RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE PROVIDING FOR THE SELECTION AND TERM OF OFFICE OF MEMBERS OF THE VOLUNTARY EMPLOYEES BENEFICIARY ASSOCIATION (VEBA) ADVISORY COMMITTEE FOR THE CITY OF SAN JOSE POLICE AND FIRE VOLUNTARY EMPLOYEES' BENEFICIARY ASSOCIATION AND FEDERATED EMPLOYEES' VOLUNTARY EMPLOYEES BENEFICIARY ASSOCIATION

WHEREAS, pursuant to applicable agreements between the City, the San José Police Officers' Association, and the San José Fire Fighters, IAFF Local 230, a Voluntary Employees Beneficiary Association ("VEBA") meeting the requirements of IRC Section 501(c)(9), as approved by the Internal Revenue Service, shall be established to provide post-retirement healthcare benefits to new employees and, upon approval of the Internal Revenue Service, to those members other than Tier 2 members who make a one-time irrevocable election to be covered under this Chapter 3.57 rather than continuing to be covered under Parts 14 and 15 of Chapter 3.36 of Title 3 of the San José Municipal Code;

WHEREAS, pursuant to applicable agreements between the City and City employees, a VEBA meeting the requirements of IRC Section 501(c)(9), as approved by the Internal Revenue Service, shall be established to provide post-retirement healthcare benefits for all persons who may become members thereof pursuant to the provisions of this Chapter 3.58 of Title 3 of the San José Municipal Code;

WHEREAS, San José Municipal Code Sections 3.57.210 and 3.58.210 provide that the VEBA Plans shall be administered by the VEBA Advisory Committee and that the number of members on the committee, qualifications, selection process and term of office shall be established by negotiated agreement among and between the City and all labor groups participating in the VEBA Plans, including unrepresented members; and

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once agreement is reached, the matter shall be referred to and adopted by resolution of the City Council in the form of a resolution;

WHEREAS, the City and all labor groups negotiated a Side Letter Agreement effective January 28, 2018 regarding the VEBA Advisory Committee;

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

SECTION 1. Selection of VEBA Committee Members.

The VEBA Advisory Committee shall consist of five (5) members to be selected as follows:

(a) One (1) active member of the San Jose Firefighters, IAFF Local 230;
(b) One (1) active member of the San Jose Police Officers' Association;
(c) Two (2) active members of the Federated Unions; and
(d) One (1) active member of unrepresented employees.

The union members shall be nominated by the respective unions. The City Manager or City Manager's designee shall nominate the unrepresented employee member.

SECTION 2. Terms of Office.

The initial terms for members shall be as follows:

(a) Active member of San Jose Firefighters, IAFF Local 230, first appointment as soon as possible to June 1, 2018. First term ends May 31, 2021, and terms end every four (4) years thereafter;

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(b) Active member of the San Jose Police Officers' Association, first appointment as soon as possible to June 1, 2018. First term ends May 31, 2020, and terms end every four years thereafter;

(c) Active members of Federated unions, first appointment as soon as possible to June 1, 2018. First term ends May 31, 2022, and terms end every four years thereafter; and

(d) Unrepresented employee, first appointment as a soon as possible to June 1, 2018. First term ends May 31, 2019, and terms end every four years thereafter.

The term of each member after the initial terms set forth above shall be four (4) years. There are no term limits for members.

SECTION 3. Requirement of Active Employment and Participation in a VEBA.

Each member of the VEBA Committee shall be an active employee who is a participant of a VEBA Plan established under Chapter 3.57 or Chapter 3.58 of Title 3 of the San Jose Municipal Code.

SECTION 4. Appointment of Members by City Council

The appointment of nominated employees to the VEBA Committee shall be routine business on the City Council agenda. The City Council shall approve the nomination unless the City Council finds cause for rejection. "Cause" includes, but is not limited to, a failure to disclose all conflicts of interest; a significant potential for a conflict of interest to arise; the appearance of a conflict of interest; or the existence of a conflict of interest; and such other information as may be available that the City Council finds would hinder the nominee's ability to carry out his/her fiduciary duty to the VEBA Plans or the participants and beneficiaries of such Plans.

SECTION 5. Removal of Members by City Council

A member may be removed by the City Council for cause as defined in Section 4, Appointment of Members by City Council. A member of a union, the City Manager, or retired employee that is a participant of a VEBA Plan may submit a written request to the City Council for the removal of a member on the VEBA Committee. Any such request shall state the grounds for which removal is sought. The City Clerk shall schedule a hearing before the City Council to consider any written request for removal of a member of the VEBA Committee. Notice of the hearing shall be provided to the affected member of the VEBA Committee at least ten (10) days prior to the date of the hearing. After the hearing, the City Council may remove the member if it makes a written finding of evidence supporting cause for removal.

SECTION 6. Vacancies.

A. Members shall be nominated for subsequent terms and for any vacancies in office by the process as provided for in Section 1, Selection of VEBA Committee Members. In the event a vacancy should occur in the office of any member prior to the expiration of a term, a successor shall be nominated for the unexpired portion of the member's term pursuant to the process as provided for in Section 1, Selection of VEBA Committee Members.

B. The seat of any member shall become vacant upon the happening of any of the following events:

1. The expiration of the member's term of office;
2. The death of the member;
3. The resignation of the member;
4. The member ceases to be a participant of a VEBA Plan;

5. The member ceases to be an employee of the City;
6. The member's conviction of a felony or any crime involving a violation of his or her official duties as a member of the Committee;
7. The commitment of the member to a hospital or sanitarium by a court of competent jurisdiction, except that the office shall not be deemed vacant until the order of commitment has become final;
8. Removal of the member from office by the City Council for cause.

SECTION 7. Absence From Meetings.

A. A member shall be deemed to have automatically resigned from office if the member has unexcused absences from either:

1. Any three consecutive regular meetings of the Committee; or
2. More than twenty-five percent (25%) of the total number of regular meetings held in any calendar year or, if the member was appointed to fill a vacancy, more than twenty-five percent (25%) of the total number of regular meetings held during the remainder of the calendar year.

B. For the purposes of this Section, the following shall not be considered an unexcused absence:

1. An absence due to an illness of the member;
2. An absence due to the illness or death of a person for whom the member would be eligible for bereavement leave;
3. An absence because the member is away on authorized Committee business;
4. An absence due to the member performing required City business;
5. An absence which the Committee has found to be for good cause.

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C. As used in this Section, “regular meetings” means regularly scheduled meetings of the Committee and does not include special meetings, adjourned or continued regular meetings, or subcommittee meetings.

SECTION 8 Members Not Compensated for Services

Members shall not be compensated for their services by the VEBA Plans.

SECTION 9. Members of Committee to be Officers of the City.

The members of the VEBA Advisory Committee established by this Resolution shall be officers of the City of San José for the purposes of California Government Code Section 995 *et seq.* (City defense of officers and employees) and California Government Code Section 825 *et seq.* (City indemnification of officers and employees).

ADOPTED this _____ day of _____, 2018, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

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