



THE METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA

# Board Action

- **Board of Directors**  
***Legal and Claims Committee***

2/13/2024 Board Meeting

7-11

## Subject

Approve: (1) changes to the Metropolitan Water District 457(b) and 401(k) deferred compensation plans to establish an investment committee and adopt investment committee bylaws; and (2) amendments necessary to conform the plans and the Metropolitan Administrative Code to the proposed changes, current law, practices, and regulations; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

## Executive Summary

The proposed changes will establish a new Deferred Compensation Investment Committee (DCIC) with governing bylaws (DCIC bylaws) to determine investment-related matters affecting plan assets of the Metropolitan Water District 457(b) and 401(k) deferred compensation plans (the Plans). Proposed amendments will conform the Plans and the Metropolitan Water District Administrative Code (MWD Administrative Code) to the proposed changes in governance of the Plans and conform the Plans to current law, practices, and regulations. The Plan Administrator's duties will be realigned to non-investment-related matters. The Board will continue as the plan fiduciary retaining its ultimate authority over the Plans. These changes will necessarily result in dissolving certain components of the current governance structure, namely the Deferred Compensation Advisory Committee (DCAC), the Trustee Committee, and the Plans' trust agreements.

## Time/Urgency

Delayed adoption of the proposed changes would fail to establish an investment committee and realign the Plan Administrator's duties and would postpone updating the Plans and MWD Administrative Code to change the plan governance and conform the Plans to current law, practices, and regulations.

## Proposed Action(s)/Recommendation(s) and Options

### Staff Recommendation:

#### Option #1

Approve: (1) changes to the Metropolitan Water District 457(b) and 401(k) deferred compensation plans to establish an investment committee and adopt investment committee bylaws; and (2) amendments necessary to conform the plans and the Metropolitan Administrative Code to the proposed changes, current law, practices, and regulations.

**Fiscal Impact:** No significant fiscal impacts are expected. Implementation of after-tax Roth accounts could attract new participants, thus increasing the gross match on 401(k) plan accounts. However, as the 401(k) plan participation rate exceeds 90% and the pre-tax option is the primary advantage sought by most participants, fiscal impacts should be negligible.

**Business Analysis:** Approval would establish an investment committee and realign the Plan Administrator's duties and would update the Plans and MWD Administrative Code to change the plan governance and conform the Plans to current law, practices, and regulations.

### **Option #2**

Do not approve: (1) changes to the Metropolitan Water District 457(b) and 401(k) deferred compensation plans to establish an investment committee and adopt investment committee bylaws; and (2) amendments necessary to conform the plans and the Metropolitan Administrative Code to the proposed changes, current law, practices, and regulations.

**Fiscal Impact:** None

**Business Analysis:** Not adopting the proposed changes would fail to establish an investment committee and realign the Plan Administrator's duties and would postpone updating the Plans and MWD Administrative Code to change the plan governance and conform the Plans to current law, practices, and regulations.

### **Alternatives Considered**

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An alternative governance restructure was considered, comprised of three components. First, still maintaining the DCAC as an advisory body, but adopting bylaws clarifying its roles and functions. Second, delegating the role of financial fiduciary from the Plan Administrator to the Trust Committee (a three-member, management-level committee established in 2107 by the General Manager), which would have its own bylaws and meetings; meanwhile, each member would continue to serve in an advisory capacity on the DCAC. Third, as with the current proposal, realigning the Plan Administrator's duties to the role of administrative fiduciary. This alternative was rejected because it would not give members of the District's employee bargaining units, who serve on the DCAC, a vested stake in managing the Plans' assets and because having two committees would significantly increase administrative burdens across the board for staff, committee members, and third-party service providers.

### **Applicable Policy**

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Metropolitan Water District Administrative Code Section 6810: Employee Deferred Compensation and Savings Plans

The Metropolitan Water District of Southern California 401(k) Savings Plan

The Metropolitan Water District of Southern California Deferred Compensation Plan

Metropolitan Water District Administrative Code Section 11104: Delegation of Responsibilities

### **Related Board Action(s)/Future Action(s)**

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There are no related board actions or future actions as part of the proposed restructure of governance changes or the proposed amendments to the Plans or the MWD Administrative Code.

### **Summary of Outreach Completed**

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The current Interim Plan Administrator reached out to Metropolitan's bargaining units to clarify and obtain support for the current proposed changes as presented in this board letter.

### **California Environmental Quality Act (CEQA)**

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#### **CEQA determination for Option #1:**

The proposed action is not defined as a project under CEQA because it involves organizational, maintenance, or administrative activities; personnel-related actions; and/or general policy and procedure making that will not result in direct or indirect physical changes in the environment. (Public Resources Code Section 21065; State CEQA Guidelines Section 15378(b)(2) and (5).)

#### **CEQA determination for Option #2:**

None required

## Details and Background

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### Background

#### A. Deferred Compensation Investment Committee

Board approval of MWD Administrative Code amendments and DCIC bylaws is required to establish the DCIC. The following summarizes these proposed actions:

**MWD Code Amendments:** Approve the following proposed amendments to the MWD Administrative Code, Division VI, Section 8 to establish the DCIC.

- Update the Plans' effective date to January 1, 2024. (Sections 6811(a) and (b); 6819.)
- Delete the Trustee Committee. (Sections 6814, 6815, 6816(a).)
- Affirm that the Plan Administrator is indemnified by Metropolitan with respect to liability or loss except due to willful misconduct or gross negligence; this is a minor cleanup amendment. (Section 6815.)
- Underscore the right of Metropolitan's bargaining units to meet and confer if the Board of Directors ever were to consider terminating the Plans. (Section 6816(a).)
- Substitute "DCIC" for "DCAC" throughout Division VII, Section 8. (Sections 6818, 6814, 6815.)

See **Attachment 1** - MWD Administrative Code (with changes marked) and **Attachment 2** - MWD Administrative Code (clean copy).

**DCIC Bylaws:** Adopt the proposed DCIC bylaws to govern the new committee. The bylaws cover committee composition, fiduciary duties, officers, meetings, investment-related duties, committee policies and procedures, advisory duties, disclosure of conflicts, and indemnification by Metropolitan. (**Attachment 3**)

These board actions will realign the Plan Administrator's duties to non-investment-related matters. These duties mainly include determining employee eligibility, establishing non-investment plan features, deciding death benefit claims, procuring plan service providers, designing communication campaigns, reviewing and updating the Plans, paying invoices, maintaining plan records, and directing the external corporate Trustee, who holds the Plan's assets. The Board will retain its authority to delegate its fiduciary duties, establish the Plans' terms and specifications, and terminate the Plans. These changes in governance of the Plans will necessarily result in dissolving the DCAC, the Trustee Committee, and the Plans' 1985 and 1997 trust agreements, originally executed to establish and operate the Plans in-house. (**Attachments 4 and 5**)



#### B. 2024 Plan Amendments

Board approval of the proposed amendments to the Plans is required to conform the Plans to the proposed changes in governance of the Plans and to current law, practices, and regulations. The following summarizes the proposed amendments:

- Adopting Setting Every Community Up for Retirement Security Act provisions increasing the required beginning date from age 70½ to 72 and allowing \$5,000 distributions for new births and adoptions.
- Adopting a Bipartisan Miner's Act provision lowering the age from 70½ to 59½ for 457(b) in-service distributions, thus aligning with the 401(k) plan age in-service age minimum for plan participants.
- Adopting Coronavirus Aid, Relief, and Economic Security Act provisions that allowed hardship distributions and loans of up to \$100,000 during the COVID-19 crisis.
- Establishing after-tax Roth option for elective deferrals and rollover accounts and loan availability from Roth accounts. The new Roth feature is expected to be implemented in the April-May 2024 timeframe.
- Aligning the standard for indemnifying the Plans' fiduciaries to MWD Administrative Code Section 6815.
- Clarifying the Plan Administrator's role to interpret the Plans and determine administrative claims.

- Affirming the General Counsel's role with respect to plan-related litigation in alignment with MWD Administrative Code Section 6433.
- Clarifying the Plans' operation rules for ordering excess deferral corrections, minimum rollovers, default beneficiaries, requiring spousal consent, student intern hours, and former employee roll-ins.
- Conforming the Plans to the proposed DCIC bylaws.

See **Attachment 6** - MWD 457(b) Deferred Compensation Plan (with changes marked) and **Attachment 7** – 457(b) MWD Deferred Compensation Plan (clean copy). See **Attachment 8** - MWD 401(k) Deferred Compensation Plan (with changes marked) and **Attachment 9** - MWD 401(k) Deferred Compensation Plan (clean copy). See also **Attachment 10** – Summary Charts of Proposed Plan Amendments.

	2/8/2024
Katano Kasaine	Date
Assistant General Manager/Chief Financial Officer	
	2/8/2024
Adel Hagekhilil	Date
General Manager	

**Attachment 1 – MWD Administrative Code excerpts (with changes marked)**

**Attachment 2 – MWD Administrative Code excerpts (clean copy)**

**Attachment 3 – MWD Bylaws of the Deferred Compensation Investment Committee**

**Attachment 4 – MWD 401(k) Trust Agreement (November 18,1997)**

**Attachment 5 – MWD 457(b) Trust Agreement (July 1,1985)**

**Attachment 6 – MWD 457(b) Deferred Compensation Plan (with changes marked)**

**Attachment 7 – MWD 457(b) Deferred Compensation Plan (clean copy)**

**Attachment 8 – MWD 401(k) Deferred Compensation Plan (with changes marked)**

**Attachment 9 – MWD 401(k) Deferred Compensation Plan (clean copy)**

**Attachment 10 – Summary Charts of Proposed Plan Amendments**

## Chapter 8

### EMPLOYEE DEFERRED COMPENSATION AND SAVINGS PLANS

#### Article 1

**THE METROPOLITAN WATER DISTRICT OF SOUTHERN  
CALIFORNIA 457(b) DEFERRED COMPENSATION PLAN  
AND  
THE METROPOLITAN WATER DISTRICT OF SOUTHERN  
CALIFORNIA 401(k) SAVINGS PLAN**

- 6810. Official Names.
- 6811. Establishment of the Plans.
- 6812. Purposes.
- 6813. Administration by the General Manager.
- 6814. Immunities.
- 6815. Indemnification.
- 6816. Amendment, Termination or Merger.
- 6817. Definitions.
- 6818. Deferred Compensation Investment Advisory Committee
- 6819. Effective Dates.

#### **§ 6810. Official Names.**

- (a) The official name of the District's 401(k) defined contribution profit-sharing plan is "The Metropolitan Water District of Southern California 401(k) Savings Plan" ("401(k) Plan").
- (b) The official name of the District's 457(b) deferred compensation plan is "The Metropolitan Water District of Southern California Deferred Compensation Plan" ("457(b) Plan").

#### **§ 6811. Establishment of the Plans.**

- (a) The Board of Director's established a profit-sharing plan with a cash or deferral arrangement known as "The Metropolitan Water District of Southern California Savings Plan" ("Savings Plan I") effective July 1, 1985 (M.I. 35632). The Board of Director's also established another profit-sharing plan with a cash or deferral arrangement known as "Savings Plan II" applicable to a separate group of employees effective October 1, 1985 (M.I. 35816). As a result, the Board of Director's merged "Savings Plan I" into "Savings Plan II" and renamed it "The Metropolitan Water District of Southern California Consolidated Savings Plan" effective January 1, 2006 (M.I.

46592)(“Consolidated Plan”) and incorporated it into Division VI, Chapter 7, Article 6 of this code. The Consolidated Plan has been amended and restated from time to time. It was ~~most recently~~ restated and renamed “The Metropolitan Water District of Southern California 401(k) Savings Plan” (the “401(k) Plan”) effective August 1, 2018. It was most recently restated effective January 1, 2024.

(b) The Board of Director's established the “Deferred Compensation Plan” effective November 1, 1976 (Reso. No. 7683)(“the Plan”). The Plan was restated by Board of Director's effective April 1, 1983 (M.I. 34625). Board of Director's caused the Plan to be codified in Division VI, Chapter 7, Article 8 of ~~the~~ this code and named the "Metropolitan Water District of Southern California 1997 Deferred Compensation Plan" (“1997 Plan”) effective November 18, 1997 (M.I. 42712). The 1997 Plan has been amended from time to time. The plan was ~~most recently~~ restated and renamed “The Metropolitan Water District of Southern California 457(b) Deferred Compensation Plan” (the “457(b) Plan”) effective August 1, 2018. It was most recently restated effective January 1, 2024.

~~(b)~~(c) The District is authorized to and shall establish the governing terms and specifications of the 401(k) Plan in a written plan document outside the Administrative Code. A copy of the 401(k) Plan is retained by the General Manager and will be made available upon request to Employees and other interested parties.

~~(c)~~(d) The District is authorized to and shall establish the governing terms and specifications of the 457(b) Plan in a written plan document outside the Administrative Code. A copy of the 457(b) Plan is retained by the General Manager and will be made available upon request to Employees and other interested parties.

## **§ 6812. Purposes.**

- (a) The 401(k) Plan is a tax-qualified governmental defined contribution plan under Internal Revenue Code ("IRC") Sections 401(a) and 414(d). The 401(k) Plan is a profit sharing plan pursuant to IRC Section 401(a)(27) that has a grandfathered cash or deferral arrangement under Code § 401(k).
- (b) The 457(b) Plan was established, and is maintained, as an eligible governmental deferred compensation plan meeting the requirements of IRC Sections 457(b) and 457(e)(1)(A) and Treas. Reg. Sections 1.457-3 through 1.457-10. Further, the Plan meets the definition of "qualified plan" under Code Section 409A(d)(2)(A), and is therefore exempt from the nonqualified deferred compensation requirements of Code Section 409A.

- (c) The purpose of the 401(k) Plan and the 457(b) Plan (referred to herein after as “the 401(k) and 457(b) Plans” or “the 401(k) or 457(b) Plans”) is to attract and retain officers and employees by permitting them to enter into agreements with the District which will provide benefits on retirement, death, disability, separation from service or as otherwise permitted by law.

**§ 6813. Administration by General Manager.**

The District is the Administrator of the 401(k) and 457(b) Plans and has designated the General Manager to carry out the powers, duties and responsibilities of the Plan Administrator. The General Manager shall represent the District in all matters concerning administration of the 401(k) and 457(b) Plans. Further, the General Manager shall have full power and authority:

1) to adopt rules and regulations for the administration of the 401(k) and 457(b) Plans provided they are not inconsistent with either plan, respectively; 2) to interpret, alter, amend or revoke any rules and regulations so adopted; 3) to appoint such administrative agents, or persons as they deem advisable or desirable to carry out the terms and conditions of the 401(k) and 457 (b) Plans, as applicable; and, 4) to exercise any other powers, duties and responsibilities as are provided in the 401(k) and 457(b) Plans, respectively, for purposes of their orderly administration. However, the exercise of such power and authority does not preclude employees or their representatives from either consulting or meeting and conferring with the Employee Relations Officer, as appropriate, about the practical consequences that the exercise of such power or authority may have on wages, hours, and other terms and conditions of employment subject to Section 6102 (Employee Rights).

**§ 6814. Immunities.**

- (a) Neither the District, its Directors, nor its Employees shall be liable: 1) for any action taken or not taken with respect to the 401(k) or 457(b) Plans, except for its or their own gross negligence or willful misconduct;
- (b) Neither the District, nor its Directors, nor its Employees shall be personally liable upon any contract, agreement or other instrument made or executed for administration of the 401(k) or 457(b) Plans.

The District, its Board of Directors, each Employee thereof, specifically including the General Manager, and any other persons to whom the General Manager delegates or assigns any duty with respect to the 401(k) or 457(b) Plans, may rely and shall be fully protected in acting in good faith upon: 1) the advice of counsel, who may be counsel for the District; 2) the records of the District; 3) the opinion, certificate, valuation, report, recommendation, or determination of the ~~Trustee Committee or any member thereof, the~~ Investment Advisor, the Deferred Compensation ~~Investment Advisory~~ Committee or any member thereof, or the District's General Auditor; or, 4) any certificate, statement or other representation made by or any information furnished by an

Employee, Participant, Beneficiary, Alternate Payee, ~~Trustee Committee or any member thereof,~~ ~~the~~ Deferred Compensation ~~Investment Advisory~~ Committee or any member thereof, or Investment Advisor, concerning any fact required to be determined under any of the provisions of the 401(k) or 457(b) Plans.

**§ 6815. Indemnification.**

The District will indemnify, defend and hold harmless members of the Board of Directors, the General Manager, ~~the Plan Administrator,~~ or any Employees who have administrative responsibility under the 401(k) or 457(b) Plans, ~~the Trustee Committee or any member thereof,~~ and the Deferred Compensation ~~Investment Advisory~~ Committee or any member thereof, with respect to any liability, loss, damage or expense resulting from any act or omission, except willful misconduct or gross negligence, in their official capacities in the administration ~~or management~~ of the ~~assets of the~~ 401(k) or 457(b) Plans, including attorney, accountant and advisory fees and all other expenses reasonably incurred in their defense.

**§ 6816. Amendment, Termination or Merger.**

(a) The District reserves the right at any time to terminate the 401(k) or 457(b) Plans, in whole or in part, or as to any designated group of Employees, Participants, Beneficiaries, or to amend the 401(k) or 457(b) Plans, in whole or in part. Any termination of the 401(k) Plan or 457(b) Plan shall be expressed in an instrument executed by the District on the order of its Board of Directors ~~and filed with the Trustee Committee and filed with the Plan Administrator,~~ and shall become effective as of the date designated in such instrument or, if no date is so designated, on its execution. If either of the 401(k) Plan or 457(b) Plan is terminated by the District, accounts in the terminating plan shall be distributed, to Participants, Beneficiaries, and Alternate Payees, as applicable. Distributions will be made in accordance with the applicable tax law. However, the exercise of such right to terminate the 401(k) or 457(b) Plans does not preclude employees or their representatives from either consulting or meeting and conferring with the Employee Relations Officer, as appropriate, about the practical consequences that the exercise of such power or authority may have on wages, hours, and other terms and conditions of employment subject to Section 6102 (Employee Rights).

(a)(b) The General Manager may, at any time and from time to time, amend the Plans in whole or in part to ensure compliance with applicable laws and regulations and further the administration of the Plans. However, no Plan amendment may authorize or permit any portion of the assets held under the Plans to be used for or diverted to a purpose other than the exclusive benefit of Participants or Beneficiaries, except to the extent such assets are used to pay taxes or administrative expenses of the Plans. An amendment also may not cause or permit any portion of the assets held under the Plans to revert to or become

property of the District. Nor may the General Manager amend the Plans to effectuate a termination.

~~(b)(c)~~ In the case of any merger or consolidation with, or transfer of assets or liabilities to, any other plan, each Participant, Beneficiary, or Alternate Payee in the 401(k) or 457(b) Plans, as applicable, will receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit the Participant, Beneficiary, or Alternate Payee would have been entitled to receive immediately before the merger, consolidation, or transfer.

**§ 6817. Definitions.**

In the event of any inconsistencies between the provisions of this Chapter 8 and the IRS Code of the 401(k) and 457(b) Plans, the terms of the IRS Code and the 401(k) and 457(b) Plans shall govern and control.

**§ 6818. Deferred Compensation Investment~~Advisory~~ Committee.**

A Deferred Compensation Investment~~Advisory~~ Committee may be established to manage the assets of the 401(k) and 457 Plans and when reasonable and appropriate, may advise the General Manager concerning policies and guidelines relating to the administration of the 401(k) and 457(b) Plans and provide input on 401(k) Plan and 457(b) Plan amendments. Representatives on the Deferred Compensation Investment~~Advisory~~ Committee so qualified shall be allowed time off without loss of compensation or benefits when they are participating in committee meetings. The General Manager shall give due consideration to said advice, but shall not be bound by any such advice. Members of the Deferred Compensation Investment~~Advisory~~ Committee shall serve without compensation.

**§ 6819. Effective Dates.**

The effective date of the 401(k) Plan restatement shall be January 1, 2024. ~~August 1, 2018.~~  
The effective date of the 457(b) Plan restatement shall be January 1, 2024~~August 1, 2018.~~

## **Chapter 8**

### **EMPLOYEE DEFERRED COMPENSATION AND SAVINGS PLANS**

#### **Article 1**

#### **THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA 457(b) DEFERRED COMPENSATION PLAN AND THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA 401(k) SAVINGS PLAN**

- 6810. Official Names.
- 6811. Establishment of the Plans.
- 6812. Purposes.
- 6813. Administration by the General Manager.
- 6814. Immunities.
- 6815. Indemnification.
- 6816. Amendment, Termination or Merger.
- 6817. Definitions.
- 6818. Deferred Compensation Investment Committee
- 6819. Effective Dates.

#### **§ 6810. Official Names.**

- (a) The official name of the District's 401(k) defined contribution profit-sharing plan is "The Metropolitan Water District of Southern California 401(k) Savings Plan" ("401(k) Plan").
- (b) The official name of the District's 457(b) deferred compensation plan is "The Metropolitan Water District of Southern California Deferred Compensation Plan" ("457(b) Plan").

#### **§ 6811. Establishment of the Plans.**

- (a) The Board of Director's established a profit-sharing plan with a cash or deferral arrangement known as "The Metropolitan Water District of Southern California Savings Plan" ("Savings Plan I") effective July 1, 1985 (M.I. 35632). The Board of Director's also established another profit-sharing plan with a cash or deferral arrangement known as "Savings Plan II" applicable to a separate group of employees effective October 1, 1985 (M.I. 35816). As a result, the Board of Director's merged "Savings Plan I" into "Savings Plan II" and renamed it "The Metropolitan Water District of Southern California Consolidated Savings Plan" effective January 1, 2006 (M.I. 46592)("Consolidated Plan") and incorporated it into Division VI, Chapter 7, Article 6 of

this code. The Consolidated Plan has been amended and restated from time to time. It was restated and renamed “The Metropolitan Water District of Southern California 401(k) Savings Plan” (the “401(k) Plan”) effective August 1, 2018. It was most recently restated effective January 1, 2024.

- (b) The Board of Director's established the “Deferred Compensation Plan” effective November 1, 1976 (Reso. No. 7683)(“the Plan”). The Plan was restated by Board of Director's effective April 1, 1983 (M.I. 34625). Board of Director's caused the Plan to be codified in Division VI, Chapter 7, Article 8 of this code and named the "Metropolitan Water District of Southern California 1997 Deferred Compensation Plan" (“1997 Plan”) effective November 18, 1997 (M.I. 42712). The 1997 Plan has been amended from time to time. The plan was restated and renamed “The Metropolitan Water District of Southern California 457(b) Deferred Compensation Plan” (the “457(b) Plan”) effective August 1, 2018. It was most recently restated effective January 1, 2024.
- (c) The District is authorized to and shall establish the governing terms and specifications of the 401(k) Plan in a written plan document outside the Administrative Code. A copy of the 401(k) Plan is retained by the General Manager and will be made available upon request to Employees and other interested parties.
- (d) The District is authorized to and shall establish the governing terms and specifications of the 457(b) Plan in a written plan document outside the Administrative Code. A copy of the 457(b) Plan is retained by the General Manager and will be made available upon request to Employees and other interested parties.

**§ 6812. Purposes.**

- (a) The 401(k) Plan is a tax-qualified governmental defined contribution plan under Internal Revenue Code ("IRC") Sections 401(a) and 414(d). The 401(k) Plan is a profit sharing plan pursuant to IRC Section 401(a)(27) that has a grandfathered cash or deferral arrangement under Code § 401(k).
- (b) The 457(b) Plan was established, and is maintained, as an eligible governmental deferred compensation plan meeting the requirements of IRC Sections 457(b) and 457(e)(1)(A) and Treas. Reg. Sections 1.457-3 through 1.457-10. Further, the Plan meets the definition of "qualified plan" under Code Section 409A(d)(2)(A), and is therefore exempt from the nonqualified deferred compensation requirements of Code Section 409A.
- (c) The purpose of the 401(k) Plan and the 457(b) Plan (referred to herein after as “the 401(k) and 457(b) Plans” or “the 401(k) or 457(b) Plans”) is to attract and retain officers and employees by permitting them to enter into agreements with the District which will

provide benefits on retirement, death, disability, separation from service or as otherwise permitted by law.

**§ 6813. Administration by General Manager.**

The District is the Administrator of the 401(k) and 457(b) Plans and has designated the General Manager to carry out the powers, duties and responsibilities of the Plan Administrator. The General Manager shall represent the District in all matters concerning administration of the 401(k) and 457(b) Plans. Further, the General Manager shall have full power and authority: 1) to adopt rules and regulations for the administration of the 401(k) and 457(b) Plans provided they are not inconsistent with either plan, respectively; 2) to interpret, alter, amend or revoke any rules and regulations so adopted; 3) to appoint such administrative agents, or persons as they deem advisable or desirable to carry out the terms and conditions of the 401(k) and 457 (b) Plans, as applicable; and, 4) to exercise any other powers, duties and responsibilities as are provided in the 401(k) and 457(b) Plans, respectively, for purposes of their orderly administration. However, the exercise of such power and authority does not preclude employees or their representatives from either consulting or meeting and conferring with the Employee Relations Officer, as appropriate, about the practical consequences that the exercise of such power or authority may have on wages, hours, and other terms and conditions of employment subject to Section 6102 (Employee Rights).

**§ 6814. Immunities.**

- (a) Neither the District, its Directors, nor its Employees shall be liable: 1) for any action taken or not taken with respect to the 401(k) or 457(b) Plans, except for its or their own gross negligence or willful misconduct;
- (b) Neither the District, nor its Directors, nor its Employees shall be personally liable upon any contract, agreement or other instrument made or executed for administration of the 401(k) or 457(b) Plans.

The District, its Board of Directors, each Employee thereof, specifically including the General Manager, and any other persons to whom the General Manager delegates or assigns any duty with respect to the 401(k) or 457(b) Plans, may rely and shall be fully protected in acting in good faith upon: 1) the advice of counsel, who may be counsel for the District; 2) the records of the District; 3) the opinion, certificate, valuation, report, recommendation, or determination of the Investment Advisor, the Deferred Compensation Investment Committee or any member thereof, or the District's General Auditor; or, 4) any certificate, statement or other representation made by or any information furnished by an Employee, Participant, Beneficiary, Alternate Payee, the Deferred Compensation Investment Committee or any member thereof, or Investment Advisor, concerning any fact required to be determined under any of the provisions of the 401(k) or 457(b) Plans.

**§ 6815. Indemnification.**

The District will indemnify, defend and hold harmless members of the Board of Directors, the General Manager, the Plan Administrator, or any Employees who have administrative responsibility under the 401(k) or 457(b) Plans, and the Deferred Compensation Investment Committee or any member thereof, with respect to any liability, loss, damage or expense resulting from any act or omission, except willful misconduct or gross negligence, in their official capacities in the administration or management of the assets of the 401(k) or 457(b) Plans, including attorney, accountant and advisory fees and all other expenses reasonably incurred in their defense.

**§ 6816. Amendment, Termination or Merger.**

- (a) The District reserves the right at any time to terminate the 401(k) or 457(b) Plans, in whole or in part, or as to any designated group of Employees, Participants, Beneficiaries, or to amend the 401(k) or 457(b) Plans, in whole or in part. Any termination of the 401(k) Plan or 457(b) Plan shall be expressed in an instrument executed by the District on the order of its Board of Directors and filed with the Plan Administrator, and shall become effective as of the date designated in such instrument or, if no date is so designated, on its execution. If either of the 401(k) Plan or 457(b) Plan is terminated by the District, accounts in the terminating plan shall be distributed, to Participants, Beneficiaries, and Alternate Payees, as applicable. Distributions will be made in accordance with the applicable tax law. However, the exercise of such right to terminate the 401(k) or 457(b) Plans does not preclude employees or their representatives from either consulting or meeting and conferring with the Employee Relations Officer, as appropriate, about the practical consequences that the exercise of such power or authority may have on wages, hours, and other terms and conditions of employment subject to Section 6102 (Employee Rights).
- (b) The General Manager may, at any time and from time to time, amend the Plans in whole or in part to ensure compliance with applicable laws and regulations and further the administration of the Plans. However, no Plan amendment may authorize or permit any portion of the assets held under the Plans to be used for or diverted to a purpose other than the exclusive benefit of Participants or Beneficiaries, except to the extent such assets are used to pay taxes or administrative expenses of the Plans. An amendment also may not cause or permit any portion of the assets held under the Plans to revert to or become property of the District. Nor may the General Manager amend the Plans to effectuate a termination.
- (c) In the case of any merger or consolidation with, or transfer of assets or liabilities to, any other plan, each Participant, Beneficiary, or Alternate Payee in the 401(k) or 457(b)

Plans, as applicable, will receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit the Participant, Beneficiary, or Alternate Payee would have been entitled to receive immediately before the merger, consolidation, or transfer.

**§ 6817. Definitions.**

In the event of any inconsistencies between the provisions of this Chapter 8 and the IRS Code of the 401(k) and 457(b) Plans, the terms of the IRS Code and the 401(k) and 457(b) Plans shall govern and control.

**§ 6818. Deferred Compensation Investment Committee.**

A Deferred Compensation Investment Committee may be established to manage the assets of the 401(k) and 457 Plans and, when reasonable and appropriate, may advise the General Manager concerning policies and guidelines relating to the administration of the 401(k) and 457(b) Plans and provide input on 401(k) Plan and 457(b) Plan amendments. Representatives on the Deferred Compensation Investment Committee so qualified shall be allowed time off without loss of compensation or benefits when they are participating in committee meetings. The General Manager shall give due consideration to said advice, but shall not be bound by any such advice. Members of the Deferred Compensation Investment Committee shall serve without compensation.

**§ 6819. Effective Dates.**

The effective date of the 401(k) Plan restatement shall be January 1, 2024.  
The effective date of the 457(b) Plan restatement shall be January 1, 2024.

**BYLAWS**  
of the  
**DEFERRED COMPENSATION**  
**INVESTMENT COMMITTEE**  
of

The Metropolitan Water District of Southern California 401(k) Savings Plan and  
The Metropolitan Water District of Southern California 457(b) Deferred Compensation Plan

Effective February 13, 2024

**ARTICLE I. ESTABLISHMENT AND PURPOSE**

Section 1: Establishment. The Board of Directors (the “Board”) of The Metropolitan Water District of Southern California (the “District”) has, by its approval of these Bylaws of the Deferred Compensation Investment Committee (“Bylaws”) at its meeting held on the 13th day of February 2024, formally established the Deferred Compensation Investment Committee (“Committee”).

Section 2: Purpose. The District established and maintains The Metropolitan Water District of Southern California 401(k) Savings Plan (“401(k) Plan”) and The Metropolitan Water District of Southern California 457(b) Deferred Compensation Plan (“457(b) Plan”), referred to collectively herein as “the Plans,” for the purpose of providing retirement benefits to its eligible employees.

The District established the Committee to invest the assets of the Plans. The Committee has the authority and responsibility to invest the assets of the Plans, subject to the duties set forth in Article VI, Section 1, and the terms of the Plans. In addition, the Committee has such authority and responsibilities as the Board may delegate to it from time to time.

The Committee has adopted these Bylaws effective January 1, 2024, to set forth the governance structure and the guidelines it will follow to fulfill its responsibilities under the Plans. These Bylaws will be interpreted in a manner consistent with Plans and, in the event of conflict, the terms of the Plans will govern.

**ARTICLE II. COMPOSITION OF COMMITTEE**

Section 1: Number, Appointment, and Term. The Committee consists of 11 members, as follows: six ex-officio members:

- (1) Human Resources Group Manager;
- (2) Assistant General Manager, Operations or his or her designee;

- (3) Treasury & Debt Manager;
- (4) Assistant General Manager, Chief Financial Officer or Finance Group Manager, as his or her designee;
- (5) General Auditor or his or her designee; and
- (6) Risk Manager;

and five appointed members, one appointed by each of the four bargaining units:

- (1) the Employees' Association of the Metropolitan Water District, AFSCME Local 1902 (aka "AFSCME Local 1902");
- (2) the Management and Professional Employees Association of the Metropolitan Water District, AFSCME Local 1001 (aka "MAPA");
- (3) the Supervisors Association of the Metropolitan Water District of Southern California (aka "SA");
- (4) the Association of Confidential Employees (aka "ACE"); and
- (5) one Retiree who is a participant in the Plans, and is appointed by the Committee.

Each ex officio Committee member will serve for his or her term of office. Each appointed Committee member will serve until his or her resignation, removal, or ceasing to qualify for membership, except that the Plans' retiree member will serve for a limited term of no more than five (5) years, as established by the Committee at the time of his or her appointment.

The Human Resources Benefits Manager and the Human Resource Principal Analyst will attend all Committee meetings and provide the Committee with administrative support. A representative of the District's Office of the General Counsel shall attend all meetings and provide the Committee with legal support and advice.

Section 2: Resignation and Removal. An appointed Committee member may resign or be removed by the appointing authority. Such member's resignation will be effective 30 days after the appointing authority's receipt of written notice of such resignation, or sooner at the appointing authority's discretion. Such member's removal will be effective upon receipt by every individual Committee member of written notice from the appointing authority, or later at the appointing authority's discretion.

Section 3: Qualifications of Members. Each Committee member, except the Plans' retiree member, must be a District employee. In addition, the Committee will, when evaluating candidates for appointment to Committee membership as the Plans' retiree member, consider, among other things, the following:

- (a) Recommendations from District executives;
- (b) The candidate's availability to regularly attend meetings;

- (c) The candidate's experience, training, or education working with retirement plans;
- (d) The candidate's experience, training, or education with regard to the management of investments; and
- (e) The length of the candidate's relationship with the District and the likelihood that such relationship will continue for an extended period of time.

Section 4: Vacancies. Upon a member's resignation, removal or ceasing to qualify for membership, the appointing authority may appoint a successor.

### **ARTICLE III. OFFICERS OF THE COMMITTEE**

Section 1: Appointment of Officers. The Human Resources Group Manager or, in his or her absence, the Assistant General Manager, Chief Financial Officer (or Finance Group Manager as his or her designee) will serve as the Committee's Chairperson. The Chairperson will preside at all Committee meetings, will make subcommittee appointments, and perform such other duties as the Committee may delegate to him or her. The Human Resources Group Manager will be the Committee Secretary and will be responsible for the following functions:

- (a) Oversee the keeping of the minutes of the Committee;
- (b) Execute documents on behalf of the Committee;
- (c) Maintain a permanent record of all Committee minutes and activities;
- (d) Issue formal written correspondence on behalf of the Committee with other entities, groups, or persons; and
- (e) Perform such other administrative support duties as the Committee may delegate to him or her.

Section 2: Term of Office. The Chairperson will hold his or her office as the Chairperson for his or her term of office as Human Resources Group Manager or Assistant General Manager, Chief Financial Officer (or Finance Group Manager as his or her designee). The Secretary will hold his or her office for the term for which he or she was appointed, or until his or her earlier resignation or removal from office by the General Manager.

### **ARTICLE IV. COMMITTEE MEETINGS**

Section 1: Meetings. The Committee will meet at least quarterly. The Chairperson shall set the dates of the regular quarterly meetings. In addition, the Committee may hold special meetings, as well, at such other times and places as it may fix.

Section 2: Quorum. The presence of a majority of the Committee members at a meeting constitutes a quorum, and a quorum is required before the Committee may conduct business at a meeting. The Committee may act by the majority votes cast at a meeting at which there is a

quorum. In the absence of a quorum, the Committee may meet, but may not conduct a vote or decide any issue.

Section 3: Action By Written Consent Without a Meeting. The majority of the full Committee may consent in writing (including e-mail) to any action required or permitted to be taken at any Committee meeting. Any such consent shall have the same force and effect as if such action were taken at a Committee meeting.

Section 4: Meetings by Conference Telephone or Similar Communication Equipment.

Committee members may participate in a meeting by means of conference telephone or by other interactive mediums providing for real-time participation. Participation in a meeting in this manner constitutes attendance at such meeting.

Section 5: Agenda. Committee members must submit items for consideration by the Committee to the Chairperson. The Chairperson will compile all agenda items and related information and present such items and information to the Committee members before the Committee meets to discuss them.

## **ARTICLE V. COMMITTEE POWERS AND DUTIES**

Section 1: Investment Powers and Duties. The Committee will be responsible for and perform any duties with respect to the management of the Plans' assets, and will have all of the discretionary authority necessary to perform those duties, including, but not be limited to, all of the following:

- (a) To establish, maintain, periodically review and approve any amendments the Committee deems necessary or advisable to the Plans' Investment Policy Statement ("IPS"). (i) The purpose of the IPS is to define the Plans' investment goals and objectives, describe the criteria and procedures for initially selecting investment managers, establish measurement procedures and monitor criteria for ongoing evaluation of investment managers, describe ways to address investment managers who fail to satisfy the established criteria, provide appropriate diversification within and among various investment options, and define how any default investment alternatives are selected and when they will be utilized. (ii) The Committee will follow all policies and procedures set forth in the IPS. (iii) In case of any conflict between the terms of these Bylaws and the terms of the IPS, the terms of the IPS will govern.
- (b) To select, periodically evaluate the financial performance of and the reasonableness of fees charged by, and approve any changes to the Plan's investment options in accordance with the IPS.
- (c) To establish and maintain proxy voting policies, cast proxy votes, and direct the Plan Administrator to execute such proxy votes cast.

- (d) To determine investment-related Plan design features.
- (e) To review and approve service provider fees and expenses for appropriateness and reasonableness at least annually.
- (f) To select, retain and monitor investment advisors for the purpose of obtaining second opinions, and to pay such persons' reasonable expenses and reasonable compensation for services from the Plans' trust.

Section 2: Administrative Powers and Duties. The Plan Administrator is the Plan fiduciary with the primary authority and responsibility for the administration of the Plans. However, in addition to the investment powers and duties enumerated in the preceding sections, the Committee will, subject to the Plan Administrator's ultimate authority and responsibility for Plan administration, have the following powers and duties for the administration of the Plans:

- (a) To provide input to the Plan Administrator regarding non-investment related plan features.
- (b) To review and provide input on the selection, performance, and retention of the record keeper, investment advisors, service providers, advisors, consultants, and auditors when requested by the Plan Administrator.
- (c) To review and provide input on plan amendments when requested by the Plan Administrator.

Section 3: General Powers and Duties.

- (a) To establish and maintain such policies and procedures as the Committee determines, are necessary or appropriate for it to carry out its duties hereunder or to otherwise ensure the proper investment of the Plans' assets including, but not limited to, procedures governing plan investments.
- (b) To take all other actions requested or directed by the Board in the furtherance of the duties and responsibilities hereunder, consistent with these Bylaws and governing law as the Board deem necessary or appropriate.

## **ARTICLE VI. FIDUCIARY DUTY AND CONFLICTS OF INTEREST**

Section 1: Fiduciary Duties. The members of the Committee are fiduciaries under Article XVI, Section 17 of the California Constitution. As such, the Committee members must discharge their duties with respect to the Plans:

- (a) Solely in the interest of, and for the exclusive purposes of providing benefits to, the Plans' participants and their beneficiaries and defraying reasonable expenses of administering the Plans;
- (b) With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these

matters would use in the conduct of an enterprise of a like character and with like aims; and

- (c) By diversifying the investments of the Plans so as to minimize the risk of loss and to maximize the rate of return, unless under the circumstances it is clearly not prudent to do so.

Section 2: Statement of Economic Interests. Committee members are required to file a Statement of Economic Interests pursuant to the Political Reform Act.

## **ARTICLE VII. COMPENSATION AND EXPENSES**

Section 1: Compensation. Committee members will not receive compensation directly or indirectly from the Plans' trust for their services rendered with respect to the Plans under these Bylaws.

Section 2: Expenses. Reasonable and direct expenses properly and actually incurred by Committee members and their delegates in connection with the performance of their duties with respect to the Plans will be paid from the Plans' trust if not otherwise reimbursed by the District.

## **ARTICLE VIII. MISCELLANEOUS**

Section 1: Indemnification. The District will indemnify, defend, and hold harmless the Committee members with respect to any liability, loss, damage, or expense resulting from any act or omission, except willful misconduct or gross negligence, in their official capacity as Committee members, including attorney, accountant and advisory fees and all other expenses reasonably incurred in their defense.

Section 2: Amendments. The Committee may, with Board approval, amend these Bylaws from time to time as it deems appropriate.

## **ARTICLE IX. ACKNOWLEDGMENT OF APPROVAL**

The undersigned, Deferred Compensation Committee Secretary, does hereby acknowledge that the foregoing Bylaws were duly approved by the Committee on \_\_\_\_\_, 2024.

Date: \_\_\_\_\_ By: \_\_\_\_\_

Katano Kassaine  
Assistant General Manager/Chief  
Financial Officer and  
Interim Plan Administrator

THE METROPOLITAN WATER DISTRICT OF  
SOUTHERN CALIFORNIA

TRUST AGREEMENT

Effective November 18, 1997, this trust agreement is made and entered into by and between The Metropolitan Water District of Southern California (hereinafter referred to as the "District"), and Roger N. Marumoto, the Trustee. This Trust is established to hold the assets of the Metropolitan Water District of Southern California 1997 Deferred Compensation Plan (the "Plan"). This Trust forms a part of such Plan.

W I T N E S S E T H:

WHEREAS, the District has established the Metropolitan Water District of Southern California 1997 Deferred Compensation Plan; and

WHEREAS, said Plan provides for the establishment of one or more trusts to carry out its purposes by the creation of a fund to which contributions paid under the Plan will be paid and from which benefits under such Plan will be paid; and

WHEREAS, the parties hereto desire to execute a trust agreement which sets forth the rights and duties of the Trustee and the terms and conditions under which said fund is to be established and administered;

NOW, THEREFORE, it is mutually understood and agreed as follows:

ARTICLE I  
ACCEPTANCE OF TRUST

1.1 - Acceptance of Trust by Trustee.

The Trustee hereby accepts the Trust created hereunder and agrees to perform the obligations imposed by this Trust Agreement.

ARTICLE II  
DEFINITIONS

2.1 - Definitions.

Unless the context or subject matter otherwise requires, all terms herein shall be defined in accordance with the Metropolitan Water District of Southern California 1997 Deferred Compensation Plan.

ARTICLE IV  
CONTRIBUTIONS

4.1 - Contributions.

The Trustee shall receive all contributions paid under the Plan in cash or other property acceptable to the Trustee. All contributions so received, together with the income therefrom and any increment thereon, shall be held, managed and administered by the Trustee as a single Trust pursuant to the terms of the Plan without distinction between principal and income. The Trustee shall have no duty to require any contributions to be made to it by the District and shall have no authority to compute any amount to be paid to it by the District nor to determine whether the amounts received by it from the District comply with the Plan or to determine that the assets of the Trust comply with the Plan or to determine that the assets of the Trust are adequate to provide any benefits payable pursuant to the Plan.

ARTICLE V  
PAYMENTS FROM TRUST FUND

5.1 - Payments by Trustee to Participants and Beneficiaries.

All distributions from the Trust shall be made by the Trustee to such persons, in such manner, at such times and in such amounts as the General Manager shall direct and the Trustee shall be under no duty to make inquiry as to whether any distribution directed by the General Manager is made pursuant to the provisions of the Plan. In the event that the General Manager directs that any payment be made only during or until the time a certain condition exists, it shall be the responsibility of the General Manager to notify the Trustee in writing as to the future existence or nonexistence of such condition and any payments made by the Trustee prior to such notification shall as to the Trustee be proper.

5.2 - Trustee Compensation and Expenses.

The Trustee shall be paid no additional compensation for his services as Trustee. The Trustee shall be reimbursed for his expenses that are reasonably necessary and incident to his administration of the Trust. Such expenses shall include counsel fees, if any, incurred by the Trustee for the purpose of determining his responsibilities under the Trust. All such amounts shall be paid to the Trustee from the Trust unless such expenses are paid by the District. The District shall indemnify the Trustee, to the fullest extent permitted by law, against any liability or expense resulting

ARTICLE III  
ACTIONS OF GENERAL MANAGER

3.1 - General Manager.

The General Manager shall administer the Plan. The General Manager may appoint an Investment Manager to direct the investment of Plan assets. If no Investment Manager is appointed, the Trustee shall have sole discretion with respect to investing Plan assets.

3.2 - General Manager Directions to Trustee.

All directions by the General Manager to the Trustee shall be in writing and signed by the General Manager.

3.3 - General Manager Sole Responsibility.

The General Manager shall have sole responsibility for the exercise of his rights and duties as set forth in the Plan, specifically including the determination of the existence, nonexistence, nature and amount of rights and interests of all persons in the Trust.

3.4 - Maintenance of Records.

The General Manager shall have the duty and responsibility to maintain the individual Participant records and to prepare and file all reports and other information required by any federal or state law or regulation relating to the Plan, except for such reports or information returns as are required by law to be prepared and filed by the Trustee.

3.5 - Designation of Agents.

The General Manager shall in his sole discretion have the right to appoint such agents as he may deem necessary to carry out his duties pursuant to the provisions of the Plan and this Trust. The General Manager may notify the Trustee in writing that one or more delegates have been appointed by him to carry out all or a portion of his duties under this Trust. Upon such notification, the Trustee shall be entitled to rely upon actions of such delegate (to the extent of the duties delegated) to the same extent as if the actions were performed directly by the General Manager.

from his service as Trustee, except for liability or expense incurred by reason of his own willful misconduct.

5.3 - Taxes.

The Trustee is authorized, with or without direction from the General Manager, to pay from the Trust assets all real and personal property taxes, income taxes and other taxes of any kind levied or assessed under existing or future laws against the Trust assets. The Trustee shall not be personally liable for any such taxes.

5.4 - Alienation.

Other than as expressly permitted by the Plan, the benefits, proceeds, payments or claims of any Participant or Beneficiary of the Plan payable from the Trust assets shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution or levy of any kind, either voluntary or involuntary. Any attempt to anticipate, alienate sell, transfer, assign, pledge, encumber, garnish, levy or otherwise dispose of or execute upon any right or benefit payable hereunder shall be void. The Trust assets shall not in any manner be liable for or subject to the debts, contracts, liabilities, engagements or torts of any Participant entitled to benefits hereunder and such benefits shall not be considered an asset of the Participant in the event of his or her insolvency or bankruptcy.

5.5 - General Manager Expenses.

No expenses or fees of the General Manager or the District for the administration of the Plan and services in relation thereto for legal and accounting and other similar expenses shall be paid from the Trust assets and all such expenses shall be paid by the District, unless the District determines that any or all of such expenses will be paid by the Trust and such payment does not violate any law.

ARTICLE VI  
INVESTMENT OF TRUST ASSETS

6.1 - Fiduciary Responsibilities

Unless an Investment Manager is appointed by the General Manager, the Trustee shall have full discretion in the exercise of investment authority with regard to the Trust assets and earnings thereon.

## 6.2 - Relationship of Parties.

It is the intent of the District, Trustee, General Manager, and any other person or persons designation under the provisions of Article III that each shall be solely responsible for its own acts or omissions. Except to the extent imposed by the Code, no such party shall have the duty to question whether any other party is fulfilling any or all of the responsibilities imposed upon it by the Plan or the Trust. No such party shall have any liability for a breach of responsibility of another party with respect to the Plan and this Trust.

## ARTICLE VII POWERS OF TRUSTEE

### 7.1 - Powers of Trustee.

Except as otherwise provided by law, the Trustee is authorized and empowered, but not by way of limitation except as specifically set forth:

- (a) To purchase, hold, sell, invest and reinvest assets of the Trust, together with the income therefrom, in stock, (including common, preferred, and convertible preferred stock), evidences of indebtedness (including debentures, convertible debentures and bonds), mortgages, notes (including loans to Participants to the extent authorized under the Plan), mutual fund shares, interests in unit trusts, interests in partnerships, interests in money market funds, time certificates of deposit, commercial paper and other evidences of indebtedness), other securities, and property (personal, real or mixed, and tangible or intangible) the value of which are readily ascertainable and readily marketable;
- (b) To retain in cash or other property unproductive of income, without liability for interest, so much of the Trust assets as may be determined; to deposit cash in any bank and select any bank as custodian; and to cause securities or other property to be registered and / or held in its individual name, either with or without disclosing fiduciary capacity, or in the name of its nominee;
- (c) To manage, control, sell, convey, exchange, partition, divide, subdivide, improve, and repair; to grant options and to sell upon deferred payments; to lease for terms within or extending beyond the duration of this Trust for any purpose, including exploration for and removal of gas or other minerals; to enter

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Trust, showing carrying and market values of such assets, at the close of the period covered by such account; and (2) such information which is within the control of the Trustee, and a certification by the Trustee of the accuracy thereof, as shall be necessary or appropriate for the General Manager to complete all required disclosures and reporting with respect to the Plan and Trust.

### 8.3 - Value of Trust Assets.

For the purposes of this Article, the fair market value of assets in the Trust shall be determined by the Trustee or his delegate based upon such sources of information as it may deem reliable including, but not limited to, information reported in (1) newspapers of general circulation, (2) standard financial periodicals or publications, (3) statistical and valuation services, (4) the records of securities exchanges or brokerage firms deemed by the Trustee to be reliable, (5) independent valuation, or any combination thereof.

## ARTICLE IX RESIGNATION AND REMOVAL OF TRUSTEE

### 9.1 - Method and Procedure.

The Trustee may resign at any time by delivering to the General Manager a written notice or resignation, to take effect at a date specified therein, which shall not be less than 30 days after the delivery thereof, unless such notice shall be waived.

The General Manager shall have the right to remove the Trustee by delivery of a written notice of removal to take effect at a specified time therein, which shall not be less than 30 days after the delivery thereof, unless such notice shall be waived.

In the event the Trustee notifies the General Manager of his intention to resign, or the General Manager removes the Trustee, in accordance with the foregoing provisions of this Article IX, the General Manager shall appoint a successor trustee and in default thereof, such successor trustee may be appointed by a court of competent jurisdiction. The Trustee hereunder shall thereupon deliver to the successor trustee all property of this Trust, less such amounts as said Trustee shall deem necessary to provide for any expenses, compensation and taxes or advances, together with such records as may be reasonably required to enable the successor trustee to properly administer the Trust.

In the case of his resignation or removal, the Trustee shall have the right to a settlement of his account, which may be made, at the option of the Trustee, either (1) by a judicial statement in an action instituted by the Trustee in a court of

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into community oil leases; to create restrictions, easements and other servitudes;

- (d) To compromise, arbitrate or otherwise adjust claims in favor of or against the Trust; and to institute, compromise and defend actions and proceedings;
- (e) To transfer part or all of the money constituting assets of the Trust to and as an investment in any type of interest-bearing account, including those evidenced by time certificates of deposit;
- (f) To appoint agents to carry out those Trustee responsibilities that can be efficiently carried out through an agent; and
- (g) Generally to do all such acts, execute all such instruments, take all such proceedings, and exercise all such rights and privileges with relation to property constituting the Trust assets as if the Trustee were the absolute owner thereof.

### 7.2 - Controversy or Disagreement.

Except as otherwise provided by law, if any controversy arises with respect to this Trust, the Trustee shall take such action as directed by the General Manager or, in the absence of such directions, as it deems advisable, whether by legal proceedings, compromise or otherwise. The Trustee may retain the funds or property involved without liability pending settlement of the controversy.

## ARTICLE VIII ACCOUNTS OF THE TRUSTEE

### 8.1 - Records.

The Trustee or his delegate shall maintain accurate records and accounts of all transactions hereunder, which shall be available at all reasonable times for inspection or audit by any person or persons designated by the General Manager.

### 8.2 - Reports

If the General Manager so directs, the Trustee or his delegate shall submit to the General Manager such interim valuations, reports or other information as the General Manager may reasonably require. Within 90 days following (a) the close of each Plan Year or (b) the effective date of the removal or resignation of the Trustee, the Trustee or his delegate shall file with the General Manager (1) a written account settling forth all transactions effected by it subsequent to the end of the period covered by its last previous account, and listing the assets of the

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competent jurisdiction, or (2) by agreement of settlement between the Trustee and the General Manager.

Upon such settlement, all right, title and interest of such Trustee in the assets of the Trust and all rights and privileges under the Plan and this Trust theretofore vested in such Trustee shall vest in the successor trustee, and thereupon all future liability of such Trustee shall terminate; provided, however, that the Trustee shall execute, acknowledge and deliver all documents and written instruments which are necessary to transfer and convey the right, title and interest in the Trust assets, and all rights and privileges, to the successor trustee.

### 9.2 - Successor Trustee.

In the event the Trustee notifies the General Manager of his intention to resign or the General Manager removes the Trustee, unless the Trust assets attributable to the Participants employed by the District are distributed to or held by another trust qualifying under the applicable provisions of Sections 457 and 501(a) of the Code, the District shall terminate the Plan and the General Manager shall terminate this Trust in accordance with the provisions of the Plan.

## ARTICLE X AMENDMENT AND TERMINATION

### 10.1 - Amendment and Termination.

The General Manager shall have the right at any time and from time to time (1) to modify or amend in whole or in part, by written agreement with the Trustee, any or all of the provisions of this Trust Agreement, or (2) to terminate this Trust Agreement upon 30 days prior notice in writing to the Trustee; and the General Manager hereby covenants and agrees with the Trustee as follows:

- (a) No such termination, modification, or amendment shall have any retroactive effect so as to deprive any Participant of any benefit already vested, except such changes, if any, as may be required to permit this Trust Agreement to meet the applicable requirements of the Code;
- (b) No such termination, modification, or amendment shall permit, prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries, any part of the principal or income of this Trust to be used for, or diverted to, purposes other than the exclusive benefit of Participants and their Beneficiaries. In the event of termination of this Trust, all cash, securities and other property then constituting the assets of the Trust, less any amounts constituting charges and

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expenses payable from the assets of the Trust, shall be paid over or delivered by the Trustee to or on order of the General Manager.

ARTICLE XI  
MISCELLANEOUS

11.1 - Contribution Not Recoverable.

It shall be impossible for any part of the principal or income of this Trust to be used for, or diverted to, purposes other than the exclusive benefit of Participants or their Beneficiaries; provided, however, that notwithstanding this or any other provision of this Trust, if the District Director of Internal Revenue determines that the Plan does not initially meet the requirements of the Code and Regulations, the District shall be entitled to withdraw all contributions theretofore made, in which event this Trust shall thereupon terminate and all right, if any, of the Participants thereunder, shall cease and come to an end with the same effect as if the Trust had not been adopted.

11.2 - Limitation on Participants' Rights.

Participation in this Trust shall not give any employee the right to be retained in the District's employ or any right to interest in this Trust other than as herein provided. The District reserves the right to dismiss any employee without any liability for any claim either against this Trust, except to the extent provided herein, or against the District. All benefits payable hereunder shall be provided solely from the assets of the Trust.

11.3 - Receipt or Release.

Any payment to any Participant or his Beneficiary in accordance with the provisions of this Trust shall, to the extent thereof, be in full satisfaction of all claims against the Trustee, the General Manager and the District and the Trustee may require such Participant or Beneficiary, as a condition precedent to such payment, to execute a receipt and release to such effect.

11.4 - Governing Law.

This Trust Agreement and the Trust hereby created shall be construed, administered and governed in all respects under the laws of the State of California, except to the extent federal law controls; provided, however, that if any provision is susceptible to more than one interpretation, such interpretation shall be given thereto as is consistent with the Trust being a

qualified trust within the meaning of Sections 457 of the Code. If any provision of this instrument shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions hereof shall continue to be fully effective.

11.5 - Headings, etc., Not Part of Agreement.

Headings and subheadings in this Trust Agreement are inserted for convenience of reference only and are not to be considered in the construction of the provisions hereof.

11.6 - Instrument in Counterparts.

This Trust Agreement has been executed in several counterparts, each of which shall be deemed an original and said counterparts shall constitute but one and the same instrument, which may be sufficiently evidenced by any one counterpart.

11.7 - Successors and Assigns.

This Trust Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns.

11.8 - Masculine Gender Includes Feminine and Neuter.

As used in this Trust Agreement, the masculine gender shall include the feminine and neuter genders.

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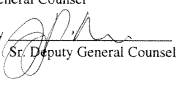
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IN WITNESS WHEREOF, the undersigned have executed this Trust Agreement effective as of the later day set forth below.

Approved as to Form:

N. Gregory Taylor  
General Counsel

By

  
Sr. Deputy General Counsel

THE METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA

EXECUTED November 19, 1997

BY

  
General Manager

TRUSTEE:

EXECUTED November 19, 1997

BY

  
Treasurer

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# 2nd Amdmt to 1985 Savings Plan II Trust Agmt – Att A.

**SECOND AMENDMENT TO  
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA  
SAVINGS PLAN II TRUST AGREEMENT**

The Metropolitan Water District of Southern California Savings Plan II Trust Agreement ("Agreement")(Attachment A) is hereby amended in the following respects:

1. Subsection 2.1 of Article II – Definitions of the Agreement is hereby amended to read as follows:

**Strikeout/Underline Version:**

**2.1 – Definitions**

Unless the context or subject matter otherwise requires, all terms herein shall be defined in accordance with The Metropolitan Water District of Southern California Savings Plan II.

"Trustee" shall mean any person or joint committee of persons appointed by the General Manager to hold in trust and administer some or all of the assets of this Savings Plan.

**Final Version:**

**2.1 – Definitions**

Unless the context or subject matter otherwise requires, all terms herein shall be defined in accordance with The Metropolitan Water District of Southern California Savings Plan II.

"Trustee" shall mean any person or joint committee of persons appointed by the General Manager to hold in trust and administer some or all of the assets of this Savings Plan.

**THE METROPOLITAN WATER DISTRICT OF  
SOUTHERN CALIFORNIA**

By: \_\_\_\_\_  
Jeffrey Kightlinger  
General Manager

Executed: \_\_\_\_\_, 2017

Approved as to Form:

Marcia L. Scully  
General Counsel

By: Marianne D. Greene  
Marianne Greene  
Senior Deputy General Counsel

Date: 6/29, 2017

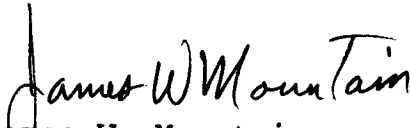


# *The Metropolitan Water District of Southern California*

November 27, 1985

To: **Acting Controller David I. Furukawa**  
From: **Deputy General Counsel James W. Mountain**  
Subject: **Savings Plan II Trust Agreement**

Enclosed for your custody is the original Trust Agreement for the MWD Savings Plan II executed by the General Manager and Richard D. Sjoberg, Trustee.

  
James W. Mountain

JWM:gld  
Encl.

cc w/encl.:

R. D. Sjoberg (2)  
G. D. Leddy  
P. M. Moyer

cc w/o encl.:

W. J. Abbott

RECEIVED

NOV 27 1985

CONTROLLER'S OFFICE  
THE METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA

METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA  
SAVINGS PLAN II  
TRUST AGREEMENT

METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA  
SAVINGS PLAN II

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SIGNATURES

METROPOLITAN WATER DISTRICT OF  
SOUTHERN CALIFORNIA

Effective October 1, 1985, this trust agreement is made and entered into by and between The Metropolitan Water District of Southern California, (hereinafter referred to as the "District"), and Richard D. Sjoberg, as Trustee. This Trust is established to hold the assets of the Metropolitan Water District of Southern California Savings Plan II (the "Plan"). This Trust forms a part of such Plan.

W I T N E S S E T H:

WHEREAS, the District has established the Metropolitan Water District of Southern California Savings Plan II; and

WHEREAS, said Plan provides for the establishment of one or more trusts to carry out its purposes by the creation of a fund to which contributions paid under the Plan will be paid and from which benefits under such Plan will be paid; and

WHEREAS, the parties hereto desire to execute a trust agreement which sets forth the rights and duties of the Trustee and the terms and conditions under which said fund is to be established and administered;

NOW, THEREFORE, it is mutually understood and agreed as follows:

ARTICLE I  
ACCEPTANCE OF TRUST

1.1 - Acceptance of Trust by Trustee.

The Trustee hereby accepts the Trust created hereunder and agrees to perform the obligations imposed by this Trust Agreement.

ARTICLE II  
DEFINITIONS

2.1 - Definitions.

Unless the context or subject matter otherwise requires, all terms herein shall be defined in accordance with the Metropolitan Water District of Southern California Savings Plan II.

ARTICLE III  
ACTIONS OF GENERAL MANAGER

3.1 - General Manager.

The General Manager shall administer the Plan. The General Manager, in conjunction with any Investment Manager selected by the General Manager, shall have sole discretion with respect to choosing the

Investment Vehicles in which Participants may cause their Tax Deferred Election Contributions to be invested.

### 3.2 General Manager Directions to Trustee.

All directions by the General Manager to the Trustee shall be in writing and signed by the General Manager.

### 3.3 - General Manager Sole Responsibility.

The General Manager shall have sole responsibility for the exercise of his rights and duties as set forth in the Plan, specifically including the determination of the existence, nonexistence, nature and amount of rights and interests of all persons in the Trust.

### 3.4 - Maintenance of Records.

The General Manager shall have the duty and responsibility to maintain the individual Participant records and to prepare and file all reports and other information required by any federal or state law or regulation relating to the Plan, except for such reports or information returns as are required by law to be prepared and filed by the Trustee.

### 3.5 - Designation of Agents.

The General Manager shall in his sole discretion have the right to appoint such agents as it may deem necessary to carry out his duties pursuant to the provisions of the Plan and this Trust. The General Manager may notify the Trustee in writing that one or more delegates have been appointed by him to carry out all or a portion of his duties under this Trust. Upon such notification the Trustee shall be entitled to rely upon actions of such delegate (to the extent of the duties delegated) to the same extent as if the actions were performed directly by the General Manager.

## ARTICLE IV CONTRIBUTIONS

### 4.1 - Contributions.

The Trustee shall receive all contributions paid under the Plan in cash or other property acceptable to the Trustee. All contributions so received, together with the income therefrom and any increment thereon, shall be held, managed and administered by the Trustee as a single Trust pursuant to the terms of the Plan without distinction between principal and income. The Trustee shall have no duty to require any contributions to be made to it by the District and shall have no authority to compute any amount to be paid to it by the District nor to determine whether the amounts received by it from the District comply with the Plan or to determine that the assets of the Trust are adequate to provide any benefits payable pursuant to the Plan.

## ARTICLE V PAYMENTS FROM TRUST FUND

### 5.1 - Payments by Trustee to Participants and Beneficiaries.

All distributions from the Trust shall be made by the Trustee to such persons, in such manner, at such times and in such amounts as the General Manager shall direct and the Trustee shall be under no duty to make inquiry as to whether any distribution directed by the General Manager is made pursuant to the provisions of the Plan. In the event that the General Manager directs that any payment be made only during or until the time a certain condition exists, it shall be the responsibility of the General Manager to notify the Trustee in writing as to the future existence or non-existence of such condition and any payments made by the Trustee prior to such notification shall as to the Trustee be proper.

### 5.2 - Trustee Compensation and Expenses.

The Trustee shall be paid no additional compensation for his services as Trustee. The Trustee shall be reimbursed for his expenses that are reasonably necessary and incident to its administration of the Trust. Such expenses shall include counsel fees, if any, incurred by the Trustee for the purpose of determining his responsibilities under the Trust. All such amounts shall be paid to the Trustee from the Trust unless such expenses are paid by the District.

### 5.3 - Taxes.

The Trustee is authorized, with or without direction from the General Manager, to pay from the Trust assets all real and personal property taxes, income taxes and other taxes of any kind levied or assessed under the existing or future laws against the Trust assets. The Trustee shall not be personally liable for any such taxes.

### 5.4 - Alienation.

Other than as expressly permitted by the Plan, the benefits, proceeds, payments or claims of any Participant or Beneficiary of the Plan payable from the Trust assets shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution or levy of any kind, either voluntary or involuntary. Any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, garnish, levy or otherwise dispose of or execute upon any right or benefit payable hereunder shall be void. The Trust assets shall not in any manner be liable for or subject to the debts, contracts, liabilities, engagements or torts of any Participant entitled to benefits hereunder and such benefits shall not be considered an asset of the Participant in the event of his insolvency or bankruptcy.

### 5.5 - General Manager Expenses.

No expenses or fees of the General Manager or the District for the administration of the Plan and services in relation thereto for legal and accounting and other similar expenses shall be paid from the Trust assets and all such expenses shall be paid by the District, unless the District

determines that any or all of such expenses will be paid by the Trust and such payment does not violate any law.

## ARTICLE VI INVESTMENT OF TRUST ASSETS

### 6.1 - Fiduciary Responsibilities.

The Trustee shall have no discretion in the exercise of investment authority with regard to the Trust assets and earnings thereon. Individual participants in the Plan shall have the authority and responsibility to choose from the Investment Vehicles which are made available by the District those Investment Vehicles into which their Tax Deferred Elective Contributions shall be invested. The Trustee's investment responsibility is limited to owning the Trust assets.

### 6.2 - Relationship of Parties.

It is the intent of the District, Trustee, General Manager, and any other person or persons designated under the provisions of Article III that each shall be solely responsible for its own acts or omissions. Except to the extent imposed by the Code, no such party shall have the duty to question whether any other party is fulfilling any or all of the responsibilities imposed upon it by the Plan or the Trust. No such party shall have any liability for a breach of responsibility of another party with respect to the Plan and this Trust.

## ARTICLE VII POWERS OF TRUSTEE

### 7.1 - Powers of Trustee.

Except as otherwise provided by law, the Trustee is authorized and empowered, but not by way of limitation except as specifically set forth:

(a) To purchase, hold, sell, invest and reinvest assets of the Trust, together with the income therefrom, in stock, (including common, preferred, and convertible preferred stock), evidences of indebtedness (including debentures, convertible debentures and bonds), mortgages, notes (including loans to Participants to the extent authorized under the Plan), mutual fund shares, interests in unit trusts, interests in partnerships, interests in money market funds, time certificates of deposit, commercial paper and other evidences of indebtedness), other securities, and property (personal, real or mixed, and tangible or intangible) the value of which are readily ascertainable and readily marketable;

(b) To retain in cash or other property unproductive of income, without liability for interest, so much of the Trust assets as may be determined; to deposit cash in any bank and select any bank as custodian; and to cause securities or other property to be registered

and/or held in its individual name, either with or without disclosing fiduciary capacity, or in the name of its nominee;

(c) To manage, control, sell, convey, exchange, partition, divide, subdivide, improve, and repair; to grant options and to sell upon deferred payments; to lease for terms within or extending beyond the duration of this Trust for any purpose, including exploration for and removal of gas or other minerals; to enter into community oil leases; to create restrictions, easements and other servitudes;

(d) To compromise, arbitrate or otherwise adjust claims in favor of or against the Trust; and to institute, compromise and defend actions and proceedings;

(e) To transfer part or all of the money constituting assets of the Trust to and as an investment in any type of interest-bearing account, including those evidenced by time certificates of deposit;

(f) To appoint agents to carry out those Trustee responsibilities that can be efficiently carried out through an agent; and

(g) Generally to do all such acts, execute all such instruments, take all such proceedings, and exercise all such rights and privileges with relation to property constituting the Trust assets as if the Trustee were the absolute owner thereof.

#### 7.2 - Funds.

The Trust Assets shall be held, administered, invested and reinvested among such separate Investment Vehicles as shall be made available for investment of Trust Assets in accordance with the instructions from the Participants to the Trustee or his delegate.

#### 7.3 - Controversy or Disagreement.

Except as otherwise provided by law, if any controversy arises with respect to this Trust, the Trustee shall take such action as directed by the General Manager or, in the absence of such directions, as it deems advisable, whether by legal proceedings, compromise or otherwise. The Trustee may retain the funds or property involved without liability pending settlement of the controversy.

### ARTICLE VIII ACCOUNTS OF THE TRUSTEE

#### 8.1 - Records.

The Trustee or his delegate shall maintain accurate records and accounts of all transactions hereunder, which shall be available at all reasonable times for inspection or audit by any person or persons designated by the General Manager.

## 8.2 - Reports.

If the General Manager so directs, the Trustee or his delegate shall submit to the General Manager such interim valuations, reports or other information as the General Manager may reasonably require. Within 90 days following (a) the close of each Plan Year or (b) the effective date of the removal or resignation of the Trustee, the Trustee or his delegate shall file with the General Manager (1) a written account setting forth all transactions effected by it subsequent to the end of the period covered by its last previous account, and listing the assets of the Trust, showing carrying and market values of such assets, at the close of the period covered by such account; and (2) such information which is within the control of the Trustee, and a certification by the Trustee of the accuracy thereof, as shall be necessary or appropriate for the General Manager to complete all required disclosures and reporting with respect to the Plan and Trust.

## 8.3 - Value of Trust Assets.

For the purposes of this Article, the fair market value of assets in the Trust shall be determined by the Trustee or his delegate based upon such sources of information as it may deem reliable including, but not limited to, information reported in (1) newspapers of general circulation, (2) standard financial periodicals or publications, (3) statistical and valuation services, (4) the records of securities exchanges or brokerage firms deemed by the Trustee to be reliable, or any combination thereof.

# ARTICLE IX RESIGNATION AND REMOVAL OF TRUSTEE

## 9.1 - Method and Procedure.

The Trustee may resign at any time by delivering to the General Manager a written notice of resignation, to take effect at a date specified therein, which shall not be less than 30 days after the delivery thereof, unless such notice shall be waived.

The General Manager shall have the right to remove the Trustee by delivery of a written notice of removal to take effect at a specified time therein, which shall not take effect in less than 30 days after the delivery thereof, unless such notice shall be waived.

In the event the Trustee notifies the General Manager of his intention to resign, or the General Manager removes the Trustee, in accordance with the foregoing provisions of this Article IX, the General Manager shall appoint a successor trustee and in default thereof, such successor trustee may be appointed by a court of competent jurisdiction. The Trustee hereunder shall thereupon deliver to the successor trustee all property of this Trust, less such amounts as said Trustee shall deem necessary to provide for any expenses, compensation and taxes or advances, together with such records as may be reasonably required to enable the successor trustee to properly administer the Trust.

In the case of his resignation or removal, the Trustee shall have the right to a settlement of his account, which may be made, at the option

of the Trustee, either (1) by a judicial statement in an action instituted by the Trustee in a court of competent jurisdiction, or (2) by agreement of settlement between the Trustee and the General Manager.

Upon such settlement, all right, title and interest of such Trustee in the assets of the Trust and all rights and privileges under the Plan and this Trust theretofore vested in such Trustee shall vest in the successor trustee, and thereupon all future liability of such Trustee shall terminate; provided, however, that the Trustee shall execute, acknowledge and deliver all documents and written instruments which are necessary to transfer and convey the right, title and interest in the Trust assets, and all rights and privileges, to the successor trustee.

#### 9.2 - Successor Trustee.

In the event the Trustee notifies the General Manager of his intention to resign or the General Manager removes the Trustee, unless the Trust assets attributable to the Participants employed by the District are distributed to or held by another trust qualifying under the applicable provisions of Sections 401 and 501 of the Code, the District shall terminate the Plan and the General Manager shall terminate this Trust in accordance with the provisions of the Plan.

### ARTICLE X AMENDMENT AND TERMINATION

#### 10.1 - Amendment and Termination.

The General Manager shall have the right at any time and from time to time (1) to modify or amend in whole or in part, by written agreement with the Trustee, any or all of the provisions of this Trust Agreement, or (2) to terminate this Trust Agreement upon 30 days prior notice in writing to the Trustee; and the General Manager hereby covenants and agrees with the Trustee as follows:

(a) No such termination, modification, or amendment shall have any retroactive effect so as to deprive any Participant of any benefit already vested, except such changes, if any, as may be required to permit this Trust Agreement to meet the applicable requirements of the Code; and

(b) No such termination, modification, or amendment shall permit, prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries, any part of the principal or income of this Trust to be used for, or diverted to, purposes other than the exclusive benefit of Participants and their Beneficiaries. In the event of termination of this Trust, all cash, securities and other property then constituting the assets of the Trust, less any amounts constituting charges and expenses payable from the assets of the Trust, shall be paid over or delivered by the Trustee to or on order of the General Manager.

## ARTICLE XI MISCELLANEOUS

### 11.1 - Contribution Not Recoverable.

It shall be impossible for any part of the principal or income of this Trust to be used for, or diverted to, purposes other than the exclusive benefit of Participants or their Beneficiaries; provided, however, that notwithstanding this or any other provision of this Trust, if the District Director of Internal Revenue determines that the Plan and this Trust do not initially meet the requirements of the Code and Regulations, the District shall be entitled to withdraw all contributions theretofore made, in which event this Trust and the Plan associated therewith shall thereupon terminate and all rights, if any, of the Participants thereunder, shall cease and come to an end with the same effect as if the Plan and Trust had not been adopted.

### 11.2 - Limitation on Participants' Rights.

Participation in this Trust shall not give any employee the right to be retained in the District's employ or any right to interest in this Trust other than as herein provided. The District reserves the right to dismiss any employee without any liability for any claim either against this Trust, except to the extent provided herein, or against the District. All benefits payable hereunder shall be provided solely from the assets of the Trust.

### 11.3 - Receipt or Release.

Any payment to any Participant or his Beneficiary in accordance with the provisions of this Trust shall, to the extent thereof, be in full satisfaction of all claims against the Trustee, the General Manager and the District and the Trustee may require such Participant or Beneficiary, as a condition precedent to such payment, to execute a receipt and release to such effect.

### 11.4 - Governing Law.

This Trust Agreement and the Trust hereby created shall be construed, administered and governed in all respects under the laws of the State of California, except to the extent federal law controls; provided, however, that if any provision is susceptible to more than one interpretation, such interpretation shall be given thereto as is consistent with the Trust being a qualified trust within the meaning of Sections 401 and 501 of the Code. If any provision of this instrument shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions hereof shall continue to be fully effective.

### 11.5 - Headings, etc., Not Part of Agreement.

Headings and subheadings in this Trust Agreement are inserted for convenience of reference only and are not to be considered in the construction of the provisions hereof.

11.6 - Instrument in Counterparts.

This Trust Agreement has been executed in several counterparts, each of which shall be deemed an original and said counterparts shall constitute but one and the same instrument, which may be sufficiently evidenced by any one counterpart.

11.7 - Successors and Assigns.

This Trust Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns.

11.8 - Masculine Gender Includes Feminine and Neuter.

As used in this Trust Agreement, the masculine gender shall include the feminine and neuter genders.

IN WITNESS WHEREOF, the undersigned have executed this Trust Agreement effective as of the later day set forth below.

THE METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA

Approved as to Form:

Warren J. Abbott  
General Counsel

By James W. Mountain  
Deputy General Counsel

EXECUTED 11-27-85  
BY Carl Boronkay  
General Manager

TRUSTEE

EXECUTED 11-27-85  
BY Richard J. Gobeig

**The Metropolitan Water District of  
Southern California  
457(b)  
Deferred Compensation Plan**

**January 1, 2024**

**THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA  
457(b) DEFERRED COMPENSATION PLAN**

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**THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA  
457(b) DEFERRED COMPENSATION PLAN**

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**The Metropolitan Water District of Southern  
California 457(b) Deferred Compensation Plan**

**BACKGROUND**

Pursuant to Board of Directors' Resolution Number 7683, The Metropolitan Water District of Southern California ("District") established effective November 1, 1976, the Deferred Compensation Plan (the "Plan").

The Plan has been amended from time to time. The Plan was restated by Board of Directors' Minute Item 34625, effective April 1, 1983. Board of Directors' Minute Item 42712 caused the Plan to be codified in Division VI, Chapter 7, Article 8 of The Metropolitan Water District of Southern California Administrative Code ("MWD Code") and named the "Metropolitan Water District of Southern California 1997 Deferred Compensation Plan" effective November 18, 1997. The Plan was restated in its entirety and renamed "The Metropolitan Water District of Southern California 457(b) Deferred Compensation Plan" effective August 1, 2018. The Plan was further amended and restated effective January 1, 2020. The Plan was most recently hereby amended and restated effective January 1, 2024, except as otherwise stated herein.

The Plan was established, and is maintained, as an eligible governmental deferred compensation plan meeting the requirements of Internal Revenue Code (the "Code") § 457(b) and § 457(e)(1)(A) and Treas. Reg. §§ 1.457-3 through 1.457-10.

All contributions made to the Plan, all property and rights purchased with such amounts and all income attributable to such amounts shall be held in trust for the exclusive benefit of Participants, Beneficiaries and Alternate Payees under the Plan in accordance with Code § 457(g). Amounts contributed under the Plan are held and invested, until distributed in accordance with the terms of the Plan.

The purpose of the Plan is to attract and retain certain officers and employees to The Metropolitan Water District of Southern California.

**ARTICLE I.**

**DEFINITIONS**

**1.1 Account.** The separate Account(s) established and maintained under the Plan for a Participant's Deferred Compensation, an alternate payee's interest in the Plan under a QDRO, or as needed, for Beneficiaries described in Section 4.3.

**1.2 Accounting Date.** The last day of the Plan Year. The Plan Administrator will allocate contributions and forfeitures for a particular Plan Year as of the Accounting Date of that Plan Year, and on such other dates, if any, as the Plan Administrator determines, consistent with the Plan's

The Metropolitan Water District of Southern  
California 457(b) Deferred Compensation Plan  
Effective January 1, 2024

allocation conditions and other provisions.

**1.3 Beneficiary.** A person who the Plan or a Participant designates and who is or may become entitled to a Participant's Account upon the Participant's death. If the Plan does not have a valid Beneficiary designation on file, the Participant's Beneficiary will be determined in accordance with Article VI (Beneficiary Designations and Enrollment). A Beneficiary who becomes entitled to a benefit under the Plan remains a Beneficiary under the Plan until the Beneficiary's entire Plan benefit has been fully distributed. A Beneficiary's right to (and the duty to provide to the Beneficiary) information or data concerning the Plan does not arise until the Beneficiary first becomes entitled to receive a benefit under the Plan.

**1.4 Code.** The Internal Revenue Code of 1986, as amended.

**1.5 Compensation.** The definition of Compensation is W-2 Wages. W-2 Wages means wages for federal income tax withholding purposes, as defined under Code § 3401(a), plus all other payments to an Employee in the course of the Employer's trade or business, for which the Employer must furnish the Employee a written statement under Code §§ 6041(Information at Source), 6051(Receipts for Employees), and 6052(Returns Regarding Payment of Wages in the Form of Group-Term Life Insurance), but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or services performed (such as the exception for agricultural labor in Code § 3401(a)(2)).

**(A) Compensation Taken Into Account.** For the Plan Year in which an Employee first becomes a Participant, the Plan Administrator will determine the allocation of contributions by taking into account the Employee's Compensation for the entire Plan Year.

**(B) Elective Contributions.** Compensation includes elective contributions excludible from the Employee's gross income under Code §§ 125(Cafeteria Plans), 132(f)(4)(De Minimis Fringe Defined), 402(e)(3)(Cash or Deferred Arrangements), 402(h)(1)(B)(Special Rules for Simplified Employee Pensions), 403(b)(Taxability of Beneficiary Under Annuity Purchased by Section 501(c)(3)), 408(p)(Simple Retirement Accounts) or 457.

**(C) Post-Severance Compensation.** Post-Severance Compensation is Compensation paid after a Participant's severance from employment with the District as further described in subsection (C)(1) below. Any other amount paid after severance from employment that is not described in subsection 5(C)(1) is not Compensation even if payment is made within the time period described below. Post-Severance Compensation does not include severance pay, or payments under a nonqualified unfunded deferred compensation plan unless the payments would have been paid at that time without regard to severance from employment.

**(1) Timing.** Post-Severance Compensation includes the following items of compensation to the extent the Employer pays such amounts by the later of 2½ months after severance from employment or by the end of the Plan Year that

includes the date of such severance from employment:

**(a) Regular Pay.** The payment of regular Compensation for services during the Participant's regular working hours, or Compensation for services outside the Participant's regular working hours (such as overtime or shift differential), bonuses, or other similar payments, but only if the payment would have been paid to the Participant prior to a severance from employment if the Participant had continued in employment with the Employer.

**(b) Leave Cash-outs.** Payments for unused accrued bona fide sick, vacation or other leave, but only if the Employee would have been able to use the leave if employment had continued and if Compensation would have included those amounts if they were paid prior to the Participant's severance from employment.

**(D) Salary Continuation for Disabled Participants.** Compensation paid to a Participant who is permanently and totally disabled (as defined in Code § 22(e)(3)) may be included in Compensation.

**(E) Differential Wage Payments.** An individual receiving a Differential Wage Payment, as defined by Code § 3401(h)(2), shall be treated as an employee of the employer making the payment and the Differential Wage Payment shall be treated as compensation for purposes of Code § 457(b) and any other Code section that references the definition of compensation under Code § 415, including the definition of Includible Compensation as provided in Section 1.14.

**1.6 Deferred Compensation.** The amount of Salary Reduction Contributions, Rollover Contributions and Transfers adjusted for allocable net income, gain or loss, in the Participant's Account.

**1.7 Deferred Compensation Investment Advisory Committee (DCIAC).** ~~A District-established advisory~~The committee which is comprised of the District's Chief Financial Officer, Chief Administrative Officer, and Budget & Treasury and Debt Manager ~~er, the Plan Administrator, a staff member and the Manager of the Human Resources Group's Benefits Unit~~District's HR Group Manager; Assistant General Manager, Operations or designee; Treasury & Debt Manager; Assistant General Manager, Chief Financial Officer or Finance Group Manager as designee; General Auditor or designee; and Risk Manager ~~and five appointed members — one appointed by the Employees' Association of the Metropolitan Water District, AFSCME Local 1902 ("AFSCME Local 1902"); one appointed by the Management and Professional Employees Association of the Metropolitan Water District, AFSCME Local 1001 ("MAPA"); one appointed by the Supervisors Association of the Metropolitan Water District of Southern California ("SA"); one appointed by the Association of Confidential Employees ("ACE"); and one, a Plan retiree, appointed by the Committee, and a member appointed to represent retirees and one representative from each of the District's four bargaining units: AFSCME Local 1902, Management and Professional Association, Supervisor's Association, and Association of Confidential Employees. The DCAC meets quarterly to advise the Plan Administrator~~

~~on plan administrative policies, investments, educational programs, the effect of regulatory and tax law changes, and the viability of proposed plan changes based on Participant requests. The DCIAC decides by an advises only on an affirmative vote by a majority of the committee or by unanimous consent. Non-voting DCIC attendees include the Human Resource Benefits Manager, the Human Resources Principal Analyst, and the General Counsel's representative described in Section 7.4.~~

**1.8 Effective Date.** ~~The Plan was originally established and effective November 1, 1976. Since then, the Plan has been amended and/or restated from time to time. The effective date of the most current amendment and restatement of this Plan is January 1, 2024, the effective date of this amendment and restatement of the Plan.~~

**1.9 Eligible Employee.** An Employee who is not an Excluded Employee.

**1.10 Employee.** An individual who provides services for the District as a common law employee of the District.

**1.11 Employer or District.** The Metropolitan Water District of Southern California.

**1.12 Excess Deferrals.** Salary Reduction Contributions to the Plan that exceed the Taxable Year maximum limitation of Code §§ 457(b) and (e)(18).

**1.13 Excluded Employee.** Employees who retired and severed employment and are rehired as annuitants, as defined in California Government Code § 7522.56, to work for a limited duration of time. For purposes of this Plan, Independent Contractors are also treated as Excluded Employees.

**1.14 Includible Compensation.** For the Employee's Taxable Year, the Employee's total Compensation within the meaning of Code § 415(c)(3) paid to an Employee for services rendered to the Employer. Includible Compensation also includes:

- (A) Salary Reduction Contributions under this Plan, compensation deferred under any other plan described in Code § 457, and any amount excludible from the Employee's gross income under Code §§ 401(k), 403(b), 125, or 132(f)(4) or any other amount excludible from the Employee's gross income for Federal income tax purposes;
- (B) Payments for unused bona fide sick, vacation, or other leave, if the Employee would have been able to use the leave if employment had continued; and
- (C) Amounts paid prior to severance, or paid within 2 1/2 months after the later of severance from employment or the end of the Plan Year that includes the date of severance.

The Employer will determine Includible Compensation without regard to community property laws.

**1.15 Independent Contractor.** Any individual who performs service for the District and who the District does not treat as an Employee or a Leased Employee.

**1.16 Leased Employee.** An Employee within the meaning of Code § 414(n).

**1.17 Normal Retirement Age.** The age is designated by a Participant. A Participant may not designate a Normal Retirement Age (NRA) that is earlier than his or her CalPERS normal retirement

age, which for classic members is age 55, and is age 62 for new members (as defined under PEPPRA). Participants shall designate a NRA in the form and manner established by the Plan Administrator.

**1.18 Participant.** An Employee (other than an Excluded Employee) who becomes a Participant in accordance with the provisions of Article II (Eligibility and Participation).

**1.19 Plan.** The Metropolitan Water District of Southern California 457(b) Deferred Compensation Plan.

**1.20 Plan Administrator.** The General Manager of the District or other person or entity designated by the District to be responsible for the administration and operation of the Plan.

**1.21 Plan Year.** The calendar year ending on December 31.

**1.22 Qualified Birth or Adoption Distribution (QBOAD).** A distribution to a Participant if made (a) during the 1-year period beginning on the date on which a child of the Participant is born or on which the legal adoption by the Participant of an eligible adoptee is finalized, (b) with respect to a child born or eligible adoptee the Participant includes the name, age, and the Taxpayer Identification Number of the child or eligible adoptee on the Participant's tax return for the taxable year in which the distribution is made, and (c) only to the extent such distribution from all plans maintained by the Employer to such Participant does not exceed \$5,000, in the aggregate, for each birth or eligible adoptee. An eligible adoptee is any individual (other than a child of the Participant's spouse) who has not attained age 18 or is physically or mentally incapable of self-support.

**1.221.23 Recurrent Employee.** An Employee who is hired for an indefinite period of time on an irregular basis, such as intermittent, emergency or on call.

**1.231.24 Rehired Annuitant.** A rehired Employee who meets the definition of rehired annuitant in California Government Code Section 7522.56.

**1.241.25 Rollover Contribution.** The amount of cash or property which an eligible retirement plan described in Code § 402(c)(8)(B) distributes to an eligible Employee or Participant in an eligible rollover distribution under Code § 402(c)(4) and which the eligible Employee or Participant transfers directly or indirectly to the Plan. A Rollover Contribution includes net income, gain or loss attributable to the Rollover Contribution. A Rollover Contribution into the Plan excludes after-tax Employee contributions, as adjusted for net income, gain or loss.

**1.25—1.26 Roth Elective Deferrals.** A Participant's Salary Reduction Contributions that are includible in the Participant's gross income at the time deferred and have been irrevocably designated as Roth Elective Deferrals by the Participant in his or her Salary Reduction Agreement. A Participant's Roth Elective Deferrals will be separately accounted for, as will gains and losses attributable to those Roth Elective Deferrals. However, forfeitures may not be allocated to such account. The Plan must also maintain a record of a Participant's investment in the contract (i.e., designated Roth contributions that have not been distributed) and the year in which the Participant first made a Roth Elective Deferral.

**~~1.26~~ 1.27 Salary Reduction Agreement.** A written agreement between a Participant and the District, authorizing the District to reduce the Participant Compensation and contribute the amount as a Salary Reduction Contribution to the Participant's Account.

**~~1.27~~ 1.28 Salary Reduction Contribution.** The Pre-Tax Elective Deferrals and Roth Elective Deferrals the District deducts from a Participant's Compensation and contributes to the Plan pursuant to a Participant's Salary Reduction Agreement.

**~~1.28~~ 1.29 Service.** Any period of time the Employee is in the employ of the Employer. An Employee terminates Service upon incurring a severance from employment.

**(A) Qualified Military Service.** Service includes any qualified military service the Plan must credit for contributions and benefits in order to satisfy the crediting of Service requirements of Code § 414(u). A Participant whose employment is interrupted by qualified military service under Code § 414(u) or who is on a leave of absence for qualified military service under Code § 414(u) may elect to make additional Salary Reduction Contributions upon resumption of employment with the Employer equal to the maximum Salary Reduction Contributions that the Participant could have elected during that period if the Participant's employment with the Employer had continued (at the same level of Compensation) without the interruption of leave, reduced by the Salary Reduction Contributions, if any, actually made for the Participant during the period of the interruption or leave. This right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave). The Plan does not provide for matching or non-elective employer contributions as those terms are defined under Code § 457 and the underlying Treasury Regulations. Therefore, the Employer is not required under Code § 414(u) to make any other contributions to such a Participant. The Plan shall apply limitations of Article III (Deferral Contributions and Limitations) to all Salary Reduction Contributions under this paragraph with respect to the year to which the Salary Reduction Contributions relates.

**(B) Continuous Service.** Service with the Employer during which the Employee does not incur a severance from employment.

**(C) Severance from Employment.**

**(1) Employee.** An Employee has a severance from employment when the Employee ceases to be an Employee of the Employer. A Participant does not incur a severance from employment if, in connection with a change in employment, the Participant's new employer continues or assumes sponsorship of the Plan or accepts a Transfer of Plan assets as to the Participant.

**(2) Deemed Severance.** If a Participant performs service in the uniformed services (as defined in Code § 414(u)(12)(B)) on active duty for a period of more than 30 days, the Participant will be deemed to have a severance from employment solely for

purposes of eligibility for distribution of amounts not subject to Code § 412. However, the Plan will not distribute such a Participant's Account on account of this deemed severance unless the Participant specifically elects to receive a benefit distribution hereunder. If a Participant elects to receive a distribution on account of this deemed severance, then no Salary Reduction Contributions may be made for the Participant during the 6-month period beginning on the date of the distribution. If a Participant would be entitled to a distribution on account of a deemed severance, and a distribution on account of another Plan provision, then the other Plan provision will control and the 6-month suspension will not apply.

**~~1.29~~ 1.30 State.** One of the 50 states of the United States or the District of Columbia, or a political subdivision of a State, or any agency or instrumentality of a State or its political subdivision. A State does not include the federal government or any agency or instrumentality thereof.

**~~1.30~~ 1.31 Taxable Year.** The calendar year or other taxable year of a Participant.

**~~1.31~~ 1.32 Temporary Employee.** An Employee who is hired for a specified limited time.

**~~1.32~~ 1.33 Transfer.** A transfer of assets from one eligible Code § 457(b) plan to another eligible Code § 457(b) plan which is not a Rollover Contribution and which is made in accordance with Section 8.3 (Transfers).

**~~1.34~~ Trust.** The ~~Trust created under~~established pursuant to the Trust Agreement between the District and the Trustee to hold, administer and distribute all or a portion of the Plan's assets in accordance with Code ~~§~~ 457(g).

**~~1.33~~ 1.35 Trust Agreement.** The separate agreement entered into by and between the District and the Trustee to hold, administer and distribute all or a portion of the Plan's assets.

**~~1.34~~ 1.36 Trustee.** ~~The District or the person, committee(s) or entity, and any successors thereto, named in the Trust Agreement, who is appointed by the District to serve as Trustee, hold, administer and accepts such position. The District retains distribute the right of appointment and removal of Trustee(s) and may exercise that right at any time. Use of the defined term, Trustee refers to a discretionary Trustee, appointed in accordance with Section 7.1. However, the District may retain the assistance of a nondiscretionary trustee to carry out some or all or a portion of the Plan assets held in the Trust pursuant to the terms and conditions of the duties of the Trustee or to assist the Trustee in the performance of its powers, duties and responsibilities. See Article VII, (Trust Provisions) Agreement.~~

## ARTICLE II.

### ELIGIBILITY AND PARTICIPATION

**2.1 Eligibility.** The Plan does not require Eligible Employees to satisfy an age or service requirement in order to participate in the Plan. Each Eligible Employee becomes a Participant in the Plan in accordance with entry date rules described in Section 2.2.

**2.2 Commencement of Salary Reduction Contributions.** Generally, Salary Reduction Contributions for Eligible Employees commence on the first day of the month coinciding with or following the later of the Eligible Employee's date of hire or submission of a Salary Reduction Agreement. Notwithstanding the preceding sentence, Eligible Employees who are Temporary Employees or Recurrent Employees commence Salary Reduction Contributions in accordance with the Minimum Salary Reduction Contribution amounts specified in Section 3.2 as of his or her date of hire. Eligible Employees who are Temporary Employees or Recurrent Employees may change contribute an amount greater than (but not less than) the Minimum Salary Reduction Contribution amount described in Section 3.2 by completing a Salary Reduction Agreement. Changes to such Eligible Employee's Minimum Salary Reduction Contribution amount will take effect in accordance with the general timing rule described above.

**2.3 Effect of Plan Restatement.** Each Eligible Employee who was a Participant on the day before the Effective Date of the Plan continues as a Participant in the Plan, irrespective of whether he/she satisfies the eligibility conditions in the amended and restated Plan.

**2.4 Participation Upon Re-Employment.** A Participant who incurs a severance from employment may re-enter the Plan as a Participant as of his or her date of re-employment, so long as the Employee is not rehired in an Excluded Employee classification.

### ARTICLE III.

#### DEFERRAL CONTRIBUTIONS AND LIMITATIONS

##### 3.1. Amount.

**(A) Contribution Formula.** For each Plan Year, the District will contribute to the Plan, on behalf of each Participant, the Participant's Salary Reduction Contribution and any other type and amount of contributions authorized under the Plan. Effective February 18, 2024, Salary Reduction Contributions may include Roth Elective Deferrals in addition to pre-tax salary deferrals.

**(B) Return of Contributions.** If any Salary Reduction Contribution (or any other type contributions authorized under the Plan) is made due to a mistake of fact, the Plan Administrator upon written request from the District shall return the contributions (adjusted for net income, gain or loss), within one (1) year after payment of the contribution.

**(C) Time of Payment of Contribution.** The District shall deposit Salary Reduction Contributions to the Trust within a period that is not longer than is reasonable for the administration of Participant Accounts.

**3.2. Salary Reduction Contributions.** The Plan permits Salary Reduction Contributions. Participants may designate a dollar or percentage amount by which to reduce his or her Compensation. Such Participant designations shall be made in accordance with a Salary Reduction Agreement.

Temporary Employees and Recurrent Employees are subject to mandatory minimum Salary Reduction Contribution amounts ("Minimum Salary Reduction Contributions"). Effective July 1, 2016, the Minimum Salary Reduction Contribution for Temporary Employees and Recurrent Employees are as follows:

<b>Temporary and Recurrent Employee Category</b>	<b>Minimum Salary Reduction Contribution</b>
Classic PERS Members	0.5%
New PERS Members	1.5%
Non PERS Members	7.5%

Provided, however, the Minimum Salary Reduction Contributions for Temporary or Recurrent Employees shall at all times be no less than the difference between 7.5% of the Temporary or Recurrent Employee's Compensation and his or her member contribution to CalPERS, if any. If at any time the Minimum Salary Reduction Contribution required of a Temporary Employee or Recurrent Employee varies from the minimums provided in the table above, the table shall automatically be adjusted.

Temporary Employees and Recurrent Employees may elect a different Salary Reduction Contribution amount, however, such election must be for an amount that is greater than the applicable Minimum Salary Reduction Contribution stated in this Section 3.2.

**(A) Deferral from Sick, Vacation and Back Pay.** Participants may elect to make Salary Reduction Contributions from accumulated sick pay, accumulated vacation pay or back pay in accordance with the established deduction timing calendar maintained by the District.

**(B) Application to Leave of Absence and Disability.** Unless a Participant in his or her Salary Reduction Agreement elects otherwise, the Participant's Salary Reduction Agreement shall continue to apply during the Participant's leave of absence or the Participant's disability (as the Plan Administrator shall establish), if the Participant has Compensation other than imputed compensation or disability benefits.

**(C) Post-Severance Deferrals Limited to Post-Severance Compensation.** Deferrals are permitted from an amount received following severance from employment only if the amount is Post-Severance Compensation.

**3.3. Normal Limitation.** Except as provided in Sections 3.4 (Age 50 Catch-Up Contribution) and 3.5 (Special Catch-Up Contribution), a Participant's maximum Salary Reduction Contributions (excluding Rollover Contributions and Transfers) under this Plan for a Taxable Year may not exceed the lesser of:

**(A)** The applicable dollar amount as specified under Code § 457(e)(15) (or as the Commissioner of the Internal Revenue may prescribe), or

**(B)** 100% of the Participant's Includible Compensation for the Taxable Year.

**3.4. Age 50 Catch-Up Contribution.** A Participant who will have attained age 50 before the close of the Taxable Year is eligible to make age 50 catch-up contributions for that Taxable Year and in subsequent Taxable Years in accordance with, and subject to the limitations of, Code § 414(v). If, for a Taxable Year, a Participant is eligible to make an Age 50 Catch-Up Contribution under this Section 3.4 and a special catchup contribution under Section 3.5 (Special Catch-Up Contribution) such Participant is entitled to the greater of the two catch up amounts determined under Section 3.4 and Section 3.5.

**3.5. Special Catch-Up Contribution.** A Participant may elect to make a catch-up contribution for one or more of the Participant's last three Taxable Years ending before the Taxable Year in which the Participant attains NRA. In a Taxable Year in which a catch-up contribution is made, the Participant's maximum Salary Reduction Contributions may not exceed the lesser of:

(A) Twice the dollar amount under Section 3.3 (Normal Limitation), and

(B) The underutilized limitation under Section 3.5(A), as described below

**(1) Underutilized Limitation.** A Participant's underutilized limitation is equal to the sum of: (i) the normal limitation for the Taxable Year, and (ii) the normal limitation for each of the prior Taxable Years of the Participant commencing after 1978 during which the Participant was eligible to participate in the Plan and the Participant's Salary Reduction Contributions were subject to the Normal Limitation or any other Code § 457(b) limit, *less* the amount of Salary Reduction Contributions for each such prior Taxable Year, excluding Age 50 Catch-Up Contributions.

**(2) Normal Retirement Age (NRA).** A Participant may elect his or her applicable NRA for purposes of this Section 3.5. Participants may not elect a NRA that is earlier than age 65 or the age at which Participants have the right to retire and receive benefits under CalPERS without actuarial or other reduction which is age 55 for classic CalPERS members and age 62 for new CalPERS members as defined by PEPR. Further, participants may not elect a NRA later than age 72.

**(3) Pre-2002 Coordination.** In determining a Participant's underutilized limitation, the Plan Administrator, in accordance with U.S. Treas. Reg. § 1.457-4(c)(3)(iv), must apply the coordination rule in effect under now repealed Code § 457(c)(2). The Plan Administrator also must determine the Normal Limitation for pre-2002 Taxable Years in accordance with Code § 457(b)(2) as then in effect.

**3.6. Rollover Contributions.** The Plan may accept Rollover Contributions.

**(A) Operational Administration.** The District, operationally and on a nondiscriminatory basis, may elect to limit an eligible Employee's or Participant's right to make a Rollover Contribution. Any Employee or Participant (or former Employee or Participant) with the District's written consent and after filing the forms prescribed by the Plan Administrator, may make a Rollover Contribution to the Trust. Before accepting a Rollover Contribution, the Participant (or eligible Employee) may be required to furnish satisfactory evidence

that the proposed transfer is in fact a Rollover Contribution which the applicable tax rules permits an employee to make to an eligible retirement plan. The Plan Administrator, in its sole discretion, may decline to accept a Rollover Contribution of property which could: (1) generate unrelated business taxable income; (2) create difficulty or undue expense in storage, safekeeping or valuation; or (3) create other practical problems for the Trust.

**(B) Separate Accounting.** If the District permits Rollover Contributions, the Plan Administrator must account separately for: (1) amounts rolled into this Plan from an eligible retirement plan (other than from another eligible governmental 457(b) plan); and (2) amounts rolled into this Plan from another eligible governmental 457(b) plan. The Plan Administrator for purposes of ordering any subsequent distribution from this Plan may designate a distribution from a Participant's Rollover Contributions as coming first from either of (1) or (2) above if the Participant has both types of Rollover Contribution Accounts.

**(C) Roth Elective Deferrals.** The Plan may accept a rollover contribution of Roth Elective Deferrals only if it is a direct rollover from another Plan which permits Roth Elective Deferrals as described in Code § 402A(e)(1) and only to the extent the rollover is permitted under the rules of Code § 402(c). The District, operationally and on a uniform and nondiscriminatory basis, may decide whether to accept any such rollovers. If the Plan chooses to accept rollovers of Roth Elective Deferrals, the amounts must be directly rolled over into this Plan from another plan that is qualified under Code § 401(a), from a Code § 403(b) plan, or from an eligible governmental Code § 457(b) plan. The Plan must account separately for the Rollover Contribution, including Roth Elective Deferrals and the earnings thereon.

**3.7. Distribution of Excess Deferrals.** In the event that a Participant has Excess Deferrals, the Plan will distribute to the Participant the Excess Deferrals and allocable net income, gain or loss, in accordance with this Section 3.7.

**(A) Eligible Governmental 457(b) Plan.** The Plan Administrator will distribute Excess Deferrals from the Plan as soon as is reasonably practicable following the Plan Administrator's determination of the amount of the Excess Deferral.

**(B) Individual Limitation.** If a Participant participates in another eligible 457(b) plan maintained by a different employer, and the Participant has Excess Deferrals, the Plan Administrator may, but is not required, to correct the Excess Deferrals by making a corrective distribution from this Plan.

**3.8. Benefit Accruals for Qualified Military Service.** To the extent required under Code § 414(u), an Employee who returns to employment with the District following a period of qualified military service will receive any contributions, benefits, and service credit required under Code § 414 (u), provided the Employee satisfies all applicable requirements under the Code and regulations. In determining the amount of contributions under Code § 414(u), Plan Compensation will be deemed to be the compensation the Employee would have received during the period while in military service

based on the rate of pay the Employee would have received from the District but for the absence due to military leave. If the compensation the Employee would have received during the leave is not reasonably certain, Plan Compensation will be equal to the Employee's average compensation from the District during the twelve (12) month period immediately preceding the military leave or, if shorter, the Employee's actual period of employment with the District.

For benefit accrual purposes, the Plan treats an individual who dies or becomes disabled (as defined under the terms of the Plan) while performing qualified military service with respect to the District as if the individual had resumed employment in accordance with the individual's reemployment rights under USERRA, on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability.

**3.9. Roth Elective Deferrals.** Effective February 18, 2024, Participants may make Roth Elective Deferrals to the Plan. Unless otherwise indicated, Roth Elective Deferrals shall be treated in the same manner as Elective Deferrals. The District may, in operation, implement deferral election procedures provided such procedures are communicated to Participants and Participants are permitted to modify their elections at least once per Plan Year.

**(A) Elective Deferrals** means a contribution the Employer makes to the Plan pursuant to a Participant's Salary Reduction Agreement and includes Pre-Tax Elective Deferrals and Roth Elective Deferrals.

**(1) Pre-Tax Elective Deferrals** mean a Participant's Salary Reduction Contributions which are not includible in the Participant's gross income at the time deferred and have been irrevocably designated as Pre-Tax Elective Deferrals by the Participant in his or her Salary Reduction Agreement. A Participant's Pre-Tax Elective Deferrals will be separately accounted for, as will gains and losses attributable to those Pre-Tax Elective Deferrals.

**(2) Roth Elective Deferrals** means a Participant's Salary Reduction Contributions that are includible in the Participant's gross income at the time deferred and have been irrevocably designated as Roth Elective Deferrals by the Participant in his or her Salary Reduction Agreement. A Participant's Roth Elective Deferrals will be separately accounted for, as will gains and losses attributable to those Roth Elective Deferrals. However, forfeitures may not be allocated to such account. The Plan must maintain a record of a Participant's Roth Elective Deferrals and the year in which the Participant first made a Roth Elective Deferral.

**(B) Ordering Rules for Distributions.** The District may implement an ordering rule for withdrawals from Participant's accounts attributable to Pre-Tax Elective Deferrals and/or Roth Elective Deferrals. Absent an ordering rule established by the District in compliance with applicable law, withdrawals will be made on a pro rata basis from Participant's Pre-Tax Elective Deferrals, and Roth Elective Deferrals.

**(C) Loans.** The Plan's loan policy or program may be modified to address Roth Elective Deferrals, including but not limited to, whether loans from Participant Roth Elective Deferral Accounts will be permitted.

### **3.10. In-Plan Roth Conversion.**

**(A) In-Plan Roth Conversion Account .** Effective February 18XX, 2024, a Participant may elect to transfer some or all of his or her vested Account balance (other than his or her Roth Elective Deferral Account or Roth Rollover Account), and earnings thereon, to an In-Plan Roth Conversion Account without regard to whether the Participant satisfies the requirements for distribution in accordance with Article IV (Time and Method of Payments of Benefits) of the Plan. Any Participant election to make an In-Plan Roth Conversion during a taxable year is irrevocable and cannot be changed after the In-Plan Roth Conversion is completed. Generally, In-Plan Roth Conversion Accounts are subject to the same Plan provisions as Roth Elective Deferral Accounts. However, distribution restrictions that otherwise apply with respect to a specific contribution source will continue to apply if such contribution source is converted to Roth Elective Deferrals. The Plan Administrator will maintain such records as are necessary for the proper reporting of In-Plan Roth Conversions and will administer the In-Plan Roth Conversion Accounts in accordance with the Code, Treasury Regulations, and Plan provisions.

**(B) Eligibility to Elect In-Plan Roth Rollover.** For purposes of determining eligibility for In-Plan Roth Rollovers, the Plan will treat a Participant's spousal Beneficiary or Participant's alternate payee spouse or former spouse as a Participant. A non-spouse beneficiary is not eligible to make an In-Plan Roth Rollover.

**(C) In-Plan Roth Rollover Procedure.** An In-Plan Roth Rollover must be made by the Participant in the form of a Direct In-Plan Roth Rollover. Additionally, an In-Plan Roth Rollover must be accomplished in the form and manner established by the Plan Administrator.

**(D) Plan Loans.** In-Plan Roth Rollovers may include a Plan loan only if there is no change in the loan's repayment schedule and the loan is not treated as a new loan. Further, Plan loans that include In-Plan Roth Rollover amounts are subject to the Plan's loan policy.

**(E) Treatment of In-Plan Roth Rollovers.** Notwithstanding anything in the Plan to the contrary, an In-Plan Roth Rollover is not a rollover contribution for purposes of the Plan. The Plan will take into account the amounts attributable to an In-Plan Roth Rollover for purposes of determining whether a Participant's vested Account Balance exceeds \$500 for purposes of the Plan's automatic cash-out distribution rule at Section 4.2(B). Amounts in the Participant's In-Plan Roth Rollover Account may only be withdrawn by a Participant when the Participant is eligible for a distribution under Article IV (Time and Method of Payments of Benefits) of the Plan.

**(F) Spousal Consent.** A married Plan Participant is not required to obtain spousal consent in connection with an election to make an In-Plan Roth Conversion, even if the Plan would otherwise require the spousal consent for distributions.

**(G) Tax Treatment of In-Plan Roth Conversion.** A Participant must include in gross income the taxable amount of an In-Plan Roth Conversion. For this purpose, the taxable amount of an In-Plan Roth Conversion is the fair market value of the distribution reduced by any basis in the converted amounts. If an outstanding loan is rolled over as part of an In-Plan Roth Conversion, the amount includible in gross income includes the balance of the loan. Generally, the taxable amount of an In-Plan Roth Conversion is includible in gross income in the taxable year in which the conversion occurs. However, In-Plan Roth Conversions are not subject to twenty percent (20%) mandatory withholding under Code § 3405(c). Thus, Participants will be required to make arrangements independent of the Plan to ensure the total taxable amount is timely paid.

**(H) In-Plan Roth Conversion Definitions.**

**(1) "Direct In-Plan Roth Rollover"** means a direct rollover from a Participant Account (other than Participant's Roth Elective Deferral Account, Roth Rollover Account and In-Plan Roth Rollover Account) to an In-Plan Roth Rollover Account established for the Participant.

**(2) "In-Plan Roth Rollover"** means a contribution made from the Participant's Account (other than Participant's Roth Deferral Account or Roth Rollover Account) to the Participant's In-Plan Roth Rollover Account under the Plan in accordance with Code § 402A(c)(4) with respect to distributable amounts under the Plan or § 402A(c)(4)(E) with respect to amounts not otherwise distributable under the Plan.

**(3) "In-Plan Roth Rollover Account"** means the subaccount established under the Plan to account for a Participant's In-Plan Roth Rollover.

**ARTICLE IV.**

**TIME AND METHOD OF PAYMENT OF BENEFITS**

**4.1. Distribution Restrictions.** Except as the Plan provides otherwise in Sections 4.3 (RMDs) and 4.5 (Distributions Prior to Severance From Employment), a Participant may not receive a distribution of the amounts in his or her Account prior to occurrence of one of the following events:

- (A)** The Participant's severance from employment; or
- (B)** The Participant's death.

**4.2. Time and Method of Payment of Account.** Upon a severance from employment the Participant's vested Account shall be distributed as specified in this Section 4.2 (Time and Method of Payment of Account) and in accordance with Code § 401(a)(9) and its underlying Treasury Regulations. In the absence of a Participant election, the Plan Administrator will determine the time

and method of payment applicable to a particular Participant. In no event will distributions commence later than permissible under the required minimum distribution rules described in Section 4.3 (RMDs) and of Code § 401(a)(9) and its underlying Treasury Regulations.

**(A) Participant Election of Time and Method.** Participants may elect the timing and method of distribution of his or her vested Account in accordance with this Section 4.2 (Time and Method of Payment of Account). The Plan Administrator must consent to the specific terms of any such Participant election and the Plan Administrator in its sole discretion may withhold consent. Subject to the foregoing conditions, a Participant: (1) may elect to postpone distribution of his or her vested Account to any fixed or determinable date including, but not beyond, the Participant's required beginning date; and (2) may elect a single lump sum or periodic payments (on a monthly, quarterly, semiannual, or annual basis) and/or a partial distribution as the method of payment of his or her vested Account balance provided the payment schedule selected by the Participant complies with Code §§ 457 and 401(a)(9). The Plan Administrator must furnish to the Participant a form for the Participant to elect the time and a method of payment.

**(B) Automatic Cash-Out Distribution.** Notwithstanding any other distribution election, if the Participant's Account balance is not in excess of \$500 as of the date of distribution, the Plan Administrator may distribute the Participant's Account balance in a single lump sum payment following Participant's severance from employment. In determining whether the Participant's Account balance is in excess of \$500, the Plan Administrator may take Rollover Contributions into consideration.

**4.3. Required Minimum Distributions ("RMDs").** A Participant's Account may not be distributed under a method of payment which, as of the required beginning date, does not satisfy the minimum distribution requirements of Code § 401(a)(9) or which is not consistent with applicable Treasury regulations.

**(A) General Rules.** All distributions required under this Section 4.3 will be determined and made in accordance with the Treasury regulations under Code § 401(a)(9), the requirements of which, will take precedence over any inconsistent provisions of the Plan.

**(B) Time and Manner of Distribution.**

**(1) Required Beginning Date.** The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date as set forth in Section 4.3(E)(5).

**(2) Death of Participant Before Distribution Begins.** If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

**(a) Spouse Designated Beneficiary.** If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, then distributions to the surviving spouse must begin by December 31 of the calendar year immediately following

the Calendar Year in which the Participant dies, or by December 31 of the Calendar Year in which the Participant would have attained age 70½ (or age 72 if Participant attains age 70½ after December 31, 2019), if later.

**(b) Non-Spouse Designated Beneficiary.** If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, then distributions to the designated Beneficiary will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

**(c) No Designated Beneficiary.** If there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

**(d) Death of Spouse.** If the Participant's surviving spouse is the Participant's sole Designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 4.3(B)(2) other than Section 4.3(B)(2)(a) (Spouse Designated Beneficiary), will apply as if the surviving spouse were the Participant. For purposes of this Section 4.3(B) (Time and Manner of Distribution) and Section 4.3(D) (RMDs After Participant's Death), unless this Section 4.3(B)(2)(d) applies, distributions are considered to begin on the Participant's required beginning date. If this Section 4.3(B)(2)(d) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 4.3(B)(2)(a) (Spouse Designated Beneficiary).

**(3) Forms of Distribution.** Unless the Participant's interest is distributed in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with Sections 4.3(C) (RMDs During Participant's Lifetime) and 4.3(D) (RMDs After Participant's Lifetime).

**(C) RMDs During Participant's Lifetime.**

**(1) Amount of RMD Each Distribution Calendar Year.** During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

**(a) Uniform Life Table.** The quotient obtained by dividing the Participant's Account Balance by the number in the Uniform Life Table set forth in U.S. Treas. Reg. § 1.401(a)(9)-9, using the Participant's attained age as of the Participant's birthday in the distribution calendar year; or

**(b) Younger Spouse.** If the Participant's sole Designated Beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in U.S. Treas. Reg. § 1.401(a)(9)-9, using the

Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

**(2) Lifetime RMDs Through Year of Participant's Death.** RMDs will be determined under this Section 4.3(C) (RMDs During Participant's Lifetime) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

**(D) RMDs After Participant's Death.**

**(1) Death On or After Distributions Begin.**

**(a) Participant Survived by Designated Beneficiary.** If the Participant dies on or after the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's Designated Beneficiary, determined as follows:

**(i) Participant's Life Expectancy.** The Participant's remaining life expectancy is calculated using the attained age of the Participant as of the Participant's birthday in the calendar year of death, reduced by one for each subsequent calendar year.

**(ii) Spouse's Life Expectancy.** If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the attained age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

**(iii) Non-Spouse's Life Expectancy.** If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining life expectancy is calculated using the attained age of the Beneficiary as of the Beneficiary's birthday in the calendar year following the calendar year of the Participant's death, reduced by one for each subsequent calendar year.

**(b) No Designated Beneficiary.** If the Participant dies on or after the date distributions begin and there is no Designated Beneficiary as of September 30 of the calendar year after the calendar year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year

after the calendar year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining life expectancy calculated using the attained age of the Participant as of the Participant's birthday in the calendar year of death, reduced by one for each subsequent calendar year.

**(2) Death Before Date Distributions Begin.**

**(a) Participant Survived by Designated Beneficiary.** If the Participant dies before the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining life expectancy of the Participant's designated Beneficiary, determined as provided in Section 4.3(D)(1) (Death On or After Distributions Begin).

**(b) No Designated Beneficiary.** If the Participant dies before the date distributions begin and there is no Designated Beneficiary, distribution of the Participant's entire interest will be completed to Participant's estate by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

**(c) Death of Surviving Spouse Before Distributions to Surviving Spouse are Required to Begin.** If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 4.3(B)(2)(a) (Spouse Designated Beneficiary), this Section 4.3(D)(2) will apply as if the surviving spouse were the Participant.

**(d) 5-Year or Life Expectancy Rule; Possible Election.** A Designated Beneficiary may elect whether the life expectancy rule under Section 4.3(D)(2)(a) (Participant Survived by Designated Beneficiary) or the 5-year rule under Section 4.3(D)(2)(b) (No Designated Beneficiary) will apply. However, the life expectancy rule is only available in the case of a Designated Beneficiary. The 5-year rule applies as to any Beneficiary who is not a Designated Beneficiary as defined by Code § 401(a)(9). A permitted election under this Section must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under Section 4.3(D)(2)(a) (Participant Survived by Designated Beneficiary), or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving spouse's) death.

**(E) RMD Definitions.**

- (1) Designated Beneficiary.** The individual who is designated as the Beneficiary under the Plan and is the designated beneficiary under Code § 401(a)(9) and U.S. Treas. Reg. 1.401(a)(9)-1, Q&A-4.
- (2) Distribution Calendar Year.** A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which the distributions are required to begin under Section 4.3(B)(2). The RMDs for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The RMD for other distribution calendar years, including the RMD for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.
- (3) Life Expectancy.** Life expectancy as computed by use of the Single Life Table in U.S. Treas. Reg. § 1.401(a)(9)-9.
- (4) Participant's Account Balance.** The account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any Rollover Contributions or Transfers to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.
- (5) Required Beginning Date.** A Participant's required beginning date is the April 1 of the calendar year following the later of: (1) the calendar year in which the Participant attains age 70½ (or age 72 if Participant attains age 70½ after December 31, 2019), or (2) the calendar year in which the Participant retires under Code § 401(a)(9). A Rehired Annuitant is treated as a retired Participant for purposes of determining his or her Required Beginning Date.

**4.4. Death Benefits.** Upon the death of the Participant, the Participant's Account must be paid in accordance with Section 4.2 (Time and Method of Payment of Account). If a Participant dies while performing qualified military service (as defined in Code § 414(u)), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed and then terminated employment on account of death. In no event may death benefits commence later than permissible under the required minimum distribution rules described in Section 4.3, and Code § 401(a) and its underlying Treasury Regulations.

**4.5. Distributions Prior to Severance From Employment.** Notwithstanding the distribution restrictions in Section 4.1 (Distribution Restrictions), the Plan permits the following in-service distributions from a Participant's vested Account balance.

**(A) Unforeseeable Emergency.** In the event of a Participant's unforeseeable emergency, the Plan Administrator may allow a distribution to a Participant who has not incurred a severance from employment (or who has incurred a severance from employment but will not begin to receive payments until some future date and continues to have an Account balance under the Plan). The Plan Administrator will establish a policy for determining whether an unforeseeable emergency exists. An unforeseeable emergency is a severe financial hardship of a resulting from:

- (1) illness or accident of the Participant, or the Participant's spouse or dependent (as defined in Code § 152(a));
- (2) loss of the Participant's property due to casualty;
- (3) the need to pay for the funeral expenses of the Participant's spouse or dependent (as defined in Code § 152(a)); or,
- (4) other similar extraordinary and unforeseeable circumstances arising from events beyond the Participant's control, or which applicable law may define as an unforeseeable emergency.

The Plan Administrator will not allow the Participant to withdraw more than the amount reasonably necessary to satisfy the emergency need, which may include amounts necessary to pay taxes or penalties on the distribution. The Plan Administrator will not allow payment to the extent the Participant may relieve the financial hardship by cessation of deferrals under the Plan, through insurance or other reimbursement, or by liquidation of the individual's assets to the extent such liquidation would not cause severe financial hardship.

**(B) Distribution of Rollover Contributions.** The Plan permits a Participant to request and to receive a distribution from the Participant's Account attributable to Rollover Contributions, plus earnings thereon, before the Participant has a distributable event under Section 4.1 (Distribution Restrictions).

**(C) Age-Based In-Service Distributions.** Effective January 1, 2020, the Plan permits a Participant to request and receive distributions from the Participant's Account on or after the date Participant attains age 59½. Prior to January 1, 2020, the Plan permitted Participants to request and receive distributions from the Participant's Account on or after attaining age 70½. Such age-based distributions must be requested by the Participant and may only be made in the frequency, form and manner provided by the Plan Administrator.

**(D) Participant Loans.** The Plan may establish and maintain a Participant loan program in accordance with the provisions of Section 5.3(**BA**) (Loan Policy) of the Plan and Code Section 72(p).

**(E) Qualified Birth or Adoption Distributions (QBOADs).** The Plan permits a Participant to request and receive QBOADs. QBOADs must be requested by the Participant and may only be made from the Plan in the frequency, form and manner provided by the Plan Administrator. Further, Participants may have an opportunity to repay a QBOAD if the Participant is eligible to make a rollover into the Plan under Section 3.4 (Rollover Contributions) and the policies and procedures established thereunder. This Section 4.5(E) is effective June 1, 2021.

**(F) Coronavirus-Related Distributions (CRDs).** Participants may request and receive a Coronavirus-Related Distribution (CRD). CRDs must be requested and made in the form and manner provided by the Plan Administrator.

**(1) "Coronavirus-Related Distribution" Defined.** A CRD means a distribution from the Plan made between January 1, 2020 and December 31, 2020, to a Participant:

- (i) who is diagnosed with the virus SARS-CoV-2 or the coronavirus disease 2019 (collectively, "COVID-19") by a test approved by the Centers for Disease Control and Prevention; or
- (ii) whose spouse or dependent is diagnosed with COVID-19 by a test approved by the Centers for Disease Control and Prevention; or
- (iii) who experiences adverse financial consequences as a result of a spouse or Participant being quarantined, furloughed or laid off, or having work hours reduced due to COVID-19; or being unable to work due to lack of childcare due to COVID-19 or closing or reducing hours of a business owned or operated by the spouse or Participant, or a member of the Participant's household (one who shares Participant's principal residence) due to COVID-19; or having a reduction in pay due to COVID-19 or having a job offer rescinded or start date for a job delayed due to COVID-19.

**(2) Aggregate Dollar Limit.** The aggregate amount of CRDs to a Participant may not exceed \$100,000 from all plans sponsored by the Employer.

**(3) Re-Contribution of CRDs.** Participants may have an opportunity to repay some or all of the Participant's CRD if completed within 3 years of the distribution, meets the re-contribution requirements in § 2202(a) of the SECURE Act, and the Participant is eligible to make a rollover contribution into the Plan under Section 3.4 (Rollover Contributions) and the policies and procedures established thereunder.

**(4) Participant Certification.** The Plan Administrator may rely on a Participant's certification that he or she satisfies the conditions for a CRD.

**(G) Pro Rata Distribution.** Unless the Plan Administrator provides otherwise, and only in accordance with applicable law, in-service distributions made under this Section 4.7 shall be made from Participant's Account on a pro rata basis across eligible contribution sources and investment options.

**4.6. Distributions Under Qualified Domestic Relations Orders (QDROs).** The Plan shall recognize and comply with a court order that the Plan Administrator (or designee thereof) determines, in its sole discretion, meets the requirements of Code § 414(p). In order to be approved, any such order must also comply with the provisions of this Section 4.6 and any additional policies or procedures established by the Plan Administrator.

**(A) Time and Method of Payment.** This Plan specifically permits distribution to an alternate payee under a QDRO at any time, notwithstanding any contrary Plan provision and irrespective of whether the Participant has attained his or her earliest retirement age (as defined under Code § 414(p)) under the Plan. A distribution to an alternate payee prior to the Participant's attainment of earliest retirement age is available only if the QDRO specifies distribution at that time or permits an agreement between the Plan and the alternate payee to authorize an earlier distribution. Nothing in this Section 4.6 gives a Participant a right to receive distribution at a time the Plan otherwise does not permit nor authorizes the alternate payee to receive a form of payment the Plan does not permit.

**(B) QDRO Procedures.** The Plan Administrator will establish reasonable procedures to determine the qualified status of a domestic relations order. Upon receiving a domestic relations order, the Plan Administrator (or its designee) promptly will notify the Participant and any alternate payee named in the order, in writing, of the receipt of the order and the Plan's procedures for determining the qualified status of the order. Within a reasonable period of time after receiving the domestic relations order, the Plan Administrator must determine the qualified status of the order and must notify the Participant and each alternate payee, in writing, of the Plan Administrator's determination. The Plan Administrator must provide notice under this paragraph by mailing to the individual's address specified in the domestic relations order.

**(C) Accounting.** If any portion of the Participant's Account balance is payable under the domestic relations order during the period the Plan Administrator is making its determination of the qualified status of the domestic relations order, the Plan Administrator must maintain a separate accounting of the amounts payable. If the Plan Administrator determines the order is a QDRO within 18 months of the date amounts first are payable following receipt of the domestic relations order, the Plan Administrator (or its designee) will distribute the payable amounts in accordance with the QDRO. If the Plan Administrator does not make its determination of the qualified status of the order within the 18-month determination period, the Plan Administrator (or its designee) will distribute the payable amounts in the manner the Plan would distribute if the order did not exist and will apply the order prospectively if the Plan Administrator later determines the order is a QDRO.

**(D) Permissible QDROs.** A domestic relations order that otherwise satisfies the requirements for a ~~qualified domestic relations order (“QDRO”)~~ will not fail to be a QDRO: (i) solely because the order is issued after, or revises, another domestic relations order or QDRO; or (ii) solely because of the time at which the order is issued, including issuance after or after the Participant’s death.

**4.7. Direct Rollover of Eligible Rollover Distributions.**

**(A) Participant Election.** A Participant (including for this purpose, a former Employee) may elect, at the time and in the manner the Plan Administrator prescribes, to have any portion of his or her eligible rollover distribution from the Plan paid directly to an eligible retirement plan specified by the Participant in a direct rollover election. For purposes of this election, a “Participant” includes as to their respective interests, a Participant’s surviving spouse and the Participant’s spouse or former spouse who is an alternate payee under a QDRO.

**(B) Rollover and Withholding Notice.** At least 30 days and not more than 180 days prior to distribution of an eligible rollover distribution, the Plan Administrator must provide a written notice (including a summary notice as permitted under applicable Treasury regulations) explaining to the distributee the rollover option, the applicability of mandatory ~~twenty percent (-20%)~~ federal withholding to any amount not directly rolled over, and the recipient’s right to roll over within 60 days after the date of receipt of the distribution (“rollover notice”).

**(C) Default Distribution or Rollover.** In the case of a Participant who does not elect timely to roll over or to receive distribution of his or her Account, the Plan Administrator (or its designee) may distribute to the Participant (if Participant’s Account balance is \$1,000 or less) or may directly roll over (if Participant’s Account balance is greater than \$1,000) the Participant’s Account in accordance with the Plan’s rollover notice. The Plan’s right to roll over Participant Account balance over \$1,000 to an IRA is effective as of the date of the close of the first regular legislative session of the legislative body with the authority to amend the Plan that begins on or after January 1, 2006. For purposes of the automatic rollover of Accounts over \$1,000, the Plan will treat a Participant’s Roth Elective Deferral Account and the Participant’s other accounts as held under two separate plans for purposes of applying the automatic rollover rules.

**(D) Non-Spouse Beneficiary Rollover Right.** A non-spouse beneficiary who is a designated beneficiary under Section 4.3(E)(1)(Designated Beneficiary), by a direct trustee-to-trustee transfer (“direct rollover”), may roll over all or any portion of his or her distribution to an individual retirement account the beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an eligible rollover distribution.

**(1) Certain Requirements Not Applicable.** Although a non-spouse beneficiary may roll over directly a distribution as provided in this Section 4.7(D), the distribution is

not subject to the direct rollover requirements of Code § 401(a)(31) (including the automatic rollover provisions of Code § 401(a)(31)(B)), the notice requirements of Code § 402(f) or the mandatory withholding requirements of Code § 3405(c). If a non-spouse beneficiary receives a distribution from the Plan, the distribution is not eligible for a “60-day” rollover.

**(2) Trust Beneficiary.** If the Participant’s named beneficiary is a trust, the Plan may make a direct rollover to an individual retirement account on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of Code § 401(a)(9)(E).

**(3) RMDs Not Eligible For Rollover.** A non-spouse beneficiary may not roll over an amount which is an RMD, as determined under applicable U.S. Treasury regulations and other IRS guidance. If the Participant dies before his or her required beginning date and the non-spouse beneficiary rolls over to an IRA the maximum amount eligible for rollover, the beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to U.S. Treas. Reg. § 1.401(a)(9)-3, A-4(c), in determining the RMDs from the IRA that receives the non-spouse beneficiary’s distribution.

**(E) Rollover Definitions.** The following definitions apply to this Section 4.7:

**(1) Eligible Rollover Distribution.** An eligible rollover distribution is any distribution of all or any portion of a Participant’s Account, except an eligible rollover distribution does not include: (a) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Participant or the joint lives (or joint life expectancies) of the Participant and the Participant’s Designated Beneficiary, or for a specified period of ten years or more; (b) any Code § 401(a)(9) required minimum distribution; and, (c) any unforeseeable emergency distribution.

**(2) Eligible Retirement Plan.** An eligible retirement plan is an individual retirement account described in Code § 408(a), an individual retirement annuity described in Code § 408(b), an annuity plan described in Code § 403(a), a qualified plan described in Code § 401(a), an annuity contract (or custodial agreement) described in Code § 403(b), or an eligible deferred compensation plan described in Code § 457(b) and maintained by an employer described in Code § 457(e)(1)(A), which accepts the Participant’s, the Participant’s spouse or alternate payee’s eligible rollover distribution. A Participant or beneficiary may elect to roll over directly an eligible rollover distribution to a Roth IRA described in Code § 408A(b). For this purpose, the term “eligible rollover distribution” includes a rollover distribution described in this Section 4.7. Notwithstanding the foregoing, a direct rollover of a distribution from Roth Elective Deferrals shall only be made to an Eligible Retirement Plan which includes Roth Elective Deferrals as described in Code § 402(e)(1) or to a Roth IRA as described in Code § 408A, and only to the extent the

rollover is permitted under the rules of Code § 402(c).

**(3) Direct Rollover.** A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

**(4) Mandatory Distribution.** A mandatory distribution is an eligible rollover distribution without the Participant's consent before the Participant attains the later of age 62 or NRA per paragraph 3.5 (Special Catch-Up Contribution). A distribution to a beneficiary is not a mandatory distribution.

## ARTICLE V.

### PLAN ~~ADMINISTRATOR - DUTIES WITH RESPECT TO PARTICIPANTS'~~ ACCOUNTS ADMINISTRATION

**5.1 Plan Administrator.** The District is the Plan Administrator and has delegated to the General Manager the powers, duties, and responsibilities of the Plan Administrator. The General Manager may delegate, in writing, some or all of the powers, duties and responsibilities of Plan Administrator position as necessary to adequately operate and maintain the Plan.

**5.2 Term/Vacancy.** Any Plan Administrator designated by the District must accept the Plan Administrator role and responsibilities in writing and will serve until his or her successor is appointed. In case of a vacancy in the position of the Plan Administrator, the District will exercise any and all of the powers, authority, duties and discretion as the Plan Administrator pending the filling of the vacancy.

**5.3 Powers and Duties.** The Plan Administrator shall have the following powers and duties:

#### **(A) In General.**

~~(1) — To and receive input from~~ select a committee to assist the Plan Administrator with administration of the Plan;

~~(2) — To select a secretary for the committee, who need not be a member of the committee;~~

~~(3)~~ (1) To determine the rights of eligibility of an Employee to participate in the Plan and the value of a Participant's Accounts;

~~(4)~~ (2) To adopt policies, rules and procedures and to create administrative forms necessary for the proper and efficient administration of the Plan provided the rules, procedures and forms are not inconsistent with the terms of the Plan or MWD Code The Metropolitan Water District of Southern California Administrative Code;

~~(5)~~ (3) To construe and enforce the terms of the Plan and the policies, rules and regulations adopted to carry out the terms of the Plan;

~~(6)~~ (4) To direct the distribution of a Participant's Accounts;

~~(7)(5)~~ To review and render decisions respecting an administrative claim for (or denial of such a claim for) a benefit under the Plan;

~~(8)(6)~~ To furnish the District with information required for tax or other purposes;

~~(9)(7)~~ To establish policies regarding distributions from the Plan;

~~(10)(8)~~ To establish policies regarding the receipt of Rollover Contributions and automatic rollover distributions;

~~(11)(9)~~ To establish a policy regarding the making and the receipt of Transfers;

~~(12)(10)~~ To establish a policy regarding Participant or Beneficiary direction of investment;

~~(13)~~ ~~To establish an investment policy for the Plan and/or a policy for Participant or Beneficiary directed investments;~~

~~(11)~~ To undertake correction of any Plan failures as necessary to preserve eligible Plan status;:

~~(12)~~ To act upon instructions from the DCIC to direct the Trustee regarding changes to the Plan's investment options and to execute proxy votes cast by the DCIC;

~~(13)~~ To request and receive input from the DCIC, when reasonable and appropriate, regarding non-investment related Plan features; the selection, performance, and retention of the record keeper, investment advisors, service providers, advisors, consultants, and auditor; and Plan amendments;

~~(14)~~ To serve as the secretary for the DCIC which includes the following duties: keeping and maintain the DCIC meeting minutes, executing documents on behalf of the DCIC, issuing formal written correspondence of the DCIC; and other such administrative support duties as the DCIC may reasonably delegate to the Plan Administrator; and

~~(14)(15)~~ To undertake any other action the Plan Administrator deems reasonable or necessary to administer the Plan.

The Plan Administrator shall have total and complete discretion to interpret and construe the Plan and to determine all questions arising in the administration, interpretation and application of the Plan. Any determination the Plan Administrator makes under the Plan is final and binding upon any affected person. The Plan Administrator shall coordinate with General Counsel concerning any litigation, compromise, or settlement of claims against the Plans in accordance with MWD Code Section 6433.

**(B) Loan Policy Establishment.** The Plan Administrator, in its sole discretion, may establish or amend a loan policy for making Plan loans (if permitted under the Plan) to Participants. If the Plan Administrator adopts a loan policy, the loan policy must be a written document and must include: (1) the identity of the person or positions authorized to administer the participant loan program; (2) the procedure for applying for a loan; (3) the criteria for

approving or denying a loan; (4) the limitations, if any, on the types and amounts of loans available; (5) the procedure for determining a reasonable rate of interest; (6) the types of collateral which may secure the loan; and (7) the events constituting default and the steps the Plan will take to preserve Plan assets in the event of default. A loan policy the Plan Administrator adopts under this Section 5.3(~~BA~~) is part of the Plan, except that the Plan Administrator may amend or terminate the policy without regard to Section 9.1 (Amendment By Employer/Sponsor) at any time.

**(C) QDRO Policy Establishment.** The Plan Administrator will establish QDRO policies and procedures.

**5.4 Without Additional Compensation.** The Plan Administrator ~~and the members of the DCIAC~~ will serve without additional compensation for services, but the District will pay all reasonable expenses of the Plan Administrator ~~and the DCIAC~~.

**5.5 Authorized Representative.** The Plan Administrator may authorize appropriate Human Resources or Finance staff, to sign on the Plan Administrator's behalf any Plan notices, directions, applications, certificates, consents, approvals, waivers, letters or other documents.

**5.6 Individual Accounts/Records.** The Plan Administrator will maintain a separate Account in the name of each Participant to reflect the value of the Participant's Deferred Compensation under the Plan. The Plan Administrator will maintain records of its activities.

**5.7 Valuation of Participant's Account.** The value of each Participant's Account consists of his or her accumulated Deferred Compensation, as of the most recent Accounting Date or any later date as the Plan Administrator may determine.

**5.8 Account Administration, Valuation and Expenses.**

**(A) Individual Accounts.** The Plan Administrator, as necessary for the proper administration of the Plan, will maintain, or direct the Trustee to maintain, a separate Account, or multiple Accounts, in the name of each Participant to reflect the Participant's Account balance under the Plan. The Plan Administrator will make its allocations of Earnings, or will request the Trustee to make such allocations, to the Accounts of the Participants as necessary to maintain proper Plan records and in accordance with the applicable: (i) Contribution Types; (ii) allocation conditions; (iii) investment account types; and (iv) Earnings allocation methods. The Plan Administrator may also maintain, or direct the Trustee to maintain, a separate temporary Account for Participant forfeitures which occur during a Plan Year, pending their accrual and allocation in accordance with the Plan terms, or for other special items as the Plan Administrator determines is necessary and appropriate for proper ~~p~~Plan administration.

**(1) By Contribution Type.** The Plan Administrator will establish Plan Accounts for each Participant as necessary to reflect his or her Accounts attributable to the following Contribution Types and the Earnings attributable thereto: In-Plan Roth Rollovers, Pre-Tax Deferrals, Rollover Contributions, Roth Deferrals, Roth Rollover

Contributions, and Transfers. If additional contribution types are added to the Plan, the Plan Administrator will establish Plan Accounts for each Participant to reflect such new contribution types.

**(2) By Investment Account Type.** The Plan Administrator will establish separate Accounts for each Participant as necessary to reflect his or her investment account types as described below:

**(a) Participant-Directed Accounts.** Participants may, in accordance with the provisions of the Plan, direct investment of all or a portion of the amounts allocated to an account. Participant-Directed Accounts are Accounts that are established and maintained for a Participant to invest in one or more assets that are not pooled assets held by the Trust. As the Plan Administrator determines, a Participant-Directed Account may provide for a limited number and type of investment options or funds. A Participant may have one or more Participant-Directed Accounts in addition to Segregated Accounts. A Participant-Directed Account is credited and charged with the Earnings. The Plan Administrator will designate how a Participant Account shall be invested in the absence of proper affirmative direction from the Participant. The Plan or Plan Administrator may designate a default fund under the Plan to deposit contributions on behalf of Participant who has not specified an investment choice under the Plan.

**(b) Segregated Accounts.** A Segregated Account that is established and maintained for a Participant: (i) to hold a QDRO amount; (ii) to prevent a distortion of Plan Earnings allocations; or (iii) for such other purposes as the Plan Administrator may direct. A Segregated Account receives all income it earns and bears all expense or loss it incurs. The assets of a Segregated Account shall be invested in a manner consistent with the purpose for which the Segregated Account was established.

As of each Valuation Date, the Plan Administrator must reduce a Segregated Account for any forfeiture arising after the Plan Administrator has made all other allocations, changes or adjustments to the Account (excluding Earnings) for the Valuation Period.

**(3) Amount of Account.** The amount of a Participant's Account, as determined by the Plan Administrator, is equal to the sum of all contributions, Earnings and other additions credited to the Account, less all distributions (including distributions to Beneficiaries and to alternate payees and also including disbursement of Plan loan proceeds), expenses and other charges against the Account as of a Valuation Date or other relevant date. For purposes of a distribution under the Plan, the amount of a Participant's Account balance is determined based upon its value on the Valuation Date immediately preceding or coinciding with the date of the distribution. If any or all Plan investment Accounts are participant-directed, the directing Participant's

Account balance consists of the assets held within the participant-directed Account and the value of the Account is determined based upon the fair market value of such assets.

**(4) Account Statements.** As soon as practicable after the Accounting Date of each Plan Year, the Plan Administrator will deliver to each Participant (and to each Beneficiary) a statement reflecting the amount of his or her Account balance in the Trust as of the statement date or most recent Valuation Date. No Participant, except the Plan Administrator/Participant or Trustee/Participant, has the right to inspect the records reflecting the Account of any other Participant.

**5.9 Participant Account Charged.** The Plan Administrator will charge all distributions made to a Participant or to his or her Beneficiary or transferred under Section 8.3 (Transfers) from his or her Account, against the Account of the Participant when made.

**5.10 Participant Direction of Investment.** Subject to authorization by the Plan's ~~i~~Investment ~~p~~Policy Statement and any terms, conditions and/or restrictions established by the Plan Administrator, Participants may elect to direct the investment or re-investment of the assets comprising the Participant's Account. Participants may direct the investment or re-investment of the assets comprising the Participant's Account in any investment options the ~~Plan-Administrator~~DCIC makes available under the Plan and in accordance with the Plan's ~~i~~Investment ~~p~~Policy Statement.

The Plan Administrator will account separately for any Account assets that are invested at the direction of the Participant or invested through a self-directed brokerage account.

The Participant's right to direct investment does not give the Participant any vested interest or secured or preferred position with respect to assets over which Participant has investment responsibility. Any assets in the Participant's Account for which the Participant has not made an investment election shall be invested in the Plan's default investment choice in accordance with the Plan's ~~i~~Investment ~~p~~Policy Statement.

**5.11 Vesting.** Participants shall be 100% vested in their Accounts at all times.

**5.12 Preservation of Eligible Plan Status.** The Plan Administrator may elect to sever from this Plan and to treat as a separate 457 plan, the Accounts of any Participants who have Excess Deferrals that the Plan Administrator has not corrected in accordance with Section 3.7 (Disbursement of Excess Deferrals) or in the case of any other Code § 457(b) failure that the District may not otherwise correct, and which failure would result in the Plan ceasing to be an eligible 457(b) plan. In such event, the Plan Administrator will take any necessary or appropriate action consistent with the District's maintenance of separate 457 plans and with preservation of tax-deferred status of this Plan.

**5.13 Limited Liability.** The District will not be liable to pay plan benefits to a Participant in excess of the value of the Participant's Account as the Plan Administrator determines in accordance with the Plan terms. Neither the District nor the Plan Administrator will be liable for losses arising

from depreciation or shrinkage in the value of any investments acquired under this Plan.

**5.14 Lost Participants.** If the Plan Administrator is unable to locate any Participant or Beneficiary whose Account becomes distributable (a “lost Participant”), the Plan Administrator will apply the provisions of this Section 5.14.

**(A) Attempt to Locate.** The Plan Administrator will attempt to locate a lost Participant or Beneficiary and may use one or more of the following methods: (1) provide a distribution notice to the lost Participant or Beneficiary at his or her last known address by certified or registered mail; (2) use a commercial locator service, the internet or other general search method; (3) use the Social Security Administration or PBGC search program; or (4) use such other methods as the Plan Administrator believes reasonable and prudent.

**(B) Failure to Locate.** The Plan Administrator may declare a forfeiture of a benefit due a Participant or Beneficiary deemed to be lost (i.e., the Participant or Beneficiary cannot be found within 4 years of his or her required beginning date). If after a benefit is forfeited under this Section 5.14(B), the lost Participant or Beneficiary is located, the Plan will restore the forfeited benefit (unadjusted for gains or losses) to such Participant or Beneficiary within a reasonable time. However, if a lost Participant or Beneficiary has not been located by the time the Plan terminates, the forfeiture of such Participant's or Beneficiary's distributable benefit will be irrevocable. Notwithstanding the foregoing, the provisions of this Section 5.14(B) are not the exclusive means for the Plan Administrator to administer the Accounts of lost Participants and Beneficiaries. The Plan Administrator may address forfeitures using any available means provided under applicable law, including escheating the Participant's or Beneficiary's benefit to the state.

**(C) Reasonable Expenses.** The Plan Administrator may charge to the Account of a lost Participant the reasonable expenses incurred under this Section 5.14 and which are associated with the lost Participant's Account.

**5.15 Plan Correction.** The Plan Administrator, in conjunction with other parties as appropriate, may undertake such correction of Plan errors as the Plan Administrator deems necessary, including but not limited to correction to maintain the Plan's status as an eligible 457(b) plan. The Plan Administrator under this Section 5.15 also may undertake Plan correction in accordance with any correction program that the Internal Revenue Service makes applicable to 457 plans.

## ARTICLE VI.

### BENEFICIARY DESIGNATIONS AND ENROLLMENT

**6.1 Beneficiary Designation.** A Participant from time to time may designate, in the form and manner set forth by the Plan Administrator, any person(s) (including a trust or other entity), contingently or successively, to whom the Plan will pay the Participant's Account in the event of death.

However, spousal consent is required in writing with respect to the distribution of death benefits from the Plan if the Participant designates someone other than the Participant's Spouse as a Beneficiary of more than fifty percent (50%) of the Participant's Account balance.

A Spouse's consent to the designation of more than fifty percent (50%) of Participant's Account to a non-spouse beneficiary must be provided at the time and in the form and manner specified by the Plan Administrator.

Subsequent beneficiary designations submitted to the Plan Administrator in good order revoke all designations filed prior to that date by the same Participant.

Participant's marriage or remarriage revokes any prior Beneficiary designations made by the Participant and a new Beneficiary designation form that complies with the consent requirements of this Section 6.1 (Beneficiary Designation) must be submitted.

Further, when designating a trust or other entity as a Beneficiary, the time and form of distribution available to such Beneficiaries may be limited ~~to~~ by the required minimum distribution rules of Code § 401(a)(9) and Section 4.3 (RMDs) of the Plan.

## **6.2 No Beneficiary Designation.**

**(A)** Effective for Participants who are active Employees of the District on or after August 1, 2018, if a Participant fails to name a Beneficiary in accordance with Section 6.1 (Beneficiary Designation), or if all the Beneficiaries named by a Participant predeceases the Participant, then the Plan Administrator will pay the Participant's remaining Account in accordance with Article IV (Time and Method of Payments of Benefits) in the following order of priority, to:

- (1)** The Participant's surviving spouse; or
- (2)** The Participant's children (including adopted children), in equal shares by right of representation (one share for each surviving child and one share for each child who predeceases the Participant with living descendants); and if none, then to:
- (3)** The Participant's estate.

**(B)** If a Participant has a severance from employment before August 1, 2018, and has a beneficiary designation form dated prior to August 1, 2018, then the Plan Administrator will pay the Participant's remaining Account in accordance with Article IV (Time and Method of Payments of Benefits) to the Participant's estate.

**(C)** If the Beneficiary survives the Participant, but dies prior to distribution of the Participant's entire Account, the remaining portion of the Participant's Account will be paid to the Participant's beneficiaries in accordance with, as applicable, Subsection 6.2 (No Beneficiary Designation) subsections (A) or (B) unless: (1) the Participant's Beneficiary designation election provides otherwise; or (2) the Beneficiary has timely and properly designated a Beneficiary under the procedures established by the Plan Administrator. A Beneficiary only may designate a Beneficiary for the Participant's

Account balance remaining at the Beneficiary's death, if the Participant has not previously designated a successive contingent Beneficiary and the Beneficiary's designation otherwise complies with the Plan terms.

### **6.3 Salary Reduction Agreement.**

**(A) General.** A Participant must elect to make Salary Reduction Contributions on a Salary Reduction Agreement form the Plan Administrator provides for this purpose. The Plan Administrator in a Salary Reduction Agreement may impose such other terms and limitations as the Plan Administrator may determine.

**(B) Election Timing.** A Participant's Salary Reduction Agreement may not take effect earlier than the first day of the calendar month following the date the Participant executes the Salary Reduction Agreement and as to Compensation paid or made available in such calendar month.

**(C) Sick, Vacation and Back Pay.** Participants may make Salary Reduction Contributions from accumulated sick pay, from accumulated vacation pay or from back pay. A Participant who will incur a severance from employment may execute a Salary Reduction Agreement before such amounts are paid or made available provided: (i) such amounts are paid or made available before the Participant incurs the Severance; and (ii) the Participant is an Employee in that month.

**(D) Modification of Salary Reduction Agreement.** A Participant's Salary Reduction Agreement remains in effect until a Participant modifies it or ceases to be eligible to participate in the Plan. However, a Salary Reduction Agreement must stay in effect for at least one (1) month once it has been entered into by a Participant. A Participant may modify his or her Salary Reduction Agreement by executing a new Salary Reduction Agreement. Any modification will become effective no earlier than the beginning of the calendar month commencing after the date the Participant executes the new Salary Reduction Agreement. Filing a new Salary Reduction Agreement will revoke all Salary Reduction Agreements filed prior to that date. The Plan Administrator may restrict the Participant's right to modify his or her Salary Reduction Agreement in any Taxable Year.

**6.4 Personal Data to Plan Administrator.** Each Participant and each Beneficiary of a deceased Participant must furnish to the Plan Administrator such evidence, data or information as the Plan Administrator considers necessary or desirable for the purpose of administering the Plan. The provisions of this Plan are effective for the benefit of each Participant upon the condition precedent that each Participant will furnish promptly full, true and complete evidence, data and information when requested by the Plan Administrator, provided the Plan Administrator advises each Participant of the effect of his or her failure to comply with its request.

**6.5 Address for Notification.** Each Participant and each Beneficiary of a deceased Participant must file with the Plan Administrator from time to time, in writing, contact information and any changes to such contract information, including but not limited to, his or her electronic and physical

address, phone number and any changes thereto. Any communication, statement or notice addressed to a Participant, or Beneficiary, at his or her last address filed with the Plan Administrator, or as shown on the records of the District, binds the Participant, or Beneficiary, for all purposes of this Plan.

**6.6 Participant or Beneficiary Incapacitated.** If it is asserted that a Participant or Beneficiary entitled to a Plan distribution is not able to care for his or her affairs because of a mental condition, a physical condition, or by reason of age and the Plan Administrator (or its designee) is directed to make the distribution to the Participant's or Beneficiary's guardian, conservator, trustee, custodian (including under a Uniform Transfers or Gifts to Minors Act) or to his or her attorney-in-fact or to other legal representative upon furnishing evidence of such status satisfactory to the Plan Administrator (or its designee), the Plan Administrator shall make such distribution. The Plan Administrator will not under any circumstance have any liability with respect to payments so made nor any duty to make inquiry as to the competence of any person entitled to receive payments under the Plan.

## ARTICLE VII.

### TRUST ~~PROVISIONS~~FUNDS

**7.1. Establishment of Trust.** Consistent with Code ~~§~~section 457(g) and applicable Treasury regulations, ~~the all~~ Plan's assets ~~are required to will~~ be held and invested in ~~the Trust in accordance with this Plan and the Trust Agreement. The Trust will be established pursuant to a written Trust Agreement that constitutes a valid trust under the laws of the State of California.~~

The District may enter into a Trust Agreement with the Trustee providing for the investment of the Trust and prescribing the powers, duties, obligations, and functions of the Trustee with respect to the Plan. The Trust Agreement will form a part of this Plan, and any rights and benefits of any Participant or Beneficiary under the Plan whose Accounts are invested in the Trust will be subject to the terms of the Trust Agreement. However, in the case of any conflict between the Plan and the Trust Agreement, the Plan will govern. The Trustee must be one or more banks or other fiduciaries appointed by the District to hold and administer assets of the Plan.

The Trust shall be operated for Trustee must hold the Plan assets in the Trust pursuant to the terms of the Trust Agreement for the exclusive benefit of Participants and their Beneficiaries and ~~to for~~ defraying reasonable expenses of administering the Plan. Except as provided in Section 3.1, no ~~assets part~~ of the ~~Plan shall~~ Trust fund will inure to the benefit of the Employer prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries.

The ~~Trust assets shall be held~~ Trustee must hold, managed, administered, valued, invested, reinvested and accounted for ~~by the Trustee~~ Trust assets in accordance with the terms of the Plan and the Trust Agreement.

~~The In its discretion, the Plan Administrator may recommend that the District may further terminate the Trustee, appoint a non-discretionary new Trustees, and authorize the Plan Administrator to carry out or assist in~~ instruct the Trustee with some or all of the duties and

~~responsibilities delegated to the transfer assets to a successor Trustee or Trustees. A nondiscretionary trustee is authorized to perform the duties delegated to the nondiscretionary trustee or directed to carry out by the District, Trustee, Plan Administrator or Plan Participant, as applicable. The nondiscretionary trustee is liable for any losses caused directly or indirectly from its negligence, misconduct or failure to act in good faith or as a result of any act or omission where it has exerted discretion. An appointment of a nondiscretionary trustee and any agreement documents outlining the duties and responsibilities of a nondiscretionary trustee shall be maintained as part of the Plan's records.~~

**7.2. Acceptance/Holding.** ~~The By executing the Trust Agreement, the~~ Trustee accepts the Trust created under the Plan Trust Agreement and agrees to perform the duties and obligations imposed under the Trust Agreement. The Trustee must hold and invest all Plan assets in ~~the~~ the Trust under ~~this Article VIII, all Deferred Compensation~~ the Trust Agreement until paid in accordance with the Plan's terms.

**7.3. Receipt of Contributions.** The Trustee is accountable to the District for the funds contributed to the Trust.

**7.4. ~~Investment of Plan Assets~~Deferred Compensation Investment Committee.** The District grants the ~~Trustee DCIC full power and~~ authority to ~~select an investment lineup consult and advise the Plan Administrator on the investment lineup for the, manage, and control~~ Plan assets. ~~The DCIC's membership, governance, and powers and duties are set forth in accordance with the Plan's Investment Policy Statement Bylaws of the Deferred Compensation Investment Committee.~~ The Trustee shall monitor performance ~~members~~ of the Plan's investment lineup ~~DCIC will serve without additional compensation for services, and as needed, consult and advise but the Plan Administrator to make adjustments to investment lineup.~~ The District grants the Trustee a consultation and advisory role with regard to the investment will pay all reasonable expenses of Trust assets, except with respect to a Trust asset under Participant direction of investment, in accordance with Section 7.12 (Participant Direction of Investment). ~~The Trustee is authorized and empowered, but not by way of limitation, to exercise and perform the following powers, rights and duties: DCIC.~~

~~(A) To the extent permitted by the Plan's Investment Policy Statement, invest any part or all of the Trust in any common or preferred stocks, open-end or closed-end mutual funds, put and call options traded on a national exchange, United States retirement plan bonds, corporate bonds, debentures, convertible debentures, commercial paper, U. S. Treasury bills, U. S. Treasury notes and other direct or indirect obligations of the United States Government or its agencies, , limited partnerships, insurance contracts of any type, 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. Other investments prudently made or retained by the Trustee of a kind constituting a diversification considered by law suitable for trust investments;~~

- ~~(B) To retain in cash so much of the Trust 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 invest, if the Trustee is a bank or similar financial institution supervised by the United States or by a State, in any type of deposit of the Trustee (or a bank related to the Trustee within the meaning of Code § 414(b)) at a reasonable rate of interest or in a common trust fund as described in Code § 584, or in a collective investment fund, the provisions of which the Trust incorporates by this reference, which the Trustee (or its affiliate, as defined in Code § 1504) maintains exclusively for the collective investment of money contributed by the bank (or its affiliate) in its capacity as Trustee and which conforms to the rules of the Comptroller of the Currency;~~
- ~~(D) To credit and distribute the Trust assets as directed by the Plan Administrator of the Plan. To borrow money, to assume indebtedness, extend mortgages and encumber by mortgage or pledge;~~
- ~~(E) To compromise, contest, arbitrate or abandon claims and demands, in the Trustee's discretion;~~
- ~~— To have with respect to the Trust all of the rights of an individual owner, including the power to exercise any and all voting rights associated with Trust assets, to give proxies, to participate in any voting trusts, mergers, consolidations or liquidations, to tender shares and to exercise or sell stock subscriptions or conversion rights. Further, the Trustee is authorized to establish a proxy voting balance. All proxies will be voted in accordance with a proxy voting policy;~~
- ~~(F) To hold any securities or other property in the name of the Trustee or its nominee, with depositories or agent depositories or in another form as it may deem best, with or without disclosing the trust relationship;~~
- ~~(G) To retain any funds or property subject to any dispute without liability for the payment of interest, and to decline to make payment or delivery of the funds or property until a court of competent jurisdiction makes a final adjudication;~~
- ~~(H) To furnish to the District and the Plan Administrator an annual statement of account 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, which accounts will be conclusive on all persons, including the District and the Plan Administrator, except as to any act or transaction concerning which the District or the Plan Administrator files with the Trustee written exceptions or objections within 90 days after the receipt of the accounts; and to begin, maintain or defend any litigation necessary in connection with the administration of the Trust, except that the Trustee~~

~~will not be obliged or required to do so unless indemnified to the extent authorized by the District.~~

- ~~(f) To perform any and all other acts in its judgment necessary or appropriate for the proper and advantageous management, investment and distribution of the Trust.~~

**7.5. ~~Records and Statements.~~** ~~The records of the Trustee pertaining to the Trust will be open to the inspection of the Plan Administrator and the District at all reasonable times and may be audited from time to time by any person or persons as the District or Plan Administrator may specify in writing. The Trustee will furnish the Plan Administrator whatever information relating to the Trust the Plan Administrator considers necessary.~~ **Investment Policy Statement.** The DCIC will establish and maintain an Investment Policy Statement (IPS) for the Plan, and will periodically review that policy, as needed. In establishing and maintaining the IPS, the DCIC will review all pertinent Plan and Participant information and data and may consult with any professional advisors as it deems necessary or appropriate, and will consider matters such as the following:

- (A) the Plan's objectives and the best method to accomplish those objectives, including the range of investment alternatives that should be available to Participants and their Beneficiaries in order to accomplish those objectives;
- (B) the policies or procedures to be followed by the DCIC in the selection and monitoring of investment alternatives, including the benchmarks and other performance criteria, as well as investment fees and expenses; and
- (C) the liquidity of Plan assets.

**7.6. ~~Fees and Expenses From Fund.~~** ~~The Trustee will pay from the Trust all fees and expenses the Trustee reasonably incurs in its administration of the Trust unless the District pays the fees and expenses. An employee Trustee may not receive compensation for performing duties as Trustee. A nonemployee trustee (whether discretionary or nondiscretionary) may receive reasonable annual compensation in an amount agreed upon by the Plan Administrator and Trustee.~~ **Investment Manager.** The Board of Directors may appoint one or more investment managers to manage (including the power to acquire and dispose of) any assets of the Plan. Only a person who is a registered investment advisor under the Investment Advisors Act of 1940, a bank or an insurance company qualified to do business in the State of California may be an investment manager under the Plan. The Trustee may be an investment manager.

**7.7. ~~Professional Agents.~~** ~~The Trustee may employ and pay from the Trust reasonable compensation to agents, attorneys, accountants and other persons to advise the Trustee as in its opinion may be necessary. The Trustee may delegate any non-fiduciary duty vested in it to any agent, attorney, accountant or other person selected by the Trustee. However, as fiduciary the Trustee may act or refrain from acting on the advice or opinion of any agent, attorney, accountant or other person so selected.~~ **Investment Funds.** The Trustee will establish and maintain investment funds designated by the DCIC or an investment manager designated by the Board of Directors. The assets of each investment fund will be managed by the Trustee or one or more investment

managers, as designated, except for Participant-directed investments that permit Participants to direct the investment of some or all of the assets in their Account in specific investments in accordance with Section 7.12 (Participant Direction of Investment).

**7.8. — Distribution of Cash or Property.** The Trustee may make distributions under the Plan in cash or property, or partly in each, at its fair market value as determined by the Trustee.

**7.9. — Resignation and Removal.** The Trustee may resign at any time by providing the Employer and Plan Administrator its position by giving written notice of resignation at least thirty (30) days prior to the effective date of such resignation unless the District consents in writing to a shorter period to the District and to the Plan Administrator. The Trustee's notice must specify the effective date of the Trustee's resignation, which date must be at least 30 days following the date of the Trustee's notice, unless the District consents in writing to shorter notice. The Employer District may remove a Trustee at any time, with or without cause, by providing written notice to the Trustee, by giving written notice to the affected party. The District's notice must specify the effective date of removal.

**7.10. — Successor Trustee/Appointment.** In the event of Upon the resignation, or the removal, death or incapacity of a Trustee, where no other Trustee continues to serve, the District must either appoint a successor Trustee or become the successor Trustee to continue the Plan. Upon accepting such appointment, a successor Trustee will have all the powers, rights, and duties conferred upon the preceding Trustee, if it intends to continue the Plan. If two or more persons hold the position of Trustee, in the event of the removal of one such person, during any period the selection of a replacement is pending, or during any period such person is unable to serve for any reason, the remaining person or persons will act as the Trustee. If the District fails to appoint a successor Trustee as of the effective date of the Trustee resignation, or removal, death or incapacity and no other Trustee remains, the District will be treated as the Trustee having appointed itself as Trustee and as having accepted the appointment, filed written acceptance of appointment as successor Trustee with the former Trustee. During such period, the Trust continues to be in existence and legally enforceable, and the assets of the Plan shall continue to be protected by the provisions of the Trust.

**7.11. — Valuation of Trust.** The Trustee will value the Trust as of each Accounting Date to determine the fair market value of the Trust assets. The Trustee will value the Trust on such other date(s) the Plan Administrator may direct.

**7.12-7.8. — Participant Direction of Investment.** Consistent with Article V, the Trustee-DCIC may consent in writing to permit Participants in the Plan to direct the investment to their Accounts under the Trust.

The Plan Administrator will advise the Trustee of the portion of the Trust credited to each Participant's Account under the Plan, and subject to such Participant direction.

As a condition of Participant direction, the Trustee-DCIC may impose such conditions, limitations and other provisions as the Trustee-DCIC may deem appropriate and as are consistent with policies created under the Plan's Investment Policy Statement and Article V.

The Trustee will report to the DCIC and Plan Administrator the net income, gain or losses incurred by each participant-directed Account separately from the net income, gain or losses incurred by the general Trust during the Plan Year.

**7.13. ~~Invalidity of Any Trust Provision.~~** ~~If any clause or provision of this Article VII proves to be or is adjudged to be invalid or void for any reason, such void or invalid clause or provision will not affect any of the other provisions of this Article VII and the balance of the Trust provisions will remain operative.~~

**7.14. ~~Exclusive Benefit.~~** ~~The Trustee will hold all the assets of the Trust for the exclusive benefit of the Participants and their Beneficiaries and neither the District nor the Trustee will use or divert any part of the corpus or income of the Trust for purposes other than the exclusive benefit of the Participants and Beneficiaries of the Plan. The District will not have any right to the assets held by the Trustee and the Trust assets will not be subject to the claims of the District's creditors or, except as provided in Section 4.6 (Distributions Under QDROs), of the creditors of any Participant or Beneficiary. No Participant or Beneficiary shall have any right to sell, assign, transfer or otherwise convey his or her Account or any interest in his or her Deferred Compensation. Notwithstanding the foregoing, the Plan Administrator may pay from a Participant's or Beneficiary's Account the amount the Plan Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary. The Trust created under the Plan is irrevocable and its assets will not inure to the benefit of the District.~~

**7.15.7.9. Group Trust Authority.** ~~Notwithstanding any contrary provision in this~~ Subject to the Plan Administrator's direction, the Trustee may, ~~unless restricted in writing by commingle, for investment or administration purposes,~~ the Plan Administrator, transfer assets (or portion of the assets) of the Plan to a Trust in any common trust fund, collective investment fund, master trust, or group trust that is operated or maintained exclusively for, but only if the commingling and collective investment of monies provided that the funds in the group commingled trust consist exclusively of trust assets held under plans qualified under Code § 401(a), individual retirement accounts that are exempt under Code § 408(e), and eligible governmental plans that meet/satisfies the requirements of Code § 457(b). For this purpose, a trust includes a custodial account that is treated as a trust under Code § 401(f) or under Code § 457(g)(3). For purposes of valuation, the value of the interest maintained Revenue Ruling 81-100 (as modified by the Plan in such group trust shall Revenue Ruling 2004-67 and Revenue Ruling 2011-1) to be the fair market value of the portion of the group trust held for Plan, determined in accordance with generally recognized valuation procedure tax exempt.

**7.16 ~~Documents and Instruments.~~** ~~The Trustee is authorized to execute, acknowledge and deliver all documents of transfer and conveyance, receipts, releases, and any other instruments that the Trustee deems necessary or appropriate to carry out its powers, rights and duties hereunder.~~

~~**7.17—More Than One Trustee.** If the Plan has more than one person acting as Trustee, the Trustees may allocate the Trustee responsibilities by mutual agreement. The Trustees may agree to make decisions by a majority vote or may permit any one of the Trustees to make any decision, undertake any action or execute any documents affecting this Trust without the approval of the remaining Trustees. The Trustees may agree to the allocation of responsibilities in a separate trust agreement or other binding document.~~

~~**7.18—Trustee Duties Limited.** The duties and obligations of the Trustee shall be limited to those imposed upon it by this Plan document, the applicable Trust Agreements, applicable law or as subsequently agreed upon by the parties. Responsibility for administrative duties required under the Plan or applicable law not imposed upon or agreed to by the Trustee shall rest with the Plan Administrator and Employer.~~

~~**7.19—Appointment of Custodian.** The Plan Administrator may appoint a Custodian to hold all or any portion of the Plan assets. A Custodian has the powers, rights and responsibilities similar to those of a nondiscretionary trustee unless otherwise provided in a separate agreement.~~

~~**7.20—Modification of Trust Provisions.** The Employer may amend the administrative trust or custodial provisions under this Plan (such as provisions relating to investments and the duties of trustees), provided the amended provisions are not in conflict with any other provision of the Plan and do not cause the Plan to fail to be eligible under Code § 457(b). The Employer may document any amendment modifying the trust or custodial provisions under this Plan or other overriding language in an Addendum to the Plan.~~

## ARTICLE VIII.

### AMENDMENT, TERMINATION AND TRANSFERS

**8.1. Amendment by Employer.** The Employer has the right, at any time and from time to time, to amend the Plan in whole or in part. Any amendment of the Plan by the Employer shall be expressed in an instrument executed by the Employer on the order of its Board of Directors and filed with the Trustee. Further, the Plan Administrator is also authorized, at any time and from time to time, to amend the Plan in whole or in part, to ensure compliance with applicable laws and regulations and further the administration of the Plan. The Plan Administrator may not amend the Plan to effectuate its termination.

**(A) Amendment Purposes Limited.** No Plan amendment may authorize or permit any portion of the assets held under the Plan to be used for or diverted to a purpose other than the exclusive benefit of Participants or Beneficiaries, except to the extent such assets are used to pay taxes or administrative expenses of the Plan. Any Plan amendment also may not cause or permit any portion of the assets held under the Plan to revert to or become property of the District.

**(B) Method of Amendment.** The Plan Administrator may amend the Plan in writing and without amendment of the MWD Code.

**(C) Termination/Freezing of Plan.** The Districts has the right, at any time, to terminate this Plan or to cease (freeze) further Salary Reduction Contributions to the Plan. Upon freezing Salary Reduction Contributions to the Plan, the provisions of the Plan (other than provisions permitting continued Salary Reduction Contributions) may remain operative until the Plan is terminated. Upon Plan termination, all Deferred Compensation in the Plan shall be distributed to Participants and Beneficiaries as soon as is reasonably practicable following termination. The exercise of such right by the District to terminate the 401(k) or 457(b) Plans does not preclude employees or their representatives from either consulting or meeting and conferring with the Employee Relations Officer, as appropriate, about the practical consequences that the exercise of such power or authority may have on wages, hours, and other terms and conditions of employment subject to MWD Code Section 6102 (Employee Rights).

**8.2. Purchase of Permissive Service Credit.** A Participant, prior to otherwise incurring a distributable event under Article IV (Time and Method of Payments of Benefits), may request a transfer of all or a portion of his or her Account to a governmental defined benefit plan (under Code § 414(d)) for: (a) the purchase of permissive service credit (under Code § 415(n)(3)(A)) under such plan, or (b) the repayment of contributions and earnings previously refunded with respect to a forfeiture of service credited under the plan (or under another governmental plan within the same State) to which Code § 415 does not apply by reason of Code § 415(k)(3). The Participant must follow the transfer request procedures established by the Plan Administrator.

## ARTICLE IX.

### MISCELLANEOUS

**9.1. No Assignment or Alienation.** A Participant or Beneficiary does not have the right to commute, sell, assign, pledge, transfer or otherwise convey or encumber the right to receive any payments under the Plan or Trust and the Plan Administrator and the Trustee will not recognize any such anticipation, assignment, or alienation. The payments and the rights under this Plan are non-assignable and nontransferable. Furthermore, except as provided in Section 4.6 (Distributions Under QDROs), a Participant's or Beneficiary's interest in the Trust is not subject to attachment, garnishment, levy, execution or other legal or equitable process. Notwithstanding the foregoing, the Plan Administrator may pay from a Participant's or Beneficiary's Account the amount the Plan Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

**9.2. Effect on Other Plans.** This Plan does not affect benefits under any other retirement, pension, or benefit plan or system established for the benefit of the District's Employees, and participation under this Plan does not affect benefits receivable under any such plan or system, except to the extent provided in such plan or system.

**9.3. Word Usage.** Words used in the masculine will apply to the feminine where applicable, and wherever the context of the Plan dictates, the plural will be read as the singular and the singular as the plural.

**9.4. Governing Law.** The provisions of this Plan shall be construed, administered, and enforced in accordance with the provisions of applicable Federal law, and, to the extent applicable, the laws of the state of California.

**9.5 Employment Not Guaranteed.** Nothing contained in this Plan, or any modification or amendment to the Plan, or in the creation of any Account, or the payment of any benefit, gives any Employee, Participant or Beneficiary any right to continue employment, any legal or equitable right against the District, the Plan Administrator, the Trustee, the DCIC, any other Employee of the District, or any agents thereof except as expressly provided by the Plan.

**9.6 Notice, Designation, Election, Consent, and Waiver.** All notices under the Plan and all Participant or Beneficiary designations, elections, consents or waivers must be in writing and made in the form and manner the Plan Administrator specifies or otherwise approves. To the extent permitted by Treasury regulations or other applicable guidance, any Plan notice, election, consent or waiver may be transmitted telephonically or electronically. Any person entitled to notice under the Plan may waive the notice or shorten the notice period except as otherwise required by the Code or other regulations or pronouncements.

**9.7 ~~Risk of Loss and Indemnities~~Indemnification.** ~~In accordance with To the extent permitted by law, the MWD Code, the the District will indemnify, defend and hold harmless the members of the Board of Directors, the the General Manager, the Plan Administrator, or any Employees who have administrative responsibility under the Plan, any employee or former employee, board member or former board member of the District and the Trustee Deferred Compensation Investment Committee or any member thereof, except to the extent such person has acted with gross negligence or has committed willful misconduct, shall be indemnified and held harmless by the District (to the extent not indemnified or held harmless under any liability insurance contract or other indemnification arrangement with respect to the plan) from and against respect to any and all liability, loss, damage or expense to which such person may be subject by reason of resulting from any act or omission made in good faith with respect to, except willful misconduct or gross negligence, in their official capacities in the administration of or management of the assets of the Plan, including attorney, accountant and advisory fees and all other all expenses reasonably incurred in that person's their defense, in the event the District fails to provide such defense after having been requested in writing to do so. The provisions of this Section 9.7 shall not be construed to in any way restrict the privileges and immunities that the District and its Employees are otherwise entitled to under Government Code Sections 818.8 and 820.2.~~

### **The Metropolitan Water District of Southern California**

The amended and restated Plan is hereby adopted, effective

The Metropolitan Water District of Southern  
California 457(b) Deferred Compensation Plan  
Effective January 1, 2024

January 1, 2024.

By: \_\_\_\_\_

Katano Kassaine  
Assistant General Manager/Chief Financial Officer and  
Interim Plan Administrator

\_\_\_\_\_  
Date Signed

**The Metropolitan Water District of  
Southern California  
457(b)  
Deferred Compensation Plan  
  
January 1, 2024**

**THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA  
457(b) DEFERRED COMPENSATION PLAN**

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**THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA  
457(b) DEFERRED COMPENSATION PLAN**

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**The Metropolitan Water District of Southern  
California 457(b) Deferred Compensation Plan**

**BACKGROUND**

Pursuant to Board of Directors' Resolution Number 7683, The Metropolitan Water District of Southern California ("District") established effective November 1, 1976, the Deferred Compensation Plan (the "Plan").

The Plan has been amended from time to time. The Plan was restated by Board of Directors' Minute Item 34625, effective April 1, 1983. Board of Directors' Minute Item 42712 caused the Plan to be codified in Division VI, Chapter 7, Article 8 of The Metropolitan Water District of Southern California Administrative Code ("MWD Code") and named the "Metropolitan Water District of Southern California 1997 Deferred Compensation Plan" effective November 18, 1997. The Plan was restated in its entirety and renamed "The Metropolitan Water District of Southern California 457(b) Deferred Compensation Plan" effective August 1, 2018. The Plan was further amended and restated effective January 1, 2020. The Plan is hereby amended and restated effective January 1, 2024, except as otherwise stated herein.

The Plan was established, and is maintained, as an eligible governmental deferred compensation plan meeting the requirements of Internal Revenue Code (the "Code") § 457(b) and § 457(e)(1)(A) and Treas. Reg. §§ 1.457-3 through 1.457-10.

All contributions made to the Plan, all property and rights purchased with such amounts and all income attributable to such amounts shall be held in trust for the exclusive benefit of Participants, Beneficiaries and Alternate Payees under the Plan in accordance with Code § 457(g). Amounts contributed under the Plan are held and invested, until distributed in accordance with the terms of the Plan.

The purpose of the Plan is to attract and retain certain officers and employees to The Metropolitan Water District of Southern California.

**ARTICLE I.**

**DEFINITIONS**

**1.1 Account.** The separate Account(s) established and maintained under the Plan for a Participant's Deferred Compensation, an alternate payee's interest in the Plan under a QDRO, or as needed, for Beneficiaries described in Section 4.3.

**1.2 Accounting Date.** The last day of the Plan Year. The Plan Administrator will allocate contributions and forfeitures for a particular Plan Year as of the Accounting Date of that Plan Year, and on such other dates, if any, as the Plan Administrator determines, consistent with the Plan's

allocation conditions and other provisions.

**1.3 Beneficiary.** A person who the Plan or a Participant designates and who is or may become entitled to a Participant's Account upon the Participant's death. If the Plan does not have a valid Beneficiary designation on file, the Participant's Beneficiary will be determined in accordance with Article VI (Beneficiary Designations and Enrollment). A Beneficiary who becomes entitled to a benefit under the Plan remains a Beneficiary under the Plan until the Beneficiary's entire Plan benefit has been fully distributed. A Beneficiary's right to (and the duty to provide to the Beneficiary) information or data concerning the Plan does not arise until the Beneficiary first becomes entitled to receive a benefit under the Plan.

**1.4 Code.** The Internal Revenue Code of 1986, as amended.

**1.5 Compensation.** The definition of Compensation is W-2 Wages. W-2 Wages means wages for federal income tax withholding purposes, as defined under Code § 3401(a), plus all other payments to an Employee in the course of the Employer's trade or business, for which the Employer must furnish the Employee a written statement under Code §§ 6041(Information at Source), 6051(Receipts for Employees), and 6052(Returns Regarding Payment of Wages in the Form of Group-Term Life Insurance), but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or services performed (such as the exception for agricultural labor in Code § 3401(a)(2)).

**(A) Compensation Taken Into Account.** For the Plan Year in which an Employee first becomes a Participant, the Plan Administrator will determine the allocation of contributions by taking into account the Employee's Compensation for the entire Plan Year.

**(B) Elective Contributions.** Compensation includes elective contributions excludible from the Employee's gross income under Code §§ 125(Cafeteria Plans), 132(f)(4)(De Minimis Fringe Defined), 402(e)(3)(Cash or Deferred Arrangements), 402(h)(1)(B)(Special Rules for Simplified Employee Pensions), 403(b)(Taxability of Beneficiary Under Annuity Purchased by Section 501(c)(3)), 408(p)(Simple Retirement Accounts) or 457.

**(C) Post-Severance Compensation.** Post-Severance Compensation is Compensation paid after a Participant's severance from employment with the District as further described in subsection (C)(1) below. Any other amount paid after severance from employment that is not described in subsection 5(C)(1) is not Compensation even if payment is made within the time period described below. Post-Severance Compensation does not include severance pay, or payments under a nonqualified unfunded deferred compensation plan unless the payments would have been paid at that time without regard to severance from employment.

**(1) Timing.** Post-Severance Compensation includes the following items of compensation to the extent the Employer pays such amounts by the later of 2½ months after severance from employment or by the end of the Plan Year that

includes the date of such severance from employment:

**(a) Regular Pay.** The payment of regular Compensation for services during the Participant's regular working hours, or Compensation for services outside the Participant's regular working hours (such as overtime or shift differential), bonuses, or other similar payments, but only if the payment would have been paid to the Participant prior to a severance from employment if the Participant had continued in employment with the Employer.

**(b) Leave Cash-outs.** Payments for unused accrued bona fide sick, vacation or other leave, but only if the Employee would have been able to use the leave if employment had continued and if Compensation would have included those amounts if they were paid prior to the Participant's severance from employment.

**(D) Salary Continuation for Disabled Participants.** Compensation paid to a Participant who is permanently and totally disabled (as defined in Code § 22(e)(3)) may be included in Compensation.

**(E) Differential Wage Payments.** An individual receiving a Differential Wage Payment, as defined by Code § 3401(h)(2), shall be treated as an employee of the employer making the payment and the Differential Wage Payment shall be treated as compensation for purposes of Code § 457(b) and any other Code section that references the definition of compensation under Code § 415, including the definition of Includible Compensation as provided in Section 1.14.

**1.6 Deferred Compensation.** The amount of Salary Reduction Contributions, Rollover Contributions and Transfers adjusted for allocable net income, gain or loss, in the Participant's Account.

**1.7 Deferred Compensation Investment Committee (DCIC).** The committee described in Section 7.4.

**1.8 Effective Date.** January 1, 2024, the effective date of this amendment and restatement of the Plan.

**1.9 Eligible Employee.** An Employee who is not an Excluded Employee.

**1.10 Employee.** An individual who provides services for the District as a common law employee of the District.

**1.11 Employer or District.** The Metropolitan Water District of Southern California.

**1.12 Excess Deferrals.** Salary Reduction Contributions to the Plan that exceed the Taxable Year maximum limitation of Code §§ 457(b) and (e)(18).

**1.13 Excluded Employee.** Employees who retired and severed employment and are rehired as annuitants, as defined in California Government Code § 7522.56, to work for a limited duration of

time. For purposes of this Plan, Independent Contractors are also treated as Excluded Employees.

**1.14 Includible Compensation.** For the Employee's Taxable Year, the Employee's total Compensation within the meaning of Code § 415(c)(3) paid to an Employee for services rendered to the Employer. Includible Compensation also includes:

- (A) Salary Reduction Contributions under this Plan, compensation deferred under any other plan described in Code § 457, and any amount excludible from the Employee's gross income under Code §§ 401(k), 403(b), 125, or 132(f)(4) or any other amount excludible from the Employee's gross income for Federal income tax purposes;
- (B) Payments for unused bona fide sick, vacation, or other leave, if the Employee would have been able to use the leave if employment had continued; and
- (C) Amounts paid prior to severance, or paid within 2 1/2 months after the later of severance from employment or the end of the Plan Year that includes the date of severance.

The Employer will determine Includible Compensation without regard to community property laws.

**1.15 Independent Contractor.** Any individual who performs service for the District and who the District does not treat as an Employee or a Leased Employee.

**1.16 Leased Employee.** An Employee within the meaning of Code § 414(n).

**1.17 Normal Retirement Age.** The age is designated by a Participant. A Participant may not designate a Normal Retirement Age (NRA) that is earlier than his or her CalPERS normal retirement age, which for classic members is age 55, and is age 62 for new members (as defined under PEPPRA). Participants shall designate a NRA in the form and manner established by the Plan Administrator.

**1.18 Participant.** An Employee (other than an Excluded Employee) who becomes a Participant in accordance with the provisions of Article II (Eligibility and Participation).

**1.19 Plan.** The Metropolitan Water District of Southern California 457(b) Deferred Compensation Plan.

**1.20 Plan Administrator.** The General Manager of the District or other person or entity designated by the District to be responsible for the administration and operation of the Plan.

**1.21 Plan Year.** The calendar year ending on December 31.

**1.22 Qualified Birth or Adoption Distribution (QBOAD).** A distribution to a Participant if made (a) during the 1-year period beginning on the date on which a child of the Participant is born or on which the legal adoption by the Participant of an eligible adoptee is finalized, (b) with respect to a child born or eligible adoptee the Participant includes the name, age, and the Taxpayer Identification Number of the child or eligible adoptee on the Participant's tax return for the taxable year in which the distribution is made, and (c) only to the extent such distribution from all plans maintained by the Employer to such Participant does not exceed \$5,000, in the aggregate, for each

birth or eligible adoptee. An eligible adoptee is any individual (other than a child of the Participant's spouse) who has not attained age 18 or is physically or mentally incapable of self-support.

**1.23 Recurrent Employee.** An Employee who is hired for an indefinite period of time on an irregular basis, such as intermittent, emergency or on call.

**1.24 Rehired Annuitant.** A rehired Employee who meets the definition of rehired annuitant in California Government Code Section 7522.56.

**1.25 Rollover Contribution.** The amount of cash or property which an eligible retirement plan described in Code § 402(c)(8)(B) distributes to an eligible Employee or Participant in an eligible rollover distribution under Code § 402(c)(4) and which the eligible Employee or Participant transfers directly or indirectly to the Plan. A Rollover Contribution includes net income, gain or loss attributable to the Rollover Contribution. A Rollover Contribution into the Plan excludes after-tax Employee contributions, as adjusted for net income, gain or loss.

**1.26 Roth Elective Deferrals.** A Participant's Salary Reduction Contributions that are includible in the Participant's gross income at the time deferred and have been irrevocably designated as Roth Elective Deferrals by the Participant in his or her Salary Reduction Agreement. A Participant's Roth Elective Deferrals will be separately accounted for, as will gains and losses attributable to those Roth Elective Deferrals. However, forfeitures may not be allocated to such account. The Plan must also maintain a record of a Participant's investment in the contract (i.e., designated Roth contributions that have not been distributed) and the year in which the Participant first made a Roth Elective Deferral.**1.27 Salary Reduction Agreement.** A written agreement between a Participant and the District, authorizing the District to reduce the Participant Compensation and contribute the amount as a Salary Reduction Contribution to the Participant's Account.

**1.28 Salary Reduction Contribution.** The Pre-Tax Elective Deferrals and Roth Elective Deferrals the District deducts from a Participant's Compensation and contributes to the Plan pursuant to a Participant's Salary Reduction Agreement.

**1.29 Service.** Any period of time the Employee is in the employ of the Employer. An Employee terminates Service upon incurring a severance from employment.

**(A) Qualified Military Service.** Service includes any qualified military service the Plan must credit for contributions and benefits in order to satisfy the crediting of Service requirements of Code § 414(u). A Participant whose employment is interrupted by qualified military service under Code § 414(u) or who is on a leave of absence for qualified military service under Code § 414(u) may elect to make additional Salary Reduction Contributions upon resumption of employment with the Employer equal to the maximum Salary Reduction Contributions that the Participant could have elected during that period if the Participant's employment with the Employer had continued (at the same level of Compensation) without the interruption of leave, reduced by the Salary Reduction Contributions, if any, actually made for the Participant during the period of

the interruption or leave. This right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave). The Plan does not provide for matching or non-elective employer contributions as those terms are defined under Code § 457 and the underlying Treasury Regulations. Therefore, the Employer is not required under Code § 414(u) to make any other contributions to such a Participant. The Plan shall apply limitations of Article III (Deferral Contributions and Limitations) to all Salary Reduction Contributions under this paragraph with respect to the year to which the Salary Reduction Contributions relates.

**(B) Continuous Service.** Service with the Employer during which the Employee does not incur a severance from employment.

**(C) Severance from Employment.**

**(1) Employee.** An Employee has a severance from employment when the Employee ceases to be an Employee of the Employer. A Participant does not incur a severance from employment if, in connection with a change in employment, the Participant's new employer continues or assumes sponsorship of the Plan or accepts a Transfer of Plan assets as to the Participant.

**(2) Deemed Severance.** If a Participant performs service in the uniformed services (as defined in Code § 414(u)(12)(B)) on active duty for a period of more than 30 days, the Participant will be deemed to have a severance from employment solely for purposes of eligibility for distribution of amounts not subject to Code § 412. However, the Plan will not distribute such a Participant's Account on account of this deemed severance unless the Participant specifically elects to receive a benefit distribution hereunder. If a Participant elects to receive a distribution on account of this deemed severance, then no Salary Reduction Contributions may be made for the Participant during the 6-month period beginning on the date of the distribution. If a Participant would be entitled to a distribution on account of a deemed severance, and a distribution on account of another Plan provision, then the other Plan provision will control and the 6-month suspension will not apply.

**1.30 State.** One of the 50 states of the United States or the District of Columbia, or a political subdivision of a State, or any agency or instrumentality of a State or its political subdivision. A State does not include the federal government or any agency or instrumentality thereof.

**1.31 Taxable Year.** The calendar year or other taxable year of a Participant.

**1.32 Temporary Employee.** An Employee who is hired for a specified limited time.

**1.33 Transfer.** A transfer of assets from one eligible Code § 457(b) plan to another eligible Code § 457(b) plan which is not a Rollover Contribution and which is made in accordance with Section 8.3 (Transfers).

**1.34 Trust.** The trust established pursuant to the Trust Agreement between the District and the Trustee to hold, administer and distribute all or a portion of the Plan's assets in accordance with Code § 457(g).

**1.35 Trust Agreement.** The separate agreement entered into by and between the District and the Trustee to hold, administer and distribute all or a portion of the Plan's assets.

**1.36 Trustee.** The person(s) or entity, and any successors thereto, named in the Trust Agreement, who is appointed by the District to hold, administer and distribute all or a portion of the Plan assets held in the Trust pursuant to the terms and conditions of the Trust Agreement.

## **ARTICLE II.**

### **ELIGIBILITY AND PARTICIPATION**

**2.1 Eligibility.** The Plan does not require Eligible Employees to satisfy an age or service requirement in order to participate in the Plan. Each Eligible Employee becomes a Participant in the Plan in accordance with entry date rules described in Section 2.2.

**2.2 Commencement of Salary Reduction Contributions.** Generally, Salary Reduction Contributions for Eligible Employees commence on the first day of the month coinciding with or following the later of the Eligible Employee's date of hire or submission of a Salary Reduction Agreement. Notwithstanding the preceding sentence, Eligible Employees who are Temporary Employees or Recurrent Employees commence Salary Reduction Contributions in accordance with the Minimum Salary Reduction Contribution amounts specified in Section 3.2 as of his or her date of hire. Eligible Employees who are Temporary Employees or Recurrent Employees may change contribute an amount greater than (but not less than) the Minimum Salary Reduction Contribution amount described in Section 3.2 by completing a Salary Reduction Agreement. Changes to such Eligible Employee's Minimum Salary Reduction Contribution amount will take effect in accordance with the general timing rule described above.

**2.3 Effect of Plan Restatement.** Each Eligible Employee who was a Participant on the day before the Effective Date of the Plan continues as a Participant in the Plan, irrespective of whether he/she satisfies the eligibility conditions in the amended and restated Plan.

**2.4 Participation Upon Re-Employment.** A Participant who incurs a severance from employment may re-enter the Plan as a Participant as of his or her date of re-employment, so long as the Employee is not rehired in an Excluded Employee classification.

## **ARTICLE III.**

### **DEFERRAL CONTRIBUTIONS AND LIMITATIONS**

#### **3.1. Amount.**

**(A) Contribution Formula.** For each Plan Year, the District will contribute to the Plan, on behalf of each Participant, the Participant's Salary Reduction Contribution and any other type and amount of contributions authorized under the Plan. Effective February 18, 2024,

Salary Reduction Contributions may include Roth Elective Deferrals in addition to pre-tax salary deferrals.

**(B) Return of Contributions.** If any Salary Reduction Contribution (or any other type contributions authorized under the Plan) is made due to a mistake of fact, the Plan Administrator upon written request from the District shall return the contributions (adjusted for net income, gain or loss), within one (1) year after payment of the contribution.

**(C) Time of Payment of Contribution.** The District shall deposit Salary Reduction Contributions to the Trust within a period that is not longer than is reasonable for the administration of Participant Accounts.

**3.2. Salary Reduction Contributions.** The Plan permits Salary Reduction Contributions. Participants may designate a dollar or percentage amount by which to reduce his or her Compensation. Such Participant designations shall be made in accordance with a Salary Reduction Agreement.

Temporary Employees and Recurrent Employees are subject to mandatory minimum Salary Reduction Contribution amounts ("Minimum Salary Reduction Contributions"). Effective July 1, 2016, the Minimum Salary Reduction Contribution for Temporary Employees and Recurrent Employees are as follows:

<b>Temporary and Recurrent Employee Category</b>	<b>Minimum Salary Reduction Contribution</b>
Classic PERS Members	0.5%
New PERS Members	1.5%
Non PERS Members	7.5%

Provided, however, the Minimum Salary Reduction Contributions for Temporary or Recurrent Employees shall at all times be no less than the difference between 7.5% of the Temporary or Recurrent Employee's Compensation and his or her member contribution to CalPERS, if any. If at any time the Minimum Salary Reduction Contribution required of a Temporary Employee or Recurrent Employee varies from the minimums provided in the table above, the table shall automatically be adjusted.

Temporary Employees and Recurrent Employees may elect a different Salary Reduction Contribution amount, however, such election must be for an amount that is greater than the applicable Minimum Salary Reduction Contribution stated in this Section 3.2.

**(A) Deferral from Sick, Vacation and Back Pay.** Participants may elect to make Salary Reduction Contributions from accumulated sick pay, accumulated vacation pay or back pay in accordance with the established deduction timing calendar maintained by the District.

**(B) Application to Leave of Absence and Disability.** Unless a Participant in his or her Salary Reduction Agreement elects otherwise, the Participant's Salary Reduction Agreement shall continue to apply during the Participant's leave of absence or the Participant's disability (as the Plan Administrator shall establish), if the Participant has Compensation other than imputed compensation or disability benefits.

**(C) Post-Severance Deferrals Limited to Post-Severance Compensation.** Deferrals are permitted from an amount received following severance from employment only if the amount is Post-Severance Compensation.

**3.3. Normal Limitation.** Except as provided in Sections 3.4 (Age 50 Catch-Up Contribution) and 3.5 (Special Catch-Up Contribution), a Participant's maximum Salary Reduction Contributions (excluding Rollover Contributions and Transfers) under this Plan for a Taxable Year may not exceed the lesser of:

**(A)** The applicable dollar amount as specified under Code § 457(e)(15) (or as the Commissioner of the Internal Revenue may prescribe), or

**(B)** 100% of the Participant's Includible Compensation for the Taxable Year.

**3.4. Age 50 Catch-Up Contribution.** A Participant who will have attained age 50 before the close of the Taxable Year is eligible to make age 50 catch-up contributions for that Taxable Year and in subsequent Taxable Years in accordance with, and subject to the limitations of, Code § 414(v). If, for a Taxable Year, a Participant is eligible to make an Age 50 Catch-Up Contribution under this Section 3.4 and a special catchup contribution under Section 3.5 (Special Catch-Up Contribution) such Participant is entitled to the greater of the two catch up amounts determined under Section 3.4 and Section 3.5.

**3.5. Special Catch-Up Contribution.** A Participant may elect to make a catch-up contribution for one or more of the Participant's last three Taxable Years ending before the Taxable Year in which the Participant attains NRA. In a Taxable Year in which a catch-up contribution is made, the Participant's maximum Salary Reduction Contributions may not exceed the lesser of:

**(A)** Twice the dollar amount under Section 3.3 (Normal Limitation), and

**(B)** The underutilized limitation under Section 3.5(A), as described below

**(1) Underutilized Limitation.** A Participant's underutilized limitation is equal to the sum of: (i) the normal limitation for the Taxable Year, and (ii) the normal limitation for each of the prior Taxable Years of the Participant commencing after 1978 during which the Participant was eligible to participate in the Plan and the Participant's Salary Reduction Contributions were subject to the Normal Limitation or any other Code § 457(b) limit, less the amount of Salary Reduction Contributions for each such prior Taxable Year, excluding Age 50 Catch-Up Contributions.

**(2) Normal Retirement Age (NRA).** A Participant may elect his or her applicable NRA for purposes of this Section 3.5. Participants may not elect a NRA that is earlier than

age 65 or the age at which Participants have the right to retire and receive benefits under CalPERS without actuarial or other reduction which is age 55 for classic CalPERS members and age 62 for new CalPERS members as defined by PEPPRA. Further, participants may not elect a NRA later than age 72.

**(3) Pre-2002 Coordination.** In determining a Participant's underutilized limitation, the Plan Administrator, in accordance with U.S. Treas. Reg. § 1.457-4(c)(3)(iv), must apply the coordination rule in effect under now repealed Code § 457(c)(2). The Plan Administrator also must determine the Normal Limitation for pre-2002 Taxable Years in accordance with Code § 457(b)(2) as then in effect.

**3.6. Rollover Contributions.** The Plan may accept Rollover Contributions.

**(A) Operational Administration.** The District, operationally and on a nondiscriminatory basis, may elect to limit an eligible Employee's or Participant's right to make a Rollover Contribution. Any Employee or Participant (or former Employee or Participant) with the District's written consent and after filing the forms prescribed by the Plan Administrator, may make a Rollover Contribution to the Trust. Before accepting a Rollover Contribution, the Participant (or eligible Employee) may be required to furnish satisfactory evidence that the proposed transfer is in fact a Rollover Contribution which the applicable tax rules permits an employee to make to an eligible retirement plan. The Plan Administrator, in its sole discretion, may decline to accept a Rollover Contribution of property which could: (1) generate unrelated business taxable income; (2) create difficulty or undue expense in storage, safekeeping or valuation; or (3) create other practical problems for the Trust.

**(B) Separate Accounting.** If the District permits Rollover Contributions, the Plan Administrator must account separately for: (1) amounts rolled into this Plan from an eligible retirement plan (other than from another eligible governmental 457(b) plan); and (2) amounts rolled into this Plan from another eligible governmental 457(b) plan. The Plan Administrator for purposes of ordering any subsequent distribution from this Plan may designate a distribution from a Participant's Rollover Contributions as coming first from either of (1) or (2) above if the Participant has both types of Rollover Contribution Accounts.

**(C) Roth Elective Deferrals.** The Plan may accept a rollover contribution of Roth Elective Deferrals only if it is a direct rollover from another Plan which permits Roth Elective Deferrals as described in Code § 402A(e)(1) and only to the extent the rollover is permitted under the rules of Code § 402(c). The District, operationally and on a uniform and nondiscriminatory basis, may decide whether to accept any such rollovers. If the Plan chooses to accept rollovers of Roth Elective Deferrals, the amounts must be directly rolled over into this Plan from another plan that is qualified under Code § 401(a), from a Code § 403(b) plan, or from an eligible governmental Code § 457(b) plan. The Plan must account separately for the Rollover Contribution, including Roth Elective Deferrals and the earnings thereon.

**3.7. Distribution of Excess Deferrals.** In the event that a Participant has Excess Deferrals, the Plan will distribute to the Participant the Excess Deferrals and allocable net income, gain or loss, in accordance with this Section 3.7.

**(A) Eligible Governmental 457(b) Plan.** The Plan Administrator will distribute Excess Deferrals from the Plan as soon as is reasonably practicable following the Plan Administrator's determination of the amount of the Excess Deferral.

**(B) Individual Limitation.** If a Participant participates in another eligible 457(b) plan maintained by a different employer, and the Participant has Excess Deferrals, the Plan Administrator may, but is not required, to correct the Excess Deferrals by making a corrective distribution from this Plan.

**3.8. Benefit Accruals for Qualified Military Service.** To the extent required under Code § 414(u), an Employee who returns to employment with the District following a period of qualified military service will receive any contributions, benefits, and service credit required under Code § 414 (u), provided the Employee satisfies all applicable requirements under the Code and regulations. In determining the amount of contributions under Code § 414(u), Plan Compensation will be deemed to be the compensation the Employee would have received during the period while in military service based on the rate of pay the Employee would have received from the District but for the absence due to military leave. If the compensation the Employee would have received during the leave is not reasonably certain, Plan Compensation will be equal to the Employee's average compensation from the District during the twelve (12) month period immediately preceding the military leave or, if shorter, the Employee's actual period of employment with the District.

For benefit accrual purposes, the Plan treats an individual who dies or becomes disabled (as defined under the terms of the Plan) while performing qualified military service with respect to the District as if the individual had resumed employment in accordance with the individual's reemployment rights under USERRA, on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability.

**3.9. Roth Elective Deferrals.** Effective February 18, 2024, Participants may make Roth Elective Deferrals to the Plan. Unless otherwise indicated, Roth Elective Deferrals shall be treated in the same manner as Elective Deferrals. The District may, in operation, implement deferral election procedures provided such procedures are communicated to Participants and Participants are permitted to modify their elections at least once per Plan Year.

**(A) Elective Deferrals** means a contribution the Employer makes to the Plan pursuant to a Participant's Salary Reduction Agreement and includes Pre-Tax Elective Deferrals and Roth Elective Deferrals.

**(1) Pre-Tax Elective Deferrals** mean a Participant's Salary Reduction Contributions which are not includible in the Participant's gross income at the time deferred and have been irrevocably designated as Pre-Tax Elective Deferrals by the Participant in his or her Salary Reduction Agreement. A Participant's Pre-Tax Elective Deferrals will

be separately accounted for, as will gains and losses attributable to those Pre-Tax Elective Deferrals.

**(2) Roth Elective Deferrals** means a Participant's Salary Reduction Contributions that are includible in the Participant's gross income at the time deferred and have been irrevocably designated as Roth Elective Deferrals by the Participant in his or her Salary Reduction Agreement. A Participant's Roth Elective Deferrals will be separately accounted for, as will gains and losses attributable to those Roth Elective Deferrals. However, forfeitures may not be allocated to such account. The Plan must maintain a record of a Participant's Roth Elective Deferrals and the year in which the Participant first made a Roth Elective Deferral.

**(B) Ordering Rules for Distributions.** The District may implement an ordering rule for withdrawals from Participant's accounts attributable to Pre-Tax Elective Deferrals and/or Roth Elective Deferrals. Absent an ordering rule established by the District in compliance with applicable law, withdrawals will be made on a pro rata basis from Participant's Pre-Tax Elective Deferrals, and Roth Elective Deferrals.

**(C) Loans.** The Plan's loan policy or program may be modified to address Roth Elective Deferrals, including but not limited to, whether loans from Participant Roth Elective Deferral Accounts will be permitted.

### **3.10. In-Plan Roth Conversion.**

**(A) In-Plan Roth Conversion Account .** Effective February 18, 2024, a Participant may elect to transfer some or all of his or her vested Account balance (other than his or her Roth Elective Deferral Account or Roth Rollover Account), and earnings thereon, to an In-Plan Roth Conversion Account without regard to whether the Participant satisfies the requirements for distribution in accordance with Article IV (Time and Method of Payments of Benefits) of the Plan. Any Participant election to make an In-Plan Roth Conversion during a taxable year is irrevocable and cannot be changed after the In-Plan Roth Conversion is completed. Generally, In-Plan Roth Conversion Accounts are subject to the same Plan provisions as Roth Elective Deferral Accounts. However, distribution restrictions that otherwise apply with respect to a specific contribution source will continue to apply if such contribution source is converted to Roth Elective Deferrals. The Plan Administrator will maintain such records as are necessary for the proper reporting of In-Plan Roth Conversions and will administer the In-Plan Roth Conversion Accounts in accordance with the Code, Treasury Regulations, and Plan provisions.

**(B) Eligibility to Elect In-Plan Roth Rollover.** For purposes of determining eligibility for In-Plan Roth Rollovers, the Plan will treat a Participant's spousal Beneficiary or Participant's alternate payee spouse or former spouse as a Participant. A non-spouse beneficiary is not eligible to make an In-Plan Roth Rollover.

- (C) In-Plan Roth Rollover Procedure.** An In-Plan Roth Rollover must be made by the Participant in the form of a Direct In-Plan Roth Rollover. Additionally, an In-Plan Roth Rollover must be accomplished in the form and manner established by the Plan Administrator.
- (D) Plan Loans.** In-Plan Roth Rollovers may include a Plan loan only if there is no change in the loan's repayment schedule and the loan is not treated as a new loan. Further, Plan loans that include In-Plan Roth Rollover amounts are subject to the Plan's loan policy.
- (E) Treatment of In-Plan Roth Rollovers.** Notwithstanding anything in the Plan to the contrary, an In-Plan Roth Rollover is not a rollover contribution for purposes of the Plan. The Plan will take into account the amounts attributable to an In-Plan Roth Rollover for purposes of determining whether a Participant's vested Account Balance exceeds \$500 for purposes of the Plan's automatic cash-out distribution rule at Section 4.2(B). Amounts in the Participant's In-Plan Roth Rollover Account may only be withdrawn by a Participant when the Participant is eligible for a distribution under Article IV (Time and Method of Payments of Benefits) of the Plan.
- (F) Spousal Consent.** A married Plan Participant is not required to obtain spousal consent in connection with an election to make an In-Plan Roth Conversion, even if the Plan would otherwise require the spousal consent for distributions.
- (G) Tax Treatment of In-Plan Roth Conversion.** A Participant must include in gross income the taxable amount of an In-Plan Roth Conversion. For this purpose, the taxable amount of an In-Plan Roth Conversion is the fair market value of the distribution reduced by any basis in the converted amounts. If an outstanding loan is rolled over as part of an In-Plan Roth Conversion, the amount includible in gross income includes the balance of the loan. Generally, the taxable amount of an In-Plan Roth Conversion is includible in gross income in the taxable year in which the conversion occurs. However, In-Plan Roth Conversions are not subject to twenty percent (20%) mandatory withholding under Code § 3405(c). Thus, Participants will be required to make arrangements independent of the Plan to ensure the total taxable amount is timely paid.
- (H) In-Plan Roth Conversion Definitions.**
- (1) "Direct In-Plan Roth Rollover"** means a direct rollover from a Participant Account (other than Participant's Roth Elective Deferral Account, Roth Rollover Account and In-Plan Roth Rollover Account) to an In-Plan Roth Rollover Account established for the Participant.
  - (2) "In-Plan Roth Rollover"** means a contribution made from the Participant's Account (other than Participant's Roth Deferral Account or Roth Rollover Account) to the Participant's In-Plan Roth Rollover Account under the Plan in accordance with Code § 402A(c)(4) with respect to distributable amounts under the Plan or

§ 402A(c)(4)(E) with respect to amounts not otherwise distributable under the Plan.

**(3) "In-Plan Roth Rollover Account"** means the subaccount established under the Plan to account for a Participant's In-Plan Roth Rollover.

#### **ARTICLE IV.**

##### **TIME AND METHOD OF PAYMENT OF BENEFITS**

**4.1. Distribution Restrictions.** Except as the Plan provides otherwise in Sections 4.3 (RMDs) and 4.5 (Distributions Prior to Severance From Employment), a Participant may not receive a distribution of the amounts in his or her Account prior to occurrence of one of the following events:

**(A)** The Participant's severance from employment; or

**(B)** The Participant's death.

**4.2. Time and Method of Payment of Account.** Upon a severance from employment the Participant's vested Account shall be distributed as specified in this Section 4.2 (Time and Method of Payment of Account) and in accordance with Code § 401(a)(9) and its underlying Treasury Regulations. In the absence of a Participant election, the Plan Administrator will determine the time and method of payment applicable to a particular Participant. In no event will distributions commence later than permissible under the required minimum distribution rules described in Section 4.3 (RMDs) and of Code § 401(a)(9) and its underlying Treasury Regulations.

**(A) Participant Election of Time and Method.** Participants may elect the timing and method of distribution of his or her vested Account in accordance with this Section 4.2 (Time and Method of Payment of Account). The Plan Administrator must consent to the specific terms of any such Participant election and the Plan Administrator in its sole discretion may withhold consent. Subject to the foregoing conditions, a Participant: (1) may elect to postpone distribution of his or her vested Account to any fixed or determinable date including, but not beyond, the Participant's required beginning date; and (2) may elect a single lump sum or periodic payments (on a monthly, quarterly, semiannual, or annual basis) and/or a partial distribution as the method of payment of his or her vested Account balance provided the payment schedule selected by the Participant complies with Code §§ 457 and 401(a)(9). The Plan Administrator must furnish to the Participant a form for the Participant to elect the time and a method of payment.

**(B) Automatic Cash-Out Distribution.** Notwithstanding any other distribution election, if the Participant's Account balance is not in excess of \$500 as of the date of distribution, the Plan Administrator may distribute the Participant's Account balance in a single lump sum payment following Participant's severance from employment. In determining whether the Participant's Account balance is in excess of \$500, the Plan Administrator may take Rollover Contributions into consideration.

**4.3. Required Minimum Distributions ("RMDs").** A Participant's Account may not be

distributed under a method of payment which, as of the required beginning date, does not satisfy the minimum distribution requirements of Code § 401(a)(9) or which is not consistent with applicable Treasury regulations.

**(A) General Rules.** All distributions required under this Section 4.3 will be determined and made in accordance with the Treasury regulations under Code § 401(a)(9), the requirements of which, will take precedence over any inconsistent provisions of the Plan.

**(B) Time and Manner of Distribution.**

**(1) Required Beginning Date.** The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date as set forth in Section 4.3(E)(5).

**(2) Death of Participant Before Distribution Begins.** If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

**(a) Spouse Designated Beneficiary.** If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, then distributions to the surviving spouse must begin by December 31 of the calendar year immediately following the Calendar Year in which the Participant dies, or by December 31 of the Calendar Year in which the Participant would have attained age 70½ (or age 72 if Participant attains age 70½ after December 31, 2019), if later.

**(b) Non-Spouse Designated Beneficiary.** If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, then distributions to the designated Beneficiary will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

**(c) No Designated Beneficiary.** If there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

**(d) Death of Spouse.** If the Participant's surviving spouse is the Participant's sole Designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 4.3(B)(2) other than Section 4.3(B)(2)(a) (Spouse Designated Beneficiary), will apply as if the surviving spouse were the Participant. For purposes of this Section 4.3(B) (Time and Manner of Distribution) and Section 4.3(D) (RMDs After Participant's Death), unless this Section 4.3(B)(2)(d) applies, distributions are considered to begin on the Participant's required beginning date. If this Section 4.3(B)(2)(d) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 4.3(B)(2)(a) (Spouse Designated Beneficiary).

**(3) Forms of Distribution.** Unless the Participant's interest is distributed in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with Sections 4.3(C) (RMDs During Participant's Lifetime) and 4.3(D) (RMDs After Participant's Lifetime).

**(C) RMDs During Participant's Lifetime.**

**(1) Amount of RMD Each Distribution Calendar Year.** During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

**(a) Uniform Life Table.** The quotient obtained by dividing the Participant's Account Balance by the number in the Uniform Life Table set forth in U.S. Treas. Reg. § 1.401(a)(9)-9, using the Participant's attained age as of the Participant's birthday in the distribution calendar year; or

**(b) Younger Spouse.** If the Participant's sole Designated Beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in U.S. Treas. Reg. § 1.401(a)(9)-9, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

**(2) Lifetime RMDs Through Year of Participant's Death.** RMDs will be determined under this Section 4.3(C) (RMDs During Participant's Lifetime) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

**(D) RMDs After Participant's Death.**

**(1) Death On or After Distributions Begin.**

**(a) Participant Survived by Designated Beneficiary.** If the Participant dies on or after the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's Designated Beneficiary, determined as follows:

**(i) Participant's Life Expectancy.** The Participant's remaining life expectancy is calculated using the attained age of the Participant as of the Participant's birthday in the calendar year of death, reduced by one for each subsequent calendar year.

**(ii) Spouse's Life Expectancy.** If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, the remaining life expectancy of the

surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the attained age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

**(iii) Non-Spouse's Life Expectancy.** If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining life expectancy is calculated using the attained age of the Beneficiary as of the Beneficiary's birthday in the calendar year following the calendar year of the Participant's death, reduced by one for each subsequent calendar year.

**(b) No Designated Beneficiary.** If the Participant dies on or after the date distributions begin and there is no Designated Beneficiary as of September 30 of the calendar year after the calendar year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the calendar year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining life expectancy calculated using the attained age of the Participant as of the Participant's birthday in the calendar year of death, reduced by one for each subsequent calendar year.

**(2) Death Before Date Distributions Begin.**

**(a) Participant Survived by Designated Beneficiary.** If the Participant dies before the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining life expectancy of the Participant's designated Beneficiary, determined as provided in Section 4.3(D)(1) (Death On or After Distributions Begin).

**(b) No Designated Beneficiary.** If the Participant dies before the date distributions begin and there is no Designated Beneficiary, distribution of the Participant's entire interest will be completed to Participant's estate by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

**(c) Death of Surviving Spouse Before Distributions to Surviving Spouse are Required to Begin.** If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated Beneficiary, and the surviving spouse dies before distributions are required to

begin to the surviving spouse under Section 4.3(B)(2)(a) (Spouse Designated Beneficiary), this Section 4.3(D)(2) will apply as if the surviving spouse were the Participant.

**(d) 5-Year or Life Expectancy Rule; Possible Election.** A Designated Beneficiary may elect whether the life expectancy rule under Section 4.3(D)(2)(a) (Participant Survived by Designated Beneficiary) or the 5-year rule under Section 4.3(D)(2)(b) (No Designated Beneficiary) will apply. However, the life expectancy rule is only available in the case of a Designated Beneficiary. The 5-year rule applies as to any Beneficiary who is not a Designated Beneficiary as defined by Code § 401(a)(9). A permitted election under this Section must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under Section 4.3(D)(2)(a) (Participant Survived by Designated Beneficiary), or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving spouse's) death.

**(E) RMD Definitions.**

- (1) Designated Beneficiary.** The individual who is designated as the Beneficiary under the Plan and is the designated beneficiary under Code § 401(a)(9) and U.S. Treas. Reg. 1.401(a)(9)-1, Q&A-4.
- (2) Distribution Calendar Year.** A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which the distributions are required to begin under Section 4.3(B)(2). The RMDs for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The RMD for other distribution calendar years, including the RMD for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.
- (3) Life Expectancy.** Life expectancy as computed by use of the Single Life Table in U.S. Treas. Reg. § 1.401(a)(9)-9.
- (4) Participant's Account Balance.** The account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any Rollover Contributions or Transfers to the Plan either in the valuation

calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

**(5) Required Beginning Date.** A Participant's required beginning date is the April 1 of the calendar year following the later of: (1) the calendar year in which the Participant attains age 70½ (or age 72 if Participant attains age 70½ after December 31, 2019), or (2) the calendar year in which the Participant retires under Code § 401(a)(9). A Rehired Annuitant is treated as a retired Participant for purposes of determining his or her Required Beginning Date.

**4.4. Death Benefits.** Upon the death of the Participant, the Participant's Account must be paid in accordance with Section 4.2 (Time and Method of Payment of Account). If a Participant dies while performing qualified military service (as defined in Code § 414(u)), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed and then terminated employment on account of death. In no event may death benefits commence later than permissible under the required minimum distribution rules described in Section 4.3, and Code § 401(a) and its underlying Treasury Regulations.

**4.5. Distributions Prior to Severance From Employment.** Notwithstanding the distribution restrictions in Section 4.1 (Distribution Restrictions), the Plan permits the following in-service distributions from a Participant's vested Account balance.

**(A) Unforeseeable Emergency.** In the event of a Participant's unforeseeable emergency, the Plan Administrator may allow a distribution to a Participant who has not incurred a severance from employment (or who has incurred a severance from employment but will not begin to receive payments until some future date and continues to have an Account balance under the Plan). The Plan Administrator will establish a policy for determining whether an unforeseeable emergency exists. An unforeseeable emergency is a severe financial hardship of a resulting from:

- (1)** illness or accident of the Participant, or the Participant's spouse or dependent (as defined in Code § 152(a));
- (2)** loss of the Participant's property due to casualty;
- (3)** the need to pay for the funeral expenses of the Participant's spouse or dependent (as defined in Code § 152(a)); or,
- (4)** other similar extraordinary and unforeseeable circumstances arising from events beyond the Participant's control, or which applicable law may define as an unforeseeable emergency.

The Plan Administrator will not allow the Participant to withdraw more than the amount reasonably necessary to satisfy the emergency need, which may include amounts necessary to pay taxes or penalties on the distribution. The Plan Administrator will not allow payment to the extent the Participant may relieve the financial hardship

by cessation of deferrals under the Plan, through insurance or other reimbursement, or by liquidation of the individual's assets to the extent such liquidation would not cause severe financial hardship.

**(B) Distribution of Rollover Contributions.** The Plan permits a Participant to request and to receive a distribution from the Participant's Account attributable to Rollover Contributions, plus earnings thereon, before the Participant has a distributable event under Section 4.1 (Distribution Restrictions).

**(C) Age-Based In-Service Distributions.** Effective January 1, 2020, the Plan permits a Participant to request and receive distributions from the Participant's Account on or after the date Participant attains age 59½. Prior to January 1, 2020, the Plan permitted Participants to request and receive distributions from the Participant's Account on or after attaining age 70½. Such age-based distributions must be requested by the Participant and may only be made in the frequency, form and manner provided by the Plan Administrator.

**(D) Participant Loans.** The Plan may establish and maintain a Participant loan program in accordance with the provisions of Section 5.3(B) (Loan Policy) of the Plan and Code Section 72(p).

**(E) Qualified Birth or Adoption Distributions (QBOADs).** The Plan permits a Participant to request and receive QBOADs. QBOADs must be requested by the Participant and may only be made from the Plan in the frequency, form and manner provided by the Plan Administrator. Further, Participants may have an opportunity to repay a QBOAD if the Participant is eligible to make a rollover into the Plan under Section 3.4 (Rollover Contributions) and the policies and procedures established thereunder. This Section 4.5(E) is effective June 1, 2021.

**(F) Coronavirus-Related Distributions (CRDs).** Participants may request and receive a Coronavirus-Related Distribution (CRD). CRDs must be requested and made in the form and manner provided by the Plan Administrator.

**(1) "Coronavirus-Related Distribution" Defined.** A CRD means a distribution from the Plan made between January 1, 2020 and December 31, 2020, to a Participant:

- (i) who is diagnosed with the virus SARS-CoV-2 or the coronavirus disease 2019 (collectively, "COVID-19") by a test approved by the Centers for Disease Control and Prevention; or
- (ii) whose spouse or dependent is diagnosed with COVID-19 by a test approved by the Centers for Disease Control and Prevention; or
- (iii) who experiences adverse financial consequences as a result of a spouse or Participant being quarantined, furloughed or laid off, or having work hours reduced due to COVID-19; or being unable to work due to lack of childcare due to COVID-19 or closing or reducing hours of a business owned or operated by

the spouse or Participant, or a member of the Participant's household (one who shares Participant's principal residence) due to COVID-19; or having a reduction in pay due to COVID-19 or having a job offer rescinded or start date for a job delayed due to COVID-19.

**(2) Aggregate Dollar Limit.** The aggregate amount of CRDs to a Participant may not exceed \$100,000 from all plans sponsored by the Employer.

**(3) Re-Contribution of CRDs.** Participants may have an opportunity to repay some or all of the Participant's CRD if completed within 3 years of the distribution, meets the re-contribution requirements in § 2202(a) of the SECURE Act, and the Participant is eligible to make a rollover contribution into the Plan under Section 3.4 (Rollover Contributions) and the policies and procedures established thereunder.

**(4) Participant Certification.** The Plan Administrator may rely on a Participant's certification that he or she satisfies the conditions for a CRD.

**(G) Pro Rata Distribution.** Unless the Plan Administrator provides otherwise, and only in accordance with applicable law, in-service distributions made under this Section 4.7 shall be made from Participant's Account on a pro rata basis across eligible contribution sources and investment options.

**4.6. Distributions Under Qualified Domestic Relations Orders (QDROs).** The Plan shall recognize and comply with a court order that the Plan Administrator (or designee thereof) determines, in its sole discretion, meets the requirements of Code § 414(p). In order to be approved, any such order must also comply with the provisions of this Section 4.6 and any additional policies or procedures established by the Plan Administrator.

**(A) Time and Method of Payment.** This Plan specifically permits distribution to an alternate payee under a QDRO at any time, notwithstanding any contrary Plan provision and irrespective of whether the Participant has attained his or her earliest retirement age (as defined under Code § 414(p)) under the Plan. A distribution to an alternate payee prior to the Participant's attainment of earliest retirement age is available only if the QDRO specifies distribution at that time or permits an agreement between the Plan and the alternate payee to authorize an earlier distribution. Nothing in this Section 4.6 gives a Participant a right to receive distribution at a time the Plan otherwise does not permit nor authorizes the alternate payee to receive a form of payment the Plan does not permit.

**(B) QDRO Procedures.** The Plan Administrator will establish reasonable procedures to determine the qualified status of a domestic relations order. Upon receiving a domestic relations order, the Plan Administrator (or its designee) promptly will notify the Participant and any alternate payee named in the order, in writing, of the receipt of the order and the Plan's procedures for determining the qualified status of the order. Within a reasonable period of time after receiving the domestic relations order, the Plan

Administrator must determine the qualified status of the order and must notify the Participant and each alternate payee, in writing, of the Plan Administrator's determination. The Plan Administrator must provide notice under this paragraph by mailing to the individual's address specified in the domestic relations order.

**(C) Accounting.** If any portion of the Participant's Account balance is payable under the domestic relations order during the period the Plan Administrator is making its determination of the qualified status of the domestic relations order, the Plan Administrator must maintain a separate accounting of the amounts payable. If the Plan Administrator determines the order is a QDRO within 18 months of the date amounts first are payable following receipt of the domestic relations order, the Plan Administrator (or its designee) will distribute the payable amounts in accordance with the QDRO. If the Plan Administrator does not make its determination of the qualified status of the order within the 18-month determination period, the Plan Administrator (or its designee) will distribute the payable amounts in the manner the Plan would distribute if the order did not exist and will apply the order prospectively if the Plan Administrator later determines the order is a QDRO.

**(D) Permissible QDROs.** A domestic relations order that otherwise satisfies the requirements for a QDRO will not fail to be a QDRO: (i) solely because the order is issued after, or revises, another domestic relations order or QDRO; or (ii) solely because of the time at which the order is issued, including issuance after or after the Participant's death.

#### **4.7. Direct Rollover of Eligible Rollover Distributions.**

**(A) Participant Election.** A Participant (including for this purpose, a former Employee) may elect, at the time and in the manner the Plan Administrator prescribes, to have any portion of his or her eligible rollover distribution from the Plan paid directly to an eligible retirement plan specified by the Participant in a direct rollover election. For purposes of this election, a "Participant" includes as to their respective interests, a Participant's surviving spouse and the Participant's spouse or former spouse who is an alternate payee under a QDRO.

**(B) Rollover and Withholding Notice.** At least 30 days and not more than 180 days prior to distribution of an eligible rollover distribution, the Plan Administrator must provide a written notice (including a summary notice as permitted under applicable Treasury regulations) explaining to the distributee the rollover option, the applicability of mandatory twenty percent (20%) federal withholding to any amount not directly rolled over, and the recipient's right to roll over within 60 days after the date of receipt of the distribution ("rollover notice").

**(C) Default Distribution or Rollover.** In the case of a Participant who does not elect timely to roll over or to receive distribution of his or her Account, the Plan Administrator (or its designee) may distribute to the Participant (if Participant's Account balance is \$1,000 or less) or may directly roll over (if Participant's Account balance is greater than \$1,000) the

Participant's Account in accordance with the Plan's rollover notice. The Plan's right to roll over Participant Account balance over \$1,000 to an IRA is effective as of the date of the close of the first regular legislative session of the legislative body with the authority to amend the Plan that begins on or after January 1, 2006. For purposes of the automatic rollover of Accounts over \$1,000, the Plan will treat a Participant's Roth Elective Deferral Account and the Participant's other accounts as held under two separate plans for purposes of applying the automatic rollover rules.

**(D) Non-Spouse Beneficiary Rollover Right.** A non-spouse beneficiary who is a designated beneficiary under Section 4.3(E)(1)(Designated Beneficiary), by a direct trustee-to-trustee transfer ("direct rollover"), may roll over all or any portion of his or her distribution to an individual retirement account the beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an eligible rollover distribution.

**(1) Certain Requirements Not Applicable.** Although a non-spouse beneficiary may roll over directly a distribution as provided in this Section 4.7(D), the distribution is not subject to the direct rollover requirements of Code § 401(a)(31) (including the automatic rollover provisions of Code § 401(a)(31)(B)), the notice requirements of Code § 402(f) or the mandatory withholding requirements of Code § 3405(c). If a non-spouse beneficiary receives a distribution from the Plan, the distribution is not eligible for a "60-day" rollover.

**(2) Trust Beneficiary.** If the Participant's named beneficiary is a trust, the Plan may make a direct rollover to an individual retirement account on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of Code § 401(a)(9)(E).

**(3) RMDs Not Eligible For Rollover.** A non-spouse beneficiary may not roll over an amount which is an RMD, as determined under applicable U.S. Treasury regulations and other IRS guidance. If the Participant dies before his or her required beginning date and the non-spouse beneficiary rolls over to an IRA the maximum amount eligible for rollover, the beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to U.S. Treas. Reg. § 1.401(a)(9)-3, A-4(c), in determining the RMDs from the IRA that receives the non-spouse beneficiary's distribution.

**(E) Rollover Definitions.** The following definitions apply to this Section 4.7:

**(1) Eligible Rollover Distribution.** An eligible rollover distribution is any distribution of all or any portion of a Participant's Account, except an eligible rollover distribution does not include: (a) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Participant or the joint lives (or joint life expectancies) of the Participant and the Participant's Designated Beneficiary, or for a specified period of ten years or more; (b) any Code § 401(a)(9) required minimum

distribution; and, (c) any unforeseeable emergency distribution.

**(2) Eligible Retirement Plan.** An eligible retirement plan is an individual retirement account described in Code § 408(a), an individual retirement annuity described in Code § 408(b), an annuity plan described in Code § 403(a), a qualified plan described in Code § 401(a), an annuity contract (or custodial agreement) described in Code § 403(b), or an eligible deferred compensation plan described in Code § 457(b) and maintained by an employer described in Code § 457(e)(1)(A), which accepts the Participant's, the Participant's spouse or alternate payee's eligible rollover distribution. A Participant or beneficiary may elect to roll over directly an eligible rollover distribution to a Roth IRA described in Code § 408A(b). For this purpose, the term "eligible rollover distribution" includes a rollover distribution described in this Section 4.7. Notwithstanding the foregoing, a direct rollover of a distribution from Roth Elective Deferrals shall only be made to an Eligible Retirement Plan which includes Roth Elective Deferrals as described in Code § 402(e)(1) or to a Roth IRA as described in Code § 408A, and only to the extent the rollover is permitted under the rules of Code § 402(c).

**(3) Direct Rollover.** A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

**(4) Mandatory Distribution.** A mandatory distribution is an eligible rollover distribution without the Participant's consent before the Participant attains the later of age 62 or NRA per paragraph 3.5 (Special Catch-Up Contribution). A distribution to a beneficiary is not a mandatory distribution.

## **ARTICLE V.**

### **PLAN ADMINISTRATION**

**5.1 Plan Administrator.** The District is the Plan Administrator and has delegated to the General Manager the powers, duties, and responsibilities of the Plan Administrator. The General Manager may delegate, in writing, some or all of the powers, duties and responsibilities of Plan Administrator position as necessary to adequately operate and maintain the Plan.

**5.2 Term/Vacancy.** Any Plan Administrator designated by the District must accept the Plan Administrator role and responsibilities in writing and will serve until his or her successor is appointed. In case of a vacancy in the position of the Plan Administrator, the District will exercise any and all of the powers, authority, duties and discretion as the Plan Administrator pending the filling of the vacancy.

**5.3 Powers and Duties.** The Plan Administrator shall have the following powers and duties:

#### **(A) In General.**

**(1)** To determine the rights of eligibility of an Employee to participate in the Plan and the value of a Participant's Account;

- (2)** To adopt policies, rules and procedures and to create administrative forms necessary for the proper and efficient administration of the Plan provided the rules, procedures and forms are not inconsistent with the terms of the Plan or MWD Code;
- (3)** To construe and enforce the terms of the Plan and the policies, rules and regulations adopted to carry out the terms of the Plan;
- (4)** To direct the distribution of a Participant's Account;
- (5)** To review and render decisions respecting an administrative claim for (or denial of such a claim for) a benefit under the Plan;
- (6)** To furnish the District with information required for tax or other purposes;
- (7)** To establish policies regarding distributions from the Plan;
- (8)** To establish policies regarding the receipt of Rollover Contributions and automatic rollover distributions;
- (9)** To establish a policy regarding the making and the receipt of Transfers;
- (10)** To establish a policy regarding Participant or Beneficiary direction of investment;
- (11)** To undertake correction of any Plan failures as necessary to preserve eligible Plan status;
- (12)** To act upon instructions from the DCIC to direct the Trustee regarding changes to the Plan's investment options and to execute proxy votes cast by the DCIC;
- (13)** To request and receive input from the DCIC, when reasonable and appropriate, regarding non-investment related Plan features; the selection, performance, and retention of the record keeper, investment advisors, service providers, advisors, consultants, and auditor; and Plan amendments;
- (14)** To serve as the secretary for the DCIC which includes the following duties: keeping and maintain the DCIC meeting minutes, executing documents on behalf of the DCIC, issuing formal written correspondence of the DCIC; and other such administrative support duties as the DCIC may reasonably delegate to the Plan Administrator; and
- (15)** To undertake any other action the Plan Administrator deems reasonable or necessary to administer the Plan.

The Plan Administrator shall have total and complete discretion to interpret and construe the Plan and to determine all questions arising in the administration, interpretation and application of the Plan. Any determination the Plan Administrator makes under the Plan is final and binding upon any affected person. The Plan Administrator shall coordinate with General Counsel concerning any litigation, compromise, or settlement of claims against the Plans in accordance with MWD Code Section 6433.

**(B) Loan Policy Establishment.** The Plan Administrator, in its sole discretion, may establish or amend a loan policy for making Plan loans (if permitted under the Plan) to Participants. If the Plan Administrator adopts a loan policy, the loan policy must be a written document and must include: (1) the identity of the person or positions authorized to administer the participant loan program; (2) the procedure for applying for a loan; (3) the criteria for approving or denying a loan; (4) the limitations, if any, on the types and amounts of loans available; (5) the procedure for determining a reasonable rate of interest; (6) the types of collateral which may secure the loan; and (7) the events constituting default and the steps the Plan will take to preserve Plan assets in the event of default. A loan policy the Plan Administrator adopts under this Section 5.3(B) is part of the Plan, except that the Plan Administrator may amend or terminate the policy without regard to Section 9.1 (Amendment By Employer/Sponsor) at any time.

**(C) QDRO Policy Establishment.** The Plan Administrator will establish QDRO policies and procedures.

**5.4 Without Additional Compensation.** The Plan Administrator will serve without additional compensation for services, but the District will pay all reasonable expenses of the Plan Administrator.

**5.5 Authorized Representative.** The Plan Administrator may authorize appropriate Human Resources or Finance staff, to sign on the Plan Administrator's behalf any Plan notices, directions, applications, certificates, consents, approvals, waivers, letters or other documents.

**5.6 Individual Accounts/Records.** The Plan Administrator will maintain a separate Account in the name of each Participant to reflect the value of the Participant's Deferred Compensation under the Plan. The Plan Administrator will maintain records of its activities.

**5.7 Valuation of Participant's Account.** The value of each Participant's Account consists of his or her accumulated Deferred Compensation, as of the most recent Accounting Date or any later date as the Plan Administrator may determine.

**5.8 Account Administration, Valuation and Expenses.**

**(A) Individual Accounts.** The Plan Administrator, as necessary for the proper administration of the Plan, will maintain, or direct the Trustee to maintain, a separate Account, or multiple Accounts, in the name of each Participant to reflect the Participant's Account balance under the Plan. The Plan Administrator will make its allocations of Earnings, or will request the Trustee to make such allocations, to the Accounts of the Participants as necessary to maintain proper Plan records and in accordance with the applicable: (i) Contribution Types; (ii) allocation conditions; (iii) investment account types; and (iv) Earnings allocation methods. The Plan Administrator may also maintain, or direct the Trustee to maintain, a separate temporary Account for Participant forfeitures which occur during a Plan Year, pending their accrual and allocation in accordance with

the Plan terms, or for other special items as the Plan Administrator determines is necessary and appropriate for proper Plan administration.

**(1) By Contribution Type.** The Plan Administrator will establish Plan Accounts for each Participant as necessary to reflect his or her Accounts attributable to the following Contribution Types and the Earnings attributable thereto: In-Plan Roth Rollovers, Pre-Tax Deferrals, Rollover Contributions, Roth Deferrals, Roth Rollover Contributions, and Transfers. If additional contribution types are added to the Plan, the Plan Administrator will establish Plan Accounts for each Participant to reflect such new contribution types.

**(2) By Investment Account Type.** The Plan Administrator will establish separate Accounts for each Participant as necessary to reflect his or her investment account types as described below:

**(a) Participant-Directed Accounts.** Participants may, in accordance with the provisions of the Plan, direct investment of all or a portion of the amounts allocated to an account. Participant-Directed Accounts are Accounts that are established and maintained for a Participant to invest in one or more assets that are not pooled assets held by the Trust. As the Plan Administrator determines, a Participant-Directed Account may provide for a limited number and type of investment options or funds. A Participant may have one or more Participant-Directed Accounts in addition to Segregated Accounts. A Participant-Directed Account is credited and charged with the Earnings. The Plan Administrator will designate how a Participant Account shall be invested in the absence of proper affirmative direction from the Participant. The Plan or Plan Administrator may designate a default fund under the Plan to deposit contributions on behalf of Participant who has not specified an investment choice under the Plan.

**(b) Segregated Accounts.** A Segregated Account that is established and maintained for a Participant: (i) to hold a QDRO amount; (ii) to prevent a distortion of Plan Earnings allocations; or (iii) for such other purposes as the Plan Administrator may direct. A Segregated Account receives all income it earns and bears all expense or loss it incurs. The assets of a Segregated Account shall be invested in a manner consistent with the purpose for which the Segregated Account was established.

As of each Valuation Date, the Plan Administrator must reduce a Segregated Account for any forfeiture arising after the Plan Administrator has made all other allocations, changes or adjustments to the Account (excluding Earnings) for the Valuation Period.

**(3) Amount of Account.** The amount of a Participant's Account, as determined by the Plan Administrator, is equal to the sum of all contributions, Earnings and other additions credited to the Account, less all distributions (including distributions to

Beneficiaries and to alternate payees and also including disbursement of Plan loan proceeds), expenses and other charges against the Account as of a Valuation Date or other relevant date. For purposes of a distribution under the Plan, the amount of a Participant's Account balance is determined based upon its value on the Valuation Date immediately preceding or coinciding with the date of the distribution. If any or all Plan investment Accounts are participant-directed, the directing Participant's Account balance consists of the assets held within the participant-directed Account and the value of the Account is determined based upon the fair market value of such assets.

**(4) Account Statements.** As soon as practicable after the Accounting Date of each Plan Year, the Plan Administrator will deliver to each Participant (and to each Beneficiary) a statement reflecting the amount of his or her Account balance in the Trust as of the statement date or most recent Valuation Date. No Participant, except the Plan Administrator/Participant or Trustee/Participant, has the right to inspect the records reflecting the Account of any other Participant.

**5.9 Participant Account Charged.** The Plan Administrator will charge all distributions made to a Participant or to his or her Beneficiary or transferred under Section 8.3 (Transfers) from his or her Account, against the Account of the Participant when made.

**5.10 Participant Direction of Investment.** Subject to authorization by the Plan's Investment Policy Statement and any terms, conditions and/or restrictions established by the Plan Administrator, Participants may elect to direct the investment or reinvestment of the assets comprising the Participant's Account. Participants may direct the investment or reinvestment of the assets comprising the Participant's Account in any investment options the DCIC makes available under the Plan and in accordance with the Plan's Investment Policy Statement.

The Plan Administrator will account separately for any Account assets that are invested at the direction of the Participant or invested through a self-directed brokerage account.

The Participant's right to direct investment does not give the Participant any vested interest or secured or preferred position with respect to assets over which Participant has investment responsibility. Any assets in the Participant's Account for which the Participant has not made an investment election shall be invested in the Plan's default investment choice in accordance with the Plan's Investment Policy Statement.

**5.11 Vesting.** Participants shall be 100% vested in their Accounts at all times.

**5.12 Preservation of Eligible Plan Status.** The Plan Administrator may elect to sever from this Plan and to treat as a separate 457 plan, the Accounts of any Participants who have Excess Deferrals that the Plan Administrator has not corrected in accordance with Section 3.7 (Disbursement of Excess Deferrals) or in the case of any other Code § 457(b) failure that the District may not otherwise correct, and which failure would result in the Plan ceasing to be an eligible 457(b) plan. In such event, the Plan Administrator will take any necessary or appropriate action consistent with

the District's maintenance of separate 457 plans and with preservation of tax-deferred status of this Plan.

**5.13 Limited Liability.** The District will not be liable to pay plan benefits to a Participant in excess of the value of the Participant's Account as the Plan Administrator determines in accordance with the Plan terms. Neither the District nor the Plan Administrator will be liable for losses arising from depreciation or shrinkage in the value of any investments acquired under this Plan.

**5.14 Lost Participants.** If the Plan Administrator is unable to locate any Participant or Beneficiary whose Account becomes distributable (a "lost Participant"), the Plan Administrator will apply the provisions of this Section 5.14.

**(A) Attempt to Locate.** The Plan Administrator will attempt to locate a lost Participant or Beneficiary and may use one or more of the following methods: (1) provide a distribution notice to the lost Participant or Beneficiary at his or her last known address by certified or registered mail; (2) use a commercial locator service, the internet or other general search method; (3) use the Social Security Administration or PBGC search program; or (4) use such other methods as the Plan Administrator believes reasonable and prudent.

**(B) Failure to Locate.** The Plan Administrator may declare a forfeiture of a benefit due a Participant or Beneficiary deemed to be lost (i.e., the Participant or Beneficiary cannot be found within 4 years of his or her required beginning date). If after a benefit is forfeited under this Section 5.14(B), the lost Participant or Beneficiary is located, the Plan will restore the forfeited benefit (unadjusted for gains or losses) to such Participant or Beneficiary within a reasonable time. However, if a lost Participant or Beneficiary has not been located by the time the Plan terminates, the forfeiture of such Participant's or Beneficiary's distributable benefit will be irrevocable. Notwithstanding the foregoing, the provisions of this Section 5.14(B) are not the exclusive means for the Plan Administrator to administer the Accounts of lost Participants and Beneficiaries. The Plan Administrator may address forfeitures using any available means provided under applicable law, including escheating the Participant's or Beneficiary's benefit to the state.

**(C) Reasonable Expenses.** The Plan Administrator may charge to the Account of a lost Participant the reasonable expenses incurred under this Section 5.14 and which are associated with the lost Participant's Account.

**5.15 Plan Correction.** The Plan Administrator, in conjunction with other parties as appropriate, may undertake such correction of Plan errors as the Plan Administrator deems necessary, including but not limited to correction to maintain the Plan's status as an eligible 457(b) plan. The Plan Administrator under this Section 5.15 also may undertake Plan correction in accordance with any correction program that the Internal Revenue Service makes applicable to 457 plans.

## ARTICLE VI.

### BENEFICIARY DESIGNATIONS AND ENROLLMENT

**6.1 Beneficiary Designation.** A Participant from time to time may designate, in the form and manner set forth by the Plan Administrator, any person(s) (including a trust or other entity), contingently or successively, to whom the Plan will pay the Participant's Account in the event of death.

However, spousal consent is required in writing with respect to the distribution of death benefits from the Plan if the Participant designates someone other than the Participant's Spouse as a Beneficiary of more than fifty percent (50%) of the Participant's Account balance.

A Spouse's consent to the designation of more than fifty percent (50%) of Participant's Account to a non-spouse beneficiary must be provided at the time and in the form and manner specified by the Plan Administrator.

Subsequent beneficiary designations submitted to the Plan Administrator in good order revoke all designations filed prior to that date by the same Participant.

Participant's marriage or remarriage revokes any prior Beneficiary designations made by the Participant and a new Beneficiary designation form that complies with the consent requirements of this Section 6.1 (Beneficiary Designation) must be submitted.

Further, when designating a trust or other entity as a Beneficiary, the time and form of distribution available to such Beneficiaries may be limited by the required minimum distribution rules of Code § 401(a)(9) and Section 4.3 (RMDs) of the Plan.

**6.2 No Beneficiary Designation.**

**(A)** Effective for Participants who are active Employees of the District on or after August 1, 2018, if a Participant fails to name a Beneficiary in accordance with Section 6.1 (Beneficiary Designation), or if all the Beneficiaries named by a Participant predeceases the Participant, then the Plan Administrator will pay the Participant's remaining Account in accordance with Article IV (Time and Method of Payments of Benefits) in the following order of priority, to:

**(1)** The Participant's surviving spouse; or

**(2)** The Participant's children (including adopted children), in equal shares by right of representation (one share for each surviving child and one share for each child who predeceases the Participant with living descendants); and if none, then to:

**(3)** The Participant's estate.

**(B)** If a Participant has a severance from employment before August 1, 2018, and has a beneficiary designation form dated prior to August 1, 2018, then the Plan Administrator will pay the Participant's remaining Account in accordance with Article IV (Time and Method of Payments of Benefits) to the Participant's estate.

**(C)** If the Beneficiary survives the Participant, but dies prior to distribution of the Participant's entire Account, the remaining portion of the Participant's Account will be paid to the Participant's beneficiaries in accordance with, as applicable, Subsection 6.2 (No Beneficiary Designation) subsections (A) or (B) unless: (1) the Participant's Beneficiary designation election provides otherwise; or (2) the Beneficiary has timely and properly designated a Beneficiary under the procedures established by the Plan Administrator. A Beneficiary only may designate a Beneficiary for the Participant's Account balance remaining at the Beneficiary's death, if the Participant has not previously designated a successive contingent Beneficiary and the Beneficiary's designation otherwise complies with the Plan terms.

### **6.3 Salary Reduction Agreement.**

**(A) General.** A Participant must elect to make Salary Reduction Contributions on a Salary Reduction Agreement form the Plan Administrator provides for this purpose. The Plan Administrator in a Salary Reduction Agreement may impose such other terms and limitations as the Plan Administrator may determine.

**(B) Election Timing.** A Participant's Salary Reduction Agreement may not take effect earlier than the first day of the calendar month following the date the Participant executes the Salary Reduction Agreement and as to Compensation paid or made available in such calendar month.

**(C) Sick, Vacation and Back Pay.** Participants may make Salary Reduction Contributions from accumulated sick pay, from accumulated vacation pay or from back pay. A Participant who will incur a severance from employment may execute a Salary Reduction Agreement before such amounts are paid or made available provided: (i) such amounts are paid or made available before the Participant incurs the Severance; and (ii) the Participant is an Employee in that month.

**(D) Modification of Salary Reduction Agreement.** A Participant's Salary Reduction Agreement remains in effect until a Participant modifies it or ceases to be eligible to participate in the Plan. However, a Salary Reduction Agreement must stay in effect for at least one (1) month once it has been entered into by a Participant. A Participant may modify his or her Salary Reduction Agreement by executing a new Salary Reduction Agreement. Any modification will become effective no earlier than the beginning of the calendar month commencing after the date the Participant executes the new Salary Reduction Agreement. Filing a new Salary Reduction Agreement will revoke all Salary Reduction Agreements filed prior to that date. The Plan Administrator may restrict the Participant's right to modify his or her Salary Reduction Agreement in any Taxable Year.

**6.4 Personal Data to Plan Administrator.** Each Participant and each Beneficiary of a deceased Participant must furnish to the Plan Administrator such evidence, data or information as the Plan Administrator considers necessary or desirable for the purpose of administering the Plan. The provisions of this Plan are effective for the benefit of each Participant upon the condition precedent

that each Participant will furnish promptly full, true and complete evidence, data and information when requested by the Plan Administrator, provided the Plan Administrator advises each Participant of the effect of his or her failure to comply with its request.

**6.5 Address for Notification.** Each Participant and each Beneficiary of a deceased Participant must file with the Plan Administrator from time to time, in writing, contact information and any changes to such contract information, including but not limited to, his or her electronic and physical address, phone number and any changes thereto. Any communication, statement or notice addressed to a Participant, or Beneficiary, at his or her last address filed with the Plan Administrator, or as shown on the records of the District, binds the Participant, or Beneficiary, for all purposes of this Plan.

**6.6 Participant or Beneficiary Incapacitated.** If it is asserted that a Participant or Beneficiary entitled to a Plan distribution is not able to care for his or her affairs because of a mental condition, a physical condition, or by reason of age and the Plan Administrator (or its designee) is directed to make the distribution to the Participant's or Beneficiary's guardian, conservator, trustee, custodian (including under a Uniform Transfers or Gifts to Minors Act) or to his or her attorney-in-fact or to other legal representative upon furnishing evidence of such status satisfactory to the Plan Administrator (or its designee), the Plan Administrator shall make such distribution. The Plan Administrator will not under any circumstance have any liability with respect to payments so made nor any duty to make inquiry as to the competence of any person entitled to receive payments under the Plan.

## **ARTICLE VII.**

### **TRUST FUNDS**

**7.1. Establishment of Trust.** Consistent with Code section 457(g) and applicable Treasury regulations, all Plan assets will be held and invested in the Trust in accordance with this Plan and the Trust Agreement. The Trust will be established pursuant to a written Trust Agreement that constitutes a valid trust under the laws of the State of California.

The District may enter into a Trust Agreement with the Trustee providing for the investment of the Trust and prescribing the powers, duties, obligations, and functions of the Trustee with respect to the Plan. The Trust Agreement will form a part of this Plan, and any rights and benefits of any Participant or Beneficiary under the Plan whose Accounts are invested in the Trust will be subject to the terms of the Trust Agreement. However, in the case of any conflict between the Plan and the Trust Agreement, the Plan will govern. The Trustee must be one or more banks or other fiduciaries appointed by the District to hold and administer assets of the Plan.

The Trustee must hold the Plan assets in the Trust pursuant to the terms of the Trust Agreement for the exclusive benefit of Participants and their Beneficiaries and for defraying reasonable expenses of administering the Plan. Except as provided in Section 3.1, no part of the Trust fund will inure to the benefit of the Employer prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries.

The Trustee must hold, manage, administer, value, invest, reinvest and account for the Trust assets in accordance with the terms of the Plan and the Trust Agreement.

In its discretion, the Plan Administrator may recommend that the District terminate the Trustee, appoint new Trustee, and authorize the Plan Administrator to instruct the Trustee to transfer assets to a successor Trustee or Trustees.

**7.2. Acceptance/Holding.** By executing the Trust Agreement, the Trustee accepts the Trust created under the Trust Agreement and agrees to perform the duties and obligations imposed under the Trust Agreement. The Trustee must hold and invest all Plan assets in the Trust under the Trust Agreement until paid in accordance with the Plan's terms.

**7.3. Receipt of Contributions.** The Trustee is accountable to the District for the funds contributed to the Trust.

**7.4. Deferred Compensation Investment Committee.** The District grants the DCIC full power and authority to invest, manage, and control Plan assets. The DCIC's membership, governance, and powers and duties are set forth in the Bylaws of the Deferred Compensation Investment Committee. The members of the DCIC will serve without additional compensation for services, but the District will pay all reasonable expenses of the DCIC.

**7.5. Investment Policy Statement.** The DCIC will establish and maintain an Investment Policy Statement (IPS) for the Plan, and will periodically review that policy, as needed. In establishing and maintaining the IPS, the DCIC will review all pertinent Plan and Participant information and data and may consult with any professional advisors as it deems necessary or appropriate, and will consider matters such as the following:

- (A) the Plan's objectives and the best method to accomplish those objectives, including the range of investment alternatives that should be available to Participants and their Beneficiaries in order to accomplish those objectives;
- (B) the policies or procedures to be followed by the DCIC in the selection and monitoring of investment alternatives, including the benchmarks and other performance criteria, as well as investment fees and expenses; and
- (C) the liquidity of Plan assets.

**7.6. Investment Manager.** The Board of Directors may appoint one or more investment managers to manage (including the power to acquire and dispose of) any assets of the Plan. Only a person who is a registered investment advisor under the Investment Advisors Act of 1940, a bank or an insurance company qualified to do business in the State of California may be an investment manager under the Plan. The Trustee may be an investment manager.

**7.7. Investment Funds.** The Trustee will establish and maintain investment funds designated by the DCIC or an investment manager designated by the Board of Directors. The assets of each investment fund will be managed by the Trustee or one or more investment managers, as designated, except for Participant-directed investments that permit Participants to direct the

investment of some or all of the assets in their Account in specific investments in accordance with Section 7.12 (Participant Direction of Investment).

**7.8. Participant Direction of Investment.** Consistent with Article V, the DCIC may consent in writing to permit Participants in the Plan to direct the investment to their Accounts under the Trust.

The Plan Administrator will advise the Trustee of the portion of the Trust credited to each Participant's Account under the Plan, and subject to such Participant direction.

As a condition of Participant direction, the DCIC may impose such conditions, limitations and other provisions as the DCIC may deem appropriate and as are consistent with policies created under the Plan's Investment Policy Statement and Article V.

The Trustee will report to the DCIC and Plan Administrator the net income, gain or losses incurred by each participant-directed Account separately from the net income, gain or losses incurred by the general Trust during the Plan Year.

**7.9. Group Trust Authority.** Subject to the Plan Administrator's direction, the Trustee may commingle, for investment or administration purposes, the assets (or portion of the assets) of the Trust in any common trust fund, collective investment fund, master trust, or group trust, but only if the commingled trust satisfies the requirements under Revenue Ruling 81-100 (as modified by Revenue Ruling 2004-67 and Revenue Ruling 2011-1) to be tax exempt.

## ARTICLE VIII.

### AMENDMENT, TERMINATION AND TRANSFERS

**8.1. Amendment by Employer.** The Employer has the right, at any time and from time to time, to amend the Plan in whole or in part. Any amendment of the Plan by the Employer shall be expressed in an instrument executed by the Employer on the order of its Board of Directors and filed with the Trustee. Further, the Plan Administrator is also authorized, at any time and from time to time, to amend the Plan in whole or in part, to ensure compliance with applicable laws and regulations and further the administration of the Plan. The Plan Administrator may not amend the Plan to effectuate its termination.

**(A) Amendment Purposes Limited.** No Plan amendment may authorize or permit any portion of the assets held under the Plan to be used for or diverted to a purpose other than the exclusive benefit of Participants or Beneficiaries, except to the extent such assets are used to pay taxes or administrative expenses of the Plan. Any Plan amendment also may not cause or permit any portion of the assets held under the Plan to revert to or become property of the District.

**(B) Method of Amendment.** The Plan Administrator may amend the Plan in writing and without amendment of the MWD Code.

**(C) Termination/Freezing of Plan.** The Districts has the right, at any time, to terminate this Plan or to cease (freeze) further Salary Reduction Contributions to the Plan. Upon

freezing Salary Reduction Contributions to the Plan, the provisions of the Plan (other than provisions permitting continued Salary Reduction Contributions) may remain operative until the Plan is terminated. Upon Plan termination, all Deferred Compensation in the Plan shall be distributed to Participants and Beneficiaries as soon as is reasonably practicable following termination. The exercise of such right by the District to terminate the 401(k) or 457(b) Plans does not preclude employees or their representatives from either consulting or meeting and conferring with the Employee Relations Officer, as appropriate, about the practical consequences that the exercise of such power or authority may have on wages, hours, and other terms and conditions of employment subject to MWD Code Section 6102 (Employee Rights).

**8.2. Purchase of Permissive Service Credit.** A Participant, prior to otherwise incurring a distributable event under Article IV (Time and Method of Payments of Benefits), may request a transfer of all or a portion of his or her Account to a governmental defined benefit plan (under Code § 414(d)) for: (a) the purchase of permissive service credit (under Code § 415(n)(3)(A)) under such plan, or (b) the repayment of contributions and earnings previously refunded with respect to a forfeiture of service credited under the plan (or under another governmental plan within the same State) to which Code § 415 does not apply by reason of Code § 415(k)(3). The Participant must follow the transfer request procedures established by the Plan Administrator.

#### **ARTICLE IX.**

#### **MISCELLANEOUS**

**9.1. No Assignment or Alienation.** A Participant or Beneficiary does not have the right to commute, sell, assign, pledge, transfer or otherwise convey or encumber the right to receive any payments under the Plan or Trust and the Plan Administrator and the Trustee will not recognize any such anticipation, assignment, or alienation. The payments and the rights under this Plan are non-assignable and nontransferable. Furthermore, except as provided in Section 4.6 (Distributions Under QDROs), a Participant's or Beneficiary's interest in the Trust is not subject to attachment, garnishment, levy, execution or other legal or equitable process. Notwithstanding the foregoing, the Plan Administrator may pay from a Participant's or Beneficiary's Account the amount the Plan Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

**9.2. Effect on Other Plans.** This Plan does not affect benefits under any other retirement, pension, or benefit plan or system established for the benefit of the District's Employees, and participation under this Plan does not affect benefits receivable under any such plan or system, except to the extent provided in such plan or system.

**9.3. Word Usage.** Words used in the masculine will apply to the feminine where applicable, and wherever the context of the Plan dictates, the plural will be read as the singular and the singular as the plural.

**9.4. Governing Law.** The provisions of this Plan shall be construed, administered, and enforced in accordance with the provisions of applicable Federal law, and, to the extent applicable, the laws of the state of California.

**9.5 Employment Not Guaranteed.** Nothing contained in this Plan, or any modification or amendment to the Plan, or in the creation of any Account, or the payment of any benefit, gives any Employee, Participant or Beneficiary any right to continue employment, any legal or equitable right against the District, the Plan Administrator, the Trustee, the DCIC, any other Employee of the District, or any agents thereof except as expressly provided by the Plan.

**9.6 Notice, Designation, Election, Consent, and Waiver.** All notices under the Plan and all Participant or Beneficiary designations, elections, consents or waivers must be in writing and made in the form and manner the Plan Administrator specifies or otherwise approves. To the extent permitted by Treasury regulations or other applicable guidance, any Plan notice, election, consent or waiver may be transmitted telephonically or electronically. Any person entitled to notice under the Plan may waive the notice or shorten the notice period except as otherwise required by the Code or other regulations or pronouncements.

**9.7 Indemnification.** In accordance with the MWD Code, the District will indemnify, defend and hold harmless the members of the Board of Directors, the General Manager, the Plan Administrator, or any Employees who have administrative responsibility under the Plan, and the Deferred Compensation Investment Committee or any member thereof, with respect to any liability, loss, damage or expense resulting from any act or omission, except willful misconduct or gross negligence, in their official capacities in the administration of or management of the assets of the Plan, including attorney, accountant and advisory fees and all other expenses reasonably incurred in their defense.

### **The Metropolitan Water District of Southern California**

The amended and restated Plan is hereby adopted, effective January 1, 2024.

By: \_\_\_\_\_  
Katano Kassaine  
Assistant General Manager/Chief Financial Officer and  
Interim Plan Administrator

\_\_\_\_\_  
Date Signed

The Metropolitan Water District of Southern  
California 457(b) Deferred Compensation Plan  
Effective January 1, 2024



# **The Metropolitan Water District of Southern California 401(k) Savings Plan**

**January 1, 2024**

**THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA**  
**401(k) SAVINGS PLAN**

**ABBREVIATED**  
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**THE METROPOLITAN WATER DISTRICT OF SOUTHERN  
CALIFORNIA 401(k) SAVINGS PLAN**

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## BACKGROUND

The Metropolitan Water District of Southern California (the "District") Board of Directors' Minute Item 35632 established a profit-sharing plan with a cash or deferral arrangement known as The Metropolitan Water District of Southern California Savings Plan ("Savings Plan I") effective July 1, 1985. By Board of Directors' Minute Item 35816, the District also established another profit-sharing plan with a cash or deferral arrangement known as "Savings Plan II" applicable to a separate group of employees effective October 1, 1985.

As a result of Board of Directors' Minute Item 46592, "Savings Plan I" was merged into "Savings Plan II" and renamed The Metropolitan Water District of Southern California Consolidated Savings Plan (the "Plan") effective January 1, 2006, and incorporated into Division VI, Chapter 7, Article 6 of The Metropolitan Water District of Southern California Administrative Code ("MWD Code"). The Plan has been amended and restated from time to time. The Plan was most recently restated and renamed The Metropolitan Water District of Southern California 401(k) Savings Plan effective August 1, 2018. The Plan was further amended and restated effective January 1, 2020. The Plan is hereby amended and restated effective January 1, 2024, except as otherwise stated herein.

The Plan is a tax-qualified governmental defined contribution plan under Internal Revenue Code (the "Code") §§ 401(a) and 414(d) that is a profit sharing plan pursuant to Code § 401(a)(27). The Plan has a grandfathered cash or deferral arrangement under Code § 401(k).

All contributions made to the Plan, all property and rights purchased with such amounts and all income attributable to such amounts shall be held in trust for the exclusive benefit of Participants, Beneficiaries and Alternate Payees under the Plan in accordance with Internal Revenue Code §401(a)(2). Prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the Plan's Trust, it shall be impossible for any part of the corpus or income of the Trust to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of the District's employees or their beneficiaries.

The purpose of the Plan is to attract and retain certain officers and employees to The Metropolitan Water District of Southern California.

## SECTION 1

### PLAN DEFINITIONS

This Section 1 contains definitions for common terms that are used throughout the Plan. All capitalized terms under the Plan are defined in this Section 1 or in the relevant section of the Plan document where such term is used.

**1.1 Account.** The separate Account established and maintained for each Participant, Beneficiary or Alternate Payee under the Plan. A Participant Account may have any or all of the following separate sub-Accounts:

- Pre-Tax Salary Deferral Account
- Roth Deferral Account
- Matching Contribution Account

The Metropolitan Water District of Southern  
California 401(k) Savings Plan  
Effective January 1, 2024

- Rollover Contribution Account
- Roth Rollover Account
- Transfer Account

The Plan Administrator may establish other Account types, as it deems necessary, for the proper administration of the Plan.

- 1.2 Account Balance.** Account Balance shall mean a Participant's balances in all of the Accounts maintained by the Plan on his or her behalf.
- 1.3 Alternate Payee.** A person designated as having a right to receive all or a portion of the Participant's benefit pursuant to a QDRO.
- 1.4 Beneficiary.** A person, including a trust, designated by the Participant (or in the absence of a proper beneficiary designation, by the terms of the Plan) to receive a benefit under the Plan upon the death of the Participant. See Section 7.6(d) (Determining a Participant's Beneficiary) for the applicable rules for determining a Participant's Beneficiaries under the Plan.
- 1.5 Cash-Out Distribution.** A total distribution made to a Participant who incurs a termination from employment.
- 1.6 Catch-Up Contributions.** Salary Deferrals that may be made in excess of an otherwise applicable IRS Code § 402(g) limit by a Participant who attains age 50 or over by the end of the applicable Plan Year.
- 1.7 Catch-Up Contribution Limit.** The annual limit applicable to Catch-Up Contributions as set forth in Section 3.2(c)(1)(Catch-Up Contributions).
- 1.8 Code.** The Internal Revenue Code of 1986, as amended.
- 1.9 Collectively Bargained Employee.** An Employee who is included in a unit of Employees covered by a collective bargaining agreement between the District and Employee representatives and whose retirement benefits are subject to good faith bargaining.
- 1.10 Compensation Limit.** The maximum amount of compensation that can be taken into account for any Plan Year for purposes of determining a Participant's Plan Compensation. For Plan Years beginning on or after January 1, 1994, and before January 1, 2002, the Compensation Limit taken into account for determining benefits provided under the Plan for any Plan Year is \$150,000, as adjusted for increases in cost-of-living in accordance with Code § 401(a)(17)(B). For any Plan Years beginning on or after January 1, 2002, the Compensation Limit is \$200,000, as adjusted for cost-of-living increases in accordance with Code § 401(a)(17)(B). In determining the Compensation Limit for any applicable period (the "Plan Year"), the cost-of-living adjustment in effect at the beginning of the calendar year applies to any Plan Year that begins within such calendar year.
- If a Plan Year consists of fewer than 12 months, the Compensation Limit for such period is an amount equal to the otherwise applicable Compensation Limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12. A Plan Year will not be considered to be less than 12 months merely because compensation is taken into account only for

the period the Employee is a Participant. If Salary Deferrals or Matching Contributions are separately determined on the basis of specified periods within the determination period (e.g., on the basis of payroll periods), no proration of the Compensation Limit is required with respect to such contributions.

~~1.11 — **Custodian.** An organization that has custody of all or any portion of the Plan assets.~~

~~1.121.11 **Deferred Compensation Investment Advisory Committee or "DCIAC".** An Employer established investment advisory committee which is comprised of the Human Resources Group Manager, Assistant General Manager, Operations (or designee), Treasury & Debt Manager, Finance Group Manager, General Auditor (or designee), Risk Manager, District's Chief Financial Officer, Treasurer, Chief Administrative Officer, and Treasury and Debt Manager, the Plan Administrator, a staff member and the Manager of the Human Resources Group's Benefits Unit, and a member appointed to represent retirees and one representative from each of the District's four bargaining units: MAPA/AFSCME Local 1001, AFSCME Local 1902, Supervisor Associations, Affiliate of IBEW Local 11, Unit 76, and Association of Confidential Employees AFSCME Local 1902, Management and Professional Employee's Association, Supervisors' Association, and Association of Confidential Employees. The DCIC committee meets quarterly and is responsible for performing the fiduciary duties related to the management of Plan assets, advise the Plan Administrator on plan administrative policies, investments, educational programs, the effect of regulatory and tax law changes, and the viability of proposed plan changes based on Participant requests. The committee DCIC decides by an advises only on an affirmative vote by a majority of the committee or by unanimous consent. Non-voting DCIC attendees include the Human Resource Benefits Manager, the Human Resources Principal Analyst, and the General Counsel's representatives described in Section 10.6.~~

~~1.131.12 **Defined Contribution Plan.** A plan that provides for individual Accounts for each Participant to which all contributions, forfeitures, income, expenses, gains and/ or losses under the Plan are credited or deducted. A Participant's benefit under a Defined Contribution Plan is based solely on the fair market value of his/her vested Account Balance.~~

~~1.141.13 **Differential Pay.** Certain payments made by the District to an individual while the individual is performing service in the Uniformed Services.~~

~~1.151.14 **Directed Account.** That portion of Participant's Account that is subject to Participant direction of investment and which is maintained by the Plan Administrator as a Directed Account.~~

~~1.161.15 **Distribution Calendar Year.** A calendar year for which a minimum distribution under Code § 409(a)(9) is required.~~

~~1.171.16 **Distribution Starting Date.** The date a Participant commences distribution from the Plan. If a Participant commences distribution with respect to a portion of his/her Account Balance, a separate Distribution Starting Date applies to any subsequent distribution.~~

~~1.181.17 **Effective Date.** The Plan was originally established and effective July 1, 1985. The Plan has since been amended and restated November 18, 2014. The current Effective Date of the Plan as amended and restated is August 1, 2018. See Section 14.1(bd) (Effective Date of Plan Amendments) for special rules concerning the retroactive effective date of provisions under the Plan designed to comply with the requirements of the Pension Protection Act of 2006 (PPA).~~

- 1.191.18 Elective Deferral Dollar Limit.** The maximum amount of Elective Deferrals a Participant may make for any calendar year.
- 1.201.19 Elective Deferrals.** A Participant's Elective Deferrals is the sum of all Salary Deferrals made by the Participant. Elective Deferrals shall not include any amounts properly distributed as an Excess Amount under Code § 415.
- 1.211.20 Eligible Employee.** An Eligible Employee is an Employee who (i) is not ~~a Seasonal Employee, a Leased Employee excluded under Section 2.2 of the Plan or and Employee~~ excluded by agreement, and (ii) meets the eligibility requirements in Section 2.32 of the Plan.
- 1.221.21 Employee.** An Employee is any individual employed by the District as a common law employee. An independent contractor is not treated as an Employee of the recipient organization for purposes of this Plan or the District.
- 1.231.22 Employer or District.** Employer or District means The Metropolitan Water District of Southern California ("District"), a political subdivision.
- 1.241.23 Employer Contributions.** Contributions the Employer makes pursuant to Sections 3.2 (Salary Deferrals) and 3.3 (Matching Contributions).
- 1.251.24 Entry Date.** The commencement of the first payroll period following the date on which an Eligible Employee satisfies the eligibility requirements described in Section 2 (Eligibility and Participation).
- 1.261.25 ERISA.** The Employee Retirement Income Security Act of 1974, as amended.
- 1.271.26 Excess Amount.** Amounts which exceed the Code § 415 Limitation.
- 1.281.27 Excess Deferrals.** Elective Deferrals that exceed the Elective Deferral Dollar Limit.
- 1.291.28 Hardship.** A heavy and immediate financial need which meets the requirements of Section 7.8(e) (Hardship Distributions).
- 1.301.29 Hour of Service.** Each Employee of the District will receive credit for each Hour of Service he/she works for purposes of applying the eligibility rules under the Plan. An Employee *will not* receive credit for the same Hour of Service under more than one category listed below:
- (a) **Performance of Duties.** Hours of Service include each hour for which an Employee is paid, or entitled to payment, for the performance of duties for the District. These hours will be credited to the Employee for the computation period in which the duties are performed. In the case of Hours of Service to be credited to an Employee in connection with a period of no more than 31 days which extends beyond one computation period, all such Hours of Service may be credited to the first computation period or the second computation period. Hours of Service under this subsection (a) must be credited consistently for all Employees within the same job classifications.
  - (b) **Nonperformance of Duties.** Hours of Service include each hour for which an Employee is paid, or entitled to payment, by the District on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence.

The purpose of this subsection (b) is to prevent a break in service occurring due to the leave of absence. Thus, no more than the required 501 hours of service needed to prevent a break in service will be credited under this paragraph.

- (c) **Back Pay Award.** Hours of Service include each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the District. The same Hours of Service *will not* be credited both under subsection (a) or subsection (b), as the case may be, and under this subsection (c). These hours will be credited to the Employee for the Plan Year to which the award or agreement pertains rather than the Plan Year in which the award, agreement or payment is made.
- (d) **Related Employers.** Hours of Service will be credited for employment with any Related Employer. A Related Employer includes all members of a controlled group, all commonly controlled entities or affiliated service groups of which the Employer is a part, and any other entity required to be aggregated with the Employer pursuant to regulations under Code §414(o). For purposes of Hours of Service, the Employer and any Related Employers are treated as a single Employer, unless specifically stated otherwise.
- (e) **Maternity/Paternity Leave.** Solely for purposes of determining eligibility, an individual who is absent from work for maternity or paternity reasons *will not* be deemed to have had a break in continuous hours of service by reason of an absence from work for maternity or paternity reasons. For purposes of this paragraph, an absence from work due to maternity or paternity reasons means an absence:
- by reason of the pregnancy of the individual,
  - by reason of birth of a child of the individual,
  - by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or
  - for purposes of caring for such child for a period beginning immediately following such birth or placement.

**1.341.30 Code § 415 Limitation.** The limit on the amount of Annual Additions a Participant may make under the Plan during any Limitation Year.

**1.321.31 Leased Employee.** An individual who performs services for the District pursuant to an agreement between the District and a leasing organization, and who satisfies the definition of a Leased Employee under Code § 414(n).

**1.331.32 Limitation Year.** The measuring period for determining whether the Plan satisfies the Code § 415 Limitation.

**1.341.33 Matching Contributions.** Matching Contributions are contributions made by the District on behalf of a Participant on account of Salary Deferrals made by the Participant under this Plan.

**1.351.34 Nonresident Alien Employee.** An Employee is a nonresident alien if he or she is neither a citizen of the United States nor a resident of the United States for U.S. tax purposes (as defined in Code § 7701(b)), and who does not have any earned income (as defined in Code § 911) for the District that constitutes U.S. source income (within the meaning of Code § 861). If a nonresident alien Employee has U.S. source income, he/she is treated as satisfying this definition if all of his/her U.S. source income from the District is exempt from U.S. income tax under an applicable income tax treaty.

**1.361.35 Normal Retirement Age (NRA).** For purposes of in-service distributions, Normal Retirement Age is 59½.

**1.371.36 Participant.** A Participant is an Eligible Employee who has satisfied the conditions for participating under Section 2.3 (Eligibility Requirement) of this Plan. A Participant also includes any Employee (or former Employee) who has an Account Balance under the Plan, including an Account Balance derived from a rollover or transfer from another qualified plan or IRA. A Participant is entitled to share in an allocation of contributions or forfeitures under the Plan for a given year only if the Participant is an Eligible Employee as defined in Section 2.2, and satisfies the allocation conditions set forth in Section 3.3 (Matching Contributions).

An Eligible Employee is treated as a Participant with respect to Salary Deferrals once the Employee has satisfied the eligibility conditions and has reached his or her Entry Date for making such contributions, even if the Eligible Employee chooses not to actually make such contributions to the Plan. An Eligible Employee is treated as a Participant with respect to Matching Contributions once the Eligible Employee has satisfied the eligibility conditions and has reached his or her Entry Date, even if the Employee does not receive a Matching Contribution because of the Employee's failure to make contributions eligible for the Matching Contribution.

**1.381.37 Part-Time Employee.** A Part-Time Employee is an Employee who is normally scheduled to work on average 20 to 39 hours per week.

**1.391.38 Plan.** Plan means The Metropolitan Water District of Southern California 401(k) Savings Plan.

**1.401.39 Plan Administrator.** The Plan Administrator is the General Manager or other person or entity designated by the District to be responsible for the administration and operation of the Plan. A Plan Administrator also includes a Qualified Termination Administrator ("QTA") that assumes the responsibilities of Plan Administrator.

**1.411.40 Plan Compensation.** Plan Compensation is Total Compensation except as modified herein. Plan Compensation includes all cash compensation payable by the District during the Plan Year to, or for the benefit of, an Employee in return for services and any deemed compensation under Code § 414(u)(7). Plan Compensation also includes payments to disabled Participants described in Section 1.54(d) if the payments are not the result of a leave donation(s).

Effective as of January 1, 1997, Plan Compensation shall include pre-tax contributions to a cafeteria plan under Code § 125, an eligible deferred compensation plan under § 457, employer pick-up contributions under § 414(h)(2) or elective contributions that are not included in the Employee's gross income as a qualified transportation fringe benefit under 132(f)(4).

Plan Compensation also does not include other fringe benefits such as medical credit, cell phone allowances, or professional development, wellness, and tuition reimbursements.

Nor does Plan Compensation include payments for leave donations (e.g., hours donated by Employees to a Participant) or payments made by Third Party Providers (TPAs). Plan Compensation also excludes all amounts earned with a related employer who is not a participating employer in this Plan.

(a) **Determination period.** Plan Compensation is determined based on the Plan Year.

(b) **Partial period of participation.** Even if an Employee is a Participant for only part of a Plan Year, Plan Compensation shall be determined over the entire Plan Year. In determining whether an Employee is a Participant for purposes of applying this subsection (b), the Employee's status will be determined solely with respect to the contribution type for which the definition of Plan Compensation is being determined. Plan Compensation does not include any amounts earned for any period while an individual is not an Eligible Employee.

In no case may Plan Compensation for any Participant exceed the Compensation Limit.

~~1.42~~**1.41** **Plan Year.** The calendar year.

~~1.43~~**1.42** **Pre-Tax Deferrals.** Pre-tax Deferrals are a Participant's Salary Deferrals that are not includible in the Participant's gross income at the time deferred.

~~1.43~~ **Qualified Birth or Adoption Distribution (QBOAD).** A distribution to a Participant if made (1) during the ~~one-year period beginning on the date on which a child of the Participant is born or on which the legal adoption by the Participant of an eligible adoptee is finalized,~~ (2) with the respect to a child born or eligible adoptee the Participant includes the name, age, and the Taxpayer Identification Number of the child born or eligible adoptee on the Participant's tax return for the taxable year in which the distribution is made, and (3) only to the extent such distribution from all plans maintained by the Employer to such Participant does not exceed \$5,000, in the aggregate, for each child born or eligible adoptee. An eligible adoptee is any individual (other than a child of the Participant's spouse) who has not attained age 18 or is physically or mentally incapable of self-support.

**1.44** **Qualified Domestic Relations Order (QDRO).** A domestic relations order that provides for the payment of all or a portion of the Participant's benefits to an Alternate Payee and satisfies the requirements under Code § 414(p).

**1.45** **Recurrent Employee.** Employees hired for an indefinite period of time on an irregular basis, such as intermittent, emergency, or on-call.

**1.46** **Rehired Annuitant.** A rehired Employee who meets the definition of retired annuitant in California Government Code § 7522.56.

**1.47** **Required Beginning Date.** The date by which minimum distributions must commence under the Plan.

**1.48** **Rollover Contribution.** A contribution made by an Employee to the Plan attributable to an Eligible Rollover Distribution from another qualified plan or IRA.

- 1.49 Roth Deferrals.** Deferral contributions that are designated irrevocably by the Participant at the time of the cash or deferred election as a Roth Deferral that is being made in lieu of all or a portion of the Pre-Tax Deferrals the Participant is otherwise eligible to make under the Plan and treated by the Employer 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 cash or deferred election.
- 1.50 Salary Deferral Election.** An agreement between a Participant and the District, whereby the Participant elects to have a specific amount withheld from his/her Plan Compensation and the District agrees to contribute such amount into the Plan.
- 1.51 Salary Deferrals.** Amounts contributed under the Plan at the election of the Participant, in lieu of cash compensation, which are made pursuant to a Salary Deferral Election or other deferral mechanism. Salary Deferrals may consist of Pre-Tax Deferrals and/or Roth Deferrals. Salary Deferrals shall not include any amounts properly distributed as an Excess Amount under Code § 415. An Employee's Salary Deferrals are treated as employer contributions for all purposes under this Plan, except as otherwise provided under the Code or U.S. Treasury regulations.
- 1.52 Seasonal Employee.** An Employee who normally works on a full-time basis less than five months during any Plan Year.
- 1.53 Short Plan Year.** Any Plan Year that is less than 12 months long, either because of the amendment of the Plan Year, or because the Effective Date of a new Plan is less than 12 months prior to the end of the first Plan Year.
- 1.54 Spouse.** Subject to any additional federal tax guidance from the Internal Revenue Service or other agency or court, a Spouse is any individual who is lawfully married to the Participant under a state or foreign jurisdiction, without regard to the location of the Employer or the state where the Participant and Spouse are domiciled. Notwithstanding the previous sentence, a former Spouse of the Participant will be treated as the Spouse or surviving Spouse to the extent provided under a valid QDRO and any current Spouse *will not* be treated as the Spouse or surviving Spouse with respect to any portion of Participant's benefit covered by a valid QDRO.
- 1.55 Total Compensation.** A Participant's compensation for services with the District, as defined herein:
- (a)** Wages within the meaning of Code § 3401(a) and all other payments of compensation to an Employee by the District (in the course of the District's trade or business) for which the District is required to furnish the Employee a written statement under Code §§ 6041(d), 6051(a)(3), and 6052, determined without regard to any rules under Code § 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed.
  - (b)** Includes Elective Deferrals (as defined in Section 1.20), elective contributions to a cafeteria plan under Code § 125 or to an eligible deferred compensation plan under Code § 457, employer pick-up contributions under Code § 414(h)(2), and elective contributions that are not includible in the Employee's gross income as a qualified transportation fringe under Code § 132(f)(4).

- (c) Effective for the first Plan Year beginning on or after July 1, 2007, Total Compensation includes compensation paid after an Employee severs employment with the Employer, provided the compensation is paid by the later of 2-½ months after severance from employment with the Employer maintaining the Plan or the end of the Plan Year that includes such date of severance from employment. For this purpose, compensation paid after severance of employment may only be included in Total Compensation to the extent such amounts would have been included as compensation if they were paid prior to the Employee's severance from employment. The following amounts paid after a Participant's severance of employment are included in Total Compensation:
- (1) **Regular Pay.** Compensation for services during the Employee's regular working hours, or compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and
  - (2) **Unused Leave Payments.** Payment for unused accrued bona fide sick, vacation, or other leave, but only if the Employee would have been able to use the leave if employment had continued.

All other post-severance payments are not included in the definition of Total Compensation, even if such amounts are paid within the time period described in this subsection (c).

- (d) Total Compensation includes post-severance payments to a Participant who is permanently and totally disabled as defined in IRS Code § 22(e)(3) provided that contributions made with respect to amounts treated as compensation under this subsection (d) are non-forfeitable when made.
- (e) **Differential Pay.** Effective for years beginning on or after January 1, 2009, in the case of an individual who receives Differential Pay from the District:
- (1) such individual will be treated as an Employee of the Employer making the payment, and
  - (2) the Differential Pay shall be treated as wages and will be included in calculating an Employee's Total Compensation under the Plan.

If all Employees performing service in the Uniformed Services are entitled to receive Differential Pay on reasonably equivalent terms and are eligible to make contributions based on the payments on reasonably equivalent terms, the Plan shall not be treated as failing to meet the requirements of any provision described in Code § 414(u)(1)(C) (Treatment of Certain Contributions Made Pursuant to Veteran's Reemployment Rights) by reason of any contribution or benefit based on Differential Pay.

For purposes of this subsection (e), Differential Pay means any payment which is made by an Employer to an individual while the individual is performing service in the Uniformed Services while on active duty for a period of more than 30 days, and represents all or a portion of the wages the individual would have received from the Employer if the individual were performing services for the Employer. In applying the provisions of this subsection (e), Uniformed Services are services as described in Code § 3401(h)(2)(A). The Trust is the separate funding vehicle under the Plan.

**1.56 Trust.** The ~~Trust created under~~ Trust established pursuant to the Plan-Trust Agreement between the District

~~and the Trustee to hold, administer and distribute all or a portion of the Plan's assets for the exclusive benefit of Plan Participants, Beneficiaries and Alternate Payees.~~

**1.57 Trust Agreement.** ~~The separate agreement entered into by and between the District and the Trustee to hold, administer and distribute all or a portion of the Plan's assets.~~

**1.561.58 Trustee.** ~~The District or person, committee(s) or entity that, and any successors thereto, who is appointed by the District to serve as Trustee hold, administer and accepts such position. The District retains the right distribute all or a portion of appointment and removal of Trustee(s) and may exercise that right at any time. Use of the defined term, Trustee refers to a discretionary Trustee, appointed Plan assets held in accordance with Section 12 (the Trust Provisions). However, pursuant to the District may retain the assistance terms and conditions of a nondiscretionary trustee to carry out some or all of the duties of the Trustee or to assist the Trustee in the performance of its powers, duties and responsibilities Trust Agreement.~~

**1.571.59 Valuation Date.** The date or dates upon which Plan assets are valued. Plan assets are typically valued daily and will be valued at least annually as of the last day of each Plan Year.

## SECTION 2

### ELIGIBILITY AND PARTICIPATION

**2.1 Eligibility.** In order to participate in the Plan, an Employee must be an Eligible Employee (as defined in Section 2.2) and must satisfy the eligibility requirements specified in Section 2.3. Once an Eligible Employee satisfies the Plan's eligibility requirements, such Eligible Employee shall become a Plan Participant as of the Entry Date specified in Section 2.3(b). An Employee who meets the eligibility requirements set forth in Section 2.3 but is not an Eligible Employee, will be eligible to participate in the Plan only upon becoming an Eligible Employee. For purposes of determining eligibility to make Salary Deferrals, an Eligible Employee will be deemed to commence participation on a timely basis if he or she is permitted to commence making Salary Deferrals as soon as administratively feasible after satisfying the eligibility conditions under the Plan.

**2.2 Eligible Employees.** Except as specified in subsection 2.2(a) and (b), all Employees of the District are Eligible Employees.

**(a) Excluded Employees.** An Employee is not an Eligible Employee and may not participate under the Plan if he or she is classified as a:

- (1) Rehired Annuitant.
- (2) Nonresident Alien Employee.
- (3) Leased Employee.
- (4) Seasonal Employee working less than 5 months in a Plan Year.
- (5) Member of the Carpenter's Union Trust.
- (6) Intern working less than 20 hours a week and less than 5 months in a Plan Year.

- (b) **Only Employees May Participate in the Plan.** To participate in the Plan, an individual must be an Employee. If an individual is not an Employee (e.g., the individual performs services with the District as an independent contractor) such individual may not participate under the Plan. If an individual who is classified as a non-Employee is later determined by the District or by a court or other government agency to be an Employee of the District, the reclassification of such individual as an Employee *will not* create retroactive rights to participate in the Plan. For periods prior to the date of such final determination, the reclassified Employee *will not* have any rights to accrued benefits under the Plan, except as agreed to by the District or mandated by a court or government agency, or as set forth in an amendment adopted by the District.
- (c) **Ineligible Employee Becomes Eligible Employee.** If an Employee changes status from an ineligible Employee to an Eligible Employee, such Employee will become a Participant immediately on the date he/she changes status to an Eligible Employee, provided the Employee has satisfied the eligibility requirements in Section 2.3 of the Plan and has passed his or her Entry Date that would otherwise have applied had the Employee been an Eligible Employee. If the Employee's original Entry Date (determined as if the Employee was always an Eligible Employee) has not passed as of the date the Employee becomes an Eligible Employee, the Employee will become a Participant upon the occurrence of such Entry Date. This requirement is deemed satisfied with respect to Salary Deferrals if the Employee is permitted to commence making Salary Deferrals under the Plan as soon as administratively feasible after the Employee becomes an Eligible Employee. If an ineligible Employee has not satisfied the eligibility requirement(s) in Section 2.3 at the time such Employee becomes an Eligible Employee, such Employee will become a Participant on the appropriate Entry Date following satisfaction of the eligibility requirements in Section 2.3 of the Plan.
- (d) **Eligible Employee Becomes Ineligible Employee.** If an Employee ceases to qualify as an Eligible Employee (i.e., the Employee changes status from an eligible class to an ineligible class of Employees), such Employee will immediately cease to participate in the Plan. If such Employee should subsequently become an Eligible Employee, he/she will be able to participate in the Plan in accordance with subsection (b) above.
- (e) **Improper Exclusion of Eligible Participant.** If the Plan improperly excludes a Participant who has satisfied the requirements under this Section 2 for participating under the Plan, the District may take **reasonable** action to correct such error, provided such corrective action is consistent with the requirements of the Internal Revenue Service's Employee Plans Compliance Resolution System (EPCRS) program, as amended, or other successor program.

### 2.3 **Eligibility Requirements.**

- (a) **Service Requirement.** There is no minimum age requirement to become an Eligible Employee. An Eligible Employee must complete 1,044 continuous Hours of Service ~~hours~~ to participate in the Plan.
- (b) **Entry Date:** An Eligible Employee will enter the Plan and begin Salary Deferral contributions and receive Matching Contributions as of the later of commencement of the first full payroll period

following Eligible Employee's satisfaction of the eligibility requirements specified in Section 2.3(a) or submitting a completed deferral election form in the manner prescribed by the Plan Administrator.

- 2.4 Participation on Effective Date of Plan.** An Eligible Employee who has satisfied the Plan's eligibility requirements and reached his/her Entry Date described in Section 2.3 as of the Effective Date of the Plan will be eligible to participate in the Plan as of such Effective Date. If an Eligible Employee has satisfied the minimum eligibility requirements as of the Effective Date in Section 2.3 of the Plan but has not yet reached his/her Entry Date, the Eligible Employee will participate upon reaching his or her Entry Date.
- 2.5 Rehired Employees.** If a terminated Employee is subsequently rehired, such Employee will be eligible to participate in the Plan on his/her reemployment date, if the Employee is rehired within a 12-month period and is an Eligible Employee and the Employee had satisfied the Plan's eligibility requirement(s) prior to his/her termination of employment. If a rehired Employee had not satisfied the Plan's eligibility requirement(s) prior to termination of employment, or was rehired more than 12 months after termination, such Employee is eligible to participate in the Plan on the appropriate Entry Date following satisfaction of the eligibility requirements under Section 2.1.

### SECTION 3

#### PLAN CONTRIBUTIONS

- 3.1 Types of Contributions.** The Plan provides for Salary Deferrals and Matching Contributions.
- 3.2 Salary Deferrals.** Participants may make Salary Deferrals under the Plan. A Participant may elect to change, discontinue and/ or resume Salary Deferrals in accordance with Section 3.2(b). Subject to the conditions and limitations of the Plan, a Participant's election shall remain in effect until any change, suspension, or termination properly elected by the Participant under Section 3.2(b) becomes effective. The amounts to be deferred shall be withheld from the Participant's Plan Compensation and contributed to the Plan on the Participant's behalf. The District will deposit any amounts withheld from a Participant's Plan Compensation as Salary Deferrals into the Participant's Salary Deferral Account under the Plan. Effective January 1, 2024, a Participant may, at the time of his or her Salary Deferral Election or election change, irrevocably designate all or a portion of his or her future Salary Deferrals, including Catch-Up Contributions, as Roth Deferrals instead of Pre-Tax Deferrals.
- (a) Salary Deferral Election.** In order to make Salary Deferrals under the Plan, a Participant must enter into a Salary Deferral Election which authorizes the District to withhold a specific dollar amount or a specific percentage from the Participant's Plan Compensation. A Participant's election to make a Salary Deferral to the Plan must be made in accordance with the procedures and time requirements established by the Plan Administrator. A Participant's election must irrevocably designate the Salary Deferrals as Pre-Tax Deferrals, Roth Deferrals, or a specific combination of both. A Participant may defer any amount up to one-hundred percent (100%) of Plan Compensation, provided however, the amount deferred never exceeds the Elective Deferral Dollar Limit imposed by Code § 402(g) and the Limit on Annual Additions under Code § 415. In

determining the amount to be withheld from a Participant's Plan Compensation, a Salary Deferral Election may be rounded to the next highest or lowest whole dollar amount. A Salary Deferral Election may only relate to Plan Compensation that is not currently payable or made available at the time the Salary Deferral Election is completed. Further, a Salary Deferral Election may not be effective prior to the later of the date the:

- (1) Employee becomes a Participant, or
- (2) Participant executes the Salary Deferral Election.

In addition, Salary Deferrals made pursuant to a Salary Deferral Election may not be made earlier than the date the Participant performs the services to which such Salary Deferrals relate or the date the compensation subject to such Salary Deferral Election would be currently available to the Participant absent the deferral election (if earlier).

(b) **Change in Deferral Election.** Participants may enter into new Salary Deferral Elections, modify or terminate existing Salary Deferral Elections within the limits established by the Plan Administrator. Any election to modify, including changing the designation of all or any portion of his or her Salary Deferrals as Pre-Tax Deferrals or Roth Deferrals, or terminate a Salary Deferral Election will take effect the first pay date of the following pay period which does not include the date of the election or modification (For example, for an election made on May 14, 2018, the salary deferrals will commence on the next pay date of June 13, 2018, which is for the following pay period of May 20 – June 2).

(c) **Catch-Up Contributions.** A Participant who is aged 50 or over before the end of a taxable year may make Catch-Up Contributions, provided such Catch-Up Contributions are in excess of an otherwise applicable limit under the Plan. For this purpose, an otherwise applicable Plan limit is a limit in the Plan that applies to Salary Deferrals without regard to Catch-up Contributions, such as the Code § 415 Limitation, or the Elective Deferral Dollar Limit under Code § 402(g). As with other Salary Deferrals, a Participant may, at the time of the deferral election, designate Catch-Up Contributions as either Pre-Tax Deferrals or Roth Deferrals.

(1) **Catch-Up Contribution Limit.** Catch-up Contributions for a Participant for a taxable year may not exceed the Catch-Up Contribution Limit. The Catch-Up Contribution Limit for the 2018 tax year is \$6,000. For taxable years beginning after 2018, the Catch-Up Contribution Limit will be adjusted for cost-of-living increases under Code § 414(v)(2)(C).

(2) **Special Treatment of Catch-Up Contributions.** Catch-up Contributions are not subject to the Elective Deferral Dollar Limit or the Code § 415 Limitation.

3.3 **Matching Contributions.** The District shall have the responsibility for making Matching Contributions under the Plan. On behalf of each Participant, the District shall make a Matching Contribution equal to one-hundred percent (100%) of Participant's contributions to the Plan. The Matching Contributions shall be capped at four and one-half percent (4.5%) of the Participant's Plan Compensation not to exceed the participant's total deferred compensation. Any Matching Contribution made under the Plan will be allocated to Participants' Matching Contribution Account.

- (a) **Employee Matching Formula.** The Matching Contribution formula shall apply to Salary Deferrals made by Participants to the Plan.
- (b) **Matching Contributions.** All Matching Contributions are one-hundred percent (100%) vested immediately.

**3.4 Rollover Contributions.** An Employee (or former Employee) may make a Rollover Contribution to this Plan from a qualified retirement plan or from an IRA in accordance with administrative procedures established by the Plan Administrator for the acceptance of Rollover Contributions, including Rollover Contributions of Roth amounts, but only if (i) it is a direct rollover from another Roth Deferral Account in an eligible retirement plan described in Code § 402A(e)(1), (ii) it is permitted under Code § 402(c), and (iii) the Plan Administrator of the transferor plan provides the Plan Administrator with information about the rollover required under the Treasury Regulations. A rollover of Roth Deferrals may not be made to this Plan from a Roth IRA. Any Roth Deferrals rolled into this Plan will be held in a separate Roth Rollover Account. A Participant may withdraw amounts from his/her Rollover Contribution Account in accordance with the distribution rules under Section 7 (Plan Distributions). Effective August 1, 2018, Participant withdrawals from his or her Rollover Contribution Account is no longer limited to once per Plan Year. Any amounts received as a Rollover Contribution under this Section 3.4 *will not* be treated as an Annual Addition for purposes of applying the Code § 415 Limitation.

For purposes of this Section 3.4, a qualified retirement plan is a tax-qualified retirement plan described in Code § 401(a) or Code § 403(a), an annuity contract described in Code § 403(b), or an eligible plan under Code § 457(b), which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. To qualify as a Rollover Contribution under this Section 3.4, the Rollover Contribution must be transferred directly from the qualified retirement plan or IRA in a Direct Rollover or must be transferred to the Plan by the Employee within sixty (60) days following receipt of the amounts from the qualified plan or IRA.

An Employee may make a Rollover Contribution to the Plan if the Employee is not a Participant with respect to any or all other contributions under the Plan. An Employee who makes a Rollover Contribution to this Plan prior to becoming an Eligible Employee shall be treated as a Participant only with respect to such Rollover Contribution Account, but shall not be treated as a Participant with respect to other contribution sources under the Plan until he/she otherwise satisfies the eligibility conditions under the Plan. To the extent Participant loans are authorized under the Plan, a "limited Participant" under this paragraph may request a Participant loan from the Rollover Contribution Account. A former Employee, however, may only make a Rollover Contribution to the Plan if he or she is a Participant with respect to other contributions under the Plan.

The Plan Administrator may refuse to accept a Rollover Contribution if the Plan Administrator reasonably believes the Rollover Contribution:

- (a) is not being made from a proper plan or IRA;
- (b) is not being made within sixty (60) days from receipt of the amounts from a qualified retirement plan or IRA;

- (c) could jeopardize the tax-exempt status of the Plan; or
- (d) could create adverse tax consequences for the Plan or the District.

Prior to accepting a Rollover Contribution, the Plan Administrator may require the Employee to provide satisfactory evidence establishing that the Rollover Contribution meets the requirements of this Section 3.4.

The Plan Administrator may apply different conditions for accepting Rollover Contributions from qualified retirement plans and IRAs. For example, the Plan Administrator may decide in its discretion whether to accept a Direct Rollover of a loan note from another qualified plan. Any conditions on Rollover Contributions must be applied uniformly to all Employees under the Plan.

**3.5 Roth Deferrals.** Effective January 1, 2024, a Participant may, at the time of his or her Salary Deferral Election or election change, irrevocably designate all or a portion of his or her future Salary Deferrals, including Catch-Up Contributions, as Roth Deferrals instead of Pre-Tax Deferrals. A Participant's Roth Deferrals will be allocated to and maintained in a separate Account as provided in this Section 3.5.

- (a) Contributions and withdrawals of Roth Deferrals will be credited and debited to a separate Account maintained for each Participant, and the Plan will maintain a record of the amount of Roth Deferrals in such Account. In addition, gains, losses and other credits or charges must be separately allocated on a reasonable and consistent basis to each Participant's Roth Deferral Account under the Plan. However, in no event may Plan forfeitures be allocated to such Account. No contributions other than Roth Deferrals or Rollover Contributions to a Roth Deferral Account will be credited to a Participant's Roth Deferral Account.
- (b) To the extent required by the Code and the Treasury regulations, reemployed veterans may designate the year for which a Roth Deferral is made. If no such designation is made, the Roth Deferrals will be treated as having been made in the first year of military service for which the veteran could have made the contributions but not earlier than February XX, 2024. This designation must be made solely for purposes of determining the five-taxable-year period under Code § 402A(d)(2).
- (c) In the absence of a specific designation of Salary Deferrals as Roth Deferrals, Salary Deferrals must be treated as Pre-Tax Deferrals. Unless specifically provided otherwise in the Plan, Roth Deferrals will be treated as Salary Deferrals for all purposes under the Plan, including but not limited to immediate full vesting, the distribution restrictions in Section 7 (Plan Distributions), the Elective Deferral Dollar Limit imposed by Code § 402(g) and the Limit on Annual Additions under Code § 415.

**3.6 In-Plan Roth Conversions.** Effective January 1, 2024, a Participant may elect to transfer some or all of his or her vested Account Balance (other than his or her Roth Deferral Account or Roth Rollover Account), and earnings thereon, to an In-Plan Roth Conversion Account without regard to whether the Participant satisfies the requirements for distribution in accordance with Section 7 (Plan Distributions). Any Participant election to make an In-Plan Roth Conversion during a taxable year is irrevocable and cannot be changed after the In-Plan Roth Conversion is completed. Generally, In-Plan Roth Conversion Accounts are subject to the same Plan provisions as Roth Deferral Accounts. However, distribution restrictions that

otherwise apply with respect to a specific contribution source will continue to apply if such contribution source is converted to Roth Deferrals. For example, if Matching Contributions are converted to Roth Deferrals, such amounts may not be distributed from the Plan upon events not otherwise available for Matching Contributions. The Plan Administrator will maintain such records as are necessary for the proper reporting of In-Plan Roth Conversions and will administer the In-Plan Roth Conversion Accounts in accordance with the Code, Treasury Regulations, and Plan provisions.

- (a) Eligibility to Elect In-Plan Roth Rollover.** For purposes of determining eligibility for In-Plan Roth Rollovers, the Plan will treat a Participant's spousal Beneficiary or Participant's alternate payee spouse or former spouse as a Participant. A non-spouse Beneficiary is not eligible to make an In-Plan Roth Rollover.
- (b) In-Plan Roth Rollover Procedure.** An In-Plan Roth Rollover must be made by the Participant in the form of a Direct In-Plan Roth Rollover. Additionally, an In-Plan Roth Rollover must be accomplished in the form and manner established by the Plan Administrator.
- (c) Plan Loans.** In-Plan Roth Rollovers may include a Plan loan only if there is no change in the loan's repayment schedule and the loan is not treated as a new loan. Further, Plan loans that include In-Plan Roth Rollover amounts are subject to the Plan's loan rules and the Plan's loan policy.
- (d) Treatment of In-Plan Roth Rollovers.** Notwithstanding anything in the Plan to the contrary, an In-Plan Roth Rollover is not a rollover contribution for purposes of the Plan. The Plan will take into account the amounts attributable to an In-Plan Roth Rollovers for purposes of determining whether a Participant's vested Account Balance exceeds \$500 for purposes of the Plan's involuntary cash-out rules. Amounts in the Participant's In-Plan Roth Rollover Account may only be withdrawn by a Participant when the Participant is eligible for a distribution under Section 7 (Plan Distributions).
- (e) Spousal Consent.** A married Plan Participant is not required to obtain spousal consent in connection with an election to make an In-Plan Roth Conversion, even if the Plan would otherwise require the spousal consent for distributions.
- (f) Tax Treatment of In-Plan Roth Conversion.** A Participant must include in gross income the taxable amount of an In-Plan Roth Conversion. For this purpose, the taxable amount of an In-Plan Roth Conversion is the fair market value of the distribution reduced by any basis in the converted amounts. If an outstanding loan is rolled over as part of an In-Plan Roth Conversion, the amount includible in gross income includes the balance of the loan. Generally, the taxable amount of an In-Plan Roth Conversion is includible in gross income in the taxable year in which the conversion occurs. However, In-Plan Roth Conversions are not subject to the twenty percent (20%) mandatory withholding under Code § 3405(c). Thus, Participants will be required to make arrangements independent of the Plan to ensure the total taxable amount is timely paid.
- (g) Early Distribution Penalty.** If an amount allocable to the taxable amount of an In-Plan Roth is subsequently distributed within the 5-taxable-year period beginning with the first day of the Participant's taxable year in which the conversion was made, the amount distributed is treated as includible in gross income for purposes of applying the Code § 72(t) early distribution penalty. For

this purpose, the 5-taxable-year period ends on the last day of the Participant's fifth taxable year in the period. This subsection (g) will not apply to the extent the distribution is rolled over to a Roth account in another qualified plan or is rolled over to a Roth IRA. However, the rule under this subsection (g) will apply to any subsequent distributions made from such other Roth account or Roth IRA within the 5-taxable-year period.

**(h) In-Plan Roth Conversion Definitions.**

- (1) "Direct In-Plan Roth Rollover"** means a direct rollover from a Participant Account (other than Participant's Roth Deferral Account, Roth Rollover Account and In-Plan Roth Rollover Account) to an In-Plan Roth Rollover Account established for the Participant.
- (2) "In-Plan Roth Rollover"** means a contribution made from the Participant's Account (other than Participant's Roth Deferral Account or Roth Rollover Account) to the Participant's In-Plan Roth Rollover Account under the Plan in accordance with Code § 402A(c)(4) with respect to distributable amounts under the Plan or § 402A(c)(4)(E) with respect to amounts not otherwise distributable under the Plan.
- (3) "In-Plan Roth Rollover Account"** means the subaccount established under the Plan to account for a Participant's In-Plan Roth Rollover.

## SECTION 4

### SPECIAL RULES AFFECTING GOVERNMENTAL PLANS

**4.1 Governmental Plan.** This Plan is a tax-qualified defined contribution plan under Code § 401(a). In addition, this Plan meets the requirements for establishing and maintaining a governmental plan under Code § 414(d).

**(a) Governmental Plan Exemptions.** As a tax-qualified governmental plan, this Plan is exempt from Title I of ERISA and certain qualification rules under Code 401(a), including:

- (1)** The minimum age and service rules under Code § 410(a) and the minimum coverage rules under Code § 410(b).
- (2)** The minimum vesting requirements of Code § 411, including minimum vesting schedules, consent requirements for plan distributions, and the anti-cutback rule under Code § 411(d)(6).
- (3)** The nondiscrimination requirements under Code §§ 401(a)(4), 401(k) and 401(m).
- (4)** The top-heavy rules under Code § 416.
- (5)** The joint and survivor annuity rules under Code §§ 401(a)(11) and 417.
- (6)** The requirements for protecting benefits pursuant to a plan merger or a transfer of plan assets and liabilities, as prescribed by Code § 401(a)(12).
- (7)** The anti-assignment rule under Code § 401(a)(13). However, the Code § 414(p)(11) rules relating to the taxability of benefits distributed pursuant to a QDRO are applicable to

benefits payable to an alternate payee under the QDRO.

- (8) The commencement of benefit requirements under Code § 401(a)(14).
- (9) The protections under Code § 401(a)(19).
- (b) **ERISA Exempt.** Adoption by the District of provisions similar to the requirements applicable to plans covered under Title I of ERISA or to otherwise inapplicable Code requirements will not affect the Plan's status as a governmental plan. In the event such provisions are adopted, the Plan shall remain exempt from ERISA and certain Code requirements as a governmental plan.

## SECTION 5

### CONTRIBUTION AND BENEFIT LIMITATIONS

#### 5.1 **Code § 415 Limitation.**

- (a) **No Other Plan Participation.** If the Participant does not participate in, and has never participated in another qualified retirement plan, a welfare benefit fund (as defined under Code § 419(e)), an individual medical account (as defined under Code § 415(l)(2)), or a SEP (as defined under Code § 408(k)) maintained by the District which provides an Annual Addition as defined in subsection (c)(1), then the amount of Annual Additions which may be credited to the Participant's Account for any Limitation Year *will not* exceed the lesser of the Maximum Permissible Amount or any other limitation contained in this Plan.

If an Employer Contribution that would otherwise be contributed or allocated to a Participant's Account will cause that Participant's Annual Additions for the Limitation Year to exceed the Maximum Permissible Amount, the amount to be contributed or allocated to such Participant will be reduced so that the Annual Additions allocated to such Participant's Account for the Limitation Year will equal the Maximum Permissible Amount. However, if a contribution or allocation is made to a Participant's Account in an amount that exceeds the Maximum Permissible Amount, such excess Annual Additions may be corrected pursuant to the correction procedures outlined under the IRS' Employee Plans Compliance Resolution System (EPCRS).

- (b) **Participation in Another Plan.** This subsection 5.1(b) applies if, in addition to this Plan, the Participant receives an Annual Addition during any Limitation Year from another Defined Contribution Plan, a welfare benefit fund (as defined under Code § 419(e)), an individual medical account (as defined under Code § 415(l)(2)), or a SEP (as defined under Code § 408(k)) maintained by the District.
  - (1) **This Plan's Code § 415 Limitation.** The Annual Additions that may be credited to a Participant's Account under this Plan for any Limitation Year will not exceed the Maximum Permissible Amount (defined in subsection 5.1(c)(6) below) reduced by the Annual Additions credited to a Participant's Account under any other Defined Contribution Plan, welfare benefit fund, individual medical account, or SEP maintained by the District for the same Limitation Year.

- (2) **Annual Additions Reduction.** If the Annual Additions with respect to the Participant under any other Defined Contribution Plan, welfare benefit fund, individual medical account, or SEP maintained by the District are less than the Maximum Permissible Amount and the Annual Additions that would otherwise be contributed or allocated to the Participant's Account under this Plan would exceed the Code § 415 Limitation for the Limitation Year, the amount contributed or allocated will be reduced so that the Annual Additions under all such Plans and funds for the Limitation Year will equal the Maximum Permissible Amount. However, if a contribution or allocation is made to a Participant's Account in an amount that exceeds the Maximum Permissible Amount, such excess Annual Additions may be corrected pursuant to the correction procedures outlined under the IRS' Employee Plans Compliance Resolution System (EPCRS).
- (3) **No Annual Additions Permitted.** If the Annual Additions with respect to the Participant under such other Defined Contribution Plan(s), welfare benefit fund(s), individual medical account(s), or SEP(s) in the aggregate are equal to or greater than the Maximum Permissible Amount, no amount will be contributed or allocated to the Participant's Account under this Plan for the Limitation Year. However, if a contribution or allocation is made to a Participant's Account in an amount that exceeds the Maximum Permissible Amount, such excess Annual Additions may be corrected pursuant to the correction procedures outlined under the IRS' Employee Plans Compliance Resolution System (EPCRS).
- (c) **§ 415 Definitions.**
- (1) **Annual Additions.** The amounts credited to a Participant's Account for the Limitation Year that are taken into account in applying the Code § 415 Limitation, including:
- i Employer Contributions, including Matching Contributions and Salary Deferrals; and
  - ii Forfeitures.
- An Annual Addition is credited to a Participant's Account for a particular Limitation Year if such amount is allocated to the Participant's Account as of any date within that Limitation Year. An Annual Addition *will not* be deemed credited to a Participant's Account for a particular Limitation Year unless such amount is actually contributed to the Plan no later than 30 days after the time prescribed by law for filing the District's income tax return (including extensions) for the taxable year with or within which the Limitation Year ends. In the case of After-Tax Employee Contributions, such amount shall not be deemed credited to a Participant's Account for a particular Limitation Year unless the contributions are actually contributed to the Plan no later than 30 days after the close of that Limitation Year.
- (2) **Defined Contribution Dollar Limitation.** \$40,000, as adjusted under Code § 415(d).
- (3) **Excess Amount.** The excess of the Participant's Annual Additions for the Limitation Year over the Maximum Permissible Amount.
- (4) **Limitation Year.** The Plan Year is the Limitation Year.

(5) **Maximum Permissible Amount.** For Limitation Years beginning on or after January 1, 2002, the Maximum Permissible Amount is the lesser of:

- i. the Defined Contribution Dollar Limitation, or
- ii. 100 percent of the Participant's Total Compensation for the Limitation Year.

The Total Compensation limitation referred to in (ii) shall not apply to any contribution for medical benefits (within the meaning of Code § 401(h) or § 419A(f)(2)) which is otherwise treated as an Annual Addition.

If a short Limitation Year is created because of an amendment changing the Limitation Year to a different 12-consecutive month period, the Maximum Permissible Amount *will not* exceed the Defined Contribution Dollar Limitation multiplied by the following fraction:

$$\frac{\text{Number of months in the short Limitation Year}}{12}$$

If a short Limitation Year is created because the Plan has an *initial* Plan Year that is less than 12 months, no proration of the Defined Contribution Dollar Limitation is required.

(6) **Total Compensation.** The amount of compensation as defined under Section 1.54, subject to the following:

- i. **Total Compensation Actually Paid or Made Available.** For purposes of applying the limitations of this Section 5.1, Total Compensation for a Limitation Year is the Total Compensation actually paid or made available to an Employee during such Limitation Year. The Employer may include in Total Compensation for a Limitation Year amounts earned but not paid in the Limitation Year because of the timing of pay periods and pay days, but only if:
  - (A) the amounts are paid during the first few weeks of the next Limitation Year,
  - (B) such amounts are included on a uniform and consistent basis with respect to all similarly-situated employees, and
  - (C) no amounts are included in Total Compensation in more than one Limitation Year.

(d) **Restorative Payments.** Restorative payments are not considered Annual Additions for any Limitation Year. For this purpose, restorative payments are payments made to restore losses to the Plan resulting from actions (or a failure to act) by a fiduciary or third-party administrator for which there is a reasonable risk of liability under applicable federal or state law, where Participants who are similarly situated are treated similarly with respect to the payments.

(e) **Corrective Provisions.** The District may use reasonable correction methods to the extent permitted by the IRS or under an IRS correction program.

(f) **Change of Limitation Year.** Where there is a change of Limitation Year, a "short" Limitation Year exists for the period beginning with the first day of the Limitation Year and ending on the day

before the change in Limitation Year is effective. For this purpose, if the Plan is terminated effective as of a date other than the last day of the Limitation Year, the Plan is treated as if it were amended to change its Limitation Year.

**5.2 Elective Deferral Dollar Limit.** The Elective Deferral Dollar Limit under this Section 5.2 applies with respect to a Participant's Salary Deferrals. Under this Elective Deferral Dollar Limit, a Participant may not make Elective Deferrals under this Plan during any calendar year in an amount that exceeds the Elective Deferral Dollar Limit in effect for each Plan Year.

The Elective Deferral Dollar Limit is \$18,500 for the 2018. For taxable years beginning after 2018, the Elective Deferral Dollar Limit will be adjusted for cost-of-living increases under Code § 402(g)(4).

If a Participant is aged 50 by the end of the taxable year, the Elective Deferral Dollar Limit is increased by the Catch-Up Contribution Limit described in Section 3.2(c).

- (a) **Excess Deferrals.** Excess Deferrals are Elective Deferrals made during the Participant's taxable year that exceed the Elective Deferral Dollar Limit for such year.
- (b) **Correction of Excess Deferrals.** If a Participant makes Elective Deferrals in excess of the Elective Deferral Dollar Limit ("Excess Deferrals") under this Plan, such Excess Deferrals (plus allocable income or loss) shall be distributed to the Participant. A distribution of Excess Deferrals may be made at any time (subject to the correction provisions under EPCRS or subsequent guidance). If the corrective distribution of Excess Deferrals is made by April 15 of the calendar year following the year the Excess Deferrals are made to the Plan, such amounts will be taxable in the year of deferral, but not in the year of distribution. If a corrective distribution of Excess Deferrals is made after April 15 of the following calendar year, such amounts will be taxable in both the year of deferral and the year of distribution. Unless the Plan Administrator determines otherwise, if the Participant made both Pre-Tax Deferrals and Roth Deferrals during the same Plan Year, the distribution of Excess Deferrals will be made first solely from the Participant's Pre-Tax Salary Deferral Account until all Pre-Tax Deferrals, plus any allocable gains and minus any allocable losses, for the Plan Year, have been distributed, and only then from the Participant's Roth Deferral Account.
  - (1) **Amount of Corrective Distribution.** The amount to be distributed from this Plan as a correction of Excess Deferrals equals the amount of Elective Deferrals the Participant contributes during the taxable year to this Plan and any other plan maintained by the District in excess of the Elective Deferral Dollar Limit, reduced by any corrective distribution of Excess Deferrals the Participant receives during the calendar year from this Plan or other plan(s) maintained by the District.
  - (2) **Allocable Gain or Loss.** A corrective distribution of Excess Deferrals must include any allocable gain or loss for the taxable year in which the Excess Deferrals are contributed to the Plan. The gain or loss allocable to Excess Deferrals may be determined in any reasonable manner, provided the manner used to determine allocable gain or loss is applied consistently for all Participants and in a manner that is reasonably reflective of the method used by the Plan for allocating income to Participants' Accounts. A corrective distribution of

Excess Deferrals will not include any income or loss allocable to the period between the end of the taxable year and the date of distribution.

- (3) **Taxation of Corrective Distribution.** If a corrective distribution of Excess Deferrals is made by April 15 of the following calendar year, amounts attributable to the Excess Deferrals will be includible in the Participant's gross income in the taxable year in which such amounts are deferred under the Plan and amounts attributable to income or loss on the Excess Deferrals will be includible in gross income in the year of distribution.

If a corrective distribution of Excess Deferrals is made after April 15, the amount of the corrective distribution attributable to Excess Deferrals will be includible in the Participant's gross income in both the taxable year in which such amounts are deferred under the Plan and the taxable year in which such amounts are distributed.

- (4) **Coordination with Other Provisions.** A corrective distribution of Excess Deferrals made by April 15 of the following calendar year may be made without consent of the Participant or the Participant's Spouse, and without regard to any distribution restrictions applicable under Section 7 (Plan Distributions). A corrective distribution of Excess Deferrals made by the appropriate April 15 also is not treated as a distribution for purposes of applying the required minimum distribution rules under Section 8 (Required Minimum Distributions).

- (5) **Correction of Excess Deferrals Under Plans Not Maintained by the Employer.** The correction provisions under this subsection 5.2(b) apply only if a Participant makes Excess Deferrals under this Plan (or under this Plan and other plans maintained by the District). However, if a Participant has Excess Deferrals for a calendar year on account of making Elective Deferrals to a plan of an unrelated employer, the Participant may assign to this Plan any portion of his/her Elective Deferrals made under all plans during the calendar year to the extent such Elective Deferrals exceed the Elective Deferral Dollar Limit. The Participant must notify the Plan Administrator in writing on or before March 1 of the following calendar year of the amount of the Excess Deferrals to be assigned to this Plan.

Upon receipt of a timely notification, the Excess Deferrals assigned to this Plan will be distributed (along with any allocable income or loss) to the Participant in accordance with the corrective distribution provisions under this subsection 5.2(b). A Participant is deemed to notify the Plan Administrator of Excess Deferrals to the extent such Excess Deferrals arise only under this Plan and any other plan maintained by the District.

## SECTION 6

### PARTICIPANT VESTING AND FORFEITURES

- 6.1 **Vesting of Contributions.** Participants are one-hundred percent (100%) vested in his or her Account at all times.
- 6.2 **Forfeiture of Benefits.** Notwithstanding immediate and full vesting, upon the occurrence of any of the events described below or at any such time as the Plan Administrator determines, a Participant Account

may be forfeited. The Plan Administrator has the responsibility to determine the amount of a Participant's forfeiture. Until an amount is forfeited pursuant to this Section 6.2 (Forfeiture of Benefits), a Participant's entire Account must remain in the Plan and continue to share in gains and losses of the Trust.

(a) **Missing Participant or Beneficiary.** If a Participant or Beneficiary cannot be located within a reasonable period following a reasonable diligent search, the missing Participant's or Beneficiary's Account may be forfeited, as provided in subsection (2) below. The District will be deemed to have performed a reasonable diligent search if it performs the actions described in subsection (1) below. In determining whether a reasonable period has elapsed following a reasonable diligent search, the District or Plan Administrator may follow any applicable guidance provided under statute, regulation, or other IRS or DOL guidance of general applicability. However, the District or Plan Administrator will be deemed to have waited a reasonable period following a reasonable diligent search if the District or Plan Administrator waits at least 6 months following the completion of the actions described in subsection (1) below.

(1) **Reasonable Diligent Search.** The District or Plan Administrator will be deemed to have performed a reasonable diligent search if it performs the following actions:

- i. Send a certified letter to the Participant's or Beneficiary's last known address.
- ii. Check related records of the District (e.g., health plan records) to determine if a more current address exists for the Participant or Beneficiary.
- iii. If the Participant cannot be located, the District or Plan Administrator may attempt~~s~~ to identify and contact any individual that the Participant has designated as a Beneficiary under the Plan for ~~–~~updated information concerning the location of the missing Participant.
- iv. Utilize the Social Security Administration (SSA) letter-forwarding service for locating lost participants. Additional information regarding the SSA letter forwarding program can be located at [www.ssa.gov](http://www.ssa.gov). In addition to the search methods discussed above, the District or Plan Administrator may use other search methods, including the use of Internet search tools, commercial locator services, and credit reporting agencies to locate the missing Participant.

(2) **Forfeiture of Account of Missing Participant or Beneficiary.** A Participant or Beneficiary deemed to be missing (i.e., cannot be found within 4 years of his or her required beginning date), the Plan administrator may forfeit the distributable amount of such missing Participant's or Beneficiary's vested Account. If, after an amount is forfeited under this subsection (2), the missing Participant or Beneficiary is located, the Plan will restore the forfeited amount (unadjusted for gains or losses) to such Participant or Beneficiary within a reasonable time. However, if a missing Participant or Beneficiary has not been located by the time the Plan terminates, the forfeiture of such Participant's or Beneficiary's distributable amount will be irrevocable. Notwithstanding the foregoing, the Plan Administrator may address forfeitures using any available means provided under

applicable law, including escheating the Participant's or Beneficiary's Account to the state.

(3) **Expenses Attributable to Search for Missing Participant.** Reasonable expenses attendant to locating a missing Participant may be charged to such Participant's Account, provided that the amount of such expenses is reasonable. The Plan Administrator may take into account the size of a Participant's Account in relation to the cost of the search when deciding how extensive a search is required before declaring such Participant as missing under subsection (a).

(b) **Employer Matching Contribution Attributable to Excess Deferrals.** If a Participant receives a distribution of Excess Deferrals, the portion of his/her Matching Contribution Account which is attributable to such distributed amounts will be forfeited. A forfeiture of Matching Contributions under this subsection 6.2(b) occurs in the Plan Year in which the Participant receives the distribution of Excess Deferrals.

6.3 **Allocation of Forfeitures.** Forfeitures may be used in the Plan Year in which the forfeitures occur or in the Plan Year following the Plan Year in which the forfeitures occur. In applying the forfeiture provisions under the Plan, if there are any unused forfeitures as of the end of the Plan Year, any remaining forfeiture will be used in the immediately following Plan Year.

(a) **Reduction of Contributions.** The District may, in its discretion, use such forfeitures to reduce Matching Contributions. The District may adjust its contribution deposits in any manner, provided the total Matching Contributions made for the Plan Year properly take into account the forfeitures that are to be used to reduce such contributions from that Plan Year. If contributions are allocated over multiple allocation periods, the District may reduce its contribution for any allocation periods within the Plan Year in which the forfeitures are to be allocated so that the total amount allocated for the Plan Year is proper. If the Plan provides for Matching Contribution and the District elects not to make a Matching Contribution for the Plan Year, any forfeitures will be allocated to eligible Participants as an additional Matching Contribution.

(b) **Payment of Plan Expenses.** The District may use forfeitures to pay Plan expenses for the Plan Year in which the forfeitures would otherwise be applied. If any forfeitures remain after the payment of Plan expenses under this subsection 6.3(b), the remaining forfeitures will be allocated to reduce Matching Contributions to the Plan. This subsection 6.3(b) only applies to the extent Plan expenses are paid by the Plan. Nothing herein affects the ability of the District to pay Plan expenses. In determining the Plan expenses that may be offset by Plan forfeitures, the District may use any reasonable method to determine the Plan expenses attributable to a particular year.

## SECTION 7

### PLAN DISTRIBUTIONS

A Participant may receive a distribution of his/her vested Account Balance at the time and in the manner provided under this Section 7. Upon reaching the Required Beginning Date, a Participant must begin receiving distributions under the Plan in accordance with the provisions of Section 8 (Required Minimum Distributions).

- 7.1 Available Forms of Distribution.** Upon termination of employment, a Participant under the Plan may take a distribution of his/her entire vested Account Balance in a single lump sum, periodic payments (on a monthly, quarterly, semiannual, or annual basis), or partial distribution. Further, the Plan Administrator may, in its discretion, permit a Participant to take distributions of less than entire vested Account Balance provided all Participants have an opportunity to take such partial distributions upon termination of employment. In addition, the Plan Administrator may, in its discretion, permit Participants to take single lump sum, periodic payments (on a monthly, quarterly, semiannual, or annual basis), or partial distribution to the extent necessary to satisfy the required minimum distribution rules under Code § 401(a)(9). (See Section 8 Required Minimum Distributions).
- 7.2 Amount Eligible for Distribution.** For purposes of determining the amount a Participant or Beneficiary may receive as a distribution from the Plan, a Participant's Account Balance is determined as of the Valuation Date immediately preceding the date the Participant or Beneficiary receives his/her distribution from the Plan. For this purpose, the Account Balance must be increased for any contributions allocated to the Participant's Account since the most recent Valuation Date and must be reduced for any distributions made from the Participant's Account since the most recent Valuation Date. A Participant or Beneficiary does not share in any allocation of gains or losses attributable to the period between the most recent Valuation Date and the date of the distribution, unless provided otherwise under uniform funding and valuation procedures established by the Plan Administrator.
- 7.3 Participant Consent.** To the extent a Participant's entire vested Account Balance exceeds the \$500 Involuntary Cash-Out threshold per this Section 7.3(a), the Participant must consent to any distribution of such Account Balance prior to his/her Required Beginning Date except as set forth in Section 8 (Required Minimum Distributions)
- (a) Involuntary Cash-Out Threshold.** For purposes of determining whether a distribution is subject to the Participant consent requirements as described in this Section 7.3, the Involuntary Cash-Out threshold is \$500. For purposes of determining whether a Participant's vested Account Balance exceeds the Involuntary Cash-Out threshold, the value of the Participant's vested Account Balance includes Rollover Contributions (and earnings allocable thereto) within the meaning of Code §§ 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16) is taken into account.
- (b) Participant Notice.** If a distribution is subject to Participant consent, the Participant must consent in writing to the distribution within a reasonable period prior to the Distribution Starting Date. For this purpose, any consent made within the 180-day period ending on the Distribution Starting Date will be deemed to be made within a reasonable period. If the distribution is subject to spousal consent, the Participant's Spouse also must consent to the distribution in accordance with Section 9.2 (Spousal Consent).

Prior to receiving a distribution from the Plan, a Participant must be notified of his/her right to defer any distribution from the Plan. Effective for Plan Years beginning on or after January 1, 2007, the Participant notice must include a description of the consequences of a Participant's decision not to defer the receipt of a distribution. The notice must be provided no less than 30 days and no more than 180 days prior to the Participant's Distribution Starting Date. However, distribution may

commence less than 30 days after the notice is given, if the Participant is clearly informed of his/ or her right to take 30 days after receiving the notice to decide whether or not to elect a distribution (and, if applicable, a particular distribution option), and the Participant, after receiving the notice, affirmatively elects to receive the distribution prior to the expiration of the 30-day minimum period. The notice requirements described in this paragraph may be satisfied by providing a summary of the required information, so long as the conditions described in applicable regulations for the provision of such a summary are satisfied, and the full notice is also provided (without regard to the 180-day period described in this subsection (b)).

- (c) **Special Rules.** The consent rules under this Section 7.3 apply to distributions made after the Participant's termination of employment and to distributions made prior to the Participant's termination of employment. However, the consent of the Participant shall not be required to the extent that a distribution is required to satisfy the required minimum distribution rules under Section 8 (Required Minimum Distributions) or to satisfy the requirements of Code § 415, as described in Section 5.2 (Elective Deferral Dollar Limit). A Participant also will not be required to consent to a corrective distribution of Excess Deferrals.

**7.4 Direct Rollovers.** A Participant (other than a Participant subject to an Involuntary Cash-Out) may elect, at the time and the manner prescribed by the Plan Administrator, to have all or any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan (a "Direct Rollover"). For purposes of this Section 7.4, a Participant includes a Participant or former Participant. In addition, this Section applies to any distribution from the Plan made to a Participant's surviving Spouse or to a Participant's Spouse or former Spouse who is the Alternate Payee under a QDRO. For distributions made on or after January 1, 2007, this Section 7.4 also applies to distributions made to a Participant's non-Spouse beneficiary, as set forth in subsection (c) below.

**(a) Definitions.**

- (1) **Eligible Rollover Distribution.** An Eligible Rollover Distribution is any distribution of all or any portion of a Participant's Account Balance, except an Eligible Rollover Distribution does not include:
- i. any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Participant or the joint lives (or joint life expectancies) of the Participant and the Participant's Beneficiary, or for a specified period of ten years or more;
  - ii. any distribution to the extent such distribution is a required minimum distribution under Code § 401(a)(9), as described under Section 8 (Required Minimum Distributions);
  - iii. any Hardship distribution, as described in Section 7.8(e) (Hardship Distribution);
  - iv. the portion of any distribution that is not includible in gross income; or,
  - ~~v. any distribution if it is reasonably expected (at the time of the distribution) that the total~~

~~amount the Participant will receive as a distribution during the calendar year will total less than \$200. Any distribution from a Participant's Roth Deferral Account is not taken into account in determining whether distributions from a Participant's other Accounts are reasonably expected to total less than \$200 during a year. Further, the Plan will not provide for a Direct Rollover for distributions from a Participant's Roth Deferral Account if it is reasonably expected (at the time of distribution) that the total amount the Participant will receive as a distribution during the calendar year will total less than \$200; or,~~

~~vi.v.~~ a distribution made to satisfy the requirements of Code § 415 (as described in Section 5.2) or a distribution to correct Excess Deferrals.

(2) **Eligible Retirement Plan.** For purposes of applying the Direct Rollover provisions under this Section 7.4, an Eligible Retirement Plan is:

- i. a qualified plan described in Code § 401(a);
- ii. an individual retirement account described in Code § 408(a);
- iii. an individual retirement annuity described in Code § 408(b);
- iv. an annuity plan described in Code § 403(a);
- v. an annuity contract described in Code § 403(b); or,
- vi. an eligible plan under Code § 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan.

If any portion of an Eligible Rollover Distribution is attributable to payments or distributions from a Roth Deferral Account, an Eligible Retirement Plan with respect to such portion will include only another Roth Deferral Account under an applicable retirement plan described in Code § 402A(e)(1) of the individual from whose Account the payments or distributions were made, or to a Roth IRA described in Code § 408A of such individual, and only to the extent the rollover is permitted under the rules of Code § 402(c).

The definition of Eligible Retirement Plan also applies in the case of a distribution to a surviving Spouse, or to a Spouse or former Spouse who is the Alternate Payee under a QDRO.

(3) **Direct Rollover.** A Direct Rollover is a payment made directly from the Plan to the Eligible Retirement Plan specified by the Participant. The Plan Administrator may develop reasonable procedures for accommodating Direct Rollover requests.

(b) **Direct Rollover Notice.** A Participant entitled to an Eligible Rollover Distribution must receive a written explanation of his/her right to a Direct Rollover, the tax consequences of not making a

Direct Rollover, and, if applicable, any available special income tax elections. The notice must be provided within 30–180 days prior to the Participant's Distribution Starting Date in the same manner as described in Section 7.3(b) (Participant Notice). The Direct Rollover notice must be provided to all Participants, ~~unless the total amount the Participant will receive as a distribution during the calendar year is expected to be less than \$200.~~

- (c) **Direct Rollover by Non-Spouse Beneficiary.** Effective for Plan Years beginning after December 31, 2009, the Plan permits a non-Spouse beneficiary (as defined in Code § 401(a)(9)(E)) to make a Direct Rollover of an Eligible Rollover Distribution to an individual retirement account under Code § 408(a) or an individual retirement annuity under Code § 408(b) that is established on behalf of the designated beneficiary and that will be treated as an inherited IRA pursuant to the provisions of Code § 402(c)(11). A non-Spouse rollover made after December 31, 2009 will be subject to the direct rollover requirements under Code § 401(a)(31), the rollover notice requirements under Code § 402(f) or the mandatory withholding requirements under Code § 3405(c).
- (d) **Direct Rollover of Non-Taxable Amounts.** Notwithstanding any other provision of the Plan, effective for taxable years beginning on or after January 1, 2007, an Eligible Rollover Distribution may include the portion of any distribution that is not includible in gross income. For this purpose, an Eligible Retirement Plan includes a Defined Contribution or defined benefit plan qualified under Code § 401(a) and a tax-sheltered annuity plan under Code § 403(b), provided the rollover is accomplished through a direct rollover and the recipient Eligible Retirement Plan separately accounts for any amounts attributable to the rollover of any nontaxable distribution and earnings thereon.

**7.5 Distribution Upon Termination of Employment.** Subject to the required minimum distribution provisions under Section 8, a Participant who terminates employment for any reason (other than death) is entitled to receive a distribution of his/her vested Account Balance in accordance with this Section 7.5.

- (a) **Account Balance Not Exceeding Cash-Out Threshold.** If a Participant's vested Account Balance does not exceed \$500 at the time of distribution, the only distribution option available under the Plan is an immediate lump sum option.
- (b) **Account Balance Exceeding Cash-Out Threshold.** If a Participant's vested Account Balance exceeds \$500 at the time of distribution, the Participant may elect to receive a distribution of his/her vested Account Balance at any time after the Participant terminates employment, but prior to his or her required beginning date.

**7.6 Distribution Upon Death.** Subject to the Required Minimum Distribution rules in Section 8, a Participant's vested Account Balance will be distributed to the Participant's Beneficiary(ies) in accordance with this Section 7.6.

- (a) **Death After Commencement of Benefits.** If a Participant begins receiving a distribution of his/her benefits under the Plan, and subsequently dies prior to receiving the full value of his/her vested Account Balance, the remaining benefit will continue to be paid to the Participant's

Beneficiary(ies) in accordance with the form of payment that has already commenced. If a Participant commences distribution prior to death only with respect to a portion of his/her Account Balance, then the rules in subsection (b) apply to the rest of the Account Balance.

- (b) **Death Before Commencement of Benefits.** If a Participant dies before commencing distribution of his or her benefits under the Plan, such benefit will be paid to the Participant's Beneficiary(ies) in a single lump sum as soon as administratively feasible following Participant's death.
- (c) **Timing of Distributions.** In no event will any death benefit be paid later than the end of the fifth year following the year of the Participant's death or in any other manner that is inconsistent with the Required Minimum Distribution rules under Section 8 (Required Minimum Distributions).
- (d) **Determining a Participant's Beneficiary.** The determination of a Participant's Beneficiary(ies) to receive any death benefits under the Plan will be based on the Participant's Beneficiary designation under the Plan. If a Participant does not designate a Beneficiary to receive the death benefits under the Plan, distribution will be made to the default Beneficiaries, as set forth in subsection (3) below.
  - (1) **Post-Retirement Death Benefit.** If a Participant dies after commencing distribution of benefits under the Plan (but prior to receiving a distribution of his/her entire vested Account Balance under the Plan), the Beneficiary of any post-retirement death benefit is determined in accordance with the Beneficiary selected under the distribution option in effect prior to death.
  - (2) **Pre-Retirement Death Benefit.** If a Participant dies before commencing distribution of his/her benefits under the Plan, the Participant's Beneficiary(ies) will be treated as the sole Beneficiary(ies).
  - (3) **Default Beneficiaries.**
    - i. **Prior to August 1, 2018.** If a Participant dies prior to August 1, 2018 or fails to effectively update his or her Beneficiary designation form subsequent to August 1, 2018, or if the Beneficiary named by a Participant predeceases the Participant, then the Plan Administrator will pay the Participant's remaining Account balance to the Participant's estate.
    - ii. **After August 1, 2018.** Effective for individuals who become Participants in the Plan on or after August 1, 2018 or file a beneficiary designation form subsequent to such date:
      - (A) If a Participant fails to name a Beneficiary or the Beneficiary named by a Participant predeceases the Participant, then the Plan Administrator will pay the Participant's remaining Account balance in the following order of priority, to the:
        - I. Participant's surviving spouse; or if no surviving spouse, to the
        - II. Participant's children (including adopted children), in equal shares

by right of representation (one share for each surviving child and one share for each child who predeceases the Participant with living descendants); and if none, then to

**III. Participant's estate.**

- (B)** Where a Participant names more than one Beneficiary and one or more of them, but not all of them, predecease Participant, then the benefits that would have been paid to the deceased Beneficiaries shall be distributed to Participant's next of kin in accordance with subsection (ii)(A)(I through III).

- (4) Identification of Beneficiaries.** The Plan Administrator may request proof of the Participant's death and may require the Beneficiary to provide evidence of his/her right to receive a distribution from the Plan as designated in accordance with the rules and procedures developed by the Plan Administrator. The Plan Administrator's determination of the Participant's death and of the right of a Beneficiary to receive payment under the Plan shall be conclusive. If a distribution is to be made to a minor or incompetent Beneficiary, payments may be made to the person's legal guardian, conservator recognized under state law, or custodian in accordance with the Uniform Gifts to Minors Act or similar law as permitted under the laws of the state where the Beneficiary resides. The Plan Administrator will not be liable for any payments made in accordance with this subsection (3) and will not be required to make any inquiries with respect to the competence of any person entitled to benefits under the Plan.
- (5) Death of Beneficiary.** If a Beneficiary does not predecease the Participant but dies before distribution of the death benefit is made to the Beneficiary, the death benefit will be paid to the Beneficiary's designated Beneficiary. If the Beneficiary did not provide the Plan with a valid Beneficiary designation, the death benefit will be paid to the Beneficiary's estate.
- (6) Divorce From Spouse.** If a Participant designates his/her Spouse as Beneficiary and subsequent to such Beneficiary designation, the Participant and Spouse are subsequently divorced, the designation of the Spouse as Beneficiary under the Plan is automatically rescinded unless specifically provided otherwise under a divorce decree or QDRO, or unless the Participant enters into a new Beneficiary designation naming the prior Spouse as Beneficiary. In addition, the provisions under this subsection will not apply if the Participant has entered into a Beneficiary designation that specifically overrides the provisions of this subsection 7.6(d)(6).

For periods prior to the date this Plan is executed by the District this subsection also applies to situations where the Participant and Spouse are legally separated.

- 7.7 Distribution to Disabled Employees.** A Participant who terminates employment on account of becoming Disabled may receive a distribution of his/her Account Balance in the same manner as a regular distribution upon termination.

- 7.8 In-Service Distributions.** The Plan permits the following in-service distributions.

- (a) **Rollover Contributions.** A Participant may make in-service distributions from Rollover Contributions.
- (b) **Matching Contributions.** Employer Matching Contributions may be withdrawn upon the occurrence of a Hardship or attainment of age 59½.
- (c) **Salary Deferrals.** Salary Deferrals (including any earnings on such amounts) generally may not be distributed prior to the Participant's severance from employment, death, or disability. However, Salary Deferrals are available for in-service distributions upon attainment of age 59½, upon a Hardship or upon meeting the requirements for a Qualified Reservist Distribution, as defined under subsection (d) below.
- (d) **Qualified Reservist Distribution.** Effective September 11, 2001, the distribution provisions applicable to Salary Deferrals include a Qualified Reservist Distribution. If a Participant takes a Qualified Reservist Distribution, such distributions *will not* be subject to the ten percent (10%) penalty tax under Code § 72(t).
- (1) **Qualified Reservist Distribution.** For purposes of this subsection (d), a Qualified Reservist Distribution means any distribution to an individual if:
- i. such distribution is from amounts attributable to elective deferrals described in Code § 402(g)(3)(A) or (C) or Code § 501(c)(18)(D)(iii),
  - ii. such individual was (by reason of being a member of a reserve component (as defined in § 101 of Title 37 of the United States Code)) ordered or called to active duty for a period in excess of 179 days or for an indefinite period, and
  - iii. such distribution is made during the period beginning on the date of such order or call and ending at the close of the active duty period.
- (2) **Active Duty.** A Qualified Reservist Distribution will only be available for individuals who are ordered or called into active duty after September 11, 2001.
- (e) **Hardship Distribution.** The Plan allows in-service distribution at the request of a Participant or primary Beneficiary upon the occurrence of a Hardship event. A Hardship distribution under the Plan must meet the requirements of a safe harbor Hardship as described under subsection (1) below.
- (1) **Safe Harbor Hardship Distribution.** To qualify for a safe harbor Hardship distribution, a Participant must demonstrate an immediate and heavy financial need, as described in subsection (i), and the distribution must be necessary to satisfy such need, as described in subsection (ii).
- i. **Immediate and Heavy Financial Need.** To be considered an immediate and heavy financial need, the Hardship distribution must be made to satisfy one of the following financial needs:
    - (A) to pay expenses incurred or necessary for medical care (as described in

Code § 213(d)) of the Participant, the Participant's Spouse or a dependents (determined without regard to whether the expenses exceed seven and one-half percent (7.5%) of adjusted gross income);

- (B)** for the purchase (excluding mortgage payments) of a principal residence for the Participant;
- (C)** for payment of tuition and related educational fees (including room and board but not including the repayment of student loans) for the next 12 months of post-secondary education for the Participant, the Participant's Spouse, children or dependents;
- (D)** to prevent the eviction of the Participant from, or a foreclosure on the mortgage of, the Participant's principal residence;
- (E)** to pay funeral or burial expenses for the Participant's deceased parent, Spouse, child or a dependent;
- (F)** effective January 1, 2020, to pay expenses to repair damage to the Participant's principal residence that would qualify for a casualty deduction under Code § 165 (determined without regard to whether the loss exceeds ten percent (10%) of the participant's adjusted gross income, and effective January 1, 2020, without regard to Code § 165(h)(5);
- (G)** to pay expenses and losses (including loss of income) incurred by the participant on account of a Federal Emergency Management Agency ("FEMA") -declared disaster, provided that the participant's principle residence or principle 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.
- (H)** for any other event that the IRS recognizes as a safe harbor Hardship distribution event under ruling, notice or other guidance of general applicability.

The payment of funeral or burial expenses under subsection (E) above and the payment of expenses to repair damage to a principal residence under subsection (F) above only apply to Plan Years beginning on or after January 1, 2006. For purposes of determining eligibility of a Hardship distribution under this subsection (i), a dependent is determined under Code § 152. However, for taxable years beginning on or after January 1, 2005, the determination of dependent for purposes of tuition and education fees under subsection (C) above will be made without regard to Code §§ 152(b)(1), (b)(2), and (d)(1)(B) and the determination of dependent for purposes of funeral or burial expenses under subsection (E) above will be made without

regard to Code § 152(d)(1)(B).

- ii. **Determination of Whether Distribution Necessary to Satisfy Need.** A distribution will be considered as necessary to satisfy an immediate and heavy financial need of the Participant under the IRS's general standard test if:
  - (A) the distribution is not in excess of the amount of the immediate and heavy financial need, including amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the distribution;
  - (B) the Participant obtained all ~~currently~~ available distributions under the plan and all other plans of deferred compensation maintained by the District, whether qualified or non-qualified; and
  - (C) effective for Hardship distributions made on or after January 1, 2020, the Participant must represent in writing (including via electronic medium) that he or she has insufficient cash or other liquid assets to satisfy the need. The Plan Administrator may rely on such representation absent actual knowledge to the contrary.
- (2) **Amount Available for Hardship Distribution.** A Participant may receive a Hardship distribution of Deferrals (including Roth Deferrals), Matching Employer Contributions and Rollover Contributions. Provided, however, distributions made from Salary Deferrals, when added to other Hardship distributions, does not exceed the total account balance which includes salary deferrals, Employer matching contributions, rollovers, and interest earned.
- (3) **Availability to Terminated Employees.** A Participant may take such a Hardship distribution after termination of employment to the extent no other distribution is available from the Plan.
- (4) **Six-Month Suspension of Salary Deferrals.** Effective for Hardship distributions made on or after January 1, 2020, the Plan will no longer suspend a Participant's Salary Deferrals after a Hardship distribution.
- (f) **Age 59½ Distributions.** A Participant may take in-service distributions upon attaining age 59½ in accordance with the terms and conditions established by the Plan Administrator. Effective January 1, 2019, in-service distributions at age 59½ are no longer limited to one per Plan Year.
- (g) **Qualified Birth or Adoption Distributions (QBOADs).** The Plan permits a Participant to request and receive QBOADs. QBOADs must be requested by the Participant and may only be made from the Plan in the frequency, form and manner provided by the Plan Administrator. Further, Participants may have an opportunity to repay a QBOAD if the Participant is eligible to make a rollover into the Plan under Section 3.4 (Rollover Contributions) and the policies and procedures established thereunder. This Section 7.8(g) is effective June 1, 2021.

**(h) Coronavirus-Related Distributions (CRDs).** Participants may request and receive a Coronavirus-Related Distribution (CRD). CRDs must be requested and made in the form and manner provided by the Plan Administrator.

**(1) "Coronavirus-Related Distribution" Defined.** A CRD means a distribution from the Plan made between January 1, 2020 and December 31, 2020, to a Participant:

- i who is diagnosed with the virus SARS-CoV-2 or the coronavirus disease 2019 (collectively, "COVID-19") by a test approved by the Centers for Disease Control and Prevention; or
- ii whose spouse or dependent is diagnosed with COVID-19 by a test approved by the Centers for Disease Control and Prevention; or
- iii who experiences adverse financial consequences as a result of a spouse or Participant being quarantined, furloughed or laid off, or having work hours reduced due to COVID-19; or being unable to work due to lack of childcare due to COVID-19 or closing or reducing hours of a business owned or operated by the spouse or Participant, or a member of the Participant's household (one who shares Participant's principal residence) due to COVID-19; or having a reduction in pay due to COVID-19 or having a job offer rescinded or start date for a job delayed due to COVID-19.

**(2) Aggregate Dollar Limit.** The aggregate amount of CRDs to a Participant may not exceed \$100,000 from all plans sponsored by the Employer.

**(3) Re-Contribution of CRDs.** Participants may have an opportunity to repay some or all of the Participant's CRD if completed within 3 years of the distribution, meets the re-contribution requirements in Section 2202(a) of the SECURE Act, and the Participant is eligible to make a rollover contribution into the Plan under Section 3.4 (Rollover Contributions) and the policies and procedures established thereunder.

**(4) Participant Certification.** The Plan Administrator may rely on a Participant's certification that he or she satisfies the conditions for a CRD.

**7.9 Sources of Distribution.** Unless otherwise indicated in the Plan, distributions will be made on a pro rata basis from all Accounts from which a distribution is permitted. Alternatively, to the extent permissible by law, the Plan Administrator may permit Participants to direct the Plan Administrator as to which Account the distribution is to be made as long as the directions provided by the Participant are from a source which such distributions are permitted. Regardless of a Participant's direction as to the source of any distribution, the tax effect of such a distribution will be governed by Code § 72 and the regulations thereunder. Further, Roth Deferrals and In-Plan Roth Rollovers that are distributed from the Plan within five years of the Participant's first designated Roth Deferral to the Plan will be subject to tax on the earnings portion of the distribution from the Roth Deferral Account or In-Plan Roth Rollover Account.

**7.10 Purchase of Service Credit Under Defined Benefit Plan.** Notwithstanding any provision of the Plan to the contrary, the Plan may permit a Participant whose Distribution Starting Date has not yet occurred to

transfer as a direct plan-to-plan transfer, any portion of the Participant's Account to any other plan that is qualified under Code § 401(a) for the purpose of purchasing service credits under such other plan. Prior to permitting such transfer, however, the Plan shall reasonably determine all of the following:

- (a) that such other plan shall accept such a transfer;
- (b) that such transferred amounts are subject to withdrawal and distribution restrictions so that the Participant may not withdraw such transferred amounts prior to retirement, death, disability or severance from employment;
- (c) that such transferred amounts are held for the benefit of the Participant as elective contributions on a fully vested and non-forfeitable basis; and,
- (d) that applicable interest is credited to such transfer amounts.

The Plan Administrator shall establish a written policy for transfers for service credit purchases.

**7.11 Correction of Qualification Defects.** Nothing in this Section 7 precludes the Plan Administrator from making a distribution to a Participant to correct a qualification defect consistent with the correction procedures under IRS voluntary compliance programs. Thus, for example, if an Employee is permitted to enter the Plan prior to his/her proper Entry Date under Section 2.3 and the Plan Administrator determines that a corrective distribution is a proper means of correcting the operational violation, nothing in this Section 7 would prevent the Plan from making such corrective distribution. Any such distribution must be made in accordance with the correction procedures applicable under IRS voluntary correction programs under IRS Rev. Proc. 2013-12 (or successive guidance).

## **SECTION 8**

### **REQUIRED MINIMUM DISTRIBUTIONS**

**8.1 Required Minimum Distributions (RMDs).** The provisions of this Section 8 apply to calendar years beginning on or after January 1, 2003. A Participant's entire interest under the Plan will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date. All distributions required under this Section 8 will be determined and made in accordance with the regulations under Code § 401(a)(9) and the minimum distribution incidental benefit requirement of Code § 401(a)(9)(G). For purposes of applying the required minimum distribution rules under this Section 8, any distribution made in a form other than a lump sum must be made over one of the following periods (or a combination thereof):

- (a) the life of the Participant;
- (b) the life of the Participant and a Designated Beneficiary;
- (c) a period certain not extending beyond the life expectancy of the Participant; or
- (d) a period certain not extending beyond the joint and last survivor life expectancy of the Participant and a Designated Beneficiary.

**8.2 Death of Participant Before Required Distributions Begin.** If the Participant dies before required distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

- (a) **Surviving Spouse as a Designated Beneficiary.** If the Participant's surviving Spouse is the Participant's sole Designated Beneficiary, the surviving Spouse must take a distribution(s) under the five-year rule described in Section 8.6(a) below or under the life expectancy method. Distributions to the surviving Spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½ (or age 72 if Participant attains age 70½ after December 31, 2019), if later. If such surviving Spouse does not make an election and a distribution must commence, the Plan will make distributions under the life expectancy method.
- (b) **Non-Spousal Designated Beneficiary.** If the Participant's surviving Spouse is not the Participant's sole Designated Beneficiary but the Plan segregates each Designated Beneficiary's Account, the Designated Beneficiary may elect to take distributions under the five-year rule described in Section 8.6(a) below or under the life expectancy method. If the non-Spousal Designated Beneficiary(ies) do not elect to commence distributions by December 31 of the calendar year immediately following the calendar year in which the Participant dies, distributions will be made under the life expectancy method.
- (c) **No Designated Beneficiary.** If there is no Designated Beneficiary as of the date of the Participant's death who remains a Beneficiary as of September 30 of the year immediately following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (d) **Death of Surviving Spouse.** If the Participant's surviving Spouse is the Participant's sole Designated Beneficiary and the surviving Spouse dies after the Participant but before distributions to the surviving Spouse begin, this Section 8.2 (other than subsection (a)) will apply as if the surviving Spouse were the Participant.

For distributions under this subsection (d), distributions are considered to begin on the date distributions are required to begin to the surviving Spouse under subsection (a) above.

**8.3 Required Minimum Distributions During Participant's Lifetime.** During the Participant's lifetime, the minimum amount that must be distributed for each Distribution Calendar Year is described in this Section 8.3.

- (a) **Amount of Required Minimum Distribution for Each Distribution Calendar Year.** During the Participant's lifetime, the minimum amount that will be distributed for each Distribution Calendar Year is the lesser of:
  - (1) the quotient obtained by dividing the Participant's Account Balance by the distribution period set forth in the Uniform Lifetime Table found in Treas. Reg. § 1.401(a)(9)-9, using the Participant's age as of the Participant's birthday in the Distribution Calendar Year; or

- (2) if the Participant's sole Designated Beneficiary for the Distribution Calendar Year is the Participant's Spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Treas. Reg. § 1.401(a)(9)-9, Q&A-3, using the Participant's and Spouse's attained ages as of the Participant's and Spouse's birthdays in the Distribution Calendar Year.

- (b) **Lifetime Required Minimum Distributions Continue Through Year of Participant's Death.** Required Minimum Distributions will be determined under this subsection (b) beginning with the first Distribution Calendar Year and continuing up to, and including, the Distribution Calendar Year that includes the Participant's date of death.

#### 8.4 **Required Minimum Distributions After Participant's Death.**

- (a) **Death On or After Date Required Distributions Begin.** Where the Participant's death occurs on or after his Required Beginning Date and Required Minimum Distributions have already begun, the minimum distributions made to Beneficiaries after the Participant's death must be completed at least as rapidly as under the minimum distribution period in effect at Participant's death.
- (1) **Participant Survived by Designated Beneficiary.** If the Participant dies on or after the date required distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's Designated Beneficiary, determined as follows:
- i. The Participant's remaining life expectancy is calculated in accordance with the Single Life Table found in Treas. Reg. § 1.401(a)(9)-9, Q&A-1, using the age of the Participant in the year of death, reduced by one for each subsequent year.
  - ii. If the Participant's surviving Spouse is the Participant's sole Designated Beneficiary, the remaining life expectancy of the surviving Spouse is calculated using the Single Life Table found in Treas. Reg. § 1.401(a)(9)-9, Q&A-1, for each Distribution Calendar Year after the year of the Participant's death using the surviving Spouse's age as of the Spouse's birthday in that year. For Distribution Calendar Years after the year of the surviving Spouse's death, the remaining life expectancy of the surviving Spouse is calculated using the age of the surviving Spouse as of the Spouse's birthday in the calendar year of the Spouse's death, reduced by one for each subsequent calendar year.
  - iii. If the Participant's surviving Spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining life expectancy is calculated under the Single Life Table using the age of the Designated Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.
- (2) **No Designated Beneficiary.** If the participant dies on or after the date required distributions

begin and there is no Designated Beneficiary as of the Participant's date of death who remains a Designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining life expectancy under the Single Life Table calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(b) **Death Before Date Required Distributions Begin.** Where the Participant's death occurs on or after his Required Beginning Date but his or her Required Minimum Distributions have not yet begun, the minimum distributions made to the Participant's Beneficiaries must be made in accordance with the rules in this Section 8.4(b).

- (1) **Participant Survived by Designated Beneficiary.** If the Participant dies before the date required distributions begin, and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining life expectancy of the Participant's Designated Beneficiary, determined as provided in subsection 8.4(a).
- (2) **No Designated Beneficiary.** If the Participant dies before the date distributions begin and there is no Designated Beneficiary as of the date of death of the Participant who remains a Designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest must be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (3) **Death of Surviving Spouse Before Distributions to Surviving Spouse are Required to Begin.** If the Participant dies before the date distributions begin, and the Participant's surviving Spouse is the Participant's sole Designated Beneficiary, and the surviving Spouse dies before distributions are required to begin to the surviving Spouse under Section 8.2(a), then this subsection 8.4(b) will apply as if the surviving Spouse were the Participant.

## 8.5 **Definitions.**

- (a) **Designated Beneficiary.** A Beneficiary designated by the Participant (or the Plan), whose life expectancy may be taken into account to calculate minimum distributions, pursuant to Code § 401(a)(9) and Treas. Reg. § 1.401(a)(9)-4.
- (b) **Distribution Calendar Year.** A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year that contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin pursuant to Section 8.2. The Required Minimum Distribution for the Participant's first Distribution Calendar Year will be made on or before the Participant's Required Beginning Date. The Required Minimum

Distribution for other Distribution Calendar Years, including the Required Minimum Distribution for the Distribution Calendar Year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that Distribution Calendar Year.

- (c) **Life Expectancy.** For purposes of determining a Participant's Required Minimum Distribution amount, life expectancy is computed using one of the following tables, as appropriate: (1) Single Life Table, (2) Uniform Life Table, or (3) Joint and Last Survivor Table found in Treas. Reg. § 1.401(a)(9)-9.
- (d) **Account Balance.** For purposes of determining a Participant's Required Minimum Distribution, the Participant's Account Balance is determined based on the Account Balance as of the last Valuation Date in the calendar year immediately preceding the Distribution Calendar Year (the "valuation calendar year") increased by the amount of any contributions or forfeitures allocated to the Account Balance as of dates in the calendar year after the Valuation Date and decreased by distributions made in the calendar year after the Valuation Date. The Account Balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the Distribution Calendar Year if distributed or transferred in the valuation calendar year.
- (e) **Required Beginning Date (RBD).** A Participant's Required Beginning Date under the Plan is April 1 that follows the end of the calendar year in which the later of the following two events occurs:
- (1) the Participant attains age 70½ (or age 72 if a Participant attains age 70½ after December 31, 2019), or
  - (2) the Participant terminates employment. For purposes of the Required Minimum Distribution, a Rehired Annuitant is considered terminated from employment.

A Participant may begin in-service distributions prior to his/her Required Beginning Date only to the extent authorized under Section 7.8 (In-Service Distributions).

## 8.6 **Special Rules.**

- (a) **Election to Allow Participants or Beneficiaries to Elect 5-Year Rule.** A Participant or Designated Beneficiary may elect whether the life expectancy rule under Section 8.2 ~~above~~ or the five-year rule under subsection 8.6(a), no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under Section 8.2 or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving Spouse's) death.
- (b) **Forms of Distribution.** Unless the Participant's interest is distributed in a lump sum on or before the Required Beginning Date, as of the first Distribution Calendar Year distributions will be made in accordance with Sections 8.2 and 8.4.
- (c) **Waiver of Required Minimum Distributions.** For calendar year 2009, the Required Minimum

Distribution rules will not apply. In applying the provisions of this Section 8 for the 2009 Distribution Calendar Year,

- (1) the Required Beginning Date with respect to any individual shall be determined without regard to this subsection (c) for purposes of applying this paragraph for Distribution Calendar Years after 2009, and
- (2) required distributions to a beneficiary upon the death of the Participant shall be determined without regard to calendar year 2009.

A Participant or beneficiary who would have been required to receive a Required Minimum Distribution for the 2009 Distribution Calendar Year but for the enactment of Code § 401(a)(9)(H) ("2009 RMD"), may elect whether or not to receive the 2009 RMD (or any portion of such distribution). A distribution of the 2009 RMD or a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the participant, the joint lives (or joint life expectancy) of the participant and the participant's designated beneficiary, or for a period of at least 10 years, will be treated as an Eligible Rollover Distribution. However, if all or any portion of a distribution during 2009 is treated as an Eligible Rollover Distribution but would not be so treated if the Required Minimum Distribution requirements under this Section 8 had applied during 2009, such distribution shall not be treated as an Eligible Rollover Distribution for purposes of Code §§ 401(a)(31), 402(f) or 3405(c). (See Notice 2009- 82 for transitional rules that apply for purposes of applying the rollover rules to the distribution of 2009 RMDs.).

- (d) **Treatment of Trust Beneficiaries As Designated Beneficiaries.** If a trust is properly named as a Beneficiary under the Plan, the beneficiaries of the trust will be treated as the Designated Beneficiaries of the Participant solely for purposes of determining the distribution period under this Section 8 with respect to the trust's interests in the Participant's vested Account Balance. The beneficiaries of a trust will be treated as Designated Beneficiaries for this purpose only if, during any period during which required minimum distributions are being determined by treating the beneficiaries of the trust as Designated Beneficiaries, the following requirements are met:

- (1) the trust is a valid trust under state law, or would be but for the fact there is no corpus;
- (2) the trust is irrevocable or will, by its terms, become irrevocable upon the death of the Participant;
- (3) the beneficiaries of the trust who are beneficiaries with respect to the trust's interests in the Participant's vested Account Balance are identifiable from the trust instrument; and
- (4) the Plan Administrator receives the documentation described in subsection (e)(1) below.

If the foregoing requirements are satisfied and the Plan Administrator receives such additional information as it may request, the Plan Administrator may treat such beneficiaries of the trust as Designated Beneficiaries.

- (e) **Special Rules Applicable to Trust Beneficiaries.**

(1) **Information That Must Be Supplied to Plan Administrator.**

- i. **Required Minimum Distribution Before Death Where Spouse Is Sole Beneficiary.** If a Participant designates a trust as the beneficiary of his/her entire benefit and the Participant's Spouse is the sole beneficiary of the trust, the Participant must provide the information under (A) or (B) below to satisfy the information requirements under subsection 8.6(d)(4) above.
- (A) The Participant must provide to the Plan Administrator a copy of the trust instrument and agree that if the trust instrument is amended at any time in the future, the Participant will, within a reasonable time, provide to the Plan Administrator a copy of each such amendment; or
- (B) The Participant must:
- (I) provide to the Plan Administrator a list of all of the beneficiaries of the trust (including contingent and remaindermen beneficiaries with a description of the conditions on their entitlement sufficient to establish that the Spouse is the sole beneficiary) for purposes of Code § 401(a)(9);
  - (II) certify that, to the best of the Participant's knowledge, the list under subsection (B)(I) above is correct and complete and that the requirements of subsection 8.6(d) above are satisfied;
  - (III) agree that, if the trust instrument is amended at any time in the future, the Participant will, within a reasonable time, provide to the Plan Administrator corrected certifications to the extent that the amendment changes any information previously certified; and
  - (IV) agree to provide a copy of the trust instrument to the Plan Administrator upon demand.
- ii. **Required Minimum Distribution After Death.** In order to satisfy the documentation requirement of subsection 8.6(d)(4) ~~above~~ for required minimum distributions after the death of the Participant (or Spouse in a case to which U.S. Treas. Reg. § 1.401(a)(9)-3, Q&A-5 applies), the trustee of the trust must satisfy the requirements of subsection (A) or (B) by October 31 of the calendar year immediately following the calendar year in which the Participant died.
- (A) The trustee of the trust must:
- (I) provide the Plan Administrator with a final list of all beneficiaries of the trust (including contingent and remaindermen beneficiaries with a description of the conditions on their entitlement) as of September 30 of the calendar year following the calendar year of the Participant's death;

- (II) certify that, to the best of the trustee's knowledge, the list in subsection (B)(I) is correct and complete and that the requirements of subsection 8.6(d) above are satisfied; and
- (III) agree to provide a copy of the trust instrument to the Plan Administrator upon demand.

(B) The trustee of the trust must provide the Plan Administrator with a copy of the actual trust document for the trust that is named as a beneficiary of the Participant under the Plan as of the Participant's date of death.

- (2) **Relief for Discrepancy.** If required minimum distributions are determined based on the information provided to the Plan Administrator in certifications or trust instruments described in subsection (1) above, the Plan will not fail to satisfy Code § 401(a)(9) merely because the actual terms of the trust instrument are inconsistent with the information in those certifications or trust instruments previously provided to the Plan Administrator, provided the Plan Administrator reasonably relied on the information provided and the required minimum distributions for calendar years after the calendar year in which the discrepancy is discovered are determined based on the actual terms of the trust instrument.

**8.7 Transitional Rule.** Notwithstanding the other requirements of this Section 8, distribution on behalf of any Employee may be made in accordance with all of the following requirements (regardless of when such distribution commences):

- (a) The distribution by the Plan is one that would not have disqualified the Plan under Code § 401(a)(9) as in effect prior to amendment by the Deficit Reduction Act of 1984.
- (b) The distribution is in accordance with a method of distribution designated by the Participant whose interest in the Plan is being distributed or, if the Participant is deceased, by a Beneficiary of such Participant.
- (c) Such designation was in writing, was signed by the Participant or the beneficiary, and was made before January 1, 1984.
- (d) The Participant had accrued a benefit under the Plan as of December 31, 1983.
- (e) The method of distribution designated by the Participant or the beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and in the case of any distribution upon the Participant's death, the beneficiaries of the Participant listed in order of priority.

A distribution upon death will not be covered by this transitional rule unless the information in the designation contains the required information described above with respect to the distributions to be made upon the death of the Participant.

For any distribution which commences before January 1, 1984, but continues after December 31, 1983, the Participant, or the Beneficiary, to whom such distribution is being made, will be presumed to have

designated the method of distribution under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirements in subsections (a) - (e) above.

If a designation is revoked any subsequent distribution must satisfy the requirements of Code § 401(a)(9) and the proposed regulations thereunder. If a designation is revoked subsequent to the date distributions are required to begin, the Plan must distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed which would have been required to have been distributed to satisfy Code § 401(a)(9) and the proposed regulations thereunder, but for the TEFRA § 242(b)(2) election. For calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another Beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life). In the case in which an amount is transferred or rolled over from one plan to another plan, the rules in Treas. Reg. § 1.401(a)(9)-8, Q&A-14 and Q&A-15 shall apply.

## SECTION 9

### SPOUSAL CONSENT RULES

- 9.1 Application of Joint and Survivor Annuity Rules.** As a governmental plan, the Qualified Joint and Survivor Annuity rules under Code §§ 401(a)(11) and 417 do not apply to the Plan. Notwithstanding the foregoing, the District requires spousal consent for certain designations of Plan benefits.
- 9.2 Spousal Consent.** Spousal consent is only required with respect to the distribution of death benefits from the Plan if the Participant designates someone other than the Participant's Spouse as a Beneficiary of more than fifty percent (50%) of the Participant's Account Balance.

A Spousal consent to the Beneficiary designation of more than fifty percent (50%) of Participant's Account to a non-spouse beneficiary must be provided at the time and in the form and manner specified by the Plan Administrator.

Subsequent beneficiary designations submitted to the Plan Administrator in good order revoke all designations filed prior to that date by the same Participant.

Participant's marriage or remarriage revokes any prior Beneficiary designations made by the Participant and a new Beneficiary designation form that complies with the consent requirements of this Section 9.2 (Spousal Consent) must be submitted.

Further, when designating a trust or other entity as a Beneficiary, the time and form of distribution available to such Beneficiaries may be limited by the required minimum distribution rules of Code § 401(a)(9) and Section 8 (RMDs) of the Plan.

**SECTION 10****PLAN ACCOUNTING AND INVESTMENTS**

**10.1 Participant Accounts.** The Plan Administrator will establish and maintain a separate Account for each Participant to reflect the Participant's entire interest under the Plan. Each Participant Account established by the Plan Administrator may include one or more of the following separate sub-Accounts:

- Pre-Tax Salary Deferral Account
- Matching Contribution Account
- Rollover Contribution Account
- Transfer Account

The Plan Administrator may establish other Accounts, as it deems necessary, for the proper administration of the Plan.

**10.2 Valuation of Accounts.** A Participant's portion of the Trust assets is determined as of each Valuation Date under the Plan. The value of a Participant's Account consists of the fair market value of the Participant's share of the Trust assets. The Trustee must value Plan assets at least annually. The Trustee's determination of the value of Trust assets shall be final and conclusive.

- (a) **Periodic Valuation.** The Plan may elect to value assets on a periodic basis more frequent than annually including daily valuation. The Trustee and the Plan Administrator may adopt reasonable procedures for performing such valuations.
- (b) **Daily Valuation.** For any period in which the Plan Administrator uses daily valuation, the Plan Administrator may adopt reasonable procedures for performing such valuations. Unless otherwise set forth in the written procedures, a daily valued Plan will have its assets valued at the end of each business day during which the New York Stock Exchange is open. The Plan Administrator has authority to interpret the provisions of this Plan in the context of a daily valuation procedure. This includes, but is not limited to, the determination of the value of the Participant's Account for purposes of Participant loans, distribution and consent rights, and corrective distributions.
- (c) **Interim Valuations.** The Plan Administrator may request the Trustee to perform interim valuations.

**10.3 Adjustments to Participant Accounts.** Unless the Plan Administrator adopts other reasonable administrative procedures, as of each Valuation Date under the Plan, each Participant's Account is adjusted in the following manner:

- (a) **Net Income or Loss.** A Participant's Account will be adjusted accordingly for any net income or loss from Participant's selected investment vehicles.
- (b) **Distributions and Forfeitures from A Participant's Account.** A Participant's Account will be reduced by any distributions, forfeitures and other reductions from the Account since the previous Valuation Date.

- (c) **Dividends.** The Account will be credited with any interest, dividends, distributions received, or credits paid by the Trust for the benefit of the Participant.
- (d) **Contributions and Forfeitures Allocated to A Participant's Account.** A Participant's Account will be credited with any contribution, forfeiture or other additions allocated to the Participant since the previous Valuation Date.
- (e) **Directed Accounts.**
  - (1) Net income or loss attributable to the investments made by a Directed Account is allocated to such account in a manner that reasonably reflects the investment experience of such Directed Account.
  - (2) Assets held in a Directed Account may be segregated from other investments held in Trust, and when this occurs, allocation of net income or loss shall not result in a Participant being entitled to distribution from the ~~a~~Account that exceeds the value of the ~~a~~Account as of the date of distribution.
- (f) **Plan Related Fees and Expenses.** A Participant's Account will be reduced by any and all reasonable expenses and fees related to plan administration and investment charges allocable to his or her Account.

**10.4 Share or Unit Accounting.** The Plan's investment procedures may provide for share or unit accounting to reflect the value of Accounts, if such method is appropriate for the investments allocable to such Accounts.

**10.5 Suspense Accounts.** The Plan's investment procedures also may provide for special valuation procedures for suspense accounts that are properly established under the Plan.

**10.6 Investments Under the Plan**~~Deferred Compensation Investment Committee.~~ The ~~DCIC~~Plan-Administrator or other authorized person(s) responsible for the investment of Plan assets or the selection of investment options to be made available under the Plan is authorized~~has the full power and authority~~ to invest, manage, and control Plan assets in any prudent i. The DCIC's membership, governance, and powers and duties are set forth in the Bylaws of the Deferred Compensation Investment option or select any prudent investment options as part of the Plan's investment lineupCommittee, as approved by the Board.

**10.7 Investment Options**~~Policy Statement.~~ The ~~DCIC~~Plan-Administrator shall select will establish and determine which maintain an iInvestment options are suitablePolicy Statement (IPS) for the Plan, and prudent based on the advicewill periodically review that policy, as needed. at least annually. In establishing and guidance of an maintaining the Plan's IPSadvisor and the DCAC, the DCIC will review all pertinent Plan and are consistentParticipant information and data and may consult with the Plan's- Investment Policy Statementany professional advisors as it deems necessary or appropriate, and will consider matters such as the following:-

- ~~(a) Common/Collective Trusts and Collectibles.~~ Plan assets may also be invested in a common/collective trust fund, or in a group trust fund that satisfies the requirements of IRS Revenue Ruling 81-100 (as modified by Rev. Rul. 2004-67 and Rev. Rul. 2011-1). All of the terms and provisions of any such common/collective trust fund or group trust into which Plan assets are

~~invested are incorporated by reference into the provisions of the Trust for this Plan. No portion of any voluntary, tax deductible Employee contributions being held under the Plan (or any earnings thereon) may be invested in life insurance contracts or, as with any Participant directed investment, in tangible personal property characterized by the IRS as a collectible.~~ the Plan's objectives and the best method to accomplish those objectives, including the range of investment alternatives that should be available to Participants and their Beneficiaries in order to accomplish those objectives;

(b) the policies or procedures to be followed by the DCIC in the selection and monitoring of investment alternatives, including the benchmarks and other performance criteria, as well as investment fees and expenses; and

(a)(c) the liquidity of Plan assets.

**10.8 Investment Manager.** The Board of Directors may appoint one or more investment managers to manage (including the power to acquire and dispose of) any assets of the Plan. Only a person who is a registered investment advisor under the Investment Advisors Act of 1940, a bank or an insurance company qualified to do business in the State of California may be an investment manager under the Plan. The Trustee may be an investment manager.

**10.9 Investment Funds.** The Trustee will establish and maintain investment funds designated by the DCIC or an investment manager designated by the Board of Directors. The assets of each investment fund will be managed by the Trustee or by one or more investment managers, as designated, except for participant-directed investments that permit Participants to direct the investment of some or all of the assets in their Account in specific investments.

**10.810.10 Participant-Directed Investments.** The Plan permits Participant direction of investments. Each Participant shall have the exclusive right, in accordance with the provisions of the Plan, to direct the investment of all or a portion of the amounts allocated to the separate sub-Accounts of the Participant under the Plan. This Section 10.710 also applies to any Beneficiary or Alternate Payee eligible to direct investments under the Plan.

**(a) Limits on Participant Investment Direction.** The Plan's separate investment procedures may limit Participant direction of investment to specific types of contributions or with respect to specific investment options. If Participant investment direction is limited to specific investment options, it shall be the responsibility of the ~~DCIC District or Plan Administrator~~ to select the investment options available under the Plan for Participant investment. In no case may Participants direct that investments be made in collectibles, including but not limited to U.S. Government or State-issued gold and silver coins. In addition, investment directions that result in the following will not be followed:

- (1) result in a prohibited transaction;
- (2) cause the assets of the Plan to be maintained outside the jurisdiction of the U.S. courts;
- (3) jeopardize the Plan's tax qualification;

- (4) be contrary to the Plan's governing documents;
- (5) cause the assets to be invested in collectibles within the meaning of Code § 408(m);
- (6) generate unrelated business taxable income; or
- (7) result (or could result) in a loss exceeding the value of the Participant's Account.

**(b) Failure to Direct Investment.** The ~~Plan Administrator~~ DCIC will designate how a Participant Account shall be invested in the absence of proper affirmative direction from the Participant. The ~~Plan or Plan Administrator~~ DCIC may designate a default fund under the Plan to deposit contributions to the Trust on behalf of a Participant who has not specified an investment choice under the Plan.

~~(b)~~ -

## SECTION 11

### PLAN ADMINISTRATION AND OPERATION

**11.1 Plan Administrator.** The District is the Plan Administrator and has delegated to the General Manager the powers, duties, and responsibilities of the Plan Administrator. The General Manager may delegate, in writing, some or all of the powers, duties and responsibilities of the Plan Administrator position as necessary to adequately operate and maintain the Plan.

**11.2 Role of Plan Administrator.** Any Plan Administrator designated by the District must accept the Plan Administrator role and responsibilities in writing and will serve until his or her successor is appointed. In case of a vacancy in the position of the Plan Administrator, the District will exercise any and all of the powers, authority, duties and discretion as the Plan Administrator pending the filling of the vacancy.

**(a) Resignation or Removal of Plan Administrator.** A Plan Administrator may resign by delivering notice of resignation to the Employer. The Employer may remove a Plan Administrator by delivering notice of removal. If a Plan Administrator resigns or is removed and no new Plan Administrator is designated, the District becomes the Plan Administrator.

~~**Indemnification of Plan Administrator.** The District will indemnify, defend and hold harmless members of the District's Board of Directors, the General Manager, or any Employees who have administrative responsibility under the 401(k) or 457(b) Plans, and the Deferred Compensation Investment Committee or any member thereof, with respect to any liability, loss, damage or expense resulting from any act or omission, except willful misconduct or gross negligence, in their official capacities in the administration of the 401(k) or 457(b) Plans, including attorney, accountant and advisory fees and all other expenses reasonably incurred in their defense.~~

**11.3 Duties, Powers and Responsibilities of the Plan Administrator.**

- (a) **General Duties, Powers and Responsibilities.** The Plan Administrator shall have the responsibility and authority to administer the Plan and shall do so for the exclusive benefit of the Plan Participants and Beneficiaries, and in accordance with the terms of the Plan. ~~The Plan Administrator shall have the responsibility and authority to appoint or remove any investment manager.~~ The Plan Administrator shall have the authority to appoint or remove any Employee who has administrative responsibilities under the Plan.
- (b) **Delegation of Duties, Powers and Responsibilities.** The Plan Administrator may delegate its duties, powers or responsibilities to one or more persons. Such delegation must be in writing and accepted by the person or persons receiving the delegation. However, the Employer must agree to any such delegation in writing when made by a delegate of the Plan Administrator. The Plan Administrator has designated the Human Resources Group Manager to carry out the powers, duties and responsibilities of the Plan Administrator.
- (c) **Specific Plan Administrator Responsibilities.** The Plan Administrator has the general responsibility to control and manage the operation of the Plan. More specifically, this responsibility includes, but is not limited to, the following:
- (1) To communicate with the Trustee and other responsible persons with respect to the crediting of Plan contributions, the disbursement of Plan distributions and other relevant matters;
  - (2) To develop separate procedures, if necessary, consistent with the terms of the Plan to assist in the administration of the Plan, including the adoption of a separate or modified loan policy, procedures for direction of investment by Participants, procedures for determining whether domestic relations orders are QDROs, and procedures for the determination of investment earnings to be allocated to Participants' Accounts;
  - (3) To maintain all records necessary for tax and other administration purposes;
  - (4) To furnish and to file all appropriate notices, reports and other information to Participants, Beneficiaries, the Employer, the Trustee and government agencies (as necessary);
  - (5) To provide information relating to Plan Participants and Beneficiaries;
  - (6) To retain the services of other persons, including ~~investment managers, attorneys,~~ consultants, advisers and others, to assist in the administration of the Plan;
  - (7) To review and decide on administrative claims for benefits under the Plan;
  - (8) To correct any defect or error in the operation of the Plan; and
  - ~~(9) To interpret and enforce the provisions of the Plan, including those related to Plan eligibility, vesting and benefits; to interpret and apply provisions of the Plan in a uniform, nondiscriminatory manner;~~
  - ~~(10) To act upon instructions from the DCIC to direct the Trustee regarding changes to the Plan's~~

investment options and to execute proxy votes cast by the DCIC;

(11) To request and receive input from the DCIC, when reasonable and appropriate, regarding non-investment related Plan features; selection, performance, and retention of the record keeper, investment advisors, service providers, advisors, consultants, and auditor; and Plan amendments; and

(12) To serve as the secretary for the DCIC which includes the following duties: keep and maintain the DCIC meeting minutes, execute documents on behalf of the DCIC, issue formal written correspondence of the DCIC; and provide other administrative support as the DCIC may reasonably delegate to the Plan Administrator.

The Plan Administrator shall coordinate with General Counsel concerning any litigation, compromise, or settlement of claims against the Plans in accordance with MWD Code Section 6433.

- (d) **Interpretation of Plan.** The Employer shall have the responsibility and authority, as an express grant of discretionary authority, where necessary, to interpret and resolve ambiguities in this Plan document, provided such interpretation is consistent with the rules of Code § 401(a), and to make discretionary decisions regarding the interpretation of the Plan's terms, and Participant's rights and status under the Plan including, but not limited to, who is eligible to participate under the Plan, and the benefit rights of a Participant or Beneficiary.
- (e) **Notices and Filings.** The Plan Administrator may modify any notice period required by the Plan or designate any office to serve as the recipient of any form or notice that has to be filed under the Plan.
- (f) **Appropriate Adjustments.** Any action taken by the Plan Administrator with respect to 1) the rights or benefits under the Plan or 2) any Participant or Beneficiary shall be revocable by the Plan Administrator as to payments, distributions or deliveries not theretofore made hereunder pursuant to such action. Appropriate adjustments may be made in future payments or distributions to a Participant or Beneficiary.

**11.4 Immunities.** The provisions of this Section 11.4 shall not be construed to in any way restrict the privileges and immunities that the Employer and its Employees are otherwise entitled to under Government Code Sections 818.8 and 820.2. Furthermore,

- (a) Neither the District, its Board of Directors, nor its Employees shall be liable: 1) for any action taken or not taken with respect to the Plan including, but not limited to, any action allocated by the foregoing to another person or entity, except for its or their own gross negligence or willful misconduct; or 2) upon any contract, agreement or other instrument made or executed for administration of the Plan. With regards to the District's responsibility and authority to interpret the Plan, unless an interpretation or decision is determined to be arbitrary and capricious, the ~~General Manager~~Plan Administrator will not be held liable for any interpretation of the Plan terms or decision regarding the application of a Plan provision.

- (b) The District, its Board of Directors, each Employee thereof, specifically including the General Manager, and any other persons to whom the General Manager delegates or assigns any duty with respect to the Plan, may rely and shall be fully protected in acting in good faith upon: 1) the advice of counsel, who may be counsel for the District; 2) the records of the District; 3) the opinion, certificate, valuation, report, recommendation, or determination of ~~the Trustee~~, an investment advisor, the ~~DCIC Deferred Compensation Advisory Committee~~ or any member thereof, or the District's General Auditor; or, 4) any certificate, statement or other representation made by or any information furnished by a Participant, Beneficiary, Alternate Payee, ~~Trustee, DCIC Deferred Compensation Advisory Committee~~ or any member thereof, or investment advisor, concerning any fact required to be determined under any of the provisions of the Plan.

#### 11.5 **Plan Administration Expenses.**

- (a) **Reasonable Plan Administration Expenses.** All reasonable expenses related to plan administration will be paid from Plan assets, except to the extent the expenses are paid (or reimbursed) by the Employer. For this purpose, Plan expenses include, but are not limited to, all reasonable costs, charges and expenses incurred by the Trustee, ~~DCIC~~, Plan Sponsor or Plan Administrator in connection with the administration of the Plan and Trust. If liquid assets of the Trust are insufficient to cover the fees of the Trustee or the Plan Administrator, then Trust assets shall be liquidated to the extent necessary for such fees. In the event any part of the Trust becomes subject to tax, all taxes incurred will be paid from the Trust.
- (b) **Plan Expense Allocation.** The Plan Administrator will allocate plan expenses among the accounts of Plan Participants. The Plan Administrator has authority to allocate these expenses either proportionally based on the value of the Account Balances or pro rata based on the number of Participants in the Plan. The Plan Administrator will determine the proper method for allocating expenses in accordance with such reasonable nondiscriminatory rules as the Plan Administrator deems appropriate under the circumstances. Unless the Plan Administrator decides otherwise, the following expenses will be allocated to the Participant's Account relative to which the expense is incurred: distribution expenses, including those relating to lump sums, installments, QDROs, hardship, in-service and required minimum distributions; loan expenses; participant direction expenses, including brokerage fees; and benefit calculations.
- (c) **Expenses Related to Administration of Former Employee or Surviving Spouse.** If the Plan is making distributions to a former Employee or surviving Spouse, the Plan may charge reasonable Plan administrative expenses to the Account of that former Employee or surviving Spouse, but only if the administrative expenses are on a pro rata basis. Under the pro rata basis, the expenses are based on the amount in each account of a former Employee or surviving Spouse receiving benefits from the Plan. The Plan Administrator may use another reasonable basis for charging the expenses.

#### 11.6 **Claims Procedure and Determinations.**

- (a) **Benefit Claims Procedures.** The Plan Administrator is authorized to conduct an examination of the relevant facts to determine the merits of a Participant's or Beneficiary's claim for Plan benefits.

The Plan Administrator may establish procedures for administering benefit claims. Such benefit claims procedures should provide claimants with a reasonable opportunity to have a full and fair review of a denied claim. Any claims procedure will incorporate the guidelines under this Section 11.6. To the extent any of the time periods specified in this Section 11.6 are amended by law, the time frames specified herein shall automatically be changed in accordance with such law or regulation.

- (b) **Benefit Claims Determinations.** The Plan Administrator, in case of disputes, may make findings of fact and determinations with respect to any benefit claims made under the Plan. Subject to the provisions of this Section 11.6, such determinations and findings shall be final and conclusive, to the extent permitted by law, as to all interested persons for all purposes of the Plan. ~~The Employer shall instruct the Plan Administrator and Trustee as to its final determination and shall furnish the Plan Administrator and Trustee with any further information reasonably required to administer the Plan consistent with the final determination.~~

#### 11.7 **Qualified Domestic Relations Orders (QDROs).**

- (a) **In General.** Upon receipt of an order which appears to be a QDRO, the Plan Administrator will notify the Participant involved and each Alternate Payee under the order. The Plan Administrator will determine whether the order is a QDRO and will notify each affected individual of such determination. The Plan Administrator may use the default QDRO procedures set forth in subsection 11.7(h) below or may develop separate QDRO procedures for administering any QDROs submitted under the Plan.
- (b) **Definitions Related to QDROs.**
- (1) **QDRO.** A QDRO is a domestic relations order that creates or recognizes the existence of an Alternate Payee's right to receive, or assigns to an Alternate Payee the right to receive, all or a portion of the benefits payable with respect to a Participant under the Plan. (See Code § 414(p).) The QDRO must contain certain information and meet other requirements described in this Section 11.7.
- (2) **Domestic Relations Order.** A domestic relations order is a judgment, decree, or order (including the approval of a property settlement) that is made pursuant to state domestic relations law (including community property law).
- (3) **Alternate Payee.** An Alternate Payee must be a Spouse, former Spouse, child, or other dependent of a Participant.
- (c) **Recognition as a QDRO.** To be a QDRO, an order must be a domestic relations order that relates to the provision of child support, alimony payments, or marital property rights for the benefit of an Alternate Payee. The Plan Administrator is not required to determine whether the court or agency issuing the domestic relations order had jurisdiction to issue an order, whether state law is correctly applied in the order, whether service was properly made on the parties, or whether an individual identified in an order as an Alternate Payee is a proper Alternate Payee under state law.

Effective April 6, 2007, a domestic relations order otherwise meeting the requirements to be a QDRO shall not fail to be treated as a QDRO solely because:

- (1) the order is issued after, or revises, another domestic relations order or QDRO; or
- (2) of the time at which the order is issued, including orders issued after the death of the Participant.

Any QDRO described in this Section 11.7 shall be subject to the same requirements and protections which apply to QDROs under Code § 414(p)(7).

(d) **Contents of QDRO.** A QDRO must contain the following information:

- (1) the name and last known mailing address of the Participant and each Alternate Payee;
- (2) the name of each plan to which the order applies;
- (3) the dollar amount or percentage (or the method of determining the amount or percentage) of the benefit to be paid to the Alternate Payee; and
- (4) the number of payments or time period to which the order applies.

(e) **Impermissible QDRO Provisions.**

- (1) The order must not require the Plan to provide an Alternate Payee or Participant with any type or form of benefit, or any option, not otherwise provided under the Plan;
- (2) The order must not require the Plan to provide for increased benefits (determined on the basis of actuarial value);
- (3) The order must not require the Plan to pay benefits to an Alternate Payee that are required to be paid to another Alternate Payee under another order previously determined to be a QDRO; and
- (4) The order must not require the Plan to pay benefits to an Alternate Payee in the form of a Qualified Joint and Survivor Annuity for the lives of the Alternate Payee and his or her subsequent Spouse.

(f) **Immediate Distribution to Alternate Payee.** Even if a Participant is not eligible to receive an immediate distribution from the Plan, an Alternate Payee may receive a QDRO benefit immediately in a lump sum, provided such distribution is consistent with the QDRO provisions.

(g) **Fee for QDRO Determination.** The Plan Administrator shall condition the making of a QDRO determination on the payment of a fee by the Participant or an Alternate Payee either directly or as a charge against the Participant's Account.

(h) **Default QDRO Procedure.** If the Plan Administrator chooses this default QDRO procedure or if the Plan Administrator does not establish a separate QDRO procedure, this subsection 11.7(h) will

apply as the procedure the Plan Administrator will use to determine whether a domestic relations order is a QDRO. This default QDRO procedure incorporates the requirements set forth below.

- (i) **Access to Information.** The Plan Administrator will provide access to Plan and Participant benefit information sufficient for a prospective Alternate Payee to prepare a QDRO. Such information might include the summary plan description, other relevant plan documents, and a statement of the Participant's benefit entitlements. The disclosure of this information is conditioned on the prospective Alternate Payee providing to the Plan Administrator information sufficient to reasonably establish that the disclosure request is being made in connection with a domestic relations order.
- (1) **Notifications to Participant and Alternate Payee.** The Plan Administrator will promptly notify the affected Participant and each Alternate Payee named in the domestic relations order of the receipt of the order. The Plan Administrator will send the notification to the address included in the domestic relations order. Along with the notification, the Plan Administrator will provide a copy of the Plan's procedures for determining whether a domestic relations order is a QDRO.
- (2) **Alternate Payee Representative.** The prospective Alternate Payee may designate a representative to receive copies of notices and Plan information that are sent to the Alternate Payee with respect to the domestic relations order.
- (3) **Evaluation of Domestic Relations Order.** Within a reasonable period of time, the Plan Administrator will evaluate the domestic relations order to determine whether it is a QDRO. A reasonable period will depend on the specific circumstances. The domestic relations order must contain the information described in subsection 11.7(d). If the order is only deficient in a minor respect, the Plan Administrator may supplement information in the order from information within the Plan Administrator's control or through communication with the prospective Alternate Payee.
- i **Separate Accounting.** Upon receipt of a domestic relations order, the Plan Administrator will separately account for and preserve the amounts that would be payable to an Alternate Payee until a determination is made with respect to the status of the order. During the period in which the status of the order is being determined, the Plan Administrator will take whatever steps are necessary to ensure that amounts that would be payable to the Alternate Payee, if the order were a QDRO, are not distributed to the Participant or any other person. The separate accounting requirement may be satisfied, at the Plan Administrator's discretion, by a segregation of the assets that are subject to separate accounting.
- ii **Separate Accounting Until the End of 18-Month Period.** The Plan Administrator will continue to separately account for amounts that are payable under the QDRO until the end of an 18-month period. The 18-month period will begin on the first date following the Plan's receipt of the order upon which a payment would be

required to be made to an Alternate Payee under the order. If, within the 18-month period, the Plan Administrator determines that the order is a QDRO, the Plan Administrator must pay the Alternate Payee in accordance with the terms of the QDRO. If, however, the Plan Administrator determines within the 18-month period that the order is not a QDRO, or, if the status of the order is not resolved by the end of the 18-month period, the Plan Administrator may pay out the amounts otherwise payable under the order to the person or persons who would have been entitled to such amounts if there had been no order. If the order is later determined to be a QDRO, the order will apply only prospectively; that is, the Alternate Payee will be entitled only to amounts payable under the order after the subsequent determination.

- iii **Preliminary Review.** The Plan Administrator will perform a preliminary review of the domestic relations order to determine if it is a QDRO. If this preliminary review indicates the order is deficient in some manner, the Plan Administrator will allow the parties to attempt to correct any deficiency before issuing a final decision on the domestic relations order. The ability to correct is limited to a reasonable period of time.
- iv **Notification of Determination.** The Plan Administrator will notify in writing the Participant and each Alternate Payee of the Plan Administrator's decision as to whether a domestic relations order is a QDRO. In the case of a determination that an order is not a QDRO, the written notice will contain the following information:
  - (A) references to the Plan provisions on which the Plan Administrator based its decision;
  - (B) an explanation of any time limits that apply to rights available to the parties under the Plan (such as the duration of any protective actions the Plan Administrator will take); and
  - (C) a description of any additional material, information, or modifications necessary for the order to be a QDRO and an explanation of why such material, information, or modifications are necessary.
  - (D) **Treatment of Alternate Payee.** If an order is accepted as a QDRO, the Plan Administrator will act in accordance with the terms of the QDRO as if it were a part of the Plan. Except as designated otherwise under this subsection 11.7(h)(4)(v), an Alternate Payee will be considered a Beneficiary under the Plan and be afforded the same rights as a Beneficiary. The Plan Administrator will provide any appropriate disclosure information relating to the Plan to the Alternate Payee. In determining the rights of an Alternate Payee, the following rules apply.
  - (E) **Loans.** An Alternate Payee is not permitted to take a loan from the Plan.

- (F) **Death Benefits.** If an Alternate Payee dies prior to receiving the entire amount designated under the QDRO, such benefits will be paid in accordance with Section 7.7, treating the Alternate Payee as the Beneficiary. If the Alternate Payee dies without a designated Beneficiary, the benefits will be paid to the Alternate Payee's estate. Any death benefit will be paid in a single sum as soon as administratively feasible after the Alternate Payee's death.
- (G) **Direction of Investments.** An Alternate Payee has the right to direct the investment of the portion of the Participant's benefit that is segregated for the Alternate Payee's benefit pursuant to a QDRO in the same manner as the Participant.

**11.8 Military Service.** To the extent required under Code § 414(u), an Employee who returns to employment with the Employer following a period of qualified military service will receive any contributions, benefits and service credit required under Code § 414(u), provided the Employee satisfies all applicable requirements under the Code and regulations. In determining the amount of contributions under Code § 414(u), Plan Compensation will be deemed to be the compensation the Employee would have received during the period while in military service based on the rate of pay the Employee would have received from the Employer but for the absence due to military leave. If the compensation the Employee would have received during the leave is not reasonably certain, Plan Compensation will be equal to the Employee's average compensation from the Employer during the twelve (12) month period immediately preceding the military leave or, if shorter, the Employee's actual period of employment with the Employer.

- (a) **Death Benefits Under Qualified Military Service.** In the case of a Participant who dies while performing qualified military service (as defined in Code § 414(u)), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as though the Participant resumed and then terminated employment on account of death. This provision is effective with respect to deaths occurring on or after January 1, 2007.
- (b) **Plan Distributions.** Notwithstanding the provisions of Section 1.54(c) regarding the treatment of Differential Pay, an individual shall be treated as having been severed from employment during any period the individual is performing service in the Uniformed Services for purposes of receiving a Plan distribution under Code § 401(k)(2)(B)(i)(I). If an individual elects to receive a distribution while on military leave, the individual may not make Salary Deferrals under the Plan during the 6-month period beginning on the date of the distribution.
- (c) **Make-Up Contributions.** A Participant who is reemployed following a qualified military leave shall have the right to make up any Salary Deferrals to which he/she would have been entitled but for the fact the Participant was on qualified military leave. The Employer will also make any Matching Contributions the Participant would have earned during the period of qualified military leave had the Participant remained employed during such period. The Employer will only be required to make Matching Contributions if the reemployed Participant makes up the underlying contributions

that were eligible for the Matching Contributions.

In determining the amount of Make-Up Contributions a Participant may make under this subsection (d), a Participant will be treated as earning Plan Compensation during the period the Participant was on qualified military leave equal to:

- (1) the rate of pay the Participant would have received from the Employer during such period had the Participant not been on qualified military leave, or
- (2) if the Plan Compensation the Participant would have received during such period was not reasonably certain, the Participant's average Plan Compensation during the 12-month period immediately preceding the qualified military leave (or the entire period of employment, if shorter).

If the Employer is required under this subsection (d) to make Employer Contributions for a reemployed Participant, the Employer must make such Employer Contributions not later than 90 days after the date of reemployment or the date the Employer Contributions are otherwise due for the year in which the military service was performed. For Salary Deferrals and After-Tax Employee Contributions, a Participant who is reemployed following a qualified military leave may make up such contributions during the period beginning on the date of reemployment and ending on the earlier of the date that is three times the length of the military service period or 5 years from the date of reemployment. Any required Matching Contributions must be made in the same manner as other Matching Contribution under the Plan following the Participant's contribution of the amounts eligible for the Matching Contributions.

Any make up contributions under this subsection 11.8(c) are subject to Code § 415 Limitation under Section 5.2 (Elective Deferral Dollar Limit) for the year for which the make-up contribution would have been made had the Participant not been on qualified military leave.

## SECTION 12

### TRUST ~~PROVISIONS~~FUNDS

- 12.1 Establishment of Trust.** In conjunction with the establishment of this Plan, a domestic Trust consisting of such sums as shall from time to time be paid to the Trust under the Plan and such earnings, income and appreciation as may accrue thereon will be established pursuant to a written Trust Agreement.

The District may enter into a Trust Agreement with the Trustee providing for the investment of the Trust and prescribing the powers, duties, obligations, and functions of the Trustee with respect to the Plan. The Trust Agreement will form a part of this Plan, and any rights and benefits of any Participant or Beneficiary under the Plan whose Accounts are invested in the Trust will be subject to the terms of the Trust Agreement. However, in the case of any conflict between the Plan and the Trust Agreement, the Plan will govern. The Trustee must be one or more banks or other fiduciaries appointed by the District to hold and administer assets of the Plan.

The Trust ~~shall be operated solely~~ must hold the Plan assets received by it in Trust pursuant to the ~~interest terms of the Trust Agreement for the exclusive benefit of~~ Participants and their Beneficiaries and ~~for the exclusive purpose of providing benefits to Participants and their Beneficiaries and~~ defraying ~~the~~ reasonable

expenses of administering the Plan. Except as provided in Section 15.2, no assets of the Plan shall inure to the benefit of the Employer prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries.

The Trust ~~shall be held~~ must hold, managed~~d~~, administer~~ed~~, valued~~d~~, invest~~ed~~, reinvest~~ed~~ and account~~ed~~ for ~~by the Trustee~~ assets in accordance with the terms of the Plan and the Trust Agreement.

~~The~~ In its discretion, the Plan Administrator may recommend that the District may further terminate the Trustee, appoint a nondiscretionary new Trustee, and authorize the Plan Administrator to carry out or assist in ~~the Trustee with some or all of the duties and responsibilities delegated to the~~ transfer assets to the a successor Trustee or Trustees. A nondiscretionary trustee is authorized to perform the duties delegated to the nondiscretionary trustee or directed to carry out by the District, Trustee, Plan Administrator or Plan Participant, as applicable. The nondiscretionary trustee is liable for any losses caused directly or indirectly from its negligence, misconduct or failure to act in good faith or as a result of any act or omission where it has exerted discretion. An appointment of a nondiscretionary trustee and any agreement documents outlining the duties and responsibilities of a nondiscretionary trustee shall be maintained as part of the Plan's records.

**~~12.2 — Responsibilities of the Trustee.~~** In addition to the powers, rights and responsibilities enumerated under this Section 12, the Trustee has all powers necessary to carry out its duties in a prudent manner. The Trustee's powers, rights and responsibilities may be modified, supplemented or limited by the District, by the Plan's Investment Policy Statement, or by any other binding document entered into between the Trustee and the District.

**(a) — Responsibilities Regarding Administration of Trust**

- ~~(1) —~~** The Trustee shall discharge the duties and responsibilities under this Plan solely in the interest of Participants and their Beneficiaries in the following manner:
  - ~~i. —~~** for the exclusive purpose of providing benefits to Participants and their Beneficiaries and defraying reasonable expenses of administering the Plan;
  - ~~ii. —~~** with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and
  - ~~iii. —~~** by diversifying the available investments under the Plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.
- ~~(2) —~~** The Trustee will receive all contributions, earnings and other amounts made to and under the terms of the Plan. The Trustee is not liable for the manner in which such amounts are deposited or the allocation between Participant's Accounts, to the extent the Trustee follows the written direction of the Plan Administrator, the District, Participant or Beneficiary, as applicable.
- ~~(3) —~~** The Trustee will make distributions from the Trust in accordance with the written directions ~~Plan document.~~

- ~~(4) — The Trustee may employ agents, attorneys accountants and other third parties to provide counsel on behalf of the Plan, where the Trustee deems advisable. The Trustee may reimburse such persons from the Trust for reasonable expenses and compensation incurred as a result of such employment. The Trustee shall not be liable for the actions of such persons, provided the Trustee acted prudently in the employment and retention of such persons. In addition, the Trustee will not be liable for any actions taken as a result of good faith reliance on the advice of such persons.~~
- ~~(5) — The Trustee shall keep full and accurate accounts of all receipts, investments, disbursements and other transactions hereunder, including such specific records as may be agreed upon in writing between the District and the Trustee. All such accounts, books and records shall be open to inspection and audit at all reasonable times by any authorized representative of the District or the Plan Administrator. A Participant may examine only those individual account records pertaining directly to him or her.~~
- ~~(6) — Except as provided in Section 15.2, at no time prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries under the Plan shall any part of the corpus or income of the Fund be used for, or diverted to, purposes other than for the exclusive benefit of Participants or their Beneficiaries, or for defraying reasonable expenses of administering the Plan.~~
- ~~(b) — **Responsibilities Regarding Investment of Plan Assets.**~~
- ~~(1) — The Trustee shall be responsible for holding the assets of the Trust in accordance with the provisions of this Plan.~~
- ~~(2) — The Trustee may invest, manage and control the Plan assets in a manner that is consistent with the Plan's funding policy and the Plan's Investment Policy Statement.~~
- ~~The Trustee may invest in any investment, as authorized under this subsection 12.3(b), which the Trustee deems advisable and prudent, and where applicable, subject to the proper written direction of the Plan Administrator, the District, a properly appointed investment manager, or a Plan Participant.~~
- ~~The Trustee is not liable for the investment of Plan assets to the extent the Trustee is following the proper direction of the Plan Administrator, the Employer, a Participant, an investment manager, or other person or persons duly appointed by the Employer to provide investment direction.~~
- ~~In addition, the Trustee does not guarantee the Trust in any manner against investment loss or depreciation in asset value if not the result of an error or omission made by the Trustee.~~
- ~~(3) — The Trustee may hold any securities or other property in the name of the Trustee or in the name of the Trustee's nominee, and may hold any investments in bearer form, provided the books and records of the Trustee at all times show such investment to be part of the Trust.~~

- ~~(4) — The Trustee may retain such portion of the Plan assets in cash or cash balances as the Trustee may, from time to time, deem to be in the best interests of the Plan, without liability for interest thereon.~~
- ~~(5) — The Trustee may collect and receive any and all moneys and other property due the Plan and to settle, compromise, or submit to arbitration any claims, debts, or damages with respect to the Plan, and to commence or defend on behalf of the Plan any lawsuit, or other legal or administrative proceedings.~~
- ~~(6) — The Trustee DCIC may pay expenses out of Plan assets as necessary to administer the Trust and as authorized under the Plan.~~
- ~~(7) — The Trustee is authorized to execute, acknowledge and deliver all documents of transfer and conveyance, receipts, releases, and any other instruments that the Trustee deems necessary or appropriate to carry out its powers, rights and duties hereunder.~~
- ~~(8) — The Trustee is authorized to enter into a transfer agreement with the tTrustee of another qualified retirement plan and to accept a transfer of assets from such retirement plan on behalf of any Employee of the Employer. The Trustee is also authorized to transfer some or all of a Participant's vested Account Balance to another qualified retirement plan on behalf of such Participant.~~
- ~~(9) — If the Employer maintains more than one Plan, the assets of such Plans may be commingled for investment purposes. The Trustee must separately account for the assets of each Plan. A commingling of assets does not cause the Trusts maintained with respect to the Employer's Plans to be treated as a single Trust, except as provided in a separate document authorized in the first paragraph of this Section 12.3.~~
- ~~(10) — The Trustee is authorized to invest Plan assets in a common/collective trust fund, or in a group trust fund that satisfies the requirements of IRS Revenue Ruling 81-100, as clarified by Revenue Ruling 2004-67. All of the terms and provisions of any such common/collective trust fund or group trust into which Plan assets are invested are incorporated by reference into the provisions of the Trust for this Plan. The assets in a group trust may be pooled with the assets of a custodial account under Code § 403(b)(7), a retirement income account under Code § 403(b)(9), and Code § 401(a)(24) governmental plans without affecting the tax status of the group trust, subject to the requirements under Rev. Rul. 2011-1 (as modified by Notice 2012-6).~~

~~**12.3 — Responsibilities of the Employer.** The Employer will provide to the Trustee written notification of the appointment of any person or persons as Plan Administrator or investment manager and the names, titles and authorities of any individuals who are authorized to act on behalf of such persons. The Trustee shall be entitled to rely upon such information until it receives written notice of a change in such appointments or authorizations.~~

The Employer may authorize the Trustee to enter into a merger agreement with the trustee of another plan to effect such merger or consolidation. A merger agreement entered into by the Trustee is not part of this Plan and does not affect the assets transferred to this Plan from another plan.

- ~~12.4 — **More Than One Trustee.** If the Plan has more than one person acting as Trustee, the Trustees may allocate the Trustee responsibilities by mutual agreement. The Trustees may agree to make decisions by a majority vote or may permit any one of the Trustees to make any decision, undertake any action or execute any documents affecting this Trust without the approval of the remaining Trustees. The Trustees may agree to the allocation of responsibilities in a separate trust agreement or other binding document.~~
- ~~12.5 — **Annual Valuation.** The Plan assets will be valued at least on an annual basis. The Employer may designate more frequent Valuation Dates in a written policy. The Trustee and Plan Administrator may agree to value the Trust on a more frequent basis, and/or to perform an interim valuation of the Trust.~~
- ~~12.6 — **Reporting to Plan Administrator and Employer.** Within a reasonable time after the end of each Plan Year or within a reasonable time after its removal or resignation, the Trustee shall file with the Plan Administrator a written account of the administration of the Trust showing all transactions effected by the Trustee from the last preceding accounting to the end of such Plan Year or date of removal or resignation. The accounting will include a statement of cash receipts, disbursements and other transactions effected by the Trustee since the date of its last accounting, and such further information as the Trustee and/or Employer deems appropriate. The Trustee shall have a reasonable time following its receipt of a written disapproval from the Employer to provide the Employer with a written explanation of the terms in question. If the Employer again disapproves of the accounting, the Trustee may file its accounting with a court of competent jurisdiction for audit and adjudication.~~
- ~~— **Reasonable Compensation.** The Trustee may be paid reasonable compensation in an amount agreed upon by the Plan Administrator and Trustee. The Trustee may also be reimbursed for any reasonable expenses or fees incurred in its function as Trustee. An individual Trustee who is already receiving pay as an Employee of the Employer shall not receive additional compensation for services as Trustee. The Plan will pay the reasonable compensation and expenses incurred by the Trustee, unless the Employer pays such compensation and expenses. Any compensation or expense paid directly by the Employer to the Trustee is not an Employer Contribution to the Plan. A nonemployee trustee (whether discretionary or nondiscretionary) may be paid reasonable annual compensation in an amount agreed upon by the Plan Administrator and Trustee.~~
- ~~— **Resignation and Removal of Trustee/Appointment of Successor.** The Trustee may resign at any time by providing Employer and the Plan Administrator written notice of resignation at least thirty (30) days prior to the effective date of such resignation, unless the District Employer consents in writing to a shorter period. The Trustee's notice must specify the effective date of the Trustee's resignation. Employer may remove the Trustee at any time, with or without cause, by providing written notice to the Trustee. The District's notice must specify the effective date of removal, which shall not be less than thirty (30) days after delivery thereof, unless such notice shall be waived.~~

~~Upon the resignation, removal, death or incapacity of a Trustee, where no other Trustee continues to serve, the District Employer must either either appoint a successor Trustee or become the successor Trustee to continue the Plan. Upon accepting such appointment, a successor successor Trustee will have all the powers, rights and duties conferred upon the preceding Trustee. If two or more persons hold the position of Trustee, in the event of the removal of one such person, during any period the selection of a replacement is pending, or during any period such person is unable to serve for any reason, the remaining person or persons will act as the Trustee. If the District Employer fails to appoint a successor Trustee as of the effective date of the Trustee resignation, removal, death or incapacity and no other Trustee remains, the District will be treated as the Trustee having appointed itself as Trustee and as having accepted the ed the appointment. During such period, the Trust continues to be in existence and legally enforceable, and the assets of the Plan shall continue to be protected by the provisions of the Trust.~~

**~~12.9 Indemnification of Trustee.~~** Except to the extent that it is judicially determined that the Trustee has acted with gross negligence negligently or has committed willful misconduct, the Employer shall indemnify the Trustee (whether or not the Trustee has resigned or been removed) against any liabilities, losses, damages, and expenses, including attorney, accountant, and other advisory fees, and all other expenses reasonably incurred in their defense as a result of:

- ~~(a) — any action of the Trustee taken in good faith in accordance with any information, instruction, direction, or opinion given to the Trustee by the Employer, the Plan Administrator, investment manager, or legal counsel of the Employer, or any person or entity appointed by any of them and authorized to give any information, instruction, direction, or opinion to the Trustee;~~
- ~~(b) — the failure of the Employer, the Plan Administrator, investment manager, or any person or entity appointed by any of them to make timely disclosure to the Trustee of information which any of them or any appointee knows or should know if it acted in a reasonably prudent manner; or~~
- ~~(c) — any breach of fiduciary duty by the Employer, the Plan Administrator, investment manager, or any person or entity appointed by any of them, other than such a breach which is caused by any failure of the Trustee to perform its duties under this Trust.~~

**~~12.10 Liability of Trustee Duties Limited.~~** The duties and obligations of the Trustee shall be limited to those imposed upon it by this Plan document, the Trust Agreement, applicable law or as subsequently agreed upon by the parties. Responsibility for administrative duties required under the Plan or applicable law not imposed upon or agreed to by the Trustee shall rest with the Plan Administrator and the Employer.

**~~12.11 Appointment of Custodian.~~** The Plan Administrator may appoint a Custodian to hold all or any portion of the Plan assets. A Custodian has the powers, rights and responsibilities similar to those of a nondiscretionary trustee unless otherwise provided in a separate agreement.

**~~12.12 Modification of Trust Provisions.~~** The Employer may amend the administrative trust or custodial provisions under this Plan (such as provisions relating to investments and the duties of trustees), provided the amended provisions are not in conflict with any other provision of the Plan and do not cause the Plan to fail to qualify under Code § 401(a). The Employer may document any amendment modifying the trust or custodial provisions under this Plan or other overriding language in an Addendum to the Plan.

~~**12.13 12.2 Custodial Accounts, Annuity Contracts, and Insurance Contracts.** As provided under Code § 401(f), a custodial account, an annuity contract or a contract issued by an Insurer is treated as a qualified trust under the Plan if (i) the custodial account or contract would, except for the fact that it is not a trust, constitute a qualified trust under Code § 401(a) and (ii) in the case of a custodial account the assets thereof are held by a bank (as defined in Code § 408(n)) or another person who demonstrates to the IRS that the manner in which the assets are held are consistent with the requirements of Code § 401(a).~~ **Common/Collective Trusts and Collectibles.** ~~Plan Subject to the DCIC's or the Plan Administrator's direction, the Trustee may commingle, for investment or administration purposes the assets may also be invested (or portion of the assets) of the Trust in any common/collective trust fund, collective investment fund, master trust or in a group trust fund that, but only if the commingled trust satisfies the requirements of under IRS Revenue Ruling 81-100 (as modified by Rev. Rul. 2004-67 and Rev. Rul. 2011-1) to be tax exempt. All of the terms and provisions of any such common/collective trust fund or group trust into which Plan assets are invested are incorporated by reference into the provisions of the Trust for this Plan. No portion of any voluntary, tax deductible Employee contributions being held under the Plan (or any earnings thereon) may be invested in life insurance contracts or, as with any Participant directed investment, in tangible personal property characterized by the IRS as a collectible.~~

## SECTION 13

### PARTICIPANT LOANS

- 13.1 Availability of Participant Loans.** In accordance with Code § 72(p), the District may permit Participants to take loans from their vested Account Balance under the Plan.

To receive a Participant loan, a Participant must sign a promissory note along with a pledge or assignment of the portion of the Account Balance used for security on the loan. The loan will be evidenced by a legally enforceable agreement which specifies the amount and term of the loan, and the repayment schedule.

A loan policy shall be established to determine the terms, conditions and restrictions applicable to such loans as well as the time and manner in which loans may be made available. The loan policy will ensure that all loans made under this Plan meet the requirements of Code § 72(p) and its underlying regulations.

- 13.2 Must be Available in Reasonably Equivalent Manner.** Participant loans must be made available to Participants in a reasonably equivalent manner. The loan policy may limit the availability of Participant loans to specified events.

- 13.3 Loan Limitations.** A Participant loan may not be made to the extent such loan (when added to the outstanding balance of all other loans made to the Participant) exceeds the lesser of:

- (a) Fifty-thousand dollars (\$50,000) (reduced by the excess, if any, of the Participant's highest outstanding balance of loans from the Plan during the one-year period ending on the day before the date on which such loan is made, over the Participant's outstanding balance of loans from the Plan as of the date such loan is made) or
- (b) One-half (½) of the Participant's vested Account Balance, determined as of the Valuation Date coinciding with or immediately preceding such loan, adjusted for any contributions or distributions made since such Valuation Date.

Notwithstanding the above described loan limitation, a Participant may take a loan equal to the greater of \$10,000 or fifty percent (50%) of the Participant's vested Account Balance. However, if a Participant takes a loan in excess of (50%) of the Participant's vested Account Balance, such loan is still subject to the adequate security requirements under Section 13.7 (Adequate Security).

In applying the limitations under this Section 13.3 (Loan Limitations), all plans maintained by the District, including an eligible governmental 457(b) plan, are aggregated and treated as a single plan. In addition, any assignment or pledge of any portion of the Participant's interest in the Plan and any loan, pledge, or assignment with respect to any insurance contract purchased under the Plan will be treated as loan under this Section.

In applying the Loan Limitations described in this Section 13.3, the Participant's Roth Deferral Account and In-Plan Roth Rollover Account will be aggregated with all of the Participant's other Accounts from which loans are permissible.

- 13.4 Limit on Amount and Number of Loans.** A Participant may not receive a Participant loan of less than \$1,000. Participant may not have more than two Participant loans outstanding at any time. Notwithstanding the foregoing sentences, the Plan Administrator may amend the minimum loan amount and maximum number of outstanding loans by amending the loan policy.
- 13.5 Participant Must Be Creditworthy.** The Plan Administrator may refuse to make a loan to any Participant who is determined to not be creditworthy. For this purpose, a Participant is not creditworthy if, based on the facts and circumstances, it is reasonable to believe that the Participant will not repay the loan. A Participant who has defaulted on a previous loan from the Plan (or on a loan from another plan sponsored by the District) and has not repaid such loan (with accrued interest) will be treated as not creditworthy until such time as the Participant repays the defaulted loan (with accrued interest).
- 13.6 Reasonable Rate of Interest.** All Participant loans will be charged a commercially reasonable rate of interest. The interest rate assumptions will be periodically reviewed to ensure the interest rate charged on Participant loans is reasonable.
- If a Participant is in military service while he/she has an outstanding Participant loan, the applicable interest charged on such loan during the period while the Participant is in military service will not exceed six percent (6%) per year provided the Participant provides written notice and a copy of his/her call-up or extension orders to the Plan Administrator within 180 days following the Participant's termination or release from military service. For this purpose, military service is as defined in the Soldier's and Sailor's Civil Relief Act of 1940 as modified by the Service members Civil Relief Act of 2003. The Participant may voluntarily waive this six percent (6%) interest limitation and the Plan Administrator may petition the court to retain the original interest rate if the ability to repay is not affected by the Participant's activation to military duty.
- 13.7 Adequate Security.** All Participant loans must be adequately secured. Generally, the Participant's vested Account Balance shall be used as security for a Participant loan provided the outstanding balance of all Participant loans made to such Participant does not exceed: -1) fifty percent (50%) of the Participant's vested Account Balance, or 2) the Participant's vested Account Balance, where the Participant seeks a loan

equal to the greater of \$10,000 or fifty percent (50%) of the Participant's vested Account Balance, in either case, as determined immediately after the origination of each loan. The Plan's loan policy shall prescribe rules for defining and obtaining adequate security for loans under the Plan.

- 13.8 Periodic Repayment.** A Participant loan must provide for level amortization with payments to be made not less frequently than quarterly. A Participant loan must be repaid in full within a period not exceeding five (5) years from the date the Participant receives the loan from the Plan, unless the loan is for the purchase of the Participant's principal residence, in which case the loan must be repaid within fifteen (15) years or such other period that is commensurate with the repayment period permitted by commercial lenders for similar loans, permissible by the Code § 72(p) and set out in the Plan's loan policy. To the extent a loan is made from a Participant's Roth Deferral Account, the loan repayment requirement must be satisfied separately with respect to that portion of the loan and the portion of the loan from the Participant's other Accounts. The Plan's loan policy shall establish the method loans shall be repaid. The loan policy shall address loan repayments during leave of absence periods in a manner that is consistent with the applicable tax rules.
- 13.9 Procedures for Loan Default.** A Participant will be considered to be in default with respect to a loan if any scheduled repayment with respect to such loan is not made by the end of the calendar quarter following the calendar quarter in which the missed payment was due. Once a loan is in default, the total outstanding balance of the loan will be deemed distributed and reported on an IRS Form 1099-R for the calendar year in which the Participant defaulted on the loan. In accordance with the Code, the deemed distribution of a defaulted loan will not be designated as a qualified distribution from a Roth Deferral Account or In-Plan Roth Rollover Account.

If a Participant defaults on a Participant loan, the Plan may not offset the Participant's Account Balance until the Participant is otherwise entitled to an immediate distribution of the portion of the Account Balance which will be offset and such amount being offset is available as security on the loan, pursuant to Section 13.7 (Adequate Security). For this purpose, a loan default is treated as an immediate distribution event to the extent the law does not prohibit an actual distribution of the type of contributions which would be offset as a result of the loan default). The Participant may repay the outstanding balance of a defaulted loan (including accrued interest through the date of repayment) at any time.

Pending the offset of a Participant's Account Balance following a defaulted loan, the following rules apply to the amount in default.

- (a) Interest continues to accrue on the amount in default until the time of the loan offset or, if earlier, the date the loan repayments are made current or the amount is satisfied with other collateral.
- (b) A subsequent offset of the amount in default is not reported as a taxable distribution, except to the extent the taxable portion of the default amount was not previously reported by the Plan as a taxable distribution.
- (c) The post-default accrued interest included in the loan offset is not reported as a taxable distribution at the time of the offset.

**13.10 Termination of Employment.**

- (a) **Outstanding Loan.** The loan policy may provide Participant's with an opportunity to continue to repay the loan after termination of employment. The terms and conditions of repayment upon termination of employment shall be established by the Plan Administrator.
- (b) **Direct Rollover.** Upon termination of employment, a Participant may request a Direct Rollover of the loan note (provided the distribution is an Eligible Rollover Distribution as defined in Section 7.4) to another qualified plan which agrees to accept a Direct Rollover of the loan note. A Participant may not engage in a Direct Rollover of a loan to the extent the Participant has already received a deemed distribution with respect to such loan.

**13.11 Amendment of Plan to Eliminate Participant Loans.** The Plan may be amended at any time to eliminate Participant loans on a prospective basis. However, the elimination of a Participant loan feature may not result in the acceleration of payment of any existing Participant loans, unless the terms of the Participant loan permit such acceleration.

**SECTION 14****PLAN AMENDMENT, TERMINATION, MERGERS AND TRANSFERS****14.1 Plan Amendment.**

- (a) **Authority to Amend.** The Employer has the right, at any time and from time to time, to amend the Plan in whole or in part. Any amendment of the Plan by the Employer shall be expressed in an instrument executed by the Employer on the order of its Board of Directors and filed with the Trustee. Further, the Plan Administrator is also authorized, at any time and from time to time, to amend the Plan in whole or in part, to ensure compliance with applicable laws and regulations and further the administration of the Plan. The Plan Administrator may not amend the Plan to effectuate its termination.
- (1) **Amendment Purposes Limited.** No Plan amendment may authorize or permit any portion of the assets held under the Plan to be used for or diverted to a purpose other than the exclusive benefit of Participants or Beneficiaries, except to the extent such assets are used to pay taxes or administrative expenses of the Plan. An amendment also may not cause or permit any portion of the assets held under the Plan to revert to or become property of the District.
- (2) **Method of Amendment.** The Plan Administrator may amend the Plan in writing and without amendment of the MWD Code.
- (b) **Effective Date of Plan Amendments.** If the Plan is restated or amended, such restatement or amendment is generally effective as of the Effective Date of the restatement or amendment except where the context indicates a reference to an earlier Effective Date. The District may designate special effective dates for individual provisions under the Plan.

- (1) **Retroactive Effective Date.** If the Plan is amended retroactively (e.g., to add language required to comply with IRS guidance or law), the provisions of the Plan as amended generally override the provisions of any prior Plan. However, if the provisions of the Plan as amended are different from the provisions of the District's prior plan and, after the retroactive Effective Date of the Plan as amended, the District operates in compliance with the provisions of the prior plan, the provisions of such prior plan are incorporated into the Plan for purposes of determining whether the District operated the Plan in compliance with its terms, provided operation in compliance with the terms of the prior plan do not violate any qualification requirements under the Code, regulations, or other IRS guidance.
- (2) **Retroactive Effect of PPA, HEART and WRERA Provisions.** This Plan is designed to comply with the Code, regulations, and general guidance applicable to qualified retirement plans, including the provisions of the Pension Protection Act of 2006 (PPA), the Heroes Earnings Assistance And Relief Tax Act Of 2008 (HEART Act), and the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA). If this Plan is being restated or amended to comply with the provisions of PPA, HEART and/or WRERA, the Plan contains special effective dates that apply with respect to such provisions. If the Plan is being restated within the remedial amendment period for retroactive compliance with the PPA, HEART and WRERA provisions, the special effective dates for such provisions (as described below) will apply, even if such special effective dates precede the Effective Date of this restatement. Thus, if the Plan is being restated or amended to comply with PPA, HEART and/or WRERA, and the Effective Date of this restatement or amendment is later than the special effective date applicable to any of the PPA, HEART or WRERA provisions described below, such special effective dates will apply and any prior plan being replaced by this Plan will be considered to have been timely amended for the PPA, HEART and WRERA provisions.

The following provisions contain special effective dates for purposes of complying with the requirements of PPA, HEART and WRERA:

- i. **Hardship Distributions.** Section 7.8(e) of this Plan allows Hardship distributions to be determined with respect to primary Beneficiaries.
- ii. **Direct Rollovers By Non-Spouse Beneficiaries.** The provisions allowing for direct rollovers by non-Spouse beneficiaries are effective for distributions made on or after January 1, 2007.
- iii. **Direct Rollover of Non-Taxable Amounts.** Effective for taxable years beginning on or after January 1, 2007, the definition of Eligible Rollover Distribution to include the portion of a distribution that is not includible in gross income.
- iv. **Rollovers to Roth IRA.** For distributions occurring on or after January 1, 2008, Participants or Beneficiaries are permitted to rollover a qualified Eligible Rollover Distribution to a Roth IRA.
- v. **Distribution Notice Periods.** Effective for Plan Years beginning on or after

January 1, 2007, the period for providing the Code § 402(f) rollover notice and the period for providing the notice regarding the right to defer receipt of a distribution is increased to 180 days.

- vi. **Content of Notice of A Participant's Right to Defer Receipt of A Distribution.** Effective for Plan Years beginning on or after January 1, 2007, notice relating to a Participant's right to defer receipt of a distribution must include a description of the consequences of a Participant's decision not to defer the receipt of a distribution.
  - vii. **Qualified Domestic Relations Orders (QDROs).** The Plan expands the definition of a QDRO effective April 6, 2007 to include modified orders and orders issued after the Participant's death.
  - viii. **Penalty-Free Withdrawals for Individuals Called to Active Duty.** Effective September 11, 2001, Qualified Reservist Distribution may be taken from elective deferrals.
  - ix. **Benefit Accruals for Participants on Qualified Military Service.** The HEART Act provisions addressing Participants on qualified military leave are effective for Plan Years beginning on or after January 1, 2007.
  - x. **Differential Pay.** Effective for years beginning on or after January 1, 2009, Section 1.54(c) of this Plan permits the Employer to include Differential Pay as Total Compensation under the Plan.
  - xi. **Waiver of Required Minimum Distributions.** Waiver of the Required Minimum Distribution rules for calendar year 2009 as prescribed under WRERA is available.
  - xii. **Final Code § 415 Regulations.** Provisions required by the final Code § 415 regulations are effective for Limitation Years beginning on or after July 1, 2007.
- (3) **Merged Plans.** Except for retroactive application of the provisions under this subsection 14.1(d), if one or more qualified retirement plans have been merged into this Plan, the provisions of the merging plan(s) will remain in full force and effect until the Effective Date of the Plan merger(s).

~~**14.2 — Indemnities.** To the extent permitted by law, any employee or former employee, board member or former board member of the District shall be indemnified and held harmless (to the extent not indemnified or held harmless under any liability insurance contract or other indemnification arrangement with respect to the plan) from and against any and all liability to which such person may be subject by reason of any act or omission made in good faith with respect to the administration of the Plan, including all expenses reasonably incurred in that person's defense in the event the District fails to provide such defense after having been requested in writing to do so. The provisions of this Section 14.29.7 shall not be construed to in any way restrict the privileges and immunities that the District and its Employees are otherwise entitled to under Government Code Sections 818.8 and 820.2.~~

~~14.3~~**14.2 Plan Termination.** The District may terminate (partial or full termination) this Plan at any time by Board resolution.

- (a) **Full and Immediate Vesting.** Upon a full or partial termination of the Plan all amounts credited to an affected Participant's Account become one-hundred percent (100%) vested. The Plan Administrator has discretion to determine whether a partial termination has occurred.
- (b) **Distribution Upon Plan Termination.** Upon the termination of the Plan, the Plan Administrator shall direct the distribution of Plan assets to Participants in accordance with the provisions under Section 7 (Plan Distribution). For purposes of applying the provisions of this subsection 14.2(b), distribution may be delayed until the District receives a favorable determination letter from the IRS, or an equivalent, as to the qualified status of the Plan upon termination, provided the determination letter request is made within a reasonable period following the termination of the Plan. Until all Plan assets have been distributed from the Plan, the District must amend the Plan in order to comply with current laws and regulations and may take any other actions necessary to retain the qualified status of the Plan.
- (c) **Missing Participants.** Upon termination of the Plan, if any Participant cannot be located after a reasonable diligent search as defined in Section 6 (Participant Vesting and Forfeitures), the Plan Administrator may make a direct rollover to an IRA selected by the Plan Administrator. For this purpose, the Plan Administrator will adopt procedures for making automatic rollovers. An Automatic Rollover under this subsection 14.2(c) may be made on behalf of any missing Participant, regardless of the value of his/her vested Account Balance under the Plan.
- ~~(d)~~ **Partial Termination.** In determining whether a Plan has experienced a partial termination as described under Code § 411(d)(3), the Plan Administrator will apply the principals set forth under IRS Revenue Ruling 2007-43.
- ~~(e)~~ **Employee Rights.** The exercise of such right by the District to terminate the 401(k) or 457(b) Plans does not preclude employees or their representatives from either consulting or meeting and conferring with the Employee Relations Officer, as appropriate, about the practical consequences that the exercise of such power or authority may have on wages, hours, and other terms and conditions of employment subject to MWD Code Section 6102 (Employee Rights).

~~14.4~~**14.3 Plan Merger or Consolidation.** In the event the Plan is merged or consolidated with another plan, each Participant must be entitled to a benefit immediately after such merger or consolidation that is at least equal to the benefit the Participant was entitled to immediately before such merger or consolidation (had the Plan terminated). If the District amends the Plan from one type of Defined Contribution Plan (e.g., a Profit Sharing Plan) into another type of Defined Contribution Plan (e.g., a Money Purchase Plan) will not result in a partial termination or any other event that would require full vesting of some or all Plan Participants.

~~14.5~~**14.4 Transfer of Assets.** The Plan may accept a transfer of assets from another qualified retirement plan on behalf of any Employee, even if such Employee is not eligible to receive other contributions under the Plan. If a transfer of assets is made on behalf of an Employee prior to the Employee's becoming a

Participant, the Employee shall be treated as a Participant for all purposes with respect to such transferred amount. Any assets transferred to this Plan from another plan must be accompanied by written instructions designating the name of each Employee for whose benefit such amounts are being transferred, the current value of such assets, and the sources from which such amounts are derived. The Plan Administrator will deposit any transferred assets in the appropriate Participant's Transfer Account. The Transfer Account will contain any sub-Accounts necessary to separately track the sources of the transferred assets. Each sub-Account will be treated in the same manner as the corresponding Plan Account.

Any amounts transferred (and any gains attributable to such transferred amounts) continue to be subject to the distribution restrictions applicable to plan assets under the transferor plan. Such amounts may not be distributed for reasons other than death, disability, attainment of Normal Retirement Age, attainment of age 59½, or termination of employment, regardless of any distribution provisions under this Plan that would otherwise permit a distribution prior to such events.

The Plan Administrator may refuse to accept a transfer of assets if the Plan Administrator reasonably believes the transfer: (1) is not being made from a proper qualified plan; (2) could jeopardize the tax-exempt status of the Plan; or (3) could create adverse tax consequences for the Plan or the District. Prior to accepting a transfer of assets, the Plan Administrator may require evidence documenting that the transfer of assets meets the requirements of this Section 14.

- (a) **Trustee's Right to Refuse Transfer.** If the assets to be transferred to the Plan under this Section 14.4 are not susceptible to proper valuation and identification or are of such a nature that their valuation is incompatible with other Plan assets, the Trustee may refuse to accept the transfer of all or any specific asset, or may condition acceptance of the assets on the sale or disposition of any specific asset.
- (b) **Transfer of Plan to Unrelated Employer.** The Employer may not transfer sponsorship of the Plan to an unrelated employer if the transfer is not in connection with a transfer of business assets or operations from the Employer to the unrelated employer.

## SECTION 15

### MISCELLANEOUS

- 15.1 **Exclusive Benefit.** Plan assets will not be used for, or diverted to, a purpose other than the exclusive benefit of Participants or Beneficiaries.
- 15.2 **Return of Employer Contributions.** Upon written request by the Employer, the Trustee must return any Employer Contributions provided that the circumstances and the time frames described below are satisfied. Any Employer Contributions made because of a mistake of fact must be returned to the Employer within one year of the contribution. The Trustee may request the Employer to provide additional information to ensure the amounts may be properly returned. Any amounts returned shall not include earnings, but must be reduced by any losses.
- 15.3 **Participants' Rights Limited.** The adoption of this Plan by the District does not give any Participant,

Beneficiary, or Employee a right to continued employment with the District and does not affect the District's right to discharge an Employee or Participant at any time. This Plan also does not create any legal or equitable rights in favor of any Participant, Beneficiary, or Employee against the District, Plan Administrator, DCIC, or Trustee. Unless the context indicates otherwise, any amendment to this Plan is not applicable to determine the benefits accrued, or the extent to which such benefits are vested, by a Participant or former Employee whose employment terminated before the effective date of such amendment, except where application of such amendment to the terminated Participant or former Employee is required by statute, regulation or other guidance of general applicability. Where the provisions of the Plan are ambiguous as to the application of an amendment to a terminated Participant or former Employee, the Plan Administrator has the authority to make a final determination on the proper interpretation of the Plan.

**15.4 Alienation.**

- (a) Except as otherwise provided in subsection (c), no benefit which shall be payable out of the Trust to any person (including a Participant or Beneficiary) shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge the same shall be void; and no such benefit shall in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any such person, nor shall it be subject to attachment or legal process for or against such person, and the same shall not be recognized by the Trustee, except to such extent as may be required by law.
- (b) In the event a Participant's benefits are garnished or attached by order of any court, the District may 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 said action, any benefits that become payable shall 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 said action. Any costs attributable to these actions may be charged to the Participant Account.
- (c) This Section shall not apply to the creation, assignment or recognition of a right to any benefit payable pursuant to a domestic relations order, unless such order is determined to be a QDRO by the Plan Administrator, as defined in Code § 414(p). The Trustee shall be entitled to make distributions to an alternate payee pursuant to a QDRO in accordance with such an Order, without regard to the age or employment status of the Participant.

**15.5 Receipt and Release for Payments.** Any payment to any Participant, Participant's legal representative, Beneficiary, or to any guardian or committee appointed for such Participant or Beneficiary in accordance with the provisions of the Plan, shall, to the extent thereof, be in full satisfaction of all claims hereunder against the Trustee and the District, either of whom may require such Participant, legal representative, Beneficiary, guardian or committee, as a condition precedent to such payment, to execute a receipt and release thereof in such form as shall be determined by the Trustee or District.

**15.6 Determination.** The District, in case of disputes, may make determinations and findings of fact with

respect to any matter arising in connection with the administration of the Plan. Such determinations and findings shall be final and conclusive, to the extent permitted by the Plan and by law, as to all interested persons for all purposes of the Plan. The District shall instruct the Plan Administrator and Trustee as to any final determination made hereunder with information as reasonably required to administer the Plan in accordance with the final determination.

- 15.7 No Guarantee Against Loss.** The District does not guarantee the Participants' Accounts or investments or any part thereof against loss or depreciation. All persons having any interest in the Accounts or investments shall look solely to such sources for payment with respect to such interest. No action by the District shall be considered to be either an endorsement or guarantee of any investment option, nor shall it be considered to attest the financial soundness or the suitability of any investment for the purpose of meeting future obligations provided for in the Plan.
- 15.8 Gender and Number.** Wherever any words are used herein in the masculine, feminine or neuter gender, they shall be construed as though they were also used in another gender in all cases where they would so apply, and whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply.
- 15.9 Use of IRS Compliance Programs.** Nothing in this Plan document should be construed to limit the District's ability to correct any tax-qualification error using whatever corrective actions or principals permitted under the IRS's Employee Plans Compliance Resolution System.
- 15.10 Governing Law.** The provisions of this Plan shall be construed, administered, and enforced in accordance with the provisions of applicable Federal Law and, to the extent applicable, the laws of the state of California.
- 15.11 Waiver of Notice.** Any person entitled to a notice under the Plan may waive the right to receive such notice, to the extent such a waiver is not prohibited by law, regulation or other pronouncement.
- 15.12 Use of Electronic Media.** The District, Plan Administrator, Trustee and any other designated individual responsible for providing applicable notices or disclosures under the Plan, and any Participant or beneficiary making an election under the Plan may use telephonic or electronic media to satisfy any notice requirements required by this Plan. Any use of electronic medium under the Plan must comply with the requirements outlined in Treas. Reg. § 1.401(a)-21 or other general guidance concerning the use of telephonic or electronic media. The Plan Administrator also may use telephonic or electronic media to conduct plan transactions such as enrolling participants, making (and changing) salary reduction elections, electing (and changing) investment allocations, applying for Plan loans, and other transactions, to the extent permissible under regulations (or other generally applicable guidance).
- 15.13 Severability of Provisions.** In the event that any provision of this Plan shall be held to be illegal, invalid or unenforceable for any reason, the remaining provisions under the Plan shall be construed as if the illegal, invalid or unenforceable provisions had never been included in the Plan.
- 15.14 Binding Effect.** The Plan, and all actions and decisions made thereunder, shall be binding upon all applicable parties, and their heirs, executors, administrators, successors and assigns.

**15.15 Headings.** The headings and subheadings of this ~~Savings~~ Plan have been inserted for convenience of reference and are to be ignored in any construction of the provisions hereof.

**15.16 Uniformity.** All provisions of this Plan shall be interpreted and applied in a uniform, nondiscriminatory manner.

~~**15.16**~~**15.17 Indemnification.** The District will indemnify, defend, and hold harmless the members of the Board of Directors, the General Manager, the Plan Administrator, the DCIC or any member thereof, or any Employees who have administrative responsibility under the Plan with respect to any liability, loss, damage, or expense resulting from any act or omission, except willful misconduct or gross negligence, in their official capacities in the administration of or management of the assets of the Plan, including attorney, accountant and advisory fees and all other expenses reasonably incurred in their defense.

The amended and restated Plan is hereby adopted, effective ~~December 31, XX XX, 2023~~January 1, 2024.

**The Metropolitan Water District of Southern  
California**

By: \_\_\_\_\_

~~Katano Kassaine~~Diane Pitman

~~Group Manager – Human Resources~~Assistant General  
Manager/Chief Financial Officer and /Interim Plan  
Administrator

\_\_\_\_\_  
Date Signed

**The Metropolitan Water District of  
Southern California  
401(k)  
Savings Plan**

**January 1, 2024**

**THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA**  
**401(k) SAVINGS PLAN**

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**THE METROPOLITAN WATER DISTRICT OF SOUTHERN  
CALIFORNIA 401(k) SAVINGS PLAN**

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## BACKGROUND

The Metropolitan Water District of Southern California (the "District") Board of Directors' Minute Item 35632 established a profit-sharing plan with a cash or deferral arrangement known as The Metropolitan Water District of Southern California Savings Plan ("Savings Plan I") effective July 1, 1985. By Board of Directors' Minute Item 35816, the District also established another profit-sharing plan with a cash or deferral arrangement known as "Savings Plan II" applicable to a separate group of employees effective October 1, 1985.

As a result of Board of Directors' Minute Item 46592, "Savings Plan I" was merged into "Savings Plan II" and renamed The Metropolitan Water District of Southern California Consolidated Savings Plan (the "Plan") effective January 1, 2006, and incorporated into Division VI, Chapter 7, Article 6 of The Metropolitan Water District of Southern California Administrative Code ("MWD Code"). The Plan has been amended and restated from time to time. The Plan was most recently restated and renamed The Metropolitan Water District of Southern California 401(k) Savings Plan effective August 1, 2018. The Plan was further amended and restated effective January 1, 2020. The Plan is hereby amended and restated effective January 1, 2024, except as otherwise stated herein.

The Plan is a tax-qualified governmental defined contribution plan under Internal Revenue Code (the "Code") §§ 401(a) and 414(d) that is a profit sharing plan pursuant to Code § 401(a)(27). The Plan has a grandfathered cash or deferral arrangement under Code § 401(k).

All contributions made to the Plan, all property and rights purchased with such amounts and all income attributable to such amounts shall be held in trust for the exclusive benefit of Participants, Beneficiaries and Alternate Payees under the Plan in accordance with Internal Revenue Code §401(a)(2). Prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the Plan's Trust, it shall be impossible for any part of the corpus or income of the Trust to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of the District's employees or their beneficiaries.

The purpose of the Plan is to attract and retain certain officers and employees to The Metropolitan Water District of Southern California.

## SECTION 1

### PLAN DEFINITIONS

This Section 1 contains definitions for common terms that are used throughout the Plan. All capitalized terms under the Plan are defined in this Section 1 or in the relevant section of the Plan document where such term is used.

**1.1 Account.** The separate Account established and maintained for each Participant, Beneficiary or Alternate Payee under the Plan. A Participant Account may have any or all of the following separate sub-Accounts:

- Pre-Tax Salary Deferral Account
- Roth Deferral Account
- Matching Contribution Account

The Metropolitan Water District of Southern  
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- Rollover Contribution Account
- Roth Rollover Account
- Transfer Account

The Plan Administrator may establish other Account types, as it deems necessary, for the proper administration of the Plan.

- 1.2 Account Balance.** Account Balance shall mean a Participant's balances in all of the Accounts maintained by the Plan on his or her behalf.
- 1.3 Alternate Payee.** A person designated as having a right to receive all or a portion of the Participant's benefit pursuant to a QDRO.
- 1.4 Beneficiary.** A person, including a trust, designated by the Participant (or in the absence of a proper beneficiary designation, by the terms of the Plan) to receive a benefit under the Plan upon the death of the Participant. See Section 7.6(d) (Determining a Participant's Beneficiary) for the applicable rules for determining a Participant's Beneficiaries under the Plan.
- 1.5 Cash-Out Distribution.** A total distribution made to a Participant who incurs a termination from employment.
- 1.6 Catch-Up Contributions.** Salary Deferrals that may be made in excess of an otherwise applicable IRS Code § 402(g) limit by a Participant who attains age 50 or over by the end of the applicable Plan Year.
- 1.7 Catch-Up Contribution Limit.** The annual limit applicable to Catch-Up Contributions as set forth in Section 3.2(c)(1)(Catch-Up Contributions).
- 1.8 Code.** The Internal Revenue Code of 1986, as amended.
- 1.9 Collectively Bargained Employee.** An Employee who is included in a unit of Employees covered by a collective bargaining agreement between the District and Employee representatives and whose retirement benefits are subject to good faith bargaining.
- 1.10 Compensation Limit.** The maximum amount of compensation that can be taken into account for any Plan Year for purposes of determining a Participant's Plan Compensation. For Plan Years beginning on or after January 1, 1994, and before January 1, 2002, the Compensation Limit taken into account for determining benefits provided under the Plan for any Plan Year is \$150,000, as adjusted for increases in cost-of-living in accordance with Code § 401(a)(17)(B). For any Plan Years beginning on or after January 1, 2002, the Compensation Limit is \$200,000, as adjusted for cost-of-living increases in accordance with Code § 401(a)(17)(B). In determining the Compensation Limit for any applicable period (the "Plan Year"), the cost-of-living adjustment in effect at the beginning of the calendar year applies to any Plan Year that begins within such calendar year.

If a Plan Year consists of fewer than 12 months, the Compensation Limit for such period is an amount equal to the otherwise applicable Compensation Limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12. A Plan Year will not be considered to be less than 12 months merely because compensation is taken into account only for

the period the Employee is a Participant. If Salary Deferrals or Matching Contributions are separately determined on the basis of specified periods within the determination period (e.g., on the basis of payroll periods), no proration of the Compensation Limit is required with respect to such contributions.

- 1.11 Deferred Compensation Investment Committee or DCIC.** The committee described in Section 10.6.
- 1.12 Defined Contribution Plan.** A plan that provides for individual Accounts for each Participant to which all contributions, forfeitures, income, expenses, gains and/ or losses under the Plan are credited or deducted. A Participant's benefit under a Defined Contribution Plan is based solely on the fair market value of his/her vested Account Balance.
- 1.13 Differential Pay.** Certain payments made by the District to an individual while the individual is performing service in the Uniformed Services.
- 1.14 Directed Account.** That portion of Participant's Account that is subject to Participant direction of investment and which is maintained by the Plan Administrator as a Directed Account.
- 1.15 Distribution Calendar Year.** A calendar year for which a minimum distribution under Code § 409(a)(9) is required.
- 1.16 Distribution Starting Date.** The date a Participant commences distribution from the Plan. If a Participant commences distribution with respect to a portion of his/her Account Balance, a separate Distribution Starting Date applies to any subsequent distribution.
- 1.17 Effective Date.** The Plan was originally established and effective July 1, 1985. The Plan has since been amended and restated November 18, 2014. The current Effective Date of the Plan as amended and restated is August 1, 2018. See Section 14.1(bd) (Effective Date of Plan Amendments) for special rules concerning the retroactive effective date of provisions under the Plan designed to comply with the requirements of the Pension Protection Act of 2006 (PPA).
- 1.18 Elective Deferral Dollar Limit.** The maximum amount of Elective Deferrals a Participant may make for any calendar year.
- 1.19 Elective Deferrals.** A Participant's Elective Deferrals is the sum of all Salary Deferrals made by the Participant. Elective Deferrals shall not include any amounts properly distributed as an Excess Amount under Code § 415.
- 1.20 Eligible Employee.** An Eligible Employee is an Employee who (i) is not excluded under Section 2.2 of the Plan or excluded by agreement, and (ii) meets the eligibility requirements in Section 2.3 of the Plan.
- 1.21 Employee.** An Employee is any individual employed by the District as a common law employee. An independent contractor is not treated as an Employee of the recipient organization for purposes of this Plan or the District.
- 1.22 Employer or District.** Employer or District means The Metropolitan Water District of Southern California ("District"), a political subdivision.
- 1.23 Employer Contributions.** Contributions the Employer makes pursuant to Sections 3.2 (Salary Deferrals) and 3.3 (Matching Contributions).

- 1.24 Entry Date.** The commencement of the first payroll period following the date on which an Eligible Employee satisfies the eligibility requirements described in Section 2 (Eligibility and Participation).
- 1.25 ERISA.** The Employee Retirement Income Security Act of 1974, as amended.
- 1.26 Excess Amount.** Amounts which exceed the Code § 415 Limitation.
- 1.27 Excess Deferrals.** Elective Deferrals that exceed the Elective Deferral Dollar Limit.
- 1.28 Hardship.** A heavy and immediate financial need which meets the requirements of Section 7.8(e) (Hardship Distributions).
- 1.29 Hour of Service.** Each Employee of the District will receive credit for each Hour of Service he/she works for purposes of applying the eligibility rules under the Plan. An Employee *will not* receive credit for the same Hour of Service under more than one category listed below:
- (a) Performance of Duties.** Hours of Service include each hour for which an Employee is paid, or entitled to payment, for the performance of duties for the District. These hours will be credited to the Employee for the computation period in which the duties are performed. In the case of Hours of Service to be credited to an Employee in connection with a period of no more than 31 days which extends beyond one computation period, all such Hours of Service may be credited to the first computation period or the second computation period. Hours of Service under this subsection (a) must be credited consistently for all Employees within the same job classifications.
  - (b) Nonperformance of Duties.** Hours of Service include each hour for which an Employee is paid, or entitled to payment, by the District on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence. The purpose of this subsection (b) is to prevent a break in service occurring due to the leave of absence. Thus, no more than the required 501 hours of service needed to prevent a break in service will be credited under this paragraph.
  - (c) Back Pay Award.** Hours of Service include each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the District. The same Hours of Service *will not* be credited both under subsection (a) or subsection (b), as the case may be, and under this subsection (c). These hours will be credited to the Employee for the Plan Year to which the award or agreement pertains rather than the Plan Year in which the award, agreement or payment is made.
  - (d) Related Employers.** Hours of Service will be credited for employment with any Related Employer. A Related Employer includes all members of a controlled group, all commonly controlled entities or affiliated service groups of which the Employer is a part, and any other entity required to be aggregated with the Employer pursuant to regulations under Code §414(o). For purposes of Hours of Service, the Employer and any Related Employers are treated as a single Employer, unless specifically stated otherwise.
  - (e) Maternity/Paternity Leave.** Solely for purposes of determining eligibility, an individual who is

absent from work for maternity or paternity reasons *will not* be deemed to have had a break in continuous hours of service by reason of an absence from work for maternity or paternity reasons. For purposes of this paragraph, an absence from work due to maternity or paternity reasons means an absence:

- by reason of the pregnancy of the individual,
- by reason of birth of a child of the individual,
- by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or
- for purposes of caring for such child for a period beginning immediately following such birth or placement.

- 1.30 Code § 415 Limitation.** The limit on the amount of Annual Additions a Participant may make under the Plan during any Limitation Year.
- 1.31 Leased Employee.** An individual who performs services for the District pursuant to an agreement between the District and a leasing organization, and who satisfies the definition of a Leased Employee under Code § 414(n).
- 1.32 Limitation Year.** The measuring period for determining whether the Plan satisfies the Code § 415 Limitation.
- 1.33 Matching Contributions.** Matching Contributions are contributions made by the District on behalf of a Participant on account of Salary Deferrals made by the Participant under this Plan.
- 1.34 Nonresident Alien Employee.** An Employee is a nonresident alien if he or she is neither a citizen of the United States nor a resident of the United States for U.S. tax purposes (as defined in Code § 7701(b)), and who does not have any earned income (as defined in Code § 911) for the District that constitutes U.S. source income (within the meaning of Code § 861). If a nonresident alien Employee has U.S. source income, he/she is treated as satisfying this definition if all of his/her U.S. source income from the District is exempt from U.S. income tax under an applicable income tax treaty.
- 1.35 Normal Retirement Age (NRA).** For purposes of in-service distributions, Normal Retirement Age is 59½.
- 1.36 Participant.** A Participant is an Eligible Employee who has satisfied the conditions for participating under Section 2.3 (Eligibility Requirement) of this Plan. A Participant also includes any Employee (or former Employee) who has an Account Balance under the Plan, including an Account Balance derived from a rollover or transfer from another qualified plan or IRA. A Participant is entitled to share in an allocation of contributions or forfeitures under the Plan for a given year only if the Participant is an Eligible Employee as defined in Section 2.2, and satisfies the allocation conditions set forth in Section 3.3 (Matching Contributions).

An Eligible Employee is treated as a Participant with respect to Salary Deferrals once the Employee has satisfied the eligibility conditions and has reached his or her Entry Date for making such contributions, even if the Eligible Employee chooses not to actually make such contributions to the Plan. An Eligible

Employee is treated as a Participant with respect to Matching Contributions once the Eligible Employee has satisfied the eligibility conditions and has reached his or her Entry Date, even if the Employee does not receive a Matching Contribution because of the Employee's failure to make contributions eligible for the Matching Contribution.

- 1.37 Part-Time Employee.** A Part-Time Employee is an Employee who is normally scheduled to work on average 20 to 39 hours per week.
- 1.38 Plan.** Plan means The Metropolitan Water District of Southern California 401(k) Savings Plan.
- 1.39 Plan Administrator.** The Plan Administrator is the General Manager or other person or entity designated by the District to be responsible for the administration and operation of the Plan. A Plan Administrator also includes a Qualified Termination Administrator ("QTA") that assumes the responsibilities of Plan Administrator.
- 1.40 Plan Compensation.** Plan Compensation is Total Compensation except as modified herein. Plan Compensation includes all cash compensation payable by the District during the Plan Year to, or for the benefit of, an Employee in return for services and any deemed compensation under Code § 414(u)(7). Plan Compensation also includes payments to disabled Participants described in Section 1.54(d) if the payments are not the result of a leave donation(s).

Effective as of January 1, 1997, Plan Compensation shall include pre-tax contributions to a cafeteria plan under Code § 125, an eligible deferred compensation plan under § 457, employer pick-up contributions under § 414(h)(2) or elective contributions that are not included in the Employee's gross income as a qualified transportation fringe benefit under 132(f)(4).

Plan Compensation also does not include other fringe benefits such as medical credit, cell phone allowances, or professional development, wellness, and tuition reimbursements.

Nor does Plan Compensation include payments for leave donations (e.g., hours donated by Employees to a Participant) or payments made by Third Party Providers (TPAs). Plan Compensation also excludes all amounts earned with a related employer who is not a participating employer in this Plan.

- (a) Determination period.** Plan Compensation is determined based on the Plan Year.
- (b) Partial period of participation.** Even if an Employee is a Participant for only part of a Plan Year, Plan Compensation shall be determined over the entire Plan Year. In determining whether an Employee is a Participant for purposes of applying this subsection (b), the Employee's status will be determined solely with respect to the contribution type for which the definition of Plan Compensation is being determined. Plan Compensation does not include any amounts earned for any period while an individual is not an Eligible Employee.

In no case may Plan Compensation for any Participant exceed the Compensation Limit.

- 1.41 Plan Year.** The calendar year.
- 1.42 Pre-Tax Deferrals.** Pre-tax Deferrals are a Participant's Salary Deferrals that are not includible in the Participant's gross income at the time deferred.

- 1.43 Qualified Birth or Adoption Distribution (QBOAD).** A distribution to a Participant if made (1) during the one-year period beginning on the date on which a child of the Participant is born or on which the legal adoption by the Participant of an eligible adoptee is finalized, (2) with the respect to a child born or eligible adoptee the Participant includes the name, age, and the Taxpayer Identification Number of the child born or eligible adoptee on the Participant's tax return for the taxable year in which the distribution is made, and (3) only to the extent such distribution from all plans maintained by the Employer to such Participant does not exceed \$5,000, in the aggregate, for each child born or eligible adoptee. An eligible adoptee is any individual (other than a child of the Participant's spouse) who has not attained age 18 or is physically or mentally incapable of self-support.
- 1.44 Qualified Domestic Relations Order (QDRO).** A domestic relations order that provides for the payment of all or a portion of the Participant's benefits to an Alternate Payee and satisfies the requirements under Code § 414(p).
- 1.45 Recurrent Employee.** Employees hired for an indefinite period of time on an irregular basis, such as intermittent, emergency, or on-call.
- 1.46 Rehired Annuitant.** A rehired Employee who meets the definition of retired annuitant in California Government Code § 7522.56.
- 1.47 Required Beginning Date.** The date by which minimum distributions must commence under the Plan.
- 1.48 Rollover Contribution.** A contribution made by an Employee to the Plan attributable to an Eligible Rollover Distribution from another qualified plan or IRA.
- 1.49 Roth Deferrals.** Deferral contributions that are designated irrevocably by the Participant at the time of the cash or deferred election as a Roth Deferral that is being made in lieu of all or a portion of the Pre-Tax Deferrals the Participant is otherwise eligible to make under the Plan and treated by the Employer 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 cash or deferred election.
- 1.50 Salary Deferral Election.** An agreement between a Participant and the District, whereby the Participant elects to have a specific amount withheld from his/her Plan Compensation and the District agrees to contribute such amount into the Plan.
- 1.51 Salary Deferrals.** Amounts contributed under the Plan at the election of the Participant, in lieu of cash compensation, which are made pursuant to a Salary Deferral Election or other deferral mechanism. Salary Deferrals may consist of Pre-Tax Deferrals and/or Roth Deferrals. Salary Deferrals shall not include any amounts properly distributed as an Excess Amount under Code § 415. An Employee's Salary Deferrals are treated as employer contributions for all purposes under this Plan, except as otherwise provided under the Code or U.S. Treasury regulations.
- 1.52 Seasonal Employee.** An Employee who normally works on a full-time basis less than five months during any Plan Year.

- 1.53 Short Plan Year.** Any Plan Year that is less than 12 months long, either because of the amendment of the Plan Year, or because the Effective Date of a new Plan is less than 12 months prior to the end of the first Plan Year.
- 1.54 Spouse.** Subject to any additional federal tax guidance from the Internal Revenue Service or other agency or court, a Spouse is any individual who is lawfully married to the Participant under a state or foreign jurisdiction, without regard to the location of the Employer or the state where the Participant and Spouse are domiciled. Notwithstanding the previous sentence, a former Spouse of the Participant will be treated as the Spouse or surviving Spouse to the extent provided under a valid QDRO and any current Spouse *will not* be treated as the Spouse or surviving Spouse with respect to any portion of Participant's benefit covered by a valid QDRO.
- 1.55 Total Compensation.** A Participant's compensation for services with the District, as defined herein:
- (a)** Wages within the meaning of Code § 3401(a) and all other payments of compensation to an Employee by the District (in the course of the District's trade or business) for which the District is required to furnish the Employee a written statement under Code §§ 6041(d), 6051(a)(3), and 6052, determined without regard to any rules under Code § 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed.
  - (b)** Includes Elective Deferrals (as defined in Section 1.20), elective contributions to a cafeteria plan under Code § 125 or to an eligible deferred compensation plan under Code § 457, employer pick-up contributions under Code § 414(h)(2), and elective contributions that are not includible in the Employee's gross income as a qualified transportation fringe under Code § 132(f)(4).
  - (c)** Effective for the first Plan Year beginning on or after July 1, 2007, Total Compensation includes compensation paid after an Employee severs employment with the Employer, provided the compensation is paid by the later of 2½ months after severance from employment with the Employer maintaining the Plan or the end of the Plan Year that includes such date of severance from employment. For this purpose, compensation paid after severance of employment may only be included in Total Compensation to the extent such amounts would have been included as compensation if they were paid prior to the Employee's severance from employment. The following amounts paid after a Participant's severance of employment are included in Total Compensation:
    - (1) Regular Pay.** Compensation for services during the Employee's regular working hours, or compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and
    - (2) Unused Leave Payments.** Payment for unused accrued bona fide sick, vacation, or other leave, but only if the Employee would have been able to use the leave if employment had continued.

All other post-severance payments are not included in the definition of Total Compensation, even if such amounts are paid within the time period described in this subsection (c).

- (d) Total Compensation includes post-severance payments to a Participant who is permanently and totally disabled as defined in IRS Code § 22(e)(3) provided that contributions made with respect to amounts treated as compensation under this subsection (d) are nonforfeitable when made.
- (e) **Differential Pay.** Effective for years beginning on or after January 1, 2009, in the case of an individual who receives Differential Pay from the District:
- (1) such individual will be treated as an Employee of the Employer making the payment, and
  - (2) the Differential Pay shall be treated as wages and will be included in calculating an Employee's Total Compensation under the Plan.

If all Employees performing service in the Uniformed Services are entitled to receive Differential Pay on reasonably equivalent terms and are eligible to make contributions based on the payments on reasonably equivalent terms, the Plan shall not be treated as failing to meet the requirements of any provision described in Code § 414(u)(1)(C) (Treatment of Certain Contributions Made Pursuant to Veteran's Reemployment Rights) by reason of any contribution or benefit based on Differential Pay.

For purposes of this subsection (e), Differential Pay means any payment which is made by an Employer to an individual while the individual is performing service in the Uniformed Services while on active duty for a period of more than 30 days, and represents all or a portion of the wages the individual would have received from the Employer if the individual were performing services for the Employer. In applying the provisions of this subsection (e), Uniformed Services are services as described in Code § 3401(h)(2)(A). The Trust is the separate funding vehicle under the Plan.

- 1.56 Trust.** The trust established pursuant to the Trust Agreement between the District and the Trustee to hold, administer and distribute all or a portion of the Plan's assets.
- 1.57 Trust Agreement.** The separate agreement entered into by and between the District and the Trustee to hold, administer and distribute all or a portion of the Plan's assets.
- 1.58 Trustee.** The person(s) or entity, and any successors thereto, who is appointed by the District to hold, administer and distribute all or a portion of the Plan assets held in the Trust pursuant to the terms and conditions of the Trust Agreement.
- 1.59 Valuation Date.** The date or dates upon which Plan assets are valued. Plan assets are typically valued daily and will be valued at least annually as of the last day of each Plan Year.

## SECTION 2

### ELIGIBILITY AND PARTICIPATION

- 2.1 Eligibility.** In order to participate in the Plan, an Employee must be an Eligible Employee (as defined in Section 2.2) and must satisfy the eligibility requirements specified in Section 2.3. Once an Eligible Employee satisfies the Plan's eligibility requirements, such Eligible Employee shall become a Plan Participant as of the Entry Date specified in Section 2.3(b). An Employee who meets the eligibility requirements set forth in Section 2.3 but is not an Eligible Employee, will be eligible to participate in the Plan only upon becoming an Eligible Employee. For purposes of determining eligibility to make Salary

Deferrals, an Eligible Employee will be deemed to commence participation on a timely basis if he or she is permitted to commence making Salary Deferrals as soon as administratively feasible after satisfying the eligibility conditions under the Plan.

**2.2 Eligible Employees.** Except as specified in subsection 2.2(a) and (b), all Employees of the District are Eligible Employees.

**(a) Excluded Employees.** An Employee is not an Eligible Employee and may not participate under the Plan if he or she is classified as a:

- (1)** Rehired Annuitant.
- (2)** Nonresident Alien Employee.
- (3)** Leased Employee.
- (4)** Seasonal Employee working less than 5 months in a Plan Year.
- (5)** Member of the Carpenter's Union Trust.
- (6)** Intern working less than 20 hours a week and less than 5 months in a Plan Year.

**(b) Only Employees May Participate in the Plan.** To participate in the Plan, an individual must be an Employee. If an individual is not an Employee (e.g., the individual performs services with the District as an independent contractor) such individual may not participate under the Plan. If an individual who is classified as a non-Employee is later determined by the District or by a court or other government agency to be an Employee of the District, the reclassification of such individual as an Employee *will not* create retroactive rights to participate in the Plan. For periods prior to the date of such final determination, the reclassified Employee *will not* have any rights to accrued benefits under the Plan, except as agreed to by the District or mandated by a court or government agency, or as set forth in an amendment adopted by the District.

**(c) Ineligible Employee Becomes Eligible Employee.** If an Employee changes status from an ineligible Employee to an Eligible Employee, such Employee will become a Participant immediately on the date he/she changes status to an Eligible Employee, provided the Employee has satisfied the eligibility requirements in Section 2.3 of the Plan and has passed his or her Entry Date that would otherwise have applied had the Employee been an Eligible Employee. If the Employee's original Entry Date (determined as if the Employee was always an Eligible Employee) has not passed as of the date the Employee becomes an Eligible Employee, the Employee will become a Participant upon the occurrence of such Entry Date. This requirement is deemed satisfied with respect to Salary Deferrals if the Employee is permitted to commence making Salary Deferrals under the Plan as soon as administratively feasible after the Employee becomes an Eligible Employee. If an ineligible Employee has not satisfied the eligibility requirement(s) in Section 2.3 at the time such Employee becomes an Eligible Employee, such Employee will become a Participant on the appropriate Entry Date following satisfaction of the eligibility requirements in Section 2.3 of the Plan.

- (d) **Eligible Employee Becomes Ineligible Employee.** If an Employee ceases to qualify as an Eligible Employee (i.e., the Employee changes status from an eligible class to an ineligible class of Employees), such Employee will immediately cease to participate in the Plan. If such Employee should subsequently become an Eligible Employee, he/she will be able to participate in the Plan in accordance with subsection (b) above.
- (e) **Improper Exclusion of Eligible Participant.** If the Plan improperly excludes a Participant who has satisfied the requirements under this Section 2 for participating under the Plan, the District may take **reasonable** action to correct such error, provided such corrective action is consistent with the requirements of the Internal Revenue Service's Employee Plans Compliance Resolution System (EPCRS) program, as amended, or other successor program.

### 2.3 **Eligibility Requirements.**

- (a) **Service Requirement.** There is no minimum age requirement to become an Eligible Employee. An Eligible Employee must complete 1,044 continuous Hours of Service to participate in the Plan.
- (b) **Entry Date:** An Eligible Employee will enter the Plan and begin Salary Deferral contributions and receive Matching Contributions as of the later of commencement of the first full payroll period following Eligible Employee's satisfaction of the eligibility requirements specified in Section 2.3(a) or submitting a completed deferral election form in the manner prescribed by the Plan Administrator.

2.4 **Participation on Effective Date of Plan.** An Eligible Employee who has satisfied the Plan's eligibility requirements and reached his/her Entry Date described in Section 2.3 as of the Effective Date of the Plan will be eligible to participate in the Plan as of such Effective Date. If an Eligible Employee has satisfied the minimum eligibility requirements as of the Effective Date in Section 2.3 of the Plan but has not yet reached his/her Entry Date, the Eligible Employee will participate upon reaching his or her Entry Date.

2.5 **Rehired Employees.** If a terminated Employee is subsequently rehired, such Employee will be eligible to participate in the Plan on his/her reemployment date, if the Employee is rehired within a 12-month period and is an Eligible Employee and the Employee had satisfied the Plan's eligibility requirement(s) prior to his/her termination of employment. If a rehired Employee had not satisfied the Plan's eligibility requirement(s) prior to termination of employment, or was rehired more than 12 months after termination, such Employee is eligible to participate in the Plan on the appropriate Entry Date following satisfaction of the eligibility requirements under Section 2.1.

## SECTION 3

### PLAN CONTRIBUTIONS

- 3.1 **Types of Contributions.** The Plan provides for Salary Deferrals and Matching Contributions.
- 3.2 **Salary Deferrals.** Participants may make Salary Deferrals under the Plan. A Participant may elect to change, discontinue and/ or resume Salary Deferrals in accordance with Section 3.2(b). Subject to the

conditions and limitations of the Plan, a Participant's election shall remain in effect until any change, suspension, or termination properly elected by the Participant under Section 3.2(b) becomes effective. The amounts to be deferred shall be withheld from the Participant's Plan Compensation and contributed to the Plan on the Participant's behalf. The District will deposit any amounts withheld from a Participant's Plan Compensation as Salary Deferrals into the Participant's Salary Deferral Account under the Plan. Effective January 1, 2024, a Participant may, at the time of his or her Salary Deferral Election or election change, irrevocably designate all or a portion of his or her future Salary Deferrals, including Catch-Up Contributions, as Roth Deferrals instead of Pre-Tax Deferrals.

(a) **Salary Deferral Election.** In order to make Salary Deferrals under the Plan, a Participant must enter into a Salary Deferral Election which authorizes the District to withhold a specific dollar amount or a specific percentage from the Participant's Plan Compensation. A Participant's election to make a Salary Deferral to the Plan must be made in accordance with the procedures and time requirements established by the Plan Administrator. A Participant's election must irrevocably designate the Salary Deferrals as Pre-Tax Deferrals, Roth Deferrals, or a specific combination of both. A Participant may defer any amount up to one-hundred percent (100%) of Plan Compensation, provided however, the amount deferred never exceeds the Elective Deferral Dollar Limit imposed by Code § 402(g) and the Limit on Annual Additions under Code § 415. In determining the amount to be withheld from a Participant's Plan Compensation, a Salary Deferral Election may be rounded to the next highest or lowest whole dollar amount. A Salary Deferral Election may only relate to Plan Compensation that is not currently payable or made available at the time the Salary Deferral Election is completed. Further, a Salary Deferral Election may not be effective prior to the later of the date the:

- (1) Employee becomes a Participant, or
- (2) Participant executes the Salary Deferral Election.

In addition, Salary Deferrals made pursuant to a Salary Deferral Election may not be made earlier than the date the Participant performs the services to which such Salary Deferrals relate or the date the compensation subject to such Salary Deferral Election would be currently available to the Participant absent the deferral election (if earlier).

(b) **Change in Deferral Election.** Participants may enter into new Salary Deferral Elections, modify or terminate existing Salary Deferral Elections within the limits established by the Plan Administrator. Any election to modify, including changing the designation of all or any portion of his or her Salary Deferrals as Pre-Tax Deferrals or Roth Deferrals, or terminate a Salary Deferral Election will take effect the first pay date of the following pay period which does not include the date of the election or modification (For example, for an election made on May 14, 2018, the salary deferrals will commence on the next pay date of June 13, 2018, which is for the following pay period of May 20 – June 2).

(c) **Catch-Up Contributions.** A Participant who is aged 50 or over before the end of a taxable year may make Catch-Up Contributions, provided such Catch-Up Contributions are in excess of an

otherwise applicable limit under the Plan. For this purpose, an otherwise applicable Plan limit is a limit in the Plan that applies to Salary Deferrals without regard to Catch-up Contributions, such as the Code § 415 Limitation, or the Elective Deferral Dollar Limit under Code § 402(g). As with other Salary Deferrals, a Participant may, at the time of the deferral election, designate Catch-Up Contributions as either Pre-Tax Deferrals or Roth Deferrals.

(1) **Catch-Up Contribution Limit.** Catch-up Contributions for a Participant for a taxable year may not exceed the Catch-Up Contribution Limit. The Catch-Up Contribution Limit for the 2018 tax year is \$6,000. For taxable years beginning after 2018, the Catch-Up Contribution Limit will be adjusted for cost-of-living increases under Code § 414(v)(2)(C).

(2) **Special Treatment of Catch-Up Contributions.** Catch-up Contributions are not subject to the Elective Deferral Dollar Limit or the Code § 415 Limitation.

3.3 **Matching Contributions.** The District shall have the responsibility for making Matching Contributions under the Plan. On behalf of each Participant, the District shall make a Matching Contribution equal to one-hundred percent (100%) of Participant's contributions to the Plan. The Matching Contributions shall be capped at four and one-half percent (4.5%) of the Participant's Plan Compensation not to exceed the participant's total deferred compensation. Any Matching Contribution made under the Plan will be allocated to Participants' Matching Contribution Account.

(a) **Employee Matching Formula.** The Matching Contribution formula shall apply to Salary Deferrals made by Participants to the Plan.

(b) **Matching Contributions.** All Matching Contributions are one-hundred percent (100%) vested immediately.

3.4 **Rollover Contributions.** An Employee (or former Employee) may make a Rollover Contribution to this Plan from a qualified retirement plan or from an IRA in accordance with administrative procedures established by the Plan Administrator for the acceptance of Rollover Contributions, including Rollover Contributions of Roth amounts, but only if (i) it is a direct rollover from another Roth Deferral Account in an eligible retirement plan described in Code § 402A(e)(1), (ii) it is permitted under Code § 402(c), and (iii) the Plan Administrator of the transferor plan provides the Plan Administrator with information about the rollover required under the Treasury Regulations. A rollover of Roth Deferrals may not be made to this Plan from a Roth IRA. Any Roth Deferrals rolled into this Plan will be held in a separate Roth Rollover Account. A Participant may withdraw amounts from his/her Rollover Contribution Account in accordance with the distribution rules under Section 7 (Plan Distributions). Effective August 1, 2018, Participant withdrawals from his or her Rollover Contribution Account is no longer limited to once per Plan Year. Any amounts received as a Rollover Contribution under this Section 3.4 *will not* be treated as an Annual Addition for purposes of applying the Code § 415 Limitation.

For purposes of this Section 3.4, a qualified retirement plan is a tax-qualified retirement plan described in Code § 401(a) or Code § 403(a), an annuity contract described in Code § 403(b), or an eligible plan under Code § 457(b), which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. To qualify as a Rollover Contribution under this

Section 3.4, the Rollover Contribution must be transferred directly from the qualified retirement plan or IRA in a Direct Rollover or must be transferred to the Plan by the Employee within sixty (60) days following receipt of the amounts from the qualified plan or IRA.

An Employee may make a Rollover Contribution to the Plan if the Employee is not a Participant with respect to any or all other contributions under the Plan. An Employee who makes a Rollover Contribution to this Plan prior to becoming an Eligible Employee shall be treated as a Participant only with respect to such Rollover Contribution Account, but shall not be treated as a Participant with respect to other contribution sources under the Plan until he/she otherwise satisfies the eligibility conditions under the Plan. To the extent Participant loans are authorized under the Plan, a "limited Participant" under this paragraph may request a Participant loan from the Rollover Contribution Account. A former Employee, however, may only make a Rollover Contribution to the Plan if he or she is a Participant with respect to other contributions under the Plan.

The Plan Administrator may refuse to accept a Rollover Contribution if the Plan Administrator reasonably believes the Rollover Contribution:

- (a) is not being made from a proper plan or IRA;
- (b) is not being made within sixty (60) days from receipt of the amounts from a qualified retirement plan or IRA;
- (c) could jeopardize the tax-exempt status of the Plan; or
- (d) could create adverse tax consequences for the Plan or the District.

Prior to accepting a Rollover Contribution, the Plan Administrator may require the Employee to provide satisfactory evidence establishing that the Rollover Contribution meets the requirements of this Section 3.4.

The Plan Administrator may apply different conditions for accepting Rollover Contributions from qualified retirement plans and IRAs. For example, the Plan Administrator may decide in its discretion whether to accept a Direct Rollover of a loan note from another qualified plan. Any conditions on Rollover Contributions must be applied uniformly to all Employees under the Plan.

**3.5 Roth Deferrals.** Effective January 1, 2024, a Participant may, at the time of his or her Salary Deferral Election or election change, irrevocably designate all or a portion of his or her future Salary Deferrals, including Catch-Up Contributions, as Roth Deferrals instead of Pre-Tax Deferrals. A Participant's Roth Deferrals will be allocated to and maintained in a separate Account as provided in this Section 3.5.

- (a) Contributions and withdrawals of Roth Deferrals will be credited and debited to a separate Account maintained for each Participant, and the Plan will maintain a record of the amount of Roth Deferrals in such Account. In addition, gains, losses and other credits or charges must be separately allocated on a reasonable and consistent basis to each Participant's Roth Deferral Account under the Plan. However, in no event may Plan forfeitures be allocated to such Account. No contributions other than Roth Deferrals or Rollover Contributions to a Roth Deferral Account will be credited to a Participant's Roth Deferral Account.

- (b) To the extent required by the Code and the Treasury regulations, reemployed veterans may designate the year for which a Roth Deferral is made. If no such designation is made, the Roth Deferrals will be treated as having been made in the first year of military service for which the veteran could have made the contributions but not earlier than February XX, 2024. This designation must be made solely for purposes of determining the five-taxable-year period under Code § 402A(d)(2).
- (c) In the absence of a specific designation of Salary Deferrals as Roth Deferrals, Salary Deferrals must be treated as Pre-Tax Deferrals. Unless specifically provided otherwise in the Plan, Roth Deferrals will be treated as Salary Deferrals for all purposes under the Plan, including but not limited to immediate full vesting, the distribution restrictions in Section 7 (Plan Distributions), the Elective Deferral Dollar Limit imposed by Code § 402(g) and the Limit on Annual Additions under Code § 415.

**3.6 In-Plan Roth Conversions.** Effective January 1, 2024, a Participant may elect to transfer some or all of his or her vested Account Balance (other than his or her Roth Deferral Account or Roth Rollover Account), and earnings thereon, to an In-Plan Roth Conversion Account without regard to whether the Participant satisfies the requirements for distribution in accordance with Section 7 (Plan Distributions). Any Participant election to make an In-Plan Roth Conversion during a taxable year is irrevocable and cannot be changed after the In-Plan Roth Conversion is completed. Generally, In-Plan Roth Conversion Accounts are subject to the same Plan provisions as Roth Deferral Accounts. However, distribution restrictions that otherwise apply with respect to a specific contribution source will continue to apply if such contribution source is converted to Roth Deferrals. For example, if Matching Contributions are converted to Roth Deferrals, such amounts may not be distributed from the Plan upon events not otherwise available for Matching Contributions. The Plan Administrator will maintain such records as are necessary for the proper reporting of In-Plan Roth Conversions and will administer the In-Plan Roth Conversion Accounts in accordance with the Code, Treasury Regulations, and Plan provisions.

- (a) **Eligibility to Elect In-Plan Roth Rollover.** For purposes of determining eligibility for In-Plan Roth Rollovers, the Plan will treat a Participant's spousal Beneficiary or Participant's alternate payee spouse or former spouse as a Participant. A non-spouse Beneficiary is not eligible to make an In-Plan Roth Rollover.
- (b) **In-Plan Roth Rollover Procedure.** An In-Plan Roth Rollover must be made by the Participant in the form of a Direct In-Plan Roth Rollover. Additionally, an In-Plan Roth Rollover must be accomplished in the form and manner established by the Plan Administrator.
- (c) **Plan Loans.** In-Plan Roth Rollovers may include a Plan loan only if there is no change in the loan's repayment schedule and the loan is not treated as a new loan. Further, Plan loans that include In-Plan Roth Rollover amounts are subject to the Plan's loan rules and the Plan's loan policy.
- (d) **Treatment of In-Plan Roth Rollovers.** Notwithstanding anything in the Plan to the contrary, an In-Plan Roth Rollover is not a rollover contribution for purposes of the Plan. The Plan will take into account the amounts attributable to an In-Plan Roth Rollovers for purposes of determining whether

a Participant's vested Account Balance exceeds \$500 for purposes of the Plan's involuntary cash-out rules. Amounts in the Participant's In-Plan Roth Rollover Account may only be withdrawn by a Participant when the Participant is eligible for a distribution under Section 7 (Plan Distributions).

- (e) **Spousal Consent.** A married Plan Participant is not required to obtain spousal consent in connection with an election to make an In-Plan Roth Conversion, even if the Plan would otherwise require the spousal consent for distributions.
- (f) **Tax Treatment of In-Plan Roth Conversion.** A Participant must include in gross income the taxable amount of an In-Plan Roth Conversion. For this purpose, the taxable amount of an In-Plan Roth Conversion is the fair market value of the distribution reduced by any basis in the converted amounts. If an outstanding loan is rolled over as part of an In-Plan Roth Conversion, the amount includible in gross income includes the balance of the loan. Generally, the taxable amount of an In-Plan Roth Conversion is includible in gross income in the taxable year in which the conversion occurs. However, In-Plan Roth Conversions are not subject to the twenty percent (20%) mandatory withholding under Code § 3405(c). Thus, Participants will be required to make arrangements independent of the Plan to ensure the total taxable amount is timely paid.
- (g) **Early Distribution Penalty.** If an amount allocable to the taxable amount of an In-Plan Roth is subsequently distributed within the 5-taxable-year period beginning with the first day of the Participant's taxable year in which the conversion was made, the amount distributed is treated as includible in gross income for purposes of applying the Code § 72(t) early distribution penalty. For this purpose, the 5-taxable-year period ends on the last day of the Participant's fifth taxable year in the period. This subsection (g) will not apply to the extent the distribution is rolled over to a Roth account in another qualified plan or is rolled over to a Roth IRA. However, the rule under this subsection (g) will apply to any subsequent distributions made from such other Roth account or Roth IRA within the 5-taxable-year period.
- (h) **In-Plan Roth Conversion Definitions.**
  - (1) **"Direct In-Plan Roth Rollover"** means a direct rollover from a Participant Account (other than Participant's Roth Deferral Account, Roth Rollover Account and In-Plan Roth Rollover Account) to an In-Plan Roth Rollover Account established for the Participant.
  - (2) **"In-Plan Roth Rollover"** means a contribution made from the Participant's Account (other than Participant's Roth Deferral Account or Roth Rollover Account) to the Participant's In-Plan Roth Rollover Account under the Plan in accordance with Code § 402A(c)(4) with respect to distributable amounts under the Plan or § 402A(c)(4)(E) with respect to amounts not otherwise distributable under the Plan.
  - (3) **"In-Plan Roth Rollover Account"** means the subaccount established under the Plan to account for a Participant's In-Plan Roth Rollover.

#### SECTION 4

#### SPECIAL RULES AFFECTING GOVERNMENTAL PLANS

**4.1 Governmental Plan.** This Plan is a tax-qualified defined contribution plan under Code § 401(a). In addition, this Plan meets the requirements for establishing and maintaining a governmental plan under Code § 414(d).

**(a) Governmental Plan Exemptions.** As a tax-qualified governmental plan, this Plan is exempt from Title I of ERISA and certain qualification rules under Code 401(a), including:

- (1)** The minimum age and service rules under Code § 410(a) and the minimum coverage rules under Code § 410(b).
- (2)** The minimum vesting requirements of Code § 411, including minimum vesting schedules, consent requirements for plan distributions, and the anti-cutback rule under Code § 411(d)(6).
- (3)** The nondiscrimination requirements under Code §§ 401(a)(4), 401(k) and 401(m).
- (4)** The top-heavy rules under Code § 416.
- (5)** The joint and survivor annuity rules under Code §§ 401(a)(11) and 417.
- (6)** The requirements for protecting benefits pursuant to a plan merger or a transfer of plan assets and liabilities, as prescribed by Code § 401(a)(12).
- (7)** The anti-assignment rule under Code § 401(a)(13). However, the Code § 414(p)(11) rules relating to the taxability of benefits distributed pursuant to a QDRO are applicable to benefits payable to an alternate payee under the QDRO.
- (8)** The commencement of benefit requirements under Code § 401(a)(14).
- (9)** The protections under Code § 401(a)(19).

**(b) ERISA Exempt.** Adoption by the District of provisions similar to the requirements applicable to plans covered under Title I of ERISA or to otherwise inapplicable Code requirements will not affect the Plan's status as a governmental plan. In the event such provisions are adopted, the Plan shall remain exempt from ERISA and certain Code requirements as a governmental plan.

## SECTION 5

### CONTRIBUTION AND BENEFIT LIMITATIONS

**5.1 Code § 415 Limitation.**

**(a) No Other Plan Participation.** If the Participant does not participate in, and has never participated in another qualified retirement plan, a welfare benefit fund (as defined under Code § 419(e)), an individual medical account (as defined under Code § 415(l)(2)), or a SEP (as defined under Code § 408(k)) maintained by the District which provides an Annual Addition as defined in subsection (c)(1), then the amount of Annual Additions which may be credited to the Participant's

Account for any Limitation Year *will not* exceed the lesser of the Maximum Permissible Amount or any other limitation contained in this Plan.

If an Employer Contribution that would otherwise be contributed or allocated to a Participant's Account will cause that Participant's Annual Additions for the Limitation Year to exceed the Maximum Permissible Amount, the amount to be contributed or allocated to such Participant will be reduced so that the Annual Additions allocated to such Participant's Account for the Limitation Year will equal the Maximum Permissible Amount. However, if a contribution or allocation is made to a Participant's Account in an amount that exceeds the Maximum Permissible Amount, such excess Annual Additions may be corrected pursuant to the correction procedures outlined under the IRS' Employee Plans Compliance Resolution System (EPCRS).

**(b) Participation in Another Plan.** This subsection 5.1(b) applies if, in addition to this Plan, the Participant receives an Annual Addition during any Limitation Year from another Defined Contribution Plan, a welfare benefit fund (as defined under Code § 419(e)), an individual medical account (as defined under Code § 415(l)(2)), or a SEP (as defined under Code § 408(k)) maintained by the District.

**(1) This Plan's Code § 415 Limitation.** The Annual Additions that may be credited to a Participant's Account under this Plan for any Limitation Year will not exceed the Maximum Permissible Amount (defined in subsection 5.1(c)(6) below) reduced by the Annual Additions credited to a Participant's Account under any other Defined Contribution Plan, welfare benefit fund, individual medical account, or SEP maintained by the District for the same Limitation Year.

**(2) Annual Additions Reduction.** If the Annual Additions with respect to the Participant under any other Defined Contribution Plan, welfare benefit fund, individual medical account, or SEP maintained by the District are less than the Maximum Permissible Amount and the Annual Additions that would otherwise be contributed or allocated to the Participant's Account under this Plan would exceed the Code § 415 Limitation for the Limitation Year, the amount contributed or allocated will be reduced so that the Annual Additions under all such Plans and funds for the Limitation Year will equal the Maximum Permissible Amount. However, if a contribution or allocation is made to a Participant's Account in an amount that exceeds the Maximum Permissible Amount, such excess Annual Additions may be corrected pursuant to the correction procedures outlined under the IRS' Employee Plans Compliance Resolution System (EPCRS).

**(3) No Annual Additions Permitted.** If the Annual Additions with respect to the Participant under such other Defined Contribution Plan(s), welfare benefit fund(s), individual medical account(s), or SEP(s) in the aggregate are equal to or greater than the Maximum Permissible Amount, no amount will be contributed or allocated to the Participant's Account under this Plan for the Limitation Year. However, if a contribution or allocation is made to a Participant's Account in an amount that exceeds the Maximum Permissible Amount, such

excess Annual Additions may be corrected pursuant to the correction procedures outlined under the IRS' Employee Plans Compliance Resolution System (EPCRS).

(c) **§ 415 Definitions.**

(1) **Annual Additions.** The amounts credited to a Participant's Account for the Limitation Year that are taken into account in applying the Code § 415 Limitation, including:

- i Employer Contributions, including Matching Contributions and Salary Deferrals; and
- ii Forfeitures.

An Annual Addition is credited to a Participant's Account for a particular Limitation Year if such amount is allocated to the Participant's Account as of any date within that Limitation Year. An Annual Addition *will not* be deemed credited to a Participant's Account for a particular Limitation Year unless such amount is actually contributed to the Plan no later than 30 days after the time prescribed by law for filing the District's income tax return (including extensions) for the taxable year with or within which the Limitation Year ends. In the case of After-Tax Employee Contributions, such amount shall not be deemed credited to a Participant's Account for a particular Limitation Year unless the contributions are actually contributed to the Plan no later than 30 days after the close of that Limitation Year.

(2) **Defined Contribution Dollar Limitation.** \$40,000, as adjusted under Code § 415(d).

(3) **Excess Amount.** The excess of the Participant's Annual Additions for the Limitation Year over the Maximum Permissible Amount.

(4) **Limitation Year.** The Plan Year is the Limitation Year.

(5) **Maximum Permissible Amount.** For Limitation Years beginning on or after January 1, 2002, the Maximum Permissible Amount is the lesser of:

- i. the Defined Contribution Dollar Limitation, or
- ii. 100 percent of the Participant's Total Compensation for the Limitation Year.

The Total Compensation limitation referred to in (ii) shall not apply to any contribution for medical benefits (within the meaning of Code § 401(h) or § 419A(f)(2)) which is otherwise treated as an Annual Addition.

If a short Limitation Year is created because of an amendment changing the Limitation Year to a different 12-consecutive month period, the Maximum Permissible Amount *will not* exceed the Defined Contribution Dollar Limitation multiplied by the following fraction:

$$\frac{\text{Number of months in the short Limitation Year}}{12}$$

If a short Limitation Year is created because the Plan has an *initial* Plan Year that is less than 12 months, no proration of the Defined Contribution Dollar Limitation is required.

(6) **Total Compensation.** The amount of compensation as defined under Section 1.54, subject

to the following:

- i. **Total Compensation Actually Paid or Made Available.** For purposes of applying the limitations of this Section 5.1, Total Compensation for a Limitation Year is the Total Compensation actually paid or made available to an Employee during such Limitation Year. The Employer may include in Total Compensation for a Limitation Year amounts earned but not paid in the Limitation Year because of the timing of pay periods and pay days, but only if:
  - (A) the amounts are paid during the first few weeks of the next Limitation Year,
  - (B) such amounts are included on a uniform and consistent basis with respect to all similarly-situated employees, and
  - (C) no amounts are included in Total Compensation in more than one Limitation Year.
- (d) **Restorative Payments.** Restorative payments are not considered Annual Additions for any Limitation Year. For this purpose, restorative payments are payments made to restore losses to the Plan resulting from actions (or a failure to act) by a fiduciary or third-party administrator for which there is a reasonable risk of liability under applicable federal or state law, where Participants who are similarly situated are treated similarly with respect to the payments.
- (e) **Corrective Provisions.** The District may use reasonable correction methods to the extent permitted by the IRS or under an IRS correction program.
- (f) **Change of Limitation Year.** Where there is a change of Limitation Year, a “short” Limitation Year exists for the period beginning with the first day of the Limitation Year and ending on the day before the change in Limitation Year is effective. For this purpose, if the Plan is terminated effective as of a date other than the last day of the Limitation Year, the Plan is treated as if it were amended to change its Limitation Year.

**5.2 Elective Deferral Dollar Limit.** The Elective Deferral Dollar Limit under this Section 5.2 applies with respect to a Participant's Salary Deferrals. Under this Elective Deferral Dollar Limit, a Participant may not make Elective Deferrals under this Plan during any calendar year in an amount that exceeds the Elective Deferral Dollar Limit in effect for each Plan Year.

The Elective Deferral Dollar Limit is \$18,500 for the 2018. For taxable years beginning after 2018, the Elective Deferral Dollar Limit will be adjusted for cost-of-living increases under Code § 402(g)(4).

If a Participant is aged 50 by the end of the taxable year, the Elective Deferral Dollar Limit is increased by the Catch-Up Contribution Limit described in Section 3.2(c).

- (a) **Excess Deferrals.** Excess Deferrals are Elective Deferrals made during the Participant's taxable year that exceed the Elective Deferral Dollar Limit for such year.
- (b) **Correction of Excess Deferrals.** If a Participant makes Elective Deferrals in excess of the Elective Deferral Dollar Limit (“Excess Deferrals”) under this Plan, such Excess Deferrals (plus allocable

income or loss) shall be distributed to the Participant. A distribution of Excess Deferrals may be made at any time (subject to the correction provisions under EPCRS or subsequent guidance). If the corrective distribution of Excess Deferrals is made by April 15 of the calendar year following the year the Excess Deferrals are made to the Plan, such amounts will be taxable in the year of deferral, but not in the year of distribution. If a corrective distribution of Excess Deferrals is made after April 15 of the following calendar year, such amounts will be taxable in both the year of deferral and the year of distribution. Unless the Plan Administrator determines otherwise, if the Participant made both Pre-Tax Deferrals and Roth Deferrals during the same Plan Year, the distribution of Excess Deferrals will be made first solely from the Participant's Pre-Tax Salary Deferral Account until all Pre-Tax Deferrals, plus any allocable gains and minus any allocable losses, for the Plan Year, have been distributed, and only then from the Participant's Roth Deferral Account.

- (1) **Amount of Corrective Distribution.** The amount to be distributed from this Plan as a correction of Excess Deferrals equals the amount of Elective Deferrals the Participant contributes during the taxable year to this Plan and any other plan maintained by the District in excess of the Elective Deferral Dollar Limit, reduced by any corrective distribution of Excess Deferrals the Participant receives during the calendar year from this Plan or other plan(s) maintained by the District.
- (2) **Allocable Gain or Loss.** A corrective distribution of Excess Deferrals must include any allocable gain or loss for the taxable year in which the Excess Deferrals are contributed to the Plan. The gain or loss allocable to Excess Deferrals may be determined in any reasonable manner, provided the manner used to determine allocable gain or loss is applied consistently for all Participants and in a manner that is reasonably reflective of the method used by the Plan for allocating income to Participants' Accounts. A corrective distribution of Excess Deferrals will not include any income or loss allocable to the period between the end of the taxable year and the date of distribution.
- (3) **Taxation of Corrective Distribution.** If a corrective distribution of Excess Deferrals is made by April 15 of the following calendar year, amounts attributable to the Excess Deferrals will be includible in the Participant's gross income in the taxable year in which such amounts are deferred under the Plan and amounts attributable to income or loss on the Excess Deferrals will be includible in gross income in the year of distribution.  
  
If a corrective distribution of Excess Deferrals is made after April 15, the amount of the corrective distribution attributable to Excess Deferrals will be includible in the Participant's gross income in both the taxable year in which such amounts are deferred under the Plan and the taxable year in which such amounts are distributed.
- (4) **Coordination with Other Provisions.** A corrective distribution of Excess Deferrals made by April 15 of the following calendar year may be made without consent of the Participant or the Participant's Spouse, and without regard to any distribution restrictions applicable under Section 7 (Plan Distributions). A corrective distribution of Excess Deferrals made by

the appropriate April 15 also is not treated as a distribution for purposes of applying the required minimum distribution rules under Section 8 (Required Minimum Distributions).

- (5) **Correction of Excess Deferrals Under Plans Not Maintained by the Employer.** The correction provisions under this subsection 5.2(b) apply only if a Participant makes Excess Deferrals under this Plan (or under this Plan and other plans maintained by the District). However, if a Participant has Excess Deferrals for a calendar year on account of making Elective Deferrals to a plan of an unrelated employer, the Participant may assign to this Plan any portion of his/her Elective Deferrals made under all plans during the calendar year to the extent such Elective Deferrals exceed the Elective Deferral Dollar Limit. The Participant must notify the Plan Administrator in writing on or before March 1 of the following calendar year of the amount of the Excess Deferrals to be assigned to this Plan.

Upon receipt of a timely notification, the Excess Deferrals assigned to this Plan will be distributed (along with any allocable income or loss) to the Participant in accordance with the corrective distribution provisions under this subsection 5.2(b). A Participant is deemed to notify the Plan Administrator of Excess Deferrals to the extent such Excess Deferrals arise only under this Plan and any other plan maintained by the District.

## SECTION 6

### PARTICIPANT VESTING AND FORFEITURES

- 6.1 **Vesting of Contributions.** Participants are one-hundred percent (100%) vested in his or her Account at all times.
- 6.2 **Forfeiture of Benefits.** Notwithstanding immediate and full vesting, upon the occurrence of any of the events described below or at any such time as the Plan Administrator determines, a Participant Account may be forfeited. The Plan Administrator has the responsibility to determine the amount of a Participant's forfeiture. Until an amount is forfeited pursuant to this Section 6.2 (Forfeiture of Benefits), a Participant's entire Account must remain in the Plan and continue to share in gains and losses of the Trust.
- (a) **Missing Participant or Beneficiary.** If a Participant or Beneficiary cannot be located within a reasonable period following a reasonable diligent search, the missing Participant's or Beneficiary's Account may be forfeited, as provided in subsection (2) below. The District will be deemed to have performed a reasonable diligent search if it performs the actions described in subsection (1) below. In determining whether a reasonable period has elapsed following a reasonable diligent search, the District or Plan Administrator may follow any applicable guidance provided under statute, regulation, or other IRS or DOL guidance of general applicability. However, the District or Plan Administrator will be deemed to have waited a reasonable period following a reasonable diligent search if the District or Plan Administrator waits at least 6 months following the completion of the actions described in subsection (1) below.
- (1) **Reasonable Diligent Search.** The District or Plan Administrator will be deemed to have performed a reasonable diligent search if it performs the following actions:

- i. Send a certified letter to the Participant's or Beneficiary's last known address.
- ii. Check related records of the District (e.g., health plan records) to determine if a more current address exists for the Participant or Beneficiary.
- iii. If the Participant cannot be located, the District or Plan Administrator may attempt to identify and contact any individual that the Participant has designated as a Beneficiary under the Plan for updated information concerning the location of the missing Participant.
- iv. Utilize the Social Security Administration (SSA) letter-forwarding service for locating lost participants. Additional information regarding the SSA letter forwarding program can be located at [www.ssa.gov](http://www.ssa.gov). In addition to the search methods discussed above, the District or Plan Administrator may use other search methods, including the use of Internet search tools, commercial locator services, and credit reporting agencies to locate the missing Participant.

(2) **Forfeiture of Account of Missing Participant or Beneficiary.** A Participant or Beneficiary deemed to be missing (i.e., cannot be found within 4 years of his or her required beginning date), the Plan administrator may forfeit the distributable amount of such missing Participant's or Beneficiary's vested Account. If, after an amount is forfeited under this subsection (2), the missing Participant or Beneficiary is located, the Plan will restore the forfeited amount (unadjusted for gains or losses) to such Participant or Beneficiary within a reasonable time. However, if a missing Participant or Beneficiary has not been located by the time the Plan terminates, the forfeiture of such Participant's or Beneficiary's distributable amount will be irrevocable. Notwithstanding the foregoing, the Plan Administrator may address forfeitures using any available means provided under applicable law, including escheating the Participant's or Beneficiary's Account to the state.

(3) **Expenses Attributable to Search for Missing Participant.** Reasonable expenses attendant to locating a missing Participant may be charged to such Participant's Account, provided that the amount of such expenses is reasonable. The Plan Administrator may take into account the size of a Participant's Account in relation to the cost of the search when deciding how extensive a search is required before declaring such Participant as missing under subsection (a).

(b) **Employer Matching Contribution Attributable to Excess Deferrals.** If a Participant receives a distribution of Excess Deferrals, the portion of his/her Matching Contribution Account which is attributable to such distributed amounts will be forfeited. A forfeiture of Matching Contributions under this subsection 6.2(b) occurs in the Plan Year in which the Participant receives the distribution of Excess Deferrals.

6.3 **Allocation of Forfeitures.** Forfeitures may be used in the Plan Year in which the forfeitures occur or in the Plan Year following the Plan Year in which the forfeitures occur. In applying the forfeiture provisions under the Plan, if there are any unused forfeitures as of the end of the Plan Year, any remaining forfeiture

will be used in the immediately following Plan Year.

- (a) **Reduction of Contributions.** The District may, in its discretion, use such forfeitures to reduce Matching Contributions. The District may adjust its contribution deposits in any manner, provided the total Matching Contributions made for the Plan Year properly take into account the forfeitures that are to be used to reduce such contributions from that Plan Year. If contributions are allocated over multiple allocation periods, the District may reduce its contribution for any allocation periods within the Plan Year in which the forfeitures are to be allocated so that the total amount allocated for the Plan Year is proper. If the Plan provides for Matching Contribution and the District elects not to make a Matching Contribution for the Plan Year, any forfeitures will be allocated to eligible Participants as an additional Matching Contribution.
- (b) **Payment of Plan Expenses.** The District may use forfeitures to pay Plan expenses for the Plan Year in which the forfeitures would otherwise be applied. If any forfeitures remain after the payment of Plan expenses under this subsection 6.3(b), the remaining forfeitures will be allocated to reduce Matching Contributions to the Plan. This subsection 6.3(b) only applies to the extent Plan expenses are paid by the Plan. Nothing herein affects the ability of the District to pay Plan expenses. In determining the Plan expenses that may be offset by Plan forfeitures, the District may use any reasonable method to determine the Plan expenses attributable to a particular year.

## SECTION 7

### PLAN DISTRIBUTIONS

A Participant may receive a distribution of his/her vested Account Balance at the time and in the manner provided under this Section 7. Upon reaching the Required Beginning Date, a Participant must begin receiving distributions under the Plan in accordance with the provisions of Section 8 (Required Minimum Distributions).

- 7.1 **Available Forms of Distribution.** Upon termination of employment, a Participant under the Plan may take a distribution of his/her entire vested Account Balance in a single lump sum, periodic payments (on a monthly, quarterly, semiannual, or annual basis), or partial distribution. Further, the Plan Administrator may, in its discretion, permit a Participant to take distributions of less than entire vested Account Balance provided all Participants have an opportunity to take such partial distributions upon termination of employment. In addition, the Plan Administrator may, in its discretion, permit Participants to take single lump sum, periodic payments (on a monthly, quarterly, semiannual, or annual basis), or partial distribution to the extent necessary to satisfy the required minimum distribution rules under Code § 401(a)(9). (See Section 8 Required Minimum Distributions).
- 7.2 **Amount Eligible for Distribution.** For purposes of determining the amount a Participant or Beneficiary may receive as a distribution from the Plan, a Participant's Account Balance is determined as of the Valuation Date immediately preceding the date the Participant or Beneficiary receives his/her distribution from the Plan. For this purpose, the Account Balance must be increased for any contributions allocated to the Participant's Account since the most recent Valuation Date and must be reduced for any distributions made from the Participant's Account since the most recent Valuation Date. A Participant or Beneficiary does not share in any allocation of gains or losses attributable to the period between the most recent

Valuation Date and the date of the distribution, unless provided otherwise under uniform funding and valuation procedures established by the Plan Administrator.

**7.3 Participant Consent.** To the extent a Participant's entire vested Account Balance exceeds the \$500 Involuntary Cash-Out threshold per this Section 7.3(a), the Participant must consent to any distribution of such Account Balance prior to his/her Required Beginning Date except as set forth in Section 8 (Required Minimum Distributions)

**(a) Involuntary Cash-Out Threshold.** For purposes of determining whether a distribution is subject to the Participant consent requirements as described in this Section 7.3, the Involuntary Cash-Out threshold is \$500. For purposes of determining whether a Participant's vested Account Balance exceeds the Involuntary Cash-Out threshold, the value of the Participant's vested Account Balance includes Rollover Contributions (and earnings allocable thereto) within the meaning of Code §§ 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16) is taken into account.

**(b) Participant Notice.** If a distribution is subject to Participant consent, the Participant must consent in writing to the distribution within a reasonable period prior to the Distribution Starting Date. For this purpose, any consent made within the 180-day period ending on the Distribution Starting Date will be deemed to be made within a reasonable period. If the distribution is subject to spousal consent, the Participant's Spouse also must consent to the distribution in accordance with Section 9.2 (Spousal Consent).

Prior to receiving a distribution from the Plan, a Participant must be notified of his/her right to defer any distribution from the Plan. Effective for Plan Years beginning on or after January 1, 2007, the Participant notice must include a description of the consequences of a Participant's decision not to defer the receipt of a distribution. The notice must be provided no less than 30 days and no more than 180 days prior to the Participant's Distribution Starting Date. However, distribution may commence less than 30 days after the notice is given, if the Participant is clearly informed of his/ or her right to take 30 days after receiving the notice to decide whether or not to elect a distribution (and, if applicable, a particular distribution option), and the Participant, after receiving the notice, affirmatively elects to receive the distribution prior to the expiration of the 30-day minimum period. The notice requirements described in this paragraph may be satisfied by providing a summary of the required information, so long as the conditions described in applicable regulations for the provision of such a summary are satisfied, and the full notice is also provided (without regard to the 180-day period described in this subsection (b)).

**(c) Special Rules.** The consent rules under this Section 7.3 apply to distributions made after the Participant's termination of employment and to distributions made prior to the Participant's termination of employment. However, the consent of the Participant shall not be required to the extent that a distribution is required to satisfy the required minimum distribution rules under Section 8 (Required Minimum Distributions) or to satisfy the requirements of Code § 415, as described in Section 5.2 (Elective Deferral Dollar Limit). A Participant also will not be required to consent to a corrective distribution of Excess Deferrals.

**7.4 Direct Rollovers.** A Participant (other than a Participant subject to an Involuntary Cash-Out) may elect, at the time and the manner prescribed by the Plan Administrator, to have all or any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan (a "Direct Rollover"). For purposes of this Section 7.4, a Participant includes a Participant or former Participant. In addition, this Section applies to any distribution from the Plan made to a Participant's surviving Spouse or to a Participant's Spouse or former Spouse who is the Alternate Payee under a QDRO. For distributions made on or after January 1, 2007, this Section 7.4 also applies to distributions made to a Participant's non-Spouse beneficiary, as set forth in subsection (c) below.

**(a) Definitions.**

- (1) Eligible Rollover Distribution.** An Eligible Rollover Distribution is any distribution of all or any portion of a Participant's Account Balance, except an Eligible Rollover Distribution does not include:
- i. any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Participant or the joint lives (or joint life expectancies) of the Participant and the Participant's Beneficiary, or for a specified period of ten years or more;
  - ii. any distribution to the extent such distribution is a required minimum distribution under Code § 401(a)(9), as described under Section 8 (Required Minimum Distributions);
  - iii. any Hardship distribution, as described in Section 7.8(e) (Hardship Distribution);
  - iv. the portion of any distribution that is not includible in gross income; or,
  - v. a distribution made to satisfy the requirements of Code § 415 (as described in Section 5.2) or a distribution to correct Excess Deferrals.
- (2) Eligible Retirement Plan.** For purposes of applying the Direct Rollover provisions under this Section 7.4, an Eligible Retirement Plan is:
- i. a qualified plan described in Code § 401(a);
  - ii. an individual retirement account described in Code § 408(a);
  - iii. an individual retirement annuity described in Code § 408(b);
  - iv. an annuity plan described in Code § 403(a);
  - v. an annuity contract described in Code § 403(b); or,
  - vi. an eligible plan under Code § 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan.

If any portion of an Eligible Rollover Distribution is attributable to payments or distributions from a Roth Deferral Account, an Eligible Retirement Plan with respect to such portion will include only another Roth Deferral Account under an applicable retirement plan described in Code § 402A(e)(1) of the individual from whose Account the payments or distributions were made, or to a Roth IRA described in Code § 408A of such individual, and only to the extent the rollover is permitted under the rules of Code § 402(c).

The definition of Eligible Retirement Plan also applies in the case of a distribution to a surviving Spouse, or to a Spouse or former Spouse who is the Alternate Payee under a QDRO.

(3) **Direct Rollover.** A Direct Rollover is a payment made directly from the Plan to the Eligible Retirement Plan specified by the Participant. The Plan Administrator may develop reasonable procedures for accommodating Direct Rollover requests.

(b) **Direct Rollover Notice.** A Participant entitled to an Eligible Rollover Distribution must receive a written explanation of his/her right to a Direct Rollover, the tax consequences of not making a Direct Rollover, and, if applicable, any available special income tax elections. The notice must be provided within 30–180 days prior to the Participant's Distribution Starting Date in the same manner as described in Section 7.3(b) (Participant Notice). The Direct Rollover notice must be provided to all Participants.

(c) **Direct Rollover by Non-Spouse Beneficiary.** Effective for Plan Years beginning after December 31, 2009, the Plan permits a non-Spouse beneficiary (as defined in Code § 401(a)(9)(E)) to make a Direct Rollover of an Eligible Rollover Distribution to an individual retirement account under Code § 408(a) or an individual retirement annuity under Code § 408(b) that is established on behalf of the designated beneficiary and that will be treated as an inherited IRA pursuant to the provisions of Code § 402(c)(11). A non-Spouse rollover made after December 31, 2009 will be subject to the direct rollover requirements under Code § 401(a)(31), the rollover notice requirements under Code § 402(f) or the mandatory withholding requirements under Code § 3405(c).

(d) **Direct Rollover of Non-Taxable Amounts.** Notwithstanding any other provision of the Plan, effective for taxable years beginning on or after January 1, 2007, an Eligible Rollover Distribution may include the portion of any distribution that is not includible in gross income. For this purpose, an Eligible Retirement Plan includes a Defined Contribution or defined benefit plan qualified under Code § 401(a) and a tax-sheltered annuity plan under Code § 403(b), provided the rollover is accomplished through a direct rollover and the recipient Eligible Retirement Plan separately accounts for any amounts attributable to the rollover of any nontaxable distribution and earnings thereon.

7.5 **Distribution Upon Termination of Employment.** Subject to the required minimum distribution provisions under Section 8, a Participant who terminates employment for any reason (other than death) is entitled to receive a distribution of his/her vested Account Balance in accordance with this Section 7.5.

- (a) **Account Balance Not Exceeding Cash-Out Threshold.** If a Participant's vested Account Balance does not exceed \$500 at the time of distribution, the only distribution option available under the Plan is an immediate lump sum option.
- (b) **Account Balance Exceeding Cash-Out Threshold.** If a Participant's vested Account Balance exceeds \$500 at the time of distribution, the Participant may elect to receive a distribution of his/her vested Account Balance at any time after the Participant terminates employment, but prior to his or her required beginning date.

**7.6 Distribution Upon Death.** Subject to the Required Minimum Distribution rules in Section 8, a Participant's vested Account Balance will be distributed to the Participant's Beneficiary(ies) in accordance with this Section 7.6.

- (a) **Death After Commencement of Benefits.** If a Participant begins receiving a distribution of his/her benefits under the Plan, and subsequently dies prior to receiving the full value of his/her vested Account Balance, the remaining benefit will continue to be paid to the Participant's Beneficiary(ies) in accordance with the form of payment that has already commenced. If a Participant commences distribution prior to death only with respect to a portion of his/her Account Balance, then the rules in subsection (b) apply to the rest of the Account Balance.
- (b) **Death Before Commencement of Benefits.** If a Participant dies before commencing distribution of his or her benefits under the Plan, such benefit will be paid to the Participant's Beneficiary(ies) in a single lump sum as soon as administratively feasible following Participant's death.
- (c) **Timing of Distributions.** In no event will any death benefit be paid later than the end of the fifth year following the year of the Participant's death or in any other manner that is inconsistent with the Required Minimum Distribution rules under Section 8 (Required Minimum Distributions).
- (d) **Determining a Participant's Beneficiary.** The determination of a Participant's Beneficiary(ies) to receive any death benefits under the Plan will be based on the Participant's Beneficiary designation under the Plan. If a Participant does not designate a Beneficiary to receive the death benefits under the Plan, distribution will be made to the default Beneficiaries, as set forth in subsection (3) below.
  - (1) **Post-Retirement Death Benefit.** If a Participant dies after commencing distribution of benefits under the Plan (but prior to receiving a distribution of his/her entire vested Account Balance under the Plan), the Beneficiary of any post-retirement death benefit is determined in accordance with the Beneficiary selected under the distribution option in effect prior to death.
  - (2) **Pre-Retirement Death Benefit.** If a Participant dies before commencing distribution of his/her benefits under the Plan, the Participant's Beneficiary(ies) will be treated as the sole Beneficiary(ies).
  - (3) **Default Beneficiaries.**
    - i. **Prior to August 1, 2018.** If a Participant dies prior to August 1, 2018 or fails to effectively update his or her Beneficiary designation form subsequent to August 1,

2018, or if the Beneficiary named by a Participant predeceases the Participant, then the Plan Administrator will pay the Participant's remaining Account balance to the Participant's estate.

- ii. **After August 1, 2018.** Effective for individuals who become Participants in the Plan on or after August 1, 2018 or file a beneficiary designation form subsequent to such date:

- (A) If a Participant fails to name a Beneficiary or the Beneficiary named by a Participant predeceases the Participant, then the Plan Administrator will pay the Participant's remaining Account balance in the following order of priority, to the:
- I. Participant's surviving spouse; or if no surviving spouse, to the
  - II. Participant's children (including adopted children), in equal shares by right of representation (one share for each surviving child and one share for each child who predeceases the Participant with living descendants); and if none, then to
  - III. Participant's estate.
- (B) Where a Participant names more than one Beneficiary and one or more of them, but not all of them, predecease Participant, then the benefits that would have been paid to the deceased Beneficiaries shall be distributed to Participant's next of kin in accordance with subsection (ii)(A)(I through III).

- (4) **Identification of Beneficiaries.** The Plan Administrator may request proof of the Participant's death and may require the Beneficiary to provide evidence of his/her right to receive a distribution from the Plan as designated in accordance with the rules and procedures developed by the Plan Administrator. The Plan Administrator's determination of the Participant's death and of the right of a Beneficiary to receive payment under the Plan shall be conclusive. If a distribution is to be made to a minor or incompetent Beneficiary, payments may be made to the person's legal guardian, conservator recognized under state law, or custodian in accordance with the Uniform Gifts to Minors Act or similar law as permitted under the laws of the state where the Beneficiary resides. The Plan Administrator will not be liable for any payments made in accordance with this subsection (3) and will not be required to make any inquiries with respect to the competence of any person entitled to benefits under the Plan.

- (5) **Death of Beneficiary.** If a Beneficiary does not predecease the Participant but dies before distribution of the death benefit is made to the Beneficiary, the death benefit will be paid to the Beneficiary's designated Beneficiary. If the Beneficiary did not provide the Plan with a valid Beneficiary designation, the death benefit will be paid to the Beneficiary's estate.

- (6) **Divorce From Spouse.** If a Participant designates his/her Spouse as Beneficiary and subsequent to such Beneficiary designation, the Participant and Spouse are subsequently divorced, the designation of the Spouse as Beneficiary under the Plan is automatically rescinded unless specifically provided otherwise under a divorce decree or QDRO, or unless the Participant enters into a new Beneficiary designation naming the prior Spouse as Beneficiary. In addition, the provisions under this subsection will not apply if the Participant has entered into a Beneficiary designation that specifically overrides the provisions of this subsection 7.6(d)(6).

For periods prior to the date this Plan is executed by the District this subsection also applies to situations where the Participant and Spouse are legally separated.

- 7.7 **Distribution to Disabled Employees.** A Participant who terminates employment on account of becoming Disabled may receive a distribution of his/her Account Balance in the same manner as a regular distribution upon termination.

- 7.8 **In-Service Distributions.** The Plan permits the following in-service distributions.

- (a) **Rollover Contributions.** A Participant may make in-service distributions from Rollover Contributions.
- (b) **Matching Contributions.** Employer Matching Contributions may be withdrawn upon the occurrence of a Hardship or attainment of age 59½.
- (c) **Salary Deferrals.** Salary Deferrals (including any earnings on such amounts) generally may not be distributed prior to the Participant's severance from employment, death, or disability. However, Salary Deferrals are available for in-service distributions upon attainment of age 59½, upon a Hardship or upon meeting the requirements for a Qualified Reservist Distribution, as defined under subsection (d) below.
- (d) **Qualified Reservist Distribution.** Effective September 11, 2001, the distribution provisions applicable to Salary Deferrals include a Qualified Reservist Distribution. If a Participant takes a Qualified Reservist Distribution, such distribution *will not* be subject to the ten percent (10%) penalty tax under Code § 72(t).
  - (1) **Qualified Reservist Distribution.** For purposes of this subsection (d), a Qualified Reservist Distribution means any distribution to an individual if:
    - i. such distribution is from amounts attributable to elective deferrals described in Code § 402(g)(3)(A) or (C) or Code § 501(c)(18)(D)(iii),
    - ii. such individual was (by reason of being a member of a reserve component (as defined in § 101 of Title 37 of the United States Code)) ordered or called to active duty for a period in excess of 179 days or for an indefinite period, and
    - iii. such distribution is made during the period beginning on the date of such order or call and ending at the close of the active duty period.

- (2) **Active Duty.** A Qualified Reservist Distribution will only be available for individuals who are ordered or called into active duty after September 11, 2001.
- (e) **Hardship Distribution.** The Plan allows in-service distribution at the request of a Participant or primary Beneficiary upon the occurrence of a Hardship event. A Hardship distribution under the Plan must meet the requirements of a safe harbor Hardship as described under subsection (1) below.
- (1) **Safe Harbor Hardship Distribution.** To qualify for a safe harbor Hardship distribution, a Participant must demonstrate an immediate and heavy financial need, as described in subsection (i), and the distribution must be necessary to satisfy such need, as described in subsection (ii).
- i. **Immediate and Heavy Financial Need.** To be considered an immediate and heavy financial need, the Hardship distribution must be made to satisfy one of the following financial needs:
- (A) to pay expenses incurred or necessary for medical care (as described in Code § 213(d)) of the Participant, the Participant's Spouse or, dependents (determined without regard to whether the expenses exceed seven and one-half percent (7.5%) of adjusted gross income);
  - (B) for the purchase (excluding mortgage payments) of a principal residence for the Participant;
  - (C) for payment of tuition and related educational fees (including room and board but not including the repayment of student loans) for the next 12 months of post-secondary education for the Participant, the Participant's Spouse, children or dependents;
  - (D) to prevent the eviction of the Participant from, or a foreclosure on the mortgage of, the Participant's principal residence;
  - (E) to pay funeral or burial expenses for the Participant's deceased parent, Spouse, child or, dependent;
  - (F) effective January 1, 2020, to pay expenses to repair damage to the Participant's principal residence that would qualify for a casualty deduction under Code § 165 (determined without regard to whether the loss exceeds ten percent (10%) of the participant's adjusted gross income, and effective January 1, 2020, without regard to Code § 165(h)(5);
  - (G) to pay expenses and losses (including loss of income) incurred by the participant on account of a Federal Emergency Management Agency ("FEMA") declared disaster, provided that the participant's principle residence or principle 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.

- (H) for any other event that the IRS recognizes as a safe harbor Hardship distribution event under ruling, notice or other guidance of general applicability.
- ii. The payment of funeral or burial expenses under subsection (E) above and the payment of expenses to repair damage to a principal residence under subsection (F) above only apply to Plan Years beginning on or after January 1, 2006. For purposes of determining eligibility of a Hardship distribution under this subsection (i), a dependent is determined under Code § 152. However, for taxable years beginning on or after January 1, 2005, the determination of dependent for purposes of tuition and education fees under subsection (C) above will be made without regard to Code §§ 152(b)(1), (b)(2), and (d)(1)(B) and the determination of dependent for purposes of funeral or burial expenses under subsection (E) above will be made without regard to Code § 152(d)(1)(B). **Determination of Whether Distribution Necessary to Satisfy Need.** A distribution will be considered as necessary to satisfy an immediate and heavy financial need of the Participant under the IRS's general standard test if:
  - (A) the distribution is not in excess of the amount of the immediate and heavy financial need, including amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the distribution;
  - (B) the Participant obtained all available distributions under the plan and all other plans of deferred compensation maintained by the District, whether qualified or non-qualified; and
  - (C) effective for Hardship distributions made on or after January 1, 2020, the Participant must represent in writing (including via electronic medium) that he or she has insufficient cash or other liquid assets to satisfy the need. The Plan Administrator may rely on such representation absent actual knowledge to the contrary.
- (2) **Amount Available for Hardship Distribution.** A Participant may receive a Hardship distribution of Deferrals (including Roth Deferrals), Matching Employer Contributions and Rollover Contributions. Provided, however, distributions made from Salary Deferrals, when added to other Hardship distributions, does not exceed the total account balance which includes salary deferrals, Employer matching contributions, rollovers, and interest earned.
- (3) **Availability to Terminated Employees.** A Participant may take such a Hardship distribution after termination of employment to the extent no other distribution is available from the Plan.
- (4) **Six-Month Suspension of Salary Deferrals.** Effective for Hardship distributions made on

or after January 1, 2020, the Plan will no longer suspend a Participant's Salary Deferrals after a Hardship distribution.

- (f) **Age 59½ Distributions.** A Participant may take in-service distributions upon attaining age 59½ in accordance with the terms and conditions established by the Plan Administrator. Effective January 1, 2019, in-service distributions at age 59½ are no longer limited to one per Plan Year.
- (g) **Qualified Birth or Adoption Distributions (QBOADs).** The Plan permits a Participant to request and receive QBOADs. QBOADs must be requested by the Participant and may only be made from the Plan in the frequency, form and manner provided by the Plan Administrator. Further, Participants may have an opportunity to repay a QBOAD if the Participant is eligible to make a rollover into the Plan under Section 3.4 (Rollover Contributions) and the policies and procedures established thereunder. This Section 7.8(g) is effective June 1, 2021.
- (h) **Coronavirus-Related Distributions (CRDs).** Participants may request and receive a Coronavirus-Related Distribution (CRD). CRDs must be requested and made in the form and manner provided by the Plan Administrator.
- (1) **"Coronavirus-Related Distribution" Defined.** A CRD means a distribution from the Plan made between January 1, 2020 and December 31, 2020, to a Participant:
- i who is diagnosed with the virus SARS-CoV-2 or the coronavirus disease 2019 (collectively, "COVID-19") by a test approved by the Centers for Disease Control and Prevention; or
  - ii whose spouse or dependent is diagnosed with COVID-19 by a test approved by the Centers for Disease Control and Prevention; or
  - iii who experiences adverse financial consequences as a result of a spouse or Participant being quarantined, furloughed or laid off, or having work hours reduced due to COVID-19; or being unable to work due to lack of childcare due to COVID-19 or closing or reducing hours of a business owned or operated by the spouse or Participant, or a member of the Participant's household (one who shares Participant's principal residence) due to COVID-19; or having a reduction in pay due to COVID-19 or having a job offer rescinded or start date for a job delayed due to COVID-19.
- (2) **Aggregate Dollar Limit.** The aggregate amount of CRDs to a Participant may not exceed \$100,000 from all plans sponsored by the Employer.
- (3) **Re-Contribution of CRDs.** Participants may have an opportunity to repay some or all of the Participant's CRD if completed within 3 years of the distribution, meets the re-contribution requirements in Section 2202(a) of the SECURE Act, and the Participant is eligible to make a rollover contribution into the Plan under Section 3.4 (Rollover Contributions) and the policies and procedures established thereunder.

- (4) **Participant Certification.** The Plan Administrator may rely on a Participant's certification that he or she satisfies the conditions for a CRD.

**7.9 Sources of Distribution.** Unless otherwise indicated in the Plan, distributions will be made on a pro rata basis from all Accounts from which a distribution is permitted. Alternatively, to the extent permissible by law, the Plan Administrator may permit Participants to direct the Plan Administrator as to which Account the distribution is to be made as long as the directions provided by the Participant are from a source which such distributions are permitted. Regardless of a Participant's direction as to the source of any distribution, the tax effect of such a distribution will be governed by Code § 72 and the regulations thereunder. Further, Roth Deferrals and In-Plan Roth Rollovers that are distributed from the Plan within five years of the Participant's first designated Roth Deferral to the Plan will be subject to tax on the earnings portion of the distribution from the Roth Deferral Account or In-Plan Roth Rollover Account.

**7.10 Purchase of Service Credit Under Defined Benefit Plan.** Notwithstanding any provision of the Plan to the contrary, the Plan may permit a Participant whose Distribution Starting Date has not yet occurred to transfer as a direct plan-to-plan transfer, any portion of the Participant's Account to any other plan that is qualified under Code § 401(a) for the purpose of purchasing service credits under such other plan. Prior to permitting such transfer, however, the Plan shall reasonably determine all of the following:

- (a) that such other plan shall accept such a transfer;
- (b) that such transferred amounts are subject to withdrawal and distribution restrictions so that the Participant may not withdraw such transferred amounts prior to retirement, death, disability or severance from employment;
- (c) that such transferred amounts are held for the benefit of the Participant as elective contributions on a fully vested and non-forfeitable basis; and,
- (d) that applicable interest is credited to such transfer amounts.

The Plan Administrator shall establish a written policy for transfers for service credit purchases.

**7.11 Correction of Qualification Defects.** Nothing in this Section 7 precludes the Plan Administrator from making a distribution to a Participant to correct a qualification defect consistent with the correction procedures under IRS voluntary compliance programs. Thus, for example, if an Employee is permitted to enter the Plan prior to his/her proper Entry Date under Section 2.3 and the Plan Administrator determines that a corrective distribution is a proper means of correcting the operational violation, nothing in this Section 7 would prevent the Plan from making such corrective distribution. Any such distribution must be made in accordance with the correction procedures applicable under IRS voluntary correction programs under IRS Rev. Proc. 2013-12 (or successive guidance).

## SECTION 8

### REQUIRED MINIMUM DISTRIBUTIONS

**8.1 Required Minimum Distributions (RMDs).** The provisions of this Section 8 apply to calendar years beginning on or after January 1, 2003. A Participant's entire interest under the Plan will be distributed, or

begin to be distributed, to the Participant no later than the Participant's Required Beginning Date. All distributions required under this Section 8 will be determined and made in accordance with the regulations under Code § 401(a)(9) and the minimum distribution incidental benefit requirement of Code § 401(a)(9)(G). For purposes of applying the required minimum distribution rules under this Section 8, any distribution made in a form other than a lump sum must be made over one of the following periods (or a combination thereof):

- (a) the life of the Participant;
- (b) the life of the Participant and a Designated Beneficiary;
- (c) a period certain not extending beyond the life expectancy of the Participant; or
- (d) a period certain not extending beyond the joint and last survivor life expectancy of the Participant and a Designated Beneficiary.

**8.2 Death of Participant Before Required Distributions Begin.** If the Participant dies before required distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

- (a) **Surviving Spouse as a Designated Beneficiary.** If the Participant's surviving Spouse is the Participant's sole Designated Beneficiary, the surviving Spouse must take a distribution(s) under the five-year rule described in Section 8.6(a) below or under the life expectancy method. Distributions to the surviving Spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½ (or age 72 if Participant attains age 70½ after December 31, 2019), if later. If such surviving Spouse does not make an election and a distribution must commence, the Plan will make distributions under the life expectancy method.
- (b) **Non-Spousal Designated Beneficiary.** If the Participant's surviving Spouse is not the Participant's sole Designated Beneficiary but the Plan segregates each Designated Beneficiary's Account, the Designated Beneficiary may elect to take distributions under the five-year rule described in Section 8.6(a) below or under the life expectancy method. If the non-Spousal Designated Beneficiary(ies) do not elect to commence distributions by December 31 of the calendar year immediately following the calendar year in which the Participant dies, distributions will be made under the life expectancy method.
- (c) **No Designated Beneficiary.** If there is no Designated Beneficiary as of the date of the Participant's death who remains a Beneficiary as of September 30 of the year immediately following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (d) **Death of Surviving Spouse.** If the Participant's surviving Spouse is the Participant's sole Designated Beneficiary and the surviving Spouse dies after the Participant but before distributions to the surviving Spouse begin, this Section 8.2 (other than subsection (a)) will apply as if the surviving Spouse were the Participant.

For distributions under this subsection (d), distributions are considered to begin on the date distributions are required to begin to the surviving Spouse under subsection (a) above.

**8.3 Required Minimum Distributions During Participant's Lifetime.** During the Participant's lifetime, the minimum amount that must be distributed for each Distribution Calendar Year is described in this Section 8.3.

**(a) Amount of Required Minimum Distribution for Each Distribution Calendar Year.** During the Participant's lifetime, the minimum amount that will be distributed for each Distribution Calendar Year is the lesser of:

- (1)** the quotient obtained by dividing the Participant's Account Balance by the distribution period set forth in the Uniform Lifetime Table found in Treas. Reg. § 1.401(a)(9)-9, using the Participant's age as of the Participant's birthday in the Distribution Calendar Year; **or**
- (2)** if the Participant's sole Designated Beneficiary for the Distribution Calendar Year is the Participant's Spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Treas. Reg. § 1.401(a)(9)-9, Q&A-3, using the Participant's and Spouse's attained ages as of the Participant's and Spouse's birthdays in the Distribution Calendar Year.

**(b) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death.** Required Minimum Distributions will be determined under this subsection (b) beginning with the first Distribution Calendar Year and continuing up to, and including, the Distribution Calendar Year that includes the Participant's date of death.

**8.4 Required Minimum Distributions After Participant's Death.**

**(a) Death On or After Date Required Distributions Begin.** Where the Participant's death occurs on or after his Required Beginning Date and Required Minimum Distributions have already begun, the minimum distributions made to Beneficiaries after the Participant's death must be completed at least as rapidly as under the minimum distribution period in effect at Participant's death.

- (1) Participant Survived by Designated Beneficiary.** If the Participant dies on or after the date required distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's Designated Beneficiary, determined as follows:
  - i.** The Participant's remaining life expectancy is calculated in accordance with the Single Life Table found in Treas. Reg. § 1.401(a)(9)-9, Q&A-1, using the age of the Participant in the year of death, reduced by one for each subsequent year.
  - ii.** If the Participant's surviving Spouse is the Participant's sole Designated Beneficiary, the remaining life expectancy of the surviving Spouse is calculated using the Single Life Table found in Treas. Reg. § 1.401(a)(9)-9, Q&A-1, for each Distribution

Calendar Year after the year of the Participant's death using the surviving Spouse's age as of the Spouse's birthday in that year. For Distribution Calendar Years after the year of the surviving Spouse's death, the remaining life expectancy of the surviving Spouse is calculated using the age of the surviving Spouse as of the Spouse's birthday in the calendar year of the Spouse's death, reduced by one for each subsequent calendar year.

- iii. If the Participant's surviving Spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining life expectancy is calculated under the Single Life Table using the age of the Designated Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

- (2) **No Designated Beneficiary.** If the participant dies on or after the date required distributions begin and there is no Designated Beneficiary as of the Participant's date of death who remains a Designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining life expectancy under the Single Life Table calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
- (b) **Death Before Date Required Distributions Begin.** Where the Participant's death occurs on or after his Required Beginning Date but his or her Required Minimum Distributions have not yet begun, the minimum distributions made to the Participant's Beneficiaries must be made in accordance with the rules in this Section 8.4(b).
  - (1) **Participant Survived by Designated Beneficiary.** If the Participant dies before the date required distributions begin, and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining life expectancy of the Participant's Designated Beneficiary, determined as provided in subsection 8.4(a).
  - (2) **No Designated Beneficiary.** If the Participant dies before the date distributions begin and there is no Designated Beneficiary as of the date of death of the Participant who remains a Designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest must be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
  - (3) **Death of Surviving Spouse Before Distributions to Surviving Spouse are Required to Begin.** If the Participant dies before the date distributions begin, and the Participant's surviving Spouse is the Participant's sole Designated Beneficiary, and the surviving Spouse dies before distributions are required to begin to the surviving Spouse under Section 8.2(a),

then this subsection 8.4(b) will apply as if the surviving Spouse were the Participant.

## 8.5 **Definitions.**

- (a) **Designated Beneficiary.** A Beneficiary designated by the Participant (or the Plan), whose life expectancy may be taken into account to calculate minimum distributions, pursuant to Code § 401(a)(9) and Treas. Reg. § 1.401(a)(9)-4.
- (b) **Distribution Calendar Year.** A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year that contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin pursuant to Section 8.2. The Required Minimum Distribution for the Participant's first Distribution Calendar Year will be made on or before the Participant's Required Beginning Date. The Required Minimum Distribution for other Distribution Calendar Years, including the Required Minimum Distribution for the Distribution Calendar Year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that Distribution Calendar Year.
- (c) **Life Expectancy.** For purposes of determining a Participant's Required Minimum Distribution amount, life expectancy is computed using one of the following tables, as appropriate: (1) Single Life Table, (2) Uniform Life Table, or (3) Joint and Last Survivor Table found in Treas. Reg. § 1.401(a)(9)-9.
- (d) **Account Balance.** For purposes of determining a Participant's Required Minimum Distribution, the Participant's Account Balance is determined based on the Account Balance as of the last Valuation Date in the calendar year immediately preceding the Distribution Calendar Year (the "valuation calendar year") increased by the amount of any contributions or forfeitures allocated to the Account Balance as of dates in the calendar year after the Valuation Date and decreased by distributions made in the calendar year after the Valuation Date. The Account Balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the Distribution Calendar Year if distributed or transferred in the valuation calendar year.
- (e) **Required Beginning Date (RBD).** A Participant's Required Beginning Date under the Plan is April 1 that follows the end of the calendar year in which the later of the following two events occurs:
  - (1) the Participant attains age 70½ (or age 72 if a Participant attains age 70½ after December 31, 2019), or
  - (2) the Participant terminates employment. For purposes of the Required Minimum Distribution, a Rehired Annuitant is considered terminated from employment.

A Participant may begin in-service distributions prior to his/her Required Beginning Date only to the extent authorized under Section 7.8 (In-Service Distributions).

**8.6 Special Rules.**

- (a) **Election to Allow Participants or Beneficiaries to Elect 5-Year Rule.** A Participant or Designated Beneficiary may elect whether the life expectancy rule under Section 8.2 or the five-year rule under subsection 8.6(a), no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under Section 8.2 or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving Spouse's) death.
- (b) **Forms of Distribution.** Unless the Participant's interest is distributed in a lump sum on or before the Required Beginning Date, as of the first Distribution Calendar Year distributions will be made in accordance with Sections 8.2 and 8.4.
- (c) **Waiver of Required Minimum Distributions.** For calendar year 2009, the Required Minimum Distribution rules will not apply. In applying the provisions of this Section 8 for the 2009 Distribution Calendar Year,
- (1) the Required Beginning Date with respect to any individual shall be determined without regard to this subsection (c) for purposes of applying this paragraph for Distribution Calendar Years after 2009, and
  - (2) required distributions to a beneficiary upon the death of the Participant shall be determined without regard to calendar year 2009.

A Participant or beneficiary who would have been required to receive a Required Minimum Distribution for the 2009 Distribution Calendar Year but for the enactment of Code § 401(a)(9)(H) ("2009 RMD"), may elect whether or not to receive the 2009 RMD (or any portion of such distribution). A distribution of the 2009 RMD or a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the participant, the joint lives (or joint life expectancy) of the participant and the participant's designated beneficiary, or for a period of at least 10 years, will be treated as an Eligible Rollover Distribution. However, if all or any portion of a distribution during 2009 is treated as an Eligible Rollover Distribution but would not be so treated if the Required Minimum Distribution requirements under this Section 8 had applied during 2009, such distribution shall not be treated as an Eligible Rollover Distribution for purposes of Code §§ 401(a)(31), 402(f) or 3405(c). (See Notice 2009- 82 for transitional rules that apply for purposes of applying the rollover rules to the distribution of 2009 RMDs.).

- (d) **Treatment of Trust Beneficiaries As Designated Beneficiaries.** If a trust is properly named as a Beneficiary under the Plan, the beneficiaries of the trust will be treated as the Designated Beneficiaries of the Participant solely for purposes of determining the distribution period under this Section 8 with respect to the trust's interests in the Participant's vested Account Balance. The beneficiaries of a trust will be treated as Designated Beneficiaries for this purpose only if, during any period during which required minimum distributions are being determined by treating the beneficiaries of the trust as Designated Beneficiaries, the following requirements are met:

- (1) the trust is a valid trust under state law, or would be but for the fact there is no corpus;
- (2) the trust is irrevocable or will, by its terms, become irrevocable upon the death of the Participant;
- (3) the beneficiaries of the trust who are beneficiaries with respect to the trust's interests in the Participant's vested Account Balance are identifiable from the trust instrument; and
- (4) the Plan Administrator receives the documentation described in subsection (e)(1) below.

If the foregoing requirements are satisfied and the Plan Administrator receives such additional information as it may request, the Plan Administrator may treat such beneficiaries of the trust as Designated Beneficiaries.

(e) **Special Rules Applicable to Trust Beneficiaries.**

(1) **Information That Must Be Supplied to Plan Administrator.**

- i. **Required Minimum Distribution Before Death Where Spouse Is Sole Beneficiary.** If a Participant designates a trust as the beneficiary of his/her entire benefit and the Participant's Spouse is the sole beneficiary of the trust, the Participant must provide the information under (A) or (B) below to satisfy the information requirements under subsection 8.6(d)(4) above.
  - (A) The Participant must provide to the Plan Administrator a copy of the trust instrument and agree that if the trust instrument is amended at any time in the future, the Participant will, within a reasonable time, provide to the Plan Administrator a copy of each such amendment; or
  - (B) The Participant must:
    - (I) provide to the Plan Administrator a list of all of the beneficiaries of the trust (including contingent and remaindermen beneficiaries with a description of the conditions on their entitlement sufficient to establish that the Spouse is the sole beneficiary) for purposes of Code § 401(a)(9);
    - (II) certify that, to the best of the Participant's knowledge, the list under subsection (B)(I) above is correct and complete and that the requirements of subsection 8.6(d) above are satisfied;
    - (III) agree that, if the trust instrument is amended at any time in the future, the Participant will, within a reasonable time, provide to the Plan Administrator corrected certifications to the extent that the amendment changes any information previously certified; and
    - (IV) agree to provide a copy of the trust instrument to the Plan Administrator upon demand.

- ii. **Required Minimum Distribution After Death.** In order to satisfy the documentation requirement of subsection 8.6(d)(4) for required minimum distributions after the death of the Participant (or Spouse in a case to which U.S. Treas. Reg. § 1.401(a)(9)-3, Q&A-5 applies), the trustee of the trust must satisfy the requirements of subsection (A) or (B) by October 31 of the calendar year immediately following the calendar year in which the Participant died.

(A) The trustee of the trust must:

- (I) provide the Plan Administrator with a final list of all beneficiaries of the trust (including contingent and remaindermen beneficiaries with a description of the conditions on their entitlement) as of September 30 of the calendar year following the calendar year of the Participant's death;
- (II) certify that, to the best of the trustee's knowledge, the list in subsection (B)(I) is correct and complete and that the requirements of subsection 8.6(d) above are satisfied; and
- (III) agree to provide a copy of the trust instrument to the Plan Administrator upon demand.

(B) The trustee of the trust must provide the Plan Administrator with a copy of the actual trust document for the trust that is named as a beneficiary of the Participant under the Plan as of the Participant's date of death.

- (2) **Relief for Discrepancy.** If required minimum distributions are determined based on the information provided to the Plan Administrator in certifications or trust instruments described in subsection (1) above, the Plan will not fail to satisfy Code § 401(a)(9) merely because the actual terms of the trust instrument are inconsistent with the information in those certifications or trust instruments previously provided to the Plan Administrator, provided the Plan Administrator reasonably relied on the information provided and the required minimum distributions for calendar years after the calendar year in which the discrepancy is discovered are determined based on the actual terms of the trust instrument.

**8.7 Transitional Rule.** Notwithstanding the other requirements of this Section 8, distribution on behalf of any Employee may be made in accordance with all of the following requirements (regardless of when such distribution commences):

- (a) The distribution by the Plan is one that would not have disqualified the Plan under Code § 401(a)(9) as in effect prior to amendment by the Deficit Reduction Act of 1984.
- (b) The distribution is in accordance with a method of distribution designated by the Participant whose interest in the Plan is being distributed or, if the Participant is deceased, by a Beneficiary of such Participant.
- (c) Such designation was in writing, was signed by the Participant or the beneficiary, and was made

before January 1, 1984.

- (d) The Participant had accrued a benefit under the Plan as of December 31, 1983.
- (e) The method of distribution designated by the Participant or the beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and in the case of any distribution upon the Participant's death, the beneficiaries of the Participant listed in order of priority.

A distribution upon death will not be covered by this transitional rule unless the information in the designation contains the required information described above with respect to the distributions to be made upon the death of the Participant.

For any distribution which commences before January 1, 1984, but continues after December 31, 1983, the Participant, or the Beneficiary, to whom such distribution is being made, will be presumed to have designated the method of distribution under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirements in subsections (a) - (e) above.

If a designation is revoked any subsequent distribution must satisfy the requirements of Code § 401(a)(9) and the proposed regulations thereunder. If a designation is revoked subsequent to the date distributions are required to begin, the Plan must distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed which would have been required to have been distributed to satisfy Code § 401(a)(9) and the proposed regulations thereunder, but for the TEFRA § 242(b)(2) election. For calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another Beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life). In the case in which an amount is transferred or rolled over from one plan to another plan, the rules in Treas. Reg. § 1.401(a)(9)-8, Q&A-14 and Q&A-15 shall apply.

## SECTION 9

### SPOUSAL CONSENT RULES

- 9.1 **Application of Joint and Survivor Annuity Rules.** As a governmental plan, the Qualified Joint and Survivor Annuity rules under Code §§ 401(a)(11) and 417 do not apply to the Plan. Notwithstanding the foregoing, the District requires spousal consent for certain designations of Plan benefits.
- 9.2 **Spousal Consent.** Spousal consent is only required with respect to the distribution of death benefits from the Plan if the Participant designates someone other than the Participant's Spouse as a Beneficiary of more than fifty percent (50%) of the Participant's Account Balance.

A Spousal consent to the Beneficiary designation of more than fifty percent (50%) of Participant's Account to a non-spouse beneficiary must be provided at the time and in the form and manner specified by the Plan Administrator.

Subsequent beneficiary designations submitted to the Plan Administrator in good order revoke all designations filed prior to that date by the same Participant.

Participant's marriage or remarriage revokes any prior Beneficiary designations made by the Participant and a new Beneficiary designation form that complies with the consent requirements of this Section 9.2 (Spousal Consent) must be submitted.

Further, when designating a trust or other entity as a Beneficiary, the time and form of distribution available to such Beneficiaries may be limited by the required minimum distribution rules of Code § 401(a)(9) and Section 8 (RMDs) of the Plan.

## SECTION 10

### PLAN ACCOUNTING AND INVESTMENTS

**10.1 Participant Accounts.** The Plan Administrator will establish and maintain a separate Account for each Participant to reflect the Participant's entire interest under the Plan. Each Participant Account established by the Plan Administrator may include one or more of the following separate sub-Accounts:

- Pre-Tax Salary Deferral Account
- Matching Contribution Account
- Rollover Contribution Account
- Transfer Account

The Plan Administrator may establish other Accounts, as it deems necessary, for the proper administration of the Plan.

**10.2 Valuation of Accounts.** A Participant's portion of the Trust assets is determined as of each Valuation Date under the Plan. The value of a Participant's Account consists of the fair market value of the Participant's share of the Trust assets. The Trustee must value Plan assets at least annually. The Trustee's determination of the value of Trust assets shall be final and conclusive.

- (a) **Periodic Valuation.** The Plan may elect to value assets on a periodic basis more frequent than annually including daily valuation. The Trustee and the Plan Administrator may adopt reasonable procedures for performing such valuations.
- (b) **Daily Valuation.** For any period in which the Plan Administrator uses daily valuation, the Plan Administrator may adopt reasonable procedures for performing such valuations. Unless otherwise set forth in the written procedures, a daily valued Plan will have its assets valued at the end of each business day during which the New York Stock Exchange is open. The Plan Administrator has authority to interpret the provisions of this Plan in the context of a daily valuation procedure. This includes, but is not limited to, the determination of the value of the Participant's Account for

purposes of Participant loans, distribution and consent rights, and corrective distributions.

- (c) **Interim Valuations.** The Plan Administrator may request the Trustee to perform interim valuations.

**10.3 Adjustments to Participant Accounts.** Unless the Plan Administrator adopts other reasonable administrative procedures, as of each Valuation Date under the Plan, each Participant's Account is adjusted in the following manner:

- (a) **Net Income or Loss.** A Participant's Account will be adjusted accordingly for any net income or loss from Participant's selected investment vehicles.
- (b) **Distributions and Forfeitures from A Participant's Account.** A Participant's Account will be reduced by any distributions, forfeitures and other reductions from the Account since the previous Valuation Date.
- (c) **Dividends.** The Account will be credited with any interest, dividends, distributions received, or credits paid by the Trust for the benefit of the Participant.
- (d) **Contributions and Forfeitures Allocated to A Participant's Account.** A Participant's Account will be credited with any contribution, forfeiture or other additions allocated to the Participant since the previous Valuation Date.
- (e) **Directed Accounts.**
- (1) Net income or loss attributable to the investments made by a Directed Account is allocated to such account in a manner that reasonably reflects the investment experience of such Directed Account.
- (2) Assets held in a Directed Account may be segregated from other investments held in Trust, and when this occurs, allocation of net income or loss shall not result in a Participant being entitled to distribution from the Account that exceeds the value of the Account as of the date of distribution.
- (f) **Plan Related Fees and Expenses.** A Participant's Account will be reduced by any and all reasonable expenses and fees related to plan administration and investment charges allocable to his or her Account.

- 10.4 Share or Unit Accounting.** The Plan's investment procedures may provide for share or unit accounting to reflect the value of Accounts, if such method is appropriate for the investments allocable to such Accounts.
- 10.5 Suspense Accounts.** The Plan's investment procedures also may provide for special valuation procedures for suspense accounts that are properly established under the Plan.
- 10.6 Deferred Compensation Investment Committee.** The DCIC has the full power and authority to invest, manage, and control Plan assets. The DCIC's membership, governance, and powers and duties are set forth in the Bylaws of the Deferred Compensation Investment Committee, as approved by the Board.
- 10.7 Investment Policy Statement.** The DCIC will establish and maintain an Investment Policy Statement (IPS) for the Plan, and will periodically review the policy, as needed. In establishing and maintaining the Plan's IPS, the DCIC will review all pertinent Plan and Participant information and data and may consult with any professional advisors as it deems necessary or appropriate, and will consider matters such as the following:
- (a) the Plan's objectives and the best method to accomplish those objectives, including the range of investment alternatives that should be available to Participants and their Beneficiaries in order to accomplish those objectives;
  - (b) the policies or procedures to be followed by the DCIC in the selection and monitoring of investment alternatives, including the benchmarks and other performance criteria, as well as investment fees and expenses; and
  - (c) the liquidity of Plan assets.
- 10.8 Investment Manager.** The Board of Directors may appoint one or more investment managers to manage (including the power to acquire and dispose of) any assets of the Plan. Only a person who is a registered investment advisor under the Investment Advisors Act of 1940, a bank or an insurance company qualified to do business in the State of California may be an investment manager under the Plan. The Trustee may be an investment manager.
- 10.9 Investment Funds.** The Trustee will establish and maintain investment funds designated by the DCIC or an investment manager designated by the Board of Directors. The assets of each investment fund will be managed by the Trustee or by one or more investment managers, as designated, except for participant-directed investments that permit Participants to direct the investment of some or all of the assets in their Account in specific investments.
- 10.10 Participant-Directed Investments.** The Plan permits Participant direction of investments. Each Participant shall have the exclusive right, in accordance with the provisions of the Plan, to direct the investment of all or a portion of the amounts allocated to the separate sub-Accounts of the Participant under the Plan. This Section 10.10 also applies to any Beneficiary or Alternate Payee eligible to direct investments under the Plan.
- (a) **Limits on Participant Investment Direction.** The Plan's separate investment procedures may limit Participant direction of investment to specific types of contributions or with respect to specific investment options. If Participant investment direction is limited to specific investment options, it shall be the responsibility of the DCIC to select the investment options available under the Plan for

Participant investment. In no case may Participants direct that investments be made in collectibles, including but not limited to U.S. Government or State-issued gold and silver coins. In addition, investment directions that result in the following will not be followed:

- (1) result in a prohibited transaction;
  - (2) cause the assets of the Plan to be maintained outside the jurisdiction of the U.S. courts;
  - (3) jeopardize the Plan's tax qualification;
  - (4) be contrary to the Plan's governing documents;
  - (5) cause the assets to be invested in collectibles within the meaning of Code § 408(m);
  - (6) generate unrelated business taxable income; or
  - (7) result (or could result) in a loss exceeding the value of the Participant's Account.
- (b) **Failure to Direct Investment.** The DCIC will designate how a Participant Account shall be invested in the absence of proper affirmative direction from the Participant. The DCIC may designate a default fund under the Plan to deposit contributions to the Trust on behalf of a Participant who has not specified an investment choice under the Plan.

## SECTION 11

### PLAN ADMINISTRATION AND OPERATION

- 11.1 Plan Administrator.** The District is the Plan Administrator and has delegated to the General Manager the powers, duties, and responsibilities of the Plan Administrator. The General Manager may delegate, in writing, some or all of the powers, duties and responsibilities of the Plan Administrator position as necessary to adequately operate and maintain the Plan.
- 11.2 Role of Plan Administrator.** Any Plan Administrator designated by the District must accept the Plan Administrator role and responsibilities in writing and will serve until his or her successor is appointed. In case of a vacancy in the position of the Plan Administrator, the District will exercise any and all of the powers, authority, duties and discretion as the Plan Administrator pending the filling of the vacancy.
- (a) **Resignation or Removal of Plan Administrator.** A Plan Administrator may resign by delivering notice of resignation to the Employer. The Employer may remove a Plan Administrator by delivering notice of removal. If a Plan Administrator resigns or is removed and no new Plan Administrator is designated, the District becomes the Plan Administrator.
- 11.3 Duties, Powers and Responsibilities of the Plan Administrator.**
- (a) **General Duties, Powers and Responsibilities.** The Plan Administrator shall have the responsibility and authority to administer the Plan and shall do so for the exclusive benefit of the Plan Participants and Beneficiaries, and in accordance with the terms of the Plan. The Plan Administrator shall have the authority to appoint or remove any Employee who has administrative

responsibilities under the Plan.

- (b) **Delegation of Duties, Powers and Responsibilities.** The Plan Administrator may delegate its duties, powers or responsibilities to one or more persons. Such delegation must be in writing and accepted by the person or persons receiving the delegation. However, the Employer must agree to any such delegation in writing when made by a delegate of the Plan Administrator. The Plan Administrator has designated the Human Resources Group Manager to carry out the powers, duties and responsibilities of the Plan Administrator.
- (c) **Specific Plan Administrator Responsibilities.** The Plan Administrator has the general responsibility to control and manage the operation of the Plan. More specifically, this responsibility includes, but is not limited to, the following:
- (1) To communicate with the Trustee and other responsible persons with respect to the crediting of Plan contributions, the disbursement of Plan distributions and other relevant matters;
  - (2) To develop separate procedures, if necessary, consistent with the terms of the Plan to assist in the administration of the Plan, including the adoption of a separate or modified loan policy, procedures for direction of investment by Participants, procedures for determining whether domestic relations orders are QDROs, and procedures for the determination of investment earnings to be allocated to Participants' Accounts;
  - (3) To maintain all records necessary for tax and other administration purposes;
  - (4) To furnish and to file all appropriate notices, reports and other information to Participants, Beneficiaries, the Employer, the Trustee and government agencies (as necessary);
  - (5) To provide information relating to Plan Participants and Beneficiaries;
  - (6) To retain the services of other persons, including , consultants, advisers and others, to assist in the administration of the Plan;
  - (7) To review and decide on administrative claims for benefits under the Plan;
  - (8) To correct any defect or error in the operation of the Plan; and
  - (9) To interpret and enforce the provisions of the Plan, including those related to Plan eligibility, vesting and benefits; to interpret and apply provisions of the Plan in a uniform, nondiscriminatory manner;
  - (10) To act upon instructions from the DCIC to direct the Trustee regarding changes to the Plan's investment options and to execute proxy votes cast by the DCIC;
  - (11) To request and receive input from the DCIC, when reasonable and appropriate, regarding non-investment related Plan features; selection, performance, and retention of the record keeper, investment advisors, service providers, advisors, consultants, and auditor; and Plan amendments; and

- (12) To serve as the secretary for the DCIC which includes the following duties: keep and maintain the DCIC meeting minutes, execute documents on behalf of the DCIC, issue formal written correspondence of the DCIC; and provide other administrative support as the DCIC may reasonably delegate to the Plan Administrator.

The Plan Administrator shall coordinate with General Counsel concerning any litigation, compromise, or settlement of claims against the Plans in accordance with MWD Code Section 6433

- (d) **Interpretation of Plan.** The Employer shall have the responsibility and authority, as an express grant of discretionary authority, where necessary, to interpret and resolve ambiguities in this Plan document, provided such interpretation is consistent with the rules of Code § 401(a), and to make discretionary decisions regarding the interpretation of the Plan's terms, and Participant's rights and status under the Plan including, but not limited to, who is eligible to participate under the Plan, and the benefit rights of a Participant or Beneficiary.
- (e) **Notices and Filings.** The Plan Administrator may modify any notice period required by the Plan or designate any office to serve as the recipient of any form or notice that has to be filed under the Plan.
- (f) **Appropriate Adjustments.** Any action taken by the Plan Administrator with respect to 1) the rights or benefits under the Plan or 2) any Participant or Beneficiary shall be revocable by the Plan Administrator as to payments, distributions or deliveries not theretofore made hereunder pursuant to such action. Appropriate adjustments may be made in future payments or distributions to a Participant or Beneficiary.

**11.4 Immunities.** The provisions of this Section 11.4 shall not be construed to in any way restrict the privileges and immunities that the Employer and its Employees are otherwise entitled to under Government Code Sections 818.8 and 820.2. Furthermore,

- (a) Neither the District, its Board of Directors, nor its Employees shall be liable: 1) for any action taken or not taken with respect to the Plan including, but not limited to, any action allocated by the foregoing to another person or entity, except for its or their own gross negligence or willful misconduct; or 2) upon any contract, agreement or other instrument made or executed for administration of the Plan. With regards to the District's responsibility and authority to interpret the Plan, unless an interpretation or decision is determined to be arbitrary and capricious, the Plan Administrator will not be held liable for any interpretation of the Plan terms or decision regarding the application of a Plan provision.
- (b) The District, its Board of Directors, each Employee thereof, specifically including the General Manager, and any other persons to whom the General Manager delegates or assigns any duty with respect to the Plan, may rely and shall be fully protected in acting in good faith upon: 1) the advice of counsel, who may be counsel for the District; 2) the records of the District; 3) the opinion, certificate, valuation, report, recommendation, or determination of an investment advisor, the DCIC or any member thereof, or the District's General Auditor; or, 4) any certificate, statement or other representation made by or any information furnished by a Participant, Beneficiary, Alternate Payee,

DCIC or any member thereof, or investment advisor, concerning any fact required to be determined under any of the provisions of the Plan.

#### **11.5 Plan Administration Expenses.**

- (a) **Reasonable Plan Administration Expenses.** All reasonable expenses related to plan administration will be paid from Plan assets, except to the extent the expenses are paid (or reimbursed) by the Employer. For this purpose, Plan expenses include, but are not limited to, all reasonable costs, charges and expenses incurred by the Trustee, DCIC, Plan Sponsor or Plan Administrator in connection with the administration of the Plan and Trust. If liquid assets of the Trust are insufficient to cover the fees of the Trustee or the Plan Administrator, then Trust assets shall be liquidated to the extent necessary for such fees. In the event any part of the Trust becomes subject to tax, all taxes incurred will be paid from the Trust.
- (b) **Plan Expense Allocation.** The Plan Administrator will allocate plan expenses among the accounts of Plan Participants. The Plan Administrator has authority to allocate these expenses either proportionally based on the value of the Account Balances or pro rata based on the number of Participants in the Plan. The Plan Administrator will determine the proper method for allocating expenses in accordance with such reasonable nondiscriminatory rules as the Plan Administrator deems appropriate under the circumstances. Unless the Plan Administrator decides otherwise, the following expenses will be allocated to the Participant's Account relative to which the expense is incurred: distribution expenses, including those relating to lump sums, installments, QDROs, hardship, in-service and required minimum distributions; loan expenses; participant direction expenses, including brokerage fees; and benefit calculations.
- (c) **Expenses Related to Administration of Former Employee or Surviving Spouse.** If the Plan is making distributions to a former Employee or surviving Spouse, the Plan may charge reasonable Plan administrative expenses to the Account of that former Employee or surviving Spouse, but only if the administrative expenses are on a pro rata basis. Under the pro rata basis, the expenses are based on the amount in each account of a former Employee or surviving Spouse receiving benefits from the Plan. The Plan Administrator may use another reasonable basis for charging the expenses.

#### **11.6 Claims Procedure and Determinations.**

- (a) **Benefit Claims Procedures.** The Plan Administrator is authorized to conduct an examination of the relevant facts to determine the merits of a Participant's or Beneficiary's claim for Plan benefits. The Plan Administrator may establish procedures for administering benefit claims. Such benefit claims procedures should provide claimants with a reasonable opportunity to have a full and fair review of a denied claim. Any claims procedure will incorporate the guidelines under this Section 11.6. To the extent any of the time periods specified in this Section 11.6 are amended by law, the time frames specified herein shall automatically be changed in accordance with such law or regulation.
- (b) **Benefit Claims Determinations.** The Plan Administrator, in case of disputes, may make findings of fact and determinations with respect to any benefit claims made under the Plan. Subject to the

provisions of this Section 11.6, such determinations and findings shall be final and conclusive, to the extent permitted by law, as to all interested persons for all purposes of the Plan.

**11.7 Qualified Domestic Relations Orders (QDROs).**

- (a) **In General.** Upon receipt of an order which appears to be a QDRO, the Plan Administrator will notify the Participant involved and each Alternate Payee under the order. The Plan Administrator will determine whether the order is a QDRO and will notify each affected individual of such determination. The Plan Administrator may use the default QDRO procedures set forth in subsection 11.7(h) below or may develop separate QDRO procedures for administering any QDROs submitted under the Plan.
- (b) **Definitions Related to QDROs.**
- (1) **QDRO.** A QDRO is a domestic relations order that creates or recognizes the existence of an Alternate Payee's right to receive, or assigns to an Alternate Payee the right to receive, all or a portion of the benefits payable with respect to a Participant under the Plan. (See Code § 414(p).) The QDRO must contain certain information and meet other requirements described in this Section 11.7.
- (2) **Domestic Relations Order.** A domestic relations order is a judgment, decree, or order (including the approval of a property settlement) that is made pursuant to state domestic relations law (including community property law).
- (3) **Alternate Payee.** An Alternate Payee must be a Spouse, former Spouse, child, or other dependent of a Participant.
- (c) **Recognition as a QDRO.** To be a QDRO, an order must be a domestic relations order that relates to the provision of child support, alimony payments, or marital property rights for the benefit of an Alternate Payee. The Plan Administrator is not required to determine whether the court or agency issuing the domestic relations order had jurisdiction to issue an order, whether state law is correctly applied in the order, whether service was properly made on the parties, or whether an individual identified in an order as an Alternate Payee is a proper Alternate Payee under state law.

Effective April 6, 2007, a domestic relations order otherwise meeting the requirements to be a QDRO shall not fail to be treated as a QDRO solely because:

- (1) the order is issued after, or revises, another domestic relations order or QDRO; or
- (2) of the time at which the order is issued, including orders issued after the death of the Participant.

Any QDRO described in this Section 11.7 shall be subject to the same requirements and protections which apply to QDROs under Code § 414(p)(7).

- (d) **Contents of QDRO.** A QDRO must contain the following information:

- (1) the name and last known mailing address of the Participant and each Alternate Payee;

- (2) the name of each plan to which the order applies;
  - (3) the dollar amount or percentage (or the method of determining the amount or percentage) of the benefit to be paid to the Alternate Payee; and
  - (4) the number of payments or time period to which the order applies.
- (e) **Impermissible QDRO Provisions.**
- (1) The order must not require the Plan to provide an Alternate Payee or Participant with any type or form of benefit, or any option, not otherwise provided under the Plan;
  - (2) The order must not require the Plan to provide for increased benefits (determined on the basis of actuarial value);
  - (3) The order must not require the Plan to pay benefits to an Alternate Payee that are required to be paid to another Alternate Payee under another order previously determined to be a QDRO; and
  - (4) The order must not require the Plan to pay benefits to an Alternate Payee in the form of a Qualified Joint and Survivor Annuity for the lives of the Alternate Payee and his or her subsequent Spouse.
- (f) **Immediate Distribution to Alternate Payee.** Even if a Participant is not eligible to receive an immediate distribution from the Plan, an Alternate Payee may receive a QDRO benefit immediately in a lump sum, provided such distribution is consistent with the QDRO provisions.
- (g) **Fee for QDRO Determination.** The Plan Administrator shall condition the making of a QDRO determination on the payment of a fee by the Participant or an Alternate Payee either directly or as a charge against the Participant's Account.
- (h) **Default QDRO Procedure.** If the Plan Administrator chooses this default QDRO procedure or if the Plan Administrator does not establish a separate QDRO procedure, this subsection 11.7(h) will apply as the procedure the Plan Administrator will use to determine whether a domestic relations order is a QDRO. This default QDRO procedure incorporates the requirements set forth below.
- (i) **Access to Information.** The Plan Administrator will provide access to Plan and Participant benefit information sufficient for a prospective Alternate Payee to prepare a QDRO. Such information might include the summary plan description, other relevant plan documents, and a statement of the Participant's benefit entitlements. The disclosure of this information is conditioned on the prospective Alternate Payee providing to the Plan Administrator information sufficient to reasonably establish that the disclosure request is being made in connection with a domestic relations order.
- (1) **Notifications to Participant and Alternate Payee.** The Plan Administrator will promptly notify the affected Participant and each Alternate Payee named in the domestic relations order of the receipt of the order. The Plan Administrator will send the notification to the address included in the domestic relations order. Along with the notification, the Plan

Administrator will provide a copy of the Plan's procedures for determining whether a domestic relations order is a QDRO.

- (2) **Alternate Payee Representative.** The prospective Alternate Payee may designate a representative to receive copies of notices and Plan information that are sent to the Alternate Payee with respect to the domestic relations order.
- (3) **Evaluation of Domestic Relations Order.** Within a reasonable period of time, the Plan Administrator will evaluate the domestic relations order to determine whether it is a QDRO. A reasonable period will depend on the specific circumstances. The domestic relations order must contain the information described in subsection 11.7(d). If the order is only deficient in a minor respect, the Plan Administrator may supplement information in the order from information within the Plan Administrator's control or through communication with the prospective Alternate Payee.
- i **Separate Accounting.** Upon receipt of a domestic relations order, the Plan Administrator will separately account for and preserve the amounts that would be payable to an Alternate Payee until a determination is made with respect to the status of the order. During the period in which the status of the order is being determined, the Plan Administrator will take whatever steps are necessary to ensure that amounts that would be payable to the Alternate Payee, if the order were a QDRO, are not distributed to the Participant or any other person. The separate accounting requirement may be satisfied, at the Plan Administrator's discretion, by a segregation of the assets that are subject to separate accounting.
- ii **Separate Accounting Until the End of 18-Month Period.** The Plan Administrator will continue to separately account for amounts that are payable under the QDRO until the end of an 18-month period. The 18-month period will begin on the first date following the Plan's receipt of the order upon which a payment would be required to be made to an Alternate Payee under the order. If, within the 18-month period, the Plan Administrator determines that the order is a QDRO, the Plan Administrator must pay the Alternate Payee in accordance with the terms of the QDRO. If, however, the Plan Administrator determines within the 18-month period that the order is not a QDRO, or, if the status of the order is not resolved by the end of the 18-month period, the Plan Administrator may pay out the amounts otherwise payable under the order to the person or persons who would have been entitled to such amounts if there had been no order. If the order is later determined to be a QDRO, the order will apply only prospectively; that is, the Alternate Payee will be entitled only to amounts payable under the order after the subsequent determination.
- iii **Preliminary Review.** The Plan Administrator will perform a preliminary review of the domestic relations order to determine if it is a QDRO. If this preliminary review indicates the order is deficient in some manner, the Plan Administrator will allow

the parties to attempt to correct any deficiency before issuing a final decision on the domestic relations order. The ability to correct is limited to a reasonable period of time.

- iv **Notification of Determination.** The Plan Administrator will notify in writing the Participant and each Alternate Payee of the Plan Administrator's decision as to whether a domestic relations order is a QDRO. In the case of a determination that an order is not a QDRO, the written notice will contain the following information:
- (A) references to the Plan provisions on which the Plan Administrator based its decision;
  - (B) an explanation of any time limits that apply to rights available to the parties under the Plan (such as the duration of any protective actions the Plan Administrator will take); and
  - (C) a description of any additional material, information, or modifications necessary for the order to be a QDRO and an explanation of why such material, information, or modifications are necessary.
  - (D) **Treatment of Alternate Payee.** If an order is accepted as a QDRO, the Plan Administrator will act in accordance with the terms of the QDRO as if it were a part of the Plan. Except as designated otherwise under this subsection 11.7(h)(4)(v), an Alternate Payee will be considered a Beneficiary under the Plan and be afforded the same rights as a Beneficiary. The Plan Administrator will provide any appropriate disclosure information relating to the Plan to the Alternate Payee. In determining the rights of an Alternate Payee, the following rules apply.
  - (E) **Loans.** An Alternate Payee is not permitted to take a loan from the Plan.
  - (F) **Death Benefits.** If an Alternate Payee dies prior to receiving the entire amount designated under the QDRO, such benefits will be paid in accordance with Section 7.7, treating the Alternate Payee as the Beneficiary. If the Alternate Payee dies without a designated Beneficiary, the benefits will be paid to the Alternate Payee's estate. Any death benefit will be paid in a single sum as soon as administratively feasible after the Alternate Payee's death.
  - (G) **Direction of Investments.** An Alternate Payee has the right to direct the investment of the portion of the Participant's benefit that is segregated for the Alternate Payee's benefit pursuant to a QDRO in the same manner as the Participant.

**11.8 Military Service.** To the extent required under Code § 414(u), an Employee who returns to employment with the Employer following a period of qualified military service will receive any contributions, benefits

and service credit required under Code § 414(u), provided the Employee satisfies all applicable requirements under the Code and regulations. In determining the amount of contributions under Code § 414(u), Plan Compensation will be deemed to be the compensation the Employee would have received during the period while in military service based on the rate of pay the Employee would have received from the Employer but for the absence due to military leave. If the compensation the Employee would have received during the leave is not reasonably certain, Plan Compensation will be equal to the Employee's average compensation from the Employer during the twelve (12) month period immediately preceding the military leave or, if shorter, the Employee's actual period of employment with the Employer.

- (a) **Death Benefits Under Qualified Military Service.** In the case of a Participant who dies while performing qualified military service (as defined in Code § 414(u)), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as though the Participant resumed and then terminated employment on account of death. This provision is effective with respect to deaths occurring on or after January 1, 2007.
- (b) **Plan Distributions.** Notwithstanding the provisions of Section 1.54(c) regarding the treatment of Differential Pay, an individual shall be treated as having been severed from employment during any period the individual is performing service in the Uniformed Services for purposes of receiving a Plan distribution under Code § 401(k)(2)(B)(i)(I). If an individual elects to receive a distribution while on military leave, the individual may not make Salary Deferrals under the Plan during the 6-month period beginning on the date of the distribution.
- (c) **Make-Up Contributions.** A Participant who is reemployed following a qualified military leave shall have the right to make up any Salary Deferrals to which he/she would have been entitled but for the fact the Participant was on qualified military leave. The Employer will also make any Matching Contributions the Participant would have earned during the period of qualified military leave had the Participant remained employed during such period. The Employer will only be required to make Matching Contributions if the reemployed Participant makes up the underlying contributions that were eligible for the Matching Contributions.

In determining the amount of Make-Up Contributions a Participant may make under this subsection (d), a Participant will be treated as earning Plan Compensation during the period the Participant was on qualified military leave equal to:

- (1) the rate of pay the Participant would have received from the Employer during such period had the Participant not been on qualified military leave, or
- (2) if the Plan Compensation the Participant would have received during such period was not reasonably certain, the Participant's average Plan Compensation during the 12-month period immediately preceding the qualified military leave (or the entire period of employment, if shorter).

If the Employer is required under this subsection (d) to make Employer Contributions for a reemployed Participant, the Employer must make such Employer Contributions not later than

90 days after the date of reemployment or the date the Employer Contributions are otherwise due for the year in which the military service was performed. For Salary Deferrals and After-Tax Employee Contributions, a Participant who is reemployed following a qualified military leave may make up such contributions during the period beginning on the date of reemployment and ending on the earlier of the date that is three times the length of the military service period or 5 years from the date of reemployment. Any required Matching Contributions must be made in the same manner as other Matching Contribution under the Plan following the Participant's contribution of the amounts eligible for the Matching Contributions.

Any make up contributions under this subsection 11.8(c) are subject to Code § 415 Limitation under Section 5.2 (Elective Deferral Dollar Limit) for the year for which the make-up contribution would have been made had the Participant not been on qualified military leave.

## SECTION 12

### TRUST FUNDS

**12.1 Establishment of Trust.** In conjunction with the establishment of this Plan, a domestic Trust consisting of such sums as shall from time to time be paid to the Trust under the Plan and such earnings, income and appreciation as may accrue thereon will be established pursuant to a written Trust Agreement.

The District may enter into a Trust Agreement with the Trustee providing for the investment of the Trust and prescribing the powers, duties, obligations, and functions of the Trustee with respect to the Plan. The Trust Agreement will form a part of this Plan, and any rights and benefits of any Participant or Beneficiary under the Plan whose Accounts are invested in the Trust will be subject to the terms of the Trust Agreement. However, in the case of any conflict between the Plan and the Trust Agreement, the Plan will govern. The Trustee must be one or more banks or other fiduciaries appointed by the District to hold and administer assets of the Plan.

The Trustee must hold the Plan assets received by it in Trust pursuant to the terms of the Trust Agreement for the exclusive benefit of Participants and their Beneficiaries and defraying the reasonable expenses of administering the Plan. Except as provided in Section 15.2, no assets of the Plan shall inure to the benefit of the Employer prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries.

The Trustee must hold, manage, administer, value, invest, reinvest and account for the Trust assets in accordance with the terms of the Plan and the Trust Agreement.

In its discretion, the Plan Administrator may recommend that the District terminate the Trustee, appoint new Trustees, and authorize the Plan Administrator to instruct the Trustee transfer assets to a successor Trustee or Trustees.

**12.2 Common/Collective Trusts.** Subject to Plan Administrator's direction, the Trustee may commingle, for investment or administration purposes the assets (or portion of the assets) of the Trust in any common trust fund, collective investment fund, master trust or group trust, but only if the commingled trust satisfies the requirements under IRS Revenue Ruling 81-100 (as modified by Rev. Rul. 2004-67 and Rev. Rul. 2011-1) to be tax exempt.

## SECTION 13

### PARTICIPANT LOANS

- 13.1 Availability of Participant Loans.** In accordance with Code § 72(p), the District may permit Participants to take loans from their vested Account Balance under the Plan.

To receive a Participant loan, a Participant must sign a promissory note along with a pledge or assignment of the portion of the Account Balance used for security on the loan. The loan will be evidenced by a legally enforceable agreement which specifies the amount and term of the loan, and the repayment schedule.

A loan policy shall be established to determine the terms, conditions and restrictions applicable to such loans as well as the time and manner in which loans may be made available. The loan policy will ensure that all loans made under this Plan meet the requirements of Code § 72(p) and its underlying regulations.

- 13.2 Must be Available in Reasonably Equivalent Manner.** Participant loans must be made available to Participants in a reasonably equivalent manner. The loan policy may limit the availability of Participant loans to specified events.

- 13.3 Loan Limitations.** A Participant loan may not be made to the extent such loan (when added to the outstanding balance of all other loans made to the Participant) exceeds the lesser of:

- (a) Fifty-thousand dollars (\$50,000) (reduced by the excess, if any, of the Participant's highest outstanding balance of loans from the Plan during the one-year period ending on the day before the date on which such loan is made, over the Participant's outstanding balance of loans from the Plan as of the date such loan is made) or
- (b) One-half ( $\frac{1}{2}$ ) of the Participant's vested Account Balance, determined as of the Valuation Date coinciding with or immediately preceding such loan, adjusted for any contributions or distributions made since such Valuation Date.

Notwithstanding the above described loan limitation, a Participant may take a loan equal to the greater of \$10,000 or fifty percent (50%) of the Participant's vested Account Balance. However, if a Participant takes a loan in excess of (50%) of the Participant's vested Account Balance, such loan is still subject to the adequate security requirements under Section 13.7 (Adequate Security).

In applying the limitations under this Section 13.3 (Loan Limitations), all plans maintained by the District, including an eligible governmental 457(b) plan, are aggregated and treated as a single plan. In addition, any assignment or pledge of any portion of the Participant's interest in the Plan and any loan, pledge, or assignment with respect to any insurance contract purchased under the Plan will be treated as loan under this Section.

In applying the Loan Limitations described in this Section 13.3, the Participant's Roth Deferral Account and In-Plan Roth Rollover Account will be aggregated with all of the Participant's other Accounts from which loans are permissible.

- 13.4 Limit on Amount and Number of Loans.** A Participant may not receive a Participant loan of less than \$1,000. Participant may not have more than two Participant loans outstanding at any time.

Notwithstanding the foregoing sentences, the Plan Administrator may amend the minimum loan amount and maximum number of outstanding loans by amending the loan policy.

**13.5 Participant Must Be Creditworthy.** The Plan Administrator may refuse to make a loan to any Participant who is determined to not be creditworthy. For this purpose, a Participant is not creditworthy if, based on the facts and circumstances, it is reasonable to believe that the Participant will not repay the loan. A Participant who has defaulted on a previous loan from the Plan (or on a loan from another plan sponsored by the District) and has not repaid such loan (with accrued interest) will be treated as not creditworthy until such time as the Participant repays the defaulted loan (with accrued interest).

**13.6 Reasonable Rate of Interest.** All Participant loans will be charged a commercially reasonable rate of interest. The interest rate assumptions will be periodically reviewed to ensure the interest rate charged on Participant loans is reasonable.

If a Participant is in military service while he/she has an outstanding Participant loan, the applicable interest charged on such loan during the period while the Participant is in military service will not exceed six percent (6%) per year provided the Participant provides written notice and a copy of his/her call-up or extension orders to the Plan Administrator within 180 days following the Participant's termination or release from military service. For this purpose, military service is as defined in the Soldier's and Sailor's Civil Relief Act of 1940 as modified by the Service members Civil Relief Act of 2003. The Participant may voluntarily waive this six percent (6%) interest limitation and the Plan Administrator may petition the court to retain the original interest rate if the ability to repay is not affected by the Participant's activation to military duty.

**13.7 Adequate Security.** All Participant loans must be adequately secured. Generally, the Participant's vested Account Balance shall be used as security for a Participant loan provided the outstanding balance of all Participant loans made to such Participant does not exceed: 1) fifty percent (50%) of the Participant's vested Account Balance, or 2) the Participant's vested Account Balance, where the Participant seeks a loan equal to the greater of \$10,000 or fifty percent (50%) of the Participant's vested Account Balance, in either case, as determined immediately after the origination of each loan. The Plan's loan policy shall prescribe rules for defining and obtaining adequate security for loans under the Plan.

**13.8 Periodic Repayment.** A Participant loan must provide for level amortization with payments to be made not less frequently than quarterly. A Participant loan must be repaid in full within a period not exceeding five (5) years from the date the Participant receives the loan from the Plan, unless the loan is for the purchase of the Participant's principal residence, in which case the loan must be repaid within fifteen (15) years or such other period that is commensurate with the repayment period permitted by commercial lenders for similar loans, permissible by the Code § 72(p) and set out in the Plan's loan policy. To the extent a loan is made from a Participant's Roth Deferral Account, the loan repayment requirement must be satisfied separately with respect to that portion of the loan and the portion of the loan from the Participant's other Accounts. The Plan's loan policy shall establish the method loans shall be repaid. The loan policy shall address loan repayments during leave of absence periods in a manner that is consistent with the applicable tax rules.

**13.9 Procedures for Loan Default.** A Participant will be considered to be in default with respect to a loan if any scheduled repayment with respect to such loan is not made by the end of the calendar quarter following the calendar quarter in which the missed payment was due. Once a loan is in default, the total outstanding balance of the loan will be deemed distributed and reported on an IRS Form 1099-R for the calendar year in which the Participant defaulted on the loan. In accordance with the Code, the deemed distribution of a defaulted loan will not be designated as a qualified distribution from a Roth Deferral Account or In-Plan Roth Rollover Account.

If a Participant defaults on a Participant loan, the Plan may not offset the Participant's Account Balance until the Participant is otherwise entitled to an immediate distribution of the portion of the Account Balance which will be offset and such amount being offset is available as security on the loan, pursuant to Section 13.7 (Adequate Security). For this purpose, a loan default is treated as an immediate distribution event to the extent the law does not prohibit an actual distribution of the type of contributions which would be offset as a result of the loan default). The Participant may repay the outstanding balance of a defaulted loan (including accrued interest through the date of repayment) at any time.

Pending the offset of a Participant's Account Balance following a defaulted loan, the following rules apply to the amount in default.

- (a) Interest continues to accrue on the amount in default until the time of the loan offset or, if earlier, the date the loan repayments are made current or the amount is satisfied with other collateral.
- (b) A subsequent offset of the amount in default is not reported as a taxable distribution, except to the extent the taxable portion of the default amount was not previously reported by the Plan as a taxable distribution.
- (c) The post-default accrued interest included in the loan offset is not reported as a taxable distribution at the time of the offset.

**13.10 Termination of Employment.**

- (a) **Outstanding Loan.** The loan policy may provide Participant's with an opportunity to continue to repay the loan after termination of employment. The terms and conditions of repayment upon termination of employment shall be established by the Plan Administrator.
- (b) **Direct Rollover.** Upon termination of employment, a Participant may request a Direct Rollover of the loan note (provided the distribution is an Eligible Rollover Distribution as defined in Section 7.4) to another qualified plan which agrees to accept a Direct Rollover of the loan note. A Participant may not engage in a Direct Rollover of a loan to the extent the Participant has already received a deemed distribution with respect to such loan.

**13.11 Amendment of Plan to Eliminate Participant Loans.** The Plan may be amended at any time to eliminate Participant loans on a prospective basis. However, the elimination of a Participant loan feature may not result in the acceleration of payment of any existing Participant loans, unless the terms of the Participant loan permit such acceleration.

**SECTION 14****PLAN AMENDMENT, TERMINATION, MERGERS AND TRANSFERS****14.1 Plan Amendment.**

- (a) **Authority to Amend.** The Employer has the right, at any time and from time to time, to amend the Plan in whole or in part. Any amendment of the Plan by the Employer shall be expressed in an instrument executed by the Employer on the order of its Board of Directors and filed with the Trustee. Further, the Plan Administrator is also authorized, at any time and from time to time, to amend the Plan in whole or in part, to ensure compliance with applicable laws and regulations and further the administration of the Plan. The Plan Administrator may not amend the Plan to effectuate its termination.
- (1) **Amendment Purposes Limited.** No Plan amendment may authorize or permit any portion of the assets held under the Plan to be used for or diverted to a purpose other than the exclusive benefit of Participants or Beneficiaries, except to the extent such assets are used to pay taxes or administrative expenses of the Plan. An amendment also may not cause or permit any portion of the assets held under the Plan to revert to or become property of the District.
- (2) **Method of Amendment.** The Plan Administrator may amend the Plan in writing and without amendment of the MWD Code.
- (b) **Effective Date of Plan Amendments.** If the Plan is restated or amended, such restatement or amendment is generally effective as of the Effective Date of the restatement or amendment except where the context indicates a reference to an earlier Effective Date. The District may designate special effective dates for individual provisions under the Plan.
- (1) **Retroactive Effective Date.** If the Plan is amended retroactively (e.g., to add language required to comply with IRS guidance or law), the provisions of the Plan as amended generally override the provisions of any prior Plan. However, if the provisions of the Plan as amended are different from the provisions of the District's prior plan and, after the retroactive Effective Date of the Plan as amended, the District operates in compliance with the provisions of the prior plan, the provisions of such prior plan are incorporated into the Plan for purposes of determining whether the District operated the Plan in compliance with its terms, provided operation in compliance with the terms of the prior plan do not violate any qualification requirements under the Code, regulations, or other IRS guidance.
- (2) **Retroactive Effect of PPA, HEART and WRERA Provisions.** This Plan is designed to comply with the Code, regulations, and general guidance applicable to qualified retirement plans, including the provisions of the Pension Protection Act of 2006 (PPA), the Heroes Earnings Assistance And Relief Tax Act Of 2008 (HEART Act), and the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA). If this Plan is being restated or amended to comply with the provisions of PPA, HEART and/or WRERA, the Plan contains special effective dates that apply with respect to such provisions. If the Plan is being restated

within the remedial amendment period for retroactive compliance with the PPA, HEART and WRERA provisions, the special effective dates for such provisions (as described below) will apply, even if such special effective dates precede the Effective Date of this restatement. Thus, if the Plan is being restated or amended to comply with PPA, HEART and/or WRERA, and the Effective Date of this restatement or amendment is later than the special effective date applicable to any of the PPA, HEART or WRERA provisions described below, such special effective dates will apply and any prior plan being replaced by this Plan will be considered to have been timely amended for the PPA, HEART and WRERA provisions.

The following provisions contain special effective dates for purposes of complying with the requirements of PPA, HEART and WRERA:

- i. **Hardship Distributions.** Section 7.8(e) of this Plan allows Hardship distributions to be determined with respect to primary Beneficiaries.
- ii. **Direct Rollovers By Non-Spouse Beneficiaries.** The provisions allowing for direct rollovers by non-Spouse beneficiaries are effective for distributions made on or after January 1, 2007.
- iii. **Direct Rollover of Non-Taxable Amounts.** Effective for taxable years beginning on or after January 1, 2007, the definition of Eligible Rollover Distribution to include the portion of a distribution that is not includible in gross income.
- iv. **Rollovers to Roth IRA.** For distributions occurring on or after January 1, 2008, Participants or Beneficiaries are permitted to rollover a qualified Eligible Rollover Distribution to a Roth IRA.
- v. **Distribution Notice Periods.** Effective for Plan Years beginning on or after January 1, 2007, the period for providing the Code § 402(f) rollover notice and the period for providing the notice regarding the right to defer receipt of a distribution is increased to 180 days.
- vi. **Content of Notice of A Participant's Right to Defer Receipt of A Distribution.** Effective for Plan Years beginning on or after January 1, 2007, notice relating to a Participant's right to defer receipt of a distribution must include a description of the consequences of a Participant's decision not to defer the receipt of a distribution.
- vii. **Qualified Domestic Relations Orders.** The Plan expands the definition of a QDRO effective April 6, 2007 to include modified orders and orders issued after the Participant's death.
- viii. **Penalty-Free Withdrawals for Individuals Called to Active Duty.** Effective September 11, 2001, Qualified Reservist Distribution may be taken from elective deferrals.
- ix. **Benefit Accruals for Participants on Qualified Military Service.** The HEART Act provisions addressing Participants on qualified military leave are effective for Plan

Years beginning on or after January 1, 2007.

- x. **Differential Pay.** Effective for years beginning on or after January 1, 2009, Section 1.54(c) of this Plan permits the Employer to include Differential Pay as Total Compensation under the Plan.
- xi. **Waiver of Required Minimum Distributions.** Waiver of the Required Minimum Distribution rules for calendar year 2009 as prescribed under WRERA is available.
- xii. **Final Code § 415 Regulations.** Provisions required by the final Code § 415 regulations are effective for Limitation Years beginning on or after July 1, 2007.

(3) **Merged Plans.** Except for retroactive application of the provisions under this subsection 14.1(d), if one or more qualified retirement plans have been merged into this Plan, the provisions of the merging plan(s) will remain in full force and effect until the Effective Date of the Plan merger(s).

**14.2 Plan Termination.** The District may terminate (partial or full termination) this Plan at any time by Board resolution.

- (a) **Full and Immediate Vesting.** Upon a full or partial termination of the Plan all amounts credited to an affected Participant's Account become one-hundred percent (100%) vested. The Plan Administrator has discretion to determine whether a partial termination has occurred.
- (b) **Distribution Upon Plan Termination.** Upon the termination of the Plan, the Plan Administrator shall direct the distribution of Plan assets to Participants in accordance with the provisions under Section 7 (Plan Distribution). For purposes of applying the provisions of this subsection 14.2(b), distribution may be delayed until the District receives a favorable determination letter from the IRS, or an equivalent, as to the qualified status of the Plan upon termination, provided the determination letter request is made within a reasonable period following the termination of the Plan. Until all Plan assets have been distributed from the Plan, the District must amend the Plan in order to comply with current laws and regulations and may take any other actions necessary to retain the qualified status of the Plan.
- (c) **Missing Participants.** Upon termination of the Plan, if any Participant cannot be located after a reasonable diligent search as defined in Section 6 (Participant Vesting and Forfeitures), the Plan Administrator may make a direct rollover to an IRA selected by the Plan Administrator. For this purpose, the Plan Administrator will adopt procedures for making automatic rollovers. An Automatic Rollover under this subsection 14.2(c) may be made on behalf of any missing Participant, regardless of the value of his/her vested Account Balance under the Plan.
- (d) **Partial Termination.** In determining whether a Plan has experienced a partial termination as described under Code § 411(d)(3), the Plan Administrator will apply the principals set forth under IRS Revenue Ruling 2007-43.
- (e) **Employee Rights.** The exercise of such right by the District to terminate the 401(k) or 457(b) Plans does not preclude employees or their representatives from either consulting or meeting and

conferring with the Employee Relations Officer, as appropriate, about the practical consequences that the exercise of such power or authority may have on wages, hours, and other terms and conditions of employment subject to MWD Code Section 6102 (Employee Rights).

- 14.3 Plan Merger or Consolidation.** In the event the Plan is merged or consolidated with another plan, each Participant must be entitled to a benefit immediately after such merger or consolidation that is at least equal to the benefit the Participant was entitled to immediately before such merger or consolidation (had the Plan terminated). If the District amends the Plan from one type of Defined Contribution Plan (e.g., a Profit Sharing Plan) into another type of Defined Contribution Plan (e.g., a Money Purchase Plan) will not result in a partial termination or any other event that would require full vesting of some or all Plan Participants.
- 14.4 Transfer of Assets.** The Plan may accept a transfer of assets from another qualified retirement plan on behalf of any Employee, even if such Employee is not eligible to receive other contributions under the Plan. If a transfer of assets is made on behalf of an Employee prior to the Employee's becoming a Participant, the Employee shall be treated as a Participant for all purposes with respect to such transferred amount. Any assets transferred to this Plan from another plan must be accompanied by written instructions designating the name of each Employee for whose benefit such amounts are being transferred, the current value of such assets, and the sources from which such amounts are derived. The Plan Administrator will deposit any transferred assets in the appropriate Participant's Transfer Account. The Transfer Account will contain any sub-Accounts necessary to separately track the sources of the transferred assets. Each sub-Account will be treated in the same manner as the corresponding Plan Account.
- Any amounts transferred (and any gains attributable to such transferred amounts) continue to be subject to the distribution restrictions applicable to plan assets under the transferor plan. Such amounts may not be distributed for reasons other than death, disability, attainment of Normal Retirement Age, attainment of age 59½, or termination of employment, regardless of any distribution provisions under this Plan that would otherwise permit a distribution prior to such events.
- The Plan Administrator may refuse to accept a transfer of assets if the Plan Administrator reasonably believes the transfer: (1) is not being made from a proper qualified plan; (2) could jeopardize the tax-exempt status of the Plan; or (3) could create adverse tax consequences for the Plan or the District. Prior to accepting a transfer of assets, the Plan Administrator may require evidence documenting that the transfer of assets meets the requirements of this Section 14.
- (a) Trustee's Right to Refuse Transfer.** If the assets to be transferred to the Plan under this Section 14.4 are not susceptible to proper valuation and identification or are of such a nature that their valuation is incompatible with other Plan assets, the Trustee may refuse to accept the transfer of all or any specific asset, or may condition acceptance of the assets on the sale or disposition of any specific asset.
- (b) Transfer of Plan to Unrelated Employer.** The Employer may not transfer sponsorship of the Plan to an unrelated employer if the transfer is not in connection with a transfer of business assets or operations from the Employer to the unrelated employer.

**SECTION 15****MISCELLANEOUS**

- 15.1 Exclusive Benefit.** Plan assets will not be used for, or diverted to, a purpose other than the exclusive benefit of Participants or Beneficiaries.
- 15.2 Return of Employer Contributions.** Upon written request by the Employer, the Trustee must return any Employer Contributions provided that the circumstances and the time frames described below are satisfied. Any Employer Contributions made because of a mistake of fact must be returned to the Employer within one year of the contribution. The Trustee may request the Employer to provide additional information to ensure the amounts may be properly returned. Any amounts returned shall not include earnings, but must be reduced by any losses.
- 15.3 Participants' Rights Limited.** The adoption of this Plan by the District does not give any Participant, Beneficiary, or Employee a right to continued employment with the District and does not affect the District's right to discharge an Employee or Participant at any time. This Plan also does not create any legal or equitable rights in favor of any Participant, Beneficiary, or Employee against the District, Plan Administrator, DCIC, or Trustee. Unless the context indicates otherwise, any amendment to this Plan is not applicable to determine the benefits accrued, or the extent to which such benefits are vested, by a Participant or former Employee whose employment terminated before the effective date of such amendment, except where application of such amendment to the terminated Participant or former Employee is required by statute, regulation or other guidance of general applicability. Where the provisions of the Plan are ambiguous as to the application of an amendment to a terminated Participant or former Employee, the Plan Administrator has the authority to make a final determination on the proper interpretation of the Plan.
- 15.4 Alienation.**
- (a)** Except as otherwise provided in subsection (c), no benefit which shall be payable out of the Trust to any person (including a Participant or Beneficiary) shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge the same shall be void; and no such benefit shall in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any such person, nor shall it be subject to attachment or legal process for or against such person, and the same shall not be recognized by the Trustee, except to such extent as may be required by law.
  - (b)** In the event a Participant's benefits are garnished or attached by order of any court, the District may 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 said action, any benefits that become payable shall 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 said action. Any costs attributable to these actions may be charged to the Participant Account.

- (c) This Section shall not apply to the creation, assignment or recognition of a right to any benefit payable pursuant to a domestic relations order, unless such order is determined to be a QDRO by the Plan Administrator, as defined in Code § 414(p). The Trustee shall be entitled to make distributions to an alternate payee pursuant to a QDRO in accordance with such an Order, without regard to the age or employment status of the Participant.

- 15.5 Receipt and Release for Payments.** Any payment to any Participant, Participant's legal representative, Beneficiary, or to any guardian or committee appointed for such Participant or Beneficiary in accordance with the provisions of the Plan, shall, to the extent thereof, be in full satisfaction of all claims hereunder against the Trustee and the District, either of whom may require such Participant, legal representative, Beneficiary, guardian or committee, as a condition precedent to such payment, to execute a receipt and release thereof in such form as shall be determined by the Trustee or District.
- 15.6 Determination.** The District, in case of disputes, may make determinations and findings of fact with respect to any matter arising in connection with the administration of the Plan. Such determinations and findings shall be final and conclusive, to the extent permitted by the Plan and by law, as to all interested persons for all purposes of the Plan. The District shall instruct the Plan Administrator and Trustee as to any final determination made hereunder with information as reasonably required to administer the Plan in accordance with the final determination.
- 15.7 No Guarantee Against Loss.** The District does not guarantee the Participants' Accounts or investments or any part thereof against loss or depreciation. All persons having any interest in the Accounts or investments shall look solely to such sources for payment with respect to such interest. No action by the District shall be considered to be either an endorsement or guarantee of any investment option, nor shall it be considered to attest the financial soundness or the suitability of any investment for the purpose of meeting future obligations provided for in the Plan.
- 15.8 Gender and Number.** Wherever any words are used herein in the masculine, feminine or neuter gender, they shall be construed as though they were also used in another gender in all cases where they would so apply, and whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply.
- 15.9 Use of IRS Compliance Programs.** Nothing in this Plan document should be construed to limit the District's ability to correct any tax-qualification error using whatever corrective actions or principals permitted under the IRS's Employee Plans Compliance Resolution System.
- 15.10 Governing Law.** The provisions of this Plan shall be construed, administered, and enforced in accordance with the provisions of applicable Federal Law and, to the extent applicable, the laws of the state of California.
- 15.11 Waiver of Notice.** Any person entitled to a notice under the Plan may waive the right to receive such notice, to the extent such a waiver is not prohibited by law, regulation or other pronouncement.
- 15.12 Use of Electronic Media.** The District, Plan Administrator, Trustee and any other designated individual responsible for providing applicable notices or disclosures under the Plan, and any Participant or beneficiary making an election under the Plan may use telephonic or electronic media to satisfy any notice

requirements required by this Plan. Any use of electronic medium under the Plan must comply with the requirements outlined in Treas. Reg. § 1.401(a)-21 or other general guidance concerning the use of telephonic or electronic media. The Plan Administrator also may use telephonic or electronic media to conduct plan transactions such as enrolling participants, making (and changing) salary reduction elections, electing (and changing) investment allocations, applying for Plan loans, and other transactions, to the extent permissible under regulations (or other generally applicable guidance).

- 15.13 Severability of Provisions.** In the event that any provision of this Plan shall be held to be illegal, invalid or unenforceable for any reason, the remaining provisions under the Plan shall be construed as if the illegal, invalid or unenforceable provisions had never been included in the Plan.
- 15.14 Binding Effect.** The Plan, and all actions and decisions made thereunder, shall be binding upon all applicable parties, and their heirs, executors, administrators, successors and assigns.
- 15.15 Headings.** The headings and subheadings of this Plan have been inserted for convenience of reference and are to be ignored in any construction of the provisions hereof.
- 15.16 Uniformity.** All provisions of this Plan shall be interpreted and applied in a uniform, nondiscriminatory manner.
- 15.17 Indemnification.** The District will indemnify, defend, and hold harmless the members of the Board of Directors, the General Manager, the Plan Administrator, the DCIC or any member thereof, or any Employees who have administrative responsibility under the Plan with respect to any liability, loss, damage, or expense resulting from any act or omission, except willful misconduct or gross negligence, in their official capacities in the administration of or management of the assets of the Plan, including attorney, accountant and advisory fees and all other expenses reasonably incurred in their defense.

The amended and restated Plan is hereby adopted, effective January 1, 2024.

**The Metropolitan Water District of Southern  
California**

By: \_\_\_\_\_

Katano Kassaine  
Assistant General Manager/Chief Financial Officer and  
Interim Plan Administrator

\_\_\_\_\_  
Date Signed

2024 Plan Amendment Summary Charts				
401(k) Plan				
	Section	Subsection	Summary of Change	Notes
	Back-ground	— 2	Specifies amendment and restatement dates	
	1.1	#	Adds Roth Elective Deferral and Roth Rollover accounts	
	1.21		Clarifies “Eligible Employee” who is not excluded	
	1.44		Defines Qualified Birth or Adoption Distributions (QBOAD)	Secure Act* Optional provision
	1.50		Defines “Roth Deferrals”	
	1.52		Amends “Salary Deferrals” definition to include Roth Deferrals	
	2.2	(a)(6)	Clarifies interns ineligible to participate absent minimum work hours and months	
	3.2	Preamble	Adds Roth Deferrals, specifies effective date**	
		(a)	Clarifies must designate Roth Deferrals	
		(b)	Clarifies deferral election change rule applies to Roth Deferrals	
		(c)	Clarifies Catch-Up Contributions may consist of Roth Deferrals	
	3.4		Clarifies Rollover Contributions to accept Roth direct rollovers, specifies separate accounting	
	3.5	(a)-(c)	Adds Roth Deferrals, specifies separate accounts, veteran leave rules, and ordering rules	
	3.6	(a)-(h)	Adds In-Plan Roth Conversions Accounts, specifies applicable rules	
	5.2	(b)	Adds ordering rule to Excess Deferral Correction rule	
	7.3	Preamble	Clarifies Involuntary Cash-Out rule applies Roth and Pre-Tax Accounts separately	

	7.4	(a)(1)v.	Deletes the \$200 minimum rollover rule	
		(a)(2)	Clarifies direct Roth-to-Roth rollover distribution restriction	
		(b)	Deletes the \$200 minimum rollover rule	
	7.8	(e)(1)(ii)(B)	Clarifies all available distributions obtained	
	7.8	(e)(2)	Clarifies may receive hardship distributions from Roth Deferrals	
		(g)	Adds Qualified Birth or Adoption Distributions (QBOADs)	Secure Act* Optional provision
		(h)	Adds Coronavirus-Related Distributions (CRDs)	CARES Act* Optional provision Expired 12.31.2020
	7.9		Adds the 5-year period of participation rule for Roth Deferral and Rollover Accounts	
	8.2	(a)	Increases RBD from age 70 <sup>©</sup> to age 72	Secure Act* Mandatory provision
		(b)	Aligns life expectancy default rule with 457(b) plan for non-spousal designated beneficiaries	Cross ref: 457(b) § 4.3(D)(2)(a)
	8.5	(e)(1)	Increases RBD from age 70 <sup>©</sup> to age 72	Secure Act* Mandatory provision
	9.2		Clarifies and conforms to spousal consent and beneficiary revocation requirements	Cross ref: 457(b) § 6.1
	11.3	(c)(7)	Clarifies Plan Administrator's authority to determine administrative claims	
		Postamble	Clarifies General Counsel's litigation and settlement authority per Adm Code § 6433	Legal procedure
	11.4	(a)	Clarifies Plan Administrator's authority to interpret plan	
	11.6	(b)	Deletes administrative claim instructions, not applicable to plan	
	13.3	Postamble	Clarifies Roth Accounts will be aggregated with Pre-Tax Accounts to compute loan limitations	

	13.8		Clarifies loan repayments for loans from Roth Deferral Accounts must be satisfied separately	
	13.9		Applies loan default rules to Roth Accounts	
<b>401(k) Plan Loan Policy Amendments 2021 - CARES Act</b>				
	Section	Subsection	Summary of Change	Notes
	Article XIII		Adds COVID-19 LOAN PROGRAM	CARES Act* Optional Provision Executed 08.01.2021 Expired 12.31.2020
<b>401(k) Plan Restructure Amendments</b>				
	Section	Subsection	Summary of Change	Notes
	Background		Updates the amendment and restatement effective date, January 1, 2024	
	1.11		Deletes "Custodian" trustee since directed-Trustee will replace; adds DCIC referring to 10.6 description	
	1.56		Revises "Trust" definition to accommodate Trust Agreement and incorporate directed-Trustee functions	
	1.57		Adds "Trust Agreement" definition to allow Trust Agreement with directed-Trustee	
	1.58		Modifies "Trustee" definition to incorporate directed-Trustee functions	
	10.6		Describes the "DCIC" referring to bylaws; replaces Plan Administrator with DCIC to align investment duties	
	10.7		Adds IPS definition and periodic review; replaces Plan Administrator with DCIC to align IPS duties with DCIC bylaws; moves Common Collective Trusts and Collectibles to Section 12.2	
	10.8		Adds authority of Board of Directors to hire an Investment Manager	
	10.9		Adds investment funds as it relates to directed-Trustee function	

	10.10		Replaces Plan Administrator with DCIC to align SDBA duties	
	11.2		Moves indemnification section to Section 15.17	
	11.3	(a) and (c)(6)	Removes Plan Administrator authority to hire investment managers and attorneys	
	11.3	(c)(10) thru (c)(11)	Adds DCIC duties and responsibilities to align with DCIC Bylaws	
	12		Deletes "Trust Provisions" and renames Section 12 "Trust Funds"	
	12.1		Adds authority to enter Trust Agreement and describes directed-Trustee duties; establishes that Plan Administrator may recommend termination of Trustee	
	12.2 thru 12.12		Deletes provisions regarding former in-house, discretionary Trustee duties	
	12.2		Relocates Common Collective Trusts and Collectibles from Section 10.7	
	14.2	(e)	Reiterates BUs right to meet and confer if plans are terminated	
	15.3		Adds DCIC to the MWD parties who do not acquire legal rights upon plan adoption	
	15.17		Relocates and unifies indemnification section for all MWD indemnified parties	

#### 457(b) Plan

	Section	Subsection	Summary of Change	Notes
	Back-ground	– 2	Specifies amendment and restatement dates	
	1.8		Specifies Effective Date	
	1.22		Defines "Qualified Birth or Adoption Distribution" (QBOAD)	Secure Act* Optional Provision
	1.26		Defines "Roth Elective Deferrals"	
	1.28		Amends "Salary Reduction Contribution" definition to include Roth Elective Deferrals	

	3.1	(A)	Adds Roth Elective Deferrals, specifies Effective Date**	
	3.6	(A)	Clarifies and conforms to practice of allowing former employees to roll-in	Cross ref: 401(k) § 3.4
		(C)	Amends Rollover Contributions to accept Roth direct rollovers, specifies separate accounting	
	3.9	(A)-(C)	Specifies Roth Elective Deferrals rules, designation, separate accounting, distribution ordering rules, and loans, specifies Effective Date, February 18, 2024**	
	3.10	(A)-(H)	Adds In-Plan Roth Conversion Accounts, specifies applicable rules	
	4.3	(B)(2)(a)	Increases Required Beginning Date (RBD) from age 70 <sup>©</sup> to age 72	Secure Act* Mandatory Provision
		(E)(5)	Increases RBD from age 70 <sup>©</sup> to age 72	Secure Act* Mandatory Provision
	4.5	(C)	Reduces in-service distributions minimum age from age 70 <sup>©</sup> to age 59 <sup>©</sup>	Bipartisan Miners Act* Optional Provision Effective 01.01.2020
		(E)	Adds Qualified Birth or Adoption Distributions (QBOADs)	Secure Act* Optional Provision
		(F)	Adds Coronavirus-Related Distributions (CRDs)	CARES Act* Optional Provision Expired 12.31.2020
		(G)	Specifies in-service distributions shall be made pro rata across contribution sources and investment options	Letter of Direction 06.28.2022
	4.7	(C)	Specifies separate treatment of Roth and Pre-Tax Accounts for automatic rollover rule purposes	
		(E)(2)	Clarifies direct Roth-to-Roth rollover distribution rules	
	5.3	(A)(7)	Clarifies Plan Administrator's authority to determine administrative claims	
		Postamble	Clarifies General Counsel's litigation and settlement authority per Adm Code § 6433(a)	Legal procedure

	6.1		Clarifies and conforms to spousal consent and beneficiary revocation requirements	Cross ref: 401(k) § 9.2
	9.7		Conforms to MWD's indemnification standard per Adm Code § 6815	Legal standard Cross ref: 401(k) § 12.9
<b>457(b) Plan Loan Policy Amendments 2021 - CARES Act</b>				
	Section	Subsection	Summary of Change	Notes
	Article XIII		Adds COVID-19 LOAN PROGRAM	CARES Act* Optional Provision Executed 08.01.2021 Expired 12.31.2020
<b>457(b) Plan Restructure Amendments</b>				
	1.7		Defines "DCIC"	
	1.34		Modifies "Trust" definition to accommodate Trust Agreement and incorporate directed-Trustee functions	
	1.35		Adds "Trust Agreement" definition to allow agreement with directed-Trustee	
	1.36		Modifies "Trustee" definition to incorporate directed-Trustee functions	
	Art. V		Deletes "Plan Administrator Duties With Respect To Participants' Accounts" and renames Article V. "Plan Administration"	
	5.3		Aligns Plan Administrator powers and duties to the DCIC Bylaws	
	5.4		Reaffirms payment of reasonable expenses to Plan Administrator; bar on additional compensation for DCIC moved to the DCIC Bylaws Article VII, Section 1.	
	5.10		Aligns IPS duties of the DCIC with the DCIC Bylaws	
	Art. VII		Deletes "Trust Provisions" and renames Art. VII "Trust Funds"	
	7.1		Clarifies establishment and parameters of the Trust, affirms directed-Trustee as the trustee; deletes discretionary Trustee functions; establishes that Plan Administrator may recommend termination of Trustee	

	7.2		Describes directed-Trustee's core duties, holding and investing funds	
	7.4		Describes the DCIC and incorporates the DCIC Bylaws	
	7.5		Aligns IPS functions to the DCIC investment duties; includes considerations	
	7.6		Adds authority of Board of Directors to hire Investment Manager	
	7.7		Describes relationship of directed-Trustee to the DCIC	
	7.8		Aligns duties SDBA related duties to the DCIC investment duties	
	7.4 thru 7.20		Deletes former, in-house discretionary Trustee duties	
	8.1(C)		Reiterates BUs right to meet and confer if plans are terminated	
	9.1		Moves IRS tax levy provision here for payment of participant taxes	
	9.7		Unifies indemnification section for all MWD indemnified parties	

\*Deadline to amend plan for Secure Acts 1.0 and 2.0, CARES Act and BiPartisan Miner's Act is March 31, 2027 per IRS Notice 2022-33 (August 3, 2022)

\*\*Deadline to amend plan for ROTHs is December 31, 2024 if implemented in 2024.