

**RETIREMENT CHIEF EXECUTIVE OFFICER
EMPLOYMENT AGREEMENT
BETWEEN
THE BOARDS OF ADMINISTRATION OF THE
SAN JOSÉ FEDERATED CITY'S EMPLOYEES' RETIREMENT SYSTEM
AND THE SAN JOSÉ POLICE AND FIRE DEPT. RETIREMENT PLAN
AND
JOHN FLYNN**

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This Agreement is entered into as of August 26, 2024 (the "Effective Date") by and between the Boards of Administration of the San José Federated City Employees' Retirement System ("Federated") and the San José Police and Fire Department Retirement Plan ("Police & Fire") (together, "Boards"), and John Flynn, an individual ("Flynn"). The Boards and Flynn are sometimes individually referred to as a "Party" and collectively as "Parties."

RECITALS

WHEREAS, on or about November 4, 2014, the voters of the City of San José ("City") passed ballot Measure G, which provided that the Boards would have the authority to appoint and prescribe the duties of a Chief Executive Officer ("CEO"), subject to the direction and supervision of the Boards exclusively, and the CEO in turn would appoint and prescribe the duties of the professional and technical employees and clerical staff employed in the City's Office of Retirement Services; and

WHEREAS, Flynn has the necessary education, experience, skills and expertise to serve as the CEO of the Office of Retirement Services; and

WHEREAS, the Boards wish to enter into a contractual arrangement with Flynn, as CEO, pertaining to salary, benefits, working conditions and termination of employment, effective as of the Effective Date; and

WHEREAS, Flynn desires to be employed as CEO under the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of these Recitals and the mutual agreements, covenants and conditions contained herein, the Boards and Flynn hereby agree as follows:

1. EMPLOYMENT AT WILL

Pursuant to City Charter Section 810.1(a), the Boards hereby appoint Flynn to the position of CEO of the Office of Retirement Services, effective as of the Effective Date, subject, however, to termination as hereinafter provided in this Agreement and under applicable law. Flynn shall be directed by, shall serve at the pleasure of, and may be dismissed at the will of the Boards and shall report directly to the Boards. Flynn understands and agrees that specific charges, a statement of reasons, or good cause shall not be required as a basis for dismissal by the Boards, it being understood that the employment relationship is "at-will" and may be terminated by the Boards at any time, with or without cause, or for any reason or no reason at all, with or without notice, except as expressly provided for in this

Agreement. Flynn expressly waives and disclaims any right to any pre-termination or post-termination notice and hearing, unless specifically provided for in this Agreement. The term of Flynn's employment shall be from the Effective Date until the effective date of termination by either party in accordance with the terms of this Agreement ("Term").

2. COMMITMENTS AND UNDERSTANDINGS

A. Chief Executive Officer's Commitments

(1) Duties & Authority

- (a)** The CEO shall serve as the Chief Executive Officer of the Office of Retirement Services and be responsible to the Boards for the proper administration of all affairs of the Office in accordance with the City Charter, City Municipal Code, and the policies, rules and regulations of the Boards in effect from time to time, including, without limitation, the CEO of Retirement Services adopted by the Boards. The current Charters are attached hereto as Exhibit A and are subject to change from time to time.
- (b)** The CEO shall perform such duties and responsibilities as may from time to time be assigned to him by the Boards, commensurate with his title and position. Such duties shall include, but shall not be limited to:
 - (i)** Planning, organizing, coordinating and supervising the work of the Boards and the personnel of the Office of Retirement Services as directed by the Boards;
 - (ii)** Developing, implementing and maintaining appropriate accounting and financial systems;
 - (iii)** Supervising the maintenance of records and accounts for all members of Federated and Police & Fire, and their beneficiaries;
 - (iv)** Directing the preparation and issuance of the retirement payroll;
 - (v)** Preparing the retirement financial statements and other appropriate financial and statistical reports;
 - (vi)** Reviewing and analyzing cash flow needs and projecting funds available for investment;
 - (vii)** Analyzing new legislation and actuarial studies to determine financial and administrative impact on the Boards' responsibilities;

- (viii) Participating in the selection of professional managers, advisors and consultants in areas such as investments, custodial services, legal services and actuarial services;
 - (ix) Developing and administering the administrative budget; and
 - (x) Supervising, training and evaluating the staff and managers of the Office of Retirement Services
 - (xi) Developing, circulating and posting public agendas and agenda item backup for all Board and committee meetings in accordance with applicable law, rules and policies.
 - (xii) Attending all regular and special meetings of the Boards and their respective committees, unless excused by the Boards or prevented by illness or physical incapacity, and taking part in the discussion of all matters before the Boards and their respective committees.
- (c) Flynn shall perform all duties hereunder in a manner consistent with the level of competency and standard of care normally observed by a person employed as a Chief Executive Officer of a public employees' retirement system, taking into account the environment and requested resources of the Office of Retirement Services.

(2) Hours of Work

- (a) The CEO is an employee of the City and is an "exempt" employee. The CEO is expected to engage in those hours of work that are necessary to fulfill the obligations of the CEO's position. The position does not have set hours of work as the CEO is expected to be available at all times.
- (b) It is recognized that the CEO must devote a great deal of time to the business of the Boards outside of the City's customary office hours, and to that end the CEO's schedule of work each day and week shall vary in accordance with the work required to be performed. The CEO shall spend sufficient hours on site to perform the work of the Office of Retirement Services, as directed by the Boards. However, the CEO has discretion over his work schedule and work location, subject to the City's Flexible Workplace Policy incorporated by reference and attached hereto as Exhibit B.

(c) The CEO shall not engage in teaching, consulting, speaking, or other non-Boards business for which compensation is paid without the express prior consent of the Boards.

(3) Disability or inability to perform

(a) In the event Flynn becomes mentally or physically incapable of performing the CEO's functions and duties with reasonable accommodation, the Boards may terminate Flynn. If the Boards elect to terminate Flynn due to incapacity, Flynn shall receive all severance benefits provided in Section 4, SEPARATION.

B. Boards' Commitments

- (1) The Boards shall provide Flynn with the compensation, incentives and benefits, specified elsewhere in this Agreement and in the City's "Executive Management and Professional Employees (Unit 99) Benefit and Compensation Summary July 1, 2023 – June 30, 2026," which is attached hereto as Exhibit C.
- (2) The Boards shall provide Flynn with a private office, secretary/executive assistant, staff, office equipment, supplies, and all other facilities and services adequate for the performance of the CEO's duties.
- (3) The Boards shall pay for or provide Flynn reimbursement for all actual out-of-pocket business expenses incurred on behalf of Federated and/or Police & Fire. The Boards shall provide Flynn a Board credit or debit card to charge appropriate and lawful business expenses.
- (4) The Boards agree to pay the professional dues and subscriptions on behalf of Flynn which are necessary for the CEO's continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for the good of the Boards, and for his continued professional participation and advancement, to the extent not otherwise paid in accordance with the Professional Development Program provided to Executive Management and Professional Employees of the City (Unit 99). The Boards agree to pay the reasonable and actual travel and subsistence expenses of the CEO to pursue official and other functions for the Boards, and meetings and occasions to continue the professional development of the CEO, including, but not limited to national, regional, state, and local conferences, and governmental groups and committees upon which the CEO serves as a member in accordance with the Board's Travel Policy and provided by budget and/or Boards' approval.
- (5) The Boards set policy for the governance and administration of Federated and Police & Fire, through the personnel of the Office of Retirement Services, and implement their respective policies through the CEO in

accordance with the City Charter, Municipal Code and the Boards' policies, charters and rules in effect from time to time.

- (6) Except for the purpose of inquiry, and as otherwise provided under Section 810.1 of the City Charter, the Boards and their respective members shall deal with all subordinate employees of the Office of Retirement Services solely through the CEO or the CEO's designee and neither the Boards nor any member thereof shall give orders to any subordinate of the CEO, either publicly or privately.
- (7) Neither the Boards nor any of their members will order the appointment or removal of any person to any office or employment under the supervision and control of the CEO.
- (8) Neither the Boards nor any of their members shall interfere with the execution of the powers and duties of the CEO in accordance with the City Charter or this Agreement. The CEO shall take orders and instructions only from the Boards and/or their duly authorized committees or designees.

C. Mutual Commitments

(1) Performance Evaluation

- (a) Annual performance evaluations are an important way for the Boards and the CEO to ensure effective communications about expectations and performance.
- (b) The Boards recognize that for Flynn to respond to their needs and to grow in the performance of the CEO's job, Flynn needs to know how the Boards evaluate his performance.
- (c) To assure that Flynn gets this feedback, the Boards shall conduct an evaluation of the CEO's performance at least once each year. The Parties may use an outside facilitator paid by Boards to assist them in conducting this evaluation, at the option of the Boards.
- (d) The CEO and the Boards will create goals or other outcome measures on an annual basis that will provide the basis for determining the next year's performance results.
- (e) The annual review and evaluation shall be in accordance with specific criteria and goals developed jointly by the Boards and Flynn. Such criteria may be added to or deleted as the Boards may from time to time determine in consultation with Flynn.
- (f) The Boards and Flynn shall define such goals and performance objectives as they mutually determine are necessary for the proper

operation of the Office of Retirement Services or the attainment of the Boards' policy objectives, and the Boards and Flynn shall further establish a relative priority among those goals and performance objectives.

3. COMPENSATION

The Boards agrees to provide the following compensation to the CEO during the term of this Agreement:

A. Compensation & Required Employer Costs

- (1) Flynn's base salary shall be the bi-weekly amount of \$12,000, which is the equivalent to an annual amount of \$312,000 (which includes a 5% non-pensionable compensation) and shall benefit from the salary increases provided to the Executive Management and Professional Employees Unit (Unit 99) during your first year of employment. Moreover, the Boards may recommend future adjustments to salary and benefits in their discretion and any such adjustments shall be subject to the terms of City Charter Sections 810.1(e) and 902, and subject to the City Council's approval. Absent any different process for adjustments to salary and benefits implemented by the Boards, the Boards will follow the City's annual general wage and merit increase process in effect for the Executive Management class of City employees (Unit 99). Flynn shall be paid at the same intervals and in the same manner as regular City employees.
- (2) All sums payable to Flynn hereunder shall be reduced by all federal, state, local and other withholding and similar taxes and customary payroll deductions required by applicable law.
- (3) Flynn shall be permitted participate in the public pension fund administered by the California Public Employees' Retirement System (CalPERS) for his services rendered under this Agreement.

B. Benefits

- (1) For sick leave, the Parties incorporate by reference Exhibit C attached hereto, which specifies the sick leave accrual and benefits as provided to the Executive Management class of City employees (Unit 99).
- (2) In consideration of Flynn's prior years of service in another public agency, there will be an adjustment of Flynn's vacation accrual to begin at 200 hours accrued annually. For other terms regarding vacation benefits provided to Flynn under this Agreement, the Parties incorporate by reference Exhibit C attached hereto, which specifies the vacation accrual and benefits as provided to the Executive Management class of City employees (Unit 99).

(3) For the 2024 calendar year, Flynn will receive 24 hours of Executive Leave. Starting in 2025, Flynn shall receive an automatic 48 hours of Executive Leave as other Executive Management class of City employees (Unit 99), and the Boards may grant Flynn up to 40 hours of additional Executive Leave per annum based on his performance evaluation, subject to the Boards' discretion. For other terms regarding Executive Leave provided to Flynn under this Agreement, the Parties incorporate by reference Exhibit C attached hereto, which specifies the Executive Leave accrual and benefits as provided to the Executive Management class of City employees (Unit 99).

(4) Automobile Allowance

For Flynn's automobile/vehicle allowance, the Parties incorporate by reference Exhibit D attached hereto, which is the City Administrative Policy Manual 1.8.4 on Vehicle Allowance, which may be changed at any time, as approved by the City Manager, City Finance Director, and/or the City Council.

C. Relocation Expense Reimbursement

Boards shall reimburse Flynn for actual and reasonable relocation and moving expenses incurred in connection with the relocation of his primary residence in order to fulfill his responsibilities as CEO. To qualify for the reimbursement, Flynn shall submit to the Boards three bona fide written bids from commercial moving companies for the same goods and services. The amount of the reimbursement shall be the average dollar amount of the three bids. Such payment shall be made within thirty (30) days following receipt by the Chairs of the Boards sufficient documentary evidence (receipts) to establish the actual and reasonable expenses incurred. Moreover, the Parties incorporate by reference to Exhibit E attached hereto.

4. **SEPARATION**

A. Administrative Leave

The Boards may place Flynn on administrative leave when Flynn's temporary suspension from office would be in the best interests of the Boards, as determined by the Boards in their sole discretion. The administrative leave shall be effective as of the date set forth in a written notice delivered to Flynn. The Boards shall also deliver a copy of the notice to any other such other employee, determined by the Boards, who shall serve as Acting CEO during the period of administrative leave. Upon the delivery of the notice to Flynn, Flynn's duties under this Agreement shall be suspended as of the effective date stated in the notice but all other provisions of this Agreement shall remain in full force and effect. Thereafter, Flynn's duties under this Agreement shall be performed by the Acting CEO or other designee of the Board of Retirement. Flynn agrees that he shall not

perform or attempt to perform any of the duties of CEO, or in any other way interfere with the administration or operation of the Office of Retirement Services during the period of administrative leave. The administrative leave and the suspension of the duties provided for herein shall terminate on the Boards' delivery to Flynn of a written notice terminating the leave.

B. Resignation

Flynn may resign at any time and agrees to give the Boards at least 30 days advance written notice of the effective date of his resignation, unless the Parties otherwise agree in writing.

C. Termination & Removal

- (1) Flynn is an at-will employee serving at the pleasure of the Boards as provided in the City Charter.
- (2) The Boards may remove Flynn at any time, with or without cause, by a majority vote of the members of each Board. Notice of termination shall be provided to Flynn in writing.
- (3) Given the at-will nature of the CEO position, an important element of the employment agreement pertains to termination. It is in both the Boards' and City's interest and that of Flynn's that any separation of Flynn is done in a businesslike manner.
- (4) Flynn acknowledges that he is subject to removal by the Boards pursuant to City Charter Section 810.1.

D. Severance Pay

Boards shall pay severance pay equal to six (6) months' base salary for involuntary termination by the Boards of Flynn's employment, without cause (as "cause" is defined in Section 4.E, below.) Severance pay shall not be paid for removal for cause, or separation due to expiration of this Agreement, or for termination by Flynn.

E. Separation for Cause

- (1) Flynn may be terminated for cause. As used in this Section, "cause" shall mean only one or more the following:
 - (a) A plea to or a trial court conviction of a criminal act, whether misdemeanor or felony, which in the opinion of the Boards in their sole discretion renders Flynn unfit to continue employment, notwithstanding any subsequent appeals, exoneration, expungement, reduction or vacating of the plea or conviction;

- (b) Continued abuse of prescription or non-prescription drugs or alcohol that materially affects the performance of the CEO's duties;
 - (c) Repeated and protracted unexcused absences from the Office of Retirement Services and the performance of the CEO's duties without the Boards' consent;
 - (d) Refusal or failure to perform the CEO's duties in accordance with this Agreement in the determination of the Boards, after Flynn is given notice of the failure or refusal to perform and a reasonable period of time and opportunity to cure, if cure is possible. Results of any performance review under Section 2.C of this Agreement may serve as the basis for the Board of Retirement's determination that Flynn has failed or refused to perform his duties;
 - (e) Any unprofessional, unethical or fraudulent act or omission, or conduct that discredits the Boards or is detrimental to the business, reputation, character or standing of the Boards or the Office of Retirement Services, without the requirement of moral turpitude;
 - (f) Flynn's breach of this Agreement, including without limitation committing an act of dishonesty or deceit in the performance of CEO's duties; or
 - (g) death or disability which cannot reasonably be accommodated (for these purposes, Flynn shall be deemed disabled if, in the judgment of a licensed physician selected by the Board of Retirement, he is physically or mentally unable to fully discharge his duties hereunder for a period of 90 consecutive days or for 90 days in any 180 calendar day period).
- (2) In the event the Boards terminate Flynn for cause, then the Boards may terminate this Agreement immediately, and Flynn shall be entitled to only the compensation accrued up to the date of termination, and such other termination benefits and payments as may be required by law or under this Agreement. Flynn shall not be entitled to any severance benefits provided by Section 4.D if terminated for cause.

5. MISCELLANEOUS PROVISIONS

A. Amendments

This Agreement may be amended at any time by mutual written agreement of the Boards and Flynn.

B. Conflict of Interest

- (1) Flynn shall not engage in any business or transaction nor shall have a financial or other personal interest or association, direct or indirect, which is in conflict with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties. Personal as distinguished from financial interest includes an interest arising from blood or marriage relationships or close business, personal, or political associations. This section shall not serve to prohibit independent acts or other forms of enterprise during those hours not covered by active City employment, providing such acts do not constitute a conflict of interest as defined herein.
- (2) Flynn shall also be subject to the conflict of interest provisions of the California Government Code and any City or other conflict of interest code applicable to his employment.
- (3) Flynn is responsible for submitting to the Boards designated person the appropriate Conflict of Interest Statements at the time of appointment, annually thereafter, and at the time of separation from the CEO position.

C. Indemnification

To the full extent of the law as provided by the California Torts Claims Act (Government Code Section 810 et seq.), the Boards jointly and severally, shall defend and indemnify Flynn against and for all losses sustained by Flynn in direct consequences of the discharge of his duties on the Boards' behalf for the period of Flynn's employment.

D. Severability

If any provision of this Agreement shall be found by any court of competent jurisdiction to be invalid or unenforceable, then the parties hereby waive such provision to the extent that it is found to be invalid or unenforceable and to the extent that to do so would not deprive one of the parties of the substantial benefit of its bargain. Such provision shall, to the extent allowable by law and the preceding sentence, be reformed by such court to comport as nearly as possible with the intent of the parties to this Agreement so that it becomes enforceable and, as reformed, shall be enforced as any other provision hereof, all the other provisions continuing in full force and effect.

E. Waiver

Waiver by any Party of any provision of this Agreement may only be done in writing, and shall not constitute or be deemed to be a waiver of any other provision of this Agreement.

F. Assignment

This Agreement and all rights hereunder are personal to Flynn and may not be transferred or assigned by Flynn at any time.

G. Jurisdiction and Venue

This Agreement shall be construed in accordance with the laws of the State of California, and the Parties agree that venue shall be in Santa Clara County, California.

H. Advice of Counsel; Interpretation of Agreement

Flynn acknowledges that he has been advised to seek the advice of independent counsel who is not counsel to the Boards in connection with the negotiation of this Agreement. Flynn and Boards acknowledge that regardless of whether they each have consulted with counsel, they have each read this Agreement and each and every part thereof and fully understand the implications of the same, Flynn and Boards further agree that this Agreement is the product of negotiation and preparation by and among each party hereto. Therefore, Flynn and Boards acknowledge and agree that this Agreement shall not be deemed to have been prepared or drafted by one party or another, and that it shall be construed accordingly.

I. Entire Agreement

This Agreement represents the entire agreement of the Parties, and no representations have been made or relied upon except as set forth herein. This Agreement may be amended or modified only by a written, fully executed agreement of the Parties.

J. Notice

Any notice, amendments, or additions to this Agreement, including change of address of either party during the term of this Agreement, which Flynn or the Boards shall be required, or may desire, to make shall be in writing and shall be sent by prepaid first class mail or hand-delivered to the respective Parties as follows:

If to the Boards:

Chairs for the Boards of Administration of the Federated City Employees'
Retirement System and the San José Police and Fire Department Retirement Plan
Office of Retirement Services
1737 North First Street, Suite 600
San José, CA 95112-4505

If to Flynn:

John Flynn



K. Attorneys' Fees

In the event of any claim, demand, proceeding or suit arising out of or with respect to this Agreement, the prevailing party in any such action shall be entitled to reasonable costs and attorneys' fees, including any such costs and fees on appeal.

L. Arbitration Agreement

- (1) Flynn and Boards agree that any and all controversies, claims, or disputes with anyone (including Boards and any of its officers, board members, employees, advisors, consultants and agents) arising out of, relating to, or resulting from Flynn's employment with Boards, including but not limited to any breach of this Employment Agreement, or any action in contract, tort or equity, shall be subject to exclusive binding arbitration under the JAMS Arbitration Rules for employment disputes in effect at the time that either Boards or Flynn make demand for arbitration under this Agreement. Disputes that Boards and Flynn agree to submit to arbitration, and thereby agree to waive any right to a trial by jury and any other court actions except provided for in subpar. 4, below, include any claims under state or federal law (including, but not limited to, claims under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, the Age Discrimination in Employment Act of 1967, the Older Workers Benefit Protection Act, the California Fair Employment and Housing Act, and the California Labor Code), claims of harassment, discrimination or wrongful termination and any other statutory claims. This Arbitration Agreement shall not, however, apply to any claims that Flynn may have to a retirement allowance from Boards under applicable law. Flynn further understands that this Agreement also applies to any disputes that Boards may have with Flynn.
- (2) Arbitration shall be at and through the auspices of the JAMS office in San José, California, before a single neutral arbitrator selected by agreement of Boards and Flynn. In the event Boards and Flynn have not reached agreement on the selection of the arbitrator within thirty (30) days following demand for arbitration being served by one party on the other, selection of the arbitrator shall be made in accordance with the JAMS Arbitration Rules. The costs charged by JAMS to conduct the arbitration shall be the responsibility of Boards alone.

- (3) Both Boards and Flynn will be entitled to discovery sufficient to adequately arbitrate any claims, including access to essential documents, and, at a minimum, one deposition per party, as determined by the neutral arbitrator and subject to limited judicial review pursuant to California Code of Civil Procedure section 1286.2.
- (4) Except as provided for in the JAMS Arbitration Rules, arbitration shall be the sole, exclusive and final remedy for any dispute between Boards and Flynn. Accordingly, except as provided for by the JAMS Arbitration Rules, California Code of Civil Procedure section 1285, et seq., and below, neither Boards nor Flynn will be entitled to pursue court action regarding any claims that are subject to arbitration. The neutral arbitrator shall have the authority to issue relief as provided by applicable law, and this Agreement shall not limit any statutory remedies either party has under applicable law. Notwithstanding the above, Boards and Flynn each reserve the right to petition a court for provisional or injunctive relief against the other.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

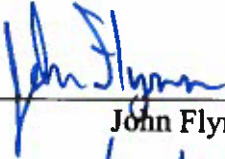
**BOARD OF ADMINISTRATION
FEDERATED CITY EMPLOYEES'
RETIREMENT SYSTEM**

By: _____
Spencer Horowitz

Its: _____ Chair _____

Dated: _____

CHIEF EXECUTIVE OFFICER

_____ 
John Flynn

Dated: 7/25/2024

**BOARD OF ADMINISTRATION
SAN JOSÉ POLICE AND FIRE
DEPARTMENT RETIREMENT PLAN**

By: _____
Franco Vado

Its: _____ Chair _____

Dated: _____