CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Office of Retirement Services
Federated City Employees' Retirement System
Police and Fire Department Retirement Plan

March 19, 2024

To: Police and Fire Department Retirement Plan Trustees

Subject: Fiduciary Insurance Waiver of Recourse Fees

Dear Trustee:

California law provides that trustees of public employee retirement systems such as the Police and Fire Department Retirement Plan ("Plan") are immune from liability for actions taken within in the course and scope of their duties and are entitled to indemnity and defense in the event they are sued for such actions. The law also authorizes the Plan to obtain third-party fiduciary insurance to cover such claims.

The Plan has completed the renewal process for the Plan's Primary, Excess and Side A Fiduciary insurance policies for the period of March 30, 2024 through March 30, 2025, which covers both the Police and Fire Department Retirement Plan and the San Jose Police and Fire Retiree Healthcare Trust Funds. In an effort to reduce insurance cost, staff worked with the insurance broker to obtain the lowest rates available that will provide the coverage needed. The total premiums plus commission decreased by 8.7% from $208,000 to $190,000 with the same carriers (Euclid and AIG). The Plan currently holds primary, excess and excess Side A fiduciary insurance policies for $10 million, $5 million and $10 million, respectively, with a $100,000 per claim deductible.

The excess Side A policy was added eight years ago per Counsel's recommendation. Side A DIC ("Difference in Conditions") coverage ensures the individual trustees and key staff members that, even for non-indemnifiable claims (as defined by the insurer), insurance will cover from the first dollar of expenses incurred. Right now, the main policy ensures the Plan that if a claim is made against it, or if a claim is made against an individual that the Plan has to indemnify, that insurance will cover those costs/claims, above the deductible ("retention"). Side A coverage is additional coverage that kicks in at the first dollar (i.e. no retention) if a claim is made against an individual, and provides coverage while the Plan is deciding whether to cover or deny coverage, or in any event if the primary insurer does not provide coverage. The additional protection is generally not expensive but gives considerable peace of mind to individual board and staff members, that they will not have to provide initial coverage out of their personal assets before insurance kicks in.

Since the total premium did not increase by more than 5%, the CEO has authority to renew the policies without going to the Board for approval. This policy was approved by the Board at the April 2016 meeting.

The policies also contain "waiver of recourse" coverage for the trustees. When an insurer accepts a claim for coverage, it typically will do so with a "reservation of rights" that allows it recourse back against the trustee for any dollars the insurer advances, in the event it is later determined that insurance coverage was not appropriate (for example, if it turns out the Trustee's acts were not "covered claims" within the scope of the trustee's duties for the Plan.) The waiver of recourse premium allows the Trustee to "buy off" such a recourse claim by the insurer. Under law, however, because this is a benefit to the individual trustee personally, the modest annual premium ($25 per policy, for three policies) must be paid directly by the trustee and not by the Plan.

For this coverage, please make the **$75.00** payment payable to the City of San Jose, Police and Fire Department Retirement Plan and remit by **May 31, 2024,** attention to:

Accounting Department
Office of Retirement Services
1737 North First Street, Suite 600
San Jose, CA 95112

Please note that the payment from each Trustee must be from his or her personal account and **cannot** be paid or reimbursed by any other person or organization.

Please contact me via e-mail at benjie.chua-foy@sanjoseca.gov, if you have any questions or should require further attention.

Regards,

/s/

Benjie Chua Foy
Accounting Division Manager