

**THE SAN FRANCISCO BAY AREA
RAPID TRANSIT DISTRICT
MONEY PURCHASE PENSION PLAN**

(As Amended and Restated Effective January 1, 2006)

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**THE SAN FRANCISCO BAY AREA
RAPID TRANSIT DISTRICT
MONEY PURCHASE PENSION PLAN**

(As Amended and Restated Effective January 1, 2006)

INTRODUCTION

THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT established this Money Purchase Pension Plan effective as of January 1, 1981, to provide for its Employees retirement benefits and benefits as part of an accident and health plan upon the termination of employment due to permanent disability. This Plan is intended to qualify under section 401(a) of the Internal Revenue Code of 1986, as amended. It is also intended that any disability payments received by Employees under this Plan will qualify for the exclusion, to the extent available, under section 105 of the Internal Revenue Code of 1986, as amended. The provisions of the Plan, as amended and restated as set forth herein, are effective as of January 1, 2006, unless a different effective date is set forth herein. In no event shall any part of the principal or income of the Trust created hereby be paid to or revert to the Employer, or be used for any purpose whatsoever other than for the exclusive benefit of the Employees of the Employer or their beneficiaries.

ARTICLE I

DEFINITIONS

When used herein and capitalized, the following words shall have the following meanings unless the context clearly indicates otherwise:

SECTION 1.01 “Account” shall include the term "Participant Account" and shall mean the individual account of a Participant to which are credited Employer contributions and the allocation of earnings, gains, losses and changes in fair market value of the assets of the Trust Fund as of the last Valuation Date. Wherever the context requires, "Account" shall also include a Participant's Rollover Account.

SECTION 1.02 “Anniversary Date” shall mean the last day of the Plan Year.

SECTION 1.03 “Beneficiary” shall mean the person or persons who, upon a Participant's death, is or are entitled to receive his or her interest under the provisions of Section 8.06 of the Plan.

SECTION 1.04 “Board” or “Board of Directors” shall mean the Board of Directors of the Employer.

SECTION 1.05 “Code” shall mean the Internal Revenue Code of 1986, as amended from time to time.

SECTION 1.06 “Committee” shall mean the Investment Plans Committee appointed under the provisions of Article IX.

SECTION 1.07 “Compensation” shall mean the entire amount of each Participant's compensation paid by the Employer for the Plan Year (including any amounts elected to be deferred under any deferred compensation plan or arrangement), but excluding the following:

- (a) All amounts in excess of \$29,700;
- (b) The first \$133.33 of a Participant's pay each month; and
- (c) Any payment which would not be subject to FICA tax if the Participant were covered by the Federal Social Security system.

SECTION 1.08 “Effective Date” shall mean January 1, 1981.

SECTION 1.09 “Eligible Employee” shall mean any Employee of the Employer except the following: (i) an Employee who is a member of a unit of Employees covered by a collective bargaining agreement which agreement does not specifically provide for coverage of such Employee under the Plan if there is evidence that retirement benefits were the subject of good faith bargaining; (ii) an Employee who is a leased employee as defined in Section 414(n)(2) of the Code; (iii) the BART Chief of Police and all other sworn officers with full peace officer powers

pursuant to the California Penal Code who are members of the BART Police Managers Association, provided, however, that such sworn officers and the BART Chief of Police shall become Eligible Employees effective January 1, 1995; and (iv) sworn officers with full peace officer powers pursuant to the California Penal Code who are members of the BART Police Officers Association, provided, however, that such sworn officers shall become Eligible Employees effective July 1, 1994.

SECTION 1.10 “Employee” shall mean any person who now is or hereafter may be a common-law employee of the Employer.

SECTION 1.11 “Employer” shall mean The San Francisco Bay Area Rapid Transit District or any successor to such Employer which adopts the Plan under the provisions of Section 13.03.

SECTION 1.12 “General Manager” shall mean the General Manager of the Employer.

SECTION 1.13 “Investment Manager” shall mean a person who is (i) registered as an investment adviser under the Investment Advisers Act of 1940; (ii) a bank, as defined in that Act; or (iii) an insurance company qualified to perform services with respect to the management, acquisition and disposition of assets of employee benefit plans under the laws of more than one state.

SECTION 1.14 “Normal Retirement Age” shall mean the attainment of age 592.

SECTION 1.15 “Participant” shall mean any Eligible Employee who has satisfied the requirements of Article II of this Plan and whose Account has not been entirely distributed. "Inactive Participant" shall have the meaning set forth in Section 2.03.

SECTION 1.16 “Participant's Rollover Account” shall mean a separate account maintained by the Committee for any rollover contributions permitted pursuant to Article VI of the Plan.

SECTION 1.17 “Payroll” shall mean the normal regular earnings of a Participant, including regular salary or wages, holiday leave pay, vacation leave pay, sick leave pay, premium pay, working out of class pay, shift differentials and the amount of the Participant's contribution to the Employer's Deferred Compensation Plan, but excluding the following: lump sum payments upon termination of employment, lump sum sick leave payments at the end of the year ("sick leave buy back"), pay in lieu of vacation or holiday ("vacation" or "holiday buy back"), overtime pay (including time off against accumulated overtime), standby pay, callback pay, court duty pay, reimbursement for items such as uniforms, tools or educational assistance, and other special payments; provided, however, that for all Plan purposes, "Payroll" shall not exceed two hundred thousand dollars (\$200,000), as adjusted by the Secretary of the Treasury in accordance with Code Section 401(a)(17)(B).

SECTION 1.18 “Plan” shall mean The San Francisco Bay Area Rapid Transit District Money Purchase Pension Plan.

SECTION 1.19 “Plan Administrator” shall mean the Investment Plans Committee appointed under the provisions of Article IX.

SECTION 1.20 “Plan Year” shall mean the calendar year.

SECTION 1.21 “Reportable Compensation” shall mean Acompensation earnable@ as defined in California Government Code Section 20636 or any successor to such statute, and in the regulations issued under such statute or any successor to such statute; provided, however, that AReportable Compensation@ for any Plan Year shall not exceed \$170,000 (or, effective on and after January 1, 2002, \$200,000), as adjusted in accordance with Section 401(a)(17)(B) of the Code; and provided further that AReportable Compensation@ shall include compensation only during the period from October 1, 2001, until the Employer=s account within the California Public Employees= Retirement System ceases to be >superfunded,= as described in Subsection 3.01(c).

SECTION 1.22 “Restatement Date” shall mean January 1, 2006.

SECTION 1.23 “Total and Permanent Disability” shall mean any medically determinable physical or mental impairment which may be expected to result in death or to be of long, continued and indefinite duration and which, in the sole judgment of the Committee and on the basis of competent medical opinion, renders the Employee incapable of performing his or her duties in the job classification in which he or she was employed when he or she became Totally and Permanently Disabled.

SECTION 1.24 “Trust Fund” shall mean the sum of the contributions (adjusted for income and losses, payments and reasonable expenses) made by the Employer hereunder and any rollover contributions made by a Participant (adjusted for income and losses, payments and reasonable expenses) and held in accordance with the terms of the related Trust established by the Employer for the purpose of holding and managing the assets of this Plan.

SECTION 1.25 “Trustee” shall mean Investors Bank & Trust Company, its successors and assigns or any duly appointed successor from time to time acting hereunder.

SECTION 1.26 “Valuation Date” shall mean the Anniversary Date or an interim date provided under Section 4.04.

SECTION 1.27 “Vested” shall mean that portion of a Participant's Account which shall not be forfeitable for any reason.

ARTICLE II

PARTICIPATION OF EMPLOYEES

SECTION 2.01 Eligibility. Each Eligible Employee who is a Participant in the Plan on the Restatement Date shall continue to be a Participant as of the Restatement Date. Each other Eligible Employee shall become a Participant upon completion of one hour of employment. For purposes of this Section, an hour of employment is an hour for which an Eligible Employee is paid, or entitled to payment, for the performance of duties for the Employer.

SECTION 2.02 Former Participants. A former Participant shall become a Participant immediately upon his or her return to the service of the Employer.

SECTION 2.03 Change in Status. Any individual who is employed by the Employer but who is not eligible to participate in the Plan because he or she is not an Eligible Employee as defined in Section 1.09 shall be eligible to participate in the Plan on the first date he or she becomes an Eligible Employee but not earlier than the date he or she would have become a Participant under Section 2.02 had he or she not been an Eligible Employee by virtue of Section 1.09. A Participant who continues to be employed by the Employer but who ceases to be an Eligible Employee as defined in Section 1.09 because of a change in employment status shall become an Inactive Participant. The Account of an Inactive Participant shall share in the allocation of Employer contributions in the manner described in Section 4.02 on the basis of the Participant=s Compensation and Payroll for the Plan Year but only to the extent that such amounts were paid to such Participant while he or she was eligible to participate in the Plan. The Account of an Inactive Participant shall continue to share in the allocation of earnings, losses and changes in the fair market value of the Trust Fund pursuant to Section 4.03.

SECTION 2.04 Cessation of Participation. A Participant's participation in the Plan ceases when he or she has received the entire balance of his or her Participant Account and Participant's Rollover Account.

ARTICLE III

EMPLOYER CONTRIBUTIONS

SECTION 3.01 Determination Of Contribution. With respect to each Plan Year the Employer shall pay to the Trustee as its contribution to the Plan an amount equal to the sum of the following:

- (a) 6.65% of the Compensation of each Participant for such Plan Year;
- (b) 1.627% of Payroll, provided, however, that in determining this portion of the contribution, the following shall not be taken into account:
 - (i) Payroll on or after September 1, 1991 and before July 1, 2011 of Participants who are members of Amalgamated Transit Union, Local 1555 or Service Employees International Union, Local 790;
 - (ii) Payroll of Participants who are members of the BART Police Officers Association and are sworn police officers with full peace officer powers pursuant to the California Penal Code;
 - (iii) Payroll of Participants who are either the BART Chief of Police or members of the BART Police Managers Association and are sworn police officers with full peace officer powers pursuant to the California Penal Code;
 - (iv) Payroll on or after July 1, 1992 and before July 1, 2012 of Participants who are members of the BART Police Managers Association, other than sworn

police offices with full peace officer powers pursuant to the California Penal Code;

- (v) Payroll on or after July 1, 1992 and before July 1, 2012 of Participants who are members of the BART Police Officers Association other than sworn police officers with full peace officer powers pursuant to the California Penal Code; and
- (vi) Payroll on or after July 1, 1992 and before July 1, 2012 of Participants who are members of the American Federation of State, County and Municipal Employees, Local Union 3993; and
- (c) From October 1, 2001, until the Employer=s account within the California Public Employees= Retirement System (CalPERS) ceases to be Asuperfunded,@ as determined by CalPERS, 3.5% of the Reportable Compensation of non-represented Participants (other than the Chief of Police as of April 25, 2002) and of Participants who are members of the Amalgamated Transit Union, Local No. 1555, the Service Employees International Union, Local No. 790, the American Federation of State, County and Municipal Employees, Local No. 3993, the BART Police Officers' Association, or the BART Police Managers' Association, provided such members of the BART Police Officers Association and BART Police Managers' Association are also local miscellaneous members of CalPERS, provided further, however, that in determining this portion of the contribution, Reportable Compensation on or after July 1, 2003 and before July 1, 2004 of the following Participants shall not be taken into account: the General Manager, the Controller-Treasurer, the General Counsel, the District Secretary, the Deputy General Manager, the Executive Assistant to the General Manager, the Assistant General Managers of Administration and Operations, the Executive Managers of External Affairs, Planning & Budget, Transit System Compliance and Transit System Development, the Managing Director, Capitol Corridor, and members of the Service Employees International Union, Local 790, whose classifications are in the Clerical Subunit, but are not in the Professional Chapter.

The contributions shall be paid in cash. The Trustee shall not be responsible for the collection of any contributions to the Trust Fund.

SECTION 3.02 Time and Manner of Contribution. The Employer shall deliver to the Trustee its contribution with respect to Compensation paid to Participants as soon as reasonably practicable following the date FICA taxes would have been withheld from such compensation in accordance with the usual payroll practices of the Employer if Participants had been covered by the Federal Social Security system during the applicable payroll period and shall deliver to the Trustee its contribution with respect to Payroll as soon as reasonably practicable following the close of the payroll period for which such contribution is made.

SECTION 3.03 Impossibility Of Reversion. No contribution by the Employer to the Trust Fund nor any income therefrom shall revert to the Employer except:

- (a) If a contribution is conditioned on the initial qualification of the Plan and if upon an application for initial qualification which is filed by the time prescribed by law for filing the Employer's return for the taxable year in which the Plan was adopted or such later date as the Secretary of the Treasury may prescribe, the Internal Revenue Service issues an adverse determination with respect to the Plan's qualification, the Employer shall be permitted to recover any contributions which would have been made prior to any such determination that the Plan is not Qualified within one year after the date of denial of qualification; or
- (b) If a contribution is made by the Employer under a good faith mistake of fact as indicated by the facts and circumstances surrounding such mistake, this Section shall not prohibit the return to the Employer, within one year after the payment of the contribution, of an amount equal to the excess of the amount contributed over the amount that would have been contributed had there not occurred a mistake of fact. Earnings attributable to such excess amount shall not be returned but losses attributable to such amount shall be used to reduce the amount to be returned.

SECTION 3.04 Mid-Career Voluntary After-Tax Contributions. Subject to all of the restrictions set forth in this section, each Participant may irrevocably elect every year to contribute a percentage of his or her Accrued Leave to the Plan, subject to the Plan's limits on Annual Additions as set forth in Article V and the terms and conditions of applicable collective bargaining agreements and written Employer policies applicable to non-represented Participants.

- (a) Accrued Leave. The term "Accrued Leave" shall mean any of the following categories of accrued pay as of the election date set forth in the collective bargaining agreement applicable to the Participant or as set forth in a written Employer policy for non-represented employees: accrued vacation leave, accrued sick leave, accrued holiday leave, and other types of accrued leave which pursuant to a collective bargaining agreement or written Employer policy may be deposited into the Plan.
- (b) Participant's Election. The Participant's election must be in writing and filed with the Employer within the time period set forth in a collective bargaining agreement or written Employer policy, whichever is applicable to the Participant.
- (c) Amount. The Participant may irrevocably elect to voluntarily contribute any percentage of his or her Accrued Leave which is permitted under the applicable collective bargaining agreement or written Employer policy.
- (d) Payment. The Employer shall pay the amount of the Accrued Leave voluntarily contributed to the Plan as soon as administratively feasible after the close of the accrual year. Such payment shall be allocated to the Participant's account when received by the Plan and treated as an annual addition in the year of receipt.

- (e) Annual Addition Limit. Notwithstanding any other provision hereof, if a voluntary contribution would result in violation of the annual addition limitation of the Code and Article V, before any other adjustment is made the voluntary contribution, plus earnings attributable thereto, shall be reduced to the extent necessary to comply with that limitation and the balance shall be paid by the Employer directly to the Participant or his or her beneficiaries.

ARTICLE IV

ALLOCATION OF EMPLOYER CONTRIBUTIONS AND INCOME

SECTION 4.01 Establishment of Participant Accounts. The Committee shall establish and maintain a separate Account for each Participant, and shall establish and maintain records reflecting the value and interest of each Participant in the Trust Fund.

SECTION 4.02 Allocation of Employer Contributions. The Employer contribution on behalf of each Participant shall be allocated to such Participant's Account as of the last day of the Plan Year with respect to which such contribution is made. The Employer contribution with respect to Compensation shall be allocated to each Participant's Account on the basis of the Participant's Compensation for the Plan Year. The Employer contribution with respect to Payroll shall be allocated to each Participant's Account on the basis of the ratio that the Participant's Payroll which is taken into account in determining the amount of such contribution for the Plan Year bears to the Payroll of all Participants which is taken into account in determining the amount of such contribution for the Plan Year. The Employer contributions with respect to Reportable Compensation shall be allocated to the Participants described in Subsection 3.01(c) on the basis of the ratio that each such Participant's Reportable Compensation which is taken into account in determining the amount of such contribution for the Plan Year bears to the Reportable Compensation of all such Participants which is taken into account in determining the amount of such contribution for the Plan Year.

SECTION 4.03 Allocation of Earnings, Losses and Changes in Fair Market Value of the Trust Fund. Within a reasonable time after the Anniversary Date of each Plan Year, the Trustee shall report to the Committee in writing, the value of the Trust Fund as of such Anniversary Date, not including the amount of Employer contributions for the Plan Year received by the Trustee subsequent to the Anniversary Date. Such valuation shall be made upon the basis of the fair market value of the assets in the Trust Fund, and upon its approval by the Committee, shall be binding upon the Participants and all other persons interested in the Plan (other than the Employer).

Earnings, gains, losses and changes in the fair market value of the assets of the Trust Fund, as reported by the Trustee, shall be allocated annually as of the Anniversary Date of each Plan Year in the ratio which the dollar value of each Participant's Account bears to the dollar value of all Participants' Accounts as of the last Valuation Date.

SECTION 4.04 Interim Valuations. If, in the sole and absolute discretion of the Committee to be applied on a uniform and nondiscriminatory basis, there is a substantial change in the fair market value of the assets of the Trust Fund between Valuation Dates and the interest of any Participant becomes distributable during such period, the Committee shall have the right to designate an interim Valuation Date as of the last day of the calendar month preceding

the date each interest becomes distributable. In such case, the dollar value of each participant's Account shall be adjusted to reflect the values determined on the interim Valuation Date, and the dollar value of each Account as adjusted shall be the amount which is distributable, to the extent that it is vested, to any Participant whose interest becomes distributable subsequent to such interim Valuation Date and prior to the next regular Valuation Date.

SECTION 4.05 Participant's Election of Funding Media. A Participant may elect to have his or her Participant Account and Participant's Rollover Account invested in one or more investment funds established by the Committee pursuant to Section 9.06. Once each year (or more frequently as prescribed by the Committee) a Participant may change his or her election as to investment funds with respect to his or her existing Accounts and future Employer contributions by filing the prescribed form with the Committee.

ARTICLE V

LIMITATIONS ON ALLOCATIONS

SECTION 5.01 Limitation of Annual Additions. If the Employer does not maintain any other qualified plan, the amount of Annual Additions which may be allocated under this Plan on a Participant's behalf for a Limitation Year shall not exceed the Maximum Permissible Amount. If, in addition to this Plan, the Employer maintains any other qualified defined contribution plan the amount of Annual Additions which may be allocated under this Plan on a Participant's behalf for a Limitation Year shall not exceed the Maximum Permissible Amount, reduced by the sum of any Annual Additions allocated to the Participant's Accounts for the same Limitation Year under this Plan and such other defined contribution plan.

SECTION 5.02 Estimated Annual Section 415 Compensation. Prior to the determination of the Participant's actual Section 415 Compensation for a Limitation Year, the Maximum Permissible Amount may be determined on the basis of the Participant's estimated annual Section 415 Compensation for such Limitation Year. Such estimated annual Section 415 Compensation shall be determined on a reasonable basis and shall be uniformly determined for all Participants similarly situated. Any Employer contributions based on estimated annual Section 415 compensation shall be reduced by any Excess Amounts carried over from prior years.

SECTION 5.03 Determination of Actual Section 415 Compensation. As soon as administratively feasible after the end of the Limitation Year, the Maximum Permissible Amount for such Limitation Year shall be determined on the basis of the Participant's actual Section 415 Compensation for such Limitation Year.

SECTION 5.04 Reduction of Excess Amount. If as a result of a reasonable error in estimating a Participant's actual Section 415 Compensation or under such other limited facts and circumstances as the Commissioner of Internal Revenue finds to be applicable there is an Excess Amount with respect to a Participant for a Limitation Year, such Excess Amount shall be disposed of as follows:

- (a) Before either of the adjustments in paragraph (b) or (c) below is made, the amount of any mid-career voluntary after-tax contributions made pursuant to Section 3.04 for the Limitation Year, plus gains attributable to those elective deferrals, will be returned to the Participant to the extent necessary to eliminate the Excess Amount.
- (b) In the event that the Participant is in the service of the Employer which is covered by the Plan at the end of the Limitation Year, then the remainder of any such Excess Amount must not be distributed to the Participant, but shall be reapplied to reduce future Employer contributions under this Plan for the next Limitation Year (and for each succeeding year, as necessary) for such Participant, so that in each such year the sum of actual Employer contributions plus the reapplied amount shall equal the amount of Employer contributions which would otherwise be allocated to each Participant's Account.
- (c) In the event that the Participant is not in the service of the Employer which is covered by the Plan at the end of the Limitation Year, then the remainder of any such Excess Amount must not be distributed to the Participant, but shall be reapplied to reduce future Employer contributions for all remaining Participants.

SECTION 5.05 Excess Amount From Other Plans. If a Participant's Annual Additions under this Plan and all other qualified defined contribution plans result in an Excess Amount, such Excess Amount shall be deemed to consist of the amounts last allocated.

SECTION 5.06 Allocation of Excess Amount. If an Excess Amount was allocated to a Participant on an allocation date of this Plan which coincides with an allocation date of another plan, the Excess Amount attributed to this Plan will be the product of:

- (a) The total Excess Amount allocated as of such date (including any amount which would have been allocated but for the limitations of Section 415 of the Code), multiplied by
- (b) The ratio of (i) the amount allocated to the Participant as of such date under this Plan, divided by (ii) the total amount allocated as of such date under all qualified defined contribution plans (determined without regard to the limitations of Section 415 of the Code).

SECTION 5.07 Definitions. For purposes of this Article, the following terms shall be defined as follows:

- (a) "Annual Additions" - Effective January 1, 1987, the sum for any year of (1) the Participant's portion of the Employer's contributions allocated to his or her Account under all defined contribution plans maintained by the Employer; (2) his or her Participant's contributions to such plans, if any, (3) forfeitures allocated to his or her Accounts, if any, and (4) contributions

allocated to the Participant's individual medical benefit account, as defined in Code Section 415 (1) (2) , which is part of a pension or annuity plan maintained by the Employer.

- (d) "Excess Amount" - The excess of the Participant's Annual Additions for the Limitation Year over the Maximum Permissible Amount, less loading and other administrative charges allocable to such excess.
- (c) "Limitation Year" - A calendar year (or any other 12 consecutive month period adopted for all plans of the Employer pursuant to a written resolution adopted by the Employer).
- (d) AMaximum Permissible Amount@ - For a Limitation Year, the Maximum Permissible Amount with respect to any Participant shall be the lesser of (1) \$40,000 or (2) 100 percent of the Participant's Section 415 Compensation for the Limitation Year.@
- (e) "Section 415 Compensation" - For purposes of this Section, Section 415 Compensation shall mean:
 - (i) Wages, salaries, and other amounts received for personal services actually rendered in the course of employment with the Employer during the calendar year, plus amounts specially included under paragraph (ii), but excluding amounts specified in paragraph (iii), and limited as provided in paragraph (iv).
 - (ii) Specifically included are:
 - (I) Any amount which is contributed or deferred by the Employer at the election of the Employee to the San Francisco Bay Area Rapid Transit District Deferred Compensation Plan and which is not includible in the gross income of the Employee by reason of Code section 457.
 - (II) Any elective deferral as defined in Code section 402(g)(3), including:
 - (A) any employer contribution under a qualified cash or deferred arrangement (as defined in Code section 401(k)) to the extent not includible in gross income for the taxable year;
 - (B) any employer contribution to the extent not includible in gross income for the taxable year under Code section 402(h)(1)(B) relating to simplified employee pensions;
 - (C) any employer contribution to purchase an annuity

contract under Code section 403(b) under a salary reduction agreement; and

- (D) any elective employer contribution under Code section 408(p)(2)(A)(i) relating to simple retirement accounts.
- (III) Any amount which is contributed or deferred by the Employer at the election of the Employee and which is not includible in the gross income of the Employee by reason of Code section 125 or 132(f)(4).
- (iii) Specifically excluded are:
 - (I) Any Employer contributions to the San Francisco Bay Area Rapid Transit District Money Purchase Pension Plan,
 - (II) Any distributions from the San Francisco Bay Area Rapid Transit District Money Purchase Pension Plan, and
 - (III) Any distribution from the San Francisco Bay Area Rapid Transit District Deferred Compensation Plan.
- (iv) Section 415 Compensation shall not exceed \$200,000 per year, which number shall be adjusted by the Secretary of Treasury at the same time and in the same manner as under Sections 415(d) and 401(a)(17) of the Code.

ARTICLE VI

ROLLOVER CONTRIBUTIONS

SECTION 6.01 Rollover Amount. The Committee may permit a Participant to contribute to the Trust Fund a rollover amount as defined by Code ' ' 402(c)(5), 403(a)(4) or 408(d)(3) from eligible retirement plans as described in Section 8.12(b) of this Plan, except that no distribution which is made upon hardship of the employee will be accepted.

SECTION 6.02 Information. The Participant shall provide the Committee with any information it deems necessary to determine that the rollover contribution satisfies all requirements of the Code.

SECTION 6.03 Segregated Accounts. Any rollover contribution made pursuant to this Article VI shall be segregated in a Participant Rollover Account. In addition, within a Rollover Account, the following shall also be segregated:

- (a) Amounts rolled over from a 457 plan; and

(b) After tax amounts that are rolled over.

ARTICLE VII

VESTING OF PARTICIPANT ACCOUNTS

SECTION 7.01 Participant's Account. The Participant shall have at all times a 100% Vested and nonforfeitable interest in his or her Participant's Account.

SECTION 7.02 Participant's Rollover Account. The Participant shall have at all times a 100% Vested and nonforfeitable interest in any Participant's Rollover Account which may be established pursuant to Article VI hereof.

ARTICLE VIII

DISTRIBUTIONS TO PARTICIPANTS

SECTION 8.01 Attainment of Normal Retirement Age or Termination of Employment. Upon the attainment of Normal Retirement Age or termination of a Participant's employment for any reason (including retirement on or after the Participant's Normal Retirement Age, death, Total and Permanent Disability, resignation or discharge), the Committee shall direct the Trustee to distribute the Participant's Account (including the Participant's Rollover Account, if any) at such time and in such form as may be determined pursuant to this Article.

SECTION 8.02. Election of Form of Distribution. A Participant may elect to have his or her benefit under the Plan distributed in a lump sum, a series of substantially equal installments until his or her Account is exhausted, or in monthly installments determined under the minimum distribution rules in effect from time to time pursuant to Internal Revenue Service regulations. A Participant may make an election as to the form of distribution under the Plan at any time prior to the date distribution of the Participant's benefits is scheduled to commence. On or after January 1, 2001, a Participant or Beneficiary who elects to have benefits distributed in substantially equal installments may additionally elect to have the distribution automatically adjusted annually for a cost-of-living increase. Such increase will be based on the rise, if any, in the Consumer Price Index for All Urban Communities (CPI-U) from the prior year. The first cost-of-living increase will be based on the rise in the CPI-U from the beginning of the first quarter of 2001 to the beginning of the first quarter of 2002, and will be applied to amounts paid commencing the beginning of the second quarter 2002. Successive increases shall be assessed in the same manner each following year.

SECTION 8.03 Failure to Elect a Form of Distribution. If a Participant has failed to elect a form of distribution under Section 8.02, distribution shall be made in the form of a lump sum.

SECTION 8.04 Time of Distribution. A Participant's benefits under the Plan shall be distributed (or distribution shall commence) at such time or times as the Participant shall elect. If the Participant has not made an election, distribution shall commence on the later of the date the Participant's employment with the Employer terminates or the Participant's 70th birthday. In no event shall distribution commence prior to the earliest of the Participant's termination of employment, attainment of Normal Retirement Age or termination of the Plan.

SECTION 8.05 Required Distributions Before Death of Participant. Notwithstanding any other provision of this Article, a Participant's benefits under the Plan shall be distributed (or distribution shall commence) no later than the April 1 of the calendar year following the calendar year in which (i) the Participant attains age 702 or (ii) the Participant retires, whichever is later.

SECTION 8.06 Effect of Death of Participant. Each Participant shall name a person or persons to be his or her Beneficiary to receive any distributions under the Plan distributable in the event of the death of the Participant. If there is no named Beneficiary living at the time payment is to be made, payment shall be made to the Participant's estate. A Participant may change the Beneficiary from time to time in accordance with procedures established by the Committee.

SECTION 8.07 Required Distributions After Death of Participant.

- (a) If a Participant dies before his or her entire interest has been distributed to him or her, the remaining interest shall be distributed to the Participant's Beneficiary in the time and manner elected by the Participant, subject to the provisions of the following Sections 8.07(b) and 8.07(c). If the Participant has made no election of the time or manner of distribution as to a Beneficiary, such Beneficiary shall have the right to designate within a reasonable time after the Participant's death the time and manner of distribution to himself or herself, subject to the provisions of the following Sections 8.07(b) and 8.07(c). If neither the Participant nor the Beneficiary has made an election of the time or manner of distribution, payment to the Beneficiary shall be made in a lump sum.
- (b) If the Participant dies before his or her benefit payments have begun, all benefits shall be paid to the Participant's Beneficiary no later than December 31 of the calendar year which contains the fifth anniversary of the Participant's death, or, if elected by the person entitled to elect under Section 8.07(a), over a period not to exceed the life or life expectancy of such Beneficiary beginning no later than December 31 of the calendar year immediately following the calendar year in which the Participant dies; provided, however, that if the designated Beneficiary is the Participant's Spouse, distributions are not required to begin earlier than the later of (i) December 31 of the calendar year immediately following the calendar year in which the Participant dies or (ii) December 31 of the calendar year in which the Participant would have attained age seventy and one-half (70-1/2). Should the Participant's Spouse die before distributions begin to the Spouse who is the designated Beneficiary, the benefit commencement period shall be applied as if the Spouse were the Participant.
- (c) If the Participant dies after benefit payments have begun, all remaining payments shall be distributed to his or her Beneficiary at least as rapidly as the method of payment in effect prior to the Participant's death.

SECTION 8.08 Limitation on Time and Form of Distribution. Distributions made pursuant to this Article VIII, if not made in a single sum, shall be payable over a period not to exceed the life or life expectancy of the Participant or the joint life or life expectancy of the

Participant and his or her designated beneficiary, and the method of distribution selected must assure that more than fifty (50%) of the present value of a Participant's benefits is paid within the life expectancy of the Participant.

Notwithstanding any other provisions of this Plan, distributions will be made in accordance with the statutory rules of Code ' 401(a)(9), including its incidental death benefit requirement. In particular, the following specific rules will be applied:

- (a) Distributions Before January 1, 2001
 - (i) Distributions made between January 1, 1985 and January 1, 2001, will be made in accordance with proposed regulations issued by the Internal Revenue Service on July 27, 1987, including section 1.401(a)(9)-2.
 - (ii) The foregoing provision overrides any distribution option in the Plan inconsistent with Code ' 401(a)(9).
- (b) Distributions During 2001. With respect to distributions under the Plan made on or after August 22, 2001 for calendar years beginning on or after January 1, 2001, the Plan will apply the minimum distribution requirements of section 401(a)(9) of the Internal Revenue Code in accordance with the regulations under section 401(a)(9) that were proposed on January 17, 2001 (the 2001 Proposed Regulations), notwithstanding any provision of the Plan to the contrary. If the total amount of required minimum distributions made to a participant for 2001 prior to August 22, 2001 are equal to or greater than the amount of required minimum distributions determined under the 2001 Proposed Regulations, then no additional distributions are required for such participant for 2001 on or after such date. If the total amount of required minimum distributions made to a participant for 2001 prior to August 22, 2001 are less than the amount determined under the 2001 Proposed Regulations, then the amount of required minimum distributions for 2001 on or after such date will be determined so that the total amount of required minimum distributions for 2001 is the amount determined under the 2001 Proposed Regulations. This amendment shall continue in effect until the last calendar year beginning before the effective date of the final regulations under section 401(a)(9) or such other date as may be published by the Internal Revenue Service.
- (c) Distributions During 2002. Distributions made on or after January 1, 2002 and before January 1, 2003 will be made in accordance with proposed regulations issued by the Internal Revenue Service on January 17, 2001, including sections 1.401(a)(9)-1 through 1.4091(a)(9)-8. The foregoing provision overrides any distribution option in the Plan inconsistent with Code Section 401(a)(9).
- (d) Distributions On Or After January 1, 2003. Distributions made on or after January 1, 2003 will be made in accordance with the final regulations issued

by the Internal Revenue Service on April 16, 2002 as provided in Article XVI.

SECTION 8.09 Distributions to Minors and Legally Disabled Persons. In case of any distribution to a minor or a legally incompetent person, the Committee may direct the Trustee that the same be made for the benefit of such person directly to such person or to his or her legal representative, to a custodian for such Beneficiary under the Uniform Gift or Transfers to Minors Act, as adopted by the state having jurisdiction with respect to the custodianship, or to some near relative of such person or that the Trustee shall use the same directly for the support, maintenance or education of such person. The Trustee shall not be required to see to the application by any third party of any distributions made pursuant to this Section 8.09.

SECTION 8.10 Involuntary Cash Outs. Notwithstanding any other provision of this Article, if the present value of a Participant=s entire nonforfeitable interest in his or her Account at the time of his or her termination of employment does not exceed \$1,000, the Committee shall direct the Trustee to distribute to the Participant or his or her designated Beneficiary in a lump sum all of the Participant=s interest in the Plan. For this purpose, the nonforfeitable interest in an Account shall include the portion of the Account attributable to rollover contributions under Code Sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii) and 457(e)(16).

SECTION 8.11 Participant Cannot Be Found at Normal Retirement Age. If a Participant or Beneficiary has not made application for the benefit to which he or she is entitled under the terms of this Plan, and within five (5) years after his or her Normal Retirement Age (or in the case of a Beneficiary, five (5) years after the death of the Participant) such Participant or Beneficiary cannot be located after a reasonable search, including mailing at least one registered letter to his or her last known mailing address, the benefit of such Participant or Beneficiary, as the case may be, may be forfeited on the last day of the Plan Year in which occurs the fifth anniversary of the Participant's Normal Retirement Age, or, in the case of a Beneficiary, the December 31 of the calendar year following the fifth anniversary of the Participant's death. Any such forfeited amounts may be allocated as an Employer contribution for and in the year following forfeiture, and may either constitute an additional Employer contribution or reduce the Employer's required contribution as described in Section 3.01. If, however, the Participant or Beneficiary, as the case may be, subsequently makes a valid claim for benefits, the amount forfeited (unadjusted for earnings) under this Section 8.11 shall be restored from forfeitures which would otherwise have been allocated in the Plan Year of restoration, and if none, from additional Employer contributions.

SECTION 8.12 Direct Rollovers. This Section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

- (a) Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the

distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

- (b) Eligible Retirement Plan: An eligible retirement plan is (i) an individual retirement account described in section 408(a) of the Code, (ii) an individual retirement annuity described in section 408(b) of the Code, (iii) an annuity plan described in section 403(a) of the Code, (iv) a qualified trust described in Section 401(a) of the Code, (v) an eligible deferred compensation plan described in Section 457(b) of the Code which is maintained by an eligible employer described in Section 457(e)(1)(A) of the Code, or (vi) an annuity contract described in Section 403(b) of the Code, in which the Participant or the Participant's spouse participates and that accepts the distributee's eligible rollover distribution.
- (c) Distributee: A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.
- (d) Direct rollover: A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.
- (e) Surviving Spouses: If any distribution attributable to an Employee is paid to the spouse of the Employee after the Employee's death, this section shall apply to such distribution in the same manner as if the spouse were the Employee.

SECTION 8.13 Optional Form of Benefits

- (a) Plan Transfers. If this Plan accepts direct transfers from another defined contribution plan, it shall be under no obligation to provide some or all of the forms of distributions previously available under the other plan.
- (b) Change of Form of Distribution. This Plan may eliminate at any time any forms of distribution previously available under it.

ARTICLE IX

THE INVESTMENT PLANS COMMITTEE

SECTION 9.01 Appointment and Removal. The Investment Plans Committee, hereinafter referred to as the "Committee," shall consist of five individuals who are Employees. One member of the Committee and an alternate shall be appointed by each of the following:

- (a) The General Manager;
- (b) Service Employees International Union, Local 790;
- (c) Amalgamated Transit Union, Local 1555;
- (d) American Federation of State, County and Municipal Employees, Local 3993; and
- (e) The BART Police Officers Association.

The General Manager or his or her appointed member shall certify to the Trustee the names and specimen signatures of the members and alternate members of the Committee. As members are replaced and appointed, such changes shall be certified to the Trustee in the same manner. The Trustee may rely in good faith on any directions signed by four of the members, or any person(s) designated to represent them.

SECTION 9.02 Organization of the Committee. The Committee may adopt rules and regulations for the administration of the Plan consistent with the terms of the Plan. The member appointed by the General Manager shall be the chairman and the members may appoint a secretary or one or more agents, any of whom may, but need not be a member.

The Committee may take action at a meeting or by written resolution. The action of four members present at the meeting or the written assent of four of the members shall constitute the action of the Committee and shall be final and conclusive regarding the exercise of its authority under the terms of the Plan. The Committee shall maintain full and complete written records of its deliberations and decisions.

SECTION 9.03 Compensation and Expenses of the Committee. The members of the Committee shall serve without compensation. The Committee shall have the right to use the Employer's facilities in maintaining accounts and records and discharging its duties hereunder. The Committee shall be reimbursed out of the Trust Fund for reasonable expenses incurred in connection with the discharge of the duties of the committee under the Plan, unless the Employer has agreed to reimburse the Committee for any item of expense.

SECTION 9.04 Plan Administrator. The Committee is the Plan Administrator.

SECTION 9.05 Powers and Duties of the Committee. The Committee shall be vested with the full power and authority to construe and interpret the terms and provisions of the Plan. Any action taken by the Committee by the exercise of authority conferred upon it shall be final and binding upon all Participants, former Participants and Beneficiaries, their successors, assigns, heirs and personal representatives. The Committee shall have all the powers and discretion to perform all its functions as Plan Administrator including, but not limited to, the following:

- (a) Determination of Employees= eligibility, participation and benefits under the Plan;
- (b) Establishment and maintenance of separate accounts and written records showing at any time the interest of a Participant in his or her Account and his or her Participant's Rollover Account;
- (c) Filing of all such annual reports, financial and other statements as may be required by any applicable Federal or State statute or regulation within the time prescribed for filing such documents;
- (d) Provision of such reports, statements and other documents to Participants and Beneficiaries of the Plan as may be required by any applicable Federal or State statute or regulation within the time prescribed for providing such documents;
- (e) Direction of the Trustee to make disbursement of benefits from the Trust;
- (f) Appointment of such agents, advisors, counsel and delegates as may be necessary and appropriate for the administration and operation of this Plan and the delegation to such agents, advisors, counsel and delegates of any of its discretionary and ministerial powers and duties in accordance with this Article;
- (g) Composition of and provision to Participants of all forms as described in this Plan;
- (h) Direction of the Trustee in the management and control of the Plan assets by written notice to the Trustee that it has assumed such directional authority in accordance with the Trust Agreement;
- (i) Appointment of an Investment Manager. Upon written notice to Trustee of such appointment, the Trustee shall segregate the assets to be managed by such Investment Manager into one or more Investment Manager Accounts. The assets of such accounts shall be managed, acquired and disposed of according to the directions of the Investment Manager. The Trustee shall not be liable for following the direction of the Investment Manager in the management, acquisition or disposition of the assets under its management. The Trustee shall act on the written direction of such Investment Manager until it has been notified in writing by the Committee that the investment Manager has resigned or has been removed, in which case the Trustee shall

exercise exclusive authority to manage and control the assets of the former Investment Manager Accounts unless the Committee has appointed a successor Investment Manager or has assumed directional authority over such accounts; and

- (j) Selection of an insurance company for the purchase of Joint and Survivor Annuities under the Plan and any other incidental life insurance benefits.

SECTION 9.06 Investment Funds. All contributions under the Plan shall be held and invested by the Trustee as part of the Trust Fund. In its discretion the Committee may subdivide the Trust Fund into two or more funds, each with a different title and a separate investment objective. Such funds shall be invested in such types of securities and other property of any kind or nature as the Committee shall from time to time authorize. Each such fund shall be treated as a separate fund for all purposes of the Plan, including investment and valuation.

ARTICLE X

ASSIGNMENT AND ALIENATION OF BENEFITS

No benefit or interest provided to any Participant or Beneficiary under this Plan shall be subject to assignment or alienation, either in whole or in part, whether by means of attachment, garnishment, constructive trust, levy, execution or by any other legal or equitable process. All benefits payable under this Plan shall be paid by the Trustee only to the Participant, or the designated Beneficiary. Notwithstanding the foregoing, if any part of a Participant's benefits under the Plan is assigned or determined to be the property of or otherwise payable to a Participant's spouse, former spouse, child or other dependent of the Participant (herein referred to as the "Alternate Payee") pursuant to a Domestic Relations Order, as defined in Section 414(p)(1)(B) of the Code, an assignment to the Alternate Payee of such property pursuant to such Domestic Relations Order (whether or not such Domestic Relations Order provides for direct payment from the Plan to the Alternate Payee) shall not constitute a violation of this Article X, provided that no payment is required to be made in a form not permitted by the Plan. The Employer may establish and maintain a separate account for the Alternate Payee and shall initially credit thereto an amount equal to the amount assigned to the Alternate Payee under the Domestic Relations Order. Any such account shall be subject to all provisions of this Plan except that:

- (a) Distributions from the account may commence at any time permitted by the Domestic Relations order, but in no event later than as required under section 8.07; and
- (b) The amount payable under Section 8.07 upon the death of the Alternate Payee shall be in the form of a lump sum to the Alternate Payee's Beneficiary, or if there is none, to the Alternate Payee's estate, as soon as is practicable.

ARTICLE XI

ESTABLISHMENT OF THE TRUST FUND

Concurrently with the adoption of this Plan, the Employer adopted a Trust Agreement providing for the administration of the Trust Fund by the Trustee thereof and containing provisions with respect to the following:

- (a) Powers and authorities of the Trustee as to the management and control of the assets of the Trust Fund, income therefrom, general administration thereof, subject to the right of the Committee to remove the Trustee's exclusive discretion and subject such discretion to the proper direction of the Committee or an Investment Manager;
- (b) Limitations on the liability of a Trustee; and
- (c) Authority of the Committee to settle the accounts of the Trustee on behalf of all persons having any interest in the Trust Fund from time to time. The Trust Agreement shall be deemed to form a part of this Plan and all rights or benefits which accrued to any person under this Plan shall be subject to all the terms and provisions of such Trust Agreement. Any conflict between the terms of this Plan and Trust Agreement regarding the duties of the Trustee shall be decided according to the terms of the Trust Agreement.

ARTICLE XII

AMENDMENT OF THE PLAN

SECTION 12.01 Amendment by the Employer. The Employer may amend the Plan by action of the Board of Directors as evidenced by an instrument in writing duly executed by the Employer.

SECTION 12.02 Limitations on Power to Amend. The Employer shall not have the power to amend the Plan in such manner that would cause or permit any part of the assets of the Trust Fund to be diverted to purposes other than for the exclusive benefit of Participants or their Beneficiaries, or that would cause or permit any portion of assets to revert to or become the property of the Employer. The Employer shall not have the right to modify or amend the Plan retroactively in such manner as to deprive any Participant or Beneficiary of the benefit to which he or she was entitled under the Plan by reason of contributions made prior to the date of adoption of such modification or amendment, unless such modification or amendment is necessary to conform the Plan to, or to satisfy the conditions of, any law, governmental regulations or rulings.

ARTICLE XIII

TERMINATION OF PLAN

SECTION 13.01 Termination of Plan. The Employer has adopted this retirement plan with the intent and expectation that it will continue indefinitely. However, it expressly reserves the right to terminate this Plan at any time by action of the Board of Directors. Except as provided in Section 3.03, however, in no event shall any assets of the Trust Fund ever revert or inure to the benefit of the Employer.

SECTION 13.02 Disposition of Trust Fund Upon Termination. If the Employer terminates this Plan it shall promptly request the Internal Revenue Service to issue a determination as to the effect the termination may have on the continuing tax qualification of the Plan. Upon notification by the Internal Revenue Service of a favorable determination, the Employer shall authorize (a) the immediate distribution of the interest of each Participant in his or her Accounts, or (b) the continuation of the Trust forming a part of this Plan with distributions from the Trust to occur thereafter in accordance with Article VIII. If the Employer does not specify the disposition of the assets of the Trust Fund within a reasonable time following receipt of a favorable determination letter, then the Trustee is authorized to immediately distribute the interest of each Participant.

SECTION 13.03 Dissolution, Merger, or Consolidation of Employer. In the event of the dissolution, merger, consolidation, or the sale of substantially all of the assets of the Employer, this Plan shall be considered terminated as of the effective date of such occurrence. The interest of each Participant in his or her Account shall be disposed of in accordance with the terms of Section 13.02. However, the resulting or successor person, persons, firm, corporation or other entity to the Employer, by reason of the dissolution, consolidation, merger, or sale of assets, may continue the Plan by appropriate corporate action within 90 days after the effective date of such occurrence. In such a case, this Plan shall not be considered terminated, but shall continue uninterrupted.

ARTICLE XIV

MISCELLANEOUS PROVISIONS

SECTION 14.01 Adoption of the Plan is Not an Employment Contract. The adoption and maintenance of this Plan and the extension of participation hereunder shall not be deemed to constitute a contract between the Employer and Employee nor consideration for, the inducement of, or a condition of the employment of any person. Nothing herein contained shall be deemed to give an Employee the right to be retained by the Employer or to interfere with the right of the Employer to discharge any Employee at any time nor shall be deemed to give the Employer the right to require an Employee to remain in its employ nor shall it interfere with an Employee's right to terminate his or her employment at any time.

SECTION 14.02 Plan is Established Under the Laws of the State of California. This Plan has been established under the laws of the State of California and, to the extent such laws have not been preempted by Federal statutes, any questions, issues, disputes or controversies arising under this Plan and the related Declaration of Trust shall be decided according to the laws, regulations and decisions in the State of California.

SECTION 14.03 Gender and Plurals. The masculine gender includes the feminine and neuter gender; the masculine pronoun shall include the feminine and neuter; the singular number the plural; and conversely, whenever appropriate.

SECTION 14.04 Severability of Provisions. In the event that any provision of this Plan shall be held illegal or invalid for any reason, such illegality or validity shall not affect the remaining provisions of this Plan, which shall be fully severable and this Plan shall be construed and enforced as if such illegal or invalid provision had not been inserted.

SECTION 14.05 Context to Control. The headings of Articles and Sections are included solely for convenience of reference, and if there be any conflict between such headings and the text of this Plan, the text shall control.

ARTICLE XV

REEMPLOYMENT UNDER THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

It is the intent of this Plan to comply with the reemployment rights of members of the Uniformed Services as specified in 38 United States Code Chapter 43 (AUSERRA) and Internal Revenue Code section 414(u). Therefore, notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to Qualified Military Service will be provided in accordance with Section 414(u) of the Internal Revenue Code.

SECTION 15.01 Definitions

- (a) Qualified Military Service means any service in the Uniformed Services of the United States by any individual if such individual is entitled to reemployment rights with respect to such service under USERRA.
- (b) Uniformed Services means:
 - (i) the Armed Forces;
 - (ii) the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty for training, or full-time National Guard duty;
 - (iii) the commissioned corps of the Public Health Service; and
 - (iv) any other category of persons designated by the President of the United States in time of war or emergency.

SECTION 15.02 Years Of Service. Each period of Qualified Military Service served by an individual is, upon reemployment by the Employer under USERRA, deemed to constitute service with the Employer during the period it was contributing to the Plan.

SECTION 15.03 Benefit Accruals. Each period of Qualified Military Service served by an individual, is upon reemployment by the Employer under USERRA, deemed to constitute service with the Employer for purposes of determining the accrual of benefits under the Plan as follows:

- (a) only periods during which the Employer was maintaining the Plan will be counted;
- (b) the returning Employee will be considered to have been in the same category of employment during Qualified Military Service as the category in which he was employed immediately before such Service;
- (c) the amount of benefit accrued shall be computed,
 - (i) at the rate the Employee would have received but for the period of Qualified Military Service, or
 - (ii) if the determination of such rate is not reasonably certain, on the basis of the Employee=s average pay rate, hours, or compensation during the 12-month period immediately preceding such Service (or, if shorter, the period of employment immediately preceding such Service); and
 - (iii) in the same manner and to the same extent that benefits were accrued for other Employees during the period of Qualified Military Service; and
 - (iv) the returning Employee will not be credited with any earnings with respect to any contribution before such contribution is actually made; and
 - (v) the returning Employee will not be entitled to receive any allocation of any forfeiture with respect to the period of Qualified Military Service.

SECTION 15.04 Notice. If the Employer reemploys a person under USERRA, it shall, within 30 days after the date of such reemployment, provide information, in writing, of such reemployment to the Committee.

SECTION 15.05 Cost. The cost of any additional benefits earned by a person during Qualified Military Service shall be paid for by the Employer in a lump sum within 60 days after the Employee=s date of reemployment.

ARTICLE XVI
MINIMUM DISTRIBUTION REQUIREMENTS

SECTION 16.01 Effective Date. The provisions of this Article XVI will apply for purposes of determining required minimum distributions made on or after January 1, 2003.

SECTION 16.02 Precedence. The requirements of this Article XVI will take precedence over any inconsistent provisions of the Plan.

SECTION 16.03 Requirements of Treasury Regulations Incorporated. All distributions required under this Article XVI will be determined and made in accordance with the Treasury regulations under Section 401(a)(9) of the Internal Revenue Code.

SECTION 16.04 Required Beginning Date. The Participant=s entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant=s required beginning date as determined in Plan Section 8.05.

SECTION 16.05 Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant=s entire interest will be distributed, or begin to be distributed, no later than as follows:

- (a) If the Participant=s surviving spouse is the Participant=s sole Designated Beneficiary (see subparagraph (e)), then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 702, if later.
- (b) If the Participant=s surviving spouse is not the Participant=s sole Designated Beneficiary, then distributions to the Designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
- (c) If there is no Designated Beneficiary as of September 30 of the year following the year of the Participant=s death, the Participant=s entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant=s death.
- (d) If the Participant=s surviving spouse is the Participant=s sole Designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, then this Section 16.05, other than subparagraph (a), will apply as if the surviving spouse were the Participant.
- (e) For purposes of the Plan=s minimum distribution requirement, only an individual may qualify as a Designated Beneficiary.@ The Participant=s estate cannot qualify as a Designated Beneficiary for minimum distribution purposes even though it can qualify as a beneficiary for receipt of Plan benefits. If a trust is named as a beneficiary of a Participant, the beneficiaries

of the trust and not the trust itself will be treated as Designated Beneficiaries if all of the following requirements are met:

- (i) The trust is a valid trust under state law.
 - (ii) The trust is irrevocable upon the death of the Participant.
 - (iii) The beneficiaries of the trust which is a beneficiary of the Plan are identifiable from the trust document. Members of a class that is capable of expansion or contraction will be treated as being identifiable if it is possible, as of the date the Designated Beneficiary is determined, to identify the class member with the shortest life expectancy.
 - (iv) The necessary trust documentation is provided to the Committee.
 - (v) Any other requirements of Code Section 401(a)(9) and the Treasury regulations thereunder are met.
- (f) For purposes of this Section 16.05 and Section 16.08, unless paragraph (d) applies, distributions are considered to begin on the Participant=s required beginning date. If paragraph (d) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under paragraph (a). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant=s required beginning date (or to the Participant=s surviving spouse before the date distributions are required to begin to the surviving spouse under paragraph (a)), the date distributions are considered to begin is the date distributions actually commence.

SECTION 16.06 Forms of Distribution. Unless the Participant=s interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with Sections 16.07 and 16.08. If the Participant=s interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Treasury regulations.

SECTION 16.07 Required Minimum Distributions During Participant=s Lifetime.

- (a) During the Participant=s lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:
 - (i) the quotient obtained by dividing the Participant=s Account Balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the Participant=s age as of the Participant=s birthday in the distribution calendar year; or

- (ii) if the Participant=s sole Designated Beneficiary for the distribution calendar year is the Participant=s spouse, the quotient obtained by dividing the Participant=s Account Balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the Participant=s and spouse=s attained ages as of the Participant=s and spouse=s birthdays in the distribution calendar year.
- (b) A Participant=s Account Balance will be the value of the account as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated to the account as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The Account Balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.
- (c) Required minimum distributions will be determined under this Section 16.07 beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant=s date of death.

SECTION 16.08 Required Minimum Distributions After Participant=s Death.

- (a) Death on or After Date Distributions Begin.
 - (i) If the Participant dies on or after the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant=s death is the quotient obtained by dividing the Participant=s Account Balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant=s Designated Beneficiary, determined as follows:
 - (I) The Participant=s remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent calendar year.
 - (II) If the Participant=s surviving spouse is the Participant=s sole Designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant=s death using the surviving spouse=s age as of the spouse=s birthday in that year. For distribution calendar years after the year of the surviving spouse=s death, the remaining life expectancy of the surviving spouse is calculated using the age of the

surviving spouse as of the surviving spouse's birthday in the calendar year of the surviving spouse's death, reduced by one for each subsequent calendar year.

- (III) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent calendar year.
 - (ii) If the Participant dies on or after the date distributions begin and there is no Designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent calendar year.
- (b) Death Before Date Distributions Begin.
- (i) If the Participant dies before the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining life expectancy of the Participant's Designated Beneficiary, determined as provided in Section 16.08(a).
 - (ii) If the Participant dies before the date distributions begin and there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
 - (iii) If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole Designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 16.05(a), then this Section 16.08(b) will apply as if the surviving spouse were the Participant.
- (c) Life expectancies under this Section 16.08 will be computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.

SECTION 16.09 Election of 5-Year or Life Expectancy Rule. Participants or beneficiaries may elect on an individual basis whether the 5-year rule (see Section 16.05(c) and Section 16.08(b)(ii)) or the life expectancy rule in Sections 16.05 and 16.08 apply to distributions

after the death of a Participant who has a Designated Beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under Section 16.05, or by September 30 of the calendar year which contains the fifth anniversary of the Participant=s (or, if applicable, the surviving spouse=s) death. If neither the Participant nor beneficiary makes an election under this provision, distributions will be made in accordance with Sections 16.05 and 16.08(a).

SECTION 16.10 Distribution Calendar Year. A distribution calendar year is a calendar year for which a minimum distribution is required. For distributions beginning before the Participant=s death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant=s required beginning date. For distributions beginning after the Participant=s death, the first distribution calendar year is the calendar year in which distributions are required to begin under Section 16.05. The required minimum distribution for the Participant=s first distribution calendar year will be made on or before the Participant=s required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant=s required beginning date occurs, will be made on or before December 31 of that distribution calendar year.

ARTICLE XVII

PURCHASE OF ADDITIONAL RETIREMENT SERVICE CREDIT (AAIRTIME@) FROM CALPERS

SECTION 17.01 Purchase of Airtime. Any part of a Participant=s Account or Rollover Account may be used to purchase Additional Retirement Service Credit from CalPERS if permitted by CalPERS.

SECTION 17.02 Trustee to Trustee Transfer. The purchase of Additional Retirement Service Credit from assets in this Plan shall be made only by a trustee to trustee transfer, without the assets being made available to the Participant.

SECTION 17.03 Application. To purchase Additional Retirement Service Credit the Participant must make written application to this Plan using such forms and providing such information as the Committee may from time to time require.

This amended and restated document of The San Francisco Bay area Rapid Transit District Money Purchase Pension Plan is adopted this _____ day of _____, 2006, to be effective January 1, 2006.

THE SAN FRANCISCO BAY AREA
RAPID TRANSIT DISTRICT

By: _____

Its: General Manager