



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

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375 - 11th Street, Oakland, CA 94607

Office of the Secretary: (510) 287-0440

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**AGENDA  
Tuesday, March 26, 2019**

**REGULAR CLOSED SESSION  
11:00 a.m., Boardroom**

**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:**

This memorandum sets forth the closed session agenda items for the February 26, 2019 Board meeting:

1. Significant exposure to litigation pursuant to Government Code section 54956.9(d)(2):
  - a. Waste Management of Alameda County, Inc.  
Claim No. 2017-L-183-1

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

**REGULAR BUSINESS MEETING  
1:15 p.m., Boardroom**

**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 8 recommendations, including 3 resolutions.)

1. Approve the Special and Regular Meeting Minutes of March 12, 2019.
2. File correspondence with the Board.
3. Award a contract to the lowest responsive/responsible bidder Cozad Trailer Sales, LLC, in an amount, after the addition of taxes, not to exceed \$111,944.76 for the purchase of one transport trailer under Request for Quotation No. 1912.
4. Award a contract to the lowest responsive/responsible bidder, Kiewit Infrastructure West Co., in the amount of \$4,787,350 for construction of Main Wastewater Treatment Plant Aerated Grit Tanks and Gallery Improvements under Specification SD-399.
5. Authorize an agreement beginning on or after March 27, 2019 with Lance, Soll & Lunghard, LLP, in an amount not to exceed \$253,155 for professional auditing services for three years, with two options to renew for additional two-year periods for a total amount not to exceed \$607,920.
6. Authorize a direct award contract to United States Pipe and Foundry Company, LLC, in an amount not to exceed \$163,606 to purchase earthquake resistant ductile iron pipe and appurtenances for a District pilot project.
7. Authorize an amendment to the contract awarded under Board Motion No. 113-18 with PPI America, Inc., for an additional amount of \$385,925 increasing the total amount not to exceed to \$564,822 including taxes for the sole source purchase of 25,000 feet of 6-inch diameter and 15,000 feet of 8-inch diameter structurally enhanced polyvinyl chloride (PVC) pipe called iPVC.
8. Adopt the amended and restated District 401(a), 401(k), and 457 Tax Deferred Compensation Plans. The amendments are technical and administrative clarifications and became effective January 1, 2019. (Resolutions)

**DETERMINATION AND DISCUSSION:**

9. General Manager's Report:
  - Board Meeting Video Recording Pilot

**REPORTS AND DIRECTOR COMMENTS:**

10. Committee Reports:
  - Legislative/Human Resources
11. Other Items for Future Consideration.
12. Director Comments.

**ADJOURNMENT:**

***The next Regular Meeting of the Board of Directors will be held at 1:15 p.m. on Tuesday, April 9, 2019 in the Administration Center Boardroom, 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, and can be viewed on our website at [www.ebmud.com](http://www.ebmud.com).*

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## BOARD CALENDAR

Date	Meeting	Time/Location	Topics
<b>Tuesday, March 26</b>	<b>Finance/Administration Committee</b> Patterson {Chair}; Coleman; Katz  <b>Budget Workshop No. 2</b>   <b>Board of Directors</b>	   8:30 a.m. Training Resource Center  11:00 a.m. 1:15 p.m.	<i>Cancelled</i>       <ul style="list-style-type: none"> <li>• Closed Session</li> <li>• Regular Meeting</li> </ul>
<b>Monday, April 1</b>	<b>Cesar Chavez Day</b>		<i>District Offices Closed</i>
<b>Tuesday, April 9</b>	<b>Planning Committee</b> Linney {Chair}; McIntosh; Mellon  <b>Legislative/Human Resources Committee</b> Coleman {Chair}; McIntosh; Patterson  <b>Budget Workshop No. 3</b>   <b>Board of Directors</b>	TBD Training Resource Center  TBD Training Resource Center  TBD Training Resource Center  11:00 a.m. 1:15 p.m.	       <ul style="list-style-type: none"> <li>• Closed Session</li> <li>• Regular Meeting</li> </ul>
<b>Tuesday, April 23</b>	<b>Sustainability/Energy Committee</b> Linney {Chair}; Katz, Mellon  <b>Finance/Administration Committee</b> Patterson {Chair}; Coleman; Katz  <b>Board of Directors</b>	TBD Training Resource Center  10:00 a.m. Training Resource Center  11:00 a.m. 1:15 p.m.	       <ul style="list-style-type: none"> <li>• Closed Session</li> <li>• Regular Meeting</li> </ul>



## **MINUTES**

**Tuesday, March 12, 2019**

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

### **Special Meeting**

President Marguerite Young called to order the Special Meeting of the Board of Directors at 9:11 a.m. in the Training Resource Center. The Board met in workshop session to receive an update on the District's current and planned activities to ensure water supply reliability; the Water Conservation and Water Recycling programs, regional partnerships and activities related to groundwater sustainability; and District efforts to secure long-term water transfers.

### **ROLL CALL**

Directors Doug Linney, Lesa R. McIntosh, Frank Mellon, William B. Patterson, and President Marguerite Young were present at roll call. Director Andy Katz arrived at 9:19 a.m. Director John A. Coleman was absent (excused).

Staff present included General Manager Alexander R. Coate, General Counsel Craig S. Spencer, Director of Water and Natural Resources Michael T. Tognolini, Senior Civil Engineer Hasan M. Abdullah, Senior Civil Engineer Alice E. Towey, Senior Civil Engineer Linda H. Hu, Senior Civil Engineer Ben Bray, Manager of Water Conservation Richard W. Harris, Supervisor of Water Conservation Claire E. Nordlie, Supervisor of Water Conservation Charles M. Bohlig, Special Assistant to the General Manager Douglas I. Wallace, Assistant to the General Manager Janetta M. Johnson, and Secretary of the District Rischa S. Cole.

### **DISCUSSION**

- Filed with the Board was 1) Presentation entitled "Long-Term Water Supply Board of Directors' Workshop," dated March 12, 2019; and 2) the East Bay Municipal Utility District Updated Recycled Water Master Plan dated February 2019.

Director of Water and Natural Resources Michael T. Tognolini presented an overview of the workshop topics and reviewed some current risks to the District's long-term water supply including drought, climate change, and regulatory and statewide challenges.

Senior Civil Engineer Hasan M. Abdullah presented an update on the District's Central Valley Project allocations and ongoing joint water transfer projects for supplemental supplies during dry years. The District is working with Placer County Water Agency on a long-term transfer agreement to purchase 10,000 to 47,000 acre feet of their environmental releases during dry years. In June 2018, the District signed a five year contract with Yuba County Water Agency to purchase 10,000 acre feet of their environmental releases during dry years. Yuba County Water Agency and District staff are completing documentation to obtain a Warren Act contract to

convey the water via the Folsom South Canal. In December 2018, the District signed an agreement with Sycamore Mutual Water Company to purchase multi-year transfers of about 6,000 to 7,000 acre feet. He reviewed the project's scope of work and said preliminary results of a feasibility study should be available in late summer 2019. To help implement long-term water transfer projects, the District is participating in a water transfer Environmental Impact Report/Environmental Impact Statement (EIR/EIS) – a jointly lead effort between United States Bureau of Reclamation and San Luis and Delta Mendota Water Authority that covers water transfers between the years 2019-2024. The original EIR/EIS was certified in 2015 and covered water transfers for ten years. It was challenged in court and found deficient in five areas. The deficiencies were addressed, and a revised Draft EIR/EIS was circulated and is expected to be final by the end of 2019.

Senior Civil Engineer Alice E. Towey presented an update on the Bay Area Regional Reliability partnership and its Regional Water Market Program; District participation in the Los Vaqueros Reservoir Expansion Project; the partnership with the City of Hayward to complete a Groundwater Sustainability Plan for the East Bay Plain Basin by 2021; Bayside Groundwater Project potable water injections in 2017 and 2018 and the status of injections for 2019; and developments on the Demonstration Recharge, Extraction and Aquifer Management Project (DREAM) including construction of District project components starting in FY20 and how the District will address elements identified in the groundwater during quarterly quality monitoring.

Supervisors of Water Conservation Claire E. Nordlie and Charles M. Bohlig presented updates on the Water Conservation Program and the Water Conservation Master Plan implementation strategies. The 2018 strategies included: education outreach, conservation research and incentives, water management programs, water loss control initiatives, and the District's approach to addressing conservation related regulations and legislation. Ms. Nordlie reported on education and outreach efforts, the results of a customer survey regarding water conservation services, conservation research activities and the District's partnership with the Oakland EcoBlock project. She reviewed conservation rebate data from 2018 and concluded with an update on the on-bill financing pilot program which will be expanded in FY20. Next, Mr. Bohlig reviewed components of the water management program. He reported that a pilot for integration of the Irrigation Reduction Information System (IRIS) and *My Water Report* will kick off in summer 2019. Staff continues working on water loss control initiatives and a Water Loss Control Master Plan will be available by FY20. He highlighted the tools used to educate residential customers on water conservation regulations and legislation requirements and reviewed the District's schedule to comply with long-term state conservation and water efficiency requirements by 2035.

Senior Civil Engineer Linda H. Hu presented an overview of existing and proposed recycled water projects and the updated Recycled Water Master Plan which was completed in February 2019. She summarized potable reuse alternatives and drivers and highlighted the estimated timeline to implement the projects recommended in the master plan. She provided an update on the East Bayshore, San Ramon Valley, North Richmond, RARE and Diablo Country Club satellite projects and the status of construction to expand DERWA production capacity to 16.2 million gallons per day. To address supply shortages, DERWA recently executed an agreement with Central Contra Costa Sanitary District to divert a portion of its wastewater into its system around summer 2019.

Senior Civil Engineer Ben Bray presented an update on current and upcoming activities to assess, adapt to and mitigate the impacts of climate change on the District's water supply, water demand, watershed lands, and operations. He reviewed current climate change impacts on the District's water supply, the findings from a climate change sensitivity analysis, and key focus areas for the Urban Water Management Plan 2020 update. Staff will continue tracking climate change science and use the information presented in the workshop during future water supply planning efforts.

### **PUBLIC COMMENT**

There was no public comment.

### **DISCUSSION**

Board members asked questions regarding the challenges to the long-term water transfer EIR/EIS; the importance of Los Vaqueros Expansion project participants' conservation efforts as the project advances; the IRIS water budget information and if customers receiving low use reports increase their water use; the total number of District main breaks in 2016 and 2017; the status of West County Wastewater District's updated treatment facilities; continued coordination with agricultural interests below Camanche Reservoir to share flow and flood protection information; increased funding for landscape conversion rebates; and water budget based rate information. The Board requested the following:

- Information on potential beneficial uses of flood flows during the winter.
- Information on historical flood areas on the lower Mokelumne pre and post Camanche (wet winter wrap-up).
- Information on funding levels for landscape conversion rebates during Budget Workshop No. 2 on March 26.
- Information on water budget based rates after completion of the Advanced Metering Infrastructure pilot project.
- Data at the 2020 Long-Term Water Supply Workshop on protections for the San Joaquin groundwater basin if the DREAM project is expanded.
- Review the viability of a recycled water project at the Phillips 66 refinery and the proposed strategy to address project barriers.
- Schedule a meeting for President Young and Director McIntosh to meet with West County Wastewater District Directors to discuss future partnerships.

**ADJOURNMENT**

President Young adjourned the Special Meeting at 11:12 a.m.

SUBMITTED BY:

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Rischa S. Cole, Secretary of the District

APPROVED: March 26, 2019

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Marguerite Young, President of the Board

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## **MINUTES**

**Tuesday, March 12, 2019**

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

### **Regular Closed Session Meeting**

President Marguerite Young called to order the Regular Closed Session Meeting of the Board of Directors at 11:18 a.m. in the Administration Center Boardroom.

### **ROLL CALL**

Directors Andy Katz, Doug Linney, Lesa R. McIntosh, Frank Mellon, William B. Patterson, and President Marguerite Young were present at roll call. Director John A. Coleman was absent (excused).

Staff present included General Manager Alexander R. Coate, General Counsel Craig S. Spencer, Assistant General Counsel Frederick Etheridge (Item 1a), Assistant General Counsel Xanthe M. Berry (Items 1b, 2a and 2b), Director of Water and Natural Resources Michael T. Tognolini (Item 1a), Engineering Manager Elizabeth Z. Bialek (Items 1b, 2a and 2b), Engineering Manager Carlton D. Chan (Item 3), and Attorney Derek T. McDonald (Items 1a, 1b, 2a, 2b and 3).

### **PUBLIC COMMENT**

There was no public comment.

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

President Young announced the closed session agenda. The Board convened to Conference Room 8 for discussion.

### **Regular Business Meeting**

President Young called to order the Regular Business Meeting of the Board of Directors at 1:16 p.m. in the Administration Center Boardroom.

### **ROLL CALL**

Directors Andy Katz, Doug Linney, Lesa R. McIntosh, Frank Mellon, William B. Patterson, and President Marguerite Young were present at roll call. Director John A. Coleman was absent (excused).

Staff present included General Manager Alexander R. Coate, General Counsel Craig S. Spencer and Secretary of the District Rischa S. Cole.

## **BOARD OF DIRECTORS**

President Young led the Pledge of Allegiance.

President Young acknowledged Director Lesa R. McIntosh for her 20 years of service to the District. She highlighted Director McIntosh's numerous contributions to the Board and her constituents over the years. On behalf of the Board, President Young presented Director McIntosh with her 20-year service pin and water drop plaque. Director McIntosh thanked the Board and staff for the recognition and for their continued support.

## **PRESENTATION**

General Manager Alexander R. Coate announced the District received the National Association of Clean Water Agencies' (NACWA) 2019 Public Information and Education Award for the "Watershed to Bay" 12-page insert published in the East Bay Express on September 5, 2018. The award was presented at the NACWA Winter Annual Conference on February 6, 2019. The "Watershed to Bay" insert was paired with complementary bus and billboard advertising that encouraged the public to take action and keep the bay free of pollution. General Manager Coate recognized the following staff representing the various departments that worked together to produce and promote the award-winning insert: Senior Public Information Representative Andrea Pook; Community Affairs Representative II Sharla Sullivan; Senior Graphic Designer Michael Bergstrom; Graphic Designer II Camilo Rojas-Lavado; Manager of Wastewater Environmental Services Alicia Chakrabarti; Wastewater Control Representative Kristen Font; Wastewater Control Inspector II George Chow; Assistant Engineer Jose Lopez; and Administrative Clerk Aaron McClain. Director Linney presented the award and on behalf of the Board, thanked the contributors for their efforts.

## **ANNOUNCEMENTS FROM CLOSED SESSION**

President Young announced that in closed session this morning, the Board, by unanimous vote of the Directors attending, authorized the General Counsel to initiate litigation in one matter. The action, defendants and other particulars will be disclosed, upon inquiry, once the action is formally commenced. She stated there were no other announcements required from closed session.

## **PUBLIC COMMENT**

There was no public comment.

## **CONSENT CALENDAR**

- Motion by Director Mellon, seconded by Director McIntosh, to approve the recommended actions for Items 1-6 on the Consent Calendar, carried (6-0) by the following voice vote: AYES (Katz, Linney, McIntosh, Mellon, Patterson, and Young); NOES (None); ABSTAIN (None); ABSENT (Coleman).

1. **Motion No. 046-19** – Approved the Regular Meeting Minutes of February 26, 2019.

2. The following correspondence was filed with the Board: **1)** Presentation entitled “2018 Mokelumne River Salmon Return Update,” dated March 12, 2019; **2)** Presentation entitled “Proposed Amendments to Regional Private Sewer Lateral Ordinance,” dated March 12, 2019; **3)** Presentation entitled “Water Supply Update,” dated March 12, 2019; and **4)** Speakers’ Bureau and Outreach Record CY19, dated March 12, 2019.
3. **Motion No. 047-19** – Authorized an agreement beginning on or after March 13, 2019 with McMillen Jacobs Associates in an amount not to exceed \$338,611 for the design of two new chemical feed shafts to Pardee Tunnel as part of the Pardee Chemical Plant Improvements Project.
4. **Motion No. 048-19** – Authorized an agreement beginning on or after March 12, 2019 with Pacific Rim Fall Protection, Inc., in an amount not to exceed \$333,280 for fall protection services and systems at four buildings at the Adeline Maintenance Center.
5. **Motion No. 049-19** – Considered the Addendum to the Main Wastewater Treatment Plant Land Use Master Plan Environmental Impact Report, determined that no further environmental review is required under the California Environmental Quality Act, and authorized the execution of a five-year Land Lease with an option to extend for an additional five years or less at the District’s discretion with Bizon Group, Inc., dba Conexwest, for approximately four acres of land located within the District’s West End property.
6. **Motion No. 050-19** – Adopted the Fiscal Year 2019 Diversity and Inclusion Program.

## **DETERMINATION AND DISCUSSION**

### **7. Legislative Update.**

Legislative/Human Resources Committee member Lesa R. McIntosh reported that the Committee met this morning and approved the staff recommended positions in Legislative Report No. 01-19. Manager of Legislative Affairs Marlaigne K. Dumaine highlighted the bills in the report and provided information on the status of safe drinking water fund legislation. Board members commented on state emergency funding for drinking water assistance and funding scenarios to support Senator Bill Monning’s proposal of \$140 million to fund the annual cost of water accessibility programs. Ms. Dumaine said staff will gather information on all proposed safe drinking water legislation and measures and provide a comprehensive update to the Board at a future meeting. Board members also asked about potential funding for bill payment assistance for low-income customers in urban areas with clean drinking water, providing access to water for the homeless population, and addressing lead in drinking water infrastructure at school sites. The Board asked staff to evaluate and report back on elements of the Green New Deal that may benefit from District support.

- Motion by Director Linney, seconded by Director Patterson, to approve the recommended actions for Item 7, carried (6-0) by the following voice vote: AYES (Katz, Linney, Mellon, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (Coleman).

**Motion No. 051-19** – Received Legislative Report No. 01-19 and approved positions on the following bills: SUPPORT AB 533 (Holden) Income Taxes: Exclusion: Water Conservation or Efficiency Programs: Water Runoff Management Improvement Program; SUPPORT ACA 1 (Aguiar-Curry) Local Government Financing: Affordable Housing and Public Infrastructure: Voter Approval; SUPPORT SB 379 (Committee on Governance and Finance) Validations; SUPPORT SB 380 (Committee on Governance and Finance) Validations; SUPPORT SB 381 (Committee on Governance and Finance) Validations; and SUPPORT H.R. 1497 (DeFazio) Water Quality Protection and Job Creation Act of 2019; and received information on the Status of Safe Drinking Water Fund Legislation.

8. **General Manager's Report.**

Manager of Fisheries and Wildlife Jose D. Setka presented an update on the 2018 fall-run Chinook salmon and steelhead return to the Mokelumne River. The 2018 return was the third highest recorded since 1940 with an estimated 17,474 salmon, including 10,194 fish that spawned in the river and 7,280 that were collected at the hatchery for egg production returned to the river. The steelhead trout return to the hatchery exceeded 250 adult fish. Mr. Setka reviewed the suite of management actions implemented over the last decade to help increase fish return numbers; data from the California Department of Fish and Wildlife which shows that in 2018, Mokelumne hatchery origin salmon made up approximately 43 percent of the commercial and 33 percent of the recreational catch, respectively; 2019 in-river spawning and production data; plans to address inbreeding in the Central Valley steelhead population; and coverage from the second annual media day event at the hatchery in November. He highlighted issues to be addressed in 2019 and said staff will continue implementing actions and engaging with resource agency staff, advocacy groups and others to improve the survival of juvenile salmon migrating through the Central Delta. The District remains involved in the Bay Delta Water Quality Control Plan Phase 2 process and will continue work to ensure the optimum plan outcome for the Mokelumne fishery. General Manager Coate advised the District would be issuing a media advisory today regarding the 2018 return numbers. The Board thanked staff for their efforts and the update.

Manager of Wastewater Environmental Services Alicia Chakrabarti presented an update on proposed amendments to the Regional Private Sewer Lateral (PSL) Ordinance which was last modified in 2014. This information was also presented to the Planning Committee on February 13. The PSL program is a component of the District's Wet Weather Consent Decree. Ordinance amendments are needed to provide clear requirements and enforcement tools in advance of upcoming deadlines in 2021 and to maximize the effectiveness of the program. The amendments will primarily impact common interest developments (i.e. homeowners associations (HOAs)) and parcels or parcel groups with PSLs greater than 1,000 feet. In the current ordinance, these properties have a compliance deadline of July 21, 2021. Additional proposed revisions include clarifying definitions of terms in the ordinance, exempting some transfers to/from an LLC, and strengthening enforcement language. Ms. Chakrabarti said staff has conducted ongoing outreach to stakeholders and after the ordinance amendments go into effect, will continue direct outreach to all non-compliant properties and with HOAs and properties with PSLs exceeding 1,000 feet. Board feedback will be incorporated into the draft amended ordinance and the first and second readings are scheduled for the April 9 and April 23 Board meetings. If approved by the Board on April 23, the updated ordinance will be effective June 1, 2019. Ms. Chakrabarti



responded to Board questions on how other wastewater agencies are managing this issue; clarification for the term “default allocation”; and an appeals or extension process for properties unable to meet the 2021 deadline. Staff will provide information at April 9 Board meeting to demonstrate ways default allocation could be established if an HOA does not respond to District outreach and fails to meet the compliance deadline.

Manager of Maintenance and Construction/Water Operations David A. Briggs presented the Water Supply update as of March 10 which included the latest supply projections for the remainder of the rain year. He reviewed the gross water production, the current snow water content at Caples Lake (210% of average), and precipitation in the East Bay (107% of average) and the Mokelumne (143% percent of average). As of March 10, the District’s total system storage was 651,690 acre feet, which is 108% of average and 84% of capacity.

General Manager Coate announced the Monthly Report for February was provided in the Board’s packet and an updated Speakers’ Bureau and Outreach Record was provided at the dais.

## **REPORTS AND DIRECTOR COMMENTS**

### **9. Committee Reports.**

- Filed with the Board were the Sustainability/Energy and Finance/Administration Committee Minutes of February 26, 2019.

### **10. Other Items for Future Consideration.**

None.

### **11. Director Comments.**

- Director Coleman submitted a written report on his activities during the ACWA Conference on February 25-28 in Washington D.C. and reported meeting with Eric Zell and Josh Genser regarding EBMUD related issues on March 6 in Point Richmond and attending the Contra Costa Mayors’ Conference on March 7 in San Ramon. He reported on plans to attend the DERWA Board meeting on March 25 in Dublin.
- Director Mellon reported attending the San Leandro Breakfast Club on February 27 in San Leandro and Contra Costa County Mayors’ Conference on March 7 in San Ramon.
- Director Patterson thanked fellow Board members and staff for attending the February 26 Oakland City Council meeting where he was recognized for his years of service to the City of Oakland and civil rights.
- Directors Katz, Linney, McIntosh and President Young had no comment.

**ADJOURNMENT**

President Young adjourned the meeting at 2:49 p.m. in memory of Victor McElhaney, son of Oakland City Councilmember Lynette Gibson McElhaney. She requested that a letter of condolence be sent to the family on behalf of the Board.

SUBMITTED BY:

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Rischa S. Cole, Secretary of the District

APPROVED: March 26, 2019

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Marguerite Young, President of the Board



AGENDA NO.  
MEETING DATE

3.  
March 26, 2019

TITLE PURCHASE OF TRANSPORT TRAILER

☒ MOTION ☐ RESOLUTION ☐ ORDINANCE

### RECOMMENDED ACTION

Award a contract to the lowest responsive/responsible bidder Cozad Trailer Sales, LLC in an amount, after the addition of taxes, not to exceed \$111,944.76 for the purchase of one transport trailer, under Request for Quotation (RFQ) No. 1912.

### SUMMARY

This contract is for the purchase of one Cozad 35 ton, 2-axle wide-neck transport trailer for transporting the recently purchased front loading cold milling machine. Purchase of this equipment ensures the District's ability to continue to utilize the cost-efficient and worker-friendly methodology of cold plane mill and overlay paving. This piece of equipment will reduce the need for the District to use a contractor for fully maintained and operated asphalt grinding services and will result in more than \$300,000 in cost savings per year. This equipment is a necessary component for required asphalt restorations of pipeline trenches. The procurement of this equipment supports the District's Long-Term Infrastructure Investment Strategic Plan goal.

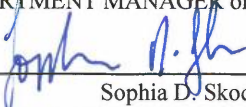
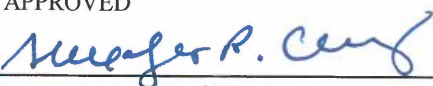
### VENDOR SELECTION

An RFQ was sent to 148 potential proposers, advertised in the Oakland Tribune, and posted on the District's website. One bid was received.

### SUSTAINABILITY

#### Economic

Funding for this equipment is included in the FY19 budget for the Vehicle and Heavy Equipment Additions.

Funds Available: FY19		Budget Code: 756/0200160/7999/5547
DEPARTMENT SUBMITTING  Finance	DEPARTMENT MANAGER or DIRECTOR   Sophia D. Skoda	APPROVED   General Manager

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

### **Social**

The completed P-035 and P-061 forms for the Contract Equity Program are attached.

### **Environmental**

Cozad Trailer Sales, LLC operates a complete trailer manufacturing plant in Stockton, California, which is run 80 percent by solar energy.

### **ALTERNATIVES**

**Do not purchase equipment.** This alternative is not recommended because the District would be unable to transport the recently purchased front loading cold milling machine and would continue to spend more than \$300,000 per year for fully maintained and operated asphalt grinding services.

**Reject and re-bid the contract.** This alternative is not recommended as the District engaged in a fair and competitive bid process. The bid received meets all specifications and is reasonable for the equipment being purchased.

### **Attachments**

P-035 – Contract Equity Program Summary  
P-061 – Affirmative Action Summary



## CONTRACT EQUITY PROGRAM SUMMARY (P-035)

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

TITLE				DATE:							
QUOTE NO.: 1912				March 14, 2019							
Purchase of Transport Trailer											
CONTRACTOR:		Sole Proposer / Local / Small Business		PERCENTAGE OF CONTRACT DOLLARS							
Cozad Trailer Sales, LLC Stockton, CA 95215				Availability Group	Contracting Objectives						
BID/PROPOSER'S PRICE:	FIRM'S OWNERSHIP		White Men		100.0%						
	Ethnicity	Gender	White Women		0.0%						
	\$111,944.76	White	Men	Ethnic Minorities	0.0%						
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
PRIME: Cozad Trailer Sales, LLC	\$111,944.76	White	X		100.0%						
SUBS: None											
TOTAL		\$111,944.76			100.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
CONTRACTOR'S WORKFORCE PROFILE (From P-025 Form)											
		White Men		White Women		Ethnic Minorities		Total Employees			
No. of Employees:		11		5		45		61			
Percent of Total Employees:		18.0%		8.2%		73.8%					
MSA Labor Market %:		28.1%		24.5%		47.4%					
MSA Labor Market Location:		Stockton-Lodi									
COMMENTS											
Contract Equity Participation - 100% White Men participation.											
Workforce Profile & Statement of Nondiscrimination Submitted				Good Faith Outreach Efforts Requirement Satisfied				Award Approval Recommended			
NA				NA							







AGENDA NO.  
MEETING DATE

4.  
March 26, 2019

**TITLE      CONSTRUCTION OF MAIN WASTEWATER TREATMENT PLANT AERATED  
GRIT TANKS AND GALLERY IMPROVEMENTS UNDER SD-399**

☒ MOTION      ☐ RESOLUTION      ☐ ORDINANCE

**RECOMMENDED ACTION**



Award a contract to the lowest responsive/responsible bidder, Kiewit Infrastructure West Co., in the amount of \$4,787,350 for construction of Main Wastewater Treatment Plant (MWWTP) Aerated Grit Tanks and Gallery Improvements under Specification SD-399.

**SUMMARY**

This construction contract consists of improvements and rehabilitation work for the aerated grit tanks (AGTs) and pipe gallery, and installation of a new plant drain bypass system. The work includes replacement of the screw conveyor systems, new vertical supports for the existing baffles, and concrete rehabilitation in all eight AGTs. These improvements to the AGTs are necessary to ensure continued reliable usage of the facility. Installation of the new plant drain bypass system will increase operational flexibility during plant maintenance activities. The work is scheduled to take place from May 2019 through October 2021. This work was discussed at the Long Term Infrastructure Investment Workshop on November 13, 2018.

**DISCUSSION**

Installed in the 1970s, the MWWTP aerated grit removal system is comprised of eight AGTs. Screw conveyors remove grit from wastewater, which protects downstream equipment from excessive wear. The AGT process ensures that the MWWTP can treat high flows resulting from wet weather events. High grit loading into the AGT process causes detrimental wear on the components, resulting in leaking seals as well as deteriorating screws and bearings. A significant amount of effort from MWWTP maintenance staff is required to keep the AGTs operational. The existing screw conveyors are made of mild steel and are severely corroded; upgrading to stainless steel screw conveyors will prevent corrosion and reduce future maintenance. This project supports the District's Long-Term Infrastructure Investment Strategic Plan goal for meeting operational needs and reliability goals by effectively maintaining infrastructure.

Funds Available: FY19		Budget Code: WWC/927/7999/2013072/5561
DEPARTMENT SUBMITTING  Wastewater	DEPARTMENT MANAGER or DIRECTOR   Eileen M. White	APPROVED   General Manager

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

## **BID RESULTS**

Bid documents were issued to 24 resource organizations and 18 prospective bidders. Two bids were received, ranging from \$4,787,350 to \$5,991,170. The bid summary is attached. The engineer's estimate for this work is \$4,250,000. The low bid is approximately 13 percent over the engineer's estimate due to a very active bid climate and above normal competition for contractor resources.

The lowest responsive/responsible bidder, Kiewit Infrastructure West Co., is licensed to perform work in California and is not on the State Department of Industrial Relations (DIR) debarment list. Kiewit Infrastructure West Co. and its listed subcontractors are properly registered with the State DIR. In the past five years, Kiewit Infrastructure West Co. has not filed a Government Code Claim against the District and has not initiated any litigation against the District.

## **SUSTAINABILITY**

### **Economic**

This item is included in the FY19 budget for the Treatment Plant Infrastructure Phase 2.

### **Social**

The completed P-035 and P-061 forms for the Contract Equity Program are attached.

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.

Local 444 was notified of this contract on December 27, 2018. Local 444 issues were addressed at a meeting on January 14, 2019 and resolved.

### **Environmental**

A Notice of Exemption was filed with the Alameda County Clerk on November 14, 2018. Reliable operation of the aerated grit tanks is essential for the District to continue to protect San Francisco Bay by treating wastewater prior to discharge.

## **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.



Main Wastewater Treatment Plant Aerated Grit Tanks and Gallery Improvements

March 26, 2019

Page 3

**Reject all bids and do not perform the work.** This alternative is not recommended because the AGTs are in need of rehabilitation to improve efficiency and long-term operational reliability.

Attachments

Bid Summary

P-035 – Contract Equity Program Summary

P-061 – Affirmative Action Summary

I:\Sec\2019 Board Related Items\032619 Board Agenda Items\WW – Construction of MWWTP Aerated Grit Tanks and Gallery Improvements.doc

**EAST BAY MUNICIPAL UTILITY DISTRICT**

**SPECIAL DISTRICT NO. 1**

**SPECIFICATION SD-399  
MAIN WASTEWATER TREATMENT PLANT  
AERATED GRIT TANKS AND GALLERY IMPROVEMENTS**

**March 6, 2019**

**BID SUMMARY**

<b>BIDDER</b>		<b>TOTAL BID</b>
1.	<b>Kiewit Infrastructure West Co.*</b>	<b>\$4,787,350</b>
2.	Abhe & Svoboda, Inc.	\$5,991,170

**\* Apparent Low Bidder**

Number of Proposals sent to Contractor	18
Number of Proposals sent to Resource Orgs	23
Number of Proposals sent to MBEs	3
Number of Proposals sent to WBEs	1
Number of Proposals sent to SBs	0
Number of bids received	2

Engineer's Estimate: \$4,250,000



# 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> <b>SPECIFICATION NO.:</b> SD-399 Construction of Main Wastewater Treatment Plant Aerated Grit Tanks and Gallery Improvements Under SD-399						<b>DATE:</b> March 11, 2019					
<b>CONTRACTOR:</b> Kiewit Infrastructure West Co. Fairfield, CA 94534						<b>PERCENTAGE OF CONTRACT DOLLARS</b>					
<b>BID/PROPOSER'S PRICE:</b> \$4,787,350		<b>FIRM'S OWNERSHIP</b>		White Men		25%		94.6%			
		Ethnicity	Gender	White Women		9%		5.3%			
		White	Men	Ethnic Minorities		25%		0.1%			
<b>CONTRACT EQUITY PARTICIPATION</b>											
<b>COMPANY NAME</b>	<b>ESTIMATED AMOUNT</b>	<b>ETHNICITY</b>	<b>GENDER</b>		<b>CONTRACTING PARTICIPATION</b>						
			M	W	White-Men	White-Women	Ethnic Minorities	Unclassified	Publicly Held Corp.	Gov't/Non Profit	Foreign
<b>PRIME:</b> Kiewit Infrastructure West Co.											
\$4,159,113											
White											
X											
86.8%											
<b>SUBS:</b> All City Trucking											
\$3,360											
Asian											
X											
0.1%											
Newton Group											
\$90,080											
White											
X											
1.9%											
AMT Metal Fabricators, Inc.											
\$160,508											
White											
X											
3.4%											
Shape Inc.											
\$42,549											
White											
X											
0.9%											
Frank Olsen Company											
\$20,219.23											
White											
X											
0.4%											
Harrington Industrial Plastics											
\$10,000											
White											
X											
0.2%											
Central Concrete Supply Co, Inc.											
\$14,279.74											
White											
X											
0.3%											
Dees-Hennessey Inc											
\$96,000											
White											
X											
2.0%											
Geo Grout Ground Modification Specialists, Inc.											
\$92,152											
White											
X											
1.9%											
Techno Coatings											
\$92,152											
White											
X											
1.9%											
Southwest Valve, LLC											
\$6,937.38											
White											
X											
0.1%											
<b>TOTAL</b>		\$4,787,350		94.6%		5.3%		0.1%		0.0%	
<b>CONTRACTOR'S WORKFORCE PROFILE (From P-025 Form)</b>											
<b>White Men</b>		<b>White Women</b>		<b>Ethnic Minorities</b>		<b>Total Employees</b>					
No. of Employees:		176		13		93		282			
Percent of Total Employees:		62.4%		4.6%		33.0%					
MSA Labor Market %:		28.0%		23.6%		48.4%					
<b>MSA Labor Market Location:</b>		California									
<b>COMMENTS</b>											
Contract Equity Participation - 94.6% White Men participation, 5.3% White Women participation, and 0.1% Ethnic Minority participation.											
<b>Workforce Profile &amp; Statement of Nondiscrimination Submitted</b>				<b>Good Faith Outreach Efforts Requirement Satisfied</b>				<b>Award Approval Recommended</b>			
NA				YES							



# AFFIRMATIVE ACTION SUMMARY (P-061)

(Completed by District)

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

Title: <b>Construction of Main Wastewater Treatment Plant Aerated Grit Tanks and Gallery Improvements Under SD-399</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	
Spec. No.: <b>SD-399</b>		DATE: <b>3/11/2019</b>	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
R=Recmmd P=Prime S=Sub	Composition of Ownership	Number of Ethnic Minority Employees						
Company Name, Owner/Contact Person, Address, and Phone Number			B	H	A/PI	AI/AN	TOTAL	PERCENT
RP	WM	Company Wide	2	67	9	9	87	30.9%
Kiewit Infrastructure West Co.		Manager/Prof	1	12	9	0	22	21.4%
Neal Murphy		Technical/Sales	0	0	0	0	0	0.0%
4650 Business Center Drive		Clerical/Skilled	0	24	0	1	25	21.0%
Fairfield, CA 94534		Semi/Unskilled	1	31	0	8	40	66.7%
707-439-7300		Bay Area	0	9	8	0	17	20.0%
		AA Plan on File: <b>NA</b>	Date of last contract with District: <b>NA</b>					
		Co. Wide MSA: <b>California</b>	# Employees-Co. Wide: <b>282</b>				Bay Area: <b>0</b>	
S	EMM: A/PI - L/SBE	Company Wide	INFORMATION NOT PROVIDED					
All City Trucking		Manager/Prof						
Roger Singh		Technical/Sales						
1941 Jackson Street		Clerical/Skilled						
Oakland, CA 94612		Semi/Unskilled						
510-438-8996		Bay Area						
		Co. Wide MSA:						
S	WM: LBE	Company Wide	14	48	5	6	73	45.6%
Newton Group		Manager/Prof	1	4	0	1	6	46.2%
Tony Lozoya		Technical/Sales	0	0	0	0	0	0.0%
815 Arnold Drive		Clerical/Skilled	13	39	5	5	62	43.7%
Martinez, CA 94553		Semi/Unskilled	0	5	0	0	5	100.0%
925-229-2030		Bay Area	14	48	5	6	73	45.6%
		Co. Wide MSA: <b>9 Bay Area Counties</b>	# Employees-Co. Wide: <b>160</b>				Bay Area: <b>160</b>	
S	WM: L/SBE	Company Wide	1	8	0	0	9	50.0%
AMT Metal Fabricators, Inc.		Manager/Prof	0	0	0	0	0	0.0%
Cheryl Turpen		Technical/Sales	0	0	0	0	0	0.0%
211 Parr Blvd.		Clerical/Skilled	1	8	0	0	9	69.2%
Richmond, CA 94801		Semi/Unskilled	0	0	0	0	0	0.0%
510-236-1417		Bay Area	1	8	0	0	9	50.0%
		Co. Wide MSA: <b>9 Bay Area Counties</b>	# Employees-Co. Wide: <b>18</b>				Bay Area: <b>18</b>	
S	WM	Company Wide	INFORMATION NOT PROVIDED					
Shape Inc.		Manager/Prof						
Jim Merritt		Technical/Sales						
5115-A Johnson Drive		Clerical/Skilled						
Pleasanton, CA 94588		Semi/Unskilled						
925-485-9720		Bay Area						
		Co. Wide MSA:						
S	WM: L/SBE	Company Wide	INFORMATION NOT PROVIDED					
Frank Olsen Company		Manager/Prof						
Brent Phillips		Technical/Sales						
286 Rickenbacker Circle		Clerical/Skilled						
Livermore, CA 94551		Semi/Unskilled						
925-961-8888		Bay Area						
		Co. Wide MSA:						

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)





# AFFIRMATIVE ACTION SUMMARY (P-061)

(Completed by District)

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

Title: <b>Construction of Main Wastewater Treatment Plant Aerated Grit Tanks and Gallery Improvements Under SD-399</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		
Spec. No.: <b>SD-399</b>		DATE: <b>3/11/2019</b>	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	
R=Recmmd P=Prime S=Sub	Composition of Ownership	Number of Ethnic Minority Employees							
Company Name, Owner/Contact Person, Address, and Phone Number		B	H	A/PI	AI/AN	TOTAL	PERCENT	MSA %	
S	WM: LBE	Company Wide							
Harrington Industrial Plastics Chris Gladish 242 South Garrard Blvd. Richmond, CA 94801  510-235-2360		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
		Bay Area							
		Co. Wide MSA:							
S	WM: LBE	Company Wide							
Central Concrete Supply Co. Inc. Rich Sntoro 2400 Peralta Street Oakland, CA 94607  408-404-1051		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
		Bay Area							
		Co. Wide MSA:							
S	WM	Company Wide	0	42	1	0	43	79.6%	39.9%
Dees-Hennessey, Inc. Daniel M. Evans 200 Industrial Road, Suite 190 San Carlos, CA 94070  650-595-8933		Manager/Prof	0	0	0	0	0	0.0%	
		Technical/Sales	0	0	0	0	0	0.0%	
		Clerical/Skilled	0	2	1	0	3	75.0%	
		Semi/Unskilled	0	40	0	0	40	90.9%	
		Bay Area	0	42	1	0	43	79.6%	39.9%
		Co. Wide MSA:	9 Bay Area Counties		# Employees-Co. Wide:		54	Bay Area:	54
S	WM	Company Wide	0	4	2	0	6	66.7%	39.9%
Geo Grout Ground Modification Specialists Steven Adams 2194 PALou Avenue San Francisco, CA 94124  510-586-1900		Manager/Prof	0	0	2	0	2	50.0%	
		Technical/Sales	0	2	0	0	2	100.0%	
		Clerical/Skilled	0	1	0	0	1	50.0%	
		Semi/Unskilled	0	1	0	0	1	100.0%	
		Bay Area	0	4	2	0	6	66.7%	39.9%
		Co. Wide MSA:	9 Bay Area Counties		# Employees-Co. Wide:		9	Bay Area:	9
S	WW	Company Wide	5	78	0	0	83	69.2%	48.4%
Techno Coatings Inc. Bruce Birney 1391 S. Allec Street Anaheim, CA 92805  714-635-1130		Manager/Prof	1	1	0	0	2	18.2%	
		Technical/Sales	0	0	0	0	0	0.0%	
		Clerical/Skilled	4	77	0	0	81	75.7%	
		Semi/Unskilled	0	0	0	0	0	0.0%	
		Bay Area	0	0	0	0	0	0.0%	39.9%
		Co. Wide MSA:	California		# Employees-Co. Wide:		120	Bay Area:	0
S	WM	Company Wide	4	4	4	4	16	48.5%	Insert %
Southwest Valve, LCO Owner's Name Address City, ST, Zip  Area Code & Phone Number		Manager/Prof	1	1	1	1	4	80.0%	
		Technical/Sales	1	1	1	1	-	NA	
		Clerical/Skilled	1	1	1	1	4	23.5%	
		Semi/Unskilled	1	1	1	1	4	36.4%	
		Bay Area	-	-	-	-	0	0.0%	39.9%
		Co. Wide MSA:	Insert MSA		# Employees-Co. Wide:		33	Bay Area:	33

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

5.  
March 26, 2019

TITLE AGREEMENT FOR PROFESSIONAL AUDITING SERVICES

☒ MOTION ☐ RESOLUTION ☐ ORDINANCE

### RECOMMENDED ACTION

Authorize an agreement beginning on or after March 27, 2019 with Lance, Soll & Lunghard, LLP (LSL) in an amount not to exceed \$253,155 for professional auditing services for three years, with two options to renew for additional two-year periods for a total amount not to exceed \$607,920.

### SUMMARY

In accordance with Section 11889 of the California Municipal Utility District Act (MUD Act), the District is required to employ an external auditor to examine and report, at least annually, upon the system of accounts kept by the District. LSL, a certified public accounting (CPA) firm, will conduct an independent audit of the District's financial internal controls, transactions and fund balance for the aforementioned periods. The audit conducted in accordance with Government Auditing Standards attests the fair presentation of the District's financial position and assures the accuracy of the District's financial statements. LSL will provide an independent auditor's report detailing its opinion and results of the audit at the conclusion of each aforementioned fiscal year audit.

### DISCUSSION

The District is required to have its financial records audited at the end of each fiscal year. Individual audit reports must be prepared for the following:

- Combined Statements for the Water System, Wastewater System and the Employees' Retirement System
- EBMUD Employees' Retirement System
- Bay Area Clean Water Agencies
- Freeport Regional Water Authority
- Dublin/San Ramon East Bay Municipal Utility District Recycled Water Authority
- Upper Mokelumne Regional Water Authority
- Federal grants in compliance with the Single Audit Act of 1984
- Joint Power Authorities' financial statements as required
- Joint Power Authorities' federal grants in compliance with the Single Audit Act of 1984

Funds Available: FY19		Budget Code:
DEPARTMENT SUBMITTING  Finance	DEPARTMENT DIRECTOR  Sophia D. Skoda	APPROVED  General Manager

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



## **CONSULTANT SELECTION**

The prior auditing services contract ended with the conclusion of the June 30, 2018 audit. In November 2018, a request for proposal (RFP) was sent to interested CPA firms, published on the District's website, in the District's Contract Equity newsletter and on the California Society of Municipal Financial Officer's website. A pre-bid meeting was held on December 6, 2018 in which the District presented its auditing needs and answered questions submitted by interested firms. Six proposals were received and four CPA firms with the best qualifications were invited to an oral interview. LSL was selected because they demonstrated that they possess the best qualifications to meet the District's needs and fulfill all the District's auditing requirements at the lowest cost.

## **SUSTAINABILITY**

### **Economic**

Funding for this item is included in the FY19 budget.

### **Social**

The completed P-035 and P-061 forms for the Contract Equity Program are attached.

## **ALTERNATIVE**

**Select another firm to perform the audit.** This alternative is not recommended as LSL was determined to be the best qualified to perform the annual audit of the District at the lowest cost.

### **Attachments**

P-035 – Contract Equity Program Summary  
P-061 – Affirmative Action Summary





## CONTRACT EQUITY PROGRAM SUMMARY (P-035)

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

TITLE				DATE:							
<b>Professional Services Agreement</b> Agreement for Professional Auditing Services - Three-Year Contract with 2 One-Year Annual Renewal Options				March 7, 2019							
CONTRACTOR:				PERCENTAGE OF CONTRACT DOLLARS							
Lance, Soll & Lunghard, LLP Sacramento, CA 95833				Availability Group		Contracting Objectives		Participation			
BID/PROPOSER'S PRICE:		FIRM'S OWNERSHIP		White Men		25%		100.0%			
		Ethnicity	Gender	White Women		6%		0.0%			
		White	Men	Ethnic Minorities		25%		0.0%			
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
PRIME: Lance, Soll & Lunghard, LLP		\$84,385	White	X		100.0%					
SUBS: None											
TOTAL		\$84,385				100.0%	0.0%	0.0%	0.0%	0.0%	0.0%
CONTRACTOR'S WORKFORCE PROFILE (From P-025 Form)											
		White Men		White Women		Ethnic Minorities		Total Employees			
No. of Employees:		29		30		43		102			
Percent of Total Employees:		28.4%		29.4%		42.2%					
MSA Labor Market %:		28.0%		23.6%		48.4%					
MSA Labor Market Location:		California									
COMMENTS											
Contract Equity Participation - 100% White Men participation.											
*Total not to exceed: \$607,920 (Annual Increase after 3 years)											
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>Agreement for Professional Auditing Services Three-Year Contract with 2 One-Year Annual Renewal Options</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	
Professional Services Agreement		DATE: 3/7/2019	Number of Ethnic Minority Employees					
R=Recmmd P=Prime S=Sub	Composition of Ownership							
Company Name, Owner/Contact Person, Address, and Phone Number			B	H	A/PI	AI/AN	TOTAL	PERCENT
MSA %								
RP	WM	Company Wide	0	18	25	0	43	42.2%
Lance, Soll & Lunghard, LLP		Manager/Prof	0	16	22	0	38	42.2%
Kenneth A. Marcias		Technical/Sales	0	0	0	0	0	0.0%
2151 River Plaza, Suite 150		Clerical/Skilled	0	2	3	0	5	41.7%
Sacramento, CA 95833		Semi/Unskilled	0	0	0	0	0	0.0%
916-503-9691		Bay Area	0	0	0	0	0	0.0%
		AA Plan on File: NA	Date of last contract with District: 6/21/2016					
		Co. Wide MSA: California	# Employees-Co. Wide: 102				Bay Area: 0	
P	WM - L/SBE	Company Wide	INFORMATION NOT PROVIDED					
Badawi & Associates		Manager/Prof						
Ahwed Badawi		Technical/Sales						
180 Grand Avenue, Suite 1500		Clerical/Skilled						
Oakland, CA 94612		Semi/Unskilled						
510-768-8244		Bay Area						
		Co. Wide MSA:						
P	WM: L/SBE	Company Wide	1	6	16	0	23	39.7%
Maze & Associates Accountancy Corporation		Manager/Prof	1	6	15	0	22	44.0%
Chris Hunt		Technical/Sales	0	0	0	0	0	0.0%
3478 Buskirk Avenue, Suite 215		Clerical/Skilled	0	0	1	0	1	16.7%
Pleasant Hill, CA 94523		Semi/Unskilled	0	0	0	0	0	0.0%
925-930-0902		Bay Area	1	6	16	0	0	0.0%
		Co. Wide MSA: 9 Bay Area Counties	# Employees-Co. Wide: 58				Bay Area: 58	
P	WM	Company Wide	9	61	63	1	134	47.7%
Vavrinek, Trine Day & CO., LLP		Manager/Prof	6	29	40	1	76	42.9%
2151 River Plaza Drive, #308		Technical/Sales	1	0	0	0	0	0.0%
Sacramento, CA 95833		Clerical/Skilled	2	32	23	0	57	55.3%
916-570-1880		Semi/Unskilled	0	0	0	0	0	0.0%
		Bay Area	0	1	1	0	0	0.0%
		Co. Wide MSA: Sacramento	# Employees-Co. Wide: 281				Bay Area: 10	
P	WW	Company Wide	1	5	10	0	16	41.0%
Davis Farr LLP		Manager/Prof	1	5	10	0	16	43.2%
Sharron Carrey		Technical/Sales	0	0	0	0	0	0.0%
2301 Dupont Drive, Suite 200		Clerical/Skilled	0	0	0	0	0	0.0%
Irvine, CA 92612		Semi/Unskilled	0	0	0	0	0	0.0%
949-474-2020		Bay Area	0	0	0	0	0	0.0%
		Co. Wide MSA: Orange County	# Employees-Co. Wide: 39				Bay Area: 2	
P	WM: L/SBE	Company Wide	1	7	22	0	30	75.0%
The Pun Group, LLP		Manager/Prof	1	4	22	0	27	75.0%
Frances Kuo		Technical/Sales	0	0	0	0	0	0.0%
2121 N. California Blvd., Suite 290		Clerical/Skilled	0	3	0	0	3	75.0%
Walnut Creek, CA 94596		Semi/Unskilled	0	0	0	0	0	0.0%
949-777-8805		Bay Area	0	0	0	0	0	0.0%
		Co. Wide MSA: California	# Employees-Co. Wide: 40				Bay Area: 0	

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.  
March 26, 2019

TITLE PILOT OF EARTHQUAKE RESISTANT DUCTILE IRON PIPE

☒ MOTION ☐ RESOLUTION ☐ ORDINANCE

### RECOMMENDED ACTION

Authorize a direct award contract to United States Pipe and Foundry Company, LLC (U.S. Pipe) in an amount not to exceed \$163,606 to purchase earthquake resistant ductile iron pipe (ERDIP) and appurtenances for a District pilot project.



### SUMMARY

This contract is for the purchase and delivery of U.S. Pipe ERDIP and appurtenances to complete a pilot installation and field inspection in order to evaluate the use of ERDIP.

### DISCUSSION

ERDIP is segmented ductile iron pipe that can accommodate up to 15 degrees of joint deflection and withstand extreme loading conditions caused by large earthquakes. In the fall 2015, the District completed a pilot project to install and evaluate Kubota Corporation ERDIP, a pipe from Japan widely used in seismic hazard zones. This pilot project will evaluate the installation of a domestically manufactured ERDIP to make a more informed recommendation on the future use of ERDIP for the District's Pipeline Rebuild program.

This pilot project is located in the Hayward Fault zone in the Berkeley Hills on Santa Barbara Road and Northampton Avenue as shown on the attached location map. The ERDIP will replace approximately 3,000 feet of 6-inch cast iron and steel pipe installed in the 1920s and 1960s that has had 31 recorded breaks in the last 25 years associated with ground motion. During installation, staff will evaluate construction metrics related to installation productivity and effort, cost, and community impacts. The goal of this pilot project is to gain additional experience with ERDIP, compare domestic ERDIP to Kubota Corporation ERDIP, and to determine future use in areas with seismic hazards and landslides. This item supports the District's Long-Term Infrastructure Investment Strategic Plan goal.

Funds Available: FY19; CIP# 000554; Page 29		Budget Code: WSC/535/7999/5331/2010410
DEPARTMENT SUBMITTING <u>Engineering &amp; Construction</u>	DEPARTMENT MANAGER or DIRECTOR  Xavier J. Irias	APPROVED  General Manager

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

## **VENDOR SELECTION**

This is a direct award purchase. U.S. Pipe currently produces the only domestic-made ERDIP that achieves expansion, contraction, and deflection within the pipe joint, and does not require additional couplings to provide seismic flexibility.

## **SUSTAINABILITY**

### **Economic**

This item is included in the FY19 budget for the Pipeline Infrastructure Renewals.

### **Social**

The completed P-035 and P-061 forms for the Contract Equity Program are attached.

The superior resilience of ERDIP is expected to result in fewer disruptions to the community from a decrease in pipe breaks and repairs.

### **Environmental**

Ductile iron pipe is manufactured from recycled and scrap materials, and ductile iron pipe is recyclable. By sourcing ductile iron from manufacturers within the United States, the overall carbon footprint of the material procurement is reduced.

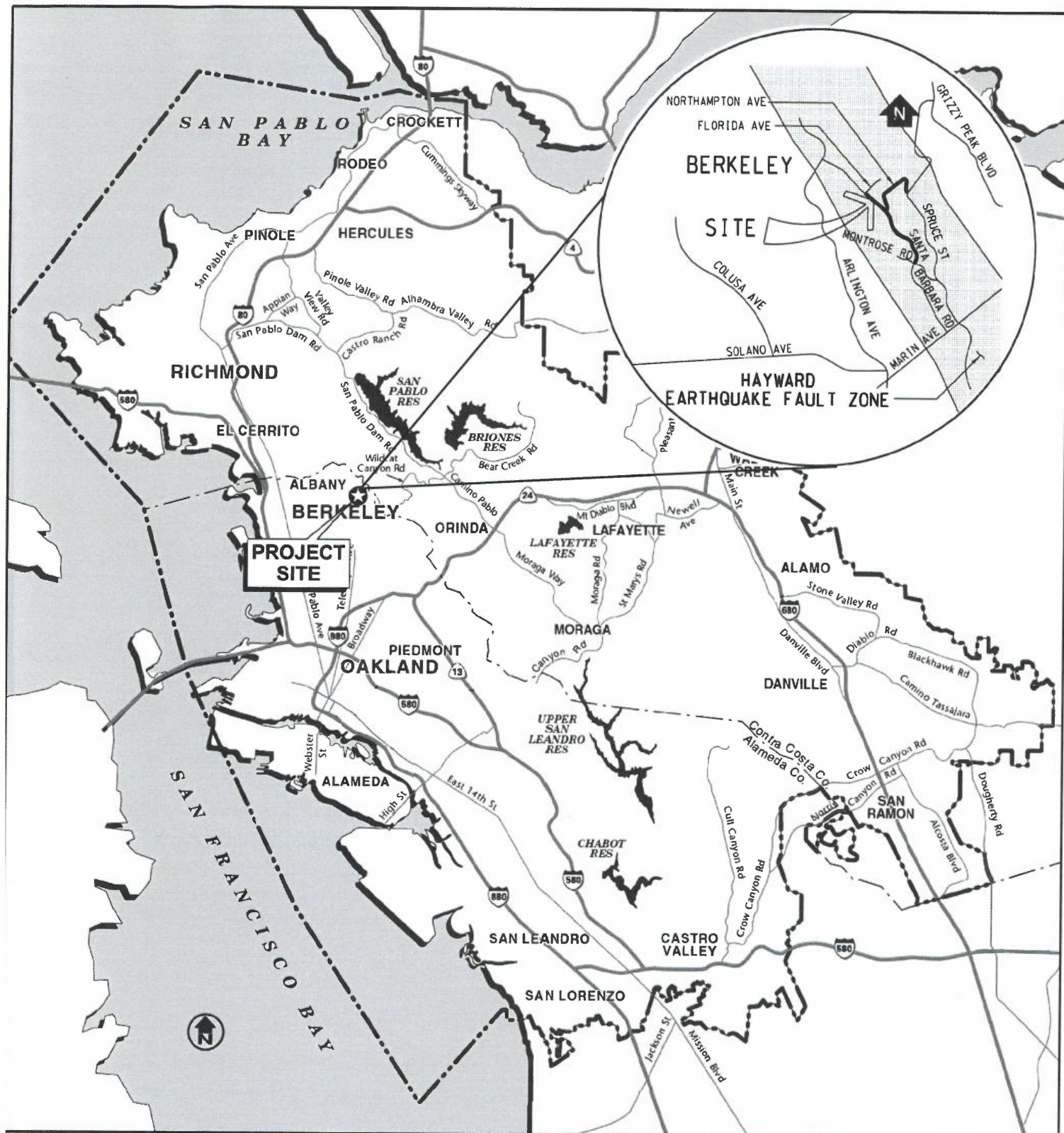
## **ALTERNATIVES**

**Purchase another product.** This alternative is not recommended because U.S. Pipe is the only domestic manufacturer that produces ductile iron pipe that achieves expansion, contraction, and deflection within the pipe joint.

**Do not pilot ERDIP.** This alternative is not recommended because the District needs to learn new technologies to improve pipeline replacement in seismic and landslide hazard areas.

## **Attachments**

Location Map  
P-035 – Contract Equity Program Summary  
P-061 – Affirmative Action Summary



## PROJECT SITE LOCATION MAP

NOT TO SCALE

**EAST BAY MUNICIPAL UTILITY DISTRICT**

**SANTA BARBARA RD &  
NORTHAMPTON AVE, BERKELEY  
PIPELINE REPLACEMENT**








## CONTRACT EQUITY PROGRAM SUMMARY (P-035)

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

TITLE						DATE:					
QUOTE NO.: NA Pilot of Earthquake Resistant Ductile Iron Pipe						March 12, 2019					
CONTRACTOR: United States Pipe and Foundry Company, LLC Union City, CA 94587				Sole Source / Local Business		PERCENTAGE OF CONTRACT DOLLARS					
						Availability Group		Contracting Objectives		Participation	
BID/PROPOSER'S PRICE:		FIRM'S OWNERSHIP		White Men		25%		0.0%			
		Ethnicity	Gender	White Women		2%		0.0%			
		Publicly Held	-	Ethnic Minorities		25%		0.0%			
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
PRIME: United States Pipe and Foundry Company, LLC		\$163,606	PHC							100.0%	
SUBS: None											
TOTAL		\$163,606			0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	0.0%
CONTRACTOR'S WORKFORCE PROFILE (From P-025 Form)											
		White Men		White Women		Ethnic Minorities		Total Employees			
No. of Employees:		19		2		154		175			
Percent of Total Employees:		10.9%		1.1%		88.0%					
MSA Labor Market %:		32.3%		27.8%		39.9%					
MSA Labor Market Location:		9 Bay Area Counties									
COMMENTS											
Contract Equity Participation - Zero Contract Equity participation since firm is a Publicly Held Corporation.											
Workforce Profile & Statement of Nondiscrimination Submitted				Good Faith Outreach Efforts Requirement Satisfied				Award Approval Recommended			
NA				NA							







AGENDA NO.  
MEETING DATE

7.  
March 26, 2019

TITLE iPVC PIPE PROCUREMENT

☒ MOTION ☐ RESOLUTION ☐ ORDINANCE

### RECOMMENDED ACTION

Authorize an amendment to the contract awarded under Board Motion No. 113-18 with PPI America, Inc. for an additional amount of \$385,925 increasing the total amount not to exceed to \$564,822 including taxes for the sole source purchase of 25,000 feet of 6-inch diameter and 15,000 feet of 8-inch diameter structurally enhanced polyvinyl chloride (PVC) pipe called iPVC.

### SUMMARY

The additional funds are for the purchase and delivery of iPVC pipe to complete pilot installations and field inspection to further evaluate the use of iPVC.



### DISCUSSION

iPVC, developed in South Korea by Pyungwha Pipe Industries (PPI), is a structurally enhanced version of typical PVC pipe. This pipe is a proprietary product and is only available directly from PPI America, Inc. The Water Research Foundation project report (No. 4650) confirms that users can expect the pipe to be more durable during handling, installation, and operation when compared to conventional PVC. In 2018, the Cornell University Geotechnical Lifelines Large-Scale Testing Facility tested and evaluated iPVC pipe with restrained joints under seismic loading conditions greater than that of the Loma Prieta or Northridge earthquakes. iPVC pipe laboratory results at Cornell were quite favorable, accommodating almost all severe ground deformation caused by liquefaction-induced lateral spreads and landslides.

In fiscal years 2018 and 2019, District crews successfully installed approximately 20,000 feet of iPVC pipe in Albany, Berkeley, and Oakland, replacing existing cast iron pipe installed from the 1920s through 1950s. Expanding the iPVC pilot will allow for additional testing by staff before making a more informed recommendation on the future use of iPVC for the District's Pipeline Rebuild program. This item supports the District's Long-Term Infrastructure Investment Strategic Plan goal.

### VENDOR SELECTION

This is a sole source purchase. PPI America, Inc. is the exclusive manufacturer and supplier of iPVC pipe.

Funds Available: FY19; CIP# 000554; Page 29		Budget Code: WSC/535/7999/5331/2010410
DEPARTMENT SUBMITTING  Engineering and Construction	DEPARTMENT MANAGER or DIRECTOR   Xavier J. Irias	APPROVED   General Manager

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

## **SUSTAINABILITY**

### **Economic**

This item is included in the FY19 budget for the Pipeline Infrastructure Renewals.

### **Social**

The completed P-035 and P-061 forms for the Contract Equity Program are attached.

The superior resilience of iPVC pipe will result in fewer disruptions to the community from the anticipated decrease in pipe breaks and repairs.

### **Environmental**

Environmental impacts may be reduced with iPVC compared to alternative District materials such as steel, as an optimized (reduced size) trench will require fewer truck trips, directly reducing greenhouse gas emissions per unit of pipe installed.

## **ALTERNATIVES**

**Select a different vendor.** This alternative is not recommended; PPI America, Inc. is the exclusive manufacturer of iPVC pipe.

**Do not continue iPVC pilot.** This alternative is not recommended because the District seeks to evaluate new technologies to improve the District's pipeline replacement rate.

### **Attachments**

P-035 – Contract Equity Program Summary

P-061 – Affirmative Action Summary



## CONTRACT EQUITY PROGRAM SUMMARY (P-035)

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

TITLE <b>Materials and Supplies - Amendment</b> iPVC Pipe Procurement						DATE: March 4, 2019						
CONTRACTOR:  PPI America, Inc Los Angeles, CA 90048				Sole Source / Foreign Owned		PERCENTAGE OF CONTRACT DOLLARS						
				Availability Group		Contracting Objectives			Participation			
BID/PROPOSER'S PRICE:		FIRM'S OWNERSHIP		White Men		25%			0.0%			
		Ethnicity		Gender		White Women			2%			
\$385,925 *		Foreign		-		Ethnic Minorities			25%			
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
PRIME: PPI America, Inc		\$385,925										100.0%
SUBS: None												
TOTAL		\$385,925				0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%
CONTRACTOR'S WORKFORCE PROFILE (From P-025 Form)												
		White Men		White Women		Ethnic Minorities		Total Employees				
No. of Employees:		0		0		347		347				
Percent of Total Employees:		0.0%		0.0%		100.0%						
MSA Labor Market %:		NA		NA		NA						
MSA Labor Market Location:		NA										
COMMENTS												
Contract Equity Participation - Zero Contract Equity participation since firm is Foreign-Owned.												
*Total not to exceed: \$564,822.00 = \$178,897 (Original) + 385,925 (Amendment)												
Workforce Profile & Statement of Nondiscrimination Submitted				Good Faith Outreach Efforts Requirement Satisfied				Award Approval Recommended				
NA				NA								







AGENDA NO.  
MEETING DATE

8.  
March 26, 2019

**TITLE      AMENDING AND RESTATING DISTRICT 401(a), 401(k), AND 457 TAX DEFERRED  
COMPENSATION PLANS**

☐ MOTION      ☒ RESOLUTION      ☐ ORDINANCE

**RECOMMENDED ACTION**

Adopt the amended and restated District 401(a), 401(k), and 457 Tax Deferred Compensation Plans. The amendments are technical and administrative clarifications and became effective January 1, 2019.

**SUMMARY**

The proposed action is to approve amended 401(a), 401(k) and 457 Plan documents. In response to legislative changes, the Plans have been updated to include clarifying and corrective language on the topics of domestic partners, loan repayments, loan defaults, Roth accounts, contribution limits, and death benefits.

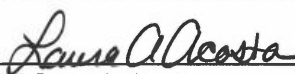

**DISCUSSION**

Each year, the District engages outside tax counsel to review its three defined contribution Plans for compliance with federal tax regulations and to ensure that the Plans maintain their tax qualified status. In 2018, tax counsel identified updates that needed to be made to the 401(k) Plan pursuant to the Bipartisan Budget Act of 2018. The updated 401(k) Plan was adopted by the Board on December 11, 2018. Additionally, tax counsel recommended required cleanup language for all three Plans to ensure they are consistent with tax regulations that govern the District's administration of the Plans. The cleanup language was discussed with the District's Deferred Compensation Advisory Committees on March 19, 2019. The required amendments to the Plans are as follows:

**401(a), 401(k), and 457 Plans**

• **Domestic Partner/Spousal Consent**

In 2014, after the Supreme Court ruled the legality of recognizing same-sex marriage, the Internal Revenue Service issued an Internal Revenue Code regulation that clarified that while Domestic Partners could be recognized as spouses, "Spousal Consent" required for the purpose of designating

Funds Available: FY		Budget Code:
DEPARTMENT SUBMITTING Human Resources	DEPARTMENT MANAGER or DIRECTOR  Laura A. Acosta	APPROVED  General Manager

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beneficiaries of deferred compensation Plans did not apply to domestic partners. However, if a participant fails to make a beneficiary designation, the domestic partner will be treated as the “surviving spouse.” All three Plans require this clarification in Article 9.10(c) of the 401(a) Plan, Article 9.10(c) of the 401(k) Plan, and Article 9.9(c) of the 457 Plan.

- **Qualified Domestic Relations Orders (QDROs) and Domestic Partners**

All three plans require clarification regarding the treatment of former domestic partners as alternate payees under a QDRO. Distributions to former domestic partners do not receive the same tax treatment as distributions to a former spouse. The amended language clarifies that: (1) no distribution may be paid to the former domestic partner until the Participant is eligible for distribution; (2) a distribution to the former domestic partner is taxable for federal tax purposes to the Participant; and (3) the distribution to the former domestic partner does not constitute an eligible rollover distribution. All three Plans require this clarification in Article 8.3(c) of the 401(a) Plan, Article 8.4(c) of the 401(k) Plan, and Article 8.3(c) of the 457 Plan.

#### **401(a) Plan**

- **Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) Provisions for Loan Repayment**

USERRA permits participants on military leaves of absence to request a suspension of loan repayments. Article 8.2 (c) of the 401(a) Plan must be amended accordingly.

- **Loan Default**

The loan default provisions in the 401(a) Plan require a technical clarification. If a Participant whose employment has not been terminated defaults on a loan, the outstanding balance of the loan shall be treated as a deemed distribution. The remedial actions provided for, such as charging the employee for costs incurred related to losses or expenses to the Plan related to the default, no longer apply and must be deleted from the Plan. The affected provision is Article 8.2 (d) of the 401(a) Plan.

#### **457 Plan**

- **Emergency Withdrawals**

The 457 Plan allows participants to make “emergency withdrawals” from their accounts under Article 8.1 of the Plan. This feature in the 457 Plan is similar to the “hardship withdrawals” permitted under the 401(k) Plan. Until the Bipartisan Budget Act (BBA) was enacted in 2018, participants were required to suspend any contributions for six months after receiving a hardship distribution. The BBA relaxed that requirement for 401(k) Plans but remained silent as to other plans such as the 457 Plan. Because the 457 Plan features an emergency withdrawal, which is similar to the hardship withdrawal, for tax compliance purposes it is recommended that the emergency withdrawals provision in the 457 Plan be amended to conform to the requirements of the BBA. As such, Section 8.1 of the 457 Plan will be amended to reflect that participants will no longer be required to suspend contributions for a period of six months after receiving the emergency withdrawal.



- **Contribution Limit, Roth Accounts, and Death Benefit**

Article 5.3(a)(3) and 5.5(c) are updated to reference the Internal Revenue Code section that provides the contribution limit rather than specifically restating the annual amount in the plan document each year for under age 50 contributions and over age 50 contribution. Article 9.7(b) is amended to clarify which eligible rollover distributions may be attributable to a Roth account. Article 9.8 is added to provide for death distributions in the 457 Plan consistent with the 401(a) and 401(k) Plans and the manner in which the Plan is currently being administered.

## **SUSTAINABILITY**

### **Social**

The Unions were informed of these changes during the March 19, 2019 Deferred Compensation Advisory Committees' meeting, and raised no objections to the proposed changes as they are required by law.

## **ALTERNATIVE**

**Do not adopt the restated District 401(a), 401(k), and 457 Tax Deferred Compensation Plans.** This alternative is not recommended. These changes will ensure that Plan language and administration are in compliance with prior legislative changes. Failure to update the deferred compensation Plans as recommended exposes the Plans to a risk of disqualification of its tax-favored status.





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

AMENDING AND RESTATING THE EAST BAY MUNICIPAL UTILITY DISTRICT  
401(a) PLAN

Introduced by Director \_\_\_\_\_ ; Seconded by Director \_\_\_\_\_

WHEREAS, the Board of Directors established the East Bay Municipal Utility District 401(a) Plan (hereafter referred to as Plan) as of March 24, 1998 to provide a tax-effective means through which eligible employees can increase their retirement savings; and

WHEREAS, the Plan is intended to constitute a tax-qualified governmental defined contribution (money purchase) pension plan (within the meaning of Section 401(a) of the Internal Revenue Code (Code) which includes a "pick-up" arrangement described in Section 414(h)(2) of the Code; and

WHEREAS, current Plan provisions regarding participant loans and qualified domestic relations orders (QDROs) applicable to participants with domestic partners require technical clarification to comply with applicable provisions of the Code; and

WHEREAS, the Board of Directors has determined that the Plan document should be amended and restated;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the East Bay Municipal Utility District that the amended and restated 401(a) Plan, attached hereto as Exhibit A, is hereby 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, 2019. The specific amendments are as follows:

**Section 1 of the Plan shall be amended 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, December 11, 2012, January 13, 2015, ~~and April 10, 2018,~~ and January 1, 2019 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 ~~April 10, 2018~~ January 1, 2019.

**Section 8 of the Plan shall be amended as follows:**

**8.2 Participant Loans**

- (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.
- (4) Participants on a military leave of absence qualifying under the Uniformed Services Employment and Reemployment Rights Act may request a suspension of their loan repayments in accordance with section 414(u)(4) of the Code.**
- (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 ~~treat~~take, or direct the Trustee to treat, the outstanding balance of the loan, together with accrued interest thereon, as a deemed distribution in accordance with section 72(p) of the Code. ~~take, such action as shall be necessary or appropriate in the circumstances prevailing;~~
- ~~(e) — to realize upon the security interest of the Plan in the collateral pledged to secure the loan, and/or~~

- ~~(f) — to reduce the total balance credited to the Participant's Account by the amount required to cure the default.~~
- ~~(g) — 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.~~
- ~~(h) — 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.~~
- ~~(i)(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.

- (c) Domestic Partners. In the case of an Alternate Payee who is the former domestic partner of a Participant: (i) no distribution may be paid to the Alternate Payee until the Participant is eligible for a distribution under the Plan; (ii) a distribution to the Alternate Payee is taxable for federal tax purposes to the Participant, who may elect withholding on the distribution, or may elect to have no withholding, and (iii) the distribution to the Alternate Payee is not an Eligible Rollover Distribution.**

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

**9.10 Marital Status**

- (c) Domestic Partner Treated as Spouse. Except for with respect to the Spousal Consent requirement set forth in Section 3.4,** 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 26<sup>th</sup> day of March, 2019 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(a) PLAN**

**(As Amended and Restated Effective as of April 10, 2019)**

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**EAST BAY MUNICIPAL UTILITY DISTRICT  
401(a) PLAN  
(As Amended and Restated Effective as of January 1, 2019)**

**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, December 11, 2012, January 13, 2015, April 10, 2018, and January 1, 2019 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, 2019.

## 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 the annual compensation limit under IRC Section 401(a)(17) 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 the annually prescribed limits (1) as adjusted in accordance with section 415(d) of the Code, 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.
- (4) Participants on a military leave of absence qualifying under the Uniformed Services Employment and Reemployment Rights Act may request a suspension of their loan repayments in accordance with section 414(u)(4) of the Code.
- (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 treat, or direct the Trustee to treat, the outstanding balance of the loan, together with accrued interest thereon, as a deemed distribution in accordance with section 72(p) of the Code.
- (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.
- (c) Domestic Partners. In the case of an Alternate Payee who is the former domestic partner of a Participant: (i) no distribution may be paid to the Alternate Payee until the Participant is eligible for a distribution under the Plan; (ii) a distribution to the Alternate Payee is taxable for federal tax purposes to the Participant, who may elect withholding on the distribution, or may elect to have no withholding, and (iii) the distribution to the Alternate Payee is not an Eligible Rollover Distribution.



## **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, distribution of the balance of his or her Account shall be made in accordance with this Section 9.7, and if elected, 9.9(b).

- (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, including an election under Section 9.9, 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 Joint and Survivor Annuity and Preretirement Survivor Annuity Options.

- (a) Joint and Survivor Annuity. The balance credited to the Participant's Account may be applied toward the purchase of a nontransferable annuity contract providing for payments in the form of a joint and survivor annuity. Such election may be made in accordance with Section 9.8(a)(4).
- (b) 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 may 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. Such election may be made in accordance with Section 9.7(b) and (c).

#### 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. Except for with respect to the Spousal Consent requirement set forth in Section 3.4, 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 be appointed by, and shall be subject to removal or replacement by, the General Manager. 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 21 and Local 39 as may be from time to time agreed to by the District

and the respective unions. 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, 2019).

### EAST BAY MUNICIPAL UTILITY DISTRICT

By \_\_\_\_\_

Title \_\_\_\_\_

Dated \_\_\_\_\_

## **APPENDIX A EFFECTIVE DATES**

The 2019 Restatement of the East Bay Municipal Utility District 401(a) Plan is generally effective as of January 1, 2019. 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.
5. Sections 9.7, 9.8 and 9.9 are effective March 24, 1998.

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

AMENDING AND RESTATING THE EAST BAY MUNICIPAL UTILITY DISTRICT  
401(k) TAX DEFERRED SAVINGS PLAN

Introduced by Director

; Seconded by Director

WHEREAS, the Board of Directors established the East Bay Municipal Utility District 401(k) Tax Deferred Savings Plan (hereafter referred to as 401(k) Plan or Plan) as of October 1, 1985 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 401(k) Plan is authorized to amend the Plan by resolution; and

WHEREAS, to ensure continued compliance with tax laws and to maintain its tax qualified status, the 401(k) Plan is reviewed regularly by tax counsel such that all Plan language is consistent with tax laws; and

WHEREAS, a review of the 401(k) Plan was conducted by tax counsel in late 2018, which identified certain amendments that need to be made to ensure compliance with tax laws; and

WHEREAS, current Plan provisions regarding qualified domestic relations orders (QDROs) applicable to participants with domestic partners require technical clarification to comply with tax laws; and

WHEREAS, the Board of Directors has determined that the 401(k) Plan document should be enacted and restated;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the East Bay Municipal Utility District that the amended and restated 401(k) Tax Deferred Savings Plan, attached hereto as Exhibit A, is hereby 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, 2019. The specific amendments are as follows:

**Section 8 of the 401(k) Plan shall be amended as follows:**

**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.

(c) Domestic Partners. In the case of an Alternate Payee who is the former domestic partner of a Participant: (i) no distribution may be paid to the Alternate Payee until the Participant is eligible for a distribution under the Plan; (ii) a distribution to the Alternate Payee is taxable for federal tax purposes to the Participant, who may elect withholding on the distribution, or may elect to have no withholding, and (iii) the distribution to the Alternate Payee is not an Eligible Rollover Distribution.

Section 9 of the Plan shall be amended as follows:

9.10 Marital Status

(c) Domestic Partner Treated as Spouse. Except for with respect to the Spousal Consent requirement set forth in Section 3.4, 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 26<sup>th</sup> day of March, 2019 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, 2019)**

**EXHIBIT A**

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**EAST BAY MUNICIPAL UTILITY DISTRICT  
401(k) TAX DEFERRED SAVINGS PLAN  
(As Amended and Restated Effective as of January 1, 2019)**

**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, December 10, 2013, January 13, 2015, April 10, 2018, and January 1, 2019 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, 2019.



## 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, a Roth Conversion 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 the annual compensation limit under IRC Section 401(a)(17) 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 annually by section 402(g) of the Code 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 as soon as practicable after such date.
- (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 the annually prescribed limits as adjusted in accordance with section 414(v)(2)(C) of the Code for each 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.

#### 4.9 In-Plan Roth Conversions

In accordance with section 402A(c)(4) of the Code and any guidance issued thereunder, a Participant may irrevocably elect an in-plan Roth conversion of any amount in the Participant's Salary Contribution Account in accordance with procedures established by the District. The funds converted by an in-plan Roth conversion shall be held in the Participant's Roth Conversion Account. The amounts converted under this Section 4.9 are included in the Participant's taxable income in the year of the transfer in accordance with section 402A(c)(4)(A) of the Code.

## 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;
- (c) a "Roth Conversion Account" which shall be credited with In-Plan Roth Conversions (if any) made by the Participant pursuant to Section 4.9 plus (or minus) investment earnings (or losses) thereon; and
- (d) 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.



Gains, losses and other credits or charges attributable to Roth Salary Contributions and In-Plan Roth Conversions shall be separately allocated to the Participant's Roth Salary Contribution Account, Roth Conversion Account, and the Participant's other Accounts under the Plan.

### 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) the annually prescribed limits as adjusted in accordance with section 415(d) of the Code, 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 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, Roth Salary Contribution Account and Roth Conversion 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, or Roth Conversion 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 the limitations in section 213(a) of the Code (relating to the applicable percentage of adjusted gross income and the recipients of the medical care) provided that, if the recipient of the medical care is not listed in section 213(a) of the Code, the recipient is a primary beneficiary under the Plan;
  - (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, child or dependent (as defined in section 152 of the Code and without regard to section 152(b)(1), (b)(2) and (d)(1)(B)), or for a primary beneficiary under the Plan;
  - (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, child or dependent (as defined in section 152 of

the Code and without regard to section 152(d)(1)(B)) or for a deceased primary beneficiary under the Plan;

- (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 section 165(h)(5) of the Code and whether the loss exceeds 10% of adjusted gross income);
  - (7) expenses and losses (including loss of income) incurred by the Participant on account of a disaster declared by the Federal Emergency Management Agency (FEMA) under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 100-707, provided that the Participant's principal residence or principal place of employment at the time of the disaster was located in an area designated by FEMA for individual assistance with respect to the disaster; or
  - (8) 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:
- (1) if the Participant has obtained all other currently available distributions, other than Hardship Withdrawals, under this Plan and all other plans of deferred compensation maintained by the District; and
  - (2) to the extent the amount of the withdrawal does not exceed the amount required to relieve the Immediate and Heavy Financial Need of the Participant (including any amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the distribution); and
  - (3) for a distribution that is made on or after January 1, 2020, the Participant represents (in writing, by an electronic medium or such other form as may be prescribed by the IRS) that he or she has insufficient cash or other liquid assets to satisfy the need. The Plan Administrator may rely on the Participant's representation unless the Plan Administrator has actual knowledge to the contrary.
- (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, including any income accrued.



- (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.
- (i) For purposes of Section 8.1(d), a “primary beneficiary under the Plan” is an individual who is named as a Beneficiary under the Plan and has an unconditional right, upon the death of the Participant, to all or a portion of the Participant’s Account balance under the Plan.
- (j) Contributions or deferrals, including Salary Contributions but excluding mandatory contributions under any defined benefit plan and contributions under any health or welfare benefit plan, by a Participant who received a Hardship Withdrawal on or after July 1, 2018 will be suspended until the earlier of: (1) the date that is six (6) months after the receipt of the withdrawal or (2) January 1, 2019.

## 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 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 active employee 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 or any of the amount remaining due under the loan only by submitting full or any 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.

- (4) Participants on a military leave of absence qualifying under the Uniformed Services Employment and Reemployment Rights Act may request a suspension of their loan repayments in accordance with section 414(u)(4) of the Code.
- (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, or direct the Trustee to, treat the outstanding balance of the loan, together with accrued interest thereon, as a deemed distribution in accordance with section 72(p) of the Code.
- (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 the Participant fails to establish the electronic funds transfer necessary to continue making loan payments as required under the loan agreement, or if distribution of the 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.

- (c) Domestic Partners. In the case of an Alternate Payee who is the former domestic partner of a Participant: (i) no distribution may be paid to the Alternate Payee until the Participant is eligible for a distribution under the Plan; (ii) a distribution to the Alternate Payee is taxable for federal tax purposes to the Participant, who may elect withholding on the distribution, or may elect to have no withholding, and (iii) the distribution to the Alternate Payee is not an Eligible Rollover Distribution.



## **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, distribution of the balance of his or her Account shall be made in accordance with this Section 9.7 and, if elected, 9.9(b).

- (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, including an election under Section 9.9, 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 Joint and Survivor Annuity and Preretirement Survivor Annuity Options

- (a) Joint and Survivor Annuity. The balance credited to the Participant's Account may be applied toward the purchase of a nontransferable annuity contract providing for payments in the form of a joint and survivor annuity. Such election may be made in accordance with Section 9.8(a)(4).
- (b) 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 may 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. Such election may be made in accordance with Section 9.7(b) and (c).

#### 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 Human Resources Department.
- (c) Domestic Partner Treated as Spouse. Except for with respect to the Spousal Consent requirement set forth in Section 3.4, 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(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 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 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, 2019).

### EAST BAY MUNICIPAL UTILITY DISTRICT

By \_\_\_\_\_

Title \_\_\_\_\_

Dated \_\_\_\_\_

## **APPENDIX A EFFECTIVE DATES**

The 2019 Restatement of the East Bay Municipal Utility District 401(k) Tax Deferred Savings Plan is generally effective as of January 1, 2019. 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.
5. Section 4.9 is effective as of January 1, 2015.
6. Sections 9.7, 9.8 and 9.9 are effective as of January 1, 2002.





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

AMENDING AND RESTATING THE EAST BAY MUNICIPAL UTILITY DISTRICT  
457 TAX DEFERRED SAVINGS PLAN

Introduced by Director \_\_\_\_\_ ; Seconded by Director \_\_\_\_\_

WHEREAS, on April 10, 1979, the Board of Directors adopted the East Bay Municipal Utility District 457 Deferred Compensation Plan and Trust for eligible employees (hereafter referred to as the 457 Plan or Plan) that meets the requirements for eligible deferred compensation plan status under Section 457 of the Internal Revenue Code (IRS 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, Sections 11.1 and 11.3 of the 457 Plan, authorize the Board of Directors to amend the Plan by resolution; and

WHEREAS, to ensure continued compliance with tax laws and to maintain its tax qualified status, the 457 Plan is reviewed regularly by tax counsel such that all Plan language is consistent with tax laws; and

WHEREAS, a review of the 457 Plan was conducted by tax counsel in late 2018, which identified certain amendments that need to be made to ensure compliance with tax laws; and

WHEREAS, Section 8.1 of the 457 Plan provides for emergency withdrawals in accordance with Section 457(b) of the IRS Code and regulations promulgated thereunder; and

WHEREAS, the Bipartisan Budget Act of 2018 (BBA) provided for certain changes to the rules related to the hardship withdrawals permitted under plans established under Section 401(k) of the IRS Code and such hardship withdrawals are akin to the emergency withdrawals permitted in the 457 Plan; and

WHEREAS, to ensure compliance with tax laws, it is recommended that provisions in Section 8.1 of the 457 Plan pertaining to emergency withdrawals conform to the requirements of the BBA and therefore be amended; and

WHEREAS, certain other current Plan provisions regarding contribution limits, Roth accounts and death distributions require technical clarification to comply with applicable provisions of the IRS Code; and

WHEREAS, the Board of Directors has determined that the Plan document should be amended and restated;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the East Bay Municipal Utility District that the amended and restated 457 Deferred Compensation Plan and Trust, attached hereto as Exhibit A, is hereby 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, 2019. The specific amendments are as follows:

**Section 1 of the Plan shall be amended 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, December 13, 2011, December 10, 2013, January 13, 2015, and January 1, 2019 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 original 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, 2019.

**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).
- (3) The Applicable Dollar Amount means the dollar limitation on elective deferrals imposed by section 402(g) of the Code (~~\$18,000 for 2015~~), as adjusted in future years as provided in section 457(e)(15) of the Code.

5.5 Additional Age 50 Catch-Up Rules

(c) The "Age 50 Catch-Up Amount" shall be an amount that does not exceed ~~\$5,000~~ the applicable dollar amount, as adjusted in accordance with section 414(v)(2)(C) of the Code (~~\$6,000 for 2015~~) for the relevant Plan Year.

**Section 8 of the Plan shall be amended as follows:**

**8.1**

- (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.

~~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.~~

**8.3 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.
- (c) Domestic Partners. In the case of an Alternate Payee who is the former domestic partner of a Participant: (i) no distribution may be paid to the Alternate Payee until the Participant is eligible for a distribution under the Plan; (ii) a distribution to the Alternate Payee is taxable for federal tax purposes to the Participant, who may elect withholding on the distribution, or may elect to have no withholding, and (iii) the distribution to the Alternate Payee is not an Eligible Rollover Distribution.

Section 9 of the Plan shall be amended as follow:

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.

**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.**

~~(6)~~**(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).

~~(7)~~**(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 Death Distributions

Upon the death of a Participant, distribution of the balance of his or her Account shall be made in accordance with this Section 9.7 and, if elected, 9.9(b).

- (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.

## 9.89.9 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 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**(b)** or 9.7**8**(b) **or** **(+c)**; 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. **Except with respect to the Spousal Consent requirement set forth in Section 3.4,** 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 26<sup>th</sup> day of March, 2019 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

President

ATTEST:

---

Secretary

APPROVED AS TO FORM AND PROCEDURE:

---

General Counsel



**EAST BAY MUNICIPAL UTILITY DISTRICT**  
**457 DEFERRED COMPENSATION PLAN AND TRUST**  
**(As Amended and Restated Effective as of January 1, 2019)**

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**EAST BAY MUNICIPAL UTILITY DISTRICT  
457 DEFERRED COMPENSATION PLAN AND TRUST  
(As Amended and Restated Effective as of January 1, 2019)**

**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, December 10, 2013, January 13, 2015, and January 1, 2019 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, 2019.

## 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, Roth Salary Contributions and In-Plan Roth Conversions, 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 the annual compensation limit under IRC Section 401(a)(17) 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 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 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.
- (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, 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, 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.

#### 4.6 In-Plan Roth Conversions

In accordance with section 402A(c)(4) of the Code and any guidance issued thereunder, a Participant may irrevocably elect an in-plan Roth conversion of any amount in the Participant's Salary Contribution Account in accordance with procedures established by the District. The funds converted by an in-plan Roth conversion shall be held in the Participant's In-Plan Roth Conversion Account. The amounts converted under this Section 4.6 are included in the Participant's taxable income in the year of the transfer in accordance with section 402A(c)(4)(A) of the Code.

## **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) an "In-Plan Roth Conversion Account" which shall be credited with In-Plan Roth Conversions (if any) made by the Participant 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, 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).
  - (3) The Applicable Dollar Amount means the dollar limitation on elective deferrals imposed by section 402(g) of the Code, 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 the applicable dollar amount, as adjusted in accordance with section 414(v)(2)(C) of the Code 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, 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 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.

## 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.

- (c) Domestic Partners. In the case of an Alternate Payee who is the former domestic partner of a Participant: (i) no distribution may be paid to the Alternate Payee until the Participant is eligible for a distribution under the Plan; (ii) a distribution to the Alternate Payee is taxable for federal tax purposes to the Participant, who may elect withholding on the distribution, or may elect to have no withholding, and (iii) the distribution to the Alternate Payee is not an Eligible Rollover Distribution.



## **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.

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 8.3) 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 Death Distributions



Upon the death of a Participant, distribution of the balance of his or her Account shall be made in accordance with this Section 9.7 and, if elected, 9.9(b).

- (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.

## 9.9 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 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(b) or 9.8(b) or (c); 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. Except with respect to the Spousal Consent requirement set forth in Section 3.4, 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 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, 2019).

### EAST BAY MUNICIPAL UTILITY DISTRICT

By \_\_\_\_\_

Title \_\_\_\_\_

Dated \_\_\_\_\_

## **APPENDIX A EFFECTIVE DATES**

The 2019 Restatement of the East Bay Municipal Utility District 457 Deferred Compensation Plan and Trust is generally effective as of January 1, 2019. 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.
5. Section 4.1(d) is effective as of January 1, 2015.
6. Section 4.6 is generally effective as of January 1, 2015.





**EAST BAY MUNICIPAL UTILITY DISTRICT**

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DATE: March 26, 2019

MEMO TO: Board of Directors

THROUGH: Alexander R. Coate, General Manager *ANC*

FROM: Rischa S. Cole, Secretary of the District *RC*

SUBJECT: Board Meeting Video Recording Pilot

**INTRODUCTION**

As part of the District's ongoing commitment to transparency and increased public access to its decision-making processes, staff video recorded the March 12, 2019 Regular Board meeting to evaluate the video and audio quality and the feasibility of using District resources to record, process, post and potentially live-stream Board meetings on the District's website. Staff reviewed the March 12 recording and determined that the video and audio quality are adequate for posting to the District's website; a segment of the recording will be shown at the March 26, 2019 Board meeting.

**DISCUSSION**

Staff has been posting audio recordings of Board meetings on the District's website since February 2018. In December 2018, the General Manager met with the Contra Costa County Grand Jury regarding transparency for the public in the development of budgets and the adoption of rates. One of the grand jury's recommendations was to provide live audio and video streaming of Board meetings. The General Manager's response to the grand jury explained that while the District's boardroom was not originally designed or constructed to incorporate live audio and visual broadcasts, staff has been evaluating the cost and feasibility of providing these services in-house or by contracting with an outside provider. As part of the evaluation process, staff will conduct a pilot using District equipment and staff to record, process and post Regular Board meeting proceedings online.

Similar to the test conducted on March 12, during the pilot, a video camera will be set up on the left side of the boardroom near security staff. The camera will be stationary and will record the dais, onscreen presentations and speakers at the podium.

As a reminder, to ensure a complete, quality recording is captured, Board members are asked to do the following:

- Lean forward and speak clearly into the microphone
- Refrain from adjusting the microphone position and from turning the microphone on/off
- Be cognizant that side conversations may be captured in recordings

## **NEXT STEPS**

Staff is procuring video editing software and finalizing system requirements to pilot processing and posting video files in the same manner currently used to post audio files online. Staff will video record the March 26, April 9 and April 23 Regular Board meetings, assess the resources required to process video files, and post the recordings online by early May. During this time staff will also continue exploring the best, most cost-effective approach to potentially live-stream video of Regular Board meetings online.

**ARC:RSC**

## EAST BAY MUNICIPAL UTILITY DISTRICT

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DATE: March 21, 2019

MEMO TO: Board of Directors

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

FROM: Rischa S. Cole, Secretary of the District *RC*

SUBJECT: Legislative/Human Resources Committee Minutes – March 12, 2019

Director Lesa R. McIntosh called to order the Legislative/Human Resources Committee at 8:15 a.m. in the Training Resource Center. Director William B. Patterson was present at roll call. Chair John A. Coleman was absent (excused). Staff present included General Manager Alexander R. Coate, General Counsel Craig S. Spencer, Manager of Legislative Affairs Marlaigne K. Dumaine, Manager of Human Resources Laura A. Acosta, Manager of Customer and Community Services Andrew L. Lee, Customer Services Manager Latrice F. King, Diversity and Inclusion Officer Dorian West Blair, Special Assistant to the General Manager Douglas I. Wallace, and Secretary of the District Rischa S. Cole.

**Public Comment.** None.

**Legislative Update.** Manager of Legislative Affairs Marlaigne K. Dumaine provided an overview of the bills in Legislative Report No. 01-19 and an update on the status of safe drinking water fund legislation. Ms. Dumaine reported on budget and policy bills that have been introduced and may serve as vehicles for legislative action on a safe drinking water fund. She said staff will gather information on all proposed safe drinking water legislation and measures, perform evaluations in the context of the April 24, 2018 Board-adopted policy on *Assessing Statewide Retail Water User Surcharge Proposals*, and provide an update to the Board at a future meeting. It was moved by Director Patterson, seconded by Director McIntosh and carried (2-0) to forward the staff recommendations for the legislative report to the full Board. Director John A. Coleman was absent (excused).

**Annual Diversity & Inclusion Program Report.** Diversity and Inclusion Officer Dorian West Blair presented a progress update on FY18 program goals and areas for improvement, an overview of the District's workforce compared to county averages for minority representation, and plans for the proposed FY19 program. In FY18, the District established a placement goal for seven of the 22 job groups where the incumbency of minorities was below availability (Rangers, Pipeline Maintenance, Heavy Equipment/Truck Operators, Electrical/Structural Maintenance, Mechanical Maintenance, Service Maintenance and Supervising Engineering) and achieved its placement goal for Heavy Equipment/Truck Operators. The District also made progress on its protected veteran hiring benchmark and its utilization goal for individuals with disabilities (IWD). Total job placements throughout the District (hires and promotions) were 364, including 102 women and 178 minorities. For FY19, the minority placement goals remain for the seven job groups. However, despite meeting the goal in FY18, there is still a placement goal for Heavy Equipment/Truck Operators in FY19 due to the time needed to address a 20 percent shortfall between incumbency and availability. Also in FY19, there is a new female placement goal for the Electrical/Structural Maintenance job group. Ms. West Blair reviewed the barriers to reaching minority placement goals



in the seven job groups, and to meeting hiring benchmarks for protected veterans and utilization goals for IWD for the majority of job groups. She outlined the proposed actions to address these challenges in FY19 which include working with departments on best practices in affirmative action, developing and posting test preparation content and resources on the District's jobs web page, evaluating expansion of the Technical Trades Apprenticeship Program, and having the newly formed Diversity Committee assist the Diversity and Inclusion Office with achieving FY19 goals. Ms. West Blair responded to Committee questions regarding the makeup of the Diversity Committee, the District's hiring practices, and partnerships with local community colleges. Addressing the Committee was Mark Foley, President, AFSCME Local 2019 who commented on the union's 2017 proposal to assist the District with increasing veteran hiring rates. The Committee asked staff to identify opportunities to partner with Contra Costa College, continue reviewing hiring practices for ways to increase minority hires, and consider the Local 2019 proposal on veteran hiring. It was moved by Director Patterson, seconded by Director McIntosh and carried (2-0) to forward the report to the full Board. Director John A. Coleman was absent (excused).

**Discontinuance of Field Payment Collections.** Customer Services Manager Latrice F. King presented information on the District's plan to stop accepting payments from customers in the field effective March 13 and the alternative practices being considered to minimize customer impacts. The District currently provides field payment collection services primarily to prevent water service interruptions by allowing customers to pay when a staff person is onsite to disconnect service for non-payment. A recent security incident involving a District employee collecting payments in the field prompted a reassessment of the practice and its inherent risks. In 2018, the District processed 4,240 payments from 2,874 accounts for a total of \$989,210. While this proved to be a valuable service for customers who utilized this payment option, the risk to staff due to the presence of cash outweighs the benefits. Ms. King reviewed survey results from 21 water utilities which revealed 19 utilities no longer provide this service primarily due to staff safety concerns. She also reviewed the tenets of Senate Bill 998 which stipulate that water systems may not discontinue residential water service for account delinquency until payments are delinquent for at least 60 days and confirmed that the District's current collection path and practice of discontinuing water service for non-payment is consistent with the bill. Ms. King reported that after March 13, the District will begin conducting targeted outreach on this topic. Staff will hand deliver updated 48-hour notices and inform customers about alternative payment options, including the location of neighborhood Pay Stations. Addressing the Committee was Mark Foley, President, AFSCME Local 2019, who expressed the union's support for the proposed approach and thanked staff for working with the union to address this issue. The Committee thanked staff and reminded them to be sensitive to customers who may have depended on this service (i.e. seniors, disabled customers and/or homebound individuals).

**Adjournment.** Director McIntosh adjourned the meeting at 9:07 a.m.

ARC/RSC