AMENDED AND RESTATED
SAN DIEGO UNIFIED PORT DISTRICT
RETIREMENT PLAN AND TRUST

Originally effective January 1, 2003
Restated effective July 1, 2007
Amended effective December 1, 2009

DUPLICATE ORIGINAL
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AMENDED AND RESTATED
SAN DIEGO UNIFIED PORT DISTRICT
RETIREMENT PLAN AND TRUST

DIVISION 1: CREATION OF PLAN AND TRUST AND DEFINITIONS

§0100 Purpose of Plan

The purpose of this Plan is to recognize an obligation to UPD employees for their long service in public employment by providing them with retirement, disability and death benefits as additional elements of compensation and by providing a means by which UPD employees who become disabled may be replaced without inflicting hardship on them.

§0101 Rights and Benefits

This Plan is created pursuant to Section 149 of the San Diego City Charter and Chapter 2, Article 4, Division 18 of the San Diego Municipal Code entitled “Contracting Public Agencies.” This Plan was initially effective on January 1, 2003. This amended and restated version of the Plan is effective July 1, 2007. Nothing in this Plan should be construed to affect any of the rights or benefits UPD employees have earned in the San Diego City Employees’ Retirement System prior to January 1, 2003, and this Plan as of July 1, 2007.

§0102 Definitions

Unless otherwise stated, for purposes of this Plan:

“Accumulated Contributions” means the total of all Accumulated Normal Contributions, Cost of Living Contributions and Surviving Spouse or Domestic Partner Contributions credited to a Member’s or Miscellaneous Member’s account, plus interest on these amounts as determined by the Administrator.

“Accumulated Cost of Living Contributions” or “Accumulated COL Contributions” means all Costs of Living Contributions credited to a Member’s or Miscellaneous Member’s account and interest on these amounts.

“Accumulated Normal Contributions” means the sum of all Normal Contributions credited to a Member’s or Miscellaneous Member’s account and interest on these amounts.

“Accumulated Surviving Spouse or Domestic Partner Contributions” means all Surviving Spouse or Domestic Partner Contributions credited to a Member’s or Miscellaneous Member’s account and interest on these amounts.

“Actuarial Equivalent” means a benefit of equal value when computed based on the mortality, interest, and other tables adopted by the Administrator by rule, which rule is incorporated by reference into this Plan. This definition is effective January 1, 2003.

“Actuary” means the actuary regularly employed by the Administrator.
“Administrator” means the Board of Administration of the San Diego City Employees’ Retirement System, when acting in its capacity as administrator of this Plan, or any other qualified entity with which the UPD contracts pursuant to §0900.

“Airport Authority” means the San Diego County Regional Airport Authority.

“Annual Supplemental Benefit” or “13th Check” means a benefit payment of a portion of the Surplus Undistributed Earnings to a Qualified Retiree based on the Member’s Service Credit.

“Annuity” means a lifetime payment derived from a Member’s or Miscellaneous Member’s contributions.

“Base Compensation” means the wages the UPD pays its employees, which are used to calculate the Participants’ Normal, COL and Surviving Spouse or Domestic Partner Contributions. Base Compensation is defined in the salary ordinance enacted by the Port Commissioners from time to time. The UPD will provide to the Administrator a copy of any resolution or ordinance approved by the Port Commissioners that amends the definition of “Base Compensation.”

“Base Retirement Benefit” means the monthly retirement benefit for service or disability paid to a Participant, or a like amount that is credited monthly to the account of a DROP Participant, which includes: 1) the unmodified service retirement allowance (which will be modified if the Participant selects an optional retirement as provided in Division 6); 2) the Cost of Living Annuity; 3) the annual Cost of Living Adjustment (COLA) described in §0300; and 4) the surviving spouse or Domestic Partner annuity described in §0600 if selected by the Participant. The Base Retirement Benefit does not include the Annual Supplemental Benefit (13th check) described in §1300.

“Basic Allowance” means the amount calculated as to each Participant upon retirement based on the defined benefit formula set forth in §0300 or §0301.

“Beneficiary” means any person who is (i) designated by a Participant to receive a benefit from this Plan, and (ii) receiving or may be entitled to receive a benefit from this Plan.

“Board” means the Board of Administration for the San Diego City Employees’ Retirement System.

“City” means the City of San Diego.

“Code” or “Internal Revenue Code” means the Internal Revenue Code of 1986, as amended, unless otherwise indicated.

“Cost of Living Adjustment” or “COLA” means the increase to the Monthly Retirement Allowance based on changes in the consumer price index.

“Cost of Living Contributions” or “COL Contributions” means contributions by a Member or Miscellaneous Member pursuant to a salary ordinance enacted by the Port Commissioners from time to time, over and above the Normal Contributions and Surviving Spouse or Domestic...
Partner Contributions, which are used to fund the Member’s or Miscellaneous Member’s share of the COLA program.

“Cost of Living Pension” or “COL Pension” means a Member’s Participant’s total accumulated Cost of Living Adjustments.

“Deferred Member” means any vested Participant who leaves the his or her Accumulated Contributions on deposit with the Plan after terminating UPD employment and who does not yet meet the age and service requirements for a service retirement. When a Deferred Member is eligible for retirement benefits, the Member is entitled to the level of retirement benefits in place on the date the Deferred Member left UPD service.

“Distributee” means a recipient of a distribution as defined in §1000(g)(1)(D) for purposes of the rollover rules under Internal Revenue Code Section 401(a)(31).

“Domestic Partner” means an individual who either: (1) is a domestic partner of a Participant under California Family Code section 297 who has provided the Administrator a certified copy of his or her “Declaration of Domestic Partnership (Form NP/SF DP-1),” or (2) proves to the Administrator by adequate documentation that he or she is a domestic partner of a Participant under a legal union in another jurisdiction that is substantially equal to a domestic partnership under California Family Code section 297.

“DROP” means the Deferred Retirement Option Plan, which is an alternative method of benefit accrual described in Division 12.

“Employee Contribution” means the Member’s or Miscellaneous Member’s contribution established in §0200. “Employer Contributions” means the contributions made to the Trust Fund by the UPD as specified in §0800, except for employee contributions that are picked-up pursuant to Internal Revenue Code Section 414(h) and §0205 of this Plan, or paid by the UPD on behalf of Miscellaneous Members.

“Final Average Salary” means the monthly average Base Compensation used to calculate the Basic Allowance.

“Final Compensation” means, for General Members hired by the UPD before October 1, 2006, and all Safety Members, regardless of their hire date, the Member’s Base Compensation for the Member’s highest one-year period while contributing to (1) SDCERS before January 1, 2003, or (2) the Plan. For General Members hired by the UPD on or after October 1, 2006, and Miscellaneous Members, Final Compensation means the General and Miscellaneous Member’s Base Compensation for his or her highest three-year period while contributing to the Plan.

“General Member” means any Member who is neither a Safety Member nor a Miscellaneous Member.

“Investment Earnings Received” means all interest received (net of interest purchased) on notes, bonds, mortgages, short term money market instruments, and savings accounts; cash dividends received on stock investments; and all realized gains and losses from the sale, trade or conversion of any of the Plan’s investments.
"Member" means any General Member who was hired before January 1, 2009 and any Safety Member who is actively participating in and contributing to the Plan, and who will be entitled to receive benefits from the Plan when eligible.

"Miscellaneous Member" means a full-time UPD employee hired after December 31, 2008, who is not a Safety Member. Miscellaneous Member shall also mean a rehired employee returning to service with UPD on or after January 1, 2009.

"Monthly Retirement Allowance" means the sum of the Monthly Pension, the Monthly Annuity, the Cost of Living Annuity and the COL Pension.

"Normal Contributions" means contributions made by a Member, or on behalf of a Miscellaneous Member, used to fund the Member or Miscellaneous Member's share of the actuarial present value of the Plan benefits allocated to the current year.

"Offset" means the amount paid by the UPD on a Member or Miscellaneous Member's behalf pursuant to the salary ordinance enacted by the Port commissioners from time to time.

"Participant" means a Member or Miscellaneous Member.

"Participation and Administration Agreement" means the agreement between the UPD and the Board providing for the administration of the Plan by the Board.

"Plan" means this document, entitled “San Diego Unified Port District Retirement Plan and Trust,” as amended from time to time.

"Port Commissioners" means the Board of Commissioners of the UPD.

"Qualified Retiree" means a retired Member who is eligible to receive the Annual Supplemental Benefit.

"Retirement Calculation Factor" means the percent of Final Average Salary per year of Service Credit a Participant is entitled to receive for each year of Service Credit. The Member’s Retirement Calculation Factor is determined by the Member’s age at retirement. The factors are set forth in §0300, §0301 and §0302.

"Safety Member" means any Member who is a full-time Harbor Police Officer and therefore a "peace officer" under California Penal Code section 830.1(a) or a Harbor Police Officer Trainee.

"SDCERS" means the San Diego City Employees’ Retirement System.

"SDCERS Group Trust" means the group trust created by the SDCERS Board of Administration to serve as a common investment vehicle for the assets of SDCERS (i.e., the City plan, this Plan, and the Airport Authority plan).

"SDCERS Plan" means the SDCERS-administered retirement plan in which the UPD Members participated before January 1, 2003, the original effective date of this Plan.
“Service Credit” means the years or partial years of service: (1) purchased by a Member under Division 11 of this Plan, (2) earned by a Member while employed by the City, the UPD or the Airport Authority and contributing to the Plan or to SDCERS (before January 1, 2003), and (3) earned by a Miscellaneous Member beginning in his or her sixth year of employment with the UPD.

“Surplus Undistributed Earnings” means any investment earnings remaining after all obligations of the Plan have been funded. Surplus Undistributed Earnings are credited to the reserve for Employer Contributions.

“Surviving Spouse/Domestic Partner Contributions” means contributions made by a Participant over and above the Normal and Cost of Living Contributions, used to fund the Participant’s share of the cost of the Surviving Spouse or Domestic Partner Benefit.

“Trust Fund” means the trust fund established by this Plan document to hold the assets of the Plan.

“Trustee” means the Board of Administration of the San Diego City Employees’ Retirement System, or any other qualified entity with which the UPD contracts to serve as trustee of the Plan.

“UPD” means the San Diego Unified Port District established under the San Diego Unified Port District Act (Chapter 67 of the Statutes of 1962, First Extraordinary Session).

§0103 Participation

A full-time UPD employee must participate in the Plan as a condition of employment. A part-time UPD employee is not eligible to participate in the Plan. The UPD may hire a retired City, Airport Authority or UPD employee, but the employee will not be eligible to participate in the Plan as a Member or Miscellaneous Member while the employee is receiving retirement benefits from the Plan. An individual receiving a differential wage payment, as defined in Code §3401(h)(2), shall be treated as a UPD employee and the differential wage payment shall be treated as Base Compensation for purposes of this Plan.

In the case of a participant who is on USERRA military leave who does not return to employment due to disability or death during such military service, he or she or his or her beneficiary shall be entitled to any additional benefits which would be available under the Plan if he or she had returned to employment.

§0104 Severability

If a court of competent jurisdiction holds that any part of this Plan is unconstitutional or invalid for any reason, that holding will not affect the validity of the remainder of this Plan.

§0105 Trust Fund and Participation in SDCERS Group Trust

(a) Establishment of Trust Fund: The Trust Fund is hereby established to hold the assets of the Plan for the exclusive benefit of the Participants and Beneficiaries of the Plan.
(b) **Trust Fund Purpose:** The Trust Fund is maintained solely to provide benefits and pay expenses under this Plan.

c) **Appointment of Trustee:** The Board will serve as Trustee of the Plan.

d) **Powers of the Trustee:** In administering the Trust Fund, the Trustee has the power in its discretion:

1. To exercise, or to refrain from exercising, all voting rights with respect to any stocks, bonds or other securities and to grant general or special proxies or powers of attorney with or without power of substitution whether discretionary or otherwise, and to enter into any voting trust or similar agreement;

2. To register and hold any investment in the name of the Trustee, in the name of one or more of their nominees or in the name of one or more nominees of any system for the central handling of securities, with or without indication of the capacity in which the investment is held, and to hold any investment in bearer form, but the books and records of the Plan will at all times show that such investments are part of the Trust Fund;

3. To collect and receive any and all money and other property due to the Trust Fund and to give full discharge therefor;

4. To employ suitable agents, counsel, and investment managers and to pay their reasonable expenses and compensation from the Trust Fund;

5. To settle, compromise or submit to arbitration any claims, debts or damages due or owing to or from the Trust, to commence or defend suits or legal proceedings to protect any interest of the Trust, and to represent the Trust in all suits or legal proceedings in any court or before any other body or tribunal;

6. To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted; and

7. Generally, to do all acts, whether or not expressly authorized, which the Trustee may deem necessary or desirable to protect the Trust Fund. However, the Trustee will operate in compliance with Internal Revenue Code Section 503(b).

e) **Trustee and Investment Expenses:** The expenses incurred by the Trustee in the performance of its duties, including fees for legal services rendered to the Trustee, and all other proper charges and disbursements of the Trustee, will be paid by the UPD. Expenses allocable to the UPD will be determined as provided in the Participation and Administration Agreement. All taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws upon or in respect of the Trust Fund or the income thereof will be paid from the Trust Fund unless the UPD elects to pay such expenses.
(f) **Counsel:** The Trustee may consult with counsel, who may be counsel for the UPD, and will be fully protected in acting upon the advice of counsel.

(g) **Limitations of Responsibility and Indemnification:** The Trustee’s responsibilities and liabilities are subject to the following limitations:

1. The Trustee has no duties other than those expressly set forth in this Plan and those imposed on the Trustee by applicable laws.
2. The Trustee will be responsible only for money and property actually received by the Trustee.
3. The Trustee has no duty to make recommendations concerning actions to be taken hereunder or to question the propriety of any action they have been directed to take hereunder with respect to matters falling within the jurisdiction of the UPD, to the extent that the action is consistent with the Plan.
4. The Trustee will not be required to give any bond or other obligation to secure the due performance of the Trust by the Trustee, unless required by law.
5. The Trustee has no liability for the acts or omissions of any predecessors or successors in office.
6. The Trustee has no liability for following directions that are given to the Trustee in accordance with this Plan.

(h) **Adoption of SDCERS Group Trust:** The SDCERS Group Trust is hereby adopted as part of this Plan.

(i) **Transfer of Funds to SDCERS Group Trust:** The Administrator will, from time to time, transfer funds of this Plan to and from the SDCERS Group Trust.

§0106 Plan Year

The plan year begins on July 1 of each year and ends on the following June 30.

**DIVISION 2: EMPLOYEE CONTRIBUTIONS**

§0200 Employee Contributions

A Member’s Employee Contribution is determined by multiplying the Member’s Base Compensation by a rate based on the Member’s age at the Member’s nearest birthday on the Member’s effective date of membership with the Plan or its predecessor, the SDCERS Plan. A Miscellaneous Member’s Employee Contributions is determined by multiplying the Miscellaneous Member’s Base Compensation by a rate based on the Miscellaneous Member’s age at his or her nearest birthday on the first day of his or her sixth year of UPD employment.
§0201 Adoption of General Member, Safety Member and Miscellaneous Member Contribution Rates

(a) The Administrator, based upon the advice of the Actuary, will periodically adopt by rule the rate of contribution of each General Member, according to the age at the time of entry into the Plan in compliance with federal law. These rates will be contained in the operating tables furnished to the Administrator by the Actuary. The rules adopted by the Administrator under this section are incorporated by reference into this Plan document and are effective beginning January 1, 2003, in accordance with their terms.

(b) The Administrator, based upon the advice of the Actuary, will periodically adopt by rule the rate of contribution of each Safety Member, according to the age at the time of entry into the Plan in compliance with federal law. These rates will be contained in the operating tables furnished to the Administrator by the Actuary. The rules adopted under this section are incorporated by reference into this Plan document and are effective beginning January 1, 2003, in accordance with their terms.

(c) The Administrator, based upon the advice of the Actuary, will periodically adopt by rule the rate of contribution of each Miscellaneous Member, according to the age at his or her nearest birthday on the first day of his or her sixth year of UPD employment, in compliance with federal law. These rates will be contained in the operating tables furnished to the Administrator by the Actuary. The rules adopted by the Administrator under this section are incorporated by reference into this Plan document and are effective beginning January 1, 2009.

§0202 Maximum and Minimum Employee Contribution Rates for Members

The minimum Employee Contribution rate for a General Member or a Safety Member is the rate for a General Member or Safety Member entering the Plan at age 20. The maximum Employee Contribution rate for a Safety Member is the rate for a Safety Member entering the Plan at age 49. The maximum Employee Contribution rate for a General Member is the rate for a Member entering the Plan at age 59.

§0203 Members' Employee Contributions Deducted by UPD

Participant's Contributions paid by the Participant are deducted by the UPD and transferred to the Administrator on a bi-weekly basis for crediting to each Member's account in the Trust Fund.

§0204 Pick-Up of Members' and Miscellaneous Members' Employee Contributions

The UPD will pick-up Members' and Miscellaneous Members' Employee Contributions as permitted by Internal Revenue Code section 414(h)(2) in accordance with Revenue Ruling 2006-43 and any subsequent Internal Revenue Service guidance. The Board of Commissioners of the UPD will take the necessary actions to authorize all such pick-up contributions made on or after January 1, 2003, the effective date of the Plan. On and after the date of the pick-up, a Member will have no cash or deferred election right (within the meaning of Treasury Regulation §1.401(k)-1(a)(3)) with respect to any designated Employee Contributions.
Withdrawal of Accumulated Contributions and Deferred Retirement Benefits

(a) If a Member terminates UPD employment other than by death or retirement, the Member may withdraw his or her Accumulated Contributions.

(b) If the Member has less than 5 years of Service Credit, the Member may leave all of the Member's Accumulated Contributions with the Plan to:

1. maintain Service Credit if he or she is re-employed by the UPD at a later date, or
2. establish reciprocity with a reciprocal agency.

(c) If the Member or Miscellaneous Member has five or more years of Service Credit, the Member or Miscellaneous may become a Deferred Member by leaving his or her Accumulated Contributions with the Plan. Subject to the provisions of Division 4, a Deferred Member is eligible to retire when the Deferred Member meets the age requirement in place when the Deferred Member left UPD employment, and will receive the level of benefits in place on the day the Deferred Member terminated UPD service.

Termination of Benefits

Any Member who withdraws his or her Accumulated Contributions from the Plan is deemed to have knowingly stopped participating in the Plan, and will be ineligible for any rights, privileges or benefits from the Plan. Members and Miscellaneous Member may not withdraw contributions that were paid by the UPD on their behalf through an Offset.

DIVISION 3: RETIREMENT FOR SERVICE

Retirement Allowance for General Members

(a) General Members are eligible for a service retirement at:

1. age 55 with 20 or more years of Service Credit, or
2. age 62 with 5 or more years of Service Credit.

(b) The Plan will pay a General Member who retires for service a retirement allowance consisting of:

1. Monthly Annuity,
2. Monthly Pension, and
3. Cost of Living Annuity.

(c) The Monthly Annuity is an Annuity that is the Actuarial Equivalent of the General Member's Accumulated Normal Contributions at the time of the General Member's retirement.
(d) The Monthly Pension is the pension derived from the UPD's contributions that is sufficient, when added to the Monthly Annuity, to equal the Basic Allowance.

(e) The Cost of Living Annuity is the lifetime payment derived from the Member's Cost of Living Contributions, which is added to the Member's Basic Allowance, and is calculated by computing the Actuarial Equivalent of the General Member's Accumulated Cost of Living Contributions.

(f) The Basic Allowance of a General Member is calculated as follows:

1. determine the Retirement Calculation Factor that corresponds to the Member's age at retirement (as shown in the tables in this section entitled "Retirement Calculation Factors for General Members"), prorating that Retirement Calculation Factor to reflect quarterly increments in the Member's retirement age; then multiply the result by the Member's years of Service Credit to arrive at the "Member's Retirement Percentage";
2. multiply 2/3 of the Member's Retirement Percentage by $400;
3. as a separate calculation, subtract $400 from the Member's Final Average Salary, and multiply the result by the Member's Retirement Percentage;
4. add the resulting numbers from subsections (2) and (3) to arrive at the Member's Basic Allowance.

(g) Effective April 1, 2004, a General Member who was hired by the UPD and joined the SDCERS Plan on or before November 9, 2001 and was contributing to the SDCERS Plan on January 1, 2002, may choose, at retirement, to have his or her Basic Allowance calculated using the:

1. Retirement Calculation Factors in effect under the SDCERS Plan on December 31, 2001, with a 10% increase to the General Member’s Final Average Salary,
2. Retirement Calculation Factors in effect under the SDCERS Plan on January 1, 2002, with no increase to the General Member’s Final Average Salary, or
3. Retirement Calculation Factors in effect on April 1, 2004, with no increase to the General Member’s Final Average Salary.

(h) The Plan will calculate the Basic Allowance of a General Member who was hired by the UPD and joined the Plan (or the predecessor SDCERS Plan) after November 9, 2001 using the Retirement Calculation Factor in effect on April 1, 2004.
RETIREMENT CALCULATION FACTORS FOR GENERAL MEMBERS
[Retirement Calculation Factors are prorated in quarterly
increments to reflect the Member’s age at retirement.]

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(i) If a General Member’s Basic Allowance is calculated using the Retirement Calculation Factors in effect on April 1, 2004, the General Member’s Basic Allowance may not exceed 90% of the General Member’s Final Average Salary.

(j) The Retirement Calculation Factors are used to calculate the Basic Allowance. If the General Member elects one of the optional retirement settlements described in Division 6, the General Member’s Monthly Retirement Allowance will be reduced.

(k) Notwithstanding subsections (a) through (j) of this section, the Retirement Calculation Factor for a General Member who is the Executive Director/President, Assistant Executive Director/Executive Vice President, a Vice President, a Senior Director, Port Attorney, Assistant Port Attorney, Chief Financial Officer/Treasurer, an Assistant Vice President, District Clerk, and the Member holding the position of Director of Marketing on July 1, 2007 (collectively, “Executive General Members”) will be 3% at a retirement age of 55 or older beginning on December 23, 2002. The Retirement Calculation Factors for General Members, described in subsections (g), (h) and (i) of this section, will apply to an Executive General Member who retired, or left UPD service and deferred the General Member’s retirement, before December 23, 2002.

§0301 Miscellaneous Member Retirement Allowance

(a) A Miscellaneous Member begins earning Service Credit on the first day of his or her sixth year of employment with the UPD.

(b) Miscellaneous Members are eligible for a service retirement at:

(1) age 55 with 20 or more years of Service Credit, or

(2) age 62 with 5 or more years of Service Credit.
(c) The Plan will pay a Miscellaneous Member who retires for service a retirement allowance consisting of:

1. Monthly Annuity,
2. Monthly Pension, and
3. Cost of Living Annuity.

(d) The Monthly Annuity is an Annuity that is the Actuarial Equivalent of the Accumulated Normal Contributions credited to the Miscellaneous Member at the time of his or her retirement.

(e) The Monthly Pension is the pension derived from the Employer Contributions that is sufficient, when added to the Monthly Annuity, to equal the Basic Allowance.

(f) The Cost of Living Annuity is the lifetime payment derived from the Cost of Living Contributions credited to the Miscellaneous Member, which is added to the Miscellaneous Member's Basic Allowance, and is calculated by computing the Actuarial Equivalent of the Accumulated Cost of Living Contributions credited to the Miscellaneous Member.

(g) The Basic Allowance of a Miscellaneous Member is calculated using the following Retirement Calculation Factors:

1. The Retirement Calculation factor is .75% per year of Service Credit for the Miscellaneous Member's first through fifth years of Service Credit;
2. The Retirement Calculation factor is 1% per year of Service Credit for the Miscellaneous Member's sixth through tenth years of Service Credit;
3. The Retirement Allowance is 1.25% per year of Service Credit for the Miscellaneous Member's eleventh through fifteenth years of Service Credit.
4. The Retirement Calculation Factor is 1.5% per year for each additional year of Service Credit beginning with the Miscellaneous Member's sixteenth year of Service Credit.

(h) The Retirement Calculation Factors are used to calculate the Basic Allowance. If the Miscellaneous Member elects one of the optional retirement settlements described in Division 6, his or her Monthly Retirement Allowance will be reduced.

§0302 Safety Member Retirement Allowance

(a) Safety Members are eligible for a service retirement at:

1. age 50 with 20 or more years of Service Credit, or
2. age 55 with 5 or more years of Service Credit.
(b) The Plan will pay a Safety Member who retires for service a retirement allowance consisting of:

1. Monthly Annuity,
2. Monthly Pension, and
3. Cost of Living Annuity.

(c) The Monthly Annuity is an Annuity that is the Actuarial Equivalent of the Safety Member's Accumulated Normal Contributions at the time of the Safety Member's retirement.

(d) The Monthly Pension is the pension derived from the UPD's contributions, that is sufficient, when added to the Monthly Annuity, to equal the Basic Allowance.

(e) The Cost of Living Annuity is the lifetime payment derived from the Member's Cost of Living Contributions, which is added to the Member's Basic Allowance and is calculated by computing the Actuarial Equivalent of the Safety Member's Accumulated Cost of Living Contributions.

(f) Subject to the retirement allowance cap described in the following paragraph, the Basic Allowance of a Safety Member is calculated as follows:

1. determine the Retirement Calculation Factor that corresponds to the Member's age at retirement (as shown in the tables in this section entitled “Retirement Calculation Factors for Safety Members”), prorating that Retirement Calculation Factor to reflect quarterly increments in the Member's retirement age; then multiply the result by the Member's years of Service Credit to arrive at the "Member's Retirement Percentage";
2. multiply 2/3 of the Member's Retirement Percentage by $400;
3. as a separate calculation, subtract $400 from the Member's Final Average Salary, and multiply the result by the Member's Retirement Percentage;
4. add the resulting numbers from subsections (2) and (3) to arrive at the Member's Basic Allowance.

(g) The Basic Allowance for a Safety Member may not exceed 90% of the Safety Member's Final Average Salary, except as follows:

1. If a Safety Member's Basic Allowance exceeds 90% of the Safety Member's Final Average Salary, using the Retirement Calculation Factors in effect under the SDCERS Plan on December 31, 1996, the Safety Member may elect to continue accruing benefits using those factors without being subject to the 90% retirement allowance cap. A Safety Member who makes this election is not required to pay
any additional contributions as recommended by the Actuary related to the increase in benefits effective January 1, 1997.

(2) If the Basic Allowance of a Safety Member exceeds 90% of Final Average Salary using the Retirement Calculation Factors in effect under the SDCERS Plan on January 1, 1997, on a date between January 1, 1997, and March 31, 1997, the Safety Member may elect to accrue benefits in excess of the 90% limitation, but this accrual ends at the level the Safety Member attained as of March 31, 1997.

(h) A Safety Member may choose at the time of his or her retirement either: (1) the Retirement Calculation Factors in effect under the SDCERS Plan on January 1, 2002, with no change to his or her Final Average Salary, or (2) the Retirement Calculation Factors in effect under the SDCERS Plan on December 31, 2001, with a 10% increase to his or her Final Average Salary.

**RETIREMENT CALCULATION FACTORS FOR SAFETY MEMBERS**

*Retirement Calculation Factors are prorated in quarterly increments to reflect the Member’s age at retirement.*

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(i) The Retirement Calculation Factors are used to calculate the Basic Allowance. If the Safety Member elects one of the optional retirement settlements described in Division 6, the Safety Member’s Monthly Retirement Allowance will be reduced.

**DIVISION 4: BLENDED BENEFITS AND RECIPROCITY**

§0400 Blended Benefits

(a) This section applies when the Administrator of the Plan is the Board and when a Participant has Service Credit:

(1) with more than one plan that is administered by SDCERS and participating in the SDCERS Group Trust,

(2) in more than one category of service under the Plan (e.g., Safety and General, or General and Miscellaneous), or

(3) in any combination of (1) and (2).
(b) Retirement Service Calculation: The Administrator will calculate the Basic Allowance of a Participant who has Service Credit with more than one plan administered by SDCERS and participating in the SDCERS Group Trust, or more than one SDCERS membership category, and who retires simultaneously from all such plans and membership categories, as follows:

(1) The Administrator will determine the Participant’s service calculation separately for each plan and membership category using:

(A) the Retirement Calculation Factor for each plan or membership category in effect when the Participant retires from the Plan,

(B) the Participant’s Final Average Salary, and

(C) the Participant’s Service Credit for that plan.

(2) The Administrator will then add together the separate service calculations to arrive at the Participant’s Basic Allowance.

(3) If the Participant becomes disabled and qualifies for a disability retirement, the Administrator will compute the Participant’s retirement benefit using the formula in effect for the Participant’s plan and membership category at the time the disabling injury occurred.

(c) Vesting and Eligibility:

(1) A Participant may combine his or her Service Credit under the Participant’s current plan or membership category with his or her Service Credit for all other plans and membership categories to satisfy the vesting requirements for each. The Participant must satisfy the age and vesting requirements for each plan and membership category from which the Participant is retiring, based upon the Participant’s combined Service Credit.

(2) The Participant’s entry age at the time the Participant originally enrolled in a qualifying plan will remain in effect when the Participant moves between qualifying plans or service categories, provided there is no break in service and the Participant leaves his or her contributions on account with each such plan.

(d) Purchasing Service Credit:

(1) The Administrator will calculate the cost to purchase Service Credit under the provisions of §1103 based upon the Participant’s salary, membership category and employer at the time of application.
(2) The Administrator will calculate the cost of all other purchases of Service Credit using the Participant's current salary and the set cost for the category of service being purchased in effect on the date of application.

(e) Limitation on Calculation of Service: Notwithstanding any other provision in the Plan, service reflecting any specific period of employment may only be used to calculate benefits under one plan.

(f) Actuarial Liability: Beginning with the actuarial valuation for the fiscal year beginning July 1, 2007, the normal cost to the UPD for a Participant receiving a blended benefit pursuant to this section will be based solely on the Participant's employment with the UPD and will not result in additional actuarial liability or cost based upon the Participant's other employment.

§0401 Reciprocal Benefits with the California Public Employees' Retirement System

(a) Reciprocity: For the purpose of expediting the conclusion of reciprocal agreements with the California Public Employees' Retirement System ("PERS") or other public agencies maintaining independent retirement systems, and to avoid problems in interpretation that may arise from a great variation in reciprocal provisions, the Board of Administration for PERS recommends the adoption of the reciprocal provisions set forth in paragraph (b) of this section into the retirement ordinances or plans of public agencies desiring to enter into a reciprocal agreement with PERS or other public agencies. In accordance with this recommendation, the Port Commissioners have adopted the Uniform Reciprocal provisions contained in paragraph (b) of this section.

(b) Uniform Reciprocal Provisions: The purpose of these reciprocal provisions is to extend to the members of other public agency retirement systems (hereinafter "reciprocal system") which adopt similar reciprocal provisions into their retirement ordinances or plans pursuant to sections 20351, 20353, 31840.2 and 45310.5 of the California Government Code, and who by contract agree to extend the benefits thereof to this Plan, the following rights in this Plan, provided such Participant enters into employment under this Plan or the reciprocal system within six months of terminating employment under such other system or this Plan:

(1) Notwithstanding any provisions of this Plan or a reciprocal system plan in the matter of vesting, a Participant whose movement between systems and/or plans occurs as herein specified will have the right to elect to leave his or her accumulated contributions on deposit irrespective of the amount of such contributions or the length of service credited to him or her.

(2) The age of entry for a person entering this Plan for purposes of fixing Participant contribution rates from a reciprocal system will be the Participant's age at entry into such reciprocal system.

(3) The average monthly salary during any period of service as a member of a reciprocal system will be considered compensation earnable by a Participant of this Plan for purposes of computing Final Average Salary for such Participant,
provided he or she retires concurrently under both systems and/or plans and is credited with such period of service under the reciprocal system at the time of retirement.

(4) Service, solely for purposes of meeting minimum service qualifications for benefits and retirement allowances under this Plan, will also include service rendered as an officer or employee of a reciprocal system if the salary for such service constitutes compensation earnable by a Participant of this Plan.

(5) A Participant will be retired for disability and receive a retirement allowance based on the service credited to him or her at the time of retirement during any period in which he receives a disability retirement allowance under a reciprocal system; provided, that such allowance will not exceed an amount which when added to the allowance paid under the reciprocal system equals the allowance which would be paid for a non-industrial disability if all the Participant’s service had been credited under the reciprocal system; and provided further, that such allowance will in no event be less than an annuity which is the Actuarial Equivalent of the Participant’s contributions, whether or not the disability is for industrial reasons.

(6) The death benefit for a Participant who dies from non-industrial causes as a member of a reciprocal system will not exceed an amount which when added to the death benefit paid for such Member under the reciprocal system equals the maximum death benefit payable under that system; provided, however, that such death benefit will be at least the amount of the accumulated contributions; and, provided further, that if death is caused by industrial injury or disease in the reciprocal system the death benefit will be the amount of the Accumulated Contributions credited to the Participant.

(7) The Administrator will on the request of a reciprocal system supply information and data necessary for administration of such system as it is affected by participation in and service credited under this Plan.

(8) Interpretation of these provisions will be made with reference to interpretations that have been made relative to the Public Employees’ Retirement System - 1937 Act County Employees’ Retirement reciprocal provisions on which they are based.

(9) These provisions will apply only to a Participant whose termination and entry into employment resulting in a change in participation from this Plan to such other system or from such other system to this Plan occurred after such acceptance by the Administrator after the effective date specified in the agreement; provided, however, that provisions relating to computation of Final Average Salary will apply to any other Participant if such provision would have applied had the termination and entry into employment occurred after such acceptance or determination by a system’s governing board.
(10) Rights under this Plan will be modified as necessary to conform to amendments to the Public Employees' Retirement Law or the County Employees' Retirement Law of 1937 as provided in Section 20353 of the California Government Code.

DIVISION 5: DISABILITY RETIREMENTS

§0500 Industrial Disability Retirement

(a) A Member who joined the SDCERS Plan before September 3, 1982, will receive an industrial disability retirement if:

(1) the Member is permanently incapacitated from the performance of his or her duties with the UPD,

(2) the permanent incapacity was caused primarily by UPD employment, and

(3) the permanent incapacity renders the Member's retirement from UPD employment necessary.

(b) A Member who enrolled in the SDCERS Plan or this Plan on or after September 3, 1982, or a Miscellaneous Member who has completed at least five years of employment with the UPD, will receive an industrial disability retirement if:

(1) the Member or Miscellaneous Member is permanently incapacitated from the performance of his or her duties with the UPD,

(2) the permanent incapacity was caused primarily by UPD employment,

(3) the permanent incapacity renders the Member or Miscellaneous Member's retirement from UPD employment necessary, and

(4) the permanent incapacity did not arise from a preexisting medical condition or a nervous or mental disorder.

(c) A pre-existing medical condition is any medical condition that occurred or existed before the Member or Miscellaneous Member joined the SDCERS Plan or this Plan.

§0501 Computing an Industrial Disability Benefit for a Safety Member

(a) The industrial disability retirement benefit for a Safety Member is a disability retirement allowance equal to 50% of the Member's Final Compensation, paid in monthly installments. But, if the Safety Member is eligible for a service retirement, and the Safety Member's service retirement allowance would be greater than the Safety Member's industrial disability retirement allowance, the Safety Member will receive:

(1) a disability retirement allowance equal to 50% of the Safety Member's Final Compensation, paid in monthly installments, plus
(2) a service-based allowance equal to the difference between the industrial disability retirement allowance and the service retirement allowance the Safety Member has earned.

(b) An industrial disability retirement allowance is derived from an Annuity based on the Safety Member's Accumulated Normal Contributions and a disability retirement pension derived from contributions of the UPD.

§0502 Computing an Industrial Disability Benefit for a General Member

(a) The industrial disability retirement benefit for a General Member is a disability retirement allowance equal to 33⅓% of the General Member's Final Compensation, paid in monthly installments. But, if the General Member is eligible for a service retirement, and his or her service retirement allowance would be greater than his or her industrial disability retirement allowance, the General Member will receive:

(1) a disability retirement allowance equal to 33⅓% of his or her Final Compensation, paid in monthly installments, plus

(2) a service-based allowance equal to the difference between the industrial disability retirement allowance and the service retirement allowance he or she has earned.

(b) An industrial disability retirement allowance is derived from an Annuity based on the General Member's Accumulated Normal Contributions and a disability retirement pension derived from contributions of the UPD.

§0503 Computing an Industrial Disability Benefit for a Miscellaneous Member

(a) The industrial disability retirement benefit for a Miscellaneous Member is a disability retirement allowance equal to 11% of the Miscellaneous Member's Final Compensation, paid in monthly installments. But, if the Miscellaneous Member is eligible for a service retirement, and his or her service retirement allowance would be greater than his or her industrial disability retirement allowance, the Miscellaneous Member will receive:

(1) a disability retirement allowance equal to 11% of his or her Final Compensation, paid in monthly installments, plus

(2) a service-based allowance equal to the difference between the industrial disability retirement allowance and the service retirement allowance he or she has earned.

(b) An industrial disability retirement allowance is derived from an Annuity based on the Miscellaneous Member's Accumulated Normal Contributions and a disability retirement pension derived from contributions of the UPD.
§0504 Non-Industrial Disability Retirement

A Participant will receive a non-industrial disability retirement if:

(a) the Participant has at least 10 years of Service Credit,

(b) the Participant is permanently incapacitated from the performance of his or her duties with the UPD,

(c) the permanent incapacity renders the Participant's retirement from UPD employment necessary,

(d) the permanent incapacity was not caused primarily by willful misconduct or a violation of the law, and

(e) the Participant is not eligible for or receiving an Industrial Disability Retirement.

§0505 Computing a Non-Industrial Disability Benefit for a Safety Member

The non-industrial disability retirement benefit for a Safety Member is the highest of the following:

(a) an allowance equal to \(33\frac{1}{3}\%\) of the Safety Member's Final Compensation, paid in monthly installments,

(b) an allowance equal to 90% of \(\frac{1}{50}\) of the Safety Member's Final Compensation multiplied by his or her years of Service Credit, paid in monthly installments, or

(c) the Safety Member's service retirement allowance, if the Safety Member is eligible to retire for service.

§0506 Computing a Non-Industrial Disability Benefit for a General Member

The non-industrial disability retirement benefit for a General Member is the highest of the following:

(a) an allowance equal to \(33\frac{1}{3}\%\) of the Member's Final Compensation, paid in monthly installments,

(b) an allowance equal to 90% of \(\frac{1}{60}\) of the Member's Final Compensation multiplied by his or her years of Service Credit, paid in monthly installments, or

(c) the Member's service retirement allowance, if he or she is eligible to retire for service.

§0507 Computing a Non-Industrial Disability Benefit for a Miscellaneous Member

The non-industrial disability retirement benefit for a Miscellaneous Member is the highest of the following:
(a) an allowance equal to 11% of the Miscellaneous Member’s Final Compensation, paid in monthly installments;

(b) an allowance equal to 30% of 1/160th of the Miscellaneous Member’s Final Compensation multiplied by his or her years of Service Credit, paid in monthly installments, or

(c) the Miscellaneous Member’s service retirement allowance, if he or she is eligible to retire for service.

§0508 Periodic Physical Exams of Disability Retirees

The Administrator may establish rules and procedures providing for periodical physical examination of any Member or Miscellaneous Member who is receiving disability retirement allowance. If the Administrator determines that the Member or Miscellaneous Member is no longer disabled, at any time before the Member or Miscellaneous Member reaches normal service retirement age, the Administrator may discontinue the Member or Miscellaneous Member’s disability retirement allowance.

DIVISION 6: OPTIONAL SETTLEMENTS AND SURVIVOR BENEFITS

§0600 Surviving Spouse/ Domestic Partner Contribution Rates and Benefits

Every Participant will make Surviving Spouse/Domestic Partner Contributions in addition to Normal Contributions in accordance with salary ordinances adopted by the UPD from time to time. The Plan will calculate the Surviving Spouse/Domestic Partner Contributions as a percentage of Employee Contributions. The Administrator will adopt the percentage rates by Board Rule based upon advice from the Actuary.

(a) The Plan will pay the Accumulated Surviving Spouse/Domestic Partner Contributions to a Participant or the Participant’s Beneficiary if the Accumulated Normal Contributions are paid either under the Active Death Benefit or because the Participant withdraws his or her Accumulated Contributions.

(b) When a retired Participant dies, the Plan will pay the Participant’s surviving spouse or Domestic Partner a monthly lifetime allowance equal to 50% of the Participant’s Monthly Retirement Allowance if

(1) the Participant designated the spouse or Domestic Partner as Beneficiary,

(2) the surviving spouse was married to the Participant, or the Domestic Partner met the definitional requirements contained in §0102, on the date the Participant retired,

(3) the surviving spouse was married to the Participant, or the Domestic Partner met the definitional requirements contained in §0102, on the date the Participant died, and
the Participant’s Monthly Retirement Allowance was the maximum monthly
benefit, and was not modified under Optional Settlement 1, 2, 3 or 4.

(c) The Plan will not pay any benefits under this section if the surviving spouse or Domestic
Partner receives the Industrial Death Benefit.

(d) If, at the time of retirement, a Participant who has selected the maximum benefit does not
have a spouse or Domestic Partner who is eligible for benefits under this section, the Plan
will either:

(1) pay the Participant the Accumulated Contributions including interest credited to
the Participant pursuant to this section, in lump sum, or

(2) use these contributions to provide a larger Monthly Retirement Allowance.

§0601 Election and Change of Retirement Optional Settlement

Instead of receiving the maximum monthly benefit, a Participant may elect to receive a modified
retirement allowance under Optional Settlement 1, 2, 3 or 4. The Participant’s election must be
made before the Participant cashes his or her first retirement allowance check, but no later than
thirty days after receipt of such check.

§0602 Optional Settlement 1

(a) If a Participant selects Optional Settlement 1, the Plan will pay the Participant a reduced
Monthly Retirement Allowance until the Participant’s death. If the Participant dies
before receiving in annuity payments the amount of the Accumulated Contributions
credited to the Participant at retirement, the Plan will pay the balance to the Participant’s
Beneficiary or estate.

(b) At the time of the Participant’s retirement, a Participant who selects Optional Settlement
1 must direct the Plan, in writing, to pay the Accumulated Contributions remaining at the
Participant’s death to the Participant’s Beneficiary or estate in one of the following three
ways:

(1) in lump sum;

(2) in equal monthly installments for the life of the Beneficiary, for no more than 120
months; or

(3) in monthly installments, fixed in number or amount and without a continuance to
a Beneficiary;

subject to the rules adopted by the Administrator.

(c) If the Participant elects to have the Participant’s Accumulated Contributions paid in
installments, the Plan will pay the first installment on the last business day of the month
after the balance becomes due. The subsequent installments will be paid on the last
§ 0603 Optional Settlement 1 - Death Before Retirement Allowance Begins

If a Participant who selected Optional Settlement 1 dies after retirement, but before cashing his or her first retirement allowance check, the Participant’s election will be revoked and the Participant’s Beneficiary will receive the Death While Eligible Benefit described in § 0703.

§ 0604 Optional Settlement 2

If a Participant selects Optional Settlement 2, the Plan will pay the Participant a reduced Monthly Retirement Allowance until the Member or Miscellaneous Member’s death. When the Participant dies, the Plan will pay the full amount of the Participant’s reduced Monthly Retirement Allowance to the Participant’s Beneficiary for life of the Beneficiary.

§ 0605 Optional Settlement 3

If a Participant selects Optional Settlement 3, the Plan will pay the Participant a reduced Monthly Retirement Allowance until the Participant’s death. When the Participant dies, the Plan will pay one-half of the Participant’s reduced Monthly Retirement Allowance to the Participant’s Beneficiary for the life of the Beneficiary.

§ 0606 Optional Settlement 4

If a Participant selects Optional Settlement 4, the Plan will pay the Participant a reduced Monthly Retirement Allowance until the Participant’s death. When the Participant dies, the Plan will pay the Participant’s Beneficiary a percentage, selected by the Participant, of the Participant’s reduced Monthly Retirement Allowance, for the life of the Beneficiary. The benefits paid to the Participant’s Beneficiary under this optional settlement will not exceed the Actuarial Equivalent of the benefits that would have been paid to the Beneficiary if the Participant had selected Optional Settlement 2.

§ 0607 Procedures for Options Set by Administrator

The Administrator will establish procedures for Participants to follow in exercising the options described in this Division. The Plan will pay all benefits in accordance with the requirements of Section 401(a)(9) of the Internal Revenue Code as set forth in § 1000(d).

DIVISION 7: DEATH BENEFITS

§ 0701 Death Benefits

(a) When a Participant dies, the Plan will pay only one of the death benefits in this Division.

(b) The Plan will pay the Active Death Benefit described in § 0701, the Death While Eligible Benefit described in § 0703, or the Industrial Death Benefit described in § 0704 when a Member dies:
(1) while in active service and before the effective date of the Member’s retirement;

(2) while on military leave approved by the UPD or military leave covered by the Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. §§4301-4333);

(3) within four months of discontinuing UPD service because the Member’s position was abolished; or

(4) while physically or mentally incapacitated from the performance of the Member’s duties, if the incapacity was continuous from the time the Member stopped working.

The Plan will pay the Active Death Benefit described in §0701, the Death While Eligible Benefit described in §0703, or the Industrial Death Benefit described in §0704 when a Miscellaneous Member who has completed at least five years of UPD employment dies:

(1) while in active service and before the effective date of the Miscellaneous Member’s retirement;

(2) while on military leave approved by the UPD or military leave covered by the Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. §§4301-4333);

(3) within four months of discontinuing UPD service because the Miscellaneous Member’s position was abolished; or

(4) while physically or mentally incapacitated from the performance of the Miscellaneous Member’s duties, if the incapacity was continuous from the time the Member stopped working.

Upon the death of a Deferred Member, or a terminated employee who left the Member’s Accumulated Contributions on deposit, the Plan will pay the Member’s Accumulated Contributions to the Member’s Beneficiary, if the Plan is not required to pay any of the following benefits: the Active Death Benefit, the Death While Eligible Benefit or the Industrial Death Benefit.

§0701 Active Death Benefit

(a) The Plan will pay the Active Death Benefit when it is required to pay a death benefit under §0700 subsection (b) or (c) and neither of the following benefits is payable: the Death While Eligible Benefit or the Industrial Death Benefit.

(b) The Active Death Benefit is the sum of the following:

(1) The Participant’s Accumulated Contributions.
(2) An amount, from the UPD’s contributions, equal to 1/12th of the Participant’s Final Compensation, multiplied by the Participant’s years of Service Credit, not to exceed one-half of the Participant’s Final Compensation.

§0702 Active Death Benefit Payment Options

(a) A Participant may elect, in writing, to have all or part of the Active Death Benefit paid in installments in one of the following two ways:

(1) In monthly installments, fixed in number or amount and without a continuance to a Beneficiary, subject to the rules adopted by the Administrator. The Administrator will credit regular interest on the balance remaining on account with the Plan.

(2) In equal monthly installments for the life of the Beneficiary, for no more than 120 months.

(b) If the Participant dies without making a payment election under subsection (a) of this section, the Participant’s Beneficiary may elect to receive the Active Death Benefit in lump sum, or in installments as provided in (a)(1) of this section. The Beneficiary must make this election in writing before the Plan pays any portion of the Active Death Benefit.

(c) If the Member or Miscellaneous Member, or his or her Beneficiary, elects to have the Active Death Benefit paid in installments, the Plan will pay the first installment on the last business day of the month after the Active Death Benefit would have become due. The subsequent installments will be paid on the last business day of each month thereafter. The total of the monthly installments will be the Actuarial Equivalent of the Active Death Benefit.

§0703 Death While Eligible Benefit

(a) The Plan will pay the Death While Eligible Benefit, instead of the Active Death Benefit, when an active Participant dies while the Participant is eligible to retire and:

(1) there is a surviving spouse who is named as the Participant’s Beneficiary and was married to the Participant when the Participant died, or there is a Domestic Partner who is named as the Participant’s Beneficiary and who met the definitional requirements contained in §0102 when the Participant died, or

(2) the Participant had one or more dependent children under 21 years of age when the Participant died.

(b) The Death While Eligible Benefit is one-half of the Monthly Retirement Allowance the Participant would have received if the Participant had retired on the day the Participant died, having selected the maximum benefit.
The Plan will pay this monthly allowance to the Participant’s surviving spouse for the surviving spouse’s life, or to the Domestic Partner for the Domestic Partner’s life. If there is no qualifying surviving spouse or Domestic Partner, or if the surviving spouse or Domestic Partner dies before all of the Participant’s children reach 21 years of age, the Plan will pay this monthly allowance in equal shares to the Participant’s children under 21 years of age until each child dies or reaches 21 years of age. This benefit begins to accrue on the day after the Participant dies.

Payment of the Death While Eligible Benefit will stop when the Participant’s surviving spouse or Domestic Partner dies and all of the Participant’s children have either died or reached 21 years of age. If this occurs before the sum of the monthly payments made, less the Annuity derived from the Participant’s Accumulated Additional Contributions, equals the Active Death Benefit, the Plan will pay the remainder in lump sum and in equal shares to the Participant’s surviving children. If there are no surviving children, the Plan will pay the sum to the Participant’s named Beneficiary. If there is no named Beneficiary, the sum will be paid as stated in §0705.

A surviving spouse or Domestic Partner who is eligible to receive the Death While Eligible Benefit may elect instead to receive a lump sum payment of the actuarial present value of the benefit. If the surviving spouse or Domestic Partner chooses the lump sum payment, the actuarial present value will be determined as of the date of the Participant’s death.

If there is no surviving spouse, Domestic Partner or child eligible to receive the Death While Eligible Benefit, the Plan will pay the Active Death Benefit to the Participant’s named Beneficiary. If there is no named Beneficiary, the sum will be paid as stated in §0705.

§0704 Industrial Death Benefit

The Plan will pay the Industrial Death Benefit, instead of the Active Death Benefit, when a or Miscellaneous Member who has completed at least five years of UPD employment, or a Member, dies from industrial causes, as determined by the Workers’ Compensation Appeals Board using its normal hearing procedures, if:

1. there is a surviving spouse who is named as the Member or Miscellaneous Members Beneficiary and was married to the Member or Miscellaneous Member when the Member or Miscellaneous Member died or there is a Domestic Partner who is named as the Member or Miscellaneous Member’s Beneficiary and who met the definitional requirements contained in §0102 when the Member or Miscellaneous Member died, or

2. the Member or Miscellaneous Member had one or more dependent children under 21 years of age when the Member or Miscellaneous Member died.

The Industrial Death Benefit is a monthly allowance equal to one-half of the Participant’s Final Average Salary, paid to the Participant’s surviving spouse or Domestic Partner for the surviving spouse’s or Domestic Partner’s life. If there is no qualifying surviving

...
spouse or Domestic Partner, or if the surviving spouse or Domestic Partner dies before all
of the Participant’s dependent children reach 21 years of age, the Plan will pay this
monthly amount in equal shares to the Participant’s children under 21 years of age until
each child dies or reaches 21 years of age. This benefit begins to accrue on the day after
the Participant dies.

(c) Payment of the Industrial Death Benefit will stop when the Participant’s surviving spouse
or Domestic Partner dies and all of the Participant’s children have either died or reached
21 years of age. If this occurs before the sum of the monthly payments made, excluding
the annuity derived from the Participant’s Accumulated Additional Contributions, equals
the Active Death Benefit, the Plan will pay the remainder in lump sum and in equal
shares to the Participant’s surviving children. The Plan will also pay the Participant’s
Accumulated Additional Contributions, less the Annuity paid from these contributions, to
the Participant’s surviving children, in equal shares. If there are no surviving children,
the Plan will pay the remainder to the Participant’s named Beneficiary. If there is no
named Beneficiary, the sum will be paid as stated in §0705.

(d) A surviving spouse or Domestic Partner who is eligible to receive the Industrial Death
Benefit may elect instead to receive a lump sum payment of the actuarial present value of
the benefit. If the surviving spouse or Domestic Partner chooses the lump sum payment,
the actuarial present value will be determined as of the date of the Participant’s death.

(e) If, at the time of the Member’s death, the Worker’s Compensation Appeals Board has not
yet determined whether the Participant’s death was industrial, the Plan may pay the
Active Death Benefit. If the Worker’s Compensation Appeals Board later determines
that the Member’s death was industrial, and there is a qualifying surviving spouse,
Domestic Partner or minor child, the Plan will then pay the Industrial Death Benefit less
the amount of the Active Death Benefit.

§0705 Beneficiary Not Designated

(a) The Plan will pay all amounts due because of the death of a Participant or retired
Participant as provided in subsection (b) of this section if the Participant or retired
Participant’s estate would not be probated if no amounts were due from the Plan and:

(1) the Participant did not name a Beneficiary,

(2) there is no living named Beneficiary, or

(3) after reasonable efforts, the Administrator is unable to locate the named
Beneficiary.

(b) Payment will be made, in the following order, to the Participant or retired Participant’s:

(1) Surviving spouse or Domestic Partner.

(2) Children or the issue of any deceased child.
(3) Parents.
(4) Siblings.
(5) Next of kin.

(c) The Plan will not make any payment under this section to persons in any group if there are living persons in any earlier group on the date of payment.

(d) The Plan may require each payee to sign an affidavit that complies with the California Probate Code before it makes any payment under this section.

§0706 Payment to Funeral Director in the Absence of a Beneficiary

(a) The Administrator may pay any of the amount due from the Plan because of the death of a Participant or retired Participant to the funeral director who conducted the funeral, or to the person or organization that paid the funeral expenses, if:

(1) the Participant did not name a Beneficiary,
(2) there is no living named Beneficiary, or
(3) the Administrator is unable to locate the named Beneficiary.

(b) Payment under this section will not exceed the actual cost of the funeral or the portion of that cost paid by the person or organization to the funeral director, as shown by the funeral director’s sworn itemized statement and by any other documents required by the Administrator.

(c) Payment under this section will fully discharge the Plan for the amount paid.

§0707 Uniform Simultaneous Death Act

California law regarding the distribution of estates under the Uniform Simultaneous Death Act governs payments made by the Plan because of the death of a Participant, retired Participant or Beneficiary. In applying the Uniform Simultaneous Death Act to benefits paid to a Beneficiary, benefits under this Plan will have the same status as benefits under insurance policies.

§0708 Retiree Death Benefit

When a retired Participant dies, the Plan will pay a retiree death benefit of $2,000 to the retired Participant’s named Beneficiary. If there is no designated Beneficiary, the benefit will be paid according to §§0705 and 0706.

§0709 Procedures for Death Benefits Set by Administrator

The Administrator will establish procedures for Participants and retired Participants to follow in distributing the benefits described in this Division. Such procedures must be consistent with the requirements of Internal Revenue Code Section 401(a)(9) and § 1000(d), as follows:
(a) If a Participant dies after the required distribution of benefits has begun, the remaining portion of the Participant’s interest must be distributed at least as rapidly as under the method of distribution before the Participant’s death.

(b) If a Participant dies before required distribution of the Participant’s benefits has begun, the Participant’s interest pursuant to Division 6 or 7 must be distributed (in accordance with federal regulations) either:

1. in the case of a periodic benefit, over the life or life expectancy of the designated Beneficiary, with the distributions beginning no later than December 31 of the calendar year following the calendar year of the Participant’s death, or

2. in the case of a lump sum benefit, within five years of the Participant’s death.

DIVISION 8: UPD’S CONTRIBUTION

§0800 UPD’s Contribution

The UPD will contribute to the Plan on behalf of the Members, and Miscellaneous Members with five or more years of UPD employment, a percentage of Base Compensation of all Members and Miscellaneous Members with five or more years of UPD employment, as determined by the Actuary in the annual actuarial valuation required by the Participation and Administration Agreement. Based upon the advice of the Actuary, the Administrator will periodically determine and adopt by rule the required UPD contributions separately for General Members, Safety Member and Miscellaneous Members. These rates will be contained in the operating tables furnished to the Administrator by the Actuary. The UPD’s contributions will be transferred to the Administrator on a bi-weekly basis. All deficiencies that accrue as a result of amendments to this Plan must be amortized over a period of thirty years or less.

DIVISION 9: ADMINISTRATION OF THE PLAN

§0900 Powers and Duties of the Administrator

(a) The UPD may contract with a qualified entity to serve as the Administrator of the Plan.

(b) The Administrator will administer the retirement benefits of the Participants according to the terms of this Plan, the terms of the Participation and Administration Agreement, the applicable City Charter provisions and City ordinances, and applicable State and Federal laws. In case of any conflict, this Plan takes precedence over the applicable City Charter provisions and City ordinances, to the extent permitted by law.

(c) Based upon its investigations, valuations, and determination of the Actuary, the Administrator will adopt by rule the mortality, service and other tables and interest rates it deems proper, and will revise by rule the Participants’ contribution rates as it deems necessary, to provide the benefits of the Plan. The Administrator’s decisions on matters covered by this section are conclusive, if arrived at in good faith, and the rules adopted by the Administrator under this section are incorporated by reference into this Plan document and are effective beginning January 1, 2003, in accordance with their terms.
§0901 Interest Crediting

The Administrator credits interest to the contribution accounts for Employee Contributions and Employer Contributions at a rate determined by the Administrator, compounded each June 30th.

§0902 Forfeiture of Inactive Retirement Accounts

(a) The Administrator may declare a forfeiture of an inactive Participant’s Accumulated Contributions if the Administrator is unable to locate the Participant after making a reasonable effort, including providing reasonable advance notice to the Participant at his or her last known address, and:

(1) the Participant is eligible for benefits and has not requested or accepted payment of those benefits within one year after becoming eligible to receive them; or

(2) the Participant has left UPD employment, is not eligible for benefits and has not requested a refund of his or her Accumulated Contributions within two years of leaving UPD employment.

(b) A reasonable effort to locate a Participant is deemed to occur when the following steps are taken:

(1) Advance notice to the last known address of the Participant.

(2) A report is run through Lexis Nexis, or other readily available source, to attempt to obtain current contact information.

(3) If contact information cannot be obtained through Lexis Nexis or other readily available sources, utilize the IRS Letter Forwarding Program to attempt to forward information to the individual.

(c) Forfeitures under this section are credited to the Plan.

DIVISION 10: MISCELLANEOUS PROVISIONS

§1000 Compliance with Certain Internal Revenue Code Provisions

Except as otherwise provided herein, all provisions in this section are effective as of January 1, 2003.

(a) General Qualification Statement. The Plan will satisfy the qualification requirements in Internal Revenue Code Section 401, as applicable. In order to meet those requirements, the Plan is subject to the following provisions, notwithstanding any other provision of this Plan. The Administrator may adopt rules to implement this section, which rules are incorporated into this section as part of the Plan document.

(b) Exclusive Benefit Rule; Internal Revenue Code Section 401(a)(1), (2): The assets of the Plan, including the assets of retirement accounts, are held in trust and may not be used for
or diverted to any purpose other than for the exclusive benefit of the Participants and their Beneficiaries and for paying the Plan's reasonable administrative expenses.

(c) **Forfeitures:** Internal Revenue Code Section 401(a)(8): The Plan will use forfeitures that arise for any reason, including from termination of employment or death, to reduce Employer Contributions. Forfeitures may not be applied to increase the benefits of any Participant.

(d) **Required Minimum Distributions:** Internal Revenue Code Section 401(a)(9): The Plan will pay all benefits in accordance with the requirements of Section 401(a)(9) of the Internal Revenue Code and the regulations under that section, including the minimum distribution incidental benefit requirements of Internal Revenue Code Section 401(a)(9)(G) and Treasury Regulation §1.401(a)(9)-2. Notwithstanding any other provision of this section, the Plan is subject to the following provisions:

1. Benefits must begin by the required beginning date, which is the later of April 1 of the calendar year following the calendar year in which the Participant reaches 70 1/2 years of age or April 1 of the calendar year following the calendar year in which the Participant terminates employment. If a Participant fails to apply for retirement benefits by April 1 of the calendar year following the calendar year in which he or she reaches 70 1/2 years of age or April 1 of the calendar year following the calendar year in which he or she terminates employment, whichever is later, the Administrator will begin distributing the benefit as required by this section.

2. The Participant's entire interest must be distributed over his or her life or the lives of the Participant and a designated Beneficiary, or over a period not extending beyond the life expectancy of the Participant, or of the Participant and a designated Beneficiary. Death benefits must be distributed in accordance with Internal Revenue Code Section 401(a)(9), including the incidental death benefit requirement in Internal Revenue Code Section 401(a)(9)(G), and the regulations implementing that section.

3. The life expectancy of a Participant, the Participant's spouse or Beneficiary may not be recalculated after the initial determination for purposes of determining benefits.

4. If a Participant dies after the required distribution of benefits has begun, the remaining portion of the Participant's interest must be distributed at least as rapidly as under the method of distribution before the Participant's death.

5. If a Participant dies before required distribution of his or her benefits has begun, the Participant's entire interest must be either:

   (A) distributed (in accordance with federal regulations) over the life or life expectancy of the designated Beneficiary, with the distributions beginning no later than December 31 of the calendar year following the calendar year of the Participant's death, or
(B) distributed within five years of the Participant’s death.

(6) The amount of an annuity paid to a Participant’s Beneficiary may not exceed the maximum determined under the incidental death benefit requirement of Internal Revenue Code Section 401(a)(9)(G).

(7) The death and disability benefits provided by the Plan are limited by the incidental benefit rule set forth in Treasury Regulation §1.401-1(b)(1)(i) or any successor regulation thereto. As a result, any death or disability benefit payable may not exceed 25% of the cost for all of the Participants’ benefits received from the Plan.

(e) Compensation Limit: Internal Revenue Code Section 401(a)(17):

(1) In accordance with the Omnibus Budget Reconciliation Act of 1993 (OBRA ’93), except as provided in this section, the annual compensation the Plan takes into account for any purpose, including contributions or benefits, may not exceed the amount as allowed by Internal Revenue Code Section 401(a)(17) as of the first day of the plan year.

(2) The annual compensation of each Participant taken into account in determining benefits or contributions for any plan year beginning on or after January 1, 2002, may not exceed $200,000, as adjusted for cost-of-living increases in accordance with Internal Revenue Code Section 401(a)(17)(B). Annual compensation means compensation during the plan year or such other consecutive 12-month period over which compensation is otherwise determined under the Plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If the determination period consists of fewer than 12 months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12. If the compensation for any prior determination period is taken into account in determining a Participant’s contributions or benefits for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period.

(f) Actuarial Assumptions: Internal Revenue Code Section 401(a)(25): The Administrator will determine the amount of any benefit that is determined on the basis of actuarial assumptions using assumptions adopted by the Administrator by rule; such benefits will not be subject to employer discretion. The Administrator’s rules adopted for this purpose are incorporated herein as part of this plan document.

(g) Rollover Rules: Internal Revenue Code Section 401(a)(31):

(1) Notwithstanding any contrary provision or retirement law that would otherwise limit an election of a Distributee (as defined in subsection (D)) under this Plan, a
Distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the Distributee in a direct rollover.

(A) **Eligible Rollover Distribution:** An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the Distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Internal Revenue Code Section 401(a)(9); the portion of any distribution that is not includible in gross income; and any other distribution that is reasonably expected to total less than $200 during the year. A portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax Employee Contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Internal Revenue Code Section 408(a) or (b), or to a qualified defined contribution plan described in Internal Revenue Code Section 401(a) or to a qualified plan described in Internal Revenue Code Section 403(a), or on or after January 1, 2007, to a qualified defined benefit plan described in Internal Revenue Code Section 401(a) or an annuity contract described in Internal Revenue Code Section 403(b), that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible.

(B) **Eligible Retirement Plan:** An eligible retirement plan is:

(i) a plan eligible under Internal Revenue Code Section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state that agrees to separately account for amounts transferred into the plan from the Plan,

(ii) an individual retirement account described in Internal Revenue Code Section 408(a),

(iii) an individual retirement annuity described in Internal Revenue Code Section 408(b),

(iv) an annuity plan described in Internal Revenue Code Section 403(a),
(v) an annuity contract described in Internal Revenue Code Section 403(b),

(vi) a qualified trust described in Internal Revenue Code Section 401(a), that accepts the Distributee's eligible rollover distribution, or

(vii) effective January 1, 2008, a Roth IRA described in Internal Revenue Code Section 408A.

(C) The definition of eligible rollover distribution will also apply in the case of a distribution to a surviving spouse or to a spouse or former spouse, who is an alternate payee under a domestic relations order, as defined in Internal Revenue Code Section 414(p).

(D) Distributee: A Distributee includes an employee or former employee. It also includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Internal Revenue Code Section 414(p). Effective January 1, 2007, it further includes a nonspouse beneficiary who is a designated beneficiary as defined by Internal Revenue Code Section 401(a)(9)(E). However, a nonspouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution and the account or annuity will be treated as an "inherited" individual retirement account or annuity.

(E) Direct Rollover: A direct rollover is a payment by the Plan to the eligible retirement plan specified by the Distributee.

(2) Effective January 1, 2006, in the event of a mandatory distribution greater than $1,000, if a Participant does not elect to have such distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover or to receive the distribution directly, then the Administrator will pay the distribution in a direct rollover to an individual retirement plan designated by the Administrator.

(h) Limits: Internal Revenue Code Section 415:

(1) Employee Contributions paid to, and retirement benefits paid from, the Plan may not exceed the annual limits on contributions and benefits, respectively, allowed by Internal Revenue Code Section 415. For purposes of applying these limits, the definition of compensation where applicable will be compensation as defined in Treasury Regulation §1.415(c)-2(d)(3), or successor regulation; provided, however, that the definition of compensation will exclude Employee Contributions picked up under Internal Revenue Code Section 414(h)(2), and will include the amount of any elective deferrals, as defined in Internal Revenue Code Section 402(g)(3), and any amount contributed or deferred by the employer at the election of the Participant and which is not includible in the gross income of the Participant.
Participant by reason of Internal Revenue Code Section 125, 132(f)(4), or 457. For limitation years beginning on or after July 1, 2007, the following types of payments, if paid by the later of (i) two and one-half (2 1/2) months following a Participant’s termination of UPD employment, or (ii) the last day of the limitation year that includes the Participant’s termination of UPD employment, will be included as compensation for purposes of this Section: payments that, absent a termination of employment, would have been paid to the Participant while he or she continued in employment and that are regular compensation for services rendered, and payments of accrued bona fide sick, vacation, or other leave, but only if the Participant would have been able to use the leave if employment had continued. For limitation years beginning on or after July 1, 2007, a Participant’s compensation for purposes of this Section shall not exceed the annual limit under Internal Revenue Code Section 401(a)(17).

(2) A Participant may not receive an annual benefit that exceeds the dollar amount specified in Internal Revenue Code Section 415(b)(1)(A), subject to the applicable adjustments in Internal Revenue Code Section 415(b).

(3) For purposes of applying the limits under Internal Revenue Code Section 415(b) (Limit), the following will apply:

(A) prior to July 1, 2007, adjustments under §§1300 and 1301 will be taken into consideration when determining a Participant’s applicable Limit;

(B) on and after July 1, 2007, with respect to a Participant who does not receive a portion of the Participant’s annual benefit in a lump sum:

(i) a Participant’s applicable Limit will be applied to the Participant’s annual benefit in the first limitation year without regard to any automatic cost of living increases under §1301;

(ii) to the extent the Participant’s annual benefit equals or exceeds the Limit, the Participant will no longer be eligible for cost of living increases under §1301 until such time as the benefit plus the accumulated increases under §1301 are less than the Limit; and

(iii) thereafter, in any subsequent limitation year, the Participant’s annual benefit including any automatic cost of living increase applicable under §1301 shall be tested under the then applicable benefit limit including any adjustment to the Internal Revenue Code Section 415(b)(1)(A) dollar limit under Internal Revenue Code Section 415(d) and the regulations thereunder; and

(C) on and after July 1, 2007, with respect to a Participant who receives a portion of his or her annual benefit in a lump sum, a Participant’s applicable Limit will be applied taking into consideration automatic cost of living increases under §1301 as required by Internal Revenue Code Section 415(b) and applicable Treasury Regulations; and
(D) In no event will a Participant's annual benefit payable under the Plan in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Internal Revenue Code Section 415(d) and the regulations thereunder. If the form of benefit without regard to the automatic benefit increase feature is not a straight life or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the Internal Revenue Code Section 415(b) limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent straight life annuity benefit determined using the following assumptions that takes into account the death benefits under the form of benefit:

(i) For a benefit paid in a form to which Internal Revenue Code Section 417(e)(3) does not apply, the actuarially equivalent straight life annuity benefit which is the greater of (or the reduced Internal Revenue Code Section 415(b) limit applicable at the annuity starting date which is the lesser of when adjusted in accordance with the following assumptions):

a. The annual amount of the straight life annuity (if any) payable to the participant under the plan commencing at the same annuity starting date as the form of benefit payable to the participant, or

b. The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the participant, computed using a 5 percent interest assumption (or the applicable statutory interest assumption) and the applicable mortality table described in Treasury Regulations §1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62); or

(ii) For a benefit paid in a form to which Internal Revenue Code Section 417(e)(3) applies, the actuarially equivalent straight life annuity benefit which is the greatest of (or the reduced Internal Revenue Code Section 415(b) limit applicable at the annuity starting date which is the least of when adjusted in accordance with the following assumptions):

a. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;
b. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption) and the applicable mortality table for the distribution under Treasury Regulation §1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62); or

c. the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation §1.417(e)-1(d)(3) (the 30-year Treasury rate (prior to July 1, 2007, using the rate in effect for the month prior to retirement, and on and after July 1, 2007, using the rate in effect for the first day of the plan year with a one-year stabilization period)) and the applicable mortality table for the distribution under Treasury Regulation §1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), divided by 1.05.

(4) Notwithstanding any other provision of the Plan to the contrary, the Administrator may modify a request by a Participant to make a contribution to the Plan if the amount of the contribution would exceed the limits provided in Internal Revenue Code Section 415 by using the following methods:

(A) If the Plan requires a lump sum payment for the purchase of service credit, the Administrator may establish a periodic payment plan for the Participant to avoid a contribution in excess of the limits under Internal Revenue Code Sections 415(c) or 415(n).

(B) If payment pursuant to clause (h)(4)(A) will not avoid a contribution in excess of the limits imposed by Internal Revenue Code Section 415(c), the Administrator may either reduce the Participant's contribution to an amount within the limits of that section or refuse the Participant's contribution.

(C) If a Participant makes one or more contributions to purchase permissive service credit under the Plan, then the requirements of this section will be treated as met only if—
(i) the requirements of Internal Revenue Code Section 415(b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of Internal Revenue Code Section 415(b), or

(ii) the requirements of Internal Revenue Code Section 415(c) are met, determined by treating all such contributions as annual additions for purposes of Internal Revenue Code Section 415(c).

For purposes of applying subparagraph (i), the Plan will not fail to meet the reduced limit under Internal Revenue Code Section 415(b)(2)(C) solely by reason of this paragraph (4), and for purposes of applying subparagraph (ii), the Plan will not fail to meet the percentage limitation under Internal Revenue Code Section 415(c)(1)(B) solely by reason of this paragraph (4).

(D) For purposes of this paragraph (4) the term “permissive service credit” means service credit—

(i) recognized by the Plan for purposes of calculating a Participant’s benefit under the Plan,

(ii) which such Participant has not received under the Plan, and

(iii) which such Participant may receive only by making a voluntary additional contribution, in an amount determined under the Plan, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Such term may include service credit for periods for which there is no performance of service, and, notwithstanding clause (ii), may include service credited in order to provide an increased benefit for service credit which a Participant is receiving under the Plan.

(E) The Plan will fail to meet the requirements of this paragraph (4) if—

(i) more than five years of nonqualified service credit are taken into account for purposes of this paragraph (4), or

(ii) any nonqualified service credit is taken into account under this paragraph (4) before the Participant has at least five years of participation under the Plan.

(F) For purposes of subparagraph (E), the term “nonqualified service credit” means permissive service credit other than that allowed with respect to—

(i) service (including parental, medical, sabbatical, and similar leave) as an employee of the Government of the United States, any State
or political subdivision thereof, or any agency or instrumentality of
any of the foregoing (other than military service or service for
credit which was obtained as a result of a repayment described in
Internal Revenue Code Section 415(c)(3)),

(ii) service (including parental, medical, sabbatical, and similar leave)
as an employee (other than as an employee described in clause (i))
of an education organization described in Internal Revenue Code
Section 170(b)(1)(A)(ii) which is a public, private, or sectarian
school which provides elementary or secondary education (through
grade 12), or a comparable level of education, as determined under
the applicable law of the jurisdiction in which the service was
performed,

(iii) service as an employee of an association of employees who are
described in clause (i), or

(iv) military service (other than qualified military service under
Internal Revenue Code Section 414(u)) recognized by such
governmental plan.

In the case of service described in clause (i), (ii), or (iii), such service will
be nonqualified service if recognition of such service would cause a
Participant to receive a retirement benefit for the same service under more
than one plan.

(G) In the case of a trustee-to-trustee transfer, to which Internal Revenue Code
Section 403(b)(13)(A) or 457(e)(17)(A) applies (without regard to whether
the transfer is made between plans maintained by the same employer) —

(i) the limitations of subparagraph (E) will not apply in determining
whether the transfer is for the purchase of permissive service
credit, and

(ii) the distribution rules applicable under federal law to the Plan will
apply to such amounts and any benefits attributable to such
amounts.

(5) Prior to July 1, 2008, the limitation year for purposes of Internal Revenue Code
Section 415 is the plan year. Effective January 1, 2009, the limitation year for
purposes of Internal Revenue Code Section 415 is the calendar year beginning
each January 1 and ending December 31, with a short limitation year beginning
July 1, 2008, and ending December 31, 2008. This is a change in the limitation
year made pursuant to Treasury Regulation Section 1.415-2(b)(2) or successor
regulation. The implementation of the change in the limitation year will be
accomplished as required by Treasury Regulation Section 1.415-2(b)(4) or
successor regulation.
(6) Nothing contained in this section will limit the Administrator from modifying benefits to the extent such modifications are required by this Plan, the San Diego City Charter, or applicable state or federal law or regulations.

(i) **Prohibited Transactions:** **Internal Revenue Code Section 503(b):** The Port Commissioners and the Administrator may not engage in a transaction prohibited by Section 503(b) of the Internal Revenue Code.

(j) **Military Service:** **Internal Revenue Code Section 414(u):** Notwithstanding any other provision of the Plan, contributions, benefits and service credit with respect to qualified military service are governed by Internal Revenue Code Section 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994.

(k) **Vesting:** **Internal Revenue Code Section 411(e):** In addition to any protection provided by this Plan and California law:

1. A Participant will be 100% vested in all Plan benefits upon attainment of the Plan’s age and service requirements for the Plan’s normal retirement benefit; and

2. A Participant will be 100% vested in all Plan benefits in the event the Plan is terminated or experiences a complete discontinuance of contributions.

§1001 Early Retirement Incentive Program

(a) The Early Retirement Incentive Program (“Program”) offers temporary incentives to eligible Participants to encourage early retirement on a voluntary basis.

(b) This Program is intended to:

1. reduce the UPD’s total staffing level in order to minimize personnel expenses and increase net income;

2. provide voluntary financial incentives to encourage eligible Participants to retire earlier;

3. enable appointing authorities to replace retiring staff only where desired in order to control personnel expenses according to UPD and department needs.

(c) Upon resolution of the Port Commissioners approving a Program and a period of time to implement the Program, any Participant who currently meets the age and service requirements for retirement under this Plan is eligible to participate in the Program, except for the following:

1. Any Participant who receives an industrial or non-industrial disability retirement from the Plan is not eligible to participate in the Program.

2. Any employee who has or will permanently terminate employment with the UPD will not thereafter be eligible to participate in the Program.
(3) Any employee who has or will participate in the Deferred Retirement Option Plan is not eligible to participate in the Program.

(d) Participation in the Program is wholly voluntary on the Participant's part.

(e) Any eligible Participant who wishes to participate in the Program must submit a written application to the Plan no later than the last date for application, which will be announced by the UPD's Human Resources Department at least three months before that date.

(f) The Participant must notify the appropriate appointing authority that the member is applying for the Program when the Participant submits the application to the Plan.

(g) Any eligible Participant who elects to participate in the Program must retire no later than the last date for retiring, which will be announced by the UPD's Human Resources Department at least three months before that date.

(h) The benefits offered under the Program are as follows:

(1) Eligible Participants electing to participate in the Program will receive an additional two years or more of Service Credit ("Additional Service Credit") as established by resolution of the Port Commissioners.

(2) The Additional Service Credit will be included in the calculations for the Annual Supplemental Benefit.

(i) The early retirement benefits under the Program are limited by Internal Revenue Code Section 415, and no early retirement benefits under this section will be effective if they would jeopardize the Plan's tax-qualified status.

§1002 Exemption from Process; Assignments Prohibited

(a) All amounts held, controlled or distributed by this Plan are unassignable and are exempt from execution, garnishment, attachment, judgment or any other process of any court or agency, other than the Plan, unless permitted by California Code of Civil Procedure section 704.110. This section does not affect the Plan's right to collect overpayments it has made to a Participant, retired Participant or Beneficiary.

(b) The benefits under the Plan are not transferable by inter vivos gift or testamentary disposition.

DIVISION 11: PURCHASE OF SERVICE CREDIT

§1100 Purchase of Service Credit for Periods of Missed Contributions

(a) Except as otherwise provided by state or federal law, a Member may purchase Service Credit for any prior period during which the Member was employed by the UPD, but not making any contributions to the Plan, including any approved leave of absence, but only if the Member left the Member's contributions with the Plan.
(b) A Member or Miscellaneous Member may purchase Service Credit for any period during which the Member or Miscellaneous Member was on an unpaid leave of absence under the Family Medical Leave Act (FMLA) or while on military leave covered by the Uniformed Services Employment and Re-employment Rights Act of 1994 (USERRA).

c) If a Participant dies or becomes disabled while on military leave under USERRA, and does not return to employment, the Participant or his or her Beneficiary may purchase Service Credit as provided in this subsection.

d) Miscellaneous Members otherwise eligible to purchase Service Credit under this section shall be permitted to do so only with respect to periods after the Miscellaneous Member's first five years of employment.

§1101 General Provision for Five-Year Purchase of Service Credit

A Member who was hired by the UPD before October 1, 2005 may purchase a maximum of five years of Service Credit in addition to any other Service Credit the Member is eligible to purchase under this Division. Service purchased under this section does not count towards the five-year vesting requirement.

§1102 Cost of Service Credit

(a) The cost of Service Credit for military leave covered by USERRA is the amount the Administrator determines to be the employee-only cost of that Service Credit. The Participant or his or her beneficiary may purchase this Service Credit over a period of up to three times the length of the Participant's military service, not to exceed five years. If the Participant purchases Service Credit for military leave covered by USERRA, the UPD must pay the Plan, on the Participant's behalf, the contributions it would have paid if the Member had continued working for the UPD during the Participant's period of military service.

(b) The cost of Service Credit for Family Medical Leave Act (FMLA) leaves of absence is the amount the Administrator determines to be the employee-only cost of that Service Credit. For all other approved leaves of absence without pay, the cost of Service Credit is the amount the Administrator determines to be the full cost of that Service Credit.

(c) The cost of Service Credit for a probationary period is calculated by multiplying the average contribution rate of a General or Safety Member by the Base Compensation the employee received during the employee's probationary period, and then by rounding that monthly salary to the nearest $100 and applying an average interest rate of 4.5% per year from the date the Member joined the Plan to the date the Service Credit is purchased.

(d) The cost of Service Credit purchased under this Division not covered by subsections (a) through (c) of this section is the amount the Administrator determines to be the employee and employer cost of that Service Credit.
§1103 Purchase of Service Credit Payment Options

Subject to any limitations imposed by the Internal Revenue Code, a Member may purchase Service Credit by a lump sum, post-tax installment payments, direct transfer from any defined contribution plan maintained by the UPD or by any other manner approved by the Administrator. The Plan administers all payments by a Member to purchase Service Credit as employee contributions. No Member will receive Service Credit under this Division for any service for which payment has not been completed before the effective date of the Member's retirement.

DIVISION 12: DEFERRED RETIREMENT OPTION PLAN

§1200 Purpose and Duration

(a) A deferred retirement option plan (DROP) was created for UPD Members under the SDCERS Plan effective April 1, 1997, to offer them an alternative method of accruing benefits in the Plan. The DROP provision is effective under this Plan on January 1, 2003.

(b) DROP is intended to add flexibility to the Plan for its Members. It provides a Member who elects to participate in DROP access to a lump sum benefit when the Member retires, in addition to the Member's Monthly Retirement Allowance. DROP is intended to be cost neutral.

§1201 Eligibility, Duration of DROP Participation, Selection of Survivor Option and Waiver

(a) Any Member hired before October 1, 2005, who is eligible for a service retirement is eligible to participate in DROP.

(b) Before a Member may participate in DROP, he or she must voluntarily and irrevocably:

1. designate a participation period of 60 consecutive months or less;
2. elect to receive either the maximum benefit or one of the retirement settlement options described in Division 6 of this Plan;
3. designate a Beneficiary for the continuance payable upon the Member's death, if there will be a continuance;
4. stop accruing benefits under any other Division of this Plan starting on the day the Member enters DROP;
5. have DROP benefits credited to a DROP Account as provided in this Division;
6. accrue benefits under the terms of this Division starting on the day the Member enters DROP;
7. receive benefits from the Plan when the Member leaves DROP and retires, as provided in this Plan;
agree to leave UPD employment on or before the end of the Member’s designated DROP participation period; and

(9) waive the Member’s right to assert a claim or bring an action against the UPD or the Plan, based on age discrimination or any other employment discrimination law, arising out of the Member’s participation in DROP or the requirement that the Member terminate employment at the end of the Member’s DROP period.

§1202 Termination of DROP Participation

(a) A Member who is participating in DROP may leave DROP at any time before the end of the Member’s designated DROP participation period by voluntarily terminating UPD employment.

(b) The Plan will stop the Member’s participation in DROP when any of the following events occurs:

1. the Member’s designated DROP participation period ends;

2. the Member’s UPD employment is terminated for cause; but, if the termination for cause is reversed, the Member’s participation will be reinstated for the remainder of the Member’s designated DROP participation period, and the Member’s DROP Account balance will be reinstated, less any benefits distributed from the Member’s DROP Account;

3. the Member dies; or

4. the Administrator grants the Member a disability retirement.

§1203 DROP Benefits and Accounts

(a) A DROP Account is a “nominal” account established within the Plan on behalf of each DROP participant. All benefits accrued by a Member under this Division are accounted for in the Member’s DROP Account. A DROP participant does not have a claim on the Plan’s assets with respect to the Member’s DROP Account, and the Plan will not set aside any assets for any DROP participant that are separate from other Plan assets.

(b) All amounts credited to a Member’s DROP Account are fully vested.

(c) A Member’s DROP Account will be credited with:

1. An amount, credited monthly, which is calculated in the same manner as the Member’s Monthly Retirement Allowance. This amount will increase each year by a COLA.

2. An amount, credited annually, representing the Annual Supplemental Benefit.
(3) An amount equal to 3.05% of the Member's Base Compensation, credited bi-weekly at the end of each pay period, which is paid by the UPD.

(4) An amount equal to 3.05% of the Member's Base Compensation, credited bi-weekly at the end of each pay period, which is deducted from the Member's salary on a pre-tax basis pursuant to Internal Revenue Code Section 414(h)(2).

(5) Interest on the above amounts, as determined by the Administrator.

§1204 Additional DROP Provisions

(a) The Member and the UPD will stop making Employee Contributions and Employer Contributions to the Plan for the Member on the day the Member enters DROP.

(b) A Member who becomes disabled while participating in DROP is eligible to apply for disability retirement benefits. If the Member's application for disability retirement benefits is approved by the Administrator:

(1) the Member's disability retirement benefit will be calculated using the Member's age, Service Credit, and Final Average Salary in effect when the Member entered DROP; and

(2) the Member will be eligible to receive all amounts in the Member's DROP Account, as provided in §1206.

(c) If a Member dies while participating in DROP, the Member's Beneficiary will receive all of the following that apply:

(1) All amounts in the Member's DROP Account.

(2) The retiree death benefit.

(3) If the Beneficiary is eligible to receive the Industrial Death Benefit, the Beneficiary may elect to receive this benefit in place of any survivor continuance otherwise payable under this Division. The Plan will calculate the benefit using the Member's age, Service Credit and Final Average Salary in effect when the Member entered DROP.

(4) If the Member's Beneficiary is not eligible for the Industrial Death Benefit, and the Member designated a Beneficiary to receive a continuance before entering DROP, the Member's Beneficiary will receive the survivor continuance elected by the Member.

(d) No beneficiary designation made under this section may abrogate the Member's community property obligations under applicable California law.
§1205 Designation of Beneficiary

(a) Before entering DROP, the Member must designate a Beneficiary for the Member's DROP Account. The Member may change this Beneficiary designation at any time before the amounts in the Member's DROP Account are fully distributed, and before any joint and survivor annuity begins.

(b) If the Member's DROP Account Beneficiary dies before the Member does, and the Member then dies before designating a new Beneficiary, the Plan will distribute all amounts in the Member's DROP Account to the Member's estate.

(c) No beneficiary designation made under this section may abrogate the Member's community property obligations under applicable California law.

§1206 Payment of Benefits

(a) When a Member simultaneously leaves DROP and retires, the Member will:

1. begin receiving the Member's Monthly Retirement Allowance;

2. begin receiving the Annual Supplemental Benefit, to the extent the Member is eligible; and

3. be entitled to receive the amounts credited to the Member's DROP Account.

(b) A Member who leaves DROP and retires after December 31, 2005, must elect, before his or her retirement date, to receive his or her DROP Account in one of the following benefit forms. The Plan will make these payments on the normal monthly payment cycle.

1. Lump Sum: The Member may elect a single lump sum distribution of his or her entire DROP Account, to be paid within 60 days of his or her retirement date. A lump sum distribution may include a rollover to another plan, subject to IRS rollover requirements.

2. Monthly Payments Over 240 Months: The Member may make an irrevocable election, at retirement, to receive his or her DROP Account in substantially equal monthly payments over 240 months, effective within 30 days of the Member's retirement date. If the Member dies before all 240 payments have been made, the Plan will continue the monthly payments to the Member's DROP beneficiary until all payments have been made. In the alternative, the beneficiary may elect to receive the commuted value of the remaining monthly payments in lump sum within 90 days of the Member's death. If the beneficiary dies before all payments have been made, the Plan will pay the commuted value of the remaining monthly payments in lump sum, to the beneficiary's estate or named beneficiary. This benefit form is not available to a Member whose life expectancy at retirement is less than 20 years, using the Single Life Table in Treas. Reg. §1.401(a)(9)-9, Q&A-1.
(3) **Monthly Payments over Member's Life Expectancy:** The Member may make an irrevocable election, at retirement, to receive his or her DROP Account in substantially equal monthly payments of a fixed amount and duration over a period equal to the Member's life expectancy at the time of retirement, using the Single Life Table in Treas. Reg. §1.401(a)(9)-9, Q&A-1. Payments under this benefit form are effective at retirement. If the Member dies before all payments have been made, the Plan will continue the monthly payments to the Member's DROP beneficiary until all payments have been made. In the alternative, the beneficiary may elect to receive the commuted value of the remaining monthly payments in lump sum within 90 days of the Member's death. If the beneficiary dies before all payments have been made, the Plan will pay the commuted value of the remaining monthly payments, in lump sum, to the beneficiary's estate or named beneficiary.

(4) **Partial Lump Sum at Retirement plus Monthly Payments over Member's Life Expectancy:** The Member may make an irrevocable election to receive, at retirement, a lump sum distribution of a portion of his or her DROP Account, with the remainder of the Account paid to the Member in substantially equal monthly payments over a period equal to the Member's life expectancy at the time of retirement, using the Single Life Table in Treas. Reg. §1.401(a)(9)-9, Q&A-1.

(c) Payments under this benefit form are effective at retirement. If the Member dies before all payments have been made, the Plan will continue the monthly payments to the Member's DROP beneficiary until all payments have been made. In the alternative, the beneficiary may elect to receive the commuted value of the remaining monthly payments in lump sum within 90 days of the Member's death. If the beneficiary dies before all payments have been made, the Plan will pay the commuted value of the remaining monthly payments, in lump sum, to the beneficiary's estate or named beneficiary. Payments under the benefit forms described in subsections (b)(2) through (b)(4) will be calculated using the annuity factor on the date of the Member's retirement, as determined by the Administrator.

(d) Notwithstanding any language herein to the contrary, if the Member chooses any benefit form other than a lump sum distribution at retirement, the Member may at any time during the distribution period elect to receive the commuted value of his or her remaining monthly payments in lump sum.

(e) If a Member dies after retirement, but before selecting a benefit form, the Member's beneficiary may either select any of the benefit forms under subsection (b), subject to applicable tax law, with distributions beginning within 60 days of the Member's death.

(f) All distributions made to or on behalf of a Member must comply with the Final Regulations issued under Internal Revenue Code Section 401(a)(9). The Plan may distribute a Member's DROP Account earlier than the Member has elected if necessary to assure compliance with Internal Revenue Code Section 401(a)(9).
If a Member's former spouse has been awarded a portion of the Member's DROP Account by court order or an agreement that is binding upon the Plan, the former spouse will receive his or her interest in the account in one lump sum distribution when the Member leaves DROP, or as soon as practicable after a final and valid domestic relations order has been served on the Plan, whichever comes later. No other benefit forms are available to the Member's former spouse.

A Member who does not make the election required by subsection (b) before the effective date of his or her retirement will be deemed to have elected the lump sum option set forth in subsection (b)(1).

The following rules govern the payment of benefits under this Division:

1. No COLA, Annual Supplemental Benefit or later similar adjustment will be made with respect to any benefit payable under subsection (b) of this section.

2. Each benefit form paid must be the Actuarial Equivalent of the amount credited to the Member's DROP Account at the end of the Member's DROP participation period.

3. Each benefit form paid must equal the amount credited to the Member's DROP Account, including interest credited to that account after the Member retires. If amounts remain credited to the Member's DROP Account after the Member's death, the Plan will pay the remaining amounts to the Member's Beneficiary in the benefit form the Member selected before the Member's death. If the Member did not select a form, the Beneficiary may elect to be paid under any of the benefit forms provided in subsection (b) of this section.

The Board will credit interest, consistent with the governing Board Rule, to the DROP account of a Member who left DROP and retired on or before December 31, 2005, and who elected to leave his or her DROP monies on deposit and take a future lump sum distribution of his or her entire DROP account before April 1 of the year following the year in which the Member turns 70½.

§1207 Compliance with Applicable Provisions of the Internal Revenue Code

(a) DROP is not intended to jeopardize the Plan's tax-qualified status under the Internal Revenue Service's rules and regulations. The Administrator may adopt rules and regulations to assure that DROP complies with applicable federal laws and regulations.

(b) Despite any other provision in this Plan, benefits provided under this Division are subject to the requirements of the Internal Revenue Code and regulations issued under the Code for the Plan to remain a tax-qualified retirement plan, including the following:

1. The limitations of Internal Revenue Code Section 415 relating to the amount of benefits that may be paid.
(2) The limitations of Internal Revenue Code Section 401(a)(17) relating to the
amount of compensation that can be taken into account for benefit accrual.

(3) The limitations of Internal Revenue Code Section 401(a)(9) relating to the time
that benefit payments must begin.

(4) The rules of Internal Revenue Code Section 401(a)(31) relating to the rollover of
benefits.

(5) The limitations of Internal Revenue Code Section 401(a)(25) relating to
"definitely determinable" benefits.

§1208 Employment Status during DROP Participation

A Member who elects to participate in DROP has all of the rights, privileges and benefits, and is
subject to all other terms and conditions of active employment, except as provided in this
Division.

DIVISION 13: INVESTMENT EARNINGS, SUPPLEMENTAL BENEFITS AND
ADJUSTMENTS

§1300 Annual Supplemental Benefit (13th Check)

(a) This section provides the general guidelines for paying the Annual Supplemental Benefit
by identifying and defining the retirees qualified to receive this benefit (Qualified
Retirees), and establishing the amount of the Annual Supplemental Benefit.

(b) The following criteria apply in identifying Qualified Retirees eligible to receive the
Annual Supplemental Benefit:

(1) If the Qualified Retiree retired under the SDCERS Plan before October 29, 2002,
the Qualified Retiree must have completed 10 years of Service Credit; if the
Qualified Retiree retired under the SDCERS Plan or this Plan on or after
October 29, 2002, the Qualified Retiree must have completed 5 years of Service
Credit.

(2) The retiree must be on the payroll for the month of October of any year in which
the Annual Supplemental Benefit is being paid.

(3) The Qualified Retiree must have been hired before October 1, 2005.

(c) The amount of the Annual Supplemental Benefit amount to be paid to each Qualified
Retiree is determined as follows:

(1) If the Qualified Retiree retired under the SDCERS Plan on or before
December 31, 1971, the Qualified Retiree will receive $75 per year of Service
Credit;
If the Qualified Retiree retired under the SDCERS Plan between January 1, 1972 and October 6, 1980, the Qualified Retiree will receive $60 per year of Service Credit;

If the Qualified Retiree was a General Member who retired under the SDCERS Plan between January 8, 1982 and June 30, 1985, the Qualified Retiree will receive $45 per year of Service Credit;

If the Qualified Retiree retired under the SDCERS Plan on or after October 7, 1980, and is not covered by (c)(3) of this section, the Qualified Retiree will receive $30 per year of Service Credit.

In years that it is paid, the Annual Supplemental Benefit will be paid in November.

The Plan will determine the Annual Supplemental Benefit of survivor of a deceased Qualified Retiree in the same ratio as the survivor’s monthly benefit bears to the Qualified Retiree’s Monthly Retirement Allowance.

The Plan will pay the Annual Supplemental Benefit only when there are sufficient Surplus Undistributed Earnings to pay it. The San Diego Municipal Code sets forth the method for determining: (1) the amount of Surplus Undistributed Earnings and (2) whether there are sufficient Surplus Undistributed Earnings to pay the Annual Supplemental Benefit.

The Administrator may enact rules and procedures, as necessary, concerning the Annual Supplemental Benefit.

§1301 Cost of Living Adjustments

Before each July 1, the Administrator will determine whether there has been an increase or decrease in the cost of living for the year ending the previous December 31, as shown by the Bureau of Labor Statistics Consumer Price Index, United States—All items. Based on this determination, on each July 1, the Plan will increase or decrease the Monthly Retirement Allowance of each retiree by the percentage of this annual increase or decrease. But, no decrease may reduce a retiree’s Monthly Retirement Allowance below the amount the retiree was receiving when the retiree first retired, and no increase or decrease may exceed 2% in any one year. If the amount of the cost of living increase or decrease in any year exceeds the 2% limit, the excess increase or decrease will accumulate to be met by increase or decreases in allowances in future years. The Member and the UPD will share equally the cost of all cost of living increases.
DIVISION 14: PRESERVATION OF BENEFIT PLAN

§1400 Creation

A Preservation of Benefit Plan ("POB Plan") is established for retired Participants, separate and apart from this Plan or any other plan sponsored by the UPD, to preserve the benefits otherwise earned by retired Participants to the extent their benefits are reduced by the limitations imposed by Internal Revenue Code Section 415.

§1401 Qualified Excess Benefit Arrangement

The POB Plan is intended to be a governmental "qualified excess benefit arrangement" within the meaning of Internal Revenue Code Section 415(m).

§1402 Part of the Retirement Plan

The POB plan is part of the Plan solely to the extent required under, and within the meaning of, Internal Revenue Code Section 415(m)(3).

§1403 Solely to Provide Benefits

In accordance with Internal Revenue Code Section 415(m), the POB Plan is established solely to provide retired Members and their Beneficiaries that part of their annual benefit otherwise payable under the Plan that exceeds the limitations imposed by Internal Revenue Code Section 415.

§1404 Exempt Governmental Deferred Compensation Plan

The POB Plan is an "exempt governmental deferred compensation plan" described in Internal Revenue Code Section 3121(v)(3). Internal Revenue Code Sections 83, 402(b), 457(a) and 457(f)(1) do not apply to the POB Plan. With respect to Internal Revenue Code Section 457(a), the maximum amount that may be deferred under the POB Plan on behalf of any retired Member or Beneficiary for the taxable year may exceed both the amount in Internal Revenue Code Section 457(b)(2) (as adjusted for cost of living increases) and the percent of the retired Member or Beneficiary's includable compensation in that Internal Revenue Code Section. The Plan will not hold any assets or income under the POB Plan in trust for the exclusive benefit of retired Members or their Beneficiaries.
§1405 Separate Document

The terms of the POB plan and the establishment of a trust and trust fund are set forth in a separate document entitled the Preservation of Benefits Plan and Trust. The Plan and Trust are incorporated by reference into this Plan document.

SAN DIEGO UNIFIED PORT DISTRICT

By: [Signature]
Title: Executive Director
Date: 12-2-2009

TRUSTEE

Board of Administration for the San Diego City Employees' Retirement System

By: [Signature]
Title: President Mark Sullivan
Date: 12-16-09
AMENDED AND RESTATED SAN DIEGO UNIFIED PORT DISTRICT
RETIREMENT PLAN AND TRUST
AMENDMENT NO. 1

RECITALS

A. SAN DIEGO UNIFIED PORT DISTRICT ("Employer"), adopted the SAN DIEGO UNIFIED PORT DISTRICT RETIREMENT PLAN (the "Plan") for the benefit of its Employees and their Beneficiaries, effective January 1, 2003.

B. It is necessary to amend the Plan to modify the benefit provided for Safety Members hired on or after January 1, 2010 and to provide that rules adopted by the Administrator of the Plan are incorporated into the plan document.

C. It is further necessary to amend the Plan to establish the provisions for an updated Early Retirement Incentive Program ("Program") for incorporation into the plan document.

D. This Amendment shall supersede the provisions of the above-named Plan to the extent those provisions are inconsistent with the provisions of this Amendment.

AMENDMENT

NOW, THEREFORE, effective January 1, 2010, Employer hereby amends the Plan as follows:

1. The definition of "Final Compensation" in §0102 is modified in its entirety to read as follows:

"Final Compensation" means, for General Members hired by the UPD before October 1, 2006, and Safety Members hired by the UPD before January 1, 2010, the Member’s Base Compensation for the Member’s highest one-year period while contributing to (1) SDCERS before January 1, 2003, or (2) the Plan. For General Members hired by the UPD on or after October 1, 2006 and Miscellaneous Members, Final Compensation means the Member’s average Base Compensation for his or her highest three-year period while contributing to the Plan. For Safety Members hired by the UPD on or after January 1, 2010, Final Compensation means the Member’s average Base Compensation for his or her final three-year period while contributing to the Plan.

2. §0301(h) is amended in its entirety to read as follows:

(h) A Safety Member hired prior to January 1, 2010 may choose at the time of his or her retirement either: (1) the Retirement Calculation Factors in effect under the SDCERS
Plan on January 1, 2002, with no change to his or her Final Average Salary, or (2) the Retirement Calculation Factors in effect under the SDCERS Plan on December 31, 2001, with a 10% increase to his or her Final Average Salary. The Basic Allowance of a Safety Member hired on or after January 1, 2010 is calculated using the Retirement Calculation Factors in effect on July 1, 2000.

3. §0302(a) is amended in its entirety to read as follows:

(a) Safety Members hired before January 1, 2010, are eligible for a service retirement at:

   (1) age 50 with 20 or more years of Service Credit, or  
   (2) age 55 with 5 or more years of Service Credit.

   Safety Members hired on or after January 1, 2010, are eligible for a service retirement at:

   (1) any age with 30 or more years of Service Credit with the UPD, or  
   (2) age 55 with 5 or more years of Service Credit.

4. §0900 is amended in its entirety to read as follows:

(a) The UPD may contract with a qualified entity to serve as the Administrator of the Plan. The Administrator may make Rules it deems proper to administer the Retirement System consistent with its fiduciary duties under Article 16, Section 17 of the California Constitution. The Administrator will identify the Rules that are incorporated into this Article as part of the Plan document.

   (b) The Administrator will administer the retirement benefits of the Participants according to the terms of this Plan, the terms of the Participation and Administration Agreement, the applicable City Charter provisions and City ordinances, and applicable State and Federal laws. In case of any conflict, this Plan takes precedence over the applicable City Charter provisions and City ordinances, to the extent permitted by law.

   (c) Based upon its investigations, valuations and determination of the Actuary, the Administrator will adopt by rule the mortality, service and other tables and interest rates it deems proper, and will revise by rule the Participants' contribution rates as it deems necessary, to provide the benefits of the Plan. The Rules adopted for these purposes will be used to determine interest rates for Member contribution accounts and are incorporated into this Article as part of the Plan document. The Administrator's decisions on matters covered by this section are conclusive, if arrived at in good faith, and the rules adopted by the Administrator

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under this section are incorporated by reference into this plan document and are effective beginning January 1, 2003, in accordance with their terms.

FURTHER, Employer hereby amends the Plan as follows:

5. §1001 is amended in its entirety to read as follows:

§1001 Early Retirement Incentive Program

(a) The Early Incentive Retirement Program ("Program") offers temporary incentives to eligible Participants to encourage early retirement on a voluntary basis. The Program is set forth in the District’s salary ordinance and is incorporated by this reference. This Program is separate from and is in no way related to the previous Program.

(b) This Program is intended to:

(1) reduce the UPD’s total staffing level in order to minimize personnel expenses and increase net income;

(2) provide voluntary financial incentives to encourage eligible Participants to retire earlier;

(3) enable appointing authorities to replace staff only where desired in order to control personnel expenses according to UPD and department needs.

(c) Upon approval of the Program as set forth in the District’s salary ordinance by the Board of Port Commissioners, any Participant who meets the requirements is eligible to participate in the Program.

(d) Participation in the Program is wholly voluntary on the Participant’s part.

(e) Any eligible Participant who wishes to participate in the Program must submit a written application.

(f) The Participant must notify the appropriate appointing authority that the Participant is applying for the Program when the Participant submits the application to the Plan.
(g) The early retirement benefits provided under the Program are limited by Internal Revenue Code §415, and any early retirement benefit shall be reduced to the extent necessary to meet the requirements of §1000(h).

IN WITNESS WHEREOF, the Employer has caused this amendment to be executed as of the effective date above.

SAN DIEGO UNIFIED PORT DISTRICT RETIREMENT PLAN:
SAN DIEGO CITY EMPLOYEES RETIREMENT SYSTEM

By: MARK C. SULLIVAN
PRESIDENT
SDCERS BOARD OF ADMINISTRATION

EMPLOYER:

SAN DIEGO UNIFIED PORT DISTRICT

By: CHARLES D. WURSTER
EXECUTIVE DIRECTOR
AMENDED AND RESTATED SAN DIEGO UNIFIED PORT DISTRICT
RETIREMENT PLAN AND TRUST
AMENDMENT NO. 2

RECITALS

A. SAN DIEGO UNIFIED PORT DISTRICT ("Employer"), adopted the
SAN DIEGO UNIFIED PORT DISTRICT RETIREMENT PLAN (the "Plan") for the benefit of
its Employees and their Beneficiaries, effective January 1, 2003.

B. It is necessary to amend the Plan to modify the benefit provided for Safety
Members hired on or after January 1, 2010, and to provide that rules adopted by the
Administrator of the Plan are incorporated into the plan document.

C. It is further necessary to amend the Plan to establish the provisions for an
updated Early Retirement Incentive Program ("Program") for incorporation into the plan
document.

D. This Amendment shall supersede the provisions of the above-named Plan
to the extent those provisions are inconsistent with the provisions of this Amendment.

AMENDMENT

NOW, THEREFORE, effective January 1, 2010, Employer hereby amends the
Plan as follows:

1. The definition of "Final Compensation" in §0102 is modified in its
entirety to read as follows:

"Final Compensation" means, for General Members hired by the UPD before
October 1, 2006, and Safety Members hired by the UPD before January 1, 2010, the Member's
Base Compensation for the Member’s highest one-year period while contributing to (1) SDCERS
before January 1, 2003, or (2) the Plan. For General Members hired by the UPD on or after
October 1, 2006 and Miscellaneous Members, Final Compensation means the Member’s average
Base Compensation for his or her highest three-year period while contributing to the Plan. For
Safety Members hired by the UPD on or after January 1, 2010, Final Compensation means the
Member’s average Base Compensation for his or her final three-year period while contributing to
the Plan.

2. §0302(h) is amended in its entirety to read as follows:

(h) A Safety Member hired prior to January 1, 2010 may choose at the time of
his or her retirement either: (1) the Retirement Calculation Factors in effect under the SDCERS
Plan on January 1, 2002, with no change to his or her Final Average Salary, or (2) the Retirement Calculation Factors in effect under the SDCERS Plan on December 31, 2001, with a 10% increase to his or her Final Average Salary. The Basic Allowance of a Safety Member hired on or after January 1, 2010 is calculated using the Retirement Calculation Factors in effect on July 1, 2000.

### RETIREMENT CALCULATION FACTORS

**FOR SAFETY MEMBERS**

*Retirement Calculation Factors are prorated in quarterly increments to reflect the Member's age at retirement.*

<table>
<thead>
<tr>
<th>Retirement Age</th>
<th>Retirement Calculation Factor In Effect 6/30/00</th>
<th>Retirement Calculation Factor In Effect 7/01/00</th>
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<td>55+</td>
<td>2.70%</td>
<td>3.00%</td>
</tr>
</tbody>
</table>

3. §0302(a) is amended in its entirety to read as follows:

(a) Safety Members hired before January 1, 2010, are eligible for a service retirement at:

1. age 50 with 20 or more years of Service Credit, or
2. age 55 with 5 or more years of Service Credit.

Safety Members hired on or after January 1, 2010, are eligible for a service retirement at:

1. any age with 30 or more years of Service Credit with the UPD, or
2. age 55 with 5 or more years of Service Credit.

4. §0900 is amended in its entirety to read as follows:

(a) The UPD may contract with a qualified entity to serve as the Administrator of the Plan. The Administrator may make Rules it deems proper to administer the Retirement System consistent with its fiduciary duties under Article 16, Section 17 of the California Constitution. The Administrator will identify the Rules that are incorporated into this Article as part of the Plan document.
(b) The Administrator will administer the retirement benefits of the Participants according to the terms of this Plan, the terms of the Participation and Administration Agreement, the applicable City Charter provisions and City ordinances, and applicable State and Federal laws. In case of any conflict, this Plan takes precedence over the applicable City Charter provisions and City ordinances, to the extent permitted by law.

(c) Based upon its investigations, valuations and determination of the Actuary, the Administrator will adopt by rule the mortality, service and other tables and interest rates it deems proper, and will revise by rule the Participants’ contribution rates as it deems necessary, to provide the benefits of the Plan. The Rules adopted for these purposes will be used to determine interest rates for Member contribution accounts and are incorporated into this Article as part of the Plan document. The Administrator’s decisions on matters covered by this section are conclusive, if arrived at in good faith, and the rules adopted by the Administrator under this section are incorporated by reference into this plan document and are effective beginning January 1, 2003, in accordance with their terms.

FURTHER, Employer hereby amends the Plan as follows:

5. §1001 is amended in its entirety to read as follows:

§1001 Early Retirement Incentive Program

(a) The Early Incentive Retirement Program (“Program”) offers temporary incentives to eligible Participants to encourage early retirement on a voluntary basis. The Program is set forth in the District’s salary ordinance and is incorporated by this reference. This Program is separate from and is in no way related to the previous Program.

(b) This Program is intended to:

(1) reduce the UPD’s total staffing level in order to minimize personnel expenses and increase net income;

(2) provide voluntary financial incentives to encourage eligible Participants to retire earlier;

(3) enable appointing authorities to replace staff only where desired in order to control personnel expenses according to UPD and department needs.

(c) Upon approval of the Program as set forth in the District’s salary ordinance by the Board of Port Commissioners, any Participant who meets the requirements is eligible to participate in the Program.

(d) Participation in the Program is wholly voluntary on the Participant’s part.

(e) Any eligible Participant who wishes to participate in the Program must submit a written application.
(f) The Participant must notify the appropriate appointing authority that the Participant is applying for the Program when the Participant submits the application to the Plan.

(g) The early retirement benefits provided under the Program are limited by Internal Revenue Code §415, and any early retirement benefit shall be reduced to the extent necessary to meet the requirements of §1000(h).

IN WITNESS WHEREOF, the Employer has caused this amendment to be executed as of the effective date above.

SAN DIEGO UNIFIED PORT DISTRICT RETIREMENT PLAN:

SAN DIEGO CITY EMPLOYEES RETIREMENT SYSTEM

By: MARK C. SULLIVAN
PRESIDENT
SDCERS BOARD OF ADMINISTRATION

EMPLOYER:

SAN DIEGO UNIFIED PORT DISTRICT

By: CHARLES D. WURSTER
EXECUTIVE DIRECTOR
AMENDEAND RESTATED SAN DIEGO UNIFIED PORT DISTRICT
RETIREMENT PLAN AND TRUST
AMENDMENT NO. 3

RECITALS

A. SAN DIEGO UNIFIED PORT DISTRICT ("Employer") adopted the SAN
DIEGO UNIFIED PORT DISTRICT RETIREMENT PLAN (the "Plan") for the benefit of
its Employees and their Beneficiaries, effective January 1, 2003.

B. It is necessary to amend the Plan to comply with certain provisions of the
Internal Revenue Code

C. It is further necessary to modify the definition of General Member to clarify
eligibility and to modify the definition of Service Credit to provide that provisions adopted
during the Early Retirement Incentive Program ("Program") are incorporated into the plan
document.

D. This amendment shall supersede the provisions of the above-named Plan to
the extent those provisions are inconsistent with the provisions of this Amendment.

AMENDMENT

NOW, THEREFORE, effective as stated herein, Employer hereby amends the
Plan as follows:

1. The definition of "General Member" in §0102 is modified in its entirety to
read as follows:

"General Member" means any Member who is not a Safety Member nor a
Miscellaneous Member. Interns hired prior to January 1, 2009 and are then promoted to
permanent, full-time positions without ever terminating employment, are covered under the
definition of General Member.

2. The definition of "Service Credit" in §0102 is modified in its entirety to read
as follows:

"Service Credit" means the years or partial years of service purchased by a Member
under Division 11 of this Plan, and the years or partial years of service received by a
Member under Division 10 of this Plan and the years or partial years earned by a Member
while the Member is employed by the City, the UPD or the Airport Authority and
contributing to (1) SDCERS before January 1, 2003, or (2) the Plan.
3. §0103 is amended in its entirety to read as follows:

§0103 Participation

A full-time UPD employee must participate in the Plan as a condition of employment. A part-time UPD employee is not eligible to participate in the Plan. The UPD may hire a former City or Airport Authority employee and they will be eligible to participate in the Plan on terms applicable to their status, provided that any such employee who is hired with reciprocity shall have no accrual of benefits until he or she has retired from the City or Airport Authority. The UPD may hire a retired UPD employee but the employee will not be eligible to participate in the Plan as a Member or Miscellaneous Member while the employee is receiving retirement benefits from the Plan. An individual receiving a differential wage payment, as defined in Code §3401(b)(2), shall be treated as a UPD employee and the differential wage payment shall be treated as Base Compensation for purposes of this Plan. The differential wage payment shall also be treated as compensation for purposes of applying the limits on annual additions under Internal Revenue Code Section 415(c). These differential wage provisions will be applied to all similarly situated individuals in a reasonably equivalent manner.

In the case of a participant who is on USERRA military leave who does not return to employment due to disability or death during such military service, he or she or his or her beneficiary shall be entitled to any additional benefits which would be available under the Plan if he or she had returned to employment prior to death or disability. In any event, a deceased participant’s period of qualified military service must be counted for vesting purposes.

4. §1000(d) is amended in its entirety to read as follows:

(d) Required Minimum Distributions: Internal Revenue Code Section 401(a)(9): The Plan will pay all benefits in accordance with a good faith interpretation of the requirements of Section 401(a)(9) of the Internal Revenue Code and the regulations under that section, as applicable to a governmental plan within the meaning of section 414(d) of the Internal Revenue Code, including the minimum distribution incidental benefit requirements of Internal Revenue Code Section 401(a)(9)(G) and Treasury Regulation §1.401(a)(9)-2. Notwithstanding any other provision of this section, the Plan is subject to the following provisions:

(1) Benefits must begin by the required beginning date, which is the later of April 1 of the calendar year following the calendar year in which the Participant reaches 70½ years of age or April 1 of the calendar year following the calendar year in which the Participant terminates employment. If a Participant fails to apply for retirement benefits by April 1 of the calendar year following the calendar year in which he or she reaches 70½ years of age or April 1 of the calendar year following the calendar year in which he or she terminates employment, whichever is later, the Administrator will begin distributing the benefit as required by this section.

(2) The Participant’s entire interest must be distributed over his or her life or the lives of the Participant and a designated Beneficiary, or over a period not extending beyond the life expectancy of the Participant, or of the Participant and a
designated Beneficiary. Death benefits must be distributed in accordance with Internal Revenue Code Section 401(a)(9), including the incidental death benefit requirement in Internal Revenue Code Section 401(a)(9)(G), and the regulations implementing that section.

(3) The life expectancy of a Participant, the Participant's spouse or Beneficiary may not be recalculation after the initial determination for purposes of determining benefits.

(4) If a Participant dies after the required distribution of benefits has begun, the remaining portion of the Participant's interest must be distributed at least as rapidly as under the method of distribution before the Participant's death.

(5) If a Participant dies before required distribution of his or her benefits has begun, the Participant's entire interest must be either:

(A) distributed (in accordance with federal regulations) over the life or life expectancy of the designated Beneficiary, with the distributions beginning no later than December 31 of the calendar year following the calendar year of the Participant's death, or

(B) distributed within five years of the Participant's death.

(6) The amount of an annuity paid to a Participant's Beneficiary may not exceed the maximum determined under the incidental death benefit requirement of Internal Revenue Code Section 401(a)(9)(G).

(7) The death and disability benefits provided by the Plan are limited by the incidental benefit rule set forth in Treasury Regulation §1.401-1(b)(1)(ii) or any successor regulation thereto. As a result, any death or disability benefit payable may not exceed 25% of the cost for all of the Participants' benefits received from the Plan.

5. §1000(g) is amended in its entirety to read as follows:

(g) Rollover Rules: Internal Revenue Code Section 401(a)(31):

(1) Notwithstanding any contrary provision or retirement law that would otherwise limit an election of a Distributee (as defined in subsection (D)) under this Plan, a Distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the Distributee in a direct rollover.

(A) Eligible Rollover Distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the Distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or
for a specified period of ten years or more; any distribution to the extent such distribution is required under Internal Revenue Code Section 401(a)(9); the portion of any distribution that is not includible in gross income; and any other distribution that is reasonably expected to total less than $200 during the year. A portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax Employee Contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Internal Revenue Code Section 408(a) or (b), or to a qualified defined contribution plan described in Internal Revenue Code Section 401(a) or to a qualified plan described in Internal Revenue Code Section 403(a), that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible, or on or after January 1, 2007, to a qualified defined benefit plan described in Internal Revenue Code Section 401(a) or to an annuity contract described in Internal Revenue Code Section 403(b), that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible.

(B) Eligible Retirement Plan: An eligible retirement plan is:

(i) a plan eligible under Internal Revenue Code Section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state that agrees to separately account for amounts transferred into the plan from the Plan,

(ii) an individual retirement account described in Internal Revenue Code Section 408(a),

(iii) an individual retirement annuity described in Internal Revenue Code Section 408(b),

(iv) an annuity plan described in Internal Revenue Code Section 403(a),

(v) an annuity contract described in Internal Revenue Code Section 403(b),

(vi) a qualified trust described in Internal Revenue Code Section 401(a), that accepts the Distributee's eligible rollover distribution, or

(vii) effective January 1, 2008, a Roth IRA described in Internal Revenue Code Section 408A.
The definition of eligible rollover distribution will also apply in the case of a distribution to a surviving spouse or to a spouse or former spouse, who is an alternate payee under a domestic relations order, as defined in Internal Revenue Code Section 414(p).

Distributee: A Distributee includes an employee or former employee. It also includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Internal Revenue Code Section 414(p). Effective January 1, 2007, it further includes a nonspouse beneficiary who is a designated beneficiary as defined by Internal Revenue Code Section 401(a)(9)(E). However, a nonspouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution and the account or annuity will be treated as an "inherited" individual retirement account or annuity.

Direct Rollover: A direct rollover is a payment by the Plan to the eligible retirement plan specified by the Distributee.

Effective January 1, 2006, in the event of a mandatory distribution greater than $1,000, if a Participant does not elect to have such distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover or to receive the distribution directly, then the Administrator will pay the distribution in a direct rollover to an individual retirement plan designated by the Administrator.

§1000(h) is amended in its entirety to read as follows:

(h) Limits: Internal Revenue Code Section 415:

Employee Contributions paid to, and retirement benefits paid from, the Plan may not exceed the annual limits on contributions and benefits, respectively, allowed by Internal Revenue Code Section 415. For purposes of applying these limits, the definition of compensation where applicable will be compensation as defined in Treasury Regulation §1.415(c)-2(d)(3), or successor regulation; provided, however, that the definition of compensation will exclude Employee Contributions picked up under Internal Revenue Code Section 414(h)(2), and will include the amount of any elective deferrals, as defined in Internal Revenue Code Section 402(g)(3), and any amount contributed or deferred by the employer at the election of the Participant and which is not includible in the gross income of the Participant by reason of Internal Revenue Code Section 125, 132(f)(4), or 457. For limitation years beginning on or after July 1, 2007, the following types of payments, if paid by the later of (i) two and one-half (2½) months following a Participant's termination of UPD employment, or (ii) the last day of the limitation year that includes the Participant's termination of UPD employment, will be included as compensation for purposes of this Section: payments that, absent a termination of employment, would have been paid to the Participant while he or she continued in employment and that are regular compensation for services rendered, and payments of accrued bona fide sick, vacation, or other leave, but only if the Participant would have been able to use the leave if employment...
had continued. For limitation years beginning on or after July 1, 2007, a Participant's compensation for purposes of this Section shall not exceed the annual limit under Internal Revenue Code Section 401(a)(17).

Any payments not described in paragraph (1) above are not considered compensation if paid after severance from employment, even if they are paid within 2½ months following severance from employment, except for payments to the individual who does not currently perform services for the employer by reason of qualified military service (within the meaning of section 414(u)(1) of the Internal Revenue Code) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the UPD rather than entering qualified military service.

An employee who is in qualified military service (within the meaning of section 414(u)(1) of the Internal Revenue Code) shall be treated as receiving compensation from the UPD during such period of qualified military service equal to (i) the compensation the employee would have received during such period if the employee were not in qualified military service, determined based on the rate of pay the employee would have received from the UPD but for the absence during the period of qualified military service, or (ii) if the compensation the employee would have received during such period was not reasonably certain, the employee's average compensation from the UPD during the twelve (12) month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

(2) A Participant may not receive an annual benefit that exceeds the dollar amount specified in Internal Revenue Code Section 415(b)(1)(A), subject to the applicable adjustments in Internal Revenue Code Section 415(b).

(3) For purposes of applying the limits under Internal Revenue Code Section 415(b) (Limit), the following will apply:

(A) prior to July 1, 2007, adjustments under §§1300 and 1301 will be taken into consideration when determining a Participant's applicable Limit;

(B) on and after July 1, 2007, with respect to a Participant who does not receive a portion of the Participant's annual benefit in a lump sum:

(i) a Participant's applicable Limit will be applied to the Participant's annual benefit in the first limitation year without regard to any automatic cost of living increases under §1301;

(ii) to the extent the Participant's annual benefit equals or exceeds the Limit, the Participant will no longer be eligible for cost of living increases under §1301 until such time as the benefit plus the accumulated increases under §1301 are less than the Limit; and

(iii) thereafter, in any subsequent limitation year, the Participant's annual benefit including any automatic cost of living increase applicable under §1301 shall be tested under the then applicable benefit limit including any adjustment to
the Internal Revenue Code Section 415(b)(1)(A) dollar limit under Internal Revenue Code Section 415(d) and the regulations thereunder; and

(C) on and after July 1, 2007, with respect to a Participant who receives a portion of his or her annual benefit in a lump sum, a Participant's applicable Limit will be applied taking into consideration automatic cost of living increases under §1301 as required by Internal Revenue Code Section 415(b) and applicable Treasury Regulations; and

(D) in no event will a Participant's annual benefit payable under the Plan in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Internal Revenue Code Section 415(d) and the regulations thereunder. If the form of benefit without regard to the automatic benefit increase feature is not a straight life or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the Internal Revenue Code Section 415(b) limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent straight life annuity benefit determined using the following assumptions that takes into account the death benefits under the form of benefit:

(i) For a benefit paid in a form to which Internal Revenue Code Section 417(e)(3) does not apply, the actuarially equivalent straight life annuity benefit which is the greater of (or the reduced Internal Revenue Code Section 415(b) limit applicable at the annuity starting date which is the lesser of when adjusted in accordance with the following assumptions):

a. The annual amount of the straight life annuity (if any) payable to the participant under the plan commencing at the same annuity starting date as the form of benefit payable to the participant, or

b. The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the participant, computed using a 5 percent interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality table described in Treasury Regulations §1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e)(3)(B) of the Internal Revenue Code); or

(ii) For a benefit paid in a form to which Internal Revenue Code Section 417(e)(3) applies, the actuarially equivalent straight life annuity benefit which is the greatest of (or the reduced Internal Revenue Code Section 415(b) limit applicable at the annuity starting date which is the least of when adjusted in accordance with the following assumptions):
a. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;

b. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality table for the distribution under Treasury Regulation §1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e)(3)(B) of the Internal Revenue Code); or

c. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation §1.417(e)-1(d)(3) (the 30-year Treasury rate (prior to July 1, 2007, using the rate in effect for the month prior to retirement, and on and after July 1, 2007, using the rate in effect for the first day of the plan year with a one-year stabilization period)) and (i) for years prior to January 1, 2009, the applicable mortality table for the distribution under Treasury Regulation §1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e)(3)(B) of the Internal Revenue Code), divided by 1.05.
Notwithstanding any other provision of the Plan to the contrary, the Administrator may modify a request by a Participant to make a contribution to the Plan if the amount of the contribution would exceed the limits provided in Internal Revenue Code Section 415 by using the following methods:

(A) If the Plan requires a lump sum payment for the purchase of service credit, the Administrator may establish a periodic payment plan for the Participant to avoid a contribution in excess of the limits under Internal Revenue Code Sections 415(c) or 415(h).

(B) If payment pursuant to clause (h)(4)(A) will not avoid a contribution in excess of the limits imposed by Internal Revenue Code Section 415(c), the Administrator may either reduce the Participant's contribution to an amount within the limits of that section or refuse the Participant's contribution.

(C) If a Participant makes one or more contributions to purchase permissive service credit under the Plan, then the requirements of this section will be treated as met only if—

(i) the requirements of Internal Revenue Code Section 415(b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of Internal Revenue Code Section 415(b), or

(ii) the requirements of Internal Revenue Code Section 415(c) are met, determined by treating all such contributions as annual additions for purposes of Internal Revenue Code Section 415(c).

For purposes of applying subparagraph (i), the Plan will not fail to meet the reduced limit under Internal Revenue Code Section 415(b)(2)(C) solely by reason of this paragraph (4), and for purposes of applying subparagraph (ii), the Plan will not fail to meet the percentage limitation under Internal Revenue Code Section 415(c)(1)(B) solely by reason of this paragraph (4).

(D) For purposes of this paragraph (4) the term "permissive service credit" means service credit—

(i) recognized by the Plan for purposes of calculating a Participant's benefit under the Plan,

(ii) which such Participant has not received under the Plan, and

(iii) which such Participant may receive only by making a voluntary additional contribution, in an amount determined under the Plan, which does not exceed the amount necessary to fund the benefit attributable to such service credit.
Such term may include service credit for periods for which there is no performance of service, and, notwithstanding clause (ii), may include service credited in order to provide an increased benefit for service credit which a Participant is receiving under the Plan.

(E) The Plan will fail to meet the requirements of this paragraph (4) if —

(i) more than five years of nonqualified service credit are taken into account for purposes of this paragraph (4), or

(ii) any nonqualified service credit is taken into account under this paragraph (4) before the Participant has at least five years of participation under the Plan.

(F) For purposes of subparagraph (E), the term "nonqualified service credit" means permissive service credit other than that allowed with respect to —

(i) service (including parental, medical, sabbatical, and similar leave) as an employee of the Government of the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in Internal Revenue Code Section 415(k)(3)),

(ii) service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in clause (i)) of an education organization described in Internal Revenue Code Section 170(b)(1)(A)(ii) which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed,

(iii) service as an employee of an association of employees who are described in clause (i), or

(iv) military service (other than qualified military service under Internal Revenue Code Section 414(u)) recognized by such governmental plan.

In the case of service described in clause (i), (ii), or (iii), such service will be nonqualified service if recognition of such service would cause a Participant to receive a retirement benefit for the same service under more than one plan.

(G) In the case of a trustee-to-trustee transfer, to which Internal Revenue Code Section 403(b)(13)(A) or 457(e)(17)(A) applies (without regard to whether the transfer is made between plans maintained by the same employer) —

(i) the limitations of subparagraph (E) will not apply in determining whether the transfer is for the purchase of permissive service credit, and
(ii) the distribution rules applicable under federal law to the Plan will apply to such amounts and any benefits attributable to such amounts.

(5) Prior to July 1, 2008, the limitation year for purposes of Internal Revenue Code Section 415 is the plan year. Effective January 1, 2009, the limitation year for purposes of Internal Revenue Code Section 415 is the calendar year beginning each January 1 and ending December 31, with a short limitation year beginning July 1, 2008, and ending December 31, 2008. This is a change in the limitation year made pursuant to Treasury Regulation Section 1.415-2(b)(2) or successor regulation. The implementation of the change in the limitation year will be accomplished as required by Treasury Regulation Section 1.415-2(b)(4) or successor regulation.

(6) Nothing contained in this section will limit the Administrator from modifying benefits to the extent such modifications are required by this Plan, the San Diego City Charter, or applicable state or federal law or regulations.

7. §1000(j) is amended in its entirety to read as follows:

(j) Military Service:

(1) Internal Revenue Code Section 414(u): Notwithstanding any other provision of the Plan, contributions, benefits and service credit with respect to qualified military service are governed by Internal Revenue Code Section 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994.

IN WITNESS WHEREOF, the Employer has caused this amendment to be executed as of the effective date above.

SAN DIEGO UNIFIED PORT DISTRICT RETIREMENT PLAN:

SAN DIEGO CITY EMPLOYEES RETIREMENT SYSTEM

By: [Signature]
HERB W. MORGAN
PRESIDENT
SDCERS BOARD OF ADMINISTRATION

EMPLOYER:

SAN DIEGO UNIFIED PORT DISTRICT

By: [Signature]
WAYNE DARBEAU
EXECUTIVE DIRECTOR
AMENDED AND RESTATED SAN DIEGO UNIFIED PORT DISTRICT
RETIREMENT PLAN AND TRUST
AMENDMENT NO. 4

RECITALS

A. SAN DIEGO UNIFIED PORT DISTRICT ("Employer") adopted the SAN DIEGO UNIFIED PORT DISTRICT RETIREMENT PLAN (the "Plan") for the benefit of its Employees and their Beneficiaries, effective November 1, 2013.

B. It is necessary to amend the Plan to add a section to clarify eligibility for the Supplemental Cost of Living Adjustment benefit.

C. This amendment shall supersede the provisions of the above-named Plan to the extent those provisions are inconsistent with the provisions of this Amendment.

AMENDMENT

NOW, THEREFORE, effective as stated herein, Employer hereby amends the Plan as follows:

§1302 Supplemental COLA Program

(a) The Supplemental COLA Program was created to increase the retirement benefits of certain Qualified Retirees and their survivors, as defined in section (b) below, to ensure that their total retirement benefit on July 1, 1998 (including Cost of Living Adjustments and the Annual Supplemental Benefit) was equal to 75% of the present value (as of July 1, 1998) of the retiree's base retirement benefit at retirement.

(b) Participation in this benefit is limited to Qualified Retirees and their survivors, including special death benefit recipients. For purposes of this Amendment, Qualified Retiree means that the retiree meets the eligibility requirements listed in §1300 of this plan document and who:

1. Retired on or before June 30, 1982; and

2. Received a retirement allowance on July 1, 1998 which, as determined by the system’s Actuary, was less than 75% of the present value (as of July 1, 1998) of their base retirement benefit when combined with their Annual Supplemental Benefit.
(c) The Administrator will pay the Supplemental COLA benefit to UPD Qualified Retirees and their survivors from the Available Benefit Amount as defined in section (d) below. Once the Available Benefit Amount is depleted, the Supplemental COLA benefit for UPD Qualified Retirees and their survivors will be paid by the Administrator from funds provided by the UPD for that purpose. Once the Available Benefit Amount is depleted, the Supplemental COLA will not be paid from plan assets. The Administrator will determine and advise the UPD the amount necessary to pay the Supplemental COLA to UPD Qualified Retirees and their survivors for the following fiscal year. When the Available Benefit Amount allocated for the benefit of UPD Qualified Retirees is depleted, the Supplemental COLA will not be paid in any month in which the UPD has not provided sufficient funds to pay the benefit.

(d) A reserve account was established with the Administrator to pay benefits of Qualified Retirees.

1. The Initial Available Benefit amount as of June 30, 1998 was $35 million.

2. From its inception, the Available Benefit Amount was credited with interest annually. The Administrator will not credit interest to the Available Benefit Amount after June 30, 2013.

(e) The Supplemental COLA benefit is paid to each eligible Qualified Retiree for life, and then to his or her survivor for life. The Qualified Retiree's Retirement Allowance, as increased by the Supplemental COLA, is adjusted each July 1st by the Cost of Living Adjustment.

IN WITNESS WHEREOF, the Employer has caused this amendment to be executed as of the effective date above.

SAN DIEGO UNIFIED PORT DISTRICT RETIREMENT PLAN:

SAN DIEGO CITY EMPLOYEES RETIREMENT SYSTEM

By: Edward W. Ktrosser
President, SDCERS Board of Administration

EMPLOYER:

SAN DIEGO UNIFIED PORT DISTRICT

By: Wayne Darbeau
Executive Director
AMENDED AND RESTATED SAN DIEGO UNIFIED PORT
DISTRICT
RETIREMENT PLAN AND TRUST
AMENDMENT NO. 5

A. SAN DIEGO UNIFIED PORT DISTRICT ("Employer") adopted the SAN DIEGO UNIFIED PORT DISTRICT RETIREMENT PLAN (the "Plan") for the benefit of its Employees and their Beneficiaries, effective January 1, 2003.

B. It is necessary to amend the Plan to comply with certain provisions of the Internal Revenue Code to provide for 401(a)(17) testing on a calendar-year basis rather than a plan-year basis to conform to Administrator's practice.

C. It is further necessary to modify the list of positions eligible for benefits under "Executive General Member".

D. It is further necessary to amend the provisions of the Plan relating to Safety members who are subject to the provisions of the Public Employees' Pension Reform Act of 2012 ("PEPRA") to be consistent with agreed-upon terms and conditions.

E. It is further necessary to modify the provisions relating to the calculation of disability retirements to clarify the components of a disability retirement allowance.

F. It is further necessary to modify the provisions relating to the calculation of creditable service to conform the plan to long-standing practice.

G. It is further necessary to modify provisions of the Plan relating to contributions of Miscellaneous Members who are not subject to the provisions of the Public Employees' Pension Reform Act of 2012 ("PEPRA") to provide clarification consistent with the agreed-upon terms and conditions of employment relating to the Plan for those Miscellaneous Members.

H. This amendment shall supersede the provisions of the above-named Plan to the extent those provisions are inconsistent with the provisions of this Amendment.

AMENDMENT

NOW, THEREFORE, effective as stated herein, Employer hereby amends the Plan as follows:

§0102 Definitions

The definition of "Service Credit" is amended as follows:
"Service Credit" means the years or partial years of service: (1) purchased by a Member under Division 11 of this Plan, (2) earned by a Member while employed by the City, the UPD or the Airport Authority and contributing to the Plan or to SDCERS (before January 1, 2003), and (3) earned by a Miscellaneous Member beginning in his or her sixth year of employment with the UPD. Service credit is earned by a Member or Miscellaneous Member by service rendered for compensation as an employee or officer of the UPD and shall include all periods for which compensation is paid and the Member or Miscellaneous Member makes contributions to the Plan. For those Members or Miscellaneous Members who make contributions to the plan, pay periods during which some service was rendered for compensation as an employee or officer may be included in computing Service Credit if sufficient compensation is received to allow full contributions for that pay period to have been deducted from the payroll check for that pay period and transferred to the Retirement System for crediting to the individual Member or Miscellaneous Member’s account. Notwithstanding any other provisions of the Plan, pay periods during which some service was rendered for compensation as an employee or officer will not be included in computing Creditable Service if insufficient compensation was received for that pay period to allow full contributions for that entire period to have been deducted from the payroll check for that pay period and transferred to the Retirement System for crediting to the individual Member or Miscellaneous Member’s account. Notwithstanding anything to the contrary in this Plan, a Miscellaneous Member who is not required to pay contributions pursuant to the terms of the Plan earns service credit beginning with his or her sixth year of employment with the UPD during all periods in which the Miscellaneous Member renders service for compensation as an employee or officer of the UPD.

§0200 Employee Contributions

A Member’s Employee Contribution is determined by multiplying the Member’s Base Compensation by a rate based upon the Member’s age at the Member’s nearest birthday on the Member’s effective date of membership with the Plan or its predecessor, the SDCERS Plan. A Miscellaneous Member’s Employee Contribution is determined by multiplying the Miscellaneous Member’s Base Compensation by a rate determined by an Actuary on the first day of his or her sixth year of UPD employment.

Notwithstanding anything to the contrary in this Plan, a Miscellaneous Member who is not subject to the provisions of PEPRA shall not be required to pay employee contributions and shall have no normal cost employee contributions standing to his or her account. The UPD will make COL, Annuity and Surviving Spouse or Domestic Partner contributions on behalf of a Miscellaneous Member who is not subject to PEPRA which will be credited to the individual Miscellaneous Member’s contribution account.

§0205 Withdrawal of Accumulated Contributions

(a) If a Member terminates UPD employment other than by death or retirement, the Member may withdraw his or her Accumulated Contributions.

(b) If the Member has less than 5 years of Service Credit, the Member may leave all of the Member’s Accumulated Contributions with the Plan to:
(1) maintain Service Credit if he or she is re-employed by the UPD at a later date, or

(2) establish reciprocity with a reciprocal agency.

(c) If the Member or Miscellaneous Member has five or more years of Service Credit, the Member or Miscellaneous Member may become a Deferred Member by leaving his or her Accumulated Contributions with the Plan. Miscellaneous Members with five or more years of Service Credit who have not paid contributions will become a Deferred Member upon termination of employment prior to retirement. Subject to the provisions of Division 4, a Deferred Member is eligible to retire when the Deferred Member meets the age requirement in place when the Deferred Member left UPD employment and will receive the level of benefits in place on the day the Deferred Member terminated UPD service.

(d) Members and Miscellaneous Members may not withdraw contributions that were paid by the UPD on their behalf, except that Miscellaneous Members who do not make contributions pursuant to the provisions of the plan may receive Surviving Spouse or Domestic Partner Annuity contributions paid on their behalf by the UPD and may elect to take those contributions as a lump sum at retirement as provided in section 0600(d) of this Plan.

§0206 Termination of Benefits

Any Member who withdraws his or her Accumulated Contributions from the Plan is deemed to have knowingly stopped participating in the Plan, and will be ineligible for any rights, privileges or benefits from the Plan. Miscellaneous Members with less than five years of Service Credit who have no contributions credited to their account will maintain Service Credit credited to them at the time of termination of employment which may be used to:

(a) establish eligibility for a blended benefit under Division 4 of this Plan, or

(b) establish reciprocity with a reciprocal agency.

§0300 General Member Retirement Allowance

(k) Notwithstanding subsections (a) through (j) of this section, the Retirement Calculation Factor for a General Member who is the Executive Director/President, Executive Vice President, a Vice President, General Counsel, Assistant General Counsel, Chief Financial Officer/Treasurer, and Port Auditor (collectively, “Executive General Members”) will be 3% at a retirement age of 55 or older beginning on December 23, 2002.
§0302 Safety Member Retirement Allowance(j) The retirement calculation factors for Safety Members hired on or after January 1, 2013 will be as follows:

<table>
<thead>
<tr>
<th>Retirement Age</th>
<th>Retirement Calculation Factor</th>
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<tr>
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</table>

§0501 Computing an Industrial Disability Benefit for a Safety Member

(a) The industrial disability retirement benefit for a Safety Member is a disability retirement allowance equal to 50% of the Member’s Final Compensation, plus an Annuity which is the actuarial equivalent of the Safety Member’s Accumulated Cost of Living Annuity Contributions and, if applicable, an Annuity based on the Safety Member’s Accumulated Surviving Spouse or Domestic Partner Contributions credited to the Safety Member’s account at retirement, paid in monthly installments. But, if the Safety Member is eligible for a service retirement, and the Safety Member’s service retirement allowance would be greater than the Safety Member’s industrial disability retirement allowance, the Safety Member will receive:

(1) a disability retirement allowance equal to 50% of the Safety Member’s Final Compensation, paid in monthly installments, plus

(2) a service-based allowance equal to the difference between the industrial disability retirement allowance and the service retirement allowance the Safety Member has earned.

(b) An industrial disability retirement allowance is derived from an Annuity based on the Safety Member’s Accumulated Normal Contributions, plus an Annuity derived from the Safety Member’s Accumulated Cost of Living Annuity Contributions and, if applicable, an Annuity derived from the Safety Member’s Accumulated Surviving Spouse or Domestic Partner Contributions credited to the Safety Member’s account at retirement, and a disability retirement pension derived from contributions of the UPD.

§0502 Computing an Industrial Disability Benefit for a General Member

(a) The industrial disability retirement benefit for a General Member is a disability retirement allowance equal to 33½% of the General Member’s Final Compensation, plus an Annuity which is the actuarial equivalent of the General
Member’s Accumulated Cost of Living Annuity Contributions and, if applicable, an Annuity based on the General Member’s Accumulated Surviving Spouse or Domestic Partner Contributions credited to the General Member’s account at retirement, paid in monthly installments. But, if the General Member is eligible for a service retirement, and his or her service retirement allowance would be greater than his or her industrial disability retirement allowance, the General Member will receive:

1. a disability retirement allowance equal to 33⅓% of his or her Final Compensation, paid in monthly installments, plus

2. a service-based allowance equal to the difference between the industrial disability retirement allowance and the service retirement allowance he or she has earned.

(b) An industrial disability retirement allowance is derived from an Annuity based on the General Member’s Accumulated Normal Contributions plus an Annuity derived from the General Member’s Accumulated Cost of Living Annuity Contributions and, if applicable, an Annuity derived from the General Member’s Accumulated Surviving Spouse or Domestic Partner Contributions credited to the General Member’s account at retirement, and a disability retirement pension derived from contributions of the UPD.

§0503 Computing an Industrial Disability Benefit for a Miscellaneous Member

(a) The industrial disability retirement benefit for a Miscellaneous Member is a disability retirement allowance equal to 11% of the Miscellaneous Member’s Final Compensation, plus an Annuity which is the actuarial equivalent of the Miscellaneous Member’s Accumulated Cost of Living Annuity Contributions and, if applicable, an Annuity based on the Miscellaneous Member’s Accumulated Surviving Spouse or Domestic Partner Contributions credited to the Miscellaneous Member’s account at retirement, paid in monthly installments. But, if the Miscellaneous Member is eligible for a service retirement, and his or her service retirement allowance would be greater than his or her industrial disability retirement allowance, the Miscellaneous Member will receive:

1. a disability retirement allowance equal to 11% of his or her Final Compensation, paid in monthly installments, plus

2. a service-based allowance equal to the difference between the industrial disability retirement allowance and the service retirement allowance he or she has earned.

(b) An industrial disability retirement allowance is derived from an Annuity based on the Miscellaneous Member’s Accumulated Normal Contributions and a disability retirement pension derived from contributions of the UPD.
§0504 Non-Industrial Disability Retirement

A Participant will receive a non-industrial disability retirement if:

(a) the Participant has at least 10 years of Service Credit,

(b) the Participant is permanently incapacitated from the performance of his or her duties with the UPD,

(c) the permanent incapacity renders the Participant’s retirement from UPD employment necessary,

(d) the permanent incapacity was not caused primarily by willful misconduct or a violation of the law, and

(e) the Participant is not eligible for or receiving an Industrial Disability Retirement.

§0505 Computing a Non-Industrial Disability Benefit for a Safety Member

The non-industrial disability retirement benefit for a Safety Member is the highest of the following:

(a) an allowance equal to 33⅓% of the Safety Member’s Final Compensation, paid in monthly installments, plus an Annuity which is the actuarial equivalent of the Safety Member’s Accumulated Cost of Living Annuity Contributions and, if applicable, an Annuity based on the Safety Member’s Accumulated Surviving Spouse or Domestic Partner Contributions credited to the Safety Member’s account at retirement,

(b) an allowance equal to 90% of 1/50th of the Safety Member’s Final Compensation multiplied by his or her years of Service Credit, paid in monthly installments, plus an Annuity which is the actuarial equivalent of the Safety Member’s Accumulated Cost of Living Annuity Contributions and, if applicable, an Annuity based on the Safety Member’s Accumulated Surviving Spouse or Domestic Partner Contributions credited to the Safety Member’s account at retirement, or

(c) the Safety Member’s service retirement allowance, if the Safety Member is eligible to retire for service.

§0506 Computing a Non-Industrial Disability Benefit for a General Member

The non-industrial disability retirement benefit for a General Member is the highest of the following:

(a) an allowance equal to 33⅓% of the Member’s Final Compensation, paid in monthly installments, plus an Annuity which is the actuarial equivalent of the General Member’s Accumulated Cost of Living Annuity Contributions and, if applicable, an Annuity based on the General Member’s Accumulated Surviving
Spouse or Domestic Partner Contributions credited to the General Member’s account at retirement,

(b) an allowance equal to 90% of 1/60\textsuperscript{th} of the Member’s Final Compensation multiplied by his or her years of Service Credit, plus an Annuity which is the actuarial equivalent of the General Member’s Accumulated Cost of Living Annuity Contributions and, if applicable, an Annuity based on the General Member’s Accumulated Surviving Spouse or Domestic Partner Contributions credited to the General Member’s account at retirement, paid in monthly installments, or

(c) the Member’s service retirement allowance, if he or she is eligible to retire for service.

§0507 Computing a Non-Industrial Disability Benefit for a Miscellaneous Member

The non-industrial disability retirement benefit for a Miscellaneous Member is the highest of the following:

(a) an allowance equal to 11\% of the Miscellaneous Member’s Final Compensation, paid in monthly installments,

(b) an allowance equal to 30\% of 1/160\textsuperscript{th} of the Miscellaneous Member’s Final Compensation multiplied by his or her years of Service Credit, paid in monthly installments, or

(c) the Miscellaneous Member’s service retirement allowance, if he or she is eligible to retire for service.

§0600 Surviving Spouse/Domestic Partner Contribution Rates and Benefits

Every Member will make Surviving Spouse/Domestic Partner Contributions in addition to Normal Contributions in accordance with Salary Ordinances adopted by the UPD from time to time. The Plan will calculate the Surviving Spouse/Domestic Partner Contributions as a percentage of Employee Contributions. Miscellaneous Members who do not pay contributions will not make Surviving Spouse/Domestic Partner Contributions but shall have credited to their Accumulated Contributions account the amount of Surviving Spouse/Domestic Partner Contributions contributed on their behalf by the UPD. The Administrator will adopt the percentage rates by Board Rule based upon advice from the Actuary.

§1000 Compliance with Certain Internal Revenue Code Provisions

(c) Compensation Limit: Internal Revenue Code Section 401(a)(17):
(1) In accordance with the Omnibus Budget Reconciliation Act of 1993 (OBRA '93), except as provided in this section, the annual compensation the Plan takes into account for any purpose, including contributions or benefits, may not exceed the amount as allowed by Internal Revenue Code Section 401(a)(17).

(2) The annual compensation of each Participant taken into account in determining benefits or contributions for any plan year beginning on or after January 1, 2002, shall comply with Internal Revenue Code Section 401(a)(17)(B) pursuant to any amendments there to. Annual compensation means compensation during the plan year or effective on or after January 1, 2013, the calendar year, or such other consecutive 12-month period over which compensation is otherwise determined under the Plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If the determination period consists of fewer than 12 months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12. If the compensation for any prior determination period is taken into account in determining a Participant's contributions or benefits for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period.

IN WITNESS WHEREOF, the Employer has caused this amendment to be executed as of the effective date above.

SAN DIEGO UNIFIED PORT DISTRICT RETIREMENT PLAN:

SAN DIEGO CITY EMPLOYEES’ RETIREMENT SYSTEM

BY: Edward W. Kitrosser
President, SDCERS Board of Administration

EMPLOYER:

SAN DIEGO UNIFIED PORT DISTRICT

BY: John A. Bolduc
Acting Executive Director
AMENDED AND RESTATE
SAN DIEGO UNIFIED PORT DISTRICT RETIREMENT PLAN AND TRUST
AMENDMENT NO. 6

RECITALS
A. SAN DIEGO UNIFIED PORT DISTRICT ("Employer"), adopted the SAN DIEGO UNIFIED PORT DISTRICT RETIREMENT PLAN (the "Plan") for the benefit of its Employees and their Beneficiaries, effective January 1, 2003.

B. It is necessary to amend the Plan by changing a section to establish additional provisions for Industrial Disability benefits for Safety Members.

C. This Amendment shall supersede the provisions of the above-named Plan to the extent those provisions are inconsistent with the provisions of this Amendment.

AMENDMENT
NOW, THEREFORE, effective January 1, 2020, Employer hereby amends the Plan as follows:

1. §0500 (d) is added to read as follows:

§0500 Industrial Disability Retirement
(d) In addition to the conditions set in §0500 (a), (b), and (c), a Safety Member who is employed by the San Diego Unified Port District as of January 1, 2020, will receive an industrial disability retirement if all the following conditions are met:

(1) the Safety Member is a victim of a violent attack involving the use of deadly force,

(2) the attack occurs on or after January 1, 2020,

(3) the attack occurs while the Safety Member is performing his or her duties as a Sworn Police Officer while employed with the UPD,

(4) the attack causes the Safety Member great bodily harm,

(5) the attack causes the Safety Member to suffer a nervous or mental disorder, and

(6) the Board determines, based upon the medical evidence, that the Safety Member has become psychologically or mentally incapable of performing his or her normal and customary duties, as a result of the attack.
IN WITNESS WHEREOF, the Employer has caused this amendment to be executed as of the effective date above.

SAN DIEGO UNIFIED PORT
DISTRICT RETIREMENT PLAN:

SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM

BY:  
CAROL BROAD
President
SDCERS Board of Administration

EMPLOYER:

SAN DIEGO UNIFIED PORT DISTRICT

BY:  
RANDA J. CONIGLIO
Executive Director
AMENDED AND RESTATED

SAN DIEGO UNIFIED PORT DISTRICT RETIREMENT PLAN AND TRUST

AMENDMENT NO. 7

A. SAN DIEGO UNIFIED PORT DISTRICT (“Employer”) adopted the SAN DIEGO UNIFIED PORT DISTRICT RETIREMENT PLAN (the “Plan”) for the benefit of its Employees and their Beneficiaries, effective January 1, 2003.

B. It is necessary to amend the Plan to specify the method for calculating Cost of Living Annuity Contributions and Surviving Spouse/Domestic Partner Contributions for Miscellaneous Members.

C. This amendment shall supersede the provisions of the above-named Plan to the extent those provisions are inconsistent with the provisions of this Amendment.

AMENDMENT

NOW, THEREFORE, effective as stated herein, Employer hereby amends the Plan as follows:

§207 Cost of Living Annuity Contribution

(a) Every Member and Miscellaneous Member must make Cost of Living Annuity Contributions, in addition to his or her Normal Contributions and his or her Surviving Spouse/Domestic Partner Contributions. The Cost of Living Annuity Contributions, for all Members except Miscellaneous Members, are 20% of the sum of the Member’s Normal Contributions plus the Member’s Surviving Spouse/Domestic Partner Contributions.

(b) Notwithstanding any provision to the contrary in this Plan, a Miscellaneous Member is not required to make an Employee Contribution and shall have no Normal Contributions standing to his or her account. The District shall make the Cost of Living Annuity Contributions on behalf of a Miscellaneous Member calculated as 0.47% of Base Compensation. The actuarial liability and normal cost of the Cost of Living Annuity benefit shall be calculated by the Actuary and included in the Actuarially Determined Contribution (ADC) remitted to SDCERS on or before July 1 of each year. The Cost of Living Annuity contributions and applicable annual interest will be transferred to the Miscellaneous Member’s account at the time of service, industrial disability, or non-industrial disability retirement.

(c) Upon retirement or DROP entry, the Plan shall pay a Cost of Living Annuity to Members and Miscellaneous Members who have Cost of Living Annuity Contributions. The Cost of Living Annuity shall be the Actuarial Equivalent of the Member’s or Miscellaneous Member’s Accumulated Cost of Living Annuity Contributions on the date of the Member’s retirement or DROP entry.
§600 Surviving Spouse/Domestic Partner Contribution Rates and Benefits

Every Member and Miscellaneous Member must make Surviving Spouse/Domestic Partner Contributions, in addition to Normal Contributions and his or her Cost of Living Annuity Contributions. The Surviving Spouse/Domestic Partner Contributions shall be calculated as set forth below:

<table>
<thead>
<tr>
<th>MEMBERSHIP CATEGORY</th>
<th>SURVIVING SPOUSE/DOMESTIC PARTNER CONTRIBUTION RATES</th>
</tr>
</thead>
<tbody>
<tr>
<td>General and Executive Members</td>
<td>9.98% of Normal Contributions</td>
</tr>
<tr>
<td>Miscellaneous Members</td>
<td>0.21% of Base Compensation</td>
</tr>
<tr>
<td>Miscellaneous and Safety PEPRA Members</td>
<td>50% of the normal cost of the benefit as determined by the Actuary</td>
</tr>
<tr>
<td>Safety Members</td>
<td>11.76% of Normal Contributions</td>
</tr>
</tbody>
</table>

Notwithstanding any provision to the contrary in this Plan, a Miscellaneous Member is not required to pay an Employee Contribution. The District shall make Surviving Spouse/Domestic Partner Contributions on behalf of a Miscellaneous Member. The actuarial liability and normal cost of the Surviving Spouse/Domestic Partner benefit shall be calculated by the Actuary and included in the Actuarially Determined Contribution (ADC) remitted to SDCERS on or before July 1 of each year. The Surviving Spouse/Domestic Partner Contributions and applicable annual interest will be transferred to the Miscellaneous Member’s account at the time of service, industrial disability, or non-industrial disability retirement.

(a) The Plan shall pay the Accumulated Surviving Spouse/Domestic Partner Contributions to a Member or the Member’s Beneficiary if the Accumulated Normal Contributions are paid either under the Active Death Benefit or because the Member withdraws his or her Accumulated Contributions. However, Miscellaneous Members may only withdraw Surviving Spouse/Domestic Partner Contributions upon retirement if choosing the single life benefit election.

(b) When a Retiree dies, the Plan shall pay the Member’s or Miscellaneous Member’s surviving spouse or Domestic Partner a monthly lifetime allowance equal to 50% of the Member’s or Miscellaneous Member’s Monthly Retirement Allowance or Disability Allowance if:

1. the Member or Miscellaneous Member’s designated the spouse or Domestic Partner as beneficiary,

2. the surviving spouse was married to the Member or Miscellaneous Member or the Domestic Partner on the date the Member or Miscellaneous Member retired or entered DROP,
(3) the surviving spouse was married to the Member or Miscellaneous Member or the Domestic Partner on the date the Member or Miscellaneous Member died, and

(4) the Member’s or Miscellaneous Member’s Monthly Retirement Allowance or Disability Allowance was the maximum monthly benefit, and was not modified under Optional Settlement 1, 2, 3 or 4, as set forth in sections 0602 through 0706 herein.

(c) The Plan shall not pay any benefits under this section if the surviving spouse or Domestic Partner receives the Industrial Death Benefit.

(d) If, at the time of retirement or DROP entry, a Member or Miscellaneous Member who has selected the maximum benefit does not have a spouse or Domestic Partner who is eligible for benefits under this section, the Plan shall either:

(1) pay the Member or Miscellaneous Member the Accumulated Surviving Spouse/Domestic Partner Contributions including interest credited to the Member in lump sum, or

(2) pay the Member or Miscellaneous Member a Surviving Spouse/Domestic Partner Annuity that is the Actuarial Equivalent of the Member’s or Miscellaneous Member’s Accumulated Surviving Spouse/Domestic Partner Contributions on the date of the Member’s or Miscellaneous Member’s retirement or DROP entry date.

IN WITNESS WHEREOF, the Employer has caused this amendment to be executed as of the effective date above.

EMPLOYER:

SAN DIEGO UNIFIED PORT DISTRICT

_______________________________
BY: J. Stuyvesant
Executive Director
San Diego Unified Port District

APPROVED AS TO FORM AND LEGALITY
GENERAL COUNSEL

_______________________________
BY: Simon Kann
DEPUTY
Simon Kann

APPROVED BY FINANCIAL SERVICES

_______________________________
BY: Robert DeAngelis
CFO/Treasurer
**How to contact San Diego Unified Port District:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: rsanagus@portofsandiego.org

**To advise San Diego Unified Port District of your new e-mail address**

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at rsanagus@portofsandiego.org and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address.

In addition, you must notify DocuSign, Inc. to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in the DocuSign system.

**To request paper copies from San Diego Unified Port District**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to rsanagus@portofsandiego.org and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

**To withdraw your consent with San Diego Unified Port District**

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

i. decline to sign a document from within your DocuSign session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;

ii. send us an e-mail to rsanagus@portofsandiego.org and in the body of such request you must state your e-mail, full name, US Postal Address, and telephone number. We do not need any other information from you to withdraw consent. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process.

**Required hardware and software**

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</table>
Enabled Security Settings: Allow per session cookies

** These minimum requirements are subject to change. If these requirements change, you will be asked to re-accept the disclosure. Pre-release (e.g. beta) versions of operating systems and browsers are not supported.

**Acknowledging your access and consent to receive materials electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the ‘I agree’ button below.

By checking the ‘I agree’ box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify San Diego Unified Port District as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by San Diego Unified Port District during the course of my relationship with you.