

**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

November 5, 1992

(Land Committee--Action)
 (Legal and Claims Committee--Action)

To: Board of Directors (Engineering and Operation Committee--
 Information)

From: General Counsel and General Manager

Subject: Revision of Administrative Code Provisions
 Concerning District Property

Report

The Metropolitan Water District's Administrative Code provisions are in need of revision to allow greater flexibility and efficiency in administering the acquisition, management, and disposal of its real and personal property.

A complete proposal in this regard was presented in draft form by letter dated July 18, 1990 to the Land Committee and Legal and Claims Committee for action and to the Engineering and Operations Committee for information. It has been further revised in light of suggestions and comments thereon by committee members and of subsequent experience in on-going acquisition, management and disposal of properties.

Salient proposed modifications to the Administrative Code include:

Modified authority to the General Manager based on judicious use of fair market value appraisals, to facilitate more effective acquisition, management and disposal of real property; added insurance, indemnity and hold-harmless requirements, to facilitate protection of the District's interests against liability claims arising out of secondary use of its real property; and modified auction provisions and other alternative means of disposal, to facilitate and protect the integrity of the sale of its surplus real property.

Accordingly, attached are the proposed complete revision of Chapter 2 of the District's Administrative Code regarding District Property (Attachment A), a strikeout/underline comparison of the existing and proposed

revised code provisions (Attachment B), an annotated summary relating the proposed revised Code provisions to the existing Code provisions (Attachment C), and a copy of the existing Code provisions (Attachment D).

Requirements for compliance with the California Environmental Quality Act and with applicable provisions of state law governing the District's acquisition, management and disposal of real property are retained.

Board Committee Assignments

This letter was referred to:

The Land Committee because of its authority under Administrative Code section 2451 to study, advise and make recommendations with regard to: policies for acquisition of rights-of-way (subdivision (a)); the purchase, sale, and leasing of land and buildings (subdivision (b)); the incidental use of land (subdivision (c)); the selection of appraisers and the determination of the scope of their assignments (subdivision (f)); and the fixing of purchase prices, and the initiation and conduct of condemnation and other proceedings relating to the purchase or sale of land or interests in property and related negotiations (subdivision (g)).

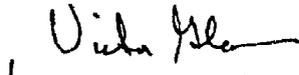
The Legal and Claims Committee because of its authority under Administrative Code section 2461(g) to study, advise and make recommendation with regard to the organization and contents of the Code.

The Engineering and Operations Committee because of its authority under Administrative Code section 2431(b) and (c) to advise, study, and make recommendations with regard to the initiation of construction work and to disposal of equipment, and the protection of plants and facilities.

Recommendation

LAND COMMITTEE AND LEGAL AND CLAIMS COMMITTEE FOR ACTION.

It is recommended that the Chapter 2 of Division VIII of the Metropolitan Water District Administrative Code be amended to read as set forth in Attachment A.


for Fred Vendig


Carl Boronkay

RDT:pmsm
Adminbd.ltr
Attachments

ATTACHMENT A

Chapter 2

DISTRICT PROPERTY

Article		Sec.
1	General Provisions	8200
2	Acquisition of Real Property	8220
3	Management of Real Property	8240
4	Disposal of Real and Personal Property	8260

Article 1

GENERAL PROVISIONS

Sec.	
8200	Definitions
8201	Authorization to General Manager
8202	Restriction on District Directors and Employees

§ 8200. Definitions.

As used in this Chapter 2:

(a) Real property means the fee estate in land, including improvements or minerals therein, the fee estate in minerals in land, or any real property interest as defined in Section 8200(b).

(b) Real property interest means the interest created by an easement in, or a lease or license or permit to use, real property.

(c) Personal property means property upon but severed from, or otherwise not affixed to, real property.

(d) Acquisition price means the amount paid by the District for the acquisition of real property.

(e) Disposal price means the amount received by the District for the disposal of District real property.

(f) Annual payment means (1) the amount paid annually by the District for the grant of any real property interest to the District; or (2) the amount received annually by the District for the grant of any real property interest.

(g) Qualified appraiser means a professional appraiser who is either an independent appraiser or an employee of the

District, and who has been determined by the General Manager to be qualified to appraise real property after demonstrating to the General Manager's satisfaction a relevant and acceptable combination of training, experience, common sense, professional designation, license, if legally required, and, in the case of an independent appraiser, reputation, availability, and fee requirement.

§ 8201. Authorization to General Manager.

The General Manager is authorized to acquire, manage, and dispose of real property on behalf of the District in accordance with Articles 2, 3, and 4, and to dispose of District surplus personal property in accordance with Article 4, of this Chapter 2, or any action by the Board, by documents which shall be approved as to legality by the General Counsel.

§ 8202. Restriction on District Directors and Employees.

District directors and employees, their spouses and dependent children may not acquire real or personal property owned by the District, or make exchange for any such property, or represent in any manner a prospective lessee, licensee, permittee, or purchaser of, or party seeking to make exchange for, any such property.

ARTICLE 2

ACQUISITION OF REAL PROPERTY

Sec.

- 8220. Authority to Procure Options
- 8221. Authority to Acquire Real Property; Appraisal
- 8222. Terms and Conditions of Acquisition Documents
- 8223. Payment of Expenses for Acquisitions
- 8224. Recordation of Notices of Public Easements
- 8225. Adoption of Resolutions of Necessity
- 8226. Relocation Assistance Programs

§ 8220. Authority to Procure Options.

The General Manager is authorized to procure options for the purchase of any real property which the General Manager determines to be required for District purposes at a price not more than the lesser of \$250,000 or the appraised market value for an option to purchase contract which shall have been determined by a qualified appraiser who may be either an employee of the District or an independent appraiser.

§ 8221. Authority to Acquire Real Property; Appraisal.

The General Manager is authorized to acquire any real property which the General Manager determines to be required for District purposes as provided herein:

(a) When the acquisition price or the annual payment therefor is less than \$10,000, it shall have been determined by a qualified appraiser to be the fair market value thereof. If the acquisition price, including any option price paid, or annual payment is \$10,000 or more but less than \$500,000, the real property shall have been appraised prior to acquisition by a qualified appraiser.

(b) If the acquisition price or annual payment for any real property is \$500,000 or more, the real property shall have been appraised prior to acquisition by a qualified appraiser who shall be an independent appraiser, and, if deemed appropriate by the General Manager, by a second qualified appraiser.

(c) The acquisition price or annual payment shall not exceed the lesser of 110 percent of or \$250,000 over the appraised value of the property established by the single appraisal if only one appraisal is obtained, or by the higher of the two appraisals if two appraisals are obtained, unless otherwise approved by the Board. In addition, if an action has been filed by the District to acquire the property by eminent domain, then either the General Manager, by contract to purchase the property upon payment of the acquisition price as provided above, or the General Counsel, by stipulated judgment in an action to acquire the property upon such payment, may pay an amount equal to interest thereon that would be required to be paid if the property were otherwise acquired by judgment in condemnation under the California Eminent Domain Law.

(d) If the General Manager recommends adoption by the Board pursuant to Section 8225 of a resolution of necessity to acquire real property by eminent domain, the General Manager shall first make the offer required by law to purchase the real property. Such offer to purchase shall be made for a price equal to the appraised value of the property established by the single appraisal if only one appraisal is obtained, or by either the higher or the lower of the two appraisals if two appraisals are obtained. The appraisal based upon which the offer to purchase is made shall be the approved appraisal of the property.

(e) In any action in eminent domain filed by the District, or any inverse condemnation action filed against the District alleging a taking of real property, the General

Counsel is authorized to acquire the property by stipulated judgment providing for payment of not more than the acquisition price which the General Manager is authorized to pay by section 8221(c), unless otherwise authorized by the Board, together with interest thereon as provided in section 8221(c).

(f) The General Manager, and the General Counsel in the event of litigation, is authorized to acquire any remainder, or portion of a remainder, in connection with acquisition of real property for District purposes whenever any appraisal obtained by the District of the required property establishes that the remainder or portion thereof will be left in such size, shape or condition as to be of little market value.

(g) The General Manager is authorized pursuant to Government Code Section 27281 to accept deeds or grants of any real property acquired pursuant to this Section 8221 and cause the same to be recorded on behalf of the District.

§ 8222. Terms and Conditions of Acquisition Documents.

The documents by which any real property is acquired for District purposes shall contain such terms and conditions as the General Manager deems to be reasonable and proper.

§ 8223. Payment of Expenses for Acquisitions.

The General Manager is authorized to pay the following expenses, where applicable, connected with the acquisition of real property:

- (a) All fees charged by an escrow holder for services rendered.
- (b) The charge made for a reconveyance.
- (c) Any premium payable for a policy of title insurance.
- (d) The cost of obtaining copies of documents referred to in title reports and records relating thereto.
- (e) Any documentary tax lawfully payable by the seller.
- (f) Any other expenses required to eliminate or minimize potential risks or liabilities associated with the acquisition of real property.

§ 8224. Recordation of Notices of Public Easements.

The General Manager is authorized to comply with the Streets and Highway Code in order to cause to be recorded in the name of the District a document in the form of a notice of public easement for District facilities in the event of the vacation of any public street or highway in which the facilities are installed pursuant to Section 142 of the Metropolitan Water District Act.

§ 8225. Adoption of Resolutions of Necessity.

(a) The General Manager shall give the notice and the Land Committee shall hold the hearing required of the Board by Code of Civil Procedure Section 1245.235(c). The hearing shall be attended by not less than a quorum of the committee. Subsequent to the hearing, the committee shall provide the Board and any person who filed a written request within the time specified in the notice and appeared before the committee with a written summary of the hearing and a written recommendation as to whether to adopt the resolution of necessity. Any such person shall also be given an opportunity to appear and be heard before the Board on the matters referred to in Section 1240.030.

(b) In determining whether to adopt a resolution of necessity to acquire real property, the Board shall consider the recommendation of the General Manager, the written summary of hearing and written recommendation presented to it by the Land Committee and the presentation to the Board by any person made pursuant to Section 8225(a).

§ 8226. Relocation Assistance Program.

The General Manager is authorized to implement a relocation assistance program, including a relocation assistance appeals procedure where required, in connection with the acquisition of real property, in accordance with Government Code Section 7260 et seq., and California Code of Regulations, Title 25, Article 1, Section 6000, et seq., and Article 5, Section 6150, et seq.

**ARTICLE 3
MANAGEMENT OF REAL PROPERTY**

Sec.

8240 Grants of Real Property Interests

8241 Appraisal of Real Property Interests

8242 Terms and Conditions of Management Documents
8243 Consent to Subdivision

§ 8240. Grants of Real Property Interests.

The General Manager is authorized to grant to public entities, public utilities, private persons and private entities, any real property interests in District real property that will not interfere with the District's operations; provided, however, that: (1) any such grant to a public entity or public utility is required for its operations; (2) the consideration for any one such grant (annual payment in the case of any lease, license or permit) to a private person or private entity is less than \$250,000; and (3) if it will be necessary for District facilities to be relocated or protected in order to avoid interference from the use of the real property interest, the General Manager shall obtain approval of a relocation or protection agreement by the Board prior to granting such real property interest, except as to any agreement which the General Manager is authorized to execute pursuant to Section 8118(a)(3).

§ 8241. Appraisals of Real Property Interests.

The General Manager shall have any real property interest proposed to be granted appraised in accordance with the provisions of Section 8260(b).

§ 8242. Terms and Conditions of Management Documents.

Documents conveying real property interests which the General Manager is authorized to grant by this Article 3, shall contain such terms and conditions, as the General Manager deems to be reasonable and proper, but shall include, as a minimum, the following:

(a) Any lease, permit or license to use District real property, other than a lease to a public entity or a public utility, shall be subject to cancellation upon order of either the Board or the General Manager upon no more than one year's written notice to the lessee, permittee or licensee.

(b) Any lease, permit or license to use District real property shall contain insurance and indemnification, defense, and hold harmless provisions protecting the District against liability arising from use of such property thereunder.

§ 8243. Consent to Subdivision.

The General Manager is authorized to consent on behalf of the District to the subdivision of real property owned by a subdivider, subject to any easement owned by the District, and to consent to recordation of the subdivision map provided that the certification expressing such consent shall reserve to the District any such easement in the property so subdivided.

ARTICLE 4

DISPOSAL OF REAL AND PERSONAL PROPERTY

Sec.	
8260	Preliminary Requirements for Sales, Leases or Exchanges of Surplus Real Property
8261	Public Sales or Leases of Surplus Real Property
8262	Quitclaims of Real Property Interests
8263	Quitclaims of 1928 Act and 1932 Act Real Property
8264	Exchanges of Surplus Real Property
8265	Methods of Public Sale of Surplus Real Property
8266	Exceptions to Public Sale or Lease Requirements
8267	Terms and Conditions of Disposal Documents
8268	Statement Regarding District Operations
8269	Disposal of Unnecessary Improvements
8270	Disposal of Excavated or Other Materials
8271	Disposal of Surplus Personal Property

§ 8260. Preliminary Requirements for Sales, Leases or Exchanges of Surplus Real Property.

The General Manager shall continuously review District real property and determine which of such property is surplus to the District's needs, and is authorized to dispose of such property as follows:

(a) When the disposal price or annual payment for property determined by the General Manager to be surplus is less than \$10,000, it shall have been determined by a qualified appraiser to be the fair market value thereof. If the disposal price or annual payment for property determined by the General Manager to be surplus is more than \$10,000, the General Manager shall have caused the property to be appraised as provided herein:

(1) If the disposal price or annual payment is less than \$250,000, the property shall have been appraised prior to disposal by a qualified appraiser. The disposal price or

annual payment shall not be less than the appraised value of the property unless otherwise approved by the Board.

(2) If the disposal price or annual payment for the property is \$250,000 or more, the property shall have been appraised prior to disposal by a qualified appraiser who shall be an independent appraiser, and, if deemed appropriate by the General Manager, by a second qualified appraiser. The disposal price or annual payment shall not be less than the appraised value of the property established by the single appraisal if only one appraisal is obtained, or by the lower of the two appraisals if two appraisals are obtained, unless otherwise approved by the Board.

(b) If the appraised value or annual payment for the property is \$250,000 or more, the General Manager shall:

(1) Notify the Engineering and Operations Committee and the Land Committee of the determination that the property is surplus to the District's needs.

(2) Notify the Land Committee of the appraised value of the property and recommend a disposal procedure authorized by this Article 4.

(3) Notify the Board if the appraised value is \$1,000,000 or more, and recommend a disposal procedure authorized by this Article 4.

(c) The General Manager shall comply with the California Environmental Quality Act, and the legal requirements pertaining to the disposal of real property in any city or county in which the property is located which has a general plan in accordance with Government Code Section 65402. If, upon such compliance, the planning agency of any such city or county disapproves of the proposed sale, the Board shall first expressly uphold or overrule the disapproval. There being no disapproval, or the disapproval having been overruled, and the appraisal or appraisals having been completed, the General Manager may then sell, lease, or exchange the property under the provisions of this Article 4.

§ 8261. Public Sales or Leases of Surplus Real Property.

After complying with Section 8260, the General Manager shall first offer surplus real property owned by the District, and not held for exchange purpose, for sale or lease to certain entities as required by Government Code Section 54222, for a disposal price at the appraised value of the property determined in accordance with Section 8260(a). If no

such offer is accepted, the General Manager may lease the property or sell it in accordance with Sections 8265, 8266, 8267 and 8268.

§ 8262. Quitclaims of Real Property Interests.

(a) Except as provided in subsection (b) hereof, the General Manager is authorized to quitclaim to the owner of the fee estate in land any easement, lease, license or permit owned by the District upon such terms as the General Manager deems appropriate when the General Manager determines that such real property interest is no longer required for the District's purposes, and when the disposal price for such real property interest, or annual payment in the case of a lease, license or permit is less than \$250,000. Any disposal price or annual payment required as consideration for such quitclaim shall be no less than the appraised value of such real property interest determined in accordance with Section 8260(a).

(b) The General Manager is authorized to quitclaim any temporary easement or lease prior to its expiration upon such terms and conditions as the General Manager deems appropriate under the circumstances, if the General Manager determines that the real property interest is no longer required for District purposes.

§ 8263. Quitclaims of 1928 Act and 1932 Act Real Property.

Notwithstanding any other provisions of this Article 4, the General Manager is authorized to quitclaim to the United States of America, any real property acquired by the District under and pursuant to the Act of Congress approved December 21, 1928 (45 Stat. 1057) or the Act of Congress approved June 18, 1932 (47 Stat. 324), when the General Manager determines that the property is no longer required for the District's purposes.

§ 8264. Exchanges of Surplus Real Property.

The General Manager is authorized to accept a grant of real property in exchange for modification or quitclaim of any existing real property of the District, provided that the construction, operation, maintenance or removal of any District facility will not be adversely affected by any such exchange; that the appraised value of the existing real property is less than \$250,000; and that the District shall be paid a disposal price equal to the difference, if any, between the value of the real property quitclaimed and that of the real property received, based upon the appraised value of such real

properties determined in accordance with Sections 8260 and 8221.

§ 8265. Methods of Public Sale of Surplus Real Property.

(a) **General.** Unless otherwise permitted by this Article 4, District surplus real property shall be disposed of by sale to the highest bidder at public auction.

(b) **Public auction.**

(1) **Notice of Sale.** A Notice of Sale shall be posted in public view on property to be sold by public auction. The notice of sale shall describe the property to be sold in general terms, give notice of the place, date, and time of the public auction of the property; and shall identify a contact person by name, address and telephone number from whom an auction brochure may be obtained. If the appraised value of the property is \$25,000 or more, the Notice of Sale shall be advertised in the manner required by Section 8110(b). The notice and brochure shall be further disseminated to local realty boards and to such persons as the General Manager may designate. Any person shall, upon request, be provided with a the Notice of Sale and brochure.

(2) **Auction Brochure.** The auction brochure shall state the date, time and place of public auction; the acreage, location, zoning, and any special characteristics of the property; any applicable title restriction, reservations or conditions existing as of the date of the notice; the acceptable minimum bid, which shall not be less than the appraised value of the property determined pursuant to Section 8260(a); and the amount of deposit required, determined pursuant to subsection (d) hereof, to enable bidding at the auction; provide for real estate broker representation of prospective bidders; and state the method of calculation of any broker commission to be paid by the District pursuant to subsection (b)(3)(IV) hereof, and that such commission shall not be included in determining which is the highest bid at auction. The auction brochure may be supplemented if the General Manager determines that there is subsequent information relevant to the property which was not available at the time of initial publication.

(3) **Auction Procedure.**

(i) **General.** A public auction shall be conducted at the place, on the date, and at the time specified in the Notice of Sale. Such auction may be by District staff or by using the services of a professional auctioneer. If the General Manager

uses the services of a professional auctioneer, the General Manager may agree to pay a commission to the auctioneer not in excess of the prevailing rate in the area in which the property is located, upon completion of the sale as provided in subsection (h) hereof. The person conducting the auction shall announce that during any oral bidding or any recess therein, conference or consultation between bidders shall be prohibited and is cause for disqualification of such bidders.

(ii) Bid deposit. No bid at the auction shall be considered unless the bidder shall, prior to the commencement of the auction, deposit with the person conducting the auction, by check certified by a responsible bank, an amount determined pursuant to subsection (d) hereof.

(iii) Bidding and sale. Any person who has furnished the bid deposit as required in subsection (b)(3)(ii) hereof shall be eligible to bid at the auction. Bids shall be oral. The minimum bid shall be not less than specified in the Auction Brochure. Thereafter, bid increments shall not be less than the lesser of 5 percent of the minimum bid or \$5,000. The sale shall be made to the highest bidder. In determining which is the highest bid, any commission to be paid to a licensed real estate broker, upon completion of sale as provided in subsection (h) hereof, shall be disregarded. Upon sale of the property, the deposit of the successful bidder shall be retained by the District as a guarantee that the person making the bid will purchase the property under the terms and conditions specified in the Notice of Sale and shall be applied by the District to the purchase price of the property. The deposits of all other bidders shall be returned forthwith.

(iv) Commission. A real estate commission shall be paid in connection with a sale at auction on the following basis, provided that a real estate broker has notified the District in writing prior to the commencement of bidding of his or her participation on behalf of a prospective bidder, who shall be identified and who shall, in person or through the broker, participate in the auction:

(A) The real estate commission shall not exceed the prevailing rate in the area where the property is located, as determined by the General Manager.

(B) The commission shall be paid only to that licensed real estate broker, if any, representing the bidder making the highest bid upon completion of sale as provided in subsection (h) hereof.

(c) **Alternate sale procedure.** The General Manager may sell District real property having an appraised value of less than \$75,000 by negotiated sale or by sealed bid. The General Manager may sell by negotiated sale District real property for which no bids complying with the terms of sale were received at public auction. If the real property is sold by negotiated sale, the services of licensed real estate brokers by open listing may be used. The General Manager shall advertise a Notice of Sale with licensed real estate broker representation, or by sealed bids, in a newspaper or newspapers, and shall provide such Notice to real estate boards in the area in which the property is located if the sale is by open listing. The General Manager may, with the approval of the Land Committee, agree to an exclusive listing with a licensed real estate broker for the sale of District real property. The Notice of Sale, or the exclusive listing, shall contain the information concerning the property required by subsection (b)(1) and (2) hereof, shall state a sales price no less than the highest appraised value of the property determined pursuant to Section 8260(a), and shall require a good faith deposit of a check certified by a responsible bank, of the portion, determined in accordance with the terms of subsection (d) hereof, of the stated sales price. The General Manager is authorized to sell the property for the highest price obtainable; provided, however, that such price shall be no lower than the lowest appraised value, determined pursuant to Section 8260(a), without the approval of the Land Committee and no lower than 90 percent of such lowest appraised value without the approval of the Board. The General Manager is authorized to pay to the broker who procures the accepted purchase offer, upon completion of the sale as provided in subsection (h) hereof, a commission not to exceed the prevailing rate in the area in which the property is located, as determined by the General Manager at the time of first advertisement and notification of real estate boards. If real property is sold by sealed bid, all sealed bids shall be filed with the General Manager on District-furnished forms, shall be accompanied by a deposit of a certified check as required by subsection (b)(3)(ii) hereof, and shall otherwise comply with such terms as may be specified in the Notice of sale. The General Manager shall, at the time and place indicated in the Notice of Sale, state the minimum acceptable bid, which shall be the lowest sale price authorized by this subdivision (c), reserve the right to reject all bids, and open the sealed bids.

(d) **Amount of Bid Deposit or Good Faith Deposit.** The bid deposit required as a condition of bidding on District real property at public auction or by sealed bid, and the good faith deposit in connection with any negotiated sale of real property shall be computed in accordance with the following:

Stated Minimum Sale Price	Amount of Minimum Bid <u>Deposit</u> or Good <u>Faith Deposit</u>
To \$1,000	- Full amount of stated minimum sale price
\$1,001 to \$25,000	- \$1,000 + 2% over \$1,000
\$25,001 to \$50,000	- \$1,500 + 3% over \$25,000
\$50,001 to \$100,000	- \$3,000 + 5% over \$50,000
\$100,001 and above	- \$8,000 + 10% over \$100,000

(e) Terms of Payment.

Any sale of District real property shall be for cash or on the following minimum terms:

20 percent down payment with balance amortized over 10 years at an interest rate equal to the prevailing interest rate on first deeds of trust charged by financial institutions on the purchase of comparable properties in the area in which the property is located, as determined by the General Manager, and to be secured by a first deed of trust on the property sold. No prepayment penalty shall be required. The General Manager shall not subordinate the fee interest in the property to a lien, subdivision map, parcel map or other interest, nor release portions of the property from the loan obligation in advance of retirement of the entire note.

(f) Zoning.

Where District real property was appraised on the basis of a different zoning on the property than the existing zoning, the sale may be made contingent upon the bidder or offeror obtaining a rezoning of the property within a reasonable time to be determined by the General Manager.

(g) Policy of Title Insurance.

The General Manager may furnish the successful bidder or offeror with a policy of title insurance, if possible, and open an escrow to complete the sale of District real property, paying the usual seller's charges in connection therewith; provided, however, that if it subsequently develops that the title company is unwilling to issue a policy insuring title to the bidder or offeror in the manner indicated by the

General Manager prior to the sale, the General Manager shall not be required to furnish such a policy and the bidder or offeror may cancel the sale; whereupon money previously deposited shall be refunded promptly and there shall be no further obligation on the part of either the bidder or offeror or the General Manager in connection with the sale; provided, further, that if under such circumstances the bidder or offeror elects not to cancel the transaction, the General Manager shall furnish such title insurance as the title company will then issue, and shall be released from liability on any representation relating to title theretofore made and not covered by the title insurance policy.

(h) Completion of Sale.

Delivery of a deed from the District to the successful bidder or offeror shall constitute completion of sale of District real property. Such delivery shall be either directly or through an escrow. The General Manager shall apply the deposit of the successful bidder or offeror to the sales price. If the sale is on terms, the General Manager shall have received delivery of a promissory note secured by a first deed of trust on the property for the balance of the purchase price. If the sale is for cash (1) without an escrow, the successful bidder or offeror must have paid the balance of the purchase price to the District within 30 days after the auction or acceptance of the offer, or (2) with an escrow, the payment must be received by the General Manager upon the closing thereof; provided, however, that the General Manager may give the successful bidder or offeror extensions of time in which to make the payment.

(j) Liquidated Damages.

Any deposit made by a successful bidder or offeror shall, by provision in accordance with Civil Code Sections 1676 and 1677, be retained by the District as liquidated damages if the bidder or offeror shall fail to complete the purchase of District real property in accordance with the terms and conditions of the Notice of Sale or broker listing. If there is such failure, a licensed real estate broker, otherwise entitled to a commission under the provisions of this Article 4, shall not be paid a commission.

§ 8266. Exceptions to Public Sale or Lease Requirements.

The requirements of Section 8265 do not apply in the case of:

(a) A sale or lease of District real property to the United States, the State, or any local governmental entity within the State. Any sale or lease under Section 8265 shall be for the fair market value of the property as determined by the General Manager after review of any or all appraisals of the property; provided that with respect to sales or leases of District real property under subsections (b) and (c) hereof, the General Manager shall make a determination of the reasonable amount for which the property or interest shall be sold or leased.

(b) A sale or lease of District real property having an estimated value of \$10,000 or less.

(c) A sale or lease of District real property to an adjoining property owner when the General Manager determines that the particular parcel is probably incapable of being developed independently.

§ 8267. Terms and Conditions of Disposal Documents.

Documents conveying or leasing real property which the General Manager is authorized to grant or lease by this Article 4, shall contain such terms and conditions as the General Manager deems reasonable and proper. However, the right to extract all oil, gas hydrocarbons or other minerals without the right of surface entry for the development thereof, shall be reserved in the sale of any real property; provided, however, that there shall be no such extraction within 500 vertical feet of the surface.

§ 8268. Statement Regarding District Operations.

The General Manager shall incorporate in any letter to the Board recommending the disposal or encumbering of any real property of the District, a statement declaring that the property will neither be required by the District nor adversely affect its operations.

§ 8269. Disposal of Unnecessary Improvements.

The General Manager is authorized to dispose of, in the manner the General Manager deems to be in the best interest of the District, any improvements that must be removed to make real property acquired for District operations suitable for District use.

§ 8270. Disposal of Excavated or Other Materials.

The General Manager is authorized to dispose of surplus excavated materials, or other materials, as surplus personal property, from District real property, with or without monetary consideration as determined by the General Manager to be in the best interests of the District.

§ 8271. Disposal of Surplus Personal Property.

Any personal property belonging to the District and which, in the opinion of the General Manager, is no longer required for the use of the District may be sold, or exchanged as part payment for the purchase of new equipment of like kind and nature, such sale or exchange to be made under such procedure, at such prices and upon such terms and conditions, as the General Manager may prescribe.

revsale1.A

Revised June 17, 1992

ATTACHMENT B

November 12, 1992
(CODE3.S&U)

~~Article 1~~

~~ACQUISITION OF REAL PROPERTY~~

Sec.

- ~~8200. Employment of Appraisers and Acquisition of Real Property~~
- ~~8201. Acceptance of Deeds or Grants and Recordation of Notices of Public Easements~~
- ~~8202. Relocation Assistance Program~~
- ~~8203. Acquisition of Tunnel Easements~~
- ~~8204. Acceptance of Temporary Easement Deeds Subject to Deeds of Trust~~
- ~~8205. Purchase of Remainders~~
- ~~8206. Entry Permits~~
- ~~8207. Adoption of Resolution of Necessity~~

DIVISION VIII

~~CONTRACTS AND DISTRICT PROPERTY~~

Chapter 2

Article 1

GENERAL PROVISIONS

Sec.

- 8200 Definitions
- 8201 Authorization to General Manager
- 8202 Restriction on District Directors and Employees

~~§ 8200. Employment of Appraisers and Acquisition of Real Property.~~

~~(a) The General Manager is authorized to pay the following expenses connected with the purchase of real property:~~

~~(1) All fees charged by an escrow holder for services rendered.~~

~~(2) Charge made for a reconveyance.~~

~~(3) Any premium payable for a policy of title insurance.~~

~~(4) Cost of obtaining copies of documents referred to in title reports and records relating thereto.~~

~~(b) The following regulations governing the purchase of real property, including rights of way and easements (hereinafter called "property") are adopted:~~

~~(1) The General Manager is authorized to procure options for the purchase of property, in the judgment of the General Manager required for District purposes, in amounts not exceeding \$5,000 for any one option.~~

~~(2) The General Manager is authorized to bind the District by contract for the purchase of any property, which, in the judgment of the General Manager, is required for District purposes, without~~

~~appraisal, when the purchase price does not exceed the sum of \$5,000 for any one parcel; provided, further, that if an appraisal is obtained, the General Manager may, with the approval of the Land Committee and without regard to the appraisal, purchase such property for any amount not in excess of \$5,000 which the General Manager believes to be in the best interests of the District to pay.~~

~~(3) All property authorized to be acquired, other than that referred to in Section 8200(b)(2) herein, shall be appraised by at least one appraiser, who may be a designated member of the staff of the General Manager or an independent appraiser employed by the General Manager. One appraisal shall be sufficient unless, in the opinion of the General Manager, the appraised valuation of the property will exceed \$75,000 or any appraisal which the General Manager obtains shows a valuation in excess of such sum, in which case there shall be an appraisal made by a second and independent appraiser. If only one appraisal is necessary, the valuation determined thereby shall constitute the approved value of the property, while if two appraisals are required, the lower of the valuations ascertained shall constitute the approved value of the property. The General Manager may bind~~

~~the District by contract for the purchase of the property at the approved valuation or for such greater sum as is authorized in Section 8200(b)(4). If there are two appraisals and the property cannot be purchased in accordance with the foregoing provisions, the reports of the two appraisers shall be submitted to the Land Committee which shall establish an approved valuation no higher than the higher of the two appraisals and no lower than the lower one thereof.~~

~~(4) The General Manager may, whenever it is necessary in the General Manager's judgment, bind the District by contract for the purchase of property authorized to be acquired at a price not exceeding the lesser of 110 percent of the approved valuation or \$5,000 over the approved valuation; provided, further, that the General Manager may pay, in addition to the lesser of the above amounts, as part of the negotiated purchase price of the property, a sum equal to any documentary tax lawfully payable by the seller.~~

~~(c) The authority of the General Manager to accept deeds or grants of any interest in or easements upon real estate on behalf of the District may be exercised when the General Manager has contracted for the purchase of such interest or easement pursuant to the~~

~~provisions of this Section 8200 or any action by the Board. The General Manager shall report to the Land Committee quarterly the deeds or grants accepted during the preceding quarter.~~

§ 8200. Definitions.

As used in this Chapter 2:

(a) Real property means the fee estate in land, including improvements or minerals therein, the fee estate in minerals in land, or any real property interest as defined in Section 8200(b).

(b) Real property interest means the interest created by an easement in, or a lease or license or permit to use, real property.

(c) Personal property means property upon but severed from, or otherwise not affixed to, real property.

(d) Acquisition price means the amount paid by the District for the acquisition of real property.

(e) Disposal price means the amount received by the District for the disposal of District real property.

(f) Annual payment means (1) the amount paid annually by the District for the grant of any real property interest to the District; or (2) the amount received annually by the District for the grant of any real property interest.

(g) Qualified appraiser means a professional appraiser who is either an independent appraiser or an employee of the District, and who has been determined by the General Manager to be qualified to appraise real property after demonstrating to the General Manager's satisfaction a relevant and acceptable combination of training, experience, common sense, professional designation, license, if legally required, and, in the case of an independent appraiser, reputation, availability, and fee requirement.

~~§ 8201. — Acceptance of Deeds or Grants and
Recordation of Notices of Public Easements.~~

~~(a) Pursuant to Section 27281 of the Government Code, the General Manager is authorized to accept deeds or grants conveying any interest in or easement upon real estate to the District for public purposes, and the District hereby consents to the recordation thereof by the General Manager, provided such deed or grant is in form approved by the General Counsel.~~

~~(b) The General Manager is authorized to comply with the Streets and Highway Code on behalf of the District in order that a notice of public easement for District facilities may be recorded in the event of the vacation of any public street or highway in which the facilities are installed pursuant to Section 142 of the Metropolitan Water District Act.~~

§ 8201. Authorization to General Manager.

The General Manager is authorized to acquire, manage, and dispose of real property on behalf of the District in accordance with Articles 2, 3, and 4, and to dispose of District surplus personal property in accordance with Article 4, of this Chapter 2, or any action by the Board, by documents which shall be approved as to legality by the General Counsel.

~~§ 8202. Relocation Assistance Program.~~

~~The General Manager is authorized to implement a relocation assistance program including a relocation assistance appeals procedure where required in connection with the acquisition of property for District purposes, in accordance with Government Code Division 7, Chapter 16, Sections 7260, et seq., and~~

~~California Administrative Code Title 25, Article 1,
Section 6000, et seq. and Article 5, Section 6150, et
seq.~~

**§ 8202. Restriction on District Directors and
Employees.**

District directors and employees, their
spouses and dependent children may not acquire real or
personal property owned by the District, or make
exchange for any such property, or represent in any
manner a prospective lessee, licensee, permittee, or
purchaser of, or party seeking to make exchange for,
any such property.

~~§ 8203. Acquisition of Tunnel Easements.~~

~~The General Manager is authorized to enter into
agreements for the acquisition of tunnel easements in
land subject to deeds of trust when the consideration
to be paid therefor does not exceed \$1,000, such
agreements to be in form approved by the General
Counsel.~~

~~§ 8204. Acceptance of Temporary Easement Deeds
Subject to Deeds of Trust.~~

~~The General Manager is authorized to accept temporary easement deeds subject to deeds of trust and is not required to obtain a consent to subordination thereof.~~

~~§ 8205. Purchase of Remainders.~~

~~The General Manager is authorized to bind the District by contract for the purchase of any such remainder or remainders in connection with any District project, whenever any appraisal report obtained by the District respecting the required parcel, establishes that the acquisition thereof will reduce the value of one such remainder to an amount between \$0 and \$500, inclusive, or of two such remainders to an amount between \$0 and \$1,000, inclusive.~~

~~§ 8206. — Entry Permits.~~

~~The General Manager, when obtaining an entry permit from a property owner, is authorized to agree, on behalf of the District, to assume the risk of any loss to the District which might arise out of the exercise of the rights granted under the permit, and to indemnify the property owner from any liability to third parties arising out of the District's use of the property. When possession of property is taken by the District under a permit from the owner, the General Manager is authorized to agree with the owner to pay interest on any award which might thereafter be made in a condemnation action to the same extent as if an order for immediate possession had been obtained from the court in such action, all such permits being in form approved by the General Counsel.~~

~~§ 8207. — Adoption of Resolution of Necessity.~~

~~(a) The General Manager shall give the notice and the Land Committee shall hold the hearing required of the Board by Code of Civil Procedure Section 1245.235(c). The hearing shall be attended by not less than a quorum of the committee. Subsequent to the hearing, the committee shall provide the Board and any~~

~~person who filed a written request within the time specified in the notice and appeared before the committee with a written summary of the hearing and a written recommendation as to whether to adopt the resolution of necessity. Any such person shall also be given an opportunity to appear and be heard before the Board on the matters referred to in Section 1240.030.~~

~~(b) In determining whether to adopt a resolution of necessity to acquire property, the Board shall consider the recommendation of the General Manager, the written summary of hearing and written recommendation presented to it by the Land Committee and presentation to the Board by any person made pursuant to Section 8207(a).~~

~~Article 2~~

~~MANAGEMENT OF REAL PROPERTY~~

~~See.~~

~~8220. Easements to Public Agencies and Public
Utilities~~

~~8221. Consent to Subdivision~~

~~8222. Leasing of Property for District Purposes~~

~~8223. Leases of District Property~~

~~8224. Utility Pole Permits~~

~~8225. Removal or Relocation of Facilities on
Easements Not Inflexible~~

~~8226. General Manager to Appraise District Property
for Leases~~

ARTICLE 2

ACQUISITION OF REAL PROPERTY

Sec.

8220. Authority to Procure Options

8221. Authority to Acquire Real Property; Appraisal

8222. Terms and Conditions of Acquisition Documents

8223. Payment of Expenses for Acquisitions

8224. Recordation of Notices of Public Easements

8225. Adoption of Resolutions of Necessity

8226. Relocation Assistance Programs

~~§ 8220. Easements to Public Agencies and Public
Utilities.~~

~~(a) The General Manager is authorized to grant to
governmental entities within and including the State of
California, public agencies, and public utilities, at~~

~~their request, on such terms as the General Manager deems to be reasonable and proper such easements, or similar rights, in District property as are required for their operations and will not interfere with the District's operations, such grants to be in form approved by General Counsel; provided, however, that if it will be necessary for District facilities to be relocated or protected in order to avoid interference by the requested easement, the General Manager shall obtain approval of a relocation or protection agreement by the Board prior to granting such easement.~~

~~(b) The General Manager shall report to the Land Committee quarterly the easements, or similar rights, granted during the preceding quarter under the authority of Section 8220, and shall also include in such report any relocation or protection agreement made in connection therewith.~~

§ 8220. Authority to Procure Options.

The General Manager is authorized to procure options for the purchase of any real property which the General Manager determines to be required for District purposes at a price not more than the lesser of \$250,000 or the appraised market value for an option to

purchase contract which shall have been determined by a qualified appraiser who may be either an employee of the District or an independent appraiser.

~~§ 8221. Consent to Subdivision~~

~~The General Manager is authorized on behalf of the District to consent to the subdivision of property owned by subdivider, subject to an easement owned by the District, and consent to the recordation of the subdivision map, provided that the certification expressing such consent shall be in form approved by the General Counsel and shall reserve to the District its easement in the property to subdivided.~~

§ 8221. Authority to Acquire Real Property; Appraisal.

The General Manager is authorized to acquire any real property which the General Manager determines to be required for District purposes as provided herein:

(a) When the acquisition price or the annual payment therefor is less than \$10,000, it shall have been determined by a qualified appraiser to be the fair market value thereof. If the acquisition price, including any option price paid, or annual payment is

\$10,000 or more but less than \$500,000, the real property shall have been appraised prior to acquisition by a qualified appraiser.

(b) If the acquisition price or annual payment for any real property is \$500,000 or more, the real property shall have been appraised prior to acquisition by a qualified appraiser who shall be an independent appraiser, and, if deemed appropriate by the General Manager, by a second qualified appraiser.

(c) The acquisition price or annual payment shall not exceed the lesser of 110 percent of or \$250,000 over the appraised value of the property established by the single appraisal if only one appraisal is obtained, or by the higher of the two appraisals if two appraisals are obtained, unless otherwise approved by the Board. In addition, if an action has been filed by the District to acquire the property by eminent domain, then either the General Manager, by contract to purchase the property upon payment of the acquisition price as provided above, or the General Counsel, by stipulated judgment in an action to acquire the property upon such payment, may pay an amount equal to interest thereon that would be required to be paid if

the property were otherwise acquired by judgment in condemnation under the California Eminent Domain Law.

(d) If the General Manager recommends adoption by the Board pursuant to Section 8225 of a resolution of necessity to acquire real property by eminent domain, the General Manager shall first make the offer required by law to purchase the real property. Such offer to purchase shall be made for a price equal to the appraised value of the property established by the single appraisal if only one appraisal is obtained, or by either the higher or the lower of the two appraisals if two appraisals are obtained. The appraisal based upon which the offer to purchase is made shall be the approved appraisal of the property.

(e) In any action in eminent domain filed by the District, or any inverse condemnation action filed against the District alleging a taking of real property, the General Counsel is authorized to acquire the property by stipulated judgment providing for payment of not more than the acquisition price which the General Manager is authorized to pay by section 8221(c), unless otherwise authorized by the Board, together with interest thereon as provided in section 8221(c).

(f) The General Manager, and the General Counsel in the event of litigation, is authorized to acquire any remainder, or portion of a remainder, in connection with acquisition of real property for District purposes whenever any appraisal obtained by the District of the required property establishes that the remainder or portion thereof will be left in such size, shape or condition as to be of little market value.

(g) The General Manager is authorized pursuant to Government Code Section 27281 to accept deeds or grants of any real property acquired pursuant to this Section 8221 and cause the same to be recorded on behalf of the District.

~~§ 8222. Leasing of Property for District Purposes.~~

~~(a) The General Manager shall be authorized to lease any property that the General Manager deems necessary in connection with the operations of the District; provided, however, that the aggregate rent under any one lease be less than \$75,000.~~

~~(b) The General Manager shall report annually to the Board and quarterly to the Land Committee all~~

~~leases made during the preceding quarter under the authority of this Section 8222.~~

~~(c) If, in the General Manager's opinion, it would be advisable to have property proposed to be leased appraised, the General Manager is authorized to obtain such an appraisal either by an independent appraiser or appraisers in accordance with the provisions of Section 8200, or by a member of the staff of the General Manager.~~

§ 8222. Terms and Conditions of Acquisition Documents.

The documents by which any real property is acquired for District purposes shall contain such terms and conditions as the General Manager deems to be reasonable and proper.

§ 8223. Leases of District Property.

~~(a) The General Manager may lease property of the District for purposes not inconsistent with the needs of the District provided each such lease, other than a lease to a public entity or a public utility, is subject to cancellation upon an order of either the~~

~~Board or the General Manager upon no more than one year's written notice to the lessee.~~

~~(b) The General Manager shall report annually to the Board and quarterly to the Land Committee all leases made during the preceding quarter under the authority of this Section 8223.~~

§ 8223. Payment of Expenses for Acquisitions.

The General Manager is authorized to pay the following expenses, where applicable, connected with the acquisition of real property:

(a) All fees charged by an escrow holder for services rendered.

(b) The charge made for a reconveyance.

(c) Any premium payable for a policy of title insurance.

(d) The cost of obtaining copies of documents referred to in title reports and records relating thereto.

(e) Any documentary tax lawfully payable by the seller.

(f) Any other expenses required to eliminate or minimize potential risks or liabilities associated with the acquisition of real property.

~~§ 8224. Utility Pole Permits.~~

~~(a) The General Manager is authorized to execute permits to enable the District to use poles owned by others for attachment of District facilities and to bind the District to indemnify the owner of the poles against liability resulting from such use.~~

~~(b) The General Manager is authorized to execute permits to enable others to use District-owned poles for attachment of their facilities, such permit to contain provisions protecting the District against liability arising from such use of District poles.~~

~~(c) The General Counsel shall review any permit executed by the General Manager pursuant to authority granted herein.~~

§ 8224. Recordation of Notices of Public Easements.

The General Manager is authorized to comply with the Streets and Highway Code in order to cause to be recorded in the name of the District a document in the form of a notice of public easement for District facilities in the event of the vacation of any public street or highway in which the facilities are installed pursuant to Section 142 of the Metropolitan Water District Act.

~~§ 8225. Removal or Relocation of Facilities on Easements Not Inflexible.~~

~~The Board shall not establish as an inflexible rule that each grant of easement shall contain the requirement that the grantee remove or relocate its facilities upon demand.~~

§ 8225. Adoption of Resolutions of Necessity.

(a) The General Manager shall give the notice and the Land Committee shall hold the hearing required of the Board by Code of Civil Procedure Section 1245.235(c). The hearing shall be attended by not less than a quorum of the committee. Subsequent to the

hearing, the committee shall provide the Board and any person who filed a written request within the time specified in the notice and appeared before the committee with a written summary of the hearing and a written recommendation as to whether to adopt the resolution of necessity. Any such person shall also be given an opportunity to appear and be heard before the Board on the matters referred to in Section 1240.030.

(b) In determining whether to adopt a resolution of necessity to acquire real property, the Board shall consider the recommendation of the General Manager, the written summary of hearing and written recommendation presented to it by the Land Committee and the presentation to the Board by any person made pursuant to Section 8225(a).

~~§ 8226. — General Manager to Appraise District
Property for Leases.~~

~~The General Manager is authorized to obtain one or more appraisals of any District property which the General Manager believes it would be in the best interests of the District to lease.~~

§ 8226. Relocation Assistance Program.

The General Manager is authorized to implement a relocation assistance program, including a relocation assistance appeals procedure where required, in connection with the acquisition of real property, in accordance with Government Code Section 7260 et seq., and California Code of Regulations, Title 25, Article 1, Section 6000, et seq., and Article 5, Section 6150, et seq.

Article 3**DISPOSAL OF REAL PROPERTY**

Sec.

8240. Preliminary Requirements

8241. Authority for General Manager to Sell or Lease
— Surplus Real Property; Restriction on —

District Directors and Employees

8242. Quitclaims

8243. Disposal of Unnecessary Improvements

8244. Auction by District Staff

8245. Open Listing

8246. Exclusive Listing

8247. Auction by Professional Auctioneers

~~8248. Required Deposit~~

~~8249. Terms~~

~~8250. Zoning~~

~~8251. Policy of Title Insurance~~

~~8252. Completion of Sale~~

~~8253. Forfeiture of Deposits~~

~~8254. Exceptions to Public Sale Requirements~~

~~8255. Reservation of Oil, Gas and Mineral Rights~~

~~8256. Retention of Oil and Mineral Rights~~

~~8257. Quarterly Reports~~

~~8258. Statement re Encumbering of Property~~

ARTICLE 3

MANAGEMENT OF REAL PROPERTY

Sec.

8240 Grants of Real Property Interests

8241 Appraisal of Real Property Interests

8242 Terms and Conditions of Management Documents
8243 Consent to Subdivision

~~§ 8240. Preliminary Requirements.~~

~~The General Manager shall establish a procedure for the continuous review of real property owned by the District for the purpose of determining which of such property is surplus to the District's needs. When the General Manager determines that property is surplus, the General Manager shall notify the Engineering and Operations Committee and Land Committee of that determination, unless the estimated value of the property is less than \$75,000.~~

~~(a) If the Engineering and Operations Committee does not overrule such determination and the estimated value of the property is \$75,000 or more, the General Manager shall:~~

~~(1) Notify the Land Committee of the estimated value of the property and recommend the appropriate marketing procedure authorized by this Article 3;~~

~~(2) Cause the property to be appraised by one or more independent appraisers.~~

~~(b) If the estimated value of the property is less than \$75,000, the General Manager shall cause the property to be appraised by a member of the staff of the General Manager or an independent appraiser, and disposed of as authorized by Article 3.~~

~~(c) The General Manager shall comply with the California Environmental Quality Act and the legal requirements pertaining to the disposition of property in cities or counties which have a general plan. If upon such compliance, any official body objects to the proposed sale, the Board of Directors shall first expressly uphold or reject the objections. There being no objections, or the objections having been rejected, and the appraisal or appraisals having been completed, the General Manager may then sell or lease the surplus property under the provisions of this Article 3.~~

§ 8240. Grants of Real Property Interests.

The General Manager is authorized to grant to public entities, public utilities, private persons and private entities, any real property interests in District real property that will not interfere with the District's operations; provided, however, that: (1) any such grant to a public entity or public utility is required for its operations; (2) the consideration for

any one such grant (annual payment in the case of any lease, license or permit) to a private person or private entity is less than \$250,000; and (3) if it will be necessary for District facilities to be relocated or protected in order to avoid interference from the use of the real property interest, the General Manager shall obtain approval of a relocation or protection agreement by the Board prior to granting such real property interest, except as to any agreement which the General Manager is authorized to execute pursuant to Section 8118(a)(3).

~~§ 8241. Authority for General Manager to Sell or Lease Surplus Real Property; Restriction on District Directors and Employees.~~

~~If after offering the property for sale or lease to certain public agencies, as required by law, at the fair market value as determined by the General Manager after review of any or all appraisals of the property, no such offer is accepted, the General Manager may lease it, or sell it either by public auction or by using the services of real estate brokers or a professional auctioneer; provided, however, that District directors and employees, their spouses and dependent children may not purchase such property or~~

~~lease it or represent in any manner a prospective lessee or purchaser of such property.~~

§ 8241. Appraisals of Real Property Interests.

The General Manager shall have any real property interest proposed to be granted appraised in accordance with the provisions of Section 8260(b).

§ 8242. Quitclaims.

~~(a) The General Manager is authorized to quitclaim, in form approved by the General Counsel, any temporary easement or lease to which the District is a party and which has expired by its own terms.~~

~~(b) The General Manager is authorized to quitclaim, in form approved by the General Counsel, any temporary easement or lease prior to its expiration~~

~~(1) Upon the recording of a Notice of Completion of the construction contract for which the easement or lease was acquired; or~~

~~(2) If no such notice has been recorded, then upon the release of the temporary easement area by the~~

~~contractor in form approved by the General Counsel, provided, however, that if a Notice of Completion has not been recorded, consideration shall be required in such amount as the General Manager deems proper under the circumstances.~~

~~(c) The General Manager is authorized to quitclaim, in form approved by the General Counsel, any easement for access to a District facility over adjoining lands at such times as the General Manager may determine that adequate access thereto from a dedicated public street is available.~~

~~(d) Notwithstanding any other provisions of the Article 3, the General Manager is authorized to quitclaim to the United States of America, in form approved by the General Counsel, any property acquired by the District under and pursuant to the Act of Congress approved June 18, 1931 (43 Stats. 324), when the General Manager determines that the property is no longer required for the District's needs.~~

§ 8242. Terms and Conditions of Management Documents.

Documents conveying real property interests which the General Manager is authorized to grant by

this Article 3, shall contain such terms and conditions, as the General Manager deems to be reasonable and proper, but shall include, as a minimum, the following:

(a) Any lease, permit or license to use District real property, other than a lease to a public entity or a public utility, shall be subject to cancellation upon order of either the Board or the General Manager upon no more than one year's written notice to the lessee, permittee or licensee.

(b) Any lease, permit or license to use District real property shall contain insurance and indemnification, defense, and hold harmless provisions protecting the District against liability arising from use of such property thereunder.

~~§ 8243. — Disposal of Unnecessary Improvements.~~

~~(a) The General Manager is authorized to dispose of, in the manner the General Manager deems to be in the best interest of the District, any improvements that must be removed to make land acquired for District operations suitable for District use.~~

~~(b) The General Manager shall report quarterly to the Land Committee the details of any transactions during the preceding quarter in which an improvement was disposed of in such a manner as to make the improvement available for subsequent use by a party other than the District.~~

§ 8243. Consent to Subdivision.

The General Manager is authorized to consent on behalf of the District to the subdivision of real property owned by a subdivider, subject to any easement owned by the District, and to consent to recordation of the subdivision map provided that the certification expressing such consent shall reserve to the District any such easement in the property so subdivided.

~~§ 8244. Auction by District Staff.~~

~~(a) If the General Manager elects to sell the property by public auction, the General Manager shall do so at such time and place as the General Manager may fix, with or without sealed bids having been first submitted.~~

~~(b) Whenever the General Manager determines that the sale shall be at public auction without sealed bids having been first submitted, no bid at the auction shall be considered unless the bidder shall, prior to the holding of the auction, deposit with the person designated by the General Manager to conduct such sale the percentage indicated in Section 8248 of the amount specified in the Notice of Sale as the minimum bid, in cash, cashier's check or check certified by a responsible bank, as a guarantee that the person making the bid will purchase the property under the terms specified in the Notice of Sale. The property shall be sold to the highest responsible bidder and the deposits of all other bidders returned forthwith.~~

~~(c) Whenever the General Manager determines that the sale shall be by sealed bids, all bids shall be filed in the office of the Director, Right of Way and Land Division, at or before the time specified in the Notice of Sale, shall be on forms approved by the General Counsel, and shall be accompanied by a cash deposit, cashier's check or check certified by a responsible bank in an amount of not less than the percentage indicated in Section 8248 of the amount specified in the Notice of Sale as the minimum bid, as a guarantee that the person making the bid will~~

~~purchase the property upon the terms and conditions specified in the Notice of Sale. The Director, Right of Way and Land Division, shall, at the time and place specified in the Notice of Sale, open the bids. Thereafter, there shall be a public auction at a time and place specified in the Notice of Sale, and any person shall be eligible to bid at the auction, provided, however, that any oral bid shall be ignored unless it exceeds by at least 5 percent the highest sealed bid made by a responsible person. No oral bid at such sale not preceded by a sealed bid from the same party shall be considered unless accompanied by a cash deposit, cashier's check or check certified by a responsible bank in an amount of not less than the percentage indicated in Section 8248 of the amount specified in the Notice of Sale as the minimum bid, as a guarantee that the person making the bid will purchase the property upon the terms and conditions specified in the Notice of Sale. If no oral bid is made at the public auction, or if such oral bid is not in accordance with the provisions hereof, the property shall be ordered sold to the highest responsible sealed bidder.~~

~~(d) A real estate commission shall be paid in connection with a sale at public auction on the following basis:~~

~~(1) The real estate commission shall not exceed the prevailing rate in the area where the property is located and it shall be stated in the bid for which a claim for the payment of a commission is made that it is subject to the same.~~

~~(2) The commission shall be distributed in this manner:~~

~~(i) When at a public auction, without sealed bids, the highest bid was procured by a licensed real estate broker, the commission shall be paid to the broker.~~

~~(ii) When at a public auction following submission of sealed bids, the successful bid is the highest sealed bid, and it was procured by a licensed real estate broker, the commission shall be paid to that broker.~~

~~(iii) When at a public auction following the submission of sealed bids, the successful bid was~~

~~procured by a licensed real estate broker, but the highest sealed bid was not obtained by such a broker, the commission shall be paid to the broker.~~

~~(iv) When at a public auction following the submission of sealed bids, the highest sealed bid was procured by a licensed real estate broker, but the successful bid was procured by a different licensed real estate broker, the commission shall be divided equally between the brokers.~~

~~(v) When at a public auction following the submission of sealed bids, the highest sealed bid was procured by a licensed real estate broker, but the successful bid was not subject to a commission, one-half of the commission based upon the amount of the successful bid shall be paid to the broker.~~

~~(3) In determining which is the highest bid, there shall not be subtracted therefrom the commission, if any, which the bid provides shall be paid to a licensed real estate broker.~~

~~(e) The General Manager shall cause a Notice of Sale to be posted on the property in at least one conspicuous place. It shall specify the minimum bid~~

~~which will be accepted for the property, which shall not be less than 90 percent of the lowest appraisal and shall state the terms of the sale which shall be in conformity with this Article 3. The General Manager shall cause one or more advertisements of the sale to be placed in a newspaper, or newspapers, so as to give reasonable notice of the sale.~~

~~§ 8245. Open Listing.~~

~~If the General Manager elects to sell the property by using the services of licensed real estate brokers, the General Manager shall do so by offering it for sale by advertising in a newspaper or newspapers that the property is being offered for sale with courtesy to brokers, and by notifying real estate boards in the area in which the property is located that the property is being offered for sale with courtesy to licensed brokers. The initial offer for sale shall be for no less than the highest appraised valuation of the property. The General Manager is authorized to sell the property for the highest price obtainable, provided, however, that such price shall be no lower than the lowest appraisal without the approval of the Land Committee and no lower than 90 percent of the lowest appraisal without the approval of the Board.~~

~~The General Manager is authorized to pay to the broker who procures the accepted offer, a commission not to exceed the prevailing rate in the area in which the property is located.~~

~~§ 8246. Exclusive Listing.~~

~~The General Manager may with the approval of the Land Committee give an exclusive listing to an individual licensed broker; provided, however, that the property shall not be sold for less than the lowest appraisal without the approval of the Land Committee and for no less than 90 percent of the lowest appraisal without the approval of the Board. In such case, the General Manager is authorized to pay a commission, upon consummation of the sale, not to exceed the prevailing rate in the area in which the property is located.~~

~~§ 8247. Auction by Professional Auctioneers.~~

~~The General Manager may sell the property by using the services of a professional auctioneer and may in connection therewith pay the reasonable expense of advertising the auction, and agree to pay a commission to the auctioneer not in excess of the prevailing rate in the area upon the consummation of the sale. Any~~

~~such sale shall be subject to the approval of the Board of Directors.~~

~~§ 8248. Required Deposit.~~

~~No bid offer made pursuant to Sections 8244, 8245, and 8246 above shall be considered unless the bidder or offeror shall at the time the bid or offer is made, deposit with the person designated by the General Manager the percentage indicated below of the specified amount in cash, cashier's check or check certified by a responsible bank as a guarantee that the bidder or offeror will purchase the property for the bid or offered price.~~

Specified Amount	Deposit
To \$500	Full amount of bid or offer
\$501 to \$10,000	\$500 + 10% of minimum bid or offer
\$10,001 to \$50,000	\$1,500 + 5% over \$10,000
\$50,001 to \$100,000	\$3,000 + 3% over \$50,000
\$100,001 and above	\$4,500 + 2% over \$100,000

~~§ 8249. Terms.~~

~~Any sale shall be for cash or on the following minimum terms:~~

~~20 percent downpayment with balance amortized over 10 years at an interest rate equal to the prevailing rate charged by financial institutions in the area in which the property is located, and to be secured by a deed of trust on the property sold. No prepayment penalty shall be required.~~

~~§ 8250. Zoning.~~

~~Where the property was appraised on the basis of a different zoning on the property than the existing zoning, the sale may be made contingent upon the bidder or offeror's obtaining a rezoning of the property within a reasonable time to be determined by the General Manager.~~

~~§ 8251. Policy of Title Insurance.~~

~~The General Manager may furnish the successful bidder or offeror with a policy of title insurance, if possible, and open an escrow to complete the sale, paying the usual seller's charges in connection therewith; provided, however, that if it subsequently~~

~~develops that the title company is unwilling to issue a policy insuring title to the bidder or offeror in the manner indicated by the General Manager prior to the sale, the General Manager shall not be required to furnish such a policy and the bidder may cancel the sale; whereupon money previously deposited shall be refunded promptly and there shall be no further obligation on the part of either the bidder or the General Manager in connection with the sale; provided, further, that if under such circumstances the bidder or offeror elects not to cancel the transaction, the General Manager shall furnish such title insurance as the title company will then issue, and shall be released from liability on any representation relating to title theretofore made and not covered by the title insurance policy.~~

~~§ 8252. — Completion of Sale.~~

~~Execution and Delivery of Deed -- The General Manager shall apply the deposit made by the successful bidder, or offeror, on the purchase price or downpayment if the sale is on terms, and, upon completion of the sale either directly or through an escrow, the General Manager is authorized to execute and deliver on behalf of the District a grant deed~~

~~conveying the property to such bidder or offeror. In the case of a sale for cash (1) without an escrow, the successful bidder or offeror must pay the balance of the purchase price to the General Manager within thirty days after the auction or acceptance of the offer or (2) with an escrow, upon the closing thereof; provided, however, that the General Manager may give the successful bidder or offeror extensions of time in which to make the payment.~~

~~§ 8253. Forfeiture of Deposits.~~

~~Any deposit made by a successful bidder or offeror shall be retained by the District as liquidated damages if the bidder or offeror shall fail to complete the purchase in accordance with the terms and conditions of the Notice of Sale or offer. If there is such failure, a licensed real estate broker, otherwise entitled to a commission under the provisions of this Article 3 shall be paid as a commission, an amount not to exceed one-half of the deposit so retained after deducting title and escrow expenses, if any; but in no event shall it exceed the commission which the broker would have received in the absence of such failure. If the successful bidder or offeror does not complete the sale as required by this Article 3 the property may be sold~~

~~to the next highest bidder or offeror who wishes to buy.~~

~~§ 8254. — Exceptions to Public Sale Requirements.~~

~~The requirements of Sections 8241 and 8244 above do not apply in the case of:~~

~~(a) A sale of real property or interest therein to the United States, the State, the County or any city, school district, flood control, or other special district within the State; any such sale shall be for the fair market value as determined by the General Manager after review of any or all appraisals of the property.~~

~~(b) A sale of real property having an estimated value of \$2,500 or less.~~

~~(c) A sale to an adjoining property owner when the General Manager determines that the particular parcel is probably incapable of being developed independently.~~

~~(d) With respect to sales under Sections 8254(b) and 8254(c), the General Manager shall make a~~

~~determination of the reasonable amount for which the property shall be sold.~~

~~§ 8255. — Reservation of Oil, Gas and Mineral Rights.~~

~~The right to extract all oil, gas hydrocarbons or other minerals without the right of surface entry for the development thereof, shall be reserved in the sale of any real property under the provisions of this Article 3 provided, however, that there shall be no such extraction within 500 feet of the surface.~~

~~§ 8256. — Retention of Oil and Mineral Rights.~~

~~It shall be the general policy that oil and mineral rights shall be retained on all property sold by the District.~~

~~§ 8257. — Quarterly Reports.~~

~~The General Manager shall report to the Land Committee quarterly on the property sold pursuant herewith.~~

~~§ 8258. — Statement re Encumbering of Property.~~

~~The General Manager shall incorporate in letter of recommendation involving the disposal or the encumbering of property or rights of the District a statement declaring that the property or rights will not be required by the District nor adversely affect its operations.~~

~~ARTICLE 4~~

~~DISPOSAL OF SURPLUS PERSONAL PROPERTY~~

~~Sec.~~

~~8270 — Disposal of Excavated Materials~~

~~8271 — Disposal of Surplus Personal Property~~

~~8272 — Acceptable Bidders on Disposal of Surplus
—Property~~

~~§ 8270. — Disposal of Excavated Materials~~

~~The General Manager is authorized to dispose of surplus excavated materials, or other materials, from Metropolitan's construction projects, with or without monetary consideration, in a manner to accomplish the purposes herein recited and determined by him best to serve the interests of Metropolitan.~~

~~§ 8271. Disposal of Surplus Personal Property~~

~~Any personal property belonging to the District and which, in the opinion of the General Manager, is no longer required for the use of the District may be sold, or exchanged as part payment for the purchase of new equipment of like kind and nature, such sale or exchange to be made under such procedure, at such prices and upon such terms and conditions, as the General Manager may prescribe.~~

~~§ 8272 Acceptable Bidders on Disposal of Surplus
— Personal Property~~

~~District directors and employees, their spouses and dependent children may not make exchange for or purchase surplus personal property from the District under any terms and conditions for the disposal of surplus personal property prescribed by the General Manager under the authority delegated to him by section 8271.~~

ARTICLE 4

DISPOSAL OF REAL AND PERSONAL PROPERTY

Sec.

<u>8260</u>	<u>Preliminary Requirements for Sales, Leases or Exchanges of Surplus Real Property</u>
<u>8261</u>	<u>Public Sales or Leases of Surplus Real Property</u>
<u>8262</u>	<u>Quitclaims of Real Property Interests</u>
<u>8263</u>	<u>Quitclaims of 1928 Act and 1932 Act Real Property</u>
<u>8264</u>	<u>Exchanges of Surplus Real Property</u>
<u>8265</u>	<u>Methods of Public Sale of Surplus Real Property</u>
<u>8266</u>	<u>Exceptions to Public Sale or Lease Requirements</u>
<u>8267</u>	<u>Terms and Conditions of Disposal Documents</u>
<u>8268</u>	<u>Statement Regarding District Operations</u>
<u>8269</u>	<u>Disposal of Unnecessary Improvements</u>
<u>8270</u>	<u>Disposal of Excavated or Other Materials</u>
<u>8271</u>	<u>Disposal of Surplus Personal Property</u>

§ 8260. Preliminary Requirements for Sales, Leases or Exchanges of Surplus Real Property.

The General Manager shall continuously review District real property and determine which of such property is surplus to the District's needs, and is authorized to dispose of such property as follows:

(a) When the disposal price or annual payment for property determined by the General Manager to be surplus is less than \$10,000, it shall have been determined by a qualified appraiser to be the fair market value thereof. If the disposal price or annual payment for property determined by the General Manager to be surplus is more than \$10,000, the General Manager shall have caused the property to be appraised as provided herein:

(1) If the disposal price or annual payment is less than \$250,000, the property shall have been appraised prior to disposal by a qualified appraiser. The disposal price or annual payment shall not be less than the appraised value of the property unless otherwise approved by the Board.

(2) If the disposal price or annual payment for the property is \$250,000 or more, the property shall have been appraised prior to disposal by a qualified appraiser who shall be an independent appraiser, and, if deemed appropriate by the General Manager, by a second qualified appraiser. The disposal price or annual payment shall not be less than the appraised value of the property established by the single appraisal if only one appraisal is obtained, or by the lower of the two appraisals if two appraisals are obtained, unless otherwise approved by the Board.

(b) If the appraised value or annual payment for the property is \$250,000 or more, the General Manager shall:

(1) Notify the Engineering and Operations Committee and the Land Committee of the determination that the property is surplus to the District's needs.

(2) Notify the Land Committee of the appraised value of the property and recommend a disposal procedure authorized by this Article 4.

(3) Notify the Board if the appraised value is \$1,000,000 or more, and recommend a disposal procedure authorized by this Article 4.

(c) The General Manager shall comply with the California Environmental Quality Act, and the legal requirements pertaining to the disposal of real property in any city or county in which the property is located which has a general plan in accordance with Government Code Section 65402. If, upon such compliance, the planning agency of any such city or county disapproves of the proposed sale, the Board shall first expressly uphold or overrule the disapproval. There being no disapproval, or the disapproval having been overruled, and the appraisal or appraisals having been completed, the General Manager may then sell, lease, or exchange the property under the provisions of this Article 4.

§ 8261. Public Sales or Leases of Surplus Real Property.

After complying with Section 8260, the General Manager shall first offer surplus real property owned by the District, and not held for exchange purpose, for sale or lease to certain entities as required by Government Code Section 54222, for a disposal price at the appraised value of the property determined in accordance with Section 8260(a). If no such offer is accepted, the General Manager may lease the property or sell it in accordance with Sections 8265, 8266, 8267 and 8268.

§ 8262. Quitclaims of Real Property Interests.

(a) Except as provided in subsection (b) hereof, the General Manager is authorized to quitclaim to the owner of the fee estate in land any easement, lease, license or permit owned by the District upon such terms as the General Manager deems appropriate when the General Manager determines that such real property interest is no longer required for the District's purposes, and when the disposal price for such real property interest, or annual payment in the case of a lease, license or permit is less than \$250,000. Any disposal price or annual payment required as consideration for such quitclaim shall be no less than

the appraised value of such real property interest determined in accordance with Section 8260(a).

(b) The General Manager is authorized to quitclaim any temporary easement or lease prior to its expiration upon such terms and conditions as the General Manager deems appropriate under the circumstances, if the General Manager determines that the real property interest is no longer required for District purposes.

§ 8263. Quitclaims of 1928 Act and 1932 Act Real Property.

Notwithstanding any other provisions of this Article 4, the General Manager is authorized to quitclaim to the United States of America, any real property acquired by the District under and pursuant to the Act of Congress approved December 21, 1928 (45 Stat. 1057) or the Act of Congress approved June 18, 1932 (47 Stat. 324), when the General Manager determines that the property is no longer required for the District's purposes.

§ 8264. Exchanges of Surplus Real Property.

The General Manager is authorized to accept a grant of real property in exchange for modification or quitclaim of any existing real property of the District, provided that the construction, operation, maintenance or removal of any District facility will not be adversely affected by any such exchange; that the appraised value of the existing real property is less than \$250,000; and that the District shall be paid a disposal price equal to the difference, if any, between the value of the real property quitclaimed and that of the real property received, based upon the appraised value of such real properties determined in accordance with Sections 8260 and 8221.

§ 8265. Methods of Public Sale of Surplus Real Property.

(a) General. Unless otherwise permitted by this Article 4, District surplus real property shall be disposed of by sale to the highest bidder at public auction.

(b) Public auction.

(1) Notice of Sale. A Notice of Sale shall be posted in public view on property to be sold by public auction. The notice of sale shall describe the property to be sold in general terms, give notice of the place, date, and time of the public auction of the property; and shall identify a contact person by name, address and telephone number from whom an auction brochure may be obtained. If the appraised value of the property is \$25,000 or more, the Notice of Sale shall be advertised in the manner required by Section 8110(b). The notice and brochure shall be further disseminated to local realty boards and to such persons as the General Manager may designate. Any person shall, upon request, be provided with a the Notice of Sale and brochure.

(2) Auction Brochure. The auction brochure shall state the date, time and place of public auction; the acreage, location, zoning, and any special characteristics of the property; any applicable title restriction, reservations or conditions existing as of the date of the notice; the acceptable minimum bid, which shall not be less than the appraised value of the property determined pursuant to Section 8260(a); and

the amount of deposit required, determined pursuant to subsection (d) hereof, to enable bidding at the auction; provide for real estate broker representation of prospective bidders; and state the method of calculation of any broker commission to be paid by the District pursuant to subsection (b)(3)(IV) hereof, and that such commission shall not be included in determining which is the highest bid at auction. The auction brochure may be supplemented if the General Manager determines that there is subsequent information relevant to the property which was not available at the time of initial publication.

(3) Auction Procedure.

(i) General. A public auction shall be conducted at the place, on the date, and at the time specified in the Notice of Sale. Such auction may be by District staff or by using the services of a professional auctioneer. If the General Manager uses the services of a professional auctioneer, the General Manager may agree to pay a commission to the auctioneer not in excess of the prevailing rate in the area in which the property is located, upon completion of the sale as provided in subsection (h) hereof. The person conducting the auction shall announce that during any

oral bidding or any recess therein, conference or consultation between bidders shall be prohibited and is cause for disqualification of such bidders.

(ii) Bid deposit. No bid at the auction shall be considered unless the bidder shall, prior to the commencement of the auction, deposit with the person conducting the auction, by check certified by a responsible bank, an amount determined pursuant to subsection (d) hereof.

(iii) Bidding and sale. Any person who has furnished the bid deposit as required in subsection (b)(3)(ii) hereof shall be eligible to bid at the auction. Bids shall be oral. The minimum bid shall be not less than specified in the Auction Brochure. Thereafter, bid increments shall not be less than the lesser of 5 percent of the minimum bid or \$5,000. The sale shall be made to the highest bidder. In determining which is the highest bid, any commission to be paid to a licensed real estate broker, upon completion of sale as provided in subsection (h) hereof, shall be disregarded. Upon sale of the property, the deposit of the successful bidder shall be retained by the District as a guarantee that the person making the bid will purchase the property under the

terms and conditions specified in the Notice of Sale and shall be applied by the District to the purchase price of the property. The deposits of all other bidders shall be returned forthwith.

(iv) Commission. A real estate commission shall be paid in connection with a sale at auction on the following basis, provided that a real estate broker has notified the District in writing prior to the commencement of bidding of his or her participation on behalf of a prospective bidder, who shall be identified and who shall, in person or through the broker, participate in the auction:

(A) The real estate commission shall not exceed the prevailing rate in the area where the property is located, as determined by the General Manager.

(B) The commission shall be paid only to that licensed real estate broker, if any, representing the bidder making the highest bid upon completion of sale as provided in subsection (h) hereof.

(c) Alternate sale procedure. The General Manager may sell District real property having an appraised

value of less than \$75,000 by negotiated sale or by sealed bid. The General Manager may sell by negotiated sale District real property for which no bids complying with the terms of sale were received at public auction. If the real property is sold by negotiated sale, the services of licensed real estate brokers by open listing may be used. The General Manager shall advertise a Notice of Sale with licensed real estate broker representation, or by sealed bids, in a newspaper or newspapers, and shall provide such Notice to real estate boards in the area in which the property is located if the sale is by open listing. The General Manager may, with the approval of the Land Committee, agree to an exclusive listing with a licensed real estate broker for the sale of District real property. The Notice of Sale, or the exclusive listing, shall contain the information concerning the property required by subsection (b)(1) and (2) hereof, shall state a sales price no less than the highest appraised value of the property determined pursuant to Section 8260(a), and shall require a good faith deposit of a check certified by a responsible bank, of the portion, determined in accordance with the terms of subsection (d) hereof, of the stated sales price. The General Manager is authorized to sell the property for the highest price obtainable; provided, however, that such

price shall be no lower than the lowest appraised value, determined pursuant to Section 8260(a), without the approval of the Land Committee and no lower than 90 percent of such lowest appraised value without the approval of the Board. The General Manager is authorized to pay to the broker who procures the accepted purchase offer, upon completion of the sale as provided in subsection (h) hereof, a commission not to exceed the prevailing rate in the area in which the property is located, as determined by the General Manager at the time of first advertisement and notification of real estate boards. If real property is sold by sealed bid, all sealed bids shall be filed with the General Manager on District-furnished forms, shall be accompanied by a deposit of a certified check as required by subsection (b)(3)(ii) hereof, and shall otherwise comply with such terms as may be specified in the Notice of sale. The General Manager shall, at the time and place indicated in the Notice of Sale, state the minimum acceptable bid, which shall be the lowest sale price authorized by this subdivision (c), reserve the right to reject all bids, and open the sealed bids.

(d) Amount of Bid Deposit or Good Faith Deposit.

The bid deposit required as a condition of bidding on District real property at public auction or by sealed

bid, and the good faith deposit in connection with any negotiated sale of real property shall be computed in accordance with the following:

<u>Stated Minimum Sale Price</u>	<u>Amount of Minimum Bid Deposit or Good Faith Deposit</u>
<u>To \$1,000</u>	<u>- Full amount of stated minimum sale price</u>
<u>\$1,001 to \$25,000</u>	<u>- \$1,000 + 2% over \$1,000</u>
<u>\$25,001 to \$50,000</u>	<u>- \$1,500 + 3% over \$25,000</u>
<u>\$50,001 to \$100,000</u>	<u>- \$3,000 + 5% over \$50,000</u>
<u>\$100,001 and above</u>	<u>- \$8,000 + 10% over \$100,000</u>

(e) Terms of Payment.

Any sale of District real property shall be for cash or on the following minimum terms:

20 percent down payment with balance amortized over 10 years at an interest rate equal to the prevailing interest rate on first deeds of trust charged by financial institutions on the purchase of comparable properties in the area in which the property is located, as determined by the General Manager, and to be secured by a first deed of trust on the property sold. No prepayment penalty shall be required. The General Manager shall not subordinate the fee interest in the property to a lien, subdivision map, parcel map or other interest, nor release portions of the property from the loan obligation in advance of retirement of the entire note.

(f) Zoning.

Where District real property was appraised on the basis of a different zoning on the property than the existing zoning, the sale may be made contingent upon the bidder or offeror obtaining a rezoning of the property within a reasonable time to be determined by the General Manager.

(g) Policy of Title Insurance.

The General Manager may furnish the successful bidder or offeror with a policy of title insurance, if possible, and open an escrow to complete the sale of District real property, paying the usual seller's charges in connection therewith; provided, however, that if it subsequently develops that the title company is unwilling to issue a policy insuring title to the bidder or offeror in the manner indicated by the General Manager prior to the sale, the General Manager shall not be required to furnish such a policy and the bidder or offeror may cancel the sale; whereupon money previously deposited shall be refunded promptly and there shall be no further obligation on the part of either the bidder or offeror or the General Manager in connection with the sale; provided, further,

that if under such circumstances the bidder or offeror elects not to cancel the transaction, the General Manager shall furnish such title insurance as the title company will then issue, and shall be released from liability on any representation relating to title theretofore made and not covered by the title insurance policy.

(h) Completion of Sale.

Delivery of a deed from the District to the successful bidder or offeror shall constitute completion of sale of District real property. Such delivery shall be either directly or through an escrow. The General Manager shall apply the deposit of the successful bidder or offeror to the sales price. If the sale is on terms, the General Manager shall have received delivery of a promissory note secured by a first deed of trust on the property for the balance of the purchase price. If the sale is for cash (1) without an escrow, the successful bidder or offeror must have paid the balance of the purchase price to the District within 30 days after the auction or acceptance of the offer, or (2) with an escrow, the payment must be received by the General Manager upon the closing thereof; provided, however, that the General Manager

may give the successful bidder or offeror extensions of time in which to make the payment.

(j) Liquidated Damages.

Any deposit made by a successful bidder or offeror shall, by provision in accordance with Civil Code Sections 1676 and 1677, be retained by the District as liquidated damages if the bidder or offeror shall fail to complete the purchase of District real property in accordance with the terms and conditions of the Notice of Sale or broker listing. If there is such failure, a licensed real estate broker, otherwise entitled to a commission under the provisions of this Article 4, shall not be paid a commission.

§ 8266. Exceptions to Public Sale or Lease Requirements.

The requirements of Section 8265 do not apply in the case of:

(a) A sale or lease of District real property to the United States, the State, or any local governmental entity within the State. Any sale or lease under Section 8265 shall be for the fair market value of the

property as determined by the General Manager after review of any or all appraisals of the property; provided that with respect to sales or leases of District real property under subsections (b) and (c) hereof, the General Manager shall make a determination of the reasonable amount for which the property or interest shall be sold or leased.

(b) A sale or lease of District real property having an estimated value of \$10,000 or less.

(c) A sale or lease of District real property to an adjoining property owner when the General Manager determines that the particular parcel is probably incapable of being developed independently.

§ 8267. Terms and Conditions of Disposal Documents.

Documents conveying or leasing real property which the General Manager is authorized to grant or lease by this Article 4, shall contain such terms and conditions as the General Manager deems reasonable and proper. However, the right to extract all oil, gas hydrocarbons or other minerals without the right of surface entry for the development thereof, shall be reserved in the sale of any real property; provided,

however, that there shall be no such extraction within 500 vertical feet of the surface.

~~§ 8268 Auction by Professional Auctioneers~~

~~The General Manager may sell District real property by using the services of a professional auctioneer and may in connection therewith pay the reasonable expense of advertising the auction, and agree to pay a commission to the auctioneer not in excess of the prevailing rate in the area upon the completion of the sale as provided in section 8273. Any such sale shall be subject to the approval of the Board of Directors.~~

§ 8268. Statement Regarding District Operations.

The General Manager shall incorporate in any letter to the Board recommending the disposal or encumbering of any real property of the District, a statement declaring that the property will neither be required by the District nor adversely affect its operations.

§ 8269. Disposal of Unnecessary Improvements.

The General Manager is authorized to dispose of, in the manner the General Manager deems to be in the best interest of the District, any improvements that must be removed to make real property acquired for District operations suitable for District use.

§ 8270. Disposal of Excavated or Other Materials.

The General Manager is authorized to dispose of surplus excavated materials, or other materials, as surplus personal property, from District real property, with or without monetary consideration as determined by the General Manager to be in the best interests of the District.

§ 8271. Disposal of Surplus Personal Property.

Any personal property belonging to the District and which, in the opinion of the General Manager, is no longer required for the use of the District may be sold, or exchanged as part payment for the purchase of new equipment of like kind and nature,

such sale or exchange to be made under such procedure,
at such prices and upon such terms and conditions, as
the General Manager may prescribe.

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ATTACHMENT C

November 17, 1992 - Annocode.1

Annotation of Sections of Division VIII,
Chapter 2, District Property, Articles 1-4

Table of Contents	Completely revised.
Article I - General Provisions	
8200	New. Definitions
8201	New. General Manager's property acquisition, management and disposal authority
8202	Derived from existing Section 8272
Table of Contents	Completely revised
Article 2 - Acquisition of Real Property	
8220	Derived from existing Section 8200(b)(1); increases monetary limit on General Manager's authority to procure options to purchase real property, from \$5,000 to a price no more than the lesser of \$250,000 or the appraised fair market value for an option to purchase contract.
8221(a), (b) and (c)	Derived from existing Section 8200(b)(2), (3), and (4); modifies General Manager's authority to acquire real property to require: determination of fair market value by a qualified appraiser when an acquisition price or annual payment is less than \$10,000; if more than \$10,000 but less than \$500,000, appraisal by a qualified appraiser; if

\$500,000 or more appraisal by a qualified independent appraiser, and, if deemed appropriate by the General Manager, by a second qualified appraiser. (Replaces \$500 unappraised purchase authority and \$75,000 purchase authority limit.); Increases General Manager acquisition negotiation authority to not exceed the lesser of 110 percent of or \$250,000 (rather than \$5000) over the appraised value of the property.

- 8221(d) New. Offer to purchase
- 8221(e) New. General Counsel acquisition authority by stipulated judgment
- 8221(f) Derived from existing Section 8205; eliminates monetary limit on General Manager's authority to purchase remainder of real property rendered uneconomic by virtue of District's partial acquisition of lands.
- 8221(g) Derived from existing Section 8201(c)
- 8222 New re terms and conditions of acquisition documents
- 8223 Derived from existing Section 8200(a)
- 8224 Derived from existing Section 8201(b)
- 8225 Existing Section 8207
- 8226 Existing Section 8202

Table of Contents Article 3 - Management of Real Property	Completely revised
8240	Derived from existing Sections 8220 and 8222; General Manager's authority to grant real property interests in District real property to public entities and public utilities expanded to include private persons and private entities; increases monetary limit on such authority to be less than \$250,000 (increased from \$75,000 to \$250,000 in the case of a lease).
8241	Derived from existing Section 8226; expanded to any real property interest
8242	New; eliminates need for existing Sections 8223, 8224 and 8225; adds insurance, indemnity and hold-harmless requirements on leases, permits and licenses.
8243	Derived from existing Section 8221
Table of Contents Article 4 - Disposal of Real and Personal Property	Completely revised; existing Article 4 deleted
8260	Derived from existing section 8240; modifies General Manager's authority to dispose of District surplus real property to require: determination of fair market value by a qualified appraiser when a disposal

price or annual payment is less than \$10,000; if more than \$10,000 but less than \$250,000, appraisal by a qualified appraiser; if \$250,000 or more, appraisal by a qualified independent appraiser and, if deemed appropriate by the General Manager, by a second qualified appraiser. Required communication and direct accountability respectively to the Engineering and Operations and Land Committees if appraised value of property is \$250,000 or more, and to the Board if \$1,000,000 or more (replaces \$75,000 appraisal and notification requirements).

- 8261 Derived from existing Section 8241
- 8262 Derived from existing Section 8242(a), (b) and (c); expands General Manager quitclaim authority to include permanent rights; limited to disposal price or annual payment of less than \$250,000.
- 8263 Derived from existing Section 8242(d); expanded to include 1928 Act real property
- 8264 New. Exchange of surplus property of less than \$250,000 price or annual payment value; but no less than appraised value.
- 8265 Derived from existing sections 8444-8253 inclusive. No longer requires bids as part of

procedure to dispose of real property by auction; includes alternatives to auctions such as negotiated sale and sealed bids without oral bidding in situations where no bids were received at public auction; establishes criteria to disqualify improper bids upon auction of District property; modifies the amount of good faith deposits required on sale of real property. Adds provision authorizing the General Manager to exchange real property of less than \$250,000 in appraised value.

- 8266 Derived from existing Section 8254

- 8267 New re terms and conditions of disposal documents; and derived from and replaces existing sections 8255 and 8256

- 8268 Derived from existing Section 8258

- 8269 Derived from existing Section 8243

- 8270 Derived from existing Section 8270

- 8271 Derived from existing Section 8271

A T T A C H M E N T D

Chapter 2

DISTRICT PROPERTY

Article	Sec.
1 Acquisition of Real Property	8200
2 Management of Real Property	8220
3 Disposal of Real Property	8240
4 Disposal of Surplus Personal Property	8270

Article 1

ACQUISITION OF REAL PROPERTY

Sec.	
8200.	Employment of Appraisers and Acquisition of Real Property
8201.	Acceptance of Deeds or Grants and Recordation of Notices of Public Easements
8202.	Relocation Assistance Program
8203.	Acquisition of Tunnel Easements
8204.	Acceptance of Temporary Easement Deeds Subject to Deeds of Trust
8205.	Purchase of Remainders
8206.	Entry Permits
8207.	Adoption of Resolution of Necessity

§ 8200. Employment of Appraisers and Acquisition of Real Property.

(a) The General Manager is authorized to pay the following expenses connected with the purchase of real property:

(1) All fees charged by an escrow holder for services rendered.

(2) Charge made for a reconveyance.

(3) Any premium payable for a policy of title insurance.

(4) Cost of obtaining copies of documents referred to in title reports and records relating thereto.

(b) The following regulations governing the purchase of real property, including rights of way and easements (hereinafter called "property") are adopted:

(1) The General Manager is authorized to procure options for the purchase of property, in the judgment of the General Manager required for District purposes, in amounts not exceeding \$5,000 for any one option.

(2) The General Manager is authorized to bind the District by contract for the purchase of any property, which, in the judgment of the General Manager, is required for District purposes, without appraisal, when the purchase price does not exceed the sum of \$5,000 for any one parcel; provided, further, that if an appraisal is obtained, the General Manager may, with the approval of the Land Committee and without regard to the appraisal, purchase such property for any amount not in excess of \$5,000 which the General Manager believes to be in the best interests of the District to pay.

(3) All property authorized to be acquired, other than that referred to in Section 8200(b)(2) herein, shall be appraised by at least one appraiser, who may be a designated member of the staff of the General Manager or an independent appraiser employed by the General Manager. One appraisal shall be sufficient unless, in the opinion of the General Manager, the appraised valuation of the property will exceed \$75,000 or any appraisal which the General Manager obtains shows a valuation in excess of such sum, in which case there shall be an appraisal made by a second and independent appraiser. If only one appraisal is necessary, the valuation determined thereby shall constitute the approved value of the property, while if two appraisals are required, the lower of the valuations ascertained shall constitute the approved value of the property. The General Manager may bind the District by contract for the purchase of the property at the approved valuation or for such greater sum as is authorized in Section 8200(b)(4). If there are two appraisals and the property cannot be purchased in accordance with the foregoing provisions, the reports of the two appraisers shall be submitted to the Land Committee which shall establish an approved valuation no higher than the higher of the two appraisals and no lower than the lower one thereof.

(4) The General Manager may, whenever it is necessary in the General Manager's judgment, bind the District by contract for the purchase of property authorized to be acquired at a price not exceeding the lesser of 110 percent of the approved valuation or \$5,000 over the approved valuation; provided, further, that the General Manager may pay, in addition to the lesser of the above amounts, as part of the negotiated purchase price of the property, a sum equal to any documentary tax lawfully payable by the seller. In addition, if an action has been filed by the District to acquire property by eminent domain, then either the General Manager, by contract to purchase the property upon

payment of the approved value or price as provided above, or the General Counsel, by stipulated judgment in an action to acquire the property upon such payment, may pay an amount equal to interest thereon that would be required to be paid if the property were otherwise acquired by judgment in condemnation under the California Eminent Domain Law.

(c) The authority of the General Manager to accept deeds or grants of any interest in or easements upon real estate on behalf of the District may be exercised when the General Manager has contracted for the purchase of such interest or easement pursuant to the provisions of this Section 8200 or any action by the Board. The General Manager shall report to the Land Committee quarterly the deeds or grants accepted during the preceding quarter.

§ 8201. Acceptance of Deeds or Grants and Recordation of Notices of Public Easements.

(a) Pursuant to Section 27281 of the Government Code, the General Manager is authorized to accept deeds or grants conveying any interest in or easement upon real estate to the District for public purposes, and the District hereby consents to the recordation thereof by the General Manager, provided such deed or grant is in form approved by the General Counsel.

(b) The General Manager is authorized to comply with the Streets and Highway Code on behalf of the District in order that a notice of public easement for District facilities may be recorded in the event of the vacation of any public street or highway in which the facilities are installed pursuant to Section 142 of the Metropolitan Water District Act.

§ 8202. Relocation Assistance Program.

The General Manager is authorized to implement a relocation assistance program including a relocation assistance appeals procedure where required in connection with the acquisition of property for District purposes, in accordance with Government Code Division 7, Chapter 16, Sections 7260, et seq., and California Administrative Code Title 25, Article 1, Section 6000, et seq. and Article 5, Section 6150, et seq.

§ 8203. Acquisition of Tunnel Easements.

The General Manager is authorized to enter into agreements for the acquisition of tunnel easements in land subject to deeds of trust when the consideration to be paid therefor does not exceed \$1,000, such agreements to be in form approved by the General Counsel.

§ 8204. Acceptance of Temporary Easement Deeds Subject to Deeds of Trust.

The General Manager is authorized to accept temporary easement deeds subject to deeds of trust and is not required to obtain a consent to subordination thereof.

§ 8205. Purchase of Remainders.

The General Manager is authorized to bind the District by contract for the purchase of any such remainder or remainders in connection with any District project, whenever any appraisal report obtained by the District respecting the required parcel, establishes that the acquisition thereof will reduce the value of one such remainder to an amount between \$0 and \$500, inclusive, or of two such remainders to an amount between \$0 and \$1,000, inclusive.

§ 8206. Entry Permits.

The General Manager, when obtaining an entry permit from a property owner, is authorized to agree, on behalf of the District, to assume the risk of any loss to the District which might arise out of the exercise of the rights granted under the permit, and to indemnify the property owner from any liability to third parties arising out of the District's use of the property. When possession of property is taken by the District under a permit from the owner, the General Manager is authorized to agree with the owner to pay interest on any award which might thereafter be made in a condemnation action to the same extent as if an order for immediate possession had been obtained from the court in such action, all such permits being in form approved by the General Counsel.

§ 8207. Adoption of Resolution of Necessity.

(a) The General Manager shall give the notice and the Land Committee shall hold the hearing required of the Board by Code of Civil Procedure Section 1245.235(c). The hearing shall be attended by not less than a quorum of the committee. Subsequent to the hearing, the committee shall provide the Board and any person who filed a written request within the time specified in the notice and appeared before the committee with a written summary of the hearing and a written recommendation as to whether to adopt the resolution of necessity. Any such person shall also be given an opportunity to appear and be heard before the Board on the matters referred to in Section 1240.030.

(b) In determining whether to adopt a resolution of necessity to acquire property, the Board shall consider the recommendation of the General Manager, the written summary of

hearing and written recommendation presented to it by the Land Committee and presentation to the Board by any person made pursuant to Section 8207(a).

Article 2

MANAGEMENT OF REAL PROPERTY

Sec.

- 8220. Easements to Public Agencies and Public Utilities
- 8221. Consent to Subdivision
- 8222. Leasing of Property for District Purposes
- 8223. Leases of District Property
- 8224. Utility Pole Permits
- 8225. Removal or Relocation of Facilities on Easements Not Inflexible
- 8226. General Manager to Appraise District Property for Leases

§ 8220. Easements to Public Agencies and Public Utilities.

(a) The General Manager is authorized to grant to governmental entities within and including the State of California, public agencies, and public utilities, at their request, on such terms as the General Manager deems to be reasonable and proper such easements, or similar rights, in District property as are required for their operations and will not interfere with the District's operations, such grants to be in form approved by General Counsel; provided, however, that if it will be necessary for District facilities to be relocated or protected in order to avoid interference by the requested easement, the General Manager shall obtain approval of a relocation or protection agreement by the Board prior to granting such easement.

(b) The General Manager shall report to the Land Committee quarterly the easements, or similar rights, granted during the preceding quarter under the authority of Section 8220, and shall also include in such report any relocation or protection agreement made in connection therewith.

§ 8221. Consent to Subdivision.

The General Manager is authorized on behalf of the District to consent to the subdivision of property owned by subdivider, subject to an easement owned by the District, and consent to the recordation of the subdivision map, provided that the certification expressing such consent shall be in form approved by the General Counsel and shall reserve to the District its easement in the property so subdivided.

§ 8222. Leasing of Property for District Purposes.

(a) The General Manager shall be authorized to lease any property that the General Manager deems necessary in connection with the operations of the District; provided, however, that the aggregate rent under any one lease be less than \$75,000.

(b) The General Manager shall report annually to the Board and quarterly to the Land Committee all leases made during the preceding quarter under the authority of this Section 8222.

(c) If, in the General Manager's opinion, it would be advisable to have property proposed to be leased appraised, the General Manager is authorized to obtain such an appraisal either by an independent appraiser or appraisers in accordance with the provisions of Section 8200, or by a member of the staff of the General Manager.

§ 8223. Leases of District Property.

(a) The General Manager may lease property of the District for purposes not inconsistent with the needs of the District provided each such lease, other than a lease to a public entity or a public utility, is subject to cancellation upon an order of either the Board or the General Manager upon no more than one year's written notice to the lessee.

(b) The General Manager shall report annually to the Board and quarterly to the Land Committee all leases made during the preceding quarter under the authority of this Section 8223.

§ 8224. Utility Pole Permits.

(a) The General Manager is authorized to execute permits to enable the District to use poles owned by others for attachment of District facilities and to bind the District to indemnify the owner of the poles against liability resulting from such use.

(b) The General Manager is authorized to execute permits to enable others to use District-owned poles for attachment of their facilities, such permit to contain provisions protecting the District against liability arising from such use of District poles.

(c) The General Counsel shall review any permit executed by the General Manager pursuant to authority granted herein.

§ 8225. Removal or Relocation of Facilities on Easements Not Inflexible.

The Board shall not establish as an inflexible rule that each grant of easement shall contain the requirement that the grantee remove or relocate its facilities upon demand.

§ 8226. General Manager to Appraise District Property for Leases.

The General Manager is authorized to obtain one or more appraisals of any District property which the General Manager believes it would be in the best interests of the District to lease.

Article 3

DISPOSAL OF REAL PROPERTY

Sec.

- 8240. Preliminary Requirements
- 8241. Authority for General Manager to Sell or Lease Surplus Real Property; Restriction on District Directors and Employees
- 8242. Quitclaims
- 8243. Disposal of Unnecessary Improvements
- 8244. Auction by District Staff
- 8245. Open Listing
- 8246. Exclusive Listing
- 8247. Auction by Professional Auctioneers
- 8248. Required Deposit
- 8249. Terms
- 8250. Zoning
- 8251. Policy of Title Insurance
- 8252. Completion of Sale
- 8253. Forfeiture of Deposits
- 8254. Exceptions to Public Sale Requirements
- 8255. Reservation of Oil, Gas and Mineral Rights
- 8256. Retention of Oil and Mineral Rights
- 8257. Quarterly Reports
- 8258. Statement re Encumbering of Property

§ 8240. Preliminary Requirements.

The General Manager shall establish a procedure for the continuous review of real property owned by the District for the purpose of determining which of such property is surplus to the District's needs. When the General Manager determines that property is surplus, the General Manager shall notify the Engineering and Operations Committee and Land Committee of that

determination, unless the estimated value of the property is less than \$75,000.

(a) If the Engineering and Operations Committee does not overrule such determination and the estimated value of the property is \$75,000 or more, the General Manager shall:

(1) Notify the Land Committee of the estimated value of the property and recommend the appropriate marketing procedure authorized by this Article 3;

(2) Cause the property to be appraised by one or more independent appraisers.

(b) If the estimated value of the property is less than \$75,000, the General Manager shall cause the property to be appraised by a member of the staff of the General Manager or an independent appraiser, and disposed of as authorized by Article 3.

(c) The General Manager shall comply with the California Environmental Quality Act and the legal requirements pertaining to the disposition of property in cities or counties which have a general plan. If upon such compliance, any official body objects to the proposed sale, the Board of Directors shall first expressly uphold or reject the objections. There being no objections, or the objections having been rejected, and the appraisal or appraisals having been completed, the General Manager may then sell or lease the surplus property under the provisions of this Article 3.

§ 8241. Authority for General Manager to Sell or Lease Surplus Real Property; Restriction on District Directors and Employees.

If after offering the property for sale or lease to certain public agencies, as required by law, at the fair market value as determined by the General Manager after review of any or all appraisals of the property, no such offer is accepted, the General Manager may lease it, or sell it either by public auction or by using the services of real estate brokers or a professional auctioneer; provided, however, that District directors and employees, their spouses and dependent children may not purchase such property or lease it or represent in any manner a prospective lessee or purchaser of such property.

§ 8242. Quitclaims.

(a) The General Manager is authorized to quitclaim, in form approved by the General Counsel, any temporary easement or lease

to which the District is a party and which has expired by its own terms.

(b) The General Manager is authorized to quitclaim, in form approved by the General Counsel, any temporary easement or lease prior to its expiration

(1) Upon the recording of a Notice of Completion of the construction contract for which the easement or lease was acquired; or

(2) If no such notice has been recorded, then upon the release of the temporary easement area by the contractor in form approved by the General Counsel; provided, however, that if a Notice of Completion has not been recorded, consideration shall be required in such amount as the General Manager deems proper under the circumstances.

(c) The General Manager is authorized to quitclaim, in form approved by the General Counsel, any easement for access to a District facility over adjoining lands at such times as the General Manager may determine that adequate access thereto from a dedicated public street is available.

(d) Notwithstanding any other provisions of the Article 3, the General Manager is authorized to quitclaim to the United States of America, in form approved by the General Counsel, any property acquired by the District under and pursuant to the Act of Congress approved June 18, 1931 (43 Stats. 324), when the General Manager determines that the property is no longer required for the District's needs.

§ 8243. Disposal of Unnecessary Improvements.

(a) The General Manager is authorized to dispose of, in the manner the General Manager deems to be in the best interest of the District, any improvements that must be removed to make land acquired for District operations suitable for District use.

(b) The General Manager shall report quarterly to the Land Committee the details of any transactions during the preceding quarter in which an improvement was disposed of in such a manner as to make the improvement available for subsequent use by a party other than the District.

§ 8244. Auction by District Staff.

(a) If the General Manager elects to sell the property by public auction, the General Manager shall do so at such time and place as the General Manager may fix, with or without sealed bids having been first submitted.

(b) Whenever the General Manager determines that the sale shall be at public auction without sealed bids having been first submitted, no bid at the auction shall be considered unless the bidder shall, prior to the holding of the auction, deposit with the person designated by the General Manager to conduct such sale the percentage indicated in Section 8248 of the amount specified in the Notice of Sale as the minimum bid, in cash, cashier's check or check certified by a responsible bank, as a guarantee that the person making the bid will purchase the property under the terms specified in the Notice of Sale. The property shall be sold to the highest responsible bidder and the deposits of all other bidders returned forthwith.

(c) Whenever the General Manager determines that the sale shall be by sealed bids, all bids shall be filed in the office of the Director, Right of Way and Land Division, at or before the time specified in the Notice of Sale, shall be on forms approved by the General Counsel, and shall be accompanied by a cash deposit, cashier's check or check certified by a responsible bank in an amount of not less than the percentage indicated in Section 8248 of the amount specified in the Notice of Sale as the minimum bid, as a guarantee that the person making the bid will purchase the property upon the terms and conditions specified in the Notice of Sale. The Director, Right of Way and Land Division, shall, at the time and place specified in the Notice of Sale, open the bids. Thereafter, there shall be a public auction at a time and place specified in the Notice of Sale, and any person shall be eligible to bid at the auction; provided, however, that any oral bid shall be ignored unless it exceeds by at least 5 percent the highest sealed bid made by a responsible person. No oral bid at such sale not preceded by a sealed bid from the same party shall be considered unless accompanied by a cash deposit, cashier's check or check certified by a responsible bank in an amount of not less than the percentage indicated in Section 8248 of the amount specified in the Notice of Sale as the minimum bid, as a guarantee that the person making the bid will purchase the property upon the terms and conditions specified in the Notice of Sale. If no oral bid is made at the public auction, or if such oral bid is not in accordance with the provisions hereof, the property shall be ordered sold to the highest responsible sealed bidder.

(d) A real estate commission shall be paid in connection with a sale at public auction on the following basis:

(1) The real estate commission shall not exceed the prevailing rate in the area where the property is located and it shall be stated in the bid for which a claim for the payment of a commission is made that it is subject to the same.

(2) The commission shall be distributed in this manner:

(i) When at a public auction, without sealed bids, the highest bid was procured by a licensed real estate broker, the commission shall be paid to the broker.

(ii) When at a public auction following submission of sealed bids, the successful bid is the highest sealed bid, and it was procured by a licensed real estate broker, the commission shall be paid to that broker.

(iii) When at a public auction following the submission of sealed bids, the successful bid was procured by a licensed real estate broker, but the highest sealed bid was not obtained by such a broker, the commission shall be paid to the broker.

(iv) When at a public auction following the submission of sealed bids, the highest sealed bid was procured by a licensed real estate broker, but the successful bid was procured by a different licensed real estate broker, the commission shall be divided equally between the brokers.

(v) When at a public auction following the submission of sealed bids, the highest sealed bid was procured by a licensed real estate broker, but the successful bid was not subject to a commission, one-half of the commission based upon the amount of the successful bid shall be paid to the broker.

(3) In determining which is the highest bid, there shall not be subtracted therefrom the commission, if any, which the bid provides shall be paid to a licensed real estate broker.

(e) The General Manager shall cause a Notice of Sale to be posted on the property in at least one conspicuous place. It shall specify the minimum bid which will be accepted for the property, which shall not be less than 90 percent of the lowest appraisal and shall state the terms of the sale which shall be in conformity with this Article 3. The General Manager shall cause one or more advertisements of the sale to be placed in a newspaper, or newspapers, so as to give reasonable notice of the sale.

§ 8245. Open Listing.

If the General Manager elects to sell the property by using the services of licensed real estate brokers, the General Manager shall do so by offering it for sale by advertising in a newspaper or newspapers that the property is being offered for sale with courtesy to brokers, and by notifying real estate boards in the area in which the property is located that the property is being

offered for sale with courtesy to licensed brokers. The initial offer for sale shall be for no less than the highest appraised valuation of the property. The General Manager is authorized to sell the property for the highest price obtainable; provided, however, that such price shall be no lower than the lowest appraisal without the approval of the Land Committee and no lower than 90 percent of the lowest appraisal without the approval of the Board. The General Manager is authorized to pay to the broker who procures the accepted offer, a commission not to exceed the prevailing rate in the area in which the property is located.

§ 8246. Exclusive Listing.

The General Manager may with the approval of the Land Committee give an exclusive listing to an individual licensed broker; provided, however, that the property shall not be sold for less than the lowest appraisal without the approval of the Land Committee and for no less than 90 percent of the lowest appraisal without the approval of the Board. In such case, the General Manager is authorized to pay a commission, upon consummation of the sale, not to exceed the prevailing rate in the area in which the property is located.

§ 8247. Auction by Professional Auctioneers.

The General Manager may sell the property by using the services of a professional auctioneer and may in connection therewith pay the reasonable expense of advertising the auction, and agree to pay a commission to the auctioneer not in excess of the prevailing rate in the area upon the consummation of the sale. Any such sale shall be subject to the approval of the Board of Directors.

§ 8248. Required Deposit.

No bid offer made pursuant to Sections 8244, 8245, and 8246 above shall be considered unless the bidder or offeror shall at the time the bid or offer is made, deposit with the person designated by the General Manager the percentage indicated below of the specified amount in cash, cashier's check or check certified by a responsible bank as a guarantee that the bidder or offeror will purchase the property for the bid or offered price.

Specified Amount	Deposit
To \$500	Full amount of bid or offer
\$501 to \$10,000	\$500 + 10% of minimum bid or offer
\$10,001 to \$50,000	\$1,500 + 5% over \$10,000
\$50,001 to \$100,000	\$3,000 + 3% over \$50,000
\$100,001 and above	\$4,500 + 2% over \$100,000

§ 8249. Terms.

Any sale shall be for cash or on the following minimum terms:

20 percent down payment with balance amortized over 10 years at an interest rate equal to the prevailing rate charged by financial institutions in the area in which the property is located, and to be secured by a deed of trust on the property sold. No prepayment penalty shall be required.

§ 8250. Zoning.

Where the property was appraised on the basis of a different zoning on the property than the existing zoning, the sale may be made contingent upon the bidder or offeror's obtaining a rezoning of the property within a reasonable time to be determined by the General Manager.

§ 8251. Policy of Title Insurance.

The General Manager may furnish the successful bidder or offeror with a policy of title insurance, if possible, and open an escrow to complete the sale, paying the usual seller's charges in connection therewith; provided, however, that if it subsequently develops that the title company is unwilling to issue a policy insuring title to the bidder or offeror in the manner indicated by the General Manager prior to the sale, the General Manager shall not be required to furnish such a policy and the bidder may cancel the sale; whereupon money previously deposited shall be refunded promptly and there shall be no further obligation on the part of either the bidder or the General Manager in connection with the sale; provided, further, that if under such circumstances the bidder or offeror elects not to cancel the transaction, the General Manager shall furnish such title insurance as the title company will then issue, and shall be released from liability on any representation relating to title theretofore made and not covered by the title insurance policy.

§ 8252. Completion of Sale.

Execution and Delivery of Deed -- The General Manager shall apply the deposit made by the successful bidder, or offeror, on the purchase price or down payment if the sale is on terms, and, upon completion of the sale either directly or through an escrow, the General Manager is authorized to execute and deliver on behalf of the District a grant deed conveying the property to such bidder or offeror. In the case of a sale for cash (1) without an escrow, the successful bidder or offeror must pay the balance of the purchase price to the General Manager within thirty days after the auction or acceptance of the offer or (2) with an escrow, upon the closing thereof; provided, however, that the General Manager may give the successful bidder or offeror extensions of time in which to make the payment.

§ 8253. Forfeiture of Deposits.

Any deposit made by a successful bidder or offeror shall be retained by the District as liquidated damages if the bidder or offeror shall fail to complete the purchase in accordance with the terms and conditions of the Notice of Sale or offer. If there is such failure, a licensed real estate broker, otherwise entitled to a commission under the provisions of this Article 3 shall be paid as a commission, an amount not to exceed one-half of the deposit so retained after deducting title and escrow expenses, if any; but in no event shall it exceed the commission which the broker would have received in the absence of such failure. If the successful bidder or offeror does not complete the sale as required by this Article 3 the property may be sold to the next highest bidder or offeror who wishes to buy.

§ 8254. Exceptions to Public Sale Requirements.

The requirements of Sections 8241 and 8244 above do not apply in the case of:

(a) A sale of real property or interest therein to the United States, the State, the County or any city, school district, flood control, or other special district within the State; any such sale shall be for the fair market value as determined by the General Manager after review of any or all appraisals of the property.

(b) A sale of real property having an estimated value of \$2,500 or less.

(c) A sale to an adjoining property owner when the General Manager determines that the particular parcel is probably incapable of being developed independently.

(d) With respect to sales under Sections 8254(b) and 8254(c), the General Manager shall make a determination of the reasonable amount for which the property shall be sold.

§ 8255. Reservation of Oil, Gas and Mineral Rights.

The right to extract all oil, gas hydrocarbons or other minerals without the right of surface entry for the development thereof, shall be reserved in the sale of any real property under the provisions of this Article 3 provided, however, that there shall be no such extraction within 500 feet of the surface.

§ 8256. Retention of Oil and Mineral Rights.

It shall be the general policy that oil and mineral rights shall be retained on all property sold by the District.

§ 8257. Quarterly Reports.

The General Manager shall report to the Land Committee quarterly on the property sold pursuant herewith.

§ 8258. Statement re Encumbering of Property.

The General Manager shall incorporate in letter of recommendation involving the disposal or the encumbering of property or rights of the District a statement declaring that the property or rights will not be required by the District nor adversely affect its operations.

Article 4

DISPOSAL OF SURPLUS PERSONAL PROPERTY

Sec.

8270. Disposal of Excavated Materials

8271. Disposal of Surplus Personal Property

8272. Acceptable Bidders on Disposal of Surplus Property

§ 8270. Disposal of Excavated Materials.

The General Manager is authorized to dispose of surplus excavated materials, or other materials, from Metropolitan's construction projects, with or without monetary consideration, in a manner to accomplish the purposes herein recited and determined by him best to serve the interests of Metropolitan.

§ 8271. Disposal of Surplus Personal Property.

Any personal property belonging to the District and which, in the opinion of the General Manager, is no longer required for the use of the District may be sold, or exchanged as part payment for the purchase of new equipment of like kind and nature, such sale or exchange to be made under such procedure, at such prices

and upon such terms and conditions, as the General Manager may prescribe.

§ 8272. Acceptable Bidders on Disposal of Surplus Personal Property.

District directors and employees, their spouses and dependent children may not make exchange for or purchase surplus personal property from the District under any terms and conditions for the disposal of surplus personal property prescribed by the General Manager under the authority delegated to him by Section 8271.

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June 17, 1992