

DRAFT

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING
CHAPTER 3.48 OF TITLE 3 OF THE SAN JOSE
MUNICIPAL CODE**

WHEREAS, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), it has been determined that the provisions of this Ordinance do not constitute a project, under File No. PP17-008 (General Procedure and Policy Making resulting in no changes to the physical environment); and

WHEREAS, the City Council of the City of San José is the decision-making body for this Ordinance; and

WHEREAS, this Council has reviewed and considered the "not a project" determination under CEQA prior to taking any approval actions on this Ordinance; and

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 ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 3.48.010 of Chapter 3.48 of Title 3 of the San José Municipal Code is amended to read as follows:

3.48.010 Name

The name of this plan is the City of San José, California, Deferred Compensation Plan (hereinafter referred to as the Plan). [Detailed rules and provisions related to the Plan can be found in the Basic Plan Document.](#)

SECTION 2. Section 3.48.020 of Chapter 3.48 of Title 3 of the San José Municipal Code is amended to read as follows:

3.48.020 Purpose

The primary purpose of the Plan is to attract and hold personnel by permitting them to enter into agreements with the City of San José which will provide for deferral of payment of a portion of their current compensation until death, ~~disability~~, retirement, termination of employment, or other event as provided herein, in accordance with the applicable provisions of the Internal Revenue Code.

SECTION 3. Section 3.48.025 of Chapter 3.48 of Title 3 of the San José Municipal Code is amended to read as follows:

3.48.025 Establishment of Trust

- A. There is hereby established the City of San José deferred compensation plan trust.
- B. Notwithstanding any contrary provision of the plan, in accordance with Section 457(g) of the Internal Revenue Code, 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 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.

ED. 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 benefits of the plan participants and their beneficiaries and defraying reasonable expenses of the administration of the plan.

SECTION 4. Section 3.48.030 of Chapter 3.48 of Title 3 of the San José Municipal Code is amended to read as follows:

3.48.030 Definitions

For the purposes of this Pp plan, certain words or phrases used herein will have the following meanings:

A. “Account” shall mean 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.

BH. “Alternative normal retirement age” shall mean any age irrevocably designated in writing by the participant which is:

1. 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
2. No later than age seventy and one-half (70-1/2); ~~provided, however, for a participant who continues in the service of the City after age seventy and one-half (70-1/2), the normal retirement age shall be the date or age designated by the participant but such date or age shall not be later than the mandatory retirement age for such participant or the date or age at which the participant separates from service with the City.~~

C. "Alternate payee" shall mean 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 Internal Revenue Code Section 414(p).

D. "Basic Plan Document" shall mean the written Basic Plan Document, as amended and restated from time to time, for the City of San José, California Deferred Compensation Plan.

EJ. "Beneficiary" shall mean a beneficiary designated by the participant to receive payment of benefits under the pPlan, or if no beneficiary is so designated, the participant's estate.

FA. "City" shall mean the City of San José, California.

G. "City Manager" shall mean the City Manager or the City Manager's designee.

H. “Committee” or “Aadvisory Ccommittee” shall mean the Ddeferred Compensation Aadvisory Ccommittee.

I. “Eligible deferred compensation plan” means a plan which meets the requirements of Internal Revenue Code Section 457(b).

J. “Employee” shall mean any officer or employee of the City of San José, California.

K. “Includible compensation” shall mean:

1. Prior to January 1, 2002, “includible compensation” shall mean the compensation for services performed for the City which (taking into account the provisions of Sections 457 and 403(b) of the Internal Revenue Code) is currently includible in gross income. Amounts of compensation shall be determined without regard to any community property laws.
2. After December 31, 2001, “includible compensation” shall have the meaning given to the term “participant’s compensation” by Section 415(c)(3) of the Internal Revenue Code, consistent with the earnings codes established by the City. Amounts of compensation shall be determined without regard to any community property laws.
3. Effective January 1, 2009, “includible compensation” includes differential wage payments ~~to~~ while the participants is performing qualified military service (as defined in Chapter 43 of Title 38, United States Code) ~~on~~ active duty to the extent required by ~~the provisions of~~ Internal Revenue Code Sections 3401(h) and 414(u)(12) ~~(A)(ii)~~, the Treasury regulations

thereunder and any subsequent guidance issued under Internal Revenue Code Section 414(u)(12)(A)(ii). 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 (2-1/2) 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:

- a. 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.
- b. 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.

4. Effective [insert effective date of this 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.

~~F.~~ “Disability” shall mean the complete and permanent inability of a participant to engage in his or her usual occupation by reason of a medically determinable physical or mental impairment as determined solely by the City on the basis of advice from a physician or physicians.

~~LG.~~ “Normal retirement age” shall mean age seventy and one-half (70-1/2), or that age as irrevocably selected in writing by the participant as an alternative normal retirement age. For a participant who is a qualified police officer or firefighter as defined under Internal Revenue Code Section 415(b)(2)(H)(ii)(I), normal retirement age shall mean the age designated by the participant that is between age forty (40) and age seventy and one-half (70-1/2)

~~MG.~~ “Participant” shall mean any eligible employee who fulfills the requirements of enrollment into the ~~P~~plan, and who is or has enrolled in the Plan and who retains the rights to benefits under the Plan.

~~ND.~~ “Participation agreement” shall mean the agreement executed and filed by an employee with the City or Plan administrator, pursuant to ~~Section 3.48.050~~the Basic Plan Document, in which an employee elects to become a participant in the ~~P~~plan.

~~OL.~~ “Payroll period” shall mean a biweekly compensation period.

PN. “Percentage limitation” shall mean:

1. Prior to January 1, 2002, thirty-three and one-third percent (33-1/3%) of the participant's includible compensation for the taxable year.
2. After December 31, 2001, one hundred percent (100%) of the participant's includible compensation for the taxable year.

Q. “Plan administrator” shall mean the City Manager or the person or entity designated by the City Manager to carry out certain administrative functions of the Plan.

RK. “Plan year” shall mean a calendar year.

S. “Roth account” shall mean a separate account within an account in the Plan established that is composed of after-tax contributions made pursuant to Section 402A of the Internal Revenue Code.

IQ. “Severance event” shall mean:

1. 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).
2. 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).

U. "Trustee" shall mean the City of San José and Advisory Committee as set forth in Section 3.48.060 of Chapter 3.48 of Title 3 of the San José Municipal Code.

SECTION 5. Section 3.48.040 of Chapter 3.48 of Title 3 of the San José Municipal Code is amended to read as follows:

3.48.040 Deferral of Includible Compensation

Notwithstanding any provision of the Plan to the contrary, contributions to the Plan and additions to accounts of participants shall be limited to the percentage limitation and as provided in Internal Revenue Code Section 457 and any other relevant Internal Revenue Code Sections, as detailed in the Basic Plan Document.

~~A. During each payroll period in which an employee is a participant in the plan, the City shall defer payment of such part of the employee's compensation as is specified by the employee in his or her participation agreement, provided that, except as provided in subsections B. and C. of this Section 3.48.040, the maximum that each participant may defer under this plan for any taxable year shall not exceed the lesser of:~~

~~1. The applicable dollar amount permitted under Section 457(b) of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder; or~~

~~2. The percentage limitation applied to the participant's includible compensation.~~

~~B. Beginning January 1, 2002, a participant who has attained the age of fifty (50) years before the close of the tax year, and with respect to whom no other elective deferrals may be made to the plan for the tax year by reason of the~~

~~limitations set forth in subsection A., may specify in the participation agreement that the participant elects to make deferrals in addition to those permitted by subsection A. in an amount not to exceed:~~

~~1. The applicable dollar amount permitted under Section 414(v)(2)(B) of the Internal Revenue Code, as adjusted for the cost-of-living in accordance with Section 414(v)(2)(C) of the Internal Revenue Code; or~~

~~2. The portion, if any, of the participant's compensation (as defined in Section 415(c)(3) of the Internal Revenue Code) that is in excess of any other elective deferrals of the participant for such year as are made without regard to this subsection B.~~

~~C. The maximum deferrals described in subsections A. and B. above shall not be applicable for one or more of the participant's last three (3) taxable years ending before the attainment of normal retirement age as defined under this plan. In that instance, the maximum shall be the lesser of:~~

~~1. Twice the dollar amount in effect under Section 457(b)(2)(A) of the Internal Revenue Code; or~~

~~2. The sum of:~~

~~a. The maximum deferral amount established for the purposes of Section 3.48.040A. for the taxable year (determined without regard to Section 3.48.040B.); plus~~

~~b. So much of the maximum deferral amount established for the purposes of Section 3.48.040A. for taxable years beginning after~~

~~December 31, 1978, and before the taxable year as has not previously been used under Section 3.48.040A., or under Section 3.48.040B.~~

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

~~1. 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 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.~~

~~2. 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, the period immediately following the resumption of employment that is equal to three (3) times the length of the interruption or leave of absence.~~

~~E. If the amount of compensation deferred in any taxable year exceeds the limitations described in this Section 3.48.040 when combined with other amounts deferred by a participant under another eligible deferred compensation plan under Internal Revenue Code Section 457(b) for which the participant provides information to the City, then the deferral for that taxable year (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.~~

~~F. On or after January 1, 2013, an employee may specify that any portion of the employee's compensation that the employee elects to defer under this Section 3.48.040 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. Roth elective deferrals shall be taken into account for purposes of Internal Revenue Code Section 402(g) and 415 and 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.~~

~~G. On or after January 1, 2013, if the maximum deferral amount allowed under this Section 3.48.040 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.~~

SECTION 6. Section 3.48.050 of Chapter 3.48 of Title 3 of the San José Municipal Code is amended to read as follows:

3.48.050 Participation in the Plan

- A. Each employee may elect to become a participant of the ~~p~~Plan and defer payment of part of his or her includible compensation by executing a written participation agreement and filing it with City or Plan administrator before the beginning of the month in which the deferral is to be effective.
- B. The deferred amount must equal at least twenty-five dollars (\$25.00) per payroll period ~~per investment company~~, exclusive of any service charge or such other minimum as the City Manager advisory committee may determine.
- C. A participation agreement shall be effective for the first payroll period of the next month following its execution and filing with 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 3.48.050~~DB~~.
- D. A participant may terminate his or her participation in the ~~P~~plan, and thereby terminate further deferral of includible compensation, by filing with the City or Plan administrator an executed ~~written~~ notice of termination of contributions prior to effective date of termination. Once terminated, a former participant cannot rejoin the ~~P~~plan during the month in which termination occurred; however, the former participant may elect to become a participant in a subsequent month. No amounts shall be payable to an employee upon terminating his or her participation in the ~~P~~plan unless otherwise due, pursuant to Section 3.48.130.

- E. 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 ~~P~~plan for the purpose of determining the accrual of benefits under the ~~P~~plan, all to the extent required by and as provided under USERRA. Notwithstanding any provision in the ~~P~~plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Internal Revenue Code Section 414(u) for additional elective deferrals a participant can make upon return from qualified military service.

SECTION 7. Section 3.48.055 of Chapter 3.48 of Title 3 of the San José Municipal Code is amended to read as follows:

3.48.055 Inter-Plan Transfer

- A. ~~Incoming Transfers.~~ Incoming transfers shall be accepted pursuant to the ~~Basic Plan Document.~~

~~1. 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 said plan to the City of San José deferred compensation 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.~~

~~2. Any such transferred amount shall not be treated as a deferral subject to the limitations of Section 3.48.040, 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.~~

~~3. Any such transferred amount shall otherwise be subject to the provisions of this Chapter 3.48.~~

~~4. On or after January 1, 2013, subject to the provisions of this Section 3.48.055.A, 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 allocated.~~

B. Outgoing Transfers.~~Outgoing transfers shall be permitted pursuant to the **Basic Plan Document.**~~

~~1. 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 transferred to the new employer's plan.~~

~~2. 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 Internal Revenue Code Section 414(d)) if such transfer is:~~

- a. ~~For the purchase of permissive service credit (as defined in Internal Revenue Code Section 415(n)(3)(A)) under such governmental plan; or~~
- b. ~~A repayment to which Internal Revenue Code Section 415 does not apply by reason of Subsection (k)(3) thereof.~~

- C. ~~The advisory committee or the City~~ The City Manager may require such documentation regarding any plan from which a transfer 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.

SECTION 8. Section 3.48.058 of Chapter 3.48 of Title 3 of the San José Municipal Code is amended to read as follows:

3.48.058 Eligible Rollover Distributions

- A. Incoming ~~R~~ollovers shall be permitted pursuant to the Basic Plan Document.
 - 1. ~~Beginning January 1, 2002, this plan may accept an eligible rollover distribution from an eligible retirement plan maintained by another employer and credit such rolled-over amounts to a participant's account under this plan.~~
 - 2. ~~Beginning January 1, 2009, within twelve months of a former City employee's separation from City service, this plan may accept an eligible rollover distribution of pre-tax contributions from an eligible retirement plan~~

~~maintained by the City and credit such rolled-over amounts to the former employee's account under this plan.~~

- ~~3. The plan shall separately account for eligible rollover distributions accepted from any eligible retirement plan that is not an eligible deferred compensation plan maintained by an eligible governmental employer.~~
- ~~4. For the purpose of this Subsection A., "eligible retirement plan" means an annuity plan described in Internal Revenue Code Section 403(b), a qualified trust described in Internal Revenue Code Section 401(a), or an eligible governmental deferred compensation plan.~~
- ~~5. On or after January 1, 2013, an employee may elect a direct rollover to this plan from another Roth elective deferral account of an eligible retirement plan described in Section 3.48.058.A.4. Direct rollovers will be held in a Roth rollover account to which earnings on such account shall be allocated.~~

B. Outgoing rollovers shall be permitted pursuant to the Basic Plan Document.

- ~~1. 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.~~
- ~~2. For the purposes of this Subsection B.:~~
 - ~~a. "Distributee" includes:~~

~~(1) An employee or former employee of the City; and~~

~~(2) — With respect to the interest of the spouse, an employee's or former employee's surviving spouse; and~~

~~(3) — With respect to the interest of the beneficiary, an employee's or former employee's designated beneficiary; and~~

~~(4) — With respect to the interest of the spouse or former spouse, an employee's or former employee's spouse or former spouse who is the alternate payee under a conforming domestic relations order.~~

~~b. — "Eligible retirement plan" means an individual retirement account described in Internal Revenue Code Section 408(a), a Roth individual retirement account described in Internal Revenue Code Section 408A (for distributions after December 31, 2007), an individual retirement annuity described in Internal Revenue Code Section 408(b), an annuity plan described in Internal Revenue Code Section 403(b), a qualified trust described in Internal Revenue Code Section 401(a), or an eligible deferred compensation plan that accepts an eligible rollover distribution.~~

~~C. — 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 Internal Revenue Code Section 401(a)(31)(C). 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 (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).~~

- ~~D. The advisory committee or the City 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; or to assure that rollover distributions are permitted under such plan.~~
- ~~E. For the purposes of Internal Revenue 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 Internal Revenue Code Section 4974(c)).~~
- ~~F. 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 Internal Revenue Code Section 402(c)(11) of the Code.~~

SECTION 9. Section 3.48.060 of Chapter 3.48 of Title 3 of the San José Municipal Code is amended to read as follows:

3.48.060 Administration of the Plan

- A. The Plan and the Trust established by this Chapter shall be administered by the City Manager ~~Deferred Compensation Advisory Committee~~ 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 the Basic Plan Document, provided such amendments do not conflict with any provisions of the San José Municipal Code.

B. The ~~Advisory Committee~~ 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, ~~including making decisions on behalf of the City as to the choice and nature of investments to be available under the Plan.~~ All such determinations shall be conclusive and binding on all persons.

C. The ~~Advisory Committee~~ 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.

GD. 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.

~~DE~~. 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.

SECTION 10. Section 3.48.070 of Chapter 3.48 of Title 3 of the San José Municipal Code is amended to read as follows:

3.48.070 Deferred Compensation Fund

- A. 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 individual employees if not a participant in the Plan, and to which all inter-plan transfer and direct rollover amounts accepted by the Plan shall be credited as received. Separate ~~book~~ accounts will be established for each employee participating which will ~~show~~ include all amounts of deferred compensation, inter-plan transfer amounts, direct rollover amounts, investments made, shares acquired and earnings and gains on investments. Each ~~book~~ account will be valued at least semiannually.
- B. On executing the participation agreement, the employee shall designate his or her investment ~~objective-choice~~ prospectively only. The ~~City Advisory Committee~~ shall may select funds and investments to be offered for invest 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 ~~and in corporate stocks, bonds, and securities, mutual funds, savings and loan accounts, credit union accounts, life insurance policies, variable and fixed annuities, mortgages, deeds of trust, or other security interests in real or personal property, whichever in the City's sole judgment will best achieve the employee's objectives~~. Nothing in this ~~S~~ section shall be construed to permit any type of investment prohibited by

the Constitution of the State of California. ~~The employee's investment designations are intended to be merely an expression of investment preferences and do not obligate City to follow the employee's designations.~~

~~C. No participant of the Plan or such participant's beneficiaries shall have, by reason of the Plan, participation agreement, or book account, any secured or preferred interest in, or to, any assets of the City. The City shall have only a contractual obligation to pay the benefits due the participant under the Plan.~~

~~D. Except as provided in Internal Revenue Code Section 457(g), all amounts of compensation deferred under this Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property and rights shall remain (until made available to the participant or his beneficiaries) solely the property and rights of the City, without being restricted to the provision of benefits under this Plan, subject only to the claims of the City's general creditors.~~

SECTION 11. Section 3.48.080 of Chapter 3.48 of Title 3 of the San José Municipal Code is amended to read as follows:

3.48.080 City Participation

Notwithstanding any other provisions of this Plan, the City may 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 compensation is paid, to have such additional includible compensation deferred and invested, pursuant to this Plan;

- B. That such additional deposit shall not exceed the maximum deferral permitted in Section 3.48.040 [of Chapter 3.48 of Title 3 of the San José Municipal Code and the Basic Plan Document](#).

SECTION 12. Section 3.48.090 of Chapter 3.48 of Title 3 of the San José Municipal Code is amended to read as follows:

3.48.090 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 José retirement system.

SECTION 13. Section 3.48.100 of Chapter 3.48 of Title 3 of the San José Municipal Code is amended to read as follows:

3.48.100 Status of Participants

Neither the establishment of the Plan nor any modification thereof, nor the establishment of any ~~book~~-account, nor the payment of any benefits, shall be construed as giving to any participant or other person any legal or equitable right against 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.

SECTION 14. Section 3.48.110 of Chapter 3.48 of Title 3 of the San José Municipal Code is hereby repealed.

SECTION 15. Section 3.48.130 of Chapter 3.48 of Title 3 of the San José Municipal Code is amended to read as follows:

3.48.130 Distribution of Benefits; Election

The distribution of benefits shall be made in accordance with the provisions pursuant to the Basic Plan Document.

- ~~A. Except as provided in subsections E. and F. below, a participant may elect the method of payment and the settlement options for distribution in the event of retirement, disability or other severance event, except death, 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 Chapter, the benefits payable to the participant or the participant's beneficiary, shall be continued to be held under 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 Sections 3.48.055 and 3.48.058.~~
- ~~E. On or after January 1, 1997, a participant may elect to defer commencement of distributions from the plan if such election is made after amounts may be~~

~~available under the plan in accordance with the requirements of Section 457(d)(1)(A) of the Internal Revenue Code of 1986, as amended, and before commencement of such distributions. A participant may make only one election under this subsection E.~~

~~F. On or after January 1, 2002, a participant's right to change his or her election with respect to commencement of distribution shall not be constrained by subsection E. Subject to such limitations on frequency of changes as may be imposed by the advisory committee or the provider(s) of the investment options selected by the participant, the participant may change the date for commencement of distribution at any time prior to distribution. Notwithstanding the foregoing, the advisory committee may, in order to ensure the orderly administration of this plan, establish a deadline after which such election to defer commencement of distribution of benefits shall not be allowed.~~

~~G. 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 described in Internal Revenue Code Section 3401(h)(2)(A). If a participant elects to receive a distribution from the plan as result of the application of this paragraph, the participant may not make deferrals to the plan during the six (6) month period beginning on the date of the distribution.~~

~~H. On or after January 1, 2013, after a severance event as defined in Section 3.48.030.0, except death, has occurred, 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 Internal Revenue 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 Internal Revenue Code Section 408A(e)) and Internal Revenue Code Section 72(t) shall not apply. Any distribution to which this Section 3.48.130.E. applies shall not be taken into account for purposes of Internal Revenue Code Section 402A(c)(1) and the rules of subparagraphs (D), (E) and (F) of Internal Revenue Code Section 408A(d)(3) shall apply.~~

SECTION 16. Section 3.48.131 of Chapter 3.48 of Title 3 of the San José Municipal Code is amended to read as follows:

3.48.131 Method of Payment of Benefits Upon Occurrence of Severance Event

The method of payment of benefits upon the occurrence of termination of employment, or other severance event shall be made in accordance with the provisions pursuant to the Basic Plan Document.

~~A. In the event of termination of employment because of retirement, disability, or other severance event, except death, the full benefits credited to the participant's book 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 or more of the following ways:~~

~~1. In a lump sum;~~

~~2. In 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' book 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 Internal Revenue 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 Internal Revenue 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 Internal Revenue 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 3.48.040.D for a year of qualified military service pursuant to Internal Revenue 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 3.48.131.C. 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.~~

SECTION 17. Section 3.48.132 of Chapter 3.48 of Title 3 of the San José Municipal Code is amended to read as follows:

3.48.132 Postponement of Payments of Benefits

~~A. The postponement of payment of benefits shall be allowed as permitted under Subject to the requirements of Internal Revenue Code Sections 401(a)(9) and 457(d)(2), a participant may postpone all of the payments under Section 3.48.131 as detailed in the Basic Plan Document.~~

~~B. The election to commence the distribution of benefits must be made in accordance with the provisions of Section 3.48.130.~~

~~C. Except as provided in subsections E. and F. of Section 3.48.130, the election to commence the distribution of benefits shall be irrevocable.~~

~~D. — Prior to January 1, 2002, if a participant postpones payments under this Section, the participant must elect the method of payment no later than thirty (30) days prior to the date the postponed payments are due to commence.~~

SECTION 18. Section 3.48.133 of Chapter 3.48 of Title 3 of the San José Municipal Code is amended to read as follows:

3.48.133 Date of Payment of Benefits

The date of payment of benefits shall be made in accordance with the provisions in the Basic Plan Document.

~~A. — A participant's book account balances may continue to be invested until, in the City's sole judgment, cash is to be withdrawn for the payment of benefits.~~

~~B. — Payment of benefits under Section 3.48.131 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 Internal Revenue 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 3.48.132.A. or 3.48.134.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 the death of the participant, unless the time for payment is extended pursuant to Section 3.48.134.C.~~

SECTION 19. Section 3.48.134 of Chapter 3.48 of Title 3 of the San José Municipal Code is amended to read as follows:

3.48.134 Payment of Benefits After Death

The payment of benefits following the death of the participant shall be made in accordance with the provisions as described in the Basic Plan Document.

~~A. After the death of a participant, the full benefits credited to the participant's book 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:
 - (1). ~~The life expectancy of the beneficiary if the beneficiary is the surviving spouse of the participant.~~
 - (2). ~~Fifteen (15) years, if the beneficiary is not the surviving spouse of the participant.~~
 - (3). ~~No installment payment shall be less than fifty dollars (\$50.00) unless it is the entire balance remaining in the participant's book account. Life expectancy shall be actuarially determined by the City, based on the date distribution to the beneficiary shall commence.~~~~
- c. ~~A partial lump sum payment followed by monthly, quarterly, semi-annual 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 balance 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 this 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 this plan, subject to the requirements of Internal Revenue Code Sections 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 shall meet the requirements of Internal Revenue Code Section 457.~~

~~E. Effective as of January 1, 2007, the plan specifically incorporates herein by reference the requirements of Internal Revenue Code Section 401(a)(37), the Treasury regulations thereunder and any subsequent guidance under Internal Revenue Code Section 401(a)(37) requiring that if a participant dies while performing qualified military service (as defined in Internal Revenue 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.~~

SECTION 20. Section 3.48.135 of Chapter 3.48 of Title 3 of the San José Municipal Code is amended to read as follows:

3.48.135 Emergency Withdrawals

If a participant is faced with an unforeseeable emergency, the participant may apply to ~~advisory committee~~ City Manager for withdrawal of funds from the Pplan. Such withdrawals shall be permitted, in ~~the advisory committee's~~ the City Manager's discretion, only in circumstances of an unforeseeable emergency. The rules related to the eligibility and requirements relating to an unforeseeable emergency are as described in the Basic Plan Document.

~~"Unforeseeable emergency" means 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 Internal Revenue Code Section 152(a) but without regard to 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 result of an unforeseeable emergency, the participant's Roth elective deferral account and Roth rollover account shall be distributed first in accordance with the advisory committee's policies.~~

SECTION 21. Section 3.48.137 of Chapter 3.48 of Title 3 of the San José Municipal Code is amended to read as follows:

3.48.137 De Minimus Accounts

The provisions relating to both voluntary liquidations and mandatory liquidations of account balances are as described in the **Basic Plan Document**.

A. Voluntary Liquidation.

1. 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 the amount set forth in subsection B; and~~
 - b. ~~— There have been no deferrals under the Plan with respect to the participant during the two-year period ending on the date of the distribution; and~~
 - c. ~~— There has been no prior distribution from the Plan to the participant.~~
2. ~~— A participant may not withdraw the account balance pursuant to this Section unless the total account balance does not exceed the following amount:~~
- a. ~~— For withdrawals on or after January 1, 1997, but before January 1, 1998, the sum of three thousand five hundred dollars (\$3,500.00); or~~
 - b. ~~— For withdrawals on or after January 1, 1998, the dollar limit set forth in Section 457(e)(9) of the Internal Revenue Code. On or after January 1, 2002, the value of the participant's account shall be determined without factoring in any amounts attributable to rollovers under Section 3.48.058 from eligible retirement plans other than eligible deferred compensation plans.~~
- B. ~~— Mandatory Liquidations. Notwithstanding any other provision of this Chapter, 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.~~

SECTION 22. Section 3.48.140 of Chapter 3.48 of Title 3 of the San José Municipal Code is amended to read as follows:

3.48.140 Loans

Loans shall be allowed under the Plan as provided for in the Basic Plan Document.

A. 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 Section 3.48.140. Any such loan may not be for an amount less than one thousand dollars (\$1,000.00).

B. No loan to a participant hereunder may exceed the lesser of:

1. 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-year period ending on the day before the date the loan is approved (not taking into account any payments made during such one-year period), over the outstanding balance of any loans from the plan to the participant on the date the loan is made; or

2. One-half of the value of the participant's vested account balance as of the day immediately preceding the date on which such loan is approved.

C. For purposes of subsection B. above:

1. 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

~~2. The amount of any loan fee shall be deducted from the participant's account balance before the determination of the maximum loan amount available.~~

~~D. The terms of the loan shall:~~

~~1. Require level amortization with payments not less frequently than biweekly throughout the repayment period, except that, to the extent permitted by the Internal Revenue Code and the applicable treasury regulations:~~

~~a. 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.~~

~~b. A borrower who is on a leave of absence for the performance of uniformed service within the meaning of Section 414(u) of the Internal Revenue 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.~~

~~2. 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; and~~

- ~~3. 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.~~

~~E. Security for Loan; default.~~

- ~~1. Security. 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.~~

- ~~2. Default. 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:~~

- ~~a. All remaining payments on the loan shall be immediately due and payable;~~

- ~~b. The participant shall not be allowed to initiate another loan from the plan until the defaulted amount is repaid.~~

- ~~3. 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 in satisfaction of the loan on the date of severance from employment.~~

4. ~~Notwithstanding anything elsewhere in this Chapter 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).~~

~~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 1., 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.~~

~~F. 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.~~

~~G. Loan fee. The loan administrator, with the approval of the committee, may charge a loan fee for any loan made pursuant to this Section 3.48.140. The loan fee will be deducted from the participant's account balance.~~

~~H. For the purpose of this Section 3.48.140, "loan administrator" means the person or entity authorized by the committee to administer the loan program for the plan. The committee may change the loan administrator at any time.~~

~~I. The committee may establish such rules with respect to the loan program as the committee deems advisable, including without limitation, rules regarding the~~

~~maximum number of loans that may be outstanding for any participant at any time.~~

J. ~~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 **Subsection B. of Section 3.48.140.**~~

SECTION 23. Section 3.48.150 of Chapter 3.48 of Title 3 of the San José Municipal Code is hereby repealed.

SECTION 24. Section 3.48.160 of Chapter 3.48 of Title 3 of the San José Municipal Code is amended to read as follows:

3.48.160 Amendment or Termination of 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 ~~his~~ **their** service as of the date of such termination, and the value of each participant's ~~book~~ 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 this Plan at any time; provided, however, that no amendment shall affect the rights of the participants or their 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.

C. 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.

D. This Plan is intended to qualify as an eligible state deferred compensation plan under Section 457 of the Internal Revenue Code, and shall be interpreted and administered in a manner consistent with such qualification. The City reserves the right to amend the Plan to the extent that may be necessary to conform the Plan to the requirements of 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 Section 457, City shall correct such administration within the period provided in 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 Section 457.

SECTION 25. Section 3.48.170 of Chapter 3.48 of Title 3 of the San José Municipal Code is amended to read as follows:

3.48.170 Limitation on City Responsibility

A. The City ~~may, but is not required to,~~ 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. ~~The City shall retain the right to approve or disapprove such investment requests. Any action by the City or the Advisory Committee in investing-selecting investment funds, or approving of any such investment of 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 ~~as provided in Section 3.48.130~~. 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 ~~or funding made~~ under the Plan.

- C. The City hereby establishes this Deferred Compensation Plan on the terms and conditions set forth herein.

SECTION 26. Section 3.48.180 of Chapter 3.48 of Title 3 of the San José Municipal Code is amended to read as follows:

3.48.180 Administrative Costs

The ~~Advisory Committee~~ 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 Advisory Committee~~ 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 Advisory Committee~~ the City Manager, or (3) by direct charge to the participants or any combination of the above.

SECTION 27. Section 3.48.181 of Chapter 3.48 of Title 3 of the San José Municipal Code is amended to read as follows:

3.48.181 Conforming Domestic Relations Orders

The eligibility for and requirements of a conforming domestic relations order are as described in the [Basic Plan Document](#).

~~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 Advisory Committee, in accordance with its authority under Section 3.48.060, determines are conforming domestic relations orders.~~

~~C. A conforming domestic relations order is a domestic relations order that the Advisory Committee 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, "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 in subsection 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 Section 457 of the Internal Revenue Code of 1986, and may not conflict in any other way with the Plan's distribution provisions or the requirements and limitations of Sections 401(a)(9), and 457(d) of the Internal Revenue Code of 1986 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 Advisory Committee 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 Advisory Committee with such written requests, consents or instructions as the Advisory Committee 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.~~

PASSED FOR PUBLICATION of title this _____ day of _____, 2021, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk