

AGREEMENT

BETWEEN

**SAN FRANCISCO BAY AREA
RAPID TRANSIT DISTRICT**

AND

**AMALGAMATED TRANSIT
UNION
LOCAL 1555**

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 Amalgamated Transit Union (ATU) Local 1555 enter into 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 ATU Local 1555 as the exclusive bargaining agent for the employees specified herein as represented by ATU in a separate eBART bargaining unit under the BART Act, Public Utilities Code Section 28850 et. seq.

The parties agree that the *Diesel Train Engineers, eBART* job classification shall be represented by ATU.

The parties further agree that if eBART classifications are created or revised that share a community of interest with the *Diesel Train Engineers, eBART* classification and/or whose duties and responsibilities are such that they would ordinarily be classified within the ATU core BART bargaining unit, the parties agree that the District shall amend the ATU eBART 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

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, ultrasonic rail testing and repair, training of unit members, heavy vehicle maintenance, elevator maintenance, maintenance of real property and related structures, maintenance of non-revenue vehicles, maintenance of sanding and fueling facilities, train washing, fence repair, patio and station steam cleaning, yard and station parking lot lighting, street and parking lot sweeping and graffiti removal.

It is the intent of the parties that work connected with the operation and maintenance of the system be performed by the bargaining unit employees; therefore, the eBART Chief Operating Officer (COO), prior to reaching his/her final decision to contract out work for maintenance or transportation services, will give consideration to whether adequate numbers of qualified employees are available to perform the necessary work within time limits available, whether sufficient and suitable equipment is available within eBART to perform the work, whether shop capacity is adequate, whether the use of eBART employees shall involve extra cost to eBART, or whether the performance of work presents added hazards to existing employees which are not present in their normal assignments. Temporary work load, over and above normal positions, including overtime, may be contracted out. Suppliers' personnel performing work related to their equipment and clearly not bargaining unit work will not be prohibited.

Prior to contracting out any work for maintenance or transportation services, the eBART COO or designee shall send notice to the unions of the intent to contract out such work. Email notification to the designated Union representative(s) shall be provided at least seven (7) working days prior to the eBART COO entering into any contract for said services. The Union(s) may provide comments to the eBART COO or designee within seven (7) working days, which shall be taken into consideration before a final determination is made. 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 unions of such emergency or circumstances within forty-eight (48) 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

In addition to the executive board member and officers of ATU Local 1555, which may include a Representative from eBART, the District shall recognize ATU stewards designated by the Union to assist employees in resolving grievances at the lowest possible administrative level. The eBART Union Representative and stewards shall be afforded reasonable time off for conducting Union Business, without loss of pay or benefits, subject to the operational needs of eBART.

eBART shall allow the recognized eBART Representative time off without pay once a month to attend regularly scheduled Executive Board meetings.

At no time will the eBART Union Representative or a steward be paid a premium or overtime for conducting Union Business unless expressly authorized by the COO or designee. "Union Business" leave may be used for various uses including investigating and processing grievances at the lowest possible administrative level; conducting contractual bids; attending meetings and trainings with management; and participating in negotiations and arbitrations, including reasonable preparation time for such activities.

In order to be released, the eBART Union Representative or steward shall provide written notice seventy-two (72) hours in advance. In the event that a Union Representative requires Union Business leave to address unforeseen circumstances and is unable to provide seventy-two (72) hours advance notice, he or she shall provide such notice as possible. Release time for Union Business shall not be unreasonably denied. In the event that a request to take leave in order to investigate a potential grievance or discipline is postponed, the associated timeline shall be tolled in proportion to the delay. 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.

Upon formal designation by the Union, the eBART Union Representative employed by the District will not be transferred from the assignment, shift or location he/she holds due to his/her 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 eBART Union Representative and stewards 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.

1.8 UNION MEMBERSHIP

Employees within the scope of this Agreement shall become members of the Union and remain members in good standing as a condition precedent to continued employment with the District.

All employees shall be required to become members of ATU within thirty-one (31) calendar days of the signing of this Agreement or thirty-one (31) calendar days following employment, whichever occurs later, except those employees in classifications or positions subsequently excluded from the bargaining unit by mutual agreement. In the event of such an agreement, exclusions shall be set forth by Side Letter.

All employees covered by this Agreement, within thirty-one (31) calendar days of the execution of this Agreement, or for new hires, within thirty-one (31) calendar days following the date of

employment, shall execute a payroll deduction authorization. The timely execution of such authorization shall be a condition precedent to continued employment with the District.

1.9 DUES AND OTHER DEDUCTIONS

The District agrees to make payroll deductions as hereafter indicated from the pay of employees covered by this Agreement. Such deductions shall commence upon submission of a written authorization, satisfactory to the District, by the employee as forwarded by the Union. Deductions shall include monthly membership dues, assessments, insurance premiums, initiation fees, and contributions, including but not limited to Committee on Political Education (“COPE”) contributions, as are authorized by the employee, and shall be forwarded monthly to the appropriate Union in an agreed upon electronic format. Dues and assessments shall be uniformly applicable to all employees in the same job classification or pay level in the applicable subunit.

No fines or penalty imposed on an individual by the Union shall be collected by means of payroll deduction under this Section. The Union agrees to furnish the District with written notice of changes in amounts to be deducted by the tenth (10th) of the month in which such changes are to be effected.

The Union shall hold the District harmless from any and all claims, and will indemnify it against any unusual costs in implementing these provisions.

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 printed copy and a digital version of this Agreement to the Union and all employees.

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 Unions 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 VENDING MACHINES

ATU Local 1555 and SEIU Local 1021 are authorized to establish vending machines in employees' work areas, and eBART shall approve any reasonable plan with respect to such machines.

The Unions shall have the responsibility of contracting for the installation of such machines, along with maintenance.

Proceeds shall be deposited in a special fund under the direction and control of a representative of ATU Local 1555 and SEIU Local 1021, and shall be divided on a basis established by the Unions, allocated for the exclusive benefit of the employee's welfare and recreation as determined by the Unions.

The Unions will hold the District harmless from any expense or claim relating to the establishment and maintenance or distribution of such vending machines. The Unions shall indemnify the District in any contract entered into by the Unions for the vending machines.

1.15 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 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.

1.16 DOMESTIC PARTNER

All benefits and considerations afforded to spouses of employees/retirees shall be provided to eligible domestic partners on a substantially equivalent basis subject to any statutory constraints.

Domestic Partner Definition: Domestic partners are two adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring. A domestic partnership shall be established in California when both persons file a Declaration of Domestic Partnership with the Secretary of State and their relationship is recognized by state law or BART policy, whichever is broader.

2.0 EMPLOYMENT PROVISIONS

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 probationary period, the District shall evaluate each such employee following the seventieth (70th), one-hundredth (100th), and one hundred and fiftieth (150th) 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 based on the quality of their performance history within the District. Any District employee who transfers from core BART to eBART shall have the right

to revert to his or her original position in core BART in accordance with the terms of the vacated position.

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 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 or her original position in eBART at any time within ninety (90) calendar days of transfer.

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. Seniority in the classification shall prevail for selection of shifts, rest days, vacation, and all other bidding. Reduction in force will be according to inverse seniority for the seniority classification.

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

If the date of hire or promotion into the eBART classification is the same for two (2) or more employees, then any non-ATU represented employee from core BART will be treated as the next most senior employee at eBART. If two or more non-ATU 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. All questions pertaining to seniority shall be resolved by the Union.

The Union shall post seniority rosters in locations as mutually agreed to with eBART management and shall supply a seniority roster to eBART and shall notify eBART of any changes in such posted seniority roster. eBART shall promptly notify the Union of any new hires, terminations, transfers, or promotions of individuals in order that the Union may prepare the posted seniority roster. eBART may rely upon the monthly posted seniority roster for the purpose of effecting assignments and compliance with the provisions of this Agreement. In the event the Union, in good faith, makes an error in such seniority list or posting, the District shall not be liable for any erroneous assignment that has been made prior to notification by the Union of such error.

All seniority must be accrued in the classification. Employees shall lose all ATU seniority ninety (90) cumulative calendar days after transfer from their classification to a non-ATU position during any five (5) year period.

2.4 TEMPORARY MODIFIED ASSIGNMENT

A disabled employee may be entitled to reasonable accommodation(s) pursuant to District policy, state and federal law.

The District may also offer a Temporary Modified Assignment (TMA) that allows an employee with a disability who cannot perform the essential functions of the job with or without reasonable accommodation to continue to work or return to work.

Employees seeking a TMA shall make a request in writing to the Employee Services Department. Temporary modified work assignments will be considered on a case-by-case basis. At the employee's or union's request, a union representative may participate in discussions of proposed TMA for represented employee(s). If the proposed TMA may affect the terms and conditions of employment of any represented employee(s), impair seniority or other contractual rights, the District will provide notice to the union and seek a non-precedent setting waiver, should one be necessary.

Temporary modified work or temporary work assignments may be provided if work is available and can be provided without adversely affecting operations, services, or seniority. The District shall have no obligation to continue a TMA for a period in excess of ninety (90) calendar days and has no obligation to create TMA positions.

2.5 REDUCTION IN FORCE

Employees furloughed on account of reduction in force will be privileged to work elsewhere and retain their seniority for four (4) years from date of layoff. They must maintain on record with the District their correct mailing addresses. A copy of the recall notice will be furnished the Union. Upon receipt of a recall notice, an employee will inform the District, in writing or by recorded telephone call within seventy-two (72) hours of receipt of the recall notice of his/her decision to return to work. However, each recalled employee may take up to ten (10) calendar days from the

date of receipt of a recall notice to return to work. Employees having other employment being recalled for periods of sixty (60) calendar days or less, will be given permission to reject same without loss of seniority. Furloughed employees failing to comply with these regulations will forfeit seniority rights and will no longer be considered employees of the District. In the event failure to comply is attributable to illness and/or disability, notice and proof of illness and/or disability must be supplied to the District.

Employees recalled from furloughs will report for duty on the date specified in the District's notice, unless excused.

Employees furloughed more than thirty (30) calendar days may be required by the District to undergo retraining prior to assuming regular duties; provided however, such employees shall receive, at their regular rate of pay, full compensation and benefits for all time spent in said retraining.

Employees within a job classification in which a furlough occurs will be furloughed in the inverse order of their classification seniority ranking.

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 TRAVEL ALLOWANCE

- A. Travel Expense - Local: Insofar as possible, authorized travel within the District shall be by local transit facilities or by District automobile. In the event taxicab use is necessary, actual reimbursement shall be paid. In the event private automobile is used, the Internal Revenue Service Standard Mileage Rate will be paid by the District in addition to actual parking and toll fees. While on assigned District business away from the employee's assigned office or area, reimbursement for lunch expense will be that portion of the lunch expense that is in excess of that which would normally be paid were the employee working at the office or area. Reimbursement under this policy shall not exceed twelve dollars (\$12) per luncheon.
- B. Travel Expense Outside of District: Travel for distances in excess of one hundred fifty (150) miles will be provided by public carrier. Mode of travel and commencement of travel status will be determined by the District prior to departure. Hotel charges will be reimbursed at actual cost. Actual costs of meals will be reimbursed when traveling outside the District. Other necessary travel expenses including, but not limited to, local transportation, telephone, laundry and cleaning, will be reimbursed on the basis of actual cost to employee.

- C. Travel Allowance: When assigned outside the District in excess of twenty-four (24) hours, employees of the District may, in lieu of receiving reimbursement for actual costs of travel, elect to receive actual receipted cost of lodging, plus an allowance as established by the District's Management Procedure No. 20, Section II, Travel Outside The District as reimbursement for all other travel costs. This allowance will be allowed in full on the day of departure and return without regard for time of departure or arrival.
- D. Employees may choose either "B" or "C" for travel expenses.

3.3 TRAINING/CERTIFICATIONS

A. Training

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

The District will provide training programs which will provide each individual the opportunity 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 professional growth of all employees. eBART retains the right to establish training classes (i.e., recertification, refresher, etc.).

The parties agree that the Union will be provided reasonable time in new hire orientation to acquaint employees with terms and conditions of employment and with the Union organization/structure and its history.

B. Recertification and/or Refresher

eBART shall provide recertification and refresher training as needed. eBART may adjust schedules up to four (4) hours to accommodate training classes on regular work days. In no case will shift differential be denied to employees who normally receive such differentials.

3.4 REPORT LOCATIONS, PARKING, WORK-RELATED TRANSPORTATION

The District shall ensure 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.

3.5 REST FACILITIES

eBART shall provide and maintain suitable rest facilities for use by employees at their work location. If rest facilities are not available at the employee's work location, the employee shall be permitted to travel to the nearest rest facility for lunch and rest breaks. The travel time to and from the nearest rest facility shall not be counted against the employee's lunch or rest break time.

3.6 DISTRICT FIRST AID

Prompt ambulance service and first aid to injured employees shall be provided on all shifts.

Adequate first aid equipment shall be furnished and maintained as determined by the Chief Safety Officer or designee with input from eBART's Safety and Security Review Committee.

3.7 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. Additionally, eBART management will meet to discuss 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.

3.8 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 3.7 "District Uniform Program/Regulations".

4.0 VACATION & HOLIDAY PROVISIONS

4.1 VACATION

As set forth in Section 10.21, employees are provided three (3) weeks of vacation following one (1) year of service, four (4) weeks of vacation after eight (8) years of service, five (5) weeks of vacation after fifteen (15) years of service, and six (6) weeks of vacation after twenty (20) 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 thirteen (13) paid 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)

Employee's Birthday

Each eBART employee will receive three (3) 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.

No employee shall be required to work on his/her birthday. Birthday holidays shall be observed only on the employee's birthday. However, with a minimum of five (5) working days notice, an employee may elect to convert his/her birthday holiday to a floating holiday which may be scheduled according to department/section scheduling at no additional cost to the District. Should an employee's birthday fall on his/her day off, he/she shall, at his/her option, receive an extra shift's pay at his/her existing straight time rate for that pay period, or an extra shift off with pay at the employee's existing straight time rate to be taken consistent with department/section scheduling.

In any year other than a leap year, February 28 shall be considered the birthday holiday for any employee whose birthday is February 29.

In the event an employee's birthday coincides with a contractual holiday, the employee shall, at his/her option, receive an extra shift's pay at the employee's existing straight time rate of pay during the pay period, or an extra shift off with pay at the existing straight time rate, to be taken consistent with department/section scheduling.

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.

5.3 EMPLOYEE SHIFTS

A full time 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.

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 LUNCH & REST BREAKS

Employees shall receive a paid lunch break of thirty (30) minutes after three (3) hours of work and before the end of six (6) hours of work. If any portion of a designated lunch break is missed, during the first twenty (20) minutes, the entire thirty (30) minute lunch break shall be compensated at one and one-half (1½) the regular rate of pay for a missed lunch plus time worked. If any portion of a lunch break is missed after twenty (20) minutes have elapsed, only the minutes remaining in the lunch break shall be compensated at one and one-half (1½) the regular rate of pay, in addition to hours worked.

Employees when operating on mainline shall be entitled to receive a designated ten (10) minute break or lunch after operating for ninety (90) minutes. If a break is not received in its entirety

before one hundred and fifty (150) minutes the employee shall be paid ten (10) minutes at one and one-half (1½) the regular rate of pay for a missed break plus time worked.

Alternatively, if adequate restroom facilities are available on or adjacent to the platform, at the end of the line, the parties shall meet and confer in order to reach agreement on an alternative break schedule involving, for those on an eight (8) hour shift, one designated fifteen (15) minute break approximately midway between the first half of the day's shift and another fifteen (15) minute break approximately midway between the second half of the day's shift, and for those on a 10 hour shift, a third designated fifteen (15) minute break.

Employees who are not operating shall receive a fifteen (15) minute break approximately two (2) hours after the start of their shift and thereafter, approximately two (2) hours after the last scheduled meal or rest break.

If any portion of a break is missed (i.e., not received in its entirety), the employee shall be paid (10 or 15 minutes, as applicable) at one and one-half (1½) the regular rate of pay for a missed break plus time worked.

Employees will be provided reasonable grace periods to travel to and from the break facility prior to beginning and after ending rest/lunch breaks.

The District shall provide and maintain rest/lunch break facilities at each break location and such facilities will be equipped with a refrigerator, sink, microwave oven, storage cabinet, table, chairs, computer, internet access, printer, bulletin board, drinking water, and adequate restroom facilities.

Prior to eBART revenue service, eBART may provide an interim rest/lunch break facility at the Antioch station. eBART will make its best effort to equip such facility to the fullest extent possible.

5.5 SHIFT EXCHANGING

Employees may exchange shifts following these understandings:

1. Exchanges will not result in any additional cost to eBART.
2. Exchange employees must have a minimum of ten (10) hours rest between all shifts worked.
3. One-day shift exchanges will not result in any employee working on his/her Regular Day Off (RDO). Employees exchanging shifts for one work week, will not be permitted to work on the RDOs of the exchanged shifts.
4. In any calendar month, an employee may exchange either:
 - a. A maximum of five (5) work shifts; or
 - b. One (1) work week (seven [7] days).
5. All shift exchanges are subject to eBART management approval. If denied, and upon written request, the reason for any denial will be placed in writing.

5.6 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 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.

For purposes of establishing alternative work schedules, the following shall apply:

- 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 on a 4/10 Workweek shall be as follows:
 - i. A workday shall consist of ten (10) consecutive hours of work. (Paid 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. Employees shall receive a paid lunch break of thirty (30) minutes between the beginning of the fourth (4th) and the end of the seventh (7th) hour of work.
 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 Plan.

B. Split Shifts: eBART may establish a split shift schedule under the following conditions:

1. A split shift is defined as a daily tour of duty divided into two (2) work periods of time with a mid-shift, non-work period between the work periods of more than one (1) hour.
2. The workday can potentially consist of a span of between ten (10) and up to sixteen (16) hours.
 - i. If the workday span exceeds ten (10) hours, then the hours of work beyond the tenth (10th) hour of the workday shall be paid at the overtime rate of one and one-half (1½) times the existing straight time rate of pay.
 - ii. During the mid-shift, non-work period of the day, each hour shall be paid at one-half (½) the regular rate of pay. Such payment shall be inclusive of the employee's paid lunch period which employees shall take at the outset of the mid-shift, non-work period.
3. Employees working a split shift shall have a minimum of eleven (11) hours off between scheduled work shifts except in exigent circumstances.
4. Split shifts shall not be used overnight.
5. The provisions of this subsection shall prevail whenever they conflict with any other sections of this Agreement for employees working under this Plan.

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 one-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.

5.7 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, eBART Management may change the bid schedule one (1) additional time to the regularly scheduled core BART bids by notifying the Union two (2) weeks in advance of implementing the change and new bid.

5.8 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), 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.

5.9 VACATION ALLOCATION

- A. The District shall post a yearly vacation allocation calendar on or before the first Monday of February for the forthcoming March 1st through the following February 28th. 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 28th. Every week during the calendar year from March 1st through the following February 28th shall be available for bid to at least two (2) 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. 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 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 week(s) shall be posted within two (2) working days for rebid by seniority. Once bid, employees may use floating holidays to complete the vacation week(s).
- E. Employees may use accrued single vacation days, subject to the staffing needs of eBART.

5.10 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.

5.11 EXTRA BOARD

eBART reserves the right to establish a Diesel Engineer extra board. The Diesel Engineer(s) 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 (e.g., Event Trains, Special Tests, etc.) 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 (1½) 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. Employees will have the option to sign up to receive a hard copy of their paystub by mail to the employee's designated address. 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 fifty dollars (\$50), 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 fifty dollars (\$50) 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.

A. Payroll Deductions

The District shall also permit employees to authorize deductions from their paychecks of contributions to be remitted to charitable or other not-for-profit organizations in the amount(s) designated by the employee in writing, pursuant to District policy.

B. Credit Unions

Employees may designate a portion of their paycheck to be deposited into one of the credit unions designated by the District, on the same terms as other represented District employees.

C. Direct Deposit Allocations

Employees may designate up to two (2) bank or credit union accounts to receive direct deposit payments from their paycheck.

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.

Overtime shall be paid in increments of fifteen (15) minutes.

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 LEADWORKER & INSTRUCTOR PREMIUM

Whenever an employee is assigned by the COO or designee to formally instruct another employee, he/she shall receive ten percent (10%) per hour additional to his/her applicable rate of pay for such time so assigned.

Whenever an employee is assigned or directed by the COO or designee to conduct orientation, class-room instruction, or to prepare instructional material as his/her primary assignment for any part of a day, he/she shall receive ten percent (10%) per hour additional to his/her applicable rate of pay for such time so assigned. These provisions shall be applicable to incidental instruction by a represented employee in the course of his/her primary assignment during any such hour.

An employee assigned by the COO or designee, in the absence of supervision, as a leadworker to lead other bargaining unit employees shall be paid a leadworker premium of ten percent (10%) per hour additional to his/her applicable rate of pay for such time so assigned.

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 four (4) hours per day (or one-half [½] day's pay, whichever is greater) at the applicable rate of pay. This Section shall be limited to a specific assignment where broken time is involved. In no event shall an employee be eligible for both stand-by and call-back compensation for the same hours.

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 four (4) hours per day (or one-half [½] of a day's pay, whichever is greater) during the employee's assigned work week and a full day's pay per day on off-duty days unless such employee is called and released from such stand-by assignment by 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.

7.0 SICK LEAVE PROVISIONS

7.1 SICK LEAVE

A. Accrual: As set forth in Section 10.22, employees shall accrue one (1) day of sick leave for each full month of employment. Sick leave credits may be accumulated to a total of two hundred fifty (250) working days.

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 District’s contract with CalPERS 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 govern the eligibility of unused sick leave earned 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:** The maximum sick leave which may be earned for each accrual period is ninety-six (96) hours for employees on a 5-8 work week and one hundred twenty (120) hours for employees on a 4-10 work week. 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.

Election Period	Accrual Period
9/5/17 – 9/18/17	9/25/17 – 9/23/18
9/3/18 – 9/17/18	9/24/18 – 9/22/19
9/2/19 – 9/16/19	9/23/19 – 9/20/20
9/7/20 – 9/21/20	9/21/20 – 9/19/21

- b. **Buy-Back/MPPP Deposit Amounts:** An election to “buy-back” or to deposit into the MPPP must also include an election as to the percentage amount of the “buy-back”, based on the percentage increments and maximums provided below. The maximum Buy-Back percentage that will be allowed is based on the employee’s attendance record during the accrual period.

Days	Eligible Percentage of Unused Earned Sick Leave
0	5% up to 50% (in 5% increments)
1-3	5% up to 40% (in 5% increments)

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

- c. **Impact Of Buy-Back/MPPP Election:** Employees may select only one option (Buy-Back or MPPP) for each accrual period.

Once the buy-back or MPPP Incentive election is made for any accrual period it may not be changed. Employees will receive the buy-back checks or MPPP credit no later than December 1 following the end of the accrual period.

Unused sick leave hours for which an election to buy-back or transfer into the MPPP is not made shall be carried over to the next year, subject to maximum accumulation limits, and will no longer be available for any future Annual Buy-Back/MPPP incentive election.

C. Sick Leave Payment:

Employees shall be eligible for paid sick leave in accordance with state and federal law.

FMLA/CFRA: An Employee on FMLA/CFRA qualifying leave may be required to use any accumulated sick leave, floating holidays or compensatory leave before taking unpaid leave. Employees shall not be required to use more than half of their accrued vacation time, however, or be required to draw down vacation time in such a way that it would interfere with vacation time already bid and scheduled. Employees who would otherwise qualify for short term disability while on FMLA/CFRA leave will not qualify for that disability until all of the employee’s sick leave is exhausted.

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 are met. Employees shall accrue sick leave credits during the probationary period; however, they shall not be eligible for sick leave pay until ninety (90) calendar days after their date of hire.

- a. An employee who is absent from work for reasons that qualify for use of sick leave under this Agreement, or state or federal law who has no accumulated sick leave to cover such absence must use accumulated vacation or personal holiday, before unpaid leave may be granted. The employee must advise the employee’s appropriate absence report recipient,

as designated by eBART, of the category of paid leave that shall be charged for such absence. If the employee does not do so, the absence shall be charged by default against the employee's accumulated vacation, holiday, and compensatory time off, in that order.

Employees shall be eligible for paid sick leave as follows, without limitation on their rights under state and federal law:

1. Illness, 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. Verifiable medical and/or dental appointments which cannot be scheduled outside the normal working hours, provided that a minimum of forty-eight (48) hours advance notice is given and provided subsequent confirmation that the appointment was kept is given if requested by Management;
 3. Doctor's visits associated with pregnancy, subject to the provisions in "2" above;
 4. Hospitalization or serious illness/accident and resulting subsequent related scheduled doctor's visits, subject to the provisions in "2" above;
 5. Required attendance upon a seriously ill spouse, eligible domestic partner, parent or child. The District may require a written statement from the attending physician that the employee's attendance was required; and
 6. Required transportation to doctor for employee's spouse, eligible domestic partner, or child, if spouse, eligible domestic partner, or child has serious accident or serious illness (subsequent verified and scheduled doctor's visits resulting from initial visit are also included).
- b. Sick leave with pay shall apply to each separate sick leave incident. 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.

If an employee's absence which qualifies for paid sick leave also qualifies as statutory family and medical leave (i.e., FMLA/CFRA), the employee may elect to preserve eligibility for participation in the annual buy-back or transfer into the MPPP of eligible accruals, if elected during the election period, by requesting to substitute vacation, floating holidays (for increments of a full day only), or compensatory leave pay, if applicable, or, if he/she has no

accrued vacation, floating holidays, or compensatory leave, requesting to take the leave unpaid. The request must be made before receipt of sick pay.

- D. **Sick Leave Verification:** 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 to the satisfaction of eBART, eligibility for sick leave as defined above, for any sick leave incident.

Employees shall furnish a doctor's statement for each sick leave incident involving absences of more than three (3) working days.

In instances where eBART requires a doctor's statement, either to verify sick leave or determine an employee's fitness to return to work, that statement must include the following:

1. date and time of treatment;
2. duration of illness; and
3. date cleared to return to work.

Otherwise, an employee returning to work from a sick leave incident must submit a required doctor's statement and other documentation within seven (7) calendar days of his/her return to work. Failure to submit required documentation within the time provided shall result in denial of sick leave pay, and may result in disciplinary action.

eBART may require any employee to submit to a medical examination by a doctor designated by eBART, at eBART's expense, as a condition of return to work from a sick leave incident or to verify the continuing need for sick leave.

Pattern use, misuse, or abuse of sick leave will be governed by the District's disciplinary procedures and handled on a case-by-case basis.

A Sick Leave Incident is defined as a continuous absence for an injury or illness. After the commencement of revenue service, the District and ATU may negotiate the terms of an attendance policy specific to eBART.

- E. **Sick Leave Reporting:** 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 as to the expected date of return to work and where the employee can be reached during his/her normal work hours. The employee will promptly notify his/her supervisor or supervisor's designee of any change which affects his/her ability to return to work.

- F. An employee who transfers from a core BART position to eBART shall retain ongoing sick leave incentives provided by historical language in the core BART/ATU Labor Agreement.

7.2 MEDICAL EXAMINATIONS

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

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

Medical examinations or follow-up medical appointments shall be scheduled, where possible, during non-work hours. Should this not be possible, the examination shall be scheduled at either the beginning or end of the shift so as to minimize time lost from work.

JOB RELATED ILLNESS/INJURY

Should the employee select his/her doctor, and the District disagrees with any findings, the District may require a second medical opinion through a District-designated doctor.

Should the findings of the District-designated doctor be inconsistent with the employee-selected doctor, a doctor shall be mutually selected by the following procedure:

The District and the Union shall mutually agree upon an odd-numbered panel of doctors for such purpose. If they are unable to agree upon the names to be included on such a panel, they shall request the Industrial Accident Commission to submit the names of independent medical examiners most frequently used in the San Francisco Bay Area in the various specialties of medicine and these shall constitute the panel. The District and the Union shall select a third doctor from this panel within five (5) working days of the date the dispute is established. The conclusions of the third doctor shall be final and binding upon the parties, and the fee shall be shared 50-50 by both parties.

No employee shall suffer any loss of income or other benefits as a result of any directive to report to a physician, and the time required to report and return from such examination shall be considered as time worked unless the employee is found physically unfit to return to work.

If the findings of the District-designated and employee-selected doctors are inconsistent, no employee shall suffer loss of income or benefits during the first thirty (30) calendar days after the second doctor's inconsistent conclusions are issued or until the conclusions of the third doctor are issued, whichever occurs first.

Should the third doctor uphold the findings of the District-designated doctor, the employee shall agree in writing to reimburse the District for any income or benefits received to which he/she was not entitled. Reimbursement to the District shall be completed within thirty (30) calendar days from the employee's return to work.

NON JOB-RELATED ILLNESS/INJURY

Should eBART require any medical examination of an employee with a non-job-related illness/injury, the District may designate a doctor for such purpose. This doctor may be the employee's doctor; however, if the employee's doctor is selected, the District reserves the right to require a second medical opinion through another District-designated doctor.

If the first medical examination is not performed by the employee's doctor, and if the employee disagrees with any medical findings of the District-designated doctor, said employee shall have the right to examination doctor of his/her choosing.

In either case, should the findings of the two doctors be inconsistent, a third doctor shall be mutually selected by the following procedure:

The District and the Union shall mutually agree upon an odd-numbered panel of doctors for such purpose. If they are unable to agree upon the names to be included on such a panel, they shall request the Industrial Accident Commission to submit the names of independent medical examiners most frequently used in the San Francisco Bay Area in the various specialties of medicine and these shall constitute the panel. The District and the Union shall select a third doctor from this panel within five (5) working days of the date the dispute is established. The conclusions of the third doctor shall be final and binding upon the parties, and the fee shall be shared 50-50 by both parties.

No employee shall suffer any loss of income or other benefits as a result of any directive to report to a physician, and the time required to report and return from such examination shall be considered as time worked unless the employee is found physically unfit to return to work.

If the findings of the District-designated and employee-selected doctors are inconsistent, no employee shall suffer loss of income or benefits during the first thirty (30) calendar days after the second doctor's inconsistent conclusions are issued or until the conclusions of the third doctor are issued, whichever occurs first.

Should the third doctor uphold the findings of the District-designated doctor, the employee shall agree in writing to reimburse the District for any income or benefits received to which he/she was not entitled. Reimbursement to the District shall be completed within thirty (30) calendar days from the employee's return to work.

Nothing in this Section is intended to exempt employees from notice requirements of California State Law.

7.3 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.

8.0 GRIEVANCE & DISCIPLINE PROCEDURES

8.1 GRIEVANCE PROCEDURE

Grievance Defined:

A grievance is any dispute between the District and the Union including grievances involving the interpretation or application of this Agreement.

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 ATU. 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.

The District shall not utilize or involve Police Services in the investigation of any personnel matter or workers compensation claims unless after an initial investigation a violation of criminal law is indicated.

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 with ten (10) calendar days advance written notice to the Unions. The notice shall enumerate practices effective on the date of change. eBART shall post said notices in break rooms.

After the first 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 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 eBART 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 30th 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 30th 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 ATU Local 1555 receive at least the same level of compensation and benefits as those received by core BART employees represented by ATU Local 1555. ATU-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 ATU and the District and eBART shall administer these wages and benefits in a manner consistent with their application in the core BART/ATU 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/ATU 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, conditional lump sum payments, 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, tools and clothing allowance), 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/ATU Labor Agreement.

WAGES

10.1 BASE WAGE SCHEDULE (Joint 4/11/17 Revised; Agreed 4/12/17)

- A. Employees will suffer no loss of pay as a result of the pay progression.
- B. The pay progression of 85%, 87.5%, 90%, and 100% (top rate) apply to all base rates of pay. Movement within the pay steps is based on one year intervals, on the date of hire/anniversary date. All percentages are based on the top rate. The pay progression will apply only one time to each such employee.
- C. New employees that are hired will be placed at the first year pay progression rate (85%) of their classification. New employees will progress through each successive step based on their date of hire/anniversary date with the District.

D. Fiscal Years 2018, 2019

Effective July 01, 2017 and July 01, 2018 the base salary/wage schedule for bargaining unit members shall be increased by two and one-half percent (2.50%).

E. Fiscal Years 2020, 2021

Effective July 01, 2019 and July 01, 2020 the base salary/wage schedule for bargaining unit members shall be increased by two and seventy-five hundredths percent (2.75%).

F. 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/ATU Agreement.

G. BASE WAGE SCHEDULE

Effective 7/1/2017 - 6/30/2021

Grade Description	Hourly Rates					
	1/1/2017	6/30/2017	7/1/2017	7/1/2018	7/1/2019	7/1/2020
Diesel Train Engineer, eBART, Step 1	35.5771	85% of Top Rate	85% of Top Rate	85% of Top Rate	85% of Top Rate	85% of Top Rate
Diesel Train Engineer, eBART, Step 2	36.6235	87.5% of Top Rate	87.5% of Top Rate	87.5% of Top Rate	87.5% of Top Rate	87.5% of Top Rate
Diesel Train Engineer, eBART, Step 3	37.6699	90% of Top Rate	90% of Top Rate	90% of Top Rate	90% of Top Rate	90% of Top Rate
Diesel Train Engineer, eBART, Step 4	41.8555	+4 COLA	+ 2.50%	+ 2.50%	+2.75%	+2.75%

10.2 COST OF LIVING / WAGE ADJUSTMENT (District 3/20/17 Proposal)

All employees covered by this Agreement shall be covered by the provisions for a cost of living increase as set forth in this section.

The wage rates as contained in this Agreement shall not be reduced by application of this Cost of Living Provision. In addition to the wage rates contained in this Agreement, all employees shall be paid cost of living adjustments to be determined on the basis of the “Urban Wage Earners and Clerical Workers” Consumer Price Index (United States Average, revised base 1967 = 100), published by the Bureau of Labor Statistics, United States Department of Labor, in the manner described in this (hereafter referred to as the “Index”).

- A. Effective on June 30, 2017 and on June 30, 2021, a Cost of Living Adjustment shall be granted to the wages/salaries of all employee’s subject to this Agreement equal to one-cent (1¢) per hour for each full point four (.4) of a point change in the Consumer Price Index as measured on the basis of movement of the Index published for the month of May 2017 for the June 30, 2017, adjustment and May 2021 for the June 30, 2021, adjustment, over the Index published for the month of February 2017 and February 2021 respectively.
- B. All Cost of Living Adjustments specified in Paragraph A of this for salaried employees shall be at the monthly equivalent of the hourly adjustment (the cost of living cent adjustment times two thousand eighty hours [2,080] hours divided by twelve [12] months = monthly equivalent of the hourly adjustment.).
- C. The resulting Cost of Living Allowance shall be used in the computation of pensions, straight time and overtime pay exactly as though the wage rates had been changed by the allowance. However, the allowance shall not be added to the base wage rates.

D. The District, during the negotiations for a succeeding term after June 30, 2021, shall not assert that the Cost of Living Allowance increase effective on June 30, 2021 is included as part of any increased wage offer made by the District for the succeeding contract.

PENSION BENEFITS

10.3 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.

10.4 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 ATU and SEIU 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 10.3 above and that such changes, if any, shall apply equally to all employees represented by ATU and SEIU at core BART and eBART.

10.5 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 basic group life insurance;
- B. Second year of retirement, forty percent (40%) of the basic group life insurance;
- C. Third year of retirement, thirty percent (30%) of the basic group life insurance;
- D. Fourth and subsequent years of retirement, twenty percent (20%) of the basic group life insurance.

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

10.6 PERS RATE REDUCTION

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

10.7 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.

10.8 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. Additional Contributions to Employees Money Purchase Pension Plan or Retiree Health Benefits Trust during PERS Superfunding

1. Except as provided below and for the period(s) during which the District’s PERS account is superfunded, the District shall make an additional contribution to each employee’s Money Purchase Pension Plan account in the amount of three and one-half percent (3.5%) of gross straight-time wages. This contribution is fifty percent (50%) or one-half (½) of the seven percent (7%) PERS Employer Paid Member Contribution (EPMC). The other three and one-half percent (3.5%) will be available to the District for discretionary obligations and purposes. The seven percent (7%) EPMC will be discontinued during the period(s) of superfunding.

2. If the District’s employer PERS account becomes superfunded in any fiscal year commencing before the fiscal year beginning July 1, 2034, and if in the next fiscal year the RHBT has an unfunded actuarial liability as determined by the District’s actuaries, then the District shall, at the commencement of the fiscal year after superfunding status begins, discontinue its payment of the EPMC for members of the bargaining units from the

operating budget and shall instead direct an equal amount into the District's Retiree Health Benefit Trust.

If the District's employer PERS account loses superfunding status, the payments provided in B(1) or B(2) of this, whichever applies, shall cease and the District shall resume payment of the employee PERS contribution from the operating budget.

MEDICAL, VISION, AND DENTAL BENEFITS

10.9 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 10.12, 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.

DATE	Maximum Employee Monthly Contribution
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 10.9 (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:

FY Year Beginning	Baseline ARC
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 10.9(A).

Each eligible employee who opts out of medical coverage as provided for herein shall receive a monthly payment of three hundred and fifty dollars (\$350.00) “in lieu of medical” to each eligible employee who opts out of Section 10.9(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 10.9(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 and 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.

10.10 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:

Coverage	Intervals
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.

10.11 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.

10.12 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

10.13 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.

10.14 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 and sixty [4160] hours times base straight time hourly rate) with accidental death and dismemberment provisions.

10.15 VOLUNTARY / ADDITIONAL LIFE INSURANCE

All bargaining unit employees are eligible to purchase voluntary life insurance with accidental death and dismemberment provisions, equivalent to one (1), two (2) or three (3) times the employee’s base rate annual salary. The full cost of the premiums are to be paid by the employee through payroll deduction.

Each year during open enrollment there shall be an annual application period for all eligible employees to apply for voluntary and/or additional life insurance.

All new hire employees shall be eligible to apply, as described above within the first thirty-one (31) days of employment.

Eligibility of existing and new hire employees to participate in the voluntary and/or additional life insurance program(s) during the initial or annual application period(s) shall be subject to timely application and medical certification of insurability.

10.16 DISABILITY COVERAGE

A. **Short-Term Disability Coverage** – The District will maintain Short-Term Disability coverage at the following rates:

Weeks of Disability	Maximum Salary	Maximum Benefit
1st – 26th	\$1260 x 66 ⅔%	\$840.00

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

B. **Long-Term Disability** – The District will maintain Long-Term Disability coverage with a maximum monthly benefit of sixty-six and two-thirds percent (66 ⅔%) of the base monthly salary to a maximum insured salary of two thousand dollars (\$2,000) per month. Maximum

benefit - one thousand four hundred fifty-six dollars (\$1,456.00) per month for weeks twenty-seven (27) through fifty-two (52) and one thousand three hundred thirty-four dollars (\$1,334.00) for weeks fifty-three (53) and any subsequent week.

C. Employee Purchase of Additional Coverage

1. **Short-Term Disability coverage** - Employees may purchase additional Short-Term Disability coverage up to the following rates:

Week of Disability	Maximum Salary	Maximum Benefit
1st – 4th	\$800.00 x 66 ⅔%	\$533.00
5th – 26th	\$931.00 x 66 ⅔%	\$621.00

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

2. **Long-Term Disability Coverage** - Employees may purchase additional Long-Term Disability coverage to ensure payment of up to sixty-six and two-thirds percent (66⅔%) of the employee’s base monthly salary to a maximum insured salary of three thousand dollars (\$3,000) per month. The maximum monthly benefit is two thousand dollars (\$2,000). Premiums for this additional coverage shall be fully paid by the employee.

Eligibility of employees to purchase additional Short-Term and/or Long-Term Disability coverage shall be subject to medical certification of insurability.

10.17 PASS PRIVILEGES

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 ten-dollar (\$10) 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 dollars (\$20) 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. 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.
- F. 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.
- G. 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.
- H. 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.

10.18 EDUCATIONAL 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 of 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.

10.19 EMPLOYEE ASSISTANCE PROGRAM (District 3/20/17 Proposal)

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.

10.20 UNIFORM ALLOWANCE

If eBART management determines that employees shall be responsible for laundering/maintaining uniforms, such employees shall receive a uniform allowance in accordance with the core BART/ATU Labor Agreement 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/ATU Labor Agreement.

LEAVES AND LEAVE OF ABSENCE

10.21 VACATION ACCRUALS

The District shall grant three (3) weeks of vacation following one (1) year of service, four (4) weeks of vacation after eight (8) years of service, five (5) weeks of vacation after fifteen (15) years of service, and six (6) weeks of vacation after twenty (20) years of service.

10.22 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 hundred fifty (250) working days.

10.23 INDUSTRIAL INJURY/ILLNESS LEAVE

A. Industrial Injury/Illness: An employee experiencing a verified industrial injury or illness will be entitled to receive industrial accident leave compensation for no more than two (2) industrial accidents/illnesses during any twelve (12) month period. The employee will be compensated up to a maximum of three (3) days' pay for each industrial accident leave. When an employee receives an industrial accident leave he/she shall be entitled to receive only one (1) additional industrial accident leave of up to a maximum of three (3) days during the next twelve (12) months. The twelve (12) month period shall commence on the date the employee returns to work from the absence which gave rise to the first industrial accident leave.

For the purposes of this Section, industrial accident leave shall commence only if the employee is not released to return to work by the beginning of his/her regularly scheduled shift next following the date on which the industrial accident/ illness occurred.

Industrial accident leave compensation shall be advanced to an employee, within the limits set forth above, promptly upon proper notification to the District by the employee, on the condition that it must be verified at a later date. In order to be entitled to industrial accident leave, the employee should report the illness/injury to his/her immediate supervisor by the end of the shift in

which the illness/injury occurred, but in no event no later than twenty-four (24) hours from the end of the shift in which the illness/injury occurred.

If it is later determined that the industrial accident leave was improper or invalid, the District may recover the amount equal to the industrial accident leave advance by deducting the amount advanced from the employee's existing or future sick leave, vacation or floating holiday accrual.

The employee shall be given five (5) working days to authorize such payment by payroll deduction or by designating the specific leave from which the recovery may be made. The accrual must be presently sufficient to cover the amount of the industrial accident leave advance. If the employee does not notify the District within five (5) working days, the District may deduct from any accrual an amount sufficient to cover the amount of the advance.

Nothing in this section shall affect the District's right to recover any amounts owed to it through appropriate legal action.

B. Coordination of Benefits: Industrial accident leave and Sick Leave benefits, to the extent they are available, may be coordinated, at the employee's option, with Workers' Compensation or other compensation to maintain the employee's basic straight time earnings. Should an employee choose not to exercise the option of coordinating benefits, notification to the District is required in advance.

10.24 MILITARY LEAVE

Employees of the District 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 the District with a copy of the orders as early as possible prior to such leave.

During such military leave, employees with one (1) year 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.

10.25 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. 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. During a pregnancy disability leave, employees may, to the extent possible, use the Disability Insurance provided by the District.

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.

10.26 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 five (5) days 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. If the employee is on a five (5) day per week work week schedule or four (4) days if the employee is on a four (4) day per week work week schedule. 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/step-parent of spouse/eligible domestic partner, step-parent, step-child and legal guardian.

"Domestic Partner" is defined in Section 1.16.

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

The parties understand that alternate forms of leave, e.g., vacation, floating holidays, leaves of absence without pay, are available to employees who may wish to extend the bereavement period.

10.27 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.

10.28 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 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.

10.29 LEAVE OF ABSENCE

Employees may request time off without pay. 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. Requests for a leave of two (2) days or less shall be made through the employee's immediate or appropriate Supervisor, and do not require approval of the COO.

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.

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:

FOR THE UNION:

By: _____
Grace Crunican
General Manager

By: _____
Ray Rivera
Trustee

NEGOTIATED:

By: _____
Carol Isen
Chief Labor Relations Officer

By: _____
Jesse Hunt
Chief Negotiator

District Negotiating Team:

Union Negotiating Team:

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

Kate Hallward
Jesse Hunt
Leopoldo Ruiz