



BAY AREA  
AIR QUALITY  
MANAGEMENT  
DISTRICT

## BOARD OF DIRECTORS REGULAR MEETING

JUNE 18, 2014

A meeting of the Bay Area Air Quality Management District Board of Directors will be held in the 7<sup>th</sup> Floor Board Room at the Air District Headquarters, 939 Ellis Street, San Francisco, California.

### Questions About an Agenda Item

The name, telephone number and e-mail of the appropriate staff Person to contact for additional information or to resolve concerns is listed for each agenda item.

### Meeting Procedures

The public meeting of the Air District Board of Directors begins at 9:45 a.m. The Board of Directors generally will consider items in the order listed on the agenda. However, any item may be considered in any order.

After action on any agenda item not requiring a public hearing, the Board may reconsider or amend the item at any time during the meeting.

This meeting will be webcast. To see the webcast, please visit <http://www.baaqmd.gov/The-Air-District/Board-of-Directors/Agendas-and-Minutes.aspx> at the time of the meeting.

## Public Comment Procedures

Persons wishing to make public comment must fill out a Public Comment Card indicating their name and the number of the agenda item on which they wish to speak, or that they intend to address the Board on matters not on the Agenda for the meeting.

**Public Comment on Non-Agenda Matters, Pursuant to Government Code Section 54954.3** For the first round of public comment on non-agenda matters at the beginning of the agenda, ten persons selected by a drawing by the Clerk of the Boards from among the Public Comment Cards indicating they wish to speak on matters not on the agenda for the meeting will have three minutes each to address the Board on matters not on the agenda. For this first round of public comments on non-agenda matters, all Public Comment Cards must be submitted in person to the Clerk of the Boards at the location of the meeting and prior to commencement of the meeting. The remainder of the speakers wishing to address the Board on non-agenda matters will be heard at the end of the agenda, and each will be allowed three minutes to address the Board at that time.

Members of the Board may engage only in very brief dialogue regarding non-agenda matters, and may refer issues raised to District staff for handling. In addition, the Chairperson may refer issues raised to appropriate Board Committees to be placed on a future agenda for discussion.

**Public Comment on Agenda Items** After the initial public comment on non-agenda matters, the public may comment on each item on the agenda as the item is taken up. Public Comment Cards for items on the agenda must be submitted in person to the Clerk of the Boards at the location of the meeting and prior to the Board taking up the particular item. Where an item was moved from the Consent Calendar to an Action item, no speaker who has already spoken on that item will be entitled to speak to that item again.

Up to ten (10) speakers may speak for three minutes on each item on the Agenda. If there are more than ten persons interested in speaking on an item on the agenda, the Chairperson or other Board Member presiding at the meeting may limit the public comment for all speakers to fewer than three minutes per speaker, or make other rules to ensure that all speakers have an equal opportunity to be heard. Speakers are permitted to yield their time to one other speaker; however no one speaker shall have more than six minutes. The Chairperson or other Board Member presiding at the meeting may, with the consent of persons representing both sides of an issue, allocate a block of time (not to exceed six minutes) to each side to present their issue.

# BOARD OF DIRECTORS REGULAR MEETING AGENDA

WEDNESDAY  
JUNE 18, 2014  
9:45 A.M.

BOARD ROOM  
7TH FLOOR

## CALL TO ORDER

Chairperson, Nate Miley

1. **Opening Comments**  
**Roll Call**  
**Pledge of Allegiance**

*The Chair shall call the meeting to order and make opening comments. The Clerk of the Boards shall take roll of the Board members. The Chair shall lead the Pledge of Allegiance.*

## PUBLIC COMMENT ON NON-AGENDA MATTERS

2. **Public Comment on Non-Agenda Items, Pursuant to Government Code Section 54954.3**  
*For the first round of public comment on non-agenda matters at the beginning of the agenda, ten persons selected by a drawing by the Clerk of the Boards from among the Public Comment Cards indicating they wish to speak on matters not on the agenda for the meeting will have three minutes each to address the Board on matters not on the agenda. For this first round of public comments on non-agenda matters, all Public Comment Cards must be submitted in person to the Clerk of the Board at the location of the meeting and prior to commencement of the meeting.*

## PROCLAMATION/AWARDS

3. *The Board of Directors will present a Proclamation of Appreciation to Brian Bateman, Health and Science Officer, upon his retirement for his years of service to the Air District.*

*The Board of Directors will recognize employees who have completed milestones of twenty-five (25), thirty (30), thirty-five (35), forty (40), and forty-five (45) years of service with the Air District during this second half of the calendar year.*

## CONSENT CALENDAR (ITEMS 4 –12)

Staff/Phone (415) 749-

4. Minutes of the Board of Directors Regular Meeting of June 4, 2014      Clerk of the Boards/5073  
*The Board of Directors will consider approving the draft minutes of the Board of Directors Regular Meeting of June 4, 2014.*
5. Board Communications Received from June 4, 2014 through June 17, 2014      J. Broadbent/5052  
[jbroadbent@baaqmd.gov](mailto:jbroadbent@baaqmd.gov)

*A copy of communications directed to the Board of Directors received by the Air District from June 4, 2014 through June 17, 2014, if any, will be at each Board Member's place.*

6. Air District Personnel on Out-of-State Business Travel **J. Broadbent/5052**  
[jbroadbent@baaqmd.gov](mailto:jbroadbent@baaqmd.gov)

*In accordance with Section 5.4 (b) of the Air District's Administrative Code, Fiscal Policies and Procedures Section, the Board is hereby notified that the attached memorandum lists Air District personnel who have traveled on out-of-state business in the preceding month.*

7. Notice of Violations Issued and Settlements in Excess of \$10,000 in May 2014 **B. Bunger/4920**  
[jbroadbent@baaqmd.gov](mailto:jbroadbent@baaqmd.gov)

*In accordance with Resolution No. 2012-08, the Board of Directors will receive a list of all Notices of Violation issued, and all settlements for amounts in excess of \$10,000 during the month of May 2014.*

8. Approve Proposed Memorandum of Understanding between the Bay Area Air Quality Management District (Air District) and Bay Area Air Quality Management District Employees' Association (EA) **J. Broadbent/5052**  
[jbroadbent@baaqmd.gov](mailto:jbroadbent@baaqmd.gov)

*Approve proposed Memorandum of Understanding between the Bay Area Air Quality Management District and Bay Area Air Quality Management District Employees' Association.*

9. Approval for Execution of a Contract Totaling in Excess of \$70,000 for Site Development Work Required by U.S. Environmental Protection Agency (EPA) Mandated Near-Road Monitoring Adjacent to Interstate 80 at Aquatic Park, Berkeley CA **J. Broadbent/5052**  
[jbroadbent@baaqmd.gov](mailto:jbroadbent@baaqmd.gov)

*The Board of Directors will consider authorizing the Executive Officer/APCO to execute a contract not to exceed \$200,000, with the successful bidder in a bid process to be conducted in accordance with all federal and state requirements applicable to public works contracting, for site development work adjacent to Interstate 80 at Aquatic Park in Berkeley as require by EPA's Near-Road Monitoring regulation.*

10. Consider Authorizing Contract Amendments for the My Air Online Program **J. Broadbent/5052**  
[jbroadbent@baaqmd.gov](mailto:jbroadbent@baaqmd.gov)

*The Board of Directors will consider authorizing the Executive Officer/APCO to execute contract amendments for C&G Technology in the amount not to exceed \$84,240; Farallon Geographics in the amount not to exceed \$45,900; IT Dependz in the amount not to exceed \$280,722; Sushimedia LLC in the amount not to exceed \$21,600; Trinity Technology Group in the amount not to exceed \$396,900; and Vertigo Software, Inc. in the amount not to exceed \$648,000.*

11. Consider Authorizing a Contract Amendment for Spare the Air Resource Teams  
**J. Broadbent/5052**  
[jbroadbent@baaqmd.gov](mailto:jbroadbent@baaqmd.gov)

*The Board of Directors will consider authorizing the Executive Officer/APCO to enter into a contract amendment through October 2014 with the Tides Center-Community Focus for \$76,000 for Spare the Air Resource Team program management.*

12. Consider a Support Position on Senate Bill 1249 - Hill  
**J. Broadbent/5052**  
[jbroadbent@baaqmd.gov](mailto:jbroadbent@baaqmd.gov)

*The Board of Directors will consider a support position on Senate Bill 1249 - Hill.*

### **COMMITTEE REPORTS**

13. Report of the **Public Outreach Committee** Meeting of June 5, 2014  
CHAIR: M. Ross  
**J. Broadbent/5052**  
[jbroadbent@baaqmd.gov](mailto:jbroadbent@baaqmd.gov)

*The Committee received the following reports:*

- A) **2014 Spare the Air Campaign**
  - B) **Update on Great Race for Clean Air**
  - C) **Update on Commuter Benefits Program Employer Outreach**
14. Report of the **Ad Hoc Building Committee** Meeting of June 18, 2014  
CHAIR: N. Miley  
**J. Broadbent/5052**  
[jbroadbent@baaqmd.gov](mailto:jbroadbent@baaqmd.gov)

*The Committee will receive the following reports and may recommend that the Board of Directors approve the following items as indicated below:*

- A) **Regional Agency Headquarters Status Report – June 2014**

*None; receive and file.*

- B) **Approval of Expenditure in Excess of \$70,000**

- 1. *Authorize the Executive Officer/APCO to contract with a Project/Construction Manager to assist staff with oversight of the development and construction of the improvements for the Air District's space in 375 Beale Street, with a budget not to exceed \$300,000. Further recommend that the Board of Directors increase the Fiscal Year Ending (FYE) 2015, Program 104 budget by a corresponding \$300,000, to be drawn from the Air District's undesignated reserves.*

## **PRESENTATION**

15. Overview of the HBO Documentary “Toxic Hot Seat”

J. Broadbent/5052  
[jbroadbent@baaqmd.gov](mailto:jbroadbent@baaqmd.gov)

*The Board of Directors will receive an overview of the documentary “Toxic Hot Seat.”*

## **CLOSED SESSION**

16. **EXISTING LITIGATION (Government Code Section 54956.9(a))**

*Pursuant to Government Code Section 54956.9(a), a need exists to meet in closed session with legal counsel to consider the following case(s):*

**Communities for a Better Environment, et al. v. Bay Area AQMD, Kinder Morgan Material Services, LLC, et al., Real Parties in Interest**, San Francisco County Superior Court, Case No. CPF-14-513557

**Communities for a Better Environment v. Bay Area AQMD, Chevron Products Company, et al., Real Parties in Interest**, San Francisco County Superior Court, Case No. CPF-14-513704

17. **CONFERENCE WITH LEGAL COUNSEL--ANTICIPATED LITIGATION**

Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Section 54956.9: one potential case.

## **OPEN SESSION**

### **PUBLIC COMMENT ON NON-AGENDA MATTERS**

#### **Public Comment on Non-Agenda Items, Pursuant to Government Code Section 54954.3**

*Speakers who did not have the opportunity to address the Board in the first round of comments on non-agenda matters will be allowed three minutes each to address the Board on non-agenda matters.*

### **BOARD MEMBERS' COMMENTS**

*Any member of the Board, or its staff, on his or her own initiative or in response to questions posed by the public, may: ask a question for clarification, make a brief announcement or report on his or her own activities, provide a reference to staff regarding factual information, request staff to report back at a subsequent meeting concerning any matter or take action to direct staff to place a matter of business on a future agenda. (Gov't Code § 54954.2)*

## **OTHER BUSINESS**

18. Report of the Executive Officer/APCO
19. Chairperson's Report
20. Time and Place of Next Meeting:

*Wednesday, July 2, 2014, 939 Ellis Street, San Francisco, California 94109 at 9:45 a.m.*

21. Adjournment

*The Board meeting shall be adjourned by the Board Chair.*

**CONTACT THE CLERK OF THE BOARDS  
939 ELLIS STREET SF, CA 94109**

**(415) 749-5073  
FAX: (415) 928-8560  
BAAQMD homepage:  
[www.baaqmd.gov](http://www.baaqmd.gov)**

- To submit written comments on an agenda item in advance of the meeting.
- To request, in advance of the meeting, to be placed on the list to testify on an agenda item.
- To request special accommodations for those persons with disabilities. Notification to the Executive Office should be given at least 3 working days prior to the date of the meeting so that arrangements can be made accordingly.

Any writing relating to an open session item on this Agenda that is distributed to all, or a majority of all, members of the body to which this Agenda relates shall be made available at the Air District's headquarters at 939 Ellis Street, San Francisco, CA 94109, at the time such writing is made available to all, or a majority of all, members of that body.

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**  
**939 ELLIS STREET, SAN FRANCISCO, CALIFORNIA 94109**  
**FOR QUESTIONS PLEASE CALL (415) 749-5016 or (415) 749-4941**

**EXECUTIVE OFFICE:**  
**MONTHLY CALENDAR OF AIR DISTRICT MEETINGS**

**JUNE 2014**

<u>TYPE OF MEETING</u>	<u>DAY</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
<b>Board of Directors Executive Committee</b> <i>(Meets on the 3<sup>rd</sup> Monday of each Month)</i> - CANCELLED	Monday	16	9:30 a.m.	4 <sup>th</sup> Floor Conf. Room
<b>Board of Directors Stationary Source Committee</b> <i>(Meets Quarterly – At the Call of the Chair)</i> - CANCELLED	Monday	16	10:30 a.m.	Board Room
<b>Board of Directors Regular Meeting</b> <i>(Meets on the 1<sup>st</sup> &amp; 3<sup>rd</sup> Wednesday of each Month)</i>	Wednesday	18	9:45 a.m.	Board Room
<b>Board of Directors Budget &amp; Finance Committee</b> <i>(Meets on the 4<sup>th</sup> Wednesday of each Month)</i> - CANCELLED	Wednesday	25	9:30 a.m.	4 <sup>th</sup> Floor Conf. Room
<b>Board of Directors Mobile Source Committee</b> <i>(Meets on the 4<sup>th</sup> Thursday of each Month)</i> - CANCELLED	Thursday	26	9:30 a.m.	Board Room

**JULY 2014**

<u>TYPE OF MEETING</u>	<u>DAY</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
<b>Board of Directors Regular Meeting</b> <i>(Meets on the 1<sup>st</sup> &amp; 3<sup>rd</sup> Wednesday of each Month)</i>	Wednesday	2	9:45 a.m.	Board Room
<b>Board of Directors Personnel Committee</b> <i>(At the Call of the Chair)</i>	Monday	7	9:30 a.m.	4 <sup>th</sup> Floor Conf. Room
<b>Advisory Council Regular Meeting</b> <i>(Meets on the 2<sup>nd</sup> Wednesday of each Month)</i>	Wednesday	9	9:00 a.m.	Board Room
<b>Board of Directors Regular Meeting</b> <i>(Meets on the 1<sup>st</sup> &amp; 3<sup>rd</sup> Wednesday of each Month)</i>	Wednesday	16	9:45 a.m.	Board Room
<b>Board of Directors Climate Protection Committee</b> – <i>(Meets 3<sup>rd</sup> Thursday every other Month)</i>	Thursday	17	9:30 a.m.	Board Room
<b>Board of Directors Executive Committee</b> <i>(Meets on the 3<sup>rd</sup> Monday of each Month)</i>	Monday	21	9:30 a.m.	4 <sup>th</sup> Floor Conf. Room
<b>Board of Directors Stationary Source Committee</b> <i>(Meets Quarterly – At the Call of the Chair)</i>	Monday	21	10:30 a.m.	Board Room



## JULY 2014

<u>TYPE OF MEETING</u>	<u>DAY</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
<b>Board of Directors Budget &amp; Finance Committee</b> <i>(Meets on the 4<sup>th</sup> Wednesday of each Month)</i>	Wednesday	23	9:30 a.m.	4 <sup>th</sup> Floor Conf. Room

<b>Board of Directors Mobile Source Committee</b> <i>(Meets on the 4<sup>th</sup> Thursday of each Month)</i>	Thursday	24	9:30 a.m.	Board Room
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## AUGUST 2014

<u>TYPE OF MEETING</u>	<u>DAY</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
<b>Board of Directors Regular Meeting</b> <i>(Meets on the 1<sup>st</sup> &amp; 3<sup>rd</sup> Wednesday of each Month)</i>	Wednesday	6	9:45 a.m.	Board Room
<b>Board of Directors Executive Committee</b> <i>(Meets on the 3<sup>rd</sup> Monday of each Month)</i>	Monday	18	9:30 a.m.	4 <sup>th</sup> Floor Conf. Room
<b>Board of Directors Regular Meeting</b> <i>(Meets on the 1<sup>st</sup> &amp; 3<sup>rd</sup> Wednesday of each Month)</i>	Wednesday	20	9:45 a.m.	Board Room
<b>Board of Directors Budget &amp; Finance Committee</b> <i>(Meets on the 4<sup>th</sup> Wednesday of each Month)</i>	Wednesday	27	9:30 a.m.	4 <sup>th</sup> Floor Conf. Room
<b>Board of Directors Mobile Source Committee</b> <i>(Meets on the 4<sup>th</sup> Thursday of each Month)</i>	Thursday	28	9:30 a.m.	Board Room

HL – 6/11/14 (12:22 p.m.)

P/Library/Forms/Calendar/Calendar/Moncal

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

Memorandum

To: Chairperson Nate Miley and Members  
of the Board of Directors

From: Jack P. Broadbent  
Executive Officer/Air Pollution Control Officer

Date: June 6, 2014

Re: Minutes of the Board of Directors Regular Meeting of June 4, 2014

RECOMMENDED ACTION

Approve the attached draft minutes of the Board of Directors Regular Meeting of June 4, 2014.

DISCUSSION

Attached for your review and approval are the draft minutes of the Board of Directors Regular Meeting of June 4, 2014.

Respectfully submitted,

Jack P. Broadbent  
Executive Officer/APCO

Prepared by: Sean Gallagher

Reviewed by: Rex Sanders

Attachment A: Draft Minutes of the Board of Directors Regular Meeting of June 4, 2014

Bay Area Air Quality Management District  
939 Ellis Street  
San Francisco, CA 94109  
(415) 749-5073

Board of Directors Regular Meeting  
Wednesday, June 4, 2014

## **DRAFT MINUTES**

- CALL TO ORDER:** Vice-Chairperson Carole Groom called the meeting to order at 9:47 a.m.

**Opening Comments:** None.

### **Roll Call:**

**Present:** Chairperson Nate Miley; Vice-Chairperson Carole Groom; Secretary Eric Mar; and Directors John Avalos, Teresa Barrett, Tom Bates, Cindy Chavez, John Gioia, Scott Haggerty, David Hudson, Ash Kalra, Roger Kim (on behalf of Edwin Lee), Carol L. Klatt, Liz Kniss, Mary Piepho, Mark Ross, Jim Spring, Brad Wagenknecht and Shirlee Zane.

**Absent:** Directors Susan Adams, Jan Pepper and Tim Sbranti (resigned).

**Pledge of Allegiance:** Vice-Chairperson Groom led the Pledge of Allegiance.

### **PUBLIC COMMENT ON NON-AGENDA MATTERS**

- Public Comment on Non-Agenda Items, Pursuant to Government Code Section 54954.3:**

No requests received.

### **CONSENT CALENDAR (ITEMS 3 – 8)**

- Minutes of the Board of Directors (Board) Special Budget Hearing and Regular Board of Directors Meetings of May 21, 2014;**
- Board Communications Received from May 21, 2014 through June 3, 2014;**
- Consideration of Contract Amendment for Janitorial Services;**
- Authorize Expenditure for the Enhancement of the Production System and Integration with JD Edwards Financial System;**
- Web Maintenance and Projects Contract Approval; and**
- Consider Authorizing the Executive Officer/Air Pollution Control Officer (APCO) to Execute a Contract Amendment with E4 Strategic Solutions, Inc.**

Board Comments: None.

Public Comments: No requests received.

Board Action:

Director Wagenknecht made a motion to approve Consent Calendar Items 3 through 8, inclusive; Director Piepho seconded; and the motion carried by the following vote of the Board:

AYES: Avalos, Barrett, Bates, Chavez, Gioia, Groom, Hudson, Kim, Klatt, Kniss, Piepho, Ross, Spering, Wagenknecht and Zane.

NOES: None.

ABSTAIN: None.

ABSENT: Adams, Haggerty, Kalra, Mar, Miley, Pepper and Sbranti.

**COMMITTEE REPORTS AND RECOMMENDATIONS**

**9. Report of the Mobile Source Committee (MSC) Meeting of May 22, 2014**

Committee Chairperson Haggerty (read by Director Piepho)

The MSC met on Thursday, May 22, 2014, and approved the minutes of April 24, 2014.

The MSC reviewed Projects and Contracts with Proposed Awards Over \$100,000 and recommends the Board:

1. Approve Carl Moyer Program (CMP) projects with proposed grant awards over \$100,000;
2. Allocate \$6.3 million in Mobile Source Incentive Funds to eligible Lower-Emission School Bus Program (LESBP) projects; and
3. Authorize the Executive Officer/APCO to enter into agreements with applicants for LESBP projects and the recommended CMP projects.

The MSC then reviewed the Transportation Fund for Clean Air (TFCA) Regional Fund Policies and Evaluation Criteria for Fiscal Year Ending (FYE) 2015, including information about the public input process and proposed revisions. The MSC recommends the Board approve the proposed FYE 2015 TFCA Regional Fund Policies and Evaluation Criteria presented in Attachment A of the MSC staff report, with an amendment on page 3, Policy 26.d. Shuttle/Feeder Bus Service Projects, to replace “0.6 miles” with “0.5 miles.”

The MSC then reviewed a recommendation for vendor selection for the next Bicycle Rack Voucher Program cycle, including a review of the program results from the first cycle and the process and results of the request for proposals for the upcoming cycle. The MSC recommends the Board authorize the Executive Officer/APCO to enter into and execute all necessary contracts with five vendors including Dero Bike Rack Co., Peak Racks Inc., Saris Cycling Group, Sportsworld Northwest Inc., and Urban Racks not to exceed a total of \$860,000.

The next meeting of the Committee is at the call of the Chair.

Board Comments: None.

Public Comments: No requests received.

Board Action:

Director Piepho made a motion, seconded by Director Hudson, to approve the recommendations of the MSC; and the motion carried by the following vote of the Board:

AYES: Avalos, Barrett, Bates, Chavez, Gioia, Groom, Hudson, Kim, Klatt, Kniss, Piepho, Ross, Spering, Wagenknecht and Zane.

NOES: None.

ABSTAIN: None.

ABSENT: Adams, Haggerty, Kalra, Mar, Miley, Pepper and Sbranti.

**10. Report of the Executive Committee (EC) Meeting of May 28, 2014**  
Committee Chairperson Miley (read by Vice-Chairperson Groom)

The EC met on Wednesday, May 28, 2014 without establishing a quorum.

The EC received the Quarterly Report of the Hearing Board for January through March 2014, including summaries of the cases and fees collected, from Terry Trumbull, Esq., Chairperson of the Hearing Board.

The EC then received a staff report *Update of Remote Participation Protocol for Committee Meetings* and discussed the concerns raised by Director Shirlee Zane in a letter to the Board, dated March 18, 2014. The EC referred the discussion to the full Board at its next meeting.

The EC then received a staff presentation *My Air Online Program Update*, including the program goal, structure and plan; website project process and content organization; website design samples; permitting and compliance systems status; next steps; public data access status; geospatial mapping request for proposals results; and next steps. Staff will deliver a presentation on this topic at today's meeting. A consensus of EC members present recommended the Board:

1. Select Lightmaker USA, Inc. (Lightmaker) as the successful vendor for the Geospatial Mapping and Data Visualization Tool for the My Air Online program website; and
2. Authorize the Executive Officer/APCO to execute all contracts not to exceed \$193,320 with Lightmaker for this project.

The EC then received a staff presentation *Information Technology (IT) Infrastructure for 375 Beale Street*, including IT procurement cycle; 2010 equipment; IT infrastructure lease; and recommendation. The consensus of EC members present recommended the Board authorize the Executive

Officer/APCO to prepay one annual payment of \$368,000 for the Air District's IT infrastructure capital lease.

Last, the EC met in closed session to confer with agency representatives in labor negotiations with the employee organization Bay Area Air Quality Employee's Association, Inc., with no reportable action. The EC Chairperson will brief the Board on the negotiations during today's closed session.

The next meeting of the EC is Monday, July 21, 2014, at 9:30 a.m.

Board Action:

Director Groom made a motion, seconded by Director Kniss, to approve the consensus recommendation of the EC.

Board Comments:

The Board and staff discussed the travel time required for Board members from remote counties and the viability of a less expensive alternative to the videoconferencing setup in the fourth floor conference room that could be implemented in the Board room until the Air District moves to 375 Beale Street.

Director Zane asked staff to research a less expensive alternative that could be implemented in the board room during the interim.

NOTED PRESENT: Chairperson Miley was noted present at 10:00 a.m. and Director Mar was noted present at 10:04 a.m.

Jack Broadbent, Executive Officer/APCO, introduced Jaime Williams, IT Officer, who gave the staff presentation *My Air Online Program Update*, including program goal, structure and plan; website project process and content organization; website design samples; permitting and compliance systems status; next steps; public data access status; geospatial mapping request for proposals results; and next steps.

NOTED PRESENT: Director Kalra was noted present at 10:16 a.m.

The Board and staff discussed the heartening progress and the significant scope of this undertaking.

Public Comments: No requests received.

Board Action (continued):

The motion carried by the following vote of the Board:

AYES: Avalos, Barrett, Bates, Chavez, Gioia, Groom, Hudson, Kim, Klatt, Kniss, Mar, Miley, Piepho, Ross, Spering, Wagenknecht and Zane.

NOES: None.

ABSTAIN: None.

ABSENT: Adams, Haggerty, Kalra, Pepper and Sbranti.

## **PUBLIC HEARINGS**

### **11. Public Hearing to Consider Adoption of Proposed Amendments to Air District Regulation 3: Fees**

Mr. Broadbent introduced Jeff McKay, Deputy APCO, who gave the staff presentation *Proposed Amendments to Regulation 3: Fees*, including an overview of revenue sources in the FYE 2013 Budget, an explanation of the background and current cost recovery policy, trends in cost cutting, proposed changes to fee schedules, greenhouse gas fees, impact on small businesses, a fee comparison with South Coast Air Quality Management District, public comments, and the rule development schedule.

#### **Public Comments:**

Janet Whittick, California Council for Environmental and Economic Balance (CCEEB), addressed the Board in support of the staff recommendation.

#### **Board Action:**

Director Piepho made a motion, seconded by Director Wagenknecht, to adopt a resolution adopting the proposed amendments to Air District Regulation 3: Fees, as attached to the staff report, effective July 1, 2014; approve the filing of a California Environmental Quality Act (CEQA) Notice of Exemption; and a two year phase-in of the greenhouse gas (GHG) fee increase.

#### **Board Comments:**

The Board and staff discussed the reason for considering a two year phase-in of the GHG fee increase and whether or not it is appropriate.

#### **Board Action (continued):**

Director Zane made a substitute motion, seconded by Director Bates, to adopt a resolution adopting the proposed amendments to Air District Regulation 3: Fees, as attached to the staff report, effective July 1, 2014, and approve the filing of a CEQA Notice of Exemption.

#### **Board Comments (continued):**

The Board and staff discussed the GHG fee increase, including the nexus of the recommendation to consider a two year phase-in; whether or not a phase-in is appropriate; how it impacts the Air District's Climate Action Plan; how many facilities will see a significant fee increase; CCEEB's recommendation record; the importance of maintaining strong relationships with Air District stakeholders and the value of compromise; impact on the Air District cost recovery plan; the past successes of the phase-in approach and importance of supporting staff recommendations in general; impact on staffing plans and future operations; Air District record of environmental stewardship for

the public benefit; CCEEB's mission and membership; and the varying impacts of the immediate versus phased-in approaches on Air District programs and operations.

NOTED PRESENT: Director Haggerty was noted present at 10:37 a.m.

Ms. Whittick, at the request of the Board, provided additional information regarding the mission and membership of CCEEB.

Board Action (continued):

Director Zane withdrew the substitute motion, which withdrawal was seconded by Director Bates.

The original motion carried by the following vote of the Board:

AYES: Barrett, Bates, Chavez, Gioia, Groom, Haggerty, Hudson, Kalra, Kim, Klatt, Kniss, Mar, Miley, Piepho, Ross, Spering, Wagenknecht and Zane.

NOES: None.

ABSTAIN: None.

ABSENT: Adams, Avalos, Pepper and Sbranti.

**12. Public Hearing to Consider Adoption of the Air District's Proposed Budget for FYE 2015**

Mr. Broadbent introduced Mr. McKay who, at the request of Chairperson Miley, gave an abbreviated version of the staff presentation *Proposed FYE 2015 Budget*, focused on Other Post-Employment Benefits (OPEB) and the presentation summary.

Public Comments: No requests received.

Board Action:

Director Kniss made a motion, seconded by Director Piepho, to adopt a resolution to approve the Budget for FYE 2015 and various budget related items.

Board Comments:

The Board and staff discussed, regarding slide 15, *Illustration Funded OPEB*, how instructive the material was to the Budget and Finance Committee who recommended approval of the proposed Budget for FYE 2015; the likely value of the material for all public agencies; the current benchmark for full funding of OPEB; and what benchmark the current funding proposal is based upon.

Board Action (continued):

The motion carried by the following vote of the Board:



AYES: Barrett, Bates, Chavez, Gioia, Groom, Haggerty, Hudson, Kalra, Kim, Klatt, Kniss, Mar, Miley, Piepho, Ross, Spering, Wagenknecht and Zane.

NOES: None.

ABSTAIN: None.

ABSENT: Adams, Avalos, Pepper and Sbranti.

**PRESENTATION**

**13. Discussion of Procedures for the Vote Reporting in Compliance with Senate Bill (SB) 751**

Mr. Broadbent introduced Brian Bunger, District Counsel, who gave the staff presentation *Discussion of Compliance with SB 751*, including introduction and background; SB 571 requirements and considerations; and possible voting methods.

Board Comments:

The Board and staff discussed the purpose of the legislation; the expected facilities at 375 Beale Street; the use of a vote tally board; and whether a voice vote is appropriate.

Board Action:

Director Bates made a motion, seconded by Director Hudson, to initiate use of the voice vote method.

Board Comments (continued):

The Board and staff discussed the burden placed on the clerk and possible impact on the accuracy of the record by utilizing the voice vote; use of voice vote being at the discretion of the Chairperson; and the applicable provisions of the current Administrative Code.

Public Comments: No requests received.

Board Action (continued):

Director Bates made an amended motion, seconded by Director Hudson, to initiate use of the voice vote method at the discretion of the Chairperson unless the vote is not unanimous, in which case a roll call vote will be taken; and the motion carried by the following vote of the Board:

AYES: Barrett, Bates, Chavez, Gioia, Haggerty, Hudson, Kalra, Kim, Klatt, Piepho, Ross, Spering, Wagenknecht and Zane.

NOES: Groom and Kniss.

ABSTAIN: Miley.

ABSENT: Adams, Avalos, Mar, Pepper and Sbranti.

**CLOSED SESSION**

The Board adjourned to Closed Session at 11:18 a.m.

**14. CONFERENCE WITH LABOR NEGOTIATORS (Government Code Section 54957.6(a))**

Pursuant to Government Code Section 54957.6(a), the Board met in closed session to confer with agency negotiators to discuss the status of labor negotiations as follows:

Agency Negotiators: Jack P. Broadbent, Executive Officer/APCO  
Jack M. Colbourn, Director of Administrative Services

Employee Organization: Bay Area Air Quality Employee’s Association, Inc.

**OPEN SESSION**

The Board resumed Open Session at 11:45 a.m. with no reportable action.

**PUBLIC COMMENT ON NON-AGENDA MATTERS:** No requests received.

**BOARD MEMBERS’ COMMENTS:**

Directors Piepho and Gioia thanked staff for attending a public meeting in Contra Costa County regarding the proposed Shell refinery project.

Director Hudson suggested the Board consider increasing the 85% fee recovery target for the future.

**OTHER BUSINESS**

**15. Report of the Executive Officer/APCO:**

Mr. Broadbent gave the staff presentation *Summary of Ozone Seasons*; announced the sale of 939 Ellis Street and thanked staff; gave an update on the status of the headquarters move; delivered the 2013 Annual Report; highlighted the upcoming committee meetings related to refinery activities and requested time for staff to obtain critical information on the projects of interest; reported that the Stationary Source Committee meeting in July will include an update on the proposed refinery tracking rule and the Public Outreach Committee will receive an update on outreach relative to the Commuter Benefits Program; provided an update on staff review of budget allocations to monitoring equipment purchases; and announced the scheduling of a Climate Protection Committee meeting that will include a discussion of possible grant options available under the Climate Action Program.

**16. Chairperson’s Report:**

Chairperson Miley congratulated Directors Gioia, Groom, Spering and Wagenknecht on the June 3, 2014 election results and announced the screening of excerpts from a new documentary “Toxic Hot Seat” at the Board meeting on June 18, 2014.

**17. Time and Place of Next Meeting:**

Wednesday, June 18, 2014, Bay Area Air Quality Management District Headquarters, 939 Ellis Street, San Francisco, California 94109 at 9:45 a.m.

**18. Adjournment:** The Board meeting adjourned at 11:56 a.m.

Sean Gallagher  
Clerk of the Boards

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

Memorandum

To: Chairperson Nate Miley and Members  
of the Board of Directors

From: Jack P. Broadbent  
Executive Officer/APCO

Date: June 9, 2014

Re: Board Communications Received from June 4, 2014 through June 17, 2014

RECOMMENDED ACTION

None; receive and file.

DISCUSSION

Copies of communications directed to the Board of Directors received by the Air District from June 4, 2014 through June 17, 2014, if any, will be at each Board Member's place at the June 18, 2014 Board meeting.

Respectfully submitted,

Jack P. Broadbent  
Executive Officer/APCO

Prepared by: Maricela Martinez  
Reviewed by: Rex Sanders

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

Memorandum

To: Chairperson Nate Miley and Members  
of the Board of Directors

From: Jack P. Broadbent  
Executive Officer/APCO

Date: June 9, 2014

Re: Air District Personnel on Out-of-State Business Travel

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

In accordance with Section 5.4 (b) of the Air District's Administrative Code, Fiscal Policies and Procedures Section, the Board is hereby notified of Air District personnel who have traveled on out-of-state business.

The report covers the out-of-state business travel for the months of May and June 2014. The monthly out-of-state business travel report is presented in the month following travel completion.

DISCUSSION

The following out-of-state business travel activities occurred in the month of May and June 2014:

Jack Broadbent, Executive Office / APCO, attended National Association Clean Air Agencies (NACAA) Spring Conference in Atlanta, GA May 15 – 22, 2014.

Jean Roggenkamp, DAPCO, attended the Clean Enviro Summit in Marina Bay Sands, Singapore May 31 – June 5, 2014.

Respectfully submitted,

Jack P. Broadbent  
Executive Officer/APCO

Prepared by: Stephanie Osaze  
Reviewed by: Jeff McKay

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

Memorandum

To: Chairperson Nate Miley and Members  
of the Board of Directors

From: Jack P. Broadbent  
Executive Officer/APCO

Date: June 10, 2014

Re: Notice of Violations Issued and Settlements in Excess of \$10,000 in May 2014

RECOMMENDED ACTION

None; receive and file.

DISCUSSION

In accordance with Resolution No. 2012-08, attached to this Memorandum is a listing of all Notices of Violation issued, and all settlements for amounts in excess of \$10,000 during the calendar month prior to this report.

BUDGET CONSIDERATION/FINANCIAL IMPACT

The amounts of civil penalties collected are included in the Air District's general fund budget.

Respectfully submitted,

Jack P. Broadbent  
Executive Officer/APCO

Prepared by: Brian C. Bungler

Attachments

**NOTICES OF VIOLATION ISSUED**

The following Notice(s) of Violation were issued in May 2014:

<b>Alameda</b>						
<b>Site Name</b>	<b>Site #</b>	<b>City</b>	<b>NOV #</b>	<b>Issuance Date</b>	<b>Regulation</b>	<b>Comments</b>
United States Pipe & Foundry Company, LLC	A0083	Union City	A53208A	5/22/14	2-6-307	Episode 06N56, permit condition 2274.4

<b>Contra Costa</b>						
<b>Site Name</b>	<b>Site #</b>	<b>City</b>	<b>NOV #</b>	<b>Issuance Date</b>	<b>Regulation</b>	<b>Comments</b>
Air Liquide Large Industries US LP	B7419	Rodeo	A53249A	5/7/14	2-6-307	(Excess ID-06K77) - CO >10 ppm & >9.1 lbs/hr
Air Liquide Large Industries US LP	B7419	Rodeo	A53250A	5/7/14	2-6-307	(Excess ID-06M15) - CO >10 ppm & >9.1 lbs/hr
Calitho	A9722	Concord	A53163A	5/7/14	2-1-307	over usage limit permit condition #25619 S#11
Chevron Inc	A0072	Richmond	A53253A	5/15/14	8-33-309.5	Failed Source Test (ST-14131). TOC > 3000 ppm
Contra Costa Newspapers	A5916	Concord	A53164A	5/8/14	8-20-320.3	Open ink containers
Phillips 66 Company - San Francisco Refinery	A0016	Rodeo	A52973A	5/22/14	8-5-322.5	18" of secondary seal gaps > 0.06 inches
Phillips 66 Company - San Francisco Refinery	A0016	Rodeo	A52974A	5/22/14	8-5-322.5	38" of secondary seal gaps > 0.06 inches and open sample hatch cover
Phillips 66 Company - San Francisco Refinery	A0016	Rodeo	A52974B	5/22/14	8-5-320.4.2	38" of secondary seal gaps > 0.06 inches and open sample hatch cover



Phillips 66 Company - San Francisco Refinery	A0016	Rodeo	A53251A	5/8/14	2-6-307	No quarterly records (1Q-3Q 2012); Leaking hatch during loading event
Sentinel Transportation	R0790	Richmond	A53562A	5/28/14	8-33-304	8-33-304.7: CT#203704, failure to meet year round decay rate

<b>Napa</b>						
Site Name	Site #	City	NOV #	Issuance Date	Regulation	Comments
SFD	W5318	Napa	A52752A	5/1/14	5-301	Burning on no burn days 4/30/14 - 5/1/14

<b>Solano</b>						
Site Name	Site #	City	NOV #	Issuance Date	Regulation	Comments
Valero Refining Company - California	B2626	Benicia	A53802A	5/15/14	9-1-307	(Excess ID-06M58) - SO2 > 250 ppm/hour
Valero Refining Company - California	B2626	Benicia	A53803A	5/15/14	2-6-307	(Excess ID-06N46) - NOx > 10 ppm/3-hr. avg

<b>Sonoma</b>						
Site Name	Site #	City	NOV #	Issuance Date	Regulation	Comments
Cordelia Club LLC	W5660	Sonoma	A53406A	5/1/14	5-301.3	Burning after 15:00 hours, CFD Incident #14-0000163

**SETTLEMENTS FOR \$10,000 OR MORE REACHED**

There were 5 settlements for \$10,000 or more completed in May 2014.

- 1) On May 7, 2014, the District reached a settlement with Mills Peninsula Health Services for \$18,000, regarding the allegations contained in the following 2 Notices of Violation:

<b>NOV#</b>	<b>Issuance Date</b>	<b>Occurrence Date</b>	<b>Regulation</b>	<b>Comments from Enforcement</b>
A52292A	05/29/13	01/01/12	9-7-307	9-7-307 Failed to meet NOx standard by compliance deadline
A52293A	05/29/13	01/01/12	9-7-307	Failed to meet NOx standard by compliance deadline

- 2) On May 7, 2014, the District reached a settlement with Plains Products Terminals, LLC for \$61,500, regarding the allegations contained in the following 6 Notices of Violation:

<b>NOV #</b>	<b>Issuance Date</b>	<b>Occurrence Date</b>	<b>Regulation</b>	<b>Comments from Enforcement</b>
A52957A	5/16/13	12/10/12	8-5-320	tank 3102 & 901, ladder well gasket gaps, tank 3107, column well gasket gaps
A52959A	7/18/13	7/17/13	8-5-320.3	8-5-320.3.2 visible gap around roof support column
A52960A	8/8/13	6/20/13	8-33-309	8-33-309.5 source 1 pressure vacuum valve hydrocarbon emissions >3000ppm
A53052A	4/16/13	12/20/12	2-6-307	no deviation report 12/10/12-12/23/12
A53053A	4/16/13	12/10/12	8-5-320.3	bad ladder seal - no compliant degass
A53054A	4/16/13	12/10/12	8-5-320.3	bad ladder seals on S79,82,83

- 3) On May 28, 2014, the District reached a settlement with Lehigh Southwest Cement Co. for \$39,750, regarding the allegations contained in the following 7 Notices of Violation:

<b>NOV #</b>	<b>Issuance Date</b>	<b>Occurrence Date</b>	<b>Regulation</b>	<b>Comments from Enforcement</b>
A52606A	3/29/13	5/15/11	2-6-307	missing daily surface wet condition report on eight permitted sources
A52607A	5/30/13	1/31/13	2-6-307	Late submission of the annual certification report (Apr. 20, 2012 - Dec. 31, 2012)
A52608A	6/13/13	5/30/13	2-6-307	secondary plume visible emissions greater than 20% opacity
A52609A	6/13/13	6/11/13	2-6-307	visible emissions greater than 20% opacity
A52611A	9/9/13	8/20/13	2-6-307	VE greater than Ringelmann 1
A52612A	9/9/13	4/23/13	2-6-307	Exceed PC#24557 low-use engine usage limit of 80 hrs/yr
A52613A	10/31/13	10/2/13	2-6-307	VE greater than ringelmann 1 for 10 minutes

- 4) On May 28, 2014, the District reached a settlement with Shell Oil Products US for \$77,000, regarding the allegations contained in the following 9 Notices of Violation:

<b>NOV #</b>	<b>Issuance Date</b>	<b>Occurrence Date</b>	<b>Regulation</b>	<b>Comments from Enforcement</b>
A51321A	4/19/12	8/12/11	2-6-307	Permit condition #22820 >20hrs/yr
A51581A	3/24/11	3/7/11	12-11-502.3.1	No required flare sample results
A51582A	4/19/11	4/2/11	2-6-307	Fugitive check after 20% cargo load P.C.4288(part9)
A51582B	4/19/11	4/2/11	8-44-305	8-44-305.3 Fugitive check after 20% cargo load P.C.4288(part9)
A51585A	8/11/11	7/23/11	2-6-307	Leaking PPV during marine load
A51585B	8/11/11	7/23/11	8-44-304.2	Leaking PPV during marine load
A51586A	9/1/11	7/8/11	9-1-307	> 250ppm SO2/clk hr (05A63)
A51587A	9/8/11	7/13/11	9-2-301	>60ppb over 3min GLM excess (06A67)

A51588A	10/5/11	9/17/11	2-6-307	>458lbs SO2 daily limit 12271 part24b
A51590A	11/17/11	8/14/11	2-6-307	>10ppm NOx/3hr & late reporting
A51590B	11/17/11	8/14/11	1-522.7	>10ppm NOx/3hr & late reporting
A51591A	12/14/11	10/3/11	9-1-307	>250ppm SO2 clock hr avg E06B74

5) On May 30, 2014, the District reached a settlement with Owens Brockway Glass Container, Inc. for \$99,000, regarding the allegations contained in the following 7 Notices of Violation:

<b>NOV #</b>	<b>Issuance Date</b>	<b>Occurrence Date</b>	<b>Regulation</b>	<b>Comments from Enforcement</b>
A51243A	5/16/12	1/27/12	2-6-307	failed test (ST#OS-4124) PC#23142
A51244A	5/16/12	12/26/11	1-522.7	late reporting
A51245A	5/30/12	4/10/12	6-1-302	excess #06E68 had opacity >or=30%
A51246A	5/30/12	12/27/11	1-522.7	indicated excess not reported
A51247A	2/6/13	8/15/12	6-1-302	breakdown denial (RCA 06G43 & 06G42)
A52527A	11/6/13	9/3/13	6-1-302	RCA#06L83 had opacity > 30% > 6 min/hr
A52528A	11/20/13	9/5/13	6-1-302	RCA #06L81/06L82 had opacity >30% >6min/hr Dev #3686

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

## Memorandum

To: Chairperson Nate Miley and Members  
of the Board of Directors

From: Jack Broadbent  
Executive Officer/APCO

Date: June 9, 2014

Re: Approve Proposed Memorandum of Understanding between the Bay Area Air  
Quality Management District and Bay Area Air Quality Management District  
Employees' Association

---

**RECOMMENDATION**

Approve Proposed Memorandum of Understanding (MOU) between the Bay Area Air Quality Management District (Air District) and the Bay Area Air Quality Management District Employees' Association (EA) which provides an MOU term of three years, Consumer Price Index (CPI) based salary increases, and benefit cost sharing. The three year MOU with specific provisions for economic improvements will contribute positively to a stable and constructive labor relations environment, and provides a defined basis for financial forecasting and labor management over the next three years.

**BACKGROUND**

The MOU between the Air District and the EA will expire on June 30, 2014. Beginning in February 2014, the Air District's negotiators entered successor MOU negotiations with the EA on matters within the scope of bargaining.

The Executive Committee of the Board of Directors provided negotiating authority relative to various contract provisions at the May 28, 2014 Executive Committee meeting.

The members of the EA have ratified the resulting agreement. The agreement is now subject to ratification by the Air District's Board of Directors.

**KEY PROVISIONS OF MOU**

All of the individual agreements which amend the current MOU are attached for review. The items with significant financial impact are discussed briefly below.

First, the proposed MOU includes a term beginning July 1, 2014 and ending on June 30, 2017.

Second, the proposed agreement includes annual cost of living adjustments (COLA) effective on July 1 of each contract year. The COLA will be equal to the annual Consumer Price Index for

Urban Wage Earners and Clerical Workers for San Francisco-Oakland-San Jose metropolitan area, at a level which is not less than 1% and not more than 3%. The adjustment for FY 2014/15 year, based on this CPI index, will be 2.1%.

Third, the agreement expands health care cost sharing. The provisions include an adjustment, effective July 1, 2014, in the fringe benefit allowance (FBA) equivalent to 67% of the difference between the current FBA and the lowest cost family health care plan offered by CalPERS in the nine county area, with additional adjustments using the same formula on January 1, 2016 and January 1, 2017. The maximum per employee value of this improvement is \$180 per month. Historically, the Air District has paid 100% of the lowest cost family plan premium plus the cost of a dental and vision plans. This agreement begins to cost share the annual increases in these premiums between the Air District and employees. Additionally, the parties are committed to undertaking a comprehensive study of benefit options during the term of this agreement in order to seek cost savings and options for future negotiations.

Finally, the new MOU provisions include implementation of the provisions of the Public Employee Pension Reform Act of 2012 (PEPRA).

#### BUDGET CONSIDERATION/FINANCIAL IMPACT

The Fiscal Year End 2015 budget, as approved, includes the costs which result from the provisions described above.

Labor cost increases, if any, for each succeeding fiscal year will be budgeted for that fiscal year in the ordinary course of the Air District's budget process.

Respectfully Submitted,

Jack P. Broadbent  
Executive Officer/APCO

Reviewed by: Jack M. Colbourn

Attachments:

- A) Proposed Memorandum of Understanding between the Bay Area Air Quality Management District and Bay Area Air Quality Management District Employees' Association
- B) Resolution to Approve a Successor Memorandum of Understanding Between the Air District and the Bay Area Air Quality Management District Employees' Association

# **MEMORANDUM OF UNDERSTANDING**

Between

Bay Area Air Quality Management District

And

Bay Area Air Quality Management District  
Employees' Association, Inc.

July 1, 2014 to June 30, 2017

(Adopted May 15, 2002)

(Amended November 17, 2004, March 17, 2010, June 15, 2011 and  
June 18, 2014)

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**ARTICLE I PARTIES**

**SECTION 1.01 DESIGNATION**

This Agreement is between the Bay Area Air Quality Management District (hereinafter referred to as “BAAQMD”, “District”, or “Employer”) and the Bay Area Air Quality Management District Employees’ Association, Inc. (hereinafter referred to as “BAAQMD EA” or the “Association”). This document is referred to herein as either “Agreement” or the “MOU.”

Throughout this MOU, when specific management positions are indicated, such references shall be understood to include the phrase “or his/her designee.”

Throughout this MOU, the term “days” shall refer to calendar days, unless otherwise stated.

**SECTION 1.02 NOTIFICATION**

Official notification for purposes of this Agreement shall be by U.S. Mail or personal service to:

for the District  
Executive Officer (EO)  
Bay Area Air Quality Management District  
939 Ellis Street  
San Francisco, CA 94109  
for the Association

(personal service)  
President (or Designee)

(U.S. Mail)  
President (or Designee)

BAAQMD Employees’ Association, Inc.  
939 Ellis Street  
San Francisco, CA 94109

BAAQMD Employees’ Association, Inc  
P.O. Box 420434  
San Francisco, CA 94109

**ARTICLE II RECOGNITION, COVERAGE AND EXCLUSIVE REPRESENTATION**

**SECTION 2.01 RECOGNITION**

The Bay Area Air Quality Management District (District) has recognized the Bay Area Air Quality Management District Employees’ Association, Inc. as the representative of the employees in the Technical/General representation unit and the Professional Employees’ representation unit for all matters of employer-employee relations. (Hereinafter the term Association will apply to either or both units as applicable and appropriate.)

**SECTION 2.02 COVERAGE OF EMPLOYEES**

1. The classifications within each unit are listed in the Appendix A. For the purpose of this Memorandum of Understanding, the classification system which is adopted by the Board of Directors and maintained by the Human Resources Section is the source for determination of unit representation.

2. The District will notify the Association’s Recording Secretary within ten (10) days when a new employee is hired into regular employment in a bargaining unit position.

SECTION 2.03 EXCLUSIVE REPRESENTATION BY THE ASSOCIATION

The District agrees that during the term this Memorandum of Understanding is in effect, the Association shall be the exclusive bargaining agent of those employees covered by this Memorandum.

SECTION 2.04 AGENCY SHOP / MAINTENANCE OF MEMBERSHIP

Each employee covered by this Agreement except supervisory employees shall, as a condition of continued employment, within thirty (30) days of first employment at the District, or for a supervisor who does not already pay association dues, effective July 1, 2010, either 1) become and remain a member in good standing of the Association, or 2) commence and continue to make payment(s) of an amount equivalent to the Association’s periodic dues to the Association as a service fee for Association representation, except such amount shall not exceed that amount as outlined by or required by law having to do with the subject of non-member fees paid to unions for representation.

SECTION 2.05 RELIGIOUS EXEMPTION

No District employee shall be required to join the Association or to make an agency fee payment if the District employee is an actual verified member of a bona fide religion, body, or sect which has historically held conscientious objections to joining or financially supporting employee organizations, or if the District employee has personal moral objections to joining or financially supporting employee organizations. Such employee must, instead, arrange with the Association to satisfy his/her obligation by donating the equivalent amount to a non-labor, non-religious charitable fund chosen by the employee, which is tax exempt under Section 501 (c)(3) of the Internal Revenue Code (IRC).

SECTION 2.06 DUES/FEE DEDUCTIONS

The parties agree that the District will provide payroll deductions to the Association on the following terms:

1. Authorization:

The District shall deduct dues and initiation fees (or agency fees or charitable contributions in lieu of Association dues and initiation fees) from the salaries of unit members every pay day and remit the total deductions to the Association member designated in writing as the person authorized to receive such funds, and at the address specified by the Association. Such remittance will contain an itemized statement and will be made to the Association no later than seven (7) days following the payday. No deductions shall be made except in accordance with a deduction authorization form individually and voluntarily executed by the employee for whom the deduction is made.

2. Amount of Dues:

The Association shall certify to the District in writing the current rate of membership dues and agency fees. The District shall put into effect any new, changed, or discontinued

deduction no later than the beginning of the second pay period after receipt of written notice from the Association.

**SECTION 2.07 INDEMNIFICATION**

The Association will defend, indemnify, and hold harmless the District from any loss, liability, or cause of action arising out of the operation of this Article. The indemnity obligation is more fully set forth as follows. Upon commencement of any such legal action, the District shall have the right to decide and determine whether any claim, liability, suit or judgment made or brought against the District because of such action shall or shall not be compromised, resisted, defended, tried or appealed. Any such decision on the part of the District shall not diminish the Association’s indemnification obligations under this agreement.

The District, immediately upon receipt of notice of such legal action, shall inform the Association of such action; provide the Association with all information, documents and assistance necessary for the District’s defense or settlement of such action; and fully cooperate with the Association in providing all necessary witnesses, experts, and assistance necessary for said defense.

**ARTICLE III RIGHTS AND OBLIGATIONS**

**SECTION 3.01 EQUAL EMPLOYMENT OPPORTUNITY POLICY**

It is the District’s policy to provide equal employment opportunities for all persons to be recruited, employed, placed, selected for training, trained, evaluated, promoted, demoted, laid off, terminated, compensated, assigned work and otherwise treated without regard to race, religious creed, color, national origin, ancestry, disability, medical condition, marital status, sex, age or sexual orientation. This Section is not subject to the Grievance Procedure of this Document.

**SECTION 3.02 EMPLOYEE RIGHTS**

1. The rights of employees of the District include, but are not limited to, the right to, subject to the provisions of this agreement and consistent with applicable laws and regulations:
  - A. Form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matter of employer-employee relations.
  - B. Refuse to join or participate in the activities of any employee organizations.
2. The scope of representation by the Association shall include all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment except, however, that the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order. This subsection parallels Section 3504 of the Meyers-Milias-Brown Act and will automatically be amended to reflect any amendment to or replacement of said statutory section on the effective date of any such change.

3. The District and the Association shall not interfere with, intimidate, restrain, coerce, retaliate, or discriminate against employees because of their exercise of these rights.
4. Any matter within the scope of the Meyers-Milias-Brown Act or within the scope of the Memorandum of Understanding that the District acts upon without meeting and conferring shall be null and void.
5. The District shall deduct dues and/or agency fees from the paychecks of all members of the Association and from non-members who are employed by the District in a classification represented by the Association.
6. The Association agrees to hold harmless and indemnify the District against any claims, causes of action or lawsuits arising out of the deductions or transmittal of such funds to the Association, except the intentional failure of the District to transmit moneys deducted from employees to the Association pursuant to this Article.

SECTION 3.03 PHYSICAL EXAMINATION

The District may require a physical examination or a personal statement of good health after an employment offer has been made.

SECTION 3.04 SEXUAL HARASSMENT AND OTHER UNACCEPTABLE CONDUCT

The provisions of Division III, Section 3.6 of the District's Administrative Code Personnel Policies and Procedures are incorporated herein, and made a part hereof by this reference. Proposed changes to this policy that are within the scope of bargaining will not be implemented without first obtaining the concurrence of the Association. This section is excluded from the grievance procedure.

SECTION 3.05 EMPLOYEES' TIME OFF TO VOTE

The provisions of Division III, Section 3.7 of the District's Administrative Code Personnel Policies and Procedures are incorporated herein, and made a part hereof by this reference. Proposed changes to this policy that are within the scope of bargaining will not be implemented without first obtaining the concurrence of the Association.

SECTION 3.06 DRUG-FREE WORKPLACE

The provisions of Division III, Section 3.8 of the District's Administrative Code Personnel Policies and Procedures are incorporated herein, and made a part hereof by this reference. Proposed changes to this policy that are within the scope of bargaining will not be implemented without first obtaining the concurrence of the Association.

SECTION 3.07 SAFETY

The provisions of Division III, Section 3.9 of the District's Administrative Code Personnel Policies and Procedures are incorporated herein, and made a part hereof by this reference. Proposed changes to this policy that are within the scope of bargaining will not be implemented without first obtaining the concurrence of the Association.

SECTION 3.08 WORKPLACE VIOLENCE

The provisions of Division III, Section 3.10 of the District’s Administrative Code Personnel Policies and Procedures are incorporated herein, and made a part hereof by this reference. Proposed changes to this policy that are within the scope of bargaining will not be implemented without first obtaining the concurrence of the Association.

SECTION 3.09 SMOKE-FREE WORK SITE

The provisions of Division III, Section 3.11 of the District’s Administrative Code Personnel Policies and Procedures are incorporated herein, and made a part hereof by this reference. Proposed changes to this policy that are within the scope of bargaining will not be implemented without first obtaining the concurrence of the Association.

SECTION 3.10 ASSOCIATION RIGHTS

Nothing contained in this Memorandum of Understanding shall be interpreted or construed in any way that prohibits or restricts the Association of its rights granted by law and accordingly the Association retains all rights guaranteed to employee organizations under the Meyers-Milias-Brown Act (Government Code Sections 3500 and following), the Public Records Act (Government Code Sections 6250 and following) and all other applicable provisions of law.

SECTION 3.11 MANAGEMENT RIGHTS

The rights of the District include, but are not limited to, the exclusive right to, subject to the provisions of this agreement and consistent with applicable laws and regulations:

- a. Determine the mission of its constituent departments, boards, and committees.
- b. Set standards of service.
- c. Determine the procedures and standards of selections for employment and promotion.
- d. Hire, promote, transfer, assign, retain in position, direct, or take other non-disciplinary action toward its employees and to relieve them from duty because of lack of work or for other legitimate reasons.
- e. Maintain the efficiency of governmental operations and exercise complete control and discretion over its organization and the technology of performing its work.
- f. Determine the methods, means, and personnel by which government operations are to be conducted.
- g. Determine the content of job classifications.
- h. Take all necessary actions to carry out its mission in emergencies.

The District will not use the provisions of this Article, for the purpose of discriminating against any employee or to avoid or evade the provisions of this agreement.

The provisions of this Article do not absolve the District or District Management from their obligation to meet and confer with the Association in advance of taking any action changing, modifying, or affecting employee wages, hours or working conditions.

This Section is not subject to the Grievance Procedure.



**SECTION 3.12 SURVEILLANCE CAMERAS**

1. Surveillance cameras shall not be installed to monitor non-public areas of District facilities occupied by employees except as follows: one in the elevator foyer of every floor (none on roof); one in the back staircase of the 2<sup>nd</sup> and 6<sup>th</sup> floors; one aimed at each of the access points to the garages; one in the hallway on the 7<sup>th</sup> floor, southeast quadrant; two in the hallway on the 6<sup>th</sup> floor, southwest quadrant; two in the basement lobby; and two in the main lobby.
2. The District shall not use surveillance cameras and related equipment (e.g., electronic access control system, proximity identification cards) to monitor the activities of bargaining unit employees.
3. Information obtained through the security use of surveillance cameras and related equipment (e.g., electronic access control system, proximity identification cards) shall not serve as the basis for disciplinary action except in the event those records constitute evidence of a criminal act. Provided, however, the Grievant, or Arbitrator permits the Grievant, District, Association, and Arbitrator to review and refer to records from security cameras and related equipment to resolve factual disputes that may arise in the course of the processing of a grievance that has been filed pursuant to a disciplinary action. The District, upon request of the Grievant, shall provide copies of the records within five working days. Further, the District shall not review records from security cameras and related equipment for the purpose of investigating and/or evaluating employee conduct at work. To ensure compliance with the terms of this agreement, all security records from surveillance cameras and related equipment shall only be available for review by the Director of Administration or his/her designee, except as provided herein.

**ARTICLE IV GRIEVANCE PROCEDURE**

**SECTION 4.01 DEFINITION OF A GRIEVANCE**

A grievance is a claimed violation, misinterpretation, inequitable application of, or non-compliance with, a specific provision of this Memorandum of Understanding, or any disputed disciplinary action against an employee or employees covered by this MOU.

**SECTION 4.02 ASSOCIATION AS THE GRIEVANT**

The Association may be the grievant.

Process: When the Association is the grievant the Association shall file the first step with the Human Resources Officer (HRO). The Association shall submit the grievance in writing. The written grievance shall state the factual particulars of the matter, any provision(s) of the Memorandum of Understanding that has allegedly been misinterpreted or misapplied, how the alleged misinterpretation or misapplication has affected the grievant to the grievant's detriment, and the redress sought. The HRO shall meet with the Association representative(s) and respond to the grievance within the proper time limits. The response shall be in writing and set forth the reason(s) therefore. Except as otherwise specified herein, all of the rights, responsibilities and procedures of the grievance procedure apply to grievances filed by the Association. If a

grievance is not resolved to the satisfaction of the Association, the Association may submit the grievance in writing to the EO as set forth in 4.05 Step 3 below:

SECTION 4.03 TIME LIMITS

1. The employee and/or the Association must initiate a grievance within thirty (30) working days from the event giving rise to the grievance or from the date the employee could reasonably have been expected to have had knowledge of such event.
2. At each step District representatives shall have fifteen (15) working days from the filing of the grievance to meet with the grievant and Association representative(s) and to respond to the grievance in writing. In the event that the District fails to respond to a grievance within specified timelines the grievant has the right to continue to process the grievance at the next higher step in the process.
3. If a grievance is not resolved to the satisfaction of the grievant at each step below, the grievant may within fifteen (15) working days, submit the grievance in writing to the next higher step. Failure of the grievant to act within the specified time limits, unless such time limits are extended, shall dismiss and nullify the grievance.
4. These time limits may only be extended by mutual written agreement by the parties.

SECTION 4.04 REPRESENTATION

The Association may represent the employee(s) at any stage of the process contained herein.

SECTION 4.05 PROCEDURE

Grievances filed, except when the Association is the grievant, shall be processed in the following manner:

Step 1: The grievant shall discuss the grievance with his or her immediate supervisor and/or section manager who shall meet with the employee and Association representative(s) and respond to the grievance within the proper time limits as set forth in Section 4.03.2 above. The response shall be in writing and set forth the reason(s) therefor.

Step 2: If a grievance is not resolved to the satisfaction of the grievant in Step 1 above, the grievant may submit the grievance in writing to the HRO. The HRO shall either process the grievance at Step 2 or shall route the grievance to the appropriate Division Director for step 2 processing. The written grievance shall state the factual particulars of the matter, any provision(s) of the Memorandum of Understanding that has allegedly been violated or misapplied, how the alleged violation or misapplication has affected the grievant to the grievant's detriment, and the redress sought. The grievant shall provide a copy of the grievance to the Association. The Division Director or HRO shall meet with the grievant and Association representative(s) and respond to the grievance within the proper time limits. The response shall be in writing and set forth the reason(s) therefor.

Step 3: If a grievance is not resolved to the satisfaction of the grievant in Step 2 above, the grievant may submit the grievance in writing to the EO or designee. The grievant shall provide a

copy of the grievance to the Association. The EO shall meet with the grievant and Association representative(s) and respond to the grievance within the proper time limits. The response shall be in writing and set forth the reason(s) therefor.

#### **STEP 3A - REQUEST FOR MEDIATION**

If the grievant is not satisfied with the written response of the EO, he/she may within the time limits specified in this Article request that the matter be submitted to Mediation. Mediation shall be by mutual written agreement of the grievant and the EO. If Mediation is not agreed upon, the grievant may proceed to Step 4. If Mediation is agreed upon, within ten (10) working days from receipt of the EO's response, the parties shall request that a Mediator be appointed by the State Mediation and Conciliation Services.

Step 4: If a grievance is not resolved to the satisfaction of the grievant in Step 3 above, the grievant may, within ten (10) working days, submit the grievance to binding arbitration. The rules and procedures of the American Arbitration Association will prevail.

#### **SECTION 4.06 DISCIPLINARY DISPUTES**

The decision to proceed to binding arbitration regarding disciplinary complaints shall be at the sole discretion of the grievant.

#### **SECTION 4.07 MOU DISPUTES**

An employee or Association claim of an alleged violation of a specific section of the MOU may be submitted to binding arbitration. Such request for binding arbitration shall come only from the Association Board of Directors. An individual member may not file for arbitration on a dispute of the MOU.

#### **SECTION 4.08 REQUEST FOR ARBITRATION**

A written request for arbitration shall be submitted to the EO within ten (10) working days following the receipt of the EO's written response as required in 4.05 Step 3 above, or the conclusion of mediation, if mediation does not resolve the grievance to the satisfaction of the grievant.

#### **SECTION 4.09 SELECTION OF AN ARBITRATOR**

The District and the grievant(s) will select an arbitrator from the California State Mediation and Conciliation Service. If the grievant(s) is (are) represented by the Employees' Association, then the Employee's Association President or designee and the District will select an arbitrator from the California State Mediation and Conciliation Service. If the parties cannot agree on the selection of an arbitrator, the grievant will request of the California State Mediation and Conciliation Service a list of nine (9) arbitrators. Within ten (10) working days from the receipt of the list of nine (9) arbitrators, each party beginning by lot shall alternatively cross off one name on the list; the first party to cross off a name will be selected by a flip of a coin. The final name left on the list shall be the arbitrator if he/she agrees to serve. If he/she will not serve, the process shall be repeated until an arbitrator is found. The rules and procedures of the California State Mediation and Conciliation Service will prevail.

**SECTION 4.10 DECISION OF THE ARBITRATOR**

The decision of the arbitrator shall be final and binding on the parties and on any affected employees covered by this agreement. Such decision shall be issued in writing.

**SECTION 4.11 FEES AND EXPENSES**

The fees of the arbitrator and related expenses shall be shared equally by the District and the grievant.

**SECTION 4.12 LIMITATIONS ON ARBITRATOR’S AUTHORITY AND JURISDICTION**

The limitations on the arbitrator’s authority and jurisdiction are as set forth below:

1. No arbitrator shall entertain, hear, or decide any dispute unless such dispute involves a represented employee and unless such dispute falls within the grievance procedure as set forth in section 4.01 Definition of a Grievance.
2. Any dispute regarding whether an issue is grievable or applicable to arbitration shall be determined by the arbitrator as an initial determination prior to proceeding with the hearing on the merits of the grievance.
3. No arbitrator shall entertain, hear, decide, or make recommendations on any disciplinary action unless such dispute involves a bargaining unit employee who has successfully completed an initial (new hire) probationary period and who has availed him/herself of the response and appeals procedures of the Disciplinary Procedures Article of this Agreement.

**ARTICLE V DISCIPLINARY PROCEDURE**

**SECTION 5.01 PROGRESSIVE DISCIPLINE**

In order to maintain the orderly and efficient operation of the District, it may be necessary for District Management to impose discipline on an employee who violates work instructions or District policies and procedures, whose service is unsatisfactory, whose conduct is unacceptable or for other just cause. However, no employee shall be disciplined without just and sufficient cause.

The administration of discipline by District Management is intended to be corrective rather than punitive, and discipline will normally be imposed in progressive steps. The progressive steps in the imposition of discipline will normally include: (a) informal verbal reprimand, (b) formal written reprimand, (c) warning and one-day suspension, (d) extended suspension and (e) dismissal.

An employee who has been demoted, suspended or terminated from employment may appeal such disciplinary action in accordance with ARTICLE IV of this Memorandum of Understanding. An employee may provide a written response to any written disciplinary action taken against that employee.

SECTION 5.02            GROUND(S) FOR DISCIPLINE

Disciplinary Action shall be for fact(s) which establish unacceptable conduct such as, but not limited to, one or more of the following:

1. Fraud in securing appointment.
2. Incompetence.
3. Inefficiency.
4. Inexcusable neglect of duty.
5. Insubordination.
6. Failure to follow District policy.
7. Dishonesty.
8. Being under the influence of alcohol or illicit drugs while on duty.
9. Unexcused absence.
10. Conviction of a felony or conviction of a misdemeanor which is of such a nature as to adversely affect the employee's ability to perform the duties and responsibilities of the employee's position. A plea of guilty, or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this Section.
11. Discourteous treatment of the public or other employees.
12. Political activity prohibited by state or federal law.
13. Engaging in sexual harassment of another employee or member of the public.
14. Refusal to take and sign any oath or affirmation which is a federal, state or District requirement.
15. Any failure of good behavior during duty hours which is of such nature that it causes discredit to the District or his/her employment.
16. Failure to possess or keep in effect any license, certificate or other similar requirement specified in the employee's position specification as a condition of employment.

SECTION 5.03            REPRIMANDS

1. The initial step in the imposition of discipline is normally a verbal reprimand. When delivering the reprimand, the supervisor shall identify the action(s) which the employee should take to correct the basis for the reprimand. A verbal reprimand is an informal disciplinary measure and is not entered in the employee's personnel record unless discipline progresses to a written reprimand or beyond.
2. If, after receiving a verbal reprimand, an employee continues to perform his or her work in an unsatisfactory manner, to engage in the same violation of a District work instruction, policy or procedure, or to manifest the unacceptable behavior or conduct for which the employee received the verbal reprimand, the employee's immediate supervisor may either: (i) repeat the verbal reprimand and again identify the action(s) which the employee should take to correct the basis for the reprimand; or (ii) move to the next step of progressive discipline and request the section manager to issue a formal written reprimand.
3. A written reprimand shall document all previously delivered verbal reprimands, shall state the basis for such verbal reprimand(s) and shall specify the action(s) which the employee should take to correct the basis for the formal written reprimand and the possible

consequences of a failure by the employee to take such corrective action. A written reprimand is a formal disciplinary measure and is entered in the employee's personnel record.

- A. If, after receiving a formal written reprimand, an employee continues to perform his or her work in an unsatisfactory manner, to engage in the violation of a District work instruction, policy or procedure, or to manifest the unacceptable behavior or conduct for which the employee received the written reprimand(s), the employee's section manager may either: (i) repeat the formal written reprimand and again identify the action(s) which the employee should take to correct the basis for the reprimand; or (ii) move to the next step of progressive discipline and request the division director to issue a formal written warning and one-day suspension without pay.
  - B. An employee may appeal a written reprimand through the grievance procedure at Step 3. The decision of the EO shall be final. An employee has the right to respond to a written reprimand in writing and to have that response attached to the reprimand in the personnel file.
  - C. If an employee does not receive any discipline more severe than a verbal reprimand for a period of 18 months then all previous written reprimands will be sealed. However, for just cause, the District may open the employee's sealed reprimand file and use any of the contents contained therein on an as needed basis. If the sealed reprimand is opened the employee shall be notified in writing within five (5) working days. The notification shall include the reason for such action.
4. Notwithstanding paragraphs 1-3 of this section, the District has the right to impose more serious discipline or to escalate disciplinary action without satisfying each of the recommended progressive discipline steps.

#### SECTION 5.04 WARNING AND ONE-DAY SUSPENSION

If, for good cause shown, or after receiving a formal written reprimand, an employee continues to perform his or her work in an unsatisfactory manner, to engage in the violation of a District work instruction, policy or procedure, or continues to manifest the unacceptable behavior or conduct for which the employee received the written reprimand, the employee's division director may impose a warning and suspend the employee without pay for a full working day. The imposition of the warning and one-day suspension without pay shall be in writing, shall state the factual basis for this disciplinary action and shall specify the action(s) which the employee should take to correct the basis for this disciplinary action and the possible consequences of a failure by the employee to take such corrective action. This written documentation is entered in the employee's personnel record. A Warning and One Day Suspension may not be grieved or appealed.

#### SECTION 5.05 EXTENDED SUSPENSION

1. If, for good cause shown or after being issued a warning and being placed on a one-day suspension without pay, an employee continues to perform his or her work in an unsatisfactory manner, persists in engaging in the violation of a District work instruction,

policy or procedure, or continues to manifest the unacceptable behavior or conduct for which the employee was issued a warning and placed on a one-day suspension without pay, the EO may suspend the employee from work without pay for a period of up to two weeks. Prior to placing an employee on an extended suspension without pay, the EO shall cause to be served on the employee a written Notice of Proposed Disciplinary Action, which shall contain the following information: (i) a statement of the action which is proposed to be taken, (ii) a statement of the factual basis for this proposed disciplinary action, (iii) a specific reference to any District work instruction, policy or procedure which the employee is alleged to have violated, (iv) a specification of the action(s) which the employee should take to correct the basis for this disciplinary action and the possible consequences of a failure by the employee to take such corrective action, (v) a statement that the employee may review and request copies of materials upon which the proposed disciplinary action is based, and (vi) a statement that the employee will be given an opportunity to address the charges supporting this disciplinary action with the EO prior to the suspension becoming effective.

2. An employee who is to be placed on an extended suspension from work without pay will be given an opportunity to address the charges supporting this disciplinary action with the EO prior to the suspension becoming effective. This meeting with the EO should take place as soon as possible, and in no event more than five (5) working days after the recommendation for suspension from work without pay has been provided to the employee. The employee may bring a representative of the Association and/or a private personal representative to the meeting with the EO. Within five (5) working days after meeting with the employee and the Division Director recommending the suspension, the EO shall prepare a written decision regarding the recommended suspension. If, after considering the Division Director's recommendation and the information presented by the employee at the meeting, the EO determines to impose a suspension from work without pay, the suspension shall begin on the day after the EO's written decision is served on the employee, and all written documentation pertaining to the suspension will be entered in the employee's personnel record.
3. Employees who are placed on an extended suspension without pay will not accrue sick or annual leave during the period of such suspension.
4. Notwithstanding the progressive discipline policy outlined in Sections 5.01 through 5.04 above, the EO may place an employee guilty of serious misconduct on extended suspension. In such case, the EO shall follow the procedure set forth in 2 above.

SECTION 5.06 DISMISSAL

1. If, for good cause shown or after being suspended from work without pay, an employee continues to perform his or her work in an unsatisfactory manner, persists in engaging in the violation of a District work instruction, policy or procedure, or continues to manifest the unacceptable conduct or behavior for which the employee was placed on an extended suspension from work without pay, the EO may dismiss the employee from employment with the District. Prior to the dismissal of an employee from employment with the District, the EO shall cause to be served on the employee a written Notice of Proposed Disciplinary Action, which shall contain the following information: (i) a statement of the action which is proposed to be taken, (ii) a statement of the factual basis for this proposed disciplinary

action, (iii) a specific reference to any District work instruction, policy or procedure which the employee is alleged to have violated, (iv) a statement that the employee may review and request copies of materials upon which the proposed disciplinary action is based, and (v) a statement that the employee will be given an opportunity to address the charges supporting this disciplinary action with the EO prior to the dismissal becoming effective.

2. An employee who is to be dismissed from employment with the District will be given an opportunity to address the charges supporting this disciplinary action with the EO prior to the dismissal becoming effective. In such event, the employee’s Division Director will inform the employee of the Director’s recommendation that the employee be dismissed from employment. This meeting should take place as soon as possible, and in no event more than ten (10) working days after the recommendation for dismissal. The employee may bring a representative of the Association and/or a private personal representative to the meeting with the EO. Within five (5) working days after meeting with the employee and the Division Director recommending the dismissal, the EO shall prepare a written decision regarding the recommended dismissal. If, after considering the Division Director’s recommendation and the information presented by the employee at the meeting, the EO determines to dismiss the employee from employment with the District, the dismissal shall be effective on the day on which the EO’s written decision is mailed to the employee. An employee may be placed on administrative leave with pay when they are informed of the Director’s recommendation that he/she be dismissed from employment. In that event, he/she shall remain on administrative leave with pay until such time as he/she is either directed to return to work or until the date the EO’s written decision is mailed to the employee.
3. After the EO takes action on a proposed dismissal of an employee, the Notice of Proposed Disciplinary Action and all related written documentation will be entered in the employee’s personnel record.

SECTION 5.07 ADMINISTRATIVE LEAVE WITH PAY

Any bargaining unit employee placed on administrative leave with pay shall receive all salary and benefits and remain covered by all provisions of the MOU, including membership status with the EA while on leave with pay. Said terms and conditions of employment shall remain in full force and effect as if the bargaining unit employee had remained on the job for the duration administrative leave with pay.

Pursuant to Section 3.11(d), the District has the right to relieve employees from duty for legitimate reasons. Accordingly, the District may place employees on paid administrative leave during the course of investigations that may lead to disciplinary action. Provided, however, that the period of administrative leave in any given instance shall not exceed the timely reasonably necessary to conclude the investigation.

The District reserves the right to direct employees not to enter and/or access District facilities and to direct them and to schedule them to attend meetings related to investigations and notice employees regarding the discipline process in accordance with the MOU. Further, District managers may approve a request from an employee who is



placed on administrative leave with pay to use other types of paid leave and unpaid leave in lieu of administrative leave with pay. In the event the employee’s manager approves such a request, then the employee would be subject to the conditions that normally apply to the approved leave. Leave requests that were approved prior to an employee being placed on administrative leave will be honored unless doing so unduly impedes the investigation and/or disciplinary process. Any and all leaves cancelled by the District causing a monetary loss to the employee shall be reimbursed by the District to the full amount. The employee shall submit to the District verification of the monetary loss and the District shall fully reimburse the employee within ten working days of the receipt of such verification.

Administrative leave with pay is not considered a break in service and the bargaining unit employee’s position shall not be vacated by this leave.

**ARTICLE VI CLASSIFICATION STUDIES**

1. Up to 6 classifications will be reviewed in each of the remaining years of the current MOU. The EA and the District will each select up to three classification series.
2. Bargaining unit positions in selected job classifications will be audited to determine whether the positions are correctly classified.
3. Job classification descriptions will be thoroughly reviewed to determine whether they need to be updated to reflect changes to the work being performed in the positions assigned to those classifications, including the knowledge, skills and abilities, examples of duties, and qualifications required to perform the work.
4. Review of classifications may include a compensation analysis to determine if adjustment to the rate of pay for a classification is warranted based on external comparators and/or internal equity considerations.
5. No bargaining unit employee will be subject to a reduction in force, demoted, y-rated, or suffer a reduction in salary or benefits based on the results of an audit of his/her position, a review of the job classification description assigned to their position, or a compensation analysis.
6. In the event that a compensation analysis conducted pursuant to this Side Letter of Agreement indicates that an adjustment to pay rates is warranted, the Human Resources Officer shall prepare a report and recommendation for consideration by the Board of Directors as part of the annual budget preparation process.
7. All position audits, job classification description reviews, and compensation analyses conducted pursuant to this Side Letter of Agreement shall be performed by an external consulting firm mutually agreed upon by the parties.
8. The cost of any work performed pursuant to #7 shall be borne equally by the District and the Association, except that the Association’s costs for such work shall not exceed \$15,000 per year.
9. However, neither party is required to designate classes in any year.
10. Aside mutual agreement in the form of a side letter, existing represented classifications shall remain in full force and effect without modification for the term of this MOU.

**ARTICLE VII SALARIES**

**SECTION 7.01 SALARIES**

The following changes to unit wages or salaries shall be made effective as identified below:

Effective July 1, 2014 wages and salaries of unit employees shall be increased by **2.1 percent (2.1%)**. Effective July 1<sup>st</sup> 2015, and July 1, 2016, wages and salaries of unit employees shall be increased by the Consumer Price Index for Urban Wage Earners and Clerical Workers for San Francisco-Oakland-San Jose for the preceding calendar year, as reported by the Bureau of Labor Statistics, U.S. Department of Labor, over the wage and salaries in effect on the preceding June 30. The minimum increase shall be ~~zero percent (0%)~~ **one percent (1%)** and the maximum increase shall be **three percent (3%)** ~~no more than 2.5%. the increase in the PERS employee contribution in the corresponding year as provided in Section 11.10 (2).~~

**SECTION 7.02 SALARY STEPS**

1. There are five (5) steps within the salary range for each position, with a 5% increment between the steps. The time between Entrance Step A and Step B is six (6) months of satisfactory service in Step A. The time between Step B and Step C is six (6) months of satisfactory service in Step B. The time between Step C and Step D is one (1) year of satisfactory service in Step C, and the time between Step D and Step E is one (1) year of satisfactory service in Step D.
2. Unless special conditions warrant otherwise, an employee promoted to a higher position will receive the minimum salary for the higher position nearest a 5% increase (not less than 4.9%) above the employee's former position, whichever is higher, provided the increase is within the range of the higher position. If a promotion is awarded within thirty days of a scheduled step increase, the step increase and promotional increase will both be effective at the time of the change. Hiring at a higher salary step will require justification from the Hiring Manager and approval of the EO.
3. If a position is reclassified, a competitive recruitment will occur and the salary placement of the selected employee will be in accordance with subsection 2 above.
4. If a position is reclassified to a position having a lower salary range, the incumbent will be Y-rated according to the provision section 7.05.
5. If an employee is transferred, the employee will remain in the same step of the salary range effective prior to the transfer.
6. Any employee who has passed through the initial probationary period with the District and who is promoted or transfers to another position in the District shall not be subject to any “up or out” probation. Such an employee may be terminated for cause. However, if an employee is promoted prior to the completion of his/her initial probation period, the employee must successfully complete the full probationary period designated for the higher classification before attaining regular status.

7. If an employee is demoted for disciplinary reasons to a position having a lower salary range, the employee will be placed in the new range at the step held prior to the demotion.
8. If an employee is demoted because of lack of funds, the employee will be placed in the salary step in the new range that reflects the least decrease in salary. If an employee promoted to a higher class fails to pass a promotional probationary period, the employee will be returned to a position in the formerly held classification and will revert back to the step in the salary range he/she occupied in the former position effective prior to promotion. Step increases will be awarded on the schedule appropriate to the prior position.

SECTION 7.03 STEP INCREASES

Step increases are effective on the first day of the pay period in which the employee's anniversary date falls providing that a formal performance evaluation has been completed which indicates at least an overall “meets standard” rating. For purposes of this section, a delayed performance evaluation exceeding 30 calendar days shall cause the employee’s performance evaluation to be an overall “meets standard” rating and the employee shall receive the increase retroactive to the first of the pay period in which the employee’s anniversary date falls.

SECTION 7.04 DETERMINATION OF SALARY RATES

1. **ORIGINAL APPOINTMENTS:** Unless special conditions warrant otherwise, employees will be hired at the entrance salary of the position classification. Hiring at a higher salary step will require justification from the Hiring Manager and approval of the EO for Steps B and C. Recommendation by the EO and approval of the appropriate committee of the Board of Directors is required for hiring at Steps D and E.
2. **LIMITED-TERM EMPLOYMENT:** Limited-term employees will be placed on the salary range of the classification in which the person is employed. If a former regular District employee is re-hired as a limited-term employee for the same classification in which he/she held upon separation, the former regular employee will be paid at the same step of the salary range for the classification at the time of separation. If a former regular employee is re-hired as a limited-term employee for a classification other than that held at the time of separation, the former regular employee will be paid the same step of the salary range for the classification at the time of separation providing that the salary range of the classification in which the person is employed is equal to or less than the salary range of the classification held at the time of separation. If the salary range for the classification in which the former regular employee is employed is higher than the salary range of the classification held at the time of separation, the former regular employee will be placed at the step of the salary range of the classification based on the needs of the District pursuant to 7.04.1 above.

SECTION 7.05 Y-RATING

Y-Rating refers to a position which has been reclassified to a position having a lower salary range. The incumbent will retain his/her present salary until the appropriate step in the reclassified position is equal to or greater than the incumbent's current salary. A Y-Rating status must be approved by the EO and the Board of Directors.

SECTION 7.06 DIFFERENTIAL PAY

Employees not working a regular scheduled late shift or flextime will be compensated an additional \$1.00 per hour for hour worked between 8:00 P.M. and 6:00 A.M. Differential pay is a premium payment and is, therefore, included in the computation of overtime.

SECTION 7.07 SHIFT DIFFERENTIAL PAY

A \$2.50 per hour payment shall be paid to any employee assigned regularly established shift differential assignments. For purposes of this Section, shift differential hours are 5:00 P.M. to 8:30 A.M. and all day Saturday and Sunday. Shift differential is a premium payment and is, therefore, included in the computation of overtime. The schedule for employees working a flex time or compressed schedule shall not be considered shift differential hours.

SECTION 7.08 STANDBY DUTY/CALL BACK

1. STANDBY DUTY

- A. Standby duty shall be defined as that circumstance when an employee assigned by the District to:
  - (1) Be ready to respond immediately to a call for services;
  - (2) Be readily available at all hours by telephone, pager or other agreed upon communication equipment; and
  - (3) Refrain from activities which might impair his/her assigned duties upon call.
- B. With the approval of the EO, a manager may request volunteers or, if needed, assign an employee or employees to standby duty.
- C. Standby duty is normally assigned in one-week increments. Standby duty will be distributed among those employees deemed qualified by the District to perform the duty. An employee assigned standby duty shall be paid \$2.50 per standby duty hour (those hours before and after normal working hours) or at the employee's discretion, one (1) hour of Compensatory Time Off for each twelve (12) hours. A standby duty shift shall consist of a twenty-four (24) hour period of time as determined by the District less any regular or overtime hours.
- D. An employee called to respond while on standby duty shall be compensated for the time worked in accordance with the Call Back provision, below.

2. CALL BACK

- A. A bargaining unit employee who is called back to work while on standby or after he/she has worked the scheduled shift and has departed from the place of employment shall be compensated with overtime for the time worked, either in cash or compensating time off (if applicable), at the rate of time and one-half with a minimum of two (2) hours at such rate.

- B. Should the time worked while called back become contiguous with the regular work schedule, time worked shall not be treated as a call back and the minimum time period shall not apply.
- C. An employee being paid for Call Back shall not receive Stand-By Pay for the same hours.

SECTION 7.09 SALARY DEDUCTIONS

Salary deductions may be authorized from time to time by the EO.

- 1. Mandatory deductions include but not be limited to Federal Withholding Tax, State Withholding Tax, Medicare tax, if applicable, State Disability Insurance premium, and the employees' Public Employees' Retirement System contribution.
- 2. Voluntary deductions include the regular deduction of health insurance, life insurance, credit union, union dues and other voluntary program deductions that may be authorized by the employee and provided for by the District.

SECTION 7.10 PAY PERIOD AND PAYDAY

- 1. The pay period will be a two-week period beginning on Sunday and ending on Saturday. Employees will be paid biweekly no later than the Friday following the close of a pay period. If payday falls on a holiday, warrants will be distributed on the previous workday. Start of the pay period will be adjusted for an employee working a compressed workweek. The District shall indicate on each employee's paycheck stub the following: accrued annual leave, accrued sick leave, accrued compensatory time, and accrued floating holiday time.
- 2. The District shall provide employees with the option of direct deposit of their paychecks to those banks that provide this capability.
- 3. The District and the Association agree that during the term of this MOU, the parties will study alternate paydays and pay periods. No said changes will be made unless parties to this MOU agree to such changes.

SECTION 7.11 FINAL PAYMENTS

- 1. **SALARY.** Final salary payments to any person who terminates will be paid within 72 hours of the last day worked. When an employee is discharged for cause, the final salary payment will be issued on the last day of employment.
- 2. **ACCRUED ANNUAL LEAVE.** An employee leaving the service of the District shall receive a single payment covering the amount of the accrued annual leave remaining on account.
- 3. **ACCRUED SICK LEAVE.** Employees leaving the service of the District will not be paid for any unused accumulated sick leave credit remaining on account. Accrued sick leave will be applied to service credit upon retirement under the PERS contract.

4. FLOATING HOLIDAYS. Floating holidays must be used within the fiscal year they are credited. An employee leaving the service of the District shall receive a single payment covering the amount of the accrued floating holidays remaining on account.
5. COMPENSATORY TIME. An employee leaving the service of the District shall receive a single payment covering the amount of accrued compensatory time remaining on account.

SECTION 7.12 SALARY ADVANCES

Employees may apply for a payroll advance under the following conditions:

1. An employee must have been in a paid status for at least one week in the pay period prior to receiving a salary advance.
2. The amount requested cannot exceed amount earned to date during the pay period.
3. The amount advanced must be deducted from the paycheck for that pay period.
4. No more than two (2) such requests can be submitted annually. Exceptions may be approved by the EO and must be announced to the Board under “Report of EO”.
5. Requests for salary advance must be received by the HRO at least one (1) week prior to the date of requested distribution for which the advance is requested.
6. Requests are subject to the approval of the HRO.

SECTION 7.13 ACTING ASSIGNMENTS

1. When an employee is assigned in writing by his/her Division Director to perform all of the day-to-day duties of a position in a higher District classification due to a vacancy or temporary absence of the person normally assigned to perform those duties, the employee shall receive “Acting Pay” from the first day of such assignment until the end of the assignment not less than 40 hours.
2. The rate for “Acting Pay” shall be determined by Section 7.02.2 of this MOU.
3. Acting assignments shall not be for less than forty (40) hours.
4. It is expressly understood that acting assignments do not constitute an appointment to a different position and have no effect on the employee’s representation status and/or terms and conditions of employment other than the duties performed by the employee and the “Acting Pay” received by the employee during the period of the acting assignment.
5. An acting assignment for a vacant position may only be used to backfill the position during the recruitment process to fill the vacancy.
6. An employee may decline acting assignments. An employee who has accepted an acting assignment may decline to continue the acting assignment with five (5) working days

advance written notice to his/her Division Director. A Division Director may discontinue an acting assignment at any time with written notice to the employee.

**SECTION 7.14 SPECIAL PAY AND ALLOWANCES**

1. **BILINGUAL PAY.** Division directors shall identify those employees who, in the performance of their duties, are required to converse with the public or translate documents in a language other than English. Employees so designated, who have demonstrated their competency in a second language to the satisfaction of the Division Director, shall receive bilingual pay in the amount of \$30 per pay period provided the employee utilizes the bilingual skills as described above for ten (10) or more hours per pay period. The compensation shall be increased by the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the San Francisco-Oakland-San Jose based on the previous year's CPI-W on each July 1, as reported by the Bureau of Labor Statistics, U.S. Department of Labor.
2. **PER DIEM.** Employees who travel away from the District for training or other work assignments that extend for more than one day shall be reimbursed for reasonable expenses provided that receipts are submitted for such expenses. The employee should submit a detailed expense report within 7 days of the travel, including receipts for other expenses (e.g. travel and lodging).
3. **HAZARD PAY.** Division directors shall identify those employees who, in the performance of their duties, are required to 1) climb to the sampling point of stacks, storage tanks or any structure at a height of 30 feet or more 2) wear a Self-Contained Breathing Apparatus (SCBA) or safety harness 3) perform confined space entries or 4) climb to a height of 30 feet or more wearing SCBA, harness and is in a confined space. Such employees shall receive additional compensation in the amount of two and one-half percent (2½%) above the employees' current salary step for the duration of that assignment.

Employees may be required to successfully complete training prescribed by The District as a condition of employment in positions requiring the above duties.

The hazard pay shall not constitute a part of the employee's base rate, but shall be a bonus for performing these duties. Hazard pay shall be considered part of the regular rate for the purpose of computing overtime.

**SECTION 7.15 LONGEVITY INCENTIVE**

Upon ratification in May, 2002, the District shall provide a Longevity Incentive payment of \$325 to each unit member.

**ARTICLE VIII EMPLOYMENT AND MERIT INCREASES**

**SECTION 8.01 POLICY**

Employment, passing of a probationary period and merit increases are based solely on merit of the individual employee. No employee is guaranteed a continuation of employment or of receiving any future salary benefits.

SECTION 8.02 DEFINITIONS

1. Original Date of Hire: The date of hire into a regular position with the District in an unbroken period of employment that includes the most recent employment with the District. The period of time an employee is on Workers' Compensation shall be considered a continuous period of employment.
2. Adjusted Hire Date: The most recent hire date preceding any period of absence due to layoff of six (6) months or less adjusted forward to account for the lapse in service.
3. Salary Anniversary Date: The date on which the employee has completed six (6) full months of service in pay steps A or B, or completed twelve (12) full months of service in pay steps C or D.
4. Adjusted Anniversary Date: The Salary Anniversary Date, taking into account any periods of absence without pay of a pay period or more. For purposes of this section employees on Workers' Compensation shall not be considered absent from service.

SECTION 8.03 ANNIVERSARY DATE

The salary anniversary date or adjusted anniversary date for newly hired or promoted employees is the date of hire or date of most recent promotion. The anniversary date will be used in determining when an employee becomes eligible to be considered for salary step increments.

Annual leave credits and sick leave credits are accrued from original date of hire or adjusted hire date. For the initial pay period after hire and the final pay period upon termination, annual and sick leave accruals shall be determined as forty (40) hours worked in a pay period. There will be no prorating of time for annual or sick leave for less than this minimum time per pay period. For part-time new hires and any employee who separates employment with the District, 50% of their regularly scheduled assignment will constitute forty (40) hours worked in a pay period. These provisions will not be applicable for determining annual leave and sick leave accruals during any other type of leave.

SECTION 8.04 PERFORMANCE EVALUATION

1. During the initial probationary period, a probationary employee shall receive at least two (2) formal performance evaluations which will normally be conducted at the end of the sixth and eleventh month of service as defined in Section 8.05.2 below.
2. Promoted employees who are subject to a six (6) month probationary period as defined in Section 8.05.2 below shall receive at least two (2) formal performance evaluations which will normally be conducted at the end of the third and fifth month of service as defined in Section 8.05.2 below.
3. Promoted employees who are subject to a nine (9) month probationary period as defined in Section 8.05.2 below shall receive at least two (2) formal performance evaluations which will



normally be conducted at the end of the third and eighth month of service as defined in Section 8.05.2 below.

4. After completion of the appropriate probationary period, a formal performance evaluation shall be completed for the employee annually. A supervisor is not precluded from completing a formal performance evaluation at any time. Performance evaluations are a continuing responsibility of each supervisor, and each supervisor will informally discuss employees' performance as often as necessary to ensure effective work performance.
5. A performance evaluation that includes an overall rating of needs improvement or unsatisfactory must include an attached plan for improvement.

**SECTION 8.05 PROBATIONARY PERIOD**

1. Upon initial hire, each employee shall be subject to a probationary period equivalent to one (1) year of full-time actual and cumulative service. During an employee's initial hire probationary period the employee may be terminated without cause or right of appeal.
2. Employees promoted within the same class series shall be subject to a probationary period equivalent to six (6) months of full-time actual and cumulative service. Employees promoted to a position in a different class series shall be subject to a probationary period equivalent to nine (9) months of full-time actual and cumulative service. If an employee does not successfully complete his/her promotional probationary period, he/she shall be placed back in a position in the employee's former classification at the salary step held prior to the promotion without cause or right of appeal.
3. During any probationary period, no employee shall be demoted or terminated in violation of the District's Equal Employment Opportunity policy.

**ARTICLE IX HOURS OF WORK**

**SECTION 9.01 HOURS OF WORK**

**1. WORKWEEK**

- A. **NORMAL WORKWEEK.** A normal workweek shall consist of five (5) consecutive eight (8) hour days, Monday through Friday. The normal workday shall be scheduled over an eight and one-half (8 ½) hour period from 8:30 A.M. to 5:00 P.M., normally with one-half (1/2) hour for meals.
- B. **COMPRESSED WORKWEEK.** With the approval of Management, an employee's normal workweek and/or workday can be modified to allow for flextime hours or a compressed workweek. In such a case, appropriate adjustments will be made to recognize such a normal flex or compressed day/week.
- C. **TELECOMMUTING.** With the approval of Management, an employee's normal workweek may be modified to allow for telecommuting. The employee and his/her

supervisor will agree on core days and hours during which the employee can be reached by phone and these will remain constant from week to week, unless modified by agreement with the supervisor. In all cases, telecommuters shall make provisions that provide sufficient communication with the office and the public to meet the District goals. Telecommuters shall be present at least three (3) days per week in the District office. Exceptions may be granted in extraordinary situations. With the approval of Management and his/her supervisor, the District will allow non-scheduled telecommuting on Spare-the-Air days.

- D. PART-TIME WORK: An employee may request a regular part-time work schedule of fewer than 80 hours per pay period. Approval shall be at the discretion of the Division Director and the EO on a fiscal year basis considering business needs of the District. The part-time schedule may be rescinded by the EO with a 30-day notice to the affected employee for business needs or for unsatisfactory employee performance.
2. An employee shall not work any time in excess of his or her approved work schedule without prior approval of the employee's supervisor, acting supervisor or other manager in the employee's chain of command.
  3. When a situation arises in which a represented employee is unable to work his or her regular hours on a particular day, upon the approval of his or her supervisor, the employee may make up the time missed. The makeup time shall occur during the same pay period. The total hours worked, including makeup time, shall not exceed forty (40) hours during any work week and shall not exceed ten (10) hours on any one day.
  4. When an employee is away from the employee's normal duty assignment for jury duty, an all-day or multi-day meeting, a conference or to take a District-authorized class, the employee shall only be paid: for the hours representing the agency at, and travel time to and from, meetings or conferences; for the hours at, and travel time to and from, a class; or for the hours at jury duty and for any travel time between the location of the jury duty and the District office or the location of the employee's normal duty assignment. With the approval of the employee's supervisor, an employee will receive overtime or compensatory time if the time consumed by the outside activity exceeds the employee's normal workday.
  5. When an employee attends one of the activities which requires the employee to be away from the employee's normal duty assignment and the activity concludes prior to the end of the employee's assigned work day, the employee must return to work, use appropriate paid leave, work at home, or make-up time. In order to use appropriate paid leave, work at home or make-up time the employee must receive concurrence from his/her immediate supervisor and authorization from his/her manager. If the employee is authorized to make-up time, the employee must make-up the time in the same pay week in which time was taken off and in no event shall this time when combined with regular hours worked result in weekly overtime.
  6. With the approval of Management, an employee may make up work time that is lost as a personal or job-related obligation within the same workweek in which the work time is lost. Make up may not be counted towards computing the total number of hours worked in a day

for purposes of the overtime requirement specified in this MOU. The schedule according to which any such time will be made up will be established in consultation with the employee's supervisor.

SECTION 9.02 MEAL PERIOD AND REST PERIOD

1. Lunch period of one-half (1/2) hour is to be taken as assigned by the employee's manager, normally it will be taken between 12:00 P.M. and 1:00 P.M.
2. Rest period of one-quarter (1/4) hour each is normally taken in mid-morning and mid-afternoon.
3. Continuation of Business. An adequate number of employees may be assigned lunch and rest periods to ensure the continuation of business.

If an employee is authorized to take a 30-minute lunch, the employee may either be authorized by the manager to combine his/her two 15-minute breaks with his/her lunch period or to take one 15-minute break mid-morning and one 15-minute break mid-afternoon.

If an employee chooses and is authorized to combine his/her lunch and break periods, to provide the employee a one (1) hour lunch period, the employee will not be entitled to take any additional breaks during the employee's work shift.

If an employee is authorized to take a one (1) hour lunch and two 15-minute breaks, then the employee shall take one 15-minute break midmorning and one 15-minute break mid-afternoon.

Due to unforeseeable work duties, there may be times that an employee will not be able to adhere to his/her primary lunch option. The District acknowledges that in such cases, an employee may select an alternative lunch option for that day.

SECTION 9.03 ATTENDANCE

1. An employee's supervisor will be responsible for keeping the daily attendance record of each employee.
2. A bargaining unit employee who is tardy shall report to the employee's supervisor as promptly as possible after beginning work and at the sole discretion and approval of the employee's manager, the employee may be allowed to make-up time providing the time made-up does not put the employee in an overtime status, use appropriate paid leave in accordance with this agreement, or may be docked for the period of tardiness.
3. An employee must report unscheduled leave to the District within the first hour of the workday unless an emergency prevents such reporting.

A. Failure to report may result in loss of pay for the period of absences from work.

- B. An employee who is absent without leave and without having reported his/her absence for more than one (1) working day may be considered to have resigned and may be terminated.

SECTION 9.04 OVERTIME

The District will avoid the necessity for overtime where possible. The District is under no obligation to assure anyone of the availability of overtime work, nor is the District obligated to treat any particular kind of assignment as overtime. Therefore, the District may adjust work schedules where possible to cover work assignments as straight time work assignments.

The District recognizes that not all work matters can be scheduled during a work shift, and consequently, legitimate overtime assignments will be compensated accordingly.

A notice to an employee to work overtime is a notice in advance if the assignment is given more than 24 hours prior to the beginning of the work to be performed. Such assignments will be considered “scheduled” overtime. An assignment given less than 24 hours in advance will be considered an “unscheduled” assignment for call-back purposes. A call-back is the unscheduled, emergency, and authorized call-back to return to work after a regular shift has been completed.

The District will make every reasonable effort to notify employees of changes in work schedules 14 days in advance of the work to be performed.

Though work schedules for most employees are within the normal work day and normal workweek, groupings of employees may occasionally or regularly have work schedules at different times. The District reserves the right to change work schedules to meet operational needs during straight time shifts.

Except as otherwise provided in Section 9.01, travel time pay is only authorized for call-back assignments. Travel time and call-back time will be compensated at the applicable rate of pay. The time employees spend traveling to a work assignment, except for qualifying callback assignments, is not to be paid regardless of whether the employee is traveling to a scheduled overtime or straight time assignment.

1. **AUTHORIZATION.** Overtime is the necessary, assigned authorized time worked in excess of eight (8), nine (9), or ten (10) hours per day (depending on an individual's normal work schedule) or forty (40) hours per week. With regard to flex time or compressed work weeks, it is recognized that the standard work week may not be 40 hours. Any hours worked beyond whatever is necessary to fulfill the designated flex/compressed work week plan for a represented employee are designated as excess hours. These excess hours are to be paid as overtime or compensatory time at the rate of one and one-half times base hourly rate. For the purposes of this section, paid leave time shall be included in computing the forty hours per week when determining eligibility for overtime; provided, however, that an employee on a flex time or compressed schedule may, with supervisor's approval, modify a normal schedule in order to meet operational necessities, which modified schedule will then constitute a normal work time.

2. **CALL-BACK.** Call-back is the unscheduled, authorized call back to work before or after but not connected to the normal workday. Compensation will be based on a minimum of two hours at the applicable rate of pay.
3. **TRAVEL TIME.** For a call-back which is not directly connected to the beginning or ending of a normal shift, the employee will receive compensation from the time the employee leaves home until the employee returns home (travel time) at the applicable rate of pay.
4. **DISTRIBUTION OF OVERTIME.** Overtime, other than call-back, will be distributed in the following manner, consistent with District operating requirements:
  - A. When overtime is required to complete an assignment, the person given the assignment will normally continue the work.
  - B. When unscheduled overtime is required in a supervisor's area (or an extended coverage area) to conduct an additional assignment, employees working for a supervisor (or working in an extended coverage area) will be asked first whether they wish to volunteer for the overtime work. If two or more people volunteer for the assignment, the assignment will be made based on a rotating overtime assignment schedule starting with the most senior person in the work group. If no one volunteers for the assignment, a supervisor may select an individual through the use of a lottery system or, at the discretion of management, the supervisor may select in the order of inverse seniority. Any and all of the above methods may be used to establish an order of rotation for the purposes of distribution of overtime.
  - C. On continuing extended, overtime assignments, coverage will be assigned on a rotating basis.
  - D. All overtime assignments will be made with due consideration for employee hardship.
  - E. Seniority, for the purposes of overtime assignments only, is determined by the time an employee has held the position for which the overtime assignment is required.
  - F. The District reserves the right to approve, or disapprove, all assignments with due consideration of safe work hours and excessive work schedules.
  - G. Limited-term employees shall not be offered the opportunity to work overtime hours without first offering the overtime hours to that supervisor's regular employees and allowing those employees to decline the overtime hours.
5. **DISTRIBUTION OF CALL-BACK.** Call-back will be distributed in the following manner:
  - A. When call-back is required, the person normally responsible for the assignment will be given first opportunity of call-back.

- B. If the person normally responsible for the assignment is unavailable for call-back, then the immediate supervisor will be responsible for the assigning of call-back to other employees in the same position.
  - C. If the immediate supervisor is unavailable for call-back, then the alternate supervisor, manager or division director will be responsible for the assignment of callback.
  - D. The District maintains the option to deviate from this procedure based upon immediate need.
6. All represented employees who are authorized and work overtime shall be compensated at the rate of one and one-half times their base hourly rate of pay for all time worked over their normally scheduled work day. Represented employees may elect compensatory time at the rate of one and one-half (1½) times the overtime worked in lieu of overtime pay but may not accumulate more than 240 hours of compensatory time. After 240 hours of compensatory time has been accumulated, overtime pay will be the compensation for overtime work. The maximum accumulation of compensation time is 120 hours as of the end of the calendar year. At the end of the calendar year, the District will pay the employee all compensation time in excess of 120 hours at the current hourly rate. An employee may cash out up to the full amount (240 hours) at the end of the calendar year.
  7. Employees required to work a designated holiday shall receive overtime pay equal to two times the employees' base hourly rate of pay. For purposes of this section, a designated holiday shall be the dates on which the holiday is observed by the District (Section 12.07), except that for New Year's Day, Independence Day, and Christmas Day, the designated holiday shall include the actual date of the holiday and if any of these holidays fall on a Saturday or a Sunday, the Monday or Friday on which the holiday is observed by the District.
  8. An employee shall not work any time in excess of his or her approved work schedule without prior approval of the employee's supervisor.

**ARTICLE X            REDUCTION IN FORCE**

**SECTION 10.01            PROCEDURE / BUMPING, LAY-OFF AND RECALL**

1. **SENIORITY.** For the purpose of this Section, there are three types of seniority which apply in connection with the implementation of a reduction in any portion of the District work force: District employment seniority, seniority within a class series and seniority within a specific job classification. District employment seniority is the seniority gained based on overall employment with the District. Seniority within a class series is the seniority gained based on time in service in a number of job classifications which all belong to the same class series (for example, Inspector I, Inspector II, Senior Inspector and Supervising Inspector). Seniority within a job classification is the seniority gained based on time in service in a specific job classification.
2. **LAYOFFS/REDUCTIONS IN WORK FORCE**

- A. When a reduction in work force becomes necessary for any reason such as lack of funds or lack of work, layoffs will be based on reverse order of overall District employment seniority.
- B. As a result of any such layoffs, management may reassign remaining employees to equal or lower paying job classifications in order to assure that the operating requirements of the District can be met. Any such reassignments shall be made in accordance with the bumping mechanism set forth in Section 3(C) below.
- C. The District will give an employee at least 30 days written notice prior to the effective layoff date.
- D. The District will furnish a list of employees to be laid off to recognized employee organization(s) at the same time the employees are given written notice.

### 3. BUMPING

- A. **DEFINITION.** Bumping is the displacement of an employee to an equal or lower paying job classification. Bumping will be based on reverse order of seniority, either in the job classification or District-wide, as set forth in subsection (C) (2) below. Normally, bumping will occur in the context of a reduction in the District work force, when the position of an employee with sufficient overall employment seniority with the District to avoid being laid off is eliminated. However, bumping may also occur in the context of a static staffing mode, when the District is unable to hire new employees to fill existing vacancies or as a result of significant changes in the operating requirements of the District, such that it is necessary to displace existing employees to equal or lower paying job classifications involving new or different duties.

#### B. GENERAL RULES APPLICABLE TO BUMPING

The bumping procedure set forth below shall not be used for punitive or disciplinary purposes.

- (1) When any employee who has held a given job classification for less than 4 years must be bumped, the employee to be bumped to an equal or lower paying job classification will be the employee with the least seniority in that employee's current job classification. When any employee who has held a given job classification for more than 4 years must be bumped, the employee to be bumped to an equal or lower-paying job classification will be the employee with the least overall employment seniority with the District.
- (2) Whenever an employee is bumped, the time spent by the employee in the position from which the employee has been bumped, as well as any time which the employee previously spent in the position to which the employee is bumped, will count as time spent in the job classification to which the employee is bumped.

- (3) When two or more employees have the same amount of seniority in a given job classification and one must be bumped, the employee with the least overall District employment seniority is the one who will be bumped. When two employees have the same amount of overall District employment seniority and one must be bumped, the decision as to which employee must be bumped will be based on the flip of a coin.
  - (4) Any employee who is bumped to a lower paying job classification will be Y-rated in accordance with Section 7.05. In the event of any subsequent vacancy in a job classification from which an employee was bumped, that employee will be automatically returned to that previous job classification. When more than one employee has been bumped, that employee with the highest applicable seniority in accordance with rule (1) above shall have priority to return to the previously held vacant job classification. In the event of a vacancy in a job classification in a class series from which an employee has been bumped that pays more than the job classification that the employee currently holds, but less than the job classification from which the employee was bumped (an intermediate-paying classification), the employee with highest applicable seniority in accordance with rule (1) above will be automatically promoted to the intermediate paying classification.
  - (5) An employee's seniority in a given job classification shall not be affected by a re-titling of the position and/or modification of the job description which involves no change in pay.
  - (6) Subsequent to being hired as a regular employee, an employee's time in service as a limited-term employee in excess of 1,000 hours within a fiscal year shall count toward that employee's overall District employment seniority, and all of an employee's time in service as a limited term employee in a given job classification shall count toward that employee's seniority in that job classification.
  - (7) Prior to bumping any employee to an equal or lower paying job classification, the EO shall provide a written explanation as to why the operating requirements of the District necessitate that the employee be displaced from his or her current job classification. The District will give an employee at least 30 days written notice prior to the effective date of any bumping. The District will furnish a list of employees to be bumped to recognized employee organization(s) at the same time the employees are given written notice.
- C. THE BUMPING MECHANISM. The bumping mechanism will operate by the application in sequential order of the following criteria, (1) through (9). Thus, an employee who, because of a lack of seniority in his/her job classification, is to be bumped to an equal or lower paying job classification will be bumped in accordance with the first of the following criteria which applies to his/her specific circumstances. At any step where a given employee may bump one of several other employees with less seniority, the individual with the least seniority is the one who will be bumped.
- (1) Prior to the implementation of any mandatory bumping or displacement of an employee to an equal or lower paying job classification to meet the operating requirements of the



District, management shall solicit volunteers to move to that job classification. If more than one employee in a job classification volunteers to be bumped, the volunteer with the greatest overall District employment seniority is the one who will be bumped.

- (2) An employee can never bump back to a higher paying position which that employee previously held in the District; however, for purposes of calculating seniority in a job classification, the time spent by an employee in a higher paying job classification will be added to the time already spent in the current, lower paying job classification.
- (3) An employee whose job is being eliminated bumps the least senior employee in the same job classification in the same division.
- (4) The least senior employee in a division bumps the least senior employee in the same job classification anywhere in the District.
- (5) An employee, “A”, bumps to an equal paying job classification which “A” previously held, provided that “A” has more total seniority in the current and the previously held position than the least senior current employee in the position which “A” previously held.
- (6) “A” bumps to a lower paying job classification which “A” previously held, provided that “A” has more total seniority in the current and the previously held position than the least senior current employee in the position which “A” previously held.
- (7) “A” bumps to a lower paying job classification in a class series in the same division in which “A” previously held a position, provided that “A” has more total seniority in that class series and in “A’s” current position, taken together, than the least senior current employee in the lower paying job classification; and provided, further, that an employee must have held a job classification as a supervisor within the District in order to bump a supervisor in a lower paying class series.
- (8) “A” bumps to a lower paying job classification in a class series anywhere in the District in which “A” previously held a position, provided that “A” has more total seniority in that class series and in “A’s” current position, taken together, than the least senior current employee in the lower paying job classification; and provided, further, that an employee must have held a job classification as a supervisor within the District in order to bump a supervisor in a lower paying class series.
- (9) “A” bumps to an equal or lower paying job classification which “A” did not previously hold but for which “A” meets the minimum requirements identified in the job description, provided that “A” has more total District seniority than the least senior current employee in the equal or lower paying job classification.

Note: Notwithstanding that the foregoing criteria (6), (7), (8) and (9) shall normally be applied in sequential order, an employee who can bump to an equal or lower paying job classification under any of those four criteria shall bump to the highest paying of the available positions.

**D. RECALL**

- (1) Employees who are laid off will be placed on a recall list for thirty-six (36) months, during which period, service time in the former classification will be preserved. However, no service time will be accrued during any period of layoff.
- (2) Employees will be recalled to their former job classification, or to a lower paying job classification for which they meet the minimum requirements identified in the job description, in reverse order of layoff provided they respond to the notice (mailed to the employee's home address of record with the District by certified mail return receipt requested) of a classification opening by notifying the District of their intent to return within 10 working days of receipt of such notice and return to work or to their former classification within fifteen (15) calendar days of receipt of such notice.
- (3) An employee recalled to a lower paying classification or advanced to an intermediate paying classification shall remain on the recall list and retain the right to return automatically to his or her former, higher paying classification. The employee with the highest seniority shall have priority to return to the previously held vacant job classification or to advance to an intermediate paying job classification in the class series of the previously held classification.
- (4) An employee's name shall be removed from the recall list only when the employee refuses an offer to be returned to the employee's former position.
- (5) A change in job title shall not affect an employee's recall rights.

**ARTICLE XI FRINGE BENEFITS**

An employee who is approved for a part-time assignment of 90% or more will receive the fringe allowance as specified in Section 11.07 Premium Requirements. All other employment benefits will be prorated based on the hours worked. All employment benefits for an employee who is approved for a part-time assignment of less than 90% will be prorated based on the hours worked.

**SECTION 11.01 HEALTH INSURANCE**

The District shall make available health insurance coverage through the Public Employees Medical and Hospital Care Program for employees and their eligible dependents. Optional coverage is available for eligible dependents and for Domestic Partners where an employee has filed a confidential Declaration of Domestic Partnership with the Human Resources Section. In the event the health insurance coverage in effect July 1, 2014 becomes unavailable, the District and the Association shall immediately meet and confer to mutual agreement in order to select a comparable value plan.

SECTION 11.02 DENTAL INSURANCE

The District shall make available dental insurance coverage for employees. Optional coverage is available for eligible dependents and for Domestic Partners where an employee has filed a confidential Declaration of Domestic Partnership with the Human Resources Section. In the event the dental insurance coverage in effect July 1, 2014 becomes unavailable, the District and the Association shall immediately meet and confer to mutual agreement in order to select a comparable value plan.

SECTION 11.03 VISION CARE

The District shall make available Vision coverage for employees. Optional coverage is available for eligible dependents and for Domestic Partners where an employee has filed a confidential Declaration of Domestic Partnership with the Human Resource Section. Vision care coverage for dependents must be elected at the time of enrollment. In the event the vision care coverage in effect July 1, 2014 becomes unavailable, the District and the Association shall immediately meet and confer to mutual agreement in order to select a comparable value plan.

SECTION 11.04 LIFE INSURANCE

The District provides life insurance coverage for employees. The life insurance amount is based on annual salary. Optional Additional Contributory Life is also available to employees. In the event the life insurance coverage in effect July 1, 2014 becomes unavailable, the District and the Association shall immediately meet and confer to mutual agreement in order to select a comparable value plan.

SECTION 11.05 LONG TERM DISABILITY INSURANCE

The District shall provide Long Term Disability Insurance which partially replaces lost income for employees who become disabled on or off the job and meet the eligibility requirements.

SECTION 11.06 VISION CARE, AND HEALTH, DENTAL AND LIFE INSURANCE COVERAGE AFTER RETIREMENT

1. All Employees Upon Retirement

At a minimum, the District shall comply with the provisions of the California Public Employees' Medical and Hospital Care Act. Vision care, dental insurance and life insurance coverage after retirement will be governed by the vision, dental and life insurance plans in effect for employees covered by this agreement, and in compliance with the provisions of the Medicare program.

2. Employees Hired before July 1, 2010

Health insurance, dental insurance, vision care and life insurance shall continue for employees hired before July 1, 2010 at the maximum fringe benefit allowance received at the time of retirement. This Section also applies to employees hired before July 1, 2010 who separate from the District and are re-hired by the District at a later date and subsequently retire from the District.

3. Employees Hired on and after July 1, 2010

- A. Health insurance, dental insurance, vision care and life insurance shall continue for retired employees at the maximum fringe benefit allowance received upon retirement times a percentage of District contribution, and in compliance with the provisions of the Medicare program.

The percentage of District contribution payable for postretirement health insurance, dental insurance, vision care and life insurance shall, except as provided in subsection C below, be based on the employee’s completed years of credited CalPERS service at retirement as shown in the following table:

<u>Credited Years Of Service</u>	<u>Percentage of District Contribution</u>
10	50
11	60
12	70
13	80
14	90
15	100

- A. Subsection A shall apply only to employees who receive a service or disability retirement and are first employed by the District after July 1, 2010.
- B. The credited service of an employee for the purpose of determining the percentage of District contributions applicable under subsection A shall not include purchased Additional Retirement Service Credit (‘air time’).
- C. The credited service of an employee for the purpose of determining the percentage of District contributions applicable under subsection A shall include purchased Military, Peace Corps and AmeriCorps service.
- D. Notwithstanding subsection A, for employees hired by the District on and after July 1, 2010, and who retire for disability with less than 10 years of credited service, the contribution payable by the District shall be 50 percent of the maximum fringe benefit allowance received at the time of retirement.

4. Increases

Retired annuitants’ fringe benefit allowances may be equal to and increased concurrently with increases to represented employees’ fringe benefits, as determined by the District’s Board of Directors.

SECTION 11.07 PREMIUM REQUIREMENTS

- ~~1. Effective January 1, 2011 the District will provide a Cafeteria Plan for Fringe Benefits that will provide a Fringe Benefit Allowance (FBA) of \$1,464.39 per month per employee for~~

~~payment of premiums for health, dental, vision and additional Life insurance coverage, as set forth in Sections 11.01 through 11.04 above.~~

- ~~2. Effective January 1, 2012, the District will provide a Cafeteria Plan for Fringe Benefits that will provide a FBA that will be the total of the lowest health plan premium rate for an employee and two or more dependents offered by the California Public Employees' Retirement System (PERS), and the dental plan and vision plan premium rates for an employee plus dependents.~~
- ~~3. Effective January 1, 2013, the District will provide a Cafeteria Plan for Fringe Benefits that will be equal to the FBA provided on December 31, 2012 plus one half of the increase in the lowest health plan premium rate for an employee and two or more dependents offered by the California Public Employees' Retirement System (PERS).~~
- ~~4. Effective January 1, 2014, the District will provide a cafeteria plan for Fringe Benefits that will provide an FBA that will be equal to the FBA provided on December 31, 2013.~~
- 1. Effective July 1, 2014, the District will provide a cafeteria plan for Fringe Benefits with a Fringe Benefit Allowance (FBA) which is \$180 per month greater than the FBA provided on June 30, 2014 (the new FBA will be \$1630.63 per month) for payment of premiums for health, dental, vision and additional Life insurance coverage.**
- 2. Effective January 1, 2016, the District will increase the FBA by an amount equal to 67% of the increase, if any, in the premium between calendar year 2014 and calendar year 2016 for the least expensive health plan for employee and two or more dependents offered by CalPERS available in all nine counties, and the dental plan and vision plan premium rates for an employee plus dependents. Rate changes for each benefit will be calculated separately.**
- 3. Effective January 1, 2017, the District will increase the FBA by an amount equal to 67% of the increase, if any, in the premium between calendar year 2016 and calendar year 2017 for the least expensive health plan for employee and two or more dependents offered by CalPERS in all nine counties, and the dental plan and vision plan premium rates for an employee plus dependents. Rate changes for each benefit will be calculated separately.**

~~Cafeteria Plan - Each employee who uses less than the full amount of the FBA shall be eligible to receive cash payments of the unused portion. Such payments shall not exceed \$100 per month. The District and the Association agree that represented employees will receive effective May 15, 2002, the same Cafeteria Plan as the Confidential Employees until such time as the Cafeteria Plan for Confidential.~~

**SECTION 11.08 STATE DISABILITY INSURANCE/FAMILY TEMPORARY DISABILITY INSURANCE/PAID FAMILY LEAVE**

Each employee is covered by State Disability Insurance (SDI) and Paid Family Leave Insurance, also known as Family Temporary Disability Insurance (FTDI). Premiums are paid by the employee. The District's sick leave payments are integrated with any payments received by the employee from SDI or FTDI. The cost of SDI and FTDI is deducted from the employee's pay. State Disability Insurance and Family Temporary Disability Insurance are integrated with the employee's leave time. Employees shall not be entitled to receive more than one hundred percent (100%) of pay when SDI or FTDI and leave time are combined. The administration of the SDI and FTDI programs is solely the responsibility of the State of California. The District is not

responsible for benefit levels, the duration of benefits, or the eligibility of District employees for benefits.

SECTION 11.09 WORKERS' COMPENSATION

1. An employee who is absent as a result of a work-related injury will continue to receive full pay for the first 90 calendar days after the date of injury (the period will apply only once per injury) providing the injured employee meets the following requirements/conditions:
2. The injury has been accepted by the District's workers' compensation insurance carrier as a bona fide work-related injury.
3. The work-related attending health care provider has medically authorized the absence.
4. If the length of the work-related absence qualifies the injured worker for temporary
5. disability benefits from the District's workers' compensation insurance carrier, the wages of the employee will be deducted for the same amount as the temporary disability payments; and in no event, will the injured employee receive more than 100% of his/her wages when combined with any temporary disability payments from the District workers' compensation insurance carrier.
6. These provisions will only apply once per injury as determined by the District's Workers' Compensation Insurance carrier.
7. In the event that the District's workers' compensation insurance carrier does not accept the workers' compensation claim, the District is entitled to recover the amount of any benefits or time paid under this section. The District and the employee will develop a repayment plan. The employee may surrender sick leave, annual leave, floating holidays or compensatory time, make a cash payment, accept payroll deductions, or agree to surrender any combination thereof for repayment. The compensation shall be paid back within one year from the denial of the claim. Any period longer than one year must be agreed upon by both parties due to extenuating circumstances.

SECTION 11.10 PUBLIC EMPLOYEES RETIREMENT SYSTEM (PERS)

The following applies to those employees who were employed by the Air District on or before December 31, 2012 and to those employees ~~or~~ who are otherwise eligible as 'classic members' of the ~~as defined by CalPERS plan;~~

2% at 55 FULL RETIREMENT FORMULA: The District amended the PERS contract to implement the "2.0% at age 55 formula" effective July 22, 2002.

Employees who began CalPERS membership at the Air District or another qualifying CalPERS agency on or after January 1, 2013 shall participate in the 2% at 62 FULL RETIREMENT FORMULA.

In the event that any part of PEPRA which affects benefits described herein is amended or otherwise

voided by action of the legislature, electorate or court of law, **the parties shall immediately reopen negotiations concerning such provisions and shall bargain this provision in accordance with MMBA requirements.**

1. PICK-UP OF EMPLOYEE CONTRIBUTIONS:

There shall be no employer pick-up of mandatory retirement contributions during the term of this Agreement.

~~A. Except as limited by Subsection 2 below, the District shall make employee contributions on behalf of all employees, and such contribution shall be treated as employer contributions in determining tax treatment under the Internal Revenue Code of the United States. Such contributions are being made by the District in lieu of employee contributions.~~

~~B. Employee contributions made under paragraph A above shall be paid from the same source of funds as used in paying the wages to affected employees.~~

~~C. Employee contributions made by the employer under paragraph A above shall be treated for all purposes other than taxation in the same manner and to the same extent as employee contributions made prior to the effective date of this Agreement.~~

~~D. The employee does not have the option to receive the District contributed amounts paid directly instead of having them paid to the retirement system~~

2. EMPLOYEE CONTRIBUTIONS

A. Effective July 1, 2013, the “classic employees” shall pay the entire 7% mandatory employee contribution to CalPERS.

**B. *Employees who are not considered “classic employees” by CalPERS shall pay 50% of normal cost as required in the California Public Employees’ Pension Reform Act (PEPRA) – AB340.***

C. The charges, if any, shall not reduce the employees’ pensionable compensation, and shall not be treated as taxable income to the extent allowed by law. The District shall implement the provisions of section 414 (h)2 of the Internal Revenue Code to ensure that the tax benefit provided by that section is made available to employees.

SECTION 11.11 CREDIT UNION

Employees may become members in the San Francisco Federal Credit Union.

SECTION 11.12 EMPLOYEE ASSISTANCE PROGRAM

The District shall offer an employee assistance program to employees and members of their household. The Employee Assistance Program provides limited professional, confidential counseling service at no cost to the employee.

SECTION 11.13 TRANSIT SUBSIDY/CARPOOL SUBSIDY

1. Consistent with the District’s efforts to promote the use of public transportation and to reduce the number of single-occupant automobiles during commute hours, fulltime District employees are eligible for a transit or a carpool subsidy. Use of the passes, or tickets, is confined to the employee during commute hours.
2. Effective July 1, 2002, the District will provide transit ticket or passes, up to a maximum value of \$150.00 per month or, at the option of the employee, the District will allow \$6.00 per-day (\$3.00 per one-way trip) up to a maximum of \$150.00 per-month per-carpool amount, for the reimbursement to the vehicle owner of commute carpooling expenses and up to \$6.00 per-day (\$3.00 per one-way trip) to District employees (driver) commuting in a carpool (carpool is three or more persons, at least two of which must be District employees). District employees who ride in a carpool will be allowed up to \$3.00 per day (\$1.50 per one-way trip). District employees who walk or bicycle to work and live more than 1.0 mile from his or her work location will be allowed up to \$3.00 per day (\$1.50 per one-way trip).
3. Procurement of the transit passes is the obligation of the individual employee. No funding will be advanced by the District. Transit tickets or passes for a given month will be made available to eligible District employees at the District’s office on a designated day prior to the beginning of that month. The District reserves the right to change the system of distributing passes/tickets in order to provide direct reimbursement for transit passes to employee or other methods deemed more efficient for the District.
4. Carpool reimbursement will be made on a monthly basis. No funding will be advanced by the District. In order to receive the carpool subsidy, the employee must certify to the Director of Administrative Services, no later than the 10th day of each month, the number of days carpooled the previous month and the names of the persons who participated in the carpool.
5. There will be no banking of the unused allocation of transit subsidy. Transit subsidy allowance is for each individual month and will not be cumulative. The purpose of transit subsidy is to provide an allowance to employees who use an alternative method of transportation for the sole purpose of coming to and from work (portal to portal).
6. Verification: Transit subsidies may be audited on a District-wide basis at any time. For stated reasons in writing to the employee, the District may audit an individual employee and require the employee to provide a written explanation of his or her use of transit subsidy. This provision is intended to be invoked on an individual basis in situations where abuse of transit subsidy is reasonably suspected. Persons in violation of this section may be subject to disciplinary action.
7. If an employee chooses to change his or her subsidy, he or she must complete the necessary forms in a timely manner in order to receive his or her subsidy for the subsequent month.
8. Effective July 1, 2002, an employee that uses an electrical vehicle to commute to and from the District main office in San Francisco shall be provided with parking and have access to a re-charging station at no cost, subject to availability.



9. The amount of transit subsidy shall be increased by any percentage increase(s) in Bay Area Rapid Transit fares that occur on or after July 1, 2003 for the duration of the contract. The maximum value of transit tickets or passes provided by the District was increased to \$165.00 effective July 1, 2004 in accordance with this provision.
10. Parking passes associated with transit systems are subject to subsidy.

SECTION 11.14 DEFERRED COMPENSATION

The District shall offer the opportunity to participate in Section 457 deferred compensation plans. These plans are designed to allow employees to invest a portion of salary that is tax deferred until such time as the employee withdraws the funds. The District will continue to provide at least two (2) vendors for its Deferred Compensation Program: Hartford and CalPERS, unless another vendor(s) is chosen by mutual agreement of the parties hereto.

SECTION 11.15 JOB-RELATED EDUCATIONAL PURSUITS

1. JOB-RELATED EDUCATIONAL PURSUITS

- A. The provisions of the “Job-Related Educational Pursuits” section will be applicable to an employee who applies for “Skills Enhancement Pursuits” and who takes an educational course or other skills enhancement course which is directly related to the employee's current position, but is not necessarily enrolled at an accredited college or university in an undergraduate or graduate degree program.
- B. “Year” is defined as fiscal year.
- C. For the purposes of this section “Job-Related Educational Pursuits” is defined as education that either maintains or improves an employee's job skills as they relate to an employee's current position.
- D. To receive reimbursement, an employee must be enrolled at an accredited college or university in an undergraduate or graduate degree program, or in a certificate program; courses taken must contribute to progress towards the degree or certificate.
- E. To qualify for reimbursement under this Section 11.15, participation in certificate programs is subject to prior approval by the HRO. Reimbursement will be approved if the educational pursuit conforms with (A), (C) and (D) above, and there is sufficient funding pursuant to (F) below. Certificate programs in which an employee's participation will normally be granted shall include, but not be limited to, environmental management certificate programs offered by the University of California or other colleges and universities as well as coursework leading to a professional license which relates to the work of the District (such as a Professional Engineer license).
- F. The District shall yearly apportion an amount up to \$15,000.00 to allow for reimbursements of up to \$1,500.00 per employee for those employees who attend and successfully complete job related educational courses or seminars. Such reimbursement

will be paid upon proof of completion of any approved course. Employees wishing to take educational or other professional courses must obtain prior approval from the HRO before taking the course in order to be reimbursed.

2. SKILLS ENHANCEMENT PURSUITS

- A. For the purposes of this section “skills enhancement pursuits” is defined to include educational courses and other skills enhancement courses that may or may not be related to an employee’s current position, but reasonably relate to the District’s work in general and will enhance an employee’s skills and may allow for further advancement or promotion at the District.
- B. The District shall yearly apportion an amount up to \$10,000.00 to allow for reimbursements of up to \$1,000.00 per employee for those employees who attend and successfully complete skills enhancement course. Such reimbursement will be paid upon proof of completion in any approved course. Employees wishing to take skills enhancement courses must obtain prior approval from the HRO before taking the course in order to be reimbursed.
- C. An employee may be reimbursed for courses necessary to attain a job-related degree.
- D. Reimbursement will be approved if the skills enhancement pursuit conforms with (A) and (C) above, and there is sufficient funding pursuant to (B) above.

3. REIMBURSEMENT:

- A. Upon proof of completion of a course (grade “C” or better, “pass”, “credit” or other indication of satisfactory completion of the course) the District will reimburse the employee for the course cost and related materials (required books, supplies, lab fees, etc.) up to the prescribed limit. An employee may be reimbursed for courses necessary to attain a job related degree.
- B. The reimbursement for Job-Related Educational Pursuits or Skills Enhancement Pursuits whose course cost is all-inclusive, which includes either meals, lodging, entertainment, or special events, etc. shall be reduced by the reasonable costs of these non-course related items.

SECTION 11.16 DEPENDENT CARE ASSISTANCE PLAN

The District will continue for the term of this Agreement the Dependent Care Assistance Plan as adopted by the Board of Directors by Resolution 98-25, November 4, 1998. However, employee contributions shall be allowed at the maximum level allowed by law.

SECTION 11.17 SOCIAL SECURITY REPLACEMENT BENEFITS

The District's Board of Directors has adopted and implemented a package of benefits designed to replace to the fullest extent possible those benefits formerly provided under the employer-

employee jointly funded federal program commonly known as Social Security. These replacement benefits include the following:

1. Special retirement and disability benefits under PERS.
2. Life insurance coverage for employees is as specified in the contracts. The contracts are available in the Human Resources Section.
3. A portion of long-term disability coverage at the level of 66 2/3% of monthly salary to a maximum benefit of \$6,500.
4. Qualified pension plan contribution of \$62.50 per month credited to each full-time regular employee's account, effective July 1, 2000. The monthly contribution for each subsequent fiscal year shall be adjusted by the change in the annual-average Bay Area CPI-W for the previous calendar year. The contribution amount increased to \$71.21 per month effective July 1, 2004 in accordance with this provision.
5. Medicare Part B for employees that retire after July 1, 2000 up to a maximum total cost of \$10,000 per year for all covered retirees. However, employees that retire after July 1, 2011 shall only be entitled to be reimbursed for the standard Medicare Part B premium. Once the \$10,000 has been distributed by the District, an additional \$5,000 per calendar year shall be made available to reimburse the standard Medicare Part B premium for employees that retire after July 1, 2011.
6. PERS Long Term Care for District employees who elect to enroll in the PERS Long Term Care Program as paid for by the employee.

**SECTION 11.18 HEALTH CARE SPENDING ACCOUNT**

The District will offer employees the option to participate in a Health Care Spending Account (HCSA) Program designed to qualify for tax saving under Section 125 of the Internal Revenue Code, but such savings are not guaranteed. The HCSA Program allows employees to set aside a pre-determined amount of money from their paycheck, not to exceed ~~\$6000 per year starting January 1, 2014~~ the maximum amount allowed by law, for health care expenses not reimbursed by any other health benefits plan before tax dollars. HCSA dollars can be expended on any eligible medical expenses allowed by Internal Revenue Code Section 125. The employee cannot recover any unused balance

**SECTION 11.19 GUARANTEED RIDE HOME**

An employee who uses an alternate method of transportation to commute to and from work will be guaranteed a ride home in the event of an unforeseeable circumstance that would prevent the employee from using such alternate method of transportation to commute home from work.

**ARTICLE XII LEAVE AND HOLIDAYS**

**SECTION 12.01 ANNUAL LEAVE**

1. An employee earn annual leave credits at the rate of 3.69 hours per pay period (approximately one day per month) for the first three years of employment. Annual leave will accrue but cannot be taken until the successful completion of six months' service.
2. An employee with more than three and up to five years of employment will earn annual leave at the rate of 4.64 hours per pay period (approximately 1-1/4 days per month).
3. An employee with more than five and up to ten years of employment will earn annual leave at the rate of 5.52 hours per day period (approximately 1-1/2 days per month).
4. An employee with more than ten and up to twenty years of employment will earn annual leave at the rate of 6.48 hours per pay period (approximately 1-3/4 days per month).
5. An employee with more than twenty years and up to thirty years of employment will earn annual leave at the rate of 7.69 hours per pay period (approximately 2 days per month).
6. An employee with thirty or more years of employment will earn annual leave at the rate of 9.23 hours per pay period (approximately 2-1/2 days per month).
7. If an employee's annual leave accrual rate changes during a pay period, the new rate will be credited from the first day of that period.
8. Annual leave will be normally scheduled in advance by the employee's immediate supervisor, in consideration of the operating requirements of the section and the division. However, in an emergency situation, annual leave will be authorized so long as the employee's immediate supervisor is notified in advance.
9. The maximum accumulation of annual leave is four hundred and sixty (460) working hours as of the end of the calendar year. After reaching that limit, no further hours shall be accumulated until the employee reduces the balance below four hundred and sixty (460) hours.
10. Use of annual leave of more than one hundred and sixty (160) hours must be scheduled and approved by the Executive Officer.
11. For the purposes of determining the rate of annual leave, accumulated service within the District will be used less any time for leave of absence in excess of two pay periods.
12. For a permanent employee that was previously employed as either a limited-term employee or a temporary employee for more than 1000 hours: effective July 1, 2001 accumulated service shall be the combined service as a permanent employee and previous service as a limited-term employee or temporary employee, less the initial 1,000 hours. The District will not allow retroactive accrual prior to July 1, 2001.

13. If a payday falls during an employee's vacation, the employee may receive a partial pay warrant for the pay period. The employee may pick up the warrant three (3) days prior to beginning vacation, provided two weeks' notice is given to the Human Resources Office.
14. Once per calendar year, an employee may exchange unused annual leave in excess of 200 hours, up to a maximum of 40 hours per calendar year, for the equivalent amount in wages. The request may not exceed forty (40) hours per fiscal year. Payment shall be made within 10 working days of the request.
15. An employee who is re-hired by the District as a permanent employee will accrue annual leave at the rate he/she was accruing at the time of separation.

SECTION 12.02 SICK LEAVE

1. **COVERAGE.** Sick leave is granted leave to cover authorized absence by an employee unable to work for any of the following reasons:
  - A. Personal injury or illness, pregnancy, childbirth, or pregnancy-related disability.
  - B. Exposure to contagious disease requiring quarantine.
  - C. When the employee is required to attend to a member of the immediate family for reason stated in (A) above, to a maximum of eighty (80) hours per calendar year, provided, however, that in the event of a catastrophic illness of an immediate family member, an employee may petition the EO to use more than 80 hours of accrued sick leave per year to care for that immediate family member.
  - D. For the purpose of this section, immediate family will include: mother, father, spouse, children, brother, sister, grandparents and grandchildren of the employee, domestic partners and relatives by marriage and relatives of domestic partners, including mother-, father-, brother-, sister-, son-, and daughter-in-law.
  - E. Appointments for dental, eye, and other medical examinations.
  - F. When an employee is required to be absent for purposes related to the adoption of a child to a maximum of 80 hours per calendar year, provided, however, an employee may petition the EO to use more than 80 hours of accrued sick leave per year for purposes related to the adoption of a child. Examples may include but are not limited to: Appointments with adoption agencies, social workers, and attorneys; Court proceedings; Required travel; Any periods of time the adoptive parents are ordered or required by the adoption agency or by the court to take time off from work to care for the adopted child; and any other activities necessary to allow the adoption to proceed. Adoptive parents who voluntarily choose to be absent from work to bond with an adoptive child may not use sick leave for this purpose. Employees must have at least 200 hours of sick leave before initially requesting sick leave for purposes related to the adoption of a child.

2. ALLOWANCE. Employees will earn sick leave at the rate of 3.69 hours per pay period. There is no limit to the amount of sick leave that may be accumulated. Employees are eligible to use sick leave as it is earned.
3. COORDINATION WITH STATE DISABILITY INSURANCE. At the employee's election, sick leave may be integrated with State Disability Insurance, Family Temporary Disability Insurance and Workers' Compensation Insurance as soon as eligibility for such benefits is established.
4. JOB-RELATED INJURY. Employees injured on the job and accepted for Workers' Compensation will not be required to use sick leave for the period from the 1st through the 90th calendar day. This period will begin the day following the date of injury or the date Workers' Compensation approved the absence from work, whichever date begins the absence from work. The period will apply only once per injury. The date of injury will be paid as a day worked for pay purposes.
5. HOLIDAY DURING A SICK LEAVE PERIOD. If a holiday occurs during a continuous period of authorized sick leave, the holiday will not be counted as a day of sick leave.
6. BLOOD DONATIONS. Employees may take up to two (2) hours to donate blood to the District's account or to a specific person's account to a maximum of twice a year without loss of sick leave credits. Such leave must be approved in advance by the employee's supervisor and consistent with District operating requirements.

SECTION 12.03 BEREAVEMENT LEAVE

1. When a death occurs in the immediate family of an employee, the employee may take twenty-four (24) consecutive work hours off, counting the day of the funeral, without loss of pay, or
2. If the employee is the family member required to make the family arrangements for the funeral and burial (or equivalent ceremony), the employee may take up to forty (40) work hours off without loss of pay to make such arrangements. Such time shall include all time for travel.
3. For the purpose of this Section, immediate family is defined the same as in Section 12.02(1)(D) above.

SECTION 12.04 MILITARY LEAVE

The District shall comply with all applicable laws requiring the release and payment for duty in the U.S. Military or California National Guard. Notice must be given by the employee to his/her supervisor as soon as the obligation to attend military duty is known.

SECTION 12.05 JURY DUTY

Employees selected for jury duty shall be excused from work with pay for the hours required by such obligation provided they submit any jury fees received for such time to the District. The

employee shall return to work whenever released during working hours and travel time allows except as provided in Section 9.01.3.

SECTION 12.06 SUBPOENA AS A WITNESS

Pursuant to Government Code Sections 1230 and 1230.1, any employee subpoenaed as a witness shall be allowed the time necessary to be absent from work without loss of regular pay.

SECTION 12.07 HOLIDAYS

1. The following days will be paid holidays for all employees:

New Year's Day	(First day of January)
King's Birthday	(Third Monday of January)
Lincoln's Birthday	(Twelfth day of February)
Washington's Birthday	(Third Monday of February)
Chavez' Birthday	(Thirty-first day of March)
Memorial Day	(Last Monday of May)
Independence Day	(Fourth of July)
Labor Day	(First Monday of September)
Columbus Day	(Second Monday of October)
Veterans Day	(Eleventh day of November)
Thanksgiving Day	(Fourth Thursday of November)
Day After Thanksgiving	(Fourth Friday of November)
Christmas Day	(Twenty-fifth day of December)

2. Every day appointed by the President of the United States or Governor of California as a holiday.
3. Holidays falling on Sunday will be celebrated on the following Monday. Holidays falling on Saturday will be celebrated on the preceding Friday, except, if the Governor proclaims the following Monday to be the holiday.
4. Employees will be granted 36 hours of floating holidays per year. Except, an employee hired after January 1st and prior to June 1st will be allowed only 8 hours of floating holiday within that fiscal year. Employees hired after May 31st and prior to July 1st will receive no floating holiday for that fiscal year. Employees must request to use a floating holiday in advance. A floating holiday can be taken only with the approval of the employee's supervisor.
5. Notwithstanding Section 12.07(3), above, employees who are not scheduled to work on a day that is a scheduled holiday for other District employees shall be credited with 8 hours of floating holiday pay in-lieu of the scheduled holiday. The 8 hours of floating holiday shall be credited to the employee's accrual in the same pay period that the scheduled holiday occurs.

SECTION 12.08 BENEVOLENT LEAVE FUND

1. The Benevolent Leave Fund is established for the use and donation by District employees. Any District employee (hereinafter referred to as "employee") may donate annual leave, sick

leave, compensatory time, or floating holiday, with the limitation noted in subsection A immediately below, to the benevolent leave fund for the benefit of employees who are catastrophically ill or injured for one hundred (100) consecutive working hours or longer. In order to donate leave, the following conditions apply:

- A. Only accrued annual or sick leave, compensatory time, or floating holiday leave may be donated to the fund. Any employee may donate up to 40 hours of sick leave to the fund per fiscal year. Floating holiday leave that is donated will only be valid during the fiscal year in which it is accrued. Thus, if in a given fiscal year, an employee donates floating holiday leave and the leave is not used during that fiscal year, the donated leave will expire on the last day (June 30) of that fiscal year.
  - B. To donate accrued leave to the fund, an employee must be eligible to accrue or use annual leave credit and cannot currently be using leave from the Benevolent Leave Fund.
  - C. To donate sick leave, an employee must have a sick leave balance of at least 200 hours.
  - D. Donated leave may be designated for a specific employee, or may be donated without designation. Floating holiday leave shall be used first. Other benevolent leave that is designated to a specific employee must be used in the sequence it was donated. If leave that is donated to a specific employee is not used within 120 days, such leave will be added to the general benevolent leave fund.
  - E. Leave may be donated to the fund regardless of whether there is a qualified recipient.
  - F. Leave may not be sold, bartered or traded to another employee under any circumstances.
  - G. Once leave has been donated to the fund, that leave cannot be reclaimed by the employee making the donation unless and until that employee later becomes an eligible fund recipient.
2. In order to be a fund recipient, the following conditions apply:
- A. The recipient must be catastrophically ill or injured, on an approved leave for medical purposes and must have on file with the Human Resources Office a medical verification from the employee's personal physician that demonstrates that the recipient is in fact catastrophically ill or injured and unable to work for at least one hundred (100) consecutive working hours or longer.
  - B. Upon written request from the Association Board of Directors, the Human Resources Officer shall provide to the Association the amount of leave in the fund.
  - C. The recipient must have exhausted all forms of paid leave prior to using any benevolent leave. However, it is understood the employee will accrue all appropriate leaves during the time the Benevolent Leave Fund is in use and shall not be required to use such accrued leave during such time.



- D. The recipient may not receive benevolent leave from the fund in an amount which exceeds 100% of that employee's normally scheduled hours for any pay period.
  - E. Written requests to use leave from the fund shall be submitted to the Human Resources Officer.
  - F. The Human Resources Officer or designee shall provide a written response approving or denying the employee's request, or requesting more information within 5 working days. If the request is denied, the Human Resources Officer or designee shall state the reasons for denial in the written response.
  - G. If a request to use leave from the fund is denied, the refusal may be appealed to the APCO. The APCO's decision shall be provided, in writing, to the employee within ten (10) calendar days from the date an appeal is submitted.
3. Catastrophic illness or injury is defined as a serious illness, injury, impairment, or physical or mental condition that is present for a minimum of one hundred (100) consecutive working hours or longer.

SECTION 12.09      TEMPORARY DISABILITY LEAVE

The provisions of Division III, Section 11.4 of the District's Administrative Code Personnel Policies and Procedures are incorporated herein, and made a part hereof by this reference. Proposed changes to this policy that are within the scope of bargaining will not be implemented without first obtaining the concurrence of the Association in said changes.

SECTION 12.10      FAMILY CARE LEAVE

The provisions of Division III, Section 11.7 of the District's Administrative Code Personnel Policies and Procedures are incorporated herein, and made a part hereof by this reference except as modified in 1 and 2 below:

- 1. Each full-time employee is entitled to a maximum of 480 hours of family care and medical leave during any 12-month period. The 12-month period begins on the first date family care and medical leave is taken. Family care and medical leave can only be initiated by request of the employee. Prior to the request, time off taken on any type of paid leave will not be deducted from the family care and medical leave entitlement. When medically necessary, leave may be taken on an intermittent basis or the employee may be authorized to work on a reduced schedule.
- 2. The family care and medical leave entitlement may consist of paid or unpaid leave. An employee who is taking family care and medical leave to care for an eligible family member must use all accrued annual leave and floating holiday, except for 80 hours that may be retained or used at the employee's discretion, before unpaid leave may be taken. An employee who is taking family care and medical leave due to the employee's own serious medical condition is not required, but may choose to, use accrued annual leave and floating holiday.

No changes to said provisions of Division III, Section 11.7 of the District’s Administrative Code Personnel Policies and Procedures that are within the scope of bargaining will be proposed to the District’s Board of Directors by District Management without first obtaining the concurrence of the Association in writing of said proposed changes.

SECTION 12.11 PREGNANCY DISABILITY LEAVE

The provisions of Division III, Section 11.9 of the District’s Administrative Code Personnel Policies and Procedures are incorporated herein, and made a part hereof by this reference. Proposed changes to this policy that are within the scope of bargaining will not be implemented without first obtaining the concurrence of the Association in said changes.

SECTION 12.12 LEAVE ACCRUAL - RETURNING FROM UNPAID LEAVE

Once returning to work from unpaid leave, in order to accrue annual and sick leave, an employee must work 50% of his or her regularly scheduled assignment (i.e. 50% of the regular assignment of 40 hours in five (5) consecutive eight-hour days or 50% of 40 hours in four (4) consecutive 10-hour days).

SECTION 12.13 LEAVE WITHOUT PAY

Regular full-time or part-time and probationary employees may be granted a leave without pay for non-medical reasons. Such leave will be granted at the discretion of the EO.

Leave may be granted for any period of time up to thirty (30) calendar days and may be extended for one (1) to ten (10) additional working days. A working day is any day that the District office is open for business. A return to work of one full day is considered as ending a leave period. Additional time after this day will be requested as a new and separate leave.

An employee on leave without pay continues to receive benefits described in Article XI, except that an employee on leave without pay for more than 80 hours during a fiscal year will not accrue annual or sick leave for the period of leave without pay in excess of 80 hours, and will not receive transit subsidy, or receive educational reimbursement, unless the course was approved prior to the commencement of the leave. Employee and employer contributions to PERS are not paid during leave without pay. A leave without pay is not considered as a break in service, and the employee is assured return to the same position, or to a comparable position in the same job classification and at the same pay grade.

SECTION 12.14 LEAVE OF ABSENCE

1. Leave of absence may be granted for non-medical reasons or to continue a medical leave for a maximum of six (6) months by the EO. A consecutive leave of absence may be granted but in no case for a total of more than twelve (12) months for any employee.

No annual or sick leave credits are earned during leaves of absence. An employee on a medical leave of absence continues to receive benefits described in Article XI, except that an employee on leave of absence shall not receive transit subsidy, or receive educational reimbursement, unless the course was approved prior to the commencement of the leave. Employee and employer contributions to PERS are not paid during unpaid leaves of absence.

An employee on a leave of absence for non-medical reasons receives none of the benefits described in Section 11. A leave of absence for non-medical reasons is considered a break in service, and the position vacated by this leave may be open for recruitment of a regular employee.

2. Return after unexpired leave. Granting a leave of absence will permit the return of the employee to District employment before the expiration of the leave of absence under the following conditions.
  - A. The employee will have preference for re-employment in the same classification or at another lower classification for which the person is qualified, provided the position is vacant.
  - B. Leave of absence does not confer any absolute right to return to position or employment.
  - C. Employee time in-grade for salary increase will be preserved, at the same level.
  - D. Accrued pension rights and pension time will be preserved.

### **ARTICLE XIII      ASSOCIATION ACTIVITIES**

#### **SECTION 13.01      COMMUNICATING WITH EMPLOYEES**

1. The Association may use District internal mail. Any mail will be given to the Business Manager for routing.
2. The Association will use the right-hand third of the space on District bulletin boards for posting Association business announcements provided District business matters do not take precedence. All material posted will be dated for timely removal. No Association documents will be removed prematurely except for demonstrated lack of space.

#### **SECTION 13.02      USE OF DISTRICT FACILITIES**

1. The Association may use District meeting rooms provided they are available and there is no interruption of District work. The Association will submit its requests to the Business Manager for the use of the rooms in advance. Meetings of the District take precedence over Association meetings. Security and clean-up will be the responsibility of the Association.
2. The Association may use the District's reproduction facilities at reasonable cost.
3. Materials to be reproduced will be submitted to the Business Manager for costing and scheduling, which will be without interruption of District business. The District will bill the Association monthly for costs incurred.
4. The District will provide the Association with office space providing there is available space.

**SECTION 13.03      ASSOCIATION REPRESENTATIVES AT BOARD OF DIRECTOR MEETINGS**

Two Association representatives will be allowed to attend regular meetings of the Board of Directors on paid release time. Two Association representatives will be allowed to attend regular meeting of committees of the Board of Directors when items are on the agenda that directly relate to matters within the scope of representation of Association activities.

**SECTION 13.04      ASSOCIATION REPRESENTATIVES**

1. The Association may, by written notice to the HRO, designate no more than seven (7) of its members to be stewards. If a change in Stewards occurs, notification shall be provided to the HRO within ten (10) working days of such change.
2. The stewards and officers (representatives) will obtain approval from their immediate supervisor or management official before leaving a work assignment. Permission will not be withheld except for good cause.
3. Representatives will be allowed to post Association notices on District bulletin boards.
4. Representatives other than the President or Vice President will each be allowed up to eight (8) hours off, with pay, per month to engage in Association business, including but not limited to assisting employees in processing grievances. The amount of time so used will be reflected in the representative's time sheet. Time spent meeting with District Management personnel shall not count against the hours allotted. The President and Vice President each will be allowed up to seven (7) hours off, with pay, per month to spend on Association business.
5. Any represented employee who has a grievance may request the assistance of a representative in preparing and presenting the grievance.
6. Association board and committee members working on Association business and issues related to meet and confer shall be provided with reasonable time and accommodations to spend on these activities, so long as advance notification is given to, and approval is received from, an employee's supervisor.
7. The Association negotiating team members (total of nine) will be allowed up to 40 hours off, with pay, per month for bargaining preparation when negotiations are in progress.
8. In the event that a dispute results in litigation or is submitted to arbitration or any other forum for dispute or grievance or litigation resolution, not more than two representatives shall be authorized to attend the proceedings on paid release time to represent the grievant and/or the Association. This paid release time is separate and apart from any other paid time afforded to representatives for association activities. The EO may release any number of people for such proceedings.

**ARTICLE XIV      AVAILABILITY OF DISTRICT DOCUMENTS**

SECTION 14.01 ADMINISTRATIVE CODE

The District will continue to make available to the Association a copy of the Administrative Code.

SECTION 14.02 HEALTH INSURANCE PLANS

The District will continue to make available for reading by authorized representatives of the Association the master plans of the life, health, vision and dental insurance plans. The master plans will be available in the Human Resources Section only.

SECTION 14.03 PERSONNEL FILES

The District will continue to maintain a personnel file on each employee. Employees have the right to review their personnel file at reasonable times with prior arrangement (normally within 7 days) with the Human Resources Section.

**ARTICLE XV PERSONNEL TRANSACTIONS AND RECORDS**

SECTION 15.01 HIRING AND INITIAL ORIENTATION

The provisions of Division III, Section 12.1 of the District’s Administrative Code Personnel Policies and Procedures are incorporated herein, and made a part hereof by this reference. Proposed changes to this policy that are within the scope of bargaining will not be implemented without first obtaining the concurrence of the Association.

SECTION 15.02 PERSONNEL AND MEDICAL FILES

The provisions of Division III, Section 12.2 of the District’s Administrative Code Personnel Policies and Procedures are incorporated herein, and made a part hereof by this reference. Proposed changes to this policy that are within the scope of bargaining will not be implemented without first obtaining the concurrence of the Association.

SECTION 15.03 EMPLOYMENT RECORD VERIFICATION

The provisions of Division III, Section 12.3 of the District’s Administrative Code Personnel Policies and Procedures are incorporated herein, and made a part hereof by this reference. Proposed changes to this policy that are within the scope of bargaining will not be implemented without first obtaining the concurrence of the Association.

SECTION 15.04 CLASSIFICATION SYSTEM

The provisions of Division III, Section 12.4 of the District’s Administrative Code Personnel Policies and Procedures are incorporated herein, and made a part hereof by this reference. Proposed changes to this policy that are within the scope of bargaining will not be implemented without first obtaining the concurrence of the Association.

SECTION 15.05 REQUESTS FOR NEW EMPLOYEES

The provisions of Division III, Section 12.5 of the District’s Administrative Code Personnel Policies and Procedures are incorporated herein, and made a part hereof by this reference.

Proposed changes to this policy that are within the scope of bargaining will not be implemented without first obtaining the concurrence of the Association.

**SECTION 15.06 PERSONNEL ACTION FORMS**

The provisions of Division III, Section 12.6 of the District’s Administrative Code Personnel Policies and Procedures are incorporated herein, and made a part hereof by this reference. Proposed changes to this policy that are within the scope of bargaining will not be implemented without first obtaining the concurrence of the Association.

**ARTICLE XVI METHOD OF FILLING VACANCIES**

**SECTION 16.01 PROCEDURES**

1. **ANNOUNCEMENT PROCEDURE.** When a bargaining unit vacancy exists, the Human Resources Officer (HRO) will prepare and distribute a position announcement for the vacancy. The announcement will normally be posted on the electronic (e-mail) Personnel Bulletin Board as well as on each floor’s bulletin board. The announcement will be delivered by mail or by insertion into the employee’s pay envelope. The position will be opened for at least 10 working days. The bargaining unit vacancy announcement will include the opening date, minimum qualifications required, the criteria to be used to screen applicants, the weight which will be given to the panel interview, and a statement that the District may choose to utilize these procedures or any other selection procedure deemed appropriate as determined by the HRO and Hiring Manager, if the qualified applicant pool does not include any bargaining unit employees.
2. **REVIEW OF JOB ASSIGNMENT(S) AND DESCRIPTION.** Prior to the opening of a vacancy, a Division Director shall have the right to make job assignment changes within the classification of the vacant position prior to identifying the actual vacant position. The Hiring Manager must review the job description prior to the commencement of the recruitment process in order to select those duties and functions, which are the most relevant for the position to be filled. Those identified duties and functions shall be placed in bold print so that they are given prominence in the job announcement for the position to be filled.
3. **APPLICATION.** Employees who wish to be considered for the position will submit a completed application form to the HRO on or before the filing deadline specified on the announcement.
4. **QUALIFICATIONS.** The qualifications include, but are not limited to, the education, experience, knowledge, skills, abilities and other background factors, which are needed for each classification. The minimum qualifications will be specified in the position description form and included in the announcement. The HRO may allow for or consider equivalent education and/or work experience when evaluating if an applicant meets the minimum qualifications. In reviewing job applications, the HRO shall consider all relevant education, work experience, supervisory experience and lead experience. In evaluating the qualifications of each applicant, the HRO shall document in writing the extent to which each applicant possesses the desirable qualifications.

The HRO shall determine if candidates meet the minimum qualifications of the position. The HRO shall inform each candidate in writing if he/she meets the minimum qualifications for the position. The HRO may reject any application if the applicant does not possess the minimum qualifications required for the position, or for other justifiable reasons. The HRO shall inform any disqualified District employee in writing. This written notice shall inform the employee of his/her rights to appeal the HRO's decision and the right to obtain a written statement of the specific reasons for the disqualification, providing the employee requests the written statement within five (5) working days of the receipt of the written notice.

5. **VACANCY.** A vacancy is a position in which there is no incumbent and no employee has a right to the position. A position is vacant when the position is newly-created, the incumbent terminates, the incumbent is on a leave of absence or the incumbent has been demoted from the position. A position is not vacant if the incumbent is on sick leave, annual leave, bereavement leave, temporary disability including maternity leave, Family Care Leave, Workers' Compensation, leave without pay or any other circumstances determined by the EO.
6. **ORDER OF FILLING VACANCIES.**
  - A. **FIRST PRIORITY.** Reinstatement from layoff, return from leave of absence granted for medical reasons. To fill a vacancy in the first priority category, the HRO will submit the names of all qualified candidates to the Hiring Manager.
  - B. **SECOND PRIORITY.** For regular employees, transfer, promotion, or return from leave of absence granted for non-medical reasons. To fill a vacancy in the second priority category, the procedures specified in this Section shall be used.

The Hiring Manager shall have the right to determine whether a second priority order for filling vacancies shall be promotional or open. In the event the recruitment is open, bargaining unit employees have the opportunity to apply and compete for the vacant position with the outside applicants.

7. **DISQUALIFICATION APPEAL.** Those bargaining unit applicants who do not meet the minimum qualifications for the bargaining unit vacancy shall be notified in writing and shall have the right to a consultation with the HRO and an opportunity to present additional information regarding his/her qualifications provided a written request for consultation is submitted to the HRO within 10 working days from the receipt of the written notification of disqualification. The HRO shall review the additional information with the Hiring Manager. The Hiring Manager shall have the final decision in determining whether or not a bargaining unit applicant meets the minimum qualifications for the bargaining unit vacancy. If the Hiring Manager or the HRO decides that the employee meets the minimum qualifications, the employee will be allowed to continue in the recruitment. If the Hiring Manager decides that the employee fails to meet the qualifications, the employee shall be disqualified. The HRO, within five (5) working days of receipt of the Hiring Manager's written decision, shall inform the employee of the reason for his/her disqualification in writing.

8. **QUALIFIED APPLICANT POOL - PROCEDURE.** The following procedure shall be used to determine the qualified applicant pool. In an open recruitment, all qualified District employees shall be interviewed by the Hiring Manager and Steps A, B, and C will not apply to those District employees. When there are five (5) or fewer qualified applicants, Steps A, B, and C will not apply.
  - A. A panel of three (3) District employees chosen by and facilitated by the HRO shall screen those applicants who meet the minimum qualifications for the bargaining unit vacancy. The HRO will not be a member of the screening panel. The Hiring Manager in consultation with the HRO shall establish the screening criteria. The screening criteria may include a practical test, a written examination, a review of the responses to the supplemental application question, and/or any combination of screening methods deemed appropriate for the position by the Hiring Manager. The screening panel shall score the applicant consistent with predetermined scoring methodology. As a result of the screening, all applicants will be given a score based on a 100-point scale. If the Hiring Manager has opted for an examination, then the HRO shall administer the examination to all of the candidates under the same conditions. The HRO or the screening panel shall score the examinations with the predetermined scoring criteria. The examination will be scored blindly.
  - B. Out of the total qualified applicant pool screened by the panel identified in (A) above, the top eight (8) applicants, by score, will be referred for a panel interview.
  - C. The top eight (8) applicants will be interviewed by the panel of three (3) District employees designated at the discretion of the HRO, giving due consideration to the necessities of the job being filled. The HRO shall ensure that one of the panelists shall be a representative from the Division where the vacancy exists, and who occupies a position in a job classification, which is equal to or higher than that of the job to be filled. The HRO shall ensure that the other two panelists come from two other Divisions and each shall occupy a position in a job classification, which is equal to or higher than that of the job to be filled. The HRO may choose a fourth (4th) panel member from outside the District employ who possesses expertise in the area of the vacant position. The Hiring Manager and the HRO will develop the interview questions and rating criteria. A representative of the HRO will facilitate the interview process, however, that person will not be a member of the panel. The interview panel score, based on a 100-point scale, will be combined with the screening panel score, if applicable, in accordance with the weighting identified in the vacancy announcement. In no event will the interview score be weighted less than 20% of the total score.
  - D. As a result of the combined scores, the Hiring Manager in the presence of the HRO will interview the top five (5) applicants. In open recruitments the Hiring Manager will interview all qualified District employees. The Hiring Manager and the HRO will develop the interview questions and rating criteria. The Hiring Manager shall ask the predetermined interview questions of every candidate and evaluate the candidates based on the predetermined selection criteria. Based on the answers to the prepared questions,



the Hiring Manager may pursue further lines of inquiry, which will draw out further information about the candidate’s qualifications or abilities that relate to the vacant position. The Hiring Manager shall document in writing the extent to which each applicant possesses the desirable qualifications. The Hiring Manager shall score each candidate consistent with the scoring criteria. The Hiring Manager shall review the scoring of each candidate with the HRO or designee. At the conclusion of all the interviews, the Hiring Manager shall forward his/her scoring sheets, notes and recommendation of the selected candidate to fill the vacancy to the HRO or designee. The hiring recommendation shall be forwarded to the HRO for certification as to process and procedure. Once the HRO certifies the process and procedure the hiring recommendation shall be forwarded through the chain of command to the EO for approval. Any determination not to approve a Hiring Manager’s recommendation shall be in writing. If the hiring process and procedure is not certified by the HRO, the recommendation shall not be forwarded to the EO and the HRO shall take the appropriate steps to ensure the recruitment and selection process conforms to the procedures specified in this Article. Any determination not to approve the Hiring Manager’s recommendation shall be in writing and shall provide a detailed explanation of the reasons for the determination, and must be approved by the EO. This document, and any correspondence concerning the document from the Hiring Manager or from any other manager in the chain of command applicable to the hiring decision, shall become part of the record of the hiring decision.

- E. In the event the EO does not approve the Hiring Manager’s recommendation, the Hiring Manager shall submit the name of the candidate who has the next highest final score through the appropriate levels of management for approval by the EO.
- F. After the final selection(s) are made and approved by the EO, the Hiring Manager upon request shall provide each unsuccessful candidate with reasons for his or her rejection. These reasons shall be constructive and specific.
- G. In the event there are tied scores at the eighth or fifth positions as a result of the procedures identified in Step B and C above, each employee at the tied positions shall proceed to the next steps in the process.
- H. For more than one vacancy, one additional applicant for each additional vacancy will be added to each of the selection processes Steps B, C and D above.
- I. If a vacancy occurs in the same classification during a current recruitment or within 18 months from the start date of the selected applicant, the District shall have the option of using the applicant pool of the most recent recruitment to fill the subsequent vacancy.
- J. A bargaining unit employee or the Association has the right to file a grievance if the procedures of this Article are not followed when there are bargaining unit employees in the applicant pool. Matters that are not procedural, including the hiring decision, are not grievable.

- K. If there are two (2) or less bargaining unit candidates who meet the minimum qualifications in the applicant pool, the bargaining unit candidates will be interviewed by the Hiring Manager, and in continuing the recruitment, the District retains the right to utilize these procedures or any other selection procedures deemed appropriate by the HRO with the concurrence of the Hiring Manager.

Allegations of discrimination under this Article cannot be grieved.

SECTION 16.02 CONTRACTING OUT

The District shall not contract out or remove from the bargaining unit any District work, whether permanent or temporary, which is performed by bargaining unit members, if the services are of a kind that persons selected through the District’s normal selection process could perform adequately, competently and in timely manner, except as follows:

- A. Concurrent with recruitment for one or more bargaining unit vacancies, the District may contract out for services normally performed by bargaining unit employees provided no more than 1,000 hours is contracted out per vacancy.
- B. In emergency situations contracting out for services normally performed by bargaining unit employees shall be permitted, providing no more than 1,000 hours is contracted out per contract employee.
- C. Contracting out of new functions not previously undertaken or covered by existing employees shall be permitted provided it is determined that the services cannot be adequately performed by bargaining unit employees.
- D. Non-bargaining unit employees (Temporary workers) employed by the District for the purpose of filling a bargaining unit position while a bargaining unit employee is on approved leave (i.e., not those instances where the temporary worker is filling a vacant position) need not be terminated for the duration of the approved leave.

SECTION 16.03 INTERN PROGRAM

The District operates a College Intern Program and High School Intern Program. In connection with these actions, the District and the EA agree that individuals appointed to College Intern or High School Intern classifications shall be allowed to perform bargaining unit work based on the conditions set forth in this Agreement.

**PART A: COLLEGE INTERNS**

1. The EA and the District shall mutually establish College Intern Program guidelines and College Intern classifications. The District shall have the right to determine where Interns are assigned. The District agrees Interns shall perform work consistent with the class specification only. The College Intern classifications shall be in place and in effect prior to the implementation of Part A.

2. The District has the right to determine the number of College Interns to use in this Program. The cumulative hours for all College Interns shall not exceed 4,000 hours in each calendar year.
3. The District has the right to determine each College Intern's work schedule. The District shall be allowed to assign intermittent, part-time or full-time work schedules to College Interns. College Interns shall not be assigned work in excess of 40 hours in a workweek. College Interns are subject to the Fair Labor Standards Act (FLSA).
4. For each 4-week period (two pay periods), the District shall report to the EA in writing the names, duties, hours of work in that 4-week period, and cumulative hours of work for all College Interns in the calendar year. The District shall ensure that the EA President or designee is in receipt of this written report no later than 14 calendar days from the end of the preceding 4-week period.
5. College Interns shall not be eligible to become members of the EA and are not covered by the MOU.
6. The hourly pay rate for Air Quality Intern shall be equivalent to that of step A of the entry level job classification of the specified series most closely related to the specific assignment.

#### PART B: HIGH SCHOOL INTERNS

1. The EA and the District have established the High School Intern Program guidelines and the High School Intern classification. The District shall have the right to determine where High School Interns are assigned. The District agrees High School Interns shall perform work consistent with the class specification only. The High School Intern classification shall be in place and in effect prior to the implementation of Part B.
2. The District has the right to determine the number of High School Interns to use in this Program. The cumulative hours for all High School Interns shall not exceed 2,000 hours in each calendar year.
3. The District has the right to determine each High School Intern's work schedule. The District shall be allowed to assign intermittent, part-time or full-time work schedules to High School Interns. High School Interns shall not be assigned work in excess of 40 hours in a workweek. High School Interns are subject to FLSA. High School Interns shall not be eligible to perform work done by regular employees as an overtime assignment that includes but not limited to, home and garden shows, county fairs, lawn mower exchange programs, wood stove exchange programs, ethnic celebrations and earth day fairs.
4. For each 4-week period (two pay periods), the District shall report to the EA in writing the names, duties, hours of work in that 4-week period, and cumulative hours of work for all High School Interns in the calendar year. The District shall ensure that the EA President or designee is in receipt of this written report no later than 14 calendar days from the end of the preceding 4-week period.

5. High School Interns shall not be eligible to become members of the EA and are not covered by the MOU.
6. The hourly rate for High School Interns shall be the City and County of San Francisco minimum wage.

**PART C: VIOLATIONS OF THIS AGREEMENT**

1. If the EA believes this Side Letter is being violated, the President or designee shall request a meeting with the Human Resource Officer or designee to review concerns. The meeting shall be held within 5 calendar days of the request. In the event matters are not resolved to the EA's satisfaction, at the sole discretion of the EA, the EA may move any alleged violation of this Agreement to binding arbitration, beginning at Section 4.09 of the MOU. If an arbitrator determines that the District violated any provision in Part A and/or Part B of this Agreement, then Part A and/or Part B inclusive shall automatically be rendered null and void and terminated. For example, if an arbitrator determined that the District only violated a provision in Part A of this Agreement, the District would terminate the College Intern Program. The High School Intern Program would not be affected. If an Intern Program is terminated, all Interns in that program shall be terminated within 7 calendar days from the date of receipt of the arbitrator's decision. If an arbitrator determines that the District violated any provision in Part E of this Agreement, then Part A and Part B shall automatically be rendered null and void and terminated.
2. Upon termination of Part A and/or Part B, as a result of the arbitrator's decision, the District shall have the right to discontinue the work performed by an Intern or offer current bargaining unit employees overtime to complete the work that was previously performed by the Interns.

**PART D LAYOFFS AND BUMPING**

Except as provided under Section 16.02 of the MOU, if for any reason layoffs and/or bumping is implemented, then all non-regular employees (e.g. temporary part-time or full time worker, College Intern or High School Intern) performing bargaining unit work shall be terminated prior to layoffs and/or bumping of any regular bargaining unit employee. A regular employee is an employee who is hired on a permanent basis.

**PART E MISCELLANEOUS**

1. The District shall pay to the EA an equivalent amount of dues, that the College Interns would have paid had they been EA members, as applicable under Section 2.06 of the MOU.
2. Except as provided in Section 16.02 of the MOU, all other temporary employees performing bargaining unit work shall be terminated for the duration of this agreement.

3. In the event that part A and or Part B are terminated the remaining provisions of this agreement remain in full force and effect.
4. Non-bargaining unit employees (Temporary workers) employed by the District for the purpose of filling a bargaining unit position (not a vacant position) while a bargaining unit employee is on approved leave need not be terminated for the duration of the approved leave.

SECTION 16.04 I-BOND PROGRAM

1. A category of limited term appointments shall be established to perform work necessitated by the I-Bond grant program, or to backfill vacancies created when District employees accept such limited term appointments.
  - A. “Limited Term” is defined as employment that is paid for by I-Bond funds and is not to exceed the duration of the I-Bond grant funding.
  - B. When I-Bond funding terminates, either for an individual position or the program, limited term appointments associated with that funding shall terminate. Employees in limited term positions are not subject to Article 10 of the collective bargaining agreement.
  - C. Limited term employees shall be considered employees represented by the Bay Area Quality Management District Employees’ Association, Inc.
  - D. Limited term employees shall be limited to non-supervisory positions.
  - E. This agreement is not intended to prohibit the District from hiring full-time regular employees for any purpose.
2. For I-Bond limited term appointments only, a separate promotional recruitment process may run concurrent with an open recruitment process.
  - A. The Association waives Article 16.01 Sections 8 A, B and C of the collective bargaining agreement for these I-Bond limited term appointments only.
  - B. Qualified regular full-time employees shall be considered prior to consideration of candidates from an open recruitment.
3. Regular full-time employees of the Bay Area Air Quality Management District who are hired into an I-Bond limited term position shall have the right to return to her/his regular full-time position when I-Bond funding terminates.
4. Contract employees shall not be used for I-Bond projects after April 30, 2009 unless otherwise agreed to by the parties. The Association shall not unreasonably withhold agreement. Disputes regarding application of this provision will be subject to expedited

binding arbitration, using a pre-determined list of arbitrators; selection from the list will be based on the first available arbitrator. The date of the arbitration shall not exceed 30 days from the date of request. Arbitration decisions pursuant to this provision will be issued at the conclusion of the arbitration hearing.

## **ARTICLE XVII MEMORANDUM OF UNDERSTANDING**

### **SECTION 17.01 ENTIRE AGREEMENT**

It is the intent of the parties hereto that the provisions of this Memorandum of Understanding supersede previous agreements between the parties.

This Memorandum of Understanding supersedes any and all other statements of policy or procedure established by this District through its Board of Directors insofar as such provisions relate directly to the matters specifically dealt with herein. Matters not the subject to bilateral agreement through this Memorandum of Understanding remain in full force and effect. Unless specifically amended by the terms of this Understanding, all other terms and conditions of employment remain as previously established.

### **SECTION 17.02 CONSISTENCY WITH ADMINISTRATIVE CODE**

To the extent that any provisions of said Policies and Procedures, which pertain to any subject within the scope of representation, are inconsistent with the terms of this Memorandum of Understanding, the terms of this Memorandum of Understanding shall prevail. During the term of this Memorandum of Understanding, no new provision or amendment to said Policies and Procedures not in accord with this Memorandum or which directly affect wages, hours, terms or conditions of employment of employees covered by this Memorandum of Understanding shall be adopted and/or implemented by the District except upon written agreement with the Association following meet and confer with bargaining representatives.

### **SECTION 17.03 SEVERABILITY**

It is understood that this Memorandum of Understanding is not intended to conflict with any State or Federal law; however, should any provision be deemed ineffective or null and void by reason of law, the remaining provisions shall remain in full force and effect.

### **SECTION 17.04 INTERIM BARGAINING**

Nothing contained in this Memorandum of Understanding, included but not limited to any reopener provision, shall allow any modifications to this Agreement without written consent of the parties hereto.

### **SECTION 17.05 REOPENER**

~~The parties agree that several issues remain to be addressed. Consequently, during the term of this contract, but not later than one year from June 30, 2010 either party may introduce up to five (5) additional proposed amendments to the MOU. Upon mutual agreement, the District or the Employees Association may introduce additional proposed amendments.~~

~~The parties shall negotiate such proposals in good faith. Only items for which mutual agreement is reached shall be implemented. Upon mutual agreement, amendments shall be incorporated into the MOU in the form of a side letter.~~

**ARTICLE XVIII INTERIM ADJUSTMENTS**

During the term of this MOU any and all increases in salary or benefits granted to all confidential employees not expressly provided herein to the Association members shall be immediately incorporated into this MOU.

**ARTICLE XIX SAVINGS PROVISION**

Should any provision of this Agreement be found to be in contravention of any Federal or State law, or by a court of competent jurisdiction, such particular provision shall be null and void, but all other provisions of this Agreement shall remain in full force and effect until otherwise canceled or amended by mutual agreement of the parties. In the event that any provision shall be held unlawful and unenforceable by any court of competent jurisdiction, the parties agree to meet forthwith for the purpose of renegotiating such provision in an attempt to reach a valid agreement.

**ARTICLE XX TERM OF AGREEMENT**

The District and the Association agree that the term of this Agreement shall commence ~~June 7, 2000~~ July 1, 2014 and expire at midnight on June 30, ~~2006~~ 2017. ~~The parties further agree to amend the term of this Agreement to expire at midnight June 30, 2014.~~

No less than ninety (90) days prior to the expiration of this MOU the parties shall commence negotiation for a successor MOU.

~~Should the parties fail to reach agreement on a successor MOU prior to the expiration of this agreement, for up to twelve (12) months immediately following expiration of this agreement, all provisions of this contract shall continue to be honored. Whenever a successor MOU is ratified, all provisions shall supersede the provisions of this agreement.~~

**ARTICLE XXI SUBMISSION TO BOARD OF DIRECTORS**

The provisions of the Memorandum of Understanding are hereby being submitted to the Board of Directors of the Bay Area Air Quality Management District for its approval.

For the District

\_\_\_\_\_  
Date

\_\_\_\_\_

\_\_\_\_\_

For the BAAQMD Employees' Association, Inc.

\_\_\_\_\_  
Date

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**APPENDIX A: CLASSIFICATIONS**

Accountant	Principal Air Quality Engineer
Accounting Assistant I/II	Principal Air Quality Specialist
Administrative Analyst	Principal Environmental Planner
Administrative Secretary	Programmer Analyst I/II
Advanced Projects Advisor	Public Information Officer I/II
Air Quality Case Settlement Specialist I/II	Radio Telephone Operator
Air Quality Chemist I/II	Radio Telephone Operator Supervisor
Air Quality Engineer I/II	Receptionist
Air Quality Inspector I/II	Research Analyst
Air Quality Instrument Specialist I/II	Secretary
Air Quality Laboratory Technician I/II	Senior Accounting Assistant
Air Quality Meteorologist I/II	Senior Advanced Projects Advisor
Air Quality Permit Technician I/II	Senior Air Quality Chemist
Air Quality Specialist I/II	Senior Air Quality Engineer
Air Quality Technical Assistant	Senior Air Quality Inspector
Air Quality Technician I/II	Senior Air Quality Instrument Specialist
Atmospheric Modeler	Senior Air Quality Meteorologist
Building Maintenance Mechanic	Senior Air Quality Permit Technician
Data Entry Operator	Senior Air Quality Technician
Database Specialist	Senior Air Quality Specialist
Deputy Clerk of the Boards	Senior Atmospheric Modeler
Environmental Planner I/II	Senior Environmental Planner
Facilities Maintenance Worker	Senior Public Information Officer
Facilities Services Supervisor	Statistician
Fiscal Services Coordinator	Supervising Air Quality Engineer
Legislative Analyst	Supervising Air Quality Inspector
Librarian	Supervising Air Quality Instrument Specialist
Mechanic I/II	Supervising Air Quality Meteorologist
Office Assistant I/II	Supervising Air Quality Specialist
Office Services Supervisor	Supervising Environmental Planner
Organization Development & Training Spec.	Supervising Public Information Officer
Permit Coordinator	Supervising Systems Analyst
Principal Accountant	Systems Analyst
Principal Air & Meteorological Monitoring Specialist	Systems Quality Assurance Specialist
Principal Air Quality Chemist	Toxicologist
	Web Master

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

**Resolution No. -----**

**A Resolution to Approve a Successor Memorandum of Understanding Between  
the Air District and the Bay Area Air Quality Management District  
Employees' Association**

WHEREAS, the current Memorandum of Understanding (MOU) between the Bay Area Air Quality Management District (“Air District”) and the Bay Area Air Quality Management District Employees’ Association (“Association”) representing the Technical/General representation group and the Professional representation group (collectively, the “Representation Groups”) was approved by the Board on June 15, 2011, by Resolution No. 2011-11 said MOU having an expiration date of June 30, 2014; and

WHEREAS, representatives of the Air District, as authorized by this Board, have met and conferred in good faith with representatives of the Association regarding wages, hours, fringe benefits, and other terms and conditions of employment for the Representation Groups; and

WHEREAS, the Air District and Association negotiators reached an Agreement for a new Memorandum of Understanding from July 1, 2014 through June 30, 2017; and

WHEREAS, the attached MOU reflects the changes agreed to by the Air District and the Association, including changes agreed to pursuant to interim bargaining that have already been approved by the Board of Directors; and

WHEREAS, the Agreement as reflected in the attached MOU has been duly ratified by the membership of the Association;

NOW, THEREFORE, BE IT RESOLVED that the attached extended Memorandum of Understanding between the Air District and the Association be, and is, hereby approved.

The foregoing resolution was duly and regularly introduced, passed and adopted at a regular meeting of the Board of Directors of the Bay Area Air Quality Management District on the Motion of Director \_\_\_\_\_, seconded by Director \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_ 2014 by the following vote of the Board:

AYES:

NOES:

ABSENT:

ATTEST:

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NATE MILEY  
Chairperson of the Board of Directors

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ERIC MAR  
Secretary of the Board of Directors

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

## Memorandum

To: Chairperson Nate Miley and Members  
of the Board of Directors

From: Jack P. Broadbent  
Executive Officer/APCO

Date: June 9, 2014

Re: Approval for Execution of a Contract Totaling in Excess of \$70,000 for Site  
Development Work Required by U.S. Environmental Protection Agency (EPA)  
Mandated Near-Road Monitoring Adjacent to Interstate 80 at Aquatic Park, Berkeley  
CA

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RECOMMENDATION

The Board of Directors will consider authorizing the Executive Officer/APCO to execute a contract not to exceed \$200,000.00, with the successful bidder in a bid process to be conducted in accordance with all federal and state requirements applicable to public works contracting, for site development work adjacent to Interstate 80 at Aquatic Park in Berkeley as required by EPA's Near-Road Monitoring regulation.

BACKGROUND

In 2010, the EPA strengthened the health-based National Ambient Air Quality Standard (NAAQS) for nitrogen dioxide (NO<sub>2</sub>) by adding a new 1-hour standard of 100 ppb. The new NO<sub>2</sub> standard protects public health by limiting short-term exposures to NO<sub>2</sub> concentrations.

Given the elevated pollutant concentrations near major roads and the potential for peak human exposures to occur on or near such roadways, and given that the public health protection envisioned under the revised NO<sub>2</sub> NAAQS depends on determining peak 1-hour NO<sub>2</sub> concentrations, the final NO<sub>2</sub> NAAQS requires monitors near major roadways in large urban areas to ensure the degree of public health protection envisioned in the final rule. In addition, the EPA is requesting that additional pollutants, such as carbon monoxide, particulate matter, and volatile organic compounds associated with vehicle traffic, be incorporated at any sites to help determine health risk associated with high traffic roadways.

The EPA regulation requires three sites to be located in the Bay Area based on population, roadway traffic and vehicle mix. The EPA has provided grant funding for site development and equipment purchase that has been previously reviewed by the Budget and Finance Committee, recognized by the Board of Directors and incorporated in the Air Monitoring Section budget. This contract and associated Purchase Order will allow development of one site located on City of Berkeley property near Interstate 80 in Aquatic Park that represents the most appropriate location based on EPA criteria outlined in EPA's Near-road NO<sub>2</sub> Monitoring Technical

Assistance Document. Staff worked with EPA, the National Resource Defense Council and various community groups to identify and receive EPA approval of this location and then worked with multiple City of Berkeley Departments to receive approval for development of the site.

### DISCUSSION

Staff will request bids through multiple websites and building exchanges that will include detailed scope of work, project construction plans and specifications to successfully complete this project. The bid process will include all required state and federal requirements for bidding and award of contracts for public works projects. Once that process is complete, staff will award the contract to the bidder that represents the best value to the Air District for completion of this project.

### BUDGET CONSIDERATION/FINANCIAL IMPACT

Funds for this contract are part of an EPA grant reviewed by the Budget and Finance Committee (October 24, 2012, Agenda Item 7) and recognized by the Board of Directors (November 7, 2012, Agenda Item 6) and are included in the FYE 2014 budget.

Respectfully submitted,

Jack P. Broadbent  
Executive Officer/APCO

Prepared by: Eric Stevenson  
Reviewed by: Jean Roggenkamp

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

Memorandum

To: Chairperson Nate Miley and Members  
of the Board of Directors

From: Jack P. Broadbent  
Executive Officer/APCO

Date: June 9, 2014

Re: Consider Authorizing Contract Amendments for the My Air Online Program

RECOMMENDED ACTION

Recommend Board of Directors:

- 1) Authorize the Executive Officer/APCO to execute contract amendments with the following vendors in the amounts listed below:

<b>Vendor</b>	<b>Amount</b>	<b>Service Description</b>
C&G Technology Services	\$84,240	Software testing services for the permitting and compliance systems software.
Farallon Geographics	\$45,900	Geospatial software development and data management.
IT Dependz, Inc.	\$280,722	Software development, automated testing and quality assurance services related to the implementation of Production System and registration software.
Sushimedia, LLC.	\$21,600	User experience design.
Trinity Technology Group	\$396,900	Data clean-up and transfer services from legacy permitting and compliance systems to the new permitting and compliance systems. Software development, database and business rules logic implementation permitting and enforcement processes.
Vertigo Software, Inc.	\$648,000	Software development, automated testing and quality assurance services related to the implementation of Production System and registration software.
<b>TOTAL</b>	<b>\$1,447,362</b>	

## BACKGROUND

At the Board of Directors meeting of June 4, 2014, the Executive Officer/APCO presented an update on the My Air Online program. This included a discussion on the integration of the production system project, website redesign, and geospatial data visualization platform to present a unified face to the public.

Air District staff is recommending semi-annual contract amendments for vendors assisting with the development of the permitting and compliance systems of the My Air Online Program in order to meet the calendar year 2014 goals.

## DISCUSSION

In the second half of the 2014 calendar year, the production system project will aim to:

- Provide online permitting for gas stations, auto body shops and dry cleaners for the public;
- Provide the public with tools to submit air quality complaints online;
- Provide online payment for asbestos renovation and demolition job request; and
- Integrate into the redesigned public website ([www.baaqmd.gov](http://www.baaqmd.gov))

In order to continue progress on the permitting and compliance systems of the My Air Online program, Air District staff is recommending the continued use of proven vendors familiar with Air District systems for the first half of Fiscal Year End (FYE) 2015. The Air District has used these firms to assist with the design, development and testing of the permitting and compliance software systems, and they have performed well.

## BUDGET CONSIDERATION/FINANCIAL IMPACT

Funding for the vendor contract recommendations is included in the proposed FYE 2015 budget and will be funded from the My Air Online Program (#125).

Respectfully submitted,

Jack P. Broadbent  
Executive Officer/APCO

Prepared by: Jaime Williams  
Reviewed by: Damian Breen

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

Memorandum

To: Chairperson Nate Miley and Members  
of the Board of Directors

From: Jack P. Broadbent  
Executive Officer/APCO

Date: June 11, 2014

Re: Consider Authorizing a Contract Amendment for Spare the Air Resource Teams

RECOMMENDED ACTION

The Board of Directors will consider authorizing the Executive Officer/APCO to enter into a contract amendment through October 2014 with the Tides Center-Community Focus for \$76,000 for Spare the Air Resource Team program management.

BACKGROUND

In summer 2012, the Board of Directors approved a one-year contract with the option for two one-year extensions for Spare the Air Resource Team program management and facilitation. Air District staff will issue a new Request for Proposals for Spare the Air Resource Team program management and facilitation contracts in 2015.

DISCUSSION

The Air District's Community Outreach Office relies on contractors to assist with aspects of its outreach programs. In 2012, the Communications and Outreach Division completed a Request for Proposal (RFP) process to solicit responses for Spare the Air Resource Team program management and facilitation. The Tides Center-Community Focus was selected and contract work began in 2012-2013 with the potential for two one-year annual extensions.

The Tides Center, through Community Focus, facilitates the nine existing Air District Spare the Air Resource Teams located in Alameda, Contra Costa, Napa, San Francisco, San Mateo, Santa Clara and Sonoma counties. The Spare the Air Resource Teams have become an integral part of the Air District's community-based efforts to improve air quality and a way to garner community, public, business and local government support for developing innovative regional clean air projects.

Based on Air District staff evaluation of contractor performance over the past two years, Air District staff is recommending the contract be amended through October 2014. In October 2014, Air District staff will present to the Public Outreach Committee a request for additional funding and a contract extension for the remainder of Fiscal Year Ending (FYE) 2015.

BUDGET CONSIDERATION/FINANCIAL IMPACT



Funding for Spare the Air Resource Team program management is made available through the Transportation for Clean Air (TFCA) fund and is included in the FYE 2015 budget.

Respectfully submitted,

Jack P. Broadbent  
Executive Officer/APCO

Prepared by: Kristina Chu  
Reviewed by: Jean Roggenkamp

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

Memorandum

To: Chairperson Nate Miley and  
Members of the Board of Directors

From: Jack P. Broadbent  
Executive Officer/APCO

Date: June 12, 2014

Re: Consider a Support Position on Senate Bill 1249 - Hill

RECOMMENDED ACTION

Consider a support position on Senate Bill (SB) 1249 (Hill).

BACKGROUND

Bay Area metal shredding facilities have repeatedly caught fire in recent months, causing neighbors near and far from these facilities to have to shelter in place and subjecting them to unhealthy smoke. Because of the fine particles, heavy metals, and other air toxics in this smoke, the Air District strongly supports efforts to reduce fires at metal shredding facilities. While the Air District has the authority and has repeatedly cited facility owners for creating a public nuisance under Section 41700 of the Health and Safety Code when they have had fires, the Air District's authority to prevent such behavior are limited.

DISCUSSION

Senate Bill 1249 (SB 1249) authored by Senator Jerry Hill, addresses metal shredding facilities. This bill has been referred to the Assembly Environmental Safety and Toxic Materials Committee, and is scheduled to be heard on June 17, 2014.

On June 10, 2014, the bill was amended to require consultation with local air districts as these standards are developed. As a result of these recent amendments, staff is bringing this item to the Board and is recommending a support position at this time.

SB 1249 requires the Department of Toxic Substances Control do a full analysis of metal shredding facilities. Furthermore, they would be authorized to adopt management standards for these facilities.

Staff recommends a support position on SB 1249 with the belief that this bill will help the Air District accomplish the mission of providing a healthy breathing environment to Bay Area residents.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Jack P. Broadbent  
Executive Officer/APCO

Prepared by: Rex Sanders

Attachment: Senate Bill 1249 - Hill

AMENDED IN ASSEMBLY JUNE 10, 2014

AMENDED IN SENATE MAY 27, 2014

AMENDED IN SENATE APRIL 22, 2014

**SENATE BILL**

**No. 1249**

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**Introduced by Senator Hill**

February 20, 2014

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An act to add Sections 25150.9, 25150.9.1, and 25150.9.2 to the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

SB 1249, as amended, Hill. Hazardous waste: shredder waste.

(1) The California Integrated Waste Management Act of 1989 requires materials that require special handling, as defined, to be removed from major appliances and vehicles in which they are contained before crushing for transport or transferring to a baler or shredder for recycling.

The hazardous waste control laws prohibit a person who is not a certified appliance recycler from removing materials that require special handling from major appliances and imposes specified requirements regarding transporting, delivering, or selling discarded major appliances to a scrap recycling facility. A violation of the hazardous waste control laws is a crime.

This bill would authorize, until January 1, 2017, the Department of Toxic Substances Control, in consultation with the Department of Resources Recycling and ~~Recovery~~ and *Recovery*, the State Water Resources Control Board, and *affected local air quality management districts*, to adopt regulations establishing alternative management standards for a metal shredding facility, ~~including activities conducted~~

~~within the boundaries of a metal shredding facility, and for the generation, storage, transportation, and disposal of metal shredder residue and treated metal shredder residue, as defined, for hazardous waste management activities within the jurisdiction of the Department of Toxic Substances Control, that would apply in lieu of the hazardous waste management standards if the department performs specified actions. The bill would include among those department actions preparing a preliminary analysis and a final analysis evaluating the hazardous waste management activities to which the *alternative* management standards would apply. The bill would require the department to provide notice that it proposes to adopt alternative management standards. The bill would prohibit the department from adopting *alternative* management standards that are less stringent than applicable standards under federal law and would require ~~metal shredder residue and treated metal shredder residue~~ *waste* to be disposed of in a specified manner. The bill would require the department to complete the analysis of the hazardous waste management activities and the subsequent regulatory action before January 1, 2017, and would make all hazardous waste determinations and policies, procedures, or guidance issued by the department before January 1, 2014, relating to metal shredder ~~residue~~ *waste* or treated metal shredder ~~residue~~ *waste* inoperative once the department has taken regulatory action. Because a violation of these requirements would be a crime, this bill would impose a state-mandated local program.~~

The bill would authorize the department to collect an annual fee from metal shredding facilities at a rate sufficient to cover the costs of the department to implement these provisions.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. *The Legislature finds and declares all of the*  
2     *following:*

1 (a) Before 1984, all metal shredder waste was considered not  
2 to be hazardous waste and was disposed of or used as alternative  
3 daily cover in municipal solid waste landfills.

4 (b) In 1984, California deemed metal shredder waste as a  
5 non-RCRA hazardous waste, or California hazardous waste, due  
6 to the presence of lead, cadmium, copper, and zinc at levels above  
7 the state’s regulatory thresholds, as well as polychlorinated  
8 biphenyls in concentrations that, on some occasions, exceeded  
9 either the federal or the California regulatory thresholds, or both.

10 (c) Between 1986 and 1992, the Toxic Substances Control  
11 Division of the Department of Health Services, which was the  
12 predecessor to the Department of Toxic Substances Control  
13 (DTSC), issued conditional nonhazardous waste classifications,  
14 also referred to as “f letters,” to seven shredder facilities in  
15 California that treated their metal shredder waste to affix the  
16 hazardous components into waste. Once a facility operator  
17 received a nonhazardous waste classification, treated metal  
18 shredder waste was no longer regulated as a hazardous waste at  
19 the facility.

20 (d) In early 2001, DTSC began an initiative to evaluate the  
21 adequacy of the metal shredder waste policy and compliance with  
22 the conditional nonhazardous waste classifications, which included  
23 new sampling and analysis. The report from that initiative  
24 recommended rescinding the conditional nonhazardous waste  
25 classifications. However, DTSC took no further action.

26 (e) In 2002, DTSC conducted an auto shredder initiative that  
27 found that both treated and untreated shredder waste exceeded  
28 state regulatory thresholds for lead, zinc, and cadmium. The report  
29 recommended that the DTSC policy and procedure that allowed  
30 the exemption for this waste be rescinded and that the waste stream  
31 be regulated as hazardous waste. No action was taken at that time.

32 (f) In 2002, DTSC issued an “imminent and substantial  
33 endangerment” order against Pacific Steel Inc., because of dust  
34 that blew from contaminated piles of waste stored by Pacific Steel  
35 Inc. out in the open. The contaminated piles, which contained  
36 polychlorinated biphenyls and toxic metals such as lead, zinc, and  
37 copper, polluted and threatened to pollute the air and water near  
38 the facility. In 2011, DTSC issued a remedial action order against  
39 Pacific Steel Inc. to clean up the site.

1 (g) In 2008, DTSC sent letters to operators of metal shredder  
2 facilities expressing the department's intention to repeal the  
3 conditional authorization that allows metal shredder waste to be  
4 classified as a nonhazardous waste. However, DTSC has not, to  
5 date, rescinded the conditional waste classifications.

6 (h) In 2009, the California Integrated Waste Management  
7 Board, now known as the Department of Resources Recycling and  
8 Recovery, or CalRecycle, issued the "Alternative Daily Cover  
9 White Paper." The paper states that, "[s]taff with DTSC have  
10 indicated that [metal shredder waste] treatment is not effective,  
11 the material should be considered hazardous, and [metal shredder  
12 waste] should be required to be disposed [of] in Class I landfills.  
13 DTSC staff also indicates that [metal shredder waste] feedstocks  
14 are variable and have changed in the last 20 years (more electronic  
15 components, white goods, chlorinated plastics). Sampling is costly,  
16 and it is difficult to obtain representative samples of [metal  
17 shredder waste]."

18 (i) In 2011, DTSC settled an enforcement action against SA  
19 Recycling, LLC, which is jointly owned by Sims Metal Management  
20 Ltd. and Adams Steel LLC, for \$2.9 million. The action alleged  
21 that SA Recycling, LLC violated air pollution laws when an  
22 explosion at its Port of Los Angeles metal shredding facility at  
23 Terminal Island destroyed its air pollution control system in May  
24 of 2007, and the company continued operating for weeks without  
25 proper equipment. As a result, approximately 4.4 tons of toxic  
26 particulate matter were released into the air, and migrated to bay  
27 waters and the community of Wilmington, putting local residents  
28 and the environment at risk.

29 (j) In January 2012, the Redwood City, California, metal  
30 shredding location of Sims Metal Management was cited by the  
31 United States Environmental Protection Agency for polluting the  
32 San Francisco Bay. Inspectors found the company had unlawfully  
33 discharged polychlorinated biphenyls, lead, copper, mercury, and  
34 zinc into Redwood Creek, a tributary of San Francisco Bay. The  
35 United States Environmental Protection Agency found  
36 polychlorinated biphenyl at levels of 195 times of the accepted  
37 levels and lead at levels of more than 10 times of the accepted  
38 levels in sediment near where the shredding yard meets Redwood  
39 Creek. This enforcement action was resolved in 2013.

1     (k) *Additionally, there have been several fires in the last several*  
2 *years at the Sims Metal Management Redwood City facility that*  
3 *have caused the Bay Area Air Quality Management District to ask*  
4 *residents to stay inside. Two fires occurred in November and*  
5 *December of 2013, raising concerns about the proximity of this*  
6 *facility to residents. In the fire in December of 2013, no one was*  
7 *reported injured by the smoke or fire, which was limited to a debris*  
8 *pile about 900 square feet in area and 30 feet tall, but the noxious*  
9 *odor produced by the blaze was detected as far south as South San*  
10 *Jose and across the San Francisco Bay in Oakland and Berkeley.*

11     (l) *Sims Metal Management’s recycling facilities in Hayward*  
12 *and San Francisco experienced fires in 2009 and 2010,*  
13 *respectively, according to records from the Bay Area Air Quality*  
14 *Management District.*

15     (m) *In 2011, the United States Fish and Wildlife Service*  
16 *investigated Sims Metal Management for allowing fibrous*  
17 *automobile shredder residue to blow or drift into wetlands around*  
18 *Bair Island, 800 feet downwind from the Redwood City facility.*

19     (n) *DTSC has failed to revoke the nonhazardous waste*  
20 *classifications for treated shredder waste granted decades ago to*  
21 *the metal shredding industry despite a 2001 legal opinion by DTSC*  
22 *attorneys, which called the exemption “outdated and legally*  
23 *incorrect,” and warnings from the department’s scientists that*  
24 *this waste could become hazardous during the shredding process.*

25     (o) *It is the intent of the Legislature that the conditional*  
26 *nonhazardous waste classifications be revoked and that metal*  
27 *shredding facilities be thoroughly regulated to ensure adequate*  
28 *protection of the human health and the environment.*

29     **SECTION 1.**

30     **SEC. 2.** Section 25150.9 is added to the Health and Safety  
31 Code, to read:

32     25150.9. (a) The Legislature finds and declares that this section  
33 is intended to address the unique circumstances associated with  
34 the operation of metal shredding facilities, and the generation and  
35 management of wastes generated by metal shredding facilities.  
36 The Legislature further declares that this section does not set a  
37 precedent applicable to the management, including disposal, of  
38 other hazardous wastes.

39     (b) For purposes of this section, ~~the following definitions shall~~  
40 ~~apply:~~



1 (1) ~~“Metal shredder aggregate” means the combination of ferrous~~  
2 ~~metal, nonferrous metal, other recyclable materials, and~~  
3 ~~nonrecyclable materials that exits from a metal shredding facility.~~

4 (2) ~~“Metal shredder residue” means the predominantly~~  
5 ~~nonmetallic material that remains after conducting physical~~  
6 ~~separation methods to separate any ferrous or nonferrous metals,~~  
7 ~~or any other recyclable materials, from the materials created by a~~  
8 ~~metal shredding facility. Metal shredder residue does not include~~  
9 ~~the ferrous and nonferrous metals and other recyclable materials~~  
10 ~~that have been removed from the metal shredder aggregate.~~

11 (3) ~~“Metal “metal shredding facility” means an operation that~~  
12 ~~uses a shredding technique to process end-of-life vehicles, waste~~  
13 ~~appliances, and other forms of scrap metal to facilitate the~~  
14 ~~separation and sorting of ferrous metals, nonferrous metals, and~~  
15 ~~other recyclable materials from nonrecyclable materials that are~~  
16 ~~components of the end-of-life vehicles, waste appliances, and other~~  
17 ~~forms of scrap metal *objects containing material to be discarded.*~~  
18 ~~“Metal shredding facility” does not include a feeder yard, a metal~~  
19 ~~crusher, or a metal baler.~~

20 (4) ~~“Scrap metal” includes ferrous metals, nonferrous metals,~~  
21 ~~aluminum scrap, other metals, and auto bodies, but does not include~~  
22 ~~aluminum cans, steel cans, or bimetal cans.~~

23 (5) ~~“Treated metal shredder residue” means metal shredder~~  
24 ~~residue that has been chemically treated to alter its chemical~~  
25 ~~characteristics for purposes of rendering the metal shredder residue~~  
26 ~~less hazardous or nonhazardous for purposes of classifying the~~  
27 ~~waste in accordance with the criteria and guidelines adopted by~~  
28 ~~the department pursuant to Section 25141.~~

29 (c) The department, in consultation with the Department of  
30 Resources Recycling and ~~Recovery~~ and *Recovery*, the State Water  
31 Resources Control Board, *and affected local air quality*  
32 *management districts*, may adopt regulations establishing  
33 management standards for metal shredding facilities ~~and for the~~  
34 ~~generation, storage, transportation, and disposal of metal shredder~~  
35 ~~residue or treated metal shredder residue *for hazardous waste*~~  
36 ~~*management activities within the department’s jurisdiction* as an~~  
37 ~~alternative to the requirements specified in this chapter and the~~  
38 ~~regulations adopted pursuant to this chapter, if the department does~~  
39 ~~all of the following:~~

1 (1) Prepares an analysis of the activities to which the *alternative*  
2 management standards will apply pursuant to subdivision (d). The  
3 department shall first prepare the analysis as a preliminary analysis  
4 and make it available to the public at the same time that the  
5 department gives notice, pursuant to Section 11346.4 of the  
6 Government Code, that it proposes to adopt the alternative  
7 management standards. The department shall include in the notice  
8 a statement that the department has prepared a preliminary analysis  
9 and a statement concerning where a copy of the preliminary  
10 analysis can be obtained. The information in the preliminary  
11 analysis shall be updated and the department shall make the  
12 analysis available to the public as a final analysis not less than 10  
13 working days before the date that the regulation is adopted.

14 (2) Demonstrates at least one of the conclusions set forth in  
15 paragraphs (1) to (4), inclusive, of subdivision (e).

16 (3) Imposes, as may be necessary, conditions and limitations  
17 as part of the *alternative* management standards that ensure that  
18 the hazardous waste management activity to which the *alternative*  
19 management standards will apply will not pose a significant  
20 potential hazard to human health or safety or to the environment.

21 (d) Before the department gives notice of a proposal to adopt  
22 the *alternative* management standards pursuant to subdivision (c),  
23 and before the department adopts the regulation, the department  
24 shall *evaluate the operative environmental and public health*  
25 *regulatory oversight of metal shredding facilities, identifying*  
26 *activities that need to be addressed by the alternative management*  
27 *standards, or other advisable regulatory or statutory changes, and*  
28 *shall* evaluate the hazardous waste management activities and  
29 prepare, as required by paragraph (1) of subdivision (c), an analysis  
30 that addresses all of the following aspects of the activity, to the  
31 extent that the *alternative* management standards can affect these  
32 aspects of the activity:

33 (1) The types of hazardous waste and the estimated amounts of  
34 each hazardous waste that are managed as part of the activity and  
35 the hazards to human health or safety or to the environment posed  
36 by reasonably foreseeable mismanagement of those hazardous  
37 wastes and their hazardous constituents. The estimate of the  
38 amounts of each hazardous waste that are managed as part of the  
39 activity shall be based upon information reasonably available to  
40 the department.

1 (2) The complexity of the activity, and the amount and  
2 complexity of operator training, equipment installation and  
3 maintenance, and monitoring that are required to ensure that the  
4 activity is conducted in a manner that safely and effectively  
5 manages each hazardous waste.

6 (3) The chemical or physical hazards that are associated with  
7 the activity and the degree to which those hazards are similar to,  
8 or different from, the chemical or physical hazards that are  
9 associated with the production processes that are carried out in the  
10 facilities that produce the hazardous waste that is managed as part  
11 of the activity.

12 (4) The types of accidents that might reasonably be foreseen to  
13 occur during the management of particular types of hazardous  
14 waste streams as part of the activity, the likely consequences of  
15 those accidents, and the reasonably available actual accident history  
16 associated with the activity.

17 (5) The types of locations where the activity may be carried out,  
18 an estimate of the number of these locations, and the types of  
19 hazards that may be posed by proximity to the land uses described  
20 in Section 25227. The estimate of the number of locations where  
21 the activity may be carried out shall be based upon information  
22 reasonably available to the department.

23 (e) The department shall not give notice proposing the adoption  
24 of, and the department shall not adopt, a regulation pursuant to  
25 subdivision (c) unless it first demonstrates at least one of the  
26 following, *for each requirement that the alternative management*  
27 *standards are intended to replace*, using the information developed  
28 in the analysis prepared pursuant to subdivision (d):

29 (1) The requirements that the *alternative* management standards  
30 replace are not significant or important in either of the following  
31 situations:

32 (A) Preventing or mitigating potential hazards to human health  
33 or safety or to the environment posed by the activity.

34 (B) Ensuring that the activity is conducted in compliance with  
35 other applicable requirements of this chapter and the regulations  
36 adopted pursuant to this chapter.

37 (2) A requirement is imposed and enforced by another public  
38 agency that provides protection of human health and safety and  
39 the environment that is as effective as, and equivalent to, the

1 protection provided by the requirement, or requirements, that the  
2 *alternative* management standards replace.

3 (3) Conditions or limitations imposed as part of the *alternative*  
4 management standards will provide protection of human health  
5 and safety and the environment equivalent to the requirement, or  
6 requirements, that the *alternative* management standards replace.

7 (4) Conditions or limitations imposed as part of the *alternative*  
8 management standards accomplish the same regulatory purpose  
9 as the requirement, or requirements, that the *alternative*  
10 management standards replace, but at less cost or with greater  
11 administrative convenience, and without increasing potential risks  
12 to human health or safety or to the environment.

13 (f) The department shall not adopt *alternative* management  
14 standards pursuant to this section if those standards are less  
15 stringent than the standards that would otherwise apply under the  
16 federal act.

17 ~~(g) The management standards adopted by the department~~  
18 ~~pursuant to this section shall establish requirements that apply not~~  
19 ~~only to the generation, management, and disposal of metal shredder~~  
20 ~~residue or treated metal shredder residue, but shall apply to all~~  
21 ~~activities being conducted within the boundaries of any metal~~  
22 ~~shredding facility. Nothing in this subdivision the alternative~~  
23 ~~management standards authorized by this section is intended to~~  
24 ~~duplicate or conflict with other laws, rules, or regulations adopted~~  
25 ~~by other state agencies or affected local air quality management~~  
26 ~~districts. The department shall, as much as possible, align the~~  
27 ~~alternative management standards with the laws, rules, and~~  
28 ~~regulations of other state agencies or affected local air quality~~  
29 ~~management districts.~~

30 (h) *The owner or operator of a metal shredding facility that*  
31 *may be subject to the alternative management standards shall*  
32 *provide to the department all information and data determined by*  
33 *the department to be relevant to the evaluation and preparation*  
34 *of the analysis required by paragraphs (1) to (5), inclusive, of*  
35 *subdivision (d).*

36 ~~(h)~~

37 (i) The *alternative* management standards adopted by the  
38 department pursuant to this section may, to the extent it is  
39 consistent with the standards that would otherwise apply under  
40 the federal act, allow for ~~metal shredder residue or treated metal~~

1 shredder ~~residue~~ *waste* to be classified and managed as  
2 nonhazardous waste, provided that the analysis prepared pursuant  
3 to subdivision (d) demonstrates that classification and management  
4 as hazardous waste is not necessary to prevent or mitigate potential  
5 hazards to human health or safety or to the environment posed by  
6 the ~~metal shredder residue~~ or treated metal shredder ~~residue~~ *waste*.

7 (i)

8 (j) (1) Notwithstanding Sections 25189.5 and 25201, ~~metal~~  
9 ~~shredder residue~~ or treated metal shredder ~~residue~~ *waste* shall be  
10 disposed of in either a class I hazardous waste landfill or, if the  
11 management standards adopted by the department pursuant to this  
12 section result in it being classified as a nonhazardous waste, ~~in a~~  
13 ~~composite-lined portion of a solid waste landfill unit that meets~~  
14 ~~all requirements applicable to the disposal of municipal solid waste~~  
15 ~~in California after October 9, 1993, and that is regulated by waste~~  
16 ~~discharge requirements issued pursuant to Division 7 (commencing~~  
17 ~~with Section 13000) of the Water Code for discharges of designated~~  
18 ~~waste, as defined in Section 13173 of the Water Code, or metal~~  
19 ~~shredder residue or treated metal shredder residue as specified by~~  
20 *the alternative management standards.*

21 (2) If the *alternative* management standards adopted by the  
22 department pursuant to this section result in ~~metal shredder residue~~  
23 ~~or treated metal shredder residue~~ *waste* being classified as  
24 nonhazardous waste *and deem it appropriate*, the material may be  
25 used as alternative daily cover or for beneficial reuse pursuant to  
26 Section 41781.3 of the Public Resources Code and its implementing  
27 regulations.

28 (3) *Upon the department's final regulatory action required in*  
29 *regard to the consideration of alternative management standards*  
30 *pursuant to this section, the current disposal and beneficial use*  
31 *practices determinations allowed pursuant to the hazardous waste*  
32 *determinations issued by the department before January 1, 2014,*  
33 *shall cease to apply.*

34 (j)

35 (k) The department shall complete the analysis described in  
36 paragraph (1) of subdivision (c) and subsequent regulatory action  
37 before January 1, 2017. All hazardous waste determinations and  
38 policies, procedures, or guidance issued by the department before  
39 January 1, 2014, governing or related to the generation, treatment,  
40 and management of metal shredder ~~residue~~ *waste* or treated metal

1 shredder ~~residue~~ *waste* shall be inoperative and have no further  
2 effect once the department has taken *the required* regulatory action.

3 ~~(k)~~

4 (l) The authority of the department to adopt original regulations  
5 pursuant to this section shall remain in effect only until January  
6 1, 2017, unless a later enacted statute, which is enacted before  
7 January 1, 2017, deletes or extends that date. This subdivision does  
8 not invalidate any regulation adopted pursuant to this section before  
9 the expiration of the department’s authority.

10 ~~(t)~~

11 (m) A regulation adopted pursuant to this section on or before  
12 January 1, 2017, shall continue in force and effect after that date,  
13 until repealed or revised by the department.

14 ~~SEC. 2.~~

15 *SEC. 3.* Section 25150.9.1 is added to the Health and Safety  
16 Code, to read:

17 25150.9.1. The department is authorized to collect an annual  
18 fee from all metal shredding facilities that are subject to the  
19 requirements of this chapter or to the *alternative* management  
20 standards adopted pursuant to Section 25150.9. The department  
21 shall establish and adopt by regulation a fee schedule that is set at  
22 a rate sufficient to reimburse the department’s costs to implement  
23 this chapter *as applicable to metal shredder facilities*. The fee  
24 schedule established by the department may be updated periodically  
25 as necessary and shall provide for the assessment of no more than  
26 the reasonable costs of the department to implement this chapter.

27 ~~SEC. 3.~~

28 *SEC. 4.* Section 25150.9.2 is added to the Health and Safety  
29 Code, to read:

30 25150.9.2. ~~If metal shredder residue or treated metal shredder~~  
31 ~~residue~~ *waste* is accepted by a solid waste landfill that manages  
32 and disposes of the ~~metal shredder residue or treated metal shredder~~  
33 ~~residue~~ *waste* in accordance with the *alternative* management  
34 standards adopted by the department pursuant to Section 25150.9,  
35 the ~~metal shredder residue or treated metal shredder residue~~ *waste*,  
36 upon acceptance by the solid waste landfill, shall thereafter be  
37 deemed to be a solid waste, and not a hazardous waste, for purposes  
38 of this chapter and Section 40191 of the Public Resources Code.

1     ~~SEC. 4.~~  
2     *SEC. 5.* No reimbursement is required by this act pursuant to  
3 Section 6 of Article XIII B of the California Constitution because  
4 the only costs that may be incurred by a local agency or school  
5 district will be incurred because this act creates a new crime or  
6 infraction, eliminates a crime or infraction, or changes the penalty  
7 for a crime or infraction, within the meaning of Section 17556 of  
8 the Government Code, or changes the definition of a crime within  
9 the meaning of Section 6 of Article XIII B of the California  
10 Constitution.

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**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

Memorandum

To: Chairperson Nate Miley and Members  
of the Board of Directors

From: Jack P. Broadbent  
Executive Officer/Air Pollution Control Officer

Date: June 5, 2014

Re: Report of the Public Outreach Committee Meeting of June 5, 2014

RECOMMENDED ACTION

The Public Outreach Committee (Committee) received only informational items and has no recommendations of approval by the Board of Directors.

BACKGROUND

The Committee met on Thursday, June 5, 2014, and received the following reports:

- A) 2014 Spare the Air Campaign;
- B) Update on Great Race for Clean Air; and
- C) Update on Commuter Benefits Program Employer Outreach.

Chairperson Mark Ross will give an oral report of the meeting.

BUDGET CONSIDERATION/FINANCIAL IMPACT:

- A) Funding for the campaign is included in the Fiscal Year Ending (FYE) 2014 and 2015 budgets. The campaign is funded primarily through the Congestion Mitigation Air Quality program, supplemented by the Transportation Fund for Clean Air (TFCA).
- B) None.
- C) Funding for the campaign is included in the FYE 2014 and 2015 budgets. The campaign is funded by the TFCA.



Respectfully submitted,

Jack P. Broadbent  
Executive Officer/APCO

Prepared by: Sean Gallagher

Reviewed by: Rex Sanders

Attachment A: 06/05/14 – Public Outreach Committee Meeting Agenda #4

Attachment B: 06/05/14 – Public Outreach Committee Meeting Agenda #5

Attachment C: 06/05/14 – Public Outreach Committee Meeting Agenda #6

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

Memorandum

To: Chairperson Mark Ross and Members  
of the Public Outreach Committee

From: Jack P. Broadbent  
Executive Officer/APCO

Date: May 22, 2014

Re: 2014 Spare the Air Campaign

RECOMMENDED ACTION:

None; receive and file.

BACKGROUND

Since 1991, the Spare the Air campaign has encouraged the public to adopt long-term behaviors to reduce air pollution and protect air quality. Past Spare the Air campaigns have targeted the general population, household decision-makers, young adults and solo drivers.

DISCUSSION

Last year's Spare the Air campaign featured a new URL-based advertising campaign that focused on alternatives to driving alone to work. The campaign will be refreshed this season and target commuters region-wide, including non-English speakers.

The 2014 Spare the Air campaign's commuter-focused messaging and advertising will complement outreach efforts for the new Commuter Benefits Program.

BUDGET CONSIDERATION/FINANCIAL IMPACT:

Funding for the campaign is included in the Fiscal Year Ending (FYE) 2014 and FYE 2015 budgets. The campaign is funded primarily through the Congestion Mitigation Air Quality program, supplemented by the Transportation Fund for Clean Air.

Respectfully submitted,

Jack P. Broadbent  
Executive Officer/APCO

Prepared by: Kristine Roselius  
Reviewed by: Lisa Fasano

AGENDA: 5

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

Memorandum

To: Chairperson Mark Ross and Members  
of the Public Outreach Committee

From: Jack P. Broadbent  
Executive Officer/APCO

Date: May 22, 2014

Re: Update on Great Race for Clean Air

RECOMMENDED ACTION:

None; receive and file.

BACKGROUND

The Air District's annual Great Race for Clean Air is a friendly competition between Bay Area employers to encourage use of commute alternatives such as transit, carpooling, vanpooling, walking and bicycling rather than driving solo to work. The Great Race for Clean Air competition started on March 1, 2014 and concluded on April 30, 2014.

The Great Race for Clean Air originated from a Tri-Valley Resource Team project over five years ago. After much success in the Tri-Valley, the program expanded to encompass the entire Bay Area. In its fourth year, Great Race for Clean Air participants have saved 1,548,716 lbs. of carbon dioxide by using alternatives to solo driving to work.

DISCUSSION

The Committee will receive an overview of the 2014 Great Race for Clean Air including a summary of this year's winners.

BUDGET CONSIDERATION/FINANCIAL IMPACT:

None.

Respectfully submitted,

Jack P. Broadbent  
Executive Officer/APCO

Prepared by: Kristine Roselius  
Reviewed by: Lisa Fasano

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

Memorandum

To: Chairperson Mark Ross and Members  
of the Public Outreach Committee

From: Jack P. Broadbent  
Executive Officer/APCO

Date: May 22, 2014

Re: Update on Commuter Benefits Program Employer Outreach

RECOMMENDED ACTION:

None; receive and file.

BACKGROUND

The Air District and the Metropolitan Transportation Commission developed the Bay Area Commuter Benefits Program in response to Senate Bill 1339, which was signed into law by Governor Brown in September 2012. Approved by both agencies in March 2014, the Commuter Benefits Program requires employers with 50 or more full-time employees in the Bay Area to offer commuter benefits to their employees.

DISCUSSION

Approximately 10,000 Bay Area employers are subject to the program and must select one of four commuter benefit options, register via the program website and implement their program by September 30, 2014.

To ensure compliance with the program and reduce greenhouse gases, air pollution and traffic congestion, an employer outreach campaign is being implemented with the Metropolitan Transportation Commission to notify Bay Area employers about the program requirements and how to register to comply.

Committee members will receive an update on outreach efforts to-date as well as employer outreach prior to the registration deadline.

BUDGET CONSIDERATION/FINANCIAL IMPACT:

Funding for the campaign is included in the Fiscal Year Ending (FYE) 2014 and FYE 2015 budgets. The campaign is funded by the Transportation Fund for Clean Air.

Respectfully submitted,

Jack P. Broadbent  
Executive Officer/APCO

Prepared by: Kristine Roselius  
Reviewed by: Lisa Fasano

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

Memorandum

To: Chairperson Nate Miley and Members  
of the Board of Directors

From: Jack P. Broadbent  
Executive Officer/Air Pollution Control Officer

Date: June 11, 2014

Re: Report of the Ad Hoc Building Oversight Committee Meeting of June 18, 2014

RECOMMENDED ACTION

The Ad Hoc Building Oversight Committee (Committee) may recommend Board of Directors' approval of the following items:

- A) None; receive and file; and
- B) Authorize the Executive Officer/APCO to enter into a contract with a Project/Construction Manager to assist staff with oversight of the development and construction of the improvements for the Air District's space in 375 Beale Street, in an amount not to exceed \$300,000. Further recommend that the Board of Directors increase the Fiscal Year Ending (FYE) 2015, Program 104 budget by a corresponding \$300,000, to be drawn from the Air District's undesignated reserves.

BACKGROUND

The Committee will meet on Wednesday, June 18, 2014, and will receive the following reports:

- A) Regional Agency Headquarters Status Report – June 2014; and
- B) Approval of Expenditure in Excess of \$70,000.

Attached are the staff reports presented in the Committee packet.

Committee Chairperson Nate Miley will provide an oral report of the Committee meeting.

BUDGET CONSIDERATION/FINANCIAL IMPACT

- A) None.
- B) An increase in the Fiscal Year Ending (FYE) 2015, Program 104 budget by a corresponding \$300,000, to be drawn from the Air District's undesignated reserves is requested.

Respectfully submitted,

Jack P. Broadbent  
Executive Officer/APCO

Prepared by: Maricela Martinez

Reviewed by: Rex Sanders

Attachment A: 06/18/14 – Ad Hoc Building Committee Meeting Agenda #4

Attachment B: 06/18/14 – Ad Hoc Building Committee Meeting Agenda #5

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

Memorandum

To: Chairperson Nate Miley and Members  
of the Ad Hoc Building Oversight Committee

From: Jack P. Broadbent  
Executive Officer/APCO

Date: June 11, 2014

Re: Regional Agency Headquarters (RAHQ) Status Report - June 2014

RECOMMENDED ACTION:

None; receive and file.

BACKGROUND

The Air District will be relocating its operations to the new Regional Agency Headquarters (RAHQ) located at 375 Beale Street during the calendar year 2016. The RAHQ was purchased by the Bay Area Headquarters Authority (BAHA) through a joint powers agreement between the Metropolitan Transportation Commission (MTC) and the Bay Area Toll Authority. BAHA has allocated 260,000 square feet of its 518,000 square feet building, to the development of separate condominium units to be purchased or leased by the Air District, the Association of Bay Area Governments (ABAG), the MTC and possibly other government agencies.

The three agencies will remain as independent legal entities with independent executive management teams, and boards of directors. However, sharing of technology and business services among the agencies will gain organizational efficiencies and is a high priority of all the agencies.

DISCUSSION:

The Ad Hoc Building Oversight Committee will receive an update on the RAHQ Project at its meeting on June 18, 2014. The items to be covered will include an update on construction; the construction schedule; the inter-agency shared services delivery assessment currently being conducted and the next steps with respect to the selection of the furniture manufacturer/dealer team.

Respectfully submitted,

Jack P. Broadbent  
Executive Officer/APCO

Prepared by: Mary Ann Okpalauugo  
Reviewed by: Jack M. Colbourn



**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

Memorandum

To: Chairperson Nate Miley and Members  
of the Ad Hoc Building Committee

From: Jack P. Broadbent  
Executive Officer/APCO

Date: June 11, 2014

Re: Authorize the Executive Officer/APCO to Enter into a Contract for  
Project/Construction Management Services to Assist in Oversight of Improvements to  
Air District Space in 375 Beale Street in an Amount not to Exceed \$300,000; Further  
Recommend that the Board of Directors Increase the Fiscal Year Ending (FYE) 2015,  
Program 104 Budget by a Corresponding \$300,000.00, to be Drawn from the Air  
District's Undesignated Reserves

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RECOMMENDED ACTION:

Recommend the Board of Directors authorize the Executive Officer/APCO to enter into a contract with a Project/Construction Manager to assist staff with oversight of the development and construction of the improvements for the Air District's space in 375 Beale Street, in an amount not to exceed \$300,000.00. Further recommend that the Board of Directors increase the Fiscal Year Ending (FYE) 2015, Program 104 budget by a corresponding \$300,000.00, to be drawn from the Air District's undesignated reserves.

BACKGROUND

The Air District has leased space in 375 Beale Street under an "Office Lease" that contains an option to purchase the space that may be exercised as soon as the space has been constructed. The tenant improvements to the space the Air District will occupy are defined in a "Tenant Work Letter" that is an exhibit to the Office Lease. The Air District anticipates exercising its option to purchase the property on move-in and has put in place financing to accomplish that goal. Once the Air District exercises its option, title to all of the tenant improvements will transfer from the Bay Area Headquarters Authority (BAHA) to the Air District.

Architectural and engineering design for the agency spaces for 375 Beale Street (including the Air District's space) have been underway for several months and have progressed to the point that contracts for construction have been bid and awarded by the BAHA. The Air District has not had an opportunity yet to provide approvals on the final working drawings and construction drawings. Construction has not commenced on tenant improvements and is not expected to for some time.

## DISCUSSION

A professional project/construction management contractor will be invaluable in assisting Air District staff with review and approval of the final working drawings and construction drawings for the Air District's tenant improvements at 375 Beale Street. A project/construction manager will also be able to assist Air District staff with any necessary change orders. In addition, a project/construction manager will be an excellent interface with BAHA's construction team and provide oversight and insight on behalf of the Air District as the development of 375 Beale Street moves forward. These activities will be expected to improve communication with BAHA, save money, and prevent delays in the construction of the Air District's tenant improvements.

Senior staff have interviewed a team from Cassidy-Turley (the Air District's broker in the sale of 939 Ellis). Cassidy-Turley acted as the federal Drug Enforcement Agency's project/construction manager for the construction of the current DEA lab in the 375 Beale Street property. Based on Cassidy-Turley's familiarity with both the Air District and 375 Beale Street, staff recommends that Cassidy-Turley be awarded a sole source contract to act as the Air District's project/construction manager for the Air District's tenant improvements at 375 Beale Street.

Based on discussions with Cassidy-Turley, staff anticipated that the project/construction manager will spend an average of 15-20 hours per week through the course of the construction project. Billing for this work will be on an hourly basis. Staff accordingly recommends an initial budget for this contract of \$300,000.00.

## BUDGET CONSIDERATION/FINANCIAL IMPACT:

The FYE 2015 Program 104 budget will be increased by \$300,000.00, drawn from undesignated reserves.

Respectfully submitted,

Jack P. Broadbent  
Executive Officer/APCO

Prepared by: Brian Bungler

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

Memorandum

To: Chairperson Nate Miley and Members  
of the Board of Directors

From: Jack P. Broadbent  
Executive Officer/Air Pollution Control Officer

Date: June 10, 2014

Re: Overview of the HBO Documentary “Toxic Hot Seat”

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RECOMMENDED ACTION

None; information only.

DISCUSSION

Former Air District Board member and current San Francisco firefighter, Dan Dunnigan will provide an overview of the documentary “Toxic Hot Seat” for informational purposes and discussion.

From the Toxic Hot Seat website:

TOXIC HOT SEAT tells the story of a growing tide of activists, journalists and citizen groups who are bringing an end to the era of manipulation and misinformation about hidden toxic chemicals.

The film shows the struggle to remove toxic flame retardant chemicals from our couches, environment and bodies. These chemicals are linked to lower IQ in children, thyroid disease, infertility, cancer and other rising rates of health problems. They are found in every living being on earth.

Respectfully submitted,

Jack P. Broadbent  
Executive Officer/APCO

Prepared by: Lisa Fasano