

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE TO APPROVE THE BASIC PLAN DOCUMENT FOR THE PTC 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 PTC Plan is for part-time, temporary and contract employees not covered by one of the City of San Jose's Retirement Systems and councilmembers that choose the PTC Plan over CalPERS; and

WHEREAS, on April 9, 2013, the City Council accepted the City Auditor's recommendation that responsibility for the administration of the PTC 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 PTC 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 PTC 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 PTC Plan should be set forth in a stand-alone Basic Plan Document; and

WHEREAS, the PTC 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 PTC Plan is hereby approved. The Basic Plan Document for the PTC is effective the date of the amended ordinance modifying the provisions of the PTC Plan in Chapter 3.50 of Title 3 of the San Jose Municipal Code relating to the administration and provisions of the PTC Plan that was approved by the City Council on February 23, 2021.
2. The terms of the Basic Plan Document for the PTC 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 JOSÉ, CALIFORNIA, PTC
DEFERRED COMPENSATION PLAN**

BASIC PLAN DOCUMENT

As of [effective date of ordinance]

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CITY OF SAN JOSÉ, CALIFORNIA, PTC DEFERRED COMPENSATION PLAN
PREAMBLE
(3.50.010, 3.50.020)

The City of San José, California ("City") established the City of San José, California, PTC Deferred Compensation Plan (hereinafter referred to as the "Plan"), pursuant to Chapter 3.50 of Title 3 of the San José Municipal Code ("SJMC"). In addition to SJMC Chapter 3.50, 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 SJMC Chapter 3.50, as well as a governmental plan within the meaning of Code Section 414(d). The primary purpose of the Plan is to provide part-time, temporary and contract employees, City Councilmembers and Council assistants (who are not members of a City retirement plan other than an eligible deferred compensation plan) with a retirement program by requiring them to enter into an agreement with the City of San José 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 and Internal Revenue Code.

ARTICLE I
DEFINITIONS
(3.50.030)

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.

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 José, 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 "Compensation" prior to [insert effective date of ordinance] shall mean includible compensation. Effective [insert effective date of ordinance], "compensation" shall mean the following:

1. Regular Salary;
2. Executive Leave;
3. Personal Leave;
4. Vacation;
5. Holiday;
6. Sick Leave;
7. Administrative Leave;
8. Funeral Leave;
9. Paid Time Off;
10. Witness Leave;
11. Cancer Screening Release Time;
12. Military Leave;
13. Retroactive Salary Payments;
14. POST Pay;
15. Anti-Terrorism Pay; and
16. Any compensation that would be considered a non-pensionable compensation increase under Chapters 3.28.030.05(E) and/or 3.36.020.3(A) of Title 3 of the San Jose Municipal Code.

Notwithstanding anything to the contrary, compensation does not include payment for any purpose not included above, including, but not limited to, the following:

1. Bilingual pay;

2. Auto allowances;
3. Taxable cellular phone and data stipends;
4. Medical and dental in lieu payments;
5. Higher class pay;
6. Retention payments;
7. Management Performance Bonus Program;
8. Premium-related payments;
9. Severance pay;
10. Vacation balance payoffs;
11. Compensatory time off payoffs;
12. Sick leave payoffs;
13. Reimbursements;
14. Allowances for equipment;
15. Safety purchases;
16. Moving expenses;
17. Professional development;
18. Education reimbursement; and
19. Overtime.

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

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). 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 minimum amount which may be deferred under Code Sections 457(b)(2) and 457(b)(3). Furthermore, effective January 1, 2008, "Compensation" includes amounts paid after the Employee's Severance Event if paid by the later of two and one-half (2½) 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. "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 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 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 (70½), or, if earlier, that age as irrevocably selected in writing by the Participant as defined as an Alternative Normal Retirement Age.

1.12 "Participant" means any eligible PTC 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 any agreement executed and filed by a PTC Employee with the City or Plan Administrator, pursuant to Article II, in which a PTC Employee becomes 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 nondiscretionary administrative functions of the Plan.

1.17 "Plan Year" means a calendar year.

1.18 "PTC Employee" means any part-time, temporary, or contract employee, or any City Councilmember of the City of San José, California, and shall include any Council assistant until such time as the Council assistant becomes a member of a City retirement plan other than an eligible deferred compensation plan.

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 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 Code Section 457(d)(1)(A)(ii).

1.20 "Trustee" means the City of San José and Advisory Committee based on the duties set forth in Chapter 3.50.060 of Title 3 of the San José Municipal Code.

ARTICLE II
PARTICIPATION
(3.50.050, 3.50.090)

2.1 **Participation in Plan.** Each PTC Employee shall automatically become a Participant of the Plan and make mandatory deferrals of part of their Compensation, in the amount set forth in section 3.50.040 and Article III, effective the first pay period.

2.2 **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.

2.3 **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 PTC Employee or 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.

**ARTICLE III
DEFERRAL OF COMPENSATION
(3.50.040)**

3.1 **Individual Accounts.** Adequate records shall be created and maintained which reflect 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. Distributions and withdrawals made from an account shall be charged to the Account as of the date payment is made.

3.2 **Mandatory Deferrals and City Contributions.** During each payroll period in which a PTC Employee is a Participant in the Plan:

- a. 3.75% of the Participant's Compensation shall be deferred and paid to the Plan ("Mandatory Deferrals"); and
- b. For PTC Employees other than City councilmembers, the City shall contribute 3.75% of the Participant's Compensation to the Plan; for City councilmembers, the City shall contribute 6.55% of the Participant's Compensation to the Plan ("City Contributions").

All Mandatory Deferrals and City Contributions are subject to the applicable deferral limits set forth in this Article III. Mandatory Deferrals and City Contributions will be deposited into the Participant's Account pursuant to the Participation Agreement.

3.3 **Deferral Limits.** During each payroll period in which a PTC Employee is a Participant in the Plan with a deferral election in effect, the City shall defer payment of such part of the PTC Employee's Compensation as set forth in Section 3.2, provided that, except as provided in Sections 3.4 and 3.5, 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)
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; or

b. The Percentage Limitation.

3.4 **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.

3.5 **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 3.5 exceeds the amount computed under Sections 3.3 and 3.4, then the deferral limit under this Article III shall be the lesser of:

- a. An amount equal to two times the Section 3.3 applicable dollar amount for such year; or
- b. the sum of:
 1. An amount equal to (1) the aggregate Section 3.3 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 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 3.4 and 3.5), minus (2) the aggregate contributions to Pre-2002 Coordination Plans (as defined by the Treasury Regulations and as provided in Section 3.7) for such years.

3.6 **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.

3.7 **Pre-2002 Coordination Plans.** For purposes of Section 3.5(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, 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 3.5(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.

3.8 **Military Service.** A PTC 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-up Mandatory Deferrals upon resumption of employment with the City, subject to the following:

- a. The make-up Mandatory 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.
- c. To the extent the Employee makes-up Mandatory Deferrals, the City shall make-up corresponding City Contributions.

3.9 **Voluntary Deferrals Not Permitted.** Participants are not eligible for any deferrals in excess of the Mandatory Deferrals as provided in Section 3.2. Participants are not eligible to make any additional contributions to an Account.

3.10 **Excess Deferrals.** If the amount of 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.

ARTICLE IV
INVESTMENTS & EXPENSES – DEFERRED COMPENSATION FUND
(3.50.070, 3.50.190)

4.1 **PTC Deferred Compensation Fund.** The City shall establish a PTC 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. Separate Accounts will be established for each PTC Employee participating, which will show all amounts of deferred compensation, investments made, shares acquired and earnings and gains on investments. Each Account will be valued at least semiannually.

4.2 **Investment of Deferred Compensation.** The Advisory Committee will select the funds and investments for amounts of deferred compensation. All investments will comply with 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. Any action by the Advisory Committee in selecting investment funds shall not be considered to be either an endorsement or guarantee of any investments, 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 the 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 under the Plan.

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 or Trustee may also assess a reasonable record-keeping fee, as needed.

ARTICLE V
Rollovers and Transfers
(3.50.115 and 3.50.116)

5.1 **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 5.1:
 1. "Distributee" means a PTC Employee or former PTC Employee. It also includes the PTC Employee's or former PTC Employee's surviving spouse and the PTC Employee's or former PTC 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 the 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 Code Section 408(b), a SIMPLE IRA described in Internal Revenue Code Section 408(p) after the expiration of the required two year period, an annuity plan described in Internal Revenue 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 Internal Revenue 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 Internal Revenue 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.

5.2 **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 Internal Revenue Code Section 414(d)) if such transfer is:
 1. For the purchase of permissive service credit (as defined in Internal Revenue 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.

5.3 **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.

5.4 **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 Internal Revenue Code Section 402(c)(11).

**ARTICLE VI
CERTAIN DISTRIBUTIONS
(3.50.155)**

6.1 **Other Distributions.**

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

6.2 **De Minimus Accounts.**

Notwithstanding any other provision of this Chapter, if, upon the occurrence of a Severance Event, the value of a Participant's Account is less than one thousand dollars (\$1,000), the

Participant's Account shall be paid to the Participant in a lump-sum; provided that the Participant may elect an inter-plan transfer or an eligible rollover distribution.

ARTICLE VII
DISTRIBUTIONS OF BENEFITS
(3.50.120, 3.50.130, 3.50.131, 3.50.140, 3.50.150)

7.1 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 no later than thirty (30) days 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 VII, the benefits payable to the Participant or the Participant's Beneficiary, less any federal or state income taxes required to be withheld, shall be payable in a lump sum. 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, 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. Effective as of 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 or City Manager 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 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, the Participant may not make an elective deferrals to the Plan during the six (6) month period beginning on the date of the distribution.

7.2 **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).

7.3 **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 7.2 may commence no sooner than thirty-one (31) days following the occurrence of a Severance Event but in no event shall commence later than sixty (60) days after the close of the Plan year in which the Severance Event occurred except in the case where the Participant has elected a

postponement of the commencement of distribution in accordance with the terms of this Plan.

- c. Payment of benefits in the event of the death of the Participant may commence at sixty (60) days after satisfactory proof of death, and shall commence no later than sixty (60) days 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 7.2(c).

7.4 Postponement of Payments of Benefits and Required Minimum Distribution Rules.

The provisions of this Section 7.4 shall be administered in a manner consistent with the provisions of Section 7.1 and Internal Revenue 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 Internal Revenue Code Section 401(a)(9) in accordance with the regulations under Internal Revenue 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 Internal Revenue Code Section 401(a)(9) and the minimum distribution incidental benefit requirement of Internal Revenue Code Section 401(a)(9)(G). This Section constitutes a good faith interpretation of Internal Revenue Code Section 401(a)(9) for purposes of Section 823 of the Pension Protection Act of 2006.

- a. Subject to the requirements of Internal Revenue Code Sections 401(a)(9) and 457(d)(2), a Participant may postpone all payments under Section 7.2. 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 (70½), 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)(i)(1), 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 7.4 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 7.1.

7.5 **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 a lump sum.
 - 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, no later than thirty (30) days prior to the date payments are due to commence.
 - 2. If the Participant dies before he or she has begun to receive the benefits provided by the Plan, subject to the requirements of Internal Revenue 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 7.5 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.

**ARTICLE VIII
MISCELLANEOUS**

(3.50.060, 3.50.110, 3.50.180, 3.50.190, 3.50.200, 3.50.210)

8.1 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 José 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 the 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.

8.2 **Limitation on City Responsibility.**

- a. The City will invest funds held pursuant to agreements between Participants and City in accordance with the Plan.
- b. Any action by the City or the Advisory Committee in select 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.

8.3 **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.

8.4 **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 8.1, 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 8.4, "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.

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

8.6 **Nonassignability.** 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.

8.7 **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 his or her 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 Code Section 457.
- c. This Plan is intended to qualify as an eligible governmental state deferred compensation plan under Internal Revenue Code Section 457, and shall be interpreted and administered in a manner consistent with Internal Revenue 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 Internal Revenue Code Section 457.

8.8 **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 Code Section 457.

ARTICLE IX
ESTABLISHMENT OF TRUST
(3.50.025)

9.1 **Establishment of Trust.**

- a. There is hereby established the City of San José PTC Deferred Compensation Plan Trust ("Trust").
- b. Notwithstanding any contrary provision of the Plan, in accordance with Internal Revenue 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: _____