



BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT

BOARD OF DIRECTORS
REGULAR MEETING
MARCH 17, 2010

A meeting of the Bay Area Air Quality Management District Board of Directors will be held at 9:45 a.m. in the 7th floor Board Room at the Air District Headquarters, 939 Ellis Street, San Francisco, California.

**Questions About
an Agenda Item**

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

Meeting Procedures

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

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

BOARD OF DIRECTORS' REGULAR MEETING

A G E N D A

WEDNESDAY
MARCH 17, 2010
9:45 A.M.

BOARD ROOM
7TH FLOOR

CALL TO ORDER

Opening Comments
Roll Call
Pledge of Allegiance

Chairperson, Brad Wagenknecht
Clerk of the Boards

PUBLIC COMMENT PERIOD

Public Comment on Non-Agenda Items, Pursuant to Government Code Section 54954.3
Members of the public are afforded the opportunity to speak on any agenda item. All agendas for regular meetings are posted at District headquarters, 939 Ellis Street, San Francisco, CA, at least 72 hours in advance of a regular meeting. At the beginning of the regular meeting agenda, an opportunity is also provided for the public to speak on any subject within the Board's subject matter jurisdiction. Speakers will be limited to three (3) minutes each.

BOARD MEMBERS' COMMENTS

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

CONSENT CALENDAR (ITEMS 1 – 6)

Staff/Phone (415) 749-

1. Minutes of February 17, 2010

L. Harper/5073

lharp@baaqmd.gov

2. Communications

J. Broadbent/5052

jbroadbent@baaqmd.gov

Information only.

3. District Personnel on Out-of-State Business Travel

J. Broadbent/5052

jbroadbent@baaqmd.gov

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

4. Referral of Proposed Budget for Fiscal Year Ending 2011 to the Budget and Finance Committee

J. Broadbent/5052

jbroadbent@baaqmd.gov

Pursuant to Administrative Code Division II, Section 3.2 Fiscal Policies and Procedures, and in compliance with Section 29064 of the Government Code, the Board shall refer the proposed budget for Fiscal Year Ending 2011 to the Budget and Finance Committee for review and consideration.

5. Notice of Proposed Amendments to the Air District's Administrative Code, Division I Operating Policies and Procedures of the Board of Directors, Section 6: Board of Directors, Committees - Establishing a Maritime Sources and Ports Committee

J. Broadbent/5052

jbroadbent@baaqmd.gov

The Board will consider notice of proposed amendments to the Administrative Code Division I - Operating Policies and Procedures of the Board of Directors, Section 6: Board of Directors, Committees – Establishing a Maritime Sources and Ports Committee.

6. Consideration of Authorization for Execution of Purchase Order in Excess of \$70,000 Pursuant to Administrative Code Division II Fiscal Policies and Procedures Section 4.3 Contract Limitations

J. Roggenkamp/4646

jroggenkamp@baaqmd.gov

The Board of Directors will consider authorizing the Executive Officer/APCO to execute one purchase order to ThermoFisher Scientific for \$78,038 and another purchase order to Dionex Corporation in the amount of \$106,178 for two pieces of laboratory analytical instrumentation.

COMMITTEE REPORTS AND RECOMMENDATIONS

7. Report of the **Executive Committee** Meeting of February 22, 2010

CHAIR: B. WAGENKNECHT

J. Broadbent/5052

jbroadbent@baaqmd.gov

8. Report of the **Mobile Source Committee** Meeting of February 25, 2010

CHAIR: S. HAGGERTY

J. Broadbent/5052

jbroadbent@baaqmd.gov

Recommend Board of Directors approval of the following:

A) Carl Moyer Program (CMP) Projects:

- 1) Approve Carl Moyer Program Year 11 projects with proposed grant awards over \$100,000 listed on Attachment 1; and*
- 2) Authorize the Executive Officer/APCO to enter into agreements for the recommended Carl Moyer Program Year 11 projects*

B) Adopt Resolution Accepting Year 12 of the Carl Moyer Program:

- 1) Authorize the Executive Officer/APCO to execute all necessary agreements with the California Air Resources Board (CARB) relating to the Air District's receipt of Carl Moyer Program funds for fiscal year 2009-2010 (Program Year 12);*

- 2) *Allocate \$1.5 million in Mobile Source Incentive Funding to the Agricultural Assistance Program for the upcoming funding cycle; and*
- 3) *Allocate \$6.5 million in Mobile Source Incentive Funding for projects eligible for funding under the Carl Moyer Program*

C) *Year 1 of the California Goods Movement Bond Program for On-Road Trucks:*

- 1) *Accept up to \$17.5 million in funding from Year 1 of the California Goods Movement Bond program for the retrofit and replacement of on-road trucks; and*
- 2) *Authorize the Executive Officer/APCO to execute all contracts and contingencies to extend funding, pending endorsement by the Board of Directors Budget and Finance Committee's recommendation to designate funding from reserves to the FY 2009/10 budget for program administration*

9. Report of the **Climate Protection Committee** Meeting of March 3, 2010

CHAIR: P. TORLIATT

J. Broadbent/5052
jbroadbent@baaqmd.gov

10. Report of the **Stationary Source Committee** Meeting of March 5, 2010

CHAIR: G. UILKEMA

J. Broadbent/5052
jbroadbent@baaqmd.gov

11. Report of the **Personnel Committee** Meeting of March 8, 2010

CHAIR: H. BROWN

J. Broadbent/5052
jbroadbent@baaqmd.gov

Action: The consensus of the Committee members present was for Board of Directors' approval of the following:

A) *Hearing Board Re-Appointments:*

1. *Re-appoint Thomas M. Dailey, M.D., Medical Member, and Janet Weiss, M.D., Alternate Member, to three-year terms of office, effective April 15, 2010 through April 14, 2013; and*
2. *Re-appoint Christian Colline, P.D., Engineer Member, and Gilbert G. Bendix, P.E, Alternate Member, to three-year terms of office, effective March 7, 2010 through March 6, 2013.*

A) *Advisory Council Appointments:*

1. *Appoint Alexandra Desautels to the Advisory Council, under the Public Health category, to an unexpired term of office, effective immediately through December 31, 2011; and*
2. *Appoint Michael Sandler to the Advisory Council, under the Community Planning category, to an unexpired term of office, effective immediately through December 31, 2011.*

PRESENTATION

12. Overview of Winter Spare the Air Season

J. Broadbent/5052
jbroadbent@baaqmd.gov

Staff will provide an overview of the Winter Spare the Air season.

MEMORANDUM OF UNDERSTANDING

13. Proposed Amendments to the Current Memorandum of Understanding between the Bay Area Air Quality Management District and Bay Area Air Quality Management District Employees' Association

J. Broadbent/5052

jbroadbent@baaqmd.gov

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

CLOSED SESSION

14. **Significant Exposure to Litigation**

Pursuant to Government Code Section 54956.9(b), a need exists to meet in closed session to discuss two potential litigation matters against the District.

OPEN SESSION

OTHER BUSINESS

15. Report of the Executive Officer/APCO
16. Chairperson's Report
17. Time and Place of Next Meeting – 9:45 A.M. Wednesday, April 7, 2010 - 939 Ellis Street, San Francisco, CA 94109
18. Adjournment

CONTACT EXECUTIVE OFFICE - 939 ELLIS STREET SF, CA 94109

(415) 749-5130
FAX: (415) 928-8560
BAAQMD homepage:
www.baaqmd.gov

- To submit written comments on an agenda item in advance of the meeting.
- To request, in advance of the meeting, to be placed on the list to testify on an agenda item.
- To request special accommodations for those persons with disabilities. Notification to the Executive Office should be given at least 3 working days prior to the date of the meeting so that arrangements can be made accordingly.
- Any writing relating to an open session item on this Agenda that is distributed to all, or a majority of all, members of the body to which this Agenda relates shall be made available at the Air District's headquarters at 939 Ellis Street, San Francisco, CA 94109, at the time such writing is made available to all, or a majority of all, members of that body. Such writing(s) may also be posted on the Air District's website (www.baaqmd.gov) at that time.

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
939 ELLIS STREET, SAN FRANCISCO, CALIFORNIA 94109
(415) 771-6000

EXECUTIVE OFFICE:
MONTHLY CALENDAR OF DISTRICT MEETINGS

MARCH 2010

<u>TYPE OF MEETING</u>	<u>DAY</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
Board of Directors Public Outreach Committee <i>(At the Call of the Chair)</i>	Monday	15	9:30 a.m.	4 th Floor Conf. Room
Board of Directors Regular Meeting <i>(Meets 1st & 3rd Wednesday of each Month)</i>	Wednesday	17	9:45 a.m.	Board Room
Joint Policy Committee	Friday	19	10:00 a.m.	MTC Auditorium 101 – 8 th Street Oakland, CA 94607
Board of Directors Budget & Finance Committee <i>(At the Call of the Chair)</i>	Wednesday	24	1:00 p.m.	4 th Floor Conf. Room
Board of Directors Mobile Source Committee <i>(Meets 4th Thursday each Month)</i>	Thursday	25	9:30 a.m.	4 th Floor Conf. Room
Board of Directors Legislative Committee <i>– (At the Call of the Chair)</i>	Monday	29	10:00 a.m.	4 th Floor Conf. Room

APRIL 2010

<u>TYPE OF MEETING</u>	<u>DAY</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
Board of Directors Regular Meeting <i>(Meets 1st & 3rd Wednesday of each Month)</i>	Wednesday	7	9:45 a.m.	Board Room
Board of Directors Stationary Source Committee <i>(At the Call of the Chair)</i>	Monday	12	9:30 a.m.	Board Room
Advisory Council Regular Meeting	Wednesday	14	9:00 a.m. – 11:00 a.m.	Board Room
Board of Directors Regular Meeting <i>(Meets 1st & 3rd Wednesday of each Month)</i>	Wednesday	21	9:45 a.m.	Board Room
Board of Directors Mobile Source Committee <i>(Meets 4th Thursday each Month)</i> - RECHEDULED TO THURSDAY, APRIL 29, 2010	Thursday	22	9:30 a.m.	4 th Floor Conf. Room
Board of Directors Budget & Finance Committee <i>(At the Call of the Chair)</i>	Wednesday	28	1:00 p.m.	4 th Floor Conf. Room
Board of Directors Mobile Source Committee <i>(Meets 4th Thursday each Month)</i>	Thursday	29	9:30 a.m.	4 th Floor Conf. Room

MAY 2010

<u>TYPE OF MEETING</u>	<u>DAY</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
Board of Directors Regular Meeting <i>(Meets 1st & 3rd Wednesday of each Month)</i>	Wednesday	5	9:45 a.m.	Board Room
Advisory Council Regular Meeting	Wednesday	12	9:00 a.m. – 11:00 a.m.	Board Room
Board of Directors Regular Meeting <i>(Meets 1st & 3rd Wednesday of each Month)</i>	Wednesday	19	9:45 a.m.	Board Room
Joint Policy Committee	Friday	21	10:00 a.m.	MTC Auditorium 101 – 8 th Street Oakland, CA 94607
Board of Directors Mobile Source Committee <i>(Meets 4th Thursday each Month)</i>	Thursday	27	9:30 a.m.	4 th Floor Conf. Room
HL – 3/10/10 (8:50 a.m.) P/Library/Forms/Calendar/Calendar/Moncal				

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson, Brad Wagenknecht and Members
of the Board of Directors

From: Jack P. Broadbent
Executive Officer/APCO

Date: March 8, 2010

Re: Board of Directors Draft Meeting Minutes

RECOMMENDED ACTION:

Approve attached draft minutes of the Board of Directors Regular Meeting of February 17, 2010.

DISCUSSION

Attached for your review and approval are the draft minutes of the Board of Directors Regular Meeting of February 17, 2010.

Respectfully submitted,

Jack P. Broadbent
Executive Officer/APCO

Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109
(415) 749-5000

Board of Directors' Regular Meeting
February 17, 2010

DRAFT MINUTES

CALL TO ORDER: Chairperson Brad Wagenknecht called the meeting to order at 9:45 a.m.

Roll Call: Chairperson Brad Wagenknecht; Vice Chairperson Tom Bates; Secretary John Gioia; Directors Harold Brown, Chris Daly, Dan Dunnigan, Carole Groom, Scott Haggerty, David Hudson, Jennifer Hosterman, Ash Kalra, Carol Klatt, Liz Kniss, Eric Mar, Mark Ross, James Spering, Pamela Torliatt, Gayle B. Uilkema, Ken Yeager and Shirlee Zane

Absent: Directors Susan Garner, John Gioia and Nate Miley

PLEDGE OF ALLEGIANCE: Chairperson Wagenknecht the Pledge of Allegiance.

Public Comments: None

Board Member Comments: None

CONSENT CALENDAR (Items 1-2):

1. Minutes of February 3, 2010
2. Communications

Board Action: Director Brown made a motion to approve Consent Calendar Items 1 and 2; Director Ross seconded the motion; carried unanimously without opposition.

COMMITTEE REPORTS AND RECOMMENDATIONS:

- 3. Report of the Budget and Finance Committee Meeting**
February 10, 2010
Vice Chair: H. Brown

The Budget and Finance Committee met on February 10, 2010 and approved the minutes of November 2, 2009.

The Committee received an update on the financial audit for 2008/2009, reviewed financial statements which were found to be in conformity with accounting principles, and discussed results of internal control over financial reporting, compliance with major federal programs, and Health and Safety Code

Sections relative to the Transportation Fund for Clean Air (TFCA). The Committee asked that staff provide a status report of the San Mateo County Investment Pool at its next meeting.

The Committee received a report on the second quarter Financial Report for Fiscal Year 2009-2010. A comparison of revenues and expenditures, reserves, investment balances, undesignated reserves and total fund balances was reviewed. The Committee requested staff provide additional information relating to District inspection services.

The Committee then received an update on the Air District's financial status and discussed General Fund revenue sources and expenditures. Financial challenges were identified and the Committee discussed planned responses, which include maintaining vacancies, reducing services and supplies, modest decreases in the cost recovery gap, and maintaining cautious stewardship of reserves.

The next meeting of the Budget and Finance Committee is at the call of the Chair.

Board Action: Director Brown made a motion to approve the report of the Budget and Finance Committee; Director Haggerty seconded the motion; carried unanimously without opposition.

District Financial Status: Deputy APCO, Jeffrey McKay, gave an update on the financial status, General Fund revenue sources, General Fund expenditures, and discussed financial challenges in the current fiscal year, as follows:

Property Taxes will decrease by 8% in Accordance Assembly Bill No.15, in the amount of:	- \$1.6 Million
Budgeted grant revenue will not be realized, resulting in General Fund encroachment in the amount of:	- \$2.2 Million
Permit Fees will Decrease in the amount of:	- \$1.0 Million
Penalties will Decrease in the amount of:	- \$1.0 Million
Interest will Decrease in the amount of:	- \$0.4 Million
Property Tax will Increase in the amount of:	<u>+\$1.0 Million</u>
Total	- \$5.2 Million

He indicated that the budgeted grant revenue encroachment of \$2.2 million is presented conservatively, which could be improved by \$500,000, and noted the following actions to be taken:

• Excess Vacancies (beyond budget) – estimated at:	+ \$1.5 M
• Reduce Services and Supplies by 10%:	+ \$1.2 M
• Securitize 8% Property Tax Decrease	<u>+ \$1.6 M</u>
• Total	\$4.3 M

The Board's direction is to maintain 15% of the General Fund budget (\$9 million). The District's total fund balance at the end of the year will be \$13,767,982. Going forward, staff proposes to maintain vacancies, reduce service and supplies expenditures, impose fee increases to address cost recovery gap, and maintain cautious stewardship of reserves.

Director Torliatt requested a breakdown of property tax calculations by county, and Mr. McKay agreed to provide this via email to the Board.

Director Daly thanked staff for their financial stewardship during what is an incredibly difficult financial time for most cities and counties. He believed that the mandate the Board set out during good years has allowed the District to maintain itself for several months, and without new takings from the State, he believed the District will weather the storm.

Director Zane questioned and confirmed that the proposal is the difference between revenues and expenditures which would result in reserves being drawn down by \$1 million. She questioned which of the Districts reserve designations would be drawn down.

Mr. McKay said the detail designations are at the discretion of the Board. In the past the Board has made the decision to spread those reserves into a variety of areas. At the end of every fiscal year, the Board reviews the distribution and has the freedom to redistribute them accordingly. Director Zane voiced concern with taking reserves out of undesignated funds.

Mr. Broadbent said even though the Board has designated a number of categories, from a financial standpoint, they are all considered to be reserves.

Director Bates questioned the \$2.2 million Grants Enhancement and asked for an explanation of where this money would come from. Mr. McKay discussed the District's receipt of grants and ability to take 5% in administrative fees. He explained that when the District budgets, it anticipates a certain amount of money can be deposited into the General Fund from grants received. If not received, costs for certain resources must be paid out of the General Fund as opposed to being paid out of administrative fees from grants.

Mr. Broadbent added that this is an important issue facing all air districts in California. Infrastructure bond monies are received and distributed for air district programs. It takes significant staff time and cost to do this, and managing the programs has become expensive. Staff's concerns have been raised to the State which focuses on the need to make sure administrative costs are covered by grant dollars, and the State has been unwilling to provide coverage for expenditures. He said other districts have turned back monies unless administrative costs are covered, but he was not sure whether this district wanted to consider this.

Mr. Broadbent confirmed with Director Bates that the District has just petitioned to receive \$17.5 million of I-Bond monies which will be considered by the Mobile Source Committee next week. Staff clearly feels that taking this money must be conditioned on the fact that costs will be covered. He noted that inspectors have been moved over to help out with grant processing instead of being out in the field conducting inspections, issuing NOV's and catching violations.

Director Bates questioned and confirmed that this does not include Carl Moyer funds because the District receives 5% in administrative costs for that program. Director Bates referred to the property tax receipts and questioned if this was due to the District anticipating revenue would be down. Mr. McKay said staff originally budgeted property taxes according to two separate studies that projected a 3% decrease every year over the next several years. What is being seen is a flat property tax rate after having received the first of the two property tax payments from counties. He said even in the current downturn, there are sales that occur for more than the property was purchased, which increases the tax base.

Director Spring said he would hope that the District would look at internal cuts prior to going into reserves, which he felt should be the last resort. He also questioned excess vacancies in numbers and how this will be treated in the future.

Mr. McKay said there are vacancies assumed due to turnover. In the current year budget, beyond that, staff anticipates maintaining vacancies beyond those that would simply occur due to turnover. Excess vacancies refer to beyond those in the budget, and going into the future, they anticipate maintaining those excess vacancies over those currently in the budget. Mr. Broadbent noted the District has 363 positions and is running a vacancy rate of 24 positions, some of which constitute turnovers. Normally, the District budgets for approximately 10 vacancies. Staff is also being very cautious as to which positions are filled.

Director Daly said last year the District did move significant funds from undesignated reserves to the special reserves for specific purposes, which included \$2 million to OPEB, \$1 million for climate protection, and another \$1 million for building and facilities. The thinking at the time was that if reserves were not moved, the State would come after them. With slow hiring, keeping positions vacant, and decreasing services and supplies across the board, he felt the District is operating in a prudent manner and to use a modest amount of reserves right now makes some political sense.

Director Zane acknowledged problems with unfunded mandates, but said she would not be in favor of not taking grant monies given the fact that it helps meet the clean air mission.

Director Hudson pointed out that the Board voted on the item because the Committee felt it was a good budget and in the budget presentation it notes that the District's policy is 15% reserves. The District under-budgeted \$1 million in property taxes and staff will know more by June. He acknowledged concerns and believes that the District can adjust its budget at that time, as needed.

PRESENTATION

4. Report on the Pilot Business Incentive for Industry Compliance Schools

Air Quality Program Manager, Barbara Coler, provided a presentation on the pilot business incentive for Industry Compliance Schools (ICS), stating that the mobile coaters served as a catalyst to develop the pilot program. She described their operations, challenges with compliance and opportunities for assistance and outreach.

Ms. Coler said the pilot was presented to the Board in September 2009. The goals are to provide compliance assistance for small business, provide economic incentives for environmental education, to achieve higher compliance rates, with resulting benefits for air quality and public health. Through District-run industry compliance schools, they are able to provide materials on regulations, tools and tips, and participants receive hands-on expertise and experience through their attendance resulting in clearer regulations and higher compliance rates.

She said amendment of Regulation 8, Rule 45 applied to auto refinishers, which includes auto body shops and mobile coaters. It required mobile coaters to register annually with the District. For all, there are recordkeeping requirements, and lower VOC limits, and annual registration will improve the District's ability to improve the ability to inspect them. She discussed registration fees, discount on the registration with requirements for attendance to schools and completion of registration, with an estimate of less than \$5,000 in loss of fee revenues.

Ms. Coler said four (4) Industry Compliance Schools were held; Concord (2); San Francisco and Santa Clara, in early evening hours, and translation services provided in Spanish and Vietnamese.

Results revealed that 41 mobile coaters attended the schools, 36 operations were registered, 30 were registered with a discount, \$2,100 collected in initial registration fees, and \$1,500 in discounts were provided to ICS attendees. She noted staff received numerous email and calls thanking the District for holding the schools and recognized Megan Harris for her work in coordinating and attending the schools.

Ms. Coler said staff are pleased with the success of Phase I and are ready to move onto Phase II of the pilot. She noted that Regulation 8, Rule 20 was amended November 19, 2008 which impacts all graphic art printing operations. A new requirement allowed a registration requirement in lieu of obtaining a permit for low usage operations. There are new recordkeeping, labeling and lower VOC requirements. She discussed registration fees, outreach to graphic art operators, and said 13 businesses have registered to date. Staff estimates less than \$3,500 in loss of fee revenue. They would start holding classes in the March/April timeframes.

A workshop will be held next Monday on the District's Fee schedule, and staff provided input to provide for the possible expansion of the pilot program incentives by providing a potential discount on registration fees for those who attend industry compliance schools.

Chairperson Wagenknecht questioned if there was a possibility of the District receiving a grant for covering the shortfall in revenue. Mr. Wee said not at this time; it is discretionary and the programs together should be less than \$5,000.

Director Mar questioned what phase the dry cleaning industry would be addressed and if Cantonese is one of the languages for some of the industries. Ms. Coler said one option is to see the outcome of the fee proposal and dry cleaning operators may be brought in during Phase III. As staff conducts schools, the appropriate translating services would be provided according to the audience by either staff or outside services.

Director Spring voiced support for the program and asked to see a stronger emphasis on why the District is holding the schools; what are the benefits to people, participants, and to communities. He also supported the raising of fees to cover costs and expansion of schools in the future. Ms. Coler said staff can spend more time explaining benefits of public health in the next phase.

Director Torliatt echoed comments of Directors, and asked for information on the total number of mobile coaters and art graphic operators in the Bay Area, and Ms. Coler agreed to provide this information.

CLOSED SESSION:

The Board of Directors adjourned to Closed Session at 10:38 a.m.

5. Conference with Labor Negotiators (Government Code § 54957.6(a))

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

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

OPEN SESSION:

The Board of Directors reconvened the Regular Board Meeting at 11:25 a.m. District Counsel Brian Bunger stated there was no reportable action taken in Closed Session.

OTHER BUSINESS

6. Report of the Executive Officer/APCO

Executive Officer/APCO Jack Broadbent gave an overview of the Winter 2009-10 PM2.5 Season, stating that the District had 6 days over the federal standard, and that the District had called 7 Winter Spare the Air Alerts. In response to Director Torliatt, Mr. Broadbent noted the highest reading seen was in San Rafael at 47 micrograms, where the standard is 35 micrograms, in January 2010.

Mr. Broadbent said at the next Board meeting, staff will provide a review of the WSTA program to the Board. Mr. Broadbent then introduced Mr. Damian Breen to provide an update about the District's Port drayage truck retrofits/replacements.

Director of Strategic Incentives, Damian Breen, provided a status report on Port truck retrofit/replacement program at the Port of Oakland, as follows:

Retrofits:

- 635 devices installed
- 170 on order for February

Replacements:

- 38 trucks replaced
- 149 on order for March

He discussed the Supplemental Program, as follows:

1/1/10: Up to \$11 million available: \$3 million in locomotive funds and \$8 million in Year 2 I-Bond funding; \$5,000 for truck retrofits and \$50,000 for truck replacements;
1/8/10: 786 applicants requested supplemental funding
2/5/10: 597 applicants provided proof of financing and staff is still working with 158 others
2/19/10: Applicants pre-inspected by the Air District
2/26/10: Contracts executed with applicants
4/30/10: All retrofits and replacements in place

7. Chairperson's Report

Chairperson Wagenknecht requested information be forwarded to the Board on the various county meetings on update of CEQA guidelines and asked that Directors attend meetings in their respective jurisdictions. Mr. Broadbent agreed to email the information out to Directors.

Chairperson Wagenknecht announced the cancellation of the March 3, 2010 Board of Directors meeting.

8. Time and Place of Next Meeting: Regular Meeting - Wednesday, March 17, 2010, 9:30 a.m., 939 Ellis Street, San Francisco, CA 94109.

9 Adjournment: The Board of Directors Meeting adjourned at 11:30 a.m.

Lisa Harper
Clerk of the Boards

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson, Brad Wagenknecht and Members
of the Board of Directors

From: Jack P. Broadbent
Executive Officer/APCO

Date: March 8, 2010

Re: Board Communications Received from February 17, 2010 through March 16, 2010

RECOMMENDED ACTION:

Receive and file.

DISCUSSION

A list of Communications directed to the Board of Directors received by the Air District from February 17, 2010 through March 16, 2010, if any, will be at each Board member's place at the March 17, 2010 Regular Board meeting.

Respectfully submitted,

Jack P. Broadbent
Executive Officer/APCO

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chair Brad Wagenknecht and Members
of the Board of Directors

From: Jack P. Broadbent
Executive Officer/APCO

Date: March 10, 2010

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

RECOMMENDED ACTION:

Receive and file.

BACKGROUND

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

The out-of-state business travel summarized below covers the period from February 1 – February 28, 2010. Out-of-state travel is reported in the month following travel completion.

DISCUSSION

Saffet Tanrikulu - Research & Modeling Manager, met with University of Arizona staff to discuss PM filter analysis for wood burning meeting in Tucson, AZ February 21 – 22, 2010.

Jeffrey McKay - DAPCO, John Chiladakis - Division Director of Information Services and Jaime Williams – Manager of Information Systems, attended the Microsoft Public Sector CIO Conference in Redmond, WA, February 23 – 25, 2010.

Respectfully submitted,

Jack P. Broadbent
Executive Officer/APCO

Prepared by: Linda J. Serdahl, CPA, CFE
Reviewed by: Jack M. Colbourn

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson, Brad Wagenknecht and Members
of the Board of Directors

From: Jack P. Broadbent,
Executive Officer/APCO

Date: March 8, 2010

Re: Referral of Proposed Budget for Fiscal Year Ending 2011 to the
Budget & Finance Committee

RECOMMENED ACTION:

Refer proposed operating budget for Fiscal Year Ending 2011 to the Budget and Finance Committee for review and consideration.

BACKGROUND

Pursuant to Administrative Code Division II, Section 3.2 Fiscal Policies and Procedures and in compliance with Health and Safety Code Section 40276, the Executive Officer/APCO requests that the Board of Directors refer the proposed budget for Fiscal Year Ending 2011 to the Budget and Finance Committee for review and consideration.

BUDGET CONSIDERATION/FINANCIAL IMPACT:

The proposed general fund budget for Fiscal Year Ending 2011 is \$62,428,303.

Respectfully submitted,

Jack P. Broadbent
Executive Officer/APCO

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Brad Wagenknecht
and Members of the Board of Directors

From: Jack P. Broadbent
Executive Officer/APCO

Date: March 10, 2010

Re: Notice of Proposed Amendments to the Air District's Administrative Code, Division I Operating Policies and Procedures of the Board of Directors, Section 6: Board of Directors, Committees - Establishing a Maritime Sources and Ports Committee

RECOMMENDED ACTION:

Notice of Proposed Amendments to the Air District's Administrative Code, Division I Operating Policies and Procedures of the Board of Directors Section 6.2 Standing Committees (i), (j), (k), and Sections: 6.13-6.15 establishing a Maritime Sources and Ports Committee; all other changes are re-ordering of existing sections. The proposed revisions are indicated in underline and strikethrough in the attached proposal.

BACKGROUND

The Board of Directors at its February 3, 2010, meeting/retreat voted unanimously to establish the Ad Hoc Committee on Port Emissions as a Standing Committee; thereby, removing the ad hoc designation.

In accordance with provisions of the Administrative Code governing amendments to the Code, notice is hereby given that at the Board of Directors' regular meeting of March 17, 2010, the Board will consider proposed amendments to the Administrative Code establishing the Maritime Sources and Ports Committee.

DISCUSSION

This noticing action will start the process of amending the Air District's Administrative Code to create a new Standing Committee of the Board of Directors designated the Maritime Sources and Ports Committee.

BUDGET CONSIDERATION/FINANCIAL IMPACT:

None.

Respectfully submitted,

Jack P. Broadbent
Executive Officer/APCO

Prepared by: Mary Ann Okpalaugo
Reviewed by: Jack Colbourn

Attachment(s)

Proposed Amendments to Administrative Code Division 1 Operating Policies and Procedures of the Board of Directors Section 6: Establishing a Maritime Sources and Ports Standing Committee

SECTION 6.2 STANDING COMMITTEES

6.2 STANDING COMMITTEES. (Proposed Revision 2/2010)

Standing Committees of the Board of Directors shall be the following:

- (a) Executive Committee, consisting of the Chairperson of the Board, who shall be Chairperson of the Committee, the Vice-Chairperson of the Board, the Board Secretary, the last past Chairperson and five (5) other Directors appointed by the Chairperson.
- (b) Budget and Finance Committee, consisting of nine (9) Directors appointed by the Chairperson.
- (c) Personnel Committee, consisting of nine (9) Directors appointed by the Chairperson.
- (d) Legislative Committee, consisting of nine (9) Directors appointed by the Chairperson.
- (e) Mobile Source Committee, consisting of nine (9) Directors appointed by the Chairperson.
- (f) Public Outreach Committee, consisting of (9) Directors appointed by the Chairperson.
- (g) Stationary Source Committee, consisting of nine (9) Directors appointed by the Chairperson.
- (h) Climate Protection Committee, consisting of nine (9) Directors appointed by the Chairperson.
- (i) Maritime Sources and Ports Committee, consisting of nine (9) Directors appointed by the Chairperson.
- ~~(j)~~ The Chairperson shall be an ex-officio member of all Standing Committees of the Board of Directors.
- ~~(k)~~ Each Standing Committee shall have authority to make recommendations to the Board of Directors for action regarding matters within the scope of the Committee's jurisdiction. A standing committee may discuss but may not make recommendations to the Board of Directors regarding issues outside of its jurisdiction and shall refer such matters to the appropriate committee. Except as specified in this Division or as otherwise specified by the Board of Directors, Standing Committees are not delegated decision-making authority.

6.13

MARITIME SOURCES AND PORTS COMMITTEE (Proposed Revise 3/17/2010)

It is the function of the Maritme Sources and Ports Committee to consider and recommend to the Board of Directors policies relating to the five (5) ports in the Bay Area and maritime activity; such as ferry boats, commercial fishing boats, and tug boats, to ensure diesel emission reductions take place. The Committee shall recommend to the Board of Directors port emission policy issues to reduce air pollution and health risks from maritime port activity, action plans, and goods movement. The Committee will keep itself informed on actions and proposed actions by local, regional, state, federal and international agencies relative to maritime activity.

6.14

QUORUM FOR COMMITTEES. (Revised ~~12/6/06~~)

There is no quorum requirement for a Committee meeting to be held, except that, for the purpose of making a Committee recommendation to the Board of Directors, there is established a quorum of five (5) Committee members.

6.154

COMMITTEE PROCEDURE (REVISED 12/6/06)

- (a) Voting. Only members of the Committee shall be allowed to vote on Committee recommendations.
- (b) Minority Report. Any Committee member can submit a Minority Report to accompany the Committee recommendation submitted to the Board of Directors, but may not use District staff to prepare such report

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson, Brad Wagenknecht and Members
of the Board of Directors

From: Jack P. Broadbent
Executive Officer/APCO

Date: March 3, 2010

Re: Approval of Two Purchase Orders in Excess of \$70,000 for Replacement and
Upgrading of Laboratory Equipment

RECOMMENDED ACTION:

Authorize the Executive Officer to issue a Purchase Order to ThermoFisher Scientific in the amount of \$87,038 and another Purchase Order to Dionex Corporation in the amount of \$106,178.

SUMMARY

Division II, Section 4, 4.3 of the Administrative Code requires that the Board authorize all expenditures over \$70,000. Staff requests that the Board approve the issuance of a Purchase Order to ThermoFisher Scientific in the amount of \$87,038 and another Purchase Order to Dionex Corporation in the amount of \$106,178 for two pieces of laboratory analytical instrumentation.

Staff evaluated instruments from various manufacturers. The ThermoFisher instrument was selected as the best option to meet Air District needs based on initial and operational costs. The Dionex instrument is the only equipment of that type that meets the needs of the Air District. Funds for these purchases were included in the FY 2009-2010 Budget in the Laboratory Program Capital Equipment Account, items 26 (Laboratory Instruments and Upgrade).

DISCUSSION

The laboratory does not have the capabilities to analyze particulate material (PM) filters for metals. This analysis is currently contracted out to commercial labs at a relatively high cost to the Air District. In addition, newly adopted EPA regulations will require the Air District to analyze for lead on PM filters in the near future. There are currently two manufacturers of bench top X-ray Fluorescence instrumentation made especially for filter analysis. The ThermoFisher unit is less expensive and has a more favorable maintenance history. The new ThermoFisher X-ray Fluorescence instrument will give the lab the capability to analyze all types of PM filters for many metals at very low detection limits at a lower cost than the competitor.

The Air District's Laboratory Section currently analyzes PM filters for ionic compounds using a ten year old Ion Chromatograph that has surpassed its useful lifetime. Dionex is the only manufacturer of instrumentation capable of the desired type of analysis. The new Dionex Ion Chromatograph will allow for analysis of PM filters as well as other samples, to continue more

efficiently. The new instrument also has the capability to analyze for additional potentially toxic compounds.

The combined purchase of these laboratory instruments will allow the Air District laboratory to perform speciation analysis of all types of PM filters and further the laboratory's capabilities.

Purchase of the Dionex and ThermoFisher instruments will:

- result in less instrument downtime,
- provide measurements with greater accuracy and stability,
- increase laboratory efficiency,
- allow the lab to analyze for additional potentially toxic compounds,
- allow the Air District to potentially save funds currently spent on contracted analyses.

Therefore, staff recommends purchasing the laboratory instruments from Dionex and ThermoFisher Scientific because this represents the best overall value to the Air District.

BUDGET CONSIDERATION/FINANCIAL IMPACT:

Funds for this purchase were included in the FY 2009-2010 Capital Equipment Budget item 26 (Laboratory Instruments and Upgrade).

Respectfully Submitted,

Jack P. Broadbent
Executive Officer/APCO

Prepared by: Jim Hesson
Reviewed by: Eric Stevenson
Reviewed by: Jean Roggenkamp

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Brad Wagenknecht and Members
of the Board of Directors

From: Jack P. Broadbent
Executive Officer/APCO

Date: March 5, 2010

Re: Report of the Executive Committee Meeting of February 22, 2010

RECOMMENDED ACTION

Receive and file.

BACKGROUND

The Executive Committee met on Monday, February 22, 2010. The Committee received the following reports and updates:

- A) Quarterly Report of the Hearing Board – October 2009 – December 2009
- B) Joint Policy Committee Update
- C) Update On Outreach Regarding Proposed Revisions To The District's California Environmental Quality Act (CEQA) Guidelines And Thresholds Of Significance
- D) Report On The Community Air Risk Evaluation (Care) Program And Identification Of Impacted Communities

The Executive Committee deferred the following reports to the next Executive Committee meeting:

- E) Update Of The 2010 Clean Air Plan
- F) Strategic Facility Planning Process Update

The Executive Committee also met in Closed Session - Conference with Labor Negotiators (*Government Code § 54957.6(a)*). No reportable action was taken.

Attached are the staff reports presented in the Executive Committee packet of February 22, 2010.

Chairperson Brad Wagenknecht will give an oral report of the meeting.

BUDGET CONSIDERATION/FINANCIAL IMPACT

- A) None.
- B) None.
- C) Funding for consultant services to assist with the CEQA Guidelines update is included in the approved FY 2009/2010 Air District budget.
- D) None.

Respectfully submitted,

Jack P. Broadbent
Executive Officer/APCO

Prepared by: Lisa Harper
Reviewed by: Jennifer Chicconi

Attachment(s)

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
 Memorandum

TO: Chairperson Brad Wagenknecht and Members
 of the Executive Committee

FROM: Chairperson Thomas M. Dailey, M.D., and Members of the Hearing Board

DATE: February 9, 2010

RE: Hearing Board Quarterly Report – OCTOBER 2009 – DECEMBER 2009

RECOMMENDED ACTION:

This report is provided for information only.

DISCUSSION:

<u>COUNTY/CITY</u>	<u>PARTY/PROCEEDING</u>	<u>REGULATION(S)</u>	<u>STATUS</u>	<u>PERIOD OF VARIANCE</u>	<u>ESTIMATED EXCESS EMISSIONS</u>
Alameda/Livermore	WASTE MANAGEMENT OF ALAMEDA COUNTY, INC. (LIVERMORE) - Appeal – Docket No. 3571 - <i>Appeal of Permits to Operate for Facility No. B2066, Waste Management of Alameda County, Inc.'s Altamont Landfill and Resource Recovery Facility.</i>	Condition No. 24421; S-206, S-207, S-208, S209 (Major Facility Review Permit)	Pro Forma Hearing Held 10/15/09; Briefing/oral arguments set; Further hearing scheduled for January 29, 2010; postponed to February 25, 2010	===	===
Solano/Fairfield	ASHLAND, INC. (FAIRFIELD) – Emergency Variance – Docket No. 3572 – <i>Application for Emergency Variance from regulation requiring compliance with permit conditions and Volatile Organic Compound Emissions..</i>	8-5-6	Granted	10/26/09 – 11/6/09	===

NOTE: During the fourth quarter of 2009, the Hearing Board processed and filed a total of two applications; one (1) Appeal and one (1) Emergency Variance Application. The Clerk processed two hearing notices, received and filed Respondent's Brief (Appellant) and a Reply Brief (District) for the Appeal and prepared two Orders granting Emergency Variances (Docket Nos. 3570 and 3572). The Hearing Board also held a workshop on November 12, 2009 to review and discuss update of the Hearing Board Rules, and on November 19, 2009, the Chair of the Hearing Board presented the third quarter Hearing Board Report; July through September 2009. A total of \$1,057.09 was collected during the fourth quarter of 2009.

EXCESS EMISSION DETAILS

<u>COMPANY NAME</u>	<u>DOCKET NO.</u>	<u>TOTAL EMISSIONS</u>	<u>TYPES OF EMISSIONS</u>	<u>PER UNIT COST</u>	<u>TOTAL AMT COLLECTED</u>
					\$ 0
				TOTAL COLLECTED:	<u>\$ 0</u>

Respectfully submitted,

Thomas M. Dailey, M.D.
Chair, Hearing Board

Prepared by: Lisa Harper
Reviewed by: Jennifer Chicconi

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Brad Wagenknecht and Members
of the Executive Committee

From: Jack P. Broadbent
Executive Officer/APCO

Date: February 9, 2010

Re: Joint Policy Committee Update

RECOMMENDED ACTION:

Receive and file.

DISCUSSION

At the February 22, 2010 meeting of the Executive Committee, Ted Droettboom will provide an update on the activities of the Joint Policy Committee.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Jack P. Broadbent
Executive Officer/APCO

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Wagenknecht and Members
of the Executive Committee

From: Jack P. Broadbent
Executive Officer/APCO

Date: February 10, 2010

Re: Update on Outreach Regarding the CEQA Guidelines Revision

RECOMMENDED ACTION:

None, for information only.

BACKGROUND

The BAAQMD CEQA Guidelines provide guidance to local lead agencies conducting air quality analyses pursuant to the California Environmental Quality Act (CEQA). Staff is updating and revising the Guidelines.

DISCUSSION

The CEQA Guidelines recommend air quality significance thresholds for local agencies to use when preparing impact analyses under CEQA and provide guidance on the District's recommended analytical methodologies and mitigation measures. Staff has reviewed, and revised as necessary, existing thresholds of significance, and developed new significance thresholds for local air quality impacts and for greenhouse gas emissions from projects subject to CEQA. Staff also has updated analytical methodologies and mitigation measures recommended in the Guidelines.

Staff hosted public workshops for the Guidelines update in February, April and September 2009. Public hearings on the proposed significance thresholds were held by the Board of Directors on November 18 and December 2, 2009, and the Board further discussed the matter at the January 6, 2010 meeting. Staff is planning to bring the proposed CEQA thresholds back to the Board of Directors for their consideration on June 2, 2010.

At the January 6 meeting the Board of Directors directed staff to conduct additional outreach to local agency staff in each of the nine Bay Area counties to improve understanding of the proposed Guidelines update and address issues they may have. Staff have since met with city, county and regional agency staff and officials including the cities of Berkeley, San Francisco, San Mateo and San Jose, Santa Clara County, the Port of Oakland, the Association of Bay Area Governments and the Metropolitan Transportation Commission. Staff also has prepared an outreach plan that includes an agency staff workshop in each county, public workshops, meetings with business and environmental groups, and meetings with planning directors associations and councils of mayors around the Bay Area. Staff is also planning to host training sessions on the computer models and other analytical tools that have been developed to implement the Guidelines.

Staff will provide an update on the outreach being conducted on the recommended thresholds of significance and CEQA Guidelines.

BUDGET CONSIDERATION/FINANCIAL IMPACT:

Funding for consultant services to assist with the CEQA Guidelines update is included in the approved FY 2009/2010 Air District budget.

Respectfully submitted,

Jack P. Broadbent
Executive Officer/APCO

Prepared by: Greg Tholen
Reviewed by: Henry Hilken

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson Brad Wagenknecht and
Members of the Executive Committee

From: Jack P. Broadbent
Executive Officer/APCO

Date: February 11, 2010

Re: Report on the Community Air Risk Evaluation (CARE) Program and
Identification of Impacted Communities

RECOMMENDED ACTION:

Informational item only.

BACKGROUND

The Community Air Risk Evaluation (CARE) program was initiated in 2004 to evaluate and reduce health risks associated with exposures to outdoor toxic air contaminants (TACs) in the Bay Area. The program examines TAC emissions from point sources, area sources, and on-road and off-road mobile sources with an emphasis on diesel exhaust, which is was identified as a major contributor to airborne health risk in the Bay Area. The main objectives of the program are to:

- Evaluate regional and community cancer and non-cancer health risks from ambient (TAC);
- Identify sensitive populations;
- Focus health risk mitigation measures on locations with higher risk levels and sensitive populations.

DISCUSSION

The identification of impacted areas within the Bay Area is an important step to achieving the CARE program objectives. This step has involved identifying areas where TAC concentrations are high and areas where there are many sensitive people exposed. Specifically, the District has developed a method that considers areas where TAC emissions are high, where there are high TAC exposures to youth and seniors, and where there are high percentages of low income families. The emissions are important because we want to focus on source areas as well as where people are exposed; the exposure of youth and seniors is important because many studies suggest that these are among our

most vulnerable populations; and the family income data is important because income is an important determinant in health outcomes at similar exposure levels. Our mapping shows that there is a significant level of overlap among emissions, exposures, and family income.

This method identified the following six areas as impacted communities:

1. Portions of the City of Concord;
2. Western Contra Costa county, including portions of the Cities of Richmond and San Pablo;
3. Western Alameda County along the Interstate-880 corridor, including portions of the Cities of Berkeley, Oakland, San Leandro, San Lorenzo, and Hayward;
4. Portions of the City of San Jose;
5. Eastern San Mateo County, including portions of the Cities of Redwood City and East Palo Alto; and
6. Eastern portions of the City and County of San Francisco.

Staff will provide a presentation on the CARE program and the identification of impacted communities.

BUDGET CONSIDERATION/FINANCIAL IMPACT:

None.

Respectfully submitted,

Jack P. Broadbent
Executive Officer/APCO

Prepared by: Phil Martien
Reviewed by: Henry Hilken

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Wagenknecht and Members
of the Executive Committee

From: Jack P. Broadbent
Executive Officer/APCO

Date: February 11, 2010

Re: Update on the 2010 Clean Air Plan

RECOMMENDED ACTION:

Receive and file.

BACKGROUND

The California Health & Safety Code requires air districts to revise their plans for attaining state ozone standards on a triennial basis. Staff is preparing the 2010 Clean Air Plan to update the District's current ozone plan, known as the 2005 Ozone Strategy. Under the terms of the Health & Safety Code, ozone plans must include "all feasible control measures" and reduce transport to neighboring air basins.

In response to state and federal requirements and guidelines, air quality planning to date has been performed on a pollutant by pollutant basis, with an emphasis on ozone planning. However, in the past several years, there has been growing interest in the concept of multi-pollutant air quality planning. In January 2004, the National Research Council issued recommendations calling for air quality agencies to pursue a multi-pollutant, risk-based, "one atmosphere" approach for air quality planning. US EPA has been moving to gradually embrace the concept of planning on a multi-pollutant basis. The 2010 Clean Air Plan will provide a multi-pollutant approach to air quality planning in the Bay Area.

DISCUSSION:

Although there are no requirements to develop a multi-pollutant plan at this time, the multi-pollutant framework offers a number of potential benefits. The 2010 Clean Air Plan addresses ozone, particulate matter, air toxics, and greenhouse gases via an integrated control strategy that identifies co-benefits and disbenefits of the control measures.

Staff has hosted numerous public workshops to solicit input on potential control measures and other aspects of the plan. Based on the input received at these workshops, and from meetings with our regional agency partners, staff has developed a draft multi-pollutant control strategy containing 56 measures which will be the heart of the plan. Staff expects to soon release the draft 2010 Clean Air Plan and Draft Environmental Impact Report (DEIR) for public review.

Staff will provide a presentation on the draft 2010 Clean Air Plan.

BUDGET CONSIDERATION/FINANCIAL IMPACT:

Resources to develop the 2010 Clean Air Plan are included in the FY 2009/2010 budget.

Respectfully submitted,

Jack P. Broadbent
Executive Officer/APCO

Prepared by: David Burch
Reviewed by: Henry Hilken

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Brad Wagenknecht and Members
of the Executive Committee

From: Jack P. Broadbent
Executive Officer/APCO

Date: February 17, 2010

Re: Strategic Facility Planning Process Update

RECOMMENDED ACTION:

For information only.

BACKGROUND

The Executive Committee at its July 29, 2009, meeting received an overview of the Strategic Facility Planning Process. The Committee received an overview of a revised Request for Proposal for Strategic Facilities Planning issued to include Phase I: Visioning Process. The Strategic Facility Planning process is a multi-phased approach that will be instrumental in determining recommendations for improvements.

The Executive Committee at its November 19, 2009, meeting received an overview of Phase I of the strategic facility planning process to date; the overview included interview and survey results conducted with Executive Management staff, operational staff, the Board of Directors, the Advisory Council and the Hearing Board; confirmation of co-location discussions; and next steps.

The Committee provided follow-up direction to staff. The consensus of the Executive Committee was to have staff continue to move forward with plans to relocate the Air District headquarters with the issuance of a Request for Information (RFI) for Commercial Real Estate and Advisory Services.

DISCUSSION

The Committee will receive an update on the progress to date relative to direction provided to staff at its November 19, 2009 meeting. The overview will include the status of the RFI, recommendations from the San Francisco Department of the Environment on opportunities for improved energy efficiency at the Air District headquarters and results of an engineering study conducted on the HVAC systems.

NEXT PHASE:

The Air District will issue an RFP for a commercial real estate and advisory services based on the RFI results.

Respectfully submitted,

Jack P. Broadbent
Executive Officer/APCO

Prepared by: Mary Ann Okpalaugo
Approved by: Jack Colbourn

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Brad Wagenknecht and Members
of the Board of Directors

From: Jack P. Broadbent
Executive Officer/APCO

Date: March 5, 2010

Re: Report of the Mobile Source Committee Meeting of February 25, 2010

RECOMMENDED ACTIONS

The Committee recommends Board of Directors' approval of the following items:

- A) Approve Carl Moyer Program Year 11 projects with proposed grant awards over \$100,000 listed on Attachment 1; and authorize the Executive Officer/APCO to enter into agreements for the recommended Carl Moyer Program Year 11 projects;
- B) Authorize the Executive Officer/APCO to execute all necessary agreements with the California Air Resources Board (CARB) relating to the Air District's receipt of Carl Moyer Program funds for fiscal year 2009-2010 (Program Year 12); Allocate \$1.5 million in Mobile Source Incentive Funding to the Agricultural Assistance Program for the upcoming funding cycle; and Allocate \$6.5 million in Mobile Source Incentive Funding for projects eligible for funding under the Carl Moyer Program.
- C) Receive and file the results of TFCA Audit Report #11, an audit of the County Program Managers, including the auditor's findings and recommendations for actions to address financial and administrative issues.
- D) Approval of accepting up to \$17.5 million in California Goods Movement Bond funding and authorization for the Executive Officer/APCO to execute all contracts and contingencies to expend this funding pending endorsement by the Board of Directors (Board) Budget and Finance Committee.

BACKGROUND

The Mobile Source Committee met on Thursday, February 25, 2010. The Committee received and considered the following reports and recommendations:

- A) Consideration of approval for Carl Moyer Program Year 11 and Transportation Fund for Clean Air FY 2009/2010 projects with proposed grant awards over \$100,000;
- B) Consideration of Air District Participation in Year 12 of the Carl Moyer Program;
- C) Transportation Fund for Clean Air (TFCA) County Program Manager Audit Report;

- D) Consideration of accepting up to \$17.5 million from Year 1 of the California Goods Movement Bond program for on-road trucks

Attached are the staff reports presented in the Mobile Source Committee packet.

Chairperson, Scott Haggerty will give an oral report of the meeting.

BUDGET CONSIDERATION/FINANCIAL IMPACT

- A) None. Through the CMP, MSIF and TFCA, the Air District distributes “pass-through” funds to public agencies and private entities on a reimbursement basis. Administrative costs for both programs are provided by each funding source.
- B) None. Through the CMP and MSIF the Air District distributes “pass-through” funds to public agencies and private entities on a reimbursement basis. Administrative costs for both programs are provided by each funding source.
- C) None. TFCA funds are distributed by the Air District as “pass-through” funds to County Program Managers
- D) By accepting this funding, the I-Bond Program would continue to require support from the Air District's general fund. ARB has indicated that it will seek to provide an additional \$700,000 to cover the Air District’s administrative costs for this program based on the spring sales of California State bonds. Staff will continue to convey to ARB the importance of receiving funds to cover our administrative costs. However, the timing and actual receipt of this funding is by no means certain. Budget projections for the current I-Bond program indicate that based on salary expenditure rates, the program could require as much as \$1.6 million from the general fund. Acceptance of this on-road truck funding would increase that number by up to \$200,000 and these funds would need to be transferred from reserves. Staff recommends that the transfer of these funds be referred to the Board’s Budget and Finance Committee.

Respectfully submitted,

Jack P. Broadbent
Executive Officer/APCO

Prepared by: Lisa Harper
Reviewed by: Jennifer Chicconi

Attachment(s)

Attachment 1: BAAQMD Year 11 Carl Moyer Program/ MSIF projects with grant awards greater than \$100k (Evaluated between 1/12/10 and 2/10/10)

1	Project #: 11MOY36	Applicant Name: Geoff and David Bettencourt	2 engines
Description: Charter fishing vessel engine repower project			

<i>Unit #</i>	<i>Equipment category</i>	<i>Project type</i>	<i>Cost-effectiveness</i>	<i>Proposed award</i>	<i>NOx (TPY)</i>	<i>ROG (TPY)</i>	<i>PM (TPY)</i>	<i>AB1390 Designation</i>
Mariah Lee-main-1	Marine	Repower	\$7,868.86	\$87,458.00	2.379	0.080	0.077	AB1390
Mariah Lee-aux-1	Marine	Repower	\$13,229.95	\$33,736.00	0.224	0.037	0.016	AB1390
Project Totals				\$121,194.00	2.603	0.117	0.093	

2	Project #: 11MOY47	Applicant Name: Harley Marine Services, Inc.	4 engines
Description: Replacement of 2 engines, in 2 tug boats			

<i>Unit #</i>	<i>Equipment category</i>	<i>Project type</i>	<i>Cost-effectiveness</i>	<i>Proposed award</i>	<i>NOx (TPY)</i>	<i>ROG (TPY)</i>	<i>PM (TPY)</i>	<i>AB1390 Designation</i>
Ernest Campbell-main-1	Marine	Repower only	\$15,073.71	\$221,732.00	4.767	-0.005	0.166	AB1390
Ernest Campbell-main-2	Marine	Repower only	\$15,073.71	\$221,732.00	4.767	-0.005	0.166	AB1390
Pacific Falcon-main-1	Marine	Repower only	\$12,295.02	\$225,482.00	7.781	-0.005	0.271	AB1390
Pacific Falcon-main-2	Marine	Repower only	\$12,295.02	\$225,482.00	7.781	-0.005	0.271	AB1390
Project Totals				\$894,428.00	25.096	-0.020	0.874	

3	Project #: 11MOY143	Applicant Name: Trefethen Family Vineyards	12 engines
Description: Replacement of 11 frost protection engines, and the electrification of 1 engine			

<i>Unit #</i>	<i>Equipment category</i>	<i>Project type</i>	<i>Cost-effectiveness</i>	<i>Proposed award</i>	<i>NOx (TPY)</i>	<i>ROG (TPY)</i>	<i>PM (TPY)</i>	<i>AB1390 Designation</i>
142	Agriculture	Repower only	\$14,940.45	\$9,386.00	0.056	0.007	0.002	Not AB1390

135	Agriculture	Repower only	\$14,940.45	\$9,386.00	0.056	0.007	0.002	Not AB1390
132	Agriculture	Repower only	\$14,940.45	\$0.00	0.056	0.007	0.002	Not AB1390
140	Agriculture	Repower only	\$14,940.45	\$9,386.00	0.056	0.007	0.002	Not AB1390
138	Agriculture	Repower only	\$14,940.45	\$9,386.00	0.056	0.007	0.002	Not AB1390
133	Agriculture	Repower only	\$7,611.72	\$43,011.00	1.119	0.120	0.040	Not AB1390
144	Agriculture	Repower only	\$14,940.45	\$9,386.00	0.056	0.007	0.002	Not AB1390
136	Agriculture	Repower only	\$14,940.45	\$9,386.00	0.056	0.007	0.002	Not AB1390
134	Agriculture	Repower only	\$14,940.45	\$9,386.00	0.056	0.007	0.002	Not AB1390
139	Agriculture	Repower only	\$14,940.45	\$9,386.00	0.056	0.007	0.002	Not AB1390
143	Agriculture	Repower only	\$14,940.45	\$0.00	0.056	0.007	0.002	Not AB1390
137	Agriculture	Repower only	\$14,940.45	\$9,386.00	0.056	0.007	0.002	Not AB1390

Project Totals \$127,485.00 1.735 0.197 0.062

4	Project #: <i>11MOY149</i>	Applicant Name: <i>Spaletta Ranch</i>	<i>1 engine</i>
Description: <i>Agricultural wheel loader replacement project</i>			

<i>Unit #</i>	<i>Equipment category</i>	<i>Project type</i>	<i>Cost-effectiveness</i>	<i>Proposed award</i>	<i>NOx (TPY)</i>	<i>ROG (TPY)</i>	<i>PM (TPY)</i>	<i>AB1390 Designation</i>
1	Off-Road	Replacement	\$15,998.85	\$106,058.00	0.683	0.117	0.035	Not AB1390
Project Totals				\$106,058.00	0.683	0.117	0.035	

5	Project #: <i>11MOY150</i>	Applicant Name: <i>LaFranchi Ranch</i>	<i>1 engine</i>
Description: <i>Agricultural wheel loader replacement project</i>			

<i>Unit #</i>	<i>Equipment category</i>	<i>Project type</i>	<i>Cost-effectiveness</i>	<i>Proposed award</i>	<i>NOx (TPY)</i>	<i>ROG (TPY)</i>	<i>PM (TPY)</i>	<i>AB1390 Designation</i>
1	Off-Road	Replacement	\$15,786.81	\$138,665.00	0.823	0.138	0.051	Not AB1390
Project Totals				\$138,665.00	0.823	0.138	0.051	

6 **Project #: 11MOY151** **Applicant Name:** Austin Creek Aggregates 1 engine

Description: Wheel loader replacement project

<i>Unit #</i>	<i>Equipment category</i>	<i>Project type</i>	<i>Cost-effectiveness</i>	<i>Proposed award</i>	<i>NOx (TPY)</i>	<i>ROG (TPY)</i>	<i>PM (TPY)</i>	<i>AB1390 Designation</i>
1	Off-Road	Replacement	\$15,998.93	\$264,978.00	2.175	0.261	0.106	Not AB1390
Project Totals				\$264,978.00	2.175	0.261	0.106	

7 **Project #: 11MOY163** **Applicant Name:** Neal Carstensen dba Custom Tractor Service 2 engines

Description: Replacement of 2 agricultural tractors with 1 new tractor

<i>Unit #</i>	<i>Equipment category</i>	<i>Project type</i>	<i>Cost-effectiveness</i>	<i>Proposed award</i>	<i>NOx (TPY)</i>	<i>ROG (TPY)</i>	<i>PM (TPY)</i>	<i>AB1390 Designation</i>
2	Off-Road	Replacement		\$0.00	0.000	0.000	0.000	Not AB1390
1	Off-Road	Replacement	\$15,746.01	\$156,275.00	1.154	0.132	0.047	Not AB1390
Project Totals				\$156,275.00	1.154	0.132	0.047	

Summary:	<i>Projects</i>	<i>Engines</i>	<i>Proposed award</i>	<i>NOx (TPY)</i>	<i>ROG (TPY)</i>	<i>PM (TPY)</i>
	7	23	\$1,809,083.00	34.269	0.942	1.268

Attachment 2

Summary of all CMP Yr 11/ MSIF approved projects (4/15/09 to 2/10/10)

Project #	Equipment category	# of engines	Proposed contract award	Applicant name	NOx (TPY)	ROG (TPY)	PM (TPY)	Board approval date	County
11MOY1	Marine	2	\$274,156.00	Robert S. Tuckey	3.435	0.065	0.101	03-Jun-09	San Mateo
11MOY2	Marine	2	\$149,356.00	Blue and Gold Fleet LP	5.368	0.148	0.178	03-Jun-09	San Francisco
11MOY3	Agriculture	6	\$159,834.00	Gallo Family Vineyards	1.550	0.186	0.052	01-Jul-09	Sonoma, Napa
11MOY5	Marine	2	\$155,330.00	Kelli Dickinson	3.306	0.042	0.114	03-Jun-09	Solano
11MOY6	Marine	2	\$152,088.00	Jacqueline G. Douglas	1.296	-0.014	0.045	03-Jun-09	San Francisco
11MOY7	Marine	1	\$72,300.00	Frank A. Rescino	1.638	0.010	0.058	APCO	San Francisco
11MOY8	Marine	2	\$137,500.00	Chuck Louie	1.454	0.016	0.050	03-Jun-09	San Francisco
11MOY9	Marine	1	\$103,830.00	Erik Anfinson	0.562	-0.004	0.019	03-Jun-09	Marin
11MOY10	Marine	2	\$90,996.00	Golden Gate Bridge Highway and Transportation Dist	0.828	0.003	0.022	APCO	San Francisco
11MOY11	Marine	2	\$181,894.00	New Salmon Queen Sportfishing, LLC	2.538	0.000	0.086	11/18/2009	Alameda
11MOY12	Agriculture	1	\$23,193.00	Ricioli Brothers	0.486	0.059	0.016	APCO	Sonoma
11MOY13	Marine	3	\$227,317.00	Fly Rose Marine, Inc.	2.563	0.101	0.084	01-Jul-09	Santa Clara
11MOY14	Off-road	4	\$215,318.00	Fremont Paving	1.294	0.204	0.101	03-Jun-09	Alameda
11MOY17	Marine	2	\$182,160.00	David Underwood	1.557	0.055	0.059	7/1/2009	Solano
11MOY19	Marine	2	\$217,544.00	City of Alameda	15.069	-0.083	0.447	03-Jun-09	Alameda
11MOY20	Marine	8	\$3,791,855.00	City of Vallejo	92.783	1.475	2.756	6/3/2009	Solano
11MOY21	Off-Road	1	\$12,974.00	Thomas D. Eychner Co., Inc.	0.059	0.017	0.005	APCO	Contra Costa
11MOY22	Marine	1	\$41,488.00	Bay Marine Services, Inc.	0.975	0.028	0.032	APCO	Marin
11MOY23	Marine	1	\$74,820.00	Andy Guiliano	0.455	0.000	0.015	APCO	Contra Costa
11MOY24	Locomotive	1	\$101,400.00	Richmond Pacific Railroad	1.052	0.020	0.007	03-Jun-09	Contra Costa
11MOY26	Marine	2	\$165,898.00	State of California, State Parks Department	1.156	0.026	0.038	01-Jul-09	Marin
11MOY27	Marine	2	\$178,962.00	City and County of San Francisco, San Francisco Police Department	2.253	-0.034	0.079	01-Jul-09	San Francisco
11MOY30	Off-road	5	\$112,368.00	J. Flores Construction Company	0.364	0.067	0.066	6/3/2009	San Francisco
11MOY33	Marine	2	\$144,504.00	Brian Guiles	1.329	-0.007	0.046	01-Jul-09	Marin
11MOY34	Marine	2	\$209,056.00	Bodega Bay Sportfishers, Inc.	2.644	0.040	0.084	7/1/2009	Sonoma
11MOY35	Marine	2	\$49,830.00	Matt Butler	1.148	0.030	0.042	APCO	Marin
11MOY36	Marine	2	\$121,194.00	Geoff and David Bettencourt	2.603	0.117	0.093	03-Mar-10	San Mateo
11MOY39	Marine	2	\$61,616.00	Harry Vogal	0.448	0.008	0.016	APCO	San Francisco
11MOY40	Marine	1	\$102,984.00	James Gregory Smith	1.685	-0.001	0.057	01-Jul-09	Contra Costa
11MOY41	Marine	2	\$199,466.00	Bay Marine Services, Inc.	7.122	0.196	0.230	7/1/2009	Marin
11MOY44	Locomotive	5	\$2,609,010.00	California Department of Transportation	49.088	1.158	0.394	01-Jul-09	Sacramento
11MOY46	Marine	3	\$2,068,071.00	APL Maritime Services, Ltd.	22.710	0.810	12.420	01-Jul-09	Alameda
11MOY47	Marine	4	\$894,428.00	Harley Marine Services, Inc.	25.096	-0.020	0.874	3/3/2010	Alameda
11MOY48	Off-Road	1	\$80,767.00	Contra Costa Topsoil, Inc	0.533	0.072	0.027	APCO	Contra Costa
11MOY51	Off-Road	4	\$191,709.00	Stroer & Graff, Inc.	5.007	0.650	0.181	1-Jul-09	Contra Costa
11MOY52	Off-Road	4	\$244,897.00	Salt River Construction Corporation	3.614	0.464	0.126	1-Jul-09	Marin
11MOY54	Off-Road	2	\$27,117.00	St. Francis Electric	0.264	0.052	0.014	APCO	Alameda
11MOY55	Agriculture	2	\$42,180.00	Huneus Vintners, LLC	0.450	0.058	0.014	APCO	Napa
11MOY57	Marine	2	\$526,302.00	Harley Marine Services, Inc.	41.738	0.672	1.240	7-Oct-09	Alameda
11MOY64	Off-Road	7	\$154,249.00	Stroer & Graff, Inc.	1.978	0.241	0.064	7-Oct-09	Contra Costa
11MOY65	Marine	2	\$179,896.00	C-Gull II Sportfishing Inc.	2.131	0.000	0.072	7-Oct-09	Alameda
11MOY66	Agriculture	1	\$39,940.00	Arthur Kunde and Sons, Inc.	0.211	0.026	0.009	APCO	Sonoma
11MOY72	Off-Road	2	\$34,335.00	TMT Enterprises, Inc.	0.000	0.000	0.024	APCO	Santa Clara
11MOY73	Marine	2	\$203,232.00	Edward Gallia	2.983	0.000	0.101	7-Oct-09	Contra Costa
11MOY74	Marine	2	\$75,666.00	Marin County Sheriff's Office	0.666	-0.004	0.022	APCO	Marin
11MOY76	Marine	2	\$166,182.00	Blue Runner, Inc.	1.076	0.022	0.036	7-Oct-09	Marin
11MOY79	Off-Road	1	\$81,195.00	Kingsborough Atlas Tree Surgery, Inc.	0.654	0.087	0.020	APCO	Sonoma
11MOY82	Off-Road	2	\$153,350.00	West Coast Aggregates, Inc.	1.614	0.203	0.081	7-Oct-09	San Mateo
11MOY85	Off-Road	1	\$181,207.00	Mission Trail Waste Systems	1.153	0.226	0.078	7-Oct-09	Santa Clara

Project #	Equipment category	# of engines	Proposed contract award	Applicant name	NOx (TPY)	ROG (TPY)	PM (TPY)	Board approval date	County
11MOY93	Off-Road	1	\$54,288.00	American Soil Products, Inc	0.280	0.053	0.022	APCO	Contra Costa
11MOY97	Off-Road	1	\$47,790.00	Terry Barnard	0.274	0.055	0.017	APCO	Santa Clara
11MOY100	Off-Road	2	\$83,490.00	G & G Heavy Equipment LLC	0.773	0.144	0.048	APCO	Sonoma
11MOY102	Off-Road	1	\$132,853.00	DeBernardi Dairy, Inc.	0.907	0.152	0.056	18-Nov-09	Sonoma
11MOY107	Locomotive	1	\$879,450.00	California Northern Railroad	3.900	0.379	0.124	18-Nov-09	Napa
11MOY109	Off-Road	1	\$52,613.00	McCall Dairy	0.422	0.053	0.013	APCO	Sonoma
11MOY111	Marine	2	\$159,348.00	Westar Marine Services	0.898	0.000	0.030	18-Nov-09	San Francisco
11MOY112	Off-Road	2	\$197,994.00	Evergreen Supply	1.582	0.213	0.062	18-Nov-09	Santa Clara
11MOY113	Marine	1	\$89,565.00	S&J Fisheries	0.763	0.021	0.022	APCO	San Mateo
11MOY114	Off-Road	1	\$22,939.00	Mononi Ranches	0.162	0.027	0.009	APCO	Sonoma
11MOY115	Off-Road	1	\$54,142.00	George Grossi & Son Dairy	0.360	0.065	0.017	APCO	Marin
11MOY116	On-Road	29	\$716,300.00	Livermore Sanitation, Inc.	5.510	0.000	0.000	18-Nov-09	Alameda
11MOY117	Off-Road	3	\$288,308.00	Antioch Building Materials	2.905	0.348	0.101	3-Feb-10	Contra Costa
11MOY118	Off-Road	2	\$154,800.00	Marin Sanitary Service	1.794	0.283	0.074	18-Nov-09	Marin
11MOY119	Marine	2	\$130,554.00	James Robertson	1.009	-0.023	0.036	3-Feb-10	Marin
11MOY120	Agriculture	14	\$303,422.00	Sonoma-Cutrer Vineyards	4.009	0.515	0.128	11/18/2009	Sonoma
11MOY121	Marine	1	\$22,064.00	Steve Fitz	0.238	0.003	0.013	APCO	San Mateo
11MOY122	Off-Road	1	\$30,200.00	James Groverman/Petaluma Pumpkin Patch	0.182	0.031	0.011	APCO	Sonoma
11MOY124	Off-Road	1	\$24,225.00	Thomas W. Crane	0.148	0.025	0.008	APCO	Sonoma
11MOY126	Off-Road	1	\$27,460.00	Riccoli Brothers	0.165	0.029	0.010	APCO	Sonoma
11MOY127	Off-Road	1	\$56,832.00	Simoni & Massoni Farms	0.492	0.085	0.023	APCO	Contra Costa
11MOY129	Off-Road	2	\$285,458.00	Daniel W. Silacci	2.358	0.284	0.091	3-Feb-10	Sonoma
11MOY131	Off-Road	2	\$90,406.00	George Bianchi, Inc.	0.683	0.101	0.034	APCO	Sonoma
11MOY132	Off-Road	1	\$133,675.00	Kilik General Engineering, Inc.	1.127	0.131	0.052	3-Feb-10	Santa Clara
11MOY135	Off-Road	2	\$69,462.00	MCE, Inc. dba Amos Bros Dairy	0.575	0.103	0.027	APCO	Sonoma
11MOY136	Off-Road	1	\$35,714.00	Delmar Friedrichsen	0.214	0.037	0.013	APCO	Sonoma
11MOY137	Off-Road	1	\$124,801.00	Mazzetta Dairy	0.852	0.146	0.054	3-Feb-10	Sonoma
11MOY138	Off-Road	1	\$29,581.00	Albert Mello	0.198	0.036	0.009	APCO	Sonoma
11MOY139	Off-Road	1	\$134,387.00	Mulas Dairy Company	1.001	0.137	0.050	3-Feb-10	Sonoma
11MOY140	Off-Road	1	\$97,738.00	Sonoma Compost	0.971	0.133	0.029	APCO	Sonoma
11MOY141	Marine	1	\$94,895.00	Ted Varena	4.840	0.490	0.120	APCO	Contra Costa
11MOY143	Agriculture	12	\$127,485.00	Trefethen Family Vineyards	1.735	0.197	0.062	3-Mar-10	Napa
11MOY144	Marine	1	\$30,479.00	Mike Holm	0.147	0.004	0.005	APCO	Solano
11MOY145	Off-Road	1	\$34,529.00	Mazzetta Dairy	0.414	0.091	0.026	APCO	Sonoma
11MOY146	Off-Road	1	\$96,225.00	F.A. Maggiore & Sons, LLC	0.772	0.097	0.024	APCO	Contra Costa
11MOY147	Off-Road	2	\$32,667.00	F. Korbel & Bros, Inc	0.201	0.039	0.010	APCO	Sonoma
11MOY148	Off-Road	1	\$78,858.00	Ronald & Robert McClure, Inc.	0.601	0.070	0.022	APCO	Marin
11MOY149	Off-Road	1	\$106,058.00	Spaletta Ranch	0.683	0.117	0.035	3-Mar-10	Sonoma
11MOY150	Off-Road	1	\$138,665.00	LaFranchi Ranch	0.823	0.138	0.051	3-Mar-10	Marin
11MOY151	Off-Road	1	\$264,978.00	Austin Creek Aggregates	2.175	0.261	0.106	3-Mar-10	Sonoma
11MOY152	Off-Road	2	\$62,268.00	Jacobsen Ranches, Inc.	0.475	0.064	0.016	APCO	Sonoma
11MOY153	Agriculture	1	\$18,693.00	Steve MacRostie	-0.013	0.051	0.010	APCO	Sonoma
11MOY155	Off-Road	1	\$35,790.00	Dotti Brothers, LLC	0.216	0.037	0.013	APCO	Sonoma
11MOY157	Marine	2	\$178,720.00	C&W Diving Services	3.130	-0.066	0.112	APCO	Alameda
11MOY160	Off-Road	1	\$29,196.00	Richard Olufs	0.166	0.036	0.010	APCO	Sonoma
11MOY161	Off-Road	2	\$46,374.00	Robert Marsh	0.464	0.110	0.027	APCO	San Mateo
11MOY162	Off-Road	2	\$90,393.00	R. Rossi Co.	0.546	0.096	0.031	APCO	San Mateo
11MOY163	Off-Road	2	\$156,275.00	Neal Carstensen dba Custom Tractor Service	1.154	0.132	0.047	3-Mar-10	Sonoma
11MOY164	Off-Road	1	\$26,020.00	Bianchini, Inc	0.217	0.038	0.013	APCO	Marin
11MOY166	Off-Road	3	\$58,535.00	Kirwan Enterprises dba Geo Dynamics	0.516	0.083	0.020	APCO	Sonoma
11MOY167	Off-Road	1	\$48,800.00	Imhof Tractor Services	0.523	0.104	0.033	APCO	Alameda
11MOY169	Off-Road	1	\$22,065.00	Renati Dairy	0.133	0.023	0.008	APCO	Sonoma
101	Projects	239	\$ 21,972,791.00		374.656	13.263	22.781		

Figure 1: CMP/ MSIF Funding Distribution by Equipment Category as of 2/10/10

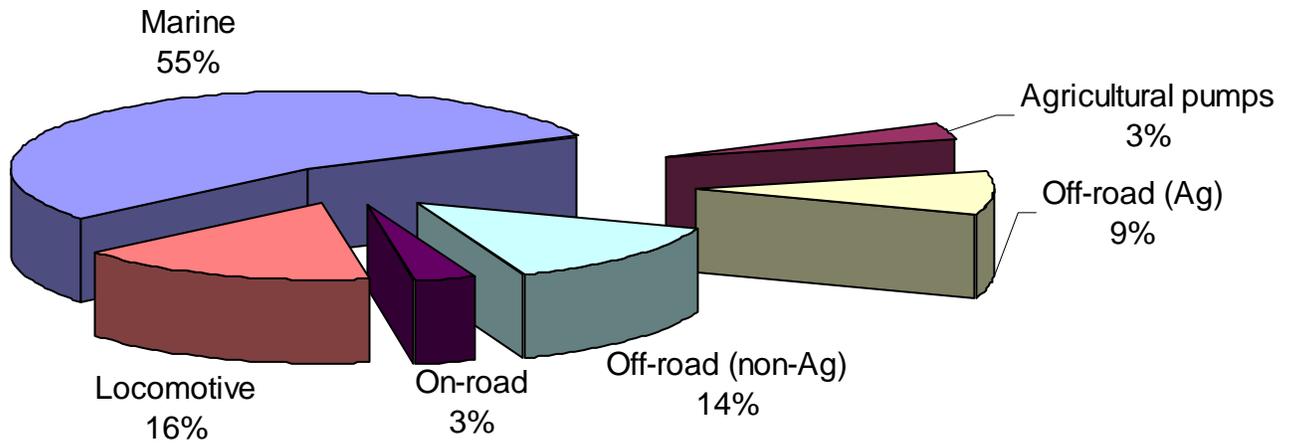
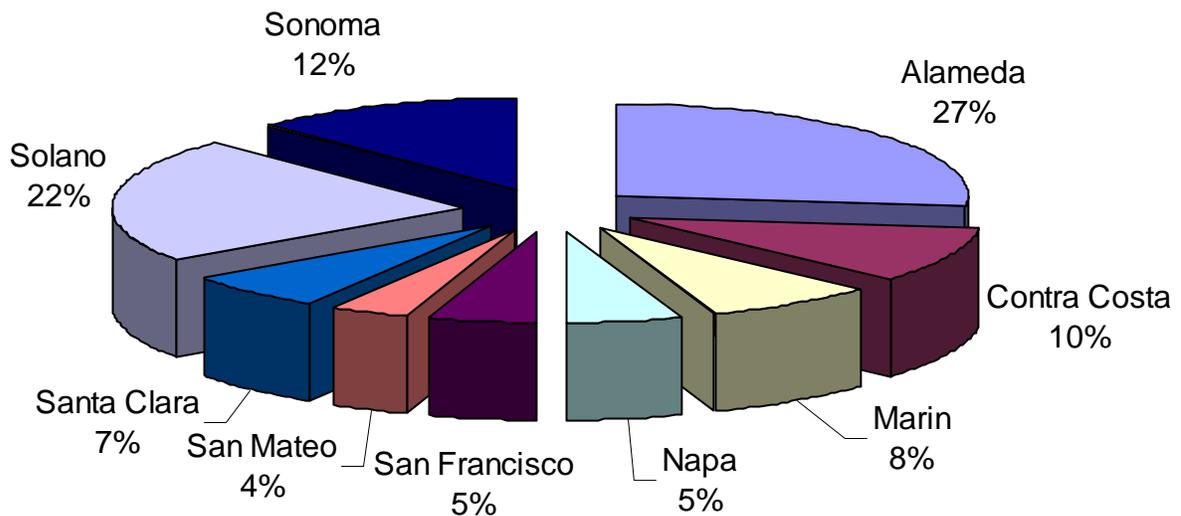


Figure 2: CMP/ MSIF Funding Distribution by County as of 2/10/10



BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Haggerty and
Members of the Mobile Source Committee

From: Jack P. Broadbent
Executive Officer/APCO

Date: February 18, 2010

Re: Consideration of Air District Participation in Year 12 of the Carl Moyer
Program

RECOMMENDED ACTION

Request that the Committee recommend the Board of Directors:

1. Authorize the Executive Officer/APCO to execute all necessary agreements with the California Air Resources Board (CARB) relating to the Air District's receipt of Carl Moyer Program funds for fiscal year 2009-2010 (Program Year 12).
2. Allocate \$1.5 million in Mobile Source Incentive Funding to the Agricultural Assistance Program for the upcoming funding cycle.
3. Allocate \$6.5 million in Mobile Source Incentive Funding for projects eligible for funding under the Carl Moyer Program.

BACKGROUND

The Bay Area Air Quality Management District (Air District) has participated in the Carl Moyer Program (CMP), in cooperation with the California Air Resources Board (ARB), since the program began in fiscal year 1998/ 1999. The CMP provides grants to public and private entities to reduce emissions of oxides of nitrogen (NOx), reactive organic gases (ROG) and particulate matter (PM) from existing heavy-duty engines by either replacing or retrofitting them. Eligible heavy-duty diesel engine applications include on-road trucks and buses, off-road equipment, marine vessels, locomotives, stationary agricultural pump engines, and forklifts.

Assembly Bill 923 (AB 923 - Firebaugh), enacted in 2004 (codified as Health and Safety Code Section 44225), authorized local air districts to increase their motor vehicle registration surcharge up to an additional \$2 per vehicle. The revenues from the additional \$2 surcharge are deposited in the Air District's Mobile Source Incentive Fund (MSIF). AB 923 stipulates that air districts may use the revenues generated by the additional \$2 surcharge for projects eligible for grants under the CMP.

DISCUSSION

Carl Moyer Program Year 12

The Air District has submitted an application to ARB requesting \$14.5 million in funding for the implementation of the Year 12 (FY 2009/ 2010) CMP funding cycle. The Air District has also submitted an application to ARB for \$1.5 million in CMP Multi-District funding. Up to 5% of the total funds awarded to the Air District will be used to pay for administrative expenses related to the implementation of the CMP. As part of the application to ARB, the Air District has proposed the commitment of \$2.8 million in matching funds for the Year 12 Carl Moyer Program cycle, and \$1.5 million in match funding for the Multi-District funds. The Air District will provide the required matching funds by allocating local Mobile Source Incentive Funds (MSIF) to eligible emission reduction projects.

The CMP Multi-District funds requested by the Air District must be used for the on-road Voucher Incentive Program (VIP). The VIP funds the replacement of on-road vehicles for fleets that have 1-3 vehicles. The program was first implemented by the Air District during the CMP Year 11 funding cycle, and will continue into the Year 12 cycle.

Project Solicitation

Staff plans to begin accepting CMP Year 12 applications in early April 2010. Project applications will be accepted and evaluated on a first-come, first-served basis until all funds have been allocated. In accordance with the authorization granted to the Executive Officer/APCO on February 4, 2009, projects with individual grant awards up to \$100,000 will be executed by the Executive Officer/ APCO, and reported to the Mobile Source Committee (MSC) on a regular basis. Eligible projects with individual grant awards over \$100,000 will be brought to the MSC for consideration at least quarterly.

ARB requires districts to use the 2008 CMP Guidelines to allocate Year 12 CMP funds. The guidelines require all projects to achieve a cost-effectiveness of \$16,000 or less per ton of reduced emissions (NO_x, ROG, and weighted PM combined) in order to be eligible to receive funding. Year 12 funding must be obligated to eligible projects by June 30, 2011, and expended by June 30, 2012.

The process used in CMP Year 12 for identifying and prioritizing projects with the most significant exposure (“impacted communities”) will be similar to the process used for CMP Year 11 (FY 2008/ 2009) funding cycle as priority will be given to projects that reduce emissions in the six highest impacted communities: (1) Eastern San Francisco, (2) West Oakland, (3) East Oakland/San Leandro (4) Richmond, (5) San Jose and (6) Concord.

Mobile Source Incentive Funds

Staff requests \$1.5 million in MSIF funds be allocated to Agricultural Assistance projects that will be used to replace stationary agricultural irrigation pump engines. Staff will monitor the interest in this program, and if the demand exceeds the proposed allocation, staff will request additional MSIF funding for these projects. Staff also requests \$6.5

million in MSIF funds be allocated to eligible projects evaluated during the CMP Year 12 funding cycle. These funds will be used to cover the Air District match requirement for the CMP state funds, and will be used to fund additional CMP eligible projects.

BUDGET CONSIDERATION / FINANCIAL IMPACT

None. Through the CMP and MSIF the Air District distributes “pass-through” funds to public agencies and private entities on a reimbursement basis. Administrative costs for both programs are provided by each funding source.

Respectfully submitted,

Jack P. Broadbent
Executive Officer/APCO

Prepared by: Anthony Fournier
Reviewed by: Damian Breen

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Haggerty and
Members of the Mobile Source Committee

From: Jack P. Broadbent
Executive Officer/APCO

Date: February 15, 2010

Re: Transportation Fund for Clean Air (TFCA) County Program Manager Audit Report

RECOMMENDED ACTION

Receive and file the results of TFCA Audit Report #11, an audit of the County Program Managers, including the auditor's findings and recommendations for actions to address financial and administrative issues.

BACKGROUND

California Health and Safety Code Section 44242 requires fiscal auditing of each project or program funded by TFCA. The fiscal audits are to be conducted by an independent auditor selected by the Bay Area Air Quality Management District (Air District).

DISCUSSION

The Air District retained the services of Maze & Associate to conduct the fiscal audits of closed (completed) TFCA County Program Manager Fund projects that were completed as of June 30, 2008. The audits were conducted November 2008 through April 2009. Maze & Associates completed and issued nine audit reports (one for each agency audited) to the Air District and appropriate County Program Manager for review and comment.

The auditor's Summary Report, a compilation of the nine audit reports, is attached and a list of the audited projects is provided in Appendix B of the Audit Summary Report. Each Program Manager was provided an opportunity to respond in writing to the findings; responses are included in the auditor's report. The report contains two exceptions regarding the handling and reporting of administrative funds by one Program Manager, which have been addressed.

The audit provided recommendations for improving the administration and fiscal management of the TFCA Program. These recommendations centered on the two exceptions identified in the report. In response to these exceptions and the auditor's recommendations the District has taken steps to ensure that Program Managers use the proper methodology for determining the maximum allowable administrative costs and has updated guidance, policies and forms. A summary of the Air District's response to the findings, the auditor's recommendations, and the Air District's remediation effort are contained in the report.

BUDGET CONSIDERATION / FINANCIAL IMPACT

None. TFCA funds are distributed by the Air District as “pass-through” funds to County Program Managers.

Respectfully submitted,

Jack P. Broadbent
Executive Officer/APCO

Prepared by: Karen Schkolnick
Reviewed by: Damian Breen

Attachment 1: Bay Area Air Quality Management District Audit Summary Report

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT
AUDIT SUMMARY REPORT**

**Transportation Fund for Clean Air (TFCA)
Program Manager Fund**

For Specified Projects Conducted for the Period from
July 1, 2006 through June 30, 2008

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BAY AREA AIR QUALITY MANAGEMENT DISTRICT

AUDIT SUMMARY REPORT

Transportation Fund for Clean Air Program Manager Fund
For Specified Projects Conducted from the Period of July 1, 2006 through June 30, 2008

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BAY AREA AIR QUALITY MANAGEMENT DISTRICT

AUDIT SUMMARY REPORT

Transportation Fund for Clean Air Program Manager Fund

For Specified Projects Conducted from the Period of July 1, 2006 through June 30, 2008

INTRODUCTION

The Bay Area Air Quality Management District (Air District), created by the California Legislature in 1955, is the state's first regional agency dealing with air pollution. The Air District regulates stationary sources of air pollution within the nine San Francisco Bay Area counties in California. The Air District's jurisdiction includes Alameda County, Contra Costa County, Marin County, Napa County, City/County of San Francisco, San Mateo County, Santa Clara County, southern Sonoma County, and south-western Solano County. The primary mission of the Air District is to achieve ambient air quality standards designed to protect the public's health and the environment. The Air District is governed by a 22-member Board of Directors who has the authority to develop and enforce regulations for the control of air pollution within its jurisdiction.

Health and Safety Code Sections 44241 and 44242 authorize a surcharge on the motor vehicle registration fee (surcharge) to be used by the Air District and local governments to fund projects that implement transportation control measures in accordance with the 1988 California Clean Air Act and the Bay Area 2005 Ozone Strategy. These measures are designed specifically to reduce air pollution from motor vehicle usage. The Department of Motor Vehicles collects the surcharge and subvenes the amount to the Air District.

The Air District administers these funds through the Transportation Fund for Clean Air (TFCA) Program. Under the TFCA Program, money is allocated to two funds: (1) 60% of the total TFCA funds is placed in a Regional Fund for distribution by the Air District and (2) 40% is placed in the Program Manager Fund and allocated to designated agencies (known as program managers). Program managers are responsible for allocating funds to eligible project sponsors within a specific geographic area. Allowable projects under Health and Safety Code Section 44241 include the following:

- Ridesharing programs
- Purchase or lease of clean fuel buses for school and transit operators
- Feeder or shuttle bus service to rail and ferry stations and airports
- Arterial traffic management
- Demonstrations in congestion pricing of highways, bridges and public transit
- Rail-bus integration and regional transit information systems
- Low-emission vehicle based projects
- Bicycle facility improvement projects
- Physical improvements that support "Smart Growth" projects

State law requires that any agency receiving TFCA funding be subject, at least once every two years, to an audit of each funded project. California Health and Safety Code Section 44242 provides legal compliance guidelines for the Air District to follow if revenues were not spent appropriately or if funded projects did not result in emission reductions.

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

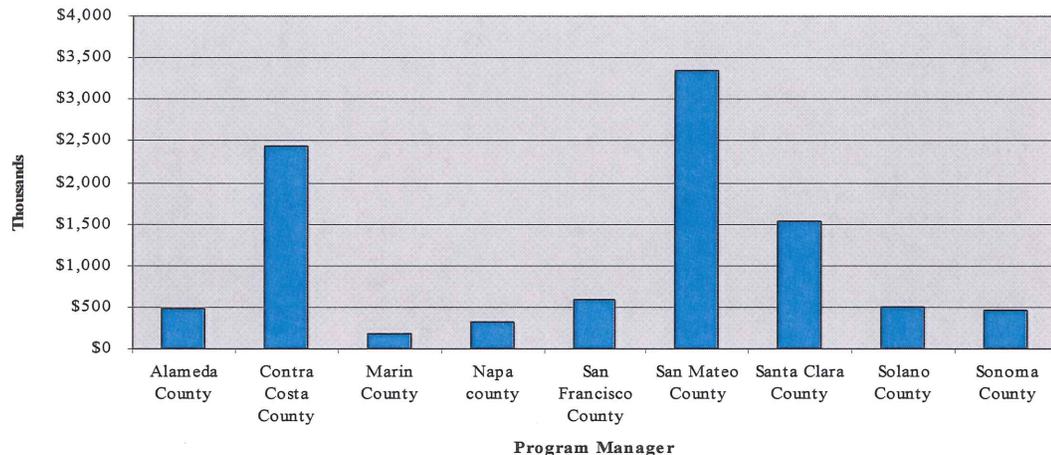
AUDIT SUMMARY REPORT

Transportation Fund for Clean Air Program Manager Fund For Specified Projects Conducted from the Period of July 1, 2006 through June 30, 2008

INTRODUCTION (Continued)

The Air District retained the firm of Maze and Associates, Certified Public Accountants, to conduct financial and compliance audits of specified projects using the Program Manager Fund (40% fund) conducted for the period from July 1, 2006 through June 30, 2008. The graph below reports the amount of TFCA Funds allocated to each of the individual Program Managers for projects that closed during the period from July 1, 2006 through June 30, 2008. These audits were performed during the period of November 2008 through April 2009. A list of audited projects is provided in Attachment B.

**Total Funds Allocated by Program Manager for Specified Projects
Conducted for the period from July 1, 2006 through June 30, 2008**



AUDIT PROCESS

The audits were designed to address numerous financial and compliance objectives. However, the principal objective of the audits was to determine whether TFCA revenues provided by the Air District were used to implement projects to reduce air pollution as stipulated in the funding agreements between the Air District and the Congestion Management Agency. The auditors developed audit procedures specifically designed for TFCA financial and compliance requirements. The approach is briefly described below:

Auditing Standards and Scope

The audits were performed in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in the *Government Auditing Standards*, issued by the Comptroller General of the United States. The expenditures under audit were TFCA expenditures, incurred by the Program Managers in the Air District's jurisdiction, related to projects with funding allocated during the period July 1, 2006 to June 30, 2008, and had been reported closed as of June 30, 2008. A list of the audited projects is provided in Attachment B.

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

AUDIT SUMMARY REPORT

Transportation Fund for Clean Air Program Manager Fund

For Specified Projects Conducted from the Period of July 1, 2006 through June 30, 2008

AUDIT PROCESS (Continued)

Compliance Auditing Procedures

The compliance audits were performed in accordance with generally accepted auditing standards in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. The principal focus of the compliance audits was to ensure that TFCA revenues were used in accordance with the requirements outlined in the Health and Safety Code and individual funding agreements. In the individual Program Manager Fund audits, a report entitled "Independent Auditor's Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of a Financial Schedule Performed in Accordance with *Government Auditing Standards* and Requirements of Section 44241 of the California Health and Safety Code" was issued for each Program Manager to provide specific assurance that the Program Manager did or did not comply with the Health and Safety Code. Each of the nine program managers audited received an unqualified opinion.

CURRENT PERIOD AUDIT RESULTS BY PROGRAM MANAGER

A summary of audit exceptions is provided below. For additional details, please contact the Air District's auditor: Katherine Yuen, Maze & Associates at 925-930-0902.

NAPA COUNTY

2008-1:

Criteria:

In Attachment A Funding Agreement, (06-NAP) between the Bay Area Air Quality Management District and the Agency states that the maximum allowed administration costs covered under this Agreement is \$5,000. The Agency should not charge more than the allotted amount to the TFCA program funded by this Agreement.

Condition:

According to the Agency's general ledger, the amount of \$5,913.44 of administration costs charged to Funding Agreement (06-NAP) for the TFCA program; exceeded the amount allowed by the agreement by \$913.44.

Effect:

The Agency is out of compliance with this requirement stated in the Funding Agreement (06-NAP).

Cause:

We were informed that the Agency staff records on their time sheet each week actual time spent administering the TFCA Program. The total accumulated amount spent each month is then drawn down from the TFCA account.

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

AUDIT SUMMARY REPORT

Transportation Fund for Clean Air Program Manager Fund

For Specified Projects Conducted from the Period of July 1, 2006 through June 30, 2008

CURRENT PERIOD AUDIT RESULTS BY PROGRAM MANAGER (Continued)

NAPA COUNTY (Continued)

Recommendation:

Before expenses are charged to the TFCA programs, the Agency should review all the Funding Agreements in detail to ensure that actual charges do not exceed allowable amounts.

Napa County Program Manager Management Response:

The Agency was made aware of this situation during the time of this audit that it had inadvertently over drawn \$913.44 in excess for Project 06NAP00. The Agency will be taking the measures necessary to correct this matter. Action was delayed at the time (March 2009) primarily because the Agency was undergoing its external audit and its end-of-year closing for FY 2007-2008 with the Agency Board accepting final audited report at its Board meeting in April 2009. The Agency has initiated the actions necessary to restore these funds back into the TFCA account and will include a copy of that transaction in the project folder. In addition, the Agency will be taking the necessary internal controls to ensure that the Agency caps the charges to the funding limits set forth in the Funding Agreement including any associated Amendments to that Funding Agreement.

2008-2:

Criteria:

Annually, the Agency submits a report for each Funding Agreement to the Air District itemizing (a) the expenditures of the funds, (b) progress to date in the implementation of each funded project or projects, and (c) the results of the monitoring of the performance of the project or projects....”

Condition:

In review of the Annual Report related to the Funding Agreement (07NAP) for fiscal year 2007-08, the Agency reported the approved maximum amount of \$9,679 for project 07NAP00, Program Administration. According to the Amendment No. 1 to the Funding Agreement (07NAP), the amended amount should be \$5,979.50.

Effect:

The amended amount for Project #07NAP00 was overstated on the Annual Report.

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

AUDIT SUMMARY REPORT

Transportation Fund for Clean Air Program Manager Fund

For Specified Projects Conducted from the Period of July 1, 2006 through June 30, 2008

CURRENT PERIOD AUDIT RESULTS BY PROGRAM MANAGER (Continued)

Cause:

The amount stated in the original fully executed Funding Agreement 07NAP approved the amount for administration at \$9,679.00 and left \$115,321.00 unallocated. Amendment No. 1 to 07NAP reprogrammed the available funds and it was at that time that the administration for FY 2007-2008 was adjusted to correct an error in the calculation since it originally took into account all available funds rather than the DMV revenues to be spent on FY 2007-2008. This adjustment was not specifically called out in the transmittal of the fully executed Amendment No. 1 to the Agency.

Recommendation:

Prior to submittal of the Annual Report, the Agency should compare data with the Funding Agreements for accuracy.

Napa County Program Manager Management Response:

The Agency was made aware of this fact during the time of this audit. Fortunately, as a result of becoming an independent agency on July 1, 2008, the Agency is now directly managing its own finances. To date the Agency has only drawn down \$1,542.90 for Project 07NAP00 and was waiting for the completion of their external audit and the end-of-year closing in March 2009 before processing the remainder of \$4,436.60. The Agency is in the process of developing a tracking and monitoring system to ensure that the Agency is in compliance as we continue to administer this program.

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

AUDIT SUMMARY REPORT

Transportation Fund for Clean Air Program Manager Fund

For Specified Projects Conducted from the Period of July 1, 2006 through June 30, 2008

RECOMMENDATION TO THE AIR DISTRICT

2008-1

According to Section 44233 of the Health and Safety Code, “not more than 5 percent of the fees distributed to any district.....or distributed by a district to any other public agency pursuant to this chapter, shall be used by the district or other public agency for administrative costs.” In addition, Section II Item (7) of the Funding Agreements under this audit requires the Program Managers, “To limit administrative costs in the handling of these funds to no more than five (5) percent of the funds received.”

Also included on each of the Funding Agreements under this audit was Attachment A which shows summary information of the program. Item (6) of Attachment A shows an amount of “Total TFCA funds budgeted for administration.” This amount was calculated, by the District, by taking five percent of “Total new TFCA funds”, which was a combination of current year estimated TFCA revenue and an adjustment between prior year estimated and actual revenues.

During our audit of the nine Program Managers, we noticed that different Program Managers have different interpretations on the above requirement. Some adhered to the language stated on Section II Item (7) of the Funding Agreements; while others adhered to the amounts stated on Attachment A.

In order to provide consistency and ensure that the Funding Managers are in compliances with the applicable regulations, we recommend the District communicate to the Funding Managers in writing the proper methodology for applying the 5 percent administrative cost limitation.

District’s Response:

The Air District has taken steps to ensure that Program Managers use the proper methodology for determining maximum allowable administrative costs.

The proper methodology limits administrative costs to five percent of funds received on a per-year basis. On the other hand, the administrative cost line item on Attachment A of the funding agreement is only an *estimate* of the maximum administrative costs, not a limitation on those costs.

The Air District has revised the forms used for estimating expenditures to clarify this point, and is ensuring that all guidance, funding agreements and attachments, and communications are consistent regarding the proper methodology for limiting administrative costs.

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

AUDIT SUMMARY REPORT

Transportation Fund for Clean Air Program Manager Fund

For Specified Projects Conducted from the Period of July 1, 2006 through June 30, 2008

ATTACHMENTS

ATTACHMENT A

California Health and Safety Code Section 44241

44241.

(a) Fee revenues generated under this chapter in the bay district shall be subvended to the bay district by the Department of Motor Vehicles after deducting its administrative costs pursuant to Section 44229.

(b) Fee revenues generated under this chapter shall be allocated by the bay district to implement the following mobile source and transportation control projects and programs that are included in the plan adopted pursuant to Sections 40233, 40717, and 40919: (1) The implementation of ridesharing programs. (2) The purchase or lease of clean fuel buses for school districts and transit operators. (3) The provision of local feeder bus or shuttle service to rail and ferry stations and to airports. (4) Implementation and maintenance of local arterial traffic management, including, but not limited to, signal timing, transit signal preemption, bus stop relocation and "smart streets." (5) Implementation of rail-bus integration and regional transit information systems. (6) Implementation of demonstration projects in telecommuting and in congestion pricing of highways, bridges, and public transit. No funds expended pursuant to this paragraph for telecommuting projects shall be used for the purchase of personal computing equipment for an individual's home use. (7) Implementation of vehicle-based projects to reduce mobile source emissions, including, but not limited to, engine repowers, engine retrofits, fleet modernization, alternative fuels, and advanced technology demonstrations. (8) Implementation of a smoking vehicles program. (9) Implementation of an automobile buy-back scrappage program operated by a governmental agency. (10) Implementation of bicycle facility improvement projects that are included in an adopted countywide bicycle plan or congestion management program. (11) The design and construction by local public agencies of physical improvements that support development projects that achieve motor vehicle emission reductions. The projects and the physical improvements shall be identified in an approved area-specific plan, redevelopment plan, general plan, or other similar plan.

(c) (1) Fee revenue generated under this chapter shall be allocated by the bay district for projects and programs specified in subdivision (b) to cities, counties, the Metropolitan Transportation Commission, transit districts, or any other public agency responsible for implementing one or more of the specified projects or programs. Fee revenue generated under this chapter may also be allocated by the bay district for projects and programs specified in paragraph (7) of subdivision (b) to entities that include, but are not limited to, public agencies, consistent with applicable policies adopted by the governing board of the bay district. Those policies shall include, but are not limited to, requirements for cost-sharing for projects subject to the policies. Fee revenues shall not be used for any planning activities that are not directly related to the implementation of a specific project or program. (2) The bay district shall adopt cost-effectiveness criteria for fee revenue generated under this chapter that projects and programs are required to meet. The cost-effectiveness criteria shall maximize emissions reductions and public health benefits.

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

AUDIT SUMMARY REPORT

Transportation Fund for Clean Air Program Manager Fund

For Specified Projects Conducted from the Period of July 1, 2006 through June 30, 2008

ATTACHMENT A (Continued)

(d) Not less than 40 percent of fee revenues shall be allocated to the entity or entities designated pursuant to subdivision (e) for projects and programs in each county within the bay district based upon the county's proportionate share of fee-paid vehicle registration.

(e) In each county, one or more entities may be designated as the overall program manager for the county by resolutions adopted by the county board of supervisors and the city councils of a majority of the cities representing a majority of the population in the incorporated area of the county. The resolution shall specify the terms and conditions for the expenditure of funds. The entities so designated shall be allocated the funds pursuant to subdivision (d) in accordance with the terms and conditions of the resolution.

(f) Any county, or entity designated pursuant to subdivision (e), that receives funds pursuant to this section, at least once a year, shall hold one or more public meetings for the purpose of adopting criteria for expenditure of the funds and to review the expenditure of revenues received pursuant to this section by any designated entity. If any county or entity designated pursuant to subdivision (e) that receives funds pursuant to this section has not allocated all of those funds within six months of the date of the formal approval of its expenditure plan by the bay district, the bay district shall allocate the unallocated funds in accordance with subdivision (c).

44241.5.

The bay district board shall hold an annual public hearing to review the expenditure of revenues received by the bay district pursuant to Section **44241** to determine their effectiveness in improving air quality.

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

AUDIT SUMMARY REPORT

Transportation Fund for Clean Air Program Manager Fund

For Specified Projects Conducted from the Period of July 1, 2006 through June 30, 2008

ATTACHMENT B

List of Audited Projects

Alameda Project List 2008

Sponsor Project Description	Project Number	TFCA Allocation (Final)
City of Berkeley		
Citywide Bicycle Parking Program	05ALA02	\$25,000
Alameda County CMA		
Program Administration Cost	05ALA00	33,840
Program Administration Cost	06ALA00	7,500
Program Administration Cost	07ALA00	53,307
City of Livermore		
Arroyo Mocho Multiuse Trail Extension	05ALA03	86,803
City of Union City		
Compressed Natural Gas Facility Improvements	05ALA05	120,000
County of Alameda		
Guaranteed Ride Home Program	06ALA01	<u>150,000</u>
Total		<u><u>\$476,450</u></u>

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

AUDIT SUMMARY REPORT

Transportation Fund for Clean Air Program Manager Fund

For Specified Projects Conducted from the Period of July 1, 2006 through June 30, 2008

ATTACHMENT B (Continued)

Contra Costa Project List 2008

Sponsor	Project	Allocation
Project Description	Number	(Final)
Central Contra Costa Transit Authority		
Program Administration Cost	05CC00	\$66,243
Program Administration Cost	06CC00	67,812
Program Administration Cost	07CC00	68,029
City of San Ramon/Southwest Area Transportation		
South County Employer Network	05CC04	30,000
South County Carpool to School Program	05CC05	36,450
Countywide Vanpool Incentive Program	05CC06	70,000
City of Lafayette		
Lamorinda School Bus Program - 17 school busses	05CC02	50,000
Lamorinda School Bus Program	06CC12	50,000
ECCTA dba Tri Delta Transit		
PuriNOx Alternative Fuel	05CC03	53,798
TRANSPAC/City of Pleasant Hill		
Bicycle Rack Project - Central/East Contra Costa	05CC08	24,881
Countywide Carpool Incentive Program	05CC09	174,994
Central/East County Employer Outreach Program	05CC10	119,972
SchoolPool Program	05CC11	203,993
Countywide Transit Incentive Program	05CC12	188,497
Central/East County Employer Outreach Program	06CC05	207,500
Countywide Carpool Incentive Program	06CC06	195,500
Countywide Transit Incentive Program	06CC07	466,113
WCCTAC		
Bay Trail Gap Closure - Richmond Parkway	05CC13	38,693
Employer Based Trip Reduction Program	05CC14	89,000
Countywide Guaranteed Ride Home Program	05CC15	150,000
i-80 Corridor Transit Incentive Program	05CC16	66,000
Class 1 Bike Lane - Montalvin Manor/Tara Hills	05CC17	20,000
Total		<u><u>\$2,437,475</u></u>

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

AUDIT SUMMARY REPORT

Transportation Fund for Clean Air Program Manager Fund

For Specified Projects Conducted from the Period of July 1, 2006 through June 30, 2008

ATTACHMENT B (Continued)

Marin Project List 2008

Sponsor	Project	Project
Project Description	Number	Allocation
		(Final)
Transportation Authority of Marin		
Program Administration	05MAR00	\$18,108
Program Administration	06MAR00	17,912
Program Administration	07MAR00	18,152
Golden Gate Bridge, Highway, & Trans. District		
Bike Racks on Golden Gate Transit	05MAR02	60,000
Marin County		
Video Conferencing Network	05MAR03	67,243
Total		<u><u>\$181,415</u></u>

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

AUDIT SUMMARY REPORT

Transportation Fund for Clean Air Program Manager Fund

For Specified Projects Conducted from the Period of July 1, 2006 through June 30, 2008

ATTACHMENT B (Continued)

Napa Project List 2008

Sponsor	Project	Project
Project Description	Number	Allocation
		(Final)
City of Napa		
Seminary Bike Boulevard	05NAP02	\$12,000
County of Napa		
Conn Creek Class II Bicycle Lane	05NAP01	165,000
Bike Lockers	06NAP06	4,491
Napa County Transportation Planning Agency		
Program Administration Cost	05NAP00	4,370
Program Administration Cost	06NAP00	5,000
Transit Bus Particulate Filters	06NAP04	38,000
Program Administration Cost	07NAP00	5,971
City of American Canyon		
Wetlands Edge Bikeway Extension	06NAP01	<u>86,000</u>
Total:		<u><u>\$320,832</u></u>

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

AUDIT SUMMARY REPORT

Transportation Fund for Clean Air Program Manager Fund

For Specified Projects Conducted from the Period of July 1, 2006 through June 30, 2008

ATTACHMENT B (Continued)

San Francisco Project List 2008

Sponsor	Project	TFCA
Project Description	Number	Allocation
		(Final)
Bart		
Embarcadero Bikestation O&M	05SF01	\$37,000
UCSF Mission Bay Transit Shuttle	05SF12	71,000
UCSF Mission Bay Bicycle Parking	05SF13	42,496
County of San Francisco		
Bicycles for Gardeners	05SF02	14,745
Commuter Benefits Program	05SF04	125,293
Clean Air Vehicle Replacement	05SF05	105,000
Telecommuting Program	05SF06	50,000
CCSF Fleet Bicycle Program	06SF02	18,140
Presidio Trust		
Lockers	05SF11	19,829
San Francisco County Transportation Agency		
Program Administration	05SF00	36,555
Program Administration	06SF00	26,936
Program Administration	07SF00	<u>36,588</u>
Total		<u><u>\$583,582</u></u>

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

AUDIT SUMMARY REPORT

Transportation Fund for Clean Air Program Manager Fund

For Specified Projects Conducted from the Period of July 1, 2006 through June 30, 2008

ATTACHMENT B (Continued)

San Mateo Project List 2008

Sponsor	Project	TFCA
Project Description	Number	Allocation
		(Final)
C/CAG		
Program Administration	05SM00	\$16,317
TFCA FY 2006-2007 Program Management	06SM00	31,661
TFCA FY 2006-2007 Program Management	07SM00	49,099
City of Menlo Park		
Menlo Park Mid-day & Shoppers' Shuttle	05SM01	40,000
Menlo Park Mid-day & Shoppers' Shuttle	06SM01	45,000
Peninsula Congestion Relief Alliance		
TDM/TSM Program	05SM02	143,333
TDM/TSM Program	05SM02	286,667
TDM/TSM Program	06SM02	75,000
TDM/TSM Program	06SM02	375,000
TDM/TSM Program	07SM02	453,000
SamTrans Shuttle Bus Program		
SamTrans Shuttle Bus Service	05SM03	605,000
SamTrans Shuttle Bus Service	06SM03	638,000
SamTrans Shuttle Bus Service	07SM03	576,000
Total		<u><u>\$3,334,077</u></u>

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

AUDIT SUMMARY REPORT

Transportation Fund for Clean Air Program Manager Fund

For Specified Projects Conducted from the Period of July 1, 2006 through June 30, 2008

ATTACHMENT B (Continued)

Santa Clara Project List 2008

Sponsor	Project	Project
Project Description	Number	Allocation
		(Final)
City of Los Altos		
Citywide Bicycle Racks Installation	06SC04	\$17,250
City of San Jose		
On-Street Bicycle Racks	06SC08	40,000
City of Sunnyvale		
Mathilda Avenue Adaptive Traffic Signal Project	06SC03	175,905
Multimodel Station Bike Parking	06SC02	11,000
County of Santa Clara		
Lawrence Expressway Weekend Signal Timing	06SC06	45,000
San Tomas Expressway Traffic Signal Controller Assembles	06SC07	90,000
Santa Clara Valley Transportation Authority		
Program Administration Cost	05SC00	40,020
VTA Light Rail Shuttle program	05SC03	485,000
Program Administration Cost	06SC00	81,956
VTA Light Rail Shuttle program	06SC01	485,000
Program Administration Cost	07SC00	<u>51,979</u>
Total		<u><u>\$1,523,110</u></u>

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

AUDIT SUMMARY REPORT

Transportation Fund for Clean Air Program Manager Fund
For Specified Projects Conducted from the Period of July 1, 2006 through June 30, 2008

ATTACHMENT B (Continued)

Solano Project List 2008

Sponsor Project Description	Project Number	TFCA Allocation (Final)
Solano/Napa Commuter Information		
Ridesharing/Trip Reduction Program	05SOL01	\$195,000
Transit and Bicycle Service and Outreach	06SOL03	210,000
City of Benicia		
Diesel Retrofit Devices for Benicia Busses	07SOL01	10,000
Shuttle Service: Benicia Industrial Park to Vallejo Ferry Terminal	06SOL02	29,325
City of Fairfield		
Fairfield/Suisun Transit Bicycle Racks	07SOL02	13,120
Solano Transportation Authority		
Solano Transportation Authority	05SOL00	15,861
Solano Transportation Authority	06SOL00	15,986
Solano Transportation Authority	07SOL00	16,272
Total		<u><u>505,564</u></u>

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

AUDIT SUMMARY REPORT

Transportation Fund for Clean Air Program Manager Fund
For Specified Projects Conducted from the Period of July 1, 2006 through June 30, 2008

ATTACHMENT B (Continued)

Sonoma Project List 2008

Sponsor	Project	TFCA
Project Description	Number	Allocation
		Final
Sonoma County Transit		
Cotati Intermodal Facility/Park & Ride	05SON03	\$9,695
Transit Marketing Program	05SON04	90,398
Sonoma County Transportation Authority		
Program Administration Cost	05SON00	27,127
Program Administration Cost	06SON00	29,449
Program Administration Cost	07SON00	27,174
City of Sebastopol		
Railroad Forest Bike Path	05SON05	55,451
One Hybrid Light Duty Vehicle	06SON09	2,000
City of Santa Rosa		
FY 2005-06 Voluntary Trip Reduction Program	05SON06	140,000
FY 2005-06 Student Bus Pass Subsidy	05SON08	<u>86,181</u>
Total		<u><u>\$467,475</u></u>

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BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Haggerty and
Members of the Mobile Source Committee

From: Jack P. Broadbent
Executive Officer/APCO

Date: February 17, 2010

Re: Consideration of accepting up to \$17.5 million from Year 1 of the
California Goods Movement Bond program for on-road trucks

RECOMMENDED ACTION

Staff is requesting that the Committee recommend to the Board of Directors:

- Approval of accepting up to \$17.5 million in California Goods Movement Bond funding and authorization for the Executive Officer/APCO to execute all contracts and contingencies to expend this funding pending endorsement by the Board of Directors (Board) Budget and Finance Committee.

BACKGROUND

In November 2006, California voters authorized the Legislature to appropriate \$1 billion in bond funding to the California Air Resources Board (ARB) to quickly reduce air pollution emissions and health risk from freight movement along California’s priority trade corridors. On February 28, 2008, ARB approved an allocation of \$140 million from projected bond sales to the Bay Area trade corridor (\$35 million per year over the next four years.)

Under the guidelines for the program, the Bay Area Air Quality Management District (District) submitted an application to ARB on April 4, 2008, for the first year of program funding (\$31.1 million - less an early grant amount (\$3.4 million) and administrative costs). ARB staff accepted the District’s application and funding was approved by the ARB Board of Directors on May 22, 2008.

Table 1 -Summary of Projects and Funding Requested as Part of I-Bond Application

Project Type	Funding requested
Trucks at Ports and Intermodal railyards*	\$6.3 million
Other Goods movement trucks*	\$17.4 million
Locomotives	\$3.1 million
Marine harbor craft	\$4.3 million
*retrofits and replacements	
Total	\$31.1 million

Since that time, the ARB and the State of California have experienced significant difficulties in providing the Air District with the funding promised under the California

Goods Movement Bond (I-Bond) Program. As part of this report, staff will discuss current budget issues with the I-Bond program and why this current round funding should be accepted by the District.

DISCUSSION

As indicated above, Program Year 1 of the I-Bond was intended to distribute \$35 million in funding to the Air District for goods movement projects in Fiscal Year (FY) 2008/2009. However, due to weak California bonds sales, the ARB stopped and started the distribution of these monies on a number of occasions.

On February 9, 2010, ARB notified the Air District that the remaining funds requested for on-road trucks as part of the Year 1 I-Bond application were available for distribution (\$16,550,000 in grant funding plus over \$700,000 promised to cover Air District administrative costs (see budgetary discussion below)). ARB also indicated that this funding needed to be encumbered in contracts with grantees by June 30, 2010, in order to meet the requirements of state statute and that no administrative fees are currently available to the Air District administer this funding (see budget section below).

Currently, the Air District has over \$19 million in active applications from on-road truck owners for this funding from a grant solicitation in August 2008. It is estimated that based on impending changes to the California Air Resources Board on-road truck regulation that retrofits and replacement of these vehicles would provide emissions in excess of the 0.03 tons per day in diesel particulate matter (DPM) provided by the current drayage truck program. This amounts to more than a 1% reduction in the total diesel particulate matter emitted from heavy duty trucks on Bay Area highways.

It is important to note that 85% of the total health risk from toxic air contaminants in the Bay Area comes from diesel particulates emitted from on-road trucks. Additionally, the health risk assessment performed in the West Oakland community and studies performed as part of the District's Community Air Risk Evaluation (CARE) program also indicate that the majority of the health risk in highly impacted communities comes from on the road diesel truck emissions. It should also be noted, that at present this funding would be the largest and most flexible source of monies available to the Air District to address on-road truck emissions. Other funding sources, such as the Carl Moyer Program, have surplus requirements that make it very difficult to fund any of the retrofits or replacements required by the up to 30,000 on-road heavy duty trucks registered in the Bay Area. Therefore, in order to address these emissions in an expeditious fashion, staff is recommending that this additional funding be accepted from the ARB.

Should the Board choose not to accept this funding, it would either be given to another local agency for distribution, given to another Air District for distribution or the funding would revert to the state legislature.

BUDGET CONSIDERATION / FINANCIAL IMPACT

By accepting this funding, the I-Bond Program would continue to require support from the Air District's general fund. ARB has indicated that it will seek to provide an additional \$700,000 to cover the Air District's administrative costs for this program

based on the spring sales of California State bonds. Staff will continue to convey to ARB the importance of receiving funds to cover our administrative costs. However, the timing and actual receipt of this funding is by no means certain. Budget projections for the current I-Bond program indicate that based on salary expenditure rates, the program could require as much as \$1.6 million from the general fund. Acceptance of this on-road truck funding would increase that number by up to \$200,000 and these funds would need to be transferred from reserves. Staff recommends that the transfer of these funds be referred to the Board's Budget and Finance Committee.

Respectfully submitted,

Jack P. Broadbent
Executive Officer/APCO

Prepared by: Damian Breen
Reviewed by: Jean Roggenkamp

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Brad Wagenknecht and Members
of the Board of Directors

From: Jack P. Broadbent
Executive Officer/APCO

Date: March 5, 2010

Re: Report of the Climate Protection Committee Meeting of March 3, 2010

RECOMMENDED ACTION

Receive and file.

BACKGROUND

The Climate Protection Committee met on Wednesday, March 3, 2010. The Committee received the following reports and updates:

- A) Transportation 2035 Climate Initiatives Grant Funding
- B) Implementation of Greenhouse Gas Regulations for Stationary Sources

Attached are the staff reports presented in the Climate Protection Committee packet.

Chairperson, Pamela Torliatt, will provide an oral report of the meeting.

BUDGET CONSIDERATION/FINANCIAL IMPACTS

- A) None. Air District staff resources will be funded out of the approved FYE 2010 budget and funding for the grant projects will be funded through MTC's Transportation Climate Action Campaign.
- B) None.

Respectfully submitted,

Jack P. Broadbent
Executive Officer/APCO

Prepared by: Lisa Harper
Approved by: Jennifer Chicconi

Attachment(s)

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Torliatt and Members
of the Climate Protection Committee

From: Jack P. Broadbent
Executive Officer/APCO

Date: February 22, 2010

Re: Transportation 2035 Climate Initiatives Grant Funding

RECOMMENDED ACTION

None. For information only.

BACKGROUND

On April 22, 2009, the Metropolitan Transportation Commission (MTC) approved the Transportation 2035 Plan (Plan) for the San Francisco Bay Area. The Plan includes \$400 million earmarked toward the Transportation Climate Action Campaign to implement a comprehensive regional climate initiative focusing on individual actions, public-private partnerships, and incentives and grants for innovative climate strategies. This campaign was developed as a partnership between all four regional agencies.

In October 2009, MTC established the Climate Initiatives Working Group, chaired by MTC Commissioner Kinsey with participation from the Air District, JPC, TransForm, and CMAs. The Working Group recommended an \$80 million program for the first three years (2009-2011) of RTP 2035 funding as an initial component of the Transportation Climate Action Campaign, with four primary elements: 1) Public Education / Outreach; 2) Safe Routes to Schools; 3) Innovative Grants; and 4) Climate Action Program Evaluation.

DISCUSSION

In February, 2010, MTC convened several meetings of a staff-level working group to develop a request for proposals and guidelines to solicit projects throughout the Bay Area for the Innovative Grants element of the regional Transportation Climate Action Campaign. Grant funding in the amount of \$35 million will be available for three program areas:

Safe Routes to Schools Creative Grants - \$2 million
Youth Education Grants - \$3 million
Innovative Grants - \$30 million

AGENDA:

As a partner in this funding program, the Air District will participate at the staff level in review and selection of projects, and in the development of an evaluation component of the grant program.

Staff will brief the Climate Protection Committee on the draft solicitation and review guidelines for this regional grant program.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None. Air District staff resources will be funded out of the approved FYE 2010 budget and funding for the grant projects will be funded through MTC's Transportation Climate Action Campaign.

Respectfully submitted,

Jack P. Broadbent
Executive Officer/APCO

Prepared by: Abby Young
Reviewed by: Henry Hilken

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Torliatt and
Members of the Climate Protection Committee

From: Jack Broadbent, Executive Officer/APCO

Date: March 3, 2010

Subject: Status Report On the Implementation of Greenhouse Gas Regulations for
Stationary Sources

RECOMMENDED ACTION:

Informational Report; receive and file.

BACKGROUND:

To ensure effective implementation of the AB32 Greenhouse Gas (GHG) Scoping Plan, the California Air Resources Board (CARB) has worked with local Air Districts and the California Air Pollution Control Officers Association (CAPCOA) to plan and delineate rule development and compliance responsibilities, and develop the detailed implementation timeline. Seventy-two measures are listed in the timeline, many apply to stationary sources, and some have potential for significant impact on stationary sources in the Bay Area. In addition, Federal regulations under development may result in additional permit requirements for Bay Area facilities with GHG emissions.

DISCUSSION

There are numerous GHG reduction measures that require coordinated efforts between CARB and the local air districts to implement, track, and identify opportunities for emission reductions. Recent work has included measures that focus on petroleum refineries, semiconductor operations, landfills, natural gas transmission, oil and gas extraction operations, refrigerant management, and regional transportation. Staff has been working closely with CARB and CAPCOA on all these measures and anticipates additional staff resource impacts as GHG regulations are implemented.

On December 6, 2007, CARB approved the *Mandatory Reporting of Greenhouse Gas Emissions* regulation. Facilities subject to mandatory reporting are required to have their GHG emissions report verified beginning in 2010 for their 2009 reported emissions. These reports will improve existing GHG inventories, which will be an element in developing CARB's proposed Cap-and-Trade regulation.

On September 30, 2009, EPA announced a proposal that would establish permitting requirements under the Clean Air Act for facilities emitting over 25,000 short tons of GHGs a year. The number of facilities in the Bay Area requiring Title V or Synthetic Minor Operating Permits based on GHG emissions would likely more than double from the current number of 128. The number of projects that would trigger PSD permitting requirements in the Bay Area is more difficult to predict, but an increase of 5 to 10 projects per year is considered to be a reasonable estimate. Adoption of a national Climate Protection Program would likely remove EPA's authority to establish these permit requirements for GHGs under the Clean Air Act.

NEXT STEPS:

Staff will provide a status update on the District's participation and progress in reducing GHG emissions from stationary sources in the Bay Area.

Respectfully submitted,

Jack P. Broadbent
Executive Officer/APCO

Prepared by: Alex Ezersky
Reviewed by: Kelly Wee

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Brad Wagenknecht and Members
of the Board of Directors

From: Jack P. Broadbent
Executive Officer/APCO

Date: March 10, 2010

Re: Report of the Stationary Source Committee Meeting of March 5, 2010

RECOMMENDED ACTION

Receive and file.

BACKGROUND

The Stationary Source Committee met on Friday, March 5, 2010 and considered and received the following reports and updates:

- A) Status Report on Proposed Amendments to Regulation 11, Rule 16: Perchloroethylene and Synthetic Solvent Dry Cleaning Operations
- B) Status Report on Proposed Bay Area Power Plants

Attached are the staff reports presented to the Stationary Source Committee for your review.

Chairperson Gayle Uilkema will give an oral report of the meeting.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None

Respectfully submitted,

Jack P. Broadbent
Executive Officer/APCO

Prepared by: Lisa Harper
Approved by: Jennifer Chicconi

Attachment(s)

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Uilkema and Members
of the Stationary Source Committee

From: Jack P. Broadbent
Executive Officer/APCO

Date: February 24, 2010

Re: Status Report on Proposed Amendments to Regulation 11, Rule 16:
Perchloroethylene and Synthetic Solvent Dry Cleaning Operations

RECOMMENDED ACTION:

Receive and file; provide direction to staff as appropriate on the options for rule amendments being considered.

BACKGROUND

The Board of Directors adopted amendments to District Regulation 11, Rule 16: Perchloroethylene and Synthetic Solvent Dry Cleaning Operations, on March 4, 2009. These amendments incorporated new requirements of the state Airborne Toxic Control Measure (ATCM) for Emissions of Perchloroethylene (Perc) from Dry Cleaning Operations adopted by the California Air Resources Board (CARB). Effective July 1, 2010, the rule amendments prohibit Perc equipment at co-residential dry cleaning facilities, converted Perc machines, and Perc equipment older than 15 years (after date of manufacture). Additionally, the amended rule prohibits all Perc dry cleaning operations effective January 1, 2023.

During discussions of the proposed amendments, the Board indicated dissatisfaction over the Perc phase-out schedule, and directed staff to prepare additional rule amendments that would accelerate the phase-out of Perc dry cleaning equipment in the Bay Area.

DISCUSSION

Staff has prepared four options for an accelerated Perc phase-out as follows:

- A) Perc equipment to be shutdown when reaching 12 years of age beginning July 1, 2011; final phase-out by January 1, 2020;
- B) Perc equipment to be shutdown when reaching 10 years of age beginning July 1, 2011; final phase-out by January 1, 2018;
- C) Perc equipment to be shutdown when reaching 8 years of age beginning July 1, 2011; final phase-out by January 1, 2016; or
- D) Perc equipment to be shutdown when reaching 15 years of age; final phase-out by January 1, 2020.

The following table shows the estimated number of Perc dry cleaning machines that would need to be shutdown over time under the existing 15 year phase-out requirement, and under the four options considered for accelerated phase-out. The figures in the table are based on information staff has collected regarding the type and age of Perc dry cleaning machines in operation in the Bay Area.

Estimated Number of Bay Area Perc Dry Cleaning Machines to be Shutdown Under Various Phase-Out Options

Date	Existing 15 Year Ends 2023	Option A 12 Year Ends 2020	Option B 10 Year Ends 2018	Option C 8 Year Ends 2016	Option D 15 Year Ends 2020
By July 1, 2010	205	205	205	205	205
By July 1, 2011	15	94	165	186	15
By Jan. 1, 2012	9	16	12	6	9
By Jan. 1, 2013	16	42	7	5	16
By Jan. 1, 2014	38	25	8	0	38
By Jan. 1, 2015	32	7	5	0	32
By Jan. 1, 2016	42	8	0	3	42
By Jan. 1, 2017	25	5	0		25
By Jan. 1, 2018	7	0	3		7
By Jan. 1, 2019	8	0			8
By Jan. 1, 2020	5	3			8
By Jan. 1, 2021	0				
By Jan. 1, 2022	0				
By Jan. 1, 2023	3				
Total	405	405	405	405	405

Staff held a public workshop on June 10, 2009, to discuss, and receive comments on Options A, B, and C for an accelerated Perc phase-out schedule (Option D was developed by staff after the workshop). Dry cleaner industry members expressed strong concerns that accelerating the Perc phase-out schedule would be financially burdensome. Many commenters indicated that economic impacts would be exacerbated by the economic downturn that has caused reductions in their sales and profits, and made financing more difficult to obtain. Some commenters also indicated that requiring a large number of machines to be replaced by the initial effective date would create compliance problems because of equipment availability issues, and because the Bay Area has a limited number of machine installers.

A socioeconomic study was completed for Options A, B, and C by the District's consultant BAE. The study determined that the annualized costs of shutting down a Perc dry cleaning machine prior to the end of its useful life ranges from \$2,700 to \$3,100. The total compliance costs (per machine) for each phase-out option is as follows, based on the number of years that a machine would need to be shutdown in advance of the existing 15 year requirement: (A) phase-out of 12 year old machines: \$5,400 to \$9,400, (B) phase-out of 10 year old machines: \$10,800 to \$15,600, and (C) phase-out of 8 year old machines: \$16,200 to \$21,800. These costs represent the loss of equity associated with replacing a machine prior to the existing 15 year phase-out requirement.

The socioeconomic study estimated average annual sales for Bay Area dry cleaners to be \$105,100, with average annual profits of \$6,900. About two-thirds of these facilities, however, are very small businesses with fewer than 5 employees, and average annual sales and profits of \$62,200 and \$4,100, respectively. For these very small facilities, the annual compliance costs of the accelerated phase-out options represent 66 to 76 percent of annual profits, which would continue over a period of 3, 5, or 7 years (for Options A, B, and C, respectively). The study notes that business profit losses of 10 percent or more are considered to indicate a potential for significant adverse economic impacts and, under this measure of burden, all of the options for reducing the useful lifespan are potentially significant.

In light of the significant impacts on small businesses identified, staff developed Option D, which would retain the existing requirement for Perc machines to be shutdown at an age of 15 years, but which would move the final phase-out date up by three years (to January 1, 2020). Under this option, Perc machines with a manufacture date of January 1, 2005 or later would need to be shutdown up to 3 years in advance of reaching 15 years of age. There are three machines (two facilities) in the Bay Area that meet this criterion. Staff believes that Option D addresses the Board's direction for an accelerated Perc phase-out schedule relative to the rest of the state (providing the Bay Area with the most stringent Perc dry cleaning rule of any air district), while minimizing loss of equity to affected facilities. This option also would provide more time (relative to Options A, B, and C) for non-solvent dry cleaning technologies, such as professional wet cleaning and liquid carbon dioxide, to advance prior to deadlines for equipment replacement. Staff is therefore recommending the adoption of Option D.

An Environmental Impact Report (EIR) is currently being prepared for this rule development action. The draft EIR is expected to be issued for public comment in March 2010.

Respectfully submitted,

Jack P. Broadbent
Executive Officer/APCO

Prepared by: Brian Bateman
Reviewed by: Jeffrey McKay

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Uilkema and Members
of the Stationary Source Committee

From: Jack P. Broadbent
Executive Officer/APCO

Date: February 24, 2010

Re: Status Report on Proposed Bay Area Power Plants

RECOMMENDED ACTION:

Receive and file.

BACKGROUND

District staff complete preconstruction permit reviews for a variety of proposed Bay Area power plant projects. These projects range in size from small distributed generation facilities to large central power plants. Proposed thermal power plants with an output of 50 megawatts (MW) or greater must be licensed by the California Energy Commission (CEC), and the District provides a Determination of Compliance (DOC) to the CEC on these projects so that applicable air quality requirements can be subsumed into the CEC license. Some projects also require federal preconstruction air quality permits under the Clean Air Act's Prevention of Significant Deterioration (PSD) program. The EPA has delegated their authority to issue federal PSD permits to the District for projects in the Bay Area.

Power plant projects are subject to stringent New Source Review requirements that include the use of the Best Available Control Technology (BACT) to minimize air pollutant emissions. BACT requirements become more stringent over time due to advances in air pollution control technology, and new power plants are therefore much cleaner than older existing power plants. This is true even though older Bay Area power plants have become much cleaner over time due to the adoption of rules that require retrofit emission controls. Additional permit requirements for proposed power plant projects include emission offsets, air quality impact analysis (for criteria air pollutants), and health risk screening (for toxic air contaminants).

The vast majority of Bay Area power plants exclusively use natural gas, a fuel that results in relatively low air emissions compared to the use of liquid or solid fuels (e.g., fuel oil or coal). The primary pollutants emitted from natural gas-fired power plants are nitrogen oxides (NO_x), carbon monoxide (CO), and carbon dioxide (CO₂). NO_x and CO are criteria air pollutants that are formed in the combustion process -- NO_x from the combination of nitrogen and oxygen in the combustion air, and CO from incomplete combustion of fuel. CO₂ is a greenhouse gas (GHG) generated from the complete combustion of fuel, and it is emitted in much larger quantities than NO_x and CO.

The CEC, in their role as lead agency under their CEQA-equivalent review process, has begun to review GHG emissions from new power plant projects for consistency with California's stringent GHG goals and policies. This review has been in the context of the operation of the entire electricity system of which the proposed plant is an integrated part. Because the system is integrated, and because electricity is produced and consumed instantaneously, any change in output from one generation source is likely to affect the output from all generators. The CEC has noted that the electricity produced from a new plant will most likely displace the output from older, less energy efficient, fossil-fueled plants, thereby reducing the GHG emissions that would otherwise occur. The CEC also indicates that, even as more renewable generation is introduced into the system to meet GHG emission reduction goals, gas-fired power plants will be necessary to provide intermittent generation support, extreme load and system emergencies support, as well as meeting local capacity requirements. At this time, gas-fired plants are better able to provide such services than are most renewables, because they can be dispatched when they are needed.

DISCUSSION

The most recent permit approved by the District for a large new power plant was the PSD permit for the Russell City Energy Center in Hayward. Permit applications for five other power plant projects of 50-MW or larger are currently under review by District staff as follows: (1) Los Esteros Critical Energy Facility, (2) Marsh Landing Generating Station, (3) Willow Pass Generating Station, (4) Oakley Generating Station, and (5) Mariposa Energy Project. All of these projects are dispatchable gas turbine-based power plants that will utilize BACT to minimize emissions including selective catalytic reduction (for NOx), oxidation catalysts (for CO), the exclusive use of natural gas fuel, and modern combustion controls.

Russell City Energy Center (RCEC)

RCEC is a proposed 600-MW natural gas fired combined-cycle power plant to be located at 3862 Depot Road in Hayward. The RCEC includes two gas turbines, two heat recovery boilers, a fire pump engine, and a zero liquid discharge cooling tower. The initial project, proposed by an affiliate of Calpine Corporation, was licensed by the CEC in 2002. The project changed location thereafter and an amendment to the license was required. On June 19, 2007, the District issued a Final Determination of Compliance (FDOC) for the amended RCEC, concluding that the project, with appropriate permit conditions, could comply with all applicable air quality requirements. On September 26, 2007, the CEC approved the amended RCEC and granted a power plant license. The District subsequently issued an Authority to Construct (ATC) and federal PSD permit for the amended RCEC on November 1, 2007. An appeal of the PSD permit resulted in a remand by EPA's Environmental Appeals Board (EAB) that required the District to provide additional opportunities for public comment. In response to this remand, the District conducted more extensive public noticing, held additional comment periods, and held two public hearings in Hayward on the PSD permit. The District received numerous comments on the PSD permit, and revised its proposal based on some of these comments. Permit issuance was further delayed pending the completion of an endangered species consultation by the U.S. Fish and Wildlife Service. The District approved the PSD permit for the RCEC on February 3, 2010 upon completion of the

endangered species consultation. It is expected that the PSD permit for this project will be appealed to the EAB.

Los Esteros Critical Energy Facility (LECEF)

The LECEF, located at 800 Thomas Foon Chew Way in San Jose, is a simple-cycle gas turbine facility that became fully operational in March 2003. The LECEF currently consists of four natural gas fired turbines with a combined nominal output of 180-MW, a fire pump diesel engine, and a one-cell cooling tower. The simple-cycle configuration was planned as the first stage of a phased development leading to conversion to a combined-cycle power plant. The District issued LECEF an ATC on August 22, 2007, for the project to convert the plant to a combined-cycle configuration. This conversion would increase the nominal output to 320-MW, and requires the addition of four heat recovery steam generators, one steam turbine generator and one six-cell cooling tower. On June 5, 2009, the applicant, a Calpine affiliate, submitted a request to renew the conversion project ATC for an additional two years. The District is currently reviewing this ATC renewal request, which requires an updated BACT determination that will likely result in more stringent emission limits.

Marsh Landing Generating Station (MLGS)

MLGS is a proposed 760-MW natural gas fired power plant that is to be located adjacent to the existing Contra Costa Power Plant in unincorporated Antioch. It is expected that construction of the MLGS will allow for the two remaining utility boilers at the Contra Costa Power Plant to be shutdown. MLGS consists of four simple-cycle gas turbines, two natural gas fired preheaters, and associated equipment. An affiliate of Mirant Corporation submitted this permit application to the District and filed an Application for Certification (AFC) with the CEC. The first required formal District action associated with the CEC process is a Preliminary Determination of Compliance (PDOC). The District had initially expected to complete its PDOC review in 2009, but this timeframe became infeasible due to an unexpected change in PSD requirements made by EPA, and because the applicant revised the project on September 22, 2009. The District expects to complete its PDOC review for the project in the first quarter of 2010.

Willow Pass Generating Station (WPGS)

WPGS is a proposed 550-MW natural gas fired power plant to be located in the City of Pittsburg adjacent to the existing Pittsburg Power Plant. The WPGS is a combined-cycle plant that includes two gas turbines with heat recovery boilers and steam turbines. An affiliate of Mirant Corporation submitted this permit application to the District and filed an AFC with the CEC. The first required formal District action associated with the CEC process is a PDOC. Mirant has requested that the District's review of WPGS follow after its review of MLGS.

Oakley Generating Station (OGS)

OGS is a proposed 624-MW natural gas fired power plant to be located at 6000 Bridgehead Road in the City of Oakley. The OGS is a combined-cycle plant that includes two gas

turbines with heat recovery boilers, one steam turbine, and an auxiliary boiler. The applicant, Contra Costa Generating Station, LLC (wholly owned by Radback Energy, Inc.) filed an AFC with the CEC on June 30, 2009, and submitted a permit application to the District on July 13, 2009. The first required formal District action associated with the CEC process is a PDOC. The District is currently conducting its PDOC evaluation for this project.

The Mariposa Energy Project (MEP)

MEP is a proposed 200-MW natural gas fired power plant to be located in northeastern Alameda County, approximately 7 miles northwest of Tracy, 7 miles east of Livermore, and 6 miles south of Byron. The facility would be a simple-cycle generating facility consisting of four gas turbines and associated equipment. The applicant, Mariposa Energy, LLC, filed an AFC with the CEC on June 15, 2009 and submitted a permit application to the District on June 17, 2009. The first required formal District action associated with the CEC process is a PDOC. The District is currently conducting its PDOC evaluation for this project.

Respectfully submitted,

Jack P. Broadbent
Executive Officer/APCO

Prepared by: Brian Bateman
Reviewed by: Jeffrey McKay

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Brad Wagenknecht and Members
of the Board of Directors

From: Jack P. Broadbent
Executive Officer/APCO

Date: March 9, 2010

Re: Report of the Personnel Committee Meeting of March 8, 2010

RECOMMENDED ACTION

The consensus of Committee members present was for the Board of Directors to approve of the following items:

A) Hearing Board Re-Appointments:

1. Re-appoint Thomas M. Dailey, M.D., Medical Member, and Janet Weiss, M.D., Alternate Member, to three-year terms of office, effective April 15, 2010 through April 14, 2013; and
2. Re-appoint Christian Colline, P.D., Engineer Member, and Gilbert G. Bendix, P.E, Alternate Member, to three-year terms of office, effective March 7, 2010 through March 6, 2013.

B) Advisory Council Appointments:

1. Appoint Alexandra Desautels to the Advisory Council, under the Public Health category, to an unexpired term of office, effective immediately through December 31, 2011; and
2. Appoint Michael Sandler to the Advisory Council, under the Community Planning category, to an unexpired term of office, effective immediately through December 31, 2011.

BACKGROUND

The Personnel Committee met on March 8, 2010 to consider recommending Board of Directors' approval to re-appoint the two incumbent Hearing Board Regular and Alternate Members to new, three year terms. The consensus of the Committee members present was for the Board to re-appoint the incumbent, regular and alternate members.

The Committee also conducted interviews of Advisory Council candidates to fill unexpired terms of two members under the *Public Health* and *Community Planning* categories. Based on the Committee's review of candidates' background and responses to interview questions, the consensus of Committee members present was for the Board to appoint the two (2) candidates listed above.

Attached are the staff reports submitted to the Personnel Committee for the March 8, 2010 meeting.

Chairperson Brown will provide an oral report of the meeting.

BUDGET CONSIDERATION/FINANCIAL IMPACTS:

None.

Respectfully submitted,

Jack P. Broadbent
Executive Officer/APCO

Prepared by: Lisa Harper
Reviewed by: Jennifer Chicconi

Attachment(s)

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson Harold Brown and
Members of the Personnel Committee

From: Jack P. Broadbent
Executive Officer/APCO

Date: February 25, 2010

Re: Consider Recommending Board of Directors' Approval to Re-Appoint the
Regular and Alternate Member Positions for the Medical Member and Engineer
Member Categories on the Air District's Hearing Board

RECOMMENDED ACTION:

Consider Recommending Board of Directors' Approval to Re-Appoint the Regular and Alternate Member Positions for the Medical Member and Engineer Member Categories on the Air District's Hearing Board

BACKGROUND:

Pursuant to Section 40800 of the California Health and Safety Code, the Air District is required to maintain a Hearing Board consisting of five members. Section 40801 (d) requires that two public members be appointed and appoint one alternate member for each of the positions, provided that the alternate has the qualifications specified in Section 40801.

Pursuant to Division I, Section 8.6 of the District's Administrative Code, Hearing Board Member terms are limited to twelve (12) consecutive years, with re-appointment possible after a three-year absence. If re-appointed, this will be both the Engineer and Medical Members' final three-year term on the Hearing Board.

DISCUSSION:

The term of office for the Engineer Member/Alternate Member will expire on March 6, 2010. The term of office for the Medical Member/Alternate Member will expire on April 14, 2010. Of the four positions with terms expiring, all four incumbents have expressed an interest in being considered for re-appointment. Therefore, staff recommends that interviews be waived and all four incumbents be re-appointed to a three (3) year term of office.

Respectfully submitted,

Jack P. Broadbent
Executive Officer/APCO

Prepared by: Lisa Harper
Approved by: Jennifer A. Chicconi

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Harold Brown and
Members of the Personnel Committee

From: Jack P. Broadbent
Executive Officer/APCO

Date: February 16, 2010

Re: Conduct Interviews and Consider Recommending Board of Directors' Approval to Fill Unexpired Terms of Office on the Advisory Council in the Community Planning Category and the Public Health Agency Category

RECOMMENDED ACTION:

Conduct interviews and consider recommending Board of Directors' approval to fill unexpired terms of office on the Advisory Council in the Community Planning Category and the Public Health Agency Category

BACKGROUND:

Pursuant to Section 40261 of the California Health and Safety Code, the District is required to maintain an Advisory Council consisting of 20 members. Further, Section 40262 requires that the member categories consist of at least three representatives of public health agencies; at least four representatives of private organizations active in conservation or protection of the environment within the bay district; at least one representative of colleges or universities in the state; and at least one representative of each of the following groups within the bay district: regional park district, park and recreation commissions or equivalent agencies of any city, public mass transportation system, agriculture, industry, community planning, transportation, registered professional engineers, general contractors, architects, and organized labor. To the extent that suitable persons cannot be found for each of the specified categories, council members may be appointed from the general public. The two terms would fill unexpired vacancies and would expire on December 31, 2010.

DISCUSSION:

A member in the Community Planning category resigned effective January 12, 2010, and a member in the Public Health Agency category resigned effective January 14, 2010.

The recruitment period opened on January 26, 2010 and closed on February 18, 2010, after having been extended one week. Applications were reviewed and screened by the Human Resources Office, Technical Services Division and the Executive Office as to each candidate's experience and education relative to the position for which they applied. Two (2) candidates have been selected with the most relevant experience to interview under the category of Community Planning, and two (2) candidates have been selected under the category of Public Health Agency.

Interviews of applicants will take place on March 8, 2010, beginning at 9:40 a.m. The length of each interview will be approximately ten minutes. The application materials for the candidate will be provided to Personnel Committee Members and also presented in a binder at the meeting for review.

Respectfully submitted,

Jack P. Broadbent
Executive Officer/APCO

Prepared by: Lisa Harper
Approved by: Jennifer A. Chicconi

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson, Brad Wagenknecht and Members
of the Board of Directors

From: Jack P. Broadbent
Executive Officer/APCO

Date: March 5, 2010

Re: Overview of the 2009/2010 Wood Smoke Reduction Program

RECOMMENDED ACTION:

Informational Report. Receive and file.

BACKGROUND

On July 9, 2008 the Board of Directors adopted Regulation 6, Rule 3: Wood-burning Devices to protect Bay Area residents from the public health impacts of fine particulate matter (PM) and to reduce harmful emissions from wood smoke pollution. The winter of 2009/2010 was the second *Winter Spare the Air* season which included a mandatory curtailment of wood burning. Along with banning burning of wood and solid fuels during *Winter Spare the Air Alerts*, the rule limits visible emissions, prohibits burning inappropriate materials, restricts the sale and installation of non-EPA certified wood burning devices within the District, and requires labeling on firewood and solid fuels sold within the District. In order to be consistent with the rule's mandatory curtailment requirement, outdoor recreational burning, agricultural burning, and other open burning were also banned on those days. The *Winter Spare the Air* season commenced on November 1, 2009 and ended on February 28, 2010.

DISCUSSION

For the 2009/2010 season, the District made several changes to improve the effectiveness of the program. Continued education of the public about the health effects of particulate matter air pollution and how to comply with the rule was a primary focus. In order to provide the public with more advance warning of *Winter Spare the Air Alerts*, the District announced the day before an alert took effect. The *Winter Spare the Air Alert* was declared in the early afternoon (by 2 PM) for the alert that took effect at midnight and ran the entire next day to midnight. The earlier notification gave Bay Area residents more advance notice in order to comply and provided an opportunity to have the alert covered by the evening news and the next morning news cycles.

For the 2009/2010 season, seven *Winter Spare the Air Alerts* were issued and nine days exceeded the national PM_{2.5} 24-hour ambient air quality standard. There were two curtailments on major holidays, Thanksgiving and Christmas Day. Preliminary information indicates that the *Alert* declared on Christmas Day helped the region avoid an air quality exceedance that day, historically one of the dirtiest days of the winter season.

Over 10,270 wood smoke information packets were sent out to Bay Area residents to provide information about the Wood Burning Regulation and 254 reminder letters were sent to residences that received violation warning letters from the previous winter. The public could enter wood smoke complaints either online through the website or by phone, and the District recorded 2,355 wood smoke complaints. The 2009/2010 season enforcement program included inspection patrols covering all Bay Area counties for curtailment or visible emissions (opacity) violations. Over 300 violations were documented; warning letters were issued for the first violations. For the second violations, Notices of Violation were issued for which penalties of \$400 will be sought. Eight Notices of Violation were issued, seven for curtailment violations and one for excessive visible emissions.

The *Winter Spare the Air Alert* advertising and outreach campaign utilized TV, radio, print, web, billboard, grassroots and in-theater spots achieving 963 total news stories and 136.2 million media impressions. Educational materials were developed and distributed to the public via direct mail, public events, door-to-door canvassing and through the Air District website. The public could be notified of *Winter Spare the Air Alerts* by signing up for AirAlerts emails and/or phone calls which had 117,000 subscribers. Additionally, 2,000 employers and 500 schools receive Alert notifications. Based on survey data, 63% of the respondents were aware that the District prohibits wood burning on certain nights, and support for the Wood Burning Regulation remains strong at 71%.

Respectfully submitted,

Jack P. Broadbent
Executive Officer/APCO

Prepared by: Barbara Coler
Reviewed by: Kelly Wee

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson, Brad Wagenknecht and Members
of the Board of Directors

From: Jack P. Broadbent
Executive Officer/APCO

Date: March 8, 2010

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

RECOMMENDATION:

Approve amendments to the current Memorandum of Understanding (MOU) between the Bay Area Air Quality Management District and Bay Area Air Quality Management District Employees' Association (EA) which provides a two year extension of the MOU term.

BACKGROUND

The MOU between the District and the EA will expire on June 30, 2010. On February 22, 2010, as authorized by the Board of Directors at its February 17, 2010 Regular Meeting, the Executive Committee of the Board of Directors authorized the District's negotiators to meet and confer with the EA and provided negotiating authority relative to various contract matters.

The District's negotiators reached tentative agreement with the EA on all matters under discussion.

The tentative agreement is subject to ratification both by the District Board and the EA membership. The members of the EA are in the process of voting on the tentative agreement. The results will be known prior to the date this agenda item will be considered by the Board of Directors.

BUDGET CONSIDERATION/FINANCIAL IMPACT:

All amendments are reflected in the attached underline/strikethrough version of the proposed MOU. The items with significant financial impact are discussed below.

The proposed amendment includes a lower retiree health benefit tier for new employees. This new tier would grant vesting after ten (10) years, with a 50% benefit, rising to a full benefit after fifteen (15) years of service. This change will favorably impact the District's OPEB liability.

The amendment introduces employee cost sharing of increases in CalPERS pension costs. For FYE 2011, employee cost sharing is 0.16% while in FYE 2012, employee cost sharing is estimated to be 1.7%.

The proposed amendment includes annual cost of living adjustments which will be effective on July 1 of each year, and will be equal to changes in the annual CPI-W for the Bay Area, at a level which is not less than 0% and not more than 6%. The adjustment for this year, based on the CPI index, would be .6%.

Finally, an extension is less costly to negotiate than a full contract negotiation.

Respectfully Submitted,

Jack P. Broadbent
Executive Officer/APCO

Reviewed by: Jack M. Colbourn

MEMORANDUM OF UNDERSTANDING

Between

Bay Area Air Quality Management District

And

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

June 7, 2000 to June 30, 2012
(Adopted May 15, 2002)
(Amended November 17, 2004
and xxxx xx, 2010)

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ARTICLE I PARTIES

SECTION 1.01 DESIGNATION

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

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

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

SECTION 1.02 NOTIFICATION

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

for the District

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

for the Association

(personal service)

President (or Designee)

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

(U. S. Mail)

President (or Designee)

BAAQMD Employees' Association, Inc.
P.O. Box 420434
San Francisco, CA 94142

ARTICLE II RECOGNITION, COVERAGE AND EXCLUSIVE REPRESENTATION

SECTION 2.01 RECOGNITION

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

SECTION 2.02 COVERAGE OF EMPLOYEES

1. The classifications within each unit are listed in the Appendix A. For the purpose of this Memorandum of Understanding, the classification system which is adopted by the Board of Directors and maintained by the Human Resources Section is the source for determination of unit representation.
2. The District will notify the Association's Recording Secretary within ten (10) days when a new employee is hired into regular employment in a bargaining unit position.

SECTION 2.03 EXCLUSIVE REPRESENTATION BY THE ASSOCIATION

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

SECTION 2.04 AGENCY SHOP / MAINTENANCE OF MEMBERSHIP

- ~~1. AGENCY SHOP.~~ Each employee covered by this Agreement except supervisory employees shall, as a condition of continued employment, within thirty (30) days of first employment at the District, **or for a supervisor who does not already pay association dues, effective July 1, 2010,** either 1) become and remain a member in good standing of the Association, or 2) commence and continue to make payment(s) of an amount equivalent to the Association's periodic dues to the Association as a service fee for Association representation, except such amount shall not exceed that amount as outlined by or required by law having to do with the subject of non-member fees paid to unions for representation.
- ~~2. MAINTENANCE OF MEMBERSHIP.~~ Supervisory employees who are members of the Association after the first thirty (30) days from ratification of this Agreement by the BAAQMD Board of Directors, shall be required to maintain their membership in the Association for the duration of this Agreement. Newly promoted supervisory employees following the first thirty (30) days from their promotion shall be required to maintain their membership in the Association for the duration of this Agreement.

SECTION 2.05 RELIGIOUS EXEMPTION

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

SECTION 2.06 DUES/FEES DEDUCTIONS

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

1. Authorization:

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

2. Amount of Dues:

The Association shall certify to the District in writing the current rate of membership dues and agency fees. The District shall put into effect any new, changed, or discontinued deduction no later than the beginning of the second pay period after receipt of written notice from the Association.

SECTION 2.07 INDEMNIFICATION

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

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

ARTICLE III RIGHTS AND OBLIGATIONS

SECTION 3.01 EQUAL EMPLOYMENT OPPORTUNITY POLICY

It is the District's policy to provide equal employment opportunities for all persons to be recruited, employed, placed, selected for training, trained, evaluated, promoted, demoted, laid off, terminated, compensated, assigned work and otherwise treated without regard to race, religious creed, color, national origin, ancestry, disability, medical condition, marital status,

sex, age or sexual orientation. This Section is not subject to the Grievance Procedure of this Document.

SECTION 3.02 EMPLOYEE RIGHTS

1. The rights of employees of the District include, but are not limited to, the right to, subject to the provisions of this agreement and consistent with applicable laws and regulations:
 - A. Form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matter of employer-employee relations.
 - B. Refuse to join or participate in the activities of any employee organizations.
2. The scope of representation by the Association shall include all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment except, however, that the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order. This subsection parallels Section 3504 of the Meyers-Milias-Brown Act and will automatically be amended to reflect any amendment to or replacement of said statutory section on the effective date of any such change.
3. The District and the Association shall not interfere with, intimidate, restrain, coerce, retaliate, or discriminate against employees because of their exercise of these rights.
4. Any matter within the scope of the Meyers-Milias-Brown Act or within the scope of the Memorandum of Understanding that the District acts upon without meeting and conferring shall be null and void.
5. The District shall deduct dues and/or agency fees from the paychecks of all members of the Association and from non-members who are employed by the District in a classification represented by the Association.
6. The Association agrees to hold harmless and indemnify the District against any claims, causes of action or lawsuits arising out of the deductions or transmittal of such funds to the Association, except the intentional failure of the District to transmit moneys deducted from employees to the Association pursuant to this Article.

SECTION 3.03 PHYSICAL EXAMINATION

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

SECTION 3.04 SEXUAL HARASSMENT AND OTHER UNACCEPTABLE CONDUCT

The provisions of Division III, Section 3.6 of the District's Administrative Code Personnel Policies and Procedures are incorporated herein, and made a part hereof by this reference. Proposed changes to this policy that are within the scope of bargaining will not be

implemented without first obtaining the concurrence of the Association. This section is excluded from the grievance procedure.

SECTION 3.05 EMPLOYEES' TIME OFF TO VOTE

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

SECTION 3.06 DRUG-FREE WORKPLACE

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

SECTION 3.07 SAFETY

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

SECTION 3.08 WORKPLACE VIOLENCE

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

SECTION 3.09 SMOKE-FREE WORK SITE

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

SECTION 3.10 ASSOCIATION RIGHTS

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

SECTION 3.11 MANAGEMENT RIGHTS

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

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

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

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

This Section is not subject to the Grievance Procedure.

ARTICLE IV GRIEVANCE PROCEDURE

SECTION 4.01 DEFINITION OF A GRIEVANCE

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

SECTION 4.02 ASSOCIATION AS THE GRIEVANT

The Association may be the grievant.

Process: When the Association is the grievant the Association shall file the first step with the Human Resources Officer (HRO). The Association shall submit the grievance in writing. The written grievance shall state the factual particulars of the matter, any provision(s) of the Memorandum of Understanding that has allegedly been misinterpreted or misapplied, how the alleged misinterpretation or misapplication has affected the grievant to the grievant's

detriment, and the redress sought. The HRO shall meet with the Association representative(s) and respond to the grievance within the proper time limits. The response shall be in writing and set forth the reason(s) therefore. Except as otherwise specified herein, all of the rights, responsibilities and procedures of the grievance procedure apply to grievances filed by the Association. If a grievance is not resolved to the satisfaction of the Association, the Association may submit the grievance in writing to the EO as set forth in 4.05 Step 3 below:

SECTION 4.03 TIME LIMITS

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

SECTION 4.04 REPRESENTATION

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

SECTION 4.05 PROCEDURE

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

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

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

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

Step 3: If a grievance is not resolved to the satisfaction of the grievant in Step 2 above, the grievant may submit the grievance in writing to the EO or designee. The grievant shall provide a copy of the grievance to the Association. The EO shall meet with the grievant and Association representative(s) and respond to the grievance within the proper time limits. The response shall be in writing and set forth the reason(s) therefor.

STEP 3A - REQUEST FOR MEDIATION

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

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

SECTION 4.06 DISCIPLINARY DISPUTES

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

SECTION 4.07 MOU DISPUTES

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

SECTION 4.08 REQUEST FOR ARBITRATION

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

SECTION 4.09 SELECTION OF AN ARBITRATOR

The District and the grievant(s) will select an arbitrator from the ~~American Arbitration Association~~ **California State Mediation and Conciliation Service**. If the grievant(s) is (are) represented by the Employees' Association, then the Employee's Association President or designee and the District will select an arbitrator from the ~~American Arbitration Association~~ **California State Mediation and Conciliation Service**. If the parties cannot agree on the selection of an arbitrator, the grievant will request of the ~~American Arbitration Association~~ **California State Mediation and Conciliation Service** a list of nine (9) arbitrators. Within ten (10) working days from the receipt of the list of nine (9) arbitrators, each party beginning by lot shall alternatively cross off one name on the list; the first party to cross off a name will be selected by a flip of a coin. The

final name left on the list shall be the arbitrator if he/she agrees to serve. If he/she will not serve, the process shall be repeated until an arbitrator is found. The rules and procedures of the ~~American Arbitration Association~~ **California State Mediation and Conciliation Service** will prevail.

SECTION 4.10 DECISION OF THE ARBITRATOR

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

SECTION 4.11 FEES AND EXPENSES

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

SECTION 4.12 LIMITATIONS ON ARBITRATOR'S AUTHORITY AND JURISDICTION

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

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

ARTICLE V DISCIPLINARY PROCEDURE

SECTION 5.01 PROGRESSIVE DISCIPLINE

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

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

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

SECTION 5.02 GROUNDS FOR DISCIPLINE

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

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

SECTION 5.03 REPRIMANDS

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

of progressive discipline and request the section manager to issue a formal written reprimand.

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

SECTION 5.04 WARNING AND ONE-DAY SUSPENSION

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

SECTION 5.05 EXTENDED SUSPENSION

1. If, for good cause shown or after being issued a warning and being placed on a one-day suspension without pay, an employee continues to perform his or her work in an unsatisfactory manner, persists in engaging in the violation of a District work instruction, policy or procedure, or continues to manifest the unacceptable behavior or conduct for which the employee was issued a warning and placed on a one-day suspension without pay, the EO may suspend the employee from work without pay for a period of up to two weeks. Prior to placing an employee on an extended suspension without pay, the EO shall cause to be served on the employee a written Notice of Proposed Disciplinary Action, which shall contain the following information: (i) a statement of the action which is proposed to be taken, (ii) a statement of the factual basis for this proposed disciplinary action, (iii) a specific reference to any District work instruction, policy or procedure which the employee is alleged to have violated, (iv) a specification of the action(s) which the employee should take to correct the basis for this disciplinary action and the possible consequences of a failure by the employee to take such corrective action, (v) a statement that the employee may review and request copies of materials upon which the proposed disciplinary action is based, and (vi) a statement that the employee will be given an opportunity to address the charges supporting this disciplinary action with the EO prior to the suspension becoming effective.
2. An employee who is to be placed on an extended suspension from work without pay will be given an opportunity to address the charges supporting this disciplinary action with the EO prior to the suspension becoming effective. This meeting with the EO should take place as soon as possible, and in no event more than five (5) working days after the recommendation for suspension from work without pay has been provided to the employee. The employee may bring a representative of the Association and/or a private personal representative to the meeting with the EO. Within five (5) working days after meeting with the employee and the Division Director recommending the suspension, the EO shall prepare a written decision regarding the recommended suspension. If, after considering the Division Director's recommendation and the information presented by the employee at the meeting, the EO determines to impose a suspension from work without pay, the suspension shall begin on the day after the EO's written decision is served on the employee, and all written documentation pertaining to the suspension will be entered in the employee's personnel record.
3. Employees who are placed on an extended suspension without pay will not accrue sick or annual leave during the period of such suspension.
4. Notwithstanding the progressive discipline policy outlined in Sections 5.01 through 5.04 above, the EO may place an employee guilty of serious misconduct on extended suspension. In such case, the EO shall follow the procedure set forth in 2 above.

SECTION 5.06 DISMISSAL

1. If, for good cause shown or after being suspended from work without pay, an employee continues to perform his or her work in an unsatisfactory manner, persists in engaging in the violation of a District work instruction, policy or procedure, or continues to manifest

the unacceptable conduct or behavior for which the employee was placed on an extended suspension from work without pay, the EO may dismiss the employee from employment with the District. Prior to the dismissal of an employee from employment with the District, the EO shall cause to be served on the employee a written Notice of Proposed Disciplinary Action, which shall contain the following information: (i) a statement of the action which is proposed to be taken, (ii) a statement of the factual basis for this proposed disciplinary action, (iii) a specific reference to any District work instruction, policy or procedure which the employee is alleged to have violated, (iv) a statement that the employee may review and request copies of materials upon which the proposed disciplinary action is based, and (v) a statement that the employee will be given an opportunity to address the charges supporting this disciplinary action with the EO prior to the dismissal becoming effective.

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

ARTICLE VI CLASSIFICATION STUDIES

See side letter in Appendix B.

ARTICLE VII SALARIES

SECTION 7.01 SALARIES

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

- ~~1. Effective 7/1/2000, wages and salaries of unit employees shall be increased by 4.3% over the wages in effect on 6/30/2000.~~
- ~~2. Effective 7/1/2001, wages and salaries of unit employees shall be increased by 4.4% over the~~

wage and salaries in effect on 6/30/2001.

~~3. Effective 7/1/2002, wages and salaries of unit employees shall be increased by 5.3% over the wage and salaries in effect on 6/30/2002.~~

~~4. Effective 7/1/2003, wages and salaries of unit employees shall be increased by the Consumer Price Index for Urban Wage Earners and Clerical Workers for the San Francisco-Oakland-San Jose for calendar year 2002, as reported by the Bureau of Labor Statistics, U.S. Department of Labor, over the wage and salaries in effect on 6/30/2003.~~

~~5. Effective 7/1/2004, wages and salaries of unit employees shall be increased by the Consumer Price Index for Urban Wage Earners and Clerical Workers for the San Francisco-Oakland-San Jose for calendar year 2003, as reported by the Bureau of Labor Statistics, U.S. Department of Labor, over the wage and salaries in effect on 6/30/2004.~~

~~6. Effective 7/1/2005, wages and salaries of unit employees shall be increased by the Consumer Price Index for Urban Wage Earners and Clerical Workers for the San Francisco-Oakland-San Jose for calendar year 2004, as reported by the Bureau of Labor Statistics, U.S. Department of Labor, over the wage and salaries in effect on 6/30/2005.~~

~~7. Effective 7/1/2006, wages and salaries of unit employees shall be increased by the Consumer Price Index for Urban Wage Earners and Clerical Workers for the San Francisco-Oakland-San Jose for calendar year 2005, as reported by the Bureau of Labor Statistics, U.S. Department of Labor, over the wage and salaries in effect on 6/30/2006. The minimum increase shall be two percent (2%) and the maximum increase shall be five percent (5%).~~

~~8. Effective 7/1/2007, wages and salaries of unit employees shall be increased by the Consumer Price Index for Urban Wage Earners and Clerical Workers for the San Francisco-Oakland-San Jose for calendar year 2006, as reported by the Bureau of Labor Statistics, U.S. Department of Labor, over the wage and salaries in effect on 6/30/2007. The minimum increase shall be two percent (2%) and the maximum increase shall be five percent (5%).~~

~~9. Effective 7/1/2008, wages and salaries of unit employees shall be increased by the Consumer Price Index for Urban Wage Earners and Clerical Workers for the San Francisco-Oakland-San Jose for calendar year 2007, as reported by the Bureau of Labor Statistics, U.S. Department of Labor, over the wage and salaries in effect on 6/30/2008. The minimum increase shall be two percent (2%) and the maximum increase shall be five percent (5%).~~

~~10. Effective 7/1/2009, wages and salaries of unit employees shall be increased by the Consumer Price Index for Urban Wage Earners and Clerical Workers for the San Francisco-Oakland-San Jose for calendar year 2008, as reported by the Bureau of Labor~~

1. Effective 7/1/2010, wages and salaries of unit employees shall be increased by the Consumer Price Index for Urban Wage Earners and Clerical Workers for the San Francisco-Oakland-San Jose for calendar year 2009, as reported by the Bureau of Labor Statistics, U.S. Department of Labor, over the wage and salaries in effect on 6/30/2010. The minimum increase shall be zero percent (0%) and the maximum increase shall be six percent (6%).

2. Effective every subsequent July, wages and salaries of unit employees shall be increased by the Consumer Price Index for Urban Wage Earners and Clerical Workers for San Francisco-Oakland-San Jose, as reported by the Bureau of Labor Statistics, U.S. Department of Labor, over the wage and salaries in effect on the preceding June 30. The minimum increase shall be zero percent (0%) and the maximum increase shall be six percent (6%).

SECTION 7.02 SALARY STEPS

1. There are five (5) steps within the salary range for each position, with a 5% increment between the steps. The time between Entrance Step A and Step B is six (6) months of satisfactory service in Step A. The time between Step B and Step C is six (6) months of

satisfactory service in Step B. The time between Step C and Step D is one (1) year of satisfactory service in Step C, and the time between Step D and Step E is one (1) year of satisfactory service in Step D.

2. An employee promoted to a higher position will receive the minimum salary for the higher position nearest a 5% increase (not less than 4.9%) above the employee's former position, whichever is higher, provided the increase is within the range of the higher position. If a promotion is awarded within thirty days of a scheduled step increase, the step increase and promotional increase will both be effective at the time of the change.
3. If a position is reclassified, a competitive recruitment will occur and the salary placement of the selected employee will be in accordance with subsection 2 above.
4. If a position is reclassified to a position having a lower salary range, the incumbent will be Y-rated according to the provision section 7.05.
5. If an employee is transferred, the employee will remain in the same step of the salary range effective prior to the transfer.
6. Any employee who has passed through the initial probationary period with the District and who is promoted or transfers to another position in the District shall not be subject to any "up or out" probation. Such an employee may be terminated for cause. However, if an employee is promoted prior to the completion of his/her initial probation period, the employee must successfully complete the full probationary period designated for the higher classification before attaining regular status.
7. If an employee is demoted for disciplinary reasons to a position having a lower salary range, the employee will be placed in the new range at the step held prior to the demotion.
8. If an employee is demoted because of lack of funds, the employee will be placed in the salary step in the new range that reflects the least decrease in salary. If an employee promoted to a higher class fails to pass a promotional probationary period, the employee will be returned to a position in the formerly held classification and will revert back to the step in the salary range he/she occupied in the former position effective prior to promotion. Step increases will be awarded on the schedule appropriate to the prior position.

SECTION 7.03 STEP INCREASES

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

SECTION 7.04 DETERMINATION OF SALARY RATES

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

SECTION 7.05 Y-RATING

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

SECTION 7.06 DIFFERENTIAL PAY

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

SECTION 7.07 SHIFT DIFFERENTIAL PAY

A \$2.50 per hour payment shall be paid to any employee assigned regularly established shift differential assignments. For purposes of this Section, shift differential hours are 5:00 P.M.

to 8:30 A.M. and all day Saturday and Sunday. Shift differential is a premium payment and is, therefore, included in the computation of overtime. The schedule for employees working a flex time or compressed schedule shall not be considered shift differential hours.

SECTION 7.08 STANDBY DUTY/CALL BACK

1. Standby Duty

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

2. Call Back

- A. A bargaining unit employee who is called back to work while on standby or after he/she has worked the scheduled shift and has departed from the place of employment shall be compensated with overtime for the time worked, either in cash or compensating time off (if applicable), at the rate of time and one-half with a minimum of two (2) hours at such rate.
- B. Should the time worked while called back become contiguous with the regular work schedule, time worked shall not be treated as a call back and the minimum time period shall not apply.
- C. An employee being paid for Call Back shall not receive Stand-By Pay for the same hours.

SECTION 7.09 SALARY DEDUCTIONS

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

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

SECTION 7.10 PAY PERIOD AND PAYDAY

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

SECTION 7.11 FINAL PAYMENTS

1. SALARY. Final salary payments to any person who terminates will be paid within 72 hours of the last day worked. When an employee is discharged for cause, the final salary payment will be issued on the last day of employment.
2. ACCRUED ANNUAL LEAVE. An employee leaving the service of the District shall receive a single payment covering the amount of the accrued annual leave remaining on account.
3. ACCRUED SICK LEAVE. Employees leaving the service of the District will not be paid for any unused accumulated sick leave credit remaining on account. Accrued sick leave will be applied to service credit upon retirement under the PERS contract.
4. FLOATING HOLIDAYS. Floating holidays must be used within the fiscal year they are credited. An employee leaving the service of the District shall receive a single payment covering the amount of the accrued floating holidays remaining on account.
5. COMPENSATORY TIME. An employee leaving the service of the District shall receive a single payment covering the amount of accrued compensatory time remaining on account.

SECTION 7.12 SALARY ADVANCES

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

1. An employee must have been in a paid status for at least one week in the pay period prior to receiving a salary advance.
2. The amount requested cannot exceed amount earned to date during the pay period.

3. The amount advanced must be deducted from the paycheck for that pay period.
4. No more than two (2) such requests can be submitted annually. Exceptions may be approved by the EO and must be announced to the Board under "Report of EO".
5. Requests for salary advance must be received by the HRO at least one (1) week prior to the date of requested distribution for which the advance is requested.
6. Requests are subject to the approval of the HRO.

SECTION 7.13 ACTING APPOINTMENTS

When appointed to a higher position by the EO in an "acting" status, an employee shall receive "Acting Pay" from the first day of such appointment until the end of the appointment or until withdrawn by the EO. The rate for "Acting Pay" shall be determined by Section 7.02.2 of this MOU. Acting appointments shall not be for less than ten (10) working days. Only the EO may approve an acting appointment.

SECTION 7.14 SPECIAL PAY AND ALLOWANCES

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

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

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

SECTION 7.15 LONGEVITY INCENTIVE

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

ARTICLE VIII EMPLOYMENT AND MERIT INCREASES

SECTION 8.01 POLICY

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

SECTION 8.02 DEFINITIONS

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

SECTION 8.03 ANNIVERSARY DATE

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

Annual leave credits and sick leave credits are accrued from original date of hire or adjusted hire date. For the initial pay period after hire and the final pay period upon termination, annual and sick leave accruals shall be determined as forty (40) hours worked in a pay period. There will be no prorating of time for annual or sick leave for less than this minimum time per pay period. For part-time new hires and any employee who separates employment with the District, 50% of their regularly scheduled assignment will constitute

forty (40) hours worked in a pay period. These provisions will not be applicable for determining annual leave and sick leave accruals during any other type of leave.

SECTION 8.04 PERFORMANCE EVALUATION

1. During the initial probationary period, a probationary employee shall receive at least two (2) formal performance evaluations which will normally be conducted at the end of the sixth and eleventh month of service as defined in Section 8.05.2 below.
2. Promoted employees who are subject to a six (6) month probationary period as defined in Section 8.05.2 below shall receive at least two (2) formal performance evaluations which will normally be conducted at the end of the third and fifth month of service as defined in Section 8.05.2 below.
3. Promoted employees who are subject to a nine (9) month probationary period as defined in Section 8.05.2 below shall receive at least two (2) formal performance evaluations which will normally be conducted at the end of the third and eighth month of service as defined in Section 8.05.2 below.
4. After completion of the appropriate probationary period, a formal performance evaluation shall be completed for the employee annually. A supervisor is not precluded from completing a formal performance evaluation at any time. Performance evaluations are a continuing responsibility of each supervisor, and each supervisor will informally discuss employees' performance as often as necessary to ensure effective work performance.
5. A performance evaluation that includes an overall rating of needs improvement or unsatisfactory must include an attached plan for improvement.

SECTION 8.05 PROBATIONARY PERIOD

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

ARTICLE IX HOURS OF WORK

SECTION 9.01 HOURS OF WORK

1. WORKWEEK

- A. **NORMAL WORKWEEK.** A normal workweek shall consist of five (5) consecutive eight (8) hour days, Monday through Friday. The normal workday shall be scheduled over an eight and one-half (8 ½) hour period from 8:30 A.M. to 5:00 P.M., normally with one-half (1/2) hour for meals.
 - B. **COMPRESSED WORKWEEK.** With the approval of Management, an employee's normal workweek and/or workday can be modified to allow for flextime hours or a compressed workweek. In such a case, appropriate adjustments will be made to recognize such a normal flex or compressed day/week.
 - C. **TELECOMMUTING.** With the approval of Management, an employee's normal workweek may be modified to allow for telecommuting. The employee and his/her supervisor will agree on core days and hours during which the employee can be reached by phone and these will remain constant from week to week, unless modified by agreement with the supervisor. In all cases, telecommuters shall make provisions that provide sufficient communication with the office and the public to meet the District goals. Telecommuters shall be present at least three (3) days per week in the District office. Exceptions may be granted in extraordinary situations. With the approval of Management and his/her supervisor, the District will allow non-scheduled telecommuting on Spare-the-Air days.
 - D. **PART-TIME WORK:** An employee may request a regular part-time work schedule of fewer than 80 hours per pay period. Approval shall be at the discretion of the Division Director and the EO on a fiscal year basis considering business needs of the District. The part-time schedule may be rescinded by the EO with a 30-day notice to the affected employee for business needs or for unsatisfactory employee performance.
2. An employee shall not work any time in excess of his or her approved work schedule without prior approval of the employee's supervisor, acting supervisor or other manager in the employee's chain of command.
 3. When a situation arises in which a represented employee is unable to work his or her regular hours on a particular day, upon the approval of his or her supervisor, the employee may make up the time missed. The make up time shall occur during the same pay period. The total hours worked, including make up time, shall not exceed forty (40) hours during any work week and shall not exceed ten (10) hours on any one day.
 4. When an employee is away from the employee's normal duty assignment for jury duty, an all-day or multi-day meeting, a conference or to take a District-authorized class, the employee shall only be paid: for the hours representing the agency at, and travel time to and from, meetings or conferences; for the hours at, and travel time to and from, a class; or for the hours at jury duty and for any travel time between the location of the jury duty and the District office or the location of the employee's normal duty assignment. With the approval of the employee's supervisor, an employee will receive overtime or compensatory time if the time consumed by the outside activity exceeds the employee's normal workday.

5. When an employee attends one of the activities which requires the employee to be away from the employee's normal duty assignment and the activity concludes prior to the end of the employee's assigned work day, the employee must return to work, use appropriate paid leave, work at home, or make-up time. In order to use appropriate paid leave, work at home or make-up time the employee must receive concurrence from his/her immediate supervisor and authorization from his/her manager. If the employee is authorized to make-up time, the employee must make-up the time in the same pay week in which time was taken off and in no event shall this time when combined with regular hours worked result in weekly overtime.
6. With the approval of Management, an employee may make up work time that is lost as a personal or job-related obligation within the same workweek in which the work time is lost. Make up may not be counted towards computing the total number of hours worked in a day for purposes of the overtime requirement specified in this MOU. The schedule according to which any such time will be made up will be established in consultation with the employee's supervisor.

SECTION 9.02 MEAL PERIOD AND REST PERIOD

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

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

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

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

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

SECTION 9.03 ATTENDANCE

1. An employee's supervisor will be responsible for keeping the daily attendance record of each employee.

2. A bargaining unit employee who is tardy shall report to the employee's supervisor as promptly as possible after beginning work and at the sole discretion and approval of the employee's manager, the employee may be allowed to make-up time providing the time made-up does not put the employee in an overtime status, use appropriate paid leave in accordance with this agreement, or may be docked for the period of tardiness.
3. An employee must report unscheduled leave to the District within the first hour of the workday unless an emergency prevents such reporting.
 - a. Failure to report may result in loss of pay for the period of absences from work.
 - b. An employee who is absent without leave and without having reported his/her absence for more than one (1) working day may be considered to have resigned and may be terminated.

SECTION 9.04 OVERTIME

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

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

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

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

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

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

1. **AUTHORIZATION.** Overtime is the necessary, assigned authorized time worked in excess of eight (8), nine (9), or ten (10) hours per day (depending on an individual's normal work schedule) or forty (40) hours per week. With regard to flex time or compressed work weeks, it is recognized that the standard work week may not be 40 hours. Any hours worked beyond whatever is necessary to fulfill the designated

flex/compressed work week plan for a represented employee are designated as excess hours. These excess hours are to be paid as overtime or compensatory time at the rate of one and one-half times base hourly rate.

For the purposes of this section, paid leave time shall be included in computing the forty hours per week when determining eligibility for overtime; provided, however, that an employee on a flex time or compressed schedule may, with supervisor's approval, modify a normal schedule in order to meet operational necessities, which modified schedule will then constitute a normal work time.

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

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

ARTICLE X REDUCTION IN FORCE

SECTION 10.01 PROCEDURE / BUMPING, LAY-OFF AND RECALL

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

and Supervising Inspector). Seniority within a job classification is the seniority gained based on time in service in a specific job classification.

2. LAYOFFS/REDUCTIONS IN WORK FORCE

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

3. BUMPING

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

B. GENERAL RULES APPLICABLE TO BUMPING

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

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

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

- (1) Prior to the implementation of any mandatory bumping or displacement of an employee to an equal or lower paying job classification to meet the operating requirements of the District, management shall solicit volunteers to move to that job classification. If more than one employee in a job classification volunteers to be bumped, the volunteer with the greatest overall District employment seniority is the one who will be bumped.
- (2) An employee can never bump back to a higher paying position which that employee previously held in the District; however, for purposes of calculating seniority in a job classification, the time spent by an employee in a higher paying job classification will be added to the time already spent in the current, lower paying job classification.
- (3) An employee whose job is being eliminated bumps the least senior employee in the same job classification in the same division.
- (4) The least senior employee in a division bumps the least senior employee in the same job classification anywhere in the District.
- (5) An employee, "A", bumps to an equal paying job classification which "A" previously held, provided that "A" has more total seniority in the current and the previously held position than the least senior current employee in the position which "A" previously held.
- (6) "A" bumps to a lower paying job classification which "A" previously held, provided that "A" has more total seniority in the current and the previously held position than the least senior current employee in the position which "A" previously held.
- (7) "A" bumps to a lower paying job classification in a class series in the same division in which "A" previously held a position, provided that "A" has more total seniority in that class series and in "A's" current position, taken together, than the least senior current employee in the lower paying job classification; and provided, further, that an employee must have held a job classification as a supervisor within the District in order to bump a supervisor in a lower paying class series.
- (8) "A" bumps to a lower paying job classification in a class series anywhere in the District in which "A" previously held a position, provided that "A" has more total seniority in that class series and in "A's" current position, taken together, than the least senior current employee in the lower paying job classification; and provided, further, that an employee must have held a job classification as a supervisor within the District in order to bump a supervisor in a lower paying class series.
- (9) "A" bumps to an equal or lower paying job classification which "A" did not previously hold but for which "A" meets the minimum requirements identified in the job description, provided that "A" has more total District seniority than the least senior current employee in the equal or lower paying job classification.

Note: Notwithstanding that the foregoing criteria (6), (7), (8) and (9) shall normally be applied in sequential order, an employee who can bump to an equal or lower

paying job classification under any of those four criteria shall bump to the highest paying of the available positions.

D. RECALL

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

ARTICLE XI FRINGE BENEFITS

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

SECTION 11.01 HEALTH INSURANCE

The District shall make available health insurance coverage through the Public Employees Medical and Hospital Care Program for employees and their eligible dependents. Optional coverage is available for eligible dependents and for Domestic Partners where an employee has filed a confidential Declaration of Domestic Partnership with the Human Resources Section. In the event the health insurance coverage in effect July 1, 2000 becomes unavailable, the District and the Association shall immediately meet and confer to mutual agreement in order to select a comparable value plan.

SECTION 11.02 DENTAL INSURANCE

The District shall make available dental insurance coverage for employees. Optional coverage is available for eligible dependents and for Domestic Partners where an employee has filed a confidential Declaration of Domestic Partnership with the Human Resources Section. In the event the dental insurance coverage in effect July 1, 2000 becomes unavailable, the District and the Association shall immediately meet and confer to mutual agreement in order to select a comparable value plan.

SECTION 11.03 VISION CARE

The District shall make available Vision coverage for employees. Optional coverage is available for eligible dependents and for Domestic Partners where an employee has filed a confidential Declaration of Domestic Partnership with the Human Resource Section. Vision care coverage for dependents must be elected at the time of enrollment. In the event the vision care coverage in effect July 1, 2000 becomes unavailable, the District and the Association shall immediately meet and confer to mutual agreement in order to select a comparable value plan.

SECTION 11.04 LIFE INSURANCE

The District provides life insurance coverage for employees. The life insurance amount is based on annual salary. Optional Additional Contributory Life is also available to employees. In the event the life insurance coverage in effect July 1, 2000 becomes unavailable, the District and the Association shall immediately meet and confer to mutual agreement in order to select a comparable value plan.

SECTION 11.05 LONG TERM DISABILITY INSURANCE

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

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

1. All Employees Upon Retirement

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

2. Employees Hired before July 1, 2010

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

3. Employees Hired on and after July 1, 2010

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

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

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

B. Subsection A shall apply only to employees who receive a service or disability retirement and are first employed by the District after July 1, 2010.

C. The credited service of an employee for the purpose of determining the percentage of District contributions applicable under subsection A shall not include purchased Additional Retirement Service Credit ('air time').

D. The credited service of an employee for the purpose of determining the percentage of District contributions applicable under subsection A shall include purchased Military, Peace Corps and AmeriCorps service.

E. Notwithstanding subsection A, for employees hired by the District on and after July 1, 2010, and who retire for disability with less than 10 years of credited service, the contribution payable by the District shall be 50 percent of the maximum fringe benefit allowance received at the time of retirement.

4. Increases

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

SECTION 11.07 PREMIUM REQUIREMENTS

1. Effective July 1, 2000, the District will provide a Fringe Benefit Allowance (FBA) of \$576.00 per month per employee for payment of premiums for health, dental, vision and additional Life insurance coverage, as set forth in Sections 11.01 through 11.04 above.
2. Effective January 1, 2001, the District will provide a FBA of \$596.00 per month per employee for payment of premiums for health, dental, vision and additional Life insurance coverage, as set forth in Sections 11.01 through 11.04 above.
3. Effective January 1, 2002, the District will provide a Cafeteria Plan for Fringe Benefits that will provide a FBA of \$626.00 per month per employee for payment of premiums for health, dental, vision and additional Life insurance coverage, as set forth in Sections 11.01 through 11.04 above.
4. Effective July 1, 2003 and continuing for the duration of the contract, the District will provide a Cafeteria Plan for Fringe Benefits that will provide a FBA that will be the total of the lowest health plan premium rate for an employee and two or more dependants offered by the California Public Employees' Retirement System (PERS), and the dental plan and vision plan premium rates for an employee plus dependants.
5. Effective January 1, 2004, the District will provide a Cafeteria Plan for Fringe Benefits that will provide a FBA of \$983.14 per month per employee for payment of premiums for health, dental, vision and additional Life insurance coverage, as set forth in Sections 11.01 through 11.04 above.
6. Effective January 1, 2005 the District will provide a Cafeteria Plan for Fringe Benefits that will provide a FBA of \$1,111.24 per month per employee for payment of premiums for health, dental, vision and additional Life insurance coverage, as set forth in Sections 11.01 through 11.04 above.
7. Thereafter, and continuing for the duration of the contract, the District will provide a Cafeteria Plan for Fringe Benefits that will provide a FBA that will be the total of the lowest health plan premium rate for an employee and two or more dependants offered by the California Public Employees' Retirement System (PERS), and the dental plan and vision plan premium rates for an employee plus dependants.
8. Cafeteria Plan - Each employee who uses less than the full amount of the FBA shall be eligible to receive cash payments of 50% of the unused portion. Such payments shall not exceed \$300 per month. (See side letter in the Appendix B).

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

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

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

SECTION 11.09 WORKERS' COMPENSATION

An employee who is absent as a result of a work-related injury will continue to receive full pay for the first 90 calendar days after the date of injury (the period will apply only once per injury) providing the injured employee meets the following requirements/conditions:

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

SECTION 11.10 PUBLIC EMPLOYEES RETIREMENT SYSTEM (PERS)

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

1. PICK-UP OF EMPLOYEE CONTRIBUTIONS:

- A. Except as limited by Subsection ~~3~~ 2 below, the District shall make employee contributions on behalf of all employees, and such contribution shall be treated as employer contributions in determining tax treatment under the Internal Revenue Code of the United States. Such contributions are being made by the District in lieu of employee contributions.
- B. Employee contributions made under ~~Subsection~~ paragraph A above shall be paid from the same source of funds as used in paying the wages to affected employees.
- C. Employee contributions made by the employer under ~~Subsection~~ paragraph A above shall be treated for all purposes other than taxation in the same manner and to the same extent as employee contributions made prior to the effective date of this Agreement.
- D. The employee does not have the option to receive the District-contributed amounts paid directly instead of having them paid to the retirement system

2. EMPLOYEE CONTRIBUTIONS

- A. Effective July 30, 2000, the employees' portion of PERS contribution rate (7% maximum) will be paid by the District for as long as the District is in "super-funded" status with PERS without wage
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reduction. The District shall fully compensate all employees that made contributions by District applied wage reductions from July 30, 2000 until the District Board of Directors approves this MOU.

B. Upon approval of this MOU by the District Board of Directors, for any period of time that PERS determines the District is in “super-funded” status [Actuarial Value of Assets in the District’s PERS account exceeds the Present Value of Benefits], the District shall request that PERS transfer sufficient assets from the employer reserve account to member-accumulated (employee) contribution accounts and use those assets to satisfy all employee contributions for the maximum period of time allowed. Those contributions that the District would otherwise make on behalf of the employees during that period of time shall be paid to the employees as wages, without reduction pursuant to Subsection 2 above.

C. Effective July 1, 2003, District shall pay the employees’ required portion of PERS contribution rate (7% maximum) for the duration of the contract regardless of super-funded status without wage deduction pursuant to Subsection 2 above.

D. Effective July 1, 2010, whenever the total (employer plus employee) required contributions to CalPERS exceeds 16%, the employees shall pay the amount over 16%, but not to exceed 7%. The charges, if any, shall not reduce the employees’ pensionable compensation, and shall not be treated as taxable income to the extent allowed by law. The District shall implement the provisions of section 414 (h)2 of the Internal Revenue Code to ensure that the tax benefit provided by that section is made available to employees.

SECTION 11.11 CREDIT UNION

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

SECTION 11.12 EMPLOYEE ASSISTANCE PROGRAM

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

SECTION 11.13 TRANSIT SUBSIDY / CARPOOL SUBSIDY

1. Consistent with the District’s efforts to promote the use of public transportation and to reduce the number of single-occupant automobiles during commute hours, fulltime District employees are eligible for a transit or a carpool subsidy. Use of the passes, or tickets, is confined to the employee during commute hours.
2. Effective July 1, 2002, the District will provide transit ticket or passes, up to a maximum value of \$150.00 per month or, at the option of the employee, the District will allow \$6.00 per-day (\$3.00 per one-way trip) up to a maximum of \$150.00 per-month per-carpool amount, for the reimbursement to the vehicle owner of commute

carpooling expenses and up to \$6.00 per-day (\$3.00 per one-way trip) to District employees (driver) commuting in a carpool (carpool is three or more persons, at least two of which must be District employees). District employees who ride in a carpool will be allowed up to \$3.00 per day (\$1.50 per one-way trip). District employees who walk or bicycle to work and live more than 1.0 mile from his or her work location will be allowed up to \$3.00 per day (\$1.50 per one-way trip).

3. Procurement of the transit passes is the obligation of the individual employee. No funding will be advanced by the District. Transit tickets or passes for a given month will be made available to eligible District employees at the District's office on a designated day prior to the beginning of that month. The District reserves the right to change the system of distributing passes/tickets in order to provide direct reimbursement for transit passes to employee or other methods deemed more efficient for the District.
4. Carpool reimbursement will be made on a monthly basis. No funding will be advanced by the District. In order to receive the carpool subsidy, the employee must certify to the Director of Administrative Services, no later than the 10th day of each month, the number of days carpooled the previous month and the names of the persons who participated in the carpool.
5. There will be no banking of the unused allocation of transit subsidy. Transit subsidy allowance is for each individual month and will not be cumulative. The purpose of transit subsidy is to provide an allowance to employees who use an alternative method of transportation for the sole purpose of coming to and from work (portal to portal).
6. Verification: Transit subsidies may be audited on a District-wide basis at any time. For stated reasons in writing to the employee, the District may audit an individual employee and require the employee to provide a written explanation of his or her use of transit subsidy. This provision is intended to be invoked on an individual basis in situations where abuse of transit subsidy is reasonably suspected. Persons in violation of this section may be subject to disciplinary action.
7. If an employee chooses to change his or her subsidy, he or she must complete the necessary forms in a timely manner in order to receive his or her subsidy for the subsequent month.
8. Effective July 1, 2002, an employee that uses an electrical vehicle to commute to and from the District main office in San Francisco shall be provided with parking and have access to a re-charging station at no cost, subject to availability.
9. The amount of transit subsidy shall be increased by any percentage increase(s) in Bay Area Rapid Transit fares that occur on or after July 1, 2003 for the duration of the contract. The maximum value of transit tickets or passes provided by the District was increased to \$165.00 effective July 1, 2004 in accordance with this provision.

SECTION 11.14 DEFERRED COMPENSATION

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

SECTION 11.15 JOB-RELATED EDUCATIONAL PURSUITS 1.

JOB-RELATED EDUCATIONAL PURSUITS

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

2. SKILLS ENHANCEMENT PURSUITS

- A. For the purposes of this section “skills enhancement pursuits” is defined to include educational courses and other skills enhancement courses that may or may not be related to an employee's current position, but reasonably relate to the District's work

in general and will enhance an employee's skills and may allow for further advancement or promotion at the District.

- B. The District shall yearly apportion an amount up to \$10,000.00 to allow for reimbursements of up to \$1,000.00 per employee for those employees who attend and successfully complete skills enhancement course. Such reimbursement will be paid upon proof of completion in any approved course. Employees wishing to take skills enhancement courses must obtain prior approval from the HRO before taking the course in order to be reimbursed.
- C. An employee may be reimbursed for courses necessary to attain a job-related degree.
- D. Reimbursement will be approved if the skills enhancement pursuit conforms with (A) and (C) above, and there is sufficient funding pursuant to (B) above.

3. REIMBURSEMENT:

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

SECTION 11.16 DEPENDENT CARE ASSISTANCE PLAN

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

SECTION 11.17 SOCIAL SECURITY REPLACEMENT BENEFITS

The District's Board of Directors has adopted and implemented a package of benefits designed to replace to the fullest extent possible those benefits formerly provided under the employer-employee jointly funded federal program commonly known as Social Security. These replacement benefits include the following:

1. Special retirement and disability benefits under PERS.
2. Life insurance coverage for employees is as specified in the contracts. The contracts are available in the Human Resources Section.
3. A portion of long-term disability coverage at the level of 66 2/3% of monthly salary to a maximum benefit of \$6,500.
4. Qualified pension plan contribution of \$62.50 per month credited to each full-time regular employee's account, effective July 1, 2000. The monthly contribution for each subsequent fiscal year shall be adjusted by the change in the annual-average Bay Area

CPI-W for the previous calendar year. The contribution amount increased to \$71.21 per month effective July 1, 2004 in accordance with this provision.

5. Medicare Part B for employees that retire after July 1, 2000 up to a maximum total cost of \$10,000 per year for all covered retirees.
6. PERS Long Term Care for District employees who elect to enroll in the PERS Long Term Care Program as paid for by the employee.

SECTION 11.18 HEALTH CARE SPENDING ACCOUNT

The District will offer employees the option to participate in a Health Care Spending Account (HCSA) Program designed to qualify for tax saving under Section 125 of the Internal Revenue Code, but such savings are not guaranteed. The HCSA Program allows employees to set aside a pre-determined amount of money from their paycheck, not to exceed ~~\$5000~~ **\$6000** per year **starting January 1, 2011**, for health care expenses not reimbursed by any other health benefits plan before tax dollars. HCSA dollars can be expended on any eligible medical expenses allowed by Internal Revenue Code Section 125. The employee cannot recover any unused balance.

SECTION 11.19 GUARANTEED RIDE HOME

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

ARTICLE XII LEAVE AND HOLIDAYS

SECTION 12.01 ANNUAL LEAVE

1. An employee will earn annual leave credits at the rate of 3.69 hours per pay period (approximately one day per month) for the first three years of employment. Annual leave will accrue but cannot be taken until the successful completion of six months' service.
2. An employee with more than three and up to five years of employment will earn annual leave at the rate of 4.64 hours per pay period (approximately 1-1/4 days per month).
3. An employee with more than five and up to ten years of employment will earn annual leave at the rate of 5.52 hours per day period (approximately 1-1/2 days per month).
4. An employee with more than ten and up to twenty years of employment will earn annual leave at the rate of 6.48 hours per pay period (approximately 1-3/4 days per month).
5. An employee with more than twenty years and up to thirty years of employment will earn annual leave at the rate of 7.69 hours per pay period (approximately 2 days per month).
6. An employee with thirty or more years of employment will earn annual leave at the rate of 9.23 hours per pay period (approximately 2-1/2 days per month).
7. If an employee's annual leave accrual rate changes during a pay period, the new rate will be credited from the first day of that period.

8. Annual leave will be normally scheduled in advance by the employee's immediate supervisor, in consideration of the operating requirements of the section and the division. However, in an emergency situation, annual leave will be authorized so long as the employee's immediate supervisor is notified in advance.
9. The maximum accumulation of annual leave is four hundred and sixty (460) working hours as of the end of the calendar year. After reaching that limit, no further hours shall be accumulated until the employee reduces the balance below four hundred and sixty (460) hours.
10. Use of annual leave of more than one hundred and sixty (160) hours must be scheduled and approved by the Executive Officer.
11. For the purposes of determining the rate of annual leave, accumulated service within the District will be used less any time for leave of absence in excess of two pay periods.
12. For a permanent employee that was previously employed as either a limited-term employee or a temporary employee for more than 1000 hours: effective July 1, 2001 accumulated service shall be the combined service as a permanent employee and previous service as a limited-term employee or temporary employee, less the initial 1,000 hours. The District will not allow retroactive accrual prior to July 1, 2001.
13. If a payday falls during an employee's vacation, the employee may receive a partial pay warrant for the pay period. The employee may pick up the warrant three (3) days prior to beginning vacation, provided two weeks' notice is given to the Human Resources Office.
14. Once per calendar year, an employee may exchange unused annual leave in excess of 200 hours, up to a maximum of 40 hours per calendar year, for the equivalent amount in wages. The request may not exceed forty (40) hours per fiscal year. Payment shall be made within 10 working days of the request.

SECTION 12.02 SICK LEAVE

1. **COVERAGE.** Sick leave is granted leave to cover authorized absence by an employee unable to work for any of the following reasons:
 - A. Personal injury or illness, pregnancy, childbirth, or pregnancy-related disability.
 - B. Exposure to contagious disease requiring quarantine.
 - C. When the employee is required to attend to a member of the immediate family for reason stated in (A) above, to a maximum of eighty (80) hours per calendar year, provided, however, that in the event of a catastrophic illness of an immediate family member, an employee may petition the EO to use more than 80 hours of accrued sick leave per year to care for that immediate family member.
 - D. For the purpose of this section, immediate family will include: mother, father, spouse, children, brother, sister, grandparents and grandchildren of the employee, domestic partners and relatives by marriage and relatives of domestic partners, including mother-, father-, brother-, sister-, son-, and daughter-in-law.
 - E. Appointments for dental, eye, and other medical examinations.

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

SECTION 12.03 BEREAVEMENT LEAVE

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

SECTION 12.04 MILITARY LEAVE

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

SECTION 12.05 JURY DUTY

Employees selected for jury duty shall be excused from work with pay for the hours required by such obligation provided they submit any jury fees received for such time to the District. The employee shall return to work whenever released during working hours and travel time allows except as provided in Section 9.01.3.

SECTION 12.06 SUBPOENA AS A WITNESS

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

SECTION 12.07 HOLIDAYS

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

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

2. Every day appointed by the President of the United States or Governor of California as a holiday.

3. Holidays falling on Sunday will be celebrated on the following Monday. Holidays falling on Saturday will be celebrated on the preceding Friday, except, if the Governor proclaims the following Monday to be the holiday.

4. Commencing with fiscal year 2001-02, employees will be granted 28 hours of floating holidays per year. Except, an employee hired after January 1st and prior to June 1st will be allowed only 8 hours of floating holiday within that fiscal year. Employees hired after May 31st and prior to July 1st will receive no floating holiday for that fiscal year. Employees must request to use a floating holiday in advance. A floating holiday can be taken only with the approval of the employee's supervisor.

5. If an employee normally is not scheduled to work on a day which is a paid holiday for other District employees, that employee is entitled to 8 hours (or 4 hours for December 24 or 31) of paid holiday leave on the day on which that employee is normally scheduled to work which immediately precedes or follows the paid holiday.

6. Employees working a compressed workweek whose normal workweek includes a paid holiday for other employees are only entitled to 8 hours of paid leave for that holiday.

7. When a recognized holiday falls on a scheduled day off of the compressed workweek the employee may take the preceding, or following day off.

SECTION 12.08 BENEVOLENT LEAVE FUND

1. The Benevolent Leave Fund is established for the exclusive use and donation by bargaining unit employees. Any bargaining unit employee (herein after employee) may donate annual leave or, with the limitation noted in subsection 1 immediately below, floating holiday leave to a benevolent leave fund for the benefit of employees who are ill or injured for one hundred (100) consecutive working hours or longer. In order to donate leave, the following conditions apply:
 - A. Only accrued annual or floating holiday leave may be donated. Floating holiday leave that is donated will only be valid during the fiscal year in which it is accrued. Thus, if in a given fiscal year, an employee donates floating holiday leave and the leave is not used during that fiscal year, the donated leave will expire on the last day (June 30) of that fiscal year.
 - B. To donate accrued leave to the fund, an employee must be eligible to accrue or use annual leave credit and cannot currently be using leave from the Benevolent Leave Fund.
 - C. Donated leave may be designated for a specific employee, or may be donated without designation.
 - D. Leave may be donated to the fund regardless of whether there is a qualified recipient.
 - E. Leave may not be sold, bartered or traded to another employee under any circumstances.
 - F. Once leave has been donated to the fund, that leave cannot be reclaimed by the employee making the donation unless and until that employee later becomes an eligible fund recipient.
2. In order to be a fund recipient, the following conditions apply:
 - A. The recipient must be on an approved leave for medical purposes and must have on file with the Association Board of Directors a medical verification that demonstrates that the recipient is in fact ill or injured and unable to work for at least one hundred (100) consecutive working hours or longer.
 - B. Upon written request from the Association Board of Directors, the Human Resources Officer shall provide, if available, to the recipient the amount and type of donated leave indicated.
 - C. The recipient must have exhausted all forms of paid leave prior to using any benevolent leave. However, it is understood the employee will accrue all appropriate leaves during the time the Benevolent Leave Fund is in use and shall not be required to use such accrued leave during such time.
 - D. The recipient may not receive benevolent leave from the fund in an amount which exceeds 100% of that employee's normally scheduled hours for any pay period.
 - E. Written requests to use leave from the fund shall be submitted to the Board of Directors of the Association with a copy to the Human Resources Officer.

SECTION 12.09 TEMPORARY DISABILITY LEAVE

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

SECTION 12.10 FAMILY CARE LEAVE

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

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

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

SECTION 12.11 PREGNANCY DISABILITY LEAVE

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

SECTION 12.12 LEAVE ACCRUAL - RETURNING FROM UNPAID LEAVE

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

SECTION 12.13 LEAVE WITHOUT PAY

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

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

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

SECTION 12.14 LEAVE OF ABSENCE

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

No annual or sick leave credits are earned during leaves of absence. An employee on a medical leave of absence continues to receive benefits described in Article XI, except that an employee on leave of absence shall not receive transit subsidy, or receive educational reimbursement, unless the course was approved prior to the commencement of the leave. Employee and employer contributions to PERS are not paid during unpaid leaves of absence. An employee on a leave of absence for non-medical reasons receives none of the benefits described in Section 11. A leave of absence for non-medical reasons is considered a break in service, and the position vacated by this leave may be open for recruitment of a regular employee.

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

ARTICLE XIII ASSOCIATION ACTIVITIES

SECTION 13.01 COMMUNICATING WITH EMPLOYEES

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

SECTION 13.02 USE OF DISTRICT FACILITIES

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

SECTION 13.03 ASSOCIATION REPRESENTATIVES AT BOARD OF DIRECTOR MEETINGS

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

SECTION 13.04 ASSOCIATION REPRESENTATIVES

1. The Association may, by written notice to the HRO, designate no more than seven (7) of its members to be stewards. If a change in Stewards occurs, notification shall be provided to the HRO within ten (10) working days of such change.
2. The stewards and officers (representatives) will obtain approval from their immediate supervisor or management official before leaving a work assignment. Permission will not be withheld except for good cause.
3. Representatives will be allowed to post Association notices on District bulletin boards.

4. Representatives other than the President or Vice President will each be allowed up to ~~seven (7)~~ **eight (8)** hours off, with pay, per month to engage in Association business, including but not limited to assisting employees in processing grievances. The amount of time so used will be reflected in the representative's time sheet. Time spent meeting with District Management personnel shall not count against the hours allotted. The President and Vice President each will be allowed up to seven (7) hours off, with pay, per month to spend on Association business.
5. Any represented employee who has a grievance may request the assistance of a representative in preparing and presenting the grievance.
6. Association board and committee members working on Association business and issues related to meet and confer shall be provided with reasonable time and accommodations to spend on these activities, so long as advance notification is given to, and approval is received from, an employee's supervisor.
7. The Association negotiating team members (total of ~~eight~~ **nine**) will be allowed up to ~~30~~ **40** hours off, with pay, per month for bargaining preparation when negotiations are in progress.
8. In the event that a dispute results in litigation or is submitted to arbitration or any other forum for dispute or grievance or litigation resolution, not more than two representatives shall be authorized to attend the proceedings on paid release time to represent the grievant and/or the Association. This paid release time is separate and apart from any other paid time afforded to representatives for association activities. The EO may release any number of people for such proceedings.

ARTICLE XIV AVAILABILITY OF DISTRICT DOCUMENTS

SECTION 14.01 ADMINISTRATIVE CODE

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

SECTION 14.02 HEALTH INSURANCE PLANS

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

SECTION 14.03 PERSONNEL FILES

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

ARTICLE XV PERSONNEL TRANSACTIONS AND RECORDS

SECTION 15.01 HIRING AND INITIAL ORIENTATION

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

SECTION 15.02 PERSONNEL AND MEDICAL FILES

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

SECTION 15.03 EMPLOYMENT RECORD VERIFICATION

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

SECTION 15.04 CLASSIFICATION SYSTEM

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

SECTION 15.05 REQUESTS FOR NEW EMPLOYEES

The provisions of Division III, Section 12.5 of the District's Administrative Code Personnel Policies and Procedures are incorporated herein, and made a part hereof by this reference. Proposed changes to this policy that are within the scope of bargaining will not be implemented without first obtaining the concurrence of the Association.

SECTION 15.06 PERSONNEL ACTION FORMS

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

ARTICLE XVI METHOD OF FILLING VACANCIES

SECTION 16.01 PROCEDURES

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

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

5. **VACANCY.** A vacancy is a position in which there is no incumbent and no employee has a right to the position. A position is vacant when the position is newly-created, the incumbent terminates, the incumbent is on a leave of absence or the incumbent has been demoted from the position. A position is not vacant if the incumbent is on sick leave, annual leave, bereavement leave, temporary disability including maternity leave, Family Care Leave, Workers' Compensation, leave without pay or any other circumstances determined by the EO.

6. **ORDER OF FILLING VACANCIES.**

A. **FIRST PRIORITY.** Reinstatement from layoff, return from leave of absence granted for medical reasons. To fill a vacancy in the first priority category, the HRO will submit the names of all qualified candidates to the Hiring Manager.

B. **SECOND PRIORITY.** For regular employees, transfer, promotion, or return from leave of absence granted for non-medical reasons. To fill a vacancy in the second priority category, the procedures specified in this Section shall be used.

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

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

8. **QUALIFIED APPLICANT POOL - PROCEDURE.**

The following procedure shall be used to determine the qualified applicant pool. In an open recruitment, all qualified District employees shall be interviewed by the Hiring Manager and Steps A, B, and C will not apply to those District employees. When there are five (5) or fewer qualified applicants, Steps A, B, and C will not apply.

A. A panel of three (3) District employees chosen by and facilitated by the HRO shall screen those applicants who meet the minimum qualifications for the bargaining unit vacancy. The HRO will not be a member of the screening panel. The Hiring Manager in consultation with the HRO shall establish the screening criteria. The screening criteria may include a practical test, a written examination, a review of the

- responses to the supplemental application question, and/or any combination of screening methods deemed appropriate for the position by the Hiring Manager. The screening panel shall score the applicant consistent with predetermined scoring methodology. As a result of the screening, all applicants will be given a score based on a 100-point scale. If the Hiring Manager has opted for an examination, then the HRO shall administer the examination to all of the candidates under the same conditions. The HRO or the screening panel shall score the examinations with the predetermined scoring criteria. The examination will be scored blindly.
- B. Out of the total qualified applicant pool screened by the panel identified in (A) above, the top eight (8) applicants, by score, will be referred for a panel interview.
 - C. The top eight (8) applicants will be interviewed by the panel of three (3) District employees designated at the discretion of the HRO, giving due consideration to the necessities of the job being filled. The HRO shall ensure that one of the panelists shall be a representative from the Division where the vacancy exists, and who occupies a position in a job classification, which is equal to or higher than that of the job to be filled. The HRO shall ensure that the other two panelists come from two other Divisions and each shall occupy a position in a job classification, which is equal to or higher than that of the job to be filled. The HRO may choose a fourth (4th) panel member from outside the District employ who possesses expertise in the area of the vacant position. The Hiring Manager and the HRO will develop the interview questions and rating criteria. A representative of the HRO will facilitate the interview process, however, that person will not be a member of the panel. The interview panel score, based on a 100-point scale, will be combined with the screening panel score, if applicable, in accordance with the weighting identified in the vacancy announcement. In no event will the interview score be weighted less than 20% of the total score.
 - D. As a result of the combined scores, the Hiring Manager in the presence of the HRO will interview the top five (5) applicants. In open recruitments the Hiring Manager will interview all qualified District employees. The Hiring Manager and the HRO will develop the interview questions and rating criteria. The Hiring Manager shall ask the predetermined interview questions of every candidate and evaluate the candidates based on the predetermined selection criteria. Based on the answers to the prepared questions, the Hiring Manager may pursue further lines of inquiry, which will draw out further information about the candidate's qualifications or abilities that relate to the vacant position. The Hiring Manager shall document in writing the extent to which each applicant possesses the desirable qualifications. The Hiring Manager shall score each candidate consistent with the scoring criteria. The Hiring Manager shall review the scoring of each candidate with the HRO or designee. At the conclusion of all the interviews, the Hiring Manager shall forward his/her scoring sheets, notes and recommendation of the selected candidate to fill the vacancy to the HRO or designee. The hiring recommendation shall be forwarded to the HRO for certification as to process and procedure. Once the HRO certifies the process and procedure the hiring recommendation shall be forwarded through the chain of command to the EO for approval. Any determination not to approve a Hiring Manager's recommendation shall be in writing. If the hiring process and procedure is

not certified by the HRO, the recommendation shall not be forwarded to the EO and the HRO shall take the appropriate steps to ensure the recruitment and selection process conforms to the procedures specified in this Article. Any determination not to approve the Hiring Manager's recommendation shall be in writing and shall provide a detailed explanation of the reasons for the determination, and must be approved by the EO. This document, and any correspondence concerning the document from the Hiring Manager or from any other manager in the chain of command applicable to the hiring decision, shall become part of the record of the hiring decision.

- E. In the event the EO does not approve the Hiring Manager's recommendation, the Hiring Manager shall submit the name of the candidate who has the next highest final score through the appropriate levels of management for approval by the EO.
- F. After the final selection(s) are made and approved by the EO, the Hiring Manager upon request shall provide each unsuccessful candidate with reasons for his or her rejection. These reasons shall be constructive and specific.
- G. In the event there are tied scores at the eighth or fifth positions as a result of the procedures identified in Step B and C above, each employee at the tied positions shall proceed to the next steps in the process.
- H. For more than one vacancy, one additional applicant for each additional vacancy will be added to each of the selection processes Steps B, C and D above.
- I. If a vacancy occurs in the same classification during a current recruitment or within 18 months from the start date of the selected applicant, the District shall have the option of using the applicant pool of the most recent recruitment to fill the subsequent vacancy.
- J. A bargaining unit employee or the Association has the right to file a grievance if the procedures of this Article are not followed when there are bargaining unit employees in the applicant pool. Matters that are not procedural, including the hiring decision, are not grievable.
- K. If there are two (2) or less bargaining unit candidates who meet the minimum qualifications in the applicant pool, the bargaining unit candidates will be interviewed by the Hiring Manager, and in continuing the recruitment, the District retains the right to utilize these procedures or any other selection procedures deemed appropriate by the HRO with the concurrence of the Hiring Manager.

Allegations of discrimination under this Article cannot be grieved.

SECTION 16.02 CONTRACTING OUT

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

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

ARTICLE XVII MEMORANDUM OF UNDERSTANDING

SECTION 17.01 ENTIRE AGREEMENT

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

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

SECTION 17.02 CONSISTENCY WITH ADMINISTRATIVE CODE

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

SECTION 17.03 SEVERABILITY

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

SECTION 17.04 INTERIM BARGAINING

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

SECTION 17.05 REOPENER

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

The parties shall negotiate additional proposals in good faith allowing the flexibility to address issues within the scope. Only items for which mutual agreement is reached shall be implemented. Upon mutual agreement, amendments shall be incorporated into the MOU in the form of a side letter.

ARTICLE XVIII INTERIM ADJUSTMENTS

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

ARTICLE XIX SAVINGS PROVISION

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

ARTICLE XX TERM OF AGREEMENT

The District and the Association agree that the term of this Agreement shall commence June 7, 2000 and expire at midnight on June 30, 2006. The parties further agree to amend the term of this Agreement to expire at midnight June 30, ~~2010~~ 2012.

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

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

ARTICLE XXI SUBMISSION TO BOARD OF DIRECTORS

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

For the District

Date

For the BAAQMD Employees' Association, Inc.

Date

APPENDIX A: CLASSIFICATIONS

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

APPENDIX B: SIDE LETTERS

(The following Side Letters have been completed as of November 17, 2004)

**SIDE LETTER
BETWEEN THE DISTRICT AND THE ASSOCIATION
DUES/FEES DEDUCTIONS
ARTICLE II, SECTION 2.06**

The District and the Association agree that there shall be no Association dues deducted from retroactive compensation, July 1, 2000 through June 15, 2002, afforded to bargaining unit members.

**SIDE LETTER
BETWEEN THE DISTRICT AND THE ASSOCIATION
REGARDING THE GRIEVANCE PROCEDURE
ARTICLE IV**

Any grievance filed after June 7, 2000, and has not be resolved, will subject to the new grievance procedure under this MOU.

**SIDE LETTER
BETWEEN THE DISTRICT AND THE ASSOCIATION
REGARDING SALARY STEPS
ARTICLE VII, SECTION 7.02**

Any bargaining unit employee who was promoted to a higher paying bargaining unit position beginning at step A, or step B, under the Terms and Conditions of Employment imposed on June 7, 2000, shall advance to the next salary step C, D, or E based on the salary step provisions of this MOU. This is a one-time adjustment only. Retroactive pay does not apply for this section.

**SIDE LETTER
BETWEEN THE DISTRICT AND THE ASSOCIATION
REGARDING OVERTIME
ARTICLE IX, SECTION 9.04**

The District and the Association agree that the provisions of Section 9.04, Overtime, will be applicable for represented employees commencing June 7, 2000 under the following conditions.

Represented employees who qualify for overtime under the provisions of Section 9.04 shall submit the necessary records to document working of overtime to the Human Resource Office by no later than June 30, 2002. The Human Resource Office shall provide an employee reasonable access to their records in order to ascertain if overtime pay is applicable.

**SIDE LETTER
BETWEEN THE DISTRICT AND THE ASSOCIATION
REGARDING PREMIUM REQUIREMENTS
ARTICLE XI, SECTION 11.07.5**

The District and the Association agree that represented employees will receive, effective May 15, 2002, the same Cafeteria Plan as the Confidential Employees until such time as the Cafeteria Plan for Confidential Employees is structured similar to Section 11.07.5. When the Confidential Employee cafeteria plan is restructured, Section 11.07.5 of the MOU will become operative.

**SIDE LETTER
BETWEEN THE DISTRICT AND THE ASSOCIATION
REGARDING RETROACTIVE COMPENSATION FOR PERS CONTRIBUTIONS
ARTICLE XI, SECTION 11.10.3.A**

The District and the Association agree that, pursuant to Subsection 11.10.3A, retroactive compensation for employees PERS contributions made between July 30, 2000 and May 15, 2002 will be made as a lump sum monetary payment, or at the option of any individual employee, an employee may elect to receive a portion of the compensation as Floating Holiday, up to a maximum of 240 hours. Each hour of Floating Holiday will be equivalent to the hourly wage rate in effect on May 16, 2002.

Any employee that elects to receive a portion of the retroactive compensation as Floating Holiday shall submit a written request to the Human Resource Office by May 22, 2002. This retroactive Floating Holiday compensation must be used by June 30, 2003 or it will expire.

**SIDE LETTER
BETWEEN THE DISTRICT AND THE ASSOCIATION
REGARDING FLOATING HOLIDAYS
ARTICLE XII, SECTION 12.07.4**

Commencing with fiscal year 2001-02 employees will be granted an additional 8 hours of floating holiday. Employees may carry over to the next fiscal year (2002-03) these additional 8 hours due to the limited time left in this fiscal year. These 8 hours must be used by June 30, 2003.

**SIDE LETTER
BETWEEN THE DISTRICT AND THE ASSOCIATION
REGARDING METHOD OF FILLING VACANCIES
ARTICLE XVI**

The District and the Association agree that the Method of Filling Vacancies contained in the MOU will be applicable for all represented positions opened after the signing of the MOU.

All represented positions opened prior to signing of the MOU will use the procedures in place at the time the position was opened.

(The following Side Letters remain in full force and effect)

**SIDE LETTER
BETWEEN THE DISTRICT AND THE ASSOCIATION
REGARDING CLASSIFICATION STUDIES
ARTICLE VI**

The District Board of Directors or Executive Officer may require that a salary classification study be conducted to evaluate individual positions or groups of positions, classes or class series from time to time. The current Classification Study being performed by CPS will be discarded and will not be used for any purpose. Existing represented classifications shall remain in full force and effect without modification for the term of this agreement. **Note - the CPS study was discarded in 2002 and has not been used.**

If the District chooses to conduct a comprehensive Classification Study it shall be conducted in the last year of this MOU and it shall conclude its study before the expiration of this MOU in preparation for a succeeding MOU. If the District chooses to conduct a Classification Study the District shall not conduct any salary or classification survey affecting wages, hours or terms and conditions of employment in any represented classification without first meeting and conferring with the Association.

**SIDE LETTER
BETWEEN THE DISTRICT AND THE ASSOCIATION
REGARDING PAY PERIOD AND PAYDAY
ARTICLE VII, SECTION 7.10**

The District and the Association agree that during the term of this MOU, the parties will study alternate paydays and pay periods. No said changes will be made unless parties to this MOU agree to such changes.

**SIDE LETTER
BETWEEN THE DISTRICT AND THE ASSOCIATION
REGARDING DENTAL INSURANCE
ARTICLE XI, SECTION 11.02**

The District and the Association agree that during the term of this MOU the parties will study alternative dental plans offered by Delta Dental Insurance. No said changes will be made unless the parties to this MOU agree to such changes.

**SIDE LETTER
BETWEEN THE DISTRICT AND THE ASSOCIATION
REGARDING VISION CARE
ARTICLE XI, SECTION 11.03**

The District and the Association agree that during the term of this MOU the parties will study vision care coverage. No said changes will be made unless the parties to this MOU agree to such changes.

**SIDE LETTER
BETWEEN THE DISTRICT AND THE ASSOCIATION
REGARDING HEALTH CARE SPENDING ACCOUNT
ARTICLE XI, SECTION 11.18**

The District and the Association agree that during the term of this MOU the parties will study the time and cost factors in the administration of the Health Care Spending Account program. If the parties agree that the time and cost factors are reasonable, the District will implement the program.

**SIDE LETTER
BETWEEN THE DISTRICT AND THE ASSOCIATION
REGARDING COLLEGE INTERNS
AND HIGH SCHOOL INTERNS**

This Side Letter of Agreement is reached between the Bay Area Air Quality Management District Employees' Association (EA) and the Bay Area Air Quality Management District (District) pursuant to Section 17.04 Interim Bargaining of the current Memorandum of Understanding (MOU).

This Side Letter of Agreement is incorporated into the MOU as if fully set forth therein.

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

PART A COLLEGE INTERNS

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

2. The District shall be allowed to use up to 4,000 hours for a 12-month period beginning with July 1, 2003 to and including June 30, 2004 and each 12-month period following thereafter for the College Intern Program. The District has the right to determine the number of College Interns to use in this Program. The cumulative hours for all College Interns shall not exceed 4,000 hours in each 12-month period following thereafter.
3. The District shall be allowed to work any individual College Intern up to 1,000 hours providing the College Intern does not work more than 1,000 hours from his/her original date of hire. The District shall terminate the employment of any Individual College Intern no later than the time when the College Intern has worked 1,000 hours.
4. The District has the right to determine each College Intern's work schedule. The District shall be allowed to assign intermittent, part-time or full-time work schedules to College Interns. College Interns shall not be assigned work in excess of 40 hours in a workweek. College Interns are subject to the Fair Labors Standards Act (FLSA).
5. For each pay period, the District shall report to the EA in writing the names, duties, hourly pay rate, hours of work in that pay period, and cumulative hours of work since the original date of hire for each College Intern. The District shall ensure that the EA President or designee is in receipt of this written report no later than 14 calendar days from the end of the preceding pay period.
6. College Interns shall not be eligible to become members of the EA and are not covered by the MOU.
7. The hourly pay rate for Air Quality Engineering Intern shall be equivalent to that of step A of the Air Quality Permit Technician I. The hourly pay rate for the Administrative Intern will be determined.

PART B HIGH SCHOOL INTERNS

1. The EA and the District shall mutually establish High School Intern Program guidelines and the High School Intern classification. The District shall have the right to determine where High School Interns are assigned. The District agrees High School Interns shall perform work consistent with the class specification only. The High School Intern classification shall be in place and in effect prior to the implementation of Part B.
2. The District shall be allowed to use up to 1,100 hours for a 12-month period beginning with July 1, 2003 to and including June 30, 2004 and each 12-month period following thereafter for the High School Intern Program. The District has the right to determine the number of High School Interns to use in this Program. The cumulative hours for all High School Interns shall not exceed 1,100 hours in each 12-month period following thereafter.
3. The District shall be allowed to work any individual High School Intern up to 1,000 hours providing the High School Intern does not work more than 1,000 hours from

his/her original date of hire as a High School Intern. The District shall terminate the employment of any individual High School Intern no later than the time when the High School Intern has worked 1,000 hours.

4. The District has the right to determine each High School Intern's work schedule. The District shall be allowed to assign intermittent, part-time or full-time work schedules to High School Interns. High School Interns shall not be assigned work in excess of 40 hours in a workweek. High School Interns are subject to FLSA. High School Interns shall not be eligible to perform work done by regular employees as an overtime assignment that includes but not limited to, home and garden shows, county fairs, lawn mower exchange programs, wood stove exchange programs, ethnic celebrations and earth day fairs.
5. For each pay period, the District shall report to the EA in writing the names, duties, hourly pay rate, hours of work in that pay period, and cumulative hours of work since the original date of hire for each High School Intern. The District shall ensure that the EA President or designee is in receipt of this written report no later than 14 calendar days from the end of the preceding pay period.
6. High School Interns shall not be eligible to become members of the EA and are not covered by the MOU.
7. The hourly rate for High School Interns shall be \$8.25 per hour.

PART C VIOLATIONS OF THIS AGREEMENT

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

PART D LAYOFFS AND BUMPING

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

PART E MISCELLANEOUS

1. The District shall pay to the EA an equivalent amount of dues, that the College Interns would have paid had they been EA members, as applicable under Section 2.06 of the MOU.
2. Effective June 15, 2003, except as provided in Section 16.02 of the MOU, all other temporary employees performing bargaining unit work shall be terminated for the duration of this agreement.
3. In the event that part A and or Part B are terminated the remaining provisions of this agreement remain in full force and effect.
4. Non-bargaining unit employees (Temporary workers) employed by the District for the purpose of filling a bargaining unit position (not a vacant position) while a bargaining unit employee is on approved leave need not be terminated for the duration of the approved leave.

