

**AGREEMENT**

**BETWEEN**

**SAN FRANCISCO BAY AREA  
RAPID TRANSIT DISTRICT**

**AND**

**AFSCME LOCAL 3993  
(AMERICAN FEDERATION OF STATE,  
COUNTY AND MUNICIPAL EMPLOYEES)**

**MAY 11, 2017 – JUNE 30, 2022**

**REPRESENTING EBART EMPLOYEES**

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## **1.0 GENERAL PROVISIONS**

### **1.1 GUIDING PRINCIPLES**

In order for eBART to meet its obligation for the delivery of reliable transportation services, the parties agree:

- 1) Each employee shall have broad job duties and responsibilities;
- 2) The duties of represented employees may overlap with job duties and responsibilities of other represented employees; including the represented supervisory personnel. The intent is to supplement, not supplant the role or core functions of each classification;
- 3) Each employee shall be fully engaged in frontline customer service in assisting and promoting eBART transportation services;
- 4) Each employee shall be responsible for assisting in any reasonable capacity under exigent circumstances regardless of job duties and responsibilities. The term exigent circumstances as used in this Section shall be defined as instances involving the risk of injury to persons, or damage to property and/or equipment, major modifications affecting either revenue vehicles or eBART wayside (right-of-way), power failures, derailments, fires, and natural disasters; and
- 5) Each employee shall be engaged in other ancillary duties as assigned.

### **1.2 UNION RECOGNITION**

The District and American Federation of State, County and Municipal Employees (AFSCME) Local 3993 enter the following agreement with respect to the eBART system. eBART, owned and operated by the District, is a separate and distinct Diesel Multiple Unit (DMU) rail system that presently is scheduled to operate between Pittsburg and Antioch, California and as may be extended. The District recognizes AFSCME Local 3993 as the exclusive bargaining agent for the employees specified herein as represented by AFSCME in a separate eBART supervisory bargaining unit under the BART Act, Public Utilities Code Section 28850 et. seq.

The parties agree that the *Supervisor of Operations, eBART* job classification shall be represented by AFSCME.

The parties further agree that if new eBART classifications are created or revised that share a community of interest with the *Supervisor of Operations, eBART*, and/or whose duties and responsibilities are such that they would ordinarily be classified within the AFSCME core BART supervisory bargaining unit, the parties agree that the District will amend the AFSCME eBART supervisory bargaining unit to add those classifications.

### **1.3 SUCCESSOR RIGHTS**

In the event the operations of eBART, 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 District and the assuming party or parties.

### **1.4 CONTRACTING EBART WORK**

It is the intent of the parties that work connected with the supervision of the eBART system be performed by AFSCME-represented bargaining unit employees. eBART reserves the right to contract out work generally, including work traditionally done by unit members and that does not directly impact mandatory subjects of bargaining. This reservation of right to contract out work includes, but is not limited to, the training of unit members.

Prior to contracting out any bargaining unit work, the Union President shall be notified whenever the District is considering contracting work which is usually done by an AFSCME classification. The eBART Chief Operating Officer (COO) or designee shall email notice to the President of AFSCME prior to awarding the contract. The notice will identify the date it is emailed. The Union shall have ten (10) calendar days after the notification is emailed to provide comments to the COO or designee. In the event of an emergency or exigent circumstances which require an immediate response, the District shall not be required to provide advance notice but shall provide notice at the time of the contract and advise the Union of such emergency or circumstances within seventy-two (72) hours.

### **1.5 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 the public receives a rapid and efficient transit system. The District has the duty to execute the traditional responsibilities of the District to attain this goal and the Unions recognize the District responsibilities. The District, in turn, recognizes its responsibility to treat employees fairly and equitably.

### **1.6 NON DISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY**

There shall be no discrimination in the application of 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, marital status, sexual orientation, religion, national origin, ancestry, age, sex, gender identity, disability, medical condition (cancer),

family and medical care leave, pregnancy, disability leave or veteran status and in a manner consistent with the District's Equal Employment Opportunity (EEO) Policy.

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

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

Finally, the parties agree no employee covered by this Agreement shall suffer discrimination because of his/her membership and participation in the Union.

Should procedures negotiated relating to promotion and/or reduction in force produce results contrary to these objectives, the parties may, by mutual agreement, seek to achieve these objectives by ways and means outside the established seniority procedures.

Nothing in this provision shall be construed as a waiver of an employee's individual statutory rights, remedies and/or procedural protections.

## **1.7 UNION REPRESENTATIVES**

One (1) eBART Area Representative shall be recognized to assist employees in resolving grievances at the lowest possible administrative level. The eBART Area Representative employed by eBART shall be afforded reasonable time off for conducting Union Business, without loss of pay or benefits, subject to the operational needs of eBART. In order to be released, the eBART Area Representative must receive written authorization from the COO or designee, except as described herein. If the COO or designee does not respond to the request within forty-eight (48) hours, then the request for union business will be granted. The forty-eight (48) hours does not apply to emergencies. At no time will an eBART Area Representative be paid a premium or overtime for conducting Union Business. "Union Business" includes investigating and processing grievances at the lowest possible administrative level; attending meetings and trainings with management; and participating in negotiations and arbitrations, including reasonable preparation time for such activities.

Only one (1) eBART employee who is elected or appointed to an AFSCME Local 3993 Officer position (President, Vice President, Secretary or Treasurer) may be released on Union Business at a time. If there is an eBART employee elected or appointed to an AFSCME Local 3993 Officer position, this will not eliminate the eBART Area Representative.

If a Union member from eBART is elected to or appointed the AFSCME Local 3993 President during his/her respective term of office that person shall receive grave shift differential in recognition of his/her variable work schedule.

The AFSCME Local 3993 President, during his/her respective term of office shall have two (2) paid designated days a week off on Union Business subject to advance notification to his/her supervisor. Requests for additional Union Business time shall not be unreasonably denied.

Upon formal designation by the Union, the eBART Area Representative and/or Union Officer employed by the District will not be transferred from the assignment, shift, or location they hold due to their election or appointment. 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.

The Union Officer and/or eBART Area Representative will be given the privilege of utilizing the District's interoffice mail, e-mail, and existing telephone facilities as may reasonably be necessary in conducting Union business.

The Union Officer and/or eBART Area Representative will be released for eight (8) hours to attend the monthly Executive Board meetings held on the second Wednesday of the month.

The AFSCME Local 3993 Officer and/or eBART Area Representative shall be afforded preferred seniority as follows while they are holding the respective position/title:

- a. Monday through Friday day shift;
- b. When no Monday through Friday day shift exists, eBART shall be under no obligation to retain or create a position for an employee because of preferred seniority status. In the event no Monday through Friday day shift exists, employees afforded preferred seniority shall have bumping rights to his/her preferred shift closest to the Monday through Friday day shift;
- c. In case of conflict, District date of hire will prevail; and
- d. Seniority on layoff in classification.

Each eBART employee member of the duly appointed eBART Union Negotiating Committee (not to exceed two (2) eBART employees, including the eBART Area Representative and Officer, if any) who attends the eBART Union Management contract negotiation meetings will be compensated for actual work time lost as a result of such meetings.

## **1.8 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 to 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 designated as AFSCME fairly, without regard as to whether such employee is a member of the Union. The terms of this Agreement have been made for all of the employees designated as AFSCME for eBART and not only for members of the Union. Accordingly, it is fair that each such designated employee pays his/her own way and assumes 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.
- D. In consideration of the District 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 1.9.

## **1.9 DUES DEDUCTION**

- A. In accordance with the terms set forth under Section 1.8, 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 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 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 AFSCME.
- E. The District shall advise AFSCME in writing of the names of all new hires or those promoted to eBART positions assigned to AFSCME.

### **1.10 UNION ACCESS TO WORK LOCATIONS**

Non-employee business agents and employee Union officials will be permitted access to the eBART facilities for the purpose of conducting Union business. Where reasonable and practical, they will provide notification in advance to the area supervisors as to the general purpose of said visit, the anticipated time involved, and employees to be contacted.

Outside Union officials who visit eBART facilities shall, upon arrival at the facility, contact the person in charge to advise of their arrival. eBART will provide an area for meeting purposes. Such agents or officials will be permitted entry upon presentation of acceptable identification to the supervisor in charge whenever possible, and will be required to observe all safety and other rules and regulations of eBART.

### **1.11 ACCESS TO PERSONNEL FILES**

Each employee shall be provided a copy of all matters placed in his/her official personnel file, except personnel transaction forms, medical reports or information, and reference checks.

Personnel transaction forms will not be accessible to supervisory personnel who review qualifications of employees for promotional consideration.

An employee shall be permitted at any time during regular office hours to inspect his/her personnel file on his/her own time. He/she may also authorize in writing the Union Representative to inspect his/her personnel file. Employees wishing to access their medical files may do so upon written request.

Suspended or terminated employees (and their Union Representative), pending final disposition of the case, shall have similar access rights.

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

### **1.12 AGREEMENTS FURNISHED**

The District will make available a digital version of the Agreement to the Union for the term of this Agreement.

New employees will be provided a copy of this Agreement upon employment.

### **1.13 JOB DESCRIPTIONS**

eBART job descriptions shall be posted on the District website.

New or revised job descriptions shall be forwarded to the Union for review.

In the event an employee believes he/she is working out of classification, or there has been a substantial change in essential job duties, said dispute shall be subject to the grievance procedure.

#### **1.14 BULLETIN BOARDS**

The District shall provide a clear covered and locked bulletin board to be located in each employee break room utilized by bargaining unit employees. This board will be for the sole use of the ATU Local 1555, SEIU Local 1021, and AFSCME Local 3993, for notices of meetings or other business pertaining to the Unions. The District will provide keys to each Union. Any additional number of boards and their locations shall be mutually agreed upon by the parties.

The Unions agree that the Labor Relations Department shall be furnished a copy of any material being displayed on any bulletin board at the time of posting. Said material shall be authenticated by the signature of the designated representative of the Union. Such Union bulletin boards shall be maintained by the Unions.

If a copy of posted material is not provided to the District within twenty-four (24) hours, it may be removed from the bulletin boards.

### **2.0 EMPLOYMENT CONDITIONS**

#### **2.1 PROBATIONARY PERIOD**

- A. New or rehired eBART employees shall, for the first one hundred eighty (180) calendar days of employment with eBART, be considered probationary. Upon completion of the probationary period such new or rehired employees shall be credited with continuous eBART service from their date of hire or rehire.
- B. Employees promoted or who voluntarily transferred to a position in a different classification shall serve a one hundred eighty (180) calendar day probationary period in the classification into which the employee was promoted or into which the employee voluntarily transferred.
- C. For employees requiring certification, the probationary period will cover the entire certification period even if it exceeds the one hundred eighty (180) calendar day probationary period outlined in Sections A and B above.
- D. 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.

- E. During the one hundred eighty (180) calendar day period, the District shall evaluate each such employee following the seventieth (70<sup>th</sup>), one-hundredth (100<sup>th</sup>), and one hundred fiftieth (150<sup>th</sup>) day of employment, and evaluations shall be reviewed with each employee. If it is anticipated that an employee may receive a rating of marginal or unsatisfactory, the District will notify the employee that he/she is entitled to union representation in such evaluation.
- F. During any initial probationary period, new or rehired employees may be released at will and cannot grieve that release except where evaluations have not been written in a timely manner. Nothing herein shall preclude the Union from challenging through the grievance procedure on grounds of prohibited discrimination the District's decision to release an employee during initial probation or probation pursuant to promotion or voluntary transfer where discrimination, as defined elsewhere in the Agreement, is alleged.
- G. Employees on a probationary period due to promotion or a voluntary transfer to a different classification may be released from such classification at the District's discretion during the probationary period. In the event that a promoted or voluntary transfer employee is released from that classification during the probationary period, he/she shall revert to his/her former position, unless he/she is terminated by the District for cause. The Union may appeal such for cause dismissal from District service but not the probationary release.
- H. If the Union prevails in grieving a for cause dismissal and the arbitrator reinstates the employee to 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.

## **2.2 REVERSION RIGHTS**

District employees may apply for positions in the eBART system. Selection for eBART positions will be made on the basis of best qualifications, as determined by eBART; however, all other factors being determined by management as equal, current BART employees will be given preference over non-employee applicants. Any District employee who transfers from core BART to eBART shall have the right to revert to his/her original position in core BART in accordance with the terms of the vacated position at any time during the probationary period.

Any District employee initially retained by eBART may apply for a position in core BART. Selection for core BART positions will be made on the basis of best qualifications; however, all other factors being determined by management as equal, current eBART employees will be given preference over non-employee applicants.

Any District employee who transfers from eBART to core BART or another position in eBART shall be permitted to revert to his/her original position in eBART at any time within ninety (90) calendar days of transfer. During the initial ninety (90) calendar days of any eBART employee's

reversion right period, the COO or designee may temporarily upgrade an eBART employee to the vacant Supervisor of Operations position for training purposes only.

After the 90 day reversion period, the employee may revert with the consent of the eBART COO or designee.

## **2.3 SENIORITY**

Seniority shall be defined by the time in service (date of hire or promotion) with eBART, by eBART job classification, and as otherwise described herein.

If the date of hire or promotion into the eBART classification is the same for two (2) or more employees, then any AFSCME represented employee from core BART will be treated as the most senior employee at eBART. If two (2) or more AFSCME represented employees fall into this category, then the seniority ranking between those employees shall be determined by his/her District date of hire.

If the date of hire or promotion into the eBART classification is the same for two (2) or more employees, then any non-AFSCME represented employee from core BART will be treated as the next most senior employee at eBART. If two (2) or more non-AFSCME represented employees fall in this category, then the seniority ranking between those employees shall be determined by his/her District date of hire.

At any time, if the date of hire or promotion into the eBART classification is the same for two (2) or more employees, and where no other provisions in this section apply to define which of those employees is the most senior, seniority shall be established by the senior date of birth of said employees.

Any seniority established prior to this agreement going into effect will be honored.

## **2.4 REDUCTION IN FORCE**

An employee may be terminated from employment as a result of a reduction in force. In the event of a reduction in force, classification seniority shall be controlling, in inverse order.

Reductions-In-Force shall be accomplished in accordance with the following procedure:

### **1. Notification**

An employee shall be informed in writing by the COO or designee as soon as possible after a reduction in force decision has been made. At that time, the employee will be told the scope

and purpose of this procedure, and furnished a copy of the tentative schedule of future events affecting him/her.

**2. Placement in Vacant District Position**

The District shall make a good faith attempt to identify all vacant and/or anticipated vacant positions for each employee subject to reduction in force.

The District and the Union, within one hundred twenty (120) calendar days of the signing of this Agreement, shall meet to develop a policy to implement this provision. Such policy shall require the employee to indicate interest and to provide a resume for consideration. The District shall assist, if requested by the employee, in assembling the resume.

The period for indicating interest, providing a resume and identifying an available position to which the employee is qualified shall be completed within thirty (30) calendar days of notice and before the termination takes effect.

**3. Participation in District Selection Process**

eBART employees shall be eligible to participate in the selection process for vacant positions within the District provided that the minimum qualifications are met or exceeded, and be given preference over non-employee applicants.

**4. Severance 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.

**5. Placement Assistance and Employment Counseling**

If an employee is not successfully placed to continue or begin employment in another District position, placement assistance and employment counseling shall be provided to employees and 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 thirty (30) calendar days following the employee's termination.

**6. Recall Rights**

Employees laid-off as a direct result of a 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 layoff. Laid-off employees are responsible for checking job openings with the District and advising the District of their interest in positions for which they believe they are qualified

by the posted closing date. However, if within eighteen (18) months from the date of layoff an internal-only posting is created, the District will contact laid-off employees to determine their interest in applying for the job.

The District's obligations under this subsection shall cease immediately upon rejection of any offer of reinstatement and/or employment by the District.

This procedure may be modified by mutual agreement of the parties.

### **3.0 WORK PROVISIONS**

#### **3.1 MEAL ALLOWANCE**

A fifteen dollar (\$15) meal allowance shall be paid to Union members who work twelve (12) continuous hours.

#### **3.2 TRAINING**

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.

Each employee will be eligible for up to twenty-four (24) hours of training during the life of the agreement in the core set of skills.

#### **3.3 REPORT LOCATIONS, PARKING, WORK-RELATED TRANSPORTATION**

The District shall ensure that an employee assigned during the work shift to another District work location shall be returned to his/her bid work location. Until returned to his/her bid work location, the employee shall be considered on duty.

Should an employee be assigned to report at the commencement of any shift or during any shift to a work location other than the reporting location selected by bid, the time required to go to and from the normal working location shall be considered as time worked.

While in full day training, the report location shall be the actual training location within the District and the employee will not be compensated for travel time.

At each employee report location, an adequate number of employee parking spaces will be provided. Locations designated as report locations shall be equipped with adequate lockers, restroom facilities, and a break area equipped as mutually agreed.

### **3.4 DISTRICT UNIFORM PROGRAM / REGULATIONS**

eBART employees are required to be in uniform at all times while on duty. Employees shall maintain an appropriate appearance.

The District shall provide and replace uniforms and/or cover the cost of purchasing uniforms for employees working within eBART, and shall reimburse employees for the expense of laundering/maintaining uniforms or provide for laundering at the District at no cost to the employee.

During the initial start-up, eBART management will meet with the Union regarding each classification to determine: the style and the amount of items to be provided, how the uniforms will be provided (e.g., purchased, rented), how the uniforms will be maintained (e.g., cleaning, wear and tear), and if any allowance is required.

After the initial start-up, eBART management will determine a replacement schedule. In addition, the District will replace individual uniform items as the items become worn or are otherwise in need of replacement.

If eBART management determines that employees shall be responsible for laundering/maintaining uniforms, such employees shall receive a uniform allowance as follows:

In FY18, uniform maintenance allowance shall be \$50 per month to be included as a separate item in the employee's paycheck each month. Said amount shall be increased by five dollars (\$5.00) per month on July 1 of each fiscal year during the term of the core BART/AFSCME Labor Agreement.

### **3.5 SAFETY SHOES**

Safety shoes shall be worn by employees as required by eBART during their on-duty hours. Upon retention by the District to work for eBART, each employee required by eBART to wear safety shoes shall be provided with one hundred sixty-five dollars (\$165) for the purchase of such shoes. Thereafter the District will reimburse one hundred sixty-five dollars (\$165) annually to each employee required to wear safety shoes.

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.

The safety shoes shall be the best suited to the employee's work environment, meet requirements of the Chief Safety Officer or designee who will set reasonable requirements based on applicable law and regulations, and be subject to Section 3.4 "District Uniform Program/Regulations".



### **3.6 SAFETY GLASSES**

- A. Those employees designated by eBART as required to wear eye protection and who presently wear prescription glasses will be furnished prescription safety glasses.
- B. Those employees who presently wear prescription glasses will be required to take an eye examination and utilize whatever medical coverage they have that includes this provision. If the employee's medical coverage does not include eye examinations, the District will provide; however, this does not include "first-time" eye examination.
- C. Safety prescription glasses provided under this program shall not be altered without District approval.
- D. Prescription or Plano safety glasses shall be worn, as directed by the eBART Safety and Training manager.
- E. The District will pay for the glasses and employee may select whatever style he/she wishes provided the glasses comply with prescription safety glasses specifications (American National Standards, Z87.1-2015). Only District authorized optical vendors shall be patronized.
- F. Prescription safety glasses furnished under this Section will become the property of the employee and a condition of employment is the requirement to wear them while on the job.
- G. An employee will be allowed no more than one-half (½) hour at straight time rate of pay off the job annually for the purpose of purchasing prescription safety glasses as stated above.
- H. Plano safety glasses will be properly fitted and provided by the District.
- I. The District will provide the Union with a list of vendors within close proximity of all eBART stations.
- J. Additional costs incurred which exceed the amount allotted by the District to the vendor shall be deducted from the employee's paycheck.

### **4.0 VACATION & HOLIDAY PROVISIONS**

#### **4.1 VACATION**

As set forth in Section 10.23, employees are provided 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 of vacation after fourteen (14) years of service, and six (6) weeks of vacation after nineteen (19) years of service.

Vacation shall be scheduled at the annual vacation bid, and otherwise as requested throughout the calendar year. When vacation is requested at times other than during the annual vacation bid,

eBART management shall be responsible for granting scheduled vacation leave. All vacations shall be subject first to the staffing needs of eBART as determined by management. However, to the maximum extent possible, consideration consistent with operating requirements will be given. No request for vacation shall be unreasonably denied.

During the month of December each year, employees with four (4) or more weeks of accumulated vacation may elect to buy back up to forty (40) hours of such vacation. The determination of the four (4) week eligibility threshold shall be made in December the following year with payment made in the second February following the election. Subject to law and policies applicable to the MPPP Program, employees may also elect to have such payment deposited in their MPPP account on a post-tax basis.

eBART employees shall only be permitted to carry over up to twelve (12) weeks of vacation. Any accrued unused vacation in excess of twelve (12) weeks as of the end of the calendar year shall be paid out or, per the employee's pre-accrual election, deposited into the MPPP, subject to any maximum limits on contributions. A District employee who applies for and is hired for an eBART position shall, upon the date of his/her reassignment to eBART, be paid all accrued and unused vacation in excess of twelve (12) weeks or, at the employee's option, may have such payment deposited into his/her MPPP account during the next regular annual vacation buy back processing, subject to any maximum limits on contributions. That employee shall however continue to accrue vacation based on his/her date of hire with the District.

In the event an employee terminates or retires, he/she shall be granted pro rata vacation compensation based upon his/her accrued credits.

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

Vacation accrual shall not be continued beyond thirty-one (31) calendar days in the event an employee is in a non-pay status.

#### **4.2 CANCELLATION DUE TO ILLNESS**

Should an employee or a member of his/her immediate family as defined in Section 7.1 become ill while the employee is on vacation, the employee may, at his/her option, notify the District to change his/her pay status from vacation leave to sick leave, subject to the following conditions:

- A. The employee shall present medical verification of the illness to the District upon his/her return to work.

- B. The sick leave used shall not extend the employee's scheduled vacation. Vacation which is not used due to illness may be rebid or taken as incremental vacation leave subject to the annual allotment.
- C. Vacation charges will not be changed to sick leave charges under this section until the employee complies with the provisions of paragraph A.

### **4.3 HOLIDAYS**

eBART shall observe nine (9) paid fixed contractual holidays per year as follows:

New Year's Day (January 1)  
Martin Luther King's Birthday (third Monday in January)  
President's Day (third Monday in February)  
Memorial Day (last Monday in May)  
Independence Day (July 4)  
Labor Day (first Monday in September)  
Veteran's Day (November 11)  
Thanksgiving Day (fourth Thursday in November)  
Christmas Day (December 25)

Each eBART employee will receive four (4) paid floating holidays at the beginning of each fiscal year. Accrued and unused floating holidays will be paid out following the conclusion of the fiscal year at the base rate of pay in effect when paid out.

On termination, an employee will be paid a lump sum, at the rate of pay in effect for the employee at the time of termination, for all unused floating holidays.

Total paid holidays per year is thirteen (13).

### **Annual Pre-Accrual Buy-Back Election**

During the month of June each year, employees shall 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:

- A. Employees may elect to buy back all or part of any unused fiscal year accrual, with such floating holidays paid off subsequent to the end of the fiscal year earned.
- B. 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 the excess will be paid off in a lump sum at the base rate of pay in effect when paid out, as provided above.

Employees promoted or transferred into the unit after the beginning of the fiscal year, and who prior to transfer or promotion did not have the right to elect to buy back holidays as provided herein, 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.

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 the MPPP.

#### **4.4 HOLIDAY COMPENSATION**

An employee who works on a holiday shall receive one and one-half (1½) times his/her regular rate of pay for hours worked and, in addition, at the employee's option, an extra shift of holiday pay at the employee's base hourly rate of pay or receive a floating holiday.

Should a holiday be observed on an employee's day off, or while on vacation, the employee, at his/her option, shall receive an extra shift of holiday pay at the employee's base hourly rate of pay or receive a floating holiday.

In order to be eligible for this holiday compensation, an employee must be in a paid status. Definition of unpaid status is as follows: (1) authorized leave of absence; (2) disability insurance after thirty-one (31) continuous days; (3) industrial disability insurance after twenty-six (26) continuous weeks.

Fixed contractual holidays shall be considered time worked for the purposes of the calculation of overtime.

#### **5.0 SCHEDULING PROVISIONS**

##### **5.1 WORK DAYS AND WORK WEEK**

The eBART established work week shall be from 0001 hours Monday and end 2400 hours Sunday. A shift started prior to midnight shall be considered as worked on that day.

##### **5.2 HOURS OF SERVICE**

eBART will comply with state and federal law, regulations, and guidelines regarding rest periods. eBART shall not require or permit, except in exigent circumstances, any safety sensitive employee to remain on duty for more than twelve (12) consecutive hours.

Employees will not remain on duty for more than twelve (12) consecutive hours or more than an aggregate of twelve (12) hours spread over a period of sixteen (16) hours except in exigent circumstances. Employees shall have a minimum of eleven (11) hours off between scheduled work shifts except in exigent circumstances. These hours are subject to change in the event the CPUC GO 143 (B) standard on hours of service changes.

### **5.3 EMPLOYEE SHIFTS**

An employee shall be assigned shifts which shall consist of a minimum of forty (40) hours in the workweek with at least two (2) consecutive days off. A workday shall consist of at least eight (8) consecutive hours of work, unless later changed by mutual agreement per Section 5.5(B), with a scheduled starting time inclusive of meal periods and breaks.

Paid rest and lunch breaks provided herein shall be considered as hours worked for pay purposes.

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.

### **5.4 TIME-OFF REQUEST PROCEDURES**

Requests for time-off of less than a workweek shall be granted in the following descending order, subject to the staffing needs of eBART:

#### **1. Vacation Day(s)**

An employee may submit a vacation day(s) request at any time. If a request is received ten (10) days prior to the request date, seniority will prevail in granting the time off. Vacation requests received less than ten (10) days from the requested date will be granted on a first-come first-serve basis, if available.

#### **2. Floating Holidays**

An employee may submit a floating holiday request at any time. Floating holidays shall be granted on a first-come first-serve basis. Requests for use of floating holidays are more likely to be granted where employees provide a minimum of five (5) working days' notice.

#### **3. Compensatory Time**

An employee may submit a compensatory day request at any time. Requests for compensatory time shall receive consideration after all other requests for time off have been honored.

## 5.5 SCHEDULING OF WORK

In its initial phase, prior to the initiation of revenue service, eBART management is solely responsible for determining the type and number of employees needed to efficiently deliver eBART services. This determination includes, but is not limited to, whether the shifts are split, extent to which structured overtime can be offered, scheduling for holidays, scheduling for peak periods of service, number and type of schedules, the Regular Days Off (RDOs), and the reporting times and reporting locations, subject to the terms reflected in this Agreement. During this initial pre-revenue phase, eBART management will make reasonable efforts to accommodate stated scheduling needs of employees.

After this initial pre-revenue phase, the eBART COO or designee will provide notice to the Union prior to establishing or amending schedules for bid, and at the Union's request, meet to discuss changes with the Union. Nothing herein shall constitute a waiver of eBART's right to determine the number and type of schedules needed to efficiently deliver eBART services, subject to terms and conditions described herein.

A. **4/10 Workweek:** eBART may establish an alternate workweek consisting of four (4) days per week and ten (10) hours per day under the following conditions:

1. The workdays and shifts for employees in a 4/10 workweek shall be as follows:
  - i. A workday shall consist of ten (10) consecutive hours of work. (Paid rest and lunch breaks provided herein shall be considered as hours worked for pay purposes.)
  - ii. The assigned shifts shall consist of four (4) workdays within a seven (7) consecutive day period, with a minimum of two (2) consecutive days off. If the days off do not include Saturday and Sunday, then the shift shall have three (3) consecutive days off.
2. Overtime shall be paid for all hours worked in excess of ten (10) hours a day and all hours worked in excess of forty (40) hours in the eBART workweek, and shall be compensated at one and one-half (1½) times the existing straight time rate of pay for actual overtime hours worked.
3. Meal and rest breaks for employees working the 4/10 workweek shall be as follows:
  - i. Employees shall receive a paid lunch break of thirty (30) minutes as close as operationally practical to the middle of their shift.
  - ii. Employees shall receive three (3) fifteen (15) minute paid break periods, at approximately two (2) hour intervals after the starting time of their shift or breaks may be taken on an irregular basis as determined by the Supervisor.
4. Vacation and Sick Leave shall be accrued and used based upon a "ten (10) hour workday" and not an "eight (8) hour workday".
5. 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".
6. The provisions of this Subsection shall prevail whenever they conflict with any other sections of this Agreement for employees working under this a 4/10 workweek.

- B. Split Shifts:** eBART reserves the right to implement split shift schedules after the start of revenue service. Prior to implementing any split shift schedule, the eBART COO or designee shall provide notice to the Union and, at the Union's request, meet and confer to reach mutual agreement over the terms and conditions of the split shift schedule.
- C. Structured Overtime:** eBART may establish a schedule including structured overtime. Structured overtime shall be defined as scheduled hours in the regularly bid shift in excess of eight (8) hours, but not to exceed nine (9) hours, a day for employees on a regular workweek, or ten (10) hours, but not to exceed ten and a half (10½) hours, a day for employees on a 4/10 workweek. Structured overtime shall be paid in accordance with the Overtime Section 6.2 of this Agreement.

## **5.6 BIDDING PROCESS**

The eBART's COO or designee is solely responsible for establishing shift schedules and the number of shifts. eBART reserves the right to implement an electronic bidding system. The COO or designee shall consult with the Union prior to establishing schedules.

Each time a shift schedule is developed, employees shall bid in the following manner:

There shall be a specific number of shifts, the number to be determined by eBART management. The total number of shifts will be equal to, or greater than, the total number of employees eligible to bid.

Employees shall bid for shifts by proxy. Proxies shall be awarded by seniority. Employees who fail to submit a proxy, shall be assigned to a shift by the Union Representative conducting the bid. The Union Representative shall use his/her best efforts to select a shift assignment and days off as close as possible to the employee's present assignment and such selection shall be final.

Once bids are posted the shift hours cannot be changed or adjusted unilaterally by eBART. There shall be two (2) schedule bids a year, the duration of each being approximately six (6) months. The start and end dates shall be agreed to by both parties, but in general will correspond with core BART's potential changes to train schedules. The parties can change the duration of the bid by mutual agreement.

Shift schedules shall be furnished to the Union ten (10) calendar days prior to posting. Shift schedules shall be posted and distributed to each employee at least two (2) weeks before the bid is effective. The bid shall be conducted one (1) week after posting.

During the first six (6) months of revenue service only, eBART management may change the bid schedule once by notifying the Union two (2) weeks in advance of implementing the change and new bid.

## 5.7 OVERTIME ALLOCATION

- A. Available overtime will be posted at least ten (10) calendar days prior to the scheduled date or as soon as it is practicable.
- B. Overtime worked, excluding structured overtime in a regularly bid shift, shall be on a voluntary basis except as stated below in Section E. If two (2) or more persons desire the overtime, the person with the lowest accrued overtime will be selected. If two (2) or more persons with an equal amount of accrued overtime desire the overtime, seniority will prevail. Accrued overtime is defined for this purpose as the sum of all unscheduled overtime hours worked in a regular shift schedule bid. Accrued overtime will be recorded on an Overtime List. This list will be updated bi-weekly.
- C. Overtime records shall be available for purposes of determining overtime assignments.
- D. When overtime needs (i.e., vacancy[ies]) cannot be posted due to time constraints, less than forty-eight (48) hours prior to the start of the shift, the vacancy(ies) will be filled as follows:
  - 1. Soliciting eligible volunteers from the Overtime List, with the person with the lowest accrued overtime being offered the vacancy(ies).
  - 2. Voluntary Extensions of on duty employees in seniority order.
  - 3. Voluntary Early Starts in seniority order.
- E. Only when use of the above procedures has not solicited sufficient volunteers to fill vacancy(ies) within the AFSCME eBART bargaining unit, only then management may assign overtime by inverse seniority as follows:
  - 1. Extension of on duty employees in inverse seniority order.
  - 2. Early Starts in inverse seniority order.
- F. An employee may elect in writing to opt out of being included on the Overtime List for the purposes of being offered voluntary overtime at the time of bid sign-up. An employee who has opted out of the Overtime List may call to add his/her name to the bottom of the list without regard to accumulated hours or seniority at any time on a day to day basis. An employee may elect in writing to opt in on the Overtime List at any time, to be effective the following month.

Overtime allocation procedures may be changed by mutual agreement. This Section is subject to Section 5.2 Hours of Service.



## **5.8 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<sup>st</sup> through the following February 28<sup>th</sup>. Vacations will be allocated throughout the year, and employees will be allowed to bid one (1) block at a time. Each block shall be limited to a minimum of one (1) eBART work week and a maximum of three (3) eBART work weeks, in one (1) week increments. Employees shall complete their vacation selections prior to February 28<sup>th</sup>. Every week during the calendar year from March 1<sup>st</sup> through the following February 28<sup>th</sup> shall be available for bid to at least one (1) employees per week. Employees shall select vacation periods by seniority. A Union Representative shall conduct the vacation sign-up.
- B. Employees may only bid vacation selections based upon expected vacation accruals at the time of their vacation week(s) and not based upon floaters or compensatory time. Vacation hours will be checked two (2) 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 vacation weeks made available for rebid by seniority. Once bid, employees may use compensatory time and/or floating holidays to complete the vacation week(s).
- C. On and after March 1 of the bid year, employees may select any remaining vacation weeks on a first-come, first-serve basis.
- D. A vacation period may be cancelled by an employee upon two (2) weeks' notice, except in an emergency where no notice is required. Upon cancellation, vacation weeks shall be posted within two (2) working days for rebid by seniority. Once bid, employees may use compensatory time and/or floating holidays to complete the vacation week(s).
- E. Employees may use accrued single vacation days, pursuant to the time off request procedures stated in this Agreement and subject to the staffing needs of eBART.

## **5.9 HOLIDAY SCHEDULING**

eBART's COO or designee will be responsible for determining staffing levels for all holidays. In addition, all time off for holidays will be subject first to the staffing needs of eBART as determined by the COO.

Holiday staffing needs will be posted at least one (1) month in advance, but no earlier than six (6) weeks, before the holiday. Holiday bids will be conducted by proxy submitted to the Union two (2) weeks after posting. Holiday shifts will be granted to the employee with sufficient rest in the following order:

1. Seniority order for any employee normally scheduled to work the holiday.

2. Seniority order for any employee not scheduled to work the holidays.

If there are any vacant holiday shifts after all bids have been submitted, the employee with the lowest seniority, who normally works on that day, shall be inversely assigned to fill the vacant shift. Inverse assignments will not be applicable to employees on their RDOs or on a scheduled week of vacation. The tentative bid results shall be submitted to the COO or designee within twenty-four (24) hours after the bid is completed by the representative. Once the COO or designee has reviewed the tentative bid, the holiday bid will be posted immediately.

The Union may change the manner in which seniority is applied as it pertains to holiday bids after discussing with eBART management.

Floating holidays shall be granted consistent with the scheduling ability of the employee's department. Requests for use of floating holidays are more likely to be granted where employees provide a minimum of five (5) working days' notice.

#### **5.10 EXTRA BOARD**

eBART reserves the right to establish a Supervisor of Operations extra board. The Supervisor of Operations assigned to the Extra Board will be used to fill vacant shifts as required.

- A. Extra board shifts, including report time when free, and RDOs will be selected and bid in conjunction with regular shift selections. Extra Board personnel will be guaranteed a minimum eight (8) hours work/pay per day on each of five (5) days in the workweek.
- B. Based on operational needs and availability, free Extra Board personnel may be assigned to either day or night shift assignments. Same day Extra Board work will be assigned to assume a shift on a first in first out process. Extra Board personnel can work up to twelve (12) hours a day, when assuming a shift. Extra Board personnel will be available for work assignments throughout their shift. Overtime procedures will be used to fill any shifts or portions of shifts which cannot be covered by Extra Board personnel.
- C. The next day's Extra Board assignments, if different from the Extra Board personnel's normal shift, will be posted no later than 1600 hours. Extra Board personnel not assigned to a hold-down, defined as a vacancy of a full work week or more, will be required to call the Control Center after 1600 hours to receive the next day's assignment if they are unable to review the extra board assignment posting. Extra Board personnel shall not be assigned to shifts with start times from 0001 to 0200 hours.
- D. Extra Board personnel will fill vacancies on a one-for-one basis. If a position is vacant, the Extra Board personnel will fill that position. Otherwise, Extra Board personnel may be assigned to assume Special Assignments as posted, prior to use of overtime.

- E. Hold-downs will be assigned to Extra Board personnel closest to their regular hours and RDOs. Hold-down assignments will be posted by 1600 on Friday. Once posted the RDOs cannot be changed. An employee who is assigned a hold-down will assume the conditions of that hold-down including the RDOs. If, in the assumption of that hold-down, the employee works six (6) and/or seven (7) consecutive day(s), the employee shall be compensated at one and one-half (½) the regular rate of pay.

## **6.0 COMPENSATION PROVISIONS**

### **6.1 PAY PROCEDURES**

All payroll for eBART unit members shall be processed on the electronic direct deposit system. All employees shall be paid bi-weekly on every other Friday. Pay periods shall remain as established unless changed by mutual agreement.

As a condition for participating in the electronic direct deposit payroll system, any correction necessary for payment made in error, other than for shortages greater than one-hundred dollars (\$100.00), which cannot be adjusted in the current pay period will be adjusted in full on the next following pay period's direct deposit.

All shortages greater than one hundred (\$100.00) dollars shall be corrected within the time limits set below. In cases of payment shortages, the employee's immediate or appropriate supervisor shall ensure 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.

No deductions for overpayments shall be made without express specific written authorization from the employee.

Final termination paychecks shall be issued to terminating employees within seventy-two (72) hours after such termination becomes effective. The District will promptly process Public Employees' Retirement System refund forms following an employee's termination.

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.

Employees represented by AFSCME shall be required to electronically record their arrival and departure at a designated place at their bid work location. Records of such electronic entries and departures shall not be used by eBART for time-recording or discipline. However, where the electronic records of an employee demonstrate a pattern failure to report or report on time, then that employee may be counseled, and the records may justify a temporary or permanent revocation of that employee's access to Elapsed Time.

## **6.2 OVERTIME**

All hours worked in excess of eight (8) hours a day and forty (40) hours in the eBART work week shall be compensated at one and one-half (1½) times the existing straight time rate of pay for actual overtime hours worked.

Conducting Union Business is time worked and shall be credited towards an employee's forty (40) hour workweek.

## **6.3 SHIFT DIFFERENTIAL**

Where fifty percent (50%) or more of an employee's shift occurs between the hours of 4:00 pm 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.

Where fifty percent (50%) or more of an employee's shift occurs between midnight and 8:00 am, a graveyard shift premium of nine and one-half percent (9½%) will be paid for all hours worked during the shift at the existing straight time rate of pay.

## **6.4 INSTRUCTOR PREMIUM**

An employee assigned by the COO or designee to train other eBART employees shall be compensated with an additional one and one-half (1½) hours of pay at the employee's existing base rate of pay for any instruction less than four (4) hours, or with an additional three (3) hours of pay for any instruction greater than four (4) hours.

## **6.5 CALL-BACK**

In the event an employee is called back for unscheduled work outside of his/her regular work day or work week, compensation will be based on a minimum of one-half (½) day's pay per day at the applicable rate of pay. This 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.

## **6.6 STAND-BY PAY**

Employees required by Management assignment to remain on stand-by duty, subject to call-in, shall be paid a minimum of one-half (½) day's pay per day during the employee's scheduled work week and a full day's pay per day on scheduled off-duty days unless such employee is called and released from such stand-by assignment by Management prior to the beginning of stand-by duty. All stand-by pay shall be paid at the existing straight time rate of pay.

Employees who are called in while on stand-by shall receive stand-by compensation for only those actual hours they were on stand-by.

## **6.7 TEMPORARY UPGRADE**

- A. From time to time, an AFSCME represented employee may receive a temporary assignment in which he/she is directed to perform the duties regularly assigned to a higher classification. Such assignments are made in writing by the employee's supervisor or manager.
- B. Unless the temporary upgrade assignment fully replaces the work of a position that is temporarily or permanently vacant, the Human Resources Department must review the proposed work assignment to determine the appropriate pay band of work.
- C. Such temporary upgrade assignments are considered career-development opportunities and are not eligible for temporary upgrade pay during the first thirty (30) calendar days of the employee's assignment.
- D. The prior approval of the Human Resources Department Manager and the affected Department Manager is required to extend any temporary assignment to a higher classification beyond thirty (30) work days. Such approval must be obtained before the thirtieth (30<sup>th</sup>) working day.
- E. Employees in an approved temporary upgrade assignment will be compensated at five percent (5%) above their base pay rate, after the thirtieth (30<sup>th</sup>) consecutive calendar day of assignment to the classification.
- F. Leave taken while an employee is assigned to a temporary upgrade assignment will be paid at the employee's base pay rate; they will not receive the five percent (5%) premium while on leave.

## **6.8 COMPENSATORY TIME**

An employee at his/her option in any given pay period shall receive monetary compensation or may elect, at the time overtime is assigned, to receive compensatory time for overtime hours whenever the compensatory time accrued is less than the forty (40) hour maximum accrual.

Accrual of compensatory time will be limited to forty (40) hours and employees shall be paid overtime for all hours in excess of the forty (40) hour maximum accrual.

Requests for compensatory time shall be subject to the operational needs of eBART and shall receive consideration after all other requests for time off have been honored. Should compensatory time be approved, the eBART COO or designee shall notify the employee five (5) days prior to his/her compensatory day.

## **7.0 SICK LEAVE PROVISIONS**

### **7.1 SICK LEAVE**

A. **Accrual:** As set forth in Section 10.24, 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/or 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.

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.

**B. Incentives For Sick Leave Accrued And Unused:**

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

1. **PERS Retirement Service Credit for Sick Leave:** The Districts contract with CalPERS to provides the California Government Code Section 20965 option for service credit for unused sick leave for eligible CalPERS members in the bargaining unit. The Public Employees Retirement Law (PERL) and CalPERS rules will govern the eligibility of unused sick leave 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 (4) 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.
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 paragraph B (2) (a) below, less sick leave taken during that same period, on an after tax basis.
  - a) **Sick Leave Accrual/Election Periods:** 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.

<b>ELECTION PERIOD</b>	<b>ACCRUAL PERIOD</b>
09/05/17 – 09/18/17	09/25/17 – 09/23/18
09/03/18 – 09/17/18	09/24/18 – 09/22/19
09/02/19 – 09/16/19	09/23/19 – 09/20/20
09/07/20 – 09/21/20	09/21/20 – 09/19/21

- b) **Buy-Back/MPPP Deposit Amounts:** An election to “buyback” 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.

<b>Days</b>	<b>Eligible Percentage of Unused Earned Sick Leave</b>
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 (1) 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.

### **C. Sick Leave Payment:**

Employees shall receive sick leave with pay up to the amount of sick leave accrued at the time of illness, provided the requirements of this Section are met. Employees shall accrue sick leave credits during the probationary period; however, they shall not be eligible for sick leave pay until completion of the first ninety (90) calendar days of employment.

An employee who is absent from work, for reasons that qualify for use of sick leave under state and/or federal law, who has no accumulated sick leave to cover such absence must use accumulated vacation, compensatory time, or floating holiday before unpaid leave may be granted. Employees shall be eligible for paid sick leave in accordance with state and/or federal law.

For purposes of this Section, "sick leave with pay" means pay calculated at the straight time day shift rate for the number of hours the employee was regularly scheduled to work each day, had the illness or injury not occurred.

### **D. Sick Leave Reporting & Verification**

It is the responsibility of every employee absent from work because of illness or injury to report such absences to his/her immediate supervisor or the supervisor's designated representative. This report must include information, if known, as to the expected date of return to work.

If doubt exists as to an illness or injury or that absence from work was required, eBART may take reasonable means to verify the employee's eligibility for sick leave. Upon prior written notice, an employee, at his/her expense, may be required to provide a doctor's statement which demonstrates eligibility for sick leave as defined above.



An employee who is absent from work due to illness or injury may be required, when reasonable, to present a doctor's certificate as a condition of returning to work.

## **8.0 GRIEVANCE & DISCIPLINE PROCEDURES**

### **8.1 GRIEVANCE PROCEDURE**

#### **Grievance Defined:**

A grievance is any dispute involving a claimed violation, misinterpretation, or inequitable application of, or noncompliance with, one (1) or more provisions of this Agreement or of the District or eBART rules, regulations and procedures, or any existing practice affecting status or working conditions of employees including matters of discipline.

#### **Procedure:**

The Parties recognize that disputes should be resolved expeditiously at the lowest possible administrative level, notwithstanding the right and desirability of the employee or the Union to bypass any initial steps if the case involves decision making at a higher administrative level.

Whenever practicable, 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.

A grievance shall be filed no later than thirty (30) calendar days following the occurrence or dispute or from such time as the employee or Union knew, or should have known, of the occurrence or dispute.

**Step One:** The Grievance shall initially be presented, in writing, to a manager at the Assistant Superintendent level or higher. The grievance may be resolved at this level through discussion with the COO. A response shall be provided within ten (10) calendar days either mutually resolving the grievance or moving the grievance to Step Two. Failure to respond shall result in the grievance moving to Step Two.

**Step Two:** If the grievance is not resolved at Step One it shall be submitted to the Labor Relations Department who will undertake to meet with the grievant and the union to discuss resolution. Such meeting shall occur within thirty (30) calendar days of the date the grievance is advanced to Step Two. If the grievance is not resolved, either party may move the matter to arbitration after the Step Two meeting or thereafter, for a period of ninety (90) calendar days. That time period may be extended by mutual agreement in writing. In the event that a grievance is not moved to arbitration and absent a writing extending the time within which to move to arbitration the grievance shall be dismissed.

**Arbitration:** In the event that either party moves the grievance to arbitration, the parties shall promptly strike for an arbitrator using the same mutually agreed upon arbitrators as provided for in the core BART Agreement with AFSCME. Once the arbitrator is chosen either side may contact the arbitrator to request an arbitration date for consideration by the parties. The parties shall make reasonable efforts to find a mutually agreeable date for arbitration within one (1) year of the date the arbitrator is chosen.

**Conduct of Hearing:** In any arbitration the person chosen as the 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(s) presented by the dispute and agreed upon between the parties, including the issue of arbitrability. If the parties cannot agree on the issue(s) to be decided the arbitrator shall decide the issue or issues to be decided based upon the grievance presented. The arbitrator shall have the right to sustain or overrule the grievance. If the grievance is sustained the arbitrator shall fashion an appropriate remedy that does not conflict with the terms of this Agreement.

Each side shall have the right to present evidence, to cross examine witnesses, and to be represented by an advocate of their choosing. 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.

## **8.2 DISCIPLINARY PROCESS**

No employee shall be disciplined or discharged, except for just cause. No non-probationary employee may be suspended or discharged for disciplinary reasons without a pre-disciplinary hearing before a hearing officer designated by the District.

### **Investigative Interviews and Representation; Review of Discipline**

Before conducting an investigative interview that may result in the employee being formally disciplined, the COO or designee must advise the Union and employee of his/her right to Union representation.

Any formal discipline shall not be imposed unless the COO or designee reviewed and concurred with the action, in writing.

Discipline by the eBART COO or designee is intended to be corrective rather than punitive, and shall be initiated promptly. Employees shall have the right to Union Representation at each step of the disciplinary process. Progressive discipline shall be applied using the following steps:

## **Formal Counseling**

For minor offenses, the supervisor shall discuss the offense with the employee. The employee has the right to Union representation during formal counseling. Such counseling shall be held in private. Counseling is not discipline and is not grievable. Counseling notes shall not be recorded in the employee's official personnel record and shall not be cited in any subsequent disciplinary action against the employee; however a record of the counseling may be maintained for the sole purpose of demonstrating the informal attempt to address the behavior. Such records of counseling shall not be used or cited in any manner that is adverse to the employee. Instructions or reminders by Supervisors shall not be considered counseling or discipline.

## **First Step Discipline**

A first step discipline notice shall be oral and specifically identify the employee's deficiency, infraction, or misconduct, and explain what corrective action is required. A first step discipline may be grieved, or the employee may within thirty (30) calendar days submit a response in writing to the COO or designee. If a written response was provided and the employee receives a second step discipline, the employee or Union may assert as a defense to the discipline level that the prior step lacked just cause.

## **Second Step Discipline**

A second step discipline notice must be in writing and specifically identify the employee's deficiency, infraction, or misconduct, and explain what corrective action is required. A second step disciplinary notice may be issued when a first step discipline notice has not had the desired corrective effect because the deficiency, infraction, or misconduct has recurred or other related misconduct has occurred. A second step discipline may be grieved, or the employee may within thirty (30) calendar days submit a response in writing to the COO or designee. If a written response was provided and the employee receives a third step discipline, the employee or Union may assert as a defense to the discipline level that the prior step(s) lacked just cause.

## **Third Step Discipline**

A third step discipline notice must be in writing and specifically identify the employee's deficiency or misconduct and explain what corrective action is required. A third step disciplinary notice, when circumstances warrant, may result in a written notice of suspension of up to five (5) days. Suspension may be appropriate for repeat offenses that followed from prior discipline steps or other serious, related misconduct has occurred. Any notice of suspension must advise the employee of the right to a pre-disciplinary hearing prior to the imposition of the proposed suspension. A third step discipline, with or without suspension, may be grieved or the employee

may within thirty (30) calendar days submit a response in writing to the COO or designee. If a written response was provided and the employee receives a subsequent discipline, the employee or Union may assert as a defense to the discipline level that the prior step(s) lacked just cause.

### **Serious Offenses**

In the event that an employee is alleged to have committed a serious offense (e.g., theft, physical violence, gross insubordination), the District may skip the disciplinary steps and initiate discipline at a level deemed appropriate to the offense up to and including a suspension of up to fifteen (15) days or termination.

### **Discharge**

An employee may be discharged for disciplinary reasons. The written Notice of Discharge must specifically identify the employee's deficiency or misconduct and must explain the conduct that constitutes just cause for the discharge. The Notice must also advise the employee of the right to a pre-disciplinary hearing prior to the imposition of the discharge.

### **Pre-Disciplinary Hearing**

The Hearing Officer shall not be in the employee's immediate chain of command. The hearing date, time, and location will be scheduled by the hearing officer. The employee and the Union shall receive reasonable advance written notice of no less than seven (7) calendar days. The notice shall include a copy of the investigative file including all materials on which the District relies. The Union may request additional relevant material prior to the pre-disciplinary hearing and the District shall provide that information at least three (3) working days before the pre-disciplinary hearing. In the event that the District is unable to timely provide the requested documentation, the hearing shall be continued until three (3) working days after the materials are provided. If the District is unable to provide the requested documentation, it must advise the Union of the reasons that the materials are not available. At the hearing, the employee shall be entitled to attend, to be represented by the Union, to submit testimony and evidence, and to examine and cross examine witnesses. The Hearing Officer will have full authority to affirm, modify, or rescind the discharge. The Hearing Officer's decision shall be in writing.

The employee may appeal the Hearing Officer's decision by filing a grievance. Discharge grievances shall be expedited.

### **Retention of Disciplinary Records**

For a First Step Discipline: The records of a formal disciplinary action against an employee shall be expunged and not be considered in any subsequent disciplinary actions if there has been no disciplinary actions initiated against the employee for a period of six (6) months.

For a Second Step Discipline: The records of a formal disciplinary action against an employee shall be expunged and not be considered in any subsequent disciplinary action if there has been no disciplinary action initiated against the employee for a period of nine (9) months.

For a Third Step Discipline, Suspension: The records of a formal disciplinary action against an employee shall be expunged and not be considered in any subsequent disciplinary action if there has been no disciplinary action initiated against the employee for a period of twelve (12) months.

No anonymous hearsay or rumor shall be the basis for disciplinary action, be retained by the District, or be introduced in any pre-disciplinary hearing or subsequent arbitration.

### **8.3 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.

### **8.4 INVESTIGATION OF EMPLOYEES**

Employees shall cooperate fully in any investigation of misconduct, operational difficulties, etc. made by the District, subject to the provisions of the grievance/discipline procedure. Failure on the part of employees to cooperate during such investigation may result in disciplinary action. The District shall not initiate any investigations of its employees without reasonable cause.

District lockers may be periodically inspected as determined by the District, but such routine locker checks will not be initiated without prior notification to a Union representative to include an offer to be present during such inspection. Inspections deemed necessary as part of an investigation to determine a violation of criminal law shall not be subject to restriction.

### **9.0 EFFECT AND TERM OF AGREEMENT**

#### **9.1 SAVINGS CLAUSE**

Should any part hereof or any provisions herein be declared invalid by a court of competent jurisdiction, such invalidation of such part or portion of this Agreement shall not invalidate the remaining portions hereof and the remaining portions hereof shall remain in full force and effect

for the duration of the Agreement. Upon request, the parties shall promptly meet and confer regarding the impact of the court's determination and agree to attempt to rewrite the contract language to conform as nearly as possible to the original intent. Alternatively if the clause cannot be rewritten the parties shall negotiate an alternate provision not exceeding the cost of the challenged provision. If the parties cannot agree, the grievance procedure may be invoked by either party.

## **9.2 PAST PRACTICES PROVISION**

The Parties, in recognition that eBART is a new operation and will encounter changes and modifications in the proposed method of operation during the initial stages, agree that during the first two (2) years following commencement of revenue service, all policies and practices may be subject to change without notice and that the following provision shall be suspended.

Commencing following two (2) years of revenue service for eBART, eBART agrees that rules or regulations or practices within the scope of representation will not be changed without notice and opportunity to bargain the changes. To qualify for the purpose of this provision, a practice must be: (1) unequivocal, (2) clearly enunciated and acted upon, and (3) readily ascertainable over a reasonable period of time as a fixed and established practice accepted by the parties.

## **9.3 NO STRIKES AND NO LOCKOUTS**

A. It is the intent of the District and the Union to ensure uninterrupted transit service to the public during the life of this Agreement. Accordingly:

1. No employee or Union signatory hereto shall engage in, cause, or encourage any strike, slowdown, picketing, concerted refusal to work, or other interruption of the District's operations for the duration of this Agreement as a result of any labor dispute;
2. The District shall not lockout any employee covered by this Agreement during its term as a result of any labor dispute;
3. 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; provided, however, such employees shall not perform, nor be assigned, any work of any BART employee represented by the employee organization in such dispute.

For purposes of this Section, a primary labor dispute is defined as a dispute between BART and other BART employee organizations; and

4. In any case where employee conduct occurs in violation of this Section, the Union will promptly take all necessary action to bring about a termination of such conduct, and where so requested by the District, will give individual notification to the employees involved to cease such conduct.
- B. In the event of any alleged violation of Paragraph A of this Section, either the District or the Union may seek immediate arbitration before one of the named arbitrators to be selected in accord with the arbitration procedures set forth in this Agreement. The party seeking such arbitration shall use its best efforts to notify the other party of the referral to arbitration by means of telephone or written notice, delivered to the principal office of the party against whom the award is being sought. 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 this Section. The arbitrator shall have full equitable power to resolve the dispute, including the power to immediately issue an order to terminate the activities in violation of this Section. Such award shall be binding on both parties and employees. The expenses of the arbitration shall be borne by the party against whom the award is entered. Unless the parties agree that the arbitrator shall retain jurisdiction to decide the underlying dispute at the same hearing, he/she shall refer the dispute leading to or determined to be the cause of the alleged violation of Paragraph A of this Section to the appropriate grievance and arbitration procedure provided under this Agreement. If either party raises an issue of arbitrability of the dispute allegedly causing the violation of Paragraph A of this Section, said preliminary issue of arbitrability shall be decided by the same arbitrator selected to hear the underlying dispute on the merits.

#### **9.4 DEFINITIONS**

- A. **Side Letter (SL):** 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 (MOU):** 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.

#### **9.5 TERM OF AGREEMENT**

The term of this Agreement shall be effective upon ratification of both parties, up to and including the 30<sup>th</sup> day of June, 2022, unless one party provides at least one hundred (100) days' notice of intent to modify or terminate the agreement, in which case this Agreement shall remain in effect up to and including the 30<sup>th</sup> day of June, 2020. In the event either party serves notice upon the other party of a desire to modify or terminate the Agreement, the parties shall meet and make all reasonable efforts to reach agreement on the subject matters of such proposed modifications.

## **10.0 PRIMARY WAGES AND BENEFITS – MOST FAVORED NATION**

Employees retained to work on eBART are District employees. Notwithstanding certain variations reflected herein, employees covered by this Agreement shall be eligible to participate and are covered by all programs available to District employees.

The District is committed to ensuring that all eBART employees represented by AFSCME Local 3993 receive at least the same level of compensation and benefits as those received by core BART employees represented by AFSCME Local 3993. AFSCME-represented eBART employees shall be eligible to participate in the following benefits on the same terms as those negotiated for other District employees represented by AFSCME and the District and eBART shall administer these wages and benefits in a manner consistent with their application in the core BART/AFSCME Labor Agreement.

Should any dispute arise regarding the application and interpretation of the wage and benefit terms specified in this Article, the relevant provisions of the core BART/AFSCME Labor Agreement, and any interpretation of that agreement shall be controlling notwithstanding any variation in the language set forth herein. Should any dispute arise regarding the application and interpretation of any provision specified elsewhere in this Agreement, the specific terms unique to eBART employees shall be controlling.

If at any time including during the term of this Agreement, the core BART bargaining unit receives higher wage increases (including without limitation general percentage wage increases, dollar increases, cost of living increases, bonuses, and/or pay progression increases) or greater enhancement of benefits (including without limitation: pensions and other retirement related benefits, medical, vision, dental, retiree medical, sick leave, vacations, holidays, minimum rest, call-back and standby pay, safety shoes, safety glasses, uniforms and allowances for shoes/glasses/uniforms), these improvements shall be provided to the employees covered by this Agreement at the same time that the improvements become applicable under the core BART/AFSCME Labor Agreement.

## **WAGES**

### **10.1 WAGE SCHEDULE**

#### **A. GENERAL WAGE INCREASES**

Salaries for AFSCME employees shall be set within the limitations established by the pay bands provided below. Additionally, pay bands shall be increased at the same time by an amount equivalent to the general wage increases received by AFSCME employees each fiscal year.



## AFSCME eBART 2017 - 2022

Supervisor of Operations, eBART								
Effective Date	1st Quartile		2nd Quartile		3rd Quartile		4th Quartile	
	Minimum				Midpoint			Maximum
1/1/2017	\$103,592.71	\$111,362.15	\$111,362.16	\$119,131.60	\$119,131.61	\$126,901.06	\$126,901.07	\$134,670.52
7/1/2017	\$106,182.53	\$114,146.20	\$114,146.21	\$122,109.89	\$122,109.90	\$130,073.58	\$130,073.59	\$138,037.28
1/1/2018	\$106,501.07	\$114,488.64	\$114,488.65	\$122,476.22	\$122,476.23	\$130,463.80	\$130,463.81	\$138,451.39
7/1/2018	\$109,163.60	\$117,350.86	\$117,350.87	\$125,538.13	\$125,538.14	\$133,725.40	\$133,725.41	\$141,912.68
1/1/2019	\$109,491.09	\$117,702.91	\$117,702.92	\$125,914.74	\$125,914.75	\$134,126.58	\$134,126.59	\$142,338.42
7/1/2019	\$112,502.10	\$120,939.74	\$120,939.75	\$129,377.40	\$129,377.41	\$137,815.06	\$137,815.07	\$146,252.72
1/1/2020	\$112,839.60	\$121,302.56	\$121,302.57	\$129,765.53	\$129,765.54	\$138,228.50	\$138,228.51	\$146,691.48
7/1/2020	\$115,942.69	\$124,638.38	\$124,638.39	\$133,334.08	\$133,334.09	\$142,029.79	\$142,029.80	\$150,725.50
1/1/2021	\$116,290.52	\$125,012.30	\$125,012.31	\$133,734.09	\$133,734.10	\$142,455.88	\$142,455.89	\$151,177.67

### I. Fiscal Year 2017

Effective on the first pay period immediately following ratification by the Board of Directors, the base salary for AFSCME employees shall be increased by four and two thousand two hundred fourteen ten-thousandths percent (4.2214%).

For employees first employed by the District prior to January 1, 2013, effective with this wage increase, employees shall contribute an additional one percent (1%) of base pay, and the District shall discontinue the payment of one percent (1%), toward the Employee PERS Contribution.

### II. Fiscal Year 2018 and 2019

Effective July 1, 2017 and July 1, 2018, the base salary for AFSCME employees shall be increased by two and one-half percent (2.5%).

### III. Fiscal Year 2020 and 2021

Effective July 1, 2019 and July 1, 2020, the base salary for AFSCME employees shall be increased by two and three quarters percent (2.75%).

## B. PAY PROGRESSION

Pay bands shall be increased by three tenths percent (0.3%) at the same time the pay progression increases are received by AFSCME employees each fiscal year.

On January 1 of each Fiscal Year, employees whose base pay is within his/her assigned pay band will receive a percentage increase based upon the quartile in which their base pay falls in their assigned pay band, as provided below.

<b>QUARTILE</b>	<b>PERCENTAGE</b>
First Quartile (Minimum of pay band to < 25%)	1.50% of base salary
Second Quartile (25% to < 50%)	1.0% of base salary
Third Quartile (50% to < 75%)	0.5% of base salary
Fourth Quartile (75% to Maximum of pay band)	0.3% of base salary

After application of a general wage increase, if any, employees will receive the percentage increases based upon pay band quartile. Eligibility for the percentage increases shall also be subject to the limitations provided in C and D below.

The parties mutually understand that the continuation of the annual pay progression described herein is subject to collective bargaining between the parties upon expiration of the agreement.

**C. General Rate Increase and Pay Progression**

1. Employees whose most recent annual overall performance evaluation, described in Section 10.2(D), is “effective” or better are eligible for the pay progression and general rate increase, provided they have no active discipline involving an attendance component.
2. Employees who have been in unpaid status for fifteen (15) calendar days or more during the twelve (12) month period will receive a pro-rated adjustment for that year.

**D. Timing of Increases**

1. A new employee who has not completed his/her probationary period, on the day a general rate increase or pay progression is given, will receive the increase the pay period following completion of his/her probationary period.
  - a. Any employee transferred or promoted into an AFSCME classification who received a performance evaluation for the prior year, must have received an “effective” in accordance with C above to receive his/her increase(s).

**E. Conditional Lump Sum Payments**

Bargaining unit members on active and paid status shall receive the same conditional lump sum payments as those earned by employees covered by the core BART/AFSCME Agreement.

## **10.2 COMPENSATION**

### **A. Objectives**

1. The objective of the compensation program is to permit eBART to recruit and retain a highly qualified workforce, including those represented by AFSCME.
2. Recruitment and retention will be done:
  - a. In a cost effective manner;
  - b. In a manner that fosters internal career development; and
  - c. In a way that maintains a balance between internal equity and the external market place. Internal equity includes consideration of the relationship between the pay of AFSCME represented employees and non-represented employees.

### **B. Hiring**

1. The establishment of an appropriate salary for AFSCME represented employees includes consideration of the following:
  - a. Relevant education and experience beyond minimum qualifications;
  - b. Current compensation;
  - c. Pay-growth prospects within eBART's compensation program;
  - d. Equity considerations as to current incumbents of similar background and experience, including those the employee may supervise; and
  - e. New AFSCME employees hired below the lowest paid in their classification, shall have their salary increased at least to the salary of the lowest paid incumbent in that classification. This increase shall be effective after two consecutive years of receiving an "effective" or better rating in the annual overall performance evaluation.

### **C. Career Development Opportunities**

1. It is anticipated and expected that employees will receive developmental opportunities in the course of carrying out their work, and specifically, that they will acquire skills that

would enable them to quickly master work at a higher level when the opportunity presents itself.

2. This developmental process does not permit a manager to make a de facto change in the level of the position through a gradual accretion of duties.
3. Career growth opportunities must be decided in a manner that is open, fair, and job-related.

#### D. Performance Management and Evaluation

1. The performance management and evaluation process is used to ensure that employees are aware of the performance requirements for their position, to assist them in meeting those requirements and to measure and evaluate the results.
2. The employee's immediate supervisor:
  - a. Should develop a "performance plan" and discuss the plan with the employee at the beginning of the evaluation period;
  - b. Is responsible for ensuring that documentation of the employee's review of the plan is maintained and available in the event that it is required later; and
  - c. May initiate discussions modifying the plan throughout the year, as may the employee – any changes to the plan should be documented.
3. The performance plan:
  - a. Should reflect major issues – either specific goals or defined work characteristics, or both – for the employee's work for the twelve (12) month period;
  - b. Should be limited to six (6) to twelve (12) items;
  - c. Should indicate not only what is to be done, but how it is to be measured; and
  - d. Should be discussed with the employee at the same time his/her future development and career directions are discussed.
4. During the twelve (12) month period, the employee's immediate supervisor should provide the employee with periodic feedback concerning his/her performance, within the context of the plan.
5. The annual evaluation:
  - a. Should reflect the whole year's work;
  - b. Should include specificity relative to the measures articulated in the plan; and

- c. Should include a face-to-face discussion with the employee.
6. The following ratings may be given:

Outstanding	Regularly exceeds performance requirements
Superior	Regularly meets performance requirements and frequently exceeds them
Effective	Meets performance requirements most of the time
Marginal	Frequently fails to meet some performance requirements
Unsatisfactory	Frequently fails to meet many performance requirements

### 10.3 PERFORMANCE REVIEW BOARD

- A. Employees shall not have recourse to the grievance procedure to dispute their performance evaluation scores. However, employees receiving a less than “effective” score shall have recourse to the Performance Review Board (PRB) for disputes regarding their performance evaluations in matters concerning procedural issues, and 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 employee shall present their concerns to the Union. The Union shall decide if the issue involving the performance evaluation shall be taken to the PRB.
- B. The PRB 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.
- C. The PRB will convene to investigate allegations, interview pertinent witnesses, and review documents. Recommendations of the PRB shall be made by consensus of all Board members and will be prepared for the General Manager’s review.
- D. 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 Manager. The General Manager shall not unreasonably overturn recommendations made by the PRB. The decision shall be final and binding on all parties.
- E. PRB Procedure:
  - Purpose of the PRB
    - a) The purpose of the PRB is to determine the validity of a disputed performance evaluation score, relative to matters concerning procedural and substantive issues.

- b) Discussions regarding the meeting will be limited to the PRB members and evidence presented at the proceedings. Discussion among the PRB members will be confidential.

#### Objectives of the PRB

- a) The first objective is to determine compliance with written policies, procedures, and guidelines, including but not limited to this Agreement.
- b) If there is compliance with policies, procedures, guidelines, and the Agreement, the second objective is to judge the validity of the performance evaluation score through evaluation of the testimony and evidentiary documentation incorporated as part of the evaluation.

#### Convening the PRB

- a) The PRB shall determine the date, time, and location that the PRB will convene to investigate allegations, interview pertinent witnesses, and review documents.
- b) The PRB will schedule a date in which all the advocates will be available and will grant a continuance if a key witness is unavailable.
- c) The PRB will notify the Union President and Labor Relations Department Manager in writing as to the date, time, and location of the meeting.
- d) The PRB shall commence by blocking out one (1) full day, but not limited thereto, to hear the case.

#### Tape Recording the Proceedings

- a) The PRB will take record of the proceedings.
- b) A copy shall be made available to the Union and the District, upon request.

#### Advocates

- a) The Union President and Labor Relations Department Manager will select the respective advocates.
- b) Each party may have a “second chair” attend the meeting.

#### Presentation and Marking of Evidence

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

#### Opening Statements

- a) The District will present its opening statement first.
- b) The Union will then present its opening statement.

#### Presenting the Case

- a) The District will present its case first. The Union will have an opportunity to cross-examine each witness.
- b) The Union will then present its case. The District will have the opportunity to cross-examine each witness.
- c) Both the District and the Union shall have the opportunity to rebut testimony.
- d) The PRB will have the opportunity to ask clarifying questions at the end of the examination of each witness. The intent is to allow witnesses to testify without interruption.

The Grievant shall be released to attend the entire PRB.

#### Witnesses/Advocates

- a) 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 (1) week prior to the scheduled meeting.
- b) Labor Relations shall be responsible for notifying the witness'(es') supervisor for release time.
- c) The witness(es) shall be sequestered until called by their respective advocates except for the grievant and advocate that may testify.
- d) Additional witnesses may be called by the PRB as a result of information presented at the proceedings.

#### Closing Statements

- a) The District will present its closing statement first.
- b) The Union will then present its closing statement.

#### Report of the PRB – Recommendations

- a) Based on the objective(s) of the PRB, the PRB will prepare a report for the General Manager's review, including the PRB's recommended course of action.
- b) Recommendation 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.

- c) The PRB's report and recommended course of action(s) shall be submitted to the General Manager no later than two (2) weeks from the conclusion of the proceedings. The PRB members will sign the report without identifying their respective recommendations.
- d) The PRB's report shall indicate that the General Manager's decision will be sent to the Union President and the Labor Relations Department Manager.
- e) Copies of the PRB's report shall also be sent to the Union President, Union Advocate, Labor Relations Department Manager and the District Advocate.

**General Manager's Decision**

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

**PENSION BENEFITS**

**10.4 RETIREMENT BENEFITS**

The Parties agree that no later than thirty (30) days following a final ruling in *State of California v. DOL*, the Parties shall commence bargaining regarding the provisions related to employee pensions, pension contributions and any other applicable contract provision related to pension contributions.

After January 1, 2018, and upon request of any party, the parties agree to bifurcate the issues reflected in pending pension-related grievances filed by the Unions prior to the execution of this Agreement and endeavor to reach agreement related to employee pension contributions.

The Parties agree that any resolution shall be cost neutral to all parties. The negotiations shall not result in an increase in the employer paid member contributions as specified in this Agreement. Any agreement described above shall immediately toll the District's prospective liability with respect to the dispute over employee contributions reflected in the grievances. All bargaining shall be conducted based upon the District's obligations under state and federal law.

In the event that the Parties are unable to reach agreement within six (6) months of the commencement of bargaining, unresolved issues shall be put to interest arbitration for a final and binding decision.



Nothing in this Agreement is intended to modify or compromise the position of any party to this Agreement in relation to the pending litigation referenced above.

#### **10.5 PUBLIC EMPLOYEES' RETIREMENT SYSTEM & PICK UP**

District employees are enrolled in the Public Employees' Retirement System (PERS). The District's 2013-2021 collective bargaining agreement with AFSCME for District employees at core BART, provides that represented employees receive a benefit of two percent (2%) at age 55; and that employees contribute four percent (4%) of base pay towards the pension; and the District "picks up" the remainder of the Employer Paid Member Contribution to the extent that it exceeds four percent (4%) of base pay.

For those employees employed by the District prior to January 1, 2013, the District provides a pension of two percent (2%) at 55. Those employees contribute four percent (4%) of the required employee contribution. Employees first employed after January 1, 2013, are provided a pension benefit formula of two percent (2%) at 62 and those same employees are required to contribute fifty percent (50%) of normal cost towards the pension.

Employee contributions shall be made on all reportable compensation as defined by CalPERS. 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 District and the Union have ongoing disputes regarding the changes to the pension benefit and the change in employee contributions required of Union-represented employees first employed after January 1, 2013. The District asserts, without limitation, that enrollment into the appropriate retirement options is based on the eligibility requirements set by CalPERS and required by California law. The Union objects to the changes described above, and asserts without limitation that the changes to the pension benefit and contribution requirements, and their implementation are unlawful. Both the District and the Union expressly reserve their rights regarding the legal and contractual rights, requirements or restrictions on pension formulae and contributions. Nothing in this description shall be construed as a waiver of either the District's or Union's position taken in any pending pension-related litigation, administrative proceeding, or grievance, and the parties agree that it shall not be cited or referenced in any pending pension-related litigation.

It is expressly agreed and understood that pension benefits and contributions may be subject to change as a result of the final ruling in *State of California v. DOL*, or following negotiation and/or interest arbitration as described in Section 10.4 above and that such changes, if any, shall apply equally to all employees represented by AFSCME at core BART and eBART.

## **10.6 PENSIONERS' LIFE INSURANCE**

Life insurance will be provided to all employees who retire from District employment as follows:

- A. First year of retirement, fifty percent (50%) of the employee's annual base earnings;
- B. Second year of retirement, forty percent (40%) of the employee's annual base earnings;
- C. Third year of retirement, thirty percent (30%) of the employee's annual base earnings;
- D. Fourth and subsequent years of retirement, twenty percent (20%) of the employee's annual base earnings.

This Section is subject to the contract language governing "Group Insurance and District Self-Funded Plans".

## **10.7 PERS RATE REDUCTION**

Any PERS savings accrued by the District shall remain the property of the District and shall not be shared with employees.

## **10.8 ADDITIONAL PERS OPTION**

The District's current contract with CalPERS ("PERS") permits employees to purchase the following service credit options: Public Service Credit for California Senate Fellows, Assembly Fellowship, Executive Fellowship, or Judicial Administration Fellowship Programs; Public Service Credit for Periods of Layoff, Public Service Credit for Peace Corps, AmeriCorps VISTA, or AmeriCorps Service; and up to four (4) years of service credit for any continuous active military service prior to employment with BART pursuant to Government Code Section 20930.3. The employee will bear all costs for these PERS options.

If PERS does not offer Long Term Care Insurance, the District shall provide employees with an option to purchase, at employees' expense, Long Term Care Insurance outside of PERS.

## **10.9 MONEY PURCHASE PENSION PLAN**

- A. The District will deposit an amount equivalent to six and sixty-five hundredths percent (6.65%) of the employee's base rate monthly compensation (after deducting the first one hundred thirty-three dollars and thirty-three cents [\$133.33] paid during the month) up to a maximum annual contribution of one thousand eight hundred sixty-eight dollars and sixty-five cents (\$1,868.65) into a Money Purchase Pension Plan (MPPP) 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. The District shall contribute the one and six hundred twenty-seven thousandths percent (1.627%) of payroll to the District's Money Purchase Pension Plan.
- C. The District shall retain .0888% of the 1.627% MPPP contribution as specified in Subsection D.1 of Section 10.11 - PERS Medical and Prescription Drug Benefit and shall deduct thirty-seven dollars (\$37) from the 1.627% MPPP contribution as specified in Subsections B.2 and D.1 of Section 10.11.
- D. The District shall retain the remainder of 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%.

## **10.10 PERS DEATH BENEFITS**

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.

## **MEDICAL, VISION, AND DENTAL BENEFITS**

### **10.11 PERS-MEDICAL & PRESCRIPTION DRUG BENEFITS**

#### **A. PERS Medical and 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 Survivor Benefits, as provided for in Section 10.14, the Union waives the right to any group medical or prescription drug benefit granted expressly or impliedly under others 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.

## **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 as provided below.

1. The employee's monthly contribution toward the medical insurance premium shall be as specified below and shall increase by an escalator amount of three percent (3%) per year. The contribution amount for 2017 shall be increased as specified in paragraph 2 and the employee contribution amounts provided below shall be in addition to any costs for coverage in excess of the amounts specified in paragraph C below.

<b>DATE</b>	<b>Maximum Employee Monthly Contribution</b>
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	\$143.70
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. During the term of this Agreement, the employees' premium contribution shall be increased by thirty-seven dollars (\$37) per month as follows: 2017 - \$140.82; 2018 - \$143.93; 2019 - \$147.14; 2020 - \$150.44; and 2021 - \$153.85. For active employees the additional thirty-seven dollars (\$37) per month shall be deducted from the one and six hundred twenty-seven one thousandth percent (1.627%) money purchase pension plan contribution.
3. Eligible retirees 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, Union and employees shall comply with the PERS procedures in effect from time to time.

#### **C. Maximum District Contributions for Health Insurance**

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 10.11(B) above. This contribution shall be the District's maximum payment toward employee health insurance premiums. Employees and retirees electing coverage with a cost greater than the maximum contribution shall have the difference deducted automatically from the employee's pay, in addition to amounts to be deducted in accordance with Subsection B above.

#### **D. Retiree Insurance Funding**

The District has established a Retiree Benefits Health Trust (RBHT) and shall contribute to the RBHT each pay period an amount equal to the full GASB compliant Annual Required Contribution (ARC) percentage of straight time base pay.

1. The District shall retain .0888% of the one and six hundred twenty-seven one-thousandths percent (1.627%) of the Money Purchase Plan contribution in addition to the \$37/month to be used as specified in Paragraph B2, above.
2. The District shall retain the remainder of the 1.627% MPPP contribution, 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%.

The baseline ARC is as follows:

<b>FY Year Beginning</b>	<b>Baseline ARC</b>
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%

3. The Trustee of the RHBT shall pay eBART retirees health insurance premiums from the RHBT.

#### **E. In Lieu of Medical Payments**

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 10.11(A).

Each eligible employee who opts out of medical coverage as provided for herein shall receive a monthly payment of three hundred fifty dollars (\$350.00) "in lieu of medical" to each eligible employee who opts out of Section 10.11(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 Section 10.11(A) coverage may subsequently enroll in such coverage as permitted under the terms of the plan(s).

#### **F. Retiree Health Benefits Trust**

The Trust Agreement provides that:

1. Trust assets shall be held for the sole and exclusive purpose of providing health benefits to eligible eBART 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.
4. 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 contractual 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.

#### **G. Retiree Medical Insurance Eligibility**

The parties agree that the District shall make no contribution for post-retirement health benefits on behalf of such individuals with less than ten years of credited service with the District, and that the full District contribution for post-retirement health benefits shall be made only on behalf of individuals who have completed a minimum of fifteen (15) years of credited service with the District. Eligibility for this benefit is, in addition to the specified criteria, subject to current

provision which require that the employee retire from CalPERS within one hundred twenty (120) days of separation from the District.

The parties agree that:

1. This provision applies to members of any unit of employees whose terms and conditions of employment are determined through collective bargaining and who agree that it should apply to its members.
2. Contributions shall be subject to:
  - a. Credited years of District service
  - b. An agreement with all represented employees mutually agreed upon through collective bargaining
3. The District contribution shall be a percentage of the employer contribution for applicable credited years of service as follows:

10 years- 50%; 11 years- 60%; 12 years- 70%; 13 years- 80%; 14 years- 90%; 15 years- 100%
4. The full contribution level shall be available for post-retirement health benefits for those employees who are approved for and exercise a disability retirement with at least five years of credited service with the District.
5. Any agreement to adopt these provisions by any collective bargaining unit shall apply only if the agreement is expressly incorporated into or made a part of a memorandum of understanding.
6. This provision shall not apply to any employee who retires before the effective date of the memorandum of understanding referenced above. In the event that the memorandum of understanding establishes a retroactive effective dates, this Section will govern, limiting its applicability only to prospective retirements.
7. The District shall provide, in the manner prescribed by CalPERS, a notification of each agreement established pursuant to this Section and any additional information necessary to implement it.

The Parties recognize that implementation of this agreement requires statutory changes to the California Government Code and agree to jointly seek a sponsor for and support the passage and signing into law of the provisions as set forth herein. If the law is not successfully passed, then the Parties agree to mutually agree on alternative provisions.



### 10.12 VISION CARE

The District will provide 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:

<b>Coverage</b>	<b>Intervals</b>
Visual Examination	12 Months
Lens Replacement	12 Months
Frames Replacement	24 Months

There shall be a ten dollar (\$10) deductible. The District shall pay the full premium for all employees and eligible dependents.

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.

Retirees shall have the option to purchase the same vision coverage as listed in this Section at no cost to the District.

### 10.13 DENTAL PLAN

The District will provide coverage for preventative care, restorative care, prosthodontics 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.

Retirees shall have the option to purchase the same dental coverage as listed in this Section at no cost to the District.

#### **10.14 SURVIVOR BENEFITS**

Subject to the restrictions, limitations and eligibility requirements of the applicable health plans, for employees who elect a survivor benefit, the District will 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 medical, dental, and vision coverage.

New full-time District employees can enroll in the survivor benefits program described in the preceding paragraph within ninety (90) days from his/her initial date of hire. 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**

The survivors of employees who were not eligible for a PERS retirement allowance and who die in service are eligible for benefits if they are eligible under the optional PERS Survivor Benefits Program provided for at Government Code Section 22819 (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 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 monthly 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:

1. 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;

2. 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 RETIREES WHO DIE**

If an employee who is enrolled in this Survivor Benefits Program retires and then dies, his/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 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 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.

## **ADDITIONAL INSURANCE & SUPPLEMENTAL BENEFITS**

### **10.15 GROUP INSURANCE & DISTRICT SELF-FUNDED PLANS – GENERAL**

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 Deferred Compensation Plan, under which individual employees are to receive benefits, shall be made available to eBART employees and are incorporated by reference herein and shall be controlling in all matters pertaining to benefits hereunder.

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.

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.

Married employees and employees in an eligible domestic partnership who both work for the District, including eBART, 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.

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

- A. The covered employee's legally wedded spouse or domestic partner per Board Resolutions 4455 and 4757 and BART and health plan eligibility guidelines.
- B. 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 legal guardian before age 19, who is under the age of 26.

#### **10.16 GROUP LIFE**

The District will provide a basic group life insurance policy for each employee equivalent to two (2) times the employee's base rate annual salary (four thousand one hundred sixty [4160] hours times base straight time hourly rate) with accidental death and dismemberment provisions.

#### **10.17 VOLUNTARY / ADDITIONAL LIFE INSURANCE**

##### **A. 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 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 percent (65%) at age seventy five (75), and will remain at the thirty-five percent (35%) level until employee retires.

**B. 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 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.

**10.18 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.

**10.19 DISABILITY COVERAGE**

**A. Short Term Disability Coverage – Basic**

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

<b>Weeks of Disability</b>	<b>District Paid Basic STD</b>
1 <sup>st</sup> – 26 <sup>th</sup>	\$1,1172.57

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 ( $66\frac{2}{3}\%$ ) 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 provide Basic Long Term Disability (LTD) coverage with a maximum monthly benefit of sixty-six and two thirds percent ( $66\frac{2}{3}\%$ ) of the base monthly salary subject to the following maximum benefit amount:

<b>Weeks of Disability</b>	<b>District Paid Basic LTD</b>	<b>Employee Paid Voluntary* LTD</b>
After 26 <sup>th</sup> week	\$3,335 per mo.	\$5,000 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 ( $66\frac{2}{3}\%$ ) 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.**

**10.20 PASS PRIVILEGES (Agreed Prior to 3/17/17)**

The District will provide free transportation over its lines, including eBART, 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.

- A. 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.
- B. 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.

- C. 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.
- D. Pass privileges will be revoked when an employee is terminated from the District.
- E. Spouses' pass privileges terminate upon dissolution of marriage. The employee must notify the District when the marriage is dissolved.
- F. 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; or 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.
- G. If an employee dies as the result of a 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.
- H. 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.

- I. 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.

## **10.21 EDUCATION ASSISTANCE PROGRAM**

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 Certificate of Achievement Program, correspondence course and/or a specific course of study that may not result in a degree, said employee shall be reimbursed a maximum of one thousand five hundred dollars (\$1,500.00).
- 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 a maximum of two thousand dollars (\$2,000.00).
- C. The maximum amount that an employee may be reimbursed under this program in any fiscal year is two thousand dollars (\$2,000.00).
- D. Language Programs will also be covered by these provisions or employees wishing to learn another language.

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 Training and Development.

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

Approval for said courses must be granted by the department head prior to enrollment. Reimbursement shall be made upon presentation of proper receipts and upon completion of the course with at least a grade "C" or its equivalent.

At the employee's option, an advance may be secured from the District against tuition costs by agreeing to 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.

## **10.22 EMPLOYEE ASSISTANCE PROGRAM**

The District provides a referral program for the purpose of assisting in a confidential manner employees and their families with stress, marital, psychological, alcohol, drug, child, elder and other dependent care needs, domestic violence, financial, legal and other problems to obtain counseling and other services. A twenty-four (24) hour crisis intervention service will be available at all times. Child care and other dependent care services, including those with emergency availability, are also available.

The Union agrees to cooperate with the District in the administration of this program.

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.

The District shall distribute informational materials in order to inform employees of the EAP Program and the services provided and shall provide union stewards and officials with training regarding the nature and extent of said programs and otherwise provide the Union with information as may be requested regarding the nature and extent of all such programs.

## **LEAVES AND LEAVE OF ABSENCE**

### **10.23 VACATION ACCRUALS**

The District shall 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 of vacation after fourteen (14) years of service, and six (6) weeks of vacation after nineteen (19) years of service.

### **10.24 SICK LEAVE ACCRUALS**

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.

### **10.25 MILITARY LEAVE**

Employees, who are ordered to active duty with the Armed Forces for a period not to exceed one hundred eighty (180) calendar days, 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 eBART with a copy of the orders as early as possible prior to such leave.

During such military leave, employees with one (1) year of District service will be eligible for their existing straight time rate of pay for the first thirty (30) calendar days of any such absence during a fiscal year (July 1 - June 30).

For purposes of this Section, weekend military training sessions shall not be considered as Military Leave; however, employees who have military training sessions on weekends (Saturday and Sunday), and whose assigned work week includes Saturday or Sunday, or both, may request adjustment of their scheduled rest day or 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.

### **10.26 PREGNANCY AND BONDING LEAVE**

Pregnancy disability leave will be granted to employees who are disabled by pregnancy, childbirth, or related medical conditions, in accordance with the California Fair Employment and Housing Act. Such leave will begin no later than the date the employee's doctor states in writing she should

discontinue working due to pregnancy disability, and will continue until the date on which the employee's doctor states in writing that she is capable of returning to work.

Except as stated herein, an employee who is granted pregnancy disability leave will be required to exhaust any accrued sick leave before taking unpaid leave or using any accrued vacation leave or floating holidays. District employees eligible for short-term disability insurance benefits will not have to exhaust this accrued sick leave prior to receiving short-term disability insurance benefits. During a pregnancy disability leave, employees may, to the extent possible, use the Disability Insurance provided by the District. 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.

Bonding leave will be granted to each employee covered by this Agreement upon the birth or adoption of the employee's child, or the placement of the child with the employee for foster care, in accordance with the Family and Medical Leave Act and the California Family Rights Act. An employee who is granted bonding leave will be required to exhaust any accrued vacation leave, floating holidays or compensatory time before taking unpaid leave. Upon exhaustion of any accrued vacation, floating holidays or compensatory time the employee may, at his or her option use accrued sick leave.

#### **10.27 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 one work week for death of the employee's current spouse or eligible domestic partner per Board Resolutions 4455 and 4757, or other members of the employee's immediate family. 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, or a child of an employee's domestic partner; parent, brother, sister, grandparent, grandchild; and current, parent/stepparent of spouse/eligible domestic partner, 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.

## **10.28 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 eBART showing the amount of fees paid or payable and the time spent in jury service.

When an employee has served a full work week on jury duty and that service conflicts with one or more of the employee's RDOs, the employee has the option to reschedule their RDOs with his/her supervisor without additional cost to eBART. Also, if the employee's active jury duty encompasses a portion of his/her RDO, he or she shall receive the following Saturday and/or Sunday as a day(s) off. An employee shall receive Saturday off for their first RDO, and Sunday off for their second RDO.

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.

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

## **10.29 WITNESS DUTY**

An employee shall be excused from work on a work day 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, 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 RDO 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 related to other employment.

### **10.30 LEAVE OF ABSENCE**

Employees may request time off without pay through the employee's immediate supervisor. Approval of requested leaves is at the discretion of the COO or designee.

The Union will be notified of approved leaves of absence in excess of thirty (30) days. The District also will notify the Union in the event it considers a request for extension of a leave of absence beyond a six (6) month period. However, the District is not precluded from approving such extended leave in the event the Union objects. Requests for a leave of two (2) days or less shall be made through the employee's immediate or appropriate Supervisor.

A leave of absence, for the purposes of this Section, is defined as an absence from work requested in writing by an eBART employee and approved in writing by the COO of eBART or designee. Such leaves must specify an agreed-upon period of time normally longer than two (2) days but not to exceed six (6) 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 eBART. (eBART 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 eBART COO or designee will determine the length of time it will grant for such leave, if any, in each individual case. eBART reserves the right to extend a given leave if it deems it desirable to do so.

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

Employees on leave of absence shall have the option to pay any costs involved into and continue to participate in Health & Welfare Programs and life insurance.

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

**FOR THE DISTRICT:**

By: \_\_\_\_\_  
Grace Crunican  
General Manager

**FOR THE UNION:**

By: \_\_\_\_\_  
Sal Cruz  
President

**NEGOTIATED:**

By: \_\_\_\_\_  
Carol Isen  
Chief Labor Relations Officer

By: \_\_\_\_\_  
Latika Malkani  
Chief Negotiator

By: \_\_\_\_\_  
Sal Cruz  
Chief Negotiator

**District Negotiating Team:**

Carol Isen  
Victoria Nuetzel  
Shana Dines  
David Murphy  
Randall Roderick  
Henry Loud  
Cassondra Stephens

**Union Negotiating Team:**

Latika Malkani  
Sal Cruz  
Patricia Schuchardt