

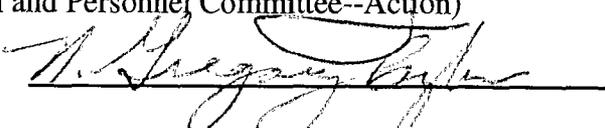


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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

7-6

March 18, 1998

To: Board of Directors (Organization and Personnel Committee--Action)
From: General Counsel 
Subject: Amendments to Articles of The Metropolitan Water District of Southern California Savings Plan and Savings Plan II

RECOMMENDATION(S)

That your Board:

1. Approve and adopt amendments to the Articles of The Metropolitan Water District of Southern California Savings Plan and Savings Plan II as shown in Attachments A-1 and A-2 hereto; and
2. Authorize the General Manager, as Plan Administrator, and General Counsel to execute such amendments and take such other actions as they may deem necessary or desirable to effect such amendments.

EXECUTIVE SUMMARY

The Articles of The Metropolitan Water District of Southern California Savings Plan and Savings Plan II under Internal Revenue Code Section 401(k) require amendment to (1) remove provisions under federal tax laws which no longer apply and (2) conform certain provisions of the Plans to present practices. The proposed amendments to the Articles of each Plan are shown on Attachments A-1 and A-2.

The Articles of the Plans are contained in Articles 5 and 6 of Chapter 7 of Division VI of the Administrative Code, beginning at Sections 6760 and 6780, respectively. The proposed amendments to the Administrative Code are shown in underline and strikeout format on Attachment B.

DETAILED REPORT

The Articles of The Metropolitan Water District of Southern California Savings Plan and Savings Plan II under Internal Revenue Code Section 401(k) require amendment to (1) remove provisions under federal tax laws which no longer apply and (2) conform certain provisions of the Plans to present practices. In particular, the amendments permit distributions of assets pursuant to qualified domestic relations orders, adjust the minimum amount of 401(k) loans which may be originated and remove nondiscrimination testing requirements which were made inapplicable to plans maintained by state and local governments.

The proposed amendments to the Articles of each Plan are shown on Attachments A-1 (for Plan I) and A-2 (for Plan II).

The Articles of the Plans are contained in Articles 5 and 6 of Chapter 7 of Division VI of the Administrative Code, beginning at Sections 6760 and 6780, respectively. The proposed amendments to the Administrative Code are shown in underline and strikeout format on Attachment B.

SBB:mg

Attachments
sbb/#9420

FIRST AMENDMENT TO
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
SAVINGS PLAN

The Metropolitan Water District of Southern California Savings Plan ("the Plan") is hereby amended in the following respects:

1. (i) Subsection (d) of Article III--Definitions of the Plan (Administrative Code Section 6762) is hereby amended by deleting the phrase, "Except as otherwise specified in Sections 6762(k), 6765(c)(1) and 6765(d)(2)," and substituting therefor the phrase, "Except as otherwise specified in Section 6765(c)(1)," and

(ii) Subsection (k) of Article III--Definitions of the Plan is hereby deleted.

2. (i) Subsections (d) and (f) of Article VI--Contribution and Allocation of the Plan (Administrative Code Section 6765) are hereby deleted;

(ii) Subsection (a)(1) of Article VI is amended by the deletion of the phrase, "Subject to the limitations contained in Section 6765(d)," and

(iii) Subsection (b)(1) of Article VI is amended by the deletion of the phrase, "Subject to the limitations contained in Section 6765(f)."

3. Subsection (e)(4) of Article VIII--Distributions and Withdrawals (Administrative Code Section 6767) is amended by substituting the amount of \$1,000 in place of the amount of \$500.

4. (i) Subsection (c)(1) of Article XI--Miscellaneous of the Plan (Administrative Code Section 6770) is amended by adding the following words to the beginning of subsection (1) thereof: "Except as otherwise provided in subparagraph (3) of this section," and

(ii) A new subsection (3) is added to Subsection (c) of Article XI--Miscellaneous, to read as follows:

"(3) This Section shall not apply to the creation, assignment or recognition of a right to any benefit payable pursuant to a domestic relations order, unless such order is determined to be a Qualified Domestic Relations Order by the District, as defined in Section 414(p) of the Code. The Trustee shall be entitled to make distributions to an alternate payee pursuant to a Qualified Domestic Relations Order in accordance with such an Order, without regard to the age or employment status of the Participant."

The above amendments shall be effective as of January 1, 1998. Except as specifically amended by this First Amendment, the Plan shall remain in full force and effect.

IN WITNESS WHEREOF, this First Amendment to the Plan is adopted this 14th day of April, 1998.

**THE METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA SAVINGS PLAN**

By: _____
Its: Plan Administrator

APPROVED AS TO FORM:

N. Gregory Taylor
General Counsel

By _____
Deputy General Counsel

sbb/#9268

FIRST AMENDMENT TO
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
SAVINGS PLAN II

The Metropolitan Water District of Southern California Savings Plan II ("the Plan") is hereby amended in the following respects:

1. (i) Subsection (d) of Article III--Definitions of the Plan (Administrative Code Section 6782) is hereby amended by deleting the phrase, "Except as otherwise specified in Sections 6782(k), 6785(c)(1) and 6785(d)(2)," and substituting therefor the phrase, "Except as otherwise specified in Section 6785(c)(1)," and

(ii) Subsection (k) of Article III--Definitions of the Plan is hereby deleted.

2. (i) Subsections (d), (f) and (g) of Article VI--Contribution and Allocation of the Plan (Administrative Code Section 6785) are hereby deleted,

(ii) Subsection (a)(1) of Article VI is amended by the deletion of the phrase, "Subject to the limitations contained in Section 6785(d)," and

(iii) Subsection (b)(1) of Article VI is amended by the deletion of the phrase, "Subject to the limitations contained in Section 6785(f)."

3. Subsection (e)(4) of Article VIII--Distributions and Withdrawals (Administrative Code Section 6787) is amended by substituting the amount of \$1,000 in place of the amount of \$500.

4. (i) Subsection (c)(1) of Article XI--Miscellaneous of the Plan (Administrative Code Section 6790) is amended by adding the following words to the beginning of subsection (1) thereof: "Except as otherwise provided in subparagraph (3) of this section," and

(ii) A new subsection (3) is added to Subsection (c) of Article XI--Miscellaneous, to read as follows:

"(3) This Section shall not apply to the creation, assignment or recognition of a right to any benefit payable pursuant to a domestic relations order, unless such order is determined to be a Qualified Domestic Relations Order by the District, as defined in Section 414(p) of the Code. The Trustee shall be entitled to make distributions to an alternate payee pursuant to a Qualified Domestic Relations Order in accordance with such an Order, without regard to the age or employment status of the Participant."

The above amendments shall be effective as of January 1, 1998. Except as specifically amended by this First Amendment, the Plan shall remain in full force and effect.

IN WITNESS WHEREOF, this First Amendment to the Plan is adopted this 14th day of April, 1998.

THE METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA SAVINGS PLAN II

By: _____
Its: Plan Administrator

APPROVED AS TO FORM:

N. Gregory Taylor
General Counsel

By _____
Deputy General Counsel

sbb/#9515

[Amendment to Administrative Code Section 6762(d) [Plan I]]

(d) Compensation. - Compensation shall mean the total of all cash Compensation payable by the District to or for the benefit of an Employee in return for the Employee's services to the extent it does not exceed \$200,000 for any Savings Plan Year. Except as otherwise specified in Sections 6762(k), Section 6765(c)(1) and 6765(d)(2), Compensation shall include salary reductions permitted under Sections 401(k), 414(h), and 457 of the Code.

[Amendment to Administrative Code Section 6762(k)]

(k) ~~[Reserved.] Highly Compensated Employee.~~ Highly Compensated Employee shall mean any Employee described in (1) through (4).

~~(1) Any Employee who performs services for the District during the "determination year" and who, during the "look-back year" (A) received compensation from the District in excess of \$75,000 (as adjusted pursuant to Code Section 415(d)); (B) received compensation from the District in excess of \$50,000 (as adjusted pursuant to Code Section 415(d)) and was a member of the "top paid group" for such year; or (C) was an officer of the District and received compensation during such year that is greater than 50 percent of the dollar limitation in effect under Code Section 415(b)(1)(A);~~

~~(2) Any Employee who performs services for the District during the determination year and who, with respect to the determination year, is both one of the 100 Employees who received the most compensation from the District during the determination year and is described in (1)(A), (1)(B) or (1)(C); or~~

~~(3) Any Employee who had a Separation from Service (or was deemed to have a Separation from Service) prior to the determination year, performed no services for the District during the determination year, and met the description in (1) or (2) above for either the separation year or any determination year ending on or after the Employee's 55th birthday.~~

~~(4) In addition, if no officer has compensation in excess of 50 percent of the limit in Code Section 415(b)(1)(A) during a determination year or look-back year, the highest paid officer for such year shall be treated as a Highly Compensated Employee.~~

~~(5) If an Employee is, during a determination year or look-back year, a "family member" of a Highly Compensated Employee in the group consisting of the 10 most highly compensated Employees ranked on the basis of compensation paid by the District during such year, then the family member and top ten Highly Compensated~~

~~Employee shall be treated as a single Highly Compensated Employee, and their compensation and contributions or benefits under this Savings Plan shall be aggregated. Except as otherwise provided under Code Section 401(a)(17), "family member" includes the spouse, lineal ascendants and descendants of the Employee or former Employee and the spouses of such lineal ascendants and descendants.~~

~~(6) The "determination year" shall be the Savings Plan Year for which compliance is being tested, and the "look back year" shall be the 12-month period immediately preceding the determination year.~~

~~(7) The "top paid group" for a determination year or look back year shall consist of the top 20 percent of Employees ranked on the basis of compensation received during the year excluding Employees described in Code Section 414(q)(8) and Treasury Regulations thereunder. The number of Employees treated as officers shall be limited to 50 (or, if less, the greater of 3 Employees or 10 percent of Employees). For purposes of this Section 6762(k), "compensation" means compensation within the meaning of Code Section 415(e)(3) but including elective or salary reduction contributions to a cafeteria plan, cash or deferred arrangement under Code Section 401(k) or tax sheltered annuity under Code Section 403(b).~~

[Amendment to Administrative Code Section 6765(a)(1)]

(1) Tax Deferred Elective Contributions. - ~~Subject to the limitations contained in Section 6765(d), a~~ A Participant may, pursuant to the enrollment agreement, have the District contribute to the Participant's Tax Deferred Elective Contributions Account a percentage or dollar amount not in excess of 20 percent of the Participant's Compensation (or such lower percentage as the General Manager may designate from time to time).

[Amendment to Administrative Code Section 6765(b)(1)]

(1) Amount of Matching Contributions. - ~~Subject to the limitations contained in Section 6765(f), a~~ A Matching Contribution shall be allocated to the Matching Contributions Account of each Participant in an amount equal to a specified percentage from 0 percent to 100 percent of a Participant's Tax Deferred Elective Contributions for each payroll period, but not in excess of a specified percentage of the Participant's Compensation for such payroll period, both of which percentages shall be established by the District from time to time.

[Amendment to Administrative Code Section 6765(d)]

(d) [Reserved.] ~~Fail safe Provision under Section 401(k).~~

~~(1) In order to ensure that the Savings Plan constitutes a qualified cash or deferred arrangement under Code Section 401(k) and the applicable Treasury Regulations thereunder (CODA), the General Manager shall monitor the amounts of Tax Deferred Elective Contributions made hereto for each Participant in order to ensure that the mechanical test of Code Section 401(k)(3) is met. Accordingly the General Manager will estimate, as soon as practicable before the close of the Savings Plan Year and at such other times as the General Manager in the General Manager's discretion determines, the extent, if any, to which deferral treatment under Code Section 401(k) may not be available to any Participant. In accordance with any such estimate, the General Manager may modify the limit in Section 6765(a)(1), or set initial or interim limits, for Tax Deferred Elective Contributions relating to any Participant, provided that in doing so all Participants who are similarly situated shall be treated in a nondiscriminatory manner and there shall be no discrimination in favor of Employees who are officers of the District or who are highly compensated within the meaning of Section 401(a) of the Code.~~

~~(2) For each Savings Plan Year, an actual deferral percentage will be determined for each eligible Employee equal to the ratio of the total amount of the eligible Employee's Tax Deferred Elective Contributions allocated under Section 6765(a)(1) for the Savings Plan Year divided by the eligible Employee's Compensation in the Savings Plan Year. For Savings Plan Years beginning before January 1, 1992 or such later date as may be provided by the Internal Revenue Service, an Employee's Compensation taken into account for this purpose may be limited to Compensation received during the Savings Plan Year while the Employee is a Participant. With respect to eligible Employees who have made no Tax Deferred Elective Contributions under the Savings Plan, such actual deferral percentage will be zero. For purposes of this paragraph, the General Manager may elect, at the General Manager's sole discretion, to treat all or part of the District's Matching Contributions as Tax Deferred Elective Contributions to the extent permitted by Treasury Regulations. As used in this paragraph, Compensation shall not include salary reductions permitted under Code Section 414(h) or 457. In the case of family members treated as a single Highly Compensated Employee under Section 6762(k) in accordance with the family aggregation rules of Code Section 414(q)(6), the actual deferral percentage shall be the greater of (A) the actual deferral percentage determined by combining the Tax Deferred Elective Contributions and Compensation of all eligible family members who are Highly Compensated Employees without regard to family aggregation, and (B) the actual deferral percentage determined by combining the Tax Deferred Elective Contributions and Compensation of all eligible family members. Except to the extent taken into account in the preceding sentence, the Tax Deferred Elective Contributions and Compensation of such family members shall be disregarded for purposes of this section.~~

~~(3) The average of the actual deferral percentages for Highly Compensated Employees ("High Average") when compared with the average of the actual deferral~~

percentages for non-Highly Compensated Employees ("Low Average") must meet one of the following requirements:

- ~~(A) The High Average is no greater than 1.25 times the Low Average; or~~
- ~~(B) The High Average is no greater than two times the Low Average, and the High Average is no greater than the Low Average plus two percentage points.~~
- ~~(4) If, pursuant to the estimates by the General Manager under (1), (2) and (3) above, a Participant is not eligible for deferral treatment for any or all of the amounts deferred pursuant to the election made under Section 6765(a)(1), then the General Manager may elect, at the General Manager's discretion, to pursue any of the following courses of action or any combination thereof:~~
- ~~(A) Excess Tax Deferred Elective Contributions, and any earnings attributable thereto, may be returned to the District, solely for the purpose of enabling the District to withhold any federal, state, or local taxes due on such amounts. The District will pay all remaining amounts to the Participant within 2-1/2 months after the close of the Savings Plan Year to which the excess Tax Deferred Elective Contributions relate to the extent feasible, but in all events no later than 12 months after the close of such Savings Plan Year. In determining the amount of excess Tax Deferred Elective Contributions to be distributed, amounts previously distributed in the Participant's taxable year ending in the same Savings Plan Year shall reduce the amount otherwise distributable under this subsection. Earnings attributable to excess Tax Deferred Elective Contributions shall include earnings for the Savings Plan Year for which such contributions are made and for the period between the end of such year and the date of distribution.~~
- ~~(B) The General Manager may authorize a suspension or reduction of Tax Deferred Elective Contributions made pursuant to Section 6765(a)(1) in accordance with rules promulgated by the General Manager. These rules may include provisions authorizing the suspension or reduction of Tax Deferred Elective Contributions above a specified dollar amount or percentage of Compensation.~~
- ~~(5) The amount of the excess Tax Deferred Elective Contributions will be determined by the General Manager by reducing the actual deferral percentage of the Highly Compensated Employee(s) with the highest actual deferral percentage to the extent required to enable the Savings Plan to meet the limits in (3) above or to cause the actual deferral percentage of such Employee(s) to equal the actual deferral percentage of the Highly Compensated Employee(s) with the next highest actual~~

~~deferral percentage. The process in the preceding sentence shall be repeated until the Savings Plan satisfies the limits in (3) above. In the case of family members subject to the family aggregation rules of Code Section 414(q)(6), excess Tax Deferred Elective Contributions will be allocated among family members in proportion to the Tax Deferred Elective Contributions of each family member that have been combined under (2) above; provided, where the actual deferral percentage is determined under (2)(A) above and reduction of the actual deferral percentage below that of eligible non-Highly Compensated Employee family members is required to enable the Savings Plan to meet the limits in (3) above, such further reduction shall take into account the Tax Deferred Elective Contributions of all eligible family members and be allocated among all such family members in proportion to their Tax Deferred Elective Contributions. The earnings attributable to excess Tax Deferred Elective Contributions will be determined in accordance with Treasury Regulations. The General Manager will not be liable to any Participant (or Beneficiary, if applicable) for any losses caused by inaccurately estimating the amount of any Participant's excess Tax Deferred Elective Contributions and earnings attributable to the Tax Deferred Elective Contributions.~~

~~(6) In the discretion of the General Manager, the tests described in this section may be applied by aggregating the Savings Plan with any other defined contribution plans as permitted under the Code and in accordance with Treasury Regulations.~~

[Amendment to Administrative Code Section 6765(f)]

(f) [Reserved.] ~~Fail-safe Provision under Section 401(m).~~

~~(1) The General Manager shall also monitor the amounts of Matching Contributions made hereto for each Participant in order to ensure that the mechanical test of Code Section 401(m)(2) is met. Accordingly, for each Savings Plan Year, a contribution percentage will be determined for each eligible Employee equal to the ratio of the total amount of Matching Contributions allocated under Section 6765(b)(1) for the Savings Plan Year divided by the eligible Employee's Compensation in the Savings Plan Year. For Savings Plan Years beginning before January 1, 1992 or such later date as may be provided by the Internal Revenue Service, an Employee's Compensation taken into account for this purpose may be limited to Compensation received during the Savings Plan Year while the Employee is a Participant. Except as otherwise provided in this section, with respect to eligible Employees for whom there were no Matching Contributions under the Savings Plan, such contribution percentage will be zero. In the case of family members treated as a single Highly Compensated Employee under Section 6762(k) in accordance with the family aggregation rules of Code Section 414(q)(6), the contribution percentage shall be the greater of (A) the contribution percentage determined by combining the Matching Contributions and compensation of all eligible family members who are Highly Compensated Employees without regard to family aggregation, and (B) the contribution percentage determined by combining the Matching Contributions and~~

~~compensation of all eligible family members. Except to the extent taken into account in the preceding sentence, the Matching Contributions and compensation of such family members shall be disregarded for purposes of this section.~~

~~_____ (2) The average of the contribution percentages for Highly Compensated Employees ("High Average") when compared with the average of the contribution percentages for non-Highly Compensated Employees ("Low Average") must meet one of the following requirements:~~

~~_____ (A) The High Average is no greater than 1.25 times the Low Average; or~~

~~_____ (B) The High Average is no greater than two times the Low Average, and the High Average is no greater than the Low Average plus two percentage points.~~

~~_____ (3) If, pursuant to estimates by the General Manager under (1) and (2) above, the contribution percentage for any Savings Plan Year for Highly Compensated Employees exceeds the limits established in (2), the excess contributions for such Savings Plan Year (and the earnings attributable to such excess contributions) shall be distributed to the Highly Compensated Employees so that the contribution percentage of the Highly Compensated Employee(s) with the highest contribution percentage is reduced to the extent required to enable the Savings Plan to meet the limits in (2) above or to cause the contribution percentage of such Employee(s) to equal the contribution percentage of the Highly Compensated Employee(s) with the next highest contribution percentage. The process in the preceding sentence shall be repeated until the Savings Plan satisfies the limits in (2) above. In the case of family members subject to the family aggregation rules of Code Section 414(q)(6), excess contributions will be allocated among family members in proportion to the Matching Contributions of each family member that have been combined under (1) above; provided, where the contribution percentage is determined under (1)(A) above and reduction of the contribution percentage below that of eligible non-Highly Compensated Employee family members is required to enable the Savings Plan to meet the limits in (2) above, such further reduction shall take into account the Matching Contributions of all eligible family members and be allocated among all such family members in proportion to their Matching Contributions. Earnings attributable to excess contributions shall include earnings for the Savings Plan Year for which such contributions are made and for the period between the end of such year and the date of distribution.~~

~~_____ (4) Except as otherwise permitted by the Code or Treasury Regulations, any Matching Contributions treated as Tax-Deferred Elective Contributions for purposes of the 401(k) test shall not be treated as Matching Contributions for purposes of the 401(m) test. In addition, both the 401(k) and 401(m) tests shall be met in accordance with the prohibition against multiple use of the alternative limitation under Section 401(m)(9) of the Code.~~

[Amendment to Administrative Code Section 6767(e)]

(e) Loans to Participants.

(1) The General Manager may establish a loan program allowing a Participant to borrow a portion of Participant's Accounts. If the General Manager determines, in the General Manager's discretion, to institute a loan program, each Participant shall have the right, subject to the prior approval of the General Manager, to borrow from Participant's Accounts an amount not to exceed 50 percent of the balance of such Accounts valued as of the Valuation Date immediately preceding the date on which the loan is to be made.

(2) Any loans made pursuant to the provisions hereof, shall satisfy the following conditions: (1) such loans shall be available to all Participants on a reasonably equivalent basis; (2) such loans shall not be made available to Participants who are highly compensated Employees or officers of the District in an amount which, when stated as a percentage of the balance of such Participants' Accounts, is greater than is available to other Participants; (3) such loans shall bear a reasonable rate of interest (unless the General Manager determines otherwise, such loan shall bear interest equal to one percent above the reference rate being charged by Bank of America NT&SA, or the prime rate or similar rate of a successor bank or other commercial bank designated by the General Manager, in effect at the beginning of the month in which the loan is made); (4) each such loan shall be adequately secured, with the security to consist of the portion of the Participant's Accounts equal to the loan principal and any additional security that the General Manager determines to be necessary; (5) the amount of any such loan, when added to the outstanding balance of all other loans from the Savings Plan to the Participant, shall not exceed either (i) \$50,000 reduced by the excess (if any) of the highest outstanding balance during the preceding 12 months of loans from the Savings Plan to the Participant over the outstanding balance of loans from the Savings Plan to the Participant on the date such loan is made or (ii) one-half the value of such Participant's Accounts, including in such balance prior loans to the Participant (for the purpose of this clause, the value of the balance of such Participant's Accounts shall be established as of the Valuation Date preceding the date upon which the loan is made); and (6) each such loan, by its terms, shall be repaid within five years (except that if the General Manager is satisfied that the loan proceeds are being used to acquire the principal residence of a Participant, the General Manager may, in his discretion, establish a term of up to 15 years for repayment).

(3) Each such loan shall be evidenced by a promissory note executed by the Participant (and his or her spouse if the Participant is married) of a fixed maturity date meeting the requirements of Section 6767(e)(2) above, but in no event later than the date that (a) the Participant dies, (b) the Plan is terminated, or (c) the Participant incurs a

Separation from Service. Such promissory note shall evidence such terms as are required by this section.

(4) Any Participant may, upon written notice delivered to the General Manager 30 working days prior to a Valuation Date, request that a loan be made to Participant from Participant's Accounts in the Savings Plan, provided that (1) such Participant has not made a loan request within the preceding 24 months and (2) the request is for a loan of at least ~~\$1,000~~500 (or any lesser minimum amount required in regulation promulgated by the Secretary of the Treasury or the Secretary of Labor).

(5) While the Participant is employed by the District, each such loan shall be repaid through substantially level payroll deductions from Compensation that the Participant would otherwise receive. No payments shall be required during a leave of absence without pay for up to one year; provided that the entire loan balance shall remain due and payable at the loan's maturity date. At the end of such a leave (or the end of one year period, if earlier), a new loan repayment schedule shall be implemented to take into account payments not made during the leave; the new schedule shall not extend the loan's maturity date. If the Participant is absent from employment for more than one year and does not incur a Separation from Service, the Participant shall continue to make the payments required for each such loan directly to the Savings Plan at the times and in the amounts prescribed by the revised schedule. In addition, each such loan may be prepaid in full at any time, such prepayment to be paid directly to the Trustee in accordance with procedures adopted by the General Manager. All loan repayments shall be transmitted by the District to the Trustee as soon as practicable but not later than the end of the payroll period during which such amounts were withheld.

(6) In connection with implementing this section, a new Investment Vehicle shall be created. A Participant's request for a loan shall be treated as a request to transfer a portion of Participant's Accounts in an amount equal to the funds to be loaned to the new Investment Vehicle from the Investment Vehicle it is currently invested in. Each Participant's Accounts in the new Investment Vehicle shall be separately accounted for, and loan repayments shall be credited solely to the Participant's Accounts. A Participant shall designate the Investment Vehicle in which loan interest and principal repayments shall be invested.

(7) Notwithstanding anything to the contrary contained herein, each such loan shall be made only in accordance with the regulations and rulings of the Internal Revenue Service and other applicable state or federal law. The General Manager shall act in the General Manager's sole discretion to ascertain whether the requirements of such regulations and rulings and this section shall have been met.

(8) The General Manager shall have the power to establish any additional rules with respect to loans extended pursuant to this section including, but not limited to, rules relating to nondiscriminatory minimum installments for the repayment of such loans,

the requirement of a financial hardship to obtain a loan, or limitations of the amounts of loans.

(9) Any loans hereunder constitute an exception to the anti-alienation rules in Section 6770(c) of the Savings Plan.

[Amendment to Administrative Code Section 6770(c)]

(c) Alienation.

(1) Except as otherwise provided in subparagraph (3) of this Section, no benefit which shall be payable out of the Trust Fund to any person (including a Participant or Beneficiary) shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge the same shall be void; and no such benefit shall in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any such person, nor shall it be subject to attachment or legal process for or against such person, and the same shall not be recognized by the Trustee, except to such extent as may be required by law.

(2) In the event a Participant's benefits are garnished or attached by order of any court, the General Manager may bring an action for a declaratory judgment in a court of competent jurisdiction to determine the proper recipient of the benefits to be paid by the Savings Plan. During the pendency of said action, any benefits that become payable shall be paid into the court as they become payable, to be distributed by the court to the recipient it deems proper at the close of said action. Any costs attributable to these actions may be charged to the Account of the Participant.

(3) This Section shall not apply to the creation, assignment or recognition of a right to any benefit payable pursuant to a domestic relations order, unless such order is determined to be a Qualified Domestic Relations Order by the District, as defined in Section 414(p) of the Code. The Trustee shall be entitled to make distributions to an alternate payee pursuant to a Qualified Domestic Relations Order in accordance with such an Order, without regard to the age or employment status of the Participant.

[Amendment to Administrative Code Section 6782(d)][Plan II]

(d) Compensation. - Compensation shall mean the total of all cash compensation payable by the District to or for the benefit of an Employee in return for the Employee's services to the extent it does not exceed \$200,000 for any Savings Plan II Year. Except as otherwise specified in ~~Sections 6782(k), Section 6785(c)(1) and 6785(d)(2)~~ Compensation shall include salary reductions permitted under sections 401(k), 414(h), and 457 of the Code.

[Amendment to Administrative Code Section 6782(k)]

(k) ~~[Reserved.] Highly Compensated Employee.~~ Highly Compensated Employee shall mean any Employee described in (1) through (4).

~~(1) Any Employee who performs services for the District during the "determination year" and who, during the "look-back year" (A) received compensation from the District in excess of \$75,000 (as adjusted pursuant to Code Section 415(d)); (B) received compensation from the District in excess of \$50,000 (as adjusted pursuant to Code Section 415(d)) and was a member of the "top-paid group" for such year; or (C) was an officer of the District and received compensation during such year that is greater than 50 percent of the dollar limitation in effect under Code Section 415(b)(1)(A);~~

~~(2) Any Employee who performs services for the District during the determination year and who, with respect to the determination year, is both one of the 100 Employees who received the most compensation from the District during the determination year and is described in (1)(A), (1)(B) or (1)(C); or~~

~~(3) Any Employee who had a Separation from Service (or was deemed to have a Separation from Service) prior to the determination year, performed no services for the District during the determination year, and met the description in (1) or (2) above for either the separation year or any determination year ending on or after the Employee's 55th birthday.~~

~~(4) In addition, if no officer has compensation in excess of 50 percent of the limit in Code Section 415(b)(1)(A) during a determination year or look-back year, the highest paid officer for such year shall be treated as a Highly Compensated Employee.~~

~~(5) If an Employee is, during a determination year or look-back year, a "family member" of a Highly Compensated Employee in the group consisting of the 10 most highly compensated Employees ranked on the basis of compensation paid by the District during such year, then the family member and top ten Highly Compensated~~

~~Employee shall be treated as a single Highly Compensated Employee, and their compensation and contributions or benefits under this Savings Plan II shall be aggregated. Except as otherwise provided under Code Section 401(a)(17), "family member" includes the spouse, lineal ascendants and descendants of the Employee or former Employee and the spouses of such lineal ascendants and descendants.~~

~~(6) The "determination year" shall be the Savings Plan II Year for which compliance is being tested, and the "look-back year" shall be the 12-month period immediately preceding the determination year.~~

~~(7) The "top paid group" for a determination year or look-back year shall consist of the top 20 percent of Employees ranked on the basis of compensation received during the year excluding Employees described in Code Section 414(e)(8) and Treasury Regulations thereunder. The number of Employees treated as officers shall be limited to 50 (or, if less, the greater of 3 Employees or 10 percent of Employees). For purposes of this Section 6782(k), "compensation" means compensation within the meaning of Code Section 415(e)(3) but including elective or salary reduction contributions to a cafeteria plan, cash or deferred arrangement under Code Section 401(k) or tax-sheltered annuity under Code Section 403(b).~~

[Amendment to Administrative Code Section 6785(d)]

(d) [Reserved.] ~~Fail-safe Provision under Section 401(k).~~

~~(1) In order to ensure that Savings Plan II constitutes a qualified cash or deferred arrangement under Code Section 401(k) and the applicable Treasury Regulations thereunder (CODA), the General Manager shall monitor the amounts of Tax Deferred Elective Contributions made hereto for each Participant in order to ensure that the mechanical test of Code Section 401(k)(3) is met. Accordingly the General Manager will estimate, as soon as practicable before the close of the Savings Plan II Year and at such other times as the General Manager in the General Manager's discretion determines, the extent, if any, to which deferral treatment under Code Section 401(k) may not be available to any Participant. In accordance with any such estimate, the General Manager may modify the limit in Section 6785(a)(1), or set initial or interim limits, for Tax Deferred Elective Contributions relating to any Participant, provided that in doing so all Participants who are similarly situated shall be treated in a nondiscriminatory manner and there shall be no discrimination in favor of Employees who are officers of the District or who are highly compensated within the meaning of Section 401(a) of the Code.~~

~~(2) For each Savings Plan II Year, an actual deferral percentage will be determined for each eligible Employee equal to the ratio of the total amount of the eligible Employee's Tax Deferred Elective Contributions allocated under Section 6785(a)(1) for the Savings Plan II Year divided by the eligible Employee's~~

~~Compensation in the Savings Plan II Year. For Savings Plan II Years beginning before January 1, 1992 or such later date as may be provided by the Internal Revenue Service, an Employee's Compensation taken into account for this purpose may be limited to Compensation received during the Savings Plan II Year while the Employee is a Participant. With respect to eligible Employees who have made no Tax Deferred Elective Contributions under Savings Plan II, such actual deferral percentage will be zero. For purposes of this paragraph, the General Manager may elect, at the General Manager's sole discretion, to treat all or part of the District's Matching Contributions as Tax Deferred Elective Contributions to the extent permitted by Treasury Regulations. As used in this paragraph, Compensation shall not include salary reductions permitted under Code Section 414(h) or 457. In the case of family members treated as a single Highly Compensated Employee under Section 6782(k) in accordance with the family aggregation rules of Code Section 414(q)(6), the actual deferral percentage shall be the greater of (A) the actual deferral percentage determined by combining the Tax Deferred Elective Contributions and Compensation of all eligible family members who are Highly Compensated Employees without regard to family aggregation, and (B) the actual deferral percentage determined by combining the Tax Deferred Elective Contributions and Compensation of all eligible family members. Except to the extent taken into account in the preceding sentence, the Tax Deferred Elective Contributions and Compensation of such family members shall be disregarded for purposes of this section.~~

~~(3) The average of the actual deferral percentages for Highly Compensated Employees ("High Average") when compared with the average of the actual deferral percentages for non-Highly Compensated Employees ("Low Average") must meet one of the following requirements:~~

~~(A) The High Average is no greater than 1.25 times the Low Average; or~~

~~(B) The High Average is no greater than two times the Low Average, and the High Average is no greater than the Low Average plus two percentage points.~~

~~(4) If, pursuant to the estimates by the General Manager under (1), (2) and (3) above, a Participant is not eligible for deferral treatment for any or all of the amounts deferred pursuant to the election made under Section 6785(a)(1), then the General Manager may elect, at the General Manager's discretion, to pursue any of the following courses of action or any combination thereof:~~

~~(A) Excess Tax Deferred Elective Contributions, and any earnings attributable thereto, may be returned to the District, solely for the purpose of enabling the District to withhold any federal, state, or local taxes due on such amounts. The District will pay all remaining amounts to the Participant within 2-1/2 months after the close of the Savings Plan II Year to which the excess Tax Deferred Elective Contributions relate to the extent feasible, but in all events no later than 12 months after the close of such Savings Plan II Year. In determining the amount of excess Tax Deferred Elective Contributions to be distributed, amounts previously distributed in the Participant's taxable year ending in the same Savings Plan II Year shall reduce the amount otherwise distributable under this subsection. Earnings attributable to excess Tax Deferred Elective Contributions shall include earnings for the Savings Plan II Year for which such contributions are made and for the period between the end of such year and the date of distribution.~~

~~(B) The General Manager may authorize a suspension or reduction of Tax Deferred Elective Contributions made pursuant to Section 6785(a)(1) in accordance with rules promulgated by the General Manager. These rules may include provisions authorizing the suspension or reduction of Tax Deferred Elective Contributions above a specified dollar amount or percentage of Compensation.~~

~~(5) The amount of the excess Tax Deferred Elective Contributions will be determined by the General Manager by reducing the actual deferral percentage of the Highly Compensated Employee(s) with the highest actual deferral percentage to the extent required to enable Savings Plan II to meet the limits in (3) above or to cause the actual deferral percentage of such Employee(s) to equal the actual deferral percentage of the Highly Compensated Employee(s) with the next highest actual deferral percentage. The process in the preceding sentence shall be repeated the Savings Plan II satisfies the limits in (3) above. In the case of family members subject to the family aggregation rules of Code Section 414(q)(6), excess Tax Deferred Elective Contributions will be allocated among family members in proportion to the Tax Deferred Elective Contributions of each family member that have been combined under (2) above; provided, where the actual deferral percentage is determined under (2)(A) above and reduction of the actual deferral percentage below that of eligible non-Highly Compensated Employee family members is required to enable Savings Plan II to meet the limits in (3) above, such further reduction shall take into account the Tax Deferred Elective Contributions of all eligible family members and be allocated among all such family members in proportion to their Tax Deferred Elective Contributions. The earnings attributable to excess Tax Deferred Elective Contributions will be determined in accordance with Treasury Regulations. The General Manager will not be liable to any Participant (or Beneficiary, if applicable) for any losses caused by inaccurately estimating the amount of any Participant's~~

~~excess Tax Deferred Elective Contributions and earnings attributable to the Tax Deferred Elective Contributions.~~

~~(6) In the discretion of the General Manager, the tests described in this section may be applied by aggregating Savings Plan II with any other defined contribution plans as permitted under the Code and in accordance with Treasury Regulations.~~

[Amendment to Administrative Code Section 6785(a)(1)]

(1) Tax Deferred Elective Contributions. - Subject to the limitations contained in Section 6785(d), a Participant may, pursuant to the enrollment agreement, have the District contribute to the Participant's Tax Deferred Elective Contributions Account a percentage or dollar amount not in excess of 20 percent of the Participant's Compensation (or such lower percentage as the General Manager may designate from time to time).

[Amendment to Administrative Code Section 6785(b)(1)]

(1) Amount of Matching Contributions. - Subject to the limitations contained in Section 6785(f), a Matching Contribution shall be allocated to the Matching Contributions Account of each Participant in an amount equal to a specified percentage from 0 percent to 100 percent of a Participant's Tax Deferred Elective Contributions for each payroll period, but not in excess of a specified percentage of the Participant's Compensation for such payroll period, both of which percentages shall be established by the District from time to time.

[Amendment to Administrative Code Section 6785(f)]

(f) ~~[Reserved.] Fail-safe Provision under Section 401(m).~~

~~(1) The General Manager shall also monitor the amounts of Matching Contributions made hereto for each Participant in order to ensure that the mechanical test of Code Section 401(m)(2) is met. Accordingly, for each Savings Plan II Year, a contribution percentage will be determined for each eligible Employee equal to the ratio of the total amount of Matching Contributions allocated under Section 6785(b)(1) for the Savings Plan II Year divided by the eligible Employee's Compensation in the Savings Plan II Year. For Savings Plan II Years beginning before January 1, 1992 or such later date as may be provided by the Internal Revenue Service, an Employee's Compensation taken into account for this purpose may be limited to Compensation received during the Savings Plan II Year while the Employee is a Participant. Except as otherwise provided in this section, with respect to eligible Employees for whom there were no Matching Contributions under Savings Plan II, such contribution percentage will be zero. In the case of family members treated as a single Highly Compensated Employee under Section 6782(k) in accordance with the family aggregation rules of Code Section 414(q)(6), the contribution percentage~~

~~shall be the greater of (A) the contribution percentage determined by combining the Matching Contributions and compensation of all eligible family members who are Highly Compensated Employees without regard to family aggregation, and (B) the contribution percentage determined by combining the Matching Contributions and compensation of all eligible family members. Except to the extent taken into account in the preceding sentence, the Matching Contributions and compensation of such family members shall be disregarded for purposes of this section.~~

~~(2) The average of the contribution percentages for Highly Compensated Employees ("High Average") when compared with the average of the contribution percentages for non-Highly Compensated Employees ("Low Average") must meet one of the following requirements:~~

~~(A) The High Average is no greater than 1.25 times the Low Average; or~~

~~(B) The High Average is no greater than two times the Low Average, and the High Average is no greater than the Low Average plus two percentage points.~~

~~(3) If, pursuant to estimates by the General Manager under (1) and (2) above, the contribution percentage for any Savings Plan II Year for Highly Compensated Employees exceeds the limits established in (2), the excess contributions for such Savings Plan II Year (and the earnings attributable to such excess contributions) shall be distributed to the Highly Compensated Employees so that the contribution percentage of the Highly Compensated Employee(s) with the highest contribution percentage is reduced to the extent required to enable Savings Plan II to meet the limits in (2) above or to cause the contribution percentage of such Employee(s) to equal the contribution percentage of the Highly Compensated Employee(s) with the next highest contribution percentage. The process in the preceding sentence shall be repeated until Savings Plan II satisfies the limits in (2) above. In the case of family members subject to the family aggregation rules of Code Section 414(q)(6), excess contributions will be allocated among family members in proportion to the Matching Contributions of each family member that have been combined under (1) above; provided, where the contribution percentage is determined under (1)(A) above and reduction of the contribution percentage below that of eligible non-Highly Compensated Employee family members is required to enable Savings Plan II to meet the limits in (2) above, such further reduction shall take into account the Matching Contributions of all eligible family members and be allocated among all such family members in proportion to their Matching Contributions. Earnings attributable to excess contributions shall include earnings for the Savings Plan II Year for which such contributions are made and for the period between the end of such year and the date of distribution.~~

~~_____ (4) Except as otherwise permitted by the Code or Treasury Regulations, any Matching Contributions treated as Tax Deferred Elective Contributions for purposes of the 401(k) test shall not be treated as Matching Contributions for purposes of the 401(m) test. In addition, both the 401(k) and 401(m) tests shall be met in accordance with the prohibition against multiple use of the alternative limitation under Section 401(m)(9) of the Code.~~

[Amendment to Administrative Code Section 6785(g)]

~~_____ (g) [Reserved] The provisions of Section 6785(f) above shall be operative only when and to the extent that Code Section 401(m) is applicable to Savings Plan II in any given Savings Plan II year.~~

[Amendment to Administrative Code Section 6787(e)]

(e) Loans to Participants.

(1) The General Manager may establish a loan program allowing a Participant to borrow a portion of Participant's Accounts. If the General Manager determines, in the General Manager's discretion, to institute a loan program, each Participant shall have the right, subject to the prior approval of the General Manager, to borrow from Participant's Accounts an amount not to exceed 50 percent of the balance of such Accounts valued as of the Valuation Date immediately preceding the date on which the loan is to be made.

(2) Any loans made pursuant to the provisions hereof, shall satisfy the following conditions: (1) such loans shall be available to all Participants on a reasonably equivalent basis; (2) such loans shall not be made available to Participants who are highly compensated Employees or officers of the District in an amount which, when stated as a percentage of the balance of such Participants' Accounts, is greater than is available to other Participants; (3) such loans shall bear a reasonable rate of interest (unless the General Manager determines otherwise, such loan shall bear interest equal to one percent above the reference rate being charged by Bank of America NT&SA, or the prime rate or similar rate of a successor bank or other commercial bank designated by the General Manager, in effect at the beginning of the month in which the loan is made); (4) each such loan shall be adequately secured, with the security to consist of the portion of the Participant's Accounts equal to the loan principal and any additional security that the General Manager determines to be necessary; (5) the amount of any such loan, when added to the outstanding balance of all other loans from Savings Plan II to the Participant, shall not exceed either (i) \$50,000 reduced by the excess (if any) of the highest outstanding balance during the preceding 12 months of loans from Savings Plan II to the Participant over the outstanding balance of loans from Savings Plan II to the Participant on the date such loan is made or (ii) one-half the value of such Participant's Accounts, including in such balance prior loans to the Participant (for the purpose of this clause, the

value of the balance of such Participant's Accounts shall be established as of the Valuation Date preceding the date upon which the loan is made); and (6) each such loan, by its terms, shall be repaid within five years (except that if the General Manager is satisfied that the loan proceeds are being used to acquire the principal residence of a Participant, the General Manager may, in his discretion, establish a term of up to 15 years for repayment).

(3) Each such loan shall be evidenced by a promissory note executed by the Participant (and his or her spouse if the Participant is married) of a fixed maturity date meeting the requirements of Section 6787(e)(2) above, but in no event later than the date that (a) the Participant dies, (b) the Plan is terminated, or (c) the Participant incurs a Separation from Service. Such promissory note shall evidence such terms as are required by this section.

(4) Any Participant may, upon written notice delivered to the General Manager 30 working days prior to a Valuation Date, request that a loan be made to Participant from Participant's Accounts in Savings Plan II, provided that (1) such Participant has not made a loan request within the preceding 24 months and (2) the request is for a loan of at least ~~\$1,000~~500 (or any lesser minimum amount required in regulation promulgated by the Secretary of the Treasury or the Secretary of Labor).

(5) While the Participant is employed by the District, each such loan shall be repaid through substantially level payroll deductions from Compensation that the Participant would otherwise receive. No payments shall be required during a leave of absence without pay for up to one year; provided that the entire loan balance shall remain due and payable at the loan's maturity date. At the end of such a leave (or the end of one year period, if earlier), a new loan repayment schedule shall be implemented to take into account payments not made during the leave; the new schedule shall not extend the loan's maturity date. If the Participant is absent from employment for more than one year and does not incur a Separation from Service, the Participant shall continue to make the payments required for each such loan directly to Savings Plan II at the times and in the amounts prescribed by the revised schedule. In addition, each such loan may be prepaid in full at any time, such prepayment to be paid directly to the Trustee in accordance with procedures adopted by the General Manager. All loan repayments shall be transmitted by the District to the Trustee as soon as practicable but not later than the end of the payroll period during which such amounts were withheld.

(6) In connection with implementing this section, a new Investment Vehicle shall be created. A Participant's request for a loan shall be treated as a request to transfer a portion of Participant's Accounts in an amount equal to the funds to be loaned to the new Investment Vehicle from the Investment Vehicle it is currently invested in. Each Participant's Accounts in the new Investment Vehicle shall be separately accounted for, and loan repayments shall be credited solely to the Participant's Accounts. A Participant shall designate the Investment Vehicle in which loan interest and principal repayments shall be invested.

(7) Notwithstanding anything to the contrary contained herein, each such loan shall be made only in accordance with the regulations and rulings of the Internal Revenue Service and other applicable state or federal law. The General Manager shall act in the General Manager's sole discretion to ascertain whether the requirements of such regulations and rulings and this section shall have been met.

(8) The General Manager shall have the power to establish any additional rules with respect to loans extended pursuant to this section including, but not limited to, rules relating to nondiscriminatory minimum installments for the repayment of such loans, the requirement of a financial hardship to obtain a loan, or limitations of the amounts of loans.

(9) Any loans hereunder constitute an exception to the anti-alienation rules in Section 6790(c) of the Savings Plan.

[Amendment to Administrative Code Section 6790(c)]

(c) Alienation.

(1) Except as otherwise provided in subparagraph (3) of this Section, no benefit which shall be payable out of the Trust Fund to any person (including a Participant or Beneficiary) shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge the same shall be void; and no such benefit shall in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any such person, nor shall it be subject to attachment or legal process for or against such person, and the same shall not be recognized by the Trustee, except to such extent as may be required by law.

(2) In the event a Participant's benefits are garnished or attached by order of any court, the General Manager may bring an action for a declaratory judgment in a court of competent jurisdiction to determine the proper recipient of the benefits to be paid by Savings Plan II. During the pendency of said action, any benefits that become payable shall be paid into the court as they become payable, to be distributed by the court to the recipient it deems proper at the close of said action. Any costs attributable to these actions may be charged to the Account of the Participant.

(3) This Section shall not apply to the creation, assignment or recognition of a right to any benefit payable pursuant to a domestic relations order, unless such order is determined to be a Qualified Domestic Relations Order by the District, as defined in Section 414(p) of the Code. The Trustee shall be entitled to make distributions to an alternate payee pursuant to a Qualified Domestic Relations Order in accordance with such an Order, without regard to the age or employment status of the Participant.

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