

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING CHAPTER 3.28 OF TITLE 3 OF THE SAN JOSE MUNICIPAL CODE TO INCORPORATE PROVISIONS RELATED TO PRIMARY PURPOSE OF THE FEDERATED CITY EMPLOYEES RETIREMENT PLAN, USE OF RETIREMENT PLAN ASSETS, PROHIBITED RETIREMENT PLAN TRANSACTIONS, PENSION BENEFIT VESTING, PENSION BENEFIT AND CONTRIBUTION LIMITS, REQUIRED BENEFIT PAYMENTS, PERMISSIVE PURCHASES OF SERVICE CREDIT, ROLLOVER OF EMPLOYEE CONTRIBUTIONS INTO OTHER TAX QUALIFIED PLANS AND ACCOUNTS, PERMISSIVE RETIREMENT PLAN INVESTMENT VEHICLES, QUALIFIED DOMESTIC RELATIONS ORDERS AND CONTRIBUTIONS, BENEFITS, SERVICE CREDIT FOR QUALIFIED MILITARY SERVICE, DATE OF ESTABLISHMENT OF MEDICAL BENEFITS ACCOUNT, AND TO MAKE OTHER TECHNICAL AMENDMENTS RELATED TO INTERNAL REVENUE CODE PROVISIONS FOR QUALIFIED GOVERNMENTAL RETIREMENT PLANS

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 3.28.010 of Part 1 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.28.010 Establishment - Name – Scope

- A. There is hereby established a retirement plan for all persons, hereinafter in this chapter specified, who may become members thereof pursuant to the provisions of this chapter. This plan shall be known as the “1975 Federated City Employees Retirement Plan-,” and includes all provisions of this Chapter 3.28.

- B. Notwithstanding any provision of the Code to the contrary, the elements of the retirement plan as set out in Chapters 3.16, 3.20, 3.24 and 3.28 are components of a single retirement system known as the Federated City Employees Retirement Plan.
- C. Contributions made by the City and the members of the Plan to the retirement fund described in Part 3 of this Chapter shall be made for the purpose of distributing to such members or their beneficiaries the corpus and income of the fund in accordance with the terms of this plan.
- D. The Federated City Employees Retirement Plan is established as a qualified governmental defined benefit plan pursuant to Sections 401(a) and 414(d) of the Internal Revenue Code or such other provision of the Internal Revenue Code as applicable and applicable Treasury Regulations and other guidance of the Internal Revenue Service. The Board shall be authorized to adopt rules and regulations which are appropriate or necessary to maintain the qualified status of the plan.

SECTION 2. Section 3.28.020.22 of Part 1 of Chapter 3.28 of Title 3 of the San José Municipal Code are renumbered as Sections 3.28.020.23.

SECTION 3. Section 3.28.020.23 is renumbered as Section 3.28.020.24.

SECTION 4. Section 3.28.020.24 is renumbered as Sections 3.28.020.25.

SECTION 5. Section 3.28.020.25 of Part 1 of Chapter 3.28 of Title 3 of the San José Municipal Code is renumbered as Section 3.28.020.26.

SECTION 6. Section 3.28.020.26 of Part 1 of Chapter 3.28 of Title 3 of the San José Municipal Code is renumbered as 3.28.020.27.

SECTION 7. Part 1 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to add a new section 3.28.030.22 to be entitled and read as follows:

3.28.030.22 “Plan Year”

“Plan year” means July 1 to June 30.

SECTION 8. Section 3.28.110 of Part 2 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to read as follows:

3.28.110 Retirement Board - Powers and Duties

The retirement board shall have all the powers and duties ~~given to by the provisions of Section 2.08.1090, inclusive of the San José Municipal Code, plus all powers and duties~~ given it by the provisions of this Chapter 3.28, including but not limited to, the powers and duties specified in this Part 2. Notwithstanding anything in this part to the contrary, the retirement board shall not engage in a transaction prohibited by Section 503(b) of the Internal Revenue Code.

SECTION 9. Section 3.28.270 of Part 2 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to read as follows:

3.28.270 Direct transfers of Eligible Rollover Distributions

A. If, under the provisions of this chapter, a person becomes entitled to a distribution which is an eligible rollover distribution, the person may elect to have

the distribution or any portion thereof paid directly to an eligible retirement plan specified by the person.

- B. The election made pursuant to this section shall be in accordance with the terms and conditions established by the board.
- C. Upon the exercise of the election by a person pursuant to this section, the distribution from the retirement fund of the amount designated by the person, once distributable under the provisions of this chapter, shall be made in the form of a direct transfer to the eligible retirement plan so specified.
- D. For the purposes of this section, "eligible rollover distribution" means a distribution from the retirement fund which constitutes an eligible rollover distribution within the meaning of Section 401(a)(31)(C) of the Internal Revenue Code, consisting of any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; the portion of any distribution that is not includible in gross income; and any other distribution which the Internal Revenue Service does not consider eligible for rollover treatment, such as certain corrective distributions necessary to comply with the provisions of Section 415 of the Internal Revenue Code or any distribution that is reasonably expected to total less than \$200 during the year. Effective January 1, 2002, a portion of a distribution shall not fail to be an eligible rollover distribution merely

because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only (i) to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code or to a qualified defined contribution plan described in Section 401(a) of the Internal Revenue Code; (ii) on or after January 1, 2007, to a qualified defined benefit plan described in Section 401(a) of the Internal Revenue Code or to an annuity contract described in Section 403(b) of the Internal Revenue Code, that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible; or (iii) on or after January 1, 2008, to a Roth IRA described in Section 408A of the Internal Revenue Code. Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse or to a spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code. For purposes of this Section 3.36.480, "spouse" has the meaning set forth in federal law.

E. For purposes of this section, "eligible retirement plan" means a plan which constitutes an eligible retirement plan within the meaning of Section 401(a)(31)(D) of the Internal Revenue Code, consisting of one or more of the following:

1. an individual retirement account described in Section 408(a) of the Internal Revenue Code,
2. an individual retirement annuity described in Section 408(b) of the Internal Revenue Code,

3. an annuity plan described in Section 403(a) of the Internal Revenue Code,
4. a qualified trust described in Section 401(a) of the Internal Revenue Code,
5. effective January 1, 2002, an annuity contract described in Section 403(b) of the Internal Revenue Code,
6. effective January 1, 2002, a plan eligible under Section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from the retirement plan, or
7. effective January 1, 2008, a Roth IRA described in Section 408A of the Internal Revenue Code.

F. For purposes of this section, "distributee" means an employee or former employee. It also includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code. Effective July 1, 2010, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by Section 401(a)(9)(E) of the Internal Revenue Code. 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.

G. If on or after March 28, 2005, the member is to receive a distribution of an eligible rollover distribution, with a present value greater than One Thousand Dollars (\$1,000), and if a member does not elect to have such distribution paid directly to an eligible retirement plan specified by member in a direct rollover or to receive the distribution directly, then the system shall pay the distribution in a direct rollover to an individual retirement plan designated by the board in accordance with Section 401(a)(31)(B) of the Internal Revenue Code and IRS Notice 2005-5.

SECTION 10. Section 3.28.350 of Part 3 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to read as follows:

3.28.350 Investment of Funds - Conditions and Limitations

The board shall invest and reinvest the moneys in the retirement fund in accordance with the following standards:

- A. The assets of the retirement plan are trust funds and shall be held for the exclusive purposes of providing benefits to members of the plan and their beneficiaries and defraying reasonable expenses of administering the systemplan. The assets of the retirement plan must not revert, and no contributions shall be permitted to be returned, to the employers, except as permitted by Revenue Ruling 91-4.
- B. The board shall discharge its duties with respect to the systemplan solely in the interest of, and for the exclusive purposes of providing benefits to, members of the plan and their beneficiaries, maintaining the actuarial soundness of the plan, and defraying reasonable expenses of administering the plan. The board's duty

to the members and their beneficiaries shall take precedence over any other duty.

- C. The board shall discharge its duties with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of like character and with like aims.
- D. The board shall diversify the investments of the plan so as to minimize the risk of loss and to maximize the rate of return, unless under the circumstances, it is clearly prudent not to do so.

E. The retirement plan may participate under Section 401(a)(24) of the Internal Revenue Code in a qualified group trust that meets the requirements of Section 401(a) of the Internal Revenue Code in accordance with Revenue Ruling 81-100, as amended by Revenue Ruling 2004-67.

SECTION 11. Section 3.28.380 of Part 3 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to read as follows:

3.28.380 Separate Medical Benefits Account

- A. There is hereby established as of July 1, 1995, the medical benefits account as a separate account within the retirement fund. The medical benefits account shall be maintained in compliance with Internal Revenue Code Section 401(h) and the regulations promulgated thereunder. Monies in the medical benefits account

may be commingled with other monies in the retirement fund solely for the purposes of investment.

- B. All contributions made to the retirement fund to provide for the payment of benefits for sickness, accident, hospitalization, dental or medical expenses of persons receiving monthly allowances under the provisions of this plan, and all earnings and interest attributable to such contributions, shall be placed in the medical benefits account. All contributions to the medical benefits account shall be reasonable and ascertainable. At the time the city makes a contribution to the medical benefits account, the city shall designate in writing that such contribution is solely for the medical benefits account.
- C. Contribution rates to fund the benefits for sickness, accident, hospitalization, dental or medical expenses shall be established by the board as determined by the board's actuary and shall be borne by the city and the members of the plan as follows:
1. Contributions for dental benefits shall be made by the city and the members in the ratio of three-to-one.
 2. Contributions for medical and dental insurance premiums costs attributable to the early retirement incentive programs described in Parts 18,19, and 20 of this chapter shall be borne by the City.
 3. Contributions for other benefits provided through the medical benefits account shall be made by the city and the members in the ratio of one-to-one.

- D. ~~Except as otherwise provided in this Section 3.28.380a~~All funds in the medical benefits account shall be used only for the payment of benefits and expenses allowed under Internal Revenue Code Section 401(h) and the regulations promulgated thereunder. The medical benefits account shall be used to provide medical and dental benefits in accordance with Parts 16 and 17 of this chapter. Prior to the satisfaction of all liabilities under this plan to provide such benefits, no funds in the medical benefits account shall be used for, or diverted to, any other purpose.
- E. All benefits provided through the medical benefits account, plus any life insurance protection provided under the plan, shall be subordinate to the retirement and survivors' benefits provided by the plan. Accordingly, at all times after the date on which the medical benefits account is established, the aggregate of the city's contributions to the medical benefits account shall not exceed twenty-five (25) percent of its total aggregate contributions to the plan (other than contributions to fund prior service). For the purpose of this limitation, city contributions include any contributions which are "picked-up" pursuant to Internal Revenue Code Section 414(h).
- F. ~~In any case under the terms of this plan where a person is entitled to a return of employee contributions, such return of contributions shall include the employee contributions to the medical benefits account plus interest accrued thereon at the rate of two (2) percent per annum; provided, however, that no such return of contributions shall be paid from the medical benefits account.~~~~G.~~—Upon the satisfaction of all liabilities under this plan to provide the benefits described in this section, any amount remaining in the medical benefits account shall be paid to the city.

HG. In the event that a member's interest in the medical benefits account is forfeited prior to the termination of the plan, an amount equal to the forfeiture shall be applied as soon as practicable to reduce the city contributions to the medical benefits account.

H. City and member contributions to the medical benefits account shall be made on the same periodic basis as city and member contributions are made to the retirement fund. City contributions and member contributions to the medical benefits account may be paid on different payment schedules.

SECTION 12. Section 3.28.580 of Part 4 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to read as follows:

3.28.580 Election by Persons who Became Members pursuant to Sections 3.28.400 through 3.28.430, inclusive, to Allow Accumulated Contributions to Remain in Fund

- A. The provisions of this section apply only to persons who became subject to the provisions of this chapter pursuant to the provisions of Sections 3.28.400 through 3.28.430, inclusive, of this part.
- B. If the federated city service of a member described in Subsection A. is discontinued by reason of resignation or discharge, or by reason of layoff or leave of absence deemed or found by the retirement board to have resulted in permanent discontinuance (and in such case, as of the date of determination by the board that the discontinuance is permanent), or if such member retires for disability under the provisions of this chapter but such retirement is followed by a cessation of the disability because of which the member was retired and his or her disability retirement allowance is canceled but he or she does not thereupon

reenter federated city service, then, in either of said events, if the amount of said member's accumulated normal contributions standing to his or her credit at that time is five hundred dollars (\$500.00) or more, the member shall have the right to elect, not later than the ninetieth day from and after the date upon which notice of such right is mailed to him or her at the latest address on file with the board:

1. To continue (or in the case of the abovementioned person whose disability retirement allowance was canceled, to renew) his or her membership by allowing all of his or her accumulated prior service contributions and all or part (but in no event less than five hundred dollars (\$500.00) of his or her accumulated normal contributions to remain in the retirement fund; or
 2. To terminate or not renew membership, as the case may be, by withdrawing all of his or her accumulated contributions.
- C. Failure to make such election within the above-specified time shall be deemed to be an irrevocable election to terminate or not renew membership, as the case may be, by withdrawing all of his or her accumulated contributions; provided and excepting, however, that if such member is entitled under this plan to credit for twenty (20) or more years of federated city service, the failure to make such election within said time shall be deemed to be an election to continue or renew, as the case may be, his or her membership by allowing all of his or her accumulated contributions to remain in the retirement fund.
- D. An election to allow all or part of one's accumulated normal contributions to remain in the fund may be revoked at any time by said person as to all such normal contributions or as to any part of them in excess of five hundred dollars (\$500.00).

- E. Upon electing to terminate or not renew membership by withdrawing all of his or her accumulated contributions, such person immediately:
1. Ceases to be a member of this plan (or loses the right to renew his membership, as the case may be); and
 2. Loses all rights to any credit for federated city service to which he or she was entitled hereunder; and
 3. Except as may be otherwise provided elsewhere in this plan, loses all other rights or privileges under this plan excepting the right to the return of his or her said accumulated contributions, which said contributions shall be returned to the person forthwith.
- F. Upon electing to continue or renew membership by allowing all of his or her accumulated prior service contributions and all or part (but not less than five hundred dollars (\$500.00) of his or her accumulated normal contributions to remain in the retirement fund:
1. The said person continues to be or again becomes a member; and
 2. The member and his or her survivors shall thereafter have such rights, if any, as are provided elsewhere in this Chapter 3.28 for the member and his or her survivors, except that, unless otherwise provided elsewhere in this plan, he or she shall lose and shall no longer be entitled to credit for any federated city service on account of which such withdrawn contributions had been paid into the retirement fund. In determining the federated city service for which a person is no longer entitled to credit upon such partial withdrawal, the withdrawn contributions shall be deemed

to have been paid into the retirement fund on account of the latest federated city service rendered by the person to the city, or on account of the person's earliest federated city service if so requested by said person at the time he or she withdraws a part of his or her accumulated normal contributions.

- G. A member may at any time, if he or she so elects, voluntarily relinquish such right as the member may have to be credited for federated city service for such periods of time as may be designated by him or her, without withdrawing any contributions paid by the member because of such service, provided he or she retains credit for not less than five (5) years of continuous federated city service; and in such event, in determining the member's eligibility for or the amount of any benefits to which he or she may subsequently be entitled, the member shall be given no credit for any federated city service so relinquished, and any contributions left in the fund which were made because of the service for which the member has relinquished credit shall be treated as income of the retirement fund.

H. If on or after March 28, 2005, the member is to receive a distribution of an eligible rollover distribution, with a present value greater than One Thousand Dollars (\$1,000), and if a member does not elect to have such distribution paid directly to an eligible retirement plan specified by member in a direct rollover or to receive the distribution directly, then the system shall pay the distribution in a direct rollover to an individual retirement plan designated by the board in accordance with Section 401(a)(31)(B) of the Internal Revenue Code and IRS Notice 2005-5.

SECTION 13. Section 3.28.590 of Part 4 of Chapter 3.28 of the San José Municipal Code is amended to read as follows:

3.28.590 Election by Members other than those Specified in Section 3.28.580 to Allow Accumulated Contributions to Remain in Fund

- A. The provisions of this section apply only to members of this plan who are entitled to credit for five (5) or more years of federated city service rendered after June 30, 1975, and who are not covered by the provisions of Section 3.28.580.
- B. If the federated city service of a member described in Subsection A. above is discontinued by reason of resignation or discharge or by reason of layoff or leave of absence which is determined by the retirement board to have resulted in permanent discontinuance (the effective date of such discontinuance to be the date of said determination by the board), then such member shall have the right to elect:
1. To continue membership in this system by allowing all of his or her accumulated contributions to remain in the retirement fund; or
 2. To terminate membership in this system by withdrawing all of his or her accumulated contributions.
- C. If a member described in Subsection A. above retires for disability but the disability retirement allowance is canceled because of a cessation of the disability for which the member retired and such member does not thereupon reenter federated city service, then such member shall have the right to elect:
1. To renew membership in this system by allowing all of his or her accumulated contributions to remain in the retirement fund; or

2. Not to renew membership in this system by withdrawing all of his or her accumulated contributions.
- D. The election described in Subsections B. and C. shall be made not later than the ninetieth day from and after the date notice of the right to make such election is mailed to the member at the latest address on file with the board.
1. In the case of a member entitled to credit for less than twenty (20) years of federated city service, failure to make such election within said ninety (90) days shall be deemed to be an irrevocable election to terminate or not renew, whichever is applicable, membership in this system by the withdrawal of all of the member's accumulated contributions.
 2. In the case of a member entitled to credit for twenty (20) or more years of federated city service, failure to make such election within said ninety (90) days shall be deemed to be an election to continue or renew, whichever is applicable, membership in this system by allowing all of the member's accumulated contributions to remain in the retirement fund.
- E. Upon electing to terminate or not renew membership in this system pursuant to Subsection B., C. or D. above, the person immediately:
1. Ceases to be a member of this system or loses the right to renew membership in this system, whichever is applicable; and
 2. Unless otherwise provided elsewhere in this chapter, loses all credit for any federated city service to which he or she was entitled under this system; and

3. Loses all other rights and privileges under this system except the right to the return of his or her accumulated contributions, and such contributions shall be returned to such person forthwith.
- F. Upon electing to continue or renew membership in this system, whichever is applicable, by allowing all of his or her accumulated contributions to remain in the fund, the person:
1. Continues to be, or again becomes, a member of this system; and
 2. Shall continue to be entitled to credit for such federated city service as he or she was entitled as of the time the person made such election; and
 3. Shall thereafter have such rights, if any, as are provided in this chapter for such person or such person's survivors.

G. If on or after March 28, 2005, the member is to receive a distribution of an eligible rollover distribution, with a present value greater than One Thousand Dollars (\$1,000), and if a member does not elect to have such distribution paid directly to an eligible retirement plan specified by member in a direct rollover or to receive the distribution directly, then the system shall pay the distribution in a direct rollover to an individual retirement plan designated by the board in accordance with Section 401(a)(31)(B) of the Internal Revenue Code and IRS Notice 2005-5.

SECTION 14. Section 3.28.630 of Part 5 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to read as follows:

3.28.630 Military Service Defined -- Deemed Federated City Service When -- Conditions

"Federated city service" shall be deemed to include military service rendered by a member on or after July 1, 1975, while a member of this system, and such member shall be entitled to credit for such service, if and only if he or she is entitled to credit for such service under the following provisions of this section, and then only to the extent and for the purpose or purposes hereinafter provided in this section.

- A. **Military Service Defined.** As used in this section, "military service" shall be deemed to mean service rendered on or after July 1, 1975, as a member of the Armed Forces of the United States or of the Merchant Marine of the United States, either during a war including the United States as a belligerent or in any other national emergency, or in time of peace if the person performing such service is drafted for such service by the United States.

- B. **Military Service Because of Which City Must Make Member Contributions.**
 - 1. If, on or after July 1, 1975, while he or she is a member of this system, and while on leave of absence without compensation to engage in military service, a member of this system renders military service other than as a member of the Merchant Marine of the United States, and if, in addition, said member returns to federated city service after discharge under conditions other than dishonorable within six months after such discharge or within six months after any period of rehabilitation afforded by the United States government, including a period of rehabilitation for purely educational purposes, the city shall contribute to this system on behalf of such member such amounts of contribution which would have been payable by said member, together with such additional amounts as would have been payable by the city, on the basis of compensation earnable at the commencement of said member's absence plus the annual salary adjustments which he or she would have received if said member had

remained in federated city service and had not left for said military service. For purposes of this subsection, said member absent on said military service shall be deemed to have received a rating for the period of such absence entitling him or her to annual salary adjustment. Also, for purposes of this subsection, a member who is granted a leave of absence or placed on a city civil service reemployment list as of the same date he or she was reinstated from military leave, if said date of reinstatement is within the abovementioned six months, shall be considered as having returned to city service within the abovementioned six months if he or she returns to city service at the end of such leave of absence or upon offer of employment from the reemployment list or if he or she retires under this system for service or disability during such leave.

2. Any military service mentioned in this subsection because of which the city is required to make all of the contributions above specified in this subsection shall be deemed to be "federated city service" for which said member shall be entitled to credit in the same manner as if he or she had not been absent from federated city service during such time.

C. Military Service Because of Which City Need Not Pay Member Contributions.

1. If, on or after July 1, 1975, while he or she is a member of this system and while on leave of absence without compensation to engage in military service, a member of this system renders any military service as such service is above defined, and if such member is not entitled to have the city pay his or her member contributions during such period of time pursuant to the immediately preceding subsection B., then in such event, said member may contribute to the system, either during his or her absence on military service or upon his or her return to federated city

service, at times and in the manner prescribed by the retirement board, amounts equal to the contributions which would have been payable by said member to the system on the basis of his or her compensation earnable at the commencement of the leave of absence if he or she had remained in city service. If said member does so contribute, "federated city service" shall be deemed to include such military service and the member shall receive credit for the absence in military service in the same manner as if he or she had not been absent but were still in federated city service. If, however, said member does not contribute as aforesaid, such military service shall be credited to said member as "federated city service" only for the purpose of determining said member's eligibility for benefits under this system and such military service shall not be credited for the purpose of determining the amount of such benefits.

2. If the member elects to contribute as aforesaid and does so contribute, the city shall also contribute because of such military service to the same extent as it would have contributed if the member had not been absent on military service.

~~D. Election to Withdraw All Contributions. Any member absent on military service or absent from federated city service by reason of having been ordered by an authorized official of this state or of the United States to military duties outside federated city service may, at any time while he or she is so absent, request the payment to him or her of all of his or her accumulated contributions, in which event, upon payment to him or her of all such contributions, said member shall cease to be a member of this system and neither said member nor any other person or estate shall thereafter have any rights under this system because of said member's prior membership or service.~~

DE. Manner in Which City may Contribute. Any contributions required of the city by the provisions of this section may be made in one sum or in the manner in which other contributions are made. Anything elsewhere in this Chapter 3.28 to the contrary notwithstanding, no contributions made by the city pursuant to the provisions of subsection B. of this section can ever be withdrawn by or paid to a member or any of the member's survivors or beneficiaries or estate.

E.F. Part-time Employees ~~Excepted. Anything hereinabove in this section to the contrary notwithstanding,~~ Ithe provisions of this section shall ~~not~~ apply to part-time employees only to the extent that they were in this system prior to entry into the, ~~and part-time employees shall not be entitled to credit for any~~ military service ~~under the provisions of this Chapter 3.28.~~

E.G. For the purposes of this section, "leave of absence without compensation to engage in military service" shall include any leave of absence to engage in military service granted on or after September 1, 1990, during which the member receives compensation from the city pursuant to an action of the city council approving special or supplemental pay or benefits for persons on leave for military duty.

SECTION 15. Section 3.28.640 of Part 5 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to be entitled and read as follows:

3.28.640 Service Credit for Absence on or after July 1, 1975; Because of Service-Connected Injury or Illness

A. Time on or after July 1, 1975, during which a member is a member of this system and during which he is absent from federated city service by reason of injury or illness determined within one year after the end of such absence to have arisen

out of and in the course of his employment with the city, shall be deemed to be “federated city service” for which such member is entitled to credit for the purpose of qualifying for benefits under this system but not for the purpose of determining the amount of such benefits, unless he contributes during such absence, or upon his return to city service at times and in the manner prescribed by the board, the same amount of contributions as he would have been required to contribute if he were not absent because of any said injury or illness. If he does contribute as aforesaid, said time shall be deemed “federated city service” for which he shall be entitled to credit the same as if he were not absent from federated city service because of such injury or illness. ~~Unless otherwise directed by such member, the director of finance shall continue to deduct from any compensation received by him for said periods of absence the same amounts of contribution as he would have been required to contribute if he were not absent.~~ The provisions of this section do not apply to time during which a person is retired for disability or service. Also, the provisions of this section do not apply to part-time employees.

B. Subject to any limits on annual contributions imposed by Section 415 of the Internal Revenue Code of 1986, as amended, a member who elects to make contributions to purchase full service credit for a period of leave of absence pursuant to subsection A. above may pay the contributions:

1. In one lump sum within sixty (60) days from and after the date the member returns to City service; or
2. For elections made on or before January 31, 2011, in monthly or biweekly installments by pre-tax payroll deductions, paid over a period of time not to exceed eight years; or

3. For elections made on or after February 1, 2011, in monthly or biweekly installments by post-tax payroll deductions, paid over a period of time not to exceed eight years; or

4. In a combination of a lump sum and post-tax installments.

C. Any member electing to pay the contributions in installments or to make the lump sum payment by payroll deduction shall execute a payroll authorization form authorizing the payment of the required contributions by payroll deduction. The payroll authorization form shall be filed with the director of finance.

D. The election to purchase credit through post-tax payroll deductions, pursuant to subsection B. 3 or 4 above, may be revoked. During the time the post-tax payroll deduction election is in effect, the member may make additional payments to the retirement fund for the purchase of such service credit.

E. All contributions under subsections (B)(2) and (C) shall be treated as pre-tax salary reductions pursuant to Internal Revenue Code Section 414(h)(2).

SECTION 16. Section 3.28.660 of Part 5.5 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to be entitled and to read as follows:

3.28.660 Service under Police or Fire Department Retirement Plan Where Member Elects to Pay Contributions to Federated this System for Such Service

Subject to the following conditions, restrictions, limitations and other provisions, a person who becomes a member of this system on or after July 1, 1975, pursuant to the

provisions of Section 3.28.450 and who, prior to becoming a member of this system but on or after February 1, 1962, was a member of the police and fire department retirement plan established pursuant to Chapter 3.32 or Chapter 3.36 of the San José municipal code, shall be entitled to credit under this system for service, if any, for which the person was entitled to credit under said police and fire department retirement plan at the time his or her membership therein was last terminated, if all of the following conditions exist and are satisfied:

- A. Such person must have held, prior to becoming a member of this system, a city position in the police department or fire department of the city which qualified the person for membership in, and because of which the person was a member of the police and fire department retirement plan; and
- B. Such person's membership in the police and fire department retirement plan must have ceased and terminated prior to his or her becoming a member of this system; and
- C. Such person must not have elected to continue making contributions to the police and fire department retirement plan, pursuant to the provisions of Section 3.36.1630 nor have retained any rights to benefits from said plan pursuant to any other provision of said plan (other than rights as an eligible surviving spouse or surviving child or rights as a former spouse under a domestic relations order of a court of competent jurisdiction); and
- D. Such person must have filed with the retirement board a written notice of election re police and fire service, wherein the person elects to receive credit under this system for service for which he or she was entitled to credit under the police and

fire department retirement plan pursuant to this section, and wherein the person agrees to pay into the retirement fund established by this chapter the amounts specified in subsection E. below. Such notice of election must be filed on or before the later of:

1. The thirtieth day immediately following the date on which there is deposited in the United States mail, addressed to the person at his or her address shown in the records of the retirement board, a written notice of the person's right to make the election provided in this section; or
2. The thirtieth day following the date as of which the person becomes a member of this system.

E. In order to receive service credit in this system for service rendered while a member of the police and fire department retirement plan, the person must pay into the retirement fund established by this chapter an amount of money sufficient to make the accumulated contributions standing to the credit of the person's individual account in this system equal to the amount they would be if:

1. The person had been a member of this system (and of the Chapter 3.24 system with respect to service rendered prior to July 1, 1975), in the position because of which he or she became a member of this system, during the time he or she was rendering the previous service in the police department or fire department for which he or she seeks to get credit; and
2. The contributions payable to this system and to the Chapter 3.24 system under such circumstances had been deducted from the person's compensation and paid into the retirement fund pursuant to this system and the Chapter 3.24 system during all of such time.

F. Subject to any limits on annual contributions imposed by Section 415 of the Internal Revenue Code of 1986, as amended, a person who elects to purchase credit for prior police and fire service may pay of the contributions required by subsection E. above:

1. In one lump sum within sixty days from and after the date the person files the written notice of election to purchase such service credit; or

2. For elections made on or before January 31, 2011, in installments by pre-tax payroll deduction; paid over a period of time not to exceed eight years; or

3. For elections made on or after February 1, 2011, in monthly or biweekly installments by post-tax payroll deductions, paid over a period of time not to exceed eight years; or

4. By transfer of moneys contributed by him to the police and fire department retirement fund, together with interest thereon, from the police and fire department retirement fund; or

5. By a combination of the above.

G. Any member ~~If the person electing s~~ to pay the contributions ~~in installments, or the person elects to make the lump sum payment~~ by pre-tax payroll deduction, ~~the person~~ shall execute a binding irrevocable payroll authorization form authorizing the payment of the required contributions by payroll deduction. Such irrevocable ~~The~~ payroll authorization form shall be filed with the director of finance within the time specified in subsection D. above for the filing of the person's election to receive service credit.

~~H.~~ The election to purchase credit for prior police and fire service through pre-tax payroll deductions and the authorization to make payments by pre-tax payroll deductions shall be irrevocable. During the time the irrevocable election is in effect, no direct payments from the member to the retirement fund shall be made by the member or accepted by this system.

H. The election to purchase credit for prior police and fire service through post-tax payroll deductions and the authorization to make payments by post-tax payroll deductions shall be revocable. During the time the revocable election is in effect, the member may make additional direct payments to the retirement fund.

I. A copy of the notice of election specified in subsection D. above shall be transmitted by the retirement board to the board which is charged with the duty of administering the police and fire department retirement plan of which said person was formerly a member.

J. All contributions under subsections (F)(2) and (G) shall be treated as pre-tax salary reductions pursuant to Internal Revenue Code Section 414(h)(2).

~~Notwithstanding the other provisions of this section, a person who elected to purchase credit for prior police and fire service and has not completed the payments as of December 14, 1999, may either:~~

~~1. Continue to make payments in the manner permitted by this section as it read prior to December 14, 1999; or~~

~~2. Execute a binding irrevocable payroll authorization form authorizing the payment by payroll deductions and file the form with the director of finance within thirty days from and after the date the written notice of rights under this section is personally delivered or deposited in the mail to the person. If such person does not file the payroll authorization form within such time, the person shall be deemed to have elected to continue to make payments under paragraph 1., above.~~

- K. If a person elects to purchase credit for prior police and fire service and make the contributions specified in this section, and subsequently does pay all such moneys as provided in this section, the person shall be credited under this system for the prior police and fire service.
- L. If a member elects to redeposit and pay said moneys but fails to complete the redeposit, then:
1. If the failure to complete the redeposit is because of death of the person while in federated city service and before retirement, the person shall be credited with the amount of service which is determined by the board to be attributable to the amount of accumulated contributions redeposited as of the date of the person's death.
 2. If the failure to redeposit is for any reason other than the death of the person prior to retirement, any contributions made pursuant to the election shall be credited to the person's accumulated normal contributions account but the person shall receive no credit for any prior police and fire service.

SECTION 17. Section 3.28.765 of Part 6 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to be entitled and read as follows:

3.28.765 City Pick Up of Member Contributions

A. For the purposes of this section, contributions “picked up” by the city means contributions to this system which are designated as employee contributions but are treated as employer contributions for income tax purposes as authorized by Section 414(h)(2) of the Internal Revenue Code (26 U.S.C.A. 414(h)(2)).

B. Notwithstanding any other provision of law, the city may pick up, for the sole and limited purpose of deferring taxes as authorized by Section 414(h)(2) of the Internal Revenue Code (26 U.S.C.A. 414(h)(2)) and Section 17501 of the California Revenue and Taxation Code, all or a portion of the contributions:

- ~~1. Required to be paid by a member of this system; or~~
- ~~2. Elected to be paid by a member pursuant to an irrevocable election provided in Section 3.28.660; or~~
- ~~3. Elected to be paid by a member pursuant to an irrevocable election provided in Section 3.28.790.~~

C. Nothing herein shall be construed to mean that any contributions so picked up by the city are to be treated as city contributions for any purpose other than the sole and limited purpose specified herein. Any contributions so picked up by the city shall be paid into the retirement fund and shall be treated in the retirement fund in the same manner as such contributions would be treated if they had not been picked up by the city. The member shall have no right to receive such picked-up contributions directly but instead they must be paid to the retirement fund.

D. Subject to applicable laws relating to meet and confer requirements, the city shall retain the authority periodically to increase, reduce or eliminate the pick up by the city of all or a portion of the contributions required to be paid by a member of this

system ~~or elected to be paid pursuant to the irrevocable election provided in Section 3.28.660 or Section 3.28.790, as authorized by this section.~~

SECTION 18. Section 3.28.780 of Part 6 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to read as follows:

3.28.780 **Return of Contributions**

- A. Except as otherwise provided in Sections 3.28.580, 3.28.590, 3.28.785, and 3.28.2420 of this chapter, if the membership herein of a member of this system is terminated for any reason other than death or retirement, the member shall be paid, within six months after the date of such termination, all of his or her accumulated normal contributions, all of his or her accumulated prior service contributions and all of his or her accumulated additional contributions. In any case under the terms of this plan where a person is entitled to a return of employee contributions, such return of contributions shall include an amount equal to the amount of the employee contributions to the medical benefits account plus interest accrued thereon at the rate of two (2) percent per annum; provided, however, that no such return of contributions shall be paid from the medical benefits account.
- B. Anything elsewhere in this Chapter 3.28 to the contrary notwithstanding, if during a member's employment with the city, the member is required to or elects to become a member of any other retirement system supported in whole or in part by public funds, or is required to or elects to discontinue such federated city service as qualifies him or her for membership in this system and thereafter renders city service other than federated city service, such member shall be considered as having resigned from federated city service and, except as otherwise provided in Sections 3.28.580, 3.28.590, 3.28.785, and 3.28.2420, to

have terminated membership in this system, as of the date he or she becomes a member of said other system or ceases to render said federated city service as aforesaid.

- C. Except as provided in Section 3.28.785, upon termination of a member's membership in this system for any reason other than death or retirement, the member, and any and all other persons or estates who might otherwise be entitled to any rights or benefits under this system because of such member's membership, shall thereupon cease to have or be entitled to any rights or benefits under this system.

D. If on or after March 28, 2005, the member is to receive a distribution of an eligible rollover distribution, with a present value greater than One Thousand Dollars (\$1,000), and if a member does not elect to have such distribution paid directly to an eligible retirement plan specified by member in a direct rollover or to receive the distribution directly, then the system shall pay the distribution in a direct rollover to an individual retirement plan designated by the board in accordance with Section 401(a)(31)(B) of the Internal Revenue Code and IRS Notice 2005-5.

SECTION 19. Section 3.28.790 of Part 6 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to be entitled and read as follows

3.28.790 Redeposit of Withdrawn Contributions

- A. Except as provided in this Section 3.28.790 and in Section 3.28.2430, no person shall be entitled or permitted to repay or redeposit into the retirement fund or this system any accumulated contributions withdrawn by or returned to such person pursuant to the provisions of this chapter or of Chapter 3.24, nor to reacquire

credit for any federated city service lost by such person because of the withdrawal or return of such person's accumulated contributions.

- B. Upon any person becoming a member of this system pursuant to Section 3.28.430 or Section 3.28.450 or because of reemployment in a federated city service position, the retirement board shall cause written notice to be personally delivered or mailed to such member, informing such member of his or her rights under this section. If mailed, such notice shall be mailed to said member at the latest address as shown in the records of the human resources department of the city.
- C. If the member wishes to have the prior service which was lost by reason of the withdrawal of accumulated contributions recredited to him or her, the person shall file a written notice of election to redeposit with the secretary to the board within thirty days from and after the date that written notice of his or her rights under this section is mailed or delivered to the member. If the person does not file the notice of election to redeposit within such time, the member shall be deemed to have elected not to have such prior service credited to him or her.
- D. The member shall not be entitled to prior service credit under this section unless the member redeposits and pays into the retirement fund:
 - 1. All accumulated contributions previously withdrawn by or returned to said member; plus
 - 2. All additional interest which would have been earned by said member's contributions at the actual rate earned by the retirement fund under the provisions of this chapter or Chapter 3.24, whichever is applicable, as of

the date he or she becomes a member of this system, if said accumulated contributions had not been withdrawn by or returned to said member; plus

3. Interest on the unpaid balance of all such moneys from the date said member becomes a member of this system to the date all such moneys are fully redeposited and paid into the retirement fund, at the regular rate of interest established by the board which is in effect at the time said member elects to redeposit the withdrawn or returned accumulated contributions.

E. Subject to any limits on annual contributions imposed by Section 415 of the Internal Revenue Code of 1986, as amended, any member who elects to redeposit and pay into the retirement fund the moneys specified in subsection D. may redeposit and pay said moneys:

1. In one lump sum within sixty days from and after the date said member files with the secretary of the retirement board his or her written notice of election to redeposit; or
2. For elections made on or before January 31, 2011, in installments, paid pre-tax over a period of time not to exceed the number of monthly installments or biweekly installments approved by the board, all payable within the time and in the manner determined by the board; or
3. For elections made on or after February 1, 2011, in installments, paid post-tax over a period of time not to exceed the number of monthly installments or biweekly installments approved by the board, all payable within the time and in the manner determined by the board; or

4. A combination of a lump sum and installments.

F. If the member elects to redeposit and pay the contributions in pre-tax installments or if the member elects to make the lump sum payment by pre-tax payroll deduction, the member shall execute a binding irrevocable payroll authorization form authorizing the payment of the redeposit by payroll deductions. The payroll authorization form shall be filed with the director of finance within thirty days from and after the date that written notice of his or her rights hereunder is delivered or mailed to said member. If the member does not file the payroll authorization form within such time, the member shall be deemed to have elected not to redeposit and pay the contributions by payroll deduction.

~~G.~~ The election to redeposit accumulated contributions in the retirement fund by pre-tax payroll deduction and the authorization to redeposit by pre-tax payroll deductions shall be irrevocable. During the time the pre-tax irrevocable election is in effect, no direct payments from the member to the retirement fund shall be made by the member or accepted by the system.

G. The election to purchase credit for prior police and fire service through post-tax payroll deductions and the authorization to make payments by post-tax payroll deductions shall be revocable. During the time the revocable election is in effect, the member may make additional direct payments to the retirement fund.

H. All contributions under subsections (E)(2) and (G) shall be treated as pre-tax salary reductions pursuant to Internal Revenue Code Section 414(h)(2).

~~H. Notwithstanding the other provisions of this section:~~

~~1. Any member described in subsection B. who did not elect to redeposit and pay said moneys may make such election by filing with the secretary of the retirement board on or before September 1, 1986, and no later, a written notice of his or her election, and by redepositing and paying all moneys specified in subsection B.~~

~~2. If such member does not file such notice on or before September 1, 1986, such member shall be deemed to have elected not to redeposit and pay said moneys into the retirement fund.~~

~~3. To be eligible for the election provided in this subsection, such member must be a member of this retirement system on the date he or she files said written notice with the secretary of the retirement board. No prior service shall be credited to any person, who on the date said written notice is filed with the secretary, is not or was not a member of this retirement system because of retirement or because of termination or suspension of membership under the provisions of this Code.~~

~~I. Notwithstanding the other provisions of this section, a person who elected to redeposit withdrawn or returned accumulated contributions and has not completed the redeposit as of December 14, 1999, may either:~~

~~1. Continue to make such redeposits in the manner permitted by this Section 3.28.790 as it read prior to December 14, 1999; or~~

~~2. Execute a binding irrevocable payroll authorization form authorizing the payment of the redeposit by payroll deductions and file the form with the director of finance within thirty days from and after the date that written notice of rights under this section is personally delivered or deposited in the mail to the~~

~~member. If said person does not file the payroll authorization form within such time, the person shall be deemed to have elected to continue to make redeposits under paragraph 1, above.~~

JK. If a member elects to redeposit and pay the moneys specified in subsection D. and subsequently does redeposit and pay said moneys as provided in this section, the member shall be credited under this system for all the service for which he or she lost credit upon the withdrawal or return of his or her accumulated contributions.

JK. If a member elects to redeposit and pay said moneys but fails to complete the redeposit, then:

1. If the failure to complete the redeposit is because of death while in federated city service and before retirement, the member shall be credited with the amount of service which is determined by the board to be attributable to the amount of accumulated contributions redeposited as of the date of the member's death.
2. If the failure to redeposit is for any reason other than the death of the person prior to retirement, any amounts redeposited and paid pursuant to such election shall be credited to the member's accumulated normal contributions account but the member shall receive no credit for any service lost by him or her because of the previous withdrawal or return of accumulated contributions.

SECTION 20. Section 3.28.990 of Part 8 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to read as follows:

3.28.990 Compensation Limitation

A. Notwithstanding any other law, except as provided in subsection A.3 and B. below, for any person who becomes a member of this plan on or after January 1, 1996, the annual compensation taken into account under this plan shall be subject to the limitation set forth in Section 401(a)(17) of the Internal Revenue Code of 1986, as amended.

1. Effective with respect to plan years beginning on and after January 1, 1996, and before January 1, 2002, the annual compensation of a plan member which exceeds \$150,000 (as adjusted for cost-of-living increases under Section 401(a)(17)(B) of the Internal Revenue Code) shall be disregarded for purposes of computing employee contributions to or benefits due from the retirement plan. Effective only for the 1996 plan year, in determining the compensation of an employee eligible for consideration under this provision, the rules of Section 414(g)(6) of the Internal Revenue Code shall apply, except that in applying such rules, the term "family" shall include only the spouse of the member and any lineal descendants of the employee who have not attained age 19 before the close of the year.

2. Effective with respect to plan years beginning on and after January 1, 2002, the annual compensation of a plan member which exceeds \$200,000 (as adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Internal Revenue Code) may not be taken into account in determining benefits or employee contributions due for any plan year. Annual compensation means compensation during the plan year or such other consecutive 12-month period over which compensation is otherwise determined under the plan (the determination period). The

cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If the determination period consists of fewer than 12 months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12. If the compensation for any prior determination period is taken into account in determining a plan member's contributions or benefits for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period.

3. As used in this paragraph (3), the term "eligible member" means a person who first became a member of the retirement plan prior to January 1, 1996. Pursuant to Section 13212(d)(3)(A) of OBRA '93, and the regulations issued under that Section, eligible members are not subject to the limits of Section 401(a)(17) of the Internal Revenue Code and this section.

B. In the event Section 401(a)(17) of the Internal Revenue Code is repealed, amended or qualified, by statute or otherwise, to relieve all or any members of this plan described in subsection A. from the limitation set forth in Section 401(a)(17), then for those members no longer subject to the limitation, the annual compensation taken into account under the plan shall be calculated without such limitation.

SECTION 21. Section 3.28.995 of Part 8 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to read as follows:

3.28.995 Benefit Limitations

A. Notwithstanding any other law, except as provided in subsections B and E, below, the benefits payable to any person who becomes a member of this system on or after January 1, 1990, shall be subject to the limitations set forth in Section 415 of the Internal Revenue Code as applied (other than paragraph (b)(2)(G)) without regard to paragraph (b)(2)(F) of said Section 415.

B. Effective January 1, 1990, this paragraph shall apply only to ~~Notwithstanding any other law, the benefits payable to any persons~~ who became a member of this system prior to January 1, 1990. For purposes of this paragraph, these members are referred to as “qualified participants.” For a qualified participant, the 415(b) limit shall not be less than; ~~shall be subject to the greater of the following limitations as provided in Section 415(b)(10) of the Internal Revenue Code:~~

1. ~~The limitations set forth in Section 415 of the Internal Revenue Code; or~~
2. ~~The~~ the accrued benefit of the member under this System determined without regard to any amendment of the plan made after October 14, 1987.

C. For purposes of the application of Section 415(b) of the Internal Revenue Code, actuarial equivalences shall be based on the applicable interest rate and annuity tables as provided in subsection E. below.

D. The limitation year or period shall be the calendar year.

E. Basic 415(b) Limitation.

1. Before January 1, 1995, a member may not receive an annual benefit that exceeds the limits specified in Section 415(b) of the Internal Revenue Code, subject to the applicable adjustments in that Section. On and after January 1, 1995, a member may not receive an annual benefit that exceeds the dollar amount specified in Section 415(b)(1)(A) of the Internal Revenue Code, subject to the applicable adjustments in Section 415(b) of the Internal Revenue Code and subject to any additional limits that may be specified in the retirement plan. In no event shall a member's benefit payable under the plan in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code and the regulations thereunder.

2. For purposes of Section 415(b) of the Internal Revenue Code, the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to Section 415(n) of the Internal Revenue Code) and to rollover contributions (as defined in Section 415(b)(2)(A) of the Internal Revenue Code). The "benefit attributable" shall be determined in accordance with Treasury Regulations.

F. Adjustments to Basic 415(b) Limitation for Form of Benefit.

1. If the benefit under the plan is other than the form specified in subsection (E)(2), then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed by Treasury Regulations.

2. If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity,

then the preceding sentence is applied by either reducing the Section 415(b) of the Internal Revenue Code limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount (determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii) that takes into account the additional benefits under the form of benefit as follows:

a. For a benefit paid in a form to which Section 417(e)(3) of the Internal Revenue Code does not apply (a monthly benefit), the actuarially equivalent straight life annuity benefit that is the greater of:

i. The annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the form of benefit to the member, or

ii. The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a 5% interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2008, the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Rulings 2001-62), and (ii) for years after December 31, 2007, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code); or

b. For a benefit paid in a form to which Section 417(e)(3) of the Internal Revenue Code applies (such as a lump sum benefit), the actuarially equivalent straight life annuity benefit that is the greatest of:

i. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial equivalence;

ii. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2008, the applicable mortality table for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2007, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code); or

iii. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(3) (the 30-year Treasury rate (prior to January 1, 2007, using the rate in effect for

the month prior to retirement, and on and after January 1, 2007, using the rate the in effect for the first day of the plan year with a one-year stabilization period)) and (i) for years prior to January 1, 2008, the applicable mortality rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2007, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code), divided by 1.05.

G. Benefits For Which No Adjustment of 415(b) Limit is Required.

For purposes of this Section, the following benefits shall not be taken into account in adjusting these limits:

1. Any ancillary benefit which is not directly related to retirement income benefits;
2. That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity;
3. Any other benefit not required under Section 415(b)(2) of the Internal Revenue Code and Treasury Regulations thereunder to be taken into account for purposes of the limitation of Section 415(b)(1) of the Internal Revenue Code.

H. Other Adjustments in 415(b) Limitation.

1. In the event the member's retirement benefits become payable before age sixty-two (62), the limit prescribed by this Section shall be reduced in accordance with Treasury Regulations pursuant to the provisions of Section 415(b) of the Internal Revenue Code, so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a one hundred sixty thousand dollar (\$160,000) (as adjusted) annual benefit beginning at age sixty-two (62), using assumptions described under the Treasury Regulations.
2. In the event the member's benefit is based on at least fifteen (15) years of service as a full-time employee of any police or fire department or on fifteen (15) years of military service, the adjustments provided for in (1) above shall not apply.
3. The reductions provided for in (1) above shall not be applicable to income received from a governmental plan (i) as a result of the recipient becoming disabled by reason of personal injuries or sickness or (ii) by the beneficiaries, survivors, or the estate of an employee as the result of the death of the employee.

I. Less than Ten (10) Years of Participation Adjustment for 415(b) Limitations.

The maximum retirement benefits payable to any member who has completed less than ten (10) years of participation shall be the amount determined under subsection (E) multiplied by a fraction, the numerator of which is the number of the member's years of participation and the denominator of which is ten (10).

The reduction provided by this subsection cannot reduce the maximum benefit below 10%. The reduction provided for in this subsection shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

J. Ten Thousand Dollar (\$10,000) Limit.

Notwithstanding the foregoing, the retirement benefit payable with respect to a member shall be deemed not to exceed the 415 limit if the benefits payable, with respect to such member under this plan and under all other qualified defined benefit pension plans to which the member's employer contributes, do not exceed ten thousand dollars (\$10,000) for the applicable limitation year and for any prior limitation year and the employer has not any time maintained a qualified defined contribution plan in which the member participated.

K. Effect of COLA without a Lump Sum Component on 415(b) Testing

1. Effective on and after January 1, 2008, for purposes of applying the limits under Section 415(b) of the Internal Revenue Code (the "Limit") to a member with no lump sum benefit, the following shall apply:

a. a member's applicable Limit shall be applied to the member's annual benefit in the member's first limitation year without regard to any cost of living adjustments under the provisions of Chapter 3.44;

b. to the extent that the member's annual benefit equals or exceeds the Limit, the member shall no longer be eligible for cost of living

increases until such time as the benefit plus the accumulated increases are less than the Limit; and

c. thereafter, in any subsequent limitation year, a member's annual benefit, including any cost of living increases under Chapter 3.44, shall be tested under the then applicable benefit Limit including any adjustment to the Section 415(b)(1)(A) of the Internal Revenue Code dollar limit under Section 415(d) of the Internal Revenue Code, and the regulations thereunder.

2. Effect of COLA with a Lump Sum Component on 415(b) Testing. On and after January 1, 2008, with respect to a member who receives a portion of the member's annual benefit in a lump sum, a member's applicable Limit shall be applied taking into consideration cost of living increases as required by Section 415(b) of the Internal Revenue Code and applicable Treasury Regulations.

L. Section 415(c) limitations on contributions and other additions.

After-tax member contributions or other annual additions with respect to a member may not exceed the lesser of \$40,000 (as adjusted pursuant to Section 415(d) of the Internal Revenue Code) or 100% of the member's compensation.

1. Annual additions are defined to mean the sum (for any year) of employer contributions to a defined contribution plan, member contributions, and forfeitures credited to a member's individual account. Member contributions are determined without regard to rollover contributions and to picked-up employee contributions that are paid to a defined benefit plan.

2. For purposes of applying Section 415(c) of the Internal Revenue Code and for no other purpose, the definition of compensation where applicable shall be compensation actually paid or made available during a limitation year, except as noted below and as permitted by Treasury Regulation Section 1.415(c)-2, or successor regulation; provided, however, that member contributions picked up under Section 414(h) of the Internal Revenue Code shall not be treated as compensation.

3. Compensation shall be defined as wages within the meaning of Section 3401(a) of the Internal Revenue Code and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under Sections 6041(d), 6051(a)(3) and 6052 of the Internal Revenue Code and shall be determined without regard to any rules under Section 3401(a) of the Internal Revenue Code that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Section 3401(a)(2) of the Internal Revenue Code).

a. However, for limitation years beginning after December 31, 1997, compensation shall also include amounts that would otherwise be included in compensation but for an election under Section 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the Internal Revenue Code. For limitation years beginning after December 31, 2000, compensation shall also include any elective amounts that are not includible in the gross income of the member by reason of Section 132(f)(4) of the Internal Revenue Code.

b. For limitation years beginning on and after January 1, 2008, compensation for the limitation year shall also include compensation paid by the later of 2½ months after a member's severance from employment or the end of the limitation year that includes the date of the member's severance from employment if:

i. the payment is regular compensation for services during the member's regular working hours, or compensation for services outside the member's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the member while the member continued in employment with the employer; or

ii. the payment is for unused accrued bona fide sick, vacation or other leave that the member would have been able to use if employment had continued; or

iii. payments pursuant to a nonqualified unfunded deferred compensation plan, but only if the payments would have been paid to the member at the same time if the member had continued employment with the employer and only to the extent that the payment is includible in the member's gross income.

Any payments not described in subparagraph (b) above are not considered compensation if paid after severance from employment, even if they are paid within 2½ months following severance from employment, except for payments to the individual who does not currently perform services for the employer by reason of qualified military service (within the meaning of Section 414(u)(1) of the Internal Revenue Code) 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 employer rather than entering qualified military service.

An employee who is in qualified military service (within the meaning of Section 414(u)(1) of the Internal Revenue Code), shall be treated as receiving compensation from the employer during such period of qualified military service equal to (i) the compensation the employee would have received during such period if the employee were not in qualified military service, determined based on the rate of pay the employee would have received from the employer but for the absence during the period of qualified military service, or (ii) if the compensation the employee would have received during such period was not reasonably certain, the employee's average compensation from the employer during the twelve (12) month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

c. Back pay, within the meaning of Treasury Regulation Section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

4. If the annual additions for any member for a plan year exceed the limitation under Section 415(c) of the Internal Revenue Code, the excess annual addition shall be corrected as permitted under the Employee Plans Compliance Resolution System (or similar IRS correction program).
5. For limitation years beginning on or after January 1, 2008, a member's compensation for purposes of subsection (L) shall not exceed the annual limit under Section 401(a)(17) of the Internal Revenue Code.

M. Service Purchases under Section 415(n).

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under the retirement plan, then the requirements of Section 415(n) of the Internal Revenue Code shall be treated as met only if:

1. the requirements of Section 415(b) of the Internal Revenue Code are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of Section 415(b) of the Internal Revenue Code, or
2. the requirements of Section 415(c) of the Internal Revenue Code are met, determined by treating all such contributions as annual additions for purposes of Section 415(c) of the Internal Revenue Code.
3. For purposes of applying this Section, the retirement plan shall not fail to meet the reduced limit under Section 415(b)(2)(C) of the Internal Revenue Code solely by reason of this paragraph and shall not fail to meet the percentage limitation under Section 415(c)(1)(B) of the Internal Revenue Code solely by reason of this Section.
4. For purposes of this Section the term "permissive service credit" means service credit—
 - a. recognized by the retirement plan for purposes of calculating a member's benefit under the retirement plan,

b. which such member has not received under the retirement plan, and

c. which such member may receive only by making a voluntary additional contribution, in an amount determined under the retirement plan, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may include service credit for periods for which there is no performance of service, and, notwithstanding subparagraph (b), may include service credited in order to provide an increased benefit for service credit which a member is receiving under the retirement plan.

5. The retirement plan shall fail to meet the requirements of this Section if:

a. more than five years of nonqualified service credit are taken into account for purposes of this subsection (M), or

b. any nonqualified service credit is taken into account under this subsection (M) before the member has at least five years of participation under the retirement plan.

6. For purposes of paragraph (5), effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit other than that allowed with respect to:

a. service (including parental, medical, sabbatical, and similar leave) as an employee of the Government of the United States, any State

or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in Section 415(k)(3) of the Internal Revenue Code),

b. service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in subparagraph (a) of an education organization described in Section 170(b)(1)(A)(ii) of the Internal Revenue Code which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed,

c. service as an employee of an association of employees who are described in subparagraph (a), or

d. military service (other than qualified military service under Section 414(u) of the Internal Revenue Code) recognized by the retirement plan.

In the case of service described in subparagraph (a), (b), or (c), such service shall be nonqualified service if recognition of such service would cause a member to receive a retirement benefit for the same service under more than one plan.

7. In the case of a trustee-to-trustee transfer after December 31, 2001, to which Section 403(b)(13)(A) of the Internal Revenue Code or Section 457(e)(17)(A) of the Internal Revenue Code applies (without regard to

whether the transfer is made between plans maintained by the same employer)—

a. the limitations of paragraph (5) shall not apply in determining whether the transfer is for the purchase of permissive service credit, and

b. the distribution rules applicable under federal law to the retirement plan shall apply to such amounts and any benefits attributable to such amounts.

8. For an eligible member, the limitation of Section 415(c)(1) of the Internal Revenue Code shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the retirement plan as in effect on August 5, 1997. For purposes of this paragraph, an eligible member is an individual who first became a member in the retirement plan before January 1, 1998.

N. Modification of Contributions for 415(c) and 415(n) Purposes.

Notwithstanding any other provision of law to the contrary, the retirement plan may modify a request by a member to make a contribution to the retirement plan if the amount of the contribution would exceed the limits provided in Section 415 of the Internal Revenue Code by using the following methods:

1. If the law requires a lump sum payment for the purchase of service credit, the retirement plan may establish a periodic payment plan for the member to avoid a contribution in excess of the limits under Section 415(c) or 415(n) of the Internal Revenue Code.

2. If payment pursuant to paragraph (1) shall not avoid a contribution in excess of the limits imposed by Section 415(c) or 415(n) of the Internal Revenue Code, the retirement plan may either reduce the member's contribution to an amount within the limits of those Sections or refuse the member's contribution.

O. Repayments of Cashouts.

Any repayment of contributions (including interest thereon) to the retirement plan with respect to an amount previously refunded upon a forfeiture of service credit under the retirement plan or another governmental plan maintained by the City shall not be taken into account for purposes of Section 415 of the Internal Revenue Code, in accordance with applicable Treasury Regulations.

P. Participation in Other Qualified Plans: Aggregation of Limits.

1. The 415(b) limit with respect to any member who at any time has been a member in any other defined benefit plan as defined in Section 414(j) of the Internal Revenue Code maintained by the City shall apply as if the total benefits payable under all such defined benefit plans in which the member has been a member were payable from one (1) plan.

2. The 415(c) limit with respect to any member who at any time has been a member in any other defined contribution plan as defined in Section 414(i) of the Internal Revenue Code maintained by the City shall apply as if the total annual additions under all such defined contribution plans in which the member has been a member were payable from one (1) plan.

Q. Reduction of Benefits Priority.

Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the member's benefit under any defined benefit plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be determined by the plan and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be established by the plan and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the plan and the plan administrator of all other plans covering such member.

SECTION 22. Section 3.28.190¹⁵ of Part 8 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to read as follows:

3.28.1015 Minimum Distribution Requirements

A. Notwithstanding any other provision of this chapter, the distribution of a retirement benefit shall be subject to a good faith interpretation of the minimum distribution rules of Section 401(a)(9) of the Internal Revenue Code and the regulations promulgated thereunder, as applicable to a governmental plan within the meaning of section 414(d) of the Internal Revenue Code. In compliance with these provisions, payment of a member's retirement allowance shall commence no later than the later of the following:

1. The April 1 following the end of the calendar year in which the member attains age seventy and one-half (70-1/2); or
2. The April 1 following the end of the calendar year in which the member retires.

If a member fails to apply for retirement benefits by the later of either of those dates, the Board shall begin distribution of the monthly benefit in the form provided under the applicable provision of Section 3.28.1110.

B. The member's entire interest must be distributed over the member's life or the lives of the member and a designated beneficiary, or over a period not extending beyond the life expectancy of the member, or of the member and a designated beneficiary.

C. For purposes of this section, the retirement plan pursuant to a qualified domestic relations order, may establish separate benefits for a member and nonmember.

D. If a member dies after the required distribution of benefits has begun, the remaining portion of the member's interest must be distributed at least as rapidly as under the method of distribution before the member's death.

E. If a member dies before required distribution of the member's benefits has begun, the member's entire interest must be distributed within five (5) years of his death, unless it is to be distributed in accordance with the following rules:

1. If the member's surviving spouse is the sole designated beneficiary, the member's remaining interest in the plan is distributed or begins to be distributed by December 31 of the calendar year immediately following the calendar year in which the member died or by December 31 of the calendar year in which the participant would have attained age 70-1/2, if later, and if the surviving spouse dies before the distribution to the surviving spouse begins, this Section shall be applied as if the surviving spouse were the plan member; or
 2. If the member's surviving spouse is not the sole designated beneficiary, the member's remaining interest is to be distributed over the life of the designated beneficiary or over a period not extending beyond the life expectancy of the designated beneficiary; and such distribution begins no later than December 31 of the calendar year immediately following the calendar year of the member's death.
- F. The amount of an annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of Section 401(a)(9)(G) of the Internal Revenue Code, and the minimum distribution incidental benefit rule under Treasury Regulation Section 1.401(a)(9)-6, Q&A-2.
- G. The death and disability benefits provided by the retirement system are limited by the incidental benefit requirement set forth in Section 401(a)(9)(G) of the Internal Revenue Code and Treasury Regulation Section 1.401-1(b)(1)(i) or any successor regulation thereto. These incidental death and disability benefits include any lump sum death benefits and any disability benefits. As a result, the total death or disability benefits payable may not exceed 25% of the cost for all of the members' benefits received from the retirement plan.

H. Notwithstanding the other provisions of this rule or the provisions of the Treasury Regulations, benefit options may continue so long as the option satisfies Section 401(a)(9) of the Internal Revenue Code based on a reasonable and good faith interpretation of that Section.

I. Notwithstanding any other provision of this chapter, if a member has elected an optional settlement under Part 13 of this chapter and the designated beneficiary is not the spouse of the member, the periodic amounts payable to the member and the designated beneficiary shall be adjusted only to the extent necessary to ensure that the minimum distribution requirements of Internal Revenue Code Section 401(a)(9) are satisfied.

SECTION 23. Part 8 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended by adding a new section to be numbered, entitled and read as follows:

3.28.1080 Vesting

A. A member shall be 100% vested in his or her service retirement benefit upon attaining eligibility for a service retirement benefit under the applicable provisions of the retirement system.

B. A plan member shall be 100% vested in his or her accumulated contributions at all times.

C. An affected plan member shall be 100% vested in his or her accrued benefit, to the extent then funded, in the event the retirement system is terminated in whole or in part or contributions are completely discontinued.

D. For purposes of this section 3.28.1080 “vested” shall mean the nonforfeitable right to the benefit that the member has accrued.

SECTION 24. Part 8 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended by adding a new section 3.28.1090 to entitled and read as follows:

3.28.1090 Compliance with USERRA and the HEART Act

A. Effective December 12, 1994, notwithstanding any other provision of the retirement system law, contributions, benefits and service credit with respect to qualified military service are governed by Section 414(u) of the Internal Revenue Code and the Uniformed Services Employment and Reemployment Rights Act of 1994.

B. Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in chapter 43 of title 38, United States Code), to the extent required by Section 401(a)(37) of the Internal Revenue Code, survivors of a member in the retirement plan, are entitled to any additional benefits that the retirement plan would provide if the member had resumed employment and then died (as a non-service connected death) that are contingent on the member's death while employed. In any event, a deceased member's period of qualified military service must be counted for vesting purposes, but such period of service shall not be counted for benefit accrual purposes.

C. Beginning January 1, 2009, to the extent required Section 414(u)(12) of the Internal Revenue Code, an individual receiving a differential wage payment (as

defined under Section 3401(h)(2) of the Internal Revenue Code) from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under Section 415(c) of the Internal Revenue Code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner

SECTION 25. Section 3.28.2600 of Part 23 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to read as follows:

3.28.2600 Purpose and Applicability

- A. The purpose of this Part 23 is to set forth the requirements for plan-approved domestic relations orders that may be awarded by a court in a dissolution of marriage, a legal separation action, or a termination of a registered domestic partnership with respect to community property rights in benefits provided by this plan.

- B. This part shall apply only in those dissolution of marriage, legal separation or termination of domestic partnership proceedings which meet one of the following requirements:
 - 1. The proceedings are instituted on or after October 14, 2005; or

 - 2. The proceedings are pending on October 14, 2005, and the court has not yet awarded the benefits; or

 - 3. The court has reserved jurisdiction over the retirement benefits or has not yet awarded the benefits; or

4. The court issues a supplemental order with respect to the division of the community property rights in benefits provided by this plan.

C. If benefits are payable pursuant to a qualified domestic relations order that meets the requirements of a domestic relations order as defined in Section 414(p) of the Internal Revenue Code, then the applicable requirements of Section 414(p) of the Internal Revenue Code shall be followed by the retirement plan.

PASSED FOR PUBLICATION of title this _____ day of _____, 2011, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

DENNIS D. HAWKINS, CMC
City Clerk