



**ENGINEERING & OPERATIONS
BOARD OF DIRECTORS' MEETING
MOULTON NIGUEL WATER DISTRICT
27500 La Paz Road, Laguna Niguel
January 18, 2016
8:30 AM
Approximate Meeting Time: 2 Hours**

1. CALL MEETING TO ORDER
2. APPROVE THE MINUTES OF THE DECEMBER 14, 2015 ENGINEERING AND OPERATIONS BOARD OF DIRECTORS' MEETING

3. PUBLIC COMMENTS

Persons wishing to address the Board of Directors on matters not listed on the Agenda may do so at this time. "Request To Be Heard" forms are available at the entrance to the Board Room. Comments are limited to five minutes unless further time is granted by the Presiding Officer. Submit form to the Recording Secretary prior to the beginning of the meeting.

Those wishing to address the Board of Directors on any item listed on the Agenda should submit a "Request To Be Heard" form to the Recording Secretary before the Presiding Officer announces that agenda item. Your name will be called to speak at that time.

PRESENTATION ITEMS

4. Advanced Metering Infrastructure Update
5. Crown Valley Parkway Line Break

DISCUSSION ITEMS

6. Personnel & Salary Policy Revisions and MOU Side Letters

INFORMATION ITEMS

7. On-Call Emergency Construction Services
8. Private Development Update
9. Operations Center Consolidation Update
10. Quarterly Construction Progress Report
11. Future Agenda Items (Any items added under this section are for discussion at future meetings only)

12. Late Items (Appropriate Findings to be Made)
 - a. Need to take immediate action; and
 - b. Need for action came to District's attention after Agenda Posting. [Requires 2/3 vote (5 members) or unanimous vote if less than 2/3 are present]

CLOSED SESSION

13. **CONFERENCE INVOLVING A JOINT POWERS AGENCY: SOUTH ORANGE COUNTY WASTEWATER AUTHORITY (SOCWA)**

Pursuant to Government Code Sections 54956.96 and 54956.8

Discussion will concern: CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Property: AWMA Bridge is located at the intersection of AWMA Road and Alicia Parkway at the entrance to the County's Woods Canyon/Aliso Canyon Wilderness Parks

Agency negotiators: Betty Burnett, SOCWA General Manager; Jim Burror, SOCWA Director of Operations

Negotiating party: County of Orange/Stacy Blackwood

Under negotiation: Price and terms of payment

Name of local agency representative on SOCWA Joint Powers Agency Board: Director Larry Lizotte

ADJOURNMENT

The Board of Directors' Meeting Room is wheelchair accessible. If you require any special disability related accommodations (i.e., access to an amplified sound system, etc.), please contact the Moulton Niguel Water District Secretary's office at (949) 831-2500 at least forty-eight (48) hours prior to the scheduled meeting. This agenda can be obtained in alternate format upon written request to the Moulton Niguel Water District Secretary at least forty-eight (48) hours prior to the scheduled meeting.

Agenda exhibits and other writings that are disclosable public records distributed to all, or a majority of, the members of the Moulton Niguel Water District Board of Directors in connection with a matter subject to discussion or consideration at an open meeting of the Board of Directors are available for public inspection at the District Office, 27500 La Paz Road, Laguna Niguel, CA ("District Office"). If such writings are distributed to members of the Board less than seventy-two (72) hours prior to the meeting, they will be available in the reception area of the District Office at the same time as they are distributed except that, if such writings are distributed immediately prior to, or during the meeting, they will be available in the Board meeting room and on the District website at www.mnwd.com.



DRAFT
MINUTES OF THE REGULAR MEETING OF THE
ENGINEERING & OPERATIONS BOARD OF DIRECTORS OF THE
MOULTON NIGUEL WATER DISTRICT

December 14, 2015

A Regular Meeting of the Engineering & Operations Board of Directors of the Moulton Niguel Water District was held at the District offices, 27500 La Paz Road, Laguna Niguel, California, at 8:30 AM on December 14, 2015. There were present and participating:

DIRECTORS

Duane Cave	Director
Scott Colton	Vice President/Chair
Richard Fiore	Director
Gary Kurtz	Director
Larry Lizotte	Director
Brian Probolsky	Vice President

Also present and participating were:

STAFF MEMBERS, LEGAL COUNSEL, AND MEMBERS OF THE PUBLIC

Joone Lopez	General Manager
Matt Collings	Assistant General Manager
Marc Serna	Director of Engineering & Operations
Gina Hillary	Director of Human Resources
Jeff Ferre	Best, Best, & Krieger (General Counsel)
Paige Gulck	Board Secretary
Trevor Agrelius	MNWD
Drew Atwater	MNWD
Tim Bonita	MNWD
Todd Dmytryshyn	MNWD
Tracy Ingebrigtsen	MNWD
Todd Novacek	MNWD
Eva Plajzer	MNWD
Megan Schneider	MNWD
Carole Wayman-Piascik	MNWD
Andrew Zelinko	MNWD
Tony Ingegneri	ATS Communications
Gail Karish	Best, Best, & Krieger

Jim Peak
Scot Dey
Steve Vlahos
David Palmer

Member of the Public
Mission Viejo Country Club
Mission Viejo Country Club
Stradling Yocca Carlson & Rauth,

1. CALL MEETING TO ORDER

The meeting was called to order by Scott Colton at 8:30 a.m.

2. APPROVE THE MINUTES OF THE NOVEMBER 16, 2015 ENGINEERING AND OPERATIONS BOARD OF DIRECTORS' MEETING

MOTION DULY MADE BY DUANE CAVE, AND SECONDED BY GARY KURTZ, MINUTES OF THE NOVEMBER 16, 2015 ENGINEERING AND OPERATIONS BOARD OF DIRECTORS' MEETING WERE APPROVED AS PRESENTED. THE VOTE WAS UNANIMOUS WITH DIRECTORS DUANE CAVE, SCOTT COLTON, RICHARD FIORE, GARY KURTZ, LARRY LIZOTTE, AND BRIAN PROBOLSKY ALL VOTING 'AYE'.

3. PUBLIC COMMENTS

None.

DISCUSSION/ACTION ITEMS

6. REBATE APPLICATION FOR TURF REMOVAL

It is recommended that the Board of Directors consider the rebate application for the identified projects per the attached staff report without a limitation on the maximum allowable acreage and direct staff accordingly.

This item was taken first on the agenda.

Prior to consideration of this matter, Director Fiore announced that he would be recusing himself due to a potential conflict of interest in that his law firm has done work for the entity that is the subject of this request. However, no work was done by his firm in regard to this rebate application. Director Fiore then left the dais and the Board room during consideration of this matter.

Matt Collings presented the item regarding Kite Hill Community Association.

MOTION DULY MADE BY DUANE CAVE, AND SECONDED BY BRIAN PROBOLSKY, KITE HILL COMMUNITY ASSOCIATION'S REBATE REQUEST WAS APPROVED AS PRESENTED. THE VOTE WAS UNANIMOUS WITH DIRECTORS DUANE CAVE, SCOTT COLTON, GARY KURTZ, LARRY LIZOTTE, AND BRIAN PROBOLSKY ALL VOTING 'AYE'. DIRECTOR RICHARD FIORE ABSENT.

Scott Dey, from Mission Viejo Country Club, presented the revised turf removal application for the club. Discussion ensued regarding the modifications. Action on this item will be taken at the December 17, 2015 Board of Directors meeting.

The Board then went into closed session for Item 11.

11. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

(Paragraph (1) of subdivision (d) of Government Code Section 54956.9)

Name of case: San Juan Hills Golf Club, LP v. City of San Juan Capistrano, San Juan Basin Authority, et al. Case No. 30-2014-00742347

The Board entered closed session at 9:00 a.m. and exited at 9:50 a.m.

Legal counsel stated that there was no reportable action.

4. COMMUNICATIONS FACILITIES LICENSE PROGRAM UPDATE

It is recommended that the Board of Directors approve the resolution entitled "Adopting the 2015 Communication Facilities License Program Policy and Procedures for Communication Facilities Licenses with Moulton Niguel Water District Properties" and authorize the General Manager or her designee to implement the program and execute agreements on behalf of the District.

Eva Plajzer presented the Communications Facilities License Program Update. Main topics discussed were drivers of the update, and policy changes pertaining to the program.

The Board suggested that staff clarify on all documents and agreements that the General Manager, Assistant General Manager or Director of Operations and Engineering have the authority to sign and execute the agreements.

MOTION DULY MADE BY RICHARD FIORE, AND SECONDED BY GARY KURTZ, ITEM 4 WAS APPROVED AS AMENDED. THE VOTE WAS UNANIMOUS WITH DIRECTORS DUANE CAVE, SCOTT COLTON, RICHARD FIORE, GARY KURTZ, LARRY LIZOTTE, AND BRIAN PROBOLSKY ALL VOTING ‘AYE’.

5. ON-CALL ENGINEERING SERVICE CONTRACT AMENDMENT

It is recommended that the Board of Directors approve Amendment No. 1 with Lee & Ro, Inc. for \$250,000 for a total contract value not-to-exceed \$750,000 and approve Amendment No. 1 with AKM Consulting Engineers for \$250,000 for a total contract value not-to-exceed \$750,000.

Joone Lopez presented the item.

MOTION DULY MADE BY GARY KURTZ, AND SECONDED BY DUANE CAVE, ITEM 5 WAS APPROVED AS PRESENTED. THE VOTE WAS UNANIMOUS WITH DIRECTORS DUANE CAVE, SCOTT COLTON, RICHARD FIORE, GARY KURTZ, LARRY LIZOTTE, AND BRIAN PROBOLSKY ALL VOTING 'AYE'.

INFORMATION ITEMS

7. Drought Emergency Regulations Update

This item will be discussed at the Finance & Information Technology Board meeting.

8. Operations Center Consolidation Improvement Project Update

This item will be discussed at the Finance & Information Technology Board meeting.

9. Future Agenda Items (Any items added under this section are for discussion at future meetings only)

None.

10. Late Items (Appropriate Findings to be Made)

Staff has none.

CLOSED SESSION

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

Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Government Code Section 54956.9

Receipt of claim: Naghmeh and Ali Reza Sarabi

The Board entered closed session at 11:10 a.m. and exited at 11:48 a.m.

MOTION DULY MADE BY LARRY LIZOTTE, AND SECONDED BY GARY KURTZ, THE BOARD TOOK ACTION TO (A) REJECT THE CLAIM AND (B) AUTHORIZED STAFF TO SEND THE APPLICABLE CLAIM REJECTION LETTER AND TO EXPLAIN, AS APPROPRIATE, IN THAT LETTER THAT THE DISTRICT HAS INVESTIGATED THE MATTER AND HAS DETERMINED THAT THE FACILITIES AT ISSUE ARE NOT OWNED BY THE DISTRICT. THE MOTION PASSED 6-0.

13. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Government Code Section 54956.9

Receipt of claim: Quail Creek-La Paz Condominium Association

Prior to this closed session item, Richard Fiore announced that he would not participate in this matter due to the fact that his law firm has done work for this Association in the past and out of abundance of caution, he would recuse himself and leave the Board meeting in order to avoid even the appearance of a conflict of interest. After coming out of the closed session, it was reported that:

MOTION DULY MADE BY LARRY LIZOTTE, AND SECONDED BY GARY KURTZ, THE BOARD TOOK ACTION TO: (A) REJECT THE CLAIM; (B) DIRECT STAFF TO SEND THE APPLICABLE CLAIM REJECTION LETTER AND TO EXPLAIN, AS APPROPRIATE, IN THAT LETTER THAT THE DISTRICT IS INTERESTED IN WORKING WITH THE CLAIMANT TO RESOLVE THE MATTER; AND (C) DIRECT STAFF TO PERSONALLY COMMUNICATE AND FOLLOW UP WITH THIS CLAIMANT. THE MOTION PASSED 5-0 WITH RICHARD FIORE ABSTAINING.

ADJOURNMENT

The meeting was adjourned at 11:50 a.m.

Respectfully submitted,

Paige Gulck
Board Secretary



Moulton Niguel Water District

STAFF REPORT

TO: Board of Directors **MEETING DATE:** January 18, 2016

FROM: Joone Lopez, General Manager
Gina Hillary, Director of Human Resources

SUBJECT: Personnel & Salary Policy Revisions and MOU Side Letters

SUMMARY:

Issue: Consistent with the Memoranda of Understanding (MOU) between the Moulton Niguel Water District and its Employees Association (MNWDEA), General and Supervisory Units, staff met and conferred with duly authorized representatives of the MNWDEA to review sections of the Personnel & Salary Policy and discuss revisions.

Recommendation: It is recommended that the Board of Directors adopt the resolution entitled, "Approving the Personnel & Salary Policy" and authorize the General Manager to sign Side Letter Agreement #2 for the General and Supervisory Units.

Fiscal Impact: None.

BACKGROUND:

On April 29, 2013, the Board of Directors approved the MOUs between the Moulton Niguel Water District and the Moulton Niguel Water District Employees Association (MNWDEA), General and Supervisory Units. Article X of the MOUs stipulated that the District and the MNWDEA would review and discuss revisions to portions of the Personnel & Salary Policy, and once agreement was reached on the revisions, certain sections of the Personnel & Salary Policy would be incorporated into the MOU by way of side letter. For your reference, the following is an excerpt of Article X of the MOUs:

#6.

Personnel & Salary Policy Revisions and MOU Side Letters

January 18, 2016

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MEMORANDUM OF UNDERSTANDING

Article X

Section 10.01 Policy Revisions

The parties further agree to review sections of the Personnel & Salary Policy and discuss revisions. Once agreement has been reached on revisions, the following sections will be moved to the MOU by the way of side letter as follows:

- B. In 2015 – Educational reimbursement, personal computer purchase plan, insurance, physical examination, medical retirement benefits, social security Medicare coverage, deferred compensation plan.

DISCUSSION:

District staff is proposing the following revision to the Personnel & Salary Policy:

- 1. Medical Retirement Benefits (Section 4.19):
 - A. Eligible retirees will receive health benefits equal to the value of the health benefit provided to active employees. The District and employees agreed to share the cost of health plan premium increases on a 50/50 basis during the term of the MOU. In July, 2015, the employees began paying a portion of the HMO premium and the employee share of PPO premiums increased. As a result, retirees who qualify for District paid health insurance were required to pay a portion of the HMO premium and the retiree share of PPO premiums increased to the same amount paid by active employees.

Pursuant to the terms of the MOU, staff met with representatives of the MNWDEA to discuss the proposed revision along with the other identified sections of the Personnel & Salary Policy. Aside from the one recommended change, no revisions to these sections of the Personnel & Salary Policy are being recommended at this time.

Pursuant to Article X of the MOUs, it is recommended that the Board of Directors adopt Resolution No. 16-___ to approve the revision to the Personnel & Salary Policy (Medical Retirement Benefits, Section 4.19) and authorize the General Manager to sign Side Letter Agreement #2 for the General and Supervisory Units to incorporate the following sections of the P & S Policy to the MOU by way of this side letter:

- 1. Educational reimbursement
- 2. Personal computer purchase plan
- 3. Insurance
- 4. Physical examination

Personnel & Salary Policy Revisions and MOU Side Letters

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5. Medical retirement benefits
6. Social Security Medicare coverage
7. Deferred compensation plan.

Attachments:

1. Resolution 16-___, "Approving the Personnel & Salary Policy"
2. Personnel & Salary Policy
3. General Unit Side Letter #2
4. Supervisory Unit Side Letter #2

RESOLUTION NO. 16-____

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE
MOULTON NIGUEL WATER DISTRICT
APPROVING THE PERSONNEL & SALARY POLICY**

WHEREAS, the representatives of the Board of Directors of the Moulton Niguel Water District (“District) have made adjustments to personnel rules, regulations and procedures for all employees; and

WHEREAS, the Personnel & Salary Policy prepared by said representatives has been presented to the Board of Directors for approval.

NOW, THEREFORE, the Board of Directors of the Moulton Niguel Water District **DOES HEREBY FIND, DETERMINE AND RESOLVE AS FOLLOWS:**

Section 1. That this Board of Directors does hereby approve the personnel rules, regulations and procedures contained in the Personnel & Salary Policy, attached hereto as Exhibit 1, which shall be effective upon approval and remain in full force and effect until modified by the Board of Directors.

ADOPTED, SIGNED and APPROVED this 21th day of January, 2016.

MOULTON NIGUEL WATER DISTRICT

President
MOULTON NIGUEL WATER DISTRICT
and the Board of Directors thereof

Secretary
MOULTON NIGUEL WATER DISTRICT
and the Board of Directors thereof



Exhibit 1

ARTICLE V
Personnel & Salary
Policy

January ~~14~~2021, 20156

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**MOULTON NIGUEL WATER DISTRICT
PERSONNEL AND SALARY POLICY**

ARTICLE I - PURPOSE

Section 1.01 General

This policy is intended to provide employees with a general understanding of the Moulton Niguel Water District’s (District) basic rules and practices governing employment. It is intended to familiarize employees with important information about the District as well as information regarding their own privileges and responsibilities.

Each employee will be given a copy of the District's Personnel and Salary policy and is held responsible for reading, understanding, and being familiar with the obligations outlined within. It is important that all employees read, understand, and follow the provisions of the policy. A signed Acknowledgment of Understanding form will be placed in each employee's personnel file as evidence of the employee having read the policy and agreeing to abide by its rules and regulations. This Policy is not intended to be an employment contract or legal document.

Circumstances will undoubtedly require that guidelines, practices, and benefits described in this policy change. Accordingly, the District reserves the right to modify, supplement, rescind or revise any provision of this policy from time to time as it deems necessary. Employees will, of course, be advised of such changes as they occur.

ARTICLE II – DEFINITIONS

For the purpose of the District’s policies, the following definitions shall apply:

Section 2.01 Assistant Division Head

This shall mean those employees who are directly responsible to the Director of Engineering and Operations for the supervision of the Engineering and Operations Division.

Section 2.02 Assistant General Manager

This shall mean the Assistant General Manager of the District, appointed by the General Manager of the District, and serving at the will and pleasure of the General Manager.

Section 2.03 Board of Directors

This shall mean the Board of Directors of the District and may also be referred to as “Board” or “Directors”. (Directors are not considered employees for purposes of this Personnel and Salary Policy, except for health, dental, vision, life, and workers’ compensation insurance benefits, medical retirement benefits, Section 125 Plan and the Deferred Compensation Plan and except where otherwise specifically included in the terms of this policy. See Section 4.19.A.)

Section 2.04 Delegation of Responsibility by the General Manager

This shall mean that in the absence of the General Manager, his/her designated representative shall act on his/her behalf.

Section 2.05 District

This shall mean the Moulton Niguel Water District, a California Water District, authorized under the California Water District Law, Division No. 14.

Section 2.06 Division Head

This shall mean those employees who are directly responsible to the General Manager and/or Assistant General Manager for the supervision of the Engineering and Operations, Finance, and Human Resources or any other Divisions. These employees serve at the will and pleasure of the General Manager.

Section 2.07 Domestic Partner

This shall mean a person who has validly registered as a domestic partner by filing a Declaration of Domestic Partnership with the California Secretary of State pursuant to the California Family Code, section 297.

Section 2.08 Exempt Employee

This shall mean employees who are exempt from the overtime pay requirement of the Fair Labor Standards Act (FLSA).

Section 2.09 Full-Time Employee

This shall mean all employees appointed by the General Manager for employment on a regular basis to work forty (40) hours per week or more.

Section 2.10 General Manager

This shall mean the General Manager of the District, duly appointed by and serving at the will and pleasure of the Board of Directors.

Section 2.11 Immediate Family Member

This shall mean the spouse, domestic partner, child, child of domestic partner, stepchild, brother, stepbrother, sister, stepsister, mother, stepmother, father, or stepfather of the employee.

Section 2.12 Non-Exempt Employee

This shall mean employees who are required to be paid overtime when they work in excess of ten (10) hours per day and/or forty (40) hours per week.

Section 2.13 Part-Time Employee

This shall mean all employees appointed by the General Manager for employment on a regular basis to work less than forty (40) hours per week. Those part-time employees who work more than thirty (30) hours per week on a monthly basis shall receive vacation, holidays, sick leave, and retirement benefits on a pro-rata basis according to the total number of hours worked, as compared to forty (40). Those part-time employees who work less than thirty (30) hours per week shall receive no benefits, except as required by law.

Section 2.14 Regular Employee

This shall mean all full-time or part-time employees who have satisfactorily completed their initial probationary period.

Section 2.15 Supervisor

This shall mean an individual who directs the work of one or more other employees and may also participate in evaluating and disciplining employees.

Section 2.16 Temporary Employee

This shall mean all employees hired by the General Manager for a limited period of time. Temporary employees are at-will and may be terminated at any time without cause and without right to appeal. As such, they are not entitled to receive District benefits and are not subject to any other provisions stipulated in this policy.

ARTICLE III - EMPLOYMENT

Section 3.01 Hiring of Employees

- A. The Moulton Niguel Water District is an equal opportunity employer and makes employment decisions on the basis of merit. The District wants the best available person for each job. District policy prohibits nepotism and unlawful discrimination based on race, color, gender, religious or political affiliation, creed, citizenship status, military service status, marital status, pregnancy, age, national origin or ancestry, medical condition, physical or mental disability, gender identity and medical condition including genetic characteristics, sexual orientation, or any other consideration made unlawful by federal, state or local laws.

The District is committed to complying with all applicable laws which provide for equal employment opportunities. This commitment applies to all persons involved in the operations of the District and prohibits unlawful discrimination by any employee of the District, including Supervisors and coworkers.

To comply with the laws ensuring equal employment opportunities to qualified individuals with a disability, the District will make reasonable accommodations for the known physical or mental disabilities of an otherwise qualified individual with a disability who is an applicant or an employee unless undue hardship would result.

Any applicant or employee who requires an accommodation in order to perform the essential functions of the job or complete the application should contact the Human Resources Division and request an accommodation. The individual with the disability should specify what accommodation he/she needs. The District will then conduct an interactive process meeting to identify possible accommodations, if any, that will help eliminate the limitation. The District will identify possible accommodations, if any, that will help eliminate the limitation. If the accommodation is reasonable and will not impose an undue hardship, the District will make the necessary accommodation.

If an employee or applicant believes he/she has been subjected to any form of unlawful discrimination, he/she must submit a written complaint pursuant to the reporting procedures set forth within these policies. The complaint should be specific and should include the names of the individuals involved and the names of any witnesses. The District will immediately undertake an effective, thorough, and objective investigation and attempt to resolve the situation.

If the District determines that unlawful discrimination has occurred, effective remedial action will be taken commensurate with the severity of the offense. Appropriate action also will be taken to defer any future discrimination. The District will not retaliate against any employee for filing a complaint and will not knowingly permit retaliation by any employee.

- B. All District employees shall be appointed to their positions by the General Manager. The General Manager is appointed by and serves at the will and pleasure of the Board.
- C. Without approval from the General Manager, no immediate family member of any District personnel shall be hired on a full-time, part-time, or temporary basis.
- D. The District will comply to the extent applicable with the provisions of the Fair Labor Standards Act, and with any other applicable statutes and regulations regarding wages, hours, and benefits (see Article V).
- E. It shall be required that all employees certify, by signature, that they have received, read and fully understand the currently adopted Personnel and Salary Policy.
- F. All employees entering full-time or part-time District employment, pursuant to Chapter 8 (commencing with Section 3100), Division 4, Title 1 of the Government Code are required to take an Oath of Allegiance to support and defend the Constitution of the United States and the Constitution of the State of California.
- G. To provide a healthful working environment for all District employees, the District shall maintain Administrative Policies (and by this reference incorporates them herein), which will be updated as necessary. All employees shall be expected to comply with these Policies and failure to do so will result in implementation of the disciplinary procedures set forth in Section 3.18 of this policy.

- H. It shall be required that all individuals accepting District employment provide verification of work authorization and identity pursuant to the Immigration Reform and Control Act of 1986. Completion of Form I-9, Employment Eligibility Verification, U.S. Department of Homeland Security, is mandatory within seventy-two (72) hours of hiring.
- I. The District shall not consider a person who has been convicted of a felony or a misdemeanor involving moral turpitude eligible for employment except that such conviction may be disregarded if it is determined that mitigating circumstances exist, or that the conviction is not related to the employment in question.

Consequently, all employee applicants must submit to a criminal background check prior to being eligible for employment. All criminal background checks will be completed in compliance with state and federal law, and the results of any investigation shall be confidential. The District will provide each applicant with a copy of any information received from state or local law enforcement, or any other criminal history source, if requested.

Section 3.02 Probationary Period

- A. All employees entering full-time or part-time District employment, with the exception of the General Manager, Assistant General Manager, and Division Heads, shall serve a probationary period of twelve months during which time the employee must demonstrate his/her ability to successfully fill the job requirements and establish effective working relationships with co-workers.
- B. Prior to the completion of the twelve-month probationary period an employee will be evaluated by his or her immediate Supervisor, Division Head, the General Manager or a designee thereof and, at the will and pleasure of the General Manager, may have his or her probationary period extended for an additional six months upon written notice to the employee that an additional period of appraisal is required.
- C. Passing the probationary period with a satisfactory rating is a requirement for continued employment with the District.
- D. A new employee shall be hired at Step 1 of the established Range for his/her job classification. Upon the approval of the General Manager, a new employee may be hired at a higher Step, not to exceed the maximum Step established for the job classification.
- E. A new employee who successfully passes his/her probationary period shall be eligible for a pro-rated lump sum non-base building merit incentive payment of 2.5% of base bi-weekly earnings based on the number of pay periods remaining between the conclusion of the probationary period and the end of the last pay period in a fiscal year. For example, a new employee making \$2,000 per pay period who completes his/her probationary period ending 3/22/14, shall receive a merit incentive payment of \$350 ($\$2,000 \times 2.5\% \times 7 \text{ pay periods} = \350). Any merit

incentive payment awarded pursuant to this section shall not be considered as reportable compensation to CalPERS.

- F. All full-time or part-time employees serving their probationary period shall receive applicable benefits (as defined herein).
- G. Employees serving a probationary period are not entitled to due process in discipline or termination, and may be terminated at-will, without cause and without right to appeal.

Section 3.03 Annual Employee Appraisal

- A. The Supervisors, Division Heads, Assistant Division Heads, Assistant General Manager, and General Manager shall annually evaluate the performance of employees under their supervision. This appraisal will occur after the completion of the probationary period and then at least annually thereafter.
- B. An employee may complete a Self Evaluation Form prior to his or her employee appraisal. Attached to the form is a copy of the Job Classification Statement for the employee to review and make any necessary changes. All changes need to be approved by his or her Supervisor and Division Head.
- C. The Employee Performance Appraisal Form will be reviewed by the employee together with his or her Supervisor and signed by both.

Section 3.04 Workweek

The term “workweek” is defined as beginning at 12:00 a.m. on Saturday and ending at midnight the following Friday. All full-time employees will be assigned a four or five-day, eight, nine or ten-hours per day schedule as may be desirable from time to time, in regard to their respective job functions. The employee’s designated work schedule will be determined by his or her Division Head, subject to approval by the General Manager.

Section 3.05 Outside Employment

- A. Any full-time employee of the District engaging in outside employment must inform the General Manager by completing an Employee Action Form.
- B. It is understood that all employees represent the District and their actions shall not be in conflict with the mission of the District.

Section 3.06 Military Leave of Absence

Military leaves of absence shall be granted in accordance with state and federal law.

Section 3.07 Vehicle Responsibility

#6.

- A. Employees entering District employment may be required to operate District vehicles on a regular or semi-regular basis. Therefore, District offers of employment are contingent upon employees furnishing the District with a current Department of Motor Vehicles (DMV) report reflecting a safe driving record.
- B. Employees operating District vehicles are responsible for the safe operation of the vehicle in accordance with the law. Most job classifications require daily or periodic operation of District vehicles. Employees who are required to operate District vehicles in the performance of their job, either on a regular or semi-regular basis, are required to be in possession of a valid California driver's license for the class vehicle being operated. The revoking of that license by the State of California for any reason may be sufficient cause for termination. Traffic citations, except due to faulty equipment, are the employee's responsibility.
- C. It is the responsibility of the employee to notify his or her Supervisor and Director of Human Resources or designee immediately upon receipt of any suspension or revocation of his or her California driver's license. Failure to comply with this provision shall be grounds for disciplinary action up to and including termination.
- D. Any employee who is required to use a private vehicle in the discharge of his or her duties for the District shall receive mileage reimbursement at the rate set forth annually by the Internal Revenue Service.
- E. An employee who receives mileage reimbursement, as described in Section 3.07.D, shall furnish the District a copy of his or her proof of automobile insurance coverage including public liability, bodily injury, and property damage, minimum coverage \$100,000, \$300,000 and \$100,000. This insurance certificate shall remain on file with the District.
- F. Use of a District or private vehicle by an employee while conducting District business is governed by the District's Vehicle and Equipment Policy, Article X, of the District's Administrative Policies, and by this reference is incorporated herein.

Section 3.08 Safety—California Occupational Safety and Health Act (CAL/OSHA)

- A. The District will furnish the employee a place of employment which is safe and healthful. First-aid kits are furnished by the District and are located at the Main Office, Operations Building and District vehicles.
- B. The employee's personal appearance, including attire and hair, shall not present a safety hazard or prevent full and proper utilization of safety equipment.
- C. The District shall maintain Safety Rules and Regulations and an Injury and Illness Prevention Program. These policies shall be updated as necessary, to comply with all federal and state regulations (see Articles VII and XXVIII of the District's Administrative Policies, which are incorporated by reference herein).

- D. The District requires that safety meetings be held on a regularly scheduled monthly basis and requires all District field personnel to attend. Administrative (non-field) personnel will attend those regularly scheduled meetings as directed by the General Manager.
- E. It shall be required that all employees certify, by signature, that they have received, read and fully understand the currently adopted Safety Rules and Regulations and Injury and Illness Prevention Program, Article VII and Article XXVIII, of the District’s Administrative Policies.
- F. All employees shall be expected to comply with all Safety Rules and Regulations and failure to do so shall be considered as grounds for dismissal.

Section 3.09 Dress and Grooming Standards

It is important that all District personnel strive to maintain a professional appearance while taking into account the nature of their jobs. The District’s public image is an important aspect of our relationship with our customers.

- A. Apparel – Employees shall report to work in neat and clean attire, including those employees provided with District uniforms. For those employees provided a uniform, the uniform shirt shall be buttoned and tucked in during working hours. This applies equally to the “golf” shirt worn by some employees.
- B. Hair – Hair shall be kept clean, combed, and neatly trimmed or arranged. This also pertains to male facial hair. Additionally, no employee shall have facial hair that will conflict with the District’s policy regarding confined spaces as noted in the District’s Safety Rules and Regulations. Immoderate hairstyle, unnatural color, or unkempt hair is unacceptable for District business.
- C. Tattoos and Piercings – No tattoos are allowed on the head, face or neck. Any visible tattoos must not be obscene, sexually explicit, discriminatory to sex, race, religion or national origin, and/or gang related. No visible tattoo shall be larger than four (4) inches. Any non-conforming tattoos must be covered by clothing or a bandage while at work. All jewelry worn by employees must be appropriate, not detract from a professional appearance and not pose any safety hazards. Visible piercings other than ears are prohibited. Any non-conforming piercing must be removed, covered with a bandage, or replaced with a clear, plastic spacer during work hours.
- D. Personal Hygiene – Good personal hygiene habits must be maintained.
- E. Supervisors and managers are responsible for adhering to and enforcing these standards within their departments. In applying these guidelines, supervisors and managers must:
 - 1. Make reasonable accommodations as required by applicable law for dress or grooming directly related to employees’ religion, ethnicity, or

disabilities. Employees should discuss any accommodation needs with their manager or the Director of Human Resources or designee.

- 2. Specify any additional or alternative requirements necessary for reasons of employee safety or public health.

Section 3.10 District Tools and Facilities

Employees may not engage in personal work in District shops or other facilities or use District equipment on or off District property for personal purposes.

Section 3.11 E-mail/Fax

All electronic mail (e-mail) and fax messages are official District records and are the property of the District. The District reserves the right to access, monitor, search, read, inspect and disclose all messages sent over its e-mail/fax system for any purpose.

All messages transmitted over the e-mail/fax system should be those involved in the District business activities for the accomplishment of business related tasks or any communication directly related to District business. The District discourages personal use of e-mail. However, incidental and occasional personal use of the e-mail system is subject to the access and disclosure statement set forth in the policy above. As such, it is recommended that any personal communication be limited to "light personal" communication. E-mail is an important method of distributing information to employees and it is an employee's responsibility to check it frequently and read its contents.

Section 3.12 Personal Cell Phones and Texting

During working hours, personal cell phone use and texting should be limited to meal and rest breaks.

Section 3.13 Internet

Access to the Internet has been provided to employees for the benefit of the District. It allows employees to connect to information resources around the world. Employees accessing the Internet are representing the District. Employees are responsible for seeing that the Internet is used in an effective, ethical, productive, and lawful manner. To ensure that all employees are responsible, productive Internet users and are protecting the District's public image, the following guidelines have been established.

- A. Unacceptable Use of the Internet - The Internet should not be used for personal gain or advancement of individual views. Solicitation of non-District business, or any use of the Internet for personal gain is strictly prohibited. Use of the Internet must not disrupt the operation of the District network or the networks of the other users. It must not interfere with your productivity. Personal usage of the Internet should be kept at a minimum. Any unlawful or inappropriate use of the Internet is strictly prohibited. While it is not possible to provide an exhaustive list of every type of

inappropriate use of the Internet, the following examples should offer employees some guidance:

1. Harassment and discrimination
2. Offensive and defamatory conduct
3. Sexually-suggestive material
4. Gambling
5. Trademark, copyrights and licensing stipulations
6. Proprietary and confidential information
7. No solicitation
8. No personal sites

B. Communications - Each employee is responsible for the content of all text, audio or images that he/she place or send over the Internet. Fraudulent, harassing or obscene messages are prohibited. All messages communicated over the Internet should have your name attached. No messages should be transmitted under an assumed name. Users may not attempt to obscure the origin of any messages. Information published on the Internet should not violate or infringe upon the rights of others. No abusive, profane or offensive language should be transmitted through the system.

Employees are reminded that, under some circumstances, communications sent by e-mail may be subject to disclosure under the Public Records Act or during litigation. Therefore, it is important not to compromise themselves or the District under these circumstances.

C. Software - To prevent computer viruses from being transmitted through the system, there will be no unauthorized downloading of any software. All software downloads will be done by the District's Management Information System personnel.

D. Security - All messages created, sent, or retrieved over the Internet are the property of the District and should be considered public information. Any confidential information should be conducted from home. The District intends to access and monitor all messages and files on the computer system, including e-mail originated outside of the District, as deemed necessary and appropriate. All communications including text and images can be disclosed to law enforcement or other third parties without prior consent of the sender or receiver.

- E. Violations - Violations of any guidelines listed above may result in disciplinary action up to and including termination. If necessary the District will advise appropriate legal officials of any illegal violations.

Section 3.14 Address Change

It is important that the District maintain current home addresses and telephone numbers for all employees. There may be occasions when it is imperative that the District reach an employee when the employee is at home. The District should also be able to contact the employee's family in case of an accident or illness at work. An employee shall notify his/her Supervisor and the Director of Human Resources or designee of any change of address or telephone number by updating the Employee Information/Address Change portion in the Employee Action Form (EAF) program.

Section 3.15 Use of Confidential Information

No persons, whether presently or previously employed by the District, shall utilize confidential information gained in the course of their employment in their dealings with the District or in soliciting or representing clients who desire District services. Persons violating this provision shall be subject to appropriate disciplinary action or discharge or to such civil actions as may be permitted by law.

Section 3.16 Policy Against Harassment and Discrimination

The District strictly prohibits harassment or discrimination of an individual because of that individual's sex, race, religious creed, color, age (over forty), national origin, ancestry, marital status, medical condition, sexual orientation, physical or mental handicap or disability, or membership in any other protected classification under applicable law. Such harassment by employees and non-employees is not only unlawful, but it may result in high turnover, absenteeism, low morale and productivity, and an uncomfortable work environment. Therefore, the District will not tolerate any such harassment of its employees and will take affirmative steps to stop it.

A. Application

- 1. This policy applies to all phases of the employment relationship, including recruitment, testing, hiring, upgrading, promotion/demotion, transfer, layoff, termination, rates of pay, benefits, and selection for training.
- 2. This policy applies to all officers, directors, and employees of the District, including persons working under contract for the District.

B. Harassment Defined

- 1. Harassment may consist of offensive verbal, physical or visual conduct when such conduct is based on, or related to, an individual's sex and/or membership in one of the above-described protected classifications, and:

- (a) Submission to the offensive conduct is an explicit or implicit term or condition of employment;
 - (b) Submission to, or rejection of, the offensive conduct forms the basis for an employment decision affecting the employee; or
 - (c) The offensive conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile or offensive working environment.
2. Examples of what may constitute prohibited harassment include, but are not limited to, the following:
- (a) Kidding or joking about sex or membership in one of the protected classifications;
 - (b) Hugs, pats and similar physical contact;
 - (c) Assault, impeding or blocking movement, or any physical interference with normal work movement;
 - (d) Cartoons, posters and other materials referring to sex, or membership in one of the protected classifications;
 - (e) Threats intended to induce sexual favors;
 - (f) Continued suggestions or invitations to social events outside the workplace after being told such suggestions are unwelcome;
 - (g) Degrading words or offensive terms of a sexual nature or based on the individual's membership in one of the protected classifications;
 - (h) Prolonged staring or leering at a person;
 - (i) Similar conduct directed at an individual on the basis of race, color, ancestry, religious creed, handicap or disability, medical condition, age (over 40), marital status, sexual orientation, or any other protected classification under applicable law; or
 - (j) Other examples include threats of reprisals; implying or actually withholding support for appointments, promotion or transfer; change of assignment; or suggestion that a poor performance report will be prepared if requests for sexual favors are not met.

C. Reporting Procedure

1. Internal Reporting Procedure

- (a) Any employee who believes that he or she is the victim of harassment by co-workers, Supervisors, visitors, vendors or others should immediately report the incident to his or her Supervisor, or in the alternative, the Director of Human Resources or designee, depending on which individual the employee feels most comfortable contacting. In the event that the complaint is against the General Manager, the employee may report the incident directly to the President of the Board of Directors.
- (b) In addition to reporting the incident to District management, employees are encouraged to recognize the importance of informing the harasser that his or her behavior is unwelcome, offensive, in poor taste and inappropriate.

2. External Reporting Procedure

Any employee who believes that he or she has been the victim of sexual or other prohibited harassment by coworkers, Supervisors, clients or customers, visitors, vendors or others may file a complaint with the California Department of Fair Employment and Housing (DFEH). The phone number for DFEH is in the government pages of the phone book.

D. Investigation

1. Internal Investigation

- (a) Upon the filing of a complaint with the District, the employee will be provided with a copy of this policy. The Director of Human Resources or designee is the person designated by the District to investigate complaints of harassment. The Director of Human Resources or designee may, however, delegate the investigation at his or her discretion. In the event the harassment complaint is against the Director of Human Resources or designee, an investigator shall be appointed by the General Manager (or the Board President, in the event that the complaint is against the General Manager).
- (b) When an allegation of harassment or discrimination is made by an employee, the Director of Human Resources or designee or other party to whom the complaint is made shall immediately prepare a report of the complaint.
- (c) The investigator shall make and keep a written record of the investigation, including notes of verbal responses made to the investigator by the person complaining of harassment or discrimination, witnesses interviewed during the investigation, the person against whom the complaint of harassment was made, and any other person contacted by the investigator in connection with the investigation. The investigator's notes shall be made at the time

the verbal interview is in progress. Any other documentary evidence shall be retained as part of the record of the investigation. Upon completion of the investigation, the results shall be given to the complainant, the alleged harasser, and the Director of Human Resources or designee (or the General Manager, in the event the complaint involves the Director of Human Resources or designee). If the complaint is against the General Manager, the Board President shall also be provided the results of the investigation.

- (d) All records and information related to the investigation of any alleged harassment and resulting disciplinary action shall be confidential, except to the extent disclosure is required by law, as part of the investigatory or disciplinary process, or as otherwise reasonably necessary.
- (e) Based on the report and any other relevant information, the Director of Human Resources or designee (or General Manager) shall, within a reasonable period of time, determine whether the conduct of the person against whom a complaint has been made constitutes harassment. In making that determination, the Director of Human Resources or designee (or General Manager) shall look at the record as a whole and at the totality of the circumstances, including the nature of the conduct in question, the context in which the conduct, if any, occurred, and the conduct of the person complaining of harassment. The determination of whether harassment occurred will be made on a case-by-case basis by the Director of Human Resources or designee (or the General Manager). (If the complaint is against the General Manager, the Board will determine whether the complaint constitutes harassment as set forth above.)

2. External Investigation

Charges filed with the DFEH are investigated by the DFEH.

E. Remedies

1. Corrective Action

- (a) The District will take whatever corrective action is deemed necessary, including but not necessarily limited to, disciplining or discharging any individual who is believed to have violated this prohibition against harassment. The District does not tolerate harassment or discrimination of any kind and will take appropriate disciplinary action whenever such harassment or discrimination is demonstrated. Other steps may be taken to the extent reasonably necessary to prevent recurrence of the harassment and to remedy the complainant's loss, if any. Any individual who engages in conduct

that is contrary to this policy may be personally liable in any legal action brought against him or her.

- (b) Corrective action shall be consistent with the nature and severity of the offense, the rank of the harasser, and any other factors relating to the fair and efficient administration of the District's operations.

2. External Remedies

- (a) In the event a complaint is filed with the DFEH, and the DFEH finds that the complaint has merit, the DFEH will attempt to negotiate a settlement between the parties.
- (b) If not settled, DFEH may prosecute the charging party's case before the Fair Employment and Housing Commission ("FEHC"). Legal remedies available through DFEH and FEHC for a successful claim by an applicant, employee or former employee include possible reinstatement to a former job, award of a job applied for, back pay, front pay, attorneys' fees, and, under appropriate circumstances, actual damages and/or administrative fines.
- (c) In the alternative, where the DFEH determines that a complaint lacks merit, or within 150 days after filing a complaint with the DFEH, the DFEH shall inform the alleged victim of his or her right to request a right-to-sue notice. Upon request by the alleged victim, the DFEH may grant permission to withdraw the case and pursue a court action.

F. Retaliation

No employee will be disciplined or otherwise retaliated against for complaining about such harassment or discrimination, for opposing prohibited conduct, or for participating in any investigation, proceeding, or hearing conducted by the District, DFEH, FEHC, Equal Employment Opportunity Commission, or any other state or federal agency.

G. Employee Obligation

- 1. Employees are not only encouraged to report instances of harassment or discrimination, they are obligated to report instances of harassment. Reports are to be made to the Employee's Supervisor or the Director of Human Resources or designee.
- 2. Employees are obligated to cooperate in every investigation of harassment or discrimination, including, but not limited to:
 - (a) Coming forward with evidence, both favorable and unfavorable, to a person accused of harassment or discrimination; and

- (b) Fully and truthfully making a written report or verbally answering questions when required to do so during the course of the District’s investigation of alleged harassment or discrimination.
- 3. Knowingly and falsely accusing someone of harassment or discrimination or otherwise knowingly giving false information in an investigation of harassment or discrimination shall be grounds for disciplinary action up to and including termination.

Section 3.17 Grievance Procedure

A. Purpose of Grievance Procedures

- 1. Promotes improved employer/employee relations by establishing an appropriate means for determining the validity of grievances, i.e., claims by an employee that the District has violated, misinterpreted or misapplied an obligation to the employee as such obligation is expressed and written in this policy.
- 2. Provides a method of resolving such claims as closely as possible to the point of origin and as informally as possible.
- 3. Encourages free communication between Supervisors and employees.
- 4. Grievances regarding discipline or discharge must be handled under Section 3.18. All other grievances, except as noted under Section 3.18, must be handled as outlined in Item B below.

B. Grievance Procedure Steps:

- 1. Step One: Supervisor: Employees who have a grievance shall first take it up informally with their immediate Supervisor within five (5) working days after they knew or reasonably should have known of the occurrence of the cause of the grievance. The Supervisor shall record, in writing, the grievance and any action taken.
- 2. Step Two: Division Head: If the grievance is not resolved within five (5) working days after its submission in Step One, employee may submit the grievance in writing to his or her Division Head within five (5) working days thereafter. The Division Head shall meet with the employee within two (2) working days after submission of the grievance and shall deliver his or her answer, in writing, to the employee within five (5) working days after such meeting. At this and all subsequent steps in the grievance procedure, employee has the right to present their grievance with or without a representative at his or her option.
- 3. Step Three: General Manager: If the grievance is not resolved in the second step, the aggrieved employee may submit it in writing to the General

Manger, within five (5) working days after the Division Head's answer is received. The General Manager shall meet with the employee within five (5) working days after receiving the grievance and shall deliver his/her answer to them in writing within five (5) working days after such meeting. The decision of the General Manager shall represent the final decision of the District with respect to the grievance. At the discretion of the General Manager, in unusual or extenuating circumstances, it may be requested that the General Manager refer the matter to the Personnel and Salary Committee of the Board of Directors.

4. Step Four: If the General Manager determines to offer referral to the Personnel and Salary Committee of the Board of Directors (hereinafter, the "P & S Board"), the grievant may, within five (5) working days from the date of the General Manager's written response at Step Three, file a written request with the General Manager for a hearing before the P & S Board. The P & S Board may, at its sole discretion, decide to:
 - (a) Limit its review of the grievance to the documentation developed at prior levels of this grievance procedure;
 - (b) Hold a hearing at which both the grievant and the General Manger shall be afforded the opportunity to present evidence, testimony and oral argument regarding their respective positions as to the grievance;
 - (c) Direct that the matter be heard by a subcommittee or designee of the P & S Board, other than the General Manager.
5. If the matter is heard by a subcommittee or designee of the P & S Board, written findings of fact and an advisory decision shall, within a reasonable period of time, be presented for consideration by the P & S Board at a regularly scheduled or special P & S Board meeting. The decision of the P & S Board shall be final and binding on all parties.
6. In the event that a grievance hearing is convened, the grievant must be personally present at the hearing or his or her grievance will be deemed forever waived.
7. A grievant's failure to follow the timelines for addressing his or her grievance at the next progressive Step, as set forth above, will constitute the grievant's consent that the matter was resolved at the previous Step.

Section 3.18 Discipline and Discharge Procedures

A. Disciplinary Action

1. Employee Representatives Permitted. Regular employees are permitted an employee representative at any meeting in which they may be subject to

disciplinary action by the District. Such regular employees may have an employee representative when there is probable cause to believe that disciplinary action may be taken as the result of the meeting; if a significant purpose of the meeting is to investigate facts in relation to a contemplated disciplinary action; or if there is a potential for disciplinary action.

2. Disciplinary Action Subject to Notice and Hearing Procedures. Upon compliance with procedures set forth in the section entitled, "Disciplinary Procedures for Regular Employees," Section 3.18.B, the following disciplinary actions may be taken against a regular employee either by the General Manager or such management personnel as he or she may designate:

- (a) Termination: Discharge from District service.
- (b) Demotion: Reduction from a position in one classification to a position in another classification effected for disciplinary purposes. An employee who is demoted shall be placed on a Step of the Range established for the classification to which the employee is demoted that is closest to his/her current pay rate, which does not result in a pay increase. In the event the employee's current pay rate exceeds the maximum of the new Range, the employee's pay rate shall be reduced to the maximum Step of the Range established for the classification to which the employee is demoted. (Demotions resulting from an employee's inability to perform required duties for medical reasons, organizational changes, or layoffs are not disciplinary in nature and are not subject to the appeal process.)
- (c) Salary Reduction: A reduction in pay from the employee's current pay range to any lower amount within that same range, as such range is recorded in the District's current salary schedule.
- (d) Suspension from Duty: An ordered interruption of duties for five (5) or more days without pay.

3. Disciplinary Actions Not Subject to Notice and Hearing Procedures. The following disciplinary actions may be taken against any employee by the General Manager, Assistant General Manager or Division Head, without compliance with the procedures referred to in Section 3.18.A.2:

- (a) Counseling statements.
- (b) Written or oral warnings.
- (c) Reprimand, which may be oral, or in writing, or both.
- (d) Change in working hours.

- (e) Reassignment not entailing a salary reduction or demotion.
 - (f) Suspension for four (4) days or less without pay. (The General Manager must be notified prior to implementing a suspension without pay).
4. Causes for Disciplinary Action. It is intended that discipline be imposed primarily for corrective purposes and to address deficiencies in work performance. The following is a non-exclusive list of the more common reasons for disciplinary action:
- (a) Actions contrary to the rules and policies of the District.
 - (b) Inefficiency, incompetence, inattention to or dereliction of duty, failure to perform assigned duties in a satisfactory manner.
 - (c) Insubordination or failure to comply with District rules and policies.
 - (d) Accepting gratuities or tips in violation of the District's Ethics Policy or applicable law.
 - (e) Dishonesty.
 - (f) Theft or unauthorized use of District property.
 - (g) Fighting while on duty or on District premises.
 - (h) Frequent or habitual tardiness, unexcused absences or unsatisfactory attendance.
 - (i) Conducting non-District business activities during working hours.
 - (j) Harassment and/or discrimination in any form.
 - (k) Consumption of alcoholic beverages while on duty or on District premises.
 - (l) Being under the influence of alcohol while on duty.
 - (m) Use of, possession of, and/or transfer or sale of, non-prescribed drugs or narcotics while on duty or on District premises.
 - (n) Disorderly, indecent or immoral conduct while on duty or while in District uniform.
 - (o) Discourteous treatment of the public or other District employees.

- (p) Conviction of any felony or of a misdemeanor involving moral turpitude, dishonesty or immoral conduct.
- (q) Unauthorized absence from work.
- (r) Neglect of duty.
- (s) Failure to follow safe working practices.
- (t) Failure to report an injury promptly.
- (u) Failure to report significant unsafe working practices to Supervisor.
- (v) Misrepresentations in obtaining employment with or promotion within the District.
- (w) Misuse of District monies.
- (x) Falsification of forms, records, or reports; including, but not limited to, time sheets, employment applications and District documents.
- (y) Possessing or bringing firearms or weapons onto District property.
- (z) Destroying or willfully damaging District or employee property, records, or other materials.
- (aa) Unauthorized opening or tampering with locks in desks, doors, cabinets, etc., or unauthorized use or duplication of keys.
- (bb) Failure to immediately report the loss of a California driver's license due to suspension, withdrawal, forfeiture or confiscation by any court of law or by the California Department of Motor Vehicles by employees who must maintain such a license as a condition of employment.
- (cc) Failure to call in to the employee's Supervisor prior to the start of employee's work shift if employee will be absent or tardy without prior approval.

5. Recordation of Disciplinary Action in Employee's Personnel File. The disciplinary action taken, along with the reasons for such action, will be recorded in an employee's personnel file.

B. Disciplinary Procedures for Regular Employees

1. Purpose. This section sets forth the procedure to ensure that all regular employees are fairly treated when subjected to disciplinary actions described in Section 3.18.A.2, "Disciplinary Action Subject to Notice and

Hearing Procedures”. These procedures do not apply to the General Manager, Assistant General Manager, Division Heads or employees in their probationary period who may be discharged, suspended or otherwise disciplined without any reason or cause.

2. Notice of Proposed Action. Prior to taking disciplinary action subject to notice and hearing procedures, as outlined in Section 3.18.A.2, the Division Head shall deliver to the employee a written notice of its intention to dismiss or otherwise discipline the employee. Such notice shall be personally served on the employee, or if the employee is not available, it shall be sent by registered or certified mail to the employee’s place of residence, as shown on the records of the District. The notice shall be served or mailed not less than seven (7) calendar days prior to the proposed disciplinary action and shall contain the following:
 - (a) The proposed disciplinary action and the date said action becomes effective.
 - (b) The specific charges upon which such action has been proposed and the reasons why such action is being taken. Such charges shall contain any information essential to give the employee a fair opportunity to answer the charges made. Such information shall include, but is not limited to, names, times, dates, places or numbers that may be pertinent to the charges made.
 - (c) If such charges are based upon documents or materials, the notice shall inform the employee of this fact, and shall inform the employee as to the location of such documents and materials. If available and subject to duplication, copies of such documents and materials shall be furnished to the employee with the notice.
 - (d) A time and date by which the employee may file a written response and for presentment of any oral response, which date shall not be less than seven (7) days after the notice is served on or mailed to the employee, whichever occurs first.

Pre-disciplinary procedures are not required for suspension of four (4) days or less. For suspensions of four (4) days or less, the notice procedures of Section 3.18.B.2. and the response and determination procedures for Section 3.18.B.3. through Section 3.18.B.5. may be provided to the employee during the suspension or within a reasonable time thereafter.

3. Response of Employee. The employee shall have the right to respond, either orally or in writing, or both, no later than the time and date provided in the notice to the employee. The time for response may be extended by the Division Head for a reasonable period if the Division Head determines it is necessary to provide the employee with a fair opportunity to answer the charges made. Written responses shall be delivered to the Division Head.

If the employee desires to make an oral response, the employee shall give written notice to the Division Head of this fact at least two (2) working days before the time and date stated in the notice for presentment of the oral response. Failure of the employee to give such notice shall constitute a waiver by the employee of any right to present an oral response. At this time, the employee should also advise the Division Head if the employee's legal or other representative will be present during the oral response.

- 4. Oral Response. If the employee gives the notice described, the oral response of the employee shall be presented to the Division Head. At the time of the employee's oral response, the employee shall have the right to be represented by counsel or other representative.
- 5. Determination by Division Head. Upon expiration of the period of time set forth in the District's notice to the employee, or if an oral response is presented, upon completion of the response, whichever is later, the Division Head shall review the matter, including any response of the employee and his/her representatives and any evidence presented, and shall make a determination whether to discharge or otherwise discipline the employee. The Division Head shall notify the employee in writing of the determination. Such notice shall be personally served on the employee or shall be sent by registered or certified mail to the employee's place of residence as shown in the records of the District.
- 6. Appeal of Decision of Division Head. An employee or former employee dissatisfied with the determination made by the Division Head may appeal the determination to the General Manager, provided that a written notice of appeal is filed with the Director of Human Resources or designee of the District no later than fifteen (15) calendar days after the date of personal service or mailing of the notice of the Division Head's determination, whichever is sooner.

If a timely appeal is filed with the Director of Human Resources or designee of the District, the General Manager shall schedule a hearing within thirty (30) calendar days of the date of filing of the notice of appeal, and the Director of Human Resources or designee of the District shall notify the employee or former employee of the time and date fixed for the hearing. At the hearing, the employee shall have the right to be represented by counsel or other representative, or both. The General Manager or such management personnel as he/she may designate, may extend the time to schedule the hearing upon a determination of good cause.

The employee shall have the right to present evidence and to examine adverse witnesses. The employee shall, at least five (5) working days before the scheduled hearing, file a written request with the Director of Human Resources or designee requesting the presence of such persons at the hearing. If such persons can be made available without unduly interfering

with the operations of the District, the Director of Human Resources or designee shall cause such persons to be present at the time of the hearing. The General Manager or such management personnel as he/she may designate, may continue the hearing for a reasonable period until such persons can be present. The hearing shall be recorded.

- 7. Determination of Appeal. Upon conclusion of the hearing, the General Manager shall review the matter, including any evidence presented at the hearing, and shall make a final determination whether to confirm the determination of the Division Head.
- 8. Status of Employee. During the period prior to the determination of the matter by the Division Head as set forth in Section 3.18.B.5, the employee may be suspended from performance of his or her duties with pay or may be reassigned to other duties. If the final determination of the Division Head is to discharge an employee, the effective date of the discharge shall be the date that the notice of the Division Head's determination is personally served or mailed pursuant to Section 3.18.B.5, whichever occurs first.
- 9. Judicial Review. Judicial review of any decision of the District, or of any commission, committee, board, officer or agent thereof dismissing or otherwise disciplining an employee, which decision is subject to review under Code of Civil Procedures section 1094.5, may be had pursuant to this section only if a petition for writ of mandate is filed in Superior Court within the time limits specified in Code of Civil Procedure section 1094.6.

C. Layoff or Reduction in Force

A layoff or reduction in force is not a disciplinary measure. Notwithstanding any other provisions of these rules, nothing provided herein shall prohibit the District from discharging, suspending or transferring an employee upon a determination by the District that the needs of the District do not require continuance of the employee's position.

Section 3.19 Resignation

An employee who resigns should submit his or her resignation in writing to his or her Supervisor and indicate date of resignation. Such notice should be submitted at least two (2) weeks before the effective date of resignation and given to the Director of Human Resources or designee.

Section 3.20 Exit Interview

Upon leaving District employment, the employee shall be given an exit interview. This review, while not limited to, will also include a discussion of all benefits, including accrued sick leave, accrued vacation, California Public Employees' Retirement System, health insurance, life insurance and disability insurance.

Section 3.21 Medical Coverage for Terminated Employees and their Dependents

Medical coverage for employees, whose employment terminates for any reason, and their eligible dependents can continue at the option of the employee pursuant to the provisions of the Consolidated Omnibus Budget Reconciliation Act (COBRA). The District will not bear the cost of such coverage. Details concerning this provision may be obtained from the Director of Human Resources or designee.

Section 3.22 Anti-Violence/Weapons

- A. The District has adopted a Zero Tolerance Policy against workplace violence and weapons. Consistent with this policy, acts or threats of physical violence, including intimidation, harassment, and/or coercion, which involve or affect the District or which occur on District property will not be tolerated.
- B. Acts or threats of violence include conduct which is sufficiently severe, offensive, or intimidating to alter the employment conditions at the District or to create a hostile, abusive, or intimidating work environment for one or several District employees.

Examples of workplace violence include, but are not limited to, the following:

- 1. All threats or acts of violence occurring on the District premises, regardless of the relationship between the District and the parties involved in the incident.
- 2. All threats or acts of violence occurring off the District premises involving someone who is acting in the capacity of a representative of the District.
- 3. All threats or acts of violence occurring off the District premises involving an employee of the District if the threats or acts affect the legitimate interests of the District.
- 4. Any acts or threats resulting in the conviction of an employee or agent of the District, or of an individual performing services for the District on a contract or temporary basis, under any criminal code provision relating to violence or threats of violence which adversely affect the legitimate interests and goals of the District.

Specific examples of conduct which may be considered threats or acts of violence include, but are not limited to, the following:

- 1. Hitting or shoving an individual
- 2. Threatening an individual or his or her family, friends, associates, or property with harm
- 3. The intentional destruction or threat of destruction of District property

- 4. Harassing or threatening phone calls
 - 5. Harassing surveillance or stalking
 - 6. The suggestion or intimation that violence is appropriate
 - 7. Unauthorized possession or inappropriate use of firearms or weapons
- C. The District's prohibition against threats and acts of violence applies to all persons involved in the District's operation, including but not limited to District personnel, contractors, and temporary workers and anyone else on District property. Violations of this Policy by any individual on District property, by any individual acting as a representative of the District while off District property, or by any individual acting off of District property when his or her actions affect the District's business interests will lead to disciplinary action (up to and including termination) and/or legal action as appropriate.
- D. Possession while on duty or bringing onto District property unauthorized material, such as explosives, weapons (including, but not limited to, firearms and knives), or other similar items, is strictly prohibited. (This Policy does not preclude employees from possessing District-issued knives which are used as tools for their job.)
- E. Every employee and every person on District property is required to report incidents of threats or acts of physical violence or any other violation of this policy of which he or she is aware. The report should be made to the Director of Human Resources or designee, the reporting individual's immediate Supervisor, or another supervisory employee if the immediate Supervisor is not available. Nothing in this Policy alters any other reporting obligation established in District policies or in state, federal, or other applicable law.

ARTICLE IV - BENEFITS

Section 4.01 Annual Vacation

- A. Vacation leave will begin to accrue from the date of employment. All full-time employees working forty (40) hours per week shall earn the following amount of vacation hours with pay:
- 1. Non-management employees:
 - (a) First year through fifth year of continuous employment, 80 hours per year.
 - (b) Sixth year through tenth year of continuous employment, 120 hours per year.
 - (c) After ten years of continuous employment, 160 hours per year.

2. Management employees:

(a) General Manager and Assistant General Manager

- i. First year of continuous employment, 80 hours per year.
- ii. Second year through fifth year of continuous employment, 120 hours per year.
- iii. After six years of continuous employment, 160 hours per year.

(b) Division Heads:

- i. First year through third year of continuous employment, 80 hours per year.
- ii. Fourth year through tenth year of continuous employment, 120 hours per year.
- iii. After ten years of continuous employment, 160 hours per year.

- B. Vacation hours will be computed proportionately for those employees working thirty (30) hours per week or more. Part-time employees who work less than thirty (30) hours per week shall not accrue vacation leave.
- C. Perfect attendance (i.e., the employee has not utilized sick leave, or used other paid leave on the same day notice is given) for a four-month period earns a forty (40) hour per week employee an additional eight (8) hours of vacation. The four-month periods are as follows: January 1 through April 30, May 1 through August 31, and September 1 through December 31. Vacation hours for employees working thirty (30) hours or more per week will be calculated proportionately.
- D. No vacation time shall be taken without prior approval of the employee's Supervisor and Division Head.
- E. Vacation requests shall be submitted no less than two weeks prior to commencement of the requested vacation.
- F. Vacation duration is limited to no more than 120 continuous hours without special approval of an employee's Division Head and General Manager or Assistant General Manager.
- G. Any employee separating from the District who has not taken accrued vacation shall receive pay for each day of accrued vacation according to the base pay for such employee on the last regular pay period.

- H. An employee is eligible to transfer up to 80 hours of accrued vacation into his/her deferred compensation plan offered by the District, provided the employee has used at least 40 vacation hours during the fiscal year and provided that the employee maintains 40 hours of accrued vacation following the transfer, or has taken 80 hours of vacation within the fiscal year.
- I. The District will pay out vacation hours, provided the employee has used at least 40 hours of vacation during the 12 months preceding May 31. Vacation cash outs are paid once per year in June. The maximum amount of vacation that an employee is able to cash out per calendar year is 120 hours. Employees must present their vacation cash out request to the Finance Division prior to January 1st for the following year. In addition, if an employee who is within 40 hours of the vacation ceiling is denied vacation because of District needs, the employee may cash out up to 40 hours irrespective of the limitation set forth above.
- J. An employee cannot accrue more than 200% of his/her annual vacation accrual (for example, an employee accruing 120 hours per year can accrue up to 240 hours before the employee ceases to accrue vacation until the employee uses vacation to reduce it below the ceiling). Every effort shall be made by the employee to schedule at least one continuous forty (40) hour (one week) vacation during the year.

Section 4.02 Holidays

- A. The District observes the following eleven (11) holidays:
 - New Year's Day (January 1)
 - Washington's Birthday (third Monday in February)
 - Memorial Day (last Monday in May)
 - Independence Day (July 4)
 - Labor Day (First Monday in September)
 - Veteran's Day (November 11)
 - Thanksgiving Day
 - Thanksgiving Holiday (Friday after Thanksgiving Day)
 - Christmas Day (December 25)
 - Two (2) Floating Holidays

Employees will be granted leave with pay for all holidays observed by the District. For the purposes of holiday compensation, a day shall equal the number of hours that the employee would have normally worked if not for the holiday.

Employees accrue two floating holidays on July 1. The employee must be employed on July 1 in order to accrue the floating holidays.

Each floating holiday will be selected by the employee and approved by the employee's Supervisor at least two (2) weeks in advance of taking the day off. Each floating holiday must be used prior to the last day of the fiscal year (June 30).

- B. For those employees assigned to an eight-hour, five-day work schedule, when the holiday falls on a Saturday or Sunday, either the preceding Friday or the following Monday shall be observed as the holiday. The General Manager or Assistant General Manager shall determine which day will be used.
- C. For those employees assigned to a ten-hour, four-day work schedule, when the holiday falls on the employee’s regularly scheduled day off, a floating holiday will be given for the observed holiday.
- D. Holiday compensation and floating holiday credit will be computed proportionately for those employees working thirty (30) hours or more per week. Part-time employees who work less than thirty (30) hours per week shall not receive any type of holiday pay.
- E. All employees who are required to work on a holiday shall be entitled to compensation pursuant to overtime pay (as defined in Section 5).

Section 4.03 Sick Leave

- A. Sick leave will begin to accrue from the date of employment. Paid sick leave for full-time employees working forty (40) hours per week is accrued on the basis of eight (8) hours per calendar month completed. Sick leave will be computed proportionately for those employees working thirty (30) or more hours per week. Effective July 1, 2015, pursuant to Assembly Bill 1522, a part-time, temporary or intern employee who works less than thirty (30) hours per week shall be entitled to paid sick leave after he/she has worked for thirty (30) or more days within a year from when employment commences. Such employee shall accrue paid sick leave at the rate of one (1) hour for every thirty (30) hours worked up to twenty-four (24) hours per 12-month employment year. A part-time, temporary or intern employee shall be permitted to use paid sick leave beginning on the 90th day of employment. A part-time, temporary or intern employee shall be permitted to carry over paid sick leave to the following year of employment, up to a maximum of forty-eight (48) hours of sick leave.

- B. One-half of an employee’s annual accumulation of sick leave may be used for family illness or kin care. An employee is required to notify his/her supervisor when using sick leave to care for a family member.

The definition of kin for purposes of this section includes an employee’s child, parent, spouse or domestic partner, or sibling. A “child” means your biological, adopted or foster child, stepchild, legal ward, a child of a domestic partner, or a child you have accepted the responsibility for raising, such as a grandchild. A “parent” means your biological parent, foster parent, adoptive parent, stepparent, grandparent, parent-in-law and/or legal guardian. Other relatives are not covered.

- C. Upon request from the Division Head, Assistant General Manager or General Manager, a doctor’s certificate may be required if an employee is absent from work for ten (10) or more consecutive working hours. If an employee is absent thirty (30)

consecutive working hours, a doctor's certificate shall be mandatory in order to return to work.

- D. The same conditions placed on use of sick leave by an employee also apply to kin care, as described above in Section 4.03.C.
- E. On January first of each year, an employee may carry over a maximum of one hundred seventy-six (176) accumulated sick leave hours. An employee who has accumulated hours greater than one hundred seventy-six (176) will receive compensation for seventy-five percent (75%) of those hours over one hundred seventy-six (176).
- F. Upon retirement or termination of employment that is not deemed "for cause," the employee will be paid for any accrued sick leave according to the following schedule: (a) fifty percent (50%) of accrued sick leave after ten full years of continuous service; (b) seventy-five percent (75%) of accrued sick leave after 15 full years of continuous service; or (c) one hundred percent (100%) of accrued sick leave after 20 or more full years of continuous service.
- G. When an employee has utilized his or her total accumulated sick leave, accrued vacation may be taken to the extent available. If an employee does not elect to utilize or does not have sufficient accrued vacation time to cover the entire absence, the employee shall not receive compensation. The District may deny the use of vacation for sick leave purposes in cases of suspected sick leave abuse.

Section 4.04 Family and Medical Leave

A. General

In accordance with state and federal laws, the District shall provide up to twelve (12) workweeks a year of unpaid family leave to any "eligible" employee who requests leave for any of the following reasons:

- 1. The birth or adoption of a child by the employee or placement of a child in foster care with the employee (all family leave taken for one of these purposes must be concluded within one year of the event);
- 2. To care for his or her child, parent, spouse, domestic partner or the child of a domestic partner who has a serious health condition; or
- 3. For an employee's own serious health condition which makes the employee unable to perform any of the essential functions of the employee's position.

It is the District's responsibility to determine, based on information provided by the employee, whether leave qualifies as family leave.

B. Serious Health Condition

“Serious health condition” means an illness, injury, impairment, or physical or mental condition which warrants the participation of a family member to provide care and involves either (a) inpatient care in a hospital, hospice, or residential health care facility; or (b) continuing treatment or continuing supervision by a qualified health care provider.

C. Eligibility

An employee is eligible for family leave if, at the time leave commences, all of the following are satisfied:

1. The employee has worked for the District for at least twelve (12) months (not necessarily consecutive months),
2. The employee has worked at least 1,250 hours during the twelve (12) months immediately preceding the leave period,
3. Employees who are “exempt” under the Fair Labor Standards Act are presumed to have worked for the required number of hours provided they have been employed by the District for at least twelve (12) months; and,
4. If a husband and wife or domestic partners are both employed by the District, family leave taken may be limited to a combined total of twelve (12) weeks leave for the birth, adoption or placement of a child, or to care for the employee’s parent(s).

D. Notification Requirement – Employee

The employee must notify the employee’s immediate Supervisor, preferably in writing, of the requested leave at least thirty (30) calendar days before the leave is to begin if the leave is foreseeable. If the leave is not foreseeable, the employee must give as much notice as practicable (usually within two (2) business days).

An employee must consult with his or her Supervisor regarding any planned medical treatment and make a reasonable effort to schedule leave not to unduly interfere with the District’s operations, subject to the employee’s health care provider’s approval. Failure to comply with these notice requirements may result in deferral of the requested leave until compliance. When an employee requests leave because of his or her own, child’s, spouse’s, domestic partner’s, child of a domestic partner’s or parent’s serious health condition, an employer may require an employee to provide medical certification from the health care provider, supporting need for leave.

The certification shall contain the following:

1. The date on which the condition began;
2. The probable duration of the condition;

3. If for the employee's own health condition, a statement that due to the serious health condition the employee is unable to work or to perform at least one of the essential functions of his or her position; and,
4. If for care of a family member, a statement that the health condition warrants participation of a family member to provide care.

E. Pay and Benefits Continuation

1. Family leave is unpaid, however, employees may use their available sick and vacation leave.
2. Employees may continue group health, life, or other insurance while on family leave. Before the leave begins, the Director of Human Resources or designee shall provide the employee with the amount and due dates of any copay premiums that become due during the employee's leave.
3. Family leave is not a break in service for seniority purposes; however, the period of the leave does not count as accrued service for retirement plan purposes and the District will not make retirement plan contributions during the period of unpaid leave.
4. Employees returning from family leave generally have a right to reinstatement to the same or equivalent position held immediately before leave; however, employees returning from leave have no greater right to reinstatement than if they had been on-the-job continuously during the same period.

Should you have any questions about your rights and responsibilities in connection with family leave, contact the District's Director of Human Resources or designee.

Section 4.05 Servicemember Family and Medical Leave

The federal Family and Medical Leave Act (FMLA) entitles eligible employees to take leave for a covered family member's service in the Armed Forces. This policy supplements the District's FMLA policy and provides general notice of employee rights to this leave. Except as stated below, such rights and obligations for Servicemember FMLA are governed by our existing FMLA policy. Servicemember FMLA runs concurrent with other leave entitlements provided under federal, state and local law.

A. Employee entitlement to Servicemember FMLA

Servicemember FMLA provides eligible employees unpaid leave for any one, or combination, of the following reasons:

1. A "qualifying exigency" arising out of a covered family member's active duty or call to active duty in the Armed Forces in support of a contingency plan; and/or,

- 2. To care for a covered family member who has incurred an injury or illness while in the Armed Forces provided that such injury or illness renders the family member medically unfit to perform duties of the member’s office, grade, rank or rating and is certified by the servicemember’s health care provider.

B. Duration of Servicemember FMLA

- 1. When leave is because of a “Qualified Exigency” concerning the military duty of a family member, an eligible employee may take up to 12 workweeks of leave during any 12-month period.
- 2. When leave is to care for an injured or ill servicemember, an eligible employee may take up to 26 workweeks of leave during a single 12-month period to care for the servicemember. Leave to care for an injured or ill servicemember, when combined with other FMLA-qualifying leave, may not exceed 26 workweeks in a single 12-month period.
- 3. Where spouses are both employed by the District, they may take up to, in aggregate, 26 workweeks of Servicemember FMLA, provided that any portion of the aggregate leave that is not for care of a family servicemember does not exceed 12 workweeks.

C. Notice of Intent to take Servicemember FMLA

- 1. In any case where it is foreseeable that an employee will need servicemember FMLA, that employee must provide notice of his or her intent to take leave as soon as reasonably possible and provide certification of either the “qualified exigency” or family servicemember’s medical condition as soon as practicable.

Section 4.06 Military Leave

- A. Employees may take military leave to serve in the uniformed military services in accordance with the federal laws, including the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), as well as the California Military and Veterans Code, sections 389, *et seq.* “Military services” means service in the Armed Forces, the National Guard, the Public Health Service or any other category designated by the U.S. President during time of war or national emergency.
- B. For any pay differential provided by the District to the employee during military leave, it will be the employee’s responsibility to make estimated quarterly tax payments as appropriate. These payments will be reported on Form 1099-MISC for tax purposes. The employee has all rights regarding benefits and re-employment as described by California and federal law.

- C. The District prohibits the discharge or denial of initial employment, reemployment, promotion or any benefit of employment to any person because of the person's membership, application for membership, performance of service, application for performance of service or obligation to perform service in a uniformed service. Any employee who performs service in the uniformed services will be granted an unpaid leave of absence (except where paid leave is permitted as noted below by District policy) and reinstatement privileges as prescribed by applicable law, namely USERRA.
- D. Employees who have received orders should contact Director of Human Resources or designee for information about their rights before and after such leave.
- E. In most cases, employees are entitled to reinstatement upon completion of military service provided they return or apply for reinstatement within the time periods allowed for by law. If they are re-employed under this policy, they are entitled to all the rights and benefits that they would have attained, just as if they were not on a leave of absence as outlined in this policy.
 - 1. The employee shall give advance notice of military activation as far in advance as is reasonable under the circumstances, unless the Secretary of Defense determines that giving notice is precluded by military necessity, or if the giving of such notice is otherwise impossible or unreasonable.
 - 2. A copy of the employee's military activation orders shall be given to the employee's Supervisor and a copy forwarded to Human Resources.
- F. Compensation

Military Leave shall be governed in conformity with USERRA and the applicable California law. Any employee who has worked for the District not less than one year immediately prior to the day on which the leave begins shall be entitled to receive his or her salary or compensation for any one military leave of absence or during any one fiscal year for up to 30 calendar days of any such absence, in accordance with California Military and Veterans Code section 395.02. Temporary Military Leave, not exceeding 180 calendar days, shall be governed by California Military and Veterans Code section 395.01. These provisions shall include and apply to military duty ordered for the purposes of active duty training. The District does not provide paid military leaves of absence to an employee for periods of inactive duty training.

1. Annual Encampments or Military Training (10 business days or less)

Employees who are members of an active reserve unit of a U.S. military service or a state National Guard will be given the necessary time off to fulfill the federal or state minimum annual training requirements. Included in military leave is reasonable time to and from military service and time

for physical examinations. The employee may use vacation hours for this type of duty. The vacation hours paid cannot exceed the number of hours the employee would have worked had they not taken a military leave.

2. Extended Leaves (more than 10 business days)

Extended military leave shall be governed in conformity with USERRA and the applicable California law.

Section 4.07 Disability Leave

Employees who are not eligible for FMLA or PDL, may request a leave of absence without pay for medical reasons. Such leave of absence may be granted for no longer than four (4) months, in any consecutive twelve (12) month period, unless otherwise required by applicable law.

Section 4.08 Pregnancy Disability Leave

Under the California Fair Employment and Housing Act (FEHA), if an employee is disabled by pregnancy, childbirth, or related medical conditions, the employee is eligible to take a pregnancy disability leave (PDL) of up to four (4) months. If an employee is affected by pregnancy or related medical condition, the employee is also eligible to transfer to a less strenuous or hazardous position or to less strenuous or hazardous duties, if this transfer is medically advisable.

A PDL does not need to be taken in one continuous period, but can be taken on an as-needed basis. Time off needed for prenatal care, severe morning sickness, doctor-ordered bed rest, childbirth, and recovery from childbirth are all covered by a PDL. During a PDL, the District will continue to maintain coverage in its group health plan for any eligible female employee. The District may recover from the employee the premium that the District paid if the employee fails to return from the leave after the period of leave to which the employee is entitled has expired and the employee's failure to return from leave is for a reason other than taking CFRA leave or a continuation, recurrence or onset of a health condition that entitles the employee to pregnancy disability leave or other circumstance beyond the control of the employee.

Section 4.09 Voluntary Leave of Absence

Upon approval from the General Manager or Assistant General Manager in response to a written request, an employee may be granted an unpaid leave of absence. The District shall comply with all applicable state and federal regulations for unpaid leave. Employee benefits will not accrue or be paid during a voluntary leave of absence with the exception of insurance coverage, which will remain in effect for the first thirty (30) calendar days of leave. Upon approval of the General Manager or Assistant General Manager, employees may take a voluntary leave of absence under this section after exhausting family medical leave or pregnancy disability leave. In no event may the total leave of absence of an employee exceed six (6) months, unless otherwise mandated by law.

Section 4.10 Bereavement Leave

#6.

Whenever any full-time employee is compelled to be absent from duty for reason of death of a member of his or her immediate family, the employee shall be entitled to a maximum of forty (40) hours leave with pay. This absence with pay shall not affect any employee benefits. Bereavement leave will be computed proportionately for those employees working thirty (30) hours or more per week. Part-time employees who work less than thirty (30) hours per week are not eligible for bereavement leave.

Section 4.11 Jury Duty

- A. When required to serve on a jury, all full-time employees shall be allowed time off up to a maximum of fifteen (15) working days for the actual period of service required on such jury. Upon return to work, employee will present his or her Supervisor or Division Head with a proof of service for the actual days served and have it duly authorized by the court bailiff. A copy of the proof of service will be placed in the employee's personnel file.
- B. Such employee shall be paid his/her regular salary while serving on jury duty up to a maximum of fifteen (15) working days. Any jury duty beyond fifteen (15) days will have to be served under the voluntary leave of absence criteria set forth in Section 4.09. of this policy. Part-time employees who work less than thirty (30) hours per week are not eligible for paid jury duty.

Section 4.12 Victims of Crime

- A. All employees who are victims of a "violent felony" (as defined by section 667.5 of the California Penal Code), a "serious felony" (as defined by section 1192.7 of the California Penal Code) or a crime of theft or embezzlement, shall be allowed time off to attend judicial proceedings related to that crime. The employee may use his or her accrued paid vacation time, sick leave time, compensatory time off that is otherwise available to the employee, unpaid leave time or a leave of absence as set forth in this Policy.
- B. All employees who have an "immediate family member," a domestic partner, or child of a domestic partner who has been the victim of a violent felony, a serious felony or a crime of theft or embezzlement shall be allowed time off to attend judicial proceedings related to that crime. The employee may use his or her accrued paid vacation time, sick leave time, compensatory time off that is otherwise available to the employee, unpaid leave time or a leave of absence as set forth in this Policy.
- C. Before the employee may be absent from work pursuant to this provision, the employee shall provide written documentation in advance to the District from the court or government agency setting the judicial proceedings, the district attorney or prosecuting attorney's office or the victim or witness office that is advocating on behalf of the victim, unless advance notice is not feasible. If advance notice is not feasible, the employee shall provide written documentation of the judicial proceedings to the District within a reasonable time.

Section 4.13 Educational Reimbursement

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- A. In order to encourage employees to improve their job-related skills and opportunity for advancement through continuing education, the District has established a plan of tuition assistance for employee education.
- B. The District will refund tuition fees and educational material costs spent by employees who have received prior approval from the General Manager. Reimbursement for tuition and registration costs will be based on the actual cost of tuition and fees, and will be limited to the cost of tuition and fees of the California State University, Fullerton fee schedule. If an employee chooses to attend an accredited institution whose tuition is higher than the state university system, the employee will not be reimbursed for the difference between the two.
- C. Funds received from outside sources, such as scholarship grants or veterans' educational benefits, must be applied toward the cost of the course before the District's reimbursement is applied.
- D. Courses must be related to the employee's work or be required for a degree related to their work and must be taken at an accredited institution. Expenses eligible for reimbursement include tuition, parking, registration fees, laboratory/materials fees and books.
- E. Employees are required to submit a "Request for Approval of Work-Related Education" to their Division Head before starting courses for which the tuition refund is requested. The request will outline the curriculum and projected costs that will be involved and must be approved by the employee's Division Head and the General Manager or Assistant General Manager.
- F. An employee is eligible for reimbursement if the employee is on the District payroll at the time he or she starts, takes, and successfully completes the course with a "C" or better grade or a "pass" for courses graded on a pass/fail basis.
- G. Evidence of successful completion of the course and receipts for the allowable expenses must be submitted to the Director of Human Resources or designee, prior to reimbursement. Upon verification that all courses and expenses were previously approved, the Director of Human Resources or designee will submit a check request for the reimbursement of expenses/fees to the employee.
- H. If an employee voluntarily terminates employment with the District within 12 months of completing a course in which educational reimbursement has been paid, the employee shall repay those funds to the District.

Section 4.14 Personal Computer Purchase Plan

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- A. This program is offered to employees to encourage the use of home computers and software.

- B. Any full-time employee who has completed one (1) year of service with the District and has satisfactorily completed the probationary period is eligible for a loan to purchase a personal computer system.
- C. Loan applications are available from the Director of Human Resources or designee. The completed application will be reviewed by the Director of Human Resources or designee. A written loan agreement is also required between the District and the employee.
- D. The maximum amount of the loan is two thousand dollars (\$2,000). The loan is interest free and repayment will be calculated over a twenty-four (24) month period. Loan payments will be made through biweekly payroll deductions.
- E. Proceeds from an approved loan must be used for the purchase of a personal computer (including any upgrades, software and peripheral equipment).
- F. Loans are due and payable in full upon departure from the District. Any remaining balance will be deducted from the employee's final paycheck, upon written approval from the employee. An outstanding balance still owed after the final paycheck is due and payable in full within ten (10) days of leaving employment with the District for any reason.

Section 4.15 Travel and Meeting Expenses

- A. Employees shall be reimbursed for reasonable travel expenses pursuant to Article XXIV, Travel and Expense Reimbursement Policy, as authorized by the General Manager or Division Head for activities related to District business. This shall include payment of expenses associated with meetings, seminars, or conferences.
- B. It is the responsibility of the employee to provide receipts of charges for approval of payment within two weeks of the time of the meeting, seminar or conference. Substantiating receipts will be needed for expenses related to transportation, lodging, meals, and miscellaneous expenses. Miscellaneous expenses may include cab fares, parking fees, tips, telephone calls, and so forth.

Section 4.16 Uniforms and Safety Equipment

The District shall provide all appropriate field personnel with uniforms to be worn while on duty and the necessary District-owned safety equipment.

Section 4.17 Insurance

The District provides major health, dental, vision, life, and disability insurance to eligible employees and dependents. A Section 125 Plan is available which will cover both the employee monthly insurance deduction as well as a Flexible Spending Account (FSA) for medical and/or dependent care expenses through payroll deductions. Employees will receive information during the employee orientation from the Human Resources Department.

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An employee may elect, in writing, not to participate in the District's health, dental, and vision insurance plans, provided the employee submits written proof of comparable coverage elsewhere. Employees (excluding the Board of Directors) electing not to participate in the District's health, dental and vision insurance plans pursuant to this section shall be entitled to a monthly payment equal to \$300.

Eligible dependents are defined as set forth in the insurance enrollment materials.

For an eligible dependent to be eligible for coverages, a copy of a marriage license, State of California Declaration of Domestic Partnership form (NP/SF DP-1), birth certificate, or other identifying paperwork will be required.

- A. Group insurance plan booklets will be provided to all full-time employees.
- B. It is the employee's responsibility to notify the Director of Human Resources or designee upon marriage, divorce, implementation or termination of Domestic Partnership, birth or adoption of child, over-age dependent, or any event that changes the status of dependency.
- C. Health Insurance: Full-time and part-time employees working 30 hours or more per week and their dependents are covered by a group health insurance plan. Eligibility for participation begins the first of the month following thirty (30) days of regular employment with the District.
- D. Dental Insurance: Full-time and part-time employees working 30 hours or more per week and their dependents are covered by a group dental insurance plan. Eligibility for participation begins the first of the month following thirty (30) days of regular employment with the District.
- E. Vision Insurance: Full-time and part-time employees working 30 hours or more per week and their dependents are covered by a group vision insurance plan. Eligibility for participation begins the first of the month following thirty (30) days of regular employment with the District.
- F. Life Insurance: Full-time and part-time employees working 30 hours or more per week and their eligible dependents are covered by a group life insurance plan. The life insurance benefit for employees is equal to two (2) times their annual salary. Eligibility begins the first of the month following thirty (30) days of regular employment with the District.
- G. Disability Insurance: Full-time and part-time employees working 30 hours or more per week are covered by short and long-term disability plan. Eligibility begins the first of the month following thirty (30) days of regular employment with the District.
- H. Flexible Spending Account (FSA): A FSA allows an employee to set aside a portion of his or her earnings to pay for qualified medical and/or dependent care expenses. Money deducted from an employee's pay into an FSA is not subject to payroll taxes.

I. Workers' Compensation Insurance: All employees are covered by workers' compensation insurance for injuries or disability resulting from employment. Workers' compensation insurance provides medical, surgical, and hospital treatment in addition to payment for loss of earnings that result from work-related injuries. Compensation payment begins from the first day of hospitalization or after the third day following the injury, if the employee is not hospitalized. Accumulated sick leave and or accrued vacation time may be used for the three-day waiting period, and to bring the employee's compensation up to, but not greater than, the employee's regular gross pay.

It is the employee's responsibility to report immediately to his or her Supervisor or Division Head any injury, regardless of severity, and to complete an injury report.

J. Unemployment Insurance: All employees are provided unemployment insurance by the District. To apply for benefits or to determine eligibility, employees should contact their nearest Employment Development Department (EDD) office.

K. The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) Insurance: Any employee/eligible family member who loses regular group eligibility because of a qualifying event is eligible for enrollment under COBRA.

Section 4.18 Physical Examination

Employees entering District employment may be required to take, at the District's expense, a physical examination prior to appointment.

Commented [A4]: Moved to MOU via Side Letter

Section 4.19 Medical Retirement Benefits

A. Upon retirement from District employment, full-time employees, who retire in good standing and who are not terminated for cause, will receive medical retirement benefits as follows:

Commented [A5]: Revised and moved to MOU via Side Letter

1. Full time employees~~Employees hired prior to July 1, 2008~~ who are at least 55 years old with a minimum of ten (10) years of continuous District employment, ~~upon retirement of active employment with the District, may request early retirement and~~ will be eligible to continue to receive ~~medical~~health insurance benefits, which are equal to the value of the health benefit provided to active employees, until the retiree is eligible for Medicare.

2. Employees hired after July 1, 2008 who are at least 60 years old with a minimum of ~~15~~ fifteen (15) years of continuous District employment will be eligible to continue to receive health insurance benefits, which are equal to the value of the health benefit provided to active employees, until the retiree is eligible for Medicare.

3. ~~and be age sixty (60) to receive this benefit. (This benefit is only available to employees who retire from the District in good standing and is not available for employees who are terminated for cause.)~~When an eligible retiree attains Medicare age, the District will provide a reimbursement of up to \$235 per month for the costs associated with a supplemental Medicare policy. This benefit applies to the eligible retiree only, and is not provided to the retiree's dependent(s). ~~If the employ~~retiree's dependent is not eligible for Medicare, at the time the employee reaches Medicare age, the dependent may apply for continued medical coverage pursuant to the provisions of the Consolidated Omnibus Budget Reconciliation Act (COBRA). The District will not bear the cost of such coverage.

4. Upon retirement, retirees may continue dental and vision coverage pursuant to the provisions of COBRA. The District will not bear the cost of such coverage.

5. {Pursuant to Government Code Section 53201, a member of the Board of Directors first elected to a term of office that began on or after January 1, 1995, is not eligible for District paid retiree medical benefits.}

B. ~~When an eligible retired employee attains Medicare age, the District will provide a cash allotment up to \$235 per month towards a supplemental Medicare policy. This benefit applies to eligible retired employees only.~~

Section 4.20 California Public Employees' Retirement System (CalPERS)

The District participates in the California Public Employees' Retirement System (CalPERS).

- A. Employees hired prior to July 28, 2009 will make increasing contributions in the first pay period of each fiscal year with a total employee contribution as follows: 3% in FY2013/14; 3% in FY 2014/15; 4% in FY 2015/16 and 7% in FY 2016/17.
- B. Employees hired after July 28, 2009 will pay 100% of the "Employee's share" of CalPERS contributions, currently 7%. Under no circumstances would the employee be asked to contribute an amount in excess of that set forth in applicable law (currently 7%).
- C. Employees who become new members of CalPERS for the first time on or after January 1, 2013 are required to pay at least 50% of the normal cost, currently 6.5%.
- D. The District's contract with CalPERS includes the following items: Level I 1959 Survivor Benefit, Military Service Credit as Prior Service, Annual Cost-of-Living Allowance Increase up to 3%, Credit for Unused Sick Leave, and Pre-Retirement Optional Settlement 2 Death Benefit.
- E. Employees hired prior to July 28, 2009 are enrolled in the CalPERS 2% @ 55 benefit formula with one year final compensation, and Employer Paid Member

Contribution Converted to Payrate During the One Year Final Compensation Period. (Employees hired after July 28, 2009, are not eligible for the Employer Paid Member Contribution (EPMC) Converted to Payrate During the One Year Final Compensation Period benefit).

- F. Employees hired after July 28, 2009 are enrolled in the CalPERS 2% @ 55 benefit formula with one year final compensation.
- G. Employees hired after January 1, 2013 who are new members of CalPERS are enrolled in the CalPERS 2% @ 62 benefit formula with three year final compensation.
- H. A leave of absence up to fifteen (15) days will not result in loss of time credited to an employee for his/her service years utilized to compute retirement benefits.
- I. CalPERS benefits booklets will be provided to all employees.

Section 4.21 Social Security Medicare Coverage

Commented [A6]: Moved to MOU via Side Letter

Employees hired after March 31, 1986, are covered under the Medicare portion of the Social Security Retirement System. The District and the employee each contribute the 1.45% mandatory contribution.

Section 4.22 Credit Union

All full-time or part-time employees are eligible to participate in the credit union program offered by the District. Members of the employee's immediate family are also eligible for membership in this program.

Section 4.23 Deferred Compensation Plan

Commented [A7]: Moved to MOU via Side Letter

- A. The 457 deferred compensation plan is a tax deferred retirement plan that allows employees to defer compensation on a pre-tax basis through a payroll deduction. This pre-tax advantage allows employees to defer federal and state income taxes until assets are withdrawn.
- B. All full-time employees are offered one (1) deferred compensation plan from which to choose a wide variety of investment options for added retirement funding. Employees may enroll at any time throughout the year.

Deferred compensation plans are regulated by the Internal Revenue Code Section 457 and participation in these plans offers many advantages:

1. Increasing your retirement savings while reducing your current tax liability.
2. Earnings accumulate tax deferred
3. Savings may be moved to another public agency's qualified plan

You may participate in the plan, but you cannot exceed your maximum annual contribution. This amount is determined annually by the Internal Revenue Service. For additional information, please see the plan document.

C. Employees may also be eligible to participate in the District’s 401(a) ~~Money Purchase~~ Plan and Trust. The District will match a portion of the employee’s deferred compensation 457 contribution and those funds will be contributed directly to a 401(a) ~~Money Purchase~~ Plan and Trust.

D. To enroll or make changes in the deferred compensation plan(s), please contact the Human Resources Department to schedule an appointment.

ARTICLE V - COMPENSATION

Section 5.01 Employee Compensation

- A. All full-time employees shall receive compensation in accordance with the Job Classification Salary Schedules approved by the District’s Board of Directors.
- B. Pay periods are on a biweekly basis, every other Thursday, and employees may elect direct deposit.

Section 5.02 Merit Increase within the Salary Range

- A. Merit Increase is defined as an increase in the base pay rate of an employee from his/her current Step to a higher Step in the salary Range established for his/her job classification. The amount of the merit increase is awarded based on the employee’s overall performance rating as documented on the annual “Performance Appraisal” form.
- B. The advancement of an employee within a classification shall be dependent on the employee exhibiting increased knowledge, skills and abilities, coupled with meritorious performance. The employee’s supervisor shall evaluate the employee’s performance and if merited, recommend a merit increase. The General Manager shall have the authority to approve or deny merit increases. The amount of each merit increase will be determined by the overall performance rating as documented on the annual “Performance Appraisal” form.
- C. An employee who receives an overall performance rating of Meets Standards shall receive a 1 step merit increase, and an employee who receives an overall performance rating of Exceeds Standards shall receive a 2 step merit increase.
- D. The General Manager may authorize a 3 step merit increase in extenuating circumstances.
- E. The pay rate shall not exceed the maximum Step of the Range established for the job classification, except for employees who are eligible for and are receiving the

employer paid member contributions converted to pay rate benefit during the one year final compensation period.

- F. An employee at the maximum Step of the Range established for his/her job classification, who receives an overall rating of Exceeds Standards, may receive a lump sum non-base building merit incentive payment of 3% of annual base earnings, which shall not be considered as reportable compensation to CalPERS.
- G. All merit increases shall be awarded effective with the first day of the first pay period in each fiscal year.
- H. An employee who receives an overall rating of Below Standards shall not receive a merit increase.
- I. An employee who receives an overall rating of Below Standards may appeal the rating to his/her Division Head.
- J. Performance appraisals will be done at the same time for all employees on an annual basis.

Section 5.03 Overtime Pay

- A. All employees who are classified as “non-exempt employees,” as defined under applicable laws or regulations, will be eligible for overtime pay.
- B. Overtime is defined as hours worked by non-exempt employees in excess of ten (10) hours in a work day or forty (40) hours in a work week.
- C. In order to be eligible for overtime pay, an employee must have management approval before working overtime.
- D. All vacation and holiday hours (but not sick leave) shall be considered as hours worked toward the 40 hours in a week for qualifying for overtime.
- E. Overtime pay shall be paid at the rate of one and one-half times the employee’s rate of pay for hours worked in excess of ten (10) hours per day and two times the employee’s rate of pay for hours worked in excess of 12 hours per day. If an employee works on a holiday, the employee shall be paid at the rate of one and one-half times the employee’s rate of pay.
- F. Paid compensatory time off (CTO) may be given to non-exempt employees at a rate of one-and-one-half (1 ½) hours for each hour of overtime, if the employee and the District agree to the time off from work in lieu of earned overtime pay. By law, the employee must request in writing a desire for compensatory time off in lieu of overtime monies. If the employee desires to take compensatory time, a written request for the time off must be submitted and approved by the Supervisor and/or Division Head in advance of the time requested. The total accrued CTO shall not exceed forty (40) hours and will be cashed out completely on June 30 of each year.

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- G. For the purpose of computing overtime pay, the formula shall be as follows: monthly salary multiplied by twelve (12) months; divided by 2080 hours; equals hourly rate; multiplied by 1.5 for overtime pay or 2.0 for double-time pay. The calculation of monthly salary shall include all rates and pay as required by Section 7(e) of the Fair Labor Standards Act.
- H. When a non-exempt employee is required to work for four (4) hours or more beyond his or her regular daily work schedule, or when a non-exempt employee is called out for work after completing his or her regular work schedule and his or her meal period occurs during such work, he or she will be given a reasonable meal allowance or furnished a meal and reasonable work time to eat it. Additional meal allowances or meals will be provided at four-hour intervals thereafter, during the continuous work period.

Section 5.04 Standby

- A. Standby duties are assigned to qualified employees on a rotating basis for a one-week period of time several times each year. In order to be eligible to perform standby duties, employees are required to complete training that will provide them with the knowledge and current information about District facilities.
- B. When personnel are designated standby duties after their normal working day, the compensation shall be three hundred dollars (\$300) per week in addition to their regular pay and any other compensation earned such as overtime (see Section 5.03). Any call that physically requires personnel to respond to the District shall earn a minimum of two (2) hours of overtime compensation for that particular response provided that response does not take them into their normal working day. For any response that extends into their normal working day, staff shall be compensated with overtime up to the start of the normal working day. Any calls that do not require personnel to physically respond shall earn thirty (30) minutes of overtime compensation.
- C. Standby duties require an employee to be available within the District upon thirty (30) minutes notification of the need to respond, on a twenty-four (24) hour basis. Water Distribution staff must be able to respond to alarms or other system notifications via the Supervisory Control and Data Acquisition (SCADA) system within fifteen (15) minutes.
- D. Standby personnel shall have the ability to respond during non-working hours during the work week, weekends, and on holidays. Additional standby duties may be required as designated by the Division Head or his or her designee. Standby personnel will be compensated for all overtime earned while on standby duty.
- E. The Division Head or his or her designee shall determine when standby responsibilities should be transferred among personnel. An employee requesting to transfer standby duties must get approval from his or her supervisor prior to the start of the standby shift.

- F. District personnel on standby are permitted to utilize the District's designated standby vehicles during non-working hours to allow for emergency response provided those vehicles remain within a thirty (30) minute response distance.

Section 5.05 Time Sheets

Each employee is responsible for completing a time attendance record. The use of time sheets assures proper cost accounting. Time sheets must be signed, approved by his or her Supervisor and/or Division Head and submitted biweekly and they are the official payroll records from which pay is computed.

Section 5.06 Wage Garnishments

A garnishment is a court order requiring the District to remit part of an employee's wages to another party in payment of a just debt. Because garnishments involve the District in its employees' private financial affairs, it is requested that employees handle their finances appropriately.

Section 5.07 Promotions

- A. Promotion is defined as the movement of an employee to a supervisory or management level classification. An employee who is promoted shall be placed on Step 1 of the Range established for the classification to which the employee is promoted, or shall receive a pay increase equivalent to the employee's current pay rate multiplied by 5% followed by placement on the closest Step in the new pay Range, whichever is greater. Under no circumstances shall the pay rate exceed the maximum Step of the Range established for the job classification.
- B. It is District's desire to promote from within whenever practicable. However, the District's policy is to fill all positions with the best qualified individual. When opportunities occur within the organization, promotions and transfers will be based upon an employee's qualifications and performance. In general, only employees who have been at their present job assignment for at least six (6) months will be considered.
- C. It is the District's desire to provide internal employment to qualified candidates through intra or interdepartmental promotion whenever practicable. The criteria used when considering employees' qualifications for promotion must be fair and unbiased, and all District employment policy requirements must be fully met and documented. Employees are to be considered for promotion regardless of age, sex, race, color, religion, national origin, sexual orientation, gender identity, disability or membership to any other protected classification under applicable law.

Section 5.08 Reclassification

A reclassification is defined as the conversion of a position, through an increase in job duties and responsibilities coupled with a history of meritorious performance, to a different

classification and/or pay Range within the same job family. A job family is defined as a grouping of positions which are sufficiently similar in duties, responsibilities and working conditions which share common standards of selection. An employee who is reclassified shall be placed on Step 1 of the Range established for the classification to which the employee is reclassified, or shall receive a pay increase equivalent to the employee's current pay rate multiplied by 2.5% followed by placement on the closest Step in the new pay Range, whichever is greater.

Section 5.09 Transfer

A transfer is defined as the movement of an employee from one job family to another job family in a comparable classification which does not qualify as a promotion or reclassification. A transfer may occur to meet the needs of the District or through an internal competitive process. An employee who is transferred shall be placed on a Step of the Range established for the classification to which the employee is transferred that is closest to his/her current pay rate, which does not result in a decrease in pay.

Section 5.10 Severance Policy

- A. In the event of an involuntary termination due to a reduction in force/layoff, or job elimination due to change in District operating procedures and organizational structure, Moulton Niguel Water District may provide a severance benefit for the eligible employees. This does not apply to terminations for cause, refusal to be reassigned, voluntary resignations, and employees that have not passed their probationary period. To be eligible for a severance payment, the employee must sign a general release of all claims.
- B. The rate of severance is based upon length of service with Moulton Niguel Water District (or as adjusted through acquisition or consolidation). This policy applies to all exempt and non-exempt, full-time employees.

Length of Service	Number of Weeks
Two years - less than four	2
Four years - less than six	3
Six years - less than eight	4
Eight years - less than ten	5
Ten years or more	6

- C. The maximum allowed severance is six weeks. Severance is calculated on base pay only, which excludes overtime, bonuses, uniform allowances, and vehicle allowances. Employees may choose to receive it as a salary continuation benefit (continue payments on scheduled paydays) or in a lump sum.
- D. Holidays, vacation and sick leave will not accrue during salary continuation. Accrued, but unused, vacation will be paid out to the employee in accordance with

#6.

the Personnel and Salary Policy in the final paycheck. Sick leave will be paid in accordance with the schedule outlined in the Personnel and Salary Policy.

- E. Medical, dental and vision insurance coverage, if applicable, will end on the last day of the month in which the employee receives the severance benefit. Upon termination of coverage, COBRA notification will be forwarded to the employee.

**SIDE LETTER AGREEMENT #2 TO MEMORANDUM OF UNDERSTANDING
BETWEEN MOULTON NIGUEL WATER DISTRICT AND
MOULTON NIGUEL WATER DISTRICT EMPLOYEE ASSOCIATION
GENERAL UNIT
REGARDING INCLUSION OF CERTAIN SECTIONS OF
PERSONNEL & SALARY POLICY IN THE
MEMORANDUM OF UNDERSTANDING**

Pursuant to Article X of the MOU, the parties agree to Personnel & Salary (P & S) Policy revisions adopted by the Board of Directors on January 21, 2016 as follows:

- 1. Medical Retirement Benefits (Section 4.19):
 - A. Eligible retirees will receive health benefits equal to the value of the health benefit provided to active employees

Further, the parties agree to move the following sections of the P & S Policy to the MOU by way of this side letter:

- 1. Educational reimbursement
- 2. Personal computer purchase plan
- 3. Insurance
- 4. Physical examination
- 5. Medical retirement benefits
- 6. Social Security Medicare coverage
- 7. Deferred compensation plan.

MOULTON NIGUEL WATER DISTRICT

MOULTON NIGUEL WATER DISTRICT
EMPLOYEE ASSOCIATION

Joone Lopez, General Manager

Nolan King, President

Date

Larry Ballew, Vice President

Aaron Peardon, Sr.Labor Relations Rep.

Bo Gutierrez, Labor Relations Rep.

Date

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MOULTON NIGUEL WATER DISTRICT EMPLOYEE ASSOCIATION
SUPERVISORY UNIT
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MOULTON NIGUEL WATER DISTRICT

MOULTON NIGUEL WATER DISTRICT
EMPLOYEE ASSOCIATION

Joone Lopez, General Manager

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Date

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Bo Gutierrez, Labor Relations Rep.

Date



Moulton Niguel Water District

STAFF REPORT

TO: Board of Directors **MEETING DATE:** January 18, 2016

FROM: Marc Serna, Director of Engineering and Operations
Eva Plajzer, Assistant Director of Engineering

SUBJECT: On-Call Emergency Construction Services

DIVISION: District-Wide

SUMMARY:

Issue: Secure agreements and bonding for emergency construction services.

Recommendation: This is an information item.

Fiscal Impact: The fiscal impact will depend on the amount of emergency construction services required. The District budgeted \$950,000 for emergency repairs for Fiscal Year 2015-16.

BACKGROUND:

The Moulton Niguel Water District (District) uses contractors on an as-needed basis to assist in performing emergency pipeline and mechanical repair construction work on the District’s water, sewer and recycled water systems. The District has staff and equipment capable of performing most repairs to the District’s infrastructure. However, a contractor may be utilized to assist with certain emergency repairs should the District’s staff be engaged in other repairs throughout the District or the repair work be complicated, i.e. require welding or involve large infrastructure. Contractors may be called in as soon as the emergency occurs or when staff determines assistance is necessary. As such, staff has determined that it would be beneficial to have a defined emergency contractor repair program with the associated agreements.

The District is finalizing agreements to formalize an emergency contractor repair program that establishes a list of contractors capable of and available to perform the District’s emergency repair needs. The agreements would also include the necessary insurance, bonding and indemnification terms with contractors performing emergency construction work.

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On-Call Emergency Construction Services

January 18, 2016

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DISCUSSION:

Staff identified six local contractors based on established performance, capabilities and experience on pipeline and mechanical construction work, and a successful history of responsiveness to emergency repair needs. Each of the contractors expressed interest in contracting with the District for on-call emergency services. The District plans to enter into agreements with the following six contractors, each of whom have demonstrated an excellent track record with the District:

- Ferreira Construction Co, Inc.
- GCI Construction, Inc.
- Kennedy Pipeline Construction
- Paulus Engineering, Inc.
- Shoffeitt Pipeline, Inc.
- T.E. Roberts, Inc.

District staff worked with legal counsel to develop an agreement template for the emergency contractor repair program. The agreements will be managed on a time, materials and labor basis based on the rates submitted by each of the contractors for their labor and equipment. The agreement has a term extending through Fiscal Year 2016-17. Finally, the agreement ensures that all applicable risks are mitigated through indemnification and liability contractual obligations, insurance and bonding requirements.

The execution of the agreement with each of the identified contractors will assist staff in responding to the emergencies that occur in a timely manner to ensure service to the District's customers. The agreements will allow staff to ensure all contractors used to perform emergency work are done under a consistent set of expectations and guidelines while being responsive to the immediate needs on a job site.

Attachment: Template for Agreement for On-Call Emergency Construction Services.

**AGREEMENT FOR ON-CALL EMERGENCY
CONSTRUCTION AND MAINTENANCE/REPAIR SERVICES BETWEEN
MOULTON NIGUEL WATER DISTRICT AND**

(Contract No. OM15-16.052)

This Agreement for On-Call Emergency Construction and Maintenance/Repair Services (“Agreement”) is made and entered into effective as of _____ 20____, (the “Effective Date”) by and between **Moulton Niguel Water District** (hereinafter referred to as “DISTRICT” or “Owner”) and _____ (“CONTRACTOR”), with reference to the following:

- A. DISTRICT desires to obtain emergency, immediate response construction, maintenance and repair services (collectively, the “Services”) in connection with District’s facilities (the “DISTRICT Facilities”) from time to time on an as-needed basis as requested by DISTRICT.
- B. CONTRACTOR is qualified to perform the Services for the DISTRICT.
- D. The objective of this Agreement is for DISTRICT to authorize CONTRACTOR to provide the Services on an on-call basis.

DISTRICT and CONTRACTOR are sometimes referred to in this Agreement individually as a “party” or jointly as the “parties.”

NOW THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES, COVENANTS AND CONDITIONS HEREIN CONTAINED, THE PARTIES HEREBY AGREE AS FOLLOWS:

PART I - SERVICES TO BE PERFORMED BY CONTRACTOR

A. Scope of Work.

1. CONTRACTOR agrees to perform the Services and supply all materials in connection with DISTRICT’S Facilities from time to time on an as-needed basis as requested by DISTRICT as provided herein. The Services are generally described in **Exhibit A** attached hereto and incorporated herein by reference. The specific Services to be provided by CONTRACTOR (the “Work”) shall be specified in individual Requests for Immediate Response Services (each a “Request”). The Services shall be provided in accordance with the applicable Request received from DISTRICT’s representative and the terms of this Agreement and its attachments. By entering into this Agreement, DISTRICT does not give any guarantee to CONTRACTOR that DISTRICT will select CONTRACTOR for any Request. All terms and conditions in this Agreement shall govern performance under and shall apply to all Requests received from DISTRICT.

2. In the event of conflicting provisions among a specific Request or change order; the Agreement; and Exhibit A, the Appendices to this Agreement, DISTRICT’s

#7.

Water/Sewer Public Work Standard Specifications Special Provisions, the Standard Specifications, the terms of these documents shall control in the following order of priority:

- 1) Change Order to a Request for Immediate Response Services,
- 2) Request for Immediate Response Services,
- 3) Agreement,
- 4) DISTRICT's Water/Sewer Public Works Standard Specifications,
- 5) DISTRICT's General Provisions
- 6) Appendices to this Agreement, and
- 7) Exhibits to this Agreement

B. Representatives of CONTRACTOR.

1. Prior to commencing work under any Request, CONTRACTOR shall designate for each Request a Representative with whom all contacts concerning that Request shall be made. CONTRACTOR's Representative or designee shall be on the job site at all times during performance of the Work.

2. DISTRICT shall have the right but not the obligation to approve CONTRACTOR's designation of a Representative for each Request. If DISTRICT disapproves CONTRACTOR's Representative for a Request, CONTRACTOR shall promptly designate another Representative acceptable to DISTRICT in its sole discretion. Failure by DISTRICT to object to CONTRACTOR's designation of a Representative at any time before or during performance of the Work shall not be a waiver of DISTRICT's right to require CONTRACTOR to replace Representative at any time during performance of the Work.

3. Other than as set forth above, CONTRACTOR shall give a minimum of thirty (30) days advance notice and receive DISTRICT's written approval prior to substitution of any Representative(s) designated for Request pursuant to this Section, prior to assignment to the project or during the performance of the Work under this Agreement. CONTRACTOR shall assign additional staff as needed to perform the Work in a timely and expeditious manner.

PART II - SERVICES TO BE FURNISHED BY DISTRICT

A. Documents. DISTRICT will, upon request, make available to CONTRACTOR original or copies of existing drawings, maps, and other existing information relevant to the Work to be performed as may be readily available to DISTRICT.

B. Representative of DISTRICT. For the Work defined as Public Works pursuant to state law and/or municipal ordinance and so identified in the applicable Request, the Director of Engineering and Operations of DISTRICT or his designee shall represent DISTRICT in all matters pertaining to such Work to be performed under this Agreement. CONTRACTOR shall,

in the performance of this Agreement for such Work, consult with the Director of Engineering and Operations or his designee and other DISTRICT employees as the Director of Engineering and Operations or his designee may direct.

C. Inspection. DISTRICT and/or local municipalities may, at any time and from time to time, inspect the Work prior to its completion to see that the Work is in accordance with the Request and Agreement. Such inspections will be conducted at reasonable times. Notwithstanding the above, DISTRICT may inspect the Work at any time if the Director of Engineering & Operations or his respective designee, determines in his/her sole discretion it is necessary for health and safety reasons. Any such inspection shall not waive DISTRICT's right to reject the Work at a later time, and shall not relieve CONTRACTOR from its obligation to complete the Work in accordance with the specific Request. DISTRICT shall require written evidence of municipal inspection and approval, as applicable, prior to DISTRICT's acceptance and payment for Work under each Request.

D. Observation. CONTRACTOR's performance of Work is subject to observation by DISTRICT's representatives. The observation of the Work, if any, by DISTRICT's representatives shall not relieve CONTRACTOR of any obligations under the Agreement as prescribed, or CONTRACTOR's obligations to perform the work in accordance with all terms and provisions required by this Agreement.

PART III – TERMS OF AGREEMENT

A. Term of Agreement.

1. This terms of this Agreement shall commence on the Effective Date as stated above and continue through the DISTRICT's 2016 - 2017 Fiscal Year which ends on **June 30, 2017**, unless earlier terminated pursuant to the terms of this Agreement. The DISTRICT's General Manager is authorized to extend the term of the Agreement for such time as necessary for completion of outstanding Requests in progress at that time. In no event, however, shall such extension exceed six (6) months.

B. Commencement and Completion of Performance.

1. For the immediate response services request, DISTRICT will contact via telephone pre-qualified contractors until the Service requirements have been satisfied. Under this process, DISTRICT may or may not contact CONTRACTOR. If selected, CONTRACTOR shall sign and return the Request by as expeditiously as reasonably possible and shall commence performance of the Work as may be requested in a timely and expeditious manner until final completion and acceptance by DISTRICT of the Work or until sooner terminated as provided herein.

2. If CONTRACTOR is unable or unwilling to provide the Work pursuant to a Request, CONTRACTOR shall promptly notify DISTRICT of such fact.

3. The nature of the Work is such that timely performance is critical to the orderly progress of related Work and to the operating schedule of DISTRICT. CONTRACTOR

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shall, if required under the applicable Request, provide a detailed construction schedule for that Request, which schedule is satisfactory to DISTRICT, which sets forth at a minimum each phase of the Work, the number of personnel to be utilized for each phase, and the specific time required to complete each phase.

4. If performance of the Work falls behind the schedule agreed upon by the Parties, CONTRACTOR shall, upon request by the DISTRICT Representative, make reasonable efforts to accelerate its performance of the Work at no additional cost to DISTRICT until performance of the Work conforms to the agreed upon schedule.

5. CONTRACTOR shall obtain approval from the DISTRICT Representative prior to expenditure of any overtime which would result in extra cost to DISTRICT. DISTRICT reserves the right to refuse to pay overtime premiums when CONTRACTOR has the option to provide services at straight-time by utilizing additional personnel, consecutive shifts or other methods approved by DISTRICT.

6. CONTRACTOR shall not be charged liquidated damages because of any delays in completion of the Work due to unforeseeable causes beyond the control and without the fault or negligence of Contractor (or its subcontractors or suppliers). CONTRACTOR shall immediately, but within no more than five (5) calendar days of identifying any such delay, notify DISTRICT in writing of causes of delay. DISTRICT shall ascertain the facts and extent of delay and grant extension of time for completing the Work when, in its judgment, the facts justify such an extension. Time extensions to the Project shall be requested by CONTRACTOR as they occur and without delay. No delay claims shall be permitted unless the event or occurrence delays the completion of the Project beyond the completion date agreed upon in the Request.

7. The parties agree that time is of the essence in completing the Work and that it is essential that CONTRACTOR provide the Work by the date specified in each Request. The parties agree that in the event that the Work is not provided by such date, actual damages to DISTRICT as a result of that failure would be impractical or extremely difficult to ascertain. Therefore, CONTRACTOR agrees to pay DISTRICT in the event of CONTRACTOR's failure to complete the Work by such date the sum of Five Hundred Dollars (\$500.00) per calendar day as liquidated and actual damages for-the delay.

8. A written statement requesting acceptance of the Work pursuant to each specific Request shall be submitted to the DISTRICT Representative by CONTRACTOR, with a request for acknowledgment. The acknowledgment shall be executed by DISTRICT within thirty (30) days after final inspection determines that the Work has been satisfactorily completed and DISTRICT has accepted the Work. Execution of the acknowledgment shall constitute "final acceptance" by DISTRICT.

9. CONTRACTOR acknowledges that Work it completes under this Agreement shall not provide it with any right to obtain follow-up Work that may be required, even if the follow-up Work is a continuation of Work begun by the CONTRACTOR under a Request or Notice to Proceed issued under this Agreement.

C. Compensation and Payment. CONTRACTOR'S performance of the Work shall be compensated on a Time and Material basis at the rates set forth in **Exhibit B, Rate Schedule**, which is attached hereto and incorporated herein. The term Time and Materials means the sum of all costs reasonably and necessarily incurred and paid by CONTRACTOR for labor, materials, and equipment in the proper performance of Work. Except as otherwise may be agreed to in writing by DISTRICT, such costs shall be in amounts no higher than those prevailing in the locality of the Work, and shall include only the following items:

1. Labor. CONTRACTOR will be paid the cost of labor for the workers used in the actual and direct performance of the Work. The cost of labor will be the sum of the actual wages paid (which shall include any employer payments to or on behalf of the workers for health and welfare, pension, vacation, and similar purposes) substantiated by timesheets and certified payroll for wages prevailing for each craft or type of workers performing the Work at the time the Work is done, and the labor surcharge set forth in the Department of Transportation publication entitled *Labor Surcharge and Equipment Rental Rates*, which is in effect on the date upon which the Agreement was executed. The labor surcharge shall constitute full compensation for all payments imposed by Federal, State, or local laws and for all other payments made to, or on behalf of, the workers, other than actual wages.

a. Equipment Operator Exception. Labor costs for equipment operators and helpers shall be paid only when such costs are not included in the invoice for equipment rental.

b. Foreman Exception. The labor costs for foremen shall be proportioned to all of their assigned work and only that applicable to the Work shall be paid. Indirect labor costs, including, without limitation, the superintendent, project manager, and other labor identified in the Agreement will be considered overhead.

2. Materials. The cost of materials reported shall be itemized at invoice or lowest current price at which materials are locally available and delivered to the work site in the quantities involved, plus the cost of sales tax, freight, delivery, and storage.

a. Trade discounts available to the purchaser shall be credited to DISTRICT notwithstanding the fact that such discounts may not have been taken by CONTRACTOR.

b. For materials secured by other than a direct purchase and direct billing to the purchaser, the cost shall be deemed to be the price paid to the actual supplier as determined by DISTRICT'S Representative.

c. Payment for materials from sources owned wholly or in part by CONTRACTOR shall not exceed the price paid by CONTRACTOR for similar materials from said sources on Work items or the current wholesale price for such materials delivered to the Work site, whichever price is lower.

d. If, in the opinion of DISTRICT'S Representative, the cost of materials is excessive, or CONTRACTOR does not furnish satisfactory evidence of the cost of

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such materials, then the cost shall be deemed to be the lowest current wholesale price for the total quantity concerned delivered to the Work site less trade discounts.

e. DISTRICT reserves the right to furnish materials for the Work and no Claim shall be allowed by CONTRACTOR for costs of such materials or indirect costs or profit on DISTRICT furnished materials.

3. Equipment.

a. Rental Time. The rental time to be paid for equipment on the Work site shall be the time the equipment is in productive operation on the Work being performed and, in addition, shall include the time required to move the equipment to the location of the Work and return it to the original location or to another location requiring no more than that required to return it to its original location; except that moving time will not be paid if the equipment is used on other than the Work, even though located at the site of the Work.

i. Rental Time Not Allowed. Rental time will not be allowed while equipment is inoperative due to breakdowns.

ii. Computation Method. The following shall be used in computing the rental time of equipment on the Work site:

(a) When hourly rates are paid, any part of an hour less than 30 minutes of operation shall be considered to be 1/2-hour of operation, and any part of an hour in excess of 30 minutes will be considered one hour of operation.

(b) When daily rates are paid, any part of a day less than 4 hours operation shall be considered to be 1/2-day of operation, and any part of a day in excess of 4 hours will be considered one day of operation.

b. Rental Rates. CONTRACTOR will be paid for the use of equipment at the lesser of (i) the actual rental rate, or (ii) the rental rate listed for that equipment in the California Department of Transportation publication entitled *Labor Surcharge and Equipment Rental Rates*, which is in effect on the date upon which the Agreement is executed. Such rental rates will be used to compute payments for equipment whether the equipment is under CONTRACTOR'S control through direct ownership, leasing, renting, or another method of acquisition. The rental rate to be applied for use of each item of equipment shall be the rate (i.e., daily, monthly) resulting in the least total cost to DISTRICT for the total period of use. If it is deemed necessary by CONTRACTOR to use equipment not listed in the publication, an equitable rental rate for the equipment will be established by DISTRICT'S Representative. CONTRACTOR may furnish cost data which might assist DISTRICT'S Representative in the establishment of the rental rate.

c. Contractor-Owned Equipment.

i. For Contractor-owned equipment, the allowed equipment rental rate will be limited to the monthly equipment rental rate using a utilization rate of 173 hours per month.

ii. For Contractor-owned equipment, the rental time to be paid for equipment on the Work site shall be the time the equipment is in productive operation, unless, in the instance of standby time, the equipment could be actively used by CONTRACTOR on another project, then DISTRICT shall pay for the entirety of the time the equipment is on the Work site. It shall be CONTRACTOR'S burden to demonstrate to DISTRICT that the equipment could be actively used on another project.

iii. All equipment shall, in the opinion of DISTRICT'S Representative, be in good working condition and suitable for the purpose for which the equipment is to be used.

iv. Before construction equipment is used on the Work, CONTRACTOR shall plainly stencil or stamp an identifying number thereon at a conspicuous location, and shall furnish to DISTRICT'S Representative, in duplicate, a description of the equipment and its identifying number and the scheduled Work activities planned.

v. Unless otherwise specified, manufacturer's rating and manufacturer approved modifications shall be used to classify equipment for the determination of applicable rental rates. Equipment which has no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer.

4. Special Services. Special work or services are defined as that Work characterized by extraordinary complexity, sophistication, or innovation or a combination of the foregoing attributes which are unique to the construction industry.

a. Invoices for Special Services. When DISTRICT'S Representative and CONTRACTOR determine that a special service is required which cannot be performed by the forces of CONTRACTOR or those of any of its subcontractors, the special service may be performed by an entity especially skilled in the Work. Invoices for special services based upon the current fair market value thereof may be accepted without complete itemization of labor, material, and equipment rental costs, after validation of market values by DISTRICT'S Representative.

b. Discount and Allowance. All invoices for special services will be adjusted by deducting all trade discounts offered or available, whether the discounts were taken or not. In lieu of Overhead and Profit as specified elsewhere in the Agreement, a total allowance not to exceed five percent (5%) for Overhead and Profit will be added to invoices for Special Services.

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c. When DISTRICT determines, in its sole discretion, that competitive bidding is necessary for certain special services, CONTRACTOR shall solicit competitive bids for those special services.

5. Excluded Costs. The term Time and Material shall not include any of the following costs or any other home or field office overhead costs, all of which are to be considered administrative costs covered by CONTRACTOR'S allowance for Overhead and Profit.

a. Overhead Cost. Payroll costs and other compensation of CONTRACTOR'S officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, timekeepers, clerks, and other personnel employed by CONTRACTOR whether at the Work site or in CONTRACTOR'S principal office or any branch office, material yard, or shop for general administration of the Work;

b. Office Expenses. Expenses of CONTRACTOR'S principal and branch offices;

c. Capital Expenses. Any part of CONTRACTOR'S capital expenses, including interest on CONTRACTOR'S capital employed for the Work and charges against CONTRACTOR for delinquent payments;

d. Negligence. Costs due to the negligence of CONTRACTOR or any subcontractor or supplier, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including without limitation, the correction of defective work, disposal of materials or equipment wrongly supplied, and making good any damage to property;

e. Other. Other overhead or general expenses costs of any kind and the cost of any item not specifically and expressly included in the Agreement;

f. Small Tools. Cost of small tools valued at less than \$1,000 and that remain the property of CONTRACTOR;

g. Administrative Costs. Costs associated with the preparation of a Request (whether or not ultimately authorized), cost estimates, or the preparation or filing of claims;

h. Anticipated Lost Profits. Expenses of CONTRACTOR associated with anticipated lost profits or lost revenues, lost income or earnings, lost interest on earnings, or unpaid retention;

i. Home Office Overhead. Costs derived from the computation of a "home office overhead" rate by application of the *Eichleay, Allegheny*, burden fluctuation, or other similar methods;

j. Special Consultants and Attorneys. Costs of special consultants or attorneys, whether or not in the direct employ of CONTRACTOR, employed for services specifically related to the resolution of a claim, dispute, or other matter arising out of or relating to the performance of Work.

6. Overhead, Profit, and Other Charges. The mark-up for overhead (including supervision) and profit shall be according to the following:

a. "Net Cost" is defined as consisting of costs of labor, materials, and tools and equipment only excluding overhead and profit. CONTRACTOR shall provide DISTRICT with documentation of the costs, including, but not limited to, payroll records, invoices, and such other information as DISTRICT may reasonably request.

b. For Work performed by CONTRACTOR'S forces, the added cost for overhead and profit shall not exceed fifteen (15%) of the Net Cost of the Work.

c. For Work performed by a subcontractor, the added cost for overhead and profit shall not exceed fifteen percent (15%) of the subcontractor's Net Cost of the Work to which CONTRACTOR may add five percent (5%) of the subcontractor's Net Cost.

d. No additional mark-up will be allowed for lower tier subcontractors, and in no case shall the added cost for overhead and profit payable by DISTRICT exceed twenty percent (20%) of the Net Cost as defined herein, of the party that performs the Work.

7. All of the following costs are included in the mark-ups for overhead and profit described above, and CONTRACTOR shall not receive any additional compensation for: Submittals, drawings, field drawings, Shop Drawings, including submissions of drawings; field inspection; General Superintendence; General administration and preparation of cost proposals, schedule analysis, Change Orders, and other supporting documentation; computer services; reproduction services; Salaries of project engineer, superintendent, timekeeper, storekeeper, and secretaries; Janitorial services; Small tools, incidentals and consumables; Temporary On-Site facilities (Offices, Telephones, High Speed Internet Access, Plumbing, Electrical Power, Lighting; Platforms, Fencing, Water), Jobsite and Home office overhead or other expenses; vehicles and fuel used for work otherwise included in the Contract Documents; Surveying; Estimating; Protection of Work; Handling and disposal fees; Final Cleanup; Other Incidental Work; Related Warranties; and insurance.

8. For Work by subcontractors, CONTRACTOR shall furnish to DISTRICT the subcontractor's signed detailed record of the cost of labor, material and equipment, including the subcontractor markup for overhead and profit. The same requirement shall apply to sub-subcontractors.

9. For Work furnished by a vendor or supplier, CONTRACTOR shall furnish to DISTRICT a detailed record of the cost to CONTRACTOR, signed by such vendor or supplier.

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10. Taxes. CONTRACTOR assumes exclusive liability for, and shall pay before delinquency, all Federal, State or Local sales, use, excise and other taxes, charges or contributions of any kind now or hereafter imposed on, or with respect to, or measured by, the equipment, materials, supplies or labor furnished hereunder or the wages, salaries, or other remunerations paid to individuals employed in connection with the performance of the Work.

11. Method of Payment.

a. No payment shall be made under any Request until DISTRICT has received any current required certificate(s) of insurance, and bond(s) from CONTRACTOR.

b. For Time, Material and Equipment Work, CONTRACTOR shall submit a copy of daily time sheets, for approval and retention by the DISTRICT Representative, listing: employee name, classification, hours worked straight time and overtime, and identification of equipment and materials utilization and materials used. Each monthly invoice shall be supported with sufficient detail to allow DISTRICT to evaluate the invoiced costs, including hours for each classification, with sheets and approved time sheets and applicable rates, invoiced costs from suppliers and subcontractors, and equipment rental charges.

c. As part of CONTRACTOR's application for payment, CONTRACTOR shall certify that the portion of the Work for which compensation is claimed has been completed in accordance with the terms and conditions and specifications of this Agreement, shall state CONTRACTOR's estimate of the percentage of construction completed to date and the actual construction costs incurred to date, that the amount claimed has not been the subject of a prior application for payment, and an estimate of the time required for completion of the Work. Each application for payment shall identify the Request to which it applies and shall be signed by an authorized officer of CONTRACTOR.

d. CONTRACTOR shall submit invoices in a format approved by DISTRICT and as set forth in this Article to:

Moulton Niguel Water District
Attention: Invoices
27500 La Paz Road
Laguna Niguel, CA 92677

e. Upon "final acceptance" of Work pursuant to a Request, when requesting final payment for such Request, CONTRACTOR shall execute a "Conditional Waiver and Release Upon Final Payment" pursuant to California Civil Code Section 8136 or successor provision in a form approved by DISTRICT. If requested, CONTRACTOR shall provide further assurances reasonably required by DISTRICT that all subcontractors, suppliers and employees have been paid. No final payment shall be made to CONTRACTOR without full compliance with this requirement.

f. DISTRICT may withhold payment of the whole or part of any amount due or claimed by CONTRACTOR to such extent as may be necessary to protect DISTRICT from losses, including, but not limited to, the following: defective Work not remedied; third party claims filed or reasonable evidence indicating probable filing of such

claims; failure of CONTRACTOR to make payment promptly to its employees, suppliers or subcontractors; damage caused by CONTRACTOR to another contractor to DISTRICT; failure of CONTRACTOR to diligently prosecute the Work and maintain satisfactory progress required to meet the work completion schedule; or any other material breach by CONTRACTOR of its obligations under the Request, or Agreement.

g. Subject to the above, DISTRICT shall make payment within thirty (30) days after receipt and approval of invoice.

h. Pursuant to Public Contract Code section 22300, for monies earned by CONTRACTOR and withheld by DISTRICT to ensure the performance of the Agreement, CONTRACTOR may, at its option, choose to substitute securities meeting the requirements of Public Contract Code section 22300.

12. Subcontractors.

a. CONTRACTOR shall at all times be responsible for the acts and omissions of subcontractors and individuals directly or indirectly employed by them. CONTRACTOR is responsible for performance of all the Work, whether performed by CONTRACTOR or its subcontractors. The Request shall not give rise to any contractual relationship between DISTRICT and a subcontractor. DISTRICT shall not undertake any obligation to pay or to be responsible for the payment of any sums to any subcontractor.

b. CONTRACTOR shall provide a list of any subcontractors to DISTRICT prior to commencement of Work. It is agreed and acknowledged that should CONTRACTOR fail to conform with any of the requirements of Section 4100 *et seq.* of the Public Contract Code, CONTRACTOR shall be subject to the applicable statutory penalties, and to the requirements of Labor Code Sections 1777.1 or 1777.7 relating to payment of wages to ineligible subcontractors' employees, and the corresponding return of all subcontracting payments to DISTRICT.

D. Other Work.

1. CONTRACTOR acknowledges that this Agreement is not exclusive, and that DISTRICT reserves the right to employ or contract with other entities for the performance of the subject Services. CONTRACTOR further acknowledges that its services will be requested on an as-needed basis, and that no promises or guarantees have been made that a particular amount of services will be requested or that any level of compensation may be earned by CONTRACTOR hereunder.

2. If any part of CONTRACTOR's Work depends upon the Work of another contractor or of the employees of DISTRICT, CONTRACTOR shall inspect and promptly report to the DISTRICT Representative any defects in such Work that renders it unsuitable for the proper execution and results of CONTRACTOR's Work. Failure to so inspect and report any defective Work shall constitute an acceptance of the same by CONTRACTOR as being fit and suitable for the proper execution and results of the Work.

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3. CONTRACTOR further agrees that during the performance of the Work, CONTRACTOR shall not hinder or interfere with any individuals whom DISTRICT may employ to do any Work. CONTRACTOR shall suspend any part of the Work, or shall carry on the same, as directed by the DISTRICT Representative, so as to afford all reasonable facilities for the performance of such other Work. CONTRACTOR shall not claim any extra compensation for delays in the Work. CONTRACTOR's sole recourse shall be an extension of time for performance as DISTRICT may grant in accordance with the provisions hereof.

E. Reports. CONTRACTOR shall provide status reports as requested by the DISTRICT Representative. Reports shall compare expended labor hours, recorded costs and actual performance to estimated man hours, estimated costs and scheduled performance for the Work. Such reports shall also include projections of cost overrun/underrun, estimated Work completion date, explanation of any significant variations, and identification of any potential or known developments which may affect the cost to DISTRICT or the Work completion date.

F. Protective Measures.

1. CONTRACTOR shall be responsible for the proper care and protection of all equipment and materials delivered and the Work performed under a specific Request until "final acceptance" of such Work and issuance of a notice of completion for that Request by DISTRICT. CONTRACTOR shall also adequately protect adjacent property as provided by law and by this Agreement, including, but not limited to, protection of any Work existing in public property. CONTRACTOR shall take all necessary precautions for the safety of the public, CONTRACTOR'S employees and the employees of its contractors, subcontractors, or others working on its behalf on the Work and prevent accidents or injury to individuals on, about, or adjacent to the premises where the Work is being performed. In addition, CONTRACTOR shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards and warnings, including, but not limited to, temporary covering on all equipment pads, for the protection of its employees and the employees of its contractors, subcontractors, or others working on its behalf and the public.

2. CONTRACTOR shall conduct its operations so as to offer the least possible obstruction and inconvenience to the public, and shall have under construction no greater length or amount of work that it can prosecute properly with due regard to the rights of the public. Convenient access to driveways, houses and buildings along the line of work shall be maintained and temporary crossings shall be provided and maintained in good condition. Not more than one crossing or intersecting street or road shall be closed at any one time. CONTRACTOR shall provide and maintain such fences, barriers, directional signs, lights and flagmen as are necessary to give adequate warning to the public at all times of any dangerous conditions to be encountered as a result of the work and to give directions to the public. CONTRACTOR shall comply with all terms of any permits issued by public agencies for the work.

G. Risk of Loss and Damage. CONTRACTOR shall be responsible for any loss or damage to the Work, or material furnished by DISTRICT for the Work performed under a specific Request, until "final acceptance" of the Work and issuance of a notice of completion by DISTRICT for a specific Request. In the event of loss or damage, if it should become necessary

to replace materials furnished by DISTRICT, the cost of replacement shall be paid by CONTRACTOR to DISTRICT. DISTRICT may deduct such costs from any amounts due or to become due CONTRACTOR.

H. Suspension of Work.

1. DISTRICT may at any time suspend the entire Work, or any portion thereof, upon written notice to CONTRACTOR, who shall thereupon discontinue and suspend the Work except such operations as may be necessary to prevent damage to property or to the Work already accomplished. CONTRACTOR shall resume the Work after DISTRICT gives written notice lifting the suspension.

2. CONTRACTOR shall be paid its actual cost as defined in the Request for all Work performed in accordance with the orders of DISTRICT during any such suspension. If the Work shall be delayed due to any suspension of Work, CONTRACTOR shall also be entitled to an equitable extension of time within which to complete the Work. DISTRICT shall pay additional reasonable costs actually incurred by CONTRACTOR in deactivating and reactivating the Work caused by a DISTRICT ordered suspension. This shall be CONTRACTOR's sole compensation for suspension of the Work by DISTRICT.

3. The preceding provision of this Article shall be construed as applying only to suspension of the Request by DISTRICT and caused by conditions that cannot be reasonably anticipated. The provisions of this Article shall not apply to any conditions or suspension of the Work cited in the Request or suspension because of inclement weather, or nature of the Work, or operating requirements of DISTRICT, or termination as defined herein.

I. Liens. CONTRACTOR shall hold harmless, indemnify and defend DISTRICT from any mechanic's liens or stop notice claims against DISTRICT by CONTRACTOR, subcontractors, employees, or agents pertaining to the Work specified in any Request referencing this Agreement.

J. Required Bonds.

1. At the execution of this Agreement, CONTRACTOR shall provide both a performance bond and a bond for payment for labor and material to secure its performance of Work under this Agreement (each a "Bond"). Each such Bond shall be written in the principal amount of not less than One Hundred Thousand Dollars (\$100,000.00) and in the form set forth in the sample Payment Bond attached hereto as Appendix 2 and sample Performance Bond attached hereto as Appendix 3. However, should the total value of all Work awarded to CONTRACTOR pursuant to this Agreement, exceed the sum of One Hundred Thousand Dollars (\$100,000.00) at any time, CONTRACTOR agrees to increase the principal amount of such bonds to an amount not less than the total value of the Work awarded. In no event shall the principal amount of each of the Bonds be less than One Hundred Thousand Dollars (\$100,000.00) at any time during the entire term of this Agreement. Such Bonds shall be written with surety (i) authorized to do business in the State of California by the California Department of Insurance, and (ii) listed on the most current version of the Department of Treasury's Circular

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570 and acceptable to the DISTRICT at DISTRICT'S sole discretion. Such Bonds shall be in the form set forth in Appendices 2 and 3, respectively.

2. CONTRACTOR shall deliver all Bonds required hereunder to the DISTRICT prior to the commencement of Work, or if the Work is commenced prior thereto in response to a Request, the CONTRACTOR shall, submit evidence satisfactory to the DISTRICT that such Bonds will be issued.

3. DISTRICT agrees to reimburse 100% of the total amount of the Bond premiums paid by the CONTRACTOR under this Agreement in consideration of CONTRACTOR maintaining availability for on-call Work during the term of this Agreement. DISTRICT will reimburse such premium amounts within thirty (30) days of DISTRICT's receipt of invoice and following CONTRACTOR's posting of Bonds.

4. Nothing in the insurance requirements set forth in this Agreement or under the bonding terms is to be construed as limiting the liability of CONTRACTOR or CONTRACTOR's insurers or sureties. CONTRACTOR agrees that the provisions of this Section shall not be construed as limiting in any way the extent to which CONTRACTOR may be held responsible for the payment of damages or other costs to DISTRICT, or any persons or property, resulting from CONTRACTOR's activities or the activities of any person or persons for which CONTRACTOR is otherwise responsible, including CONTRACTOR's subcontractors, if any.

K. Breach of Agreement. CONTRACTOR shall not be relieved of liability to DISTRICT for damages sustained by DISTRICT by virtue of any breach of this Agreement by CONTRACTOR, and DISTRICT may withhold any payments to CONTRACTOR for the purpose of set-off until such time as the exact amount of damages due DISTRICT from CONTRACTOR is determined. In addition, DISTRICT may pursue all remedies available under law for breach of this Agreement. The waiver by either party of any breach to this Agreement shall not constitute a waiver as to any succeeding breach.

L. Compliance with Law

1. In the performance of this Agreement, CONTRACTOR shall abide by and conform to (and shall ensure that CONTRACTOR's contractors and/or subcontractors, if any, shall abide by and conform to) any and all applicable laws, statutes, safety rules, and practices of the United States, the State of California, and any other applicable local laws (collectively, Laws and Practices). Further, CONTRACTOR warrants that all Work done under this Agreement shall be in strict compliance with such Laws and Practices, including, but not limited to, Cal/OSHA and EPA regulations.

2. In addition to compliance with the terms of any Request and the terms of this Agreement, all Work shall be performed in accordance with DISTRICT's *Standard Specifications and Standard Plans for Water, Sewer, and Recycled Water Facilities* ("*Standard Specifications*") that are applicable to the Work, which are incorporated herein by this reference and made a part hereof. DISTRICT's *General Provisions* included as part of **Appendix 1** to this Agreement are incorporated in this Agreement by this reference. CONTRACTOR agrees and acknowledges that it is familiar with the terms of the *General*

Provisions and *Standard Specifications* and will be able to perform any Request under this Agreement in compliance with all such applicable terms.

M. Termination. Either party may terminate this Agreement by providing written notice to the other party ten (10) business days in advance of the date of termination; provided, DISTRICT may terminate the Agreement without any advance notice in the event CONTRACTOR is in material breach of any of the terms of this Agreement, as determined by DISTRICT in its discretion. Any termination by CONTRACTOR shall not be effective as to any Work previously performed hereunder, or any Work being undertaken at the time of such termination by CONTRACTOR, and shall only apply prospectively. CONTRACTOR remains responsible for the completion of any Work still outstanding under a Request in accordance with the terms of this Agreement and Request. CONTRACTOR's indemnity and warranty obligations as to any Request, as well as any outstanding obligations of CONTRACTOR at the time of any termination, shall survive the expiration or termination of this Agreement. On DISTRICT's termination, CONTRACTOR will be entitled to the reasonable value of the Work performed for which it has not received prior compensation under a Request, subject to any offset from such payment representing DISTRICT's damages from any material breach of the terms of this Agreement by CONTRACTOR or as otherwise provided for under Part III, Section C. 8(f) of this Agreement. The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to DISTRICT.

N. Insurance.

1. In addition to the requirements set forth below, during the entire term of the Agreement, CONTRACTOR will pay for and maintain, in full force and effect, all insurance required by any governmental agency having jurisdiction to require particular insurance of CONTRACTOR in connection with or related to the Work provided under the Agreement.

2. During the entire term of the Agreement, CONTRACTOR will pay for and maintain, in full force and effect, all insurance required by DISTRICT as listed in this Section. CONTRACTOR shall not commence Work under the Agreement until it has obtained all insurance required by the Agreement. Executed certificates of insurance and all required endorsements evidencing the required coverage detailed in this Section shall be provided by CONTRACTOR with the CONTRACTOR's executed copy of this Agreement, and prior to commencement of any Work.

3. The general liability and business automobile insurance will be comprehensive in form, and be for the term of this Agreement and on a 'per occurrence' basis. All policies will have a clause providing that thirty (30) calendar days written notice will be given to DISTRICT prior to any cancellation of such policies. All insurance will be issued and underwritten by insurance companies having at least an "A-" policyholder's rating and a financial rating not less than Class VII in accordance with the most current Best's Rating Guide - Property/Casualty, or better, or as otherwise approved by DISTRICT. CONTRACTOR may satisfy the limit requirements set forth below in a single policy or multiple policies, provided, however, that any such additional policies written as excess insurance will not provide any less coverage than that provided by CONTRACTOR's first or primary policy. All policies shall name Moulton Niguel Water District, City of Aliso Viejo, City of Dana Point, City of Laguna Hills, City

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of Laguna Niguel, City of Mission Viejo, and each of their directors, elected officials, officers, employees and agents, and any other public entities issuing permits for entry in public right of way to perform the repair work, and owner's of record of all property on which entry will be made to perform the repair work as additional insureds thereunder ("Additional Insureds"). All of the policies of insurance provided hereunder shall be primary insurance and not contribute with any other insurance maintained by the Additional Insureds, and the insurer shall waive all rights of subrogation and contribution it may have against the Additional Insureds; these requirements shall be set forth in endorsements to policies. In the event any of said policies of insurance are canceled, CONTRACTOR shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section to DISTRICT.

4. In the event DISTRICT consents and CONTRACTOR subcontracts any portion of the Work under the Agreement, the Agreement between CONTRACTOR and such subcontractor shall require the subcontractor to maintain the same policies, limits and terms of insurance that CONTRACTOR is required to maintain pursuant to this Section, in accordance with all of the requirements of this Section.

5. CONTRACTOR shall take out and maintain at all times during the Agreement the following policies of insurance, which shall comply with the other terms of Section as well as the following:

- (i) Workers Compensation Insurance and Employers Liability Insurance. Worker's compensation insurance as required by State laws, and employer's liability insurance with limits not less than \$1,000,000 each accident and \$1,000,000 for disease per employs, **which will include the subrogation and additional insured terms and endorsements described under subsection 3. above.** This insurance shall be in strict accordance with the requirements of the most current and applicable state Workers' Compensation insurance laws. Provider shall execute the Certificate required by Section 1861 of the Labor Code on **Appendix 4** attached to this Agreement prior to commencement of any Work.
- (ii) Commercial General Liability Insurance. Commercial general liability in a combined limit of not less than \$1,000,000 per occurrence, \$2,000,000 aggregate with such aggregate to apply separately to the Work. Commercial General Liability insurance coverage shall be equivalent to Insurance Services Office Form CG 00 01. Included in such insurance shall be contractual coverage sufficiently broad to insure the matters set forth in Part III, Section O of this Agreement, **as well as the subrogation, primary insurance/non-contribution and Additional Insureds terms and endorsements described under subsection 3 above.** This insurance shall name the Additional Insureds using ISO endorsement CG 20 10 11 85, or both CG 20 10 and CG 20 37 forms if later revisions are used.
- (iii) Business Automobile Insurance. Business automobile insurance with a liability limits of not less than \$1,000,000 each accident. The policy shall include coverage for owned, non-owned, and hired vehicles, **and include**

the subrogation, primary insurance/non-contribution and Additional Insureds terms and endorsements described under subsection 3 above.

6. Nothing in the insurance requirements set forth in this Agreement is to be construed as limiting the liability of CONTRACTOR or CONTRACTOR's insurers or sureties. CONTRACTOR agrees that the provisions of this Section shall not be construed as limiting in any way the extent to which CONTRACTOR may be held responsible for the payment of damages or other costs to DISTRICT, or any persons or property, resulting from CONTRACTOR's activities or the activities of any person or persons for which CONTRACTOR is otherwise responsible, including CONTRACTOR's subcontractors, if any.

O. Indemnification.

1. To the fullest extent permitted by law, CONTRACTOR shall hold harmless, indemnify, and defend, including the duty and cost to defend as provided by Section 2778 of the California Civil Code, DISTRICT and its directors, officers, employees, engineers and representatives as well as all public agencies issuing permits in connection with the Work, and all property owners of the Work site ("indemnitees"), from liability, claims, damages, demands, actions, attorney's fees, costs and expenses arising out of the performance of the Work under this Agreement, or actual or alleged non-performance, or the furnishing of materials by CONTRACTOR or its subcontractors, including but not limited to, claims by the CONTRACTOR or CONTRACTOR's employees for damages to person or property, except for the sole negligence or willful misconduct or active negligence of the DISTRICT, its directors, officers, engineers, employees and representatives.

2. In furtherance of CONTRACTOR's obligations in this Section, CONTRACTOR shall defend itself and the indemnitees against any and all liabilities, claims, losses, damages, actions, attorney's fees, costs and expenses arising out of the performance of the Work, or actual or alleged non-performance, or the furnishing of materials by CONTRACTOR or its subcontractors, including but not limited to claims by the CONTRACTOR or CONTRACTOR'S employees for damages to person or property.

3. This indemnity obligation shall survive the termination or expiration of the Agreement and the completion of any Work pursuant to any Request, or otherwise.

P. Warranty.

1. CONTRACTOR fully warrants and guarantees, for a period of three hundred sixty-five (365) days from the date of "final acceptance" (as defined in Part III, Section B(8)) of any Work pursuant to a specific Request by DISTRICT ("Warranty Period"), that: (1) all goods, materials, and equipment supplied are new; conform to the *Standard Specifications*; are of first class material and workmanship and are free from defects; and (2) that all Work will be of good quality, performed to the standard of care customary in CONTRACTOR's trade or profession. Under this guarantee, CONTRACTOR shall repair and replace any and all work, together with any other work which may be displaced in so doing, that does not meet the terms above under (1) and (2) within the Warranty Period, without expense whatsoever to DISTRICT

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and with ordinary wear and tear and unusual abuse or neglect excepted. Neither DISTRICT'S inspection nor failure to inspect shall relieve CONTRACTOR of any obligation hereunder. If in DISTRICT'S opinion, any article, material or work fails to conform to specifications or is otherwise defective, CONTRACTOR shall promptly replace same at CONTRACTOR'S expense. No acceptance or payment by DISTRICT shall constitute a waiver of the foregoing, and nothing herein shall exclude or limit any manufacturers, suppliers or other express warranties, or warranties implied by law.

2. In the event of CONTRACTOR'S failure to comply with the above-mentioned conditions within seven (7) days after being notified in writing, DISTRICT may proceed to have the work repaired or replaced and made good at the expense of CONTRACTOR who agrees to pay the cost of and charges therefore immediately on demand. If, in the opinion of DISTRICT, defective work creates a dangerous condition or requires immediate correction or attention to prevent further loss to DISTRICT or to prevent interruption of operations of DISTRICT, DISTRICT will attempt to give the notice required by this Section. If CONTRACTOR cannot be contacted or does not comply with DISTRICT'S request for correction within a reasonable time as determined by DISTRICT, DISTRICT may, notwithstanding the provisions of this Section, proceed to make such correction or provide such attention, and the costs of such corrections or attention shall be charged against CONTRACTOR. Such action by DISTRICT will not relieve CONTRACTOR of the guarantees provided in this Section or elsewhere in the Agreement.

3. This Section does not in any way limit the warranty on any items for which a longer warranty is specified or on any items for which CONTRACTOR or a manufacturer or supplier gives a warranty for a longer period. CONTRACTOR agrees to furnish DISTRICT, and assign over to DISTRICT as required, all appropriate warranty certificates upon completion of the work. No warranty whether provided for in this Section or elsewhere shall in any way limit the liability of CONTRACTOR or its sureties or insurers under the indemnity or insurance provisions of the Agreement. This warranty obligation shall survive the termination or expiration of the Agreement as to all completed Work.

4. CONTRACTOR expressly warrants that all the Work performed by it or its Subcontractors shall be in conformance with this Agreement and the Request and shall be free from defects in workmanship. CONTRACTOR further warrants that all Work shall be performed in a manner consistent with prudent engineering and utility industry practices.

5. CONTRACTOR represents to DISTRICT that it and its subcontractors are properly licensed, fully experienced and properly qualified to perform the class and type of the Work outlined in the Request, in addition to being properly equipped, organized, staffed, and financed to handle such Work. CONTRACTOR shall perform the Work in an orderly and workmanlike manner, and shall not employ in the Work any individual unskilled in the Work assigned.

6. This Section shall not limit DISTRICT'S rights under this Agreement or with respect to latent defects, gross mistakes, or fraud. DISTRICT specifically reserves all rights related to defective work, including but not limited to defect claims pursuant to California Code of Civil Procedure Section 337.15.

Q. Records.

1. CONTRACTOR shall preserve and retain any and all records of or related to the Work, including all records of or related to this Agreement and the obligations contained herein, for a period of no less than four (4) years commencing upon final payment to CONTRACTOR under the Agreement or, if an examination, review or audit is commenced but not completed within such period, until such examination, review or audit has been completed.

2. Pursuant to Government Code Section 8546.7, the State has the right to examine, review, audit and/or copy such records during the three (3) year period following final Request and payment to CONTRACTOR pursuant to this Agreement. CONTRACTOR, upon request, shall make the records of the Work available for the purposes described in this Section at all reasonable times during the period CONTRACTOR is required to preserve and maintain such records.

R. Labor.

1. The CONTRACTOR shall forfeit as a penalty to the DISTRICT \$25.00 for each worker employed in the execution of the Agreement by the CONTRACTOR or any subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of the Labor Code and, in particular, Section 1810 to Section 1815 thereof, inclusive, except that work performed by employees of CONTRACTOR in excess of 8 hours per day and 40 hours during any one week shall be permitted upon compensation for all hours worked in excess of 8 hours per day at not less than one and one-half times the basic rate of pay as provided in said Section 1815.

2. The Agreement is subject to California Labor Code Section 1720, et seq., and CONTRACTOR and any subcontractor shall pay not less than the specified prevailing rates of wage to all workers employed in performance of the Work. Pursuant to the provisions of Section 1770 of the California Labor Code, DISTRICT has obtained the general prevailing rate of wages and employer payments for health and welfare, vacation, pension and similar purposes, as determined by the Director of the Department of Industrial Relations, a copy of which is on file in the office of DISTRICT, and shall be made available for viewing to any interested party upon request. The CONTRACTOR and each subcontractor shall forfeit as a penalty to DISTRICT not more than Two Hundred Dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the stipulated prevailing wage rate in violation of the Labor Code. In addition, the difference between the prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the CONTRACTOR.

3. CONTRACTOR'S attention is directed to the provisions in Section 1777.5 and 1777.6 of the Labor Code concerning the employment of apprentices by the CONTRACTOR or any subcontractor under the CONTRACTOR. It shall be the responsibility of the CONTRACTOR to effectuate compliance on the part of itself and any subcontractors with the requirements for employment of apprentices. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of

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Industrial Relations, ex-officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

4. Pursuant to Labor Code Section 1776, the CONTRACTOR and each subcontractor shall maintain weekly certified payroll records showing the name, address, social security number, work classification, straight time and overtime hours paid each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed in connection with the work. CONTRACTOR shall certify under penalty of perjury that records maintained and submitted by CONTRACTOR are true and accurate. CONTRACTOR shall also require subcontractor(s) to certify weekly payroll records under penalty of perjury. In the event of noncompliance with the requirements of this Section, the CONTRACTOR shall have ten (10) days in which to comply subsequent to receipt of written notice specifying any item or actions necessary to achieve compliance with this Section. If CONTRACTOR or subcontractor does not comply after such ten (10)-day period, the CONTRACTOR shall, as a penalty to DISTRICT, forfeit One Hundred Dollars (\$100) for each day, or portion thereof, for each worker until strict compliance is effectuated.

5. In accordance with Labor Code Section 1771.4, the CONTRACTOR and each subcontractor shall furnish the certified payroll records directly to the Department of Industrial Relations ("DIR") on a weekly basis and in the format prescribed by the DIR, which may include electronic submission. CONTRACTOR shall comply with all requirements and regulations from the DIR relating to labor compliance monitoring and enforcement.

6. CONTRACTOR shall post, at appropriate conspicuous points on the work site, a schedule showing all determined general prevailing wage rates and all authorized deductions, if any, from unpaid wages actually earned.

7. Pursuant to Labor Code Sections 1725.5 and 1771.1, the CONTRACTOR and its subcontractors must be registered with the Department of Industrial Relations prior to the execution of a contract to perform public works. By entering into this Agreement, CONTRACTOR represents that it is aware of the registration requirement and is currently registered with the DIR. CONTRACTOR shall maintain a current registration for the duration of the Agreement. CONTRACTOR shall further include the requirements of Labor Code Sections 1725.5 and 1771.1 in any subcontract and ensure that all subcontractors are registered at the time this Agreement is entered into and maintain registration for the duration of the Agreement. Contractor's DIR Registration No. is 1000001634.

8. Pursuant to the requirements of Division 4 of the Labor Code, the CONTRACTOR will be required to secure the payment of worker's compensation to its employees in accordance with the provisions of Section 3700 of the Labor Code. Prior to commencement of work, the CONTRACTOR shall sign and file with the DISTRICT a certification in the following form:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions before commencing the performance of the work of this contract."

S. Assignment of Anti-Trust Actions. Section 7103.5 of the Public Contract Code specifies that in entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 commencing with Sec. 16700) of Part 2 of Division 7 of the Business Profession Code, arising from purchase of goods, services or materials pursuant to the contract or subcontract. Pursuant to Public Contract Code Section 7103.5 CONTRACTOR and all of its subcontractors hereby offer and agree to assign to DISTRICT all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 commencing with Sec. 16700) of Part 2 of Division 7 of the Business Profession Code, arising from purchase of goods, services or materials pursuant to this Agreement. This assignment shall become effective when DISTRICT tenders final payment to CONTRACTOR without further acknowledgement by the parties.

T. State License Board Notice. CONTRACTOR is required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

U. Procedure for Resolving Disputes. In accordance with Public Contract Code sections 20104 et seq. and other applicable law, public works claims of \$375,000 or less which arise between CONTRACTOR and DISTRICT shall be resolved under the following statutory procedure unless DISTRICT has elected to resolve the dispute pursuant to Public Contract Code section 10240 et seq.

1. All Claims. All claims shall be submitted in writing and accompanied by substantiating documentation. Claims must be filed on or before the date of final payment unless other notice requirements are provided in the contract. "Claim" means a separate demand by CONTRACTOR for (1) a time extension, (2) payment of money or damages arising from work done by or on behalf of CONTRACTOR and payment of which is not otherwise expressly provided for or CONTRACTOR is not otherwise entitled, or (3) an amount the payment of which is disputed by DISTRICT.

2. Claims Under \$50,000. DISTRICT shall respond in writing to the claim within 45 calendar days of receipt of the claim, or, DISTRICT may request, in writing, within 30 calendar days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims DISTRICT may have. If additional information is needed thereafter, it shall be provided upon mutual agreement of DISTRICT and CONTRACTOR. DISTRICT'S written response shall be submitted 15 calendar days after receiving the additional documentation, or within the same period of time taken by CONTRACTOR to produce the additional information, whichever is greater.

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3. Claims over \$50,000 but less than or equal to \$375,000. DISTRICT shall respond in writing within 60 calendar days of receipt, or, may request in writing within 30 calendar days of receipt of the claim, any additional documents supporting the claim or relating to defenses or claims CONTRACTOR may have against DISTRICT. If additional information is needed thereafter, it shall be provided pursuant to mutual agreement between DISTRICT and CONTRACTOR. The DISTRICT response shall be submitted within 30 calendar days after receipt of the further documents, or within the same period of time taken by CONTRACTOR to produce the additional information or documents, whichever is greater. CONTRACTOR shall make these records and documents available at all reasonable times, without any direct charge.

4. All Claims. If CONTRACTOR disputes DISTRICT'S response, or if DISTRICT fails to respond within the statutory time period(s), CONTRACTOR may so notify DISTRICT within 15 calendar days of the receipt of the response or the failure to respond, and demand an informal conference to meet and confer for settlement. Upon such demand, DISTRICT shall schedule a meet and confer conference within 30 calendar days.

5. Government Code Claim. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, construction claims and/or changed conditions, CONTRACTOR must comply with the claim procedures set forth in Government Code Sections 900 et seq. prior to filing any lawsuit against DISTRICT. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, construction claims, and/or changed conditions have been followed by CONTRACTOR. If no such Government Code claim is submitted, or if the prerequisite contractual requirements are not otherwise satisfied as specified herein, CONTRACTOR shall be barred from bringing and maintaining a valid lawsuit against DISTRICT.

V. Notice of Third-Party Claims. In accordance with Public Contract Code Section 9201, DISTRICT shall timely notify CONTRACTOR if DISTRICT receives any third-party claim relating to the services/work, or this Agreement. DISTRICT shall be entitled to recover from CONTRACTOR DISTRICT's reasonable costs incurred in providing such notification.

PART IV – MISCELLANEOUS

A. Complete Agreement. This Agreement, including all documents and exhibits and appendices attached hereto, or incorporated herein by reference, and the executed Requests represent the entire agreement between DISTRICT and CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written or oral, including any previous agreements or contracts between the parties to the extent the same are inconsistent with the terms hereof.

B. Modification. This Agreement shall not be considered modified, altered, changed, or amended in any respect unless documented in writing and signed by both parties.

C. Governing Law. This Agreement shall be interpreted according to the laws of the State of California. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure 394.

D. Successors and Assigns. All of the terms, conditions and provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns, provided, however, that no assignment of this Agreement shall be made without the prior written consent of the parties to this Agreement, which consent shall not be unreasonably withheld.

E. Severability. If any section of this Agreement as applied to either party or to any circumstance shall be adjudged by a court of competent jurisdiction to be void or enforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of this Agreement as a whole.

F. No Waiver. The failure of either party to request performance in accordance with the terms of this Agreement shall not be deemed a waiver of the right to enforce the terms of this Agreement.

G. Ownership. All documents or other information developed or received by CONTRACTOR and related to the Work shall be delivered to DISTRICT as the property of DISTRICT.

H. Time of the Essence. Time is expressly agreed to be of the essence of this Agreement, Request, and each, every, and all of the terms, conditions and provisions herein.

I. Authority. Each party represents and warrants this Agreement is valid and binding, is duly authorized by appropriate corporate or approving action, and that the person initialing this Agreement has the authority to bind such party to this Agreement

J. Counterparts. This Agreement may be executed in counterparts, each of which, when executed and delivered, shall be an original and both of which together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document.

K. Attorneys' Fees. In the event of any declaratory or other legal or equitable action instituted between DISTRICT and CONTRACTOR in connection with this Agreement, the prevailing party shall be entitled to recover from the losing party all of its attorneys' fees, and costs and expense

L. Independent Contractor. The performance of CONTRACTOR's Services hereunder shall be in the capacity of an independent contractor and not as an officer, agent, or employee of DISTRICT. In consideration for the compensation paid to CONTRACTOR by

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DISTRICT, CONTRACTOR agrees that DISTRICT shall not be liable or responsible for any benefits, including, but not limited to, worker's compensation, disability, retirement, life, unemployment, health or any other benefits and CONTRACTOR agrees that he shall not sure or file a claim, petition or application therefor against DISTRICT or any of its officers, employees, agents, representatives, or sureties.

M. Notification. Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, registered or certified, postage prepaid, addressed to:

To DISTRICT:

Attn: Director of Engineering & Operations
Moulton Niguel Water District
27500 La Paz Road
Laguna Niguel, CA 92677

To CONTRACTOR:

Attn:

Notwithstanding the foregoing, the parties agree that each party may rely on a facsimile signature of the other with respect to matters pertaining to this Agreement, and the confirmation of delivery of fax shall be sufficient evidence of delivery of any notice required hereunder.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, this Agreement has been executed in the name of DISTRICT and CONTRACTOR as of the Effective Date.

DISTRICT:
MOULTON NIGUEL WATER DISTRICT

Signed: _____
Joone Lopez, General Manager

Dated: _____

CONTRACTOR:

Signed: _____

Dated: _____

By: _____
[Print Name]*

Its: _____

*Attach corporate officer certification or notary acknowledgement

Signature Page On-Call Emergency Construction and Maintenance/Repair Services Agreement

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CORPORATE CERTIFICATE*

I, _____, certify that I am the Secretary of the corporation named as Contractor in the foregoing Agreement; that _____, who signed said Agreement on behalf of Contractor, was then President of said corporation; and that said Agreement was duly signed for and on behalf of said corporation by authority of its Governing Body and is within the scope of its corporate powers.

[_____] , Secretary

(CORPORATE SEAL)

*To be completed if Contractor is a corporation. If Contractor is a joint venture or partnership that includes a corporation(s), a certificate must be obtained from Owner's office, completed and attached to this page.

EXHIBIT A**GENERAL SCOPE OF WORK – EMERGENCY
CONSTRUCTION AND MAINTENANCE/ REPAIR SERVICES**

I. The services of a CONTRACTOR are required, on an as-needed basis, for the emergency or immediate construction, maintenance, repair, abandonment, and relocation of various water distribution and sewer facilities. Typical work will include, but not be limited to the following:

1. Repair, relocate, replace, abandon, and install aboveground and underground water and sewer facilities including but not limited to, fire hydrants, water mains, large services, small services, line stops, vaults, valves, meter vaults, lids, air vacuum, blow offs, gravity and sewer force mains, manholes and appurtenances.
2. Repair, relocate, replace, abandon, and install aboveground and underground sewer pipelines at sewage lift stations, water pump stations, and any related facilities and equipment to the foregoing.
3. Locate and pothole utility substructures, underground conduits, and underground substructures related to the facilities and work above.
4. Replace and install concrete sidewalks, concrete driveway approaches, concrete curb and gutter, concrete spandrels and cross gutters, concrete pavement, and asphalt concrete pavement related to the facilities and work above to the satisfaction of the various City agencies which we serve.

This is not a description of the actual Services to be performed under the Agreement pursuant to individual Requests.

II. Materials shall be furnished by CONTRACTOR for completion of Work as specified in each Request. All Work shall be planned, executed, and completed in accordance with the Request. DISTRICT'S Standard Specifications for the Construction of Domestic Water, Sewer and Recycled Water Facilities, 2012 Standard Specifications for Public Works Construction (Standard Specifications) (excluding Sections 1-9) by the Southern California Chapter, American Public Works Association and the Southern California District, Associated General Contractors of California Joint Cooperative Committee; the Special Provisions attached to the Request for Proposals; and the Appendices to the Agreement.

III. CONTRACTOR shall operate in and around active or energized equipment and shall conduct itself in accordance with all applicable federal, state, and local laws and regulations. CONTRACTOR shall follow DISTRICT'S Standard Specifications in the testing and activation of new and existing water system components or facilities. Required system outages shall be scheduled with and approved by DISTRICT the Director of Engineering & Operations five (5) working days before the required date, or with as much notice as reasonably possible. The requirements for repairing, replacing, or installing water or sewer facilities to complete the Work shall be described in the individual Request.

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IV. The services of a CONTRACTOR are required, on an as-needed basis, to provide emergency Services to repair and/or replace and inspect damages to the Water System. Typical Work will include, but not be limited to the following:

1. Inspect and evaluate damages and restore services to water distribution, production facilities; sewer conveyance facilities.
2. Repair and/or replace mains, pipelines, valves, fire hydrants, services, meters, line stops, vaults, sampling stations, conduits, and substructures.
3. Clean up environmental/hazardous spills and by-products of combustion and/or disinfection.

EXHIBIT B
RATE SCHEDULE

EXHIBIT C

REQUEST FOR IMMEDIATE RESPONSE SERVICES

[To be executed by DISTRICT and CONTRACTOR prior to, or as soon as reasonably possible following commencement of emergency Work.

This Request for Immediate Response Services (the "Request") is executed pursuant to the "AGREEMENT FOR ON-CALL EMERGENCY CONSTRUCTION AND MAINTENANCE/REPAIR SERVICES BETWEEN MOULTON NIGUEL WATER DISTRICT AND _____ (Contract No. _____)" dated _____, 20__ ("Agreement"). The Agreement terms are fully incorporated in this Request. Terms used in this Request have the same meanings given in the Agreement.

Request No.: _____

Description of Work Requested:

Estimate of Work Cost: \$ _____

Work Location: (address/intersection, City)

Time for Completion: _____

Notice to Proceed Given: [Date] _____

EXECUTED, ACKNOWLEDGE AND AGREED:

Owner's Representative

Contractor's Authorized Representative- (Sign / Print Name)

APPENDIX 1

General Provisions

- I. DISTRICT's General Provisions** [attached]:
 - a. Section 4, subdivisions 1, 3-6
 - b. Section 5, subdivisions 1, 4, 7-8, 10-13, 14
 - c. Section 6, subdivisions 1-2, 6
 - d. Section 7, subdivisions 1-10, 12-18, 23-27
 - e. Section 9, subdivision 6

- II. District's Standard Specifications for the Construction of Domestic Water, Sewer and Recycled Water Facilities, accessible via the District's website at:
<http://www.mnwd.com/standards-specifications/>

- III. Requirements of City with authority over work site/permit terms

***** In the event any statutory sections cited or referred to in the General Provisions above are updated at the time a Request is issued, all such updates and terms shall be deemed controlling, and are incorporated prospectively by this reference.***

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APPENDIX 2
PAYMENT BOND

APPENDIX 3
PERFORMANCE BOND

APPENDIX 4
CONTRACTOR’S CERTIFICATE
REGARDING WORKER’S COMPENSATION

Description of Contract: Moulton Niguel Water District
On-Call Emergency Construction and Maintenance/Repair Services Agreement

Labor Code Section 3700:

“Every employer, except the state, shall secure the payment of compensation in one or more of the following ways:

- (a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this state.
- (b) By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.”

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker’s compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Contract.

Dated: _____

(Contractor)

By: _____

(Official Title)

(CORPORATE SEAL)

(Labor Code Section 1861 provides that the above certificate must be signed and filed by the Contractor with the District prior to performing any work under this Contract.)