



moulton niguel water district

**BOARD OF DIRECTORS' MEETING
MOULTON NIGUEL WATER DISTRICT
26880 Aliso Viejo Pkwy, Suite 150, Aliso Viejo
February 27, 2020
6:00 PM
Approximate Meeting Time: 2 Hours**

1. CALL MEETING TO ORDER:

2. PLEDGE OF ALLEGIANCE:

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.

CONSENT CALENDAR ITEMS:(Items on the Consent Calendar have been discussed at the regularly scheduled Administrative and Technical Committee meetings)

Consent items: Unless the General Manager or the Board requests that an item be removed from the Consent Calendar, all items will be acted upon as a whole and by one vote. Requests for discussion of any specific item should be made to the Presiding Officer in conjunction with the discussion of the consent motion.

4. MINUTES FROM THE JANUARY 9, 2020 BOARD OF DIRECTORS MEETING

5. MINUTES FROM THE JANUARY 23, 2020 BOARD OF DIRECTORS MEETING

6. AMENDMENT NO. 1 FOR PLANT 3A PUMP REHABILITATION SERVICES

It is recommended that the Board of Directors approve Amendment No. 1 to the Plant 3A RAS Pump Refurbishment Services Agreement with Power Bros. Machine, Inc. in the amount of \$13,327 for a total not-to-exceed amount of \$103,792; authorize the General Manager or Assistant General Manager to execute the amendment; and to approve amendments up to 10% of the total contract value.

7. CHEMICAL DELIVERY COOPERATIVE AGREEMENT

It is recommended that the Board of Directors authorize the General Manager or Assistant General Manager to execute a contract services agreement between SOCWA, other public entities, and Olin Corporation, Inc. for the delivery and supply of sodium hypochlorite to Plant 3A.

8. LA PAZ CREEK VEGETATION MANAGEMENT CONTRACT AMENDMENT

It is recommended that the Board of Directors approve an amendment to the La Paz Creek Vegetation Management Agreement with Habitat Restoration Sciences, Inc. in the amount of \$12,000 for a total not-to-exceed amount of \$173,250; authorize the General Manager or Assistant General Manager to execute the amendment; and to approve future amendments up to 10% of the contract value.

GENERAL MANAGER MATTERS:(Brief general updates on District matters and/or brief general updates from staff - Informational purposes only.)

9. ADOPT A CHANNEL PRESENTATION

10. FUTURE LEADERS OF WATER VIDEO PRESENTATION

ADMINISTRATIVE MATTERS:

11. RESOLUTION HONORING SGT. JACK SONGER (RESOLUTION NO. 20-__)

It is recommended that the Board of Directors approve the resolution entitled, "Honoring Sgt. Jack Songer for Service to the City of Laguna Niguel"

12. DEFERRED COMPENSATION RETIREMENT PLANS AND ADVISORY SERVICES (RESOLUTIONS 20-__ & 20-__)

It is recommended that the Board of Directors:

1. Approve resolution entitled, "Adopting an Amended and Restated 457(b) Deferred Compensation Plan & Trust;
2. Approve resolution entitled, "Adopting an Amended and Restated 401(a) Plan & Trust;
3. Change the 457(b) and 401(a) record keeper to Lincoln Alliance;
4. Engage the services of Morgan Stanley to act as 3(21) Fiduciary Investment Advisor for both Plans; and,
5. Authorize the General Manager or Director of Human Resources to execute all required documents.

13. MWDOC BUDGET UPDATE

14. MONTHLY FINANCIALS

TECHNICAL MATTERS:

15. CONSTRUCTION CONTRACT AWARD FOR REHABILITATION OF RANCHO RESERVOIR NOS. 1 AND 2

It is recommended that the Board of Directors award the construction services contract to Advanced Industrial Coatings, Inc. (AIS) in the amount of \$1,561,900; authorize the General Manager or Assistant General Manager to execute the contract; and to approve change orders up to 10% of the contract value.

16. CONSTRUCTION CONTRACT AWARD FOR 2017-18 ELECTRICAL DISTRIBUTION EQUIPMENT REPLACEMENTS

It is recommended that the Board of Directors award the construction services contract to Southern Contracting Company in the amount of \$498,500; authorize the General Manager or Assistant General Manager to execute the contract; and to approve change orders up to 10% of the contract value.

LEGAL MATTERS:

17. CONDUCT PUBLIC HEARING AND CONSIDER ADOPTION OF ORDINANCE TO INCREASE PER DIEM COMPENSATION FOR BOARD MEMBERS

The Board of Directors will conduct the duly noticed public hearing regarding the proposed Ordinance which would increase the amount of per diem compensation for the members of the Board of Directors for attendance at meetings of the Board or for each day's service rendered as a Director. Upon completion of the public hearing, the Board may consider adoption of the Ordinance to increase the amount of per diem compensation. Occurrences constituting District business, official duties or each day's service rendered as a "day of service" are defined and authorized by separate policy of the District and by law.

PRESIDENT'S REPORT:

BOARD REPORTS:

FUTURE AGENDA ITEMS (Any items added under this section are for discussion at future meetings only.):

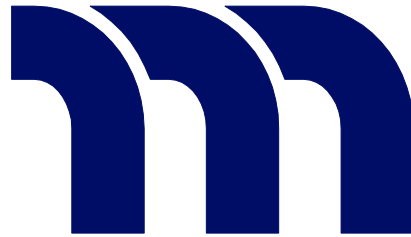
LATE ITEMS: (Appropriate Findings to be Made)

- 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]

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, 26880 Aliso Viejo Parkway, Suite 150, Aliso Viejo, 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.



moulton niguel water district

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MINUTES OF THE REGULAR MEETING OF THE BOARD OF DIRECTORS OF THE MOULTON NIGUEL WATER DISTRICT

January 9, 2020

A Regular Meeting of the Board of Directors of the Moulton Niguel Water District was held at the District offices, 26880 Aliso Viejo Pkwy, Suite 150, Aliso Viejo, California, at 5:00 PM on January 9, 2020. There were present and participating:

DIRECTORS

Duane Cave	Vice President (arrived at 6:23 p.m.)
Richard Fiore	Director
Donald Froelich	Vice President
Kelly Jennings	Director
Gary Kurtz	Director
Bill Moorhead	Director
Brian Probolsky	President (arrived during closed session)

Also present and participating were:

STAFF MEMBERS, LEGAL COUNSEL, AND MEMBERS OF THE PUBLIC

Joone Lopez	General Manager
Matt Collings	Assistant General Manager
Drew Atwater	Director of Finance & Water Resources
Gina Hillary	Director of Human Resources
Todd Novacek	Director of Operations
Jake Vollebregt	Director of Regional & Legal Affairs
Jose Solorio	Government Affairs Officer
Ruben Duran	Best, Best, & Krieger (General Counsel)
Paige Gulck	Board Secretary
Tim Bonita	Recording Secretary
Trevor Agrelius	MNWD
Matthew Brown	MNWD
Johnathan Cruz	MNWD
Todd Dmytryshyn	MNWD

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David Larsen	MNWD
Ian Morgan	MNWD
Medha Patel	MNWD
Adrian Tasso	MNWD
Sherry Wanninger	CAC Member
Kerry Worgan	CalPERS

1. **CALL MEETING TO ORDER:**

The meeting was called to order by Donald Froelich at 5:08 p.m.

CLOSED SESSION:

2. **CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Pursuant to Government Code Section 54956.8
Property: 27500 La Paz Road, Laguna Niguel, CA
Agency Negotiator: Rod Woods, Director of Engineering
Negotiating Parties: TBD – Initial review of offers
Under Negotiation: Price and terms of payment for a potential sale or lease

The Board entered closed session at 5:09 p.m. exited at 5:59 p.m.

OPEN SESSION - 6:05 PM

3. **REPORT OUT OF CLOSED SESSION:**

Ruben Duran stated that there was no reportable action.

4. **PLEDGE OF ALLEGIANCE:**

The Pledge of Allegiance was led by Donald Froelich.

5. **PUBLIC COMMENTS:**

None.

PRESENTATION ITEM:

6. CALPERS UPDATE

Kerry Worgan, from California Public Employees' Retirement Systems (CalPERS), provided an update on the CalPERS pension program.

Duane Cave arrived at 6:23 p.m.

CONSENT CALENDAR ITEMS:(Items on the Consent Calendar have been discussed at the regularly scheduled Administrative and Technical Committee meetings)

7. MINUTES OF THE DECEMBER 12, 2019 BOARD OF DIRECTORS MEETING

8. MINUTES OF THE DECEMBER 18, 2019 SPECIAL BOARD OF DIRECTORS MEETING

9. AMENDMENT NO. 1 FOR ON-CALL INSPECTION SUPPORT SERVICES

It is recommended that the Board of Directors approve Amendment No. 1 to the On-Call Inspection Support Services Agreement with MWH Constructors in the amount of \$450,000 for a total not-to-exceed amount of \$750,000; authorize the General Manager or Assistant General Manager to execute the amendment; and to approve amendments up to 10% of the total contract value.

10. VEHICLE REPLACEMENT – JETTER RODDER / VACUUM COMBINATION TRUCK

It is recommended that the Board of Directors approve the purchase of a 2020 Vactor 2112i Combination Sewer Truck for \$480,406.

MOTION DULY MADE BY DONALD FROELICH AND SECONDED BY DUANE CAVE, CONSENT ITEMS 7 THROUGH 10 WERE APPROVED AS PRESENTED. THE VOTE WAS UNANIMOUS WITH DIRECTORS DUANE CAVE, RICHARD FIORE, DONALD FROELICH, KELLY JENNINGS, GARY KURTZ, BILL MOORHEAD, AND BRIAN PROBOLSKY ALL VOTING 'AYE'.

INFORMATION ITEMS:

11. FISCAL YEAR 2020-21 BUDGET UPDATE

Johnathan Cruz provided an update on the development of the Fiscal Year 2020-2021 Budget including a schedule for upcoming budget discussions with the Board of Directors.

LEGAL MATTERS:

12. BOARD PER DIEM

Discussion ensued regarding the Board per diem. The Board directed staff to make the appropriate notices and agendaize Board per diem at a future meeting.

GENERAL MANAGER MATTERS:(Brief general updates on District matters and/or brief general updates from staff - Informational purposes only.)

Joone Lopez stated that the Fix-a-leak week campaign will be rolling out in March. Joone also stated that Metropolitan Water District will be shutting down the Diemer plant for 7 days starting January 14, 2019.

David Larsen provided a Plant 2A upgrades project.

PRESIDENT'S REPORT:

Brian Probolsky congratulated Director Moorhead on his retirement from the City of Anaheim.

BOARD REPORTS:

Duane Cave stated that he and Director Froelich observed a District vault removal project. Duane also complimented staff on the year-in-review video and continued outreach efforts.

Richard Fiore stated also complimented staff on the year-in-review video.

FUTURE AGENDA ITEMS (Any items added under this section are for discussion at future meetings only.):

None.

LATE ITEMS: (Appropriate Findings to be Made)

None.

ADJOURNMENT:

The meeting was adjourned at 7:10 p.m.

Respectfully submitted,

Tim Bonita
Recording Secretary



moulton niguel water district

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MINUTES OF THE REGULAR MEETING OF THE BOARD OF DIRECTORS OF THE MOULTON NIGUEL WATER DISTRICT

January 23, 2020

A Regular Meeting of the Board of Directors of the Moulton Niguel Water District was held at the District offices, 26880 Aliso Viejo Pkwy, Suite 150, Aliso Viejo, California, at 6:00 PM on January 23, 2020. There were present and participating:

DIRECTORS

Duane Cave	Vice President
Richard Fiore	Director
Donald Froelich	Vice President
Kelly Jennings	Director
Gary Kurtz	Director
Bill Moorhead	Director
Brian Probolsky	President (via teleconference)

Also present and participating were:

STAFF MEMBERS, LEGAL COUNSEL, AND MEMBERS OF THE PUBLIC

Joone Lopez	General Manager
Matt Collings	Assistant General Manager
Rod Woods	Director of Engineering
Drew Atwater	Director of Finance & Water Resources
Todd Novacek	Director of Operations
Jose Solorio	Government Affairs Officer
Jeff Ferre	Best, Best, & Krieger (General Counsel)
Paige Gulck	Board Secretary
Tim Bonita	Recording Secretary
Trevor Agrelius	MNWD
Matthew Brown	MNWD
Todd Dmytryshyn	MNWD
Medha Patel	MNWD
Laura Rocha	MNWD

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Sherry Wanninger
Ross Chun
Pedram Bazargani
Adele Giovanniello
Eva Jabbari
Brian Kim

CAC Member
Council Member, City of Aliso Viejo
Member of the Public
Member of the Public
Member of the Public
Member of the Public

1. **CALL MEETING TO ORDER:**

The meeting was called to order by Duane Cave at 6:00 p.m.

2. **PLEDGE OF ALLEGIANCE:**

The Pledge of Allegiance was led by Richard Fiore.

3. **PUBLIC COMMENTS:**

Members of the EcoFreako Club at Aliso Niguel High School provided public comment.

TECHNICAL MATTERS:

4. WATER RELIABILITY POLICY UPDATE

Drew Atwater provided the Water Reliability Policy update.

INFORMATION ITEMS:

5. MONTHLY FINANCIAL REPORT

Trevor Agrelius presented the Monthly Financial Report.

GENERAL MANAGER MATTERS: (Brief general updates on District matters and/or brief general updates from staff - Informational purposes only.)

None.

PRESIDENT'S REPORT:

None.

BOARD REPORTS:

Don Froelich stated that he attended the MWDOC Board meeting on January 15th.

Kelly Jennings stated that Sustain SoCal will be launching an educational program for middle schools and that she will be participating as part of those discussions.

FUTURE AGENDA ITEMS (Any items added under this section are for discussion at future meetings only.):

None.

LATE ITEMS: (Appropriate Findings to be Made)

None.

ADJOURNMENT:

The meeting was adjourned at 7:23 p.m.

Respectfully submitted,

Tim Bonita
Recording Secretary

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Plant 3A Pump Rehabilitation Services Amendment

February 27, 2020

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for the removal, rehabilitation, and reinstallation of four (4) RAS pumps to ensure reliable wastewater treatment is continuously provided. Amendments of up to 10% of the total contract value was also authorized.

DISCUSSION:

Between October and December 2019, two (2) of the existing RAS pumps were removed, refurbished, and reinstalled. However, upon removal and inspection of the remaining two (2) pumps, significant corrosion and deterioration of the parts and accessories of the pumps were identified, necessitating additional repairs that were not included in the original scope of services. The additional repairs include:

- Fabrication and installation of new enclosing tubes
- Fabrication and installation of new shaft coupling guards
- Fabrication, pump column machining, and installation of one (1) new impeller and bowl assembly

Staff requested a proposal for the completion of the identified repairs and received a quotation in the amount of \$13,327, which exceeds the previously approved contingency by \$4,281. Staff has reviewed the proposal and determined that the additional repairs are necessary and the costs are appropriate. As such, Staff is recommending the approval of Amendment No. 1 to the Plant 3A RAS Pump Refurbishment Services Agreement with Power Bros. Machine, Inc.

This project is part of the capital improvement program costs for the Plant 3A facility, of which Santa Margarita Water District's proportionate share is 28-percent.

Attachments:

1. Exhibit A - Location Map
2. Plant 3A RAS Pump Refurbishment Service Agreement
3. Amendment No. 1 to the Plant 3A RAS Pump Refurbishment Service Agreement



Path: C:\GIS\Projects\Projects_Ongoing\Capital Improvement\Project Exhibits\Larsen\Plant3A_RAS.mxd

Project Area

Project Area



0 50 100 200 Feet

Scale = 1:1,700

Exhibit "A" Location Map Plant 3A RAS Pump Refurbishment

**MOULTON NIGUEL WATER DISTRICT
PLANT 3A RAS PUMP REFURBISHMENT SERVICES AGREEMENT
BETWEEN MOULTON NIGUEL WATER DISTRICT AND
POWERS BROS. MACHINE, INC.
CONTRACT NO. 2019.303a**

1. PARTIES AND DATE.

This Agreement for Pump Refurbishment Services ("Agreement") is made and entered into this 16 day of September 2019 ("Effective Date"), by and between the **Moulton Niguel Water District**, ("District") and **Powers Bros. Machine, Inc.**, a corporation, with its principal place of business at 8100 Slauson Avenue, Montebello, CA 90640 ("Contractor"). District and Contractor are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Contractor.

Contractor desires to perform and assume responsibility for the provision of certain pump refurbishment services required by District on the terms and conditions set forth in this Agreement. Contractor represents that it is experienced in providing such services to public clients, is licensed in the State of California, and is familiar with the plans of District.

2.2 Project.

District desires to engage Contractor to render such services for Pump Refurbishment Services, Contract No. 2019.303a ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Contractor promises and agrees to furnish to District all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the services and advice on various issues affecting the decisions of District regarding the Project and on other programs and matters affecting District ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from the Effective Date to **March 31, 2020**, unless earlier terminated as provided herein.

3.2 Responsibilities of Contractor.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Contractor or under its supervision. Contractor will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. District retains Contractor on an independent contractor basis and not as an employee of District. Contractor retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Contractor shall also not be employees of District and shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Contractor shall perform the Services expeditiously, within the term of this Agreement, and at the times scheduled by District. Contractor represents that it has the skilled personnel required to perform the Services in conformance with such conditions. In order to facilitate Contractor's conformance with the Schedule, District shall respond to Contractor's submittals in a timely manner. Upon request of District, Contractor shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Contractor shall be subject to the approval of District.

3.2.4 Substitution of Key Personnel. Contractor has represented to District that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Contractor may substitute other personnel of at least equal competence and experience upon written approval of District. In the event that District and Contractor cannot agree as to the substitution of key personnel, District shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to District, or who are determined by District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by Contractor at the request of District.

3.2.5 District's Representative. District hereby designates its Director of Engineering, or his designee, to act as its representative for the performance of this Agreement ("District's Representative"). District's Representative shall have the power to act on behalf of District for all purposes under this Agreement. Contractor shall not accept direction or orders from any person other than District's Representative or his or her designee.

3.2.6 Contractor's Representative. Contractor hereby designates Kory Mikesell, or his designee, to act as its representative for the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent and act on behalf of Contractor for all purposes under this Agreement. Contractor's Representative shall

supervise and direct the Services, using his or her best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Contractor agrees to work closely with District staff in the performance of Services and shall be available to District's staff, consultants and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Contractor shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by contractors in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the calling necessary to perform the Services. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a business license, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Contractor shall perform, at its own cost and expense and without reimbursement from District, any services necessary to correct errors or omissions which are caused by Contractor's failure to comply with the standard of care provided for herein, and shall be fully responsible to District for all damages and other liabilities provided for in the indemnification provisions of this Agreement arising from the Contractor's errors and omissions.. Any employee of Contractor or its subcontractors who is determined by District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to District, shall be promptly removed from the Project by Contractor and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Services. If Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to District, Contractor shall be solely responsible for all costs arising therefrom. Contractor shall defend, indemnify and hold District, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.10 Insurance.

(a) Time for Compliance. Contractor shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Contractor, its agents, representatives, employees or subcontractors. Contractor shall not commence work under this Agreement until it has provided evidence satisfactory to District that it has secured all insurance required under this section. In addition, Contractor shall

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not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to District that the subcontractor has secured all insurance required under this section.

(b) Types of Required Coverages. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder and without limiting the indemnity provisions of the Agreement, Contractor in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement, the following policies of insurance.

(i) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as the latest version of the Insurance Services Office "occurrence" form CG 0001, with minimum limits of at least \$1,000,000 per occurrence. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or provisions limiting coverage for (1) products and completed operations; (2) contractual liability; (3) third party action over claims; or (4) cross liability exclusion for claims or suits by one insured against another.

(ii) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as the latest version of Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1) with minimum limits of \$1,000,000 each accident.

(iii) Workers' Compensation and Employer's Liability: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury and disease.

(iv) Contractors Pollution Liability: Contractors Pollution Liability Insurance covering all of Contractor's operations to include onsite and offsite coverage for bodily injury (including death and mental anguish), property damage, defense costs and cleanup costs with minimum limits of \$5 million per loss and \$10 million total all losses. Non-owned disposal site coverage shall be provided if handling, storing or generating hazardous materials or any material/substance otherwise regulated under environmental laws/regulations.

If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination or expiration of this Agreement.

(c) Endorsements.

(i) The policy or policies of insurance required by Section 3.2.10(b) (i) Commercial General Liability and (ii) Automobile Liability Insurance shall be endorsed to provide the following:

- (1) Additional Insured: District, its directors, members, officials, officers, employees and agents shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement. Endorsements shall be issued on a

combination of ISO CG 20 10 and CG 20 37 or exact equivalents. Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Contractor; or (4) contain any other exclusions contrary to the Agreement.

- (2) **Primary Insurance and Non-Contributing Insurance:** This insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the District, its directors, members, officials, officers, employees and agents shall not contribute with this primary insurance.
- (3) **Severability:** In the event of one insured, whether named or additional, incurs liability to any other of the insureds, whether named or additional, the policy shall cover the insured against whom claim is or may be made in the same manner as if separate policies had been issued to each insured, except that the limits of insurance shall not be increased thereby.
- (4) **Cancellation:** The policy shall not be canceled or the coverage suspended, voided, reduced or allowed to expire until a thirty (30) day prior written notice of cancellation has been served upon District except ten (10) days prior written notice shall be allowed for non-payment of premium.
- (5) **Waiver of Subrogation:** A waiver of subrogation stating that the insurer waives all rights of subrogation against the District, its directors, members, officials, officers, employees and agents.
- (6) **Duties:** Any failure by the named insured to comply with reporting provisions of the policy or breaches or violations of warranties shall not affect coverage provided to the District, its directors, members, officials, officers, employees and agents.
- (7) **Applicability:** That the coverage provided therein shall apply to the obligations assumed by Contractor under the indemnity provisions of the Agreement, unless the policy or policies contain a blanket form of contractual liability coverage.

(ii) The policy or policies of insurance required by Section 3.2.10(b) (iii) Workers' Compensation shall be endorsed, as follows:

- (1) **Waiver of Subrogation:** A waiver of subrogation stating that the insurer waives all rights of subrogation against the District, its directors, members, officials, officers, employees and agents.
- (2) **Cancellation:** The policy shall not be canceled or the coverage

suspended, voided, reduced or allowed to expire until a thirty (30) day prior written notice of cancellation has been served upon District except ten (10) days prior written notice shall be allowed for non-payment of premium.

(d) Deductible. Any deductible or self-insured retention must be approved in writing by District and shall protect the District, its directors, members, officials, officers, employees and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

(e) Evidence of Insurance. Contractor, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates and endorsements on forms approved by District. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15 days) prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with District. If such coverage is cancelled or reduced, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with District evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

(f) Failure to Maintain Coverage. Contractor agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to District. District shall have the right to withhold any payment due Contractor until Contractor has fully complied with the insurance provisions of this Agreement.

In the event that Contractor's operations are suspended for failure to maintain required insurance coverage, Contractor shall not be entitled to an extension of time for completion of the work because of production lost during suspension.

(g) Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A-:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

(h) Insurance for Subcontractors. Contractor shall be responsible for causing subcontractors to purchase the appropriate insurance in compliance with the terms of this Agreement, including adding District as an Additional Insured to the subcontractor's policies.

3.2.11 Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and lifesaving equipment and

procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.3 Fees and Payments.

3.3.1 Compensation. Contractor shall perform Services pursuant to this Agreement on a time and material basis, based on the rates set forth in Exhibit "A", attached hereto and incorporated herein by reference. The total compensation shall not exceed **Ninety Thousand Four Hundred Sixty-Four Dollars and Sixty-Eight Cents (\$90,464.68)** without written approval of District. Contractor is responsible for, and shall pay all sales, consumer, use, and other taxes in connection with materials for the Service.

3.3.2 Payment of Compensation. Upon completion of Services, or a distinct phase of services, Consultant shall submit to District an invoice for payment. District shall, within 30 days of receiving such Invoice, review and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Contractor shall not be reimbursed for any expenses unless authorized in writing by District.

3.3.4 Extra Work. At any time during the term of this Agreement, District may request that Contractor perform Extra Work. As used herein, "Extra Work" means any work which is determined by District to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Contractor shall not perform, nor be compensated for, Extra Work without written authorization from District's Representative.

3.3.5 California Labor Code Requirements

(a) Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. District shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold District, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Contractor and all subcontractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section

#6.

1777.5), certified payroll records (Labor Code Section 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Sections 1777.1).

(b) If the Services are being performed as part of an applicable “public works” or “maintenance” project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Contractor and all subcontractors performing such Services must be registered with the Department of Industrial Relations. Contractor shall maintain registration for the duration of the Project and require the same of any subcontractors, as applicable. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Contractor’s sole responsibility to comply with all applicable registration and labor compliance requirements.

3.4 Accounting Records.

3.4.1 Maintenance and Inspection. Contractor shall maintain complete and accurate records with respect to all costs and expenses incurred and fees charged under this Agreement. All such records shall be clearly identifiable. Contractor shall allow a representative of District during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.5 General Provisions.

3.5.1 Termination of Agreement.

(a) Grounds for Termination. District may, by written notice to Contractor, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Contractor of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Contractor shall be compensated only for those services which have been fully and adequately rendered to District through the effective date of the termination, and Contractor shall be entitled to no further compensation. Contractor may not terminate this Agreement except for cause.

(b) Effect of Termination. If this Agreement is terminated as provided herein, District may require Contractor to provide all finished or unfinished Documents and Data, as defined below, and other information of any kind prepared by Contractor in connection with the performance of Services under this Agreement. Contractor shall be required to provide such document and other information within fifteen (15) days of the request.

(c) Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, District may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Contractor:

Powers Bros. Machine, Inc.
8100 Slauson Avenue
Montebello, CA 90640
Attn: Kory Mikesell

District:

Moulton Niguel Water District
P.O. Box 30203
Laguna Niguel, CA 92607
Attn: Director of Engineering

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.3 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.4 Attorneys' Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and all costs of such action.

3.5.5 Indemnification. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold District, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged negligent acts, omissions or willful misconduct of Contractor, its officials, officers, employees, agents, subcontractors and subcontractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of all consequential damages, attorneys' fees and other related costs and expenses. Contractor shall defend, at Contractor's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against District, its directors, officials, officers, employees, agents or volunteers. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against District or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Contractor shall reimburse District and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs, including reasonable attorneys' fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by District or its directors, officials, officers, employees, agents or volunteers. Notwithstanding the foregoing, to the extent Contractor's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful

#6.

misconduct of the Contractor. This Section 3.5.5 shall survive any expiration or termination of this Agreement.

3.5.6 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be supplemented, amended or modified by a writing signed by both Parties.

3.5.7 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Orange County.

3.5.8 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.9 District's Right to Employ Other Contractors. District reserves the right to employ other Contractors in connection with this Project.

3.5.10 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.5.11 Assignment or Transfer. Contractor shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of District. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.12 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Contractor include all personnel, employees, agents, and subcontractors of Contractor, except as otherwise specified in this Agreement. All references to District include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.5.13 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.14 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.5.15 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.16 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.17 Prohibited Interests. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, District shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of District, during the term of his or her service with District, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.18 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Contractor shall also comply with all relevant provisions of any minority business enterprise program, affirmative action plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.5.19 Labor Certification. By its signature hereunder, Contractor certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5.20 Authority to Enter Agreement. Contractor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.21 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.5.22 Employment Adverse to District. Contractor shall notify District, and shall obtain District's written consent, prior to accepting work to assist with or participate in a third-party lawsuit or other legal or administrative proceeding against District during the term of this Agreement.

3.5.23 Conflict of Employment. Employment by Contractor of personnel currently on the payroll of District shall not be permitted in the performance of this Agreement, even though such employment may occur outside of the employee's regular working hours or on weekends, holidays or vacation time. Further, the employment by Contractor of personnel who have been on

Exhibit "A"

#6.

POWERS BROS. MACHINE, INC.
8100 Slauson Ave
Montebello, CA 90640

Scope of Work and Fees

Estimate

Phone # 323-728-2010

Fax # 323-728-5403

Date	Estimate #
8/6/2019	3236

Name / Address
Moulton Niguel Water District 26161 Gordon Rd. Laguna Hills, CA 92653 Contract No. OM18-19.013

Acct Mgr.
KM

Description	Total
Rebuild 4 pumps	
SIMFLO 1,400 GPM TDH 19.3" BOWEL MODEL SC6MF-1, COLUMN ASSY. 1-3/16" X 2" X 10" FLANGED WATER FLUSH COLUMN ASSEMBLY 316SS SHAFT. 304 BOLTS, FLUNDATIN PLATE FP-600 FABRICATED STEEL, DISHCARGE HEAD S-750 CAST IRON, SEAL TYPE WATER FLUSH PACKING ASSEMBLY WITH 416 SS SHAFT SLEEVE, IMP. DIA. 7.439", IMP. TYPE MIXED FLOW, SPECIAL BRONZE BOWL LINERS, CAST IRON IMPELLERS, MECHANICAL WORK TO DISASSEMBLE, REPLACE INTERNAL PARTS, INSPECT AND REASSEMBLE	23,880.52
REPLACE, LINE SHAFTS WITH 316SS PSQ, SHAFT COUPLINGS, SHAFT BUSHINGS, SS HARDWARE.	21,749.00
RECONDITION COLUMNS, FLANGES, ENCLOSING TUBES, IMPELLER, BOWL, SUCTION BELL, DISHCARGE PLATE	
COAT COLUMNS, TUBES, BOWLS, SUCTION BELOW, FOUNDATION PLATE, DISHCARGE HEAD WITH AMERLOCK 400	9,640.00
COAT IMPELLER WITH CERAMIC COATING	800.00
REPLACE MOTOR TEFC 10H.P./3 PH/60Hz/460 VOLTS	7,800.00
REPLACE PACKING WTH MECHANICAL SEAL	10,400.00
REMOVE AND REINSTALL WORKING ON 2 PUMPS AT A TIME (PREVAILING WAGES)	12,400.00
LEAD TIME 10-12 WEEKS TO REPAIR THE 4 PUMPS	

Terms: Quoted price does not include applicable taxes or environmental fees. Quote good for 30 days, payment terms are Net 30 on approved credit. There is a 2% fee on invoices paid with credit card. Shipping is F.O.B. Powers Bros. unless stated otherwise. For complete Terms and Conditions, please see www.PowersBros.com

Subtotal \$86,669.52

Sales Tax (9.5%) \$3,795.16

Total \$90,464.68

Wyatt Rias 323-797-0064
Powers Bros Machine Wyatt@Powersbros.com

**AMENDMENT NO. 1 TO THE SERVICES AGREEMENT
BETWEEN MOULTON NIGUEL WATER DISTRICT AND
POWERS BROS. MACHINE, INC. FOR
PLANT 3A RAS PUMP REFURBISHMENT
CONTRACT NO. 2019.303a**

This Amendment No. 1 (this "Amendment") is entered into and effective as of _____, 2020, amending the Services Agreement dated September 16, 2019 (the "Agreement"), by and between Moulton Niguel Water District ("MNWD"), and Powers Bros. Machine, Inc. ("Contractor") (collectively, the "Parties"). Any capitalized terms used but not defined herein shall have the meaning assigned to them in the Agreement.

RECITALS

A. WHEREAS, on September 16, 2019, the Parties entered into the Agreement for RAS pump refurbishment services through Match 31, 2020 for a total not-to-exceed amount of \$90,464.68; and

B. WHEREAS, the Parties desire to extend Agreement term until May 31, 2020; and

C. WHEREAS, the Parties desire to amend the Agreement's Scope of Services to be performed by Contractor under this Agreement and have negotiated and agreed to the Supplemental Scope of Services, attached hereto and incorporated herein by this reference as Exhibit "A".

NOW, THEREFORE, in consideration of these recitals and the mutual covenants contained herein, MNWD and Contractor agree as follows:

1. The term of the Agreement is hear by extended through May 31, 2020.
2. The Services to be provided by Contractor shall be revised to include the Services set forth in Exhibit "A" attached hereto and incorporated by this reference.
3. All payments and services associated with this Amendment shall not exceed \$13,326.52.
4. The Parties agree that the total Agreement amount, including this Amendment, shall not exceed One Hundred Three Thousand Seven Hundred Ninety-One Dollars and Twenty Cents (\$103,791.20).
5. All requisite insurance policies to be maintained by the Contractor pursuant to the Agreement will include coverage for this Amendment.
6. All other provisions of the Agreement will remain in full force and effect. In the event of any conflict or inconsistency between the Agreement and this Amendment, the terms of this Amendment shall control.
7. The individuals executing this Amendment and the instruments referenced in it on behalf of the Contractor each represent and warrant that they have the legal power, right and actual authority to bind Contractor to the terms and conditions of this Amendment.

-Signatures on following page-

#6.

MOULTON NIGUEL WATER DISTRICT:

By: _____

Printed Name: _____

Title: _____

Dated: _____

POWERS BROS. MACHINE, INC.:

By: _____
(Authorized Representative of
Contractor)

Printed Name: _____

Title: _____

Dated: _____

Exhibit A

#6.

Supplemental Scope of Services

POWERS BROS. MACHINE, INC.

8100 Slauson Ave
Montebello, CA 90640

323-728-2010 Phone
323-728-5403 Fax

Estimate	
Date	Estimate #
1/17/2020	3381

www.PowersBros.com
CSLB# 1021366

Name / Address
Moulton Niguel Water District 26161 Gordon Rd. Laguna Hills, CA 92653 Contract No. OM18-19.013

Acct. Mgr
WR

Description	Total
Simflo Repair For 3A Plant	0.00
4) Enclosing Tubes - Fabricate Four New Enclosing Tubes to Replace Corroded and Non-Functioning Enclosing Tubes. 1 Per Pump for a Total of 4 Pumps	5,000.00
16) Coupling Guards For Discharge Head - Fabricate 16 New Coupling Guards. 4 Per Pump for a Total of 4 Pumps	1,400.00
2) Repaint to Desert Sand- On-Site Repainting to Customers Specifications of Desert Sand on Two installed Simfo Rebuilds	700.00
2) Coating of Pumps to Desert Sand- Added Cost From Changing Paint from Standard White to Desert Sand	350.00
1) 9ZS (Stages: 1) Hydroflo bowl assembly, impeller 9ZS SS, 1500 gpm, at 20ft head, machine pump colum to adapt new bowl assembly	4,918.00

Terms: Quoted price does not include applicable taxes or environmental fees. Quote good for 30 days. Payment terms are Net 30 on approved credit. There is a 2% fee on invoices paid with credit card. Shipping is F.O.B. Powers Bros, unless stated otherwise. For complete Terms and Conditions, please see www.PowersBros.com.

Jessica Villagomez
Powers Bros. Machine
(323) 313-2490 mobile
Jessica@PowersBros.com

Subtotal	\$12,368.00
Sales Tax (7.75%)	\$958.52
Total	\$13,326.52

#7.

Delivery and Supply of Sodium Hypochlorite for Plant 3A

February 27, 2020

Page 2 of 2

process. It is also utilized to control bacteria that can impact plant processes. The amount of sodium hypochlorite consumed is based on the actual recycled water production at Plant 3A.

DISCUSSION:

In June 2019, the District was added to an agreement between South Orange County Wastewater Authority, Public Entities, and Olin for the delivery and supply of sodium hypochlorite to Plant 3A. The agreement has now expired; consequently, SOCWA staff has again solicited for sodium hypochlorite pricing to obtain the lowest possible price.

On November 7, 2019, the SOCWA Board of Directors approved the contract services agreement with Olin. The agreement was entered into and became effective on January 1, 2020. At Plant 3A, the anticipated annual expenditures for sodium hypochlorite are approximately \$50,000 based on current usage and contract pricing. Staff recommends approval to purchase sodium hypochlorite at the negotiated price under the contract services agreement between SOCWA, other public entities, and Olin for a two-year term with up to three annual renewals. This would require authorization for the General Manager or Assistant General Manager to execute the agreement.

Attachment: Contract Services Agreement Between the South Orange County Wastewater Authority and Other Public Entities and Provider for the Delivery and Supply of Sodium Hypochlorite to SOCWA Wastewater Treatment Facilities

**CONTRACT SERVICES AGREEMENT BETWEEN THE SOUTH ORANGE COUNTY
WASTEWATER AUTHORITY AND OTHER PUBLIC ENTITIES AND PROVIDER FOR THE
DELIVERY AND SUPPLY OF SODIUM HYPOCHLORITE TO SOCWA WASTEWATER
TREATMENT FACILITIES**

This Agreement is made and entered into this January 1, 2020 (“Effective Date”), between on the one hand, the South Orange County Wastewater Authority (“SOCWA”), Santa Margarita Water District (“SMWD”), Moulton Niguel Water District (“MNWD”), El Toro Water District (“ETWD”), City of San Clemente (“CSC”), Irvine Ranch Water District (IRWD), Trabuco Canyon Water District (TCWD), City of San Juan Capistrano, (CSJC) and, on the other hand, Olin Corporation (“PROVIDER”). For purposes of this Agreement, SOCWA, SMWD, MNWD, ETWD, CSC, IRWD, TCWD, CSJC are collectively referred to as “SOCWA Entities” and are individually referred to as an “Agency of the SOCWA Entities” or “Agency”. SOCWA Entities and PROVIDER may be referred to in this Agreement from time to time as “party” or “parties”.

RECITALS

WHEREAS, the SOCWA Entities desire to secure contract services to deliver and supply Sodium Hypochlorite for the referenced treatment facilities; and

WHEREAS, PROVIDER represents that it has the necessary equipment, facilities, permits, and skills required to perform the necessary contract services.

NOW, THEREFORE, SOCWA and PROVIDER agree as follows:

SECTION 1 PROVIDER’S Contracted SERVICES

1.1 PROVIDER will supply Sodium Hypochlorite to the facilities listed below meeting the Sodium Hypochlorite specifications and per ton price as found in Attachment 1.

South Orange County Wastewater Authority Facilities

- J.B. Latham Treatment Plant
34156 Del Obispo St.
Dana Point, CA 92629
- Coastal Treatment Plant
28303 Alicia Parkway
Laguna Niguel, CA 92677
- Regional Treatment Plant
29201 La Paz Road
Laguna Niguel, CA 92677

Santa Margarita Water District Facilities

- Chiquita WRF
28792 Ortega Highway
San Juan Capistrano, CA 92690
- Oso Creek WRP
27204 E. La Paz Road
Mission Viejo, CA 92690
- Nichols WRF
33608 Ortega Highway

San Juan Capistrano, CA 92690

Moulton Niguel Water District

- 26801 Camino Capistrano
Mission Viejo, CA 92691

City of San Clemente

- Water Reclamation Plant
380 Avenida Pico
San Clemente, CA 92672

El Toro Water District Facilities

- Water Recycling Plant
23542 Moulton Parkway
Laguna Hills, CA 92653
- R-6 Reservoir
24251 Los Aliso Blvd.
Lake Forest, CA 92630

Irvine Ranch Water District

- MWRP
3512 Michelson Dr.
Irvine, CA 92619
- LAWRP
22312 Muirlands
Lake Forest, CA 92630

Trabuco Canyon Water District

- Robinson Ranch WRP
21397 Heritage Dr.
Trabuco Canyon, CA 92679

City of San Juan Capistrano

- Ground Water Recovery Plant
32400 Paseo Adelanto
San Juan Capistrano, CA 92675

- 1.2 Provider represents and warrants that it is and will at all times during the performance of this Agreement remain aware of and comply with existing, revised, proposed, and new federal, State of California (“State”) and local rules and regulation (collectively, the “Regulation”) covering its activities in connection with the Contracted Services. Changes in Provider’s practices necessitated by any revision to such Regulations will be brought to the attention of the SOCWA Entities sufficiently in advance of implementation. The SOCWA Entities will not be responsible and have no duty to notify the Provider of any changes in Regulations regarding the operation or permitting of the Provider’s facility or equipment or Provider’s duties and obligations under this Agreement. Changes in any Regulations will not constitute justification for amendments to this Agreement or

any alteration or diminution in the duty and responsibility of Provider to provide the required services hereunder.

- 1.3 All equipment utilized in connection with Contracted Services shall be fully licensed by all applicable agencies to operate on the highways of the State and any other states as applicable. Provider shall be responsible for ensuring that all licenses are current. The Provider shall be fully responsible for the proper licensing and training of its personnel. Provider shall produce evidence that Provider has developed programs required under the Omnibus Transportation Employee Testing Act of 1991. Provider shall be required to complete a hazardous materials manifest(s) prior to the transportation of every load to SOCWA facilities.
- 1.4 The Provider shall be responsible for cleaning up and removing all trash, grease, oil and debris that is the result of the specified work. All of the Provider equipment shall be kept clean and shall maintain a neat appearance. Cleaning or servicing of equipment shall not be undertaken at any SOCWA Entities facilities except for emergency repairs. Any spills or discharge at the SOCWA Entities facilities resulting from Provider’s operation will be promptly cleaned up by Provider.
- 1.5 Provider hereby certifies in writing that, to the best of its knowledge, the Provider safety programs and related employee training meets or exceeds all applicable local, State and Federal regulatory requirements for:
 - Injury and Illness Prevention Program
 - Emergency Action Plan
 - Hazard Communication Program
 - Personal Protective Equipment
- 1.5.1 In addition, Provider must adhere to all aspects of SOCWA’s Safety Program whenever the Provider or Provider’s field personnel, including any subcontractors of Provider are performing work in and around SOCWA’s treatment facilities.

SECTION 2 TERM OF AGREEMENT

- 2.1 The term of this Agreement will be from the effective date as first written above until December 31, 2021. SOCWA may extend this Agreement for up to 3 annual periods beyond December 31, 2021 in one-year extension periods, not to exceed five (5) successive annual periods in total, SOCWA shall deliver notice of extension in writing for itself and any SOCWA Entities continuing participation. Price increases, if any, for the extension periods, will be negotiated to the satisfaction of both parties and will not occur at a frequency of more than once per year, coinciding with the anniversary date of the Effective Date. The extension must be agreed upon at least sixty (60) days prior to the termination of the Agreement unless otherwise waived by the Parties.

SECTION 3 COMPENSATION FOR SERVICES

- 3.1 (Compensation rates outlined in Attachment 2)

SECTION 4 PAYMENTS FOR SERVICE

- 4.1 Compensation will be billed by Provider per the SOCWA requested format and will be based upon the actual work performed during the designated time period. Invoices will include delivery date(s), location of delivery and shall be submitted to SOCWA Entities receiving deliveries as set forth in this Agreement. Each Agency of the SOCWA Entities, respectively, will make payment to Provider within thirty (30) calendar days of receipt and approval of the invoices by such Agency, provided all required documentation is attached to such invoices. Each Agency of the SOCWA

#7.

Entities agrees with the other Agencies of the SOCWA Entities that each shall be responsible for payment of the Contract Services provided by Provider to such Agency's facilities or plants.

To receive the timely payment of Providers' s invoices, send billings to:

For Contracted Services rendered for SOCWA Facilities:

email invoices to finance@socwa.com

or mail to: SOCWA
34156 Del Obispo Street
Dana Point, CA 92629
Attn: Accounts Payable

- Invoice MUST include a PO # for respective plant where delivery was made.
- SOCWA's Fiscal Year End is June 30th all invoices must be submitted for payment by the 15th of the previous month.

For Contracted Services rendered for SMWD Facilities:

Mail invoices to: SMWD - Accounts Payable
PO Box 7005
Mission Viejo, CA 92690-70

For Contracted Services rendered for MNWD Facilities:

Mail invoices to: MNWD - Accounts Payable
Attention: Purchasing Department
P.O. Box 30203
Laguna Niguel, CA 92607-0203

For Contracted Services rendered for ETWD Facilities:

Mail invoices to: ETWD-Accounts Payable
PO Box 4000
Laguna Hills, CA 92654

For services rendered for the City of San Clemente WRP Facility:

Mail invoices to: City of San Clemente-Attn: Accounts Payable
380 Avenida Pica, Bldg. N
San Clemente, CA 92672

For services rendered for the City of Irvine Ranch Water District Facility:

Mail invoices to: Irvine Ranch Water District
Attn: Accounts Payable
P.O. Box 57000
Irvine, CA 92619-7000

For services rendered for the City of San Juan Capistrano Facility:

Mail invoices to: City of San Juan Capistrano
Attn: Utilities Department
32400 Paseo Adelanto
San Juan Capistrano, CA 92675

Mail invoices to: Trabuco Canyon Water District
Attn: Accounts Payable
32003 Dove Canyon Dr.
Trabuco Canyon, CA 92679

- 4.2 Acceptance and payment by the Agency of the SOCWA Entities for Contracted Services furnished hereunder, will not in any way relieve the Provider of its responsibility to provide Contracted Services in strict accordance with Regulations. Neither an Agency of the SOCWA Entities acceptance of, nor payment for any Contracted Services will be construed to operate as a waiver of any rights an Agency may have under this Agreement or of any cause of action or claim arising out of the performance of this Agreement.

SECTION 5 TERMINATION OF AGREEMENT

- 5.1 If, during the term of this Agreement, SOCWA, SMWD, MNWD, ETWD, TCWD, CSC, IRWD, TCWD, or CSJC determines that Provider is not faithfully abiding by any term or condition contained herein, any (or all) such agencies (“Affected Agencies”) may notify Provider in writing of such defect or failure to perform. Such notice must allow Provider a ten (10) calendar day period thereafter in which to perform services or cure the deficiency related to the affected Agency’s specified facility within the specified period. After such 10-day period, if the Provider has not satisfactorily performed the services or cured the deficiency, this will constitute a breach of this Agreement, and the affected agency may terminate the Agreement as it applies to such affected Agency by written notice to Provider. At such time, the Provider will be entitled to the reasonable value of its Contracted Services performed from the beginning of the period in which the breach occurs, through the effective date of termination; which shall be offset by the affected Agency’s damages from such breach through the remaining term of the Agreement, including any agreed upon extensions. Notwithstanding this section 5.1, in no event will Provider be entitled to receive in excess of compensation as specified under Section 3 of this Agreement.

SECTION 6 LIABILITY

- 6.1 Provider is an independent contractor and not an employee of the SOCWA Entities. No permitted or required approval by any of the SOCWA Entities hereunder or in connection with Provider’s services will be construed as making the SOCWA Entities responsible for the manner in which Provider performs such Contracted Services. Such approvals are intended only to give the SOCWA Entities the right to satisfy themselves with the quality of Contracted Services performed by Provider.
- 6.2 Provider will indemnify, defend and hold harmless the SOCWA Entities, the member agencies of SOCWA (which include both Agency participants in this Agreement and other SOCWA Member Agencies, and each of their officers, directors, agents and employees (collectively and individually the “Indemnitees”), from and against all claims, demands, losses, damages, costs, expenses, and legal liability arising from, connected with, or resulting from or claimed to have arisen out of, in connection with or resulted from, Provider’s Contracted Services and work hereunder including (a)

bodily injury to or death of persons, and personal injury, including but not limited to, third parties and employees, directors and officers of the Indemnitees, Provider, and third parties, and damage or injury to natural resources (b) violation of any Regulations, including but not limited to strict liability imposed by Regulations; (c) and any other claims, demands, losses, damages, costs, expenses, attorneys' fees and liability connected with or arising from, or as a result of Provider's Contracted Services or work under this Agreement; excepting only such claims, losses, demands, damages, costs, expenses, attorneys' fees and liability caused by the sole negligence or willful misconduct of the indemnitees.

Provider Acknowledges that any claim, demands, losses, damages, costs, expenses, and legal liability that arise out or result from or are in any way connected with the release or spill of any hazardous material (as designated under the Regulations), by-Sodium Hypochlorite or residue as a result of the Contracted Services or work performed under this Agreement by Provider are expressly within the scope of this indemnity, and that the costs, expenses, and liability for (a) environmental investigations, monitoring, containment, abatement, removal, repair, cleanup, restoration and remedial work; (b) penalties and fines arising from the violation of the Regulations; and (c) attorneys' fees, disbursements and other response costs, are all expressly within the scope of this Indemnity.

Provider shall, on the Indemnitee's request, defend any action, claim or suit asserting a claim covered by this Indemnity clause. Provider shall pay all costs that may be incurred by the indemnitees in enforcing this indemnity, including reasonable attorney's fees. This indemnity obligation shall survive the termination of this Agreement by any party hereto.

- 6.2.1 SOCWA shall indemnify MNWD, SMWD, ETWD, CSC, IRWD, TCWD, and CSJC in their individual entity capacities and not as a member agency of SOCWA, and each of their respective officers, directors, employees and agents against, and shall hold and save them and each of them harmless from, and all actions, claims, damages to persons or property, penalties, obligations or liabilities of any kind that may be asserted or claimed by any person, firm, entity, corporation, political subdivision, governmental entity or agency or other organization arising out of or in connection with the negligence or willful misconduct of SOCWA in the performance of this Agreement.
- 6.2.2 SMWD shall indemnify SOCWA, and its member agencies (excluding SMWD), ETWD, IRWD, TCWD, CSJC and CSC and each of their respective officers, directors, employees and agents against, and shall hold and save them and each of them harmless from any and all actions, claims, damages to persons or property, penalties, obligations or liabilities of any kind that may be asserted or claimed by any person, firm, entity, corporation, political subdivision, governmental entity or agency or other organization arising out of or in connection with the negligence or willful misconduct of SMWD in the performance of this Agreement.
- 6.2.3 CSC shall indemnify SOCWA, and its member agencies (excluding CSC), ETWD, SMWD, IRWD, TCWD, CSJC and each of their respective officers, directors, employees and agents against, and shall hold and save them and each of them harmless from any and all actions, claims, damages to persons or property, penalties, obligations or liabilities of any kind that may be asserted or claimed by any person, firm, entity, corporation, political subdivision, governmental entity or agency or other organization arising out of or in connection with the negligence or willful misconduct of CSC in the performance of this Agreement.

- 6.2.4 ETWD shall indemnify SOCWA, and its member agencies (excluding ETWD), CSC, SMWD, IRWD, TCWD, and CSJC and each of their respective officers, directors, employees and agents against, and shall hold and save them and each of them harmless from any and all actions, claims, damages to persons or property, penalties, obligations or liabilities of any kind that may be asserted or claimed by any person, firm, entity, corporation, political subdivision, governmental entity or agency or other organization arising out of or in connection with the negligence or willful misconduct of ETWD in the performance of this Agreement.
- 6.2.5 MNWD shall indemnify SOCWA, and its member agencies (excluding MNWD), SMWD, ETWD, IRWD, TCWD, CSJC and CSC and each of their respective officers, directors, employees and agents against, and shall hold and save them and each of them harmless from any and all actions, claims, damages to persons or property, penalties, obligations or liabilities of any kind that may be asserted or claimed by any person, firm, entity, corporation, political subdivision, governmental entity or agency or other organization arising out of or in connection with the negligence or willful misconduct of SMWD in the performance of this Agreement.
- 6.2.6 IRWD shall indemnify SOCWA, and its member agencies (excluding IRWD), SMWD, ETWD, TCWD, CSJC, MNWD and CSC and each of their respective officers, directors, employees and agents against, and shall hold and save them and each of them harmless from any and all actions, claims, damages to persons or property, penalties, obligations or liabilities of any kind that may be asserted or claimed by any person, firm, entity, corporation, political subdivision, governmental entity or agency or other organization arising out of or in connection with the negligence or willful misconduct of SMWD in the performance of this Agreement.
- 6.2.7 TCWD shall indemnify SOCWA, and its member agencies (excluding TCWD), IRWD, CSJC, SMWD, ETWD, and CSC and each of their respective officers, directors, employees and agents against, and shall hold and save them and each of them harmless from any and all actions, claims, damages to persons or property, penalties, obligations or liabilities of any kind that may be asserted or claimed by any person, firm, entity, corporation, political subdivision, governmental entity or agency or other organization arising out of or in connection with the negligence or willful misconduct of SMWD in the performance of this Agreement.
- 6.2.8 CSJC shall indemnify SOCWA, and its member agencies (excluding CSJC), IRWD, TCWD, SMWD, ETWD, and CSC and each of their respective officers, directors, employees and agents against, and shall hold and save them and each of them harmless from any and all actions, claims, damages to persons or property, penalties, obligations or liabilities of any kind that may be asserted or claimed by any person, firm, entity, corporation, political subdivision, governmental entity or agency or other organization arising out of or in connection with the negligence or willful misconduct of SMWD in the performance of this Agreement.

SECTION 7 INSURANCE

- 7.1 In addition to the requirements set forth below in this Section 7, during the course of the Agreement, Provider will pay for and maintain, in full force and effect, all insurance required by any governmental agency having jurisdiction to require particular insurance of Provider in connection with or related to the services covered under this Agreement.
- 7.2 Provider will furnish satisfactory proof by certificate or otherwise as may be required by the SOCWA Entities that it has taken out public or commercial liability and property damage insurance naming the SOCWA, its member agencies, MNWD, ETWD, SMWD, IRWD, TCWD, CSJC and

#7.

CSC, and each of their directors, officers, agents and employees as additional insureds under such policies, in accordance with the terms of this Agreement (see Section 7.5). Provider shall furnish each individual Agency of the SOCWA Entities herein with certificates of insurance naming each such individual Agency as an additional insured.

7.3 The insurance will be comprehensive in form and cover all indemnity and other contractual obligations set forth in this Agreement, and will insure against (1) claims, loss or damages on account of bodily injury and personal injury, including death resulting therefrom, caused or alleged to have been caused directly or indirectly from the performance or execution of this Agreement or performance of Contracted Services hereunder by Provider, its employees, officers, agents and (2) claims, loss or damages to any property caused or alleged to have been caused directly or indirectly by the performance or execution of the Agreement or performance of the Contracted Services hereunder by Provider, its employees, officers and agents and any subcontractor thereof. Such insurance will also adequately insure against all injury, death, claims, loss, damage or accidents caused by or alleged to have been caused directly or indirectly by the use and operation of automobiles, trucks and/or other mobile or stationary equipment. Provider will maintain worker's compensation insurance, including occupational disease provisions, under the laws of the State or other state (as applicable) and employer's liability insurance for the benefit of its employees. All said public or commercial liability and auto liability and other insurance will be for the period of performance under this Agreement and shall be on a per occurrence basis and any and all aggregate amounts, if applicable, must be stated in the certificates provided hereunder. The amounts of coverage of said insurance will not be less than the following:

INSURANCE COVERAGE	AMOUNT PER OCCURRENCE	Aggregate
General Liability- Bodily, Personal Injury; Property Damage	\$3,000,000	\$5,000,000
Auto Liability – Bodily, Personal Injury; Property Damage	1,000,000	\$5,000,000
Employers Liability -- Bodily Injury by Accident	1,000,000	\$5,000,000
Employers Liability – Bodily Injury by Disease	1,000,000	\$5,000,000

7.4 Said policies will have a clause providing that thirty (30) calendar days written notice by registered mail will be given to the SOCWA Entities proper to any cancellation or amendment to such policies, Such insurance will be issued and underwritten by insurance companies having at least an A- policyholders rating and financial rating not less than Class VII in accordance with the most current Best's Rating Guide. The insurance companies shall be admitted and licensed to do business in the State and have an agent for service of process in the State. Provider may satisfy the limit requirements 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 Provider's first or primary policy. All policies of insurance and certificates of insurance showing

compliance with the terms of this Section 7 will be furnished to each Agency of the SOCWA Entities concurrently with Provider’s execution of this Agreement and upon renewal thereafter.

- 7.5 All of the above policies of insurance shall be primary insurance and shall name “SOCWA, and its member agencies, including but not limited to MNWD, SMWD, MNWD, ETWD, CSC, IRWD, TCWD, and CSJC and each of their officers, employees, directors and agents” as additional insureds (the Additional Insureds) by endorsements. The insurer shall waive all rights of subrogation and contribution it may have against the Additional Insureds and their respective insurers and the certificates of insurance shall set forth the waiver of subrogation by separate endorsement as necessary. In the event any of said policies or insurance are canceled, Provider shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section 7 to each Agency. No work or services under this Agreement shall commence until Provider has provided the SOCWA Entities with certificates of insurance and endorsements and said certificates of insurance and endorsements are approved by the SOCWA Entities.
- 7.6 In the event Provider subcontracts any portion of the services under this Agreement, the contract between Provider and such subcontractor shall require the subcontractor to maintain the same policies of insurance that Provider is required to maintain pursuant to this Section 7, and to name the Additional insureds under the policies identified above, in accordance with all of the requirements of this Section 7.
- 7.7 Nothing in the insurance requirements set forth in this Agreement is to be construed as limiting the liability of Provider or Provider’s insurers. Provider agrees that the provisions of Section 7 shall not be construed as limiting in any way the extent to which Provider may be held responsible for the payment of damages or other costs to the SOCWA Entities or to SOCWA members agencies, or any persons or property, resulting from Provider’s activities or the activities of any person or persons for which Provider is otherwise responsible including Provider’s subcontractors.

SECTION 8 ADDITIONAL PROVISIONS

8.1 This Agreement represents the entire understanding of the SOCWA Entities and Provider as to those matters contained herein. No prior oral or written understanding will be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing signed by all parties. Provider represents and warrants that its Authorized representative, SOCWA’s General Manager or his/her designee has been duly and validly authorized to enter into this Agreement. Any notice required or permitted to be given hereunder in not otherwise specified herein may be given or delivered by depositing the same in the United States Post Office, registered or certified, postage prepaid, or by personal service a hand delivery, and addressed to:

To SOCWA:	Jeanette Cotinola, Contracts Administrator 34156 Del Obispo St. Dana Point, CA 92629 949-234-5430
To Provider:	Olin Corporation Attn: John Schabacker 26700 So. Banta Rd. Tracy, CA95304

- 8.2 The Provider shall not assign this Agreement, nor any part thereof, nor any monies due, or to become due hereunder, without prior written consent of the SOCWA Entities. Any assignment by the Provider without the SOCWA Entities' approval shall be cause for termination of this Agreement at the sole option of the SOCWA Entities. In no event shall any contractual relationship be created between any third party and the SOCWA Entities.
- 8.3 In the event an action is filed by either party to enforce any rights or obligations under this Agreement, the prevailing party will be entitled to recover all attorney's fees and court costs, in addition to any other relief granted by the Court.
- 8.4 The provisions of this Agreement will be interpreted and enforced in accordance with the laws of the State of California.
- 8.5 Each Agency of the SOCWA Entities acknowledges and agrees with the other Agency of the SOCWA Entities that this Agreement is not intended to establish a joint exercise of powers arrangement under and pursuant to laws of the State with respect to the contractual matters hereunder among such agencies; further, MNWD, SMWD, ETWD, IRWD, TCWD, CSJC and CSC each agree that the existing joint powers agreement establishing SOCWA and the joint powers arrangements established pursuant to that agreement, have no bearing or effect on this Agreement and the application thereof to the MNWD facilities, SMWD facilities, ETWD facilities, IRWD facilities, TCWD facilities, CSJC facilities or the SCS WRP.
- 8.6 This Agreement may be executed in counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed the day and year first above written.

SOUTH ORANGE COUNTY WASTEWATER AUTHORITY

BY: _____

DATE: _____

Betty Burnett; GENERAL MANAGER

APPROVED AS TO FORM:

PROCOPIO, CORY, HARGREAVES & SAVITCH LLP

Legal Counsel -SOCWA

BY: _____

DATE: _____

Gregory V. Moser, Partner

SANTA MARGARITA WATER DISTRICT

BY: _____

DATE: _____

GENERAL MANAGER

MOULTON NIGUEL WATER DISTRICT

BY: _____

DATE: _____

GENERAL MANAGER

CITY OF SAN CLEMENTE

BY: _____

DATE: _____

GENERAL MANAGER

EL TORO WATER DISTRICT

BY: _____

DATE: _____

GENERAL MANAGER

TRABUCO CANYON WATER DISTRICT

BY: _____

DATE: _____

GENERAL MANAGER

IRVINE RANCH WATER DISTRICT

BY: _____

DATE: _____

GENERAL MANAGER

CITY OF SAN JUAN CAPISTRANO

BY: _____

DATE: _____

TITLE: _____

OLIN CORPORATION, INC

BY: _____

DATE: _____

TITLE: _____

#7.

Attachment 1

Characteristics	Units	Min	Max
Sodium Hypochlorite, NaOCl	wt%	12.5	15.6
Available Chlorine	wt%	11.9	14.8
Total Alkalinity ¹	wt%	0.1	1.5
Chlorate (12.5% Basis) ²	ppm	N/A	3,570
Bromate (12.5% Basis) ²	ppm	N/A	39
Insolubles ¹	wt%	N/A	0.15
Iron, Fe	ppm	N/A	1.5
Nickel, Ni	ppm	N/A	0.1
Copper, Cu	ppm	N/A	0.1
Cobalt, Co	ppm	N/A	0.1

1 – Limit set to meet ANSI/AWWA B300-18 2 –
Limit set to meet NSF/ANSI Standard 60

Meets the Following

ANSI/AWWA B300-18

EPA Pesticide Registration

NSF/ANSI Standard 60 Certification

Olin Document Information

<u>Specification No:</u> NaOCl-S4	<u>Revision:</u> 2	<u>Issue Date:</u> 3/18/2019	<u>Supersedes:</u> 10/28/2014	<u>Review Date:</u> 3/18/2024	<u>Sheet No.:</u> 1 of 1
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Attachment 2

Compensation Rates -Sodium Hypochlorite

All facilities

Sodium Hypochlorite at the following:

Volume	\$/Gallon
(501-1000 gals)	\$1.297
(1001-2000 gals)	\$1.067
(2001-3000 gals)	\$0.897
(3001-4000 gals)	\$0.797
(>4500 gals)	\$0.670

- Plus, all applicable state and local fees and taxes including applicable charges for split load deliveries of \$75/stop.
- Rates effective 1/1/2020 to 12/31/21
- Up to three (3) optional annual renewals.

Thereafter subject to market adjustment based on prior negotiations and agreement between SOCWA Entities and Provider.

Attachment 3

**SPECIFICATIONS FOR
FURNISHING AND DELIVERING SODIUM HYPOCHLORITE****1.0 GENERAL**

It is estimated that SOCWA will require an annual quantity of approximately 380,000 gallons of Sodium Hypochlorite. However, no representation is made as to the total quantity that will be used during this period. This Sodium Hypochlorite will be used for controlling sulfides in the digester gas, although the Owners reserve the right to use it for other applications. Present projections indicate Sodium Hypochlorite will be required on a fairly uniform basis throughout the supply period, but no assurances for this are given.

2. DELIVERY

Deliveries can be accepted Monday through Friday between 7:00 AM and 3:00 PM.

Deliveries shall be 5,000 gallons or less by tank truck for discharge to a bulk storage tank. All transportation equipment shall be thoroughly cleaned, and free from scale and other foreign matter. All truck connecting piping and valves shall be inspected before shipment and shall be in proper operating condition upon delivery. Defective tank trucks from which Sodium Hypochlorite cannot be withdrawn will be rejected and returned at the manufacturer's expense. Provider shall inspect the storage and transfer facilities to ensure compatibility with trucks prior to commencing delivery.

All Sodium Hypochlorite shall be delivered within five (5) working days of the request. If the supplier is unable to deliver a requested quantity within the terms stated above, the Owners may purchase on the open market such additional Sodium Hypochlorite that might be necessary for their use and consumption. If the cost of the Sodium Hypochlorite procured results in increased operating costs, Provider shall be responsible for the difference in costs.

Each shipment of Sodium Hypochlorite delivered shall have a certified weight statement included with the delivery.

4. HOUSEKEEPING AND SPILLS

The Contractor shall be responsible to cleanup and remove all trash, grease, oil and debris that are the result of Contracted Services. The Provider will be responsible for the removal, disposal, cleaning, transportation, labor and other costs associated with the Contracted Services that does not meet acceptable performance criteria as determined by SOCWA Entities.

#8.

La Paz Creek Vegetation Management Contract Amendment

February 27, 2020

Page 2 of 2

period was a requirement of the Streambed Alteration Agreement with the California Department of Fish & Wildlife.

The initial clearing of non-native vegetation and debris occurred in February 2017. However, in December of 2017, due to limited rainfall, the re-growth of native species was insufficient, and additional plantings and seeding were deemed necessary. A proposal for this additional work was requested, and the contract was amended by an amount of \$8,750, which was within the Board-approved contingency amount of \$15,250 (10% of original contract amount).

DISCUSSION:

At this time, further seeding has been determined to be necessary to meet the regrowth requirements of the Streambed Alteration Agreement. HRS has submitted a proposal in the amount of \$12,000 to purchase, spread, and incorporate additional native plant seeds. This would exceed the previously Board-approved contingency amount.

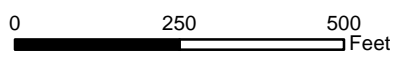
Staff has reviewed the proposal and determined that the additional work is necessary and the costs are appropriate. Therefore, Staff is recommending approval of an additional not-to-exceed contingency to allow HRS to perform this work and potential future work.

This project is part of the capital improvement program costs for the Plant 3A facility, of which Santa Margarita Water District's proportionate share is 28-percent.

Attachments: Exhibit A - Location Map



Path\GIS\Projects\Projects_Ongoing\Captial Improvement\Project Exhibits\Larsen\La Paz\Crk\Vegetation\mgt.mxd



Scale = 1:3,500

**Exhibit "A" Location Map
La Paz Creek Vegetation
Management Amendment
Contract No. 2016.016**

RESOLUTION NO. 20-___

**RESOLUTION OF THE BOARD OF DIRECTORS OF
MOULTON NIGUEL WATER DISTRICT
HONORING SGT. JACK SONGER FOR SERVICE
TO THE CITY OF LAGUNA NIGUEL**

WHEREAS, Sgt. Jack Songer retired as Administrative Sergeant for the City of Laguna Niguel after 31 years of dedicated service to the Orange County Sheriff's Department; and

WHEREAS, Sgt. Jack Songer's dedication to crime prevention is evidenced by Laguna Niguel's consistent high rankings in overall safety through programs, including Neighborhood Watch, You Are Not Alone Program (Y.A.N.A.) and Crime Prevention Workshops; and

WHEREAS, Sgt. Jack Songer during his tenure provided leadership to enhance communication and coordination between Moulton Niguel Water District, the Sheriff's Department and the community of Laguna Niguel; and

WHEREAS, Sgt. Jack Songer actively contributed to the law enforcement community as a member of the Association of Orange County Deputy Sheriffs since 1991; and

WHEREAS, prior to his tenure with Laguna Niguel, Sgt. Jack Songer through his service contributed to the quality of life in other South Orange County communities in Moulton Niguel's service area, including the cities of Mission Viejo and Aliso Viejo; and

WHEREAS, Sgt. Jack Songer partnered with the Laguna Niguel Chamber of Commerce, to provide public safety education to the business community as part of the "Business Watch" program; and

WHEREAS, Sgt. Jack Songer served in the United States Marine Corps, once having the distinction of being assigned to protect President Ronald Reagan on a trip to the Great Wall of China; and

NOW, THEREFORE, BE IT RESOLVED: The Board of Directors of Moulton Niguel Water District wishes to honor Sgt. Jack Songer for his outstanding contributions and dedication to the City of Laguna Niguel and the Moulton Niguel Water District, his exemplary leadership during his tenure in the Sheriff's Department, and for his devoted service to keeping all residents in Orange County safe.

#11.

ADOPTED, SIGNED AND APPROVED this 27th day of February, 2020.

President
MOULTON NIGUEL WATER DISTRICT
and of the Board of Directors thereof

Secretary
MOULTON NIGUEL WATER DISTRICT
and of the Board of Directors thereof



moulton niguel water district

STAFF REPORT

TO: Board of Directors **MEETING DATE:** February 27, 2020
FROM: Gina Hillary, Director of Human Resources
SUBJECT: Deferred Compensation Retirement Plans and Advisory Services

SUMMARY:

Issue: Board action is required to adopt amended and restated 457(b) and 401(a) Plan & Trust documents, to change the Plan record keeper, and to engage in advisory services with Morgan Stanley.

Recommendation: It is recommended that the Board of Directors:

1. Approve resolution entitled, "Adopting an Amended and Restated 457(b) Deferred Compensation Plan & Trust;
2. Approve resolution entitled, "Adopting an Amended and Restated 401(a) Plan & Trust;
3. Change the 457(b) and 401(a) record keeper to Lincoln Alliance;
4. Engage the services of Morgan Stanley to act as 3(21) Fiduciary Investment Advisor for both Plans; and,
5. Authorize the General Manager or Director of Human Resources to execute all required documents.

Fiscal Impact: The District will realize a savings of approximately \$4,000 per year in administrative fees associated with the current 401(a) Plan.

Reviewed by Committee: Provided as an informational item to the Administrative Committee on November 6, 2019 and February 5, 2020.

Reviewed by Legal: Yes

BACKGROUND:

In 1982, the Board of Directors established the Moulton Niguel Water District 457(b) Deferred Compensation Plan & Trust to allow employees to defer income until retirement. Enrollment in the Plan has always been voluntary, and all contributions

#12.

Deferred Compensation Retirement Plans and Advisory Services

February 27, 2020

Page 2 of 3

are made by the employee through payroll deductions. The current record keeper for the 457(b) Plan is Nationwide Retirement Solutions.

In 2001, the Board of Directors established the Moulton Niguel Water District 401(a) Plan & Trust to provide a matching contribution of up to 2% of an employee's base compensation into the Plan provided the employee contributes at least that much into the 457(b) Plan. The current record keeper for the 401(a) Plan is Lincoln Financial Group.

One of the strategic goals for the District for Fiscal Year 2019-20 was to review our Deferred Compensation plans to evaluate opportunities to reduce participation costs for the District and plan participants while enhancing services.

DISCUSSION:

Staff worked with Erik Tappin, a Financial Advisor with Morgan Stanley who specializes in government agency retirement plans, to evaluate the 457(b) and 401(a) Plans. Mr. Tappin issued a request for proposals (RFP) to compare asset fees, fund fees and fixed account interest rates of other 457(b) and 401(a) record keepers. We received eight responses to the RFP. A thorough evaluation of the responses was conducted, and staff determined that the Lincoln Financial Group offered the lowest fees with the best fixed account interest rate.

Staff also recognized that the District needs regular guidance and evaluation of the 457(b) and 401(a) investment policies, fund identification, performance evaluation, and assistance with a review of Plan expenses as they relate to the services provided. In addition, employees could benefit from access to regular investment education in order to reach their retirement goals, which is not currently available. Staff is recommending engaging with Morgan Stanley to provide these services.

Based on the overall assessment, staff recommends the District:

- I. Adopt amended and restated 457(b) and 401(a) Plan & Trust documents to ensure compliance with IRS regulations. The 457(b) Plan document was last updated in 2011 and the 401(a) Plan document was last updated in 2015.
- II. Change the record keeper for our 457(b) Plan from Nationwide to Lincoln Alliance and change our 401(a) Plan from the Lincoln Director to the Lincoln Alliance platform. Lincoln is the preferred provider for the following reasons:
 - Asset and fund fees paid by participants will be reduced from 1.19% to .70% of account balance.
 - The fixed account interest rate is 3% in year 1, 2.5% in years 2 and 3, with a minimum of 1.7% after that. With regular employee education, we are confident that employees will be more comfortable with investing their savings in funds that have the potential for a higher rate of return.

Deferred Compensation Retirement Plans and Advisory Services

February 27, 2020

Page 3 of 3

- Participants and District staff are familiar with Lincoln. We have worked with their client support team in the past and believe they are well-qualified to perform the record keeping services. The Lincoln Alliance platform will give access to a more robust website and user-friendly interface where employees can view and take action on their 457(b) and/or 401(a) accounts. In addition, participants will get one statement that includes information on both accounts.
- III. Engage the services of Morgan Stanley to assume the role of a 3(21) Fiduciary Investment Advisor and employee educator. As a Fiduciary Investment Advisor, Morgan Stanley will ensure investments are diversified to minimize risk, select and monitor plan investments, evaluate the reasonableness of fees paid from the plan, review the plan record keeper's performance, and keep a record of the District's prudent process. In addition, Morgan Stanley will provide employee education through regular quarterly and one-on-one meetings as needed.

Overall, participants will collectively save in excess of \$70,000 in fees per year with the added benefit of having access to financial education. There would be no additional cost to the District for changing the record keeper for the Plans and for offering employee education.

Best Best & Krieger has reviewed the 457(b) and 401(a) Plan & Trust documents, the Morgan Stanley Institutional Consulting Agreements, and other relevant documents related to this recommendation and have determined that they are legally sufficient under state and federal law and can be adopted in their current form.

With the approval of the Board of Directors, staff will proceed with the transition by executing all required documents and notifying plan participants. It is expected that the transition could be completed by April, 2020.

Attachments:

1. Resolution No. 20-XX, Adopting an Amended and Restated 457(b) Deferred Compensation Plan & Trust
2. Resolution No. 20-XX, Adopting an Amended and Restated 401(a) Plan & Trust
3. Morgan Stanley Smith Barney LLC, Institutional Consulting Agreement for the 457(b) and 401(a) Plans

RESOLUTION NO. 20-_____

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE
MOULTON NIGUEL WATER DISTRICT
ADOPTING AN AMENDED AND RESTATED
457(b) DEFERRED COMPENSATION PLAN & TRUST**

WHEREAS, the Board of Directors of the Moulton Niguel Water District (“District”) previously adopted Resolution No. 01-42 on December 20, 2001, which resolution approved the current 457(b) Deferred Compensation Plan & Trust (“457(b) Plan & Trust”); and,

WHEREAS, the District employs employees who are and will be rendering valuable services to the District. As a result, the District established the 457(b) Plan for said employees who may desire to defer income until retirement for the purpose of deferring federal and state income taxes on said income;

WHEREAS, the Board of Directors desires to amend and restate the 457(b) Plan & Trust in order to implement certain updates.

NOW, THEREFORE, the Board of Directors of Moulton Niguel Water District does hereby **RESOLVE, DETERMINE** and **ORDER** as follows:

Section 1. In order to update the 457(b) Plan & Trust, the Board of Directors hereby establishes, approves and adopts for its employees the Moulton Niguel Water District 457(b) Governmental Deferred Compensation Plan Document attached hereto as Exhibit A and the Governmental 457(b) Trust Agreement attached hereto as Exhibit B and incorporated herein by reference. The updated 457(b) Plan & Trust shall be effective as of April 15, 2020 and shall remain in effect unless or until amended or terminated by further action of the Board of Directors.

Section 2. Resolution 01-42, dated December 20, 2001, which established the original/current 457(b) Plan & Trust, and any amendments thereto, shall be deemed to be superseded and of no further force or effect as of the effective date of the updated 457(b) Plan & Trust, which is April 15, 2020.

Section 3. If any section, subsection, clause or phrase in this Resolution is for any reason held invalid, the validity of the remainder of this Resolution shall not be affected thereby. The Board hereby declares that it would have passed this Resolution and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases or the application thereof be held invalid.

Section 4. This Resolution shall be effective as of the date of adoption and the updated 457(b) Plan & Trust shall be effective as of April 15, 2020.

#12.

Section 5. The Recitals set forth above are incorporated herein and made an operative part of this Resolution.

ADOPTED, SIGNED and APPROVED this 27th day of February, 2020.

MOULTON NIGUEL WATER DISTRICT

By _____
President/Vice President
MOULTON NIGUEL WATER DISTRICT
and the Board of Directors thereof

By _____
Secretary/Assistant Secretary
MOULTON NIGUEL WATER DISTRICT
and the Board of Directors thereof



EXHIBIT A

Moulton Niguel Water District 457(b) Plan & Trust

Effective Date of This Document April 15, 2020

**The Lincoln National Life Insurance Company
1300 South Clinton Street
PO Box 2340
Fort Wayne, Indiana 46802
Phone 800-4LINCOLN**

Specimen 457(b) Plan Document
Deferred Compensation Plan

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457(b) PLAN DOCUMENT

DEFERRED COMPENSATION PLAN

PREAMBLE

Adoption of Plan

The Moulton Niguel Water District 457(b) Plan & Trust (hereinafter "the Plan"), an eligible deferred compensation plan within the meaning of Section 457(b) of the Internal Revenue Code of 1986, as amended (hereinafter the "Code"), of a State or local government as described in Code Section 457(e)(1)(A), that meets the requirements of Code Section 401(a)(37), originally adopted by Moulton Niguel Water District (hereinafter the "Employer") effective June 30, 2011 and hereby amended effective as of April 15, 2020.

Purpose of Plan

The primary purpose of this Plan is to permit Employees of the Employer to enter into an agreement which will provide for deferral of payment of a portion of his or her current compensation until death, retirement, Severance from Employment, or other event, in accordance with the provisions of the Code Section 457(b), with other applicable provisions of the Code, and in accordance with the General Statutes of the State.

Status of Plan

It is intended that the Plan shall qualify as an eligible deferred compensation plan within the meaning of Code Section 457(b) sponsored by an eligible employer within the meaning of Code Section 457(e)(1)(A), i.e., a State, political subdivision of a State, or agency or instrumentality of a State or political subdivision of a State.

Tax Consequences of Plan

The Employer does not and cannot represent or guarantee that any particular federal or State income, payroll, or other tax consequence will occur by reason of participation in this Plan. A Participant should consult with his or her own counsel or other representative regarding all tax or other consequences of participation in this Plan.

SECTION I DEFINITIONS

1.1 Plan Definitions

For purposes of this Plan, the following words and phrases have the meaning set forth below, unless a different meaning is plainly required by the context:

An "**Account Balance**" means the bookkeeping account maintained with respect to each Participant which reflects the value of the deferred Compensation credited to the Participant, including the Participant's Annual Deferrals, the earnings or loss of the Trust Fund (net of Trust Fund expenses) allocable to the Participant, any transfers for the Participant's benefit, and any distribution made to the Participant or the Participant's Beneficiary. If a Participant has more than one Beneficiary at the time of the Participant's death, then a separate Account Balance shall be maintained for each Beneficiary. The Account Balance includes any account established under Section VII for rollover contributions and plan-to-plan transfers made for a Participant, the account established for a Beneficiary after a Participant's death, and any account or accounts established for an alternate payee (as defined in Code Section 414(p)(8)).

The "**Administrator**" means the Employer. The term Administrator includes any person or persons, committee, or organization appointed by the Employer to administer the Plan.

An "**Annual Deferral**" means the amount of Compensation deferred in any calendar year.

The "**Beneficiary**" of a Participant means the person or persons (or, if none, the Participant's surviving spouse, or if the Participant has no surviving spouse, the Participant's surviving children in equal shares, or if there are no surviving children, the Participant's estate) who is entitled under the provisions of the Plan to receive a distribution in the event the Participant dies before receiving distribution of his or her entire interest under the Plan. If a married Participant designates his or her spouse as Beneficiary under the Plan, such designation shall automatically become null and void as of the date of any final divorce or similar decree or order; except that the Participant may re-designate such former spouse as his or her Beneficiary after the date of the final decree or order.

The "**Code**" means the Internal Revenue Code of 1986, as now in effect or as hereafter amended from time to time. Reference to a Code Section includes such section and any comparable section or sections of any future legislation that amends, supplements, or supersedes such section.

The "**Compensation**" of a Participant means all cash compensation for services to the Employer that is includible in the Employee's gross income for the calendar year, including, as applicable, compensation attributable to services as an independent contractor, plus amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under Code Section 125, 132(f), 401(k), 403(b), or 457(b) (including an election to defer compensation under Section II).

#12.

Any payments described below made to a Participant after a Severance from Employment shall qualify as Compensation for purposes of the Plan, but only if the payments are made by the later of (a) the end of the calendar year in which the Severance from Employment occurred or (b) within 2 ½ months of such Severance from Employment:

- (a) Compensation that, absent a Severance from Employment, would have been paid to the Participant while the Participant continued in employment with the Employer, but only if such payments constitute regular compensation for services during the Participant's regular working hours, compensation for services outside the Participant's regular working hours (such as overtime or a shift differential), commissions, bonuses or other similar payments that would otherwise be included in determining Compensation under the Plan.
- (b) Payments for accrued bona fide sick, vacation or other leave, but only if the Participant would have been able to use the leave if employment had continued.

Any payment that is not described above shall not be considered Compensation if it is paid after the date of the Participant's Severance from Employment, even if it is paid within 2 ½ months of such date. Thus, for example, Compensation does not include severance pay.

For years beginning after December 31, 2008, (a) a Participant receiving a differential wage payment, as defined by Code Section 3401(h)(2), by reason of qualified military service (within the meaning of Code Section 414(u)), is treated as an Employee of the Employer making the payment and (b) the differential wage payment is treated as Compensation.

An "**Employee**" means each natural person who is employed by the Employer as a common law employee on a full time basis; provided, however, that the term Employee shall not include a leased employee or any employee who is included in a unit of employees covered by a collective bargaining agreement that does not specifically provide for participation in the Plan. Notwithstanding the foregoing, the term Employee shall only include the following specific individuals or persons in the following specified job classes: all Employees except Employees designated as temporary, part-time, interns, and independent contractors.

Any individual who is not treated by the Employer as a common law employee of the Employer shall be excluded from Plan participation even if a court or administrative agency determines that such individual is a common law employee of the Employer, unless the Employer has included the individual in Plan participation as an independent contractor.

An "**Employer**" means the eligible employer (within the meaning of Code Section 457(e)(1)) that has adopted the Plan. In the case of an eligible employer that is an agency or instrumentality of a political subdivision of a State within the meaning of Code Section 457(e)(1)(A), the term Employer shall include any other agency or instrumentality of the same political subdivision that has adopted the Plan.

An "**Employer Contribution**" means Annual Deferrals made to the Account Balance of a Participant by the Employer on a non-elective basis.

"Includible Compensation" means, with respect to a taxable year, the Participant's compensation as defined in Code Section 415(c)(3) and the regulations thereunder, for services performed for the Employer. The amount of Includible Compensation is determined without regard to any community property laws.

"Normal Retirement Age" means at the age at which a Participant has the right to retire and receive benefits as defined by California Public Employees' Retirement System (CalPERS) which is the defined benefit plan of the state.

A Participant's Normal Retirement Age must be the same as his or her Normal Retirement Age under any other eligible deferred compensation plan or plans sponsored by the Employer. The designation of a Normal Retirement Age under the Plan does not compel retirement with the Employer.

The **"Participant"** means an individual who is currently deferring Compensation, or who has previously deferred Compensation under the Plan by salary reduction and who has not received a distribution of his or her entire benefit under the Plan. Only individuals who perform services for the Employer as an Employee may defer Compensation under the Plan.

A **"Plan Year"** means the calendar year.

"Roth Contributions" means the amount of any Annual Deferral elected by a Participant that is irrevocably designated by the Participant as being made pursuant to, and intended to comply with, Code Section 402A. Roth Contributions are includable in the Participant's taxable gross income at the time they are contributed to the Plan and have been irrevocably designated as Roth Annual Deferrals by the Participant in their deferral agreement. The Administrator shall establish and maintain for the Employee a separate account for any Roth Contributions made to the Plan, to which only Roth Contributions and the income attributable thereto shall be allocated. Roth Contributions also include any contributions made to another eligible retirement plan that are rolled over to the Plan in accordance with the provisions of Section 7.1 and that the Participant designated as Roth contributions at the time they were contributed to such other plan.

"Severance from Employment" means the date that the Employee dies, retires, or otherwise has a severance from employment with the Employer, as determined by the Administrator (and taking into account guidance issued under the Code). Solely for the purpose of determining whether the Participant is entitled to receive a distribution of his or her Account Balance pursuant to Section 6.2, a Participant shall be treated as having incurred a Severance from Employment during any period the Participant is performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code) while on active duty for a period of more than 30 days.

The **"State"** means the State that is the Employer or of which the Employer is a political subdivision, agency, or instrumentality, including any agency or instrumentality of a political subdivision of the State, or the State in which the Employer is located.

The **"Trust Fund"** means the trust fund created under and subject to a trust agreement or a custodial account or contract described in Code Section 401(f) held on behalf of the Plan.

#12.

The "**Valuation Date**" means each business day.

SECTION II PARTICIPATION AND CONTRIBUTIONS

2.1 Eligibility

Each Employee shall be eligible to participate in the Plan and defer Compensation hereunder immediately upon becoming employed by the Employer.

2.2 Election

An Employee may elect to become a Participant by executing an election to defer a portion of his or her Compensation (and to have that amount contributed as an Annual Deferral on his or her behalf) and filing such election with the Administrator. This participation election shall be made on the deferral agreement provided by the Administrator under which the Employee agrees to be bound by all the terms and conditions of the Plan. Any such election shall remain in effect until a new election is filed. The Administrator may establish a minimum deferral amount, and may change such minimums from time to time. The deferral agreement shall also include designation of investment funds and a designation of Beneficiary. The deferral agreement may also include a Participant's designation that all or a portion of the Annual Deferral elected by the Participant shall be treated as Roth Contributions.

- (a) **Special Deferral Election of Sick, Vacation, or Back Pay:** A Participant who has not had a Severance from Employment may authorize a special election to defer accumulated sick pay, accumulated vacation pay, and back pay for any calendar month if an election to defer is entered into before the beginning of the month in which the amounts would otherwise be paid or made available and the Participant is an Employee on the date the amounts would otherwise be paid or made available. For this purpose, Compensation that would otherwise be paid for a payroll period that begins before Severance from Employment is treated as an amount that would otherwise be paid or made available before an Employee has a Severance from Employment. In addition, a Participant who is a former Employee may elect to defer accumulated sick pay, accumulated vacation pay, and back pay that is paid by the later of 2 ½ months following the date of the Participant's Severance from Employment or the end of the calendar year in which the Severance from Employment occurred, provided that the special election to defer is entered into before the amount is currently available.
- (b) **Special Deferral Election of Bonuses:** A Participant who has not had a Severance from Employment may authorize a special election to defer that portion of his or her Compensation attributable to Employer paid cash bonuses up to 100% of such bonuses if an election to defer is entered into before the beginning of the month in which the amounts would otherwise be paid or made available and the Participant is an Employee on the date the bonus would otherwise be paid or made available.

2.3 Commencement of Participation

An Employee shall become a Participant as soon as administratively practicable following the date the Employee files an election pursuant to Section 2.2. Such election shall become effective no earlier than the calendar month following the month in which the election is made. A new Employee may defer Compensation payable in the calendar month during which the Participant first becomes an Employee if an agreement providing for the deferral is entered into on or before the first day on which the Participant performs services for the Employer.

2.4 Amendment of Annual Deferral Election, Investment Direction, or Beneficiary Designation

Subject to other provisions of the Plan, a Participant may at any time revise his or her participation election, including a change of the amount of his or her Annual Deferrals, his or her investment direction and his or her designated Beneficiary. The revised participation election may also include a change in the Participant's designation of the amount of the Annual Deferral elected by the Participant that is to be treated as Roth Contributions. Unless the election specifies a later effective date, a change in the amount of the Annual Deferrals shall take effect as of the first day of the next following month or as soon as administratively practicable if later. A change in the investment direction shall take effect as of the date provided by the Administrator on a uniform basis for all Employees. A change in the Beneficiary designation shall take effect when the election is accepted by the Administrator.

2.5 Information Provided by the Participant

Each Employee enrolling in the Plan should provide to the Administrator at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Administrator to administer the Plan, including, without limitation, whether the Employee is a participant in any other eligible plan under Code Section 457(b).

2.6 Contributions Made Promptly

Annual Deferrals by the Participant under the Plan shall be transferred to the Trust Fund within a period that is not longer than is reasonable for the proper administration of the Participant's Account Balance. For this purpose, Annual Deferrals shall be treated as contributed within a period that is not longer than is reasonable for the proper administration if the contribution is made to the Trust Fund within 15 business days following the end of the month in which the amount would otherwise have been paid to the Participant, or earlier if required by law.

2.7 Employer Contributions

Nothing in this Plan prohibits the Employer from making Employer Contributions to the Account Balance of a Participant on a non-elective basis, including but not limited to Employer matching contributions, subject to the Participant's contribution limits in Section III.

2.8 Leave of Absence

Unless an election is otherwise revised, if a Participant is absent from work by leave of absence, Annual Deferrals under the Plan shall continue to the extent that Compensation continues.

2.9 Disability

A disabled Participant (as determined by the Administrator) may elect Annual Deferrals during any portion of the period of his or her disability to the extent that he or she has actual Compensation (not imputed Compensation and not disability benefits) from which to make contributions to the Plan and has not had a Severance from Employment.

2.10 Protection of Persons Who Serve in a Uniformed Service

An Employee whose employment is interrupted by qualified military service under Code Section 414(u) or who is on a leave of absence for qualified military service under Code Section 414(u) may elect to make additional Annual Deferrals upon resumption of employment with the Employer equal to the maximum Annual Deferrals that the Employee could have elected during that period if the Employee's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Annual Deferrals, if any, actually made for the Employee during the period of the interruption or leave. This right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave).

A reemployed Employee shall also be entitled to an allocation of any additional Employer Contributions, if applicable, that such Employee would have received under the Plan had the Employee continued to be employed as an eligible Employee during the period of qualified military service. Such restorative Employer Contributions (without interest), if applicable, shall be remitted by the Employer to the Plan on behalf of the Employee within 90 days after the date of the Employee's reemployment or, if later, as of the date the contributions are otherwise due for the year in which the applicable qualified military service was performed.

2.11 Corrective Measures

In the event that an otherwise eligible Employee is erroneously omitted from Plan participation, or an otherwise ineligible individual is erroneously included in the Plan, the Employer shall take such corrective measures as may be permitted by applicable law. Such measures may include, in the case of an erroneously omitted Employee, contributions made by the Employer to the Plan on behalf of such Employee equal to the missed deferral opportunity, subject to the Participant's contribution limits in Section III, and, in the case of an erroneously included individual, a payment by the Employer to such individual of additional Compensation in an amount equal to the amount of the individual's elective deferrals under the Plan.

2.12 Vesting of Account Balance

A Participant's vested interest in his Account Balance shall be at all times 100%.

**SECTION III
LIMITATIONS ON AMOUNTS DEFERRED**

3.1 Basic Annual Limitation

- (a) The maximum amount of the Annual Deferral and, if applicable, Employer Contributions under the Plan for any calendar year shall not exceed the lesser of:
 - (i) The "applicable dollar amount" (as defined in paragraph (b) below); or
 - (ii) The Participant's Includible Compensation (as defined in Code Section 415(c)(3)) for the calendar year.
- (b) The "applicable dollar amount" means the amount established under Code Section 457(e)(15), as indexed.
- (c) Rollover amounts received by the Plan under Treasury Regulation Section 1.457-10(e) and any plan-to-plan transfer into the Plan made pursuant to Section 7.2 shall not be applied against the Annual Deferral limit.

3.2 Age 50 Catch-up Annual Deferral Contributions

A Participant who will attain age 50 or more by the end of a calendar year is permitted to elect an additional amount of Annual Deferral for the calendar year, up to the maximum age 50 catch-up Annual Deferral limit under §414(v)(2), as indexed.

The amount of the age 50 catch-up Annual Deferral for any calendar year cannot exceed the amount of the Participant's Compensation, reduced by the amount of the elective deferred compensation, or other elective deferrals, made by the Participant under the Plan.

The age 50 catch-up Annual Deferral limit is not available to a Participant for any calendar year for which the Special Section 457 Catch-up limitation described in Section 3.3 is available and applied.

3.3 Special Rules

For purposes of this Section III, the following rules shall apply:

- (a) Participant Covered By More Than One Eligible Plan. If the Participant is or has been a participant in one or more other eligible plans within the meaning of Code Section 457(b), then this Plan and all such other plans shall be considered as one plan for purposes of applying the foregoing limitations of this Section III. For this purpose, the Administrator shall take into account any other such eligible plan maintained by the Employer and shall also take into account any other such eligible plan for which the Administrator receives from the Participant sufficient information concerning his or her participation in such other plan.

- (b) Disregard Excess Deferral. For purposes of Sections 3.1 and 3.2, an individual is treated as not having deferred compensation under a plan for a prior taxable year if excess deferrals under the plan are distributed, as described in Section 3.4. To the extent that the combined deferrals for pre-2002 years exceeded the maximum deferral limitations, the amount is treated as an excess deferral for those prior years.

3.4 Correction of Excess Deferrals

If the Annual Deferral on behalf of a Participant for any calendar year exceeds the limitations described above, or the Annual Deferral on behalf of a Participant for any calendar year exceeds the limitations described above when combined with other amounts deferred by the Participant under another eligible deferred compensation plan under Code Section 457(b) for which the Participant provides information that is accepted by the Administrator, then the Annual Deferral, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto), shall be distributed to the Participant as soon as administratively practicable after the Administrator determines that the amount is an excess deferral. If a Participant to whom distribution must be made in accordance with the preceding sentence has made Roth Contributions for the year, the amount distributed as an excess deferral shall be made first from pre-tax Annual Deferrals, then from Roth Contributions for the year unless otherwise specified.

**SECTION IV
INVESTMENT RESPONSIBILITIES**

4.1 Investment of Deferred Amount

Each Participant or Beneficiary shall direct the investment of amounts held in his or her Account Balance under the Plan among the investment options of the Trust Fund. The investment of amounts segregated on behalf of an alternate payee pursuant to a Plan qualified domestic relations order (as defined under Code Section 414(p)) may be directed by such alternate payee to the extent provided in such order. In the absence of such direction, such amounts shall be invested in the same manner as they were immediately before such segregation was made on account of such order. Each Account Balance shall share in any gains or losses of the investment(s) in which such account is invested.

4.2 Investment Election for Future Contributions

A Participant may amend his or her investment election at such times and by such manner and form as prescribed by the Administrator. Such election will, unless specifically stated otherwise, apply only to future amounts contributed under the Plan.

4.3 Investment Changes for an Existing Account Balance

The Participant, Beneficiary, alternate payee, or Administrator may elect to transfer amounts in his Account Balance among and between those investments available under the Trust Fund at such times and by such manner and form prescribed by the Administrator, subject further to any restrictions or limitations placed on any investment by the Administrator to be uniformly applied to all Participants.

4.4 Investment Responsibility

To the extent that a Participant, Beneficiary, or alternate payee exercises control over the investment of amounts credited to his Account Balance, the Employer, the Administrator, and any other fiduciary of the Plan shall not be liable for any losses that are the direct and necessary result of investment instructions given by a Participant, Beneficiary or an alternate payee.

4.5 Default Investment Fund

The Employer may designate a default investment fund. Any Participant who does not make an investment election on the deferral agreement provided by the Administrator will have his contributions invested in the default investment fund until such time he provides investment direction under Sections 4.2 and 4.3.

4.6 Statements

The Administrator will cause statements to be issued periodically to reflect the contributions and actual earnings posted to the Account Balances.

**SECTION V
LOANS**

5.1 No Loans

There shall be no loans made to Participants from the Plan.

**SECTION VI
DISTRIBUTIONS**

6.1 Distributions from the Plan

- (a) Earliest Distribution Date. Payments from a Participant's Account Balance shall not be made earlier than:
- (i) the Participant's Severance from Employment pursuant to Section 6.2
 - (ii) the Participant's death pursuant to Section 6.3
 - (iii) Plan termination under Section 10.3
 - (iv) an unforeseeable emergency withdrawal pursuant to Section 6.10(a), if permitted under the Plan
 - (v) a de minimis Account Balance distribution pursuant to Section 6.10(b), if permitted under the Plan
 - (vi) a rollover account withdrawal pursuant to Section 6.10(c), if permitted under the Plan
 - (vii) attainment of age 70 ½ withdrawal pursuant to Section 6.10(d), if permitted under the Plan
 - (viii) Qualified Military Service Deemed Severance withdrawal pursuant to Section 6.10(e), if permitted under the Plan
 - (ix) Qualified Distributions for Retired Public Safety Officers pursuant to Section 6.11, if permitted under the Plan
- (b) Latest Distribution Date. In no event shall any distribution under this Section VI begin later than the Participant's "required beginning date". Such required minimum distributions must be made in accordance with Section 6.6.
- (c) Amount of Account Balance. Except as provided in Section 6.3, the amount of any payment under this Section VI shall be based on the amount of the Account Balance as of the Valuation Date.

6.2 Benefit Distributions Upon Severance from Employment

Distributions required to commence under this section shall be made in the form of benefit provided under Section 6.5. Distributions postponed until the Participant's "required beginning date" will be made in a manner that meets the requirements of Section 6.6.

6.3 Distributions on Account of Participant's Death

Upon receipt of satisfactory proof of the Participant's death, the designated Beneficiary may file a request with the Administrator to elect a form of benefit provided under Section 6.5 and made in a manner that meets the requirements of Section 6.6.

- (a) Death of Participant Before Distributions Begin. If the Participant dies before his or her distributions begin, the designated Beneficiary may elect to have distributions to be made (i) in full within 5 years of the Participant's death (5-year rule) or (ii) in installments over the designated Beneficiary's "life expectancy" (life expectancy rule).

If the designated Beneficiary does not make an election by September 30 of the year following the year of the Participant's death, the Participant's Account Balance will be distributed in a lump sum payment by December 31 of the calendar year containing the fifth anniversary of the Participant's death or if the Participant's spouse is the sole designated Beneficiary by December 31 of the year the Participant would have attained age 70 ½.

- (b) Death of Participant On or After Date Distributions Begin. If the Participant dies on or after his or her distributions began, the Participant's Account Balance shall be paid to the Beneficiary at least as rapidly as under the payment option used before the Participant's death.

For purposes of this Section, a Participant who dies on or after January 1, 2007, while performing qualified military service (as defined in Code Section 414(u)) will be deemed to have resumed employment in accordance with the Participant's reemployment rights under chapter 43 of title 38, United States Code, on the day preceding death and to have terminated employment on the actual date of death for purposes of determining the entitlement of the Participant's survivors to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan, in accordance with the provisions of Code Sections 401(a)(37), 414(u)(9), and 457(g)(4).

6.4 Distribution of Small Account Balances Without Participant's Consent

Notwithstanding any other provision of the Plan to the contrary, if the amount of a Participant's or Beneficiary's Account Balance is not in excess of the amount specified below on the date that payments commence under Section 6.2 or on the date the Administrator is notified of the Participant's death, the Administrator may direct payment without the Participant's or Beneficiary's consent as soon as practicable following the Participant's retirement, death, or other Severance from Employment.

- (a) If the Participant's or Beneficiary's Account Balance (including the rollover contribution separate account) does not exceed \$5,000 (or the dollar limit under Code Section 411(a)(11), if greater), distribution shall be made through a direct rollover to an individual retirement account selected by the Administrator, unless the Participant or Beneficiary affirmatively elects rollover to a different "eligible retirement plan" (as defined under Section 6.9(b)) or distribution in a lump sum payment.

6.5 Forms of Distribution

In an election to commence benefits under Section 6.2, a Participant entitled to a distribution of benefits under this Section VI may elect to receive payment in any of the forms of distribution offered under the Plan. Such election may be made or modified by the date 30 days prior to commencement of payment. If the Participant fails to elect a distribution option then the benefit shall be paid in the form of a lump sum payment to the Participant or Beneficiary. The forms of distribution available under the Plan are as follows:

- (a) a lump sum payment of the Participant's total Account Balance.
- (b) partial distribution of the Participant's Account Balance in a lump sum payment.
- (c) in a series of installments over a period of years (payable on a monthly, quarterly, semi-annual or annual basis) which extends no longer than the life expectancy of the Participant as permitted under Code Section 401(a)(9).
- (d) a purchase of a single premium nontransferable annuity contract for such term and in such form as the Participant selects that provides for payments in the form of an irrevocable annuity each calendar year of amounts not less than the amount required under Code Section 401(a)(9); including any annuity distribution options under a guaranteed income product, that are consistent with the Code and Regulations.

6.6 Minimum Distribution Requirements

- (a) General Rules.

Notwithstanding anything in this Plan to the contrary, distributions from this Plan shall commence and be made in accordance with Code Section 401(a)(9) and the regulations promulgated thereunder. Additionally, the requirements of this Section 6.6 will take precedence over any inconsistent provisions of the Plan.

- (b) Time and Manner of Distribution.
 - (i) Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's "required beginning date".
 - (ii) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
 - (A) If the Participant's surviving spouse is the Participant's sole "designated Beneficiary", then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant dies, or by December 31 of the calendar year in which the Participant would have attained age 70 ½, if later.

- (B) If the Participant's surviving spouse is not the Participant's sole "designated Beneficiary" (i.e., multiple beneficiaries), then distributions to the "designated Beneficiaries" will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
- (C) If the Participant's sole "designated Beneficiary" is not the Participant's spouse, then distributions to the "designated Beneficiary" will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
- (D) If there is no "designated Beneficiary" as of September 30 of the year following the year of the Participant's death, the Participant's Account Balance will be distributed in a lump sum payment by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (E) If the Participant's surviving spouse is the Participant's sole "designated Beneficiary" and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this subparagraph (b)(ii), other than subsection (b)(ii)(A), will apply as if the surviving spouse were the Participant.

For purposes of this subparagraph (ii) and paragraph (d), unless subsection (b)(ii)(D) applies, distributions are considered to begin on the Participant's "required beginning date". If subsection (b)(ii)(E) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under subsection (b)(ii)(A). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's "required beginning date" (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under subsection (b)(ii)(A)), the date distributions are considered to begin is the date distributions actually commence.

- (iii) Death of Participant On or After Distributions Begin. If the Participant dies on or after distributions begin and before depleting his or her Account Balance, distributions must commence to the "designated Beneficiary" by December 31 of the calendar year immediately following the calendar year in which the Participant died.
 - (iv) Forms of Distribution. Unless the Participant's Account Balance is distributed in the form of an annuity contract or in a lump sum on or before the Participant's "required beginning date", as of the first distribution calendar year, distributions will be made in accordance with paragraphs (c) and (d). If the Participant's interest is distributed in the form of an annuity contract, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9).
- (c) Required Minimum Distributions During the Participant's Lifetime.

(i) Amount of Required Minimum Distribution For Each "Distribution Calendar Year". During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

(A) The quotient obtained by dividing the "Participant's Account Balance" by the distribution period in the Uniform Lifetime Table set forth in Treasury Regulation Section 1.401(a)(9)-9, Q&A-2 using the Participant's age as of the Participant's birthday in the "distribution calendar year"; or

(B) if the Participant's sole "designated Beneficiary" for the "distribution calendar year" is the Participant's spouse and the spouse is more than 10 years younger than the Participant, the quotient obtained by dividing the "Participant's Account Balance" by the distribution period in the Joint and Last Survivor Table set forth in Treasury Regulation Section 1.401(a)(9)-9, Q&A-3 using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the "distribution calendar year".

(ii) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this paragraph (c) beginning with the first "distribution calendar year" and up to and including the "distribution calendar year" that includes the Participant's date of death.

(d) Required Minimum Distributions After Participant's Death.

For purposes of this Section 6.6(d), the Participant's and Beneficiary's "life expectancy" determination will use the Single Life Table set forth in Treasury Regulation Section 1.401(a)(9)-9, Q&A-1.

(i) Death On or After Date Distributions Begin.

(A) Participant Survived by Designated Beneficiary.

If the Participant dies on or after the date distributions begin and there is a "designated Beneficiary", the minimum amount that will be distributed for each "distribution calendar year" after the year of the Participant's death is the quotient obtained by dividing the "Participant's Account Balance" by the longer of the remaining "life expectancy" of the Participant or the remaining "life expectancy" of the Participant's "designated Beneficiary", determined as follows:

(1) The Participant's remaining "life expectancy" is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(2) If the Participant's surviving spouse is the Participant's sole "designated Beneficiary", the remaining "life expectancy" of the

surviving spouse is calculated for each "distribution calendar year" after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For "distribution calendar years" after the year of the surviving spouse's death, the remaining "life expectancy" of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

- (3) If the Participant's surviving spouse is not the Participant's sole "designated Beneficiary" (i.e., multiple beneficiaries), the "designated Beneficiary's" remaining "life expectancy" is calculated using the age of the oldest Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.
- (4) If the Participant's sole "designated Beneficiary" is not the Participant's spouse, the "designated Beneficiary's" remaining "life expectancy" is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(B) No Designated Beneficiary.

If the Participant dies on or after the date distributions begin and there is no "designated Beneficiary" as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each "distribution calendar year" after the year of the Participant's death is the quotient obtained by dividing the "Participant's Account Balance" by the Participant's remaining "life expectancy" calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(ii) Death Before Date Distributions Begin.

(A) Participant Survived by Designated Beneficiary.

Except as provided in this Section, if the Participant dies before the date distributions begin and there is a "designated Beneficiary", the minimum amount that will be distributed for each "distribution calendar year" after the year of the Participant's death is the quotient obtained by dividing the "Participant's Account Balance" by the remaining "life expectancy" of the Participant's "designated Beneficiary", determined as follows:

- (1) If the Participant's surviving spouse is the Participant's sole "designated Beneficiary", the remaining "life expectancy" of the surviving spouse is calculated for each "distribution calendar year"

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after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year.

- (2) If the Participant's surviving spouse is not the Participant's sole "designated Beneficiary" (i.e., multiple beneficiaries), the "designated Beneficiary's" remaining "life expectancy" is calculated using the age of the oldest Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.
- (3) If the Participant's sole "designated beneficiary" is not the Participant's spouse, the "designated Beneficiary's" remaining "life expectancy" is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(B) No Designated Beneficiary.

If the Participant dies before the date distributions begin and there is no "designated Beneficiary" as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(C) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin.

If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole "designated Beneficiary", and the surviving spouse dies before distributions are required to begin to the surviving spouse under subsection (b)(ii)(A), this subparagraph (d)(ii) will apply as if the surviving spouse were the Participant.

(e) Definitions.

- (i) A Participant's "required beginning date" is April 1 of the year that follows the later of (1) the calendar year the Participant attains age 70 ½ or (2) retires due to Severance from Employment. If the Participant postpones the required distribution due in calendar year he or she attains age 70 ½ or severs employment, to the "required beginning date", the second required minimum distribution must be taken by the end of that year.
- (ii) Participant's "designated Beneficiary" means the individual who is designated as the Beneficiary under Section 8.1 and is the designated Beneficiary under Code Section 401(a)(9) and Treasury Regulation Section 1.401(a)(9)-4.

- (iii) A "distribution calendar year" means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first "distribution calendar year" is the calendar year the Participant attains age 70 ½ or retires, if later. For distributions beginning after the Participant's death, the first "distribution calendar year" is the calendar year in which distributions are required to begin under subparagraph (b)(ii).

The required minimum distribution for the Participant's first "distribution calendar year" will be made on or before the Participant's "required beginning date". The required minimum distribution for other "distribution calendar years", including the required minimum distribution for the "distribution calendar year" in which the Participant's "required beginning date" occurs, will be made on or before December 31 of that "distribution calendar year".

- (iv) A married Participant's "life expectancy", whose spouse is the sole Beneficiary and is more than 10 years younger than the Participant, means the Participant's and spouse Beneficiary's life expectancy as computed by use of the Joint and Last Survivor Life Table under Treasury Regulation Section 1.401(a)(9)-9, Q&A 3. All other Participants will have his or her life expectancy computed by use of the Uniform Lifetime Table under Treasury Regulation Section 1.401(a)(9)-9, Q&A 2. A deceased Participant's or Beneficiary's "life expectancy" means his or her life expectancy as computed by use of the Single Life Table under Treasury Regulation Section 1.401(a)(9)-9, Q&A 1.
- (v) A "Participant's Account Balance" means the Account Balance as of the last Valuation Date in the calendar year immediately preceding the "distribution calendar year" (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the Account Balance as of dates in the valuation calendar year after the Valuation Date and decreased by distributions made in the valuation calendar year after the Valuation Date. The Account Balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the "distribution calendar year" if distributed or transferred in the valuation calendar year.

6.7 Payments to Minors and Incompetents

If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits will be paid to such person as the Administrator or a court of competent jurisdiction may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

6.8 Procedure When Distributee Cannot Be Located

The Administrator shall make all reasonable attempts to determine the identity and address of a Participant or a Participant's Beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt means (a) the mailing by certified mail of a notice to the last known address shown in the Administrator's records; (b) use of a commercial locator service, the internet or other general search method; (c) use such other methods as the Administrator believes prudent.

If the Participant or Beneficiary has not responded within 6 months, the Plan shall continue to hold the benefits due such person until, in the Administrator's discretion, the Plan is required to take other action under applicable law.

Notwithstanding the foregoing, if the Administrator is unable to locate a person entitled to benefits hereunder after applying the search methods set forth above, then the Administrator, in its sole discretion, may pay an amount that is immediately distributable to such person in a direct rollover to an individual retirement plan designated by the Administrator.

6.9 Direct Rollover

- (a) A Participant or spouse Beneficiary (or a Participant's spouse or former spouse who is the alternate payee under a domestic relations order, as defined in Code Section 414(p)) who is entitled to an "eligible rollover distribution" may elect, at the time and in the manner prescribed by the Administrator, to have all or any portion of the distribution paid directly to an "eligible retirement plan" specified by the Participant or spouse Beneficiary in a direct rollover.
- (b) For purposes of this Section 6.9, an "eligible rollover distribution" means any distribution of all or any portion of a Participant's Account Balance, except that an eligible rollover distribution does not include (i) any distribution that is one of a series of substantially equal periodic payment made not less frequently than annually for the life or life expectancy of the Participant or the joint lives or life expectancies of the Participant and the Participant's designated Beneficiary, or for a specified period of ten years or more (ii) any distribution made as a result of an unforeseeable emergency, or (iii) any distribution that is a required minimum distribution under Code Section 401(a)(9).

In addition, an "eligible retirement plan" with respect to the Participant, the Participant's spouse, or the Participant's spouse or former spouse who is an alternate payee under a domestic relations order as defined in Code Section 414(p) means any of the following: (i) an individual retirement account described in Code Section 408(a), (ii) an individual retirement annuity described in Code Section 408(b), (iii) an annuity plan described in Code Section 403(a), (iv) a qualified defined contribution plan described in Code Section 401(a), (v) an annuity contract described in Code Section 403(b), (vi) an eligible deferred compensation plan described in Code Section 457(b) that is maintained by a State, political subdivision of a State, or any agency or instrumentality of a State or political subdivision of a State, or (vii) effective for distributions made on or after January 1, 2008, a Roth IRA, as described in Code Section 408A, provided, that for distributions

made before January 1, 2010, such rollover shall be subject to the limitations contained in Code Section 408A(c)(3)(B).

Notwithstanding any other provision of this Section 6.9(b), a plan or contract described in clause (iii), (iv), (v), or (vi) above shall not constitute an "eligible retirement plan" with respect to a distribution of Roth Contributions unless such plan or contract separately accounts for such distribution, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

- (c) A Beneficiary who is not the spouse of the deceased Participant may elect a direct rollover of a distribution to an individual retirement account described in Code Section 408(b) or to a Roth individual retirement account described in Code Section 408A(b) ("IRA"), provided that the distributed amount satisfies all the requirements to be an eligible rollover distribution. The direct rollover must be made to an IRA established on behalf of the designated nonspouse Beneficiary that will be treated as an inherited IRA pursuant to the provisions of Code Section 402(c)(11). The IRA must be established in a manner that identifies it as an IRA with respect to a deceased Participant and also identifies the deceased Participant and the nonspouse Beneficiary. This Section applies to distributions made after the last day of the 2009 Plan Year.

6.10 Inservice Distributions

- (a) Unforeseeable Emergency Distributions. If the Participant who has not incurred a Severance from Employment or Beneficiary has an unforeseeable emergency, the Administrator may approve a single sum distribution of the amount requested or, if less, the maximum amount determined by the Administrator to be permitted to be distributed under this Section 6.10(a), Treasury Regulation Section 1.457-6(c) or other regulatory guidance. The Administrator shall determine whether an unforeseeable emergency exists based on relevant facts and circumstances, and Treasury Regulation Section 1.457-6(c) or other regulatory guidance.
- (i) An unforeseeable emergency is defined as a severe financial hardship resulting from the following:
- (A) an illness or accident of the Participant or Beneficiary, the Participant's or Beneficiary's spouse, or the Participant's or Beneficiary's dependent or the Participant's "primary Beneficiary";
 - (B) loss of the Participant's or Beneficiary's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster);
 - (C) the need to pay for the funeral expenses of a Participant's or Beneficiary's spouse, Participant's or Beneficiary's dependent or "primary Beneficiary" of the Participant;

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- (D) the need to pay for medical expenses of the Participant or Beneficiary, the Participant's or Beneficiary's spouse, Participant's or Beneficiary's dependent or the Participant's "primary Beneficiary" which are not reimbursed or compensated by insurance or otherwise, including non-refundable deductibles, as well as for the cost of prescription drug medication;
- (E) the imminent foreclosure of or eviction from the Participant's or Beneficiary's primary residence; or
- (F) other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant or Beneficiary. However, except as otherwise specifically provided in this Section 6.10(a), certain circumstances are not considered an unforeseen emergency such as the purchase of a home or the payment of college tuition or credit card debt.

For purposes of this paragraph, if the Participant is not deceased, a "primary Beneficiary" shall be limited to a primary Beneficiary under the Plan, which is an individual who is named as a Beneficiary pursuant to Section 8.1 and has an unconditional right to all or a portion of the Participant's Account Balance upon the death of the Participant, and which shall not include a contingent Beneficiary. Additionally, dependent shall be limited to the definition under Code Section 152(a), and, for taxable years beginning on or after January 1, 2005, without regard to Code Sections 152(b)(1), (b)(2) and (d)(1)(B).

- (ii) Unforeseeable emergency distribution standard. A distribution on account of unforeseeable emergency may not be made to the extent that such emergency is or may be relieved through reimbursement or compensation from insurance or otherwise; by liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship; or by cessation of deferrals under the Plan if the cessation of deferrals would alleviate the financial need.
 - (iii) Distribution necessary to satisfy emergency need. Distributions because of an unforeseeable emergency may not exceed the amount reasonably necessary to satisfy the emergency need (which may include any amounts necessary to pay any federal, State, or local income taxes or penalties reasonably anticipated to result from the distribution).
- (b) De minimis Account Balance Distributions. A Participant may request a distribution of his or her total Account Balance before Severance of Employment if all of the following requirements are satisfied:
- (i) the Participant's total Account Balance (including the rollover contribution separate account) does not exceed \$5,000 (or the dollar limit under Code Section 411(a)(11), if greater);

- (ii) the Participant has not previously received a distribution of his or her total Account Balance in accordance with the provisions of this Section 6.10(b); and
- (iii) no Annual Deferral has been made with respect to the Participant during the two-year period ending immediately before the date of the distribution.

Distribution shall be made as soon as practical following the request in a lump sum payment or through a direct rollover to the "eligible retirement plan" (as defined under Section 6.9(b)) selected by the Participant or Beneficiary.

- (c) Rollover Account Distributions. If a Participant has a separate account attributable to rollover contributions under the Plan, the Participant before Severance of Employment may at any time elect to receive an inservice distribution of all or any portion of the amount held in the rollover separate account. Any designated Roth contributions rolled over to the Plan are treated as Roth Contributions and not rollover contributions for Plan purposes.
- (d) Age 70 ½ Distributions. Prior to Severance from Employment, a Participant may withdraw all or a portion of his or her Account Balance on or after the first day of the calendar year in which the Participant shall attain age 70½.
- (e) Qualified Military Service Deemed Severance Distributions. Notwithstanding any other provision of the Plan to the contrary, a Participant before Severance of Employment who is absent from employment because of service with the uniformed services (as described in United States Code, Title 38, Chapter 43) for more than 30 days shall be treated as if he or she had incurred a Severance from Employment for purposes of receiving a distribution. A Participant who is deemed to have incurred a Severance from Employment hereunder may elect to receive a withdrawal from his or her Annual Deferrals.

If a Participant receives a distribution in accordance with this Section 6.10(e) and would not otherwise be entitled to receive a distribution under the Plan other than pursuant to this section, his or her Annual Deferrals shall be suspended for at least 6 months after receipt of the withdrawal.

- (f) Inservice Distribution of Roth Contributions. Roth Contributions are eligible for all inservice distributions and withdrawals.

6.11 Qualified Distributions for Retired Public Safety Officers

The Plan does not permit qualified distributions for retired public safety officers.

**SECTION VII
ROLLOVERS AND PLAN TRANSFERS**

7.1 Eligible Rollover Contributions to the Plan

- (a) A Participant who is an Employee and who is entitled to receive an eligible rollover distribution from another "eligible retirement plan", as defined in 6.9(b) excluding the direct rollover of after-tax contributions, may request to have all or a portion of the eligible rollover distribution paid to the Plan. The Administrator may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Code Section 402 and to confirm that such plan is an "eligible retirement plan" within the meaning of Code Section 402(c)(8)(B).
- (b) If an Employee makes a rollover contribution to the Plan of amounts that have previously been distributed to him or her, the Employee must deliver to the Administrator the cash that constitutes his or her rollover contribution within 60 days of receipt of the distribution from the distributing "eligible retirement plan". Such delivery must be made in the manner prescribed by the Administrator.
- (c) The Plan shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan from any "eligible retirement plan" that is an eligible governmental plan under Code Section 457(b). In addition, the Plan shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan from any "eligible retirement plan" that is not an eligible governmental plan under Code Section 457(b).
- (d) To the extent that the Plan accepts rollover contributions attributable to Roth Contributions, the Administrator shall account for such contributions separately from other rollover contributions. In administering rollover contributions attributable to Roth Contributions, the Administrator shall be entitled to rely on a statement from the distributing plan's administrator identifying (i) the Participant's basis in the rolled over amounts and (ii) the date on which the Participant's 5-taxable-year period of participation (as required under Code Section 402A(d)(2) for a qualified distribution of Roth Contributions) started under the distributing plan. If the 5-taxable-year period of participation under the distributing plan would end sooner than the Participant's 5-taxable-year period of participation under the Plan, the 5-taxable-year period of participation applicable under the distributing plan shall continue to apply with respect to the Roth Contributions included in the rollover contribution. Roth Contributions that are rolled over to the Plan shall be subject to the provisions of the Plan applicable to Roth Contributions rather than the provisions of the Plan applicable to rollover contributions.

7.2 Plan-to-Plan Transfers to the Plan

At the direction of the Employer, the Administrator may permit Participants or Beneficiaries who are participants or Beneficiaries in another eligible governmental plan under Code Section 457(b) to transfer assets to the Plan as provided in this Section 7.2. Such a transfer is permitted

only if the other plan provides for the direct transfer of each Participant's or Beneficiary's interest therein to the Plan. The Administrator may require in its sole discretion that the transfer be in cash or other property acceptable to the Administrator. The Administrator may require such documentation from the other plan as it deems necessary to effectuate the transfer in accordance with Code Section 457(e)(10) and Treasury Regulation Section 1.457-10(b) and to confirm that the other plan is an eligible governmental plan as defined in Treasury Regulation Section 1.457-2(f). The amount so transferred shall be credited to the Participant's Account Balance and shall be held, accounted for, administered and otherwise treated in the same manner as an Annual Deferral by the Participant under the Plan, except that the transferred amount shall not be considered an Annual Deferral under the Plan in determining the maximum deferral under Section III.

7.3 Plan-to-Plan Transfers from the Plan

- (a) At the direction of the Employer, the Administrator may permit Participants or Beneficiaries to elect to have his or her Account Balance transferred to another eligible governmental plan within the meaning of Treasury Regulation Section 1.457-2(f), if the other eligible governmental plan provides for the receipt of transfers, the Participant or Beneficiary whose amounts deferred are being transferred will have an amount deferred immediately after the transfer at least equal to the amount deferred with respect to that Participant or Beneficiary immediately before the transfer, and the conditions of subparagraph (i), (ii), or (iii) are met.
- (i) A transfer from the Plan to another eligible governmental plan is permitted in the case of a transfer for a Participant if the Participant has had a Severance from Employment with the Employer and is performing services for the entity maintaining the other eligible governmental plan.
- (ii) A transfer from the Plan to another eligible governmental plan is permitted if:
- (A) The transfer is to another eligible governmental plan within the same State as the Plan;
- (B) All the assets held by the Plan are transferred; and
- (C) A Participant or Beneficiary whose amounts deferred are being transferred is not eligible for additional annual deferrals in the other eligible governmental plan unless he or she is performing services for the entity maintaining the other eligible governmental plan.
- (iii) A transfer from the Plan to another eligible governmental plan of the Employer is permitted if:
- (A) The transfer is to another eligible governmental plan of the Employer (and, for this purpose, an employer is not treated as the Employer if the Participant's compensation is paid by a different entity); and

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- (B) A Participant or Beneficiary whose deferred amounts are being transferred is not eligible for additional annual deferrals in the other eligible governmental plan unless he or she is performing services for the entity maintaining the other eligible governmental plan.
- (b) Upon the transfer of assets under this Section 7.3(b), the Plan's liability to pay benefits to the Participant or Beneficiary under this Plan shall be discharged to the extent of the amount so transferred for the Participant or Beneficiary. The Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section 7.3(b) (for example, to confirm that the receiving plan is an eligible governmental plan under paragraph (a) of this Section 7.3(b), and to assure that the transfer is permitted under the receiving plan) or to effectuate the transfer pursuant to Treasury Regulation Section 1.457-10(b).

7.4 Permissive Service Credit Transfers

- (a) If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in Code Section 414(d)) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to have any portion of the Participant's Account Balance transferred to the defined benefit governmental plan. A transfer under this Section 7.4(a) may be made before the Participant has had a Severance from Employment and without regard to whether the defined benefit governmental plan is maintained by the Employer. The distribution rules applicable to the defined benefit governmental plan to which any amounts are transferred under this Section 7.4(a) shall apply to the transferred amounts and any benefits attributable to the transferred amounts.
- (b) A transfer may be made under Section 7.4(a) only if the transfer is either for the purchase of permissive service credit (as defined in Code Section 415(n)(3)(A)) under the receiving defined benefit governmental plan, including service credit for periods for which there is no performance of services, service credited in order to provide an increased benefit for service credit which a participant is receiving under the plan, and service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in Code Section 415(n)(3)(C)(i)) of an educational organization described in Code Section 170(b)(1)(A)(ii) which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12) or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed, without application of the limitations of Code Section 415(n)(3)(B) in determining whether the transfer is for the purchase of permissive service credit, or a repayment to which Code Section 415 does not apply by reason of Code Section 415(k)(3).

SECTION VIII BENEFICIARY

8.1 Beneficiary Designation

A Participant has the right, by written notice filed with the Administrator, to designate one or more Beneficiaries to receive any benefits payable under the Plan in the event of the Participant's death prior to the complete distribution of benefits. The Participant accepts and acknowledges that he or she has the burden for executing and filing, with the Administrator, a proper Beneficiary designation form.

The form for this purpose shall be provided by the Administrator. The form is not valid until it is signed, filed with the Administrator by the Participant, and accepted by the Administrator. Upon the Participant filing the form and acceptance by the Administrator, the form revokes all Beneficiary designations filed prior to that date by the Participant. If a married Participant designates his or her spouse a Beneficiary under the Plan, such designation shall automatically become null and void as of the date of any final divorce or similar decree or order; except that the Participant may re-designate such former spouse or his or her Beneficiary after the date of the final decree or order.

If no such designation is in effect upon the Participant's death, or if no designated Beneficiary survives the Participant, the Beneficiary shall be the Participant's surviving spouse, or if the Participant has no surviving spouse, the Participant's surviving children in equal shares, or if there are no surviving children, the Participant's estate. If a Beneficiary dies after becoming entitled to receive a distribution under the Plan but before distribution is made to him or her in full, the estate of the deceased Beneficiary shall be the Beneficiary as to the balance of the distribution.

**SECTION IX
ADMINISTRATION AND ACCOUNTING**

9.1 Administrator

The Administrator shall have the responsibility and authority to control the operation and administration of the Plan in accordance with the terms of the Plan, the Code and regulations thereunder, and any State law as applicable.

The Administrator may contract with a financially responsible independent contractor to administer and coordinate the Plan under the direction of the Administrator. The Administrator shall have the right to designate a plan coordinator or other party of its choice to perform such services under this agreement as may be mutually agreed to between the Administrator and the plan coordinator or other party.

The Administrator has full and complete discretionary authority to determine all questions of Plan interpretation, policy, participation, or benefit eligibility in a manner consistent with the Plan's documents; such determinations shall be conclusive and binding on all persons except as otherwise provided by law.

9.2 Administrative Costs

All reasonable expenses of administration may be paid out of the Plan assets unless paid (or reimbursed) by the Employer. Such expenses shall include any expenses incident to the functioning of the Administrator, or any person or persons retained or appointed by the Administrator or the Employer incident to the exercise of his or her duties under the Plan, including, but not limited to, fees of accountants, counsel, investment managers, agents (including nonfiduciary agents) appointed for the purpose of assisting the Administrator in carrying out the instructions of Participants as to the directed investment of his or her accounts and other specialists and his or her agents, and other costs of administering the Plan. In addition, unless specifically prohibited under statute, regulation or other guidance of general applicability, the Administrator may charge to the Account Balance of an individual a reasonable charge to offset the cost of making a distribution to the Participant, Beneficiary, or alternate payee. If liquid assets of the Plan are insufficient to cover the fees of the Administrator, then Plan assets shall be liquidated to the extent necessary for such fees. In the event any part of the Plan assets becomes subject to tax, all taxes incurred will be paid from the Plan assets. Until paid, the expenses shall constitute a liability of the Trust Fund described in Section 11.1.

9.3 Paperless Administration

The Administrator may use telephonic or electronic media to satisfy any notice requirements required by this Plan, to the extent permissible under regulations (or other generally applicable guidance). In addition, a Participant's consent to immediate distribution may be provided through telephonic or electronic means, to the extent permissible under regulations (or other generally applicable guidance). The Administrator also may use telephonic or electronic media to conduct plan transactions such as enrolling Participants, making (and changing) salary reduction

elections, electing (and changing) investment allocations, and other transactions, to the extent permissible under regulations (or other generally applicable guidance).

**SECTION X
AMENDMENTS**

10.1 Amendment

The Employer may at any time either prospectively or retroactively amend the Plan. The Employer shall not have the right to reduce or affect the value of any Participant's Account Balance or any rights accrued under the Plan prior to amendment.

10.2 Conformation

The Employer shall amend and interpret the Plan to the extent necessary to conform to the requirements of Code Section 457 and any other applicable law, regulation or ruling, including amendments that are retroactive. In the event the Plan is deemed by the Internal Revenue Service to be administered in a manner inconsistent with Code Section 457, the Employer shall correct such inconsistency within the period provided in Code Section 457(b).

10.3 Plan Termination

In the event of the termination of the Plan, all Account Balances shall be disposed to or for the benefit of each Participant or Beneficiary in accordance with the provisions of Section VI or Section VII as soon as reasonably practicable following the Plan's termination. The Employer shall not have the right to reduce or affect the value of any Participant's account or any rights accrued under the Plan prior to termination of the Plan. The Participant's or Beneficiary's written consent to the commencement of distribution shall not be required regardless of the value of his or her Account Balance.

The distribution in the event of termination of the Plan may, at the discretion of the Employer, be made in the form of a lump sum payment of the Participant's total Account Balance, without regard to the form of distribution elected by the Participant.

SECTION XI TRUST FUND

11.1 Trust Fund

All amounts in a Participant's or Beneficiary's Account Balance, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held and invested in the Trust Fund in accordance with this Plan. The Trust Fund, and any subtrust established under the Plan, shall be established pursuant to a written agreement that constitutes a valid trust, custodial agreement, annuity contract, or similar agreement under the laws of the State of residence of the Employer, to the extent not superseded by federal law,. All investments, amounts, property, and rights held under the Trust Fund shall be held in trust for the exclusive benefit of Participants and their Beneficiaries and defraying reasonable expenses of the Plan and of the Trust Fund. Prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries, no part of the assets and income of the Trust Fund may be used for, or diverted to, for purposes other than for the exclusive benefit of Participants and their Beneficiaries. The Employer has no beneficial interest in the Trust Fund and no part of the Trust Fund shall ever revert to the Employer, directly or indirectly, provided, however, that a contribution or any portion thereof made by the Employer through a mistake of fact under Section 12.4 shall upon written request of the Employer, reduced by losses attributable thereto, shall be returned to the Employer.

**SECTION XII
MISCELLANEOUS**

12.1 Non-Assignability

Except as provided in Sections 12.2 and 12.3, no benefit under the Plan at any time shall be subject in any manner to anticipation, alienation, assignment (either at law or in equity), encumbrance, garnishment, levy, execution, or other legal or equitable process; and no person shall have power in any manner to anticipate, transfer, assign (either law or in equity), alienate or subject to attachment, garnishment, levy, execution, or other legal or equitable process, or in any way encumber his or her benefits under the Plan, or any part thereof, and any attempt to do so shall be void except to such extent as may be required by law.

12.2 Domestic Relation Orders

The Employer shall establish reasonable procedures to determine the status of domestic relations orders and to administer distributions under domestic relations orders which are deemed to be qualified orders. Such procedures shall be in writing and shall comply with the provisions of Code Section 414(p) and regulations issued thereunder.

Notwithstanding Section 12.1, the Administrator may affect a Participant's Account Balance for a "qualified domestic relations order" as defined in Code Section 414(p), and those other domestic relations orders permitted to be so treated by the Administrator under the provisions of the Retirement Equity Act of 1984. The amount of the Participant's Account Balance shall be paid in the manner and to the person or persons so directed in the qualified domestic relations order. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan.

12.3 IRS Levy

Notwithstanding Section 12.1, the Administrator may pay from a Participant's or Beneficiary's Account Balance the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service to the Plan with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

12.4 Mistaken Contributions

Notwithstanding any other provision of the Plan or the Trust Fund to the contrary, in the event any contribution of an Employer is made under a mistake of fact (and not a Plan operational error), such contribution may be returned to the Employer within one year after the payment of the contribution. Earnings attributable to the excess contribution may not be returned to the Employer (and instead shall be applied otherwise as determined by the Administrator), but losses attributable thereto must reduce the amount to be so returned.

12.5 Employment

Neither the establishment of the Plan nor any modification thereof, nor the establishment of any account, nor the payment of any benefits, shall be construed as giving to any Participant or other person any legal or equitable right against the Employer except as herein provided; and, in no event, shall the terms or employment of any Employee be modified or in any way affected hereby.

12.6 Successors and Assigns

The Plan shall be binding upon and shall inure to the benefit of the Employer, its successors and assigns, all Participants and Beneficiaries and their heirs and legal representatives.

12.7 Written Notice

Any notice or other communication required or permitted under the Plan shall be in writing, and if directed to the Administrator shall be sent to the designated office of the Administrator, and, if directed to a Participant or to a Beneficiary, shall be sent to such Participant or Beneficiary at his or her last known address as it appears on the Administrator's record. To the extent permitted by law, regulation or other guidance from an appropriate regulatory agency, the Administrator, Employer or any other party may provide any notice or disclosure, obtain any authorization or consent, or satisfy any other obligation under the Plan through the use of any other medium acceptable to the Administrator. Such other medium may include, but is not necessarily limited to, electronic or telephonic medium. In addition, any communication or disclosure to or from Participants or Beneficiaries that is required under the terms of the Plan to be made in writing may be provided in any other medium (electronic, telephonic, or otherwise) that is acceptable to the Administrator and permitted under applicable law. The Administrator shall be entitled to reliance on any such communication from a Participant or Beneficiary, including any data or consent included in such communication, provided in any such manner.

12.8 Total Agreement


This Plan and Participant deferral election, and any subsequently adopted Plan amendment thereof, shall constitute the total agreement or contract between the Employer and the Participant regarding the Plan. No oral statement regarding the Plan may be relied upon by the Participant.

12.9 Gender

As used herein the masculine shall include the neuter and the feminine where appropriate.

12.10 Controlling Law

This Plan is created and shall be construed, administered and interpreted in accordance with Code Section 457 and the regulations thereunder, and under laws of the State of residence of the Employer, to the extent not superseded by federal law, as the same shall be at the time any dispute or issue is raised. If any portion of this Plan is held illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder shall be unaffected.

IN WITNESS WHEREOF, the Employer has executed this Plan document this _____ day 
of _____.


Moulton Niguel Water District

SEAL

By _____ 

Name _____

Title _____

Attest: _____ 

Title (Witness)

Employer Address: 26161 Gordon Rd
Laguna Hills, CA 92653

Employer EIN: 95-2377983

Contract Number: MNWD-002

This plan document is a specimen plan document only. Unlike 401(a)/(k) and 403(b) plans, the Internal Revenue Service does not offer a preapproved program for 457(b) plan documents and does not generally provide any determination or advisory letter regarding a 457(b) plan's compliance in form with applicable rules. As such, this plan document has not been reviewed by the Internal Revenue Service for compliance with applicable sections of the Internal Revenue Code of 1986, as amended. The Lincoln National Life Insurance Company and its affiliates (Lincoln) make no guarantees or warranties, expressed or implied, regarding the tax effects of the specimen plan document. Employers are strongly encouraged to consult with their legal and/or tax advisor regarding the adoption of this plan document.

EXHIBIT B

Governmental 457(b) Trust Agreement

between

MOULTON NIGUEL WATER DISTRICT

and

**Lincoln Financial Group Trust Company,
as Trustee**

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Governmental 457(b) Trust Agreement

This TRUST AGREEMENT (the "Agreement") is made as of this 15th day of April, 2020, by and between MOULTON NIGUEL WATER DISTRICT (the "Employer"), and LINCOLN FINANCIAL GROUP TRUST COMPANY, a non-depository trust company organized under the laws of the State of New Hampshire (the "Trustee") (each a "Party" or collectively the "Parties").

Witnesseth

WHEREAS, Employer sponsors a plan under Section 457(b) of the Code, known as the Moulton Niguel Water District 457(b) Plan & Trust ("Plan"), and

WHEREAS, Employer is either a State, a political subdivision of a State, or an agency or instrumentality of a State or political subdivision of a State so that Employer is eligible to sponsor an eligible deferred compensation plan pursuant to Code Section 457(b), and

WHEREAS, Employer wishes to establish a trust for the Plan pursuant to the requirements of Code Section 457(g), and

WHEREAS, Employer wishes to appoint Trustee as trustee of the Trust established under the Plan and Trustee hereby accepts such appointment.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the Employer and Trustee hereby mutually agree as follows:

Article I – Definitions

Section 1.1 Definitions

Unless the context otherwise requires or unless otherwise expressly provided, as used in this Agreement:

- (a) "Administrator" means, with respect to the Plan, the organization, entity, committee or other person responsible for benefit administration under the Plan, including any representative or delegate thereof designated in writing, authorized to act on behalf of such organization, entity, committee or other person, and may include the Employer.
- (b) "Code" means the Internal Revenue Code of 1986, as amended from time to time, and regulations issued thereunder.
- (c) "Investment Manager" means a bank, insurance company or registered investment adviser satisfying the requirements of Section 3(38) of ERISA appointed by the Employer to manage all or any portion of the Trust as designated by the Employer.
- (d) "ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time.
- (e) "Trust" means all property, real, personal or mixed, of any kind or nature, contributed, paid or delivered to the Trustee hereunder, and all investments, reinvestments and proceeds thereof, and all gains, earnings and profits thereon.

Article II - Creation; Purpose; Etc.

Section 2.1 Creation

The Employer hereby creates the Trust. Under the terms of the Plan, the Employer has the power to appoint and hereby appoints Lincoln Financial Group Trust Company to act as Trustee; and Lincoln Financial Group Trust Company hereby accepts the appointment to serve as Trustee.

Section 2.2 Purpose

The Trust is established to fund the benefits payable to participants and their beneficiaries under the Plan.

Section 2.3 Exclusive Benefit

Except as otherwise permitted by law, at no time prior to the satisfaction of all liabilities with respect to participants and their beneficiaries under the Plan shall any part of the Trust be used for, or diverted to, any purposes other than for the exclusive benefit of the participants and their beneficiaries and for defraying the reasonable expenses of administering such Plan.

Section 2.4 Domestic Trust

The Trust shall at all times be maintained as a domestic trust in the United States.

Section 2.5 Prohibited Transactions

Neither Trustee, Employer, Investment Manager nor any participant shall knowingly enter into any transaction, engage in any activity, or direct the purchase or acquisition of any investment with respect to the Plan which would constitute a prohibited transaction under the Code for which a statutory or administrative exemption is not available.

Section 2.6 Directed Trustee

Trustee shall have no discretion or authority with respect to the investments of the Trust but shall act solely as a directed Trustee of the funds contributed hereunder. Trustee shall not have any responsibilities for money or property not deposited into the Trust, except Trustee will take instruction from Employer regarding any group annuity issued by an affiliate of Trustee that Employer or Plan Sponsor owns. Trustee shall have no responsibility for money or properties held in any other trust Employer has established or will establish with respect to the Plan (unless specifically agreed to in writing by Trustee), or held by or deposited with any other trustee appointed by Employer.

Trustee will make distributions from the Plan in accordance with the written directions of the Administrator. To the extent Trustee follows such written direction, Trustee is not obligated in any manner to ensure a distribution complies with the terms of the Plan, that a participant or beneficiary is entitled to such a distribution, or that the amount distributed is proper under the terms of the Plan. If there is a dispute as to a payment from Trustee, Trustee may decline to make payment of such amounts until the proper payment of such amounts is determined by a court of competent jurisdiction, or Trustee has been indemnified to its satisfaction.

Section 2.7 Employer Representation

Employer represents that it is eligible to establish and maintain an eligible deferred compensation plan pursuant to Code Section 457(b). Employer represents that the Plan satisfies the requirement to be an eligible deferred compensation plan as defined in Code Section 457(b). Employer represents that the Plan is a governmental plan as defined in Code Section 414(d) and ERISA Section 3(32). Employer represents and warrants that the specifications, terms and conditions of the Plan are current and comply with applicable law, and that Employer has communicated such specifications, terms and conditions to Trustee in writing. Employer further represents and warrants that its underlying business and/or the plan will not cause or put Trustee in position to violate any federal, state or local law, regulation, rule or ordinance.

Article III – Administration of Plan

Section 3.1 Payment of Benefits

At the direction of the Administrator, Trustee shall pay moneys or other property directly to or for the benefit of participants and their beneficiaries, or to a paying or disbursing agent, which may be the Administrator. Any moneys or other property disbursed or paid over by Trustee pursuant to this Section 3.1 shall no longer be part of the Trust.

Section 3.2 Reliance on Administrator

Any directions pursuant to Section 3.1 may, but need not, specify the application to be made of payments so directed. Each direction to Trustee under Section 3.1 shall constitute a representation and warranty by the Administrator that such direction is in accordance with this Agreement, the Plan and applicable law, and Trustee shall have no duty to make any independent inquiry or investigation before acting upon such direction, or to see to the application of any moneys or other property so paid.

Section 3.3 Trustee Not Responsible for Plan Administration

Trustee shall not be responsible in any way for the determination, computation, payment or application of any benefit, or for any other matter affecting the administration of the Plan by the Employer or the Administrator or any organization, entity, committee or other person to whom such responsibility is delegated under the Plan.

Section 3.4 Trustee Not Responsible for Enforcing Contributions or for Sufficiency of Account

Trustee shall not be responsible for enforcing payment of any contribution to the Trust, for the timing or amount thereof, or for the adequacy of the Trust or any part thereof or the funding standards adopted for the Plan to meet or discharge any liabilities of the Plan or the Trust. Trustee has no duty to inquire into the source of any money or property transferred to it nor to inquire into the authority or right of the transferor of such money or property to transfer such money or property to Trustee. Trustee does not have any duty to see that the contributions received by it comply with the provisions of the Plan, nor is Trustee obligated to collect any contributions from the Employer; provided, however, Trustee will take such reasonable collection efforts as directed by the Employer.

Section 3.5 Plan-to-Plan Transfers/Rollovers

If the Plan permits plan-to-plan transfers and/or rollovers Trustee shall take such action as is necessary or desirable to accomplish any such matter, all pursuant to appropriate directions from the Administrator. The Administrator shall be responsible to determine that any such plan-to-plan transfers and/or rollovers comply with applicable law.

Article IV – Investment of Trust

Section 4.1 Employer Authority

Except as otherwise provided in Section 4.2 or 4.3, the Employer shall possess all discretionary authority for the management and control of the Trust. The Employer shall be responsible for determining the diversification policy (if and to the extent required), and for monitoring adherence by any Investment Manager or Investment Managers to such policy.

Section 4.2 Investment Managers

Discretionary authority for the management and control of all or any portion of the Trust may be delegated by the Employer, in its absolute discretion, to one or more Investment Managers. The terms and conditions of appointment, authority and retention of any Investment Manager shall be the sole responsibility of the Employer. The Employer shall promptly notify Trustee in writing of the appointment or removal of any Investment Manager and the portion of the Trust over which such Investment Manager shall have authority. Any notice of appointment pursuant to this Section 4.2 shall constitute a

representation and warranty that the Investment Manager has been appointed in accordance with the Plan and that any Investment Manager is an Investment Manager as defined in this Agreement. The Employer may limit, restrict or impose guidelines affecting the exercise of the discretion conferred on any Investment Manager, and shall be responsible for communicating, and monitoring adherence to, any such limitations, restrictions or guidelines.

Section 4.3 Individually Directed Accounts

As to each individually directed account permitted by the Plan, the applicable participant shall possess all of the investment and investment-related authority held by the Employer hereunder, and Trustee shall invest and reinvest such assets pursuant to the directions of the participant, as communicated in writing, via facsimile or by electronic transmission to Trustee by the Administrator or its delegate. Trustee shall be fully protected in relying upon the instructions of the Administrator or its delegate as to the participant's directions. Trustee shall not be liable to the participant or any of his or her beneficiaries for any loss resulting from any action taken at the direction of the participant.

Section 4.4 Reliance on Employer, Investment Managers, Participants

Trustee shall invest and reinvest the Trust pursuant to the directions of the Employer, participants – acting through the Administrator or its delegate - or the Investment Manager or Investment Managers, as the case may be. Trustee shall have no investment responsibility with respect to the Trust, and shall have no duty to inquire into the directions of the Employer, participants – acting through the Administrator or its delegate - any Investment Manager, as the case may be, to solicit such directions, to determine such directions are in compliance with the provisions of the Plan, or to review and follow the investments made pursuant to any such directions, other than to the extent required by law. Any such investment direction shall constitute a representation and warranty that the transaction will not constitute a prohibited transaction or other violation under the Code and that the investment is authorized under this Agreement, the Plan, any other applicable agreement affecting investment authority under the Plan, or any applicable law.

Trustee may refuse to comply with any directions in the event Trustee, in its sole discretion, deems such directions improper by virtue of applicable law. Trustee shall not be responsible or liable for any loss or expense which may result from Trustee's refusal and failure to comply with any such directions.

Section 4.5 Late Day Trading

Trustee does not engage in the practice of late day trading. In the event trade orders made by the Plan or its participants are received before the established cutoff time for Trustee or another party to receive such orders and such orders cannot be processed by the cutoff time, the Employer authorizes Trustee to process these orders after the cutoff time as if they were received and processed before the cutoff time.

Section 4.6 Self-Directed Brokerage Accounts

In the event the Plan now or hereafter provides for self-directed brokerage accounts ("Participant SDBAs") as an investment option, the Employer and Trustee agree that the provisions set forth on the Self Directed Brokerage Accounts Addendum attached hereto shall be deemed incorporated into this Agreement. The Employer agrees to give Trustee reasonable advance notice of its intention to offer Participant SDBAs.

Section 4.7 Plan Expense Account

The Employer hereby directs Trustee to establish a segregated sub-account within the Trust for the purpose of receiving certain amounts from mutual fund sub-transfer agents, administrative service fees, shareholder servicing fees or other revenue or annuity spread revenue (the "plan expense account"). As authorized by Employer, the plan expense account will be invested in an investment that has an investment objective of capital preservation and liquidity. The Employer hereby agrees that if included as an investment option under the Plan, such investment shall be a group fixed annuity or stable value investment issued by an affiliate of Trustee. If Employer chooses not to include such investment issued by an affiliate of Trustee, then the plan expense account will be invested in such other investment option as designated by the Employer.

#12.

From time to time, Trustee shall receive such fees or revenue and deposit or sweep it into the plan expense account. Such funds shall be considered Plan assets. The activity of the plan expense account shall be provided quarterly to the Employer. Any Plan expense to be paid from the plan expense account shall be at the direction of the Administrator or its delegate to Trustee or its affiliate. At no time shall Trustee or its affiliates have discretion to make deposits into or payment out of the plan expense account. If the balance in the account is to be used as contributions to Plan participants, the Administrator or its delegate will notify Trustee or its affiliate of the amount in the plan expense account that will be used for participant contributions. The Plan's record keeper will coordinate the transfer of funds from the plan expense account to participant accounts.

Trustee is not responsible for ensuring the accuracy or adequacy of assets transferred to the plan expense account but will rely on its affiliated recordkeeper and service provider, Lincoln Retirement Services Company, LLC, to transfer the agreed amounts to the plan expense account. The Employer will have control over such account and will be responsible for any application or use of such funds in the plan expense account.

Article V – Powers of Trustee

Section 5.1 General Powers

Upon the directions of the Employer, the Investment Manager(s), or the Administrator on behalf of the participants with respect to individually directed accounts, as the case may be, Trustee shall be authorized and empowered to exercise any and all of the following rights, powers and privileges with respect to the Trust:

- (a) To invest and reinvest the principal and income of the Trust Fund, without distinction between principal and income, in such securities as but not limited to, common stocks, preferred stocks, bonds, bills, notes, commercial paper, debentures, mortgages, equipment trust certificates, investment trust certificates, partnership interests and also in other investments, whether real, personal or mixed property.
- (b) To receive any and all money and other property of whatsoever kind or nature due or owing or belonging to the Trust.
- (c) To settle, compromise, or submit any claims, debts or damages due or owing to or from the Trust; to commence or defend suits or legal proceedings; and to represent the Trust in all suits or legal proceedings in any court of law or equity or before any other body or tribunal, insofar as such suits or proceedings relate to any part of the Trust or the administration thereof.
- (d) To borrow money from any source as may be necessary or advisable to effectuate the purposes of the Trust.
- (e) To generally take all actions, execute all instruments, and exercise all rights and privileges with relation to the Trust, whether or not expressly authorized, as Trustee is directed or in its sole discretion deems necessary or desirable, subject however to the directions by an appropriate party as set forth in this Agreement.
- (f) To execute and deliver any vote, proxy, tender offer or similar rights incident to the ownership of any securities held in the Trust, except that Trustee shall exercise such rights only pursuant to the written instructions of the Employer, or the written instructions of plan participants or beneficiaries if the Plan gives such rights to participants or beneficiaries, or by the Investment Manager if an Investment Manager has been appointed pursuant to Section 4.2. If no such written directions are timely received from the appropriate party, Trustee shall not vote or exercise any such rights with respect to such securities.
- (g) To sell, exchange, convey, transfer or otherwise dispose of any such property at public or private sale, for cash or credit, or partly for cash and partly for credit, and with or without notice or advertisement of any kind.
- (h) To purchase whole or part interests in real property or in mortgages on real property, wherever situated, directly or through financial intermediaries or entities, such as, but not limited to,

partnerships, and to mortgage or lease for any term any real property or part interest in real property; and to delegate to a manager the management and operation of any interest in such property or properties.

- (i) To purchase or sell, write or issue, puts, calls or other options, covered or uncovered, to enter into financial futures contracts, forward placement contracts and standby contracts, and in connection therewith, to deposit, hold or pledge assets of the Trust Fund.
- (j) To collect and receive any and all money and other property of whatsoever kind or nature due or owing or belonging to the Trust Fund and to give full discharge and acquittance therefore; and to extend the time of payment of any obligation at any time owing to the Trust Fund.
- (k) To transfer, from time to time, all or any part of the Trust Fund to any common, collective or commingled trust fund exempt from taxation under the Code ("Collective Trust") and/or to enter into the relevant trustee agreement on behalf of the Plan for such Collective Trust, to be held and administered subject to the terms and provisions of the relevant trust agreement, and such trust agreement shall be deemed adopted as part of this Agreement and the Plan to the extent that any portion of the Trust Fund is invested therein.
- (l) To apply for and procure from an insurance company as an investment of the Trust such annuity, or other contracts on the life of any participant as the Administrator shall deem proper; exercise, at any time or from time to time, whatever rights and privileges may be granted under such annuity, or other contracts; and collect, receive, and settle for the proceeds of any such annuity, or other contracts as and when entitled to do so under the provisions thereof.
- (m) To, upon the written direction of the Administrator, enter into a transfer agreement with the Trustee of another qualified retirement plan and to accept a transfer of assets from such retirement plan on behalf of any employee of the Employer. Trustee is also authorized, upon the written direction of the Administrator, to transfer some or all of a participant's vested account balance to another qualified retirement plan on behalf of such participant.

Section 5.2 Uninvested Cash and Float

With respect to uninvested cash and float, while Trustee may not at any time accept deposits of funds, it is understood that State Street Bank (or any successor thereto) (hereinafter, the "depository bank"), acting on behalf of Trustee, may from time to time, have on hand funds from (i) the receipt of contributions that are awaiting investment or (ii) the sale of assets which are awaiting reinvestment or distribution. While there is not an explicit fee debited from plan assets as float revenue, a noninterest-bearing omnibus bank account has been established at depository bank in which to temporarily place cash to facilitate purchases and liquidations into and out of the Plan. The account is a noninterest bearing account, so no explicit direct float income is earned on the cash in transit. However, the account does earn banking credits based on the following formula: The Fed Funds Rate x 1/360 treasury rate. Contributions into the account are generally held in the account for one to two days. Distributions from the account are generally in the account for less than one day for wires and ACH transfers and three or more days for distributions. The length of time cash stays in this account can vary depending on how quickly the check is redeemed by the participant or how quickly payroll is processed. Credits earned are used entirely to pay banking fees and other fees that would otherwise be charged to Trustee and its clients.

Section 5.3 Valuations

Trustee shall periodically determine the market value of the assets of the Trust or, in the absence of readily ascertainable market values, at such values as Trustee shall determine in accordance with methods consistently followed and uniformly applied. With respect to assets without readily ascertainable market values, Trustee may rely for all purposes of this Agreement on the latest valuation and transaction information submitted to it by the person responsible for the investment. The Employer shall cause such person to provide Trustee with all information needed by Trustee to discharge its obligations to value such assets and to account for such assets under this Agreement.

Article VI – Records and Accounts of Trustee

Section 6.1 Records

Trustee shall keep accurate and detailed accounts of all investments, receipts, disbursements and other transactions in the Trust and all accounts, books and records relating thereto shall be open to inspection and audit at reasonable times during normal business hours by any person designated by the Employer.

Section 6.2 Annual and Other Periodic Accounts

Within ninety (90) days following the close of each Plan year, and within sixty (60) days following the close of each Plan quarter, Trustee shall file with the Employer or the Administrator a written account setting forth the receipts and disbursements and the investments and other transactions effected by it with respect to the Trust during such Plan year or quarter, as the case may be. Unless otherwise requested, recipients will be set up for quarterly statements and access via the web for all trust account reporting. Upon the expiration of ninety (90) days from the date of mailing (or, if applicable, distribution via e-mail or other electronic means) of its annual or quarterly account, Trustee shall be forever released and discharged from all liability and further accountability to the Employer, the Administrator or any other person with respect to the accuracy of such accounting and all acts and failures to act of Trustee reflected in such account, except to the extent that the Employer or the Administrator shall, within such 90-day period, file with Trustee specific written objections to the account. Neither the Employer, the Administrator, any participant nor any other person shall be entitled to any additional or different accounting by Trustee and Trustee shall not be compelled to file in any court any additional or different accounting.

Section 6.3 Tax Returns and Tax Withholding and Reporting

Unless otherwise agreed to in writing by the Parties, Trustee shall prepare and file tax returns or other filings with respect to the Trust only if such returns or filings must be filed by Trustee rather than by the Administrator or the Employer. If Trustee disburses funds from the Trust to a Plan participant, Trustee shall withhold and remit to the Internal Revenue Service ("IRS") and other applicable taxing authorities the amount of any income tax withholding required by law. Unless otherwise agreed to in writing by the Parties, the Employer shall be responsible for preparing and filing all other applicable federal and state reports.

Article VII – Trustee's Rights/Limitation of Trustee's Responsibility**Section 7.1 No Implied Duties**

The duties and responsibilities of Trustee shall be solely determined in accordance with this Agreement, shall not be deemed to be enlarged by the provisions of the Plan, and no other or further duties or responsibilities shall be implied against or imposed on Trustee.

Section 7.2 Evidence of Authority

The Employer shall furnish Trustee from time to time with a certificate evidencing the name, title and specimen signature of any person authorized to give instructions to Trustee on behalf of the Employer hereunder. The Employer shall also furnish Trustee from time to time or cause Trustee to be furnished from time to time with certified lists of the names and signatures of all other organizations, entities, committees or other persons authorized to act as the Administrator or in any manner authorized to issue notices, requests, directions, instructions or other communications to Trustee pursuant to this Agreement. The Employer shall cause each Investment Manager to furnish Trustee from time to time with the names and signatures of the persons authorized to direct Trustee on its behalf hereunder. Trustee shall be entitled to rely upon each such evidence of authority until it is revoked in writing.

Section 7.3 Reliance by Trustee

Trustee shall be entitled to rely upon each representation, information, notice, direction, certificate and other communication furnished by or on behalf of the Employer, the Administrator, and each Investment Manager; and Trustee shall be protected to the extent the law permits in acting in accordance with and relying upon such representations, information, notices, directions, certificates and other communications; and Trustee shall be under no duty to make any inquiry or investigation in connection therewith.

Section 7.4 Trustee May Employ Agents

Trustee may from time to time employ and consult with counsel (who may also serve as counsel for the Employer or Trustee) and shall be protected to the extent the law permits in acting upon such advice of counsel. Trustee may also from time to time employ accountants and other agents as may be reasonably necessary in administering and protecting the Trust, and Trustee may pay such counsel, accountants and other agents reasonable compensation, which shall be reimbursed to Trustee in accordance with Section 8.1. Trustee shall at no time be obligated to institute any legal action or to become a party to any legal action unless Trustee shall have been indemnified to its satisfaction for any fees, costs and expenses to be incurred in connection with such legal action.

Section 7.5 No Obligation to Act on Unsatisfactory Notice

Trustee shall not be liable for any failure to act pursuant to any notice, direction or any other communication from the Employer, the Administrator, any Investment Manager or any other person or delegate of any of them unless and until it shall have received directions in the form specified in this Agreement.

Article VIII – Compensation, Taxes, Expenses, Indemnity

Section 8.1 Payment of Compensation and Expenses

Trustee shall be entitled to receive reasonable compensation for its services and reimbursement of all reasonable costs and expenses incurred in connection with the administration of the Trust. Unless and until agreed otherwise in writing by the Employer and Trustee, the compensation of Trustee shall be as agreed upon from time to time among Trustee and the Employer; and in the event that Trustee shall be called upon to render any extraordinary services, it shall be entitled to additional compensation. Any change in Trustee’s compensation or charges will be applicable only after reasonable notice to the Employer. If such compensation, costs and expenses are not paid by the Employer, they shall be paid from the Trust.

Section 8.2 Taxes

All income or other taxes of any kind whatsoever which may be properly levied or assessed under existing or future laws upon, or in respect of, the Trust shall, at the direction of the Administrator, be paid by Trustee out of the Trust, and, until paid, shall constitute a charge upon the Trust.

Section 8.3 Indemnification by Employer

In addition to any other remedies at law or in equity available to Trustee for breach of this Agreement by Employer, the Employer shall indemnify Trustee against, and agrees to hold Trustee harmless from, any and all damages, losses, costs, judgments, fines and expenses (including attorneys’ fees and disbursements) of any kind and nature related to this Agreement including any such items arising out of any threatened, pending, or completed claim, action, suit, or proceeding, whether civil, criminal, administrative, or investigative (hereinafter in the aggregate referred to as the “Losses”), unless such Losses results from Trustee’s intentional wrongdoing or negligent actions or omissions. Except as otherwise provided by the preceding sentence, the Employer also shall indemnify Trustee against, and agrees to hold Trustee harmless from, all Losses arising from any actions or breach of any responsibility by any party other than Trustee.

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The Employer agrees to indemnify Trustee against any Losses arising as a result of any act taken or failure to act by Trustee, in accordance with the directions received from the Employer, Administrator, Investment Manager, participant, or a designee specified by the Administrator or the Employer.

Trustee shall not be responsible in any way for any actions taken, or failure to act, by a prior trustee or custodian. The Employer shall indemnify and hold harmless Trustee for any Losses for such prior trustee's or custodian's acts or inactions.

The Employer shall indemnify Trustee against, and agrees to hold Trustee harmless from any Losses resulting from Trustee's actions or inactions pursuant to the provisions of Section 5.1(f) pertaining to voting, proxies, tender offers or similar rights.

As a condition of indemnification, (i) Trustee shall give Employer timely notice in writing of any potential Losses promptly after Trustee becomes aware of them; (ii) Employer shall, at its option, have sole control of the defense of such Losses; and (iii) Trustee shall cooperate with Employer in the defense of such Losses. Employer shall not be responsible for the settlement of any claim, demand or lawsuit related to the Losses without Employer's written consent.

For purposes of this Section 8.3, the term Trustee shall include Trustee's officers, directors (or managers), employees and agents.

Section 8.4 Indemnification by Trustee

In addition to any other remedies at law or in equity available to Employer for breach of this Agreement by Trustee, Trustee will indemnify Employer, from and against any Losses imposed on or incurred by Employer and related to this Agreement where such Losses are the result of Trustee's intentional wrongdoing or its negligent actions or omissions. However, Trustee will have no liability with respect to claims of breach of its duties for (i) the inclusion, exclusion, or deletion of investments in the Plan, or (ii) the monitoring of such investments after the Employer's selection of them as an investment option for the Plan.

As a condition of indemnification, (i) Employer shall give Trustee timely notice in writing of any potential Losses promptly after Employer becomes aware of them; (ii) Trustee shall, at its option, have sole control of the defense of such Losses; and (iii) Employer shall cooperate with Trustee in the defense of such Losses. Trustee shall not be responsible for the settlement of any claim, demand or lawsuit related to the Losses without Trustee's written consent.

For purposes of this Section 8.4, the term Employer shall include Employer's officers, directors (or managers), employees and agents.

Article IX – Resignation or Removal of Trustee

Section 9.1 Removal or Resignation of Trustee

Trustee may be removed by the Employer at any time by 60 days prior written notice to Trustee. Trustee may resign at any time by written notice to the Employer. Such notice shall be effective 60 days after receipt by the Employer or such later date as shall be specified therein, or at an earlier date by the mutual agreement of the Parties. Upon the effective date of the removal or resignation of Trustee, Trustee shall deliver the Trust to a successor Trustee or Trustee designated by the Employer. If, for any reason, the Employer cannot or does not act promptly to appoint a successor Trustee, Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee. Any expenses incurred by Trustee in connection therewith shall be charged to and paid from the Trust as an expense of administration.

Section 9.2 Reserve for Expenses

Trustee is authorized to reserve such sum of money (and for that purpose to liquidate property to produce such sum) as it may deem advisable for payment of all proper charges against the Trust,

including expenses in connection with such resignation or removal, and any balance of such reserve remaining after the payment of such charges shall be paid over to the successor Trustee or Trustee.

Article X – Amendment or Termination of Agreement

Section 10.1 Amendment of Agreement

Subject to Section 2.3, a Party may not alter, modify or amend this Agreement in whole or in part at any time, without the prior written consent of the other Party.

Section 10.2 Termination of Agreement

Subject to Sections 2.3 and 9.1, the Parties may at any time terminate this Agreement by written notice given to the other Party. The Parties may by mutual agreement determine an earlier time when such termination shall be effective. Such notice of termination shall be accompanied by a certified copy of a resolution of the Board of Directors of the Employer approving such termination. In the event of the termination of this Agreement, the Trust shall be distributed pursuant to Article IX or XI hereof.

Article XI – Termination of Plan

Section 11.1 Amendment or Termination of Plan

Subject to Section 2.3, if Employer alters, modifies, amends or terminates the Plan in whole or in part, Employer shall give written notice to Trustee promptly of such alteration, modification or amendment. Such notice shall include a certified copy of a resolution of the Board of Directors of the Employer or letter on Employer's letterhead and signed by an officer with authority over the Plan.

Section 11.2 Cessation of 457(b) Status

The Employer shall promptly notify the Trustee if the Plan becomes an ineligible deferred compensation plan pursuant to the provisions of Code Section 457(f), or if the Plan ceases for any reason to qualify as a Section 457(b) plan.

Section 11.3 Application of Funds on Termination

In the event of termination of the Plan, the interests of the Plan participants shall vest and be processed in accordance with the written directions of the Employer, accompanied by a certificate that such disposition is in accordance with the terms of the Plan.

Article XII – General Provisions

Section 12.1 Governing Law

To the extent not preempted by the provisions of any applicable federal law, this Agreement shall be administered, construed and enforced according to the laws of the State of Indiana, and shall be deemed to have been executed and delivered in that State.

Section 12.2 Entire Agreement

Trustee's duties and responsibilities to the Plan or any person interested therein shall be limited to those specifically set forth in this Agreement. No amendment to the Plan or any other document affecting the Plan shall affect Trustee's duties or responsibilities hereunder without its prior written consent.

Section 12.3 Notices

Except as otherwise provided in writing and agreed to by Trustee, all notices, reports, accounts and other communications from Trustee to the Employer, the Employer, the Administrator, the Investment Manager(s) or any other person shall be in writing or in such other form agreed to by the parties,

#12.

including transmission by electronic means through the facilities of third parties or otherwise. Any paper communication shall be deemed to be duly given if mailed; postage prepaid, or otherwise placed for delivery by a national delivery service, shipping prepaid, or is delivered by hand to such person at the address appearing on the records of the Trustee. Any electronic notice shall be deemed to be duly given at the time the electronic notification is sent. Except as otherwise provided in writing and agreed by Trustee, all directions, notices, objections and other communications to Trustee shall be in writing or in such other form, including transmission by electronic means through the facilities of third parties or otherwise, specifically agreed to in writing by Trustee and shall be deemed to have been given when received by Trustee at its offices.

Section 12.4 Plan Documents

Upon execution of this Agreement, Trustee hereby requests the Named Fiduciary to provide complete, current copies of the Plan documents. Trustee shall be entitled to rely upon the Named Fiduciary's attention to this obligation and shall be under no duty to request such documents again or to inquire of any person as to the existence of any documents not provided hereunder.

Section 12.5 Spendthrift Provision

Except as may be required by law, no interest or claim of interest of any kind of any participant under the provisions of this Trust is assignable, nor may any such interest or claim be subject to garnishment, attachment, execution or levy of any kind, and no attempt to transfer, assign, pledge or otherwise encumber or dispose of such interest by act of the person involved or by operation of law will be recognized.

Section 12.6 Effect

All persons at any time interested in the Plan shall be bound by the provisions of this Agreement and, in the event of any conflict between this Agreement and the provisions of the Plan or any instrument or agreement forming part of the Plan, the provisions of this Agreement shall control.

Section 12.7 Severability

The illegality or unenforceability of any provisions of this Agreement or any instrument or agreement required hereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Agreement or any instrument or agreement required hereunder.

Section 12.8 Headings and Titles

The titles of the Articles and headings of Sections in this Trust Agreement are for convenience of reference only and in case of conflict the text of this Trust Agreement rather than such titles or headings shall control.

Section 12.9 Binding Agreement

This Agreement shall be binding upon Trustee and the Employer, their successors and assigns, and upon the participants and their beneficiaries, heirs, executors, administrators and assigns.

Section 12.10 Merger or Consolidation

Any legal entity into which Trustee may be merged, or with which it may be consolidated, or any legal entity resulting from any merger or consolidation to which Trustee may be a party, or any legal entity succeeding to the business of Trustee or to which substantially all of the assets of Trustee may be transferred, shall be the successor of Trustee hereunder without the execution or filing of any paper and without any further action on the part of the parties hereto, with like effect as if such successor Trustee had originally been named Trustee herein.

Section 12.11 Force Majeure

Trustee shall have no liability for any losses arising out of delays in performing the services which it renders under this Agreement which result from events beyond its control, including without limitation, interruption of the business of Trustee due to acts of God, acts of governmental authority, acts of war, riots, civil commotions, insurrections, labor difficulties (including, but not limited to, strikes and other work slippages due to slow-downs), or any action of any courier or utility, mechanical or other malfunction, or electronic interruption.

Section 12.2 Shareholder Communications Act

Trustee is obligated to provide to issuers of securities identifying information such as Employer's name(s), address(es), and share positions, unless Employer objects below or through subsequent notice to Trustee in writing.

_____Employer requests that Trustee withhold Employer's identifying information from issuers.

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IN WITNESS WHEREOF, the Employer and Trustee have caused this Agreement to be executed by their respective duly authorized officers, all as of the day and year first above written.

Employer

By: _____

Employer: _____

Title: _____

Signature: _____

Attest: _____

Title: _____

Signature: _____

Trustee

By: Ralph Ferraro

Trustee: Lincoln Financial Group Trust
Company, as Trustee

Title: President

Signature:  _____

Self-Directed Brokerage Accounts Addendum

Effect of Addendum

This Addendum is part of the Trust Agreement between the Employer and the Trustee upon Employer establishing self-directed brokerage accounts (SDBAs) for its participants as described herein. Except as otherwise provided in this Addendum, Participant SDBAs (as hereafter defined) shall be subject to all of the terms and conditions of the Trust Agreement and the TD Ameritrade Documents (as hereafter defined) governing the Participant SDBAs.

Participant SDBAs

The Plan provides that certain self-directed brokerage accounts (the "Participant SDBAs") may be invested by a participant in investments selected solely by the participant, subject to such limitations as may be determined by the Employer from time to time, and not solely from among the eligible investments otherwise applicable to all participant accounts or the Trust in its entirety. The Employer shall communicate any such limitations in writing to the Trustee. The Employer acknowledges and agrees that the Trustee, if and as directed by the Administrator or other person or entity authorized to give instructions under the Agreement on behalf of a participant, shall establish accounts representing Participant SDBAs through TD Ameritrade, Inc. ("TD Ameritrade"), a registered broker-dealer, and shall enter into an agreement or agreements with TD Ameritrade governing such Participant SDBAs (the "TD Ameritrade Documents"). Participant SDBAs shall be subject to the TD Ameritrade Documents and to such terms and procedures as are agreed upon by the Trustee, the Employer and the Administrator or its delegate from time to time, and also to such other terms and procedures as may be reasonably required by TD Ameritrade from time to time and communicated in writing by TD Ameritrade or the Trustee to the Employer and the Administrator or other person or entity authorized to give instructions under the Agreement on behalf of a participant.

Authority of Participants Regarding Participant SDBAs, Etc.

Once a Participant SDBA is established through TD Ameritrade, a participant shall communicate all investment and investment related instructions relating to such account to TD Ameritrade, and TD Ameritrade, on behalf of the Trustee, shall invest the Participant SDBAs pursuant to the directions of the participant. The participant shall be solely responsible for managing his or her Participant SDBA subject to the terms and conditions applicable to such Participant SDBA. The Employer shall be responsible for communicating to participants (or causing to be communicated to participants) all applicable terms and conditions. Notwithstanding the foregoing, unless and until otherwise agreed in writing by the Employer and the Trustee, the Administrator or its delegate shall direct the Trustee with respect to: (i) the terms and conditions of all transfers of cash and/or other property between a Participant SDBA and the remainder of the Trust, including, without limitation, any sale or liquidation instructions associated with such transfers; and (ii) all withdrawals and distributions on behalf of each participant.

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Reliance on Participants, Etc.

The Trustee and TD Ameritrade shall be fully protected in relying upon the directions of the participant with respect to investments and investment related decisions within Participant SDBAs. The Trustee shall not be liable to the participant or any of his or her beneficiaries for any loss resulting from any action taken at the direction of the participant or the Administrator, or other person or entity authorized to give instructions under this Addendum. Neither the Trustee nor TD Ameritrade shall have any investment responsibility with respect to the Participant SDBAs, or any duty to inquire into the directions of the participants, to solicit such directions or to review and follow the investments made pursuant to any such directions. Any such investment direction by a participant shall constitute a representation and warranty that the transaction will not constitute a non-exempt prohibited transaction under the Code and that the investment is authorized under the Agreement, the Plan and any other applicable agreement affecting the participant's investment authority under the Plan. Further, the Trustee and TD Ameritrade shall also be fully protected in relying upon the directions of the Administrator, or other person or entity authorized to give instructions under this Addendum.

Costs of Participant SDBAs

The costs and expenses of establishing and maintaining Participant SDBAs shall be borne by the respective participants and Participant SDBAs, except to the extent otherwise paid by the Employer or the Trust. TD Ameritrade shall be entitled to the payment of fees for each Participant SDBA, including without limitation as TD Ameritrade's compensation for executing securities transactions, without diminution of the compensation otherwise payable to Trustee under the Agreement.

RESOLUTION NO. 20-_____

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE
MOULTON NIGUEL WATER DISTRICT
ADOPTING AN AMENDED AND RESTATED
401(a) PLAN & TRUST**

WHEREAS, the Board of Directors of the Moulton Niguel Water District (“District”) previously adopted Resolution No. 01-13 on June 21, 2001, which resolution established the current 401(a) Plan & Trust Profit Sharing Defined Contribution Plan (“401(a) Plan & Trust”); and,

WHEREAS, the Board of Directors desires to amend and restate the 401(a) Plan & Trust in order to implement certain updates.

NOW, THEREFORE, the Board of Directors of Moulton Niguel Water District does hereby **RESOLVE, DETERMINE** and **ORDER** as follows:

Section 1. In order to update the 401(a) Plan & Trust, the Board of Directors hereby establishes, approves and adopts for its employees the Moulton Niguel Water District 401(a) Plan & Trust Adoption Agreement attached hereto as Exhibit A and the Governmental 401(a) Trust Agreement attached hereto as Exhibit B and incorporated herein by reference. The updated 401(a) Plan & Trust shall be effective as of April 15, 2020 and shall remain in effect unless or until amended or terminated by further action of the Board of Directors.

Section 2. Resolution 01-13, dated June 21, 2001, which established the original/current 401(a) Plan & Trust, and any amendments thereto, shall be deemed to be superseded and of no further force or effect as of the effective date of the updated 401(a) Plan & Trust, which is April 15, 2020.

Section 3. If any section, subsection, clause or phrase in this Resolution is for any reason held invalid, the validity of the remainder of this Resolution shall not be affected thereby. The Board hereby declares that it would have passed this Resolution and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases or the application thereof be held invalid.

Section 4. This Resolution shall be effective as of the date of adoption and the updated 401(a) Plan & Trust shall be effective as of April 15, 2020.

Section 5. The Recitals set forth above are incorporated herein and made an operative part of this Resolution.

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ADOPTED, SIGNED and APPROVED this 27th day of February, 2020.

MOULTON NIGUEL WATER DISTRICT

By _____
President/Vice President
MOULTON NIGUEL WATER DISTRICT
and the Board of Directors thereof

By _____
Secretary/Assistant Secretary
MOULTON NIGUEL WATER DISTRICT
and the Board of Directors thereof

Moulton Niguel Water District
GOVERNMENTAL VOLUME SUBMITTER PLAN
ADOPTION AGREEMENT

EXHIBIT A

By executing this Governmental Volume Submitter Plan Adoption Agreement (the "Agreement"), the undersigned Employer agrees to establish or continue a Governmental Plan for its Employees. The Plan adopted by the Employer consists of the Governmental Defined Contribution Volume Submitter Plan and Trust Basic Plan Document #05 (the "BPD") and the elections made under this Agreement (collectively referred to as the "Plan"). An Employer may jointly co-sponsor the Plan by signing a Participating Employer Adoption Page, which is attached to this Agreement. **This Plan is effective as of the Effective Date identified on the Signature Page of this Agreement.**

**SECTION 1
EMPLOYER INFORMATION**

The information contained in this Section 1 is informational only. The information set forth in this Section 1 may be modified without amending this Agreement. Any changes to this Section 1 may be accomplished by substituting a new Section 1 with the updated information. The information contained in this Section 1 is not required for qualification purposes and any changes to the provisions under this Section 1 will not affect the Employer's reliance on the IRS Favorable Letter.

1-1 **EMPLOYER INFORMATION:**

Name: Moulton Niguel Water District

Address: 26161 Gordon Rd
Laguna Hills, CA 92653

Telephone: 949-831-2500 Fax: n/a

1-2 **EMPLOYER IDENTIFICATION NUMBER (EIN):** 95-2377983

1-3 **FORM OF BUSINESS:**

- State or political subdivision of a State
- State agency or instrumentality
- Indian Tribal Government
- Describe other Employer qualified to adopt a Governmental Plan: Local Public Agency

1-4 **EMPLOYER'S TAX YEAR END:** The Employer's tax year ends June 30

1-5 **RELATED EMPLOYERS:** Is the Employer part of a group of Related Employers (as defined in Section 1.78 of the Plan)?

- Yes
- No

If yes, Related Employers may be listed below. A Related Employer must complete a Participating Employer Adoption Page for Employees of that Related Employer to participate in this Plan.

[Note: This AA §1-5 is for informational purposes. The failure to identify all Related Employers will not jeopardize the qualified status of the Plan.]

**SECTION 2
PLAN INFORMATION**

2-1 **PLAN NAME:** Moulton Niguel Water District 401(a) Plan and Trust

2-2 **PLAN NUMBER:** 001

2-3 **TYPE OF PLAN:** This Plan is a Profit Sharing Defined Contribution Plan.

The Plan is intended to be a FICA Replacement Plan (as defined under Section 4.03 of the Plan).

2-4 **PLAN YEAR:**

(a) Calendar year.

(b) The 12-consecutive month period ending on _____ each year.

(c) The Plan has a Short Plan Year running from 7-1-2020 to 12-31-2020.

2-5 **FROZEN PLAN:** Check this AA §2-5 if the Plan is a frozen Plan to which no contributions will be made.

This Plan is a frozen Plan effective _____. (See Section 3.02(a)(1)(iv) of the Plan.)

[Note: As a frozen Plan, the Employer will not make any contributions with respect to Plan Compensation earned after such date and no Participant will be permitted to make any contributions to the Plan after such date. In addition, no Employee will become a Participant after the date the Plan is frozen.]

2-6 **PLAN ADMINISTRATOR:**

(a) The Employer identified in AA §1-1.

(b) Name: _____

Address: _____

Telephone: _____

**SECTION 3
ELIGIBLE EMPLOYEES**

3-1 **ELIGIBLE EMPLOYEES:** In addition to the Employees identified in Section 2.02 of the Plan, the following Employees are excluded from participation under the Plan with respect to the contribution source(s) identified in this AA §3-1. See Sections 2.02(d) and (e) of the Plan for rules regarding the effect on Plan participation if an Employee changes between an eligible and ineligible class of employment.

Match	ER	
<input type="checkbox"/>	<input type="checkbox"/>	(a) No exclusions
<input type="checkbox"/>	<input type="checkbox"/>	(b) Collectively Bargained Employees
<input type="checkbox"/>	<input type="checkbox"/>	(c) Non-resident aliens who receive no compensation from the Employer which constitutes U.S. source income
<input type="checkbox"/>	<input type="checkbox"/>	(d) Leased Employees
<input type="checkbox"/>	<input type="checkbox"/>	(e) Employees paid on an hourly basis
<input type="checkbox"/>	<input type="checkbox"/>	(f) Employees paid on a salaried basis
<input type="checkbox"/>	<input type="checkbox"/>	(g) Employees in an elected or appointed position.
<input type="checkbox"/>	<input type="checkbox"/>	(h) Part-Time Employees (as defined in Section 1.68 of the Plan)
<input type="checkbox"/>	<input type="checkbox"/>	(i) Seasonal Employees (as defined in Section 1.84 of the Plan)
<input type="checkbox"/>	<input type="checkbox"/>	(j) Temporary Employees (as defined in Section 1.88 of the Plan)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	(k) Other: <u>(1) Part-time Employees as defined by California Public Employees' Retirement System (CalPERS) the defined benefit plan of the state. (2) Temporary Employees as defined by California Public Employees' Retirement System (CalPERS) the defined benefit plan of the state. (3) Interns</u>

[Note: The elections under the ER column apply to any Pick-Up Contributions authorized under AA §6-1(d) and any After-Tax Employee Contributions authorized under AA §6-6, unless elected otherwise under subsection (k).]

SECTION 4
MINIMUM AGE AND SERVICE REQUIREMENTS

4-1 **ELIGIBILITY REQUIREMENTS – MINIMUM AGE AND SERVICE:** An Eligible Employee (as defined in AA §3-1) who satisfies the minimum age and service conditions under this AA §4-1 will be eligible to participate under the Plan as of his/her Entry Date (as defined in AA §4-2 below).

(a) **Service Requirement.** An Eligible Employee must complete the following minimum service requirements to participate in the Plan.

- | Match | ER | |
|-------------------------------------|--------------------------|--|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | (1) There is no minimum service requirement for participation in the Plan. |
| <input type="checkbox"/> | <input type="checkbox"/> | (2) ___ Year(s) of Service (as defined in Section 2.03(a)(1) of the Plan and AA §4-3). |
| <input type="checkbox"/> | <input type="checkbox"/> | (3) The completion of at least ___ Hours of Service during the first ___ months of employment or the completion of a Year of Service (as defined in AA §4-3), if earlier. <ul style="list-style-type: none"> <input type="checkbox"/> (i) An Employee who completes the required Hours of Service satisfies eligibility at the end of the designated period, regardless if the Employee actually works for the entire period. <input type="checkbox"/> (ii) An Employee who completes the required Hours of Service must also be employed continuously during the designated period of employment. See Section 2.03(a)(2) of the Plan for rules regarding the application of this subsection (ii). |
| <input type="checkbox"/> | <input type="checkbox"/> | (4) The completion of ___ Hours of Service during an Eligibility Computation Period. <i>[An Employee satisfies the service requirement immediately upon completion of the designated Hours of Service rather than at the end of the Eligibility Computation Period.]</i> |
| <input type="checkbox"/> | <input type="checkbox"/> | (5) Full-time Employees are eligible to participate as set forth in subsection (i). Employees who are “part-time” Employees must complete a Year of Service (as defined in AA §4-3). For this purpose, a full-time Employee is any Employee not defined in subsection (ii). <ul style="list-style-type: none"> (i) Full-time Employees must complete the following minimum service requirements to participate in the Plan: <ul style="list-style-type: none"> <input type="checkbox"/> (A) There is no minimum service requirement for participation in the Plan. <input type="checkbox"/> (B) The completion of at least ___ Hours of Service during the first ___ months of employment or the completion of a Year of Service (as defined in AA §4-3), if earlier. <input type="checkbox"/> (C) Under the Elapsed Time method as defined in AA §4-3(c) below. <input type="checkbox"/> (D) Describe: _ (ii) Part-time Employees must complete a Year of Service (as defined in AA §4-3). For this purpose, a part-time Employee is any Employee (including a temporary or seasonal Employee) whose normal work schedule is less than: <ul style="list-style-type: none"> <input type="checkbox"/> (A) ___ hours per week. <input type="checkbox"/> (B) ___ hours per month. <input type="checkbox"/> (C) ___ hours per year. |
| <input type="checkbox"/> | <input type="checkbox"/> | (6) Under the Elapsed Time method as defined in AA §4-3(c) below. |
| <input type="checkbox"/> | <input type="checkbox"/> | (7) Describe eligibility conditions: _____ |

(b) **Minimum Age Requirement.** An Eligible Employee (as defined in AA §3-1) must have attained the following age with respect to the contribution source(s) identified in this AA §4-1(b).

Match	ER	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	(1) There is no minimum age for Plan eligibility.
<input type="checkbox"/>	<input type="checkbox"/>	(2) Age 21.
<input type="checkbox"/>	<input type="checkbox"/>	(3) Age ____.

(c) **Special eligibility rules.** The following special eligibility rules apply with respect to the Plan: _____

[Note: Any elections under the ER column under this AA §4-1 apply to any Pick-Up Contributions authorized under AA §6-1(d) and any After-Tax Employee Contributions authorized under AA §6-6, unless elected otherwise under subsection (c). Subsection (c) may be used to apply the eligibility conditions selected under this AA §4-1 separately with respect to different Employee groups or different contribution formulas under the Plan. Any special rules under subsection (c) must be definitely determinable.]

4-2 **ENTRY DATE:** An Eligible Employee (as defined in AA §3-1) who satisfies the minimum age and service requirements in AA §4-1 shall be eligible to participate in the Plan as of his/her Entry Date. For this purpose, the Entry Date is the following date with respect to the contribution source(s) identified under this AA §4-2.

Match	ER	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	(a) Immediate. The date the minimum age and service requirements are satisfied (or date of hire, if no minimum age and service requirements apply).
<input type="checkbox"/>	<input type="checkbox"/>	(b) Semi-annual. The first day of the 1st and 7th month of the Plan Year.
<input type="checkbox"/>	<input type="checkbox"/>	(c) Quarterly. The first day of the 1st, 4th, 7th and 10th month of the Plan Year.
<input type="checkbox"/>	<input type="checkbox"/>	(d) Monthly. The first day of each calendar month.
<input type="checkbox"/>	<input type="checkbox"/>	(e) Payroll period. The first day of the payroll period.
<input type="checkbox"/>	<input type="checkbox"/>	(f) The first day of the Plan Year.

An Eligible Employee's Entry Date (as defined above) is determined based on when the Employee satisfies the minimum age and service requirements in AA §4-1. For this purpose, an Employee's Entry Date is the Entry Date:

Match	ER	
<input type="checkbox"/>	<input type="checkbox"/>	(g) next following satisfaction of the minimum age and service requirements.
<input type="checkbox"/>	<input type="checkbox"/>	(h) coinciding with or next following satisfaction of the minimum age and service requirements.
<input type="checkbox"/>	<input type="checkbox"/>	(i) nearest the satisfaction of the minimum age and service requirements.
<input type="checkbox"/>	<input type="checkbox"/>	(j) preceding the satisfaction of the minimum age and service requirements.

This section may be used to describe any special rules for determining Entry Dates under the Plan. For example, if different Entry Date provisions apply for the same contribution sources with respect to different groups of Employees, such different Entry Date provisions may be described below.

Match	ER	
<input type="checkbox"/>	<input type="checkbox"/>	(k) Describe any special rules that apply with respect to the Entry Dates under this AA §4-2: _____

[Note: The elections under the ER column under this AA §4-2 apply to any Pick-Up Contributions selected under AA §6-1(d) and any After-Tax Employee Contributions selected under AA §6-6, unless elected otherwise under subsection (k). Any special rules under subsection (k) must be definitely determinable.]

4-3 **DEFAULT ELIGIBILITY RULES.** In applying the minimum age and service requirements under AA §4-1 above, the following default rules apply with respect to all contribution sources under the Plan:

- **Year of Service.** An Employee earns a Year of Service for eligibility purposes upon completing 1,000 Hours of Service during an Eligibility Computation Period. Hours of Service are calculated based on actual hours worked during the Eligibility Computation Period. (See Section 1.56 of the Plan for the definition of Hours of Service.)
- **Eligibility Computation Period.** If one Year of Service is required for eligibility, the Plan will determine subsequent Eligibility Computation Periods on the basis of Plan Years. (See Section 2.03(a)(3)(i) of the Plan). If more than one Year of Service is required for eligibility, the Plan will determine subsequent Eligibility Computation Periods on the basis of Anniversary Years. (See Section 2.03(a)(3)(ii) of the Plan.)

To override the default eligibility rules, complete the applicable sections of this AA §4-3. If this AA §4-3 is not completed for a particular contribution source, the default eligibility rules apply.

Match	ER	
<input type="checkbox"/>	<input type="checkbox"/>	(a) Year of Service. Instead of 1,000 Hours of Service, an Employee earns a Year of Service upon the completion of ____ Hours of Service during an Eligibility Computation Period.
<input type="checkbox"/>	<input type="checkbox"/>	(b) Eligibility Computation Period (ECP). The Plan will use Anniversary Years, unless more than one Year of Service is required under AA §4-1(a), in which case the Plan will shift to Plan Years if the Employee does not earn a Year of Service during the first Eligibility Computation Period. (See Section 2.03(a)(3)(ii) of the Plan.)
<input type="checkbox"/>	<input type="checkbox"/>	(c) Elapsed Time method. Eligibility service will be determined under the Elapsed Time method. An Eligible Employee (as defined in AA §3-1) must complete a ____ period of service to participate in the Plan. (See Section 2.03(a)(6) of the Plan.) <i>[Note: Under the Elapsed Time method, service will be measured from the Employee's employment commencement date (or reemployment commencement date, if applicable) without regard to the Eligibility Computation Period designated in Section 2.03(a)(3) of the Plan.]</i>
<input type="checkbox"/>	<input type="checkbox"/>	(d) Equivalency Method. For purposes of determining an Employee's Hours of Service for eligibility, the Plan will use the Equivalency Method (as defined in Section 2.03(a)(5) of the Plan). The Equivalency Method will apply to: <ul style="list-style-type: none"> <input type="checkbox"/> (1) All Employees. <input type="checkbox"/> (2) Only Employees for whom the Employer does not maintain hourly records. For Employees for whom the Employer maintains hourly records, eligibility will be determined based on actual hours worked. Hours of Service for eligibility will be determined under the following Equivalency Method. <input type="checkbox"/> (3) Monthly. 190 Hours of Service for each month worked. <input type="checkbox"/> (4) Weekly. 45 Hours of Service for each week worked. <input type="checkbox"/> (5) Daily. 10 Hours of Service for each day worked. <input type="checkbox"/> (6) Semi-monthly. 95 Hours of Service for each semi-monthly period worked.
<input type="checkbox"/>	<input type="checkbox"/>	(e) Special eligibility provisions. _____

[Note: The elections under the ER column under this AA §4-3 apply to any Pick-Up Contributions authorized under AA §6-1(d) and any After-Tax Employee Contributions selected under AA §6-6, unless elected otherwise under subsection (e). Any special rules under subsection (e) must be definitely determinable.]

4-4 **EFFECTIVE DATE OF MINIMUM AGE AND SERVICE REQUIREMENTS.** The minimum age and/or service requirements under AA §4-1 apply to all Employees under the Plan. An Employee will participate with respect to all contribution sources under the Plan as of his/her Entry Date, taking into account all service with the Employer, including service earned prior to the Effective Date.

To allow Employees hired on a specified date to enter the Plan without regard to the minimum age and/or service conditions, complete this AA §4-4.

Match ER

An Eligible Employee who is employed by the Employer on the following date will become eligible to enter the Plan without regard to minimum age and/or service requirements (as designated below):

- (a) the Effective Date of this Plan (as designated in the Employer Signature Page).
- (b) the date the Plan is executed by the Employer (as indicated on the Employer Signature Page).
- (c) _____ [insert date]

An Eligible Employee who is employed on the designated date will become eligible to participate in the Plan without regard to the minimum age and service requirements under AA §4-1. If both minimum age and service conditions are not waived, select (d) or (e) to designate which condition is waived under this AA §4-4.

- (d) This AA §4-4 only applies to the minimum service condition.
- (e) This AA §4-4 only applies to the minimum age condition.

The provisions of this AA §4-4 apply to all Eligible Employees employed on the designated date unless designated otherwise under subsection (f) or (g) below.

- (f) The provisions of this AA §4-4 apply to the following group of Employees employed on the designated date: _____
- (g) Describe special rules: _____

[Note: An Employee who is employed as of the date described in this AA §4-4 will be eligible to enter the Plan as of such date unless a different Entry Date is designated under subsection (g). The elections under the ER column apply to any Pick-Up Contributions authorized under AA §6-1(d) and any After-Tax Employee Contributions selected under AA §6-6, unless elected otherwise under subsection (g). Any special rules under subsection (g) must be definitely determinable.]

4-5 **SERVICE WITH PREDECESSOR EMPLOYER.** Service with the following Predecessor Employers will be counted for purposes of determining eligibility, vesting and allocation conditions under this Plan, unless designated otherwise under subsection (a) or (b) below. (See Sections 2.06, 3.07(b) and 6.07 of the Plan.)

(a) The Plan will count service with the following Predecessor Employers:

	Name of Predecessor Employer	Eligibility	Vesting	Allocation Conditions
<input type="checkbox"/> (1)	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

(b) Describe any special provisions applicable to Predecessor Employer service: _____

4-6 **BREAKS IN SERVICE.** Generally, an Employee will be credited with all service earned with the Employer, including service earned prior to a Break in Service. To disregard service earned prior to a Break in Service for eligibility purposes, complete this AA §4-6. (See Section 2.07 of the Plan.)

- (a) If an Employee incurs at least one Break in Service, the Plan will disregard all service earned prior to such Break in Service for purposes of determining eligibility to participate.
- (b) If an Employee incurs at least _____ Breaks in Service, the Plan will disregard all service earned prior to such Break in Service for purposes of determining eligibility to participate. [Enter "0" if prior service will be disregarded for all rehired Employees.]
- (c) Describe: _____

**SECTION 5
COMPENSATION DEFINITIONS**

5-1 **TOTAL COMPENSATION.** Total Compensation is based on the definition set forth under this AA §5-1. See Section 1.89 of the Plan for a specific definition of the various types of Total Compensation.

- (a) W-2 Wages
- (b) Code §415 Compensation
- (c) Wages under Code §3401(a)

[For purposes of determining Total Compensation, each definition includes Elective Deferrals as defined in Section 1.35 of the Plan, pre-tax contributions to a Code §125 cafeteria plan or a Code §457 plan, and qualified transportation fringes under Code §132(f)(4).]

5-2 **POST-SEVERANCE COMPENSATION.** Total Compensation includes post-severance compensation, to the extent provided in Section 1.89(b) of the Plan.

- (a) **Exclusion of post-severance compensation from Total Compensation.** The following amounts paid after a Participant’s severance of employment are excluded from Total Compensation.
 - (1) **Unused leave payments.** Payment for unused accrued bona fide sick, vacation, or other leave, but only if the Employee would have been able to use the leave if employment had continued.
 - (2) **Deferred compensation.** Payments received by an Employee pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid to the Employee at the same time if the Employee had continued in employment and only to the extent that the payment is includible in the Employee’s gross income.

[Note: Plan Compensation (as defined in Section 1.72 of the Plan) includes any post-severance compensation amounts that are includible in Total Compensation. The Employer may elect to exclude all compensation paid after severance of employment from the definition of Plan Compensation under AA §5-3(j) or may elect to exclude specific types of post-severance compensation from Plan Compensation under AA §5-3(l).]

- (b) **Continuation payments for disabled Participants.** Unless designated otherwise under this subsection (b), Total Compensation does not include continuation payments for disabled Participants.
 - Payments to disabled Participants.** Total Compensation shall include post-severance compensation paid to a Participant who is permanently and totally disabled, as provided in Section 1.89(c) of the Plan.

5-3 **PLAN COMPENSATION:** Plan Compensation is **Total Compensation** (as defined in AA §5-1 above) with the following exclusions described below.

Match	ER	
<input type="checkbox"/>	<input type="checkbox"/>	(a) No exclusions.
<input type="checkbox"/>	<input type="checkbox"/>	(b) Elective Deferrals (as defined in Section 1.35 of the Plan), pre-tax contributions to a cafeteria plan or a Code §457 plan, and qualified transportation fringes under Code §132(f)(4) are excluded.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	(c) All fringe benefits (cash and noncash), reimbursements or other expense allowances, moving expenses, deferred compensation, and welfare benefits are excluded.
<input type="checkbox"/>	<input type="checkbox"/>	(d) Compensation above \$___ is excluded.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	(e) Amounts received as a bonus are excluded.
<input type="checkbox"/>	<input type="checkbox"/>	(f) Amounts received as commissions are excluded.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	(g) Overtime payments are excluded.
<input type="checkbox"/>	<input type="checkbox"/>	(h) Amounts received for services performed for a non-signatory Related Employer are excluded. (See Section 2.02(c) of the Plan.)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	(i) “Deemed §125 compensation” as defined in Section 1.89(d) of the Plan.

Match	ER	
<input type="checkbox"/>	<input type="checkbox"/>	(j) Amounts received after termination of employment are excluded. (See Section 1.89(b) of the Plan.)
<input type="checkbox"/>	<input type="checkbox"/>	(k) Differential Pay (as defined in Section 1.89(e) of the Plan).
<input checked="" type="checkbox"/>	<input type="checkbox"/>	(l) Describe adjustments to Plan Compensation: <u>(1) Stand-by pay (2) Unused paid leave (3) Any Plan Compensation above the Employer's definition of base salary</u>

[Note: Any modification under subsection (l) must be definitely determinable and preclude Employer discretion. The elections under the ER column under this AA §5-3 apply to any Pick-Up Contributions authorized under AA §6-1(d) and any After-Tax Employee Contributions selected under AA §6-6, unless elected otherwise under subsection (l).]

5-4 PERIOD FOR DETERMINING COMPENSATION.

(a) **Compensation Period.** Plan Compensation will be determined on the basis of the following period(s) for the contribution sources identified in this AA §5-4. [If a period other than the Plan Year applies for any contribution source, any reference to the Plan Year as it refers to Plan Compensation for that contribution source will be deemed to be a reference to the period designated under this AA §5-4.]

Match	ER	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	(1) The Plan Year.
<input type="checkbox"/>	<input type="checkbox"/>	(2) The calendar year ending in the Plan Year.
<input type="checkbox"/>	<input type="checkbox"/>	(3) The Employer's fiscal tax year ending in the Plan Year.
<input type="checkbox"/>	<input type="checkbox"/>	(4) The 12-month period ending on _____ which ends during the Plan Year.

(b) **Compensation while a Participant.** Unless provided otherwise under this subsection (b), in determining Plan Compensation, only compensation earned while an individual is a Participant under the Plan with respect to a particular contribution source will be taken into account.

To count compensation for the entire Plan Year for a particular contribution source, including compensation earned while an individual is not a Participant with respect to such contribution source, check below. (See Section 1.72(b) of the Plan.)

Match	ER	
<input type="checkbox"/>	<input type="checkbox"/>	All compensation earned during the Plan Year will be taken into account, including compensation earned while an individual is not a Participant.

(c) **Few weeks rule.** The few weeks rule (as described in Section 5.02(c)(7)(ii) of the Plan) will not apply unless designated otherwise under this subsection (c).

- Amounts earned but not paid during a Limitation Year solely because of the timing of pay periods and pay dates shall be included in Total Compensation for the Limitation Year, provided the amounts are paid during the first few weeks of the next Limitation Year, the amounts are included on a uniform and consistent basis with respect to all similarly situated Employees, and no amounts are included in more than one Limitation Year.

**SECTION 6
EMPLOYER AND EMPLOYEE CONTRIBUTIONS**

6-1 **EMPLOYER / EMPLOYEE CONTRIBUTIONS.** The Employer/Employee may make the following contributions under the Plan:

- (a) Employer Contributions under AA §6-2
- (b) Voluntary After-Tax Employee Contributions under AA §6-6(a)
- (c) Mandatory After-Tax Employee Contributions under AA §6-6(b)
- (d) Employer Pick-Up Contributions under AA §6-6(c)
- (e) N/A. No Employer/Employee Contributions are permitted under the Plan [Skip to Section 6A]

6-2 **EMPLOYER CONTRIBUTION FORMULA.** For the period designated in AA §6-4(a) below, the Employer will make the following Employer Contributions on behalf of Participants who satisfy the allocation conditions designated in AA §6-5 below. Any Employer Contribution authorized under this AA §6-2 will be allocated in accordance with the allocation formula selected under AA §6-3.

- (a) **Discretionary contribution.** The Employer will determine in its sole discretion how much, if any, it will make as an Employer Contribution.
- (b) **Fixed contribution.**
 - (1) **Fixed percentage.** ___% of each Participant’s Plan Compensation.
 - (2) **Fixed dollar.** \$___ for each Participant.
 - (3) **Determined in accordance with the terms of the Employment contract** between an Eligible Employee and the Employer. *[If this subsection (3) is checked, the provisions of an Employment contract addressing retirement benefits will override any selection under this AA §6-2.]*
- (c) **Service-based contribution.** The Employer will make the following contribution:
 - (1) **Discretionary.** A discretionary contribution determined as a uniform percentage of Plan Compensation or a uniform dollar amount for each period of service designated below.
 - (2) **Fixed percentage.** ___% of Plan Compensation paid for each period of service designated below.
 - (3) **Fixed dollar.** \$___ for each period of service designated below.

The service-based contribution will be based on the following periods of service:

 - (4) Each Hour of Service
 - (5) Each week of employment
 - (6) Describe period: _____

The service-based contribution is subject to the following rules.

 - (7) Describe any special provisions that apply to service-based contribution: _____
- (d) **Describe special rules for determining contributions under Plan:** _____
[Note: Any special rules under subsection (d) must be definitely determinable.]

6-3 **ALLOCATION FORMULA.**

- (a) **Pro rata allocation.** The discretionary Employer Contribution under AA §6-2(a) will be allocated:
 - (1) as a uniform percentage of Plan Compensation.
 - (2) as a uniform dollar amount.
 - (b) **Fixed contribution.** The fixed Employer Contribution under AA §6-2(b) will be allocated in accordance with the selections made under AA §6-2(b).
 - (c) **Permitted disparity allocation.** The discretionary Employer Contribution under AA §6-2(a) will be allocated under the two-step method (as defined in Section 3.02(a)(1)(i)(B)(I) of the Plan), using the Taxable Wage Base (as defined in Section 1.87 of the Plan) as the Integration Level.
- To modify these default rules, complete the appropriate provision(s) below.
- (1) **Integration Level.** Instead of the Taxable Wage Base, the Integration Level is:
 - (i) ___% of the Taxable Wage Base, increased (but not above the Taxable Wage Base) to the next higher:

<input type="checkbox"/> (A) N/A	<input type="checkbox"/> (B) \$1
<input type="checkbox"/> (C) \$100	<input type="checkbox"/> (D) \$1,000
 - (ii) \$___ (not to exceed the Taxable Wage Base)
 - (iii) 20% of the Taxable Wage Base

[Note: See Section 3.02(a)(1)(i)(B)(IV) of the Plan for rules regarding the Maximum Disparity Rate that may be used where an Integration Level other than the Taxable Wage Base is selected.]
 - (2) **Describe special rules for applying permitted disparity allocation formula:** _____
[Note: Any special rules under subsection (2) must be definitely determinable.]

- (d) **Uniform points allocation.** The discretionary Employer Contribution designated in AA §6-2(a) will be allocated to each Participant in the ratio that each Participant's total points bears to the total points of all Participants. A Participant will receive the following points:
 - (1) ___ point(s) for each ___ year(s) of age (attained as of the end of the Plan Year).
 - (2) ___ points for each \$___ of Plan Compensation.
 - (3) ___ point(s) for each ___ Year(s) of Service. For this purpose, Years of Service are determined:
 - (i) In the same manner as determined for eligibility.
 - (ii) In the same manner as determined for vesting.
 - (iii) Points will not be provided with respect to Years of Service in excess of ___.

- (e) **Employee group allocation.** The Employer may make a separate discretionary Employer Contribution to the Participants in the following allocation groups. The Employer must notify the Trustee in writing of the amount of the contribution to be allocated to each allocation group.
 - (1) A separate discretionary Employer Contribution may be made to each Participant of the Employer (i.e., each Participant is in his/her own allocation group).
 - (2) A separate discretionary or fixed Employer Contribution may be made to the following allocation groups. If no fixed amount is designated for a particular allocation group, the contribution made for such allocation group will be allocated as a uniform percentage of Plan Compensation or as a uniform dollar amount to all Participants within that allocation group.

[Note: The Employee allocation groups designated above must be clearly defined in a manner that will not violate the definite allocation formula requirement of Treas. Reg. §1.401-1(b)(1)(ii).]
 - (3) **Special rules.**
 - (i) **More than one Employee group.** Unless designated otherwise under this subsection (i), if a Participant is in more than one allocation group described in (2) above during the Plan Year, the Participant will receive an Employer Contribution based on the Participant's status on the last day of the Plan Year. (See Section 3.02(a)(1)(i)(D) of the Plan.)
 - Determined separately for each Employee group.** If a Participant is in more than one allocation group during the Plan Year, the Participant's share of the Employer Contribution will be based on the Participant's status for the part of the year the Participant is in each allocation group.
 - (ii) **Describe:** _____

[Note: Any special rules under subsection (ii) must be definitely determinable.]

- (f) **Age-based allocation.** The discretionary Employer Contribution designated in AA §6-2(a) will be allocated under the age-based allocation formula so that each Participant receives a pro rata allocation based on adjusted Plan Compensation. For this purpose, a Participant's adjusted Plan Compensation is determined by multiplying the Participant's Plan Compensation by an Actuarial Factor (as described in Section 1.03 of the Plan).

A Participant's Actuarial Factor is determined based on a specified interest rate and mortality table. Unless designated otherwise under (1) or (2) below, the Plan will use an applicable interest rate of 8.5% and a UP-1984 mortality table.

 - (1) **Applicable interest rate.** Instead of 8.5%, the Plan will use an interest rate of ___% (must be between 7.5% and 8.5%) in determining a Participant's Actuarial Factor.
 - (2) **Applicable mortality table.** Instead of the UP-1984 mortality table, the Plan will use the following mortality table in determining a Participant's Actuarial Factor: _____
 - (3) **Describe special rules applicable to age-based allocation:** _____

[Note: See Exhibit A of the Plan for sample Actuarial Factors based on an 8.5% applicable interest rate and the UP-1984 mortality table. If an interest rate or mortality table other than 8.5% or UP-1984 is selected, appropriate Actuarial Factors must be calculated.]

- (g) **Service-based allocation formula.** The service-based Employer Contribution selected in AA §6-2(c) will be allocated in accordance with the selections made in AA §6-2(c).
- (h) **Describe special rules for determining allocation formula:** _____

[Note: Any special rules under subsection (h) must be definitely determinable.]

6-4 **SPECIAL RULES.** No special rules apply with respect to Employer/Employee Contributions under the Plan, except to the extent designated under this AA §6-4. Unless designated otherwise, in determining the amount of the Employer/Employee Contributions to be allocated under this AA §6, the contribution will be based on Plan Compensation earned during the Plan Year.

(a) **Period for determining Employer/Employee Contributions.** Instead of the Plan Year, Employer/Employee Contributions will be determined based on Plan Compensation earned during the following period: *[The Plan Year must be used if the permitted disparity allocation method is selected under AA §6-3(c) above.]*

- (1) Plan Year quarter
- (2) calendar month
- (3) payroll period
- (4) Other: _____

[Note: Although Employer Contributions are determined on the basis of Plan Compensation earned during the period designated under this subsection (a), this does not require the Employer to actually make contributions or allocate contributions on the basis of such period. Employer Contributions may be contributed and allocated to Participants at any time within the contribution period permitted under Treas. Reg. §1.415(c)-1(b)(6)(B), regardless of the period selected under this subsection (a).]

(b) **Limit on Employer Contributions.** The Employer Contribution elected in AA §6-2 may not exceed:

- (1) ___% of Plan Compensation
- (2) \$___
- (3) Describe: _____

(c) **Offset of Employer Contribution.**

- (1) A Participant's allocation of Employer Contributions under AA §6-2 of this Plan is reduced by contributions under _____ *[insert name of plan(s)]*. (See Section 3.02(a)(1) of the Plan.)
- (2) In applying the offset under this subsection (c), the following rules apply: _____

(d) **Special rules:** _____

[Note: Any special rules under subsection (d) must be definitely determinable.]

6-5 **ALLOCATION CONDITIONS.** A Participant must satisfy any allocation conditions designated under this AA §6-5 to receive an allocation of Employer Contributions under the Plan. *[Note: No allocation conditions apply to After-Tax Employee Contributions or Employer Pick-Up Contributions under AA §6-6.]*

(a) **No allocation conditions** apply with respect to Employer Contributions under the Plan.

(b) **Employment condition.** An Employee must be employed with the Employer on the last day of the Plan Year.

(c) **Minimum service condition.** An Employee must be credited with at least:

- (1) ___ Hours of Service during the Plan Year.
 - (i) Hours of Service are determined using actual Hours of Service.
 - (ii) Hours of Service are determined using the following Equivalency Method (as defined under Section 2.03(a)(5) of the Plan):

<input type="checkbox"/> (A) Monthly	<input type="checkbox"/> (B) Weekly
<input type="checkbox"/> (C) Daily	<input type="checkbox"/> (D) Semi-monthly

(2) ___ consecutive days of employment with the Employer during the Plan Year.

(d) **Exceptions.**

(1) The above allocation condition(s) will **not** apply if the Employee:

- (i) dies during the Plan Year.
- (ii) terminates employment due to becoming Disabled.
- (iii) terminates employment after attaining Normal Retirement Age.
- (iv) terminates employment after attaining Early Retirement Age.
- (v) is on an authorized leave of absence from the Employer.

(2) The exceptions selected under subsection (1) will apply even if an Employee has not terminated employment at the time of the selected event(s).

- (3) The exceptions selected under subsection (1) do not apply to:
 - (i) an employment condition under subsection (b) above.
 - (ii) a minimum service condition under subsection (c) above.
- (e) Describe any special rules governing the allocation conditions under the Plan: _____
 [Note: Any special rules under subsection (e) must be definitely determinable.]

6-6 AFTER-TAX EMPLOYEE CONTRIBUTIONS AND EMPLOYER PICK-UP CONTRIBUTIONS.

- (a) **Voluntary After-Tax Employee Contributions.** If permitted under this subsection (a), a Participant may contribute any amount as Voluntary After-Tax Employee Contributions up to the Code §415 Limitation (as defined in Section 5.02 of the Plan), except as limited under this subsection (a).
- (1) **Limits on Voluntary After-Tax Employee Contributions.** If this subsection (1) is checked, the following limits apply to Voluntary After-Tax Employee Contributions:
 - (i) **Maximum limit.** A Participant may make Voluntary After-Tax Employee Contributions up to:
 - (A) _____% of Plan Compensation
 - (B) \$_____
 for the following period:
 - (C) the entire Plan Year.
 - (D) the portion of the Plan Year during which the Employee is eligible to participate.
 - (E) each separate payroll period during which the Employee is eligible to participate.
 - (ii) **Minimum limit.** The amount of Voluntary After-Tax Employee Contributions a Participant may make for any payroll period may not be less than:
 - (A) _____% of Plan Compensation
 - (B) \$_____
- (2) **Change or revocation of Voluntary After-Tax Employee Contributions.** In addition to the Participant’s Entry Date under the Plan, a Participant’s election to change or resume Voluntary After-Tax Employee Contributions will be effective as of the dates designated under the Voluntary After-Tax Employee Contribution election form or other written procedures adopted by the Plan Administrator. Alternatively, the Employer may designate under this subsection (2) specific dates as of which a Participant may change or resume Voluntary After-Tax Employee Contributions. (See Section 3.04 of the Plan.)
 - (i) The first day of each calendar quarter.
 - (ii) The first day of each Plan Year.
 - (iii) The first day of each calendar month.
 - (iv) The beginning of each payroll period.
 - (v) Other: _____

[Note: A Participant must be permitted to change or revoke a Voluntary After-Tax Employee Contribution election at least once per year. Unless designated otherwise under subsection (v), a Participant may revoke an election to make Voluntary After-Tax Employee Contributions (on a prospective basis) at any time. This subsection (2) also applies to any Employer Pick-Up Contributions selected under subsection (c) below, unless designated otherwise under subsection (c)(2).]
- (3) **Other limits or special rules relating to Voluntary After-Tax Employee Contributions:** _____
 [Note: Any limits described under this subsection (3) must be consistent with the provisions of Section 3.04 of the Plan.]

- (b) **Mandatory After-Tax Employee Contributions.** If this subsection (b) is checked, Employees are required to make Mandatory After-Tax Employee Contributions in order to participate under the Plan.
 - (1) **Amount of Mandatory After-Tax Employee Contributions.** Employees are required to contribute the following amount in order to participate in the Plan:
 - (i) _____% of each Employee’s Total Compensation.
 - (ii) \$_____ for each Participant.
 - (iii) Describe rate or amount: _____
 - (2) **Special rules applicable to Mandatory After-Tax Employee Contributions:** _____
- (c) **Employer Pick-Up Contributions.** Each Participant will be required to make a Pick-up Contribution to the Plan equal to the amount specified under this subsection (c). Any amounts contributed pursuant to this subsection (c) will be picked up by the Employer pursuant to Code §414(h) and will be treated as Employer Contributions under the Plan. Such contributions and earnings thereon will be 100% vested at all times. (See Section 3.03 of the Plan.)
 - (1) The following amounts will be contributed to the Plan as an Employer Pick-Up Contribution:
 - (i) _____% of Plan Compensation.
 - (ii) \$_____ per pay period.
 - (iii) Any amount from _____% to _____% of Plan Compensation, as designated by the Participant.
 - (2) **Special rules applicable to Employer Pick-Up Contributions:** _____

[Note: Any Employer Pick-Up Contributions made under this subsection (c) must satisfy the requirements of Section 3.03 of the Plan. See AA §11-4 for an Employee’s ability to elect out of making Employer Pick-Up Contributions.]

**SECTION 6A
MATCHING CONTRIBUTIONS**

6A-1 **MATCHING CONTRIBUTIONS.** Is the Employer authorized to make Matching Contributions under the Plan? *[Note that this Section 6A only applies if the Employer is matching Elective Deferral made under another plan maintained by the Employer or with respect to Pick-Up Contributions or After-Tax Employee Contributions under this Plan.]*

- Yes.**
- No.** *[If “No” is checked, skip to Section 7.]*

6A-2 **MATCHING CONTRIBUTION FORMULA:** For the period designated in AA §6A-5 below, the Employer will make the following Matching Contribution on behalf of Participants who satisfy the allocation conditions under AA §6A-6 below. *[See AA §6A-3 for the definition of Eligible Contributions for purposes of the Matching Contributions under the Plan.]*

- (a) **Discretionary match.** The Employer will determine in its sole discretion how much, if any, it will make as a Matching Contribution. Such amount can be determined either as a uniform percentage of deferrals or as a flat dollar amount for each Participant.
- (b) **Fixed match.** The Employer will make a Matching Contribution for each Participant equal to:
 - (1) _____% of Eligible Contributions made for each period designated in AA §6A-5 below.
 - (2) \$_____ for each period designated in AA §6A-5 below.
- (c) **Tiered match.** The Employer may make a Matching Contribution to all Participants based on the following tiers of Eligible Contributions as a percentage of Plan Compensation.

Eligible Contributions	Fixed Match	Discretionary Match
<input type="checkbox"/> (1) Up to _____% of Plan Compensation	_____%	<input type="checkbox"/>
<input type="checkbox"/> (2) From _____% up to _____% of Plan Compensation	_____%	<input type="checkbox"/>

Eligible Contributions	Fixed Match	Discretionary Match
<input type="checkbox"/> (3) From ___% up to ___% of Plan Compensation	_____%	<input type="checkbox"/>
<input type="checkbox"/> (4) From ___% up to ___% of Plan Compensation	_____%	<input type="checkbox"/>

- (d) **Year of Service match.** The Employer will make a Matching Contribution as a uniform percentage of Eligible Contributions (as defined in AA §6A-3) to all Participants based on Years of Service with the Employer.

Years of Service	Matching %
<input type="checkbox"/> (1) From ___ up to ___ Years of Service	_____%
<input type="checkbox"/> (2) From ___ up to ___ Years of Service	_____%
<input type="checkbox"/> (3) From ___ up to ___ Years of Service	_____%
<input type="checkbox"/> (4) From ___ up to ___ Years of Service	_____%
<input type="checkbox"/> (5) Years of Service equal to and above _	_____%

For this purpose, a Year of Service is each Plan Year during which an Employee completes at least 1,000 Hours of Service. Alternatively, a Year of Service is: _____

[Note: Any alternative definition of a Year of Service must meet the requirements of a Year of Service as defined in Section 2.03(a)(1) of the Plan.]

- (e) **Based on employment agreement.** The Employer will make a Matching Contribution determined in accordance with the terms of the Employment agreement between an Eligible Employee and the Employer. [If this subsection (e) is checked, the provisions of an Employment agreement addressing retirement benefits will override any selection under this AA §6A-2.]
- (f) **Describe special rules for determining Matching Contribution formula:** _____

6A-3 **ELIGIBLE CONTRIBUTIONS.** Unless designated otherwise under this AA §6A-3, the Matching Contribution described in AA §6A-2 will apply to all Eligible Contributions authorized under AA §6-6.

- (a) **Designated Eligible Contributions.** If this subsection (a) is checked, the Matching Contribution described in AA §6A-2 will apply only to the Eligible Contributions selected below:
- (1) Voluntary After-Tax Employee Contributions under AA §6-6(a).
 - (2) Mandatory After-Tax Employee Contributions under AA §6-6(b).
 - (3) Employer Pick-Up Contributions under AA §6-6(c).
- (b) **Elective deferrals under another plan.** If this subsection (b) is checked, the Matching Contributions described in AA §6A-2 will apply to elective deferrals under the following plan maintained by the Employer: Moulton Niguel Water District 457(b) Plan & Trust

- (c) **Special rules.** The following special rules apply for purposes of determining the Matching Contribution under this AA §6A-3: The following contributions made under the Moulton Niguel Water District 457(b) Plan & Trust shall be eligible for a Matching Contribution: pre-tax deferrals, Roth deferrals, and age 50 Catch-Up Contributions.

[Note: Subsection (c) may be used to describe any special provisions applicable to Matching Contributions provided with respect to Eligible Contributions under this Plan or elective deferrals made under another plan maintained by the Employer.]

6A-4 **LIMITS ON MATCHING CONTRIBUTIONS.** In applying the Matching Contribution formula(s) selected under AA §6A-2 above, all Eligible Contributions designated under AA §6A-3 are eligible for Matching Contributions, unless elected otherwise under this AA §6A-4.

- (a) **Limit on amount of Eligible Contributions.** The Matching Contribution formula(s) selected in AA §6A-2 above apply only to Eligible Contributions under AA §6A-3 that do not exceed:

- (1) _____% of Plan Compensation.
- (2) \$_____.
- (3) A discretionary amount determined by the Employer.

[Note: If both (1) and (2) are selected, the limit under this subsection (a) is the lesser of the percentage selected in subsection (1) or the dollar amount selected in subsection (2).]

- (b) **Limit on Matching Contributions.** The total Matching Contribution provided under the formula(s) selected in AA §6A-2 above will not exceed:

- (1) _____% of Plan Compensation.
- (2) \$_____.

- (c) **Special limits applicable to Matching Contributions:** _____

6A-5 **PERIOD FOR DETERMINING MATCHING CONTRIBUTIONS.** The Matching Contribution formula(s) selected in AA §6A-2 above (including any limitations on such amounts under AA §6A-4) are based on Eligible Contributions under AA §6A-3 and Plan Compensation for the Plan Year. To apply a different period for determining the Matching Contributions and limits under AA §6A-2 and AA §6A-4, complete this AA §6A-5.

- (a) payroll period
- (b) Plan Year quarter
- (c) calendar month
- (d) Other: _____

[Note: Although Matching Contributions (and any limits on those Matching Contributions) will be determined on the basis of the period designated under this AA §6A-5, this does not require the Employer to actually make contributions or allocate contributions on the basis of such period. Matching Contributions may be contributed and allocated to Participants at any time within the contribution period permitted under Treas. Reg. §1.415-6, regardless of the period selected under this AA §6A-5.]

[Note: In determining the amount of Matching Contributions for a particular period, if the Employer actually makes Matching Contributions to the Plan on a more frequent basis than the period selected in this AA §6A-5, a Participant will be entitled to a true-up contribution to the extent he/she does not receive a Matching Contribution based on the Eligible Contributions under AA §6A-3 and/or Plan Compensation for the entire period selected in this AA §6A-5. If a period other than the Plan Year is selected under this AA §6A-5, the Employer may make an additional discretionary Matching Contribution equal to the true-up contribution that would otherwise be required if Plan Year was selected under this AA §6A-5. See Section 3.02(a)(2)(ii) of the Plan.]

6A-6 **ALLOCATION CONDITIONS.** A Participant must satisfy any allocation conditions designated under this AA §6A-6 to receive an allocation of Matching Contributions under the Plan.

- (a) **No allocation conditions** apply with respect to Matching Contributions under the Plan.
- (b) **Employment condition.** An Employee must be employed with the Employer on the last day of the Plan Year.
- (c) **Minimum service condition.** An Employee must be credited with at least:
 - (1) _____ Hours of Service during the Plan Year.
 - (i) Hours of Service are determined using actual Hours of Service.
 - (ii) Hours of Service are determined using the following Equivalency Method (as defined under Section 2.03(a)(5) of the Plan):
 - (A) Monthly
 - (B) Weekly

- (C) Daily (D) Semi-monthly
- (2) ___ consecutive days of employment with the Employer during the Plan Year.
- (d) **Exceptions.**
- (1) The above allocation condition(s) will **not** apply if the Employee:
 - (i) dies during the Plan Year.
 - (ii) terminates employment as a result of becoming Disabled.
 - (iii) terminates employment after attaining Normal Retirement Age.
 - (iv) terminates employment after attaining Early Retirement Age.
 - (v) is on an authorized leave of absence from the Employer.
 - (2) The exceptions selected under subsection (1) will apply even if an Employee has not terminated employment at the time of the selected event(s).
 - (3) The exceptions selected under subsection (1) do not apply to:
 - (i) an employment condition designated under subsection (b) above.
 - (ii) a minimum service condition designated under subsection (c) above.
- (e) **Describe any special rules governing the allocation conditions under the Plan:** _____

**SECTION 7
RETIREMENT AGES**

- 7-1 **NORMAL RETIREMENT AGE:** Normal Retirement Age under the Plan is:
- (a) Age ___ (not to exceed 65).
 - (b) The later of age ___ (not to exceed 65) or the ___ (not to exceed 5th) anniversary of:
 - (1) the Employee’s participation commencement date (as defined in Section 1.64 of the Plan).
 - (2) the Employee’s employment commencement date.
 - (c) At the age at which a Participant has the right to retire and receive benefits as defined by California Public Employees’ Retirement System (CalPERS) the defined benefit plan of the state.
- 7-2 **EARLY RETIREMENT AGE:** Unless designated otherwise under this AA §7-2, there is no Early Retirement Age under the Plan.
- (a) A Participant reaches Early Retirement Age if he/she is still employed after attainment of each of the following:
 - (1) Attainment of age ___
 - (2) The ___ anniversary of the date the Employee commenced participation in the Plan, and/or
 - (3) The completion of ___ Years of Service, determined as follows:
 - (i) Same as for eligibility.
 - (ii) Same as for vesting.
 - (b) **Describe.** _____

**SECTION 8
VESTING AND FORFEITURES**

- 8-1 **CONTRIBUTIONS SUBJECT TO VESTING.** Does the Plan provide for any Employer and/or Matching Contributions that are subject to a vesting schedule under AA §8-2?
- Yes
 - No [If “No” is checked, skip to Section 9.]
- [Note: “Yes” should be checked under this AA §8-1 if the Plan provides for Employer Contributions and/or Matching Contributions that are subject to a vesting schedule, even if such contributions are always 100% vested under AA §8-2. “No” should be checked if the only contributions under the Plan are After-Tax Employee Contributions and/or Employer Pick-Up Contributions. If the Plan holds Employer Contributions and/or Matching Contributions that are subject to vesting but the Plan no longer provides for such contributions, see Sections 7.04(e) and 7.13(e) of the Plan for default rules for applying the vesting and forfeiture rules to such contributions.]*

8-2 **VESTING SCHEDULE.** The vesting schedule under the Plan is as follows for both Employer Contributions and Matching Contributions, to the extent authorized under the Plan. See Section 6.02 of the Plan for a description of the various vesting schedules under this AA §8-2.

(a) **Vesting schedule:**

Match	ER	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	(1) Full and immediate vesting.
<input type="checkbox"/>	<input type="checkbox"/>	(2) Three-year cliff vesting schedule
<input type="checkbox"/>	<input type="checkbox"/>	(3) Six-year graded vesting schedule
<input type="checkbox"/>	<input type="checkbox"/>	(4) Modified vesting schedule
		___% after 1 Year of Service
		___% after 2 Years of Service
		___% after 3 Years of Service
		___% after 4 Years of Service
		___% after 5 Years of Service
		___% after 6 Years of Service
		___% after 7 Years of Service
		___% after 8 Years of Service
		___% after 9 Years of Service
		100% after 10 Years of Service
<input type="checkbox"/>	<input type="checkbox"/>	(5) Other: vesting schedule: _____

(b) **Special provisions applicable to vesting schedule:** _____

[Note: This subsection (b) may be used to apply a different vesting schedule for different contribution formulas or different Employee groups under the Plan.]

8-3 **VESTING SERVICE.** In applying the vesting schedules under this AA §8, all service with the Employer counts for vesting purposes, unless designated otherwise under this AA §8-3.

(a) Service before the original Effective Date of this Plan (or a Predecessor Plan) is excluded.

(b) Service completed before the Employee's ___ birthday is excluded.

(c) Describe vesting service exclusions: _____

[Note: See Section 6.07 of the Plan and AA §4-5 for rules regarding the crediting of service with Predecessor Employers for purposes of vesting under the Plan.]

8-4 **VESTING UPON DEATH, DISABILITY OR EARLY RETIREMENT AGE.** An Employee's vesting percentage increases to 100% if, while employed with the Employer, the Employee

(a) dies

(b) becomes Disabled

(c) reaches Early Retirement Age

(d) Not applicable. No increase in vesting applies.

8-5 **DEFAULT VESTING RULES.** In applying the vesting requirements under this AA §8, the following default rules apply. *[Note: No election should be made under this AA §8-5 if all contributions are 100% vested.]*

• **Year of Service.** An Employee earns a Year of Service for vesting purposes upon completing 1,000 Hours of Service during a Vesting Computation Period. Hours of Service are calculated based on actual hours worked during the Vesting Computation Period. (See Section 1.56 of the Plan for the definition of Hours of Service.)

• **Vesting Computation Period.** The Vesting Computation Period is the Plan Year.

To override the default vesting rules, complete the applicable sections of this AA §8-5. If this AA §8-5 is not completed, the default vesting rules apply.

- | Match | ER | |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | (a) Year of Service. Instead of 1,000 Hours of Service, an Employee earns a Year of Service upon the completion of ____ Hours of Service during a Vesting Computation Period. |
| <input type="checkbox"/> | <input type="checkbox"/> | (b) Vesting Computation Period (VCP). Instead of the Plan Year, the Vesting Computation Period is: <ul style="list-style-type: none"> <input type="checkbox"/> (1) The 12-month period beginning with the Employee's date of hire and, for subsequent Vesting Computation Periods, the 12-month period beginning with the anniversary of the Employee's date of hire. <input type="checkbox"/> (2) Describe: _____ <p><i>[Note: Any Vesting Computation Period described in (2) must be a 12-consecutive month period and must apply uniformly to all Participants.]</i></p> |
| <input type="checkbox"/> | <input type="checkbox"/> | (c) Elapsed Time Method. Instead of determining vesting service based on actual Hours of Service, vesting service will be determined under the Elapsed Time Method. If this subsection (c) is checked, service will be measured from the Employee's employment commencement date (or reemployment commencement date, if applicable) without regard to the Vesting Computation Period designated in Section 6.05 of the Plan. (See Section 6.04(b) of the Plan.) |
| <input type="checkbox"/> | <input type="checkbox"/> | (d) Equivalency Method. For purposes of determining an Employee's Hours of Service for vesting, the Plan will use the Equivalency Method (as defined in Section 6.04(a)(2) of the Plan). The Equivalency Method will apply to: <ul style="list-style-type: none"> <input type="checkbox"/> (1) All Employees. <input type="checkbox"/> (2) Only to Employees for whom the Employer does not maintain hourly records. For Employees for whom the Employer maintains hourly records, vesting will be determined based on actual hours worked. <p>Hours of Service for vesting will be determined under the following Equivalency Method.</p> <ul style="list-style-type: none"> <input type="checkbox"/> (3) Monthly. 190 Hours of Service for each month worked. <input type="checkbox"/> (4) Weekly. 45 Hours of Service for each week worked. <input type="checkbox"/> (5) Daily. 10 Hours of Service for each day worked. <input type="checkbox"/> (6) Semi-monthly. 95 Hours of Service for each semi-monthly period. |
| <input type="checkbox"/> | <input type="checkbox"/> | (e) Special rules: _____
<i>[Note: Any special rules under subsection (e) must be definitely determinable.]</i> |

8-6 **BREAKS IN SERVICE.** Generally, an Employee will be credited with all service earned with the Employer, including service earned prior to a Break in Service. To disregard service earned prior to a Break in Service for vesting purposes, complete this AA §8-6. (See Section 6.08 of the Plan.)

- (a) If an Employee incurs at least one Break in Service, the Plan will disregard all service earned prior to such Break in Service for purposes of determining vesting under the Plan.
- (b) If an Employee incurs at least _____ consecutive Breaks in Service, the Plan will disregard all service earned prior to such consecutive Breaks in Service for purposes of determining vesting under the Plan. *[Enter "0" if prior service will be disregarded for all rehired Employees.]*
- (c) Describe any special rules for applying the vesting Break in Service rules: _____
[Note: Any special rules under subsection (c) must be definitely determinable.]

8-7 **ALLOCATION OF FORFEITURES.**

The Employer may decide in its discretion how to treat forfeitures under the Plan. Alternatively, the Employer may designate under this AA §8-7 how forfeitures occurring during a Plan Year will be treated. (See Section 6.11 of the Plan.)

- | Match | ER | |
|-------------------------------------|--------------------------|--|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | (a) N/A. All contributions are 100% vested. <i>[Do not complete the rest of this AA §8-7.]</i> |
| <input type="checkbox"/> | <input type="checkbox"/> | (b) Reallocated as additional Employer Contributions or as additional Matching Contributions. |
| <input type="checkbox"/> | <input type="checkbox"/> | (c) Used to reduce Employer and/or Matching Contributions. |

Match ER

For purposes of subsection (b) or (c), forfeitures will be applied:

- (d) for the Plan Year in which the forfeiture occurs.
- (e) for the Plan Year following the Plan Year in which the forfeitures occur.

Prior to applying forfeitures under subsection (b) or (c):

- (f) Forfeitures may be used to pay Plan expenses. (See Section 6.11(d) of the Plan.)
- (g) Forfeitures may **not** be used to pay Plan expenses.

In determining the amount of forfeitures to be allocated under subsection (b), the same allocation conditions apply as for the source for which the forfeiture is being allocated, unless designated otherwise below.

- (h) Forfeitures are not subject to any allocation conditions.
- (i) Forfeitures are subject to a last day of employment allocation condition.
- (j) Forfeitures are subject to a ____ Hours of Service minimum service requirement.

In determining the treatment of forfeitures under this AA §8-7, the following special rules apply:

- (k) Describe: _____

8-8 SPECIAL RULES REGARDING CASH-OUT DISTRIBUTIONS.

- (a) **Additional allocations.** If a terminated Participant receives a complete distribution of his/her vested Account Balance while still entitled to an additional allocation, the Cash-Out Distribution forfeiture provisions do not apply until the Participant receives a distribution of the additional amounts to be allocated. (See Section 6.10(a)(1) of the Plan.)

To modify the default Cash-Out Distribution forfeiture rules, complete this AA §8-8(a).

- The Cash-Out Distribution forfeiture provisions will apply if a terminated Participant takes a complete distribution, regardless of any additional allocations during the Plan Year.

- (b) **Timing of forfeitures.** A Participant who receives a Cash-Out Distribution (as defined in Section 6.10(a) of the Plan) is treated as having an immediate forfeiture of his/her nonvested Account Balance.

To modify the forfeiture timing rules to delay the occurrence of a forfeiture upon a Cash-Out Distribution, complete this AA §8-8(b).

- A forfeiture will occur upon the completion of ____ consecutive Breaks in Service (as defined in Section 6.08 of the Plan).

**SECTION 9
DISTRIBUTION PROVISIONS – TERMINATION OF EMPLOYMENT**

9-1 AVAILABLE FORMS OF DISTRIBUTION.

Lump sum distribution. A Participant may take a distribution of his/her entire vested Account Balance in a single lump sum upon termination of employment. The Plan Administrator may, in its discretion, permit Participants to take distributions of less than their entire vested Account Balance provided, if the Plan Administrator permits multiple distributions, all Participants are allowed to take multiple distributions upon termination of employment. In addition, the Plan Administrator may permit a Participant to take partial distributions or installment distributions solely to the extent necessary to satisfy the required minimum distribution rules under Section 8 of the Plan.

Additional distribution options. To provide for additional distribution options, check the applicable distribution forms under this AA §9-1.

- (a) **Installment distributions.** A Participant may take a distribution over a specified period not to exceed the life or life expectancy of the Participant (and a designated beneficiary).
- (b) **Annuity distributions.** A Participant may elect to have the Plan Administrator use the Participant’s vested Account Balance to purchase an annuity as described in Section 7.01 of the Plan.
- (c) **Describe distribution options:** _____

[Note: Any distribution option described in (c) may not be subject to the discretion of the Employer or Plan Administrator.]

9-2 PARTICIPANT AND SPOUSAL CONSENT.

- (a) **Involuntary Cash-Out Distribution.** A Participant who terminates employment with a vested Account Balance of \$5,000 or less will receive an Involuntary Cash-Out Distribution, unless elected otherwise under this AA §9-2. If a Participant's vested Account Balance exceeds \$5,000, the Participant generally must consent to a distribution from the Plan, except to the extent provided otherwise under this AA §9-2. See Sections 7.03 of the Plan for additional rules regarding the Participant consent requirements under the Plan.
 - (1) **No Involuntary Cash-Out Distributions.** The Plan does not provide for Involuntary Cash-Out Distributions. A terminated Participant must consent to any distribution from the Plan. (See Section 14.02(b) of the Plan for special rules upon Plan termination.)
 - (2) **Involuntary Cash-Out Distribution threshold.** A terminated Participant will receive an Involuntary Cash-Out Distribution only if the Participant's vested Account Balance is less than or equal to \$_____.
 - (3) **Application of Automatic Rollover rules.** The Automatic Rollover rules described in Section 7.05 of the Plan do not apply to any Involuntary Cash-Out Distribution below \$1,000, unless elected otherwise under this subsection (3). If this subsection (3) is checked, the Automatic Rollover provisions apply to all Involuntary Cash-Out Distributions (including those below \$1,000).
 - (4) **Distribution upon attainment of stated age.** Participant consent will not be required with respect to distributions made upon attainment of Normal Retirement Age (or age 62, if later), regardless of the value of the Participant's vested Account Balance.
 - (5) **Treatment of Rollover Contributions.** Unless elected otherwise under this (5), Rollover Contributions will be excluded in determining whether a Participant's vested Account Balance exceeds the Involuntary Cash-Out threshold for purposes of applying the distribution rules under this AA §9 and the Automatic Rollover provisions under Section 7.05 of the Plan. To include Rollover Contributions in determining whether a Participant's vested Account Balance exceeds the Involuntary Cash-Out threshold, check this (5).
- (b) **Spousal consent.** Spousal consent is not required for a Participant to receive a distribution or name an alternate beneficiary, unless designated otherwise under this subsection (b). See Section 9.02 of the Plan for rules regarding Spousal consent under the Plan.
 - (1) **Distribution consent.** A Participant's Spouse must consent to any distribution or loan, provided the Participant's vested Account Balance exceeds \$5,000_____.
 - (2) **Beneficiary consent.** A Participant's Spouse must consent to naming someone other than the Spouse as beneficiary under the Plan.
- (c) **Describe any special rules affecting Participant or Spousal consent:** _____
 [Note: Any special rules under subsection (c) must be definitely determinable.]

9-3 TIMING OF DISTRIBUTIONS UPON TERMINATION OF EMPLOYMENT.

- (a) **Distribution of vested Account Balances exceeding \$5,000.** A Participant who terminates employment with a vested Account Balance exceeding \$5,000 may receive a distribution of his/her vested Account Balance in any form permitted under AA §9-1 within a reasonable period following:
 - (1) the date the Participant terminates employment.
 - (2) the last day of the Plan Year during which the Participant terminates employment.
 - (3) the first Valuation Date following the Participant's termination of employment.
 - (4) the end of the calendar quarter following the date the Participant terminates employment.
 - (5) attainment of Normal Retirement Age, death or becoming Disabled.
 - (6) Describe: _____
 [Note: Any special rules under subsection (6) must be definitely determinable.]
- (b) **Distribution of vested Account Balances not exceeding \$5,000.** A Participant who terminates employment with a vested Account Balance that does not exceed \$5,000 will receive a lump sum distribution of his/her vested Account Balance within a reasonable period following:
 - (1) the date the Participant terminates employment.
 - (2) the last day of the Plan Year during which the Participant terminates employment.
 - (3) the first Valuation Date following the Participant's termination of employment.
 - (4) the end of the calendar quarter following the date the Participant terminates employment.

(5) Describe: _____
[Note: Any special rules under subsection (5) must be definitely determinable.]

(c) **Alternate Cash-Out distribution threshold.** Instead of a vested Account Balance Cash-Out threshold of \$5,000, for purposes of applying the Cash-Out distribution provisions under this AA §9-3, the forms of distribution available under subsections (a) and (b) will be based on a vested Account Balance of \$_____.

(d) **Describe additional distribution options:** _____
[Note: Any additional distribution option described in (d) may not be subject to the discretion of the Employer or Plan Administrator.]

9-4 **DISTRIBUTION UPON DISABILITY.** Unless designated otherwise under this AA §9-4, a Participant who terminates employment on account of becoming Disabled may receive a distribution of his/her vested Account Balance in the same manner as a regular distribution upon termination.

(a) **Termination of Disabled Employee.**

(1) **Immediate distribution.** Distribution will be made as soon as reasonable following the date the Participant terminates on account of becoming Disabled.

(2) **Following year.** Distribution will be made as soon as reasonable following the last day of the Plan Year during which the Participant terminates on account of becoming Disabled.

(3) **Describe:** _____
[Note: Any distribution event described in subsection (3) will apply uniformly to all Participants under the Plan and may not be subject to the discretion of the Employer or Plan Administrator.]

(b) **Definition of Disabled.** A Participant is treated as Disabled if such Participant satisfies the conditions in Section 1.28 of the Plan.

To override this default definition, check below to select an alternative definition of Disabled to be used under the Plan.

(1) The definition of Disabled is the same as defined in the Employer's Disability Insurance Plan.

(2) The definition of Disabled is the same as defined under Section 223(d) of the Social Security Act for purposes of determining eligibility for Social Security benefits.

(3) Alternative definition of Disabled: _____

9-5 **DETERMINATION OF BENEFICIARY.**

(a) **Default beneficiaries.** Unless elected otherwise under this subsection (a), the default beneficiaries described under Section 7.07(c)(3) of the Plan are the Participant's surviving Spouse, the Participant's surviving children, and the Participant's estate.

If this subsection (a) is checked, the default beneficiaries under Section 7.07(c)(3) of the Plan are modified as follows: _____

(b) **One-year marriage rule.** For purposes of determining whether an individual is considered the surviving Spouse of the Participant, the determination is based on the marital status as of the date of the Participant's death, unless designated otherwise under this subsection (b).

If this subsection (b) is checked, in order to be considered the surviving Spouse, the Participant and surviving Spouse must have been married for the entire one-year period ending on the date of the Participant's death. If the Participant and surviving Spouse are not married for at least one year as of the date of the Participant's death, the Spouse will not be treated as the surviving Spouse for purposes of applying the distribution provisions of the Plan. (See Section 9.03 of the Plan.)

(c) **Divorce of Spouse.** Unless elected otherwise under this subsection (c), if a Participant designates his/her Spouse as Beneficiary and subsequent to such Beneficiary designation, the Participant and Spouse are divorced, the designation of the Spouse as Beneficiary under the Plan is automatically rescinded as set forth under Section 7.07(c)(6) of the Plan.

If this subsection (c) is checked, a Beneficiary designation will not be rescinded upon divorce of the Participant and Spouse.

[Note: Section 7.07(c)(6) of the Plan and this subsection (c) will be subject to the provisions of a Beneficiary designation entered into by the Participant. Thus, if a Beneficiary designation specifically overrides the election under this subsection (c), the provisions of the Beneficiary designation will control. See Section 7.07(c)(6) of the Plan.]

SECTION 10
IN-SERVICE DISTRIBUTIONS AND REQUIRED MINIMUM DISTRIBUTIONS

10-1 **AVAILABILITY OF IN-SERVICE DISTRIBUTIONS.** A Participant may withdraw all or any portion of his/her vested Account Balance, to the extent designated, upon the occurrence of any of the event(s) selected under this AA §10-1. If more than one option is selected for a particular contribution source under this AA §10-1, a Participant may take an in-service distribution upon the occurrence of any of the selected events, unless designated otherwise under this AA §10-1.

- | Match | ER | |
|-------------------------------------|--------------------------|---|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | (a) No in-service distributions are permitted. |
| <input type="checkbox"/> | <input type="checkbox"/> | (b) Attainment of age 59½. |
| <input type="checkbox"/> | <input type="checkbox"/> | (c) Attainment of age ____. |
| <input type="checkbox"/> | <input type="checkbox"/> | (d) A Hardship that satisfies the safe harbor rules under Section 7.10(e)(1) of the Plan. |
| <input type="checkbox"/> | <input type="checkbox"/> | (e) A non-safe harbor Hardship described in Section 7.10(e)(2) of the Plan. |
| <input type="checkbox"/> | <input type="checkbox"/> | (f) Attainment of Normal Retirement Age. |
| <input type="checkbox"/> | <input type="checkbox"/> | (g) Attainment of Early Retirement Age. |
| <input type="checkbox"/> | <input type="checkbox"/> | (h) The Participant has participated in the Plan for at least ____ (cannot be less than 60) months. |
| <input type="checkbox"/> | <input type="checkbox"/> | (i) The amounts being withdrawn have been held in the Trust for at least two years. |
| <input type="checkbox"/> | <input type="checkbox"/> | (j) Upon a Participant becoming Disabled (as defined in AA §9-4(b)). |
| <input type="checkbox"/> | <input type="checkbox"/> | (k) Describe: _____ |

10-2 **APPLICATION TO OTHER CONTRIBUTION SOURCES.** If the Plan allows for Rollover Contributions under AA §C-2 or After-Tax Employee Contributions under AA §6-6, unless elected otherwise under this AA §10-2, a Participant may take an in-service distribution from his/her Rollover Account and After-Tax Employee Contribution Account at any time. Employer Pick-Up Contributions will not be eligible for in-service distribution.

Alternatively, if this AA §10-2 is completed, the following in-service distribution provisions apply for Rollover Contributions, After-Tax Employee Contributions and/or Employer Pick-Up Contributions:

- | Rollover | After-Tax | Pick-Up | |
|-------------------------------------|--------------------------|--------------------------|---|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (a) No in-service distributions are permitted. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (b) Attainment of age 59½. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (c) Attainment of age ____. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (d) A Hardship (that satisfies the safe harbor rules under Section 7.10(e)(1) of the Plan). |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (e) A non-safe harbor Hardship described in Section 7.10(e)(2) of the Plan. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (f) Attainment of Normal Retirement Age. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (g) Attainment of Early Retirement Age. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (h) Upon a Participant becoming Disabled (as defined in AA §9-4(b)). |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (i) Describe: _____ |

10-3 **SPECIAL DISTRIBUTION RULES.** No special distribution rules apply, unless specifically provided under this AA §10-3.

- (a) In-service distributions will only be permitted if the Participant is 100% vested in the source from which the withdrawal is taken.
- (b) A Participant may take no more than ___ in-service distribution(s) in a Plan Year.
- (c) A Participant may not take an in-service distribution of less than \$___.
- (d) A Participant may not take an in-service distribution of more than \$___.
- (e) Unless elected otherwise under this subsection, the hardship distribution provisions of the Plan are not expanded to cover primary beneficiaries as set forth in Section 7.10(e)(5) of the Plan. If this subsection (e) is checked, the hardship provisions of the Plan will apply with respect to individuals named as primary beneficiaries under the Plan.
- (f) In determining whether a Participant has an immediate and heavy financial need for purposes of applying the non-safe harbor Hardship provisions under Section 7.10(e)(2) of the Plan, the following modifications are made to the permissible events listed under Section 7.10(e)(1) of the Plan: _____

[Note: This subsection (f) may only be used to the extent a non-safe harbor Hardship distribution is authorized under AA §10-1 or AA §10-2.]
- (g) Other distribution rules: _____

10-4 **REQUIRED MINIMUM DISTRIBUTIONS.**

- (a) **Required distributions after death.** If a Participant dies before distributions begin and there is a Designated Beneficiary, the Participant or Beneficiary may elect on an individual basis whether the 5-year rule (as described in Section 8.06(a) of the Plan) or the life expectancy method described under Sections 8.02 of the Plan apply. See Section 8.06(b) of the Plan for rules regarding the timing of an election authorized under this AA §10-4.

Alternatively, if selected under this subsection (a), any death distributions to a Designated Beneficiary will be made only under the 5-year rule.
 - The five-year rule under Section 8.06(a) of the Plan applies (instead of the life expectancy method). Thus, the entire death benefit must be distributed by the end of the fifth year following the year of the Participant's death. Death distributions to a Designated Beneficiary may not be made under the life expectancy method.
- (b) **Waiver of Required Minimum Distribution for 2009.** For purposes of applying the Required Minimum Distribution rules for the 2009 Distribution Calendar Year, as described in Section 8.06(d) of the Plan, a Participant (including an Alternate Payee or beneficiary of a deceased Participant) who is eligible to receive a Required Minimum Distribution for the 2009 Distribution Calendar Year may elect whether or not to receive the 2009 Required Minimum Distribution (or any portion of such distribution). If a Participant does not specifically elect to leave the 2009 Required Minimum Distribution in the Plan, such distribution will be made for the 2009 Distribution Calendar Year as set forth in Section 8 of the Plan.
 - (1) **No Required Minimum Distribution for 2009.** If this box is checked, 2009 Required Minimum Distributions will not be made to Participants who are otherwise required to receive a Required Minimum Distribution for the 2009 Distribution Calendar Year under Section 8 of the Plan, unless the Participant elects to receive such distribution.
 - (2) **Describe any special rules applicable to 2009 Required Minimum Distributions:** _____

**SECTION 11
MISCELLANEOUS PROVISIONS**

11-1 **PLAN VALUATION.** The Plan is valued annually, as of the last day of the Plan Year.

- (a) **Additional valuation dates.** In addition, the Plan will be valued on the following dates:

Match	ER	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	(1) Daily. The Plan is valued at the end of each business day during which the New York Stock Exchange is open.
<input type="checkbox"/>	<input type="checkbox"/>	(2) Monthly. The Plan is valued at the end of each month of the Plan Year.

Match

ER

(3) **Quarterly.** The Plan is valued at the end of each Plan Year quarter.

(4) **Describe:** _____

[Note: The Employer may elect operationally to perform interim valuations, regardless of any selection in this subsection (a).]

(b) **Special rules.** The following special rules apply in determining the amount of income or loss allocated to Participants' Accounts: _____

11-2 **SPECIAL RULES FOR APPLYING THE CODE §415 LIMITATION.** The provisions under Section 5.02 of the Plan apply for purposes of determining the Code §415 Limitation.

Complete this AA §11-2 to override the default provisions that apply in determining the Code §415 Limitation under Section 5.02 of the Plan.

(a) **Limitation Year.** Instead of the Plan Year, the Limitation Year is the 12-month period ending _____.

[Note: If the Plan has a short Plan Year for the first year of establishment, the Limitation Year is deemed to be the 12-month period ending on the last day of the short Plan Year.]

(b) **Imputed compensation.** For purposes of applying the Code §415 Limitation, Total Compensation includes imputed compensation for a Nonhighly Compensated Participant who terminates employment on account of becoming Disabled. (See Section 5.02(c)(7)(iii) of the Plan.)

(c) **Special rules:** _____

[Note: Any special rules under this subsection (c) must be consistent with the requirements of Code §415.]

11-3 **HEART ACT PROVISIONS – BENEFIT ACCRUALS.** The benefit accrual provisions under Section 15.04 of the Plan do not apply. To apply the benefit accrual provisions under Section 15.04, check the box below.

Eligibility for Plan benefits. Check this box if the Plan will provide the benefits described in Section 15.04 of the Plan. If this box is checked, an individual who dies or becomes disabled in qualified military service will be treated as reemployed for purposes of determining entitlement to benefits under the Plan.

11-4 **ELECTION NOT TO PARTICIPATE (see Section 2.08 of the Plan).** All Participants share in any allocation under this Plan and no Employee may waive out of Plan participation.

To allow Employees to make a one-time irrevocable waiver, check below.

(a) An Employee may make a one-time irrevocable election not to participate under the Plan.

(b) An Employee may make a one-time irrevocable election not to make Employer Pick-Up Contributions under the Plan.

**APPENDIX A
SPECIAL EFFECTIVE DATES**

- A-1 **Eligible Employees.** The definition of Eligible Employee under AA §3 is effective as follows:

- A-2 **Minimum age and service conditions.** The minimum age and service conditions and Entry Date provisions specified in AA §4 are effective as follows:

- A-3 **Compensation definitions.** The compensation definitions under AA §5 are effective as follows:

- A-4 **Employer and Matching Contributions.** The Employer and Matching Contribution provisions under the Plan are effective as follows:

- A-5 **After-Tax Employee and Pick-Up Contributions.** The provisions of the Plan addressing Employee After-Tax Contributions and Pick-Up Contribution provisions under the Plan are effective as follows:

- A-6 **Retirement ages.** The retirement age provisions under AA §7 are effective as follows:

- A-7 **Vesting and forfeiture rules.** The rules regarding vesting and forfeitures under AA §8 are effective as follows:
Money purchase and mandatory pick-up contributions made prior to 9-1-2015 shall be 100% vested.
- A-8 **Distribution provisions.** The distribution provisions under AA §9 are effective as follows:

- A-9 **In-service distributions and Required Minimum Distributions.** The provisions regarding in-service distribution and Required Minimum Distributions under AA §10 are effective as follows:
Money purchase and mandatory pick-up contributions may not be withdrawn prior to termination of employment.
- A-10 **Miscellaneous provisions.** The provisions under AA §11 are effective as follows:

- A-11 **Special effective date provisions for merged plans.** If any qualified retirement plans have been merged into this Plan, the provisions of Section 14.04 of the Plan apply, as follows:

- A-12 **Other special effective dates:**
Effective 9-1-2015, the Plan discontinued money purchase contributions and mandatory pick-up contributions.

**APPENDIX B
LOAN POLICY**

Use this Appendix B to identify elections dealing with the administration of Participant loans. These elections may be changed without amending this Agreement by substituting an updated Appendix B with new elections. Any modifications to this Appendix B or any modifications to a separate loan policy describing the loan provisions selected under the Plan will not affect an Employer's reliance on the IRS Favorable Letter.

B-1 Are **PARTICIPANT LOANS** permitted? (See Section 13 of the Plan.)

- (a) Yes
- (b) No

B-2 **LOAN PROCEDURES.**

- (a) Loans will be provided under the default loan procedures set forth in Section 13 of the Plan, unless modified under this Appendix B.
- (b) Loans will be provided under a separate written loan policy. *[If this subsection (b) is checked, do not complete the rest of this Appendix B.]*

B-3 **AVAILABILITY OF LOANS.** Participant loans are available to all active Participants and Beneficiaries. Participant loans are not available to a former Employee or Beneficiary (including an Alternate Payee under a QDRO). To override this default provision, check (a) and/or (b) below:

- (a) A former Employee or Beneficiary (including an Alternate Payee) who has a vested Account Balance may request a loan from the Plan.
- (b) A "limited participant" as defined in Section 3.05 of the Plan may not request a loan from the Plan.
- (c) An officer or director of the Employer, as defined for purposes of the Sarbanes-Oxley Act, may **not** request a loan from the Plan.

B-4 **LOAN LIMITS.** The default loan policy under Section 13.03 of the Plan allows Participants to take a loan provided all outstanding loans do not exceed 50% of the Participant's vested Account Balance. To override the default loan policy to allow loans up to \$10,000, even if greater than 50% of the Participant's vested Account Balance, check this AA §B-4.

- A Participant may take a loan equal to the greater of \$10,000 or 50% of the Participant's vested Account Balance. *[If this AA §B-4 is checked, the Participant may be required to provide adequate security as required under Section 13.06 of the Plan.]*

B-5 **NUMBER OF LOANS.** The default loan policy under Section 13.04 of the Plan restricts Participants to one loan outstanding at any time. To override the default loan policy and permit Participants to have more than one loan outstanding at any time, complete (a) or (b) below.

- (a) A Participant may have ___ loans outstanding at any time.
- (b) There are no restrictions on the number of loans a Participant may have outstanding at any time.

B-6 **LOAN AMOUNT.** The default loan policy under Section 13.04 of the Plan provides that a Participant may not receive a loan of less than \$1,000. To modify the minimum loan amount or to add a maximum loan amount, complete this AA §B-6.

- (a) There is no minimum loan amount.
- (b) The minimum loan amount is \$_____.
- (c) The maximum loan amount is \$_____.

B-7 **INTEREST RATE.** The default loan policy under Section 13.05 of the Plan provides for an interest rate commensurate with the interest rates charged by local commercial banks for similar loans. To override the default loan policy and provide a specific interest rate to be charged on Participant loans, complete this AA §B-7.

- (a) The prime interest rate
 - plus ___ percentage point(s).
- (b) Describe: _____

[Note: Any interest rate described in this AA §B-7 must be reasonable and must apply uniformly to all Participants.]

- B-8 **PURPOSE OF LOAN.** The default loan policy under Section 13.02 of the Plan provides that a Participant may receive a Participant loan for any purpose. To modify the default loan policy to restrict the availability of Participant loans to hardship events, check this AA §B-8.
- (a) A Participant may only receive a Participant loan upon the demonstration of a hardship event, as described in Section 7.10(e)(1)(i) of the Plan.
 - (b) A Participant may only receive a Participant loan under the following circumstances: _____
- B-9 **APPLICATION OF LOAN LIMITS.** If Participant loans are not available from all contribution sources, the limitations under Code §72(p) and the adequate security requirements of the Department of Labor regulations will be applied by taking into account the Participant’s entire Account Balance. To override this provision, complete this AA §B-9.
- The loan limits and adequate security requirements will be applied by taking into account only those contribution Accounts which are available for Participant loans.
- B-10 **CURE PERIOD.** The Plan provides that a Participant incurs a loan default if a Participant does not repay a missed payment by the end of the calendar quarter following the calendar quarter in which the missed payment was due. To override this default provision to apply a shorter cure period, complete this AA §B-10.
- The cure period for determining when a Participant loan is treated as in default will be _____ days (cannot exceed 90) following the end of the month in which the loan payment is missed.
- B-11 **PERIODIC REPAYMENT – PRINCIPAL RESIDENCE.** If a Participant loan is for the purchase of a Participant’s primary residence, the loan repayment period for the purchase of a principal residence may not exceed ten (10) years.
- (a) The Plan does not permit loan payments to exceed five (5) years, even for the purchase of a principal residence.
 - (b) The loan repayment period for the purchase of a principal residence may not exceed _____ years (may not exceed 30).
 - (c) Loans for the purchase of a Participant’s primary residence may be payable over any reasonable period commensurate with the period permitted by commercial lenders for similar loans.
- B-12 **TERMINATION OF EMPLOYMENT.** Section 13.10(a) of the Plan provides that a Participant loan becomes due and payable in full upon the Participant’s termination of employment. To override this default provision, complete this AA §B-12.
- A Participant loan will not become due and payable in full upon the Participant’s termination of employment.
- B-13 **DIRECT ROLLOVER OF A LOAN NOTE.** Section 13.10(b) of the Plan provides that upon termination of employment a Participant may request the Direct Rollover of a loan note. To override this default provision, complete this AA §B-13.
- A Participant may not request the Direct Rollover of the loan note upon termination of employment.
- B-14 **LOAN RENEGOTIATION.** The default loan policy provides that a Participant may renegotiate a loan, provided the renegotiated loan separately satisfies the reasonable interest rate requirement, the adequate security requirement, the periodic repayment requirement and the loan limitations under the Plan. The Employer may restrict the availability of renegotiations to prescribed purposes provided the ability to renegotiate a Participant loan is available on a non-discriminatory basis. To override the default loan policy and restrict the ability of a Participant to renegotiate a loan, complete this AA §B-14.
- (a) A Participant may not renegotiate the terms of a loan.
 - (b) The following special provisions apply with respect to renegotiated loans: _____
- B-15 **SOURCE OF LOAN.** Participant loans may be made from all available contribution sources, to the extent vested, unless designated otherwise under this AA §B-15.
- Participant loans will not be available from the following contribution sources: _____
- B-16 **MODIFICATIONS TO DEFAULT LOAN PROVISIONS.**
- The following special rules will apply with respect to Participant loans under the Plan: _____

[Note: Any provision under this AA §B-16 must satisfy the requirements under Code §72(p) and the regulations thereunder and will control over any inconsistent provisions of the Plan dealing with the administration of Participant loans.]

**APPENDIX C
ADMINISTRATIVE ELECTIONS**

Use this Appendix C to identify certain elections dealing with the administration of the Plan. These elections may be changed without amending this Agreement by substituting an updated Appendix C with new elections. The provisions selected under this Appendix C do not create qualification issues and any changes to the provisions under this Appendix C will not affect the Employer's reliance on the IRS Favorable Letter.

C-1 **DIRECTION OF INVESTMENTS.** Are Participants permitted to **direct investments**? (See Section 10.07 of the Plan.)

- (a) No
- (b) Yes
- (c) Describe any special rules that apply for purposes of direction of investments: _____

C-2 **ROLLOVER CONTRIBUTIONS.** Does the Plan accept **Rollover Contributions**? (See Section 3.05 of the Plan.)

- (a) No
- (b) Yes
 - (1) If this subsection (1) is checked, an Employee may not make a Rollover Contribution to the Plan prior to becoming a Participant in the Plan.
 - (2) Check this subsection (2) if the Plan will not accept Rollover Contributions from former Employees.
 - (3) Describe any special rules for accepting Rollover Contributions: _____

[Note: The Employer may designate in subsection (3) or in separate written procedures the extent to which it will accept rollovers from designated plan types. For example, the Employer may decide not to accept rollovers from certain designated plans (e.g., 403(b) plans, §457 plans or IRAs). Any special rollover procedures will apply uniformly to all Participants under the Plan.]

C-3 **LIFE INSURANCE.** Are **life insurance** investments permitted? (See Section 10.08 of the Plan.)

- (a) No
- (b) Yes

C-4 **QDRO PROCEDURES.** Do the **default QDRO procedures** under Section 11.05 of the Plan apply?

- (a) No
- (b) Yes
 - The provisions of Section 11.05 are modified as follows: _____

EMPLOYER SIGNATURE PAGE

PURPOSE OF EXECUTION. This Signature Page is being executed to effect:

- (a) The adoption of a **new plan**, effective [insert Effective Date of Plan]. [Note: Date can be no earlier than the first day of the Plan Year in which the Plan is adopted.]
- (b) The **restatement** of an existing plan, in order to comply with the requirements of PPA, pursuant to Rev. Proc. 2011-49.
 - (1) Effective date of restatement: _____ [Note: Date can be no earlier than January 1, 2007. Section 14.01(d)(2) of Plan provides for retroactive effective dates for all PPA provisions. Thus, a current effective date may be used under this subsection (1) without jeopardizing reliance.]
 - (2) Name of plan(s) being restated: _____
 - (3) The original effective date of the plan(s) being restated: _____
- (c) An **amendment or restatement** of the Plan (other than to comply with PPA). If this Plan is being amended, a snap-on amendment may be used to designate the modifications to the Plan or the updated pages of the Adoption Agreement may be substituted for the original pages in the Adoption Agreement. All prior Employer Signature Pages should be retained as part of this Adoption Agreement.
 - (1) Effective Date(s) of amendment/restatement: 4-15-2020
 - (2) Name of plan being amended/restated: Moulton Niguel Water District 401(a) Plan and Trust
 - (3) The original effective date of the plan being amended/restated: 7-1-2001
 - (4) If Plan is being amended, identify the Adoption Agreement section(s) being amended: 1-1; 2-4; 3-1; 4-1; 5-3; 6A-3; 7-1; 8-4; 9-1; 9-2; A-7; A-9; A-12; Trustee Declaration

VOLUME SUBMITTER SPONSOR INFORMATION. The Volume Submitter Sponsor (or authorized representative) will inform the Employer of any amendments made to the Plan and will notify the Employer if it discontinues or abandons the Plan. To be eligible to receive such notification, the Employer agrees to notify the Volume Submitter Sponsor (or authorized representative) of any change in address. The Employer may direct inquiries regarding the Plan or the effect of the Favorable IRS Letter to the Volume Submitter Sponsor (or authorized representative) at the following location:

Name of Volume Submitter Sponsor (or authorized representative): Lincoln Financial Group

Address: 1300 South Clinton Street Ft. Wayne, IN 46802

Telephone number: 800-248-0838

IMPORTANT INFORMATION ABOUT THIS VOLUME SUBMITTER PLAN. A failure to properly complete the elections in this Adoption Agreement or to operate the Plan in accordance with applicable law may result in disqualification of the Plan. The Employer may rely on the Favorable IRS Letter issued by the National Office of the Internal Revenue Service to the Volume Submitter Sponsor as evidence that the Plan is qualified under Code §401(a), to the extent provided in Rev. Proc. 2011-49. The Employer may not rely on the Favorable IRS Letter in certain circumstances or with respect to certain qualification requirements, which are specified in the Favorable IRS Letter issued with respect to the Plan and in Rev. Proc. 2011-49. In order to obtain reliance in such circumstances or with respect to such qualification requirements, the Employer must apply to the office of Employee Plans Determinations of the Internal Revenue Service for a determination letter. See Section 1.50 of the Plan.

By executing this Adoption Agreement, the Employer intends to adopt the provisions as set forth in this Adoption Agreement and the related Plan document. By signing this Adoption Agreement, the individual below represents that he/she has the authority to execute this Plan document on behalf of the Employer. This Adoption Agreement may only be used in conjunction with Basic Plan Document #05. The Employer understands that the Volume Submitter Sponsor has no responsibility or liability regarding the suitability of the Plan for the Employer's needs or the options elected under this Adoption Agreement. It is recommended that the Employer consult with legal counsel before executing this Adoption Agreement.

Moulton Niguel Water District
(Name of Employer)

(Name of authorized representative) (Title)

(Signature) (Date)

PLEASE SIGN & DATE

TRUSTEE DECLARATION

This Trustee Declaration may be used to identify the Trustees under the Plan. A separate Trustee Declaration may be used to identify different Trustees with different Trustee investment powers.

Effective date of Trustee Declaration: 4-15-2020

The Trustee's investment powers are:

- (a) **Discretionary.** The Trustee has discretion to invest Plan assets, unless specifically directed otherwise by the Plan Administrator, the Employer, an Investment Manager or other Named Fiduciary or, to the extent authorized under the Plan, a Plan Participant.
- (b) **Nondiscretionary.** The Trustee may only invest Plan assets as directed by the Plan Administrator, the Employer, an Investment Manager or other Named Fiduciary or, to the extent authorized under the Plan, a Plan Participant.
- (c) **Fully funded.** There is no Trustee under the Plan because the Plan is funded exclusively with custodial accounts, annuity contracts and/or insurance contracts. (See Section 12.15 of the Plan.)
- (d) **Determined under a separate trust agreement.** The Trustee's investment powers are determined under a separate trust document which replaces (or is adopted in conjunction with) the trust provisions under the Plan.

Name of Trustee: Lincoln Financial Group Trust Company

Title of Trust Agreement: Trust Agreement

[Note: To qualify as a Volume Submitter Plan, any separate trust document used in conjunction with this Plan must be approved by the Internal Revenue Service. Any such approved trust agreement is incorporated as part of this Plan and must be attached hereto. The responsibilities, rights and powers of the Trustee are those specified in the separate trust agreement.]

Description of Trustee powers. This section can be used to describe any special trustee powers or any limitations on such powers. This section also may be used to impose any specific rules regarding the decision-making authority of individual trustees. In addition, this section can be used to limit the application of a trustee's responsibilities, e.g., by limiting trustee authority to only specific assets or investments.

Describe Trustee powers: _____

[The addition of special trustee powers under this section will not cause the Plan to lose Volume Submitter status provided such language merely modifies the administrative provisions applicable to the Trustee (such as provisions relating to investments and the duties of the Trustee). Any language added under this section may not conflict with any other provision of the Plan and may not result in a failure to qualify under Code §401(a).]

EXHIBIT B

Governmental 401(a) Trust Agreement

between

MOULTON NIGUEL WATER DISTRICT

and

**Lincoln Financial Group Trust Company,
as Trustee**

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Governmental 401(a) Trust Agreement

This TRUST AGREEMENT (the "Agreement") is made as of this 15th day of April, 2020, by and between MOULTON NIGUEL WATER DISTRICT (the "Employer"), and LINCOLN FINANCIAL GROUP TRUST COMPANY, a non-depository trust company organized under the laws of the State of New Hampshire (the "Trustee") (each a "Party" or collectively the "Parties").

Witnesseth

WHEREAS, Employer sponsors a plan under Section 401(a) of the Code, known as the Moulton Niguel Water District 401(a) Plan and Trust ("Plan"), and

WHEREAS, Employer is either a State, a political subdivision of a State, or an agency or instrumentality of a State or political subdivision of a State so that Employer is eligible to sponsor an eligible deferred compensation plan pursuant to Code Section 401(a), and

WHEREAS, Employer has determined, in its sole and exclusive discretion, that the Plan is not subject to the governance of Title 1 of ERISA since the Plan falls within the scope of the exclusion in ERISA Section 4(b)(1) for a government plan, and has delegated certain non-fiduciary administrative task and responsibilities to certain parties, and

WHEREAS, Employer wishes to establish a trust for the Plan pursuant to the requirements of Code Section 401(a), and

WHEREAS, Employer wishes to appoint Trustee as trustee of the Trust established under the Plan and Trustee hereby accepts such appointment.

NOW, THEREFORE, in consideration of the promises and the mutual covenants herein contained, the Employer and Trustee hereby mutually agree as follows:

Article I – Definitions

Section 1.1 Definitions

Unless the context otherwise requires or unless otherwise expressly provided, as used in this Agreement:

- (a) "Administrator" means, with respect to the Plan, the organization, entity, committee or other person responsible for benefit administration under the Plan, including any representative or delegate thereof designated in writing, authorized to act on behalf of such organization, entity, committee or other person, and may include the Employer.
- (b) "Code" means the Internal Revenue Code of 1986, as amended from time to time, and regulations issued thereunder.
- (c) "Investment Manager" means a bank, insurance company or registered investment adviser satisfying the requirements of Section 3(38) of ERISA appointed by the Employer to manage all or any portion of the Trust as designated by the Employer.

(d) "ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time.

(e) "Trust" means all property, real, personal or mixed, of any kind or nature, contributed, paid or delivered to the Trustee hereunder, and all investments, reinvestments and proceeds thereof, and all gains, earnings and profits thereon.

Article II - Creation; Purpose; Etc.

Section 2.1 Creation

The Employer hereby creates the Trust. Under the terms of the Plan, the Employer has the power to appoint and hereby appoints Lincoln Financial Group Trust Company to act as Trustee; and Lincoln Financial Group Trust Company hereby accepts the appointment to serve as Trustee.

Section 2.2 Purpose

The Trust is established to fund the benefits payable to participants and their beneficiaries under the Plan.

Section 2.3 Exclusive Benefit

Except as otherwise permitted by law, at no time prior to the satisfaction of all liabilities with respect to participants and their beneficiaries under the Plan shall any part of the Trust be used for, or diverted to, any purposes other than for the exclusive benefit of the participants and their beneficiaries and for defraying the reasonable expenses of administering such Plan.

Section 2.4 Domestic Trust

The Trust shall at all times be maintained as a domestic trust in the United States.

Section 2.5 Prohibited Transactions

Neither Trustee, Employer, Investment Manager nor any participant shall knowingly enter into any transaction, engage in any activity, or direct the purchase or acquisition of any investment with respect to the Plan which would constitute a prohibited transaction under the Code or other applicable law for which a statutory or administrative exemption is not available.

Section 2.6 Directed Trustee

Trustee shall have no discretion or authority with respect to the investments of the Trust but shall act solely as a directed Trustee of the funds contributed hereunder. Trustee shall not have any responsibilities for money or property not deposited into the Trust, except Trustee will take instruction for Employer regarding any group annuity issued by an affiliate of Trustee that Employer or Plan sponsor owns. Trustee shall have no responsibility for money or properties held in any other trust Employer has established or will establish with respect to the Plan (unless specifically agreed to in writing by Trustee), or held by or deposited with any other trustee appointed by Employer.

Trustee will make distributions from the Plan in accordance with the written directions of the Administrator. To the extent Trustee follows such written direction, Trustee is not obligated in any manner to ensure a distribution complies with the terms of the Plan, that a participant or beneficiary is entitled to such a distribution, or that the amount distributed is proper under the terms of the Plan. If there is a dispute as to a payment from Trustee, Trustee may decline to make payment of such amounts until the proper payment of such amounts is determined by a court of competent jurisdiction, or Trustee has been indemnified to its satisfaction.

Section 2.7 Employer Representation

Employer represents that it is eligible to establish and maintain a pension or profit sharing plan intended to have tax qualified status under Code Section 401(a) for the exclusive benefit of its employees and their beneficiaries. Employer represents that the Plan satisfies the tax qualification requirements of Code Section 401(a). Employer represents that the Plan is a governmental plan as defined in Code Section 414(d) and ERISA Section 3(32), and, as such, is exempt from Title I of ERISA pursuant to ERISA Section 4. Employer represents and warrants that the specifications, terms and conditions of the Plan are current and comply with applicable law, and that Employer has communicated such specifications, terms and conditions to Trustee in writing. Employer further represents and warrants that its underlying business and/or Plan will not cause or put Trustee in position to violate any applicable federal, state, local law, regulation, rule, or ordinance.

Article III – Administration of Plan**Section 3.1 Payment of Benefits**

At the direction of the Administrator, Trustee shall pay moneys or other property directly to or for the benefit of participants and their beneficiaries, or to a paying or disbursing agent, which may be the Administrator. Any moneys or other property disbursed or paid over by Trustee pursuant to this Section 3.1 shall no longer be part of the Trust.

Section 3.2 Reliance on Administrator

Any directions pursuant to Section 3.1 may, but need not, specify the application to be made of payments so directed. Each direction to Trustee under Section 3.1 shall constitute a representation and warranty by the Administrator that such direction is in accordance with this Agreement, the Plan and applicable law, and Trustee shall have no duty to make any independent inquiry or investigation before acting upon such direction, or to see to the application of any moneys or other property so paid.

Section 3.3 Trustee Not Responsible for Plan Administration

Trustee shall not be responsible in any way for the determination, computation, payment or application of any benefit, or for any other matter affecting the administration of the Plan by the Employer or the Administrator or any organization, entity, committee or other person to whom such responsibility is delegated under the Plan.

Section 3.4 Trustee Not Responsible for Enforcing Contributions or for Sufficiency of Account

In accordance with the terms of the Plan and this Agreement, the Employer hereby retains responsibility for monitoring and collecting contributions and does not delegate such responsibility to Trustee. By retaining responsibility for monitoring and collecting contributions, the Employer may be liable for Plan losses due to a failure to collect contributions. As such, Trustee shall not be responsible for enforcing payment of any contribution to the Trust, for the timing or amount thereof, or for the adequacy of the Trust or any part thereof or the funding standards adopted for the Plan to meet or discharge any liabilities of the Plan or the Trust. Trustee has no duty to inquire into the source of any money or property transferred to it nor to inquire into the authority or right of the transferor of such money or property to transfer such money or property to Trustee. Trustee does not have any duty to see that the contributions received by it comply with the provisions of the Plan.

Notwithstanding the foregoing, the Trustee may take appropriate steps to remedy a situation where the Trustee knows that no party has assumed responsibility for the collection and monitoring of contributions and that delinquent contributions are going uncollected.

Section 3.5 Plan-to-Plan Transfers/Rollovers

If the Plan permits plan-to-plan transfers and/or rollovers Trustee shall take such action as is necessary or desirable to accomplish any such matter, all pursuant to appropriate directions from the Administrator. The Administrator shall be responsible to determine that any such plan-to-plan transfers and/or rollovers comply with applicable law.

Article IV – Investment of Trust

Section 4.1 Employer Authority

Except as otherwise provided in Section 4.2 or 4.3, the Employer shall possess all discretionary authority for the management and control of the Trust. The Employer shall be responsible for determining the diversification policy (if and to the extent required), and for monitoring adherence by any Investment Manager or Investment Managers to such policy.

Section 4.2 Investment Managers

Discretionary authority for the management and control of all or any portion of the Trust may be delegated by the Employer, in its absolute discretion, to one or more Investment Managers. The terms and conditions of appointment, authority and retention of any Investment Manager shall be the sole responsibility of the Employer. The Employer shall promptly notify Trustee in writing of the appointment or removal of any Investment Manager and the portion of the Trust over which such Investment Manager shall have authority. Any notice of appointment pursuant to this Section 4.2 shall constitute a representation and warranty that the Investment Manager has been appointed in accordance with the Plan and that any Investment Manager is an Investment Manager as defined in this Agreement. The Employer may limit, restrict or impose guidelines affecting the exercise of the discretion conferred on any Investment Manager, and shall be responsible for communicating, and monitoring adherence to, any such limitations, restrictions or guidelines.

Section 4.3 Individually Directed Accounts

As to each individually directed account permitted by the Plan, the applicable participant shall possess all of the investment and investment-related authority held by the Employer hereunder, and Trustee shall invest and reinvest such assets pursuant to the directions of the participant, as communicated in writing, via facsimile or by electronic transmission to Trustee by the Administrator or its delegate. Trustee shall be fully protected in relying upon the instructions of the Administrator or its delegate as to the participant's directions. Trustee shall not be liable to the participant or any of his or her beneficiaries for any loss resulting from any action taken at the direction of the participant.

Section 4.4 Reliance on Employer, Investment Managers, Participants

Trustee shall invest and reinvest the Trust pursuant to the directions of the Employer, participants – acting through the Administrator or its delegate - or the Investment Manager or Investment Managers, as the case may be. Trustee shall have no investment responsibility with respect to the Trust, and shall have no duty to inquire into the directions of the Employer, participants – acting through the Administrator or its delegate - any Investment Manager, as the case may be, to solicit such directions, to determine such directions are in compliance with the provisions of the Plan, or to review and follow the investments made pursuant to any such directions, other than to the extent required by law. Any such investment direction shall constitute a representation and warranty that the transaction will not constitute a prohibited transaction or other violation under the Code or other applicable law, and that the investment is authorized under this Agreement, the Plan, any other applicable agreement affecting investment authority under the Plan, or any applicable law.

Trustee may refuse to comply with any directions in the event Trustee, in its sole discretion, deems such directions improper by virtue of applicable law. Trustee shall not be responsible or liable for any loss or expense which may result from Trustee's refusal and failure to comply with any such directions.

Section 4.5 Late Day Trading

Trustee does not engage in the practice of late day trading. In the event trade orders made by the Plan or its participants are received before the established cutoff time for Trustee or another party to receive such orders and such orders cannot be processed by the cutoff time, the Employer authorizes Trustee to process these orders after the cutoff time as if they were received and processed before the cutoff time.

Section 4.6 Self-Directed Brokerage Accounts

In the event the Plan now or hereafter provides for self-directed brokerage accounts ("Participant SDBAs") as an investment option, the Employer and Trustee agree that the provisions set forth on the Self Directed Brokerage Accounts Addendum attached hereto shall be deemed incorporated into this Agreement. The Employer agrees to give Trustee reasonable advance notice of its intention to offer Participant SDBAs.

Section 4.7 Plan Expense Account

The Employer hereby directs Trustee to establish a segregated sub-account within the Trust for the purpose of receiving certain amounts from mutual fund sub-transfer agents, administrative service fees, shareholder servicing fees or other revenue or annuity spread revenue (the "plan expense account"). As authorized by Employer, the plan expense account will be invested in an investment that has an investment objective of capital preservation and liquidity. The Employer hereby agrees that if included as an investment option under the Plan, such investment shall be a group fixed annuity or stable value investment issued by an affiliate of Trustee. If Employer chooses not to include such investment issued by an affiliate of Trustee, then the plan expense account will be invested in such other investment option as designated by the Employer.

From time to time, Trustee shall receive such fees or revenue and deposit or sweep it into the plan expense account. Such funds shall be considered Plan assets. The activity of the plan expense account shall be provided quarterly to the Employer. Any Plan expense to be paid from the plan expense account shall be at the direction of the Administrator or its delegate to Trustee or its affiliate. At no time shall Trustee or its affiliates have discretion to make deposits into or payment out of the plan expense account. If the balance in the account is to be used as contributions to Plan participants, the Administrator or its delegate will notify Trustee or its affiliate of the amount in the plan expense account that will be used for participant contributions. The Plan's record keeper will coordinate the transfer of funds from the plan expense account to participant accounts.

Trustee is not responsible for ensuring the accuracy or adequacy of assets transferred to the plan expense account but will rely on its affiliated recordkeeper and service provider, Lincoln Retirement Services Company, LLC, to transfer the agreed amounts to the plan expense account. The Employer will have control over such account and will be responsible for any application or use of such funds in the plan expense account.

Article V – Powers of Trustee**Section 5.1 General Powers**

Upon the directions of the Employer, the Investment Manager(s), or the Administrator on behalf of the participants with respect to individually directed accounts, as the case may be, Trustee shall be authorized and empowered to exercise any and all of the following rights, powers and privileges with respect to the Trust:

- (a) To invest and reinvest the principal and income of the Trust Fund, without distinction between principal and income, in such securities as but not limited to, common stocks, preferred stocks, bonds, bills, notes, commercial paper, debentures, mortgages, equipment trust certificates, investment trust certificates, partnership interests and also in other investments, whether real, personal or mixed property.

- (b) To receive any and all money and other property of whatsoever kind or nature due or owing or belonging to the Trust.
- (c) To settle, compromise, or submit any claims, debts or damages due or owing to or from the Trust; to commence or defend suits or legal proceedings; and to represent the Trust in all suits or legal proceedings in any court of law or equity or before any other body or tribunal, insofar as such suits or proceedings relate to any part of the Trust or the administration thereof.
- (d) To borrow money from any source as may be necessary or advisable to effectuate the purposes of the Trust.
- (e) To generally take all actions, execute all instruments, and exercise all rights and privileges with relation to the Trust, whether or not expressly authorized, as Trustee is directed or in its sole discretion deems necessary or desirable, subject however to the directions by an appropriate party as set forth in this Agreement.
- (f) To execute and deliver any vote, proxy, tender offer or similar rights incident to the ownership of any securities held in the Trust, except that Trustee shall exercise such rights only pursuant to the written instructions of the Employer, or the written instructions of plan participants or beneficiaries if the Plan gives such rights to participants or beneficiaries, or by the Investment Manager if an Investment Manager has been appointed pursuant to Section 4.2. If no such written directions are timely received from the appropriate party, Trustee shall not vote or exercise any such rights with respect to such securities.
- (g) To sell, exchange, convey, transfer or otherwise dispose of any such property at public or private sale, for cash or credit, or partly for cash and partly for credit, and with or without notice or advertisement of any kind.
- (h) To purchase whole or part interests in real property or in mortgages on real property, wherever situated, directly or through financial intermediaries or entities, such as, but not limited to, partnerships, and to mortgage or lease for any term any real property or part interest in real property; and to delegate to a manager the management and operation of any interest in such property or properties.
- (i) To purchase or sell, write or issue, puts, calls or other options, covered or uncovered, to enter into financial futures contracts, forward placement contracts and standby contracts, and in connection therewith, to deposit, hold or pledge assets of the Trust Fund.
- (j) To collect and receive any and all money and other property of whatsoever kind or nature due or owing or belonging to the Trust Fund and to give full discharge and acquittance therefore; and to extend the time of payment of any obligation at any time owing to the Trust Fund.
- (k) To transfer, from time to time, all or any part of the Trust Fund to any common, collective or commingled trust fund exempt from taxation under the Code ("Collective Trust") and/or to enter into the relevant trustee agreement on behalf of the Plan for such Collective Trust, to be held and administered subject to the terms and provisions of the relevant trust agreement, and such trust agreement shall be deemed adopted as part of this Agreement and the Plan to the extent that any portion of the Trust Fund is invested therein.
- (l) To apply for and procure from an insurance company as an investment of the Trust such annuity, or other contracts on the life of any participant as the Administrator shall deem proper; exercise, at any time or from time to time, whatever rights and privileges may be granted under such annuity, or other contracts; and collect, receive, and settle for the proceeds of any such annuity, or other contracts as and when entitled to do so under the provisions thereof.
- (m) To, upon the written direction of the Administrator, enter into a transfer agreement with the Trustee of another qualified retirement plan and to accept a transfer of assets from such retirement plan on behalf of any employee of the Employer. Trustee is also authorized, upon the written direction of the Administrator, to transfer some or all of a participant's vested account balance to another qualified retirement plan on behalf of such participant.

Section 5.2 Uninvested Cash and Float

With respect to uninvested cash and float, while Trustee may not at any time accept deposits of funds, it is understood that State Street Bank (or any successor thereto) (hereinafter, the "depository bank"),

acting on behalf of Trustee, may from time to time, have on hand funds from (i) the receipt of contributions that are awaiting investment or (ii) the sale of assets which are awaiting reinvestment or distribution. While there is not an explicit fee debited from plan assets as float revenue, a noninterest-bearing omnibus bank account has been established at depository bank in which to temporarily place cash to facilitate purchases and liquidations into and out of the Plan. The account is a noninterest bearing account, so no explicit direct float income is earned on the cash in transit. However, the account does earn banking credits based on the following formula: The Fed Funds Rate x 1/360 treasury rate. Contributions into the account are generally held in the account for one to two days. Distributions from the account are generally in the account for less than one day for wires and ACH transfers and three or more days for distributions. The length of time cash stays in this account can vary depending on how quickly the check is redeemed by the participant or how quickly payroll is processed. Credits earned are used entirely to pay banking fees and other fees that would otherwise be charged to Trustee and its clients.

Section 5.3 Valuations

Trustee shall periodically determine the market value of the assets of the Trust or, in the absence of readily ascertainable market values, at such values as Trustee shall determine in accordance with methods consistently followed and uniformly applied. With respect to assets without readily ascertainable market values, Trustee may rely for all purposes of this Agreement on the latest valuation and transaction information submitted to it by the person responsible for the investment. The Employer shall cause such person to provide Trustee with all information needed by Trustee to discharge its obligations to value such assets and to account for such assets under this Agreement.

Article VI – Records and Accounts of Trustee

Section 6.1 Records

Trustee shall keep accurate and detailed accounts of all investments, receipts, disbursements and other transactions in the Trust and all accounts, books and records relating thereto shall be open to inspection and audit at reasonable times during normal business hours by any person designated by the Employer.

Section 6.2 Annual and Other Periodic Accounts

Within ninety (90) days following the close of each Plan year, and within sixty (60) days following the close of each Plan quarter, Trustee shall file with the Employer or the Administrator a written account setting forth the receipts and disbursements and the investments and other transactions effected by it with respect to the Trust during such Plan year or quarter, as the case may be. Unless otherwise requested, recipients will be set up for quarterly statements and access via the web for all trust account reporting. Upon the expiration of ninety (90) days from the date of mailing (or, if applicable, distribution via e-mail or other electronic means) of its annual or quarterly account, Trustee shall be forever released and discharged from all liability and further accountability to the Employer, the Administrator or any other person with respect to the accuracy of such accounting and all acts and failures to act of Trustee reflected in such account, except to the extent that the Employer or the Administrator shall, within such 90-day period, file with Trustee specific written objections to the account. Neither the Employer, the Administrator, any participant nor any other person shall be entitled to any additional or different accounting by Trustee and Trustee shall not be compelled to file in any court any additional or different accounting.

Section 6.3 Tax Returns and Tax Withholding and Reporting

Unless otherwise agreed to in writing by the Parties, Trustee shall prepare and file tax returns or other filings with respect to the Trust only if such returns or filings must be filed by Trustee rather than by the Administrator or the Employer. If Trustee disburses funds from the Trust to a Plan participant, Trustee shall withhold and remit to the Internal Revenue Service ("IRS") and other applicable taxing authorities the amount of any income tax withholding required by law. Unless otherwise agreed to in writing by the Parties, the Employer shall be responsible for preparing and filing all other applicable federal and state reports.

Article VII – Trustee’s Rights/Limitation of Trustee’s Responsibility

Section 7.1 No Implied Duties

The duties and responsibilities of Trustee shall be solely determined in accordance with this Agreement, shall not be deemed to be enlarged by the provisions of the Plan, and no other or further duties or responsibilities shall be implied against or imposed on Trustee.

Section 7.2 Evidence of Authority

The Employer shall furnish Trustee from time to time with a certificate evidencing the name, title and specimen signature of any person authorized to give instructions to Trustee on behalf of the Employer hereunder. The Employer shall also furnish Trustee from time to time or cause Trustee to be furnished from time to time with certified lists of the names and signatures of all other organizations, entities, committees or other persons authorized to act as the Administrator or in any manner authorized to issue notices, requests, directions, instructions or other communications to Trustee pursuant to this Agreement. The Employer shall cause each Investment Manager to furnish Trustee from time to time with the names and signatures of the persons authorized to direct Trustee on its behalf hereunder. Trustee shall be entitled to rely upon each such evidence of authority until it is revoked in writing.

Section 7.3 Reliance by Trustee

Trustee shall be entitled to rely upon each representation, information, notice, direction, certificate and other communication furnished by or on behalf of the Employer, the Administrator, and each Investment Manager; and Trustee shall be protected to the extent the law permits in acting in accordance with and relying upon such representations, information, notices, directions, certificates and other communications; and Trustee shall be under no duty to make any inquiry or investigation in connection therewith.

Section 7.4 Trustee May Employ Agents

Trustee may from time to time employ and consult with counsel (who may also serve as counsel for the Employer or Trustee) and shall be protected to the extent the law permits in acting upon such advice of counsel. Trustee may also from time to time employ accountants and other agents as may be reasonably necessary in administering and protecting the Trust, and Trustee may pay such counsel, accountants and other agents reasonable compensation, which shall be reimbursed to Trustee in accordance with Section 8.1. Trustee shall at no time be obligated to institute any legal action or to become a party to any legal action unless Trustee shall have been indemnified to its satisfaction for any fees, costs and expenses to be incurred in connection with such legal action.

Section 7.5 No Obligation to Act on Unsatisfactory Notice

Trustee shall not be liable for any failure to act pursuant to any notice, direction or any other communication from the Employer, the Administrator, any Investment Manager or any other person or delegate of any of them unless and until it shall have received directions in the form specified in this Agreement.

Section 7.6 The Exclusive Benefit and Prudent Man Rule

Trustee, Employer, and or Administrator hereunder shall each discharge its duties hereunder solely in the interest of the Participants and for the exclusive purpose of providing benefits to the Participants and for paying reasonable expenses of administering the Plan. Trustee, Employer, and or Plan Administrator hereunder shall perform all of its duties with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, or in accordance with such other standards as may, from time to time, be required by law, and in accordance with the Plan and this Agreement, insofar as they are consistent with applicable law.

Article VIII – Compensation, Taxes, Expenses, Indemnity

Section 8.1 Payment of Compensation and Expenses

Trustee shall be entitled to receive reasonable compensation for its services and reimbursement of all reasonable costs and expenses incurred in connection with the administration of the Trust. Unless and until agreed otherwise in writing by the Employer and Trustee, the compensation of Trustee shall be as agreed upon from time to time among Trustee and the Employer; and in the event that Trustee shall be called upon to render any extraordinary services, it shall be entitled to additional compensation. Any change in Trustee's compensation or charges will be applicable only after reasonable notice to the Employer. If such compensation, costs and expenses are not paid by the Employer, they shall be paid from the Trust.

Section 8.2 Taxes

All income or other taxes of any kind whatsoever which may be properly levied or assessed under existing or future laws upon, or in respect of, the Trust shall, at the direction of the Administrator, be paid by Trustee out of the Trust, and, until paid, shall constitute a charge upon the Trust.

Section 8.3 Indemnification by Employer

In addition to any other remedies at law or in equity available to Trustee for breach of this Agreement by Employer, except to the extent prohibited by applicable law, the Employer shall indemnify Trustee against, and agrees to hold Trustee harmless from, any and all damages, losses, costs, judgments, fines and expenses (including attorneys' fees and disbursements) of any kind and nature related to this Agreement including any such items arising out of any threatened, pending, or completed claim, action, suit, or proceeding, whether civil, criminal, administrative, or investigative (hereinafter in the aggregate referred to as the "Losses"), unless such Losses results from Trustee's intentional wrongdoing or negligent actions or omissions. Except as otherwise provided by the preceding sentence, the Employer also shall indemnify Trustee against, and agrees to hold Trustee harmless from, all Losses arising from any actions or breach of any responsibility by any party other than Trustee.

The Employer agrees to indemnify Trustee against any Losses arising as a result of any act taken or failure to act by Trustee, in accordance with the directions received from the Employer, Administrator, Investment Manager, participant, or a designee specified by the Administrator or the Employer.

Trustee shall not be responsible in any way for any actions taken, or failure to act, by a prior trustee or custodian. The Employer shall indemnify and hold harmless Trustee for any Losses for such prior trustee's or custodian's acts or inactions.

The Employer shall indemnify Trustee against, and agrees to hold Trustee harmless from any Losses resulting from Trustee's actions or inactions pursuant to the provisions of Section 5.1(f) pertaining to voting, proxies, tender offers or similar rights.

As a condition of indemnification, (i) Trustee shall give Employer timely notice in writing of any potential Losses promptly after Trustee becomes aware of them; (ii) Employer shall, at its option, have sole control of the defense of such Losses; and (iii) Trustee shall cooperate with Employer in the defense of such Losses. Employer shall not be responsible for the settlement of any claim, demand or lawsuit related to the Losses without Employer's written consent.

For purposes of this Section 8.3, the term Trustee shall include Trustee's officers, directors (or managers), employees and agents.

Section 8.4 Indemnification by Trustee

In addition to any other remedies at law or in equity available to Employer for breach of this Agreement by Trustee, Trustee will indemnify Employer, from and against any Losses imposed on or incurred by Employer and related to this Agreement where such Losses are the result of Trustee's intentional wrongdoing or its negligent actions or omissions. However, Trustee will have no liability with respect to

claims of breach of its duties for (i) the inclusion, exclusion, or deletion of investments in the Plan, or (ii) the monitoring of such investments after the Employer's selection of them as an investment option for the Plan.

As a condition of indemnification, (i) Employer shall give Trustee timely notice in writing of any potential Losses promptly after Employer becomes aware of them; (ii) Trustee shall, at its option, have sole control of the defense of such Losses; and (iii) Employer shall cooperate with Trustee in the defense of such Losses. Trustee shall not be responsible for the settlement of any claim, demand or lawsuit related to the Losses without Trustee's written consent.

For purposes of this Section 8.4, the term Employer shall include Employer's officers, directors (or managers), employees and agents.

Article IX – Resignation or Removal of Trustee

Section 9.1 Removal or Resignation of Trustee

Trustee may be removed by the Employer at any time by 60 days prior written notice to Trustee. Trustee may resign at any time by written notice to the Employer. Such notice shall be effective 60 days after receipt by the Employer or such later date as shall be specified therein, or at an earlier date by the mutual agreement of the Parties. Upon the effective date of the removal or resignation of Trustee, Trustee shall deliver the Trust to a successor trustee or trustee designated by the Employer. If, for any reason, the Employer cannot or does not act promptly to appoint a successor trustee, Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee. Any expenses incurred by Trustee in connection therewith shall be charged to and paid from the Trust as an expense of administration.

Section 9.2 Reserve for Expenses

Trustee is authorized to reserve such sum of money (and for that purpose to liquidate property to produce such sum) as it may deem advisable for payment of all proper charges against the Trust, including expenses in connection with such resignation or removal, and any balance of such reserve remaining after the payment of such charges shall be paid over to the successor trustee or Trustee.

Article X – Amendment or Termination of Agreement

Section 10.1 Amendment of Agreement

Subject to Section 2.3, a Party may not alter, modify or amend this Agreement in whole or in part at any time, without the prior written consent of the other Party.

Section 10.2 Termination of Agreement

Subject to Sections 2.3 and 9.1, the Parties may at any time terminate this Agreement by written notice given to the other Party. The Parties may by mutual agreement determine an earlier time when such termination shall be effective. For Employer, such notice of termination shall be accompanied by a certified copy of a resolution approving such termination by the Board of Directors (or the Retirement Committee as applicable) of the Employer or by a letter on the Employer's letterhead and signed by an officer with authority over the Plan. In the event of the termination of this Agreement, the Trust shall be distributed pursuant to Article IX or XI hereof.

Article XI – Termination of Plan

Section 11.1 Amendment or Termination of Plan

Subject to Section 2.3, if Employer alters, modifies, amends or terminates the Plan in whole or in part, Employer shall give written notice to Trustee promptly of such alteration, modification or amendment. Such notice shall include a certified copy of a resolution approving such termination by of the Board of Directors (or the Retirement Committee as applicable) of the Employer or by a letter on the Employer's letterhead and signed by an officer with authority over the Plan.

Section 11.2 Cessation of 401(a) Status

The Employer shall promptly notify the Trustee if the Plan becomes an ineligible deferred compensation plan or if the Plan ceases for any reason to qualify as a Section 401(a) plan.

Section 11.3 Application of Funds on Termination

In the event of termination of the Plan, the interests of the Plan participants shall vest and be processed in accordance with the written directions of the Employer, accompanied by a certificate that such disposition is in accordance with the terms of the Plan.

Article XII – General Provisions

Section 12.1 Governing Law

To the extent not preempted by the provisions of any applicable federal law, this Agreement shall be administered, construed and enforced according to the laws of the State of Indiana, and shall be deemed to have been executed and delivered in that State.

Section 12.2 Entire Agreement

Trustee's duties and responsibilities to the Plan or any person interested therein shall be limited to those specifically set forth in this Agreement. No amendment to the Plan or any other document affecting the Plan shall affect Trustee's duties or responsibilities hereunder without its prior written consent.

Section 12.3 Notices

Except as otherwise provided in writing and agreed to by Trustee, all notices, reports, accounts and other communications from Trustee to the Employer, the Employer, the Administrator, the Investment Manager(s) or any other person shall be in writing or in such other form agreed to by the parties, including transmission by electronic means through the facilities of third parties or otherwise. Any paper communication shall be deemed to be duly given if mailed; postage prepaid, or otherwise placed for delivery by a national delivery service, shipping prepaid, or is delivered by hand to such person at the address appearing on the records of the Trustee. Any electronic notice shall be deemed to be duly given at the time the electronic notification is sent. Except as otherwise provided in writing and agreed by Trustee, all directions, notices, objections and other communications to Trustee shall be in writing or in such other form, including transmission by electronic means through the facilities of third parties or otherwise, specifically agreed to in writing by Trustee and shall be deemed to have been given when received by Trustee at its offices.

Section 12.4 Plan Documents

Upon execution of this Agreement, Trustee hereby requests the Employer to provide complete, current copies of the Plan documents. Trustee shall be entitled to rely upon the Employer's attention to this obligation and shall be under no duty to request such documents again or to inquire of any person as to the existence of any documents not provided hereunder.

Section 12.5 Spendthrift Provision

Except as may be required by law, no interest or claim of interest of any kind of any participant under the provisions of this Trust is assignable, nor may any such interest or claim be subject to garnishment, attachment, execution or levy of any kind, and no attempt to transfer, assign, pledge or otherwise encumber or dispose of such interest by act of the person involved or by operation of law will be recognized.

Section 12.6 Effect

All persons at any time interested in the Plan shall be bound by the provisions of this Agreement and, in the event of any conflict between this Agreement and the provisions of the Plan or any instrument or agreement forming part of the Plan, the provisions of this Agreement shall control.

Section 12.7 Severability

The illegality or unenforceability of any provisions of this Agreement or any instrument or agreement required hereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Agreement or any instrument or agreement required hereunder.

Section 12.8 Headings and Titles

The titles of the Articles and headings of Sections in this Trust Agreement are for convenience of reference only and in case of conflict the text of this Trust Agreement rather than such titles or headings shall control.

Section 12.9 Binding Agreement

This Agreement shall be binding upon Trustee and the Employer, their successors and assigns, and upon the participants and their beneficiaries, heirs, executors, administrators and assigns.

Section 12.10 Merger or Consolidation

Any legal entity into which Trustee may be merged, or with which it may be consolidated, or any legal entity resulting from any merger or consolidation to which Trustee may be a party, or any legal entity succeeding to the business of Trustee or to which substantially all of the assets of Trustee may be transferred, shall be the successor of Trustee hereunder without the execution or filing of any paper and without any further action on the part of the parties hereto, with like effect as if such successor Trustee had originally been named Trustee herein.

Section 12.11 Force Majeure

Trustee shall have no liability for any losses arising out of delays in performing the services which it renders under this Agreement which result from events beyond its control, including without limitation, interruption of the business of Trustee due to acts of God, acts of governmental authority, acts of war, riots, civil commotions, insurrections, labor difficulties (including, but not limited to, strikes and other work slippages due to slow-downs), or any action of any courier or utility, mechanical or other malfunction, or electronic interruption.

#12.

Section 12.12 Shareholder Communications Act

Trustee is obligated to provide to issuers of securities identifying information such as Employer's name(s), address(es), and share positions, unless Employer objects below or through subsequent notice to Trustee in writing.

_____ Employer requests that Trustee withhold Employer's identifying information from issuers.

IN WITNESS WHEREOF, the Employer and Trustee have caused this Agreement to be executed by their respective duly authorized officers, all as of the day and year first above written.

Employer

By: _____

Employer: _____

Title: _____

Signature: _____

Attest: _____

Title: _____


Signature: _____

Trustee

By: Ralph Ferraro

Trustee: Lincoln Financial Group Trust
Company, as Trustee

Title: President

Signature: 

Self-Directed Brokerage Accounts Addendum

Effect of Addendum

This Addendum is part of the Trust Agreement between the Employer and the Trustee upon Employer establishing self-directed brokerage accounts (SDBAs) for its participants as described herein. Except as otherwise provided in this Addendum, Participant SDBAs (as hereafter defined) shall be subject to all of the terms and conditions of the Trust Agreement and the TD Ameritrade Documents (as hereafter defined) governing the Participant SDBAs.

Participant SDBAs

The Plan provides that certain self-directed brokerage accounts (the "Participant SDBAs") may be invested by a participant in investments selected solely by the participant, subject to such limitations as may be determined by the Employer from time to time, and not solely from among the eligible investments otherwise applicable to all participant accounts or the Trust in its entirety. The Employer shall communicate any such limitations in writing to the Trustee. The Employer acknowledges and agrees that the Trustee, if and as directed by the Administrator or other person or entity authorized to give instructions under the Agreement on behalf of a participant, shall establish accounts representing Participant SDBAs through TD Ameritrade, Inc. ("TD Ameritrade"), a registered broker-dealer, and shall enter into an agreement or agreements with TD Ameritrade governing such Participant SDBAs (the "TD Ameritrade Documents"). Participant SDBAs shall be subject to the TD Ameritrade Documents and to such terms and procedures as are agreed upon by the Trustee, the Employer and the Administrator or its delegate from time to time, and also to such other terms and procedures as may be reasonably required by TD Ameritrade from time to time and communicated in writing by TD Ameritrade or the Trustee to the Employer and the Administrator or other person or entity authorized to give instructions under the Agreement on behalf of a participant.

Authority of Participants Regarding Participant SDBAs, Etc.

Once a Participant SDBA is established through TD Ameritrade, a participant shall communicate all investment and investment related instructions relating to such account to TD Ameritrade, and TD Ameritrade, on behalf of the Trustee, shall invest the Participant SDBAs pursuant to the directions of the participant. The participant shall be solely responsible for managing his or her Participant SDBA subject to the terms and conditions applicable to such Participant SDBA. The Employer shall be responsible for communicating to participants (or causing to be communicated to participants) all applicable terms and conditions. Notwithstanding the foregoing, unless and until otherwise agreed in writing by the Employer and the Trustee, the Administrator or its delegate shall direct the Trustee with respect to: (i) the terms and conditions of all transfers of cash and/or other property between a Participant SDBA and the remainder of the Trust, including, without limitation, any sale or liquidation instructions associated with such transfers; and (ii) all withdrawals and distributions on behalf of each participant.

Reliance on Participants, Etc.

The Trustee and TD Ameritrade shall be fully protected in relying upon the directions of the participant with respect to investments and investment related decisions within Participant SDBAs. The Trustee shall not be liable to the participant or any of his or her beneficiaries for any loss resulting from any action taken at the direction of the participant or the Administrator, or other person or entity authorized to give instructions under this Addendum.

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Neither the Trustee nor TD Ameritrade shall have any investment responsibility with respect to the Participant SDBAs, or any duty to inquire into the directions of the participants, to solicit such directions or to review and follow the investments made pursuant to any such directions. Any such investment direction by a participant shall constitute a representation and warranty that the transaction will not constitute a non-exempt prohibited transaction under the Code or other applicable law and that the investment is authorized under the Agreement, the Plan and any other applicable agreement affecting the participant's investment authority under the Plan. Further, the Trustee and TD Ameritrade shall also be fully protected in relying upon the directions of the Administrator, or other person or entity authorized to give instructions under this Addendum.

Costs of Participant SDBAs

The costs and expenses of establishing and maintaining Participant SDBAs shall be borne by the respective participants and Participant SDBAs, except to the extent otherwise paid by the Employer or the Trust. TD Ameritrade shall be entitled to the payment of fees for each Participant SDBA, including without limitation as TD Ameritrade's compensation for executing securities transactions, without diminution of the compensation otherwise payable to Trustee under the Agreement.

Morgan Stanley Smith Barney LLC

Institutional Consulting Agreement For Participant Directed Retirement Plans

Moulton Niguel Water District Public Facilities

Corporation (“Client” or “you”) hereby retains, under the terms and conditions set forth herein, Morgan Stanley Smith Barney LLC (“MSSB”, “we” or “us”), to perform the services set forth below with respect to the **Moulton Niguel Water District 457(b) Plan** (“Plan”), a non-qualified retirement plan.

This Agreement includes information including but not limited to, the direct compensation that MSSB will receive, as well as the services MSSB will provide, pursuant to the relationship created by this document. In providing services under this Agreement, MSSB reasonably expects to provide services as a fiduciary under applicable law, as well as an investment advisor registered under the Investment Advisers Act of 1940 (“Advisers Act”). The applicable MSSB ADV brochure includes additional information which will help the Client understand its relationship with us, the services we provide and the compensation we receive. A copy of that document will be delivered in accordance with applicable legal requirements, and is available upon request from the Client’s MSSB financial advisor (“Financial Advisor” or “FA”). MSSB’s Institutional Services Program (asset based fee) ADV brochure and privacy notices, and the Advisors’ profiles, for your relationship are available at www.morganstanley.com/ADV.

1. Services

As requested and after receipt of appropriate information from or on behalf of Client, MSSB shall perform the following consulting services as indicated below:

A. Investment Policy Statement. MSSB shall provide Client with a template and assist Client in the review, evaluation and preparation of investment policies and based on the objectives for the Plan. MSSB has been retained as a non-discretionary investment consultant. Accordingly, Client shall be responsible for monitoring compliance with their investment policies and guidelines.

B. Fund Search. MSSB shall assist Client with identifying Funds that are generally consistent with the Plan’s investment policies and objectives. MSSB shall identify mutual funds, exchange-traded funds, group annuity separate accounts or

collective investments funds from the universe of Funds that have been profiled, reviewed and approved by MSSB Global Investment Manager Analysis (“GIMA”), or the universe of Funds that have successfully passed MSSB’s proprietary fund screening process, collectively “MSSB Approved Funds”. If the Client intends to use a default investment, MSSB will assist the Client in determining the type of default investment (e.g., target date fund, managed account, balanced fund) that is compliant with applicable law. Once the default investment account type has been determined, MSSB will identify Funds to populate the default investment. Client understands that MSSB does not evaluate, will not recommend, and makes no representations concerning any Fund chosen by Client outside of those MSSB Approved Funds, nor shall MSSB assume any liability for any loss, claim, damage or expense attributable to Client’s selection of any Funds outside of those MSSB Approved Funds.

In the case of stable value funds, Client should be aware that such investments may impose limitations on the ability for the plan to withdraw assets at market value as well as impose a waiting period before the assets can be withdrawn without a market value adjustment.

When MSSB recommends a new stable value fund for the Plan, Client understands that they are responsible for reviewing and executing any agreements required by the stable value fund provider. As part of that review Client will be responsible for understanding any applicable waiting periods as well as any client initiated events that could result in participant withdrawals at less than book value. Client will hold MSSB harmless for any liability, loss or damages resulting from imposition of a holding period or Client initiated events that result in withdrawals at less than book value.

C. Asset Classification. MSSB shall advise as to which asset classes the Client may want to consider offering within the Plan. MSSB may also provide the Client with general financial and investment information relating to such concepts as diversification and asset classification.

D. Performance Reporting. MSSB shall provide Client on a periodic basis with a performance evaluation report (a “Report”), of the Funds which will include information on the performance

June 2019

MORGAN STANLEY SMITH BARNEY, LLC INSTITUTIONAL CONSULTING AGREEMENT
FOR PARTICIPANT DIRECTED RETIREMENT PLANS

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Morgan Stanley

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of each Fund including whether the Fund is meeting the criteria set forth in the Investment Policy Statement. The Report will be based solely on information requested by MSSB and provided by (i) Client, (ii) the Plan's recordkeeper, at Client's direction, and/or (iii) various third party data sources. MSSB shall not be responsible for the accuracy of the information supplied by the Client, the Plan's recordkeeper or other third parties or any reports derived from such information.

E. Plan Sponsor Education. MSSB has educational materials available to plan fiduciaries. The available materials may cover topics such as retirement plan administration, fiduciary responsibilities, plan design features and investments.

F. Employee Education Consulting. MSSB shall collaborate with the Client to develop strategies relating to participant enrollment and ongoing employee education. The FA may choose to deliver this education through a seminar or a meeting which the employees can attend. MSSB may work with plan providers to deliver general financial and investment information relating to such concepts as diversification, asset allocation, retirement planning and plan participation. MSSB will meet with the Client as reasonably requested by Client to review such issues as participation and the overall allocation within the Plan. To the extent that the Client consents to MSSB providing employees with such general financial and investment information, such information is intended by MSSB (and understood by Client) to be "investment education" and not fiduciary "investment advice".

G. Plan Services & Expense Review. Upon written request from the client, MSSB shall provide Client with a report for the purpose of assisting Client with the review of various Plan expenses as they relate to the services provided. This report will generally consist of an overall assessment of current services and expenses, as well as a comparison of such services and expenses to those incurred by other plans of similar size and composition.

H. Plan Provider Search Support. Upon written request from the Client, MSSB shall assist Client with the preparation and distribution of Requests for Proposals ("RFP") with respect to Client's search for a party to provide recordkeeping or related services for the Plan, and shall provide assistance with the evaluation of RFP responses and corresponding finalist interviews and conversion support. Client and MSSB agree that Client will retain sole discretion with respect to the selection of the plan provider.

Client acknowledges that the Plan Provider Search Support and Plan Services & Expense Review services set forth above are intended as administrative support services and do not constitute investment advisory services. In that respect, Client acknowledges and agrees that the fiduciary standards of the

Advisers Act and any other applicable law or regulation shall not apply to the provision of these particular services.

I. Additional Considerations. In connection with the services being provided to Client under this Agreement, MSSB shall be entitled to rely on the financial and other information provided by Client, the Plan's recordkeeper, or other authorized third parties to MSSB. MSSB does not independently verify this information, nor does MSSB guarantee the accuracy or validity of such information. Client agrees to inform MSSB promptly in writing of any material change in Client's or the Plan's circumstances which might affect the manner in which the Plan's assets should be invested or the services provided by MSSB to Client under this Agreement. Client will also provide MSSB with any such information as MSSB shall reasonably request.

Client has determined that the services requested are suitable given the Plan's current financial situation and investment objectives. The Client acknowledges custody of Plan assets must be maintained at a third party and will not rely on MSSB, Morgan Stanley & Co. LLC ("MS&Co.", formerly known as "Morgan Stanley & Co Incorporated"), or any of their affiliates for any custodial type services. Furthermore, MSSB: (a) is not responsible for Plan administration or for performing any duties not expressly set forth in this Agreement, and (b) will not render any legal, accounting or actuarial advice and will not prepare any legal or accounting documents.

To that end, Client acknowledges that, its decision to change any of the Plan's investments, vendors or other service providers as a result of the services set forth in this Agreement and the Exhibits hereto will be made solely at the discretion of Client, and MSSB shall not have any authority or discretion with respect to the management, custody, or investment of assets of the Plan nor with respect to the determination as to which vendors or other service providers shall be retained by or for the Plan.

Client acknowledges that it has retained and will exercise any and all final decision-making authority and responsibility for all matters concerning the assets of the Plan, including the selection of Funds as well as for the implementation of any asset allocation or other investment plan or strategy resulting from the services provided under this Agreement.

Notwithstanding any other provision of this Agreement, MSSB affiliated investment funds will not be presented to the Client. Client understands and agrees that, with respect to any MSSB affiliated funds that: (i) MSSB will not act in a fiduciary capacity under applicable law with respect to such Plan assets, and will not recommend any purchase, sale or retention of such funds under this Agreement, and (ii) with respect to any such Plan assets that are now or hereafter acquired as Plan assets, that the terms of MSSB's engagement will not cover such funds, other

than standard performance monitoring, which Client agrees is not a fiduciary act of MSSB.

2. Fees

Client shall pay MSSB for its services hereunder a fee as set forth in Exhibit A, which is attached to, and made a part of, this Agreement. The fees payable hereunder may be modified or changed by MSSB. If MSSB increases the fee, it will do so after Client's written consent or upon written notice to Client. Client will also be notified of any decreases to its fee. The new fee will become effective unless Client notifies MSSB in writing to terminate the Agreement.

The calculation of fees payable pursuant to this Agreement shall exclude the value of any MSSB-affiliated investment funds.

Client agrees that they will not designate or name MSSB, Morgan Stanley & Co., their collective affiliates, their Financial Advisors nor their employees (collectively, the "MSSB Parties") as broker of record for the Plan, and that the MSSB Parties will not be responsible for collecting 12b-1 fees, shareholder servicing fees and/or selling fees or "loads" on behalf of the Plan.

A portion of the fees charged hereunder is paid to Financial Advisors and other employees of MSSB and its affiliates in connection with the provision of supplemental and client-related services. Such payments are made for the duration of this Agreement.

3. Client/Plan Sponsor Authority and Representations

A. Representations. Client and the undersigned plan sponsor ("Plan Sponsor") represent and warrant that: (i) the individuals signing this Agreement have the full power, authority, and capacity to enter into this Agreement, and this Agreement has been duly authorized and is a legal, valid, and binding obligation of Client and Plan Sponsor enforceable against Client and Plan Sponsor in accordance with its terms; (ii) the execution, delivery and performance of this Agreement will not violate any provisions of the Plan or, if applicable its trust, and will not violate or result in any default under the Plan's governing documents, any contract or other agreement to which Client, Plan Sponsor or the Plan is a party or by which any such entity may be bound, or any statute or any rule, regulation or order of any government agency or body; (iii) Client, Plan Sponsor and the individuals signing this Agreement are independent of MSSB, the Fund(s), and their affiliates; (iv) either the instrument under which the Plan is maintained or, a named fiduciary of the Plan, expressly permits investments in the types of investment products contemplated in this Agreement (i.e., investment companies, exchange-traded funds and collective investment funds) and (v) the individuals signing this Agreement are capable of making investment decisions regarding the investment of the

Plan's assets, the selection of Funds, administrative matters and funding matters related to the Plan, and are able to make an informed decision concerning the signing of this Agreement and maintenance of this relationship.

Client has concluded that the fee and other charges set forth in this Agreement and any addenda thereto are reasonable in light of the services to be provided by MSSB under this Agreement, and that paying such amounts to MSSB is in the best interests of the Plan, its participants and beneficiaries. Further, if the Client has selected a Fund advised or distributed by MSSB or an affiliate as an investment under the Plan, Client acknowledges that it has received and reviewed a prospectus containing the applicable fees and expenses for the applicable Fund prior to investment. Client has concluded that entering into this Agreement is prudent and has determined that each Fund chosen by it is a suitable investment for the Plan and as an investment complies with the terms of the Plan and any constituent documents. You also understand that due to regulatory constraints until further notice, your selection of available Funds will not include those that are, or are managed by, affiliates of MSSB.

You represent that signing this Agreement and any instruction you give with regard to this Agreement is, and will be, consistent with applicable Plan documents, adopted and pending. You represent that except as communicated in writing to MSSB, that other than those contained in applicable law, there are no limitations under the Plan on the Funds that may be purchased or held as assets of the Plan. You will notify MSSB promptly in writing of any modifications to the Plan's documents pertaining to investments by the Plan. You will provide MSSB with prompt written notice if you deem any investments made for the Plan to be inconsistent with Plan documents. You agree promptly to furnish MSSB with such documents as MSSB may reasonably request to verify the foregoing.

Client and Plan Sponsor undertake to advise MSSB of any event which might affect Client's authority to participate in, or the propriety of, this Agreement. If the Plan is subject to the provisions of ERISA or analogous state law, unless Client or Plan Sponsor notifies MSSB otherwise, Client and Plan Sponsor acknowledge that the assets subject to this Agreement represent all of the Plan's assets unless otherwise noted. MSSB is not responsible for Plan administration, for performing any duties not expressly set forth in this Agreement, or the Plan's overall compliance with the requirements of any governing law or documents.

B. The Client represents that neither it nor another person who has an ownership interest in or authority over the Plan knowingly owns, operates or is associated with a business that uses, at least in part, the Internet to receive or send information

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that could be seen as placing, receiving or otherwise knowingly transmitting a bet or wager.

C. The Client understands that MSSB is required to obtain certain information from the Client. If this information is not provided by you fully or in a timely manner, MSSB may suspend the provision of services hereunder and/or terminate the Agreement. The Client will deliver to MSSB, in writing, all of the information that MSSB may require or reasonably request to perform their duties hereunder without violating or causing any violation of applicable law.

USA PATRIOT ACT NOTICE: IMPORTANT INFORMATION ABOUT OUR PROCEDURES FOR OPENING A NEW CUSTOMER RELATIONSHIP.

You further understand that to help the government fight the funding of terrorism and money laundering activities, federal law may require all financial institutions to obtain, verify and record information that identifies each individual or institution that opens an account or establishes a customer relationship with MSSB. Therefore, before entering into a new client relationship with you, MSSB will ask for your name, address, date of birth (as applicable) and other identification information. If all required documentation or information is not provided, MSSB may be unable to open an account or maintain a relationship with you.

D. If you, or any person with authority over the Plan is, or has been, a "Politically Exposed Person" ("PEP"), or is a corporation, business or entity that is closely aligned with a PEP such that it is subject to due diligence as a PEP ("PEP Entity"), you confirm that you have disclosed this fact to MSSB and have provided the necessary information required by law. You also agree that you will not use the Plan, or permit the Plan to be used, for any transactions (i) with, involving or for the benefit of, any Sanctioned Person identified by OFAC (excluding legally permissible transactions in debt or equity issued by an entity designated on OFAC's Sectoral Sanctions Identifications List), or (ii) in any other manner that would cause either you or MSSB to violate any OFAC Sanctions.

4. Proxies and Other Legal Notices

MSSB shall not take any action or render any advice with respect to the voting of proxies solicited by, or with respect to, the issuers of any securities held in the account, nor shall it be obligated to render any advice or take any action on behalf of Client with respect to securities or other investments held in the account, or the issuers thereof, which become the subject of any legal proceedings, including bankruptcies.

5. Termination of Agreement

This Agreement may be terminated at any time upon written notice by either party to the other, and termination will become effective upon receipt of such notice or on agreed upon dates. Such termination will not, however, affect the liabilities or obligations of the parties incurred, arising from transactions initiated, under this Agreement prior to such termination, including the provisions regarding arbitration, which shall be deemed to survive any expiration or termination of the Agreement. Upon the termination of this Agreement, MSSB shall not be under any obligation whatsoever to take any action with regard to the assets of the Plan.

6. Potential Conflicts of Interest

Client understands that MSSB is affiliated with MS&Co. and thus MSSB cannot recommend MS&Co. affiliated investment products. Client understands that MSSB and its affiliates may perform, among other things, investment banking, research, brokerage, and investment advisory services for other clients. Client recognizes that MSSB may give advice and take action in the performance of its duties for such clients (including those who may also be participants in the Consulting Group Institutional Services program) which may differ from advice given, or in the timing and nature of action taken, with respect to Client. Moreover, MSSB or any of its affiliates may give advice or take action with respect to itself or themselves differently than with respect to Client. Nothing in this Agreement shall be deemed to impose on MSSB or any of its affiliates any obligation to recommend any Fund or to purchase or sell, or recommend for purchase or sale, for Client any Fund which MSSB or any of its affiliates may recommend, purchase or sell, or recommend for purchase or sale, for its or their own account, or for the account of any other client, nor shall anything on this Agreement be deemed to impose upon MSSB or any of its affiliates any obligation to give Client the same advice as may be given to any other clients. Client further understands that any Fund may from time to time and as it deems advisable, consistent with applicable law, effect securities transactions with or through MSSB or any of its affiliates and that MSSB or any of its affiliates may earn brokerage commissions or other compensation in connection with those transactions. MSSB, its affiliates, and its employees, including Financial Advisors, may invest with any Fund.

By reason of its investment banking or other activities, MSSB and its affiliates may from time to time acquire confidential information and information about corporations and other entities and their securities. Client acknowledges and agrees that MSSB will not be free to divulge to Client, or to act upon, such information with respect to its or their activities, including its or their activities with respect to this Agreement.

In general, for MSSB to receive revenue directly from Funds in which the Plan invests, MSSB must be designated as “broker of record” in connection with the Plan’s investment. MSSB proposes to only receive the fees as described in Section 2 and Exhibit A of this Agreement. Accordingly, Client and Plan Sponsor hereby acknowledge that neither will designate MSSB or Morgan Stanley & Co LLC (formerly known as “Morgan Stanley & Co Incorporated”) or any of their affiliates, Financial Advisors or employees, as “broker of record” in connection with the Plan or the Plan’s investment in any Fund and such parties will not be responsible for collecting 12b-1 fees, shareholder servicing fees and/or selling fees, “loads” or other revenue associated with Plan’s investment in any Fund.

7. Liability of MSSB

Client and the Plan Sponsor acknowledge that a Fund’s past performance is not necessarily indicative of future performance. MSSB makes no representations or warranty under this Agreement with respect to the present or future level of risk or volatility in the assets of the Plan, or any Fund’s future performance or activities. Client and Plan Sponsor understand that MSSB will perform no discretionary trading acts with respect to the assets of the Plan, and that the Client or Client’s properly authorized agents are solely responsible for the management of such assets.

Client and Plan Sponsor understand and agree that: (i) neither MSSB nor its officers, directors, employees, or agents (collectively, “Agents”) are guaranteeing, or otherwise making representations with respect to, the performance of the assets of the Plan; (ii) neither MSSB nor its Agents shall be liable for any losses with respect to such assets except those arising out of their own willful misfeasance, bad faith, reckless disregard of their obligations under this Agreement, negligence, or as otherwise may be provided by law; (iii) MSSB shall not be liable for any act done or omitted on the part of any third-party broker or agent utilized by the Funds to effect transactions for the assets of the Plan; (iv) neither MSSB nor its Agents shall be liable to Client, the Plan, the Plan Sponsor or any third-party for any tax, fines, or penalties payable by such parties and Plan Sponsor agrees to indemnify MSSB for any such tax, fines, or penalties and (v) neither MSSB nor its Agents shall be liable for any non-direct, special, consequential, incidental or similar type damages.

MSSB shall not be responsible for any misstatement or omission or for any loss attributable to such misstatement or omission contained in a Fund’s prospectus or any other written disclosure statement or other materials concerning the Fund that was approved by the Fund for distribution to MSSB’s clients. Client and Plan Sponsor acknowledge that any benchmarks that may be indexed in Client reports or Fund profiles are targets only, and

neither MSSB nor any Fund shall be liable to Client, the Plan, the Plan Sponsor or any third-party for its failure to meet or outperform any such benchmark.

Plan Sponsor shall indemnify MSSB and hold it harmless from any claim that Client did not have the authority to enter into this Agreement. Plan Sponsor shall also indemnify MSSB and hold it harmless from any claim if the basis of such claim is premised upon inaccurate information Client, the Plan’s custodian, or any third-party provided to MSSB. To the extent the fees due under this Agreement are paid from a trust under a Plan, if it is subsequently determined those payments were improperly paid from the trust, the Plan Sponsor also agrees to indemnify MSSB for any and all amounts expended to correct such payments.

Neither MSSB nor its Agents shall be liable for any losses caused directly or indirectly by government restrictions, exchange controls, exchange market rulings, suspension of trading, act of war, strikes or other conditions beyond their control, including but not limited to, extreme market volatility or trading volumes.

Nothing in this Agreement shall serve as a waiver or limitation of any rights that Client or Plan Sponsor may have under the Advisers Act, or any federal or state securities laws. Nothing in this Agreement shall serve as a condition that limits or contradicts the rules of any self-regulatory organization or limits the ability of any party to this Agreement to file any claim in arbitration or limits the ability of arbitrators to make any award.

8. Non-Assignability

This Agreement shall not be assignable by MSSB without the prior consent of Client and Plan Sponsor. This Agreement and its terms shall be binding upon Client’s and Plan Sponsor’s successors, administrators, heirs, executors, committee and/or conservators.

9. Governing Law

This Agreement, including the arbitration provision contained herein, is made and shall be construed under the laws of the State of California.

10. Entire Agreement/Amendment

This Agreement represents the entire agreement between the parties with regard to the services described herein. MSSB shall have the right to amend this Agreement by modifying or rescinding any of its existing provisions or by adding new provisions. Any such amendment shall be effective as of thirty (30) days after MSSB has notified Client and Plan Sponsor in writing of any change or such later date as is established by MSSB. This Agreement supersedes all previous agreements and understandings between the parties hereto with respect to the subject matter hereof.

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11. Severability

If any provision of this Agreement shall be held or made invalid by a statute, rule, regulation, decision of the tribunal or otherwise, the remainder of the Agreement shall not be affected thereby and, to this extent, the provisions of the Agreement shall be deemed to be severable.

12. Arbitration

This Agreement contains a predispute arbitration clause. By signing an arbitration agreement the parties agree as follows:

- All parties to this Agreement are giving up the right to sue each other in court, including the right to a trial by jury, except as provided by the rules of the arbitration forum in which a claim is filed.
- Arbitration awards are generally final and binding; a party's ability to have a court reverse or modify an arbitration award is very limited.
- The ability of the parties to obtain documents, witness statements and other discovery is generally more limited in arbitration than in court proceedings.
- The panel of arbitrators may include a minority of arbitrators who were or are affiliated with the securities industry.
- The rules of some arbitration forums may impose time limits for bringing a claim in arbitration. In some cases, a claim that is ineligible for arbitration may be brought in court.
- The applicable rules of the American Arbitration Association and California law shall be incorporated into this Agreement.

You agree that all claims or controversies, that arise on or after to the date hereof, between you and MSSB and/or any of its present or former officers, directors, or employees concerning or arising from (i) any account maintained by you with MSSB individually or jointly with others in any capacity; (ii) any transaction involving MSSB or any predecessor or successor firms by merger, acquisition or other business combination and you, whether or not such transaction occurred in such account or accounts; or (iii) the construction, performance or breach of this or any other agreement between you and us, any duty arising from the business of MSSB or otherwise, shall be determined by arbitration before an arbitrator, or panel thereof, selected in accordance with the applicable rules of the American Arbitration Association and California law.

No person shall bring a putative or certified class action to arbitration, nor seek to enforce any predispute arbitration agreement against any person who has initiated in court a putative class action; or who is a member of a putative class who has not opted out of the class with respect to any claims encompassed by the putative class action until: (i)

the class certification is denied; (ii) the class is decertified; or (iii) the person is excluded from the class by the court. Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this Agreement except to the extent stated herein.

The statute of limitations applicable to any claim, whether brought in arbitration or in a court of competent jurisdiction shall be that which would be applied by the courts in the state in which you reside or if you do not reside in the United States, the statute of limitations shall be that which would be applied by the courts in the state where the MSSB office servicing your Account is located.

13. Miscellaneous

MSSB reserves the right to refuse to accept or renew this Agreement in its sole discretion and for any reason.

MSSB represents that it is registered as an investment advisor under the Advisers Act.

For the purpose of referring to this Agreement, the date of this Agreement shall be April 15, 2020.

All written communication to MSSB pursuant to this Agreement shall be sent to MSSB at the address referenced below, unless MSSB designates otherwise in writing. All written communication to Client or Plan Sponsor shall be sent to the Client or Plan Sponsor at the address referenced below, unless Client or Plan Sponsor, respectively, designates otherwise in writing.

As used herein, reference to persons in the masculine gender shall include persons of the feminine gender. References in the singular shall, as and if appropriate, include the plural.

All paragraph headings are for convenience of reference only, do not form part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement.

All information, recommendations and advice furnished to Client and/or Plan Sponsor pursuant to the Consulting Group Institutional Services program shall be treated as confidential by Client and Plan Sponsor.

Client understands that collection and processing of the required documentation may delay the acceptance of the contract.

Client and Plan Sponsor acknowledge receipt of a copy of this Agreement (including Exhibit A), and of the applicable Morgan Stanley ADV brochure. Notwithstanding anything to the contrary herein, Client and Plan Sponsor shall have the right to terminate this Agreement within five-business days after entering into, and acceptance by MSSB of, this Agreement, and MSSB

will refund any amounts previously received pursuant to this Agreement.

Representative Client List. MSSB publishes materials, which, in addition to describing the nature of its investment advisory services, may also provide a representative listing of institutional clients (“Representative Client List”). Such a listing will generally provide the name and/or logo of the Client, but will not provide any specific asset information. By signing below, Client consents to the inclusion of its name on MSSB’s Representative Client List.

Client’s Signature: _____

YOUR CONSENT TO ELECTRONIC DELIVERY OF ADV BROCHURES, PRIVACY NOTICES AND OTHER DOCUMENTS

- a. **Electronic delivery:** By signing below, you authorize us to deliver any type of document relating to your existing and future investment advisory accounts and relationships with MSSB (including MSSB’s ADV brochures and privacy notices), instead of paper copies, either by email to an email address you give us by referring you to a website.
- b. **Website address:** MSSB’s ADV brochures and privacy notices are available at www.morganstanley.com/ADV. Please review them.
- c. **Your computer access:** You acknowledge that you have access to a computer which can access these documents (including PDF software, available free of charge at Adobe’s website www.adobe.com, and that you may incur costs accessing or printing the documents (e.g. online provider fees and printing costs). We are not liable for these costs or any computer problems (including viruses) you incur in accessing the documents.
- d. **How to get paper copies:** This consent remains in place until you give written notice to your Financial Advisor that you are revoking it. You may also, without revoking this consent, ask your Financial Advisor for a paper copy of any document that we deliver electronically under this consent.
- e. **Other document deliveries:** Sometimes we may deliver paper copies of documents relating to an account. Also, some documents that we can deliver electronically are not covered by this consent and have separate procedures for enrollment and unenrollment in electronic delivery and for obtaining paper copies.

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BY SIGNING THIS AGREEMENT, THE UNDERSIGNED CLIENT ACKNOWLEDGES: (A) THIS AGREEMENT CONTAINS A PREDISPUTE ARBITRATION CLAUSE (IN SECTION 12 ON PAGE 6) UNDER WHICH THE CLIENT AGREES TO ARBITRATE ANY DISPUTES WITH US; (B) RECEIPT OF A COPY OF THE AGREEMENT; (C) RECEIPT AND REVIEW OF THE APPLICABLE MORGAN STANLEY ADV BROCHURES AND ANY PRIVACY NOTICES; AND (D) THAT CLIENT CONSENTS TO ELECTRONIC DELIVERY OF ADV BROCHURES, PRIVACY NOTICES AND OTHER DOCUMENTS, AS PROVIDED ABOVE.

Plan Name: **Moulton Niguel Water District 457(b) Plan**

(If more than one, authorized representative of Client must sign. If any signatory is a fiduciary, the capacity in which the fiduciary is acting must also be indicated.)

AGREED to this _____ day of _____, _____.

CLIENT (For example: Board of Trustees, Investment Committee, Plan Sponsor, Other Named Fiduciary):

Name of Client: **Moulton Niguel Water District Public Facilities Corporation**

By: _____

Print Individual's Name: _____

Title: _____

Address: _____

PLAN SPONSOR (Do not complete or sign if Client signing above is Plan Sponsor):

Name of Sponsor: _____

By: _____

Print Individual's Name: _____

Title: _____

Address: _____

ACCEPTED as of the _____ day of _____, 20_____

Morgan Stanley Smith Barney LLC

By: _____

Robert J. Mandel, Managing Director
Consulting Group Institutional Services
2000 Westchester Avenue 2nd Floor
Purchase, New York 10577

Exhibit A
to
Institutional Consulting Agreement
For Participant Directed Retirement Plans
Asset Based Fee

Effective April 15, 2020 Client shall pay MSSB for the services described in the Agreement quarterly (on a calendar quarter basis) in arrears an annual fee as a percent of the market value of the assets of the Plan based on the following schedule (the "Fee").

The initial Fee payment will cover the period from the acceptance date through the last business day of the billing period and shall be prorated accordingly. In the event this Agreement is terminated by either party prior to the end of a billing period, a prorata charge of the Fee will be made.

FEE SCHEDULE

Asset Value	Annual MSSB Fee to Client
On all assets	<u>0.21%</u>

Morgan Stanley Smith Barney LLC

Institutional Consulting Agreement For Participant Directed Retirement Plans

Moulton Niguel Water District Public Facilities

Corporation (“Client” or “you”) hereby retains, under the terms and conditions set forth herein, Morgan Stanley Smith Barney LLC (“MSSB”, “we” or “us”), to perform the services set forth below with respect to the **Moulton Niguel Water District 401(a) Plan** (“Plan”), a qualified retirement plan.

This Agreement includes information, including but not limited to, the direct compensation that MSSB will receive, as well as the services MSSB will provide, pursuant to the relationship created by this document. In providing services under this Agreement, MSSB reasonably expects to provide services as a fiduciary under applicable law, as well as an investment advisor registered under the Investment Advisers Act of 1940 (“Advisers Act”). The applicable MSSB ADV brochure includes additional information which will help the Client understand its relationship with us, the services we provide and the compensation we receive. A copy of that document will be delivered in accordance with applicable legal requirements, and is available upon request from the Client’s MSSB financial advisor (“Financial Advisor or “FA”). MSSB’s Institutional Services Program (asset based fee) ADV brochure and privacy notices, and the Advisors’ profiles, for your relationship are available at www.morganstanley.com/ADV.

1. Services

As requested and after receipt of appropriate information from or on behalf of Client, MSSB shall perform the following consulting services as indicated below:

A. Investment Policy Statement. MSSB shall provide Client with a template and assist Client in the review, evaluation and preparation of investment policies and based on the objectives for the Plan. MSSB has been retained as a non-discretionary investment consultant. Accordingly, Client shall be responsible for monitoring compliance with their investment policies and guidelines.

B. Fund Search. MSSB shall assist Client with identifying Funds that are generally consistent with the Plan’s investment policies and objectives. MSSB shall identify mutual funds, exchange-traded funds, group annuity separate accounts or

collective investments funds from the universe of Funds that have been profiled, reviewed and approved by MSSB Global Investment Manager Analysis (“GIMA”), or the universe of Funds that have successfully passed MSSB’s proprietary fund screening process, collectively “MSSB Approved Funds”. If the Client intends to use a default investment, MSSB will assist the Client in determining the type of default investment (e.g., target date fund, managed account, balanced fund) that is compliant with applicable law. Once the default investment account type has been determined, MSSB will identify Funds to populate the default investment. Client understands that MSSB does not evaluate, will not recommend, and makes no representations concerning any Fund chosen by Client outside of those MSSB Approved Funds, nor shall MSSB assume any liability for any loss, claim, damage or expense attributable to Client’s selection of any Funds outside of those MSSB Approved Funds.

In the case of stable value funds, Client should be aware that such investments may impose limitations on the ability for the plan to withdraw assets at market value as well as impose a waiting period before the assets can be withdrawn without a market value adjustment.

When MSSB recommends a new stable value fund for the Plan, Client understands that they are responsible for reviewing and executing any agreements required by the stable value fund provider. As part of that review Client will be responsible for understanding any applicable waiting periods as well as any client initiated events that could result in participant withdrawals at less than book value. Client will hold MSSB harmless for any liability, loss or damages resulting from imposition of a holding period or Client initiated events that result in withdrawals at less than book value.

C. Asset Classification. MSSB shall advise as to which asset classes the Client may want to consider offering within the Plan. MSSB may also provide the Client with general financial and investment information relating to such concepts as diversification and asset classification.

D. Performance Reporting. MSSB shall provide Client on a periodic basis with a performance evaluation report (a “Report”), of the Funds which will include information on the performance

June 2019

MORGAN STANLEY SMITH BARNEY, LLC INSTITUTIONAL CONSULTING AGREEMENT
FOR PARTICIPANT DIRECTED RETIREMENT PLANS

PAGE 1 OF 9



Morgan Stanley

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of each Fund including whether the Fund is meeting the criteria set forth in the Investment Policy Statement. The Report will be based solely on information requested by MSSB and provided by (i) Client, (ii) the Plan's recordkeeper, at Client's direction, and/or (iii) various third party data sources. MSSB shall not be responsible for the accuracy of the information supplied by the Client, the Plan's recordkeeper or other third parties or any reports derived from such information.

E. Plan Sponsor Education. MSSB has educational materials available to plan fiduciaries. The available materials may cover topics such as retirement plan administration, fiduciary responsibilities, plan design features and investments.

F. Employee Education Consulting. MSSB shall collaborate with the Client to develop strategies relating to participant enrollment and ongoing employee education. The FA may choose to deliver this education through a seminar or a meeting which the employees can attend. MSSB may work with plan providers to deliver general financial and investment information relating to such concepts as diversification, asset allocation, retirement planning and plan participation. MSSB will meet with the Client as reasonably requested by Client to review such issues as participation and the overall allocation within the Plan. To the extent that the Client consents to MSSB providing employees with such general financial and investment information, such information is intended by MSSB (and understood by Client) to be "investment education", and not fiduciary "investment advice,".

G. Plan Services & Expense Review. Upon written request from the client, MSSB shall provide Client with a report for the purpose of assisting Client with the review of various Plan expenses as they relate to the services provided. This report will generally consist of an overall assessment of current services and expenses, as well as a comparison of such services and expenses to those incurred by other plans of similar size and composition.

H. Plan Provider Search Support. Upon written request from the Client, MSSB shall assist Client with the preparation and distribution of Requests for Proposals ("RFP") with respect to Client's search for a party to provide recordkeeping or related services for the Plan, and shall provide assistance with the evaluation of RFP responses and corresponding finalist interviews and conversion support. Client and MSSB agree that Client will retain sole discretion with respect to the selection of the plan provider.

Client acknowledges that the Plan Provider Search Support and Plan Services & Expense Review services set forth above are intended as administrative support services and do not constitute investment advisory services. In that respect, Client acknowledges and agrees that the fiduciary standards of the

Advisers Act and any other applicable law or regulation shall not apply to the provision of these particular services.

I. Additional Considerations. In connection with the services being provided to Client under this Agreement, MSSB shall be entitled to rely on the financial and other information provided by Client, the Plan's recordkeeper, or other authorized third parties to MSSB. MSSB does not independently verify this information, nor does MSSB guarantee the accuracy or validity of such information. Client agrees to inform MSSB promptly in writing of any material change in Client's or the Plan's circumstances which might affect the manner in which the Plan's assets should be invested or the services provided by MSSB to Client under this Agreement. Client will also provide MSSB with any such information as MSSB shall reasonably request.

Client has determined that the services requested are suitable given the Plan's current financial situation and investment objectives. The Client acknowledges custody of Plan assets must be maintained at a third party and will not rely on MSSB, Morgan Stanley & Co. LLC ("MS&Co.", formerly known as "Morgan Stanley & Co Incorporated"), or any of their affiliates for any custodial type services. Furthermore, MSSB: (a) is not responsible for Plan administration or for performing any duties not expressly set forth in this Agreement, and (b) will not render any legal, accounting or actuarial advice and will not prepare any legal or accounting documents.

To that end, Client acknowledges that, its decision to change any of the Plan's investments, vendors or other service providers as a result of the services set forth in this Agreement and the Exhibits hereto will be made solely at the discretion of Client, and MSSB shall not have any authority or discretion with respect to the management, custody, or investment of assets of the Plan nor with respect to the determination as to which vendors or other service providers shall be retained by or for the Plan.

Client acknowledges that it has retained and will exercise any and all final decision-making authority and responsibility for all matters concerning the assets of the Plan, including the selection of Funds as well as for the implementation of any asset allocation or other investment plan or strategy resulting from the services provided under this Agreement.

Notwithstanding any other provision of this Agreement, MSSB affiliated investment funds will not be presented to the Client. Client understands and agrees that, with respect to any MSSB affiliated funds that: (i) MSSB will not act in a fiduciary capacity under applicable law with respect to such Plan assets, and will not recommend any purchase, sale or retention of such funds under this Agreement, and (ii) with respect to any such Plan assets that are now or hereafter acquired as Plan assets, that the terms of MSSB's engagement will not cover such funds, other

than standard performance monitoring, which Client agrees is not a fiduciary act of MSSB.

2. Fees

Client shall pay MSSB for its services hereunder a fee as set forth in Exhibit A, which is attached to, and made a part of, this Agreement. The fees payable hereunder may be modified or changed by MSSB. If MSSB increases the fee, it will do so after Client's written consent or upon written notice to Client. Client will also be notified of any decreases to its fee. The new fee will become effective unless Client notifies MSSB in writing to terminate the Agreement.

The calculation of fees payable pursuant to this Agreement shall exclude the value of any MSSB-affiliated investment funds.

Client agrees that they will not designate or name MSSB, Morgan Stanley & Co., their collective affiliates, their Financial Advisors nor their employees (collectively, the "MSSB Parties") as broker of record for the Plan, and that the MSSB Parties will not be responsible for collecting 12b-1 fees, shareholder servicing fees and/or selling fees or "loads" on behalf of the Plan.

A portion of the fees charged hereunder is paid to Financial Advisors and other employees of MSSB and its affiliates in connection with the provision of supplemental and client-related services. Such payments are made for the duration of this Agreement.

3. Client/Plan Sponsor Authority and Representations

A. Representations. Client and the undersigned plan sponsor ("Plan Sponsor") represent and warrant that: (i) the individuals signing this Agreement have the full power, authority, and capacity to enter into this Agreement, and this Agreement has been duly authorized and is a legal, valid, and binding obligation of Client and Plan Sponsor enforceable against Client and Plan Sponsor in accordance with its terms; (ii) the execution, delivery and performance of this Agreement will not violate any provisions of the Plan or, if applicable its trust, and will not violate or result in any default under the Plan's governing documents, any contract or other agreement to which Client, Plan Sponsor or the Plan is a party or by which any such entity may be bound, or any statute or any rule, regulation or order of any government agency or body; (iii) Client, Plan Sponsor and the individuals signing this Agreement are independent of MSSB, the Fund(s), and their affiliates; (iv) either the instrument under which the Plan is maintained or, a named fiduciary of the Plan, expressly permits investments in the types of investment products contemplated in this Agreement (i.e., investment companies, exchange-traded funds and collective investment funds) and (v) the individuals signing this Agreement are capable of making investment decisions regarding the investment of the

Plan's assets, the selection of Funds, administrative matters and funding matters related to the Plan, and are able to make an informed decision concerning the signing of this Agreement and maintenance of this relationship.

Client has concluded that the fee and other charges set forth in this Agreement and any addenda thereto are reasonable in light of the services to be provided by MSSB under this Agreement, and that paying such amounts to MSSB is in the best interests of the Plan, its participants and beneficiaries. Further, if the Client has selected a Fund advised or distributed by MSSB or an affiliate as an investment under the Plan, Client acknowledges that it has received and reviewed a prospectus containing the applicable fees and expenses for the applicable Fund prior to investment. Client has concluded that entering into this Agreement is prudent and has determined that each Fund chosen by it is a suitable investment for the Plan and as an investment complies with the terms of the Plan and any constituent documents. You also understand that due to regulatory constraints until further notice, your selection of available Funds will not include those that are, or are managed by, affiliates of MSSB.

You represent that signing this Agreement and any instruction you give with regard to this Agreement is, and will be, consistent with applicable Plan documents, adopted and pending. You represent that except as communicated in writing to MSSB, that other than those contained in applicable law, there are no limitations under the Plan on the Funds that may be purchased or held as assets of the Plan. You will notify MSSB promptly in writing of any modifications to the Plan's documents pertaining to investments by the Plan. You will provide MSSB with prompt written notice if you deem any investments made for the Plan to be inconsistent with Plan documents. You agree promptly to furnish MSSB with such documents as MSSB may reasonably request to verify the foregoing.

Client and Plan Sponsor undertake to advise MSSB of any event which might affect Client's authority to participate in, or the propriety of, this Agreement. If the Plan is subject to the provisions of ERISA or analogous state law, unless Client or Plan Sponsor notifies MSSB otherwise, Client and Plan Sponsor acknowledge that the assets subject to this Agreement represent all of the Plan's assets unless otherwise noted. MSSB is not responsible for Plan administration, for performing any duties not expressly set forth in this Agreement, or the Plan's overall compliance with the requirements of any governing law or documents.

B. The Client represents that neither it nor another person who has an ownership interest in or authority over the Plan knowingly owns, operates or is associated with a business that uses, at least in part, the Internet to receive or send information

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that could be seen as placing, receiving or otherwise knowingly transmitting a bet or wager.

C. The Client understands that MSSB is required to obtain certain information from the Client. If this information is not provided by you fully or in a timely manner, MSSB may suspend the provision of services hereunder and/or terminate the Agreement. The Client will deliver to MSSB, in writing, all of the information that MSSB may require or reasonably request to perform their duties hereunder without violating or causing any violation of applicable law.

USA PATRIOT ACT NOTICE: IMPORTANT INFORMATION ABOUT OUR PROCEDURES FOR OPENING A NEW CUSTOMER RELATIONSHIP.

You further understand that to help the government fight the funding of terrorism and money laundering activities, federal law may require all financial institutions to obtain, verify and record information that identifies each individual or institution that opens an account or establishes a customer relationship with MSSB. Therefore, before entering into a new client relationship with you, MSSB will ask for your name, address, date of birth (as applicable) and other identification information. If all required documentation or information is not provided, MSSB may be unable to open an account or maintain a relationship with you.

D. If you, or any person with authority over the Plan is, or has been, a "Politically Exposed Person" ("PEP"), or is a corporation, business or entity that is closely aligned with a PEP such that it is subject to due diligence as a PEP ("PEP Entity"), you confirm that you have disclosed this fact to MSSB and have provided the necessary information required by law. You also agree that you will not use the Plan, or permit the Plan to be used, for any transactions (i) with, involving or for the benefit of, any Sanctioned Person identified by OFAC (excluding legally permissible transactions in debt or equity issued by an entity designated on OFAC's Sectoral Sanctions Identifications List), or (ii) in any other manner that would cause either you or MSSB to violate any OFAC Sanctions.

4. Proxies and Other Legal Notices

MSSB shall not take any action or render any advice with respect to the voting of proxies solicited by, or with respect to, the issuers of any securities held in the account, nor shall it be obligated to render any advice or take any action on behalf of Client with respect to securities or other investments held in the account, or the issuers thereof, which become the subject of any legal proceedings, including bankruptcies.

5. Termination of Agreement

This Agreement may be terminated at any time upon written notice by either party to the other, and termination will become effective upon receipt of such notice or on agreed upon dates. Such termination will not, however, affect the liabilities or obligations of the parties incurred, arising from transactions initiated, under this Agreement prior to such termination, including the provisions regarding arbitration, which shall be deemed to survive any expiration or termination of the Agreement. Upon the termination of this Agreement, MSSB shall not be under any obligation whatsoever to take any action with regard to the assets of the Plan.

6. Potential Conflicts of Interest

Client understands that MSSB is affiliated with MS&Co. and thus MSSB cannot recommend MS&Co. affiliated investment products. Client understands that MSSB and its affiliates may perform, among other things, investment banking, research, brokerage, and investment advisory services for other clients. Client recognizes that MSSB may give advice and take action in the performance of its duties for such clients (including those who may also be participants in the Consulting Group Institutional Services program) which may differ from advice given, or in the timing and nature of action taken, with respect to Client. Moreover, MSSB or any of its affiliates may give advice or take action with respect to itself or themselves differently than with respect to Client. Nothing in this Agreement shall be deemed to impose on MSSB or any of its affiliates any obligation to recommend any Fund or to purchase or sell, or recommend for purchase or sale, for Client any Fund which MSSB or any of its affiliates may recommend, purchase or sell, or recommend for purchase or sale, for its or their own account, or for the account of any other client, nor shall anything on this Agreement be deemed to impose upon MSSB or any of its affiliates any obligation to give Client the same advice as may be given to any other clients. Client further understands that any Fund may from time to time and as it deems advisable, consistent with applicable law, effect securities transactions with or through MSSB or any of its affiliates and that MSSB or any of its affiliates may earn brokerage commissions or other compensation in connection with those transactions. MSSB, its affiliates, and its employees, including Financial Advisors, may invest with any Fund.

By reason of its investment banking or other activities, MSSB and its affiliates may from time to time acquire confidential information and information about corporations and other entities and their securities. Client acknowledges and agrees that MSSB will not be free to divulge to Client, or to act upon, such information with respect to its or their activities, including its or their activities with respect to this Agreement.

In general, for MSSB to receive revenue directly from Funds in which the Plan invests, MSSB must be designated as “broker of record” in connection with the Plan’s investment. MSSB proposes to only receive the fees as described in Section 2 and Exhibit A of this Agreement. Accordingly, Client and Plan Sponsor hereby acknowledge that neither will designate MSSB or Morgan Stanley & Co LLC (formerly known as “Morgan Stanley & Co Incorporated”) or any of their affiliates, Financial Advisors or employees, as “broker of record” in connection with the Plan or the Plan’s investment in any Fund and such parties will not be responsible for collecting 12b-1 fees, shareholder servicing fees and/or selling fees, “loads” or other revenue associated with Plan’s investment in any Fund.

7. Liability of MSSB

Client and the Plan Sponsor acknowledge that a Fund’s past performance is not necessarily indicative of future performance. MSSB makes no representations or warranty under this Agreement with respect to the present or future level of risk or volatility in the assets of the Plan, or any Fund’s future performance or activities. Client and Plan Sponsor understand that MSSB will perform no discretionary trading acts with respect to the assets of the Plan, and that the Client or Client’s properly authorized agents are solely responsible for the management of such assets.

Client and Plan Sponsor understand and agree that: (i) neither MSSB nor its officers, directors, employees, or agents (collectively, “Agents”) are guaranteeing, or otherwise making representations with respect to, the performance of the assets of the Plan; (ii) neither MSSB nor its Agents shall be liable for any losses with respect to such assets except those arising out of their own willful misfeasance, bad faith, reckless disregard of their obligations under this Agreement, negligence or as otherwise may be provided by law; (iii) MSSB shall not be liable for any act done or omitted on the part of any third-party broker or agent utilized by the Funds to effect transactions for the assets of the Plan; (iv) neither MSSB nor its Agents shall be liable to Client, the Plan, the Plan Sponsor or any third-party for any tax, fines, or penalties payable by such parties and Plan Sponsor agrees to indemnify MSSB for any such tax, fines, or penalties and (v) neither MSSB nor its Agents shall be liable for any non-direct, special, consequential, incidental or similar type damages.

MSSB shall not be responsible for any misstatement or omission or for any loss attributable to such misstatement or omission contained in a Fund’s prospectus or any other written disclosure statement or other materials concerning the Fund that was approved by the Fund for distribution to MSSB’s clients. Client and Plan Sponsor acknowledge that any benchmarks that may be indexed in Client reports or Fund profiles are targets only, and

neither MSSB nor any Fund shall be liable to Client, the Plan, the Plan Sponsor or any third-party for its failure to meet or outperform any such benchmark.

Plan Sponsor shall indemnify MSSB and hold it harmless from any claim that Client did not have the authority to enter into this Agreement. Plan Sponsor shall also indemnify MSSB and hold it harmless from any claim if the basis of such claim is premised upon inaccurate information Client, the Plan’s custodian, or any third-party provided to MSSB. To the extent the fees due under this Agreement are paid from a trust under a Plan, if it is subsequently determined those payments were improperly paid from the trust, the Plan Sponsor also agrees to indemnify MSSB for any and all amounts expended to correct such payments.

Neither MSSB nor its Agents shall be liable for any losses caused directly or indirectly by government restrictions, exchange controls, exchange market rulings, suspension of trading, act of war, strikes or other conditions beyond their control, including but not limited to, extreme market volatility or trading volumes.

Nothing in this Agreement shall serve as a waiver or limitation of any rights that Client or Plan Sponsor may have under the Advisers Act, or any federal or state securities laws. Nothing in this Agreement shall serve as a condition that limits or contradicts the rules of any self-regulatory organization or limits the ability of any party to this Agreement to file any claim in arbitration or limits the ability of arbitrators to make any award.

8. Non-Assignability

This Agreement shall not be assignable by MSSB without the prior consent of Client and Plan Sponsor. This Agreement and its terms shall be binding upon Client’s and Plan Sponsor’s successors, administrators, heirs, executors, committee and/or conservators.

9. Governing Law

This Agreement, including the arbitration provision contained herein, is made and shall be construed under the laws of the State of California.

10. Entire Agreement/Amendment

This Agreement represents the entire agreement between the parties with regard to the services described herein. MSSB shall have the right to amend this Agreement by modifying or rescinding any of its existing provisions or by adding new provisions. Any such amendment shall be effective as of thirty (30) days after MSSB has notified Client and Plan Sponsor in writing of any change or such later date as is established by MSSB. This Agreement supersedes all previous agreements and understandings between the parties hereto with respect to the subject matter hereof.

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11. Severability

If any provision of this Agreement shall be held or made invalid by a statute, rule, regulation, decision of the tribunal or otherwise, the remainder of the Agreement shall not be affected thereby and, to this extent, the provisions of the Agreement shall be deemed to be severable.

12. Arbitration

This Agreement contains a predispute arbitration clause. By signing an arbitration agreement the parties agree as follows:

- All parties to this Agreement are giving up the right to sue each other in court, including the right to a trial by jury, except as provided by the rules of the arbitration forum in which a claim is filed.
- Arbitration awards are generally final and binding; a party's ability to have a court reverse or modify an arbitration award is very limited.
- The ability of the parties to obtain documents, witness statements and other discovery is generally more limited in arbitration than in court proceedings.
- The panel of arbitrators may include a minority of arbitrators who were or are affiliated with the securities industry.
- The rules of some arbitration forums may impose time limits for bringing a claim in arbitration. In some cases, a claim that is ineligible for arbitration may be brought in court.
- The applicable rules of the American Arbitration Association and California law shall be incorporated into this Agreement.

You agree that all claims or controversies that arise on or after to the date hereof, between you and MSSB and/or any of its present or former officers, directors, or employees concerning or arising from (i) any account maintained by you with MSSB individually or jointly with others in any capacity; (ii) any transaction involving MSSB or any predecessor or successor firms by merger, acquisition or other business combination and you, whether or not such transaction occurred in such account or accounts; or (iii) the construction, performance or breach of this or any other agreement between you and us, any duty arising from the business of MSSB or otherwise, shall be determined by arbitration before an arbitrator, or panel thereof, selected in accordance with the applicable rules of the American Arbitration Association and California law.

No person shall bring a putative or certified class action to arbitration, nor seek to enforce any predispute arbitration agreement against any person who has initiated in court a putative class action; or who is a member of a putative class who has not opted out of the class with respect to any claims encompassed by the putative class action until: (i)

the class certification is denied; (ii) the class is decertified; or (iii) the person is excluded from the class by the court. Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this Agreement except to the extent stated herein.

The statute of limitations applicable to any claim, whether brought in arbitration or in a court of competent jurisdiction shall be that which would be applied by the courts in the state in which you reside or if you do not reside in the United States, the statute of limitations shall be that which would be applied by the courts in the state where the MSSB office servicing your Account is located.

13. Miscellaneous

MSSB reserves the right to refuse to accept or renew this Agreement in its sole discretion and for any reason.

MSSB represents that it is registered as an investment advisor under the Advisers Act.

For the purpose of referring to this Agreement, the date of this Agreement shall be April 15, 2020.

All written communication to MSSB pursuant to this Agreement shall be sent to MSSB at the address referenced below, unless MSSB designates otherwise in writing. All written communication to Client or Plan Sponsor shall be sent to the Client or Plan Sponsor at the address referenced below, unless Client or Plan Sponsor, respectively, designates otherwise in writing.

As used herein, reference to persons in the masculine gender shall include persons of the feminine gender. References in the singular shall, as and if appropriate, include the plural.

All paragraph headings are for convenience of reference only, do not form part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement.

All information, recommendations and advice furnished to Client and/or Plan Sponsor pursuant to the Consulting Group Institutional Services program shall be treated as confidential by Client and Plan Sponsor.

Client understands that collection and processing of the required documentation may delay the acceptance of the contract.

Client and Plan Sponsor acknowledge receipt of a copy of this Agreement (including Exhibit A), and of the applicable Morgan Stanley ADV brochure. Notwithstanding anything to the contrary herein, Client and Plan Sponsor shall have the right to terminate this Agreement within five-business days after entering into, and acceptance by MSSB of, this Agreement, and MSSB

will refund any amounts previously received pursuant to this Agreement.

Representative Client List. MSSB publishes materials, which, in addition to describing the nature of its investment advisory services, may also provide a representative listing of institutional clients (“Representative Client List”). Such a listing will generally provide the name and/or logo of the Client, but will not provide any specific asset information. By signing below, Client consents to the inclusion of its name on MSSB’s Representative Client List.

Client’s Signature: _____

YOUR CONSENT TO ELECTRONIC DELIVERY OF ADV BROCHURES, PRIVACY NOTICES AND OTHER DOCUMENTS

- a. **Electronic delivery:** By signing below, you authorize us to deliver any type of document relating to your existing and future investment advisory accounts and relationships with MSSB (including MSSB’s ADV brochures and privacy notices), instead of paper copies, either by email to an email address you give us by referring you to a website.
- b. **Website address:** MSSB’s ADV brochures and privacy notices are available at www.morganstanley.com/ADV. Please review them.
- c. **Your computer access:** You acknowledge that you have access to a computer which can access these documents (including PDF software, available free of charge at Adobe’s website www.adobe.com, and that you may incur costs accessing or printing the documents (e.g. online provider fees and printing costs). We are not liable for these costs or any computer problems (including viruses) you incur in accessing the documents.
- d. **How to get paper copies:** This consent remains in place until you give written notice to your Financial Advisor that you are revoking it. You may also, without revoking this consent, ask your Financial Advisor for a paper copy of any document that we deliver electronically under this consent.
- e. **Other document deliveries:** Sometimes we may deliver paper copies of documents relating to an account. Also, some documents that we can deliver electronically are not covered by this consent and have separate procedures for enrollment and unenrollment in electronic delivery and for obtaining paper copies.

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BY SIGNING THIS AGREEMENT, THE UNDERSIGNED CLIENT ACKNOWLEDGES: (A) THIS AGREEMENT CONTAINS A PREDISPUTE ARBITRATION CLAUSE (IN SECTION 12 ON PAGE 6) UNDER WHICH THE CLIENT AGREES TO ARBITRATE ANY DISPUTES WITH US; (B) RECEIPT OF A COPY OF THE AGREEMENT; (C) RECEIPT AND REVIEW OF THE APPLICABLE MORGAN STANLEY ADV BROCHURES AND ANY PRIVACY NOTICES; AND (D) THAT CLIENT CONSENTS TO ELECTRONIC DELIVERY OF ADV BROCHURES, PRIVACY NOTICES AND OTHER DOCUMENTS, AS PROVIDED ABOVE.

Plan Name: **Moulton Niguel Water District 401(a) Plan**

(If more than one, authorized representative of Client must sign. If any signatory is a fiduciary, the capacity in which the fiduciary is acting must also be indicated.)

AGREED to this _____ day of _____, _____.

CLIENT (For example: Board of Trustees, Investment Committee, Plan Sponsor, Other Named Fiduciary):

Name of Client: **Moulton Niguel Water District Public Facilities Corporation**

By: _____

Print Individual's Name: _____

Title: _____

Address: _____

PLAN SPONSOR (Do not complete or sign if Client signing above is Plan Sponsor):

Name of Sponsor: _____

By: _____

Print Individual's Name: _____

Title: _____

Address: _____

ACCEPTED as of the _____ day of _____, 20_____

Morgan Stanley Smith Barney LLC

By: _____

Robert J. Mandel, Managing Director
Consulting Group Institutional Services
2000 Westchester Avenue 2nd Floor
Purchase, New York 10577

Exhibit A
to
Institutional Consulting Agreement
For Participant Directed Retirement Plans
Asset Based Fee

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FEE SCHEDULE

Asset Value	Annual MSSB Fee to Client
On all assets	<u>0.21%</u>

MOULTON NIGUEL WATER DISTRICT
Summary of Financial Results
February 27, 2020

Year to date unaudited results of operations as of December 31, 2019, are summarized below.

Total operating revenues were \$35.0 million for the month ended, which came in at 52% of the budget. Total operating expenses ended at \$36.7 million, which amounted to 46% of the approved budget. With the District receiving \$15.7 million in property tax receipts through December, total Net Income for the month ended was \$4.3 million. The \$15.7 million in property tax revenue represents 55% of the total expected receipts for the fiscal year.

The District received \$0.3 million in December 2019 for Phase II of the smart meter implementation and currently has \$3.7 million available in the Water Efficiency Fund for new projects, rebate applications or additional programs. The remaining balance considers \$3.1 million in approved water efficiency program commitments, along with \$1.5 million in expected grant reimbursements for the Smart Meter project.

The District's total unrestricted cash and investments balance at December 31, 2019, was \$134.6 million. As of December 31, 2019, the District has spent \$22.3 million in capital spending, and an additional \$10.3 million in Debt Service payments.

The District holds \$38.1 million invested in three different trustee accounts: The 2015 Revenue Refunding Bonds reserve is currently being met and has a balance of \$1.3 million. The \$4.5 million deposited in the 2019 Revenue Refunding Bonds accounts will be used to pay future debt service payments. The 2019 Certificates of Participation balance of \$32.2 million will be released to the District as capital spending occurs. The District has coordinated with its investment managers to invest the total \$38.1 million balance in securities geared towards meeting the District's future cash flow needs. This strategy allows the District to maximize investment earnings and liquidate cash as investments mature.

The District will transfer \$0.8 million to the trustee for the March 1st interest payments for the 2015 Revenue Refunding Bonds and the 2019 Certificates. There are no more remaining principal payments required this fiscal year.

Based on the approved FY 19/20 Budget, the Board has established a target reserve level of \$69.7 million, and as of December 31, 2019, the District held \$70.0 million in reserves. Additionally, there is \$44.9 million available in the funds designated for capital projects.

Moulton Niguel Water District
All Funds - Budget Comparison Report
Year To Date Totals December 31, 2019

	1	2	3	=3-1	=1/3
Description	Fiscal Year to Date Actuals	Prior Fiscal Year to Date Actuals	Current Year Approved Budget	Current Year Budget Balance	% of Actuals to Budget
ALL FUNDS					
<u>Operating Revenues</u>					
Water Sales	\$ 15,929,091	\$ 16,016,094	\$ 31,512,227	\$ 15,583,136	51%
Recycled Water Sales	3,124,099	3,387,221	6,438,316	3,314,217	49%
Sewer Sales	13,078,125	12,468,357	24,065,352	10,987,227	54%
Water Efficiency	2,655,809	3,094,875	4,764,604	2,108,795	56%
Other Operating Income	198,458	223,551	911,436	712,978	22%
A Total Operating Revenue	34,985,581	35,190,098	67,691,935	32,706,355	52%
<u>Operating Expenses</u>					
Salaries ¹	6,903,355	6,468,857	14,413,800	7,510,445	48%
PERs Employer Contributions ¹	1,262,599	1,105,931	2,547,924	1,285,325	50%
Defined Contribution 401A ¹	124,691	115,151	265,601	140,910	47%
Educational Courses	23,953	11,012	85,934	61,981	28%
Travel & Meetings	167,472	118,266	387,140	219,668	43%
Recruitment & Employee Relations	4,211	16,420	93,813	89,602	4%
General Services	165,189	155,972	490,292	325,103	34%
Annual Audit	18,850	22,803	62,500	43,650	30%
Member Agencies O&M	123,893	150,289	541,714	417,821	23%
Dues & Memberships	127,154	78,757	203,082	75,928	63%
Consulting Services	1,072,469	1,034,756	3,538,300	2,465,831	30%
Equipment Rental	30,832	25,003	66,500	35,668	46%
District Fuel	137,558	139,586	315,000	177,442	44%
Insurance - District	255,562	223,200	532,850	277,288	48%
Insurance - Personnel	242,188	193,830	369,692	127,504	66%
Insurance - Benefits ¹	1,865,277	1,901,220	3,799,415	1,934,138	49%
Legal Services - Personnel	5,903	13,685	50,000	44,097	12%
Legal Services - General	89,318	1,086,191	1,020,000	930,682	9%
District Office Supplies	456,529	264,574	840,305	383,776	54%
District Operating Supplies	697,951	197,359	1,045,269	347,318	67%
Repairs & Maintenance - Equipment	610,006	305,205	1,074,550	464,544	57%
Repairs & Maintenance - Facilities	1,680,299	2,351,224	3,950,249	2,269,950	43%
Safety Program & Compliance Requirements	159,524	137,827	366,898	207,374	43%
Wastewater Treatment	4,574,770	4,662,095	9,471,915	4,897,145	48%
Special Outside Assessments ²	27,290	27,412	33,600	6,310	81%
Utilities	1,321,803	1,124,086	2,992,102	1,670,299	44%
Water Purchases	13,835,661	13,900,228	28,997,811	15,162,150	48%
Meter / Vault Purchases	-	30,532	-	-	-
Water Efficiency	689,512	342,572	1,883,000	1,193,488	37%
B Total Operating Expenses	36,673,817	36,203,861	79,439,255	42,765,438	46%
A-B Operating Income (Loss)	(1,688,236)	(1,013,763)	(11,747,320)	(10,059,083)	14%
<u>Non-Operating Revenues (Expenses)</u>					
Property Tax Revenue	15,683,732	15,109,975	28,599,883	12,916,151	55%
Investment Income ³	1,455,010	2,028,562	2,108,233	653,223	69%
Property Lease Income	883,485	873,661	1,800,265	916,780	49%
Interest Expense	(1,842,079)	(2,423,587)	(3,027,210)	(1,185,131)	61%
Misc. Non-Operating Income (Expense)	419,053	1,441,130	933,435	514,382	45%
Capacity and Demand Offset Fees	47,119	132,901	36,000	(11,119)	131%
C Total Non-Operating Revenue (Expenses)	16,646,321	17,162,641	30,414,606	13,768,285	55%
A-B+C Change in All Funds	\$ 14,958,084	\$ 16,148,878	\$ 18,667,286	\$ 3,709,202	
<u>Other Non Cash Expenses</u>					
Depreciation	10,663,793	9,772,392	-	(10,663,793)	n/a
D Total Change in Net Position	\$ 4,294,292	\$ 6,376,487	\$ 18,667,286	\$ 14,372,995	

Note: Totals may not sum due to rounding.

- The District has capitalized \$1,028,894 in salaries and benefits year-to-to date related to time spent on capital projects.
- The District paid the FY 19-20 LAFCO fees to the County of Orange.
- Investment income is comprised of realized income of \$853,948 and unrealized income of \$601,062.

Moulton Niguel Water District
All Funds - Budget Comparison Report
Year To Date Totals December 31, 2019
Legal Services - General

Firm	Water Use		Capital ²	Total
	General ¹	Efficiency ¹		
Alvarado Smith APC	\$ 5,501	\$ -	\$ -	\$ 5,501
Best Best & Krieger LLP	74,123	9,693	25,177	108,993
Total	79,624	9,693	25,177	114,494
Budget Amount	1,000,000	20,000	-	1,020,000
Budget Balance	\$ 920,376	\$ 10,307	n/a	\$ 930,682

Note: Totals may not sum due to rounding.

1. Legal Services - General on the previous page is made up of the General balance of \$79,624 and the \$9,693 Water Use Efficiency balance, for a total of \$89,318.
2. Capital legal services represent legal services rendered during construction and are capitalized by the District as part of the project. Each project has a separate budget for legal expenses and those individual budgets are not included as part of this schedule.

Consulting Services - Grant Administration

Firm	YTD	Overall
Nossaman LLP	\$ 16,500	\$ 88,000
West Yost Associates ³	25,676	165,585
Grants Received ⁴	(2,000,000)	(2,000,000)
Totals	\$ (1,957,824)	\$ (1,746,415)

3. West Yost compiled the AMI WaterSmart final closeout documents and prepared documents for additional grant applications, including the AMI Phase II project, and two additional Cal OES grant applications.

4. The District has received two grants from the US Bureau of Reclamation since the start of the grant administration program, totalling \$1.8 million. Additionally, the District has received a \$0.2 million grant from Metropolitan Water District of Southern California.

Moulton Niguel Water District
General Fund - Budget Comparison Report
Year To Date Totals December 31, 2019

	1	2	=1-2	=2/1
Description	Approved Budget	Fiscal Year to Date Actuals	Budget Balance	% of Actuals to Budget
GENERAL FUND				
<u>Operating Revenues</u>				
Water Sales	\$ 31,512,227	\$ 15,929,091	\$ 15,583,136	51%
Recycled Water Sales	6,438,316	3,124,099	3,314,217	49%
Sewer Sales	24,065,352	13,078,125	10,987,227	54%
Other Operating Income	911,436	198,458	712,978	22%
A Total Operating Revenue	62,927,331	32,329,772	30,597,559	51%
<u>Operating Expenses</u>				
Salaries	13,073,384	6,379,947	6,693,437	49%
PERs Employer Contributions	2,374,048	1,176,053	1,197,995	50%
Defined Contribution 401A	240,739	115,634	125,106	48%
Educational Courses	79,934	15,370	64,564	19%
Travel & Meetings	347,140	151,117	196,023	44%
Recruitment & Employee Relations	93,813	4,211	89,602	4%
General Services	490,292	165,189	325,103	34%
Annual Audit	62,500	18,850	43,650	30%
Member Agencies O&M	541,714	123,893	417,821	23%
Dues & Memberships	139,857	72,685	67,171	52%
Consulting Services	1,603,300	649,469	953,831	41%
Equipment Rental	66,500	30,832	35,668	46%
District Fuel	315,000	137,558	177,442	44%
Insurance - District	532,850	255,562	277,288	48%
Insurance - Personnel	339,306	230,405	108,901	68%
Insurance - Benefits	3,267,475	1,732,035	1,535,440	53%
Legal Services - Personnel	50,000	5,903	44,097	12%
Legal Services - General	1,000,000	79,624	920,376	8%
District Office Supplies	493,680	356,896	136,784	72%
District Operating Supplies	1,044,654	697,951	346,703	67%
Repairs & Maintenance - Equipment	969,300	598,175	371,125	62%
Repairs & Maintenance - Facilities	3,950,249	1,680,299	2,269,950	43%
Safety Program & Compliance Requirements	364,548	159,116	205,432	44%
Wastewater Treatment	9,471,915	4,574,770	4,897,145	48%
Special Outside Assessments	33,600	27,290	6,310	81%
Utilities	2,992,102	1,321,803	1,670,299	44%
Water Purchases	28,997,811	13,835,661	15,162,150	48%
B Total Operating Expenses	72,935,710	34,596,296	38,339,414	47%
A-B Operating Income (Loss)	(10,008,379)	(2,266,525)	(7,741,854)	23%
<u>Non-Operating Revenues (Expenses)</u>				
Property Tax Revenue	28,599,883	15,683,732	12,916,151	55%
Investment Income	2,076,671	718,448	1,358,223	35%
Property Lease Income	1,800,265	883,485	916,780	49%
Misc. Non-Operating Income (Expense)	250,812	106,071	144,741	n/a
C Total Non-Operating Revenue (Expenses)	32,727,631	17,391,736	15,335,895	53%
A-B+C Change in General Fund	\$ 22,719,252	\$ 15,125,211	\$ 7,594,041	57%
<u>Other Non Cash Expenses</u>				
Depreciation	-	10,663,793	(10,663,793)	n/a
D Total Change in Net Position	\$ 22,719,252	\$ 4,461,418	\$ 18,257,834	

Note: Totals may not sum due to rounding.

Moulton Niguel Water District
 Water Efficiency Fund - Budget Comparison Report
 Year To Date Totals December 31, 2019

	1	2	=1-2	=2/1
Description	Approved Budget	Fiscal Year to Date Actuals	Budget Balance	% of Actuals to Budget
WATER EFFICIENCY FUND				
<u>Projected Operating Revenue</u>				
Water Efficiency	\$ 4,764,604	\$ 2,655,809	\$ 2,108,795	56%
A	4,764,604	2,655,809	2,108,795	56%
<u>Projected Operating Expenses</u>				
Labor	2,101,479	764,036	1,337,443	36%
Educational Courses	6,000	8,583	(2,583)	143%
Travel & Meetings	40,000	16,355	23,645	41%
Dues & Memberships ¹	63,225	54,468	8,757	86%
Consulting Services	1,935,000	423,000	1,512,000	22%
Legal Services	20,000	9,693	10,307	48%
Conservation supplies	347,240	99,632	247,608	29%
Repairs and Maintenance - Equipment	105,250	11,832	93,418	11%
Safety Program & Compliance Requirements	-	409	(409)	n/a
Water Efficiency	1,883,000	689,512	1,193,488	37%
B	6,501,194	2,077,520	4,423,674	32%
A-B	(1,736,590)	578,289	(2,314,879)	-33%
<u>Projected Non-Operating Revenue</u>				
Demand offset fees	36,000	4,691	31,309	13%
Grants received ²	-	298,542	(298,542)	n/a
Investment Income	31,562	70,044	(38,482)	222%
C	67,562	373,277	(305,715)	552%
A-B+C	\$ (1,669,028)	\$ 951,566	\$ (2,620,593)	

Note: Totals may not sum due to rounding.

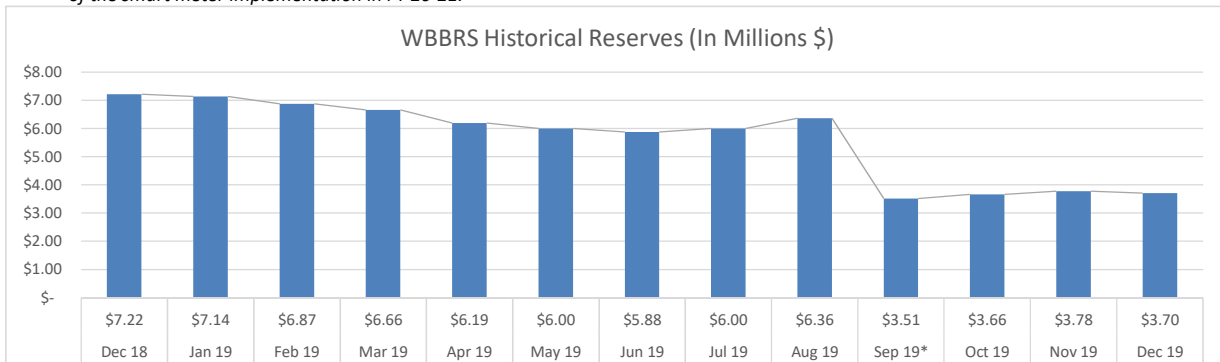
¹ The District participated in the water research foundation this year.

² The District received approximately \$300k in grants related to the Smart Meter project.

Water Efficiency Available Net Position ³

Description	Approved Budget	Fiscal Year to Date Actuals	Budget Balance
Fund Net Position, Beginning of Year	\$ 7,166,522	\$ 7,166,522	\$ 7,166,522
Projected Change in Water Efficiency Fund	(1,669,028)	951,566	(2,620,593)
Project Commitments		\$ (3,448,910)	
Capital Spending	(4,742,500)	(964,572)	
Fund Net Position, Year To Date Totals December 31, 2019	\$ 754,994	\$ 3,704,606	

3. In addition to realized expenditures, there is approximately \$3,448,910 in project commitments, and \$964,572 in capital spending, reducing the available WBBRS reserve balance to \$3,704,606. Additionally, the District anticipates spending another \$4.1 million on Phase III of the smart meter implementation in FY 20-21.



*Note: The District awarded two contracts for the implementation of the Smart Meter project totaling \$5.9 million.

MOULTON NIGUEL WATER DISTRICT
STATEMENT OF NET POSITION

	(Unaudited)	
	December 31, 2019	June 30, 2019
CURRENT ASSETS:		
Cash and investments ¹	\$ 43,403,830	\$ 17,470,320
Accounts receivables:		
Water and sanitation charges	3,148,313	3,761,531
Property taxes	-	309,158
Other accounts receivable	(185,692)	1,851,349
Interest receivable	636,393	802,315
Inventory	1,262,485	1,054,341
Prepaid expenses	1,785,033	750,393
TOTAL CURRENT ASSETS	50,050,362	25,999,407
NONCURRENT ASSETS:		
Investments ¹	91,243,348	100,897,457
Restricted cash and investments with fiscal agent	38,098,005	5,888,857
Retrofit loans receivable	480,704	490,468
Capital assets, net of accumulated depreciation	372,488,371	381,319,918
Capital assets not being depreciated:		
Land	1,091,910	1,091,910
Construction in progress ¹	33,978,352	13,508,163
TOTAL NONCURRENT ASSETS	537,380,690	503,196,773
TOTAL ASSETS	587,431,052	529,196,180
DEFERRED OUTFLOW OF RESOURCES:		
Deferred Charges on Refunding	366,619	415,501
Deferred Items related to Pension	5,122,331	5,122,331
Deferred Items related to OPEB	479,511	479,511
TOTAL DEFERRED OUTFLOW OF RESOURCES	5,968,461	6,017,343
TOTAL ASSETS AND DEFERRED OUTFLOW OF RESOURCES \$	593,399,513	\$ 535,213,523

1. Total cash and investments has changed \$48,488,549 during this fiscal year. The District issued \$64,570,000 of 2019 Certificates of Participation in November 2019. Additionally, \$22,260,640 has been spent on capital projects and \$10,290,396 has been spent on debt service.

MOULTON NIGUEL WATER DISTRICT
STATEMENT OF NET POSITION

	(Unaudited)	
	December 31, 2019	June 30, 2019
CURRENT LIABILITIES:		
Accounts payable	\$ 5,609,509	\$ 11,487,184
Interest payable	1,163,536	1,069,054
Compensated absences	779,496	869,518
Current portion of long-term debt:		
Bonds payable	1,990,000	3,360,000
Loans Payable ²	-	1,283,260
	9,542,541	18,069,016
LONG-TERM LIABILITIES		
Compensated absences	259,832	289,839
Long-term debt:		
Bonds payable	55,180,000	57,170,000
Loans payable ²	-	3,805,058
Certificates of participation ¹	64,570,000	-
Net Pension Liability	20,386,747	20,386,747
Net OPEB Liability	1,540,822	1,540,822
	141,937,401	83,192,466
Bond Discount/Premium	14,789,311	11,116,102
TOTAL LIABILITIES	166,269,254	112,377,584
DEFERRED INFLOW OF RESOURCES:		
Deferred Items related to Pension	1,184,247	1,184,247
Deferred items related to OPEB	14,312	14,312
	1,198,559	1,198,559
NET POSITION:		
Net investment in capital assets	303,623,503	319,601,072
Restricted for capital projects	222,362	375,294
Unrestricted	122,085,836	101,661,014
	425,931,700	421,637,380
TOTAL LIABILITIES, DEFERRED INFLOW OF RESOURCES, AND NET POSITION	\$ 593,399,513	\$ 535,213,523

Note: Totals may not sum due to rounding.

1. Total cash and investments has changed \$48,488,549 during this fiscal year. The District issued \$64,570,000 of 2019 Certificates of Participation in November 2019. Additionally, \$22,260,640 has been spent on capital projects and \$10,290,396 has been spent on debt service.

2. The District paid off \$4.1 million in outstanding loans in September 2019, releasing \$4.5 million in restricted cash reserves.

#14.

MOULTON NIGUEL WATER DISTRICT RESTRICTED CASH AND INVESTMENTS WITH FISCAL AGENT As of December 31, 2019

	Reserve Requirement	(Unaudited) Balance 12/31/2019	Over (Under) Requirement	Balance 6/30/2019	Outstanding Debt Balance 12/31/2019
Restricted Cash and Investments:					
2015 Refunding Bonds Reserve	\$ 1,226,500	\$ 1,321,854	\$ 95,354	\$ 1,305,081	\$ 8,565,000
2019 Revenue Bonds	-	4,548,589	4,548,589	4,583,776	48,605,000
2019 Certificates of Participation	-	32,227,562 ¹	32,227,562	-	64,570,000
Total Restricted Trust Accounts	\$ 1,226,500	\$ 38,098,005	\$ 36,871,505	\$ 5,888,857	\$ 121,740,000

Note: Totals may not sum due to rounding.

¹ Money available to fund capital projects. Will be drawn down as capital projects are executed.

FY	Remaining Payoff Schedule		
	Principal	Interest	Totals
2019*	\$ -	\$ 826,155	\$ 826,155
2020	2,900,000	5,012,276	7,912,276
2022	3,465,000	4,643,706	8,108,706
2023	3,640,000	4,466,081	8,106,081
2024	3,460,000	4,288,581	7,748,581
2025	3,630,000	4,111,331	7,741,331
2026	3,815,000	3,925,206	7,740,206
2027	4,005,000	3,728,806	7,733,806
2028	4,210,000	3,524,331	7,734,331
2029	4,415,000	3,308,706	7,723,706
2030	4,640,000	3,082,331	7,722,331
2031	4,865,000	2,854,581	7,719,581
2032	5,090,000	2,646,406	7,736,406
2033	5,280,000	2,448,097	7,728,097
2034	5,485,000	2,238,513	7,723,513
2035	5,705,000	2,010,088	7,715,088
2036	5,945,000	1,768,925	7,713,925
2037	6,185,000	1,522,738	7,707,738
2038	6,440,000	1,265,613	7,705,613
2039	6,700,000	995,594	7,695,594
2040	2,490,000	819,600	3,309,600
2041	2,565,000	743,775	3,308,775
2042	2,645,000	665,625	3,310,625
2043	2,725,000	585,075	3,310,075
2044	2,805,000	502,125	3,307,125
2045	2,890,000	416,700	3,306,700
2046	2,975,000	328,725	3,303,725
2047	3,065,000	238,125	3,303,125
2048	3,155,000	144,825	3,299,825
2049	3,250,000	48,750	3,298,750
	\$ 121,740,000	\$ 67,974,222	\$ 189,714,222

*Note: Total principal of \$3,360,000 was paid on 9/1/19. Only \$826,155 in interest payments remain in FY 2020.

MOULTON NIGUEL WATER DISTRICT
NET POSITION
As of December 31, 2019

	<u>Reserve Target</u>	(Unaudited)		<u>Balance</u>
		<u>Balance</u>	<u>Net Change</u>	
		<u>12/31/2019</u>		<u>6/30/2019</u>
Adopted Reserve Targets ¹				
Designated for Self Insurance Reserve	\$ 250,000	\$ 235,951	\$ (5,473)	\$ 241,424
Designated for Rate Stabilization	14,299,942	14,577,970	(248,810)	14,826,780
Designated for Emergency Reserves	35,300,000	35,300,000	-	35,300,000
Designated for Operating Reserves ²	19,859,814	19,873,863	(4,327,918)	24,201,781
Total Adopted Reserve Targets	\$ 69,709,755	\$ 69,987,783	\$ (4,582,202)	\$ 74,569,985
	FY Capital			
	Budget ⁴			
Designated for Capital Projects ³				
Designated for Replacement and Refurbishment	\$ 43,624,388	30,146,840	\$ 27,121,076	\$ 3,025,764
Designated for Water Supply Reliability	-	-	(346,493)	346,493
Designated for Planning and Construction	21,413,204	14,797,696	(1,754,508)	16,552,204
Total Designated for Capital Projects	\$ 65,037,592	\$ 44,944,536	\$ 25,020,075	\$ 19,924,461
Other amounts				
Designated for Water Efficiency (WBBRS) ⁵		\$ 7,153,516	\$ (13,006)	\$ 7,166,522
Restricted for Capital Facilities (Projects)		222,362	(152,932)	375,294
Net Investment in Capital Assets ⁶		303,623,503	(15,977,569)	319,601,072
Total Other amounts		\$ 310,999,380	\$ (16,143,508)	\$ 327,142,888
Total Net Position		\$ 425,931,700	\$ 4,294,366	\$ 421,637,334

Note: Totals may not sum due to rounding.

1. Board designated balances represent available cash in that fund.

2. General Operating Reserves include the unrestricted, undesignated balance, and other general District accrued cash flows. This amount includes the remaining total cash balance of \$30,428,428.

3. Balances in the Capital Project Funds represent available and designated cash to fund identified CIP projects.

4. FY Budget also includes capital expenses of \$1,949,601 and \$4,742,500 in Funds 1 and 6, respectively, bringing the total CIP

5. In addition to realized expenditures, there is approximately \$3,448,910 in project commitments, and \$964,572 in capital spending, reducing the available WBBRS reserve balance to \$3,704,606. Additionally, the District anticipates spending another \$4.1 million on the Smart Meter implementation in FY 20-21.

6. Net Investment in Capital Assets calculated as follows:

Total capital assets	\$ 407,558,633
Less capital related debt	(104,301,749)
Add deferred charges related to debt	366,619
Total Net Investment in Capital Assets	\$ 303,623,503

#14.

MOULTON NIGUEL WATER DISTRICT SUMMARY OF DISBURSEMENTS FOR THE MONTH OF JANUARY

Summary of Disbursements in January:

General Fund Disbursements		\$ 5,852,818
<u>Other Fund Disbursements:</u>		
Self Insurance Fund	650	
Water Efficiency Fund	647,258	
Replacement & Refurbishment Fund	1,811,914	
Water Supply Reliability Fund	1,357	
Planning & Construction Fund	1,065,530	3,526,709
Total Disbursements for all Funds		\$ 9,379,527

Detail of Major Expenditures in January:

1. Municipal Water District of Orange County (MWDOC)		
November Water Purchases 1978 AF	1,851,877	
November Readiness to Serve	98,247	
AWIA Scope of Services Selection, phase 2	83,855	
November Capacity Charge	27,463	
October Turf Removal, Smart Timer Rebates, and Rotating Nozzles	25,893	
November SCP and SAC Operation Surcharges	7,871	
December WaterSmart Residential Rebate Programs	3,200	
November SCP and SAC Operation Surcharges	776	2,099,182
2. Layton Construction Company		
CMAR Construction Phase Services, progress payment #8		937,410
3. Vadnais Trenchless Services, Inc.		
C #2017009 and C#2017014 Portable and Recycle Water Pipeline Replacement, progress payment #4		912,950
4. Aqua-Metric Sales, Co.		
3,154 MXU Single Ports for Smart Meter project		326,250
5. Ferreira Construction Co. Inc.		
C #2017006 Valve Replacement, progress payment #10	73,625	
C #2016022 Camino Capistrano Yard Improvement, progress payments #9 & #10	68,414	
Emergency Repair at multiple Locations	162,083	304,121
6. Gateway Pacific Contractors, Inc.		
C #2017003 Reservoir Management Systems Replacement, progress payment #8		160,714
7. Lee & Ro, Inc.		
Plant 3A Engineering Service projects	97,008	
Engineering Service projects at multiple Locations	43,135	140,143
9. State Water Resources Control Board		
FY 19/20 Water System Annual Fees		100,131



moulton niguel water district

STAFF REPORT

TO: Board of Directors **MEETING DATE:** February 27, 2020

FROM: Rod Woods, Director of Engineering
Alex Thomas, Principal Engineer

SUBJECT: Construction Contract Award for Rehabilitation of Rancho Reservoir Nos. 1 and 2

SUMMARY:

Issue: Board action is required for the Notice Inviting Sealed Bids for the Rehabilitation of Rancho Reservoir Nos. 1 and 2, Project No. 2019.008.

Recommendation: It is recommended that the Board of Directors award the construction services contract to Advanced Industrial Coatings, Inc. (AIS) in the amount of \$1,561,900; authorize the General Manager or Assistant General Manager to execute the contract; and to approve change orders up to 10% of the contract value.

Fiscal Impact: Project No. 2019.008 is budgeted in Fund 7, Rehabilitation and Replacement, with a current project budget of \$2,550,000. The proposed project budget is \$1,913,090. The overall Fiscal Year 2019-20 CIP budget for Fund 7 is \$43,624,388.

Reviewed by Committee: Yes, recommended for approval at the Technical Committee Meeting on February 3, 2020.

Reviewed by Legal: Yes

BACKGROUND:

The Rancho Reservoir Nos. 1 and 2 are aboveground welded steel potable water storage tanks located in the City of Laguna Niguel (as shown in Exhibit A). Rancho Reservoir No. 1 was constructed in 1963 and Rancho Reservoir No. 2 was constructed in 1981. The reservoirs have a capacity of 1.5 million gallons each and serve the 650 pressure zone.

#15.

Construction Contract Award for Rehabilitation of Rancho Reservoir Nos. 1 and 2

February 27, 2020

Page 2 of 3

The District's steel reservoirs are coated to protect the steel shell, floor, and roof. The District inspects its reservoirs every 5 to 10 years to determine when repairs to the coating or steel surfaces are necessary or if a complete re-coating is appropriate. The interior of Rancho Reservoir Nos. 1 and 2, were last re-coated in 2002 and 1997, respectively.

Condition assessments were performed by CSI Services, Inc. (CSI) on Rancho Reservoir Nos. 1, 2, and 3 in April 2019. CSI recommended re-coating of Rancho Reservoir Nos. 1 and 2. CSI concluded that re-coating Rancho Reservoir No. 3 was not required since the existing coating was still in good condition.

The proposed work at Rancho Reservoir Nos. 1 and 2 includes: structural and corrosion repairs, tank operation and safety improvements (including spiral stairways, full perimeter guardrails, and interior fiberglass platforms and ladders), installation of cathodic protection systems, and re-coating of the interior and exterior of the reservoirs.

Construction documents for the project were prepared by Harper and Associates Engineering, Inc. A categorical exemption was prepared in accordance with State CEQA Guidelines and a Notice of Exemption was filed with Orange County on December 23, 2019.

DISCUSSION:

A request for bids was issued to six qualified construction contractors. The District received four sealed bids for subject contract on January 21, 2020. The table below summarizes the bids received:

Firm	Bid
Advanced Industrial Services, Inc.	\$1,561,900
Paso Robles Tank, Inc.	\$2,018,420
J. Colon Coatings, Inc.	\$2,203,500
Spiess Construction Co., Inc.	\$2,377,380
Engineer's Estimate	\$1,505,400

Staff has determined that the lowest responsible and responsive bidder was Advanced Industrial Services, Inc. (AIS). Staff has completed its review of the contract documents and has determined that they are in order. AIS has performed quality work for the District in the past and is well-qualified to perform this type of work.

Staff intends to procure specialty inspection services related to the coating and improvements under the existing On-Call Construction Management and Inspection Services Agreements. These services are anticipated to be approximately \$130,000.

SUMMARY OF PROJECT BUDGET:

	Project Budget*	Proposed / Approved Contract	Proposed / Authorized Contingency	Total Proposed / Authorized Amount
Project Items				
Engineering	\$50,000	\$50,000	\$0	\$50,000
Construction	\$2,355,000	\$1,561,900	\$156,190	\$1,718,090
Specialty Inspection	\$130,000	\$130,000	\$0	\$130,000
Legal, Permits, District Labor	\$15,000	\$15,000	\$0	\$15,000
Totals	\$2,550,000	\$1,756,900	\$156,190	\$1,913,090

*\$19,942 has been expended to date.

Currently Proposed Amount

Attachments:

1. Exhibit A – Location Map
2. Exhibit B – Vendor Contact List



Path: C:\GIS\Projects\Projects_Ongoing\Staff_Report_Exhibits\ThomasRancho_Rehabilitation.mxd



0 50 100 200 300 400 Feet

Scale = 1:2,500

**Exhibit "A" Location Map
Rehabilitation of the Rancho Reservoir - No.1 & 2
Contract No. 2019.008**



moulton niguel water district

STAFF REPORT

TO: Board of Directors **MEETING DATE:** February 27, 2020

FROM: Rod Woods, Director of Engineering
Sheldon Yu, Senior Engineer

SUBJECT: Construction Contract Award for 2017-18 Electrical Distribution
Equipment Replacements

SUMMARY:

Issue: Board action is required for the Notice Inviting Sealed Bids for the 2017-18 Electrical Distribution Equipment Replacements, Project No. 2017.005.

Recommendation: It is recommended that the Board of Directors award the construction services contract to Southern Contracting Company in the amount of \$498,500; authorize the General Manager or Assistant General Manager to execute the contract; and to approve change orders up to 10% of the contract value.

Fiscal Impact: Project No. 2017.005 is budgeted in Fund 7, Rehabilitation and Replacement, with a current project budget of \$700,000. The proposed project budget is \$748,350. Sufficient funds are available in Fund 7; the overall Fiscal Year 2019-20 CIP budget for Fund 7 is \$43,624,388.

Reviewed by Committee: Provided as an informational item to the Technical Committee on February 3, 2020.

Reviewed by Legal: Yes

BACKGROUND:

The proposed project consists of improvements at five of the District's potable water pump stations: Beacon Hill, Bear Brand, Big Niguel, Pacific Island Drive No. 1, and Valencia. Each of the pump stations receive electrical utility power from San Diego Gas & Electric, except for Big Niguel which is served by Southern California Edison.

#16.

Construction Contract Award for 2017-18 Electrical Distribution Equipment Replacements
February 27, 2020
Page 2 of 3

In 2016, a District-wide electrical system assessment was conducted at its pump and lift stations. Based on this assessment, Staff prioritized the recommended electrical upgrades and scheduled the replacement of the appropriate improvements at each station. This particular project includes the following: coordinating with the appropriate electrical utility company at each site; replacing the main switchboard, installing a manual transfer switch and portable generator connection, and minor building improvements to accompany the new electrical work at Beacon Hill; replacing the main switchboard at Bear Brand; replacing the main switchboard, concrete driveway, and minor building improvements to accompany the new switchboard at Big Niguel; replacing the main switchboard at Pacific Island Drive No. 1; and replacing the main switchboard at Valencia.

Construction documents for the project were prepared by Dudek utilizing the on-call engineering services agreement. A categorical exemption was prepared in accordance with State CEQA Guidelines and a Notice of Exemption was filed with Orange County on November 30, 2018.

DISCUSSION:

A request for bids was issued to five qualified contractors. The District received three sealed bids for the subject contract on February 11, 2020. The table below summarizes the bids received:

Firm	Bid
Southern Contracting Company	\$498,500
Anderson Howard	\$578,185
Neal Electric	\$787,000
Engineer's Estimate	\$405,503

Staff has determined that the lowest responsible and responsive bidder was Southern Contracting Company. Staff has completed its review of the contract documents and has determined that they are in order. Southern Contracting Company has performed quality work for the District in the past and is well-qualified to perform this type of work.

Staff intends to procure specialty inspection services related to the electrical improvements under the existing On-Call Construction Management and Inspection Services Agreements. These services are anticipated to be approximately \$50,000.

Construction Contract Award for 2017-18 Electrical Distribution Equipment Replacements
February 27, 2020
Page 3 of 3

SUMMARY OF PROJECT BUDGET:

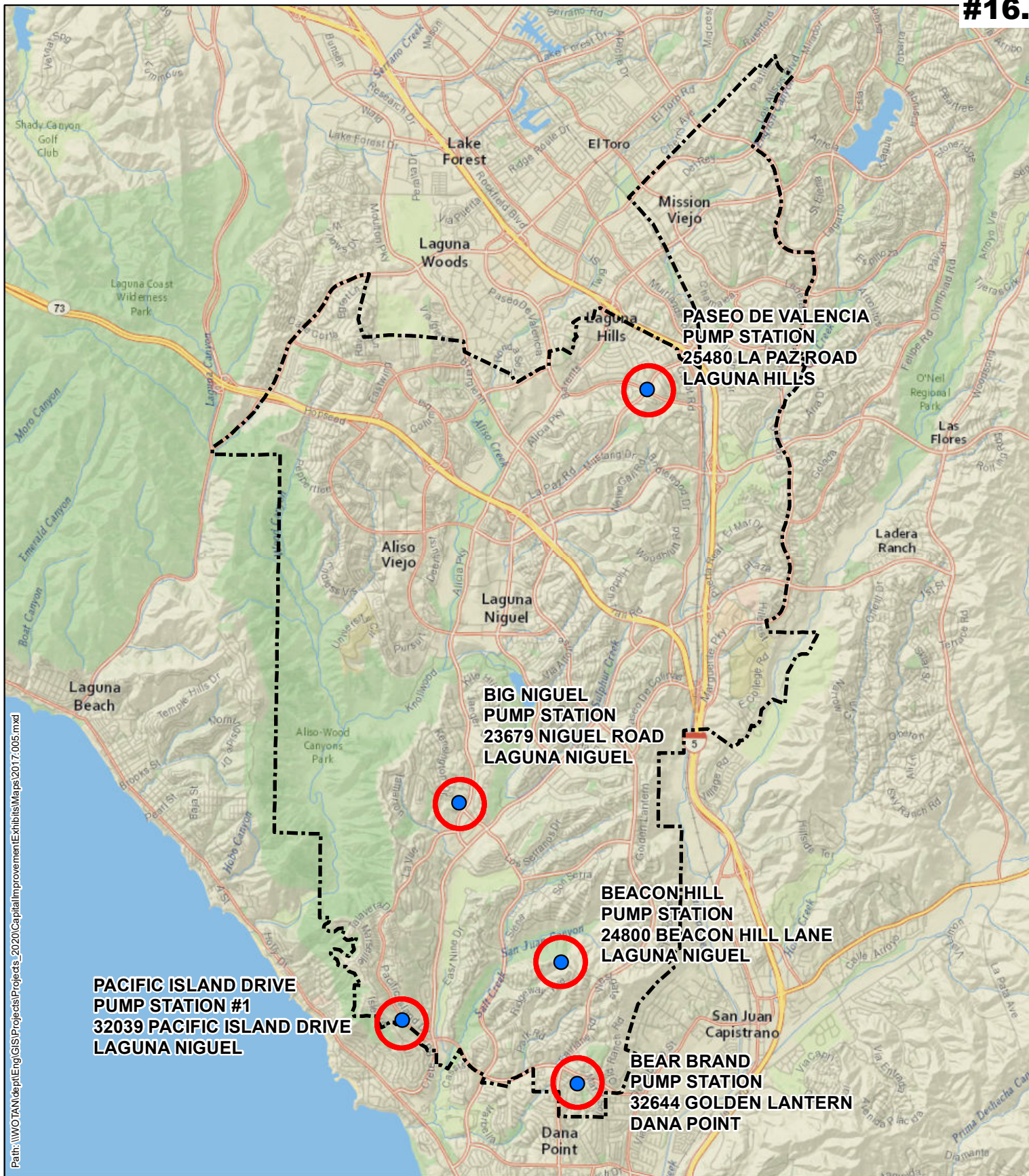
	Project Budget*	Proposed / Approved Contract	Proposed / Authorized Contingency	Total Proposed / Authorized Amount
Project Items				
Engineering	\$145,000	\$145,000	\$0	\$145,000
Construction	\$500,000	\$498,500	\$49,850	\$548,350
Specialty Inspection	\$50,000	\$50,000	\$0	\$50,000
Legal, Permits, District Labor	\$5,000	\$5,000	\$0	\$5,000
Totals	\$700,000	\$698,500	\$49,850	\$748,350

*\$102,973.93 has been expended to date.

Currently Proposed Amount

Attachments:

1. Exhibit A – Location Map
2. Exhibit B – Vendor Contact List



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**PACIFIC ISLAND DRIVE
PUMP STATION #1
32039 PACIFIC ISLAND DRIVE
LAGUNA NIGUEL**

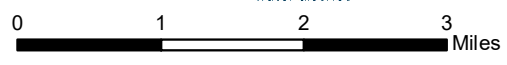
**BIG NIGUEL
PUMP STATION
23679 NIGUEL ROAD
LAGUNA NIGUEL**

**BEACON HILL
PUMP STATION
24800 BEACON HILL LANE
LAGUNA NIGUEL**

**BEAR BRAND
PUMP STATION
32644 GOLDEN LANTERN
DANA POINT**

**PASEO DE VALENCIA
PUMP STATION
25480 LA PAZ ROAD
LAGUNA HILLS**

● Pump Station
- - - District Boundary



Scale = 1:85,000

**Exhibit "A" Location Map
2017-18 Electrical Distribution
Equipment Replacements
Contract No. 2017.005**

ORDINANCE NO. 20-1

**ORDINANCE OF THE BOARD OF DIRECTORS OF
MOULTON NIGUEL WATER DISTRICT
TO INCREASE THE AMOUNT OF PER DIEM FOR
MEMBERS OF THE BOARD OF DIRECTORS**

WHEREAS, Water Code Section 20200 *et seq.* sets forth the authority and procedure for establishing per diem compensation for the Board of Directors for attendance at meetings of the Board or for each day’s services rendered as a Director. Occurrences constituting District business, official duties or each day’s service rendered as a Director, as a “day service” are defined and authorized by separate policy of the District and by law; and

WHEREAS, the Water Code authorizes an increase in the per diem compensation that may be received by the Board of Directors up to an amount equal to five percent (5%) for each calendar year since the effective date of the last increase, and limits the total compensation that may be received to a maximum of ten (10) days per calendar month; and

WHEREAS, the Board of Directors last took action on February 21, 2019 to increase the per diem compensation amount from \$220.00 per day to \$231.00 per day; and

WHEREAS, the Board of Directors seeks to increase the amount of compensation in accordance with the provisions of the Water Code; and

WHEREAS, in accordance with Section 20203 of the Water Code and Section 6066 of the Government Code, a public hearing was held on February 27, 2020, at 6:00 p.m., or soon thereafter as practicable, at the meeting room of the Board of Directors of the District at 26880 Aliso Viejo Pkwy, Suite 150, Aliso Viejo, CA 92656, and a notice of said hearing was duly published in the *Orange County Register*, a newspaper of general circulation, once a week for two weeks as follows: on February 6, 2020 and February 13, 2020.

NOW THEREFORE, THE BOARD OF DIRECTORS OF THE MOULTON NIGUEL WATER DISTRICT DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. The amount of compensation to be received by members of the Board for each day’s attendance at meetings of the Board, or for each day’s service rendered as a Director, shall be in the amount of Two Hundred and Forty Two Dollars and Fifty Five Cents (\$242.55). Said increase does not exceed an amount equal to five percent (5%) for each calendar year since the date of the last adjustment as authorized according to Water Code Section 20200.

Section 2. In accordance with Section 20202 of the Water Code, no member of the Board of Directors shall receive the compensation set forth in Section 1 of this Ordinance for more than ten (10) days in any calendar month.

Section 3 Any actual expenses, including mileage, incurred by members of the Board with respect to services rendered as a Director shall be reimbursed by the District upon presentation of satisfactory evidence thereof and compliance with the applicable rules and regulations of the District.

#17.

Section 4. All ordinances, resolutions, or administrative actions by the Board of Directors, or parts thereof, that are inconsistent with any provision of this Ordinance are hereby superseded only to the extent of such inconsistency.

Section 5. Pursuant to Section 20204 of the Water Code, this Ordinance shall take effect sixty (60) days from the date of adoption.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of Moulton Niguel Water District held on February 27, 2020 by the following vote:

Duane Cave:
Richard Fiore:
Donald Froelich:
Kelly Jennings:
Gary Kurtz:
William Moorhead:
Brian Probolsky:

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