

AGREEMENT

BETWEEN

SAN FRANCISCO BAY AREA

RAPID TRANSIT DISTRICT

AND

BART SUPERVISORY

AND

PROFESSIONAL ASSOCIATION

(BARTSPA)

AFSCME LOCAL 3993

**(AMERICAN FEDERATION OF STATE,
COUNTY, AND MUNICIPAL EMPLOYEES)**

EFFECTIVE JULY 1, 2009 - JUNE 30, 2013

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1. DURATION OF AGREEMENT

This Agreement shall become effective as of July 1, 2009 and shall remain in full force and effect up to and including June 30, 2013.

2. PURPOSE

The purpose of this Agreement is to provide orderly relations between the District and employees represented by the Union, to establish procedures for the disposition of grievances which may arise, to eliminate interruptions in service, and to provide for the efficient operation of the District.

The Union and the District agree to cooperate fully in the establishment and maintenance of harmonious and orderly relations and recognize the need for good working conditions, fair and impartial discipline and treatment of employees, and efficient operation.

3. ASSOCIATION RECOGNITION

Pursuant to an election conducted June 19, 1976 by the California State Conciliation Service, the District recognizes the Association as the sole and exclusive bargaining agent for all employees in the Supervisory Unit.

3.1 UNION RECOGNITION

Pursuant to the Cross-Check Election conducted by the State Mediation and Conciliation Service on September 28, 1995, the District recognizes the American Federation of State, County and Municipal Employees (AFSCME), Local 3993, as the sole and exclusive bargaining agent for all employees in the Supervisory Unit.

3.2 CLASSIFICATIONS

- A. The job classifications covered by the AFSCME bargaining unit include the following:

Classifications	Pay Band
Access Administrator	7
Access Coordinator	6
Applications Analyst	5
Assistant Logistics Program Manager	7
Assistant Manager of Revenue Control	9
Automotive and Equipment Maintenance Supervisor	5
Central Maintenance Supervisor	7
Coordinator, Technical Maintenance Support	7
Data Base Administrator	7
District Real Estate Surveyor	8
District Right-of-Way Surveyor	8
Employee Patron Safety Administrator	7
Energy Analyst	4
Environmental Administrator	8
Facilities/Utility Location Coordinator	7
Facilities Maintenance Supervisor	5
Financial Analyst I	2
Financial Analyst II	4
Government & Community Relations Representative I	2
Government & Community Relations Representative II	4
Hazardous Material/Environmental Compliance Program Manager	7
Industrial Hygienist	7
Information Systems Security Officer	7
Insurance Analyst	5
Lead Marketing Representative	6
Legal Office Supervisor	4
Liability Risk Analyst	5
Logistics Program Administrator	7
Logistics Supervisor	5
Maintenance Support Administrator	6
Manager of Access Programs	8
Manager of Accounting	8
Manager of Automatic Fare Collection Maintenance	9
Manager of Automotive and Equipment Maintenance	9
Manager of Credit/Debit Fare Programs	9
Manager of Customer Services	8

Manager of Drafting & Configuration	9
Manager of Employee/Patron Safety	8
Manager of Inventory Management	8
Manager of Operations Safety	8
Manager of Paratransit Programs	8
Manager of Parking Programs	8
Manager of Quality Assurance	8
Manager of Special Projects	8
Manager of Special Projects, Analysis	8
Manager of Special Projects, TSD	8
Manager of Technical Resources, Publications & Graphics	7
Manager of Time and Labor Administration	8
Manager of Track Geometry	6
Manager of Transit Vehicle Cleaning	8
Marketing Representative I	2
Marketing Representative II	3
Material Control Systems Supervisor	6
Operations Supervisor	6
Operations Supervisor – Operations Liaisons	6
Power & Way Controller	7
Principal Administrative Analyst	7
Principal Financial Analyst	7
Principal Government and Community Relations Representative	7
Principal Legislative Analyst	7
Principal Marketing Representative	7
Principal Planner	7
Principal Property Development Officer	7
Principal Real Estate Officer	7
Principal Right of Way Officer	7
Procurement Analyst	3
Program Control Administrator, Telecommunications Revenue	8
Public Information Officer	7
Purchasing Support Supervisor	7
Quality Assurance Supervisor	6
Query & Reports Specialist	7
Section Manager, Automatic Fare Collection Maintenance	7
Section Manager, Elevator/Escalator Maintenance	7
Section Manager, Power and Mechanical Maintenance	7

Section Manager, Structures Inspection and Maintenance	7
Section Manager, Structures Maintenance	7
Section Manager, Systems Maintenance	7
Section Manager, Track Maintenance	7
Section Manager, Track Maintenance and Wreckmaster	8
Senior Administrative Analyst	5
Senior Applications Analyst	7
Senior Budget Analyst	4
Senior Central Maintenance Supervisor	8
Senior Energy Analyst	7
Senior Environmental Compliance Specialist	6
Senior Financial Analyst	5
Senior Government and Community Relations Representative	5
Senior Inventory Control Analyst	4
Senior Logistics Supervisor	6
Senior Marketing Representative	5
Senior Operations Safety Specialist	7
Senior Operations Supervisor	8
Senior Operations Supervisor – Operations Liaisons	8
Senior Planner	5
Senior Real Estate Officer	6
Senior Right-of-Way Officer	6
Senior Safety Specialist	6
Senior Systems Programmer	7
Senior Projects Coordinator	5
Senior Time and Labor Administrative Analyst	5
Special Projects Manager, Systems Maintenance	7
Special Projects Manager, Track and Structures	7
Supervising Power and Way Controller	8
Supervisor, Business Systems Operations	8
Supervisor, Data Center Operations	5
Supervisor, Facilities Maintenance Contract	5
Supervisor, LAN Administration	8
Supervisor, Technical Support and Graphics	6
Systems Programmer	6
System Service Supervisor	5
Technical Documentation Administrator	5
Technical Maintenance Support Administrator	7
Train Controller	8
Treasury Analyst	5

Job descriptions shall be provided by the District to the Union by classification.

- B. If the District creates a new job classification or substantially revises an existing job classification, it shall provide AFSCME with a copy of the classification description at least fifteen (15) workdays prior to posting to fill a vacant position in the classification. If the classification is not designated by the District as an AFSCME represented classification and AFSCME believes that the classification should be AFSCME represented it shall notify the District in writing within fifteen (15) workdays after the union's receipt of the classification description.
- C. If the District performs an analysis of the duties of a position within a classification in the bargaining unit and determines that those duties are described more accurately by a classification description of a classification in another bargaining unit or in a non-represented status, the union may challenge the accuracy or that determination.
- D. If the District revises substantially an AFSCME represented classification or creates a new classification from a pre-existing AFSCME classification(s) and the District proposes to remove the classification from the bargaining unit, the union may proceed immediately to the State Department of Industrial Relations to resolve whether the classification should remain in the AFSCME bargaining unit.
- E. The District or AFSCME may petition the State Department of Industrial Relations to resolve whether the classification or positions therein are to be included in the AFSCME bargaining unit. However, if the classification encompasses duties performed, in whole or in part, by employees in the job classifications already assigned to another bargaining agent under the terms of the then-existing collective bargaining agreement between the District and the other bargaining agent, AFSCME may challenge such assignment only as provided under applicable state law.
- F. If the State Department of Industrial Relations decides or the parties mutually agree that the affected classification(s) or

position(s) shall be AFSCME represented, any affected employee's dues, initiation fees and other terms and conditions of employment specified under the AFSCME agreement shall take effect on the first of the month following the date such determination is announced.

- G. The Union President shall be notified whenever the District is considering contracting work which is usually done by an AFSCME classification. The associated Department Manager shall fax a Contract Notification Form to the President of AFSCME prior to awarding the contract. The Contract Notification Form will identify the date it is faxed. The Union shall have seven (7) workdays after the Contract Notification Form is faxed to provide any comments to the associated Department Manager. If comments are received within the seven (7) workday period, the Department Manager shall meet with the Union to discuss concerns which will be considered before making a decision to contract. The Department Manager's decision shall be final.

3.2.1 EVALUATION, ASSESSMENT AND REVISION OF JOB DESCRIPTIONS AND CLASSIFICATIONS

The parties agree, beginning September 2009, to meet in an effort to reach mutual agreement regarding an evaluation, assessment and revision of the job descriptions and classifications as outlined within the Siegel-based Classification & Compensation Study of 2007-2009 as it relates to the AFSCME bargaining unit, to be completed by no later than the end of 2009, and retroactive from July 1, 2009.

4. DEFINITIONS

For the purposes of this Agreement:

- A. The terms "BART," "District," "Employer" and/or "Management" mean the San Francisco Bay Area Rapid Transit District.
- B. The term "Supervisory Unit" means the unit of supervisory employees described in the decision of the Director of the California Department of Industrial Relations, dated April 28,

1976: "Petition of BART Supervisory and Professional Association for Determination of Bargaining Unit as concerns the San Francisco Bay Area Rapid Transit District (BART)."

- C. The terms "Association" and/or "BARTSPA" mean the BART Supervisory and Professional Association, formerly, the bargaining agent for all employees in the Supervisory Unit described above. "BARTSPA" has been replaced by the American Federation of State, County and Municipal Employees, Local 3993 AFL-CIO (AFSCME) as described in "D" below.
 - D. The terms "AFSCME" and/or "Union" mean the American Federation of State, County and Municipal Employees, Local 3993, which became the sole and exclusive bargaining agent for all employees in the Supervisory Unit described above, effective September 28, 1995.
 - E. The terms "Employee" and/or "Employees" mean any person and/or all persons in the Supervisory Unit described above.
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5. MUTUAL RIGHTS & RESPONSIBILITIES

The Union and the District agree that both have obligations and responsibilities to see that the statutory objective of the Bay Area Rapid Transit District law is attained and that the public receives a rapid and efficient transit system. The District has the duty to execute the traditional responsibilities of Management to attain this goal and the Union recognizes those District responsibilities. The District, in turn, recognizes its responsibility to treat employees fairly and equitably.

6. MANAGEMENT RIGHTS

The District shall have the traditional prerogatives of Management, including, but not limited to, the right to continue to establish and enforce rules, regulations, and procedures implementing those prerogatives, to manage and direct the work and the work force and to determine assignments of work, with there being no exclusive "bargaining unit work." Management shall also have the right to cross-train other employees in various categories of work, provided those employees shall not be in any represented bargaining unit of

the District, unless the training is required for improved performance of their normal duties. The specific recitation of management rights is not intended to be a full enumeration of Management's traditional prerogatives, not otherwise limited by this Agreement.

7. UNION MEMBERSHIP

- A. Membership in the Union is not compulsory. Employees shall have the right to join, not to join, maintain or drop their membership in the Union as they see fit. Neither party shall discriminate against any employee as regards such matters, including by the use of apparent District authority or by the use of superior District position.
- B. The Union is required to represent all employees in the Supervisory Unit fairly, without regard as to whether or not an employee is a member of the Union. The terms of this Agreement have been made for all of the employees in the Supervisory Unit and not only for members of the Union. Accordingly, it is fair that each employee in the Supervisory Unit pay his/her own way and assume his/her fair share of the obligation along with the grant of equal benefits.
- C. The District shall notify the Union in writing prior to any person (or persons) placed in an AFSCME job classification in accordance with Section 6.
- D. In consideration of the District's entering into this Collective Bargaining Agreement, the Union hereby agrees to indemnify the District and hold it harmless from any and all claims, liabilities or costs to the District which arise out of entering into or enforcement of said provision or which arise out of the payroll deduction of said fees or dues as provided in Section 9.

8. UNION REPRESENTATIVES

Twelve (12) Union representatives shall be recognized to assist employees in resolving grievances at the lowest possible administrative level, provided, however, the parties agree that four (4) of the twelve (12) representatives shall be area representatives. The Union agrees to select one (1) area representative from

members working at each of the following four (4) locations: A/L line, C line, M line and R line. If an area representative assignment is vacant for any reason the total number of twelve (12) representatives is temporarily reduced accordingly until the area representative vacancy is filled. Representatives employed by the District shall be afforded reasonable time for the conduct of the Union business, e.g., investigation and processing of grievances, meetings with Management, without loss of pay or benefits provided advance notification is given to, and approved by, their immediate supervisor.

The President during his/her respective term of office shall receive grave shift differential in recognition of his/her variable work schedule.

The President, during his/her respective term of office shall have two (2) paid designated days a week time off on Union Business subject to advance notification to his or her supervisor. Requests for additional Union Business time shall not be unreasonably denied.

Upon formal designation by the Union, representatives employed by the District will not be transferred from the assignment, shift or location they hold by reason of their election or appointment, but at no time will the District be under obligation to retain a representative employed by the District because of his/her status for whom there is no work to perform or who cannot perform available work in a qualified and acceptable manner.

Representatives will be given the privilege of utilizing the District's inter-office mail and existing telephone facilities as may reasonably be necessary in the conduct of Union business.

Each member of the duly elected or appointed Union Negotiating Committee (not to exceed twelve (12) who attends the Union-Management contract negotiation meetings will be compensated for actual work time lost as a result of such meetings.

9. DUES DEDUCTION

- A. In accordance with the terms set forth under Section 7, employees who are not members of the Union shall, as a condition of employment, pay to the Union an amount of

money equal to the Union's initial administration fee which is for this purpose established by AFSCME Bylaws, and its regular and usual membership dues. For existing employees such payments shall commence on the effective date of this Agreement; and for new employees the payments shall commence thirty (30) days following the date of their employment.

- B. All current employees of the District shall continue to pay dues through payroll deduction. New hires, or those promoted to positions within the Unit as set forth in Section 4, Paragraph B of this Agreement shall execute a payroll deduction authorization in favor of the Union, in which the effective date of such authorization shall be the date of employment or promotion. The timely execution of such authorization shall be a condition precedent to continued employment with the District.
- C. Any member of the Union terminated from membership by virtue of non-payment of dues shall be subject to the payment of a new administration fee, as described in Paragraph A above.
- D. The District agrees to make payroll deductions from the pay of employees covered by this Agreement. Such deductions shall commence upon submission by the employee of a written authorization as provided above, reasonably satisfactory to the District. Deductions shall include monthly membership dues, or dues equivalent and initial administration fees, when applicable, and shall be forwarded monthly to the Union. Dues shall be uniformly applicable to all employees in the Supervisory Unit.
- E. The District shall submit notice in writing at the time action is taken to the Union, the names of all new hires or those promoted to positions within the Unit as set forth in Section 4, Paragraph B of this Agreement.

10. ACCESS TO PERSONNEL FILES

Union represented employees shall be provided a copy of all performance related memoranda (including Performance Evaluations) placed in their official personnel file.

The District will continue the practice of providing copies of derogatory material, with the exclusion of personnel transaction forms, reference checks, background investigation reports, and medical reports, to employees within twenty-four (24) hours from its placement in the personnel file.

An employee shall be permitted at any time during regular office hours to schedule an appointment to inspect his/her personnel file provided twenty-four (24) hours advance notice is given to the Human Resources Department. He/she may also authorize in writing a Union representative to also schedule an appointment to inspect his/her personnel file provided the same twenty-four (24) hours advance notice is given. Such reviews shall be made in the Human Resources Department subject to the presence of a member of the Human Resources Department staff or its designee.

Material in personnel files shall be regarded as confidential and disclosed only in accordance with the provisions of the law.

11. UNION ACCESS TO WORK LOCATIONS

Non-employee Union representatives will be permitted access to District facilities for the purpose of conducting Union business. Where reasonable and practical, they shall notify area supervisors at least one (1) hour in advance of their intent to visit a given work location and of the approximate duration of their visit. They will be permitted entry upon presentation of acceptable identification and will be required to observe all safety and other rules and regulations of the District.

12. NO STRIKES AND NO LOCKOUTS

- A. It is the intent of the District and the Union to assure uninterrupted transit service to the public during the life of this Agreement. Accordingly:
1. No employee shall engage in, cause or encourage any strike, slowdown, picketing, concerted refusal to work or other withholding of services, or other interruption of the District's operations for the duration of this Agreement. It shall be the responsibility of the District

to ensure safe ingress and egress.

2. The District shall not lock out employees during the term of this Agreement.
3. In any case where employee conduct occurs in violation of this Section, Union will promptly and actively encourage its members to return to work.
4. If the Union is sued by one or more Supervisory Unit members challenging the legality of this Section, whether or not the District is made a party, the District shall hold the Union harmless concerning any judgment and concerning reasonable costs of defense.
5. It shall not be a violation and shall not be cause for discipline for a District employee voluntarily to refuse to enter upon any property involved in a primary bona fide labor dispute. It shall not be a violation of this section and shall not be cause for discipline of any employee by any party or other employee subject to this Agreement, should any employee voluntarily enter District property at a time when the District is involved in a primary labor dispute.

For purpose of this section, a primary labor dispute is defined as a dispute between BART and other BART employee organizations.

- B. In the event of any alleged violation of Paragraph A, either the District or the Union may seek immediate arbitration before an arbitrator to be selected in accordance with the arbitration procedures set forth in Section 59 of these provisions.
 1. If immediate arbitration is requested, employee(s) shall immediately refrain from the acts and omissions identified in Paragraph A.1 and shall continue to refrain there from pending a decision by the arbitrator selected to decide the issue.
 2. The party seeking such arbitration shall use its best efforts to notify the other party and its counsel of the referral to arbitration by means of telephone or written

- notice including telegraphic, delivered to the party against whom the award is being sought.
3. If notification cannot be accomplished, the party seeking arbitration may select any arbitrator from the list established by the parties to hear the matter in dispute.
 4. The question in such arbitration shall be whether either party or any employee covered by this Agreement has engaged or is engaging in activities in violation of Paragraph A.
 5. The arbitrator shall have full equitable power to resolve the dispute, including the power to immediately issue an order (including the ex parte order) to terminate activities in violation of this Paragraph A. An ex parte order may be issued upon the showing of reasonable, thorough, and conscientious efforts to notify the other party and upon reasonable cause. Such awards shall be binding on both parties and all employees.
 6. The expenses of the arbitration shall be borne as provided in Section 59.
 7. Unless the parties agree that the arbitrator shall retain jurisdiction to decide the underlying dispute leading to or determined to be, the cause of the alleged violation of Paragraph A, it shall be referred to the appropriate grievance and/or arbitration procedures provided in this Agreement.
 8. If either party raises an issue of arbitrability of the dispute allegedly causing the violation of Paragraph A, said issue shall be decided first.
 9. It shall be the responsibility of the District to ensure safe ingress and egress to and from the arbitration site.
- C. Violation of this Section shall be cause for discipline up to and including discharge.
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13. NON-DISCRIMINATION, AFFIRMATIVE ACTION

There shall be no discrimination in the application of the provisions of this Agreement. In recognition of such, the parties are committed to ensure these provisions are applied equally to all employees without regard to race, color, religion, disability, sex, sexual orientation, age or national origin and in a manner consistent with the stated Affirmative Action Policy of the District.

The intent of this Section is to continue efforts to provide equal employment opportunity for all persons and to establish methods for the resolution of equal employment problems.

Further, the intent is designed to meet the spirit and letter of the Federal Civil Rights Laws, Executive Orders and Amendments, and the State of California Fair Employment Practices Act.

No employee shall suffer discrimination because of his/her membership in the Union or participation in Union activities.

14. AGREEMENTS FURNISHED

- A. The District will ensure that copies of this Agreement are printed within sixty (60) days of receipt of the Union's concurrence with the proof copy following signing and will pay the full cost of printing such Agreements.
- B. The District will provide twenty (20) copies of the Agreement to the Union.
- C. The District will provide a copy of the Agreement to all current employees within two (2) weeks of receipt of the printed copies.
- D. New employees will be provided a copy of the Agreement upon employment.
- E. Copies of any side letters or other modifications agreed to within the life of the Agreement shall be provided by the District to the Union for attachment to each copy.
- F. The Agreement and all attachments thereto shall be provided in a format acceptable to both parties.

- G. The District shall provide a copy of the disk(s) containing the Agreement to the Union accordance with Subsection C.
-

15. SUCCESSOR RIGHTS

In the event the operations of the District, in whole or in part, are assumed by any other entity, public or private, the successor organization or organizations shall agree, as a condition precedent of said assumption, to all terms and conditions of this Agreement as though said Agreement were more fully set forth in the assumption agreement by and between the District and the assuming party or parties.

16. BEREAVEMENT LEAVE *

When a death occurs or appears imminent in the immediate family of an employee, the employee shall be granted up to a total of 40 hours for current spouse, eligible domestic partner (per Board Resolutions 4455 and 4757) and immediate family members of cumulative leave without loss of pay, payable only if the days of leave are regularly scheduled workdays. Such leave shall not be deducted from any other leave accrual.

To be eligible for compensation for bereavement pay, the employee, upon his/her return, must provide written verification by the attending physician of death or imminence and indication of relationship of the member of the immediate family involved. False information given concerning the death, imminence, or relationship shall be cause for discharge. The immediate family of an employee is defined as spouse or an employee's eligible domestic partner, child, eligible dependent child of an employee's domestic partner, parent, brother, sister, grandparent; and current, mother-in-law, father-in-law, step-parent, step-child and legal guardian.

Only one (1) bereavement leave within a twelve (12) month period shall be granted an employee for each member of the immediate family.

*** Minute Clarification**

In agreeing to continue existing language in this Section, the parties understand that alternate forms of leave, e.g., compensatory time,

vacation, floating holidays, leaves of absence without pay, are available to employees who may wish to extend the bereavement period and such reasonable request for said extensions have been granted in the past and shall continue to be considered and granted in the same manner.

*** Minute Clarification**

Employees will be eligible for bereavement leave for his/her domestic partner only if the partnership meets the criteria of Board Resolutions 4455 and 4757 and BART eligibility guidelines.

17. MILITARY LEAVE

Employees of the District who are ordered to active duty with the United States Armed Forces for a period not to exceed one hundred eighty (180) days per Fiscal Year, including travel time, will be granted a temporary military leave of absence for time required to meet military obligations as established by State and Federal law. Employees must furnish the District with a copy of the orders as early as possible prior to such leave.

During such Military Leave, employees with one (1) year or more of District service will be eligible for their existing straight time rate of pay for the first thirty (30) days per Fiscal Year of any such absence.

For purposes of this Section, weekend (i.e., Saturday and Sunday) military training sessions shall not be considered as Military leave; however, employees who have military training sessions on weekends, and whose assigned workweek includes Saturday or Sunday, or both, may request adjustment of their scheduled days off where work is available which they are qualified to perform in order to attend such sessions without loss of pay. Employees must request such arrangements in writing as far in advance as possible and provide verification of attendance upon return to work. No additional compensation, shift premiums or other extra costs to the District shall result from such adjustments.

18. PARENTING LEAVE

A. A Parenting Leave of absence will be granted each employee

covered by this Agreement who becomes pregnant. Such leave will begin no later than the date the employee's doctor states in writing she should discontinue working.

- B. The Parenting Leave will continue until the date on which the employee's doctor states in writing she is released to return to work from pregnancy or pregnancy related physical conditions, or until such time as an additional leave of absence granted by the District expires.
- C. The parties agree the District will amend its Short-Term Disability Insurance Plan to provide that employees who are determined to be disabled due to pregnancy or childbirth and are otherwise eligible for District short-term disability insurance benefits will not have to exhaust this accrued sick leave prior to receiving short-term disability insurance benefits. Employees determined to be disabled due to pregnancy or childbirth may utilize their accrued sick leave to supplement District disability insurance benefits so that their disability benefits and sick leave benefits combine to meet but not to exceed their base salary.
- D. The parties agree that in Parenting Leave cases involving the father of the child, the District shall comply with all applicable State and Federal Laws Including the California Family Rights Act (CFRA).
- E. Employees of either gender shall be eligible for Parenting Leave for the placement of a child for adoption or foster care.

19. JURY DUTY

Pursuant to State law, an employee shall be excused from work on a workday on which he/she performs jury service, providing he/she gives prior notification to his/her supervisor. During such excused absence, an employee shall be paid up to an amount of the difference between jury fees and his/her existing shift earnings, exclusive of reimbursable travel expenses.

No such payment will be made to an employee excused for jury service unless a statement is provided to the District showing the amount of fees paid or payable and time spent in jury service.

When an employee has served five (5) consecutive days on jury duty and that service conflicts with one or more of the employee's RDOs, the employee has the option to reschedule his/her RDOs with his/her supervisor without additional cost to the District.

If the court recesses for the day without discharging the employee from jury duty or discharges the employee from jury duty, the employee may use a floating holiday or accumulated vacation for the next scheduled shift.

Also, if the employee's active jury duty encompasses a portion of his or her normally scheduled (i.e., non-jury duty) days off, he or she shall receive the following Saturday and/or Sunday as a day(s) off. If the employee performs active jury duty on the first normally scheduled RDO, Saturday shall be a substitute RDO. If the employee performs active jury duty on his or her second normally scheduled RDO (or third in the case of four-ten employees), Sunday shall be a substitute RDO.

The employee shall notify his or her supervisor of his or her election to work or use holiday or vacation time as provided above in accordance with his or her department's normal departmental reporting procedures.

20. WITNESS DUTY

An employee shall be excused from work for the actual hours required by the court, including travel time to/from work on a workday on which he/she is subpoenaed as a witness in court, before a Grand Jury or for a deposition, providing he/she gives prior notification to his/her supervisor. During such excused absence, an employee shall be paid up to an amount of the difference between the witness fees and his/her existing shift earnings for actual work time lost, exclusive of reimbursable travel expenses.

If an employee is subpoenaed as a witness in court, before a Grand Jury or for a deposition on his/her regular day off on a matter related to his/her employment with the District, the employee shall be paid up to an amount of the difference between the witness fees and his/her applicable rate exclusive of reimbursable travel expenses. In such cases, the employee must provide to his/her supervisor a copy of the subpoena and a statement of the witness fees paid or payable as a condition of being paid.

The pay provisions of this Section shall not apply when an employee is required to appear in court or at a deposition in any matter in which he/she is the plaintiff or as a result of any activities not related to BART employment.

21. WHITE BOOK BENEFITS (NOT USED)

22. LEAVE OF ABSENCE *

Employees occasionally may request time off without pay. When such time off becomes necessary, it must be requested through the employee's immediate supervisor.

A leave of absence, for the purposes of this Section, is defined as an absence from work requested in writing by a District employee and approved in writing by the employee's Department Head and by the Department Manager of Human Resources. Such leaves must specify an agreed upon period of time normally longer than two (2) days but not to exceed six (6) calendar months.

Leaves of absence generally fall into the following categories:

- A. **Emergency Leave** - To assist an employee in taking care of crisis circumstances or conditions which cannot normally be handled while working full time.
- B. **Vocational/Educational Leave** - To assist an employee in preparation for possible upward mobility in the District. (The District makes no representation that leave for such purpose will result in promotions or transfers.)
- C. **Leave for Personal Matters** - To allow employees time off to attend to such matters which are not urgent and are purely personal in nature, but which are of such character as to require a short absence from work.
- D. **Voluntary Service Leave:** To allow employees time off who are volunteer members of a federal, state, or local certified fire department, police department, or American Red Cross.

The District will determine the length of time it will grant for such

leave in each individual case. The District reserves the right to extend a given leave if it deems it desirable to do so. The District may grant a leave of absence when an employee still has accrued leave in a leave bank(s), however the District shall require usage of all available accrued leave prior to granting leave without pay.

During the period of time in which an employee is on a leave of absence, he/she shall accumulate service with the District.

Any employee who fails to return to work upon conclusion of the agreed upon leave of absence shall be considered to have resigned his/her employment with the District in accordance with Section 67, Job Abandonment.

Employees on leave of absence shall have the option to pay any costs involved, in order to continue to participate in health and welfare programs and life insurance.

*** Minute Clarification**

The parties agree that requests for leave of two (2) days or less shall be made through the employee's immediate or appropriate supervisor. The District agrees to notify the Union of leaves of absence approved pursuant to this section which are in excess of thirty (30) days.

23. MONEY PURCHASE PENSION PLAN *

- A. The District will continue to deposit an amount equivalent to six and sixty-five hundredth's percent (6.65%) of the employee's base rate monthly compensation (after deducting the first one hundred thirty-three dollars and thirty-three cent [\$133.33] paid during the month) up to a maximum annual contribution of one thousand eight hundred and sixty-eight dollars and sixty-five cents (\$1,868.65) into a Money Purchase Pension Plan for employees. The base rate monthly compensation equals one hundred seventy-three and one-third (173.33) hours X base straight time hourly rate.
- B. Effective January 18, 1982, the District, in addition to the above described deposits, began contributions at one and six hundred twenty-seven thousandth's percent (1.627%) of payroll to the District's Money Purchase Pension Plan. The

District agrees to continue these contributions for the life of this Agreement.

- C. Effective July 1992, the District shall begin contribution of the one and six hundred twenty-seven thousandth's percent (1.627%) of payroll to the Public Employees' Retirement System (PERS) to provide for the two percent (2%) at 55 "miscellaneous" retirement feature. This payment shall continue until June 30, 2012. After that date the District shall begin contribution of this amount to the District's Money Purchase Pension Plan.
- D. Effective July 1, 2013, the District shall retain the 1.627% MPPP contribution to the extent necessary to compensate the District for paying the difference between the actual Annual Required Contribution (ARC) and the baseline ARC to assist in the funding of the Retiree Health Benefit Trust. The District shall retain this amount through June 30, 2034. In any year in which the actual ARC does not exceed the baseline ARC by an amount equal to the amount of the retained 1.627% MPPP contribution, the District shall pay the appropriate portion of the 1.627% into the employees' MPPP accounts, but only to the extent that the difference between the actual ARC and the baseline ARC is less than the dollar value of the retained MPPP 1.627%. (See Section 33 – PERS Medical and Prescription Drug Benefit)
- E. If the District's employer PERS account becomes superfunded in any fiscal year commencing before the fiscal year beginning July 1, 2034, and, if in the next fiscal year the Retiree Health Benefit Trust (see Section 33) has an unfunded actuarial liability as determined by the District's actuaries, the District shall, at the commencement of the fiscal year after superfunding status begins, discontinue its payment of the EPMC for members of the bargaining units from the operating budget and shall instead direct an equal amount into the District's Retiree Health Benefit Trust.

*** Minute Clarification**

The District's 1.627% contribution to the Money Purchase Pension Plan for fiscal year 2013 has been suspended.

24. PASS PRIVILEGES

- A. The District will provide an identification card for two (2) representatives designated by name by the Union authorizing free transportation on the system. The District will provide free transportation over its lines during normal hours of operation to full-time employees and pensioners and their spouses and dependent children, provided they properly display their District identification card.
- B. Dependent children under the age of five (5) years will not be required to display their identification cards. Dependent children include unmarried children (including legally adopted children) to their nineteenth (19th) birthday, or to their twenty-third (23rd) birthday if they are enrolled full-time at an accredited institution of learning, provided such children are dependent on the employee for their support and maintenance.
- C. There will be a ten dollar (\$10) fee to replace an employee's identification card. In any twelve (12) month period:
 - 1. Dependents will be charged a fifteen dollar (\$15) fee to replace a dependent's first identification card.
 - 2. The fee to replace any subsequent dependent's identification card shall be twenty dollars (\$20).
 - 3. On the third request, and any subsequent requests, the fee to replace the identification card shall be twenty five dollars (\$25) and there will be a three (3) month waiting period.

These fees may be waived by the District upon verifiable proof of the reasonableness of loss or destruction.
- D. Failure to properly display identification or any attempt to misuse this privilege will be cause for refused entry into the system, revocation of privilege and/or disciplinary action.
- E. Pass privileges will be revoked when an employee is terminated from the District.
- F. Spouses' pass privileges terminate upon dissolution of

marriage. The employee must notify the District when the marriage is dissolved.

- G. Spouse's and eligible dependent children's pass privileges shall continue upon the retirement of an employee. When an employee who has retired from District services dies: 1) his/her spouse's pass privileges shall terminate upon the surviving spouse's remarriage; 2) eligible dependent children's pass privileges shall terminate five (5) years after the retiree's death or upon the expiration of the time periods set forth in this Section, whichever occurs first.
 - H. If an employee dies as the result of a District job-related accident, the following shall occur:
 - 1. if the employee has been employed by the District for less than five (5) years, the surviving spouse's pass privileges shall terminate five (5) years after the employee's death or upon the surviving spouse's remarriage, whichever occurs first;
 - 2. if the employee has been employed by the District for more than five (5) years, the surviving spouse's pass privileges shall terminate upon the spouse's remarriage;
 - 3. eligible dependent children's pass privileges shall terminate five (5) years after the employee's death or, upon the expiration of the time periods set forth in this Section, whichever occurs first.
 - I. If an employee dies as a result of a non-job-related injury or illness, and at the time of death he/she has been an employee of the District for at least five (5) years and is at least fifty (50) years of age, the employee's surviving spouse's pass privileges shall terminate upon the spouse's remarriage.
 - J. An employee's eligible domestic partner and their eligible children shall be entitled to the same pass privileges under this section as spouses and dependent children of the employee, per board Resolutions 4455 and 4757.
-

25. REIMBURSEMENT OF EMPLOYEES' PERS CONTRIBUTION

The District shall continue to pick up the employee's contribution to the Public Employees' Retirement System. During the life of this Agreement, earnings may accrue to the District by reason of a reduction of the Districts' or employees' contribution to PERS.

The District agrees that should the current rate of employee contribution to PERS increase during the term of this Collective Bargaining Agreement, the District shall include such rate increase in the affected pick up due subsequent to the rate increase. The parties agree that any additional cost to the District resulting from any increase in the percentage level of employee contributions occurring after November 1979 shall be borne by the District until the expiration of this Agreement.

Each employee is solely and personally responsible for any federal, state or local tax liability of the employee that may arise out of receipt of said pick up by the District or any penalty that may be imposed therefore.

The parties recognize that it may be contended that some of these payments were unlawful and that they could not have been made in the absence of an amendment to the District's contract with PERS and recognize further that BART has not sought such an amendment.

Should the District be required to reimburse PERS for back contributions related to these payments, BART's pick up of employee PERS contributions will cease until an amount equivalent to the amount required to be reimbursed to PERS has been placed by BART in an escrow account pending mutual agreement by the parties as to alternative benefit(s). Such benefit(s) shall not increase BART's aggregate direct or indirect payroll cost above the amount it would otherwise have incurred by continuation of the PERS pick up program.

Any PERS savings accrued by the District on or after July 1, 1989 remain the property of the District and shall not be shared with employees.

26. BLOOD BANK

The District agrees to continue its participation in the Blood Bank of the Alameda/Contra Costa County Medical Association Community Blood Plan for the duration of the Agreement.

27. ASSAULT INSURANCE

The District will provide Assault Insurance as indicated under the existing insurance policy in the amount of seventy-five thousand dollars (\$75,000) for each District employee.

28. DENTAL INSURANCE COVERAGE *

Present coverage for preventative care, restorative care, prosthodontic care, and orthodontic care will continue. Coverage will be as follows:

- A. **Preventative Care:** Insurance will pay one hundred percent (100%) of Usual and Customary charges.
- B. **Restorative Care:** Insurance will pay ninety percent (90%) of the Usual and Customary charges, with the employee paying the balance.
- C. **Prosthodontics:** Insurance will pay ninety percent (90%) of the Usual and Customary charges, with the employee paying the balance.
- D. **Orthodontics:** Insurance will pay seventy-five percent (75%) of the Usual and Customary charges, with the employee paying the balance.

Maximum benefit payable for a combination of preventative, restorative, and prosthodontic care is two thousand dollars (\$2,000) for each calendar year. Each calendar year, the employee may place the maximum benefit payable for preventative, restorative and prosthodontic care for each employee and dependent in a family bank. Maximum benefit payable for orthodontic care is three thousand five hundred dollars (\$3,500) lifetime maximum, with fifty dollars (\$50) deductible for employees and dependents.

*** Minute Clarification**

Employees shall have the option to purchase, at their own expense, an enhanced dental plan. Benefits and premiums shall be established by the District annually, based on plan experience. Premiums for this benefit will be paid through payroll deduction.

29. DISABILITY COVERAGE

A. Short-Term Disability Coverage – Basic

1. The District will continue to maintain Basic Short-Term Disability (STD) coverage with a maximum monthly benefit of sixty-six and two-thirds percent (66-2/3%) of the base monthly salary subject to the following maximum benefit amounts:

Weeks of Disability	District Paid Basic STD	Employee Paid Voluntary
1st – 26th	\$840	

At no time will disability coverage be less than the level mandated by State law.

2. **Employee Paid Short-Term Disability Coverage - Voluntary**
Employees may purchase additional Short-Term Disability coverage to insure payment of up to sixty-six and two-thirds percent (66-2/3%) of the base monthly salary, subject to the above listed Voluntary maximum benefit amounts.
Premiums for this additional coverage shall be fully paid by the employee.

B. Long Term Disability Coverage – Basic

1. The District will continue to maintain Basic Long-Term Disability (LTD) coverage with a maximum monthly benefit of sixty-six and two-thirds percent (66-2/3%) of the base monthly salary subject to the following maximum benefit amount:

Weeks of Disability	District Paid Basic LTD	Employee Paid Voluntary * LTD
After 26th week	\$3335 per mo.	\$5000 per mo.

2. Employee Paid Long-Term Disability Coverage - Voluntary

Employees may purchase additional Long-Term Disability Insurance to insure payment of up to sixty-six and two-thirds percent (66-2/3%) of the base monthly salary subject to the above-listed maximum benefit amount.

Premiums for this additional coverage shall be fully paid by the employee.

Eligibility of employees to purchase additional Short-Term and Long-Term Disability coverage shall be subject to medical certification of insurability at the employee's own expense.

NOTE: * Voluntary maximum benefit amount includes the Basic benefit provided by the District.

30. TRAINING

The Union and the District agree the District will provide training for each job category and for each employee, which will result in a competent staff and provide individuals with reasonable growth opportunities.

The District will provide training programs, which will enable each individual to maintain his/her basic skills, knowledge and abilities. Such programs will encompass job training to maintain and develop skills and to provide opportunities for the personal growth of all employees.

The District will conduct a training needs assessment during the life of the agreement. The intent of the needs assessment is to identify a core set of skills that are applicable to a broad number of employees in job classifications in areas such as problem solving, action planning, effective communication, conflict resolution, presentation skills and other such job related skill needs. The District will develop a training plan based on the analysis of the

needs assessment. The Union may provide input in the design of the needs assessment and in the review of the training plan.

Employees will be eligible for up to twenty-four (24) hours of training during the life of the agreement in the core set of skills identified in the needs assessment. The training is subject to departmental approval for job relatedness and/or career development and scheduling.

The District and up to five (5) representatives of the Union will meet within ninety (90) days after mutual contract signing to discuss and receive input from the Union on existing and potential new training opportunities.

**31. GROUP INSURANCE & DISTRICT SELF-FUNDED PLANS
- GENERAL ***

- A. The terms, conditions and provisions of all current group insurance policies issued by insurance companies to the District, or hereafter negotiated between the parties, and of all self-funded employee benefits plans, exclusive of the Money Purchase Pension Plan and the Deferred Compensation Plan, under which individual employees are to receive benefits, are incorporated by reference herein and shall be controlling in all matters pertaining to benefits hereunder.
- B. The District agrees that it will not change, or seek to change, the benefits under the group insurance policies, or under the self-funded benefit plans or fail to provide reasonable and customary claims services under which individual employees are to receive benefits, without mutual agreement of the parties to this Agreement.
- C. The District agrees that it will promptly notify the Union of any proposed changes to group insurance policies or self-funded benefit plans which may be mandated by law or required by insurers, or proposed by the District.
- D. Married employees and employees in an eligible domestic partnership, who both work for the District shall receive full coverage under group insurance policies and self-funded benefit plans. They shall each receive their allotted employee

and dependent coverage. In no event will these employees or their dependents be entitled to such combined coverage in excess of their actual expenses.

DEPENDENT DEFINITION

The definition of a dependent for the purposes of District-paid medical benefit plans shall be as follows:

1. The covered employee's legally wedded spouse or domestic partner per Board Resolutions 4455 and 4757, BART eligibility guidelines and health plan eligibility guidelines.
2. The unmarried, a) natural born child, b) legally adopted child, c) Step child or d) child of the employee or the employee's domestic partner for whom the covered employee or employee's domestic partner became the guardian before age 19 who is under age 19 and dependent on the covered employee for their principal support and maintenance. This also includes any such child as listed above who is under age 23 (or under age 24 in accordance with the individual health plan) provided they are attending school on a continuous, full-time basis (12 units or more), at an accredited academic or vocational institution.

This also includes any such child as listed above who is incapable of sustaining employment by reason of mental retardation or physical handicap, if such was incurred prior to age 19 (or prior to age 23, or prior to age 24 in accordance with the individual health plan, if the child was attending school as a full-time student as defined above), provided the child resides in the covered employee's household or a custodial facility.

3. Any unmarried child (including the eligible child of an employee's domestic partner) under age 19 (or prior to age 23, or prior to age 24 in accordance with the individual health plan, if attending school as a full-time student as previously defined) for whom the covered employee is mandated by court decree to provide health benefits.
4. Proof of dependency and/or incapacity must be furnished during the period specified by BART.
5. The parties agree that the second paragraph of this section means that the District will not make changes

to current group insurance policies which adversely affects the level of benefits without mutual agreement of the parties.

*** Minute Clarification**

This Section shall not apply to benefits which are provided pursuant to Section 33, PERS-Medical & Prescription Drug Benefits and Section 41, Survivor Benefits. Section 33, PERS-Medical & Prescription Drug Benefits and the PERS rules, regulations and plan documents shall control on all issues concerning medical and prescription drug benefits.

32. GROUP LIFE INSURANCE

A. Basic Life Insurance

1. The District will provide a Basic Group Life Insurance Policy (Basic Group) with accidental death and dismemberment coverage for each employee, equivalent to two (2) times the employee's annual base earnings, two thousand and eighty (2,080) hours X base straight time hourly rate, rounded to the next higher even thousand dollars (\$1,000).
2. Coverage reduces thirty-five percent (35%) of the Basic Group amount at age sixty-five (65), fifty percent (50%) at age seventy (70), sixty-five percent (65%) at age seventy-five (75) and will remain at the thirty-five percent (35%) level until the employee retires.

B. Additional Life Insurance

1. Employees are eligible to participate in Additional Life Insurance (Additional Life) which is a flat amount equal to one (1) times the employee's annual base earnings, two thousand and eighty (2,080) hours X base straight time hourly rate, rounded to the next higher even thousand dollars (\$1,000) with accidental death or dismemberment provisions. Premiums for this coverage are paid fifty percent (50%) by the District and fifty percent (50%) by the employee.

2. Coverage reduces thirty-five percent (35%) of the Additional Life amount at age seventy (70), sixty-five (65%) at age seventy-five (75) and will remain at the thirty-five percent (35%) level until employee retires.

C. Voluntary Life Insurance

1. All employees are eligible to purchase this coverage at their individual option. The plan provides protection in a flat amount equivalent to one (1) times the employee's annual base earnings, two thousand and eighty (2,080) hours X base straight time hourly rate, rounded to the next higher even thousand dollars (\$1,000) with accidental death and dismemberment provisions (AD&D). Premiums for this coverage are fully paid by the employee.
2. Coverage reduces thirty-five percent (35%) of the Voluntary Life amount at age sixty-five (65), fifty percent (50%) at age seventy (70), sixty-five percent (65%) at age seventy-five (75) and will remain at the thirty-five percent (35%) level until employee retires.

Employees who participate in either plan or both will be required to sign a payroll deduction authorization form for the premiums.

33. PERS-MEDICAL & PRESCRIPTION DRUG BENEFITS *

A. PERS Medical & Prescription Drug Benefits

The District will provide group medical and prescription drug benefits, as provided below, through the Public Employees' Retirement System (PERS). The PERS rules, regulations and plan documents will control on all issues concerning benefits, including the types and levels of benefits offered and eligibility for those benefits.

The Union acknowledges that it understands these benefits may not equate to benefits previously available to employees and retirees through the various optional medical plans and the Prescription Drug Plan. Because coverage will be provided through PERS, the District and the Union understand that PERS may terminate or

change covered expenses, benefit payments and co-payments on covered benefits, deductibles, lifetime and/or annual maximums and may implement various cost control features.

Except for Survivors Benefits, as provided for in Section 41, the Union waives the right to any group medical or prescription drug benefit granted expressly or implied under other sections of this Agreement, or by any other agreement between the parties or by any District guideline, policy or practice if that benefit is not offered through the PERS medical plan.

Employer Contributions for Health Insurance.

B. Employee and Retiree Contributions for Health Insurance.

All employees eligible for PERS medical benefits who enroll for such benefits shall be responsible for a premium contribution in the amount of twenty-four dollars and fifty eight cents (\$24.58) per month, except as provided below.

1. The employee's twenty-four dollars and fifty eight cents (\$24.58) monthly employee contribution toward the medical insurance premium shall increase by fifty dollars and forty two cents (\$50.42) on January 1, 2006. Each January 1 thereafter, the monthly employee contribution shall increase by an escalator amount of three percent (3%). For example, the total monthly employee contribution on January 1, 2007 will be seventy-seven dollars and twenty-five cents per month. (The calculation that arrives at this number is as follows: $\$24.58 + \$50.42 = \$75 \times 1.03 = \77.25 .) The employee contribution amounts provided by this subsection shall be the maximum employee premium contribution through June 30, 2034. The employee contribution amounts provided below shall be in addition to any costs for coverage excess of the amounts specified in paragraph C. below.

<u>DATE</u>	<u>Maximum Employee Monthly Contribution</u>
01 Jan. - 06	\$75.00
01 Jan. - 07	\$77.25

01 Jan. - 08	\$79.57
01 Jan. - 09	\$81.95
01 Jan. - 10	\$84.41
01 Jan. - 11	\$86.95
01 Jan. - 12	\$89.55
01 Jan. - 13	\$92.24
01 Jan. - 14	\$95.01
01 Jan. - 15	\$97.86
01 Jan. - 16	\$100.79
01 Jan. - 17	\$103.82
01 Jan. - 18	\$106.93
01 Jan. - 19	\$110.14
01 Jan. - 20	\$113.44
01 Jan. - 21	\$116.85
01 Jan. - 22	\$120.35
01 Jan. - 23	\$123.96
01 Jan. - 24	\$127.68
01 Jan. - 25	\$131.51
01 Jan. - 26	\$135.46
01 Jan. - 27	\$139.52
01 Jan. - 28	\$143.02
01 Jan. - 29	\$148.02
01 Jan. - 30	\$152.46
01 Jan. - 31	\$157.03
01 Jan. - 32	\$161.74
01 Jan. - 33	\$166.60
01 Jan. - 34	\$171.59

2. Each eligible retiree shall pay the same premium contribution as active employees. Employees' premium contributions will be paid for through tax-exempt payroll deductions. Retiree premium contributions will be deducted from the retirement allowance paid by PERS. If a retiree's retirement allowance is not sufficient to pay the entire contribution, the retiree must pay the balance due on such premium contribution directly to PERS. If such payment is not received by the due date, health care coverage will automatically, immediately and permanently cease. These rules are intended to comply with the premium contribution procedures established by PERS, which may be modified by PERS. The District, Unions and employees shall comply with the PERS procedures in effect from time

to time.

C. Maximum District Contributions for Health Insurance

Beginning January 1, 2010, the District shall contribute an amount up to the applicable level of plan participation (i.e. one party, two party, or family) and the same Medicare status as elected by the eligible employee or retiree equal to the Bay Area Basic Premium Rates for the PERS HMO Blue Shield Access+ or PERS HMO Kaiser Plan, whichever is greater, less the employee and retiree contributions provided for in 33.B above. This District contribution shall be the District's maximum payment toward employee health insurance premiums. Employees and retirees electing coverage with a cost greater than the District's maximum contribution shall have the difference deducted automatically from the unit member's pay or as set forth in 33.B.1. above, in addition to amounts to be deducted in accordance with subsection B above.

D. Retiree Insurance Funding.

1. Beginning July 1, 2007, the District shall contribute into its Retiree Health Benefit Trust (RHBT) amounts that, at minimum, reflect an eight (8) year "ramp up" to District payment of the full Government Accounting Standards Board (GASB) compliant Annual Required Contribution (ARC) beginning July 1, 2013 using an open group valuation method with a closed thirty (30) year amortization schedule for unfunded liability ending June 30, 2034. Except as provided in paragraph 3 below, each pay period the District shall contribute to the RHBT an amount equal to the below-listed percentages of straight time bargaining unit base pay paid to bargaining unit members in that pay period into the RHBT. (For example, if base pay in the pay period in FY '07 is one million dollars (\$1,000,000), the District will contribute \$34,900 into the RHBT for that pay period).

<u>Date</u>	<u>Percentage</u>
July 1, 2007 (FY 08)	3.49%
July 1, 2008 (FY 09)	3.64%
July 1, 2009 (FY 10)	3.79%

July 1, 2010 (FY 11)	3.94%
July 1, 2011 (FY 12)	4.10%
July 1, 2012 (FY 13)	4.27%

2. In addition, on or before June 30, 2009 the District shall, at minimum, contribute into the RHBT an amount equal to three and twenty-two one-hundredths percent (3.22%) of straight time bargaining unit base pay paid in FY '06 and three and thirty-six one-hundredths percent (3.36%) of straight time bargaining unit base pay paid in FY '07. These figures represent the “ramp up” percentages for those fiscal years.

3. The District shall perform an actuarial study of the retiree medical insurance plan liabilities and funding needs (including the Annual Required Contribution – “ARC”) after the end of each calendar year but before the beginning of the next fiscal year for which the results provide guidance. For each fiscal year beginning with FY 2007, the actuaries shall adjust the above “ramp up” percentages for the fiscal year for which the study was prepared and for each remaining fiscal year in the “ramp up” period. The last such adjustment will be in the study performed prior to July 1, 2013 for FY 2013. The revised percentages shall be the percentages contributed by the District to the RHBT for those years, except that the District shall pay no less than the percentages specified in subsections 1 and 2 above.

4. Beginning July 1, 2013, the District shall, at minimum, contribute to the RHBT each pay period an amount equal to the full GASB compliant Annual Required Contribution (ARC) percentage of straight time base pay paid to bargaining unit members during that pay period using an open group valuation method with a closed thirty (30) year amortization schedule for unfunded liability ending June 30, 2034. (For example, if the base pay during the pay period is one million dollars (\$1,000,000) and the ARC percentage is fourteen percent (14%), the District will contribute one hundred forty thousand dollars (\$140,000) to the RHBT for that pay period.)

5. Effective July 1, 2013, the District shall retain the

1.627% MPPP contribution referred to in subsection C.2 above to the extent necessary to compensate the District for paying the difference between the actual ARC and the baseline ARC described below. The District shall retain this amount through June 30, 2034. In any year in which the actual ARC does not exceed the baseline ARC by an amount equal to the amount of the retained 1.627% MPPP contribution, the District shall pay the appropriate portion of the 1.627% into the employees' MPPP accounts, but only to the extent that the difference between the actual ARC and the baseline ARC is less than the dollar value of the retained MPPP 1.627%.

EXAMPLE: Assume that the actual ARC is fifteen percent (15%) in the particular year, the baseline ARC is fourteen percent (14%) in the particular year, and that the difference between the two is one million dollars (\$1,000,000). Assume further that the value of the retained 1.627% is one million five hundred thousand dollars (\$1,500,000). The District would then pay a total of five hundred thousand dollars (\$500,000) into the employees' collective MPPP accounts. These payments would be prorated in the same manner as would result from full payment of the 1.627% into the employee accounts.

The baseline ARC is as follows:

<u>FY Year Beginning</u>	<u>Baseline ARC</u>
7/1/13	11.88%
7/1/14	11.94%
7/1/15	12.00%
7/1/16	12.06%
7/1/17	12.12%
7/1/18	12.18%
7/1/19	12.24%
7/1/20	12.30%
7/1/21	12.36%
7/1/22	12.42%
7/1/23	12.48%
7/1/24	12.54%
7/1/25	12.60%

7/1/26	12.66%
7/1/27	12.72%
7/1/28	12.78%
7/1/29	12.84%
7/1/30	12.90%
7/1/31	12.96%
7/1/32	13.02%
7/1/33	13.08%

6. Effective July 1, 2013 the District shall direct the Trustee of the RHBT to pay retiree health insurance premiums from the RHBT. No premiums will be paid from the RHBT prior to July 1, 2013.

E. One Time Payment

The District shall pay each bargaining unit member a one-time lump sum payment of three hundred dollars (\$300) gross in January 2006 to offset the increased employee's health insurance cost.

F. Alternative Plans

1. Between July 15 and November 15, 2005 the District and Union will meet to discuss possible proposals for alternative retiree health insurance plan legislation that would apply to employees hired after the effective date of the legislation. If the parties mutually agree on such proposals, they will jointly request that the state legislature and the Governor approve such legislation on an urgency basis. If the proposal becomes law the District will amend its contract with PERS to adopt the new program effective January 1, 2007 or as soon thereafter as possible for employees hired after the plan takes effect, subject to satisfaction of the following conditions. First, all other District bargaining agents must agree to amend their respective labor agreements to accommodate the change under the same overall terms as for the SEIU and ATU bargaining units. Second, District actuaries must certify that using the same actuarial assumptions, contribution assumptions and "ramp up" percentages set forth above:

- a. The actuarial projection of the ARC under the new program by the District's actuaries demonstrates that it will not rise above the ARC under the existing program at any time and that the District's unfunded liability for retiree medical insurance will not increase at any time.
- b. It will not diminish budgetary savings during the "ramp up" period described above.

In addition, if the new plan otherwise meets the conditions set forth above, but produces additional savings as determined by the District's actuaries, the parties shall offset employee medical contributions to the extent of such savings at the time they occur.

If there are remaining projected savings after the elimination of the above employee contributions, the District and Union shall meet to discuss further distribution of the savings for employee benefit costs.

G. In Lieu of Medical Payments

During any open enrollment period after July 1, 2009, an eligible employee who has medical coverage under a spousal or other alternate plan may elect, in accordance with procedures established by the District to opt out of the group medical and prescription drug benefits covered under Section 33.A.

The District shall make a monthly payment of \$100.00 "in lieu of medical" to each eligible employee who opts out of 33.A. coverage.

Tax treatment of these payments will be subject to applicable Internal Revenue Code (IRC) and Internal Revenue Service (IRS) rules. The payments will be made in a manner that will not impact the income tax status of medical premiums under IRC requirements and to allow an employee to receive the amounts as cash monthly payments.

An eligible employee who opts out of 33.A. coverage may subsequently enroll in such coverage as permitted under the terms of the plan(s) described in Section 33.A.

H. Trust Review Committee.

1. The District's five (5) unions shall each appoint one (1) member to serve on a trust review committee (TRC). The District Labor Relations Manager and Human Resources Manager shall serve on the TRC for the District. The TRC shall meet quarterly. Employee members of the TRC will be released from regularly scheduled duty with pay for quarterly TRC meetings.
2. The District will direct the Trustee of the Trust to provide the Unions with quarterly reports of all RHBT operations, including audited and unaudited financial statements and investment performance reports, and other consultant reports in advance of the quarterly TRC meeting. (The parties acknowledge that audited financial statements are performed only once per year.)
3. The Trustee will attend the TRC meeting to answer questions concerning the information provided to the TRC. However, the TRC shall in no way attempt to assist, direct, or otherwise involve itself in matters concerning the investment of Trust assets. However, the TRC may advise the Trustee on other Trust matters to the extent such advisory activity does not affect the legal status of the Trust. It shall be within the sole discretion of the Trustee whether to follow or not follow such advice.
4. The TRC members shall be released from regularly scheduled duty with pay to attend meetings of the Human Resources Manager and Labor Relations Manager with the District's actuaries and other professionals to discuss assumptions to be included in annual GASB valuation studies, the preliminary and final results of such studies, etc. Such studies shall include ARC projections through at least the year 2035. The District will provide the unions with a copy of the final version of such study on or before February 1st each year or as soon thereafter as is practicable.

I. Retiree Health Benefits Trust.

Within one hundred twenty (120) days after the signing of this agreement by the parties hereto, the District shall amend the Trust Agreement to provide that:

1. Trust assets shall be held for the sole and exclusive purpose of providing health benefits to eligible BART retirees and to defray the reasonable expenses of administering the RHBT.
2. The only District benefit plans for which payments may be made from the RHBT shall be those retiree health benefit plans offered to eligible District retirees as a result of its collective bargaining agreements, or District policy which extends such plans to non-represented employees. In addition, for District personnel on a District plan that is no longer generally offered to District employees, payments may be made from the RHBT. However, the District shall ensure sufficient separate funding and the Trustee shall separately account for benefits paid for such personnel.
3. The District may terminate the RHBT, subject to its duty to bargain in good faith to agreement or impasse over such termination with the Union. If the District gives the Union notice of the termination of the RHBT, the Trust shall not terminate until the assets then remaining are exhausted. Such assets shall be used only as provided in paragraph 1 above.

The District reserves the right to terminate or change any part or all of the health benefits program at any time with respect to active or retired employees, however, any such action will be taken only after the District has satisfied its obligations under applicable Collective Bargaining Agreements. The District's obligation to provide health benefits coverage to retired employees shall terminate upon the expiration of this Agreement. By providing benefits to retirees, the parties do not intend to vest retirees with such benefits.

*** Minute Clarification**

The parties mutually understand that the only obligation to continue the health benefits of active employees after the expiration of the Agreement is that which may arise from the general legal duty to bargain in good faith.

34. VISION CARE PLAN *

The District will continue to provide and pay for a Vision Care Plan for employees, an employee's eligible domestic partner (per Board Resolutions 4455 and 4757) and their eligible dependents providing the following:

Coverage	Intervals
Visual Examinations	12 months
Lens Replacement	12 months
Frames Replacement	24 months

There shall be a ten dollar (\$10) deductible.

*** Minute Clarification**

Employees shall have the option to purchase, at their own expense, an enhanced Vision Care Plan. Benefits and premiums shall be established by the District annually based on plan experience. Premiums for this benefit will be paid through payroll deduction.

35. SICK LEAVE

A. Employees will accrue one (1) day of Sick Leave for each full month of employment. Sick Leave credits may be accumulated to a total of two thousand five hundred (2500) hours. Sick Leave will be paid without limitation on their rights under state and federal law when an employee is required to be absent because of:

1. Illness (including alcoholism), including the appropriate use of required prescribed medication which would impair the employee's work performance, injury, quarantine or similar exposure to contagious disease;
2. Required attendance upon a seriously ill spouse, domestic partner (as per Board resolutions 4455 and 4757), parent or child as required in writing by a doctor, to include the length of the anticipated leave. Said documentation shall be subject to verification;

3. Verifiable medical and/or dental appointments which cannot be scheduled outside the normal working hours of the employee, provided that a minimum of forty-eight (48) hours advance notice is given and provided that subsequent confirmation that the appointment was kept is given, if requested by management.
- B. An employee experiencing a verified industrial injury or illness will be entitled to receive for each separate injury or illness up to five (5) days industrial accident leave. Sick Leave benefits, to the extent they are available, will be coordinated with Workers' Compensation to maintain the employee's basic straight time earnings.
 - C. To be eligible for Sick Leave benefits an employee may be required to provide satisfactory written verification of the necessary and/or compelling reason. If doubt exists as to an illness or injury or that absence from work was required, the decision of a physician selected by District will govern.
 - D. The General Manager may grant time off without pay to an employee who has insufficient accumulated Sick Leave.
 - E. All unused accumulated Sick Leave shall be cancelled without compensation upon termination of employment.
 - F. **Incentives For Sick Leave Accrued And Unused On Or After October 19, 2009**

To encourage employees to maintain maximum attendance and to improve performance, the District offers employees the following two (2) incentives beginning October 19, 2009:

1. **PERS Retirement Service Credit for Sick Leave:** The District will amend its contract with CalPERS to provide the California Government Code Section 20965 option for service credit for unused sick leave for eligible CalPERS members in the bargaining unit, with an effective date of October 19, 2009. The Public Employees Retirement Law (PERL) and CalPERS rules will govern the eligibility of unused sick leave earned on or after October 19, 2009 for service credit. Those rules presently grant 0.004 years of service credit for each certified unused day of sick leave accrued by the member during the normal course of

his/her employment. For employees whose effective date of retirement is within four months of separation from employment with the District, the District shall certify to CalPERS all such unused days of sick leave that were accrued by the employee on or after October 19, 2009. For purposes of Government Code Section 20965, leave accrued prior to October 19, 2009 shall not be considered “unused” sick leave and the District will not certify such sick leave to CalPERS, unless the employee has made the one-time election to convert such pre-October 19 sick leave to PERS-credit-eligible sick leave pursuant to Paragraph G below.

2. **Annual Buy-Back or MPPP Incentive:** The District shall give employees the option each year to make an irrevocable election on the schedule indicated below to buy-back or to deposit into their Money Purchase Pension Plan (MPPP) accounts, the dollar value of the sick leave earned within the annual accrual period indicated in F.2.a below, less sick leave taken during that same period, on an after tax basis.

a. **Sick Leave Accrual/Election Periods:** The maximum sick leave which may be earned for each accrual period is ninety-six (96) hours for employees on a 5-8 or 9/80 Work Plan and one hundred twenty (120) hours for employees on a 4-10 Work Plan. Sick leave for which such an election has been made shall not be included by the District in the certification to CalPERS under the retirement service credit plan described above.

<u>Election Period</u>	<u>Accrual Period</u>
09/01/09 – 09/15/09	09/21/09 – 09/19/10
09/01/10 – 09/15/10	09/20/10 – 09/18/11
09/01/11 – 09/15/11	09/19/11 – 09/16/12
09/01/12 – 09/15/12	09/17/12 – 09/15/13

b. **Buy-Back / MPPP Deposit Accounts:** An election to “buy-back” or to deposit into the MPPP must also include an election as to the percentage amount of the “buy-back”, based on the percentage increments and maximums provided below. The Maximum Buy-Back

percentage that will be allowed is based on the employee's attendance record during the accrual period.

<u>Days</u>	<u>Banking Percentage of Unused Earned Sick Leave</u>
0	5% up to 50% (in 5% increments)
1-3	5% up to 40% (in 5% increments)

Buy-Back and MPPP amounts shall be calculated at the employee's base rate of pay at the end of the accrual period less applicable tax withholding.

- c. **Impact of Buy-Back / MPPP Election:** Employees may select only one option (Buy-Back or MPPP) for each accrual period. Once the Buy-Back or MPPP incentive election is made for any accrual period it may not be changed. Employees will receive the Buy-Back checks or MPPP credit no later than December 1 following the end of the accrual period. Unused sick leave hours for which an election to Buy-Back or transfer into the MPPP is not made shall be carried over to the next year, subject to maximum accumulation limits, and will no longer be available for any future Annual Buy-Back / MPPP incentive election.

G. One-Time Election To Convert Sick Leave Accrued Prior to October 19, 2009 To PERS Creditable Sick Leave.

During the month of October 2009, employees will be given a one-time opportunity to convert unused sick leave that has been accrued prior to October 19, 2009 to PERS-credit-eligible sick leave (described in paragraph F.1. above). This election shall be irrevocable, and will include all the employee's unused sick leave, including banked sick leave pursuant to H.1 and unbanked sick leave pursuant to F.2.c. below. If an employee makes this election, such accrued leave will no longer be eligible for pay-out at termination/retirement (previously banked leave) or at retirement (unbanked leave). All leave converted pursuant to this paragraph G will be subject to CalPERS rules for service credit eligibility. Leave converted under this paragraph will

thereafter be considered, for purposes of disposition at the end of employment only, to have been accrued on or after October 19, 2009.

H. Sick Leave Accrued Prior to October 19, 2009:

Sick leave accrued prior to October 19, 2009, which is not converted to PERS creditable sick leave pursuant to paragraph G above, shall be preserved in accounts separate from sick leave accrued on or after October 19, 2009, and shall be used pursuant to the terms of this paragraph H, including 1.-3.

1. Banked Sick Leave (Under Previously Exercised Option).

This section refers to sick leave which has been “banked” in accordance with Labor Agreement Section 35 as it was in effect on June 30, 2009, or banked pursuant to Agreements previously in effect. It excludes sick leave electively converted to PERS creditable sick leave pursuant to paragraph G above. It includes sick leave for which a banking election was made during the 2008 or earlier options periods.

Banked sick leave, as defined above, will be preserved in a separate account for use by the employee in accordance with the provisions of former Section 35 including the following:

- a. Such bank shall be set aside for payment upon death/retirement/termination and shall not be included in the calculation of unused sick leave pursuant to paragraph G above or Government Code Section 20965.
- b. Sick leave hours banked will be paid at the employee’s base rate of pay, effective on the employee’s date of death or retirement/termination from District’s employment.
- c. Employees who experience an illness/injury and exhaust their existing sick leave that is available, may utilize sick leave that has been banked under prior Section 35 provided they make a written request to do so through their Department Manager at the time of the illness/injury and the circumstances qualify for sick

leave under Section A (sick leave payment).

2. Sick Leave Buy-Back (under previously exercised option).

Employees who exercised the option during the September 2008 period specified in Labor Agreement Section 35 in effect on June 30, 2009 to make an irrevocable election to buy-back or deposit into the MPPP the value of sick leave earned during the annual accrual period, less sick leave taken during the annual accrual period shall receive the buy-back payments and the MPPP deposits required by the prior Labor Agreement.

Buy-back checks for the 2009 accrual period under former Labor Agreement Section 35 will be distributed to employees no later than December 1 following the end of the accrual period, and MPPP elections for that period will be deposited by that same date.

3. Retirement Buy-Back

Sick leave accrued prior to October 19, 2009 and not (1) banked pursuant to paragraph 1 above; (2) bought back or deposited in the MPPP pursuant to paragraph 2 above; (3) converted to PERS creditable sick leave pursuant to paragraph G above; or (4) used pursuant to E and A, shall be available for use as Retirement Buy Back incentive. Employees leaving District service on a service retirement (non-disability retirement) shall be paid fifty percent (50%) of this accrued sick leave balance upon the effective date of service retirement. The accrued sick leave shall not be included in the calculation of unused sick leave pursuant to paragraph G above or Government Code Section 20965.

I. Order of Use of Sick Leave from Separate Accounts.

When using sick leave with pay pursuant to Section A above, employees sick leave balances will be deducted in the following order;

1. Sick leave accrued on or after October 19, 2009, if any, including any sick leave accrued before October 19, 2009

- which an employee has elected to convert to PERS creditable sick leave pursuant to paragraph G above, if any.
2. If the accruals described in paragraph I.1 are exhausted, unbanked sick leave accrued prior to October 19, 2009, if any.
 3. If the accruals described in paragraphs I.1 and I.2 above are exhausted, banked sick leave, if any, may be used subject to the terms of paragraph H.1.c above.
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36. EDUCATIONAL ASSISTANCE PROGRAM

The District's Educational Assistance Program will be continued during the life of this Agreement. Employees who wish to enroll in job-related and promotion oriented courses which will improve their job knowledge and performance will be compensated by the District for expenses as follows:

- A. When an employee is in the process of acquiring a sixty (60) semester unit or a ninety (90) quarter unit degree (e.g., Associate of Arts Certificate of Achievement), or when an employee is properly authorized to enroll in a correspondence course and/or a specific course of study that may not result in a degree, said employee shall be reimbursed up to a maximum of seven hundred fifty dollars (\$750) per fiscal year.
- B. When an employee exceeds sixty (60) semester units or ninety (90) quarter units and is enrolled in upper division course work, said employee shall be reimbursed up to a maximum of one thousand dollars (\$1,000) per fiscal year.
- C. The maximum amount that an employee may be reimbursed under this program in any fiscal year is one thousand dollars (\$1,000).

Out-of-pocket expenses for required textbooks and course materials may be included for reimbursement within the above dollar limits. Textbooks may be retained by the employee upon completion of the course. Courses must be taken at an accredited institution or through correspondence courses or other approved vendors, whether training is delivered in-person or on-line, if comparable courses are not available in local schools or if the work assignment of the

individual is such that it does not permit regular classroom attendance. Approval of other vendors under this section and the establishment of criteria for successful completion, when those listed below are inapplicable shall be at the discretion of the Department Manager of Human Resources or designee.

Except for unusual circumstances, employees will not be granted time off from their regular work schedule to attend courses taken under this Section.

Courses must be approved by the employee's Department Head prior to enrollment. Reimbursement shall be made after presentation of proper receipts and upon completion of the course with at least a "C" grade or its equivalent.

At the employee's option, an advance may be secured by payroll deduction of the amount of the advance if:

1. Satisfactory evidence of completion of the course taken is not provided to the District within thirty (30) days following completion of the course, or
2. The course is not completed with at least a grade "C" or its equivalent, or
3. The course is failed, or
4. The employee voluntarily drops the course for any reason, including voluntary shift change or termination of employment with the District.

If the employee's course is not completed due to a District required shift change or reduction in force, repayment of the advance will not be required.

Definitions

- a. District required shift change: a reorganization or District mandated classification rebid resulting in an involuntary shift change due to the seniority of an employee or as the result of a promotion.
- b. District required reduction in force: reduction in force action as described in Section 69 of this Agreement,

resulting in employee being placed in lay-off status with recall rights.

- c. Voluntary shift change: any shift change in which the individual has the ability to control movement affecting him/her adversely, i.e., advance bid, promotion, reverting to his/her former position, system bids, line/yard bids, lateral bids, etc.

37. EMPLOYEE ASSISTANCE PROGRAM

The District will continue to provide a referral program for the purpose of assisting in a confidential manner, employees and their families with marital, psychological, alcohol or drug problems to obtain counseling and other services.

The District shall retain a consultant to provide referrals as appropriate in the above-described problem areas. The District shall pay the cost of this consultant's referral services, which will constitute the entire District monetary contribution to this program.

The costs for all other services provided to employees or their families under this program shall be borne by the participating employee/family member to the extent such services are not covered by the employee's medical or other benefit plans.

38. PENSIONERS' LIFE INSURANCE

Life insurance will be provided to all employees who retire from the District on either a service or a disability retirement as follows:

- A. First year of retirement, fifty percent (50%) of the employee's annual base earnings rounded to the next higher even thousand dollars (\$1,000);
- B. Second year of retirement, forty percent (40%) of the employee's annual base earnings rounded to the next higher even thousand dollars (\$1,000);
- C. Third year of retirement, thirty percent (30%) of the employee's annual base earnings rounded to the next higher even thousand dollars (\$1,000);

- D. Fourth and subsequent years of retirement, twenty percent (20%) of the employee's annual base earnings rounded to the next higher even thousand dollars (\$1,000).

This section is subject to the provisions of Section 31 - Group Insurance and District Self-Funded Plans - General.

39. RETIREMENT BENEFITS

- A. The District shall continue its present participation in the Public Employees' Retirement System (PERS) for miscellaneous members at existing levels.
- B. Effective January 17, 1982, the District discontinued Employer-paid additional contributions to PERS. Effective January 18, 1982, the District began contributions of one point six hundred twenty-seven thousandth's percent (1.627%) of payroll to the District's Money Purchase Pension Plan.
- C. The District shall continue to contract with the Public Employees' Retirement System (PERS) to provide the two percent (2%) at 55 retirement option. To partially offset the cost of the 2% at 55 retirement benefit, effective July 1, 1992, the District shall retain its contribution of one and six hundred twenty-seven thousandth's percent (1.627%) of payroll to the District's Money Purchase Pension Plan on behalf of members in the bargaining unit. The retention of the one and six hundred twenty-seven thousandth's percent (1.627%) contribution shall remain in effect to and including June 30, 2012.
- D. Additional PERS Option. Upon execution of this Agreement, the District will permit employees to purchase up to four (4) years of service credit for any continuous active military service prior to employment with BART pursuant to Government Code Sections 20930.3 and 20930.33. The employees will bear all costs for this PERS option.

40. PERS DEATH BENEFIT

All employees are eligible for a basic death benefit through the

Public Employees' Retirement System (PERS) if they should die before retirement. If an employee is not eligible to retire at the time of death (under age fifty [50] or less than five [5] years of credited service), the employee's beneficiary will receive a refund of the employee's contributions with interest and an additional sum of one (1) month's salary rate for each year of current service to a maximum of six (6) months salary.

41. SURVIVOR BENEFITS

Subject to the restrictions, limitations and eligibility requirements of the applicable health plans, employees may elect a survivor benefit which would pay a portion of premiums or provide reimbursement for the enrollment of their previously eligible covered survivor(s) in the medical, dental, and vision care plans upon the death of the employee. The cost for this program is fifteen dollars (\$15) per month. After the employee's death, the survivor must continue to contribute fifteen dollars (\$15) per month to receive the medical, dental, and vision coverage.

Full-time employees in the bargaining unit who did not enroll in the survivor benefits program described in the preceding paragraph within the 90 day period following hire will be permitted to enroll during a one-time-only thirty (30) day open enrollment period to be conducted at a time determined by the District's Benefits Manager but commencing no later than 120 days following the signing of this 2001-05 agreement by the parties hereto. Such enrollment shall be conditioned on the employee first paying to the District, at the time of enrollment, an amount equal to fifteen dollars (\$15) per month plus interest at the rate of four percent (4%) annually (prorated for partial years) retroactive to the employee's date of hire or April 1, 1992 (whichever is later). Continued participation after enrollment is properly completed in accordance with the one-time open enrollment period provided in this paragraph shall be governed by the terms and conditions of the program as otherwise specified in this section.

Part-time employees (less than 40 hours per week) and employees who are ineligible for District health plan coverage, including, without limitation, limited term intermittent employees, are ineligible for the Survivor Benefits Program. In order for the survivor of an employee or retiree who dies before the effective date of this Survivor Benefits Program to be eligible for survivor benefits, the

employee and survivor must have been covered by District medical benefits at the time of termination by death or retirement. In order for the survivor of an employee or retiree who dies after the effective date of this Survivor Benefits Program to be eligible for survivor benefits, the employee/retiree and survivor must have been covered by District medical benefits and enrolled in the Survivor Benefits Program at the time of death.

Payment for those who choose this benefit must commence within ninety (90) days of the beginning of the onetime open enrollment period for the program. This benefit shall be made available to eligible new hires when they commence the fifteen dollars (\$15) monthly assessment within ninety (90) days of hire. Former employees who retired prior to the effective date of this survivor benefits program are not eligible for this program. Survivors of employees or retirees who died after 11/17/88 and prior to the effective date of this program will have a specified one time open enrollment period to elect this or a similar reimbursement benefit described below.

Failure to pay the required fifteen dollars (\$15) per month assessment by the due date established by the District shall permanently and irrevocably terminate eligibility for the Survivor Benefits Program.

The various categories of individuals eligible to elect this program, and the additional conditions applicable to each category, are described below.

SURVIVORS OF EMPLOYEES WHO DIE IN SERVICE AFTER THE EFFECTIVE DATE OF SURVIVOR BENEFITS PROGRAM

The survivors of employees who were not eligible for a PERS retirement allowance and who die in service after the effective date of the Survivor Benefits Program are eligible for benefits if they are eligible under the optional PERS Survivors Benefits Program provided for at Government Code 22821 (the optional program). The District will pay the entire premium to PERS for the optional program upon payment of the fifteen dollars (\$15) per month contribution.

The survivors of employees who were eligible for a PERS retirement allowance and who die in service after the effective date of the Survivor Benefits Program are eligible for survivor benefits

only if the survivors are receiving a survivor's allowance from PERS and having the survivor's portion of the retiree medical premium withheld from the allowance. They will be reimbursed for the difference between the amount withheld and the required fifteen dollars (\$15) per month contribution. However, if the surviving spouse is not eligible for a PERS annuity only because he/she was married to the employee for less than a year, or only because he/she was a PERS annuitant and became ineligible for an annuity because of remarriage, the District will provide medical benefits as follows:

If the survivor meets the eligibility requirements for the optional PERS program, the District will pay the entire premium to PERS for the optional program upon payment of the fifteen dollars (\$15) per month contribution;

If the survivor does not meet the eligibility requirements for the optional program, the District will reimburse the survivors for medical premiums paid for any medical plan or coverage in which they may participate, less the required fifteen dollars (\$15) per month contribution. The maximum medical reimbursement will be based on the highest PERS medical plan premium applicable to their covered family size or the actual cost of their medical insurance, whichever is lower. Reimbursement will be made on a monthly basis. Proof of payment of medical premiums shall be required.

SURVIVORS OF EMPLOYEES WHO DIED IN SERVICE AFTER 11/17/88 BUT BEFORE EFFECTIVE DATE

The survivors of employees who died in service after November 17, 1988 but before the effective date of this program may elect the survivor benefits. If the survivors are receiving a survivor's allowance from PERS and having the survivor's portion of the retiree medical premium withheld from the allowance, they will be reimbursed for the difference between the amount withheld and the required fifteen dollars (\$15) per month contribution. If the survivors are not receiving a survivor's allowance from PERS, the District will provide dental and vision coverage and will reimburse the survivors for medical premiums paid for any medical plan or coverage in which they may participate, less the required fifteen dollars (\$15) per month contribution. The maximum medical reimbursement will be based on the highest PERS medical plan premium applicable to their covered family size or the actual cost of their medical

insurance, whichever is lower. Reimbursement will be made on a monthly basis. Proof of payment of medical premiums shall be required.

SURVIVORS OF RETIREES WHO DIED AFTER 11/17/88 BUT BEFORE EFFECTIVE DATE

The survivors of retirees who died after November 17, 1988 but before the effective date of this program may elect survivor benefits.

If the survivors are receiving a survivor's allowance from PERS and having the survivor's portion of the retiree medical premium withheld from the allowance, they will be reimbursed for the difference between the amount withheld and the required fifteen dollars (\$15) per month contribution. If the survivors are not receiving a survivor's allowance from PERS, the District will provide dental and vision coverage and will reimburse the survivors for medical premiums paid, less the required fifteen dollars (\$15) per month contribution. The maximum medical reimbursement will be based on the highest PERS medical plan premium applicable to their covered family size or the actual cost of their medical insurance, whichever is lower. Reimbursement will be made on a monthly basis. Proof of payment of medical premiums shall be required.

SURVIVORS OF RETIREES WHO DIE AFTER EFFECTIVE DATE OF PROGRAM

The survivors of retirees who retired before the effective date of this program but who die after the effective date are ineligible for this program. If an employee who elected this program retires and then dies, his or her survivors are eligible for dental and vision coverage, but medical coverage will be provided only if the survivors are receiving a PERS survivor's allowance. However, if the PERS survivor's allowance is not available only because the survivor and employee were married less than one year, or because the survivor remarries, then the District will reimburse the survivor for medical premiums paid, less the required fifteen dollars (\$15) per month contribution. The maximum medical reimbursement will be based on the highest PERS medical plan premium applicable to their covered family size or the actual cost of their medical insurance, whichever is lower. Reimbursement will be made on a monthly basis. Proof of payment of medical premiums shall be required.

The District reserves the right to terminate or change any part or all of the Survivor Benefits Program at any time with respect to active

or retired employees or survivors. However, any such action will be taken only after the District has satisfied its obligations under applicable Collective Bargaining Agreements. The District's obligation to provide survivor benefits coverage shall terminate upon the expiration of this Agreement.

The effective date of this Survivor Benefits Program shall be the first day of the second month following the effective date of the PERS Medical contract.

42. HEALTH & SAFETY PROTECTION

- A. The District will furnish safe and healthful working conditions and facilities.
- B. The District will furnish adequate devices to ensure safety and sanitation if required by law or regulations applicable to the District.
- C. The District and employees shall observe the letter and spirit of all applicable safety standards including Federal, State and CPUC provisions for both employees and patrons.
- D. Should an employee believe evidence exists that any law or regulation is not being complied with, such evidence must be submitted to the District.
- E. All matters covered by this Section shall be handled expeditiously by all parties to effect the correction of any valid safety or health hazard.
- F. Each employee shall be responsible for the proper care and maintenance of his/her tools, equipment and work area. Required tools and equipment and protective items necessary to safeguard the health of or to prevent injury to a worker shall be provided by the District.
- G. No employee shall be required to work in the presence of any safety or health hazard which can be demonstrated to Management as being an imminent threat to his/her health or safety.

If an employee believes that such conditions exist, he/she

should so notify his/her immediate supervisor and a Safety Engineer/Specialist shall be contacted to determine the degree of the existing hazard.

- H. The District agrees to provide physical examinations and other appropriate tests including audiometric examinations on an annual basis for employees whose work environment as determined by the District could be detrimental to his/her health or the safety of patrons.

43. SAFETY SHOES

Safety shoes shall be worn by employees when required by the District during their on-duty hours. The District will reimburse each employee required to wear safety shoes up to one hundred twenty-five (\$125.00) dollars annually.

The safety shoes shall be the best suited to the employee's work environment and meet OSHA requirements.

Annual payment for the purchase and maintenance of safety shoes will be made in the month of September of each fiscal year on a separate check.

44. LOST ARTICLES

All lost property shall be handled in accordance with the following procedures:

- A. If given to an employee by other than another employee, the name and address of the finder shall be obtained and he/she shall be notified of the procedures under this Section.
- B. If found by an employee, it will be returned on the same day if possible but without delay to the owner or, if unable to do so, turned into the District not later than the following day. When an employee is of the opinion such property is valuable, he/she shall immediately report the same to the supervisor, and it shall be properly identified and turned over by the supervisor to the Lost and Found office.
- C. The District Lost and Found office will maintain a record of such property, including the name of the employee turning in

the property, and if unclaimed after a prescribed period, the property shall be sold at public auction pursuant to regulations established by the District not in conflict with this Section. Employees shall be permitted to bid at such auction.

- D. The Union shall be provided a copy of the public notice of auction at the time such notice is published.
- E. Lost property turned in by an employee may be returned to the employee finding same following the prescribed retention period if such return is permitted by law.
- F. The District agrees to furnish any information to the employee finding lost property as to its final disposition upon request from the employee.
- G. Any property found that is suitable for an employee welfare or recreation program, or for other District purposes, shall be retained by the District after the period of retention has expired and allocated to such purpose.

45. CREDIT UNION

The District will continue to participate in the Provident Central Credit Union, The Golden One Credit Union and First Metropolitan Credit Union. Employees may select only one of the three (3) Credit Unions for utilization of payroll deduction. The District will make brochures and application forms available to employees and retirees upon request.

46. BENEFITS REVIEW

The District and the Union agree that the Department Manager of Human Resources or designee and top officials/consultants shall meet annually between the months of March and May to discuss the District's benefits plans. This discussion may include a review of the status of the plans, the preceding year's experience under the plans, levels of coverage, alternative benefits and other matters relating to employee benefits.

47. COMPENSATION

A. Salary

1. Fiscal Year 2010 (First Year)

Effective August 1, 2009 and continuing until June 30, 2010, the base salary for bargaining unit members shall remain the same as the fiscal year 2008-2009 base rate of pay.

2. Fiscal Year 2011 (Second Year)

Effective July 1, 2010, and continuing until June 30, 2011, the base salary for bargaining unit members shall remain the same as the 2008-2009 base rate of pay.

No later than July 1, 2010, the District shall pay each bargaining unit member in active paid status on June 1, 2010, a one-time, lump sum payment of five hundred dollars (\$500). The District shall have no obligation to make a similar payment on any future date.

3. Fiscal Year 2012 (Third Year)

Effective July 1, 2011, and continuing until June 30, 2012, the base salary for bargaining unit members shall remain the same as the 2008-2009 base rate of pay.

No later than July 1, 2011, the District shall pay each bargaining unit member in active paid status on June 1, 2011, a one-time, lump sum payment of one thousand dollars (\$1,000). The District shall have no obligation to make a similar payment on any future date.

4. Fiscal Year 2013 (Fourth Year)

Effective July 1, 2012, and continuing until June 30, 2013, the base salary for bargaining unit members shall remain the same as the 2008-2009 base rate of pay.

No later than July 1, 2012, the District shall pay each bargaining unit member in active paid status on June

1, 2012, a one-time, lump sum payment of one thousand and five hundred dollars (\$1,500). The District shall have no obligation to make a similar payment on any future date.

5. Potential One-Percent Schedule Improvement

If all criteria set forth in 6 are met and no extraordinary unplanned expenses as set forth in 7 have occurred, then effective at the end of this Agreement on June 30, 2013, the District shall increase the salary/wage schedule by one percent over the 2008-2009 salary schedule. These calculations shall be made on or before March 31, 2013, and shall be effective on July 1, 2013 (FY14). The calculations for FY13 will be based on the data available on March 31, 2013. All references to FY13 in 6 shall include only the period of July 1, 2012 through March 31, 2013.

6. Criteria For Potential Increase To Base Salary/Wage
On or before March 31, 2013, the District shall calculate and apply the following criteria:

a. Sales Tax Revenue Growth Rates

Determine the FY11, FY12 and FY13 percentage increase in annual sales tax growth over the prior fiscal year. To meet this criterion, the 3-year average annual increase in sales tax growth for FY11, FY12, and FY13 must be 5.0% or more growth in sales tax revenue funded and received.

b. Ridership Growth Rates

Determine the FY11, FY12, and FY13 percentage increase in annual ridership growth over the prior fiscal year ridership. To meet this criterion, the 3-year average annual increase in ridership growth for FY11, FY12, and FY13 must be 4.7% or more growth.

c. Specific Increased Expenses

Determine whether the following specific District expenses have increased on an annual basis greater than stated:

- District's Employer PERS miscellaneous pension contributions increased by an average of more than 10.5% per year over FY11, FY 12, and FY13; or
- District contributions toward medical insurance

premiums required by Section 33.B of this Agreement increased by an average of more than 10% annually during FY 11, FY12, and FY13.

If either of the average annual increases listed above in this Subsection 6.c. are exceeded, then the criterion for 6.c. has not been met.

7. Extraordinary, Unplanned Expenses

On or before March 31, 2013, the District shall determine whether an extraordinary, unbudgeted, and unanticipated expense exceeding 2.5% of the District's adopted operating budget has occurred during fiscal years FY10, FY11, FY12, or FY13, other than those specified in A.6.c. above. In the event that such an extraordinary, unbudgeted and unanticipated expense outside the control of the District has occurred during FY10, FY11, FY12, or FY13, the District shall have no obligation to increase the salary/wage schedule by one percent (1.0%) as specified above.

8. All Conditions Must Be Met

The District shall have no obligation to increase the salary/wage schedule by one percent (1.0%) effective on July 1, 2013 or at any time in the future unless all the conditions set forth in 6 are met, and the conditions set forth in 7 do not occur.

9. One-Time, Non-Precedent Setting Increase / Definition of Status Quo

The salary increase described in this section is provided on a one-time, non-precedent setting basis that does not constitute a past practice. And, during negotiations for any successor agreement, the salary/wage criteria described in this section shall not define the status quo for salary/wage increases. During the negotiations for a succeeding term after June 30, 2013, the District shall not assert that the 1.0% conversion is included as part of any increased wage offer made by the District for the succeeding contract.

B. Salary Adjustment Methodology

1. In order to be eligible for any salary increase specified

in Paragraph A.1 above, an employee in an AFSCME represented position must have received an overall rating of “Effective” or higher in their annual December performance evaluation for the evaluation period preceding the date of each specified increase.

Notwithstanding the preceding paragraph: for new or rehired employees and employees transferred or promoted from bargaining units other than AFSCME to be eligible for an annual raise, the employee must have satisfactorily completed the probationary period before the annual raise effective date. For non-represented and AFSCME employees transferred or promoted into AFSCME represented positions to be eligible for an annual raise, the employee must also have received an overall rating of “Effective” or higher in their annual December evaluation for the evaluation period preceding the date of each specified increase. The effective date for all salary increases under this Agreement shall be as provided in A.1, above. Employees on probation shall receive their increases pursuant to Section 91 of this Agreement.

2. Administration of the performance appraisal system shall be in accordance with District guidelines, including but not limited to the BART Compensation Manual, as such guidelines shall be established from time to time by the District. The Union recognizes that the administration of the District's performance appraisal system and the Compensation Manual remains entirely the prerogative of the District and that no liability, contractual or otherwise is assumed by the District in connection with such administration.
3. Effective on the employee's regular annual review date occurring in each calendar year, during the term of this Agreement, employees shall receive an annual performance evaluation in accordance with the District's performance appraisal guidelines.
4. During the term of this Agreement, employees who achieve the required rating will receive the specified increase even if such increase will result in their exceeding the salary range specified in the BART

Compensation Manual. However, the portion of any such increase which exceeds the higher of (a) or (b) below, will be discontinued on the effective date of the next scheduled increase provided in A.1. above and will not be included in the calculation of such increase:

- a. The employee's total salary (base salary plus over the range pay) on June 30, 2009, provided the employee is in the same pay grade or position he/she held on June 30, 2009.
- b. The top of the salary range specified in the BART Compensation Manual for the applicable pay grade.

5. Salary adjustments granted to employees pursuant to this provision shall be added to the employee's base rate of pay until the employee has attained the maximum base rate (i.e. the top of the applicable range in the BART Compensation Manual). Base salary shall be used in the computation of overtime compensation and shift differentials, where applicable. Total compensation (base salary plus over the range compensation, if any, pursuant to A.5, above) will be used in the computation of pension contributions and straight time pay.
6. Employees shall not have recourse to the grievance procedure. However, employees receiving a less than "Effective" rating shall have recourse to the Performance Review Board for disputes regarding their performance evaluations in matters concerning procedural issues, allegations of bias and/or discrimination. However, employees shall discuss their concerns regarding performance evaluations with their immediate supervisor and the Department Manager. If dissatisfied with the results of these discussions, the employees shall present their concerns to AFSCME for review. AFSCME shall decide if the issue involving the performance evaluation shall be taken to the Performance Review Board.
7. The Performance Review Board shall consist of two (2) members appointed by the District, and two (2) members appointed by the Union. The appointed members will form a standing committee with the Labor

Relations Department staff's assistance.

The Review Board will convene to investigate allegations, interview pertinent witnesses and review documents, as set forth in Section 47.1 of this Agreement. Recommendations of the Performance Review Board shall be made by a consensus of all Board members and will be prepared for the General Manager's review.

The General Manager or designee will determine what action will be implemented within twenty (20) days of receipt of the report. The General Manager's decision will be sent to the Union President and to the Labor Relations Department. The General Manager shall not unreasonably overturn recommendations made by the Review Board. The decision shall be final and binding on all parties involved.

C. Compensation

1. Employees promoted from one covered classification to another covered classification shall be granted a minimum five percent (5%) salary adjustment upon promotion, provided no promotional salary adjustment under this Section shall be made above the maximum step of the salary range of the new classification then in effect.
2. The District reserves the right to appoint newly hired or promoted employees to any salary rate within the applicable salary range which the District considers proper for the position, with the exceptions as provided for in Paragraph B.1 of this Section. However, the District shall not reduce the salaries of present incumbents holding positions within the covered classifications pursuant to this paragraph.
3. No employee in a covered classification may be paid a salary above the maximum salary for the applicable range by virtue of any of the foregoing adjustments except as provided in A.5. above. However, when their positions are vacated, the appointment salary of their replacement, if any, shall be within the salary range for the applicable classification. The District shall not reduce the salaries of present incumbents

holding positions within covered classifications pursuant to this Section. Lateral transfers shall not result in a loss of pay to employees.

D. Salary Ranges

1. The annual base salary ranges in effect shall be those specified in the BART Compensation Manual.
2. Salary ranges shall be adjusted based on annual salary surveys among comparable jurisdictions and positions.
3. Salary surveys pursuant to Paragraph D.2 of this Section shall be conducted annually by the Human Resources Department. Prior to conducting salary surveys, representatives of the Human Resources Department shall meet with representatives of the Union to review and discuss benchmark job descriptions and survey jurisdictions. However, there is no requirement by this provision that the District and the Union agree to benchmark job descriptions or survey jurisdictions before a survey may be conducted and used to establish salary ranges. Based on salary survey results, salary ranges shall be adjusted upward as appropriate so that the revised midpoints of the salary ranges shall approximate the 75th percentile of the average of salaries of the survey jurisdictions.
4. Based on salary survey results, if the midpoint of the then existing salary ranges are equal to or greater than the 75th percentile of the average of salaries paid for each covered classification among survey jurisdictions, no adjustment to the salary ranges shall necessarily be required until such time as salary ranges require adjustment in accordance with Paragraph D.3 of this Section.

47.1 PERFORMANCE REVIEW BOARD (PRB) PROCEDURE

The parties agree that the procedure, as it relates to Section 47 B.6. and B.7 shall be as follows:

- A. Purpose of Performance Review Board (PRB)
 - 1. The purpose of the PRB is to determine the validity of a disputed Performance Appraisal relative to matters concerning procedural and substantive issues.
 - 2. Discussions regarding the meeting will be limited to the Board members and evidence presented at the proceedings. Discussions among the board members will be confidential.

- B. Objective(s) of the Performance Review Board
 - 1. The first objective is to determine compliance with written policies, procedures and guidelines which are documented in the existing Compensation Manual (Chapter III), the Performance Appraisal Form and AFSCME's Collective Bargaining Agreement.
 - 2. If there is compliance with policies, procedures, guidelines, collective bargaining agreement, and B.1 above, then the second objective is to judge the validity of the Performance Appraisal through evaluation of testimony and evidentiary documentation incorporated as part of the appraisal.

- C. Convening of the Performance Review Board (PRB)
 - 1. The PRB shall determine the date, time and location that the PRB will convene to investigate allegations, interview pertinent witnesses and review documents.
 - 2. The PRB shall schedule a date in which all advocates will be available and will grant a continuance if a key witness is unavailable.
 - 3. The PRB shall notify the District Advocate, Labor Relations and AFSCME President and Advocate in writing on the date, time and location of the scheduled meeting.
 - 4. The PRB shall commence by blocking out one full day, but not limited hereto, to hear the case.

D. Tape Recording and Proceedings

1. The PRB shall tape the proceedings.
2. A copy shall be made available to the Union and District on request.

E. Advocates

1. The District and AFSCME shall identify their primary advocate when the PRB convenes.
2. The identification of the “primary advocate” shall not preclude the participation of a secondary advocate during the proceedings.

F. Presentation and Marking of Evidence

1. Each primary advocate will inform the PRB as to how he/she will present or mark his/her evidence prior to the opening statement using one of the following methods:
 - a. All at once, at the beginning of the meeting after the PRB has convened;
 - b. Present and mark the evidence as the witnesses testify, as determined by the advocates or,
 - c. A combination of a. and b. above.
2. Each primary advocate will provide seven (7) copies of each exhibit (four [4] copies for the PRB, one [1] copy for the witness and two [2] copies for the opposing advocates[s]).

G. Opening Statements

The District shall present its opening statement first.

1. The Union will then present its opening statement.

H. Presenting the Case

1. The District will present its case first. The Union will have an opportunity to cross examine each witness.

2. The Union will then present its case. The District will have an opportunity to cross examine each witness.
 3. Both the District and the Union shall have the opportunity to rebut testimony.
 4. The PRB shall have an opportunity to ask clarifying questions at the end of the examination of each witness. The intent is to allow witnesses to testify without interruption.
- I. The Grievant
1. The grievant shall be released to attend the entire PRB hearing.
- J. Witnesses/Advocates
1. The Union and the District shall exchange a list of witnesses/advocates and provide said list to the PRB and Labor Relations for the purposes of scheduling the meeting and arranging release time at least one week prior to the scheduled meeting.
 2. Labor Relations shall be responsible for notifying the witness(es) supervisor for release time.
 3. The witness(es) shall be sequestered until called by their respective advocates except for the grievant and advocate that may testify.
 4. Additional witnesses may be called by the PRB as a result of information presented at the proceedings.
- K. Closing Statements
1. The District will present its closing statement first.
 2. The Union will then present its closing statement.
- L. Report of the Performance Review Board – Recommendations
1. Based on the objective(s) of the PRB (in B. above), the

PRB will prepare a report for the General Manager's review, including the PRB's recommended course of action.

2. Recommendations of the PRB shall be made with the consensus of all PRB members; however, if the PRB cannot reach consensus, then the PRB shall submit one report to the General Manager with a factual analysis containing separate recommendations.
3. The PRB's report and recommended course of action(s) shall be submitted to the General Manager no later than two weeks from the conclusion of the proceedings. The PRB members will sign the report without identifying their respective recommendations.
4. The PRB's report shall indicate that the General Manager's decision will be sent to the Union President and Labor Relations.
5. Copies of the "4." above shall also be provided to the District, Union President, Union Advocate(s) and Labor Relations at the same time.

M. General Manager's Decision

1. The General Manager or designee will determine what action will be implemented within twenty (20) days of receipt of the report.
2. The General Manager shall not unreasonably overturn a consensus recommendation made by the PRB.
3. The General Manager's decision shall be final and binding on the District and Union.
4. The General Manager's decision will be sent to the Union President and Labor Relations.

48. HOLIDAYS *

The District shall observe the following fixed holidays:

New Year's Day (January 1)

Martin Luther King's Birthday (3rd Monday in January)
Washington's Birthday (3rd Monday in February)
Memorial Day (last Monday in May)
Independence Day (July 4th)
Labor Day (1st Monday in September)
Veterans' Day (November 11)
Thanksgiving Day (4th Thursday in November)
Christmas Day (December 25)

In addition to the above fixed holidays, each employee shall be credited with four (4) floating holidays per fiscal year granted consistent with the scheduling ability of the employee's department. Up to five (5) unused floating holidays may be carried over per year.

On termination, an employee will be paid in a lump sum, at the rate of pay in effect for the employee at the time of termination, for all unused floating holidays. Total Holidays per year 12 (twelve).

Beginning January 2003, total holidays per year is 13 (thirteen).

ANNUAL ELECTIONS

Pre-Retirement Bank Election

During the month of June each year, employees may also elect to deposit extra floating holidays into a "Pre-Retirement Bank" which may be used only as terminal holidays prior to service retirement. Service retirement means voluntary separation by an employee who has attained a minimum age of fifty (50) and accumulated five (5) years of service credit to qualify for retirement through PERS.

Once placed in the "Bank," holidays are frozen and cannot be withdrawn for use prior to service retirement. However, if termination occurs prior to service retirement, all excess holidays in the "Pre-Retirement Bank" shall be paid off in cash upon termination at the rate of pay in effect for the employee at the time of termination.

Pre-Accrual Buy-Back Election

During the month of June each year, employees shall also have the option to make an irrevocable election to buy-back floating holidays newly earned during the following fiscal year but not used during

that year (unused fiscal year accrual) as follows:

1. Employees may elect to buy back all or part of any unused fiscal year accrual up to a maximum of five (5) days, with such floating holidays paid off subsequent to the end of the fiscal year earned.
2. In the event an employee fails to make an election during the election period regarding the following fiscal year's unused accrual or makes an incomplete election, such accruals may: a) be carried over, subject to the maximum carry-over, or b) may be deposited in the Pre-Retirement Bank, if elected as provided above.

Employees promoted or transferred into the unit after the beginning of the fiscal year who prior to transfer or promotion did not have the right to elect to buy back holidays as provided therein may exercise the pre-accrual buy back election as to floating holidays newly earned during the balance of the fiscal year. Such election must be made on or before the first day of employment in the new position.

Effective after the Business Advancement Plan (BAP) goes live, an employee may elect to deposit the post tax equivalent value of the unused fiscal year accrual that is eligible for buy-back, as provided above, into the employee's MPPP account, subject to applicable law and the terms of MPPP.

When an employee takes a floating holiday, his/her current fiscal year accrual will be charged only after he/she has exhausted floating holidays accrued prior to the current fiscal year.

Floating Holidays shall be granted consistent with the scheduling ability of the employee's department. Employees must give five (5) working days' notice of desire to take a floating holiday. Failure of an employee to give such notice is cause for refusal of that request.

Actual hours worked on the day a holiday is observed shall be compensated at the employee's regular base rate plus at his/her option, either eight (8) hours of pay at the employee's straight time rate or eight (8) hours off with pay.

Actual hours worked on the day a holiday is observed, in the case of Foreworker IIIs, shall be compensated at one and one-half (1-½) times the Foreworker's regular straight time rate plus at his/her

option, either eight (8) hours of pay at the Foreworker's straight time rate or eight (8) hours off with pay.

Should a holiday be observed on an employee's day off, the employee, at his/her option, shall receive an extra eight (8) hours of pay at the employee's existing straight time rate or eight (8) hours time off with pay.

Should a holiday be observed during an employee's recognized vacation, the employee, at his/her option, shall receive eight (8) hours of pay at the employee's existing straight time rate, or an extra eight (8) hours off with pay.

Should work be required on the day a holiday is observed, and a sufficient work force, as determined by Management, is unavailable voluntarily, assignments shall be made at District's sole discretion. Rotation among qualified employees insofar as feasible shall be considered by Management in making holiday assignments.

Unused holidays, if caused by action or inaction of the District, may be carried over into the next fiscal year.

*** Minute Clarification**

The parties agree to the following provisions in managing reduction in hours of straight time pay:

In order to achieve cost reductions, the District and AFSCME agree to reduce labor costs by the equivalent of 16 straight time base pay hours for each full time employee in the 2009/2010 contract year and 24 straight time base hours for each full time employee in the 2010/2011 contract year as follows:

1. During the 2009/2010 contract year, employees must forego 16 hours of new vacation accrual. During the 2009/2010 contract year, employees may use floating holidays, accrued compensatory time, or, time off without pay for up to 16 hours of vacation regardless of any contractual provision to the contrary. The District may reduce the pay of exempt employees for the amount of time taken without pay pursuant to this provision.
2. During the 2010/2011 contract year, employees may elect to forego up to 24 hours of new vacation accrual or new

floating holiday accrual to reach the yearly reduction requirement. Regardless of any contractual provision to the contrary, employees may use accrued compensatory time, or unpaid time off without pay for up to 24 hours of vacation. The District may reduce the pay of exempt employees for the amount of time taken without pay pursuant to this provision

3. Employees shall submit an election form provided by the District indicating their choices among the options for the 2010/2011 contract year on or before July 1, 2010. Employees will indicate on the election form the number of vacation and/or floating holidays to be deducted from the amount the employee would otherwise accrue in the year in question.
4. The total reduction of vacation or floating holidays required by this Agreement shall not exceed the equivalent of 16 straight time base pay hours for each employee in the 2009/2010 contract year and 24 straight time base hours on the 2010/2011 contract year. Part time employees shall not be required to take any unpaid time off or forego holiday pay to which they may otherwise be entitled.

49. VACATION *

The District will grant three (3) weeks of vacation following one (1) year of service, four (4) weeks of vacation after five (5) years of service, five (5) weeks vacation after fourteen (14) years of service and six (6) weeks vacation after nineteen (19) years of service.

Provided adequate notice is given, employees will be permitted to take four (4) uninterrupted weeks of vacation at least every other year. If an approved vacation is cancelled by the District, the employee is entitled to be reimbursed for actual and reasonable unrecovered expenses.

When an employee terminates or retires, he/she shall be granted pro rata vacation cash payoff based upon his/her accrued credits.

Vacation allocation will be scheduled throughout the calendar year; however, to the maximum extent possible, consideration consistent with operating requirements will be given to allow employees to take

their vacations during the summer months.

Years of service shall be used upon the employee's date of employment by District or in the case of 13(c) employees, in accordance with the 13(c) Award.

Vacation accrual will not be continued in the event an employee is in a non-pay status for more than thirty-one (31) days.

Maximum annual vacation carry-over is sixty (60) days. Upon termination, for whatever reason, employees shall receive compensation for all accrued and unused vacation in the "Carry-Over" account at the rate of pay in effect for the employee at the time of termination. Final compensation shall be paid in a lump sum, however, employees voluntarily terminating may elect to utilize thirty (30) days of such accrual as terminal vacation prior to separation from the payroll.

ANNUAL ELECTIONS

Pre-Retirement Bank Election

During the month of December each year, employees with four (4) weeks or more of accrued vacation may elect to deposit extra vacation into a "Pre-Retirement Bank" which may be used only as terminal vacation prior to service retirement. Service retirement means voluntary separation by an employee who has attained a minimum age of fifty (50) and accumulated five (5) years of service credit to qualify for retirement through PERS. Once placed in the "Bank," vacation time is frozen and cannot be withdrawn for use prior to service retirement. However, if termination occurs prior to service retirement, all excess vacation in the Pre-Retirement Bank should be paid off in cash upon termination at the rate of pay in effect for the employee at the time of termination.

Pre-Accrual Buy-Back Election

During the month of December each year, employees will also be given the opportunity to make an irrevocable annual election to buy-back vacation which will be newly earned during the following calendar year but not used during that year (unused calendar year accrual) as follows:

1. Employees may elect that in the event they have a

total of four (4) or more weeks of total accruals at the end of the following calendar year, they will buy-back up to a specified number of days, not to exceed sixty (60) hours of unused calendar year accrual, if any.

2. In the event an employee fails to make an election during the election period regarding the following calendar year's unused accrual or makes an incomplete election, such accruals may: a) be carried-over, subject to the maximum annual vacation carry-over, or b) may be deposited in the "Pre-Retirement Bank" if elected as provided above.

Employees promoted or transferred into the unit after the beginning of the calendar year who prior to transfer or promotion did not have the right to elect to buy-back vacation as provided therein may exercise the pre-accrual buy back election as to vacation which will be newly earned during the balance of the calendar year. Such election must be made on or before the first day of employment in the new position.

Effective after BAP goes live, an employee may elect to deposit the post-tax equivalent value of the unused calendar year accrual that is eligible for buy-back, as provided above, into the employee's MPPP account, subject to applicable law and the terms of the MPPP.

When an employee takes vacation, his/her current calendar year vacation accrual will be charged only after he/she has exhausted vacation accrued prior to the current calendar year.

*** Minute Clarification**

The parties agree to the following provisions in managing reduction in hours of straight time pay:

In order to achieve cost reductions, the District and AFSCME agree to reduce labor costs by the equivalent of 16 straight time base pay hours for each full time employee in the 2009/2010 contract year and 24 straight time base hours for each full time employee in the 2010/2011 contract year as follows:

1. During the 2009/2010 contract year, employees must forego 16 hours of new vacation accrual. During the 2009/2010 contract year, employees may use

floating holidays, accrued compensatory time, or, time off without pay for up to 16 hours of vacation regardless of any contractual provision to the contrary. The District may reduce the pay of exempt employees for the amount of time taken without pay pursuant to this provision.

2. During the 2010/2011 contract year, employees may elect to forego up to 24 hours of new vacation accrual or new floating holiday accrual to reach the yearly reduction requirement. Regardless of any contractual provision to the contrary, employees may use accrued compensatory time, or unpaid time off without pay for up to 24 hours of vacation. The District may reduce the pay of exempt employees for the amount of time taken without pay pursuant to this provision
3. Employees shall submit an election form provided by the District indicating their choices among the options for the 2010/2011 contract year on or before July 1, 2010. Employees will indicate on the election form the number of vacation and/or floating holidays to be deducted from the amount the employee would otherwise accrue in the year in question.

The total reduction of vacation or floating holidays required by this Agreement shall not exceed the equivalent of 16 straight time base pay hours for each employee in the 2009/2010 contract year and 24 straight time base hours on the 2010/2011 contract year. Part time employees shall not be required to take any unpaid time off or forego holiday pay to which they may otherwise be entitled.

50. COMPENSATORY TIME / OVERTIME

Employees will be compensated by compensatory time on a straight time basis for work specifically assigned either on a non-workday or beyond the scheduled hours on a normal workday. The accrual of compensatory time will be limited to forty (40) hours and employees will be paid at the straight time rate for any excess. An employee at his/her option in any given pay period may elect to receive straight time monetary compensation or compensatory time for overtime

hours whenever the compensatory time accrued is less than forty (40) hours.

Employees shall use accrued compensatory time prior to using accrued vacation time.

Foreworker IIIs are not eligible for compensatory time. All hours worked by Foreworker IIIs on off-duty days or beyond the scheduled hours on a normal workday shall be compensated as follows:

- A. Time worked in excess of forty (40) hours in a scheduled workweek or eight (8) or ten (10) hours in a scheduled workday shall be compensated at one and one-half (1-½) times the existing straight time rate of pay for all actual overtime worked.
- B. All hours worked on the employee's regular days off (RDOs) shall be compensated as follows:
 - 1. All hours worked on the first scheduled day off (RDO) shall be compensated at one and one-half (1-½) times the existing straight time rate.
 - 2. All hours worked on the second regular day off (RDO) after working the first regular day off (RDO), shall be compensated at two (2) times the existing straight time rate.
 - 3. All hours worked on the third regular day off (RDO) (for 4-10 Plan) after working the first and second regular days off (RDO), shall be compensated at two (2) times the existing straight time rate.

51. SHIFT DIFFERENTIAL

- A. Where fifty percent (50%) or more of an employee's shift occurs between the hours of 4:00 p.m. and midnight, a swing shift premium of seven percent (7%) will be paid for all hours worked during the shift at the existing straight time rate of pay.
- B. Where fifty percent (50%) or more of an employee's shift occurs between midnight and 8:00 a.m., a graveyard shift

premium of nine and one-half percent (9-1/2%) will be paid for all hours worked during the shift at the existing straight time rate of pay.

52. STAND-BY PAY

- A. Employees required by the District to remain on stand-by duty subject to call-in shall be paid a minimum of one-half (1/2) of a day's extra pay per day during the employees assigned workweek and a full day's pay per day on off-duty days unless such employee is called and released from such stand-by assignment by the District prior to the beginning of the stand-by duty. All stand-by pay shall be paid at existing straight time rate of pay.
 - B. Employees who are called in while on stand-by shall receive stand-by compensation for only those actual hours they were on stand-by.
-

53. UNSCHEDULED CALL BACK

- A. In the event an employee is called back for unscheduled work outside of his/her regular workday or workweek, compensation will be based on a minimum of one-half (1/2) day's pay per day at the applicable rate of pay. This Section shall be limited to a specific assignment where broken time is involved. In no event shall an employee be eligible for both stand-by and call back compensation for the same hours.
 - B. The understanding of the parties signing off this Section is that the change to existing language which provides that "a minimum of one-half (1/2) day's pay per day" shall be paid is inserted to accommodate the five (5) and four (4) day workweek.
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54. TRAVEL ALLOWANCE

A. Travel Expense – Local

Insofar as possible, authorized travel within the District shall be by local transit facilities or by District automobile. In the

event taxicab use is necessary, actual reimbursement shall be paid. In the event private automobile is used, the Internal Revenue Service standard mileage rate, plus actual parking and toll fees shall be paid by the District. While on assigned District business away from the employee's assigned office or area, reimbursement for lunch expense will be that portion of the lunch expense that is in excess of that which would normally be paid were the employee working at the office or area. Reimbursement under this policy shall not exceed the amount established in Section XI, Meals and Related Expenses, of the District's Management Procedure No. 20, Reporting and Reimbursement of Employee Expenses.

B. Travel Expense - Outside of District

Travel for distances in excess of one hundred fifty (150) miles will be provided by public carrier. Mode of travel and commencement of travel status will be determined by the District prior to departure. Hotel charges will be reimbursed at actual cost. Actual costs of meals will be reimbursed when traveling outside the District. Other necessary travel expenses including, but not limited to, local transportation, telephone, laundry and cleaning, will be reimbursed on the basis of actual cost to the employee.

C. Travel Allowance

When assigned outside the District in excess of twenty-four (24) hours, employees of the District may, in lieu of receiving reimbursement for actual costs of travel, elect to receive actual receipted cost of lodging, plus an allowance established by the District's Management Procedure No. 20, Section II, Travel Outside the District as reimbursement of all other travel costs. Effective July 1, 1984, this allowance shall be increased to thirty-five dollars (\$35) per day.

- D. Employees may choose either "B" or "C" for travel expenses. If "B" is selected, a reasonable cash or check advance in such sums as may be deemed necessary, considering the character of the expense, shall be made.
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55. MEAL ALLOWANCE

A twelve dollar (\$12) meal allowance shall be paid to Union members who work twelve (12) continuous hours.

56. PAY PROCEDURES

- A. All salaried professional employees shall continue to be considered salaried and shall be paid twice a month on the 15th and last day of the month. However, the District may at any time implement a payroll cycle every two (2) weeks in place of the twice monthly payroll. If the District does implement a new payroll cycle, employees may apply for a "bridge loan" for the amount of the difference in pay that may result in the first three (3) months of the new pay cycle (pay periods one [1] through six [6]). Employees will be required to sign a repayment promissory note if their application for a "bridge loan" is granted. Granting of the "bridge loan" shall not be denied unreasonably. Repayment of the "bridge loan" will be effectuated through payroll deductions, commencing in the seventh payroll period and the deductions shall terminate in the twelfth payroll period.
- B. The District shall continue the present system of itemizing deductions during the life of this Agreement.
- C. Except for employees participating in direct deposit:
 - 1. All shortages above one hundred (\$100.00) dollars shall be corrected within the time limits set below. The employee's immediate or appropriate supervisor shall assure that the documentation necessary to correct the shortage has been delivered to Payroll within one (1) workday, exclusive of weekends and holidays, after he/she receives written notification of the shortage from the employee. Payroll shall correct the shortage and cause a check to be available at the employee's normal work location within three (3) Accounting workdays, exclusive of weekends and holidays, after receipt of written notification. All other shortages shall be added to the next paycheck.
 - 2. In the event an overpayment is made in error, it shall

be deducted from the employee's first regular paycheck following discovery of such overpayment by the District.

3. Any employee taking a scheduled vacation shall be provided an advance paycheck, provided such payday falls within the scheduled vacation period and provided a written request is submitted to the District no less than five (5) Accounting workdays prior to the scheduled vacation.
- D. The District shall make available an electronic direct deposit system for payroll checks. As a condition for participating in the electronic direct deposit payroll system:
1. Subsequent to receipt of written notification to Payroll, any payroll adjustment necessary due to payment made in error (other than for regular base pay), which cannot be adjusted in the current pay period will be adjusted in full on the next following pay period's direct deposit.
 2. If the payroll correction is not made in the next following pay period's direct deposit, the District will make the correction as set forth in Paragraph C as if the employee were not participating in direct deposit.
- E. Where repayment of the entire amount of the overpayment in a lump sum would work a hardship on the affected employee, the Union may request development of a reasonable repayment schedule through the Human Resources Department. Such request will not be unreasonably denied by the Human Resources Department.
- F. Final termination paychecks shall be issued to terminating employees within seventy-two (72) hours after such termination becomes effective.
- G. The District will promptly process Public Employees' Retirement System refunds forms following an employee's termination.
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56.1 TIME KEEPING

Employees represented by AFSCME will have access to the Elapsed Time page in PeopleSoft to enter elapsed time for themselves and enter the appropriate TRCs. They will not have access to make Baseline Schedule Changes. Baseline Schedule Changes can only be done by the TAAD Group with Management approval.

57. WAGE GUIDELINES

Both parties recognize this Agreement is the result of negotiations between the parties for represented employees and, in the event any wage increase or other benefit or condition provided in this Agreement results in any challenge or determination by any governmental agency, the parties agree to use their best efforts in a joint appeal to such governmental agency to uphold the validity and propriety of such provision.

Pending exhaustion of such appeal, the challenged provision shall be suspended except that, the parties may commence negotiations within thirty (30) days of such challenge to ensure that the superseded portion(s) shall be rewritten to conform legally as nearly as possible to the original intent.

In the alternative, the parties may negotiate an alternate provision not exceeding the cost of the provision challenged.

Should the parties fail to agree, the grievance procedure may be invoked in its entirety by either party.

58. BENEFICIAL PRACTICES

Claims for beneficial practices will be negotiated in good faith with the Union by the Labor Relations Manager or designee, with discussions and an appeal to the General Manager whose decision is final. The General Manager shall meet with the Union President no later than sixty (60) calendar days after receipt of the appeal.

59. GRIEVANCE PROCEDURE

A grievance is any dispute involving a claimed violation, misinterpretation or inequitable application of, or noncompliance with, one or more provisions of this Agreement or of the District rules, regulations and procedures or any existing practice affecting status or working conditions of employees including matters of discipline.

The following procedures shall be followed to ensure the orderly resolution of grievances by the parties under this Agreement except for claims provided for under Section 58, or violations provided for under Section 12.B.

Step 1 - Informal Grievance

Whenever possible, a grievance will be promptly resolved by discussion between the Union representative and the supervisor in question, or between the parties. If discussion does not resolve a grievance, the aggrieved party may present a formal grievance.

Step 2 - Formal Grievance

A formal grievance must be presented in writing within twenty (20) working days of the occurrence or within twenty (20) working days from such time as the employee, the Union or the District could have been aware of the occurrence. All grievances shall be presented to Labor Relations by the Union representative. Only AFSCME officers, members of the Executive Board, or their Business Agent may process grievances on behalf of the Union. The Union shall notify the District of those persons who are authorized to process grievances for the Union. Grievances must clearly identify the facts giving rise to the alleged grievance, state the relief being sought and be dated and signed by the Union representative and by the District within the time limits specified. The Department Manager of the Labor Relations Division or the Union representative will acknowledge receipt by signing and dating the grieving party's copy. The grievance shall be replied to in writing within twenty (20) working days. Receipt of the reply must be acknowledged by signing and dating the respondent's copy.

Step 3 - Arbitration

If a Union grievance is not resolved at Step 2 by the District, it may

be submitted to arbitration by the Union within ten (10) working days of receipt of the Labor Relations Division's reply. If a District grievance is not resolved at Step 2 by the Union, the District, within ten (10) working days of receipt of the Union's reply, may submit the matter to arbitration. Arbitration shall proceed as follows:

- * Either party may request arbitration.
- * Either party may select an arbitrator from a panel of six (6) arbitrators pre-approved by AFSCME and the District.
- * Within sixty (60) days of ratification of the contract, the parties shall meet and agree on a panel of six arbitrators.
- * Should both parties not agree to the panel within sixty (60) days, the parties agree to apply for a list of twenty (20) neutral Arbitrators from the California State Department of Industrial Relations, no later than ninety (90) days from ratification. The parties shall alternately strike names from the list until six (6) remain and those persons shall be designated as the panel, within ten (10) days after the receipt of the list.
- * The grieving party shall contact the entire panel to solicit an arbitrator, in writing with a copy to the other party.
- * The first arbitrator available, not sooner than thirty (30) days from contact shall hear the case.
- * The arbitration shall be decided within thirty (30) days of the arbitrations hearing.
- * The decision of the arbitrator is final and binding.

In any arbitration held pursuant to the Agreement the person acting as arbitrator shall act in a judicial, not legislative manner. The arbitrator shall not amend, modify, nullify, ignore, add to or subtract from the provisions of the Agreement but, rather, shall interpret and apply its terms. The arbitrator shall consider and decide only the issue or issues agreed upon by the parties, including the issue of arbitrability. If the parties are unable to decide upon the issue or issues to be submitted to the arbitrator, the arbitrator shall decide what the issue or issues are, based upon the grievance that was filed. If the arbitrator sustains the grievance, he or she shall fashion an appropriate remedy that does not conflict with provisions contained in this Agreement.

Salaries and expenses of the arbitrator and court reporter, if any, shall be borne equally by the parties to the proceeding; all other expenses shall be paid by the party incurring them.

Extension of Time Limits

The time between the steps of the grievance procedure may be extended by mutual agreement. The parties agree that if either party misses a time limit delineated in this Section, the grievance shall progress immediately to the next step of the Grievance Procedure.

60. WITNESSES

Parties who may have direct knowledge of circumstances relating to the grievance may be present at the request of either party during any stage of the procedure. In the case of employees, they shall be compensated at their regular rate of pay for actual time spent in such meetings.

61. WORKDAYS AND WORKWEEK

A workweek which has been assigned to an employee will be that employee's scheduled workweek. The five (5) workdays in that workweek, regardless of shift assignment, will be the employee's scheduled workdays and the two (2) days off will be the scheduled days off. No premium shall be paid for Saturday and/or Sunday work if such days are scheduled workdays.

An employee shall be assigned a workweek which shall consist of five (5) consecutive workdays within a seven (7) day period and two (2) consecutive days off. A workday for Foreworker IIIs shall consist of eight (8) consecutive hours of work with a scheduled starting time. All other employees are entitled to an unpaid lunch break of forty-five (45) minutes duration which shall extend the consecutive hours of work by that amount of time except where this agreement provides expressly for a paid lunch.

When any employee is assigned to a shift, he/she shall not thereafter be assigned to another shift which does not permit the employee at least ten (10) hours elapsed time from the end of the previous work assignment, including overtime.

Subject to other provisions of this Agreement governing choice of shifts, notice of changes in shift assignment shall be given as far in advance as practicable.

61.1 ALTERNATIVE WORK PROGRAM

- A. The District will establish a Pilot Program for AFSCME Administrative members to test an Alternative Work Program (Program) that would allow an employee to voluntarily work their assigned work days or a portion thereof from their residence.
- B. The Program shall be available no later than ninety (90) days after ratification of the contract through the Human Resources Department using the guidelines as described below. The Program shall be executed for an initial test period of ninety (90) days. Once the Program is completed, it will be evaluated within thirty (30) days by the Manager of Human Resources and if the Program is determined to be effective, it will be made available to AFSCME members whose classifications are appropriate for participation in the Program.
- C. Permission to participate in the Program must be approved by the employee's Department Manager and Executive Manager. Management will make a reasonable effort to accommodate the employee's request.
- D. The Program shall establish a schedule to be determined between management and the participant. Such a schedule will conform to work days and the work week as set forth in the CBA.
- E. Participant shall remain available by phone, pager, or e-mail during the work hours established between management and participant.
- F. Participant shall furnish and maintain all computer and workstation equipment. Management may incur additional costs if they require specialized equipment or software. Any such additional costs must be approved by the Manager of Human Resources.
- G. No District work, functions or assignments shall suffer or become less productive as a result of an employee's participation in the Program.
- H. To ensure uninterrupted service delivery and operational

efficiency, participating employee should make any necessary arrangements for scheduled and unscheduled meeting or events that might occur during the work week.

- I. In the event it becomes necessary to suspend or alter the Program, every attempt shall be made to provide the participating employee with reasonable notice.

62. 4-10 WORKWEEK

- A. The District may establish an alternate workweek in areas to be identified consisting of four (4) days per week and ten (10) hours per day (4-10 Plan). Employees working under any such Plan shall be governed by the following conditions:
- B. Vacation and Sick Leave shall be accrued and used based upon a "ten (10) hour workday" and not an "eight (8) hour workday."
- C. Holidays as provided for under this Agreement shall be accrued and paid on the basis of a "ten (10) hour workday" and not an "eight (8) hour workday."
- D. The workdays and workweek for employees in this Plan shall be as follows:
 1. A workday shall consist of ten (10) consecutive hours of work, with a scheduled starting time. (Paid rest and lunch breaks provided herein shall be considered as hours worked.)
 2. The assigned workweek shall consist of four (4) workdays within a seven (7) consecutive day period, with a minimum of two (2) consecutive days off.
- E. Overtime shall be governed as follows:
 1. Employees who work their 1st regular day off (RDO) during any workweek will be compensated at straight time;
 2. Employees who work their 2nd RDO during any workweek will be compensated at straight time for all hours worked;

3. Employees who work their 3rd RDO during any workweek will be compensated at straight time for all hours worked.
- F. Meal and break periods for employees working the 4-10 Plan shall be as follows:
1. At Supervisor's discretion, a thirty (30) minute paid meal period within a continuous ten (10) hour shift shall be granted;
 2. Three (3) fifteen (15) minute paid break periods shall be provided at approximately two (2) hour intervals after the starting time of the employee's shift, or breaks may be taken on an irregular basis as determined by the Supervisor.
- G. The staffing of shifts and the weekly distribution of the work force shall be determined by Management.
- H. The provisions of this Section shall prevail whenever they conflict with any other sections of this Agreement for employees working under this Plan.

63. FLEXIBLE HOURS

Union employees may request to work a flex-time schedule. Any request to work a flex-time schedule is subject to the approval of the appropriate Department and/or Executive Manager. The Department and/or Executive Manager shall forward a copy of the request to the Union as soon as practicable.

64. MEDICAL EXAMINATIONS

- A. Any medical examinations, including periodic eye tests, required of employees by the District shall be paid for by the District, with the exception of costs incurred as a result of untimely employee cancellation of or missed examinations or appointments which shall be paid by the employee, provided the employee is given one week notice of the appointment.
- B. Medical examinations or follow-up medical appointments

shall be scheduled during non-work hours. If the medical facility cannot accommodate scheduling during non-work hours, the examination shall be scheduled at either the beginning or end of the shift, so as to minimize time lost from work.

- C. In the case of any job-related illness or injury, an employee shall have the right to examination/treatment by a doctor of his/her choosing, provided advance notice is given the District.

Job-Related Illness/Injury

- A. Should the employee select his/her doctor, and the District disagrees with any findings, the District may require a second medical opinion through a District-designated doctor.
- B. Should the findings of the District-designated doctor be inconsistent with the employee-selected doctor, a third doctor shall be mutually selected by the following procedure:
 - 1. The District and the Union shall mutually agree upon an odd-numbered panel of doctors for such purpose.
 - 2. If they are unable to agree upon the names to be included on such a panel, they shall request the Department of Industrial Relations to submit the names of independent medical examiners most frequently used in the San Francisco Bay Area in the various specialties of medicine and these shall constitute the panel.
 - 3. The District and the Union shall select a third doctor from this panel within five (5) working days of the date the dispute is established.
 - 4. The conclusions of the third doctor shall be final and binding upon the parties, and the fee shall be paid by the party requesting the opinion of the third doctor.
- C. No employee shall suffer any loss of income or other benefits as a result of any directive to report to a physician, and the time required to report and return from such examination shall be considered as time worked unless the employee is found physically unfit to return to work.

- D. If the findings of the District-designated and employee-selected doctors are inconsistent, no employee shall suffer loss of income or benefits during the first thirty (30) calendar days after the second doctor's inconsistent conclusions are issued or until the conclusions of the third doctor are issued, whichever occurs first.
- E. Should the third doctor uphold the findings of the District-designated doctor, the employee shall agree in writing to reimburse the District for any income or benefits received to which he/she was not entitled. Reimbursement to the District shall be completed within thirty (30) calendar days from the employee's return to work.

Non Job-Related Illness/Injury

- A. Should the District require any medical examination of an employee with a non job-related illness/injury, the District may designate a doctor for such purpose. This doctor may be the employee's doctor, however, if the employee's doctor is selected, the District reserves the right to require a second medical opinion through another District-designated doctor.
- B. If the first medical examination is not performed by the employee's doctor, and if the employee disagrees with any medical findings of the District-designated doctor, said employee shall have the right to examination by a doctor of his/her choosing.
- C. In either case, should the findings of the two doctors be inconsistent, a third doctor shall be mutually selected by the following procedure:
 - 1. The District and the Union shall mutually agree upon an odd-numbered panel of doctors for such purpose.
 - 2. If they are unable to agree upon the names to be included on such a panel, they shall request the Department of Industrial Relations to submit the names of independent medical examiners most frequently used in the San Francisco Bay Area in the various specialties of medicine and these shall constitute the panel.

3. The District and the Union shall select a third doctor from this panel within five (5) working days of the date the dispute is established.
 4. The conclusions of the third doctor shall be final and binding upon the parties, and the fee shall be paid by the party requesting the opinion of the third doctor.
- D. No employee shall suffer any loss of income or other benefits as a result of any directive to report to a physician, and the time required to report and return from such examination shall be considered as time worked unless the employee is found physically unfit to return to work.
 - E. If the findings of the District-designated and employee-elected doctors are inconsistent, no employee shall suffer loss of income or benefits during the first thirty (30) calendar days after the second doctor's inconsistent conclusions are issued or until the conclusions of the third doctor are issued, whichever occurs first.
 - F. Should the third doctor uphold the findings of the District-designated doctor, the employee shall agree in writing to reimburse the District for any income or benefits received to which he/she was not entitled. Reimbursement to the District shall be completed within thirty (30) calendar days from the employee's return to work.

65. DOCTOR'S CERTIFICATE

- A. An employee who is absent from work due to illness, may be required, in advance, to present a doctor's certificate as a condition of returning to work.
- B. If the employee has not been under treatment by a physician, the District shall pay for the cost of the required examination and doctor's certificate if costs exceed current medical plan limits. Where an employee has been under treatment by a physician, the employee shall request the doctor to provide a certificate at the conclusion of each visit for the above mentioned requirements.
- C. If the employee fails to provide the doctor's certificate

(provided the District requires such certificate in advance as a condition of return to work) the employee shall pay all costs for that certificate, including examination costs, if necessary.

- D. Employees not required by prior notification by the District to present a doctor's certificate as a condition of returning to work shall not lose pay when sent to a doctor by the District as a condition of returning to work; however, pay shall not commence unless the doctor's certificate specifies that the employee is able to return to work.

66. JOB POSTINGS

Vacancies to be filled which are not filled by voluntary or involuntary lateral transfer/reassignment, upgrading or downgrading as a result of classification audits, shall be posted by job announcements on District bulletin boards or, by electronic posting on any District Job site on the Internet and or Intranet job site, for a minimum period of one (1) week. Job announcements shall include:

Job title, a brief description of job duties and responsibilities, minimum qualifications, salary, deadline for filing applications and to the extent practical and feasible, hours of work, RDOs, location and supervisor.

Nothing in this Section prevents the District from filling job vacancies by other procedures when there are less than five (5) satisfactory qualified applicants, or no qualified applicants respond to job announcements. The District reserves the right to appoint from among the best qualified applicants.

First time or revised job postings shall be sent to the Union for informational purposes prior to posting.

67. JOB ABANDONMENT

Absence without authorization, whether voluntary or involuntary, for three (3) consecutive working days is an automatic resignation from District service as of the last date on which the employee worked.

The Human Resources Department shall notify the employee of his or her proposed automatic resignation. The notice will set forth the length of the absence and the facts indicating the absence was

without authorization. Service of notice shall be made by first class mail to the last known address and is complete on mailing. The employee may file a written objection with the Human Resources Department. The objection must be received by the Human Resources Department within fifteen (15) calendar days of the service of the notice of proposed separation, or it will be denied as untimely. The notice to the employee will set forth the right to make a written objection and the time limit and method for doing so. If a timely, written objection is received, the notice and the objection shall be referred to an arbitrator selected by mutual agreement or by striking from the Arbitrator's List utilized by the parties. The arbitrator shall decide whether there has been an automatic resignation. In deciding whether there has been an automatic resignation, the arbitrator shall decide if the employee was absent for three (3) or more consecutive working days, if the absence was without authorization, and if the employee has a satisfactory explanation that is sufficient to warrant an exception to this rule.

An automatic resignation will not bar the resigned employee from applying for future District openings.

68. TRANSFER / REASSIGNMENT

The District recognizes the Union's interest that employees be given consideration for voluntary lateral transfer/reassignment. The Union recognizes the District's right to laterally assign personnel system-wide shall not be unduly restricted and is an essential element in managing the operations of the District.

Employees are encouraged to inform Management of their interest in voluntary lateral transfer/reassignment. Such requests for voluntary transfer/reassignment shall be considered by Management in filling vacancies wherever practicable and consistent with operational and or administrative requirements as determined by the District. Compensation and benefits in such lateral transfer/reassignment shall be commensurate with the level of work to which the employee is assigned.

The parties recognize that involuntary lateral transfers/reassignments may occur. In such instances, the transfer/reassignment shall be based solely on the operational needs of the District and not for punitive or disciplinary reasons. Selection of individuals for involuntary transfer/reassignment shall be based on

consideration of his/her qualifications, experience, and wherever practical and feasible, the interest of the employee shall be taken into account. The involuntary transfer/reassignment shall not result in a loss of seniority to the employee. The reasons for the involuntary transfer/reassignment shall be explained to the affected employee.

The parties further recognize that nothing in this understanding precludes the District from making involuntary demotions or downgrades of positions which may result in a reduction in pay and benefits to the affected employee.

69. TERMINATION PROCEDURES

An employee may be terminated from employment as a result of a valid reorganization, a reduction in force, or discharged for cause. If the District terminates a non-probationary employee for cause as defined in subsection A below, it shall notify the employee of such action by delivering written notice to the employee directly or by mail to his or her last address on record with the District Human Resources Department. If, within one (1) business day after such notice is tendered the union shall deliver a notice of appeal to the Labor Relations Department challenging the termination, the termination shall be stayed for fourteen (14) days from the effective date of termination set forth in the termination notice and shall thereafter take effect.

- A. Cause shall include but is not limited to:
 - 1. Performance below reasonable expectations.
 - 2. Improper conduct discrediting the District.
- B. Reorganizations/Reductions-In-Force Terminations as a result of valid reorganizations or reductions in force shall be accomplished in accordance with the following procedure:
 - 1. **Notification**

An employee shall be informed personally by the Department Head or designee as soon as possible after a termination decision has been made. At that time, the employee will be told the reason for termination, the scope and purpose of this procedure,

and furnished a copy of the tentative schedule of future events affecting him/her.

2. **Resume**

The employee shall have five (5) working days to prepare and submit a current resume for inter-departmental distribution. Assistance in resume preparation may be requested from the District's Human Resources Department staff or a consultant selected by the District.

3. **Distribution**

If a resume is submitted, it will be distributed within three (3) days of receipt to all District Department Heads and to Division Managers within large departments along with a letter indicating the name, the functional and pay classifications of the affected employee, and information concerning his/her availability. If no resume is submitted, this procedure shall move directly to step seven (7) as if all responses were negative.

4. **Responses**

Department Heads/Division Managers shall respond within ten (10) working days by returning resumes to the originating Department Head with a response either positive or negative indicated thereon. The responses shall indicate present and foreseeable vacancies which may be developing within the next six (6) months.

5. **Results**

The employee shall be informed within three (3) working days of the result of this process by the originating Department Head or designee.

6. **Positive Response**

If positive responses are received, the employee shall be given five (5) working days to confer with the department(s) involved; and to indicate a preference. The District shall ensure that the conference occurs within that time period.

- a. If the employee selects a position, a personnel action to affect a transfer shall be initiated by the

original Department Head. The effective date of transfer shall be as mutually agreed by the Department Heads involved. Salary adjustments, if any, shall be determined through discussion between the receiving Department Head and the Human Resources Department staff prior to any discussion with the employee.

- b. If the employee rejects all positive responses, he/she shall be terminated in the same manner as if all responses were negative.

7. **Negative Responses**

If all responses are negative, the employee shall be given notice that the District is unable to place him/her in another position and that he/she will be terminated at the end of ten (10) working days, in accordance with the District's separation procedures.

8. **Termination Compensation**

Employees shall receive, in addition to compensation for accrued and unused vacation and accrued compensatory time, severance compensation based on two (2) weeks' pay for each full year of service with the District. Final compensation, calculated pursuant to this subsection shall be paid in lump sum.

Employees shall not be permitted to remain on the payroll for any periods based on factors in that calculation and continuous service with the District shall terminate concurrent with issuance of the lump sum final compensation.

9. **Placement Assistance and Employment Counseling**

Placement assistance and employment counseling shall be provided employees to include reproducing a reasonable number of resumes at the District expense, arranging for letters of recommendation, if requested, and counseling by the District's Human Resources Department staff as to the local and transit industry job market. This phase shall be completed within the ten (10) working day period in Paragraph 7 above.

10. Employees terminated as a direct result of valid reorganizations or reduction in force, shall be entitled

to reinstatement to open positions for which qualified for a period not to exceed eighteen (18) months from the date of termination.

Reinstatement consideration shall be limited to those specific positions of interest identified by the employee, in writing, prior to the date of termination. The District's obligations under this subsection shall cease immediately upon rejection of any offer of reinstatement and/or employment by the District.

11. This procedure may be altered by mutual agreement of the parties.

70. INTERPRETATION

In the event of conflict, Special Provisions shall prevail over General Provisions.

71. ENTIRE AGREEMENT

This Agreement expresses and constitutes the entire Agreement between the parties.

72. SPECIAL PROVISIONS APPLICABLE TO OPERATIONS CONTROL CENTER - REST PERIODS

- A. Train Controllers shall not be worked more than twelve (12) continuous hours or allowed to return to work with less than twelve (12) hours rest except in emergency situations where a vital position would be unstaffed. In such cases, the following steps will be taken in order:
 1. Request a Train Controller to return to work on a voluntary basis. These volunteers should be afforded eight (8) or more hours of rest prior to returning to work.
 2. Call a Train Controller back to work by inverse classification seniority.
 3. Request an on-duty employee to extend his/her shift

beyond twelve (12) hours on a voluntary basis.

4. Extend an on-duty employee's shift beyond twelve (12) hours by inverse classification seniority.
5. Where minimum staffing is required and a Train Controller is required to work for four (4) or more hours with no more than the de minimus assistance (which refers to work that is minor, done in passing, not planned in advance), of another Train Controller, he/she will, if at all possible, be given his/her next regular shift off with pay. If that is not possible, he/she will be compensated at straight time rates equal to that of regular shift.
6. Rest days will provide at least sixty-four (64) uninterrupted hours. This provision does not apply to Extra Board employees or during changes in scheduled shifts required by the bidding of positions.

73. SPECIAL PROVISIONS APPLICABLE TO OPERATIONS CONTROL CENTER - LUNCHES/BREAKS

The Manager in charge shall determine when and if lunches and breaks shall be taken.

74. SPECIAL PROVISIONS APPLICABLE TO OPERATIONS CONTROL CENTER - EXTRA BOARD

- A. There shall be a day/night Extra Board. Extra Board shift and rest days will be selected in conjunction with regular shift selections.
- B. Day Extra Board personnel shall be those who perform work starting between 0001 and 1200 hours; night Extra Board personnel shall be those who perform work starting between 1201 and 2400 hours.
- C. The next day's Extra Board assignments, if different from the Extra Board person's normal shift, will be posted in the Operations Control Center no later than 1200 hours for the day Extra Board and no later than 2200 hours for the night

Extra Board.

- D. The Extra Board shall be posted no later than 1300 hours each Friday. Once posted the RDOs cannot be changed.
- E. Extra Board personnel may be transferred from their selected Extra Board position (day or night) only to fill temporary job vacancies. To fill such vacancies, the Extra Board will be polled in classification seniority for volunteers. In the event there are no volunteers, assignments will be made by inverse classification seniority.
- F. Extra Board personnel will first be used to fill vacancies in the Operations Control Center. If no vacancies exist in the Operations Control Center, Extra Board personnel may be utilized elsewhere in any appropriate manner. If a vacancy occurs in the Operations Control Center after a shift starts, every effort will be made to fill it with an appropriate Extra Board person.
- G. Extra Board personnel will fill vacancies on a one-for-one basis; that is, if a Train Controller position is vacant, the Extra Board person will fill that position.
- H. Extra Board positions will be titled as to primary purpose, i.e., day-to-day, vacation, training relief, special assignment (Central Liaison), if appropriate. Persons in vacation and training relief positions shall be free to work any shift.
- I. The District shall create a bank of no less than forty (40) hours of compensatory time per quarter (bid). Twenty (20) of these hours shall be reserved for the day Extra Board and twenty (20) for the night Extra Board. The purpose of this bank is to pay the Extra Board four (4) hours of compensatory time for each sixth (6) and/or seventh (7) day worked. Time will be drawn from the appropriate bank until that bank is exhausted. In the event there remains any unused hours at the end of a quarter (bid), that time will be used to compensate any Extra Board who worked a sixth (6) and/or seventh (7) day but whose respective bank was exhausted. Any remaining hours not used in the quarter (bid) after the above steps have been followed, will expire. If the Extra Board increases in size (above five [5] positions) an additional eight (8) hours of compensatory time will be added

to the appropriate day and/or night Extra Board, per additional position.

75. SPECIAL PROVISIONS APPLICABLE TO OPERATIONS CONTROL CENTER - SCHEDULING

- A. The Union's Operations Control Center Scheduling Committee will be consulted during the development of schedules for staffing level changes.
 - B. Each time a schedule is developed, Train Controllers will be allowed to select their shifts on a classification seniority basis.
 - C. Management has the right to assign personnel to a specific shift provided the best interest of the individual or BART can be demonstrated. If possible, such assignments shall take place with the consent of all concerned parties; however, if no mutual agreement can be reached, the Chief Transportation Officer will resolve the matter.
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76. SPECIAL PROVISIONS APPLICABLE TO OPERATIONS CONTROL CENTER - TRAIN CONTROLLER SCHEDULING *

- A. The eight (8) and ten (10) hour shift schedules will be bid four (4) times a year, (paid lunch and breaks to be included in the eight (8) or ten (10) hour shifts), becoming effective at 0001 hours the first Monday of March, June, September, and December. Operations Control Center - Train Controllers on duty at 0001 hours of the effective day of the bid shall complete their work assignment/shifts unless other mutually agreed upon arrangements have been made prior to the new bid assignment.
- B. Shift schedules will be furnished to the Union two (2) weeks prior to posting, for the Union to comment. Any disputes will be submitted to the Scheduling Committee for recommendation regarding resolution, with the ACTO of the Operations Control Center making the final decision.
- C. Shift schedules and Extra Board positions will be posted and distributed to each Train Controller two (2) weeks before the

bid is effective.

- D. All shift assignments will be posted in an Operations Control Center binder showing start time and rest days. Extra Board positions/slots will show days off. Each posted shift will have the same starting time for the entire workweek if, in the District's judgment, all work assignments may be covered without additional cost.
- E. Train Controllers who cannot be present for a sign-up may leave a list of written choices (proxy) in numerical order of preference with the Central Manager in charge of scheduling.
- F. Bidding shifts and Extra Board positions/slots will be in seniority order. No employee will be permitted to pass his/her turn to bid. If an employee fails to bid, the Central Manager shall select a shift or a position/slot on the Extra Board for that employee that, in the judgment of the Central Manager, is closest to the employee's current bid assignment.
- G. When a shift change is made as a result of a new bid, the Train Controller shall normally be afforded a minimum of twelve (12) hours rest between his/her last shift of the previous bid assignment and the first shift of his/her new bid assignment.
- H. Seniority for bidding will be by Train Controller classification within the Operations Control Center. Employees will begin to accrue seniority when the employee is assigned to the Operations Control Center and begins to serve in the capacity and performs duty assignments of the classification. If the date of promotion is the same for any individuals, the individual with the earlier date of hire within the District will be treated as senior. If the date of promotion and the date of hire is the same, the date of birth will apply, with the oldest individual being more senior.

*** Minute Clarification**

If the employee accepts a permanent position which is not represented by AFSCME, his/her seniority in the Control Center is terminated after a twelve (12) month absence.

If the employee accepts another permanent AFSCME represented

position, his/her seniority in the Train Controller classification will be frozen after twelve (12) months and he/she will no longer accumulate seniority in the Train Controller classification.

If after twelve (12) months the AFSCME represented employee re-enters the Operations Control Center in a Train Controllers classification, he/she will commence accruing seniority in that classification upon his/her return.

If a former certified Train Controller requests permission to return to the Train Controller classification, the employee may return provided a vacant position is available, subject to all eligibility requirements including, but not necessarily limited to, certification.

Train Controllers who are on a temporary assignment away from the Control Center will not be cause for loss or freezing of a Train Controller's seniority.

77. SPECIAL PROVISIONS APPLICABLE TO OPERATIONS CONTROL CENTER - VACATION ALLOCATION

- A. The District shall post a yearly vacation allocation calendar on or before the first Monday of December for the forthcoming January 1st through December 31st. Vacations will be allocated throughout the year. Employees shall complete their vacation selections prior to January 1.
- B. Employees may only bid vacation selections based upon vacation accruals on the books at the time of their vacation week(s) and not based upon floaters or compensatory time. Vacation hours will be checked three (3) weeks prior to the dates requested. If the employee does not have sufficient vacation hours accrued, the vacation will be cancelled by the Supervisor/Manager and the time made available for rebid by seniority.
- C. Train Controllers will select vacation periods by classification seniority.
- D. On and after January 1 of the bid year, Train Controllers may select any remaining vacation periods on a first-come, first-serve basis. Those selections will be subject to staffing requirements.

- E. A vacation period may be cancelled by an employee upon one (1) week's notice, except that in an emergency no notice is required. Upon cancellation, vacation periods may be immediately posted for re-selection by classification seniority. Train Controllers may select a cancelled vacation period provided staffing requirements are met.

78. SPECIAL PROVISIONS APPLICABLE TO OPERATIONS CONTROL CENTER - OVERTIME ALLOCATION

- A. Available overtime will be posted at least fifteen (15) days prior to the scheduled date or as soon as it is known.
- B. If two (2) or more persons desire the overtime, the person with the lowest accrued overtime will be selected. Accrued overtime is defined for this purpose as the sum of all overtime hours worked and all overtime hours rejected.
- C. Overtime records shall be available for purposes of determining overtime assignments.
- D. When vacancies cannot be posted due to time constraints, and there are no volunteers, the vacancy(ies) will be filled as follows:
 - 1. Extra Board;
 - 2. Overtime list;
 - 3. Extensions of on duty Train Controllers in seniority order;
 - 4. Early call in;
 - 5. Inverse assignments of the least senior Train Controller.

79. SPECIAL PROVISIONS APPLICABLE TO OPERATIONS CONTROL CENTER - CERTIFICATION

A certification board shall be established for Train Controllers. The board shall develop standards for certification and the means to judge those standards. The board shall have access to all training records and other related information.

The members of the board shall consist of at least one (1) person from the classification position being certified and total membership

will consist of at least fifty percent (50%) Union bargaining unit members, all of whom shall have been, or are, working in the Operations Control Center, except for one (1). The selection of its members shall be the sole responsibility of the Union. When the certification review is completed, a formal certification meeting shall be held between the board and the Chief Transportation Officer. In the event the recommendation of the board is overruled, the decision of the Chief Transportation Officer is final and binding.

80. SPECIAL PROVISIONS APPLICABLE TO OPERATIONS CONTROL CENTER - PERFORMANCE INCENTIVES

The District will provide performance incentive cash payments as outlined below. These performance incentives will be earned and paid as described below and will not become a part of the base salary.

Train Controllers, Vehicle Maintenance Supervisors and Power and Way Supervisors in the Operations Control Center will receive a performance incentive to be paid in a separate check when the weekday (Monday-Friday) On-Time Performance for the BART system is as follows:

1. Beginning July 1, 2009, for each month for the life of the contract, when the on-time performance monthly average is equal to or greater than 95%, the above employees will receive \$100.00.
2. Beginning July 1, 2009, for each quarter for the life of the contract, when the on-time performance quarterly average is equal to or greater than 95%, the above employees will receive \$700.00.
3. Beginning July 1, 2009, for the life of the contract, when the on-time performance for a one-year average is equal to or greater than 95%, the above employees will receive \$1000.00.

The provisions above do not apply to any temporary employees that may be working in any of the classifications listed above, nor do the provisions apply to any employee in a training program/situation.

**81. SPECIAL PROVISIONS APPLICABLE TO MAINTENANCE
- VACATION ALLOCATION**

- A. The District shall post a yearly vacation allocation calendar on or before the first Monday of February for the forthcoming March 1 through the last day of February. Vacations will be allocated throughout the year subject to operating and staffing requirements of the Department. Employees shall complete their vacation selections prior to February 15 of the vacation year.
- B. Maintenance employees will select vacation periods by classification seniority.
- C. Only one (1) vacation leave up to full accrual can be picked in the first go-round. After all employees in the functional classification have made their initial selection classification seniority will again prevail for the subsequent selections.
- D. On and after March 1 of the vacation year, employees may select any remaining vacation periods on a first-come, first-serve basis.
- E. A vacation period may be cancelled by an employee upon one (1) week's written notice, except that in an emergency no notice is required. Upon cancellation vacation periods will be immediately posted for re-selection on a first-come, first-serve basis. Employees may select a cancelled vacation period providing staffing and operating requirements are met.
- F. Vacation periods will be allocated to coincide with an employee's scheduled rest days if at all possible.
- G. Annual vacation period selection is valid only for present approved work location. The vacation selection may be carried to a new work location only if it does not interfere with scheduled vacations or staffing and operating requirements of the new work location.

**82. SPECIAL PROVISIONS APPLICABLE TO POWER AND
WAY CONTROLLERS (P&W) – SCHEDULING**

The following scheduling procedure for the Power and Way

Controller classification in the Operations Control Center shall be:

- A. The eight (8) and ten (10) hour shift schedules will be bid once a year, conducted the last week of November, and becoming effective at 0001 hours the first Tuesday of January.
- B. Power and Way Controllers on duty at 0001 hours of the effective day of the bid shall complete their work assignment/shifts unless other mutually agreed upon arrangements have been made prior to the new bid assignment.
- C. Shift Schedules will be furnished to the Union two (2) weeks prior to posting, for the Union to comment. Any disputes will be submitted to the OCC Scheduling Manager for resolution.
- D. Power and Way Controllers who cannot be present for a sign-up may leave a list of written choices (proxy) in numerical order of preference with the Power and Way Controller Supervisor.
- E. Bidding shift slots will be in seniority order. No employee will be permitted to pass his/her turn to bid. If an employee fails to bid, the Power and Way Controller Supervisor shall select a shift that, in the judgment of the Power and Way Controller Supervisor, is closest to the employee's current bid assignment.
- F. When a shift change is made as a result of a new bid, the Power and Way Controller shall normally be afforded a minimum of ten (10) hours rest between his/her last shift of the previous bid assignment and the first shift of his/her new bid assignment.
- G. Power and Way Controllers will begin to accrue seniority when the employee is promoted/hired to the classification of Power and Way Controller. If the date of promotion/hire is the same for any individuals, the individual with the earlier date of hire within the District will be treated as senior. If the date of promotion and the date of hire are the same, the date of birth will apply, with the oldest individual being more senior. If the date of promotion and the date of hire and the date of birth are the same, the matter shall be resolved by lot

between the individuals.

83. SPECIAL PROVISIONS APPLICABLE TO POWER AND WAY CONTROLLER SUPERVISOR (P&W) - SCHEDULING

- A. The Power and Way Controller Supervisor's shift will be determined by mutual agreement between the Power and Way Controller Supervisor and the OCC Scheduling Manager.
- B. If mutual agreement cannot be reached, the matter will be resolved by the OCC Scheduling Manager.

84. SPECIAL PROVISIONS APPLICABLE TO LINE/ YARD SENIOR OPERATIONS LINE OPERATIONS SUPERVISORS – CLOTHING MAINTENANCE ALLOWANCE (NOT USED)

NOTE:

This section has been incorporate into section 85: Special Provisions applicable to Line/ Yard Senior Operations/ Operations Supervisors.

85. SPECIAL PROVISIONS APPLICABLE TO LINE/ YARD SENIOR OPERATIONS/ OPERATIONS SUPERVISORS - UNIFORMS

- A. A Uniform Committee consisting of two (2) AFSCME representatives appointed by the Union and two (2) District representatives appointed by the District will meet within one hundred twenty days (120) after ratification of the contract to develop recommendations to the Chief Transportation Officer or Transportation Manager designee concerning the number of uniforms that a Line/ Yard Senior Operations/Operations Supervisor needs, their design, functional requirements, and the replacement schedule and cost that would be required for such uniforms. The Chief Transportation Officer or Transportation Manager designee will consider such recommendations and provide each January a Uniform budget amount to the Uniform Committee to establish a payment process to Operations Supervisors and Senior

Operations Supervisors, however, the initial decision on such matters and the right to revise such decisions from time to time shall remain within his or her exclusive discretion.

- B. Uniforms provided pursuant to A above will become the property of the employee after six (6) months of active service.
- C. Line/ Yard Senior Operations Supervisors/ Operations Supervisors shall maintain their uniforms in a neat and clean condition, except in circumstances not reasonably within their control.
- D. Line/ Yard Senior Operations Supervisors/ Operations Supervisors who are required by the District to wear uniforms shall be provided a uniform maintenance allowance of twenty-five dollars (\$25) per month to be included as a separate item in the employee's paycheck each month.
- E. Employees receiving a uniform under this Section shall be required to wear the uniform at all times while on duty. Employees who fail to comply with this regulation may be subject to disciplinary action. Such employee may also be relieved from duty and if relieved shall forfeit compensation for the balance of that shift.

86. SPECIAL PROVISIONS APPLICABLE TO LINE/ YARD SENIOR OPERATIONS SUPERVISORS AND OPERATIONS SUPERVISORS - SCHEDULING

- A. The organizational structure of the Lines and Yards are: A/L-Line, R-Line, C-Line and M/W-Line.
- B. Each time a shift schedule is developed, once per year, Line/ Yard Senior Operations Supervisors and Operations Supervisors shall bid in the following manner:
 - 1. Bids will be determined first by SOS and then OS seniority.
 - 2. Systemwide Bid shall include all lines, all slots open to all.

3. The remaining vacancies shall be filled by inverse seniority.
 - C. The Systemwide bid schedule shall be posted by the 15th of November of each year and the bid shall be held the first Monday in December of that year for an effective date of the second Monday in January of the year immediately following the posted bid.
 - D. If, based on operational needs, the District decides that a “realignment” bid is warranted, the District shall notify the Union in advance of the bid change and the Union will assist the District with developing and scheduling the realignment bid.
-

87. SPECIAL PROVISIONS APPLICABLE TO LINE/ YARD SENIOR OPERATIONS SUPERVISORS/ OPERATIONS SUPERVISORS -TRAINING

- A. The District agrees to develop a structured training program for newly promoted Senior Operations and Operation Supervisors. The District will also meet with the Union within ninety (90) days of contract ratification to solicit input from the Union regarding the elements of the training program.
 - B. During the training period, the employee will be assigned by Management to a Line/Yard, rest days off and hours of work (eight (8) or ten (10) hour shift). Such assignments are subject to change by Management during the training period.
-

88. SPECIAL PROVISIONS APPLICABLE TO LINE/ YARD SENIOR OPERATIONS SUPERVISORS/ OPERATIONS SUPERVISORS – SENIORITY

- A. There will be separate classification seniority lists for:
 1. Line/ Yard Senior Operations Supervisor
 2. Line/ Yard Operations Supervisor
- B. For purposes of seniority the employee will begin accruing seniority in his/her classification on the date he/she reports to

the Line/Yard and continuously works the Line/Yard for sixty (60) regularly scheduled workdays.

- C. Seniority shall be established in the following manner and continue unless the Union establishes a different order or method of ranking:
1. Senior Operations Supervisors seniority shall be established by:
 - a. Effective date of promotion.
 - b. If two or more employees are promoted effective the same date, then seniority shall be established by the date of promotion from the Operations Supervisor classification.
 - c. If two or more employees are promoted to Senior Operations Supervisor from the Operations Supervisor classification, the respective date of hire shall establish the seniority.
 - d. If the date of hire is the same for two (2) or more employees, ranking shall be established by the senior date of birth of said employees.
 - e. If two (2) or more employees have the same date of birth, then the matter shall be resolved by "lot" between the employees concerned.
 2. Operations Supervisors seniority shall be established by:
 - a. Effective date of promotion/transfer.
 - b. If two (2) or more employees are promoted/transferred effective the same date, seniority shall be established by the date of hire.
 - c. If two or more employees have the same date of hire, seniority shall be established by the senior date of birth of said employees.
 - d. If two (2) or more employees have the same date of birth, the matter shall be resolved by "lot" between the individuals concerned.
- D. The District shall promptly notify the Union of any new hires, terminations, transfers or promotions in order that the Union may prepare a new Seniority Roster.
-

89. SPECIAL PROVISIONS APPLICABLE TO YARD AND LINE SENIOR OPERATIONS/ OPERATIONS SUPERVISORS - VACATION ALLOCATION *

- A. The District shall post a yearly vacation allocation calendar on or before the first Monday of December for the forthcoming January 1st through December 31st. Vacations will be allocated throughout the year.
- B. Yard/Line Senior Operations/Operations Supervisors within Transportation will select allocated vacation periods by classification seniority on their designated Line/Yard. Every week during the calendar year from January 1st through December 31st will be available for bid for at least one a.m. and one p.m. person per week. A Union representative will be responsible for conducting the vacation sign-up.
- C. After the annual vacation sign-up, employees may request additional week(s) of vacation as follows:
 - 1. On a first come first served basis, vacations of one (1) week or more may be requested up to a maximum of thirty (30) days in advance of the period.
 - 2. The District will advise the employee within seven (7) calendar days of receiving the request if the vacation request can be granted.
 - 3. Vacation approval will be subject to staffing requirements.
- D. A vacation period may be canceled by an employee upon one (1) week's notice, except that in an emergency no notice is required. Upon cancellation, vacation periods will be immediately posted for re-selection by classification seniority if staffing and operational requirements permit.
- E. Vacation periods will be allocated to coincide with employee's scheduled rest days if at all possible.

*** Minute Clarification**

This provision does not apply to any Senior Operations/ Operations Supervisors that are not assigned to Transportation Line/Yard.

90. SIDE LETTERS (SLs) AND MEMORANDA OF UNDERSTANDING (MOUs) DEFINITIONS

- A. Side Letter: A binding agreement which changes existing contract language or adds or deletes language from the contract. Side letters require ratification by the District's Board of Directors and the membership of the Union.
- B. Memorandum of Understanding: A binding agreement which clarifies existing contract language or sets forth procedures which implement contract language. MOUs do not require ratification by the District's Board of Directors or the membership of the Union.

91. PROBATIONARY PERIOD

New or rehired District employees shall, for the first ninety (90) calendar days of employment with the District, be considered probationary employees. Upon completion of the probationary period such new or rehired employees shall be credited with continuous District service from their date of hire or rehire. Employees promoted or who voluntarily transferred to a position in a different classification shall serve a ninety (90) day probationary period in the classification into which the employee was promoted or into which the employee voluntarily transferred. For employees requiring certification, the probationary period will cover the entire certification period. Employees will receive any increase associated with a promotion or voluntary transfer (separate from general contractual increases) beginning with the effective date of the promotion and/or voluntary transfer only after having completed successfully their probationary period.

During any initial probationary period new or rehired employees are terminable at will and do not have the right to use the grievance procedure. Employees serving probation pursuant to promotion or voluntary transfer to a different classification may be terminated from such classification at the District's discretion during the probationary period. However, an employee who has passed probation in a classification who fails to pass probation in a different classification into which he or she was promoted or into which he or she voluntarily transferred shall revert to the position he or she held immediately before the promotion or voluntary transfer unless the District dismisses the employee from District employment for cause.

The union may appeal such "for cause" dismissal from District service through the grievance procedure. However, if the union prevails in the grievance and the arbitrator reinstates the employee in the classification held at the time of the dismissal, the employee will serve the balance of the probationary period that had not been served at the time of the dismissal. The reversion rights, if any, of employees promoted or transferred from another bargaining unit will be governed by the applicable collective bargaining agreement. Notwithstanding the foregoing, employees promoted or who voluntarily transferred to the Train Controller classification from an AFSCME represented classification will revert to an AFSCME position for which they are qualified of similar classification to their prior position. Nothing herein shall preclude the union from challenging through the grievance procedure on grounds of prohibited discrimination the District's decision to terminate an employee during initial probation or probation pursuant to promotion or voluntary transfer where discrimination, as defined elsewhere in the Agreement, is alleged.

92. JOINT UNION / MANAGEMENT COMMITTEE

The parties agree to establish a Joint Union/Management Committee to assist the District in transitioning to and implementing a management style and organization culture that values and includes more direct participation by employees in the business decision making process.

The size, composition, structure, duration, authority and responsibility of the Committee will be determined through further discussion with the Union. The District agrees to allow designated Union Committee members time off work, as appropriate, to attend Committee meetings and participate in Committee activities. The District will further provide administrative staff support for the Committee as appropriate.

93. DONATION OF VACATION & FLOATING HOLIDAYS

The Parties agree on the following procedure for allowing employees to donate vacation and/or floating holidays to affected employees.


A. Employees who donate vacation or floating holidays to an

affected employee shall complete and sign a “Donation of Vacation & Floating Holiday Form.” The Forms must be delivered to the Human Resources Department. The employees who request to donate shall identify the affected employee, number of hours they request to donate, and they shall have at least that many hours in their account.

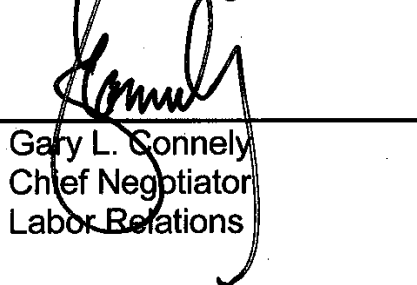
- B. Employees who donate vacation hours and/or floating holidays agree that their balance of vacation hours and/or floating holiday hours will be reduced by the amount they donate.
- C. To be an eligible recipient the person shall be a full-time or part-time employee with a catastrophic emergency, who has depleted all available sick leave, vacation, compensatory time, floating holidays, disability payments and is in a non-paid status.
- D. A catastrophic emergency is a medical and/or family emergency requiring the employee to be off work in a non-paid status which results in a financial crisis.
- E. All donor forms received by Human Resources shall be processed within each two (2) week payroll period.

IN WITNESS WHEREOF the parties hereto have caused their names to be subscribed by their duly authorizing officers and representatives this day,

FOR THE DISTRICT:

By: 

Dorothy W. Dugger
General Manager

By: 

Gary L. Connely
Chief Negotiator
Labor Relations

District Negotiating Team:

Hamed Tafaghodi
Joseph M. Torrisi
Ronald L. McVicker

FOR THE UNION:

By: 

Jean E. Hamilton
President, AFSCME Local 3993

AFSCME Negotiating Team:

Gregory Ramirez, Business Agent
David L. Sanborn, Vice President
Melissa Miller, Secretary
Patricia Schuchardt, Treasurer
Alex Serrano
Chris Stuart
Dave Hood
Helen Lopez
Len Bridges
Rube Warren
Sal Cruz

September 30, 1980

Mr. Larry Williams, Director
BART Employee Relations
800 Madison Street
Oakland, CA. 94607

Re: **ROLE OF THE INVESTMENTS COMMITTEE, GEN-1**

Dear Mr. Williams:

At yesterday's meeting (September 29), you are aware the Committee voted unanimously that, in the event employees vote to withdraw from Social Security coverage, Centrecorp of Oakland be designated to handle both the IRS Qualified Plan and Deferred Compensation as retirement/ investment vehicles.

In response to your earlier questions concerning our interest in maintaining a continuing role for the Committee/Employee Organizations in such eventuality, you responded as follows:

- 1) The District has no objection to a 5-Party Agreement (the four organizations and BART operating as a Joint Trust) to enter into any Agreements to provide such programs; however
- 2) Any such Agreements would be reviewed by your Legal department and/or approved by the Board of Directors as necessary;
- 3) In the case of the Qualified Program, there appears to be no legal difficulties with the Joint Trust concept;
- 4) As to Deferred Compensation, BART has no opposition to a similar Joint Trust, provided such is legally permissible (there seems to be some question concerning BART being required to hold the Contract) or, as an alternate procedure, a format could be instituted to allow the Committee to effectively exercise authority over the Plan operation and funds;
- 5) The Committee would meet at least quarterly on District time, and on such special occasions as necessary to administer the Plans, although no paid time off would be authorized for individual members of the Committee acting independently;

- 6) The Committee would also function to review and approve requests for emergency withdrawal of funds due to hardship situations;
- 7) Actions by the Committee, unless otherwise specified, would continue to require a 4/5 vote.
- 8) Each entity (BART and the four organizations) would designate a Trustee and an alternate Trustee to serve on the Committee meetings (staff could also attend in nonvoting capacities).
- 9) The 6.65% annual contribution by BART (on a maximum salary of \$29,700) in behalf of each employee would not be costed as a part of the economic package in future collective bargaining between any of the Unions and BART; however, any proposals and increases in such contributions resulting from negotiations could be considered as a part of the economic package offered by BART to represented employees.

If the foregoing is also your understanding, and provided the other organizations concur, I suggest that you confirm same in writing so that an appropriate Trust Agreement may be drafted and executed by the involved parties.

Sincerely Yours,

Paul Varacalli

cc: J. Danzy, ATU 1555/ R. Hendricks, BPOA, L1008/ R. Peters, BARTSPA/ M. Waalkens/ L. Gerber

October 22, 1980

Mr. Paul Varacalli, Executive Secretary
United Public Employees Local 390
522 Grand Avenue
Oakland, California 94610

Re: **ROLE OF THE BART INVESTMENTS COMMITTEE. GEN-2**

Dear Mr. Varacalli:

This is in response to your letter of September 30, 1980 regarding the above referenced subject, and our subsequent discussions at the Committee meetings on October 2, 1980 and October 16, 1980.

With the exception of the changes noted below, your letter accurately reflects my comments to the Committee on September 29, 1980 regarding my understanding of the continuing role of the Committee in the event BART withdraws from Social Security. The noted exceptions are as follows: (Numerical references are to paragraph numbers in your September 30, 1980 letter.)

- 1) Change "Joint Trust" to "Joint Administrators."
- 3) Change "Joint Trust" to "Joint Agreement."
- 4) Change "Joint Trust" to "Joint Agreement", and end sentence after word "operation." (In the contemplated Deferred Compensation Plan, BART will be the legal owner of the "funds;" however, I am agreeable to allowing the Committee to direct the administration of these funds subject to more detailed provisions to be included in formal documents.)
- 8) Change the first "Trustee" to "Primary Representative" and change "Alternate Trustee" to "Alternate Representative." (These two Representatives would be the only recognized Representatives from each Union/Association for purposes of time off for Committee meetings. Recognized Representatives would be made whole only for time spent in Committee meetings which overlaps scheduled work time.)

(Last Paragraph) Change "Trust Agreement" to "Joint Agreement."

With the above noted understandings, and modifications to your

September 30, 1980 letter, we are prepared to proceed to conclude the respective Agreements to effectuate a Deferred Compensation Plan, plus an IRS Qualified Plan if employees vote to withdraw from Social Security. Obviously, as you have noted, I must seek the review of our General Counsel and the approval of our Board.

By copy of this letter, all other affected labor organizations are notified accordingly. In addition, each Union/Association is requested to designate in writing its Primary and Alternate Representative to the Committee at the next meeting scheduled at 9:00 a.m. on Friday, November 7, 1980 at LMA Headquarters.

If you have further questions, please let me know.

Sincerely,

Larry Williams

LAW:jb

cc: P. L. Cooper
D. R. Bankston
J. Danzy, ATU Div. 1555
R. Hendricks, BPOA
R. Peters, BARTSPA
M. Waalkens, UPE 790

File: Investment Committee, BART

November 6, 1981

SIDE LETTER OF AGREEMENT: GEN-3

Mr. Everett Riehl, President
Amalgamated Transit Union - Local 1555
1440 Broadway, Suite 501
Oakland, CA 94612

Mr. Milton Waalkens, Chapter Chairperson
United Public Employees Local 790
522 Grand Avenue
Oakland, CA 94610

Mr. Gene Nixon, President
BART Supervisory and Professional Association
800 Madison Street
Oakland, CA 94607

Mr. Glenn Nunes, President
BART Police Officers Association
Local 1008 SEIU
800 Madison Street
Oakland, CA 94607

Gentlemen:

Attached for your records is an executed copy of the Side Letter of Agreement implementing the transfer of the 1.627% from PERS to the Money Purchase Pension Plan.

Thank you for your cooperation during the ratification process.

Sincerely,

Larry Williams, Chairman
Investment Plans Committee

LAW:dcm

Attachment

cc: D. R. Bankston/ P. L. Cooper

SIDE LETTER OF AGREEMENT: GEN-4-3(A)

When signed below by the parties, this letter will constitute a Side Letter of Agreement between the parties on the subject of retirement benefits: Employer-paid contribution of One point six hundred twenty seven percent (1.627%). The undersigned Union agrees, as the sole and exclusive bargaining agent for employees of the Clerical and Maintenance Subunit that the District will, effective January 18, 1982, cease making the Employer-paid contribution to the PERS miscellaneous member account of One point six hundred twenty seven percent (1.627%) of payroll as required by the provisions of Section 29B of the current collective bargaining agreement and the undersigned agree that, in its place and stead, the District shall make such 1.627% contributions to the District's Money Purchase Pension Plan to be credited to the Individual Accounts in the same manner as other contributions to said Plan on behalf of participating employees. Effective January 18, 1982, Section 29B of the Agreement between the parties effective July 1, 1979 - June 30, 1982 is deleted in consideration of the District's agreement to make the above described 1.627% contributions to the District's Money Purchase Pension Plan from and after January 18, 1982 in the same amount and in the same payment periods and for the same duration as it would have been legally required to make such contributions pursuant to the provisions of Section 29B of the agreement in the absence of this Side Letter of Agreement.

This shall also serve as the required written authorization to amend any applicable agreement relating to the Money Purchase Pension Plan to implement the provisions of this Side Letter of Agreement.

This Side Letter of Agreement shall be deemed part of the collective bargaining agreement between the parties and any dispute regarding its interpretation or application shall be subject to the grievance and arbitration provisions of the agreement between the parties dated July 1, 1979 - June 30, 1982.

CONCUR FOR DISTRICT:

CONCUR FOR UNION:

C. K. Bernard
General Manager
SAN FRANCISCO BAY AREA
RAPID TRANSIT DISTRICT

UNITED PUBLIC
EMPLOYEES Union,
Local 790

cc: Department Heads/ D. R. Bankston/ P. L. Cooper/ J. Troy/ S.
Wakeman

File: Benefits, Employee General/Investment Plan
BART/Retirement Plan (PERS)/ Agreements, Side Letters of

January 5, 1981

SIDE LETTER OF AGREEMENT: GEN-4

BART Police Officers Association
Local 1008, SEIU
800 Madison Street
Oakland, California 94607

BART Supervisory and Professional Association
800 Madison Street
Oakland, California 94607

United Public Employees Local 790
522 Grand Avenue
Oakland, California 94610

Amalgamated Transit Union Local 1555
1440 Broadway Street, Suite 501
Oakland, California 94612

Re: Deferred Compensation Plan and Qualified Money Purchase
Pension Plan

Gentlemen:

When signed below by all parties, this letter will constitute a Side Letter of Agreement between the parties regarding the above-mentioned subject.

The parties agree that with the exception of changes which are necessary or desirable to obtain or maintain the qualified status of the plans, the District shall not change, amend, terminate, alter or modify the written plan documents governing the implementation and administration of the District's Deferred Compensation Plan and Qualified Money Purchase Pension Plan adopted by the District's Board of Directors on December 18, 1980, insofar as such action would affect employees represented by United Public Employees Local 790, Amalgamated Transit Union Local 1555, BART Police Officers Association or BART Supervisory and Professional Association without the written mutual agreement of all parties signatory to this Side Letter of Agreement.

The parties further agree that the understandings contained in the

letter dated September 30, 1980 from Paul Varacalli to Larry Williams together with the letter dated October 22, 1980 from Larry Williams to Paul Varacalli, copies of which are attached hereto, are made part of this agreement and by this reference incorporated herein.

The understandings and agreements contained in this Side Letter are to be considered a part of the consideration given for the establishment of the Deferred Compensation Plan and Qualified Money Purchase Pension Plan.

This Side Letter of Agreement shall continue in full force and effect from the date of execution until modified or terminated by the written mutual agreement of all parties to this agreement.

Keith Bernard
San Francisco Bay Area
Rapid Transit District

Gene Nixon
BART Supervisory and
Professional Association

Milt Waalkens
United Public Employees
Local 790

Gene Nunes
BART Police Officers
Association

Everett Riehl
Amalgamated Transit
Union, Local 1555

October 7, 1983

GEN-5

Electronic Technician/Vehicle Mechanic Training Program

Everett M. Riehl, President
Amalgamated Transit Union - Local 1555
1440 Broadway, Suite 501
Oakland, CA 94612

M. E. Waalkens, Chapter Chairperson
United Public Employees Local 790
522 Grand Avenue
Oakland, CA 94610

Joseph D. Evinger, President
BART Supervisory & Professional Association
800 Madison Street
Oakland, CA 94607

Glenn Nunes, President
BART Police Officers Association - Local 1008 SEIU
800 Madison Street
Oakland, CA 94607

Leo Tamisiea, President
BART Police Managers Association
800 Madison Street
Oakland, CA 94607

It is hereby mutually agreed among and between the parties that bargaining unit employees participating as trainees in the Electronic Technician and Transit Vehicle Mechanic training program (Side Letter of Agreement No. UPE-4-4) shall be governed by the applicable provisions of the United Public Employees Local 790 labor Agreement to the extent that those provisions are not in conflict with Side Letter No. UPE-4-4. In the event of a conflict, the Side Letter shall be controlling.

Furthermore, should a trainee who was in BART bargaining unit prior to the placement in the training program be unsuccessful in completing the program and/or the probationary period, as determined by the District, he/she shall have reversion rights to bump back into his/her previously held classification.

CONCUR FOR DISTRICT:

CONCUR FOR
UNION/ASSOCIATION:

<hr/> Larry Williams Department Manager	<hr/> Date	<hr/> Everett Riehl President, ATU - 1555	<hr/> Date
<hr/> D. R. Bankston	<hr/> Date	<hr/> M. E. Waalkens Chapter, Chairperson UPE Local 790	<hr/> Date
		<hr/> Joseph Evinger President, BART Supervisory & Professional Association	<hr/> Date
		<hr/> Glenn Nunes President, BART Police Officers Association	<hr/> Date
		<hr/> Leo Tamisiea President, BART Police Managers Association	<hr/> Date

cc: R. Demko/ F. Stephens/ V. Mahon/E. Bailey/ G. Mackin/ A. Braun/ D. R. Bankston

File: Understanding, Memorandum of Agreement, Side Letter of Training, General

March 6, 1996

SIDE LETTER OF AGREEMENT: GEN-6

Mr. Milt Waalkens
SEIU, Local 790
100 Oak Street
Oakland, CA 94607

Mr. Chuck Baca
BPOA, Local 1008
800 Madison Street
Oakland, CA 94607

Mr. Robert Smith
ATU, Local 1555
132 Ninth Street, Suite 100
Oakland, CA 94607

Mr. Gregg Savage
BPMA
800 Madison Street
Oakland, CA 94607

Ms. E. Norma del Mercado
AFSCME, Local 3993
P. O. Box 12123
Oakland, CA 94604

Subject: Donation of Vacation & Floating Holidays

The Parties agree on the following procedure for allowing employees to donate vacation and/or floating holidays to affected employees.

1. Employees who donate vacation or floating holidays to an affected employee shall complete and sign a "Donation of Vacation & Floating Holiday Form." The Forms must be delivered to the Human Resources Department. The employees who request to donate shall identify the affected employee, number of hours they request to donate, and they shall have at least that many hours in their account.
2. Employees who donate vacation and/or floating holidays agree that their balance of vacation and/or floating holiday hours will be reduced by the amount they donate.
3. To be an eligible recipient the person shall be a full-time or part-time employee with a catastrophic emergency, who has depleted all available sick leave, vacation, compensatory time, floating holidays, disability payments and is in a non-paid status.
4. A catastrophic emergency is a medical and/or family emergency requiring the employee to be off work in a non-paid status which results in a financial crisis.

5. All donor forms received by Human Resources shall be processed within each two (2) week payroll period.

Howard Lewis Manager, Labor Relations	Date	Milt Waalkens President/BART Chapter Service Employee International Union, Local 790	Date
		Robert Smith President/Business Agent Amalgamated Transit Union, Local 1555	Date
		Gregg Savage President BART Police Officers Association	Date
		E Norma del Mercado President American Federation of State, County and Municipal Employees, Local 3993	Date
		Chuck Baca Acting President BART Police Officers Association	Date

MEMORANDUM OF UNDERSTANDING:
AFSCME/MOU-6-05 Alternative Work Schedule

Ms. E. Norma del Mercado, President
American Federation of State, County
and Municipal Employees (AFSCME) Local 3993
P.O. Box 12123
Oakland, CA 94604

Re: Alternative Work Schedule

Dear Ms. del Mercado:

On or before July 1, 2007, the District and the Union will meet to discuss the feasibility of an Alternative Work Schedule (AWS) program.

Concur for District:

Concur for Union:

	23 June '05		6/23/05
Michelle Tellez	Date	E. Norma del Mercado	Date
Labor Relations		President	
		AFSCME Local 3993	

August 4, 2005

**MEMORANDUM OF UNDERSTANDING BETWEEN SAN FRANCISCO
BAY AREA RAPID TRANSIT DISTRICT AND THE AMERICAN
FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES,
LOCAL 3993 – AFSCME MOU - 9**

Ms. E. Norma del Mercado, President
American Federal, State, Municipal
And County Employees (AFSCME) Local 3993
P.O. Box 12123
Oakland, CA 94604

Dear Ms. del Mercado;

Pursuant to collective bargaining that resulted in an Agreement, whose term is 1 July 2005 through 30 June 2009, the parties acknowledge the following:

Certain employees, who are covered under this collective bargaining agreement (CBA), have been designated non-exempt, eligible to earn overtime at a rate of 1.5 times their rate of pay, as a result of litigation pursued outside of the parties' CBA. This litigation is ongoing and may result in certain other employees covered under this CBA having their designation of exempt changed to a non-exempt status.

All non-exempt employees shall be subject to the overtime provision covered in the parties' CBA.

For AFSCME

For the District:

E. Norma del Mercado
President

Michelle Tellez
Labor Relations

7 April 2006

MEMORANDUM OF UNDERSTANDING BETWEEN SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT AND THE AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, LOCAL 3993 – AFSCME MOU – 10

Ms. E. Norma del Mercado, President
American Federal, State, Municipal
And County Employees (AFSCME) Local 3993
446 17th Street – Suite 302
Oakland, CA 94612

Dear Ms. Del Mercado;

Pursuant to the parties' collective bargaining that resulted in an Agreement, whose term is 1 July 2005 through 30 June 2009 and in further clarification of the parties' MOU-9 dated 4 August 2005, which is part of the afore-mentioned Agreement, the parties acknowledge the following:

1. Employees in the classifications Train Controller and Power & Way Controller have elected to receive monetary compensation OR compensator time at one and one half (1.5x) their rate of pay when they work overtime. There will be NO double time paid if they work their 2nd RDO (or 3rd RDO if they work a 4-10 schedule) after having worked the 1st RDO; and
2. Employees in the classifications Senior Central Supervisor and Central Maintenance Supervisor have elected to receive monetary compensation at one and one half time (1.5x) their rate of pay when they work overtime on their first (1st) RDO and monetary compensation at double their rate of pay if they work on their 2nd RDO (or 3rd RDO if they work a 4-10 schedule). This is applicable ONLY after the employee has worked overtime on their 1st RDO. These classifications will not be eligible to receive compensatory time.

All effected classifications will be paid time and one half (1.5x) for all hours worked in excess of eight (8) hour and/or ten (10) hour work days (5-8s or 4-10s) and in excess of a forty (40) hour week, including holidays if the employee works the holiday.

The term of MOU-9 and MOU-10 shall last until the end of the parties' 2005-2009 collective bargaining agreement.*

E. Norma del Mercado
AFSCME Local 3993

Michelle Tellez
BART Labor Relations

* The term of MOU-9 and MOU-10 shall last until the end of the parties' 2009-2013 collective bargaining agreement.

Jean E. Hamilton
AFSCME Local 3993

Gary L. Connely
BART Labor Relations

January 10, 2007

MEMORANDUM OF UNDERSTANDING BETWEEN SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT AND THE AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, LOCAL 3993 – AFSCME MOU - 11

Ms. Jean E. Hamilton, President
American Federal, State, Municipal
And County Employees (AFSCME) Local 3993
446 17th Street – Suite 302
Oakland, CA 94612

Dear Ms. Hamilton;

Pursuant to the parties' collective bargaining that resulted in an Agreement, whose term is 1 July 2009 through 30 June 2013 and in further clarification of the parties' MOU-9 dated 4 August 2005, which is part of the afore-mentioned Agreement, the parties acknowledge the following:

1. Employees in the classifications, Data Base Administrator, Senior Financial Analyst, Senior Inventory Control Analyst, Sr. Operations Supervisor – Operations Liaisons, and Treasury Analyst have elected to receive monetary compensation or compensatory time at one and one half (1.5x) their rate of pay when they work overtime. There will be no double time paid if they work their 2nd RDO (or 3rd RDO if they work a 4-10 schedule) after having worked the 1st RDO; and
2. Employees in the classifications, Operations Supervisor, Operations Supervisor – Liaisons, and Senior Operations Supervisor, have elected to receive monetary compensation at one and one half time (1.5x) their rate of pay when they work overtime on their first (1st) RDO and monetary compensation at double (2x) their rate of pay if they work on their 2nd (or 3rd RDO if they work a 4-10 schedule). This is applicable only after the employee has worked overtime on their 1st RDO. These classifications will not be eligible to receive compensatory time.

All affected classifications will be paid time and one half (1.5x) for all hours worked in excess of eight (8) hour, nine (9) hour and/or ten (10) hour work days (5-8s, 9/80 or 4-10) and in excess of a forty (40) hour week, including holidays if the employee works the holiday.

The District will be allowed 90 days from the date of signing this MOU to reprogram the PeopleSoft system to allow for changes that fulfill the intent of

this agreement.

The term of MOU-9 and MOU-11 shall last until the end of the parties' 2005-2009 collective bargaining agreement. *

	1/11/07		1/09/07
_____ Jean E. Hamilton President AFSCME Local 3993	date	_____ Elaine M. Kurtz Department Manager Human Resources/Labor Relations	date

* The term of MOU-9 and MOU-11 shall last until the end of the parties' 2009-2013 collective bargaining agreement.

_____ Jean E. Hamilton AFSCME Local 3993	_____ Gary L. Connely BART Labor Relations
--	--

February 9, 2010

**MEMORANDUM OF UNDERSTANDING BETWEEN SAN FRANCISCO
BAY AREA RAPID TRANSIT DISTRICT AND THE AMERICAN
FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES,
LOCAL 3993 – AFSCME MOU - 11**

Ms. Jean E. Hamilton, President
American Federal, State, Municipal
And County Employees (AFSCME) Local 3993
446 17th Street – Suite 302
Oakland, CA 94612

AFSCME MOU – 11 ADDENDUM

The attached Memorandum of Understanding, AFSCME MOU – 11, shall move the classification of "Sr. Operations Supervisor - Operations Liaisons" from group 1. to 2., July 1, 2009 through the end of the contract period.

Jean E. Hamilton
President
AFSCME Local 3993

Gary L. Connely
Prin. Labor Relations Representative
Labor Relations

August 16, 2001 (Modified July 1, 2009)

SIDE LETTER OF AGREEMENT: AFSCME/SL-1
Train Controllers On-the-Job Instructor Program (OJI)

Ms. E. Norma del Mercado, President
American Federal, State, Municipal
And County Employees (AFSCME) Local 3993
P.O. Box 12123
Oakland, CA 94604

Dear Ms. del Mercado:

This letter shall constitute a Side Letter of Agreement, which has been reached by the District and American Federal, State, Municipal and County Employees Union, Local 3993, regarding the Train Controller On-the-Job Instructor Program.

The parties agree that the Program, as it relates to On-the-Job Instructor position, shall be as follows:

A. Job Classification:

The OJI positions will be the same job classification as the Train Controller classification.

B. Compensation:

1. In addition to the compensation provided by the Collective Bargaining Agreement (CBA), during the OJI assignment, the OJIs shall receive an annual pay increase of nine thousand one hundred forty dollars and eighty eight cents (\$9,140.88). This additional compensation was based on ten percent (10%) of the average salary of certified Train Controllers, as shown on the list dated 7/31/04.
2. The District's salary range scale shall not preclude any OJI from receiving the full additional ten percent (10%) average compensation as described above.
3. The District agrees to review and adjust, if necessary, the ten percent (10%) compensation pay every two (2) years on July 31st using the same formula as stated in No. 1 above. The District agrees that at no time shall the pay increase be adjusted

downward.

C. Posting:

1. The number of OJI positions, which shall be mutually agreed to by the District and Union, shall be posted thirty (30) days after the signing of this side letter.
2. The OJI posting shall reflect the effective date and ending date of the two (2) year assignment.
3. Re-posting of the OJI position shall occur every two (2) years from the original date of posting, as well as the ending date of said assignment.

D. Selection:

1. A panel will be used for the selection process which will consist of two (2) Management appointed representatives and two (2) Union AFSCME appointed representatives.
2. Criteria for selection by the Panel shall include examination of the candidate's personnel and attendance records and Train Controller experience (minimum of two [2] year's experience required).

E. Training:

1. The District shall provide two (2) days of training for each new OJI.
2. The District shall provide one (1) additional, required, eight (8) hour class each year to enable the OJI to reinforce training techniques.

F. OJI Shifts:

1. OJI shift bidding shall be in accordance with the CBA.
2. If an OJI opts out of the OJI Program during any part of the two year term, the additional ten percent (10%) average compensation shall cease on the effective date of her/his return to the Train Controller position in accordance with the CBA bid procedure.
3. In the event an OJI is not available, the Training Supervisor will designate a Train Controller to fill in temporarily for a day (days) or a specific period of time that is less than a day. In the event the

Training Supervisor is unavailable, the on duty OCC Manager will make the determination. The temporary OJI will be compensated at a rate of one and one-half hours of overtime at the applicable rate of pay for each day or portion thereof that they fill temporarily. The Operations Control Center Scheduling Committee shall resolve any issues which may arise regarding shifts per the CBA.

G. Performance Reviews:

1. The OJIs shall be subject to a separate performance review in addition to the yearly performance review agreed to in Section 47 of the CBA.
2. The OJI Performance Review shall not be used in lieu of, nor effect, the OJIs salary as a Train Controller per Section 47 of the CBA.
3. No discipline shall result from a performance review as an OJI based on lack of skills or deficient skills as a trainer. However, while acting as a trainer the OJI will be held accountable for work performance as it relates to system operations. If an OJI takes or directs an action that adversely affects system operations they will be subject to discipline to the same extent that the OJI would normally be subject to while acting in the capacity of a Train Controller.
4. The OJI Performance review will be used to determine if OJIs will remain in the OJI Program
5. If OJIs do not remain in the OJI Program, the additional compensation will stop effective the day of removal from the position.

H. Overtime:

Overtime will be handled in accordance with the CBA, according to existing practices.

I. Vacations:

Vacations will be handled in accordance with the CBA, according to existing practices.

This Side Letter of Agreement shall become effective August 8, 1996, and remain in effect until June 30, 2009. However, the parties agree that the

provisions of this Side Letter of Agreement may be renegotiated to coincide with B.3. above.

CONCUR FOR DISTRICT:

CONCUR FOR UNION:

James T. Gallagher Date
AGM, Operations

E. Norma del Mercado Date
President
AFSCME, Local 3993

Paul Oversier Date
Chief Transportation Officer

Howard W. Lewis Date
Manager, Labor Relations

June 21, 2005

SIDE LETTER OF AGREEMENT: AFSCME / SL-1

Certified Train Controllers - On-the-Job Instructor Program (OJI)

Ms. E. Norma del Mercado
President
American Federation of State, County
and Municipal Employees (AFSCME) Local 3993
132 Ninth Street, Suite 201
Oakland, CA 94604

AFSCME/SL-1 ADDENDUM

The attached Side Letter of Agreement, AFSCME/SL - 1 (Certified Train Controllers On-the-Job Instructor Program - OJI) shall remain in effect from July 1, 2005 through the end of the current contract period.

Concur for District:

Concur for Union:

Michelle Tellez Date
Labor Relations

E. Norma del Mercado Date
President
AFSCME, Local 3993

AFSCME/SL-1 ADDENDUM

The attached Side Letter of Agreement, AFSCME/SL - 1 (Certified Train Controllers On-the-Job Instructor Program - OJI) shall remain in effect from July 1, 2009 through the end of the current contract period.

Concur for District:

Concur for Union:

Gary L. Connely Date
Labor Relations

Jean E. Hamilton Date
President
AFSCME, Local 3993

August 11, 1997

SIDE LETTER OF AGREEMENT : AFSCME/SL-2

Train Controller Training Supervisor Program *

Ms. E. Norma del Mercado, President
American Federation of State, County
and Municipal Employees (AFSCME) Local 3993
P.O. Box 12123
Oakland, CA 94604

Dear Ms. del Mercado:

This letter shall constitute a Side Letter of Agreement, which has been reached by the District and American Federation of State, County and Municipal Employees Union, Local 3993, regarding the Train Controller Training Supervisor Assignment.

The parties agree that the Program, as it relates to the Train Controller Training Supervisor position, shall be as follows:

A. Job Classification:

The Train Controller Training Supervisor position will be the same job classification as the Train Controller classification.

B. Compensation:

1. In addition to the compensation provided by the Collective Bargaining Agreement (CBA), during the Training Supervisor's assignment, the Training Supervisor shall receive an annual pay increase of thirteen thousand seven hundred eleven dollars and twenty cents (\$13,711.20). This additional compensation was based on fifteen percent (15%) of the average salary of certified Train Controllers, as shown on the list dated 7/31/04.
2. The District's salary range scale shall not preclude the Training Supervisor from receiving the full additional fifteen percent (15%) average compensation as described above.
3. If the Training Supervisor opts out of the Training Supervisor Program or is removed by management during any part of his/her term, the additional fifteen percent (15%) average compensation shall cease on the effective date of her/his last day in the Training Supervisor Program.
4. The District agrees to review and adjust, if necessary, the fifteen percent (15%) compensation pay every two (2) years on July

31st using the same formula as stated in No. 1 above. The District agrees that at no time shall the pay increase be adjusted downward.

C. Posting:

1. The Training Supervisor posting shall reflect the effective date and ending date of the two (2) year assignment.
2. Re-posting of the Training Supervisor position shall occur every two (2) years from the original date of posting, as well as the ending date of said assignment.

D. Selection:

1. The ACTO of the Control Center shall select the Training Supervisor.
2. Criteria for selection shall include examination of the candidate's personnel and attendance records and Train Controller experience (minimum of two [2] years experience required). The candidate must also be a certified Train Controller.

E. Training:

1. The District shall provide five (5) days of training for a new Training Supervisor.

The District shall provide two (2) additional, required, eight (8) hour classes each year to enable the Training Supervisor to reinforce training techniques.

F. Performance Reviews:

1. The Training Supervisor shall be subject to a separate performance review in addition to the yearly performance review agreed to in Section 47 of the CBA. The performance review will be conducted by the Control Center ACTO.
2. The Training Supervisor performance review will be used to determine if the Training Supervisor will remain in the Training Supervisor assignment.
3. In order to maintain proficiency at the Train Control Console, the Training Supervisor shall perform the duties of a Train Controller a minimum of eight (8) hours per month. During that eight (8) hour period, at least three (3) hours will include one (1) commute rush period.
4. No discipline shall result from a performance review as a Training Instructor based on lack of skills or deficient skills as a trainer. However, the Training Supervisor will be held accountable for work performance as it relates to system

operations. If the Training Supervisor takes or directs an action that adversely affects system operations they will be subject to discipline to the same extent that the OJI would normally be subject to while acting in the capacity of a Train Controller.

G. **Overtime:**
Overtime will be handled in accordance with the CBA, according to existing practices.

H. **Vacations:**
Vacations will be handled in accordance with the CBA, according to existing practices.

This Side Letter of Agreement shall become effective upon ratification of the 1997 agreement and remain in effect until the end of the current contract. However, the parties agree that the provisions of this Side Letter of Agreement may be renegotiated to coincide with B.4. above.

*** Minute Clarification**

Should any salary increase provided in Section 47A of the Agreement be made effective prior to the ratification date of the 1997 Agreement, the effective date of the additional compensation provided in "B" of AFSCME/SL-2 will be effective on the same date.

CONCUR FOR DISTRICT:

CONCUR FOR UNION:

Walter Kawecki, Jr. Date
BART Labor Supervisor

E. Norma del Mercado Date
President
AFSCME Local 3993

June 21, 2005

SIDE LETTER OF AGREEMENT: AFSCME/SL-2
Train Controller Training Supervisor Program

Ms. E. Norma del Mercado
President
American Federation of State, County
and Municipal Employees (AFSCME) Local 3993
132 Ninth Street, Suite 201
Oakland, CA 94607

AFSCME/SL-2 ADDENDUM

The attached Side Letter of Agreement, AFSCME/SL-2 (Train Controller Training Supervisor Program) shall remain in effect from July 1, 2005 through the end of the current contract period.

Concur for District:

Concur for Union:

Michelle Tellez Date
Labor Relations

E. Norma del Mercado Date
President, AFSCME, Local 3993

AFSCME/SL-2 ADDENDUM

The attached Side Letter of Agreement, AFSCME/SL-2 (Train Controller Training Supervisor Program) shall remain in effect from July 1, 2009 through the end of the current contract period.

Concur for District:

Concur for Union:

Gary L. Connely Date
Labor Relations

Jean E. Hamilton Date
President, AFSCME, Local 3993

July 31, 2009

**SIDE LETTER OF AGREEMENT: AFSCME/SL 05-09
AFSCME “ME TOO” CLAUSE**

Mr. Gary Connely
Principal Labor Relations Analyst
BART District
300 Lakeside Drive, 20th Floor
Oakland, CA 94612

Dear Mr. Connely:

Per our discussion, this side letter will be adopted at the same time the parties adopt the successor to the 2005-2009 District-AFSCME labor agreement. It is a “me too” agreement on certain terms that are simultaneously under discussion between the District and several of its unions. It shall be deemed a part of the successor to the 2005-09 District-AFSCME labor agreement. The parties agree as follows:

This side letter repeatedly references “the successors to the 2005-09 District ATU/SEIU Agreements.” The parties agree that throughout this side letter agreement, “the successors to the 2005-09 District ATU/SEIU Agreements” shall include the successor to the 2005-09 District-ATU collective bargaining agreement and the successor to the 2005-09 District-SEIU Local 1021 collective bargaining agreement. If the referenced benefit and/or contract term in the successor to the 2005-09 District-ATU collective bargaining agreement, differs in substance from the referenced benefit and/or contract term in the successor to the 2005-09 District-SEIU agreement, then AFSCME shall elect whether the employees covered under the successor to this District-AFSCME Agreement shall receive the benefit and/or contract term as stated in the successor to the 2005-09 District-ATU collective bargaining agreement, or as stated in the successor to the 2005-09 District-SEIU collective bargaining agreement.

The employees covered under this successor to the 2005-09 AFSCME Agreement shall receive the same general across the board percentage base wage increase and one-time-only lump sum wage payments, if any, as granted to the employees covered by the successors to the 2005-09 District ATU/SEIU Agreements provided that AFSCME can pay for such salary adjustments through cost reductions over and above the established 2009 cost saving goal.

If the District grants specialized adjustments to ATU and/or to SEIU for other wage premiums or individual classifications wage rate increases, apart from the general across the board increases (excluding COLA), the District shall calculate the on-going cost of such adjustments amount as a percentage of ATU and/or SEIU bargaining unit base wages plus percentage-based fringe benefits for the year in which such increase(s) take effect. The District shall promptly notify AFSCME of this percentage(s). AFSCME may within fourteen (14) days after receipt of such notice propose the manner of distributing the on-going cost of its equivalent percentage (e.g. for particular premiums, classification adjustments, individual employee adjustments, etc.) provided that AFSCME can pay for such adjustments in accordance with the methodology in the above paragraph. If the parties are unable to reach an agreement within ninety (90) days after the union proposes such distribution, the percentage for each year of the agreement respectively shall be applied as a uniform percentage across the board wage increase at the commencement of the contract year.

The successor to the 2005-2009 District-AFSCME contract shall have the same effective date(s) and duration under Section 1. of the AFSCME agreement as the successors to the 2005-09 District ATU/SEIU contracts.

Section 12.A.1-5 of the successor to the 2005-2009 District AFSCME Agreement shall have the same terms as the successors to the 2005-09 District ATU/SEIU Agreements with respect to prohibition of sympathy strikes and performing struck work.

Sections 31 and 33 of the successor to the 2005-09 District AFSCME Agreement shall be deemed amended to incorporate all substantive and procedural changes from the 2005-09 District-ATU/SEIU Agreements. This may include, but is not limited to, those provisions concerning the financing, structure, and governance of active and retiree medical insurance plans and related funds.

Section 40 of the successor to the 2005-09 District-AFSCME labor agreement shall have any improvements the successors to the 2005-09 District-ATU/SEIU Agreements have with respect to retirement benefits.

This document is the entire side-letter between the parties. It is effective upon ratification and signing of the successor to the 2005-09 District-AFSCME labor agreement by both parties.

For the District:

For AFSCME:

Gary L. Connely Date
Labor Relations

Jean E. Hamilton Date
President, Local 3993

SIDE LETTER OF AGREEMENT - 7

Compensation Plan

A. Parties

The parties to this side letter of agreement are AFSCME Local 3993 (hereinafter "AFSCME" and the Bay Area Rapid Transit District (hereinafter "BART").

B. Purpose

The purpose of this side letter is to set forth the terms under which the parties shall continue to evaluate and explore alternatives to the compensation plan for AFSCME members in accordance with the 2001 BART Board-approved Side Letter/7.

C. Evaluation

1. In accordance with Side Letter/7 in the 2001-2005 collective bargaining agreement, the parties began discussions on alternative compensation plans in September 2004. AFSCME provided to BART a proposal dated May 25, 2005. This proposal shall be integrated into the continued discussions
2. Discussions shall resume by September 15, 2005.
3. If the parties agree to an alteration of the AFSCME compensation plan, any adjustments shall be determined by mutual agreement.

D. Funding

AFSCME reserves the right to consider contributing towards the District's funding of an alternate compensation plan.

For the District:

For AFSCME:

Michelle Tellez
Labor Relations

Norma del Mercado
President, Local 3993

June 28, 2005

SIDE LETTER OF AGREEMENT: AFSCME/SL - 8

PART A: Parties

The parties to this side letter are AFSCME Local 3993 (hereinafter “AFSCME” or “Union”) and the San Francisco Bay Area Rapid Transit District (hereinafter “District”).

PART B: Background

1. The parties are signatories to a 1997-2001 collective bargaining agreement (hereinafter “1997-01 Agreement”) covering members of the certified AFSCME bargaining unit.]
2. The Agreement provides Medical Premium Conversion, Medical Spending Accounts (hereinafter “MSA’s”), or Dependent Care Accounts (hereinafter “DCA’s”). Medical Premium Conversion, MSA’s and DCA’s are hereinafter jointly referred to as the “Program.” They are mechanisms through which employee health insurance premium contributions, qualified medical expenses not covered by insurance, and qualified expenses incurred by employees to care for certain dependents may be exempted from certain taxes.
3. The parties wish to offer the Program to members of the AFSCME bargaining unit. However, to ensure efficient administration, the District is prepared to do so at this time only if all District bargaining units simultaneously agree to participate on the same terms.
4. The District and its unions established a joint labor-management committee to identify and recommend a vendor to provide certain administrative services related to the implementation and management of the Program.
5. The District will perform certain administrative functions it deems reasonable and necessary related to implementation of the Program not performed by the vendor (e.g. Program communications, creation of general ledger records needed to independently validate enrollment, etc.). For cost estimate and fee calculation purposes, the parties have initially agreed to assume that these functions will require one and one-half full-time equivalent positions, including an SA III H1 (payroll) and a Clerk III (benefits).
6. The District will enjoy some savings as a result of the implementation of the Program. However, the District is not a

participant in the non-Medicare portion of the federal Social Security program and will, therefore, not enjoy much of the savings that employers who participate fully in Social Security enjoy when implementing the same program.

7. The fact that the District will not enjoy reduced Social Security costs but will incur substantial expenses means that other revenues must be generated if the Program is to be implemented at no net cost to the District.
8. The joint labor-management committee has discussed methods of funding the District's net program related expenses.
9. The joint labor-management committee has recommended adoption of an initial monthly fee that each District employee enrolled in its medical insurance programs will be charged to defray the District's projected net cost of administering the Program.
10. The Union concurs with the joint labor-management committee's recommendation.
11. The parties acknowledge that the monthly rate may be a mandatory subject of bargaining. However, the parties desire that employees pay the same rate on a District-wide basis insofar as possible that will cover the actual net cost to the District of administrative functions performed in administration of the Program.

The parties agree as follows:

PART C: Exchange of Promises and Obligations

Section 1. PROGRAM INITIATION AND TERMINATION. The District shall establish the details of the Program effective January 1, 2001. The "Program" consists of three parts: Medical Premium Conversion, Medical Spending Accounts and Dependent Care Accounts. The District may terminate the Program or any of its parts if, in the District's judgment, the Program or part no longer meets the requirements of law or does not qualify for tax-exempt treatment.

Section 2. OPEN ENROLLMENT. The District shall establish an open enrollment period for the program to occur either separately or at the same time as other District open enrollment processes. In any event, the open enrollment period shall occur prior to January 1, 2001 and once per year thereafter.

Section 3. TERMINATION FROM THE PROGRAM. Employees who terminate from District employment (through retirement or otherwise) or who

are placed on inactive status shall be permitted to continue to participate in the Program only in accordance with the terms of the Program and applicable federal and state law. Employees who are terminated from the Program during a given plan year and who are rehired during that same plan year shall be permitted to re-enroll in accordance with the terms of the Program and applicable federal and state law, but in no event later than the next following open enrollment period for the Program. Employees on inactive status include those who have exhausted their available sick leave, vacation leave, holiday leave and available compensatory time off and who are on unpaid leaves of absence or eligible for short or long-term disability or Industrial Accident payments.

Section 4. CHARGE TO EMPLOYEES FOR DISTRICT'S NET ADMINISTRATIVE COSTS. Subject to Section 5 below, each employee in the AFSCME bargaining unit enrolled in a District medical insurance plan shall be charged two dollars and eighty-two cents (\$2.82) each month to defray the District's net District-wide cost for functions it performs that are reasonably necessary to administer and account for the Program. This amount shall be deducted once each month at the last pay date of the month. The District shall maintain a record of staff time and other expenses incurred to administer and account for the Program to provide the parties with objective data on which to base discussions conducted pursuant to section 5 below.

Section 5. REVISIONS TO MONTHLY CHARGE.

- A. Meeting(s) To Discuss Rate. Except as provided in Section 9 below, the parties agree to meet between March 15 and April 1 of each even numbered year beginning in 2002 to discuss possible modification of the monthly charge deducted from employee paychecks pursuant to Section 4 above that will apply for the two years that ensue the following January 1. The parties may propose a modified rate to cover the ensuing two-year period, or may propose separate rates for each of the two ensuing two years. If after ten (10) days from the date of such meeting the parties are unable to reach an agreement on the amount of such charge(s) for the ensuing two year period, the matter shall be submitted to arbitration pursuant to Section 6 below. However, if the parties agree on a modified rate structure or to continue the pre-existing rate structure prior to issuance of an arbitration award, the arbitration request shall be withdrawn or, if the hearing has begun, the hearing shall be terminated and the arbitrator shall not issue an award.
- B. Access To Information. During the meeting(s) described in subsection A of this section, each party agrees to share with the other the data and

assumptions that form the basis of the party's proposed rate structure. The parties additionally agree that during the period beginning January 15 immediately preceding the first such meeting and ending with the establishment of a revised rate pursuant to this section, each shall provide the other with such information as is reasonably necessary and reasonably within their control to carry out their respective roles in the discussions and any impasse resolution proceedings carried out pursuant to section 6 below. If the parties are unable to reach agreement on a revised fee structure, the arbitrator appointed pursuant to section 6 below shall resolve all disputes concerning an alleged breach of this subsection during the thirty (30) day period immediately preceding the hearing date established pursuant to section 6 below. The party that desires resolution of such a dispute shall petition the arbitrator by letter with a copy to the other side. The arbitrator shall consult simultaneously with the parties' respective representatives and thereafter issue an order resolving the dispute.

Section 6. ARBITRATION OF MONTHLY CHARGE.

- A. Scheduling the Hearing Date. On the regular business day nearest to January 10 of calendar years in which the parties will meet to discuss possible revisions to charges pursuant to Section 5 above, the parties shall select an arbitrator in the same manner as for grievance arbitration under the parties' collective bargaining agreement. The selected arbitrator shall be immediately notified of his or her selection and requested to hold the regular business day nearest to but not before May 1 of the same calendar year open for hearing and resolving a dispute over the appropriate monthly charge pursuant to Section 5 above. The parties shall each submit their last-best offer to the arbitrator and to the other party not later than April 20 preceding the hearing date. Neither party may change their last-best offer after it is submitted unless they receive written permission from the other party.

- B. Hearing. The arbitrator appointed pursuant to Section 6(A) above shall conduct a hearing on the date scheduled pursuant to subsection A above of this Section. During the hearing, the arbitrator shall permit each party to present in support of its proposed rate(s) such relevant evidence as it desires concerning the District's past and anticipated costs and savings incurred as a result of its implementation and on-going operation of the Program. Such costs and savings may include but are not limited to:
 1. Medicare contributions that the District is not required to make because of the tax laws and rules governing the Program;

2. Any positive and negative employee Medical Spending and Dependent Care Account balances at the end of the plan year;
 3. Any interest the District may earn on funds in Medical Spending or Dependent Care accounts, if not already accounted for under 2 immediately above.
 4. Charges in excess of or less than actual net District costs incurred to implement and administer the Program during the two-year period to which the rate structure in effect at the time of the hearing applies. For example, for the hearing held in May, 2002 the applicable measurement period is January 1, 2001 through December 31, 2002. Charges considered shall include a reasonable projection of the total that will accrue by the end of the applicable two-year period.
 5. Vendor and consultant charges (including outside counsel) incurred by the District in connection with the implementation and operation of the Program.
 6. Costs for work performed by District employees to implement, operate or account for the Program including, but not limited to, conducting open enrollment, change of status enrollments, and new employee enrollments, inputting enrollment data, processing terminations from the Program, inputting termination data, managing participation of retirees in the program pursuant to COBRA, responding to inquiries from employees or their representatives, preparing and disseminating written Program information to employees or their representatives, downloading data to and from the vendor, analyzing data to be downloaded or that has been downloaded, creating and maintaining transaction records independent of those maintained by the vendor to ensure existence of an independent audit trail.
- C. Arbitrator's Decision. Within seven (7) days after the hearing, the arbitrator shall award the rate(s) contained in either the District's or Union's last-best offer submitted pursuant to subsection A above. Such award shall be based on the evidence produced at hearing and reflect the arbitrator's opinion concerning the offer that most closely reflects the District's net district-wide per employee monthly cost for implementing, operating and accounting for the Program in the two year period beginning the following January 1, taking into account any substantial overcharges or undercharges that are established by the evidence for the period in which the hearing occurs.

SECTION 7. ENTIRE AGREEMENT. This written instrument reflects the entire agreement of the parties. There are no terms or promises related to the subject matter addressed, except as expressed in writing herein.

SECTION 8. CHANGES TO CONFORM WITH LAW. The District may immediately implement such changes in the Program as, in the District's judgment, are necessary to ensure that the Program and its parts conform with law and remain tax exempt. The District shall meet with the Union as soon as feasible to discuss the basis for such changes and any alternatives.

SECTION 9. DURATION. The parties may modify or terminate this agreement at any time by mutual agreement. Otherwise, this agreement shall remain in effect through the life of the current collective bargaining agreement between the parties and the first successor thereto. Upon expiration of said successor agreement but prior to the signing of the next successor agreement, the continuation, modification, or discontinuation (f the Side Letter) shall be governed by collective bargaining.

Done this day, June 28, 2005.

For the District:

For the Union:

Michelle Tellez
Labor Relations

E. Norma del Mercado
President

2009

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6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

November

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

December

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				