

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AMENDING THE BASIC PLAN DOCUMENT FOR THE DEFINED CONTRIBUTION PLAN FOR UNIT 99 EMPLOYEES TO COMPLY WITH THE CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT (CARES ACT) AND SETTING EVERY COMMUNITY UP FOR RETIREMENT ENHANCEMENT ACT (SECURE ACT)

WHEREAS, the Setting Every Community Up for Retirement Enhancement Act (SECURE Act) was enacted by Congress on December 20, 2019 with the primary objective to increase access to and encourage retirement savings; and

WHEREAS, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was enacted by Congress on March 27, 2020 with the primary objective to help ease some of the financial burdens facing Americans in the wake of the COVID-19 pandemic; and

WHEREAS, the CARES Act and SECURE Act require an amendment to the City's the Defined Contribution Plan for Unit 99 Employees relating to the mandatory provisions for the required minimum distribution age increase to age 72, required minimum distribution waivers, and beneficiary payment period; and

WHEREAS, the CARES Act and SECURE Act require an amendment to the City's Defined Contribution Plan for Unit 99 Employees relating to the optional provisions for Coronavirus-related distributions, in-service distribution at age 59½, and qualified birth and adoption distributions up to \$5000.

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

The amendments to the Basic Plan Document for the Defined Contribution Plan for Unit 99 Employees to comply with the CARES Act and SECURE Act and authorization for the City Manager or her designee to execute the amended and restated Basic Plan Document and other documents as necessary to administer the Defined Contribution Plan for Unit 99 Employees set forth in Chapter 3.49 of the San Jose Municipal Code are hereby approved. These amendments will become effective on the same date as the accompanying Ordinance to amend Chapter 3.49 of Title 3 of the Defined Contribution Plan for Unit 99 Employees to comply with the CARES Act and SECURE Act. The proposed amendments to the Basic Plan Document for the Defined Contribution Plan for Unit 99 Employees is attached hereto as Exhibit A and incorporated in this Resolution.

ADOPTED this ____ day of _____, 2024, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

ATTACHMENT A

DEFINED CONTRIBUTION PLAN FOR UNIT 99 EMPLOYEES
AMENDED AND RESTATED BASIC PLAN DOCUMENT
(As of _____, 2024)

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**DEFINED CONTRIBUTION PLAN FOR UNIT 99 EMPLOYEES
PREAMBLE**

The Employer hereby establishes the Code Section 401(a) Defined Contribution Plan for Governmental Employers, named the City of San José, California Defined Contribution Plan for Unit 99 Employee (the "Plan").

The Plan is intended to be a qualified plan within the meaning of Section 401(a) of the Internal Revenue Code (the "Code"); based on the election of the Employer in the Adoption Agreement, a money purchase pension plan within the meaning of Section 1-401-1(b)(1)(i) of the Income Tax Regulations or a profit sharing plan within the meaning of Section 1-401-1(b)(1)(ii) of the Income Tax Regulations; and a governmental plan within the meaning of Section 414(d) of the Code and Section 3(32) of the Employee Retirement Income Security Act of 1974.

The Plan consists of the provisions set forth in this basic plan document and the Adoption Agreement and is applicable to each Eligible Employee and elected official.

This amendment of this Basic Plan Document amends the Plan to comply with applicable provisions of the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019 and the Coronavirus Aid, Relief, and Economic Security Act (CARES) of 2020.

**ARTICLE I.
DEFINITIONS**

As used in this Plan, the following words and phrases shall have the meanings set forth herein unless a different meaning is clearly required by the context.

1.1 "414(h) Pick-Up Contribution" means mandatory contributions that all Participants must make if required under the Adoption Agreement pursuant to Section 414(h) of the Code. 414(h) Pick-Up Contribution are picked up by the Employer via a salary reduction in accordance with Section 414(h)(2) of the Code and are treated as Employer Contributions for federal income tax purposes, but are considered "wages" for purposes of FICA and FUTA.

1.2 "414(h) Pick-Up Contribution Account" means the account (including any earnings and losses attributable thereon) established and maintained by the Administrator for each Participant with respect to his total interest under the Plan resulting from 414(h) Pick-Up Contribution.

1.3 "Administrator" means the City. The City may appoint the city manager or his designee pursuant to Section 5.2 to perform administrative functions for the Plan.

1.4 "Adoption Agreement" means the separate agreement which is executed by the Employer and sets forth the elective provisions of the Plan. The Adoption Agreement is considered a part of the Plan.

1.5 "Anniversary Date" means the annual date for valuation of Plan assets specified in the Adoption Agreement, but in no event shall a valuation of Plan assets be performed less than once a year occurring on the last day of the Plan Year.

1.6 "Beneficiary" means the individual, individuals or trust designated by the Participant in writing on a form acceptable to the Administrator, and received by the Administrator before the Participant's death, to receive any undistributed amounts under the Participant Account which becomes payable upon the Participant's death. A Beneficiary may designate his own Beneficiary. If a Participant or Beneficiary does not designate a Beneficiary in a form acceptable to the Administrator, then his estate will be deemed to be his Beneficiary. In addition, any Beneficiary designation will meet the requirements of applicable state law.

1.7 "Code" means the Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to sections of the Code are to such sections as they may from time to time be amended or renumbered.

1.8 "Compensation" shall be defined in the Ordinance.

1.9 "Eligible Employee" means any individual Employee of the Employer who meets the criteria set forth in the Ordinance and the Adoption Agreement.

1.10 "Employee" means any person set forth in the Ordinance.

1.11 "Employer" means the City of San Jose, California

1.12 "Employer Contributions" means the Employer's contributions to the Plan in accordance with the formula selected in the Adoption Agreement.

1.13 "Employer Contribution Account" means that portion of the Participant Account established and maintained by the Administrator for each Participant with respect to his total interest (including any earnings and losses attributable thereon) under the Plan resulting from Employer Contributions.

1.14 "Fiscal Year" means the Employer's 12-month consecutive accounting year specified by the Employer in the Adoption Agreement.

1.15 "Investment Product" means group or individual annuity contracts or such other investment arrangements issued by or offered through the Provider and used to hold the assets of the Plan. Notwithstanding the previous sentence, life insurance shall not be a permissible investment product under the Plan.

1.16 "Normal Retirement Age" as set forth in the Ordinance and Adoption Agreement.

1.17 "Ordinance" means the municipal Ordinance adopted to establish the Plan.

1.18 "Participant" means any individual defined in the Ordinance.

1.19 "Participant Account" means the total of a Participant's 414(h) Pick-Up Contribution Account, Rollover Contribution Account, and the Employer Contribution Account for each Participant in the Plan, the account established for a Beneficiary after a Participant's death, and any account or accounts established for an alternate payee (as defined in Section 414(p)(8) of the Code).

1.20 "Plan" means the name of the Plan as indicated in the Adoption Agreement.

1.21 "Plan Year" means the Plan's 12-consecutive month accounting year as elected by the Employer in the Adoption Agreement.

1.22 "Provider" means ING Life Insurance and Annuity Company and/or ReliaStar Life Insurance Company or such other provider entity as the Employer may approve.

1.23 "Rollover Contribution" means, if so elected by the Employer in the Adoption Agreement, contributions made by a Participant (or, if applicable, Eligible Employee or elected official) pursuant to Section 3.6 of "eligible rollover distributions" in accordance with Section 402(c)(4) of the Code.

1.24 "Rollover Contribution Account" means the account established and maintained by the Administrator for each Participant (or, if applicable, Eligible Employee or elected official) with respect to his total interest (including any earnings and losses attributable thereon) under the Plan resulting from Rollover Contribution.

1.25 "Vested" means the nonforfeitable portion of any account maintained on behalf of a Participant. All accounts are always 100% vested. There are no forfeitures in this Plan.

ARTICLE II. ELIGIBILITY

2.1 Eligibility

Each Eligible Employee and elected official will be a Participant in the Plan when he satisfies the eligibility requirements specified in the Adoption Agreement and the Ordinance.

2.2 Determination of Eligibility and Effective Date of Participation

(a) The Administrator will determine whether an Eligible Employee or elected official has satisfied the eligibility requirements specified in the Adoption Agreement based upon information furnished by the Employer. Such determination will be conclusive and binding and the criteria for such determination will be applied uniformly to all Participants.

(b) An Eligible Employee who is eligible to be a Participant shall become a Participant effective as of the day specified in the Adoption Agreement if they elect

coverage in this Plan as provided in the Adoption Agreement. An elected official who is eligible to be a Participant shall become a Participant effective as of the day specified in the Adoption Agreement and as provided in the Ordinance.

(c) The Participant will provide investment direction for contributions made to an Investment Product on such forms as may be required by the Provider.

2.3 Termination of Eligibility

In the event a Participant will go from a classification of an Eligible Employee to a non-Eligible Employee, or a Participant is no longer an elected official, such Participant will not be able to actively participate in the Plan until he is again reclassified as an Eligible Employee or an elected official. The Participant Account of such inactive Participant will continue to be allocated any attributable earnings and losses.

2.4 Information Provided by the Employee or elected official

Each Eligible Employee or elected official enrolling in the Plan should provide to the Administrator at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Administrator to administer the Plan.

2.5 Leave of Absence

If an Employee or elected official is absent from work by leave of absence, contributions under the Plan shall continue to the extent that Compensation continues.

2.6 Payment of Contributions to Investment Product

The Employer shall remit to the Provider the contributions to be allocated under the Investment Product to fund benefits under the Plan within the time period prescribed by applicable law.

ARTICLE III. CONTRIBUTION AND ALLOCATION

3.1 Employer Contributions

The Plan is a money purchase pension plan within the meaning of Section 1-401-1(b)(1)(i) of the Income Tax Regulations, as elected by the Employer in the Adoption Agreement, and the Employer will make Employer Contributions for each Plan Year as elected in the Adoption Agreement. Employer Contributions are subject to any limitations imposed under applicable law. Such Employer contributions shall be allocated to the Participant's Employer Contribution Account.

3.2 414(h) Pick-Up Contribution

A Participant shall make 414(h) Pick-Up Contribution as indicated in the Adoption Agreement, subject to any limitations imposed under applicable law. Such contributions shall be allocated to the 414(h) Pick-Up Contribution Account of each Participant.

3.3 Maximum Annual Additions

(a) The maximum permissible Annual Additions that may be contributed or allocated to each Participant Account under the Plan for any Limitation Year shall not exceed the lesser of:

- (1) \$40,000, as adjusted for increase in the cost of living under Section 415(d) of the Code, or
- (2) 100 percent of the Participant's Compensation for the Limitation Year.

(b) For purposes of this Section, "Annual Additions" means, for any Limitation Year, the sum of Employer Contributions, 414(h) Pick-Up Contribution, and Forfeitures to the Plan and any contributions and forfeitures allocated to any other qualified defined contribution plans of the Employer which are required to be aggregated with the Plan in accordance to Section 1.415(c)-1(a)(2) of the Income Tax Regulations. For this purpose, any excess amount applied under Section 415 of the Code in the Limitation Year to reduce Employer contributions shall be considered "Annual Additions" for such Limitation Year.

(c) For purposes of this Section, "Limitation Year" means the 12-consecutive month calendar year. If the Employer maintains any other qualified defined contribution plans as defined in Section 1.415(c)-1(a)(2) of the Income Tax Regulations, such other plans shall also use the calendar year as the Limitation Year.

(d) If a Participant participates in another qualified defined contribution plan maintained by the Employer (as defined in Section 1.415(c)-1(a)(2)) which is required to be aggregated with the Plan for purposes of this Section, the amount of Annual Additions which may be credited to an individual's Participant Account for any Limitation Year shall not exceed the maximum permissible amount described in subsection (a). If amounts allocated to a Participant's account maintained under this Plan are equal or greater than the maximum permissible amount described in subsection (a) in a Limitation Year, no amount shall be contributed to the Participant's account under the other plans for that Limitation Year.

3.4 Adjustment for Excess Annual Additions

(a) Notwithstanding Section 3.3(d), if the maximum permissible amount described in Section 3.3(a) is exceeded and if the Employer sponsors more than one qualified defined contribution plan, then any excesses will first be cured from such other qualified plan. If excesses remain or if there is no other qualified defined contribution

plan of the Employer, then any remaining excesses shall be corrected in accordance with this Section.

(b) Notwithstanding any provision of the Plan to the contrary, if the Annual Additions to a Participant Account under the Plan are exceeded in any Limitation Year, then the Plan shall correct such excess in accordance with the Income Tax Regulations and such other guidance as the IRS may issue from time to time.

3.5 Rollovers to the Plan

(a) If elected by the Employer in the Adoption Agreement and with the consent of the Administrator, amounts that are considered eligible rollover distributions as defined in Section 402(c)(4) of the Code may be rolled over by an Eligible Employee or elected official, whether or not a Participant at the time, from an eligible retirement plan, as defined in subsection (b) below. A Participant who is a surviving spousal Beneficiary or an alternate payee (who is a spouse or former spouse) of another eligible retirement plan may roll over eligible rollover distributions from such eligible retirement plan as further defined in subsection (b). Such amounts shall be allocated to the Participant's Rollover Contribution Account.

(b) For purposes of this Section, the term "eligible retirement plan" means any other plan under Section 401(a) of the Code, a plan under Section 457(b) of the Code maintained by an employer as defined in Section 457(e)(1)(A) of the Code, a plan under Section 403(b) of the Code, an individual retirement account as described in Section 408(a) of the Code, and an individual retirement annuity as described in Section 408(b) of the Code, provided that after-tax amounts may only be rolled into the Plan from another plan that is subject to Section 401(a) of the Code. Distributions from a Roth account may not be rolled into this Plan. For purposes of this Section, the term "amounts rolled over from an eligible retirement plan" means:

(1) amounts rolled to the Plan directly from another eligible retirement plan on behalf of an Eligible Employee or elected official (or Participant, surviving spouse or alternate payee, as applicable); and

(2) eligible rollover distributions as defined in Section 402(c)(4) of the Code received by an Eligible Employee or elected official (or Participant, surviving spouse or alternate payee, as applicable) from another eligible retirement plan that are rolled over by them to the Plan within sixty (60) days, following his receipt thereof.

3.6 Investments

Amounts deferred under the Plan will be invested in any Investment Product. If applicable, a Participant will direct the investment of his Participant Account among the investment options available under the Investment Product. Contributions will be allocated to a Participant Account in accordance with this Article III and earnings and losses attributable to such contributions will

be allocated to such Participant Account. If any provision of an Investment Product agreement is not consistent with the Plan provisions, the terms of the Plan will control.

3.7 Vesting

(a) A Participant is always fully vested in his 414(h) Pick-Up Contribution, Rollover Contribution, Employer Contributions and the earnings thereon.

3.8 Protection of Persons Who Serve in a Uniformed Service

(a) Notwithstanding any provision of this plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Code and the Ordinance.

ARTICLE IV. DETERMINATION AND DISTRIBUTION OF BENEFITS

4.1 Distributions under the Plan

(a) A Participant Account may not be paid to a Participant (or, if applicable, the Beneficiary) until one of the following events has occurred:

(1) attainment of Normal Retirement Age,

~~(2)~~ separation from service prior to Normal Retirement Age,

~~(2)(3)~~ effective July 1, 2021, if a Participant is at least fifty-nine and a half (59½) years of age, the Participant may take distributions from the Participant's Account even if the Participant has not had a separation from service, or

~~(3)(4)~~ the Participant's death.

(b) Notwithstanding subsection (a), a Participant may choose to receive a distribution from his Rollover Contribution Account at the time elected by the Employer in the Adoption Agreement.

4.2 Distribution of Benefits upon Normal Retirement Age, Other Separation From Service.

(a) Upon attainment of a distributable event described in Section 4.1, but in no event later than the requirement to commence minimum distribution payments in accordance with a reasonable, good faith interpretation of Section 401(a)(9) of the Code and the Income Tax Regulations thereunder, a Participant may elect a benefit distribution option to which benefits will be paid.

(b) Upon a Participant's application for benefits, the Administrator will direct the distribution of a Participant Account in accordance with this Section 4.2 and the Ordinance.

(c) A Participant may choose a benefit distribution option as selected by the Employer in the Adoption Agreement and the Ordinance. The terms of any annuity contract purchased and distributed by the Plan to a Participant will comply with the requirements of the Plan.

4.3 Distribution of Benefits upon Death

(a) Upon the death of a Participant, the Administrator will direct that the deceased Participant's Participant Account be distributed to the Beneficiary in accordance with the provisions of this Section.

(b) The designation of a Beneficiary will be made on a form satisfactory to the Administrator. A Participant or Beneficiary may at any time revoke his designation of a Beneficiary or change his Beneficiary by filing written notice of such revocation or change with the Administrator. In the event no valid designation of Beneficiary exists at the time of the Participant's or Beneficiary's death, the death benefit will be payable to the Participant's or Beneficiary's estate.

(c) The Administrator may require such proper proof of death and such evidence of the right of any person to receive payment of the value of the Participant Account of a deceased Participant or Beneficiary, as the Administrator may deem appropriate. The Administrator's determination of death and of the right of any person to receive payment will be conclusive.

(d) Death benefits payable to a Beneficiary will be made in a form as selected by the Beneficiary in accordance with the available options as elected by the Employer in the Adoption Agreement. If no election of the method of payment has been made by the Participant or the Participant's Beneficiary as provided for in the Plan, the benefits payable to the Participant or the Participant's Beneficiary shall continue to be held in the Plan. The terms of any annuity contract purchased and distributed by the Plan to a Beneficiary will comply with the requirements of the Plan.

4.4 Minimum Distributions

(a) All distributions under the Plan shall comply with a reasonable and good faith interpretation of the minimum distribution requirements of Section 401(a)(9) of the Code and the Income Tax Regulations.

(b) Notwithstanding any other provisions of this Plan, whether a Participant or Beneficiary who would have been required to receive required minimum distributions in 2020 (or paid in 2021 for the 2020 calendar year for a Participant with a required beginning date of April 1, 2021) but for the enactment of Code Section 401(a)(9)(I)

("2020 RMDs"), and who would have satisfied that requirement by receiving distributions that are either (i) equal to the 2020 RMDs as a single payment, or (ii) one or more installment payments (that include the 2020 RMDs), or a series of substantially equal periodic payments made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancies) of the Participant and the Participant's Designated Beneficiary, or for a period of at least 10 years ("Extended 2020 RMDs"), will receive those distributions is determined as follows:

(1) A Participant or Beneficiary who would have satisfied the requirement to receive 2020 RMDs by receiving a single payment equal to the 2020 RMDs will not receive these distributions unless the Participant or beneficiary chooses to receive the distributions.

(2) A Participant or Beneficiary who would have satisfied the requirement to receive 2020 RMDs by receiving Extended 2020 RMDs will receive these distributions unless the Participant or Beneficiary chooses not to receive the distributions.

Solely for purposes of applying the direct rollover provisions of the Plan, 2020 RMDs and Extended 2020 RMDs will be treated as Eligible Rollover Distributions in 2020.

4.5 Rollovers from the Plan

(a) Notwithstanding any provision of the Plan to the contrary, a Participant will be permitted to elect to have any eligible rollover distribution (as defined in Section 402(c)(4) of the Code) paid directly to an eligible retirement plan (as defined in Section 3.56(b)) or, effective for distributions after December 31, 2007, to a Roth IRA established under Code Section 408A specified by the Participant. Effective for distributions made after December 18, 2015, an eligible retirement plan also includes a SIMPLE IRA described in Code Section 408(p)(1), provided that the rollover contribution is made after the 2-year period described in Code Section 72(t)(6). The maximum amount which may be rolled over shall not exceed the amount described in Section 402(c)(2) of the Code. The Participant will, in the time and manner prescribed by the Administrator, specify the amount to be rolled over and the eligible retirement plan to receive such rollover. Any portion of a distribution which is not rolled over will be distributed directly to the Participant.

(b) The election described in subsection (a) also applies to the surviving spouse who is the designated Beneficiary of the Participant or a spouse or former spouse who is the alternate payee, provided that such spouse, former spouse or alternate payee directs the transfer of an eligible rollover distribution, as defined in Section 402(c)(4) of the Code into an eligible retirement plan, as defined in Section 3.6(b), in which such spouse, former spouse or alternate payee is a participant.

(c) A non-spousal Beneficiary may elect to roll over death benefits amounts in accordance with Section 402(c)(11) of the Code provided that:

(1) such amounts are rolled over to an inherited IRA via a direct trustee-to-trustee transfer;

(2) such election is made by December 31 of the year following the year of the Participant's death; and

(3) the rolled over amounts are eligible rollover distributions as defined in Section 402(c)(4) of the Code.

4.6 Coronavirus-Related Distributions.

(a) Definitions. For purposes of this Section 4.6, the following definitions shall apply:

(1) "Coronavirus-Related Distribution" means a distribution made on or after March 27, 2020, but before December 31, 2020, or such later date as provided in subsequent legislation and/or regulatory guidance, to a Qualified Individual in accordance with subsection (b).

(2) "Qualified Individual" means a Participant:

(A) who is diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention;

(B) whose spouse or dependent (as defined in Internal Revenue Code Section 152) is diagnosed with such virus or disease by such a test; or

(C) who experiences adverse financial consequences as a result of:

(i) the Participant, the Participant's spouse, or a person residing in the Participant's household (1) being quarantined, (2) being furloughed or laid off or having work hours reduced due to such virus or disease, (3) being unable to work due to lack of child care due to such virus or disease, (4) having a reduction in pay (or self-employment income) due to such virus or disease, or (5) having a job offer rescinded or start date for a job delayed due to such virus or disease;

(ii) closing or reducing hours of a business owned or operated by the Participant, the Participant's spouse, or a person residing in the Participant's household due to such virus or disease; or

- (iii) other factors as determined by the Secretary of the Treasury (or the Secretary's delegate); or
- (iv) any other Participant who satisfies the definition of a Qualified Individual as provided in subsequent legislation and/or regulatory guidance.

For purposes of this subparagraph (2), a person residing in the Participant's household means someone who shares the Participant's principal residence.

- (b) Notwithstanding any other section to the contrary, a Participant who is a Qualified Individual may request to receive his or her Account, in part or in full, as a Coronavirus-Related Distributions on or after March 27, 2020 (or as soon as administratively practicable after March 27, 2020), and before December 31, 2020.
- (c) Coronavirus-Related Distributions to a Participant from this Plan and all other plans maintained by the Employer may not exceed \$100,000.
- (d) A Participant shall certify that they are a Qualified Individual prior to receiving a Coronavirus-Related Distribution.

4.7 Qualified Birth or Adoption Distributions.

(a) Definitions.

- (1) "Qualified Birth or Adoption Distribution" means a distribution made to a Participant within the one-year period beginning on the date on which a child of the Participant is born or on which the legal adoption by the Participant of an eligible adoptee is finalized.
- (2) "Eligible Adoptee" means an individual (other than the child of the Participant's spouse) who has not attained age 18 or is physically or mentally incapable of self-support.

(d)(b) A Participant who is otherwise eligible to receive a distribution from this Plan may request to receive one or more Qualified Birth or Adoption Distributions from his or her vested Account subject to the provisions of this paragraph. Qualified Birth or Adoption Distributions made from this Plan and all other plans maintained by the Employer or a related Employer may not exceed \$5,000 per birth or adoption. A Participant shall certify to the Administrator that he or she satisfies the criteria to receive a Qualified Birth or Adoption Distribution.

**ARTICLE V.
ADMINISTRATION**

5.1 Powers and Responsibilities of the Employer.

(a) The Administrators shall have full power to interpret and construe the Plan in a manner consistent with its terms and the provisions of Section 401(a) of the Code, including the applicable Income Tax Regulations and to establish practices and procedures conforming to those provisions. In all such cases, the Administrator's determination shall be final and conclusive upon all persons. It is recognized that unusual circumstances may occur and questions may arise that are not specifically covered by any provision of the Plan, and the Administrator shall have the right to resolve all such questions. Notwithstanding the above, the Administrator's power and responsibility under the Plan will not extend to, nor have any control over, those responsibilities and duties of the Provider.

(b) If the City has appointed someone to fulfill Administrators responsibility, the City shall be empowered to appoint and remove the Administrator from time to time as it deems necessary for the proper administration of the Plan to assure that the Plan is being operated for the exclusive benefit of the Participants and their Beneficiaries in accordance with the terms of the Plan and the Code.

(c) The Employer shall periodically review the performance of any person to whom duties have been delegated or allocated by it under the provisions of this Plan or pursuant to procedures established hereunder. This requirement may be satisfied by formal periodic review by the Employer or by a qualified person specifically designated by the Employer, through day-to-day conduct and evaluation, or through other appropriate ways.

5.2 Designation of Administrative Authority

The Employer may appoint the city manager and the city manager's designee to discharge the Administrator's responsibilities under the Plan.

5.3 Allocation and Delegation of Responsibilities

If more than one entity is appointed as Administrator, the responsibilities of each Administrator may be specified by the Employer and accepted in writing by each Administrator. In the event that the Employer makes no such delegation, the Administrators may allocate the responsibilities among themselves, in which event the Administrators shall notify the Employer in writing of such action and specify the responsibilities of each Administrator.

5.4 Powers and Duties of the Administrator

The primary responsibility of the Administrator is to administer the Plan for the benefit of the Participants and their Beneficiaries, subject to the specific terms of the Plan. The Administrator

will administer the Plan in accordance with its terms and will have the power and discretion to construe the terms of the Plan and determine all questions arising in connection with the administration, interpretation, and application of the Plan. Any such determination by the Administrator will be conclusive and binding upon all persons. The Administrator may establish procedures, correct any defect, supply any information, or reconcile any inconsistency in such manner and to such extent as will be deemed necessary or advisable to carry out the purpose of the Plan; provided, however, that any procedure, discretionary act, interpretation or construction will be done in a nondiscriminatory manner based upon uniform principles consistently applied and will be consistent with the intent that the Plan will continue to be deemed a qualified plan under the terms of Section 401(a) of the Code, and will comply with the terms of all Income Tax Regulations issued pursuant thereto. The Administrator will have all powers necessary or appropriate to accomplish his duties under this Plan. The Administrator will be charged with the duties of the general administration of the Plan, including, but not limited to, the following:

- (a) the discretion to determine all questions relating to the eligibility of Employees, Independent Contractors and elected officials to participate or remain a Participant hereunder and to receive benefits under the Plan;
- (b) determine the amounts to be contributed to each Participant Account;
- (c) to authorize and direct the Provider with respect to all disbursements to which a Participant or Beneficiary is entitled under the Plan;
- (d) to maintain all necessary records for the administration of the Plan;
- (e) to maintain practices and procedures necessary to administer the Plan as are consistent with the terms hereof;
- (f) to determine the type of any Investment Product to be purchased from the Provider; and
- (g) to assist any Participant or Beneficiary regarding his rights, benefits, or elections available under the Plan.

5.5 Records and Reports

The Administrator will keep a record of all actions taken and will keep all other books of account, records, and other data that may be necessary for proper administration of the Plan and will be responsible for supplying all information and reports to the Internal Revenue Service, Participants, Beneficiaries and others as required by law.

5.6 Appointment of Advisers

The Administrator may appoint/employ such agents, attorneys, actuaries, accountants, auditors, investment counsel, and clerical assistants, and other persons as the Administrator deems necessary or desirable in connection with the administration of this Plan.

5.7 Information from Employer

To enable the Administrator to perform his functions, the Employer will supply the necessary information to the Administrator on a timely basis regarding the Participants under the Plan, including but not limited to Compensation, date of hire, date of death, disability, or termination of employment, and such other pertinent facts and data as the Administrator may require. The Administrator may rely upon such information as is supplied by the Employer and shall have no duty or responsibility to verify such information.

5.8 Payment of Expenses

All expenses of administration will be paid as directed by the Employer. Such expenses will include any expenses incident to the functioning of the Administrator, including, but not limited to, fees of accountants, counsel, and other specialists and their agents, and other costs of administering the Plan.

ARTICLE VI. AMENDMENT AND TERMINATION

6.1 Amendment

(a) The Employer shall have the right at any time to amend this Plan subject to the limitations of this Section. Any such amendment shall become effective as provided therein upon its execution.

(b) No amendment to the Plan will be effective if it authorizes or permits any part of the Investment Product (other than such part as is required to pay taxes and administration expenses) to be used for or diverted to any purpose other than for the exclusive benefit of the Participants or their Beneficiaries; or causes any reduction in the amount credited to the account of any Participant or Beneficiary; or causes or permits any portion of the Investment Product to revert to or become property of the Employer.

6.2 Termination

(a) The Employer shall have the right at any time to terminate the Plan by Ordinance. Upon any full or partial termination all amounts credited to the affected Participant Accounts shall become 100% Vested and shall not thereafter be subject to Forfeiture, and all unallocated amounts shall be allocated to the accounts of all Participants in accordance with the provisions hereof. In addition, the Employer must deliver written notice of discontinuance of the Investment Product to the Provider.

(b) Upon the full termination of the Plan, the Employer will direct the distribution of the assets to Participants and Beneficiaries in a manner which is consistent with and satisfies the provisions of Article IV.

**ARTICLE VII.
MISCELLANEOUS**

7.1 Assets for Exclusive Benefit of Participants and Beneficiaries

All amounts in the Participant Accounts under this Plan, all property and rights which may be purchased with such amounts and all income attributable to such amounts, property or rights will be held in trust (or a custodial account or annuity contract described in Section 401(f) of the Code) for the exclusive benefit of Participants and their Beneficiaries. All such amounts will not be subject to the claims of the Employer's general creditors.

7.2 Participant's Rights

This Plan will not be deemed to constitute an employment contract between the Employer and any Participant or to be a consideration or an inducement for the employment of any Participant or Employee. Nothing contained in this Plan will be deemed to give any Participant or Employee the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant or Employee at any time regardless of the effect which such discharge shall have upon him as a Participant in this Plan.

7.3 Alienation

Subject to applicable state law (and Section 401(g) of the Code if the Investment Product consists of an annuity contract) and except as provided in Section 7.4, no benefit which will be payable to any person (including a Participant or their Beneficiaries) will be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge the same will be void; and no such benefit will in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any such person, nor will be subject to attachment or legal process for or against such person, and the same will not be recognized except to such extent as may be required by law.

7.4 Recognition of Approved Domestic Relations Orders

Notwithstanding Section 7.3, if a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a Participant is made pursuant to the domestic relations law of any State ("domestic relations order") and Section 414(p) of the Code, then the amount of the Participant Account shall be paid in the manner and to the person or persons so directed in the domestic relations order. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan. The Ordinance contains procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the domestic relations order.

7.5 IRS Levy or Federal Restitution Order

Notwithstanding Section 7.3, if a Participant or Beneficiary is entitled to a distribution in accordance with Section 5, the Administrator may pay from a Participant's or Beneficiary's Account the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service or a criminal restitution order, with respect to that Participant or Beneficiary, or an amount that is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

7.6 Distribution for Minor Beneficiary or Incompetent

If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits will be paid to such person as the Administrator may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

7.7 Mistaken Contributions

If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one year after the payment of the contribution, and upon receipt in good order of a proper request approved by the Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Participant or, to the extent required or permitted by the Administrator, to the Employer.

7.8 Procedure When Distributee Cannot Be Located

The Administrator shall make all reasonable attempts to determine the identity and address of a Participant or Beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt means (a) the mailing by certified mail of a notice to the last known address shown on the Employer's or the Administrator's records, (b) notification sent to the Social Security Administration or the Pension Benefit Guaranty Corporation (under their program to identify payees under retirement plans), and (c) the payee has not responded within 6 months. If the Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the funding vehicle shall continue to hold the benefits due such person.

7.9 Governing Law

The Plan will be construed, administered and enforced according to the Code and the laws of California.

7.10 Headings

Headings of the Plan have been inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof.

7.11 Gender

Pronouns used in the Plan in the masculine or feminine gender include both genders unless the context clearly indicates otherwise.

7.12 Approval by Internal Revenue Service

Notwithstanding anything herein to the contrary, if, pursuant to a timely application filed by or on behalf of the Plan, the Commissioner of the Internal Revenue Service or his delegate should determine that the Plan does not initially qualify as a tax-exempt plan under Sections 401 and 501 of the Code, and such determination is not contested, or if contested, is finally upheld, then if the Plan is a new plan, it shall be void and all amounts contributed to the Plan, by the Employer, less expenses paid, shall be returned within one year and the Plan shall terminate. If the disqualification relates to an amended plan, then the Plan shall operate as if it had not been amended and restated. In the event that a contribution is made to the Plan conditioned upon qualification of the Plan as amended, such contribution must be returned to the Employer upon the determination that the amended Plan fails to qualify under the Code.

Approved this _____ day of _____, 2024.

CITY OF SAN JOSE

By: _____

Title: _____