



# Memorandum

**TO:** Police and Fire Department Retirement  
Plan Board

**FROM:** Jennifer Schembri

Federated Retirement Board

**SUBJECT:** Tier 1 Rehire Amortization Costs

**DATE:** July 23, 2018

## **BACKGROUND**

The City and the eleven (11) bargaining units have clarified the terms of the Alternative Pension Reform Framework, including the process for the payment of the amortization costs associated with transitioning rehired Tier 1 employees in Tier 2 back into Tier 1 (hereinafter "Tier 1 Rehire Amortization"). In the two attached side letters, the City and the bargaining units have agreed to the amended terms regarding the Tier 1 Rehire amortization costs.

## **ANALYSIS**

The parties agreed in the attached side letters that for Rehired Tier 1 Employees, any costs, including any unfunded liability, associated with transitioning current Tier 2 employees who were former Tier 1 City employees who have since been rehired will be amortized over different individual amortization periods as determined by the Board's actuary, depending on how long the Rehired Tier 1 Employee was in Tier 2 prior to being transitioned back to Tier 1 and split between the employee and the City on a 50/50 basis. The side letters only apply to rehired employees who were rehired before June 16, 2017. Those rehired after that date who did not become part of Tier 2 were put directly back into Tier 1.

Rehired Tier 1 Employees are individually responsible for the costs, including any unfunded liability, of transitioning from Tier 2 to Tier 1, and will sign individual agreements confirming his or her obligations. They will pay the same contribution rate, as determined by the Board's actuary, to pay for the costs, including any unfunded liability, of transitioning from Tier 2 to Tier 1. This contribution rate is in addition to the Tier 1 contributions these employees are required to make as a reinstated Tier 1 employee. The employees will pay this additional contribution rate on different individual amortization periods, depending on how long the Rehired Tier 1 Employee was in Tier 2 prior to being transitioned back to Tier 1.

If a rehired Tier 1 employee leaves City service prior to paying the full cost attributable to such member's transition to Tier 1, including any unfunded liability, the employee is required to pay any remaining balance upon leaving City service. The remaining balance may be paid through an asset transfer from the employee's 457 deferred compensation plan account or through a lump-sum after-tax payment.

Pursuant to these side letter agreements, the City is bringing forward an amendment to the San Jose Municipal Code. The City drafted an ordinance that, if adopted by Council, would amend the Municipal

Code to provide for the repayment of these amortization costs as outlined in the attached side letters. The proposed draft ordinance and Council memo will tentatively be discussed at the August 28, 2018 City Council meeting. If the Council approves the proposed draft ordinance for publication on August 28, 2018, a second reading of the proposed draft ordinance will occur on September 11, 2018. Please note that the ordinance becomes effective thirty (30) days after the second reading.

Pursuant to San Jose Municipal Code sections 3.28.275 and 3.36.485, the City is requesting the Boards review of the draft ordinances during the August 2, 2018 Police and Fire Board meeting and the August 16, 2018 Federated Board meeting. The Boards can provide any comments regarding the proposed ordinances to the City and they can be considered by the Council on August 28, 2018.

Please let us know if you have any questions related to the ordinance.



Jennifer Schembri  
Director of Employee Relations

C: Roberto Peña, Director of Retirement Services  
Rick Doyle, City Attorney

Attachments

## SIDE LETTER AGREEMENT

BETWEEN

THE CITY OF SAN JOSE

AND

THE SAN JOSE POLICE OFFICERS' ASSOCIATION (POA)  
THE SAN JOSE FIRE FIGHTERS, IAFF LOCAL 230 (IAFF)

### **Alternative Pension Reform Settlement Framework (Tier 1 Rehire Amortization)**

#### **Background**

On or about July 2015, the City of San Jose (City) and the San Jose Police Officers' Association (POA) and the San Jose Fire Fighters, IAFF Local 230 (IAFF) reached agreement on the Alternative Pension Reform Settlement Framework (Framework). As the City has moved to implement the terms of the Framework, the City, the POA, and IAFF have updated certain terms of the Framework, including the amortization costs associated with transitioning Tier 1 employees in Tier 2 back into Tier 1 (hereinafter "Tier 1 Rehire Amortization").

This Side Letter Agreement is to memorialize the amended terms regarding Tier 1 Rehire Amortization that the City, the POA, and IAFF have agreed upon and which shall be incorporated into the San Jose Municipal Code.

#### **Amended Framework Terms (Tier 1 Rehire Amortization)**

The parties hereby agree to the following amendments to the terms of the Framework with regards to Tier 1 Rehire Amortization:

Framework		Amended Terms
Issue	Section	
Tier 2 Retirement Benefits	16	<p>"a. Former Tier 1 sworn City employees who have been rehired since the implementation of Tier 2 or rehired after the effective date of a tentative agreement based on this framework will be placed in Tier 1</p> <p>b. Any costs, including any unfunded liability, associated with transitioning current Tier 2 employees who were former Tier 1 sworn City employees who have since been rehired will be amortized as a separate liability over a minimum of 16 years and split between the employee and the City 50/50. This will be calculated as a separate</p>



	<p>unfunded liability and as Tier 1 employees these members are not subject to a ramp up in unfunded liability. <u>For purposes of this section, former Tier 1 employees who are subject to the costs, including any unfunded liability, of transitioning from Tier 2 to Tier 1, shall be referred to as "Rehired Tier 1 Employees."</u></p> <p><u>(i) Rehired Tier 1 Employees shall be individually responsible for the costs, including any unfunded liability, of transitioning from Tier 2 to Tier 1, and shall sign individual binding agreements to this effect.</u></p> <p><u>(ii) Rehired Tier 1 Employees shall:</u></p> <p><u>(1) Pay the same contribution rate, as determined by the Board's actuary, to pay for the costs, including any unfunded liability, of transitioning from Tier 2 to Tier 1. This contribution rate is in addition to the Tier 1 contributions these employees are required to make as a reinstated Tier 1 employee; and</u></p> <p><u>(2) Pay the additional contribution rate referenced above on different individual amortization periods as determined by the Board's actuary, depending on how long the Rehired Tier 1 Employee was in Tier 2 prior to being transitioned back to Tier 1. This means the amortization period for each individual Rehired Tier 1 Employee will be determined by the Board's actuary and may not be the same length of time the Rehired Tier 1 Employee was in Tier 2 member.</u></p> <p><u>(iii) A Rehired Tier 1 Employee who leaves City service prior to paying the full cost attributable to such member's transition to Tier 1, including any unfunded liability associated with the transition from Tier 2 to Tier 1, is liable for and shall be required to pay any remaining balance upon leaving City service. The remaining balance owing and payable by the Rehired Tier 1 Employee shall be determined by the Board's actuary. Upon separation from City service, Rehired Tier 1 Employees must pay their outstanding balance, as determined by the Board's actuary, through an asset transfer from the employee's 457 deferred compensation plan account or through a lump-sum after-tax payment.</u></p> <p>c. Any lateral hire from any other pension system who transfers as a "Classic" employee under PEPRA, regardless of tier, will be placed in Tier 1.</p> <p>d. Any lateral hire from any other pension system who transfers as a "new" employee under PEPRA will be placed in Tier 2."</p>
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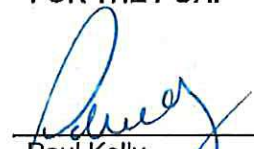
The terms of this Side Letter Agreement shall not be construed to modify or supersede any other section or term of the Framework unless specified herein.

This Side Letter Agreement shall be effective when signed by all parties below.

**FOR THE CITY:**

 6/14/18  
Date  
Jennifer Schembri  
Director of Employee Relations

**FOR THE POA:**

 6/11/18  
Date  
Paul Kelly  
President, POA

 6/11/18  
Date  
Gregg Adam  
POA Counsel

**FOR IAFF:**

 4/18/18  
Date  
Sean Kaldor  
President, IAFF

 6/14/18  
Date  
Christopher Platten  
IAFF Counsel



## SIDE LETTER AGREEMENT

BETWEEN

THE CITY OF SAN JOSE

AND

THE ASSOCIATION OF BUILDING, MECHANICAL AND ELECTRICAL INSPECTORS (ABMEI)  
THE ASSOCIATION OF ENGINEERS AND ARCHITECTS, IFPTE LOCAL 21 (AEA)  
THE ASSOCIATION OF LEGAL PROFESSIONALS (ALP)  
THE ASSOCIATION OF MAINTENANCE SUPERVISORY PERSONNEL, IFPTE LOCAL 21 (AMSP)  
THE CITY ASSOCIATION OF MANAGEMENT PERSONNEL, IFPTE LOCAL 21 (CAMP)  
CONFIDENTIAL EMPLOYEES' ORGANIZATION, AFSCME LOCAL NO 101 (CEO)  
THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL NO 332 (IBEW)  
MUNICIPAL EMPLOYEES' FEDERATION, AFSCME LOCAL NO 101 (MEF)  
THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO 3 (OE#3)

### Federated Alternative Pension Reform Settlement Framework (Tier 1 Rehire Amortization)

#### Background

On or about November/December 2015, the City of San Jose (City) and ABMEI, AEA, ALP, AMSP, CAMP, CEO, IBEW, MEF and OE#3 (collectively, Federated Bargaining Units) reached agreement on the Federated Alternative Pension Reform Settlement Framework (Federated Framework). As the City has moved to implement the terms of the Federated Framework, the City and the Federated Bargaining Units have updated certain terms of the Framework, including the amortization costs associated with transitioning Tier 1 employees in Tier 2 back into Tier 1 (hereinafter "Tier 1 Rehire Amortization").

This Side Letter Agreement is to memorialize the amended terms regarding Tier 1 Rehire Amortization that the City and the Federated Bargaining Units have agreed upon and which shall be incorporated into the San Jose Municipal Code.

#### Amended Framework Terms (Tier 1 Rehire Amortization)

The parties hereby agree to the following amendments to the terms of the Framework with regards to Tier 1 Rehire Amortization:

<u>Federated Framework</u>		Amended Terms
Issue	Section	
Tier 2 Retirement Benefits	18	"18. Former Tier 1 Federated City employees who have been rehired since the implementation of Tier 2 or rehired after the effective date of a tentative agreement based on this framework will be placed in Tier 1.  a. Any costs, including any unfunded liability, associated with transitioning current Tier 2 employees who were former Tier 1 City employees who have since been rehired will be amortized as a separate liability over a

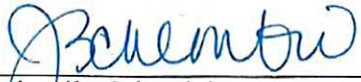
		<p>minimum of 20 years and split between the employee and the City 50/50. This will be calculated as a separate unfunded liability and as Tier 1 employees these members are not subject to a ramp up in unfunded liability. <u>For purposes of this section, former Tier 1 employees who are subject to the costs, including any unfunded liability, of transitioning from Tier 2 to Tier 1, shall be referred to as "Rehired Tier 1 Employees."</u></p> <p><u>(i) Rehired Tier 1 Employees shall be individually responsible for the costs, including any unfunded liability, of transitioning from Tier 2 to Tier 1, and shall sign individual binding agreements to this effect.</u></p> <p><u>(ii) Rehired Tier 1 Employees shall:</u></p> <p><u>(1) Pay the same contribution rate, as determined by the Board's actuary, to pay for the costs, including any unfunded liability, of transitioning from Tier 2 to Tier 1. This contribution rate is in addition to the Tier 1 contributions these employees are required to make as a reinstated Tier 1 employee; and</u></p> <p><u>(2) Pay the additional contribution rate referenced above on different individual amortization periods as determined by the Board's actuary, depending on how long the Rehired Tier 1 Employee was in Tier 2 prior to being transitioned back to Tier 1. This means the amortization period for each individual Rehired Tier 1 Employee will be determined by the Board's actuary and may not be the same length of time the Rehired Tier 1 Employee was a Tier 2 member.</u></p> <p><u>(iii) A Rehired Tier 1 Employee who leaves City service prior to paying the full cost attributable to such member's transition to Tier 1, including any unfunded liability associated with the transition from Tier 2 to Tier 1, is liable for and shall be required to pay any remaining balance upon leaving City service. The remaining balance owing and payable by the Rehired Tier 1 Employee shall be determined by the Board's actuary. Upon separation from City service, Rehired Tier 1 Employees must pay their outstanding balance, as determined by the Board's actuary, through an asset transfer from the employee's 457 deferred compensation plan account or through a lump-sum after-tax payment.</u></p> <p>b. Any lateral hire from any other pension system who transfers as a "Classic" employee under PEPRA, regardless of tier, will be placed in Tier 1.</p> <p>c. Any lateral hire from any other pension system who transfers as a "new" employee under PEPRA will be placed in Tier 2."</p>
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The terms of this Side Letter Agreement shall not be construed to modify or supersede any other section or term of the Framework unless specified herein.




This Side Letter Agreement shall be effective when signed by all parties below.

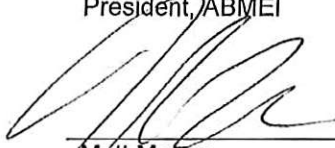
FOR THE CITY:

 6/20/18  
\_\_\_\_\_  
Jennifer Schembri  
Director of Employee Relations

FOR THE UNIONS:


 6/4/18  
\_\_\_\_\_  
Peter Fenerin  
President, ABMEI


 5/30/18  
\_\_\_\_\_  
Brad Fox  
President, AEA

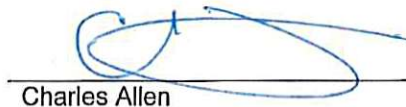
 5/29/2018  
\_\_\_\_\_  
Matt Mason  
Business Representative, IFPTE

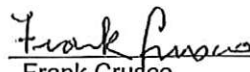
 6/6/18  
\_\_\_\_\_  
Terra Chaffee  
President, ALP

 6/21/18  
\_\_\_\_\_  
Steve Contreras  
President, AMSP

 5/31/18  
\_\_\_\_\_  
Olympia Williams  
IFPTE Representative, CAMP

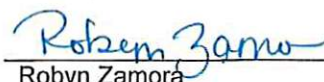
 \_\_\_\_\_  
LaVerne Washington  
President, CEO

 6-1-18  
\_\_\_\_\_  
Charles Allen  
Business Representative, AFSCME

 5-29-2018  
\_\_\_\_\_  
Frank Crusco  
Chief Steward, IBEW

 6-4-18  
\_\_\_\_\_  
Daniel Romero  
Business Representative, IBEW

 6/4/18  
\_\_\_\_\_  
Mary Blanco  
Business Representative, OE#3

 6/4/18  
\_\_\_\_\_  
Robyn Zamora  
President, MEF

 6/14/18  
\_\_\_\_\_  
Christopher Platten  
Legal Counsel



ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING VARIOUS SECTIONS OF CHAPTERS 3.28 AND 3.36 OF TITLE 3 OF THE SAN JOSE MUNICIPAL CODE TO IMPLEMENT THE TERMS OF THE ALTERNATIVE PENSION REFORM SETTLEMENT FRAMEWORK AGREEMENT WITH CITY EMPLOYEE BARGAINING GROUPS

WHEREAS, on November 8, 2016, San José voters approved Measure F, which modified provisions of Title 3 of the San José Municipal Code which were previously adopted by Measure B, approved by San José voters on June 5, 2012; and

WHEREAS, in order to implement Measure F, the following changes are required to be made to Title 3; and

WHEREAS, the ordinance will also include modifications to Title 3 to allow re-enrollment after alternative health coverage and flexibility in designation of death benefit;

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

**SECTION 1. Section 3.28.030.28 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to read as follows:**

**"3.28.030.28 - "Tier 2 Member."**

- A. "Tier 2 member" means any person who is hired, rehired or reinstated by the City on or after September 30, 2012 except for any person who is eligible and elects to participate in a defined contribution plan established under the San José Municipal Code.
- B. Notwithstanding subsection 3.28.030.28.A., the following persons who do not elect to participate in a defined contribution plan established under the San José Municipal Code shall not be considered Tier 2 members under this Plan and their benefits shall be determined under the same terms as those members hired prior to September 30, 2012:
  1. Any person who was a member of this Plan prior to September 30, 2012, and terminated employment with the City and did not take a return of contributions, and returned to employment with the City in a position covered by this Plan on or after September 30, 2012; or
  2. Any person accepting employment on or after September 30, 2012 who is otherwise eligible for this Plan and who was an active member in another California public retirement system, with which this Plan has reciprocity under Part 21, and who has a break in service of less than six (6) months from that covered employment and employment with the City, other than those who meet the definition of a new member as defined by Government Code Section 7522.04(f) as may be amended, or are rehired or reinstated City employees without a work history prior to September 30, 2012; or
  3. Any person who, prior to August 4, 2013, was a Police member of the Police and Fire Department Retirement Plan established under Chapter 3.24 or the 1961

Police and Fire Department Retirement Plan established under Chapter 3.36, and terminated employment with the City without a return of his or her contributions, and later returned to employment with the City in a position covered by this Plan on or after August 4, 2013; or

4. Any person who, prior to January 2, 2015, was a Fire Department member of the Police and Fire Department Retirement Plan established under Chapter 3.24 or the 1961 Police and Fire Department Retirement Plan established under Chapter 3.36, and terminated employment with the City without a return of his or her contributions, and later returned to employment with the City in a position covered by this Plan on or after January 2, 2015.

(Ords. 29120, 29174, 29904.)"

**SECTION 2. Section 3.28.200 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:**

**"3.28.200 - Authority to Adopt Tables, Revise Contribution Rates.**

- A. Upon the basis of any or all of such investigations, valuations and determinations, the Board shall adopt such mortality, service and other tables, actuarially assumed annual rate of return, and other actuarial assumptions as it may deem reasonably necessary, and, subject to such limitations as are set forth elsewhere in this Chapter, it shall fix and from time to time make such revisions or changes in the rates of contribution required of members and of the City as it may determine reasonably necessary to provide the benefits provided for by this Retirement Plan and make this System at all times actuarially sound in a manner consistent with Article XVI, Section 17 of the California Constitution (the "1992 California Pension Protection Act"); provided that, as may be otherwise provided elsewhere in this Chapter, the share of the normal cost portion of contributions made to the Plan on behalf of the City and members who are not Tier 2 members shall at all times be shared in the ratio of three to eight (3:8), except as provided for in 3.28.200.A.1 and 3.28.200.A.2 with the City bearing the total cost of any associated actuarially accrued unfunded liability for such members. For Tier 2 members, except as provided in Section 3.28.200.B, the proportionate share of contributions on behalf of the City and Tier 2 members shall at all times be in the ratio of one for the City to one for the Tier 2 members (1:1) (sharing equally), including any unfunded actuarially accrued liability.

1. Notwithstanding the foregoing, the following shall apply to the manner of determining contributions on behalf of the City and members who had been prior members of this Plan and then became Tier 2 members prior to June 16, 2017 but on and after September 30, 2012 remain in the Plan but are no longer considered Tier 2 members as defined under Section 3.28.030.28. The costs, including but not limited to, any unfunded actuarial accrued liability, associated with benefit changes adopted on June 16, 2017 for such members any amounts associated with moving such members from Tier 2 status to non-Tier 2 status, will be amortized as a separate liability over twenty (20) years or other period determined by the Board. Notwithstanding the cost sharing ratio for non-Tier 2 members described in the first paragraph of this Section 3.28.200.A above, the costs described in this Section 3.28.200.A.1 shall at all times be shared in a ratio of one for the City and one for the affected member (1:1) and will be reflected as



soon as practicable as an increase in the monthly contribution rates for these affected members. Members who are reclassified from Tier 2 membership to Tier 1 membership, shall be referred to as Reclassified Tier 1 members for purposes of this Section 2.28.200.A.1. Reclassified Tier 1 members shall:

- i. be individually responsible for the cost, including any unfunded liability, associated with the transition from Tier 2 to Tier 1 membership and must sign a legally binding agreement setting forth the terms and conditions of his or her Tier 1 member status under the Plan; and
- i.ii. in addition to making the contributions required of Tier 1 members, make additional contributions to pay the entire cost, including any unfunded liability, of the transition from Tier 2 to Tier 1 membership. The additional contributions shall be determined by the Board's actuary and may be based, at least in part, on the period of time each Reclassified Tier 1 member spent as a Tier 2 member prior to reclassification. As a result, the amortization schedule for each Reclassified Tier 1 member may vary; and
- ii.iii. any outstanding balance associated with a Reclassified Tier 1 member's liability for the cost of transition from Tier 2 to Tier 1 membership must be satisfied upon separation from City service. Any outstanding balance attributable to such Reclassified Tier 1 member's liability must be paid in accordance with Section 3.28.700.

4.2. Notwithstanding the foregoing, the following shall apply to the manner of determining contributions on behalf of the City and members who accept employment on or after September 30, 2012 who is otherwise eligible for this Plan and who was an active member in another California public retirement system, with which this Plan has reciprocity under Part 21, and who has a break in service of less than six (6) months from that covered employment and employment with the City, other than those who meet the definition of new members as defined by Government Code Section 7522.04(f) as may be amended, but on and after June 16, 2017 remain in the Plan but are no longer considered Tier 2 members under the definition of Tier 2 member under Section 3.28.030.28. Any and all costs, including but not limited to any unfunded actuarial accrued liability, directly or indirectly associated with benefit changes adopted on June 16, 2017 for such members and any and all amounts associated with moving such members from Tier 2 status to non-Tier 2 status, will be amortized as a separate liability over twenty (20) years or such other period determined by the Board. Further, notwithstanding the cost sharing ratio for non-Tier 2 members described in the first paragraph of Section 3.28.200.A above, any and all costs described in this subsection 3.28.200.A.2. shall at all times be shared in the ratio of one for the City and one for the affected non-Tier 2 members (1:1) and will be reflected as soon as practicable in the monthly contribution rates for such members.

- B. Notwithstanding Section 3.28.200.A, the following shall apply to the manner of determining contributions on behalf of the City and members who are Tier 2 members on or after June 16, 2017:



1. The costs, including any unfunded actuarial accrued liability, associated with the Tier 2 benefit changes adopted on June 16, 2017 for members who were Tier 2 members prior to June 16, 2017, will be amortized as a separate liability over twenty (20) years or other period determined by the Board and will be reflected as soon as practicable in contribution rates to be shared equally among the City and all Tier 2 members and such increased rates shall not be subject to the incremental increases in amounts associated with unfunded actuarial accrued liability described in Section 3.28.200.B.2.
2. Other than provided in Section 3.28.200.A, in determining member contribution rates, to the extent an unfunded actuarial accrued liability is determined to exist with respect to the Plan, Tier 2 members will contribute toward the amount of such amortized unfunded actuarial accrued liability by increasing the Tier 2 member contribution rate by one-third of one percent (0.33%) of compensation each year until such time as the cost of the unfunded actuarial accrued liability is being shared equally by the Tier 2 members and the City. Until such time as the Tier 2 members and the City are sharing such cost equally, the City will include in its contribution rate the amount of the amortized unfunded actuarial accrued liability that would otherwise have been paid by the Tier 2 members in such year.

(Prior code § 2904.1056; Ords. 27436, 29904, 30017.)"

**SECTION 3. Chapter 3.28 of Title 3 of the San José Municipal Code is amended to add a new Section 3.28.700 to read as follows:**

**"3.28.700 – Satisfaction of Liability for Reclassification as Tier 1**

- A. A member who is a Reclassified Tier 1 member under Section 3.28.200.A.1 and leaves City service prior to paying the full cost of the transition from Tier 2 to Tier 1 membership, as that cost is described in Section 3.28.200.A.1, is liable for and shall be required to pay any remaining balance upon leaving City service or as may otherwise be provided in Subsection 3.28.700.E.
- B. The outstanding balance owing and payable by the Reclassified Tier 1 member shall be determined by the Board's actuary. In the event there is any dispute regarding the amount attributable to such Reclassified Tier 1 member or any other issue related to the liability associated with this reclassification, the board shall determine the issue based on the relevant information presented to the board. Any decision made by the board shall be final and binding.
- C. Subject to any limits on annual contributions imposed by Section 415 of the Internal Revenue Code of 1986, as amended, the Reclassified Tier 1 member must satisfy the outstanding balance of his or her liability under Section 3.28.200.A.1, as determined by the Board's actuary, through either an transfer or rollover from the employee's Code Section 457(b) deferred compensation plan account or through a lump-sum after-tax payment.
- D. In order for a Reclassified Tier 1 member to satisfy his or her outstanding liability, the member must make the payment in the time and manner established by the board, provided however, the entire outstanding liability must be paid concurrent with the

Reclassified Tier 1 member's separation from City service or as may otherwise be provided in Subsection 3.28.700.E.

- E. If a Reclassified Tier 1 member fails to satisfy his or her outstanding liability within sixty days from the later of such Reclassified Tier 1 member's separation from City service or passage of this Section 3.28.700.E by the City Council of the City of San José, the Reclassified Tier 1 member shall be reclassified as a Tier 2 member and only receive benefits attributable to Tier 2 membership under this plan."

**SECTION 4. Section 3.36.020.15 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:**

**"3.36.020.15 - "Tier 2 Member."**

"Tier 2 member" means:

- A. Any person who is hired, rehired, or reinstated by the City as an employee of the Police Department in a position covered by this Plan on or after August 4, 2013; or
- B. Any person who is hired, rehired, or reinstated by the City as an employee of the Fire Department in a position covered by this Plan on or after January 2, 2015.
- C. Notwithstanding the foregoing, the following persons shall not be considered Tier 2 members under this Plan and their benefits shall be determined under the same terms as those members hired prior to the dates specified in subsections A. and B. of this Section:
  - 1. Any person who was a member of this Plan as an employee of the Police Department prior to August 4, 2013, and terminated employment with the City without a return of his or her contributions, and returned to employment with the City in a position covered by this Plan on or after August 4, 2013; or
  - 2. Any person who was a member of this Plan as an employee of the Fire Department prior to January 2, 2015, and terminated employment with the City without a return of his or her contributions, and returned to employment with the City in a position covered by this Plan on or after January 2, 2015; or
  - 3. Any person accepting employment in the Police Department or Fire Department of the City on or after January 1, 2013 who is otherwise eligible for this Plan and who was an active member in another California public retirement system with which this Plan has reciprocity under Part 16, and who has a break in service of less than six (6) months from that covered employment and employment with the City, other than those who meet the definition of new members as defined by Government Code Section 7522.04(f) as may be amended; or
  - 2.4. Any person who, prior to September 30, 2012, was a member of the Federated City Employees Retirement System established under Chapter 3.24 or the 1975 Federated City Employees Retirement Plan established under Chapter 3.28 and terminated employment with the City without a return of his or her contributions, and later returned to employment with the City in a



Police Department position covered by this Plan on or after September 30, 2012; or

5. Any person who, prior to September 30, 2012, was a member of the Federated City Employees Retirement System established under Chapter 3.24 or the 1975 Federated City Employees Retirement Plan established under Chapter 3.28 and terminated employment with the City without a return of his or her contributions, and returned to employment with the City in a Fire Department position covered by this Plan on or after September 30, 2012.

(Ords. 29266, 29511, 29879, 30007.)"

**SECTION 5. Section 3.36.410.A of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:**

**"3.36.410 - Mortality, Service and Other Tables - Revision of Rates of Contribution.**

- A. Upon the basis of any or all of such investigations, evaluations and determinations, the Board shall adopt such mortality, service and other tables as may be necessary, and shall fix and from time to time change the rates of monthly contribution required of members and of the City as may be necessary to make this System at all times actuarially sound in a manner consistent with Article XVI, Section 17 of the California Constitution (the "1992 California Pension Protection Act") and to provide the benefits provided for in this Retirement Plan; provided that, as may be otherwise provided elsewhere in this Chapter, the proportionate share of contributions on behalf of the City and members who are not Tier 2 members shall at all times be in the ratio of three to eight (3:8) except as provided in 3.36.410.A. For Tier 2 members, except as provided in Section 3.36.410.B, the proportionate share of contributions on behalf of the City and Tier 2 members shall at all times be in the ratio of one for the City to one for the Tier 2 members (1:1) (sharing equally), including any unfunded actuarially accrued liability.

1. Notwithstanding the foregoing, the following shall apply to the manner of determining contributions on behalf of the City and members who prior to August 4, 2013 for Police and prior to January 1, 2015 for Fire were non-Tier 2 members of this Plan and then became Tier 2 members prior to March 31, 2017 but on and after March 31, 2017 remain in the Plan but are no longer considered Tier 2 members as defined under Section 3.36.020.15. Any cost, including but not limited to any unfunded actuarial accrued liability, associated with benefit changes adopted on March 31, 2017 for such members and any amounts associated with moving such members from Tier 2 status to non-Tier 2 status, will be amortized as a separate liability over sixteen (16) years or other period determined by the Board. Notwithstanding the cost sharing ratio for non-Tier 2 members described in the first paragraph of Section 3.36.410.A above, the costs described in this subsection 3.36.410.A.1. shall at all times be shared in the ratio of one for the City and one for the affected member (1:1) and will be reflected as soon as practicable in the monthly contribution rates for such members.

Members who are reclassified from Tier 2 membership to Tier 1 membership, shall be referred to as Reclassified Tier 1 members for purposes of this Section 2.28.410.A.1. Reclassified Tier 1 members shall:



- i. be individually responsible for the cost, including any unfunded liability, associated with the transition from Tier 2 to Tier 1 membership and must sign a legally binding agreement setting forth the terms and conditions of his or her Tier 1 member status under the Plan; and
- ii. in addition to making the contributions required of Tier 1 members, make additional contributions to pay the entire cost, including any unfunded liability, of the transition from Tier 2 to Tier 1 membership. The additional contributions shall be determined by the Board's actuary and may be based, at least in part, on the period of time each Reclassified Tier 1 member spent as a Tier 2 member prior to reclassification. As a result, the amortization schedule for each Reclassified Tier 1 member may vary; and
- iii. any outstanding balance associated with a Reclassified Tier 1 member's liability for the cost of transition from Tier 2 to Tier 1 membership must be satisfied upon separation from City service. Any outstanding balance attributable to such Reclassified Tier 1 member's liability must be paid in accordance with Section 3.28.720.

4.2. Notwithstanding the foregoing, the following shall apply to the manner of determining contributions on behalf of the City and members who accept employment in the Police Department or Fire Department of the City on or after January 1, 2013 who is otherwise eligible for this Plan and who was an active member in another California public retirement system, with which this Plan has reciprocity under Part 16, and who has a break in service of less than six (6) months from that covered employment and employment with the City, other than those who meet the definition of new members as defined by Government Code Section 7522.04(f) as may be amended, but on and after March 31, 2017 remain in the Plan but are no longer considered Tier 2 members under the definition of Tier 2 member under Section 3.36.020.15. Any and all costs, including but not limited to any unfunded actuarial accrued liability, directly or indirectly associated with benefit changes adopted on March 31, 2017 for such members and any and all amounts associated with moving such members from Tier 2 status to non-Tier 2 status, will be amortized as a separate liability over sixteen (16) years or other period determined by the Board. Further, notwithstanding the cost sharing ratio for non-Tier 2 members described in the first paragraph of Section 3.36.410.A above, any and all costs described in this subsection 3.36.410.A.2. shall at all times be shared in the ratio of one for the City and one for the affected non-Tier 2 members (1:1) and will be reflected as soon as practicable in the monthly contribution rates for such members.

B. Notwithstanding Section 3.36.410.A, the following shall apply to the manner of determining contributions on behalf of the City and members who are Tier 2 members on or after March 31, 2017:

1. The costs, including any unfunded actuarial accrued liability, associated with the Tier 2 benefit changes adopted on March 31, 2017 for members who were Tier 2 members prior to March 31, 2017 will be amortized as a separate liability over

sixteen (16) years or other period determined by the Board and will be reflected as soon as practicable in contribution rates to be shared equally among the City and all Tier 2 members and such increased rates shall not be subject to the incremental increases in amounts associated with unfunded actuarial accrued liability described in Section 3.36.410.B.2.

2. Other than provided in Section 3.36.410.A, in determining member contribution rates, to the extent an unfunded actuarial accrued liability is determined to exist with respect to the Plan, Tier 2 members will contribute toward the amount of such amortized unfunded actuarial accrued liability by increasing the Tier 2 member contribution rate by one-third of one percent (0.33%) of compensation each year until such time as the cost of the unfunded actuarial accrued liability is being shared equally by the Tier 2 members and the City. Until such time as the Tier 2 members and the City are sharing such cost equally, the City will include in its contribution rate the amount of the amortized unfunded actuarial accrued liability that would otherwise have been paid by the Tier 2 members in such year.

(Prior code § 2903.106; Ords. 29198, 29266, 29879, 30007.) "

**SECTION 6. Chapter 3.36 of Title 3 of the San José Municipal Code is amended to add a new Section 3.36.720 to read as follows:**

**"3.36.720 – Satisfaction of Liability for Reclassification as Tier 1**

- A. A member who is a Reclassified Tier 1 member under Section 3.28.410.A.1 and leaves City service prior to paying the full cost of the transition from Tier 2 to Tier 1 membership, as that cost is described in Section 3.28.410.A.1, is liable for and shall be required to pay any remaining balance upon leaving City service or as may otherwise be provided in Subsection 3.36.720.E.
- B. The outstanding balance owing and payable by the Reclassified Tier 1 member shall be determined by the Board's actuary. In the event there is any dispute regarding the amount attributable to such Reclassified Tier 1 member or any other issue related to the liability associated with this reclassification, the board shall determine the issue based on the relevant information presented to the board. Any decision made by the board shall be final and binding.
- C. Subject to any limits on annual contributions imposed by Section 415 of the Internal Revenue Code of 1986, as amended, the Reclassified Tier 1 member must satisfy the outstanding balance of his or her liability under Section 3.28.200.A.1, as determined by the Board's actuary, through either an transfer or rollover from the employee's Code Section 457(b) deferred compensation plan account or through a lump-sum after-tax payment.
- D. In order for a Reclassified Tier 1 member to satisfy his or her outstanding liability, the member must make the payment in the time and manner established by the board, provided however, the entire outstanding liability must be paid concurrent with the Reclassified Tier 1 member's separation from City service or as may otherwise be provided in Subsection 3.36.720.E.

- E. If a Reclassified Tier 1 member fails to satisfy his or her outstanding liability within sixty days from the later of such Reclassified Tier 1 member's separation from City service or the passage of this Section 3.36.720.E by the City Council of the City of San José, the Reclassified Tier 1 member shall be reclassified as a Tier 2 member and only receive benefits attributable to Tier 2 membership under this plan."



PASSED FOR PUBLICATION of title this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

\_\_\_\_\_  
SAM LICCARDO  
Mayor

ATTEST:

\_\_\_\_\_  
TONI J. TABER, CMC  
City Clerk