

AC TRANSIT
EMPLOYEES' RETIREMENT PLAN
(As Amended and Restated Effective January 1, 2005)

RESOLUTION NO. 05-004 - EXHIBIT A

AC TRANSIT

EMPLOYEES' RETIREMENT PLAN

As Amended and Restated Effective January 1, 2005

This AC Transit Employees' Retirement Plan (the "Plan") is sponsored and maintained by the Alameda-Contra Costa Transit District (the "District"), a transit district organized and existing as a governmental agency under the laws of the State of California with its principal place of business located at Oakland, California, for the benefit of persons employed by the District, including members of bargaining units represented by the Amalgamated Transit Union Local 192, AFL-CIO, the International Brotherhood of Electrical Workers Local 1245, AFL-CIO, and the American Federation of State, County and Municipal Employees, Local 3916, AFL-CIO. The Plan is a governmental plan within the meaning of Section 414(d) of the Internal Revenue Code of 1986, as amended (the "Code"). Capitalized terms used in the Plan generally are defined in Article I.

Recitals

1. The District wishes to continue to provide eligible employees with retirement benefits under the Plan.
2. The Plan was originally adopted effective January 1, 1913. After such date, the Plan was amended and restated from time to time, and was last amended and restated effective July 1, 1989.
3. The District wishes to amend and restate the Plan effective January 1, 2005, for the following purposes: (i) to comply with the applicable provisions of the Code, such that the Plan continues to remain qualified under Section 401(a) of the Code, (ii) to reflect the applicable requirements of collective bargaining agreements between the District and the Unions, and (iii) to make certain other revisions to clarify the intended operation of the Plan.
4. Except as provided in Article XI, benefits payable under the Plan with respect to any Participant whose Retirement Date precedes the effective date of the provisions of this Plan restatement will be determined in accordance with the Plan provisions in effect on that Retirement Date.

Operative Provisions

NOW, THEREFORE, the Plan is hereby amended and restated, effective as of January 1, 2005 except where otherwise noted, in the form set forth below.

ARTICLE I

DEFINITIONS

- 1.1 "Accrued Benefit" means a Participant's accrued interest in benefits under the Plan.

1.2 **“Actuarial Equivalent”** means the equivalent on an actuarial basis of the value of aggregate amounts expected to be received under different forms of payment, based on mortality and interest rate assumptions consistent with generally accepted actuarial principles applied on a consistent basis (based upon recommendations of the Retirement Board’s chosen Enrolled Actuary and adopted by the Board for use under this Plan). Unless otherwise amended, the assumptions implicit in the applicable Tables set forth in Appendix A to the Plan will be used, where required in the Plan. Where such Tables do not specifically cover a Participant’s situation, an interpolated (adjusted) value will be calculated.

If the definition of **“Actuarial Equivalent”** is amended, the value of a Participant’s Accrued Benefit on or after the date of such amendment will be the greater of (1) the Actuarial Equivalent of the Participant’s total Accrued Benefit computed in accordance with the new definition, or (2) the Actuarial Equivalent of the Participant’s Accrued Benefit determined as of the date of such amendment and computed in accordance with the definition in effect immediately prior to such amendment.

1.3 **“Annuity”** means a series of periodic payments.

1.4 **“AFSCME”** means the American Federation of State, County and Municipal Employees, Local 3916, AFL-CIO.

1.5 **“ATU”** means the Amalgamated Transit Union, Local 192, AFL-CIO. In addition, **“ATU-International”** means the Amalgamated Transit Union International, or any successor entity.

1.6 **“Benefit”** means the monthly amount payable to a Participant or Beneficiary under the Plan. Three types of Benefits are provided under the Plan: **“Disability Retirement Benefit”** under Section 4.2; **“Service Retirement Benefit”** under Section 4.3; and **“Pre-Retirement Death Benefit”** under Article VI.

1.7 **“Beneficiary”** means the individual last designated by a Participant to receive benefits under the Plan in the event of the Participant’s death. A Participant’s designation of his or her spouse or Domestic Partner as a Beneficiary will survive separation or divorce, or the termination of the domestic partnership, respectively, unless a Domestic Relations Order provides otherwise, in which case that order will be effective prospectively from the date on which it is served. If a Participant is married or has a Domestic Partner when the Participant designates a Beneficiary, the designation of a Beneficiary other than the surviving spouse or surviving Domestic Partner will be valid only if the surviving spouse or surviving Domestic Partner provides acceptable written consent to such designation at the time and in the manner required by the Board.

1.8 **“Board”** means the Retirement Board.

1.9 **“Break in Service”** means the cessation of an Employee’s Service as a result of resignation, discharge, death, or retirement. In determining whether a Break in Service has occurred, the following rules apply:

(a) An Employee who has at least three Years of Service prior to a Break in Service which lasted no more than three years, and who has at least five (10 in the case of an Employee who is a member of the bargaining unit represented by ATU) continuous Years of Service after such Break in Service, will be given full credit for such prior Service and Compensation earned during such prior Service. Notwithstanding the preceding sentence, such Employee will not receive credit under this Plan for the period during which he or she was not an Employee of the District.

(b) A leave of absence taken by an Employee to work for ATU or ATU-International as a full-time official of ATU or ATU-International, or as an employee of ATU or ATU-International on official business for such entity, will not constitute a Break in Service.

1.10 "Code" means the Internal Revenue Code of 1986, as amended.

1.11 "Compensation" means the total salary and wages, including overtime payments and other monetary remuneration, if any, which is paid to an Employee by the District (or by ATU or ATU-International in the case of Employees described in Section 1.23(ii)) for the Plan Year, and which is required to be reported as wages on the Employee's Form W-2. Compensation includes any "elective deferrals" (within the meaning of Section 402(g)(3) of the Code) withheld from the Employee's gross income by the District (or ATU or ATU-International in the case of Employees described in Section 1.23(ii)) for the Plan Year, and any amounts withheld for the Plan Year from the Employee's gross income by the District (or ATU or ATU-International in the case of Employees described in Section 1.23(ii)) that are not includible in the Employee's gross income by reason of Sections 125, 132(f)(4) or 457(b) of the Code.

For any Plan Year, Compensation does not include:

(a) Any compensation directly paid or payable as fringe benefits or other special allowances.

(b) With respect to an Employee on leave to work for ATU or ATU-International, any compensation paid to such person by ATU or ATU-International for the performance of his or her normal duties as a "shop steward."

(c) If the Employee is either a Non-Represented Employee or a member of the collective bargaining unit represented by AFSCME, sick leave amounts accrued by such Employee that are rolled over or otherwise transferred on such Employee's behalf to a deferred compensation plan.

If the Employee first became a Participant on or after July 1, 1996, any amount in excess of \$200,000, as adjusted for increases in the cost of living pursuant to Section 401(a)(17) of the Code. This Section 1.11(d) is effective January 1, 2002.

1.12 "Custodian" means the financial institution(s) or trustee(s) selected by the Board as a depository for assets accumulated under this Plan, severally or jointly, as the case may be.

1.13 **"Custodial Agreement"** means the agreement entered into by the Board and the Custodian to hold the Fund.

1.14 **"Deferred Vested Participant"** means an Employee who is Vested at the time of his or her termination of employment with the District, and who either (i) is not eligible to receive a Benefit at the time of his or her termination of employment, or (ii) is eligible to receive a Benefit at the time of his or her termination of employment but has not elected to receive any Benefit.

1.15 **"Deferred Vested Retirement Date"** means:

(a) The first day of the month coinciding with or next following a Deferred Vested Participant's attainment of age 65, unless subsection (b) below applies to the Deferred Vested Participant.

(b) The first day of the month coinciding with or next following a Deferred Vested Participant's attainment of age 55, but only if his or her employment with the District terminates on or after one of the following dates, as applicable:

(i) July 1, 1997, in the case of a Deferred Vested Participant who is a member of the bargaining unit represented by ATU;

(ii) July 1, 1998, in the case of a Deferred Vested Participant who is a Non-Represented Employee or a member of the bargaining unit represented by AFSCME; or

(iii) January 1, 1999, in the case of a Deferred Vested Participant who is a member of the bargaining unit represented by IBEW.

1.16 **"Disability"** means a physical or mental condition of a Participant resulting from bodily injury, disease, or mental disorder which prevents the Participant from performing a job as determined in accordance with the provisions of Section 3.2. Subject to Section 3.2, there are two types of Disability under this Plan:

(a) **"Occupational Disability"** means a Disability which incapacitates the Employee from the performance of the duties in which the Employee has been engaged. An Occupational Disability determination will not be made unless (1) the Employee cannot be transferred to other work which the Employee is able to perform for the District, and (2) the Employee has submitted satisfactory medical evidence for permanent disqualification from the job.

(b) **"Total and Permanent Disability"** means a Disability of an Employee that prevents such Employee from performing the duties of any occupation for wages or profit. The Board shall determine in its sole discretion whether an individual has suffered a Total and Permanent Disability.

1.17 **"District"** means the Alameda-Contra Costa Transit District.

1.18 **"Domestic Partner"** means one of the following, as applicable:

(a) **Non-Represented Employee.** With respect to a Non-Represented Employee, "Domestic Partner" means an individual designated as the Non-Represented Employee's domestic partner by one of the following methods: (i) the domestic partnership is registered with the State of California, and a copy of the applicable valid State registration form(s) is filed with the Retirement Board, or (ii) an affidavit that meets the District's established guidelines for certifying the existence of a domestic partnership is filed with the Retirement Board.

(b) **Represented Employee.** A "Domestic Partner" of a Represented Employee will be determined under the applicable collective bargaining agreement, but if that agreement does not specify a method for determining a person's status as Domestic Partner, then such status will be determined in the same manner as for Non-Represented Employees.

1.19 **"Domestic Relations Order"** means any valid judgment, decree, or order of court of competent jurisdiction including approval of a property settlement agreement, that is made pursuant to a state domestic relations law and that relates but is not limited to the provision of child support, alimony payments or marital or other property rights to a spouse, former spouse, Domestic Partner, former Domestic Partner, child or dependent.

1.20 **"Eligible Child"** means an (i) unmarried child under age 19, or (ii) an unmarried child age 19 or older but under age 24 and who is enrolled as a full-time student in an accredited college or university, or a qualified vocational school. A student is considered "full time" if such student is so enrolled in at least 12 semester units (or equivalent hours). The Retirement Board will establish qualifications and procedures for determining if a college, university or vocational school is qualified for verifying academic units. The Board in its sole discretion may require the submission of documentation or other evidence it deems necessary to demonstrate a person's status as an Eligible Child. "Eligible Children" means more than one Eligible Child.

1.21 **"Eligible Domestic Partner"** means an Employee's surviving Domestic Partner at the time of the Employee's death, provided that such Employee and surviving Domestic Partner were in a valid domestic partnership for the entire one-year period immediately preceding the Employee's death. If the Employee's death is caused by an accident, as determined in the sole discretion of the Board, the one-year requirement does not apply.

1.22 **"Eligible Spouse"** means an Employee's surviving spouse at the time of the Employee's death, provided that such Employee and surviving spouse were legally married for the entire one-year period immediately preceding the Employee's death. If the Employee's death is caused by an accident, as determined in the sole discretion of the Board, the one-year requirement does not apply.

1.23 **"Employee"** means (i) a person employed by the District, any portion of whose income is subject to withholding of income tax by the District, or (ii) any person employed by the District who is on leave to work for ATU or ATU-International as a full-time official of such entity, or as an employee on official business for such entity, and who receives salary from ATU

or ATU-International. A person's status as Employee will be determined by the Board subject to the following:

(a) Employee excludes persons treated or classified by the District as (i) temporary employees, (ii) independent contractors, (iii) Para-Transit workers, or (iv) Leased Employees. For this purpose, "Leased Employee" means any person classified by the District as a leased employee who receives compensation from a third party for services performed for the District.

(b) A person who is reclassified as an Employee on a retroactive basis will not be treated as having been an Employee for purposes of the Plan for any period prior to the date that such person is so reclassified.

(c) No person will be an Employee for any period for which he or she receives service credit under another pension plan, if receipt of service credit under this Plan for that period is prohibited under California Government Code section 20894, as amended.

1.24 "Employment Date" means the date on which a person first becomes an Employee.

1.25 "Enrolled Actuary" means an actuary officially enrolled by the United States Joint Board for the Enrollment of Actuaries to practice before the Treasury Department and the Department of Labor of the United States.

1.26 "Fiduciary" means anyone who exercises any discretionary authority or discretionary control respecting the management or disposition of Plan assets, or who renders any investment advice for a fee or other compensation (or has authority or responsibility to do so) or who exercises any discretionary authority or responsibility for Plan administration. Any such person will be a Fiduciary only to the extent that person has responsibilities or authority described in this Section 1.26.

1.27 "Fund" means the aggregate of all assets held under the Plan for the benefit of Participants and their Beneficiaries.

1.28 "IBEW" means the International Brotherhood of Electrical Workers 1245, AFL-CIO.

1.29 "Investment Manager" means a Fiduciary to whom the Board, pursuant to Article VII, has delegated the responsibility and authority to control and manage any assets of the Fund.

1.30 "Monthly Average Earnings" means the greater of (a) or (b) below:

(a) The monthly average of an Employee's Compensation during the last 60 months of employment with the District (36 months, in the case of an Eligible Age 60 Employee), subject to the following:

(i) If an Employee worked less than one-half of a month during the 60-month or 36-month calculation period, as applicable, each such month (and Compensation, if any, for that month) will be excluded in calculating the monthly average of the Employee's Compensation.

(ii) For purposes of the 60-month calculation, no fewer than 30 months will be used in calculating the monthly average of the Employee's Compensation; for purposes of the 36-month calculation, no fewer than 18 months will be used in calculating the monthly average of the Employee's Compensation.

(iii) If an Employee has not worked the applicable minimum number of months specified in paragraph (ii) above, then the monthly average of that Employee's Compensation for purposes of this Section 1.30(a) will equal:

(1) the monthly average of the Employee's Compensation during the last 30 months (18 months in the case of an Eligible Age 60 Employee) preceding his or her termination of employment in which the Employee worked at least one-half of a month, or

(2) if the Employee has not completed at least 30 months (18 months in the case of an Eligible Age 60 Employee) of employment in which he or she worked at least one-half month, the monthly average of the Employee's Compensation during every month of employment in which he or she worked at least one-half of a month.

(b) The monthly average earnings of the five calendar years (three calendar years, in the case of an Eligible Age 60 Employee) in which an Employee's Compensation was its highest, as calculated by dividing (1) the Employee's total Compensation for such years, by (2) the number of months during the five- or three-year period. For this purpose, this calculation will exclude any month during the three- or five-year period in which the Employee worked less than a half-month, and will also exclude any Compensation for that month. In addition, no more than one complete calendar year in which the number of months taken into account is less than six will be included in the calculation.

(c) For purposes of Section 1.30(a) and (b), a "half month" means:

(i) Salaried Employees

For salaried Employees, a half month is defined by pay. For example, for an Employee whose monthly salary is \$2,000, a half month is a month in which he or she earns \$1,000.

(ii) Hourly Employees

For hourly employees, half months are defined by the number of working hours in a month. In order to complete a half-month of employment, a full-time hourly employee must work half of the total working hours in

that month, and a part-time hourly employee must work ¼ of that month's total working hours.

(d) For purposes of Section 1.30(a) and (b), "Eligible Age 60 Employee" means an Employee who is:

(i) age 60 or older on the effective date of his or her Retirement; and

(ii) either a Non-Represented Employee or a member of the collective bargaining unit represented by AFSCME.

(e) For purposes of this Section 1.30, any accumulated vacation or sick leave pay not paid to an Employee pursuant to his or her absence from work due to vacation or sick leave while an Employee, respectively, will not be counted in determining Monthly Average Earnings; provided, however, that any such amounts paid to Employees who are members of the bargaining unit represented by ATU will be counted in determining Monthly Average Earnings to the extent such amounts are attributable to accumulated casual vacation and do not exceed two weeks worth of payments per calendar year.

(f) If an Employee has completed any period of part-time employment with the District that is taken into account under Section 1.46(a), then for purposes of the calculation of Monthly Average Earnings in Section 1.30(a) and (b), any Compensation earned by such Employee for such period will be converted into the amount that the Employee would have earned on a full-time basis.

1.31 "Non-Represented Employee" means an Employee whose employment is not subject to the terms of any collective bargaining agreement with a Union.

1.32 "Participant" means any Employee who is eligible to earn a Benefit under the Plan and any former Employee who is receiving or is eligible to receive a Benefit under the Plan.

1.33 "Plan" means this AC Transit Employees' Retirement Plan, as set forth herein and as amended hereafter. The Plan is a governmental plan within the meaning of Section 414(d) of the Code.

1.34 "Plan Year" means the calendar year.

1.35 "Predecessor Employer" means any corporation, partnership, or sole proprietorship, or a division thereof, or government agency, a substantial part of the assets of which are acquired or assumed by the District either by purchase from, or liquidation of, merger or consolidation of or with, such other corporation, partnership, or sole proprietorship, and which is designated by the District as a Predecessor Employer for purposes of this Plan.

1.36 "Reemployment Date" means the date a person is reemployed with the District as an Employee after incurring a Break in Service.

1.37 "Represented Employee" means an Employee whose wages and working conditions are set pursuant to a collective bargaining agreement between the District and one or more of the Unions.

1.38 "Retirement" means the date designated by a Participant as the date of his or her retirement for purposes of the Plan, which date must be on or after the termination of the Participant's employment with the District.

1.39 "Retirement Age" means age 55.

1.40 "Retirement Board" means the Retirement Board as defined in Section 25361 of the Public Utilities Code and appointed as provided in Article VIII of this document.

1.41 "Retirement Date" means the first day of the month coinciding with or next following a Participant's Retirement.

1.42 "Secretary" means the individual appointed by the Board to manage the day-to-day responsibilities of the Plan and to perform other Plan related responsibilities as assigned by the Board.

1.43 "Service" means:

(a) Non-Represented Employee. With respect to a Non-Represented Employee, "Service" means the entire period of his or her full-time regular employment with the District as an Employee, including employment with a Predecessor Employer. For this purpose, employment is "full-time" if designated as such by the District in accordance with its payroll procedures, and the determination of Service is subject to the requirements of Section 1.9. Service will be determined in accordance with the following requirements:

(i) Service Retirement Benefit. For purposes of determining a Non-Represented Employee's eligibility for a Service Retirement Benefit and the amount of such Benefit (if any), Service ends on the earlier of (1) the last day he or she receives Compensation, or (2) the date his or her employment with the District terminates.

(ii) Disability Retirement Benefit. For purposes of determining a Non-Represented Employee's eligibility for a Disability Retirement Benefit and the amount of such Benefit (if any), Service ends on the last day worked as an Employee, as determined by the Board.

(iii) Conversion of Disability Retirement Benefit. With respect to a Non-Represented Employee who converts his or her Disability Retirement Benefit to a Service Retirement Benefit, if that Employee receives Compensation after the last day he or she worked, Service will be recalculated for purposes of determining the converted Benefit to include the period through the earlier of (1) the last day the Participant receives Compensation, or (2) the effective date of his or her Disability Retirement Benefit.

(b) Represented Employee. With respect to a Represented Employee, "Service" means a period of service as determined under the applicable collective bargaining agreement; provided, however, that if such collective bargaining agreement does not specify a method for determining Service with respect to a Represented Employee, then Service for such Employee will be determined in the same manner as for Non-Represented Employees.

1.44 "Union" means any of ATU, IBEW or AFSCME. "Unions" means ATU, IBEW and AFSCME collectively.

1.45 "Vested" means:

(a) ATU. With respect to Employees who are members of the bargaining unit represented by ATU, "Vested" means completion of 10 continuous Years of Service.

(b) AFSCME, IBEW & Non-Represented Employees. With respect to Employees who are Non-Represented Employees or members of the bargaining unit represented by AFSCME or IBEW, "Vested" means completion of five continuous Years of Service.

(c) ATU Transfers Out. An Employee member of the bargaining unit represented by ATU who becomes a Non-Represented Employee or a member of the bargaining unit represented by AFSCME or IBEW will become covered by the vesting provision under Section 1.45(b) after he or she completes the applicable probationary period as a Non-Represented Employee or an IBEW or AFSCME member.

(d) Reemployed Participants. Notwithstanding the preceding provisions of this Section 1.45 to the contrary, with respect to a Participant who is reemployed as an Employee after incurring a Break in Service:

(i) if the Participant was not Vested immediately prior to such Break in Service, then he or she will be subject to the vesting schedule under Section 1.45(a), (b) or (c), as applicable, and any Service accrued prior to such Break in Service will not count towards his or her number of Years of Service for purposes of determining whether the Participant is Vested.

(ii) if the Participant was Vested prior to such Break in Service, then he or she will become Vested in any Benefit accrued after such Break in Service only upon completing one Year of Service after such Participant's Reemployment Date.

1.46 "Year of Service" means a period of Service of 12 consecutive months commencing on an Employee's Employment Date and any anniversary thereof, except as described below.

(a) Part-Time and Peak Operator Service

Years of Service for an Employee will include (A) employment with the District as a part-time operator before July 1, 2000, if the Employee was an Employee on July 1, 2000 and, at the time of the termination of his or her District employment, is a Non-Represented Employee or a member of the bargaining unit represented by ATU or AFSCME, and (B) service with the District as a Peak Operator on or after July 1, 2000. Years of Service under this Section 1.46(a) will be calculated solely as described below:

(i) Vesting Service Credit

Continuous service for such Employee will be measured from the date of District employment, and each consecutive twelve-month period in which the employee remains in employment without a Break in Service as defined in Section 1.9 of the Plan, will be credited as a Year of Service for vesting purposes.

(ii) Benefit Service Credit

Upon his or her termination of employment with the District, such Employee will be credited under the Plan with Years of Service (other than as a full-time Employee) for benefit calculation purposes determined by dividing the Employee's career total of hours worked in part-time or Peak Operator status by 2,080. The resulting calculation will be stated in years or fractions of years, and will represent the service credit for part-time or Peak Operator service. This calculation will be added to the Employee's Years of Service as a full-time Employee, if any, including fractional years, to reach a total Years of Service for the employee for benefit calculation purposes. Only full twelve-month periods will count as Years of Service for benefit purposes; after the calculation described above is made, fractional years of service will not be counted.

(iii) "Peak Operator" Defined

For purposes of this Section 1.46(a), "Peak Operator" means an Employee, who, on or after July 1, 2000, served as a bus driver in the ATU bargaining unit in the position of Peak Operator.

ARTICLE II

PARTICIPATION IN THE PLAN

2.1 Eligibility Requirements. Any Employee who was a Participant in the Plan on will continue as a Participant on January 1, 2005. For all other Employees, each Non-Represented Employee will automatically become a Participant upon his or her Employment Date or Reemployment Date, and each Represented Employee's eligibility will be determined under the applicable collective bargaining agreement.

2.2 Notice of Eligibility. No notice or application to or from an Employee will be required in order for an Employee to become a Participant. The Plan's application form for

Service Retirement Benefit will include provisions providing for a designation of Beneficiary by the Participant. The Board may at any time in its sole discretion provide the Participant with any other information it deems appropriate.

2.3 Termination of Participation. A Participant will cease to be a Participant upon the earliest of the following to occur:

- (a) death;
- (b) payment of all the entire non-forfeitable Benefit due under the Plan; or
- (c) upon termination of the Participant's employment with the District if he or she is not then Vested.

ARTICLE III

ELIGIBILITY FOR BENEFITS

3.1 Service Retirement Benefit. An Employee who is Vested, has submitted an application as provided in Section 8.8, and has attained Retirement Age will be eligible to receive a Service Retirement Benefit, commencing as of the Participant's Retirement Date, provided that for this purpose the Retirement Date will be effective as of the first day of a calendar month following completion of active employment and accumulated vacation, if any, or from the first day of a calendar month to be determined by the Board.

3.2 Disability Retirement Benefit. An Employee who is Vested, has submitted an application as provided in Section 8.8, and has completed 10 Years of Service will be eligible upon incurring a Disability to receive a Disability Retirement Benefit, commencing on the first day of the month following six months of such Disability, but only if the Participant's employment with the District terminates before that date. A former Employee who has satisfied the eligibility requirements described in the preceding sentence before termination of employment with the District may, within six months following the date of that termination, submit application to the Board for the payment of a Disability Retirement Benefit. An Employee's (or former Employee's) eligibility for a Disability Retirement Benefit will be subject to the following requirements, as applicable:

- (a) Occupational Disability. An Employee who claims to be entitled to a Disability Retirement Benefit because he or she has incurred an Occupational Disability must submit acceptable written medical evidence thereof to the Board. The Board may require a medical examination or examinations by a physician or physicians of its choice. Failure by an Employee to comply with the foregoing requirements, or failure by an Employee to follow reasonable courses of medical care prescribed that would lead to a return to duty will be deemed conclusive evidence that such Employee is not entitled to a Disability Retirement Benefit because of Occupational Disability and the Employee's application for such Benefit will be rejected, or if his or her Benefit is in pay status, such Benefit will be terminated.

(b) **Total and Permanent Disability.** An Employee who claims to be entitled to a Disability Retirement Benefit because he or she has incurred a Total and Permanent Disability must submit written medical evidence of that Disability to the Board. The Board may require a medical examination or examinations by one or more physicians of its choice.

3.3 **Reemployed Participants.** Notwithstanding any provision of this Plan to the contrary, if a Participant is reemployed as an Employee after incurring a Break in Service, his or her Service Retirement Benefit will be determined as follows:

(a) If the Participant meets the requirements set forth in Section 1.9(a) to receive full credit for Service prior to such Break in Service, then his or her Service Retirement Benefit, if any, will be determined in accordance with the Plan as in effect at the time of the Participant's Retirement after the Break in Service. For this purpose, the Benefit will be calculated by taking into account the Participant's continuous Service and Compensation before and after such Break in Service.

(b) If the Participant is Vested prior to such Break in Service and does not meet the requirements set forth in Section 1.9(a) to receive full credit for Service prior to such Break in Service, then such Participant's Service Retirement Benefit attributable to Service prior to the Break in Service will be determined in accordance with the Plan as in effect at the commencement of the Break in Service, and any Service Retirement Benefit for Service after the Break in Service will be determined in accordance with the Plan as in effect at the time of the Participant's Retirement after the Break in Service. For this purpose, the Service Retirement Benefit for each continuous period of Service before and after such Break in Service will be calculated by taking into account only the Participant's Service and Compensation for each such separate but continuous period.

(c) If the Participant is not Vested prior to such Break in Service and does not meet the requirements set forth in Section 1.9(a) to receive full credit for Service and Compensation prior to such Break in Service, then such Participant will not be entitled to any Service Retirement Benefit for Service or Compensation prior to the Break in Service. In addition, any Service Retirement Benefit attributable to the Participant's Service after such Break in Service will be calculated without taking into account any Service or Compensation prior to the Break in Service.

3.4 **Deferred Vested Benefits.** A Deferred Vested Participant will be eligible to receive a Benefit determined under Section 4.3, commencing as soon as administratively practicable after receipt of the Participant's Benefit application and his or her Deferred Vested Retirement Date, or at such later date as determined in accordance with Section 4.3.

ARTICLE IV

RETIREMENT BENEFITS

4.1 **Service Retirement Benefit.** A Participant who meets the eligibility requirements of Section 3.1 will be entitled to elect to receive a Service Retirement Benefit determined under

(a) or (b) below, as applicable. Provided, however, that the maximum monthly Benefit determined under this Section 4.1 will be a Participant's Monthly Average Earnings, and the Service Retirement Benefit for a Deferred Vested Participant will be determined in accordance with Section 4.3.

(a) **ATU & IBEW Retirement Benefits.** An eligible Participant who is a member of the bargaining unit represented by ATU or IBEW at the time of his or her termination of employment with the District will be entitled to the monthly Benefit set forth in subsection (i) or (ii) below, as applicable, calculated as of the date payment of such Benefit commences:

(i) On or after age 55:

2% x Monthly Average Earnings x Years of Service

(ii) On or after age 65:

2.5% x Monthly Average Earnings x Years of Service

(b) **AFSCME and Non-Represented Employee Retirement Benefits.** An eligible Participant who, at the time of his or her termination of employment with the District, is a Non-Represented Employee or member of the bargaining unit represented by the AFSCME, will be entitled to a monthly Benefit set forth in subsection (i), (ii) or (iii) below, as applicable, calculated as of the date payment of such Benefit commences:

(i) On or after age 55:

2% x Monthly Average Earnings x Years of Service.

(ii) On or after age 60:

2.25% x Monthly Average Earnings x Years of Service.

(iii) On or after age 65:

2.5% x Monthly Average Earnings x Years of Service.

4.2 **Disability Retirement Benefit.**

(a) A Participant who meets the eligibility requirements of Section 3.2 will be entitled to elect to receive a Disability Retirement Benefit as provided below:

(i) for a Total and Permanent Disability, then regardless of age, a monthly Benefit for life so long as such Disability continues, in an amount equal to 50% of Monthly Average Earnings as of the date such Service terminates; or

(ii) for an Occupational Disability, a monthly Benefit for life, while disabled, equal to an amount determined pursuant to Table I of Appendix A attached hereto; provided, however that if such Employee is a Non-Represented

Employee, or a member of the bargaining unit represented by ATU or AFSCME, the amount of such Benefit will be reduced by the amount of any payment received by such individual through any workers' compensation program, but only if the amount of such payment is determined by reference to the Participant's earnings as an Employee. The amount of such reduction will be calculated by the Retirement Board's chosen Enrolled Actuary by converting any lump-sum or periodic payments under workers' compensation to a reduction of the Participant's monthly Disability Retirement Benefit.

(b) With respect to a Disability Retirement Benefit paid pursuant to Total and Permanent Disability:

(i) A Participant may at any time elect to convert his or her Disability status from Total and Permanent Disability to Occupational Disability.

(ii) The Board may require a physical examination of a Participant by a qualified medical examiner once every three to five years, at the Plan's expense, in order to evaluate the Participant's continuing eligibility for the receipt of a Disability Retirement Benefit pursuant to a Total and Permanent Disability.

(c) With respect to a Disability Retirement Benefit paid pursuant to Occupational Disability:

(i) An Employee is not entitled to any payment before the date on which the Disability actually occurs, and in no event will retroactive payment be allowed for a period prior to the date a completed application for a Disability Retirement Benefit is filed. In addition, a Disability Retirement Benefit will be paid only for the one-year period preceding the date on which an application for such Benefit is approved by the Board, unless within one year after the Employee has filed such application, the Employee requests an extension of time in writing, and that request is approved in the sole discretion of the Board.

(ii) Date of claim filing is determined as of the date the Retirement Board is furnished with a completed application for a Disability Retirement Benefit and substantial medical information leading to final determination of physical disqualification. Filing such information is solely the responsibility of the Employee.

(iii) If a Participant who is receiving a Disability Retirement Benefit returns to active employment with the District, the payment of such Benefit will cease. However, if the Participant, within five years of the date of such return to Service, again incurs a Disability, the Benefit will be resumed in accordance with the Participant's original Disability Retirement Benefit.

(iv) The Board may require a physical examination by a qualified medical examiner every three to five years, at the Plan's expense.

(d) A Participant may elect, at the time and in the manner required by the Board, to convert his or her Disability Retirement Benefit to a Service Retirement Benefit within the six-month period following the Participant's attainment of one of the following ages, as applicable:

(i) age 65, unless subsection (ii) below applies to the Participant; or

(ii) age 55, but only if the Participant's employment with the District terminates on or after (A) July 1, 1997, in the case of a Participant who is a member of the bargaining unit represented by ATU, (B) July 1, 1998, in the case of a Participant who is a Non-Represented Employee or a member of the bargaining unit represented by AFSCME, or (C) January 1, 1999, in the case of a Participant who is a member of the bargaining unit represented by IBEW.

4.3 Deferred Vested Retirement Benefit.

(a) With respect to a New Deferred Vested Participant:

(i) ATU & IBEW Deferred Vested Retirement Benefits. A New Deferred Vested Participant who is a member of the bargaining unit represented by ATU or IBEW at the time his or her employment with the District terminates, and who terminates employment for a reason other than Disability, will be entitled to receive the Benefit described in Section 4.1(a)(i) after he or she has attained age 55. If no election is made to receive such Benefit, the New Deferred Vested Participant will be entitled to receive the Benefit described in Section 4.1(a)(ii) upon his or her attainment of age 65.

(ii) AFSCME & Non-Represented Employee Deferred Vested Retirement Benefits. A New Deferred Vested Participant who is a Non-Represented Employee or a member of the bargaining unit represented by AFSCME at the time his or her employment with the District terminates, and who terminates employment for a reason other than Disability, will be entitled to receive the Benefit described in Section 4.1(b)(i) or (ii), whichever is applicable, after he or she has attained the age specified in that Section for payment of that Benefit. If no election is made to receive the Benefit described in Section 4.1(b)(i) or (ii), as applicable, the New Deferred Vested Participant will be entitled to receive the Benefit described in Section 4.1(b)(iii) upon his or her attainment of age 65.

(b) With respect to an Old Deferred Vested Participant, he or she will be entitled after attaining age 65 to receive the Benefit specified in Section 4.5 of the Plan as in effect on December 31, 2004.

(c) For purposes of Section 4.3(a) and (b):

(i) "New Deferred Vested Participant" means a Deferred Vested Participant whose employment with the District terminates on or after (A) July 1, 1997, in the case of a Deferred Vested Participant who is a member of the

bargaining unit represented by ATU, (B) July 1, 1998, in the case of a Deferred Vested Participant who is a Non-Represented Employee or a member of the bargaining unit represented by AFSCME, or (C) January 1, 1999, in the case of a Deferred Vested Participant who is a member of the bargaining unit represented by IBEW.

(ii) "Old Deferred Vested Participant" means a Deferred Vested Participant who is not described in subsection (i) above.

4.4 **Minimum Retirement Benefits.** The minimum Benefit a Participant is entitled to receive is \$400 per month; such minimum Benefit may be reduced if the Participant elects an optional form of Benefit under Section 5.4.

4.5 **Favorable Benefit Selection.** If an Employee is eligible for Benefits under more than one provision of this Plan, he or she may elect to be covered by the most favorable provision; except as provided in Section 4.2, such election will be final.

ARTICLE V

PAYMENT OF RETIREMENT BENEFITS

5.1 **Form of Payment of Benefit upon Retirement.**

(a) Unless an optional benefit form is elected under Section 5.2 (relating to a Service Retirement Benefit), a Participant's Benefit will be paid in the form of a single life monthly Annuity during the life of the Participant with no continuing payments after death.

(b) If a Participant dies after submitting an application for a Service Retirement Benefit, but before the Board's approval of such application, and a Beneficiary is designated on such application to receive Benefit payments under the Plan but no optional benefit form is elected under Section 5.2, such Participant's Benefit will be paid to the Beneficiary in the form of a 50% Annuity pursuant to Section 5.3(a).

5.2 **Election.** A Participant may, before his or her Retirement Date, elect to have his or her Service Retirement Benefit paid in one of the optional Benefit forms under Section 5.3. After payment of the Service Retirement Benefit begins, elections under this Section 5.2 will not be accepted and the form of payment may not be modified.

5.3 **Optional Benefit Forms.** Subject to Section 5.2, a Participant may elect to have his or her Service Retirement Benefit paid in one of the forms under subsections (a) or (b) below, each of which will be the Actuarial Equivalent of the Benefit under Section 5.1(a).

(a) A monthly Annuity for the life of the Participant with a monthly Annuity payable after the death of the Participant for the life of the Beneficiary in an amount equal to either 50% or 100% of the amount of the Annuity payable during the life of the Participant (with such Benefit to be determined pursuant to Table II or III, respectively, under Appendix A). The Participant's Beneficiary under this option must be designated

on or before the Participant's Retirement Date. If elected, this option cannot be changed or rescinded after the Participant's Retirement Date. Nor can the date for commencement of Benefit payments be changed without the consent of the Board, which consent may be given subject to satisfactory evidence of either the Participant's or the Beneficiary's good health. If either the Participant or the Beneficiary should die before the Participant's Retirement Date, election of this option will be null and void.

(b) A monthly Annuity for the life of the Participant with payments guaranteed to continue to a Beneficiary for the remainder of a period certain elected by the Participant in the event of the Participant's death prior to the end of such period certain. Participants may elect that the period certain be five, 10, 15 or 20 years in duration provided that such Annuity will not be in a form that provides payments over a period extending beyond either the life of the Participant (or lives of the Participant and Beneficiary) or the life expectancy of the Participant (or life expectancies of the Participant and Beneficiary). A Participant may, but need not, name a contingent Beneficiary to receive period certain benefits in the event the named Beneficiary dies before the expiration of the period certain elected by the Participant. In the event that the Participant and Beneficiary (and contingent Beneficiary, if any) die before expiration of the period certain, the balance of the period certain payments will be made to the estate of the last survivor, by a single actuarially derived lump sum payment. If elected, the Beneficiary and contingent beneficiary designation cannot be changed or rescinded after the Participant's Retirement Date.

5.4 Limitation on Optional Benefit Forms. A Participant may not elect an optional Benefit form under Section 5.3 unless the Actuarial Value of the payments expected to be made to the Participant is more than 50% of the Actuarial Value of the total payments expected to be made under such optional form to both the Participant and the Beneficiary. However, the preceding sentence will not apply to an optional form providing a Benefit to the Eligible Spouse or Eligible Domestic Partner of a Participant for as long as such Eligible Spouse or Eligible Domestic Partner survives the Participant. In no event, however, can the amount of each monthly payment to a Beneficiary exceed that payable to the Participant under the optional Benefit form.

5.5 Commencement of Benefits. Subject to Section 8.8, payment of Benefits will commence as soon as administratively practicable after the date, specified in Article III of the Plan, that the Participant is entitled to receive Benefit payments. Benefits will be paid monthly as of the end of each month. Notwithstanding anything to the contrary contained herein, the distribution options under the Plan will comply with Section 401(a)(9) of the Code and regulations promulgated thereunder including the minimum distribution incidental benefit requirements of Treasury Regulation Section 1.401(a)(9). Accordingly, distribution of each Participant's interest will commence as soon as administratively feasible after the later of the (1) date the Participant attains age 70½ or (2) the termination of the Participant's employment with the District. If the Participant dies after attaining age 70½ but before the termination of his or her employment with the District, distribution of the Participant's interest will commence as soon as administratively feasible. In no event, however, will any Benefits under this Section 5.5 be paid later than the fifth anniversary of the Participant's death.

Determination of the amounts to be distributed each year under each of the optional forms available under Section 5.3 will be made in accordance with requirements established under Section 401(a)(9) of the Code, and regulations thereunder.

5.6 Inability to Locate a Participant or Beneficiary. In the event the Board is unable to locate within three years a Participant or Beneficiary to whom, pursuant to the provisions of this Plan, payment of a Benefit is due, such Benefit will be forfeited, provided that if a valid claim is made by the Participant or Beneficiary pursuant to Section 8.8, such Benefit will be reinstated.

ARTICLE VI

PRE-RETIREMENT DEATH BENEFITS

6.1 Pre-Retirement Death Benefit. A Participant who, at the time of his or her death before Retirement, is an Employee, will be eligible for a Pre-Retirement Death Benefit payable in accordance with Sections 6.2 and 6.3 to his or her Eligible Spouse or Eligible Domestic Partner or, if there is no Eligible Spouse or Eligible Domestic Partner, to the Participant's Eligible Child or Eligible Children at the time of the Participant's death, provided such Participant:

- (a) was an active Employee on the day before death;
- (b) on the date of death, was eligible to elect to receive a Service Retirement Benefit or had completed at least 10 Years of Service; and
- (c) on the date of death, had an Eligible Spouse or Eligible Domestic Partner, Eligible Child or Eligible Children.

No other pre-Retirement death Benefits will be payable under this Plan, unless there is a valid court order directing otherwise.

6.2 Form of Pre-Retirement Death Benefit. The Pre-Retirement Death Benefit will be payable (i) to a Participant's Eligible Spouse or Eligible Domestic Partner in the form of a monthly Annuity for the lifetime of the Eligible Spouse or Eligible Domestic Partner, or, if applicable, (ii) to a Participant's Eligible Child, in the form of a monthly Annuity for so long as the person remains an Eligible Child.

The amount payable to an Eligible Spouse or Eligible Domestic Partner will be 50% of the amount that would have been payable to the Participant had the Participant retired immediately before death and elected to receive a Service Retirement Benefit in the form of a 50% Annuity payable during his or her life determined pursuant to Table II of Appendix A. The total amount payable to an Eligible Child or, if there is more than one Eligible Child, Eligible Children, will be equal to the amount that would have been payable to an Eligible Spouse or Eligible Domestic Partner of the same age as the Participant at the time of the Participant's death. If there is more than one Eligible Child, the amount of the Pre-Retirement Death Benefit will be divided equally among the Eligible Children.

6.3 Commencement of Pre-Retirement Death Benefits. Payment of a Pre-Retirement Death Benefit will commence as of the first day of the month following the month in which an eligible Participant dies, or as soon as administratively practicable thereafter. No other form of payment may be elected and payment may not be made to a person other than the Eligible Spouse, Eligible Domestic Partner or Eligible Child or Eligible Children.

ARTICLE VII

FIDUCIARIES

7.1 Fiduciaries. To the extent consistent with applicable law, the District, the Board, the Custodian and Investment Manager (if any) are hereby named Fiduciaries of the Plan. Each Fiduciary has only the authority and responsibility specifically granted under this Article VII or applicable law.

7.2 Custodian Authority. The Custodian has the authority to manage the assets held by it to the extent delegated to it by the Retirement Board, subject to the terms and conditions of Article IX hereof and the Custodial Agreement.

7.3 Retirement Board Authority. The Board has the power and authority to control and manage the operation and administration of the Plan, to interpret the provisions of the Plan, to determine who is eligible for benefits under the provisions of the Plan and to invest Plan assets as provided in Article VIII, and in Public Utilities Code Sections 25363 and 25364. The Board has the power and authority to appoint the Custodian as provided in Article IX, and to direct the Custodian in the control and management of the assets held in the Fund as provided in Article IX hereof and the Custodial Agreement or to designate an Investment Manager for such purpose. In addition, the Board has each of the powers, authorities and responsibilities set forth in Section 17 of Article XVI of the California Constitution with respect to a retirement board of a public pension or retirement system.

ARTICLE VIII

ADMINISTRATION OF THE PLAN

8.1 Creation and Structure of the Retirement Board. The District has created the Retirement Board to administer the Plan. The Retirement Board will at all times consist of not more than five members, at least two of whom will be elected representatives of the employees. The Board is responsible for administration of the Plan. The District defines the tenure of the members. The Board shall elect one of its members as Chair and one of its members as Vice Chair and shall also appoint a Secretary. Members of the Board shall serve without pay but will receive reimbursement for reasonable expenses incurred.

8.2 Resignation and Replacement of Board Members. Board members may resign by giving at least 15 days' written notice prior to the effective date of their resignation, unless such notice is waived by the District. The District shall fill all vacancies as soon as reasonably possible.

8.3 Board Meetings. Three members of the Retirement Board will constitute a quorum, but in all cases of Board action a minimum of three affirmative votes is required. The Board will act at meetings held upon such notice, and at such place or places, and at such intervals as it may from time to time determine in accordance with all applicable laws. Any direction by the Board to the Custodian will be in writing and signed by the Secretary to the Board, the Chair or Vice Chair of the Board, or an individual so designated; in any event, all such direction will be authorized and empowered by the Board. A dissenting Board member will have the right to register dissent in writing.

8.4 Rules and Decisions. The Board may adopt such rules and regulations as it deems necessary, desirable or appropriate. All rules and decisions of the Board will be uniformly and consistently applied to all Participants in similar circumstances.

8.5 Expenses. The reasonable expenses necessary to the operation of the Plan, including the compensation of the Custodian, Enrolled Actuary, attorney, accountant, Secretary, Investment Manager, advisers and such other technical and clerical assistance as may be required and retained by the Retirement Board, may be paid out of the Fund, but the District in its discretion may elect at any time to pay part or all thereof directly to the extent such payment is consistent with the Retirement Board's responsibility under the Plan. Any such election by the District will not bind the District to pay such expenses at any other time.

8.6 Powers and Duties. In addition to any implied powers and duties which may be needed to carry out the authority granted to the Board under Article VII of the Plan and Public Utilities Code Article 3 (Section 25361 et seq.), the Board has the following powers and duties:

- (a) To administer the Plan;
- (b) To appoint a Secretary;
- (c) To compute the amount, manner and time of payment of any Benefit payable to any Participant, Eligible Spouse or Eligible Domestic Partner or other Beneficiary in accordance with the provisions of the Plan;
- (d) To authorize disbursements from the assets of the Fund for payment of Benefits hereunder;
- (e) To prescribe procedures to be followed by Participants or Beneficiaries filing applications for Benefits;
- (f) To prepare and distribute, in such manner as the Board determines to be appropriate, information explaining the Plan;
- (g) To receive any information that is necessary for the proper administration of the Plan;
- (h) To furnish the District and the Union, upon request, such annual reports with respect to the administration of the Plan as are reasonable and appropriate;

- (i) To receive and review the valuations of the Plan made by the Enrolled Actuary;
- (j) To establish and maintain a system for record retention and destruction;
- (k) To comply with applicable governmental regulations relating to records of Participants' Service, Accrued Benefits and the percentage of such Benefits which are nonforfeitable under the Plan and notifications to Participants.
- (l) To withhold and transmit any tax required to be withheld from any Benefits paid in accordance with the provisions of this Plan.
- (m) To establish a procedure for the Plan to deal with Domestic Relations Orders.
- (n) From time to time to make reports of their action to the District Board of Directors.
- (o) To recommend amendments to the Plan.
- (p) To purchase such insurance as is deemed appropriate by the Board.

Unless directed by the District, or the District and the Union where applicable to the terms of the collective bargaining agreement between the District and the Union, the Board will have no power to add to, subtract from or modify any of the terms of the Plan, or to change or add to any Benefits provided by the Plan, or to waive or fail to apply any requirements of eligibility for Benefits under the Plan. The Board has each of the powers, authorities and responsibilities set forth in Section 17 of Article XVI of the California Constitution with respect to a retirement board of a public pension or retirement system.

8.7 Delegation of Duties. Except as limited by applicable law, the Board may from time to time delegate any duty with respect to the operation and administration of the Plan and may employ persons to render advice and provide services with regard to any duty of the Board hereunder. Any such delegation will be reviewed by the Board and will be terminable upon such notice as the Board, in its sole discretion, deems reasonable and prudent under the circumstances.

8.8 Elections and Application for Retirement Benefits.

(a) In addition to the elections by a Participant specifically provided by the Plan, a Participant must complete and file an application in order to receive a Benefit under the Plan. Elections (or revocations of elections) or applications for a Benefit must:

- (i) include all pertinent information requested by the Board including reasonable proof;
- (ii) be in writing on the forms prescribed by the Board;
- (iii) be signed by the Participant; and

(iv) be submitted to the Board.

(b) Each election (or revocation of election) or application will be deemed submitted upon receipt by the Board. If an election (or revocation of election) or application is rejected, the Board will notify the Participant in writing of the specific reasons for such rejection and provide a description of any additional material or information necessary to correct the defect of such election (or revocation of election).

(c) Generally, each completed Benefit application will be acted upon and approved or denied within 60 days following its receipt by the Board or its designee. No later than 15 days after reaching its decision on an application, the Board will send the applicant written notice of such decision. If any application for Benefit is denied, in whole or in part, such notice will state the reasons for that denial and inform the applicant of his or her right of appeal.

8.9 Appeals Procedure.

(a) In the event of a dispute between an Employee, a Participant, a Beneficiary or a Union (hereinafter individually and collectively referred to as "Petitioner") and the Board regarding a tentative decision as it pertains to (a) entitlement to benefits under the Plan or (b) the amount of benefits to be paid pursuant to the Plan, such dispute will be resolved pursuant to the Appeals Procedures contained in this Section 8.9.

(b) A tentative decision of the Board will become final unless within 30 calendar days after receiving written notice of the tentative decision, sent by certified mail to the Petitioner, the Petitioner or his or her representative requests in writing a hearing on the tentative decision. If a hearing is requested, a final decision will not be made until after the hearing provided by this section. Petitioner may, but need not be, represented at any stage of the proceedings by an attorney or any other authorized representative.

(c) The hearing described in subsection (b) above will be before an independent hearing officer ("Hearing Officer") qualified to hear pension matters. The Petitioner or his or her representative and the Board or its representative will select the Hearing Officer by alternately striking names from a panel of five qualified hearing officers previously selected by the collective bargaining parties. The first strike will go to the Petitioner or his or her representative.

(d) Once a Hearing Officer has been selected, the Board will send the Petitioner a Notice of Impending Hearing setting forth the date scheduled for the hearing.

(e) At the hearing the parties will have a full opportunity to present testimony and documentary evidence, to cross-examine witnesses, and to submit oral or written argument at the close of the hearing. A court reporter will transcribe the hearing.

(f) The Hearing Officer will render a written recommendation within 30 calendar days of the close of the hearing or submission of written argument, which ever

is later, unless an extension is agreed to in writing by the parties to extend the time limit. The recommendation will be submitted to the Board for review and action. The recommendation will be reviewed by the Board at its next regularly scheduled meeting following its receipt by the Secretary of the Board.

(g) The Board will independently review the recommendation of the Hearing Officer which will become the decision of the Board unless rejected by at least four of the Board's five members, in which case the tentative decision of the Board will be the decision of the Board.

(h) The Petitioner's failure to appear at the hearing will result in a default. The Board will send by certified mail a notice of default to the Petitioner. The Petitioner may set aside a default only upon a showing of good cause, served on the Board within 15 days after receipt of the notice of the default. Absent a showing of good cause, the Board's tentative decision will become final and binding 30 days after service of the notice of default.

(i) The decision of the Board following the procedure set forth above, including the decision upon the Petitioner's default, will be final and binding. Within 10 working days of the date of the final decision by the Board, the Secretary of the Board will notify the Petitioner or his or her representative, in writing, of the Board's decision, which will be sent by certified mail.

(j) Following receipt of the decision, the Petitioner or the Board may pursue their remedies under California Code of Civil Procedure Section 1094.5 and any applicable federal law.

(k) The costs of the Hearing Officer and court reporter will be borne by the Plan unless the Hearing Officer determines the appeal to be frivolous, in which case the cost will be borne as determined by the Hearing Officer.

(l) The Retirement Board will accord discovery to the same extent as allowed by California's Administrative Procedures Act. Within 45 days of service of the Notice of Impending Hearing, and upon written request made to the other party, the Petitioner or the Retirement Board is entitled to:

(i) Receive the names and addresses of all witnesses;

(ii) Inspect and copy any of the following in the possession, custody or control of the other person: (1) Statements pertaining to the subject matter of the proceeding made by any party to another party or person; (2) Statements of any witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding; (3) All writings including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence; and (d) Any other writing or thing which is relevant and which would be admissible in evidence. For these purposes, "statements" include written statements by the person signed or otherwise authenticated by him or her,

stenographic, mechanical, electrical or other recordings, or transcripts thereof, or oral statements by the person, and written reports or summaries of such oral statements.

(m) Nothing in this Section 8.9 authorizes the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as attorney's work product.

(n) Failure to request discovery within the 45-day time limit prescribed in Section 8.9(l) waives the right to obtain discovery, unless the parties have stipulated to additional time.

(o) The Petitioner or the Retirement Board may subpoena the attendance of witnesses and the production of books, documents, and other things. The Petitioner may obtain blank subpoenas by contacting the Retirement Board's representative identified in the Notice of Impending Hearing. Subpoenas must be forwarded to the Hearing Officer for issuance.

(p) Any party claiming that the party's request for discovery under this section has not been complied with may file and serve with the Hearing Officer a motion to compel discovery. The motion must state facts showing the responding party failed or refused to comply with a written discovery request, a description of the matters sought to be discovered, the reasons why the matters is discoverable, that a reasonable good faith attempt to contact the responding party for an informal resolution has been made, and ground(s) for the responding party's refusal, so far as known to the moving party.

(q) Motions to compel discovery must be served on the responding party and filed with the Hearing Officer within 15 days after the responding party first evidenced failure or refusal to comply with the discovery request or within 30 days after the request was made and the responding party failed to reply, or within another time provided by stipulation, whichever is larger.

(r) The responding party may serve and file a written answer within 15 days. The Hearing Officer's decision to grant or deny the motion to compel will be made after an examination of the papers. The Hearing Officer may hold a hearing on the motion, in person or by telephone, at his or her discretion.

(s) Upon the petition of any party, the Hearing Officer may order that the testimony of any material witness who will be unavailable to testify at the hearing may be taken by deposition in the manner prescribed by law for depositions in civil actions. The petitioning party must show the name and address of the witness, the materiality of his or her testimony, and the unavailability to appear at the hearing.

8.10 Liability of Board Members. Whenever the Board is informed that a person entitled to receive any Benefit payment is under a legal disability to receive such Benefit such as when an individual has been declared legally incompetent, the Board may make payments to such person's legal representative. Any payment of a Benefit or installment thereof in accordance with the provisions of this Section will be a complete discharge of any liability for

the making of such payment under the provisions of the Plan. No member of the Board will be liable for any act of omission or commission except as expressly provided by applicable law.

8.11 Reliance on Reports and Certificates. The Board will be entitled to rely conclusively upon all tables, valuations, certificates, opinions and reports which will be furnished by an Enrolled Actuary, accountant, controller, counsel or other person who is employed or engaged for such purposes.

8.12 Member's Own Participation. No member of the Board may act, vote or otherwise influence a decision of the Board specifically relating to such member's own participation under the Plan unless there are no other members of the Board who can act. The fact that a member of the Board's vote is needed to break a tie does not make his or her participation necessary for purposes of this section.

8.13 Loans to Participants. No loans will be made to Participants from the assets of this Plan.

8.14 Indemnification. To the extent permitted by the laws of the State of California, the Plan shall indemnify and hold harmless the Board and each member thereof, and any other Employee to whom any responsibility with respect to the Plan is delegated, from and against any and all liabilities and claims, including legal fees to defend against such liabilities and claims, and costs and expenses, arising out of their discharge in good faith of responsibilities under or incident to the Plan, excepting only expenses and liabilities arising out of willful misconduct or gross negligence. This indemnity will not preclude such further indemnities as may be available.

ARTICLE IX

METHOD OF FINANCING

9.1 Appointment of Custodian. A Custodian may be appointed by the Board and a Custodial Agreement executed between the Board and such Custodian under the terms of which a Fund will be established to receive and hold contributions, interest and other income, and to pay the Benefits provided by the Plan as set forth in the Custodial Agreement, as modified from time to time. The Board may remove the Custodian at any time upon the notice required by the terms of such Custodial Agreement, and, upon such removal or upon the resignation of any such Custodian, the Board will designate a successor Custodian.

9.2 District Contributions. Contributions to fund the Benefits will be made by the District.

9.3 Refund of District Contributions. Except where contributions are required to be returned to the District as provided by the Plan or the Code, it will be impossible for any part of the principal or income of the Fund to be used for, or diverted to, purposes other than the exclusive benefit of such Participants or their Beneficiaries; provided, however, that notwithstanding this or any other provision of this Plan, the District will be entitled, subject to the conditions established under Revenue Ruling 91-4, to recover any contributions made to the Fund:

(a) In error as a result of a mistake in fact.

(b) The permissible recovery under (a) must be made within one year from the date the contribution was made to the Plan.

(c) Reversions due to mistake of fact will be permitted only if the surrounding facts and circumstances indicate that the contribution of the amount that subsequently reverts to the District is attributable to a good faith mistake of fact.

(d) The maximum amount that may be returned to the District in the case of a mistake of fact is the excess of (i) the amount contributed, over (ii) the amount that would have been contributed had no mistake of fact occurred.

(e) Earnings attributable to the excess contribution may not be returned to the District, but losses attributable to such contribution will reduce the amount returned.

(f) If the return of the amount attributable to the mistake would cause the Accrued Benefit of any Participant to be reduced to an amount which is less than the amount which would have been the Accrued Benefit of such Participant had the mistakes not occurred, the amount returned to the District will be limited so as to avoid such reduction.

9.4 Contributions by Participants. Participants will not be required or permitted to make contributions to the Plan.

9.5 No Diversion of Corpus or Income. Except as provided in Section 9.3 hereof, all District contributions when made to the Fund and all property of the Fund, including income from investments and all other sources, will be retained for the exclusive benefit of Participants, and persons claiming through them, and will be used to pay Benefits provided hereunder or to pay expenses of administration of the Plan and the Fund to the extent not paid by the District.

9.6 Transfers from Other Qualified Plans. No transfers from other retirement or pension plans will be accepted under this Plan.

9.7 Rollover Contributions. No rollover contributions from other retirement or pension plans will be accepted under this Plan.

ARTICLE X

AMENDMENT, MERGER OR TERMINATION

10.1 Right to Amend. For Non-Represented Employees, the District has the right to amend this Plan from time to time and to amend further or cancel any such amendment. For Represented Employees, any amendment or cancellation will be subject to collective bargaining. Any such amendments will be stated in an instrument in writing executed by the District, or the District and the Union, and this Plan will be deemed to have been amended in the manner and at the time therein set forth, and the District, and all Employees, former Employees, Participants and Beneficiaries will be bound thereby; provided, however, that:

- (a) All such amendments will be subject to collective bargaining.
- (b) No such amendment will be effective until adopted by the Board of Directors of the District.
- (c) No such amendment will be effective which attempts to cause any of the assets of the Fund to be used for or diverted to purposes other than for the exclusive benefit of the Participants or their Beneficiaries, or to defray reasonable Plan expenses, except such changes, if any, as may be required to permit this Plan to meet the applicable requirements of the Code;
- (d) No such amendments will have any retroactive effect so as to deprive any Participant of any Benefit already vested, except such changes, if any, as may be required to permit this Plan to meet the applicable requirements of the Code;
- (e) No such amendment will affect the qualified status of the Plan under the Code;
- (f) No such amendment will reduce or eliminate any Participant's right to the availability of a Benefit under this Plan if that Participant had already satisfied the requirements for that Benefit as of the date of the amendment;
- (g) No such amendment will eliminate any Benefits accrued as of the date of the amendment.
- (h) Subject to applicable law, an amendment under this Section 10.1 may be made effective on a date prior to the first day of a Plan Year in which it is adopted.
- (i) Notwithstanding the preceding, no amendment will be applicable to Represented Employees without the consent of the Union.

10.2 Right to Terminate. In accordance with the procedures set forth herein and subject to the terms of any collective bargaining agreement covering Represented Employees of the District, the District may terminate the Plan at any time. The Retirement Board shall direct the disposition of the assets of the Fund in accordance with the termination resolution. In the event of the dissolution, merger, consolidation or reorganization of the District without a termination resolution, the Plan will terminate and assets of the Fund will be liquidated unless the Plan is continued by a successor to the District.

10.3 Assets of the Fund. Upon termination of the Plan, each Participant's Accrued Benefit, based on Years of Service prior to the date of termination, will become fully vested and nonforfeitable to the extent funded.

10.4 Manner of Distribution upon Termination. Any distribution after termination of the Plan may be made, in whole or in part, to the extent that no discrimination in value results, in cash, in securities or other assets in kind, or in nontransferable annuity contracts, as elected by a Participant or Beneficiary, if applicable, provided the Board will not be required to make

available optional forms of payment which were not available under the Plan prior to its termination.

ARTICLE XI

LIMITATIONS ON BENEFITS

11.1 Maximum Retirement Benefit.

(a) Subject to the subsequent provisions of this Article XI, the maximum annual Benefit payable to a Participant will not exceed \$160,000, as adjusted annually by the cost of living adjustment factor prescribed by the Secretary of the Treasury in accordance with Section 415(d)(1) of the Code.

(b) **Adjustment for Optional Forms of Benefit.** If a Participant's annual Benefit is paid under one of the optional Benefit forms described under Section 5.3, for purposes of applying the defined benefit dollar limitation in Section 11.1(a), the amount of the Benefit will be adjusted to the actuarial equivalent of a single life monthly Annuity for the Participant's life, in accordance with Section 415(b)(2)(B) of the Code. For purposes of this adjustment, the applicable mortality table is the table prescribed by Revenue Ruling 2001-62 (or any superseding guidance), and the interest rate assumption is 5%. This Section 11.1(b) will not apply to any Benefit payable under an optional Benefit form that constitutes a qualified joint and survivor annuity under Section 417 of the Code.

(c) **Adjustment for Benefits Commencing Before Age 62.** If Benefit payments to a Participant commence before the Participant attains age 62, the defined benefit dollar limitation under Section 11.1(a) will be adjusted in accordance with Section 415(b)(2)(C) of the Code; provided, however, that such adjustment will not apply to a Disability Retirement Benefit or a Benefit paid as a result of the Participant's death.

(d) **Adjustment for Benefits Commencing After Age 65.** If Benefit payments to a Participant commence after the Participant attains age 65, the defined benefit dollar limitation under Section 11.1(a) will be adjusted in accordance with Section 415(b)(2)(D) of the Code.

(e) If the District maintains, or at one time maintained, another qualified defined benefit plan, the limitations of this Article XI will not be exceeded when all such defined benefit plans are treated as one plan.

(f) The maximum permissible amount determined in accordance with this Section 11.1 for any Participant will not be less than the current accrued benefit for such Participant. For this purpose, the term "current accrued benefit" means the Participant's accrued benefit under such Plans, determined as if the Participant had separated from Service at the close of the last limitation year beginning before July 1, 1987, expressed as an annual benefit within the meaning of Section 415(b)(2) of the Code. The preceding sentence only applies if such defined benefit plans met the requirements of Section 415 of the Code for all limitation years beginning before July 1, 1987. In determining the

amount of a Participant's current accrued benefit, the Plan will disregard (i) any change in the terms and conditions of the Plan after May 5, 1986; and (ii) any cost of living adjustments occurring after May 5, 1986.

11.2 Less Than 10 Years of Service or Participation.

(a) If a Participant has completed less than 10 years of participation in the Plan, the maximum annual Benefit payable to a Participant under this Plan in any Plan Year will not exceed the dollar amount in Section 11.1(a) as adjusted by multiplying such amount by a fraction, the numerator of which is the Participant's number of years (or part thereof) of participation in the Plan, and the denominator of which is 10.

(b) In no event will Section 11.2(a) reduce the limitations provided under Section 11.1(a) to an amount less than 1/10th of the applicable limitation, and to the extent provided by the Secretary of the Treasury, Section 11.2(a) will be applied separately with respect to each change in the benefit structure of the Plan.

The provisions set forth in this Section 11.2 will not apply with respect to Benefits payable after the Participant's death or on account of a Participant's Disability.

11.3 Special Rule for Participants prior to July 1, 1983. The maximum benefit limitation prescribed by this Article will not apply with respect to any Participant who was a Participant before July 1, 1983, provided the following conditions are met:

(a) The annual Benefit payable to such Participant on retirement does not exceed 100% of the Participant's annual rate of Compensation on June 30, 1983;

(b) Such Benefit does not exceed the annual Benefit which would have been payable based on the Participant's rate of Compensation on June 30, 1983, had all the terms and conditions of the Plan, including the then Maximum Benefit on such date remained in effect until such Participant's retirement; and

(c) In the case of a Participant who separated from the Service of the District prior to July 1, 1983, the annual Benefit payable hereunder will be no greater than such Participant's vested Benefit as of the date the Participant separated from Service.

11.4 Effective Date. This Article XI is effective January 1, 2002 and applies to all Participants, regardless of Retirement Date.

ARTICLE XII

GENERAL PROVISIONS

12.1 No Guarantee of Employment. The Plan will not be deemed to constitute a contract between the District and any Employee or to be a consideration for, or an inducement for, the employment of any Employees by the District. Nothing contained in the Plan will be deemed to give any Employee the right to be retained in the employment of the District or to interfere with the right of the District to discharge or to terminate the employment of any

Employee at any time without regard to the effect such discharge or termination may have on any rights under the Plan.

12.2 Nonalienation of Benefits. None of the benefits, payments, proceeds or claims of any Participant or Beneficiary will be subject to any claim of any creditor and, in particular, the same will not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution or levy of any kind, either voluntary or involuntary. Any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, garnish, levy or otherwise dispose of or execute upon any right or benefit payable hereunder will be void. The Fund will not in any manner be liable or subject to the debts, contracts, liabilities, engagements or costs of any Participant entitled to benefits hereunder, and such benefits will not be considered an asset of the Participant in the event of insolvency or bankruptcy. This provision will not prevent the Plan from complying with the terms of an applicable Domestic Relations Order so long as such compliance will not adversely affect the qualified status of the Plan and does not require the Plan to provide Benefits not specifically set forth in the Plan.

12.3 Purchase of Annuities. If the Board for any reason deems it advisable, the Benefits payable at any Retirement Date under the Plan may be provided through the purchase of annuities from an insurance company as may be approved by the Board. Payment thereof will be made from the assets held by the Custodian under the Custodial Agreement.

12.4 Beneficiary Designation. Each Participant will have the right at any time prior to Retirement Date to designate, and rescind or change any designation of, a primary and a contingent Beneficiary or Beneficiaries to receive Benefits in the event of death as provided in Section 1.7.

12.5 Governing Law. The provisions of the Plan will be construed, administered and governed in all respects under the laws of the State of California; and to the extent applicable under Federal law; provided, however, that if any provision is susceptible to more than one interpretation, such interpretation will be given thereto as is consistent with the Plan qualifying as a defined benefit plan under Section 401 of the Code. If any provision of this instrument will be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions thereof will continue to be fully effective.

12.6 Interpretation. Headings and subheadings in the Plan are inserted for convenience only and are not to be considered in the construction of the provisions thereof. Singular nouns may include the plural and plural nouns may include the singular where appropriate. The words "hereof," "hereunder," and other similar compounds of the word "here" means and refer to the entire Plan and not to any particular provision or section.

12.7 Counterparts. This Plan and any amendments hereto may be executed in an original and any number of counterparts, each of which will be deemed to be an original of one and the same instrument.

12.8 Post-Retirement Employment. A Participant's acceptance of Benefit payments under the Plan will not prevent him/her from obtaining gainful employment except as otherwise provided in the Plan.

IN WITNESS WHEREOF, the District, the Board and the Unions have caused this Plan to be executed on this 16th day of March 2005.

THE AC TRANSIT DISTRICT BOARD OF DIRECTORS

By: Joe Wallace
Joe Wallace, President of the Board

By: Greg Harper
Greg Harper, Vice President

By: Joe Bischofberger
Joe Bischofberger, Director

By: Dennis Hayashi
Dennis Hayashi, Director

By: Rebecca Kaplan
Rebecca Kaplan, Director

By: Dolores Jaquez
Dolores Jaquez, Director

By: H. E. Christian Peoples
H. E. Christian Peoples, Director

AMALGAMATED TRANSIT UNION, LOCAL 192

By: Christine Zook
Christine Zook, President

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 1245

By: Ferry Zimmerman
Ferry Zimmerman, Business Manager

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 3916

By: Jim Cunradi
Jim Cunradi, President

Approved as to form:

Kenneth C. Scheidig
Kenneth C. Scheidig, General Counsel

APPENDIX A

**Table I
(Applicable to All Employees)
Effective July 1, 1990**

APPLICABLE TO OCCUPATIONAL DISABILITY

<u>Years of Service Upon Physical Disqualification</u>	<u>Percentage Payable for Lifetime</u>
10	29.0%
11	29.5
12	30.0
13	30.5
14	31.0
15	31.5
16	32.0
17	32.5
18	33.0
19	33.5
20	34.0
21	34.5
22	35.0
23	35.5
24	36.0
25	36.5
26	37.0
27	37.5
28	38.0
29	38.5
30 or more	39.0

9 28.5
8 28
7 27.5
6 27
5 26.5

Table II

JOINT AND 50% SURVIVOR OPTION FACTORS

If the spouse, Domestic Partner or Beneficiary of the Participant is:

The same age:	90.0%		
1 year younger:	89.6%	1 year older:	90.4%
2 years younger:	89.2%	2 years older:	90.8%
3 years younger:	88.8%	3 years older:	91.2%
4 years younger:	88.4%	4 years older:	91.6%
5 years younger:	88.0%	5 years older:	92.0%
6 years younger:	87.6%	6 years older:	92.4%
7 years younger:	87.2%	7 years older:	92.8%
8 years younger:	86.8%	8 years older:	93.2%
9 years younger:	86.4%	9 years older:	93.6%
10 years younger:	86.0%	10 years older:	94.0%
11 years younger:	85.6%	11 years older:	94.4%
12 years younger:	85.2%	12 years older:	94.8%
13 years younger:	84.8%	13 years older:	95.2%
14 years younger:	84.4%	14 years older:	95.6%
15 years younger:	84.0%	15 years older:	96.0%
16 years younger:	83.6%	16 years older:	96.4%
17 years younger:	83.2%	17 years older:	96.8%
18 years younger:	82.8%	18 years older:	97.2%
19 years younger:	82.4%	19 years older:	97.6%
20 years younger:	82.0%	20 years older:	98.0%
21 years younger:	81.6%	21 years older:	98.0%
22 years younger:	81.2%	22 years older:	98.0%
23 years younger:	80.8%	23 years older:	98.0%
24 years younger:	80.4%	24 years older:	98.0%
25 years younger:	80.0%	25 years older:	98.0%
26 years younger:	79.6%	26 years older:	98.0%
27 years younger:	79.2%	27 years older:	98.0%
28 years younger:	78.8%	28 years older:	98.0%
29 years younger:	78.4%	29 years older:	98.0%
30 years younger:	78.0%	30 years older:	98.0%

Note: Age difference is computed using full years only. For example:

Participant Birthday:	04/30/40	11 month difference – use “same age” factor
Beneficiary Birthday:	05/01/39	90.0%
Participant Birthday:	05/01/40	1 year + 1 month difference – use “1 year older”
Beneficiary Birthday:	04/01/39	90.4%
Participant Birthday:	04/01/39	1 year + 1 month difference – use “1 year younger”
Beneficiary Birthday:	05/01/40	89.6%

Table III

JOINT AND 100% SURVIVOR OPTION FACTORS

If the spouse, Domestic Partner or Beneficiary of the Participant is:

The same age:	82.0%		
1 year younger:	81.3%	1 year older:	82.7%
2 years younger:	80.6%	2 years older:	83.4%
3 years younger:	79.9%	3 years older:	84.1%
4 years younger:	79.2%	4 years older:	84.8%
5 years younger:	78.5%	5 years older:	85.5%
6 years younger:	77.8%	6 years older:	86.2%
7 years younger:	77.1%	7 years older:	86.9%
8 years younger:	76.4%	8 years older:	87.6%
9 years younger:	75.7%	9 years older:	88.3%
10 years younger:	75.0%	10 years older:	89.0%
11 years younger:	74.3%	11 years older:	89.7%
12 years younger:	73.6%	12 years older:	90.4%
13 years younger:	72.9%	13 years older:	91.1%
14 years younger:	72.2%	14 years older:	91.8%
15 years younger:	71.5%	15 years older:	92.5%
16 years younger:	70.8%	16 years older:	93.2%
17 years younger:	70.1%	17 years older:	93.9%
18 years younger:	69.4%	18 years older:	94.6%
19 years younger:	68.7%	19 years older:	95.0%
20 years younger:	68.0%	20 years older:	95.0%
21 years younger:	67.3%	21 years older:	95.0%
22 years younger:	66.6%	22 years older:	95.0%
23 years younger:	65.9%	23 years older:	95.0%
24 years younger:	65.2%	24 years older:	95.0%
25 years younger:	64.5%	25 years older:	95.0%
26 years younger:	63.8%	26 years older:	95.0%
27 years younger:	63.1%	27 years older:	95.0%
28 years younger:	62.4%	28 years older:	95.0%
29 years younger:	61.7%	29 years older:	95.0%
30 years younger:	61.0%	30 years older:	95.0%

Note: Age difference is computed using full years only. For example:

Participant Birthday:	04/30/40	11 month difference – use “same age” factor	
Beneficiary Birthday:	05/01/39		82.0%
Participant Birthday:	05/01/40	1 year + 1 month difference – use “1 year older”	
Beneficiary Birthday:	04/01/39		82.7%
Participant Birthday:	04/01/39	1 year + 1 month difference – use “1 year younger”	
Beneficiary Birthday:	05/01/40		81.3%