



**BOARD OF DIRECTORS  
EAST BAY MUNICIPAL UTILITY DISTRICT**

---

375 - 11th Street, Oakland, CA 94607

Office of the Secretary: (510) 287-0440

---

**AGENDA  
Tuesday, December 10, 2013**

**REGULAR CLOSED SESSION  
11:00 a.m., Board Room**

**ROLL CALL:**

**PUBLIC COMMENT:** The Board of Directors is limited by State law to providing a brief response, asking questions for clarification, or referring a matter to staff when responding to items that are not listed on the agenda.

**ANNOUNCEMENT OF CLOSED SESSION AGENDA:**

1. Existing litigation pursuant to Government Code section 54956.9(a):
  - a. *East Bay Municipal Utility District, et al. v. AMBAC Financial Group, Inc., et al.*  
San Francisco County Superior Court, Case No. CJC 08-004555, JCCP No. 4555
2. Significant exposure to litigation pursuant to Government Code section 54596.9(b): one matter.
3. Conference with Labor Negotiators Delores Turner and Michael Rich pursuant to Government Code Section 54957.6: American Federation of State, County and Municipal Employees, Local 444.

*(The Board will hold Closed Session in Conference Room 8A/B)*

**REGULAR BUSINESS MEETING  
1:15 p.m., Board Room**

**ROLL CALL:**

**BOARD OF DIRECTORS:**

- Pledge of Allegiance

**ANNOUNCEMENTS FROM CLOSED SESSION:**

**PUBLIC COMMENT:** The Board of Directors is limited by State law to providing a brief response, asking questions for clarification, or referring a matter to staff when responding to items that are not listed on the agenda.

**CONSENT CALENDAR:** (Single motion and vote approving 16 recommendations and 7 resolutions)

1. Approve the Regular Meeting Minutes of November 26, 2013.
2. File correspondence with the Board.
3. Award a contract to the lowest responsive/responsible bidder, Peterson Power Systems, in the amount after addition of taxes of \$286,318 for supplying one 300-kilowatt electrical generator for the Main Wastewater Treatment Plant under RFQ No. 1411.
4. Award a contract to the lowest responsive/responsible bidder, Insituform Technologies, LLC, in the amount of \$1,248,760 for construction of the Versailles Interceptor Rehabilitation under Specification SD 354.
5. Award a sole source contract to Honeywell, Inc. in the total amount after the addition of taxes of \$956,000 for 14 Experion Distributed Control System Honeywell C200 controllers and associated hardware for the Orinda Water Treatment Plant Control System Improvements.
6. Authorize an agreement with the Ashland Family Housing Limited Partnership (Ashland Partnership) to relocate approximately 340 feet of eight-inch diameter pipeline to accommodate street improvements and construction of the Ashland Family Housing Project, Ashland Township in Alameda County. Under the terms of the agreement, Ashland Partnership will reimburse the District fifty percent of the estimated \$202,000 total project cost.
7. Consider the Addendum to the Environmental Impact Report for the Main Wastewater Treatment Plant (MWWTP) Land Use Master Plan and authorize an amendment to the existing Organic Material Processing and Feedstock Digestion Agreement with Recology, Inc. (Recology) for a 30-month pilot project for Recology to deliver and pre-process food waste and other organics-rich materials for digestion and renewable energy production by the District at the MWWTP.
8. Authorize an agreement with Bayview Environmental, Inc., in an amount not to exceed \$134,000 for asbestos and lead abatement work at the Main Wastewater Treatment Plant West End Property.
9. Authorize an agreement with CheckFree Services Corporation for an estimated annual amount of \$85,000 to provide customers with electronic bill presentment and payment services during the period December 31, 2013 through December 30, 2014, with two 1-year options to renew for a total estimated amount of \$255,000.
10. Approve the Water Supply Assessment requested by the City of San Leandro for the San Leandro Downtown Technology Campus pursuant to California Water Code, Sections 10910-10915.
11. Cancel the December 24, 2013 Closed Session and Regular Meetings of the Board of Directors.

**CONSENT CALENDAR:** (Continued)

12. Authorize the acceptance of a grant from the United States Environmental Protection Agency Region IX in the amount of \$517,650 to conduct a regional Bay Area nutrient removal study based on wastewater sidestream treatment. (Resolution)
13. Approve the sale of the Redwood Filter Plant property to the Hayward Area Recreation and Park District (HARD) for an amount determined by the date of the close of escrow, and authorize District staff to execute the Agreement for the Sale of Real Property with HARD. (Resolution)
14. Approve the sale of the former Oakland Business Office property at 250 17<sup>th</sup> Street, Oakland to Alcatraz Capital I LLC for \$2,676,000. (Resolution)
15. Adopt the District's 401(a) Plan, 401(k) Tax Deferred Savings Plan and 457 Deferred Compensation Plan, as restated, to comply with Internal Revenue Service Ruling 2013-17 related to the repeal of Section 3 of the Defense of Marriage Act, and make other minor changes, effective January 1, 2014. (Resolutions-3)
16. Approve the 2013-2017 Memoranda of Understanding (MOU) and other special agreements between the District and AFSCME Locals 444 and 2019, and IUOE Local 39, approve revisions to District salary schedules, amend all existing Civil Service Rules, Policy Statements and Procedures and other pertinent resolutions to conform to revisions contained in the MOU's and in the Resolution. (Resolution)

**DETERMINATION AND DISCUSSION:**

17. Legislative Update:
  - Update on Legislative Issues of Interest to EBMUD
18. Certify the Final Supplemental Environmental Impact Report for the Estates Reservoir Replacement Project, and make findings in accordance with the California Environmental Quality Act (CEQA); adopt the Mitigation Monitoring and Reporting Program, as revised, in accordance with CEQA; and approve the proposed revisions to the Estates Reservoir Project. (Resolution)
19. Certify the Final Environmental Impact Report for the West of Hills Northern Pipelines Project and make findings in accordance with the California Environmental Quality Act (CEQA) including a Statement of Overriding Considerations; adopt the Mitigation Monitoring and Reporting Program in accordance with CEQA; and approve the West of Hills Northern Pipelines Project. (Resolution)
20. General Manager's Report:
  - Water Supply Update
  - Monthly Report – November 2013

**REPORTS AND DIRECTOR COMMENTS:**

21. Committee Reports:
  - Planning
  - Legislative/Human Resources
  - Finance/Administration
22. Director Comments.

**ADJOURNMENT:**

***The next Regular Meeting of the Board of Directors will be held at 1:15 p.m. on Tuesday, January 14, 2014 in the Administration Center Board Room, 375 Eleventh Street, Oakland, California.***

**Disability Notice**

*If you require a disability-related modification or accommodation to participate in an EBMUD public meeting please call the Office of the Secretary (510) 287-0404. We will make reasonable arrangements to ensure accessibility. Some special equipment arrangements may require 48 hours advance notice.*

**Document Availability**

*Materials related to an item on this Agenda that have been submitted to the EBMUD Board of Directors within 72 hours prior to this meeting are available for public inspection in EBMUD's Office of the Secretary at 375 11<sup>th</sup> Street, Oakland, California, during normal business hours.*



## BOARD CALENDAR

| Date                   | Meeting  | Time/Location   | Topics   |
|------------------------|--|---|--|
| Tuesday, December 10   | <b>Planning Committee</b><br>Foulkes (Chair), Linney,<br>McIntosh  | 10:00 am<br>Training Resource<br>Center   | <ul style="list-style-type: none"> <li>West of Hills Northern Pipelines Project</li> </ul>             |
|                        | <b>Legislative/Human Resources</b><br>McIntosh (Chair), Coleman,<br>Mellon   | 10:30 am<br>Training Resource<br>Center   | <ul style="list-style-type: none"> <li>Project Labor Agreements</li> <li>Legislative Update</li> </ul> |
|                        | <b>Board of Directors</b>  | 11:00 a.m.<br>1:15 p.m.   | <ul style="list-style-type: none"> <li>Closed Session</li> <li>Regular Meeting</li> </ul>              |
| Tuesday, December 24   | <b>Finance/Administration Committee</b><br>Coleman (Chair), Linney,<br>Patterson   | Training Resource<br>Center   | <ul style="list-style-type: none"> <li>May be cancelled</li> </ul>                                     |
|                        | <b>Board of Directors</b>  | 11:00 a.m.<br>1:15 p.m.   | <ul style="list-style-type: none"> <li>May be cancelled</li> </ul>                                     |
| Wednesday, December 25 | <b>Christmas Day Holiday</b>   |   | <i>District Offices Closed</i>   |
| Wednesday, January 1   | <b>New Year's Day Holiday</b>  |   | <i>District Offices Closed</i>   |
| Tuesday, January 14    | <b>Planning Committee</b><br>Foulkes (Chair), Linney,<br>McIntosh<br><br><b>Legislative/Human Resources</b><br>McIntosh (Chair), Coleman,<br>Mellon<br><br><b>Board of Directors</b> | TBD<br>Training Resource<br>Center<br><br>TBD<br>Training Resource<br>Center<br><br>11:00 a.m.<br>1:15 p.m. | <ul style="list-style-type: none"> <li>Closed Session</li> <li>Regular Meeting</li> </ul>              |
| Tuesday, January 28    | <b>Sustainability/Energy</b><br>Linney (Chair), Foulkes,<br>Katz   | TBD<br>Training Resource<br>Center  |  |
|                        | <b>Finance/Administration Committee</b><br>Coleman (Chair), Linney,<br>Patterson   | TBD<br>Training Resource<br>Center  |  |
|                        | <b>Board of Directors</b>  | 11:00 a.m.<br>1:15 p.m.   | <ul style="list-style-type: none"> <li>Closed Session</li> <li>Regular Meeting</li> </ul>              |
| Monday, January 20     | <b>Martin Luther King Day Holiday</b>  |   | <i>District Offices Closed</i>   |



## **MINUTES**

**Tuesday, November 26, 2013**

**East Bay Municipal Utility District  
Board of Directors  
375 Eleventh Street  
Oakland, California**

### **Regular Closed Session Meeting**

President Andy Katz called to order the Regular Closed Session Meeting of the Board of Directors at 11:13 a.m. in the Administration Center Board Room.

### **ROLL CALL**

Directors John A. Coleman, Katy Foulkes, Doug Linney, Lesa R. McIntosh, Frank Mellon, William B. Patterson, and President Andy Katz were present at roll call.

Staff present included General Manager Alexander R. Coate, General Counsel Jylana Collins, Attorney Jonathan Salmon (Item 1a), Director of Wastewater Bennett K. Horenstein (Item 1a), Attorney Derek T. McDonald (Item 2a), Risk Manager Karen K. Curry (Item 2a), Director of Water and Natural Resources Richard G. Sykes (Item 3), Attorney Lourdes Matthew (Item 4), Director of Administration Carol Y. Nishita (Item 4), Manager of Human Resources Delores A. Turner (Item 4), Manager of Employee Relations Michael K. Rich (Item 4), Manager of Employee Services Lisa A. Sorani (Item 4), and I.E.D.A. representatives Bruce Heid and Glenn Berkheimer (Item 4).

### **PUBLIC COMMENT**

There was no public comment.

### **ANNOUNCEMENT OF CLOSED SESSION AGENDA**

President Katz announced the Closed Session agenda. The Board convened to Conference Room 8A/B for discussion.

### **Regular Business Meeting**

President Andy Katz called to order the Regular Business Meeting of the Board of Directors at 1:22 p.m. in the Administration Center Board Room.

### **ROLL CALL**

Directors John A. Coleman, Katy Foulkes, Doug Linney, Lesa R. McIntosh, Frank Mellon, William B. Patterson, and President Andy Katz were present at roll call.

## **BOARD OF DIRECTORS**

President Katz led the Pledge of Allegiance.

## **ANNOUNCEMENTS FROM CLOSED SESSION**

There were no announcements required from closed session.

## **PRESENTATION**

General Manager Coate announced that the EBMUD/Central Contra Costa Solid Waste Authority (CCCSWA) Food Recycling Project recently won the 2013 Government Award of Sustainable Contra Costa. He said that the Food Recycling Project diverts commercial food waste from landfill disposal for conversion into renewable energy. Mr. Coate noted that the District is working with CCCSWA on developing a new long-term agreement that builds on the success of the current Food Recycling Project. Next, he introduced Paul Morsen, the Executive Director of CCCSWA, who commented about the Project. On behalf of the EBMUD Board, President Katz accepted the award and said that EBMUD appreciates the partnership with CCCSWA and looks forward to continued success in the future.

## **PUBLIC COMMENT**

- Addressing the Board was Roxie Hardeman, customer, Oakland, CA who asked the Board to grant a reduction to her \$900 water bill. She said the high water bill was due to a leaking water pipe underneath her home which she had repaired. The Board referred Ms. Hardeman to staff for assistance.

## **CONSENT CALENDAR**

- Motion by Director Coleman, seconded by Director McIntosh, to approve Items 1-6 on the Consent Calendar, carried (7-0) by voice vote.
1. **Motion No. 165-13** -- Approved the Regular Meeting Minutes of November 12, 2013.
  2. The following correspondence was filed with the Board: 1) Memorandum dated November 26, 2013 to Board of Directors, from Xavier J. Irias, Director of Engineering and Construction, regarding Estates Reservoir Replacement Project – Final Supplemental Environmental Impact Report; and 2) Slide presentation entitled “Contract Equity Program Small Business Enterprise Bid Discount”, dated November 26, 2013.
  3. **Motion No. 166-13** -- Awarded a contract to the lowest responsive/responsible bidder, JMB Construction, Inc. in the amount of \$10,768,100 for construction of El Portal Reservoir Rehabilitation and Almond Pumping Plant Replacement under Specification 2047.

4. **Motion No. 167-13** -- Authorized an agreement with Four Season's Landscape in an amount not to exceed \$44,000 annually for landscaping services at Pardee Center during the period December 1, 2013 to November 30, 2015, with three options to renew for additional one-year periods for a total expenditure of \$220,000.
5. **Motion No. 168-13** -- Authorized an agreement with Solar Turbines, Incorporated, Division of Caterpillar Company in an amount not to exceed \$682,000 annually plus a \$700,000 initial fee, for turbine service and repairs at the Main Wastewater Treatment Plant during the period December 1, 2013 to November 30, 2018, with a total amount not to exceed \$3,980,000.
6. **Motion No. 169-13** -- Authorized the Office of General Counsel to continue employment of the law firm of Barg, Coffin, Lewis & Trapp, LLP, for special counsel services related to environmental regulatory and environmental litigation matters in an additional amount not to exceed \$180,000.

#### **DETERMINATION AND DISCUSSION**

7. **Legislative Update.**

Special Assistant to the General Manager Marlaigine K. Dumaine presented an update on the federal draft legislation regarding "Reduction of Lead in Drinking Water Act." She reported that the Environmental Protection Agency draft guidance includes requirements for lead-free for fire hydrants; however, Ms. Dumaine pointed out that the current state lead-free law does not cover fire hydrants. The proposed legislation establishes an effective date of January 4, 2014. She noted that staff has provided comments on District issues and concerns related to the new requirements and will keep a close watch on this legislation. Next, she provided brief updates on the federal budget negotiations, the Water Resource Development Act, the projected state budget surplus, state legislative membership, and the outcome of the Senate Rules decision on Senator Calderon.

8. **Approve an Increase in the Maximum Dollar Amount for the Contract Equity Program (CEP) 5% Small Business Enterprise (SBE) Discount.**

Contract Equity Administrator Beverly D. Johnson provided highlights of the District's contract performance and outreach efforts in FY14. She said that overall achievement was good and the program has been effective and beneficial to the local community. Ms. Johnson reported on proposed enhancements to the program in FY14. One of these enhancements includes an increase in the maximum dollar amount of the 5% SBE bid discount from \$50,000 to \$100,000 for responsive/responsible bids on one-time awards and \$100,000 per year for responsive/responsible bids on multi-year awards. Ms. Johnson pointed out that this proposal was reviewed with the Legislative/Human Resources Committee on November 12, 2013. At that meeting, the Committee requested that staff explore an alternative of increasing the maximum dollar amount for the CEP SBE discount to \$250,000 with an annual limit of \$500,000 for the fiscal year.

Ms. Johnson reported that based on staff's analysis of the SBE contract history, the \$250,000 amount would not impact the budget. She also reported that if the discount amount increased to \$250,000 staff would monitor contract limits and report to the Board when a SBE had reached 75% of the annual limit. There was considerable discussion about the pros and cons of the proposed increase. The Board commended Ms. Johnson on the excellent work on this staff report.

- Motion by Director Coleman, seconded by Director Mellon, to increase the maximum dollar amount for the Contract Equity Program 5% Small Business Enterprise discount from \$50,000 to \$250,000 a year with a cap of \$500,000 in a fiscal year effective January 1, 2014, carried (6-1) by voice vote. Director Foulkes voted "no."

**Motion No. 170-13** -- Approved an increase in the maximum dollar amount for the 5% Small Business Enterprise bid discount from \$50,000 to \$250,000 per year with an annual budget limit of \$500,000 effective January 1, 2014.

9. **General Manager's Report.**

General Manager Coate reported that a customer opinion survey is being planned for February 2014 to update our understanding of how customers rate the District's overall performance and to gather information about topics such as customer preparedness for emergencies and droughts. Board members asked about the cost of the survey, how the survey goal ties into the District's key initiatives and strategic plan, and the contractor selection process. The Board also asked for the opportunity to review and comment on the draft survey instrument. The Board suggested that the draft survey include questions on: customer's willingness to pay a surcharge for Freeport water vs. mandatory rationing; conservation/rate perception issues; customer actions regarding sustainability initiatives (food waste separation, proper drug disposal, fats, oils and grease disposal); and customer acceptance of budget messages. Special Assistant to the General Manager Cheryl A. Farr said that staff would provide a memorandum in response to the questions raised.

At the request of the Board, Operations and Maintenance Department Manager Eileen M. White provided a brief water supply update. She reported that our local and upcountry areas recently received a small amount of rain, but overall conditions are still quite dry. Ms. White noted that as a result of the dry weather, water sales are 38 million gallons per day higher than last year.

**REPORTS AND DIRECTOR COMMENTS**

10. **Committee Reports.**

- Filed with the Board were the November 12, 2013 Minutes of the Finance/Administration and Legislative/Human Resources Committees.

**11. Director Comments.**

- Director Coleman reported attending/participating in the following events: ACWA teleconference meeting on November 12; ACWA teleconference meeting on the Governor's State Water Action Plan on November 13; ACWA teleconference meeting regarding Climate Change on November 13; ACWA meeting with Natural Resources Defense Council on November 13 in San Francisco; meeting with Moraga Councilmember Ken Chew on November 15 in Oakland; ACWA Executive Committee teleconference meeting on November 18; Boy Scouts of America Executive Committee meeting on November 18 in Pleasant Hill; ACWA meeting with Martha Davis on November 19 in Oakland; ACWA regional chair meeting and dinner on November 21 in Sacramento; and ACWA Executive Committee Board meetings on November 22 in Sacramento. He reported on plans to attend/participate in the following upcoming events: ACWA/JPIA dinner on December 1 in Los Angeles; ACWA/JPIA Executive Committee and Board meeting on December 2 in Los Angeles; ACWA 2013 Fall Conference December 3-6 in Los Angeles; ACWA Executive Committee teleconference meeting on December 9; WRDA Conference Committee meetings December 10-12 in Washington, D.C.; ACWA Executive Committee teleconference meetings on December 16, December 30, and January 6; Freeport Regional Water Authority teleconference meeting on January 9; ACWA Executive Committee teleconference meeting on January 13; and Boy Scouts of America Executive Committee meeting on January 13 in Pleasant Hill.
- Director Foulkes reported attending the Peralta Colleges Foundation Gala on November 21 in Oakland.
- Director Linney reported attending the African American Chamber of Commerce annual luncheon on November 13 in Oakland and the Transform Fall Event on November 14 in San Francisco.
- Director McIntosh reported that she would be attending the ACWA 2013 Fall Conference December 3-6 in Los Angeles.
- Director Mellon reported attending the EBMUD Retirement Board meeting on November 19 and the Peralta Colleges Foundation Gala on November 21 in Oakland.
- Director Patterson reported attending the EBMUD Retirement Board meeting on November 19. He reported that he would be attending the ACWA 2013 Fall Conference December 3-6 in Los Angeles.
- President Katz reported attending the Berkeley Chamber of Commerce Crush Festival on November 17 in Berkeley; the Cypress Mandela Training Center graduation ceremony on November 21 in Oakland, and the Peralta Colleges Foundation Gala on November 21 in Oakland.

**ADJOURNMENT**

President Katz adjourned the meeting at 2:21 p.m.

SUBMITTED BY:

---

Lynelle M. Lewis, Secretary of the District

APPROVED: December 10, 2013

---

Andy Katz, President of the Board

W:\Minutes\Minutes 2013\112613\_regular\_minutes.doc





AGENDA NO.

3.

MEETING DATE

December 10, 2013

TITLE **PURCHASE OF 300-KILOWATT PRIME ELECTRICAL GENERATOR**☒ MOTION ☐ RESOLUTION ☐ ORDINANCE**RECOMMENDED ACTION**

Award a contract to the lowest responsive/responsible bidder, Peterson Power Systems, in the amount after addition of taxes of \$286,318 for supplying one 300-kilowatt electrical generator for the Main Wastewater Treatment Plant (MWWTP) under RFQ No. 1411.

**SUMMARY**

This new electrical generator will replace the existing electrical generator and will provide reliable backup power to the MWWTP Maintenance Building in case of a power failure. The new generator meets current air emission standards established by the Bay Area Air Quality Management District.

**DISCUSSION**



The existing Maintenance Building generator is approximately 20 years old. Replacement parts are no longer readily available and the generator is close to its electrical load limit when operating. The existing generator will continue powering the Maintenance Building while the new generator will be used to power the proposed Organics Preprocessing Pilot Facility at the MWWTP for a maximum anticipated period of 30 months. Once the pilot is completed, the new generator will be used to power the Maintenance Building.

**BID RESULTS**

Requests for quotation were posted on the District website for 14 days and sent to four resource organizations and 149 potential proposers. One bid was received from Peterson Power Systems. The engineer's estimate for this purchase was \$300,000.

**CONTRACT EQUITY PROGRAM EFFORTS**

The completed P-035 and P-061 forms are attached.

|                                     |  |  |
|-------------------------------------|--|--|
| Funds Available: FY 14              |  | Budget Code: WWC/928/7999/2009006/5301   |
| DEPARTMENT SUBMITTING<br>Wastewater | DEPARTMENT MANAGER or DIRECTOR<br><br>Bennett K. Horenstein | APPROVED<br><br>General Manager |

Contact the Office of the District Secretary regarding questions about completing or submitting this form.

## **FISCAL IMPACT**

The FY14/15 capital budget includes sufficient funds for the purchase of the 300 Kilowatt Prime Electrical Generator.

## **ALTERNATIVES**

- **Do not purchase the generator.** This alternative is not recommended because the existing generator is reaching the end of its useful life with reliability concerns associated with providing backup power generation for the Maintenance Building. In addition, the schedule for beginning the Organics Preprocessing Pilot Facility would be delayed if the generator is not purchased for interim use.
- **Reject all bids and re-bid.** This alternative is not recommended because the bid is reasonable, and rebidding would result in a significant delay and increased project costs. The cost of the generator is consistent with the engineer's estimate and price quotations received prior to bid.

## **Attachments**

F:\Draft Board Documents\12-10-13 Board Items\WW - 300kw Prime Elec Generator.doc



# CONTRACT EQUITY PROGRAM SUMMARY (P-035)

This summary contains information on the contractor's workforce and contract equity participation. (Completed by District)

|   |  |   |
|---|--|---|
| <b>TITLE</b><br><b>PROPOSAL NO.: 1411</b><br><b>300-Kilowatt Prime Electrical Generator</b> |  | <b>DATE:</b><br><b>December 4, 2013</b> |
|---|--|---|

|   |                         |   |                               |                                       |               |  |
|---|-------------------------|---|-------------------------------|---------------------------------------|---------------|--|
| <b>CONTRACTOR:</b><br>Peterson Power Systems, Inc.<br>San Leandro, CA |                         | <b>Sole Bidder</b><br><b>Local Business</b> |                               | <b>PERCENTAGE OF CONTRACT DOLLARS</b> |               |  |
|   |                         | <b>Availability Group</b>                   | <b>Contracting Objectives</b> | <b>Participation</b>                  |               |  |
| <b>BID/PROPOSER'S PRICE:</b><br><br>\$262,720                         | <b>FIRM'S OWNERSHIP</b> |   | <b>White Men</b>              | <b>25%</b>                            | <b>100.0%</b> |  |
|   | <b>Ethnicity</b>        | <b>Gender</b>                               | <b>White Women</b>            | <b>2%</b>                             | <b>0.0%</b>   |  |
|   | White                   | Men   | <b>Ethnic Minorities</b>      | <b>25%</b>                            | <b>0.0%</b>   |  |

| CONTRACT EQUITY PARTICIPATION                 |                  |           |        |   |                           |             |                   |              |                     |                  |         |  |
|---|------------------|-----------|--------|---|---------------------------|-------------|-------------------|--------------|---------------------|------------------|---------|--|
| COMPANY NAME                                  | ESTIMATED AMOUNT | ETHNICITY | GENDER |   | CONTRACTING PARTICIPATION |             |                   |              |                     |                  |         |  |
|   |                  |           | M      | W | White-Men                 | White-Women | Ethnic Minorities | Unclassified | Publicly Held Corp. | Gov't/Non Profit | Foreign |  |
| <b>PRIME:</b><br>Peterson Power Systems, Inc. | \$262,720        | White     | X      |   | 100.0%                    | --          | --                | --           | --                  | --               | --      |  |
| <b>SUBS:</b>                                  |                  |           |        |   |                           |             |                   |              |                     |                  |         |  |
| None  |                  |           |        |   |                           |             |                   |              |                     |                  |         |  |
|   |                  |           |        |   |                           |             |                   |              |                     |                  |         |  |
|   |                  |           |        |   |                           |             |                   |              |                     |                  |         |  |
|   |                  |           |        |   |                           |             |                   |              |                     |                  |         |  |
|   |                  |           |        |   |                           |             |                   |              |                     |                  |         |  |
| <b>TOTAL</b>                                  |                  |           |        |   | 100.0%                    | 0.0%        | 0.0%              | 0.0%         | 0.0%                | 0.0%             | 0.0%    |  |

| CONTRACTOR'S WORKFORCES PROFILE (From P-025 Form) |            |             |                   |                 |
|---|------------|-------------|-------------------|-----------------|
|   | White Men  | White Women | Ethnic Minorities | Total Employees |
| <b>No. of Employees:</b>                          | 578        | 78          | 133               | 789             |
| <b>Percent of Total Employees:</b>                | 73.3%      | 9.9%        | 16.9%             |                 |
| <b>MSA Labor Market %:</b>                        | 28.0%      | 23.6%       | 48.4%             |                 |
| <b>MSA Labor Market Location:</b>                 | California |             |                   |                 |

## COMMENTS

**Contract Equity Participation** - 100% White Men participation.

Although Peterson Power Systems' Affirmative Action profile continues to be less than 50% workforce diversity based on the applicable MSA, their minority workforce increased from 107 to 133 employees since their last contract award. The District will continue to encourage greater implementation efforts. Their Affirmative Action Policy Statement is on file.

|  |   |                                      |
|--|---|--------------------------------------|
| <b>Workforce Profile &amp; Statement of Nondiscrimination</b><br>Submitted | <b>Good Faith Outreach Efforts</b><br>Requirement Satisfied | <b>Award Approval</b><br>Recommended |
| ON FILE  | YES   |                                      |



# AFFIRMATIVE ACTION SUMMARY (P-061)

(Completed by District)

This summarizes information provided by the contractor(s)' P-025 Form regarding their workforce.

|  |                          |   |                          |      |                                      |       |          |         |               |
|--|--------------------------|---|--------------------------|------|--------------------------------------|-------|----------|---------|---------------|
| Title:<br><b>300-Kilowatt Prime Electrical Generator</b>   |                          | Ethnic Minority Percentages From U.S. Census Data |                          |      |                                      |       |          |         |               |
|  |                          | National  | B                        | H    | A/PI                                 | AI/AN | TOTAL    |         |               |
|  |                          | 9 Bay Area Counties                               | 10.5                     | 10.7 | 3.7                                  | 0.7   | 27.3     |         |               |
|  |                          | Alameda/CC Counties                               | 5.5                      | 16.2 | 14.2                                 | 0.4   | 39.9     |         |               |
|  |                          |   | 10.7                     | 15.6 | 15.4                                 | 0.5   | 46.2     |         |               |
| Proposal #: 1411   | DATE:<br>12/4/2013       | Number of Ethnic Minority Employees               |                          |      |                                      |       |          |         |               |
| R=Recmmd<br>P=Prime<br>S=Sub   | Composition of Ownership |   | B                        | H    | A/PI                                 | AI/AN | TOTAL    | PERCENT | MSA %         |
| Company Name, Owner/Contact Person, Address, and Phone Number  |                          |   |                          |      |                                      |       |          |         |               |
| RP   | WM - LBE                 | Company Wide                                      | 17                       | 79   | 32                                   | 5     | 133      | 16.9%   | 48.4%         |
| Peterson Power Systems, Inc.<br>Bob Klapperich<br>2828 Teagarden Street<br>San Leandro, CA 94577<br><br>510-895-8400 |                          | Manager/Prof                                      | 2                        | 6    | 4                                    | 1     | 13       | 8.8%    |               |
|  |                          | Technical/Sales                                   | -                        | 9    | 4                                    | -     | 13       | 21.0%   |               |
|  |                          | Clerical/Skilled                                  | 14                       | 61   | 23                                   | 3     | 101      | 18.0%   |               |
|  |                          | Semi/Unskilled                                    | 1                        | 3    | 1                                    | 1     | 6        | 33.3%   |               |
|  |                          | Bay Area  | Information Not Provided |      |                                      |       |          |         |               |
|  |                          | AA Plan on File:                                  | 11/30/2006               |      | Date of last contract with District: |       | 4/5/2012 |         |               |
|  |                          | Co. Wide MSA:                                     | California               |      | # Employees-Co. Wide:                |       | 789      |         | Bay Area: 503 |
|  |                          | Company Wide                                      |                          |      |                                      |       |          |         |               |
|  |                          | Manager/Prof                                      |                          |      |                                      |       |          |         |               |
|  |                          | Technical/Sales                                   |                          |      |                                      |       |          |         |               |
|  |                          | Clerical/Skilled                                  |                          |      |                                      |       |          |         |               |
|  |                          | Semi/Unskilled                                    |                          |      |                                      |       |          |         |               |
|  |                          | Bay Area  |                          |      |                                      |       |          |         | 39.9%         |
|  |                          | Co. Wide MSA:                                     |                          |      | # Employees-Co. Wide:                |       |          |         | Bay Area:     |
|  |                          | Company Wide                                      |                          |      |                                      |       |          |         |               |
|  |                          | Manager/Prof                                      |                          |      |                                      |       |          |         |               |
|  |                          | Technical/Sales                                   |                          |      |                                      |       |          |         |               |
|  |                          | Clerical/Skilled                                  |                          |      |                                      |       |          |         |               |
|  |                          | Semi/Unskilled                                    |                          |      |                                      |       |          |         |               |
|  |                          | Bay Area  |                          |      |                                      |       |          |         | 39.9%         |
|  |                          | Co. Wide MSA:                                     |                          |      | # Employees-Co. Wide:                |       |          |         | Bay Area:     |
|  |                          | Company Wide                                      |                          |      |                                      |       |          |         |               |
|  |                          | Manager/Prof                                      |                          |      |                                      |       |          |         |               |
|  |                          | Technical/Sales                                   |                          |      |                                      |       |          |         |               |
|  |                          | Clerical/Skilled                                  |                          |      |                                      |       |          |         |               |
|  |                          | Semi/Unskilled                                    |                          |      |                                      |       |          |         |               |
|  |                          | Bay Area  |                          |      |                                      |       |          |         | 39.9%         |
|  |                          | Co. Wide MSA:                                     |                          |      | # Employees-Co. Wide:                |       |          |         | Bay Area:     |
|  |                          | Company Wide                                      |                          |      |                                      |       |          |         |               |
|  |                          | Manager/Prof                                      |                          |      |                                      |       |          |         |               |
|  |                          | Technical/Sales                                   |                          |      |                                      |       |          |         |               |
|  |                          | Clerical/Skilled                                  |                          |      |                                      |       |          |         |               |
|  |                          | Semi/Unskilled                                    |                          |      |                                      |       |          |         |               |
|  |                          | Bay Area  |                          |      |                                      |       |          |         | 39.9%         |
|  |                          | Co. Wide MSA:                                     |                          |      | # Employees-Co. Wide:                |       |          |         | Bay Area:     |
|  |                          | Company Wide                                      |                          |      |                                      |       |          |         |               |
|  |                          | Manager/Prof                                      |                          |      |                                      |       |          |         |               |
|  |                          | Technical/Sales                                   |                          |      |                                      |       |          |         |               |
|  |                          | Clerical/Skilled                                  |                          |      |                                      |       |          |         |               |
|  |                          | Semi/Unskilled                                    |                          |      |                                      |       |          |         |               |
|  |                          | Bay Area  |                          |      |                                      |       |          |         | 39.9%         |
|  |                          | Co. Wide MSA:                                     |                          |      | # Employees-Co. Wide:                |       |          |         | Bay Area:     |

WM=White Male, WW=White Women, EM=Ethnic Minority (Ethnicities: B=Black, H=Hispanic, A/PI=Asian/Pacific Islander, and AI/AN=American Indian/Alaskan Native)



AGENDA NO.  
MEETING DATE

4.  
December 10, 2013

TITLE **VERSAILLES INTERCEPTOR REHABILITATION**

☒ MOTION ☐ RESOLUTION ☐ ORDINANCE

### RECOMMENDED ACTION

Award a contract to the lowest responsive/responsible bidder, Insituform Technologies, LLC, in the amount of \$1,248,760 for construction of the Versailles Interceptor Rehabilitation under Specification SD 354.

### SUMMARY

This construction contract consists of rehabilitation of the Versailles Interceptor in the city of Alameda. The work includes rehabilitation of approximately 3,200 feet of pipe and 14 manholes in the wastewater interceptor system to restore structural integrity and significantly extend the remaining useful life of this segment. Rehabilitation of this critical infrastructure will help ensure long-term, reliable operation of the Alameda interceptor and continued compliance with Statewide General Waste Discharge Requirements (SGWDR), which prohibit sanitary sewer overflows.

### DISCUSSION

In 2008, the District initiated an updated study of its wastewater interceptor system via the Interceptor Damage Assessment Project. This effort included an assessment of the physical condition of the piping and manholes and an evaluation of the remaining useful life of these facilities. Several significant defects were identified in the Versailles Interceptor, including accelerated corrosion of the original ductile iron pipe, deterioration of the epoxy coating protecting the pipe, and infiltration in the manholes due to sulfide corrosion. The Versailles Interceptor was originally constructed around 27 years ago, and rehabilitation is required to prevent further corrosion damage. This contract includes installation of approximately 3,200 feet of 24-inch, cured-in-place pipe lining and the resurfacing of 14 manholes.

### BID RESULTS

Bid documents were issued to twenty-eight (28) resource organizations and fifteen (15) prospective bidders. Six (6) bids were received, ranging from \$1,248,760 to \$2,205,000. The bid summary is attached. The Engineer's estimate for this work is \$1,564,000. The lowest responsive/responsible bidder, Insituform Technologies, LLC, is licensed to perform work in California, and is not on the Department

|                                     |   |  |
|-------------------------------------|---|--|
| Funds Available: FY14               |   | Budget Code: WWC/927/7999/2008984/5561 |
| DEPARTMENT SUBMITTING<br>WASTEWATER | DEPARTMENT MANAGER or DIRECTOR<br><br>Bennett K. Horenstein | APPROVED<br><br>General Manager        |

Contact the Office of the District Secretary with questions about completing or submitting this form.

of Industrial Relations debarment list. In the past five years, Insituform Technologies, LLC has not filed a Government Code Claim against the District, and has not initiated any litigation against the District.

### **CONTRACT EQUITY PROGRAM EFFORTS**

The completed P-035 and P-061 forms are attached.

### **FISCAL IMPACT**

The FY14 capital budget includes sufficient funds for construction of the Versailles Interceptor Rehabilitation.

### **PREVAILING WAGE**

Work under this contract is subject to the payment of current prevailing wages according to determinations for each craft as established by the Director of Industrial Relations of the State of California.

### **UNION NOTIFICATION**

Local 444 was notified of this contract on August 16, 2013. Local 444 did not raise any specific issues related to this contract.

### **CEQA/ENVIRONMENTAL COMPLIANCE**

A Notice of Exemption was filed with the Alameda County Clerk on August 29, 2013.

### **ALTERNATIVES**

**Reject all bids and immediately rebid the work.** This alternative is not recommended because the bids are reasonable for the scope of work involved and rebidding the work would result in a significant delay and increased project costs.

**Reject all bids and do not perform the work.** This alternative is not recommended because the interceptor system is in need of rehabilitation due to significant corrosion of the pipelines and manholes. Performing this work will ensure the reliability of the system and continued compliance with the SGWDR.

### **Attachments**

**EAST BAY MUNICIPAL UTILITY DISTRICT**  
**SPECIAL DISTRICT NO. 1**  
**SPECIFICATION SD-354**  
**VERSAILLES INTERCEPTOR REHABILITATION**

**November 6, 2013**

**BID SUMMARY**

| <b>BIDDER</b> |                                       | <b>TOTAL BID</b>                 |
|---------------|---------------------------------------|----------------------------------|
| 1.            | <b>Insituform Technologies, LLC*</b>  | <b>\$1,248,760</b>               |
| 2.            | RePipe California, LP                 | \$1,286,967.70                   |
| 3.            | SAK Construction, LLC                 | \$1,361,100                      |
| 4.            | Michels Pipeline Construction         | \$1,498,489                      |
| 5.            | <b>California Trenchless, Inc. ++</b> | <b>\$1,712,000 (\$1,662,000)</b> |
| 6.            | Andes Construction, Inc.              | \$2,205,000                      |

**\* Apparent Low Bidder**

**++ Effective SB Bid (*in parenthesis*), 5%, not to exceed \$50,000**

|   |    |
|---|----|
| Number of Proposals sent to Contractor    | 15 |
| Number of Proposals sent to Resource Orgs | 28 |
| Number of Proposals sent to MBEs          | 4  |
| Number of Proposals sent to WBEs          | 1  |
| Number of Proposals sent to SBs           | 3  |
| Number of bids received                   | 6  |

|                      |             |
|----------------------|-------------|
| Engineer's Estimate: | \$1,564,000 |
|----------------------|-------------|







AGENDA NO.  
MEETING DATE

5.

December 10, 2013

TITLE ORINDA WATER TREATMENT PLANT CONTROL SYSTEM IMPROVEMENTS

☒ MOTION \_\_\_\_\_ ☐ RESOLUTION \_\_\_\_\_ ☐ ORDINANCE \_\_\_\_\_

### RECOMMENDED ACTION

Award a sole source contract to Honeywell, Inc. in the total amount after the addition of taxes of \$956,000 for 14 Experion Distributed Control System (Experion DCS) Honeywell C200 controllers and associated hardware for the Orinda Water Treatment Plant (WTP) Control System Improvements.

### SUMMARY

Work includes the purchase and delivery of 14 Honeywell C200 controllers and associated hardware.

### DISCUSSION

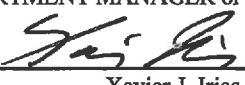

The existing control system at the Orinda WTP was installed in the 1980s and contains hardware and software components that are near the end of their useful lives. Because of the age of the existing control system, hardware and technical support is becoming increasingly difficult to obtain resulting in lower reliability, higher repair costs and longer repair time. The purchase of the Honeywell C200 controllers and associated hardware will permit control system improvements to be made. The controllers will be installed by District forces.

### VENDOR SELECTION

This is a sole source purchase to ensure compatibility with the control system software and hardware already purchased for an earlier phase of this work and to ensure compatibility with the existing control system at Walnut Creek and Sobrante WTPs.

### CONTRACT EQUITY PROGRAM EFFORTS

The completed P-035 and P-061 forms are attached.

|   |  |  |
|---|--|--|
| Funds Available: FY14-15; CIP#000437; Page 50             |  | Budget Code: WSC\557\7999\2007706:41   |
| DEPARTMENT SUBMITTING<br><br>Engineering and Construction | DEPARTMENT MANAGER or DIRECTOR<br><br><br>Xavier J. Irias | APPROVED<br><br><br>General Manager |

Contact the Office of the District Secretary with questions about completing or submitting this form.

## **FISCAL IMPACT**

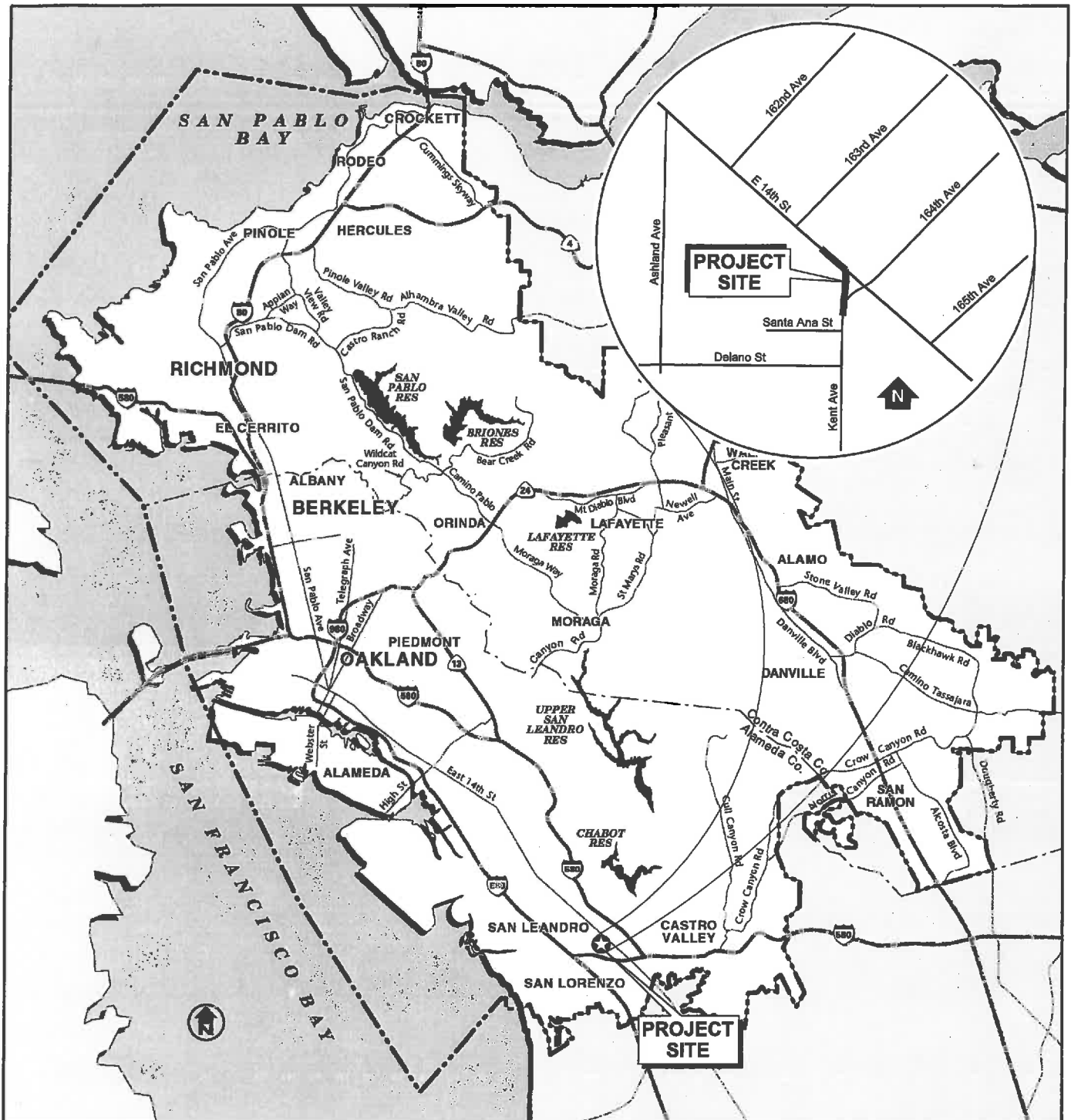
Funds are available for this purchase in the FY14-15 Capital Improvement Program for Treatment Plant Upgrades under the Water Treatment Upgrade Program.

## **ALTERNATIVES**

**Do not purchase equipment.** This alternative is not recommended because the current system is unreliable and difficult to maintain.

**Solicit for competitive bid.** This alternative is not recommended because the District saves costs by standardizing control systems to avoid duplicate programming, retraining staff, and stocking parts for multiple control systems. By not sole sourcing this contract, the District would incur significant additional design and maintenance costs.

Attachments: Contract Equity Program Summary (P-035)  
Affirmative Action Summary (P-061)



## PROJECT SITE LOCATION MAP

NOT TO SCALE


### EAST BAY MUNICIPAL UTILITY DISTRICT

**MISCELLANEOUS AGREEMENT TO  
RELOCATE WATER MAINS TO  
ACCOMMODATE CONSTRUCTION OF THE  
ASHLAND FAMILY HOUSING PROJECT**



## CONTRACT EQUITY PROGRAM SUMMARY (P-035)

**This summary contains information on the contractor's workforce and contract equity participation. (Completed by District)**

|  |   |   |                           |   |                    |                        |                   |                  |                     |                  |         |             |    |      |                   |     |      |
|--|---|---|---------------------------|---|--------------------|------------------------|-------------------|------------------|---------------------|------------------|---------|-------------|----|------|-------------------|-----|------|
| TITLE<br><b>Materials and Supplies</b><br>Orinda Water Treatment Plant Control System Improvements   |   | DATE:<br>November 27, 2013  |                           |   |                    |                        |                   |                  |                     |                  |         |             |    |      |                   |     |      |
| CONTRACTOR:<br><br>Honeywell Process Solutions<br>Phoenix, AZ  |   | <b>PERCENTAGE OF CONTRACT DOLLARS</b><br><table border="1"> <tr> <td>Sole Source</td> <td>Availability Group</td> <td>Contracting Objectives</td> <td>Participation</td> </tr> <tr> <td rowspan="3">FIRM'S OWNERSHIP</td> <td>White Men</td> <td>25%</td> <td>0.0%</td> </tr> <tr> <td>White Women</td> <td>6%</td> <td>0.0%</td> </tr> <tr> <td>Ethnic Minorities</td> <td>25%</td> <td>0.0%</td> </tr> </table> |                           | Sole Source   | Availability Group | Contracting Objectives | Participation     | FIRM'S OWNERSHIP | White Men           | 25%              | 0.0%    | White Women | 6% | 0.0% | Ethnic Minorities | 25% | 0.0% |
| Sole Source  | Availability Group  | Contracting Objectives  | Participation             |   |                    |                        |                   |                  |                     |                  |         |             |    |      |                   |     |      |
| FIRM'S OWNERSHIP   | White Men   | 25%   | 0.0%                      |   |                    |                        |                   |                  |                     |                  |         |             |    |      |                   |     |      |
|  | White Women   | 6%  | 0.0%                      |   |                    |                        |                   |                  |                     |                  |         |             |    |      |                   |     |      |
|  | Ethnic Minorities   | 25%   | 0.0%                      |   |                    |                        |                   |                  |                     |                  |         |             |    |      |                   |     |      |
| BID/PROPOSER'S PRICE:<br>\$956,000   | FIRM'S OWNERSHIP<br>Ethnicity: Publicly Held Corp.<br>Gender: |   |                           |   |                    |                        |                   |                  |                     |                  |         |             |    |      |                   |     |      |
| <b>CONTRACT EQUITY PARTICIPATION</b>   |   |   |                           |   |                    |                        |                   |                  |                     |                  |         |             |    |      |                   |     |      |
| COMPANY NAME   | ESTIMATED AMOUNT  | ETHNICITY   | CONTRACTING PARTICIPATION |   |                    |                        |                   |                  |                     |                  |         |             |    |      |                   |     |      |
|  |   |   | GENDER<br>M W             |   | White-Men          | White-Women            | Ethnic Minorities | Unclassified     | Publicly Held Corp. | Gov't/Non Profit | Foreign |             |    |      |                   |     |      |
| PRIME:<br>Honeywell Process Solutions  | \$956,000   | Publicly Held Corp.   |                           |   | ---                | ---                    | ---               | ---              | 100.0%              | ---              | ---     |             |    |      |                   |     |      |
| SUBS:<br>None  |   |   |                           |   | ---                | ---                    | ---               | ---              | ---                 | ---              | ---     |             |    |      |                   |     |      |
|  |   |   |                           |   | ---                | ---                    | ---               | ---              | ---                 | ---              | ---     |             |    |      |                   |     |      |
|  |   |   |                           |   | ---                | ---                    | ---               | ---              | ---                 | ---              | ---     |             |    |      |                   |     |      |
|  |   |   |                           |   | ---                | ---                    | ---               | ---              | ---                 | ---              | ---     |             |    |      |                   |     |      |
|  |   |   |                           |   | ---                | ---                    | ---               | ---              | ---                 | ---              | ---     |             |    |      |                   |     |      |
|  |   |   |                           |   | ---                | ---                    | ---               | ---              | ---                 | ---              | ---     |             |    |      |                   |     |      |
|  |   |   |                           |   | ---                | ---                    | ---               | ---              | ---                 | ---              | ---     |             |    |      |                   |     |      |
| TOTAL  | \$956,000   |   |                           |   | 0.0%               | 0.0%                   | 0.0%              | 0.0%             | 100.0%              | 0.0%             | 0.0%    |             |    |      |                   |     |      |
| <b>CONTRACTOR'S WORKFORCES PROFILE (From P-025 Form)</b>   |   |   |                           |   |                    |                        |                   |                  |                     |                  |         |             |    |      |                   |     |      |
|  | White Men   | White Women   | Ethnic Minorities         | Total Employees   |                    |                        |                   |                  |                     |                  |         |             |    |      |                   |     |      |
| No. of Employees:  | 27,538  | 8,023   | 9,275                     | 44,836  |                    |                        |                   |                  |                     |                  |         |             |    |      |                   |     |      |
| Percent of Total Employees:  | 61.4%   | 17.9%   | 20.7%                     |   |                    |                        |                   |                  |                     |                  |         |             |    |      |                   |     |      |
| MSA Labor Market %:  | 39.0%   | 33.7%   | 27.2%                     |   |                    |                        |                   |                  |                     |                  |         |             |    |      |                   |     |      |
| MSA Labor Market Location:   | USA   |   |                           |   |                    |                        |                   |                  |                     |                  |         |             |    |      |                   |     |      |
| <b>COMMENTS</b>  |   |   |                           |   |                    |                        |                   |                  |                     |                  |         |             |    |      |                   |     |      |
| Contract Equity Participation - Zero Contract Equity participation since firm is a publicly held corporation and no subcontract opportunities exist. |   |   |                           |   |                    |                        |                   |                  |                     |                  |         |             |    |      |                   |     |      |
| Workforce Profile & Statement of Nondiscrimination Submitted   |   | Good Faith Outreach Efforts Requirement Satisfied   |                           | Award Approval Recommended  |                    |                        |                   |                  |                     |                  |         |             |    |      |                   |     |      |
| NA   |   | NA  |                           |  |                    |                        |                   |                  |                     |                  |         |             |    |      |                   |     |      |



# AFFIRMATIVE ACTION SUMMARY (P-061)

(Completed by District)

This summarizes information provided by the contractor(s)' P-025 Form regarding their workforce.

|   |                          |   |       |       |                                      |       |            |       |
|---|--------------------------|---|-------|-------|--------------------------------------|-------|------------|-------|
| Title: <b>Orinda Water Treatment Plant Control System Improvements</b>  |                          | Ethnic Minority Percentages From U.S. Census Data |       |       |                                      |       |            |       |
|   |                          |   | B     | H     | A/PI                                 | AI/AN | TOTAL      |       |
|   |                          | National  | 10.5  | 10.7  | 3.7                                  | 0.7   | 27.3       |       |
|   |                          | 9 Bay Area Counties                               | 5.5   | 16.2  | 14.2                                 | 0.4   | 39.9       |       |
|   |                          | Alameda/CC Counties                               | 10.7  | 15.6  | 15.4                                 | 0.5   | 46.2       |       |
| Materials and Supplies  | DATE: 11/27/2013         | Number of Ethnic Minority Employees               |       |       |                                      |       |            |       |
| R=Recommnd<br>P=Prime<br>S=Sub  | Composition of Ownership |   |       |       |                                      |       |            |       |
| Company Name, Owner/Contact Person, Address, and Phone Number   |                          | B   | H     | A/PI  | AI/AN                                | TOTAL | PERCENT    |       |
| RP  | Publicly Held Corp.      | Company Wide                                      | 3,157 | 3,140 | 2,766                                | 212   | 9,275      | 20.7% |
| Honeywell Process Solutions<br>David Cote<br>2500 West Union Hills Drive<br>Phoenix, AZ 85027<br><br>925-798-3658 |                          | Manager/Prof                                      | 1,315 | 1,474 | 2,104                                | 117   | 5,010      | 18.3% |
|   |                          | Technical/Sales                                   | 502   | 576   | 338                                  | 39    | 1,455      | 19.4% |
|   |                          | Clerical/Skilled                                  | 1,274 | 1,049 | 313                                  | 55    | 2,691      | 28.3% |
|   |                          | Semi/Unskilled                                    | 66    | 41    | 11                                   | 1     | 119        | 31.6% |
|   |                          | Bay Area  | -     | -     | -                                    | -     | -          | NA    |
|   |                          | AA Plan on File:                                  | NA    |       | Date of last contract with District: |       | 10/15/2009 |       |
|   |                          | Co. Wide MSA:                                     | USA   |       | # Employees-Co. Wide:                |       | 44,836     |       |
|   |                          |   |       |       | Bay Area:                            |       | 0          |       |
|   |                          | Company Wide                                      |       |       |                                      |       |            |       |
|   |                          | Manager/Prof                                      |       |       |                                      |       |            |       |
|   |                          | Technical/Sales                                   |       |       |                                      |       |            |       |
|   |                          | Clerical/Skilled                                  |       |       |                                      |       |            |       |
|   |                          | Semi/Unskilled                                    |       |       |                                      |       |            |       |
|   |                          | Bay Area  |       |       |                                      |       | 39.9%      |       |
|   |                          | Co. Wide MSA:                                     |       |       | # Employees-Co. Wide:                |       | Bay Area:  |       |
|   |                          | Company Wide                                      |       |       |                                      |       |            |       |
|   |                          | Manager/Prof                                      |       |       |                                      |       |            |       |
|   |                          | Technical/Sales                                   |       |       |                                      |       |            |       |
|   |                          | Clerical/Skilled                                  |       |       |                                      |       |            |       |
|   |                          | Semi/Unskilled                                    |       |       |                                      |       |            |       |
|   |                          | Bay Area  |       |       |                                      |       | 39.9%      |       |
|   |                          | Co. Wide MSA:                                     |       |       | # Employees-Co. Wide:                |       | Bay Area:  |       |
|   |                          | Company Wide                                      |       |       |                                      |       |            |       |
|   |                          | Manager/Prof                                      |       |       |                                      |       |            |       |
|   |                          | Technical/Sales                                   |       |       |                                      |       |            |       |
|   |                          | Clerical/Skilled                                  |       |       |                                      |       |            |       |
|   |                          | Semi/Unskilled                                    |       |       |                                      |       |            |       |
|   |                          | Bay Area  |       |       |                                      |       | 39.9%      |       |
|   |                          | Co. Wide MSA:                                     |       |       | # Employees-Co. Wide:                |       | Bay Area:  |       |
|   |                          | Company Wide                                      |       |       |                                      |       |            |       |
|   |                          | Manager/Prof                                      |       |       |                                      |       |            |       |
|   |                          | Technical/Sales                                   |       |       |                                      |       |            |       |
|   |                          | Clerical/Skilled                                  |       |       |                                      |       |            |       |
|   |                          | Semi/Unskilled                                    |       |       |                                      |       |            |       |
|   |                          | Bay Area  |       |       |                                      |       | 39.9%      |       |
|   |                          | Co. Wide MSA:                                     |       |       | # Employees-Co. Wide:                |       | Bay Area:  |       |
|   |                          | Company Wide                                      |       |       |                                      |       |            |       |
|   |                          | Manager/Prof                                      |       |       |                                      |       |            |       |
|   |                          | Technical/Sales                                   |       |       |                                      |       |            |       |
|   |                          | Clerical/Skilled                                  |       |       |                                      |       |            |       |
|   |                          | Semi/Unskilled                                    |       |       |                                      |       |            |       |
|   |                          | Bay Area  |       |       |                                      |       | 39.9%      |       |
|   |                          | Co. Wide MSA:                                     |       |       | # Employees-Co. Wide:                |       | Bay Area:  |       |

WM=White Male, WW=White Women, EM=Ethnic Minority (Ethnicities: B=Black, H=Hispanic, A/PI=Asian/Pacific Islander, and AI/AN=American Indian/Alaskan Native)



AGENDA NO.  
MEETING DATE

6.

December 10, 2013

**TITLE      AGREEMENT WITH ASHLAND FAMILY HOUSING LIMITED PARTNERSHIP –  
EAST 14<sup>TH</sup> STREET AND KENT AVENUE WATER MAIN RELOCATIONS**

☒ MOTION \_\_\_\_\_ ☐ RESOLUTION \_\_\_\_\_ ☐ ORDINANCE \_\_\_\_\_

**RECOMMENDED ACTION**



Authorize an agreement with the Ashland Family Housing Limited Partnership (Ashland Partnership) to relocate approximately 340 feet of eight-inch diameter pipeline to accommodate street improvements and construction of the Ashland Family Housing Project, Ashland Township in Alameda County. Under the terms of the agreement, Ashland Partnership will reimburse the District fifty percent of the estimated \$202,000 total project cost.

**SUMMARY**

Ashland Partnership is constructing a new multi-family housing project at 16375 East 14<sup>th</sup> Street, in the unincorporated community of Ashland in Alameda County. (See attached location map). The District's existing eight-inch mains, located on East 14<sup>th</sup> Street and Kent Avenue, are in conflict with the proposed footprint of the Ashland Partnership project. The new mains will be relocated by District forces to adjacent public rights-of-way, and the existing main will be abandoned. Actual costs will be tracked during project development and installation and evenly split upon project completion between the District and the Ashland Partnership.

**DISCUSSION**

Ashland Partnership submitted a development plan to the District on June 11, 2013 that called for relocation of water mains in conflict with the Ashland Partnership project. Fiscal responsibility for the District's water main relocation was not immediately clear. Alameda County is vacating a portion of Kent Avenue where the existing main is located, and re-aligning the street as part of a roadway improvement project. When street improvements are made, the District is typically obligated to fund the relocation of its pipelines that are in conflict. However, since this particular improvement project also benefits the Ashland Partnership, which is a private entity, the District would ordinarily be reimbursed by the private entity for the costs to relocate its facilities.

|   |  |  |
|---|--|--|
| Funds Available: FY14-15; CIP 1006298; Page 22            |  | Budget Code: WSC\570\7999\5561   |
| DEPARTMENT SUBMITTING<br><br>Engineering and Construction | DEPARTMENT MANAGER or DIRECTOR<br><br><br>Xavier J. Irias | APPROVED<br><br><br>General Manager |

Contact the Office of the District Secretary with questions about completing or submitting this form.

After extensive research and negotiations among the District, the Ashland Partnership, and Alameda County, the parties decided to enter into a cost sharing agreement to fund the water main relocation work. The agreement requires the Ashland Partnership and the District to each pay fifty percent of the total project costs.

### **FISCAL IMPACT**

This item is included in the planned FY14-15 Capital Improvement Program for the Pipelines/Regulators Program.

### **UNION NOTIFICATION**

District forces will complete the work and therefore Local 444 was not notified.

### **CEQA/ENVIRONMENTAL COMPLIANCE**

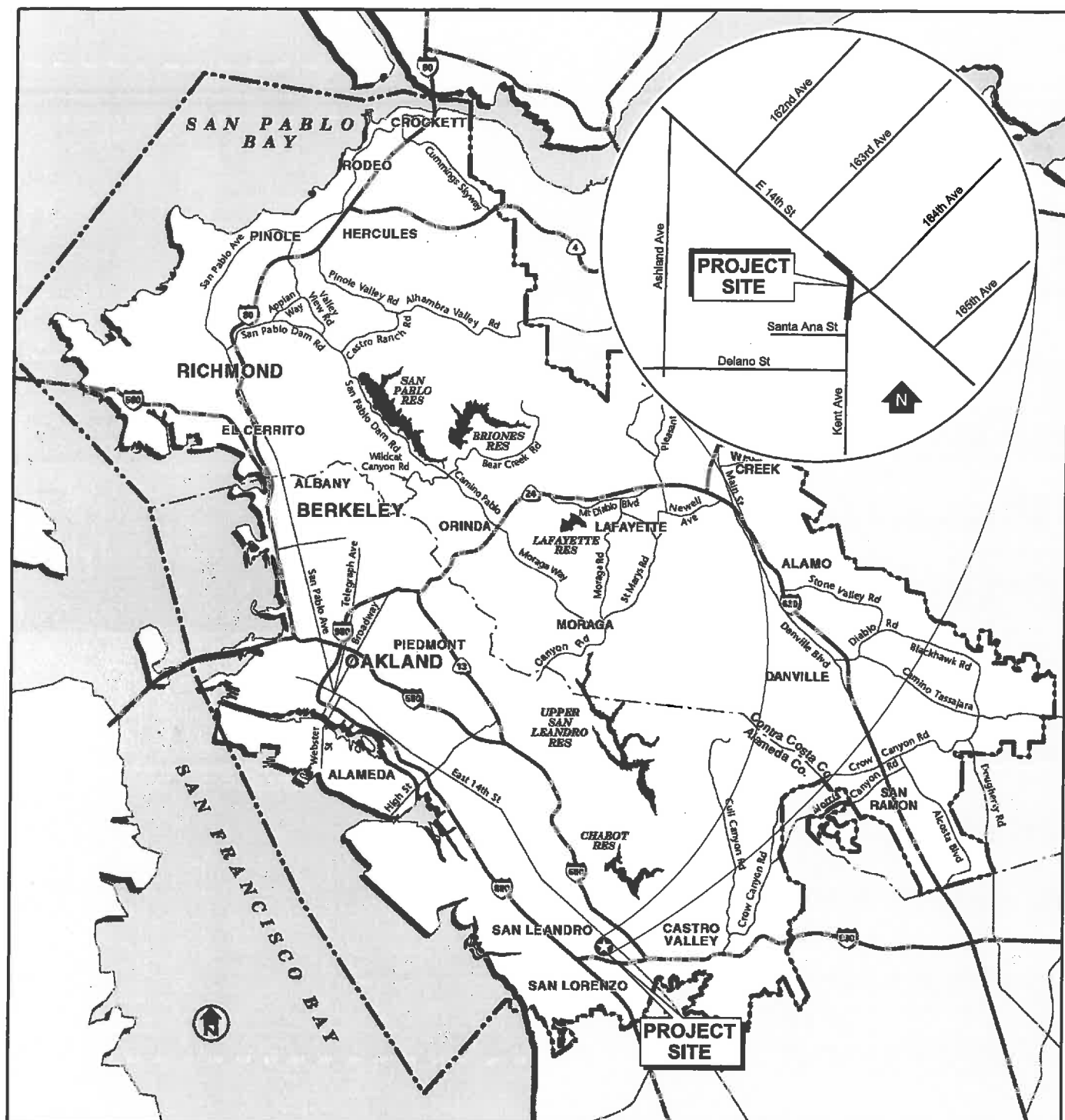
Per the Public Resources Code, Section 21080.21, this project is exempt from the California Environmental Quality Act since the work performed under this contract is the routine relocation of pipelines with a length less than one mile.

### **ALTERNATIVES**

**Do not relocate the pipeline.** This alternative is not recommended because the District is required to remove its pipelines to accommodate street improvement projects. Since this pipeline is an essential part of the potable water distribution system, it is not possible to abandon the pipeline.

Attachment: Location Map





## PROJECT SITE LOCATION MAP

NOT TO SCALE

### EAST BAY MUNICIPAL UTILITY DISTRICT

**MISCELLANEOUS AGREEMENT TO  
RELOCATE WATER MAINS TO  
ACCOMMODATE CONSTRUCTION OF THE  
ASHLAND FAMILY HOUSING PROJECT**





AGENDA NO. 7.  
MEETING DATE December 10, 2013

TITLE RECOLOGY FOOD WASTE PRE-PROCESSING PILOT PROJECT CONTRACT AMENDMENT

☒ MOTION \_\_\_\_\_ ☐ RESOLUTION \_\_\_\_\_ ☐ ORDINANCE \_\_\_\_\_

### RECOMMENDED ACTION



Consider the Addendum to the Environmental Impact Report for the Main Wastewater Treatment Plant (MWWTP) Land Use Master Plan and authorize an amendment to the existing Organic Material Processing and Feedstock Digestion Agreement with Recology, Inc. (Recology) for a 30-month pilot project for Recology to deliver and pre-process food waste and other organics-rich materials for digestion and renewable energy production by the District at the MWWTP.

### SUMMARY

The Resource Recovery Program makes beneficial use of processing capacity at the MWWTP through the acceptance of high strength wastes, such as food wastes, which can be digested to produce biogas for onsite renewable energy production. The District and Recology have been working on processing and digestion of food waste organics since 2004. In 2009 the District entered into a Request for Interest (RFI) process to identify parties interested in leasing District property to construct and operate a pre-processing facility to provide food waste for District digestion. The RFI process resulted in the selection of Recology by the District to pursue a partnership for a regional facility to process and digest food waste for creation of renewable energy. In 2011, the parties signed a ten-year Processing and Digestion Agreement and an associated lease of District land at the MWWTP ("2011 Agreement"). The parties continue to pursue efforts to develop a full-scale project. In the meantime, Recology and District staff have developed a smaller-scale "pilot project" that would be operated at the MWWTP while the full-scale project is pending. This project was discussed at the October 22, 2013 Sustainability/Energy Committee.

### DISCUSSION

To facilitate the pilot project, the parties have developed an amendment to the 2011 Agreement ("Pilot Project Contract Amendment"). Recology must construct a pre-processing facility by December 1, 2014 on a subset of the land leased to Recology in the 2011 Agreement. The pilot project may last up to 30 months from start of construction, or until June 1, 2017, whichever is earlier. During the period of operation, Recology would deliver and pre-process up to 99.9 tons per day (tpd), the maximum allowed

|   |  |  |
|---|--|--|
| Funds Available FY:                     |  | Budget Code: WWO/WAS/943/1003776   |
| DEPARTMENT SUBMITTING<br><br>WASTEWATER | DEPARTMENT MANAGER or DIRECTOR<br><br><br>Bennett K. Horenstein | APPROVED<br><br><br>General Manager |

Contact the Office of the District Secretary with questions about completing or submitting this form.

under the pilot's Registration Permit, of food waste organics and provide a feedstock suitable for the District's digesters. The District would receive tip fees and all energy value resulting from the digested feedstock. The parties will use the pilot project to analyze equipment performance and to identify an efficient and cost-effective method for creating suitable feedstock from organics-rich materials.

The Pilot Project Contract Amendment contains the following key provisions:

- Recology to:
  - Construct and operate a food waste organics pre-processing facility on specified District land at the MWWTP;
  - Pay the District \$37 per ton delivered for processing and digestion;
  - Deliver between 25 tpd and 99.9 tpd of food waste organics to the District that meets identified quality specifications;
  - Remove all residual materials associated with Recology-pre-processed material;
- District to:
  - Process up to 99.9 tpd of food waste organics from Recology;
  - Provide land, power, non-potable process water, tanks and associated piping.

## **FISCAL IMPACT**

The Pilot Project Contract Amendment will provide the District with between \$240,000 and \$960,000 annually in tipping fees based on deliveries of between 25 tpd and 99.9 tpd of material, 5 days per week. It will also provide annual energy and Renewable Energy Credit revenues associated with production of between 0.25MW and 1 MW of power 5 days per week valued between \$109,000 and \$437,000. The District will incur capital and incremental operations and maintenance costs for digestion, dewatering, biosolids disposal, and utilities.

## **CEQA/ENVIRONMENTAL COMPLIANCE**

On June 28, 2011, the Board certified the Final Environmental Impact Report for the MWWTP Land Use Master Plan ("FEIR"). The FEIR analyzed the impacts of the planned full-scale pre-processing facility, which would be located on the same site. The District has prepared an Addendum to the FEIR ("FEIR Addendum") in compliance with the Public Resources Code and CEQA Guidelines. The FEIR Addendum analyzes the impacts of the pilot project and concludes, based on substantial evidence, that the pilot project will not have a significant environmental effect not discussed in the FEIR nor result in the substantial increase in the severity of significant effects identified in the FEIR. Board members received copies of the 2011 EIR and the FEIR Addendum under separate cover in their December 5 packets for consideration prior to making this decision on the pilot project.

## **UNION NOTIFICATION**

The type of work to be conducted under the Pilot Project Contract Amendment, collection, hauling, and grinding of food wastes, is not performed by District forces.

## **ALTERNATIVES**

**Delay action.** This alternative is not recommended because the District has been anticipating on-site food waste processing since 2011 and Recology is now ready to begin processing with the pilot. As Recology has other options for recycling or disposal of the food waste materials, unnecessary delay could result in loss of this opportunity for the District.

**Do not enter into an agreement.** This alternative is not recommended because the proposed pilot will allow for processing of new sources of food waste organics by the District and consequent tipping fees and energy production from this material. In addition, the pilot will advance the District's experience with larger scale food waste production towards the full-scale project. The Pilot Project Contract Amendment will provide the District with benefits, including tipping revenues and renewable energy generation, which are of value to the District.





AGENDA NO.  
MEETING DATE

8.

December 10, 2013

**TITLE** MWWTP WEST END PROPERTY ASBESTOS AND LEAD ABATEMENT

☒ MOTION \_\_\_\_\_ ☐ RESOLUTION \_\_\_\_\_ ☐ ORDINANCE \_\_\_\_\_

### RECOMMENDED ACTION

Authorize an agreement with Bayview Environmental, Inc., in an amount not to exceed \$134,000 for asbestos and lead abatement work at the Main Wastewater Treatment Plant (MWWTP) West End Property (WEP).

### SUMMARY



In 2007, the District acquired the 15.9-acre West End Property (WEP) (former U.S. Army Reserve Center), which is adjacent to the MWWTP. This property has numerous large and small structures that are currently abandoned and contain hazardous materials (i.e., lead, asbestos). Eight of these structures are scheduled for demolition in spring 2014, to increase land area availability for future land-lease tenants. To expedite the demolition work, the removal of asbestos- and lead-containing materials is being accelerated prior to demolition contract award.

### DISCUSSION

The WEP includes eleven buildings that contain hazardous materials, specifically lead and asbestos, that make them unsuitable for use. The asbestos resides in the drywall and roofing materials, while lead is present in the interior and exterior surface paint. These buildings are mostly abandoned and represent a significant vandalism risk, safety issue, maintenance burden, and hindrance to increased lease revenue. The District has agreed to demolish eight of these structures on behalf of Viridis Fuels, Inc. (Viridis), to facilitate construction of a large-scale biodiesel production facility on the WEP. Viridis has agreed to pay for building demolition costs; however, the District has agreed to pay for removal of hazardous materials. Staff will be recommending award of the construction contract to demolish the buildings in January 2014.

### SERVICE PROVIDER SELECTION

Request for proposals were sent to four firms that are qualified to perform this type of work. The District received only one proposal from Bayview Environmental, Inc. Staff reviewed the proposal and checked

|   |  |  |
|---|--|--|
| Funds Available: FY14                   |  | Budget Code: WWC/927/7999/2008750/5311   |
| DEPARTMENT SUBMITTING<br><br>Wastewater | DEPARTMENT MANAGER or DIRECTOR<br><br><br>Bennett K. Horenstein | APPROVED<br><br><br>General Manager |

Contact the Office of the District Secretary with questions about completing or submitting this form.

the firm's qualifications and determined that Bayview Environmental, Inc. is qualified to perform this work. The proposed cost is reasonable and below the engineer's estimate of \$150,000.

#### **CONTRACT EQUITY PROGRAM EFFORTS**

The completed P-035 and P-061 forms are attached.

#### **FISCAL IMPACT**

Funds are available for this work in the FY14 budget under the West End Property Development Project.

#### **UNION NOTIFICATION**

The unions were not notified of this contract because this type of hazardous material abatement work is not performed by District forces.

#### **ALTERNATIVES**

**Reject the proposal and rebid the work.** This alternative is not recommended, as this will delay the demolition of the buildings on the WEP, which will result in lost land-lease revenue.

**Reject the proposal, and do not perform the work.** This alternative is not recommended, as the buildings represent a vandalism risk, safety issue, maintenance burden, and hindrance to increasing land-lease revenue.

#### **Attachments**





# CONTRACT EQUITY PROGRAM SUMMARY (P-035)

This summary contains information on the contractor's workforce and contract equity participation. (Completed by District)

|  |  |                         |                  |                  |  |   |                    |                               |                     |                            |                         |                |
|--|--|-------------------------|------------------|------------------|--|---|--------------------|-------------------------------|---------------------|----------------------------|-------------------------|----------------|
| <b>TITLE</b><br><b>General Services Agreement</b><br><b>Main Wastewater Treatment Plan (MWWTP) West End Property Asbestos and Lead Abatement</b> |  |                         |                  |                  |  | <b>DATE:</b><br><b>December 2, 2013</b> |                    |                               |                     |                            |                         |                |
| <b>CONTRACTOR:</b><br><b>Bayview Environmental, Inc.</b><br><b>Oakland, CA</b>   |  |                         |                  |                  |  | <b>PERCENTAGE OF CONTRACT DOLLARS</b>   |                    |                               |                     |                            |                         |                |
| <b>Sole Bidder</b>   |  |                         |                  |                  |  | <b>Availability Group</b>               |                    | <b>Contracting Objectives</b> |                     | <b>Participation</b>       |                         |                |
| <b>BID/PROPOSER'S PRICE:</b>   |  | <b>FIRM'S OWNERSHIP</b> |                  | <b>White Men</b> |  | <b>25%</b>                              |                    | <b>100.0%</b>                 |                     |                            |                         |                |
|  |  | <b>Ethnicity</b>        |                  | <b>Gender</b>    |  | <b>White Women</b>                      |                    | <b>6%</b>                     |                     | <b>0.0%</b>                |                         |                |
| <b>\$134,000</b>   |  | <b>White</b>            |                  | <b>Men</b>       |  | <b>Ethnic Minorities</b>                |                    | <b>25%</b>                    |                     | <b>0.0%</b>                |                         |                |
| <b>CONTRACT EQUITY PARTICIPATION</b>   |  |                         |                  |                  |  |   |                    |                               |                     |                            |                         |                |
| <b>COMPANY NAME</b>  |  | <b>ESTIMATED AMOUNT</b> | <b>ETHNICITY</b> | <b>GENDER</b>    |  | <b>CONTRACTING PARTICIPATION</b>        |                    |                               |                     |                            |                         |                |
|  |  |                         |                  | <b>M W</b>       |  | <b>White-Men</b>                        | <b>White-Women</b> | <b>Ethnic Minorities</b>      | <b>Unclassified</b> | <b>Publicly Held Corp.</b> | <b>Gov't/Non Profit</b> | <b>Foreign</b> |
| <b>PRIME:</b><br><b>Bayview Environmental, Inc.</b>  |  | <b>\$134,000</b>        | <b>White</b>     | <b>X</b>         |  | <b>100.0%</b>                           | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
| <b>SUBS:</b><br><b>None</b>  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              | <b>---</b>         | <b>---</b>                    | <b>---</b>          | <b>---</b>                 | <b>---</b>              | <b>---</b>     |
|  |  |                         |                  |                  |  | <b>---</b>                              |                    |                               |                     |                            |                         |                |



# AFFIRMATIVE ACTION SUMMARY (P-061)

(Completed by District)

This summarizes information provided by the contractor(s)' P-025 Form regarding their workforce.

|  |                          |   |                                     |      |                                      |       |         |        |
|--|--------------------------|---|-------------------------------------|------|--------------------------------------|-------|---------|--------|
| Title: <b>Main Wastewater Treatment Plan (MWWTP)<br/>West End Property Asbestos and Lead<br/>Abatement</b>       |                          | Ethnic Minority Percentages From U.S. Census Data |                                     |      |                                      |       |         |        |
|  |                          |   | B                                   | H    | A/PI                                 | AI/AN | TOTAL   |        |
|  |                          | National  | 10.5                                | 10.7 | 3.7                                  | 0.7   | 27.3    |        |
|  |                          | 9 Bay Area Counties                               | 5.5                                 | 16.2 | 14.2                                 | 0.4   | 39.9    |        |
|  |                          | Alameda/CC Counties                               | 10.7                                | 15.6 | 15.4                                 | 0.5   | 46.2    |        |
| General Services Agreement   |                          | DATE:<br>12/2/2013                                | Number of Ethnic Minority Employees |      |                                      |       |         |        |
| R=Recmmd<br>P=Prime<br>S=Sub   | Composition of Ownership |   |                                     |      |                                      |       |         |        |
| Company Name, Owner/Contact Person, Address,<br>and Phone Number   |                          | B   | H                                   | A/PI | AI/AN                                | TOTAL | PERCENT |        |
| RP   | WM                       | Company Wide                                      | -                                   | 175  | 1                                    | -     | 176     | 93.6%  |
| Bayview Environmental, Inc.<br>Michael Christie<br>6925 San Leandro St.<br>Oakland, CA 94621<br><br>510-562-6181 |                          | Manager/Prof                                      | -                                   | 6    | -                                    | -     | 6       | 50.0%  |
|  |                          | Technical/Sales                                   | -                                   | 2    | -                                    | -     | 2       | 40.0%  |
|  |                          | Clerical/Skilled                                  | -                                   | 3    | -                                    | -     | 3       | 50.0%  |
|  |                          | Semi/Unskilled                                    | -                                   | 164  | 1                                    | -     | 165     | 100.0% |
|  |                          | Bay Area  | -                                   | 175  | 1                                    | -     | 176     | 106.7% |
|  |                          | AA Plan on File:                                  | NA                                  |      | Date of last contract with District: |       | NA      |        |
|  |                          | Co. Wide MSA:                                     | 9 Bay Area Counties                 |      | # Employees-Co. Wide:                |       | 188     |        |
|  |                          |   |                                     |      | Bay Area:                            |       | 165     |        |
|  |                          | Company Wide                                      |                                     |      |                                      |       |         |        |
|  |                          | Manager/Prof                                      |                                     |      |                                      |       |         |        |
|  |                          | Technical/Sales                                   |                                     |      |                                      |       |         |        |
|  |                          | Clerical/Skilled                                  |                                     |      |                                      |       |         |        |
|  |                          | Semi/Unskilled                                    |                                     |      |                                      |       |         |        |
|  |                          | Bay Area  |                                     |      |                                      |       | 39.9%   |        |
|  |                          | Co. Wide MSA:                                     | # Employees-Co. Wide:               |      | Bay Area:                            |       |         |        |
|  |                          | Company Wide                                      |                                     |      |                                      |       |         |        |
|  |                          | Manager/Prof                                      |                                     |      |                                      |       |         |        |
|  |                          | Technical/Sales                                   |                                     |      |                                      |       |         |        |
|  |                          | Clerical/Skilled                                  |                                     |      |                                      |       |         |        |
|  |                          | Semi/Unskilled                                    |                                     |      |                                      |       |         |        |
|  |                          | Bay Area  |                                     |      |                                      |       | 39.9%   |        |
|  |                          | Co. Wide MSA:                                     | # Employees-Co. Wide:               |      | Bay Area:                            |       |         |        |
|  |                          | Company Wide                                      |                                     |      |                                      |       |         |        |
|  |                          | Manager/Prof                                      |                                     |      |                                      |       |         |        |
|  |                          | Technical/Sales                                   |                                     |      |                                      |       |         |        |
|  |                          | Clerical/Skilled                                  |                                     |      |                                      |       |         |        |
|  |                          | Semi/Unskilled                                    |                                     |      |                                      |       |         |        |
|  |                          | Bay Area  |                                     |      |                                      |       | 39.9%   |        |
|  |                          | Co. Wide MSA:                                     | # Employees-Co. Wide:               |      | Bay Area:                            |       |         |        |
|  |                          | Company Wide                                      |                                     |      |                                      |       |         |        |
|  |                          | Manager/Prof                                      |                                     |      |                                      |       |         |        |
|  |                          | Technical/Sales                                   |                                     |      |                                      |       |         |        |
|  |                          | Clerical/Skilled                                  |                                     |      |                                      |       |         |        |
|  |                          | Semi/Unskilled                                    |                                     |      |                                      |       |         |        |
|  |                          | Bay Area  |                                     |      |                                      |       | 39.9%   |        |
|  |                          | Co. Wide MSA:                                     | # Employees-Co. Wide:               |      | Bay Area:                            |       |         |        |
|  |                          | Company Wide                                      |                                     |      |                                      |       |         |        |
|  |                          | Manager/Prof                                      |                                     |      |                                      |       |         |        |
|  |                          | Technical/Sales                                   |                                     |      |                                      |       |         |        |
|  |                          | Clerical/Skilled                                  |                                     |      |                                      |       |         |        |
|  |                          | Semi/Unskilled                                    |                                     |      |                                      |       |         |        |
|  |                          | Bay Area  |                                     |      |                                      |       | 39.9%   |        |
|  |                          | Co. Wide MSA:                                     | # Employees-Co. Wide:               |      | Bay Area:                            |       |         |        |

WM=White Male, WW=White Women, EM=Ethnic Minority (Ethnicities: B=Black, H=Hispanic, A/PI=Asian/Pacific Islander, and AI/AN=American Indian/Alaskan Native)

AGENDA NO.  
MEETING DATE

December 10, 2013

TITLE ELECTRONIC BILL PRESENTMENT AND PAYMENT SERVICES☒ MOTION ☐ RESOLUTION ☐ ORDINANCE

## RECOMMENDED ACTION

Authorize an agreement with CheckFree Services Corporation for an estimated annual amount of \$85,000 to provide customers with electronic bill presentment and payment services during the period December 31, 2013 through December 30, 2014, with two 1-year options to renew for a total estimated amount of \$255,000.

## SUMMARY

For the past 13 years, the District's Electronic Bill Presentment and Payment (EBPP) program has provided customers the ability to view and pay their water bills electronically via a third-party vendor's website or distribution network. The vendor, CheckFree Services Corporation, services approximately 48,000 District customers enrolled in the program. From January to November 2013, CheckFree delivered more than 300,000 electronic bills and processed 200,000 payments totaling \$31,000,000 at [www.mycheckfree.com](http://www.mycheckfree.com). They also processed an additional 220,000 water bill payments from both EBPP enrolled and approximately 20,000 non-enrolled District customers totaling \$34,000,000 through online banks and service portals that are part of CheckFree's distribution network. The District pays \$.28 per electronic bill presented and \$.015 per payment received. These costs compare to approximately \$.50 to print and mail a bill, and \$.44 to process a payment received by mail.

## DISCUSSION

In 2000, the District awarded CheckFree a multi-year contract to install and support the EBPP program which included customer enrollment, electronic bill delivery and online payment services. By 2006, over 17,500 customers had enrolled in EBPP. CheckFree was subsequently awarded a sole source contract for continued EBPP services and support while the District replaced and completed its transition to the new Customer Information System (CIS). The current contract with CheckFree will expire on December 30, 2013.

There are approximately 48,000 active EBPP-enrolled and 20,000 non-enrolled customers that receive, view, or pay an estimated \$70,000,000 per year at [www.mycheckfree.com](http://www.mycheckfree.com) or at any of the online banks

|   |   |  |
|---|---|--|
| Funds Available: FY14-15                |   | Budget Code: 335/5241                                    |
| DEPARTMENT SUBMITTING<br>Administration | DEPARTMENT MANAGER or DIRECTOR<br><i>Carol Nishita</i><br>Carol Nishita | APPROVED<br><i>Michael J. R. C...</i><br>General Manager |

Contact the Office of the District Secretary with questions about completing or submitting this form.

and service portals in CheckFree's distribution network. While customer participation in the existing EBPP program is still increasing, there is also a growing demand for a "biller direct" model that would allow customers to make payments and transact other business directly on [www.ebmud.com](http://www.ebmud.com). Staff intends to issue a Request for Proposals in 2014 for this biller direct service. In the meantime, the new three-year agreement with CheckFree will enable the District to continue to provide the electronic bill presentment and payment services as it has in the past. It will also provide ample time to fully implement the new biller direct model and for EBPP-enrolled customers to voluntarily transition from the existing program once that feature becomes available on the District's website. This three-year agreement will also allow the District time, before its expiration, to evaluate the need to support any remaining District customers who still want to continue viewing and paying their bills via CheckFree's website and distribution network.

### **CONTRACT EQUITY PROGRAM EFFORTS**

The completed P-035 and P-061 forms are attached.

### **FISCAL IMPACT**

Funds are available for this work in the FY14/15 operating budget.


### **ALTERNATIVES**

1. **Discontinue the District's EBPP program.** This is not recommended because we would forfeit the operational savings and diminish customer service for approximately 68,000 customers who utilize the service.
2. **Discontinue the current EBPP program with CheckFree and utilize the District's own website.** This alternative is not recommended. More time is needed to implement the changes needed to ensure that customers can accurately view their bills and make payments on the District's website.

Attachments

## CONTRACT EQUITY PROGRAM SUMMARY (P-035)

**This summary contains information on the contractor's workforce and contract equity participation. (Completed by District)**

|  |  |                         |                     |  |          |                                  |                                       |   |                               |                            |                         |                |
|--|--|-------------------------|---------------------|--|----------|----------------------------------|---------------------------------------|---|-------------------------------|----------------------------|-------------------------|----------------|
| <b>TITLE</b><br><b>Professional Services Agreement</b><br>Electronic Bill Presentment and Payment Services - Three-Year Contract,<br>with Two 1-Year Options |  |                         |                     |  |          |                                  | <b>DATE:</b><br>December 4, 2013      |   |                               |                            |                         |                |
| <b>CONTRACTOR:</b><br>CheckFree Services Corporation<br>Norcross, GA   |  |                         |                     |  |          |                                  | <b>PERCENTAGE OF CONTRACT DOLLARS</b> |   |                               |                            |                         |                |
| Sole Source  |  |                         |                     |  |          |                                  | <b>Availability Group</b>             |   | <b>Contracting Objectives</b> |                            | <b>Participation</b>    |                |
| <b>BID/PROPOSER'S PRICE:</b>   |  | <b>FIRM'S OWNERSHIP</b> |                     | <b>White Men</b>   |          | <b>25%</b>                       |                                       | <b>0.0%</b>   |                               |                            |                         |                |
|  |  | <b>Ethnicity</b>        | <b>Gender</b>       | <b>White Women</b>                                       |          | <b>6%</b>                        |                                       | <b>0.0%</b>   |                               |                            |                         |                |
| \$255,000  |  | Publicly Held Corp.     |                     | <b>Ethnic Minorities</b>                                 |          | <b>25%</b>                       |                                       | <b>0.0%</b>   |                               |                            |                         |                |
| <b>CONTRACT EQUITY PARTICIPATION</b>   |  |                         |                     |  |          |                                  |                                       |   |                               |                            |                         |                |
| <b>COMPANY NAME</b>  |  | <b>ESTIMATED AMOUNT</b> | <b>ETHNICITY</b>    | <b>GENDER</b>  |          | <b>CONTRACTING PARTICIPATION</b> |                                       |   |                               |                            |                         |                |
|  |  |                         |                     | <b>M</b>   | <b>F</b> | <b>White-Men</b>                 | <b>White-Women</b>                    | <b>Ethnic Minorities</b>  | <b>Unclassified</b>           | <b>Publicly Held Corp.</b> | <b>Gov't/Non Profit</b> | <b>Foreign</b> |
| <b>PRIME:</b><br>CheckFree Services Corporation  |  | \$255,000               | Publicly Held Corp. |  |          | ---                              | ---                                   | ---   | ---                           | 100.0%                     | ---                     | ---            |
| <b>SUBS:</b><br>None   |  |                         |                     |  |          | ---                              | ---                                   | ---   | ---                           | ---                        | ---                     | ---            |
|  |  |                         |                     |  |          | ---                              | ---                                   | ---   | ---                           | ---                        | ---                     | ---            |
|  |  |                         |                     |  |          | ---                              | ---                                   | ---   | ---                           | ---                        | ---                     | ---            |
|  |  |                         |                     |  |          | ---                              | ---                                   | ---   | ---                           | ---                        | ---                     | ---            |
|  |  |                         |                     |  |          | ---                              | ---                                   | ---   | ---                           | ---                        | ---                     | ---            |
|  |  |                         |                     |  |          | ---                              | ---                                   | ---   | ---                           | ---                        | ---                     | ---            |
|  |  |                         |                     |  |          | ---                              | ---                                   | ---   | ---                           | ---                        | ---                     | ---            |
| <b>TOTAL</b>   |  | \$255,000               |                     |  |          | 0.0%                             | 0.0%                                  | 0.0%  | 0.0%                          | 100.0%                     | 0.0%                    | 0.0%           |
| <b>CONTRACTOR'S WORKFORCES PROFILE (From P-025 Form)</b>   |  |                         |                     |  |          |                                  |                                       |   |                               |                            |                         |                |
|  |  | <b>White Men</b>        |                     | <b>White Women</b>                                       |          | <b>Ethnic Minorities</b>         |                                       | <b>Total Employees</b>  |                               |                            |                         |                |
| <b>No. of Employees:</b>   |  | 420                     |                     | 285  |          | 282                              |                                       | 987   |                               |                            |                         |                |
| <b>Percent of Total Employees:</b>   |  | 42.6%                   |                     | 28.9%  |          | 28.6%                            |                                       |   |                               |                            |                         |                |
| <b>MSA Labor Market %:</b>   |  | 35.9%                   |                     | 30.0%  |          | 34.2%                            |                                       |   |                               |                            |                         |                |
| <b>MSA Labor Market Location:</b>  |  | Georgia                 |                     |  |          |                                  |                                       |   |                               |                            |                         |                |
| <b>COMMENTS</b>  |  |                         |                     |  |          |                                  |                                       |   |                               |                            |                         |                |
| Contract Equity Participation - Zero Contract Equity participation since firm is a publicly held corporation and no subcontract opportunities exist.         |  |                         |                     |  |          |                                  |                                       |   |                               |                            |                         |                |
| <b>Workforce Profile &amp; Statement of Nondiscrimination Submitted</b>  |  |                         |                     | <b>Good Faith Outreach Efforts Requirement Satisfied</b> |          |                                  |                                       | <b>Award Approval Recommended</b>   |                               |                            |                         |                |
| NA   |  |                         |                     | NA   |          |                                  |                                       |  |                               |                            |                         |                |



# AFFIRMATIVE ACTION SUMMARY (P-061)

(Completed by District)

This summarizes information provided by the contractor(s)' P-025 Form regarding their workforce.

|   |                                  |  |                            |          |   |              |              |                |                    |
|---|----------------------------------|--|----------------------------|----------|---|--------------|--------------|----------------|--------------------|
| <b>Title: Electronic Bill Presentment and Payment Services - Three-Year Contract, with Two 1-Year Options</b>               |                                  | <b>Ethnic Minority Percentages From U.S. Census Data</b> |                            |          |   |              |              |                |                    |
|   |                                  |  | <b>B</b>                   | <b>H</b> | <b>A/PI</b>                                 | <b>AI/AN</b> | <b>TOTAL</b> |                |                    |
|   |                                  | <b>National</b>  | 10.5                       | 10.7     | 3.7   | 0.7          | 27.3         |                |                    |
| <b>Professional Services Agreement</b>  |                                  | <b>DATE:</b><br>12/4/2013                                | <b>9 Bay Area Counties</b> | 5.5      | 16.2  | 14.2         | 0.4          | 39.9           |                    |
|   |                                  |  | <b>Alameda/CC Counties</b> | 10.7     | 15.6  | 15.4         | 0.5          | 46.2           |                    |
| <b>R=Recmmd</b><br><b>P=Prime</b><br><b>S=Sub</b>   | <b>Composition of Ownership</b>  | <b>Number of Ethnic Minority Employees</b>               |                            |          |   |              |              |                |                    |
| <b>Company Name, Owner/Contact Person, Address, and Phone Number</b>  |                                  |  | <b>B</b>                   | <b>H</b> | <b>A/PI</b>                                 | <b>AI/AN</b> | <b>TOTAL</b> | <b>PERCENT</b> | <b>MSA %</b>       |
| <b>RP</b>   | <b>Publicly Held Corporation</b> | <b>Company Wide</b>                                      | 150                        | 18       | 112   | 2            | 282          | 28.6%          | 34.2%              |
| CheckFree Services Corporation<br>Jardon T. Bouska<br>4411 East Jones Bridge Road<br>Norcross, GA 30092<br><br>678-375-3000 |                                  | <b>Manager/Prof</b>                                      | 102                        | 16       | 110   | 2            | 230          | 26.2%          |                    |
|   |                                  | <b>Technical/Sales</b>                                   | 18                         | -        | -   | -            | 18           | 46.2%          |                    |
|   |                                  | <b>Clerical/Skilled</b>                                  | 30                         | 2        | 2   | -            | 34           | 49.3%          |                    |
|   |                                  | <b>Semi/Unskilled</b>                                    | -                          | -        | -   | -            | 0            | 0.0%           |                    |
|   |                                  | <b>Bay Area</b>  | -                          | -        | -   | -            | -            | NA             |                    |
|   |                                  | <b>AA Plan on File:</b>                                  | NA                         |          | <b>Date of last contract with District:</b> |              | 7/29/2010    |                |                    |
|   |                                  | <b>Co. Wide MSA:</b>                                     | Georgia                    |          | <b># Employees-Co. Wide:</b>                |              | 987          |                | <b>Bay Area:</b> 0 |
|   |                                  | <b>Company Wide</b>                                      |                            |          |   |              |              |                |                    |
|   |                                  | <b>Manager/Prof</b>                                      |                            |          |   |              |              |                |                    |
|   |                                  | <b>Technical/Sales</b>                                   |                            |          |   |              |              |                |                    |
|   |                                  | <b>Clerical/Skilled</b>                                  |                            |          |   |              |              |                |                    |
|   |                                  | <b>Semi/Unskilled</b>                                    |                            |          |   |              |              |                |                    |
|   |                                  | <b>Bay Area</b>  |                            |          |   |              |              |                |                    |
|   |                                  | <b>Co. Wide MSA:</b>                                     |                            |          | <b># Employees-Co. Wide:</b>                |              |              |                | <b>Bay Area:</b>   |
|   |                                  | <b>Company Wide</b>                                      |                            |          |   |              |              |                |                    |
|   |                                  | <b>Manager/Prof</b>                                      |                            |          |   |              |              |                |                    |
|   |                                  | <b>Technical/Sales</b>                                   |                            |          |   |              |              |                |                    |
|   |                                  | <b>Clerical/Skilled</b>                                  |                            |          |   |              |              |                |                    |
|   |                                  | <b>Semi/Unskilled</b>                                    |                            |          |   |              |              |                |                    |
|   |                                  | <b>Bay Area</b>  |                            |          |   |              |              |                |                    |
|   |                                  | <b>Co. Wide MSA:</b>                                     |                            |          | <b># Employees-Co. Wide:</b>                |              |              |                | <b>Bay Area:</b>   |
|   |                                  | <b>Company Wide</b>                                      |                            |          |   |              |              |                |                    |
|   |                                  | <b>Manager/Prof</b>                                      |                            |          |   |              |              |                |                    |
|   |                                  | <b>Technical/Sales</b>                                   |                            |          |   |              |              |                |                    |
|   |                                  | <b>Clerical/Skilled</b>                                  |                            |          |   |              |              |                |                    |
|   |                                  | <b>Semi/Unskilled</b>                                    |                            |          |   |              |              |                |                    |
|   |                                  | <b>Bay Area</b>  |                            |          |   |              |              |                |                    |
|   |                                  | <b>Co. Wide MSA:</b>                                     |                            |          | <b># Employees-Co. Wide:</b>                |              |              |                | <b>Bay Area:</b>   |
|   |                                  | <b>Company Wide</b>                                      |                            |          |   |              |              |                |                    |
|   |                                  | <b>Manager/Prof</b>                                      |                            |          |   |              |              |                |                    |
|   |                                  | <b>Technical/Sales</b>                                   |                            |          |   |              |              |                |                    |
|   |                                  | <b>Clerical/Skilled</b>                                  |                            |          |   |              |              |                |                    |
|   |                                  | <b>Semi/Unskilled</b>                                    |                            |          |   |              |              |                |                    |
|   |                                  | <b>Bay Area</b>  |                            |          |   |              |              |                |                    |
|   |                                  | <b>Co. Wide MSA:</b>                                     |                            |          | <b># Employees-Co. Wide:</b>                |              |              |                | <b>Bay Area:</b>   |
|   |                                  | <b>Company Wide</b>                                      |                            |          |   |              |              |                |                    |
|   |                                  | <b>Manager/Prof</b>                                      |                            |          |   |              |              |                |                    |
|   |                                  | <b>Technical/Sales</b>                                   |                            |          |   |              |              |                |                    |
|   |                                  | <b>Clerical/Skilled</b>                                  |                            |          |   |              |              |                |                    |
|   |                                  | <b>Semi/Unskilled</b>                                    |                            |          |   |              |              |                |                    |
|   |                                  | <b>Bay Area</b>  |                            |          |   |              |              |                |                    |
|   |                                  | <b>Co. Wide MSA:</b>                                     |                            |          | <b># Employees-Co. Wide:</b>                |              |              |                | <b>Bay Area:</b>   |

WM=White Male, WW=White Women, EM=Ethnic Minority (Ethnicities: B=Black, H=Hispanic, A/PI=Asian/Pacific Islander, and AI/AN=American Indian/Alaskan Native)



AGENDA NO.  
MEETING DATE

10.

December 10, 2013

**TITLE      WATER SUPPLY ASSESSMENT FOR THE SAN LEANDRO DOWNTOWN  
TECHNOLOGY CAMPUS**

☒ MOTION      ☐ RESOLUTION      ☐ ORDINANCE

**RECOMMENDED ACTION**

Approve the Water Supply Assessment (WSA) requested by the City of San Leandro (City) for the San Leandro Downtown Technology Campus pursuant to California Water Code, Sections 10910-10915.



**SUMMARY**

The San Leandro Downtown Technology Campus project site is approximately seven acres bounded by West Estudillo Avenue on the north, Thornton Street on the south, Alvarado Street on the west and the Union Pacific Railroad right-of-way on the east (see Attachment A). As described in the City's WSA request letter, the San Leandro Downtown Technology Campus is a transit oriented development project that includes a maximum of 500,000 square feet of office and other complementary service uses located in multiple buildings on site. It is expected that development will occur in three or more phases with six-story technology-focused office buildings in each phase.

The site is located immediately west of the San Leandro Bart Station and is currently a vacant lot. Historical (1975 to 1987) annual average demand was 6,500 gallons per day (gpd). The estimated annual average demand for the project will be approximately 50,000 gpd for all phases. This demand is accounted for in the District's Urban Water Management Plan (UWMP). Approval of the assessment is described in the attached letter (Attachment B) and, upon Board approval, will be sent to the City.

**DISCUSSION**

On October 18, 2013, the City submitted a formal request for consultation between the District and the City regarding water service to the San Leandro Downtown Technology Campus Project, pursuant to California Water Code, Section 10912. The project, for which a Mitigated Negative Declaration is being prepared, meets the threshold requirement for an assessment of water supply availability (a proposed commercial office building employing more than 1,000 persons or having more than 250,000 square feet of floor space). The City is required to consult with the public water supplier to determine whether the water demand associated with the proposed project was included in its last UWMP, and to assess whether its 20-year water supply (available during normal, single-dry and multiple-dry water years) will meet the

|   |  |  |
|---|--|--|
| Funds Available: FY                                       |  | Budget Code:   |
| DEPARTMENT SUBMITTING<br><br>Engineering and Construction | DEPARTMENT MANAGER or DIRECTOR<br><br><br>Xavier J. Irias | APPROVED<br><br><br>General Manager |

Contact the Office of the District Secretary with questions about completing or submitting this form.

water demand associated with the proposed project. The 2010 UWMP concludes that the District has, and will have, adequate water supplies to serve existing and projected demand within the Ultimate Service Boundary during normal and wet years, but that deficits are projected for drought years. The District's Water Supply Management Plan includes up to a 15 percent water conservation requirement in a severe drought. The project will be subject to the same drought restriction as all District customers.

The WSA letter requests that the City comply with the California Code of Regulations concerning water-efficient landscapes and District water service regulations in force at the time the application is made. The letter also requests a meeting to discuss water conservation opportunities in the project area. A key objective of this discussion will be to explore timely opportunities to maximize conservation via early consideration of the District's conservation programs and State and Federal best management practices applicable to the project.

The proposed project is located about one mile away from the San Leandro Water Pollution Control Plant (SLPCP) that currently produces and supplies secondary treated recycled water to San Leandro. The District's long term planning envisions upgrading the treatment level at the SLPCP to a tertiary standard which may allow expansion of the recycled water distribution pipelines in the future. The portions of the project area that present opportunities for recycled water uses range from landscape irrigation, toilet flushing and other non-potable commercial and industrial uses and could be served by existing or expanded future recycled water pipelines. The District recommends that the City and their developers maintain continued coordination and consultation with the District as they plan and implement the project regarding the feasibility of providing for recycled water for appropriate non-potable uses.

## **ALTERNATIVE**

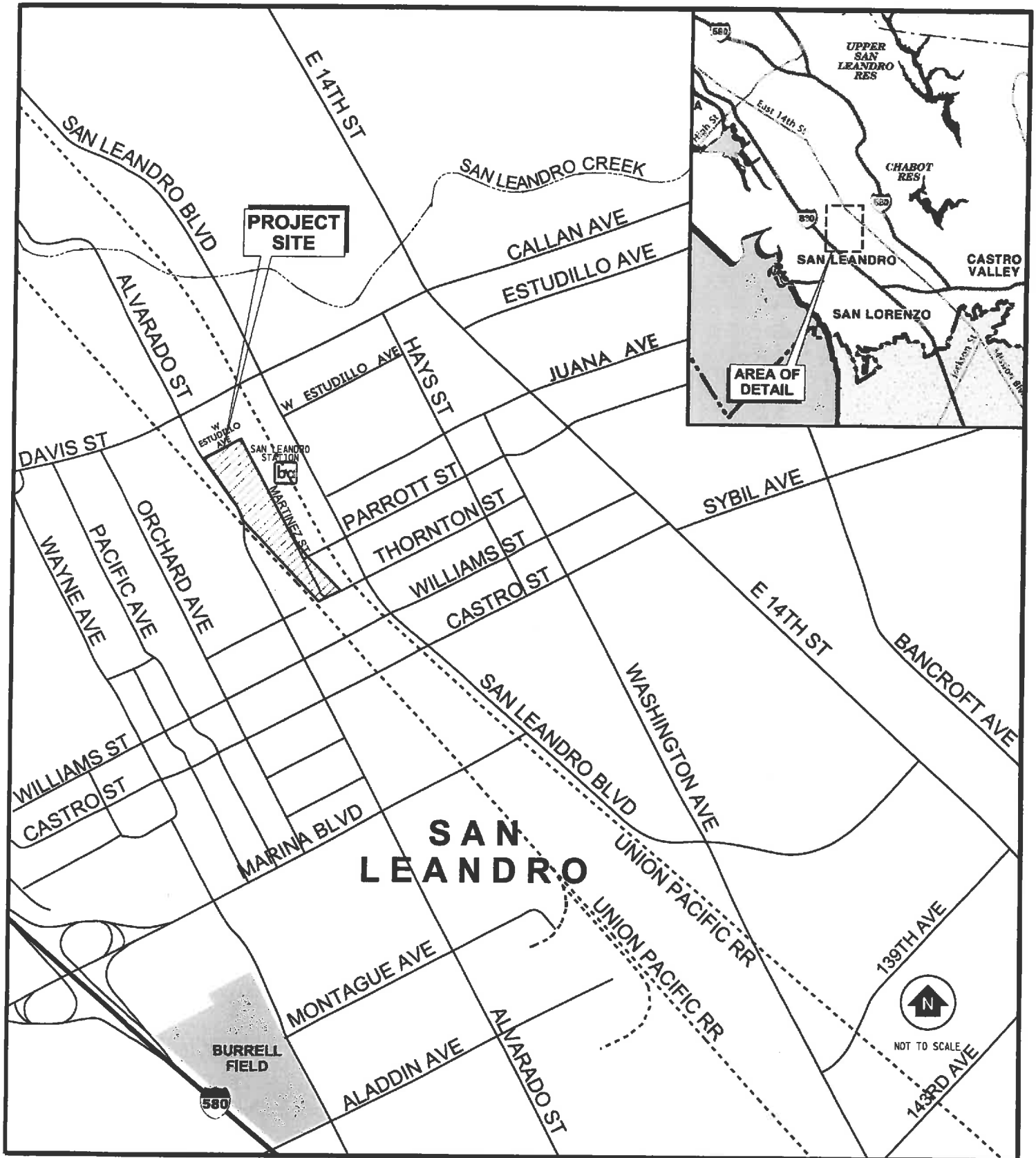
**Do not submit a response.** This alternative is not recommended. This assessment has been prepared pursuant to California Water Code, Sections 10910-10915. It is consistent with the law and the District's past WSAs.

Attachments: A. Map – San Leandro Downtown Technology Campus  
B. District's Response to October 18, 2013 Water Supply Assessment Request



**SAN LEANDRO DOWNTOWN  
TECHNOLOGY CAMPUS  
PROJECT**

**Attachment A**





**DRAFT**

December 10, 2013

Tom Liao, Planning and Housing Manager  
City of San Leandro, Civic Center  
Community Development Department  
835 East 14th Street  
San Leandro, CA 94577

Re: Water Supply Assessment – San Leandro Downtown Technology Campus

Dear Mr. Liao:

This letter responds to the City of San Leandro's (City) request of October 18, 2013, for water agency consultation concerning the San Leandro Downtown Technology Campus (Enclosure 1) located in San Leandro, which is within the East Bay Municipal Utility District's (EBMUD) Ultimate Service Boundary. EBMUD appreciates the opportunity to provide this response.

Pursuant to Section 10912 (SB-610) of the California Water Code, the project meets the threshold requirement for an assessment of water supply availability based on the amount of water this project would require, a proposed commercial office building employing more than 1,000 persons or having more than 250,000 square feet of floor space.

Please note that this assessment addresses the issue of water supply only and is not a guarantee of service, and future water service is subject to rates and regulations in effect at the time.

### **Project Demand**

The water demand for the San Leandro Downtown Technology Campus is accounted for in EBMUD's water demand projections as published in EBMUD's 2010 Urban Water Management Plan (UWMP/Enclosure 2). EBMUD's water demand projections account for anticipated future water demands within EBMUD's service boundaries and for variations in demand-attributed changes in development patterns. The proposed project site is an existing vacant lot. Historical water use was approximately 6,500 gallons per day (gpd). The water demand for the project at build out is approximately 50,000 gpd.

EBMUD's demand projections indicate both densification and land use changes in a few existing land use classifications, including commercial and residential land use areas, thus increasing EBMUD's overall demand. EBMUD's 2010 UWMP projects water demands over time, accounting for estimated variations in demand usage less conservation and recycled supply sources as noted in Table 4-1, Water Demand Projections for Each Water Use Sector, of the

2010 UWMP. EBMUD's water demand projections are based on the 2040 Demand Study (Demand Study), which was completed in 2009. For planning purposes, the demands are estimated in five year increments, but it is recognized that actual incremental amounts may occur stepwise in shorter time increments. An increase in usage by one customer in a particular customer class does not require a strict gallon-for-gallon increase in conservation by other customers in that class as, in actuality, the amount of potable demand, conservation and recycled water use EBMUD-wide will vary somewhat. Future versions of the UWMP, which is updated every five years, will include an updated assessment of customer demand and water supply.

### **Project Area**

The proposed San Leandro Downtown Technology Campus consists of a seven-acre development and is bounded by West Estudillo Avenue on the north, Thornton Street on the south, Alvarado Street on the west and the Union Pacific Railroad right-of-way on the east. As described in the City's Water Supply Assessment request letter, the San Leandro Downtown Technology Campus is a multi-phase, transit-oriented development that will include a maximum of 500,000 square feet of office and other complementary services located in multiple buildings on the site.

### **EBMUD Water Demand Projections**

Since the 1970s, water demand within EBMUD's service area has ranged from 200 to 220 million gallons per day (mgd) in non-drought years. The 2040 water demand forecast of 312 mgd for EBMUD's service area can be reduced to 230 mgd with the successful implementation of water recycling and conservation programs, as outlined in the 2010 UWMP. Although current demand is lower than estimated in the Demand Study, as a result of the recent multi-year drought and the downturn in the economy, the Demand Study still reflects a reasonable expectation for growth over the long term for demand in year 2040. The Alameda Point Project will not change EBMUD's 2040 demand projection.

### **EBMUD Water Supply and Water Rights**

EBMUD has water rights permits and licenses that allow for delivery of up to a maximum of 325 mgd from the Mokelumne River, subject to the availability of Mokelumne River runoff and the senior water rights of other users. EBMUD's position in the hierarchy of Mokelumne River water users is determined by a variety of agreements between Mokelumne River water right holders, and the terms of the appropriative water rights permits and licenses, which have been issued by the State, pre-1914 rights, and riparian rights.

Conditions that could, depending on hydrology, restrict EBMUD's ability to receive its full entitlement include:

- Upstream water use by prior right holders.
- Downstream water use by riparian and senior appropriators and other downstream obligations, including protection of public trust resources.
- Variability in rainfall and runoff.

During prolonged droughts, the Mokelumne River supply cannot meet EBMUD's projected customer demands. To address this, EBMUD has completed construction of the Freeport Regional Water Facility and the Bayside Groundwater Facility, which are discussed below in the Supplemental Water Supply and Demand Management section of this assessment. EBMUD has obtained and continues to seek supplemental supplies.

#### **EBMUD UWMP**

The 2010 UWMP, adopted on June 28, 2011, by EBMUD's Board of Directors by Resolution No. 33832-11, is a long-range planning document used to assess current and projected water usage, water supply planning and conservation and recycling efforts. A summary of EBMUD's demand and supply projections, in 5-year increments for a 25-year planning horizon is provided in Table 4-3, EBMUD Demand and Supply Projections of the 2010 UWMP (Enclosure 3).

EBMUD's evaluation of water supply availability accounts for the diversions of both upstream and downstream water right holders and fishery releases on the Mokelumne River. Fishery releases are based on the requirements of a 1998 Joint Settlement Agreement (JSA) between EBMUD, United States (U.S.) Fish and Wildlife Service, and the California Department of Fish and Game. The JSA requires EBMUD to make minimum flow releases from its reservoirs to the lower Mokelumne River to protect and enhance the fishery resources and ecosystem of the river. As this water is released downriver, it is, therefore, not available for use by EBMUD's customers.

The available supply shown in the attached table (Enclosure 3) was derived from EBMUD's hydrologic model with the following assumptions:

- EBMUD Drought Planning Sequence is used for 1976, 1977 and 1978;
- Total system storage is depleted by the end of the third year of the drought;
- EBMUD will implement its Drought Management Program when necessary;
- The diversions by Amador and Calaveras Counties upstream of Pardee Reservoir will increase over time, eventually reaching the full extent of their senior rights;

- Releases are made to meet the requirements of senior downstream water right holders and fishery releases are made according to the JSA;
- Dry-year supply of Central Valley Project (CVP) water, through the Freeport Regional Water Facility, is available; and
- Bayside Groundwater Project, Phase 1, is available.

As discussed under the Drought Management Program section in Chapter 3 of the 2010 UWMP, EBMUD's system storage generally allows it to continue serving its customers during dry-year events. EBMUD imposes rationing based on the projected storage available at the end of September. By imposing rationing in the first dry year of potential drought periods, EBMUD attempts to minimize rationing in subsequent years if a drought persists while continuing to meet its current and subsequent-year fishery flow release requirements and obligations to downstream agencies. Table 3-2, Long-Term Drought Management Program Guidelines, in the 2010 UWMP summarizes the Drought Management Program guidelines for consumer water reduction goals based on projected system storage.

In Table 4-3, EBMUD Demand and Supply Projections (Enclosure 3), "Single Dry Water Year" (or Year 1 of "Multiple Dry Water Years") is determined to be a year that EBMUD would implement Drought Management Program elements at the "moderate" stage with the goal of achieving a reduction between 0 to 10 percent in customer demand. Year 2 of "Multiple Dry Years" is determined to be a year that EBMUD would implement Drought Management Program elements at the "severe" stage with the goal of achieving between 10 to 15 percent reduction in customer demand. Year 3 of "Multiple Dry Years" is a year in which EBMUD would implement Drought Management Program elements at the "critical" stage. Despite water savings from EBMUD's aggressive conservation and recycling programs and rationing of up to 15 percent, additional supplemental supplies beyond those provided through the Freeport Regional Water Facility and the Bayside Groundwater Facility will be needed during Years 2 and 3 of a three-year drought. Therefore, supplemental supplies are needed in a multiple-year drought periods while continuing to meet the requirements of senior downstream water right holders and the provisions of the 1998 JSA.

### **Supplemental Water Supply and Demand Management**

The goals of meeting projected water needs and increased water reliability rely on supplemental supplies, improving reliability of existing water supply facilities, water conservation and recycled water programs.

By 2011, EBMUD completed construction of the Freeport Regional Water Facility and the Bayside Groundwater Facility to augment its water supply during drought periods. However,

additional supplemental supplies beyond those provided through these facilities will still be needed, as noted above. Chapter 2 of the 2010 UWMP describes potential supplemental water supply projects that could be implemented to meet projected long-term water demands during multi-year drought periods.

The Freeport Regional Water Facility became operational in February 2011. EBMUD's ability to take delivery of water through the Freeport facility is based on its Long Term Renewal Contract (LTRC) with the U.S. Bureau of Reclamation. The LTRC provides for up to 133,000 acre-feet in a single dry-year, not to exceed a total of 165,000 acre-feet in three consecutive dry years. Under the LTRC, the CVP supply is available to EBMUD only in dry years when EBMUD's total stored water supply is forecast to be below 500,000 total acre-feet on September 30 of each year.

Construction of the Bayside Groundwater Project, Phase 1, was completed in 2010. A permit from the Department of Public Health, which is pending, is required before the groundwater can be extracted and treated for municipal use. The project is designed to yield two mgd over a six-month period, resulting in an average annual production capacity of 1 mgd per year.

Chapter 2 of the 2010 UWMP also lists other potential supplemental water projects, including northern California water transfers, Bayside Groundwater Project Expansion, Los Vaqueros Expansion and others that could be implemented as necessary to meet the projected long-term water supplemental need during multi-year drought periods. The 2010 UWMP identifies a broad mix of projects, with inherent scalability and the ability to adjust implementation schedules for a particular component, so that EBMUD will be able to continue to pursue the additional supplemental supplies that are projected to be necessary, while also minimizing the risks associated with future uncertainties such as project implementation challenges and global climate change. The EIR that EBMUD certified for the Water Supply Management Program 2040 examined the impacts of pursuing these supplemental supply projects at a program level. Separate project-level environmental documentation will be prepared, as appropriate, for specific components as they are developed in further detail and implemented in accordance with EBMUD's water supply needs.

In addition to pursuing supplemental water supply sources, EBMUD also maximizes resources through continuous improvements in the delivery and transmission of available water supplies, and investments in ensuring the safety of its existing water supply facilities. These programs, along with emergency interties and planned water recycling and conservation efforts, would ensure a reliable water supply to meet projected demands for current and future EBMUD customers within the current service area.

The San Leandro Downtown Technology Campus presents an opportunity to incorporate water conservation measures. Conditions of approval for the implementation of the San Leandro Downtown Technology Campus should require that the project comply with the California Model Water Efficient Landscape Ordinance (Division 2, Title 23, California Code of Regulations, Chapter 2.7, Sections 490 through 495). EBMUD staff would appreciate the opportunity to meet with the project sponsor to discuss water conservation programs and best management practices applicable to the integrated projects. A key objective of this discussion will be to explore timely opportunities to expand water conservation via early consideration of EBMUD's conservation programs and best management practices applicable to the project.

The proposed project is located about one mile away from the San Leandro Water Pollution Control Plant (SLPCP) that currently produces and supplies secondary treated recycled water to San Leandro. The District's long term planning envisions upgrading the treatment level at the SLPCP to a tertiary standard which may allow expansion of the recycled water distribution pipelines in the future. The portions of the project area that present opportunities for recycled water uses range from landscape irrigation, toilet flushing and other non-potable commercial and industrial uses and could be served by existing or expanded future recycled water pipelines. The District recommends that the City and their developers maintain continued coordination and consultation with the District as they plan and implement the project regarding the feasibility of providing for recycled water for appropriate non-potable uses.

The project sponsor should contact David J. Rehnstrom, Senior Civil Engineer, at (510) 287-1365 for further information.

Sincerely,

William R. Kirkpatrick  
Manager of Water Distribution Planning Division

WRK:JAM:sb  
sb13\_235a.doc

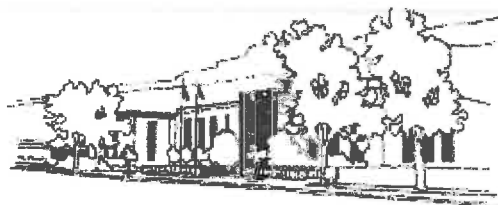
Enclosures: 1. Letter of Request for Water Supply Assessment dated October 18, 2013  
2. EBMUD 2010 Urban Water Management Plan  
3. EBMUD Demand and Supply Projections Table

cc: Board of Directors w/o Enclosure 2



**City of San Leandro**

Civic Center, 835 E. 14th Street  
San Leandro, California 94577  
www.sanleandro.org



October 18, 2013

Mr. David Rehnstrom  
East Bay Municipal Utilities District  
Water Distribution Planning Division  
375 11th Street  
Oakland, California 94607

RECEIVED  
OCT 21 2013  
WATER SERVICE PLANNING

RE: Request for Water Supply Assessment for San Leandro Downtown Technology Campus;  
Westlake Development Partners, LLC, "Westlake" (Project Proponent).

Dear Mr. Rehnstrom,

Per amendments to Section 10912 of the Water Code implemented by Senate Bill 610, the City of San Leandro ("City") is submitting this request to the East Bay Municipal Utilities District ("EBMUD") to prepare a Water Supply Assessment (WSA). The assessment is required in order to determine whether adequate water supply is available to meet the projected water demand of the proposed project. The City, as lead agency, is currently preparing an Initial Study/Mitigated Negative Declaration (IS/MND) for the proposed project. The City respectfully requests that EBMUD immediately prepare a water supply assessment for the proposed project as described.

Proposed Project:

The subject property encompasses an area totaling approximately 7 acres (including 5.5 acres of Westlake owned property and 1.5 acre of City right-of-way to be vacated). The site is located generally at 1333 Martinez Street and bounded by West Estudillo Avenue on the north, Thornton Street on the south, Alvarado Street on the west and the Union Pacific Railroad right-of-way on the east.

The proposed multi-phase, transit-oriented development project located adjacent to the Downtown San Leandro BART Station will include a maximum of 500,000 square feet of office and other complementary service uses located in multiple buildings on the site. It is expected that development will occur in three or more phases with six-story technology-focused office buildings in each phase. Surface parking will be provided for the development of Phase I while future phases will require the construction of a multi-level parking structure. The onsite parking ratio will vary by Phase with a range between a minimum of 2.0 spaces per 1,000 square feet to a maximum parking ratio of 3.0 spaces per 1,000 square feet. The development plan for the vacated portion of the streets (i.e., Estudillo Avenue, Martinez Street) includes pedestrian, bicycle, street, sidewalk, landscaping and utility improvements. The project will be the first development to implement the City's Transit Oriented Development Strategy (TOD Strategy).

Stephen H. Cassidy, Mayor

City Council:

Pauline Russo Cutler  
Dorinda Reed

Michael J. Gregory  
Diana M. Scurie

Jim Yola  
Joyce R. Sarmiento



Mr. David Rehnstrum  
East Bay Municipal Utilities District  
Request for Water Supply Assessment for San Leandro Downtown Technology Campus  
October 18, 2013  
Page 2

The architects for the project, RMW Architecture & Interiors, have estimated the average water use of the project as approximately 49,386 gallons/day (gpd). A table providing a breakdown of this estimated use is attached.

The estimated existing water usage at the site is negligible (zero gallons) since the site is vacant and undeveloped. The projected demand of the project (also net increase in water demand at the site) would be about 49,386 gpd or 55.31 Acre-feet Annually (AFA).

The City has identified East Bay Municipal Utilities District (EBMUD) as the water purveyor for the proposed project. As such, pursuant to the requirements of SB 610, the City requests a WSA be prepared and adopted by East Bay Municipal Utilities District (EBMUD) in 90 days or less.

The City is in the process of preparing the IS/MND for the proposed project. The results and conclusion of the WSA will be included in the Utilities section of the IS/MND.

If you have any questions regarding the proposed project please contact me or Senior Planner Elinor Penaranda at 510-577-3314 or [epenaranda@sanleandro.org](mailto:epenaranda@sanleandro.org).

Thank you for your consideration of this request.

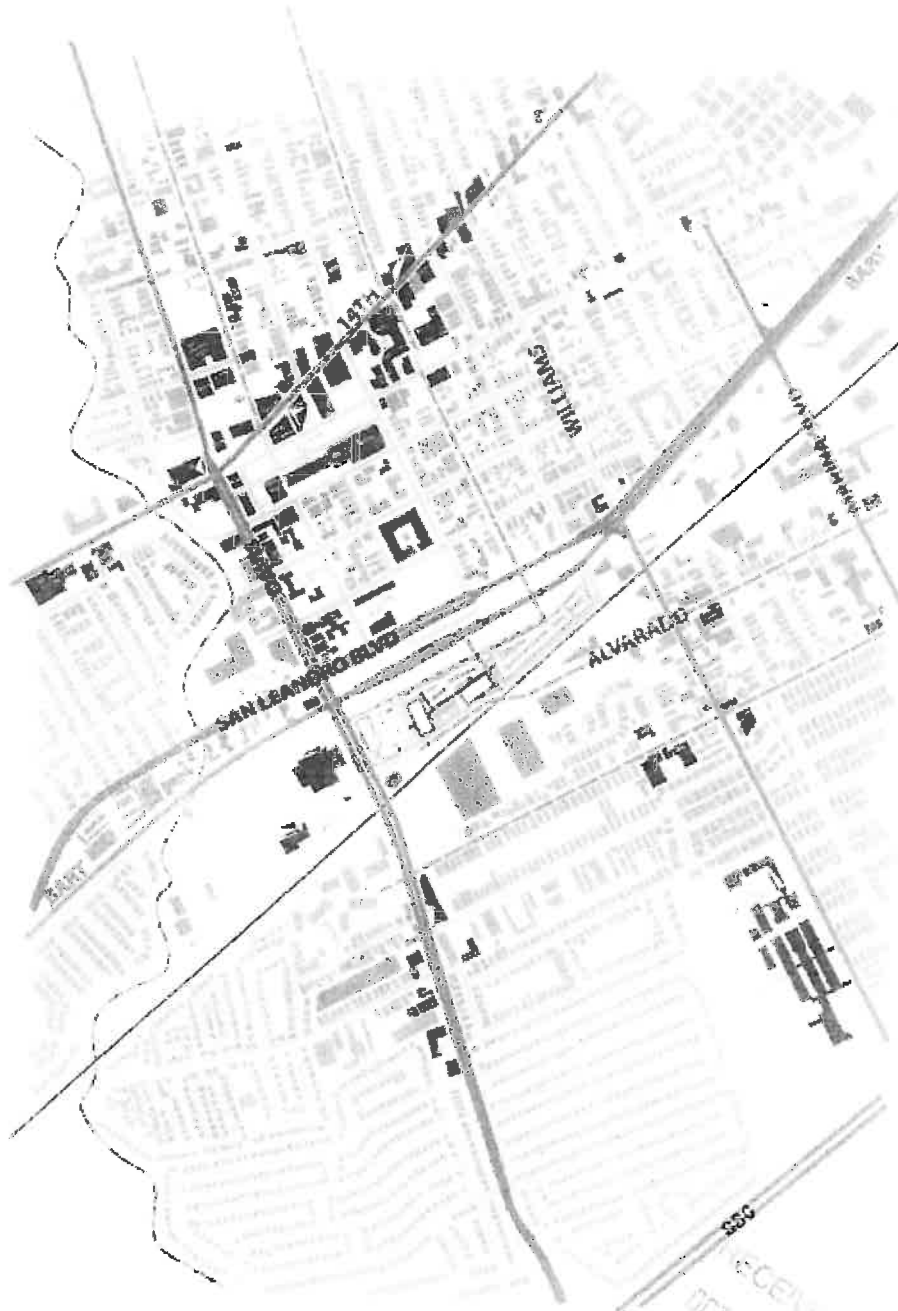
Sincerely,



Tom Liao  
Planning and Housing Manager  
Community Development Department

Attachment: Exhibit A – Region Map (Development Site shown at Phase 2)  
Exhibit B – Site Plan Phase 1  
Exhibit C – Site Plan Phase 2  
Exhibit D – Site Plan Phase 3  
Exhibit E – Estimated Water Usage Table with Sources

Cc with: Bonnie Terra, Fire Marshal  
Keith Cooke, Principal Engineer  
Sunny Teng, Gaye Quinn and Donovan Cole, Westlake Development Partners, LLC  
Brent Wollenburg and Russ Nichols, RMW Architecture & Interiors  
Elinor Penaranda, Senior Planner



STREET INDEX

Exhibit A



San Francisco Planning Department



RECEIVED  
OCT 21 2013  
SAN FRANCISCO PLANNING



An aerial photograph of the Los Angeles Convention Center complex. The main convention hall is a large, rectangular building with a flat roof. To its right are several smaller, rectangular buildings, likely exhibition halls. The complex is surrounded by streets and parking areas. The image is oriented horizontally, with the main hall on the left and the exhibition halls on the right. The text 'LOS ANGELES CONVENTION CENTER' is visible in the bottom right corner of the image.

$$= \{1\} \cup \{2, 3, \dots, 10\} \cup \{11, 12, \dots, 20\} \cup \{21, 22, \dots, 30\} \cup \{31, 32, \dots, 40\} \cup \{41, 42, \dots, 50\} \cup \{51, 52, \dots, 60\} \cup \{61, 62, \dots, 70\} \cup \{71, 72, \dots, 80\} \cup \{81, 82, \dots, 90\} \cup \{91, 92, \dots, 100\}$$


## Exhibit D

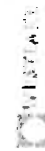
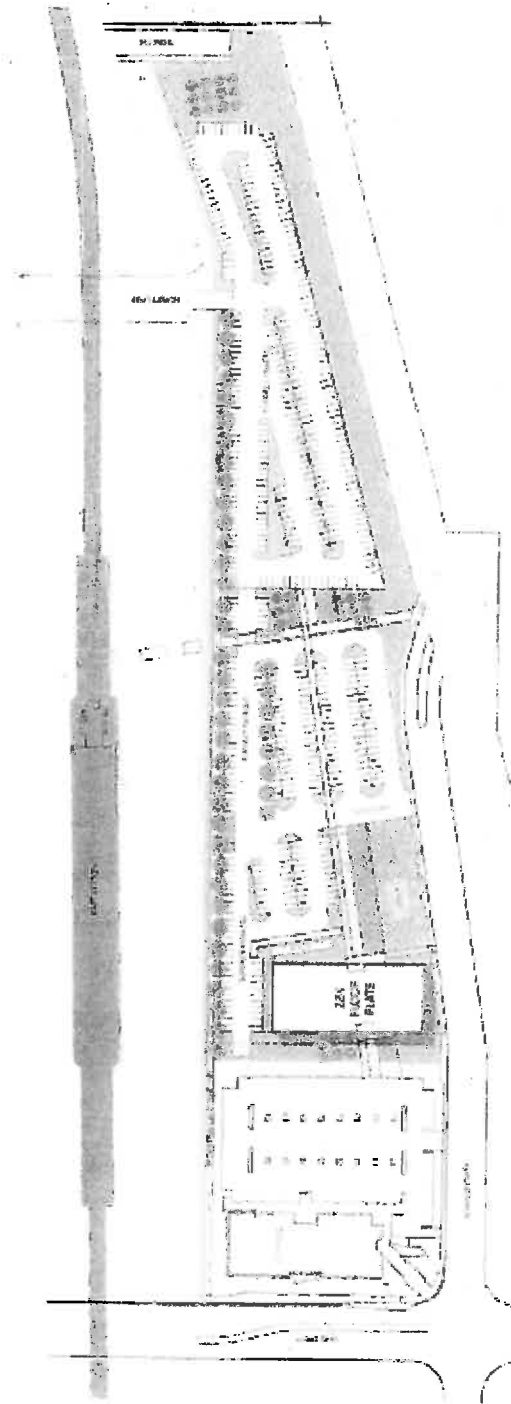




An aerial photograph of a building complex, likely a skyscraper under construction or recently completed. The image shows a long, narrow building with a central section. Two rectangular areas are labeled '21st FLOOR PLATE' and '22nd FLOOR PLATE'. The building is surrounded by a parking lot and other structures. The image is oriented vertically, with the building's length running from top to bottom.

[illegible]

PHASE 1 123 ACRES  
 22.5 ACRES FOR PHASE 1  
 100.5 ACRES



PHASE 1 123 ACRES  
 22.5 ACRES FOR PHASE 1  
 100.5 ACRES



EXHIBIT 3





Exhibit E

**San Leandro Tech Campus**

Westlake Development Partners, LLC

10/18/2013

|                               |         | Annual Water Use (gpd/unit) |           |                             |
|-------------------------------|---------|-----------------------------|-----------|-----------------------------|
|                               |         | Water Demand Factor         | Unit      | Annual Average Demand (gpd) |
| General Office Space - Sq Ft  | 492,000 | 0.093                       | per sq ft | 45,756                      |
| Restaurant Space - # of seats | 150     | 24.2                        | per seat  | 3,630                       |
| <b>Total Project</b>          |         |                             |           | <b>49,386</b>               |

Acres Feet Annually

892.85

55.31

**Sources:**

Prasanna, David W. (1994). Water Supply Planning. Malabar, Florida: Krieger Publishing Company

American Water Works Association. Water Sources: Principles and Practices of Water Supply Operations Series. (2<sup>nd</sup> Ed.). Denver, Colorado: American Water Works Association.

Metcalf & Eddy, Inc. (3<sup>rd</sup> Ed., Rev. Tchobanoglous, G. and F.L. Burton) Wastewater Engineering: Treatment, Disposal, and Reuse. New York: McGraw-Hill.

Vlossman, W. and M.J. Hammer. (5<sup>th</sup> Ed.). Water Supply and Pollution Control. Harper Collins College Publishers

2-1-2013  
WATER SERVICE PLANNING



# EAST BAY MUNICIPAL UTILITY DISTRICT DEMAND AND SUPPLY PROJECTIONS

(Reference: Table 4-3, UWMP 2010 – EBMUD)

|  | 2010 | 2015 | 2020 | 2025 | 2030 | 2035 <sup>1</sup> | 2040 |
|--|------|------|------|------|------|-------------------|------|
| <b>PROJECTED DEMAND (MGD)</b>  |      |      |      |      |      |                   |      |
| CUSTOMER DEMAND <sup>2</sup>   | 251  | 266  | 280  | 291  | 304  | 308               | 312  |
| ADJUSTED FOR CUMULATIVE CONSERVATION <sup>3</sup>                                    | (26) | (32) | (43) | (49) | (56) | (59)              | (62) |
| ADJUSTED FOR RECYCLED WATER <sup>4</sup>   | (9)  | (11) | (16) | (18) | (19) | (20)              | (20) |
| PLANNING LEVEL OF DEMAND   | 216  | 223  | 221  | 224  | 229  | 229               | 230  |
| <b>PROJECTED AVAILABLE SUPPLY AND NEED FOR SUPPLEMENTAL SUPPLY (MGD)<sup>5</sup></b> |      |      |      |      |      |                   |      |
| NORMAL YEAR  | >216 | >223 | >221 | >224 | >229 | >229              | >230 |
| SUPPLEMENTAL SUPPLY NEED   | 0    | 0    | 0    | 0    | 0    | 0                 | 0    |
| <b>SINGLE DRY YEAR (MULTIPLE DRY YEARS – YEAR 1)</b>                                 |      |      |      |      |      |                   |      |
| AVAILABLE SUPPLY   | 211  | 217  | 215  | 218  | 223  | 222               | 222  |
| CUSTOMER RATIONING <sup>6</sup>  | 2%   | 3%   | 3%   | 3%   | 3%   | 3%                | 4%   |
| SUPPLEMENTAL SUPPLY NEED <sup>7</sup>  | 5    | 6    | 6    | 7    | 7    | 8                 | 8    |
| <b>MULTIPLE DRY YEARS – YEAR 2</b>   |      |      |      |      |      |                   |      |
| AVAILABLE SUPPLY   | 183  | 189  | 188  | 190  | 194  | 194               | 195  |
| CUSTOMER RATIONING <sup>6</sup>  | 15%  | 15%  | 15%  | 15%  | 15%  | 15%               | 15%  |
| SUPPLEMENTAL SUPPLY NEED <sup>7</sup>  | 21   | 21   | 21   | 21   | 22   | 22                | 22   |
| <b>MULTIPLE DRY YEARS – YEAR 3</b>   |      |      |      |      |      |                   |      |
| AVAILABLE SUPPLY   | 183  | 189  | 188  | 190  | 183  | 164               | 144  |
| CUSTOMER RATIONING <sup>6</sup>  | 15%  | 15%  | 15%  | 15%  | 15%  | 15%               | 15%  |
| SUPPLEMENTAL SUPPLY NEED <sup>7</sup>  | 21   | 21   | 21   | 21   | 33   | 53                | 73   |
| <b>THREE-YEAR DROUGHT</b>  |      |      |      |      |      |                   |      |
| TOTAL SUPPLEMENTAL SUPPLY NEED (TAF) <sup>7</sup>                                    | 53   | 54   | 54   | 55   | 69   | 93                | 115  |

<sup>1</sup> Projected demand for 2035 is interpolated.

<sup>2</sup> Customer demand values are based on the demand projections from the "2040 Demand Study," Feb 2009. These projected water demands are based on land use in EBMUD's ultimate service area and is unadjusted for conservation and non-potable water. The values are also unadjusted for the current suppressed demand due to the 2007-2010 rationing period and the economic downturn.

<sup>3</sup> Existing conservation saving from the "1994 Water Conservation Master Plan" and planned conservation program savings based on the "2011 Water Conservation Master Plan".

<sup>4</sup> Existing recycled water achieved per the "1993 Water Supply Management Program" and planned recycled water program savings as outlined in Chapter 5 of the UWMP 2010.

<sup>5</sup> Projected available supply data includes dry year supply deliveries from the Freeport Regional Water Project (FRWP) and Bayside Groundwater Project, Phase 1. Delivery rules for the FRWP follow the rules as developed in the Freeport EIR, 2003.

<sup>6</sup> Rationing reduction goals are determined according to projected system storage levels in the Long-Term Drought Management Program guidelines per Table 3-2 in Chapter 3 of the UWMP 2010.

<sup>7</sup> The supplemental supply need is based on EBMUDSIM modeling studies. It is the amount of water needed based on EBMUD's updated demand projections, the provisions of the 1998 Joint Settlement Agreement and the rationing policy stated in Table 3-2, Chapter 3 of the UWMP 2010. The actual need will be dependent on antecedent conditions and the severity of actual drought conditions. Supplemental supply stored during the initial year of the drought could be later released, diminishing supplemental supply needs. During the drought that continued into 2010, the combined effects of water rationing and an economic downturn suppressed demand below the planning level of demand to maintain a sufficient water supply and deferred the need for supplemental water. However, if the drought had continued into its second year, most likely supplemental supplies would have been obtained from the Freeport Regional Water Facility as anticipated in the Interim Drought Management Program Guidelines discussed in Appendix G-2.



**EAST BAY MUNICIPAL UTILITY DISTRICT**

---

DATE: December 5, 2013

MEMO TO: Board of Directors

FROM: Alexander R. Coate, General Manager *ARC*

SUBJECT: Cancel the December 24, 2013 Closed Session and Regular Meetings  
of the Board of Directors

The Board of Directors has traditionally cancelled the Board meetings scheduled for the fourth Tuesday in December, provided it did not adversely impact the operations of the District, and to accommodate holiday plans of Directors and staff. This action would provide an opportunity for a vacation period from December 11, 2013 through January 13, 2014.

The first Closed Session and Regular Business Meetings after the holiday season would be Tuesday, January 14, 2014 at 11:00 a.m. and 1:15 p.m. respectively.

ARC:LML:av

I:\Draft Board Documents\12-10-13 Board Items\Item XX-OGM - Cancellation of 122413 Board mtgs.doc





12.

AGENDA NO.

MEETING DATE

December 10, 2013

TITLE **EPA GRANT FOR WASTEWATER NUTRIENT REMOVAL STUDY**☐ MOTION ☒ RESOLUTION ☐ ORDINANCE**RECOMMENDED ACTION**

Authorize the acceptance of a grant from the United States Environmental Protection Agency Region IX (EPA) in the amount of \$517,650 to conduct a regional Bay Area nutrient removal study based on wastewater sidestream treatment.



**SUMMARY**

The District proposed a regional collaborative effort to investigate nutrient reduction in San Francisco Bay through the treatment of wastewater "sidestreams" (i.e., nutrient-rich internal recycle streams at treatment plants) to EPA in July 2013. The EPA has offered a grant award in an amount of \$517,650, with a 1:1 matching fund required. To meet this matching fund requirement, the District would contribute an in-kind contribution up to \$200,000 and the project partners would provide \$317,650 in the form of bench- and pilot-testing, equipment purchases, facility access, laboratory analysis, and staff time over the next two years.

**DISCUSSION**

A growing body of evidence suggests that the historic resilience of San Francisco Bay (SF Bay) to elevated nutrient concentrations (i.e., nitrogen, phosphorus) is declining, which has increased concerns from regulators and stakeholders regarding loading contributions from all sources including wastewater agencies. Wastewater agencies contribute a significant portion (40 to 60%) of overall nutrient loading to SF Bay. The possibility of future nutrient removal requirements could pose both technical and financial challenges due to the emerging nature of technology development and high associated capital investment costs (estimated at \$2-10 billion on a regional level). Concentrated wastewater sidestreams contribute approximately 15 to 30% of nitrogen discharged, but less than 1% of plant flow. Therefore, it may be more cost effective to separately treat wastewater sidestreams rather than the full plant flow as a significant step towards nitrogen reduction.

In response to a request for proposals issued by the EPA for its FY2013 SF Bay Area Water Quality Improvement Fund, the District prepared a proposal with the following key elements:

|                                     |  |  |
|-------------------------------------|--|--|
| Funds Available: FY14               |  | Budget Code: WWC/924/7999/2008214/5999   |
| DEPARTMENT SUBMITTING<br>WASTEWATER | DEPARTMENT MANAGER or DIRECTOR<br><br>Bennett K. Horenstein | APPROVED<br><br>General Manager |

Contact the Office of the District Secretary with questions about completing or submitting this form.

- Identify cost-effective nutrient removal technologies for sidestream treatment by conducting a comprehensive literature review and bench/pilot testing selected technologies at multiple sites;
- Quantify nutrient load reductions to SF Bay and estimate the cost/benefit of sidestream treatment;
- Simulate water quality improvements to SF Bay via hydrodynamic and water quality modeling, assuming full-scale implementation of sidestream treatment; and
- Evaluate the role of sidestream treatment in developing a science- and cost-effectiveness based regional approach to nutrient management in SF Bay.

To ensure regional participation and collaboration, the District has assembled an outstanding project team, including several key SF Bay wastewater agencies, scientists, engineers and regulators. The team includes San Francisco Public Utilities Commission, Delta Diablo Sanitation District, East Bay Dischargers Authority, Bay Area Clean Water Agencies, San Francisco Estuary Institute, researchers from Stanford University and UC Berkeley (Reinventing the Nation's Urban Water Infrastructure team), an environmental consulting firm, and San Francisco Regional Water Quality Control Board. The District will lead this regional effort by wastewater agencies to proactively address nutrients and gather information on whether nutrient removal via sidestream treatment may provide a cost-effective approach to reducing nutrients, were it at some point required by regulations.

## **FISCAL IMPACT**

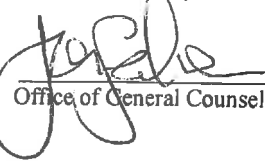
Funding for this work will be provided by the \$517,650 EPA grant. The District's in-kind contribution will be provided through the Sidestream Nutrient Removal project, which is in the FY14 budget.

## **ALTERNATIVES**

**Do not accept EPA grant funding.** This alternative is not recommended, because the District would forego the \$517,650 in grant funding and lose the opportunity to lead a regional, science-based study to inform a significant and emerging issue in SF Bay.

**Perform the work with District funds.** This alternative is not recommended, because the District would not benefit from a collaborative, regional effort focused on advancing current understanding regarding sidestream treatment technologies and costs.



  
Office of General Counsel

RESOLUTION NO. \_\_\_\_\_

AUTHORIZING ACCEPTANCE OF A GRANT AWARDED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION IX THROUGH ITS SAN FRANCISCO BAY AREA WATER QUALITY IMPROVEMENT FUND

Introduced by Director

; Seconded by Director

WHEREAS, the United States Environmental Protection Agency Region IX ("EPA") manages a competitive grant program known as the San Francisco Bay Area Water Quality Improvement Fund ("SFBWQIF"); and

WHEREAS, through the SFBWQIF, the EPA is authorized to issue grants to public agencies to propose projects to protect and restore the water quality of the San Francisco Bay and its watersheds; and

WHEREAS, East Bay Municipal Utility District ("District") has applied for grant funding from the SFBWQIF for a project entitled "Reducing Nutrients in the San Francisco Bay through Wastewater Sidestream Treatment," which is designed to investigate nutrient reduction through the treatment of nutrient-rich internal recycle streams at treatment plants known as "sidestreams" via a regional collaborative effort with several key San Francisco Bay wastewater agencies, scientists, engineers, and regulators; and

WHEREAS, on November 25, 2013, the EPA notified the District that the submitted project was selected to receive \$517,650 in grant funding; and

WHEREAS, as part of the grant acceptance process, the EPA requires that entities awarded grant funding execute certain documents, including the project work plan and budget before such funds can be claimed; and

WHEREAS, as part of the EPA grant award requirement for this project, the District and its project partners will provide a 1:1 matching fund of \$517,650, with the District's share constituting an in-kind contribution in the form of bench and pilot testing, equipment purchases, facility access, laboratory analysis, and staff time over the next two years, and the approved Fiscal Year 14 budget contains an appropriation sufficient for that purpose; and

WHEREAS, accepting this grant is in the District's interest because nutrient removal via sidestream treatment at the Main Wastewater Treatment Plant may benefit the growth of the Resource Recovery Program, and because the District will lead a regional effort on a significant regulatory issue while proactively responding to growing interest in nutrients from key stakeholders;

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors for the East Bay Municipal Utility District hereby authorize the General Manager to accept the EPA grant of \$517,650 and execute in the name of East Bay Municipal Utility District all documents, upon such terms as may be required by EPA and in a form approved by the General Counsel, necessary for distribution and administration of the funds, to implement and carry out the purpose of this resolution, and to undertake all actions necessary to complete the sidestream nutrient removal project(s) including making an in-kind contribution to fulfill the matching fund requirement.

ADOPTED this 10th day of December, 2013 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

APPROVED AS TO FORM AND PROCEDURE:

\_\_\_\_\_  
General Counsel

W:\410.01 Resolutions\Grants\EPA Grant Resolution Rev 2-OGC (4).doc



AGENDA NO.

13.

MEETING DATE

December 10, 2013

**TITLE     SALE OF REDWOOD FILTER PLANT PROPERTY TO HAYWARD AREA  
RECREATION AND PARK DISTRICT**☐ MOTION                      ☒ RESOLUTION                      ☐ ORDINANCE**RECOMMENDED ACTION**

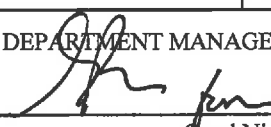
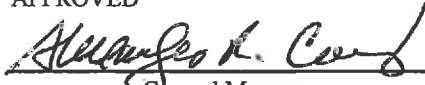
1. Approve the sale of the Redwood Filter Plant property ("Property") as shown on Exhibit "A" to the Hayward Area Recreation and Park District ("HARD") for an amount determined by the date of the close of escrow, and
2. Authorize District staff to execute the Agreement for the Sale of Real Property ("Agreement") with HARD.

**SUMMARY**

After formal adoption in 2012 by the Alameda County Board of Supervisors of the updated Castro Valley General Plan, the District re-circulated the Property's availability to qualified public schools, parks, and housing agencies, including HARD. HARD was the only agency which expressed an interest to purchase the Property. Using the valuation parameters of the District-commissioned appraisal, the District and HARD have negotiated a purchase price which is dependent upon the date of the close of escrow in 2014. The sale is structured to allow HARD the time necessary to secure funds to purchase the Property. The total purchase price of the Property shall be:

- \$5,600,000 (Five Million Six Hundred Thousand Dollars) with escrow closing between January 1, 2014 and April 30, 2014.
- \$5,800,000 (Five Million Eight Hundred Thousand Dollars) with escrow closing between May 1, 2014 and September 30, 2014.
- \$5,900,000 (Five Million Nine Hundred Thousand Dollars) with escrow closing between October 1, 2014 and December 31, 2014.

The Agreement also specifies:

|   |  |  |
|---|--|--|
| Funds Available: FY                     |  | Budget Code:   |
| DEPARTMENT SUBMITTING<br>Administration | DEPARTMENT MANAGER or DIRECTOR<br><br>Carol Nishita | APPROVED<br><br>General Manager |

Contact the Office of the District Secretary with questions about completing or submitting this form.

- HARD's due diligence period and right to terminate the Agreement ends on December 31, 2013.
- HARD is required by January 10, 2014 to deliver into escrow a non-refundable \$50,000 deposit which shall be applied to the purchase price of the Property.
- Cross-indemnification between the two agencies.
- HARD is responsible for escrow and closing costs associated with the sale of the Property.
- If escrow does not close by December 31, 2014, the Agreement is terminated and the \$50,000 deposit is forfeited to the District.

HARD's Board of Directors approved the purchase of the Property at its November 25th meeting.

## DISCUSSION

Anticipating the need to construct a filter plant to serve the central portion of the Alameda County area, the District purchased and assembled 25 properties on some 24 acres in Castro Valley in the late '50's and early '60's which now comprise the Property. Those anticipated needs were successfully fulfilled with other District infrastructure. The District's updated long range water treatment and transmission master plan indicated no future need for the Property and it was declared surplus about 10 years ago. Previous attempts to sell the Property were unsuccessful mainly due to general economic conditions and uncertainty surrounding the lack of an adopted General Plan.

Since 2012, the District has:

- Obtained confirmation from Alameda County as to the conformance of the sale of the Property to the new Castro Valley General Plan.
- Hired an engineering firm to develop conceptual development plans under different park and recreational density scenarios in order to define the net acreage available for residential development.
- Retained the services of a real estate appraiser to estimate the land value based on the number of residential lots derived from the conceptual development plans.
- Pursuant to California law, notified other qualified public agencies of the Property being available for purchase.

## CEQA

Upon Board approval of the sale of the Property to HARD, the District will prepare a Notice of Exemption and file the CEQA documentation with Alameda County.

## ALTERNATIVE

**Do not sell the Property.** This alternative is not recommended as the Property has been declared surplus to the District's needs. The District would forego the sale proceeds and would continue to incur annual maintenance costs, estimated at \$25,000. HARD is confident that it can secure funding to purchase the Property in the first half of 2014. Market conditions have improved to warrant the disposal of the Property at this time.

RESOLUTION NO. \_\_\_\_\_

AUTHORIZING THE SALE OF THE REDWOOD FILTER PLANT PROPERTY TO THE  
HAYWARD AREA RECREATION AND PARK DISTRICT

Introduced by Director

; Seconded by Director

WHEREAS, the District has determined that the Redwood Filter Plant Property, 24 acres in Castro Valley, Alameda County, California, as more particularly shown on Exhibit A, attached hereto and incorporated herein, is surplus to the District's needs; and

WHEREAS, in accordance with the provisions of Government Code Section 54222, the District offered the property to two local school districts, local park and recreation agencies, and the local housing authorities, and the Hayward Area Recreation and Park District (HARD) was the only agency to express an interest in acquiring the land; and

WHEREAS, HARD has agreed to purchase the property under a structured purchase price based on the date of close of escrow, the total purchase price being \$5,600,000 (Five Million, Six Hundred Thousand Dollars) with escrow closing between January 1, 2014 and April 30, 2014, \$5,800,000 (Five Million, Eight Hundred Thousand Dollars) with escrow closing between May 1, 2014 and September 30, 2014, or \$5,900,000 (Five Million, Nine Hundred Thousand Dollars) with escrow closing between October 1, 2014 and December 31, 2014; and

WHEREAS, the proposed sale is in conformance with the General Plan of Alameda County, and is categorically exempt from the California Environmental Quality Act under Section 15312 of the State CEQA Guidelines; and

WHEREAS, it is in the best interest of the District to sell said property;

NOW, THEREFORE, BE IT RESOLVED that the Manager of Real Estate Services and Secretary are authorized and directed to execute a grant deed, in a form approved by the General Counsel, conveying said real property to the Hayward Area Recreation and Park District, and any and all other documents necessary to close escrow, and the proper officers of the District are hereby authorized and directed to deliver said deed to the Hayward Area Recreation and Park District upon receipt of \$5,600,000 if escrow closes between January 1, 2014 and April 30, 2014, \$5,800,000 if escrow closes between May 1, 2014 and September 30, 2014, or \$5,900,000 if escrow closes between October 1, 2014 and December 31, 2014, less the non-refundable deposit of \$50,000 received.

BE IT FURTHER RESOLVED that the Secretary of the District is hereby directed to file a notice of exemption in accordance with the law, with the County Clerk of Alameda.

ADOPTED this 10th day of December, 2013 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

---

President

---

Secretary

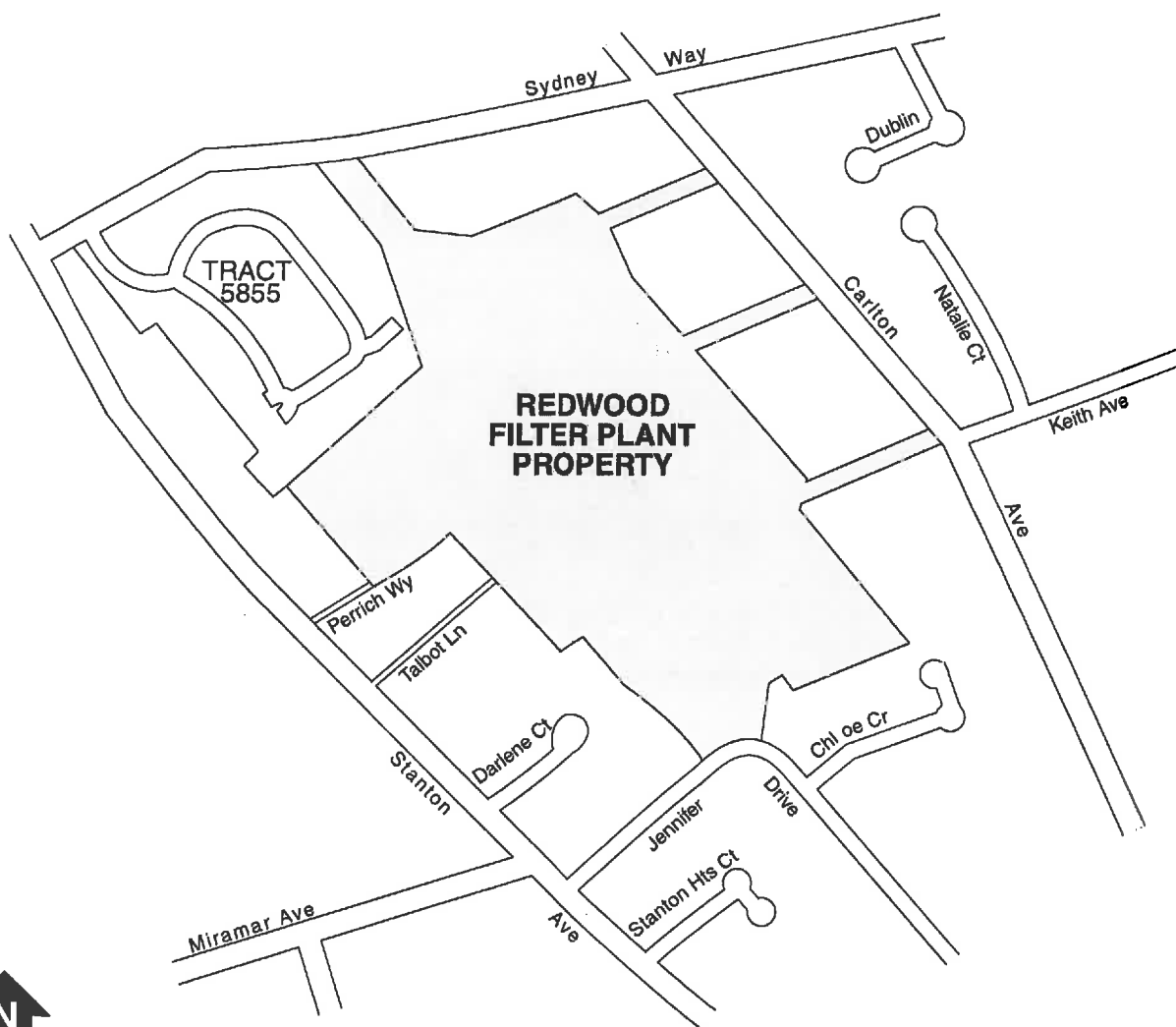
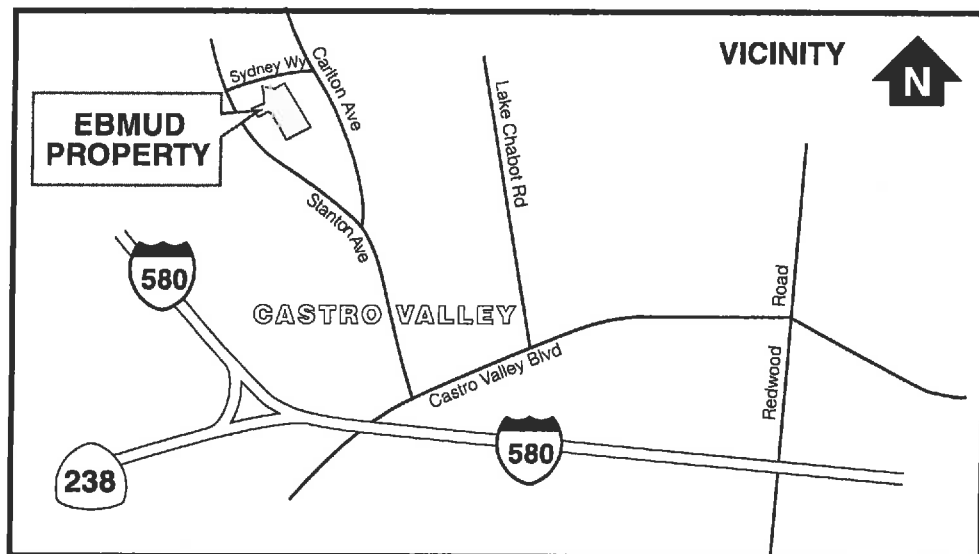
APPROVED AS TO FORM AND PROCEDURE:

---

General Counsel

W:\400\410\410.01\Sale of Redwood Filter Plant Property.docx

**SALE OF EBMUD VACANT  
REDWOOD FILTER PLANT PROPERTY  
CASTRO VALLEY, CA**









14.

AGENDA NO.

MEETING DATE

December 10, 2013

TITLE SALE OF FORMER OAKLAND BUSINESS OFFICE, 250 17<sup>TH</sup> STREET, OAKLAND☐ MOTION ☒ RESOLUTION ☐ ORDINANCE**RECOMMENDATION ACTION**

Approve the sale of the former Oakland Business Office property at 250 17<sup>th</sup> Street, Oakland to Alcatraz Capital I LLC for \$2,676,000.

**SUMMARY**

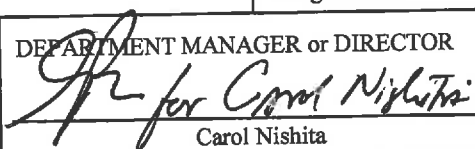
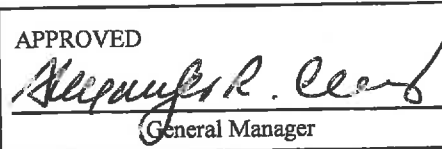
In late 2012, the District made a final determination that it had no future need for the former business office property located at 250 17<sup>th</sup> Street (corner of Alice Street) in downtown Oakland (see attached photo). In February 2013 the District declared the property as surplus. Having received no interest in the property from other public agencies, the District listed the property for sale at \$2,676,000. After receiving three offers, a counter offer from Alcatraz Capital I LLC at the list price of \$2,676,000 is considered to be the best overall offer with no unusual contingencies that would prevent a close of escrow from occurring within the next 120 days.

**DISCUSSION**

The District purchased the former Oakland Business Office property in August, 1955 for \$89,500 and constructed the 4,920+/- square foot building in 1956. The business office was in operation until its functions were relocated to the Administration Building in 1991.

Since 1994, the District has leased the business office property to the City of Oakland, which in partnership with the Oakland Unified School District (OUSD) operates a child care facility on the premises known as the Alice Street Learning Center. The current lease through June 2014 provides the District with annual revenue of \$103,308. The City has an option to extend the lease for one additional year through June 2015. The property will be sold subject to the existing lease; however, the OUSD has indicated that it plans to relocate the Alice Street Learning Center to OUSD headquarters sometime in 2014.

In conformance with California Government Code section 54222, the District notified the City of Oakland (Department of Human Services and Department of Parks and Recreation), the OUSD, and the Oakland

|   |   |  |
|---|---|--|
| Funds Available: FY                     |   | Budget Code:   |
| DEPARTMENT SUBMITTING<br>Administration | DEPARTMENT MANAGER or DIRECTOR<br><br>Carol Nishita | APPROVED<br><br>General Manager |

Contact the Office of the District Secretary with questions about completing or submitting this form.

Housing Authority of the property's availability for purchase. No response was received from any of these agencies. Thereafter, pursuant to District Policy 4.21, Land Sales – Use of Funds, the District notified adjacent property owners by certified mail of the District's intent to dispose of its property.

In order to generate interest from a wide audience, the District retained the services of a local Oakland real estate brokerage firm to market the property. The District's listing broker, LCB Associates, will split the 5% sales commission with the broker representing the buyer, Alcatraz Capital I LLC who presented the best overall offer for the property in the amount of \$2,676,000. Alcatraz Capital I LLC plans to eventually demolish the existing structure and build a multi-story residential building on the site. The buyer will have up to 60 days to conduct its due diligence of the property, notify the District that it wants to proceed with the transaction, and deposit \$80,280 into escrow. Escrow shall close 60 days after the buyer's formal notification to the District, with the District and Alcatraz Capital I LLC sharing in normal closing and escrow costs.

## **CEQA**

Upon Board approval of the sale to Alcatraz Capital I LLC, the District will prepare a Notice of Exemption and file the CEQA documentation with Alameda County.

## **ALTERNATIVE**

**Do not sell the property and continue to lease it instead.** This is not recommended because the District has determined that the property is no longer needed and selling the property in this market climate is prudent. Since the OUSD plans to relocate the child care facility and not renew the lease, the District would have to identify prospective tenants and re-condition the building for another lessee.

Attachment

RESOLUTION NO. \_\_\_\_\_

AUTHORIZING THE SALE OF THE FORMER OAKLAND BUSINESS OFFICE  
PROPERTY TO ALCATRAZ CAPITAL I LLC

Introduced by Director

; Seconded by Director

WHEREAS, the District has determined that its former business office property at 250 17th Street in Oakland, Alameda County, California, as more particularly shown on Exhibit A, attached hereto, is surplus to the District's needs; and

WHEREAS, in accordance with the provisions of Government Code Section 54222, the District notified the City of Oakland Department of Human Services and the City of Oakland Department of Parks and Recreation, the Oakland Unified School District and the Oakland Housing Authority of the property's availability for purchase and did not receive a response from any of these agencies; and

WHEREAS, pursuant to District Policy 4.21, the District notified property owners adjacent to the former Oakland Business Office of its intent to offer the property for sale; and

WHEREAS, after the District marketed the property for sale, the District received three offers, and the offer from Alcatraz Capital I LLC in the amount of \$2,276,000 was the best overall offer for the property; and

WHEREAS, the proposed sale is in conformance with the General Plan of Alameda County, and is categorically exempt from the California Environmental Quality Act under Section 15312 of the State CEQA Guidelines; and

WHEREAS, it is in the best interest of the District to sell said property;

NOW, THEREFORE, BE IT RESOLVED that the Manager of Real Estate Services and Secretary are authorized and directed to execute a grant deed, in a form approved by the General Counsel, conveying said real property to the Alcatraz Capital I LLC, and any and all other documents necessary to close escrow, and the proper officers of the District are hereby authorized and directed to deliver said deed to Alcatraz Capital I LLC upon receipt of \$2,276,000, less a non-refundable deposit into escrow of \$80,280.

BE IT FURTHER RESOLVED that the Secretary of the District is hereby directed to file a notice of exemption in accordance with the law, with the County Clerk of Alameda.

ADOPTED this 10th day of December, 2013 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

President

ATTEST:

---

Secretary

APPROVED AS TO FORM AND PROCEDURE:

---

General Counsel



AGENDA NO.  
MEETING DATE

15.  
December 10, 2013

**TITLE** ADOPT DISTRICT 401(a), 401(k), AND 457 PLANS AS RESTATED TO COMPLY WITH NEW INTERNAL REVENUE SERVICE (IRS) RULING 2013-17

☐ MOTION ☒ RESOLUTION ☐ ORDINANCE

### RECOMMENDED ACTION

Adopt the District's 401(a) Plan, 401(k) Tax Deferred Savings Plan and 457 Deferred Compensation Plan, as restated, to comply with Internal Revenue Service (IRS) Ruling 2013-17 related to the repeal of Section 3 of the Defense of Marriage Act (DOMA), and make other minor changes, effective January 1, 2014.

### SUMMARY

As a result of the repeal of Section 3 of DOMA, the IRS issued Revenue Ruling 2013-17, which defines the terms "marriage", "spouse", "husband", "wife", and "husband and wife" for federal tax purposes. These terms drive several administrative items within the various deferred compensation retirement plans at EBMUD. The proposed resolution amends the definitions in the District's 401(a), 401(k), and 457 employee deferred compensation plans as updated in Revenue Ruling 2013-17, and makes other minor changes. The revised plan documents, as restated effective January 1, 2014, are attached to the resolution (Attachments A, B and C, respectively).

### DISCUSSION

On June 26, 2013, Section 3 of DOMA was repealed by the U.S. Supreme Court. Section 3 of DOMA previously stated that for all federal law purposes, the word "marriage" means only a legal union between one man and one woman as husband and wife, and the word "spouse" refers only to a person of the opposite sex who is a husband or wife. The repeal of Section 3 of DOMA affects more than 1,000 federal laws, including those related to estate and gift taxes, Social Security benefits and tax return filings. Its effect on the Internal Revenue Code (IRC) and the Employee Retirement Income Security Act of 1974 (ERISA) will have a significant impact on employer-sponsored healthcare and retirement plans.

In August 2013, the IRS provided much anticipated guidance on how the court decision to overturn Section 3 of DOMA affects tax administration. IRS Revenue Ruling 2013-17 states that for federal tax purposes, the terms "spouse," "husband and wife," "husband," and "wife" now include an individual married to a person of the same gender and the term "marriage" includes a marriage between individuals of the same gender, as long as the individuals are lawfully married under any domestic or foreign law

|  |   |   |
|--|---|---|
| Funds Available: FY                      |   | Budget Code:  |
| DEPARTMENT SUBMITTING<br>Human Resources | DEPARTMENT MANAGER or DIRECTOR<br><i>Delores Turner</i><br>Delores Turner | APPROVED<br><i>William R. C...</i><br>General Manager |

Contact the Office of the District Secretary with questions about completing or submitting this form.

which authorizes the marriage of two individuals of the same gender, even if they are now domiciled in a state that does not recognize the validity of same gender marriage. For example, a same gender couple married in California, but now residing in Arizona, will be considered married for federal tax purposes. However, the terms do not include individuals who have entered into a registered domestic partnership, civil union, or other similar form of relationship that is not denominated as a marriage under domestic or foreign law.

The proposed resolution amends the District's 401(a), 401(k), and 457 deferred compensation plans to update the definition of marriage to match the definition stated in IRS Revenue Ruling 2013-17. It does not give any further rights to domestic partners, because the federal tax laws governing the tax-exempt status of the plans continue to state that state-registered domestic partners will not be treated as equivalent to spouses for the following purposes:

- Death benefits on the same basis as a surviving spouse,
- Tax-exempt rollovers on the same basis as a current, former or surviving spouse, and
- A state-registered domestic partner is also ineligible to be an Alternate Payee on the same basis as a former spouse for purposes of qualified domestic relations orders (QDROs) under the three plans.

The additional changes are not substantive. Compensation and contribution limits are updated to reference the current year limits, and the IRS Revenue Ruling used for corrective action of over contribution to the plan(s) is updated to the most recent IRS Revenue Ruling on the subject.

## **FISCAL IMPACT**

There is no fiscal impact in adopting the plan restatements.

## **UNION NOTIFICATION**

All four unions have been notified of the proposed restatements of the District's 401(a), 401(k), and 457 deferred compensation plans.

## **ALTERNATIVES**

**Do not approve amendments to the District's 401(a), 401(k), and 457 plans.** This action is not recommended because the 401(a), 401(k), and 457 plans should be updated to reflect the most recent IRS Revenue Ruling 2013-17 to ensure administrative rules comply with federal tax laws that govern the 401(a), 401(k), and 457 plans.

Attachment

RESOLUTION NO. \_\_\_\_\_

AMENDING THE EAST BAY MUNICIPAL UTILITY DISTRICT  
401(a) TAX DEFERRED SAVINGS PLAN  
TO MAKE CHANGES EFFECTIVE JANUARY 1, 2014

Introduced by Director

; Seconded by Director

WHEREAS, on March 24, 1998, the Board of Directors adopted the East Bay Municipal Utility District 401(a) Plan ("401(a) Plan") that meets the requirements for eligible tax deferred savings plan status under section 401(a) of the Internal Revenue Code; and

WHEREAS, the Board of Directors under Sections 11.1 and 11.3 of the 401(a) Plan is authorized to amend the Plan by resolution; and

WHEREAS, on June 26, 2013, the United States Supreme Court ruled that Section 3 of the Defense of Marriage Act, was unconstitutional for failing to recognize same-sex marriage; and

WHEREAS, the Internal Revenue Service issued regulations effectuating the U.S. Supreme Court ruling; and

WHEREAS, the District must amend the 401(a) Plan to ensure compliance with federal regulatory tax law and to ensure that the plan language is current;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the East Bay Municipal Utility District that the 401(a) Plan, attached herein as Exhibit A, is hereby amended and adopted, and that the proper officers and employees of the District are authorized and directed to take all necessary steps to implement the amendments to the 401(a) Plan, effective January 1, 2014. The specific amendments are as follows:

**Section 1 of the Plan shall be amended to read as follows:**

**1.1 Name of Plan**

This Plan, effective March 24, 1998 and as previously amended and restated on February 9, 1999, February 22, 2000, October 23, 2001, November 27, 2001, December 11, 2001, December 10, 2002, December 14, 2004, December 13, 2005 and December 9, 2008, January 1, 2009, December 8, 2009, December 14, 2010, December 13, 2011, and December 11, 2012, **and December 10, 2013** is hereby amended and restated in accordance with the terms hereof, and shall be known as the East Bay Municipal Utility District 401(a) Plan (the "Plan").

### 1.3 Effective Date

The effective date of (a) this Plan is March 24, 1998, and (b) this amendment and restatement of the Plan is effective (generally) as of January 1, 2014.

### **Section 2 of the Plan shall be amended as follows:**

2.6 Compensation means the “total gross compensation” payable to an Employee for services rendered to the District during periods in which he or she is a Participant. For this purpose, “total gross compensation” shall include the total salary, wages and other remuneration reportable on the Employee’s Federal Income Tax Withholding Statement (IRS Form W-2), *plus* (i) any amounts contributed by or on behalf of the Employee pursuant to a Salary Contribution election under the District’s 401(k) Tax Deferred Savings Plan; (ii) any deferrals made by the Employee pursuant to a Salary Contribution election under the District’s 457 Deferred Compensation Plan; (iii) any salary reduction contributions made by the Employee which are not includible in his or her gross income by reason of section 125 of the Code; (iv) any amounts not includible in the Participant’s gross income by reason of section 132(f)(4) of the Code; (v) any amounts contributed by or on behalf of the Employee pursuant to a salary deferral agreement to purchase an annuity contract under section 403(b) of the Code; (vi) any amounts contributed by or on behalf of the Employee pursuant to a Salary Contribution agreement made under the Plan in accordance with Section 4.1 that are “picked up” by the District in accordance with section 414(h)(2) of the Code; and (vii) any employee contributions made under the District’s Retirement Ordinance that are “picked up” by the District in accordance with section 414(h)(2) of the Code; *provided, however*, that all other items of extra pay, including, but not limited to, the following, shall not be included in Compensation:

- (a) imputed income on group life insurance;
- (b) non-cash benefits extended to domestic partners;
- (c) education expenses and reimbursements;
- (d) meal vouchers;
- (e) personal use value (including commuting costs) of District-provided automobiles;  
or
- (f) mileage allowances in excess of the amount permitted for reimbursement under an accountable plan.



Compensation shall include payments made within 2½ months following an Employee's Severance from Employment, *provided* that such payments (absent a Severance from Employment) would have been paid to the Employee while the Employee continued in employment with the District and constitute (i) regular compensation for services during the Employee's regular working hours, compensation for services outside the Employee's regular working hours (overtime and shift differential), or commissions; or (ii) unused accrued vacation or sabbatical pay, but only if the payment would have been paid to the Employee at the same time if the Employee had continued in employment with the District and only to the extent that the payment is includible in the Employee's gross income.

Notwithstanding the foregoing, no portion of the Compensation of any Employee which exceeds \$250,000 (for 2012~~3~~) shall be taken into account for any purpose under the Plan for any Plan Year.

**Section 5 of the Plan shall be amended as follows:**

**5.4     Limitation on Allocations**

The purpose of this Section 5.4 is to provide that Annual Additions shall not exceed the limitations imposed on tax-qualified defined contribution plans by federal law, and this Section 5.4 shall be construed to effectuate this purpose.

- (a)     Annual Additions Limitation. Notwithstanding any contrary Plan provision, the maximum Annual Addition to a Participant's Account for any Plan Year shall not exceed the lesser of (1) \$40,000 (as adjusted in accordance with section 415(d) of the Code (*i.e.*, \$50,000 for 2012~~3~~), or (2) one hundred percent (100%) of the Participant's Annual Compensation from the District.
- (b)     "Annual Compensation" means, for purposes of this Section 5.4, an Employee's compensation as described in Treas. Reg. § 1.415(c)-2(d)(4). Annual Compensation shall also include compensation paid after severance from employment to the extent permitted by Treas. Reg. § 1.415(c)-2(e)(3).
- (c)     Adjustments. For Plan Years prior to January 1, 2009, if, as the result of (i) the allocation of forfeitures under any other tax-qualified plan, (ii) a reasonable error in estimating a Participant's Annual Compensation or in determining the amount of salary contributions that may be made by a Participant under the District's 401(k) Tax Deferred Savings Plan, or (iii) other circumstances which permit the application of the rules stated in this Section 5.4 or Section 5.5, any of the limitations of these Sections would otherwise be exceeded with respect to any Participant for any Plan Year, then the following actions (but only to the extent necessary to avoid exceeding such limitations) shall be taken in the following order:

- (1) Any nondeductible voluntary employee contributions made by the Participant for the Plan Year under any other tax-qualified plan shall be returned.
- (2) The Participant's Salary Contributions made under the District's 401(k) Tax Deferred Savings Plan, if not distributed to the Participant under such Plan, shall be reallocated to a suspense account under such Plan, and the balance credited to such account shall be applied to reduce the Salary Contributions otherwise to be contributed on behalf of, and allocated to the accounts of, all eligible participants under such Plan for succeeding Plan Years in order of time.
- (3) The amount allocated to the Participant's account from contributions made by the District under any other tax-qualified plan shall be reallocated to a suspense account, and the balance credited to such account shall be applied to reduce the contributions (of the same class) otherwise to be made on behalf of, and allocated to the accounts of, all eligible participants under such other plan for succeeding Plan Years in order of time.
- (4) The amount (if any) allocated to the Participant's Account from contributions made by the District (other than as Salary Contributions) under this Plan shall be reallocated to a suspense account, and the balance credited to such account shall be applied to reduce the Salary Contributions otherwise to be made on behalf of, and allocated to the Accounts of, all eligible Participants under this Plan for succeeding Plan Years in order of time.
- (5) The Participant's accrued benefit under the District's Employees' Retirement System shall be frozen and/or the rate of its future accrual shall be reduced.

For Plan Years beginning on or after January 1, 2009, any excess Annual Additions shall be corrected as necessary in accordance with the correction methods specified in ~~Sections 6.06(2) and (3)~~ of Revenue Procedure 2008-50 2013-12 or its successor.

In applying these rules, this Plan and any other plan required to be aggregated with this Plan under Treas. Reg. § 1.415(f)-1 shall be treated as one plan.

No suspense account established under this Section 5.4(c) shall share in allocations of earnings and gains (or losses) of the Trust. The balances credited to all suspense accounts shall be returned to the District upon termination of the Plan.

**Section 9.10 of the Plan shall be amended as follows:**

**9.10 Marital Status**

- (a) Requirements for Marriage or Domestic Partnership. If this Section 9.10 applies with respect to a Participant, for all purposes of this Plan, the Participant shall be treated as married if at the relevant time he or she is:
- (1) Married to ~~an~~ the individual ~~who is his wife or her husband~~ in a marital relationship which is legally valid under ~~applicable local~~ the law of the state or other jurisdiction where the marriage took place; or
  - (2) Not legally married but is the domestic partner of an individual (i) who is of the same or opposite sex as the Participant, (ii) who is his or her domestic partner in a domestic partnership which is validly registered in a jurisdiction which provides for domestic partner registration, and (iii) who has executed (together with the Participant) a certification demonstrating that the foregoing terms of this paragraph (b) have been satisfied; *provided, however*, that the current or former domestic partner of a Participant:
    - (i) Shall not be treated as his or her surviving spouse for purposes of applying Sections 9.6(c), 9.7(b) and (c), or 9.8(b)(1); and
    - (ii) If he or she is not also the Participant's dependent (within the meaning of section 152(a) of the Code), shall not be treated as his or her former spouse or other Alternate Payee (as defined in Section 8.3) for purposes of applying Section 8.3 (relating to Qualified Domestic Relations Orders) or any related Plan provision
- (b) Evidence of Marriage or Domestic Partnership. Any Participant who claims to be married for purposes of this Plan, as a condition to his or her eligibility for any benefit available only to married Participants or their spouses under this Plan, shall provide such evidence as to the continued existence of his or her marital relationship or domestic partnership as is reasonably requested by the Committee.

- (c) Domestic Partner Treated as Spouse. Each reference in this Plan to the spouse, lawful spouse, husband or wife of a Participant, or to his or her status as a married individual, shall also refer to the domestic partner of such Participant, or to his or her status as an individual who is a member of a domestic partnership, *provided* that such relationship satisfies the criteria set forth in Section 9.10(a)(2).

BE IT FURTHER RESOLVED that any Resolution in conflict herewith is hereby superseded and canceled.

ADOPTED this 10th day of December, 2013 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

APPROVED AS TO FORM AND PROCEDURE:

\_\_\_\_\_  
General Counsel

W:\410 EBMUD BOARD\410.01 Resolutions\Human Resources - Misc\2013 DC Plan Amendments\401(a)  
Resolution and Exhibits-2013.docx

**EAST BAY MUNICIPAL UTILITY DISTRICT**

**401(a) PLAN**

**(As Amended and Restated Effective as of January 1, 2014)**



## TABLE OF CONTENTS

|                    |  |          |
|--------------------|--|----------|
| <b>ARTICLE I</b>   | <b>NAME, PURPOSE AND EFFECTIVE DATE.....</b> | <b>1</b> |
| 1.1                | Name of Plan .....                           | 1        |
| 1.2                | Purpose of Plan .....                        | 1        |
| 1.3                | Effective Date .....                         | 1        |
| <b>ARTICLE II</b>  | <b>DEFINITIONS.....</b>                      | <b>2</b> |
| 2.1                | Account.....                                 | 2        |
| 2.2                | Beneficiary.....                             | 2        |
| 2.3                | Board of Directors or Board .....            | 2        |
| 2.4                | Code.....                                    | 2        |
| 2.5                | Committee.....                               | 2        |
| 2.6                | Compensation .....                           | 2        |
| 2.7                | District .....                               | 3        |
| 2.8                | Eligible Employee .....                      | 3        |
| 2.9                | Employee .....                               | 3        |
| 2.10               | Entry Date.....                              | 3        |
| 2.11               | Fund or Investment Fund.....                 | 3        |
| 2.12               | Human Resources Department .....             | 4        |
| 2.13               | Leased Employee.....                         | 4        |
| 2.14               | Normal Retirement Age.....                   | 4        |
| 2.15               | Participant .....                            | 4        |
| 2.16               | Plan .....                                   | 4        |
| 2.17               | Plan Administrator or Administrator .....    | 4        |
| 2.18               | Plan Sponsor .....                           | 4        |
| 2.19               | Plan Year .....                              | 4        |
| 2.20               | Salary Contribution.....                     | 4        |
| 2.21               | Severance from Employment .....              | 4        |
| 2.22               | Spousal Consent .....                        | 4        |
| 2.23               | Third Party Administrator.....               | 5        |
| 2.24               | Trust.....                                   | 5        |
| 2.25               | Trustee .....                                | 5        |
| 2.26               | Valuation Date .....                         | 5        |
| <b>ARTICLE III</b> | <b>ELIGIBILITY AND PARTICIPATION.....</b>    | <b>5</b> |
| 3.1                | Eligibility .....                            | 5        |
| 3.2                | Participation.....                           | 6        |
| 3.3                | Conditions of Participation .....            | 7        |
| 3.4                | Beneficiary Designation .....                | 7        |
| 3.5                | Loss of Eligibility .....                    | 8        |
| 3.6                | Termination of Participation.....            | 8        |
| <b>ARTICLE IV</b>  | <b>CONTRIBUTIONS UNDER THE PLAN.....</b>     | <b>9</b> |
| 4.1                | Salary Contribution Agreement.....           | 9        |
| 4.2                | Amount of Salary Contributions.....          | 9        |

|  |   |           |
|--|---|-----------|
| 4.3  | Changes in Salary Contributions .....   | 10        |
| 4.4  | Employee Contributions .....  | 11        |
| 4.5  | Date of Contribution .....  | 11        |
| 4.6  | Direct Transfers of Eligible Rollover Distributions .....                                     | 11        |
| <b>ARTICLE V ACCOUNT ADMINISTRATION.....</b>           |   | <b>13</b> |
| 5.1  | Participant Accounts.....   | 13        |
| 5.2  | Allocation of Income, Appreciation and Loss .....   | 13        |
| 5.3  | Annual Additions.....   | 13        |
| 5.4  | Limitation on Allocations.....  | 14        |
| 5.5  | Notice to Participants.....   | 16        |
| <b>ARTICLE VI INVESTMENT OF FUNDS .....</b>            |   | <b>17</b> |
| 6.1  | Investment Funds.....   | 17        |
| 6.2  | Investment Fund Election .....  | 17        |
| 6.3  | Change in Investment Fund Election.....   | 17        |
| 6.4  | Transfer Between Investment Funds .....   | 18        |
| <b>ARTICLE VII VESTING AND FORFEITURES .....</b>       |   | <b>19</b> |
| 7.1  | Salary Contributions .....  | 19        |
| <b>ARTICLE VIII WITHDRAWALS, LOANS AND QDROs .....</b> |   | <b>20</b> |
| 8.1  | Withdrawals.....  | 20        |
| 8.2  | Participant Loans .....   | 20        |
| 8.3  | QDROs .....   | 23        |
| <b>ARTICLE IX PAYMENT OF BENEFITS.....</b>             |   | <b>24</b> |
| 9.1  | General Conditions .....  | 24        |
| 9.2  | Events Permitting Distribution .....  | 24        |
| 9.3  | Time Limits on Benefit Payments .....   | 24        |
| 9.4  | Small Accounts.....   | 25        |
| 9.5  | Unclaimed Benefits .....  | 25        |
| 9.6  | Limitations on Distributions .....  | 25        |
| 9.7  | Death Distributions.....  | 26        |
| 9.8  | Distribution Methods .....  | 27        |
| 9.9  | Qualified Joint and Survivor Annuity and Preretirement Survivor Annuity<br>Requirements ..... | 28        |
| 9.10   | Marital Status.....   | 29        |
| <b>ARTICLE X ADMINISTRATION OF PLAN .....</b>          |   | <b>31</b> |
| 10.1   | District .....  | 31        |
| 10.2   | 401(a) Advisory Committee .....   | 31        |
| 10.3   | Secretary of the Committee .....  | 32        |
| 10.4   | Administrative Decisions.....   | 32        |
| 10.5   | Payment of Fees and Expenses.....   | 32        |
| 10.6   | Trustee .....   | 32        |
| 10.7   | Fiduciary Responsibilities .....  | 33        |



|   |  |           |
|---|--|-----------|
| 10.8  | Indemnification.....                       | 34        |
| 10.9  | Claims Procedures .....                    | 34        |
| <b>ARTICLE XI PLAN AMENDMENT, TERMINATION, AND OTHER CHANGES.....</b> |  | <b>36</b> |
| 11.1  | Action by District .....                   | 36        |
| 11.2  | District's Obligations Limited.....        | 36        |
| 11.3  | Plan Amendment .....                       | 36        |
| 11.4  | Plan Termination .....                     | 36        |
| <b>ARTICLE XII MISCELLANEOUS PROVISIONS .....</b>                     |  | <b>38</b> |
| 12.1  | Nonguarantee of Employment.....            | 38        |
| 12.2  | No Vested Contractual Rights Created.....  | 38        |
| 12.3  | Nonguarantee of Value of Trust Assets..... | 38        |
| 12.4  | Rights to Trust Assets.....                | 38        |
| 12.5  | Correction of Errors.....                  | 39        |
| 12.6  | Continuing Conditions.....                 | 39        |
| 12.7  | USERRA Provisions.....                     | 39        |
| 12.8  | Severability .....                         | 41        |
| 12.9  | Construction.....                          | 41        |
| 12.10   | Applicable Law.....                        | 41        |
| <b>EXECUTION .....</b>  |  | <b>42</b> |
| <b>APPENDIX A EFFECTIVE DATES .....</b>                               |  | <b>43</b> |



**EAST BAY MUNICIPAL UTILITY DISTRICT  
401(a) PLAN  
(As Amended and Restated Effective as of January 1, 2014)**

**ARTICLE I  
NAME, PURPOSE AND EFFECTIVE DATE**

**1.1     Name of Plan**

This Plan, effective March 24, 1998 and as previously amended and restated on February 9, 1999, February 22, 2000, October 23, 2001, November 27, 2001, December 11, 2001, December 10, 2002, December 14, 2004, December 13, 2005 and December 9, 2008, January 1, 2009, December 8, 2009, December 14, 2010, December 13, 2011 and December 11, 2012, is hereby amended and restated in accordance with the terms hereof, and shall be known as the East Bay Municipal Utility District 401(a) Plan (the "Plan").

**1.2     Purpose of Plan**

The purpose of the Plan is to provide a tax-effective means through which eligible employees can increase their retirement savings. The Plan is established pursuant to section 12338 of the Public Utilities Code and sections 53212 through 53213.5 of the Government Code of the State of California and is intended to constitute a qualified governmental defined contribution (money purchase) pension plan (within the meaning of section 401(a) of the Code) which includes a "pick-up" arrangement described (within the meaning of section 414(h)(2) of the Code). However, the Plan is not intended to grant to or create in any Participant any vested contractual rights under federal or California law nor any right to the continued existence of the Plan in its current or amended form.

**1.3     Effective Date**

The effective date of (a) this Plan is March 24, 1998, and (b) this amendment and restatement of the Plan is effective (generally) as of January 1, 2014.

## ARTICLE II DEFINITIONS

The following terms and phrases shall have the following meanings when used herein and in the Trust Agreement, unless a different meaning is clearly required by the context:

- 2.1 Account means the aggregate of one or more subaccounts held by the Trustee for a Participant under the Plan. Each Participant's Account may be invested in one or more Funds as authorized under the terms of this Plan and the Trust Agreement.
- 2.2 Beneficiary means an individual, trust or estate which is entitled to receive a death benefit under the Plan pursuant to the Participant's most recent effective beneficiary designation or otherwise under the provisions of Section 3.4.
- 2.3 Board of Directors or Board means the Board of Directors of the East Bay Municipal Utility District.
- 2.4 Code means the Internal Revenue Code of 1986, as amended from time to time. Reference to a specific section of the Code shall include such section, any valid regulation promulgated thereunder, and any comparable provision of any future legislation amending, supplementing or superseding such section.
- 2.5 Committee means the 401(a) Advisory Committee created by the Board and appointed by the General Manager to exercise the duties and responsibilities delegated to it under Section 10.2.
- 2.6 Compensation means the "total gross compensation" payable to an Employee for services rendered to the District during periods in which he or she is a Participant. For this purpose, "total gross compensation" shall include the total salary, wages and other remuneration reportable on the Employee's Federal Income Tax Withholding Statement (IRS Form W-2), *plus* (i) any amounts contributed by or on behalf of the Employee pursuant to a Salary Contribution election under the District's 401(k) Tax Deferred Savings Plan; (ii) any deferrals made by the Employee pursuant to a Salary Contribution election under the District's 457 Deferred Compensation Plan; (iii) any salary reduction contributions made by the Employee which are not includible in his or her gross income by reason of section 125 of the Code; (iv) any amounts not includible in the Participant's gross income by reason of section 132(f)(4) of the Code; (v) any amounts contributed by or on behalf of the Employee pursuant to a salary deferral agreement to purchase an annuity contract under section 403(b) of the Code; (vi) any amounts contributed by or on behalf of the Employee pursuant to a Salary Contribution agreement made under the Plan in accordance with Section 4.1 that are "picked up" by the District in accordance with section 414(h)(2) of the Code; and (vii) any employee contributions made under the District's Retirement Ordinance that are "picked up" by the District in accordance with section 414(h)(2) of the Code; *provided, however*, that all other items of extra pay, including, but not limited to, the following, shall not be included in Compensation:
  - (a) imputed income on group life insurance;

- (b) non-cash benefits extended to domestic partners;
- (c) education expenses and reimbursements;
- (d) meal vouchers;
- (e) personal use value (including commuting costs) of District-provided automobiles; or
- (f) mileage allowances in excess of the amount permitted for reimbursement under an accountable plan.

Compensation shall include payments made within 2½ months following an Employee's Severance from Employment, *provided* that such payments (absent a Severance from Employment) would have been paid to the Employee while the Employee continued in employment with the District and constitute (i) regular compensation for services during the Employee's regular working hours, compensation for services outside the Employee's regular working hours (overtime and shift differential), or commissions; or (ii) unused accrued vacation or sabbatical pay, but only if the payment would have been paid to the Employee at the same time if the Employee had continued in employment with the District and only to the extent that the payment is includible in the Employee's gross income.

Notwithstanding the foregoing, no portion of the Compensation of any Employee which exceeds \$250,000 (for 2013) shall be taken into account for any purpose under the Plan for any Plan Year.

- 2.7 District means the East Bay Municipal Utility District.
- 2.8 Eligible Employee shall have the meaning specified in Section 3.1.
- 2.9 Employee means any person, including a person generally classified as an officer or an official, who is:
  - (a) in the employ of the District and whose compensation in such employment is paid wholly by the District;
  - (b) a member of the Board of Directors; or
  - (c) a Leased Employee. However, if Leased Employees constitute less than 20% of the District's nonhighly compensated work force (within the meaning of section 414(n)(5)(C)(ii) of the Code), the term "Employee" shall not include those Leased Employees who are covered by a plan described in section 414(n)(5) of the Code.
- 2.10 Entry Date means the first day of each payroll period.
- 2.11 Fund or Investment Fund means each investment fund in which a Participant may elect to have his or her Account invested, as provided in Section 6.1.

- 2.12 Human Resources Department means the Human Resources Department of the District which is responsible for performing day-to-day plan administrative tasks and functions necessary to administer and manage the Plan and providing administrative assistance to the Committee. The Human Resources Department may delegate responsibilities with respect to the administration of the Plan to the Third Party Administrator.
- 2.13 Leased Employee means an individual who is a leased employee (within the meaning of section 414(n)(2) of the Code) of the District.
- 2.14 Normal Retirement Age means age 65.
- 2.15 Participant means an Eligible Employee (as defined in Section 3.1) who has elected to participate under Section 3.2 and whose Account balance is greater than zero.
- 2.16 Plan means the East Bay Municipal Utility District 401(a) Plan, as set forth herein and as amended from time to time.
- 2.17 Plan Administrator or Administrator means the District, which may allocate and delegate its responsibilities and duties pursuant to Section 10.1
- 2.18 Plan Sponsor means the District, which may act by action of the Board of Directors or any person to whom it has delegated the relevant authority.
- 2.19 Plan Year means the calendar year.
- 2.20 Salary Contribution means the reduction through bi-weekly payroll deduction of a Participant's Compensation by a specified percentage, which the District agrees to contribute to the Participant's Account under this Plan in a manner intended to meet the conditions of section 414(h)(2) of the Code. Each Participant's Compensation must be reduced by a specified percentage and may not be reduced by a lump sum amount. Salary Contributions will be (a) allocated to the Participant's Account pursuant to his or her Salary Contribution agreement, (b) immediately nonforfeitable, and (c) subject to the withdrawal limitations of Article VII.
- 2.21 Severance from Employment means the date an Employee dies, retires or otherwise has a severance from employment with the District, as determined by the Plan Administrator (and taking into account guidance issued under section 401(k)(2)(B)(i)(I) of the Code).
- 2.22 Spousal Consent means the consent of the spouse of a Participant that:
- (a) Is set forth in writing;
  - (b) Acknowledges the effect of the election, consent, waiver or designation made or other action taken by the Participant; and
  - (c) Is signed by the spouse and witnessed by a notary public.

- (d) However, if the Participant establishes to the satisfaction of the District that Spousal Consent may not be obtained or is not required, either because the Participant has no spouse or the spouse cannot be located or because of other circumstances specified under section 417(a)(2) of the Code or in rules adopted by the Committee or the Human Resources Department, the Participant's election or other action shall be effective without Spousal Consent.
  - (e) Any Spousal Consent required under the Plan shall be valid only (1) with respect to the spouse who signs the Spousal Consent, and (2) as to the particular choice made by the Participant in the election or other action requiring Spousal Consent.
  - (f) A Participant (without Spousal Consent) may revoke a prior election or other action at any time before its effective date. The number of such revocations shall not be limited.
- 2.23 Third Party Administrator means the organization with whom the Plan Administrator contracts to administer the Plan under the direction of the Committee and the Human Resources Department and which shall serve as the agent of the District, the Trustee, the Committee and the Human Resources Department in carrying out the administrative duties of the Plan.
- 2.24 Trust means that certain Trust created by execution of the "East Bay Municipal Utility District 401(a) Plan Trust Agreement," effective as of March 24, 1998, as amended from time to time (the "Trust Agreement").
- 2.25 Trustee means the individuals serving as the Director of Finance, Manager of Human Resources and Treasury Manager of the District appointed by the Board pursuant to Section 10.6(a). The Trustee may allocate or delegate the duty to determine the fair market value of Trust assets and other custodial duties to the Third Party Administrator.
- 2.26 Valuation Date means each date as of (a) which the Trustee determines the fair market value of Trust assets, and (b) which the Human Resources Department allocates investment earnings to Participants' Accounts. The Valuation Date shall be each business day.

### ARTICLE III ELIGIBILITY AND PARTICIPATION

#### 3.1 Eligibility

Eligible Employee means an Employee who is a member of one of the following classes of Employees:

- (a) the General Manager (the "Class 1 Employees");
- (b) the Senior Management Group (of which the General Counsel was not a member prior to, and became a member on and after, July 1, 2006) (the "Class 2 Employees");

- (c) the Non-Represented Management Group (of which the General Counsel was a member prior to, and ceased to be a member on and after, July 1, 2006) (the "Class 3 Employees");
- (d) the IFPTE Local 21 Group (the "Class 4 Employees");
- (e) the Confidential Group (the "Class 5 Employees");
- (f) the IUOE Local 39 Group (the "Class 6 Employees"); and
- (g) the AFSCME Local 2019 Group (the "Class 7 Employees").

Notwithstanding the foregoing, the term "Eligible Employee" shall not include any individual who, during such period, is classified or treated by the District as a part-time, contract, temporary or "as-needed" employee, an independent contractor, a consultant, a Leased Employee, an employee of an employment agency or any entity other than the District, even if such individual is subsequently determined to have been a full-time common-law employee of the District during such period; *provided, however*, that the term "Eligible Employee" shall include a "limited term" employee, a "temporary construction" employee, an "intermittent" employee or an employee who participates in a "job share" arrangement who is otherwise a member of one of the classes of Employees listed in this Section 3.1.

### 3.2 Participation

Participation in the Plan on the part of Eligible Employees shall be voluntary initially but irrevocable once commenced. An Eligible Employee shall be eligible to elect to participate in this Plan as follows:

- (a) Each Eligible Employee may elect to become a Participant in this Plan within a 30-day period beginning on the date the Participant is notified by the Secretary that he or she has satisfied the eligibility requirements of Section 3.1. Participation will be effective as of the first Entry Date coincident with or next following the date the Participant elects to participate as described in Section 4.1(c).
- (b) An Employee who becomes an Eligible Employee after the Effective Date, as a result of being transferred from an employment status other than that of an Eligible Employee, shall be eligible to become a Participant within a 30-day period beginning on the date the Participant is notified by the Secretary that he or she has satisfied the eligibility requirements of Section 3.1. Participation will be effective as of the first Entry Date coincident with or next following the date the Participant elects to participate as described in Section 4.1(c).
- (c) A Participant who becomes a member of a different class of Eligible Employees listed in Section 3.1 shall remain a Participant in the Plan, but shall be subject to such terms and conditions applicable to the class of Eligible Employees of which the Participant becomes a member.



- (d) A Participant or former Participant who is rehired by the District within two years of his or her most recent Severance from Employment shall automatically continue or resume his or her status as a Participant on the Entry Date coincident with or next following the date of his or her reemployment as an Eligible Employee. A Participant who is rehired by the District more than two years after his or her most recent Severance from Employment shall continue his or her status as a Participant on the Entry Date coincident with or next following the date of his or her reemployment as an Eligible Employee, *provided* that he or she enters into a new Salary Contribution Agreement as provided in Article IV.

### 3.3 Conditions of Participation

Each Eligible Employee's election to participate in this Plan shall be irrevocable.

Participation in this Plan by Eligible Employees shall be contingent upon receipt by the Human Resources Department of such applications, Salary Contribution agreements, consents, elections, Beneficiary designations and other documents and information as may be prescribed by the Human Resources Department.

If an Eligible Employee elects to participate in the Plan and concurrently participates in the 401(k) Tax-Deferred Savings Plan and/or the 457 Deferred Compensation Plan, under each such other Plan, the Participant must elect to have his or her Compensation reduced through bi-weekly payroll deduction by a specified percentage (rather than by a lump sum amount).

Each Eligible Employee upon becoming a Participant shall be deemed conclusively, and for all purposes, to have assented to the terms and provisions of this Plan and shall be bound thereby.

### 3.4 Beneficiary Designation

Upon commencement of participation, each Participant shall designate a Beneficiary on forms furnished by the Human Resources Department. A Participant may, from time to time, change his or her Beneficiary designation by written notice to the Human Resources Department. Upon such change, the rights of all previously designated Beneficiaries to receive any benefits under this Plan shall cease. A married Participant's designation of any primary Beneficiary other than his or her spouse shall require Spousal Consent.

If a deceased Participant is not survived by any named primary or contingent Beneficiary (or if no Beneficiary was effectively named), the balance credited to the Participant's Account shall be paid in a lump sum to the living person or persons in the first of the following classes (in the order listed) in which there are any survivors when the Participant dies: the Participant's (a) surviving spouse, (b) issue, (c) parents, or (d) estate.

If the Beneficiary or any contingent Beneficiary is living at the death of the Participant, but such person dies prior to receiving the death benefit described in the immediately

preceding paragraph, the balance credited to the Participant's Account shall be paid in a lump sum to the estate of the deceased Beneficiary or contingent Beneficiary.

3.5 Loss of Eligibility

An Employee who loses eligibility, by ceasing to be an Eligible Employee because of transfer, promotion, demotion or otherwise, shall remain a Participant but no further Salary Contributions shall be made by or on behalf of such Employee with respect to any payroll period beginning during the period in which he or she remains in an ineligible employment status.

3.6 Termination of Participation

After becoming a Participant, an Eligible Employee shall continue to be a Participant until the balance credited to his or her Account is distributed or he or she dies.

## ARTICLE IV CONTRIBUTIONS UNDER THE PLAN

### 4.1 Salary Contribution Agreement

- (a) Each Eligible Employee who desires to participate in the Plan shall enter into a written Salary Contribution agreement with the District. Each Salary Contribution agreement shall be applied to Compensation paid on and after the effective date of the election. The terms of any Salary Contribution agreement shall provide that the Participant agrees that an amount of his or her Compensation from the District, contributed at a mandatory rate in accordance with the provisions of Section 4.2, shall be withheld by the District and contributed as a Salary Contribution under the Plan to be credited to the Participant's Account under the Plan, *provided* that he or she elects to make Salary Contributions in such manner and within such advance notice period as the Human Resources Department shall specify.
- (b) The effective date of the Salary Contribution agreement shall be no later than the Entry Date coincident or next following the date of the eligibility under Article III.
- (c) Each Eligible Employee who desires to participate in the Plan shall have a one-time irrevocable election to participate in the Plan by entering into a Salary Contribution agreement within 30 days following the date that he or she is notified by the Human Resources Department that he or she has initially become an Eligible Employee. An Eligible Employee who fails to elect to participate in the Plan during such election period will not be permitted to participate at any time during the remainder of his or her employment with the District.

### 4.2 Amount of Salary Contributions

- (a) Class 1 Employees. On or after the Effective Date, the amount of the Salary Contribution to be made on behalf of each Participant who is a Class 1 Employee shall be a percentage of the Compensation payable to such Participant, for each payroll period after his or her Salary Contribution agreement becomes effective under Section 4.1, equal to 1% for payroll periods beginning on or after January 1, 2013 and continuing indefinitely thereafter.
- (b) Class 2 Employees. On or after the Effective Date, the amount of the Salary Contribution to be made on behalf of each Participant who is a Class 2 Employee shall be a percentage of the Compensation payable to such Participant, for each payroll period after his or her Salary Contribution agreement becomes effective under Section 4.1, equal to (1) 5% for payroll periods beginning on or after April 27, 1998 through the payroll period ending on April 25, 1999, and (2) 10% for payroll periods beginning on or after April 26, 1999 and continuing indefinitely thereafter.

- (c) Class 3 Employees. On or after the Effective Date, the amount of the Salary Contribution to be made on behalf of each Participant who is a Class 3 Employee shall be a percentage of the Compensation payable to such Participant, for each payroll period after his or her Salary Contribution agreement becomes effective under Section 4.1, equal to (1) 4% for payroll periods beginning on or after April 27, 1998 through the payroll period ending on April 25, 1999, and (2) 7% for payroll periods beginning on or after April 26, 1999 and continuing indefinitely thereafter.
- (d) Class 4 Employees. Effective on or after February 9, 1999, the amount of the Salary Contribution to be made on behalf of each Participant who is a Class 4 Employee shall be a percentage of the Compensation payable to such Participant, for each payroll period after his or her Salary Contribution agreement becomes effective under Section 4.1, equal to (1) 4% for payroll periods beginning on or after April 26, 1999 through the payroll period ending on April 23, 2000, and (2) 7% for payroll periods beginning on or after April 24, 2000 and continuing indefinitely thereafter.
- (e) Class 5 Employees. On or after February 22, 2000, the amount of the Salary Contribution to be made on behalf of each Participant who is a Class 5 Employee shall be a percentage of the Compensation payable to such Participant, for each payroll period after his or her Salary Contribution agreement becomes effective under Section 4.1, equal to 3% for payroll periods beginning on or after April 24, 2000 and continuing indefinitely thereafter.
- (f) Class 6 Employees. On or after October 23, 2001, the amount of the Salary Contribution to be made on behalf of each Participant who is a Class 6 Employee shall be a percentage of the Compensation payable to such Participant, for each payroll period after his or her Salary Contribution agreement becomes effective under Section 4.1, equal to 2.5% for payroll periods beginning on or after April 21, 2002 and continuing indefinitely thereafter.
- (g) Class 7 Employees. On or after October 23, 2001, the amount of the Salary Contribution to be made on behalf of each Participant who is a Class 7 Employee shall be a percentage of the Compensation payable to such Participant, for each payroll period after his or her Salary Contribution agreement becomes effective under Section 4.1, equal to 5% for payroll periods beginning on or after April 21, 2002 and continuing indefinitely thereafter.

Notwithstanding the foregoing, the amount to be contributed under any of paragraphs (a) through (g) of this Section 4.2 in respect to each Participant who is a member of one of the classes of Eligible Employees listed in Section 3.1 shall be for the period during which the Eligible Employee is both a Participant and a member of such class.

#### 4.3 Changes in Salary Contributions

Notwithstanding the provisions of Section 4.2, the District reserves the right, in its absolute and unlimited discretion, to amend the Plan to change or eliminate prospectively the Salary Contribution percentage applicable to future Compensation payments to be made to any Participant, subject to the terms and conditions of any applicable memorandum of understanding (a) applicable to a Participant who is a member of a class of Employees represented by a formally recognized majority representative, and (b) which relates to the Participant's Eligible Employee classification under Section 3.1. No Participant shall have any vested contractual right under federal or California law or the Plan to continue to make any Salary Contributions at the rate in effect prior to the effective date of any such change.

#### 4.4 Employee Contributions

Participants shall not be permitted or required to make contributions under the Plan other than pursuant to Salary Contribution agreements. Although Salary Contributions are hereby designated as mandatory employee contributions under the Plan, the District hereby agrees to "pick up" all Participants' obligations to make such Salary Contributions for federal and California income tax purposes, by agreeing to make contributions to each Participant's Account, in an amount for each payroll period equal to the amount by which his or her Compensation was reduced pursuant to his or her Salary Contribution agreement, in lieu of employee contributions made by the Participant, all in a manner intended to meet the conditions of, and to have the income tax effects applicable under, section 414(h)(2) of the Code.

#### 4.5 Date of Contribution

Subject to the provisions of Article XI, the District shall pay to the Trust the amounts to be contributed as Participants' Salary Contributions pursuant to this Article IV. Salary Contribution amounts to be paid for a payroll period in accordance with the preceding sentence shall be paid to the Trust no later than within a reasonable time after the end of such period.

#### 4.6 Direct Transfers of Eligible Rollover Distributions

If a Participant (a) was formerly a participant in an "eligible retirement plan" (as defined in section 402(c)(8)(B)(iii) of the Code, *i.e.*, a retirement plan qualified under section 401(a) of the Code), and (b) elects to effect a direct transfer to the Plan of an eligible rollover distribution (as defined in section 402(c)(4) of the Code) payable by such plan, then the Plan shall accept such transfer; *provided, however*, that any such transfer shall be made only in the form of cash or its equivalent unless the Human Resources Department (in its sole discretion) directs that all or a designated portion of such transfer shall be accepted in the form distributed by the transferor plan. Any amount so transferred to the Plan shall be held, accounted for, administered and otherwise treated in that same manner as Salary Contributions made on behalf of the Participant under the Plan except that such amount shall not adversely affect the Participant's ability to defer Compensation by making Salary Contributions in accordance with the other provisions of this Article IV.

The Plan will accept a direct rollover contribution of a distribution attributable to payments or distributions from a designated Roth account (as described in section 402A(e)(1) of the Code) only to the extent the rollover is permitted under the rules of section 402(c) of the Code. Any amount so transferred to the Plan shall be held and accounted for in a designated Roth subaccount under the Plan.

## ARTICLE V ACCOUNT ADMINISTRATION

### 5.1 Participant Accounts

The Human Resources Department shall establish and maintain for each Participant a separate Account, to which the District shall credit all amounts allocated to the Participant pursuant to the provisions of Article IV and this Article V. Each Participant's Account shall be credited with Salary Contributions made pursuant to the Participant's Salary Contribution agreement plus (or minus) investment earnings (or losses) thereon.

### 5.2 Allocation of Income, Appreciation and Loss

As of each Valuation Date, the Trustee shall determine the fair market value of the Trust and the Human Resources Department shall allocate an appropriate share of such fair market value to the Account of each Participant.

Fair market value shall include such items as realized or unrealized investment gains and losses and investment income and, except to the extent that such expenses are paid by the District, all expenses of administering the Investment Funds and the Plan.

The fair market value of the assets of each Fund shall be determined by the Trustee on the basis of such sources of information as it may deem reliable including, but not limited to, information reported in (a) newspapers of general circulation; (b) standard financial periodicals or publications; (c) statistical and valuation services; (d) records of securities exchanges; (e) reports of any investment manager or of any brokerage firm deemed reliable by the Trustee; or (f) any combination of the foregoing. If the Trustee is unable to value assets from such sources, it may rely on information from the District, the Committee, appraisers or other sources, and will not be liable for inaccurate valuation based in good faith on such information. The valuations by the Trustee shall be binding upon all interested persons.

### 5.3 Annual Additions

The "Annual Addition" for any Participant for any Plan Year shall include only (a) the Salary Contributions allocated to his or her Account under this Plan and any deferral or contribution amounts allocated to his or her account under the District's 401(k) Tax Deferred Savings Plan for such year, and (b) any other amounts required to be included in Annual Additions by Treas. Reg. § 1.415(c)-1(b). Annual Additions shall not include any amounts required to be excluded from Annual Additions by Treas. Reg. § 1.415(c)-1(b).

#### 5.4 Limitation on Allocations

The purpose of this Section 5.4 is to provide that Annual Additions shall not exceed the limitations imposed on tax-qualified defined contribution plans by federal law, and this Section 5.4 shall be construed to effectuate this purpose.

- (a) Annual Additions Limitation. Notwithstanding any contrary Plan provision, the maximum Annual Addition to a Participant's Account for any Plan Year shall not exceed the lesser of (1) \$40,000 (as adjusted in accordance with section 415(d) of the Code (*i.e.*, \$50,000 for 2013), or (2) one hundred percent (100%) of the Participant's Annual Compensation from the District.
- (b) "Annual Compensation" means, for purposes of this Section 5.4, an Employee's compensation as described in Treas. Reg. § 1.415(c)-2(d)(4). Annual Compensation shall also include compensation paid after severance from employment to the extent permitted by Treas. Reg. § 1.415(c)-2(e)(3).
- (c) Adjustments. For Plan Years prior to January 1, 2009, if, as the result of (i) the allocation of forfeitures under any other tax-qualified plan, (ii) a reasonable error in estimating a Participant's Annual Compensation or in determining the amount of salary contributions that may be made by a Participant under the District's 401(k) Tax Deferred Savings Plan, or (iii) other circumstances which permit the application of the rules stated in this Section 5.4 or Section 5.5, any of the limitations of these Sections would otherwise be exceeded with respect to any Participant for any Plan Year, then the following actions (but only to the extent necessary to avoid exceeding such limitations) shall be taken in the following order:
  - (1) Any nondeductible voluntary employee contributions made by the Participant for the Plan Year under any other tax-qualified plan shall be returned.
  - (2) The Participant's Salary Contributions made under the District's 401(k) Tax Deferred Savings Plan, if not distributed to the Participant under such Plan, shall be reallocated to a suspense account under such Plan, and the balance credited to such account shall be applied to reduce the Salary Contributions otherwise to be contributed on behalf of, and allocated to the accounts of, all eligible participants under such Plan for succeeding Plan Years in order of time.
  - (3) The amount allocated to the Participant's account from contributions made by the District under any other tax-qualified plan shall be reallocated to a suspense account, and the balance credited to such account shall be applied to reduce the contributions (of the same class) otherwise to be made on behalf of, and allocated to the accounts of, all eligible participants under such other plan for succeeding Plan Years in order of time.



- (4) The amount (if any) allocated to the Participant's Account from contributions made by the District (other than as Salary Contributions) under this Plan shall be reallocated to a suspense account, and the balance credited to such account shall be applied to reduce the Salary Contributions otherwise to be made on behalf of, and allocated to the Accounts of, all eligible Participants under this Plan for succeeding Plan Years in order of time.
- (5) The Participant's accrued benefit under the District's Employees' Retirement System shall be frozen and/or the rate of its future accrual shall be reduced.

For Plan Years beginning on or after January 1, 2009, any excess Annual Additions shall be corrected as necessary in accordance with the correction methods specified in Revenue Procedure 2013-12 or its successor.

In applying these rules, this Plan and any other plan required to be aggregated with this Plan under Treas. Reg. § 1.415(f)-1 shall be treated as one plan.

No suspense account established under this Section 5.4(c) shall share in allocations of earnings and gains (or losses) of the Trust. The balances credited to all suspense accounts shall be returned to the District upon termination of the Plan.

- (d) Aggregation of Defined Contribution Plans. If a Participant is a participant in any other tax-qualified defined contribution plan of the District, or any other plan required to be aggregated with this Plan pursuant to Treas. Reg. § 1.415(f)-1, the Annual Addition considered allocated to such Participant shall be the sum of the Annual Additions allocated to such Participant under all such defined contribution plans (including this Plan), which shall be treated as one plan. If this aggregate Annual Addition would exceed the maximum Annual Addition allowed by Section 5.4(a) unless a reduction is made, the Human Resources Department is hereby authorized to apportion fairly among such plans the limits to be applied to each such plan, in accordance with Section 5.4(c), so that the aggregate Annual Addition will not exceed that maximum.
- (e) Incorporation by Reference. To the extent not otherwise provided in this Section 5.4, to the extent inconsistent with the provisions of this Section 5.4 and except as prohibited by applicable regulations under the Code, the applicable limitations on contributions and benefits under section 415 of the Code and the final regulations issued on April 5, 2007 thereunder, are incorporated by reference and shall control over any contrary or omitted provision in the Plan.

## 5.5 Notice to Participants

The Human Resources Department shall notify each Participant of the balance credited to such Participant's Account as of the last day of each calendar quarter by furnishing a quarterly statement of account to each Participant as soon as administratively practicable after the close of each calendar quarter.

## **ARTICLE VI INVESTMENT OF FUNDS**

### **6.1     Investment Funds**

The Account of each Participant (or Beneficiary in the event of death) shall be held in investment media which may include, but shall not be limited to, one or more of the following categories of Investment Funds:

- (a)     Equity Fund,
- (b)     Fixed Income Fund,
- (c)     Money Market Fund, and
- (d)     Any other investment fund or media (including self-directed brokerage account arrangements) approved by the Committee.

The selection of Investment Funds and the investment media in which Investment Fund assets will be invested shall be the responsibility of the Board of Directors but is subject to the Board's delegation powers under Section 10.1. Except as otherwise provided in this Section 6.1, the selection among the Investment Funds is the sole responsibility of each Participant (or his or her Beneficiary in the event of death). No employee or representative of the District, the Committee and/or any investment manager is authorized to make any recommendation to any Participant or Beneficiary with respect to Investment Fund selection. The Human Resources Department shall furnish descriptions of the various Investment Funds available for the purpose of informing Participants and Beneficiaries of deceased Participants of the material characteristics of each.

### **6.2     Investment Fund Election**

Each Participant shall, upon his or her initial participation in the Plan, elect to have his or her Account invested in one or more of the then available Investment Funds. The election shall be made on such form or in such manner as is prescribed by the Human Resources Department. An Investment Fund election made in accordance with this Section 6.2 shall remain in effect with respect to all future Salary Contributions allocated to the Participant's Account unless or until changed in accordance with the provisions of Section 6.3. If a Participant fails to select an Investment Fund for the investment of his or her Account, the Human Resources Department may provide that such Account shall be invested in the Investment Fund designated by the Board of Directors for such purpose.

### **6.3     Change in Investment Fund Election**

A Participant may elect to change his or her Investment Fund election with respect to Salary Contributions made to his or her Account from and after the effective date of such change. Such a change in an Investment Fund election shall be made in such form or manner as prescribed by the Human Resources Department and shall be limited to the

currently available Investment Fund choices. Such change with respect to Investment Fund elections may be made at any time and will become operative on the Valuation Date that coincides with or next follows receipt by the Human Resources Department of the election, or as soon thereafter as is reasonably practicable.

#### 6.4 Transfer Between Investment Funds

A Participant may elect to transfer amounts from one or more Investment Funds to other Investment Funds under the Plan at any time. The Participant's election to transfer must be made in writing to the Human Resources Department in such form as may be prescribed by the Human Resources Department. Any such change will become operative on the Valuation Date that coincides with or next follows receipt by the Human Resources Department of the transfer election, or as soon thereafter as is reasonably practicable. The Human Resources Department may require such elections to be made on a less frequent schedule with respect to one or more Investment Funds in accordance with such rules as may be established by the Human Resources Department.



**ARTICLE VII  
VESTING AND FORFEITURES**

**7.1     Salary Contributions**

The full amounts credited to a Participant's Account shall be one hundred percent (100%) vested and nonforfeitable at all times.

## ARTICLE VIII WITHDRAWALS, LOANS AND QDROs

### 8.1 Withdrawals

At any time after he or she attains Normal Retirement Age and before Severance from Employment, a Participant may, upon written application to the Human Resources Department on such form as the Human Resources Department may prescribe, withdraw all or any portion of his or her Account. Any application for such a withdrawal shall be made to the Human Resources Department at least 30 days in advance of the withdrawal date and in such form as the Human Resources Department may specify. The Human Resources Department may shorten the 30-day notice period if it finds it administratively feasible.

### 8.2 Participant Loans

This Section 8.2 shall not become operative (if ever) until such date as the Human Resources Department (in its discretion) shall determine.

- (a) General Loan Rules. A Participant may, upon written application to the Human Resources Department on such form as the Human Resources Department may prescribe, obtain a loan from his or her Account in accordance with the provisions of this Section 8.2. Loans shall be available to all Participants on a reasonably equivalent basis.
- (1) Amount. The amount of the loan shall be neither less than \$1,000 nor more than the excess of fifty percent (50%) of the Available Balance, determined as of the Valuation Date next preceding the date the loan is approved.
- (2) "Available Balance" means the balance credited to the Participant's Account as of the applicable date reduced by the amount allocated for any Alternate Payee (as defined in Section 8.3) pursuant to a QDRO (as defined in Section 8.3).
- (3) Additional Limits. The amount borrowed under this Section 8.2 shall not cause the sum of (i) the amount of the loan, plus (ii) the aggregate outstanding balances (including both principal and accrued interest) under all of the Participant's prior loans under this Plan and any other tax-qualified defined contribution plan maintained by the District (an "Other Plan"), to exceed an amount equal to \$50,000, reduced by the excess (if any) of (A) the highest aggregate outstanding balance of all loans under this Plan and all Other Plans during the one-year period ending on the day before the date the loan is to be made, over (B) the aggregate outstanding balance on all such loans on the date the loan is made.

- (4) Number of Loans. No Participant shall be permitted to borrow under this Section 8.2 if the borrowing would result in his or her having a total of more than two loans outstanding under this Plan and the District's 401(k) Tax Deferred Savings Plan.
  - (5) Spousal Consent. No loan may be made to a Participant who is married at the time the loan is to be made without Spousal Consent (as defined in Section 2.22), given no more than 180 days before the date of the loan, in which the Participant's spouse consents in writing to the loan and to the possible reduction of the total balance of the Participant's Account in the event the loan is in default. The same Spousal Consent requirement shall apply with respect to any renegotiation, renewal or other revision of the loan.
- (b) Minimum Requirements of Each Loan. The terms of any loan made under this Section 8.2 shall be evidenced by a promissory note signed by the Participant, and such terms shall satisfy the following minimum requirements:
- (1) Separate Accounting. Each loan shall be considered as a separate, segregated investment of the Account from which it is made.
  - (2) Term. The term of the loan shall not exceed five (5) years, *provided that*, if the loan is used to acquire a dwelling unit which is to be used as the principal residence of the Participant within a reasonable time after acquisition, then the term of the loan shall not exceed fifteen years.
  - (3) Interest Rate. Each loan shall bear a reasonable rate of interest, as determined by the Human Resources Department, which shall be comparable to the interest rate which is charged under similar circumstances by persons in the business of lending money. Until otherwise modified by the Human Resources Department, the interest rate shall equal the "prime rate," as published by Reuters on the last business day of the week that preceded the date the loan is made, plus one percent (1%).
  - (4) Repayment Schedule. A definite repayment schedule shall be established for each loan which shall require level and periodic payments of both principal and interest over the agreed term of the loan, with payment in full being required at the end of the loan term. A Participant may prepay at any time all the amount remaining due under the loan only by submitting full payment of such amount directly to the Human Resources Department.
  - (5) Withholding. No loan shall be made unless the Participant is receiving periodic Compensation payments and agrees to make principal and interest payments on the loan, together with any and all charges imposed by the Trustee in connection with the loan, by payroll withholding.



- (6) Security. Each loan shall be adequately secured by collateral of sufficient value to secure repayment of the loan principal and interest. The Participant shall pledge fifty percent (50%) of his or her Account (as of the date of the loan) and shall provide such other collateral as the Human Resources Department may require to secure his or her repayment obligations.
- (c) Leave of Absence, Disability, Worker's Compensation, Garnishment, Etc. This paragraph (c) shall apply only to a Participant who is an Employee and is absent on disability, worker's compensation or an approved leave of absence or is subject to a wage garnishment order.
- (1) If the Participant is receiving periodic wage payments from the District, his or her loan payments shall continue to be made by payroll withholding, *provided* that the payroll amount remaining after garnishment is sufficient to cover the loan payments. Otherwise, the Participant may elect in a writing submitted to the Human Resources Department to defer his or her loan payments for up to one year.
- (2) If the Participant does not, by the end of the third calendar month following the end of the first payroll period for which his or her payroll amount was sufficient, either (i) make a loan deferral election pursuant to paragraph (c)(1) above, or (ii) repay the entire outstanding loan balance (including unpaid principal and interest), the loan shall become immediately due and payable.
- (3) When the periodic wage payments a Participant receives from the District is again sufficient to cover the loan payments, his or her loan payments shall resume by payroll withholding, and the Human Resources Department shall recompute the monthly loan payment amount by reamortizing the outstanding loan balance (including unpaid principal and interest) over the remainder of the original term of the loan.
- (d) Default. If a Participant defaults on his or her repayment obligations under the loan and does not cure the default within 30 days of the date the Human Resources Department notifies him or her of the default, then the Human Resources Department shall take, or direct the Trustee to take, such action as shall be necessary or appropriate in the circumstances prevailing:
- (1) to realize upon the security interest of the Plan in the collateral pledged to secure the loan, and/or
- (2) to reduce the total balance credited to the Participant's Account by the amount required to cure the default.
- (3) In applying the method of cure provided in paragraph (d)(1) above, if any losses are realized or expenses incurred, such losses and expenses shall be allocated only to the Participant's Account in which the default occurred.

- (4) In applying the method of cure provided in paragraph (d)(2) above, the amount by which the Participant's Account is to be reduced shall be credited to a separate suspense account for the Participant and shall be increased annually with interest, at the rate that actually applies to the loan, for the period from the date of the default until the earlier of the date the Participant attains age 65 or the first date on which distributions from his or her Account could be commenced under Article IX; the value of the Account as of such date shall be reduced by the amount then credited to the suspense account; and only the remaining balance shall be available for distribution in accordance with Article IX.
- (e) Termination of Employment. If any amount remains outstanding as a loan obligation of a Participant upon commencement of distributions from his or her Account, the value of the Account shall be reduced to the extent necessary to discharge the obligation.

### 8.3 QDROs

The Human Resources Department shall establish written procedures for determining whether a domestic relations order purporting to dispose of all or a portion of Participant's Account is a qualified domestic relations order (within the meaning of section 414(p) of the Code (a "QDRO"). No payment shall be made to any person designated in a domestic relations order (an "Alternate Payee") until the Human Resources Department (or a court of competent jurisdiction reversing an initial adverse determination by the Human Resources Department) determines that the order is a QDRO. Lump sum payments shall be made to each Alternate Payee specified in the QDRO.

- (a) Immediate Payment Permitted. Payment may be made to an Alternate Payee, in accordance with a QDRO, at any time beginning as soon as practicable after the QDRO determination is made, without regard to whether the distribution, if made to a Participant at the time specified in the QDRO, would be permitted under the terms of the Plan.
- (b) Delayed Payment. If the QDRO does not provide for immediate payment to an Alternate Payee, the Human Resources Department shall establish a subaccount to record the interest of that Alternate Payee in the Participant's Account. All investment decisions with respect to amounts credited to the subaccount shall be made by the Alternate Payee pursuant to Article VI. Pending distribution of his or her subaccount, an Alternate Payee shall not be permitted to make withdrawals (except in accordance with the QDRO pursuant to paragraph (a) above) or borrow funds from the subaccount. Payment to the Alternate Payee shall not be deferred beyond the date distribution to the Participant (or his or her Beneficiary) is made.

## **ARTICLE IX PAYMENT OF BENEFITS**

### **9.1    General Conditions**

- (a)    Any payment made in accordance with the provisions of the Plan to a Participant or Beneficiary, or to his or her legal representative, shall constitute full satisfaction of claims under the Plan against the District, the Board, the Trustee, the Committee and the Human Resources Department, any of whom may require the Participant, Beneficiary or legal representative, as a condition precedent to such payment, to execute a receipt and release therefor, in such form as shall be determined by the District, the Board, the Trustee, the Committee or the Human Resources Department, as applicable.
- (b)    All benefits under the Plan shall be distributed solely from the Trust, and the District shall have absolutely no liability or responsibility therefor.
- (c)    Before it directs payment of any benefit under the Plan, the Human Resources Department may require the Participant or Beneficiary, as the case may be, to submit a written application for such benefits to the Human Resources Department in such form and manner as it shall uniformly prescribe.
- (d)    Payment of benefits shall commence within the time period specified in Section 9.3.

### **9.2    Events Permitting Distribution**

The balance credited to a Participant Account shall become distributable only in the following circumstances:

- (a)    Upon the Participant's Severance from Employment with the District; or
- (b)    Upon the creation or recognition of the right of an Alternate Payee's (as defined in Section 8.3) to all or a portion of a Participant's Account under a domestic relations order which the Human Resources Department determines is a DRO (as defined in Section 8.3), but only as to the portion of the Participant's Account that the DRO states is payable to the Alternate Payee.

### **9.3    Time Limits on Benefit Payments**

Subject to Sections 9.7 and 9.8, distribution of the balance then credited to a Participant's Account normally will be made or commenced as soon as practicable after the Valuation Date that next follows the date the Participant incurs a Severance from Employment or dies. In all events, distribution of the Participant's Account shall be made or commenced no later than the April 1 following the close of the Plan Year in which the Participant attains age 70½ or incurs a Severance from Employment (whichever is later).

#### 9.4 Small Accounts

If the balance credited to a Participant's Account did not exceed the cashout ceiling amount as of the Valuation Date that next preceded the date of distribution, the balance credited to the Participant's Account shall be distributed to the Participant, in the form of a lump sum payment of cash (or its equivalent), as soon as practicable after the Participant's Severance from Employment. For purposes of this Section 9.4, "cashout ceiling" shall mean \$1,000.

#### 9.5 Unclaimed Benefits

If after diligent effort by the Human Resources Department, a Participant or Beneficiary who is entitled to a distribution cannot be located within three (3) years of the date distribution was to be made, the distributable Account balance shall be returned to the District. Notwithstanding this forfeiture, the Account balance shall be paid to the Participant or Beneficiary after the above three-year period if the Participant or Beneficiary makes a written application as provided in Section 9.1(c). In the event the Human Resources Department approves the Participant's or Beneficiary's application for such benefit, the District shall make a special contribution to the Plan to provide the funds required to pay such benefit.

#### 9.6 Limitations on Distributions

Notwithstanding any contrary Plan provision, the following provisions shall govern all distributions from the Plan:

(a) General Rule. Distribution of the balance credited to a Participant's Account:

- (1) Shall be completed no later than the Deadline Date; or
- (2) Shall be commenced no later than the Deadline Date and paid in such a manner that the balance credited to the Account will be distributed (i) in the case of a life annuity form of distribution, over the life of the Participant or the joint lives of the Participant and his or her Beneficiary, or (ii) in the case of a distribution in the form of a periodic payments, over a period certain that does not extend beyond the Participant's life expectancy or the joint and last survivor life expectancy of the Participant and his or her Beneficiary.
- (3) The amount to be distributed for each calendar year under paragraph (2) above, beginning with the year that immediately precedes the year in which the Deadline Date occurs (the "First Distribution Year"), shall equal or exceed the lesser of (i) the balance credited to the Account, or (ii) the quotient obtained by dividing (A) the balance of the Account as of the last Valuation Date of the preceding calendar year, by (B) the applicable life expectancy.

- (4) The distribution for the First Distribution Year shall be made by the Deadline Date, and each later distribution shall be made by the end of the year to which it relates.
- (b) Life Expectancies. For purposes of applying this Section 9.6 and Section 9.7(b), life expectancies shall be computed using the expected return multiples set forth in Tables V and VI of Treas. Reg. § 1.72-9 or their successors. Applicable life expectancies shall be calculated as of the date payments first commence without further recalculation.
- (c) Incidental Benefit Rule. If the Participant's spouse is not his or her sole primary Beneficiary, the minimum distribution required to be made under Section 9.6(a)(2) shall not be less than the quotient obtained by dividing (1) the balance of the Participant's Account as of the last Valuation Date of the preceding year, by (2) the applicable divisor, as determined under the incidental death benefit requirements of section 401(a)(9) of the Code.
- (d) "Deadline Date" means, for purposes of applying this Section 9.6, the later of the April 1 that next follows the later of (1) the calendar year in which a Participant attains age 70½, or (2) the calendar year in which a Participant incurs a Severance from Employment.

#### 9.7 Death Distributions

Upon the death of a Participant who has elected a distribution method other than the Qualified Joint Survivor Annuity (as defined in Section 9.9(c)(2)), distribution of the balance of his or her Account shall be made in accordance with this Section 9.7.

- (a) Post-Commencement Death. If a Participant dies after distributions have commenced under this Article IX but before the entire balance credited to his or her Account has been distributed, then the remainder of such balance shall be paid as a death benefit to his or her Beneficiary in accordance with the distribution method in effect as of the date of the Participant's death. Notwithstanding the foregoing, the Beneficiary may elect to accelerate payments of the remaining balance, including but not limited to, payment in the form of a lump sum.
- (b) Pre-Commencement Death. If a Participant dies before distribution of his or her Account has been made or commenced under this Article IX, the balance credited to the Participant's Account shall be paid as a death benefit to his or her Beneficiary as soon as administratively practicable following the Participant's death, but not later than the end of the calendar year that contains the fifth anniversary of the Participant's death. However, if (1) any portion of the Participant's Account is payable to (or for the benefit of) his or her Beneficiary, and (2) distribution of that portion commences (i) by the end of the calendar year that next follows the Participant's death, or (ii) if the Beneficiary is the Participant's surviving spouse, before the end of the calendar year in which the Participant would have attained age 70½, then the Beneficiary may elect that

distribution of that portion shall be made in periodic payments over a period certain which does not extend beyond his or her own life expectancy.

- (c) Surviving Spouse Beneficiaries. If the Participant's surviving spouse is his or her Beneficiary and dies before distributions have commenced to him or her, this Section 9.7 shall be applied as if the spouse were the Participant and had died on the same date as the Participant.

## 9.8 Distribution Methods

- (a) General Rule. Distribution of the balance credited to a Participant's Account shall be made by the Trustee, at the direction of the Human Resources Department and based on the Participant's distribution request, in whichever of the following methods satisfies the limitations of this Article IX and is elected by the Participant, in such manner and within such advance notice period as the Human Resources Department (in its discretion) shall specify:
- (1) one lump sum payment of cash (or its equivalent) comprising a complete distribution of the vested balance credited to the Participant's Account;
  - (2) a portion paid in a lump sum payment of cash, and the remainder paid later (partial payment);
  - (3) periodic installments over a period not to exceed the life expectancy of the Participant and his or her Beneficiary;
  - (4) the purchase and distribution of a fully paid, nontransferable annuity contract providing for payment in a series of periodic payments of cash (or its equivalent) over the Participant's life (or the joint lives of the Participant and his or her Beneficiary) or over a period certain which does not extend beyond the life expectancy of the Participant (or the joint life expectancy of the Participant and his or her Beneficiary); or
  - (5) a direct rollover which satisfies the requirements of paragraph (b) below, *provided* that any portion of the Account that is not rolled over shall be distributed in accordance with paragraph (a)(1) above.
- (b) Direct Rollovers. Notwithstanding any contrary Plan provision, if the Distributee of an Eligible Rollover Distribution from the Plan (i) elects to have all or any portion of such Distribution paid directly to one individual retirement account ("IRA"), another eligible retirement plan (within the meaning of section 401(a)(31)(E) of the Code), or a Roth IRA (as described in section 408A of the Code); and (ii) specifies such IRA or plan on such form as prescribed by the Committee, at such time and subject to such permissible restrictions as the Secretary may specify, such distribution or elected portion thereof shall be made in the form of a direct rollover to such IRA or plan, in accordance with and subject to the conditions and limitations of section 401(a)(31) and related provisions of the Code.

- (1) “Distributee” means a Participant, a Beneficiary (other than an estate), or an Alternate Payee (as defined in Section 8.3) (if he or she is the current, former or surviving spouse of a Participant under a QDRO (as defined in Section 8.3)).
- (2) “Eligible Rollover Distribution” means a distribution of any portion of the balance credited to the Account of a Participant which is not one of a series of substantially equal periodic payments made over (i) a specified period of ten years or more, or (ii) the life or life expectancy of the Distributee, to the extent that it constitutes an eligible rollover distribution (within the meaning of section 401(a)(31)(D) of the Code).

With respect to an Eligible Rollover Distribution that is payable to a Beneficiary who is *not* the Participant’s surviving spouse, an eligible retirement plan is limited to an individual retirement account or annuity described in section 408(a) or 408(b) of the Code established for the purpose of receiving the Eligible Rollover Distribution on behalf of the Beneficiary and that agrees to be treated as an inherited individual retirement account or annuity within the meaning of section 408(d)(3)(C) of the Code.

#### 9.9 Qualified Joint and Survivor Annuity and Preretirement Survivor Annuity Requirements.

Notwithstanding the foregoing provisions of this Article IX, this Section 9.9 shall apply to each distribution to be made from a Participant’s Account, but only if the balance credited to the Account exceeds \$5,000 as of the Valuation Date that next precedes the date on which the distribution is to be made.

- (a) Qualified Joint and Survivor Annuity. Unless a Qualified Election has been made within the 180-day period ending on the date on which distribution to a Participant is to be made or commence (the “Annuity Starting Date”), the balance credited to the Participant’s Account shall be applied toward the purchase of a nontransferable annuity contract providing for payments in the form of a Qualified Joint and Survivor Annuity.
- (b) Qualified Preretirement Survivor Annuity. If a Participant dies before the distribution of any portion of his or her Account has commenced and the Participant is survived by his or her spouse, the Account shall be applied toward the purchase of a nontransferable annuity contract providing for the payment of an annuity for the life of the surviving spouse, unless the Participant’s surviving spouse elects an alternate form of distribution following the Participant’s death. Payments under the annuity contract shall not commence before the date the Participant (if not deceased) would have attained Normal Retirement Age, unless the surviving spouse elects (or consents to) (1) the earlier commencement of payments, or (2) the payment of the Participant’s Account in the form of a lump sum (rather than as an annuity), in a written instrument which is signed by the spouse and received by the Human Resources Department not more than 180 days

before the earlier commencement date. A surviving spouse who is a Participant's Beneficiary may make that election (or give his or her consent) at any time after the Participant's death.

(c) Definitions. For purposes of applying this Section 9.9, the following definitions shall apply:

- (1) "Qualified Election" means a written waiver of a Qualified Joint and Survivor Annuity. A waiver shall be ineffective in the absence of Spousal Consent.
- (2) "Qualified Joint and Survivor Annuity" or "QJSA" means:
  - (i) In the case of a Participant who *is married* on the Annuity Starting Date, an immediate annuity for the life of the Participant, with a survivor annuity for the life of his or her spouse which provides for periodic payments of 50% or (if the Participant so elects) 100% or 75% of the annuity payable during the joint lives of the Participant and the spouse; or
  - (ii) In the case of a Participant who *is not married* on the Annuity Starting Date, an immediate annuity for the life of the Participant, with no survivor annuity; and
  - (iii) Which (in either case) provides the annuity benefit that is purchased with the entire balance credited to the Account.

(d) QJSA Notice Requirements. With respect to a Qualified Joint and Survivor Annuity, the Human Resources Department shall provide to each Participant, no less than 30 days and no more than 180 days before the Annuity Starting Date, a written notice explaining:

- (1) The terms and conditions of the Qualified Joint and Survivor Annuity form of payment;
- (2) The Participant's right to waive (and the effect of waiving) the Qualified Joint and Survivor Annuity;
- (3) The rights of a Participant's spouse; and
- (4) The Participant's right to revoke (and the effect of revoking) a prior waiver of the Qualified Joint and Survivor Annuity.

#### 9.10 Marital Status

(a) Requirements for Marriage or Domestic Partnership. If this Section 9.10 applies with respect to a Participant, for all purposes of this Plan, the Participant shall be treated as married if at the relevant time he or she is:



- (1) Married to an individual in a marital relationship which is legally valid under the law of the state or other jurisdiction where the marriage took place; or
  - (2) Not legally married but is the domestic partner of an individual (i) who is of the same or opposite sex as the Participant, (ii) who is his or her domestic partner in a domestic partnership which is validly registered in a jurisdiction which provides for domestic partner registration, and (iii) who has executed (together with the Participant) a certification demonstrating that the foregoing terms of this paragraph (b) have been satisfied; *provided, however*, that the current or former domestic partner of a Participant:
    - (i) Shall not be treated as his or her surviving spouse for purposes of applying Sections 9.6(c), 9.7(b) and (c), or 9.8(b); and
    - (ii) If he or she is not also the Participant's dependent (within the meaning of section 152(a) of the Code), shall not be treated as his or her former spouse or other Alternate Payee (as defined in Section 8.3) for purposes of applying Section 8.3 (relating to Qualified Domestic Relations Orders) or any related Plan provision.
- (b) Evidence of Marriage or Domestic Partnership. Any Participant who claims to be married for purposes of this Plan, as a condition to his or her eligibility for any benefit available only to married Participants or their spouses under this Plan, shall provide such evidence as to the continued existence of his or her marital relationship or domestic partnership as is reasonably requested by the Committee.
- (c) Domestic Partner Treated as Spouse. Each reference in this Plan to the spouse, lawful spouse, husband or wife of a Participant, or to his or her status as a married individual, shall also refer to the domestic partner of such Participant, or to his or her status as an individual who is a member of a domestic partnership, *provided* that such relationship satisfies the criteria set forth in Section 9.10(a)(2).

## **ARTICLE X ADMINISTRATION OF PLAN**

### **10.1 District**

The District, by action of the Board of Directors, shall have full power and authority to administer the Plan, which authority shall include, but not to be limited to, the following:

- (a) to make and enforce such rules and regulations as are necessary and proper for the efficient administration of the Plan;
- (b) to interpret the Plan and decide all questions concerning the Plan and the eligibility of any person to participate in the Plan;
- (c) to determine the benefits payable under the Plan, authorize the payment of such benefits and determine the person or persons to whom such benefits shall be paid;
- (d) to select and change investment media within categories of Investment Funds; and
- (e) to appoint actuaries, attorneys, certified public accountants, consultants, investment managers, counselors, trustees, custodians and other experts whenever necessary to enable the District to carry out its duties under the Plan.

The Board may delegate responsibilities of the District with respect to the administration of the Plan to the 401(a) Advisory Committee, the Human Resources Department, appropriate employees and/or one or more experts appointed pursuant to paragraph (e) above, including the Third Party Administrator. The Board may revoke any such delegation at any time with immediate effect, except to the extent that the Board has agreed to provide advance written notice to the affected party. Except as otherwise provided, any such revocation shall become effective upon receipt of written notice by the affected party or upon such later date as may be specified therein.

Any party who has agreed to accept such delegation may at any time advise the Board in writing that it wishes to terminate such acceptance. Any such termination shall become effective upon receipt of written notice by the Board or by a designated officer acting on behalf of the Board or upon such later date as may be specified in such notice.

### **10.2 401(a) Advisory Committee**

The General Manager shall appoint an advisory committee which (i) shall be known as the "401(a) Advisory Committee" (the "Committee"), and (ii) shall have authority to execute those duties of Plan administration which have been delegated to the Committee pursuant to Section 10.1. The Committee shall not have more than five (5) members each of whom shall be appointed by, and shall be subject to removal or replacement by, the General Manager. The General Manager shall designate one member of the Committee to serve as its chair. The members of the Committee shall serve without compensation for their services thereon.

### 10.3 Secretary of the Committee

The Human Resources Department shall serve as the Secretary to the Committee to provide administrative assistance to the Committee and to perform day-to-day administrative tasks and functions necessary to administer and manage the Plan

### 10.4 Administrative Decisions

All decisions of the Board, the Committee and the Human Resources Department, any action taken by either in respect of the Plan and within the powers granted to each under the Plan, and any interpretation of any provision of the Plan or the Trust Agreement by the Board or the Committee or the Human Resources Department as provided by the Plan, shall be final and conclusive, shall be afforded the maximum possible deference allowed by law, and shall not be modified or set aside except for fraud or abuse of discretion.

### 10.5 Payment of Fees and Expenses

The District shall not be liable for nor have an obligation to pay any fees and expenses related to Account maintenance, transaction and Investment Fund management and maintenance or any other costs incurred in the administration of the Plan. Any fees or expenses imposed by any third-party administrator or sponsor of an Investment Fund shall be borne by the Participants and shall be chargeable to their Accounts, except to the extent that such fees and expenses are otherwise provided for or paid by the District.

### 10.6 Trustee

- (a) Appointment. The General Manager shall appoint, and may remove and replace, the institution or individuals who shall serve as the Trustee. As of the effective date specified in Section 1.3(b), the Trustee shall be composed of the individuals serving as the Director of Finance, Manager of Human Resources and Treasury Manager of the District. Any institution or individual serving as the Trustee may be removed by the General Manager at any time upon 30 days' written notice to the Trustee. Any institution or individual serving as the Trustee shall have the right to resign at any time by giving at least 30 days' written notice, and a full accounting, to the District. In such event, the Committee shall recommend and the General Manager shall choose a successor Trustee, who shall execute a written instrument acknowledging the acceptance of such Trust.
- (b) Duties. The Trustee, upon accepting this appointment, agrees to accept the provisions of the Plan and to carry out the provisions of the Plan and Trust to be performed by the Trustee. Not in limitation thereof, the Trustee shall hold legal title to the assets held in Trust under the Plan and shall be entitled to exercise each and every incident of ownership, unless there is an express provision to the contrary in the Plan or the Trust Agreement. The Trustee shall have exclusive authority to manage and control Plan assets and shall invest and reinvest Plan assets as provided in the Plan and Trust Agreement, *provided* that (1) the Trustee shall be subject to the proper written direction of the Board made in accordance

with the Plan and the Trust Agreement, and (2) the Committee may appoint an investment manager (as provided in paragraph (c) below) to manage and control a portion of Plan assets in accordance with the Plan and the Trust Agreement. The Trustee shall receive all Salary Contributions, but shall not be responsible for the collection of any Salary Contributions and shall have no power to inquire into the accuracy of any Salary Contributions. The Trustee shall make payments out of the Trust to Participants and Beneficiaries in accordance with the directions of the Human Resources Department. The Trustee shall have such further duties as are set out in the Trust Agreement.

- (c) Investment Manager Appointment. In the event of the appointment of an investment manager, the Trustee shall follow the instructions of the investment manager in investing and administering the Plan assets allocated to the investment manager. Alternatively, the Committee may delegate investment authority and responsibility with respect to any Investment Fund directly to any investment manager that has investment management responsibility for any collective investment fund in which the Investment Fund is invested. Each person, firm or corporation that is appointed to serve as an investment manager shall:
  - (1) Make such representations from time to time as the Committee may require in order to determine its qualifications to be appointed and to continue to serve in such capacity; and
  - (2) Acknowledge in writing its status as a fiduciary with respect to the Plan upon acceptance of its appointment.
- (d) No Diversion of Assets. Notwithstanding any contrary Plan provision, at no time shall any assets of the Plan be used for, or diverted to, purposes other than for the exclusive benefit of Participants, Beneficiaries and other persons receiving or entitled to receive benefits or payments under the Plan. Except to the limited extent permitted by Sections 5.4(c), 9.5 and 12.6, no assets of the Plan shall ever revert to or become the property of the District.
- (e) Delegation of Custodial Duties. The Trustee or, if the Trustee is an institution, the Committee may appoint a qualified financial institution to hold Salary Contributions, to hold the assets of the Trust as the custodial agent of the Trustee, to make payments out of the Trust to Participants and Beneficiaries as provided in paragraph (b) above, and to discharge such other duties as may be delegated to it under the Trust Agreement.

#### 10.7 Fiduciary Responsibilities

- (a) Fiduciaries. The Board, the Committee, the Human Resources Department and the Trustee shall be the fiduciaries of the Plan (the “Fiduciaries”), but only with respect to the specific responsibilities of each for the operation and administration of the Plan and Trust.

- (b) Allocation of Responsibility Among Fiduciaries. The Fiduciaries shall have only those specific powers, duties, responsibilities and obligations which are specifically given them under the Plan or the Trust Agreement. The Board shall have the sole authority to determine the amount of Salary Contributions under the Plan and to amend or terminate the Plan and/or the Trust Agreement in accordance with Sections 11.3 and 11.4.

#### 10.8 Indemnification

The District shall indemnify and defend each member of the Committee, the Human Resources Department, and any other Employee, officer or director of the District from and against any and all claims, losses, damages, expenses or liabilities (including attorneys' fees, litigation expenses and amounts paid, with the District's approval, in settlement of any claim), by insurance or otherwise (other than amounts paid in settlement not approved by the District), reasonably incurred by such person in connection with any action or failure to act to which such person may be party by reason of membership on the Committee or performance of an authorized duty, act, responsibility or decision for or on behalf of the District, the Board or the Committee pursuant to the Plan or the Trust Agreement, unless the same is judicially determined to be the result of the individual's gross negligence or willful misconduct. The foregoing right to indemnification shall be in addition to any other right or remedy to which such person may be entitled as a matter of law.

#### 10.9 Claims Procedures

- (a) Notice of Denial. In the event a Participant's or Beneficiary's claim for benefits under the Plan is wholly or partially denied by the Human Resources Department, the Human Resources Department shall notify the claimant, in writing, of such denial, which may include in such notification the following information:
- (1) The reason or reasons for such denial;
  - (2) References to pertinent Plan provisions upon which the denial is based;
  - (3) A description of any additional material or information which may be needed to clarify the request, including an explanation of why such information is required; and
  - (4) An explanation of this Plan's claim review procedures.
- (b) Review Procedure. Any Participant or Beneficiary whose claim for benefits has been denied by the Human Resources Department may appeal to the Committee for a review of the denial by making a written request therefor within 60 days of receipt of a notification of denial.
- (1) The Participant or Beneficiary may, upon request to the Committee, examine any pertinent documents.

- (2) The Participant may, if he or she chooses, submit to the Committee written issues, comments or other information upon which the claimant relies in support of his or her claim, or may request an attorney or other representative to make such written submissions on his or her behalf.
- (3) Within 60 days after receipt of a request for review, the Committee shall notify the claimant in writing of its decision, and, if the Committee confirms the denial in whole or in part, the notice may, but is not required to, set forth the reasons for the decision and specific reference to those Plan provision upon which the decision is based.
- (4) Notwithstanding the foregoing, if the Committee determines that special circumstances require additional time for processing, the Committee will extend the 60-day period and notify the claimant of the extension.

**ARTICLE XI**  
**PLAN AMENDMENT, TERMINATION, AND OTHER CHANGES**

**11.1 Action by District**

Any action by the District under the Plan may be by resolution of its Board of Directors, or by any person or persons duly authorized by resolution of the Board to take such action.

**11.2 District's Obligations Limited**

The Plan is voluntary on the part of the District and the District shall have no responsibility to satisfy any liabilities under the Plan. Furthermore, the District does not guarantee to continue the Plan, and the District may, by appropriate amendment of the Plan, suspend or discontinue Salary Contributions for any reason at any time. Complete discontinuance of Salary Contributions shall be deemed a termination of the Plan. The Plan shall create no vested contractual rights in Plan Participants to the continued existence of the Plan.

**11.3 Plan Amendment**

The Board of Directors reserves the right at any time to modify or end, in whole or part, any or all of the provisions of the Plan in such manner as it may determine. Any such modification or amendment that may be made by reason thereof will take effect upon the date indicated in the document embodying such modification or amendment; *provided, however*, that (a) no such modification or amendment shall deprive any Participant of a benefit to which he or she would otherwise be entitled as of the effective date of the amendment, and (b) any modification or amendment of the Plan, or any part thereof, shall be subject to the restrictions of Section 10.6(d).

Notwithstanding any contrary provision of this Section 11.3, the Board of Directors (in its sole discretion) may make any modifications, amendments, additions or deletions to the Plan as to benefits or otherwise, retroactively if necessary, and regardless of the effect on the rights of any particular Participants, which it deems appropriate to bring the Plan into conformity with or to satisfy any conditions of applicable law, to maintain the qualification of the Plan under section 401(a) of the Code, and to maintain the tax-exempt status of the Trust under section 501(a) of the Code.

**11.4 Plan Termination**

- (a) Right to Terminate. The District reserves the right to terminate the Plan in whole or in part by a resolution of its Board of Directors.
- (b) Distribution to Affected Participants. Upon termination of the Plan, the interests of all Participants affected by such termination in their Accounts shall remain fully (100%) vested and nonforfeitable and the Human Resources Department shall direct the Trustee to distribute the assets remaining in the Trust, after

payment of any expenses properly chargeable thereto, to Participants and Beneficiaries as provided in Article IX.

- (c) Manner of Distribution. To the extent that no discrimination in value results, any distribution after termination of the Plan may be made in cash, in securities or other assets in kind, in nontransferable term-certain annuities (individual or group), or in any combination thereof, as the Human Resources Department in its discretion may determine. All non-cash distributions shall be valued at fair market value at date of distribution.



## **ARTICLE XII MISCELLANEOUS PROVISIONS**

### **12.1 Nonguarantee of Employment**

Nothing contained in the Plan or in the forms issued pursuant to the Plan shall be construed as a contract of employment or reemployment between the District and any Employee, or as a right of any Employee to be continued in the employment of the District or to be rehired by the District, or as a limitation of the right of the District to discharge any of its Employees, with or without cause.

### **12.2 No Vested Contractual Rights Created**

Nothing contained in the Plan shall be construed as granting or creating in any Participant any vested contractual rights under federal or California law nor any right to the continued existence of the Plan in its current or amended form.

### **12.3 Nonguarantee of Value of Trust Assets**

Neither the Trustee, the Committee nor the District in any way guarantees the Trust or any Participant's Account from loss or depreciation.

### **12.4 Rights to Trust Assets**

No Participant or Beneficiary shall have any right to, or interest in, any assets of the Trust upon Severance from Employment or otherwise, except as provided from time to time under this Plan, and then only to the extent of the benefits payable under the Plan to the Participant out of the assets of the Trust.

Except as otherwise provided by law or in Section 8.3, no benefit, payment or distribution under the Plan shall be subject either to the claim of any creditor of a Participant, spouse, contingent annuitant or Beneficiary, or to attachment, garnishment, levy (other than a federal tax levy under section 6331 of the Code), execution or other legal or equitable process, by any creditor of such person, and no such person shall have any right to alienate, commute, anticipate or assign (either at law or equity) all or any portion of any benefit, payment or distribution under the Plan.

The Trust shall not in any manner be liable for or subject to the debts, contracts, liabilities, engagements or torts of any person entitled to benefits under the Plan.

If any Participant's benefits are garnished or attached by order of any court, the Plan Administrator may elect to bring an action for a declaratory judgment in a court of competent jurisdiction to determine the proper recipient of the benefits to be paid by the Plan. During the pendency of such action, any benefits that become payable may be paid into the court as they become payable, to be distributed by the court to the recipient it deems proper at the close of such action.

## 12.5 Correction of Errors

If any error in any Account or record is discovered and would result in any Participant's Account being more or less than it would have been had the error not been discovered or had the record been correct, the Human Resources Department, investment manager, Trustee or any other fiduciary shall correct the error by adjusting, to the extent reasonable and practical, the Accounts or records under their control. Any such correction shall be conclusive and binding on all Participants and their Beneficiaries.

## 12.6 Continuing Conditions

- (a) In the event that the Internal Revenue Service determines that the Plan does not or no longer satisfies the qualification requirements under section 401(a) of the Code, all Salary Contributions shall be returned to the District as promptly as practicable, but not later than one year after the District receives written notice that such determination has been made. Any obligation to make Salary Contributions under the Plan is hereby conditioned upon the initial and continued qualification of the Plan under section 401(a) of the Code and the exempt status of the Trust under section 501(a) of the Code.
- (b) That portion of any Salary Contribution which is made by reason of a good faith mistake of fact shall be returned to the District as promptly as practicable, but not later than one year after the contribution was made. The amount returned pursuant to the preceding sentence shall be an amount equal to the excess of the amount actually contributed over the amount that would have been contributed if the mistake had not been made.
- (c) Notwithstanding the foregoing, in determining the amount to be returned to the District, (1) if paragraph (b) above applies, gains attributable to the returnable portion shall be retained in the Trust; and (2) the returnable portion shall be reduced (i) by any losses attributable thereto, and (ii) if paragraph (b) above applies, to avoid a reduction in any Participant's Account below the total balance that would have resulted if the mistake had not been made.

## 12.7 USERRA Provisions

- (a) Intent. It is the intent of the Plan to comply with the reemployment rights of members of the Uniformed Services as specified in the Uniformed Services Employment and Reemployment Act of 1994, 38 U.S. Code chapter 43 ("USERRA"), and section 414(u) of the Code. Therefore, notwithstanding any contrary Plan provision, Salary Contributions with respect to Qualified Military Service will be provided in accordance with section 414(u) of the Code.
- (b) Definitions. For the purposes of this Section 12.7, the following words and phrases shall have the meanings set forth below:

- (1) "Qualified Military Service" means any service in the Uniformed Services of the United States by any individual if such individual is entitled to reemployment rights with respect to such service under USERRA.
- (2) "Uniformed Services" means:
  - (A) The armed forces of the United States;
  - (B) The Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty for training or full-time National Guard duty;
  - (C) The commissioned corps of the Public Health Service; and
  - (D) Any other category of persons designated by the President of the United States in time of war or emergency.
- (c) Benefit Accruals. Each period of Qualified Military Service served by an individual is, upon reemployment by the District under USERRA, deemed to constitute service with the District for purposes of determining the accrual of benefits under the Plan as follows:
  - (1) Only periods during which the District was maintaining the Plan will be counted.
  - (2) The returning Participant will be considered to have been in the same category of employment during Qualified Military Service as the category in which he or she was employed immediately before such Service.
  - (3) The amount of Salary Contributions allowed shall be computed as if the individual had been permitted to contribute had the individual remained continuously employed by the District throughout the period of Qualified Military Service.
  - (4) Payment of such Salary Contributions must be made by the Participant during a period which begins with the date of reemployment and is three (3) times the duration of the period of Qualified Military Service, but not greater than five (5) years.
- (d) Compensation. In accordance with section 414(u)(12)(A)(ii) of the Code and any regulations and other guidance promulgated thereunder, Compensation shall include differential pay that (1) is made by the District to a Participant with respect to any period during which the Participant is performing Qualified Military Service while on active duty for a period of more than 30 days, and (2) represents all or a portion of the wages the Participant would have received from the District if he or she had remained actively employed.

- (e) Death During Qualified Military Service. If a Participant dies while performing Qualified Military Service, his or her Beneficiary shall be entitled (to the extent required by section 401(a)(37) of the Code) to any additional benefits (other than benefit accruals relating to the period of Qualified Military Service) provided under the Plan as if he or she had resumed employment with the District on the day before his or her death and then had a Severance from Employment on account of death.
- (f) Notice. If the District reemploys an individual under USERRA, it shall, within 30 days after the date of such reemployment, provide notice, in writing, of such reemployment to the Human Resources Department.
- (g) Military Leave Distributions. A Participant shall be treated as having had a Severance from Employment during any period the Participant is performing service in the uniformed services while on active duty for a period of more than 30 days as described in section 3401(h)(2)(A) of the Code. If a Participant elects to receive a distribution by reason of the preceding sentence, the Participant may not make Salary Contributions during the 6-month period beginning on the date of the distribution.

#### 12.8 Severability

In the event any Article, Section, paragraph or specific provision of this Plan is found to be illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining provisions of the Plan, and the Plan shall be construed and enforced as if such illegal or invalid provision had never been set forth in the Plan.

#### 12.9 Construction

Where applicable, the masculine includes the feminine, and the singular the plural and vice versa. Where a word or phrase is defined in Article II or elsewhere in the Plan, such word or phrase shall have the meaning set forth in the Plan unless the context clearly requires otherwise. A word or phrase in non-capitalized form shall retain its plain meaning taken in the context in which it appears, regardless of whether such word or phrase is defined in Article II or elsewhere in the Plan.

#### 12.10 Applicable Law

The provisions of the Plan shall be construed, administered and enforced in accordance with section 401(a) and related provisions of the Code and, to the extent applicable, the laws of the State of California.

## EXECUTION

*Witness* the execution of this **East Bay Municipal Utility District 401(a) Plan**, as amended and restated on the date set forth below (effective as of January 1, 2014).

### EAST BAY MUNICIPAL UTILITY DISTRICT

By \_\_\_\_\_

Title \_\_\_\_\_

Dated \_\_\_\_\_

## **APPENDIX A EFFECTIVE DATES**

The 2014 Restatement of the East Bay Municipal Utility District 401(a) Plan is generally effective as of January 1, 2014. However, the Plan provisions identified below are effective as of the dates specified below:

1. The paragraph that immediately follows Section 2.6(f) is effective as of January 1, 2008.
2. The reference to a Roth IRA in clause (i) of Section 9.8(b) effective as of January 1, 2008.
3. Section 12.7 is generally effective as of January 1, 2008.
4. Section 12.7(e) is effective as of January 1, 2009.



RESOLUTION NO. \_\_\_\_\_

AMENDING THE EAST BAY MUNICIPAL UTILITY DISTRICT  
401(k) TAX DEFERRED SAVINGS PLAN  
TO MAKE CHANGES EFFECTIVE JANUARY 1, 2014

Introduced by Director

; Seconded by Director

WHEREAS, on October 1, 1985, the Board of Directors adopted the East Bay Municipal Utility District 401(k) Tax Deferred Savings Plan ("401(k) Plan") that meets the requirements for eligible tax deferred savings plan status under Section 401(k) of the Internal Revenue Code; and

WHEREAS, the Board of Directors under Sections 11.1 and 11.3 of the 401(k) Plan is authorized to amend the Plan by resolution; and

WHEREAS, on June 26, 2013, the United States Supreme Court ruled that Section 3 of the Defense of Marriage Act, was unconstitutional for failing to recognize same-sex marriage; and

WHEREAS, the Internal Revenue Service issued regulations effectuating the U.S. Supreme Court ruling; and

WHEREAS, the District must amend the 401(k) Plan to ensure compliance with federal regulatory tax law and to ensure that the plan language is current;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the East Bay Municipal Utility District that the 401(k) Plan, attached herein as Exhibit A, is hereby amended and adopted, and that the proper officers and employees of the District are authorized and directed to take all necessary steps to implement the amendments to the 401(k) Plan, effective January 1, 2014. The specific amendments are as follows:

**Section 1 of the Plan shall be amended to read as follows:**

**1.1 Name of Plan**

This Plan, effective October 1, 1985 and as previously amended and restated on January 1, 1989, January 1, 1992, January 1, 1994, January 10, 1995, June 13, 1995, December 12, 1995, March 28, 2000, June 27, 2000, November 27, 2001, December 11, 2001, December 10, 2002, November 10, 2003, December 14, 2004, December 13, 2005, December 9, 2008, January 1, 2009, December 8, 2009, December 14, 2010, ~~and December 13, 2011,~~ **and December 10, 2013,** is hereby amended and restated in accordance with the terms hereof and shall be known as the East Bay Municipal Utility District 401(k) Tax Deferred Savings Plan (the "Plan").



### 1.3 Effective Date

The original effective date of (a) this Plan is October 1, 1985, and (b) this amendment and restatement of the Plan is effective (generally) as of January 1, ~~2012~~ **2014**.

### **Section 2 of the Plan shall be amended to read as follows:**

2.6 Compensation means the “total gross compensation” payable to an Employee for services rendered to the District during periods in which he or she is a Participant. For this purpose, “total gross compensation” shall include the total salary, wages and other remuneration reportable on the Employee’s Federal Income Tax Withholding Statement (IRS Form W-2), *plus* (i) any Salary Contributions elected by or on behalf of the Employee under Section 4.1 of the Plan; (ii) any deferrals made by the Employee pursuant to a Salary Contribution election under the District’s 457 Deferred Compensation Plan; (iii) any salary reduction contributions made by the Employee which are not includible in his or her gross income by reason of section 125 of the Code; (iv) any amounts not includible in the Participant’s gross income by reason of section 132(f)(4) of the Code; (v) any amounts contributed by or on behalf of the Employee pursuant to a salary deferral agreement to purchase an annuity contract under section 403(b) of the Code; (vi) any amounts contributed by or on behalf of the Employee pursuant to a Salary Contribution agreement made under the District’s 401(a) Plan that are “picked up” by the District in accordance with section 414(h)(2) of the Code; and (vii) any employee contributions made under the District’s Retirement Ordinance that are “picked up” by the District in accordance with section 414(h)(2) of the Code; *provided, however*, that all other items of extra pay, including, but not limited to, the following, shall not be included in Compensation:

- (a) imputed income on group life insurance;
- (b) non-cash benefits extended to domestic partners;
- (c) education expenses and reimbursements;
- (d) meal vouchers;
- (e) personal use value (including commuting costs) of District-provided automobiles; or
- (f) mileage allowances in excess of the amount permitted for reimbursement under an accountable plan.

Compensation shall include payments made within 2½ months following an Employee’s Severance from Employment, *provided* that such payments (absent a Severance from Employment) would have been paid to the Employee while the Employee continued in employment with the District and constitute (i) regular compensation for services during the Employee’s regular working hours, compensation for services outside the Employee’s regular working hours (overtime and shift differential), or commissions; or (ii) unused accrued vacation or sabbatical pay, but only if the payment would have been paid to the

Employee at the same time if the Employee had continued in employment with the District and only to the extent that the payment is includible in the Employee's gross income.

Notwithstanding the foregoing, no portion of the Compensation of any Employee which exceeds \$2650,000 (for 2012 ~~2014~~) shall be taken into account for any purpose under the Plan for any Plan Year.

- 2.20 Section 401(k) Ceiling means the dollar limitation on elective deferrals imposed by section 402(g) of the Code (\$17,500 for 2012 ~~2013 and 2014~~) as adjusted in future years to reflect increases in the cost of living in accordance with sections 402(g)(4) and 415(d) of the Code.

**Section 4 of the Plan shall be amended as follows:**

**4.7 Age 50 Catch-Up Rules**

Eligible Participants (as defined in paragraph (a) below) may make additional Salary Contributions ("Age 50 Catch-Up Deferrals") up to the amounts specified in paragraph (b) below.

- (g) For purposes of this Section 4.7, "Eligible Participant" means a Participant who meets the following requirements:
- (1) The Participant has attained the age of 50 before the close of the Plan Year.
  - (2) The Participant may make no other Salary Contributions due to the Section 401(k) Ceiling or the restrictions imposed under Section 4.5 or 5.4.
- (h) The maximum amount of Age 50 Catch-Up Deferrals an Eligible Participant may make during a Plan Year shall not exceed the lesser of:
- (1) the Age 50 Catch-Up Amount; or
  - (2) the excess, if any, of (i) the Eligible Participant's Compensation for the Plan Year, over (ii) any other Salary Contributions made on behalf of the Eligible Participant for such Plan Year without regard to this Section 4.7.
- (i) The "Age 50 Catch-Up Amount" shall be an amount that does not exceed \$2,000 (as adjusted in accordance with section 414(v)(2)(C) of the Code) (*i.e.*, \$5,500 for 2010, 2011 and 2012 ~~2013 and 2014~~) for the relevant Plan Year.
- (j) Age 50 Catch-Up Deferrals made pursuant to this Section 4.7 are not subject to the deferral percentage limitations of Section 4.5 or section 401(k)(3) of the Code.

**Section 5 of the Plan shall be amended as follows:**

**5.4     Limitation on Allocations**

The purpose of this Section 5.4 is to provide that Annual Additions shall not exceed the limitations imposed on tax-qualified defined contribution plans by federal law, and this Section 5.4 shall be construed to effectuate this purpose.

- (a)     Annual Additions Limitation. Notwithstanding any contrary Plan provision, the maximum Annual Addition to a Participant's Account for any Plan Year shall not exceed the lesser of (1) \$40,000 (as adjusted in accordance with section 415(d) of the Code (*i.e.*, \$~~52~~0,000 for ~~2012~~ 2014), or (2) one hundred percent (100%) of the Participant's Annual Compensation from the District.
- (b)     "Annual Compensation" means, for purposes of this Section 5.4, an Employee's compensation as described in Treas. Reg. § 1.415(c)-2(d)(4). Annual Compensation shall also include compensation paid after severance from employment to the extent permitted by Treas. Reg. § 1.415(c)-2(e)(3).
- (c)     Adjustments. For Plan Years prior to January 1, 2009, if, as the result of (i) the allocation of forfeitures under any other tax-qualified plan, (ii) a reasonable error in estimating a Participant's Annual Compensation or in determining the amount of Salary Contributions that may be made by a Participant under the limits of this Section 5.4 or Section 4.7, or (iii) other circumstances which permit the application of the rules stated in this Section 5.4 or Section 5.5, any of the limitations of these Sections would otherwise be exceeded with respect to any Participant for any Plan Year, then the following actions (but only to the extent necessary to avoid exceeding such limitations) shall be taken in the following order:
  - (1)     Any nondeductible voluntary employee contributions made by the Participant for the Plan Year under any other tax-qualified plan shall be returned.
  - (2)     The Participant's Salary Contributions, if not distributed to the Participant, shall be reallocated to a suspense account, and the balance credited to such account shall be applied to reduce the Salary Contributions otherwise to be contributed on behalf of, and allocated to all eligible Participants under this Plan for succeeding Plan Years in order of time.
  - (3)     The amount allocated to the Participant's Account from Matching Contributions made by the District under this Plan shall be reallocated to a suspense account, and the balance credited to such account shall be applied to reduce the Matching Contributions otherwise to be made for, and allocated to the Accounts of, all eligible Participants for succeeding Plan Years in order of time.

- (4) The amount allocated to the Participant's account from contributions made by the District under any other tax-qualified plan shall be reallocated to a suspense account, and the balance credited to such account shall be applied to reduce the contributions (of the same class) otherwise to be made on behalf of and allocated to the accounts of all eligible participants under such other plan for succeeding Plan Years in order of time.
- (5) The Participant's accrued benefit under the District's Employees' Retirement System shall be frozen and/or the rate of its future accrual shall be reduced.

For Plan Years beginning on or after January 1, 2009, any excess Annual Additions shall be corrected as necessary in accordance with the correction methods specified in ~~Sections 6.06(2) and (3) of Revenue Procedure 2008-50~~ **2013-12** or its successor.

In applying these rules, this Plan and any other plan required to be aggregated with this Plan under Treas. Reg. § 1.415(f)-1 shall be treated as one plan.

No suspense account established under this Section 5.4(c) shall share in allocations of earnings and gains (or losses) of the Trust. The balances credited to all suspense accounts shall be returned to the District upon termination of the Plan.

**Section 9 of the plan shall be amended as follows:**

**9.10 Marital Status**

- (a) Requirements for Marriage or Domestic Partnership. If this Section 9.10 applies with respect to a Participant, for all purposes of this Plan, the Participant shall be treated as married if at the relevant time he or she is:
  - (1) Married to ~~an~~ the individual ~~who is his wife or her husband~~ in a marital relationship which is legally valid under ~~applicable local~~ the law of the state or other jurisdiction where the marriage took place; or
  - (2) Not legally married but is the domestic partner of an individual (i) who is of the same or opposite sex as the Participant, (ii) who is his or her domestic partner in a domestic partnership which is validly registered in a jurisdiction which provides for domestic partner registration, and (iii) who has executed (together with the Participant) a certification demonstrating that the foregoing terms of this paragraph (b) have been satisfied; *provided, however*, that the current or former domestic partner of a Participant:
    - (i) Shall not be treated as his or her surviving spouse for purposes of applying Sections 8.1, 9.6(c), 9.7(b) and (c), or 9.8(b); and

- (ii) If he or she is not also the Participant's dependent (within the meaning of section 152(a) of the Code), shall not be treated as his or her former spouse or other Alternate Payee (as defined in Section 8.4) for purposes of applying Section 8.4 (relating to Qualified Domestic Relations Orders) or any related Plan provision.
- (b) Evidence of Marriage or Domestic Partnership. Any Participant who claims to be married for purposes of this Plan, as a condition to his or her eligibility for any benefit available only to married Participants or their spouses under this Plan, shall provide such evidence as to the continued existence of his or her marital relationship or domestic partnership as is reasonably requested by the Committee.
- (c) Domestic Partner Treated as Spouse. Each reference in this Plan to the spouse, lawful spouse, husband or wife of a Participant, or to his or her status as a married individual, shall also refer to the domestic partner of such Participant, or to his or her status as an individual who is a member of a domestic partnership, *provided* that such relationship satisfies the criteria set forth in Section 9.10(a)(2).

BE IT FURTHER RESOLVED that any Resolution in conflict herewith is hereby superseded and canceled.

ADOPTED this 10th day of December, 2013 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

APPROVED AS TO FORM AND PROCEDURE:

\_\_\_\_\_  
General Counsel

**EAST BAY MUNICIPAL UTILITY DISTRICT**  
**401(k) TAX DEFERRED SAVINGS PLAN**  
**(As Amended and Restated Effective as of January 1, 2014)**



## TABLE OF CONTENTS

|                    |   |          |
|--------------------|---|----------|
| <b>ARTICLE I</b>   | <b>NAME, PURPOSE AND EFFECTIVE DATE .....</b> | <b>1</b> |
| 1.1                | Name of Plan.....                             | 1        |
| 1.2                | Purpose of Plan .....                         | 1        |
| 1.3                | Effective Date .....                          | 1        |
| <b>ARTICLE II</b>  | <b>DEFINITIONS .....</b>                      | <b>2</b> |
| 2.1                | Account .....                                 | 2        |
| 2.2                | Beneficiary .....                             | 2        |
| 2.3                | Board of Directors or Board .....             | 2        |
| 2.4                | Code .....                                    | 2        |
| 2.5                | Committee.....                                | 2        |
| 2.6                | Compensation .....                            | 2        |
| 2.7                | District.....                                 | 3        |
| 2.8                | Eligible Employee.....                        | 3        |
| 2.9                | Employee .....                                | 3        |
| 2.10               | Entry Date .....                              | 3        |
| 2.11               | Fund or Investment Fund .....                 | 4        |
| 2.12               | Human Resources Department .....              | 4        |
| 2.13               | Leased Employee .....                         | 4        |
| 2.14               | Participant .....                             | 4        |
| 2.15               | Plan .....                                    | 4        |
| 2.16               | Plan Administrator or Administrator .....     | 4        |
| 2.17               | Plan Sponsor .....                            | 4        |
| 2.18               | Plan Year.....                                | 4        |
| 2.19               | Salary Contribution.....                      | 4        |
| 2.20               | Section 401(k) Ceiling .....                  | 4        |
| 2.21               | Severance from Employment.....                | 4        |
| 2.22               | Spousal Consent.....                          | 4        |
| 2.23               | Third Party Administrator.....                | 5        |
| 2.24               | Trust .....                                   | 5        |
| 2.25               | Trustee.....                                  | 5        |
| 2.26               | Valuation Date .....                          | 5        |
| <b>ARTICLE III</b> | <b>ELIGIBILITY AND PARTICIPATION.....</b>     | <b>6</b> |
| 3.1                | Eligibility .....                             | 6        |
| 3.2                | Participation .....                           | 6        |
| 3.3                | Conditions of Participation .....             | 6        |
| 3.4                | Beneficiary Designation.....                  | 7        |
| 3.5                | Loss of Eligibility .....                     | 7        |
| 3.6                | Termination of Participation .....            | 7        |
| <b>ARTICLE IV</b>  | <b>CONTRIBUTIONS UNDER THE PLAN .....</b>     | <b>8</b> |
| 4.1                | Salary Contribution Elections .....           | 8        |
| 4.2                | Changes in Salary Contributions .....         | 9        |



|   |   |           |
|---|---|-----------|
| 4.3   | Employee Contributions .....  | 9         |
| 4.4   | Date of Contribution .....  | 9         |
| 4.5   | Salary Contribution Limited by Section 401(k) Ceiling.....                                    | 9         |
| 4.6   | District's Matching Contributions .....   | 10        |
| 4.7   | Age 50 Catch-Up Rules .....   | 11        |
| 4.8   | Direct Transfers of Eligible Rollover Distributions.....                                      | 11        |
| <b>ARTICLE V ACCOUNT ADMINISTRATION .....</b>         |   | <b>13</b> |
| 5.1   | Participant Accounts .....  | 13        |
| 5.2   | Allocation of Income, Appreciation and Loss .....   | 13        |
| 5.3   | Annual Additions .....  | 13        |
| 5.4   | Limitation on Allocations .....   | 14        |
| 5.5   | Human Resources Department May Disallow Deferral .....  | 16        |
| 5.6   | Notice to Participants .....  | 16        |
| <b>ARTICLE VI INVESTMENT OF FUNDS.....</b>            |   | <b>17</b> |
| 6.1   | Investment Funds .....  | 17        |
| 6.2   | Investment Fund Election .....  | 17        |
| 6.3   | Change in Investment Fund Election.....   | 17        |
| 6.4   | Transfer Between Investment Funds .....   | 18        |
| <b>ARTICLE VII VESTING AND FORFEITURES .....</b>      |   | <b>19</b> |
| 7.1   | Salary Contributions .....  | 19        |
| 7.2   | Matching Contributions .....  | 19        |
| 7.3   | Disposition of Forfeitures .....  | 19        |
| <b>ARTICLE VIII WITHDRAWALS, LOANS AND QDROs.....</b> |   | <b>20</b> |
| 8.1   | Hardship Withdrawals .....  | 20        |
| 8.2   | Age 59½ Withdrawal for Permissive Service Credit Transfers.....                               | 22        |
| 8.3   | Participant Loans .....   | 22        |
| 8.4   | QDROs.....  | 25        |
| <b>ARTICLE IX PAYMENT OF BENEFITS.....</b>            |   | <b>27</b> |
| 9.1   | General Conditions .....  | 27        |
| 9.2   | Events Permitting Distribution .....  | 27        |
| 9.3   | Time Limits on Benefit Payments .....   | 27        |
| 9.4   | Small Accounts .....  | 28        |
| 9.5   | Unclaimed Benefits.....   | 28        |
| 9.6   | Limitations on Distributions .....  | 28        |
| 9.7   | Death Distributions .....   | 29        |
| 9.8   | Distribution Methods .....  | 30        |
| 9.9   | Qualified Joint and Survivor Annuity and Preretirement Survivor Annuity<br>Requirements ..... | 31        |
| 9.10  | Marital Status .....  | 33        |
| <b>ARTICLE X ADMINISTRATION OF PLAN.....</b>          |   | <b>34</b> |
| 10.1  | District.....   | 34        |

|   |   |           |
|---|---|-----------|
| 10.2  | 401(k)/457 Advisory Committee .....         | 34        |
| 10.3  | Secretary of the Committee .....            | 35        |
| 10.4  | Administrative Decisions .....              | 35        |
| 10.5  | Payment of Fees and Expenses .....          | 35        |
| 10.6  | Trustee.....                                | 35        |
| 10.7  | Fiduciary Responsibilities.....             | 36        |
| 10.8  | Indemnification .....                       | 37        |
| 10.9  | Claims Procedures .....                     | 37        |
| <b>ARTICLE XI PLAN AMENDMENT, TERMINATION AND OTHER CHANGES .....</b> |   | <b>39</b> |
| 11.1  | Action by District.....                     | 39        |
| 11.2  | District's Obligations Limited .....        | 39        |
| 11.3  | Plan Amendment.....                         | 39        |
| 11.4  | Plan Termination.....                       | 39        |
| <b>ARTICLE XII MISCELLANEOUS PROVISIONS.....</b>                      |   | <b>41</b> |
| 12.1  | Nonguarantee of Employment .....            | 41        |
| 12.2  | No Vested Contractual Rights Created .....  | 41        |
| 12.3  | Nonguarantee of Value of Trust Assets ..... | 41        |
| 12.4  | Rights to Trust Assets .....                | 41        |
| 12.5  | Correction of Errors .....                  | 42        |
| 12.6  | Continuing Conditions .....                 | 42        |
| 12.7  | USERRA Provisions.....                      | 42        |
| 12.8  | Severability .....                          | 44        |
| 12.9  | Construction.....                           | 44        |
| 12.10   | Applicable Law .....                        | 44        |
| <b>EXECUTION .....</b>  |   | <b>45</b> |
| <b>APPENDIX A EFFECTIVE DATES.....</b>                                |   | <b>46</b> |



**EAST BAY MUNICIPAL UTILITY DISTRICT  
401(k) TAX DEFERRED SAVINGS PLAN  
(As Amended and Restated Effective as of January 1, 2014)**

**ARTICLE I  
NAME, PURPOSE AND EFFECTIVE DATE**

**1.1     Name of Plan**

This Plan, effective October 1, 1985 and as previously amended and restated on January 1, 1989, January 1, 1992, January 1, 1994, January 10, 1995, June 13, 1995, December 12, 1995, March 28, 2000, June 27, 2000, November 27, 2001, December 11, 2001, December 10, 2002, November 10, 2003, December 14, 2004, December 13, 2005, December 9, 2008, January 1, 2009, December 8, 2009, December 14, 2010, December 13, 2011, and December 10, 2013 is hereby amended and restated in accordance with the terms hereof and shall be known as the East Bay Municipal Utility District 401(k) Tax Deferred Savings Plan (the "Plan").

**1.2     Purpose of Plan**

The purpose of the Plan is to provide a tax-effective means through which eligible employees can increase their retirement savings. The Plan is established pursuant to section 12338 of the Public Utilities Code and sections 53212 through 53213.5 of the Government Code of the State of California and is intended to constitute a tax-qualified governmental defined contribution profit sharing plan (within the meaning of section 401(a) of the Code) which includes a cash and deferred arrangement described in section 401(k) of the Code. The Plan and Trust shall be construed, and all ambiguities shall be resolved, in favor of an interpretation consistent with such qualified tax status.

**1.3     Effective Date**

The original effective date of (a) this Plan is October 1, 1985, and (b) this amendment and restatement of the Plan is effective (generally) as of January 1, 2014.

## ARTICLE II DEFINITIONS

The following terms and phrases shall have the following meanings when used herein and in the Trust Agreement, unless a different meaning is clearly required by the context:

- 2.1 Account means the aggregate of one or more subaccounts held by the Trustee for a Participant under the Plan. Each Participant's Account shall include a Salary Contribution Account, a Roth Salary Contribution Account and a Matching Account. Each Participant's Account may be invested in one or more Funds as authorized under the terms of this Plan and the Trust Agreement.
- 2.2 Beneficiary means an individual, trust or estate which is entitled to receive a death benefit under the Plan pursuant to the Participant's most recent effective beneficiary designation or otherwise under the provisions of Section 3.4.
- 2.3 Board of Directors or Board means the Board of Directors of the East Bay Municipal Utility District.
- 2.4 Code means the Internal Revenue Code of 1986, as amended from time to time. Reference to a specific section of the Code shall include such section, any valid regulation promulgated thereunder, and any comparable provision of any future legislation amending, supplementing or superseding such section.
- 2.5 Committee means the 401(k)/457 Advisory Committee created by the Board and appointed by the General Manager to exercise the duties and responsibilities delegated to it under Section 10.2.
- 2.6 Compensation means the "total gross compensation" payable to an Employee for services rendered to the District during periods in which he or she is a Participant. For this purpose, "total gross compensation" shall include the total salary, wages and other remuneration reportable on the Employee's Federal Income Tax Withholding Statement (IRS Form W-2), *plus* (i) any Salary Contributions elected by or on behalf of the Employee under Section 4.1 of the Plan; (ii) any deferrals made by the Employee pursuant to a Salary Contribution election under the District's 457 Deferred Compensation Plan; (iii) any salary reduction contributions made by the Employee which are not includible in his or her gross income by reason of section 125 of the Code; (iv) any amounts not includible in the Participant's gross income by reason of section 132(f)(4) of the Code; (v) any amounts contributed by or on behalf of the Employee pursuant to a salary deferral agreement to purchase an annuity contract under section 403(b) of the Code; (vi) any amounts contributed by or on behalf of the Employee pursuant to a Salary Contribution agreement made under the District's 401(a) Plan that are "picked up" by the District in accordance with section 414(h)(2) of the Code; and (vii) any employee contributions made under the District's Retirement Ordinance that are "picked up" by the District in accordance with section 414(h)(2) of the Code; *provided, however*, that all other items of extra pay, including, but not limited to, the following, shall not be included in Compensation:

- (a) imputed income on group life insurance;
- (b) non-cash benefits extended to domestic partners;
- (c) education expenses and reimbursements;
- (d) meal vouchers;
- (e) personal use value (including commuting costs) of District-provided automobiles;  
or
- (f) mileage allowances in excess of the amount permitted for reimbursement under an accountable plan.

Compensation shall include payments made within 2½ months following an Employee's Severance from Employment, *provided* that such payments (absent a Severance from Employment) would have been paid to the Employee while the Employee continued in employment with the District and constitute (i) regular compensation for services during the Employee's regular working hours, compensation for services outside the Employee's regular working hours (overtime and shift differential), or commissions; or (ii) unused accrued vacation or sabbatical pay, but only if the payment would have been paid to the Employee at the same time if the Employee had continued in employment with the District and only to the extent that the payment is includible in the Employee's gross income.

Notwithstanding the foregoing, no portion of the Compensation of any Employee which exceeds \$260,000 (for 2014) shall be taken into account for any purpose under the Plan for any Plan Year.

2.7 District means the East Bay Municipal Utility District.

2.8 Eligible Employee shall have the meaning specified in Section 3.1.

2.9 Employee means any person, including a person generally classified as an officer or an official, who is:

- (a) in the employ of the District and whose compensation in such employment is paid wholly by the District; or
- (b) a member of the Board of Directors; or
- (c) a Leased Employee. However, if Leased Employees constitute less than 20% of the District's nonhighly compensated work force (within the meaning of section 414(n)(5)(C)(ii) of the Code), the term "Employee" shall not include those Leased Employees who are covered by a plan described in section 414(n)(5) of the Code.

2.10 Entry Date means the first day of each payroll period.

- 2.11 Fund or Investment Fund means each investment fund in which a Participant may elect to have his or her Account invested, as provided in Section 6.1.
- 2.12 Human Resources Department means the Human Resources Department of the District which is responsible for performing day-to-day plan administrative tasks and functions necessary to administer and manage the Plan and providing administrative assistance to the Committee. The Human Resources Department may delegate responsibilities with respect to the administration of the Plan to the Third Party Administrator.
- 2.13 Leased Employee means an individual who is a leased employee (within the meaning of section 414(n)(2) of the Code) of the District.
- 2.14 Participant means an Eligible Employee (as defined in Section 3.1) who has elected to participate under Section 3.2 and whose Account balance is greater than zero.
- 2.15 Plan means the East Bay Municipal Utility District 401(k) Tax Deferred Savings Plan, as set forth herein and as amended from time to time.
- 2.16 Plan Administrator or Administrator means the District, which may allocate and delegate its responsibilities and duties pursuant to Section 10.1.
- 2.17 Plan Sponsor means the District, which may act by action of the Board of Directors or any person to whom it has delegated the relevant authority.
- 2.18 Plan Year means the calendar year.
- 2.19 Salary Contribution means the reduction through bi-weekly payroll deduction of a Participant's Compensation by a specified percentage, which the District agrees to contribute to the Participant's Account under the Plan in a manner intended to meet the conditions of section 401(k) and 414(v) of the Code. Each Participant's Compensation must be reduced by a specified percentage and may not be reduced by a lump sum amount. Salary Contributions will be (a) allocated to the Participant's Account pursuant to his or her Salary Contribution election, (b) immediately nonforfeitable, and (c) subject to the withdrawal limitations of Article VIII.
- 2.20 Section 401(k) Ceiling means the dollar limitation on elective deferrals imposed by section 402(g) of the Code (\$17,500 for 2013 and 2014) as adjusted in future years to reflect increases in the cost of living in accordance with sections 402(g)(4) and 415(d) of the Code.
- 2.21 Severance from Employment means the date an Employee dies, retires or otherwise has a severance from employment with the District, as determined by the Plan Administrator (and taking into account guidance issued under section 401(k)(2)(B)(i)(I) of the Code).
- 2.22 Spousal Consent means the consent of the spouse of a Participant that:
- (a) is set forth in writing;

- (b) acknowledges the effect of the election, consent, waiver or designation made or other action taken by the Participant; and
  - (c) is signed by the spouse and witnessed by a notary public.
  - (d) However, if the Participant establishes to the satisfaction of the District that Spousal Consent may not be obtained or is not required, either because the Participant has no spouse or the spouse cannot be located or because of other circumstances specified under section 417(a)(2) of the Code or in rules adopted by the Human Resources Department, the Participant's election or other action shall be effective without Spousal Consent.
  - (e) Any Spousal Consent required under the Plan shall be valid only (1) with respect to the spouse who signs the Spousal Consent, and (2) as to the particular choice made by the Participant in the election or other action requiring Spousal Consent.
  - (f) A Participant (without Spousal Consent) may revoke a prior election or other action at any time before its effective date. The number of such revocations shall not be limited.
- 2.23 Third Party Administrator means the organization with whom the Plan Administrator contracts to administer the Plan under the direction of the Committee and the Human Resources Department and which shall serve as the agent of the District, the Trustee, the Committee and the Human Resources Department in carrying out the administrative duties of the Plan.
- 2.24 Trust means that certain Trust which was created by execution of the "East Bay Municipal Utility District 401(k) Tax Deferred Savings Plan Trust Agreement," effective as of October 1, 1985, as amended from time to time (the "Trust Agreement").
- 2.25 Trustee means the individuals serving as the Director of Finance, Manager of Human Resources and Treasury Manager of the District appointed by the Board pursuant to Section 10.6(a). The Trustee may allocate or delegate the duty to determine the fair market value of Trust assets and other custodial duties to the Third Party Administrator.
- 2.26 Valuation Date means each date as of (a) which the Trustee determines the fair market value of Trust assets, and (b) which the Human Resources Department allocates investment earnings to Participants' Accounts. The Valuation Date shall be each business day.



## **ARTICLE III ELIGIBILITY AND PARTICIPATION**

### **3.1    Eligibility**

“Eligible Employee” means any individual who is (i) an Employee who is eligible for membership in the District’s Retirement System, (ii) an Employee who is appointed to a full-time “limited term” or a “temporary construction” position, (iii) an employee who participates in a “job share” arrangement, (iv) an employee who is designated an “intermittent” employee or (v) the General Manager of the District. Notwithstanding the foregoing, the term “Eligible Employee” shall not include any individual who, during such period, is classified or treated by the District as a part-time, contract, temporary or “as-needed” employee, an independent contractor, a consultant, a Leased Employee, an employee of an employment agency or any entity other than the District, even if such individual is subsequently determined to have been a full-time common-law employee of the District during such period.

### **3.2    Participation**

Participation in the Plan on the part of Eligible Employees shall be voluntary. An Eligible Employee shall be eligible to elect to participate in the Plan as follows:

- (a)    An Eligible Employee may elect to become a Participant in the Plan upon satisfaction of the eligibility requirements in Section 3.1. Participation shall be effective as of the first Entry Date coincident with or next following the date of eligibility.
- (b)    An Employee who becomes an Eligible Employee after the Effective Date, as a result of being transferred from an employment status other than that of an Eligible Employee, shall be eligible to become a Participant on the Entry Date coincident with or next following the date of transfer.
- (c)    A Participant or former Participant who is rehired by the District shall be eligible to again become a Participant on the Entry Date coincident with or next following the date of his or her reemployment as an Eligible Employee.

### **3.3    Conditions of Participation**

Participation in the Plan by Eligible Employees shall be contingent upon receipt by the Human Resources Department of such applications, Salary Contribution elections, consents, Beneficiary designations and other documents and information as may be prescribed by the Human Resources Department.

Each Eligible Employee upon becoming a Participant shall be deemed conclusively, and for all purposes, to have assented to the terms and provisions of the Plan and shall be bound thereby.

### 3.4 Beneficiary Designation

Upon commencement of participation, each Participant shall designate a Beneficiary on forms furnished by the Human Resources Department. A Participant may, from time to time, change his or her Beneficiary designation by written notice to the Human Resources Department. Upon such change, the rights of all previously designated Beneficiaries to receive any benefits under the Plan shall cease. A married Participant's designation of any primary Beneficiary other than his or her spouse shall require Spousal Consent.

If a deceased Participant is not survived by any named primary or contingent Beneficiary (or if no Beneficiary was effectively named), the balance credited to the Participant's Account shall be paid in a lump sum to the living person or persons in the first of the following classes (in the order listed) in which there are any survivors when the Participant dies: the Participant's (a) surviving spouse, (b) issue, (c) parents, or (d) estate.

If the Beneficiary or any contingent Beneficiary is living at the death of the Participant, but such person dies prior to receiving the death benefit described in the immediately preceding paragraph, the balance credited to the Participant's Account shall be paid in a lump sum to the estate of the deceased Beneficiary or contingent Beneficiary.

### 3.5 Loss of Eligibility

An Employee who loses eligibility, by ceasing to be an Eligible Employee because of transfer, promotion, demotion or otherwise, shall remain a Participant but no further Salary Contributions shall be made by or on behalf of such Employee with respect to any payroll period beginning during the period in which he or she remains in an ineligible employment status.

### 3.6 Termination of Participation

After becoming a Participant, an Eligible Employee shall continue to be a Participant until the balance credited to his or her Account is distributed or he or she dies.

**ARTICLE IV  
CONTRIBUTIONS UNDER THE PLAN**

**4.1     Salary Contribution Elections**

- (a) Each Eligible Employee may elect to have portions of his or her Compensation payments withheld by the District and contributed as a Salary Contribution under the Plan to be credited to his or her Account under the Plan, *provided* that he or she elects to make Salary Contributions in such manner and within such advance notice period as the Human Resources Department shall specify.
- (b) Subject to Sections 5.3 and 5.4, an Eligible Employee may elect to defer a portion of each payment of Compensation that would otherwise be made to him or her, measured in any whole or partial percentage carried to two decimal points. Such election shall become effective no earlier than the next Entry Date following the date on which the election is made and shall remain in effect until changed or cancelled pursuant to Section 4.2.
- (c) Each Eligible Participant (as defined in Section 4.7(a)) may make additional Age 50 Catch-Up Deferrals as provided under Section 4.7, *provided* that he or she elects to make Age 50 Catch-Up Deferrals in such manner and within such advance notice period as the Human Resources Department shall specify. Age 50 Catch-Up Deferrals, as determined in accordance with Section 4.7, shall be withheld by the District and contributed as Salary Contributions under the Plan to be credited to the Eligible Participant's Account.
- (d) Roth Salary Contributions. Each Eligible Employee may elect to have all or a portion of the Salary Contributions made pursuant to his or her election under paragraphs (a) through (c) above treated as "designated Roth contributions" (as described in section 402A(c)(1) of the Code) ("Roth Salary Contributions") and credited to his or her Roth Salary Contribution Account under the Plan, *provided* that any such deferral is:
  - (1) irrevocably designated by the Participant, at the time of his or her election pursuant to this Section 4.1, as a Roth Salary Contribution that is being made in lieu of all or a portion of the regular Salary Contributions the Participant is otherwise eligible to defer under this Section 4.1; and
  - (2) treated by the District as includible in the Participant's income at the time the Participant would have received that amount in cash if the Participant had not made a Salary Contribution election in accordance with this Section 4.1.

Unless specifically stated otherwise, Roth Salary Contributions shall be treated as Salary Contributions for all purposes under the Plan.

#### 4.2 Changes in Salary Contributions

- (a) A Participant may elect to increase the amount of his or her Salary Contributions as determined under Section 4.1 at any time, in such manner and within such advance notice period as the Human Resources Department (in its discretion) may specify, and such increase shall be effective no earlier than the calendar month following the month in which the increase is elected.
- (b) A Participant may decrease the amount of Salary Contributions as determined under Section 4.1, or completely cancel his or her Salary Contributions at any time, in such manner and within such advance notice period as the Human Resources Department (in its discretion) may specify, and such change shall be effective as soon as practicable after such date.
- (c) Amendments to increase or decrease the amount of Salary Contributions may be made only with respect to future payroll periods. No more than one amendment may be made in a pay period.
- (d) A Participant who has cancelled his or her Salary Contribution election shall immediately be eligible to enter into a new Salary Contribution election.

#### 4.3 Employee Contributions

Participants shall not be permitted or required to make contributions under the Plan other than pursuant to Salary Contribution agreements.

#### 4.4 Date of Contribution

Subject to the provisions of Article XI, the District shall pay to the Trust the amounts to be contributed as Participants' Salary Contributions pursuant to this Article IV. Salary Contribution amounts to be paid for a payroll period in accordance with the preceding sentence shall be paid to the Trust no later than within a reasonable time after the end of such period.

#### 4.5 Salary Contributions Limited by Section 401(k) Ceiling

Notwithstanding any contrary Plan provision, the Human Resources Department (in its discretion) (1) may suspend or limit any Participant's Salary Contribution election at any time in order to prevent the cumulative amount of the Participant's Salary Contributions from exceeding the Section 401(k) Ceiling for any Plan Year, and (2) may (but shall have no obligation whatsoever to) cause any amount allocated to the Plan as an excess deferral (with or without any income allocable to such amount) to be distributed to the Participant in accordance with section 402(g)(2)(A) of the Code.

#### 4.6 District's Matching Contributions

This Section 4.6 shall not become operative (if ever) until such date as the Board of Directors (in its discretion) shall determine by resolution.

The District shall contribute to the Trust as "Matching Contributions" amounts equal to the Matching Percentage (determined pursuant to paragraph (a) below) of the Salary Contributions made for each payroll period by each Participant. Only those Salary Contributions which are made pursuant to such portion of each eligible Participant's deferral percentage rate (determined pursuant to Section 4.1(b)) as does not exceed the Matching Ceiling (determined pursuant to paragraph (b) below) shall be taken into account in calculating the amount of the Matching Contribution (if any) to be made in respect of the Participant's Salary Contributions; *provided, however*, that the Matching Percentage and Maximum Matched Rate shall be applied on a Plan Year (rather than a Payroll period) basis in the case of any Participant whose Salary Contributions for the Plan Year are limited by the Section 401(k) Ceiling.

- (a) Matching Percentage. For any Plan Year for which a different rate is not determined in accordance with the following sentence, the matching percentage rate shall be zero percent (0%). Subject to the limitations of Section 5.4, the Matching Percentage rate specified in the preceding sentence may be changed for any Plan Year to such extent (if any) as the Board of Directors (in its discretion) may determine; *provided, however*, that no decrease in the Matching Percentage shall take effect prior to the first payroll period that begins after the decrease is announced to eligible Participants.
- (b) Maximum Matched Rate. For any Plan Year for which a different rate is not determined in accordance with the following sentence, the Matching Ceiling shall be zero percent (0%). Subject to the limitations of Section 5.4, the Board of Directors (in its discretion) may determine for any Plan Year the maximum deferral percentage rate elected by an eligible Participant pursuant to Section 4.1(b) (the "Matching Ceiling") that shall be taken into account in determining the amount of Matching Contribution (if any) to be made on behalf of the Participant pursuant to this Section 4.6; *provided, however*, that no decrease in the Matching Ceiling shall take effect prior to the first payroll period that begins after the decrease is announced to eligible Participants.
- (c) Timing. The District shall pay its Matching Contributions (if any) for any Plan Year to the Trust no later than within a reasonable time after the end of the Plan Year for which they are made.
- (d) Matching Account Restrictions. Any Matching Contributions made to the Trust for allocation to a Participant's Account shall be subject to the withdrawal limitations of Article VIII.

#### 4.7 Age 50 Catch-Up Rules

Eligible Participants (as defined in paragraph (a) below) may make additional Salary Contributions ("Age 50 Catch-Up Deferrals") up to the amounts specified in paragraph (b) below.

- (a) For purposes of this Section 4.7, "Eligible Participant" means a Participant who meets the following requirements:
  - (1) The Participant has attained the age of 50 before the close of the Plan Year.
  - (2) The Participant may make no other Salary Contributions due to the Section 401(k) Ceiling or the restrictions imposed under Section 4.5 or 5.4.
- (b) The maximum amount of Age 50 Catch-Up Deferrals an Eligible Participant may make during a Plan Year shall not exceed the lesser of:
  - (1) the Age 50 Catch-Up Amount; or
  - (2) the excess, if any, of (i) the Eligible Participant's Compensation for the Plan Year, over (ii) any other Salary Contributions made on behalf of the Eligible Participant for such Plan Year without regard to this Section 4.7.
- (c) The "Age 50 Catch-Up Amount" shall be an amount that does not exceed \$2,000 (as adjusted in accordance with section 414(v)(2)(C) of the Code) (*i.e.*, \$5,500 for 2013 and 2014) for the relevant Plan Year.
- (d) Age 50 Catch-Up Deferrals made pursuant to this Section 4.7 are not subject to the deferral percentage limitations of Section 4.5 or section 401(k)(3) of the Code.

#### 4.8 Direct Transfers of Eligible Rollover Distributions

If a Participant (a) was formerly a participant in an "eligible retirement plan" (as defined in section 402(c)(8)(B)(iii) of the Code, *i.e.*, a retirement plan qualified under section 401(a) of the Code), and (b) elects to effect a direct transfer to the Plan of an eligible rollover distribution (as defined in section 402(c)(4) of the Code) payable by such plan, then the Plan shall accept such transfer; *provided, however*, that any such transfer shall be made only in the form of cash or its equivalent unless the Human Resources Department (in its sole discretion) directs that all or a designated portion of such transfer shall be accepted in the form distributed by the transferor plan. Any amount so transferred to the Plan shall be held, accounted for, administered and otherwise treated in that same manner as Salary Contributions made on behalf of the Participant under the Plan except that such amount shall not adversely affect the Participant's ability to defer Compensation by making Salary Contributions in accordance with the other provisions of this Article IV.

The Plan will accept a direct rollover contribution of a distribution attributable to payments or distributions from a designated Roth account (as described in section 402A(e)(1) of the Code) only to the extent the rollover is permitted under the rules of section 402(c) of the Code. Any amount so transferred to the Plan shall be held, accounted for, administered and otherwise treated in that same manner as Roth Salary Contributions made on behalf of the Participant under the Plan except that such amount shall not adversely affect the Participant's ability to defer Compensation by making Roth Salary Contributions in accordance with the other provisions of this Article IV.

## **ARTICLE V ACCOUNT ADMINISTRATION**

### **5.1     Participant Accounts**

The Human Resources Department shall establish and maintain for each Participant a separate Account, to which the District shall credit all amounts allocated to the Participant pursuant to the provisions of Article IV and this Article V. Each Participant's Account shall include the following:

- (a) a "Salary Contribution Account" which shall be credited with Salary Contributions contributed pursuant to the Participant's Salary Contribution election plus (or minus) investment earnings (or losses) thereon;
- (b) a "Roth Salary Contribution Account" which shall be credited with Roth Salary Contributions contributed pursuant to the Participant's Roth Salary Contribution election plus (or minus) investment earnings (or losses) thereon; and
- (c) a "Matching Account" which shall be credited with Matching Contributions (if any) made on the Participant's behalf pursuant to Section 4.6 plus (or minus) investment earnings (or losses) thereon.

### **5.2     Allocation of Income, Appreciation and Loss**

As of each Valuation Date, the Trustee shall determine the fair market value of the Trust and the Human Resources Department shall allocate an appropriate share of such fair market value to the Account of each Participant.

Fair market value shall include such items as realized or unrealized investment gains and losses and investment income and, except to the extent that such expenses are paid by the District, all expenses of administering the Investment Funds and the Plan.

The fair market value of the assets of each Fund shall be determined by the Trustee on the basis of such sources of information as it may deem reliable including, but not limited to, information reported in (a) newspapers of general circulation; (b) standard financial periodicals or publications; (c) statistical and valuation services; (d) records of securities exchanges; (e) reports of any investment manager or of any brokerage firm deemed reliable by the Trustee; or (f) any combination of the foregoing. If the Trustee is unable to value assets from such sources, it may rely on information from the District, the Committee, appraisers or other sources, and will not be liable for inaccurate valuation based in good faith on such information. The valuations by the Trustee shall be binding upon all interested persons.

### **5.3     Annual Additions**

The "Annual Addition" for any Participant for any Plan Year shall include only (a) any Salary Contributions and Matching Contributions allocated to his or her Account under this Plan and any contribution amounts allocated to his or her account under the District's



401(a) Plan for such year, and (b) any other amounts required to be included in Annual Additions by Treas. Reg. § 1.415(c)-1(b). Annual Additions shall not include any amounts required to be excluded from Annual Additions by Treas. Reg. § 1.415(c)-1(b).

#### 5.4 Limitation on Allocations

The purpose of this Section 5.4 is to provide that Annual Additions shall not exceed the limitations imposed on tax-qualified defined contribution plans by federal law, and this Section 5.4 shall be construed to effectuate this purpose.

- (a) Annual Additions Limitation. Notwithstanding any contrary Plan provision, the maximum Annual Addition to a Participant's Account for any Plan Year shall not exceed the lesser of (1) \$40,000 (as adjusted in accordance with section 415(d) of the Code (*i.e.*, \$52,000 for 2014), or (2) one hundred percent (100%) of the Participant's Annual Compensation from the District.
- (b) "Annual Compensation" means, for purposes of this Section 5.4, an Employee's compensation as described in Treas. Reg. § 1.415(c)-2(d)(4). Annual Compensation shall also include compensation paid after severance from employment to the extent permitted by Treas. Reg. § 1.415(c)-2(e)(3).
- (c) Adjustments. For Plan Years prior to January 1, 2009, if, as the result of (i) the allocation of forfeitures under any other tax-qualified plan, (ii) a reasonable error in estimating a Participant's Annual Compensation or in determining the amount of Salary Contributions that may be made by a Participant under the limits of this Section 5.4 or Section 4.7, or (iii) other circumstances which permit the application of the rules stated in this Section 5.4 or Section 5.5, any of the limitations of these Sections would otherwise be exceeded with respect to any Participant for any Plan Year, then the following actions (but only to the extent necessary to avoid exceeding such limitations) shall be taken in the following order:
  - (1) Any nondeductible voluntary employee contributions made by the Participant for the Plan Year under any other tax-qualified plan shall be returned.
  - (2) The Participant's Salary Contributions, if not distributed to the Participant, shall be reallocated to a suspense account, and the balance credited to such account shall be applied to reduce the Salary Contributions otherwise to be contributed on behalf of, and allocated to all eligible Participants under this Plan for succeeding Plan Years in order of time.
  - (3) The amount allocated to the Participant's Account from Matching Contributions made by the District under this Plan shall be reallocated to a suspense account, and the balance credited to such account shall be applied to reduce the Matching Contributions otherwise to be made for, and allocated to the Accounts of, all eligible Participants for succeeding Plan Years in order of time.

- (4) The amount allocated to the Participant's account from contributions made by the District under any other tax-qualified plan shall be reallocated to a suspense account, and the balance credited to such account shall be applied to reduce the contributions (of the same class) otherwise to be made on behalf of and allocated to the accounts of all eligible participants under such other plan for succeeding Plan Years in order of time.
- (5) The Participant's accrued benefit under the District's Employees' Retirement System shall be frozen and/or the rate of its future accrual shall be reduced.

For Plan Years beginning on or after January 1, 2009, any excess Annual Additions shall be corrected as necessary in accordance with the correction methods specified in Revenue Procedure 2013-12 or its successor.

In applying these rules, this Plan and any other plan required to be aggregated with this Plan under Treas. Reg. § 1.415(f)-1 shall be treated as one plan.

No suspense account established under this Section 5.4(c) shall share in allocations of earnings and gains (or losses) of the Trust. The balances credited to all suspense accounts shall be returned to the District upon termination of the Plan.

- (d) Aggregation of Defined Contribution Plans. If a Participant is a participant in any other tax-qualified defined contribution plan of the District, or any other plan required to be aggregated with this Plan pursuant to Treas. Reg. § 1.415(f)-1, the Annual Addition considered allocated to such Participant shall be the sum of the Annual Additions allocated to such Participant under all such defined contribution plans (including this Plan), which shall be treated as one plan. If this aggregate Annual Addition would exceed the maximum Annual Addition allowed by Section 5.4(a) unless a reduction is made, the Human Resources Department is hereby authorized to apportion fairly among such plans the limits to be applied to each such plan, in accordance with Section 5.4(c), so that the aggregate Annual Addition will not exceed that maximum.
- (e) Incorporation by Reference. To the extent not otherwise provided in this Section 5.4, to the extent inconsistent with the provisions of this Section 5.4 and except as prohibited by applicable regulations under the Code, the applicable limitations on contributions and benefits under section 415 of the Code and the final regulations issued on April 5, 2007 thereunder, are incorporated by reference and shall control over any contrary or omitted provision in the Plan.

5.5 Human Resources Department May Disallow Deferral

Each Participant, by electing to have Salary Contributions made under the Plan, acknowledges the right of the Human Resources Department to disallow deferral of Compensation in excess of the limitations imposed by Sections 4.5 through 4.7 and 5.4. However, the Human Resources Department shall have no duty to assure that amounts deferred are in compliance with those limitations

5.6 Notice to Participants

The Human Resources Department shall notify each Participant of the balance credited to such Participant's Account as of the last day of each calendar quarter by furnishing a quarterly statement of account to each Participant as soon as administratively practicable after the close of each calendar quarter.

## **ARTICLE VI INVESTMENT OF FUNDS**

### **6.1     Investment Funds**

The Account of each Participant (or Beneficiary in the event of death) shall be held in investment media which may include, but shall not be limited to, one or more of the following categories of Investment Funds:

- (a)     Equity Fund,
- (b)     Fixed Income Fund,
- (c)     Money Market Fund, and
- (d)     Any other investment fund or media (including self-directed brokerage account arrangements) approved by the Committee.

The selection of Investment Funds and the investment media in which Investment Fund assets will be invested shall be the responsibility of the Board of Directors but is subject to the Board's delegation powers under Section 10.1. Except as otherwise provided in this Section 6.1, the selection among the Investment Funds is the sole responsibility of each Participant (or his or her Beneficiary in the event of death). No employee or representative of the District, the Committee and/or any investment manager is authorized to make any recommendation to any Participant or Beneficiary with respect to Investment Fund selection. The Human Resources Department shall furnish descriptions of the various Investment Funds available for the purpose of informing Participants and Beneficiaries of deceased Participants of the material characteristics of each.

### **6.2     Investment Fund Election**

Each Participant shall, upon his or her initial participation in the Plan, elect to have his or her Account invested in one or more of the then available Investment Funds. The election shall be made on such form or in such manner as is prescribed by the Human Resources Department. An Investment Fund election made in accordance with this Section 6.2 shall remain in effect with respect to all future Salary Contributions allocated to the Participant's Account unless or until changed in accordance with the provisions of Section 6.3. If a Participant fails to select an Investment Fund for the investment of his or her Account, the Human Resources Department may provide that such Account shall be invested in the Investment Fund designated by the Board of Directors for such purpose.

### **6.3     Change in Investment Fund Election**

A Participant may elect to change his or her Investment Fund election with respect to Salary Contributions made to his or her Account from and after the effective date of such change. Such a change in an Investment Fund election shall be made in such form or manner as prescribed by the Human Resources Department and shall be limited to the

currently available Investment Fund choices. Such change with respect to Investment Fund elections may be made at any time and will become operative on the Valuation Date that coincides with or next follows receipt by the Human Resources Department of the election, or as soon thereafter as is reasonably practicable.

#### 6.4 Transfer Between Investment Funds

A Participant may elect to transfer amounts from one or more Investment Funds to other Investment Funds available under the Plan at any time. The Participant's election to transfer must be made in writing to the Human Resources Department in such form as may be prescribed by the Human Resources Department. Any such change will become operative on the Valuation Date that coincides with or next follows receipt by the Human Resources Department of the transfer election, or as soon thereafter as is reasonably practicable. The Human Resources Department may require such elections to be made on a less frequent schedule with respect to one or more Investment Funds in accordance with such rules as may be established by the Human Resources Department.

## ARTICLE VII VESTING AND FORFEITURES

### 7.1 Salary Contributions

The full amounts credited to a Participant's Salary Contribution Account and Roth Salary Contribution Account shall be one hundred percent (100%) vested and nonforfeitable at all times.

### 7.2 Matching Contributions

The full amounts credited to a Participant's Matching Account shall be one hundred percent (100%) vested and nonforfeitable upon the completion of five (5) years of service. For purposes of this Section 7, such "years of service" shall be determined as provided under the District's Retirement Ordinance; *provided, however*, that no periods of service shall be counted for any period prior to the date that Matching Contributions become operative under Section 4.6.

### 7.3 Disposition of Forfeitures

- (a) As of the last day of the Plan Year coinciding with or immediately following the termination of employment of a Participant who was not fully vested in his or her Matching Account, the non-vested portion of the Participant's Matching Account shall be forfeited, subject to possible restoration as provided in paragraph (b) below. Any amount forfeited pursuant to this paragraph (a) shall be applied to reduce Matching Contributions.
- (b) If an amount of a Participant's Matching Account has been forfeited in accordance with paragraph (a) above, that amount shall be subsequently restored to the Participant's Matching Account, but only if (i) the Participant is reemployed by the District before he or she has a period of break in service of five (5) years, and (ii) the Participant repays to the Plan during his or her period of reemployment an amount in cash equal to the full amount distributed from the Plan on account of his or her termination of employment, other than the amount attributable to rollover contributions made under Section 4.8; *provided, however*, that the Participant may elect to repay to the Plan all or part of those amounts as well.
- (c) In the event that any amounts to be restored by the District to a Participant's Matching Account have been forfeited under paragraph (a) above, those amounts shall be taken first from any forfeitures which have not as yet been applied against Matching Contributions and if any amounts remain to be restored, the District shall make a special Matching contribution equal to those amounts.
- (d) Any repayment under this Section 7.3 must be made in a single sum within five (5) years of the date the Participant is reemployed. A repayment shall be invested in the available Investment Funds as the Participant elects at the time of repayment.

**ARTICLE VIII  
WITHDRAWALS, LOANS AND QDROs**

**8.1    Hardship Withdrawals**

While still employed by the District, a Participant may apply to the Human Resources Department for a Hardship Withdrawal from his or her Salary Contribution Account or Roth Salary Contribution Account. Hardship Withdrawals shall be governed by the following:

- (a) Any application for a Hardship Withdrawal shall be made in writing to the Human Resources Department at least 30 days in advance of the withdrawal date in such form as the Human Resources Department may specify. The Human Resources Department may shorten the 30-day notice period if it finds it administratively feasible.
- (b) The Human Resources Department will act upon the Hardship Withdrawal application under uniform and nondiscriminatory rules and regulations.
- (c) “Hardship Withdrawal” means a withdrawal which is made on account of an Immediate and Heavy Financial Need of the Participant and which is Necessary to satisfy that Need.
- (d) “Immediate and Heavy Financial Need” means any of the following:
  - (1) expenses for (or necessary to obtain) medical care that would be deductible under section 213(d) of the Code (determined without regard to whether the expenses exceed 7.5% of adjusted gross income);
  - (2) costs (excluding mortgage payments) directly related to the purchase of a principal residence for the Participant;
  - (3) payment of tuition, related educational fees, and room and board expenses for up to the next 12 months of post-secondary education for the Participant or his or her spouse, children or dependents (as defined in section 152 of the Code and without regard to section 152(b)(1), (b)(2) and (d)(1)(B));
  - (4) payments necessary to prevent the eviction of the Participant from his or her principal residence or foreclosure on the mortgage of or deed of trust on the Participant’s principal residence;
  - (5) expenses incurred by the Participant for burial or funeral of his or her deceased parent, spouse, children or dependents (as defined in section 152 of the Code and without regard to section 152(d)(1)(B));
  - (6) expenses for the repair of damage to the Participant’s principal residence that would qualify for the casualty deduction under section 165 of the

Code (determined without regard to whether the loss exceeds 10% of adjusted gross income); or

- (7) expenses with respect to the Participant's primary designated Beneficiary that would be an immediate and heavy financial need described in (1), (3) and (5) above if the expense was incurred with respect to the Participant's spouse or dependent (as described in section 152 of the Code).
- (e) A Hardship Withdrawal is "Necessary" to satisfy an Immediate and Heavy Financial Need only if:
- (1) the Participant has obtained all distributions, other than Hardship Withdrawals, and all nontaxable loans currently available under this Plan and all other plans maintained by the District;
  - (2) under the terms of all plans maintained by the District or a separate agreement, the Participant's contributions or deferrals, including Salary Contributions but excluding mandatory contributions under any defined benefit plan and contributions under any health or welfare benefit plan, will be suspended for six (6) months after the receipt of the withdrawal;
  - (3) the withdrawal does not exceed the amount required to relieve the Immediate and Heavy Financial Need of the Participant; and
  - (4) the Participant may not make Salary Contributions for the year immediately following the year of the withdrawal in excess of (i) the limit applicable under section 402(g) of the Code for year, less (ii) the amount of the Participant's Salary Contributions for the year of withdrawal.
- (f) There shall be no minimum amount available as a Hardship Withdrawal.
- (g) The maximum amount available as a Hardship Withdrawal shall be the value of the Participant's Salary Contribution Account and Roth Salary Contribution Account, determined as of the Valuation Date immediately following the date of application, excluding any income accrued after December 31, 1988.
- (h) Hardship Withdrawals made pursuant to this Section 8.1 shall be made under such rules and regulations as the Human Resources Department may adopt, to the extent that such rules conform to any applicable requirements of section 401(k) of the Code.



## 8.2 Age 59½ Withdrawal for Permissive Service Credit Transfers

If a Participant has attained age 59½ and is also a participant in a tax-qualified defined benefit governmental plan (as defined in section 414(d) of the Code) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to withdraw any portion of the Participant's Account and to have the amount withdrawn transferred to that plan. A withdrawal and transfer under this Section 8.2 may be made before the Participant has had a Severance from Employment. A withdrawal and transfer may be made under Section 8.2 only if the transfer is for either:

- (a) the purchase of permissive service credit (as defined in section 415(n)(3)(A) of the Code) under the receiving defined benefit governmental plan, or
- (b) any repayment of contributions (including interest thereon) to the receiving defined benefit governmental plan with respect to an amount previously refunded upon a forfeiture of service credit under (1) that plan, or (2), another defined benefit governmental plan maintained by the State of California or a local government employer within California, to which section 415 of the Code does not apply by reason of section 415(k)(3) of the Code.

## 8.3 Participant Loans

- (a) General Loan Rules. A Participant may, upon written application to the Human Resources Department on such form as the Human Resources Department may prescribe, obtain a loan from his or her Account in accordance with the provisions of this Section 8.3. Loans shall be available to all Participants on a reasonably equivalent basis.
  - (1) Amount. The amount of the loan shall be neither less than \$1,000 nor more than the excess of fifty percent (50%) of the Available Balance, determined as of the Valuation Date next preceding the date the loan is approved.
  - (2) "Available Balance" means the balance credited to the Participant's Account as of the applicable date reduced by the amount allocated for any Alternate Payee (as defined in Section 8.4) pursuant to a QDRO (as defined in Section 8.4).
  - (3) Additional Limits. The amount borrowed under this Section 8.3 shall not cause the sum of (i) the amount of the loan, plus (ii) the aggregate outstanding balances (including both principal and accrued interest) under all of the Participant's prior loans under this Plan and any other tax-qualified defined contribution plan maintained by the District (an "Other Plan"), to exceed an amount equal to \$50,000, reduced by the excess (if any) of (A) the highest aggregate outstanding balance of all loans under this Plan and all Other Plans during the one-year period ending on the day before the date the loan is to be made, over (B) the aggregate outstanding balance on all such loans on the date the loan is made.

- (4) Number of Loans. No Participant shall be permitted to borrow under this Section 8.3 if the borrowing would result in his or her having a total of more than two loans outstanding under this Plan and the District's 401(a) Plan.
  - (5) Spousal Consent. No loan may be made to a Participant who is married at the time the loan is to be made without Spousal Consent (as defined in Section 2.22), given no more than 180 days before the date of the loan, in which the Participant's spouse consents in writing to the loan and to the possible reduction of the total balance of the Participant's Account in the event the loan is in default. The same Spousal Consent requirement shall apply with respect to any renegotiation, renewal or other revision of the loan.
- (b) Minimum Requirements of Each Loan. The terms of any loan made under this Section 8.3 shall be evidenced by a promissory note signed by the Participant, and such terms shall satisfy the following minimum requirements:
- (1) Separate Accounting. Each loan shall be considered as a separate, segregated investment of the Account from which it is made.
  - (2) Term. The term of the loan shall not exceed five (5) years, *provided that*, if the loan is used to acquire a dwelling unit which is to be used as the principal residence of the Participant within a reasonable time after acquisition, then the term of the loan shall not exceed fifteen years.
  - (3) Interest Rate. Each loan shall bear a reasonable rate of interest, as determined by the Human Resources Department, which shall be comparable to the interest rate which is charged under similar circumstances by persons in the business of lending money. Until otherwise modified by the Human Resources Department, the interest rate shall equal the "prime rate," as published by Reuters on the last business day of the week that preceded the date the loan is made, plus one percent (1%).
  - (4) Repayment Schedule. A definite repayment schedule shall be established for each loan which shall require level and periodic payments of both principal and interest over the agreed term of the loan, with payment in full being required at the end of the loan term. A Participant may prepay at any time all the amount remaining due under the loan only by submitting full payment of such amount directly to the Human Resources Department.
  - (5) Withholding. No loan shall be made unless the Participant is receiving periodic Compensation payments and agrees to make principal and interest payments on the loan, together with any and all charges imposed by the Trustee in connection with the loan, by payroll withholding.

- (6) Security. Each loan shall be adequately secured by collateral of sufficient value to secure repayment of the loan principal and interest. The Participant shall pledge fifty percent (50%) of his or her Account (as of the date of the loan) and shall provide such other collateral as the Human Resources Department may require to secure his or her repayment obligations.
- (c) Leave of Absence, Disability, Worker's Compensation, Garnishment, Etc. This paragraph (c) shall apply only to a Participant who is an Employee and is absent on disability, worker's compensation or an approved leave of absence or is subject to a wage garnishment order.
- (1) If the Participant is receiving periodic wage payments from the District, his or her loan payments shall continue to be made by payroll withholding, *provided* that the payroll amount remaining after garnishment is sufficient to cover the loan payments. Otherwise, the Participant may elect in a writing submitted to the Human Resources Department to defer his or her loan payments for up to one year.
- (2) If the Participant does not, by the end of the third calendar month following the end of the first payroll period for which his or her payroll amount was sufficient, either (i) make a loan deferral election pursuant to paragraph (c)(1) above, or (ii) repay the entire outstanding loan balance (including unpaid principal and interest), the loan shall become immediately due and payable.
- (3) When the periodic wage payments a Participant receives from the District is again sufficient to cover the loan payments, his or her loan payments shall resume by payroll withholding, and the Human Resources Department shall recompute the monthly loan payment amount by reamortizing the outstanding loan balance (including unpaid principal and interest) over the remainder of the original term of the loan.
- (d) Default. If a Participant defaults on his or her repayment obligations under the loan and does not cure the default within 30 days of the date the Human Resources Department notifies him or her of the default, then the Human Resources Department shall take, or direct the Trustee to take, such action as shall be necessary or appropriate in the circumstances prevailing:
- (1) to realize upon the security interest of the Plan in the collateral pledged to secure the loan, and/or
- (2) to reduce the total balance credited to the Participant's Account by the amount required to cure the default.

- (3) In applying the method of cure provided in paragraph (d)(1) above, if any losses are realized or expenses incurred, such losses and expenses shall be allocated only to the Participant's Account in which the default occurred.
- (4) In applying the method of cure provided in paragraph (d)(2) above, the amount by which the Participant's Account is to be reduced shall be credited to a separate suspense account for the Participant and shall be increased annually with interest, at the rate that actually applies to the loan, for the period from the date of the default until the earlier of the date the Participant attains age 65 or the first date on which distributions from his or her Account could be commenced under Article IX; the value of the Account as of such date shall be reduced by the amount then credited to the suspense account; and only the remaining balance shall be available for distribution in accordance with Article IX.
- (e) Severance from Employment. If any amount remains outstanding as a loan obligation of a Participant upon a Participant's Severance from Employment, (i) if distribution of the Participant's Account has not begun, the Participant shall be required to establish an electronic funds transfer from the Participant's checking or savings account to the Plan to facilitate the remaining loan payments; or (ii) if distribution of a Participant's Account has begun, the value of the Account shall be reduced to the extent necessary to discharge the obligation.

#### 8.4 QDROs

The Human Resources Department shall establish written procedures for determining whether a domestic relations order purporting to dispose of all or a portion of Participant's Account is a qualified domestic relations order (within the meaning of section 414(p) of the Code (a "QDRO"). No payment shall be made to any person designated in a domestic relations order (an "Alternate Payee") until the Human Resources Department (or a court of competent jurisdiction reversing an initial adverse determination by the Human Resources Department) determines that the order is a QDRO. Lump sum payments shall be made to each Alternate Payee specified in the QDRO.

- (a) Immediate Payment Permitted. Payment may be made to an Alternate Payee, in accordance with a QDRO, at any time beginning as soon as practicable after the QDRO determination is made, without regard to whether the distribution, if made to a Participant at the time specified in the QDRO, would be permitted under the terms of the Plan.
- (b) Delayed Payment. If the QDRO does not provide for immediate payment to an Alternate Payee, the Human Resources Department shall establish a subaccount to record the interest of that Alternate Payee in the Participant's Account. All investment decisions with respect to amounts credited to the subaccount shall be made by the Alternate Payee pursuant to Article VI. Pending distribution of his or her subaccount, an Alternate Payee shall not be permitted to make withdrawals

(except in accordance with the QDRO pursuant to paragraph (a) above) or borrow funds from the subaccount. Payment to the Alternate Payee shall not be deferred beyond the date distribution to the Participant (or his or her Beneficiary) is made.

## **ARTICLE IX PAYMENT OF BENEFITS**

### **9.1     General Conditions**

- (a) Any payment made in accordance with the provisions of the Plan to a Participant or Beneficiary, or to his or her legal representative, shall constitute full satisfaction of claims under the Plan against the District, the Board, the Trustee, the Committee and the Human Resources Department, any of whom may require the Participant, Beneficiary or legal representative, as a condition precedent to such payment, to execute a receipt and release therefor, in such form as shall be determined by the District, the Board, the Trustee, the Committee or the Human Resources Department, as applicable.
- (b) All benefits under the Plan shall be distributed solely from the Trust, and the District shall have absolutely no liability or responsibility therefor.
- (c) Before it directs payment of any benefit under the Plan, the Human Resources Department may require the Participant or Beneficiary, as the case may be, to submit a written application for such benefits to the Human Resources Department in such form and manner as it shall uniformly prescribe.
- (d) Payment of benefits shall commence within the time period specified in Section 9.3.

### **9.2     Events Permitting Distribution**

The balance credited to a Participant Account shall become distributable only in the following circumstances:

- (a) upon the Participant's Severance from Employment with the District; or
- (b) upon the creation or recognition of the right of an Alternate Payee's (as defined in Section 8.4) to all or a portion of a Participant's Account under a domestic relations order which the Human Resources Department determines is a QDRO (as defined in Section 8.4), but only as to the portion of the Participant's Account that the QDRO states is payable to the Alternate Payee.

### **9.3     Time Limits on Benefit Payments**

Subject to Sections 9.7 and 9.8, distribution of the balance then credited to a Participant's Account normally will be made or commenced as soon as practicable after the Valuation Date that next follows the date the Participant incurs a Severance from Employment or dies. In all events, distribution of the Participant's Account shall be made or commenced no later than the April 1 that next follows the close of the Plan Year in which the Participant attains age 70½ or incurs a Severance from Employment (whichever is later).

#### 9.4 Small Accounts

If the balance credited to a Participant's Account did not exceed the cashout ceiling amount as of the Valuation Date that next preceded the date of distribution, the balance credited to the Participant's Account shall be distributed to the Participant, in the form of a lump sum payment of cash (or its equivalent), as soon as practicable after the Participant's Severance from Employment. For purposes of this Section 9.4, "cashout ceiling" shall mean \$1,000.

#### 9.5 Unclaimed Benefits

If after diligent effort by the Human Resources Department, a Participant or Beneficiary who is entitled to a distribution cannot be located within three (3) years of the date distribution was to be made, the distributable Account balance shall be returned to the District. Notwithstanding this forfeiture, the Account balance shall be paid to the Participant or Beneficiary after the above three-year period if the Participant or Beneficiary makes a written application as provided in Section 9.1(c). In the event the Human Resources Department approves the Participant's or Beneficiary's application for such benefit, the District shall make a special contribution to the Plan to provide the funds required to pay such benefit.

#### 9.6 Limitations on Distributions

Notwithstanding any contrary Plan provision, the following provisions shall govern all distributions from the Plan:

(a) General Rule. Distribution of the balance credited to a Participant's Account:

- (1) Shall be completed no later than the Deadline Date; or
- (2) Shall be commenced no later than the Deadline Date and paid in such a manner that the balance credited to the Account will be distributed (i) in the case of a life annuity form of distribution, over the life of the Participant or the joint lives of the Participant and his or her Beneficiary, or (ii) in the case of a distribution in the form of a periodic payments, over a period certain that does not extend beyond the Participant's life expectancy or the joint and last survivor life expectancy of the Participant and his or her Beneficiary.
- (3) The amount to be distributed for each calendar year under paragraph (2) above, beginning with the year that immediately precedes the year in which the Deadline Date occurs (the "First Distribution Year"), shall equal or exceed the lesser of (i) the balance credited to the Account, or (ii) the quotient obtained by dividing (A) the balance of the Account as of the last Valuation Date of the preceding calendar year, by (B) the applicable life expectancy.

- (4) The distribution for the First Distribution Year shall be made by the Deadline Date, and each later distribution shall be made by the end of the year to which it relates.
- (b) Life Expectancies. For purposes of applying this Section 9.6 and Section 9.7(b), life expectancies shall be computed using the expected return multiples set forth in Tables V and VI of Treas. Reg. § 1.72-9 or their successors. Applicable life expectancies shall be calculated as of the date payments first commence without further recalculation.
- (c) Incidental Benefit Rule. If the Participant's spouse is not his or her sole primary Beneficiary, the minimum distribution required to be made under Section 9.6(a)(2) shall not be less than the quotient obtained by dividing (1) the balance of the Participant's Account as of the last Valuation Date of the preceding year, by (2) the applicable divisor, as determined under the incidental death benefit requirements of section 401(a)(9) of the Code.
- (d) "Deadline Date" means, for purposes of applying this Section 9.6, the later of the April 1 that next follows the later of (1) the calendar year in which a Participant attains age 70½, or (2) the calendar year in which a Participant incurs a Severance from Employment.

#### 9.7 Death Distributions

Upon the death of a Participant who has elected a distribution method other than the Qualified Joint Survivor Annuity (as defined in Section 9.9(c)(2)), distribution of the balance of his or her Account shall be made in accordance with this Section 9.7.

- (a) Post-Commencement Death. If a Participant dies after distributions have commenced under this Article IX but before the entire balance credited to his or her Account has been distributed, then the remainder of such balance shall be paid as a death benefit to his or her Beneficiary in accordance with the distribution method in effect as of the date of the Participant's death. Notwithstanding the foregoing, the Beneficiary may elect to accelerate payments of the remaining balance, including but not limited to, payment in the form of a lump sum.
- (b) Pre-Commencement Death. If a Participant dies before distribution of his or her Account has been made or commenced under this Article IX, the balance credited to the Participant's Account shall be paid as a death benefit to his or her Beneficiary as soon as administratively practicable following the Participant's death, but not later than the end of the calendar year that contains the fifth anniversary of the Participant's death. However, if (1) any portion of the Participant's Account is payable to (or for the benefit of) his or her Beneficiary, and (2) distribution of that portion commences (i) by the end of the calendar year that next follows the Participant's death, or (ii) if the Beneficiary is the Participant's surviving spouse, before the end of the calendar year in which the Participant would have attained age 70½, then the Beneficiary may elect that



distribution of that portion shall be made in periodic payments over a period certain which does not extend beyond his or her own life expectancy.

- (c) Surviving Spouse Beneficiaries. If the Participant's surviving spouse is his or her Beneficiary and dies before distributions have commenced to him or her, this Section 9.7 shall be applied as if the spouse were the Participant and had died on the same date as the Participant.

#### 9.8 Distribution Methods

- (a) General Rule. Distribution of the balance credited to a Participant's Account shall be made by the Trustee, at the direction of the Human Resources Department and based on the Participant's distribution request, in whichever of the following methods satisfies the limitations of this Article IX and is elected by the Participant, in such manner and within such advance notice period as the Human Resources Department (in its discretion) shall specify:
- (1) one lump sum payment of cash (or its equivalent) comprising a complete distribution of the vested balance credited to the Participant's Account;
  - (2) a portion paid in a lump sum payment of cash, and the remainder paid later (partial payment);
  - (3) periodic installments over a period not to exceed the life expectancy of the Participant and his or her Beneficiary;
  - (4) the purchase and distribution of a fully paid, nontransferable annuity contract providing for payment in a series of periodic payments of cash (or its equivalent) over the Participant's life (or the joint lives of the Participant and his or her Beneficiary) or over a period certain which does not extend beyond the life expectancy of the Participant (or the joint life expectancy of the Participant and his or her Beneficiary); or
  - (5) a direct rollover which satisfies the requirements of paragraph (b) below, *provided* that any portion of the Account that is not rolled over shall be distributed in accordance with paragraph (a)(1) above.
- (b) Direct Rollovers. Notwithstanding any contrary Plan provision, if the Distributee of an Eligible Rollover Distribution from the Plan (i) elects to have all or any portion of such Distribution paid directly to one individual retirement account ("IRA"), another eligible retirement plan (within the meaning of section 401(a)(31)(E) of the Code), or a Roth IRA (as described in section 408A of the Code); and (ii) specifies such IRA or plan on such form as prescribed by the Committee, at such time and subject to such permissible restrictions as the Secretary may specify, such distribution or elected portion thereof shall be made in the form of a direct rollover to such IRA or plan, in accordance with and subject to the conditions and limitations of section 401(a)(31) and related provisions of the Code.

That portion of a Participant's Eligible Rollover Distribution which represents amounts attributable to his or her Roth Salary Contribution Account may only be made (i) to another Roth elective deferral account under an applicable retirement plan (as described in section 402A(e)(1) of the Code) or to a Roth IRA (as described in section 408A of the Code), and (ii) to the extent the rollover is permitted under the rules of section 402(c) of the Code.

- (1) "Distributee" means a Participant, a Beneficiary (other than an estate), or an Alternate Payee (as defined in Section 8.4) (if he or she is the current, former or surviving spouse of a Participant under a QDRO (as defined in Section 8.4)).
- (2) "Eligible Rollover Distribution" means a distribution of any portion of the balance credited to the Account of a Participant which is not one of a series of substantially equal periodic payments made over (i) a specified period of ten years or more, or (ii) the life or life expectancy of the Distributee, to the extent that it constitutes an eligible rollover distribution (within the meaning of section 401(a)(31)(D) of the Code).

With respect to an Eligible Rollover Distribution that is payable to a Beneficiary who is *not* the Participant's surviving spouse, an eligible retirement plan is limited to an individual retirement account or annuity described in section 408(a) or 408(b) of the Code established for the purpose of receiving the Eligible Rollover Distribution on behalf of the Beneficiary and that agrees to be treated as an inherited individual retirement account or annuity within the meaning of section 408(d)(3)(C) of the Code.

#### 9.9 Qualified Joint and Survivor Annuity and Preretirement Survivor Annuity Requirements

Notwithstanding the foregoing provisions of this Article IX, this Section 9.9 shall apply to each distribution to be made from a Participant's Account, but only if the balance credited to the Account exceeds \$5,000 as of the Valuation Date that next precedes the date on which the distribution is to be made.

- (a) Qualified Joint and Survivor Annuity. Unless a Qualified Election has been made within the 180-day period ending on the date on which distribution to a Participant is to be made or commence (the "Annuity Starting Date"), the balance credited to the Participant's Account shall be applied toward the purchase of a nontransferable annuity contract providing for payments in the form of a Qualified Joint and Survivor Annuity.
- (b) Qualified Preretirement Survivor Annuity. If a Participant dies before the distribution of any portion of his or her Account has commenced and the Participant is survived by his or her spouse, the Account shall be applied toward the purchase of a nontransferable annuity contract providing for the payment of an annuity for the life of the surviving spouse, unless the Participant's surviving

spouse elects an alternate form of distribution following the Participant's death. Payments under the annuity contract shall not commence before the date the Participant (if not deceased) would have attained age 65, unless the surviving spouse elects (or consents to) (1) the earlier commencement of payments, or (2) the payment of the Participant's Account in the form of a lump sum (rather than as an annuity), in a written instrument which is signed by the spouse and received by the Committee not more than 180 days before the earlier commencement date. A surviving spouse who is a Participant's Beneficiary may make that election (or give his or her consent) at any time after the Participant's death.

- (c) Definitions. For purposes of applying this Section 9.9, the following definitions shall apply:
- (1) "Qualified Election" means a written waiver of a Qualified Joint and Survivor Annuity. A waiver shall be ineffective in the absence of Spousal Consent.
  - (2) "Qualified Joint and Survivor Annuity" or "QJSA" means:
    - (i) In the case of a Participant who *is married* on the Annuity Starting Date, an immediate annuity for the life of the Participant, with a survivor annuity for the life of his or her spouse which provides for periodic payments of 50% or (if the Participant so elects) 100% or 75% of the annuity payable during the joint lives of the Participant and the spouse; or
    - (ii) In the case of a Participant who *is not married* on the Annuity Starting Date, an immediate annuity for the life of the Participant, with no survivor annuity; and
    - (iii) Which (in either case) provides the annuity benefit that is purchased with the entire balance credited to the Account.
- (d) QJSA Notice Requirements. With respect to a Qualified Joint and Survivor Annuity, the Human Resources Department shall provide to each Participant, no less than 30 days and no more than 180 days before the Annuity Starting Date, a written notice explaining:
- (1) The terms and conditions of the Qualified Joint and Survivor Annuity form of payment;
  - (2) The Participant's right to waive (and the effect of waiving) the Qualified Joint and Survivor Annuity;
  - (3) The rights of a Participant's spouse; and
  - (4) The Participant's right to revoke (and the effect of revoking) a prior waiver of the Qualified Joint and Survivor Annuity.

9.10 Marital Status

- (a) Requirements for Marriage or Domestic Partnership. If this Section 9.10 applies with respect to a Participant, for all purposes of this Plan, the Participant shall be treated as married if at the relevant time he or she is:
- (1) Married to an individual in a marital relationship which is legally valid under the law of the state or other jurisdiction where the marriage took place; or
  - (2) Not legally married but is the domestic partner of an individual (i) who is of the same or opposite sex as the Participant, (ii) who is his or her domestic partner in a domestic partnership which is validly registered in a jurisdiction which provides for domestic partner registration, and (iii) who has executed (together with the Participant) a certification demonstrating that the foregoing terms of this paragraph (b) have been satisfied; *provided, however*, that the current or former domestic partner of a Participant:
    - (i) Shall not be treated as his or her surviving spouse for purposes of applying Sections 8.1, 9.6(c), 9.7(b) and (c), or 9.8(b); and
    - (ii) If he or she is not also the Participant's dependent (within the meaning of section 152(a) of the Code), shall not be treated as his or her former spouse or other Alternate Payee (as defined in Section 8.4) for purposes of applying Section 8.4 (relating to Qualified Domestic Relations Orders) or any related Plan provision.
- (b) Evidence of Marriage or Domestic Partnership. Any Participant who claims to be married for purposes of this Plan, as a condition to his or her eligibility for any benefit available only to married Participants or their spouses under this Plan, shall provide such evidence as to the continued existence of his or her marital relationship or domestic partnership as is reasonably requested by the Committee.
- (c) Domestic Partner Treated as Spouse. Each reference in this Plan to the spouse, lawful spouse, husband or wife of a Participant, or to his or her status as a married individual, shall also refer to the domestic partner of such Participant, or to his or her status as an individual who is a member of a domestic partnership, *provided* that such relationship satisfies the criteria set forth in Section 9.10(a)(2).

## **ARTICLE X ADMINISTRATION OF PLAN**

### **10.1 District**

The District, by action of the Board of Directors, shall have full power and authority to administer the Plan, which authority shall include, but not be limited to, the following:

- (a) to make and enforce such rules and regulations as are necessary and proper for the efficient administration of the Plan;
- (b) to interpret the Plan and decide all questions concerning the Plan and the eligibility of any person to participate in the Plan;
- (c) to determine the benefits payable under the Plan, authorize the payment of such benefits and determine the person or persons to whom such benefits shall be paid;
- (d) to select and change investment media within categories of Investment Funds; and
- (e) to appoint actuaries, attorneys, certified public accountants, consultants, investment managers, counselors, trustees, custodians and other experts whenever necessary to enable the District to carry out its duties under the Plan.

The Board may delegate responsibilities of the District with respect to the administration of the Plan to the 401(k)/457 Advisory Committee, the Human Resources Department, appropriate employees and/or one or more experts appointed pursuant to paragraph (e) above, including the Third Party Administrator. The Board may revoke any such delegation at any time with immediate effect, except to the extent that the Board has agreed to provide advance written notice to the affected party. Except as otherwise provided, any such revocation shall become effective upon receipt of written notice by the affected party or upon such later date as may be specified therein.

Any party who has agreed to accept such delegation may at any time advise the Board in writing that it wishes to terminate such acceptance. Any such termination shall become effective upon receipt of written notice by the Board or by a designated officer acting on behalf of the Board or upon such later date as may be specified in such notice.

### **10.2 401(k)/457 Advisory Committee**

The General Manager shall appoint an advisory committee which (i) shall be known as the "401(k)/457 Advisory Committee" (the "Committee") and (ii) shall have authority to execute those duties of Plan administration which have been delegated to the Committee pursuant to Section 10.1. The Committee may also perform duties of plan administration relative to the District's 457 Deferred Compensation Plan. The membership of the Committee shall be composed of the Manager of Human Resources (Committee Chairperson), the Director of Finance, the Treasury Manager, and such designated representatives from Local 2019, Local 444, Local 21 and Local 39 as may be from time to time agreed to by the District and the respective unions.

### 10.3 Secretary of the Committee

The Human Resources Department shall serve as the Secretary to the Committee to provide administrative assistance to the Committee and to perform day-to-day administrative tasks and functions necessary to administer and manage the Plan.

### 10.4 Administrative Decisions

All decisions of the Board, the Committee and the Human Resources Department, any action taken by either in respect of the Plan and within the powers granted to each under the Plan, and any interpretation of any provision of the Plan or the Trust Agreement by the Board or the Committee or the Human Resources Department as provided by the Plan, shall be final and conclusive, shall be afforded the maximum possible deference allowed by law, and shall not be modified or set aside except for fraud or abuse of discretion.

### 10.5 Payment of Fees and Expenses

The District shall not be liable for nor have an obligation to pay any fees and expenses related to Account maintenance, transaction and Investment Fund management and maintenance or any other costs incurred in the administration of the Plan. Any fees or expenses imposed by any third-party administrator or sponsor of an Investment Fund shall be borne by the Participants and shall be chargeable to their Accounts, except to the extent that such fees and expenses are otherwise provided for or paid by the District.

### 10.6 Trustee

- (a) Appointment. The General Manager shall appoint, and may remove and replace, the institution or individuals who shall serve as the Trustee. As of the effective date specified in Section 1.3(b), the Trustee shall be composed of the individuals serving as the Director of Finance, Manager of Human Resources and Treasury Manager of the District. Any institution or individual serving as the Trustee may be removed by the General Manager at any time upon 30 days' written notice to the Trustee. Any institution or individual serving as the Trustee shall have the right to resign at any time by giving at least 30 days' written notice, and a full accounting, to the District. In such event, the Committee shall recommend and the General Manager shall choose a successor Trustee, who shall execute a written instrument acknowledging the acceptance of such Trust.
- (b) Duties. The Trustee, upon accepting this appointment, agrees to accept the provisions of the Plan and to carry out the provisions of the Plan and Trust to be performed by the Trustee. Not in limitation thereof, the Trustee shall hold legal title to the assets held in Trust under the Plan and shall be entitled to exercise each and every incident of ownership, unless there is an express provision to the contrary in the Plan or the Trust Agreement. The Trustee shall have exclusive authority to manage and control Plan assets and shall invest and reinvest Plan assets as provided in the Plan and the Trust Agreement, *provided* that (1) the Trustee shall be subject to the proper written direction of the Board made in

accordance with the Plan, and (2) the Committee may appoint investment managers (as provided in paragraph (c) below) to manage and control designated portions of the Plan assets in accordance with the Plan and the Trust Agreement. The Trustee shall receive all Salary Contributions, but shall not be responsible for the collection of any Salary Contributions and shall have no power to inquire into the accuracy of any Salary Contributions. The Trustee shall make payments out of the Trust to Participants and Beneficiaries in accordance with the directions of the Human Resources Department. The Trustee shall have such further duties as are set out in the Trust Agreement.

- (c) Investment Manager Appointment. In the event of the appointment of an investment manager, the Trustee shall follow the instructions of the investment manager in investing and administering the Plan assets allocated to the investment manager. Alternatively, the Committee may delegate investment authority and responsibility with respect to any Investment Fund directly to any investment manager that has investment management responsibility for any collective investment fund in which the Investment Fund is invested. Each person, firm or corporation that is appointed to serve as an investment manager shall:
  - (1) make such representations from time to time as the Committee may require in order to determine its qualifications to be appointed and to continue to serve in such capacity; and
  - (2) acknowledge in writing its status as a fiduciary with respect to the Plan upon acceptance of its appointment.
- (d) No Diversion of Assets. Notwithstanding any contrary Plan provision, at no time shall any assets of the Plan be used for, or diverted to, purposes other than for the exclusive benefit of Participants, Beneficiaries and other persons receiving or entitled to receive benefits or payments under the Plan. Except to the limited extent permitted by Sections 5.4(c), 9.5 and 12.6, no assets of the Plan shall ever revert to or become the property of the District.
- (e) Delegation of Custodial Duties. The Trustee or, if the Trustee is an institution, the Committee may appoint a qualified financial institution to hold Salary Contributions, to hold the assets of the Trust as the custodial agent of the Trustee, to make payments out of the Trust to Participants and Beneficiaries as provided in paragraph (b) above, and to discharge such other duties as may be delegated to it under the Trust Agreement.

#### 10.7 Fiduciary Responsibilities

- (a) Fiduciaries. The Board, the Committee, the Human Resources Department and the Trustee shall be the fiduciaries of the Plan (the "Fiduciaries"), but only with respect to the specific responsibilities of each for the operation and administration of the Plan and Trust.

- (b) Allocation of Responsibility Among Fiduciaries. The Fiduciaries shall have only those specific powers, duties, responsibilities and obligations which are specifically given them under the Plan or the Trust Agreement. The Board shall have the sole authority to amend or terminate the Plan and/or the Trust Agreement in accordance with Sections 11.3 and 11.4.

#### 10.8 Indemnification

The District shall indemnify and defend each member of the Committee, the Trustee (other than any institution serving as Trustee unless otherwise agreed in writing between the District and such Trustee), the Human Resources Department, and any other Employee, officer or director of the District from and against any and all claims, losses, damages, expenses or liabilities (including attorneys' fees, litigation expenses and amounts paid, with the District's approval, in settlement of any claim), by insurance or otherwise (other than amounts paid in settlement not approved by the District), reasonably incurred by such person in connection with any action or failure to act to which such person may be party by reason of membership on the Committee, service as Trustee or performance of an authorized duty, act, responsibility or decision for or on behalf of the District, the Board or the Committee pursuant to the Plan or the Trust Agreement, unless the same is judicially determined to be the result of the individual's gross negligence or willful misconduct. The foregoing right to indemnification shall be in addition to any other right or remedy to which such person may be entitled as a matter of law.

#### 10.9 Claims Procedures

- (a) Notice of Denial. In the event a Participant's or Beneficiary's claim for benefits under the Plan is wholly or partially denied by the Human Resources Department, the Human Resources Department shall notify the claimant, in writing, of such denial, which may include in such notification the following information:
  - (1) the reason or reasons for such denial;
  - (2) references to pertinent Plan provisions upon which the denial is based;
  - (3) a description of any additional material or information which may be needed to clarify the request, including an explanation of why such information is required; and
  - (4) an explanation of the Plan's claim review procedures.
- (b) Review Procedure. Any Participant or Beneficiary whose claim for benefits has been denied by the Committee may appeal to the Human Resources Department for a review of the denial by making a written request therefor within 60 days of receipt of a notification of denial.
  - (1) The Participant or Beneficiary may, upon request to the Committee, examine any pertinent documents.



- (2) The Participant may, if he or she chooses, submit to the Committee written issues, comments or other information upon which the claimant relies in support of his or her claim, or may request an attorney or other representative to make such written submissions on his or her behalf.
- (3) Within 60 days after receipt of a request for review, the Committee shall notify the claimant in writing of its decision, and, if the Committee confirms the denial in whole or in part, the notice may, but is not required to, set forth the reasons for the decision and specific reference to those Plan provision upon which the decision is based.
- (4) Notwithstanding the foregoing, if the Committee determines that special circumstances require additional time for processing, the Committee will extend the 60-day period and notify the claimant of the extension.

**ARTICLE XI**  
**PLAN AMENDMENT, TERMINATION AND OTHER CHANGES**

**11.1    Action by District**

Any action by the District under the Plan may be taken by resolution of its Board of Directors, or by any person or persons duly authorized by resolution of the Board or the terms of the Plan to take such action.

**11.2    District's Obligations Limited**

The Plan is voluntary on the part of the District and the District shall have no responsibility to satisfy any liabilities under the Plan. Furthermore, the District does not guarantee to continue the Plan, and the District may, by appropriate amendment of the Plan, suspend or discontinue Salary Contributions for any reason at any time. Complete discontinuance of Salary Contributions shall be deemed a termination of the Plan. The Plan shall create no vested contractual rights in any Participant to the continued existence of the Plan.

**11.3    Plan Amendment**

The Board of Directors reserves the right at any time to modify or end, in whole or part, any or all of the provisions of the Plan in such manner as it may determine. Any such modification or amendment that may be made by reason thereof shall take effect upon the date indicated in the document embodying such modification or amendment; *provided, however*, that (a) no such modification or amendment shall deprive any Participant of a benefit to which he or she would otherwise be entitled as of the effective date of the amendment, and (b) any modification or amendment of the Plan, or any part thereof, shall be subject to the restrictions of Section 10.6(d).

Notwithstanding any contrary provision of this Section 11.3, the Board of Directors (in its sole discretion) may make any modifications, amendments, additions or deletions to the Plan as to benefits or otherwise, retroactively if necessary, and regardless of the effect on the rights of any particular Participants, which it deems appropriate to bring the Plan into conformity with or to satisfy any conditions of applicable law, to maintain the qualification of the Plan under section 401(a) of the Code, and to maintain the tax-exempt status of the Trust under section 501(a) of the Code.

**11.4    Plan Termination**

- (a)    Right to Terminate. The District reserves the right to terminate the Plan in whole or in part by a resolution of its Board of Directors.
- (b)    Distribution to Affected Participants. Upon termination of the Plan, the interests of all Participants affected by such termination in their Accounts shall remain fully (100%) vested and nonforfeitable and the Human Resources Department shall direct the Trustee to distribute the assets remaining in the Trust, after

payment of any expenses properly chargeable thereto, to Participants and Beneficiaries as provided in Article IX.

- (c) Manner of Distribution. To the extent that no discrimination in value results, any distribution after termination of the Plan may be made in cash, in securities or other assets in kind, in nontransferable term-certain annuities (individual or group), or in any combination thereof, as the Human Resources Department in its discretion may determine. All non-cash distributions shall be valued at fair market value at the date of distribution.

## **ARTICLE XII MISCELLANEOUS PROVISIONS**

### **12.1 Nonguarantee of Employment**

Nothing contained in the Plan or in the forms issued pursuant to the Plan shall be construed as a contract of employment or reemployment between the District and any Employee, or as a right of any Employee to be continued in the employment of the District or to be rehired by the District, or as a limitation of the right of the District to discharge any of its Employees, with or without cause.

### **12.2 No Vested Contractual Rights Created**

Nothing contained in the Plan shall be construed as granting or creating in any Participant any vested contractual rights under federal or California law nor any right to the continued existence of the Plan in its current or amended form.

### **12.3 Nonguarantee of Value of Trust Assets**

Neither the Trustee, the Committee nor the District in any way guarantees the Trust or any Participant's Account from loss or depreciation.

### **12.4 Rights to Trust Assets**

No Participant or Beneficiary shall have any right to, or interest in, any assets of the Trust upon Severance from Employment or otherwise, except as provided from time to time under the Plan, and then only to the extent of the benefits payable under the Plan to the Participant or Beneficiary out of the assets of the Trust.

Except as otherwise provided by law or in Section 8.4, no benefit, payment or distribution under the Plan shall be subject either to the claim of any creditor of a Participant, spouse, contingent annuitant or Beneficiary, or to attachment, garnishment, levy (other than a federal tax levy under section 6331 of the Code), execution or other legal or equitable process, by any creditor of such person, and no such person shall have any right to alienate, commute, anticipate or assign (either at law or equity) all or any portion of any benefit, payment or distribution under the Plan.

The Trust shall not in any manner be liable for or subject to the debts, contracts, liabilities, engagements or torts of any person entitled to benefits under the Plan.

If any Participant's benefits are garnished or attached by order of any court, the Plan Administrator may elect to bring an action for a declaratory judgment in a court of competent jurisdiction to determine the proper recipient of the benefits to be paid by the Plan. During the pendency of such action, any benefits that become payable may be paid into the court as they become payable, to be distributed by the court to the recipient it deems proper at the close of such action.

## 12.5 Correction of Errors

If any error in any Account or record is discovered and would result in any Participant's Account being more or less than it would have been had the error not been discovered or had the record been correct, the Human Resources Department, investment manager, Trustee or any other fiduciary shall correct the error by adjusting, to the extent reasonable and practical, the Accounts or records under its control. Any such correction shall be conclusive and binding on all Participants and their Beneficiaries.

## 12.6 Continuing Conditions

- (a) In the event that the Internal Revenue Service determines that the Plan does not or no longer satisfies the qualification requirements under section 401(a) of the Code, all Salary Contributions shall be returned to the District as promptly as practicable, but not later than one year after the District receives written notice that such determination has been made. Any obligation to make Salary Contributions under the Plan is hereby conditioned upon the initial and continued qualification of the Plan under section 401(a) of the Code and the exempt status of the Trust under section 501(a) of the Code.
- (b) That portion of any Salary Contribution which is made by reason of a good faith mistake of fact shall be returned to the District as promptly as practicable, but not later than one year after the contribution was made. The amount returned pursuant to the preceding sentence shall be an amount equal to the excess of the amount actually contributed over the amount that would have been contributed if the mistake had not been made.
- (c) Notwithstanding the foregoing, in determining the amount to be returned to the District, (1) if paragraph (b) above applies, gains attributable to the returnable portion shall be retained in the Trust; and (2) the returnable portion shall be reduced (i) by any losses attributable thereto, and (ii) if paragraph (b) above applies, to avoid a reduction in any Participant's Account below the total balance that would have resulted if the mistake had not been made.

## 12.7 USERRA Provisions

- (a) Intent. It is the intent of the Plan to comply with the reemployment rights of members of the Uniformed Services as specified in the Uniformed Services Employment and Reemployment Act of 1994, 38 U.S. Code chapter 43 ("USERRA"), and section 414(u) of the Code. Therefore, notwithstanding any contrary Plan provision, Salary Contributions with respect to Qualified Military Service will be provided in accordance with section 414(u) of the Code.
- (b) Definitions. For the purposes of this Section 12.7, the following words and phrases shall have the meanings set forth below:

- (1) “Qualified Military Service” means any service in the Uniformed Services of the United States by any individual if such individual is entitled to reemployment rights with respect to such service under USERRA.
- (2) “Uniformed Services” means:
  - (i) the armed forces of the United States;
  - (ii) the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty for training or full-time National Guard duty;
  - (iii) the commissioned corps of the Public Health Service; and
  - (iv) any other category of persons designated by the President of the United States in time of war or emergency.
- (c) Benefit Accruals. Each period of Qualified Military Service served by an individual is, upon reemployment by the District under USERRA, deemed to constitute service with the District for purposes of determining the accrual of benefits under the Plan as follows:
  - (1) Only periods during which the District was maintaining the Plan will be counted.
  - (2) The returning Participant will be considered to have been in the same category of employment during Qualified Military Service as the category in which he or she was employed immediately before such Service.
  - (3) The amount of Salary Contributions allowed shall be computed as if the individual had been permitted to contribute had the individual remained continuously employed by the District throughout the period of Qualified Military Service.
  - (4) Payment of such Salary Contributions must be made by the Participant during a period which begins with the date of reemployment and is three (3) times the duration of the period of Qualified Military Service, but not greater than five (5) years.
- (d) Service Credits. Notwithstanding any contrary Plan provision, service credits with respect to Qualified Military Service will be provided in accordance with section 414(u) of the Code.
- (e) Compensation. In accordance with section 414(u)(12)(A)(ii) of the Code and any regulations and other guidance promulgated thereunder, Compensation shall include differential pay that (1) is made by the District to a Participant with respect to any period during which the Participant is performing Qualified Military Service while on active duty for a period of more than 30 days, and

(2) represents all or a portion of the wages the Participant would have received from the District if he or she had remained actively employed.

- (f) Death During Qualified Military Service. If a Participant dies while performing Qualified Military Service, his or her Beneficiary shall be entitled (to the extent required by section 401(a)(37) of the Code) to any additional benefits (other than benefit accruals relating to the period of Qualified Military Service) provided under the Plan as if he or she had resumed employment with the District on the day before his or her death and then had a Severance from Employment on account of death.
- (g) Notice. If the District reemploys an individual under USERRA, it shall, within 30 days after the date of such reemployment, provide notice in writing of such reemployment to the Human Resources Department.
- (h) Military Leave Distributions. A Participant shall be treated as having had a Severance from Employment during any period the Participant is performing service in the uniformed services while on active duty for a period of more than 30 days as described in section 3401(h)(2)(A) of the Code. If a Participant elects to receive a distribution by reason of the preceding sentence, the Participant may not make Salary Contributions during the 6-month period beginning on the date of the distribution.

#### 12.8 Severability

In the event any Article, Section, paragraph or specific provision of the Plan is found to be illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining provisions of the Plan, and the Plan shall be construed and enforced as if such illegal or invalid provision had never been set forth in the Plan.

#### 12.9 Construction

Where applicable, the masculine includes the feminine, and the singular the plural and vice versa. Where a word or phrase is defined in Article II or elsewhere in the Plan, such word or phrase shall have the meaning set forth in the Plan unless the context clearly requires otherwise. A word or phrase in non-capitalized form shall retain its plain meaning taken in the context in which it appears, regardless of whether such word or phrase is defined in Article II or elsewhere in the Plan.

#### 12.10 Applicable Law

The provisions of the Plan shall be construed, administered and enforced in accordance with section 401(a) and related provisions of the Code and, to the extent applicable, the laws of the State of California.

## EXECUTION

*Witness the execution of this **East Bay Municipal Utility District 401(k) Tax Deferred Savings Plan**, as amended and restated on the date set forth below (effective as of January 1, 2014).*

**EAST BAY MUNICIPAL UTILITY DISTRICT**

By \_\_\_\_\_

Title \_\_\_\_\_

Dated \_\_\_\_\_



## **APPENDIX A EFFECTIVE DATES**

The 2014 Restatement of the East Bay Municipal Utility District 401(k) Tax Deferred Savings Plan is generally effective as of January 1, 2014. However, the Plan provisions identified below are effective as of the dates specified below:

1. The paragraph that immediately follows Section 2.6(f) is effective as of January 1, 2008.
2. The reference to a Roth IRA in clause (i) of Section 9.8(b) effective as of January 1, 2008.
3. Section 12.7 is generally effective as of January 1, 2008.
4. Section 12.7(e) is effective as of January 1, 2009.

RESOLUTION NO. \_\_\_\_\_

AMENDING THE EAST BAY MUNICIPAL UTILITY DISTRICT  
457 DEFERRED COMPENSATION PLAN AND TRUST  
TO MAKE CHANGES EFFECTIVE JANUARY 1, 2014

Introduced by Director

; Seconded by Director

WHEREAS, on April 10, 1979, the Board of Directors adopted the EBMUD 457 Deferred Compensation Plan and Trust for eligible employees (hereafter referred to as the "457 Plan") that meets the requirements for eligible deferred compensation plan status under Section 457 of the Internal Revenue Code; and

WHEREAS, the purpose of the 457 Plan is to provide a tax-effective means through which eligible employees can increase their retirement savings; and

WHEREAS, the Board of Directors under Sections 11.1 and 11.3 of the 457 Plan is authorized to amend the Plan by resolution; and

WHEREAS, on June 26, 2013, the United States Supreme Court ruled that Section 3 of the Defense of Marriage Act, was unconstitutional for failing to recognize same-sex marriage; and

WHEREAS, the Internal Revenue Service issued regulations effectuating the U.S. Supreme Court ruling; and

WHEREAS, the District must amend the 457 Plan to ensure compliance with federal regulatory tax law and to ensure that the plan language is current;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the East Bay Municipal Utility District that the 457 Plan, attached herein as Exhibit A, is hereby amended and adopted, and that the proper officers and employees of the District are authorized and directed to take all necessary steps to implement the amendments to the 457 Plan, effective January 1, 2014. The specific amendments are as follows:

**Section 1 of the Plan shall be amended to read as follows:**

**1.1 Name of Plan**

This Plan, effective April 10, 1979 and as previously amended and restated on March 8, 1994, June 13, 1995, December 9, 1998, November 27, 2001, December 10, 2002, November 10, 2003, December 14, 2004, December 13, 2005, December 9, 2008, January 1, 2009, December 8, 2009, December 14, 2010, ~~and December 13, 2011,~~ and December 10, 2013 is hereby amended and restated in accordance with the terms hereof and shall be known as the East Bay Municipal Utility District 457 Deferred

Compensation Plan (the "Plan").

1.3 Effective Date

The effective date of (a) this Plan is April 10, 1979, and (b) this amendment and restatement of the Plan is effective (generally) as of January 1, 2012 2014.

**Section 2 of the Plan shall be amended as follows:**

2.6 Compensation means the "total gross compensation" payable to an Employee for services rendered to the District during periods in which he or she is a Participant. For this purpose, "total gross compensation" shall include the total salary, wages and other remuneration reportable on the Employee's Federal Income Tax Withholding Statement (IRS Form W-2), *plus* (i) any amounts contributed by or on behalf of the Employee pursuant to a Salary Contribution election under the District's 401(k) Tax Deferred Savings Plan; (ii) any Salary Contributions elected by the Employee under Article IV of the Plan; (iii) any salary reduction contributions elected by the Employee which are not includible in his or her gross income by reason of section 125 of the Code; (iv) any amounts not includible in the Participant's gross income by reason of section 132(f)(4) of the Code; (v) any amounts contributed by or on behalf of the Employee pursuant to a salary deferral agreement to purchase an annuity contract under section 403(b) of the Code; (vi) any amounts contributed by or on behalf of the Employee pursuant to a Salary Contribution agreement made under the District's 401(a) Plan that are "picked up" by the District in accordance with section 414(h)(2) of the Code; and (vii) any employee contributions made under the District's Retirement Ordinance that are "picked up" by the District in accordance with section 414(h)(2) of the Code; *provided, however*, that all other items of extra pay, including, but not limited to, the following, shall not be included in Compensation:

- (a) imputed income on group life insurance;
- (b) non-cash benefits extended to domestic partners;
- (c) education expenses and reimbursements;
- (d) meal vouchers;
- (e) personal use value (including commuting costs) of District-provided automobiles;  
or
- (f) mileage allowances in excess of the amount permitted for reimbursement under an accountable plan.

Compensation shall include payments made within 2½ months following an Employee's Severance from Employment, *provided* that such payments (absent a Severance from Employment) would have been paid to the Employee while the Employee continued in employment with the District and constitute (i) regular compensation for services during the Employee's regular working hours, compensation for services outside the Employee's

regular working hours (overtime and shift differential), or commissions; or (ii) unused accrued vacation or sabbatical pay, but only if the payment would have been paid to the Employee at the same time if the Employee had continued in employment with the District and only to the extent that the payment is includible in the Employee's gross income.

Notwithstanding the foregoing, no portion of the Compensation of any Employee which exceeds \$2650,000 (for 2012~~2014~~) shall be taken into account for any purpose under the Plan for any Plan Year.

**Section 5 of the Plan shall be amended as follows:**

**5.3 Limitations on Salary Contributions**

- (a) Maximum Annual Deferral. Except as provided in Sections 5.4 and 5.5 (relating to special three-year and additional age 50 catch-up contributions), the maximum Compensation amount that may be deferred under the Plan for any taxable year of a Participant shall not exceed the lesser of:
  - (1) 100% of the Participant's Annual Compensation, or
  - (2) the Applicable Dollar Amount determined under Section 5.3(a)(3) and (4).
  - (3) The Applicable Dollar Amount means the dollar limitation on elective deferrals imposed by section 402(g) of the Code (\$17,500 for 2012~~2014~~) as adjusted in future years as provided in section 457(e)(15) of the Code.
- (b) "Annual Compensation" means, for purposes of this Section 5.3, an Employee's wages (within the meaning of section 3401(a) of the Code) and all other payments of compensation which the District is required to report in Box 1 of IRS Form W-2 ("wages, tips, other compensation") –
  - (1) *plus* (A) any amounts contributed by or on behalf of the Employee pursuant to a Salary Contribution election under Section 4.1; (B) any amounts contributed by or on behalf of the Employee pursuant to a Salary Contribution election under the District's 401(k) Tax Deferred Savings Plan; (C) any salary reduction contributions amounts elected by the Employee which are not includible in his or her gross income by reason of section 125 of the Code; (D) any amounts not includible in the Employee's gross income by reason of section 132(f)(4) of the Code; and (E) any amounts contributed by or on behalf of the Employee pursuant to salary contribution agreement to purchase an annuity contract under section 403(b) of the Code; *but*
  - (2) excluding (A) amounts paid or reimbursed by the District for moving expenses incurred by the Employee, to the extent that at the time of payment it is reasonable to believe that such amounts are deductible by the Employee under section 217 of the Code; (B) any amounts contributed by

or on behalf of the Employee pursuant to a Salary Contribution agreement made under the District's 401(a) Plan that are "picked up" by the District in accordance with section 414(h)(2) of the Code; and (C) any employee contributions made under the District's Retirement Ordinance that are "picked up" by the District in accordance with section 414(h)(2) of the Code; *and*

- (3) determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the agricultural labor exception).
- (c) Adjustments. If as the result of a reasonable error in estimating a Participant's Annual Compensation, any other administrative error or other circumstances which result in a violation of the limitations imposed by this Section 5.3 or Section 5.4 or 5.5, any of the limitations of these Sections would otherwise be exceeded with respect to any Participant for any Plan Year, then the excess Salary Contribution amount allocated to his or her Account shall be withdrawn from the Account and paid to the Participant as soon as practical after the error is discovered. Correction of a Participant's excess Salary Contribution amount shall be made in accordance with the correction methods specified in Revenue Procedure ~~2008-50~~2013-12 or its successor.

#### 5.5 Additional Age 50 Catch-Up Rules

Eligible Participants (as defined in paragraph (a) below) may make additional Salary Contributions ("Age 50 Catch-Up Deferrals") up to the amounts specified in paragraph (b) below.

- (a) For purposes of this Section 5.5, "Eligible Participant" means a Participant who meets the following requirements:
  - (1) The Participant has attained the age of 50 before the close of the Plan Year.
  - (2) The Participant may make no other Salary Contributions due to the limits of Section 5.3(a).
  - (3) The Participant is not making Salary Contributions under the special three-year catch-up rules set forth in Section 5.4.
- (b) The maximum amount of Age 50 Catch-Up Deferrals an Eligible Participant may make during a Plan Year shall not exceed the lesser of:
  - (1) the Age 50 Catch-Up Amount; or
  - (2) the excess (if any) of (i) the Eligible Participant's Compensation for the Plan Year, over (ii) any other Salary Contributions made on behalf of the Eligible Participant for such Plan Year without regard to this Section 5.5.

- (c) The “Age 50 Catch-Up Amount” shall be an amount that does not exceed \$5,000 (as adjusted in accordance with section 414(v)(2)(C) of the Code (\$5,500 for 2010, 2011 and 20122013 and 2014) for the relevant Plan Year.

**Section 9 of the Plan shall be amended as follows:**

**9.8 Marital Status**

- (a) Requirements for Marriage or Domestic Partnership. If this Section 9.9 applies with respect to a Participant, for all purposes of this Plan, the Participant shall be treated as married if at the relevant time he or she is:
- (1) Married to ~~an~~ the individual ~~who is his wife or her husband~~ in a marital relationship which is legally valid under ~~applicable local~~ the law of the state or other jurisdiction where the marriage took place; or
  - (2) Not legally married but is the domestic partner of an individual (i) who is of the same or opposite sex as the Participant, (ii) who is his or her domestic partner in a domestic partnership which is validly registered in a jurisdiction which provides for domestic partner registration, and (iii) who has executed (together with the Participant) a certification demonstrating that the foregoing terms of this paragraph (b) have been satisfied; *provided, however*, that the current or former domestic partner of a Participant:
    - (i) Shall not be treated as his or her surviving spouse for purposes of applying Sections 8.1(d), 9.6(c), 9.7 or 9.7(b)(1); and
    - (ii) If he or she is not also the Participant’s dependent (within the meaning of section 152(a) of the Code), shall not be treated as his or her former spouse or other Alternate Payee (as defined in Section 8.3) for purposes of applying Section 8.3 (relating to Qualified Domestic Relations Orders) or any related Plan provision.
- (b) Evidence of Marriage or Domestic Partnership. Any Participant who claims to be married for purposes of this Plan, as a condition to his or her eligibility for any benefit available only to married Participants or their spouses under this Plan, shall provide such evidence as to the continued existence of his or her marital relationship or domestic partnership as is reasonably requested by the Committee.

- (c) Domestic Partner Treated as Spouse. Each reference in this Plan to the spouse, lawful spouse, husband or wife of a Participant, or to his or her status as a married individual, shall also refer to the domestic partner of such Participant, or to his or her status as an individual who is a member of a domestic partnership, *provided* that such relationship satisfies the criteria set forth in Section 9.8(a)(2).

BE IT FURTHER RESOLVED that any Resolution in conflict herewith is hereby superseded and canceled.

ADOPTED this 10th day of December, 2013 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

APPROVED AS TO FORM AND PROCEDURE:

\_\_\_\_\_  
General Counsel

W:\410 EBMUD BOARD\410.01 Resolutions\Human Resources - Misc\2013 DC Plan Amendments\457  
Resolution and Exhibit (2013).docx

**EAST BAY MUNICIPAL UTILITY DISTRICT**  
**457 DEFERRED COMPENSATION PLAN AND TRUST**  
**(As Amended and Restated Effective as of January 1, 2014)**





## TABLE OF CONTENTS

|                    |  |          |
|--------------------|--|----------|
| <b>ARTICLE I</b>   | <b>NAME, PURPOSE AND EFFECTIVE DATE.....</b> | <b>1</b> |
| 1.1                | Name of Plan.....                            | 1        |
| 1.2                | Purpose of Plan .....                        | 1        |
| 1.3                | Effective Date .....                         | 1        |
| <b>ARTICLE II</b>  | <b>DEFINITIONS .....</b>                     | <b>2</b> |
| 2.1                | Account .....                                | 2        |
| 2.2                | Beneficiary .....                            | 2        |
| 2.3                | Board of Directors or Board .....            | 2        |
| 2.4                | Code .....                                   | 2        |
| 2.5                | Committee.....                               | 2        |
| 2.6                | Compensation .....                           | 2        |
| 2.7                | District.....                                | 3        |
| 2.8                | Eligible Employee.....                       | 3        |
| 2.9                | Employee .....                               | 3        |
| 2.10               | Entry Date .....                             | 3        |
| 2.11               | Fund or Investment Fund .....                | 3        |
| 2.12               | Human Resources Department .....             | 3        |
| 2.13               | Normal Retirement Age.....                   | 4        |
| 2.14               | Participant .....                            | 4        |
| 2.15               | Plan .....                                   | 4        |
| 2.16               | Plan Administrator or Administrator .....    | 4        |
| 2.17               | Plan Sponsor .....                           | 4        |
| 2.18               | Plan Year.....                               | 4        |
| 2.19               | Salary Contribution.....                     | 4        |
| 2.20               | Severance from Employment.....               | 4        |
| 2.21               | Spousal Consent.....                         | 5        |
| 2.22               | Third Party Administrator.....               | 5        |
| 2.23               | Trust.....                                   | 5        |
| 2.24               | Trustee.....                                 | 5        |
| 2.25               | Valuation Date .....                         | 5        |
| <b>ARTICLE III</b> | <b>ELIGIBILITY AND PARTICIPATION.....</b>    | <b>6</b> |
| 3.1                | Eligibility .....                            | 6        |
| 3.2                | Participation .....                          | 6        |
| 3.3                | Conditions of Participation .....            | 6        |
| 3.4                | Beneficiary Designation.....                 | 6        |
| 3.5                | Loss of Eligibility .....                    | 7        |
| 3.6                | Termination of Participation .....           | 7        |
| <b>ARTICLE IV</b>  | <b>CONTRIBUTIONS UNDER THE PLAN .....</b>    | <b>8</b> |
| 4.1                | Salary Contribution Election.....            | 8        |
| 4.2                | Changes in Salary Contributions .....        | 8        |
| 4.3                | Employee Contributions .....                 | 9        |

|   |  |           |
|---|--|-----------|
| 4.4   | Date of Contribution .....                               | 9         |
| 4.5   | Direct Transfers of Eligible Rollover Distributions..... | 9         |
| <b>ARTICLE V ACCOUNT ADMINISTRATION .....</b>             |  | <b>10</b> |
| 5.1   | Participant Accounts .....                               | 10        |
| 5.2   | Allocation of Income, Appreciation and Loss .....        | 10        |
| 5.3   | Limitations on Salary Contributions .....                | 10        |
| 5.4   | Special Three-Year Catch-Up Rules.....                   | 12        |
| 5.5   | Additional Age 50 Catch-Up Rules .....                   | 12        |
| 5.6   | Human Resources Department May Disallow Deferral .....   | 13        |
| 5.7   | Notice to Participants.....                              | 13        |
| <b>ARTICLE VI INVESTMENT OF FUNDS.....</b>                |  | <b>14</b> |
| 6.1   | Investment Funds .....                                   | 14        |
| 6.2   | Investment Fund Election .....                           | 14        |
| 6.3   | Change in Investment Fund Election.....                  | 14        |
| 6.4   | Transfer Between Investment Funds .....                  | 15        |
| <b>ARTICLE VII VESTING AND FORFEITURES .....</b>          |  | <b>16</b> |
| 7.1   | Salary Contributions .....                               | 16        |
| <b>ARTICLE VIII EMERGENCY WITHDRAWALS AND QDROS .....</b> |  | <b>17</b> |
| 8.1   | Emergency Withdrawals.....                               | 17        |
| 8.2   | Permissive Service Credit Transfers .....                | 18        |
| 8.3   | QDROs.....   | 18        |
| <b>ARTICLE IX PAYMENT OF BENEFITS .....</b>               |  | <b>20</b> |
| 9.1   | General Conditions .....                                 | 20        |
| 9.2   | Events Permitting Distribution .....                     | 20        |
| 9.3   | Time Limits on Benefit Payments .....                    | 20        |
| 9.4   | Small Accounts .....                                     | 21        |
| 9.5   | Unclaimed Benefits.....                                  | 21        |
| 9.6   | Limitations on Distributions .....                       | 21        |
| 9.7   | Distribution Methods .....                               | 22        |
| 9.8   | Marital Status.....                                      | 23        |
| <b>ARTICLE X ADMINISTRATION OF PLAN.....</b>              |  | <b>25</b> |
| 10.1  | District.....  | 25        |
| 10.2  | 401(k)/457 Advisory Committee .....                      | 25        |
| 10.3  | Secretary of the 401(k)/457 Advisory Committee.....      | 26        |
| 10.4  | Administrative Decisions.....                            | 26        |
| 10.5  | Payment of Fees and Expenses .....                       | 26        |
| 10.6  | Trustee.....   | 26        |
| 10.7  | Fiduciary Responsibilities.....                          | 27        |
| 10.8  | Indemnification .....                                    | 28        |
| 10.9  | Claims Procedures .....                                  | 28        |

|                     |  |           |
|---------------------|--|-----------|
| <b>ARTICLE XI</b>   | <b>PLAN AMENDMENT, TERMINATION AND OTHER CHANGES .....</b> | <b>30</b> |
| 11.1                | Action by District.....                                    | 30        |
| 11.2                | District's Obligations Limited .....                       | 30        |
| 11.3                | Plan Amendment.....  | 30        |
| 11.4                | Plan Termination.....                                      | 30        |
| <b>ARTICLE XII</b>  | <b>TRUST AGREEMENT .....</b>                               | <b>32</b> |
| 12.1                | Acceptance.....  | 32        |
| 12.2                | Receipt of Contributions .....                             | 32        |
| 12.3                | Full Investment Powers.....                                | 32        |
| 12.4                | Records and Statements .....                               | 34        |
| 12.5                | Fees and Expenses From Trust .....                         | 34        |
| 12.6                | Distribution of Cash or Property.....                      | 34        |
| 12.7                | Resignation .....  | 35        |
| 12.8                | Removal .....  | 35        |
| 12.9                | Interim Duties and Successor Trustee.....                  | 35        |
| 12.10               | Valuation of Trust.....                                    | 35        |
| 12.11               | Exclusive Benefit .....                                    | 35        |
| <b>ARTICLE XIII</b> | <b>MISCELLANEOUS PROVISIONS.....</b>                       | <b>36</b> |
| 13.1                | Nonguarantee of Employment .....                           | 36        |
| 13.2                | No Vested Contractual Rights Created .....                 | 36        |
| 13.3                | Nonguarantee of Value of Trust Assets .....                | 36        |
| 13.4                | Rights to Trust Assets .....                               | 36        |
| 13.5                | Correction of Errors .....                                 | 37        |
| 13.6                | Continuing Conditions .....                                | 37        |
| 13.7                | USERRA-Related Matters .....                               | 37        |
| 13.8                | Severability .....   | 39        |
| 13.9                | Construction.....  | 39        |
| 13.10               | Applicable Law .....                                       | 39        |
| <b>EXECUTION</b>    | <b>.....</b>   | <b>40</b> |
| <b>APPENDIX A</b>   | <b>EFFECTIVE DATES.....</b>                                | <b>41</b> |



**EAST BAY MUNICIPAL UTILITY DISTRICT  
457 DEFERRED COMPENSATION PLAN AND TRUST  
(As Amended and Restated Effective as of January 1, 2014)**

**ARTICLE I  
NAME, PURPOSE AND EFFECTIVE DATE**

**1.1    Name of Plan**

This Plan, effective April 10, 1979 and as previously amended and restated on March 8, 1994, June 13, 1995, December 9, 1998, November 27, 2001, December 10, 2002, November 10, 2003, December 14, 2004, December 13, 2005, December 9, 2008, January 1, 2009, December 8, 2009, December 14, 2010, December 13, 2011 and December 10, 2013 is hereby amended and restated in accordance with the terms hereof and shall be known as the East Bay Municipal Utility District 457 Deferred Compensation Plan (the "Plan").

**1.2    Purpose of Plan**

The purpose of the Plan is to provide deferred compensation for East Bay Municipal Utility District employees that elect to participate in the Plan. The Plan is established pursuant to section 12338 of the Public Utilities Code and sections 53212 through 53213.5 of the Government Code of the State of California and is intended to constitute an "eligible deferred compensation plan" within the meaning of section 457 of the Code.

**1.3    Effective Date**

The effective date of (a) this Plan is April 10, 1979, and (b) this amendment and restatement of the Plan is effective (generally) as of January 1, 2014.

## ARTICLE II DEFINITIONS

The following terms and phrases shall have the following meanings when used herein and in the Trust Agreement, unless a different meaning is clearly required by the context:

- 2.1 Account means the bookkeeping account maintained with respect to each Participant which reflects the value of the Participant's Salary Contributions, and the aggregate of one or more subaccounts held by the Trustee for a Participant under the Plan. Each Participant's Account may be invested in one or more Funds as authorized under the terms of this Plan and the Trust Agreement.
- 2.2 Beneficiary means an individual, trust or estate which is entitled to receive a death benefit under the Plan pursuant to the Participant's most recent effective beneficiary designation or otherwise under the provisions of Section 3.4.
- 2.3 Board of Directors or Board means the Board of Directors of the East Bay Municipal Utility District.
- 2.4 Code means the Internal Revenue Code of 1986, as amended from time to time. Reference to a specific section of the Code shall include such section, any valid regulation promulgated thereunder, and any comparable provision of any future legislation amending, supplementing or superseding such section.
- 2.5 Committee means the 401(k)/457 Advisory Committee created by the Board and appointed by the General Manager to exercise the duties and responsibilities delegated to it under Section 10.2.
- 2.6 Compensation means the "total gross compensation" payable to an Employee for services rendered to the District during periods in which he or she is a Participant. For this purpose, "total gross compensation" shall include the total salary, wages and other remuneration reportable on the Employee's Federal Income Tax Withholding Statement (IRS Form W-2), *plus* (i) any amounts contributed by or on behalf of the Employee pursuant to a Salary Contribution election under the District's 401(k) Tax Deferred Savings Plan; (ii) any Salary Contributions elected by the Employee under Article IV of the Plan; (iii) any salary reduction contributions elected by the Employee which are not includible in his or her gross income by reason of section 125 of the Code; (iv) any amounts not includible in the Participant's gross income by reason of section 132(f)(4) of the Code; (v) any amounts contributed by or on behalf of the Employee pursuant to a salary deferral agreement to purchase an annuity contract under section 403(b) of the Code; (vi) any amounts contributed by or on behalf of the Employee pursuant to a Salary Contribution agreement made under the District's 401(a) Plan that are "picked up" by the District in accordance with section 414(h)(2) of the Code; and (vii) any employee contributions made under the District's Retirement Ordinance that are "picked up" by the District in accordance with section 414(h)(2) of the Code; *provided, however*, that all other items of extra pay, including, but not limited to, the following, shall not be included in Compensation:

- (a) imputed income on group life insurance;
- (b) non-cash benefits extended to domestic partners;
- (c) education expenses and reimbursements;
- (d) meal vouchers;
- (e) personal use value (including commuting costs) of District-provided automobiles;  
or
- (f) mileage allowances in excess of the amount permitted for reimbursement under an accountable plan.

Compensation shall include payments made within 2½ months following an Employee's Severance from Employment, *provided* that such payments (absent a Severance from Employment) would have been paid to the Employee while the Employee continued in employment with the District and constitute (i) regular compensation for services during the Employee's regular working hours, compensation for services outside the Employee's regular working hours (overtime and shift differential), or commissions; or (ii) unused accrued vacation or sabbatical pay, but only if the payment would have been paid to the Employee at the same time if the Employee had continued in employment with the District and only to the extent that the payment is includible in the Employee's gross income.

Notwithstanding the foregoing, no portion of the Compensation of any Employee which exceeds \$260,000 (for 2014) shall be taken into account for any purpose under the Plan for any Plan Year.

- 2.7 District means the East Bay Municipal Utility District.
- 2.8 Eligible Employee shall have the meaning specified in Section 3.1.
- 2.9 Employee means any individual, including an individual generally classified as an officer or an official, who is:
  - (a) in the employ of the District and whose compensation in such employment is paid wholly by the District; or
  - (b) a member of the Board of Directors.
- 2.10 Entry Date means the first day of each payroll period.
- 2.11 Fund or Investment Fund means each investment fund in which a Participant may elect to have his or her Account invested, as provided in Section 6.1.
- 2.12 Human Resources Department means the Human Resources Department of the District which is responsible for performing day-to-day plan administrative tasks and functions



necessary to administer and manage the Plan and providing administrative assistance to the Committee. The Human Resources Department may delegate responsibilities with respect to the administration of the Plan to the Third Party Administrator.

2.13 Normal Retirement Age means, for purposes of the Plan, the age elected by a Participant as his or her Normal Retirement Age. A Participant's elected Normal Retirement Age must fall within the range of ages:

- (a) ending not later than age seventy and one-half (70½); and
- (b) beginning not earlier than the earliest age at which the Participant has the right to retire under the District's Retirement Ordinance for which the Participant is eligible without consent of the District and under which the Participant will receive immediate retirement benefits without actuarial adjustment due to retirement prior to some later specified age in the District's Retirement Ordinance.

A Participant's election of a Normal Retirement Age shall be contingent upon receipt by the Human Resources Department of such applications, forms and other documents and information as may be prescribed by the Human Resources Department.

2.14 Participant means an Eligible Employee (as defined in Section 3.1) who has elected to participate under Section 3.2 and whose Account balance is greater than zero.

2.15 Plan means the East Bay Municipal Utility District 457 Deferred Compensation Plan and Trust, as set forth herein and as amended from time to time.

2.16 Plan Administrator or Administrator means the District, which may allocate and delegate its responsibilities and duties pursuant to Section 10.1.

2.17 Plan Sponsor means the District, which may act by action of the Board of Directors or any person to whom it has delegated the relevant authority.

2.18 Plan Year means the calendar year.

2.19 Salary Contribution means the reduction through bi-weekly payroll deduction of a Participant's Compensation by a specified percentage, which the District agrees to credit to the Participant's Account under the Plan in a manner intended to meet the conditions of sections 414(v) and 457 of the Code. Each Participant's Compensation must be reduced by a specified percentage and may not be reduced by a lump sum amount. Salary Contributions will be (a) credited to the Participant's Account pursuant to his or her Salary Contribution election, (b) immediately nonforfeitable, and (c) subject to the withdrawal limitations of Article VIII.

2.20 Severance from Employment means the date an Employee dies, retires or otherwise has a severance from employment with the District, as determined by the Plan Administrator (and taking into account guidance issued under section 401(k)(2)(B)(i)(I) of the Code). An Employee who is performing active military service (within the meaning of section

3401(h)(2)(A) of the Code) for a period of more than 30 days shall be treated as having severed from employment during such period.

2.21 Spousal Consent means the consent of the spouse of a Participant that:

- (a) is set forth in writing;
- (b) acknowledges the effect of the election, consent, waiver or designation made or other action taken by the Participant; and
- (c) is signed by the spouse and witnessed by a notary public.
- (d) However, if the Participant establishes to the satisfaction of the District that Spousal Consent may not be obtained or is not required, either because the Participant has no spouse or the spouse cannot be located or because of other circumstances specified under section 417(a)(2) of the Code or in rules adopted by the Committee or the Human Resources Department, the Participant's election or other action shall be effective without Spousal Consent.
- (e) Any Spousal Consent required under the Plan shall be valid only (1) with respect to the spouse who signs the Spousal Consent, and (2) as to the particular choice made by the Participant in the election or other action requiring Spousal Consent.
- (f) A Participant (without Spousal Consent) may revoke a prior election or other action at any time before its effective date. The number of such revocations shall not be limited.

2.22 Third Party Administrator means the organization with whom the Plan Administrator contracts to administer the Plan under the direction of the Committee and the Human Resources Department and which shall serve as the agent of the District, the Trustee, the Committee and the Human Resources Department in carrying out the administrative duties of the Plan.

2.23 Trust means that certain Trust created by execution of the East Bay Municipal Utility District 457 Deferred Compensation Trust Agreement between the District and the Trustee, effective as of December 8, 1998, and as set forth in Article XII and related provisions of this Plan and Trust as amended from time to time (the "Trust Agreement").

2.24 Trustee means the individuals serving as the Director of Finance, Manager of Human Resources and Treasury Manager of the District appointed by the Board pursuant to Section 10.6(a). The Trustee may allocate or delegate the duty to determine the fair market value of Trust assets and other custodial duties to the Third Party Administrator.

2.25 Valuation Date means each date as of (a) which the Trustee determines the fair market value of Trust assets, and (b) which the Human Resources Department allocates investment earnings to Participants' Accounts. The Valuation Date shall be each business day.

## **ARTICLE III ELIGIBILITY AND PARTICIPATION**

### **3.1    Eligibility**

“Eligible Employee” means any Employee except any individual who is classified or treated by the District as a six-month temporary employee, an independent contractor, a consultant, an employee of an employment agency or any entity other than the District, even if such individual is subsequently determined to have been a common-law employee of the District during such period.

### **3.2    Participation**

Participation in the Plan on the part of Eligible Employees shall be voluntary. An Eligible Employee shall be eligible to elect to participate in the Plan as follows:

- (a) An Eligible Employee may elect to become a Participant in the Plan upon satisfaction of the eligibility requirements in Section 3.1. Participation shall be effective as of the first Entry Date coincident with or next following the date of eligibility.
- (b) An Employee who becomes an Eligible Employee after the Effective Date as a result of being transferred from an employment status other than that of an Eligible Employee shall be eligible to become a Participant on the Entry Date coincident with or next following the date of transfer.
- (c) A Participant or former Participant who is rehired by the District shall be eligible to again become a Participant on the Entry Date coincident with or next following the date of his or her reemployment as an Eligible Employee.

### **3.3    Conditions of Participation**

Participation in the Plan by Eligible Employees shall be contingent upon receipt by the Human Resources Department of such applications, Salary Contribution elections, consents, Beneficiary designations and other documents and information as may be prescribed by the Human Resources Department.

Each Eligible Employee upon becoming a Participant shall be deemed conclusively, and for all purposes, to have assented to the terms and provisions of the Plan and shall be bound thereby.

### **3.4    Beneficiary Designation**

Upon commencement of participation, each Participant shall designate a Beneficiary on forms furnished by the Human Resources Department. A Participant may, from time to time, change his or her Beneficiary designation by written notice to the Human Resources Department. Upon such change, the rights of all previously designated Beneficiaries to

receive any benefits under the Plan shall cease. A married Participant's designation of any primary Beneficiary other than his or her spouse shall require Spousal Consent.

If a deceased Participant is not survived by any named primary or contingent Beneficiary (or if no Beneficiary was effectively named), the balance credited to the Participant's Account shall be paid in a lump sum to the living person or persons in the first of the following classes (in the order listed) in which there are any survivors when the Participant dies: the Participant's (a) surviving spouse, (b) issue, (c) parents, or (d) estate.

If the Beneficiary or any contingent Beneficiary is living at the death of the Participant, but such person dies prior to receiving the death benefit described in the immediately preceding paragraph, the balance credited to the Participant's Account shall be paid in a lump sum to the estate of the deceased Beneficiary or contingent Beneficiary.

### 3.5 Loss of Eligibility

An Employee who loses eligibility, by ceasing to be an Eligible Employee because of transfer, promotion, demotion or otherwise, shall remain a Participant but no further Salary Contributions shall be made by or on behalf of such Employee with respect to any payroll period beginning during the period in which he or she remains in an ineligible employment status.

### 3.6 Termination of Participation

After becoming a Participant, an Eligible Employee shall continue to be a Participant until the balance credited to his or her Account is distributed or he or she dies.

## ARTICLE IV CONTRIBUTIONS UNDER THE PLAN

### 4.1 Salary Contribution Election

- (a) Each Eligible Employee may elect to have portions of his or her Compensation payments withheld by the District and contributed as a Salary Contribution under the Plan to be credited to his or her Account under the Plan, *provided* that he or she elects to make Salary Contributions in such manner and within such advance notice period as the Human Resources Department shall specify.
- (b) Subject to Section 5.3, an Eligible Employee may elect to defer a portion of each payment of Compensation that would otherwise be made to him or her, measured in any whole or partial percentage carried to two decimal points. Such election shall become effective no earlier than the first day of the calendar month following the date on which the election is made and shall remain in effect until changed or cancelled pursuant to Section 4.2.
- (c) Each Eligible Participant (as defined in Section 5.5(a)) may make additional Salary Contributions as Age 50 Catch-Up Deferrals as provided under Section 5.5, *provided* that he or she elects to make Age 50 Catch-Up Deferrals in such manner and within such advance notice period as the Human Resources Department shall specify. Age 50 Catch-Up Deferrals, as determined in accordance with Section 5.5, shall be withheld by the District and contributed as Salary Contributions under the Plan to be credited to the Eligible Participant's Account.

### 4.2 Changes in Salary Contributions

- (a) A Participant may elect to increase the amount of his or her Salary Contributions as determined under Section 4.1 at any time, in such manner and within such advance notice period as the Human Resources Department (in its discretion) may specify, and such increase shall be effective no earlier than the calendar month following the month in which the increase is elected.
- (b) A Participant may decrease the amount of Salary Contributions as determined under Section 4.1, or completely cancel his or her Salary Contributions at any time, in such manner and within such advance notice period as the Human Resources Department (in its discretion) may specify, and such change shall be effective as soon as practicable after such date.
- (c) Amendments to increase or decrease the amount of Salary Contributions may be made only with respect to future payroll periods, but an amendment to increase the amount of Salary Contributions shall be effective no earlier than the calendar month following the month in which the increase is elected. No more than one amendment may be made in a pay period.

- (d) A Participant who has cancelled his or her Salary Contribution election shall immediately be eligible to enter into a new Salary Contribution election.

4.3 Employee Contributions

Participants shall not be permitted or required to make contributions under the Plan other than pursuant to Salary Contribution elections.

4.4 Date of Contribution

Subject to the provisions of Article XI, the District shall pay to the Trust the amounts to be contributed as Participants' Salary Contributions pursuant to this Article IV. Salary Contribution amounts to be paid for a payroll period in accordance with the preceding sentence shall be paid to the Trust no later than within a reasonable time after the end of such period.

4.5 Direct Transfers of Eligible Rollover Distributions

If a Participant (a) was formerly a participant in an eligible retirement plan (as defined in section 402(c)(8)(v) of the Code, *i.e.*, a governmental deferred compensation plan subject to section 457(b) of the Code), and (b) elects to effect a direct transfer to the Plan of an eligible rollover distribution (as defined in section 402(c)(4) of the Code) payable by such plan, then the Plan shall accept such transfer; *provided, however*, that any such transfer shall be made only in the form of cash or its equivalent unless the Human Resources Department (in its sole discretion) directs that all or a designated portion of such transfer shall be accepted in the form distributed by the transferor plan. Any amount so transferred to the Plan shall be held, accounted for, administered and otherwise treated in that same manner as Salary Contributions made on behalf of the Participant under the Plan except that such amount shall not adversely affect the Participant's ability to defer Compensation by making Salary Contributions in accordance with the other provisions of this Article IV.

The Plan will accept a direct rollover contribution of a distribution attributable to payments or distributions from a designated Roth account (as described in section 402A(e)(1) of the Code) only to the extent the rollover is permitted under the rules of section 402(c) of the Code. Any amount so transferred to the Plan shall be held and accounted for in a designated Roth subaccount under the Plan.

## **ARTICLE V ACCOUNT ADMINISTRATION**

### **5.1 Participant Accounts**

The Human Resources Department shall establish and maintain for each Participant a separate Account, to which the District shall credit all amounts allocated to the Participant pursuant to the provisions of Article IV and this Article V. Each Participant's Account shall be credited with Salary Contributions made pursuant to the Participant's Salary Contribution election plus (or minus) investment earnings (or losses) thereon.

### **5.2 Allocation of Income, Appreciation and Loss**

As of each Valuation Date, the Trustee shall determine the fair market value of the Trust and the Human Resources Department shall allocate an appropriate share of such fair market value to the Account of each Participant.

Fair market value shall include such items as realized or unrealized investment gains, losses and investment income and, except to the extent that such expenses are paid by the District, all expenses of administering the Investment Funds and the Plan.

The fair market value of the assets of each Fund shall be determined by the Trustee on the basis of such sources of information as it may deem reliable including, but not limited to, information reported in (a) newspapers of general circulation; (b) standard financial periodicals or publications; (c) statistical and valuation services; (d) records of securities exchanges; (e) reports of any investment manager or of any brokerage firm deemed reliable by the Trustee; or (f) any combination of the foregoing. If the Trustee is unable to value assets from such sources, it may rely on information from the District, the Committee, appraisers or other sources, and will not be liable for inaccurate valuation based in good faith on such information. The valuations by the Trustee shall be binding upon all interested persons.

### **5.3 Limitations on Salary Contributions**

- (a) Maximum Annual Deferral. Except as provided in Sections 5.4 and 5.5 (relating to special three-year and additional age 50 catch-up contributions), the maximum Compensation amount that may be deferred under the Plan for any taxable year of a Participant shall not exceed the lesser of:
- (1) 100% of the Participant's Annual Compensation, or
  - (2) the Applicable Dollar Amount determined under Section 5.3(a)(3) and (4).
  - (3) The Applicable Dollar Amount means the dollar limitation on elective deferrals imposed by section 402(g) of the Code (\$17,500 for 2014) as adjusted in future years as provided in section 457(e)(15) of the Code.

- (b) “Annual Compensation” means, for purposes of this Section 5.3, an Employee’s wages (within the meaning of section 3401(a) of the Code) and all other payments of compensation which the District is required to report in Box 1 of IRS Form W-2 (“wages, tips, other compensation”) –
- (1) *plus* (A) any amounts contributed by or on behalf of the Employee pursuant to a Salary Contribution election under Section 4.1; (B) any amounts contributed by or on behalf of the Employee pursuant to a Salary Contribution election under the District’s 401(k) Tax Deferred Savings Plan; (C) any salary reduction contributions amounts elected by the Employee which are not includible in his or her gross income by reason of section 125 of the Code; (D) any amounts not includible in the Employee’s gross income by reason of section 132(f)(4) of the Code; and (E) any amounts contributed by or on behalf of the Employee pursuant to salary contribution agreement to purchase an annuity contract under section 403(b) of the Code; *but*
  - (2) *excluding* (A) amounts paid or reimbursed by the District for moving expenses incurred by the Employee, to the extent that at the time of payment it is reasonable to believe that such amounts are deductible by the Employee under section 217 of the Code; (B) any amounts contributed by or on behalf of the Employee pursuant to a Salary Contribution agreement made under the District’s 401(a) Plan that are “picked up” by the District in accordance with section 414(h)(2) of the Code; and (C) any employee contributions made under the District’s Retirement Ordinance that are “picked up” by the District in accordance with section 414(h)(2) of the Code; *and*
  - (3) *determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the agricultural labor exception).*
- (c) Adjustments. If as the result of a reasonable error in estimating a Participant’s Annual Compensation, any other administrative error or other circumstances which result in a violation of the limitations imposed by this Section 5.3 or Section 5.4 or 5.5, any of the limitations of these Sections would otherwise be exceeded with respect to any Participant for any Plan Year, then the excess Salary Contribution amount allocated to his or her Account shall be withdrawn from the Account and paid to the Participant as soon as practical after the error is discovered. Correction of a Participant’s excess Salary Contribution amount shall be made in accordance with the correction methods specified in Revenue Procedure 2013-12 or its successor.



#### 5.4 Special Three-Year Catch-Up Rules

For one or more of the Participant's last three taxable years ending before he or she attains Normal Retirement Age, the maximum Compensation amount that may be deferred under the Plan shall not exceed the lesser of:

- (a) twice the Applicable Dollar Amount specified in Section 5.3(a); or
- (b) the sum of (1) the limitation set forth in Section 5.3(a) (determined without regard to this Section 5.4), and (2) so much of the limitation set forth in Section 5.3(a) for prior taxable years as has not been previously used under Section 5.3(a) or this Section 5.4.
- (c) A prior taxable year used under Section 5.3(a) shall be taken into account only if:
  - (1) the Participant was eligible to participate in the Plan during any portion of the taxable year;
  - (2) Compensation deferred (if any) under the Plan during the taxable year was subject to a maximum limitation (as established under Section 5.3); and
  - (3) The limitations imposed by Treas. Reg. § 1.457-4(c)(3) are satisfied.
- (d) A prior taxable year for purposes of paragraph (b) includes a taxable year in which the Participant was eligible to participate in an eligible deferred compensation plan (as defined in section 457(b) of the Code) sponsored by another employer.
- (e) In no event may the Participant elect to have these special three-year catch-up rules apply more than once even if the full catch-up had been utilized.
- (f) These special three-year catch-up rules may not be used in the year in which the Participant attains age 70½ or any later year.

#### 5.5 Additional Age 50 Catch-Up Rules

Eligible Participants (as defined in paragraph (a) below) may make additional Salary Contributions ("Age 50 Catch-Up Deferrals") up to the amounts specified in paragraph (b) below.

- (a) For purposes of this Section 5.5, "Eligible Participant" means a Participant who meets the following requirements:
  - (1) The Participant has attained the age of 50 before the close of the Plan Year.
  - (2) The Participant may make no other Salary Contributions due to the limits of Section 5.3(a).

- (3) The Participant is not making Salary Contributions under the special three-year catch-up rules set forth in Section 5.4.
- (b) The maximum amount of Age 50 Catch-Up Deferrals an Eligible Participant may make during a Plan Year shall not exceed the lesser of:
  - (1) the Age 50 Catch-Up Amount; or
  - (2) the excess (if any) of (i) the Eligible Participant's Compensation for the Plan Year, over (ii) any other Salary Contributions made on behalf of the Eligible Participant for such Plan Year without regard to this Section 5.5.
- (c) The "Age 50 Catch-Up Amount" shall be an amount that does not exceed \$5,000 (as adjusted in accordance with section 414(v)(2)(C) of the Code (\$5,500 for 2013 and 2014) for the relevant Plan Year.

5.6 Human Resources Department May Disallow Deferral

Each Participant, by electing to have Salary Contributions made under the Plan, acknowledges the right of the Human Resources Department to disallow deferral of Compensation in excess of the limitations imposed by Sections 5.3, 5.4 and 5.5. However, the Human Resources Department shall have no duty to assure that amounts deferred are in compliance with those limitations.

5.7 Notice to Participants

The Human Resources Department shall notify each Participant of the balance in the Participant's Account as of the last day of each calendar quarter by furnishing a quarterly statement of account to each Participant as soon as administratively practicable after the close of each calendar quarter.

## **ARTICLE VI INVESTMENT OF FUNDS**

### **6.1     Investment Funds**

The Account of each Participant (or Beneficiary in the event of death) shall be held in investment media which may include, but shall not be limited to, one or more of the following categories of Investment Funds:

- (a)     Equity Fund.
- (b)     Fixed Income Fund.
- (c)     Money Market Fund.
- (d)     Any other investment fund or media (including self-directed brokerage account arrangements) approved by the Committee.

The selection of Investment Funds and the investment media in which Investment Fund assets will be invested shall be the responsibility of the Board of Directors but is subject to the Board's delegation powers to the Committee under Section 10.1. Except as otherwise provided in this Section 6.1, the selection among the Investment Funds is the sole responsibility of each Participant (or his or her Beneficiary in the event of death). No employee or representative of the District, the Committee and/or any investment manager is authorized to make any recommendation to any Participant or Beneficiary with respect to Investment Fund selection. The Human Resources Department shall furnish descriptions of the various Investment Funds available for the purpose of informing Participants and Beneficiaries of deceased Participants of the material characteristics of each.

### **6.2     Investment Fund Election**

Each Participant shall, upon his or her initial participation in the Plan, elect to have his or her Account invested in one or more of the then available Investment Funds. The election shall be made on such form or in such manner as is prescribed by the Human Resources Department. An Investment Fund election made in accordance with this Section 6.2 shall remain in effect with respect to all future Salary Contributions allocated to the Participant's Account unless or until changed in accordance with the provisions of Section 6.3. If a Participant fails to select an Investment Fund for the investment of his or her Account, the Human Resources Department may provide that such Account shall be invested in the Investment Fund designated by the Board of Directors for such purpose.

### **6.3     Change in Investment Fund Election**

A Participant may elect to change his or her Investment Fund election with respect to Salary Contributions made to his or her Account from and after the effective date of such change. Such a change in an Investment Fund election shall be made in such form or

manner as prescribed by the Human Resources Department and shall be limited to the currently available Investment Fund choices. Such change with respect to Investment Fund elections may be made at any time and will become operative on the Valuation Date that coincides with or next follows receipt by the Secretary of the election, or as soon thereafter as is reasonably practicable.

#### 6.4 Transfer Between Investment Funds

A Participant may elect to transfer amounts from one or more Investment Funds to other Investment Funds available under the Plan at any time. The Participant's election to transfer must be made in writing to the Human Resources Department in such form as may be prescribed by the Human Resources Department. Any such change will become operative on the Valuation Date that coincides with or next follows receipt by the Human Resources Department of the transfer election, or as soon thereafter as is reasonably practicable. The Human Resources Department may require such elections to be made on a less frequent schedule with respect to one or more Investment Funds in accordance with such rules as may be established by the Human Resources Department.

**ARTICLE VII**  
**VESTING AND FORFEITURES**

**7.1     Salary Contributions**

The full amounts credited to a Participant's Account shall be one hundred percent (100%) vested and nonforfeitable at all times.

**ARTICLE VIII**  
**EMERGENCY WITHDRAWALS AND QDROS**

**8.1    Emergency Withdrawals**

Notwithstanding any contrary Plan provision, in the event of an Unforeseeable Emergency prior to a Participant's Severance from Employment, the Participant may apply to the Human Resources Department for a lump sum withdrawal from his or her Account. Emergency Withdrawals shall be governed by the following:

- (a) Any application for an Emergency Withdrawal shall be made in writing to the Human Resources Department at least 30 days in advance of the withdrawal date in such form as the Human Resources Department may specify. The Human Resources Department may shorten the 30-day notice period if it finds it administratively feasible to do so.
- (b) The Human Resources Department will act upon the Emergency Withdrawal application under uniform and nondiscriminatory rules and regulations.
- (c) "Emergency Withdrawal" means a withdrawal of an amount which is limited strictly to the amount reasonably necessary to satisfy the financial needs resulting from an Unforeseeable Emergency (which may include any amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the withdrawal).
- (d) "Unforeseeable Emergency" means a severe financial hardship to the Participant resulting from:
  - (1) an illness or accident of the Participant or his or her spouse or dependent (as defined in section 152(a) of the Code, without regard to section 152(b)(1), (b)(2) and (d)(1)(B));
  - (2) loss of the Participant's property due to casualty;
  - (3) other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant; or
  - (4) an event that would constitute an Unforeseeable Emergency as described in paragraph (1), (2) or (3) above if such event had incurred with respect to the Participant's spouse or dependent (as defined in paragraph (1) above).

The circumstances that will constitute an Unforeseeable Emergency will depend upon the facts of each case, but in any case, payment shall not be made to the extent that such hardship is or may be relieved (i) through reimbursement or compensation by insurance or otherwise; (ii) by liquidation of the Participant's assets, to the extent liquidation of such assets would not itself cause severe financial hardship; or (iii) by cessation of deferrals under the Plan. Examples of

what shall not be considered to be Unforeseeable Emergencies include the need to send Participant's child to college or the desire to purchase a home.

- (e) Participants who receive an Emergency Withdrawal may not contribute to the Plan for a period of six months from the date of receiving the withdrawal.

## 8.2 Permissive Service Credit Transfers

If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in section 414(d) of the Code) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to have any portion of the Participant's Account transferred to that plan. A transfer under this Section 8.2 may be made before the Participant has had a Severance from Employment. A transfer may be made under Section 8.2 only if the transfer is for either:

- (a) the purchase of permissive service credit (as defined in section 415(n)(3)(A) of the Code) under the receiving defined benefit governmental plan, or
- (b) any repayment of contributions (including interest thereon) to the receiving defined benefit governmental plan with respect to an amount previously refunded upon a forfeiture of service credit under (1) that plan, or (2), another defined benefit governmental plan maintained by the State of California or a local government employer within California, to which section 415 of the Code does not apply by reason of section 415(k)(3) of the Code.

## 8.3 QDROs

The Human Resources Department shall establish written procedures for determining whether a domestic relations order purporting to dispose of all or a portion of Participant's Account is a qualified domestic relations order (within the meaning of section 414(p) of the Code) (a "QDRO"). No payment shall be made to any person designated in a domestic relations order (an "Alternate Payee") until the Human Resources Department (or a court of competent jurisdiction reversing an initial adverse determination by the Human Resources Department) determines that the order is a QDRO. Lump sum payments shall be made to each Alternate Payee specified in the QDRO.

- (a) Immediate Payment Permitted. Payment may be made to an Alternate Payee, in accordance with a QDRO, at any time beginning as soon as practicable after the QDRO determination is made, without regard to whether the distribution, if made to a Participant at the time specified in the QDRO, would be permitted under the terms of the Plan.
- (b) Delayed Payment. If the QDRO does not provide for immediate payment to an Alternate Payee, the Human Resources Department shall establish a subaccount to record the interest of that Alternate Payee in the Participant's Account. All investment decisions with respect to amounts credited to the subaccount shall be made by the Alternate Payee pursuant to Article VI. Pending distribution of his

or her subaccount, an Alternate Payee shall not be permitted to make withdrawals (except in accordance with the QDRO pursuant to paragraph (a) above) or borrow funds from the subaccount. Payment to the Alternate Payee shall not be deferred beyond the date distribution to the Participant (or his or her Beneficiary) is made.



## **ARTICLE IX PAYMENT OF BENEFITS**

### **9.1    General Conditions**

- (a) Any payment made in accordance with the provisions of the Plan to a Participant or Beneficiary, or to his or her legal representative, shall constitute full satisfaction of claims under the Plan against the District, the Board, the Trustee, the Committee and the Human Resources Department, any of whom may require the Participant, Beneficiary or legal representative, as a condition precedent to such payment, to execute a receipt and release therefor, in such form as shall be determined the District, the Board, the Trustee, the Committee or the Human Resources Department, as applicable.
- (b) All benefits under the Plan shall be distributed solely from the Trust, and the District shall have absolutely no liability or responsibility therefor.
- (c) Before it directs payment of any benefit under the Plan, the Human Resources Department may require the Participant or Beneficiary, as the case may be, to submit a written application for that benefit to the Human Resources Department in such form and manner as it shall uniformly prescribe.
- (d) Payment of benefits shall commence within the time period specified in Section 9.3.

### **9.2    Events Permitting Distribution**

The balance credited to a Participant Account shall become distributable only in the following circumstances:

- (a) upon the Participant's Severance from Employment with the District; or
- (b) upon the creation or recognition of the right of an Alternate Payee's (as defined in Section 8.3) to all or a portion of a Participant's Account under a domestic relations order which the Human Resources Department determines is a QDRO (as defined in Section 8.3), but only as to the portion of the Participant's Account that the QDRO states is payable to the Alternate Payee.

### **9.3    Time Limits on Benefit Payments**

Subject to Sections 9.7 and 9.8, distribution of the balance then standing in the Participant's Account normally will be made or commenced as soon as practicable after the Valuation Date that next follows the date the Participant incurs a Severance from Employment or dies. In all events, distribution of the Participant's Account shall be made or commenced no later than the April 1 that next follows the close of the Plan Year in which the Participant attains age 70½ or incurs a Severance from Employment (whichever is later).

#### 9.4 Small Accounts

If the balance credited to a Participant's Account did not exceed the cashout ceiling amount as of the Valuation Date that next preceded the date of distribution, the balance credited to the Participant's Account shall be distributed to the Participant, in the form of a lump sum payment of cash (or its equivalent), as soon as practicable after the Participant's Severance from Employment. For purposes of this Section 9.4, "cashout ceiling" shall mean \$1,000.

#### 9.5 Unclaimed Benefits

If after diligent effort by the Human Resources Department, a Participant or Beneficiary who is entitled to a distribution cannot be located within three (3) years of the date distribution was to be made, the distributable Account balance shall be returned to the District. Notwithstanding this forfeiture, the Account balance shall be paid to the Participant or Beneficiary after the above three-year period if the Participant or Beneficiary makes a written application as provided in Section 9.1(c). In the event the Human Resources Department approves the Participant's or Beneficiary's application for such benefit, the District shall make a special contribution to the Plan to provide the funds required to pay such benefit.

#### 9.6 Limitations on Distributions

Notwithstanding any contrary Plan provision, the following provisions shall govern all distributions from the Plan:

(a) General Rule. Distribution of the balance credited to a Participant's Account:

- (1) Shall be completed no later than the Deadline Date; or
- (2) Shall be commenced no later than the Deadline Date and paid in such a manner that the balance credited to the Account will be distributed (i) in the case of a life annuity form of distribution, over the life of the Participant or the joint lives of the Participant and his or her Beneficiary, or (ii) in the case of a distribution in the form of a periodic payments, over a period certain that does not extend beyond the Participant's life expectancy or the joint and last survivor life expectancy of the Participant and his or her Beneficiary.
- (3) The amount to be distributed for each calendar year under paragraph (2) above, beginning with the year that immediately precedes the year in which the Deadline Date occurs (the "First Distribution Year"), shall equal or exceed the lesser of (i) the balance credited to the Account, or (ii) the quotient obtained by dividing (A) the balance of the Account as of the last Valuation Date of the preceding calendar year, by (B) the applicable life expectancy.

- (4) The distribution for the First Distribution Year shall be made by the Deadline Date, and each later distribution shall be made by the end of the year to which it relates.
- (b) Life Expectancies. For purposes of applying this Section 9.6, life expectancies shall be computed using the expected return multiples set forth in Tables V and VI of Treas. Reg. § 1.72-9 or their successors. Applicable life expectancies shall be calculated as of the date payments first commence without further recalculation.
- (c) Incidental Benefit Rule. If the Participant's spouse is not his or her sole primary Beneficiary, the minimum distribution required to be made under Section 9.5(a)(2) shall not be less than the quotient obtained by dividing (1) the balance of the Participant's Account as of the last Valuation Date of the preceding year, by (2) the applicable divisor, as determined under the incidental death benefit requirements of section 401(a)(9) of the Code.
- (d) "Deadline Date" means, for purposes of applying this Section 9.6, the later of the April 1 that next follows the later of (1) the calendar year in which a Participant attains age 70½, or (2) the calendar year in which a Participant incurs a Severance from Employment.

#### 9.7 Distribution Methods

- (a) General Rule. Distribution of the balance credited to a Participant's Account shall be made by the Trustee, at the direction of the Human Resources Department and based on the Participant's distribution request, in whichever of the following methods satisfies the limitations of this Article IX and is elected by the Participant, in such manner and within such advance notice period as the Human Resources Department (in its discretion) shall specify:
  - (1) one lump sum payment of cash (or its equivalent) comprising a complete distribution of the vested balance credited to the Participant's Account;
  - (2) a portion paid in a lump sum payment of cash, and the remainder paid later (partial payment);
  - (3) periodic installments over a period not to exceed the life expectancy of the Participant and his or her Beneficiary;
  - (4) the purchase and distribution of a fully paid, nontransferable annuity contract providing for payment in a series of periodic payments of cash (or its equivalent) over the Participant's life (or the joint lives of the Participant and his or her Beneficiary) or over a period certain which does not extend beyond the life expectancy of the Participant (or the joint life expectancy of the Participant and his or her Beneficiary); or

- (5) a direct rollover which satisfies the requirements of paragraph (b) below, provided that any portion of the Account that is not rolled over shall be distributed in accordance with paragraph (a)(1) above.
- (b) **Direct Rollovers.** Notwithstanding any contrary Plan provision, if the Distributee of an Eligible Rollover Distribution from the Plan (i) elects to have all or any portion of such Distribution paid directly to one individual retirement account (“IRA”), another eligible retirement plan (within the meaning of section 401(a)(31)(E) of the Code), or a Roth IRA described in section 408A of the Code; and (ii) specifies such IRA or plan on such form as is prescribed by the Committee, at such time and subject to such permissible restrictions as the Secretary may specify, such distribution or elected portion thereof shall be made in the form of a direct rollover to such IRA or plan, in accordance with and subject to the conditions and limitations of section 401(a)(31) and related provisions of the Code.
- (1) “Distributee” means a Participant, a Beneficiary (other than an estate), or an Alternate Payee (as defined in Section 8.3) if he or she is the current, former or surviving spouse of a Participant under a QDRO (as defined in Section 8.3).
- (2) “Eligible Rollover Distribution” means a distribution of any portion of the balance credited to the Account of a Participant which is not one of a series of substantially equal periodic payments made over (i) a specified period of ten years, or (ii) the life or life expectancy of the Distributee, to the extent that it constitutes an eligible rollover distribution (within the meaning of section 402(c)(4) of the Code).

With respect to an Eligible Rollover Distribution that is payable to a Beneficiary who is *not* the Participant’s surviving spouse, an eligible retirement plan is limited to an individual retirement account or annuity described in section 408(a) or 408(b) of the Code established for the purpose of receiving the Eligible Rollover Distribution on behalf of the Beneficiary and that agrees to be treated as an inherited individual retirement account or annuity within the meaning of section 408(d)(3)(D) of the Code.

## 9.8 Marital Status

- (a) **Requirements for Marriage or Domestic Partnership.** If this Section 9.8 applies with respect to a Participant, for all purposes of this Plan, the Participant shall be treated as married if at the relevant time he or she is:
- (1) Married to an individual in a marital relationship which is legally valid under the law of the state or other jurisdiction where the marriage took place; or
- (2) Not legally married but is the domestic partner of an individual (i) who is

of the same or opposite sex as the Participant, (ii) who is his or her domestic partner in a domestic partnership which is validly registered in a jurisdiction which provides for domestic partner registration, and (iii) who has executed (together with the Participant) a certification demonstrating that the foregoing terms of this paragraph (b) have been satisfied; *provided, however*, that the current or former domestic partner of a Participant:

- (i) Shall not be treated as his or her surviving spouse for purposes of applying Sections 8.1(d), 9.6(c), 9.7 or 9.7(b)(1); and
  - (ii) If he or she is not also the Participant's dependent (within the meaning of section 152(a) of the Code), shall not be treated as his or her former spouse or other Alternate Payee (as defined in Section 8.3) for purposes of applying Section 8.3 (relating to Qualified Domestic Relations Orders) or any related Plan provision.
- (b) Evidence of Marriage or Domestic Partnership. Any Participant who claims to be married for purposes of this Plan, as a condition to his or her eligibility for any benefit available only to married Participants or their spouses under this Plan, shall provide such evidence as to the continued existence of his or her marital relationship or domestic partnership as is reasonably requested by the Committee.
- (c) Domestic Partner Treated as Spouse. Each reference in this Plan to the spouse, lawful spouse, husband or wife of a Participant, or to his or her status as a married individual, shall also refer to the domestic partner of such Participant, or to his or her status as an individual who is a member of a domestic partnership, *provided* that such relationship satisfies the criteria set forth in Section 9.8(a)(2).

## **ARTICLE X ADMINISTRATION OF PLAN**

### **10.1 District**

The District, by action of the Board of Directors, shall have full power and authority to administer the Plan, which authority shall include, but not to be limited to, the following:

- (a) to make and enforce such rules and regulations as are necessary and proper for the efficient administration of the Plan;
- (b) to interpret the Plan and decide all questions concerning the Plan and the eligibility of any person to participate in the Plan;
- (c) to determine the benefits payable under the Plan, authorize the payment of such benefits and determine the person or persons to whom such benefits shall be paid;
- (d) to select and change investment media within categories of Investment Funds; and
- (e) to appoint actuaries, attorneys, certified public accountants, consultants, investment managers, counselors, trustees, custodians and other experts whenever necessary to enable the District to carry out its duties under the Plan.

The Board may delegate responsibilities of the District with respect to the administration of the Plan to the 401(k)/457 Advisory Committee, the Human Resources Department, appropriate employees and/or one or more experts appointed pursuant to paragraph (e) above, including the Third Party Administrator. The Board may revoke any such delegation at any time with immediate effect, except to the extent that the Board has agreed to provide advance written notice to the affected party. Except as otherwise *provided*, any such revocation shall become effective upon receipt of written notice by the affected party or upon such later date as may be specified therein.

Any party who has agreed to accept such delegation may at any time advise the Board in writing that it wishes to terminate such acceptance. Any such termination shall become effective upon receipt of written notice by the Board or by a designated officer acting on behalf of the Board or upon such later date as may be specified in such notice.

### **10.2 401(k)/457 Advisory Committee**

The General Manager shall appoint an advisory committee which (i) shall be known as the "401(k)/457 Advisory Committee" (the "Committee"), and (ii) shall have authority to execute those duties of Plan administration which have been delegated pursuant to Section 10.1. The Committee may also perform duties of plan administration relative to the District's 401(k) Taxed Deferred Savings Plan. The membership of the Committee shall be composed of the Manager of Human Resources (Committee Chairperson), the Director of Finance, the Treasury Manager, and such designated representatives from Local 2019, Local 444, Local 21 and Local 39 as may be from time to time agreed to by the District and the respective unions.

### 10.3 Secretary of the 401(k)/457 Advisory Committee

The Human Resources Department shall serve as the Secretary to the Committee to provide administrative assistance to the Committee and to perform day-to-day administrative tasks and functions necessary to administer and manage the Plan.

### 10.4 Administrative Decisions

All decisions of the Board, the Committee and the Human Resources Department, any action taken by either in respect of the Plan and within the powers granted to each under the Plan, and any interpretation of any provision of the Plan or the Trust Agreement by the Board, the Committee or the Human Resources Department as provided by the Plan, shall be final and conclusive, shall be afforded the maximum possible deference allowed by law, and shall not be modified or set aside except for fraud or abuse of discretion.

### 10.5 Payment of Fees and Expenses

The District shall not be liable for nor have an obligation to pay any fees and expenses related to Account maintenance, transaction and Investment Fund management and maintenance or any other costs incurred in the administration of the Plan. Any fees or expenses imposed by any third-party administrator or sponsor of an Investment Fund shall be borne by the Participants and shall be chargeable to their Accounts, except to the extent that such fees and expenses are otherwise provided for or paid by the District.

### 10.6 Trustee

- (a) Appointment. The General Manager shall appoint, and may remove and replace, the institution or individuals who shall serve as the Trustee. As of the effective date specified in Section 1.3(b), the Trustee shall be composed of the individuals serving as the Director of Finance, Manager of Human Resources and Treasury Manager of the District. Any institution or individual serving as the Trustee may be removed by the General Manager at any time upon 30 days' written notice to the Trustee. Any institution or individual serving as the Trustee shall have the right to resign at any time by giving at least 30 days' written notice, and a full accounting, to the District. In such event, the Committee shall recommend and the General Manager shall choose a successor Trustee, who shall execute a written instrument acknowledging the acceptance of such Trust.
- (b) Duties. The Trustee, upon accepting this appointment, agrees to accept the provisions of the Plan and to carry out the provisions of the Plan and Trust to be performed by the Trustee. Not in limitation thereof, the Trustee shall hold legal title to the assets held in Trust under the Plan and shall be entitled to exercise each and every incident of ownership, unless there is an express provision to the contrary in the Plan. The Trustee shall have exclusive authority to manage and control Plan assets and shall invest and reinvest Plan assets as provided in the Plan and Trust Agreement, *provided that* (1) the Trustee shall be subject to the proper written direction of the Board made in accordance with the Plan, and (2) the Committee may appoint investment managers (as provided in paragraph (c))

below) to manage and control designated portions of the Plan assets in accordance with the Plan. The Trustee shall receive all Salary Contributions, but shall not be responsible for the collection of any Salary Contributions and shall have no power to inquire into the accuracy of any Salary Contributions. The Trustee shall make payments out of the Trust to Participants and Beneficiaries in accordance with the directions of the Human Resources Department. The Trustee shall have such further duties as are set out in the Trust Agreement.

- (c) Investment Manager Appointment. In the event of the appointment of an investment manager, the Trustee shall follow the instructions of the investment manager in investing and administering the Plan assets allocated to the investment manager. Alternatively, the Committee may delegate investment authority and responsibility with respect to any Investment Fund directly to any investment manager that has investment management responsibility for any collective investment fund in which the Investment Fund is invested. Each person, firm or corporation that is appointed to serve as an investment manager shall:
  - (1) make such representations from time to time as the Committee may require in order to determine its qualifications to be appointed and to continue to serve in such capacity; and
  - (2) acknowledge in writing its status as a fiduciary with respect to the Plan upon acceptance of its appointment.
- (d) No Diversion of Assets. Notwithstanding any contrary Plan provision, at no time shall any assets of the Plan be used for, or diverted to, purposes other than for the exclusive benefit of Participants, Beneficiaries and other persons receiving or entitled to receive benefits or payments under the Plan. Except to the limited extent permitted by Sections 9.5 and 13.6, no assets of the Plan shall ever revert to or become the property of the District.
- (e) Delegation of Custodial Duties. The Trustee or, if the Trustee is an institution, the Committee may appoint a qualified financial institution to hold Salary Contributions, to hold the assets of the Trust as the custodial agent of the Trustee, to make payments out of the Trust to Participants and Beneficiaries as provided in paragraph (b) above, and to discharge such other duties as may be delegated to it under the Trust Agreement.

#### 10.7 Fiduciary Responsibilities

- (a) Fiduciaries. The Board, the Committee, the Human Resources Department and the Trustee shall be the fiduciaries of the Plan (the "Fiduciaries"), but only with respect to the specific responsibilities of each for the operation and administration of the Plan.
- (b) Allocation of Responsibility Among Fiduciaries. The Fiduciaries shall have only those specific powers, duties, responsibilities and obligations which are specifically given them under the Plan. The Board shall have the sole authority to



amend or terminate the Plan and/or the Trust Agreement in accordance with Sections 11.3 and 11.4.

#### 10.8 Indemnification

The District shall indemnify and defend each member of the Committee, the Trustee (other than any institution serving as Trustee unless otherwise agreed in writing between the District and such Trustee), the Human Resources Department, and any other Employee, officer or director of the District from and against any and all claims, losses, damages, expenses or liabilities (including attorneys' fees, litigation expenses and amounts paid, with the District's approval, in settlement of any claim), by insurance or otherwise (other than amounts paid in settlement not approved by the District), reasonably incurred by such person in connection with any action or failure to act to which such person may be party by reason of membership on the Committee, service as Trustee or performance of an authorized duty, act, responsibility or decision for or on behalf of the District, the Board or the Committee pursuant to the Plan, unless the same is judicially determined to be the result of the individual's gross negligence or willful misconduct. The foregoing right to indemnification shall be in addition to any other right or remedy to which such person may be entitled as a matter of law.

#### 10.9 Claims Procedures

- (a) Notice of Denial. In the event a Participant's or Beneficiary's claim for benefits under the Plan is wholly or partially denied by the Human Resources Department, the Human Resources Department shall notify the claimant, in writing, of such denial, which may include in such notification the following information:
  - (1) the reason or reasons for such denial;
  - (2) references to pertinent Plan provisions upon which the denial is based;
  - (3) a description of any additional material or information which may be needed to clarify the request, including an explanation of why such information is required; and
  - (4) an explanation of the Plan's claim review procedures.
- (b) Review Procedure. Any Participant or Beneficiary whose claim for benefits has been denied by the Human Resources Department may appeal to the Committee for a review of the denial by making a written request therefor within 60 days of receipt of a notification of denial.
  - (1) The Participant or Beneficiary may, upon request to the Committee, examine any pertinent documents.
  - (2) The Participant may, if he or she chooses, submit to the Committee written issues, comments or other information upon which the claimant relies in support of his or her claim, or may request an attorney or other

representative to make such written submissions on his or her behalf.

- (3) Within 60 days after receipt of a request for review, the Committee shall notify the claimant in writing of its decision, and, if the Committee confirms the denial in whole or in part, the notice may, but is not required to, set forth the reasons for the decision and specific reference to those Plan provision upon which the decision is based.
- (4) Notwithstanding the foregoing, if the Committee determines that special circumstances require additional time for processing, the Committee will extend the 60-day period and notify the claimant of the extension.

**ARTICLE XI**  
**PLAN AMENDMENT, TERMINATION AND OTHER CHANGES**

**11.1    Action by District**

Any action by the District under the Plan may be taken by resolution of its Board of Directors, or by any person or persons duly authorized by resolution of the Board or the terms of the Plan to take such action.

**11.2    District's Obligations Limited**

The Plan is voluntary on the part of the District, and the District shall have no responsibility to satisfy any liabilities under the Plan. Furthermore, the District does not guarantee to continue the Plan, and the District may, by appropriate amendment of the Plan, suspend or discontinue Salary Contributions for any reason at any time. Complete discontinuance of Salary Contributions shall be deemed a termination of the Plan. The Plan shall create no vested contractual rights in any Participant to the continued existence of the Plan.

**11.3    Plan Amendment**

The Board of Directors reserves the right at any time to modify or end, in whole or part, any or all of the provisions of the Plan in such manner as it may determine. Any such modification or amendment that may be made by reason thereof shall take effect upon the date indicated in the document embodying such modification or amendment; *provided, however*, that (a) no such modification or amendment shall deprive any Participant of a benefit to which he or she would otherwise be entitled as of the effective date of the amendment, and (b) any modification or amendment of the Plan, or any part thereof, shall be subject to the restrictions of Section 10.6(d).

Notwithstanding any contrary provision of this Section 11.3, the Board of Directors (in its sole discretion) may make any modifications, amendments, additions or deletions to the Plan as to benefits or otherwise, retroactively if necessary, and regardless of the effect on the rights of any particular Participants, which it deems appropriate to bring the Plan into conformity with or to satisfy any conditions of applicable law, to maintain the qualification of the Plan under section 457(b) of the Code, and to maintain the tax-exempt status of the Trust under section 457(g)(2) of the Code.

**11.4    Plan Termination**

- (a)    Right to Terminate. The District reserves the right to terminate the Plan in whole or in part by a resolution of its Board of Directors.
- (b)    Distribution to Affected Participants. Upon termination of the Plan, the interests of all Participants affected by such termination in their Accounts shall remain fully (100%) vested and nonforfeitable and the Human Resources Department shall direct the Trustee to distribute the assets remaining in the Trust, after

payment of any expenses properly chargeable thereto, to Participants and Beneficiaries as provided in Article IX.

- (c) Manner of Distribution. To the extent that no discrimination in value results, any distribution after termination of the Plan may be made in cash, in securities or other assets in kind, in nontransferable term-certain annuities (individual or group), or in any combination thereof, as the Human Resources Department in its discretion may determine. All non-cash distributions shall be valued at fair market value at the date of distribution.

## **ARTICLE XII TRUST AGREEMENT**

### **12.1    Acceptance**

The Trustee or any successor or successors who accept(s) appointment under this Article XII, accept(s) the Trust hereby created under the Plan and agrees to perform the obligations imposed. The Trustee's duties and responsibilities stated in this Article XII and elsewhere in the Plan shall be performed in accordance with, and as necessary limited to comply with, applicable law.

### **12.2    Receipt of Contributions**

The Trustee shall be accountable to the District for the funds contributed to the Trust by the District but shall have no duty to see that the contributions received comply with the provisions of the Plan. The Trustee shall be neither obliged to collect any contributions from the District, nor to see that funds deposited with it are deposited in accordance with the provisions of the Plan.

### **12.3    Full Investment Powers**

The Trustee shall have full discretion and authority with regard to the investment of any portion of the Trust that is not subject to direction of investment by the District, the Committee or a Participant. The Trustee is authorized and empowered, but not by way of limitation, with the following powers, rights and duties:

- (a) to invest any part or all of the Trust in any common or preferred stocks, open-end or closed-end mutual funds, shares of an investment company, variable annuities, put and call options traded on a national exchange, U.S. retirement bonds, corporate bonds, debentures, convertible debentures, commercial paper, U.S. Treasury bills, U.S. Treasury notes and other direct or indirect obligations of the U.S. Government or its agencies, improved or unimproved real estate situated in the United States, limited partnerships, insurance contracts, mortgages, notes or other property of any kind, real or personal, and to buy or sell options on common stock on a nationally recognized options exchange with or without holding the underlying common stock, as a prudent person would do under like circumstances with due regard for the purposes of the Plan;
- (b) to retain in cash so much of the Trust assets as it may deem advisable to satisfy liquidity needs of the Plan and to deposit any cash held in the Trust in a bank account at reasonable interest;
- (c) to manage, sell, contract to sell, grant options to purchase, convey, exchange, transfer, abandon, improve, repair, insure, lease for any term even though commencing in the future or extending beyond the term of the Trust, and otherwise deal with all property, real or personal, in such manner, for such considerations and on such terms and conditions as the Trustee shall decide;

- (d) to credit and distribute the Trust as directed by the Human Resources Department, *provided* that the Trustee shall not be obliged to inquire as to whether any payee or distributee is entitled to any payment or whether the distribution is proper or conforms to the terms of the Plan, or as to the manner of making any payment or distribution, and the Trustee shall be accountable only to the Human Resources Department for any payment or distribution made by it in good faith on the order or direction of the Human Resources Department;
- (e) to borrow money; to assume indebtedness, extend mortgages and encumber by mortgage or pledge; to invest in loans to Participants in accordance with the loan policy established by the Human Resources Department (if such loans are to be permitted by the Human Resources Department), *provided* that any such loan is permissible under section 457 of the Code and applicable law, adequately secured, bears a reasonable rate of interest, and provides for repayment within a specified time;
- (f) to compromise, contest, arbitrate or abandon claims and demands, in its discretion;
- (g) to have with respect to the Trust all the rights of an individual owner, including the power to give proxies, to participate in any voting trusts, mergers, consolidations or liquidations, and to exercise or sell stock subscriptions or conversion rights;
- (h) to hold any securities or other property in the name of Trustee or its nominee, or in another form as it may deem best, with or without disclosing the Trust relationship;
- (i) to perform any and all other acts in its judgment necessary or appropriate for the proper advantage, management, investment and distribution of the Trust;
- (j) to retain any funds or property subject to any dispute, without liability of the payment of interest, and to decline, when reasonable to do so, to make payment or delivery of the funds or property until final adjudication is made by a court of competent jurisdiction;
- (k) to furnish any tax returns or portions thereof required of the Trustee;
- (l) to furnish to the District, the Committee and the Human Resources Department statements of account at least annually showing the condition of the Trust and all investments, receipts, disbursements and other transactions effected by the Trustee during the Plan Year covered by the statement and also stating the assets of the Trust held at the end of the Plan Year; *provided* that:
  - (1) the Human Resources Department may approve an account by written notice of approval delivered to the Trustee in writing within 90 days from the date upon which the account statement was mailed or otherwise delivered to the Human Resources Department;

- (2) the Committee agrees to use its best efforts to review account statements provided by the Trustee within 90 days from the date the account statement was mailed or delivered to the Human Resources Department;
  - (3) any matters objected to by the Human Resources Department shall be communicated to the Trustee in a writing signed by a member of the Human Resources Department, and the Trustee shall be given a reasonable opportunity to explain or adjust such matters; and
  - (4) in no event shall the Trustee be liable for losses to the extent that the same could have been prevented by a prompt review (within 90 days) of the Trustee's written account by the Human Resources Department; and
- (m) to begin, maintain or defend any litigation necessary in connection with the administration of the Plan, except that the Trustee shall not be obliged or required to do so unless indemnified to its satisfaction.

#### 12.4 Records and Statements

The records of the Trustee pertaining to the Plan shall be open to the inspection of the District, the Committee and the Human Resources Department at all reasonable times and may be audited from time to time by any person or persons as the District or the Committee may specify in writing. The Trustee shall furnish the Human Resources Department, the Committee or the District with whatever information relating to the Trust the Human Resources Department or the District considers necessary.

#### 12.5 Fees and Expenses From Trust

The Trustee may receive reasonable annual compensation as may be agreed upon from time to time between the District and the Trustee. The Trustee shall pay all expenses reasonably incurred by it or by the District, the Committee or other professional advisers or administrators in the administration of the Plan from the Trust unless the District pays the expenses. The Committee shall not treat any fee or expense paid, directly or indirectly, by the District as a District contribution. Notwithstanding the foregoing, if the Trustee is constituted (in whole or in part) by an individual who is an Employee, that individual shall receive no compensation for his or her services as a Trustee. If the Trustee is constituted entirely by individuals who are Employees, no compensation shall be paid to the Trustee for its services.

#### 12.6 Distribution of Cash or Property

The Trustee may make distribution under the Plan in cash or property, or partly in each, at its fair market value as determined by the Trustee.

#### 12.7 Resignation

Any of the persons composing the Trustee may resign at any time upon 30 days' written notice to the District, unless a shorter period is acceptable to the Plan.

#### 12.8 Removal

The District may at any time remove any of the persons composing the Trustee upon 30 days' written notice to that person, unless a shorter period is acceptable to that person.

#### 12.9 Interim Duties and Successor Trustee

In the event of the resignation or removal of a Trustee, the District shall appoint a successor Trustee if it intends to continue the Plan with the same number of individual Trustees. During any period for which the selection of a Trustee is pending or a Trustee is unable to serve for any reason, the remaining Trustee(s), if any, shall act as the sole Trustee or as the only Trustees of the Trust. If no Trustee remains during any period the selection of a Trustee is pending, the District shall act as a Trustee until a successor Trustee is selected.

Each successor Trustee shall succeed to the possession of legal title of Trust assets previously vested in his or her predecessor by accepting in writing his or her appointment as successor Trustee and filing the acceptance with the former Trustee and the Advisory Committee without the signing or filing of any further statement. The resigning or removed Trustee, upon receipt of acceptance in writing of the Trust by the successor Trustee, shall execute all documents and do all acts necessary to vest the title of record in any successor Trustee. Each successor Trustee shall have and enjoy all of the powers, both discretionary and ministerial, conferred under the Plan upon his predecessor. No successor Trustee shall be personally liable for any act or failure to act of any predecessor Trustee. With the approval of the District and the Committee, a successor Trustee, with respect to the Plan, may accept the account rendered and the property delivered to it by a predecessor Trustee without incurring any liability or responsibility for so doing.

#### 12.10 Valuation of Trust

The Trustee shall value the Trust assets as of the last day of each calendar year and at such other times as the Committee may direct to determine the fair market value of each Participant's Account, and the Trustee shall value the Trust fund on such other date(s) as directed by the Committee.

#### 12.11 Exclusive Benefit

The Trust shall be held for the exclusive benefit of Participants and their Beneficiaries. Except as otherwise provided in the Plan, it shall be impossible, under any circumstances and at any time, for any part of the corpus or income of the Trust fund to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries, except to the limited extent provided in Sections 9.5, 10.6(b) and 13.6.



**ARTICLE XIII**  
**MISCELLANEOUS PROVISIONS**

**13.1    Nonguarantee of Employment**

Nothing contained in the Plan or in the forms issued pursuant to the Plan shall be construed as a contract of employment or reemployment between the District and any Employee, or as a right of any Employee to be continued in the employment of the District or to be rehired by the District, or as a limitation of the right of the District to discharge any of its Employees, with or without cause.

**13.2    No Vested Contractual Rights Created**

Nothing contained in the Plan shall be construed as granting or creating in any Participant any vested contractual rights under federal or California law nor any right to the continued existence of the Plan in its current or amended form.

**13.3    Nonguarantee of Value of Trust Assets**

Neither the Trustee, the Committee nor the District in any way guarantees the Trust or any Participant's Account from loss or depreciation.

**13.4    Rights to Trust Assets**

No Participant or Beneficiary shall have any right to, or interest in, any assets of the Trust upon Severance from Employment or otherwise, except as provided from time to time under the Plan, and then only to the extent of the benefits payable under the Plan to the Participant or Beneficiary out of the assets of the Trust.

Except as otherwise provided by law or in Section 8.3, no benefit, payment or distribution under the Plan shall be subject either to the claim of any creditor of a Participant, spouse, contingent annuitant or Beneficiary, or to attachment, garnishment, levy (other than a federal tax levy under section 6331 of the Code), execution or other legal or equitable process, by any creditor of such person, and no such person shall have any right to alienate, commute, anticipate or assign (either at law or equity) all or any portion of any benefit, payment or distribution under the Plan.

The Trust shall not in any manner be liable for or subject to the debts, contracts, liabilities, engagements or torts of any person entitled to benefits under the Plan.

If any Participant's benefits are garnished or attached by order of any court, the Committee may elect to bring an action for a declaratory judgment in a court of competent jurisdiction to determine the proper recipient of the benefits to be paid by the Plan. During the pendency of such action, any benefits that become payable may be paid into the court as they become payable, to be distributed by the court to the recipient it deems proper at the close of such action.

### 13.5 Correction of Errors

If any error in any Account or record is discovered and would result in any Participant's Account being more or less than it would have been had the error not been discovered or had the record been correct, the Committee, the Human Resources Department, investment manager, Trustee or any other fiduciary shall correct the error by adjusting, to the extent reasonable and practical, the Accounts or records under its control. Any such correction shall be conclusive and binding on all Participants and their Beneficiaries.

### 13.6 Continuing Conditions

- (a) In the event that the Internal Revenue Service determines that the Plan does not or no longer satisfies the qualification requirements under section 457(b) of the Code, all Salary Contributions shall be returned to the District as promptly as practicable, but not later than one year after the District receives written notice that such determination has been made. Any obligation to make Salary Contributions under the Plan is hereby conditioned upon the initial and continued qualification of the Plan under section 457(b) of the Code and the tax-exempt status of the Trust under section 457(g) of the Code.
- (b) That portion of any Salary Contribution which is made by reason of a good faith mistake of fact shall be returned to the District as promptly as practicable, but not later than one year after the contribution was made. The amount returned pursuant to the preceding sentence shall be an amount equal to the excess of the amount actually contributed over the amount that would have been contributed if the mistake had not been made.
- (c) Notwithstanding the foregoing, in determining the amount to be returned to the District, (1) if paragraph (b) above applies, gains attributable to the returnable portion shall be retained in the Trust; and (2) the returnable portion shall be reduced (i) by any losses attributable thereto, and (ii) if paragraph (b) above applies, to avoid a reduction in any Participant's Account below the total balance that would have resulted if the mistake had not been made.

### 13.7 USERRA-Related Matters

- (a) Intent. It is the intent of the Plan to comply with the reemployment rights of members of the Uniformed Services as specified in the Uniformed Services Employment and Reemployment Act of 1994, 38 U.S. Code chapter 43 ("USERRA"), and section 414(u) of the Code. Therefore, notwithstanding any contrary Plan provision, Salary Contributions with respect to Qualified Military Service will be provided in accordance with section 414(u) of the Code.
- (b) Definitions. For the purposes of this Section 13.7, the following words and phrases shall have the meanings set forth below:
  - (1) "Qualified Military Service" means any service in the Uniformed Services of the United States by any individual if such individual is entitled to

reemployment rights with respect to such service under USERRA.

(2) “Uniformed Services” means:

- (i) The armed forces of the United States;
- (ii) The Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty for training or full-time National Guard duty;
- (iii) The commissioned corps of the Public Health Service; and
- (iv) Any other category of persons designated by the President of the United States in time of war or emergency.

(c) Benefit Accruals. Each period of Qualified Military Service served by an individual is, upon reemployment by the District under USERRA, deemed to constitute service with the District for purposes of determining the accrual of benefits under the Plan as follows:

- (1) Only periods during which the District was maintaining the Plan will be counted.
- (2) The returning Participant will be considered to have been in the same category of employment during Qualified Military Service as the category in which he or she was employed immediately before such Service.
- (3) The amount of Salary Contributions allowed shall be computed as if the individual had been permitted to contribute had the individual remained continuously employed by the District throughout the period of Qualified Military Service.
- (4) Payment of such Salary Contributions must be made by the Participant during a period which begins with the date of reemployment and is three (3) times the duration of the period of Qualified Military Service, but not greater than five (5) years.

(d) Compensation. In accordance with section 414(u)(12)(A)(ii) of the Code and any regulations and other guidance promulgated thereunder, Compensation shall include differential pay that (1) is made by the District to a Participant with respect to any period during which the Participant is performing Qualified Military Service while on active duty for a period of more than 30 days, and (2) represents all or a portion of the wages the Participant would have received from the District if he or she had remained actively employed.

(e) Death During Qualified Military Service. If a Participant dies while performing Qualified Military Service, his or her Beneficiary shall be entitled (to the extent required by section 401(a)(37) of the Code) to any additional benefits (other than

benefit accruals relating to the period of Qualified Military Service) provided under the Plan as if he or she had resumed employment with the District on the day before his or her death and then had a Severance from Employment on account of death.

- (f) Notice. If the District reemploys an individual under USERRA, it shall, within 30 days after the date of such reemployment, provide notice in writing of such reemployment to the Committee.
- (g) Military Leave Distributions. A Participant shall be treated as having had a Severance from Employment during any period the Participant is performing service in the uniformed services while on active duty for a period of more than 30 days as described in section 3401(h)(2)(A) of the Code. If a Participant elects to receive a distribution by reason of the preceding sentence, the Participant may not make Salary Contributions during the 6-month period beginning on the date of the distribution.

### 13.8 Severability

In the event any Article, Section, paragraph or specific provision of the Plan is found to be illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining provisions of the Plan, and the Plan shall be construed and enforced as if such illegal or invalid provision had never been set forth in the Plan.

### 13.9 Construction

Where applicable, the masculine includes the feminine, and the singular the plural and vice versa. Where a word or phrase is defined in Article II or elsewhere in the Plan, such word or phrase shall have the meaning set forth in the Plan unless the context clearly requires otherwise. A word or phrase in non-capitalized form shall retain its plain meaning taken in the context in which it appears, regardless of whether such word or phrase is defined in Article II or elsewhere in the Plan.

### 13.10 Applicable Law

The provisions of the Plan shall be construed, administered and enforced in accordance with section 457 and related provisions of the Code and, to the extent applicable, the laws of the State of California.

**EXECUTION**

*Witness* the execution of this **East Bay Municipal Utility District 457 Deferred Compensation Plan and Trust**, as amended and restated on the date set forth below (effective as of January 1, 2014).

**EAST BAY MUNICIPAL UTILITY DISTRICT**

By \_\_\_\_\_

Title \_\_\_\_\_

Dated \_\_\_\_\_

## **APPENDIX A EFFECTIVE DATES**

The 2014 Restatement of the East Bay Municipal Utility District 457 Deferred Compensation Plan and Trust is generally effective as of January 1, 2014. However, the Plan provisions identified below are effective as of the dates specified below:

1. The paragraph that immediately follows Section 2.6(f) is effective as of January 1, 2008.
2. The reference to a Roth IRA in clause (i) of Section 9.7(b) effective as of January 1, 2008.
3. Section 13.7 is generally effective as of January 1, 2008.
4. Section 13.7(e) is effective as of January 1, 2009.



AGENDA NO. 16.MEETING DATE December 10, 2013TITLE MEMORANDA OF UNDERSTANDING WITH AFSCME LOCALS 444 AND 2019, AND IUOE LOCAL 39☐ MOTION ☒ RESOLUTION ☐ ORDINANCE**RECOMMENDED ACTION**

- Approve the 2013-2017 Memoranda of Understanding (MOU) and other special agreements between the District and AFSCME Locals 444 and 2019, and IUOE Local 39.
- Approve revisions to District salary schedules.
- Amend all existing Civil Service Rules, Policy Statements and Procedures and other pertinent resolutions to conform to revisions contained in the MOUs and in the Resolution.

**SUMMARY**

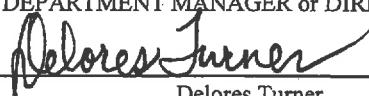
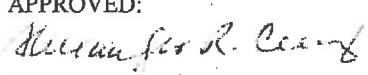
Staff recently concluded negotiations with AFSCME Locals 444 and 2019, and IUOE Local 39, resulting in a four (4) year Memoranda of Understanding (April 22, 2013 through April 16, 2017) with each local. This Resolution approves these MOUs that apply to approximately 1,370 employees in three separate bargaining units. Resolution 33951-13 was approved by the Board of Directors at the meeting held on November 12, 2013, and provided that the MOU applying to employees represented by IFPTE Local 21, as well as salaries, benefits, and working conditions for managers, confidentials, and non-represented (part-time and other) employees totaling approximately 359 would be modified in the event that more favorable terms were included in the MOUs of the other unions, which has occurred.

**DISCUSSION**

Significant terms of the recently concluded MOUs with AFSCME Locals 444 and 2019, and IUOE Local 39 are summarized below and are effective upon Board consideration and adoption, unless otherwise specified.

Salary and Benefit Changes for Eligible Employees

- **General Salary Increases for Locals 2019, 444 and 39:** Provides general salary increases over the four (4) year MOU term as noted below:

|   |  |   |
|---|--|---|
| Funds Available FY:                       |  | Budget Code:  |
| DEPARTMENT SUBMITTING:<br>Human Resources | DEPARTMENT MANAGER or DIRECTOR:<br><br>Delores Turner | APPROVED:<br><br>General Manager |

Contact the Office of the District Secretary with questions about completing or submitting this form.



First Year: 3.0%, effective April 22, 2013.

Second Year: Effective April 21, 2014, CPI-W plus .8%. (If the CPI-W is below 2%, the increase shall be CPI-W plus .8% with a minimum increase of 2%. If the CPI-W plus .8% is above 2% but less than 4.5%, the increase shall be CPI-W plus .8%. If the CPI-W plus .8% is above 4.5%, the maximum increase shall be 4.5%).

Third Year: Effective April 20, 2015, CPI-W plus .8%. (If the CPI-W is below 2%, the increase shall be CPI-W plus .8% with a minimum increase of 2%. If the CPI-W plus .8% is above 2% but less than 4.75%, the increase shall be CPI-W plus .8%. If the CPI-W plus .8% is above 4.75%, the maximum increase shall be 4.75%).

Fourth Year: Effective April 18, 2016, CPI-W plus .8%. (If the CPI-W is below 2%, the increase shall be CPI-W plus .8% with a minimum increase of 2%. If the CPI-W plus .8% is above 2% but less than 5%, the increase shall be CPI-W plus .8%. If the CPI-W plus .8% is above 5%, the maximum increase shall be 5%).

- **Salary Equity Adjustments:** Provides special salary equity adjustments for classes specified in the Resolution, as follows:

Hydroelectric Power Plant Mechanic, 7.5%  
Hydroelectric Power Plant Operator I, 7.5%  
Hydroelectric Power Plant Operator II, 7.5%

- **Classification Studies:** Job classification studies will be performed for the following classifications to determine whether or not the incumbents are classified appropriately:

Senior Field Services Representative (Local 2019); Senior Mechanic, Concrete Finisher I/II, Maintenance Machinist, Maintenance Specialist, and Water Distribution Crew Foreman (Local 444).

- **Medical Plan Changes for Locals 2019, 444 and 39:**

Office Visit Co-pays: Effective January 1, 2017, the office visit co-pay for Kaiser and Health Net will be increased to \$20.

Emergency Room Visit Co-pays: Effective January 1, 2017, the emergency room visit co-pay for Kaiser and Health Net will be \$75 (*waived if admitted.*)

Hospital Inpatient Co-pay: Effective January 1, 2017, the inpatient hospital co-pay for Health Net will be \$100.

- **Employee Retirement Contribution Rate for Locals 2019, 444 and 39:** The following contribution rates only apply to "Legacy" employees hired prior to January 1, 2013, and those hired on or after January 1, 2013 that are eligible for reciprocity with another California public retirement system.

Effective April 22, 2013, the employee contribution rate shall be 7.33%

Effective April 21, 2014, the employee contribution rate shall be 7.83%

Effective April 20, 2015, the employee contribution rate shall be 8.33%

Effective April 18, 2016, the employee contribution rate shall be 8.75%

- **Cash-in-lieu for Locals 2019, 444 and 39:** Will increase or decrease by \$10 for every employee who elects not to receive District-paid medical insurance coverage, with a minimum of \$150 per month to a maximum of \$450 per month. The District will adjust the cash-in-lieu amount effective the following January 1<sup>st</sup>, if the number of District employees who do not receive District-paid medical insurance exceeds the 58 employees who have currently elected not to participate in the District's health insurance plans during the preceding year.
- **Land Surveyor Certification, Local 2019:** Provides a \$250 monthly premium to employees in the job classifications of Survey Technician and Chief of Party if they are a certified Land Surveyor.
- **Increase to Meal Allowance for Locals 2019, 444 and 39:** Increases the meal allowance for eligible employees from \$16 to \$18 and concurrently ends the meal voucher program.
- **Increase to Bilingual Pay for Local 2019:** Increases the monthly premium for eligible bilingual employees who are required to use those skills in the course of work from \$175 to \$200. This provision would also apply to employees represented by IFPTE Local 21.

#### Group Health Plan Benefit Contracts

The General Manager is also authorized to amend any and all contracts with the District's medical plan providers to conform to the provisions of the MOUs with Locals 39, 444 and 2019, and this Resolution.

#### **FISCAL IMPACT**

Sufficient funds are available in the proposed FY14 and FY15 budgets to meet all of the first and second year fiscal obligations under the proposed MOUs, including the previously adopted MOU for IFPTE Local 21 and recommended changes to the wages and benefits for the managers, confidential and non-represented employees detailed in this Resolution.

#### **UNION NOTIFICATION**

Local 39 ratified their MOU on November 26, 2013. Local 444 ratified their MOU on December 2, 2013. Local 2019 ratified their MOU on December 3, 2013.



  
Office of General Counsel



RESOLUTION NO. \_\_\_\_\_

**APPROVE IMPLEMENTATION OF THE 2013-2017 MEMORANDA OF UNDERSTANDING AND OTHER SPECIAL AGREEMENTS WITH AFSCME LOCALS 2019 AND 444, AND IUOE LOCAL 39; AMEND THE POSITION RESOLUTION AND REVISE SALARY RANGES, SALARIES AND WAGE RATES AND OTHER BENEFITS FOR EMPLOYEES REPRESENTED BY AFSCME LOCALS 2019 AND 444, AND IUOE LOCAL 39**

Introduced by Director

; Seconded by Director

WHEREAS, the Board of Directors of the East Bay Municipal Utility District is charged with responsibility to determine the number and character of positions required to carry on the functions of the District, and to establish an appropriate salary, salary range, or wage for each position so created; and

WHEREAS, the District and the American Federation of State, County and Municipal Employees ("AFSCME") Locals 2019 and 444 have engaged in negotiations and have reached a tentative agreement on all areas of the Memoranda of Understanding ("MOU"); and

WHEREAS, the District and the International Union of Operating Engineers ("IUOE") Local 39 have engaged in negotiations and have reached a tentative agreement on all areas of the Memorandum of Understanding ("MOU"); and

WHEREAS, IUOE Local 39 ratified the tentative agreement by a majority of its members on November 26, 2013; and

WHEREAS, AFSCME Local 444 ratified the tentative agreement by a majority of its members on December 2, 2013; and

WHEREAS, AFSCME Local 2019 ratified the tentative agreement by a majority of its members on December 3, 2013; and

WHEREAS, the General Manager recommends that said MOU be approved by the Board of Directors and that the provisions of the MOU be implemented immediately, insofar as practicable, and made effective April 22, 2013, except as otherwise specified;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the East Bay Municipal Utility District as follows:

**Section 1. Ratification of MOU with IUOE Local 39**

- a. The 2013-2017 MOU and other special agreements between the District and IUOE Local 39, a copy of which is attached hereto and incorporated herein as Exhibit A, is hereby approved.
- b. The IUOE Local 39 Salary Schedule appears as Appendix A of the MOU, and shall be implemented with an effective date of April 22, 2013, and certain interim amendments to District rules, regulations and policy statements required by the MOU shall be implemented with an effective date of December 10, 2013, except as otherwise specified herein.

**Section 2. Salary Ranges – IUOE Local 39**

- a. Section 3 of Board Resolution No. 33761-10 "Revising District Salary Ranges, Salaries and Wage Rates" is amended and the monthly salaries of all employees occupying positions in classifications represented by IUOE Local 39 shall be adjusted and increased by 3% in accordance with the classifications and monthly wage rates listed in the salary schedule effective April 22, 2013, a copy of which is on file with the Secretary of the District.
- b. Unless specifically indicated otherwise, the monthly salaries established herein shall be effective April 22, 2013 for all such employees on the payroll on December 10, 2013 and for all such employees who retired from the District on or after April 22, 2013, up to and including December 10, 2013.

**Section 3. Retirement Contribution Rates – IUOE Local 39**

Employees hired at the District prior to January 1, 2013 and/or those who have reciprocity with another public retirement system and are therefore subject to the District's 1980 Retirement Plan will have their employee contribution rate raised according to the following schedule:

- a. Effective April 22, 2013, the employee retirement contribution rate shall be 7.33% for all employees on the payroll on April 22, 2013.
- b. Effective April 21, 2014, the employee retirement contribution rate shall be 7.83%.
- c. Effective April 20, 2015, the employee retirement contribution rate shall be 8.33%.
- d. Effective April 18, 2016, the employee retirement contribution rate shall be 8.75%.

**Section 4. Ratification of MOU with AFSCME Local 444**

- a. The 2013-2017 MOU and other special agreements between the District and AFSCME Local 444, a copy of which is attached hereto and incorporated herein as Exhibit B, is hereby approved.
- b. The AFSCME Local 444 Salary Schedule appears as Appendix A of the MOU, and shall be implemented with an effective date of April 22, 2013, and certain interim amendments to District rules, regulations and policy statements required by the MOU shall be implemented with an effective date of December 10, 2013, except as otherwise specified herein.

**Section 5. Salary Ranges—AFSCME Local 444**

- a. Section 2 of Board Resolution No. 33761-10 "Revising District Salary Ranges, Salaries and Wage Rates" and Board Resolution No. 33936-13 "Authorizing the Number and Character of Positions" are amended and the monthly salaries of all employees occupying positions in classifications represented by AFSCME Local 444 shall be adjusted and increased by 3% in accordance with the classifications and monthly wage rates listed in the salary schedule effective April 22, 2013, a copy of which is on file with the Secretary of the District.
- b. The following class(es) shall receive a special salary adjustment on the effective date specified below:

| Class Name                            | Percent Adjustment |
|---------------------------------------|--------------------|
| Hydroelectric Power Plant Mechanic    | 7.5%               |
| Hydroelectric Power Plant Operator I  | 7.5%               |
| Hydroelectric Power Plant Operator II | 7.5%               |

- c. Unless specifically indicated otherwise, the monthly salaries established herein shall be effective April 22, 2013 for all such employees on the payroll on December 10, 2013 and for all such employees who retired from the District on or after April 22, 2013, up to and including December 10, 2013.

#### **Section 6. Retirement Contribution Rates – AFSCME Local 444**

Employees hired at the District prior to January 1, 2013 and/or those who have reciprocity with another public retirement system and are therefore subject to the District's 1980 Retirement Plan will have their employee contribution rate raised according to the following schedule:

- a. Effective April 22, 2013, the employee retirement contribution rate shall be 7.33% for all employees on the payroll on April 22, 2013.
- b. Effective April 21, 2014, the employee retirement contribution rate shall be 7.83%.
- c. Effective April 20, 2015, the employee retirement contribution rate shall be 8.33%.
- d. Effective April 18, 2016, the employee retirement contribution rate shall be 8.75%.

#### **Section 7. Ratification of MOU with AFSCME Local 2019**

- a. The 2013-2017 MOU and other special agreements between the District and AFSCME Local 2019, a copy of which is attached hereto and incorporated herein as Exhibit C, is hereby approved.
- b. The AFSCME Local 2019 Salary Schedule appears as Appendix A of the MOU, and shall be implemented with an effective date of April 22, 2013, and certain interim amendments to District rules, regulations and policy statements required by the MOU shall be implemented with an effective date of December 10, 2013, except as otherwise specified herein.

#### **Section 8. Salary Ranges – AFSCME Local 2019**

- a. Section 1 of Board Resolution No. 33761-10 "Revising District Salary Ranges, Salaries and Wage Rates" is amended and the monthly salaries of all employees occupying positions in classifications represented by AFSCME Local 2019 shall be adjusted and increased by 3% in accordance with the classifications and monthly wage rates listed in the salary schedule effective April 22, 2013, a copy of which is on file with the Secretary of the District.
- b. Unless specifically indicated otherwise, the monthly salaries established herein shall be effective April 22, 2013 for all such employees on the payroll on December 10, 2013 and for all such employees who retired from the District on or after April 22, 2013, up to and including December 10, 2013.

#### **Section 9. Retirement Contribution Rates – AFSCME Local 2019**

Employees hired at the District prior to January 1, 2013 and/or those who have reciprocity with another public retirement system and are therefore subject to the District's 1980 Retirement Plan will have their employee contribution rate raised according to the following schedule:

- a. Effective April 22, 2013, the employee retirement contribution rate shall be 7.33% for all employees on the payroll on April 22, 2013.
- b. Effective April 21, 2014, the employee retirement contribution rate shall be 7.83%.
- c. Effective April 20, 2015, the employee retirement contribution rate shall be 8.33%.
- d. Effective April 18, 2016, the employee retirement contribution rate shall be 8.75%.

#### **Section 10. Personnel Policies and Benefit Plans**

- a. All existing Civil Service Rules, Policy Statements and Procedures, and other pertinent resolutions shall be and hereby are amended to conform to the provisions referred to in this Resolution. The District will execute any and all further documents and perform any and all further acts reasonably necessary in carrying out the provisions of this section.
- b. The General Manager is hereby authorized to amend any and all existing group benefit contracts in order to conform to the negotiated agreements ratified herein for the term of those agreements without further action required from the Board provided, however, that the General Manager will comply with Resolution 31902, Motion 026-95 and Motion 221-97, which require Board approval for any subsequent substantive changes in benefits and for any rate increase that exceeds fifteen percent.

BE IT FURTHER RESOLVED that in accordance with the limited reciprocity provisions of Resolution 33951-13, previously adopted by the Board of Directors on November 12, 2013, employees represented by IFPTE Local 21 and management and confidential and other non-represented employees will receive the same wages increase and medical benefits accorded to AFSCME Locals 2019 and 444 and IUOE Local 39.

BE IT FURTHER RESOLVED that any provision in any Resolution in conflict herewith is hereby superseded.



BE IT FURTHER RESOLVED that the budgets for the 2013/2014 and 2014/2015 fiscal years and the terms and conditions for the payment of demands as previously established by proper resolutions of this Board, and as the same may have been from time to time amended, shall be adjusted as necessary in accordance with this Resolution.

ADOPTED this 10<sup>th</sup> day of December, 2013 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

APPROVED AS TO FORM AND PROCEDURE:

\_\_\_\_\_  
General Counsel

W:\400 GOV-MGMT\410 EBMUD BOARD\410.01 Resolutions\Position Resolutions (MOUs)\13-15\L2019, 444 and 39\2013-2017 MOU Resolution-L2019, 444 and 39.docx

**PREAMBLE**

This Memorandum of Understanding (hereinafter referred to as Memorandum) entered into by East Bay Municipal Utility District (hereinafter referred to as the District) and International Union of Operating Engineers, Stationary Engineers, Local 39, (hereinafter referred to as the Union) has as its purpose the promotion of harmonious relationships between the District and the Union; establishment of an equitable and peaceful procedure for the resolution of differences; and the establishment of rates of pay, hours of work and other conditions of employment.

The provisions of this Memorandum supersede all previous agreements and understandings, whether written or oral, between the parties.

**ARTICLE I. RECOGNITION****A. Majority Representation.**

The District recognizes the Union as the majority representative of all regular, probationary, limited term (LT), temporary construction (TC) and part-time employees (except Worker Trainees) within the class titles of the formally recognized unit as enumerated in Attachment A, "Class Titles/Salary Ranges", which is attached hereto and made a part hereof.

The District shall furnish the Union with the name, classification and department number of each new employee hired for a regular, limited term, temporary construction or part-time position within the foregoing unit, and shall notify each said new employee of the District's recognition of the Union as the majority representative in said unit.

**B. Representation of Employees in Limited Term and Temporary Construction Appointments.**

The following applies to employees in LT and TC appointments in classifications represented by Local 39:

Employees who have Civil Service status in a District classification and who are promoted or transferred continue to retain rights to a position in their former Civil Service classification when the LT or TC position is completed.

The District has the obligation to assign such employees back to a position in their former Civil Service classification. Ending LT or TC appointments shall not be grievable.

LT/TC employees with Civil Service status will retain the benefits they were receiving at the time of acceptance of the LT/TC appointment. LT/TC employees without Civil Service status will be provided all District benefits except retirement.

An employee who promotes or transfers to an LT or TC position shall, while in an LT or TC position, receive continuous service credit for purposes of this Memorandum.

LT and TC employees are subject to all Memorandum provisions unless specifically exempted.

## ARTICLE II. AGENCY SHOP/DUES DEDUCTION

- A. **Eligibility/Exemptions.** All permanent, probationary, limited term, temporary construction and part-time employees in the classifications listed in Attachment A shall, as a condition of continued employment, become members of the Union, or shall pay a service fee equal to the monthly dues of the Union except as provided below. This agency shop agreement shall continue for the life of this Memorandum.

Exemption: Any employee who is a member of a bona fide religious body or sect which has historically held conscientious objections to joining or financially supporting employee organizations shall not be required to join or financially support the Union as a condition of employment. Such employees may be required, in lieu of periodic dues, initiation fees, or agency shop fees to contribute to a non-religious tax-exempt charity, three such organizations to be mutually agreed upon by the parties.

- B. **Compliance.** An employee in one of the classes included in Attachment A employed during the term of this Memorandum shall (and, in the case of a newly hired employee, within thirty (30) calendar days of employment) execute a payroll deduction authorization form as furnished by the Union, and thereby become and remain a member in good standing in the Union, or execute a payroll deduction authorization form as furnished by the Union, and thereby pay to the Union a service fee; or in the case of employees who certify that they are members of a bona fide religion, body or sect which has historically held conscientious objections to joining or financially supporting public employee organizations, execute a payroll deduction authorization form as furnished by the Union, and thereby pay sums equal to the service fee.

If any current employee fails to authorize one of the above deductions within thirty (30) calendar days of hire into a classification covered by this Memorandum, the District shall deduct the full Union dues from the employee's paycheck.

The Union shall within sixty (60) days after June 30th of each year this Memorandum is in effect provide the District with detailed financial documentation which shall meet the requirements of Government Code Section 3502.5.

- C. **Union Dues and Service Fees.** During the life of this Memorandum, and to the extent the laws of the State of California permit, and as provided in this Article, the District will deduct one month's current and periodic Union dues or service fee based upon a uniform dues schedule from the pay of each employee who has heretofore or shall hereafter execute and deliver to the District a deduction authorization form, or who has deductions made from salary pursuant to Article II Section B above.

When certifying membership dues or service fees, the Union shall use the District's Dues Certification Form.

Payroll deductions shall be made only from the pay due employees on the first payday of each calendar month; provided, however, the initial deduction for any employee shall not begin unless (1) a properly executed "Authorization for Deduction of Union Dues or Service Fees" and the amount of the monthly membership dues or service fees certified by the Secretary of the Union have been delivered to the District at least thirty (30) calendar days prior to the first payday of the calendar month before the change will become effective; or (2) pursuant to Article II Section B.

All sums deducted by the District shall be remitted to the Union at an address given to the District by the Union, once each month by the fifteenth (15<sup>th</sup>) calendar day following the payday on which the deductions were made, together with a list of names and the amount deducted for each employee for whom a deduction was made.

The District shall not be liable to the Union by reason of the requirements of this Article for the remittance or payment of any sum other than that constituting actual deductions made from the pay earned by the employee. In addition, the Union shall indemnify and save the District harmless from any liability resulting from any and all claims, demands, suits, or any other action arising from compliance with this Article, or in reliance on any list, notice, certification, or authorization furnished under this Article. The Union agrees to refund to the District any amounts paid to it in error.

The District shall furnish, monthly, a list of all employees (including current addresses) appointed within classifications contained in Attachment A of the Memorandum who are subject to the provisions of the agency shop agreement.

The Union shall furnish the District with its annual audit showing justification for its agency fee.

### ARTICLE III. DISTRICT RIGHTS

- A. **Definition of Rights.** The rights of the District include, but are not limited to, the exclusive right to determine the missions of its constituent departments and divisions; set standards of services; determine the procedures and standards of selection for employment and promotion; direct and assign its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other legitimate reasons; maintain the efficiency of District operations; determine the methods, means and personnel by which District operations are to be conducted; determine the content of job classifications; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work; provided, however, that the exercise of such District rights shall not conflict with the express provisions of this Memorandum.

District and Union mutually intend and agree that District may unilaterally exercise any and all rights reserved by this Article without further meeting and conferring with the Union. It is further mutually agreed that Union and District have met and conferred on all matters reserved to District by this Article and Union does expressly waive any and all rights to further meet and confer on such issues, or any of them, during the period of this Memorandum. Any dispute concerning the interpretation or application of District's rights shall be deemed a grievance and must be processed under Article 16.

The District agrees to apply the rights reserved by this Article in a prudent and reasonable manner; furthermore, the District shall consider the impact that the application of these rights may have on the work force, before applying these rights. The District agrees to make reasonable efforts to mitigate any significant impacts arising out of the application of any and all rights reserved by this Article.

#### ARTICLE IV. NO DISCRIMINATION/HARASSMENT

- A. **No Discrimination.** There shall be no discrimination of any kind by the Union or the District against any employee, to the extent the applicable law prohibits such discrimination because of race, religious creed, color, age, marital status, national origin, ancestry, sex, sexual orientation, political affiliation, physical or mental disability (including HIV and AIDS), or medical condition (cancer or genetic characteristic).

To the extent applicable law prohibits, there shall be no discrimination because of lawful Union activity, Union membership, or non-membership. Grievances alleging discrimination because of political affiliation, union membership, non-membership, or any lawful union activity, are filed with the Manager of Employee Relations-. Grievances alleging discrimination based on an EEO protected category are filed in accordance with District Procedure 105.

- B. **Harassment, Disparate Treatment and Inappropriate Behavior.** In addition to behavior violations of Section A. above, the following behavior will not be permitted, tolerated, nor condoned:

- (1) Dishonesty, including providing false information to District Management about the performance of an employee or circulation of private personnel files;
- (2) Abusive, threatening, or intimidating behavior, gestures or language;
- (3) Physical threats or physical striking of an employee;
- (4) Repeated threats of discipline without counseling, warning, investigations, or a progressive disciplinary approach, including untimely discipline.
- (5) Inequitable treatment regarding the application of District policies, District rules, this MOU, or those items listed in Section A above;

(6) Disrespect toward each other, regardless of position, status, or job responsibilities.

- C. **Accommodation for Disabled Employees.** The Union understands that the District has a lawful obligation under Federal and State law to make reasonable accommodations for qualified individuals with disabilities. Any accommodation will be on a case-by-case basis, and will not be precedential, or constitute a past practice for anyone other than a qualified individual with a disability.

## ARTICLE V. UNION ACTIVITIES

- A. **Union Stewards.** Employees selected by the Union to act as Union representatives shall be known as "stewards". The Union may select six stewards. The names of employees so selected and the areas to which they are assigned shall be certified in writing to the District by the Union. Stewards' duties, functions, and responsibilities shall be limited to investigation activities sufficient to report the matter to the appropriate Business Representative and attending meetings with the District. Only these activities will be paid District time.

B. **District Board Meetings.**

1. **Attendees.** Consistent with District operating requirements, the Union may designate one (1) employee representative to attend each District Board meeting and workshop (which meeting is otherwise open to the public), including the Retirement Board meeting, without loss of time or pay, during his/her regular scheduled work hours provided that he/she attends the meeting.

Authorization to attend such Board meetings must be obtained from the Manager of Employee Relations no later than twenty-four (24) hours prior to the time of such meetings.

2. **District Vehicle Use.** Union representatives are encouraged to use a District sedan or pick-up truck, when available, to attend these meetings. When a District vehicle is not available, the employee shall drive his/her own vehicle and will be eligible for reimbursement as described in Article VII, Section H.
  3. **401k/457 Committee.** In addition, the Union may designate one (1) employee to serve on the 401k/457 Deferred Compensation Committee without loss of time or pay.
- C. **Communication with Employees.** The Union shall have designated for official Union business a specific portion of District bulletin boards with space adequate for the posting of 4 sheets of paper (8.5 inches by 11 inches) or a contiguous area approximately 17 inches wide by 22 inches long. Items placed in the Union section of District bulletin boards shall be signed by an officer of the Union and shall not contain salacious or inflammatory material that is derogatory towards the District, its employees, or its policies. The Union may distribute materials to employees within the classifications it

represents through District mail distribution channels, with all such mailings subject to the prior approval of the Manager of Employee Relations. These provisions may be revoked in the event of abuse after the Manager of Employee Relations consults with representatives of the Union.

- D. **Visits by Union Representatives.** The District agrees that accredited non-employee representatives of the Union, whether local, district council, or international representatives, shall have access to District premises for the purpose of meeting with Union officials or employees when investigating grievances or determining compliance with this Memorandum. Arrangements for visits to District premises for these purposes shall be made through the Manager of Employee Relations. Employee meetings with non-employee Union representatives shall not be paid for by the District.
- E. **Limitations on Union Activities.** Activities involving internal management of the Union such as collection of dues, assessment of other funds, membership meetings, campaigns for office, distribution of literature or conducting of membership drives, shall not be conducted during working hours, in District work areas, or on District property without prior approval of the Manager of Employee Relations. The election of stewards on non-working time may be conducted at work sites when it does not interfere with the operations of the District. Prior notice of two (2) work days shall be given to the work unit supervisor.
- F. **New Employee Orientation.** As part of the District's new employee orientation, the Union shall have fifteen (15) minutes to provide information and answer questions to new employees who are in classifications covered by this Memorandum of Understanding.

## ARTICLE VI. SALARY AND WAGE SCHEDULE

### A. Wages

1. **First Year Increases.** Effective April 30, ~~2007~~22, 2013, the monthly salary rates of District employees covered by this Memorandum of Understanding ~~shall~~will be increased by ~~4.1%~~3.0%.
2. **Second Year Increases.** Effective April 28, ~~2008~~21, 2014, the monthly salary rates of District employees covered by this Memorandum of Understanding shall be increased by the February ~~2008~~2014 San Francisco/Oakland Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) plus ~~0.5~~80%. The minimum increase shall be 2% and the maximum increase ~~6%~~, with no re-opener. ~~If the CPI-W plus 0.5% is greater than 6%, the maximum increase shall be 64.5%.~~
3. **Third Year Increases.** Effective April ~~27~~, ~~2009~~20, 2015, the monthly salary rates of employees covered by this Memorandum of Understanding shall be increased by the February ~~2009~~2015 San Francisco/Oakland Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) plus ~~0.25~~80%. The

minimum increase shall be 2% and the maximum increase 6%, ~~with no re-opener. If the CPI-W plus 0.25% is greater than 6%, the maximum increase shall be 64.75%.~~

4. **Fourth Year Increases.** Effective ~~April 26, 2010~~2018, 2016, the monthly salary rates of employees covered by this Memorandum of Understanding shall be increased by the February ~~2010~~2016 San Francisco/Oakland Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) ~~plus 0.25%~~ plus 0.80%. The minimum increase shall be ~~2.5%~~ and the maximum increase ~~6%, with no re-opener~~ shall be 5.0%.
- B. **Pay Period.** Salaries shall be paid biweekly on Friday of the appropriate week. In the event that this day is a holiday, the preceding day shall be the payday.
- C. **Twenty Year Wage Adjustment.** Each employee covered by this Memorandum shall be entitled to a wage adjustment following completion of twenty (20) years of continuous full-time District service. The adjustment for such employees shall be 2.75% (plus or minus no more than one dollar per month) added to the monthly salaries set forth, exclusive of overtime, night shift differential or standby pay.
- D. **Work-Out-of-Classification.** When an employee temporarily assigned to perform the full range of duties replaces another employee in a higher classification, he/she shall be paid an additional 5% of his/her pay (including shift differential) or the beginning of the range of the higher classification, whichever is greater, for such work. Assignments to perform the work of a higher classification pursuant to this Section, will be tracked by hours worked and shall not exceed 480 hours in a calendar year. By use of this Section, the District will not attempt to avoid District Civil Service Rules and the filling of regular full time positions. The District will make reasonable efforts to distribute work-out-of-class on an equal and rotational basis for qualified employees, beginning with the most senior unit member.
- E. **New Classifications.** The Union recognizes the right of the District to establish new job classifications and to amend existing class descriptions to reflect changes in assigned duties and responsibilities. In the event a substantial change is made in the description of a class represented by the Union, the District will advise the Union of such change and of the salary for the class. Upon request of the Union, the parties shall meet and confer on the salary for the classification. Establishment of salary is not subject to the grievance procedure as contained in this Memorandum.
- F. **Payment for Licenses/Certificates.**
1. **General Provision.** The District shall pay all normal and regular fees incurred in the obtaining of any water treatment and/or distribution licenses or certificates that are required by the District for the job classification of the employee. It is understood that any late or penalty fees, which are not caused by District action, shall not be included in normal or regular fees. The District shall pay actual fees for employees who obtain higher level licenses or certificates than required for



their class but within their normal class series. Employees shall be granted paid time to take tests for any licenses or certificates required for the employee's current job classification.

2. Senior Water Treatment/Water Treatment Operators Over-Certification Premium Payment. Employees in the Water Treatment Operator classification who obtain a Water Treatment Operator's certificate at a higher level than required for their classification shall receive a \$50.00 per month premium. If they receive a second, higher classification certificate, they will receive an additional \$2550.00 per month, for a maximum total of \$75100.00 per month premium. Employees on unpaid status for two (2) consecutive pay periods, due to illness or injury, will have their over-certification premium payments discontinued until they return to work. Employees who request leave without pay (LWOP) for reasons other than illness or injury, will have their over certification premium payments discontinued effective the first full pay period after their leave begins, and their payments will resume once they have returned to work.

3. Senior Water Distribution Operators/Water Distribution Operators Over-Certification Premium Payment. Employees in Water Distribution classifications who obtain a Water Distribution Operator's certificate at a higher level than required for their classification shall receive a \$50.00 per month premium. If they receive a second, higher classification certificate, they will receive an additional \$2550.00 per month, for a maximum total of \$75100.00 per month premium. Employees on unpaid status for two (2) consecutive pay periods, due to illness or injury, will have their over-certification premium payments discontinued until they return to work. Employees who request leave without pay (LWOP) for reasons other than illness or injury, will have their over certification premium payments discontinued effective the first full pay period after their leave begins; and their payments will resume once they have returned to work.

G. Salary on Promotion. The new base salary of an employee who is promoted shall be either the beginning step of the new class, or the step in the salary schedule in the new class which is at least 5% above the employee's current base salary, whichever is the greater amount, provided that in no instance shall the employee's base rate exceed the maximum salary wage rate established and in effect for the new class.

H. Adjustment for Overpayments. In the event an employee is erroneously overpaid by the District, regardless of fault, the District shall recover overpayment by deducting from that employee's regular paycheck either the full amount of the overpayment or ten (10) percent of the employee's gross salary, whichever is less, and continue said deductions for as many consecutive pay periods as necessary until full overpayment is recovered. The District shall not commence recovery by payroll deductions until written notification has been given to the employee at least ten (10) working days in advance, which includes details of the overpayment, and provides the employees with an opportunity to respond before any deduction is made.

**ARTICLE VII. DAYS AND HOURS OF WORK**

- A. **Workday.** The standard workday shall consist of eight (8) consecutive hours of work (exclusive of any unpaid meal period) within a 24-hour period beginning at 12:00 midnight except as otherwise mutually agreed.
- B. **Workweek.** The standard workweek shall consist of five (5) consecutive workdays within a seven (7) day period beginning at 12:01 a.m. Monday and ending at 12:00 midnight Sunday, except as otherwise mutually agreed.

Notwithstanding Section A and the paragraph above, upon request of an individual employee or a group from the work unit, in accordance with the Compressed Workweek Guidelines, the District will investigate and may change the beginning and ending workday hours of that employee, or the workdays and workweeks of employees within any particular work unit, provided the work or the operation of the unit concerned will not be unduly impaired by such adjustment. Such adjustment shall not affect the total length of the workweek. All requests for flexible schedules in accordance with the Compressed Workweek Guidelines will be examined and considered for implementation by the District. The decision of the District on granting or refusing to grant a change in the beginning and ending workday hours or workweek shall be final and conclusive and shall not be subject to the grievance procedure of this Memorandum.

When a shift pattern is requested and agreed to by the majority of the classification within a work unit or plant and approved by the District, all new hires or promotions within the classification that work the shift pattern will be required to adhere to that schedule subject to the requirements of the Compressed Workweek Guidelines.

- C. **Continuous Operations.** In operations in which there is regularly scheduled employment for twenty-four (24) hours per day, seven (7) days per week, the hours of work shall consist of eight (8) consecutive hours per workday and, except during scheduled rotation or relief operation, five (5) consecutive days per workweek (except where alternate schedules are approved by the Division Manager for the work unit).

All members of Local 39 are considered continuous operations for the entire length of this MOU, with the exception of Water Distribution Operators.

In continuous operations, except where such occurs on a regular, recurring basis as part of a rotating shift schedule, employees who are called back to work an eight (8) hour shift after being off their previous shift eight (8) or fewer hours shall be paid one (1) hour at the overtime rate in addition to their pay for such time worked.

When a treatment facility is shutdown as part of a planned seasonal shutdown, employees assigned to work at that facility will be moved to the day shift for the duration of the facility shutdown and will be paid their regular shift differential for the first two weeks of the plant shutdown.

Employees in continuous operations who are required to be at their work stations for eight (8) consecutive hours shall eat during working hours, and shall take their breaks in the general vicinity of their work stations.

In operations where regularly assigned work schedules are changed, the work schedule shall be posted, and changes in schedule shall be posted a minimum of seven (7) calendar days in advance of the effective date of change. In those instances when the District does not meet this advance notice requirement, the operator shall be paid a premium of one (1) additional hour at the overtime rate for the next shift he/she works.

#### Penalty Pay

1. Roving Operators and unassigned Operators shall be notified 120 hours (5 days) in advance of changes in their work schedules. This advance notice shall not apply in cases of illness or other emergencies. In those instances when the District does not meet this advance notice requirement, the Roving Operator shall be paid a premium of one (1) additional hour at the overtime rate for the next shift he/she works.
2. Roving Operators and unassigned Operators shall be notified ~~122~~ 24 hours in advance of changes in work location. In those instances when the District does not meet this advance notice requirement, the Roving Operator shall be paid a premium of one (1) additional hour at the overtime rate for the next shift he/she works.

Seniority in class will determine the assignment of shifts.

- D. **Changes in Days and Hours of Work.** It is understood that, all other provisions of this Article notwithstanding, the hours of work, workday, and workweek practices in effect on the effective date of this Memorandum may be continued at the option of the District; provided, however, changes in such practices shall be subject to prior consultation with the Union.

Notwithstanding the above, the District shall be permitted to schedule shifts one (1) hour earlier or later than current shift starting times. If such shift creates work in two (2) different calendar days, all time will be treated as if it were worked in the calendar day containing the majority of the workday. For example, if the start of the workday is changed from 12:00 midnight to 11:00 p.m., the employee will be paid as if all work commenced at 12:00 midnight.

The District will not temporarily change the scheduled workday or workweek of employees for the purpose of avoiding overtime payments. Employees shall be compensated for time worked in excess of their regularly scheduled workday or workweek as provided in Article 8, Section 8.1. of this Memorandum of Understanding. Nothing herein shall be interpreted as limiting the District's right to reschedule shifts on a long-term or permanent basis as provided in this Article.

- E. **Rest Periods.** Employee work schedules shall provide for fifteen (15) minute rest periods during each one-half (1/2) of the workday. Rest periods shall be scheduled so as not to interfere with efficient operations of the District.
- F. **Meal Periods.** Employees shall be granted a thirty (30) minute lunch period, without pay, except as otherwise provided, scheduled at approximately the middle of the workday. Time taken for meals eaten away from the work location shall be unpaid time.
- G. **Cleanup Time.** Where the nature of the work is such that cleanup is required, work schedules shall be arranged to allow reasonable time for that purpose prior to the end of the workday. The District shall provide facilities for cleanup.
- H. **Reimbursement For Use of Private Car.** The District will reimburse employees at the rate of ~~fifty~~<sup>sixty</sup> one and two tenths cents (~~51.261~~) per mile for each mile they are authorized and required to drive their private cars within the employees' normal areas of operations in the performance of their assigned duties. Annually in July, the District will adjust this amount to conform to the American Automobile Association (AAA) composite per mile cost for a 6-cylinder, 4-door sedan in the 15,000 miles per year category. This information is obtained from the Annual Edition of Your Driving Costs, published by the American Automobile Association, Falls Church, Virginia. In the event such publication is not available, the parties will meet and confer on the new data.
- I. **Fatigue Time.** Employees shall receive full pay for fatigue time if they have worked overtime and the overtime has been completed with less than eight (8) hours between the completion of the overtime and the start of the employee's next regularly scheduled shift. Fatigue time can be taken at the beginning or end of the shift. Fatigue time shall be calculated as follows:
- Subtract the ending time of overtime from the beginning time of the next regular shift.
  - Subtract that figure from eight (8) hours.
  - The difference is the fatigue time due to the employee.

Example. OT is worked from 1:00 a.m. until 4:00 a.m. Regular shift begins at 8:00 a.m. The difference is 4 hours between the end of OT and the beginning of the next regular shift. (8 hrs - 4 hrs = 4 hours of fatigue time due to the employee.)

Employees shall not receive fatigue time if: (a) the overtime is completed more than eight (8) hours prior to the start of their next regularly scheduled shift, or (b) employees are called out to perform overtime work within four (4) hours of the start of their next regularly scheduled shift, or (c) they are assigned to continuous operations.

Fatigue time must be taken during the first or last part of the next regularly scheduled workday. Employees receiving fatigue time shall notify their immediate or after hours supervisor at the completion of the overtime work, if possible, or a minimum of one (1) hour before the start of their next regularly scheduled shift when their fatigue time will be taken.

## ARTICLE VIII. OVERTIME

- A. **Rate of Pay.** One and one-half (1-1/2) times the employee's regular hourly rate of pay shall be paid for all work performed in excess of eight (8) hours per workday or forty (40) hours per workweek except as provided in Article VII, Section B. Time worked at the overtime rate due to Call Time (as defined in Article X) overlap of the employee's regular workday shall be counted in determining the eight (8) hours per workday or forty (40) hours per workweek required to establish a base for overtime. There shall be no pyramiding of overtime pay.
- B. **Limitation and Distribution of Overtime.** No employee shall be required to work more than sixteen (16) hours in any twenty-four (24) hour period. If an employee works thirty-two (32) hours in a pay period on emergency overtime work, that employee will not be subject to non-emergency necessary overtime work in the same pay period unless the employee volunteers for such work. An employee shall be obligated to work non-emergency necessary overtime work to the extent that the employee has not worked thirty-two (32) hours in a pay period as emergency overtime work, (defined below) i.e., emergency overtime hours worked shall reduce the hours' limitation for non-emergency necessary overtime in the same pay period.
- C. **Voluntary Overtime Lists.** Work units having overtime work will establish lists of employees who are available to work overtime on a voluntary basis. The initial order of call when the lists are established shall be by seniority; thereafter, employees will be called on a rotating basis subject to the operating procedure of the work unit. The operating procedure for such lists shall be developed by each work unit and shall take into account the nature of the overtime work available, skills required to do the overtime work, and the operational requirements of the work unit.
- D. **Emergency Overtime.** Emergency or unscheduled overtime is defined as overtime that is not scheduled -a minimum of eight (8) or more hours in advance of the overtime work.

All employees are subject to working in emergency situations. An emergency includes, but is not limited to, situations which involve disruption of service to customers and actual or threatened danger of injury to person or damage to property, or threat to public health and safety.

- E. **Non-Emergency Necessary Overtime.** The District will request volunteers for all available necessary overtime. Overtime work shall be distributed as equally as possible among qualified employees working within the same job classification, within the same work unit. No volunteer may work more than sixteen (16) consecutive hours without approval of the Division Manager.

No employee will be assigned to work more than sixteen (16) hours in any 24-hour period or to work more than thirty-two (32) hours per pay period of non-emergency necessary overtime work. The parties emphasize the distribution commitment contained in Article VIII, Section B, to minimize the impact of assigned overtime on an individual employee. In the event an insufficient number of employees volunteer for necessary overtime, the District shall assign employees to fill vacancies (on a rotating basis) in inverse seniority order in the affected unit and classification. Whenever an employee is on standby, the District will not assign other overtime work to that employee unless the entire rotation of his/her classification has been exhausted and overtime is still necessary. However, an employee shall be permitted to volunteer for overtime during a week the employee is also on standby.

With District approval, employees may trade all overtime assignments. Until a trade is approved, all overtime assignments are part of an employee's job responsibilities.

Employees are expected to comply with overtime assignments and failure to do so shall subject an employee to appropriate discipline. However, an employee who, because of illness or other compelling emergency, is unable to work assigned or scheduled overtime, and who notifies the District a minimum of one (1) hour before the employee is scheduled to report to work, shall not be subjected to disciplinary action for failure to work.

- F. **Compensatory Time.** Compensatory time will be provided at 1.5 hours for each hour of overtime worked. The maximum accrual of compensatory time will be 75 hours in a payroll year. Payroll year is defined as the period beginning with the first pay period for which pay is received in January and ending with the last pay period for which pay is received in December. All overtime worked after an employee has accrued or used 75 hours of compensatory time in a payroll year will be paid at the appropriate overtime rate. All employees who have accrued compensatory time at the end of the last pay period, for which pay is received in December, shall have their compensatory time carried over as compensatory time into the next (following) payroll year. All compensatory time carried over from the last payroll year to the next must be used by the end of the next payroll year or it will be paid off to the employee at the end of the next (following) payroll year at the applicable FLSA rate. Any compensatory time used in the next (following) year will first be deducted from any compensatory time that was carried over from the last payroll year, if any. Compensatory time accrued after the last full pay period of the payroll year, but prior to the end of the calendar year, will be credited and included in the accrual for the following payroll year. Use of accumulated compensatory time shall be scheduled and approved by the District so as not to disrupt the operation of the work units.

- G. **Paid Meals.** Each employee who works continuously two (2) hours or more immediately after a regular scheduled shift workday shall be paid a meal allowance of \$1618.00. In the event such an employee continues to work beyond such first two (2) hours, and such work is not part of the regular shift, the employee shall be paid an additional meal allowance of \$1618.00 for each successive four (4) hour period so worked. In the event an employee works overtime that is not contiguous to his/her regular shift, the employee shall be paid a meal allowance of \$1618.00 for each four (4) hour period worked.

## ARTICLE IX. STANDBY PAY

- A. **Compensation Rates.** An employee assigned to be on call during non-working hours shall receive a premium of twenty-five percent (25%) of his/her base pay during the standby period, provided such employee makes himself/herself available and responds to all calls for work. Overtime work performed during a standby period shall be paid at the rate of one and one-half (1-1/2) times the straight-time hourly rate for the time worked exclusive of such standby premium.

In the event an employee assigned to standby is not called for overtime work because of District error which is verified by the District, the employee shall receive payment equivalent to 2.5 hours at their overtime rate exclusive of special or premium pay provided such employee makes himself/herself available and responds to all standby calls for overtime work during that week.

When an employee is on standby on a day that is designated as a District holiday, the employee shall receive standby pay for three (3) eight-hour standby periods on that holiday, in addition to receiving regular holiday pay.

- B. **Compliance.** Employees are expected to comply with standby assignments and failure to do so shall subject an employee to appropriate discipline. However, an employee who, because of illness or other compelling emergency, is unable to be available for standby, and who notifies the District at the onset of the illness or at the time they become aware of the compelling emergency, shall not be subjected to disciplinary action for failure to be available. Such employee shall only be compensated for the actual time he/she was available for standby.

## ARTICLE X. CALL TIME

- A. **Minimum Call Time Period.** Employees called to work outside of their regularly scheduled shift shall be paid for a minimum of two and one-half (2-1/2) hours at the appropriate overtime rate.
- B. **Shift Overlap.** If the call-time work assignment and the employee's regular shift overlap, the following shall occur:.

1. The time that the minimum call-time guarantee overlaps the employee's regular shift will be paid as a premium using a separate payroll code and will not affect the employee's regular shift or hours. Minimum call-time overlap is a premium pay and is not subject to retirement withholding and will not be counted toward retirement service credit.
2. The District and employee will pay retirement contributions for the regular shift hours worked by the employee at the regular rate of pay and the employee will receive service credit in the Retirement System for the employee's regular shift hours.
3. No retirement contributions will be made for overtime compensation paid to the employee for the minimum overtime guarantee and no retirement service shall be credited for overtime work.

- C. **Rest/M meal Break.** If an employee is called to start work less than two and one-half (2-1/2) hours before the start of his/her regularly scheduled shift, the employee shall be allowed a fifteen (15) minute break prior to the start of his/her shift. If the employee is called to start work two and one-half (2-1/2) or more hours before the start of his/her regularly scheduled shift, he/she shall receive a thirty (30) minute paid meal break prior to the start of his/her regular shift.

#### ARTICLE XI. SHIFT DIFFERENTIAL

- A. **Definition and Compensation for 8-Hour Shifts:** Employees who work a scheduled eight (8) hour shift between the hours specified below shall receive shift differential as follows:

1. Beginning -at 11:00 a.m. through 10:59 p.m. an additional 10% of his/her hourly rate per hour.
2. Beginning at 11:00 p.m. through 3.59 a.m., an- additional 15% of his/her hourly rate per hour.

- B. **Definition and Compensation for 12-Hour Shifts:** Employees who work a scheduled twelve (12) hour shift between the hours specified below shall receive shift differential as follows:

1. Beginning at 7:00 a.m. through 7:00 p.m., no shift differential.
2. Beginning at 7:00 p.m. and 7:00 a.m., an additional 15% of his/her hourly rate per hour.

- C. **Continuous Operations.** In continuous operations, when an employee's shift is extended by additional hours either before or after the normal shift, overtime compensation shall be



based on the hourly rate for the shift that was extended or actually worked, whichever is greater.

## ARTICLE XII. CONTRACTING AND SUBCONTRACTING

- A. **Right to Contract.** The rights to contract and subcontract are vested exclusively in the District; provided, however, if such contracting or subcontracting work would result in the layoff of an employee in a classification set forth in Attachment A, the District will consult with the Union, prior to such contracting or subcontracting, in an attempt to avert, by reassignment or other reasonable means, the layoff of such employee.

## ARTICLE XIII. LEAVE PROVISIONS

### A. **Holidays.**

#### 1. **Legal Holidays.**

- (a) The following legal holidays will be granted eligible employees:

|                                    |                             |
|------------------------------------|-----------------------------|
| New Year's Day                     | January 1                   |
| Martin Luther King, Jr.'s Birthday | Third Monday in January     |
| Lincoln's Birthday                 | February 12                 |
| Washington's Birthday              | Third Monday in February    |
| Cesar Chavez' Birthday             | March 31                    |
| Memorial Day                       | Last Monday in May          |
| Independence Day                   | July 4                      |
| Labor Day                          | First Monday in September   |
| Admission Day                      | September 9                 |
| Veterans' Day                      | November 11                 |
| Thanksgiving Day                   | Fourth Thursday in November |
| Day after Thanksgiving             |                             |
| Christmas Day                      | December 25                 |
| Floating Holiday                   | See Section 4               |

2. **Alternative Days.** When a holiday falls on Sunday, the following Monday shall be observed as the holiday. When a holiday falls on Saturday, the preceding Friday shall be observed as the holiday. This paragraph does not apply to shift employees in continuous or seven (7) day operations (see paragraph XIII5d).
3. **Eligibility.** Full-time employees shall receive the above holidays off with no loss in pay when both the following conditions are satisfied:
- (a) The employee works or is on Authorized Leave (with or without pay) on his/her scheduled workday immediately before and immediately after the holiday; and

- (b) The employee is in a paid status for at least 8 hours within the payroll period in which the holiday falls.
- 4. Floating Holiday. In addition to the holidays specified above, each employee shall receive one floating holiday per calendar year. If the floating holiday is not used by the end of the payroll year, defined as the last period for which pay is received in December, it shall be forfeited for that calendar year. Use of this floating holiday after the payroll year but prior to the end of the calendar year will be charged against the following year's entitlement.
- 5. Holiday Pay.
  - (a) Employees who work on a designated holiday shall receive overtime pay for hours worked in addition to their regular straight-time pay.
  - (b) Employees whose scheduled day off falls on a designated holiday shall receive a day's pay at the straight-time rate; such employees who work on a designated holiday shall, in addition, receive overtime for hours worked.
  - (c) In the event that a holiday falls on an employee's day off, (including an employee's compressed day off) the employee will be credited with eight (8) hours of vacation, or the employee may choose to receive holiday pay, to be added to 80 hours of regular pay (a total of 88 hours at regular rate for the pay period). If the employee does not indicate that he/she wishes to receive holiday pay, the holiday will be added to his/her vacation accrual.
  - (d) In continuous operations and seven (7) day operations, the employee will receive the actual holiday according to the stated conditions, instead of the District observed holiday.
- 6. Holiday Pay Retirement Contributions and Career Credit
  - (a) Eight Hour Work Schedule. Employees who work in a 24-hour continuous operation or a 7-day per week operation and are scheduled to work on a holiday and actually work on the holiday as specified in the 2003 MOU between the District and Local 39 shall receive the following:
    - 1. Eight (8) hours of regular straight time pay for the holiday worked that will be subject to retirement contributions from both the District and employee and be counted toward retirement service credit.
    - 2. Eight (8) hours of holiday pay at the straight time rate that the employee may choose either to receive as pay or add to their vacation accruals. If taken as pay, holiday pay is a premium pay

and is not subject to retirement withholding and will not be counted toward service credit.

3. Four (4) hours of holiday premium at the regular straight time rate that may be paid or added to compensatory time accruals in accordance with the 2003 MOU between the District and Local 39. If taken as pay, holiday premium pay is not subject to retirement withholding and will not be counted toward service credit. The four (4) hours of holiday premium pay will be reported using a separate payroll code.

(b) Compressed Work Week Schedule. Employees who work in a 24-hour continuous operation or a 7-day per week operation and work on a compressed workweek schedule and are scheduled to work on a holiday and actually work on the holiday as specified in the 2003 MOU between the District and Local 39 shall receive the following:

1. Nine (9), ten (10) or twelve (12) hours of regular straight time pay for the worked holiday depending on the duration of their regularly scheduled workday that will be counted toward retirement service credit and be subject to retirement contributions from both the District and employee.
2. Eight (8) hours of holiday pay at the straight time rate that the employee may choose either to receive as pay or add to their vacation accrual. If taken as pay, holiday pay is a premium pay and is not subject to retirement withholding and will not be counted toward retirement service credit.
3. Holiday premium pay equal to one-half of the duration of the employee's regularly scheduled workday at their regular straight time rate, that may be paid or added to their compensatory time accruals in accordance with the 2003 MOU between the District and Local 39. If taken as pay, holiday premium pay is not subject to retirement withholding and will not be counted toward retirement service credit. The holiday premium pay equal to one-half of these regularly scheduled hours worked will be reported using a separate payroll code.
4. No retirement contributions shall be taken from overtime compensation paid to the employee for holidays and no retirement service credit for overtime work.

7. Holiday During Vacation. Holidays that fall during a vacation shall not be charged against vacation credits.

8. One Day Special Birthday Float. Each employee shall be granted special leave for his/her birthday based on the employment status of that employee, not to exceed a total of eight (8) hours within the payroll year of his/her birthday. The District will make every reasonable effort to accommodate an employee's request for a specific special leave day off, subject to the operational needs of the District. This birthday float must be taken by the beginning of the last pay period in December.

**B. Vacations**

1. Eligibility and Allowance. Eligible employees shall accrue vacation leave on the basis of hours paid as follows:

| <u>Continuous Service Years</u> | <u>Vacation Leave Hours<br/>Per Pay Period</u> | <u>Vacation Days<br/>Per Year</u> |
|---------------------------------|--|-----------------------------------|
| 1st through 4th                 | 3.692  | 12                                |
| 5th through 9th                 | 4.616  | 15                                |
| 10 years                        | 5.539  | 18                                |
| 11 years                        | 5.539  | 18                                |
| 12 years                        | 5.539  | 18                                |
| 13 years                        | 5.847  | 19                                |
| 14 years                        | 6.154  | 20                                |
| 15 years                        | 6.462  | 21                                |
| 16 years                        | 6.770  | 22                                |
| 17 years                        | 7.077  | 23                                |
| 18 years                        | 7.385  | 24                                |
| 19 and subsequent               | 7.693  | 25                                |

2. Initial Use. At any time after completion of six (6) months of service, an eligible employee may use the six (6) vacation days credited for the first six (6) months of employment. Thereafter, employees may use vacation leave equal to the accrued vacation leave credited to their account.
3. Use of Vacation. A maximum of 50 vacation leave days (400 hours) may be deferred by employees. Any employee with deferred vacation accrual in excess of 50 days (400 hours) at the end of any calendar year shall have his or her vacation leave balance adjusted and reduced to 50 vacation days (400 hours) at the beginning of the first payroll period in January unless there is specific written authorization from the General Manager to exceed such limit. If any employee retains more than 400 hours after the three (3) month period, the District will automatically convert to pay all hours in excess of 400 hours as of the last payroll period in December. The District will discontinue the additional notification of employees by letter of vacation leave balances in excess of 400 hours effective with the end of the 2007 payroll year.

4. Choice of Vacation.

- (a) Whenever possible, vacations shall be scheduled for the time requested by the employee. In order to avoid undue disruption of work activities or to minimize conflicts with other employees' vacations, the Division Manager or designee may place reasonable seasonal or other restrictions on the use of vacation.

- (b) Annual Vacation Bid Lists. The Water Treatment Section establishes vacation lists by job classification for each plant. Vacation selection will be by District seniority on plant lists.

1. The most senior District employee on each list will make his/her first vacation choice and pass the list to the employee next on the seniority list. (The employee will make a selection within five (5) consecutive workdays after receiving the list. If the employee does not select vacation within the five (5) day period, he/she waives selection for that vacation cycle and the list moves on to the next most senior District employee.) The list will be complete when all employees have made up to six (6) vacation choices.

- (c) Supervisors shall recommend the completed schedule to the Division Manager or designee. After the vacation schedule has been approved by the Division Manager or designee, an employee promoted or transferred into a unit may not "bump" another employee's previously scheduled vacation period without that employee's consent.

5. Vacation on Separation. An employee eligible for vacation who is separated from District service for any reason shall receive a lump sum payment for any unused, earned vacation.

6. Vacation Sell Back. An employee may sell back a maximum of eighty (80) hours of vacation leave to the District in one hour increments during the payroll year. Payments to employees resulting from such sell back of vacation shall not be considered "compensation" as defined in the Retirement Ordinance for the purpose of calculating terminal compensation.

7. Unscheduled Vacation, Compensatory Time, and Floating Holiday Leave.

- a. Supervisors shall approve leave requests for unscheduled (not included in annual bid) vacation, compensatory time off, and floating holiday leave if the following conditions are satisfied:

- 1) Leave is requested at least two (2) weeks in advance.

- 2) Coverage is available for the shift (the Roving Operator is available, there are no conflicting training requirements, or other disruptive schedule changes required for other operators).
  - 3) There is no operational need to deny the leave as determined by the supervisor.
  - 4) Leave requested less than two (2) weeks in advance will only be considered on a case by case basis.
- b. Leave Requests When Another Operator Already Has Approved Leave Or When Bid Shift Coverage Is Not Available. When an employee requests leave for the same period that another employee already has approved leave or when coverage for a bid shift is not available, the supervisor will consider the following factors in evaluating the leave requests:
- 1) Leave is requested at least two (2) weeks in advance.
  - 2) There is no operational need to deny the leave as determined by the supervisor.
  - 3) No significantly disruptive schedule changes are required for other operators.
  - 4) Controllable plant overtime is within acceptable limits.

C. Sick Leave.

1. Eligibility. Any represented employee who, through no fault of his/her own, is unable to be present to perform his/her duties due to illness, injury, medical or dental treatment, or serious medical emergency in the employee's immediate family shall be granted sick leave in accordance with the provisions of this Section.
2. Accrual. Employees shall accrue four (4) hours of sick leave- for each full biweekly pay period of continuous service, to a maximum of 1040 hours (130 days). There shall be no sick leave accrual for any workday of unpaid leave in excess of twenty (20) workdays in a calendar year.
3. Use. All sick leave used shall be deducted from the employee's accrued sick leave, with the minimum chargeable time being thirty (30) minutes. When accrued sick leave is exhausted, unpaid sick leave may be granted.
4. Sick Leave/FMLA. Eligible employees who are on paid sick leave or job injury leave will be granted simultaneous leave under the FMLA, after an absence of thirteen (13) consecutive workdays, effective January 1, 2004.

5. Family Sick Leave. When employee absence is required due to serious medical emergency in the employee's immediate family (i.e. mother, father, stepmother, stepfather, husband, wife, registered domestic partner, son, daughter, stepson, stepdaughter, brother or sister) a maximum of thirteen (13) days (104 hours) of accrued sick leave may be used in a payroll year. Payroll year is defined as the period beginning with the first pay period for which pay is received in January, and ending with the last pay period for which pay is received in December.
6. Substitution of Sick Leave for Vacation. If an employee becomes ill and takes sick leave before a scheduled vacation begins, the starting date of vacation may be postponed or vacation rescheduled as approved by the District. If an employee becomes ill after his/her last workday before vacation begins or during vacation and the illness extends more than two (2) vacation days, accumulated sick leave shall be substituted for vacation leave for each full day involved. Each vacation leave day that an employee was hospitalized may be converted to sick leave upon submission of satisfactory evidence of hospitalization. Request for such substitution shall be made when the employee returns to work, unless he/she wishes to extend his/her absence, in which case he/she shall contact his/her supervisor before he/she is scheduled to return to work. Request for sick leave substitution shall be accompanied by a doctor's statement or other satisfactory evidence verifying the length of time the employee was incapacitated.
7. Limitations. An employee who is unable to report for work and who fails to notify his/her supervisor in accordance with work unit procedures, may not qualify for paid sick leave. An employee whose illness or injury arises out of non-District employment is not entitled to sick leave. All sick leave use is subject to review, verification and approval by the District. A doctor's certificate indicating time under doctor's care, approval for return to work, and any work limitations is required if sick leave extends to ten (10) consecutive workdays or more. Upon return to work from sick leave, the employee's supervisor and Department Director/Division Manager may require an employee to be evaluated by a District-selected physician, if there is reasonable concern about the employee's fitness for duty, or endangering the health of other employees. These evaluations will be conducted on District time.
8. Retirement Credit. Consistent with the terms and conditions of the Retirement Ordinance, when an employee's sick leave accumulation reaches the maximum of 1040 hours (130 days), any hours which would have otherwise accrued thereafter shall be accumulated without limit. Such hours, when added to the existing sick leave accumulation, become Service Extension Credit, to be applied when computing the employee's retirement allowance.
9. Service Extension Credit/Conversion. When an employee is released for return to work as shown by medical evidence satisfactory to the District, after sick leave extending for ninety (90) calendar days or more, the hours of sick leave taken shall be restored to the employee's sick leave account by deducting that number of hours from any service extension credit in the employee's account at the time of

return to work to a maximum of five hundred twenty (520) hours. Such sick leave shall be credited and available for use after the employee's return to work.

10. Sick Leave Buy Back. Employees who use 18 hours or less of sick leave in a six month period are eligible to sell back 8 hours or 16 hours of sick leave to the District. Eligible employees may also convert 8 hours or 16 hours of sick leave to vacation hours.
11. Sick Leave Pay-Out in Lieu of Service Extension Credit. Employees who separate from service due to retirement shall have the option of receiving a lump sum cash payment equal to the value of fifty percent of the accrued hours in the employee's sick leave account and Service Extension Credit account, at base rate, not including shift or other differential or premiums, less applicable taxes, instead of and in lieu of receiving the Service Extension Credit pursuant to Article XIIC 9 and the Retirement Ordinance. Such lump sum payment shall not be considered "compensation" as defined in the Retirement Ordinance for the purpose of calculating terminal compensation.

**D. Special Leave.**

1. Death in Family. In the event of death in an employee's immediate family (i.e., mother, father, stepmother, stepfather, husband, wife, son, daughter, stepson, stepdaughter, brother, sister, domestic partner, grandparent, grandchild or any other person sharing a comparable relationship resulting from a registered domestic partner relationship), the employee shall be granted 40 hours special leave.
2. Funeral of Relative. An employee shall be granted eight (8) hours of special leave to attend the funeral of a close relative not in the employee's immediate family. Close relative includes, spouse's grandparent, mother-in-law, father-in-law, daughter-in-law, son-in-law, , sister-in-law, brother-in-law, spouse's sister-in-law, spouse's brother-in-law, and employee's aunt, uncle, niece, nephew, and first cousin.
3. Other Deaths. An employee may request authorization by the General Manager or his/her designee for special leave involving deaths other than those listed in paragraphs XIII D1. and XIII D2 above, where the employee considers special leave justified. The decision of the General Manager is final and not subject to appeal.
4. Death in Family, Funeral of Relative, and Other Death Leave Use. This leave shall be taken immediately following the death of the person unless, because of extenuating circumstances, another specified time is required and specific written authorization is granted by the General Manager to defer such leave to another specified period of time.



5. Jury Duty. An employee shall be granted necessary special leave for jury duty as detailed in an appropriate summons or order. The employee must immediately notify the supervisor when s/he receives a jury duty summons and provide a copy of the instructions that s/he receives. Employees shall follow the instructions of the jurisdiction for which they are summoned, but must report back to work as soon as possible if not required to be present for jury duty or if released from jury duty during the workday.
6. Court Appearance. An employee subpoenaed to appear before a court or other public body on any matter not related to his/her work shall be granted special leave for such purposes. Such leave shall not be granted if the employee is the plaintiff or defendant or if the court appearance is for domestic relations matters.
7. Military Physical Examination. An employee shall be granted special leave to take a required military physical examination.
8. Military Leave. The District shall grant military leave in accordance with applicable laws of the State of California.
9. Blood Donations. Consistent with District operating requirements, employees shall be granted special leave of two (2) hours for giving blood donations at the District, Union, accredited hospital or Red Cross blood banks.
10. Voting Time. An employee who is eligible to vote in primary and general elections shall be granted special leave, when required, not to exceed two (2) hours, at a time when the polls are open, in accordance with California State Law.

**E. Job Injury Leave.**

1. Eligibility. Job injury leave shall be granted an employee who is unable to report to work following an injury or industrial disease which arises out of and during the course of his/her employment, provided that:
  - (a) Requests for leave are accompanied by a statement from an authorized treating physician indicating the nature of the injury and an estimate of the time the employee will be incapacitated from work; and
  - (b) The reported injury or disease is accepted as compensable by the District Workers' Compensation Administrator.
2. Compensation. When a job injury leave is authorized, the District will grant paid leave or supplement payments made by the Workers' Compensation Administrator so that the employee will suffer no loss in his/her regular pay for a period not to exceed 480 total hours for each such authorized injury. When lost time totals 480 hours, the employee may choose to receive, or he/she may choose to use, his/her accrued sick leave and/or vacation leave and/or compensatory time to supplement his/her compensation payments so that he/she will suffer no loss in his/her regular

pay until such accrued sick leave and/or vacation leave and/or compensatory time is exhausted.

3. Designation of Employee Personal Physician. Notwithstanding the above, pursuant to and consistent with applicable law, an employee may seek treatment from his/her personal physician. The employee must select his/her personal physician thirty (30) days prior to the injury by submitting a completed "Designation of Personal Physician". The personal physician must have treated the employee previously and maintain records of prior treatment. If a chiropractor is selected, the employee must initially see a District-designated physician.
4. Job Injury/FMLA Job injury leave used will be applied against entitlement to leave under the Family Medical Act (FMLA).
5. Reemployment-Preference After Job Injury. A former regular employee of the District currently not a District employee as a direct result of disabling job injury shall be granted reemployment preference as follows:
  - (a) An employee who has recovered sufficiently in the opinion of a District-selected physician to resume his/her former duties shall be offered the first vacant position in the employee's former classification.
  - (b) An employee as described above, or an employee who has been rehabilitated and retrained for another occupation because of a disabling job injury, who has been placed on a District employment list and is eligible for consideration for a position, shall be selected to the first vacant position.
6. The preference described above shall be in effect for a period of two (2) years beginning with the date that the employee is determined to be rehabilitated, or a total of four (4) years from the date of termination, whichever is less. The preference shall be given unless:
  - (a) Mandatory selection or reinstatement of another person is required by the Civil Service Rules, the Retirement Ordinance, or law; or
  - (b) The General Manager determines that selection for a specific position would be contrary to the interests of the District.

#### **F. Unpaid Absences**

1. General Provisions.
  - (a) Leave of absence without pay for any reasonable purpose shall be granted an employee for up to six (6) months whenever the work of the operation concerned will not be unduly impaired by such absence. Leave without pay may be extended for additional periods not to exceed thirty (30) days each

with the approval of the General Manager. When it qualifies, unpaid leave of absence used will be applied against entitlement to leave under the Family Medical Leave Act (FMLA).

- (b) There shall be no loss of vacation or sick leave credits for leaves without pay of 160 hours or less in a payroll year; thereafter, there shall be no accrual of vacation and sick leave for any workday of unpaid leave. All leave without pay except unpaid sick leave is deducted from an employee's service when computing retirement credits. All employees who are hired after January 1, 2004 shall not receive retirement credit after 18 months of unpaid sick or job injury leave.
  - (c) Insurance benefits at District expense for employees on unpaid sick leave shall be terminated after eighteen (18) months of unpaid sick leave.
2. Limitations on Leave. Employees must exhaust all accrued vacation before becoming eligible for unpaid leaves of absence; however, upon agreement between the employee and his/her supervisor, in extenuating circumstances, such unpaid leave shall not be unreasonably denied. FMLA leave, and educational leave shall be exempt from the operation of this paragraph.
  3. Family Medical Leave. Leave of absence without pay shall be granted for the birth or adoption of a child or for the serious health condition of a child, parent, or spouse, in accordance with the Family Medical Leave Act (FMLA).

#### ARTICLE XIV. INDIRECT PAY AND ALLOWANCES

- A. Health Insurance. The District shall provide health plan coverage to eligible employees and dependents in each approved District Health Plan that currently includes:
  1. Kaiser Foundation Health Plan. The District shall pay the full cost of premiums for eligible employee and eligible dependent coverage in the Kaiser Foundation Health Plan. During the life of the MOU, the following co-pays and deductibles will be in effect, unless a change is mandated by the provider.
    - Office visit co-pay      ~~\$10~~\$15; \$20 effective January 2008;~~\$15~~ effective January 2011-2017
    - Prescription co-pay      \$10/\$15 effective January 2008
    - Emergency room visit    \$50; \$75 effective January 2011-2017 (waived if admitted)
  2. Association of California Water Agencies/Joint Powers Insurance Authority -Blue Cross (ACWA/JPIA -BC). The District shall pay the full cost of premiums for

eligible employees only in the ACWA/JPIA -BC health plan. The District will pay 85% of the costs of premiums for the employee plus dependents and the remainder shall be paid by the employee by payroll deduction. During the life of the MOU, the office visit co-pay for ACWA-BC will be \$15.00 and the prescription drug co-pay will be \$5.00/\$15.00 for generic and brand name drug types, respectively, unless a change is/JPIA -BC will be set as mandated by the provider.

3. Health Net California. The District shall pay the full cost of premiums for eligible employees only for Health Net California Health Plan. The District will pay 85% of the costs for the employee plus dependents and the remainder shall be paid by the employee by payroll deduction. During the life of the MOU, the following co-pays will be in effect, unless a change is mandated by the provider.

- Office visit co-pay \$10 ~~\_\_\_\_\_~~ \$15; \$20 effective January 2008; \$15 effective January 2011~~2017~~
- Prescription co-pay ~~\_\_\_\_\_~~ \$10/\$15/\$35 effective January 2008
- Emergency room visit ~~\_\_\_\_\_~~ \$50; \$75 effective January 2011~~2017~~ (waived if admitted)
- Hospital inpatient copay \$50; \$100 effective January 2017

4. For employees without access to Kaiser Health Plan, the District will pay 100% of the medical insurance premium for the employee and dependent coverage in either of the other available District health plans (currently Health Net and Blue Cross). However, if the employee should become eligible for Kaiser, District coverage will be provided as described in paragraphs 1, 2 and 3 above.

5. ~~If Federal or State legislation is enacted which will impact The amount of the District's health plans or practices, the parties will reopen negotiations to the extent necessary to comply with the mandatory provisions of any legislation.~~

6. Dual Enrollment. If an employee receives cash-in lieu (currently \$150 per month) provided to employees who receive medical insurance coverage through their spouse or partner and elects not to receive District-paid medical insurance coverage, the employee shall receive \$150 per month (\$69.23 will increase or decrease by \$10 for every employee who so elects, with a baseline of the current number of 58 District employees, with a minimum of \$150 per pay period) in addition month to a maximum of \$450 per month. The District will count the number of employees who elect not to their regular pay. The additional money will be included in the employee's regular paycheck. In no case may an employee receive the additional money in the absence of District-paid medical insurance coverage through their spouse or partner in December of each year of the MOU and adjust the cash-in-lieu amount effective the following January 1st.

- B. **Life Insurance.** The District shall pay the cost of employee premiums in the existing group life insurance plan. The face value of the basic life insurance shall be one and one-half times the employee's annual salary rounded to the nearest \$1,000. This includes double indemnity for non-occupational accidental death and dismemberment according to scheduled benefits. Increases in costs, which may occur during the term of this Memorandum, shall be borne by the District.

Effective August 1, 1998, the District shall provide supplemental life insurance at the employees' option and expense.

- C. **Dental Insurance.** The District shall pay the cost of premiums for those employees and eligible dependents enrolled in the group insurance plan with Delta Dental and to provide 100 percent basic coverage (50 percent prosthodontics) to a maximum benefit of \$2000 per year with a deductible of \$15 for the employee and eligible dependents up to a maximum of three (3) such deductions per family unit per year. Increases in costs, which may occur during the term of this Memorandum, shall be borne by the District.

**Orthodontic Benefits.** The District shall provide for orthodontic benefits and coverage for all eligible employees and dependents. Such coverage shall be 50/50 co-insurance with a three thousand (\$3000) dollar lifetime maximum per patient with no deductible. Employees hired on or after July 1, 1985, will have a one-year waiting period without claims for orthodontic coverage.

- D. **Disability Insurance.** The District agrees to continue the existing salary continuation plan (voluntary group long-term disability insurance) and to pay the full cost per month toward the premium for each employee.

- E. **State Disability Insurance (SDI) and Paid Family Leave.** Employees represented by Local 39 shall have the SDI premiums deducted from their individual salaries at the rate determined by the State of California. When an employee sustains an injury or illness that qualifies him/her to receive SDI payments, the employee will request SDI payments from the State. When an SDI covered employee needs to care for a parent, child, spouse or domestic partner who is seriously ill or unable to care for themselves, the employee may apply for Paid Family Leave Insurance compensation.

An employee must first use accrued sick leave (limited to 104 hours per year for family medical related leave) to supplement SDI/Paid Family Leave payments. Subsequently, vacation and/or compensatory time may also be used to supplement SDI/Paid Family Leave payments if requested in advance in writing. Coordination of vacation leave balances and/or compensatory time with SDI/Paid Family Leave will not be made retroactively. Using sick or vacation leave and/or compensatory time to supplement SDI/Paid Family Leave payments is subject to the following conditions:

- (a) The combined total of the SDI/Paid Family Leave payment and accrued leave and/or compensatory time payment does not exceed 100% of the employee's regular biweekly salary; and

- (b) The employee provides a copy of his/her SDI/Paid Family Leave benefit check to the District or authorizes the District to directly receive his/her SDI/Paid Family Leave benefit check so that State and District benefit payments can be coordinated as described in (a) above.

F. **Insurance Providers/Self-Insurance.** Except for the Kaiser Foundation Health Plan, the District may change or eliminate the carriers or providers of any of the benefits set forth in this Article or self-insure (provided that there is no decrease in benefit levels), and provide an equivalent plan under Sections A, B, C, and/or D, set forth above, provided the Union is notified in writing prior to such change. Upon written request, the District will consult with the Union concerning such change. Whenever any insurance carrier refuses to provide coverage for any specific benefit or proposes an increase in its premium of more than twenty percent (20%), the District, after consultation with the Union, may change carriers or benefits as long as a good faith, reasonable effort is made by the District to provide comparable available benefits.

G. **Supplemental Benefits/Salary Reduction Plan/Deferred Compensation Plans.**

1. **Supplemental Benefits Program.**

- (a) The District will make payments for eligible employees under IRS Code Section 125 in the amount of:
- \$855 effective January 1, 2008
  - \$905 effective January 1, 2011
- (b) Employees will be eligible for supplemental benefits upon hire.
- (c) Program payments shall be made following the first payroll period of each calendar year based on the employee's submittal of receipts. For those who elect to receive cash on a taxable basis, a lump sum amount will be paid after the first quarter of the year.
- (d) The District may, after consultation with the Union, add or delete on future calendar years any IRS Code Section 125 - approved benefits.
- (e) A third party administrator will administer the program including making payments or reimbursements provided for by the program and IRS Code provisions.

2. **Salary Reduction Plan.**

- (a) The District shall establish a salary reduction plan as provided by Section 125 of the Internal Revenue Service Code permitting employees to designate a portion of their annual salary to be withheld and subsequently used to provide pre-tax reimbursement for verified medical and dependent

care expenses subject to the rules of the IRS and other governing regulations.

- (b) The maximum annual amount that may be deducted from the employee's annual salary for reimbursement of non-medical dependent care expenses is \$5,000 minus the District's contribution. The maximum amount that may be used for reimbursement for personal and dependent medical expenses is \$5,000 plus the District's contribution.
- (c) All medical and dependent care expenses for which reimbursement is required must comply with the requirements of the IRS Code.

### 3. Deferred Compensation Plans

- (a) Employees represented by the Union, are eligible to participate in the District's 401(K) plan deferred compensation program in accordance with IRS rules, regulations and District procedures.
- (b) 457 Plan. All employees who work in classifications represented by the Union are eligible to participate in the District's 457 deferred compensation program in accordance with IRS rules, regulations and District procedures.
- (c) Deferred Compensation Administrative Fees.  
The District will pay up to a maximum of \$105,500 annually for District-wide administration of the 401K/457 deferred compensation programs. If administrative fees exceed \$105,500, the participating employees in the program will assume the additional costs.
- (d) Exclusions. Employees who participate in any District deferred compensation plan may not defer sick leave buyback payments to their deferred compensation accounts.
- (e) Employees represented by the Union, are eligible to participate in the District's 401(A) plan deferred compensation program in accordance with IRS rules, regulations and District procedures.

H. Vision Insurance. The District shall pay the cost of premiums for those employees and eligible dependents enrolled in the group Vision Service Plan, Plan B with \$10 co-payment. Increases in costs which may occur during the term of this Memorandum shall be borne by the District.

### I. Legacy Employee Retirement System

1. Eligibility for the Employee Retirement System (ERS). Local 39 represented

employees are eligible to participate in the District's ERS in accordance with IRS rules and regulations and the District's "Employee Retirement System Ordinance".

2. Employee Contribution Rate. ~~The employee contribution rate will be 6.83%.~~
  - a) The employee contribution rate will be 7.33% effective April 22, 2013, and thereafter:
  - b) The employee contribution rate will be 7.83% effective the last full pay period in the month of April 2014.
  - c) The employee contribution rate will be 8.33 % effective the last full pay period in the month of April 2015.
  - d) The employee contribution rate will be 8.75 % effective the last full pay period in the month of April 2016.
3. The employee contribution rates reflected above will be fixed as of the dates specified above unless the parties agree to an improvement in current retirement benefits through the meet and confer process.
4. Any improvements made by the District to current retirement benefits during the life of this agreement, such as improvements to HIB and COLA, shall be made solely at the District's expense.

## ARTICLE XV. PERSONNEL PROVISIONS

- A. Probationary Period. There shall be a twelve (12) month probationary period for all newly hired employees, during which time employees may be discharged without cause.
- B. Personnel Files
  1. Review of Employee Personnel File. Employees shall have the right to review their personnel files pursuant to applicable State Law. No information shall be placed in an employee's personnel file without the employee receiving a copy of the information. The employee shall have the right to respond to any such material.
  2. Confidentiality.
    - (a) Employee personnel files shall be held in strict confidence by the District and shall be subject to inspection only by officials of the District acting on official District business, or by the employee or Union officials in accordance with the employee's written instructions (which shall be filed in the personnel file), or as otherwise required by law (such as by subpoena).



- (b) In the event that a prospective employer, creditor, or other person contacts any District supervisor to obtain job reference information on any former or current District employee, the information given out shall be limited to verification of employment, length of employment, and verification of salary range if the person inquiring first states a salary in the correct range to the District.

3. Disciplinary Documents. All disciplinary documents in an employee's personnel file (with the exception of suspension letters), will be removed from the file three (3) years after date of issuance at the request of the affected employee. Letters of suspension shall be removed after three (3) years, at the request of the employee if no additional written disciplinary action (warning or suspension) has been imposed within the three (3) year period following the initial -suspension. There must be a three (3) year period without any documented disciplinary action before a -suspension letter shall be removed from the employee's personnel file.
4. Counseling Memos. Counseling memos will be removed from a supervisor's file after one (1) year unless the employee has not corrected the work performance or work behavior that led to the counseling memo and has received another counseling memo or been disciplined. Supervisors may specify time frames shorter than one (1) year for removal of counseling letters from the supervisory file.

**C. Reduction In Force/Demotion And Appeals**

1. **Reasons.** An employee may be separated from District employment by reduction in force due to lack of work or funds, retrenchment, or completion of work. The District shall notify the union of its intent to implement a reduction in force no less than thirty (30) calendar days prior to its effective date. The notice shall include the reason for the layoff, the classifications and positions affected, the names of the employee(s) subject to separation by reduction in force, and the seniority information associated with the reduction in force.
2. **Application.** Reduction in force in a given classification shall be from all positions in the classification on a District-wide basis.
3. **Priority.** Reduction in force shall first affect employees having provisional or probationary appointments in the classification in question. Thereafter, employees having permanent appointments in the classification shall be subject to reduction in force in inverse order to the length of their continuous service within the affected classification.
  - 3.1. Length of service for the purpose of Section 3 shall mean an employee's continuous uninterrupted service from the effective date of appointment as a probationary, part-time, or less than full-time (Intermittent) employee
  - 3.2. An interruption in length of service within a classification shall occur as a result of any one of the following:
    - a. Discharge for cause
    - b. Voluntary resignation
    - c. Retirement for service or disability
    - d. Absence from work for thirty-six (36) consecutive months because of layoff
    - e. Failure to return from layoff as provided in Article XV C 6
    - f. Failure to return from an approved leave of absence upon the date specified for return at the time said approval was granted
    - g. Unapproved leave of absence without pay of any length

Acting appointments to a classification shall not be construed as service in such classification unless such acting appointment was contiguous with appointment to such classification in a probationary, part-time, or less than full-time (Intermittent) status.

4. **Demotion to Previously Held Classifications.** An employee subject to separation by reduction in force may elect demotion to classifications in which he/she has previously held permanent civil service status during his/her current period of employment. In such election, the procedures of reduction in force outlined in Section 3 shall be applied to the employee being separated and to all others in the classification in question.

5. Voluntary Demotion. In accordance with Civil Service Rules governing demotions and transfers, an employee subject to separation may also be considered for voluntary demotion to other lower classifications or for transfer to classifications at the same salary level, if any vacancies exist. Any employee who is not transferred or demoted to a permanent position shall be offered appointment to any temporary position in his/her classification, which is currently filled at the time of his/her proposed termination.
6. Reinstatement List. Names of employees affected by reduction in force shall be placed on a layoff and reduction list in the order in which they have been laid off or demoted. Such list shall remain in effect for a period of two (2) years, during which time, when vacancies occur in the classification in which reduction in force took place, employees laid off or demoted shall be reinstated in the reverse order of layoff or demotion.
7. Severance Pay. Each permanent employee with a minimum of five (5) continuous years of District employment who is laid off due to a reduction in force shall receive twenty (20) workdays' severance compensation exclusive of any premium, overtime, standby or longevity pay.
8. Demotion. The General Manager may approve the demotion of an employee for inefficiency, or as a result of reduction in force or for other cause. Except in disciplinary situations, there shall be no involuntary demotion of an employee until reasonable effort has been made to transfer or reassign the employee in accordance with applicable Civil Service Rules.
9. Transfer and Demotion Appeals. In the event of transfer or demotion in accordance with the District's Civil Service Rules, the Personnel Officer shall give written notice to the employee, including the reasons for the action, and the employee shall have the same rights of appeal as employees who are discharged or suspended.
10. Reassignment in Lieu of Lay-Offs. The parties shall meet when positions are scheduled to be eliminated or substantially changed due to District-initiated changes, including but not limited to reorganization, efficiency, automation and other technological change. All feasible steps (including training and/or transfer) shall be taken to assist employees to locate and prepare to qualify for other positions in the District civil service in lieu of reduction in force; provided that this shall not restrict the District's authority to affect economies or make organizational changes to increase efficiency in District operations.

**D. Civil Service Examinations**

1. Recording of Oral Examinations. Oral examinations shall be recorded by audio tape recorder. All audio tape recordings shall be the property of and remain in the custody of the District provided, however, the Union shall have reasonable access thereto. Recordings shall be retained by the District for ninety (90) days after

establishment of the employment list resulting from the examinations or, if there is a protest, until the protest is resolved.

2. Inspection of Examinations. Consistent with District operating requirements and with the provisions of the Civil Service Rules, employees participating in District Civil Service examinations shall be permitted reasonable time during working hours, without loss of time or pay, to inspect their examination papers.

3. Internal promotions

- (a) Examinations will typically be opened to both public and internal competition, however, when the Manager of Human Resources determines that there is a sufficient number of qualified and interested employees having Civil Service status, an employment examination may be designated as internal only and recruiting restricted to such Civil Service employees.

The Manager of Human Resources' determination shall include consideration of such factors as the number of current and anticipated vacancies during the expected life of the employment list, the number and qualifications of potential employee applicants, and the usual or expected rate of turnover.

All employees with Civil Service status who pass the employment examination will be placed on an Internal Eligible List in rank order by final score. The top five ranks of this list will be certified to the appointing authority.

- (b) All employees with Civil Service status who pass the examination will be placed on the Internal Eligible List in rank order by final score. All other successful candidates will be placed on the Open Eligible List. A successful candidate will be placed on only one list. The top five ranks of both lists will be certified to the appointing authority.

Hiring supervisors shall interview all candidates in the ranks certified from the internal eligible list and if they choose to interview from the open eligible list, they must interview all candidates in the ranks certified.

- (c) Employees may apply to administratively transfer without exam between classifications which have the same salary levels and identical or very similar minimum qualifications, (e.g., Senior Administrative Clerk and Senior Administrative Secretary), if they have regular status in one class.

The District may also administratively transfer employees between classifications at the same salary level provided the employee meets the minimum qualifications.

4. Duration of Eligible Lists.

- (a) The duration of employment lists shall be one (1) year unless extended, at the District's discretion, for up to one (1) additional year. All existing lists may be extended for up to one (1) additional year rather than extended for six (6) months and all new lists may be extended for one (1) additional year.
- (b) The District will review results with the Union representatives on an annual basis beginning one (1) year from the date of this MOU to determine impact on promotional opportunities for District employees.

**ARTICLE XVI. GRIEVANCE PROCEDURE**

- A. Intent. The District and the Union recognize the necessity for speedy and equitable adjustment of all complaints as close as possible to the point of origin. Whenever possible, grievances should be settled with supervisors in the department/division where the grievance originates. It is the intention of the District and the Union to eliminate unnecessary grievances, and to promptly and equitably adjust all -grievances which are meritorious. It is the intent of the parties that this Grievance Procedure shall be the exclusive remedy for the resolution of grievances as defined in Paragraph XVIC1.a.
- B. Appeals. The employee and his/her designated representative, shall have the right to appeal a suspension or discharge either in accordance with this grievance procedure by sending a completed grievance form to the Department Manager or in accordance with Civil Service Rule XIII, APPEALS, but in no case under both.
- C. Definitions.
  - 1. Grievance.

- (a) A grievance is defined as any dispute which involves the interpretation or application of this Memorandum or disciplinary action taken against an employee and the application of Civil Service Rules.

A dispute over the terms of this Memorandum, or over the terms of rules or regulations governing personnel practices or working conditions, or over the terms of a District Rights decision on wages, hours and other terms and conditions of employment shall not constitute a grievance.

- (b) The Union shall be allowed to file a grievance on behalf of a current employee and on behalf of an identifiable group of employees. If the grievance involves employees in only one (1) section, the grievance shall be filed at Step 1; if the grievance involves employees in more than one (1) section, the grievance shall be filed at Step 2 -(See procedural steps below).

2. Immediate Supervisor. The person from whom an employee receives his/her work assignments.
3. Work Unit Supervisor. The highest supervisor within the employee's work unit.

**D. Standard Grievance Procedural Steps.**

1. Step 1. Informal Discussion/Filing of Grievance Statement

- (a) The employee who has a grievance other than an EEO discrimination, suspension or termination, or Limited Civil Service complaint may, discuss the issue or concern with the supervisor in an attempt to resolve the matter.

If the initial informal discussion does not resolve the issue, the Business Agent may contact the Superintendent to discuss and attempt to resolve the issue.

If the grievance is not settled through informal discussion and the employee desires further review, a completed written "Statement of Grievance Form", must be submitted to the Superintendent within fifteen (15) calendar days from the initial date he/she knew, or reasonably could know, of the act or omission causing the grievance.

- (1) The Statement of Grievance Form shall contain the following information: (1) a statement of the grievance and all relevant facts, (2) specific provision(s) of the Memorandum of Understanding allegedly violated, and (3) the remedy sought.
- (2) The Superintendent shall promptly discuss the matter with the employee, the work unit supervisor, and any other person who should be directly involved and attempt to arrive at a solution. The Superintendent shall provide a written answer to the employee that sets forth the Superintendent's rationale and decision within ten (10) calendar days of receipt by the Superintendent of the "Statement of Grievance Form". The decision of the Superintendent shall be applicable only to the grievance being reviewed and considered.

2. Step 2. Division Level Review

- (a) If the employee is not satisfied with the Step 1 written response from his/her Superintendent, the employee must submit the completed "Statement of Grievance Form", to his/her Division Manager within ten (10) calendar days of receipt of the Step 1 written response. If the Division Manager made the decision being grieved, another Division

Manager shall be appointed to respond to the grievance. In all grievances involving suspension without pay or discharge, the Department Manager will replace the Division Manager.

- (b) A meeting will be scheduled within ten (10) calendar days of the receipt of the Statement of Grievance Form with the Division Manager or his/her designee and the grievant and one (1) Union representative. The purpose of this meeting will be (a) to review the facts of the grievance and to conduct a further investigation of the situation if appropriate, and (b) to explore alternative methods of resolving the grievance. If the parties are able to resolve the grievance, the settlement shall be written. If the parties are unable to resolve the grievance, the District decision shall be written within ten (10) calendar days.
- (c) If the Union is not satisfied with the District's response, the Union may request binding arbitration under Section XVI F, within thirty (30) calendar days of the receipt of the decision.

**E. Employment Suspensions, Demotions due to Discipline, and Termination Procedure.**

- 1. A written grievance shall be filed with the Department- Manager within ten (10) calendar days of the notice of suspension, demotion due to discipline, or termination. The Department- Manager shall meet with the Union and the grievant and shall then respond in writing within ten (10) calendar days of receipt of the written grievance.
- 2. If the Union is not satisfied with the District's response, the Union may request binding arbitration under the following section within thirty (30) calendar days of receipt of the decision.

**F. Binding Arbitration.**

- 1. If the Union is not satisfied with the, Step 2 response the Union may submit the grievance to binding arbitration in accordance with the following procedures.
- 2. A request for arbitration shall be in writing and addressed to the Manager of Employee Relations and must be postmarked within thirty (30) calendar days after the employee's receipt of the District's Step 2 decision. The request shall clearly state the issue to be arbitrated. The District's representative, and the Union's, representative, shall jointly select an impartial arbitrator. If they are unable to agree upon an arbitrator, the District shall request a list of arbitrators from the American Arbitration Association or the California State Mediation and Conciliation Service or the Federal Mediation and Conciliation Service. The arbitrator shall be selected as mutually agreed upon, by alternately striking from a list of seven (7) arbitrators provided by one of the previously listed agencies with the first party to strike to be determined by mutual agreement within thirty (30) calendar days of receipt of the request for arbitration from the Union. The

arbitrator will be requested to render a decision within ninety (90) calendar days of the receipt of briefs.

3. The arbitrator shall limit his/her findings and recommendations strictly to the interpretation, application and enforcement of the provisions of this Memorandum, or the interpretation or application of rules or regulations governing personnel practices or working conditions. In cases of suspension or discharge, the arbitrator shall limit his/her findings and recommendations strictly to the issue of cause.
  - (a) The arbitrator's hearing shall be formal and conducted in accordance with usual administrative practices, including recording of proceedings by certified reporter and testimony given under oath. If a transcript of the proceedings is ordered by either party, each party shall pay for its own copies.
  - (b) The arbitrator shall in no case make any recommendations:
    - (1) contrary to, or inconsistent with or modifying or varying in any way, the terms of the Memorandum, or the terms of rules or regulations governing personnel practices or working conditions;
    - (2) inconsistent with the District's duties, responsibilities or obligations particularly with regard to public health and safety and including the Municipal Utility District Act or any other State or Federal law to which the District is subject;
    - (3) concerning the grievance of any employee who has elected to process a grievance through any other appeal procedure established by the District;
    - (4) ordering any wage increase or decrease;
    - (5) ordering the payment of back wages for more than six (6) months prior to the date a written grievance is filed;
    - (6) reversing, overruling, or otherwise modifying any District decision or omission except after finding (a) the District decision violated some express provision of the Memorandum or rules and regulations governing personnel practices or working conditions; or (b) the District decision or omission was under the circumstances arbitrary, capricious or discriminatory.
  - (c) Each party shall make arrangements for and pay the expenses of witnesses who are called by them. The District shall have no obligation to compensate employees, with the exception of the aggrieved in other than suspension or discharge cases, for time lost during arbitration proceedings,



except when any employee is requested by the District to participate in such arbitration proceedings.

- (d) The expenses of the arbitrator and certified court reporter (if used) shall be shared equally by the District and the Union.

**G. Limited Civil Service Examination Grievance Procedure.**

1. Step 1. The Union may file a Limited Civil Service Examination Grievance on behalf of a current employee or group of current employees by submitting a Statement of Grievance Form to the Manager of Human Resources within the following time limits:
  - (a) Disqualification From Examination - Within seven (7) calendar days of notice of disqualification and prior to the administration of the examination.
  - (b) Examination results - Within seven (7) calendar days of notice of examination results.
  - (c) Other Grievances Pertaining to Recruitment, Examination, or Selection as Stated in the Civil Service Rules - Within seven (7) calendar days from the initial date the employee knew, or reasonably could know, of the act or omission causing the grievance.
  - (d) Manager of Human Resources shall provide a written answer to the Union setting forth his/her decision and rationale within seven (7) calendar days of receipt of the Statement of Grievance Form.
  - (e) The Union may request a meeting with the Manager of Human Resources or designee to review and resolve the grievance.
2. Step 2. If the Union desires to appeal the Manager of Human Resources' decision, the Union shall notify the Manager of Human Resources in writing within seven (7) calendar days from receipt of the Manager of Human Resources' decision; that it desires to submit the grievance to expedited arbitration. The expedited arbitration process for Limited Civil Service Examination Grievances shall be as described below and shall be the exclusive means for the resolution of such disputes:
  - (a) Selection of Arbitrator and Scheduling of Hearing. Within seven (7) calendar days of the Union's notice to the Manager of Human Resources, an impartial arbitrator shall be jointly selected by the District and union. If the parties cannot agree on an arbitrator, the Manager of Human Resources will request a list of five (5) arbitrators from the California State Mediation and Conciliation Service and the parties shall select an arbitrator by mutual agreement or alternately striking names.

- (b) The hearing shall be held within fourteen (14) calendar days of the arbitrator's selection. If the arbitrator has no available date within fourteen (14) calendar days, the parties may mutually consent to a later hearing date, or another arbitrator shall be selected until an arbitrator can be found who is available within the fourteen (14) calendar day time limit.
- (c) Pre-Hearing Submission and Conduct of the Hearing.
  - (1) The District and the Union shall each submit three (3) calendar days prior to the hearing a pre-hearing statement to the arbitrator with a copy to the other party, outlining its position and appending whatever exhibits it wishes to present.
  - (2) Unless the parties mutually agree to the contrary, each party shall have up to two (2) hours to present its case, but may reserve up to one-half (1/2) hour of such time to respond to the other party's presentation. The presentation may be made by way of statement by the party's representative, presentation of witnesses or both, but the hearing shall be informal and rules of evidence shall not apply. No transcript or recording shall be made.
- (d) Decision. The arbitrator shall issue a written award within five (5) calendar days after the close of the hearing. During this period, the arbitrator may convene the parties for up to an additional two (2) hours if the arbitrator wishes to raise additional questions. The award shall be final and binding.
- (e) Costs. The fee and expenses of the arbitrator shall be shared equally by the parties.

H. Election of Remedies. It is specifically and expressly understood and agreed that taking a grievance appeal to arbitration constitutes an election of remedies and a waiver of any and all rights by the appealing employee, the Union, and all persons it represents to litigate or otherwise contest the appealed subject matter through the District Civil Service Procedure.

Litigation or any other contest of the subject matter in any court or other available forum shall constitute an election of remedies and a waiver of the right to utilize this grievance procedure or to arbitrate the matter. This paragraph is not intended to bar an employee from pursuing any cause of action which has been established by statute.

I. Waiver of Steps and Time Limits. Except when otherwise provided, all steps of the grievance procedure shall be utilized unless a waiver of one (1) or more steps is mutually agreed upon in writing. If the employee or the Union fails to process a grievance within specified time limits, the grievance shall be deemed concluded on the basis of the last decision reached, unless an extension of time limits is mutually agreed upon by the

parties in writing. If the District fails to respond within the specified time limits, the grievant may appeal the next step, within the specified time limits.

- J. **Suspension of the Grievance Procedure.** If this Memorandum is violated by the occurrence of a strike, work stoppage, other interruption, or impending disruption of work, no grievance shall be processed while such violation continues. The grievance procedure outlined herein shall not be applicable to grievances arising in the period between the termination of this Memorandum and the effective date of its successor. However, if the parties, despite the termination of the Memorandum, are continuing to meet and confer in good faith and an impasse in the negotiations has not been reached, the grievance procedure shall continue to be applicable.

## ARTICLE XVII. DISCIPLINARY PROCEEDINGS

- A. **Eligibility.** An employee who has successfully passed a probationary period may be disciplined for cause by written warning, suspension or termination. Such disciplinary action(s) shall be subject to appeal through the Grievance Procedure provided for in Article XVI of this Memorandum.
- B. **Employee Notification.** When considering imposing major discipline (defined as a suspension of five days or more or termination), the District will notify the employee and the Union in writing of the pending disciplinary action and will provide copies of any known written materials, reports or documents upon which action is based to the employee and his/her representative before the scheduled pre-disciplinary meeting. The employee will be given the right to respond informally either orally, in writing, or both to the proposed charges. The District is not precluded from using information obtained in the pre-disciplinary meeting in any subsequent meeting or hearing in the event discipline is imposed. The District is also not precluded from using information obtained in investigating information and statements presented at the pre-disciplinary meeting in subsequent meetings or hearings if the discipline is imposed.
- C. **Union Notification.** An employee ordered to leave his/her place of work for disciplinary reasons shall, before leaving the District premises, have the right to consult with his/her Union representative. Consultation with a Union representative will not be required in instances in which the supervisor removes an employee from the premises in cases involving violence, willful destruction of property, or to prevent injury to the employee or others. The supervisor shall promptly notify the Union of the action taken, the reasons for, and duration of, the suspension.

## ARTICLE XVIII. INTERFERENCE WITH WORK

The Union agrees to refrain from engaging in, encouraging, or condoning, either directly or indirectly, any strike, work stoppage, slow-down, sit-down, stay-away, picketing, or any other forms of interference with the operations of the District during the term of this Memorandum.

The District agrees that there shall be no lock-out against employees during the life of this Memorandum.

#### ARTICLE XIX. SAFETY

- A. **Safe Working Conditions.** Both the District and the Union agree to comply with all Federal and State health and safety laws and standards applicable to the District and shall devote every effort to ensure that all work is performed in a safe manner consistent with the requirements of the work to be performed.
- B. **Medical Tests on Employees.** It is understood that information pertaining to accidents or injuries is confidential. It is also understood that, where employees are exposed to carcinogens or other harmful substances, which exceed the threshold limit values, medical monitoring is required. The District will produce medical monitoring records upon demand of the employee or an authorized Union representative. The District will provide other medical test information to authorized Union representatives only with the express written consent of the involved employee.
- C. **Results of Government Inspections.** The District will provide Local 39 with Cal/OSHA notices, postings, accident investigation reports, citations, hearing decisions and other documents, which, by law, require the District to take action. It is understood the above sentence applies only to work areas and District employees, which specifically are within the representation jurisdiction of Local 39.

#### ARTICLE XX. SAFETY SHOES/UNIFORMS

- A. **Safety Shoes.** The District shall provide a safety shoe allowance of \$170, on receipt of evidence of the purchase of District approved safety shoes for employees in represented classes included in the District safety shoe program. Employees shall procure their District provided safety shoes at District identified vendors under a purchase order program. Employees can visit the selected vendors and select their shoes from the vendors provided that: 1) the shoes meet the ASTM-F2413-05 safety standards and 2) the after tax cost for the shoes does not exceed \$170. Costs for shoes in excess of this amount shall be paid by the employee. Safety shoes shall not be purchased on District work time and an employee identification badge must be shown to the contract supplier to verify District employment.

It is understood that any employee utilizing the safety shoe allowance must wear such shoes while at work.

- B. **Uniforms.** Uniforms will be provided to all bargaining unit members in the Water Distribution Section. Bargaining unit members will wear the uniform when assigned to work in the field. Bargaining unit members may wear the uniform at the employee's option when working in the Operations Control Center (OCC).

The District shall not require any employee to wear a uniform if it causes a physical or health problem until such time as the District can provide a suitable uniform.

The District shall accept employee comments and other input regarding uniform details such as material, design, and maintenance needs.

# **ARTICLE XXI. PART-TIME/LESS THAN FULL-TIME (INTERMITTENT) EMPLOYEES.**

For purposes of defining part-time and less than full-time (intermittent) employees, a full-time position is 2080 aggregate hours in a payroll year.

1. **Definition of Part-time Employees.** A part-time employee is restricted from working more than forty percent (40%) of the hours worked by employees in equivalent full-time positions or more than 832 hours in a payroll year, as defined in Article VIII F. Part-time employees are exempt from civil service and cannot grieve disciplinary actions or termination of their employment.
2. **Part-time Employee Benefits.** Part-time employees are eligible for the following benefits:

|                                      |  |
|--------------------------------------|--|
| Holidays                             | 3.5 hours paid time for each District holiday, provided the employee works or is on authorized paid leave for a minimum of 16 hours in the pay period in which the holiday occurs. |
| Birthday Floater Holiday             | 3.5 hours paid time  |
| Vacation                             | Prorated accruals based on hours worked in accordance with Article XIII B -Vacations.  |
| Sick Leave                           | Prorated accruals based on hours worked in accordance with Article XIII C – Sick Leave.  |
| State Disability Insurance (SDI)     | As prescribed by the State   |
| 401K, 457 Deferred Compensation Plan | Eligible to participate (401K upon plan modification)  |
| Work Out of Class                    | Eligible to work 192 hours per payroll year  |
| Job Injury Leave                     | Eligible for 192 Hours   |

|                        |   |
|------------------------|---|
| Vacation Sell Back     | Up to 80 hours of accrued vacation time may be sold back to the District in one (1) hour increments -during the payroll year, before the last pay period of the payroll year.         |
| Sick Leave Buyback     | Up to 16 hours of sick leave may be converted to vacation or cash payment of up to 16 hours of sick leave, if the employee has not used more than 18 hours of sick leave in 6 months. |
| Domestic Partners      | Employees who register their domestic partners are eligible for all family emergency leaves.  |
| Transportation Subsidy | Eligible for Transportation Subsidy Program at 50% of the agreed upon amount for full time employees.   |

3. Definition of Less Than Full-Time (Intermittent) Employees. Less than full-time (Intermittent) employees are employees who work less than full-time but one-half or more of a standard workday or workweek, or more than 1040 aggregate hours per payroll year. Less than full-time (Intermittent) employees are eligible to grieve disciplinary actions.
4. Less Than Full-Time (Intermittent) Employee Benefits. Less than full-time employees are eligible for the following benefits;

|                                  |  |
|----------------------------------|--|
| Holidays                         | 6 hours of paid time for each District holiday, provided that the employee works or is on paid authorized leave for a minimum of 16 hours in the pay period in which the holiday falls.  |
| Birthday Floater Holiday         | 6 hours paid time.   |
| Vacation                         | Prorated accruals based on hours worked in accordance with Article XIII B -Vacations.  |
| Sick Leave                       | Prorated accruals based on hours worked in accordance with Article XIII C – Sick Leave.  |
| Job Injury                       | Eligible for 360 hours.  |
| Special Leave                    | Prorated at 75%. Jury duty: based on hours scheduled; voting time: not to exceed 2 hours; blood donations granted at 2 hours.  |
| State Disability Insurance (SDI) | As prescribed by the State.  |
| Health Insurance                 | The District will contribute 75% of the District's contribution for full-time employees for less than full time employees and their eligible dependents who participate in an approved District health plan, provided that the Less than Full-time |

|  |   |
|--|---|
|  | employees pay the remaining premium cost by payroll deduction.  |
| Dental and Vision Insurance                | District pays 75% of premium provided employees pays 25% of the composite rates by payroll deduction.   |
| Long-term Disability Insurance (LTD)       | Benefit based on salary.  |
| Life Insurance                             | Benefit based on salary.  |
| 401K, 457 Deferred Compensation Plan       | Eligible to participate (401K upon plan modification)   |
| Work Out of Class                          | Eligible to work 360 hours per payroll year.  |
| Vacation Sell Back                         | Up to 80 hours of accrued vacation time may be sold back to the District in one (1) hour increments during the payroll year, before the last pay period of the payroll year.          |
| Sick Leave Buyback                         | Up to 16 hours of sick leave may be converted to vacation or cash payment of up to 16 hours of sick leave, if the employee has not used more than 18 hours of sick leave in 6 months. |
| Domestic Partners                          | Employees who register their domestic partners are eligible for all family emergency leaves and may cover their domestic partners for medical insurance, dental and vision care.      |
| Transportation Subsidy                     | Eligible for participation in the Transportation Subsidy Program at the agreed upon amount of full-time employees.  |
| Medical Plan Non-Dual Enrollment Incentive | Employees who receive medical insurance coverage through their spouse or partner will receive \$112.50 a month, if they elect not to be covered under the District's medical plan.    |
| Supplemental Life Insurance                | Employees may purchase additional life insurance in addition to the insurance offered by the District through payroll deduction.  |
| Tuition Refund                             | Eligible to be reimbursed 75% of the tuition reimbursement benefit per fiscal year, for classes and supplies required for job related education classes.                              |
| Supplemental Benefits Program              | Eligible to participate in and receive full benefits.   |

## ARTICLE XXII. INDEMNIFICATION

- A. The District shall defend and indemnify its employees and former employees against liability for acts or omissions committed within the scope of their employment pursuant to the California Tort Claims Act ("Act"), Government Code sections 810 *et seq.*, unless

the District determines that there exists one of the exceptions provided by the Act listing grounds for refusal to defend and/or indemnify the employee.

- B. **Scope.** Nothing in this Article is intended to expand or limit the District's duty or discretion to defend and/or indemnify employees under the California Tort Claims Act except, however, that the District shall provide for the defense of an employee in a criminal action or proceeding brought against the employee if (i) the criminal action or proceeding is brought on account of an act or omission in the scope of his or her employment as an employee of the District; and (ii) the District determines that the employee acted, or failed to act, in good faith, without actual malice and in the apparent interests of the District. The District will not provide a defense to an employee in a criminal action or proceeding if (i) the employee fails to reasonably cooperate in good faith in the defense of the action or proceeding; (ii) the act or omission was not within the scope of his or her employment; (iii) the employee acted, or failed to act, in bad faith and with actual malice; or (iv) the defense of the action or proceeding by the District would create a specific conflict of interest between the District and the employee. For purposes of this Article, "specific conflict of interest" means a conflict of interest or an adverse or pecuniary interest, for which the District is excused from providing a defense by statute or by a rule or regulation of the District. When retention of outside counsel is necessary as deemed by the District, the District will consult with the employee in the selection of outside counsel, but reserves the right to make the final determination with respect therein. The District also reserves the right to conduct the employee's defense against the criminal action or proceeding pursuant to an agreement with the employee reserving the District's rights against the employee.
- C. **Interpretation.** The interpretation, application and enforcement of this Article shall not be subject to the grievance and arbitration procedure of this Memorandum, or the Civil Service grievance and hearing procedures of the District's Civil Service Personnel Rules and Regulations. Nothing in this Article shall be construed to deprive an employee of the right to petition for a writ of mandate to compel the District to perform the duties imposed by the California Tort Claims Act.
- D. **Employee.** For purposes of this Article, the term "employee" includes any current employee of the District and any former employee who was employed by the District at the time of the act or incident for which a criminal or civil action or proceeding has been brought against that person, in his or her official or individual capacity, or both.

### ARTICLE XXIII. OTHER TERMS AND CONDITIONS

- A. **Term.** On approval by the District's Board of Directors, this Memorandum shall be effective from April 30, ~~2007~~22, 2013 through ~~April 24, 2011~~16, 2017. If at least ninety (90) days prior to that date either party shall not have served written notice by registered mail upon the other that it desires revision or modification of any designated provision or provisions contained herein, or termination of all such provisions, this Memorandum shall be automatically renewed for successive periods of one (1) year.



- B. No Implied Waiver.** If at any time the Union or the District shall elect not assert its rights under any provisions of this Memorandum in the event of a breach thereof, such lack of action in this respect shall not be construed as a continued waiver of any rights under the provisions of this Memorandum.
- C. Construction.** Except as otherwise expressly provided herein, this Memorandum shall be interpreted in a manner consistent with the District's Employer-Employee Relations Resolution and with all written District policies and procedures.
- D. Savings Clause and Future Negotiations.** Should any part of this Memorandum, or any provision contained herein, be rendered or declared invalid by reason of any existing or subsequently enacted legislation, or by any decree of any court of competent jurisdiction, such invalidation of such part or portion of this Memorandum shall not invalidate the remaining portions thereof. The remaining portions or parts shall remain in full force and effect. It is mutually agreed that upon any such invalidation, the District and the Union will meet and confer with reference to the parts and provisions thus invalidated.
- E. Scope of Agreement.** Except as otherwise specifically provided herein, this Memorandum fully and completely incorporates the understanding of the parties hereto and constitutes the sole and entire Memorandum between the parties on any and all matters contained in this Memorandum. Neither party shall, during the term of this Memorandum, demand any change therein; provided, however, that nothing herein shall prohibit the parties from changing the terms of this Memorandum by mutual agreement.
- 1) The parties shall exclude from the scope of agreement (Article XXII E), and separately negotiate any revisions to the Civil Service Rules and District Policies and Procedures regarding mandatory subjects of bargaining that are not contained in this MOU, during the term of this Contract.

IN WITNESS WHEREOF, the parties hereto by their duly authorized representatives have executed this Memorandum of Understanding dated on this \_\_\_\_\_ day of \_\_\_\_\_.

EAST BAY  
MUNICIPAL UTILITY DISTRICT

LOCAL 39, INTERNATIONAL UNION OF  
OPERATING ENGINEERS,  
STATIONARY ENGINEERS

\_\_\_\_\_  
BRUCE HEID  
Chief Negotiations

\_\_\_\_\_  
JERRY KALMAR  
Business Manager ~~MATT BLAND~~  
/Secretary ~~President~~

\_\_\_\_\_  
~~MARSHA CUNNINGHAM~~  
Negotiating Team

\_\_\_\_\_  
~~JERRY KALMAR~~  
Business Manager

\_\_\_\_\_  
EILEEN WHITE  
Negotiating Team

\_\_\_\_\_  
TONY DEMARCO  
President ~~JOAN BRYANT~~  
Director of Public Employees

\_\_\_\_\_  
CLIFFORD CHAN  
Negotiating Team

\_\_\_\_\_  
LYNN LONG  
~~Chief Negotiator~~ RICHARD PUTZ  
Business Representative

\_\_\_\_\_  
AVIS ROBINSON  
JASON JIMENEZ  
Negotiating Team

\_\_\_\_\_  
ERIC GEE  
Negotiating Team

\_\_\_\_\_  
KENTON GEE  
Negotiating Team

\_\_\_\_\_  
~~JEFFERY CLOHERTY~~  
GARY HENRY  
Negotiating Team

---

CRAIG FULCHER  
CLARENCE PERALTA  
Negotiating Team

---

CONNIE BELL  
MICHAEL SLINDEE  
Negotiating Team

---

RON PETERSON  
PAUL STELZMANN  
Negotiating Team

**ATTACHMENT A**

**EBMUD**  
**LOCAL 39 SALARY SCHEDULE**  
**Effective April 30, 2013**

| <b>Class</b>                                       | <b><u>Salary</u></b> | <b><u>Step 1</u></b>              | <b><u>Step 2</u></b>             | <b><u>Step 3</u></b>             | <b><u>Step 4</u></b> |
|--|----------------------|-----------------------------------|----------------------------------|----------------------------------|----------------------|
| 8136 Senior Water Distribution Operator            | 68                   | 6,692 <sup>7</sup><br><u>,452</u> | 7,027 <sup>8</sup><br><u>25</u>  | 7,378 <sup>8</sup><br><u>216</u> | 0                    |
| 8133 Senior Water Treatment Operator               | 68                   | 7,452 <sup>6</sup><br><u>,692</u> | 7,027 <sup>8</sup><br><u>25</u>  | 7,378 <sup>8</sup><br><u>216</u> | 0                    |
| 8139 Water Distribution Operator                   | 60                   | 5,490 <sup>6</sup><br><u>,112</u> | 5,764 <sup>6</sup><br><u>418</u> | 6,052 <sup>7</sup><br><u>39</u>  | 0                    |
| 8134 Water Treatment Operator                      | 60                   | 5,490 <sup>6</sup><br><u>,112</u> | 5,764 <sup>6</sup><br><u>418</u> | 6,052 <sup>7</sup><br><u>39</u>  | 0                    |
| 8135 Water Treatment/Distribution Operator Trainee | 52                   | 4,506 <sup>5</sup><br><u>,018</u> | 4,731 <sup>5</sup><br><u>269</u> | 4,968 <sup>5</sup><br><u>532</u> | 0                    |

**ATTACHMENT B****APRIL 2003****SIDELETTER OF AGREEMENT****Between****EAST BAY MUNICIPAL UTILITY DISTRICT (District)  
AND LOCAL 39, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO****Regarding****THE EMPLOYEE COMPUTER FINANCIAL ASSISTANCE PROGRAM**

East Bay Municipal Utility District, hereinafter referred to as the District, will provide employees represented by Local 39 hereinafter referred to as the Union, interest-free loans up to twenty-five hundred (\$2,500) dollars for the purchase of personal computers. The parties agree that such loans will be provided to Local 39 represented employees in order to facilitate the development of their computer skills. The District and Local 39, agree that Local 39 employees will be subject to the following initial implementation criteria, as well as the Employee Computer Financial Assistance Program Guidelines previously established by the District. Further, the District and Local 39 agree that the program guidelines, the implementation and administration of the computer loan program are not subject to the meet and confer process, nor the Union's grievance procedure.

***TIMING OF PROGRAM IMPLEMENTATION AND LOAN APPROVAL***

- The Computer Loan Program will be implemented three (3) months after the execution of the 2003 contract between the District and the Union.
- Original requests for a loan will be approved within eight (8) to twelve (12) weeks after an employee submits a completed Application and Specification sheet, to the Employee Services Department, depending on the number of requests.

***ELIGIBILITY***

- All regular, limited term (LT), temporary construction (TC), Intermittent and Job Share employees, provided they satisfy the District's Program guidelines, are eligible to participate in the computer loan program.
- Employees must have a 'satisfactory or meets expectations' or better on their last performance evaluation and cannot have been suspended in the twelve (12) months immediately preceding their application.

**SIDELETTER AGREEMENT - 39 MOU  
COMPUTER LOAN PROGRAM**

---

***TERMS AND CONDITIONS***

- Employees must be currently at work in order to be eligible for the computer loan program.
- Employees must repay the loan through automatic biweekly payroll deductions, in an amount of fifty (\$50) dollars or more, in each pay period until the loan is extinguished.
- Employees who separate from the District must repay the entire outstanding loan balance, the balance to be deducted from their final paycheck.
- Employees who are absent on leave without pay, must continue to make biweekly payments of the loan, during their unpaid leave of absence, in the amount agreed to in the Promissory Note and Authorization for Payroll Deduction.

**EBMUD**  
**LOCAL 39 SALARY SCHEDULE**  
**Effective April 22, 2013**

2013-2017

| <b>Class</b> |   |               |               |               |               |               |                      |
|--------------|---|---------------|---------------|---------------|---------------|---------------|----------------------|
| <b>Code</b>  | <b>Class Title</b>                            | <b>Salary</b> | <b>1 Step</b> | <b>2 Step</b> | <b>3 Step</b> | <b>4 Step</b> | <b>5 Step 6 Step</b> |
| 8136         | Senior Water Distribution Operator            | 68            | 7,452         | 7,825         | 8,216         | 0             | 0                    |
| 8133         | Senior Water Treatment Operator               | 68            | 7,452         | 7,825         | 8,216         | 0             | 0                    |
| 8139         | Water Distribution Operator                   | 60            | 6,112         | 6,418         | 6,739         | 0             | 0                    |
| 8134         | Water Treatment Operator                      | 60            | 6,112         | 6,418         | 6,739         | 0             | 0                    |
| 8135         | Water Treatment/Distribution Operator Trainee | 52            | 5,018         | 5,269         | 5,532         | 0             | 0                    |

**PREAMBLE**

This Memorandum of Understanding (hereinafter referred to as Memorandum) entered into by East Bay Municipal Utility District (hereinafter referred to as the District) and Local 444, American Federation of State, County and Municipal Employees, AFL - CIO (hereinafter referred to as the Union) has as its purpose the promotion of harmonious relations between the District and the Union; establishment of an equitable and peaceful procedure for the resolution of differences; and the establishment of rates of pay, hours of work, and other conditions of employment.

The provisions of this Memorandum supersede all previous Memoranda of Understanding between the parties. Where provisions of this Memorandum make necessary the adoption, amendment or revision of Civil Service Rules and/or Policy & Procedure Statements because of specific conflict or absence of coverage, such provisions shall be presented to the District's Board of Directors in accordance with Section 31.3.

**ARTICLE 1. RECOGNITION****1.1. Majority Representation.**

1.1.1. The District recognizes the Union as the majority representative of all permanent, probationary, limited term (LT), temporary construction (TC), job shares, intermittent and part-time employees (except Worker Trainees) within the class titles of the formally recognized units as enumerated in Appendix A, "Units/Class Titles/Salary Ranges", which are attached hereto and made a part hereof.

1.1.2. The District shall furnish the Union with the name, classification and department number of each new employee hired for or separated from, a permanent, limited term, temporary construction or part-time position within the foregoing units on a monthly basis, and shall notify each said new employee of the District's recognition of the Union as the majority representative in said units.

**1.2. Representation of Employees in Limited Term and Temporary Construction Appointments.**

1.2.1. The following applies to employees in LT and TC appointments in classifications represented by Local 444.

1.2.1.1. Employees who have civil service status in a District classification and who are promoted or transferred continue to retain rights to a position in their former civil service classification when the "LT" or "TC" position is completed.

1.2.1.2. The District has the obligation to assign such employee back to a position in their former civil service classification. Ending LT or TC appointments shall not be grievable.

1.2.1.3. No "LT" employee shall serve in that category for more than four (4) years.



1.2.1.4. LT/TC employees with civil service status will retain the benefits they were receiving at the time of acceptance of the LT/TC appointment. LT/TC employees without civil service status will be provided all District benefits except retirement.

1.2.1.5. The District shall give reasonable notice of available "LT" or "TC" positions to be filled and shall, where qualifications are reasonably equal, give preference to District employees when filling such positions.

1.2.1.6. An employee who promotes or transfers to an "LT" or "TC" position shall, while in a "TC" or "LT" position, receive continuous service credit for purposes of this Contract, Article 6, Salaries, Article 12, Reduction in Force, and Article 15, Vacations.

1.2.1.7. LT and TC employees are subject to all contract provisions unless specifically restricted.

## ARTICLE 2. AGENCY SHOP/DUES DEDUCTION

~~2.1. Eligibility/Exemptions. All permanent, probationary, limited term, temporary construction and part time employees in the classifications listed in Appendix "A" shall, as a condition of continued employment, become members of the Union, or shall pay a service fee equal to the monthly dues of the Union except as provided in Section 1.2.1.3. This agency shop agreement shall continue for the life of this Memorandum.~~

### ~~2.1.1. Exemptions:~~

~~2.1.1.1. Supervisory, confidential and managerial employees shall not be covered by the above agency shop provisions.~~

~~2.1.1.2. Any employee who is a member of a bona fide religious body or sect which has historically held conscientious objections to joining or financially supporting employee organizations shall not be required to join or financially support the Union as a condition of employment. Such employees may be required, in lieu of periodic dues, initiation fees, or agency shop fees to pay an amount equal to the periodic dues, initiation fees or agency shop fees to a nonreligious tax exempt charity, three such organizations to be mutually agreed upon by the parties.~~

### ~~2.2. Enforcement. No employee shall be terminated under this Article unless:~~

~~2.2.1. The Union first has notified the employee by letter, explaining that he/she is delinquent in not tendering either uniformly required Union dues or an amount equivalent to uniformly required Union dues, and specifying the current amount of such delinquency, and warning him/her that unless such dues or service charge is tendered within thirty (30) calendar days he/she will be reported to the District for termination as provided in this Article; and~~

~~2.2.2. The Union has furnished the District with written proof that the procedure of 2.2.1. above has been followed or has supplied the District with a copy of the letter sent to the~~

employee and notice that he/she has not complied with the request. The Union must specify further, when requesting the District to terminate the employee, the following by written notice:

"The Union certifies that \_\_\_\_\_ has failed to tender either uniformly required Union dues or service charge required as a condition of continued employment under the Memorandum of Understanding and that under the terms thereof, the District shall terminate the employee."

2.2.3. \_\_\_\_\_ The Union shall indemnify and save the District harmless from any and all claims, demands, suits, or any other action arising from this Article or from complying with any demand for termination under this Article.

**2.3. \_\_\_\_\_ Union Dues and Service Fee or Optional Deduction Checkoff.**

2.3.1. \_\_\_\_\_ During the life of this Contract and to the extent the laws of the State of California permit and as provided in this Article, the District will deduct one month's current and periodic Union dues or service charge based upon a uniform dues schedule from the pay of each employee who has heretofore or shall hereafter voluntarily execute and deliver to the District a deduction authorization form. (Sample form follows as Attachment #1.)

2.3.2. \_\_\_\_\_ When certifying membership dues or service charge the Union shall use the form attached at Attachment #2).

2.3.3. \_\_\_\_\_ Payroll deductions shall be made only from the pay due employees on the first payday of each calendar month; provided, however, the initial deduction for any employee shall not begin unless both (1) a properly executed "Payroll Deduction Authorization for Membership Dues or Service Charge," and (2) the amount of the monthly membership dues or service charge certified by the Secretary of the Union have been delivered to the District at least thirty (30) calendar days prior to the first payday of the calendar month. Changes in the amount of the monthly membership dues or service charge also must be delivered to the District at least thirty (30) calendar days prior to the first payday of the calendar month before the change will become effective. (Sample form follows as Attachment #2.)

2.3.4. \_\_\_\_\_ An employee may revoke his/her "Payroll Deduction Authorization for Membership Dues or Service Charge" only as provided by the terms of his/her voluntary authorization. (Sample form follows as Attachment #3.)

2.3.5. \_\_\_\_\_ All sums deducted by the District shall be remitted to the Union at an address given to the District by the Union, once each month by the fifteenth (15th) calendar day following the payday on which the deductions were made, together with a list of names and the amount deducted for each employee for whom a deduction was made. The District will also notify the Union, within ten (10) days of District receipt of revocation, of the name of each employee who revokes his/her "Payroll Deduction Authorization for Membership Dues or Service Charge". (Sample form follows as Attachment #3.)

2.3.6. \_\_\_\_\_ The District shall not be liable to the Union by reason of the requirements of this Article for the remittance or payment of any sum other than that constituting actual deductions made from the pay earned by the employee. In addition, the Union shall indemnify and save the

District harmless from any liability resulting from any and all claims, demands, suits or any other action arising from compliance with this Article, or in reliance on any list, notice, certification or authorization furnished under this Article. The Union agrees to refund to the District any amounts paid to it in error.

~~2.3.7. The District shall furnish, monthly, a list of all employees appointed within classifications contained in Appendix "A" of this Contract who are subject to the provisions of the agency shop agreement. The list will include temporary construction (TC) and limited term (LT) employees and part time employees in classifications represented by the bargaining unit.~~

~~2.3.8. The Union may request the District to provide an optional voluntary Union deduction for members or service fee payers of the Union. Such deduction shall be requested by the member or service fee payer in even dollar amounts. The optional Union deduction shall be made only from the pay due employees on the first payday of each calendar month. The member or service fee payer may discontinue the optional Union deduction at any time. Such request for optional Union deduction shall be made on "Payroll Deduction Authorization for Optional Union Contribution, AFSCME, Local 444". The Union and District agree that such authorization for optional Union deduction is not subject to the provisions of the agency shop agreement between the Union and District. The Union agrees to refund to the District any amounts paid to it in error. (Sample form follows as Attachment #4.)~~

~~2.3.9. P.E.O.P.L.E. (Public Employees Organized to Promote Legislative Equality) Employees in classifications represented by AFSCME Local 444 may make voluntary, monetary contributions to P.E.O.P.L.E.; said contributions to be deducted from employees pay by the District and remitted to AFSCME, P.E.O.P.L.E.~~

## **Article 2. AGENCY SHOP/DUES DEDUCTION**

2.1. Eligibility/Exemptions. All permanent, probationary, limited-term, temporary construction, less than full-time (intermittent) and part-time employees in the classifications listed in Appendix "A" shall, as a condition of continued employment, become members of the Union, or shall pay a service fee equal to the monthly dues of the Union. This agency shop agreement shall continue for as long as AFSCME Local 444 remains the exclusive representative of the bargaining units listed in Appendix A.

### **2.1.1. Exemptions:**

2.1.1.1. Any employee who is a member of a bona fide religious body or sect which has historically held conscientious objections to joining or financially supporting employee organizations shall not be required to join or financially support the Union as a condition of employment. Such employees shall be required, in lieu of periodic dues, initiation fees, or agency shop fees to pay an amount equal to the periodic dues, initiation fees or agency shop fees to a non-religious tax-exempt charity, three such organizations to be mutually agreed upon by the parties.

### **2.2. Compliance.**

2.2.1. An employee in one of the classes included in Appendix A shall (and, in the case of a newly hired employee, within thirty (30) calendar days of employment) execute a payroll deduction authorization form furnished by the District, included in this MOU as attachment #1, and thereby become and remain a member in good standing in the Union; or execute a payroll deduction authorization form (Attachment #1), and thereby pay to the Union a service fee equal to the monthly dues of the Union; or in the case of employees who certify that they are members of a bona fide religion, body or sect which has historically held conscientious objections to joining or financially supporting public employee organizations, pay sums equal to the service fee which is equal to the monthly dues of the Union.

2.2.2. If any current employee fails to authorize one of the above deductions, (or, in the case of a newly hired employee, within thirty (30) calendar days of hire into a classification covered by this Contract), the District shall deduct a service fee equal to the monthly dues of the Union from the employees' paycheck.

2.2.3. The District shall provide contact information in writing, regarding persons newly hired by the District into a Local 444 represented classification, to the designated Union Official within seven (7) workdays of the employee's official hire date.

### 2.3. Union Dues, and Service Fee, or Optional Union Contribution Deduction Checkoff.

2.3.1. During the period AFSCME Local 444 remains the exclusive representative of the bargaining units listed in Appendix A and to the extent the laws of the State of California permit and as provided in this Article, the District will deduct one month's current and periodic Union dues or service charge based upon a uniform dues schedule from the pay of each employee who has executed and delivered to the District a deduction authorization form, (Attachment 1) or who has deductions made from salary pursuant to Article 2.2.2.

2.3.2. When certifying membership dues or service charge the Union shall use the certification form, as furnished by the District and included in this MOU as Attachment #2.

2.3.3. Payroll deductions shall be made only from the pay due employees on the first payday of each calendar month; provided, however, the initial deduction for any employee shall not begin unless both (1) a properly executed "Payroll Deduction Authorization for Membership Dues or Service Charge", and (2) the amount of the monthly membership dues or service charge certified by the Secretary of the Union have been delivered to the District at least thirty (30) calendar days prior to the first payday of the calendar month. If the employee fails to properly execute the "Payroll Deduction Authorization for Membership Dues or Service Charge" within thirty (30) calendar days of hire into a classification covered by this MOU, the District will deduct the monthly membership dues or service charge automatically. Changes in the amount of the monthly membership dues or service charge also must be delivered to the District at least thirty (30) calendar days prior to the first payday of the calendar month before the change will become effective.

2.3.4. All sums deducted by the District shall be remitted to the Union at an address given to the District by the Union, once each month by the fifteenth (15th) calendar day following the payday on which the deductions were made, together with a list of names, mailing addresses and the amount deducted for each employee for whom a deduction was made.

2.3.5. The District shall not be liable to the Union by reason of the requirements of this Article for the remittance or payment of any sum other than that constituting actual deductions made from the pay earned by the employee. In addition, the Union shall indemnify and hold the District harmless from any liability resulting from any and all claims, demands, suits or any other action arising from compliance with this Article, or in reliance on any list, notice, certification or authorization furnished under this Article. The Union agrees to refund to the District any amounts paid to it in error.

2.3.6. The District shall furnish, monthly, a list of all employees appointed within classifications contained in Appendix "A" of this Contract who are subject to the provisions of the agency shop agreement. The list will include temporary construction (TC) and limited term (LT) employees who have civil service status in the bargaining unit and part-time employees in classifications represented by the bargaining unit. The District shall furnish a list of all newly hired employees and change in status or representation of employees to the Union's Membership Secretary each pay period.

2.3.7. The Union may request the District to provide an optional voluntary Union deduction for members or service fee payers of the Union. Such deduction shall be requested by the member or service fee payer in even dollar amounts. The optional Union deduction shall be made only from the

the first payday of each calendar month. The member or service fee payer may discontinue the optional Union deduction at any time (Attachment #3). Such request for optional Union deduction shall be made on "Payroll Deduction Authorization for Optional Union Contribution, AFSCME, Local 444" (Attachment #4). The Union and District agree that such optional Union deduction is not subject to the provisions of the agency shop agreement between the Union and District. The Union agrees to refund to the District any amounts paid to it in error.

### **ARTICLE 3. DISTRICT RIGHTS**

#### **3.1. Definition of Rights.**

3.1.1. The rights of the District include, but are not limited to, the exclusive right to determine the missions of its constituent departments and divisions; set standards of services; determine the procedures and standards of selection for employment and promotion; direct and assign its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other legitimate reasons; maintain the efficiency of District operations; determine the methods, means and personnel by which District operations are to be conducted; determine the content of job classifications; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work; provided, however, that the exercise of such District rights shall not conflict with the express provisions of this Memorandum.

3.1.2. District and Union mutually intend and agree that District may unilaterally exercise any and all rights reserved by this Article without further meeting and conferring with the Union. It is further mutually agreed that Union and District have met and conferred on all matters reserved to District by this Article and Union does expressly waive any and all rights to further meet and confer on such issues, or any of them, during the period of this Memorandum. Any dispute concerning the interpretation or application of District's rights shall be deemed a grievance and must be processed under Article 22.

3.1.3. The District agrees to apply the rights reserved by this Article in a prudent and reasonable manner; furthermore, the District shall consider the impact that the application of these rights may have on the work force, before applying these rights. The District agrees to make reasonable efforts to mitigate any significant impacts arising out of the application of any and all rights reserved by this Article.

### **ARTICLE 4. NO DISCRIMINATION/HARASSMENT**

#### **4.1. No Discrimination.**

4.1.1. There shall be no discrimination of any kind by the Union or the District against any employee, to the extent the applicable law prohibits such discrimination, harassment, or disparate treatment, because of race, religious creed, color, age, marital status, national origin, ancestry, sex, sexual orientation, political affiliation, physical or mental disability (including HIV and AIDS), or medical condition (cancer or genetic characteristic).

4.1.2. To the extent applicable law prohibits, there shall be no discrimination or harassment because of lawful Union activity, Union membership, or non-membership.

#### **4.2. Harassment, Disparate Treatment and Inappropriate Behavior.**

4.2.1. In addition to behavior ~~violative~~which violates of Section 4.1 above, the following behavior will not be permitted, tolerated, or condoned:

- a. Dishonesty, including providing false information to District management about the performance of an employee or circulation of private personnel files;
- b. Abusive, threatening, or intimidating behavior, gestures or language;
- c. Physical threats or physical striking of an employee;
- d. Repeated threats of discipline without counseling, warning, investigation, or a progressive disciplinary approach, including untimely discipline;
- e. Inequitable treatment regarding the application of District policies, District rules, this Contract, or those items listed in 4.1. above;
- f. Disrespect toward each other regardless of position, status, or job responsibilities.

Infractions of this policy are subject to the Grievance Procedure.

#### **4.3. Accommodation for Disabled Employees.**

The Union understands that the District has a lawful obligation under federal and state law to make reasonable accommodations for qualified individuals with disabilities. Any accommodation will be on a case-by-case basis, and will not be precedential, or constitute a past practice for anyone other than qualified individuals with disabilities.

### **ARTICLE 5. UNION ACTIVITIES**

#### **5.1. Union Stewards.**

5.1.1. Employees selected by the Union to act as Union representatives shall be known as "stewards". The Union may select one steward for each thirty-five (35) filled positions or major fractions thereof for those classifications represented by the Union. The names of employees so selected and the areas to which they are assigned shall be certified in writing to the District by the Union. In the absence of the steward, an alternate may be appointed by the Union President. Stewards, during the regular working hours, shall be permitted to investigate, prepare, and present grievances to the District without loss of time or pay, provided that this is done in a manner consistent with District operating requirements, and the steward is first excused by his/her District supervisor. Permission to perform steward functions shall not be unreasonably denied.

5.1.2. If it becomes necessary during the course of his/her investigation for a steward to contact an employee in another department or division, the steward shall state to and notify the supervisor of that department or division the purpose of his/her investigation. When the investigation is completed, the steward shall promptly report back to his/her supervisor.

5.1.3. The District shall keep a record of time spent by stewards in the processing of grievances, and shall review this record periodically with officials of the Union. In order to have time approved to investigate a grievance, stewards shall complete the Grievance Investigation Request form and submit it to their immediate supervisor, prior to the start of the investigation. It is agreed that in the event any abuse is found to exist, the Union officials will cooperate with the District in taking such steps as are

necessary to correct such abuse.

## **5.2. District Board Meetings.**

5.2.1. Consistent with District operating requirements, the Union may designate ~~one~~ two (2) employee ~~representative~~ representatives to attend each District Board meeting and workshop (which meeting is otherwise open to the public), including the Retirement Board meeting, without loss of time or pay.

5.2.2. Authorization to attend such Board meetings must be obtained from the Manager of Employee Relations no later than twenty-four (24) hours prior to the time of such meetings.

5.2.3. In addition, the Union may designate two (2) employees to serve on the combined 401K and 457 Deferred Compensation Committee without loss of time or pay.

5.3. **Election Observers.** Consistent with District operating requirements, one (1) Union election observer shall be paid during regular work hours for attendance at each election balloting location to observe all election procedures which involve representation, modification or decertification of the Union.

5.4. **District Vehicle Use.** Union representatives are prohibited from using District vehicles other than sedans and pick-up trucks to attend District meetings. If Union representatives are driving District vehicles other than sedans and pick-ups at the time they are requested to attend meetings, the District will arrange for transportation or for a sedan or pick-up to be available for them.

5.5. **Communication with Employees.** The Union shall have designated for official Union business a specific portion of District Bulletin Boards with space adequate for the posting of 4 sheets of paper (8.5 inches by 11 inches), or a contiguous area approximately 17 inches wide by 22 inches long. Items placed in the Union section of the District bulletin boards shall be signed by an officer of the Union and shall not contain salacious or inflammatory material that is derogatory towards the District, its employees, or its policies. The Union may distribute materials to employees within the classifications it represents through District mail distribution channels, with all such mailings subject to the prior approval of the Manager of Employee Relations. These provisions may be revoked in the event of abuse after the Manager of Employee Relations consults with representatives of the Union.

5.6. **Visits by Union Representatives.** The District agrees that accredited non-employee representatives of the Union, whether local, district council, or international representatives, shall have access to District premises for the purpose of meeting with Union officials when investigating grievances or determining compliance with this Memorandum. Arrangements for visits to District premises for these purposes shall be made through the Manager of Employee Relations. Employee meetings with non-employee Union representatives shall not be paid for by the District.

5.7. **Limitation on Union Activities.** Activities involving internal management of the Union such as collection of dues, assessment of other funds, membership meetings, campaigns for office, distribution of literature or conducting of membership drives, shall not be conducted during working hours, in District work areas, or on District property without prior approval of the Manager of Employee Relations. The election of stewards on nonworking time may be conducted at work sites when it does not interfere with the operations of the District. Prior notice of two (2) work days shall be given to the work unit supervisor.

5.8. **Union Business.**

5.8.1. Employees elected to any Union office or selected by the Union to do work that takes them from their employment with the District shall, at the written request of the Union, be granted leave for up to six (6) months, provided that the work of the operation concerned will not be unduly impaired by such absence. While such employees are on Union Business Leave, they will remain on the District payroll.

5.8.2. The Union will reimburse the District for the employees' wages and benefits while the employees are on Union Business Leave. If Union reimbursement is not received within forty-five (45) calendar days of District billing, the employees' status for that time will be changed to Union Business Leave Without Pay and the appropriate amount will be deducted from their next paycheck.

5.8.3. It is understood the intent of this section is to permit employees to continue to accrue sick leave, vacation, and retirement system credits while on Union Business Leave With Pay.

5.8.4. Notification. Requests for Union Business Leave shall be submitted in writing from the Union President to the Manager of Employee Relations a minimum of three (3) workdays before the effective date of the leave. The Manager of Employee Relations may waive these notification requirements at her/his discretion.

5.8.5. Minimum Duration. Union Business Leaves must normally be for a minimum of one (1) hour.

5.8.6. Unpaid Leave Requirements. Union Business Leaves Without Pay shall be subject to the provisions of Section 17.1 of this Memorandum.

5.9. Orientation. As part of the District's new employee orientation program, the Union shall have ~~fifteen (15)~~ thirty (30) minutes to provide information and answer questions to new employees who are in classifications covered by this Memorandum of Understanding.

## ARTICLE 6. SALARY AND WAGE SCHEDULE

### ~~6.1.~~ 6.1. Wages.

6.1.1. First Year Increases. Effective April 22, 2013, the monthly salary rates of District employees covered by this Memorandum of Understanding will be increased by 3.0%.

Equity adjustments shall be made to represented classifications as detailed below:

|                                       |                                |
|---------------------------------------|--------------------------------|
| Hydroelectric Power Plant Operator I  | Pay Range 59 Effective 4/22/13 |
| Hydroelectric Power Plant Operator II | Pay Range 65 Effective 4/22/13 |
| Hydroelectric Power Plant Mechanic    | Pay Range 67 Effective 4/22/13 |

Pursuant to Civil Service Rule IV Classification, Section 7 Classification Study Request, the District will evaluate the need for a revision to class description, based on the alleged changes in position duties and responsibilities on the following classifications:

|                        |                                 |
|------------------------|---------------------------------|
| Senior Mechanic        | Concrete Finisher I/II          |
| Maintenance Machinist  | Water Distribution Crew Foreman |
| Maintenance Specialist |                                 |

6.1.2. Second Year Increases. Effective April 21, 2014, the monthly salary rates of District employees covered by this Memorandum of Understanding will be increased by the February 2014 San Francisco/Oakland CPLW plus 0.90% with a minimum \$0.00.



4.50%.

~~6.1.1.~~ 6.1.3. Third Year Increases. ~~30, 2007~~ Effective April 20, 2015, the monthly salary rates of District employees covered by this Memorandum of Understanding will be increased by 4.1%. February 2015 San Francisco/Oakland CPI-W plus 0.80% with a minimum of 2.0% and a maximum increase of 4.75%. ~~Equity adjustments shall be made to represented classifications as detailed below:~~

|                             |              |                   |
|-----------------------------|--------------|-------------------|
| Electrical Technician       | Pay Range 66 | Effective 4/30/07 |
| Instrument Technician       | Pay Range 66 | Effective 4/30/07 |
| Diesel Power Plant Operator | Pay Range 64 | Effective 4/30/07 |
| Maintenance Machinist       | Pay Range 65 | Effective 4/30/07 |

~~6.1.2.~~ 6.1.4. Second Year Increases. ~~Fourth Year Increases.~~ Effective April 28, 2008~~18,~~ 2016, the monthly wages~~salary~~ rates of District employees covered by this Memorandum of Understanding will be increased by the February 2008~~2016~~ San Francisco/Oakland CPI-W + .5%. ~~If the CPI-W + .5% is greater than 6%, the plus 0.80% with a minimum of 2.0% and a maximum increase shall be 6%. The minimum increase will be 2%, and the maximum increase 6%, with no re-opener.~~

~~6.1.3. Third Year Increases.~~ Effective April 27, 2009, the monthly wage rates of employees represented by this Memorandum of Understanding will be increased by the February 2009 San Francisco/Oakland CPI-W + .25%. ~~If the CPI-W + .25% is greater than 6%, the maximum increase shall be 6%. The minimum increase will be 2%, and the maximum increase 6%, with no re-opener.~~ 5.0%.

~~6.2. Fourth Year Increases. Effective April 26, 2010, the monthly wage rates of employees represented by this Memorandum of Understanding will be increased by the February 20010 San Francisco/Oakland CPI-W. The minimum increase will be 2.5%, and the maximum increase 6%, with no re-opener.~~

6.2. **Pay Period.** Salaries shall be paid biweekly on Friday of the appropriate week. In the event that this day is a holiday, the preceding day shall be the payday.

6.3. **Twenty-year Wage Increment.** Each employee covered by this Memorandum shall be entitled to a salary increment following completion of twenty (20) years' continuous full-time District service. The adjustment for such employees shall be 2.75% (plus or minus no more than one dollar per month) added to the monthly salaries set forth, exclusive of overtime, night shift differential or standby pay.

6.4. **Work-Out-of-Classification.** When an employee is assigned by a District supervisor to temporarily replace another employee in a higher classification or to perform the full range of duties required for a particular assignment of a higher classification, he/she shall be paid the appropriate higher rate lowest step of the higher classification or at least 5% whichever is greater for such work. Assignments to perform the work of a higher classification pursuant to this Section 6.4, will be tracked by hours worked and shall not exceed 480 hours in a payroll year. By use of this Section, the District will not attempt to avoid District Civil Service Rules and the filling of regular full time positions. The District will make reasonable efforts to distribute work-out-of-class on an equal and rotational basis for qualified employees, beginning with the most senior unit member.

6.5 **New Classifications.** The Union recognizes the right of the District to establish new job classifications and to amend existing class descriptions to reflect changes in assigned duties and responsibilities. In the event a substantial change is made in the description of a class represented by the Union, the District will advise the Union of such change and of the salary for the class. Upon request of the Union, the parties shall meet and confer on the salary for the classification within ten (10) working days prior to presentation to the Board of Directors. Establishment of salary is not subject to the grievance procedure as contained in this Memorandum.

6.6. **Payment for Licenses/Certificates**

6.6.1. The District shall pay all normal and regular fees incurred in the obtaining of any licenses or certificates that are required by the District for the job classification of the employee. It is understood that any late or penalty fees which are not caused by District action shall not be included in normal or regular fees. The District shall pay actual fees for employees who obtain higher level licenses or certificates than required for their class but within their normal class series. Employees shall be granted paid time to take tests for any licenses or certificates required for the employee's current job classification. The District will reimburse actual fees for and provide paid time for California Class A and B driver's tests and licenses.

6.6.2. Employees in the Wastewater Plant Operator I and II classifications who obtain a Wastewater Plant Operator's certificate at a higher level than required for their classification will receive a \$15.00 per month premium. If they receive a second, higher classification certificate,

they will receive an additional \$20.00 per month, for a maximum total of \$35.00 per month premium. Employees on unpaid status for two consecutive pay periods due to illness or injury will have their certificate premium payments discontinued until they return to work. Employees who request leave without pay (LWOP) for reasons other than illness or injury will have their certificate premium payments discontinued effective the first full pay period after their leave begins, and the payments will be resumed once they return to work.

#### **6.7. Salary on Promotion.**

The new base shall be either the beginning step of the new class, or the step in the salary schedule in the new class which is at least 5% above the employees current base salary, whichever is the greater amount, provided that in no instance shall the employee's base rate exceed the maximum salary wage rate established and in effect for the new class.

**6.8. Adjustments for Overpayments.** In the event an employee is erroneously overpaid by the District, regardless of fault, the District shall recover overpayment by deducting from that employee's regular paycheck either the full amount of the overpayment or ten (10) percent of the employee's gross salary, whichever is less, and continue said deductions for as many consecutive pay periods as necessary until full overpayment is recovered. The District shall not commence recovery by payroll deductions until written notification has been given to the employee at least 10 working days in advance, which includes all the details of the overpayment and provides the employee with an opportunity to respond before any deduction is made.

### **ARTICLE 7. DAYS AND HOURS OF WORK**

**7.1. Workday.** The workday shall consist of eight (8) consecutive hours of work (exclusive of any unpaid meal period) within a 24-hour period beginning at 12 midnight except where otherwise mutually agreed.

#### **7.2. Workweek.**

**7.2.1.** The workweek shall consist of five (5) consecutive workdays within a seven (7) day period beginning at 12:01 a.m. Monday and ending at 12 midnight Sunday.

**7.2.2.** Notwithstanding Sections 7.1 and 7.2, upon request of an individual employee or a group from the work unit, the District will investigate and may change the beginning and ending work day hours of that employee or the work days and workweeks of employees within any particular work unit provided the work or the operation of the unit concerned will not be unduly impaired by such adjustment. Such adjustment shall not affect the total length of the workweek. All requests for flexible schedules will be examined and considered for implementation by the District. The decision of the District on granting or refusing to grant a change in the beginning and ending work day hours or workweek shall be final and conclusive and shall not be subject to the grievance procedure of this Memorandum.

**7.3. Continuous Operations.**

7.3.1. In operations in which there is regularly scheduled employment for 24 hours per day, seven (7) days per week, the hours of work shall consist of eight (8) consecutive hours per workday, and except during scheduled rotation or relief operation, five (5) consecutive days per workweek.

7.3.2. The District shall not schedule work so as to require employees in continuous operations to work three (3) shifts within a forty (40) hour period. In continuous operations, except where such occurs on a regular, recurring basis as part of a rotating shift schedule, employees who are called back to work an eight (8) hour shift after being off their previous shift for eight (8) or fewer hours shall be paid one (1) hour of double back pay at the overtime rate in addition to their pay for such time worked. Seniority will be an important consideration in the assignment of shifts.

7.3.3. Employees in continuous operations who are required to be at work stations for eight (8) consecutive hours shall eat during working hours.

7.3.4. In operations where work schedules are changed, the work schedule shall be posted and changes in schedule shall be posted a minimum of one (1) week in advance of the effective date of change. (Applicable department work rules will be revised in accordance with this provision.)

7.3.5. Relief shift operators shall be notified 48 hours in advance of changes in their work schedules. The advance notice specified above shall not apply in cases of illness or other emergencies.

7.3.6. Wastewater Treatment employees working in work units designated by the District as requiring continuous operation shall utilize work shifts consisting of three (3), eight-hour shifts in a day. Shift assignments and days off shall be bid annually, based on District seniority. Operators elected as Union President and Chief Steward shall have super seniority for the purpose of bidding for day shift, Monday through Friday, assignments.

**7.4. Changes in Days and Hours of Work.**

7.4.1. It is understood that, all other provisions of this Article notwithstanding, the hours of work, workday, and workweek practices in effect on the effective day of this Memorandum may be continued at the option of the District; provided, however, changes in such practices shall be subject to prior consultation with the Union.

7.4.2. Notwithstanding the above, the District may schedule shifts one (1) hour earlier than present. If such shift creates work in two (2) different calendar days, all time will be treated for payroll processing purposes as if it were worked in the calendar day containing the majority of the workday. For example, if the start of the workday is changed from 12:00 midnight to 11:00 p.m., the employee will be paid as if all work commenced at 12:00 midnight. Such treatment of time worked shall have no effect on eligibility for shift differential or other premiums.

7.4.3. Notwithstanding the above, in special circumstances when mandated by CalTrans or other agency, the District may temporarily change shift starting times to accommodate said agency's concerns, provided that such change shall not be for less than five nor more than one hundred and twenty calendar days. In such cases a minimum of two weeks prior notice shall be provided to the employee(s) whose shift starting time is temporarily changed, and a five percent premium shall be paid to those employees for all regular hours worked on all days so changed. In no case shall the combined shift differential and shift change premiums paid to an employee exceed fifteen percent. The District will not temporarily change the scheduled workday or workweek of employees for the purpose of avoiding overtime payments. Employees shall be compensated for time worked in excess of their regularly scheduled work day or workweek as provided in Section 8.1 of this Memorandum of Understanding. Nothing herein shall be interpreted as limiting the District's right to reschedule shifts on a long-term or permanent basis as provided in this Article.

7.5. **Rest Periods.** Employee work schedules shall provide for fifteen (15) minute rest periods during each one-half (1/2) of the work day. Rest periods shall be scheduled so as not to interfere with efficient operations of the District.

7.6. **Meal Periods.**

7.6.1. Employees shall be granted a thirty (30) minute lunch period, without pay, except as otherwise provided, scheduled at approximately the middle of the workday.

7.6.2. The District, at its option, shall furnish meals or provide \$1618.00 per meal on an employee's paycheck for employees who work unscheduled overtime for two (2) or more hours beyond their regular quitting time. ~~The District will continue the voucher program in the Distribution-Maintenance and Pipeline Construction Divisions, subject to income tax.~~ Employees shall be provided additional meals or money on their paychecks, as above, for every completed four (4) hour period of unscheduled overtime work thereafter. Emergency or unscheduled overtime work is defined as overtime work that is not scheduled a minimum of eight (8) or more hours in advance of the overtime work. Scheduled or planned overtime work on a regular workday or sixth or seventh day in a week shall not require reimbursement for overtime meals unless an employee works two (2) or more consecutive hours beyond their regular eight (8) or more hour scheduled shift. Time taken for meals furnished by the District at the work location shall be paid time. Time taken for meals eaten away from the work location shall be unpaid time.

7.7. **Cleanup Time.** Where the nature of the work is such that cleanup is required, work schedules shall be arranged to allow reasonable time for that purpose prior to the end of the workday. The District shall provide facilities for cleanup. All employees who report to a job site have the option (with the permission of their immediate foreman/supervisor), to go to the nearest District facility to shower or change clothes in case of emergency or at the end of their workday.

7.8. **Receiving Materials.** District employees normally will not be required to unload or assist in unloading material from common carriers making deliveries on District premises except when weight or bulk of freight precludes reasonable physical handling by driver, or, when

other unusual circumstances require such unloading or assistance by District employees one-half (1/2) hour before the end of the shift.

**7.9.**

**Reimbursement For Use of Private Car.** The District will reimburse employees at the FY14 rate of ~~fifty-sixty-one and two-tenths cents (51.20.61)~~ per mile for each mile they are authorized and required to drive their private cars within the employee's normal areas of operations in the performance of their assigned duties. Annually in July, the District will adjust this amount to conform to the American Automobile Association (AAA) composite per mile cost for a 6-cylinder, 4-door sedan in the 15,000 miles per year category. This information is obtained from the Annual Edition of Your Driving Costs, published by the American Automobile Association, Falls Church, Virginia. In the event such publication is not available, the parties will meet and confer on the new data.

**7.10.****Fatigue Time.****7.10.1.**

Employees shall receive full pay for fatigue time hour for hour worked if they have worked overtime and the overtime has been completed with less than eight (8) hours between the completion of the overtime and the start of the employee's next regularly scheduled shift provided that the employee worked two (2) or more consecutive hours of overtime within the nine (9) hour period before the start of the employee's next regularly scheduled shift.

**7.10.2.**

Employees shall not receive fatigue time if: (1) the overtime is completed more than eight hours prior to the start of their next regularly scheduled shift, or (2) employees are called out to perform overtime work within four (4) hours of the start of their next regularly scheduled shift, or (3) they are assigned to continuous operations, except employees assigned to the Large Value Crew in the Construction Maintenance Division who meet the other requirements in 7.10.1.

**7.10.3.**

Fatigue time must be taken during the first or last part of the next regularly scheduled workday. Employees receiving fatigue time shall notify their immediate or after hours supervisor at the completion of the overtime work, if possible, or a minimum of one (1) hour before the start of their next regularly scheduled shift when their fatigue time will be taken.

**ARTICLE 8. OVERTIME****8.1.**

**Preamble.** At the present time the District has no plans and does not contemplate an expansion in the use of overtime. The District will make all reasonable efforts to avoid overtime including reviews of staffing to minimize its adverse effect on individuals and to control costs to the District, but occasionally overtime may be necessary to avoid greater costs as well as to meet legal obligations and Board commitments. The District agrees to provide the Union with reports on overtime utilization on a semi-annual basis. The District will provide the Union with specific overtime utilization reports upon reasonable request. Furthermore, the parties agree to consult on an annual basis regarding overtime, standby and call back usage in order to improve the system and eliminate practices that the parties agree should be corrected. The District will continue to assess all overtime use to ensure that overtime is necessary in order to maintain current District operations, services, and to ensure completion of projects on

schedule. Whenever overtime is necessary, the District will give employees notice as soon as is reasonable and practical to do so.

**8.2. Rate of Pay.** One and one-half (1-1/2) times the employee's regular hourly rate of pay shall be paid for all work performed in excess of eight (8) hours per workday or forty (40) hours per workweek. Time worked at the overtime rate due to Call Time overlap of the employee's regular workday shall be counted in determining the eight (8) hours per workday or forty (40) hours per workweek required to establish a base for overtime. There shall be no pyramiding of overtime pay.

**8.3. Limitation and Distribution of Overtime.** No employee shall be required to work more than sixteen (16) hours in any twenty-four (24) hour period. If an employee works thirty-two (32) hours in a pay period on emergency overtime work, that employee will not be subject to non-emergency necessary overtime work in the same pay period unless the employee volunteers for such work. An employee shall be obligated to work non-emergency necessary overtime work to the extent that the employee has not worked thirty-two (32) hours in a pay period as emergency overtime work, i.e., emergency overtime hours worked shall reduce the hours limitation for non-emergency necessary overtime in the same pay period.

**8.4. Emergency Overtime.** All employees are required to work in emergency situations. An emergency includes, but is not limited to, situations which involve disruption of service to customers and actual or threatened danger of injury to person or damage to property, or threat to public health and safety.

**8.5. Non-Emergency Necessary Overtime.**

**8.5.1.** The District will request volunteers for all available necessary overtime. Overtime work shall be distributed as nearly equally as possible among qualified employees working within the same job classification, within the same work unit.

**8.5.2.** No volunteer may work more than sixteen (16) consecutive hours without approval of the Division Manager.

**8.5.3.** No employee will be assigned to work more than sixteen (16) hours in any 24-hour period or to work more than thirty-two (32) hours per pay period of non-emergency necessary overtime work. The parties emphasize the distribution commitment contained in Article 8.5.1 above to minimize the impact of assigned overtime on an individual employee.

**8.5.4.** In the event an insufficient number of employees volunteer for necessary overtime, the District shall assign employees to fill vacancies (on a rotating basis) starting by reverse seniority in the affected unit and classification. Whenever an employee is on standby, the District will not assign other overtime work to that employee unless the entire rotation of his/her classification has been exhausted and overtime is still necessary. However, an employee shall be permitted to volunteer for overtime during a week the employee is also on standby.

**8.5.5.** With District approval, employees may trade all overtime assignments. Until a trade is approved, all overtime assignments are part of an employee's job responsibilities.

8.5.6. Employees are expected to comply with overtime assignments and failure to do so shall subject an employee to appropriate discipline. However, an employee who, because of illness or other compelling emergency, is unable to work assigned or scheduled overtime, and who notifies the District a minimum of one (1) or more hours before an employee is scheduled to report to work, shall not be subjected to disciplinary action for failure to work.

8.6. **Voluntary Overtime Lists.** Work units having overtime work will establish lists of employees who are available to work overtime on a voluntary basis. The initial order of call when the lists are established shall be by seniority; thereafter, employees will be called on a rotating basis subject to the operating procedure of the work unit. The operating procedure for such lists shall be developed by each work unit and shall take into account the nature of the overtime work available, skills required to do the overtime work, and the operational requirements of the work unit.

8.7. **Compensatory Time.** Compensatory time will be provided at 1.5 hours for each hour of overtime worked. The maximum accrual of compensatory time will be 75 hours in a payroll year. Payroll year is defined as the period beginning with the first pay period for which pay is received in January, and ending with the last pay period for which pay is received in December. All overtime worked after an employee has accrued or used 75 hours of compensatory time in a payroll year will be paid at the appropriate overtime rate. All employees who have accrued compensatory time at the end of the last pay period, for which pay is received in December, shall have their compensatory time carried over as compensatory time into the next (following) payroll year. All compensatory time carried over from the last payroll year to the next must be used by the end of the next payroll year or it will be paid off to the employee at the end of the next (following) payroll year at the applicable FLSA rate. Any compensatory time used in the next (following) payroll year will first be deducted from any compensatory time that was carried over from the last payroll year, if any. Compensatory time accrued after the last full pay period of the payroll year, but prior to the end of the calendar year, will be credited and included in the accrual for the following calendar year.

8.7.1. Use of accumulated compensatory time off shall be scheduled and approved by the District so as not to disrupt the operation of the work unit or the District.

## ARTICLE 9. STANDBY PAY

9.1. **Preamble.** At the present time the District has no plans and does not contemplate an expansion in either the use of standby or in the classifications where standby is currently being utilized.

9.2. **Compensation Rates.**

9.2.1. An employee assigned to be on call during non-working hours shall receive a premium of twenty-five percent (25%) of the basic pay during the standby period, provided such employee makes himself/herself available and responds to all calls for work. Overtime work performed during a standby period shall be paid at the rate of one and one-half (1-1/2) times the straight-time hourly rate for the time worked exclusive of such standby premium.



9.2.2. In the event an employee assigned to standby is not called for overtime work because of District error which is verified by the District, the employee shall receive payment equivalent to two and one-half (2.5) hours at their overtime rate exclusive of special or premium pay provided such employee makes himself/herself available and responds to all standby calls for overtime work during that week.

9.2.3. When an employee is on standby on a day that is designated as a District holiday, the employee shall receive standby pay for three (3) eight-hour standby periods on that holiday, in addition to receiving regular holiday pay.

9.3. **Scheduling.** The District shall schedule its standby needs at least two (2) months in advance. Volunteers for standby to fill the schedule shall be allowed in each classification with the most senior District employee allowed first choice of assignments.

9.4. **Rotation System.** A rotation system in each department, in each classification, in each location, shall be developed by the District where standby is necessary. The rotation system shall not be utilized if the standby schedule is completely filled with volunteers. The rotation system, if used, shall, in its inception, first obligate the least senior District employee in each department, in each classification, in each location.

9.5. **Trades.** With District approval, employees may trade all standby assignments. Unless and until a trade is approved, all standby assignments are part of an employee's job responsibilities.

9.6. **Compliance.** Employees are expected to comply with standby assignments and failure to do so shall subject an employee to appropriate discipline. However, an employee who, because of illness or other compelling emergency, is unable to be available for standby, and who notifies the District at the onset of the illness or at the time they become aware of the compelling emergency, shall not be subjected to disciplinary action for failure to be available. Such employee shall only be compensated for the actual time he/she was available for standby.

## ARTICLE 10. CALL TIME

10.1. **Minimum Overtime Guarantee.** Employees called and requested to work outside of their regularly scheduled shift and who report to work in response to such request, shall be paid for a minimum of two and one-half (2-1/2) hours at the appropriate overtime rate.

10.2. **Shift Overlap.** If the call time work assignment and the employee's regular shift overlap, the following process will be followed:

10.2.1. The time that the minimum overtime guarantee overlaps the employee's regular shift will be paid as a premium but will count towards the employee's regular shift or hours. Minimum overtime guarantee is a premium pay and is not subject to retirement withholding and will not be counted toward retirement service credit.

10.2.2. The District and employee will pay retirement contributions for the regular shift hours worked by the employee at the regular rate of pay and the employee shall receive service credit in the Retirement System for the employee's regular shift hours.

10.2.3. No retirement contributions will be made for overtime compensation paid to the employee for the minimum overtime guarantee and no retirement service shall be credited for overtime work.

10.3. **Rest/M meal Break.** If an employee is called to start work less than two and one-half (2-1/2) hours before the start of his/her regularly scheduled shift, the employee shall be allowed a fifteen (15) minute break prior to the start of his/her shift. If the employee is called to start work two and one-half (2-1/2) or more hours before the start of his/her regularly scheduled shift, he/she shall receive a thirty (30) minute paid meal break prior to the start of his/her regular shift.

10.4. **Telephone Response.** An employee on paid standby who is called on the telephone but not required to report for work will be compensated for a minimum of one (1) hour at the appropriate overtime rate.

## ARTICLE 11. SHIFT DIFFERENTIAL

11.1. **Definition and Compensation.** Employees who perform work on a scheduled eight (8) hour shift beginning between 11:00 a.m. and 10:59 p.m., inclusive, shall be paid ten (10) percent per hour. Employees who perform work on a scheduled eight (8) hour shift which begins between 11:00 p.m. and 3:59 a.m., inclusive, shall be paid fifteen (15) percent per hour.

11.2. **Continuous Operations.** In continuous operations, when an employee's shift is extended by additional hours either before or after the normal shift, overtime compensation shall be based on the rate for the shift that was extended or actually worked, whichever is greater.

## ARTICLE 12. REDUCTION IN FORCE/DEMOTION AND TRANSFER AND DEMOTION APPEALS

12.1. **Reasons.** An employee may be separated from District employment by reduction in force due to lack of work or funds, retrenchment, or completion of work. The District shall notify the union of its intent to implement a reduction in force no less than thirty (30) calendar days prior to its effective date. The notice shall include the reason for the layoff, the classifications and positions affected, the names of the employee(s) subject to separation by reduction in force, and the seniority information associated with the reduction in force.

12.2. **Application.** Reduction in force in a given classification shall be from all positions in the classification, District-wide.

12.3. **Priority.** Reduction in force shall first affect employees having provisional or probationary appointments in the classification in question. Thereafter, employees having permanent appointments in the classification shall be subject to reduction in force in inverse order to the length of their continuous service within the affected classification.

12.3.1. Length of service for the purpose of Section 12.3. shall mean an employee's continuous uninterrupted service from the effective date of appointment as a probationary, part-time, or less than full-time (Intermittent) employee

12.3.2. An interruption in length of service within a classification shall occur as a result of any one of the following:

- a. Discharge for cause
- b. Voluntary resignation
- c. Retirement for service or disability
- d. Absence from work for thirty-six (36) consecutive months because of layoff
- e. Failure to return from layoff as provided in Article 12.6
- f. Failure to return from an approved leave of absence upon the date\_\_\_\_\_, specified for return at the time said approval was granted
- g. Unapproved leave of absence without pay of any length

Acting appointments to a classification shall not be construed as service in such classification unless such acting appointment was contiguous with appointment to such classification in a probationary, part-time, or less than full-time (Intermittent) status.

**12.4. Demotion to Previously Held Classifications.** An employee subject to separation by reduction in force may elect demotion to classifications in which he/she has previously held permanent civil service status during his/her current period of employment. In such election, the procedures of reduction in force outlined in Section 12.3 shall be applied to the employee being separated and to all others in the classification in question.

**12.5. Voluntary Demotion.** In accordance with Civil Service Rules governing demotions and transfers, an employee subject to separation may also be considered for voluntary demotion to other lower classifications or for transfer to classifications at the same salary level, if any vacancies exist. Any employee who is not transferred or demoted to a permanent position shall be offered appointment to any temporary position in his/her classification which is currently filled at the time of his/her proposed termination.

**12.6. Reinstatement List.** Names of employees affected by reduction in force shall be placed on a layoff and reduction list in the order in which they have been laid off or demoted. Such list shall remain in effect for a period of two (2) years, during which time, when vacancies occur in the classification in which reduction in force took place, employees laid off or demoted shall be reinstated in the reverse order of layoff or demotion.

**12.7. Severance Pay.** Each permanent employee with a minimum of five (5) continuous years of District employment who is laid off due to a reduction in force shall receive twenty (20) workdays' severance compensation exclusive of any premium, overtime, standby or longevity pay.

**12.8. Demotion.** The General Manager may approve the demotion of an employee for inefficiency, or as a result of reduction in force or for other cause. Except in disciplinary situations, there shall be no involuntary demotion of an employee until reasonable effort has been made to transfer or reassign the employee in accordance with applicable Civil Service Rules.

**12.9. Transfer and Demotion Appeals.** In the event of transfer or demotion in accordance with the District's Civil Service Rules, the Personnel Officer shall give written notice to the employee, including the reasons for the action, and the employee shall have the same rights of appeal as employees who are discharged or suspended.

## **ARTICLE 13. CONTRACTING AND SUBCONTRACTING**

**13.1 Right to Contract.** The rights to contract and subcontract are vested exclusively in the District; provided, however, if such contracting or subcontracting work would result in the layoff of an employee in a classification set forth in Appendix A, the District will consult with the Union, prior to such contracting or subcontracting, in an attempt to avert, by transfer or other reasonable means, the layoff of such employee.

**13.2. Annual Meeting.** In addition to current practice, District and Union representatives will meet annually to review contract construction work and other work that is customarily performed by Union members that the District intends to contract out during the fiscal year. Further, District and Union representatives will regularly hold meetings as a Contracting Out Committee.

## **ARTICLE 14. HOLIDAYS**

### **14.1. Holidays Observed.**

**14.1.1.** The following legal holidays will be granted to eligible employees: New

Year's Day January 1

Martin Luther King, Jr.'s Birthday

Lincoln's Birthday

Washington's Birthday

Cesar Chavez' Birthday

Malcolm X's Birthday

Memorial Day

Independence Day

Labor Day

Admission Day

Veterans' Day

Thanksgiving Day

~~after Thanksgiving~~

Day after Thanksgiving

Christmas Day

Third Monday in January

February 12

Third Monday in February

March 31

Floating Holiday (May 19)

Last Monday in May

July 4

First Monday in September

September 9

November 11

Fourth Thursday in November ~~Day~~

December 25

14.1.2. When a holiday falls on Sunday, the following Monday shall be observed as the holiday. When a holiday falls on Saturday, the preceding Friday shall be observed as the holiday.

**14.2. Eligibility.**

14.2.1. Full-time employees shall receive the above holidays off with no loss in pay when both the following conditions are satisfied:

- a. The employee works or is on Authorized Leave (with or without pay) on his/her scheduled workday immediately before and immediately after the holiday; and
- b. The employee is in a paid status for 8 hours within the payroll period in which the holiday falls.

14.2.2. Malcolm X's Birthday will be recognized through a floating holiday. Probationary and regular employees will be eligible for the floating holiday if they are employed prior to July 1 and must be taken by the beginning of the last pay period in December. The District will allow the individuals to choose this day (May 19) as the floating holiday, provided the department or division does not fall below acceptable minimum staffing. If all applicants for the day cannot be satisfied, selection of which individuals will receive the specified date will be made on the basis of date of request.

14.2.2.2. The Malcolm X holiday must be taken no later than the last day of the last full pay period in the calendar year to be paid in the calendar year.

14.2.2.3. If the Malcolm X holiday is not used prior to that date it shall be forfeited.

14.2.2.4. Use of the Malcolm X holiday after the last day of the last full pay period in the calendar year will be charged against the following year.

**14.3. Holiday Pay.**

14.3.1. Employees who work on an observed holiday shall receive overtime pay for hours worked in addition to their regular straight-time pay.

14.3.2. Employees whose scheduled day off falls on an observed holiday shall receive a day's pay at the straight-time rate; such employees who work on an observed holiday shall, in addition, receive overtime for hours worked.

14.3.3. Employees who work in a 24-hour continuous operation or a seven-day per week operation and are scheduled to work on District-observed holidays and actually work on the holiday in accordance with this MOU shall receive the following based on their work schedule:

14.3.3.1. Eight Hour Work Schedule. Employees who work an eight (8) hour schedule shall receive the following:

14.3.3.1.1. Eight (8) hours of regular straight time pay for the holiday worked that will be subject to retirement contributions from both the District and employee and be counted toward retirement service credit.

14.3.3.1.2. Eight (8) hours of holiday pay at the straight time rate that the employee may choose either to receive as pay or add to his/her vacation accruals. If taken as pay, holiday pay is a premium pay and is not subject to retirement withholding and will not be counted toward service credit.

14.3.3.1.3. Four (4) hours of holiday premium at the regular straight time rate that may be paid or added to compensatory time accruals in accordance with this MOU. If taken as pay, holiday premium pay is not subject to retirement withholding and will not be counted toward service credit. The four (4) hours of holiday premium pay will be reported using a separate payroll code.

14.3.3.2. Compressed Work Week Schedule. Employees who work on a compressed workweek schedule shall receive the following:

14.3.3.2.1. Nine (9), ten (10), or twelve (12) hours of regular straight time pay for the worked holiday depending on the duration of their regularly scheduled work day that will be counted toward retirement service credit and be subject to retirement contributions from both the District and employee.

14.3.3.2.2. Eight (8) hours of holiday pay at the straight time rate that the employee may choose either to receive as pay or add to his/her vacation accruals. If taken as pay, holiday pay is a premium pay and is not subject to retirement withholding and will not be counted toward credit.

14.3.3.2.3. Holiday premium pay equal to one-half of the duration of the employee's regularly scheduled workday at his/her regular straight time rate, that may be paid or added to his/her compensatory time accruals in accordance with this MOU. If taken as pay, holiday premium pay is not subject to retirement withholding and will not be counted toward retirement service credit. The holiday premium pay equal to one-half of these regularly scheduled hours worked will be reported using a separate payroll code.

14.3.3.3. No retirement contributions shall be taken from overtime compensation paid to the employee for holidays and no retirement service credit for overtime work.

14.3.4. In the event that a holiday falls on an employee's compressed day off, the employee will be credited with eight (8) hours of vacation, or the employee may choose to receive holiday pay, to be added to 80 hours of regular pay (a total of 88 hours at regular rate for the pay period). If the employee does not indicate that he/she wishes to receive holiday pay, the holiday will be added to his/her vacation accrual.

14.3.5. In continuous and seven-day operations, when a holiday falls on a Saturday or Sunday, the actual holiday will be observed rather than the District observed holiday.

14.4. **Holiday During Vacation.** Holidays that fall during a vacation shall not be charged against vacation credits.

**ARTICLE 15. VACATIONS****15.1. Eligibility and Allowance.**

15.1.1. Employees who are eligible to be credited with vacation are those who have permanent or probationary status. Other appointments, however, if continuous with the current period of employment, shall be counted in determining the amount of vacation to be credited and the date of eligibility.

15.1.2. Eligible employees shall accrue vacation leave as follows:

| <b><u>Continuous Service Years</u></b>  | <b><u>Vacation Leave Hours<br/>Per Pay Period</u></b> | <b><u>Vacation Days<br/>Per Year</u></b> |
|---|---|--|
| 1 <sup>st</sup> through 4 <sup>th</sup> | 3.692   | 12                                       |
| 5 <sup>th</sup> through 9 <sup>th</sup> | 4.616   | 15                                       |
| 10 years                                | 5.539   | 18                                       |
| 11 years                                | 5.539   | 18                                       |
| 12 years                                | 5.539   | 18                                       |
| 13 years                                | 5.847   | 19                                       |
| 14 years                                | 6.154   | 20                                       |
| 15 years                                | 6.462   | 21                                       |
| 16 years                                | 6.770   | 22                                       |
| 17 years                                | 7.077   | 23                                       |
| 18 years                                | 7.385   | 24                                       |
| 19 and subsequent                       | 7.693   | 25                                       |

15.1.3. Any increases an employee receives in vacation shall be prorated for the calendar year.

**15.2. Vacation Accrual.** All eligible employees shall accrue vacation on the basis of hours paid.

**15.3. Use of Vacation.**

15.3.1. At any time after completion of six (6) months of service, an eligible employee may use the six (6) vacation days credited for the first six (6) months of employment. Thereafter, employees may use vacation leave equal to the accrued vacation leave credited to their account.

15.3.2. Vacation must be taken within the calendar year in which it is credited, with two (2) exceptions:

- a. Certain amounts of vacation may be deferred, as shown below.
- b. Vacation started before the end of the year may be continued into the next year.

15.3.3. A maximum of 50 vacation leave days (400 hours) may be deferred by employees. Any employee with deferred vacation accrual in excess of 50 days (400 hours) at the end of any

calendar year shall have his or her vacation leave balance adjusted and reduced to 50 vacation days at the beginning of the first payroll period in January unless there is specific written authorization from the General Manager to exceed such limit. Employees who have more than four hundred (400) hours of vacation accrued on the last payroll period in December and who have not taken at least 80 hours of vacation in the prior calendar year, shall be required to schedule and take vacation to equal eighty (80) hours (including previous year's vacation) within the following three months. These 80 hours shall not include hours used in the first quarter of the year to comply with the prior year's requirement. If any employee retains more than 400 hours after the three-month period, the District will automatically convert to pay all hours in excess of 400 hours as of the last payroll period in December. The District will discontinue the additional notification of employees by letter of vacation leave balances in excess of 400 hours effective with the end of the 2007 payroll year.

**15.4. Choice of Vacation.**

15.4.1. Whenever possible, vacations shall be scheduled for the time requested by the employee. In order to avoid undue disruption of work activities or to minimize conflicts with other employees' vacations, the Department Head or Division Manager may place reasonable seasonal or other restrictions on the use of deferred vacation.

15.4.2. Supervisors shall prepare a schedule of available vacation periods for each classification in their organizational units which shall be based on efficient staffing of the unit in relation to estimated workload. Each employee shall indicate, by order of preference, the vacation period desired. Supervisors shall review these requests and resolve any conflict in favor of the employee with the most seniority (i.e., longest total continuous District service); provided, however, if an employee requests that his/her vacation be taken in two (2) or more noncontinuous vacation periods, such employee may exercise his/her seniority only for the first period of vacation.

15.4.3. Supervisors shall recommend the completed schedule to the Department Head or Division Manager. After the vacation schedule has been approved by the Department Head or Division Manager, an employee promoted or transferred into a unit may not "bump" another employee's previously scheduled vacation period without that employee's consent.

**15.5. Vacation Proration on Separation.** An employee eligible for vacation who is separated from District service for any reason shall receive a lump sum payment for any unused, earned vacation.

**15.6 Vacation Sell-Back.** An employee may choose to sell back a maximum of -eighty (80) hours of vacation leave to the District, in one hour increments, during the payroll year. Payments to employees resulting from such sell back of vacation shall not be considered "compensation" as defined in the Retirement Ordinance for the purpose of calculating terminal compensation.



**ARTICLE 16. PAID ABSENCE****16.1. Sick Leave.**

16.1.1. Eligibility. Any permanent, probationary or part-time employee who, through no fault of his/her own, is unable to be present to perform his/her duties due to illness, injury, medical or dental treatment, or serious medical emergency in the employee's immediate family shall be granted sick leave in accordance with the provisions of this Section.

16.1.2. Accumulation. Employees shall accrue four (4) hours of sick leave credit for each full biweekly pay period of continuous service, to a maximum of 1040 hours (130 days). There shall be no accumulation for any workday of unpaid leave in excess of 20 workdays in a calendar year.

16.1.3. Use. All sick leave used shall be deducted from the employee's credits, with the minimum chargeable time being 30 minutes. When sick leave credits are exhausted, unpaid sick leave may be granted.

16.1.4. Family Sick Leave. Where employee absence is required due to serious medical emergency in the employee's immediate family (i.e., mother, father, stepmother, stepfather, husband, wife, son, daughter, stepson, stepdaughter, brother, sister, or domestic partner), a maximum of thirteen (13) days of accrued sick leave may be used in a payroll year as defined in Article 8.7 .

16.1.5. Substitution of Sick Leave for Vacation. If an employee becomes ill and takes sick leave before a scheduled vacation begins, the starting date of vacation may be postponed or vacation rescheduled as approved by the District. If an employee becomes ill after his/her last workday before vacation begins or during vacation and the illness extends more than two (2) vacation days, accumulated sick leave shall be substituted for vacation leave for each full day involved. Each vacation leave day that an employee was hospitalized may be converted to sick leave upon submission of satisfactory evidence of hospitalization. Request for such substitution shall be made when the employee returns to work, unless he/she wishes to extend his/her absence, in which case he/she shall contact his/her supervisor before he/she is scheduled to return to work. Request for sick leave substitution shall be accompanied by a doctor's statement or other satisfactory evidence verifying the length of time the employee was incapacitated.

16.1.6. Limitations. An employee who is unable to report for work and who fails to notify his/her supervisor in accordance with work unit procedures, may not qualify for paid sick leave. An employee whose illness or injury arises out of non-District employment is not entitled to sick leave. All sick leave use is subject to review, verification, and approval by the District. A doctor's certificate indicating time under doctor's care, approval for return to work, and any work limitations is required if sick leave extends to ten (10) consecutive workdays or more. Upon return to work from sick leave, the employee's supervisor and Department Director/Division Manager may require an employee to be evaluated by a District-selected physician, if there is reasonable concern about the employee's fitness for duty, or endangering the health of other employees. These evaluations will be conducted on District time.

16.1.7. Retirement Credit. Consistent with the terms and conditions of the Retirement Ordinance, when an employee's sick leave accumulation reaches the maximum of 1040 hours, any hours which would have otherwise accrued thereafter shall be accumulated without limit. Such hours, when added to the existing sick leave accumulation, become Service Extension Credit, to be applied when computing the employee retirement allowance.

16.1.8. Service Extension Credit/Conversion. When an employee is released for return to work as shown by medical evidence satisfactory to the District, after sick leave extending for ninety (90) calendar days or more, the hours of sick leave taken shall be restored to the employee's sick leave account by deducting that number of hours from any service extension credit in the employee's account at the time of return to work to a maximum of five hundred twenty (520) hours. Such sick leave shall be credited and available for use after the employee's return to work.

16.1.9. Sick Leave Pay-Out In Lieu of Service Extension Credit. Employees who separate from service due to retirement shall have the option of receiving a lump sum cash payment equal to the value of fifty percent of the accrued hours in the employee's sick leave account and Service Extension Credit account, at base rate, not including shift or other differentials or premiums, less applicable taxes, instead of and in lieu of receiving Service Extension Credit pursuant to Article 16.1.7. and the Retirement Ordinance. Such lump sum payment shall not be considered "compensation" as defined in the Retirement Ordinance for the purpose of calculating terminal compensation.

16.1.10. Sick Leave/FMLA. Eligible employees who are on paid sick leave or job injury leave will be granted simultaneous leave under the FMLA, after an absence of thirteen (13) consecutive workdays effective January 1, 2004.

## 16.2. **Special Leave.**

16.2.1. Death in Family. In the event of death in an employee's immediate family (i.e., mother, father, stepmother, stepfather, husband, wife, son, daughter, stepson, stepdaughter, brother, sister, domestic partner, grandparent, grandchild, or any other person sharing a comparable relationship resulting from a registered domestic partner relationship), the employee shall be granted five (5) workdays of special leave.

16.2.2. Funeral of Relative. An employee shall be granted one (1) workday of special leave to attend the funeral of a close relative not in the employee's immediate family. Close relative includes, mother-in-law, father-in-law, daughter-in-law, son-in-law, sister-in-law, brother-in-law, spouse's sister-in-law, spouse's brother-in-law, and employee's aunt, uncle, niece, nephew, and first cousin.

16.2.3. Other Deaths. An employee may request authorization by the General Manager or his/her designee for special leave involving deaths other than those listed in paragraphs 16.2.1 and 16.2.2 above where the employee considers special leave justified. The decision of the General Manager is final and not subject to appeal.

16.2.4. Death in Family, Funeral of Relative, and other death leave shall be taken immediately following the death of the person unless, because of extenuating circumstances,

another specified time is required and specific written authorization is granted by the General Manager to defer such leave to another specified period of time.

16.2.5. Jury Duty. An employee shall be granted necessary special leave for jury duty as detailed in an appropriate summons or order. The employee must immediately notify the supervisor when s/he receives a jury duty summons and provide a copy of the instructions that s/he receives. Employees shall follow the instructions of the jurisdiction for which they are summoned, but must immediately report back to work if not required to be present for jury duty or if released from jury duty during the workday.

16.2.5.1. Employees who work a schedule other than day shift will respond as follows:

- a. On the next regularly scheduled working day after receiving a notice for report to jury duty, the employee will inform his/her supervisor of the day and time the jury duty is scheduled. It is the employee's responsibility to give prompt notice of scheduled jury duty.
- b. At the employee's request, the supervisor will consider transferring the employee to a Monday through Friday day shift assignment starting the week of the jury duty assignment. If the employee starts jury duty mid-week, he/she will work the days of the week on a Monday through Friday day shift schedule prior to starting jury duty.
- c. The employee on jury duty may remain on a Monday through Friday day shift assignment until the jury duty assignment is completed. The employee shall notify the supervisor as soon as the jury duty assignment is completed. The employee may finish out the week on a Monday through Friday day shift assignment and return to his/her regular assignment the following week. The employee shall give the supervisor necessary paperwork to show days served on jury duty.
- d. Employees placed on a Monday through Friday day shift schedule will continue to receive their shift differential pay while on jury duty.

16.2.6. Court Appearance. An employee subpoenaed to appear before a court or other public body on any matter not related to his/her work shall be granted special leave for such purposes; provided, however, that such leave shall not be granted if the employee is the plaintiff or defendant or if the court appearance is for domestic relations matters.

16.2.7. Military Physical Examination. An employee shall be granted special leave to take a required military physical examination.

16.2.8. Military Leave. The District shall grant military leave in accordance with applicable laws of the State of California.

16.2.9. Voting Time. An employee who is eligible to vote in primary and general elections shall be granted special leave, when required, not to exceed two (2) hours, at a time when the polls are open, in accordance with California State Law.

16.2.10. One Day Special Birthday Float. Each employee shall be granted special leave for his/her birthday based on the employment status of that employee, not to exceed a total of 8 hours within the payroll year of his/her birthday. The District will make every reasonable effort to accommodate an employee's request for a specific special leave day off, subject to the operational needs of the District.

16.2.10.1. Eligible employees shall request and use the One Day Special Birthday Float Leave no later than the last day of the last full pay period in the payroll year as defined in Article 8.7.

16.2.10.2. If the one day Special Birthday Float is not used prior to this date it shall be forfeited.

16.2.10.3. Use of the one day Special Birthday Float after the last day of the last full pay period in the payroll year, as defined in Article 8.7, will be charged against the following year.

16.2.11. Blood Donations. Consistent with District operating requirements, employees shall be granted special leave of two (2) hours for giving blood donations to the District, Union, accredited hospital or Red Cross blood banks.

### 16.3. Job Injury Leave.

16.3.1. Eligibility. Job injury leave shall be granted an employee who is unable to report to work following an injury or industrial disease which arises out of and during the course of his/her employment, provided that:

16.3.1.1. Requests for leave are accompanied by a statement from a District panel physician indicating the nature of the injury and an estimate of the time the employee will be incapacitated for work; and

16.3.1.2. The reported injury or disease is accepted as industrial by the District's Third Party Workers' Compensation Administrator.

16.3.2. Compensation. When a job injury leave is authorized, the District will grant paid leave or supplement payments made by the Workers' Compensation Insurance Administrator so that the employee will suffer no loss in his/her regular pay for a period not to exceed 480 total hours of each such injury. When lost time exceeds 480 total hours, the employee may choose to receive Workers' Compensation Insurance only, or he/she may choose to use sick leave and/or vacation leave which he/she has to his/ her credit to supplement his/her compensation payments so that he/she will suffer no loss in his/her regular pay until such sick leave credit is exhausted.

16.3.3. Designation of Employee Personal Physician. Notwithstanding the above, pursuant to and consistent with applicable law, an employee may seek treatment from his/her personal physician. However, to provide a safeguard against abuse, the employee shall make every reasonable effort to be evaluated by a panel physician within 48 hours of the injury.

16.3.4. Reemployment Preference After Job Injury. A former permanent employee of the District currently not a District employee as a direct result of disabling job injury shall be granted reemployment preference as follows:

16.3.4.1. An employee who has recovered sufficiently in the opinion of a District-selected physician to resume his/her former duties shall be offered the first vacant position in the employee's former classification.

16.3.4.2. An employee as described above or an employee who has been rehabilitated and retrained for another occupation because of a disabling job injury who has been placed on a District employment list and is eligible for consideration for a position shall be selected to the first vacant position.

16.3.5. The preference described above shall be in effect for a period of two (2) years beginning with the date that the employee is determined to be rehabilitated, or a total of four (4) years from the date of termination, whichever is less. The preference shall be absolute unless:

16.3.5.1. Mandatory selection or reinstatement of another person is required by the Civil Service Rules, the Retirement Ordinance, or law; or

16.3.5.2. The General Manager determines that selection for a specific position would be contrary to the interests of the District.

## **ARTICLE 17. UNPAID ABSENCES**

### **17.1. General Provisions.**

17.1.1. Leave of absence without pay for any reasonable purpose shall be granted an employee for up to six (6) months whenever the work of the operation concerned will not be unduly impaired by such absence. Leave without pay may be extended for additional periods not to exceed thirty (30) days each with the approval of the General Manager.

17.1.2. There shall be no loss of vacation or sick leave credits for leaves without pay of 160 hours or less in a calendar year; thereafter, there shall be no accumulation of vacation and sick leave credits for any workday of unpaid leave. All leave without pay except unpaid sick leave is deducted from an employee's service when computing retirement credits. All employees hired after January 1, 2004 shall not receive retirement service credit after 18 months of unpaid sick or job injury leave.

17.1.3. Insurance benefits at District expense for employees on unpaid sick leave may be terminated after eighteen (18) months of unpaid sick leave.

17.2. **Parental Leave.** Leave of absence without pay shall be granted for the birth or adoption of a child or for the serious health condition of a child, parent, or spouse, in accordance with the Family Medical Leave Act (FMLA). Leave of absence without pay shall be granted to an employee for a parental absence subject to the foregoing general provisions. Consideration of the commencement, length and duration of maternity leave shall include review of the report or recommendations of medical authority acceptable to the District.

~~17.1.~~17.3. **Limitations on Leave.** Employees must exhaust all accrued vacation before becoming eligible for unpaid leaves of absence; however, upon agreement between the employee and his/her supervisor, in extenuating circumstances, such unpaid leave shall not be unreasonably denied. Union business leave, parental leave, and educational leave shall be exempt from the operation of this Section.

## ARTICLE 18. BENEFITS AND ALLOWANCES

**18.1. Health Insurance.** The District shall provide health plan coverage to eligible employees and dependents in each approved District Health Plan that currently include:

**18.1.1. Kaiser Foundation Health Plan.** The District shall pay the full cost of premiums for eligible employee and eligible dependent coverage in the Kaiser Foundation Health Plan. During the life of the MOU, the following co-pays and deductibles will be in effect, unless a change is mandated by the provider:

• Office Visit co-pay \$10 \$15; \$20 effective January 2008; \$15 effective January 2011-2017

• Prescription co-pay \$10/\$15 effective January 2008

• Emergency Room co-pay \$50; \$75 effective January 2011-2017 (waived if admitted)

**18.1.2. Association of California Water Agencies/Joint Powers Insurance Authority-Blue Cross (ACWA/JPIA-BC).** The District shall pay the full cost of premiums for eligible employees only in the ACWA/JPIA-BC Health Plan. The District will pay 85% of the costs of premiums for the employee plus dependents and the remainder shall be paid by the employee by payroll deduction, effective January 1, 2004. During the life of the MOU, the office visit and prescription co-pay for ACWA/JPIA-BC will be \$15.00 and the prescription drug co-pay will be \$5.00/\$15.00 for generic and brand name drug types, respectively, unless a change is mandated by the provider.

**18.1.3. Health Net California.** The District shall pay the full cost of premiums for eligible employees only for Health Net California Health Plan. The District shall pay 85% of the costs for the employee plus dependents and the remainder shall be paid by the employee by payroll deduction. During the life of the MOU, the following co-pays and deductibles will be in effect, unless a change is mandated by the provider.

• Office Visit co-pay \$10 \$15; \$20 effective January 2008; \$15 effective January 2011-2017

• Prescription co-pay \$10/\$15/\$35 effective January 2008

• Emergency Room co-pay \$50; \$75 effective January 2011-2017 (waived if admitted)

• Hospital inpatient co-pay \$50; \$100 effective January 2017

**18.1.4.** For employees without access to Kaiser Health Plan, the District will pay 100% of the medical insurance premium for the employee and dependent coverage in either of the other available District health plans (currently Health Net and Blue Cross), effective January 1, 2004. However, if the employee should again become eligible for Kaiser, District coverage will be provided as described in paragraphs 18.1.1, 18.1.2., and 18.1.3. above.

~~18.1.5.~~ If an employee receives medical insurance coverage through their spouse or partner-  
~~18.1.5.~~ and elects not to receive District-paid medical insurance coverage, the employee shall receive \$150 per month (\$69.23 per pay period) in addition to their regular pay. The additional money ~~will be included in the employee's regular paycheck.~~  
will be included in the employee's regular paycheck. Effective upon ratification and approval of the MOU, the amount of cash in lieu will increase or decrease by \$10.00 for every employee who so elects, with a baseline of the current number of 58 employees, with a minimum of \$150.00 per month to a maximum of \$450.00 per month. The District will count the number of employees who elect not to receive District paid medical insurance in December of each year of the MOU and adjust the cash in lieu amount effective the following January 1<sup>st</sup>. In no case may an employee receive the additional money in the absence of insurance coverage through their spouse or partner. If federal or state legislation is enacted which will impact the District's health plans or practices, the parties will reopen negotiations to the extent necessary to comply with the mandatory provisions of any legislation.

~~18.2.~~ 18.2. Life Insurance. The District shall pay the cost of employee premiums in the existing group life insurance plan. The face value of the basic life insurance shall be one and one-half times the employee's annual salary rounded to the nearest \$1,000. This includes double indemnity for non-occupational accidental death and dismemberment according to scheduled benefits. Increases in costs which may occur during the term of this Memorandum shall be borne by the District.

~~18.2.1.~~18.2.1.1 Supplemental Life Insurance. Effective January 1, 2008, the District shall offer a group life insurance plan that allows an employee to purchase life insurance benefits for his or her spouse or partner. The employee shall pay for the cost of this benefit by payroll deduction.

~~18.3.~~ 18.3. Dental Insurance.

~~18.3.1.~~ The District shall continue to pay the cost of premiums for those employees and eligible dependents enrolled in the group insurance plan with Delta Dental and to provide 100 percent basic coverage (50 percent prosthodontics), to a maximum benefit of \$2000 per year with a deductible of \$15 for the employee and eligible dependents up to a maximum of three (3) such deductions per family unit per year. Increases in costs which may occur during the term of this Memorandum shall be borne by the District.

~~18.3.2.~~ 18.3.2. The District shall provide for orthodontic benefits and coverage for all eligible employees and dependents. Such coverage will be 50/50 co-insurance with a three thousand (\$3000) dollar lifetime maximum per patient with no deductible. Also, the Union agrees that any increase in orthodontic premiums will be paid for by each individual employee during the term of this Memorandum, notwithstanding any other language. Employees hired on or after July 1, 1985, will have a one-year waiting period for orthodontic coverage without claims.

~~18.4.~~ 18.4 Disability Insurance. The District agrees to continue the existing salary continuation plan (a voluntary group long-term disability insurance) and to pay the full cost per month toward the premium for each employee.

~~18.5.~~ 18.5. State Disability Insurance (SDI)/Paid Family Leave (PFL). Employees represented by Local 444 shall have SDI premiums deducted from their individual salaries at the rate

444/EBMUD

2007-2011

determined by the State of California. When an employee or qualified dependent sustains an injury or illness that qualifies him/her to receive SDI/PFL payments, the employee will receive SDI/PFL payments from the State based on the benefit amount in effect at the time the injury or illness occurs.



**18.5.1. State Disability Insurance (SDI).** An injured or ill employee may first use accrued sick leave and, after sick leave is exhausted, may use compensatory time then vacation to supplement SDI payments from the State if requested in writing, provided that:

- a. The combined total of the SDI payment and accrued leave payment does not exceed 100% of the employee's regular biweekly base salary; and
- b. The employee provides a copy of his/her SDI benefit check to the District or authorizes the District to directly receive his/her SDI benefit check so that State and District benefit payments can be coordinated as described in (a) above. Coordination of leave balances with SDI will not be made retroactively.

**18.5.2. Paid Family Leave (PFL).** The employee may use in the following order family sick leave, compensatory time then vacation to supplement PFL payments from the State if requested in writing provided that:

- a. The combined total of the PFL payment and accrued leave payment does not exceed 100% of the employee's regular biweekly base salary; and
- b. The employee provides a copy of his/her PFL benefit check to the District or authorizes the District to directly receive his/her PFL benefit check so that State and District benefit payments can be coordinated as described in (a) above. Coordination of leave balances with PFL will not be made retroactively.

**18.6. Insurance Providers/Self-insurance.** Except for the Kaiser Foundation Health Plan, the District may change or eliminate the carriers or providers of any of the benefits set forth in this Article or self-insure (provided that there is no decrease in benefit levels), and provide an equivalent plan under Sections 18.1, 18.2, 18.3, and/or 18.4, set forth above, provided the Union is notified in writing prior to such change. Upon written request, the District will consult with the Union concerning such change. Whenever any insurance carrier refuses to provide coverage for any specific benefit or proposes an increase in its premium of more than twenty percent (20%), the District, after consultation with the Union, may change carriers or benefits as long as a good faith, reasonable effort is made by the District to provide comparable available benefits.

**18.7 Vision Insurance.** , The District shall pay the cost of premiums for those employees and eligible dependents enrolled in the group Vision Service Plan, Plan B with \$10 co-payment. Increases in costs which may occur during the term of this Memorandum shall be borne by the District.

## **18.8. Employee Retirement System**

**18.8.1. Eligibility for the Employee Retirement System (ERS).** Local 444 represented employees are eligible to participate in the District's ERS in accordance with IRS rules and regulations and the District's "Employee Retirement System Ordinance".

**18.8.2. Retirement Multipliers.** The District shall increase the retirement multipliers of 2.2% and 2.42% to 2.6% and 2.82% respectively, for all participants who earn District Service Credit on or after January 1, 2004.

18.8.3. Legacy Employee Contribution Rate. The following contribution rates apply only to "legacy" employees hired prior to January 1, 2013, and those hired on or after January 1, 2013 that are eligible for reciprocity with another California public retirement system.

a) The employee contribution rate will be ~~6~~7.33% effective April 22, 2013, and thereafter:

18.8.3.b) The employee contribution rate will be 7.83% effective April 21, 2014.

c) The employee contribution rate will be 8.33 % effective April 20, 2015.

d) The employee contribution rate will be 8.75 % effective April 18, 2016.

18.8.4. The employee contribution rates reflected above will be fixed as of the dates specified above unless the parties agree to an improvement in current retirement benefits through the meet and confer process.

18.8.5. Any improvements made by the District to current retirement benefits during the life of this agreement, such as improvements to HIB and COLA, shall be made solely at the District's expense.

## ARTICLE 19. SUPPLEMENTAL BENEFITS/SALARY REDUCTION PLAN/401(K)

### 19.1. Supplemental Benefits Program.

19.1.1. The District will make payments for full-time and probationary employees under IRS Code Section 125 in the amount of:

- ~~• \$855 effective January 1, 2008~~
- \$905 effective January 1, 2011

19.1.2. Maximum Reimbursement Amounts. The maximum annual amount that may be deducted from the employee's annual salary for reimbursement of non-medical dependent care expenses is \$5,000, minus the District's contribution. The maximum amount that may be used for reimbursement for personal and dependent medical expenses is \$5,000, plus the District's contribution.

19.1.3. Full time or probationary employees will be eligible for supplemental benefits upon hire.

19.1.4. Program payments shall begin after the first quarter of each year and shall be made quarterly (or semi-annually or annually at the employee's option to be determined during each annual election) within thirty (30) days after the end of each quarter. For those who elect to receive cash on a taxable basis, a lump sum amount will be paid after the first quarter of the year.

19.1.5. The District may, after consultation with the Union, add or delete for future calendar years any IRS Code Section 125 - approved benefits.

19.1.6. A third party administrator will administer the program, including making payments or reimbursements provided for by the program and IRS Code provisions.

**19.2. Salary Reduction Plan.**

19.2.1. The District shall establish a salary reduction plan as provided by Section 125 of the Internal Revenue Service Code permitting employees to designate a portion of their annual salary to be withheld and subsequently used to provide pre-tax reimbursement for verified medical and dependent care expenses, subject to the rules of the IRS and governing regulations.

19.2.2. The maximum annual amount that may be deducted from the employee's annual salary for reimbursement of non-medical dependent care expenses is ~~\$5,000~~ the current IRS limit minus the District's contribution. The maximum amount that may be used for reimbursement for personal and dependent medical expenses is ~~\$5,000~~ the current IRS limit plus the District's contribution.

19.2.3. All medical and dependent care expenses for which reimbursement is required must comply with the requirements of the IRS Code.

19.3. **401(k) Plan.** The District will include employees represented by the Union in a 401(k) plan provided that continuation of the plan is dependent upon the final determination of the rules for discrimination testing by the Internal Revenue Service (IRS). If the rules of the IRS code are likely to adversely affect the members of the District's existing 401(k) plan, then the plan will be terminated and the parties will meet and confer on possible alternative programs.

19.4. **Deferred Compensation Administrative Fees.**

19.4.1. Eligibility for 401(k) Plan. Employees who work in classifications represented by Local 444 are eligible to participate in the District's 401(k) deferred compensation program in accordance with IRS rules, regulations, and District procedures.

19.4.2. Eligibility for 457. All employees who work in classifications represented by Local 444 are eligible to participate in the District's 457 deferred compensation program in accordance with IRS rules, regulations, and District procedures.

~~19.4.3. Administration Fees. The District will pay up to a maximum of 105,500 annually for District-wide administration of the 401(k)/457 deferred compensation programs. If administrative fees exceed \$105,500, the participating employees in the program will assume the additional costs.~~

19.4.43 Deferred Compensation Committee Participation. Local 444 shall be provided ~~formal and equitable participation~~ two representatives to participate in the 401(k)/457 deferred compensation committee ~~as determined by the committee.~~

19.5 **Exclusions.**

19.5.1 Employees who participate in any District deferred compensation plan may not defer sick leave buyback payments to their deferred compensation accounts.

**ARTICLE 20. EXAMINATIONS**

20.1. **Recording of Oral Examinations.** Oral examinations shall be recorded by audio tape recorder. All audio tape recordings shall be the property of and remain in the custody of the District; provided, however, the Union shall have reasonable access thereto. Recordings shall be retained by the District for ninety (90) days after establishment of the employment list resulting from the examinations or, if there is a protest, until the protest is resolved.

**20.2. Inspection of Examinations.**

Consistent with District operating requirements and with the provisions of Civil Service Rules, employees participating in District Civil Service examinations shall be permitted reasonable time during working hours, without loss of time or pay, to inspect their examination papers.

**20.3 Internal Promotions.** The purpose of this section is to enhance the promotional opportunities for District employees.

20.3.1. Examinations will typically be open to both public and internal competition, however, an examination shall be administered on a closed promotional basis when the Manager of Human Resources determines that the number, diversity and qualifications of potential employee applicants are sufficient to generate a minimum of five (5) candidates per vacancy, to fill the current and anticipated openings, during the life of the list.

20.3.2. When the above criteria are not met, internal and external recruitments shall be conducted simultaneously. Both an open eligible list and an internal eligible list shall be established from those candidates who are successful in the examination process. All employees with Civil Service status who pass the examination shall be placed on the Internal Eligible. A successful candidate will be placed on only one list. The top five ranks on both lists shall be certified to the appointing authority. For each additional vacancy for which the certification is requested simultaneously, the Manager of Human Resources shall certify the name(s) from one additional rank on the open and internal eligible lists.

Hiring supervisors shall interview all candidates in the ranks certified from the internal eligible list and, if they choose to interview from the open eligible list, they must interview all candidates in the ranks certified.

20.3.3. A demotion is movement to a classification with a lower top salary than the employee's current regular position. Employees may apply for voluntary demotion by submitting an application to Human Resources. They will be placed on the Demotion List if they meet the minimum qualifications for the classification. The voluntary Demotion List will be certified to hiring supervisors along with other employment lists. An employee's name will remain on the voluntary Demotion List for one year. The District may also demote an employee on an involuntary basis consistent with other District rules and practices.

20.3.4. Employees may apply to administratively transfer without exam between classifications which have the same salary levels and identical or very similar minimum qualifications (e.g., Utility Laborer and Water Distribution Plumber I), if they have regular status in one class.

The District may also administratively transfer employees between classifications at the same salary level providing the employee meets the minimum qualifications.

**20.4. Duration of Eligible Lists.**

20.4.1. The duration of the employment Eligible Lists shall be one (1) year unless extended, at the District's discretion, for up to one (1) additional year. All existing lists may be

20.4.1. \_\_\_\_\_ extended for up to one (1) additional year rather than extended for six (6) months and all new lists may be extended for one (1) additional year.

20.4.2. The District will review results with the Union representatives on an annual basis beginning one year from the date of this Memorandum Of Understanding to determine impact on promotional opportunities for District employees. Should the percentage of promotions decrease in 50% or more of the classifications, the District will agree to limit the extension of eligible list an additional six (6) months except for entry-level examination processes where lists may be extended for one (1) additional year.

## 20.5. **Mandatory Reassignment Interview**

20.5.1. Employees on an active Reassignment List for ~~Heavy Transport Operator or~~ Maintenance Specialist classifications will be given an interview with a supervisor who has a vacancy. Employees who are selected from the reassignment list and decline the appointment will be ineligible for reassignment for one (1) year.

20.5.2. Probationary employees are not eligible for reassignment.

20.5.3. Employees who have been disciplined by more than one warning memo and/or have been suspended within the last year are not eligible for reassignment.

## ARTICLE 21. REASSIGNMENT/SENIORITY BIDDING PROGRAM

### 21.1. **Eligibility.**

21.1.1. This program will apply to all regular, full time, civil service positions that become vacant within the Distribution Maintenance and Pipeline Construction Divisions in the following ~~five~~seven classifications or successor classifications:

- a. Water Distribution Plumber (Senior IIs)
- b. Water Distribution Plumber III
- c. Water Distribution Plumber IV
- d. Water Distribution Crew Foreman
- e. Truck Driver II (Sludge Truck Driver)
- f. Heavy Equipment Operator (HEO)
- g. Heavy Transport Operator (HTO)

21.1.2. For purposes of this program, a vacant position is defined as a position which has become open and which the District plans to fill.

21.1.3. All regular, full time employees are eligible to participate in this program provided they:

- a. Have five or more years of District seniority on January 1 of each year.
- b. Have satisfactorily completed the probationary period for their current classification (civil service status in current classification).

- c. Have completed the District training programs (e.g., Plumber I/II/III) for their current classification.
- d. Have not been disciplined by more than one warning memo and/or have been suspended within the past three years.

## **21.2. Procedure.**

21.2.1. During the month of November, eligible employees in the above classifications may elect to place their names on the Maintenance Department's Reassignment/Seniority Bidding Lists (i.e., North, South, East, CMS, Pipeline, ESS and PCDPaving) for all locations.

21.2.2. When an employee waives an offer of reassignment, his/her name will be removed from that list.

21.2.3. The Maintenance Department's Reassignment/Seniority Bidding Lists, shall be effective for each calendar year beginning January to fill all vacant regular, full time Civil Service positions in the above classifications.

21.2.4. The most senior (utilizing District seniority) eligible employee shall be appointed to a vacant regular, full time civil service position (per the pre-designated list) if the employee is leaving a classification in Pipeline Construction Division, PCDPipeline must have a majority of the remaining employees with three (3) or more years of District seniority.

21.2.5. After filling the first vacant position, up to two (2) subsequent related vacancies will be filled by use of the Maintenance Department's Reassignment/Seniority Bidding Lists. Additional vacant positions may be filled by use of appropriate District Civil Service Lists.

21.2.6. Appropriate District Civil Service Lists will be used to fill vacant positions in classes designated in 21.1.1. if the majority of the remaining employees in the Pipeline Construction Division in the class in which the vacancy exists do not have three (3) or more years of District seniority.

21.2.7. In the event that a vacancy occurs that requires a specific classification level (e.g., Plumber III) incumbent, and no incumbent is on the reassignment list, the District reserves the right to reassign employees to such vacancies as needed; provided, however, that selection of an individual for such reassignment is based on District seniority among volunteers, then on reverse District seniority.

~~21.2.8. The interpretation of and/or the application of the provisions of this Article are not grievable under this Memorandum or under any appeal procedure.~~

## **ARTICLE 22. GRIEVANCE PROCEDURE**

~~22.1.~~ **Intent.** The District and the Union recognize the necessity for speedy and equitable adjustment of all complaints as close as possible to the point of origin. Whenever possible, grievances should be settled with supervisors in the department/division where the grievance

22.1. \_\_\_\_\_ originates. It is the intention of the District and the Union to eliminate unnecessary grievances, and to promptly and equitably adjust all those grievances which are meritorious.

22.2. **Definitions.**

22.2.1. Grievance.

22.2.1.1. A grievance is any dispute between the District and an employee or group of employees concerning the interpretation or application of this Memorandum; or the interpretation or application of rules or regulations governing personnel practices or working conditions; or the practical consequences of a District Rights decision on wages, hours and other terms and conditions of employment.

22.2.1.2 A dispute over the terms of this Memorandum of Understanding, or over the terms of rules or regulations governing personnel practices or working conditions, or over the terms of a District Rights decision on wages, hours and other terms and conditions of employment shall not constitute a grievance.

22.2.1.3. \_\_\_\_\_ The Union may file a grievance on behalf of specified unit members if the alleged violation involves unit members in more than one work unit. If the grievance involves employees in only one division, the grievance shall be filed with the Division Manager at Step 1. If the grievance involves employees in more than one (1) division, the grievance shall be filed with the Manager of Employee Relations at Step 1.

~~22.2.1.3. \_\_\_\_\_ A dispute over the terms of this Memorandum of Understanding, or over the terms of rules or regulations governing personnel practices or working conditions, or over the terms of a District Rights decision on wages, hours and other terms and conditions of employment shall not constitute a grievance.~~

22.2.2. Immediate Supervisor. The person from whom an employee receives his/ her work assignments, such as Wastewater Shift Supervisor, General Pipe Foreman, Plant Electrical Maintenance Supervisor and Equipment Foreman.

22.2.3. Work Unit Supervisor. The highest supervisor within the employee's work unit, such as the Area Superintendent, Mechanical Supervisor, Plant Maintenance Superintendent, Wastewater Treatment Superintendent, Superintendent, Pardee Section, and Superintendent, Aqueduct Section.

22.2.4. Limited Civil Service Examination Grievance Procedure. A separate grievance procedure is included in Section 22.6 of this Article to cover grievances arising out of any Civil Service examination challenge up to and including the establishment of a register.

22.3. **Suspension and Discharge.**

22.3.1. Any employee may be suspended for just cause. Before imposing the suspension, the supervisor shall advise the employee that the subject of suspension will be discussed and that the employee may be accompanied by a representative. When the District is considering taking major disciplinary action (suspension of 5 or more workdays or discharge), it shall provide copies of all written and other relevant materials used by the District, to the employee and his/her representative before the scheduled pre-disciplinary meeting. The District is not precluded from considering information obtained by the District after the pre-disciplinary meeting in response to the statements made by an employee or his/her representative during the pre-disciplinary meeting and shall provide copies of any additional information. Upon such suspension, the supervisor shall notify the employee in writing, of the reason for and duration of the suspension. An employee ordered to be suspended for just cause shall be notified in writing of the reason for and duration of the suspension.



reasons shall, before leaving the District premises, have the right to consult with his/her Union steward or officer.

22.3.1.1. Consultation with a Union steward or officer will not be required where the supervisor removes any employee from the premises in cases involving violence, willful destruction of property, or to prevent injury to himself/herself or others. The supervisor shall promptly notify the Union steward or officer of the action taken, the reasons for and duration of the suspension.

22.3.1.2. Whenever the employee is not present at his/her workplace when a suspension is deemed necessary, the employee and the Union shall be notified by telephone or mail within one

(1) workday following the effective date of suspension. Such notice shall state the reasons for and duration of the suspension.

22.3.2. Any employee may be discharged for just cause. In all cases where the District may conclude that an employee's conduct may justify discharge, such employee shall first be suspended. Such initial suspension shall not be for more than five (5) workdays. During such period, the District shall decide whether the suspension without pay already given is considered sufficient, or, dependent on the facts of the case, it should be extended, reduced, converted into a discharge, or that no discipline should have been given.

22.4. **Civil Service Appeal.** The employee, with or without his/ her designated representative, shall have the right to appeal a suspension or discharge either in accordance with the Grievance Procedure by sending a completed grievance form to the Division Manager via the work unit supervisor, or in accordance with Civil Service Rule XIII, APPEALS, but in no case under both.

22.5. **Procedural Steps.**

22.5.1. Step 1. Informal Discussion/Filing of Grievance Statement.

22.5.1.1. The employee who has a grievance other than discrimination [as described in (b) below] may, with or without the assistance of a representative, discuss the matter informally with his/her immediate supervisor. If the grievance is not settled through informal discussion and the employee desires further review, a completed and written Form PE-105, "Statement of Grievance", must be submitted to the employee's immediate supervisor within twelve (12) workdays from the initial date he/she knew, or reasonably could know, of the act or omission causing the grievance. If the grievance is challenging a disciplinary action, the grievance shall be filed with the supervisor of the person who took the disciplinary action within twelve (12) workdays.

22.5.1.1.1. The PE-105 shall contain the following information: (1) a statement of the grievance and all relevant facts; (2) specific provision(s) of the Memorandum of Understanding allegedly violated; and (3) the remedy sought.

22.5.1.1.2. The supervisor shall discuss the matter with the employee, the work unit supervisor, and any others who should be directly involved and attempt to arrive at a solution. The supervisor shall provide a written answer to the employee that sets forth the supervisor's rationale and decision within five (5) workdays of receipt by the supervisor of the written Form PE-105. The decision of the immediate supervisor shall be applicable only to the grievance being reviewed and considered.

### 22.5.1.2. Alleged Unlawful Discrimination.

22.5.1.2.1. If an employee is seeking redress from an action, decision, policy, or condition that he/she believes discriminated against him/her to the extent the applicable law prohibits such discrimination by reason of his/her race, religious creed, color, ancestry, age, marital status, national origin, sex, sexual orientation, physical or mental disability (including HIV and AIDS), or medical condition (cancer or genetic characteristic), the employee shall first discuss his/her complaint with his/her immediate supervisor; provided that an employee may alternatively discuss their complaint informally with the Affirmative Action Officer. If an employee is seeking redress from an action, decision, policy or condition that he/she believes to be a result of union activity, then the grievance shall be filed with the Manager of Employee Relations.

22.5.1.2.2 If the grievance is not settled through informal discussion and the employee desires further review, a completed and written EEO Discrimination/Harassment Complaint Form must be submitted to the Affirmative Action Officer within twelve (12) workdays from the initial date he/she knew or could reasonably have known of the act or omission causing the complaint. The complaint will be processed in accordance with the EEO Discrimination/Harassment Complaint Procedure 5.05. The Affirmative Action Officer is the final District review level of EEO complaints. If the complaint as described in the EEO Discrimination/ Harassment Complaint Form remains unresolved, the grievant may submit the grievance directly to binding arbitration as described in Section 22.5.3.2.

22.5.1.2.3. If the discrimination is believed to be because of union membership, non-membership, or any lawful union activity, then the grievance is filed with the Manager of Employee Relations.

### 22.5.2. Step 2. Board of Adjustment.

22.5.2.1. If the employee is not satisfied with the Step 1 written response from his/her immediate supervisor, the employee must submit the completed Form PE-105, "Statement of Grievance", to the Manager of Employee Relations within twelve (12) workdays of the Step 1 written response.

22.5.2.2. A Board of Adjustment meeting will be held within ten (10) workdays of the receipt of the Form PE-105 by the Manager of Employee Relations. In all grievances except those involving suspension without pay or discharge, the Board of Adjustment shall be comprised of the Division Manager and the Manager of Employee Relations or his/her delegate and not more than two representatives from the bargaining unit. The Manager of Employee Relations or his/her delegate will chair the Board of Adjustment. In all grievances that involve suspension and/or discharge, the Department Manager will replace the Division Manager. No relatives of the grievant or members of the grievant's household may sit on a Board of Adjustment for either of the parties. In addition, an individual named in a grievance resulting from a disciplinary action or alleging harassment will not be eligible to serve on the resulting Board of Adjustment, with the exception of Employee Relations staff.

22.5.2.3. —The purpose of the Board of Adjustment meeting will be: 1) to review the facts of the grievance and to conduct a further investigation of the situation, if appropriate, and (2) to explore alternate methods of resolving the grievance. Unless the parties mutually agree

22.5.2.3. otherwise, any majority decision reached at the Step 2 level, shall be reduced to writing within five (5) workdays and shall be final and binding. If no agreement is reached, Management's decision shall be reduced to writing within five (5) workdays.

22.5.3. Step 3. Binding Arbitration.

22.5.3.1. If the grievance as described in the PE-105 in Step 1 remains unresolved, the grievant may submit the grievance to binding arbitration in accordance with the procedures set forth in Step 3.

22.5.3.2. A request for arbitration shall be in writing and addressed to the Manager of Employee Relations and must be postmarked within forty-five (45) workdays after the employee's receipt of the decision in Step 2. The request shall clearly state the issue to be arbitrated. The District, or its representative, and the employee, or his/her representative, shall jointly select an impartial arbitrator. If they are unable to agree upon an arbitrator, the District shall request a list of arbitrators from either the American Arbitration Association, the California State Conciliation Service or Federal Mediation and Conciliation Service. The arbitrator shall be selected as mutually agreed upon, or in accordance with applicable rules of the agency selected within twenty (20) workdays of receipt of the request for arbitration from the grievant/union. The arbitrator will be requested to hold the hearing within thirty (30) workdays of the request to arbitrate and to render a decision within sixty (60) workdays of the receipt of briefs.

22.5.3.3. The arbitrator shall limit his/her findings and recommendations strictly to the interpretation, application and enforcement of the provisions of this Memorandum, or the interpretation or application of rules or regulations governing personnel practices or working conditions. In cases of suspension or discharge, the arbitrator shall limit his/her findings and recommendations strictly to the issue of cause.

22.5.3.3.1. The arbitrator's hearing shall be formal and conducted in accordance with usual administrative practices, including recording of proceedings by certified reporter and testimony given under oath. If a transcript of the proceedings is ordered by either party, each party shall pay for its own copies.

22.5.3.3.2. The arbitrator shall in no case make any recommendations:

1. contrary to, or inconsistent with or modifying or varying in any way, the terms of the Memorandum, or the terms of rules or regulations governing personnel practices or working conditions;
2. inconsistent with the District's duties, responsibilities or obligations particularly with regard to public health and safety and including the Municipal Utility District Act or any other State or Federal law to which the District is subject;
3. concerning the grievance of any employee who has elected to process a grievance through any other appeal procedure established by the District;
4. ordering any wage increase or decrease;

5. ordering the payment of back wages for more than six (6) months prior to the date a written grievance is filed;

6. reversing, overruling, or otherwise modifying any District decision or omission except after finding (a) the District decision violated some express provision of the Memorandum or rules and regulations governing personnel practices or working conditions; or (b) the District decision or omission was under the circumstances arbitrary, capricious or discriminatory.

22.5.3.3.3. Each party shall make arrangements for and pay the expenses of witnesses who are called by them. The District shall have no obligation to compensate employees, with the exception of the aggrieved in other than suspension or discharge cases, for time lost during arbitration proceedings, except when any employee is requested by the District to participate in such arbitration proceedings.

22.5.3.3.4. The expenses of the arbitrator shall be shared equally by the District and the Union or employee, as appropriate.

**22.6. Procedural Steps for Limited Civil Service Examination Grievance Procedure.**

22.6.1. Step 1. The Union may file a Limited Civil Service Examination Grievance on behalf of a current employee or group of current employees by submitting a PE-105 to the Director of Human Resources within the following time limits:

22.6.1.1. Disqualification from examination - Within five (5) working days of notice of disqualification and prior to the administration of the examination.

22.6.1.2. Examination results - Within five (5) working days of notice of examination results.

22.6.1.3. Other grievances pertaining to recruitment, examination, or selection as stated in the Civil Service Rules - Within five (5) working days from the initial date he/she knew, or reasonably could know, of the act or omission causing the grievance.

22.6.1.3.1. The Manager of Human Resources shall provide a written answer to the union setting forth his/her decision and rationale within five (5) working days of receipt of the PE-105.

22.6.2. Step 2. If the union desires to appeal the Manager of Human Resources' decision, it shall notify the Manager of Human Resources in writing within five (5) working days from receipt of the Manager of Human Resources' decision, that it desires to submit the grievance as set forth in the PE-105, ~~A Statement~~ "Statement of Grievance" to expedited arbitration. The expedited arbitration process for Limited Civil Service Examination Grievances shall be as described below and shall be the exclusive means for the resolution of such disputes:

22.6.2.1. Selection of Arbitrator and Scheduling of Hearing. Within five (5) working days of the Union's notice to the Director of Human Resources, an impartial arbitrator shall be jointly selected by the District and union. If the parties cannot agree on an arbitrator, then the Manager of Human Resources will request a list of five (5) arbitrators from the California State Mediation.

and Conciliation Service and the parties shall select an arbitrator by mutual agreement or alternately striking names.

22.6.2.2. The hearing shall be held within 10 working days of the arbitrator's selection. If the arbitrator has no available date within 10 working days, another arbitrator shall be selected until an arbitrator can be found who is available within the 10 working days time limit.

22.6.2.3. Pre-Hearing Submission and Conduct of the Hearing.

22.6.2.3.1. The District and the Union shall each submit three (3) calendar days prior to the hearing a pre-hearing statement to the arbitrator, with a copy to the other party, outlining its position and appending whatever exhibits it wishes to present.

22.6.2.3.2. Unless the parties mutually agree to the contrary, each party shall have up to two (2) hours to present its case, but may reserve up to one-half (2) hour of such time to respond to the other party's presentation. The presentation may be made by way of statement by the party's representative, presentation of witnesses or both, but the hearing shall be informal and rules of evidence shall not apply. No transcript or recording shall be kept.

22.6.2.4. Decision. The arbitrator shall issue a written award within three (3) working days after the close of the hearing. During this period, the arbitrator may convene the parties for up to an additional two hours if the arbitrator wishes to raise additional questions. The award shall be final and binding.

22.6.2.5. Costs. The fee and expenses of the arbitrator shall be shared equally by the parties.

22.7. Election of Remedies.

22.7.1. It is the intent of the parties that this Grievance Procedure shall be the exclusive remedy for the resolution of grievances as defined in Section 22.5.

22.7.2. It is specifically and expressly understood and agreed that taking a grievance appeal to arbitration constitutes an election of remedies and a waiver of any and all rights by the appealing employee, the Union, and all persons it represents to litigate or otherwise contest the appealed subject matter through the District Complaint Procedure or the District Civil Service Procedure. Litigation or any other contest of the subject matter in any court or other available forum shall constitute an election of remedies and a waiver of the right to utilize this Grievance Procedure or to arbitrate the matter. This paragraph is not intended to bar an employee from pursuing any cause of action which has been established by statute.

22.8. Waiver of Steps and Time Limits. Except when otherwise provided, all steps of the grievance procedure shall be utilized unless a waiver of one or more steps is mutually agreed upon in writing. If the employee or the Union fails to process a grievance within specified time limits, the grievance shall be deemed concluded on the basis of the last decision reached, unless an extension of time limits is mutually agreed upon by the parties in writing. If the District fails to respond within the specified time limits, the grievant may appeal to the next step, within the specified time limits.

**22.9. Suspension of the Grievance Procedure.** If this Memorandum is violated by the occurrence of a strike, work stoppage, other interruption or impeding of work in violation of Article 24, no grievance shall be processed while such violation continues. The Grievance Procedure outlined herein shall not be applicable to grievances arising in the period between the termination of this Memorandum and the effective date of its successor.

## **ARTICLE 23. PERSONNEL FILES**

**23.1. Review of Employee Personnel File.** Employees shall have the right to review their personnel files pursuant to applicable state law. No information shall be placed in an employee's personnel file without the employee receiving a copy of the information. The employee shall have the right to respond to any such material. Medical information shall be forwarded to an employee's medical doctor upon written request.

### **23.2. Confidentiality.**

**23.2.1.** Employee personnel files shall be held in strict confidence by the District and shall be subject to inspection only by officials of the District acting on official District business, the employee, or Union officials, in accordance with the employee's written instructions (which shall be filed in the personnel file), or as otherwise required by law (such as by subpoena).

**23.2.2.** In the event that a business inquirer, creditor, or other person contacts any District supervisor to obtain job reference information on any former or current District employee, the information given out shall be limited to verification of employment, length of employment, and verification of salary range if the person inquiring first states a salary in the correct range to the District.

**23.3. Disciplinary Documents.** All disciplinary documents in an employee's personnel file (with the exception of suspension letters), will be removed from the file three (3) years after date of issuance at the request of the affected employee. Letters of suspension will be removed after three (3) years, at the request of the employee, if no additional written disciplinary action (reprimand or suspension) has been imposed within the three (3) year period following the initial suspension. There must be a three (3) year period without any documented disciplinary action before a suspension letter will be removed from the employee's personnel file. The District can use suspension letters against an employee until the employee has three (3) years without any disciplinary documents being placed in his/her personnel file.

**23.4. Counseling Memos.** Counseling memos will be removed from a supervisor's file after one (1) year. Supervisors may specify time frames shorter than one (1) year for removal of counseling letters from the supervisory file.

**23.5. Dissemination of Disciplinary Documents.** The District will provide disciplinary documents directly to employees who are present and available in the workplace. Otherwise, if the employee is not available in the workplace, the District will mail them to the employee's home address on record with the District by regular and certified mail. The District will provide the disciplinary documents to the Union's Chief Steward, President and Business Agent. If there is a change in the disciplinary action because of a settlement agreement or arbitration decision,

**23.5.** \_\_\_\_\_ the District will send that information to the same employees who were sent the original disciplinary document.

## **ARTICLE 24. INTERFERENCE WITH WORK**

The Union agrees to refrain from engaging in, encouraging, or condoning, either directly or indirectly, any strike, work stoppage, slow-down, sit-down, stay-away, picketing, or any other forms of interference with the operations of the District during the term of this Memorandum. The District agrees that there shall be no lock-out against employees during the life of this Memorandum.

## **ARTICLE 25. LIMITATIONS ON DISCIPLINE**

District will not transfer an employee to another work location for disciplinary reasons.

## **ARTICLE 26. SAFETY**

**26.1. Safe Working Conditions.** Both the District and the Union agree to comply with all Federal and State health and safety laws and standards applicable to the District and shall devote every effort to ensure that all work is performed in a safe manner consistent with the requirements of the work to be performed.

**26.2. Union Members on District Committees.** The Union shall designate two (2) representatives as permanent members of the District General Safety Committee. The Union may select two representatives to participate on each subcommittee. The subcommittee members chosen must work on shifts that coincide with the hours that the subcommittee meets. The parties will meet within one (1) year from ratification of this agreement in order to decide whether this committee will continue and/or whether the Central Safety Committee will assume the purposes.

**26.3. Medical Tests on Employees.** It is understood that information pertaining to accidents or injuries is confidential. It is also understood that, where employees are exposed to carcinogens or other harmful substances which exceed the threshold limit values, medical monitoring is required. The District will produce medical monitoring records upon demand of the employee or an authorized Union representative. The District will provide other medical test information to authorized Union representatives only with the express written consent of the involved employee.

**26.4. Results of Government Inspections.** The District will provide Local 444 with Cal/OSHA notices, postings, accident investigation reports, citations, hearing decisions and other documents which, by law, require the District to take action. It is understood the above sentence applies only to work areas and District employees which specifically are within the representation jurisdiction of Local 444.



**26.5. Accident Records.** The District will provide the Union with quarterly reports on employee job injuries and employee vehicle accidents. The District will also provide the Union with Cal/OSHA 200 Reports.

26.5.1 Accident reports will be automatically removed from employees' personnel file five years from the date of issuance, provided there are no subsequent accident reports. Such accident reports will be archived in a separate file than the personnel file.

**26.6. List of Substances and Processes.** The District, in compliance with the State General Safety Orders, maintains Material Safety Data Sheets on special hazardous substances and processes. Upon request of the Union, the District will supply it with a list of all chemicals, etc., for which it has such data sheets. Additionally, upon request, it will also provide specific Material Safety Data Sheets.

**26.7. Safety Committee.** A Joint Union-Management Safety Committee shall be established with up to two (2) Union and two (2) management representatives and shall meet on a quarterly basis.

**26.8. No Smoking.** Smoking is prohibited in any District building or District vehicle. Smokers will be accommodated by designating smoking areas outside away from building entrances and air intakes.

## ARTICLE 27. PROBATIONARY PERIOD

There shall be a twelve (12) month probationary period for all newly hired employees in technical and skilled crafts job classifications. All other probationary periods shall be six months in length. For purposes of this article, the following job classifications shall be considered technical/skilled craft:

|  |                                       |
|--|---------------------------------------|
| Automotive Maintenance Worker          | Hydroelectric Power Plant Operator I  |
| Automotive Mechanic                    | Hydroelectric Power Plant Operator II |
| Carpenter                              | Instrument Technician                 |
| Carpentry Worker I                     | Instrument Worker I                   |
| Carpentry Worker II                    | Instrument Worker II                  |
| Carpentry Worker III                   | Instrument Worker III                 |
| Crane Operator                         | Machinist Maintenance Worker III      |
| Diesel Power Plant Operator            | Maintenance Machinist                 |
| Electrical Worker I                    | Maintenance Specialist I              |
| Electrical Worker II                   | Maintenance Specialist II             |
| Electrical Worker III                  | Maintenance Specialist III            |
| Electrician                            | Materials Specialist                  |
| Electronic Technician                  | Mechanical Maintenance Worker I       |
| General Equipment Mechanic             | Mechanical Maintenance Worker II      |
| Heavy Equipment Maintenance Worker III | Meter Mechanic I                      |
| Heavy Equipment Mechanic               | Meter Mechanic II                     |
| Heavy Equipment Operator               | Meter Mechanic/Backflow Tester        |
| Heavy Forklift Operator                | Painter                               |

|                                    |  |
|------------------------------------|--|
| Heavy Transport Operator           | Painter Foreman                        |
| HVAC Mechanic                      | Painting Worker I                      |
| Hydroelectric Power Plant Mechanic | Painting Worker II                     |
| Painting Worker III                | Treatment Plant Specialist             |
| Paving Crew Foreman                | Truck Driver II                        |
| Pipeline Welder I                  | Wastewater Plant Operator Trainee      |
| Pipeline Welder II                 | Wastewater Plant Operator I            |
| Pipeline Welder III                | Wastewater Plant Operator II Plant     |
| Maintenance Worker II              | Water Distribution Plumber I/II/III/IV |
| Plant Maintenance Mechanic         | Water Distribution Crew Foreman        |

## ARTICLE 28. PART-TIME EMPLOYEES

**28.1. Part-Time/Less than Full-time (Intermittent) Employees.** For purposes of defining part-time and less than full-time (intermittent) employees, a full-time position is 2080 aggregate hours in a payroll year.

**28.1.1. Definition of Part-Time Employees.** A Part-time employee is restricted from working more than forty percent (40%) of the hours worked by employees in equivalent full-time positions, or more than 832 hours in a payroll year, as defined in Article 8.7. Part-time employees are exempt from civil service and cannot grieve disciplinary actions or termination of their employment.

**28.1.2. Part-Time Employee Benefits:** Part-time employees are eligible for the following benefits:

|                                      |   |
|--------------------------------------|---|
| Holidays                             | 3.5 hours paid time for each District holiday, provided the employee works or is on authorized leave for a minimum of 16 hours in the pay period in which the holiday occurs. |
| Birthday Floater Holiday             | 3.5 hours paid time   |
| Vacation                             | Prorated accruals based on hours worked in accordance with Article 15   |
| Sick Leave                           | Prorated accruals based on hours worked in accordance with Article 16   |
| State Disability Insurance (SDI)     | As prescribed by the State  |
| 401k, 457 Deferred Compensation Plan | Eligible to participate (401k, 457 upon plan modification)  |
| Work Out of Class                    | Eligible to work 192 hours per payroll year   |
| Job Injury Leave                     | 192 hours   |

|                        |  |
|------------------------|--|
| Vacation Sell Back     | Up to 80 hours of accrued vacation time may be sold back to the District once during the payroll year, before the last pay period of the payroll year.                               |
| Sick Leave Buyback     | Up to 16 hours of sick leave may be converted to vacation or cash payment of up to 16 hours of sick leave, if the employee has not used more than 18 hours of sick leave in 6 months |
| Domestic Partners      | Employees who register their domestic partner are eligible for all family emergency leaves   |
| Transportation Subsidy | Eligible for Transportation Subsidy Program at 50% of the agreed upon amount for full time employees   |

28.1.3. Definition of Less Than Full-Time (Intermittent) Employees.

Less than full-time (Intermittent) employees are employees who work less than full-time but one-half or more of a standard workday or workweek, or more than 1040 aggregate hours in a payroll year.

28.1.4. Less Than Full-Time Employee Benefits. Less than full-time (intermittent) employees are entitled to the following benefits:

|                                  |  |
|----------------------------------|--|
| Holiday                          | 6 hours of paid time for each District holiday, provided that the employee works or is in an authorized leave status the day before and the day after the holiday and works a minimum of 16 hours in the pay period in which the holiday falls |
| Birthday Floater Holiday         | 6 hours paid time  |
| Vacation                         | Prorated accruals based on hours worked in accordance with Article 15  |
| Sick Leave                       | Prorated accruals based on hours worked in accordance with Article 16  |
| Job Injury                       | 360 hours  |
| Special Leave                    | Prorated at 75%; <u>Jury Duty</u> : based on hours scheduled; <u>Voting Time</u> : not to exceed 2 hours; and <u>Blood Donation</u> : granted 2 hours.   |
| State Disability Insurance (SDI) | As prescribed by State   |

|  |   |
|--|---|
| Health Insurance                           | The District will contribute 75% of the District's contribution for full-time employees for less than full-time employees and their eligible dependents who participate in an approved District health plan, provided that the employees pay the remaining premium cost by payroll deduction. |
| Dental and Vision Insurance                | District pays 75% of premium provided employees pay 25% of the composite rates by payroll deduction   |
| Long-term Disability Insurance (LTD)       | Benefit based on salary   |
| Life Insurance                             | Benefit based on salary   |
| 401k, 457 Deferred Compensation Plan       | Eligible to participate (401k, 457 upon plan modification)  |
| Work Out of Class                          | Eligible to work 360 hours per payroll year   |
| Vacation Sell Back                         | Up to 80 hours of accrued vacation time may be sold back to the District once during the payroll year, before the last pay period of the payroll year.  |
| Sick Leave Buyback                         | Up to 16 hours of sick leave may be converted to vacation or cash payment of up to 16 hours of sick leave, if the employee has not used more than 18 hours of sick leave in 6 months.   |
| Domestic Partners                          | Employees who register their domestic partner are eligible for all family emergency leaves and may cover their domestic partner for medical insurance, dental and vision care.  |
| Transportation Subsidy                     | Eligible for participation in the Transportation Subsidy Program at the agreed upon amount for full time employees  |
| Medical Plan Non-Dual Enrollment Incentive | Employees who receive medical insurance coverage through their spouse or partner will receive \$112.50 a month, if they elect not to be covered under the District's medical plan   |
| Supplemental Life Insurance                | Employees may purchase additional life insurance in addition to what the District offers.   |
| Tuition Refund                             | Eligible to be reimbursed 75% of the tuition reimbursement benefit per fiscal year, for classes and supplies  |

|                               |   |
|-------------------------------|---|
|                               | required for job-related education classes.           |
| Supplemental Benefits Program | Eligible to participate in and receive full benefits. |

**28.2. Job Share Program.** Job sharing occurs when two (2) employees equally share the work responsibilities of one (1) full-time position on a voluntary basis. The procedural guidelines, salaries, benefits, and other terms and conditions of employment governing employees who have been approved to participate in a job share agreement are set forth in the February, 1991, Job Sharing Report to the General Manager.

## ARTICLE 29. SAFETY SHOES

**29.1. Uniform Program.** Effective August 1, 1994, the District will no longer provide uniforms to bargaining unit members except as determined by the District.

**29.2. Safety Shoes.** The District shall provide a safety shoe allotment annually (effective the first day of each fiscal year) for employees in classes included in the District's safety shoe program. Employees shall procure their District provided safety shoes at District-identified vendors. Employees can visit the selected vendors and select their shoes from the vendors provided that: 1) the shoes meet the ASTM-F2412-05 or ASTM-F2413-05 safety standards and

2) the after tax cost for the shoes does not exceed \$170.00. Costs for shoes in excess of this amount shall be paid by the employee. Safety shoes shall not be purchased on District work time and an employee identification badge must be shown to the contract supplier to verify District employment.

**29.2.1.** The District-provided safety shoes for employees in the Wastewater Department shall not be allowed to be removed from the District's property because of health, safety and department work rules.

**29.2.2.** Employees in the Paving Raker classification and Water Distribution Plumbers assigned to the gate pot crews shall be granted a double allotment for safety shoes per year subject to the above conditions.

**29.2.3.** Meter Readers must purchase District approved safety walking shoes (as delineated in the work rules), in accordance with the maximum cost ceiling terms in Article 29.2.

## ARTICLE 30. JOB SITE REPORTING

**30.1. General District-Wide.** The District shall have the right to assign and reassign employees to work locations, including direct reporting to such locations, in accordance with its operational requirements.

**30.1.1.** The District shall continue its past practice relating to Union represented employees of accommodating individuals where possible, reasonable, economical, and

30.1.1. \_\_\_\_\_ operationally feasible. If a reasonable accommodation cannot be made then the District shall provide daily job site reporting payments in accordance with Section 30.2.3 below.

30.1.2 All employees shall have a regular assigned report site. All other circumstances shall be considered job site reporting, with the following exceptions:

- a. all day training workshops or seminars;
- b. assignment to an established District reporting facility for more than 30 consecutive working days;
- c. employee-requested accommodation, in writing, to report to a site other than the employee's regular reporting location.

This does not change the existing practices in the Pipeline Construction Division, except for (a).

**30.2. Distribution Maintenance and Pipeline Construction Divisions.**

30.2.1. The District intends to use job site reporting for pre-scheduled pipeline installation, construction, paving projects, tract service work, and other construction installation work. In addition, other maintenance and repair work may be determined to be appropriate by the District for job site reporting. Specific projects and jobs that management has determined to be appropriate for job site reporting will be posted on appropriate District bulletin boards as soon as is reasonable and practical to do so.

30.2.2. In the Distribution Maintenance Division, crews may be assigned to job site report. Job site reporting will be rotated among crews within a Service Center as equitably as possible. Crewmembers may trade job site reporting assignments with supervisory approval.

30.2.3. The District will pay \$20.00 per workday for each employee who is authorized or required to report directly to a District job site.

30.2.4. The District will make reasonable efforts to assign crews or individuals to job sites that are adjacent to their current reporting assignments. The District will also consider individual preferences for job site location and individual hardships in any job site reporting situation.

30.2.5. Employees authorized to drive District vehicles from their houses to District job sites shall not be eligible for the above job site reporting premiums. Job site reporting premiums shall be exclusive of shift differentials and other benefits; and such premium shall not be used for computing overtime, retirement, life insurance or any other District benefit.

30.2.6. When employees drive their personal vehicle to job sites and are subsequently assigned to another work location that necessitates the employee driving their vehicle, the District will reimburse the employee in accordance with Section 7.9, for transportation from job site to job site. Employees will not be reimbursed mileage from home to a job site or from a job site to home.

30.2.7. The Union agrees to maintain records of jobs that they consider inappropriate for job site reporting and submit them to the Personnel Department on a quarterly basis. The parties agree to consult on an annual basis regarding job site reporting in order to improve the system and eliminate practices that the parties agree should be corrected.

30.2.8. There shall be no loss of time or pay while job site reporting due to inclement weather, equipment failure, or other reasons which may cause the cancellation of a job site reporting project.

## ARTICLE 31. OTHER TERMS AND CONDITIONS

31.1. **Term.** This Memorandum shall not be effective until acted upon by the District Board of Directors and shall remain in effect from 12:01 a.m., April 30, 2007 ~~22, 2013~~, until midnight April 24, ~~2011~~ 16, 2017. If at least ninety (90) days prior to that date either party shall not have served written notice by registered mail upon the other that it desires revision or modification of any designated provision or provisions contained herein, or termination of all such provisions, it shall be automatically renewed for successive periods of one (1) year.

31.2. **No Implied Waiver.** If at any time the Union or the District shall not elect to assert its rights under any provisions of this Memorandum in the event of a breach thereof, such lack of action in this respect shall not be construed as a continued waiver of any rights under the provisions of this Memorandum.

31.3. **Construction.** Except as otherwise expressly provided in this Memorandum, this Memorandum shall be interpreted in a manner consistent with the District's Employer-Employee Relations Resolution and with all written District policies and procedures.

31.3.1. It is understood and agreed that where provisions of this Memorandum make necessary the adoption, amendment or revision of District Civil Service Rules, Policy & Procedure Statements or other rules or regulations, the District will prepare proposed amendments and revisions to rules, policies or procedures to conform with the provisions of this Memorandum.

31.4. **Savings Clause and Future Negotiations.** Should any part of this Memorandum, or any provision contained herein, be rendered or declared invalid by reason of any existing or subsequently enacted legislation, or by any decree of any court of competent jurisdiction, such invalidation of such part or portion of this Memorandum shall not invalidate the remaining portions thereof. The remaining portions or parts shall remain in full force and effect. It is mutually agreed that upon any such invalidation, the District and the Union will meet and confer with reference to the parts and provisions thus invalidated.

31.5. **Future Negotiations and Amendment of Agreement.**

31.5.1. The right to present any demands or proposals, whether discussed or not in the negotiations which led to this Memorandum, is hereby waived by the District and the Union, except as provided in this Memorandum.

31.5.2. The District and the Union agree that amendment or supplement to this Memorandum may be accomplished, insofar as permitted by law, by mutual agreement of the parties.

31.5.3. During the term of this contract, the parties will exclude from this provision (31.5 "Zipper Clause") and separately negotiate any revisions to the Civil Service Rules and District Policies and Procedures not contained in this MOU.

31.6. **Successor Clause.** In the event Local 444 elects to merge with Local 2019, American Federation of State, County, and Municipal Employees, AFL-CIO during the term of this Memorandum, the District agrees to recognize the surviving union as the exclusive bargaining representative as specified in Article 1 for each of the bargaining units listed in Appendix A of this Memorandum. Further, the terms and conditions of this Memorandum shall continue to apply only to those employees in the bargaining units formerly represented by Local 444 as specified in Appendix A and shall not be applied to employees formerly represented separately by Local 2019. Similarly, none of the terms and conditions of the Memorandum of Understanding separately negotiated between the District and Local 2019 for the bargaining units formerly represented separately by Local 2019 shall be applicable to any of the bargaining units formerly represented by Local 444.

31.7 **Transit Subsidy.** The District will provide a transportation subsidy up to a value of \$105 per month to subsidize the cost of an employee's regular commute between work and home (i.e. BART ticket, AC Transit Pass, Commuter Check, etc.). Public Transportation tickets, passes or checks available under the subsidy will be disbursed from the District Credit Union.



IN WITNESS WHEREIN WITNESS WHEREOF, the parties hereto by their duly authorized representatives have executed this Memorandum of Understanding dated on this 10<sup>th</sup> \_\_\_\_ day of January, 2008. \_\_\_\_\_.

EAST BAY MUNICIPAL UTILITY DISTRICT

LOCAL 444, AMERICAN  
FEDERATION OF  
STATE, COUNTY AND MUNICIPAL EMPLOYEES

BRUCE HEID \_\_\_\_\_ Date  
Chief Negotiator \_\_\_\_\_

FELIX HUERTA JR. \_\_\_\_\_ Date  
Business Agent

~~RUBEN RODRIGUEZ~~ \_\_\_\_\_ Date

MARK BERENBERG/JILL GASKINS \_\_\_\_\_ Date  
Negotiating Team Member

LENNY MCBRIDE/JOHN BRICENO \_\_\_\_\_ Date  
Business Agent

~~PAUL GHEREP~~ President

LAURA JOHNSON \_\_\_\_\_ Date  
Negotiating Team Member

DANNY GUARAGLIA \_\_\_\_\_ CHERYL  
FRANKLIN \_\_\_\_\_ Date  
Chief Steward

KURT HAUNSCHILD \_\_\_\_\_

PHILLIP KOHNE

Date

Negotiating Team Member

RUBEN RODRIGUEZ

Date

JOSEPH BROOKS \_\_\_\_\_ Date

RICHARD SYKES \_\_\_\_\_ Date  
Negotiating Negotiation Team Member

MARTY ENGLANDER \_\_\_\_\_

\_\_\_\_\_  
JASON JIMENEZ \_\_\_\_\_ Date

\_\_\_\_\_  
AVIS ROBINSON \_\_\_\_\_ Date  
Negotiating Negotiation Team Member

\_\_\_\_\_  
CHARLES SMITH \_\_\_\_\_

GERALD HUNTER

Date

~~Chief Steward~~

~~Negotiating~~Negotiation Team Member

SCOTT MARTIN

Date

ROBERT LOPEZ

Date

Negotiation Team Member

DAVID CORREA

Date

Negotiation Team Member

**OTHER AGREEMENTS**

1. **Memorandum of Understanding Orientation:** District and Union will provide equal amounts of release time for officers and stewards to attend an orientation to the new MOU. The orientation will be conducted by the Union and the District.
2. **Memorandum of Understanding Printing:** District and Union will pay equal amounts toward the cost of printing copies of the MOUs. The District will prepare the MOU document for printing.
3. **The Union and the District agree to agendize, as part of the labor/management meeting, classification concerns (place holder at monthly meetings) and insurance concerns (semi-annually in January and July).**

**SUPPLEMENTAL AGREEMENT NO. 1  
ELECTRONIC METER READING (EMR)**

Recognizing the need to maintain the efficiency of District operations and to implement new technology to perform its mission, the District and Union agree that the operation of Electronic Meter Reading shall be done in a manner as to improve work quality and provide for a harmonious work environment.

- A. The District will advise and consult the Union prior to:
  - (a) Using any timing stamp, devices or code to measure the speed and/or accuracy of meter reads of any one employee or group of employees.
  - (b) Implementing revised or new standards for the safe, efficient and effective reading of meters by District employees.
- B. The District agrees to solicit and consider the comments from the Meter Reading staff during the operation of the EMR and will provide necessary training on the EMR system to insure that meter reading employees are trained and qualified to efficiently and effectively operate this equipment.
- C. Both the District and Union encourage Meter Reading employees to work in a safe manner consistent with the requirements of the work to be performed in compliance with all Federal and State health and safety laws.

**APRIL 2003**

**SIDELETTER OF AGREEMENT  
Between  
EAST BAY MUNICIPAL UTILITY DISTRICT (District)  
and  
AMERICAN FEDERATION OF STATE,  
COUNTY AND MUNICIPAL EMPLOYEES (AFSCME) LOCAL 444  
Regarding  
THE EMPLOYEE COMPUTER FINANCIAL ASSISTANCE PROGRAM**

East Bay Municipal Utility District, hereinafter referred to as the District, will provide employees represented by AFSCME, Local 444, hereinafter referred to as the Union, interest-free loans up to twenty-five hundred (\$2,500) dollars for the purchase of personal computers. The parties agree that such loans will be provided to 444 represented employees in order to facilitate the development of their computer skills. The District and Local 444, agree that 444 employees will be subject to the following initial implementation criteria, as well as the Employee Computer Financial Assistance Program Guidelines previously established by the District. Further, the District and Local 444 agree that the program guidelines, the implementation and administration of the computer loan program are not subject to the meet and confer process, nor the Union's grievance procedure.

**TIMING OF PROGRAM IMPLEMENTATION AND LOAN APPROVAL**

- The Computer Loan Program will be implemented three (3) months after the execution of the 2003 contract between the District and the Union.
- Original requests for a loan will be approved within eight (8) to twelve (12) weeks after an employee submits a completed Application and Specification sheet to the Employee Services Department, depending on the number of requests.

**ELIGIBILITY**

- All regular, limited term (LT), temporary construction (TC), Intermittent and Job Share employees, provided they satisfy the District's Program guidelines, are eligible to participate in the computer loan program.
- Employees must have a 'satisfactory or meets expectations' or better on their last performance evaluation and cannot have been suspended in the twelve (12) months immediately preceding their application.

**SIDELETTER AGREEMENT - 444 MOU  
COMPUTER LOAN PROGRAM**

**TERMS AND CONDITIONS**

- Employees must be currently at work in order to be eligible for the computer loan program.
- Employees must repay the loan through automatic biweekly payroll deductions, in an amount of fifty (\$50) dollars or more, in each pay period until the loan is extinguished.
- Employees who separate from the District must repay the entire outstanding loan balance, the balance to be deducted from their final paycheck.

Employees who are absent on leave without pay, must continue to make biweekly payments of the loan, during their unpaid leave of absence, in the amount agreed to in the Promissory Note and Authorization for Payroll Deduction.





ATTACHMENT #1

## Payroll Deduction Authorization for For Membership Dues or Service Charge

|                    |                   |        |              |
|--------------------|-------------------|--------|--------------|
| LAST NAME          | FIRST NAME        | MIDDLE | EMPLOYEE NO. |
| JOB CLASSIFICATION | ORGANIZATION NAME |        | ORG NO.      |

### PAYROLL DUES OR SERVICE CHARGE AUTHORIZATION

I understand that employees of the East Bay Municipal Utility District may be represented by organized labor. I further understand the District has entered into an agency shop relationship with most of these Unions and that as a condition of employment in a job classification represented by one of these locals, I must tender membership dues or a service fee to the Union if I am not a conscientious objector. I further understand and agree that the authorization shall be automatically revoked upon my leaving District employment or upon acceptance of a position without Union representation.

I hereby authorize the East Bay Municipal Utility District to deduct from my first paycheck of each month, the regular dues or service charge as a member of a represented job classification. The amount to be paid to the local Union shall be in accordance with the formula stated in the appropriate Memorandum of Understanding. This authorization shall become effective upon my acceptance in a District job classification represented by a Union covered under the District agency shop agreement.

EMPLOYEE SIGNATURE \_\_\_\_\_

DATE \_\_\_\_\_

**ATTACHMENT #2**

**CERTIFICATION OF SECRETARY OF UNION**

I certify that the membership dues or service charge for employees in all bargaining units is

\$\_\_\_\_\_per\_\_\_\_\_.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

\_\_\_\_\_  
Secretary of Union

\_\_\_\_\_  
Date of Delivery to District

ATTACHMENT #3

**EBMUD**

ATTACHMENT #3



## Cancellation of Payroll Deduction For Optional Union Contribution

|                    |            |                   |              |
|--------------------|------------|-------------------|--------------|
| LAST NAME          | FIRST NAME | MIDDLE            | EMPLOYEE NO. |
| JOB CLASSIFICATION |            | ORGANIZATION NAME | ORG NO.      |

### PAYROLL DUES OR SERVICE CHARGE AUTHORIZATION

I hereby cancel my Payroll Deduction Authorization for Optional Union Contribution.

I further understand that employees of the East Bay Municipal Utility District may be represented by organized labor. I further understand the District has entered into an agency shop relationship with most of these Unions and that as a condition of employment in a job classification represented by one of these locals, I must tender membership dues or a service fee to the Union if I am not a conscientious objector. I further understand and agree that this authorization shall be automatically revoked upon my leaving District employment or upon acceptance of a position without Union representation.

EMPLOYEE SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

**EBMUD** \_\_\_\_\_

ATTACHMENT #4

**Payroll Deduction Authorization for Optional Union  
Contribution  
For Membership Dues or Service Charge**

|                    |                   |        |              |
|--------------------|-------------------|--------|--------------|
| LAST NAME          | FIRST NAME        | MIDDLE | EMPLOYEE NO. |
| JOB CLASSIFICATION | ORGANIZATION NAME |        | ORG NO.      |

## PAYROLL DUES OR SERVICE CHARGE AUTHORIZATION

I hereby authorize the East Bay Municipal Utility District to deduct from my first paycheck of each month an optional union contribution of \$\_\_\_\_\_ to be paid to the Treasurer of the Union representing my current job classification. I further understand and agree that this authorization shall be automatically revoked upon my leaving the District employment or upon acceptance of a position without union representation. I also understand this authorization will remain in effect should my job classification change from one represented group to another.

EMPLOYEE SIGNATURE

DATE

X-049 • 12/03

Payroll Deduct Auth for Opt Union Contrib.doc

X-019 • 12/03

**APPENDIX A**  
**UNITS/CLASS TITLES**  
**AFSCME, LOCAL 444**

These list of classifications include all Limited Term and Temporary Construction classes that are related to Local 444 represented classifications

**PARDEE/AQUEDUCT UNIT**

CARPENTRY WORKER I  
CARPENTRY WORKER II  
CARPENTRY WORKER III  
CARPENTER ELECTRICAL  
WORKER I ELECTRICAL WORKER  
II ELECTRICAL WORKER III  
ELECTRICAL TECHNICIAN GENERAL  
EQUIPMENT MECHANIC  
HYDROELECTRIC POWER PLANT MECHANIC HYDROELECTRIC POWER PLANT  
OPERATOR I HYDROELECTRIC POWER PLANT OPERATOR II INSTRUMENT  
WORKER I  
INSTRUMENT WORKER II  
INSTRUMENT WORKER III  
INSTRUMENT TECHNICIAN  
MAINTENANCE MACHINIST  
MAINTENANCE SPECIALIST I  
MAINTENANCE SPECIALIST II  
MAINTENANCE SPECIALIST III  
MATERIALS SPECIALIST STOREKEEPER I  
STOREKEEPER II  
TREATMENT PLANT SPECIALIST

**WATER POLLUTION CONTROL OPERATING UNIT**

DIESEL POWER PLANT OPERATOR ELECTRICAL  
WORKER I ELECTRICAL WORKER II ELECTRICAL  
WORKER III

**WATER POLLUTION CONTROL OPERATING UNIT – continued**

ELECTRICAL TECHNICIAN GARDENER I  
GARDENER II  
HEAVY EQUIPMENT OPERATOR HEAVY  
TRANSPORT OPERATOR INSTRUMENT  
WORKER I INSTRUMENT WORKER II  
INSTRUMENT WORKER III INSTRUMENT  
TECHNICIAN JANITOR  
MATERIALS SPECIALIST  
PLANT MAINTENANCE MECHANIC  
PLANT MECHANICAL MAINTENANCE WORKER I PLANT MECHANICAL  
MAINTENANCE WORKER II PLANT MECHANICAL MAINTENANCE  
WORKER III STOREKEEPER I  
STOREKEEPER II  
WASTEWATER PLANT OPERATOR TRAINEE WASTEWATER  
PLANT OPERATOR I WASTEWATER PLANT OPERATOR II

**METER READING UNIT**

METER READER  
METER READING FOREMAN

**OPERATIONS AND MAINTENANCE DIVISION UNIT**

AUTOMOTIVE MAINTENANCE WORKER I  
AUTOMOTIVE MAINTENANCE WORKER II  
AUTOMOTIVE MAINTENANCE WORKER III  
AUTOMOTIVE MECHANIC A AUTOMOTIVE  
MECHANIC B  
AUTOMOTIVE SERVICES ATTENDANT I AUTOMOTIVE SERVICES  
ATTENDANT II CARPENTER  
CARPENTRY WORKER I CARPENTRY WORKER  
II CARPENTRY WORKER III

**OPERATIONS AND MAINTENANCE DIVISION UNIT - continued**

CONCRETE FINISHER I CONCRETE  
FINISHER IA CONCRETE FINISHER  
II CONCRETE FINISHER IIA CRANE  
OPERATOR DISPATCHER  
ELECTRICAL WORKER I  
ELECTRICAL WORKER II  
ELECTRICAL WORKER III  
ELECTRICAL TECHNICIAN  
ELECTRONIC TECHNICIAN FACILITY  
TECHNICIAN  
HEAVY EQUIPMENT MAINTENANCE WORKER I HEAVY EQUIPMENT  
MAINTENANCE WORKER II HEAVY EQUIPMENT MAINTENANCE  
WORKER III HEAVY EQUIPMENT MECHANIC  
HEAVY EQUIPMENT OPERATOR HEAVY  
FORKLIFT OPERATOR HEAVY  
TRANSPORT OPERATOR HVAC  
MECHANIC INSTRUMENT WORKER I  
INSTRUMENT WORKER II INSTRUMENT  
WORKER III INSTRUMENT TECHNICIAN  
JANITOR  
JANITOR FOREMAN  
MACHINING AND MAINTENANCE WORKER I MACHINING AND  
MAINTENANCE WORKER II MACHINING AND MAINTENANCE WORKER  
III MAINTENANCE MACHINIST  
METER MECHANIC I METER  
MECHANIC II  
METER MECHANIC/BACKFLOW TESTER PAINTER  
PAINTER FOREMAN PAINTING  
WORKER I PAINTING WORKER II  
PAINTER WORKER III PAVING CREW  
FOREMAN PAVING RAKER  
PAVING RAKER A PAVING  
RAKER B



**OPERATIONS AND MAINTENANCE DIVISION UNIT - continued**

PIPELINE WELDER I PIPELINE  
WELDER II PIPELINE WELDER III  
PLANT MAINTENANCE MECHANIC PLANT  
MAINTENANCE WORKER I PLANT  
MAINTENANCE WORKER II PLANT  
MAINTENANCE WORKER III SENIOR FACILITY  
TECHNICIAN SENIOR MECHANIC  
SENIOR METER MECHANIC/BACKFLOW TESTER STOREKEEPER I  
STOREKEEPER II TRUCK  
DRIVER II UTILITY LABORER  
WATER DISTRIBUTION CREW FOREMAN WATER  
DISTRIBUTION PLUMBER I WATER DISTRIBUTION  
PLUMBER II WATER DISTRIBUTION PLUMBER III  
WATER DISTRIBUTION PLUMBER IV

**LAND RESOURCES UNIT**

GARDENER I GARDENER II  
GARDENER FOREMAN

# **LOCAL 444 SALARY SCHEDULE** **Effective April 22, 2013**

| <b>Class</b> |  |               |               |               |               |               |               |               |
|--------------|--|---------------|---------------|---------------|---------------|---------------|---------------|---------------|
| <b>Code</b>  | <b>Class Title</b>                     | <b>Salary</b> | <b>1 Step</b> | <b>2 Step</b> | <b>3 Step</b> | <b>4 Step</b> | <b>5 Step</b> | <b>6 Step</b> |
| 8570         | Automotive Maintenance Worker I        | 53            | 0             | 0             | 4,901         | 5,146         | 5,403         | 5,673         |
| 8572         | Automotive Maintenance Worker II       | 56            | 0             | 0             | 5,278         | 5,542         | 5,819         | 6,110         |
| 8568         | Automotive Maintenance Worker III      | 58            | 0             | 0             | 5,543         | 5,820         | 6,111         | 6,417         |
| 8565         | Automotive Mechanic A                  | 60            | 0             | 0             | 5,821         | 6,112         | 6,418         | 6,739         |
| 8564         | Automotive Mechanic B                  | 62            | 0             | 0             | 6,119         | 6,425         | 6,746         | 7,083         |
| 8983         | Automotive Services Attendant I        | 48            | 0             | 0             | 4,330         | 4,547         | 4,774         | 5,013         |
| 8981         | Automotive Services Attendant II       | 52            | 0             | 0             | 4,779         | 5,018         | 5,269         | 5,532         |
| 8616         | Carpenter                              | 62            | 0             | 0             | 6,119         | 6,425         | 6,746         | 7,083         |
| 8615         | Carpentry Worker I                     | 50            | 0             | 0             | 4,546         | 4,773         | 5,012         | 5,263         |
| 8614         | Carpentry Worker II                    | 54            | 0             | 0             | 5,023         | 5,274         | 5,538         | 5,815         |
| 8618         | Carpentry Worker III                   | 58            | 0             | 0             | 5,543         | 5,820         | 6,111         | 6,417         |
| 8974         | Concrete Finisher I                    | 54            | 0             | 0             | 5,023         | 5,274         | 5,538         | 5,815         |
| 8993         | Concrete Finisher IA                   | 56            | 0             | 0             | 5,278         | 5,542         | 5,819         | 6,110         |
| 8836         | Concrete Finisher II                   | 58            | 0             | 0             | 5,543         | 5,820         | 6,111         | 6,417         |
| 8992         | Concrete Finisher IIA                  | 59            | 0             | 0             | 5,683         | 5,967         | 6,265         | 6,578         |
| 8314         | Crane Operator                         | 62            | 0             | 0             | 6,119         | 6,425         | 6,746         | 7,083         |
| 8710         | Dispatcher                             | 60            | 0             | 0             | 5,821         | 6,112         | 6,418         | 6,739         |
| 8636         | Electrical Technician                  | 66            | 0             | 0             | 6,753         | 7,091         | 7,446         | 7,818         |
| 8640         | Electrical Worker I                    | 51            | 0             | 0             | 4,660         | 4,893         | 5,138         | 5,395         |
| 8639         | Electrical Worker II                   | 55            | 0             | 0             | 5,147         | 5,404         | 5,674         | 5,958         |
| 8638         | Electrical Worker III                  | 59            | 0             | 0             | 5,683         | 5,967         | 6,265         | 6,578         |
| 8632         | Electronic Technician                  | 61            | 0             | 0             | 5,970         | 6,269         | 6,582         | 6,911         |
| 8701         | Facility Specialist I                  | 55            | 0             | 0             | 5,147         | 5,404         | 5,674         | 5,958         |
| 8705         | Facility Specialist II                 | 61            | 0             | 0             | 5,970         | 6,269         | 6,582         | 6,911         |
| 8704         | Facility Technician                    | 59            | 0             | 0             | 5,683         | 5,967         | 6,265         | 6,578         |
| 7517         | Gardener Foreman                       | 64            | 0             | 0             | 6,429         | 6,750         | 7,088         | 7,442         |
| 7522         | Gardener I                             | 48            | 0             | 0             | 4,330         | 4,547         | 4,774         | 5,013         |
| 7520         | Gardener II                            | 52            | 0             | 0             | 4,779         | 5,018         | 5,269         | 5,532         |
| 8530         | General Equipment Mechanic             | 62            | 0             | 0             | 6,119         | 6,425         | 6,746         | 7,083         |
| 8534         | Heavy Equipment Maintenance Worker I   | 53            | 0             | 0             | 4,901         | 5,146         | 5,403         | 5,673         |
| 8536         | Heavy Equipment Maintenance Worker II  | 56            | 0             | 0             | 5,278         | 5,542         | 5,819         | 6,110         |
| 8538         | Heavy Equipment Maintenance Worker III | 58            | 0             | 0             | 5,543         | 5,820         | 6,111         | 6,417         |
| 8526         | Heavy Equipment Mechanic               | 62            | 0             | 0             | 6,119         | 6,425         | 6,746         | 7,083         |
| 8324         | Heavy Equipment Operator               | 60            | 0             | 0             | 5,821         | 6,112         | 6,418         | 6,739         |
| 8315         | Heavy Forklift Operator                | 57            | 0             | 0             | 5,408         | 5,678         | 5,962         | 6,260         |
| 8328         | Heavy Transport Operator               | 58            | 0             | 0             | 5,543         | 5,820         | 6,111         | 6,417         |
| 8528         | HVAC Mechanic                          | 61            | 0             | 0             | 5,970         | 6,269         | 6,582         | 6,911         |
| 8117         | Hydroelectric Power Plant Mechanic     | 67            | 0             | 0             | 6,922         | 7,268         | 7,631         | 8,013         |
| 8119         | Hydroelectric Power Plant Operator I   | 59            | 0             | 0             | 5,683         | 5,967         | 6,265         | 6,578         |
| 8118         | Hydroelectric Power Plant Operator II  | 65            | 0             | 0             | 6,590         | 6,920         | 7,266         | 7,629         |
| 8838         | Instrument Technician                  | 66            | 0             | 0             | 6,753         | 7,091         | 7,446         | 7,818         |
| 8842         | Instrument Worker I                    | 53            | 0             | 0             | 4,901         | 5,146         | 5,403         | 5,673         |
| 8841         | Instrument Worker II                   | 57            | 0             | 0             | 5,408         | 5,678         | 5,962         | 6,260         |
| 8840         | Instrument Worker III                  | 61            | 0             | 0             | 5,970         | 6,269         | 6,582         | 6,911         |
| 7736         | Janitor                                | 44            | 0             | 0             | 3,924         | 4,120         | 4,326         | 4,542         |
| 7734         | Janitor Foreman                        | 52            | 0             | 0             | 4,779         | 5,018         | 5,269         | 5,532         |
| 8642         | Machining & Maintenance Worker I       | 53            | 0             | 0             | 4,901         | 5,146         | 5,403         | 5,673         |
| 8569         | Machining & Maintenance Worker II      | 56            | 0             | 0             | 5,278         | 5,542         | 5,819         | 6,110         |
| 8529         | Machining & Maintenance Worker III     | 59            | 0             | 0             | 5,683         | 5,967         | 6,265         | 6,578         |
| 8527         | Maintenance Machinist                  | 65            | 0             | 0             | 6,590         | 6,920         | 7,266         | 7,629         |

# **LOCAL 444 SALARY SCHEDULE** **Effective April 22, 2013**

| Class Code | Class Title                           | Salary | 1 Step | 2 Step | 3 Step | 4 Step | 5 Step | 6 Step |
|------------|---------------------------------------|--------|--------|--------|--------|--------|--------|--------|
| 8964       | Maintenance Specialist I              | 52     | 0      | 0      | 4,779  | 5,018  | 5,269  | 5,532  |
| 8963       | Maintenance Specialist II             | 56     | 0      | 0      | 5,278  | 5,542  | 5,819  | 6,110  |
| 8962       | Maintenance Specialist III            | 61     | 0      | 0      | 5,970  | 6,269  | 6,582  | 6,911  |
| 8453       | Materials Specialist                  | 57     | 0      | 0      | 5,408  | 5,678  | 5,962  | 6,260  |
| 8585       | Meter Mechanic I                      | 49     | 0      | 0      | 4,438  | 4,660  | 4,893  | 5,138  |
| 8583       | Meter Mechanic II                     | 57     | 0      | 0      | 5,408  | 5,678  | 5,962  | 6,260  |
| 8582       | Meter Mechanic/Backflow Tester        | 61     | 0      | 0      | 5,970  | 6,269  | 6,582  | 6,911  |
| 5945       | Meter Reader                          | 52A    | 4,334  | 4,551  | 4,779  | 5,018  | 5,269  | 5,532  |
| 8580       | Meter Reader/Mechanic                 | 54     | 0      | 0      | 5,023  | 5,274  | 5,538  | 5,815  |
| 8579       | Meter Reader/Mechanic Foreman         | 64     | 0      | 0      | 6,429  | 6,750  | 7,088  | 7,442  |
| 5943       | Meter Reading Foreman                 | 61     | 0      | 0      | 5,970  | 6,269  | 6,582  | 6,911  |
| 8626       | Painter                               | 60     | 0      | 0      | 5,821  | 6,112  | 6,418  | 6,739  |
| 8621       | Painter Foreman                       | 67     | 0      | 0      | 6,922  | 7,268  | 7,631  | 8,013  |
| 8630       | Painting Worker I                     | 50     | 0      | 0      | 4,546  | 4,773  | 5,012  | 5,263  |
| 8629       | Painting Worker II                    | 54     | 0      | 0      | 5,023  | 5,274  | 5,538  | 5,815  |
| 8628       | Painting Worker III                   | 58     | 0      | 0      | 5,543  | 5,820  | 6,111  | 6,417  |
| 8255       | Paving Crew Foreman                   | 67     | 0      | 0      | 6,922  | 7,268  | 7,631  | 8,013  |
| 8967       | Paving Raker                          | 55     | 0      | 0      | 5,147  | 5,404  | 5,674  | 5,958  |
| 8973       | Paving Raker A                        | 56     | 0      | 0      | 5,278  | 5,542  | 5,819  | 6,110  |
| 8991       | Paving Raker B                        | 59     | 0      | 0      | 5,683  | 5,967  | 6,265  | 6,578  |
| 8557       | Pipeline Welder I                     | 53     | 0      | 0      | 4,901  | 5,146  | 5,403  | 5,673  |
| 8555       | Pipeline Welder II                    | 57     | 0      | 0      | 5,408  | 5,678  | 5,962  | 6,260  |
| 8553       | Pipeline Welder III                   | 61     | 0      | 0      | 5,970  | 6,269  | 6,582  | 6,911  |
| 8540       | Plant Maintenance Mechanic            | 62     | 0      | 0      | 6,119  | 6,425  | 6,746  | 7,083  |
| 8544       | Plant Maintenance Worker I            | 53     | 0      | 0      | 4,901  | 5,146  | 5,403  | 5,673  |
| 8546       | Plant Maintenance Worker II           | 56     | 0      | 0      | 5,278  | 5,542  | 5,819  | 6,110  |
| 8542       | Plant Maintenance Worker III          | 59     | 0      | 0      | 5,683  | 5,967  | 6,265  | 6,578  |
| 8125       | Power Plant Mechanic/Operator         | 64     | 0      | 0      | 6,429  | 6,750  | 7,088  | 7,442  |
| 8706       | Senior Facility Technician            | 63     | 0      | 0      | 6,273  | 6,587  | 6,916  | 7,262  |
| 8566       | Senior Mechanic                       | 67     | 0      | 0      | 6,922  | 7,268  | 7,631  | 8,013  |
| 8587       | Senior Meter Mechanic/Backflow Tester | 65     | 0      | 0      | 6,590  | 6,920  | 7,266  | 7,629  |
| 8456       | Storekeeper I                         | 48     | 0      | 0      | 4,330  | 4,547  | 4,774  | 5,013  |
| 8455       | Storekeeper II                        | 54     | 0      | 0      | 5,023  | 5,274  | 5,538  | 5,815  |
| 8130       | Treatment Plant Specialist            | 62     | 0      | 0      | 6,119  | 6,425  | 6,746  | 7,083  |
| 8334       | Truck Driver II                       | 57     | 0      | 0      | 5,408  | 5,678  | 5,962  | 6,260  |
| 8980       | Utility Laborer                       | 51     | 0      | 0      | 4,660  | 4,893  | 5,138  | 5,395  |
| 8141       | Wastewater Plant Operator I           | 60     | 0      | 0      | 5,821  | 6,112  | 6,418  | 6,739  |
| 8140       | Wastewater Plant Operator II          | 64     | 0      | 0      | 6,429  | 6,750  | 7,088  | 7,442  |
| 8143       | Wastewater Plant Operator Trainee     | 56     | 0      | 0      | 5,278  | 5,542  | 5,819  | 6,110  |
| 8220       | Water Distribution Crew Foreman       | 67     | 0      | 0      | 6,922  | 7,268  | 7,631  | 8,013  |
| 8971       | Water Distribution Plumber I          | 51     | 0      | 0      | 4,660  | 4,893  | 5,138  | 5,395  |
| 8969       | Water Distribution Plumber II         | 55     | 0      | 0      | 5,147  | 5,404  | 5,674  | 5,958  |
| 8970       | Water Distribution Plumber III        | 59     | 0      | 0      | 5,683  | 5,967  | 6,265  | 6,578  |
| 8968       | Water Distribution Plumber IV         | 63     | 0      | 0      | 6,273  | 6,587  | 6,916  | 7,262  |

**PREAMBLE**

This Contract (hereinafter referred to as "Contract") entered into by East Bay Municipal Utility District (hereinafter referred to as the "District") and Local 2019, American Federation of State, County and Municipal Employees (AFSCME), (hereinafter referred to as the "Union") has as its purpose the promotion of harmonious relations between the District and the Union; establishment of an equitable and peaceful procedure for the resolution of differences; and the establishment of rates of pay, hours of work, and other conditions of employment.

The provisions of this Contract supersede all previous Memoranda of Understanding between the parties. Where provisions of this Contract make necessary the adoption, amendment or revision of Civil Service Rules and/or Policy & Procedure Statements because of specific conflict or absence of coverage, such provisions shall be presented to District's Board of Directors in accordance with Article 32.3.

**Article 1. RECOGNITION****1.1. Majority Representation.**

1.1.1. The District recognizes the Union as the majority representative of all permanent, probationary, limited-term (LT), temporary construction (TC), (intermittent) less than full-time and part-time employees (except Worker Trainees) within the class titles of the formally recognized units as enumerated in Appendix A, "Units/Class Titles/Salary Ranges", which are attached hereto and made a part hereof.

1.1.2. The District shall furnish the Union on a monthly basis with the name, classification and department number of each new employee hired for, or separated from, a permanent, limited-term, less than full-time (intermittent) temporary construction or part-time position within the foregoing units, and shall notify each said new employee of the District's recognition of the Union as the majority representative in said units.

**1.2. Representation of employees in limited-term and temporary construction appointments.**

1.2.1. The following applies to employees in LT and TC appointments in classifications represented by Local 2019.

1.2.1.1. Employees who have civil service status in a District classification and who are promoted or transferred employees continue to retain rights to a position in their former civil service classification when the "LT" or "TC" position is completed.

1.2.1.2. The District has the obligation to assign such employee back to a position in his/her former civil service classification. Ending LT or TC appointments shall not be grievable.

1.2.1.3. Employees currently in LT and TC appointments will be placed on the union's salary schedule at the step that is equal to their current salary.

- 1.2.1.4. No "LT" employee shall serve in that category for more than 4 years.
- 1.2.1.5. LT/TC employees with civil service status shall retain the benefits they were receiving at the time of acceptance of the LT/TC appointment. LT/TC employees without civil service status shall be provided all District benefits except retirement.
- 1.2.1.6. The District shall give reasonable notice of available "LT" or "TC" positions to be filled and shall, where qualifications are reasonably equal, give preference to District employees when filling such positions.
- 1.2.1.7. An employee who promotes or transfers to an "LT" or "TC" position shall, while in a "TC" or "LT" position, receive continuous service credit for purposes of this Contract, Article 6, Salaries, Article 12, Reduction in Force, and Article 15, Vacations.
- 1.2.1.8. LT and TC employees are subject to all contract provisions unless specifically restricted.

## **Article 2. AGENCY SHOP/DUES DEDUCTION**

**2.1. Eligibility/Exemptions.** All permanent, probationary, limited-term, temporary construction, less than full-time (intermittent) and part-time employees in the classifications listed in Appendix "A" shall, as a condition of continued employment, become members of the Union, or shall pay a service fee equal to the monthly dues of the Union. This agency shop agreement shall continue for as long as AFSCME Local 2019 remains the exclusive representative of the bargaining units listed in Appendix A.

### **2.1.1. Exemptions:**

2.1.1.1. Any employee who is a member of a bona fide religious body or sect which has historically held conscientious objections to joining or financially supporting employee organizations shall not be required to join or financially support the Union as a condition of employment. Such employees shall be required, in lieu of periodic dues, initiation fees, or agency shop fees to pay an amount equal to the periodic dues, initiation fees or agency shop fees to a non-religious tax-exempt charity, three such organizations to be mutually agreed upon by the parties.

### **2.2. Compliance.**

2.2.1. An employee in one of the classes included in Appendix A shall (and, in the case of a newly hired employee, within thirty (30) calendar days of employment) execute a payroll deduction authorization form furnished by the District, included in this MOU as attachment #1, and thereby become and remain a member in good standing in the Union; or execute a payroll deduction authorization form (Attachment #1), and thereby pay to the Union a service fee equal to the monthly dues of the Union; or in the case of employees who certify that they are members of a bona fide religion, body or sect which has historically held conscientious objections to

joining or financially supporting public employee organizations, pay sums equal to the service fee which is equal to the monthly dues of the Union.

2.2.2. If any current employee fails to authorize one of the above deductions, (or, in the case of a newly hired employee, within thirty (30) calendar days of hire into a classification covered by this Contract), the District shall deduct a service fee equal to the monthly dues of the Union from the employees' paycheck.

2.2.3. The District shall provide contact information in writing, regarding persons newly hired by the District into a Local 2019 represented classification, to the designated Union Official within seven (7) workdays of the employees official hire date.

**2.3. Union Dues, and Service Fee, or Optional Union Contribution Deduction Checkoff.**

2.3.1. During the period AFSCME Local 2019 remains the exclusive representative of the bargaining units listed in Appendix A and to the extent the laws of the State of California permit and as provided in this Article, the District will deduct one month's current and periodic Union dues or service charge based upon a uniform dues schedule from the pay of each employee who has executed and delivered to the District a deduction authorization form, (Attachment 1) or who has deductions made from salary pursuant to Article 2.2.2.

2.3.2. When certifying membership dues or service charge the Union shall use the certification form, as furnished by the District and included in this MOU as Attachment #2.

2.3.3. Payroll deductions shall be made only from the pay due employees on the first payday of each calendar month; provided, however, the initial deduction for any employee shall not begin unless both (1) a properly executed "Payroll Deduction Authorization for Membership Dues or Service Charge", and (2) the amount of the monthly membership dues or service charge certified by the Secretary of the Union have been delivered to the District at least thirty (30) calendar days prior to the first payday of the calendar month. If the employee fails to properly execute the "Payroll Deduction Authorization for Membership Dues or Service Charge" within thirty (30) calendar days of hire into a classification covered by this MOU, the District will deduct the monthly membership dues or service charge automatically. Changes in the amount of the monthly membership dues or service charge also must be delivered to the District at least thirty (30) calendar days prior to the first payday of the calendar month before the change will become effective.

2.3.4. All sums deducted by the District shall be remitted to the Union at an address given to the District by the Union, once each month by the fifteenth (15th) calendar day following the payday on which the deductions were made, together with a list of names, mailing addresses and the amount deducted for each employee for whom a deduction was made.

2.3.5. The District shall not be liable to the Union by reason of the requirements of this Article for the remittance or payment of any sum other than that constituting actual deductions made from the pay earned by the employee. In addition, the Union shall indemnify and hold the District harmless from any liability resulting from any and all claims, demands, suits or any other

action arising from compliance with this Article, or in reliance on any list, notice, certification or authorization furnished under this Article. The Union agrees to refund to the District any amounts paid to it in error.

2.3.6. The District shall furnish, monthly, a list of all employees appointed within classifications contained in Appendix "A" of this Contract who are subject to the provisions of the agency shop agreement. The list will include temporary construction (TC) and limited term (LT) employees who have civil service status in the bargaining unit, and part-time employees in classifications represented by the bargaining unit. The District shall furnish a list of all newly hired employees and change in status or representation of employees to the Union's Membership Secretary each pay period.

2.3.7. The Union may request the District to provide an optional voluntary Union deduction for members or service fee payers of the Union. Such deduction shall be requested by the member or service fee payer in even dollar amounts. The optional Union deduction shall be made only from the pay due employees on the first payday of each calendar month. The member or service fee payer may discontinue the optional Union deduction at any time (Attachment #3). Such request for optional Union deduction shall be made on "Payroll Deduction Authorization for Optional Union Contribution, AFSCME, Local 2019" (Attachment #4). The Union and District agree that such optional Union deduction is not subject to the provisions of the agency shop agreement between the Union and District. The Union agrees to refund to the District any amounts paid to it in error.

### **Article 3. DISTRICT RIGHTS**

#### **3.1. Definition of Rights.**

3.1.1. The rights of the District include, but are not limited to, the exclusive right to determine the missions of its constituent departments and divisions; set standards of services; determine the procedures and standards of selection for employment and promotion; direct and assign its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other legitimate reasons; maintain the efficiency of District operations; determine the methods, means and personnel by which District operations are to be conducted; determine the content of job classifications; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work; provided, however, that the exercise of such District rights shall not conflict with the express provisions of this Contract.

3.1.2. District and Union mutually intend and agree that District may unilaterally exercise any and all rights reserved by this Article without further meeting and conferring or consulting with Union. It is further mutually agreed that Union and District have met and conferred on all matters reserved to District by this Article and Union does expressly waive any and all rights to further meet and confer on such issues, or any of them, during the period of this Contract. Any dispute concerning the interpretation or application of District's rights shall be deemed a grievance and must be processed under Article 24.

3.1.3. The District agrees to apply the rights reserved by this Article in a prudent and reasonable manner; furthermore, the District shall consider the impact that the application of these rights may have on the work force, before applying these rights. The District agrees to make reasonable efforts to mitigate any significant impacts arising out of the application of any and all rights reserved by this Article.

#### **Article 4. NO DISCRIMINATION/HARASSMENT**

##### **4.1. No Discrimination.**

4.1.1. There shall be no discrimination of any kind by the Union or the District against any employee, to the extent the applicable law prohibits such discrimination, harassment, or disparate treatment, because of race, religious creed, color, age, marital status, national origin, ancestry, sex, sexual orientation, political affiliation, physical or mental disability (including HIV and AIDS), or medical condition (cancer or genetic characteristic).

4.1.2. To the extent applicable law prohibits, there shall be no discrimination or harassment because of lawful Union activity, Union membership, or non-membership.

##### **4.2. Harassment, Disparate Treatment and Inappropriate Behavior.**

4.2.1. In addition to behavior violative of Section 4.1 above, the following behavior will not be permitted, tolerated, or condoned:

- a. Dishonesty, including providing false information to District management about the performance of an employee or circulation of private personnel files;
- b. Abusive, threatening, or intimidating behavior, gestures or language;
- c. Physical threats or physical striking of an employee;
- d. Repeated threats of discipline without counseling, warning, investigation, or a progressive disciplinary approach, including untimely discipline;
- e. Inequitable treatment regarding the application of District policies, District rules, this Contract, or those items listed in 4.1 above;
- f. Disrespect toward each other, regardless of position, status, or job responsibilities.

Infractions of this policy are subject to the Grievance Procedure.

4.2.2. When a grievance is filed under Section 4.2, the parties will be provided with the option to enter into a facilitation process to resolve the grievance. If the parties agree to facilitation, the District will arrange to have a facilitator assigned to meet with the individuals involved in the grievance in an attempt to resolve the matter.



The facilitation process will not exceed thirty (30) calendar days unless mutually extended by the parties.

If the parties do not agree to facilitation, the timetable is not met or the facilitation is unsuccessful, the grievance may be advanced by the union to the next step of the grievance process described in Article 24.3.

The facilitation process will be confidential and facilitators cannot be called as witnesses at any level of the grievance process.

**4.3. Accommodation for Disabled Employees.** The Union understands that the District has a lawful obligation under the federal and state laws to make reasonable accommodations for qualified individuals with disabilities. Any accommodation will be on a case-by-case basis, and shall not be precedential, nor shall constitute a past practice for anyone other than a qualified individual with disabilities.

## **Article 5. UNION ACTIVITIES**

### **5.1. Union Stewards.**

5.1.1. Employees selected by the Union to act as Union representatives shall be known as "stewards". The Union may select one steward for each thirty-five (35) filled positions or major fraction thereof for those classifications represented by the Union. The names of employees so selected and the areas to which they are assigned shall be certified in writing to the District by the Union. In the absence of the steward, an alternate may be appointed by the Union Chief Steward or Union President. Stewards, during regular working hours, shall be permitted to investigate and present grievances to the District without loss of time or pay, provided that this is done in a manner consistent with District operating requirements, and the steward is first excused by his/her supervisor. Permission to perform steward functions shall not be unreasonably denied.

5.1.2. If it becomes necessary during the course of his/her investigation for a steward to contact an employee in another department or division, the steward shall state to and notify the supervisor of that department or division the purpose of his/her investigation. When the investigation is completed, the steward shall promptly report back to his/her supervisor.

5.1.3. The District shall keep a record of time spent by stewards in the processing of grievances, and shall review this record periodically with the officials of the Union. It is agreed that in the event any abuse is found to exist, the Union officials will cooperate with the District in taking such steps as are necessary to correct such abuse.

### **5.2. Attendance at Meetings by Employees.**

5.2.1. District employees who are official representatives of the Union shall be given reasonable time off without loss of time or pay to attend meetings with management representatives where matters within the scope of representation are being considered.

5.2.2. Authorization to attend such meetings must be obtained from the Employee Relations Manager, no later than twenty-four (24) hours prior to the time of such meetings. The number of employees excused for such purpose shall not exceed three (3) unless additional employees are authorized by the District.

5.2.3. Consistent with District operating requirements, the Union may designate one (1) employee representative to attend each District Board meeting and workshop (which meeting is otherwise open to the public), ~~including and two (2) representatives to attend each Retirement Board meetings, meeting~~ without loss of time or pay. In addition, the Union may designate one (1) employee to serve on the 401 (k) and 457 deferred compensation committee meetings without loss of time or pay.

5.2.4. Authorization to attend such Board meetings must be obtained from the Employee Relations Manager, no later than twenty-four (24) hours prior to the time of such meetings.

5.2.5. Consistent with District operating requirements, one (1) Union election observer shall be paid during regular work hours for attendance at each election balloting location to observe all election procedures which involve representation, modification or decertification of the Union.

5.2.6. Union representatives are prohibited from using District vehicles other than sedans and pick-up trucks to attend District meetings. If Union representatives are driving District vehicles other than sedans and pick-ups at the time they are requested to attend meetings, the District will arrange for transportation or for a sedan or pick-up to be available for them.

5.3. **Communication with Employees.** The Union shall have designated for official Union business a specific portion of District Bulletin Boards with space adequate for the posting of 4 sheets of paper (8.5 inches by 11 inches), or a contiguous area approximately 17 inches wide by 22 inches long. Items placed in the Union section of the District Bulletin Boards shall be signed by an officer of the Union and shall not contain salacious or inflammatory material that is directed toward the District, its employees, or its policies. The Union may distribute materials to employees within the classifications it represents through District mail distribution channels, with all such mailings subject to the prior approval of the Employee Relations Manager. These provisions may be revoked in the event of abuse after the Employee Relations Manager consults with representatives of the Union.

5.4. **Visits by Union Representatives.** The District agrees that accredited non-employee representatives of the Union, whether local, district council, or international representatives, shall have access to District premises for the purpose of meeting with Union officials when investigating grievances or determining compliance with this Contract. Arrangements for visits to District premises for these purposes shall be made through the Employee Relations Manager. Employee meetings with non-employee representatives shall not be paid for by the District.

5.5. **Limitation on Union Activities.** Activities involving internal management of the Union, such as collection of dues, assessment of other funds, membership meetings, campaigns for office, distribution of literature, or conducting of membership drives shall not be conducted during working hours, in District work areas, or on District property without prior approval of the

Employee Relations Manager.

**5.6. Union Business Leave.**

5.6.1. Employees elected to any Union office or selected by the Union to do work that takes them from their employment with the District shall, at the written request of the Union, be granted leave for up to six (6) months, provided that the work of the operation concerned shall not be unduly impaired by such absence. While such employees are on Union Business Leave, they shall remain on the District payroll.

5.6.2. The Union will reimburse the District for the employees' wages and benefits while the employees are on Union Business Leave. If Union reimbursement is not received within 45 calendar days of District billing, the employees' status for that time shall be changed to Union Business Leave Without Pay and the appropriate amount shall be deducted from their next paycheck.

5.6.3. It is understood the intent of this section is to permit employees to continue to accrue sick leave, vacation leave, and retirement system credits while on Union Business Leave With Pay.

5.6.4. Notification. Requests for Union Business Leave shall be submitted in writing from the Union President to the Manager of Employee Relations a minimum of three workdays before the effective date of the leave. The Manager of Employee Relations may waive these notification requirements at his/her discretion.

5.6.5. Minimum Duration. Union Business Leave must normally be for a minimum of one hour.

5.6.6. Unpaid Leave Requirements. Union Business Leaves Without Pay shall be subject to the provisions of Article 17.1 of this Contract.

**5.7. Orientation.** As part of the District's new employee orientation program, the Union shall have thirty (30) minutes to provide information and answer questions to new employees who are in classifications covered by this Contract.

**5.8. General Membership Meetings.** The Union shall be able to hold its monthly general membership meetings in the Board Room or Training Room in the Administration Center on the same basis as other community groups.

**5.9. Labor Management Meetings.** The District and Local 2019 agree to continue to meet monthly to discuss issues of interest to either party.

These meetings may include representative(s) of the District's Employee Relations staff, officers of Local 2019 and other District staff, as necessary.

**Article 6. SALARIES AND OTHER PAY****6.1. Salary Schedule.**

6.1.1. First Year Increases. Effective April 30, ~~2007~~22, 2013, the monthly salary rates of employees covered by this ~~Contract~~contract shall be increased by ~~4.1~~3% as set forth in the attached Appendix "A" dated April 30, ~~2007~~22, 2013.

6.1.2. Second Year Increases. Effective April 28, ~~2008~~21, 2014, the monthly salary rates of employees covered by this contract shall be increased by the February ~~2008~~2014 San Francisco/Oakland Consumer Price Index for Urban Wage Earners and Clerical Workers CPI-W plus ~~.5~~8%. The minimum increase shall be 2%, and the maximum increase ~~64.5~~64.75%, with no reopener.

6.1.3. Third Year Increases. Effective April 27, ~~2009~~20, 2015, the monthly salary rates of employees covered by this contract shall be increased by the February ~~2009~~2015 San Francisco/Oakland Consumer Price Index for Urban Wage Earners and Clerical Workers CPI-W plus ~~.25~~8%. The minimum increase shall be 2%, and the maximum increase ~~64.75~~64.75%, with no reopener.

6.1.4. Fourth Year Increases. Effective April 26, ~~2010~~18, 2016, the monthly wage rates of employees represented by this contract shall be increased by the February ~~2010~~2016 San Francisco/Oakland Consumer Price Index for Urban Wage Earners and Clerical Workers CPI-W, plus ~~.8~~8%. The minimum increase shall be ~~2.5~~2.5%, and the maximum increase ~~65~~65%, with no reopener.

6.1.5. Equity Adjustments.

- ~~Information Systems Support Analyst II classification from salary range level 69 to 70.~~
- ~~Materials Testing Technician I classification from salary range level 53 to 54.~~
- ~~Materials Testing Technician II classification from salary range level 57 to 58.~~
- ~~Recreation Area Attendant classification from salary range level 44 to 45.~~
- ~~Senior Programmer Analyst classification from salary range level 73 to 74.~~

6.2. Pay Period. Salaries shall be paid biweekly on Friday of the appropriate week. In the event that this day is a holiday, the preceding day shall be the payday.

6.3. Twenty-Year Wage Increment. Each employee covered by this Contract shall be entitled to a salary increment following completion of twenty (20) years' continuous full-time District service. The adjustment for such employees shall be 2.75% (plus or minus no more than one dollar per month) added to the monthly salaries set forth, exclusive of overtime, night shift differential, standby pay or merit pay.

**6.4. Work-Out-of-Classification.**

6.4.1. When an employee temporarily replaces another employee in a higher classification,

he/she shall be paid the appropriate higher rate for such work. Assignments to perform the work of a higher classification pursuant to this Section shall be tracked by hours worked and shall not exceed 480 hours in a calendar year. The District shall make reasonable efforts to distribute work out of class on an equal and rotational basis for qualified employees. If there are no volunteers for the work out of class assignment, the District will fill the position by reverse seniority on a rotational basis among qualified employees. By use of this Section, the District shall not attempt to avoid District Civil Service Rules and the filling of regular full time positions.

6.4.2. The purpose of this Section is not to restrict training opportunities but to encourage proper classification and compensation for work performed.

6.4.3. Nothing herein shall prohibit the training of an employee in work of a more advanced nature without additional compensation, as long as full duties are not substantially assumed.

6.4.4. Employees assigned to work out of class shall receive the beginning step of the new class or a calculated rate which is 5-1/2% above the employee's current base rate, whichever is the greater amount, provided that the amount does not exceed the range.

**6.5. Minimum Salary Rates.** Salary rates established herein are to be minimum rates. The District may hire an employee at any salary step at or above the minimum rate.

**6.6. Payment for Licenses/Certificates.** The District shall pay all normal and regular fees incurred in the obtaining of any licenses or certificates that are required by the District for the job classification of the employee. It is understood that any late or penalty fees which are not caused by District action shall not be included in normal or regular fees. The District shall pay actual fees for registration, licenses or certificates of a professional or technical nature which are required by a District classification within the employee's career path. Employees shall be granted paid time, including reasonable travel time, to take tests which occur during the normally scheduled work shift for any licenses or certificates required for the employee's current job classification with the exception of Class C drivers' licenses. The District shall not accrue any overtime liabilities for the period of time during which an employee takes a test.

**6.6.1 Land Survey Certification Premium.** An employee in the job classification of Survey Technician II or Chief of Party shall be paid \$250 per month in addition to his/her base salary upon furnishing satisfactory evidence that he/she holds a valid California Land Survey's License. Such employee must satisfy all requirements needed to maintain the License in order to continue receiving the \$250 per month and shall provide satisfactory evidence each time the License is renewed.

**6.7. New Classifications.**

6.7.1. The Union recognizes the right of the District to establish new job classifications and to amend existing class descriptions to reflect changes in assigned duties and responsibilities. In the event a substantial change is made in the description of a class represented by the Union, the District shall consult with the Union regarding such change and the salary for the class. Upon

request of the Union, the parties shall meet and confer on the salary for the classification within five (5) working days prior to presentation to the Board of Directors. Establishment of salary is not subject to the grievance procedure as contained in this Contract.

6.7.2. The District will provide the Union with two (2) weeks notice prior to requesting Board adoption of new classes or if there are substantial revisions to existing classes represented by the Union.

6.8. **Reimbursement For Use of Private Car.** The District shall reimburse employees at the rate of ~~fiftysixty-one and twenty-four hundredths (-51.24)~~(.61) per mile for each mile they are authorized and required to drive their private cars within the employee's normal areas of operations in the performance of their assigned duties. Annually in July, the District shall adjust this amount to conform to the American Automobile Association (AAA) composite per mile cost for a 6-cylinder, 4-door sedan in the 15,000 miles per year category. This information is obtained from the Annual Edition of Your Driving Costs, published by the American Automobile Association, Falls Church, Virginia. In the event such publication is not available, the parties shall meet and confer on the new data.

6.9. **Reimbursement for Overtime Meals.** Employees required to continue to work for two (2) or more hours beyond their regular quitting time shall receive overtime meal reimbursement of sixteen dollars (~~\$16~~18.00). Employees shall be provided reimbursement for additional meals, as above, for every completed four (4) hour period of work thereafter. Time taken for meals furnished by the District at the work location shall be paid time. Time taken for meals eaten away from the work location shall be unpaid time.

6.10. **Bilingual Pay.** Employees assigned to use more than one language in the course of their employment shall be paid ~~\$175~~200/month for use of each language, including sign language, provided the following conditions are met: a) the District verifies in writing the recurring need to utilize the second language skill on the job, b) the District verifies the employee's language proficiency, and c) the District has the exclusive right to determine the need for job required usage of the second language, the number of persons receiving the pay, and which individuals shall be assigned duties requiring second language proficiency. Employees on unpaid status for two consecutive pay periods, due to illness or injury, will have their bilingual premium payments discontinued until they return to work. Employees who request leave without pay (LWOP) for reasons other than illness or injury, will have their bilingual premium payments discontinued effective the first full pay period after their leave begins and their payments will resume once they have returned to work.

6.11. **Salary on Promotion.** The new base rate shall be either the beginning step of the new class or the step in the salary schedule which is at least 5 1/2% above the employee's current base salary, whichever is the greater amount, provided that in no instance shall an employee's base rate exceed the maximum salary wage rate established and in effect for the new class.

6.12. **Adjustment for Overpayments.** In the event an employee is erroneously overpaid by the District, regardless of fault, the District shall recover overpayment by deducting from that employee's regular paycheck either the full amount of the overpayment or ten (10) percent of the

employee's gross salary, whichever is less, and continue said deductions for as many consecutive pay periods as necessary until full overpayment is recovered. The District shall not commence recovery by payroll deductions until written notification has been given to the employee at least ten (10) working days in advance, which includes details of the overpayment, and provides the employees with an opportunity to respond before any deduction is made.

## **Article 7. DAYS AND HOURS OF WORK**

**7.1. Workday.** The standard workday shall consist of eight (8) consecutive hours of work (exclusive of any unpaid meal period) within a 24-hour period beginning at 12:01 a.m.

**7.2. Workweek.** The standard workweek shall consist of five (5) consecutive workdays within a seven (7) day period beginning at 12:01 a.m. Monday and ending at 12 midnight Sunday.

**7.3. Flexible Schedules.** Notwithstanding Sections 1 and 2, upon request of an individual employee or a group of employees from a work unit, the District shall investigate and may change the beginning and ending workday hours of that employee or the workdays and workweeks of employees within any particular work unit provided the work or the operation of the unit concerned shall not be unduly impaired by such adjustment. Such adjustment shall not affect the total length of the workweek.

7.3.1. All requests for flexible schedules shall all be examined and considered for implementation by the employee's supervisor, Division Manager, and Department Manager. In the event a request for flexible workweek is denied, the employee or group of employees shall be provided specific reasons for the denial within a reasonable time frame but not more than 15 workdays.

7.3.2. If an employee or group of employees is denied a compressed workweek schedule or is removed from the compressed workweek schedule, the appeals process in the Compressed Workweek Guidelines shall be followed and the decision shall be based on criteria established in the Compressed Workweek Guidelines.

**7.4. Work Schedules.** In operations where work schedules are changed, changes in schedule shall be posted one (1) week in advance of the effective date of the change.

**7.5. Relief Shift Operators.** Relief shift operators shall be notified forty-eight (48) hours in advance of changes in their work schedules. The advance notice specified above shall not apply in cases of illness or other emergencies.

**7.6. Continuous Operations.** In operations in which there is regularly scheduled employment for 24 hours per day, seven (7) days per week, the hours of work shall consist of eight (8) consecutive hours per workday, and except during scheduled rotation or relief operation, five (5) consecutive days per workweek. It is understood that the Laboratory Services Division of the Wastewater Department is not a continuous operation.

7.6.1. Employees in continuous operations who are required to be at work stations for eight (8)

consecutive hours shall eat during working hours.

7.6.2. The District shall not schedule work so as to require employees in continuous operations to work three (3) shifts within a forty (40) hour period. In continuous operations, employees who are called back to work an eight (8) hour shift after being off their previous shift eight (8) or fewer hours shall be paid one (1) hour of premium pay at the overtime rate in addition to their pay for such time worked.

7.7. **Seniority.** Seniority based on service in the classification, not service in the District, shall be an important consideration in the assignment of shifts.

7.8. **Changes in Days and Hours of Work.**

7.8.1. It is understood that, all other provisions of this Article notwithstanding, the hours of work, workday and workweek practices in effect on the effective day of this Contract may be continued at the option of the District; provided, however, changes in such practices shall be subject to prior consultation with the Union. However, before implementing any such program which deviates from the normal eight (8) hours per day, five (5) days per week schedule, the District must meet and confer with the Union.

7.8.2. Notwithstanding the above, the District shall be permitted to schedule shifts one hour earlier or later than present, provided that such schedule changes shall not occur more than twice in a calendar year. Additional shift schedule changes may be permitted upon mutual agreement of the supervisor and the employee. A minimum of two (2) days prior notice shall be provided to the employee whose shift is changed. Employees who believe a shift change will create a hardship may appeal the decision to change their shift to their Department Manager. If such shift creates work in two (2) different calendar days, all time shall be treated as if it was worked in the calendar day containing the majority of the workday. For example, if the start of the workday is changed from 12:00 midnight to 11:00 p.m., the employee shall be paid as if all work commenced at 12:00 midnight.

7.8.3. An employee may be subject to removal from an alternative workweek schedule in the event that District Management has determined the work or operation of the unit is unduly impaired by such a schedule. The considerations for withdrawal include: a lack of availability of adequate coverage and supervision, an overall increase in costs to the District that may be incurred, a noted decrease in the work unit's and employees' effectiveness, and a demonstrated decrease in the response to customer needs.

7.9. **Rest Periods.** Employee work schedules shall provide for fifteen (15) minute rest periods during each one half (1/2) of the workday. Rest periods shall be scheduled so as not to interfere with efficient operations of the District. Rest periods shall not be scheduled in the first hour or the last hour of any one-half (1/2) of the workday.

7.10. **Meal Periods.** Employees shall be granted a thirty (30) minute lunch period, without pay, except as otherwise provided, scheduled at approximately the middle of the workday. Employees shall not be scheduled to work longer than one-half (1/2) of the regularly scheduled workday plus one (1) hour without a meal period.



**7.11. Cleanup Time.** Where the nature of the work is such that cleanup is required, work schedules shall be arranged to allow reasonable time for that purpose prior to the end of the workday. The District shall provide facilities for cleanup.

**7.12. Fatigue Time.**

7.12.1. Employees shall receive full pay for fatigue time if they have worked overtime and the overtime has been completed with less than eight (8) hours between the completion of the overtime and the start of the employee's next regularly scheduled shift. Fatigue time can be taken at the beginning or end of the shift. Fatigue time shall be calculated as follows:

- a. Subtract the ending time of overtime from the beginning time of the next regular shift.
- b. Subtract that figure from eight hours.
- c. The difference is the fatigue time due to the employee.

Example. OT is worked from 1:00 a.m. until 4:00 a.m. Regular shift begins at 8:00 a.m. The difference is 4 hours between the end of OT and the beginning of the next regular shift. (8 hrs - 4 hrs = 4 hours of fatigue time due to the employee.)

7.12.2. Employees shall not receive fatigue time if: (A) the overtime is completed more than eight hours prior to the start of their next regularly scheduled shift, or (B) employees are called out to perform overtime work within four (4) hours of the start of their next regularly scheduled shift, or (C) they are assigned to continuous operations.

7.12.3. Fatigue time must be taken during the first or last part of the next regularly scheduled workday. Employees receiving fatigue time shall notify their immediate or after hours supervisor at the completion of the overtime work, if possible, or a minimum of one (1) hour before the start of their next regularly scheduled shift when their fatigue time will be taken.

**Article 8. OVERTIME**

**8.1. Preamble.** At the present time the District has no plans and does not contemplate an expansion in the use of overtime. The District shall make all reasonable efforts to avoid overtime including reviews of staffing to minimize its adverse effect on individuals and to control costs to the District, but occasionally overtime may be necessary to avoid greater costs as well as to meet legal obligations and Board commitments. The District shall continue to assess all overtime use to ensure that overtime is necessary in order to maintain current District operations, services, and to ensure completion of projects on schedule. Whenever overtime is necessary, the District shall give employees notice as soon as is reasonable and practical to do so.

**8.2. Rate of Pay.** One and one-half (1-1/2) times the employee's regular hourly rate of pay shall be paid for all work performed in excess of eight (8) hours per workday or forty (40) hours

per workweek. Time worked at the overtime rate due to Call Time overlap of the employee's regular workday shall be counted in determining the eight (8) hours per workday or forty (40) hours per workweek required to establish a base for overtime. There shall be no pyramiding of overtime pay.

**8.3. Limitation and Distribution of Overtime.** No employee shall be required to work more than sixteen (16) hours in any twenty-four (24) hour period. If an employee works 32 hours in a pay period on emergency overtime work, that employee shall not be subject to non-emergency necessary overtime work in the same pay period unless the employee volunteers for such work. An employee shall be obligated to work non-emergency necessary overtime work to the extent that the employee has not worked 32 hours in a pay period as emergency overtime work, i.e., emergency overtime hours worked shall reduce the hours limitation for non-emergency necessary overtime in the same pay period.

**8.4. Emergency Overtime.** All employees are required to work in emergency situations. An emergency includes, but is not limited to, situations which involve disruption of service to customers and actual or threatened danger of injury to person or damage to property, or threat to public health and safety.

**8.5. Non-Emergency Necessary Overtime.**

8.5.1. The District shall request volunteers for all available necessary overtime. Overtime work shall be distributed as nearly equally as possible among qualified employees working within the same job classification, within the same work unit.

8.5.2. No volunteer may work more than 16 consecutive hours without approval of the Division Manager.

8.5.3. No employee shall be assigned to work more than 16 hours in any 24-hour period or to work more than 32 hours per pay period of non-emergency necessary overtime work. The parties emphasize the distribution commitment contained in Article 8.5.1 above to minimize the impact of assigned overtime on an individual employee.

8.5.4. In the event an insufficient number of employees volunteer for necessary overtime, the District shall assign employees to fill vacancies (on a rotating basis) starting by reverse seniority in the affected unit and classification. Whenever an employee is on standby, the District shall not assign other overtime work to that employee unless the entire rotation of his/her classification has been exhausted and overtime is still necessary. However, an employee shall be permitted to volunteer for overtime during a week the employee is also on standby.

8.5.5. With District approval, employees may trade all overtime assignments. Until a trade is approved, all overtime assignments are part of an employee's job responsibilities.

8.5.6. Employees are expected to comply with overtime assignments and failure to do so shall subject an employee to appropriate discipline. However, an employee who, because of illness or other compelling emergency, is unable to work assigned or scheduled overtime, and who notifies

the District a minimum of one (1) or more hours before an employee is scheduled to report to work, shall not be subjected to disciplinary action for failure to work.

**8.6. Voluntary Overtime List.** Work units having overtime work shall establish lists of employees who are available to work overtime on a voluntary basis. The initial order of call when the lists are established shall be by seniority; thereafter, employees shall be called on a rotating basis subject to the operating procedure of the work unit. The operating procedure for such lists shall be developed by each work unit and shall take into account the nature of the overtime work available, skills required to do the overtime work, and the operational requirements of the work unit.

**8.7. Compensatory Time.**

8.7.1. All employees represented by Local 2019 shall have the option to receive compensatory time in lieu of paid overtime. Compensatory time shall be provided at 1.5 hours for each hour of overtime worked. The maximum accrual of compensatory time will be 75 hours in a payroll year. Payroll year is defined as the period beginning with the first pay period for which pay is received in January, and ending with the last pay period for which pay is received in December. All overtime worked after an employee has accrued or used 75 hours of compensatory time in a payroll year shall be paid at the appropriate overtime rate. All employees who have accrued compensatory time at the end of the last pay period, for which pay is received in December, shall have their compensatory time carried over as compensatory time into the next (following) payroll year. All such compensatory time must be used by the end of the next payroll year or it will be paid off to the employee at the applicable FLSA rate. Any compensatory time used in the next (following) payroll year will first be deducted from any compensatory time that was carried over from the last payroll year, if any. Compensatory time accrued after the last full pay period of the calendar year, but prior to the end of the year, shall be credited and included in the accrual for the following payroll year.

8.7.2. Use of accumulated compensatory time off shall be scheduled and approved by the District so as not to disrupt the operation of the work unit or the District.

**Article 9. STANDBY PAY**

**9.1. Preamble.** At the present time the District has no plans and does not contemplate an expansion in the use of standby beyond use in those classifications where standby is currently being utilized.

**9.2. Compensation Rates.**

9.2.1. An employee assigned to be on call during non-working hours shall receive a premium of twenty-five (25%) percent of the basic pay during the standby period, provided such employee makes himself/herself available and responds to all calls for work. Overtime work performed during a standby period shall be paid at the rate of one and one-half (1-1/2) times the straight-time hourly rate for the time worked exclusive of such standby premium.

9.2.2. When an employee is on standby on a day that is designated as a District holiday, the employee shall receive standby pay for three (3) eight-hour standby periods on that holiday in addition to receiving regular holiday pay.

9.3. **Scheduling.** The District shall schedule its standby needs at least two months in advance. Volunteers for standby to fill the schedule shall be allowed in each classification with the most senior District employee allowed first choice of assignments. An employee shall be permitted to volunteer for overtime during a week the employee is also on standby.

**9.4. Rotation System.** A rotation system in each department, in each classification, in each location, shall be developed by the District where standby is necessary. The rotation system shall not be utilized if the standby schedule is completely filled with volunteers. The rotation system, if used, shall, in its inception, first obligate the least senior District employee in each department, in each classification, in each location. No employee shall serve a rotational assignment of more than one (1) week in any calendar month.

**9.5. Trades.** With District approval, employees may trade all standby assignments. Unless and until a trade is approved, all standby assignments are part of an employee's job responsibilities.

**9.6. Compliance.** Employees are expected to comply with standby assignments and failure to do so shall subject an employee to appropriate discipline. However, an employee who, because of illness or other compelling emergency, is unable to be available for standby, and who notifies the District at the onset of the illness or at the time they become aware of the compelling emergency, shall not be subjected to disciplinary action for failure to be available. Such employee shall only be compensated for the actual time he/she was available for standby.

## **Article 10. CALL TIME**

**10.1. Minimum Overtime Guarantee.** Employees called and directed to report to work outside of their regularly scheduled shift shall be paid for a minimum of two and one-half (2-1/2) hours at the appropriate overtime rate.

**10.2. Shift Overlap.** If the Call Time work assignment and the employee's regular shift overlap, the following process will be applied:

**10.2.1 Minimum Call Time Overlap.** Employees who are called to work in accordance with Article 10.2 – Shift Overlap, and have minimum call time guarantee that overlaps regular shift straight time shall be credited with retirement service credit as follows:

**10.2.1.1.** The time that the minimum call time guarantee overlaps the employee's regular shift will be paid as a premium using a separate payroll code and will not affect the employee's regular shift or hours. Minimum call time overlap is a premium pay and is not subject to retirement withholding and will not be counted toward retirement services credit.

**10.2.1.2.** The District and employee will pay retirement contributions for the regular shift hours worked by the employee. The employee shall receive service credit in the Retirement System for the employee's regular shift hours.

**10.2.1.3.** No retirement contributions shall be taken from overtime compensation paid to the employee for minimum call time guarantee and no retirement service shall be credited for overtime work.

**10.3. Rest/M meal Break.** If an employee is called to start work less than two and one-half (2-1/2) hours before the start of his/her regularly scheduled shift, the employee shall be allowed a fifteen (15) minute break prior to the start of his/her shift. If the employee is called to start work two and one half (2-1/2) or more hours before the start of his/her regularly scheduled shift, he/she shall receive a thirty (30) minute paid meal break prior to the start of his/her regular shift.

**10.4. Telephone Response.** An employee whether or not on paid standby who is called on the telephone, regarding work related issues but not directed to report to work shall be compensated for a minimum of one (1) hour at the appropriate overtime rate. (This provision does not apply to inquiries regarding the employee's leave status or administrative items).

## **Article 11. SHIFT DIFFERENTIAL**

**11.1. Premium.** Employees who perform work on a scheduled eight (8) hour shift beginning between 11:00 a.m. and 10:59 p.m., inclusive, shall be paid a premium of ten percent (10%) per hour. Employees who perform work on a scheduled eight (8) hour shift which begins between 11:00 p.m. and 3:59 a.m., inclusive, shall be paid a premium of fifteen percent (15%) per hour.

**11.2. Continuous Operations.** In continuous operations, when an employee's shift is extended by additional hours either before or after his/her normal shift, overtime compensation shall be based on the rate for the shift that was extended or actually worked, whichever is greater.

## **Article 12. REDUCTION IN FORCE**

**12.1. Reasons.** An employee may be separated from District employment by reduction in force due to lack of work or funds, retrenchment, or completion of work.

**12.2. Application.** Reduction in force in a given classification shall be from all positions in the classification, District-wide.

**12.3. Priority.** Reduction in force shall first affect employees having provisional (i.e., Temporary Construction, Limited Term, Temporary) or probationary appointments in the classification in question. Thereafter, employees having permanent appointments in the classification shall be subject to reduction in force in inverse order to the length of their District continuous service.

**12.4. Demotion to Previously Held Classifications.** An employee subject to separation by reduction in force may elect demotion to classifications in which he/she has previously held permanent civil service status during his/her current period of employment. In such election, the procedures of reduction in force outlined in Section 12.3 shall be applied to the employee being separated and to all others in the classification in question.

**12.5. Voluntary Demotion.** In accordance with Civil Service Rules governing demotions and transfers, an employee subject to separation by reduction in force may also be considered for

voluntary demotion to other lower classifications or for transfer to classifications at the same salary level, if any vacancies exist. Any employee who is not transferred or demoted to a permanent position shall be offered appointment to any temporary position in his/her classification which is currently filled at the time of his/her proposed termination.

**12.6. Reinstatement List.** Names of employees affected by reduction in force shall be placed on a layoff and reduction list in the order in which they have been laid off or demoted. Such list shall remain in effect for a period of two (2) years, during which time, when vacancies occur in the classification in which reduction in force took place, employees laid off or demoted shall be reinstated in the reverse order of layoff or demotion and receive the same salary step as at the time of layoff.

**12.7. Severance Pay.** Each permanent employee with a minimum of five (5) continuous years of District employment who is laid off due to a reduction in force shall receive twenty (20) workdays' severance compensation exclusive of any premium, overtime, standby or longevity pay.

**12.8. New Technology.** The parties shall meet when positions are scheduled to be eliminated or substantially changed due to management-initiated changes, including but not limited to reorganization, efficiency, automation and other technological change. All feasible steps (including training and/or transfer) should be taken to assist employees to locate and prepare to qualify for other positions in the District civil service in lieu of reduction in force; provided that this shall not restrict the District's authority to effect economies or make organizational changes to increase efficiency in District operations.

### **Article 13. CONTRACTING AND SUBCONTRACTING**

**13.1. Right to Contract.** The right to contract and subcontract are vested exclusively in the District; provided, however, if such contracting or subcontracting work would result in the layoff of an employee in a classification set forth in Appendix "A", the District shall consult with the Union, prior to such contracting or subcontracting, in an attempt to avert, by transfer or other reasonable means, the layoff of such employee.

**13.2. Meeting.** In addition to current practice, the District and Union representatives shall meet by department to review contract work and other work that is customarily performed by Union members that the District intends to contract out during the fiscal year. The District shall provide the Union with summary information on the projects and services planned for contracting out at least five (5) workdays prior to the annual contracting out meetings.

**13.3. Union Review.** The Union shall be offered the opportunity to review and provide comments on the District's Five Year Plan prior to its consideration by the Board of Directors.

**13.4. Training.** When the District is required to contract out work because District employees lack specific expertise or specialized equipment, the District shall make reasonable efforts to provide training to the affected employees.

**13.5. Request for Proposal (RFP) Notification and Review.** The District will provide the Union with a copy of all RFP's for professional service contracts over twenty thousand (\$20,000) dollars, for work customarily performed by classifications set forth in Appendix A, upon issuing same to prospective bidders. The Union shall be offered the opportunity to review and provide comments on these RFP's, at the Union's monthly contracting out meeting.

## **Article 14. HOLIDAYS**

### **14.1. Holidays Observed.**

14.1.1. The following legal holidays shall be granted eligible employees:

|                                    |                             |
|------------------------------------|-----------------------------|
| New Year's Day                     | January 1                   |
| Martin Luther King, Jr.'s Birthday | Third Monday in January     |
| Lincoln's Birthday                 | February 12                 |
| Washington's Birthday              | Third Monday in February    |
| Cesar Chavez' Birthday             | March 31                    |
| Memorial Day                       | Last Monday in May          |
| Independence Day                   | July 4                      |
| Labor Day                          | First Monday in September   |
| Admission Day                      | September 9                 |
| Columbus Day                       | Second Monday in October    |
| Veteran's Day                      | November 11                 |
| Thanksgiving Day                   | Fourth Thursday in November |
| Day after Thanksgiving             |                             |
| Christmas Day                      | December 25                 |

14.1.2. When a holiday falls on Sunday, the following Monday shall be observed as the holiday. When a holiday falls on Saturday, the preceding Friday shall be observed as the holiday.

**14.2. Eligibility.** Full-time employees shall receive the above holidays off with no loss in pay when both the following conditions are satisfied:

14.2.1. The employee works or is on Authorized Leave (with or without pay) on his/her scheduled workday immediately before and immediately after the holiday; and

14.2.2. The employee is in a paid status for at least 8 hours within the payroll period in which the holiday falls.

### **14.3. Holiday Pay.**

14.3.1. Employees who work on an observed holiday shall receive overtime pay for hours worked in addition to their regular straight-time pay.



14.3.2. Employees whose scheduled day off falls on an observed holiday shall receive a day's pay at the straight-time rate; such employees who work on an observed holiday shall, in addition, receive overtime for hours worked.

14.3.3. Employees who work in 24-hour continuous operation or a seven day per week operation and are scheduled to work on a holiday and actually work on the holiday as specified in this MOU shall receive the following:

14.3.3.1. Eight Hour Work Schedule – Employees who work an eight (8) hour work schedule will receive the following:

14.3.3.1a. Eight (8) hours of regular straight time pay for the holiday worked that will be subject to retirement contributions from both the District and employee, and be counted toward retirement service credit.

14.3.3.1b. Eight (8) hours of holiday pay at the regular straight time rate that the employee may choose either to receive as pay or add to their vacation accruals. If taken as pay, holiday pay is a premium pay and is not subject to retirement withholding and will not be counted toward service credit.

14.3.3.1c. Four (4) hours of holiday premium at the regular straight time rate that may be paid or added to compensatory time accruals in accordance with Article 14.3.3.1b. If taken as pay, holiday pay is a premium pay and is not subject to retirement withholding and will not be counted toward retirement service credit. The four (4) hours of holiday premium pay will be reported using a separate payroll code.

14.3.3.2. Compressed Work Week Schedule – Employees who work compressed work week schedule shall receive the following:

14.3.3.2a. Nine (9), ten (10) or twelve (12) hours of regular straight time pay for the worked holiday depending on the duration of their regularly scheduled work day that will be counted toward retirement service credit and be subject to retirement contributions from both the District and employee.

14.3.3.2b. Eight (8) hours of holiday pay at the regular straight time rate that the employee may choose either to receive as pay or add to their vacation accruals. If taken as pay, holiday pay is a premium pay and is not subject to retirement withholding and will not be counted toward retirement service credit.

14.3.3.2c. Holiday premium pay equal to one-half of the duration of their regularly scheduled workday at their regular straight time rate, that may be paid or added to their compensatory time accruals in accordance with Section 14.3.3.1b of this Article. If taken as pay, holiday premium pay is not subject to retirement withholding and will not be counted toward retirement service credit. The holiday premium pay equal to one-half of these regularly scheduled hours worked will be reported using a separate payroll code.

14.3.3.3. No retirement contributions shall be taken from overtime compensation paid to the employee for holidays or the minimum call time guarantee and no retirement service shall be credited for overtime work.

14.3.4. In the event that a holiday falls on an employee's compressed day off, the employee shall be credited with eight (8) hours of vacation, or the employee may choose to receive holiday pay, to be added to the 80 hours of regular pay (a total of 88 hours at a regular rate for the pay period). If the employee does not indicate that he/she wishes to receive holiday pay, the holiday shall be added to their vacation balance.

14.3.5. In continuous operations or seven day operations, when a holiday falls on a Saturday or Sunday, the actual holiday shall be observed rather than the District-observed holiday.

**14.4. Holiday During Vacation.** Holidays that fall during a vacation shall not be charged against vacation credits.

## **Article 15. VACATIONS**

### **15.1. Eligibility and Allowance.**

15.1.1. Employees who are eligible to be credited with vacation are those who have permanent or probationary status. Other appointments, however, if continuous with the current period of employment, shall be counted in determining the amount of vacation to be credited and the date of eligibility.

15.1.2. Eligible employees shall accrue vacation leave as follows:

| CONTINUOUS<br>SERVICE YEARS | VACATION LEAVE<br>HOURS<br>PER PAY PERIOD | VACATION DAYS<br>PER YEAR |
|-----------------------------|---|---------------------------|
| 1st through 4 <sup>th</sup> | 3.692                                     | 12                        |
| 5th through 9th             | 4.616                                     | 15                        |
| 10                          | 5.539                                     | 18                        |
| 11                          | 5.539                                     | 18                        |
| 12                          | 5.539                                     | 18                        |
| 13                          | 5.847                                     | 19                        |
| 14                          | 6.154                                     | 20                        |
| 15                          | 6.462                                     | 21                        |
| 16                          | 6.770                                     | 22                        |
| 17                          | 7.077                                     | 23                        |
| 18                          | 7.385                                     | 24                        |
| 19 and subsequent           | 7.693                                     | 25                        |

15.1.3. Any increases an employee receives in vacation shall be prorated for the calendar year.

**15.2. Vacation Accrual.** All eligible employees shall accrue vacation on the basis of hours paid.

**15.3. Use of Vacation.**

15.3.1. At any time after completion of six (6) months of service, an eligible employee may use six (6) days credited for the first six months of employment. Thereafter, employees may use vacation leave equal to the accrued vacation leave credited to their account.

15.3.2. Vacation must be taken within the calendar year in which it is credited, with two exceptions:

a. Certain amounts of vacation may be deferred, as shown below.

b. Vacation started before the end of the year may be continued into the next year.

15.3.3. A maximum of 50 vacation leave days (400 hours) may be deferred by employees. Any employee with deferred vacation accrual in excess of 50 days (400 hours) at the end of any calendar year shall have his or her vacation leave balance adjusted and reduced to 50 vacation days at the beginning of the first payroll period in January unless there is specific written authorization from the General Manager to exceed such limits. Employees who have more than four hundred (400) hours of vacation accrued on December 31 will have the option of taking vacation in the first three (3) months of the next payroll year provided that approval of the employee's vacation request will not disrupt the work activities of the work unit or being paid for all vacation over 400 hours after the first quarter of the next payroll year. ~~The District will discontinue the individual notification of employees by letter, of vacation leave balances in excess of 400 hours effective the end of the 2007 payroll year.~~

**15.4. Choice of Vacation.**

15.4.1. Whenever possible, vacations shall be scheduled for the time requested by the employee. In order to avoid undue disruption of work activities or to minimize conflicts with other employees' vacations, the Department Head or Division Manager may place reasonable seasonal or other restrictions on the use of deferred vacation.

15.4.2. Supervisors shall prepare a schedule of available vacation periods for each classification in their organizational units which shall be based on efficient staffing of the unit in relation to estimated workload. Each employee shall indicate, by order of preference, the vacation period desired. Supervisors shall review these requests and resolve any conflict in favor of the employee with the most seniority (i.e., longest total continuous District service); provided, however, if an employee requests that his/her vacation be taken in two (2) or more non-continuous vacation periods, such employee may exercise his/her seniority only for the first period of vacation.

15.4.3. Supervisors shall recommend the completed schedule to the Department Head or Division Manager. After the vacation schedule has been approved by the Department Head or

Division Manager, an employee promoted or transferred into a unit may not "bump" another employee's previously scheduled vacation period without that employee's consent.

**15.5. Vacation Proration on Separation.** An employee eligible for vacation who is separated from District service for any reason shall receive a lump sum payment for any unused, earned vacation.

**15.6. Vacation Sell Back.** An employee may choose to sell back a maximum of eighty (80) hours of vacation leave to the District in one hour increments during the payroll year. Payments to employees resulting from such sell back of vacation shall not be considered "compensation" as defined in the Retirement Ordinance for the purpose of calculating terminal compensation.

## **Article 16. PAID ABSENCE**

### **16.1. Sick Leave.**

**16.1.1. Eligibility.** Any permanent or probationary employee who through no fault of his/her own, is unable to be present to perform his/her duties due to illness, injury, medical or dental treatment, or medical emergency in the employee's immediate family shall be granted sick leave in accordance with the provisions of this Section.

**16.1.2. Accumulation.** Employees shall accrue four (4) hours of sick leave credit for each full biweekly pay period of continuous service, to a maximum of 1040 hours (130 days) (see Article 16.1.7). Part-time employees shall receive prorata sick leave based upon their hours worked in any pay period.

**16.1.3. Use.** All sick leave used shall be deducted from the employee's credits, with the minimum chargeable time being 30 minutes. When sick leave credits are exhausted, unpaid sick leave shall be granted.

**16.1.4. Family Sick Leave.** When employee absence is required due to serious medical emergency in the employee's immediate family (i.e., mother, father, stepmother, stepfather, husband, wife, domestic partner, son, daughter, stepson, stepdaughter, brother, or sister), a maximum of thirteen (13) days (104 hours) accrued sick leave may be used in a payroll year (as defined in Article 8.7).

**16.1.5. Substitution of Sick Leave for Vacation.** If an employee becomes ill and takes sick leave before a scheduled vacation begins, the starting date of vacation may be postponed or vacation rescheduled as approved by the District. If an employee becomes ill after his/her last workday before vacation begins or during vacation and the illness extends more than two (2) vacation days, accumulated sick leave shall be substituted for vacation leave for each full day involved. Request for such substitution shall be made when the employee returns to work, unless he/she wishes to extend the absence, in which case he/she shall contact the supervisor before he/she is scheduled to return to work. Request for sick leave substitution shall be accompanied by a doctor's statement or other satisfactory evidence verifying the length of time the employee was

incapacitated. Each vacation leave day that an employee was hospitalized may be converted to sick leave upon submission of satisfactory evidence of hospitalization.

16.1.6. Limitations. An employee who is unable to report for work and who fails to notify his/her supervisor in accordance with work unit procedures may not qualify for paid sick leave.

16.1.6.1. An employee whose illness or injury arises out of non-District employment is not entitled to sick leave.

16.1.6.2. All sick leave use is subject to review, verification, and approval by the District.

16.1.6.3. A doctor's certificate indicating time under doctor's care, approval for return to work, and any work limitations is required if sick leave extends to ten (10) consecutive workdays or more.

16.1.6.4. Upon return to work from sick leave, the employee's supervisor and Department Director/Division Manager may require an employee to be evaluated by a District-selected physician, if there is reasonable concern about the employee's fitness for duty, or if the employee has an illness that could be contagious. These evaluations shall be conducted on District time.

16.1.7. Retirement Credit. Consistent with the terms and conditions of the Retirement Ordinance, when an employee's sick leave accumulation reaches the maximum of 1040 hours, any hours which would have otherwise accrued thereafter shall be accumulated without limit. Such hours, when added to the existing sick leave accumulation, become Service Extension Credit to be applied when computing the employee retirement allowance.

16.1.8. Service Extension Credit/Conversion. When an employee is released for return to work as shown by medical evidence satisfactory to the District, after sick leave extending for ninety (90) calendar days or more, the hours of sick leave taken shall be restored to the employee's sick leave account by deducting that number of hours from any service extension credit in the employee's account at the time of return to work to a maximum of five hundred twenty (520) hours. Such sick leave shall be credited and available for use after the employee's return to work.

16.1.9. Sick Leave Pay-Out in Lieu of Service Extension Credit. Employees who separate from service due to retirement shall have the option of receiving a lump sum cash payment equal to the value of fifty percent of the accrued hours in the employee's sick leave account and Service Extension Credit account, at base rate, not including shift or other differentials or premiums, less applicable taxes, instead of and in lieu of receiving the Service Extension Credit pursuant to Article 16.1.7. and the Retirement Ordinance. Such lump sum payment shall not be considered "compensation" as defined in the Retirement Ordinance for the purpose of calculating terminal compensation.

16.1.10. Sick Leave Buy Back. Employees who use 18 hours or less of sick leave in a six-month period are eligible to sell back 8 hours or 16 hours of sick leave back to the District. Eligible employees may also convert 8 hours or 16 hours of sick leave to vacation hours.

16.1.11. Sick Leave/FMLA. Eligible employees who are on paid sick leave or job injury leave will be granted simultaneous leave under the FMLA, after an absence of thirteen (13) consecutive workdays effective January 1, 2004.

**16.2. Special Leave.**

16.2.1. Death in Family. In the event of death in an employee's immediate family (parent, spouse, child, sibling, grandparent, grandchild, or any other person sharing a comparable relationship resulting from marriage or a registered domestic partner relationship), the employee shall be granted five (5) workdays of special leave.

16.2.2. Funeral of Relative. An employee shall be granted one (1) work day of special leave to attend the funeral of a close relative not in the employee's immediate family. Close relative includes, spouse's grandparent, mother-in-law, father-in-law, daughter-in-law, son-in-law, , sister-in-law, brother-in-law, spouse's sister-in-law, spouse's brother-in-law, and employee's aunt, uncle, niece, nephew, and first cousin.

16.2.3. Other Deaths. An employee may request authorization by the General Manager or his/her designee for special leave involving deaths other than those listed in paragraphs 16.2.1 and 16.2.2 above, where the employee considers special leave justified. The decision of the General Manager is final and not subject to appeal.

16.2.4. Death in Family, Funeral of Relative, and other death leave shall be taken immediately following the death of the person unless, because of extenuating circumstances, another specified time is required and specific written authorization is granted by the General Manager to defer such leave to another specified period of time.

16.2.5. Jury Duty. An employee shall be granted necessary special leave for jury duty as detailed in an appropriate summons or order. The employee must notify the supervisor when he/she receives a jury duty summons and if requested by his/her supervisor, provide a copy of the instructions. The employee shall follow the practice of the jurisdiction for which they have been summoned, but must report back to work as soon as possible if not required to be present for jury duty or if released from jury duty during the workday.

16.2.6. Court Appearance. An employee subpoenaed to appear before a court or other public body on any matter not related to his/her work, shall be granted special leave for such purposes. Such leave shall not be granted if the employee is the plaintiff or defendant or if the court appearance is for domestic relations matters.

16.2.7. Military Physical Examination. An employee shall be granted special leave to take a required military physical examination.

16.2.8. Military Leave. The District shall grant military leave in accordance with applicable laws of the State of California.

16.2.9. Voting Time. An employee who is eligible to vote in primary and general elections shall be granted special leave, when required, not to exceed two (2) hours, at a time when the polls are open, in accordance with California State Law.

16.2.10. One Day Special Birthday Float. Each employee shall be granted special leave for his/her birthday based on the employment status of that employee, not to exceed a total of eight (8) hours, within the payroll year of his/her birthday, (e.g. regular/LT/TC employees will receive eight (8) hours, intermittent employees will receive six (6) hours, job-share employees will receive four (4) hours, and part-time employees will receive three and one-half (3.5 hours)). The payroll year is defined as the period beginning with the pay period for which pay is received in January, and ending with the last pay period for which pay is received in December. The District shall make every reasonable effort to accommodate an employee's request for a specific special leave day off, subject to the operational needs of the District. Eligible employees shall request and use the one day special birthday float by the end of the payroll year. If the one day special birthday float is not used by the end of the payroll year it shall be forfeited. Use of this birthday holiday after the payroll year but prior to the end of the calendar year shall be charged against the following payroll year.

16.2.11. Blood Donation. Consistent with District operating requirements, employees shall be granted special leave of two (2) hours for giving blood donations at the District, accredited hospital, or Red Cross blood banks.

### 16.3. Job Injury Leave.

16.3.1. Eligibility. Job injury leave shall be granted an employee who is unable to report to work following an injury or industrial disease which arises out of and during the course of his/her employment, provided that:

16.3.1.1. Requests for leave are accompanied by a statement from a District panel physician or pre-designated physician indicating the nature of the injury and an estimate of the time the employee shall be incapacitated for work; and

16.3.1.2. The reported injury or disease is accepted as industrial by the District's Third Party Workers' Compensation Administrator.

16.3.2. Compensation. When a job injury leave is authorized, the District shall grant paid leave or supplement payments made by the District's Third Party Workers' Compensation Administrator so that the employee will suffer no loss in his/her regular pay for a period not to exceed 480 total hours for each such injury. When lost time exceeds 480 total hours, the employee may choose to receive Workers' Compensation Insurance only, or he/she may choose to use sick leave, compensatory time and/or vacation leave which he/she has to his/her credit to supplement the compensation payments so that he/she shall suffer no loss in his/her regular pay until such leave is exhausted.

16.3.3. Personal Physician. Notwithstanding the above, pursuant to and consistent with applicable law, an employee may seek treatment from his/her personal physician. However, to

provide a safeguard against abuse, the employee shall make every reasonable effort to be evaluated by a panel physician within 48 hours of the injury.

16.3.4. Reemployment Preference After Job Injury. A former permanent employee of the District currently not a District employee as a direct result of disabling job injury shall be granted reemployment preference as follows:

16.3.4.1. An employee who has recovered sufficiently in the opinion of a District-selected physician to resume his/her former duties shall be offered the first vacant position in the employee's former classification.

16.3.4.2. An employee as described above or an employee who has been rehabilitated and retrained for another occupation because of a disabling job injury and who has been placed on a District employment list and is eligible for consideration for a position shall be selected to the first vacant position.

16.3.5. The preference described above shall be in effect for a period of two (2) years beginning with the date that the employee is determined to be rehabilitated, or a total of four (4) years from the date of termination, whichever is less. The preference shall be absolute unless:

16.3.5.1. Mandatory selection or reinstatement of another person is required by the Civil Service Rules, the Retirement Ordinance, or law; or

16.3.5.2. The General Manager determines that selection for a specified position would be contrary to the interests of the District.

## **Article 17. UNPAID ABSENCES**

### **17.1. General Provisions.**

17.1.1. Leave of absence without pay for any reasonable purpose shall be granted an employee for up to six (6) months whenever the work of the operation concerned shall not be unduly impaired by such absence. Leave without pay may be extended for additional periods not to exceed thirty (30) days each with the approval of the General Manager.

17.1.2. There- shall be no loss of vacation or sick leave credits for leaves without pay of 160 hours or less in a calendar year; thereafter, there shall be no accumulation of vacation and sick leave credits for any workday of unpaid leave. All leave without pay except unpaid sick leave or unpaid job injury leave is deducted from an employee's service when computing retirement credits. All employees who are hired after January 1, 2004 shall not accrue service credit in the Retirement System after 18 months of unpaid sick leave. All employees who were hired on or before January 1, 2004 shall continue to accrue service credit in the Retirement System during any period of unpaid sick leave or unpaid job injury leave, but not during a period of any other kind of leave without pay.



17.1.3. Insurance benefits at District expense for employees on unpaid sick leave may be terminated after eighteen (18) months of unpaid sick leave. However, an employee, at his/her option, may continue such benefits at his/her own expense.

**17.2. Maternity Leave.** Leave of absence without pay shall be granted a female employee for a maternity absence subject to the foregoing general provisions. Consideration of the commencement, length and duration of maternity leave shall include review of the report or recommendations of a medical authority acceptable to the District.

**17.3. Educational Leave.** On special approval of the General Manager, leave without pay for educational purposes may be granted to an employee for up to twelve (12) months, in cases where the educational experience is determined by the department head to benefit the District and District work operations are not unduly impaired. Approved educational leave shall be subject to the provisions of Section 17.1.2.

**17.4. Family Medical Leave.** Leave of absence without pay shall be granted for the birth or adoption of a child or for the serious health condition of a child, parent, or spouse, in accordance with the Family Medical Leave Act (FMLA).

**17.5. Limitations on Leave.** Employees must exhaust all accrued vacation before becoming eligible for unpaid leaves of absence; however, upon agreement between the employee and his/her supervisor, in extenuating circumstances, such unpaid leave shall not be unreasonably denied. Union business leave, maternity leave, family medical leave, and educational leave shall be exempt from the operation of this Section.

## **Article 18. INSURANCE BENEFITS**

**18.1. Health Insurance.** The District shall provide health plan coverage to eligible employees and dependents as follows in each approved District Health Plan that currently include:

**18.1.1. Kaiser Foundation Health Plan.** The District shall pay the full cost of premiums for eligible employees and eligible dependents coverage in the Kaiser Foundation Health Plan. During the life of the MOU, the following co-pays will be in effect unless a change is mandated by the provider:

- Office Visit co-pay      ~~\$10~~\$15; ~~\$20 effective January 2008; \$15 effective January 2011~~2017
- Prescription Drug co-pay      ~~\$10/\$15 effective January 2008 for generic and brand name drug types respectively~~
- Emergency Room co-pay      ~~\$50; \$75 effective January 2011~~2017 (*waived if admitted*)

**18.1.2. Association of California Water Agencies-Blue Cross (ACWA-BC).** The District shall provide for ACWA-BC health plan coverage and shall pay the full cost of premiums for eligible

employees only. The District will pay 85% of the costs of premiums for the employee plus dependents and the remainder shall be paid by the employee by payroll deduction. During the life of the MOU, the office visit co-pay for ACWA-BC will be \$15.00 and the prescription drug co-pay will be \$5.00/\$15.00 for generic and brand name drug types, respectively, unless a change is mandated by the provider.

18.1.3. Health Net California. The District shall pay the full cost of premiums for eligible employees only for Health Net California health plan. The District shall pay 85% of the costs for the employee plus dependents and the remainder shall be paid by the employee by payroll deduction. During the life of the MOU, the following co-pays will be in effect unless a change is mandated by the provider.

- Office Visit co-pay      ~~\$10~~\$15; ~~\$20~~ effective January 2008; ~~\$15~~ effective January ~~2011~~2017
- Prescription Drug co-pay      \$10/\$15/\$35 effective January 2008 for generic, brand and non-formulary drug types respectively
- Emergency Room co-pay      \$50; ~~\$75~~ effective January ~~2011~~2017 (*waived if admitted*)
- Hospital Inpatient co-pay      \$50; \$100 effective January 2017

18.1.4. For employees without access to Kaiser Health Plan, the District will pay 100% of the medical insurance premium for the employee and dependent coverage in either of the other available District health plans (currently Health Net and Blue Cross). However, if the employee should again become eligible for Kaiser, District coverage will be provided as described in paragraphs 18.1.1, 18.1.2., and 18.1.3. above.

18.1.5. If federal or state legislation is enacted which will impact the District's health plans or practices, the parties shall reopen negotiations to the extent necessary to comply with the mandatory provisions of any legislation.

~~18.1.6. If an employee receives~~ The amount of cash-in-lieu (currently \$150 per month) provided to employees who receive medical insurance coverage through their spouse or partner and elects~~select~~ not to receive District-paid medical insurance coverage, will increase or decrease by \$10 for every employee who so elects, with a baseline of the employee shall receive \$150 per month (\$69.23 current number of 58 District employees, with a minimum, of \$150 per pay period) in addition~~month~~ to their regular pay, a maximum of \$450 per month. The additional money~~District will be included in~~ count the employee's regular paycheck. In no case may an employee~~number of employees who elect not to receive District-paid medical insurance in~~ December of each year of the additional money in~~MOU and adjust the absence of insurance~~ coverage through their spouse or partner~~cash-in-lieu amount effective the following January 1st.~~

18.1.7. Employee paid medical premiums may be paid on a pre-tax basis in accordance with the IRS 125 Plan.

**18.2. Life Insurance.** The District shall pay the cost of employee premiums in the existing group life insurance plan. The face value of the basic life insurance shall be one and one-half times the employee's annual salary rounded to the nearest \$1000.00. This includes double indemnity for non-occupational accidental death and dismemberment according to scheduled benefits. Increases in costs which may occur during the term of this Contract shall be borne by the District.

18.2.1. Supplemental Life Insurance. Effective January 1, 2008, the District shall offer a group life insurance plan that allows an employee to purchase life insurance benefits for his or her spouse or partner. The employee shall pay for the cost of this benefit by payroll deduction.

**18.3. Dental Insurance.**

18.3.1. The District shall continue to pay the cost of premiums for those employees and eligible dependents enrolled in the group insurance plan with Delta Dental and to provide 100 percent basic coverage (50 percent prosthodontics) to a maximum of two thousand dollars (\$2000), with a deductible of \$15 for the employee and eligible dependents up to a maximum of three (3) such deductions per family unit per year. Increases in costs which may occur during the term of this Contract shall be borne by the District.

18.3.2. The District shall provide for orthodontic benefits and coverage for all eligible employees and dependents. Such coverage shall be 50/50 co-insurance with a three thousand dollar (\$3,000) lifetime maximum per patient with no deductible. Also, the Union agrees that any increase in orthodontic premiums shall be paid for by each individual employee during the term of this Contract, notwithstanding any other language. Newly-hired employees shall have a one-year waiting period for orthodontic coverage without claims.

**18.4. Long Term Disability Insurance.** The District agrees to continue the existing salary continuation plan (voluntary group long-term disability insurance) and to pay the full cost per month toward the premium for each participating employee effective September 1, 1994.

**18.5. State Disability Insurance (SDI)/Paid Family Leave (PFL).** Employees represented by Local 2019 shall have SDI premiums deducted from their individual salaries at the rate determined by the State of California. When an employee or qualified dependent sustains an injury or illness that qualifies him/her to receive SDI/PFL payments, the employee will receive SDI/PFL payments from the State based on the benefit amount in effect at the time the injury or illness occurs.

| 18.5.1. State Disability Insurance (SDI)). An injured or ill employee may use accrued sick leave, and after sick leave is exhausted, may use compensatory time then vacation to supplement SDI payments from the State if requested in writing provided that:

- a. The combined total of the SDI payment and accrued leave payment does not exceed 100% of the employee's regular biweekly base salary; and
- b. The employee provides a copy of his/her SDI benefit check to the District or authorizes

the District to directly receive his/her SDI benefit check so that State and District benefit payments can be coordinated as described in (a) above. Coordination of leave balances with SDI will not be made retroactively.

| 18.5.2. Paid Family Leave (PFL)). The employee may use in the following order family sick leave, compensatory time then vacation to supplement PFL payments from the State if requested in writing provided that:

|

- a. The combined total of the PFL payment and accrued leave payment does not exceed 100% of the employee's regular biweekly base salary; and
- b. The employee provides a copy of his/her PFL benefit check to the District or authorizes the District to directly receive his/her PFL benefit check so that State and District benefit payments can be coordinated as described in (a) above. Coordination of leave balances with PFL will not be made retroactively.

**18.6. Insurance Providers/Self-insurance.** Except for the Kaiser Foundation Health Plan, the District may change or eliminate the carriers or providers of any of the benefits set forth in this Article or self-insure (provided that there is no decrease in benefit levels), and provide an equivalent plan under Sections 18.1, 18.2, 18.3, and/or 18.4, set forth above, provided the Union is notified in writing prior to such change. Upon written request, the District shall consult with the Union concerning such change. Whenever any insurance carrier except Kaiser refuses to provide coverage for any specific benefit or proposes an increase in its premium of more than twenty percent (20%), the District, after consultation with the Union, may change carriers or benefits as long as a good faith, reasonable effort is made by the District to provide comparable available benefits.

**18.7. Vision Insurance.**

18.7.1. The District shall pay the cost of premiums for those employees and eligible dependents enrolled in the group Vision Service Plan, Plan B with a \$10 co-payment. Increases in costs which may occur during the term of this Contract shall be borne by the District.

**18.8. Retirement.**

18.8.1. Eligibility for the Employee Retirement System (ERS). Local 2019 represented employees are eligible to participate in the District's ERS in accordance with IRS rules and regulations and the District's "Employee Retirement System Ordinance".

18.8.2. Retirement Multipliers. The District retirement multipliers are 2.6% and 2.82% depending on the plan the employee participates in, for all participants who earn District Service Credit on or after January 1, 2004.

18.8.3. Employee Contribution Rate. The employee contribution rate is 6.83% of compensation.

- a) Effective April 22, 2013, the employee contribution rate will be 7.33%
- b) Effective April 21, 2014, the employee contribution rate will be 7.83%
- c) Effective April 20, 2015, the employee contribution rate will be 8.33%
- d) Effective April 18, 2016, the employee contribution rate will be 8.75%

18.8.4. The employee contribution rate is fixed as specified above unless the parties agree to an improvement in current retirement benefits through the meet and confer process.

18.8.5. Any improvements made by the District to current retirement benefits during the life of this agreement, such as improvements to HIB and COLA, shall be made solely at the District's expense.

**Article 19. SUPPLEMENTAL BENEFITS****19.1. Supplemental Benefits Program.**

19.1.1. The District shall make payments for full time status, and probationary employees under IRS Code Section 125 in the amount of :

~~\$855 effective January 1, 2008—December 31, 2010~~

- \$905 effective January 1, 2011

19.1.2. Eligible employees may elect in the last quarter of each calendar year to use pre-tax program funds for District-designated IRS Code Section 125 - Benefits, or to receive program funds in cash on a taxable basis.

19.1.3. Full time and probationary employees shall be eligible for supplemental benefits upon hire

19.1.4. Program payments shall begin after the first quarter of each year and shall be made quarterly (or semi-annually or annually at the employee's option to be determined during each annual election) within 30 days after the end of each quarter. For those who elect to receive cash on a taxable basis, a lump sum amount shall be paid after the first quarter of the year.

19.1.5. The District may, after consultation with the Union, add or delete for future calendar years any IRS Code Section 125-approved benefits.

19.1.6. A third party administrator shall administer the program, including making payments or reimbursements provided for by the program and IRS Code provisions.

**19.2. Dependent Care Program.**

19.2.1. The District shall establish a salary reduction plan as provided by Section 125 of the Internal Revenue Service Code permitting employees to designate a portion of their annual salary to be withheld and subsequently used to provide pre-tax reimbursement for verified medical and dependent care expenses, subject to the rules of the IRS and governing regulations.

19.2.2. Maximum Reimbursement Amounts. The maximum annual amount that may be deducted from the employee's annual salary for reimbursement of non-medical dependent care expenses is \$5,000 minus the District's contribution. The maximum amount that may be used for reimbursement for personal and dependent medical expenses is \$5,000 plus the District's contribution.

19.2.3. All medical and dependent care expenses for which reimbursement is required must comply with the requirements of the IRS Code.

### **19.3. 401(a)/401(k)/457 Salary Deferral Accounts.**

19.3.1. Eligibility for 401(a) Plan. Employees who work in classifications represented by Local 2019 are eligible to participate in the District's 401(a) deferred compensation program in accordance with IRS rules, regulations, and District procedures.

19.3.2. Eligibility for 401(k) Plan. Employees who work in classifications represented by Local 2019 are eligible to participate in the District's 401(k) deferred compensation program in accordance with IRS rules, regulations, and District procedures.

19.3.3. Eligibility for 457. All employees who work in classifications represented by Local 2019 are eligible to participate in the District's 457 deferred compensation program in accordance with IRS rules, regulations, and District procedures.

19.3.4. Administration Fees. The District will pay up to a maximum of \$105,500 annually for District-wide administration of the 401(a)/401(k)/457 deferred compensation programs. If administrative fees exceed \$105,500, the participating employees in the program will assume the additional costs.

19.3.5. Deferred Compensation Committee Participation. Local 2019 shall be provided formal and equitable participation in the 401(a)/401(k)/457 deferred compensation committee as determined by the committee.

### **19.4. Exclusions.**

19.4.1. Employees who participate in any District deferred compensation plan may not defer sick leave buyback payments to their deferred compensation accounts.

## **Article 20. VARIABLE DUES DEDUCTION**

The District shall provide variable dues deductions for approved group automobile and group legal insurance for Union members to the extent permitted by law.

## **Article 21. EXAMINATIONS AND TRAINING**

21.1. Recording of Oral Examinations. Oral examinations shall be recorded by audio tape recorder. All audio tape recordings shall be the property of and remain in the custody of the District; provided, however, the Union shall have reasonable access thereto. Recordings shall be retained by the District for ninety (90) days after establishment of the employment list resulting from the examinations or, if there is a protest, until the protest is resolved.

21.2. Inspection of Examinations. Consistent with District operating requirements and with the provisions of Civil Service Rules, employees participating in District Civil Service examinations shall be permitted reasonable time during working hours, without loss of time or



pay, to inspect their examination papers. Such review may include Scantron answer sheets and test products generated by the employee during the exam process such as their own writing project. Review shall not include keyed test materials, rating criteria, scoring information, or any standardized exam material which may be re-used in future selection procedures.

**21.3. Training.** The District shall attempt to provide and distribute training opportunities in a fair and equitable manner for all employees within a work unit or classification.

## **Article 22. CAREER DEVELOPMENT**

**22.1. Internal Promotions.** The purpose of this section is to enhance the promotional opportunities for District employees.

22.1.1. Regular employees who have completed probation in at least one classification may submit an application for transfer to a class at any time and subsequently be tested when the examination is conducted.

22.1.2. Examinations will typically be open to both public and internal competition, however, an examination shall be administered on a closed promotional basis when the Manager of Human Resources determines that the number, diversity and qualifications of potential employee applicants are sufficient to generate a minimum of five (5) candidates per vacancy, to fill the current and anticipated openings, during the life of the list.

22.1.3. When the above criteria are not met, internal and external recruitments shall be conducted simultaneously. Both an open eligible list and an internal eligible list shall be established from those candidates who are successful in the examination process. All employees with Civil Service status who pass the examination shall be placed on the Internal Eligible list in rank order by final score. All other successful candidates shall be placed on the Open Eligible List. A successful candidate will be placed on only one list. The top five ranks on the internal list and top three ranks on the external list shall be certified to the appointing authority. For each additional vacancy for which the certification is requested simultaneously, the Manager of Human Resources shall certify the names(s) from one additional rank on the open and internal eligible lists. Upon request of the appointing authority, the remainder of the internal eligible list will be certified in rank order by overall score. The hiring supervisor may interview additional internal candidates in the order certified providing no ranks are skipped.

Hiring supervisors must interview all candidates in the ranks certified from the internal eligible list. If they choose to interview from the open eligible list, they must interview all candidates in the ranks certified.

22.1.4. A demotion is movement to a classification with a lower top salary than the employee's current regular position. Employees may apply for voluntary demotion by submitting an application to Human Resources. They shall be placed on the Demotion List if they meet the minimum qualifications for the classification. The voluntary Demotion List shall be certified to the hiring supervisor(s) along with other employment lists. An employee's name shall remain on

the voluntary Demotion List for one year. The District may also demote an employee on an involuntary basis consistent with other District rules and practices.

22.1.5. Employees may apply to administratively transfer without exam between classifications which have the same salary levels and identical or very similar minimum qualifications (e.g., Senior Administrative Clerk and Administrative Secretary II), if they have regular status in one class.

## **22.2. Reassignment.**

### **22.2.1. Introduction.**

22.2.1.1. The District shall encourage the use of the Reassignment Program whenever possible. The General Manager shall send a memo to all Managers and Supervisors advising them that they must seriously consider employees who have placed their names on Reassignment Lists.

### **22.2.2. Eligibility For Reassignment.**

22.2.2.1. Employees may be added to a Reassignment List anytime during the year through submission of a short form application.

22.2.2.2. Each June, employees will be reminded/informed of the reassignment process by e-mail, a "LOG" article and Bulletin Board postings.

22.2.2.3. Each June (end), a renewal packet will be sent to employees on reassignment lists. An employee may renew eligibility by returning the application form. When the application form is submitted, the employee shall be placed on the reassignment list for the current fiscal year.

22.2.2.4. Each July, employees' names will be purged from reassignment list unless the employee renewed eligibility in June.

22.2.2.5. A special reassignment availability form will be developed to allow employees to specifically identify positions/assignments for which they would like to be considered.

22.2.2.6. Names shall be placed on the reassignment list in the order received.

22.2.2.7. Employees who waive interviews will not be removed from the reassignment list.

22.2.2.8. An employee shall be removed from the reassignment list upon placement through this process in a new position and shall be ineligible to sign up again for one year.

22.2.2.9. Employees who have been subject to more than one written warning and/or who have been suspended within the last year are not eligible for reassignment.

22.2.2.10. Probationary employees are ineligible.

22.2.2.11. Employees who apply for reassignment and are selected and decline shall be ineligible for reassignment for one year from that date.

22.2.3. Certification.

22.2.3.1. Department submits PE-66, Personnel Request.

22.2.3.2. The hiring supervisor may also interview as many applicants on the reassignment list as he/she chooses. The reassignment list shall be included in the certification even if only one name is on the list.

22.2.3.3. All names on the reassignment list will be certified along with all names on the transfer, demotion and reinstatement lists and the top three (3) ranks on the eligible list.

22.2.3.4. Names shall not be added to any list once a certification has been made.

22.2.4. Consideration/Interviews.

22.2.4.1. Information on underutilization in the job group and occupational category is to be considered by the hiring supervisor in making any hiring decision.

22.2.4.2. The supervisor shall consider the application materials of all applicants certified.

22.2.4.3. The appointment may be made from any of the lists certified.

22.2.5. PE-80, Notice of Personnel Action and X-45, District Employment.

22.2.5.1. These recommendations and comments are reviewed for approval as usual.

22.2.6. Reports. The District shall provide the Union with annual activity reports on the usage of reassignment lists for Local 2019 represented classifications. The District shall review the results of the reassignment program with the Union each year.

22.2.7. Duration of Eligible Lists.

22.2.7.1. The duration of employment eligible lists shall be one (1) year unless extended, at the District's discretion, for up to one (1) additional year.

22.2.7.2. The District shall review list extension results with Union representatives on an annual basis beginning one year from the date of this Contract to determine impact on promotional opportunities for District employees. Should the number or percentage of promotions decrease in 50% or more of the classifications, the District shall agree to limit the extension of eligible lists to an additional six (6) months except for entry-level examination processes where lists may be extended for one (1) additional year.

**22.3. Classification Study Requests.** Employees are encouraged to first discuss any concerns regarding the classification of their position with their immediate supervisor. If review of the issues with the supervisor and appropriate department management staff does not resolve the classification concerns, an employee may submit a written request for a study of their position. The District shall determine whether the issue causing the request is clearly one of classification. In conducting this initial review, staff may discuss the request with the employee, their supervisor, and/or other management personnel in the department. The District will issue a memo to employees with a copy to the union acknowledging the receipt of a written classification study request within 15 workdays of receiving the request. If the written request is found to be one in which a classification study is appropriate, the District will also provide a projected timeframe for conducting the study. In the event that the study results in reclassification of the employee and their position to a higher pay level, ~~the employee will be compensated at the higher pay level from the effective date of the classification study findings.~~ higher salary would be retroactive to the lesser of four months or the date the employee submitted the formal request.

## **Article 23. PERSONNEL FILES**

**23.1. Review of Employee Personnel File.** Employees shall have the right to review their personnel files pursuant to applicable state law. No information shall be placed in an employee's personnel file without the employee receiving a copy of the information. The employee shall have the right to respond to any such material. Medical information shall be forwarded to an employee's medical doctor upon written request.

### **23.2. Confidentiality.**

23.2.1. Employee personnel files shall be held in strict confidence by the District and shall be subject to inspection only by officials of the District acting on official District business, the employee, or Union officials, in accordance with the employee's written instructions (which shall be filed in the personnel file), or as otherwise required by law (such as by subpoena).

23.2.2. In the event that a business inquirer, creditor, or other person contacts any District supervisor to obtain job reference information on any former or current District employee, the information given out shall be limited to verification of employment, length of employment, and verification of salary range if the person inquiring first states a salary in the correct range to the District.

**23.3. Disciplinary Documents.** All disciplinary documents in an employee's personnel file (with the exception of suspension letters), will be removed from the file three (3) years after date of issuance at the request of the affected employee. Letters of suspension shall be removed after three (3) years, at the request of the employee, if no additional written disciplinary action (reprimand or suspension) has been imposed within the three (3) year period following the initial suspension. There must be a three (3) year period without any documented disciplinary action before a suspension letter shall be removed from the employee's personnel file.

**23.4. Counseling Memos.** Counseling memos shall be removed from a supervisor's file after one (1) year unless the employee has not corrected the work performance or work behavior that led to the counseling memo and has received another counseling memo or been disciplined. Supervisors may specify time frames shorter than one (1) year for removal of counseling letters from the supervisory file.

## **Article 24. GRIEVANCE PROCEDURE**

**24.1. Intent.** The District and the Union recognize the necessity for speedy and equitable adjustment of all complaints as close as possible to the point of origin. Whenever possible, grievances should be settled with supervisors in the department/division where the grievance originates. It is the intention of the District and the Union to eliminate unnecessary grievances, and to promptly and equitably adjust all those grievances which are meritorious.

### **24.2. Definitions.**

#### **24.2.1. Grievance.**

24.2.1.1. A grievance is any dispute between the District and an employee or group of employees concerning the interpretation or application of this Contract; or the interpretation or application of rules or regulations governing personnel practices or working conditions; or the interpretation, application, or the practical consequences of a District Rights decision or wages, hours and other terms and conditions of employment. The Union shall be allowed to file a grievance on behalf of a current employee and on behalf of an identifiable group of current employees.

24.2.1.2. If the grievance involves employees in only one division, the grievance shall be filed with the Division Manager at Step 1. If the grievance involves employees in more than one (1) division, the grievance shall be filed with the Manager of Employee Relations at Step 1.

24.2.1.3. A dispute over the terms of this Contract, or over the terms of rules or regulations governing personnel practices or working conditions, or over the terms of a District Rights decision on wages, hours and other terms and conditions of employment shall not constitute a grievance.

24.2.2. Immediate Supervisor. The person from whom an employee receives his/ her work assignments, such as a Civil Drafting Supervisor, Supervising Ranger/Naturalist, Customer Services Supervisor, Supervising Chemist, Senior Engineer, or Senior Accountant.

24.2.3. Work Unit Supervisor. The highest supervisor within the employee's work unit, such as the Management Services Administrator, Engineering Manager, Supervisor of Purchasing, Supervisor of Construction Inspection, or Surveying Supervisor.

24.2.4. Limited Civil Service Examination Grievance Procedure. A separate grievance procedure is included in Section 24.4. of this Article to cover grievances arising out of any civil service

examination challenge up to and including the establishment of a register.

### **24.3. Procedural Steps.**

#### **24.3.1. Step 1. Informal Discussion/Filing of Grievance Statement.**

24.3.1.1. The employee who has a grievance other than discrimination may, with or without the assistance of a representative, discuss the matter informally with his/her immediate supervisor. If the grievance is not settled through informal discussion and the employee desires further review, a completed and written Form PE-105, "Statement of Grievance", must be submitted to the employee's immediate supervisor within twelve (12) workdays from the initial date he/she knew, or reasonably could know, of the act or omission causing the grievance. If the grievance is challenging a disciplinary action, the grievance shall be filed with the supervisor of the person who rendered the disciplinary action within twelve (12) workdays.

24.3.1.1.1. The PE-105 shall contain the following information: (1) a statement of the grievance and all relevant facts; (2) specific provision(s) of the Contract allegedly violated; and (3) the remedy sought.

24.3.1.1.2. The immediate supervisor shall promptly discuss the matter with the employee, the work unit supervisor, and any others who should be directly involved and attempt to arrive at a solution. The supervisor shall provide a written answer to the employee that sets forth the supervisor's rationale and decision within five (5) workdays of receipt by the supervisor of the written Form PE-105. The decision of the immediate supervisor shall be applicable only to the grievance being reviewed and considered.

#### **24.3.1.2. Alleged Unlawful Discrimination.**

24.3.1.2.1. If an employee is seeking redress from an action, decision, policy, or condition that he/she believes discriminated against him/her to the extent the applicable law prohibits such discrimination by reason of his/her race, religious creed, color, age, marital status, national origin, ancestry, sex, sexual orientation, physical or mental disability (including HIV and AIDS), or medical condition (cancer or genetic characteristic), the employee shall first discuss his/her complaint with his/her immediate supervisor; provided that an employee may alternatively discuss their complaint informally with the Affirmative Action Officer.

If an employee is seeking redress from a District action, decision, policy, or condition that he/she believes to be a result of union membership, non-membership, or any lawful union activity, then the grievance shall be filed with the Manager of Employee Relations.

24.3.1.2.2. If the grievance is not settled through informal discussion and the employee desires further review, a completed and written EEO Discrimination/Harassment Complaint Form and the grievance should be submitted to the Affirmative Action Officer within thirty (30) workdays from the initial date he/she knew or could reasonably have known of the act or omission causing the complaint. The complaint shall be processed in accordance with the EEO Discrimination/ Harassment Complaint Procedure 105. The Affirmative Action Officer is the

final District review level of EEO complaints. If the complaint as described in the EEO Discrimination/Harassment Complaint Form remains unresolved, the grievant may submit the grievance directly to binding arbitration as described in Article 24.3.3.2. below.

24.3.2. Step 2. Board of Adjustment.

24.3.2.1. If the employee is not satisfied with the Step 1 written response from his/her immediate supervisor, the employee must submit the completed Form PE-105, "Statement of Grievance", to the Manager of Employee Relations with the names of the Union's Board of Adjustment representatives within ten (10) workdays of the Step 1 written response.

24.3.2.2. A Board of Adjustment meeting shall be held within ten (10) workdays of the receipt of the Form PE-105, "Statement of Grievance" by the Manager of Employee Relations. In all grievances except those involving suspension and/or discharge, the Board of Adjustment shall be comprised of the Division Manager and the Manager of Employee Relations or his/her delegate and not more than two representatives from the bargaining unit. The Manager of Employee Relations or his/her delegate shall chair the Board of Adjustment. If the Division Manager made the decision being grieved, another Division Manager shall be appointed to serve on the Board. In all grievances involving suspension without pay or discharge, the Department Manager will replace the Division Manager. No relatives of the grievant or members of the grievant's household may sit on a Board of Adjustment for either of the parties.

Individuals named in a grievance shall not be allowed to sit on the Board of Adjustment hearing for that grievance.

24.3.2.3. The purpose of the Board of Adjustment meeting shall be (1) to review the facts of the grievance and to conduct a further investigation of the situation if appropriate, and (2) to explore alternative methods of resolving the grievance. Unless the parties mutually agree otherwise, any settlement agreement reached at the Step 2 level shall be reduced to writing within five (5) workdays. If no agreement is reached, Management's decision shall be reduced to writing within five (5) workdays.

24.3.3. Step 3. Binding Arbitration.

24.3.3.1. If the grievance as described in the PE-105 in Step 1 remains unresolved, the grievant may submit the grievance to binding arbitration in accordance with the procedures set forth in Step 3.

24.3.3.2. A request for arbitration shall be in writing and addressed to the Manager of Employee Relations and must be postmarked within forty-five (45) workdays after the employee's receipt of the decision in Step 2. The request shall clearly state the issue to be arbitrated. The District, or its representative, and the employee, or his/her representative, shall jointly select an impartial arbitrator. If they are unable to agree upon an arbitrator, the District shall request a list of arbitrators from either the American Arbitration Association, the California State Conciliation Service or Federal Mediation and Conciliation Service. The arbitrator shall be selected as mutually agreed upon, or in accordance with applicable rules of the agency selected

within twenty (20) workdays of receipt of the request for arbitration from the grievant/union. The arbitrator will be requested to hold the hearing within thirty (30) workdays of the request to arbitrate and to render a decision within sixty (60) workdays of the receipt of briefs.

24.3.3.3. The arbitrator shall limit his/her findings and recommendations strictly to the interpretation, application and enforcement of the provisions of this Contract, or the interpretation or application of rules or regulations governing personnel practices or working conditions. In cases of suspension or discharge, the arbitrator shall limit his/her findings and recommendations strictly to the issue of cause.

24.3.3.3.1. The arbitrator's hearing shall be formal and conducted in accordance with usual administrative practices, including recording of proceedings by certified reporter and testimony given under oath. If a transcript of the proceedings is ordered by either party, each party shall pay for its own copies.

24.3.3.3.2. The arbitrator shall in no case make any recommendations:

1. contrary to, or inconsistent with or modifying or varying in any way, the terms of the Contract, or the terms of rules or regulations governing personnel practices or working conditions;
2. inconsistent with the District's duties, responsibilities or obligations particularly with regard to public health and safety and including the Municipal Utility District Act or any other State or Federal law to which the District is subject;
3. concerning the grievance of any employee who has elected to process a grievance through any other appeal procedure established by the District;
4. ordering any wage increase or decrease;
5. ordering the payment of back wages for more than six (6) months prior to the date a written grievance is filed;
6. reversing, overruling, or otherwise modifying any District decision or omission except after finding (a) the District decision violated some express provision of the Contract or rules and regulations governing personnel practices or working conditions; or (b) the District decision or omission was under the circumstances arbitrary, capricious or discriminatory.

24.3.3.3.3. Each party shall make arrangements for and pay the expenses of witnesses who are called by them. The District shall have no obligation to compensate employees, with the exception of the Chief Steward and the aggrieved in other than suspension or discharge cases, for time lost during arbitration proceedings, except when any employee is requested by the District to participate in such arbitration proceedings.

24.3.3.3.4. The expenses of the arbitrator and certified court reporter (if used) shall be shared equally by the District and the Union or employee, as appropriate.



**24.4. Procedural Steps for Limited Civil Service Examination Grievance Procedure.**

24.4.1. Step 1. The Union may file a Limited Civil Service Examination Grievance on behalf of a current employee or group of current employees by submitting a PE-105 to the Manager of Human Resources within the following time limits:

24.4.1.1. Disqualification from examination - Within five (5) working days of notice of disqualification and prior to the administration of the examination.

24.4.1.2. Examination results - Within five (5) working days of notice of examination results.

24.4.1.3. Other grievances pertaining to recruitment, examination, or selection as stated in the Civil Service Rules - Within five (5) working days from the initial date he/she knew, or reasonably could know, of the act or omission causing the grievance.

24.4.1.3.1. Manager of Human Resources shall provide a written answer to the union setting forth his/her decision and rationale within five (5) days of receipt of the PE-105, "Statement of Grievance".

24.4.2. Step 2. If the union desires to appeal the Manager of Human Resources's decision, it shall notify the Manager of Human Resources in writing within five (5) working days from receipt of the Manager of Human Resources's decision, that it desires to submit the grievance as set forth in the PE-105, "Statement of Grievance", to expedited arbitration. The expedited arbitration process for Limited Civil Service Examination Grievances shall be as described below and shall be the exclusive means for the resolution of such disputes:

24.4.2.1. Selection of Arbitrator and Scheduling of Hearing. Within five (5) working days of the Union's notice to the Manager of Human Resources, an impartial arbitrator shall be jointly selected by the District and Union. If the parties cannot agree on an arbitrator, then the District will request a list of seven (7) arbitrators from the California State Mediation and Conciliation Service and the parties shall select an arbitrator by mutual agreement or alternately striking names.

24.4.2.2. The hearing shall be held within 10 working days of the arbitrator's selection. If the arbitrator has no available date within 10 working days, another arbitrator shall be selected until an arbitrator can be found who is available within the 10 working days time limit.

24.4.2.3. Pre-Hearing Submission and Conduct of the Hearing.

24.4.2.3.1. The District and the Union shall each submit three (3) calendar days prior to the hearing a pre-hearing statement to the arbitrator, with a copy to the other party, outlining its position and appending whatever exhibits it wishes to present.

24.4.2.3.2. Unless the parties mutually agree to the contrary, each party shall have up to two

(2) hours to present its case, but may reserve up to one-half (1/2) hour of such time to respond to the other party's presentation. The presentation may be made by way of statement by the party's representative, presentation of witnesses or both, but the hearing shall be informal and rules of evidence shall not apply. No transcript or recording shall be kept.

24.4.2.4. Decision. The arbitrator shall issue a written award within three (3) working days after the close of the hearing. During this period, the arbitrator may convene the parties for up to an additional two hours if the arbitrator wishes to raise additional questions. The award shall be final and binding.

24.4.2.5. Costs. The fee and expenses of the arbitrator shall be shared equally by the parties.

#### **24.5. Election of Remedies.**

24.5.1. It is the intent of the parties that this grievance procedure shall be the exclusive remedy for the resolution of grievances as defined in Article 24.3.

24.5.2. It is specifically and expressly understood and agreed that taking a grievance appeal to arbitration constitutes an election of remedies and a waiver of any and all rights by the appealing employee, the Union, and all persons it represents to litigate or otherwise contest the appealed subject matter through the District Complaint Procedure or the District Civil Service Procedure. Litigation or any other contest of the subject matter in any court or other available forum shall constitute an election of remedies and a waiver of the right to utilize this grievance procedure or to arbitrate the matter. This paragraph is not intended to bar an employee from pursuing any cause of action which has been established by statute.

24.6. Waiver of Steps and Time Limits. Except when otherwise provided, all steps of the grievance procedure shall be utilized unless a waiver of one or more steps is mutually agreed upon in writing. If the employee or the Union fails to process a grievance within specified time limits, the grievance shall be deemed concluded on the basis of the last decision reached, unless an extension of time limits is mutually agreed upon by the parties in writing. If the District fails to respond within the specified time limits, the grievant may appeal the next step, within the specified time limits.

24.7. Suspension of the Grievance Procedure. If this Contract is violated by the occurrence of a strike, work stoppage, other interruption or impending disruption of work, no grievance shall be processed while such violation continues. The grievance procedure outlined herein shall not be applicable to grievances arising in the period between the termination of this Contract and the effective date of its successor. However, if the parties, despite the termination of the Contract, are continuing to meet and confer in good faith and an impasse in the negotiations has not been reached, the grievance procedure shall continue to be applicable.

**Article 25. DISCIPLINE**

**25.1. Procedure.** A regular employee may be disciplined for cause by a written warning, suspension, or discharge. Such disciplinary action shall be subject to appeal through the grievance procedure described in Article 24 of this Contract.

25.1.1. When the District is considering taking major disciplinary action (suspension in excess of 5 workdays or discharge), it shall provide copies of all written and other relevant materials used by the District, to the employee and his/her representative before the scheduled pre-disciplinary meeting. The District is not precluded from considering information obtained by the District after the pre-disciplinary meeting in response to the statements made by an employee or his/her representative during the disciplinary meeting and shall provide copies of any additional information.

25.1.2. Before imposing the suspension, a supervisor shall advise the employee that the subject of suspension will be discussed and that the employee may be accompanied by a representative. Upon such suspension, the supervisor shall notify the employee, in writing, of the reason for and duration of the suspension. An employee ordered to leave his/her work for disciplinary reasons shall, before leaving the District premises, have the right to consult with his/her Union steward or officer, unless the employee presents a danger to himself/herself, others, or property. In such a case, the supervisor shall promptly notify the Union steward or officer of the action taken, the reasons for, and duration of the suspension.

25.1.3. Whenever the employee is not present at his/her workplace when a suspension is deemed necessary, the employee and the Union shall be notified by telephone or mail within one (1) workday following the effective date of suspension. Such notice shall state the reasons for and duration of the suspension.

25.1.4. In all cases where the District may conclude that an employee's conduct may justify discharge, such employee shall first be suspended. Such initial suspension shall not be for more than five (5) workdays. During such period, the District shall decide whether the suspension without pay already given is considered sufficient, or, dependent on the facts of the case, whether it should be extended, reduced or converted into a discharge, or that no discipline should have been given.

**25.2. Civil Service Appeal.** The employee, with or without his/her designated representative, shall have the right to appeal a suspension or discharge either in accordance with the grievance procedure in Article 24 or in accordance with Civil Service Rule XIII, APPEALS, but in no case under both.

**Article 26. INTERFERENCE WITH WORK**

The Union agrees to refrain from engaging in, encouraging, or condoning, either directly or indirectly, any strike, work stoppage, slowdown, sit-down, stay-away, picketing, or any other forms of interference with the operations of the District during the term of this Contract. The

District agrees that there shall be no lock-out against employees during the life of this Contract.

**Article 27. SAFETY**

**27.1. Safe Working Conditions.** The District shall devote every effort to see that District operations are performed with a maximum degree of safety consistent with the requirements of the work to be performed.

**27.2. Medical Tests on Employees.** It is understood that information pertaining to accidents or injuries is confidential. It is also understood that, where employees are exposed to carcinogens or other harmful substances which exceed the threshold limit values, medical monitoring is required.

**27.3. Results of Government Inspections.** The District shall provide Local 2019 with Cal/OSHA notices, postings, accident investigation reports, citations, hearing decisions and other documents which, by law, require the District to take action.

**27.4. Accident Records.** The District shall provide the Union with its monthly safety summaries. It shall also provide the Union with Cal/OSHA 200 reports.

**27.5. List of Substances and Processes.** The District, in compliance with the State General Safety Orders, maintains Material Safety Data Sheets on special hazardous substances and processes. Upon request of the Union, the District shall supply it with a list of all chemicals, etc., for which it has such data sheets. Additionally, upon request, it shall also provide specific Material Safety Data Sheets.

**27.6. Report of Safety Violations.** Employees are obligated to report all known safety violations at the time they occur or as soon thereafter as is practical to their immediate supervisor.

**27.7. No Smoking.** The General Manager shall issue a directive prohibiting smoking in any District building or District vehicle. Smokers shall be accommodated by designating smoking areas outside away from building entrances and air intakes.

**Article 28. PROBATIONARY PERIOD**

There shall be a twelve (12) month probationary period for all newly hired employees in professional, technical and scientific job classifications. All other probationary periods shall be six (6) months in length.

**Article 29. PART-TIME/LESS THAN FULL-TIME (INTERMITTENT) EMPLOYEES**

For purpose of defining part-time and less than full-time (Intermittent) employees, a full-time position is 2080 aggregate hours in a payroll year.

**29.1. Definition Part-time Employee.** A part-time employee is restricted from working more than 40 percent (40%) of the hours worked by employees in equivalent full-time positions or more than 832 hours in a payroll year (as defined in Article 8.7.1). Part-time employees are exempt from civil service status and cannot grieve disciplinary actions or termination of their employment.

**29.1.1 Part-time Employee Benefits:** Part-time employees are eligible for the following benefits:

|                                      |  |
|--------------------------------------|--|
| Holidays                             | 3.5 hours paid time for each District holiday, provided the employee works or is on authorized paid leave for a minimum of 16 hours in the pay period in which the holiday occurs. |
| Birthday Floater Holiday             | 3.5 hours paid time  |
| Vacation                             | Pro-rated accruals based on hours worked in accordance with Article 15   |
| Sick Leave                           | Pro-rated accruals based on hours worked in accordance with Article 16   |
| State Disability Insurance (SDI)     | As prescribed by the State   |
| 401k, 457 Deferred Compensation Plan | Eligible to participate (401k/457 upon plan modification)  |
| Work Out of Class                    | Eligible to work 192 hours per payroll year  |
| Job Injury Leave                     | 192 hours  |
| Vacation Sell Back                   | Up to 80 hours of accrued vacation time may be sold back to the District in one hour increments during the payroll year.   |
| Sick Leave Buy Back                  | Up to 16 hours of sick leave may be converted to vacation or cash payment if the employee has not used more than 18 hours of sick leave in 6 months                                |
| Domestic Partners                    | Employees who register their domestic partner are eligible for all family emergency leaves   |
| Transportation Subsidy               | Eligible for participation in the transportation subsidy program at 50% of the agreed upon amount for full-time employees  |

**29.2. Definition Less Than Full-Time (Intermittent) Employees.** Less than full-time (Intermittent) employees are employees who work less than full-time but one-half or more of a standard workday or a workweek or more than 1040 aggregate hours per payroll year. Less than full-time (intermittent) employees are eligible to grieve disciplinary actions.

**29.2.1. Less Than Full Time (Intermittent) Employee Benefits:** Less than full time employees (intermittent) are eligible for the following benefits:

|                                      |   |
|--------------------------------------|---|
| Holidays                             | 6 hours of paid time for each District holiday, provided that the employee works or is on authorized paid leave for a minimum of 16 hours in the pay period in which the holiday occurs   |
| Birthday Floater Holiday             | 6 hours of paid time  |
| Vacation                             | Pro-rated accruals based on hours worked in accordance with Article 15  |
| Sick Leave                           | Pro-rated accruals based on hours worked in accordance with Article 16  |
| Job Injury                           | 360 hours   |
| Special Leave                        | Pro-rated at 75%; <u>Jury Duty</u> : based on hours scheduled; <u>Voting Time</u> : not to exceed 2 hours; and <u>Blood Donation</u> granted 2 hours  |
| State Disability Insurance (SDI)     | As prescribed by the State  |
| Health Insurance                     | The District will contribute 75% of the District's contribution for full-time employees, for less than full-time employees and their eligible dependents who participate in an approved District health plan, provided that the less than full-time employees pay the remaining premium cost by payroll deduction |
| Dental and Vision Insurance          | District pays 75% of premium provided employees pay 25% of the composite rate, by payroll deduction   |
| Long-term Disability Insurance (LTD) | Benefits based on salary  |
| Life Insurance                       | Benefits based on salary  |
| 401k, 457 Deferred Compensation Plan | Eligible to participate (401k/457 upon plan modification)   |
| Supplemental Benefits Program        | Eligible to participate and receive full benefits   |
| Work Out of Class                    | Eligible to work 360 hours per payroll year   |
| Vacation Sell Back                   | Up to 80 hours of accrued vacation time may be sold back to the District in one hour increments during the payroll year   |
| Sick Leave Buyback                   | Up to 16 hours of sick leave may be converted to vacation or cash payment if the employee has not used more than 18 hours of sick leave in 6 months   |
| Domestic Partner Insurance           | Employees who register their domestic partner are eligible for all family   |

|  |   |
|--|---|
|  | emergency leaves and may cover their domestic partner for medical insurance, dental and vision care   |
| Transportation Subsidy                     | Eligible for participation in the transportation subsidy program at the agreed upon amount for full-time employees  |
| Medical Plan Non-Dual Enrollment Incentive | Employees who receive medical insurance coverage through their spouse or partner will receive \$112.50 a month, if they elect not to be covered under the District's medical plan |
| Supplemental Life Insurance                | Employees may purchase additional life insurance in addition to what the District offers, through payroll deduction   |
| Tuition Refund                             | Eligible to be reimbursed 75% of the tuition reimbursement benefit per fiscal year, for classes and supplies required for job-related education classes                           |

**29.3. Job Share Program.** Job sharing occurs when two (2) employees equally share the work responsibilities of one (1) full-time position on a voluntary basis. The procedural guidelines, salaries, benefits, and other terms and conditions of employment governing employees who have been approved to participate in a job share agreement are set forth in the February, 1991, Job Sharing Report to the General Manager.

## **Article 30. UNIFORMS AND SAFETY SHOES**

### **30.1. Uniforms and Safety Shoes.**

30.1.1. Employees in the following classifications, shall be provided uniforms (as distinguished from personal protective equipment as defined by OSHA regulations and the District Workplace Health & Safety Procedures) and laundering, at no cost to the employee:

- a. Field Service Representative I/II
- b. Senior Field Service Representative
- c. Ranger/Naturalist I/II
- d. Senior Ranger/Naturalist
- e. Recreation Area Attendant
- f. Water System Inspector I/II
- g. Senior Water System Inspector
- h. Wastewater Control Inspector I/II
- i. Senior Wastewater Control Inspector
- j. Fisheries/Wildlife Biologist I/II



- k. Fisheries/Wildlife Technician
- l. Water Conservation Representative
- m. Water Conservation Technician
- n. Water Sampler
- o. Fishery Aide

All determinations for and administration of uniforms will be at the discretion of the District.

30.1.2. The District shall not require any employee to wear a uniform if it causes a physical or health problem until such time as the District can provide a suitable uniform.

30.1.3. The District shall accept employee comments and other input regarding uniform details such as material, design, and maintenance needs.

30.1.4. Safety Shoes. The District shall provide for District approved safety shoes for employees in classes included in the District safety shoe program as needed to maintain safety. For the life of this contract, the cost per pair shall not exceed the cost of Red Wing safety shoe Models #2245 or #2243. Employees shall turn in unsafe shoes to their supervisor and, upon supervisory approval, replacement shoes shall be provided for. Should a dispute arise between an employee and their supervisor as to whether a worn pair of shoes is unsafe, the final determination will be made by the District's Workplace Health and Safety unit.

## **Article 31. JOB SITE REPORTING**

**31.1. Job Site Reporting.** The District shall unilaterally have the right to assign and reassign employees to work sites, including direct reporting to such sites, in accordance with its operational requirements with ten (10) days advance notice. However, in emergency situations the ten (10) day notice requirement may be waived.

**31.2. Accommodation.** The District shall continue its past practice relating to Local 2019 represented employees accommodating individuals where possible, reasonable, economically and operationally feasible (such as provision of District vehicles, travel time, reimbursement for authorized use of private car, temporary lodging, etc.). Regarding vehicles and backfilling relocation of staff: If the current policy changes, the District will meet and confer with the union.

**31.3.** The O&M Department priorities for filling temporary vacancies outside of the NAB are:

- 1. Department floater
- 2. Temporary reassignments

**31.4. Telecommuting.** Eligible employees shall be allowed to telecommute according to the Telecommuting guidelines. The Telecommuting guidelines are not subject to the grievance procedure.

**Article 32. OTHER TERMS AND CONDITIONS**

**32.1. Term.** This Contract shall not be effective until acted upon by the District Board of Directors and shall remain in effect from 12:01 a.m., April ~~30, 2007~~22, 2013 through April 24, ~~2011~~16, 2017. If at least ninety (90) days prior to that date either party shall not have served written notice by registered mail upon the other that it desires revision or modification of any designated provision or provisions contained herein or termination of all such provisions, it shall be automatically renewed for successive periods of one (1) year.

**32.2. No Implied Waiver.** If at any time the Union or the District shall not elect to assert its rights under any provisions of this Contract in the event of a breach thereof, such lack of action in this respect shall not be construed as a continued waiver of any rights under the provisions of this Contract.

**32.3. Construction.**

32.3.1. Except as otherwise expressly provided in this Contract, this Contract shall be interpreted in a manner consistent with the District's Employer Employee Relations Resolution and with all written District policies and procedures.

32.3.2. It is understood and agreed that where provisions of this Contract make necessary the adoption, amendment or revision of District Civil Service Rules, Policy & Procedure Statements or other rules or regulations, the District shall prepare proposed amendments and revisions to rules, policies or procedures to conform with the provisions of this Contract. Notwithstanding the above, the District shall not move to modify its Civil Service regulations in response to Article 29.

**32.4. Savings Clause and Future Negotiations.** Should any part of this Contract or any provision contained herein be rendered or declared invalid by reason of any existing or subsequently enacted legislation, or by any decree of any court of competent jurisdiction, such invalidation of such part or portion of this Contract shall not invalidate the remaining portions thereof. The remaining portions or parts shall remain in full force and effect. It is mutually agreed that upon any such invalidation, the District and the Union shall meet and confer with reference to the parts and provisions thus invalidated.

~~**32.5. Security of Information.** It is understood that employees working in the Information Systems Division or Engineering Department with access to confidential/non-public information shall be immediately discharged for unauthorized use or dissemination of confidential/non-public data or information.~~

~~32.6~~**32.5. Introduction of Legislation.** Neither AFSCME, Local 2019, nor the District shall introduce legislation affecting District personnel matters before:

- a. Formally presenting the elements of the problem to the other party for discussion.
- b. Notifying the other party that specific legislation is being contemplated.

- c. Allowing reasonable time and opportunity for mutual resolution of problem(s).

|

### **32.76. Future Negotiations and Amendment of Agreement.**

32.76.1. The right to present any demands or proposals, whether discussed or not in the negotiations which led to this Contract, is hereby waived by the District and the Union, except as provided in this Contract.

32.76.2. The District and the Union agree that amendment or supplement to this Contract may be accomplished, insofar as permitted by law, by mutual agreement of the parties.

32.76.3. The District and the Union further agree that this Contract shall be amended without further action of the parties in the event that formal recognition of the Union is made by the District in a new unit or units or in a modified unit pursuant to District's Employer-Employee Relations Resolution, and that said automatic amendment shall operate to either include or exclude employees within said new or modified units from the terms and conditions of this Contract.

32.76.4. The parties shall exclude from the zipper clause (Article 32.7), and separately, negotiate any revisions to the Civil Service Rules during the term of this Contract.

**32.87. Successor Clause.** In the event Local 2019 elects to merge with Local 444, American Federation of State, County, and Municipal Employees, AFL-CIO during the term of this Contract, the District agrees to recognize the surviving union as the exclusive bargaining representative as specified in Article 1 for each of the bargaining units listed in Appendix A of this Contract. Further, the terms and conditions of this Contract shall continue to apply only to those employees in the bargaining units formerly represented by Local 2019 as specified in Appendix A and shall not be applied to employees formerly represented separately by Local 444. Similarly, none of the terms and conditions of the Contract separately negotiated between the District and Local 444 for the bargaining units formerly represented separately by Local 444 shall be applicable to any of the bargaining units formerly represented by Local 2019.

**32.98. Transportation Management Plan and Parking Fees.** The District shall meet and confer with the Union over elements of the Transportation Management Plan affecting work hours, compensation or working conditions of employees represented by the Union prior to their implementation.

Additionally, the parties agree to meet and confer if the District plans to institute parking fees for employees at any District facilities.

32.98.1. The District will provide a transportation subsidy up to a value of \$105 per month to subsidize the cost of an employee's regular commute between work and home (i.e., BART Ticket, AC Transit Pass, Commuter Check, etc.). Public transportation tickets, - passes or checks available under the subsidy will be disbursed from the District Credit Union.

### **32.109. Indemnification.**

1. **Definition.** The District shall defend and indemnify its employees and former employees

against liability for acts or omissions committed within the scope of their employment pursuant to the California Tort Claims Act ("Act"), Government Code Sections 810 *et seq.*, unless the District determines there exists one of the exceptions provided by the Act listing grounds for refusal to defend and/or indemnify the employee.

2. Scope. Nothing in this Section is intended to expand or limit the District's duty or discretion to defend and/or indemnify employees under the California Tort Claims Act except, however, that the District shall provide for the defense of an employee in a criminal action or proceeding brought against the employee if (a) the criminal action or proceeding is brought on account of an act or omission in the scope of his or her employment as an employee of the District; and (b) the District determines that the employee acted, or failed to act, in good faith, without actual malice and in the apparent interests of the District. The District will not provide a defense to an employee in a criminal action or proceeding if (a) the employee fails to reasonably cooperate in good faith in the defense of the action or proceeding; (b) the act or omission was not within the scope of his or her employment; (c) the employee acted, or failed to act, in bad faith and with actual malice; or (d) the defense of the action or proceeding by the District would create a specific conflict of interest between the District and the employee. For purposes of this Section, "specific conflict of interest" means a conflict of interest or an adverse or pecuniary interest for which the District is excused from providing a defense by statute or by a rule or regulation of the District. When retention of outside counsel is necessary as deemed by the District, the District will consult with the employee in the selection of outside counsel, but reserves the right to make the final determination with respect therein. The District also reserves the right to conduct the employee's defense against criminal action or proceeding pursuant to an agreement with the employee reserving the District's rights against the employee.

3. Interpretation. The interpretation, application and enforcement of this section shall not be subject to the grievance and arbitration procedure of this Agreement, or the civil service grievance and hearing procedures of the District's Civil Service Personnel Rules and Regulations. Nothing in this Section shall be construed to deprive an employee of the right to petition for a writ of mandate to compel the District to perform the duties imposed by the California Tort Claims Act.

4. Employee. For purposes of this Section, the term "employee" includes any current employee of the District and any former employee who was employed by the District at the time of the act or incident for which criminal or civil action or proceeding has been brought against that person, in his or her official or individual capacity, or both.

IN WITNESS WHEREOF, the parties hereto by their duly authorized representatives have executed this Contract dated, on this \_\_\_\_ day of January, 2014.

EAST BAY  
MUNICIPAL UTILITY DISTRICT

LOCAL 2019  
AMERICAN FEDERATION OF STATE,  
COUNTY AND MUNICIPAL EMPLOYEES

\_\_\_\_\_  
GLENN BERKHEIMER Date  
Chief Negotiator

\_\_\_\_\_  
BRENDA WOOD, BUSINESS AGENT Date  
Chief Negotiator

\_\_\_\_\_  
MICHAEL K. RICH Date  
Negotiating Team Member

\_\_\_\_\_  
MARK FOLEY Date  
Negotiating Team Member

\_\_\_\_\_  
MICHAEL AMBROSE Date  
Negotiating Team Member

\_\_\_\_\_  
JAY MORGAN Date  
Negotiating Team Member

\_\_\_\_\_  
ELIZABETH BIALEK Date  
Negotiating Team Member

\_\_\_\_\_  
JAE PARK Date  
Negotiating Team Member

\_\_\_\_\_  
THOMAS FOX Date  
Negotiating Team Member

\_\_\_\_\_  
KASIE EVANS Date  
Negotiating Team Member

\_\_\_\_\_  
ERIC FIEBERLING Date  
Negotiating Team Member

\_\_\_\_\_  
KEN GERSTMAN Date  
Negotiating Team Member

\_\_\_\_\_  
ROSA MERCED Date  
Negotiating Team Member

## ATTACHMENT #1



## Payroll Deduction Authorization for Membership Dues or Service Charge

|   |            |                   |              |
|---|------------|-------------------|--------------|
| LAST NAME   | FIRST NAME | MIDDLE            | EMPLOYEE NO. |
| JOB CLASSIFICATION  |            | ORGANIZATION NAME | ORG NO.      |
| <p><b>PAYROLL DUES OR SERVICE CHARGE AUTHORIZATION</b></p> <p><b>I understand that employees of the East Bay Municipal Utility District may be represented by organized labor. I further understand the District has entered into an agency shop relationship with most of these Unions and that as a condition of employment in a job classification represented by one of these locals, I must tender membership dues or a service fee to the Union if I am not a conscientious objector. I further understand and agree that the authorization shall be automatically revoked upon my leaving District employment or upon acceptance of a position without Union representation.</b></p> <p><b>I hereby authorize the East Bay Municipal Utility District to deduct from my first paycheck of each month, the regular dues or service charge as a member of a represented job classification. The amount to be paid to the local Union shall be in accordance with the formula stated in the appropriate Memorandum of Understanding. This authorization shall become effective upon my acceptance in a District job classification represented by a Union covered under the District agency shop agreement.</b></p> <p>_____<br/>EMPLOYEE SIGNATURE</p> <p>_____<br/>DATE</p> |            |                   |              |

**ATTACHMENT #2**

**CERTIFICATION OF SECRETARY OF UNION**

I certify that the membership dues or service charge for employees in all bargaining units is  
\$ \_\_\_\_\_ per \_\_\_\_\_.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

\_\_\_\_\_  
Secretary of Union

\_\_\_\_\_  
Date of Delivery to District



## ATTACHMENT #3



## Cancellation of Payroll Deduction For Optional Union Contribution

|  |            |                   |  |
|--|------------|-------------------|--|
| LAST NAME  | FIRST NAME | MIDDLE            | EMPLOYEE NO.   |
| JOB CLASSIFICATION   |            | ORGANIZATION NAME | ORG NO.  |
| <p style="text-align: center;"><b>PAYROLL DUES OR SERVICE CHARGE AUTHORIZATION</b></p> <p>I hereby cancel my Payroll Deduction Authorization for Optional Union Contribution.</p> <p>I further understand that employees of the East Bay Municipal Utility District may be represented by organized labor. I further understand the District has entered into an agency shop relationship with most of these Unions and that as a condition of employment in a job classification represented by one of these locals, I must tender membership dues or a service fee to the Union if I am not a conscientious objector. I further understand and agree that this authorization shall be automatically revoked upon my leaving District employment or upon acceptance of a position without Union representation.</p> |            |                   |  |
| <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> EMPLOYEE SIGNATURE   |            |                   | <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> DATE |

## ATTACHMENT #4



## Payroll Deduction Authorization for Optional Union Contribution

|   |            |                   |              |
|---|------------|-------------------|--------------|
| LAST NAME   | FIRST NAME | MIDDLE            | EMPLOYEE NO. |
| JOB CLASSIFICATION  |            | ORGANIZATION NAME | ORG NO.      |
| <p><b>PAYROLL DUES OR SERVICE CHARGE AUTHORIZATION</b></p> <p>I hereby authorize the East Bay Municipal Utility District to deduct from my first paycheck of each month an optional union contribution of \$_____ to be paid to the Treasurer of the Union representing my current job classification. I further understand and agree that this authorization shall be automatically revoked upon my leaving the District employment or upon acceptance of a position without union representation. I also understand this authorization will remain in effect should my job classification change from one represented group to another.</p> |            |                   |              |
| EMPLOYEE SIGNATURE  |            |                   | DATE         |

**APPENDIX A  
UNITS/CLASS TITLES/SALARY RANGES  
LOCAL 2019, AFSCME**

These lists of classifications include all Limited-Term and Temporary Construction classes that are related to Local 2019 represented classifications.

**PROFESSIONAL AND RELATED UNIT**

ACCOUNTANT I  
ACCOUNTANT II  
ACCOUNTANT III  
ACCOUNTING AND FINANCIAL SYSTEMS ANALYST  
ACCOUNTING TECHNICIAN  
ASSISTANT CAPITAL PROJECTS COORDINATOR  
ASSISTANT CORROSION CONTROL SPECIALIST  
ASSISTANT ENGINEER  
ASSISTANT PLANNER  
ASSISTANT WATER RESOURCES SPECIALIST  
ASSOCIATE ARCHITECT  
ASSOCIATE CIVIL ENGINEER  
ASSOCIATE CONTROL SYSTEM ENGINEER  
ASSOCIATE CORROSION CONTROL SPECIALIST  
ASSOCIATE ELECTRICAL ENGINEER  
ASSOCIATE MECHANICAL ENGINEER  
ASSOCIATE PLANNER  
ASSOCIATE WATER RESOURCES SPECIALIST  
BUYER I  
BUYER II  
CHEMIST I  
CHEMIST II  
COST ESTIMATOR  
ENVIRONMENTAL HEALTH & SAFETY SPECIALIST I  
ENVIRONMENTAL HEALTH & SAFETY SPECIALIST II  
FISHERY/WILDLIFE BIOLOGIST I  
FISHERY/WILDLIFE BIOLOGIST II  
INFORMATION SYSTEM SUPPORT ANALYST I  
INFORMATION SYSTEM SUPPORT ANALYST II  
JUNIOR ENGINEER  
JUNIOR WATER RESOURCES SPECIALIST  
MICROBIOLOGIST I  
MICROBIOLOGIST II  
REAL ESTATE REPRESENTATIVE I  
REAL ESTATE REPRESENTATIVE II  
REAL ESTATE REPRESENTATIVE III  
RESEARCH CHEMIST

RESEARCH MICROBIOLOGIST  
 SECURITY & EMERGENCY PREPAREDNESS SPECIALIST  
 SENIOR CHEMIST  
 SENIOR ENVIRONMENTAL HEALTH & SAFETY SPECIALIST  
 SENIOR MICROBIOLOGIST  
 SENIOR REAL ESTATE REPRESENTATIVE  
 STUDENT INTERN  
 TELECOMMUNICATION SYSTEMS SPECIALIST  
 WATER SYSTEM PLANNING ANALYST

**TECHNICAL UNIT**

CHIEF OF PARTY  
 COMPUTER OPERATOR I  
 COMPUTER OPERATOR II  
 COMPUTER OPERATOR III  
 CONSTRUCTION INSPECTOR  
 CONSTRUCTION/MAINTENANCE SCHEDULER  
 CORROSION CONTROL TECHNICIAN  
 DRAFTER I  
 DRAFTER II  
 DRAFTER III  
 EMPLOYEE TRANSPORTATION COORDINATOR  
 FISHERIES AIDE  
 FISHERIES/WILDLIFE TECHNICIAN  
 GRAPHIC DESIGNER I  
 GRAPHIC DESIGNER II  
 HYDROGRAPHER I  
 HYDROGRAPHER II  
 HYDROGRAPHER III  
 INFORMATION SYSTEMS SPECIALIST I  
 INFORMATION SYSTEMS SPECIALIST II  
 INFORMATION SYSTEMS SPECIALIST III  
 INFORMATION TECHNOLOGY INTERN I  
 INFORMATION TECHNOLOGY INTERN II  
 LABORATORY TECHNICIAN I  
 LABORATORY TECHNICIAN II  
 LABORATORY TECHNICIAN III  
 MATERIALS INSPECTOR  
 MATERIALS TESTING TECHNICIAN I  
 MATERIALS TESTING TECHNICIAN II  
 MEALS AND LODGING COORDINATOR  
 NETWORK ANALYST I  
 NETWORK ANALYST II  
 NETWORK ANALYST III  
 PIPELINE DESIGNER I

PIPELINE DESIGNER II  
PRINTING TECHNICIAN I  
PRINTING TECHNICIAN II  
PROGRAMMER ANALYST I  
PROGRAMMER ANALYST II  
RANGER/NATURALIST I  
RANGER/NATURALIST II  
RECREATION AREA ATTENDANT  
RISK MANAGEMENT ASSISTANT  
SENIOR CONSTRUCTION INSPECTOR  
SENIOR DRAFTER  
SENIOR GRAPHIC DESIGNER  
SENIOR PIPELINE DESIGNER  
SENIOR PRINTING TECHNICIAN  
SENIOR PROGRAMMER ANALYST  
SENIOR RANGER/NATURALIST  
SENIOR SYSTEMS PROGRAMMER  
SURVEY TECHNICIAN I  
SURVEY TECHNICIAN II  
SYSTEMS PROGRAMMER I  
SYSTEMS PROGRAMMER II

**SERVICE AND INSPECTION UNIT**

FIELD SERVICES REPRESENTATIVE I  
FIELD SERVICES REPRESENTATIVE II  
INDUSTRIAL WATER CONSERVATION REPRESENTATIVE  
NEW BUSINESS REPRESENTATIVE I  
NEW BUSINESS REPRESENTATIVE II  
SENIOR FIELD SERVICES REPRESENTATIVE  
SENIOR NEW BUSINESS REPRESENTATIVE  
SENIOR WASTEWATER CONTROL INSPECTOR  
SENIOR WATER SYSTEM INSPECTOR  
WASTEWATER CONTROL INSPECTOR I  
WASTEWATER CONTROL INSPECTOR II  
WASTEWATER CONTROL REPRESENTATIVE  
WATER CONSERVATION REPRESENTATIVE  
WATER CONSERVATION TECHNICIAN  
WATER SAMPLER  
WATER SYSTEM INSPECTOR I  
WATER SYSTEM INSPECTOR II

**CLERICAL UNIT**

ACCOUNT CLERK II  
ACCOUNT CLERK III  
ADMINISTRATIVE CLERK  
ADMINISTRATIVE SECRETARY I  
ADMINISTRATIVE SECRETARY II  
CUSTOMER SERVICES REPRESENTATIVE I  
CUSTOMER SERVICES REPRESENTATIVE II  
CUSTOMER SERVICES REPRESENTATIVE III  
DISPATCH/CONTACT CENTER REPRESENTATIVE  
MESSENGER-MAIL CLERK  
SENIOR ADMINISTRATIVE CLERK  
SENIOR CUSTOMER SERVICES REPRESENTATIVE  
SENIOR DISPATCH/CONTACT CENTER REPRESENTATIVE  
SENIOR MESSENGER-MAIL CLERK  
SENIOR TELEPHONE/RADIO OPERATOR  
TELEPHONE/RADIO OPERATOR  
WORD PROCESSING SPECIALIST I  
WORD PROCESSING SPECIALIST II

**PART-TIME CLASSIFICATIONS**

ENGINEERING AIDE

APRIL 2003

**SIDELETTER OF AGREEMENT**

Between

EAST BAY MUNICIPAL UTILITY DISTRICT (District)

AMERICAN FEDERATION OF STATE,

COUNTY AND MUNICIPAL EMPLOYEES (AFSCME) LOCAL 2019

Regarding

**THE EMPLOYEE COMPUTER FINANCIAL ASSISTANCE PROGRAM**

East Bay Municipal Utility District, hereinafter referred to as the District, will provide employees represented by AFSCME, Local 2019, hereinafter referred to as the Union, interest-free loans up to twenty-five hundred (\$2,500) dollars for the purchase of personal computers. The parties agree that such loans will be provided to 2019 represented employees in order to facilitate the development of their computer skills. The District and Local 2019, agree that 2019 employees will be subject to the following initial implementation criteria, as well as the Employee Computer Financial Assistance Program Guidelines previously established by the District. Further, the District and Local 2019 agree that the program guidelines, the implementation and administration of the computer loan program are not subject to the meet and confer process, nor the Union's grievance procedure.

**TIMING OF PROGRAM IMPLEMENTATION AND LOAN APPROVAL**

- The Computer Loan Program will be implemented three (3) months after the execution of the 2003 contract between the District and the Union.
- Original requests for a loan will be approved within eight (8) to twelve (12) weeks after an employee submits a completed Application and Specification sheet, to the Employee Services Department, depending on the number of requests.

**ELIGIBILITY**

- All regular, limited term (LT), temporary construction (TC), Intermittent and Job Share employees, provided they satisfy the District's Program guidelines, are eligible to participate in the computer loan program.
- Employees must have a "satisfactory or meets expectations" or better on their last performance evaluation and cannot have been suspended in the twelve (12) months immediately preceding their application.

**TERMS AND CONDITIONS**

- Employees must be currently at work in order to be eligible for the computer loan program.
- Employees must repay the loan through automatic biweekly payroll deductions, in an amount of fifty (\$50) dollars or more, in each pay period until the loan is extinguished.

**SIDELETTER AGREEMENT - 2019 MOU  
COMPUTER LOAN PROGRAM**

---

- Employees who separate from the District must repay the entire outstanding loan balance, the balance to be deducted from their final paycheck.
- Employees who are absent on leave without pay, must continue to make biweekly payments of the loan, during their unpaid leave of absence, in the amount agreed to in the Promissory Note and Authorization for Payroll Deduction.



APRIL 2003

**SIDELETTER OF AGREEMENT**

Between

EAST BAY MUNICIPAL UTILITY DISTRICT (District)  
AMERICAN FEDERATION OF STATE,  
COUNTY AND MUNICIPAL EMPLOYEES (AFSCME) LOCAL 2019

Regarding

FUTURE NEGOTIATIONS AND AMENDMENT OF AGREEMENT

During the term of this contract, the parties shall exclude from the provision of Article 32.7 Zipper Clause, revisions to the District Policies and Procedures regarding mandatory subjects of bargaining not contained in the MOU.



## LOCAL 2019 SALARY SCHEDULE

Effective April 22, 2013

| Class |   |        |        |        |        |        |        |        |
|-------|---|--------|--------|--------|--------|--------|--------|--------|
| Code  | Class Title                                 | Salary | 1 Step | 2 Step | 3 Step | 4 Step | 5 Step | 6 Step |
| 5256  | Account Clerk II                            | 49     | 4,227  | 4,438  | 4,660  | 4,893  | 5,138  | 0      |
| 5255  | Account Clerk III                           | 53     | 4,668  | 4,901  | 5,146  | 5,403  | 5,673  | 0      |
| 5228  | Accountant I                                | 60     | 5,544  | 5,821  | 6,112  | 6,418  | 6,739  | 0      |
| 5223  | Accountant II                               | 64     | 6,123  | 6,429  | 6,750  | 7,088  | 7,442  | 0      |
| 5218  | Accountant III                              | 68     | 6,759  | 7,097  | 7,452  | 7,825  | 8,216  | 0      |
| 5242  | Accounting and Financial Systems Analyst    | 73     | 7,646  | 8,028  | 8,429  | 8,850  | 9,293  | 0      |
| 5259  | Accounting Technician                       | 57     | 5,150  | 5,408  | 5,678  | 5,962  | 6,260  | 0      |
| 5770  | Administrative Clerk                        | 49     | 4,227  | 4,438  | 4,660  | 4,893  | 5,138  | 0      |
| 5646  | Administrative Secretary I                  | 51     | 4,438  | 4,660  | 4,893  | 5,138  | 5,395  | 0      |
| 5645  | Administrative Secretary II                 | 55     | 4,902  | 5,147  | 5,404  | 5,674  | 5,958  | 0      |
| 4167  | Assistant Capital Projects Coordinator      | 72     | 7,457  | 7,830  | 8,221  | 8,632  | 9,064  | 0      |
| 4136  | Assistant Corrosion Control Specialist      | 72     | 7,457  | 7,830  | 8,221  | 8,632  | 9,064  | 0      |
| 4114  | Assistant Engineer                          | 72     | 7,457  | 7,830  | 8,221  | 8,632  | 9,064  | 0      |
| 4821  | Assistant Planner                           | 64     | 6,123  | 6,429  | 6,750  | 7,088  | 7,442  | 0      |
| 4125  | Assistant Water Resources Specialist        | 72     | 7,457  | 7,830  | 8,221  | 8,632  | 9,064  | 0      |
| 4165  | Associate Architect                         | 76     | 8,234  | 8,646  | 9,078  | 9,532  | 10,009 | 0      |
| 4112  | Associate Civil Engineer                    | 76     | 8,234  | 8,646  | 9,078  | 9,532  | 10,009 | 0      |
| 4108  | Associate Control System Engineer           | 76     | 8,234  | 8,646  | 9,078  | 9,532  | 10,009 | 0      |
| 4137  | Associate Corrosion Control Specialist      | 76     | 8,234  | 8,646  | 9,078  | 9,532  | 10,009 | 0      |
| 4152  | Associate Electrical Engineer               | 76     | 8,234  | 8,646  | 9,078  | 9,532  | 10,009 | 0      |
| 4142  | Associate Mechanical Engineer               | 76     | 8,234  | 8,646  | 9,078  | 9,532  | 10,009 | 0      |
| 4820  | Associate Planner                           | 68     | 6,759  | 7,097  | 7,452  | 7,825  | 8,216  | 0      |
| 4127  | Associate Water Resources Specialist        | 76     | 8,234  | 8,646  | 9,078  | 9,532  | 10,009 | 0      |
| 4664  | Buyer I                                     | 60     | 5,544  | 5,821  | 6,112  | 6,418  | 6,739  | 0      |
| 4662  | Buyer II                                    | 64     | 6,123  | 6,429  | 6,750  | 7,088  | 7,442  | 0      |
| 4407  | Chemist I                                   | 64     | 6,123  | 6,429  | 6,750  | 7,088  | 7,442  | 0      |
| 4405  | Chemist II                                  | 68     | 6,759  | 7,097  | 7,452  | 7,825  | 8,216  | 0      |
| 4333  | Chief Of Party                              | 68     | 6,759  | 7,097  | 7,452  | 7,825  | 8,216  | 0      |
| 5434  | Computer Operations Technician              | 57     | 5,150  | 5,408  | 5,678  | 5,962  | 6,260  | 0      |
| 4350  | Construction Inspector                      | 67     | 6,592  | 6,922  | 7,268  | 7,631  | 8,013  | 0      |
| 4823  | Construction/Maintenance Scheduler          | 70     | 7,100  | 7,455  | 7,828  | 8,219  | 8,630  | 0      |
| 4354  | Corrosion Control Technician                | 64     | 6,123  | 6,429  | 6,750  | 7,088  | 7,442  | 0      |
| 4172  | Cost Estimator                              | 76     | 8,234  | 8,646  | 9,078  | 9,532  | 10,009 | 0      |
| 5851  | Customer Services Representative I          | 43     | 3,646  | 3,828  | 4,019  | 4,220  | 4,431  | 0      |
| 5850  | Customer Services Representative II         | 51     | 4,438  | 4,660  | 4,893  | 5,138  | 5,395  | 0      |
| 5848  | Customer Services Representative III        | 55     | 4,902  | 5,147  | 5,404  | 5,674  | 5,958  | 0      |
| 5492  | Dispatch/Contact Center Representative      | 53     | 4,668  | 4,901  | 5,146  | 5,403  | 5,673  | 0      |
| 4346  | Drafter I                                   | 50     | 4,330  | 4,546  | 4,773  | 5,012  | 5,263  | 0      |
| 4345  | Drafter II                                  | 54     | 4,784  | 5,023  | 5,274  | 5,538  | 5,815  | 0      |
| 4344  | Drafter III                                 | 58     | 5,279  | 5,543  | 5,820  | 6,111  | 6,417  | 0      |
| 2589  | Employee Transportation Coordinator         | 59     | 5,412  | 5,683  | 5,967  | 6,265  | 6,578  | 0      |
| 4337  | Engineering Aide                            | 46     | 3,926  | 4,122  | 4,328  | 4,544  | 4,771  | 0      |
| 4386  | Environmental Health & Safety Specialist I  | 67     | 6,592  | 6,922  | 7,268  | 7,631  | 8,013  | 0      |
| 4396  | Environmental Health & Safety Specialist II | 72     | 7,457  | 7,830  | 8,221  | 8,632  | 9,064  | 0      |
| 5936  | Field Services Representative I             | 53     | 4,668  | 4,901  | 5,146  | 5,403  | 5,673  | 0      |
| 5939  | Field Services Representative II            | 57     | 5,150  | 5,408  | 5,678  | 5,962  | 6,260  | 0      |
| 7332  | Fisheries/Wildlife Aide                     | 49     | 4,227  | 4,438  | 4,660  | 4,893  | 5,138  | 0      |
| 7340  | Fisheries/Wildlife Biologist I              | 62     | 5,828  | 6,119  | 6,425  | 6,746  | 7,083  | 0      |
| 7338  | Fisheries/Wildlife Biologist II             | 67     | 6,592  | 6,922  | 7,268  | 7,631  | 8,013  | 0      |
| 7335  | Fisheries/Wildlife Technician               | 57     | 5,150  | 5,408  | 5,678  | 5,962  | 6,260  | 0      |

# **LOCAL 2019 SALARY SCHEDULE** **Effective April 22, 2013**

| <b>Class</b> |  |               |               |               |               |               |               |               |
|--------------|--|---------------|---------------|---------------|---------------|---------------|---------------|---------------|
| <b>Code</b>  | <b>Class Title</b>                           | <b>Salary</b> | <b>1 Step</b> | <b>2 Step</b> | <b>3 Step</b> | <b>4 Step</b> | <b>5 Step</b> | <b>6 Step</b> |
| 4315         | Graphic Designer I                           | 54            | 4,784         | 5,023         | 5,274         | 5,538         | 5,815         | 0             |
| 4317         | Graphic Designer II                          | 58            | 5,279         | 5,543         | 5,820         | 6,111         | 6,417         | 0             |
| 4358         | Hydrographer I                               | 61            | 5,686         | 5,970         | 6,269         | 6,582         | 6,911         | 0             |
| 4353         | Hydrographer II                              | 65            | 6,276         | 6,590         | 6,920         | 7,266         | 7,629         | 0             |
| 4360         | Hydrographer III                             | 69            | 6,926         | 7,272         | 7,636         | 8,018         | 8,419         | 0             |
| 4748         | Industrial Water Conservation Rep            | 66            | 6,431         | 6,753         | 7,091         | 7,446         | 7,818         | 0             |
| 5440         | Information Systems Specialist I             | 49            | 4,227         | 4,438         | 4,660         | 4,893         | 5,138         | 0             |
| 5438         | Information Systems Specialist II            | 53            | 4,668         | 4,901         | 5,146         | 5,403         | 5,673         | 0             |
| 5436         | Information Systems Specialist III           | 57            | 5,150         | 5,408         | 5,678         | 5,962         | 6,260         | 0             |
| 4897         | Information Systems Support Analyst I        | 61            | 5,686         | 5,970         | 6,269         | 6,582         | 6,911         | 0             |
| 4895         | Information Systems Support Analyst II       | 70            | 7,100         | 7,455         | 7,828         | 8,219         | 8,630         | 0             |
| 5280         | Information Technology Intern I              | 46            | 3,926         | 4,122         | 4,328         | 4,544         | 4,771         | 0             |
| 5282         | Information Technology Intern II             | 53            | 4,668         | 4,901         | 5,146         | 5,403         | 5,673         | 0             |
| 4116         | Junior Engineer                              | 66            | 6,431         | 6,753         | 7,091         | 7,446         | 7,818         | 0             |
| 4123         | Junior Water Resources Specialist            | 66            | 6,431         | 6,753         | 7,091         | 7,446         | 7,818         | 0             |
| 4426         | Laboratory Technician I                      | 51            | 4,438         | 4,660         | 4,893         | 5,138         | 5,395         | 0             |
| 4423         | Laboratory Technician II                     | 57            | 5,150         | 5,408         | 5,678         | 5,962         | 6,260         | 0             |
| 4420         | Laboratory Technician III                    | 64            | 6,123         | 6,429         | 6,750         | 7,088         | 7,442         | 0             |
| 4661         | Materials Inspector                          | 68            | 6,759         | 7,097         | 7,452         | 7,825         | 8,216         | 0             |
| 4385         | Materials Testing Technician I               | 54            | 4,784         | 5,023         | 5,274         | 5,538         | 5,815         | 0             |
| 4383         | Materials Testing Technician II              | 58            | 5,279         | 5,543         | 5,820         | 6,111         | 6,417         | 0             |
| 5795         | Meals and Lodging Coordinator                | 52            | 4,551         | 4,779         | 5,018         | 5,269         | 5,532         | 0             |
| 5778         | Messenger/Mail Clerk                         | 45            | 3,829         | 4,020         | 4,221         | 4,432         | 4,654         | 0             |
| 4507         | Microbiologist I                             | 64            | 6,123         | 6,429         | 6,750         | 7,088         | 7,442         | 0             |
| 4505         | Microbiologist II                            | 68            | 6,759         | 7,097         | 7,452         | 7,825         | 8,216         | 0             |
| 5268         | Network Analyst I                            | 57            | 5,150         | 5,408         | 5,678         | 5,962         | 6,260         | 0             |
| 5267         | Network Analyst II                           | 65            | 6,276         | 6,590         | 6,920         | 7,266         | 7,629         | 0             |
| 5266         | Network Analyst III                          | 71            | 7,275         | 7,639         | 8,021         | 8,422         | 8,843         | 0             |
| 4684         | New Business Representative I                | 58            | 5,279         | 5,543         | 5,820         | 6,111         | 6,417         | 0             |
| 4683         | New Business Representative II               | 62            | 5,828         | 6,119         | 6,425         | 6,746         | 7,083         | 0             |
| 4349         | Pipeline Designer I                          | 63            | 5,974         | 6,273         | 6,587         | 6,916         | 7,262         | 0             |
| 4359         | Pipeline Designer II                         | 67            | 6,592         | 6,922         | 7,268         | 7,631         | 8,013         | 0             |
| 8857         | Printing Technician I                        | 49            | 4,227         | 4,438         | 4,660         | 4,893         | 5,138         | 0             |
| 8855         | Printing Technician II                       | 55            | 4,902         | 5,147         | 5,404         | 5,674         | 5,958         | 0             |
| 5247         | Programmer Analyst I                         | 61            | 5,686         | 5,970         | 6,269         | 6,582         | 6,911         | 0             |
| 5245         | Programmer Analyst II                        | 67            | 6,592         | 6,922         | 7,268         | 7,631         | 8,013         | 0             |
| 7348         | Ranger Naturalist I                          | 52            | 4,551         | 4,779         | 5,018         | 5,269         | 5,532         | 0             |
| 7346         | Ranger Naturalist II                         | 58            | 5,279         | 5,543         | 5,820         | 6,111         | 6,417         | 0             |
| 4648         | Real Estate Representative I                 | 64            | 6,123         | 6,429         | 6,750         | 7,088         | 7,442         | 0             |
| 4645         | Real Estate Representative II                | 68            | 6,759         | 7,097         | 7,452         | 7,825         | 8,216         | 0             |
| 7350         | Recreation Area Attendant                    | 45            | 3,829         | 4,020         | 4,221         | 4,432         | 4,654         | 0             |
| 4404         | Research Chemist                             | 70            | 7,100         | 7,455         | 7,828         | 8,219         | 8,630         | 0             |
| 4503         | Research Microbiologist                      | 70            | 7,100         | 7,455         | 7,828         | 8,219         | 8,630         | 0             |
| 4712         | Risk Management Assistant                    | 62            | 5,828         | 6,119         | 6,425         | 6,746         | 7,083         | 0             |
| 2578         | Security & Emergency Preparedness Specialist | 76            | 8,234         | 8,646         | 9,078         | 9,532         | 10,009        | 0             |
| 5763         | Senior Administrative Clerk                  | 55            | 4,902         | 5,147         | 5,404         | 5,674         | 5,958         | 0             |
| 4408         | Senior Chemist                               | 73            | 7,646         | 8,028         | 8,429         | 8,850         | 9,293         | 0             |
| 4357         | Senior Construction Inspector                | 71            | 7,275         | 7,639         | 8,021         | 8,422         | 8,843         | 0             |
| 5845         | Senior Customer Services Representative      | 59            | 5,412         | 5,683         | 5,967         | 6,265         | 6,578         | 0             |

**LOCAL 2019 SALARY SCHEDULE**  
**Effective April 22, 2013**

| Class |   |        |        |        |        |        |        |        |
|-------|---|--------|--------|--------|--------|--------|--------|--------|
| Code  | Class Title                                     | Salary | 1 Step | 2 Step | 3 Step | 4 Step | 5 Step | 6 Step |
| 5491  | Senior Dispatch/Contact Center Representative   | 57     | 5,150  | 5,408  | 5,678  | 5,962  | 6,260  | 0      |
| 4342  | Senior Drafter                                  | 62     | 5,828  | 6,119  | 6,425  | 6,746  | 7,083  | 0      |
| 4391  | Senior Environmental Health & Safety Specialist | 76     | 8,234  | 8,646  | 9,078  | 9,532  | 10,009 | 0      |
| 5938  | Senior Field Services Representative            | 61     | 5,686  | 5,970  | 6,269  | 6,582  | 6,911  | 0      |
| 4319  | Senior Graphic Designer                         | 62     | 5,828  | 6,119  | 6,425  | 6,746  | 7,083  | 0      |
| 5775  | Senior Messenger/Mail Clerk                     | 49     | 4,227  | 4,438  | 4,660  | 4,893  | 5,138  | 0      |
| 4504  | Senior Microbiologist                           | 73     | 7,646  | 8,028  | 8,429  | 8,850  | 9,293  | 0      |
| 4678  | Senior New Business Representative              | 66     | 6,431  | 6,753  | 7,091  | 7,446  | 7,818  | 0      |
| 4362  | Senior Pipeline Designer                        | 71     | 7,275  | 7,639  | 8,021  | 8,422  | 8,843  | 0      |
| 8853  | Senior Printing Technician                      | 59     | 5,412  | 5,683  | 5,967  | 6,265  | 6,578  | 0      |
| 5248  | Senior Programmer Analyst                       | 74     | 7,837  | 8,229  | 8,640  | 9,072  | 9,526  | 0      |
| 7345  | Senior Ranger/Naturalist                        | 62     | 5,828  | 6,119  | 6,425  | 6,746  | 7,083  | 0      |
| 4643  | Senior Real Estate Representative               | 74     | 7,837  | 8,229  | 8,640  | 9,072  | 9,526  | 0      |
| 5260  | Senior Systems Programmer                       | 75     | 8,030  | 8,432  | 8,854  | 9,297  | 9,762  | 0      |
| 5480  | Senior Telephone/Radio Operator                 | 53     | 4,668  | 4,901  | 5,146  | 5,403  | 5,673  | 0      |
| 4399  | Senior Wastewater Control Inspector             | 66     | 6,431  | 6,753  | 7,091  | 7,446  | 7,818  | 0      |
| 4363  | Senior Water System Inspector                   | 66     | 6,431  | 6,753  | 7,091  | 7,446  | 7,818  | 0      |
| 5300  | Student Intern                                  | 46     | 3,926  | 4,122  | 4,328  | 4,544  | 4,771  | 0      |
| 4336  | Survey Technician I                             | 58     | 5,279  | 5,543  | 5,820  | 6,111  | 6,417  | 0      |
| 4334  | Survey Technician II                            | 62     | 5,828  | 6,119  | 6,425  | 6,746  | 7,083  | 0      |
| 5264  | Systems Programmer I                            | 65     | 6,276  | 6,590  | 6,920  | 7,266  | 7,629  | 0      |
| 5262  | Systems Programmer II                           | 69     | 6,926  | 7,272  | 7,636  | 8,018  | 8,419  | 0      |
| 4205  | Telecommunication Systems Specialist            | 67     | 6,592  | 6,922  | 7,268  | 7,631  | 8,013  | 0      |
| 5482  | Telephone/Radio Operator                        | 49     | 4,227  | 4,438  | 4,660  | 4,893  | 5,138  | 0      |
| 4397  | Wastewater Control Inspector I                  | 58     | 5,279  | 5,543  | 5,820  | 6,111  | 6,417  | 0      |
| 4394  | Wastewater Control Inspector II                 | 62     | 5,828  | 6,119  | 6,425  | 6,746  | 7,083  | 0      |
| 4390  | Wastewater Control Representative               | 66     | 6,431  | 6,753  | 7,091  | 7,446  | 7,818  | 0      |
| 4749  | Water Conservation Representative               | 64     | 6,123  | 6,429  | 6,750  | 7,088  | 7,442  | 0      |
| 4738  | Water Conservation Technician                   | 57     | 5,150  | 5,408  | 5,678  | 5,962  | 6,260  | 0      |
| 4371  | Water Sampler                                   | 53     | 4,668  | 4,901  | 5,146  | 5,403  | 5,673  | 0      |
| 4367  | Water System Inspector I                        | 57     | 5,150  | 5,408  | 5,678  | 5,962  | 6,260  | 0      |
| 4366  | Water System Inspector II                       | 62     | 5,828  | 6,119  | 6,425  | 6,746  | 7,083  | 0      |
| 4824  | Water System Planning Analyst                   | 68     | 6,759  | 7,097  | 7,452  | 7,825  | 8,216  | 0      |
| 5767  | Word Processing Specialist II                   | 51     | 4,438  | 4,660  | 4,893  | 5,138  | 5,395  | 0      |

ITEM #17

LEGISLATIVE UPDATE

WILL BE GIVEN AS AN

ORAL REPORT





AGENDA NO. 18.  
MEETING DATE December 10, 2013

**TITLE CERTIFY THE FINAL SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT  
FOR THE ESTATES RESERVOIR REPLACEMENT PROJECT AND APPROVE  
THE PROPOSED REVISIONS TO THE PROJECT**

☐ MOTION ☒ RESOLUTION ☐ ORDINANCE

**RECOMMENDED ACTION**

- Certify the Final Supplemental Environmental Impact Report (EIR) for the Estates Reservoir Replacement Project, and make findings in accordance with the California Environmental Quality Act (CEQA).
- Adopt the Mitigation Monitoring and Reporting Program (MMRP), as revised, in accordance with CEQA.
- Approve the proposed revisions to the Estates Reservoir Project.

**SUMMARY**

In January 2010, the District's Board of Directors certified the 2010 EIR for the project and approved the Estates Reservoir Replacement Project. Since then, the District has advanced the design and construction of the Landscape Plan component of the project and is proposing to modify the project as anticipated in the 2010 EIR via the Supplemental EIR to include the removal of 22 trees, make changes to the planned improved pedestrian path on District property, and to finalize the location of the interpretive sign. This work will take place in early 2014 in conjunction with the original landscape work, which also includes plantings inside the perimeter security chain link fence and the pruning of trees and thinning of bushes adjacent to Estates Drive. Consistent with CEQA, the Response to Comments (RTC) - Final Supplemental EIR evaluates environmental impacts associated with the proposed changes.

**DISCUSSION**

**Environmental Review Process/Public Outreach**

The 2010 EIR Mitigation Measure 3.2-2 required the creation of a Landscape Plan for the project to be prepared with public input during the design phase. During the creation of this Landscape Plan it became evident that certain changes would need to be made to the project that could result in potentially significant impacts that were not discussed in the 2010 EIR. In response to public comment over the

|   |   |                                   |
|---|---|-----------------------------------|
| Funds Available: FY10-11; CIP #003042; page 2.4-9     |   | Budget Code: WSC/523/7999/2000649 |
| DEPARTMENT SUBMITTING<br>Engineering and Construction | DEPARTMENT MANAGER or DIRECTOR<br><br>Xavier J. Irias | APPROVED<br><br>General Manager   |

Contact the Office of the District Secretary regarding questions about completing or submitting this form.



Certify the Final Supplemental Environmental Impact Report for the Estates Reservoir Replacement Project and Approve the Proposed Revisions to the Project  
December 10, 2013  
Page 2

proposed changes, the District prepared a Draft Supplemental EIR and published it for public review from September 6, 2013 to October 21, 2013.

### **Summary of Comments, Impacts, and Mitigation Measures**

A total of 24 comment letters and emails were submitted to the District by the close of the Draft Supplemental EIR comment period. Comments were submitted from the State Clearinghouse for the Department of Forestry and Fire Protection, and one attorney. Several different form letters, individual letters, and emails were submitted from 22 neighbors in 13 households. These letters and emails focused on issues related to potential environmental impacts on aesthetics/views and biological resources, as well as on potential impacts related to increased public visitation to the Estates Reservoir site. All comments are addressed in the Final Supplemental EIR. Master responses were prepared for similar or identical comments on the plan to remove trees, implement a revised path design and install the interpretive sign.

The proposed modification of the path design involves making the path compliant with the American Disability Act, which requires relocating it from its conceived route along the shoulder of Estates Drive to a wheelchair turnaround point in front of the interpretive sign, which will be placed on the inside of the perimeter fence. Only two short sections of a low rustic fence will be constructed, at the path access points on Estates Drive, rather than a long fence along the entire shoulder of Estates Drive. There is no additional impact associated with the path relocation other than those addressed in the 2010 EIR, and the impacts of the project on short-term visual effects experienced from nearby areas during project construction remain less than significant with mitigation incorporated. Proposed tree removal will not significantly change surrounding views in a manner that is substantially different than the existing viewscape and would thus not substantially degrade the existing visual character or quality of the site and its surroundings. The impact of the project on aesthetics/views remains less than significant with mitigation incorporated.

Changes to the MMRP adopted for the January 2010 Estates Reservoir Replacement Project include elimination of the low, rustic wooden fence along Estates Drive except at the trail entrance and exits (Mitigation 3.2-2, Visual Quality), and the addition of tree replacement for the removal of protected trees in accordance with mitigations set forth in the original Draft EIR (Mitigation 3.4-1, Biological Resources). Felled trees will be chipped and distributed on site and not sold commercially.

### **Public Notice**

Pursuant to Section 21092.5 of the Public Resources Code, the RTC document was mailed to two public agencies that commented on the Draft Supplemental EIR. Copies of the RTC were also posted on EBMUD's website and sent to libraries in the project area. Notice of the Board of Directors meeting,

Certify the Final Supplemental Environmental Impact Report for the Estates Reservoir Replacement Project and Approve the Proposed Revisions to the Project  
December 10, 2013

Page 3

including availability of the Final Supplemental EIR (Draft EIR and RTC), was also mailed to neighborhood residents that were noticed on, or responded to, the Draft Supplemental EIR.

### **Project Schedule**

Final design for the changes will be completed after the Board of Directors certifies the Supplemental EIR and approves the project. Construction of the landscape improvements will be completed in early 2014.

### **FISCAL IMPACTS**

Funds for this project are included in the FY10-11 Capital Improvement Program under the Central Oakland Hills Cascade Pressure Zone Improvements.

### **ALTERNATIVE**

**Do not certify the Final Supplemental EIR or approve changes to the project.** This alternative is not recommended because the Final Supplemental EIR meets CEQA requirements and project objectives in a cost-effective manner. Additionally, in the absence of a Final Supplemental EIR and approved project changes, the District would be unable to implement certain mitigation measures approved by the Board in January 2010, namely Mitigation Measure 3.2-2 to improve the existing trail on District property along Estates Drive and Mitigation Measure 3.2-1 to install an interpretive sign in mitigation of the impact of the removal of a historical resource. The District would also not be able to meet the project objective of the Landscape Plan of removing trees to improve and maintain public safety and the health of the remaining trees.



RESOLUTION NO. \_\_\_\_\_

**CERTIFYING THE FINAL SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT FOR  
THE ESTATES RESERVOIR REPLACEMENT PROJECT, MAKING FINDINGS, APPROVING  
MODIFICATIONS TO THE MITIGATION MONITORING AND REPORTING  
PROGRAM, AND APPROVING MODIFICATIONS TO THE PROJECT**

Introduced by Director

; Seconded by Director

WHEREAS, the East Bay Municipal Utility District (EBMUD) Board of Directors certified the Estates Reservoir Replacement Project Final Environmental Impact Report (EIR) on January 26, 2010 and approved the Project in order to resolve distribution system issues in the Dingee Pressure Zone, including poor water quality due to excess volume in the Estates Reservoir, inefficient storage from a hydraulic and cost perspective; aging storage and pumping distribution facilities, and seismic deficiencies at the Estates Reservoir dam foundation; and

WHEREAS, Mitigation Measure 3.2-2 of the 2010 Project EIR required the creation of a Landscape Plan for the Project, which was to include a new perimeter path, in order to mitigate impacts to visual resources, to be prepared with public input during a Design Phase; and

WHEREAS, during the creation of this Landscape Plan it became evident that certain changes would need to be made to the landscaping component of the Project that could result in new potentially significant environmental impacts that were not discussed in the 2010 EIR; and

WHEREAS, on June 20, 2013, a Notice of Preparation (NOP) for the Estates Reservoir Replacement Project Supplemental EIR was prepared and circulated by EBMUD as lead agency in accordance with the California Environmental Quality Act (CEQA) and applicable laws and regulations; and

WHEREAS, EBMUD completed a Draft Supplemental EIR on the Project and circulated it for review and comment on September 6, 2013, providing a 45-day comment period ending on October 21, 2013, in accordance with CEQA regulations; and

WHEREAS, approximately 200 cards were mailed to notify residents and interested parties as well as state, local and regional agencies, including the State Clearinghouse and the city of Oakland of the availability of the Draft Supplemental EIR; and

WHEREAS, EBMUD also provided internet access to the Draft Supplemental EIR on its website; and

WHEREAS, EBMUD considered and responded to 24 letters and e-mail public comments on the Draft Supplemental EIR to provide further clarity and to address public concerns; and

WHEREAS, a Final Supplemental EIR was prepared by the District, which includes responses to all comments on the Draft Supplemental EIR received by the District during the public comment period and includes clarifications in response to public concerns; and

WHEREAS, the Final Supplemental EIR was sent to public agencies and made available to individuals that provided comments on the Supplemental Draft EIR on November 27, 2013; and

WHEREAS, EBMUD has revised a detailed Mitigation Monitoring and Reporting Program (MMRP), attached hereto as Exhibit B and incorporated by this reference into the resolution, to reflect the proposed modifications to the Project;

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the East Bay Municipal Utility District does hereby find, determine and certify that:

1. The Final Supplemental EIR, including the Draft Supplemental EIR, has been presented to the Board of Directors, the Board has reviewed and considered the information contained therein, and the Final Supplemental EIR reflects the Board's judgment and analysis.
2. All proceedings of the environmental review process, including the Draft and Final Supplemental EIR and all required notices, have been conducted and completed in accordance with CEQA, the CEQA guidelines, and all other applicable laws, regulations, and procedures.
3. The environmental impacts of the proposed changes to the Project are fully disclosed in the Draft Supplemental EIR and Final Supplemental EIR, and the Draft Supplemental EIR and Final Supplemental EIR are adequate for use by the District for approval, design and construction of the modifications to the Project.
4. The documents and material constituting the record of the proceeding are located at the District's administrative offices, 375 11<sup>th</sup> Street, Oakland, CA 94607. The custodian of said records is the Secretary of the District.
5. There has been no substantial change in circumstances since preparation of the Draft Supplemental EIR and Final Supplemental EIR, which would require revisions to the Draft Supplemental EIR and Final Supplemental EIR due to the discovery or disclosure of new, significant impacts not covered in the Draft Supplemental EIR and Final Supplemental EIR, and there is no requirement to recirculate the Draft Supplemental and Final Supplemental EIRs.
6. Public consultation conducted prior to completing the Draft Supplemental EIR has been a valuable component of the planning process for the Project.
7. The Board of Directors makes the findings and determinations regarding the Project set forth in the Findings, attached hereto as Exhibit A, and incorporated into this resolution by this reference.
8. The Board of Directors hereby approves, adopts, and imposes the modifications to the MMRP, attached hereto as Exhibit B and incorporated herein by this reference. The

mitigation measures adopted by the Board of Directors are hereby imposed as conditions of approval of the Project modifications.

BE IT FURTHER RESOLVED that the Final Supplemental EIR is hereby certified as having been completed in compliance with CEQA.

BE IT FURTHER RESOLVED that the modifications to the Project as described in the Draft and Final Supplemental EIR, are hereby approved; specifically the following:

- Changes in the design of the improved perimeter path and associated rustic fencing in order to make the path compliant with the Americans with Disabilities Act; and
- Modifications to the perimeter landscaping to remove 22 trees from the site in order to improve public safety and the health of the remaining trees.

BE IT FURTHER RESOLVED that the General Manager is hereby directed to take such actions as shall be necessary to implement the modifications to the Project as described in the Supplemental EIR, subject to compliance with all mitigation measures in the MMRP.

BE IT FURTHER RESOLVED that the Secretary of the District is hereby directed to file a Notice of Determination, in accordance with the law, with the County Clerk of Alameda County and with the State Clearinghouse.

ADOPTED this 10th day of December, 2013 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

APPROVED AS TO FORM AND PROCEDURE:

\_\_\_\_\_  
General Counsel

W:\400\410\410.01\Estates Reservoir Final EIR.docx



## **EXHIBIT A**

### **East Bay Municipal Utility District Board of Directors Findings Regarding the Modifications to the Estates Reservoir Replacement Project**

#### **1.0 Introduction**

This is the findings document adopted by the East Bay Municipal Utility District (“EBMUD or District”) Board of Directors for the modifications to the Estates Reservoir Replacement Project, which was originally approved in conjunction with the certification of the Estates Reservoir Replacement Project Final Environmental Impact Report (EIR) on January 26, 2010. These modifications include:

- Changes in the design of the improved perimeter path and associated rustic fence in order to make the path compliant with the Americans with Disabilities Act; and
- Modifications to the perimeter landscaping to remove 22 trees from the site in order to improve public safety and the health of the remaining trees.

Section 1, “The Project”, describes the modifications to the Estates Reservoir replacement project and places them in the context of EBMUD’s planning efforts.

Section 2, “CEQA Requirements Regarding Project Impacts”, describes the requirements under the California Environmental Quality Act (CEQA) regarding Project impacts.

Section 3, “Findings Regarding Independent Review and Judgment”, contains the findings regarding the independent review and judgment of the Board of Directors.

Section 4, “Findings Regarding the Project”, contains the findings regarding new potential significant impacts resulting from the proposed changes to the Project. Section 4.1 contains the Board’s finding regarding new potentially significant impacts that are mitigated to a less than significant level.

The findings presented here also summarize the applicable mitigation measures set forth in the Draft Supplemental EIR and agreed to by the District or incorporated into the Project. The mitigation measures are summarized below for convenience, but the summary is not intended to change any aspects of the complete text of the mitigation measures described in the Final Supplemental EIR and adopted by the District.

#### **1.1 The Modifications to the Project**

##### **A. Project Location**

Estates Reservoir is located on a 6.7 acre parcel of land on the south side of 6317 Estates Drive (between Moraga Road and Park Boulevard) in the City of Oakland. The reservoir is situated on the western slope of a ridge west of Highway 13. There are approximately twelve



home sites that overlook the reservoir site. Existing bushes along with pine, redwood, and eucalyptus trees line the Estates Drive perimeter. It is within this perimeter area that the proposed modifications to the Project will be implemented. **Figure S-1** also shows the location of Estates Reservoir, Montclair Pumping Plant and the nearby Dingee Reservoir as well as the major travel routes and proximity to the Warren Freeway (State Highway 13).

## **B. Description of Project Modifications**

The Supplemental EIR focuses specifically on impacts and mitigations related to two specific modifications to the Project as described in the 2010 EIR.

The first modification relates to the relocation of the improved path on EBMUD property. The path as contemplated under the 2010 EIR was to be a perimeter path running along the shoulder of Estates Drive, connecting to an existing unimproved path along the fence line at two points. This perimeter path was to be separated from Estates Drive by a low rustic wooden fence. In order to meet requirements of the Americans with Disabilities Act (ADA) with the least number of environmental and construction-related impacts, the new perimeter path will be relocated inward away from the shoulder of the Estates Drive and the low rustic wooden fence path component will only be built at the path access points.

The second modification relates to the perimeter landscaping to remove 22 trees. The 2010 EIR did not contemplate the removal of trees from the perimeter of the Project site. The purpose of the removal of these trees is explained in section C, below.

Additionally, the Supplemental EIR modifies the Project Mitigation Measures in order to move the installation of an interpretive sign from Mitigation Measure 3.2-1, "Visual Quality" to the more proper Mitigation Measure 3.5-1, "Cultural Resources," reflecting the fact that the purpose of the installation of the sign is to mitigate the impacts of the removal of the original Estates Reservoir roof, a historical resource. Though the contents of the sign were described in general terms in the 2010 EIR, its location was not specified. The District has decided to place the sign at the end of the improved path, inside the fence line so as not to attract vandals. Though the location of the sign is not technically a modification of the Project, the Supplemental EIR describes this location in order to provide clarity within the context of project modifications as described.

## **C. Needs and Objectives of the Modifications to the Project**

The relocation of the perimeter path is required to provide wheel chair access in order to comply with the ADA. ADA requirements include limiting path grades to not exceed 5.0% percent and installing a 4-foot minimum path width. As a result, locating an ADA-compliant path along the edge of Estates Drive would either require relocating existing utilities on EBMUD property, such as street light poles, or perform extensive grading that would require removal of up to 20 healthy trees to avoid relocating these utilities. The preferred option to relocate the path to the interior property will not require relocation of utilities, and will require the removal of only three trees. Furthermore, installing a low rustic wooden fence along the shoulder of Estates Drive without an adjacent perimeter path will limit lateral movement across Estates Drive by pedestrians who choose to use the unimproved

path along the Estates Drive shoulder, essentially forcing them to walk on the street and causing pedestrian safety concerns. The length of the low, rustic wooden fence will be reduced to locations at the two access points to the perimeter path to improve safety at those points. Therefore, the relocation of the perimeter path meets the objectives of compliance with the ADA while providing for public safety.

The removal of 22 trees, including the tree trees along the improved path, is required in order to address public safety concerns and the overall health of the tree canopy. During the creation of a Landscaping Plan under Mitigation Measure 3.2-2 a tree assessment was performed by Royston Hanamoto Ally Abey (RHAA) in order to determine the condition of the trees in the context of health, safety and future management. The tree assessment identified 54 of 108 trees surveyed that should be removed based on their health, threat to public safety or negative impacts on the health of other trees. The trees that were recommended for removal in the study were also reviewed by the City of Oakland's arborist and a private scientist hired by a neighbor to the reservoir. After considering the RHAA study and the recommendations of both the City arborist and private scientist, the District has recommended the removal of 22 trees. Removal of the remaining 32 trees can be deferred without significant impact on the health of the remaining trees. The removal of these 32 trees is not part of the Project, and no determination has been made as to whether the trees will be removed in the future.

## **2.0 CEQA Requirements Regarding Project Impacts**

The California Environmental Quality Act (CEQA), Public Resources Code, Section 21000 et seq., requires written findings of project impacts, pursuant to Section 21081. Regarding these findings, CEQA Guidelines, Title 14, California Code of Regulations (CEQA Guidelines), Section 15091, states the following:

- a. No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rational for each finding. The possible findings are independently reviewed and analyzed in the Final EIR prior to taking any final Project action.
  - 1) Changes or alterations have been required in, or incorporated into, the project, which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.
  - 2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such agency or can and should be adopted by such other agency.
  - 3) Specific economic, legal, social, technological, or other considerations including provision of employment opportunities for highly trained workers make infeasible the mitigation measures or project alternative identified in the Final EIR.
- b. The findings required by subsection (a) shall be supported by substantial evidence in the record.

- c. The finding in subdivision (a) (2) shall not be made if the agency making the finding has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives. The finding in subsection (a) (3) shall describe the specific reasons for rejecting identified mitigation measures and project alternatives.
- d. When making the findings required in subdivision (a) (1), the agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to avoid or substantially lessen significant environmental effects. These measures must be fully enforceable through permit conditions, agreements, or other measures.
- e. The public agency shall specify the location and custodian of the documents or other materials which constitute the record of the proceedings upon which its decision is based.
- f. A statement made pursuant to Section 15093 does not substitute for the findings required by this section.

Additionally, CEQA Guidelines Section 15163 states the following:

- a. The lead or responsible agency may choose to prepare a supplement to an EIR rather than a subsequent EIR if:
  - 1) Any of the conditions described in Section 15162 would require the preparation of a subsequent EIR, and
  - 2) Only minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation.
  - 3) The supplement to the EIR need contain only the information necessary to make the previous EIR adequate for the project as revised.
- c. A supplement to an EIR shall be given the same kind of notice and public review as is given to a draft EIR under Section 15087.
- d. A supplement to an EIR may be circulated by itself without recirculating the previous draft or final EIR.
- e. When the agency decides whether to approve the project, the decision-making body shall consider the previous EIR as revised by the supplemental EIR. A finding under Section 15091 shall be made for each significant effect shown in the previous EIR as revised.

The changes or alterations referred to in State law, as quoted above, may be mitigation measures, alternatives to the project or changes to the project by the project proponent. The Final Supplemental EIR identifies modifications to the Project and its mitigation measures that are proposed to minimize potential significant environmental effects of the project or to mitigate other potential effects of the Project that may not be, strictly speaking, environmental effects under CEQA. These modified mitigation measures will be incorporated into the design of the

Project. Revisions to the Mitigation Monitoring and Reporting Plan (MMRP, see Exhibit B) are also adopted by the EBMUD Board of Directors to ensure that all relevant mitigation measures as modified by the Final Supplemental EIR and these Findings will be implemented.

### **3.0 Findings Regarding Independent Review and Judgment**

Each member of the EBMUD Board of Directors was provided with access to a complete electronic copy of the Draft Supplemental EIR in September 2013 and of the Final Supplemental EIR for the Project in November 2013. The Board hereby finds that the Final Supplemental EIR, which includes the Draft Supplemental EIR, reflects the Board's own independent judgment, and that the Board has independently reviewed and analyzed the Final Supplemental EIR prior to taking any final action with respect to the Project.

### **4.0 Findings Regarding the Project**

Having reviewed and considered the information contained in the Final Supplemental EIR and the modifications to the MMRP, the EBMUD Board of Directors hereby adopts the following findings regarding new potentially significant impacts arising from the proposed changes to the Project and mitigation measures. This exhibit does not attempt to describe the full analysis of each environmental impact contained in the Final Supplemental EIR. Instead, this exhibit provides a summary description of each new potential significant impact, describes the applicable mitigation measure or modifications to mitigation measures identified in the Final Supplemental EIR, and states the Board's findings on the significance of each impact after imposition of the adopted mitigation measures as modified. A full explanation of these environmental findings and conclusions can be found in the Final Supplemental EIR, which includes the Draft Supplemental EIR, and these findings hereby incorporate by reference the discussion and analysis in the Final Supplemental EIR supporting the Final Supplemental EIR's determinations regarding the impacts of modifications to the Project and its mitigation measures.

#### **4.1 Findings Regarding Significant Effects Mitigated to Less-Than-Significant Levels**

##### **A. Visual Quality**

1. Potentially Significant Impact 3.2-1: Short-term visual effects experienced from nearby areas during Project construction.

Findings: The removal of 22 trees could substantially degrade the short-term visual effects experienced from nearby areas if the trees are left onsite for a significant period of time. However, the implementation of a modification to Mitigation Measure 3.2-1 would reduce short-term visual effects experienced from nearby areas during Project construction to a *less-than-significant level*. See pages 3-2.14-15 of the Draft Supplemental EIR.

Facts in Support of Findings: The modification to Mitigation Measure 3.2-1 is hereby adopted and will be implemented as set forth in the MMRP. Modifications to this measure commit EBMUD to chip removed trees immediately after their removal and to

spread the resulting woodchips on site no thicker than 6 inches in any area. Any surplus chips shall be disposed of offsite.

**B. Biological Resources**

1. Potentially Significant Impact 3.4-1: The Project would result in removal or damage to trees considered protected.

Findings: Under the 2010 EIR, a “protected tree” for the purposes of the Project was defined as a tree protected under the Oakland Tree Ordinance. Under the proposed changes to the project, 22 trees will be removed, 17 of which are considered “protected trees” under the Oakland Tree Ordinance. This is a *potentially significant impact*. However, modifications to Mitigation Measure 3.4-1, based on the Oakland Tree Ordinance, would reduce the potential for impacts associated with loss of or damage to protected trees to *less than significant with mitigation incorporated*. See pages 3-3.6-7 of the Draft Supplemental EIR.

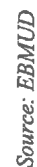
Facts in Support of Findings: The modifications to Mitigation Measure 3.4-1 are hereby adopted and will be implemented as set forth in the MMRP. These modifications commit EBMUD to replace any removed Coast Redwood, Coast Live Oak, Madrone, California Buckeye or California Bay Laurel at a 3:1 ratio.

2. Potentially Significant Impact 3.4-2: The Project would result in substantial interference with movement of any native resident or migratory fish or wildlife species or with established migration or dispersal corridors.

Findings: The 2010 EIR recognized that the removal of trees and shrubs could have a potentially significant impact on nesting raptors and special status birds, though it concluded that the impact would be limited because all large, mature trees on the site would remain. The 2010 EIR nevertheless set forth Mitigation Measure 3.4-2 in order to reduce any impacts to migratory species to a less than significant level.

No raptor or special status bird nests were observed during a habitat survey conducted in August 2013. Nevertheless, under the criteria set forth in the 2010 EIR, the removal of the 22 trees may have the potential to cause substantial interference with movement of any native resident or migratory fish or wildlife species or with established migration or dispersal corridors. However, the potential impacts are reduced to *less than significant with mitigation incorporated* by the implementation of Mitigation Measure 3.4-2.

Facts in Support of Findings: The Board reaffirms its commitment to the implementation of Mitigation Measures 3.4-2, which commits EBMUD to perform preconstruction surveys determine if any special status or raptor bird nests are present, to avoid the disturbance of active nests of special status birds or raptors and to create a no-disturbance buffer around active nests during the breeding season.



### Figure S-1

## **REVISED ESTATES RESERVOIR REPLACEMENT MITIGATION MONITORING AND REPORTING PROGRAM**

This mitigation monitoring and reporting program includes all mitigation measures identified in the January 2010 EIR along with the new or revised measures identified in this Supplemental EIR. The attached table presents the MMRP for the Revised Project. A ~~strike through~~ text indicates that text has been deleted from the 2010 EIR. Text that has been added to the 2010 EIR is presented as underlined.

**REVISED ESTATES RESERVOIR REPLACEMENT PROJECT  
MITIGATION MONITORING AND REPORTING PROGRAM**

| MITIGATION MEASURES   | Impact being Mitigated  | Timing Requirement            | Responsibility for Implementation | Responsibility for Monitoring                                     | Design Phase Check Box  | Construction Phase Check Box                | Post-Construction Phase Check Box           |
|---|---|-------------------------------|-----------------------------------|---|---|---|---|
| <p><b>VISUAL QUALITY</b></p> <p>Measure 3.2-1: EBMUD will require the contractor to ensure that the construction site is clean by storing building materials and equipment within the proposed staging areas in the reservoir bowl, or in areas removed from public view, and by frequent removal of construction debris that is not to be reused on-site. Construction planning shall be organized to minimize equipment storage on-site.</p> <p>The contractor will be required to screen construction activity from residences/properties immediately adjacent to the reservoir site. This privacy screening shall be sufficient to obstruct views into resident's properties from the construction area, and from residences into the construction site. Temporary privacy screening shall be removed once project construction is completed.</p> <p>Removed trees will be chipped immediately upon removal. Woodchips will spread on site no thicker than 6 inches in any area. Any surplus chips shall be disposed of offsite.</p> <p>EBMUD will also use temporary interpretive materials to explain the need for the Project during construction, in attractive and simple graphic displays. Temporary signage locations could include, but would not be limited to, areas near the Estates Reservoir entry, along Estates Drive and the residentially developed segments of the truck route. Requested interpretive materials at the reservoir site would include an overview of the history of the reservoir, description and visit of the Reservoir design and reference to where more detailed active information is located, including a video of the active fountains and HALLS-style documentation. Permanent signage design will be finalized in the Project Design phase in conjunction with the landscape plan. <i>This section on interpretive materials has been moved to Cultural Resources.</i></p> <p>Measure 3.2-2: A landscape plan for the Estates Reservoir Replacement Project will be prepared during the Design Phase that will be consistent with the RHAA Concept Design Process and Recommendations Report 2008, and ensure that areas disturbed by construction are re-graded and planted to result in landforms that are compatible with existing site topography and landscaping, as well as the neighborhood setting:</p> <ul style="list-style-type: none"> <li>Annual vegetation/tree pruning, consistent with City of Oakland Fire Department Fire Abatement Regulations, will continue to be implemented.</li> <li>EBMUD will coordinate with neighborhood representatives regarding the placement of new plantings to effect screening, and this input will be incorporated into the Final Landscape Plan.</li> <li>The contractor shall be required to warrant landscape plantings for one year after project completion.</li> <li>EBMUD will ensure that the contractor restores graded, disturbed areas to a natural-appearing landform.</li> <li>Site improvements will include aesthetic/architectural treatment where facilities are located near to, or are visible from, public trails and residences, namely: <ul style="list-style-type: none"> <li>- Creating a new drainage feature with rocks and stones, around the reservoir valve pit at the base of the excavated basin.</li> <li>- Improving the existing trail on EBMUD property, along Estates Drive.</li> <li>- Constructing a low-raster, wooden fence along Estates Drive.</li> <li>- Constructing a parking area for EBMUD equipment and staff vehicles in the valve pit.</li> <li>- Replacing the existing six foot high perimeter chain link fence with two inch black webbing with an eight-foot high fence with one-inch webbing, in</li> </ul> </li> </ul> | Project construction could generate visual impacts experienced in the short-term from nearby areas during construction. | During construction           | EBMUD construction contractor     | EBMUD Construction Inspector (CI) and Regulatory Compliance (RCO) | <p>Spec. # _____</p> <p>Drawing # _____</p> <p>Completed by _____</p> <p>Date _____</p> | <p>Completed by _____</p> <p>Date _____</p> | <p>Completed by _____</p> <p>Date _____</p> |
| <p>Project construction could alter the site's appearance and long-term visual effects.</p>   | During construction   | During construction           | EBMUD landscape contractor        | EBMUD Construction Inspector and Regulatory Compliance Office     | <p>Spec. # _____</p> <p>Drawing # _____</p> <p>Completed by _____</p> <p>Date _____</p> | <p>Completed by _____</p> <p>Date _____</p> | <p>Completed by _____</p> <p>Date _____</p> |
| <p>Annual vegetation/tree pruning, consistent with City of Oakland Fire Department Fire Abatement Regulations, will continue to be implemented.</p> <p>EBMUD will coordinate with neighborhood representatives regarding the placement of new plantings to effect screening, and this input will be incorporated into the Final Landscape Plan.</p> <p>The contractor shall be required to warrant landscape plantings for one year after project completion.</p> <p>EBMUD will ensure that the contractor restores graded, disturbed areas to a natural-appearing landform.</p> <p>Site improvements will include aesthetic/architectural treatment where facilities are located near to, or are visible from, public trails and residences, namely:</p> <ul style="list-style-type: none"> <li>- Creating a new drainage feature with rocks and stones, around the reservoir valve pit at the base of the excavated basin.</li> <li>- Improving the existing trail on EBMUD property, along Estates Drive.</li> <li>- Constructing a low-raster, wooden fence along Estates Drive.</li> <li>- Constructing a parking area for EBMUD equipment and staff vehicles in the valve pit.</li> <li>- Replacing the existing six foot high perimeter chain link fence with two inch black webbing with an eight-foot high fence with one-inch webbing, in</li> </ul>  |   | Annually                      | Maintenance (M)                   | Regulatory Compliance Office/Maintenance                          |   |   |   |
|   |   | During Design phase           | EBMUD Design/Planning             | EBMUD Construction Phase Manager/Inspector                        |   |   |   |
|   |   | After construction            | General/Landscape contractor      | Construction Inspector and Regulatory Compliance Office           |   |   |   |
|   |   | During construction           | Contractor                        | Construction Inspector  |   |   |   |
|   |   | Design and Construction Phase | EBMUD Design /Contractor          | Construction Inspector  |   |   |   |



**REVISED ESTATES RESERVOIR REPLACEMENT PROJECT  
MITIGATION MONITORING AND REPORTING PROGRAM**

| Mitigation Measures   | Impact being Mitigated   | Timing Requirement  | Responsibility for Implementation                       | Responsibility for Monitoring                          | Design Phase Check Box                      | Construction Phase Check Box | Post-Construction Phase Check Box |
|---|--|---------------------|---|--|---|------------------------------|-----------------------------------|
| the same color (black) and at the same location, except for a 130 foot length in the vicinity of the light curve on Estates Drive, where it will be moved inward by about two feet.   |  |                     |   |  |   |                              |                                   |
| <b>Measure 3.2-4:</b> Implement Measures 3.3-2, as detailed above.  | Project construction could affect views from the surrounding area, including public roadways, public trails and open space and residential areas |                     | EBMUD general and landscape contractor                  | EBMUD Regulatory Compliance                            | Spec #<br>Drawing #<br>Completed by<br>Date | Completed by<br>Date         | Completed by<br>Date              |
| <b>Measure 3.2-5:</b> To the extent possible, EBMUD will ensure that stationary lighting used during nighttime construction (if required) is of limited duration and shielded and directed downward or oriented such that little or no light is directly visible from Estates Drive. No permanent nighttime lights will be constructed on the site.   | Project construction could generate new sources of light and glare.  | During construction | EBMUD contractor  | EBMUD Construction Inspector and Regulatory Compliance | Spec #<br>Drawing #<br>Completed by<br>Date | Completed by<br>Date         | Completed by<br>Date              |
| <b>GEOLOGY, SOILS AND SEISMICITY</b>  |  |                     |   |  |   |                              |                                   |
| <b>Measure 3.3-1:</b> During the design phase, EBMUD will perform geotechnical evaluations and, if required, conduct site specific geotechnical investigation/exploration/tearing to reduce or eliminate potential slope hazards. Design and construction specifications will incorporate the recommendations from the geotechnical evaluation for any slope stabilization, which may include some of the following measures, although this list is not exclusive:<br><ul style="list-style-type: none"> <li>▪ Appropriate slope inclination</li> <li>▪ Slope terracing</li> <li>▪ Fill compaction</li> <li>▪ Soil reinforcement</li> <li>▪ Surface and subsurface drainage facilities</li> <li>▪ Retaining walls</li> <li>▪ Buttresses</li> <li>▪ Erosion control measures</li> <li>- Sub drain system</li> <li>- Soil nails or anchors</li> </ul> | New slopes associated with reservoir construction may be potentially unstable.   | During Design Phase | EBMUD Materials Engineering and construction contractor | EBMUD Construction Inspector and Regulatory Compliance | Spec #<br>Drawing #<br>Completed by<br>Date | Completed by<br>Date         | Completed by<br>Date              |
| <b>Measure 3.3-2:</b> During the design phase, EBMUD will perform a geotechnical evaluation and, if required, conduct site specific geotechnical investigations and evaluations to identify the potential for secondary ground failure hazards (i.e., seismically-induced settlement). The geotechnical evaluation will provide recommendations for applicable settlement mitigation measures to be incorporated in the design and construction specifications for the replacement tanks.   | Facility damage or service interruptions resulting from strong ground shaking.   | During Design Phase | EBMUD Materials Engineering                             | EBMUD Regulatory Compliance                            | Spec #<br>Drawing #<br>Completed by<br>Date | Completed by<br>Date         | Completed by<br>Date              |

**REVISED ESTATES RESERVOIR REPLACEMENT PROJECT  
MITIGATION MONITORING AND REPORTING PROGRAM**

| Mitigation Measures   | Impact being Mitigated  | Timing Requirement                | Responsibility for Implementation | Responsibility for Monitoring                          | Design Phase<br>Check Box                   | Construction Phase<br>Check Box | Post-Construction Phase<br>Check Box |
|---|---|-----------------------------------|-----------------------------------|--|---|---------------------------------|--------------------------------------|
|   |   |                                   |                                   |  | Spec #<br>Drawing #<br>Completed by<br>Date | Completed by<br>Date            | Completed by<br>Date                 |
| <p><b>Measure 3.3-3a:</b> The tank structures will be supported by 1) select engineering fill founded on bedrock after removal of the soils above the bedrock, or 2) cast-in-place concrete pier foundations obtaining vertical support from the bedrock without removing the overlying soils. These measures will reduce potential settlement to within acceptable limits.</p> <p><b>Measure 3.3-3b:</b> EBMUD will include in the contract specifications that any fill will be selected, placed, compacted, and inspected in accordance with plans and specifications prepared by a licensed professional engineer.</p>  | Facility damage resulting from settlement or uplift caused by compressible soils.                               | During construction               | EBMUD contractor                  | EBMUD Construction Inspector and Regulatory Compliance |   |                                 |                                      |
| <p><b>Measure 3.3-4:</b> Grading for the reservoir construction will be performed in compliance with the Stormwater Pollution Prevention Plan to control/manage soil erosion and run-off. During grading construction, sprinkling will be performed regularly to control dust at the site. Measures for winterization, including hydro-mulching, straw bale installation, and/or other measures will be performed to minimize soil erosion during the rainy seasons.</p>  | Exposure of soils to erosion after removal of the concrete lining within the existing reservoir basin.          | During construction               | EBMUD contractor                  | EBMUD Construction Inspector and Regulatory Compliance |   |                                 |                                      |
| <p><b>Measure 3.3-5:</b> Due to limited construction working space at the site, stockpiling of imported or locally excavated materials will be minimized. In general, the imported materials will be placed directly at the intended fill areas and the locally excavated materials not proposed for re-use on-site will be off hauled shortly after excavation.</p>  | Stockpiled materials from import or excavation of the existing dam could cause localized instability of slopes. | During construction               | EBMUD contractor                  | EBMUD Construction Inspector and Regulatory Compliance |   |                                 |                                      |
| <p><b>BIOLOGICAL RESOURCES</b></p> <p><b>Measure 3.4-1:</b> EBMUD will develop and implement a five-year tree monitoring program for any protected trees lost or damaged by project construction. Appropriate performance standards may include, but are not limited to a not less than 75 percent survival rate of replacement tree plantings and a requirement that trees be able to be self-sustaining at the end of five years.</p> <p>EBMUD will replace all removed protected trees in accordance with the mitigations set forth in the Oakland Tree Ordinance.</p> <ul style="list-style-type: none"> <li>Replacement trees shall not be required for the removal of nonnative species, or for the removal of trees for the benefit of the remaining trees.</li> <li>Replacement tree species shall consist of <i>Sequoia sempervirens</i> (Coast Redwood), <i>Quercus agrifolia</i> (Coast Live Oak), <i>Angulus merrisii</i> (Madrone), <i>Ascalus californica</i> (California Buckeye) or <i>Umbellularia californica</i> (California Bay Laurel).</li> <li>Replacement trees shall be planted on the site with fifteen (15) gallon size trees and at least a 3:1 replacement ratio.</li> </ul> | Loss of or damage to protected trees.   | For five years after construction | EBMUD Maintenance.                | EBMUD Asset Management and Regulatory Compliance       |   |                                 |                                      |
| <p><b>Measure 3.4-2:</b></p> <ul style="list-style-type: none"> <li>EBMUD will avoid disturbing active nests of special-status nesting birds by performing preconstruction surveys and creating no-disturbance buffers. If construction activities (i.e., ground clearing and grading, including removal of trees or shrubs) are scheduled to occur during the non-breeding season</li> </ul>   | Disturbances to nesting raptors or special status nesting birds.  | Prior to construction             | EBMUD Biologist                   | EBMUD Construction Inspector and Regulatory Compliance |   |                                 |                                      |

**REVISED ESTATES RESERVOIR REPLACEMENT PROJECT  
MITIGATION MONITORING AND REPORTING PROGRAM**

| Mitigation Measures<br>(September 1 through January 31), no mitigation is required.   | Impact being Mitigated  | Timing Requirement                                 | Responsibility for Implementation          | Responsibility for Monitoring               | Design Phase Check Box   | Construction Phase Check Box     | Post-Construction Phase Check Box |
|---|---|--|--|---|--|----------------------------------|-----------------------------------|
| <ul style="list-style-type: none"> <li>If construction activities are scheduled to occur during the breeding season (February 1 through August 31), EBMUD will implement the following measure: to avoid potential adverse effects on nesting raptors and other special-status birds:</li> <li>EBMUD will retain a qualified wildlife biologist to conduct preconstruction surveys of all potential nesting habitats within 500 feet of construction activities where access is available.</li> <li>If active nests are found during preconstruction surveys, EBMUD will create a no-disturbance buffer (acceptable in size to the CDFG) around active raptor nests and nests of other special-status birds during the breeding season, or until it is determined that all young have fledged. The size of these buffer zones and types of construction activities restricted in these areas will be based on existing noise and human disturbance levels at the Estates Reservoir project site. Nests initiated during construction are presumed to be unaffected by the activities occurring, and no buffer would be necessary.</li> <li>If preconstruction surveys indicate that nests are inactive or potential habitat is unoccupied during the construction period, no further mitigation is required. Trees and shrubs within the construction footprint that have been determined to be unoccupied by special-status birds or that are located outside the no-disturbance buffer for active nests may be removed.</li> </ul>  |   |  |  |   | Completed by _____<br>Date _____                                     |                                  |                                   |
| <p><b>CULTURAL RESOURCES</b></p> <p>Measure 3.5-1: A Historic American Landscapes Survey Historic American Building Survey/Historic American Engineering Record style documentation of the Estates Reservoir roof designed by Robert Royston will be prepared. The level of documentation will be similar to that described in Historic American Landscapes Survey Historic American Building Survey documentation level II, which includes at a minimum measured drawings such as as-builts or original design plans, historic photographs, if available, and current large-format photographs that record significant landscape and architectural features, including the physical context of the resource, of significant architectural design features, and a written history and description. The documentation will be submitted to the Oakland Heritage Alliance, the Oakland Historical Archives, the Oakland Cultural Heritage Survey staff within the Planning and Zoning Division of the City of Oakland, and the UC Berkeley Historical Archives. The intent is to reduce the adverse effect associated with loss of historical information; it will not prevent the physical loss of the resource and a significant and unavoidable impact will occur.</p> <p>Permanent interpretive materials at the reservoir site would include an overview of the history of the reservoir, description and visual of the Royston design and reference to where more detailed archive information is located, including a video of the active fountains and HALLS style documentation. Permanent signage design will be finalized in the Project Design phase in conjunction with the landscape plan. -- Rebased from Measure 3.2-1.</p> | Substantial adverse change to the historic significance of Estates Reservoir roof. Demolition of Estates Reservoir roof would permanently eliminate a historic resource recommended as eligible for listing on the California Register of Historic Resources. | During the Design phase and prior to construction. | EBMUD Planning and architectural historian | EBMUD Regulatory Compliance                 | Spec. # _____<br>Drawing # _____<br>Completed by _____<br>Date _____ | Completed by _____<br>Date _____ | Completed by _____<br>Date _____  |
| Measure 3.5-2: If deposits of prehistoric or historic archeological materials are encountered during Project activities, all work within 25 feet of the discovery will be   | Substantial adverse changes to the significance of currently  | During construction                                | EBMUD construction contractor and          | EBMUD Construction Inspector and Regulatory | Spec. # _____  | Completed by _____               | Completed by _____                |

**REVISED ESTATES RESERVOIR REPLACEMENT PROJECT  
MITIGATION MONITORING AND REPORTING PROGRAM**

| Mitigation Measures   | Impact being Mitigated or<br>unknown historical or<br>prehistorical resources,<br>including unique archaeological<br>resources.   | Timing<br>Requirement | Responsibility for<br>Implementation<br>Archaeologist          | Responsibility<br>for<br>Monitoring<br>Compliance      | Design Phase<br>Check Box |              |              | Construction<br>Phase<br>Check Box |      |              | Post-Construction<br>Phase<br>Check Box |              |      |
|---|---|-----------------------|--|--|---------------------------|--------------|--------------|------------------------------------|------|--------------|---|--------------|------|
|   |   |                       |  |  | Drawing #                 | Completed by | Date         | Completed by                       | Date | Completed by | Date                                    | Completed by | Date |
| <p><b>Stopped and a qualified archaeologist meeting federal criteria under 36 CFR 61 will be contacted to assess the deposit(s) and make recommendations.</b></p> <p>While deposits of prehistoric or historic archaeological materials should be avoided by Project activities, if the deposits cannot be avoided, they will be evaluated for their potential historic significance. If the deposits are recommended to be non-significant, avoidance is not necessary. If the deposits are determined to be potentially significant, they will be avoided. If avoidance is not feasible, Project impacts will be mitigated in accordance with the recommendations of the evaluating archaeologist and CEQA Guidelines §15.26.4 (b) (3) (C), which require development and implementation of a data recovery plan that would include recommendations for the treatment of the discovered archaeological materials. The data recovery plan will be submitted to EBMUD for review and approval. Upon approval and completion of the data recovery program, Project construction activity within the area of the find may resume, and the archaeologist will prepare a report documenting the methods and findings. The report will be submitted to EBMUD. Once the report is reviewed and approved by EBMUD, a copy of the report will be submitted to the Northwest Information Center.</p> <p><b>Measure 3.5-3.</b> Section 7050.5(b) of the California Health and Safety Code will be implemented in the event that human remains, or possible human remains, are located during project related construction excavation. In the event of discovery or recognition of any human remains in any location other than a dedicated cemetery, there shall be no further disturbance of the site or any nearby area suspected to overlie adjacent remains until the County Coroner has investigated the circumstances, manner and cause of death in accordance with Chapter 10 of the Government Code and determined that the remains are not subject to the provisions of Section 27492 of the Government Code, and the recommendations concerning treatment and disposition of the remains have been communicated to the person responsible for the excavation, per Section 5097.98 of the Public Resources Code. If the remains are recognized as of Native American origin, the County Coroner shall contact the Native American Heritage Commission within 24 hours, to provide guidance as to ultimate disposition.</p> | Damage to previously unidentified human remains.  | During construction   | EBMUD construction contractor and archaeologist                | EBMUD Construction Inspector and Regulatory Compliance | Spec #                    | Drawing #    | Completed by | Completed by                       | Date | Completed by | Date                                    | Completed by | Date |
| <p><b>TRAFFIC AND TRAFFIC</b></p> <p><b>Measure 3.6-1:</b> EBMUD contract specifications shall require preparation and implementation of a Traffic Management Plan, and collaboration with the City of Oakland and California Highway patrol, as appropriate. The Plan will include the following elements:</p> <ul style="list-style-type: none"> <li>The work hours for each phase of project construction, the process for notifying residents of construction activity, and the means for people to report construction-related problems.</li> <li>A haul route, based on the route shown on Figure 3.6-5 that shall be provided to all trucks serving the site during the construction period. Should the recommended one-way truck access route not be implemented and trucks routed to Estates Drive south of the project site, there is sufficient capacity on Estates Drive south of the project site to accommodate additional traffic volumes associated with the peak construction period. However, a flagger would be required at the Estates Drive/Park Boulevard intersection to direct traffic through that intersection, with an alternative routing plan.</li> <li>Flaggers at the Project site entrance and at the curve on Estates Drive immediately west of the Project site to improve traffic safety during regular construction hours.</li> <li>Flaggers at the Moraga Avenue/Estates Drive intersection during regular</li> </ul>  | The construction phase of the proposed Project would generate short-term vehicle trips by trucks and construction workers and would represent an increased traffic load on the roadways surrounding the Project site. | Prior to construction | EBMUD construction contractor and EBMUD construction inspector | EBMUD Design Phase Manager                             | Spec #                    | Drawing #    | Completed by | Completed by                       | Date | Completed by | Date                                    | Completed by | Date |

**REVISED ESTATES RESERVOIR REPLACEMENT PROJECT  
MITIGATION MONITORING AND REPORTING PROGRAM**

| Mitigation Measures   | Impact being Mitigated   | Timing Requirement         | Responsibility for Implementation                         | Responsibility for Monitoring                                 | Design Phase Check Box  | Construction Phase Check Box             | Post-Construction Phase Check Box        |
|---|--|----------------------------|---|---|---|--|--|
| <p>construction hours.</p> <ul style="list-style-type: none"> <li>A peak-period flagger (7:00am to 9:00am, and 4:00pm to 6:00pm) at the La Salle Avenue/Moraga Avenue/ Mountain Boulevard intersection.</li> <li>Control and monitoring of construction vehicle movements through the enforcement of standard construction specifications by EBMUD on-site inspectors. Inbound trucks should be given priority over outbound trucks to minimize truck queuing on local streets.</li> <li>Signage on Estates Drive and La Salle Avenue warning motorists of the construction work ahead.</li> <li>Unimpeded through access to the Montclair Pumping Plant site at all times during reservoir construction.</li> <li>The Traffic Management Plan shall be enforced by EBMUD construction inspectors.</li> </ul> |  |                            |   |   |   |  |  |
| <p><b>Measure 3.6-1a: Implement Mitigation Measure 3.6-1. As noted above.</b></p>   | <p>The addition of traffic during the construction phase of The project would exacerbate an existing deficiency on La Salle Avenue, west of Trafalgar Place. Based on the CEQA significance criteria, this is considered a significant impact.</p>   | <p>During construction</p> | <p>EBMUD construction contractor and traffic engineer</p> | <p>EBMUD Construction Inspector and Regulatory Compliance</p> | <p>Spec # _____<br/>Drawing # _____<br/>Completed by _____<br/>Date _____</p> | <p>Completed by _____<br/>Date _____</p> | <p>Completed by _____<br/>Date _____</p> |
| <p><b>Measure 3.6-1b: Implement Mitigation Measure 3.6-1. As noted above.</b></p>   | <p>The addition of traffic during the construction phase of the project would exacerbate an existing deficiency at the SR 13/Moraga Avenue/Estates Drive intersection. Construction traffic would also increase traffic on Estates Drive in locations where the roadway is not wide enough to support two-way travel, potentially creating a traffic hazard. An inadequate turning radius at the La Salle Avenue/Moraga Avenue intersection does not allow conflict free (from opposing vehicles) truck turning movements. Construction related traffic could create potential conflicts between transit buses, pedestrians, and bicyclists. Based on the significance criteria, these impacts are considered significant.</p> | <p>During construction</p> | <p>EBMUD construction contractor and traffic engineer</p> | <p>Construction Inspector and EBMUD Regulatory Compliance</p> | <p>Spec # _____<br/>Drawing # _____<br/>Completed by _____<br/>Date _____</p> | <p>Completed by _____<br/>Date _____</p> | <p>Completed by _____<br/>Date _____</p> |
| <p><b>Measure 3.6-2: EBMUD shall provide designated on-site parking areas to accommodate all Project-related parking demand. In the earlier construction phases when there may not be sufficient space on-site to accommodate all parking demand, EBMUD's contractor will secure private off-site parking and provide shuttles to bring</b></p>   | <p>Project construction would generate a demand for parking spaces to accommodate worker</p>   | <p>During construction</p> | <p>EBMUD construction contractor and traffic engineer</p> | <p>EBMUD Construction Inspector and Regulatory Compliance</p> | <p>Spec # _____<br/>Drawing # _____</p>                                       | <p>Completed by _____<br/>Date _____</p> | <p>Completed by _____<br/>Date _____</p> |

**REVISED ESTATES RESERVOIR REPLACEMENT PROJECT  
MITIGATION MONITORING AND REPORTING PROGRAM**

| Mitigation Measures<br>workers to and from the Project site.  | Impact being Mitigated<br>vehicles  | Timing<br>Requirement                  | Responsibility for<br>Implementation                      | Responsibility<br>for<br>Monitoring                           | Design Phase<br>Check Box   | Construction<br>Phase<br>Check Box       | Post-Construction<br>Phase<br>Check Box  |
|---|---|--|---|---|---|--|--|
| <p><b>Measure 3.6-3:</b> EBMUD contract documents will require that road conditions shall be documented for all routes that would be used by construction vehicles both before and after Project construction.</p>  | <p>Project construction would cause increased wear-and-tear on roadways used by construction vehicles to access the Project site.</p>   | <p>Prior to and after construction</p> | <p>EBMUD construction contractor and traffic engineer</p> | <p>EBMUD Construction Inspector and Regulatory Compliance</p> | <p>Completed by _____<br/>Date _____<br/>Spec # _____<br/>Drawing # _____<br/>Completed by _____<br/>Date _____</p> | <p>Completed by _____<br/>Date _____</p> | <p>Completed by _____<br/>Date _____</p> |
| <p><b>AIR QUALITY</b></p> <p><b>Measure 3.7-2a:</b> The following diesel control measures will be incorporated by the District into contract specifications:</p> <ul style="list-style-type: none"> <li>To minimize potential diesel odor impacts on nearby receptors (pursuant to BAAQMD Regulation 1, Rule 301, Nuisance), construction equipment will be properly tuned. A schedule of tune-ups will be developed and performed for all equipment operating within the project area, particularly for haul and delivery trucks. A log of required tune-ups will be maintained and a copy of the log will be submitted to EBMUD for review every 2,000 service hours.</li> <li>Fixed temporary sources of air emissions (such as portable pumps, compressors, generators, etc.) will be electrically powered unless the contractor submits documentation and receives approval from EBMUD that the use of such equipment is not practical, feasible, or available (generally contingent upon power line proximity, capacity, and accessibility). California ultra-low sulfur diesel fuel with maximum sulfur content of 15 ppm by weight, or an approved alternative fuel, will be used for onsite fixed equipment not using line power. If sufficient power line capacity is available, EBMUD will endeavor to rent (via the contractor) an electrically-powered concrete crusher in lieu of a diesel powered unit. This will eliminate emissions associated with combustion of approximately 1,800 gallons of diesel fuel.</li> <li>To minimize diesel emission impacts, construction contracts will require off-road compression ignition equipment operators to reduce unnecessary idling with a two (2) minute time limit.</li> <li>On-road and off-road material hauling vehicles will shut off engines while queuing for loading and unloading for time periods longer than two (2) minutes.</li> <li>Off-road diesel equipment will be fitted with verified diesel emission control systems (e.g., diesel oxidation catalysts) to the extent reasonably and economically feasible.</li> <li>Utilize alternative fuel equipment (i.e., compressed or liquefied natural gas, biodiesel, electric) to the extent reasonably and economically feasible.</li> </ul> <p><b>Measure 3.7-2b:</b> To control emissions of particulate matter, the Project shall implement the following fugitive dust and particulate matter emissions control measures suggested by the BAAQMD CEQA Guidelines as applicable (BAAQMD 1999).</p> | <p>The Project would have the potential to contribute to the already existing violation of air quality standards in the Project vicinity for PM<sub>10</sub> and PM<sub>2.5</sub>, primarily through fugitive dust emissions of PM<sub>10</sub> during demolition and construction, and from PM<sub>10</sub> and PM<sub>2.5</sub> emissions from diesel-powered construction equipment.</p> | <p>During construction</p>             | <p>EBMUD construction contractor</p>                      | <p>EBMUD Cf and RCO</p>                                       | <p>Spec # _____<br/>Drawing # _____<br/>Completed by _____<br/>Date _____</p>                                       | <p>Completed by _____<br/>Date _____</p> | <p>Completed by _____<br/>Date _____</p> |
| <p><b>Basic Dust Control Measures</b></p>   |   |  |   |   |   |  |  |

**REVISED ESTATES RESERVOIR REPLACEMENT PROJECT  
MITIGATION MONITORING AND REPORTING PROGRAM**

| Mitigation Measures  | Impact being Mitigated   | Timing Requirement | Responsibility for Implementation | Responsibility for Monitoring | Design Phase Check Box   | Construction Phase Check Box                | Post-Construction Phase Check Box           |
|--|--|--------------------|-----------------------------------|-------------------------------|--|---|---|
| <p>The following controls will be implemented at all construction sites:</p> <ul style="list-style-type: none"><li>Water and/or coarse rock all active construction areas as necessary and indicated by soil and air conditions;</li><li>Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard;</li><li>Pave or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites;</li><li>Sweep daily (with water sweepers) all paved access roads, parking areas and staging areas at construction sites; and</li><li>Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.</li><li>Suspend excavation and grading activity when sustained winds make reasonable dust control difficult to implement, e.g., for winds over 25 miles per hour.</li><li>Limit the area subject to excavation, grading, and other construction activity at any one time, as feasible.</li></ul>   |  |                    |                                   |                               |  |   |   |
| <p><b>Particulate Matter Emissions Control Measures</b></p> <p>In addition, the Project shall implement the following measures to reduce particulate matter emissions from diesel exhaust:</p> <ul style="list-style-type: none"><li>Grid power shall be used instead of diesel generators where it is feasible to connect to grid power (generally contingent upon power line proximity, capacity, and accessibility);</li><li>The Project specifications shall include 13 CCR Sections 2480 and 2485, which limit the idling of all diesel-fueled commercial vehicles (weighing over 10,000 pounds, both California- or non-California-based trucks) to 30 seconds at a school or 5 minutes at any location. In addition, the use of diesel auxiliary power systems and main engines shall be limited to 5 minutes: when within 100 feet of homes or schools while the driver is resting;</li><li>The Project specifications shall include 17 CCR Section 9311.5, Airborne Toxic Control Measure for Stationary Compression Ignition Engines, which specifies fuel and fuel additive requirements; emission standards for operation of any stationary, diesel-fueled, compression-ignition engines; and operation restrictions within 500 feet of school grounds when school is in session;</li><li>A schedule of low-emissions tune-ups shall be developed and such tune-ups shall be performed on all equipment, particularly for haul and delivery trucks; and</li><li>Low-sulfur (<math>\leq 15</math> ppm S) fuels shall be used in all stationary and mobile equipment.</li></ul> <p>Measure 3.7-3: Implement Measure 3.7-2a and 2b, as noted above.</p> | <p>The proposed Project would result in an incremental contribution to a cumulative effect for several criteria pollutants for which the San Francisco Bay region is in nonattainment under an applicable federal or state ambient air quality standard.</p> |                    |                                   |                               | <p>Spec # _____</p> <p>Drawing # _____</p> <p>Completed by _____</p> <p>Date _____</p> | <p>Completed by _____</p> <p>Date _____</p> | <p>Completed by _____</p> <p>Date _____</p> |
| <p>Measure 3.7-4: Implement Measure 3.7-2a and 2b, as noted above.</p>   | <p>The proposed Project would not expose sensitive receptors to</p>  |                    |                                   |                               | <p>Spec # _____</p>  | <p>Completed by _____</p>                   | <p>Completed by _____</p>                   |

**REVISED ESTATES RESERVOIR REPLACEMENT PROJECT  
MITIGATION MONITORING AND REPORTING PROGRAM**

| Mitigation Measures   | Impact being Mitigated<br>substantial pollutant<br>concentrations.   | Timing<br>Requirement | Responsibility for<br>Implementation               | Responsibility<br>for<br>Monitoring                    | Design Phase<br>Check Box                   | Construction<br>Phase<br>Check Box | Post-Construction<br>Phase<br>Check Box |
|---|--|-----------------------|--|--|---|------------------------------------|---|
| <b>GREENHOUSE GASES</b><br><br><b>Less Than Significant. Mitigation Measure 3.9-1:</b><br>Since the half-life of carbon dioxide is approximately 100 years (USEPA 2008), the effects of greenhouse gases affect global climate change over a relatively long time frame. Thus, the 716 metric tonnes of carbon dioxide equivalents emitted by Project demolition and construction activities would remain in the atmosphere for years. Therefore, mitigation measures are recommended to further minimize the potential for any long-term effects of construction emissions on global climate change.<br><br>EBMUD and its contractors shall implement the following measures to reduce greenhouse gas emissions from fuel combustion:<br><ul style="list-style-type: none"><li>On road and off-road vehicle tire pressures shall be maintained to manufacturer specifications. Tires shall be checked and re-inflated at regular intervals;</li><li>Construction equipment engines shall be maintained to manufacturer's specifications;</li><li>Demolition debris shall be recycled for reuse to the extent feasible (excluding wood treated with preservatives).</li></ul> Implementation of Mitigation Measure 3.9-1 (above), in addition to diesel exhaust control measures as described under Air Quality Impact 3.7-2 (Air Quality section 3.7), would reduce and sequester greenhouse gas emissions. Additionally, given that other development projects would be required to implement mitigation measures for significant impacts under CEQA, the overall cumulative greenhouse gas impacts would be further reduced. | The concern is whether the Estates Reservoir Replacement Project, primarily through construction related emissions, individually would impede the state's ability to meet its 2020 greenhouse gas emission reduction goal. | During construction   | EBMUD construction contractor                      | EBMUD Construction Inspector and Regulatory Compliance | Drawing #<br>Completed by<br>Date           | Completed by<br>Date               | Completed by<br>Date                    |
| <b>NOISE AND VIBRATION</b><br><br><b>Measure 3.9-1a:</b> Construction at the Estates Reservoir site will be restricted to the weekday hours of operation consistent with the City of Oakland's Noise Ordinance (as listed in Table 3.9-3), as feasible, except during critical water service outages or other emergencies and special situations.<br><br>Noise-generating activities greater than 90 dBA (impact construction) shall be limited to between 8:00 a.m. and 4:00 p.m., Monday through Friday. Removal of the reservoir lining and columns is expected to take a maximum of 9 weeks, but may be of shorter duration if tasks are overlapping.<br><br>Any construction activity proposed for special activities outside of the standard hours of 7:00 am to 7:00 pm (Monday through Friday) must be approved by EBMUD.<br><br><b>Measure 3.9-1b:</b> Measures that would be implemented to reduce noise levels during construction include, but are not limited to, the following:   | Construction of the Estates Reservoir Replacement Project could generate intermittent and temporary noise above existing ambient levels.   | During construction   | EBMUD construction contractor and noise contractor | EBMUD Construction Inspector and Regulatory Compliance | Spec #<br>Drawing #<br>Completed by<br>Date | Completed by<br>Date               | Completed by<br>Date                    |
|   |  | During construction   | EBMUD construction contractor and noise            | EBMUD Construction Inspector and Regulatory Compliance | Spec #<br>Drawing #<br>Completed by<br>Date | Completed by<br>Date               | Completed by<br>Date                    |



**REVISED ESTATES RESERVOIR REPLACEMENT PROJECT  
MITIGATION MONITORING AND REPORTING PROGRAM**

| Mitigation Measures   | Impact being Mitigated | Timing Requirement | Responsibility for Implementation contractor | Responsibility for Monitoring | Design Phase |                                  | Construction Phase |           | Post-Construction Phase |           |
|---|------------------------|--------------------|--|-------------------------------|--------------|----------------------------------|--------------------|-----------|-------------------------|-----------|
|   |                        |                    |  |                               | Drawing #    | Check Box                        | Date               | Check Box | Date                    | Check Box |
| <ul style="list-style-type: none"> <li>Truck operations (haul trucks and concrete delivery trucks) will be limited to the daytime hours listed in the Project Description (7:00 a.m.-7:00 p.m.).</li> <li>Best available noise control techniques (including mufflers, intake silencers, ducts, engine enclosures, and acoustically attenuating shields or shrouds) will be used for all equipment and trucks, as necessary.</li> <li>The noisiest phases of construction (such as concrete breaking or concrete grinding) shall be time limited and not extended over several months.</li> <li>Stationary noise sources will be located as far from sensitive receptors as possible. If they must be located near receptors, adequate muffling (with enclosures) will be used. Enclosure opening or venting will face away from sensitive receptors. Enclosures will be designed by a registered engineer regularly involved in noise control analysis and design.</li> <li>Material stockpiles as well as maintenance/equipment staging and parking areas (all on-site) will be located as far as practicable from residential receptors.</li> <li>An EBMUD contact person will be designated for responding to construction-related issues, including noise. The phone number of the liaison will be conspicuously posted at construction areas, on all advanced notifications, and on the EBMUD Project website. This person will take steps to resolve complaints, including coordinating periodic noise monitoring, if necessary.</li> </ul> <p><b>Measure 3.9-1c:</b> EBMUD will make a reasonable effort to limit operation of impact construction equipment during the hours of 8:00 a.m. - 4:00p.m. by implementing the following measures for noise generating activities that may be greater than 90-dBA, including hoe runs, concrete recycling (concrete breakup, pulverizing, rear separation, crushing) and concrete pumping.</p> <ul style="list-style-type: none"> <li>If impact equipment (e.g., jack hammers, pavement breakers, and rock drills) is used during project construction, hydraulically or electric-powered equipment will be used wherever feasible to avoid the noise associated with compressed-air exhaust from pneumatically powered tools. However, where use of pneumatically powered tools is unavoidable, an exhaust muffler on the compressed-air exhaust will be used (a muffler can lower noise levels from the exhaust by up to about 10 dB). External jackets on the tools themselves will be used, where feasible, which could achieve a reduction of 5 dB. Quieter procedures, such as drilling rather than impact equipment, will be used whenever feasible.</li> <li>Erect temporary noise barriers or noise control blankets around the construction site, particularly along on sites adjacent to residential buildings.</li> <li>Utilize noise control blankets around the major noise sources to reduce noise emission from the site.</li> <li>Evaluate the feasibility of noise control at the receivers by temporarily improving the noise reduction capability of adjacent buildings by the use of sound blankets for example.</li> <li>Limit the noisiest phases of construction to 10 working days at a time, where feasible.</li> <li>Notify neighbors/occupants within 300 feet of project construction at least thirty days in advance of extreme noise generating activities about the estimated duration of the activity.</li> </ul> <p>The effectiveness of noise attenuation measures shall be monitored by taking noise measurements during noise intensive activities of 90 dBA or greater over a 9 week period. However, it should be noted that although the goal is to limit construction noise to the minimal feasible duration and to reduce noise levels to minimize disturbance to sensitive receptors (adjacent residents), mitigated construction noise</p> |                        |                    |  |                               |              | Completed by _____<br>Date _____ |                    |           |                         |           |
|   |                        |                    |  |                               |              |                                  |                    |           |                         |           |

**REVISED ESTATES RESERVOIR REPLACEMENT PROJECT  
MITIGATION MONITORING AND REPORTING PROGRAM**

| Mitigation Measures  | Impact being Mitigated  | Requirement         | Implementation                | Monitoring   | Check Box   | Check Box                | Check Box                |
|--|---|---------------------|-------------------------------|--|---|--------------------------|--------------------------|
| could still cause occasional, intermittent or periodic disturbance at the closest residential receptors. In recognition of this possibility and based on the significance criteria, construction noise impacts are therefore considered significant and unavoidable, even with mitigation.<br><br>Measure 3.9-2: The estimated maximum hourly noise levels would not exceed the 70-dBA speech interference criterion. Therefore short-term noise increases due to project related trucks would be less than significant. Implementation of Mitigation Measure 3.9-1.b (above) would also ensure that truck traffic noise would be less than significant.   | Construction of the Estates Reservoir Replacement Project could increase noise levels along truck haul routes.  | During construction | EBMUD construction contractor | EBMUD Construction Inspector and Regulatory Compliance | Spec #<br><br>Drawing #<br><br>Completed by<br><br>Date | Completed by<br><br>Date | Completed by<br><br>Date |
| Measure 3.9-3: To prevent cosmetic or structural damage to adjacent or nearby structures, EBMUD will incorporate into contract specifications restrictions on construction whereby surface vibration will be limited to no more than 0.5 in/sec PPV, measured at the nearest residential or other sensitive structure. Implementation of Mitigation Measure 3.9-1.c (above) will also ensure that impacts are reduced to a less than significant level. In the unlikely and remote event that the project is demonstrated to have caused any damage to residences, compensation shall be provided to repair any damage caused by the construction. With homeowner permission, EBMUD will conduct pre-construction surveys of homes, sensitive structures and other areas of concern within the area of potential effects due to concrete demolition. During construction, a Project Liaison will be assigned to facilitate communication and expedite claims processing within the legal framework available to all parties. | Construction of the Estates Reservoir Replacement Project could cause vibration that could disturb local residents and cause cosmetic damage to buildings and structures. | During construction | EBMUD construction contractor | EBMUD Construction Inspector and Regulatory Compliance | Spec #<br><br>Drawing #<br><br>Completed by<br><br>Date | Completed by<br><br>Date | Completed by<br><br>Date |



AGENDA NO. 19.  
MEETING DATE December 10, 2013

**TITLE     WEST OF HILLS NORTHERN PIPELINES PROJECT - CERTIFY THE FINAL ENVIRONMENTAL IMPACT REPORT AND PROJECT APPROVAL**

☐ MOTION     ☒ RESOLUTION     ☐ ORDINANCE

**RECOMMENDED ACTION**

- Certify the Final Environmental Impact Report (EIR) for the West of Hills Northern Pipelines Project and make findings in accordance with the California Environmental Quality Act (CEQA) including a Statement of Overriding Considerations.
- Adopt the Mitigation Monitoring and Reporting Program in accordance with CEQA.
- Approve the West of Hills Northern Pipelines Project.

**SUMMARY**

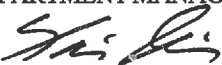

The West of Hills Northern Pipeline Project is comprised of the following four transmission pipeline segments:

Wildcat Pipeline (Berkeley) – This proposed pipeline is about 1.5 miles long and 48 inches in diameter. It will parallel the existing Wildcat Aqueduct from the intersection of Parkside Drive and Nogales Street to the intersection of Parker Street and Dana Street in Berkeley. Staff analyzed two alignment options and determined that the Benvenue Avenue alignment is the environmentally superior alignment and is the preferred alternative (Attachment A).

Wildcat Pipeline (El Cerrito) – This proposed pipeline is about 2.5 miles long and 36 inches in diameter. It will parallel the existing Wildcat Aqueduct from the intersection of San Carlos Avenue and Lynn Avenue to the intersection of Liberty Street and Hill Street in El Cerrito (Attachment B).

Central Pressure Zone Pipeline (El Cerrito/Richmond) – This proposed pipeline is about 2.5 miles long and 36 inches in diameter. It will be installed in San Pablo Avenue and will connect to existing pipelines in Central Avenue in El Cerrito and Nevin Avenue in Richmond. (Attachment B).

Central Pressure Zone Pipeline (Richmond/San Pablo) – This proposed pipeline is about 1.9 miles long and 36 inches in diameter. It will be installed primarily in 23rd Street between Nevin Avenue in Richmond and Road 20 in San Pablo. There are two options for crossing San Pablo Creek: installing a

|   |  |  |
|---|--|--|
| Funds Available: FY14-15; CIP #2001475; page 56           |  | Budget Code: WSC/522/7999/2006641  |
| DEPARTMENT SUBMITTING<br><br>Engineering and Construction | DEPARTMENT MANAGER or DIRECTOR<br><br><br>Xavier J. Irias | APPROVED<br><br><br>General Manager |

Contact the Office of the District Secretary regarding questions about completing or submitting this form.

pipe bridge in an existing District owned right-of-way or installing a pipe bridge adjacent to San Pablo Avenue (Attachment C).

A presentation on this project was provided to the Planning Committee on December 10, 2013.

## **DISCUSSION**

The purpose of the West of Hills Northern Pipelines Project is to correct existing transmission and storage deficiencies, improve system reliability and water quality, and meet projected future water demands. The pipelines will allow the District to transmit more water from the Orinda Water Treatment Plant to Berkeley, El Cerrito, Richmond, San Pablo and all the way to Crocket. The pipelines will also allow more water to be transmitted from the Sobrante Water Treatment Plant to Richmond during the summer months.

### **Environmental Review Process/Public Outreach**

Approximately 5,800 residents, businesses and agencies were noticed on a series of three community meetings in November 2011. The meetings convened to discuss the selection of the preferred pipeline alignments and to solicit input. A Notice of Preparation was published on February 27, 2012 and sent to the same residents, businesses and agencies. Responses were submitted by the California Department of Transportation, the Berkeley Unified School District, the Doctors Medical Center and four individuals.

A Draft EIR for the project was prepared and circulated for a 48-day agency and public review period from May 15, 2013, through July 2, 2013. Notices of availability were sent to the residents, businesses and agencies; notices were also posted on EBMUD's website and published in the Oakland Tribune and the Contra Costa Times. Three community meetings to discuss the Draft EIR were held on June 12, 19, and 26 of 2013. A total of 16 comment letters and emails containing 88 individual comments were submitted during the Draft EIR comment period by the State Clearinghouse, Contra Costa County Flood Control and Water Conservation District, the cities of Berkeley and El Cerrito, and members of the public. All comments are addressed in the Final EIR. Key comments focused on construction issues including location of new pipeline within the streets, temporary traffic impacts, parking, impacts to local businesses and properties, and alternative routes considered.

### **Summary of Impacts, Mitigation Measures and Comments**

The EIR analysis concluded that potential impacts from construction noise, traffic delays, impaired access to adjacent properties, temporary relocation of bus stops and routes, and growth inducement are significant and unavoidable and will require the District to approve a Statement of Overriding Considerations when approving the project. The remaining potential impacts are either less than significant or would be less than significant with mitigation.

Key mitigations measures include:

- Providing a public relations contact for complaints.
- Completing construction between 8:00 a.m. and 7:00 p.m., Monday through Friday where feasible.
- Offering hotel vouchers to residents near night work locations.
- Working with the City of Berkeley to allow residents to park in adjacent parking zones and attempting to arrange for parking at a private parking structure.
- Limiting construction in front of public schools to the traditional school breaks.
- Inspecting damaged trees one year following construction.
- Replacing trees on a 1:1 basis.
- Repaving in accordance with the 2006 Utility Trench Master Permit Conditions which were developed by the Contra Costa County City-County Engineering Advisory Committee and a coalition of utilities serving the cities in Contra Costa County.

### **Public Notice**

Pursuant to Section 21092.5 of the Public Resources Code, the Response to Comments (RTC) document was mailed to agencies, the public, and organizations. Copies of the RTC were also posted on EBMUD's website and sent to four libraries in the project area. Notice of the Board of Directors meeting was also included in the Notice of Availability of the Final EIR (Draft EIR and RTC).

### **Project Schedule**

Design and construction of the Wildcat Pipeline improvements will be in FY14/FY16, respectively. Design and construction of the Central Pressure Zone Pipeline improvements will be in FY19/FY21, respectively.

### **FISCAL IMPACTS**

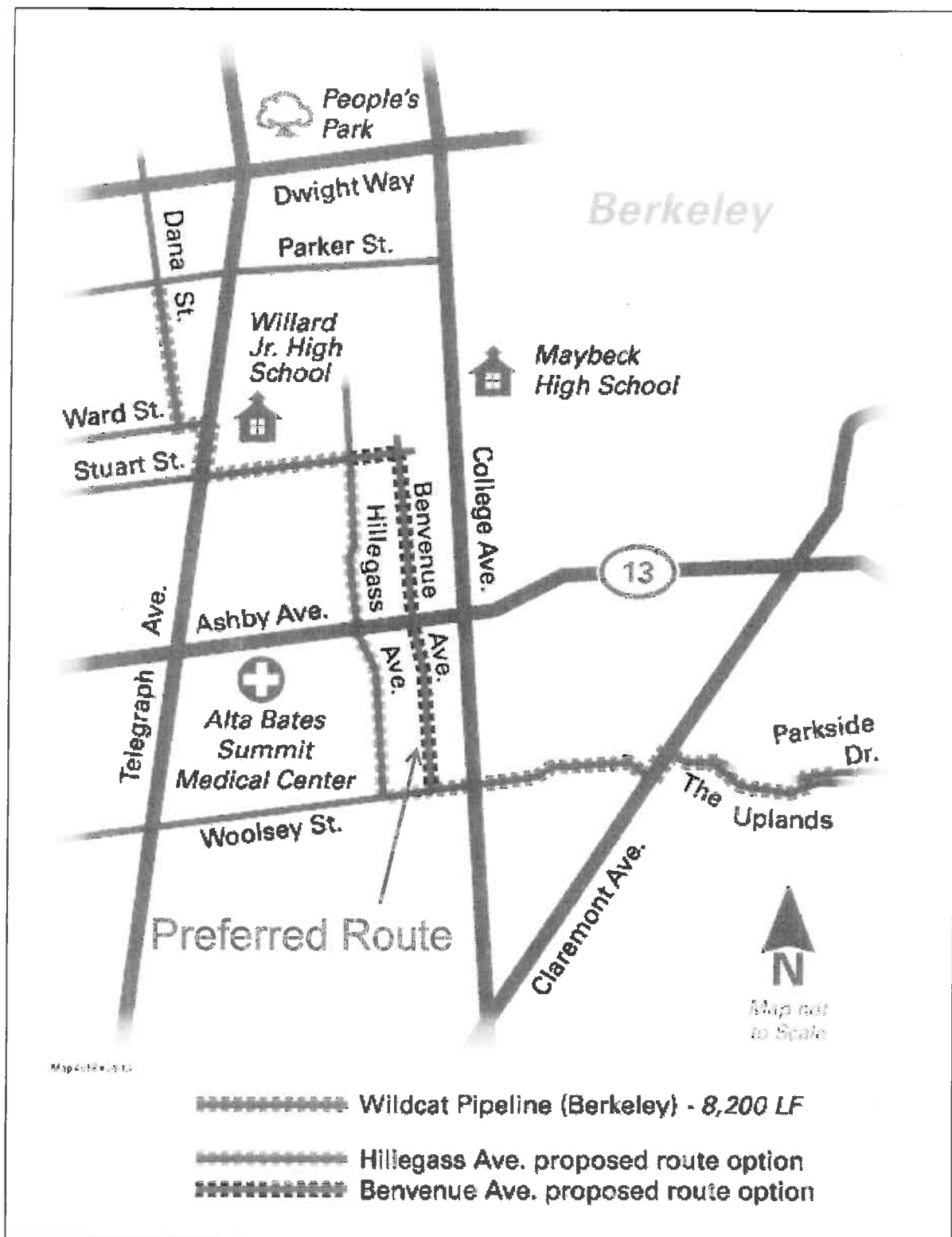
Funds for the Wildcat Pipeline improvements are included in the FY14-15 Capital Improvement Program under the West of Hills Transmission Project. Funds for the Central Pressure Zone Pipeline improvements will be required in FY19.

### **ALTERNATIVES**

**Do not certify the Final EIR or approve the project.** This alternative is not recommended because the Final EIR meets CEQA requirements and the proposed project was evaluated against several alternatives that either had equal or greater environmental impacts or failed to achieve project objectives in a cost-effective manner.

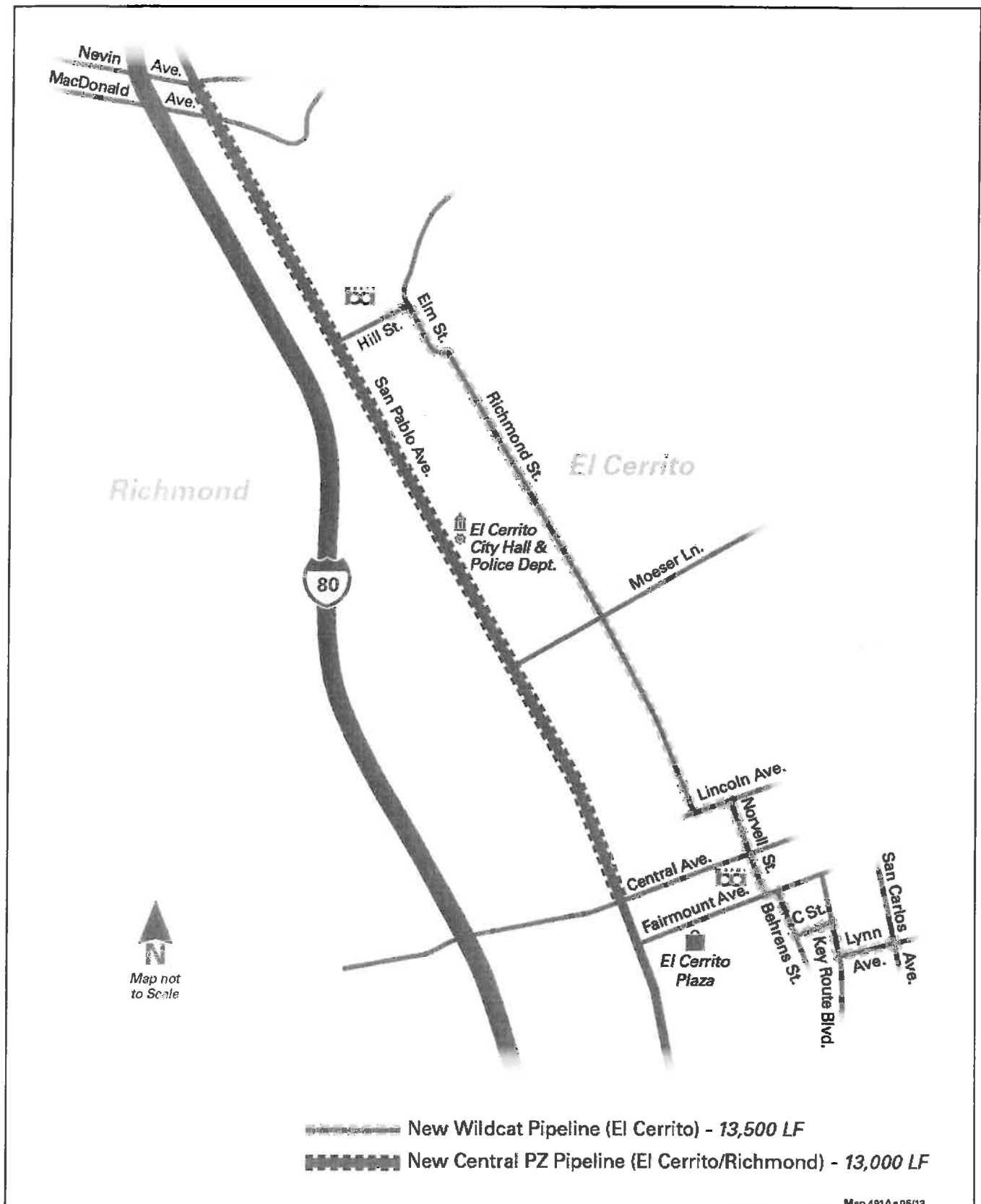
**Do not proceed with the project.** This alternative is not recommended as this alternative does not satisfy the project objectives.

- Attachments:
- A. Vicinity map Wildcat Pipeline (Berkeley)
  - B. Vicinity Map Wildcat Pipeline (El Cerrito) and Central Pressure Zone Pipeline (El Cerrito/Richmond)
  - C. Vicinity Map Central Pressure Zone Pipeline (Richmond/San Pablo)

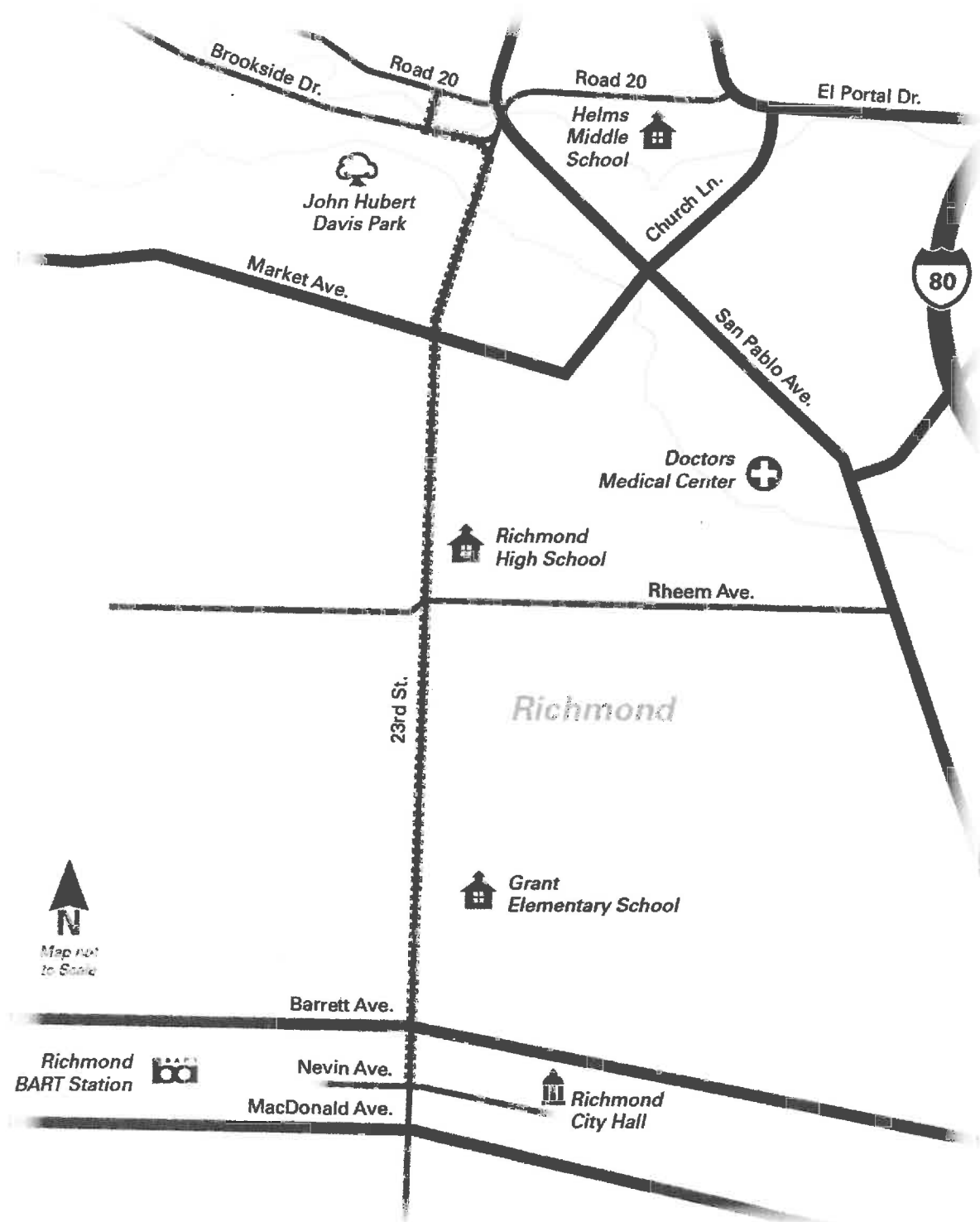


**Wildcat Pipeline (El Cerrito) and  
Central Pressure Zone Pipeline (El Cerrito/Richmond)**

**Attachment B**







Central PZ Pipeline (R/S) - 10,200 LF



RESOLUTION NO. \_\_\_\_\_

**CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE WEST OF HILLS NORTHERN PIPELINES PROJECT, MAKING FINDINGS, APPROVING THE MITIGATION MONITORING AND REPORTING PROGRAM, AND APPROVING AND AUTHORIZING THE PROJECT**

Introduced by Director

; Seconded by Director

WHEREAS, the East Bay Municipal Utility District ("EBMUD") has determined that it must correct existing deficiencies in water transmission and storage operations, meet projected future water demand, improve system reliability and the ability to maintain water quality, and facilitate repair and replacement of aging infrastructure in the West of Hills distribution area north of the Claremont Tunnel; and

WHEREAS, on February 27, 2012, a Notice of Preparation of an Environmental Impact Report ("EIR") for the West of Hills Northern Pipelines Project ("the Project") was prepared and circulated by EBMUD as lead agency in accordance with the California Environmental Quality Act ("CEQA") and applicable laws and regulations; and

WHEREAS, EBMUD mailed public notices announcing a scoping meeting for the Project EIR to local and regional agencies, including the State Clearinghouse and the cities of Berkeley, El Cerrito, Richmond, and San Pablo; and

WHEREAS, by close of the Notice of Preparation comment period on March 29, 2012, seven responses were submitted by the California Department of Transportation, the Berkeley Unified School District, the Doctors Medical Center, and four individuals; and

WHEREAS, the Draft EIR on the Project was completed by EBMUD and circulated for review and comment on May 15, 2013, providing a 48-day comment period ending on July 2, 2013, in accordance with CEQA regulations; and

WHEREAS, approximately 5,900 postcards were mailed to notify residents and interested parties as well as state, local and regional agencies, including the State Clearinghouse and the cities of Berkeley, El Cerrito, Richmond and San Pablo of the availability of the Draft EIR; and

WHEREAS, EBMUD also provided internet access to the Draft EIR on the EBMUD website; and

WHEREAS, on June 12, 19, and 26 of 2013, as part of EBMUD's public information efforts on the Project and Draft EIR, EBMUD held public meetings during the Draft EIR comment period to present the Draft EIR and receive verbal and written comments from the public; and

WHEREAS, the Draft EIR comment period concluded on July 2, 2013; and

WHEREAS, EBMUD considered and responded to 16 letters and e-mail public comments on the 2013 Draft EIR and Project, and subsequently modified portions of the Draft EIR to provide further clarity and to address public concerns; and

WHEREAS, EBMUD prepared a Final EIR, which includes responses to all comments on the Draft EIR received by EBMUD during the public comment period and includes clarifications in response to public concerns; and

WHEREAS, EBMUD sent a Notice of Availability of the Final EIR to all commenting public agencies and affected local agencies on October 31, 2013; and

WHEREAS, EBMUD sent a Notice of Availability of the Final EIR to all commenting residents on November 1, 2013; and

WHEREAS, the Notice of Availability of the Final EIR was sent to all commenting public agencies, residents and affected local agencies at least ten days before Board action to adopt the EIR, in accordance with CEQA regulations; and

WHEREAS, EBMUD has prepared a detailed Mitigation Monitoring and Reporting Program ("MMRP"), attached hereto as Exhibit B and incorporated by this reference into the resolution;

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the East Bay Municipal Utility District does hereby find, determine and certify that:

1. The Final EIR, which includes the Draft EIR, has been presented to the Board of Directors, the Board has reviewed and considered the information contained therein, and the Final EIR reflects the Board's judgment and analysis.
2. All proceedings of the environmental review process, including the Draft and Final EIR and all required notices, have been conducted and completed in accordance with CEQA, the CEQA guidelines, and all other applicable laws, regulations, and procedures.
3. The environmental impacts of the Project are fully disclosed in the Draft EIR and Final EIR, and the Draft EIR and Final EIR are adequate for use by EBMUD for approval, design and construction of the Project.
4. The documents and material constituting the record of the proceeding are located at EBMUD's administrative offices, 375 11<sup>th</sup> Street, Oakland, CA 94607. The custodian of these records is the Secretary of the District.
5. No substantial change in circumstances has occurred since preparation of the Draft EIR and Final EIR, which would require revisions to the Draft EIR and Final EIR due to the discovery or disclosure of new, significant impacts not covered in the Draft EIR and Final EIR, and there is no requirement to recirculate the Draft and Final EIRs.

6. Public consultation conducted prior to completing the Draft EIR has been a valuable component of the planning process. Efforts to encourage early public participation in the process included extensive community outreach. These efforts, which are described in detail in the EIR, allowed for early and continued public input throughout the planning process.
7. The Board of Directors makes the findings and determinations regarding the West of Hills Northern Pipelines Project set forth in the Findings, attached hereto as Exhibit A, and incorporated into this Resolution by this reference.
8. The Board of Directors hereby approves, adopts, and imposes the MMRP, attached hereto as Exhibit B and incorporated herein by this reference. The mitigation measures adopted by the Board of Directors are hereby imposed as conditions of Project approval.

BE IT FURTHER RESOLVED that the Final EIR is hereby certified as having been completed in compliance with CEQA.

BE IT FURTHER RESOLVED that the Project, including the following distribution system improvements as described in the Draft and Final EIR, is hereby approved:

- Construction of the Wildcat Pipeline (Berkeley), a 48-inch diameter water transmission pipeline, approximately 1.5 miles long, located along Parkside Drive, The Uplands, Claremont Avenue, Woolsey Street, Benvenue Avenue, Stuart Street, Telegraph Avenue, Ward Street, and Dana Street in the City of Berkeley.
- Construction of the Wildcat Pipeline (El Cerrito), a 36-inch diameter water transmission pipeline, approximately 2.5 miles long, located along Lynn and Ashbury Avenues, C and Behrens Streets, Fairmount Avenue, Norvell Street, Lincoln Avenue, Richmond, Elm and Hill Streets in the City of El Cerrito.
- Construction of the Central Pressure Zone Pipeline (El Cerrito/Richmond), a 36-inch diameter water transmission pipeline, approximately 2.5 miles long, located along San Pablo Avenue from Central Avenue in the City of El Cerrito to Nevin Avenue in the City of Richmond.
- Construction of the Central Pressure Zone Pipeline (Richmond/San Pablo), a 36-inch diameter water transmission pipeline, approximately 1.9 miles long, located primarily along 23rd Street from Nevin Avenue in the City of Richmond to Road 20 in the City of San Pablo.

BE IT FURTHER RESOLVED that the General Manager is hereby directed to take such actions as shall be necessary to implement the Project as described in the EIR, subject to compliance with all mitigation measures in the MMRP.

BE IT FURTHER RESOLVED that the Secretary of the District is hereby directed to file a Notice of Determination, in accordance with the law, with the County Clerks of Alameda and Contra Costa Counties and with the State Clearinghouse.

ADOPTED this 10th day of December, 2013 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

APPROVED AS TO FORM AND PROCEDURE:

\_\_\_\_\_  
General Counsel

# **EXHIBIT A**

## **EBMUD Board of Directors Findings Regarding West of Hills Northern Pipelines Project**

### **1.0 Introduction**

This is the findings document adopted by the East Bay Municipal Utility District (EBMUD) Board of Directors for the West of Hills Northern Pipelines Project (Project), which includes:

- Construction of the Wildcat Pipeline (Berkeley), a 48-inch diameter water transmission pipeline, approximately 1.5 miles long, located along Parkside Drive, The Uplands, Claremont Avenue, Woolsey Street, Benvenue Avenue, Stuart Street, Telegraph Avenue, Ward Street, and Dana Street in the City of Berkeley.
- Construction of the Wildcat Pipeline (El Cerrito), a 36-inch diameter water transmission pipeline, approximately 2.5 miles long, located along Lynn and Ashbury Avenues, C and Behrens Streets, Fairmount Avenue, Norvell Street, Lincoln Avenue, Richmond, Elm and Hill Streets in the City of El Cerrito.
- Construction of the Central Pressure Zone Pipeline (El Cerrito/Richmond), a 36-inch diameter water transmission pipeline, approximately 2.5 miles long, located along San Pablo Avenue from Central Avenue in the City of El Cerrito to Nevin Avenue in the City of Richmond.
- Construction of the Central Pressure Zone Pipeline (Richmond/San Pablo), a 36-inch diameter water transmission pipeline, approximately 1.9 miles long, located primarily along 23rd Street from Nevin Avenue in the City of Richmond to Road 20 in the City of San Pablo.

Section 1.1, “The Project,” describes the Project and places it in the context of the planning efforts of EBMUD.

Section 2, “CEQA Requirements Regarding Project Impacts,” describes the requirements under the California Environmental Quality Act (“CEQA”) regarding Project impacts.

Section 3, “Findings Regarding Independent Review and Judgment,” contains the findings regarding the independent review and judgment of the Board of Directors.

Section 4, “Findings Regarding the Project,” contains the findings regarding potential Project impacts. This section is divided into three parts. Section 4.1 contains findings regarding short term and one long term potential significant and unavoidable environmental impacts. The Board of Directors finds that the Project benefits, including engineering necessity, and cost, outweigh or override the potential for these impacts. Section 4.2 contains the findings regarding significant or

potentially significant Project impacts that are mitigated to a less-than-significant level. Section 4.3 contains the findings regarding Project impacts that are less than significant or where there is no impact.

Section 5, “Statement of Overriding Considerations,” sets forth the statement of overriding considerations regarding the economic, legal, social, technological or other benefits that justify the Project despite the identified the identified significant and unavoidable impacts.

Section 6, “Findings Related to Potential Growth Inducing Impacts,” contains the findings concerning the potential growth-inducing impact of the Project. The Board of Directors finds that the Project could indirectly support growth; however, EBMUD does not have the authority to impose mitigations to address potentially significant environmental impacts associated with development projects within the cities and counties served by the Project. The impact is therefore included as a potentially unavoidable significant environmental impact of the Project.

Section 7, “Findings Regarding Alternatives and Selecting the Project,” contains the findings concerning the alternative Project configurations considered in the Draft Environmental Impact Report (“Draft EIR”). The Board of Directors finds that the selected alternative is feasible, and that the other alternatives are either infeasible or do not provide any clear environmental or other benefit beyond those of the proposed Project.

The findings presented here also summarize the mitigation measures set forth in the Final EIR and agreed to by EBMUD or incorporated into the Project. The mitigation measures are summarized below for convenience, but the summary is not intended to change any aspects of the complete text of the mitigation measures described in the Final Environmental Impact Report (“Final EIR”) and adopted by EBMUD.

## **1.1 The Project**

The West of Hills Northern Pipelines Project involves the construction and operation of four new transmission pipeline segments in the cities of Berkeley, El Cerrito, Richmond, and San Pablo as part of the planned system of improvements under the EBMUD *West of Hills Master Plan*. These proposed pipelines would increase the capacity for water transmission to customers located in parts of north Oakland, Berkeley, Albany, El Cerrito, Richmond, San Pablo, Pinole, Hercules, and the unincorporated communities of West Contra Costa County, including Crockett.

## **1.2 Project Location and Description**

The four proposed pipeline routes are located in the city of Berkeley in Alameda County and the cities of El Cerrito, Richmond, and San Pablo in Contra Costa County.

### **1.2.1 Wildcat Pipeline (Berkeley)**

The Wildcat Pipeline (Berkeley) is about 8,200 feet long and located in the city of Berkeley. The southeastern terminus of the proposed alignment is at the intersection of Parkside Drive and Nogales Street, where the Wildcat Pipeline (Berkeley) would connect to an existing 54-inch



diameter pipeline. The majority of the alignment is located along The Uplands, Woolsey Street, Hillegass Avenue, Stuart Street, Telegraph Avenue, Ward Street, and Dana Street. The western terminus of the proposed alignment is at the intersection of Dana Street and Parker Street, where the Wildcat Pipeline (Berkeley) would connect to an existing 48-inch diameter transmission pipeline. The Draft EIR evaluated two options for the alignment of the portion of this pipeline between Woolsey Street and Stuart Street, one along Hillegass Avenue and one along Benvenue Avenue (the Benvenue Avenue Option), and EBMUD selected Benvenue Avenue as its preferred alignment.

### **1.2.2 Wildcat Pipeline (El Cerrito)**

The Wildcat Pipeline (El Cerrito) is about 13,500 feet long and located in the city of El Cerrito. The southern terminus of the alignment is at the intersection of Lynn Avenue and San Carlos Avenue where the Wildcat Pipeline (El Cerrito) would connect to an existing 48-inch diameter transmission pipeline in San Carlos Avenue. The proposed alignment proceeds north along Ashbury Avenue, C Street, Behrens Street, Fairmount Avenue, Norvell Street, Lincoln Avenue, Richmond Street and Elm Street to the intersection of Hill Street and Liberty Street, where the Wildcat Pipeline (El Cerrito) would connect to an existing 36-inch diameter transmission pipeline in Liberty Street.

### **1.2.3 Central Pressure Zone Pipeline (El Cerrito/Richmond)**

The Central Pressure Zone Pipeline (El Cerrito/Richmond) is about 13,000 feet long and located along San Pablo Avenue in the cities of El Cerrito and Richmond. The southern terminus of the alignment is at the intersection of San Pablo Avenue and Central Avenue in the city of El Cerrito where it would connect to the existing 36-inch Central Pressure Zone transmission pipeline in Central Avenue. The proposed alignment proceeds north to the intersection of San Pablo Avenue and Nevin Avenue in the city of Richmond, where the Central Pressure Zone Pipeline (El Cerrito/Richmond) would connect to an existing 36-inch diameter transmission pipeline in Nevin Avenue.

### **1.2.4 Central Pressure Zone Pipeline (Richmond/San Pablo)**

The Central Pressure Zone Pipeline (Richmond/San Pablo) is about 10,200 feet long and located in the cities of Richmond and San Pablo. The southern terminus of the alignment is at the intersection of 23rd Street and Nevin Avenue in the city of Richmond where the Central Pressure Zone Pipeline (Richmond/San Pablo) would connect to an existing 36-inch diameter transmission pipeline. The proposed alignment proceeds north along 23rd Street to Brookside Road, crosses San Pablo Creek via a pipe bridge within an existing EBMUD utility corridor consisting of two EBMUD-owned properties (Assessor's Parcel Numbers [APN] 411-282-002 and 412-300-001, totaling 0.28 acres), and ends at the intersection of Road 20 and 21st Street in the city of San Pablo, where the Central Pressure Zone Pipeline (Richmond/San Pablo) would connect to an existing 48-inch diameter transmission pipeline. Where the pipeline alignment crosses Wildcat Creek, construction would be accomplished by jack and bore. The jacking pit would be located within a park owned by the City of San Pablo that is located on 23rd Street on the north side of Wildcat Creek.

An alternative crossing of San Pablo Creek was under consideration. This alternative consists of a pipe bridge spanning the creek adjacent to San Pablo Avenue within the park at Kennedy Plaza, which is owned and maintained by the City of San Pablo (APN 411-282-001).

## **1.3 Project Need and Objectives**

### **1.3.1 Project Need and Objectives**

#### ***Need for the West of Hills Northern Pipelines Project***

The West of Hills Northern Pipelines Project is needed to ensure continued reliable water service to customers located west of the Oakland-Berkeley Hills and north of the Claremont Tunnel terminus in Berkeley. The purpose of the West of Hills Northern Pipelines Project is to correct existing deficiencies in water transmission and storage operations, meet projected future water demands, improve system reliability and the ability to maintain water quality, and facilitate repair and replacement of aging infrastructure.

#### **Transmission Capacity to the Northern West of Hills Area**

Some of the major facilities serving the northern West of Hills area have been in service for many decades, during which time the surrounding land use has changed substantially. EBMUD system operators currently face several challenges in moving sufficient water northward from the Claremont Tunnel to the northern West of Hills area, including reliance on inefficient pumping plant operations, an inability to refill North Reservoir during winter months, and pressure swings in the Wildcat Aqueduct. The proposed Wildcat Pipeline (Berkeley) and Wildcat Pipeline (El Cerrito) would increase transmission capacity to the northern West of Hills area. The proposed Central Pressure Zone Pipeline (El Cerrito/Richmond) would connect two existing pipelines and transmit additional needed water northward during maximum daytime demand and also during winter operations when the Sobrante Water Treatment Plant ("WTP") is off-line. The proposed Central Pressure Zone Pipeline (Richmond/ San Pablo) would connect two existing pipelines and transmit water southward (from the Sobrante WTP) during the summer and also northward during winter operations when the Sobrante WTP is off-line.

#### **Future Water Demands**

EBMUD projects that, despite planned increased levels of water conservation and recycling, potable water demand in its service area will increase; consequently, the operational deficiencies described above will worsen. To correct these existing transmission capacity problems and ensure the ability to meet projected water demand increases, the West of Hills Northern Pipelines Project has been sized using EBMUD's 2040 Demand Study to accommodate projected increases in water demand due to planned changes in land use within EBMUD's service area.

#### **System Reliability**

The West of Hills Northern Pipelines Project would improve system reliability by providing additional transmission capacity, which in turn would allow for more flexible operation of the system pumping plants and rate control stations. The new pipelines would allow existing portions of the Wildcat Aqueduct to be taken out of service when necessary in the areas where they are parallel to the new pipeline segments. In addition, the additional transmission capacity would

allow EBMUD to continue taking the Sobrante WTP off-line for maintenance activities during the winter when water demands are typically lower.

### 1.3.3 Project Objectives

The objectives for the Project are identified in **Table A-1**. The objectives most relevant to the Project relate to operations and reliability.

**TABLE A-1  
PROJECT OBJECTIVES**

| Category      | Project Objectives  |
|---------------|---|
| Operations    | <ul style="list-style-type: none"> <li>▪ Correct existing pumping deficiencies in accordance with EBMUD standards to improve pumping efficiency and reservoir filling operations.</li> <li>▪ Maintain water service pressures and reduce unacceptable swings in water pressure to the extent practicable.</li> <li>▪ Maximize the useful life of existing facilities in a manner that maximizes water quality.</li> </ul> |
| Reliability   | <ul style="list-style-type: none"> <li>▪ Provide reliable water transmission infrastructure that meets long-term operational and maintenance needs and improves overall efficiency.</li> </ul>  |
| Environmental | <ul style="list-style-type: none"> <li>▪ Locate pipelines to avoid areas of geologic hazards and high-priority utilities (high-pressure gas and fuel pipelines) to the extent practicable.</li> <li>▪ Minimize length of pipelines to reduce community disruption to the extent practicable.</li> </ul>   |
| Economics     | <ul style="list-style-type: none"> <li>▪ Minimize life-cycle costs (capital, operating, and maintenance) to EBMUD customers.</li> <li>▪ Maximize the useful life of existing facilities in a manner that reduces costs for customers.</li> </ul>  |

## 2.0 CEQA Requirements Regarding Project Impacts

The California Environmental Quality Act (CEQA), Public Resources Code, Section 21000 et seq., requires written findings of project impacts, pursuant to Section 21081. Regarding these findings, CEQA Guidelines, Title 14, California Code of Regulations (CEQA Guidelines), Section 15091, state the following:

- a. No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:

- (1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.
  - (2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such agency or can and should be adopted by such other agency.
  - (3) Specific economic, legal, social, technological, or other considerations including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternative identified in the final EIR.
- b. The findings required by subsection (a) shall be supported by substantial evidence in the record.
  - c. The finding in subdivision (a)(2) shall not be made if the agency making the finding has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives. The finding in subsection (a)(3) shall describe the specific reasons for rejecting identified mitigation measures and project alternatives.
  - d. When making the findings required in subdivision (a)(1), the agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to avoid or substantially lessen significant environmental effects. These measures must be fully enforceable through permit conditions, agreements, or other measures.
  - e. The public agency shall specify the location and custodian of the documents or other material which constitute the record of the proceedings upon which its decision is based.
  - f. A statement made pursuant to Section 15093 does not substitute for the findings required by this section.

The changes or alterations referred to in State law, as quoted above, may be mitigation measures, alternatives to the project or changes to the project by the project proponent. The Final EIR identifies mitigation measures that are proposed to minimize significant environmental effects of the project or to mitigate other potential effects that may not be, strictly speaking, environmental effects under CEQA. These mitigation measures will be incorporated into the design of the project. A Mitigation Monitoring and Reporting Plan ("MMRP", see Exhibit B) is also adopted by the EBMUD Board of Directors to ensure that all relevant mitigation measures identified in the Final EIR and these Findings will be implemented.

### **3.0 Findings Regarding Independent Review and Judgment**

Each member of the EBMUD Board of Directors was provided access to a complete electronic copy of the Draft EIR in May 2013 and of the Final EIR for the Project in October 2013. The Board hereby finds that the Final EIR reflects the Board's own independent judgment, and that the Board has independently reviewed and analyzed the Final EIR prior to taking any final action with respect to the Project.

## 4.0 Findings Regarding the Project

Having reviewed and considered the information contained in the Final EIR and the MMRP, the EBMUD Board of Directors hereby adopts the following findings regarding Project impacts and mitigation measures.

### 4.1 Findings Regarding Significant and Unavoidable Effects

There are seven short term and one long term potentially significant and unavoidable impacts resulting from the Project. Mitigation measures proposed in the Final EIR will lessen the impacts of its effects, but may not completely mitigate adverse environmental impacts to a less-than-significant level. These findings reflect the EBMUD Board's decision to adopt the Project.

#### A. Noise

1. **Significant and Unavoidable Impact 3.11-1:** Construction activities could expose people to noise during time periods that fall outside of local ordinance time limits or to noise levels that exceed ordinance limits.

Impacts could be significant and unavoidable for the following pipelines:

- Wildcat Pipeline (Berkeley)
- Central Pressure Zone Pipeline (El Cerrito/Richmond)
- Central Pressure Zone (Richmond/San Pablo)

There would be no impact for the Wildcat Pipeline (El Cerrito).

**Findings:** The Project would result in temporary construction noise impacts related to conflicts with noise ordinances in the Cities of Berkeley and Richmond. Pipeline construction would exceed the daytime weekday noise limit of 75 dBA for mobile equipment specified by the City of Berkeley Noise Ordinance and the City of Richmond Noise Ordinance. In addition, construction of pipeline tie-ins and nighttime intersection construction, if required, would exceed the nighttime noise limits of 54 dBA specified in these ordinances. Due to the proximity of construction equipment to residential receptors, this conflict with ordinance noise limits could not be reduced to a less-than-significant level even with implementation of noise controls specified in Mitigation Measure NOI-1, and this noise impact would be significant and unavoidable.

Noise impacts from construction in the roadways would be reduced with implementation of Mitigation Measure NOI-1, Time Limits, Administrative Controls and Source Controls (see Draft EIR pages 3.11-25 to 26); however, even with implementation of Mitigation Measure NOI-1, this temporary noise impact would remain significant. Therefore, EBMUD hereby makes finding (a)(3), as described in Section 2.0 above, as required by CEQA, Section 21081, and as stated in the CEQA Guidelines, Section 15091, with respect to these effects.

**Facts in Support of Findings:** Mitigation Measure NOI-1 is hereby adopted and will be implemented as set forth in the MMRP. This measure commits EBMUD to incorporate the following requirements into the contract specifications for the Project:

An acoustical consultant qualified in construction noise control analysis and design will prepare a Noise Control Plan for each pipeline. This plan will include noise controls for all construction activities to reduce the noise to the 75-dBA (Leq) ordinance daytime noise limit and 54-dBA (Leq) ordinance nighttime noise limit to the extent feasible. These limits may be increased if ambient noise levels are higher, consistent with applicable ordinances. Measures to reduce noise levels and disturbance from construction noise to be incorporated into the Noise Control Plan will include, but are not be limited to, the following:

***Time Limits***

- a. All construction activities, including truck operations (e.g., haul trucks and concrete delivery trucks), will be limited to the daytime weekday hours (8:00 a.m. to 7:00 p.m.) to the extent feasible.

***Noise Level Reduction Measures***

- b. Best available noise-control techniques (including mufflers, intake silencers, ducts, engine enclosures, and acoustically attenuating shields or shrouds) will be used for all equipment and trucks, as necessary.
- c. Stationary noise sources (e.g., pumps, compressors) will be located as far from sensitive receptors as possible and practicable and within the specified construction time limits. If they must be located near receptors, adequate muffling (with enclosures) will be used. Enclosure openings or venting will face away from sensitive receptors. A registered engineer qualified in noise control analysis and design will design the enclosures.
- d. If impact equipment (e.g., jackhammers) is used during demolition or construction activities, the construction contractor(s) will use hydraulically or electrically powered equipment wherever practical to avoid the noise associated with compressed-air exhaust from pneumatically powered tools. However, where use of pneumatically powered tools is unavoidable, an exhaust muffler on the compressed-air exhaust will be used (a muffler can lower noise levels from the exhaust by up to about 10 dB). External jackets on the tools themselves will be used, where feasible, which could achieve a reduction of 5 dB. Quieter procedures, such as drilling rather than impact equipment, will be used whenever practical.
- e. An EBMUD contact person will be designated to respond to public concerns with construction-related issues, including noise. The phone number and email address of the liaison will be conspicuously posted at construction areas, on all advanced notifications, and on the EBMUD project website. This person will take steps to resolve complaints, including coordinating periodic noise monitoring, if necessary.
- f. Residents located within 300 feet of project construction will be notified at least seven (7) days in advance of extreme noise-generating activities about the estimated duration of the activity. EBMUD will also send emails to individuals on the Project's mailing list to update them prior to noisy phases.
- g. At pipeline tie-ins, in an effort to minimize the potential of the work extending beyond the above daytime time limits (8 a.m. and 7 p.m.), the contractor will be required to begin pipe-cutting operations for the hot-tapping connection prior to 9 a.m. or wait until the following morning in order to minimize the potential

for pipe-cutting equipment to operate during the evening and nighttime hours. If pipe-cutting equipment must be operated during the nighttime hours at pipeline tie-ins, temporary noise barriers or noise enclosures will be used to minimize disturbance when construction occurs adjacent to residential uses. In addition, operation of trucks and noisier types of heavy equipment will be minimized to the extent feasible.

Mitigation Measure NOI-1, which is recommended on Draft EIR pages 3.11-25 to 26, is hereby imposed and shall be monitored in compliance with the MMRP. While EBMUD has agreed to these mitigations, impacts related to compliance with the noise ordinances of the City of Berkeley and the City of Richmond's have not been reduced to a less-than-significant level for the Project.

No impacts related to noise ordinance conflicts would result from construction of the Wildcat Pipeline (El Cerrito) because the City of El Cerrito does not specify noise limits in its ordinances or policies. Compliance with time restrictions stipulated in the encroachment permit from the City of El Cerrito would ensure that no impact would occur. Similarly, no impacts would result from construction of the Central Pressure Zone Pipeline within the City of San Pablo, because nighttime construction will be addressed with the City of San Pablo's encroachment permit and/or written permission will be obtained from the City of San Pablo's building inspector.

2. **Significant and Unavoidable Impact 3.11-2:** Construction activities could result in substantial temporary noise increases that could interfere with activities at nearby noise-sensitive land uses.

Impacts would be significant and unavoidable at all four pipelines during the following construction activities:

- Tie-in construction
- Nighttime intersection construction

Impacts would be less than significant with mitigation at all four pipelines during the following construction activities:

- Pipeline construction

No impact would occur during the following construction activities:

- Truck traffic increases on local roadways

**Findings:** The Project would result in temporary construction-related noise impacts along all pipelines related to tie-in construction and any nighttime intersection construction, if required.

The Draft EIR sets forth a 70-dBA speech interference threshold during the day and a 60-dBA sleep disturbance threshold at night, discussed on pages 3.11-8 to 3.11-10 in the Draft EIR. Daytime and nighttime construction noise levels at the tie-in locations along portions of the project in Berkeley, El Cerrito, Richmond, and San Pablo are estimated to exceed both the 70-dBA speech interference threshold during the day and the 60-dBA sleep disturbance threshold at night. Nighttime intersection construction, which could be implemented to avoid traffic impacts caused by intersection construction, also could generate nighttime noise levels

that exceed the 60-dBA sleep disturbance threshold in Berkeley, El Cerrito, Richmond, and San Pablo.

Daytime construction noise levels at the tie-in locations are estimated to range between 47 to 91 dBA (Leq) at the closest locations for approximately two weeks. This would exceed the 70-dBA speech interference noise threshold during the day. Even with implementation of noise controls required by Mitigation Measure NOI-1, this noise impact could not be reduced to a less-than-significant level, and this noise impact would be significant and unavoidable.

Nighttime construction accompanied by temporary noise increases above the sleep disturbance threshold remains a possibility. Despite a measure (NOI-1) to minimize the potential of work extending beyond the daytime time limits, tie-in construction could extend into the evening hours for one night at each tie-in location. Nighttime noise levels at tie-in locations are estimated to range between 82 to 95 dBA (Leq) at the closest receptors. In addition, nighttime construction through some street intersections may occur at night to avoid traffic impacts, if required by encroachment permit conditions. Nighttime construction noise levels would exceed the 60-dBA sleep disturbance threshold, even with implementation of required noise controls. Mitigation Measure NOI-3 would reduce the potential impact of temporary nighttime construction noise by offering alternative lodging to those residents within 400 feet of potential nighttime construction activities.

Implementation of Mitigation Measures NOI-1 and NOI-3 would reduce this impact, but not necessarily to a less-than-significant level. EBMUD hereby makes finding (a)(3), as described in Section 2.0 above, as required by CEQA, Section 21081, and as stated in the CEQA Guidelines, Section 15091, with respect to these effects.

While construction noise associated with tie-in construction and nighttime intersection construction are considered significant and unavoidable, other pipeline construction activities could also expose people to daytime construction noise that would exceed the 70-dBA speech interference threshold, but could be mitigated to a less-than-significant level with implementation of Mitigation Measures NOI-1 and NOI-2. This is described below under Section 4.2.H, Findings Regarding Significant Effects Mitigated to Less-Than-Significant Levels.

Facts in Support of Findings: Mitigation Measure NOI-1 has been adopted and will be implemented as set forth in the MMRP. This measure is described above under Findings Regarding Significant and Unavoidable Effects, Impact 3.11-1. Mitigation Measures NOI-3 is hereby adopted and will be implemented as set forth in the MMRP. This measure commits EBMUD to:

Include a provision in the Noise Control Plan to provide alternative lodging for residents, if requested, that are adversely affected by nighttime pipeline tie-in construction or by nighttime construction at intersections when required by encroachment permit conditions; this measure would only be used if nighttime construction occurs. EBMUD will make a concerted attempt to notify residents located within 400 feet of potential nighttime project construction at least ten (10) days in advance. Notified residents may request alternative lodging for the night(s) of the potential nighttime construction from EBMUD; alternative lodging will consist of a standard room at a hotel located within 6 miles of the affected residence or as close as feasible. Alternative lodging will be provided and approved by EBMUD the day before the known nighttime construction would occur, or sooner, based upon the



types of construction activities that may occur during the nighttime hours (10:00 p.m. to 7:00 a.m.).

Mitigation Measures NOI-1 and NOI-3, recommended on pages 3.11-25 to 26 and 3.11-34 through 3.11-35 of the Draft EIR, are hereby imposed and shall be monitored in compliance with the MMRP. While EBMUD has agreed to these mitigations, impacts related to temporary noise increases have not been reduced to a less-than-significant level at the tie-in locations and nighttime intersection construction locations.

## **B. Transportation and Traffic**

1. **Significant and Unavoidable Impact 3.13-1:** Closure of travel lanes during project construction would temporarily reduce roadway capacity and increase traffic delays on area roadways.

Impacts would be significant and unavoidable along the following pipelines:

- Wildcat Pipeline (El Cerrito)
- Central Pressure Zone Pipeline (El Cerrito/Richmond) – intersections along San Pablo Avenue

Impacts would be less-than-significant with mitigation along the following pipelines:

- Wildcat Pipeline (Berkeley)
- Central Pressure Zone Pipeline (Richmond/San Pablo)

Findings: With regard to the duration of impacts, the construction of the Wildcat Pipeline (El Cerrito) along all affected roadway segments in El Cerrito is expected to take approximately four to 12 weeks depending on the length of the pipeline segment. The construction of the tie-ins is expected to last up to two and half weeks at each location. Additionally, it is expected to take approximately four weeks to repave all affected streets. During construction of the Wildcat Pipeline in El Cerrito road closure and traffic detours would be required. The Level of Service (LOS) results in the Draft EIR indicate that the added traffic associated with detours along Hill Street, Elm Street, and Richmond Street traffic under Baseline plus Project conditions would exacerbate existing unacceptable operating conditions at the study intersections that are already operating at LOS E or F during the a.m. peak hour and p.m. peak hour, and would result in deterioration to unacceptable operation levels at six of the study intersections along the pipeline. Mitigation Measure TRA-1b, which would deploy flaggers at two of the affected intersections, would reduce the roadway capacity impacts at the Richmond Street/Central Avenue intersection; however, because the level of service at the remaining intersections would remain unacceptable even with the deployment of a flagger, roadway capacity impacts from the Wildcat Pipeline (El Cerrito) are significant and unavoidable at these intersections.

Under Baseline plus Project traffic conditions for the Central Pressure Zone Pipeline (El Cerrito/Richmond), all seven study intersections along San Pablo Avenue would operate at LOS F sometime during the a.m. or p.m. peak hours. Thus it is expected that the changed roadway configuration required to accommodate pipeline construction would cause intersections along San Pablo Avenue to operate at LOS F during the a.m. or p.m. peak hours. This level of service would last for the duration of construction activities affecting each intersection. Construction of the pipeline is expected to last approximately

twelve weeks. Construction of the tie-ins is expected to last approximately two and a half weeks for each tie-in location. In addition, repaving of San Pablo Avenue is expected to take seven weeks. No feasible mitigation measures that could reduce this impact to less-than-significant levels were identified in the Draft EIR.

To accommodate construction of the Central Pressure Zone (Richmond/San Pablo), lane configurations would be modified and traffic detoured. During a.m. peak hour in baseline plus Project conditions, all study intersections would operate at LOS D or better. However, during the p.m. peak hour, two of the study intersections would operate at LOS E or worse. The remaining intersections would operate at LOS D or better during p.m. peak. Two mitigation measures, TRA-1c and TRA-1d, would reduce the impacts due to lane closure at these intersections to less-than-significant levels.

During analysis it was determined that all of the study intersections along the proposed detour routes for construction of the Wildcat Pipeline (Berkeley) would operate at LOS D or better, except the westbound approach at the Claremont Avenue/Hillcrest Boulevard/Brookside Drive intersection, which would operate at LOS F during the p.m. peak period between the hours of 4:00 p.m. and 6:00 p.m. Deploying a flagger during the p.m. peak period is expected to improve the level of service for the westbound approach from LOS F to LOS B. Also, overall, the intersection is expected to operate at LOS A during the p.m. peak period with control by a flagger. The impact at the Claremont Avenue/Hillcrest Road due to traffic detour will only occur during the p.m. peak period on weekdays when the pipeline is under construction. Mitigation Measure TRA-1a, which would deploy a flagger at the affected intersection to control westbound traffic during the p.m. peak, is expected to reduce this impact to a less-than-significant level.

Implementation of Mitigation Measures TRA-1a through -1d would reduce the impact of closure of travel lanes, but not necessarily to a less-than-significant level for all roads within the Project area, as described above. EBMUD hereby makes finding (a)(3), as described in Section 2.0 above, as required by CEQA, Section 21081, and as stated in the CEQA Guidelines, Section 15091, with respect to these effects.

Facts in Support of Findings: Mitigation Measures TRA-1a through TRA-1d are hereby adopted and will be implemented as set forth in the MMRP. These measures commit EBMUD to:

- Deploy a flagger at the Claremont Avenue/Hillcrest Boulevard/Brookside Drive intersection (Wildcat Pipeline [Berkeley]) to control westbound traffic during the p.m. peak period;
- Deploy flaggers at the Richmond Street/Central Avenue and Richmond Street/Fairmount Avenue intersections (Wildcat Pipeline [El Cerrito]) during peak periods; and,
- Prohibit left turns at the 23rd Street/San Pablo Road/Road 20 and 23rd Street/Rheem Avenue intersections (Central Pressure Zone Pipeline [Richmond/San Pablo]) during the p.m. peak when construction activities require lane closures.

Mitigation Measures TRA-1a through -1d, recommended on pages 3.13-19, 3.13-21, and 3.13-31 of the Draft EIR, are hereby imposed and shall be monitored in compliance with the MMRP. While EBMUD has agreed to these mitigations, impacts from closure of travel lanes due to construction have not been reduced to a less-than-significant level at intersections along Wildcat Pipeline (El Cerrito) and the Central Pressure Zone Pipeline

(El Cerrito/Richmond) and would be significant and unavoidable; impacts would be reduced to a less-than-significant level with mitigation for the Wildcat Pipeline (Berkeley) and the Central Pressure Zone Pipeline (Richmond/San Pablo).

2. **Significant and Unavoidable Impact 3.13-4:** Project construction would substantially limit access to adjacent roadways and land uses due to construction within roadways.

Impacts would be significant and unavoidable for the following pipeline:

- Central Pressure Zone Pipeline (El Cerrito/Richmond)

Impacts would be less than significant with mitigation for the following pipelines:

- Wildcat Pipeline (Berkeley)
- Wildcat Pipeline (El Cerrito)
- Central Pressure Zone Pipeline (Richmond/San Pablo)

Findings: During construction of the Central Pressure Zone Pipeline (El Cerrito/Richmond), owners and patrons of businesses within the area of construction along San Pablo Avenue would not be able to directly access businesses during work hours. During construction of other pipelines, road closure would limit automobile access and curb parking in the construction zone during construction periods.

Implementation of Mitigation Measures TRA-2a through -2d would reduce this impact, but not necessarily to a less-than-significant level for the Central Pressure Zone Pipeline (El Cerrito/Richmond). EBMUD hereby makes finding (a)(3), as described in Section 2.0 above, as required by CEQA, Section 21081, and as stated in the CEQA Guidelines, Section 15091, with respect to these effects.

Facts in Support of Findings: Mitigation Measures TRA-2a through TRA-2d are hereby adopted and will be implemented as set forth in the MMRP. These measures commit EBMUD to:

- Provide advance notification of construction to residents and business owners located within 300 feet of project construction;
- Remove road blocks and cover open trenches at the end of the work day to provide access;
- Maintain sidewalk access on one side of the street during construction; and
- Seek alternate parking solutions for City of Berkeley residents affected by Residential Preferential Parking Program restrictions.

Mitigation Measures TRA-2a through -2d, recommended on Draft EIR pages 3.13-33 to 34, are hereby imposed and shall be monitored in compliance with the MMRP. While EBMUD has agreed to these mitigations, impacts related to the accessibility of businesses along San Pablo Avenue due to construction would remain significant and unavoidable for the Central Pressure Zone Pipeline (El Cerrito/Richmond). Impacts would be reduced to a less-than-significant level for the other pipelines.

3. **Significant and Unavoidable Impact 3.13-5:** Project construction would substantially impair access to alternative transportation facilities (public transit, bicycle, or pedestrian facilities).

Impacts would be significant and unavoidable for the following pipeline:

- Central Pressure Zone Pipeline (El Cerrito/Richmond)

Impacts would be less than significant with mitigation for the following pipelines:

- Wildcat Pipeline (Berkeley)
- Wildcat Pipeline (El Cerrito)
- Central Pressure Zone Pipeline (Richmond/San Pablo)

Findings: Pipeline construction could require temporary relocation of bus stops and/or routes, increase transit times, limit bicycle access on roadways, and close marked pedestrian crosswalks. Some of the bus stops on closed roadway segments along San Pablo Avenue for construction of the Central Pressure Zone Pipeline (El Cerrito/Richmond) would be inaccessible.

Implementation of Mitigation Measures TRA-3a through -3g would reduce this impact, but not necessarily to a less-than-significant level for the Central Pressure Zone Pipeline (El Cerrito/ Richmond). EBMUD hereby makes finding (a)(3), as described in Section 2.0 above, as required by CEQA, Section 21081, and as stated in the CEQA Guidelines, Section 15091, with respect to these effects.

Facts in Support of Findings: Mitigation Measures TRA-3a through TRA-3g are hereby adopted and will be implemented as set forth in the MMRP. These measures commit EBMUD to:

- Coordinate with AC Transit to provide notification of project construction to transit patrons;
- Coordinate with AC Transit to relocate bus stops and/or reroute affected transit services during construction;
- Require the contractor to implement staged construction across San Pablo Avenue intersections;
- Provide bicycle traffic management for construction zones;
- Provide road closure notifications; and
- Avoid closing multiple crosswalks at closely-spaced intersections.

Mitigation Measures TRA-3a through -3g, recommended on Draft EIR pages 3.13-35 to 38, are hereby imposed and shall be monitored in compliance with the MMRP. While EBMUD has agreed to these mitigations, impacts related to the accessibility of AC Transit bus stops along San Pablo Avenue due to construction have not been reduced to a less-than-significant level for the Central Pressure Zone Pipeline (El Cerrito/Richmond). Impacts would be reduced to a less-than-significant level for the other pipelines.

### C. Cumulative Impacts

1. **Significant and Unavoidable Impact C-10: Cumulative Increases in Construction Noise and Vibration.**

Findings: If construction of cumulative projects overlaps with the Project, then noise levels in excess of the speech interference criteria could occur for longer than 10 work days. Mitigation Measure C-1 would require implementation of a coordinated noise and vibration control plan to ensure that, where feasible, the combined noise and vibration levels from overlapping projects do not exceed the 70-dBA speech interference threshold set forth in the Draft EIR at the closest affective sensitive receptors for more than two consecutive weeks. However, construction at tie-in locations would continue for over two weeks, and would remain a significant and unavoidable cumulative noise and vibration impact, even with mitigation.

Implementation of Mitigation Measure C-1, Coordinated Noise and Vibration Control Plan, would reduce this impact, but not to a less-than-significant level. EBMUD hereby makes finding (a)(3), as described in Section 2.0 above, as required by CEQA, Section 21081, and as stated in the CEQA Guidelines, Section 15091, with respect to these effects.

Facts in Support of Findings: Mitigation Measure C-1 is hereby adopted and will be implemented as set forth in the MMRP. This measure commits EBMUD to prepare a coordinated noise and vibration control plan that outlines controls to ensure that, where feasible, the speech interference threshold is not exceeded during the daytime hours for more than two consecutive weeks at one location without at least one week break between projects. In addition, the vibration limits listed in Mitigation Measure NOI-4 shall not be exceeded when combined noise and vibration effects from cumulative projects are considered.

Mitigation Measure C-1, recommended on page 5-34 of the Draft EIR, is hereby imposed and shall be monitored in compliance with the MMRP. While EBMUD has agreed to this mitigation, noise and vibration impacts due to pipeline construction cumulative with other projects have not been reduced to a less-than-significant level.

2. **Significant and Unavoidable Impact C-12: Cumulative impacts related to increases in traffic and traffic hazards, access, and parking.**

Findings: If the proposed project and other identified cumulative projects were under construction at the same time and affected the same roadways, the proposed project would contribute to cumulative construction-related traffic impacts, including temporary reductions in roadway capacity, short-term increases in traffic volumes and delays, and temporary impaired access for emergency response vehicles. In addition to cumulative (additive) effects on traffic flow conditions, the proposed project and other cumulative projects would extend the period of time when there would be disruptions (albeit not all disruptions would be significant) to traffic flow on area roadways.

While it is uncertain whether the cumulative linear projects listed in Table 5-1 of the Draft EIR would occur at the same time and location as the proposed project, there is potential for overlap. In addition, there are cumulative projects that, while not on the proposed pipeline alignments, could generate construction-related traffic on the same roads that the proposed project's construction workers and trucks would use to access the project work zones and could result in temporary cumulative impacts related to reduced roadway capacity and increased traffic delays.

To minimize the project's contribution to cumulative impacts related to these impacts, EBMUD would implement Mitigation Measure C-2, Coordinated Traffic Control Plan, requiring EBMUD to develop a coordinated traffic control plan to ensure that potential impacts from overlapping projects are addressed with input from the Cities of Berkeley, El Cerrito, Richmond, and San Pablo. Specific measures to mitigate significant impacts that could occur would be determined as part of the interagency coordination, but could include measures such as employing flagmen during key construction periods, designating alternate haul routes, and providing more outreach and community noticing. Implementation of these measures would help to minimize multiple disruptions to the same areas. However, significant and unavoidable impacts related to construction of the Central Zone Pipeline (Richmond/El Cerrito) on San Pablo Avenue and construction of the Wildcat Pipeline (El Cerrito) at San Pablo Avenue and Potrero Avenue would remain during the construction period.

Implementation of Mitigation Measure C-2 would reduce these impacts, but not necessarily to a less-than-significant level. EBMUD hereby makes finding (a)(3), as described in Section 2.0 above, as required by CEQA, Section 21081, and as stated in the CEQA Guidelines, Section 15091, with respect to these effects.

Facts in Support of Findings: Mitigation Measure C-2 is hereby adopted and will be implemented as set forth in the MMRP. This measure commits EBMUD to develop a Coordinated Transportation Management Plan in coordination with the appropriate local government departments in Berkeley, El Cerrito, Richmond, and San Pablo to address the transportation impact of the overlapping construction projects within the vicinity of the West of Hills Project.

Mitigation Measure C-2, recommended on page 5-37 of the Draft EIR, is hereby imposed and shall be monitored in compliance with the MMRP. While EBMUD has agreed to this mitigation, cumulative temporary impacts to traffic, traffic hazards, access, and parking due to pipeline construction have not been reduced to a less-than-significant level along the Wildcat Pipeline (El Cerrito) and the Central Pressure Zone Pipeline (El Cerrito/Richmond).

#### **D. Growth Inducement Potential**

##### **1. Significant and Unavoidable Impact G-1: Secondary effects of planned growth.**

Findings: While the West of Hills Northern Pipelines Project would not *directly* contribute to the creation of additional housing or jobs within the area, the Project would *indirectly* support growth by removing obstacles to growth approved under the general plans within the area served by the Project. The Project could therefore indirectly contribute to potentially significant secondary effects of planned growth by removing a potential obstacle to projected development. Some of these secondary effects of planned growth have been identified in CEQA documents prepared by land use agencies as significant and unavoidable, while others have been identified as significant but mitigable. Significant unavoidable impacts that could occur as a result of planned growth include loss of open space, increased traffic, degradation of air quality, and changed visual character of the region.

EBMUD is a municipal utility district and does not have the authority to make land use decisions or to approve growth. Cities and counties and resource agencies that have jurisdiction over the Project area have the authority to do so.

EBMUD hereby makes finding (a)(2), as described in Section 2.0 above, as required by CEQA, Section 21081, and as stated in the CEQA Guidelines, Section 15091, with respect to the above-identified effect. The implementation of mitigation measures by cities, counties, and resource agencies may reduce the impacts of growth but not lessen the impacts to a less-than-significant level. See Draft EIR pages 6-23 through 6-27.

**Facts in Support of Findings:** The authority to regulate growth, and by extension to mitigate the environmental effects of growth, resides primarily with land use planning agencies. The types of agencies that fall into this category include agencies with primary authority over land use planning (such as cities and counties) and agencies responsible for stewardship of environmental resources.

Cities and counties (for unincorporated areas) have the greatest authority over land use decisions within their jurisdictions through implementation of their general plans, locally adopted ordinances and regulations to manage growth, and development approval processes, and can adopt ordinances and policies intended to avoid or reduce environmental impacts. In their capacities as lead agencies under CEQA (PRC Section 21002 and Section 21067), cities and counties also have the authority and responsibility to evaluate the environmental impacts that would result from implementation of plans and individual development projects within their jurisdictions, and to adopt measures to mitigate any resulting significant adverse impacts.

Mitigation of impacts relating to specific resource categories generally falls under the responsibility of resource-specific agencies at the federal, state, regional, and local levels through permitting and related regulatory processes. Through their permitting authority, these agencies mitigate the impacts of proposed land uses and enforce the provisions of adopted resource protection plans. Land use planning and resource agencies that have the authority to implement or require implementation of measures to avoid or mitigate potential growth-related impacts from the West of Hills Northern Pipelines Project are identified in Table 6-6 of the Draft EIR on pages 6-24 through 6-25.

While local land use planning and resource agencies have the ability to adopt mitigation for potential significant growth-inducing effects, whether these agencies choose to do so cannot be controlled by EBMUD; for this reason, secondary effects related to planned growth have not been reduced to a less-than-significant level.

## 4.2 Findings Regarding Significant Effects Mitigated to Less-Than-Significant Levels

It has been determined that mitigation measures proposed in the Final EIR will avoid or mitigate the following effects to a less-than-significant impact level.

### A. Aesthetics

1. **Potentially Significant Impact 3.2-2:** Short-term visual effects due to nighttime construction lighting.

**Findings:** Construction work could periodically occur at night at tie-ins at the ends of each pipeline and at traffic intersections, to minimize traffic impacts of construction. Construction extending beyond normal daytime work hours may require the use of nighttime construction lighting. Nighttime construction lighting may be visible from adjacent residences and roadways and adversely affect nighttime view of the surrounding

area. Implementation of Mitigation Measure AES-1 would reduce impacts on the community to a less-than-significant level.

Facts in Support of Findings: Mitigation Measure AES-1 is hereby adopted and will be implemented as set forth in the MMRP. This measure commits EBMUD to ensure that, to the extent practical, nighttime lighting is of limited duration, shielded and directed downward or oriented such that the light source is not directed toward residential areas.

**2. Potentially Significant Impact 3.2-3: Tree removal or loss may affect visual character.**

Findings: Construction would require trimming, cutting of roots, and/or removal of trees located within the public right-of-way. The tree removal and/or loss from construction activities could result in a noticeable change in visual character. Implementation of Mitigation Measures AES-2, tree replacement and landscape restoration, and BIO-1d, a vegetation restoration plan, would reduce visual impacts to a less-than-significant level.

Facts in Support of Findings: Mitigation Measure BIO-1d has been adopted (see Section 4.2.C below) and will be implemented as set forth in the MMRP. Mitigation Measure AES-2 is hereby adopted and will be implemented as set forth in the EIR and MMRP. This measure commits EBMUD to replant trees and restore landscaping consistent with the following:

- If any mature native tree or other tree protected by local ordinance is removed, replanting will be with the same species at a 1:1 ratio. To allow for access to the pipelines, replanted trees will not be located within 20 feet of the pipeline.
- All non-native protected trees which are removed will be replaced at a 1:1 ratio with a non-invasive or native tree species, or species from an approved list where applicable (i.e. Berkeley).
- Any disturbed plant, bush, and ground cover landscaping will be restored to pre-project conditions, using similar plants and materials.
- Any tree that is injured during construction shall be evaluated by EBMUD's Consulting Arborist one year following the completion of construction in the vicinity of the injured tree. The Arborist shall make recommendations for treatment or removal and replacement with an appropriate species in accordance with these tree replacement guidelines.

## **B. Air Quality**

**1. Potentially Significant Impact 3.3-1: Short-term increases in criteria pollutant emissions during construction activities.**

Findings: The only scenario in which construction emissions exceed BAAQMD significance thresholds for criteria pollutants would be if construction of the Wildcat (Berkeley) and Wildcat (El Cerrito) pipelines were to occur at the same time. BAAQMD recommends that all projects implement the *Basic Construction Mitigation Measures* regardless of whether construction emissions exceed the significance criteria. These Measures are included as Mitigation Measure AIR-1a. Mitigation Measure AIR-1b reduces the emission of construction-related NO<sub>x</sub> to a less-than-significant level by requiring that on-road haul trucks will be, on average, model year of 2010 or newer if two pipeline construction headings are undertaken at the same time.



Facts in Support of Findings: Mitigation Measures AIR-1a and AIR-1b are hereby adopted and will be implemented as set forth in the MMRP. These measures commit EBMUD to:

- Control fugitive dust and criteria pollutant emissions during construction by implementing the BAAQMD-recommended *Basic Construction Mitigation Measures*; and
- Reduce construction-related NO<sub>x</sub> emissions by using trucks that are, on average, model year 2010 or newer, if construction occurs concurrently at the Wildcat (Berkeley) and Wildcat (El Cerrito) pipelines, or if two pipeline construction headings are undertaken at the same time.

## C. Biological Resources

1. **Potentially Significant Impact 3.4-2:** Potential adverse effect on special-status species in riparian habitats during construction (Central Pressure Zone Pipeline [Richmond/San Pablo]).

Findings: Construction activities in the vicinity of the San Pablo Creek and Wildcat Creek crossings could result in loss or degradation of aquatic and riparian habitat. Implementation of Mitigation Measures HYD-1, NOI-1, and BIO-1a through BIO-1d would reduce impacts related to riparian habitats to a less-than-significant level.

Facts in Support of Findings: Mitigation Measures HYD-1 and NOI-1 have been adopted and will be implemented as set forth in the MMRP. Mitigation Measures BIO-1a through BIO-1d are hereby adopted and will be implemented as set forth in the MMRP. These measures commit EBMUD to:

- Implement general protection measures to minimize construction impacts on biological resources;
- Protect riparian resources by limiting erosion, minimizing construction disturbance in riparian areas, and conducting a construction employee education program;
- Implement preconstruction surveys near all potential bird habitats if construction is to occur during breeding bird season and forward results to the CDFW;
- Conduct preconstruction bat surveys prior to removal of mature trees at San Pablo Creek; and
- Prepare and implement a Vegetation Restoration Plan and compensatory mitigation for riparian habitats.

2. **Potentially Significant Impact 3.4-3:** Potential adverse effect on jurisdictional waters during construction.

Findings: Construction in the vicinity of San Pablo and Wildcat Creeks has the potential to result in erosion, sedimentation or discharge of pollutants into jurisdictional waters. Implementation of Mitigation Measures BIO-1b, BIO-1d, and HYD-1 would reduce impacts related to jurisdictional waters to a less-than-significant level.

Facts in Support of Findings: Mitigation Measures BIO-1b, BIO-1d, and HYD-1 have been adopted and will be implemented as set forth in the MMRP.

3. **Potentially Significant Impact 3.4-4:** Potential adverse effect on resident trout and other native fishes during construction (Central Pressure Zone Pipeline [Richmond/San Pablo]).

Findings: Without proper precautions construction at all creek crossings could result in direct discharges to the creeks with resulting degradation of aquatic habitat, a potentially significant impact. Implementation of Mitigation Measure HYD-1 would reduce impacts on trout and other fishes to a less-than-significant level.

Facts in Support of Findings: Mitigation Measure HYD-1 has been adopted and will be implemented as set forth in the MMRP.

4. **Potentially Significant Impact 3.4-6:** Potential conflict with local policies or ordinances protecting biological resources.

Findings: The project would remove trees, could potentially cause tree loss, and could significantly affect creek systems, riparian habitats, or the rare and endangered species that depend on them. Implementation of Mitigation Measures AES-2 and BIO-1a through BIO-1d would reduce impacts related to compliance with local policies and ordinances to a less-than-significant level.

Facts in Support of Findings: Mitigation Measures AES-2 and BIO-1a through BIO-1d have been adopted and will be implemented as set forth in the MMRP.

## D. Cultural Resources

1. **Potentially Significant Impact 3.5-1:** Potential adverse change in the significance of a historical resource.

Findings: Proposed construction activities could result in vibration levels that have the potential to damage buildings and structures. Implementation of Mitigation Measure NOI-4 would limit vibration levels and thus reduce potential impacts on historic structures to a less-than-significant level.

Facts in Support of Findings: Mitigation Measure NOI-4 has been adopted and will be implemented as set forth in the MMRP.

2. **Potentially Significant Impact 3.5-2:** Potential disturbance of archaeological resources, including unrecorded cultural resources.

Findings: In the event of an inadvertent discovery of cultural materials or human remains, implementation of Mitigation Measures CUL-1a through CUL-1c would reduce this impact to a less-than-significant level.

Facts in Support of Findings: Mitigation Measures CUL-1a through CUL-1c are hereby adopted and will be implemented as set forth in the MMRP. These measures commit EBMUD to:

- Retain a qualified archaeologist prior to the approximately 50% design phase;
- Develop an Archaeological Research Design and Treatment Plan, including subsurface investigation at four historical resource locations; and

- Implement the Archaeological Research Design and Treatment Plan in the case of encountering cultural resources.

3. **Potentially Significant Impact 3.5-3:** Potential damage to unique paleontological resources.

Findings: In the event that paleontological resources are uncovered during project construction, implementation of Mitigation Measures CUL-2a through CUL-2d would reduce this impact to a less-than-significant level.

Facts in Support of Findings: Mitigation Measures CUL-2a through CUL-2d are hereby adopted and will be implemented as set forth in the MMRP. These measures commit EBMUD to:

- Retain a qualified paleontologist or California Registered Professional Geologist with appropriate paleontological expertise to be “on call” throughout the duration of ground-disturbing activities;
- Provide paleontological resources training for all construction forepersons and field supervisors conducting or overseeing subsurface excavations;
- Assess and salvage potential fossil finds; and
- Have a qualified paleontologist or paleontological monitor working under the supervision of a qualified paleontologist to monitor ground-disturbing activities during construction, if warranted based on experience during construction.

4. **Potentially Significant Impact 3.5-4:** Potential disturbance of human remains.

Findings: In the event that human remains are uncovered during project construction, implementation of Mitigation Measure CUL-3 would reduce this impact to a less-than-significant level.

Facts in Support of Findings: Mitigation Measure CUL-3 is hereby adopted and will be implemented as set forth in the MMRP. This measure commits EBMUD to halt work and contact the county coroner should human remains be inadvertently discovered.

## E. Geology and Soils

1. **Potentially Significant Impact 3.7-2:** Potential damage from seismic-related ground failure including liquefaction.

Findings: The Central Pressure Zone Pipeline (Richmond/San Pablo) alignment crosses an area of high to very high liquefaction susceptibility, and this area could be subject to seismically induced settlement and lateral spreading. Implementation of Mitigation Measure GEO-1, a Site-Specific Geotechnical Investigation, would reduce impacts related to seismic-related ground failure to a less-than-significant level.

Facts in Support of Findings: Mitigation Measures GEO-1 is hereby adopted and will be implemented as set forth in the MMRP. This measure commits EBMUD to conduct a site-specific geotechnical investigation at the creek crossings for the Central Pressure Zone Pipeline (Richmond/San Pablo) and implementation of technical recommendations into project design and construction. No mitigation measures are needed for the other pipelines.

2. **Potentially Significant Impact 3.7-3:** Potential damage from seismic ground shaking.

Findings: At the San Pablo Creek crossing, the pipeline would be more susceptible to damage from ground shaking because it would span the creek on a pipe bridge, and the bridge supports would be located in banks that are susceptible to liquefaction. Therefore impacts related to seismic ground shaking would be potentially significant for this portion of the Central Pressure Zone Pipeline (Richmond/San Pablo). Implementation of Mitigation Measure GEO-1 would reduce impacts related to seismic ground shaking to a less-than-significant level.

Facts in Support of Findings: Mitigation Measure GEO-1 has been adopted for the Central Pressure Zone Pipeline (Richmond/San Pablo) and will be implemented as set forth in the MMRP. No mitigation measures are needed for the other pipelines.

3. **Potentially Significant Impact 3.7-5:** Erosion and loss of topsoil.

Findings: Construction of the pipe bridge on San Pablo Creek could cause erosion and loss of topsoil of the exposed creek banks, which would be potentially significant. Implementation of Mitigation Measure HYD-1 would reduce impacts related to erosion and loss of topsoil to a less-than-significant level.

Facts in Support of Findings (Impact 3.7-5): Mitigation Measure HYD-1 has been adopted for the Central Pressure Zone Pipeline (Richmond/San Pablo) and will be implemented as set forth in the MMRP. No mitigation measures are needed for the other pipelines.

4. **Potentially Significant Impact 3.7-6:** Potential damage due to unstable geologic units.

Findings: Operation of continuous vibratory equipment, such as compactors or sheet pile drivers, could induce liquefaction and related differential settlement in the Central Pressure Zone Pipeline (Richmond/San Pablo), depending on the type, magnitude, and duration of vibration. Implementation of Mitigation Measures NOI-4 would reduce impacts related to the effects of vibration on unstable geologic units to a less-than-significant level.

Facts in Support of Findings: Mitigation Measure NOI-4 has been adopted and will be implemented as set forth in the MMRP.

5. **Potentially Significant Impact 3.7-7:** Potential damage due to expansive or corrosive soil.

Findings: Where the proposed Central Pressure Zone Pipeline (Richmond/San Pablo) crosses San Pablo Creek, the pipe bridge footings would be constructed in a soil type that exhibits a moderate shrink-swell capacity and has a high risk of corrosion to uncoated steel and moderate risk of corrosion to concrete. Implementation of Mitigation Measure GEO-1 would reduce impacts from expansive and corrosive soils to a less-than-significant level.

Facts in Support of Findings: Mitigation Measure GEO-1 has been adopted and will be implemented as set forth in the MMRP. This measure commits EBMUD to conduct a site-specific geotechnical investigation at the creek crossings for the Central Pressure Zone Pipeline (Richmond/San Pablo) and implementation of technical recommendations into project design and construction.

## F. Hazards and Hazardous Materials

1. **Potentially Significant Impact 3.9-3:** Potential adverse effects related to the rupture of subsurface utilities.

Findings: During trench and pit excavation the potential exists for subsurface utilities to be inadvertently damaged. While Cal OHSA Construction Safety orders require the notification of USA North at least two working days prior to initiation of ground-disturbing construction activities, this may not provide sufficient time for utility owners to locate and mark the subsurface utilities or for EBMUD and its contractors to develop and incorporate appropriate design changes, if needed, to avoid damage to the utility. Implementation of Mitigation Measures HAZ-1a through HAZ-1c would reduce this impact to a less-than-significant level.

Facts in Support of Findings: Mitigation Measures HAZ-1a through HAZ-1c are hereby adopted and will be implemented as set forth in the MMRP. These measures commit EBMUD to:

- Identify buried utilities according to EBMUD Engineering Standard Practice 514;
- Protect, support, or remove underground utilities as necessary to safeguard employees; and
- Notify local fire departments if damage to a gas utility results in a leak or suspected leak, or whenever damage to any utility results in a threat to public safety. EBMUD or its contractors will also coordinate repair with the approval of the utility owner if any damage occurs.

2. **Potentially Significant Impact 3.9-4:** Exposure of construction workers and the public to naturally-occurring asbestos.

Findings: Potentially ultramafic rock has been mapped in close proximity to the Wildcat Pipeline (Berkeley) and the Central Pressure Zone Pipeline (El Cerrito/Richmond) alignments, and may contain naturally occurring asbestos that could become airborne during construction, operation, and maintenance activities in the project vicinity. Implementation of Mitigation Measure HAZ-2 would reduce this impact to a less-than-significant level.

Facts in Support of Findings: Mitigation Measure HAZ-2 is hereby adopted and will be implemented as set forth in the MMRP. This measure commits EBMUD or its contractor to conduct soil testing near mapped areas of ultramafic rock within the pipeline alignment of the Wildcat Pipeline (Berkeley) or the Central Pressure Zone Pipeline (El Cerrito/Richmond) and, if found, to develop and implement an Asbestos Dust Mitigation Plan in accordance with BAAQMD criteria.

## G. Hydrology and Water Quality

1. **Potentially Significant Impact 3.10-1:** Degradation of water quality as a result of erosion and sedimentation or a hazardous materials release during construction.

Findings: Due to the proximity of the project components to Wildcat, San Pablo, and Harwood Creeks, impacts related to degradation of water quality as a result of erosion and sedimentation or a hazardous materials release during construction are potentially

significant for the Wildcat Pipeline (Berkeley) and Central Pressure Zone Pipeline (Richmond/San Pablo). Implementation of Mitigation Measure HYD-1 would reduce the potential water quality impacts of erosion and hazardous materials to a less-than-significant level.

Facts in Support of Findings: Mitigation Measure HYD-1 is hereby adopted and will be implemented as set forth in the MMRP. This measure commits EBMUD to schedule construction activities at Harwood Creek, Wildcat Creek, and San Pablo Creek during the dry season.

2. **Potentially Significant Impact 3.10-3:** Alteration of drainage patterns and impedance or redirection of flood flows.

Findings: If flooding occurred during construction activities associated with the jack and bore crossing beneath Wildcat Creek and the pipeline bridge across San Pablo Creek, temporary alteration of drainage patterns and/or impedance or redirection of flood flows could occur. This would be a potentially significant impact for the Central Pressure Zone Pipeline (Richmond/San Pablo). Implementation of Mitigation Measure HYD-1 would reduce the potential water quality impact to a less-than-significant level.

Facts In Support of Findings (Impact 3.10-3): Mitigation Measure HYD-1 has been adopted. Implementation of Mitigation Measure HYD-1 will require construction activities in affected areas to occur during the dry season when flooding would not occur.

## H. Noise

1. **Potentially Significant Impact 3.11-2:** Construction activities could result in substantial temporary noise increases that could interfere with activities at nearby noise-sensitive land uses.

Findings: While construction noise associated with tie-in construction and nighttime intersection construction are considered significant and unavoidable (see Section 4.1, above), other pipeline construction activities could also expose people to daytime construction noise that would exceed the 70-dBA speech interference threshold, but could be mitigated to a less-than-significant level with implementation of Mitigation Measures NOI-1 and NOI-2.

Facts in Support of Findings: Mitigation Measures NOI-1 and NOI-3 have been adopted and will be implemented as set forth in the MMRP. Mitigation Measure NOI-2 is hereby adopted and will be implemented as set forth in the MMRP. This measure commits EBMUD to:

- Coordinate with schools located within 250 feet of pipeline components to schedule construction activities in a manner that minimizes noise impacts on school activities to the extent feasible; and
- Use noise barriers or enclosures as necessary to ensure that noise from the boring jack power unit/generator does not exceed the speech interference threshold for more than 10 consecutive work days at the closest noise-sensitive receptors.

2. **Potentially Significant Impact 3.11-3:** Construction activities could result in excessive groundborne vibration.

Findings: Pipeline construction, including operation of heavy earthmoving equipment during excavation and pipe installation, could generate vibration and differential settlement near residential and commercial structures. Implementation of Mitigation Measure NOI-4 would reduce construction-phase vibration impacts to a less-than-significant level.

Facts in Support of Findings: Mitigation Measure NOI-4 is hereby adopted and will be implemented as set forth in the MMRP. This measure commits EBMUD to utilize construction practices that do not generate vibration levels above MMRP-listed thresholds at the closest structures.

## I. Recreation

1. **Potentially Significant Impact 3.12-2:** Construction of the project may result in the removal of trees and other park facilities.

Findings: A short segment of the Wildcat Pipeline (Berkeley) would be constructed within the park strip between The Uplands and Parkside Drive, which would require removal of about two trees and trimming of limbs and roots of additional trees. Implementation of Mitigation Measure AES-2 would reduce impacts related to tree removal in park areas to a less-than-significant level. Jack and bore activities could result in temporary removal of trees or amenities at the proposed pocket park adjacent to 23rd Street on the north side of Wildcat Creek (Richmond/San Pablo), which could negatively affect the park facility. Implementation of Mitigation Measure REC-1 would reduce impacts on park facilities and trees to a less-than-significant level.

Facts in Support of Findings: Mitigation Measure AES-2 has been adopted and will be implemented as set forth in the MMRP. Mitigation Measure REC-1 is hereby adopted and will be implemented as set forth in the MMRP. This measure commits EBMUD to restore the 23rd Street Pocket Park near the Central Pressure Zone Pipeline (Richmond/San Pablo) to pre-project conditions after construction activities are completed.

## J. Cumulative Impacts

1. **Potentially Significant Impact C-2:** Cumulative air quality impacts.

Findings: Construction activities associated with the proposed pipeline projects in combination with construction of the identified cumulative projects could result in cumulative impacts on air quality. Implementation of Mitigation Measure AIR-1b would reduce cumulative air quality impacts to a less-than-significant level.

Facts In Support of Findings: Mitigation Measure AIR-1b has been adopted and will be implemented as set forth in the MMRP.

2. **Potentially Significant Impact C-3:** Cumulative impacts on biological resources.

Findings: Construction activities associated with the proposed pipeline projects in combination with construction of the identified cumulative projects could result in cumulative impacts on biological resources. Implementation of Mitigation Measures HYD-1, BIO-1a to -1d would reduce cumulative biological resources impacts to a less-than-significant level.

Facts In Support of Findings: Mitigation Measures HYD-1 and BIO-1a to -1d have been adopted and will be implemented as set forth in the MMRP.

3. **Potentially Significant Impact C-4:** Cumulative impacts on historical, archaeological, and paleontological resources.

Findings: Construction activities associated with the proposed pipeline projects in combination with construction of the identified cumulative projects could result in cumulative impacts on cultural resources. Implementation of Mitigation Measures CUL-1, CUL-2 and CUL-3 would reduce cumulative cultural resources impacts to a less-than-significant level.

Facts In Support of Findings: Mitigation Measures CUL-1, CUL-2 and CUL-3 have been adopted and will be implemented as set forth in the MMRP.

4. **Potentially Significant Impact C-6:** Cumulative impacts related to seismic hazards, soil and topsoil erosion, unstable geologic units, and expansive soils.

Findings: Construction activities associated with the proposed pipeline projects in combination with construction of the identified cumulative projects could result in cumulative impacts related to soil and geologic resources. Implementation of Mitigation Measures HYD-1 and NOI-4 would reduce cumulative impacts to a less-than-significant level.

Facts In Support of Findings: Mitigation Measures HYD-1 and NOI-4 have been adopted and will be implemented as set forth in the MMRP.

5. **Potentially Significant Impact C-7:** Cumulative impacts related to greenhouse gas emissions.

Findings: Construction activities associated with the proposed pipeline projects in combination with construction of the identified cumulative projects could result in cumulative impacts related to greenhouse gas emissions. Implementation of Mitigation Measure AIR-1 would reduce cumulative greenhouse gas impacts to a less-than-significant level.

Facts In Support of Findings: Mitigation Measure AIR-1 has been adopted and will be implemented as set forth in the MMRP.

6. **Potentially Significant Impact C-8:** Cumulative impacts related to hazards and hazardous materials.

Findings: Construction activities associated with the proposed pipeline projects in combination with construction of the identified cumulative projects could result in cumulative impacts related to hazards and hazardous materials. Implementation of Mitigation Measures HAZ-1a to -1c and HAZ-2 would reduce cumulative impacts to a less-than-significant level.

Facts In Support of Findings: Mitigation Measures HAZ-1a to -1c and HAZ-2 have been adopted and will be implemented as set forth in the MMRP.

7. **Potentially Significant Impact C-9:** Cumulative impacts on hydrology and water quality.



Findings: Construction activities associated with the proposed pipeline projects in combination with construction of the identified cumulative projects could result in cumulative impacts on hydrology and water quality. Implementation of Mitigation Measure HYD-1 would reduce cumulative impacts to a less-than-significant level.

Facts In Support of Findings: Mitigation Measure HYD-1 has been adopted and will be implemented as set forth in the MMRP.

8. **Potentially Significant Impact C-11:** Cumulative impacts to parks or other recreational facilities.

Findings: Construction activities associated with the proposed pipeline projects in combination with construction of the identified cumulative projects could result in cumulative impacts on parks and other recreational facilities. Implementation of Mitigation Measure REC-1 would reduce cumulative impacts to a less-than-significant level.

Facts In Support of Findings: Mitigation Measure REC-1 has been adopted and will be implemented as set forth in the MMRP.

### 4.3 Findings Regarding Less than Significant Effects

It has been determined that the following effects would be less-than-significant or there is no impact.

#### A. Aesthetics

1. **Less Than Significant Impact 3.2-1:** Short-term visual effects experienced from nearby areas during project construction.

Findings: Less than significant and no mitigation is needed. (See Draft EIR page 3.2-10).

Facts in Support of Findings (Impact 3.2-1): Construction activities would be required to comply with EBMUD's standard best practices for dust control, and would occur within urban/developed areas where temporary construction activities periodically occur. Due to the limited duration of construction activities, potential visual impacts due to construction activities are considered less than significant.

2. **Less Than Significant Impact 3.2-5:** Aboveground appurtenances may affect visual character along the pipeline routes.

Findings: Less than significant and no mitigation is needed. (See Draft EIR page 3.2-14).

Facts in Support of Findings (Impact 3.2-5): The proposed appurtenances are typical of urban utilities and would not cause a noticeable change in the visual character of the area surrounding the pipelines.

#### B. Air Quality

1. **Less Than Significant Impact 3.3-2:** Project construction could expose sensitive receptors to substantial pollutant concentrations.

Findings: Less than significant and no mitigation is needed. (See Draft EIR pages 3.3-15 to 3.3-18).

Facts in Support of Findings (Impact 3.3-2): The Project's construction-related diesel particular matter (DPM) emissions would be well below Bay Area Air Quality Management District individual and cumulative thresholds of significance.

2. **Less Than Significant Impact 3.3-3:** Project construction activities would not create objectionable odors affecting a substantial number of people.

Findings: Less than significant and no mitigation is needed. (See Draft EIR page 3.3-18).

Facts in Support of Findings (Impact 3.3-3): During project construction, nuisance diesel odors associated with operation of construction equipment could occur at adjacent uses. However, this effect would be localized, primarily affecting the closest residences, and would be occasional and temporary in nature. Due to the temporary nature of project construction, this impact would be less than significant.

3. **Less Than Significant Impact 3.3-4:** Project operations would not violate air quality standards or contribute substantially to an existing air quality violation, expose sensitive receptors to substantial pollutant concentrations, or create objectionable.

Findings: Less than significant and no mitigation is needed. (See Draft EIR pages 3.3-18 to 3.13-19).

Facts in Support of Findings (Impact 3.3-4): Once the proposed pipelines are completed, they would be operated in the same manner as existing adjacent pipelines are currently operated. Existing operational and maintenance practices for pipelines in project vicinities would remain the same. Project pipelines would not be a source of TACs or PM<sub>2.5</sub> emissions, and odors would not be emitted during operation of proposed pipelines because of the potable water contained in the pipelines as well as the enclosed nature of Project facilities.

## C. Biological Resources

1. **Less Than Significant Impact 3.4-1:** The proposed Project could have a substantial adverse effect on special-status species during open-trench construction in urban habitat.

Findings: Less than significant and no mitigation is needed. (See Draft EIR pages 3.4-21 to 22).

Facts in Support of Findings (Impact 3.4-1): No special-status plants are known to occur within or adjacent to the project area and no suitable habitat was found for any of the special-status plants known from the region. When required, tree removal would be scheduled for the period September 1 through January 31 to avoid the nesting season of birds. Urban area habitat is very limited for some species; construction activity would represent a less-than-significant increase over ambient levels of noise and vibration for others.

2. **Less Than Significant Impact 3.4-5:** The proposed Project could have a substantial adverse effect on wildlife corridors or wildlife nursery sites during construction.

Findings: Less than significant and no mitigation is needed. (See Draft EIR page 3.4-29).

Facts in Support of Findings (Impact 3.4-5): Wildcat Creek and San Pablo Creek are the only recognized wildlife corridors and potential wildlife nursery sites in the Project area. Impacts are less than significant because the Project is immediately adjacent to a busy

street, construction would be limited to the daytime, and construction would last a relatively brief amount of time.

3. **Less Than Significant Impact 3.4-7:** The proposed Project would not conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.

Findings: No impact and no mitigation is needed. (See Draft EIR page 3.4-31).

Facts in Support of Findings (Impact 3.4-7): The project area is not included within the identified boundaries of any Habitat Conservation Plan, Natural Community Conservation plan, or local, regional or state habitat conservation plan.

## D. Energy Conservation

1. **Less Than Significant Impact 3.6-1:** Construction and operation of the proposed Project would result in less-than-significant consumption of energy.

Findings: Less than significant and no mitigation is needed. (See Draft EIR pages 3.6-5 to 3.6-6).

Facts in Support of Findings (Impact 3.6-5): Fuel use would be consistent with typical construction and manufacturing practices and would not require excessive or wasteful use of energy. In addition, the construction period for each pipeline would be limited to approximately one year or less. Once operational, the proposed Project would improve the efficiency of pumping plants serving the West of Hills area, and extend the useful life of existing EBMUD facilities.

2. **Less Than Significant Impact 3.6-2:** The proposed Project would not result in a significant impact on local and regional energy supplies or on requirements for additional capacity.

Findings: Less than significant and no mitigation is needed. (See Draft EIR page 3.6-6).

Facts in Support of Findings (Impact 3.6-2): Construction would be temporary (approximately one year or less for each pipeline) and fuel consumption would not represent a substantial depletion of local or regional energy supplies. In addition, EBMUD would continue to be a net energy generator. No adverse impact on local or regional energy supplies or capacity would result.

3. **Less Than Significant Impact 3.6-3:** The proposed Project would not result in a significant impact on peak and base period demands for electricity and other forms of energy.

Findings: Less than significant and no mitigation is needed. (See Draft EIR page 3.6-6).

Facts in Support of Findings (Impact 3.6-3): The proposed Project would improve the efficiency of pumping plants serving the West of Hills area. This will improve EBMUD's ability to pump water during off-peak periods, reducing peak energy demand. The proposed Project would therefore result in a less-than-significant impact related to the demand for electricity or other forms of energy.

4. **Less Than Significant Impact 3.6-4:** Construction and operation of the proposed Project would not conflict with existing energy standards.

Findings: Less than significant and no mitigation is needed. (See Draft EIR page 3.6-7).

Facts in Support of Findings (Impact 3.6-4): Project construction would be short-term and would not result in the permanent increased use of non-renewable energy resources. Project operation would use electricity for pumping and would require infrequent trips for routine and emergency maintenance. The project would also improve the efficiency of pumping plants serving the West of Hills area. For these reasons, project construction and operation would not conflict with current energy conservation standards.

5. **Less Than Significant Impact 3.6-5:** The proposed Project would not result in a significant impact related to transportation energy use or use of efficient transportation alternatives.

Findings: Less than significant and no mitigation is needed. (See Draft EIR page 3.6-7).

Facts in Support of Findings (Impact 3.6-5): The Traffic Control Plans that would be implemented as part of the Project would minimize idling and detours, thereby limiting energy consumption. The use of transportation alternatives is not relevant to the Project except that construction workers could choose to use alternative transportation to reach the construction site and/or EBMUD truck and equipment storage facility. During project operation, transportation-related energy use would be infrequent and minor, consisting of periodic maintenance trips, and these would originate from the local area.

## E. Geology and Soils

1. **Less Significant Impact 3.7-1:** Surface fault rupture.

Findings: Less than significant and no mitigation is needed. (See Draft EIR page 3.7-16).

Facts In Support of Findings (Impact 3.7-1): None of the proposed pipeline alignments cross an active fault trace.

2. **Less Than Significant Impact 3.7-4:** Seismically induced landslides.

Findings: Less than significant and no mitigation is needed. (See Draft EIR page 3.7-18).

Facts in Support of Findings (Impact 3.7-4): All of the proposed pipelines would be constructed in a relatively flat alluvial plain to the west of the Berkeley Hills, in areas that contain few, if any, large mapped landslides.

## F. Greenhouse Gas Emissions

1. **Less Than Significant Impact 3.8-1:** Construction-related greenhouse gas emissions would not result in a significant impact on climate change or conflict with applicable greenhouse gas reduction policies and regulations.

Findings: Less than significant and no mitigation is needed. (See Draft EIR page 3.8-7).

Facts In Support of Findings (Impact 3.8-1): The contribution of greenhouse gas (GHG) emissions from the Project would be extremely small in terms of both the statewide and Bay Area annual GHG emissions: Worst-case emissions associated with project construction would represent approximately 0.00018 percent of total annual GHG emissions for the state, and approximately 0.0009 percent of total annual GHG emissions

for the entire Bay Area. Also, GHG emissions would be temporary in nature, would be limited to the construction period, and would not continue after completion of project construction.

2. **Less Than Significant Impact 3.8-2:** Operational greenhouse gas emissions would not result in a significant impact on climate change or conflict with applicable greenhouse gas reduction policies and regulations.

Findings: Less than significant and no mitigation is needed. (See Draft EIR page 3.8-8).

Facts In Support of Findings (Impact 3.8-2): Operational and maintenance practices for the water distribution network would remain the same, which would include periodic maintenance of pipelines. GHG emissions associated with this maintenance traffic would therefore be similar to existing levels.

## F. Hazards and Hazardous Materials

1. **Less Than Significant Impact 3.9-1:** The proposed Project could result in significant hazards from the release of hazardous materials present in soil or groundwater at documented hazardous materials sites within the project vicinity.

Findings: Less than significant and no mitigation is needed. (See Draft EIR page 3.9-19).

Facts In Support of Findings (Impact 3.9-1): Compliance with EBMUD's Master Specifications, Environmental Requirements and Project Safety Requirements would reduce this impact to a less-than-significant level by requiring sampling and laboratory analysis of soil and groundwater at project locations anticipated to have a high likelihood of contamination. Implementation of the site-specific Health and Safety Plan in accordance with OSHA regulations (CFR 1910.120) would reduce the potential for harmful exposure of construction workers and the public to contaminated soil and groundwater encountered during project construction. For operations, with implementation of the procedures outlined in the EBMUD Environmental Compliance Manual and compliance with applicable laws and regulations, the impact related to a reasonably foreseeable release and exposure to hazardous materials in soil and groundwater during project operations and maintenance would cause a less-than-significant hazard to the public or the environment.

2. **Less Than Significant Impact 3.9-2:** The proposed Project would not result in significant hazards to the public or the environment through the routine transport, use, or disposal of hazardous materials.

Findings: Less than significant and no mitigation is needed. (See Draft EIR page 3.9-20).

Facts In Support of Findings (Impact 3.9-2): Implementation of construction best management practices (BMPs) outlined in the Stormwater Pollution Prevention Plan (SWPPP) and Spill Prevention and Response Plan, both required under EBMUD construction specifications, would reduce the risk of a hazardous materials release during construction activities. Based on the nature of the project operations and maintenance activities, it is anticipated that potential leaks and spills from vehicles and equipment would be relatively minor and addressed by spill cleanup procedures required by EBMUD's Environmental Compliance Manual.

3. **Less Than Significant Impact 3.9-5:** The proposed Project would not release hazardous emissions or handle acutely hazardous materials, substances or waste within ¼ mile of a school.

Findings: Less than significant and no mitigation is needed. (See Draft EIR page 3.9-24).

Facts In Support of Findings (Impact 3.9-5): Construction emissions of diesel particulate matter (DPM) would be less than the BAAQMD threshold of 10 in a million. Also, a spill or release at a construction site would not result in an emission with the potential to result in exposures to individuals at nearby schools due to the types and quantities of hazardous materials that would be utilized during construction. Standard construction BMPs required by the SWPPP and Spill Prevention and Control Plan also include measures for the safe handling and storage of hazardous materials used during construction to prevent a release and methods to contain any such release if it should occur. Finally, during project operations and maintenance hazardous materials will not be used in quantities that could result in hazardous releases or emissions.

4. **Less Than Significant Impact 3.9-6:** Exposure of people or structures to significant risk of property loss, injury, or death involving wildfires.

Findings: Less than significant and no mitigation is needed. (See Draft EIR page 3.9-25).

Facts In Support of Findings (Impact 3.9-6): In accordance with EBMUD Contract Specification Section 01 35 24, fire-fighting equipment capable of extinguishing incipient fires would be maintained on the project site, and contractors would be required to comply with hazardous materials storage and fire protection regulations as well as applicable National Fire Prevention Standards for construction operations.

## G. Hydrology and Water Quality

1. **Less Than Significant Impact 3.10-2:** Degradation of water quality resulting from discharges during dewatering of trenches and discharges of treated water.

Findings: Less than significant and no mitigation is needed. (See Draft EIR page 3.10-24).

Facts In Support of Findings (Impact 3.10-2): Compliance with EBMUD construction specifications and Environmental Compliance Manual, including discharge in accordance with the requirements of the agency having jurisdiction over the discharge, would ensure that impacts associated with discharges of groundwater produced during dewatering and treated water from the pipelines are less than significant.

2. **Less Than Significant Impact 3.10-4:** Flooding resulting from a pipeline rupture.

Findings: Less than significant and no mitigation is needed. (See Draft EIR page 3.10-27).

Facts In Support of Findings (Impact 3.10-4): Pipelines would be designed with isolation valves that can be closed to interrupt the flow of water to a ruptured pipe. In addition, EBMUD inspectors typically respond on-site within one hour of a reported leak. With proper design of the pipelines, and implementation of EBMUD's Leak Response Program, the potential for pipeline rupture and associated flood damage is low.

## H. Noise and Vibration

1. **Less Than Significant Impact 3.11-4:** Project operations would not result in a substantial permanent increase in ambient noise levels in the project vicinity or significant impacts related to the exposure of people to noise levels in excess of local noise ordinance limits.

Findings: Less than significant and no mitigation is needed. (See Draft EIR page 3.11-40).

Facts In Support of Findings (Impact 3.11-4): The Project would not result in any permanent surface operations that would introduce new sources of noise or vibration. Also, maintenance activities would occur as needed or as part of routine of facility monitoring in accordance with standard inspection schedules, and the frequency of monitoring or maintenance activities would not change substantially from current conditions.

## I. Recreation

1. **Less Than Significant Impact 3.12-1:** Construction of the Project may disrupt access to parks and other recreational facilities.

Findings: Less than significant and no mitigation is needed. (See Draft EIR page 3.12-3).

Facts In Support of Findings (Impact 3.12-1): Project construction will either not limit access to relevant parks and recreational facilities or will temporarily disrupt access without affecting access to alternate nearby recreational facilities.

## J. Transportation and Traffic

1. **Less Than Significant Impact 3.13-2:** Project construction would have a less-than-significant impact on access, including access for emergency vehicles.

Findings: Less than significant and no mitigation is needed. (See Draft EIR page 3.13-31).

Facts In Support of Findings (Impact 3.13-2): For construction on all pipelines, local residents would be permitted access to their residences and barricades would be used for road closures, which can easily be removed for emergency vehicle access.

2. **Less Than Significant Impact 3.13-3:** The Project would not substantially increase hazards due to a design feature or incompatible uses.

Findings: Less than significant and no mitigation is needed. (See Draft EIR page 3.13-32 to 33).

Facts In Support of Findings (Impact 3.13-3): During construction, road closures and lane channelizations using standard traffic control schemes would not result in hazardous conditions for traffic.

## K. Cumulative

1. **Less Than Significant Impact C-5:** The Project would have a less-than-significant impact related to energy consumption and conservation.

Findings: Less than significant and no mitigation is needed. (See Draft EIR page 5-26).

Facts In Support of Findings (Impact C-5): Project construction and operation would not have a significant impact on local or regional energy supplies.

## 5.0 Statement of Overriding Considerations

CEQA requires the lead agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the proposed project. The lead agency may decide to accept significant and unavoidable adverse environmental effects, if the specific economic, legal, social, technological, or other benefits of the proposed project outweigh the unavoidable, adverse effects. (CEQA Guidelines Section 15093)

As set forth in Section 4.1 of these Findings, there are eight potentially significant and unavoidable adverse environmental effects of the Project: (1) construction activities could conflict with ordinance time limits or noise levels (Impact 3.11-1); (2) construction activities could result in substantial temporary noise increases that could interfere with activities at nearby noise-sensitive land uses (Impact 3.11-2); (3) closure of travel lanes during project construction would temporarily reduce roadway capacity and increase traffic delays on area roadways (Wildcat Pipeline [El Cerrito] and Central Pressure Zone Pipeline [El Cerrito/Richmond]) (Impact 3.13-1); (4) construction could substantially limit access to adjacent land uses (Central Pressure Zone Pipeline [El Cerrito/Richmond]) (Impact 3.13-4); (5) project construction would substantially impair access to alternative transportation facilities uses (Central Pressure Zone Pipeline [El Cerrito/Richmond]) (Impact 3.13-5); (6) cumulative increases in construction noise and vibration (Impact C-10); (7) cumulative impacts related to increases in traffic and traffic hazards, access, and parking (Wildcat Pipeline [El Cerrito] and Central Pressure Zone Pipeline [El Cerrito/Richmond]) (Impact C-12); and (8) secondary effects of planned growth (Impact G-1).

In accordance with Section 15093 of the CEQA Guidelines, the Board hereby finds that the following economic, legal, social, technological, or other benefits of the Project override and outweigh the above-referenced eight potentially significant and unavoidable adverse environmental effects of the Project and makes this statement of overriding considerations to support its action to approve the Project.

EBMUD has identified needs to correct existing deficiencies in water transmission and storage operations, meet projected future water demands, improve system reliability and water quality maintenance challenges, and facilitate repair and replacement of aging infrastructure. Addressing these needs would benefit customers located west of the Oakland-Berkeley Hills and north of the Claremont Tunnel terminus in Berkeley by ensuring continued reliable water service. Implementation of the West of Hills Northern Pipelines Project would address these needs and provide the identified benefits. The proposed improvements would also make the EBMUD system more reliable, benefiting all customers.

Particular benefits of the Project include:

- Addressing Deficiencies in Current Water Transmission and Storage Operations. Currently, the Wildcat Aqueduct does not provide adequate flow at the required pressure to allow for



the efficient operation of pumping plants along the aqueduct, or to allow the North Reservoir to be adequately filled during the winter months. The water pressure experienced by customers in the Aqueduct Pressure Zone also fluctuates widely in response to customer demand. All of these problems are projected to worsen as water demand increases. The proposed West of Hills Northern Pipelines Project would increase transmission capacity to the northern West of Hills area by installing new pipelines and connecting existing pipelines. The additional transmission capacity will allow more water to flow to pumps along the Wildcat Aqueduct during the evening and mornings when electricity is more available and cheaper. The additional transmission capacity will also reduce frictional energy losses along the pipeline that will increase the suction pressure and capacity of the Crocket Pumping Plant, which is at the very end of the Wildcat Aqueduct. The District currently cannot pump at Crocket Pumping Plant's fully rated capacity during periods of high water demand, because of the low suction pressures at the end of the Wildcat Aqueduct.

- Preparing for Future Water Demand. EBMUD projects that, despite planned increased levels of water conservation and recycling, potable water demand in its service area will increase; consequently, the operational deficiencies described above will worsen. The West of Hills Northern Pipelines Project has been sized using EBMUD's 2040 Demand Study to accommodate projected increases in water demand due to planned changes in land use within EBMUD's service area. Land use projections in the general plans were developed during a period of economic expansion, so although water demand projections reflect development planned for the general plans at that time, the timing of development and the associated rate of demand increases may be realized more slowly than the 2040 Demand Study projection. The West of Hills Northern Pipelines Project has been designed to support a future West of Hills maximum day demand up to 315 mgd.
- Improving System Reliability. The Wildcat Aqueduct is in continuous use and lacks redundancy in this part of the service area, limiting EBMUD's ability to conduct periodic maintenance and inspections. This pipeline is generally the only source of water for much of Berkeley, Albany, Kensington and the El Cerrito hills. It is only possible to take it out of service for maintenance during the winter when water demand is lower, and portable pumps are required to serve areas that are cut off during a pipeline outage. Because there are few valves on the Wildcat Aqueduct, several thousand feet of pipeline must be taken out of service for even minor maintenance activities. The West of Hills Northern Pipelines Project would improve system reliability by providing additional transmission capacity, which in turn would allow for more flexible operation of the system pumping plants and rate control stations. The new pipelines would allow existing portions of the Wildcat Aqueduct to be taken out of service in the areas where they are parallel to the new pipeline segments. In addition, the additional transmission capacity would allow EBMUD to continue taking the Sobrante WTP off-line for maintenance activities during the winter when water demands are typically lower.

Each of these economic, legal, social, technological and overall service related benefits outweigh the identified potentially significant and unavoidable adverse environmental effect of the West of Hills Northern Pipelines Project.

Findings Regarding Impacts Mitigated to Less-Than-Significant Levels: Although the Board finds and determines that, with the exception of the eight potentially significant and unavoidable adverse environmental effect set forth in Section 4.1, all other potentially significant effects of the Project will be mitigated to less-than-significant levels by the imposition of the various mitigation

measures, the Board also finds that to the extent that any such impacts set forth in Section 4.2 of this Findings document have any residual unavoidable impacts, such impacts are acceptable in light of the benefits provided by the Project.

## **6.0 Findings Related to Potential Growth Inducing Impacts**

CEQA Guidelines section 15126.2 requires the lead agency to discuss the growth-inducing impacts of the proposed project.

Discussion: As analyzed Draft EIR Chapter 6, Growth-Inducement Potential and Secondary Effects of Growth, implementation of the West of Hills Northern Pipelines Project would support an amount of growth that is consistent with regional growth projections. Nonetheless, according to the CEQA Guidelines, the project could indirectly contribute to potentially significant secondary effects by removing a potential obstacle to projected development: inadequate water transmission operations/capacity. Some of these secondary effects of planned growth have been identified in CEQA documents prepared by land use agencies as significant and unavoidable, while others have been identified as significant but mitigable. (See Sections 4.1 and 5.0 of these Findings regarding significant and unavoidable growth inducing impacts.)

Potential Impacts: Identified significant unavoidable impacts that could occur as a result of planned growth include: loss of open space, traffic increases, degradation of air quality, and changes in the visual character of the region. See Section 4.1 of these Findings and Chapter 6 of the Draft EIR.

Findings: While local land use planning and resource agencies have the ability to adopt mitigation for potential significant growth-inducing effects, whether these agencies choose to do so cannot be controlled by EBMUD; for this reason, secondary effects related to planned growth have not been reduced to a less-than-significant level. See Draft EIR pages 6-23 through 6-27 and Sections 4.1 and 5.0 of these Findings.

## **7.0 Findings Regarding Alternatives and Selecting the Project**

CEQA Guidelines require the lead agency to identify alternatives that would avoid or substantially lessen any of the significant adverse effects of the proposed project, and to evaluate the comparative merits of the alternatives (CEQA Guidelines, Section 15126.6). This may include those alternatives that could be more costly, or otherwise impede to some degree the attainment of certain project objectives. The lead agency is also required to analyze the “no project” alternative in order to allow decision makers to compare the impacts of approving the proposed project with the impacts of not approving the project.

Due to the nature of the project, alternatives for each pipeline were identified and analyzed along with an overall No Project alternative. An Alignment Study was conducted to determine potential

alignments for each of the four pipelines. These potential alignments were screened according to the General Evaluation Criteria identified in Table 4.1 of the Draft EIR. From this initial screening, EBMUD selected the preferred alignment for each pipeline. Then alternatives to these preferred alignments were chosen for further review in the Draft EIR, based on their potential to reduce significant and unavoidable impacts.

The Draft EIR evaluated five alternatives: the No Project alternative and an alternative alignment for each of the four proposed pipelines. In addition, an optional route for the proposed Wildcat Pipeline (Berkeley) and an optional pipe bridge location for the proposed Central Pressure Zone Pipeline (Richmond/San Pablo) were evaluated. Based on the information and analysis contained in the Draft EIR and Final EIR, the Board hereby makes the following findings on alternatives.

*No Project Alternative – All Pipelines.* Under the No Project Alternative, none of the environmental impacts associated with the Project would occur. However, the need for the Project would not be met and none of the water service needs associated with the Project would be satisfied.

The No Project alternative is rejected because it would fail to satisfy the Project needs and would jeopardize EBMUD's ability to improve water transmission operations, satisfy existing and future demands, and increase system reliability.

*Wildcat Pipeline (Berkeley) – Alternative Alignment 3.* Alternative 3 is about 700 feet longer than the proposed alignment and would shift a larger proportion of construction-related impacts to Telegraph Avenue and away from the residential areas along Hillegass Avenue/Benvenue Avenue and Stuart Street (see Draft EIR Figure 4-1). Because Alternative 3 includes a longer section of Telegraph Avenue, a larger volume of traffic would need to be detoured during construction, exposing a greater number of people to adverse traffic impacts.

During initial alignment screening, there was not a clear advantage between routing the Wildcat Pipeline (Berkeley) pipeline along Hillegass Avenue or along Benvenue Avenue, between Woolsey Street and Stuart Street. The Draft EIR analyzed the option of routing the pipeline along Benvenue Avenue instead of Hillegass Avenue. These routes are similar in character, being lightly traveled residential streets. Because Hillegass Avenue carries approximately 690 more vehicles per day than Benvenue Avenue and due to other traffic calming measures in the vicinity of Hillegass Avenue, the Hillegass Avenue option would have greater traffic impacts than the Benvenue Avenue option.

The Board hereby rejects this alternative and the Hillegass Avenue route because they do not provide any clear environmental, economic, social or other benefits beyond those of the proposed alignment and also would result in greater traffic and air quality impacts. Refer also to the discussion in the next section regarding the environmentally superior alternative.

*Wildcat Pipeline (El Cerrito) – Alternative Alignment 2.* Alternative 2 would shift a portion of construction-related impacts from Richmond Street (a minor arterial) to adjacent residential streets including Liberty Street and Lexington Avenue (see Draft EIR Figure 4-2). Alternative 2

would likely reduce traffic impacts at intersections along San Pablo Avenue which would occur as the result of detour routing on San Pablo Avenue (because less traffic would be diverted). Alternative 2 is approximately 1,500 feet longer than the preferred alignment, and approximately 31 more customers are located along this alignment and approximately 11 percent more air quality emissions would be generated by construction. In addition, an underground high voltage line in Liberty Street on Alternative 2 could pose a construction hazard.

The Board hereby rejects this alternative because it does not provide any clear environmental, economic, social or other benefits beyond those of the proposed alignment and also may result in greater noise and air quality impacts and pose a greater construction hazard. Refer also to the discussion in the next section regarding the environmentally superior alternative.

*Central Pressure Zone Pipeline (El Cerrito/Richmond) – Alternative Alignment 3.* Under Alternative 3, the pipeline alignment would be located along several minor arterials instead of San Pablo Avenue, a principal arterial (see Draft EIR Figure 4-3). The Alternative 3 alignment is significantly longer (by 2,600 feet) than the preferred alignment, and has over 100 more customers located along the alignment. Construction of Alternative 3 would require full road closure along a majority of the alignment. The Alternative 3 alignment also transects a known and extensive archaeological site and therefore has the potential to result in significant (but mitigable) impacts to archaeological resources.

The Board hereby rejects this alternative because it does not provide any clear environmental, economic, social or other benefits beyond those of the proposed alignment and also may result in greater construction-related noise, traffic, and air-quality impacts. Refer also to the discussion in the next section regarding the environmentally superior alternative.

*Central Pressure Zone Pipeline (Richmond/San Pablo) – Alternative Alignment 2.* Alternative 2 avoids 23rd Street and would be located along several residential streets including 22nd Street, 20th Street and 21st Street (see Draft EIR Figure 4-4). Alternative 2 would eliminate traffic impacts associated with construction activities on 23rd Street, but would transfer construction-related noise, air quality and traffic impacts to the residential areas. It would result in full road closure along a majority of the alignment, resulting in reduced access to residential areas during construction hours. Alternative 2 is only 300 feet longer than the proposed alignment of the Central Pressure Zone Pipeline in Richmond/San Pablo, but 66 more customers are located along this alignment. Underground utilities along the alignment of Alternative 2 are very congested, and include high pressure fuel lines which would pose a major construction challenge. Jack and bore construction across Wildcat Creek would be shifted to 21st Street, avoiding a pocket park but exposing residents to additional noise impacts.

The Draft EIR analyzes two pipe bridge locations at San Pablo Creek – the proposed alignment within an existing EBMUD utility corridor, and an optional alignment adjacent to San Pablo Avenue. The San Pablo Avenue Option would result in significant and unavoidable aesthetic impacts because the pipe bridge would partially obstruct views of San Pablo Creek and the adjacent vegetated banks from the San Pablo Avenue bridge and pedestrian walkway, and the pipe bridge would conflict with the City of San Pablo *General Plan 2030* Policy OSC-I-10, which requires

maintenance, protection and enhancement of the aesthetic value of San Pablo Creek. In addition, the feasibility of constructing a combined pipe and pedestrian bridge over San Pablo Creek is uncertain due to the coordination required with the City of San Pablo.

The Board hereby rejects this alternative and pipe bridge option because it does not provide any clear environmental, economic, social or other benefits beyond those of the proposed alignment and would expose fewer homes to construction-related impacts than would Alternative 2 and eliminates a significant and unavoidable aesthetic impact. Refer also to the discussion in the next section regarding the environmentally superior alternative.

## 7.1 Environmentally Superior Alternative

The Board hereby finds that the proposed Project [Wildcat Pipeline (Berkeley) Alternative 4 with the Benvenue Option, Wildcat Pipeline (El Cerrito) Alternative 1, Central Pressure Zone Pipeline (El Cerrito/Richmond) Alternative 1, and Central Pressure Zone Pipeline (Richmond/San Pablo) Alternative 4] is considered environmentally superior to Wildcat Pipeline (Berkeley) Alternatives 1, 2, and 3, Wildcat Pipeline (El Cerrito) Alternatives 2, 3A, 3B, and 4, Central Pressure Zone Pipeline (El Cerrito/Richmond) Alternatives 2, 3, and 4, Central Pressure Zone Pipeline (Richmond/San Pablo) Alternatives 1, 2, and 3, and the No Project Alternative.

Under the No Project Alternative, no pipelines would be constructed. As a result, the No Project Alternative is considered to be environmentally superior to the “action” alternatives because none of the impacts associated with those alternatives would occur. While it would be the environmentally superior alternative, the No Project Alternative would not meet any of the project objectives. According to CEQA Guidelines Section 15126.6(e)(2), when the no project alternative is identified as the environmentally superior alternative, an EIR must identify an environmentally superior alternative among the “build” alternatives.

While none of the build alternatives would avoid all impacts to residents, and all the alternatives have their own inherent impacts, the proposed Project alignments for each pipeline are considered to be the environmentally superior alternatives. Each pipeline is discussed below.

*Wildcat Pipeline (Berkeley)*. The proposed alignment for the Wildcat Pipeline (Berkeley) with the optional route along Benvenue Avenue is the environmentally superior alternative for the Wildcat Pipeline (Berkeley). The proposed alignment is 700 feet shorter than Alternative 3 and would be located on residential streets travelled by fewer vehicles, requiring less traffic detouring than from Telegraph Avenue. Because the eastern portion of Alternative 3 is similar to the proposed alignment it would not reduce impacts to operating conditions at the intersection of Claremont Avenue/Hillcrest Avenue/Brookside Drive identified for the proposed alignment. In addition, construction on Benvenue Avenue would detour approximately 690 fewer vehicles per day, comparatively reducing construction-related traffic impacts of the Project. The proposed alignment would expose fewer people to construction-related impacts, result in lower construction-related air emissions, and reduced traffic impacts than Alternative 3.

*Wildcat Pipeline (El Cerrito)*. The proposed alignment of the Wildcat Pipeline (El Cerrito) is the environmentally superior alternative. The proposed alignment is the shortest and most straight forward alignment. Since the proposed alignment is shorter fewer customers would be directly affected by construction of the pipeline on their street, it has a shorter duration of construction impacts and less air quality emissions would be generated. The proposed alignment has sufficient space for the pipeline, is not under pavement moratorium and does not parallel any hazardous pipelines. While traffic impacts would be reduced under Alternative 2 compared to the proposed alignment, other impacts may still occur, including some significant and unavoidable traffic impacts. The operation of the Richmond Street/Fairmount Ave intersection (adjacent to the El Cerrito Plaza BART station) may also experience significant delays due to detour traffic. Since Alternative 2 is longer, more customers would be directly affected by construction of the pipeline on their street. In addition, because of the additional length of the Alternative 2 alignment, approximately 11 percent more air quality emissions would be generated. Alternative 2 also parallels an underground high voltage line in Liberty Street which could pose a construction hazard.

*Central Pressure Zone Pipeline (El Cerrito/Richmond)*. The proposed alignment of the Central Pressure Zone Pipeline (El Cerrito/Richmond) is the environmentally superior alternative. The proposed alternative is the shortest alignment, which means fewer customers would be directly affected by construction of the pipeline in their street, a shorter duration of construction impacts would occur and less air quality emissions would be generated. The proposed alternative would maintain two way traffic on the proposed roadways whereas the other alternatives would require full road closures of their roadways reducing automobile access to residential areas during construction hours. The proposed alignment also avoids nearby landslide risk areas that affects Alternatives 2 and 3 reducing the risk of future pipe ruptures and potential flooding. Under Alternative 3, construction-related noise, air quality and traffic impacts would be shifted to the residential areas east of San Pablo Avenue. Because the Alternative 3 alignment is significantly longer (by 2,600 feet) than the preferred alignment, approximately 20 percent more emissions would be generated. In addition, over a 100 more customers located along the alignment would be directly affected by construction on their street. Because construction of Alternative 3 would require full road closure along a majority of the alignment automobile access to residential areas would be reduced during construction hours. In addition, the Alternative 3 alignment transects a known and extensive archaeological site and therefore has the potential to result in significant (but mitigable) impacts to archaeological resources.

*Central Pressure Zone Pipeline (Richmond/San Pablo)*. The proposed alignment of the Central Pressure Zone Pipeline (Richmond/San Pablo) with the San Pablo Avenue pipe bridge option is the environmentally superior alternative. The proposed alternative is the second shortest alignment, which means fewer customers would be directly affected by construction of the pipeline in their street, a shorter duration of construction impacts would occur and less air quality emissions would be generated. Alternative 1 is the shortest alignment, but crosses the San Pablo Creek at San Pablo Avenue, which was determined to be a significant and unavoidable aesthetic impact. The proposed alignment avoids this significant and unavoidable impact by crossing San Pablo Creek in a heavily wooded area that limits the visual impacts. The proposed alignment also

avoids a Conoco Phillips Gas Line, which parallels Alternative 2 for 2,600 feet in front of Dover Elementary School. While under Alternative 2 less traffic would need to be detoured and traffic could be routed to 23rd Street, which as an arterial can handle greater volumes of traffic, Alternative 2 would transfer construction related noise, air quality and traffic impacts to the residential areas along 22nd Street, 20th Street and 21st Street and affect 66 more customers. Construction of Alternative 2 and 3 would also require full road closure along a majority of the alignment, resulting in reduced automobile access to these residential areas during construction hours.

While the proposed option of using the existing EBMUD utility corridor would require tree removal and would therefore affect riparian habitat along San Pablo Creek, this impact would happen regardless because these trees must be removed in order for EBMUD to maintain an existing pipeline that is in the same right of way.

## 7.2 Project Selection

Based upon the Draft EIR, the Final EIR, and the Findings contained herein, the Board hereby finds and declares that the West of Hills Northern Pipelines Project is approved.





# WEST OF HILLS NORTHERN PIPELINES PROJECT

## Mitigation Monitoring and Reporting Program

### Introduction

This exhibit lists and provides a brief description of the significant and potentially significant impacts of EBMUD's West of Hills Northern Pipelines Project that were identified in the Final Environmental Impact Report (FEIR) certified on December 10, 2013, and presents the mitigation measures adopted by EBMUD to reduce these impacts to a less-than-significant level. This appendix also constitutes the Mitigation Monitoring and Reporting Program (MMRP) for the Project. The MMRP is presented in a table. The table lists all impacts identified in the FEIR as significant or potentially significant along with the adopted mitigation measures. The impacts are briefly summarized in the table. The full text of the impact discussion and analysis is presented in the FEIR. The mitigation measures are described here in full and a list of projects to which they apply is provided. For each mitigation measure a table format is used to present mitigation monitoring and reporting information. The columns in the table provide the following information:

- **Responsibility for Implementation:** This column provides additional information on how the mitigation measures will be implemented to help clarify how compliance can be monitored. The column is blank if no elaboration on the mitigation is necessary.
- **Responsibility for Monitoring:** This column contains an assignment of responsibility for the monitoring and reporting tasks.
- The remaining columns show the **Impact(s) to be Mitigated, Applicable Alignments**, and boxes to check off upon completion of the measures. The pipeline alignments are abbreviated as follows:

W.B = Wildcat Pipeline (Berkeley)

W.E = Wildcat Pipeline (El Cerrito)

C.E/R = Central Pressure Zone Pipeline (El Cerrito/Richmond)

C.R/S = Central Pressure Zone Pipeline (Richmond/San Pablo)

This page intentionally left blank

MITIGATION MONITORING AND REPORTING PLAN FOR THE WEST OF HILLS NORTHERN PIPELINES PROJECT

| Mitigation Measures   | Responsibility for Implementation         | Responsibility for Monitoring | Impact(s) Being Mitigated  | Applicable Alignments |     |       |                                | Check Box (Date) | Check Box (Date) | Check Box (Date) |
|---|---|-------------------------------|--|-----------------------|-----|-------|--------------------------------|------------------|------------------|------------------|
|   |   |                               |  | W.B                   | W.E | C.E/R | C.R/S                          |                  |                  |                  |
| AESTHETICS  |   |                               |  |                       |     |       |                                |                  |                  |                  |
| Mitigation Measure AES-1: Reduce Nighttime Construction Lighting.<br>To the extent practical, ensure that stationary lighting used during nighttime construction (if required) is of limited duration, shielded and directed downward or oriented such that the light source is not directed toward residential areas.  | EBMUD and EBMUD's construction contractor | EBMUD                         | Impact 3.2-2: Short-term visual effects experienced from nearby areas due to nighttime construction lighting.<br>Impact C-1: Cumulative impacts to scenic vistas and visual character.   | X                     | X   | X     | X                              |                  |                  |                  |
| Mitigation Measure AES-2: Tree Replacement and Landscaping Restoration.<br>This measure would apply to all pipelines except the Central Pressure Zone Pipeline (Richmond/San Pablo) at the San Pablo Creek crossing, which is addressed by Mitigation Measure BIO-1d.<br>If construction requires the removal of trees or landscaping within a public right-of-way, EBMUD will replant trees and restore landscaping consistent with the following guidelines: <ul style="list-style-type: none"><li>• If any mature native tree (i.e., trees that are 6 inches in diameter at breast height [dbh] or ten inches aggregate dbh for multi-trunk trees) or other tree protected by local ordinance is removed, replanting will be with the same species at a 1:1 ratio. To allow for access to the pipelines, replanted trees will not be located within 20 feet of the pipeline.</li><li>• All non-native protected trees which are removed will be replaced at a 1:1 ratio with a non-invasive or native tree species, or species from an approved list where applicable (i.e. Berkeley).</li><li>• Any disturbed plant, bush, and ground cover landscaping will be restored to pre-project conditions, using similar plants and materials.</li><li>• Any tree that is injured during construction shall be evaluated by the District's Consulting Arborist one year following the completion of construction in the vicinity of the injured tree. The Arborist shall make recommendations for treatment or removal and replacement with an appropriate species in accordance with these tree replacement guidelines.</li></ul> | EBMUD and EBMUD's construction contractor | EBMUD                         | Impact 3.2-3: Tree removal or loss may affect visual character.  | X                     | X   | X     | X<br>Except at San Pablo Creek |                  |                  |                  |
| AIR QUALITY   |   |                               |  |                       |     |       |                                |                  |                  |                  |
| Mitigation Measure AIR-1a: Construction Mitigation Measures.<br>To limit the Project's construction-related dust and criteria pollutant emissions, the following BAAQMD-recommended <i>Basic Construction Mitigation Measures</i> will be included in the contractor specifications for the proposed Project: <ul style="list-style-type: none"><li>• When moisture content is low enough to create dust, all exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) will be watered two times per day or as needed to control dust. Areas may be rocked to minimize dust and water, covered, or sprayed with soil binder.</li><li>• All haul trucks transporting soil, sand, or other loose material off-site will be covered.</li></ul>  | EBMUD and EBMUD's construction contractor | EBMUD                         | Impact 3.3-1: Activities associated with proposed construction would generate significant, short-term increases in criteria pollutant emissions, including suspended and inhalable particulate matter and equipment exhaust emissions. | X                     | X   | X     | X                              |                  |                  |                  |

## MITIGATION MONITORING AND REPORTING PLAN FOR THE WEST OF HILLS NORTHERN PIPELINES PROJECT (Continued)

| Mitigation Measures   | Responsibility for Implementation         | Responsibility for Monitoring | Impact(s) Being Mitigated  | Applicable Alignments |     |       |       | Check Box (Date) | Check Box (Date) | Check Box (Date) |
|---|---|-------------------------------|--|-----------------------|-----|-------|-------|------------------|------------------|------------------|
|   |   |                               |  | W.B                   | W.E | C.E/R | C.R/S |                  |                  |                  |
| AIR QUALITY (cont.)   |   |                               |  |                       |     |       |       |                  |                  |                  |
| <ul style="list-style-type: none"><li>All visible mud or dirt track-out onto adjacent public roads will be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.</li><li>All vehicle speeds on unpaved roads will be limited to 15 miles per hour.</li><li>All roadways, driveways, and sidewalks to be paved will be completed as soon as possible.</li><li>Idling times will be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage will be provided for construction workers at all access points.</li><li>All construction equipment will be maintained and properly tuned in accordance with manufacturer's specifications. All equipment will be checked by a certified mechanic and determined to be running in proper condition prior to using the equipment at the construction site.</li><li>A publicly visible sign with the telephone number and e-mail address to contact EBMUD regarding dust complaints will be posted at the site. If dust exceeds specified limits, EBMUD would respond and take corrective action within 48 hours.</li></ul>   | See above                                 | See above                     | Impact C-2: Cumulative air quality impacts.<br>Impact C-7: Cumulative Impacts related to GHG emissions.  |                       |     |       |       |                  |                  |                  |
| <p><b>Mitigation Measure AIR-1b: NO<sub>x</sub> Control.</b> To reduce the Project's construction-related NO<sub>x</sub> emissions, if construction of the Wildcat (Berkeley) and Wildcat (El Cerrito) pipelines occurs at the same time, or if two pipeline construction headings are undertaken on either the Wildcat (Berkeley) or Wildcat (El Cerrito) pipelines, the Project's on-road haul truck fleet will be, on average, model year of 2010 or newer.</p>  |   |                               |  | X                     | X   |       |       |                  |                  |                  |
| BIOLOGICAL RESOURCES  |   |                               |  |                       |     |       |       |                  |                  |                  |
| <p><b>Mitigation Measure BIO-1a: General Protection Measures.</b></p> <p>EBMUD will ensure that the following general measures are implemented by the contractor(s) during construction to minimize or avoid impacts on biological resources:</p> <ul style="list-style-type: none"><li>Removal of native and ornamental trees and shrubs will be minimized by locating staging areas away from vegetated areas and restricting construction areas in vegetated areas to the extent practical. No trees will be removed from private property.</li><li>At the San Pablo Creek crossing, temporary fencing will be installed at the perimeter of the pipe bridge work area to protect trees on private property (see also description of exclusion fence, in Measure BIO-1b). The contractor will maintain the temporary fencing until all construction activities are completed. No construction activities, parking, or staging will occur beyond the fenced areas.</li><li>The contractor will provide closed garbage containers for the disposal of trash items (e.g., wrappers, cans, bottles, food scraps). All food-related garbage will be collected daily from the project site and placed in a closed container, from which garbage will be removed weekly.</li><li>Construction personnel will not feed or otherwise attempt to attract fish or wildlife in the project area.</li></ul> | EBMUD and EBMUD's construction contractor | EBMUD's biologist             | Impact 3.2-3: Tree removal may affect visual character.<br>Impact 3.4-2: The proposed Project could have a substantial adverse effect on special-status species in Riparian habitats during construction at creek crossings using jack and bore and pipe bridge methods.<br>Impact 3.4-3: The proposed Project could have a substantial adverse effect on jurisdictional waters during construction. |                       |     |       | X     |                  |                  |                  |

## MITIGATION MONITORING AND REPORTING PLAN FOR THE WEST OF HILLS NORTHERN PIPELINES PROJECT (Continued)

| Mitigation Measures  |   |                           |                       |     |       |       |                  |                  |                  |  |
|--|---|---------------------------|-----------------------|-----|-------|-------|------------------|------------------|------------------|--|
| BIOLOGICAL RESOURCES (cont.)   |   |                           |                       |     |       |       |                  |                  |                  |  |
| Responsibility for Implementation  | Responsibility for Monitoring             | Impact(s) Being Mitigated | Applicable Alignments |     |       |       | Check Box (Date) | Check Box (Date) | Check Box (Date) |  |
|  |   |                           | W.B                   | W.E | C.E/R | C.R/S |                  |                  |                  |  |
| <ul style="list-style-type: none"><li>If vehicle or equipment fueling or maintenance is necessary, it will be performed in the designated staging areas located at least 50 feet from the top of bank of watercourses.</li></ul>   | See above                                 | See above                 |                       |     |       |       |                  |                  |                  |  |
| <p><b>Mitigation Measure BIO-1b: Riparian Protection Measures.</b></p> <ul style="list-style-type: none"><li>Prior to the start of pipe bridge construction at San Pablo Creek, silt fencing or other appropriate erosion control measures will be installed at the limit of the construction areas near the top of bank and extending to the limit of EBMUD property at Brookside Drive and private property on the north side of San Pablo Creek and along the limits of construction facing Wildcat Creek. Silt fencing will be at least three feet high, and with a bottom edge buried at least three inches, to contain sediment and potential spills within the work area.</li><li>Construction contractor(s) will minimize the extent of the construction disturbance as much as feasible, especially within the drip lines of riparian trees and the bed and bank of San Pablo Creek by locating staging areas outside of riparian areas and restricting construction areas in riparian areas to the extent practical.</li><li>A construction employee education program will be conducted prior to the initiation of ground disturbing activities at the San Pablo Creek pipe bridge construction area. The program will consist of a brief presentation by persons knowledgeable about California red legged frog, steelhead, western pond turtle, raptor and nesting bird biology and legislative protection to explain endangered species concerns to contractors and their employees. The program will include a description of the measures being taken to reduce impacts to these species during project construction and implementation. A fact sheet conveying this information will be prepared for distribution to the above-mentioned people and other Project-related personnel entering the San Pablo Creek riparian corridor. At a minimum, the program would include:<ul style="list-style-type: none"><li>- Description and natural history of the species;</li><li>- Representative photographs;</li><li>- Species' legal status;</li><li>- Measures to prevent the spread of invasive, non-native species;</li><li>- Terms and conditions of any biological permits; and</li><li>- Penalties for not complying with terms and conditions.</li></ul></li></ul> | EBMUD and EBMUD's construction contractor | EBMUD's biologist         |                       |     |       | X     |                  |                  |                  |  |
| <p><b>Mitigation Measure BIO-1c: Implement preconstruction surveys near Riparian habitat.</b></p> <p>During the breeding bird season (February 1 through August 31) and not more than two weeks before onset of construction (including equipment mobilization) of the tunnel beneath Wildcat Creek and the pipe bridge over San Pablo Creek, a qualified biologist will conduct preconstruction surveys for nesting raptors and songbirds within 500 feet of the construction area.</p> <ul style="list-style-type: none"><li>Surveys will include all potential habitats within 500 feet (for raptors) of activities and all on-site vegetation including bare ground within 250 feet of activities (for all other species).</li></ul>   | EBMUD's biologist                         | EBMUD                     |                       |     |       | X     |                  |                  |                  |  |

MITIGATION MONITORING AND REPORTING PLAN FOR THE WEST OF HILLS NORTHERN PIPELINES PROJECT (Continued)

| Mitigation Measures  | Responsibility for Implementation         | Responsibility for Monitoring | Impact(s) Being Mitigated | Applicable Alignments |     |       |       | Check Box (Date) | Check Box (Date) | Check Box (Date) |
|--|---|-------------------------------|---------------------------|-----------------------|-----|-------|-------|------------------|------------------|------------------|
|  |   |                               |                           | W.B                   | W.E | C.E/R | C.R/S |                  |                  |                  |
| <b>BIOLOGICAL RESOURCES (cont.)</b><br><br><ul style="list-style-type: none"> <li>If construction activities occur only during the non-breeding season, between September 1 and January 31, no surveys will be required.</li> <li>Results of the surveys will be forwarded to CDFW (if results are positive for nesting birds) and avoidance procedures will be adopted, if necessary, on a case-by-case basis. These may include construction buffer areas or seasonal avoidance. Typical buffer distances are 250 feet for non-raptor species, and 500 feet for raptors but these may be adjusted through consultation with CDFW on a case by case basis.</li> <li>Prior to removal of mature trees at San Pablo Creek, a pre-construction survey will be carried out by a qualified wildlife biologist using an acoustic detector. If signs of bat activity are detected, the biologist will make recommendations about how to minimize adverse effects to the bats, such as adjusting timing of tree removal, or creating a "no disturbance" buffer, if feasible.</li> </ul>   | See above                                 | See above                     | See above                 |                       |     |       |       |                  |                  |                  |
|  |   |                               |                           |                       |     |       | X     |                  |                  |                  |
| <b>Mitigation Measure BIO-1d: Prepare and Implement a Vegetation Restoration Plan and Compensatory Mitigation for Riparian Habitats.</b><br><br>This measure would apply only to San Pablo Creek crossing, which is the only location where natural habitat would be directly impacted.<br><br>At least one month prior to construction and during the plant growing season (March – July), a qualified botanist performs preconstruction surveys of the construction area to collect vegetation composition data, vegetation structure (tree diameter size, etc.), and percent cover of plant species. Photo documentation will be used to show pre-project conditions.<br><br>Prepare and implement a vegetation restoration plan with detailed specifications for minimizing the introduction of invasive weeds and restoring all temporarily disturbed areas.<br><br>For the purpose of existing pipeline maintenance as well as proposed pipe bridge construction, trees removed at the alternative San Pablo Creek crossing on EBMUD land would not be replaced on-site. Shrubs and other plants will be re-planted on EBMUD land within the pipelines alignment. Replacement tree planting could occur on-site if the selected San Pablo Creek crossing is the eastern alternative adjacent to 23rd Street and Kennedy Plaza. However, to allow for access to the pipeline, replanted trees will not be located within 20 feet of the pipeline. Tree replacement will adhere to the following guidelines: <ul style="list-style-type: none"> <li>If any mature native tree (i.e., trees that are 6 inches in diameter at breast height [dbh] or ten inches aggregate dbh for multi-trunk trees) is removed, replanting will be with the same species at a 1:1 ratio.</li> <li>All non-native protected trees which are removed will be replaced at a 1:1 ratio with a non-invasive tree species.</li> <li>Non-native trees removed from a natural environment will be replaced with a native species that occurs in the area.</li> <li>Efforts will be made to plant replacement trees within the San Pablo Creek watershed. However, if no ecologically appropriate sites are available within the watershed, EBMUD will work with local organizations to plant trees in adjacent watersheds on public lands.</li> </ul> | EBMUD and EBMUD's construction contractor | EBMUD                         | See above                 |                       |     |       |       |                  |                  |                  |

## MITIGATION MONITORING AND REPORTING PLAN FOR THE WEST OF HILLS NORTHERN PIPELINES PROJECT (Continued)

| Mitigation Measures  |                               |                           |                       |     |       |                  |                  |                  |  |           |           |           |  |  |  |  |  |  |
|--|-------------------------------|---------------------------|-----------------------|-----|-------|------------------|------------------|------------------|--|-----------|-----------|-----------|--|--|--|--|--|--|
| BIOLOGICAL RESOURCES (cont.)   |                               |                           |                       |     |       |                  |                  |                  |  |           |           |           |  |  |  |  |  |  |
| Responsibility for Implementation  | Responsibility for Monitoring | Impact(s) Being Mitigated | Applicable Alignments |     |       | Check Box (Date) | Check Box (Date) | Check Box (Date) |  |           |           |           |  |  |  |  |  |  |
|  |                               |                           | W.B                   | W.E | C.E/R | C.R/S            |                  |                  |  |           |           |           |  |  |  |  |  |  |
| <ul style="list-style-type: none"><li>In lieu of free replacement (if the western alternative crossing of San Pablo Creek is selected), EBMUD will fund riparian or upland restoration work by a local creek group (such as San Pablo Watershed Neighbors Education and Restoration Society (SPAWNERS) or Friends of Five Creeks) for the purposes of compensating for tree loss associated with the Project. In-lieu restoration work would be appropriate where restoration activities would provide greater benefit to protected trees than tree replacement. Examples of appropriate restoration work include invasive plant removal or actions to reduce exposure or risk of sudden oak death. The funded restoration work must provide habitat benefits commensurate with that lost through the removal of trees.</li><li>Implementation of in-lieu restoration, especially tree planting, is recommended well in advance of construction of the Central Pressure Zone Pipeline (Richmond/San Pablo) because it would ensure that replacement trees are established and beginning to provide habitat values for wildlife by the time project construction is expected to commence. Planting would be carried out at streambank restoration sites elsewhere within the watershed.</li></ul> <p>If required, EBMUD will provide the vegetation restoration and replacement plan to the Corps, CDFW, RWQCB, and USFWS during the permitting process, as any vegetation to be removed may provide habitat for special-status species and may also be within areas under the jurisdiction of the Corps and RWQCB. The determination of mitigation requirement (i.e., extent of habitat loss) and accumulated habitat values for advance in-lieu restoration would be determined during the permitting process. The minimum avoidance, minimization, and restoration measures as well as success criteria to be included in the vegetation restoration plan are described below.</p> <p><b>Invasive Weed Control Measures</b></p> <p>Invasive weeds such as Canary Ivy, Himalayan blackberry, and Cape Ivy readily colonize riparian soils that have been disturbed by grading or other mechanical disturbance. Although the project area has an extensive weed infestation and relatively few native species, EBMUD will incorporate the following measures into the construction plans and specifications for construction within riparian zones of San Pablo Creek and Wildcat Creek to permit restored riparian vegetation to become established and to prevent the spread of additional invasive species:</p> <ul style="list-style-type: none"><li>Construction equipment will arrive at the project area washed and free of soil, seed, and plant parts to reduce the likelihood of introducing new weed species.</li><li>Any imported fill material, soil amendments, gravel etc., required for construction and/or restoration activities that would be placed within the upper 12 inches of the ground surface will be free of vegetation and plant material.</li><li>California Department of Food and Agriculture certified, weed-free, imported erosion-control materials (or rice straw in upland areas) will be used exclusively, as applicable (this measure concerns biological material and does not preclude the use of silt fences, etc.).</li></ul> |                               |                           |                       |     |       |                  |                  |                  |  | See above | See above | See above |  |  |  |  |  |  |

MITIGATION MONITORING AND REPORTING PLAN FOR THE WEST OF HILLS NORTHERN PIPELINES PROJECT (Continued)

| Mitigation Measures   | Responsibility for Implementation | Responsibility for Monitoring | Impact(s) Being Mitigated | Applicable Alignments |     |       |       | Check Box (Date) | Check Box (Date) | Check Box (Date) |
|---|-----------------------------------|-------------------------------|---------------------------|-----------------------|-----|-------|-------|------------------|------------------|------------------|
|   |                                   |                               |                           | W.B                   | W.E | C.E/R | C.R/S |                  |                  |                  |
| BIOLOGICAL RESOURCES (cont.)  |                                   |                               |                           |                       |     |       |       |                  |                  |                  |
| <ul style="list-style-type: none"><li>The environmental awareness training program for construction personnel will include an orientation regarding the importance of preventing the spread of <b>invasive</b> weeds.</li><li>The restoration plan will specify measures to remove and/or control weeds in the project area.</li><li>No invasive species will be used in any restoration plantings.</li></ul> <p><b>Minimum Restoration Measures</b></p> <p>Restoration areas are riparian areas within the project area that would be disturbed during Project-related construction activities but would subsequently be restored to their preconstruction conditions as defined by the success criteria described below.</p> <p><b>Minimum Success Criteria</b></p> <p>Unless otherwise determined by the applicable resource agencies, the success criteria for restoring temporarily disturbed areas will be as follows:</p> <ul style="list-style-type: none"><li>Tree replacement and re-vegetation will occur within the first year after the completion of construction.</li><li>A qualified arborist or biologist will monitor newly planted trees at least twice a year for 5 years.</li><li>Any trees planted as remediation for failed plantings will be planted as stipulated here for original plantings, and will be monitored for a period of 5 years following installation, or as otherwise determined by the applicable resource agencies.</li><li>Where native vegetation is present and/or for erosion control purposes, all temporarily disturbed areas will be restored to approximate their baseline condition. Pre-construction baseline monitoring will be conducted to determine vegetative cover at the site. Revegetation success criteria will be based on the baseline monitoring and will stipulate that site cover of target weed species is equal to or less than the baseline condition.</li><li>At the end of the 5 year monitoring period, vegetation within restoration areas will be functional, fully established, and self-sustaining as evidenced by healthy vegetative growth; observed increase in vegetative cover, canopy cover, and/or plant height; successful flowering, seed set, and/or vegetative reproduction over the monitoring period.</li><li>Revegetation work will start within one year of construction completion</li><li>Restoration areas will be monitored for target invasive plants during the 5-year monitoring period, and they will be removed as necessary to support meeting the cover and vegetation composition success criteria.</li><li>Monitoring and maintenance will continue until the minimum success criteria are met, or as otherwise determined by the applicable resource agencies.</li></ul> | See above                         | See above                     | See above                 |                       |     |       |       |                  |                  |                  |



## MITIGATION MONITORING AND REPORTING PLAN FOR THE WEST OF HILLS NORTHERN PIPELINES PROJECT (Continued)

| Mitigation Measures   | Responsibility for Implementation | Responsibility for Monitoring   | Impact(s) Being Mitigated   | Applicable Alignments |     |       |       | Check Box (Date) | Check Box (Date) | Check Box (Date) |
|---|-----------------------------------|---------------------------------|---|-----------------------|-----|-------|-------|------------------|------------------|------------------|
|   |                                   |                                 |   | W.B                   | W.E | C.E/R | C.R/S |                  |                  |                  |
| <b>CULTURAL RESOURCES</b><br><b>Mitigation Measure CUL-1a: Retain a Qualified Archaeologist.</b><br>A qualified archaeologist meeting the Secretary of the Interior's Qualification Standards will be retained by EBMUD prior to approximately 50% design phase (when the specific location of the alignments within the roadway have been established) to carry out all archaeological resources mitigation measures contained herein.<br><b>Mitigation Measure CUL-1b: Develop an Archaeological Research Design and Treatment Plan.</b><br>A qualified archaeologist will prepare an Archaeological Research Design and Treatment Plan (ARDTP) that addresses, at a minimum, the following: the establishment of Environmentally Sensitive Areas; treatment and recovery of important scientific data contained within the portions of the historical resources located within the project Area of Potential Effects (APE); construction worker cultural resources sensitivity training; archaeological and Native American monitoring; inadvertent discovery protocols; and provisions for curation of recovered materials. The ARDTP will address the methods for subsurface investigation at each of the four historical resources (CA-CCO-432; CA-CCO-758; WOH-01; WOH-02) to determine whether the portions of the sites located within the project APE contribute to each of the sites' overall eligibility. The subsurface investigation will seek to identify whether the portions of the sites within the APE contain important scientific data (Criterion D/4) or other archaeological materials of traditional/cultural value to Native American tribes (Criteria A/1, B/2, and C/3). The ARDTP will include the specific methods that will be employed at each site location (i.e. the length and depth of excavation, the type of equipment utilized, the percent of area investigated at each site location). The investigation may include trenching in the APE adjacent to the visible site components and may be coordinated with potholing to confirm the location of existing utilities. The ARDTP will identify how the proposed program would preserve any significant historical information obtained and will identify the scientific/historic research questions applicable to the resources, the data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions. The results of the investigation will be documented in a technical report that provides a full artifact catalog, analysis of items collected, results of any special studies conducted, and interpretations of the resource within a regional and local context. All technical documents are to be placed on file at the Northwest Information Center of the California Historical Resources Information System. The results report will also provide recommendations for archaeological and Native American monitoring in Environmentally Sensitive Areas of the proposed Project to the extent deemed appropriate by the qualified archaeologist who carried out the work described here.<br><b>Mitigation Measure CUL-1c: Inadvertent Discovery of Cultural Resources.</b><br>Following implementation of CUL-1b, if prehistoric or historic-period cultural materials that were not identified and studied in the ARDTP are unearthed during ground-disturbing activities, all work will halt within 100 feet of the find until a qualified archaeologist, defined as one meeting the Secretary of the Interior's Professional Qualification Standards for archaeology, can assess the significance of the find. Prehistoric materials might include obsidian and chert flaked-stone tools (e.g., | EBMUD and EBMUD's archaeologist   | EBMUD and EBMUD's archaeologist | <b>Impact 3.5-2:</b><br>Construction of the proposed Project could cause a substantial adverse change in the significance of an archaeological resource, including those determined to be a historical resource defined in Section 15064.5 or a unique archaeological resource defined in PRC 21083.2.<br><b>Impact C-4:</b> Cumulative impacts on historical, archaeological, and paleontological resources. | X                     | X   | X     | X     |                  |                  |                  |

## MITIGATION MONITORING AND REPORTING PLAN FOR THE WEST OF HILLS NORTHERN PIPELINES PROJECT (Continued)

| Mitigation Measures  |  | Responsibility for Implementation          | Responsibility for Monitoring               | Impact(s) Being Mitigated   | Applicable Alignments |     |       |       | Check Box (Date) | Check Box (Date) | Check Box (Date) |
|--|--|--|---|---|-----------------------|-----|-------|-------|------------------|------------------|------------------|
| CULTURAL RESOURCES (cont.)   |  |  |   |   | W.B                   | W.E | C.E/R | C.R/S |                  |                  |                  |
| <p>projectile points, knives, scrapers) or toolmaking debris; culturally darkened soil ("midden") containing heat-affected rocks and artifacts; stone milling equipment (e.g., mortars, pestles, handstones, or milling slabs); and battered-stone tools, such as hammerstones and pitted stones. Historic-period materials might include stone, concrete, or adobe footings and walls; filled wells or privies; and deposits of metal, glass, and/or ceramic refuse. If the find is determined to be potentially significant, the archaeologist, in consultation with the lead agency and appropriate Native American representative, will implement actions outlined in the ARDTP.</p>   |  | See above                                  | See above                                   | See above   |                       |     |       |       |                  |                  |                  |
| <p><b>Mitigation Measure CUL-2a: Paleontological Resources Mitigation Program.</b><br/>Prior to ground disturbance, EBMUD will retain a qualified paleontologist or a California Registered Professional Geologist (California RPG) with appropriate paleontological expertise to carry out all mitigation measures related to paleontological resources. The qualified paleontologist or geologist will be available "on-call" to EBMUD throughout the duration of ground-disturbing activities.</p> <p><b>Mitigation Measure CUL-2b: Paleontological resources training.</b><br/>All construction forepersons and field supervisors conducting or overseeing subsurface excavations will be trained in the recognition of potential fossil materials prior to ground disturbing activities. A one hour pre-construction training on paleontological resources will also be provided to all other construction workers, but may include videotape of the initial training and/or the use of written materials rather than in person training by the qualified paleontologist. In addition to fossil recognition, the training will convey procedures to follow in the event of a potential fossil discovery.</p> <p><b>Mitigation Measure CUL-2c: Assessment and salvage of potential fossil finds.</b><br/>If potential fossils are discovered during construction, all earthwork or other types of ground disturbance in the immediate vicinity of the find will stop until the qualified paleontologist can assess the nature and importance of the find. Based on the scientific value or uniqueness of the find, the paleontologist may record the find and allow work to continue, or recommend salvage and recovery of the fossil. If treatment and salvage is required, recommendations will be consistent with current professional standards. If required, treatment for fossil remains may include preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection.</p> <p><b>Mitigation Measure CUL-2d: Monitoring by a qualified Paleontologist during ground disturbing activities.</b><br/>If found to be warranted based on experience during construction, a qualified paleontologist, or paleontological monitor working under the supervision of a qualified paleontologist, will monitor ground-disturbing activities. This monitoring would consist of periodically inspecting disturbed, graded, and excavated surfaces, as well as soil stockpiles and disposal sites. The frequency of monitoring would be determined by the qualified paleontologist. If the monitor encounters a paleontological resource, he or she will assess the fossil, and record or salvage it as described in CUL-2c.</p> |  | EBMUD and EBMUD's paleontologist/geologist | EBMUD and EBMUD's paleontologist/geo logist | Impact 3.5-3: Construction of the proposed Project could directly or indirectly destroy a unique paleontological resource or site or unique geologic feature.<br><br>Impact C-4: Cumulative impacts on historical, archaeological, and paleontological resources. | X                     | X   | X     | X     |                  |                  |                  |

MITIGATION MONITORING AND REPORTING PLAN FOR THE WEST OF HILLS NORTHERN PIPELINES PROJECT (Continued)

| Mitigation Measures  | Responsibility for Implementation         | Responsibility for Monitoring   | Impact(s) Being Mitigated  | Applicable Alignments |     |       |       | Check Box (Date) | Check Box (Date) | Check Box (Date) |
|--|---|---------------------------------|--|-----------------------|-----|-------|-------|------------------|------------------|------------------|
|  |   |                                 |  | W.B                   | W.E | C.E/R | C.R/S |                  |                  |                  |
| CULTURAL RESOURCES (cont.)   |   |                                 |  |                       |     |       |       |                  |                  |                  |
| Mitigation Measure CUL-3: Inadvertent Discovery of Human Remains.<br>If potential human remains are encountered, all work will halt within 100 feet of the find and EBMUD will be contacted. EBMUD will contact the county coroner in accordance with PRC Section 5097.98 and Health and Safety Code Section 7050.5. If the coroner determines the remains are Native American, the coroner will contact the NAHC. As provided in PRC Section 5097.98, the NAHC will identify the person or persons believed most likely to be descended from the deceased Native American. The most likely descendant will make recommendations for means of treating, with appropriate dignity, the human remains and any associated grave goods as provided in PRC Section 5097.98.   | EBMUD and EBMUD's archaeologist           | EBMUD and EBMUD's archaeologist | Impact 3.5-4: Construction of the proposed Project could disturb any human remains, including those interred outside of formal cemeteries.<br><br>Impact C-4: Cumulative impacts on historical, archaeological, and paleontological resources.   | X                     | X   | X     | X     |                  |                  |                  |
| GEOLOGY AND SOILS  |   |                                 |  |                       |     |       |       |                  |                  |                  |
| Mitigation Measure GEO-1: Site-Specific Geotechnical Investigation.<br>For the Central Pressure Zone Pipeline (Richmond/San Pablo), EBMUD will conduct a site-specific geotechnical investigation at the Wildcat and San Pablo Creek crossings under the direction of a geotechnical engineer before final design of the proposed pipelines. The investigation will evaluate subsurface conditions related to the potential for geological and seismic hazards, including ground shaking as well as liquefaction and such related phenomena such as lateral spreading and settlement. The geotechnical report will include recommendations regarding the seismic design of the pipeline at the Wildcat Creek crossing and the pipe bridge at San Pablo Creek to comply with current seismic standards and withstand geologic and seismic hazards. These recommendations will be included in the project design and incorporated into project construction specifications for implementation.                         | EBMUD                                     | EBMUD                           | Impact 3.7-2: Seismic-related ground failure including liquefaction;<br>Impact 3.7-3: Seismic groundshaking.<br>Impact 3.7-7: Expansive soil.<br><br>Impact C-6: Cumulative impacts related to seismic hazards, soil erosion and topsoil, unstable geologic units, and expansive soils, and changes to topography. |                       |     |       | X     |                  |                  |                  |
| HAZARDS AND HAZARDOUS MATERIALS  |   |                                 |  |                       |     |       |       |                  |                  |                  |
| Mitigation Measure HAZ-1a: Identifying Buried Utilities.<br>EBMUD and/or its construction contractor(s) will adhere to EBMUD Engineering Standard Practice 514, Identifying Buried Conflicts (EBMUD, 2008) which sets forth the requirements and guidelines for planning, design and construction to identify existing buried utilities/conflicts.<br><br>Mitigation Measure HAZ-1b: Subsurface Utility Protection.<br>While any excavation is open, EBMUD or its contractors will protect, support, or remove underground utilities as necessary to safeguard employees.<br><br>Mitigation Measure HAZ-1c: Notification of Utility Damage.<br>EBMUD or its contractors will notify local fire departments any time damage to a gas utility results in a leak or suspected leak, or whenever damage to any utility results in a threat to public safety. EBMUD or its contractors will also contact utility owners if any damage occurs as a result of the Project and coordinate repair with approval of the owner. | EBMUD and EBMUD's construction contractor | EBMUD                           | Impact 3.9-3: The proposed Project could result in potential adverse effects related to the rupture of subsurface utilities).<br><br>Impact C-8: Cumulative impacts related to hazards and hazardous materials.  | X                     | X   | X     | X     |                  |                  |                  |
| HAZARDS AND HAZARDOUS MATERIALS (cont.)  |   |                                 |  |                       |     |       |       |                  |                  |                  |
| Mitigation Measure HAZ-2: Asbestos Dust Mitigation Plan.   | EBMUD and                                 | EBMUD                           | Impact 3.9-4: The  | X                     |     |       | X     |                  |                  |                  |

## MITIGATION MONITORING AND REPORTING PLAN FOR THE WEST OF HILLS NORTHERN PIPELINES PROJECT (Continued)

| Mitigation Measures  | Responsibility for Implementation         | Responsibility for Monitoring | Impact(s) Being Mitigated   | Applicable Alignments |     |       | Check Box (Date) | Check Box (Date) | Check Box (Date) |
|--|---|-------------------------------|---|-----------------------|-----|-------|------------------|------------------|------------------|
|  |   |                               |   | W.B                   | W.E | C.E/R | C.R/S            |                  |                  |
| <p>For the Wildcat Pipeline (Berkeley) and Central Pressure Zone Pipeline (El Cerrito/Richmond), EBMUD or its contractor will conduct soil testing within areas of the pipeline alignments that are located within 100 feet of mapped ultramafic rock. This may be completed in conjunction with potholing conducted during the design phase. If ultramafic rock is found within the pipeline alignment, EBMUD or its contractor will submit notification of proposed construction activities to the BAAQMD and prepare an Asbestos Dust Mitigation Plan to be implemented in areas containing ultramafic rock. Additional measures, including air quality monitoring for fugitive asbestos dust, may be required by the BAAQMD. The contractor will implement all specified dust control measures and keep records of daily inspections and activities that document implementation of the plan. The plan will comply with BAAQMD criteria and address the following as applicable:</p> <ul style="list-style-type: none"> <li>• Prevent and control visible track-out from the project site.</li> <li>• Ensure adequate wetting or covering of active storage piles and disturbed surface areas.</li> <li>• Control earthmoving activities by pre-wetting ground or suspending activities during windy periods.</li> <li>• Ensuring that trucks hauling excavated materials are adequately wet and covered.</li> <li>• Stabilize disturbed areas following construction by paving or establishing vegetative cover.</li> </ul> | EBMUD's construction contractor           |                               | Project could expose construction workers and the public to naturally occurring asbestos.<br><b>Impact C-8:</b> Cumulative impacts related to hazards and hazardous materials.  |                       |     |       |                  |                  |                  |
| <b>HYDROLOGY AND WATER QUALITY</b>   |   |                               |   |                       |     |       |                  |                  |                  |
| <p><b>Mitigation Measure HYD-1: Schedule Construction Activities at Harwood Creek, Wildcat Creek, and San Pablo Creek During the Dry Season.</b></p> <p>The SWPPP, to be submitted in accordance with the Construction General Stormwater Permit, will include a schedule for construction activities that specifies a timeline for earthmoving activities, hydroseeding, and stabilization of soils and slopes. Incorporate into contract specifications that, in addition to the requirements of the Construction General Stormwater Permit, the contractor will limit construction activities within the 100-year flood zones of Harwood Creek, Wildcat Creek, and San Pablo Creek to the dry season. The schedule will indicate that all earthmoving activities at these creeks will occur during the dry season (i.e., between June 1 and October 15), unless otherwise negotiated with the appropriate regulatory agencies. The construction schedule will also specify that all materials for soil stabilization be on-site by September 15 and that site stabilization be completed by October 15.</p>   | EBMUD and EBMUD's construction contractor | EBMUD                         | <p><b>Impact 3.4-3:</b> The proposed Project could have a substantial adverse effect on jurisdictional waters during construction.</p> <p><b>Impact 3.4-4:</b> The proposed Project could have a substantial adverse effect on resident trout and other native fishes during construction, either by impeding movement or adversely affecting aquatic habitat.</p> <p><b>Impact 3.7-5:</b> Erosion and loss of topsoil;</p> | X                     |     |       | X                |                  |                  |
| <b>HYDROLOGY AND WATER QUALITY (cont.)</b>   |   |                               |   |                       |     |       |                  |                  |                  |
| <b>Mitigation Measure HYD-1 (cont.)</b>  | See above                                 | See above                     | <b>Impact 3.10-1:</b> Degradation of water quality as a result of erosion and sedimentation or a hazardous materials  |                       |     |       |                  |                  |                  |

## MITIGATION MONITORING AND REPORTING PLAN FOR THE WEST OF HILLS NORTHERN PIPELINES PROJECT (Continued)

| Mitigation Measures  | Responsibility for Implementation         | Responsibility for Monitoring | Impact(s) Being Mitigated  | Applicable Alignments |     |       | Check Box (Date) | Check Box (Date) | Check Box (Date) |
|--|---|-------------------------------|--|-----------------------|-----|-------|------------------|------------------|------------------|
|  |   |                               |  | W.B                   | W.E | C.E/R | C.R/S            |                  |                  |
|  |   |                               | release during construction.<br>Impact C-3: Cumulative impacts on biological resources.<br>Impact C-9: Cumulative impacts on hydrology and water quality.  |                       |     |       |                  |                  |                  |
| <b>NOISE</b><br><b>Mitigation Measure NOI-1: Time Limits, Administrative Controls, and Source Controls.</b><br>An acoustical consultant qualified in construction noise control analysis and design will prepare a Noise Control Plan for each pipeline. This plan will include noise controls for all construction activities to reduce the noise to the 75-dBA (Leq) ordinance daytime noise limit and 54-dBA (Leq) ordinance nighttime noise limit to the extent feasible. These limits may be increased if ambient noise levels are higher, consistent with applicable ordinances. Measures to reduce noise levels and disturbance from construction noise to be incorporated into the Noise Control Plan will include, but are not limited to, the following:<br><b>Time Limits</b><br>a. All construction activities, including truck operations (e.g., haul trucks and concrete delivery trucks), will be limited to the daytime weekday hours (8:00 a.m. to 7:00 p.m.) to the extent feasible.<br><b>Noise Level Reduction Measures</b><br>b. Best available noise-control techniques (including mufflers, intake silencers, ducts, engine enclosures, and acoustically attenuating shields or shrouds) will be used for all equipment and trucks, as necessary.<br>c. Stationary noise sources (e.g., pumps, compressors) will be located as far from sensitive receptors as possible and practicable and within the specified construction time limits. If they must be located near receptors, adequate muffling (with enclosures) will be used. Enclosure openings or venting will face away from sensitive receptors. A registered engineer qualified in noise control analysis and design will design the enclosures.<br>d. If impact equipment (e.g., jackhammers) is used during demolition or construction activities, the construction contractor(s) will use hydraulically or electrically powered equipment wherever practical to avoid the noise associated with compressed-air exhaust from pneumatically powered tools. However, where use of | EBMUD and EBMUD's construction contractor | EBMUD                         | Impact 3.11-1: Construction activities could expose people to noise during time periods that fall outside of ordinance time limits or to noise levels that exceed ordinance limits.<br>Impact 3.11-2: Construction activities could result in substantial temporary noise increases that could interfere with activities at nearby noise-sensitive land uses.<br>Impact 3.11-3: Construction activities could result in excessive groundborne vibration.<br>Impact C-10: Cumulative increases in construction noise and vibration in the vicinity of proposed pipelines. | X                     | X   | X     | X                |                  |                  |
|  |   |                               |  |                       |     |       |                  |                  |                  |
| <b>NOISE (cont.)</b><br>pneumatically powered tools is unavoidable, an exhaust muffler on the compressed-air exhaust will be used (a muffler can lower noise levels from the exhaust by up to about 10 dB). External jackets on the tools themselves will be used, where feasible, which could achieve a reduction of 5 dB. Quieter procedures, such as drilling rather than impact equipment, will be used whenever practical.<br>e. An EBMUD contact person will be designated to respond to construction-related issues, including noise. The phone number and e-mail address of the liaison will be conspicuously posted at construction areas, on all advanced notifications, and on  | See above                                 | See above                     | See above  |                       |     |       |                  |                  |                  |

## MITIGATION MONITORING AND REPORTING PLAN FOR THE WEST OF HILLS NORTHERN PIPELINES PROJECT (Continued)

| Mitigation Measures   | Responsibility for Implementation         | Responsibility for Monitoring | Impact(s) Being Mitigated   | Applicable Alignments |     |       | Check Box (Date) | Check Box (Date) | Check Box (Date) |
|---|---|-------------------------------|---|-----------------------|-----|-------|------------------|------------------|------------------|
|   |   |                               |   | W.B                   | W.E | C.E/R | C.R/S            |                  |                  |
| <p>the EBMUD project website. This person will take steps to resolve complaints, including coordinating periodic noise monitoring, if necessary.</p> <p>f. Residents located within 300 feet of project construction will be notified at least seven (7) days in advance of extreme noise-generating activities about the estimated duration of the activity. EBMUD will also send emails to individuals on the Project's mailing list to update them prior to noisy phases.</p> <p>g. At pipeline tie-ins, in an effort to minimize the potential of the work extending beyond the above daytime time limits (8 a.m. and 7 p.m.), the contractor will be required to begin pipe-cutting operations for the hot-tapping connection prior to 9 a.m. or wait until the following morning in order to minimize the potential for pipe-cutting equipment to operate during the evening and nighttime hours. If pipe-cutting equipment must be operated during the nighttime hours at pipeline tie-ins, temporary noise barriers or noise enclosures will be used to minimize disturbance when construction occurs adjacent to residential uses. In addition, operation of trucks and noisier types of heavy equipment will be minimized to the extent feasible.</p> |   |                               |   |                       |     |       |                  |                  |                  |
| <p><b>Mitigation Measure NOI-2: Additional Noise Attenuation Measures.</b></p> <p>The Noise Control Plan required by Mitigation Measure NOI-1 will also contain measures to reduce potential noise impacts on schools as well as reduce construction noise levels at the jack and bore pipeline crossing. These measures will include but not be limited to the following:</p> <p><b>Schools</b></p> <p>a. Coordinate with schools located within 250 feet of Project pipeline alignments to schedule construction activities in a manner that minimizes noise impacts on school activities to the extent feasible. The following list of schools within 250 feet of the Project will be confirmed during preparation of the Noise Control Plan.</p> <ul style="list-style-type: none"> <li>Willard Middle School (2425 Stuart Street, Berkeley)</li> <li>Windrush Elementary School (1800 Elm Street, El Cerrito)</li> <li>Keystone Montessori School (6639 Blake Street, El Cerrito)</li> <li>Harding School (7115 C Street, El Cerrito)</li> <li>St. John the Baptist School (11156 San Pablo Avenue, El Cerrito)</li> <li>Richmond High School (1250 23rd Street, Richmond)</li> </ul>  | EBMUD and EBMUD's construction contractor | EBMUD                         | <p>Impact 3.11-2: Construction activities could result in substantial temporary noise increases that could interfere with activities at nearby noise-sensitive land uses.</p> <p>Impact 3.11-3: Construction activities could result in excessive groundborne vibration.</p> <p>Impact C-10: Cumulative increases in construction noise and vibration in the vicinity of proposed pipelines</p> | X                     | X   | X     | X                |                  |                  |
| <b>NOISE (cont.)</b>  |   |                               |   |                       |     |       |                  |                  |                  |
| <p><b>Jack and Bore Pipeline Crossing</b></p> <p>b. Noise barriers or enclosures will be used as necessary to ensure that noise from the boring jack power unit/generator does not exceed 70dBA (Leq) speech interference threshold for more than 10 consecutive work days at the closest noise-sensitive receptors.</p>  | See above                                 | See above                     | See above   |                       |     |       |                  |                  |                  |
| <p><b>Mitigation Measure NOI-3: Nighttime Construction Measures.</b></p> <p>The Noise Control Plan required by Mitigation Measure NOI-1 will include a provision to provide alternative lodging for residents. If requested, that are adversely affected by nighttime pipeline tie-in construction or by nighttime construction at intersections when required by encroachment permit conditions; this measure would only be used if nighttime construction occurs. EBMUD will make a concerted attempt to notify</p>   | EBMUD and EBMUD's construction contractor | EBMUD                         | Impact 3.11-2: Construction activities could result in substantial temporary noise increases that could interfere with activities at nearby noise-  | X                     | X   | X     | X                |                  |                  |

## MITIGATION MONITORING AND REPORTING PLAN FOR THE WEST OF HILLS NORTHERN PIPELINES PROJECT (Continued)

| Mitigation Measures  | Responsibility for Implementation                     | Responsibility for Monitoring | Impact(s) Being Mitigated   | Applicable Alignments |                                   |                |                              | Check Box (Date) | Check Box (Date)   | Check Box (Date)                                      |   |       |  |   |   |   |   |  |  |  |
|--|---|-------------------------------|---|-----------------------|-----------------------------------|----------------|------------------------------|------------------|--|---|---|-------|--|---|---|---|---|--|--|--|
|  |   |                               |   | W.B                   | W.E                               | C.E/R          | C.R/S                        |                  |  |   |   |       |  |   |   |   |   |  |  |  |
| residents located within 400 feet of potential nighttime project construction at least ten (10) days in advance. Notified residents may request alternative lodging for the night(s) of the potential nighttime construction from EBMUD; alternative lodging will consist of a standard room at a hotel located within 6 miles of the affected residence or as close as feasible. Alternative lodging will be provided and approved by EBMUD the day before the known nighttime construction would occur, or sooner, based upon the types of construction activities that may occur during the nighttime hours (10:00 p.m. to 7:00 a.m.).  |   |                               | sensitive land uses.<br>Impact 3.11-3:<br>Construction activities could result in excessive groundborne vibration.<br>Impact C-10: Cumulative increases in construction noise and vibration in the vicinity of proposed pipelines |                       |                                   |                |                              |                  |  |   |   |       |  |   |   |   |   |  |  |  |
| <div>Mitigation Measure NOI-4: Vibration Limits.<br/>Construction practices will be utilized that do not generate vibration levels at the closest structures above the following thresholds:<table><tr><th>Category</th><th>Maximum Amplitude</th></tr><tr><td colspan="2">Cosmetic Damage - Residential and Commercial Buildings</td></tr><tr><td>Transient or Intermittent Sources</td><td>0.5 in/sec PPV</td></tr><tr><td>Continuous Vibratory Sources</td><td>0.4 in/sec PPV</td></tr><tr><td>All Vibratory Sources Located in Areas of Very High Liquefaction Susceptibility, as Depicted in Figure 3.7-4</td><td>0.1 g (peak acceleration), or 0.2 in/sec PPV at 30 Hz</td></tr></table></div> | Category  | Maximum Amplitude             | Cosmetic Damage - Residential and Commercial Buildings  |                       | Transient or Intermittent Sources | 0.5 in/sec PPV | Continuous Vibratory Sources | 0.4 in/sec PPV   | All Vibratory Sources Located in Areas of Very High Liquefaction Susceptibility, as Depicted in Figure 3.7-4 | 0.1 g (peak acceleration), or 0.2 in/sec PPV at 30 Hz | EBMUD and EBMUD's construction contractor | EBMUD | Impact 3.7-6: Unstable geologic unit.<br>Impact 3.11-1:<br>Construction activities could expose people to noise during time periods that fall outside of ordinance time limits or to noise levels that exceed ordinance limits.<br>Impact 3.11-2:<br>Construction activities could result in substantial temporary noise increases that could interfere with activities at nearby noise-sensitive land uses.<br>Impact 3.11-3:<br>Construction activities could result in excessive groundborne vibration. | X | X | X | X |  |  |  |
| Category   | Maximum Amplitude                                     |                               |   |                       |                                   |                |                              |                  |  |   |   |       |  |   |   |   |   |  |  |  |
| Cosmetic Damage - Residential and Commercial Buildings   |   |                               |   |                       |                                   |                |                              |                  |  |   |   |       |  |   |   |   |   |  |  |  |
| Transient or Intermittent Sources  | 0.5 in/sec PPV  |                               |   |                       |                                   |                |                              |                  |  |   |   |       |  |   |   |   |   |  |  |  |
| Continuous Vibratory Sources   | 0.4 in/sec PPV  |                               |   |                       |                                   |                |                              |                  |  |   |   |       |  |   |   |   |   |  |  |  |
| All Vibratory Sources Located in Areas of Very High Liquefaction Susceptibility, as Depicted in Figure 3.7-4   | 0.1 g (peak acceleration), or 0.2 in/sec PPV at 30 Hz |                               |   |                       |                                   |                |                              |                  |  |   |   |       |  |   |   |   |   |  |  |  |

MITIGATION MONITORING AND REPORTING PLAN FOR THE WEST OF HILLS NORTHERN PIPELINES PROJECT (Continued)

| Mitigation Measures   | Responsibility for Implementation | Responsibility for Monitoring | Impact(s) Being Mitigated   | Applicable Alignments |     |       | Check Box (Date) | Check Box (Date) | Check Box (Date) |  |  |  |  |  |  |  |  |
|---|-----------------------------------|-------------------------------|---|-----------------------|-----|-------|------------------|------------------|------------------|--|--|--|--|--|--|--|--|
|   |                                   |                               |   | W.B                   | W.E | C.E/R |                  |                  |                  |  |  |  |  |  |  |  |  |
| NOISE (cont.)   |                                   |                               |   |                       |     |       |                  |                  |                  |  |  |  |  |  |  |  |  |
| The following measures, at a minimum, will be employed to ensure these thresholds are met:<br><b>Pipeline, Tie-In, and Creek Crossing Construction</b><br>a. Vibration monitoring will be conducted for the first 500 feet of pipeline construction for each segment to confirm vibration levels do not exceed the above vibration thresholds. If vibration levels exceed the limits of this mitigation measure, then construction practices will be modified (i.e. use smaller types of construction equipment, operate the equipment in a manner to reduce vibration, or use alternate construction methods), and monitoring will continue for an additional 200 feet or until construction practices meet the required vibration levels. The monitoring in this mitigation measure will be repeated if the construction methods change in a manner that would increase vibration levels, or when structures are closer to the limits of construction than previous vibration monitoring have confirmed is below the vibration thresholds.<br>b. Smaller vibratory compactors and/or non-compacting materials (i.e., some types of gravel) will be used to minimize vibration levels during repaving activities where needed to meet vibration limits.<br>c. Sheet piles will be installed with vibratory drivers instead of impact drivers where feasible. Impact sheet pile installation will be prohibited within 55 feet of the closest structures. Vibration monitoring will be conducted within 100 feet of any buildings where impact sheet pile installation occurs, and within 60 feet of any building where vibratory sheet pile installation occurs to ensure that the above applicable performance standard is not exceeded. If vibration levels exceed the applicable threshold, the contractor will use alternative construction methods.<br>d. For the pipe bridge supports, pile holes will be pre-drilled to minimize or avoid the use of impact pile drivers. | See above                         | See above                     | Impact C-10: Cumulative increases in construction noise and vibration in the vicinity of proposed pipelines |                       |     |       |                  |                  |                  |  |  |  |  |  |  |  |  |
| <b>Areas Susceptible to High/Very High Liquefaction Hazards</b><br>e. Soil settlement and vibration monitoring will be conducted at the closest structures when vibratory equipment is operated in areas with High to Very High liquefaction susceptibility to ensure that the above performance standard is not exceeded.  |                                   |                               |   |                       |     |       |                  |                  |                  |  |  |  |  |  |  |  |  |
| <b>Preconstruction Surveys and Monitoring</b><br>f. With permission and at the request of homeowners, EBMUD will conduct a preconstruction survey of homes, other sensitive structures, hardscaping, hillsides, and slide areas adjacent to the pipeline alignments, for potential effects due to vibration-generating activities. EBMUD will respond to any claims by inspecting the affected property promptly. Any new cracks or other changes in structures will be compared to preconstruction conditions and a determination made as to whether the proposed Project could have caused such damage. In the event that the Project is demonstrated to have caused the damage, EBMUD will coordinate with the owner to have the damage repaired to the pre-existing condition.  |                                   |                               |   |                       |     |       |                  |                  |                  |  |  |  |  |  |  |  |  |



## MITIGATION MONITORING AND REPORTING PLAN FOR THE WEST OF HILLS NORTHERN PIPELINES PROJECT (Continued)

| Mitigation Measures  | Responsibility for Implementation         | Responsibility for Monitoring | Impact(s) Being Mitigated   | Applicable Alignments |     |       |       | Check Box (Date) | Check Box (Date) | Check Box (Date) |  |  |
|--|---|-------------------------------|---|-----------------------|-----|-------|-------|------------------|------------------|------------------|--|--|
|  |   |                               |   | W.B                   | W.E | C.E/R | C.R/S |                  |                  |                  |  |  |
| RECREATION   |   |                               |   |                       |     |       |       |                  |                  |                  |  |  |
| Mitigation Measure REC-1: Restoration of 23rd Street Pocket Park.<br>If the jack and bore pit required for the Central Pressure Zone Pipeline (Richmond/San Pablo) crossing of Wildcat Creek is located in the City of San Pablo's park adjacent to 23rd Street, the pit and construction activities will be located to avoid trees to the extent feasible. After completion of construction activities the park will be restored to pre-project conditions. Restoration will include replanting any trees or other vegetation and replacing any other park amenities (park benches, sidewalks, signage etc) that were removed during construction. To allow for access to the pipeline, replanted trees will not be located within 20 feet of the pipeline. | EBMUD and EBMUD's construction contractor | EBMUD                         | Impact 3.12-2: Construction of the Project may result in the removal of trees and other park facilities.  |                       |     |       | X     |                  |                  |                  |  |  |
| TRANSPORTATION AND TRAFFIC   |   |                               |   |                       |     |       |       |                  |                  |                  |  |  |
| Mitigation Measure TRA-1a: Intersection Traffic Control.<br>A flagger will be deployed at the Claremont Avenue/Hilcrest Boulevard/Brookside Drive intersection to control westbound traffic during the p.m. peak period. This would minimize the impact of the pipeline installation project.  | EBMUD and EBMUD's construction contractor | EBMUD                         | Impact 3.13-1: Closure of travel lanes during project construction would temporarily reduce roadway capacity and increase traffic delays on area roadways, causing temporary and intermittent conflicts with all modes of travel, but the effects would be of short duration and limited in magnitude.<br><br>Impact C-12: Cumulative impacts related to increases in traffic and traffic hazards, access, and parking. | X                     |     |       |       |                  |                  |                  |  |  |
| Mitigation Measure TRA-1b: Intersection Traffic Control.<br>Flaggers will be deployed at the Richmond Street/Central Avenue and Richmond Street/Fairmount Avenue intersections to control traffic during peak periods.   |   |                               |   |                       | X   |       |       |                  |                  |                  |  |  |
| Mitigation Measure TRA-1c: Intersection Traffic Control.<br>Prohibit left-turns from San Pablo Avenue to 23rd Street or Road 20 during the p.m. peak period when construction activities require lane closures. This can be accomplished using cones and changeable message signs.   |   |                               |   |                       |     | X     |       |                  |                  |                  |  |  |
| Mitigation Measure TRA-1d: Intersection Traffic Control.<br>Prohibit left-turns from 23rd Street to Rheem Avenue during the p.m. peak period when construction activities require lane closures. This can be accomplished using cones and changeable message signs.  |   |                               |   |                       |     |       |       |                  |                  |                  |  |  |
| Mitigation Measure TRA-2a: Advance Notification of Construction.<br>Residents and business owners located within 300 feet of project construction will be notified in advance of activities requiring road closures about the estimated schedule and duration of the activity. EBMUD will also send emails to individuals on the Project's mailing list to update them prior road closures.  | EBMUD and EBMUD's construction contractor | EBMUD                         | Impact 3.13-4: Project construction would not substantially limit access to adjacent roadways and land uses due to construction within roadways.<br><br>Impact C-12: Cumulative impacts related to increases in traffic and traffic hazards, access, and parking.   | X                     | X   | X     | X     |                  |                  |                  |  |  |
| Mitigation Measure TRA-2b: Road Blocks and Trenches.<br>Road blocks will be removed and open trenches covered at the end of the work day on a daily basis to provide access to residents. However, a portion of the parking zones will be retained for the storage of construction equipment on a daily basis.   |   |                               |   |                       |     |       |       |                  |                  |                  |  |  |
| Mitigation Measure TRA-2c: Sidewalk Access.<br>Sidewalk access will be maintained on one side of the street during construction.   |   |                               |   |                       |     |       |       |                  |                  |                  |  |  |

## MITIGATION MONITORING AND REPORTING PLAN FOR THE WEST OF HILLS NORTHERN PIPELINES PROJECT (Continued)

| TRANSPORTATION AND TRAFFIC (cont.)  |   |                               |  |                       |     |       |       |                  |                  |                  |
|---|---|-------------------------------|--|-----------------------|-----|-------|-------|------------------|------------------|------------------|
| Mitigation Measures   | Responsibility for Implementation         | Responsibility for Monitoring | Impact(s) Being Mitigated  | Applicable Alignments |     |       |       | Check Box (Date) | Check Box (Date) | Check Box (Date) |
|   |   |                               |  | W.B                   | W.E | C.E/R | C.R/S |                  |                  |                  |
| Mitigation Measure TRA-2d: Alternate Parking Solutions for Residents.<br>In the City of Berkeley where their Residential Preferential Parking Program restricts street parking, EBMUD will request the City of Berkeley to provide temporary parking permits for residents to park in other nearby parking permit zones during construction, and EBMUD will, where feasible, work with the owners of parking facilities near the pipeline alignments to provide parking for residents affected by construction. | See above                                 | See above                     | See above  | X                     |     |       |       |                  |                  |                  |
| Mitigation Measure TRA-3a: Notification of Transit Changes.<br>EBMUD will coordinate with AC Transit to provide the notification to transit patrons. EBMUD will provide AC Transit with 14 days notice of bus stop closures. AC Transit will communicate alternate bus stop locations to their customers.   | EBMUD and EBMUD's construction contractor | EBMUD                         | Impact 3.13-5: Project construction would not substantially impair access to alternative transportation facilities (public transit, bicycle, or pedestrian facilities), although it would temporarily decrease the performance of such facilities. | X                     | X   | X     | X     |                  |                  |                  |
| Mitigation Measure TRA-3b: AC Transit Coordination.<br>EBMUD will coordinate with AC Transit to relocate bus stops and/or reroute affected transit services via parallel streets during construction. This would minimize the distance that bus patrons would need to walk to access the buses due to bus stops on affected streets being temporarily closed.   |   |                               |  |                       | X   |       |       |                  |                  |                  |
| Mitigation Measure TRA-3c: AC Transit Coordination.<br>EBMUD will coordinate with AC Transit to relocate bus stops and/or reroute affected transit services via parallel streets during construction along San Pablo Avenue. This would minimize the distance that bus patrons would need to walk to access the buses due to bus stops on San Pablo Avenue being temporarily closed.  |   |                               | Impact C-12: Cumulative impacts related to increases in traffic and traffic hazards, access, and parking.  |                       |     | X     |       |                  |                  |                  |
| Mitigation Measure TRA-3d: Crosswalks.<br>Where possible, the contractor will implement staged construction across the intersections along San Pablo Avenue to make either the north or south crosswalk available at any one time during construction. This would minimize the need for pedestrians to walk an entire block to use the adjacent crosswalk to cross San Pablo Avenue.  |   |                               |  |                       |     |       |       |                  |                  |                  |
| Mitigation Measure TRA-3e: Bicycle Traffic Management.<br>The contractors will mount temporary "share the road" signs within the construction zone along San Pablo Avenue, or will obtain a temporary permit to allow cyclists to use the sidewalk to bypass the construction area where allowed by the local jurisdiction.   |   |                               |  |                       |     | X     |       |                  |                  |                  |
| Mitigation Measure TRA-3f: Road Closure Notification.<br>During Garvin Avenue and Hellings Avenue closures, notification will be provided through signing that pedestrians need to use alternative locations to cross 23rd Street.  |   |                               |  |                       |     |       |       |                  |                  |                  |
| Mitigation Measure TRA-3g: Sidewalk Closure.<br>Contractors will minimize or avoid closing multiple crosswalks at closely-spaced intersections at Dover Avenue, between Visalia Avenue and Lincoln Avenue, and between Grant Avenue and Clinton Avenue.   |   |                               |  |                       |     |       |       | X                |                  |                  |

## MITIGATION MONITORING AND REPORTING PLAN FOR THE WEST OF HILLS NORTHERN PIPELINES PROJECT (Continued)

| Mitigation Measures   | Responsibility for Implementation         | Responsibility for Monitoring | Impact(s) Being Mitigated  | Applicable Alignments |     |       |       | Check Box (Date) | Check Box (Date) | Check Box (Date) |
|---|---|-------------------------------|--|-----------------------|-----|-------|-------|------------------|------------------|------------------|
|   |   |                               |  | W.B                   | W.E | C.E/R | C.R/S |                  |                  |                  |
| CUMULATIVE IMPACTS  |   |                               |  |                       |     |       |       |                  |                  |                  |
| Mitigation Measure C-1: Coordinated Noise Control Plan During Construction.<br>EBMUD will prepare a coordinated Noise and Vibration Control Plan that outlines noise and vibration controls to ensure that where feasible the 70-dBA speech interference threshold is not exceeded during the daytime hours (7 a.m. to 10 p.m.) for more than two consecutive weeks at one location without at least a one week break between projects and vibration thresholds listed in Mitigation Measure NOI-4 (Vibration Limits) are not exceeded when combined noise and vibration effects from cumulative projects are considered. At locations like the tie-in locations where the Project activities will extend beyond two weeks, EBMUD will attempt to coordinate with the cumulative projects to provide a week long gap between the construction activities.   | EBMUD and EBMUD's construction contractor | EBMUD                         | Impact C-10: Cumulative increases in construction noise and vibration in the vicinity of proposed pipelines. | X                     | X   | X     | X     |                  |                  |                  |
| Mitigation Measure C-2: Coordinated Traffic Control Plan During Construction.<br>Prior to construction, EBMUD will develop a Coordinated Transportation Management Plan in coordination with the appropriate local government departments in Berkeley, El Cerrito, Richmond, and San Pablo to address the transportation impact of the overlapping construction projects within the vicinity of the West of Hills Project. The coordinated transportation management plan will include, but not be limited to, the following requirements:<br><ul style="list-style-type: none"><li>• Coordination of individual traffic control plans for the project and nearby projects.</li><li>• Coordination between the contractor and EBMUD in developing circulation and detour plans that include safety features (e.g., signage and flaggers).</li><li>• Protocols for updating the transportation management plan to account for delays or changes in the schedules of individual projects.</li></ul> | EBMUD                                     | EBMUD                         | C-12: Cumulative Impacts Related to Increases in Traffic and Traffic Hazards, Access, and Parking            | X                     | X   | X     | X     |                  |                  |                  |



**EAST BAY MUNICIPAL UTILITY DISTRICT**

---

DATE: December 5, 2013

MEMO TO: Board of Directors

FROM: Alexander R. Coate, General Manager *ARC*

SUBJECT: Monthly Report – November 2013

**HIGHLIGHTS**

**On November 25, the EPA awarded the District a \$517,650 grant to evaluate “sidestream processes” to reduce nutrient loading in San Francisco Bay.** The project proposal has a 1:1 matching fund requirement. EBMUD submitted this grant proposal as a regional collaborative effort and project partners include three other wastewater agencies, Stanford and UC Berkeley, and the San Francisco Estuary Institute. Staff will lead the regional effort on this significant regulatory issue and investigate the costs and benefits of sidestream nutrient removal for Bay Area treatment plants.

**November 21 windstorm impact on District facilities.** A strong windstorm crossed the San Francisco Bay Area with wind gusts in the East Bay Hills reaching 63 mph. The windstorm caused widespread power outages throughout the Bay Area and affected many District facilities including six reservoirs, ten pumping plants, four regulators and rate control stations, and communication systems. There were no customer impacts as a result of the windstorm and power was restored to most of the affected facilities the following day.

**Fall Run Chinook salmon return peaking on the Mokelumne river.** As of November 19, more than 11,349 salmon were recorded passing the Woodbridge Irrigation District Dam. Staff anticipates that more than 12,000 fish will pass the dam this season. The long-term average is approximately 4,500 salmon.

**Walnut Creek Water Treatment Plant Tour.** On November 9, staff met with two State Water Resources Control Board (SWRCB) members to discuss the anticipated transition of the California Department of Public Health (DPH) to the SWRCB and to provide a tour of the treatment plant. Staff explained the importance of DPH’s public health focus and the value they have provided by working cooperatively with the water utilities. The SWRCB Board members were very appreciative of the tour and information they received.

**District staff assisted with containing a peat fire near the Mokelumne Aqueducts.** On November 22, the Upper Jones Tract Reclamation District (RD) notified the District of a peat fire adjacent to the Mokelumne Aqueducts and requested District assistance. The fire was just north of the District Right-of-Way (ROW). Staff deployed firefighting equipment and began soaking the aqueduct ROW adjacent to the fire. The actions of the RD and staff contained the fire

and aqueduct operations were not impacted. Peat fires can burn underground with no smoke for considerable time. There was a fire in the area in June 2013, which appears to have continued burning underground until the recent high winds caused it to flare up to the surface.

## **WATER SUPPLY AND WATER RIGHTS PROGRAMS AND ACTIVITIES**

**EBMUD, as a member of UMRWA, is participating on the MokeWISE effort.** Staff is assisting the Upper Mokelumne River Watershed Authority (UMRWA) on its Mokelumne Watershed Inter-regional Sustainability Evaluation (MokeWISE) effort. MokeWISE is a long range water resources planning effort to address a mix of water supply and environmental needs of the watershed and its stakeholders. On December 2, the MokeWISE team issued a final Program Objectives and Measures Technical Memorandum, produced in coordination with the Mokelumne Collaboration Group (MCG) that includes EBMUD. At their next meeting in December, the MokeWISE MCG will focus on developing a community outreach strategy to determine how to engage Disadvantaged Communities that lie within the Mokelumne River Watershed.

**San Pablo Reservoir recreation area closes for season.** The recreation area closed this November and will reopen in February. The 2013 season continued a revival in visitorship, especially boating, in spite of very low water levels in late summer and fall. Visits have increased 35 percent over the past two years.

**Precipitation.** East Bay precipitation for November was 1.09 inches (34% of average, 18th driest November on record) with a season total of 1.83 inches (36% of average, 5th driest season to-date). Mokelumne precipitation was 1.45 inches (27% of average, 14th driest November on record) with a season total of 3.27 inches (35% of average, 7th driest season to-date).

**Releases from Camanche Reservoir.** The average rate of Camanche release for November was 270 cfs (209 cfs generation, 34 cfs sluice, and 27 cfs through the hatchery), and the average flow below Woodbridge Dam was 187 cfs, both in accordance with the Joint Settlement Agreement "below normal" criteria.

**Mokelumne reservoirs storage is 100% of average.** As of November 30, 2013, Pardee was at 559.3 feet or 107% of average, and Camanche was at 209.6 feet or 96% of average. Combined Pardee and Camanche storage was 424,000 acre-feet compared to 441,000 acre-feet last year.

**Releases from East Bay Reservoirs.** There were no East Bay reservoir releases in November.

**East Bay reservoirs storage is 85% of average.** As of November 30, 2013, USL was at 446.2 feet or 114% of average, San Pablo was at 281.9 feet or 66% of average, and Briones was at 546.9 feet or 79% of average. Total terminal reservoir storage was 98,000 acre-feet compared to 124,000 acre-feet last year.

**Mokelumne aqueducts and raw water pumping plants.** The average rate of Mokelumne Aqueduct draft for November 2013 was 183 MGD. Briones raw water pumping plant operation resumed to refill Briones Reservoir. Walnut Creek raw water pumping plant No. 1 was operated for construction testing. Walnut Creek Nos. 2 and 3 and Moraga raw water pumping plants remained out of service for the month.

**Water Production.** Average rate of gross water production for November:

|                    | November 2013          | November 2012          | November 2011          | Average of 2005-2007 |
|--------------------|------------------------|------------------------|------------------------|----------------------|
| East of Hills      | 46 MGD                 | 32 MGD                 | 34 MGD                 | 39 MGD               |
| West of Hills      | 130 MGD                | 110 MGD                | 112 MGD                | 133 MGD              |
| Total              | 176 MGD                | 142 MGD                | 146 MGD                | 172 MGD              |
| Max Day Production | 198 MGD<br>(11/3/2013) | 160 MGD<br>(11/5/2012) | 181 MGD<br>(11/2/2011) |                      |

*Note: Data are all from preliminary daily operational reports and are subject to revision*

## CUSTOMER EVENTS AND PUBLIC OUTREACH

**Staff assisted in organizing a one-day training seminar sponsored by the California Water Environment Association San Francisco Bay Section Professional Development Committee.** A “Math, Operations and Maintenance for Wastewater Sludge Thickening and Dewatering” seminar was held at the City of San Leandro's Marina Community Center on November 12. The event was attended by approximately 80 local wastewater plant operators, maintenance personnel, engineers and consultants.

**Staff participated in the annual Sandhill Crane Festival held in Lodi on November 2 and 3.** “Raptors by Boat” tours were held at Pardee Reservoir by District staff. Additionally, staff presented “Beyond the Water’s Edge: Salmon in the Mokelumne River” and led the “Salmon in the Mokelumne River” tour with a representative from the Department of Fish and Wildlife. The tours and presentations were sponsored by the lower Mokelumne River Partnership to promote its successful efforts to support the Mokelumne River salmon population.

**Camanche Mobilehome Park (MHP) rules revision meeting.** On November 9th, staff along with Camanche Recreation Company held an informational meeting with approximately 50 residents from all three mobilehome parks to provide responses to the residents’ requests for rule changes and to share additional rule change proposals by staff. Among the rules discussed were the number and placement of storage cabinets on the lots, restrictions on dogs, and standard (non-emergency) water conservation requirements. Park Management will revise the MHP rules and regulations, obtain legal counsel review, and begin implementing the new rules and regulations following a 6-month regulatory waiting period.

**Environmental education activities in November.** Staff led school programs for more than 100 elementary and high school students in the Mokelumne and East Bay. Topics included ecology, hydrology and fish biology. In addition to staff-led efforts, approved non-District education events occurred in the Mokelumne (field trips to Native American cave art at Camanche) and in the East Bay (field trips to an organic farm in Pinole Valley).

**Orinda community outreach on projects.** On November 7, staff and the District's architectural, landscape and noise consultants discussed the Happy Valley Pumping Plant Project at a Citizens Liaison Committee (CLC) meeting with neighbors of the proposed new pumping plant site located off of Miner Road, across from Camino Sobrante in Orinda. Five people attended the meeting. Staff and the consultants reviewed the Happy Valley project, presented alternative architectural and landscape conceptual layouts, presented a noise analysis and solicited input from the attendees. Key issues discussed included minor landscape design additions, alternative colors of the new pumping plant and noise concerns. A second CLC meeting will be scheduled in January 2014 to present a final architectural and landscape scheme. Separate CLC meetings for the Sunnyside Pumping Plant site and the Donald Pumping Plant/Ardith Reservoirs site will be scheduled in December 2013.

**On November 14, staff participated in the Sacramento Public Agency Consortium 2013 Regional Connecting Point event in Citrus Heights, CA.** Staff disseminated information on the Contract Equity Program, upcoming contract opportunities and the small business incentives. Approximately 900 participants including 80 agencies were in attendance.

**Contract Equity outreach events.**

Staff participated in the following business community events:

- November 13, Oakland African American Chamber of Commerce – *10<sup>th</sup> Anniversary Luncheon* in Oakland.
- November 14, National Forum of Black Public Administrators – *Bay Area Achievers Awards Banquet* in Oakland.
- November 21, San Francisco Bay Area Rapid Transit (BART) – *Business Advisory Council* meeting in Oakland.

**Water Conservation outreach events.**

**On November 2, staff participated in a hands-on Lawn Conversion workshop sponsored by Bay Friendly StopWaste.** Participants helped convert a San Leandro homeowner's front lawn using sheet mulch and plants adapted to a summer-dry climate. Staff spoke to workshop participants about EBMUD's lawn conversion and irrigation upgrade rebate program. Thirty-five people were in attendance.



**On November 6, as a member of the California Urban Water Conservation Council (CUWCC) Board of Directors, staff attended a meeting at the Mesa Water District in Costa Mesa.** The agenda included a discussion of the ongoing committee work on the water conservation pricing best management practice, a review of the CUWCC Board committee and governance structure, the recruitment for a new CUWCC executive director, and planning for the CUWCC Board Strategic Planning Workshop to be held at Pardee in February 2014.

**On November 12, staff presented District business customer water and energy efficiency programs as part of an Alliance for Water Efficiency-hosted webinar along with staff from the American Council for an Energy Efficient Economy, Western Resource Advocates, and Tampa Bay Water.** The webinar focused on how energy and water utilities can work together to create incentive programs for customers. The District's presentation focused on the successful partnering with Pacific Gas and Electric on joint rebate development, training, and research efforts. Approximately 95 people participated in the webinar.

**On November 16, staff gave a presentation to the California Landscape Contractors Association annual convention on the "New Norm for California Landscapes."** The presentation covered new technology and approaches to promote consumer-based landscape water budgets and trends among water utilities, landscape professionals, businesses, and regulators toward sustainable water management efforts. Approximately 60 people were in attendance.

**On November 18, staff hosted a Geographic Information System Day at the District.** Staff demonstrated how the Irrigation Reduction Information System Water Budget program is used to create commercial landscape water budgets for "irrigation only" customers.

**On November 25, staff gave a lecture to the University of California, Berkeley Energy DeCal class.** Staff gave an overview of a water utility from source, delivery and treatment and also addressed water supply issues and how water is moved in the West. Twenty-five people attended the class.

## **CAPITAL IMPROVEMENT AND FACILITIES MAINTENANCE**

**On November 7, staff negotiated a settlement agreement with Solar Turbines, Inc., the manufacturer of the turbine at the Main Wastewater Treatment Plant power generation station.** The turbine has been out of service since October 29, 2013. Staff negotiated a five-year extended service agreement and an associated memorandum of understanding that will address repair costs incurred to date and transfer responsibility for future repairs to Solar. Staff provided an update to the Planning Committee and the Board approved the agreement on November 26, 2013. The turbine is expected to be returned to service by December 9, 2013.

**Staff is working to resolve issues associated with failure of the protective coating installed on four digesters at the MWWTP.** These digesters were coated to prevent corrosion as part of the Digester Upgrade Phase 1 Project in 2007-2008. Coating failure in localized areas was identified during inspections between November 2012 and July 2013. In addition to investigating

the root cause of the failure (i.e., coating application or design specification error), staff is hiring an outside consultant to help identify recommended approaches to repairing the damaged coatings.

**Camanche Hills Hunting Preserve Road improvement completed.** Staff oversaw the installation of approximately 200 tons of rock on an existing road bed, strategically layered to allow the passage of water. The project site has been a troublesome water-crossing for years and is of particular concern due to its location in California Tiger Salamander habitat and was completed with Department of Fish and Wildlife approval.

**Staff worked with Pixar Studios in Emeryville to retrofit the new cooling towers at their main campus building for recycled water.** The required shut-down tests to rule out any cross connections were completed on November 8 and 9. A final inspection by EBMUD will confirm compliance before issuing the reuse permit and connecting to the recycled water system.

**Pipeline.** On November 5, staff completed an applicant job of 480 feet of six-inch water pipe on Tassajara Lane in Danville and began an infrastructure renewal job installing 1,400 feet of 16-inch water pipe on 42<sup>nd</sup> Street in Oakland during the week of November 18, 2013.

**Design milestone reached for the Lincoln Pipeline Replacement Project (Alameda)** – This critical project includes replacing over 2 miles of unlined 20-inch diameter riveted steel main, circa 1924. This replacement project is important because the existing pipeline is difficult to repair and recent breaks have resulted in significant customer impacts. Replacements from Park to Paru Streets have been installed and staff has completed the design for the final phase that will replace the segment from Paru to Webster Streets with 5,800 feet of 16-inch diameter steel main.

**A successful startup test was performed on the Campo Seco bypass valve for the Mokelumne Aqueducts Nos. 1 and 2.** Staff performed startup tests throughout November. The bypass valves were modified to optimize their performance as part of the Folsom South Canal Connection Post Construction Project. The improvements reduced vibration, noise and cavitation of the valves, which should significantly increase their life span.

**Staff installed ground motion recorders and associated electrical and communication hardware at Upper San Leandro Dam (Oakland) on November 12.** The recorders are connected to the United States Geological Service's network of recorders that help determine the seismic forces throughout the area in an earthquake. The recorders will also assist the District in determining the appropriate earthquake forces to be used in engineering analyses of our facilities.

**The Powell Street and Hollis Street pipeline (Emeryville) replacement start of construction has been delayed.** The City of Emeryville (City) gave the contractor approval to use an alternate storage area. The City is still using the promised storage area on Powell Street for its sewer project, which is running behind schedule. The work on Hollis Street cannot begin until the contractor receives and installs their traffic cameras in the area. Work is scheduled to start on Monday, December 2.

**The Dingee Pipeline and Claremont Center Aqueducts (Oakland) replacement pipeline installation work has begun.** The Dingee pipeline installation began at Proctor and Broadway Terrace on November 18 with work progressing towards the Claremont Center. The Dingee pipeline and Sequoia Aqueduct work under Highway 24 and BART is scheduled for mid-December to mid-January to minimize impacts to the College Preparatory School and Anthony Chabot Elementary School.

**The Walnut Creek Water Treatment Plant Water Treatment and Transmission Improvements project requires an increase in the change order contingency.** The project encountered several unexpected conditions in the existing electrical systems that required modification in order to integrate the new systems. The prior change order amount was \$1,060,000 with an additional \$63,598 needed for this work bringing the total change order amount to \$1,123,598 or 11.6 percent of the original contract amount of \$9,710,000. This project was accepted as complete on September 23, 2013 and there are no claims.

**Sobrante Water Treatment Plant (WTP) electrical upgrades have been delayed.** Staff is planning to complete electrical upgrades that include demolishing and replacing four motor control centers, an electrical substation and three automatic transfer switches, and furnishing and installing new power cable from Maloney Pumping Plant to the new electrical substation. The majority of the work is on hold because it requires the Sobrante WTP be out of service; that outage was scheduled to begin November 5, 2013 but has been delayed due to the combination high water demands in the northern part of the service area and limited water production at the Orinda WTP. The delay may increase costs or impact the scheduled completion. Contingency plans for completing the electrical upgrades are being considered since Sobrante must be back in service by March 14, 2014 to meet anticipated water demands.

## **WATER AND WASTEWATER SYSTEM OPERATIONS**

**There were two odor complaints during this reporting period.** The first complaint occurred on November 6 and was described as very strong. The follow-up investigation concluded that the likely source of the odor was the aerated grit effluent channel which had been drained and partially cleaned but still had significant trapped organic material. The second complaint occurred on November 9 and was described as a light sewage odor. The follow-up investigation into this complaint was not conclusive with regards to cause but it may have been attributable to a screening bin which had not been immediately hauled away. Light and shifting winds were also a factor in both complaints. In response to the first complaint, staff is working on solutions to mitigate trapped solids, and in response to the second complaint, staff has followed up with the hauler.

**All discharges from the MWWTP were in compliance with the permit limits for the month of November.** This is the 171st consecutive month that the plant experienced no exceedances.

**On November 9, 2013, approximately 1,500 cubic feet of biogas was vented from the pressure relieve valves on two digesters at the MWWTP.** This event is a violation of a prohibition of the District's Title V air permit issued by the Bay Area Air Quality Management District. The venting occurred when the waste gas flares were unable to control the system pressure during a peak in biogas production. The investigation into the root cause of this release is ongoing, however it appears that the flares were not adequately sized to handle peak production and flare system operation was compromised by biogas condensate accumulation. This incident is likely to result in the issuance of a notice of violation and fines.

**On November 19, there was an unauthorized discharge of approximately 100 gallons of treated secondary effluent at the North Richmond Recycled Water Facility.** The plant drain lateral backed up and effluent spilled from a manhole to a District storm drain catch basin. The backup occurred when staff was draining a filter to facilitate inspection and filter sand plugged the plant drain. This incident has been reported to the Regional Water Quality Control Board and is not expected to result in a violation.

**November main breaks.** The attached table lists the main breaks that were repaired by staff in November, sorted by city and street. The associated map shows the locations of the breaks geographically.

## ORGANIZATION EFFECTIVENESS AND EFFICIENCY

**Staff presented the District's Dam Safety Program and the Chabot Dam Seismic Upgrade project at the East Bay Municipal Engineers' (EBME) meeting in Concord on November 13.** EBME is an association of government engineers and consultants that meets monthly to discuss areas of common interest. Staff explained the District's Dam Safety Program and how it ensures dam safety and life safety. Staff also presented the investigations and analyses leading to the Chabot retrofit project.

### Tuition Reimbursement

|                  | November 2013 | FY14 Total |
|------------------|---------------|------------|
| # of Employees   | 16            | 72         |
| # of Classes     | 16            | 90         |
| Total Reimbursed | \$7,352       | \$55,529   |

### Employment Information

|                   | November 2013 | FY14 Total |
|-------------------|---------------|------------|
| Retirements*      | 8             | 37         |
| Other Separations | 5             | 26         |
| Hires             | 13            | 83         |

*\*Includes vested employees who left District employment and retired at a later date.*

## FINANCIAL NEWS

**Resource Recovery revenues for October 2013 were the second highest in the program's history at \$997,000, just under the program peak of \$999,000 in March 2011.** Increased deliveries from Musco Olives, a seasonal customer, and Lagunitas Brewing Company, a Petaluma-based firm, contributed to this revenue peak. Deliveries from Petaluma area food processors may decrease in the future as that area is pursuing a local wastewater disposal option.

**Poison Lake site remediation funding.** The engineering evaluation and cost analysis for the Poison Lake site has been completed. Staff met with the Regional Water Quality Control Board (RWQCB) in late October regarding the Bureau of Land Management's inability to proceed with site remediation due to lack of funding. The parties have agreed to pursue funding from the Department of Interior's Central HazMat Fund and a project schedule will be developed for the RWQCB in January 2014.

**The net Mokelumne power revenue for November was \$131,447 vs the \$121,222 planned.** Inflows into Pardee for November were 90% of plan and generation was 110% of plan. The average electricity price was slightly lower than expected at \$39.23/MWh. Renewable power and related Renewable Energy Credits (RECs) were sold to the Sacramento Municipal Utility District under the Power Purchase Agreement. REC revenue for November was \$15,722. Total net Mokelumne power revenue through November is \$936,308 which is 27.8% of the FY14 plan, and 16.4% of the FY14 budgeted \$5.7 million.

| FY14 PLAN             | Net Revenue      |                  | Inflow (Acre Feet) |                |
|-----------------------|------------------|------------------|--------------------|----------------|
|                       | Plan             | Actual           | Plan               | Actual         |
| Sep-13                | \$243,784        | \$209,810        | 26,600             | 23,719         |
| Oct-13                | \$164,143        | \$254,312        | 29,600             | 30,197         |
| Nov-13                | \$121,222        | \$131,447        | 29,700             | 26,868         |
| <b>FY14 YTD Total</b> | <b>\$975,311</b> | <b>\$936,308</b> | <b>141,300</b>     | <b>136,011</b> |

*Bold items are estimated.*

**There were no contracts over \$70,000 and less than \$100,000 approved by the General Manager in November 2013.**

**Monthly yield on all investments including reserve funds was 0.42%, an increase of 0.02% from October 2013.** The return on new investments made in November was 0.15%. The yield on 90-day Treasury bills on November 30, 2013 was 0.07%.

**Average interest cost during November on outstanding commercial paper issued for the Water System was 0.13%, no change from October 2013.** The average interest cost for

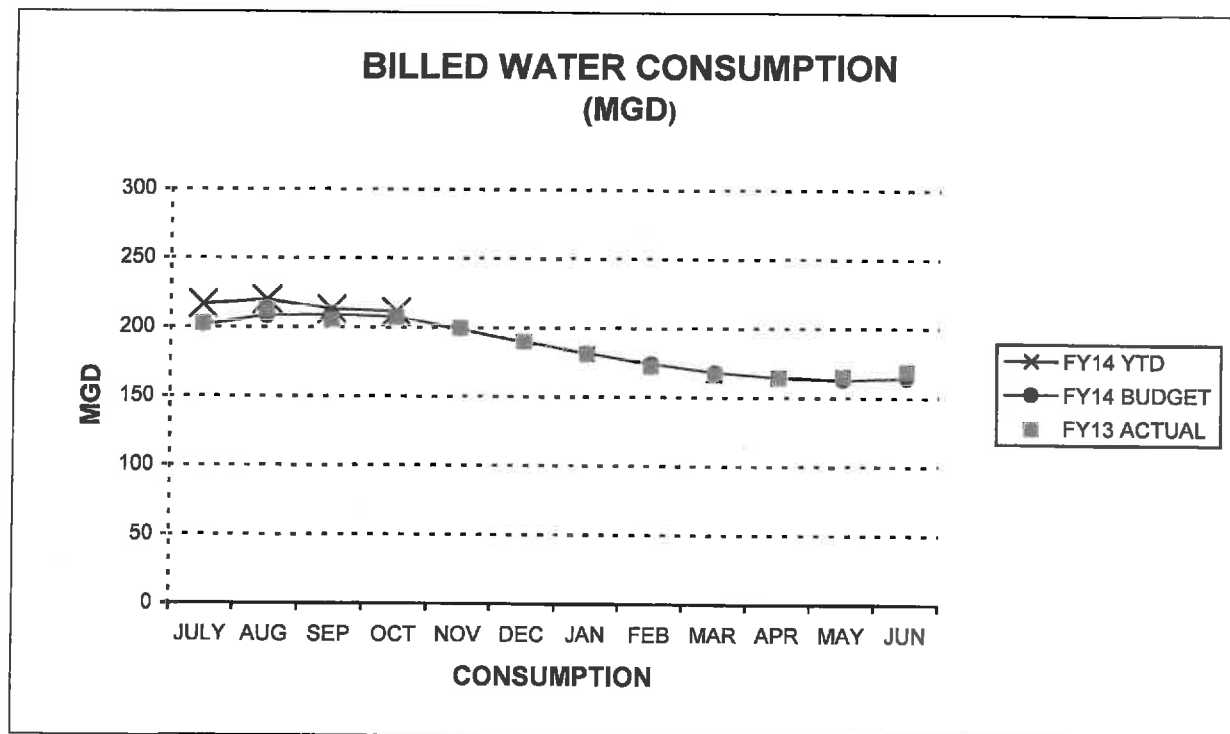
outstanding Wastewater System commercial paper in November was 0.14%, no change from October 2013.

**Plant Book Activity for November 2013.** Nine plant books were sold, which increased the total plant books sold to 34,205. November plant book revenues totaled \$324.55, increasing total revenues to \$729,844. Total revenues as a percentage of out-of-pocket book design and production cost equals 93%.

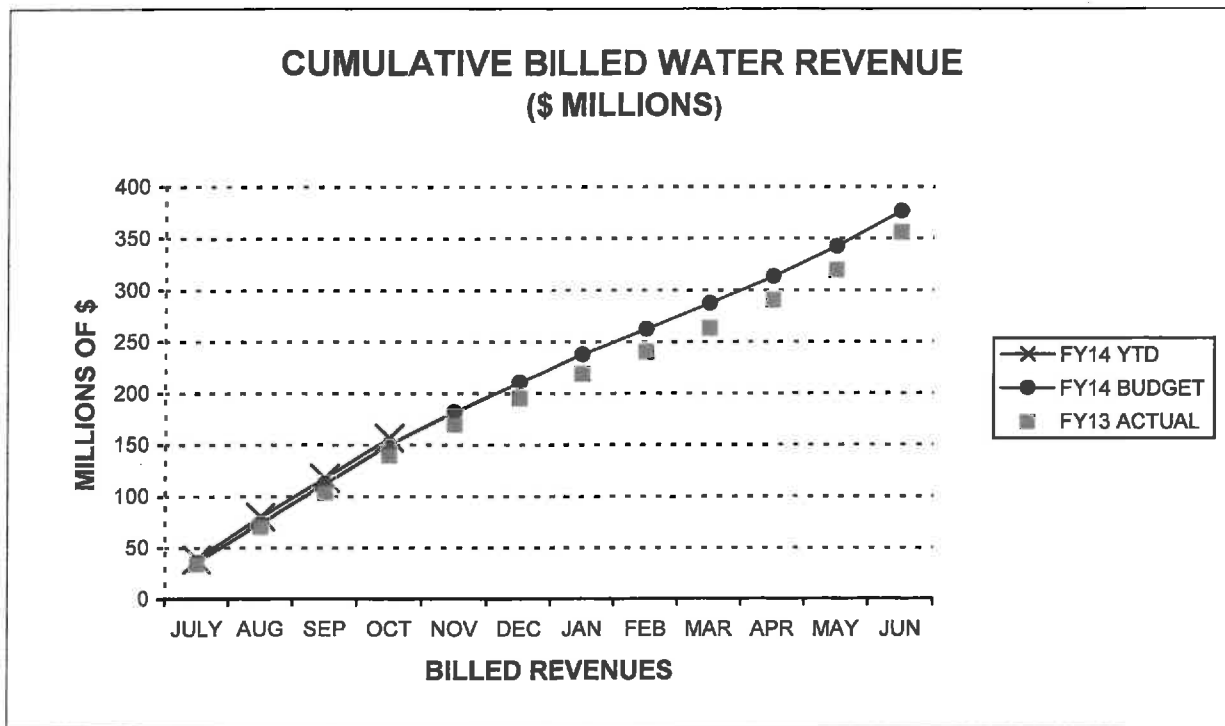
**As a result of extremely dry weather early this summer, billed water consumption for FY14 through October 2013 was 211.1 MGD, which is 2.1% more than billed consumption of 206.7 MGD for the same period in FY13, a period of normal weather.**

| Billed Water Consumption              |              |              |
|---------------------------------------|--------------|--------------|
| Usage Type                            | FY14 (MGD)   | FY13 (MGD)   |
| Residential                           | 114.3        | 114.6        |
| Commercial                            | 68.3         | 65.8         |
| Industrial                            | 18.4         | 16.5         |
| Public Authority                      | 10.1         | 9.8          |
| <b>Total Billed Water Consumption</b> | <b>211.1</b> | <b>206.7</b> |

Water revenues billed fiscal year to date were \$156.6 million, which is 12.7% more than the FY13 actual revenue of \$139.0 million due to increased consumption and the 9.75% rate increase for services provided and billed starting July 1<sup>st</sup>.



Source: Customer Information System



Source: Customer Information System

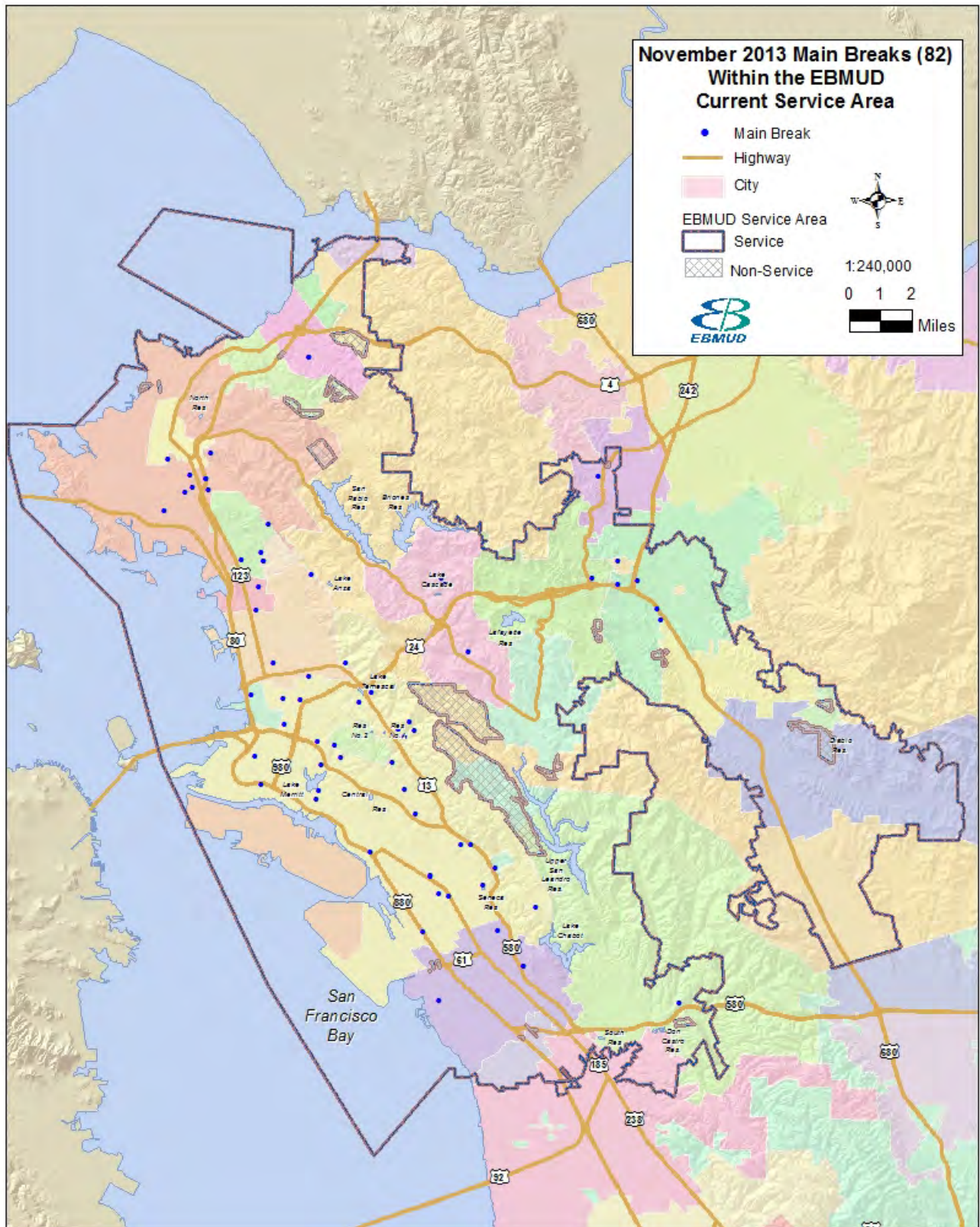
|    | City          | Bldg  | Pr e | Street       | Suf | Pipe Material   | Pipe Diameter | Year Installed | Est Water Loss (Gal) | Identified On | Completed On |
|----|---------------|-------|------|--------------|-----|-----------------|---------------|----------------|----------------------|---------------|--------------|
| 1  | ALBANY        | 719   |      | KEY ROUTE    | BL  | CAST IRON       | 6             | 1947           | 1,800                | 11/13/13      | 11/13/13     |
| 2  | ALBANY        | 1506  |      | TERRACE      | ST  | CAST IRON       | 4             | 1936           | 4,500                | 11/23/13      | 11/23/13     |
| 3  | BERKELEY      | 1775  |      | CAPISTRANO   | AVE | CAST IRON       | 6             | 1930           | 630                  | 11/20/13      | 11/20/13     |
| 4  | BERKELEY      | 1200  |      | CORNELL      | AVE | CAST IRON       | 6             | 1949           | 2,250                | 11/15/13      | 11/16/13     |
| 5  | BERKELEY      | 1331  |      | DERBY        | ST  | CAST IRON       | 4             | 1935           | 2,250                | 11/13/13      | 11/13/13     |
| 6  | BERKELEY      | 1022  |      | GRIZZLY PEAK | BL  | CAST IRON       | 6             | 1957           | 450                  | 11/25/13      | 11/26/13     |
| 7  | BERKELEY      | 1836  |      | ROSE         | ST  | CAST IRON       | 16            | 1939           | 1,800                | 11/29/13      | 11/29/13     |
| 8  | BERKELEY      | 665   |      | VISTAMONT    | AVE | CAST IRON       | 6             | 1946           | 900                  | 11/03/13      | 11/04/13     |
| 9  | BERKELEY      | 2300  |      | WOOLSEY      | ST  | STEEL           | 2             | 1992           | 5,760                | 11/06/13      | 11/08/13     |
| 10 | CASTRO VALLEY | 18448 |      | CLIFTON      | WAY | CAST IRON       | 8             | 1953           | 5,760                | 11/19/13      | 11/21/13     |
| 11 | CASTRO VALLEY | 5494  |      | JENSEN       | RD  | CAST IRON       | 6             | 1931           | 1,350                | 11/15/13      | 11/15/13     |
| 12 | DIABLO        | 1831  |      | CALLE ARROYO |     | ASBESTOS CEMENT | 6             | 1960           | 6,750                | 11/22/13      | 11/22/13     |
| 13 | EL CERRITO    | 8665  |      | DON CAROL    | DR  | CAST IRON       | 6             | 1955           | 900                  | 11/20/13      | 11/21/13     |
| 14 | EL CERRITO    | 7700  |      | EUREKA       | AVE | STEEL           | 6             | 1972           | 3,150                | 11/15/13      | 11/15/13     |
| 15 | EL CERRITO    | 636   |      | LEXINGTON    | AVE | CAST IRON       | 6             | 1925           | 900                  | 11/04/13      | 11/04/13     |
| 16 | EL CERRITO    | 403   |      | VILLAGE      | DR  | CAST IRON       | 6             | 1943           | 630                  | 10/24/13      | 11/01/13     |
| 17 | EL CERRITO    | 403   |      | VILLAGE      | DR  | CAST IRON       | 6             | 1943           | 630                  | 11/04/13      | 11/05/13     |
| 18 | EMERYVILLE    | 6390  |      | CHRISTIE     | AVE | STEEL           | 8             | 1965           | 5,760                | 11/08/13      | 11/14/13     |
| 19 | HERCULES      | 253   |      | STARLING     | WAY | ASBESTOS CEMENT | 6             | 1979           | 5,760                | 11/15/13      | 11/15/13     |
| 20 | HERCULES      | 271   |      | STARLING     | WAY | ASBESTOS CEMENT | 6             | 1979           | 6,750                | 11/12/13      | 11/13/13     |
| 21 | LAFAYETTE     | 3223  |      | ACALANES     | AVE | CAST IRON       | 6             | 1946           | 27,000               | 11/21/13      | 11/21/13     |
| 22 | LAFAYETTE     | 3227  |      | ACALANES     | AVE | CAST IRON       | 6             | 1945           | 1,350                | 11/12/13      | 11/12/13     |
| 23 | LAFAYETTE     | 4     |      | CREST        | RD  | CAST IRON       | 8             | 1940           | 630                  | 11/21/13      | 11/21/13     |
| 24 | OAKLAND       | 3801  | E    | 8TH          | ST  | ASBESTOS CEMENT | 8             | 1949           | 23,040               | 10/30/13      | 11/04/13     |
| 25 | OAKLAND       | 1448  |      | 32ND         | ST  | CAST IRON       | 6             | 1933           | 8,640                | 11/24/13      | 11/26/13     |
| 26 | OAKLAND       | 949   |      | 39TH         | ST  | CAST IRON       | 6             | 1934           | 5,760                | 10/30/13      | 11/04/13     |
| 27 | OAKLAND       | 1430  |      | 71ST         | AVE | CAST IRON       | 4             | 1926           | 2,700                | 11/12/13      | 11/13/13     |



Board of Directors  
Monthly Report – November 2013  
Page 13

|    | City    | Bldg  | Pr e | Street        |  | Suf | Pipe Material   | Pipe Diameter | Year Installed | Est Water Loss (Gal) | Identified On | Completed On |
|----|---------|-------|------|---------------|--|-----|-----------------|---------------|----------------|----------------------|---------------|--------------|
| 28 | OAKLAND | 1106  |      | 83RD          |  | AVE | CAST IRON       | 6             | 1931           | 45,000               | 11/01/13      | 11/02/13     |
| 29 | OAKLAND | 1332  |      | 87TH          |  | AVE | CAST IRON       | 12            | 1937           | 1,350                | 11/15/13      | 11/16/13     |
| 30 | OAKLAND |       | E    | 11TH          |  | ST  | STEEL           | 30            | 1932           | 57,600               | 11/13/13      | 11/21/13     |
| 31 | OAKLAND | 336   |      | ADELIN        |  | ST  | CAST IRON       | 8             | 1908           | 9,000                | 11/09/13      | 11/09/13     |
| 32 | OAKLAND | 682   |      | AILEEN        |  | ST  | CAST IRON       | 6             | 1938           | 5,760                | 11/04/13      | 11/07/13     |
| 33 | OAKLAND | 960   |      | ARLINGTON     |  | AVE | CAST IRON       | 6             | 1932           | 5,760                | 11/13/13      | 11/18/13     |
| 34 | OAKLAND | 4400  |      | BRIDGEVIEW    |  | DR  | CAST IRON       | 6             | 1927           | 4,320                | 11/03/13      | 11/04/13     |
| 35 | OAKLAND | 2868  |      | CALIFORNIA    |  | ST  | CAST IRON       | 4             | 1935           | 900                  | 11/01/13      | 11/01/13     |
| 36 | OAKLAND | 1734  |      | CAMPBELL      |  | ST  | CAST IRON       | 8             | 1948           | 9,000                | 11/11/13      | 11/11/13     |
| 37 | OAKLAND | 9331  |      | CORAL         |  | RD  | CAST IRON       | 6             | 1943           | 8,640                | 11/04/13      | 11/07/13     |
| 38 | OAKLAND | 4044  |      | EDWARDS       |  | AVE | CAST IRON       | 6             | 1949           | 5,400                | 11/07/13      | 11/08/13     |
| 39 | OAKLAND | 11326 |      | ETTRICK       |  | ST  | CAST IRON       | 4             | 1948           | 450                  | 11/04/13      | 11/04/13     |
| 40 | OAKLAND | 1     |      | EVERGREEN     |  | LN  | CAST IRON       | 6             | 1939           | 2,700                | 11/05/13      | 11/06/13     |
| 41 | OAKLAND | 1826  |      | FOOTHILL      |  | BL  | CAST IRON       | 4             | 1935           | 4,500                | 11/24/13      | 11/24/13     |
| 42 | OAKLAND | 6025  |      | GLENARMS      |  | DR  | CAST IRON       | 6             | 1954           | 450                  | 11/18/13      | 11/18/13     |
| 43 | OAKLAND | 130   |      | HERMOSA       |  | AVE | CAST IRON       | 6             | 1911           | 5,400                | 11/14/13      | 11/15/13     |
| 44 | OAKLAND | 6701  |      | HILLMONT      |  | DR  | ASBESTOS CEMENT | 6             | 1964           | 720                  | 11/13/13      | 11/14/13     |
| 45 | OAKLAND | 7100  |      | INTERNATIONAL |  | BL  | CAST IRON       | 4             | 1926           | 4,500                | 11/12/13      | 11/12/13     |
| 46 | OAKLAND | 1600  |      | LAKESHORE     |  | AVE | CAST IRON       | 4             | 1939           | 17,280               | 11/04/13      | 11/08/13     |
| 47 | OAKLAND | 1915  |      | MAGELLAN      |  | DR  | CAST IRON       | 6             | 1939           | 3,600                | 11/15/13      | 11/16/13     |
| 48 | OAKLAND | 2159  |      | MAGELLAN      |  | DR  | CAST IRON       | 6             | 1951           | 2,700                | 11/01/13      | 11/01/13     |
| 49 | OAKLAND | 8615  |      | MOUNTAIN      |  | BL  | STEEL           | 8             | 1981           | 900                  | 11/16/13      | 11/16/13     |
| 50 | OAKLAND | 3607  |      | PARK          |  | BL  | CAST IRON       | 6             | 1953           | 900                  | 11/01/13      | 11/01/13     |
| 51 | OAKLAND | 4108  |      | REDDING       |  | ST  | CAST IRON       | 6             | 1938           | 2,880                | 11/04/13      | 11/06/13     |
| 52 | OAKLAND | 3458  |      | RICHMOND      |  | BL  | CAST IRON       | 6             | 1933           | 9,000                | 11/24/13      | 11/24/13     |
| 53 | OAKLAND | 3626  |      | RICHMOND      |  | BL  | CAST IRON       | 6             | 1933           | 7,200                | 11/03/13      | 11/03/13     |
| 54 | OAKLAND | 6607  |      | SARONI        |  | DR  | CAST IRON       | 6             | 1942           | 1,080                | 11/14/13      | 11/14/13     |
| 55 | OAKLAND | 9033  |      | SENECA        |  | ST  | CAST IRON       | 6             | 1946           | 5,760                | 11/05/13      | 11/19/13     |
| 56 | OAKLAND | 367   |      | STATEN        |  | AVE | CAST IRON       | 6             | 1951           | 1,350                | 11/05/13      | 11/05/13     |

|              | City          | Bldg | Pr e | Street        | Suf | Pipe Material   | Pipe Diameter | Year Installed | Est Water Loss (Gal) | Identified On | Completed On |
|--------------|---------------|------|------|---------------|-----|-----------------|---------------|----------------|----------------------|---------------|--------------|
| 57           | OAKLAND       | 941  |      | WARFIELD      | AVE | ASBESTOS CEMENT | 6             | 1963           | 21,600               | 10/31/13      | 11/05/13     |
| 58           | OAKLAND       | 6133 |      | WESTOVER      | DR  | CAST IRON       | 6             | 1932           | 630                  | 11/04/13      | 11/04/13     |
| 59           | ORINDA        | 24   |      | LA CAMPANA    |     | CAST IRON       | 6             | 1934           | 4,500                | 11/01/13      | 11/02/13     |
| 60           | ORINDA        | 60   |      | LA ESPIRAL    |     | CAST IRON       | 6             | 1934           | 1,800                | 11/14/13      | 11/14/13     |
| 61           | ORINDA        | 28   |      | SCENIC        | DR  | CAST IRON       | 6             | 1949           | 2,700                | 11/05/13      | 11/05/13     |
| 62           | PIEDMONT      | 132  |      | OLIVE         | AVE | CAST IRON       | 6             | 1935           | 2,700                | 11/13/13      | 11/13/13     |
| 63           | PLEASANT HILL |      |      | GRAYSON       | RD  | CAST IRON       | 6             | 1981           | 2,700                | 11/18/13      | 11/19/13     |
| 64           | RICHMOND      | 900  |      | 34TH          | ST  | CAST IRON       | 4             | 1931           | 900                  | 11/13/13      | 11/13/13     |
| 65           | RICHMOND      | 650  |      | 37TH          | ST  | CAST IRON       | 6             | 1933           | 900                  | 11/14/13      | 11/14/13     |
| 66           | RICHMOND      | 342  |      | 42ND          | ST  | CAST IRON       | 4             | 1941           | 5,760                | 11/24/13      | 11/27/13     |
| 67           | RICHMOND      | 257  | S    | 1ST           | ST  | ASBESTOS CEMENT | 6             | 1972           | 900                  | 11/12/13      | 11/12/13     |
| 68           | RICHMOND      |      |      | 23RD          | ST  | CAST IRON       | 6             | 1932           | 1,800                | 11/13/13      | 11/14/13     |
| 69           | RICHMOND      | 6044 | N    | ARLINGTON     | BL  | CAST IRON       | 6             | 1939           | 5,760                | 11/09/13      | 11/18/13     |
| 70           | RICHMOND      | 3309 |      | BARRETT       | AVE | CAST IRON       | 6             | 1930           | 5,760                | 10/31/13      | 11/06/13     |
| 71           | RICHMOND      | 767  |      | HUMBOLDT      | ST  | CAST IRON       | 6             | 1938           | 450                  | 11/07/13      | 11/07/13     |
| 72           | RICHMOND      | 773  |      | HUMBOLDT      | ST  | CAST IRON       | 4             | 1938           | 1,800                | 11/01/13      | 11/01/13     |
| 73           | RICHMOND      | 620  |      | VENTURA       | ST  | CAST IRON       | 4             | 1937           | 1,440                | 11/05/13      | 11/06/13     |
| 74           | SAN LEANDRO   | 2380 | W    | AVE 133RD     |     | CAST IRON       | 4             | 1938           | 3,600                | 11/04/13      | 11/04/13     |
| 75           | SAN LEANDRO   | 1215 |      | GABRIEL       | CT  | ASBESTOS CEMENT | 6             | 1957           | 1,440                | 11/04/13      | 11/05/13     |
| 76           | SAN LEANDRO   | 1215 |      | GABRIEL       | CT  | ASBESTOS CEMENT | 6             | 1957           | 540                  | 11/08/13      | 11/08/13     |
| 77           | SAN LEANDRO   | 520  | E    | MERLE         | CT  | CAST IRON       | 4             | 1938           | 3,600                | 11/13/13      | 11/13/13     |
| 78           | WALNUT CREEK  |      |      | CAMINO DIABLO |     | CAST IRON       | 6             | 1941           | 28,800               | 11/15/13      | 11/17/13     |
| 79           | WALNUT CREEK  | 1642 |      | CASTLE HILL   | RD  | ASBESTOS CEMENT | 6             | 1972           | 9,000                | 11/20/13      | 11/20/13     |
| 80           | WALNUT CREEK  | 1515 |      | OAKLAND       | BL  | CAST IRON       | 8             | 1953           | 450                  | 11/04/13      | 11/04/13     |
| 81           | WALNUT CREEK  | 120  |      | ROSEMONT      | CT  | ASBESTOS CEMENT | 6             | 1973           | 4,500                | 11/12/13      | 11/12/13     |
| 82           | WALNUT CREEK  | 1572 |      | WEBB          | LN  | ASBESTOS CEMENT | 6             | 1957           | 2,250                | 11/02/13      | 11/03/13     |
| <b>TOTAL</b> |               |      |      |               |     |                 |               |                | <b>468,180</b>       |               |              |






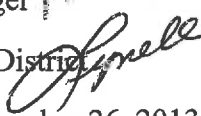
## EAST BAY MUNICIPAL UTILITY DISTRICT

---

DATE: December 5, 2013

MEMO TO: Board of Directors

THROUGH: Alexander R. Coate, General Manager 

FROM: Lynelle M. Lewis, Secretary of the District 

SUBJECT: Planning Committee Minutes – November 26, 2013

Chair Katy Foulkes called to order the Planning Committee at 9:30 a.m. in the Training Resource Center. Directors Doug Linney and Lesa R. McIntosh were present at roll call. Staff present included: General Manager Alexander R. Coate, General Counsel Jylana Collins, Director of Engineering and Construction Xavier J. Irias, Director of Operations and Maintenance Michael J. Wallis, Director of Wastewater Bennett K. Horenstein, Engineering Manager William R. Kirkpatrick, Senior Civil Engineer Bill E. Maggiore, Manager of Water Quality Rick Sakaji, Senior Civil Engineer David V. Beyer, Manager of Wastewater Engineering Vincent P. De Lange, Special Assistant to the General Manager Cheryl A. Farr, and Secretary of the District Lynelle M. Lewis.

**Public Comment.** None.

**Estates Reservoir Replacement Project – Supplemental Environmental Impact Report (SEIR).**

Engineering Manager William R. Kirkpatrick presented an update on the proposed project changes, impacts, and mitigations as well as the public comments outlined in the SEIR. He reported that the project is under construction and is approximately 90 percent complete. However, before the project can be completed, modifications are proposed which include removing 22 trees and making changes to the pedestrian path. He noted that environmental effects of these changes were analyzed in a Draft SEIR and circulated for public review in September. The comment period closed on October 21, 2013 and the Final Supplemental EIR is scheduled for circulation on November 27, 2013. Staff will be presenting a recommendation to the Board of Directors on December 10, 2013 to certify the Final Supplemental EIR and findings and authorize the implementation of modifications to the Estates Reservoir Replacement Project. The Committee concurred with the direction taken by staff.

**Chabot Dam Seismic Upgrade Project – Draft Environmental Impact Report (DEIR).**

Senior Civil Engineer Bill E. Maggiore presented an update on the project, including an overview of the public outreach process related to the Draft EIR preparation and the project schedule. Mr. Maggiore reported that the project work includes completion of seismic stability reports for Chabot Dam and its outlet tower. Staff has completed a DEIR which is scheduled for publication on December 6, 2013. He reported that eleven information and outreach meetings were held with agencies and the neighboring community. Issues and concerns raised at these meetings include dam safety, traffic and congestion in the immediate neighborhood, work hours, construction noise, air quality, recreation impacts, park restoration, tree removal and protection of San Leandro Creek. Mr. Maggiore pointed out that these issues are addressed in the DEIR. A public meeting to present the DEIR and discuss the process for responding to the DEIR for the project is planned for mid-January 2014 in San Leandro. The 60-day public comment period will end on February 4, 2014. The Final EIR and recommended project will be presented to the Board of Directors for consideration in the spring of 2014. The Committee concurred with the staff recommended approach.

**Fluoridation History and Issues.** Manager of Water Quality Rick Sakaji reviewed the District's use of fluoride and summarized interactions with customers about fluoride in drinking water. Mr. Sakaji reported that since the passage of AB 733 in 1995, the California Safe Drinking Water Act has required water systems with more than 10,000 service connections to fluoridate their drinking water. Two persons presented comments voicing their objection to the use of fluoride and suggested eliminating this practice. The Committee raised no questions.

**Power and Water Resources Pooling Authority.** Senior Civil Engineer David V. Beyer presented an update on a proposal to join the Power and Water Resources Pooling Authority (PWRPA) to explore expanding the availability of power for district accounts. He reported that the PWRPA is a publicly-owned electric utility Joint Powers Authority that collectively manages Western Area Power Administration (WAPA) base resource contracts for a number of irrigation districts and water agencies. Mr. Beyer said a preliminary analysis by staff found that for ten of the District's large electric accounts, the potential cost savings of joining PWRPA is approximately \$1.0 million per year or approximately an 18 percent savings over Pacific Gas and Electric's (PG&E) current rates. He pointed out that PG&E has challenged the validity of PWRPA as an electric utility; however, PG&E and PWRPA entered into a 5-year settlement that expires in September 2015. Staff plans to enter into an agreement with PWRPA to evaluate the costs and risks of joining PWRPA but does not obligate the District to enter into additional agreements with PWRPA. The proposed agreement can be terminated at any time with or without cause by either party. The Committee concurred with staff's plan.

**Wastewater Turbine Status and Extended Service Agreement Update.** Manager of Wastewater Engineering Vincent P. De Lange presented a status update regarding the malfunction of the biogas turbine at the Main Wastewater Treatment Plant. He said that in July 2012 and January 2013, the turbine injectors failed with associated damage to the turbine blades, resulting in an estimated \$1.4 million in repairs. Due to the progressive turbine blade damage that began in January 2013, the turbine has been shut down since October 29, 2013. Mr. De Lange reported that staff recently reached a negotiated settlement with Solar Turbines for past (out-of-warranty) repair costs and for a five-year extended service agreement (ESA) through November 30, 2018. The ESA will also provide for routine and emergency service and repairs, major overhauls and performance monitoring. Following execution of the ESA, the turbine is expected to be repaired by Solar Turbines and returned to service by December 9, 2013. The agreement with Solar Turbines will be presented to the full Board for consideration at its regular meeting later in the day. The Committee expressed concern about the repair costs and the down time resulting from the damage. A representative of Local 444 commented that the union would like assurance that the work performed will not displace employees. Staff pointed out that turbine repair work requires specialized expertise that is not available from EBMUD staff. The Committee unanimously supported the staff recommendation.

**Adjournment.** Director Foulkes adjourned the meeting at 11:03 a.m.