

ORIGINAL

**AGREEMENT BETWEEN THE CITY OF SAN JOSE AND ING
LIFE INSURANCE AND ANNUITY COMPANY FOR
INVESTMENT PROVIDER SERVICES FOR THE CITY OF SAN JOSE
DEFERRED COMPENSATION PLAN**

THIS AGREEMENT is made and entered into effective the 1st day of January, 2012 by and between the CITY OF SAN JOSE a municipal corporation of the State of California (the "City"), and ING LIFE INSURANCE AND ANNUITY COMPANY, a corporation organized and existing under the laws of the State of Connecticut and ING Financial Advisors, LLC, a limited liability company organized and existing under the laws of the State of Delaware and registered as a broker-dealer under federal securities laws (collectively "ING"). This Agreement is separate and apart from any other contract issued to the Plan, including the group annuity contract issued to the Plan Sponsor by ILIAC.

WHEREAS, the City has established and maintains the City of San José Deferred Compensation Plan (the "457 Plan") and the City of San José PTC Deferred Compensation Plan (the "PTC Plan") as eligible deferred compensation plans pursuant to Section 457 of the Internal Revenue Code; and

WHEREAS, pursuant to San José Municipal Code Section 3.48.060 and Section 3.50.060, the Deferred Compensation Advisory Committee (the "DCAC") administers the 457 Plan and the PTC Plan (the "Plans") and has the authority to determine all questions arising out of the administration, interpretation, and application of the Plans, including making decisions on behalf of the City as to the choice and nature of investments to be available under the Plans; and

WHEREAS, the Human Resources Department established an Evaluation Committee to issue a request for proposals ("RFP") for investment providers for the Plans, to evaluate responses to the RFP, and recommend to the DCAC an entity or entities to provide investment and administrative services for the Plans; and

WHEREAS, on January 26, 2011, the Evaluation Committee issued the RFP on behalf of the City; and

WHEREAS, ING submitted a response to the RFP dated March 15, 2011; and

WHEREAS, ING provides investment vehicles appropriate for investment of funds held in trust in an eligible deferred compensation plan; and

WHEREAS, in addition to serving as an investment provider, ING provides a complete offering of services to public employers for the investment and administration of eligible deferred

compensation plans including, but not limited to, account maintenance, recordkeeping, investment reporting, tax reporting, form processing, and benefits disbursement; and

WHEREAS, the Evaluation Committee has recommended that ING be selected to provide investment and administrative services for the Plans; and

WHEREAS, on August 25, 2011, the DCAC accepted the Evaluation Committee's recommendation; and

WHEREAS, the City and ING desire to enter into an agreement whereby ING will provide investment and administrative services for the Plans; and

WHEREAS, pursuant to San José Municipal Code Section 3.48.060 and Section 3.50.060, the DCAC has the authority to enter into this Agreement on behalf of the City;

NOW, THEREFORE, THE CITY AND ING HEREBY AGREE AS FOLLOWS:

SECTION 1. TERM OF AGREEMENT.

The initial term of this Agreement shall be from January 1, 2012 to June 30, 2012, inclusive, subject to the provisions of SECTION 32. The DCAC may, on behalf of the City, exercise an option to extend the term of the Agreement in five (5) one-year increments and one three-month increment, up to a maximum of sixty-nine (69) months, ending on September 30, 2017.

SECTION 2. DEFINITIONS.

For the purposes of this Agreement, the following terms shall have the meanings set forth below:

- A. "City" means the City of San José.
- B. "ING" means collectively ING Life Insurance And Annuity Company ("ILIAC", a corporation organized and existing under the laws of the State of Connecticut and ING Financial Advisors, LLC, a limited liability company organized and existing under the laws of the State of Delaware and registered as a broker-dealer under federal securities laws. Specifically, ING Financial Advisors, LLC shall perform all marketing communications, enrollment and securities transactions settlements and processing functions assigned to ING under this Agreement. ILIAC shall perform all other responsibilities assigned to ING under this Agreement, including the Plans' and participant recordkeeping.
- C. "DCAC" means the Deferred Compensation Advisory Committee of the City of San José or any successor body established by the City Council to administer the Plan.

- D. For the purposes of compensation deferrals, “participant” is limited to participant as defined in San José Municipal Code Section 3.48.030 and Section 457 of the Internal Revenue Code for the 457 Plan and for the PTC Plan, participant is as defined in San José Municipal Code Section 3.50.030 and Section 457 of the Internal Revenue Code. For all other purposes, “participant” includes persons who were participants but have left City employment (whether by retirement or otherwise) and have investments in funds offered by ING, beneficiaries and nonemployee former spouses for whom a separate account has been established pursuant to a conforming domestic relations order meeting the requirements of either Plan.
- E. “Plan” or “Plans” means the City of San José Deferred Compensation Plan set forth in Chapter 3.48 of the San José Municipal Code and the PTC Deferred Compensation Plan set forth in Chapter 3.50 of the San José Municipal Code.
- F. “Secretary to the DCAC” includes the Secretary’s designee.

SECTION 3. RESPONSIBILITIES OF ING.

- A. ING shall be solely responsible for the performance of all services under this Agreement and for its employees who perform such services.
- B. ING acknowledges that under San José Municipal Code Sections 3.48.025 and 3.50.025 the assets of the Plans are held in separate trusts by the City for the exclusive benefit of participants and their beneficiaries. ING will, as a provider of ministerial administrative and investment services for the Plans, agree to adhere to the prudent person standard of care that is required of fiduciaries and therefore will perform its duties and responsibilities under this Agreement with the care, skill, prudence and diligence under the circumstances then prevailing that a reasonably prudent person acting in a like capacity and familiar with such matters would use in an enterprise of like character.
- C. ING shall perform all services under this Agreement in compliance with the requirements for eligible deferred compensation plans under Section 457 of the Internal Revenue Code. However, ING shall not be responsible for the eligible status of the Plans to the extent status is affected by provisions of the Plan document (San José Municipal Code Chapter 3.48 or Chapter 3.50, as applicable) which are inconsistent with Section 457 requirements, and shall not be responsible for the eligible status of the Plans in the event the City directs ING to administer the Plans or disburse assets in a manner inconsistent with Section 457 requirements.
- D. ING will work with the DCAC and City staff to provide and maintain up to five (5) “kiosk”/computer station at a site specified by the DCAC for use by Plan participants to

obtain account information and conduct transactions. Additional kiosks will be provided upon the mutual agreement of the DCAC and ING.

- E. ING shall be responsible for the accuracy of information provided to participants and the City by ING. However, ING may rely on investment performance information provided to ING by industry-recognized sources such as Morningstar, the *Wall Street Journal* or other recognized industry publications. In any case where ING or the City identifies a discrepancy or an error in information provided by ING, ING shall correct the information previously provided within thirty (30) days of ING's discovery, or the City's notice to ING, of the discrepancy or error.
- F. ING shall advise the DCAC in a timely manner of any changes in federal or state laws or regulations of which ING may become aware that may affect the validity or administration of the Plans or ING's duties under this Agreement. ING shall not be liable for the effect of any such changes on either Plan or the status of either Plan as an eligible deferred compensation plan.
- G. A representative of ING shall attend the bi-monthly meetings of the DCAC and such other meetings of the DCAC as are mutually agreed by ING and the Secretary to the DCAC.
- H. At the City's direction, ING shall review the City's plan document for legislative and administrative compliance and provide recommendations as necessary.

SECTION 4. INVESTMENT FUNDS.

- A. ING shall provide investment funds appropriate for the deferral of compensation by participants of an eligible deferred compensation plan. Investment funds may be funds offered through ING or may be funds outside ING. Where investment funds are offered outside ING, ING may use its broker-dealer to effectuate transactions.
- B. For the 457 Plan, ING shall make available variable investment options through a group annuity contract ("Group Annuity Contract") and a stability of principal investment option offered through ILIAC's Stabilizer Contract ("Stabilizer Contract").
 - 1. The only option available to the PTC Plan will be the stability of principal option offered through the Stabilizer Contract.
 - 2. ING shall report the crediting rate for each quarter of the term of this AGREEMENT to the Secretary of the DCAC no later than fifteen (15) days prior to the start date of that quarter.

- C. ING shall offer the investment funds to Plan participants as listed in EXHIBIT A, effective January 1, 2012. ING shall continue to provide each such fund listed in EXHIBIT A until such time as the DCAC directs the discontinuation of that particular fund. Prior to offering any additional or replacement investment fund to participants of the Plan or accepting any deferrals for investment in such additional or replacement fund, ING shall present the fund to the DCAC and obtain the approval of the DCAC to offer the fund to Plan participants.
- D. Investment funds offered to Plan participants by ING shall have no restrictions on fund-to-fund transfers or on transfers to funds offered by another investment provider, except as follows:
1. Participant transfers out of the Stabilizer product will be subject to a standard 90-day "equity wash" provision. This provision requires any funds transferred out of the Stabilizer to a competing fund be held in a non-competing plan option for at least ninety (90) days before being moved to another competing fund(s). "Competing funds" may include Money Market funds, bond funds with a duration of three years or less, and the Self Directed Brokerage Account. "Competing funds" may also include investment options offered within the Plan by a provider other than ING; however, this definition does not include non-proprietary investment options offered within the Plan and administered by ING unless those investment options are Money Market funds or bond funds with a duration of three years or less.
 2. Restrictions may also be imposed on transfers related to frequent trading activity as described in ING's current Excessive Trading Policy (the "Excessive Trading Policy"). ING reserves the right to modify the Excessive Trading Policy as it relates to a particular fund, in whole or in part, at any time and without prior notice, depending on the needs of the underlying fund(s), the best interest of contract owners and fund investors, and/or state or federal regulatory requirements. ING shall provide to the Secretary of the DCAC a copy of the Excessive Trading Policy upon execution of this Agreement, and shall provide a copy of any changes together with the reason for the change to the Secretary within five (5) calendar days of the change.
- E. ING acknowledges that the DCAC has adopted an Investment Policy which establishes asset classes in which funds are to be offered to participants. ING shall endeavor to provide at least one investment fund in each asset class. ING may make recommendations to the DCAC for the addition or deletion of asset classes; however, the selection of asset classes is within the discretion of the DCAC and ING shall bear no responsibility for the selection of asset classes offered in the Plan.

- F. ING acknowledges that the DCAC has established performance benchmarks for investment funds in various asset classes, and the DCAC reserves the right to discontinue any investment fund which does not meet the established benchmark. ING will, upon the request or direction of the DCAC, discontinue offering any underperforming fund, replace it with an alternative investment fund in the same asset class, and provide education to participants in the replaced fund to assist participants in the selection of a replacement fund.

SECTION 5. ENROLLMENT/ACCOUNT SERVICES.

- A. ING shall perform the following enrollment and account services:

1. Assist the City in the enrollment of all employees who elect to participate in the 457 Plan or are required to participate in the PTC Plan and direct deferrals to investment funds offered by ING.
2. Establish an account and appropriate sub-accounts for each participant.
3. Provide not less than two (2) qualified account representatives to provide ongoing financial assistance to Plan participants. Such assistance shall include on-site individual counseling in such matters as investment funds available for deferral or compensation, transferring deferrals amount funds, catch-up provisions, withdrawal and disbursement options, designation of beneficiaries, and completion of forms necessary to implement any of the foregoing. At least two (2) of these account representatives shall maintain offices within the City of San José. ING shall provide the services of one local management employee who will allocate at least fifty percent (50%) of his/her time to the City of San José. Additionally, ING shall maintain a local San José office accessible to San José employees and participants. The office shall be open daily from 8:00 a.m. to 4:30 p.m. (PT), except weekends, New York Stock Exchange holidays and City holidays.
4. Provide, at ING's sole cost and expense, enrollment forms, customized for the Plans as required by the Secretary to the DCAC.
5. Send quarterly statements to all participants, and to the City, detailing beginning and ending balances in each fund and detailing all transactions or other activity occurring during the quarter.

- B. Personnel of ING responsible for assisting the City in enrolling employees in the Plans or for providing on-going financial assistance to participants shall be full-time employees of ING and shall possess any and all licenses and other authorizations required to perform such services. Such personnel shall have the training and experience

necessary to explain to participants the operation of the investment funds and the requirements of eligible deferred compensation plans.

- C. In addition to personnel to assist in enrollment of participants, ING will provide support personnel on an as-needed basis to provide technical and/or marketing assistance to Plan participants or City staff who perform deferred compensation functions.
- D. ING shall maintain telephone access for participants to conduct transactions (fund to fund transfers, contribution allocation changes, changes of address) and to obtain information including investment fund information, contribution allocations, account balances, transaction status, daily accumulation unit value (“AUV”) or daily net asset value (“NAV”) as applicable, performance information, requests for literature and forms, benefit pay status, and tax withholding and benefit illustrations. Telephone access will be provided by:
 - 1. A toll-free telephone line for participant access to ING’s service representatives, with specialized lines for Spanish-speaking participants and for the hearing impaired. The line will be available to participants Monday through Friday, from 5:30 a.m. to 6:00 p.m. Pacific Time.
 - 2. An Automated Service Line (ASL) on a 24-hour per day basis, including weekends (except downtime for maintenance), to allow participants using a touch-tone telephone to make fund to fund transfers and change investment allocations; to obtain information on share prices, performance information, account balances, investment allocations, and investment performance; and to transfer to a customer service representative during ING’s normal business hours.
- E. ING will provide the City and participants access to a City-specific Web Site on the Internet to permit fund transfers and investment allocation changes, to provide for participant statements, and to provide pie chart graphics of personal accounts, fund performance graphics, and a retirement planning calculator (which enables participants to create “what-if” scenarios to obtain information on interest earnings under various scenarios). The Web Site shall be available at ING-provided kiosks, and shall be updated on a daily basis. ING will:
 - 1. Employ a “firewall” to prevent unauthorized access to ING’s internal computing environment; and
 - 2. Require participants to use an access password in order to enhance confidentiality and privacy of participants who request access to their account information.

F. ING shall ensure that all participant deferrals to the Plan for investment in funds offered by ING are allocated to the various funds in the amounts specified by the participant or the City, and shall process all payments in accordance with applicable state, federal and securities laws and regulations.

1. All deferrals, contribution allocation instructions and transfer information received in good order by the close of the New York Stock Exchange (generally 1:00 p.m. Pacific Time) shall be processed on the day of receipt at the price as of the close of business on that day. Deferrals, contribution allocation instructions or transfer information received after the close of the New York Stock Exchange (generally 1:00 p.m. Pacific Time) shall be processed no later than the next business day at the price as of the close of business on the day processed. In the event ING fails to timely process transactions as provided in this paragraph, ING shall credit accounts as though the transactions were timely processed and ING shall bear any financial loss resulting therefrom.
2. Where fund transfer or contribution allocation instructions are received from a Plan participant, ING shall send a confirmation statement to the participant. The confirmation statement for a fund transfer shall include the number of shares/units, the price per share/unit, and the cash value for both the fund from which and the fund to which the transfer was made.

G. ING shall accept deferrals from the City by check or by Electronic Fund Transfer (EFT), at no cost to the City or the participants.

SECTION 6. RECORDKEEPING SERVICES.

A. ING shall provide administrative and recordkeeping services for all participant accounts with investments in funds provided by ING. Such services shall include:

1. Maintaining records for each participant in a format acceptable to the Secretary to the DCAC and the City's Director of Finance including, but not limited to:
 - a. The participant's sub-account number.
 - b. For each reporting period, the amount of the participant's deferral to funds offered by ING and the allocation of such deferral to each of the funds selected by the participant.
 - c. The account balance from the beginning of the year to the date of each report.

- d. The balance in each fund at the beginning of each reporting period and at the end of each reporting period.
 - e. The activity in each fund (including fund transfers and the number of shares/units, price per share/unit and cash value of each fund transfer) for the reporting period and the interest/earnings credited during the period.
 - f. The amount of any distribution made during the reporting period.
 - g. The current number of shares/units, AUV or NAV as applicable, and cash value of each fund.
 - h. Other pertinent data necessary for the efficient administration of each participant's account.
 - i. ING shall establish procedures and interface to facilitate Roth Deferrals, Roth Rollovers and Roth In-Plan Rollovers into the Plans.
 - j. ING shall, based on terms and conditions mutually agreed upon among the parties, establish and adhere to procedures with regards to the intake and processing of domestic relations cases involving the City of San José Deferred Compensation Plan.
2. Receiving participant and City instructions via multiple media, including the Internet, electronic data transfer from the City, toll-free telephone line, and hard-copy forms.
 3. Processing all transactions, including deferrals, fund transfers, and disbursements.
 4. Maintaining all holdings and transaction activity on ING's computer system in a format acceptable to the Secretary to the DCAC and the City's Director of Finance.
 5. Transmitting account and plan information to participants and the City via multiple media, including the Internet, kiosks, quarterly statements, diskette, and toll-free telephone line.
 6. Retaining historical data for participants and plan records, including contributions, distributions, earnings and fund transfers. It is understood that ING will not remove historical participant and plan data from ING's system as long as the plan is in effect and ING will maintain historical participant and plan data for discontinued plans for at least seven (7) years.

- B. ING shall work with City staff to establish an electronic data transfer link for the City to transmit payroll deduction information to ING.
- C. ING shall maintain a disaster recovery program including storing copies of all essential records on tape cartridges at an off-site location and shall test, or cause to be tested, off-site procedures a minimum of one (1) time per year. It is understood that ING may use the services of an outside vendor to maintain the off-site location. As a matter of company policy, the details of emergency response plans, including Crisis Management, Business Continuity and Disaster Recovery Plan are confidential.
- D. ING shall perform data back-up on a daily basis: back-up of critical recordkeeping data at least three times each business day, twice at critical processing points and again at the end of the processing day. In addition, ING will perform daily incremental back-ups of test and production data on a Monday through Thursday basis, and weekly back-ups of full production data each Friday.
- E. The Omni administration platform is an ING recordkeeping platform that will be used to maintain participant account information, collect online payroll deduction election information and create interface files that can be used to transfer participant information and contribution election data from ING to the City's PeopleSoft payroll and personnel data management system, and vice versa as necessary for effective and efficient Plan administration.
 - 1. ING shall provide participants with online capability to add, waive and/or change Deferred Compensation contribution amounts and catch-up contribution amounts directly into ING's recordkeeping platform in accordance with the plan document and with state and federal requirements.
 - 2. ING shall update and maintain, within the recordkeeping platform, loan repayment information related to participant accounts, as required by the City to ensure the appropriate administration of the City's Deferred Compensation Plans.
 - 3. Using the recordkeeping platform, ING shall successfully submit interface files to the City that communicate all participant contribution elections to ING and other changes to Participant accounts, including but not limited to information described in Section 5, Subsection H (1) and (2) herein, for a specific City payroll period and payroll deduction effective-date in conformance with City's payroll transmission deadline calendar.
 - 4. ING shall establish the payroll transmission deadline calendar as described below.

5. ING will transmit data on a weekly, bi-weekly or monthly basis based on a specific day of the week as elected by the City. That file will contain all changes submitted by 4:00 Eastern Time the previous business day. The payroll transmission calendar will establish and document ING's bi-weekly interface file deadlines related to the City's bi-weekly payroll processing deadlines and payroll contribution effective dates as necessary to ensure that participant-elected Deferred Compensation contributions and loan repayments are uploaded into City's PeopleSoft system on time for payroll processing based on the delivery schedule above. At its discretion, the City may give notice to ING at least one week in advance to change the date of the file delivery to meet the City's business requirements (e.g., holiday periods).
6. No later than December 15 of each year, ING, in coordination with the City, shall update the Interface Submission Calendar for the following calendar year.
7. ING shall use "contribution rules" to be established by the City and shall conform to all governing Plan documents, laws and regulations for all permitted participant contribution changes and other changes is made via the recordkeeping platform and will work with the City to establish those rules in the appropriate system.

"Contribution rules" shall include but shall not be limited to:

- a. The effective date for a new contribution based on participant submission date.
 - b. The effective date for a contribution change based on participant submission date.
 - c. The effective date for a cancelled contribution based on the participant's submission date.
8. On the dates set forth in the payroll transmission calendar, ING shall provide the City with the above described bi-weekly interface files, and such interface files shall conform to the following requirements:
 - a. ING shall provide each interface file in a format transferable and/or readable by the City's PeopleSoft system, resulting in the City's accurate upload of payroll deductions.
 - b. The data contained on the interface file shall accurately reflect any participant-submitted contribution elections, including but not limited to, all voluntary deductions, catch-up contributions and loan repayments relevant to the appropriate pay period.

- c. Each interface file submitted by ING shall contain only transactions which are consistent with the City's Plan Documents.
 - d. Each interface file submitted by ING shall contain the contribution changes, loan data, hardship or emergency withdrawal suspension and re-installment data effective for that specific City payroll processing period in accordance with the Interface Submission Calendar as agreed to by ING and the City.
 - e. Each interface file submitted by ING shall contain all new, revised or cancelled contributions required to start, waive or change payroll deductions for voluntary contributions, catch-up contributions and/or loan repayments.
9. ING will continue to monitor contribution limits outside of this interface and will communicate to the City the identity of all participants who have exceeded the contribution limit and will provide the report of participants who have exceeded the annual limit to the City on a bi-weekly basis. This report will also be available to the City on the ING Sponsor website.
 10. Other requirements as determined by the City and agreed upon by ING.
 11. ING shall maintain records of all participant deferral elections made electronically, including but not limited to records of election dates, election types (e.g., voluntary deductions, catch-up deductions and loan repayments) and election amounts.
 12. Each year, ING shall provide the city with written procedures for using the data interface system as follows:
 - a. By December 15 of each year, ING shall update the written procedures.
 - b. ING's written procedures shall include a description of and instructions regarding how participants can make online contribution elections within the recordkeeping platform, including but not limited to, adding a new contribution, changing a current contribution, waiving a contribution and restarting a waived contribution.
 - c. ING's written procedures shall include a description of loan procedures, including a description of how participants start a general purpose and/or residential loan and cease loan repayments when that loan is fully repaid.
 - d. ING's written procedures shall include any other information the City deems necessary to effectively use the recordkeeping platform in administration of the Plan and agreed upon by ING.

13. By dates determined by the City, ING shall provide the City with bi-weekly reports in a downloadable format, such as Excel or another format pre-approved by the City, which will permit the City to analyze the bi-weekly payroll deduction interface files submitted by ING.
14. ING shall provide the City with ongoing support to ensure that transactions transferred from the recordkeeping platform are consistently transmitted and uploaded in the City's PeopleSoft payroll system error-free. The City shall provide ING with as much advance notice as possible for upgrades to the City's PeopleSoft system, and ING shall work with the City to ensure that the City is able to receive and process ING's interface files once these changes are identified and implemented.
15. ING shall correct any issues identified by City staff within the same pay period if possible, but no later than the end of the next pay period.
16. Within two (2) weeks of discovery that any interface transmission resulted in a participant contribution error, ING shall inform the affected participant of the error and any corrective measures taken through a letter and/or personal phone call. In addition, ING shall provide any customer support services to the City and/or participants that are necessary to resolve any such issues.

SECTION 7. SELF-DIRECTED BROKERAGE ACCOUNTS.

ING shall make available to the 457 Plan participants access to a self directed brokerage option ("SDBO") on such terms and conditions as are agreed to by the DCAC.

SECTION 8. LOAN PROGRAM.

ING will provide loan services for participants on such terms and conditions as are agreed to in writing by ING and the DCAC.

SECTION 9. INVESTMENT ADVICE PROGRAM.

ING shall make available to the 457 Plan participants access to an independent third party online investment advice provider on such terms and conditions as are agreed to by ING and DCAC.

SECTION 10. EDUCATION PROGRAM.

- A. ING, at ING's sole cost and expense, shall design and prepare a comprehensive education program for City employees. The education program shall include, but not be limited to:

1. Fundamentals of investing, including: the effects of risk on investment and how to manage investments to reduce risk, how to read a prospectus and related materials, how to monitor and evaluate funds, characteristics of various funds, and asset allocation.
 2. Retirement planning.
 3. Fundamentals of deferred compensation, including tax benefits, eligibility for withdrawals, withdrawal options, restrictions on deferrals, catch-up provisions, and investment options available.
 4. Explanation of fees and expenses incurred with any investment, including an explanation of fees imposed by ING.
 5. An explanation of how participants can access account information and conduct transactions via the toll-free telephone line, the Internet, and ING-provided kiosks.
 6. An explanation of the Loan Program.
 7. An explanation of the 457 Roth Option.
- B. To implement the education program ING shall develop and prepare, at ING's sole cost and expense, educational materials on the topics listed above for distribution to participants. However, ING shall not distribute any materials to participants without the prior approval of the DCAC.
- C. ING shall conduct a minimum of thirty (36) seminars/workshops per year for Plan participants, at ING's sole cost and expense. Seminars/workshops will be held at City facilities identified by the Secretary to the DCAC. Seminar/workshop topics will include:
1. Basic deferred compensation information
 2. Investment and financial planning
 3. Asset allocation
 4. Retirement planning
 5. Distribution planning
 6. Other topics mutually agreed by ING and the Secretary to the DCAC.

SECTION 11. DISBURSEMENT AND TAX WITHHOLDING.

- A. When ING is notified of a request for disbursement (other than hardship withdrawals), an account representative of ING will contact the participant for the purpose of arranging to meet with the participant to provide individual counseling regarding disbursement options and to notify the participant of the availability of ING's toll-free customer service number. If the participant desires such a meeting, the account representative will meet with the participant to assist the participant with the selection of a disbursement option.
1. The disbursement meeting shall include a review of the participant's personal and financial retirement objectives, how the participant's retirement income stream can meet those objectives, and the amount and duration of payments from the deferred compensation plan necessary to meet the objectives.
 2. ING representatives will prepare benefit illustrations to assist the participant in understanding the economic impact the duration and income requirements will have on the participant's deferred compensation assets.
 3. ING representatives will discuss with the participant the impacts money management decisions can have on the income the participant receives.
 4. ING representatives will assist the participant in filling out the necessary disbursement forms and will deliver the forms to the Secretary to the DCAC for approval.
- B. ING shall issue disbursements, including hardship withdrawals, in accordance with the disbursement form submitted by the participant or the City, the terms of the applicable Plan, and the requirements of Section 457 of the Internal Revenue Code and applicable Treasury Regulations. In the event the City or ING terminates this Agreement, ING shall be obligated to make disbursements only to the extent that funds are still available in the account of the City.
- C. ING shall compute and deduct from the disbursements all state and federal income taxes required to be withheld from Plan distributions. ING will forward to the applicable taxing authority a detailed report of such withheld taxes within the timeframe prescribed by law.
- D. ING shall prepare and forward to the applicable taxing authority and the participant, the appropriate tax reporting forms (e.g., Form 1099) within the timeframe prescribed by law.

- E. For each participant receiving distributions from either or both Plans, ING shall perform an initial distribution test and shall perform annual distribution testing thereafter to confirm compliance with the distribution requirements of the applicable Plan and of Section 457 of the Internal Revenue Code. ING shall promptly notify the Secretary to the DCAC of any distribution which is not in compliance with such requirements and shall assist the City in taking appropriate action to correct any noncompliance.

SECTION 12. REPORTS.

- A. ING will provide the following reports to participants, in a format acceptable to the DCAC:

1. Quarterly financial reports providing at least the following information:
 - a. The total account balance at the beginning of the reporting period, the total contributions to the account and the total interest/earnings credited to the account during the reporting period, and the account balance at the end of the reporting period.
 - b. For each fund in the account, the fund balance at the beginning of the reporting period, the total contributions to the fund and the total interest/earnings credited to the fund during the reporting period, and the fund balance at the end of the reporting period.
 - c. For each fund in the account, the number of shares/units and the value of each share/unit in the fund at the beginning of the reporting period and at the end of the reporting period.
 - d. The contribution allocation as of the end of the reporting period.
 - e. The date and amount of each contribution to the account, and the total amount of contributions made during the reporting period.
 - f. The activity in the account during the reporting period listed by fund and including: the date the activity occurred; the type of activity (e.g., contribution, earnings, fund transfer) on each activity date; for each contribution, the amount of the contribution, the number of shares/units added, the price per share/unit, and the total shares/units in the fund after each contribution; for each fund transfer, the amount transferred and the

number of shares/units and the share/unit price for both the fund from which and the fund to which the transfer occurred.

- g. The distributions, including hardship withdrawals, made from the account during the reporting period.

2. Informational mailings, including a quarterly participant newsletter and participant information booklets describing the investment products funding the Plan to new participants at the time of enrollment. ING will customize reports to the specific funds offered to Plan participants. ING may provide additional or alternative publications, or may vary the frequency of distribution, upon the approval of the DCAC.

B. ING will provide the following reports to the DCAC, in a format acceptable to the DCAC:

1. A monthly performance report showing the performance of each fund, net of fees, for at least:
 - a. The reporting month.
 - b. The year to date.
 - c. The last twelve months.
 - d. Cumulative returns for the preceding 3-year, 5-year, and 10-year periods (where available).
2. The informational mailings to participants listed in paragraph 2 of subsection A above.

C. ING will provide the following reports to the City's Finance Department, in a format acceptable to the City's Director of Finance:

1. A monthly transaction statement showing the total City account and for each fund in the account at least: the beginning balance, the ending balance, and the amount of contributions, the amount of distributions, any adjustments made, fund-to-fund transfers made, plan-to-plan transfers made, earnings, service fees, and fee credits occurring during the month.
2. A monthly list of Plan participants with investments in funds offered by ING and the status of each participant (e.g., active, inactive, deferred distribution, distribution).

3. Such other reports as agreed by ING and the City's Director of Finance.
4. Annual report reflecting plan participants' account values by investment option - due February of each year, as agreed to for the purposes of Domestic Relations Orders.

SECTION 13. PERFORMANCE STANDARDS.

ING will meet the performance standards set out in EXHIBIT B, entitled "PERFORMANCE STANDARDS" which is attached to and incorporated in this Agreement.

SECTION 14. RESPONSIBILITIES OF THE CITY.

- A. The City shall provide timetables, procedures and facilities for:
1. Group meetings of participants for distribution of information about the Plan and seminars/workshops.
 2. Counseling and enrollment of participants.
 3. Completion of forms by participants.
 4. Payroll deduction of deferrals.
- B. The City shall cause appropriate deductions to be made from the appropriate City payrolls according to the participation agreement between City and the individual participant. The City shall send to ING, by check or wire transfer, the amount of the total applicable deductions:
1. Deferrals by check shall be sent to:

| Standard Mailing Address | Overnight / Express Address |
|---|---|
| <p style="text-align: center;">ING National Trust PO Box 3015 New York, NY 10116-3015</p> <p style="text-align: center;">** Six digit plan number must be referenced on the check</p> | <p style="text-align: center;">JP Morgan Chase C/O <i>Payee:</i> ING National Trust Attn: Lockbox 3015 4 Chase Metro Tech Center, 7th Floor East Brooklyn, NY 11245</p> <p style="text-align: center;">** Six digit plan number must be referenced on the check</p> |

Or to such other address as is specified in writing by ING.

2. Deferrals by wire transfer shall be sent to:

Wachovia Bank of North Carolina
ABA No. 053000219
Bank Account Name: ING (ILIAC) Govt. & Health
Account No: 208730044964
Beneficiary Reference: 666779-0001
OBI: City of San José Deferred Compensation Plan

Or to such other facility or in such other manner as is specified in writing by ING.

- C. The City agrees to transmit on a timely basis any relevant participant information as is necessary for ING to carry out its responsibilities as Plan administrator to each participant upon:
1. Entry into the 457 Plan or the PTC Plan.
 2. Changes in an individual participant's account.
 3. Withdrawal, termination or request for distribution under the 457 Plan or the PTC Plan, including the method and timing for any distribution.
- D. The City will send payroll deduction information to ING by electronic data transfer link (when established by the City and ING) for processing by ING.
- E. The City will use its best efforts to assure the accuracy and completeness of all participant information provided by the City. ING shall be entitled to rely upon the accuracy of information that is furnished to it by the Director of Finance, the City Manager, the Secretary to the DCAC, or the designee of any of these officers, and ING shall not be responsible for any error arising from its reasonable reliance on such information. In the event the City or ING discovers an error in such information, ING will assist the City in making appropriate corrections.

SECTION 15. CITY ADMINISTRATIVE FEES.

ING shall pay to the City administrative fees to recover the City's cost of the Plans' program operations.

- A. Beginning January 1, 2012, ING shall remit to the City, after each calendar quarter end date, all revenue sharing generated in excess of 0.08%, assuming the City uses ING's proprietary Stable Value Option (Stabilizer). If the City chooses to use a non proprietary Stability of Principal option, ING shall remit to the City all revenue sharing generated in excess of 0.09%.

- B. ING will provide to the City a report showing the actual average quarterly revenue sharing received from each Investment Option available to the plan. This average quarterly revenue sharing amount will be calculated by multiplying the quarterly average of each month end balance in each investment option, by the revenue sharing percentage ING receives from each investment option. The report will show the total revenue sharing received in excess of the amount agreed to in Section 15, Subsection B and this calculation will be provided in an Excel spreadsheet allowing the City to review and approve the calculation. ING will reimburse this excess revenue sharing to the City once the City has approved the calculation, and the report shall serve as an invoice for payment. All amounts reimbursed to the Plan pursuant to this agreement shall be for expenses that are both reasonable and necessary to the administration of the plan.
- C. ING and the City agree that each will provide Participants with full disclosure of the provisions of this SECTION 15.

SECTION 16. COMPENSATION.

- A. ING may charge participant accounts for ING's administrative fee and investment management fees as follows: (1) in amounts not to exceed the amounts set forth in EXHIBIT A and in ING's annual report showing fees and revenue sharing for the investment options offered to plan participants; and (2) to the extent that the amounts set forth in EXHIBIT A and in the annual report are different, ING agrees that it will charge participant accounts the lesser amount between EXHIBIT A and ING's annual report.
- B. ING shall charge a loan initiation fee of \$25.00 per loan.
- C. The administrative fee and the investment management fees (including fund expenses) shall be paid on a daily basis.
- D. ING shall retain 12b-1 fees and recordkeeping refunds received from investment companies up to the limited established in Section 15, Subsection A.
- E. ING shall not charge the City for any services performed pursuant to this Agreement.
- F. ING shall not charge any acquisition fees (e.g., commissions, loads, or similar expenses), any fees for contract charges or operating expenses other than those specified in subsection A above, and shall not charge any surrender charges (e.g., fees to liquidate assets or transfer assets).
- G. ING shall disclose all applicable fees to the participant at the time of the participant's enrollment.

H. The fees set forth in this SECTION 16 shall be full compensation to ING for all services performed under this Agreement and for all expenses incurred in the performance of such services.

SECTION 17. INDEPENDENT CONTRACTOR.

It is understood and agreed that ING, in the performance of the work and services pursuant to this Agreement, shall act as and be an independent contractor and not an agent or employee of the DCAC or the City of San José. It is further understood and agreed that neither ING nor any of its officers, employees or agents shall obtain any right to retirement benefits, worker's compensation benefits or other benefits or privileges which accrue to City employees, and ING hereby expressly waives any claim it may have to any such rights.

SECTION 18. CONFIDENTIALITY.

ING shall maintain strict confidence with respect to all data furnished to ING by the City or the DCAC and shall not disclose to any person any information received by ING in the course of performance of this Agreement except as authorized by the DCAC, the Secretary to the DCAC, the City Manager, the City Attorney, or a designated representative of any of the foregoing, or as required by law or by judgment of any court of competent jurisdiction.

SECTION 19. CONFLICT OF INTEREST.

- A. ING shall avoid all conflict of interest and the appearance thereof in the performance of this Agreement.
- B. For each person performing professional services pursuant to this Agreement, ING shall file with the City Clerk a disclosure statement (Statement of Economic Interests – Form 700) which includes disclosure of such person's investments, interests in real property, income, loans, gifts, and business positions relating to persons, business entities and other sources related to or connected with: brokers who purchase or sell investment products or securities for the investment vehicles provided by ING to Plan participants; companies, firms, banks or other entities whose investment products or securities are included in or are a part of the investment vehicles provided by ING to Plan participants; investment providers other than ING who provide investment management services or investment products for Plan participants.

SECTION 20. THE CONTRACTOR'S RECORDS.

- A. ING shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to the City for a minimum period of four (4)

years, or for any longer period required by law, from the date of the expiration or earlier termination of this Agreement. Such records shall be maintained in an electronic format approved by the City.

- B. ING shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of four (4) years, or for any longer period required by law, from the date of expiration or earlier termination of this Agreement.
- C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, the City Auditor, the City Manager, the Secretary to the DCAC, or a designated representative of any of these officers. Copies of such documents shall be provided for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at ING's address indicated for receipt of notices in this Agreement.
- D. Where the City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of ING's business, the City may, by written request by any of the above-named officers, require that custody of the records be given to the City and that the records and documents be maintained by City Hall. To the extent required by applicable law, ING may retain originals of such records and documents and provide a copy to the City. Access to such records and documents shall be granted to any party authorized by ING, ING's representatives, or ING's successor-in-interest.

SECTION 21. HOLD HARMLESS.

ING shall defend, indemnify and hold harmless the DCAC and the City and their officers and employees against any and all claims, losses or liabilities arising out of or resulting in any way from work performed under this Agreement due to the willful or negligent acts (active or passive) or omissions by ING or ING's officers, employees, subcontractors or agents. The acceptance of said services and duties by the DCAC or the City shall not operate as a waiver of such right of indemnification.

SECTION 22. ASSIGNMENT.

ING shall not assign, transfer or convey this Agreement nor any of ING's rights, duties or obligations hereunder, nor any part thereof, without the prior written consent of the DCAC. In the event ING attempts to so assign, transfer or convey this Agreement or any of ING's rights, duties or obligations hereunder, such assignment, transfers or conveyance shall be void and of no effect. The use of a subcontractor to perform services pursuant to this Agreement shall not constitute an

assignment, transfer or conveyance of this Agreement or of ING's rights, duties or obligations hereunder, provided that the subcontractor is identified in this Agreement or the DCAC has provided written approval prior to the commencement of any work or services by the subcontractor, that ING be solely responsible for any and all payments due to the subcontractor for the performance of the subcontractor's services, and that ING be solely responsible for the proper performance by the subcontractor.

SECTION 23. NONDISCRIMINATION.

ING shall not discriminate, in any way, against any person on the basis of age, sex, actual or perceived gender, race, color, creed, national origin, religion, sexual orientation, marital status, or disability in connection with or related to the performance of this Agreement.

SECTION 24. COMPLIANCE WITH LAWS.

ING shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government.

SECTION 25. WARRANTIES OF THE CONTRACTOR.

ING represents and warrants that:

- A. ING is an investment adviser registered as such with the Securities and Exchange Commission ("SEC") under the Investment Advisers Act of 1940, as amended. ING Financial Services, LLC (a wholly-owned subsidiary of ING) is registered as a broker-dealer with the SEC and is a member in good standing of the Financial Industry Regulatory Authority ("FINRA").
- B. ING is duly authorized under all applicable laws and regulations to provide the services contemplated under this Agreement. ING shall immediately notify the DCAC if any license, certification or other authorization required for ING to perform said services is revoked, expires without renewal, or is otherwise no longer in effect.
- C. The personnel of ING responsible for discharging ING's duties and obligations under this Agreement are individuals experienced in the performance of the various functions contemplated by this Agreement.

SECTION 26. WAIVER.

The waiver by the City, the DCAC or ING of any breach or violation of any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition contained herein nor a waiver of any subsequent breach or violation of the same or any other term

or condition. The acceptance by the City or the DCAC of the performance of any work or services by ING shall not be deemed to be a waiver of any term or condition of this Agreement.

SECTION 27. GIFTS.

- A. ING is familiar with the City of San José prohibition against the acceptance of any gift by a City officer or designated employee, which prohibition is found in Chapter 12.08 of the San José Municipal Code.
- B. ING agrees not to offer any City officer or designated employee any gift prohibited by said Chapter.
- C. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this Agreement by ING. In addition to any other remedies the DCAC or the City may have in law or equity, the City may terminate this Agreement for such breach as provided in SECTION 32 of this Agreement.

SECTION 28. DISQUALIFICATION OF FORMER EMPLOYEES.

ING is familiar with the provisions relating to the disqualification of former officers and employees of the City of San José in matters which are connected with former duties or official responsibilities as set forth in Chapter 12.10 of the San José Municipal Code (“Revolving Door Ordinance”). ING shall not utilize either directly or indirectly any officer, employee, or agent of ING to perform services under this Agreement, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

SECTION 29. GOVERNING LAW.

The law of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall govern the interpretation of the terms and provisions hereof.

SECTION 30. VENUE AND SERVICE OF PROCESS.

- A. The parties specifically agree that any litigation between them concerning or arising out of this Agreement shall be filed and maintained exclusively in the Superior Court of the County of Santa Clara, State of California, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San José, California. Each party consents to service of process in any manner authorized by California law.
- B. ING’s California address for service of process is:

CT Corporation Systems
818 West 7th Street
Los Angeles, CA 90017

SECTION 31. INSURANCE REQUIREMENTS.

ING shall have and maintain the insurance coverage set forth in EXHIBIT C, entitled "INSURANCE REQUIREMENTS," which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the Risk Manager of the City of San José as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. ING agrees to provide the Risk Manager with a copy of the certificates of insurance and original endorsements specified in EXHIBIT A before any payment is made to ING under this Agreement.

SECTION 32. TERMINATION.

- A. The City or ING shall have the right to terminate this Agreement, without cause, by giving not less than one hundred twenty (120) days' written notice of termination to the other.
- B. If ING fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, the City may terminate this Agreement immediately upon written notice.
- C. The DCAC is authorized to terminate this Agreement on behalf of the City.
- D. In the event of termination, ING shall deliver to the City or to a third party designated by the City, in a format approved by the City, copies of all reports, documents, and other work performed by ING under this Agreement, and upon receipt thereof, the City shall cause payment to be made to ING for services performed and reimbursable expenses incurred to the date of termination.
- E. In the event ING terminates this Agreement, ING shall bear all costs incurred by the City or the DCAC in connection with the transfer of participant accounts to another provider.

SECTION 33. USE OF MATERIALS.

The City may use all reports, documents or other materials developed or discovered by ING or any other person engaged directly or indirectly by ING to perform the services required hereunder without restriction or limitation. ING may retain copies of all such reports, documents or

other materials which are necessary for ING to maintain compliance with any applicable law, rule or regulation.

SECTION 34. TRANSITION SERVICES.

In the event ING is not awarded an agreement to continue to provide services following the expiration or earlier termination of this Agreement, ING shall cooperate fully with the City and any subsequent investment provider(s) to assure a smooth transition of services described in this Agreement. Such cooperation shall include, but not be limited to: transfer of computer data, files and/or tapes; providing adequate staff and support personnel to complete performance of all services under this Agreement through the date of completion of the transition; completion of all outstanding investment transactions; and providing all reports and data required by this Agreement.

SECTION 35. NOTICE ADDRESSES.

Except as otherwise provided in this Agreement, all notices and other communications between the parties which are contemplated by this Agreement shall be deemed given when deposited in the United States mail postage prepaid or when personally delivered or sent by e-mail or facsimile to the parties specified in this SECTION 35.

To the City: Deferred Compensation Advisory Committee
Human Resources
200 East Santa Clara Street, 2nd Floor Wing
San José, CA 95113
Fax: (408) 999-0889
E-mail: Kelly.Wright@sanjoseca.gov with a copy to
Jeanne.Groen@sanjoseca.gov

To ING: Mr. Brian Alemany
Plan Manager
One Orange Way
Windsor, CT 06095
Fax: (800) 643-8143
E-mail: Brian.Alemany@us.ing.com with a copy to
Gary.Bozin@us.ing.com

SECTION 36. ENTIRETY.

This Agreement and the EXHIBITS attached hereto constitute the entire agreement and understanding between the parties regarding the matters set forth in this Agreement. No prior negotiations, correspondence, conversations or understandings applicable to the matters in this

Agreement shall be of any force or effect unless specifically included in this written Agreement. This Agreement may be changed or modified only by a written amendment signed by the City and ING.

SECTION 37. SEVERABILITY.

In the event any provision of this Agreement is found by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall nevertheless remain and continue in full force and effect, provided that the continuation of such remaining provisions does not materially change the duties or obligations of either party from those duties and obligations originally contemplated by this Agreement.

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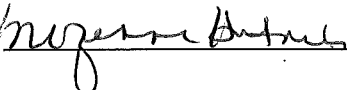
SECTION 38. SURVIVAL OF TERMS.

The provisions of SECTION 17 (Independent Contractor), SECTION 18 (Confidentiality), SECTION 19 (Conflict of Interest), SECTION 20 (The Contractor's Records), SECTION 21 (Hold Harmless), SECTION 22 (Assignment), SECTION 23 (Nondiscrimination), SECTION 24 (Compliance With Laws), SECTION 25 (Warranties of the Contractor), SECTION 27 (Gifts), SECTION 28 (Disqualification of Former Employees), SECTION 29 (Governing Law), SECTION 30 (Venue and Service of Process), SECTION 34 (Transition Services) and SECTION 35 (Notice of Addresses) of this Agreement shall survive the expiration or termination of this Agreement and remain in effect for the Group Annuity Contract and the Stabilizer Contract for the life of each contract.

WITNESS the execution of this Agreement on the dates set forth below each signature:

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation:

By: 
SUZANNE HUTCHINS

By: 
PETER JENSEN, Chair

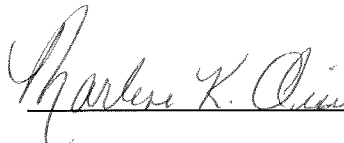
Senior Deputy City Attorney


DEFERRED COMPENSATION ADVISORY COMMITTEE

Date: 12-15-11

ING LIFE INSURANCE AND ANNUITY COMPANY, a corporation of the State of Connecticut

ING FINANCIAL ADVISORS, LLC, a limited liability company of the State of Delaware and registered as a broker-dealer under federal securities laws

By: 
Marlene K. Oien

By: 
Marlene K. Oien

Vice President

Vice President

Date: November 16, 2011

Date: November 16, 2011

EXHIBIT A

INVESTMENT FUNDS / COMPENSATION

A. The investment management fees (Net Fund Expenses) which may be charged by ING Contractor on behalf of the Funds are established by the fund company and incorporated into the NAV they provide to ILIAC. ILIAC uses the AUV which incorporates the administrative fee (as applicable) and the Net Fund Expense to process transactions. The fees shall not exceed the following rates, except as provided in B, below:

Funds Offered as of January 1, 2012

| Fund # | Fund Name | Net Fund Expense | Fund Revenue | Administrative fee | Total Rev |
|--------|--|------------------|--------------|--------------------|-----------|
| 003 | ING Money Market Portfolio - Class I | 0.34% | 0.17% | | 0.17% |
| 544 | PIMCO Total Return Fund - Institutional Class | 0.46% | 0.00% | 0.17% | 0.17% |
| 566 | Vanguard® Institutional Index Fund - Institutional Shares | 0.04% | 0.00% | 0.17% | 0.17% |
| 682 | ING Clarion Real Estate Portfolio - Institutional Class | 0.61% | 0.28% | | 0.28% |
| 803 | American Funds The Growth Fund of America® - Class R-5 | 0.39% | 0.05% | 0.10% | 0.15% |
| 817 | American Funds EuroPacific Growth Fund® - Class R-5 | 0.55% | 0.05% | 0.10% | 0.15% |
| 821 | Wanger USA | 0.97% | 0.40% | | 0.40% |
| 822 | Fidelity® VIP Mid Cap Portfolio - Initial Class | 0.66% | 0.21% | | 0.21% |
| 1197 | Vanguard® Mid-Cap Index Fund - Institutional Shares | 0.08% | 0.00% | 0.17% | 0.17% |
| 1198 | Vanguard® Small-Cap Index Fund - Institutional Shares | 0.13% | 0.00% | 0.17% | 0.17% |
| 1205 | Allianz NFJ Dividend Value Fund - Institutional Class | 0.72% | 0.10% | | 0.10% |
| 1277 | Aggressive Custom Lifestyle Portfolio | 0.48% | 0.08% | 0.07% | 0.15% |
| 1278 | Conservative Custom Lifestyle Portfolio | 0.38% | 0.10% | 0.07% | 0.17% |
| 1279 | Moderate Custom Lifestyle Portfolio | 0.46% | 0.10% | 0.07% | 0.17% |
| 1498 | Perkins Small Cap Value Fund - Class T Shares | 1.06% | 0.25% | | 0.25% |
| 1600 | Fidelity® Advisor New Insights Fund - Institutional Class | 0.89% | 0.15% | | 0.15% |
| 1737 | JP Morgan Mid Cap Value Select | 1.00% | 0.25% | | 0.25% |
| 1795 | BlackRock Inflation Protected Bond Pt - Institutional Shares | 0.45% | 0.15% | 0.00% | 0.15% |
| 1954 | Oppenheimer Developing Markets Fund - Class Y | 1.04% | 0.25% | | 0.25% |
| 2204 | CRM Mid Cap Value Fund - Institutional | 0.79% | 0.10% | | 0.10% |
| 2208 | Vanguard® Total Stock Market Index Fund - Institutional | 0.06% | 0.00% | 0.17% | 0.17% |
| 2228 | Parnassus Equity Income Fund - Investor Shares | 0.99% | 0.25% | | 0.25% |
| 2751 | DFA International Small Company Portfolio - Inst Class | 0.45% | 0.00% | 0.17% | 0.17% |
| 2926 | The Yacktman Fund | 0.93% | 0.25% | | 0.25% |
| 3289 | Templeton Global Bond Fund - Insurance Trust Shares | 0.55% | 0.20% | | 0.20% |
| 9905 | Stable Value Option | 0.47% | 0.17% | | 0.17% |
| 9906 | Stable Value Option PTC | 0.47% | 0.17% | | 0.17% |
| 795 | Vanguard Target Retirement Income Fund - Investor Shares | 0.17% | 0.00% | 0.17% | 0.17% |
| 2474 | Vanguard Total International Stock Index - Signal | 0.20% | 0.00% | 0.17% | 0.17% |
| 8612 | Vanguard Target Retirement 2005 Fund - Investor Shares | 0.17% | 0.00% | 0.17% | 0.17% |
| 1295 | Vanguard Target Retirement 2010 Fund - Investor Shares | 0.17% | 0.00% | 0.17% | 0.17% |
| 791 | Vanguard Target Retirement 2015 Fund - Investor Shares | 0.16% | 0.00% | 0.17% | 0.17% |
| 1296 | Vanguard Target Retirement 2020 Fund - Investor Shares | 0.17% | 0.00% | 0.17% | 0.17% |
| 926 | Vanguard Target Retirement 2025 Fund - Investor Shares | 0.18% | 0.00% | 0.17% | 0.17% |

| | | | | | |
|------|--|-------|-------|-------|-------|
| 1297 | Vanguard Target Retirement 2030 Fund - Investor Shares | 0.18% | 0.00% | 0.17% | 0.17% |
| 793 | Vanguard Target Retirement 2035 Fund - Investor Shares | 0.19% | 0.00% | 0.17% | 0.17% |
| 1298 | Vanguard Target Retirement 2040 Fund - Investor Shares | 0.19% | 0.00% | 0.17% | 0.17% |
| 794 | Vanguard Target Retirement 2045 Fund - Investor Shares | 0.19% | 0.00% | 0.17% | 0.17% |
| 1299 | Vanguard Target Retirement 2050 Fund - Investor Shares | 0.19% | 0.00% | 0.17% | 0.17% |
| 2473 | Vanguard Target Retirement 2055 Fund - Investor Shares | 0.19% | 0.00% | 0.17% | 0.17% |

A separate Stabilizer Contract has been issued to the 457 Plan and the PTC Plan. For the PTC Plan, the Stabilizer is the only investment option available to PTC Plan participants. Participants in the 457 Plan will have available to them for investment the Stabilizer Contract and variable investment funds offered through a group variable annuity contract.

The net fund expense for these funds is comprised of an indirect operating fee, a direct investment management fee of the fund, and a waiver.

B. It is understood that the investment management fees may include subadvisor, mutual or commingled fund, custodial, and operating costs which are not set by ING. The investment management fees change (typically annually) and from fund to fund. ING shall provide to the DCAC, via the Plan Sponsor website, fund fact sheets which disclose the fund expenses on a quarterly basis approximately 45 days following a calendar quarter end. The fund fact sheets will also be made available on the participant website. Should the fees increase above those disclosed in this Exhibit and the DCAC does not support the increase in fees, the DCAC will work with ING to select alternative investment options for the Plan.

In the event the investment management fee for any fund decreases during the term of this agreement, ING shall immediately notify the DCAC and shall apply the decrease to lower the total fee charged to participant accounts.

END OF EXHIBIT A

EXHIBIT B

PERFORMANCE STANDARDS

ING will meet the following performance standards and will provide financial guarantees as set forth below. In the event a performance standard is not met, ING will remit the financial guarantee no later than the end of the quarter in which the performance standard was not met.

| | Standard | Date |
|---|--|---|
| Transition Services (period from formal approval to fund transition) | | |
| 1. | <u>Pre-Transition Services Standard:</u> Assure attendance at finalist meetings by the representatives who will provide direct transition and ongoing services. | Finalist Meeting |
| 2. | Return phone calls from employer contact designee within 24 hours and propose method of measuring standard. <u>Guarantee:</u> \$100 per incident for failure to return phone calls from employer contact designee within 24 hours. | Transition Period |
| 3. | Respond, in writing with a copy to the City, to phone or in-person complaints within 5 business days. <u>Guarantee:</u> \$100 per incident of failure to respond to complaint within a specified time. | Transition Period |
| 4. | Comply with Sarbanes-Oxley Act requirements regarding notification of blackout period. <u>Guarantee:</u> \$1,000 plus the equivalent of any penalties that are assessed. | Transition Period |
| 5. | Finalize and publish performance standards and guarantees. <u>Guarantee:</u> \$500 | Final copy to CITY within 30 days of award of contract. |
| 6. | Provide agreed upon training to employees and retirees within initial transition period. <u>Guarantee:</u> \$1,000 | Transition Period |
| 7. | Provide a smooth and seamless transition for the 457 plans with mutually agreed upon service standards. We will measure our success by ensuring that each step of the process is monitored and delivered on time and that the City and plan participants are satisfied with our services. If ING fails to resolve the deficiency within 30 days with regard to the implementation; the City may request the service guarantee be paid. <u>Guarantee:</u> not to exceed \$30,000 for all combined implementation services. | Transition Period |

| Transition Exit (period from notification of non-renewal to fund transition) | | |
|--|---|---|
| 8. | <p>Upon termination, provide: 1) last four quarters of transaction reports, 2) current account balances, 3) past 12 months distribution and deferral information and 4) loan or other outstanding payment amounts.</p> <p><u>Guarantee:</u> \$1,000 for initial failure to provide and \$500 per day thereafter.</p> | <p>Within 30 business days after termination, provide report on disk, tape or internet.</p> |
| 9. | <p>Upon termination, provide the following information in an acceptable format (e.g., on disk, tape or internet.)</p> <ul style="list-style-type: none"> • Participant records • Transactions, including deferrals, fund transfers, and disbursements • Holdings and transaction activity • Account and plan information <p><u>Guarantee:</u> \$1,000 on failure to provide information within timeframe.</p> | <p>Within 30 days of request.</p> |

| Customer Services | | |
|-------------------|--|--|
| 10. | <p>Telephone calls to service center(s) will be answered on average within 30 seconds or less</p> <p><u>Guarantee:</u> \$1,000 per year failure to meet annual, calendar year average.</p> | <p>Quarterly summary/review due before the end of the month following the quarter.</p> |
| 11. | <p>Participant statements will be mailed within 15 calendar days after quarter-end.</p> <p><u>Guarantee:</u> \$5 per participant per quarter for each statement postmarked later than 15 calendar days after the last day of the quarter.</p> | <p>Quarterly</p> |
| 12. | <p>Finalize customized website, providing hot link between employer and provider websites and draft participant communication advertising site content and way to access. Website should permit fund transfers and investment allocation changes, to provide for participant statements, and to provide pie chart graphics of personal accounts, fund performance graphics, and a retirement planning calculator (which enables participants to create “what-if” scenarios).</p> <p><u>Guarantee:</u> \$500 for failure to provide live website and participant announcement by end of 3rd month after completion of transition period.</p> | <p>Due by 3rd month after completion of the transition period.</p> |
| 13. | <p>Process investment fund transfers, contribution reconciliation and posting within one business day. Transactions are processed same business day received in good order if received prior to the close of the NYSE.</p> <p><u>Guarantee:</u> Maximum \$1,000 for failure to meet agreed-upon standard.</p> | <p>Annual report due 31 days after each Plan year end.</p> |
| 14. | <p>Process hardship distributions, rollover requests, in-service distributions, retiree distribution requests within 5 business days of receipt in good order of acceptable documentation. Transactions are processed same business day received in good order if received prior to the close of the NYSE.</p> | <p>Annual report due 31 days after each Plan year end.</p> |

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| | Guarantee: \$1,000 annually for failure to meet standard in 90% of actions. | |
| 15. | Review plan documents, identify policy issues between the City and ING and summarize, in writing, any recommended changes to documents. Guarantee: \$500 for failure to meet standard. | Within 180 days of completion of the transition period. |
| 16. | Review investment policy and summarize, in writing, any recommended changes. Guarantee: \$500 for failure to provide review/summary within specified timeframe. | Annually within 60 days of the Committees' acceptance of fund evaluation results. |
| 17. | Provide written proposal of services and draft plan for ongoing participant communication utilizing internet educational resources (e.g., internet or computer based training). Guarantee: \$500 for failure to provide proposal within timeframe. | Within 180 days of completion of the transition period. |

| Reports | | |
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| 18. | <p>Provide the following reports:</p> <ul style="list-style-type: none"> • Quarterly financial reports providing at least the following information: <ul style="list-style-type: none"> a. The total balance at the beginning of the reporting period, the total contributions to the account and the total interest/earnings credited to the account during the reporting period, and the account balance at the end of the reporting period. b. For each fund in the account, the fund balance at the beginning of the reporting period, the total contributions to the fund and the total interest/earnings credited to the fund during the reporting period, and the fund balance at the end of the reporting period. c. For each fund in the account the number of shares/units and the value of each share/unit in the fund at the beginning of the reporting period and at the end of the reporting period. d. The contribution allocation as of the end of the reporting period. e. The date and amount of each contribution to the account, and the total amount of contributions made during the reporting period. f. The activity in the account during the reporting period listed by fund and including: the date the activity occurred; the type of activity (e.g., contribution, earnings, fund transfer) on each activity date; for each contribution, the amount of the contribution, the number of shares/units added, the price per share/unit, and the total shares/units in the fund after each contribution; for each fund transfer, the amount transferred and the number of shares/units and the share/unit price for both the fund from which and the fund to which the transfer occurred. g. The distributions, including hardship withdrawals, made from the account during the reporting period. • Informational mailings, including a participant newsletter and participant information booklets describing the investment products funding the Plan to new participants at the time of enrollment. • Monthly performance report showing the performance of each fund, net of fees, for at least: the reporting month, the year to date, the last twelve months, and the cumulative returns for the preceding 3-year, 5-year, and 10-year periods (where available) • Monthly transaction statement showing for the total City account and for | Varies by report |

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| | <p>each fund in the account at least: the beginning balance, the ending balance, and the amount of contributions, the amount of distributions, any adjustments made, fund-to-fund transfers made, plan-to-plan transfers made, earnings, service fees, and fee credits occurring during the month.</p> <ul style="list-style-type: none"> • A monthly list of Plan participants with investments in funds offered and the status of each participant (e.g., active, inactive, deferred distribution, distribution). <p><u>Guarantee</u>: \$500 per failure to provide reports by specified date.</p> | |
| 19. | <p>Provide written proposal for recommended reports that will be available to employer online (internet) including proposed access protocols.</p> <p><u>Guarantee</u>: \$500 for failure to provide written draft proposal within specified time.</p> | Within 90 days of completion of the transition period. |
| 20. | <p>Conduct training of employer-designated personnel regarding access to online reports and use of reporting capability.</p> <p><u>Guarantee</u>: \$500 for failure to provide training within specified time.</p> | Within 120 days of completion of the transition period. |

| Surveys | | |
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| 21. | <p>Draft survey.</p> <p><u>Guarantee</u>: \$500 if failure to provide draft survey.</p> | Draft due by the end of 4th month after completion of the transition period. |
| 22. | <p>Distribute survey to all plan participants.</p> <p><u>Guarantee</u>: \$500 if failure to mail 30 days from date of final agreed upon survey content.</p> | Distribution by the end of 6th month after completion of the transition period. |
| 23. | <p>Analyze survey results, provide executive summary and recommended actions.</p> <p><u>Guarantee</u>: \$1,000 if Executive Summary and Recommended Actions is not provided within timeframe.</p> | Complete by end of the 8th month after completion of the transition period. |
| 24. | <p>Repeat survey process steps described above for surveys at 24 and 36 months after completion of the transition period.</p> <p><u>Guarantee</u>: \$1,000 for failure to provide Executive Summary and Recommended Actions by the end of the 24th and 36th after the completion of the transition period.</p> | Executive Summary and Recommended Actions due by the end of the 24th and 36th month after completion of the transition period. |

| Educational Services | | |
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| 25. | Provide training to all decision-makers and administrative staff on 404(c) requirements. <u>Guarantee:</u> \$500 for failure to provide on-site training within timeframe. | 90 days after completion of the transition period. |
| 26. | Propose and schedule first year on-site training sessions and content of training for decision-makers and administrative personnel. <u>Guarantee:</u> \$500 for failure to provide proposed training and \$500 for failure to provide four training sessions in any year of contract. | Proposal within 90 days after completion of the transition period and educational programs quarterly thereafter. |
| 27. | Develop and schedule new decision-maker training for employer identified new DCAC members or administrative staff. <u>Guarantee:</u> \$4,500 for failure to provide training within specified timeframe. | Provide half-day on-site training for identified new personnel within 30 days of notification by the CITY. |
| 28. | After implementation, provide mutually agreeable number of educational seminars annually on site to participants. <u>Guarantee:</u> \$1,000 for failure to provide agreed-upon number of onsite group seminars. | Proposed schedule due within 90 days after completion of the transition period. |
| 29. | After implementation, provide newsletters to plan participants regarding plan benefits / issues. <u>Guarantee:</u> Annual \$500 penalty for failure to provider quarterly newsletters. | Quarterly. |
| 30. | Provide representative on site for mutually agreeable number of days per month to meet with plan participants. <u>Guarantee:</u> \$1,000 per year if agreed-upon number of days is not provided for 3 or more months. | Monthly. |
| 31. | Provide draft PowerPoint and / or other communication material for transition specifically written for group meetings for employees / retirees. <u>Guarantee:</u> \$500 for initial failure to provide within 30 days of execution of agreement and \$100 per day thereafter. | 30 Days after execution of this Agreement. |
| 32. | Draft communication to plan participants describing investment advice services and access. <u>Guarantee:</u> \$500 for initial failure to provide within 60 days after completion of the transition period and \$100 per day thereafter. | Within 60 days of completion of the transition period. |
| 33. | Recommend, in writing, steps ING and the City may take to communicate and coordinate information regarding defined benefits offered through the City and available fund options. <u>Guarantee:</u> \$1,000 for failure to provide within specified time. | Within 180 days of completion of the transition period. |
| 34. | Provide one half-day session per quarter to employer decision-making and | Quarterly. |

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| | administrative personnel on mutually agreeable topics. Guarantee: \$250 per quarter if education session is not provided. | |
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| Miscellaneous Performance Standards | | |
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| 35. | Provide web site copy listing final agreed-upon Performance Standards / Guarantees. <u>Guarantee:</u> \$500 for each failure to provide web-ready document to employer. | Upon completion of the transition period and 30 days after any mutually agreed-upon revisions. |
| 36. | Provide annual written summary of all Performance Standards / Guarantees categories and results to the City and as a web document for communication to plan participants. <u>Guarantee:</u> \$1,000 for failure to provide web-ready document within specified timeframe. | 30 days after annual anniversary of completion of the transition period. |

END OF EXHIBIT B

EXHIBIT C

INSURANCE REQUIREMENTS

ING, at ING's sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by ING, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

1. The coverage described in Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage described in Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall include all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance.
4. Professional Liability Errors & Omissions.

There shall be no endorsement reducing the scope of coverage required above unless approved by the CITY's Risk Manager.

B. Minimum Limits of Insurance

ING shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor and Employers Liability limits of \$1,000,000 per accident; and

4. Professional Liability Errors & Omissions \$1,000,000 Aggregate Limit.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by CITY's Risk Manager. At the option of CITY, either; the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officer, employees, agents and contractors; or ING shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the CITY's Risk Manager.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages
 - a. The City of San Jose, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, ING; products and completed operations of ING; premises owned, leased or used by ING; and automobiles owned, leased, hired or borrowed by ING. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.
 - b. ING's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of ING's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies by ING shall not affect coverage provided CITY, its officers, employees, agents, or contractors.
 - d. Coverage shall state that ING's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - e. Coverage shall contain waiver of subrogation in favor of the City of San Jose, its officers, employees, agents and contractors.
2. Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of the City of San Jose, its officers, employees, agents and contractors.

3. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY, except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

E. Acceptability of Insurers

Insurance is to be placed with insurers acceptable to CITY's Risk Manager.

F. Verification of Coverage

ING shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either mailed in pdf format to: Riskmgmt@sanjoseca.gov, or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the Risk Manager):

CITY OF SAN JOSE
Human Resources Department
Risk Management Division
200 E. Santa Clara Street, 2nd Floor Wing
San José, CA 95113
PHONE: (408) 535-7063
FAX: (408) 286-6492

G. Subcontractors

ING shall include all subcontractors as insured under its policies or shall obtain separate certificates and endorsements for each subcontractor.

These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager.

END OF EXHIBIT C