

ADMINISTRATION & FINANCE COMMITTEE

Thursday, February 18, 2016

12:00 PM

VTA Conference Room B-104

3331 North First Street

San Jose, CA

AGENDA

CALL TO ORDER

1. ROLL CALL

2. PUBLIC PRESENTATIONS:

This portion of the agenda is reserved for persons desiring to address the Committee on any matter not on the agenda. Speakers are limited to 2 minutes. The law does not permit Committee action or extended discussion on any item not on the agenda except under special circumstances. If Committee action is requested, the matter can be placed on a subsequent agenda. All statements that require a response will be referred to staff for reply in writing.

3. ORDERS OF THE DAY-Approve the Consent Agenda

CONSENT AGENDA

- 4.** Approve the Regular Meeting Minutes of January 21, 2016.
- 5.** ACTION ITEM -Review and accept the Fiscal Year 2016 Quarterly Statement of Revenues and Expenses for the period ending December 31, 2015.
- 6.** ACTION ITEM -Authorize the General Manager to execute a contract with Community Design + Architecture in an amount not to exceed \$1,014,809. This contract will provide professional consulting and planning services to implement the cities of Mountain View, Morgan Hill and Campbell's Priority Development Area (PDA) planning projects.

7. ACTION ITEM -Adopt a support position for AB 1595 (Campos), which requires a private or public employer providing mass transportation services in California to train its employees on how to recognize signs of human trafficking and report them to the appropriate law enforcement agencies.
8. INFORMATION ITEM -Review the Quarterly Purchasing Report for October 1 through December 31, 2015.

REGULAR AGENDA

9. ACTION ITEM -1) Confirm the Deferred Compensation Committee's selection of International City Management Association - Retirement Corporation (ICMA-RC) as VTA's 457 Deferred Compensation Plan and 401(a) Money Purchase Plan Provider; and 2) Adopt the 457 Deferred Compensation Plan Committee Charter.
10. ACTION ITEM -Authorize the General Manager to amend agreements with private utility owners totaling \$2,120,000 for construction safety oversight and inspection services related to VTA's BART Silicon Valley Berryessa Extension Project (SVBX), thereby increasing the total value of these agreements to \$7,200,000 and extending their periods of performance through August 2017.
11. ACTION ITEM -Authorize the General Manager to execute a contract amendment with WMH Corporation (WMH) to provide continued design and engineering services for the Silicon Valley Berryessa Extension Project Campus, Roadway and Parking Facilities in the amount of \$2,000,000, thereby increasing the total agreement value to be authorized by the VTA Board to \$12,605,000, and extending the contract period from June 30, 2016, to December 31, 2017.
12. ACTION ITEM -Authorize the General Manager to execute a contract amendment with ICF International for additional environmental planning services related to VTA's BART Silicon Valley Phase II Extension Project in the amount of \$1,750,000, thereby increasing the total agreement value to \$3,750,000 and extending the contract term to July 1, 2018.
13. ACTION ITEM -Authorize the General Manager to execute an Amendment to perform additional Engineering Support for traffic signal and street light design for \$375,000 with the City of San Jose for the Alum Rock/Santa Clara Bus Rapid Transit Project for a new contract amount of \$1,955,000.
14. ACTION ITEM -Adopt a program resolution and Certifications & Assurances for VTA's 2016 Low Carbon Transportation and Operations Program (LCTOP) of projects and augment the FY 2016 VTA Transit Fund Capital Budget by \$4,852,500 for the VTA Zero Emission Bus Pilot project.
15. INFORMATION ITEM -Receive an update on the Joint Development Program.

16. ACTION ITEM -Augment the Joint Development Program Fund Capital Budget by \$3,000,000 for professional services support related to predevelopment, offering of development opportunities, Joint Development Agreement negotiations, and monitoring of development activities.
17. INFORMATION ITEM: Receive update on Closed-circuit television (CCTV) Policy.
18. INFORMATION ITEM -Receive the Monthly Investment Report for December 2015.
19. INFORMATION ITEM -Review the Legislative Update Matrix.

OTHER ITEMS

20. Items of Concern and Referral to Administration.
21. Review Committee Work Plan. (Srinath)
22. Committee Staff Report. (Srinath)
23. Chairperson's Report. (Baker)
24. Determine Consent Agenda for the March 3, 2016 Board of Directors Meeting.
25. ANNOUNCEMENTS
26. ADJOURN

The Consent Agenda items may be voted on in one motion at the beginning of the meeting under Orders of the Day. If you wish to discuss any of the Consent Agenda items, please request that the item be removed from the Consent Agenda under Orders of the Day, Agenda Item #3.

In accordance with the Americans with Disabilities Act (ADA) and Title VI of the Civil Rights Act of 1964, VTA will make reasonable arrangements to ensure meaningful access to its meetings for persons who have disabilities and for persons with limited English proficiency who need translation and interpretation services. Individuals requiring ADA accommodations should notify the Board Secretary's Office at least 48-hours prior to the meeting. Individuals requiring language assistance should notify the Board Secretary's Office at least 72-hours prior to the meeting. The Board Secretary may be contacted at ☎ (408) 321-5680 or ✉ board.secretary@vta.org or ☎ (408) 321-2330 (TTY only). VTA's home page is www.vta.org or visit us on 📘 www.facebook.com/scvta. ☎ (408) 321-2300: 中文 / Español / 日本語 / 한국어 / tiếng Việt / Tagalog.

Disclosure of Campaign Contributions to Board Members (Government Code Section 84308) In accordance with Government Code Section 84308, no VTA Board Member shall accept, solicit, or direct a contribution of more than \$250 from any party, or his or her agent, or from any participant, or his or her agent, while a proceeding involving a license, permit, or other entitlement for use is pending before the agency. Any Board Member who has received a contribution within the preceding 12 months in an amount of more than \$250 from a party or from any agent or participant shall disclose that fact on the record of the proceeding and shall not make, participate in making, or in any way attempt to use his or her official position to influence

the decision. A party to a proceeding before VTA shall disclose on the record of the proceeding any contribution in an amount of more than \$250 made within the preceding 12 months by the party, or his or her agent, to any Board Member. No party, or his or her agent, shall make a contribution of more than \$250 to any Board Member during the proceeding and for three months following the date a final decision is rendered by the agency in the proceeding. The foregoing statements are limited in their entirety by the provisions of Section 84308 and parties are urged to consult with their own legal counsel regarding the requirements of the law.

All reports for items on the open meeting agenda are available for review in the Board Secretary's Office, 3331 North First Street, San Jose, California, (408) 321-5680, the Monday, Tuesday, and Wednesday prior to the meeting. This information is available on VTA's website at <http://www.vta.org> and also at the meeting.

**NOTE: THE BOARD OF DIRECTORS MAY ACCEPT, REJECT OR MODIFY
ANY ACTION RECOMMENDED ON THIS AGENDA.**

ADMINISTRATION & FINANCE COMMITTEE

Thursday, January 21, 2016

MINUTES

CALL TO ORDER

The Regular Meeting of the Administration and Finance Committee (A&F) was called to order at 12:03 p.m. by Chairperson Pro Tem Chavez in Conference Room B-104, VTA River Oaks Campus, 3331 North First Street, San Jose, California.

1. ROLL CALL

Attendee Name	Title	Status
Perry Woodward	Member	Absent
Manh Nguyen	Member	Present
Howard Miller	Alternate Member	Present
Raul Peralez	Alternate Member	N/A
Larry Carr	Alternate Member	Absent
Dave Cortese	Alternate Member	Absent
Jason Baker	Chairperson	Absent
Cindy Chavez	Chairperson Pro Tem	Present

*Alternates do not serve unless participating as a Member.

A quorum was present.

2. PUBLIC PRESENTATIONS

There were no Public Presentations.

3. ORDERS OF THE DAY

Chairperson Pro Tem Chavez noted staff's request to defer **Agenda Item #8**, Contract with the lowest responsive and responsible bidder for the construction of the Downtown San Jose and City Hall Bus Rapid Transit (BRT) Stations Project.

M/S/C (Nguyen/Miller) to accept the Orders of the Day and approve the Consent Agenda.

NOTE: M/S/C MEANS MOTION SECONDED AND CARRIED AND, UNLESS OTHERWISE INDICATED, THE MOTION PASSED UNANIMOUSLY.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Manh Nguyen, Member
SECONDER:	Howard Miller, Alternate Member
AYES:	Chavez, Miller, Nguyen
NOES:	None
ABSENT:	Woodward

4. Committee's Vice Chairperson for Calendar Year 2016

M/S/C (Chavez/Miller) to close nominations and elect Manh Nguyen as the Committee's Vice Chairperson for 2016.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Cindy Chavez, Member
SECONDER:	Howard Miller, Alternate Member
AYES:	Chavez, Miller, Nguyen
NOES:	None
ABSENT:	Woodward

CONSENT AGENDA

5. Meeting Minutes of December 17, 2015

M/S/C (Nguyen/Miller) to approve the Regular Meeting Minutes of December 17, 2015.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Manh Nguyen, Member
SECONDER:	Howard Miller, Alternate Member
AYES:	Chavez, Miller, Nguyen
NOES:	None
ABSENT:	Woodward

REGULAR AGENDA

6. 2016 Administration and Finance (A&F) Committee Meeting Schedule

M/S/C (Nguyen/Miller) to approve the 2016 Administration and Finance (A&F) Committee Meeting Schedule.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Manh Nguyen, Member
SECONDER:	Howard Miller, Alternate Member
AYES:	Chavez, Miller, Nguyen
NOES:	None
ABSENT:	Woodward

7. Closed Circuit Television (CCTV) at Various Locations Phase 7 (Rebid)

Ken Ronsse, Deputy Director, Construction, provided an overview of the staff report.

Members of the Committee and Staff discussed the following: 1) CCTV at VTA facilities, buses, and light rail; 2) data retention time before the data is recorded over; 3) which data is considered a public record and what are the exceptions; 4) how data can be obtained; 5) balance between public safety interest and privacy; 6) public disclaimers/notification about being recorded on video.

Chairperson Pro Tem Chavez requested staff provide a report on the protocol and policy for collecting, retaining, protecting CCTV data.

M/S/C (Nguyen/Miller) to approve submitting a recommendation to the Board of Directors to authorize the General Manager to execute a contract with Ojo Technology, the lowest responsible and responsive bidder, in the amount of \$1,604,882 for the procurement and installation of Closed Circuit Television (CCTV) at Various Locations Phase 7 (Rebid).

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Manh Nguyen, Member
SECONDER:	Howard Miller, Alternate Member
AYES:	Chavez, Miller, Nguyen
NOES:	None
ABSENT:	Woodward

8. (Deferred to February 18, 2016, Administration and Finance Committee (A&F) Meeting)

Contract with the lowest responsive and responsible bidder for the construction of the Downtown San Jose and City Hall Bus Rapid Transit (BRT) Stations Project.

9. VTA BART Silicon Valley Phase II Project's Funding Development and Implementation

Michael Smith, Finance Manager, provided an overview of the staff report.

Members of the Committee and staff discussed the following: 1) rationale for using consultants to perform the work versus in-house staff; and 2) how the requested amount of additional funding was calculated and any additional funding that may be required in the future.

M/S/C (Nguyen/Miller) to approve submitting a recommendation to the Board of Directors to authorize the General Manager to amend contract with Ernst & Young Infrastructure Advisors, LLC to add \$750,000, for a revised not to exceed contract amount of \$1,249,000, for VTA's BART Silicon Valley Phase II Project's funding development and implementation.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Manh Nguyen, Member
SECONDER:	Howard Miller, Alternate Member
AYES:	Chavez, Miller, Nguyen
NOES:	None
ABSENT:	Woodward

10. Annual Swap Report

Mr. Smith provided an overview of the staff report.

Discussion ensued regarding the changing interest rates and payments in the event of early termination.

On Order of Chairperson Pro Tem Chavez and there being no objection, the Committee received the Annual Swap Report.

11. Monthly Investment Report for November 2015

Sean Bill, Investment Program Manager, provided an overview of the staff report.

On Order of Chairperson Pro Tem Chavez and there being no objection, the Committee received the Monthly Investment Report for November 2015.

12. Fixing America's Surface Transportation (FAST) Act

Kurt Evans, Government Affairs Manager, provided an overview of the staff report.

On Order of Chairperson Pro Tem Chavez and there being no objection, the Committee reviewed the Fixing America's Surface Transportation (FAST) Act.

13. Legislative Update Matrix

Mr. Evans provided an overview of the staff report.

On Order of Chairperson Pro Tem Chavez and there being no objection, the Committee reviewed the Legislative Update Matrix.

OTHER ITEMS

14. Items of Concern and Referral to Administration

There were no Items of Concern and Referral to Administration.

15. Committee Work Plan

On order of Chairperson Pro Tem Chavez and there being no objection, the Committee reviewed the Committee Work Plan.

16. Committee Staff Report

There was no Committee Staff Report.

17. Chairperson's Report

There was no Chairperson's Report.

18. Determine Consent Agenda for the February 4, 2016 Board of Directors Meeting

CONSENT:

Agenda Item #7. Authorize the General Manager to execute a contract with Ojo Technology, the lowest responsible and responsive bidder, in the amount of \$1,604,882 for the procurement and installation of Closed Circuit Television (CCTV) at Various Locations Phase 7 (Rebid).

Agenda Item #9. Authorize the General Manager to amend contract with Ernst & Young Infrastructure Advisors, LLC to add \$750,000, for a revised not to exceed contract amount of \$1,249,000, for VTA's BART Silicon Valley Phase II Project's funding development and implementation.

Agenda Item #10. Receive Annual Swap Report.

Agenda Item #11. Receive the Monthly Investment Report for November 2015.

Agenda Item #12. Review Report on the Fixing America's Surface Transportation (FAST) Act.

Agenda Item #13. Review the Legislative Update Matrix.

REGULAR: None

19. Announcements

Chairperson Pro Tem Chavez invited Committee members to attend LUNAFEST, a film festival to raise money for breast cancer research, scheduled for Friday, January 22, 2016, at the San Jose Women's Club. More information will be emailed to the members.

20. Adjournment

On the order of Chairperson Pro Tem Chavez and there being no objection, the meeting was adjourned at 1:09 p.m.

Respectfully submitted,

Mely Taganas, Executive Secretary
VTA Office of the Board Secretary



Date: January 29, 2016
 Current Meeting: February 18, 2016
 Board Meeting: March 3, 2016

BOARD MEMORANDUM

TO: Santa Clara Valley Transportation Authority
 Administration & Finance Committee

THROUGH: General Manager, Nuria I. Fernandez

FROM: Chief Financial Officer, Raj Srinath

SUBJECT: Fiscal Year 2016 Quarterly Statement of Revenues and Expenses for the Period
 Ending December 31, 2015

Policy-Related Action: No

Government Code Section 84308 Applies: No

ACTION ITEM

RECOMMENDATION:

Review and accept the Fiscal Year 2016 Quarterly Statement of Revenues and Expenses for the period ending December 31, 2015

DISCUSSION:

This memorandum provides a brief discussion of significant items and trends on the attached Statement of Revenues and Expenses through December 31, 2015. The schedule has been designed to follow the same company-wide line item rollup as included in the adopted budget. The columns have been designed to provide easy comparison of actual to budget activities for the current fiscal year including year-to-date dollar and percentage variances from budget. The current staff projections of Revenues and Expenses for Fiscal Year 2016 are also included.

The following are highlights of the current Statement of Revenues and Expenses:

Revenues

Fiscal year-to-date Total Revenues (line 14) are below budget estimates by \$1.3M, primarily due to unfavorable variances in Fares (line 1) and State Transit Assistance (STA) (line 5). This negative variance was partially offset by a favorable variance in Sales Tax based accounts, including 1976 Half-Cent Sales Tax (line 2) and Measure A Sales Tax Operating Assistance (line 4).

Fares (line 1) shows a negative variance of \$1.3M. While overall system ridership year-to-date is tracking closely with budgeted ridership, fare revenues are approximately 6.5% lower than budgeted. This seeming inconsistency indicates an increase in the number of riders using pre-paid fare media such as monthly passes, day passes, and Eco-Pass.

STA (line 5) reflects an unfavorable variance of \$1.0M due to the continued reduction in the price of diesel fuel. STA revenues are derived entirely from the sales tax on diesel fuel.

Sales Tax based revenues, including 1976 Half-Cent Sales Tax (line 2), TDA (line 3), and Measure A Sales Tax Operating Assistance (line 4), accounted for a collective surplus of \$0.5M over budget estimates. Based on current projections, there would be no year-end transfer to or from the Sales Tax Stabilization Fund as the Fund is currently at its maximum limit of \$35.0M.

Expenses

Overall, Fiscal year-to-date Total Expenses (line 43) were \$0.3M under budget driven primarily by unfavorable variances in Labor (line 15) and Materials & Supplies (line 16) offset somewhat by savings in Professional & Special Services (line 18) and Fuel (line 20).

Labor (line 15) shows an unfavorable variance of \$0.8M due primarily to the timing of savings related to health insurance premiums anticipated from recently negotiated bargaining unit contracts.

Materials & Supplies (line 16) reflects an unfavorable variance of \$1.7M due primarily to increased preventive maintenance costs on an aging Light Rail Vehicle fleet.

Professional & Special Services (line 18) has a positive variance of \$1.1M due to timing of planned activities.

Fuel (line 20) reflects a favorable variance of \$2.0M due to lower per gallon costs than budgeted. Average diesel price per gallon paid year-to-date through December was \$1.88 versus a budgeted price of \$2.75.

Projections

Current staff projections for the fiscal year reflect a negative Operating Balance (line 44) of \$2.4M. This decrease from the budgeted Operating Balance is due primarily to a lower projection of Fare and STA revenues and higher than budgeted cost of materials & supplies and traction power. These negative impacts are offset somewhat by projected savings in fuel.

SUMMARY:

Through the first six months of the year, revenues were lower than budget projections by \$1.3M while expenses were \$0.3M lower than budget, for an overall negative variance of revenues over expenses (line 44) of \$1.0M. Current staff projections for the fiscal year reflect a negative Operating Balance of \$2.4M. This negative balance would be funded from Operating Reserves.

FISCAL IMPACT:

There is no fiscal impact as a result of this action.

Prepared by: Carol Lawson, Fiscal Resources Manager
Memo No. 5227

ATTACHMENTS:

- FY16 2Q Rev Exp Attachment (PDF)

SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
STATEMENT OF REVENUES AND EXPENSES
Fiscal Year 2016
through December 31, 2015
(Dollars in Thousands)

Line	Category	Fiscal Year-to-Date Actual	Fiscal Year-to-Date Budget	Year-to-Date Variance	% Variance	FY 2016 Current Budget ¹	FY 2016 Projection ²
1	Fares	19,228	20,562	(1,333)	-6.5%	40,618	39,870
2	1976 Half-Cent Sales Tax	107,816	106,697	1,119	1.0%	207,439	207,746
3	TDA	49,276	50,148	(871)	-1.7%	97,496	97,298
4	Measure A Sales Tax-Oper Asst	19,919	19,693	225	1.1%	38,287	38,344
5	STA	6,335	7,383	(1,047)	-14.2%	14,765	13,400
6	Federal Operating Grants	2,027	1,852	175	9.5%	11,704	3,704
7	State Operating Grants	930	1,111	(181)	-16.3%	2,223	1,898
8	Investment Earnings	1,067	713	355	49.8%	1,425	1,425
9	Advertising Income	987	1,058	(70)	-6.6%	2,115	2,115
10	Measure A Repayment Obligation	2,494	2,570	(76)	-3.0%	15,306	15,306
11	Other Income	1,675	1,223	452	36.9%	2,446	2,898
12	Transfer for Capital	(16,800)	(16,800)	0	0.0%	(33,600)	(33,600)
13	Debt Reduction Fund Contribution	9,982	9,982	0	0.0%	19,965	19,965
14	Total Revenues	204,937	206,192	(1,254)	-0.6%	420,189	410,368
15	Labor Costs	155,843	154,999	(844)	-0.5%	310,073	310,073
16	Materials & Supplies	11,406	9,708	(1,698)	-17.5%	19,408	22,408
17	Security	6,011	6,236	225	3.6%	12,473	12,473
18	Professional & Special Services	2,526	3,635	1,110	30.5%	7,616	7,616
19	Other Services	3,603	3,789	186	4.9%	7,693	7,693
20	Fuel	4,326	6,286	1,960	31.2%	12,573	8,291
21	Traction Power	2,396	2,081	(316)	-15.2%	3,819	4,569
22	Tires	985	1,057	73	6.9%	2,114	2,114
23	Utilities	1,468	1,446	(22)	-1.5%	2,895	2,895
24	Insurance	3,035	2,858	(177)	-6.2%	5,716	6,042
25	Data Processing	1,941	2,264	323	14.3%	4,779	4,779
26	Office Expense	206	184	(22)	-12.2%	426	426
27	Communications	787	659	(128)	-19.4%	1,606	1,606
28	Employee Related Expense	301	518	217	42.0%	1,031	1,031
29	Leases & Rents	472	294	(178)	-60.6%	776	776
30	Miscellaneous	478	503	26	5.1%	859	859
31	Reimbursements	(18,310)	(19,419)	(1,109)	5.7%	(38,838)	(38,838)
32	Subtotal Operating Expense	177,474	177,099	(375)	-0.2%	355,018	354,812
33	Paratransit	9,586	9,909	322	3.3%	19,817	19,817
34	Caltrain	4,207	4,195	(12)	-0.3%	8,390	8,390
35	Altamont Commuter Express	2,395	2,512	116	4.6%	5,023	5,023
36	Highway 17 Express	155	183	28	15.4%	366	366
37	Monterey-San Jose Express Service	18	18	(0)	0.0%	35	35
38	Contribution to Other Agencies	378	483	105	21.8%	8,817	817
39	Debt Service	3,601	3,691	90	2.4%	21,668	21,668
40	Subtotal Other Expense	20,340	20,990	650	3.1%	64,116	56,116
41	Operating & Other Expenses	197,814	198,090	275	0.1%	419,134	410,927
42	Contingency	0	0	0	N/A	1,845	1,845
43	Total Expenses	197,814	198,090	275	0.1%	420,979	412,772
44	Operating Balance	7,123	8,102	(979)		(790)	(2,404)

Note: Totals and percentages may not be precise due to independent rounding.

¹ Reflects Adopted Budget approved by the Board on June 4, 2015 and \$1.4M augmentation approved by the Board on October 1, 2015

² Reflects current staff projection as of January 21, 2016

**SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
SOURCES AND USES OF FUNDS SUMMARY**

**Fiscal Year 2016
through December 31, 2015
(Dollar in Thousands)**

<u>Line</u>	<u>Description</u>	<u>FY16 Adopted Budget¹</u>	<u>FY16 Current Budget²</u>	<u>FY16 Projected Actual³</u>
<u>Operating Balance</u>				
1	Total Operating Revenues	420,189	420,189	410,368
2	Total Operating Expenses	(419,579)	(420,979)	(412,772)
3	Operating Balance	610	(790)	(2,404)
<u>Operating Balance Transfers</u>				
4	Operating Balance	610	(790)	(2,404)
5	Transfer From/(To) Sales Tax Stabilization Fund	0	0	0
6	Transfer From/(To) Operating Reserve	(610)	790	2,404
7	Transfer to Debt Reduction Fund for Future Capital	0	0	0
<u>Operating Reserve</u>				
8	Beginning Operating Reserve	62,937	62,937	62,937
9	Transfer From/(To) Operating Balance	610	(790)	(2,404)
10	Ending Operating Reserves	63,547	62,147	60,533
11	Operating Reserve % ⁴	15.0%	14.7%	14.3%

Note: Totals may not be precise due to independent rounding.

¹ Adopted Budget approved by the Board on June 4, 2015

² Reflects \$1.4M augmentation approved by the Board on October 1, 2015

³ Staff Projection as of January 21, 2016

⁴ Line 18 divided by Budgeted Operating Expenses



Date: February 11, 2016
 Current Meeting: February 18, 2016
 Board Meeting: March 3, 2016

BOARD MEMORANDUM

TO: Santa Clara Valley Transportation Authority
 Administration & Finance Committee

THROUGH: General Manager, Nuria I. Fernandez

FROM: Director of Planning and Program Development, John Ristow

SUBJECT: PDA Planning Projects - Consultant Contract Award

Policy-Related Action: Yes

Government Code Section 84308 Applies: Yes

ACTION ITEM

RECOMMENDATION:

Authorize the General Manager to execute a contract with Community Design + Architecture in an amount not to exceed \$1,014,809. This contract will provide professional consulting and planning services to implement the cities of Mountain View, Morgan Hill and Campbell's Priority Development Area (PDA) planning projects.

BACKGROUND:

On August 7, 2014, the VTA Board of Directors programmed \$899,000 in Surface Transportation Program (STP) funds from the Priority Development Area (PDA) Planning program to projects submitted by the cities of Campbell, Morgan Hill and Mountain View. The grant is being matched by up to \$115,809 in local funds from the three cities. Each city has signed a funding agreement with VTA to commit their required local match. Since separately each of the projects would have received less than \$500,000 in Federal funds, VTA consolidated them for obligation and contracting purposes, relieving the cities of the need to go through the lengthy and somewhat complicated Caltrans Federal Aid processes associated with these activities.

DISCUSSION:

VTA issued a Request for Proposals (RFP) to engage a professional consulting and planning firm to provide comprehensive, professional, high-quality services to the cities to deliver the PDA Planning projects authorized by the VTA Board. VTA sought proposals from consulting and planning firms with experience in land use, development and transportation planning.

Responses to the Request for Proposals were received from:

- Community Design + Architecture (CD+A)
- Dyett and Bhatia
- Page/BMS Design
- Placeworks

All proposals were considered and reviewed by a panel consisting of a Principal Planner from VTA's Programming Unit, two Senior Planners from VTA's Congestion Management Planning Unit, and one professional and knowledgeable staff person each from the cities of Mountain View, Morgan Hill and Campbell. Each consultant's proposal was evaluated based on the following criteria:

- Technical expertise in the past projects, working previously with public agencies, and experience and strength of their sub consultants.
- Proposer' demonstrated ability to understand the project requirements, their approach to address possible challenges, and identification of a strong work plan.
- Technical expertise and staff, including an experienced Project Manager, and licensed personnel necessary to complete the required scope of work.

RFP panel members reviewed and evaluated the written proposals and invited three firms to present their proposals. Interviews were conducted December 15, 2015 and proposals were evaluated based on the scope of work and the firms' abilities to provide the following services to the cities for their PDA Planning Projects.

Community Design + Architecture (CD+A) demonstrated a superior understanding of the project scope and presented a highly qualified team that will perform the requested PDA Planning services. Community Design + Architecture's planning experience is good and the firm demonstrated a solid understanding of how to implement a PDA planning project. The assigned Project Manager understands the roles and responsibilities of the project team members including City and VTA staff. Their proposed hours and costs were appropriate and reasonable. The RFP review panel deemed this firm highly qualified in every criterion and the best candidate for this work. Staff recommends awarding this contract to Community Design + Architecture. Refer to Attachment A for government code Section 84308 for additional company information.

ALTERNATIVES:

The Board of Directors could reject this bidder and require staff to repeat the RFP process. This would result in significant project delay. The Board could choose not to enter into a contract for these services. Staff strongly recommends against either alternatives because of the specialized expertise required and probable loss of the grant funds if the contract is not awarded this month.

FISCAL IMPACT:

This action will authorize up to \$1,014,809 for professional consulting and planning services for Priority Development Area (PDA) Planning. Appropriation for these expenditures is included in the FY16 Adopted VTP Highway Improvement Program Fund Capital Budget. The contract will be funded by the Federal Surface Transportation Program (STP).

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION:

Based on identifiable subcontracting opportunities, a Disadvantaged Business Enterprise (DBE) goal of 5% has been established by the Office of Small and Disadvantaged Businesses for this contract. The consultant met the goal and has committed to 5% DBE participation on this contract.

Prepared by: Marcella Rensi
Memo No. 5368

ATTACHMENTS:

- RES 5368_Attach A_Government Section Code 84308 (PDF)

Attachment A

Agreements with Community Design + Architecture (CD+A) for
Priority Development Area (PDA) Planning Grant Projects

List of Contractor

Firm Name	Name	Role	Location
Community Design + Architecture	Philip Erickson Timothy Rood	President Principal	350 Frank Ogawa Plaza, 5th Floor Oakland, CA 94612



Date: February 9, 2016
 Current Meeting: February 18, 2016
 Board Meeting: March 3, 2016

BOARD MEMORANDUM

TO: Santa Clara Valley Transportation Authority
 Administration & Finance Committee

THROUGH: General Manager, Nuria I. Fernandez

FROM: Director of Government Affairs, Jim Lawson

SUBJECT: Bill Position: AB 1595 (Campos)

Policy-Related Action: Yes

Government Code Section 84308 Applies: No

ACTION ITEM

RECOMMENDATION:

Adopt a support position for AB 1595 (Campos), which requires a private or public employer providing mass transportation services in California to train its employees on how to recognize signs of human trafficking and report them to the appropriate law enforcement agencies.

BACKGROUND:

Early in 2015, VTA was approached by the Santa Clara County Human Trafficking Commission's Business Outreach Group regarding participating in an employer training effort geared toward creating employee awareness of human trafficking and providing workers with the skills to help them identify suspicious behavior. VTA Board of Directors Chairperson Cindy Chavez and General Manager/CEO Nuria Fernandez, both members of the county Human Trafficking Commission, recognized the important role that front-line VTA employees could play in preventing human trafficking, and supported establishing a focus group to review materials prepared by the county for VTA employees and then using those materials for training purposes. In addition, VTA took the lead in reaching out to regional public transit agencies that provide service in Santa Clara County and collaborating with them to further this training effort.

VTA's training program consisted of an extensive roll-out according to a very aggressive schedule to front-line employees, including bus and rail operators, maintenance workers, and other field personnel who would be most likely to observe suspicious human trafficking activity. The schedule consisted of multiple sessions per day conducted at each of VTA's Operating Divisions. The sessions included an overview by the South Bay Coalition to End Human Trafficking and an educational video concerning the signs of human trafficking. The video was put together by the Santa Clara County Office of Women's Policy, in collaboration with VTA

and the county Human Trafficking Commission. Over the course of four days, the awareness training and video were presented to more than 700 VTA employees.

Following this initial roll-out, VTA incorporated the training and video into the orientation process for new employees. To date, a total of 1,000 VTA employees have received the training. In addition, VTA worked with the Santa Clara County Sheriff's Office to develop a protocol for front-line employees to follow when they observe and report suspected human trafficking activity.

DISCUSSION:

VTA's human trafficking training program provided the inspiration for Assemblymember Nora Campos (D-San Jose) to introduce AB 1595. This bill requires private and public employers that provide mass transportation services, excluding taxi services and air travel, to train their employees who are likely to interact or come in contact with victims of human trafficking in the following: (1) recognizing the signs of human trafficking; and (2) reporting those signs to the appropriate law enforcement agency.

Human trafficking affects more than 20.9 million people worldwide. California is considered to be one of the top four destinations in the United States for human trafficking. In California, 72 percent of human trafficking victims, who are overwhelmingly women and children, are United States citizens. However, there is a lack of awareness with regard to human trafficking, such as who is at risk, how to identify the signs, and how to report those signs to law enforcement authorities. Often, the signs of human trafficking are in plain sight. This was recognized early on by the airline industry and, as a result, airports across the country are implementing training sessions for their employees. AB 1595 seeks to expand this practice to ground transportation because front-line employees of private and public mass transportation providers, given the nature of their work, may come in contact with suspicious activity, and could be instrumental in reporting and, thus, helping to combat incidents of human trafficking that are occurring in California.

Because VTA has been at the forefront of the public transportation industry in providing human trafficking training, Assemblymember Campos is asking that VTA consider supporting AB 1595. We recommend that the Board of Directors formally take this action.

ALTERNATIVES:

The Board of Directors could decide to adopt a position for AB 1595 that is different from the one being recommended, or could opt to take no position on this bill at this time.

FISCAL IMPACT:

There is no fiscal impact associated with this recommendation.

Prepared by: Kurt Evans
Memo No. 5461



Date: January 28, 2016
Current Meeting: February 18, 2016
Board Meeting: N/A

BOARD MEMORANDUM

TO: Santa Clara Valley Transportation Authority
Administration & Finance Committee

THROUGH: General Manager, Nuria I. Fernandez

FROM: Director of Business Services, Alberto Lara

SUBJECT: Quarterly Purchasing Report October 1 through December 31, 2015

FOR INFORMATION ONLY

BACKGROUND:

The Administrative Code delegates limited contracting authority to the General Manager. This report summarizes the procurements completed, excluding purchases made under \$25,000 and those previously approved by the Board of Directors.

Prepared By: Craig Temple, Interim Manager of Procurement, Contracts & Materials
Memo No. 5399

QUARTERLY PURCHASING REPORT

October 1, 2015 through December 31, 2015

PURCHASES GREATER THAN \$25,000

Not previously approved by the VTA Board of Directors**CONTRACTS AND PURCHASE ORDERS:**

These contracts were awarded using a formal Procurement process, and the awards were made to the lowest responsive, responsible contractor

PROCUREMENT	CONTRACTOR	CONTRACT AMOUNT	
Bus Front Axle Replacement Parts	New Flyer Industries	\$186,399	5 Yrs
Bus Front Axle Replacement Parts	Gillig	\$33,745	5 Yrs
Bus Front Axle Replacement Parts	Mohawk	\$65,382	5 Yrs
Bus Cooling Parts	Dukane Radiator	\$672,875	5 Yrs
Bus Cooling Parts	Cummins Pacific	\$30,401	5 Yrs
Bus Cooling Parts	New Flyer Industries	\$487,667	5 Yrs
Bus Cooling Parts	Gillig, LLC	\$183,678	5 Yrs
Bus Cooling Parts	Muncie Transit Supply	\$123,433	5 Yrs
Paint Wearables	NBC Supply	\$104,528	5 Yrs
F&G Bearings	Motion Industries	\$103,586	1 Yr
F&G Bearings	Voith	\$65,605	1 Yr
Symantec Netbackup Upgrade (Veritas)	CompuCom	\$172,002	1 Yr
Gaskets	Schunk Graphite Technology LLC	\$214,905	1 time buy
Module Processor	Santa Clara Systems	\$46,327	1 time buy
Radio System Upgrade APX7000	Motorola Solutions	\$26,649	1 time buy
Cardboard Compactor Preventative Maintenance	Logistics, Engineering, & Design Inc.	\$39,125	5 Yrs
Office Supply Interim Contract	Office Depot	\$105,000	6 Mos.
Light Rail Signs Remote Hardware	Envigilant Systems	\$195,240	1 Yr
Fuel Pump ISL	Cummins Pacific	\$65,814	1 time buy
Bill Acceptor Module Repair	Team One	\$99,960	1 time buy
Radiator	Pankey's Radiator	\$29,220	1 time buy
Diesel Exhaust Fluid	Mansfield Oil	\$327,477	5 Yrs
PC Board	Knorr Brake Company	\$39,713	1 time buy
Recaro Seat Parts	Gillig, LLC	\$158,499	5 Yrs
Welder Generator Diesel Engine	Air Gas USA	\$31,011	1 time buy
LED Retrofit	EveryWatt Matters	\$25,958	1 time buy
Block Rubber	Penn Machine	\$26,048	1 time buy
PIU Agate Elec. Circuit	Alstom Transportation	\$25,238	1 time buy

PO TOTAL: \$3,685,484

SERVICES PURCHASED:

The following are Service Procurements That Were Processed During the Quarter:

SERVICES PURCHASED	SERVICES PROVIDED	ESTIMATED VALUE
Delta Consulting Group	Contract #C830 Accounting Analysis	\$35,000
PRx Digital	SCAR BRT Community Outreach	\$155,075
Kimley Horn and Associates	Santa Clara I-280 Corridor Study	\$498,817
Apex Strategies	Facilitate SR-85 Policy Board Meetings	<u>\$28,725</u>
	SERVICES PURCHASED TOTAL:	\$717,617

CONSTRUCTION:

These contracts were awarded using a formal Invitation For Bid process, and the awards were made to the lowest responsive, responsible bidder.

PROJECT	CONTRACTOR	CONTRACT AMOUNT
Clipper Fare Devices Installation - Phase 2	Itech Solution	\$57,000
Replace Two HVAC Units at North Division	Emcor Services/ Mesa Energy Systems	\$241,843
Bus Stop Pavement Improvements FY14	JJR Construction	\$233,877
Rebid Non-Fuel Dispensing Equipment		
Maintenance and Repair	Central Equipment Services	<u>\$935,493</u>
	CONSTRUCTION TOTAL:	\$1,468,213

CONSTRUCTION CONTRACTOR PRE-QUALIFICATION ACTIVITY:

Project	No. Primes	No. Denials	No. Appeals
CCTV at Various Locations - Phase 7 (Rebid)	13	0	0
Alum Rock Avenue Roadway, Busway and Station Improvements	15	0	0



Date: February 11, 2016
 Current Meeting: February 18, 2016
 Board Meeting: March 3, 2016

BOARD MEMORANDUM

TO: Santa Clara Valley Transportation Authority
 Administration & Finance Committee

THROUGH: General Manager, Nuria I. Fernandez

FROM: Director of Business Services, Alberto Lara

SUBJECT: Selection of ICMA Retirement Corporation as VTA's 457 Deferred Compensation Plan and 401(a) Money Purchase Plan Provider

Policy-Related Action: Yes

Government Code Section 84308 Applies: Yes

Resolution

ACTION ITEM

RECOMMENDATION:

- 1) Confirm the Deferred Compensation Committee's selection of International City Management Association - Retirement Corporation (ICMA-RC) as VTA's 457 Deferred Compensation Plan and 401(a) Money Purchase Plan Provider; and
- 2) Adopt the 457 Deferred Compensation Plan Committee Charter.

BACKGROUND:

VTA maintains tax deferred savings plans for employees in the form of an IRS 457 Deferred Compensation Plan and 401(a) Money Purchase Plans. VTA's 457 Deferred Compensation Plan is available to all employees. Employee contributions to this plan are made on a pre-tax and/or post-tax (Roth) basis. In addition, VTA makes pre-tax contributions to the 457 Plan on behalf of the General Manager and General Counsel, pursuant to their employment contracts.

The 401(a) Money Purchase Plan is available to all American Federation of State, County and Municipal Employees (AFSCME) and Non-Represented employees, and a separate 401(a) Plan provides for an employer contribution for the General Manager, pursuant to her employment contract.

VTA entered into its existing Contract with ICMA-RC for provider services for its 457 Deferred Compensation Plan and 401(a) Money Purchase Plans on July 1, 2009 following the Request for

Proposal process. The Contract with ICMA-RC was extended in June 2014 for an additional two years. The contract expires on June 30, 2016.

DISCUSSION:

Selection of ICMA Retirement Corporation

In April 2015, VTA retained the services of Hyas Group to assist VTA's Deferred Compensation Committee with a Request for Proposals (RFP) for provider services to be effective July 1, 2016. The RFP was issued in July 2015. The Deferred Compensation Committee facilitates the administration of the 457 Plan.

Nine providers submitted proposals in response to the RFP. A selection committee including representatives from the Deferred Compensation Committee, Retirement Services, Contracts Administration staff, and Hyas Group reviewed the nine proposals. The RFP evaluation criteria included the following:

- Firm strength, experience and qualifications;
- Recordkeeping, custody and systems technology;
- Participant education, communication, counseling and investment advice services;
- Plan sponsor services;
- Investment flexibility;
- Transition services; and
- Fee structure.

Based on an evaluation of the above factors, the selection committee shortlisted three finalists - ICMA-RC, Nationwide and TIAA-CREF, who were invited to participate in finalist interviews. ICMA-RC was ultimately recommended.

At its November 24, 2015 meeting, VTA's Deferred Compensation Committee unanimously approved this selection.

Continued use of ICMA-RC's 457 and 401(a) Plan Documents

Prior to 2009, VTA maintained its own customized 457 and 401(a) plan documents. However, in 2009, based on a legal review by VTA's General Counsel's Office, it was recommended that ICMA-RC's model plan documents be used as opposed to VTA's customized plan documents to ensure that the VTA plans are in compliance with changing tax laws and regulations. Subsequently, the VTA Board of Directors adopted the model plan documents provided by ICMA-RC and authorized staff to amend the VTA plans whenever ICMA-RC amended its model plan documents. In accordance with the Resolution adopted in 2009, should the VTA Board of Directors accept the recommendation of ICMA-RC as the provider for VTA's 457 and 401(a) plans. VTA will continue to utilize ICMA-RC's model plan documents.

457 Deferred Compensation Plan Committee Charter

When VTA entered into contract with ICMA-RC in 1998, the VTA Board of Directors

authorized the Deferred Compensation Committee to facilitate the administration of the 457 Plan on behalf of participants provided that they were not inconsistent with the provisions of the Plan. In 2009, when the VTA Board of Directors adopted the model plan documents provided by ICMA-RC, the model plan documents were silent on the role and responsibilities of the Deferred Compensation Committee.

In order to ensure that the Deferred Compensation Committee's role related to the 457 Plan is clearly defined, the adoption of the 457 Deferred Compensation Plan Committee Charter is being requested. The Charter will ensure that the Deferred Compensation Committee's role and responsibilities to facilitate the administration of the Plan will remain in effect notwithstanding changes to the 457 Deferred Compensation Plan provider.

ALTERNATIVES:

As for the selection of the plan provider, the Board could recommend that ICMA-RC not be selected as the provider for these services, that one of the other two finalists be considered, or that a new RFP process be conducted.

As for the Charter, the Board could choose not to adopt the 457 Deferred Compensation Plan Committee Charter which will require all necessary changes, including routine administrative actions, to be approved by the Board, and may result in delays of items requiring immediate or urgent action.

FISCAL IMPACT:

There is no fiscal impact to VTA, as ICMA-RC administration fees are paid by participants.

Prepared by: Jeffrey Ballou
Memo No. 5426

SANTA CLARA VALLEY TRANSPORTATION AUTHORITY

457 DEFERRED COMPENSATION PLAN

COMMITTEE CHARTER

I. INTRODUCTION

This Charter sets forth the rights, powers, responsibilities, and obligations of the Deferred Compensation Plan Committee (the “Committee”) for the Santa Clara Valley Transportation Authority (“VTA”) 457 Deferred Compensation Plan (the “Plan”). The Committee is charged under this Charter with carrying out its duties and advising the Named Fiduciary for the Plan (which may be the Administrator or the Board) as originally established pursuant to authorization contained in Board Resolution _____ and applicable provisions of the respective plan document.

II. MEMBERSHIP OF THE COMMITTEE

The Committee consists of:

- (a) One (1) member from each bargaining unit as selected by the respective unit; and
- (b) A number of members appointed by the General Manager equal to the number of members selected by the respective bargaining units.

At the Committee’s discretion, the Committee may appoint one (1) retiree as a Committee Member.

Members shall serve continuously until resignation or replacement by their representative appointing authorities, while vacancies shall be filled by their original appointing authority. Members shall serve without compensation. All reasonable out-of-pocket expenses of the Committee shall be paid out of the Administrative Allowance Account in accordance with VTA’s standard reimbursement policies.

III. BY-LAWS

The Committee shall adopt by-laws and have the authority to alter, amend or revoke the by-laws as necessary, provided that they are not inconsistent with the Plan or this Charter.

IV. COMMITTEE ACTION

The Committee shall meet monthly to review Plan performance and to review the Plan's investment options offered in accordance with the Plan's Investment Policy. The Committee will also make changes to the investment offerings as provided under the Investment Policy and as warranted. With respect to any matter brought to the Committee for a vote, each voting member shall be entitled to one vote. The Committee shall act by a majority of its members and such action may be taken either by a vote at a meeting with a majority present physically or through teleconferencing in accordance with California Open Meeting Law. The Chairperson is authorized to execute documents on behalf of the Committee.

V. RIGHTS AND DUTIES

The Committee shall act with the authority and discretion to facilitate the operation and administration of the Plan. The responsibility and authority of the Committee shall include, but shall not be limited to, the following:

- A. To modify, amend or alter the provisions of the Plan in whole or in part to remain compliant with Internal Revenue Code Section 457 and regulations thereunder.
- B. To make determinations regarding the acceptance or rejection of optional provisions that may become available and to instruct staff to make such changes.
- C. To determine the investment options offered to participants of the Plan pursuant to Section VIII Plan Investments.
- D. To authorize disbursements from and transfer of Plan assets.
- E. To interpret the provisions of the Plan and publication of such rules and regulations that are deemed necessary and not inconsistent with the terms hereof or of the Plan.
- F. To recommend to the Board of Directors, subject to current contracting authority, all service providers necessary or desirable for the administration of the Plan including a consultant, record keeper(s), third-party administrator(s), trustee(s), custodian(s), insurance company(ies), regulated investment company(ies) and/or other such service provider(s) as shall be necessary or appropriate for the administration and operation of the Plan.
- G. To review the performance of all service providers engaged in the administration of the Plan.
- H. To disseminate Plan benefit information to all current and prospective Plan participants and inform all eligible VTA employees of the benefits by the Plan.

VI. ALLOCATION AND DELEGATION OF RESPONSIBILITY

The Committee may, by written rule or by its minutes, allocate responsibilities among Committee members and may delegate to persons other than Committee members the authority

to carry out responsibilities under the Plan. In the event that a responsibility is allocated to a Committee member, no other Committee member shall be liable for any act or omission of that person except as may otherwise be required by law. If a responsibility is delegated to a person other than a Committee member, the Committee shall not be responsible or liable for any act or omission of such person in carrying out such responsibility except as may otherwise be required by law.

VII. INDEMNIFICATION

VTa shall indemnify and defend individual Committee members pursuant to Government Code Section 825 and 995.

VIII. PLAN INVESTMENTS

The Committee shall have the following responsibilities related to Plan investments:

- A. Selecting the investment design feature of the Plan. This includes establishing:
 - 1. The Investment Policy and objectives,
 - 2. The number and types of investment alternatives available to Plan participants, and
 - 3. Participant investment procedures;
- B. Appointing, monitoring, and evaluating all investment fund options in accordance with guidelines and benchmarks established within this document and consistent with applicable laws;
- C. Monitoring Plan costs which are charged to Plan assets and/or paid by Plan participants, including, but not limited to, investment management fees, trustee fees and fees paid to other Plan service providers;
- D. Providing general investment information to Plan participants regarding the procedures for making investment choices under the Plan and general investment information regarding each of the investment options offered under the Plan; and
- E. Ensuring the service providers to the Plan are providing education to Plan participants.

IX. STANDARD OF CARE

The Committee shall discharge its duties with respect to the Plan in such a manner as to comply with applicable law and regulations including Internal Revenue Code Section 457 and regulations thereunder. Generally, all assets and income of the Plan shall be held in trust for the exclusive benefit of participants and their beneficiaries.

X. PLAN DOCUMENTS

The Plan shall be governed by and administered under one or more plan documents and trust agreements. These Plan documents and trust agreements, together with any other formal documents maintained for the operation and administration of the Plan, shall be on file in the permanent records of VTA and shall be available for inspection by Plan participants during business hours.

XI. ADMENDMENT

The Charter may be amended by a majority vote of VTA's Board of Directors at any of its regular meetings.

RESOLUTION NO. _____**RESOLUTION OF THE BOARD OF DIRECTORS OF SANTA CLARA VALLEY
TRANSPORTATION AUTHORITY ADOPTING THE 457 DEFERRED
COMPENSATION PLAN COMMITTEE CHARTER**

WHEREAS, the Santa Clara Valley Transportation Authority (“VTA”) maintains a governmental deferred compensation plan qualified under Section 457 of the Internal Revenue Code (“the 457 Plan”) for the benefit of VTA’s eligible employees; and

WHEREAS, in 1998 the VTA Board of Directors adopted a customized 457 plan document, which included the establishment of a Deferred Compensation Committee to facilitate the administration of the 457 Plan on behalf of the 457 Plan participants; and

WHEREAS, in 2009 the VTA Board of Directors selected ICMA Retirement Corporation (“ICMA-RC”) as the provider of the 457 Plan and adopted the model plan documents provided by ICMA-RC; and

WHEREAS, the 2009 model plan documents replaced VTA’s customized 457 plan documents to ensure that the 457 Plan would remain in compliance with changing tax laws and regulations; and

WHEREAS, the 2009 model plan documents were silent as to composition and responsibilities of the Deferred Compensation Committee; and

WHEREAS, the VTA Board of Directors intend to have the Deferred Compensation Committee continue to facilitate the administration of the 457 Plan; and

WHEREAS, the Deferred Compensation Committee has now developed a proposed 457 Deferred Compensation Plan Committee Charter to establish the composition of the Committee and its responsibilities;

NOW, THEREFORE, BE IT RESOLVED by the VTA Board of Directors that the attached 457 Deferred Compensation Plan Committee Charter is hereby adopted by the Board.

BE IT FURTHER RESOLVED that the Charter will remain in effect notwithstanding changes to the 457 Deferred Compensation Plan provider.

PASSED AND ADOPTED by the Santa Clara Valley Transportation Authority Board of Directors this 3rd day of March, 2016, by the following votes:

AYES: DIRECTORS

NOES: DIRECTORS

ABSENT: DIRECTORS

Cindy Chavez, Chairperson
Board of Directors

ATTEST:

Elaine Baltao, Board Secretary

APPROVED AS TO FORM:

Robert Fabela
General Counsel

457 Governmental Deferred Compensation Plan & Trust



DEFERRED COMPENSATION PLAN AND TRUST

As Amended and Restated Effective January 1, 2006

Article I. Purpose

The Employer hereby establishes and maintains the Employer's Deferred Compensation Plan and Trust, hereafter referred to as the "Plan." The Plan consists of the provisions set forth in this document.

The primary purpose of this Plan is to provide retirement income and other deferred benefits to the Employees of the Employer and the Employees' Beneficiaries in accordance with the provisions of Section 457 of the Internal Revenue Code of 1986, as amended (the "Code").

This Plan shall be an agreement solely between the Employer and participating Employees. The Plan and Trust forming a part hereof are established and shall be maintained for the exclusive benefit of Participants and their Beneficiaries. No part of the corpus or income of the Trust shall revert to the Employer or be used for or diverted to purposes other than the exclusive benefit of Participants and their Beneficiaries.

Article II. Definitions

- 2.01 Account.** The bookkeeping account maintained for each Participant reflecting the cumulative amount of the Participant's Deferred Compensation, including any income, gains, losses, or increases or decreases in market value attributable to the Employer's investment of the Participant's Deferred Compensation, and further reflecting any distributions to the Participant or the Participant's Beneficiary and any fees or expenses charged against such Participant's Deferred Compensation.
- 2.02 Accounting Date.** Each business day that the New York Stock Exchange is open for trading, as provided in Section 6.06 for valuing the Trust's assets.
- 2.03 Administrator.** The person or persons named in writing to carry out certain nondiscretionary administrative functions under the Plan, as hereinafter described. The Employer may remove any person as Administrator upon 75 days' advance notice in writing to such person, in which case the Employer shall name another person or persons to act as Administrator. The Administrator may resign upon 75 days' advance notice in writing to the Employer, in which case the Employer shall name another person or persons to act as Administrator.
- 2.04 Automatic Distribution Date.** April 1 of the calendar year after the Plan Year the Participant attains age 70½ or, if later, has a Severance Event.
- 2.05 Beneficiary.** The person or persons designated by the Participant in his or her Joinder Agreement who shall receive any benefits payable hereunder in the event of the Participant's death. In the event that the Participant names two or more Beneficiaries, each Beneficiary shall be entitled to equal shares of the benefits payable at the Participant's death, unless otherwise provided in the Participant's Joinder Agreement. If no beneficiary is designated in the Joinder Agreement, if the Designated Beneficiary predeceases the Participant, or if the designated Beneficiary does not survive the Participant for a period of fifteen (15) days, then the estate of the Participant shall be the Beneficiary. If a married Participant resides in a community or marital property state, the Participant shall be responsible for obtaining appropriate consent of his or her spouse in the event the Participant designates someone other than his or her spouse as Beneficiary. The preceding sentence shall not apply with respect to a Deemed IRA under Article IX.
- 2.06 Deemed IRA.** A separate account or annuity established under the Plan that complies with the requirements of Section 408(q) of the Code, the Income Tax Regulations thereunder, and any other IRS guidance.

- 2.07 Deferred Compensation.** The amount of Includible Compensation otherwise payable to the Participant which the Participant and the Employer mutually agree to defer hereunder, any amount credited to a Participant's Account by reason of a transfer under Section 6.09 or 6.10, a rollover under Section 6.11, or any other amount which the Employer agrees to credit to a Participant's Account.
- 2.08 Dollar Limitation.** The applicable dollar amount within the meaning of Section 457(b)(2)(A) of the Code, as adjusted for the cost-of-living in accordance with Section 457(e)(15) of the Code.
- 2.09 Employee.** Any individual who provides services for the Employer, whether as an employee of the Employer or as an independent contractor, and who has been designated by the Employer as eligible to participate in the Plan.
- 2.10 Employer.** _____, which is a political subdivision, agency or instrumentality of the [State/Commonwealth] of _____, described in Section 457(e)(1)(A) of the Code.
- 2.11 457 Catch-Up Dollar Limitation.** Twice the Dollar Limitation.
- 2.12 Includible Compensation.** Includible Compensation of a Participant means "compensation," as defined in Section 415(c)(3) of the Code, for services performed for the Employer. Includible Compensation shall be determined without regard to any community property laws. For purposes of a Participant's Joinder Agreement only and not for purposes of the limitations in Article V, Includible Compensation shall include pre-tax contributions (excluding direct employer contributions) to an integral part trust of the employer providing retiree health care benefits.
- 2.13 Joinder Agreement.** An agreement entered into between an Employee and the Employer, including any amendments or modifications thereof. Such agreement shall fix the amount of Deferred Compensation, specify a preference among the investment alternatives designated by the Employer, designate the Employee's Beneficiary or Beneficiaries, and incorporate the terms, conditions, and provisions of the Plan by reference.
- 2.14 Normal Limitation.** The maximum amount of Deferred Compensation for any Participant for any taxable year (other than amounts referred to in Sections 6.09, 6.10, and 6.11).
- 2.15 Normal Retirement Age.** Age 70½, unless the Participant has elected an alternate Normal Retirement Age by written instrument delivered to the Administrator prior to a Severance Event. A Participant's Normal Retirement Age determines the period during which a Participant may utilize the 457 Catch-Up Dollar Limitation of Section 5.02(b) hereunder. Once a Participant has to any extent utilized the catch-up limitation of Section 5.02(b), his Normal Retirement Age may not be changed.

A Participant's alternate Normal Retirement Age may not be earlier than the earliest date that the Participant will become eligible to retire and receive immediate, unreduced retirement benefits under the Employer's basic defined benefit retirement plan covering the Participant (or a money purchase pension plan in which the Participant also participates if the Participant is not eligible to participate in a defined benefit plan), and may not be later than the date the Participant will attain age 70½. If the Participant will not become eligible to receive benefits under a basic defined benefit retirement plan (or money purchase pension plan, if applicable) maintained by the Employer, the Participant's alternate Normal Retirement Age may not be earlier than 65 and may not be later than age 70½. In no event may a Participant's normal retirement age be different than the normal retirement age under the Employer's other 457(b) plans, if any.

In the event the Plan has Participants that include qualified police or firefighters (as defined under Section 415(b)(2)(H)(ii)(I) of the Code), a normal retirement age may be designated for such qualified police or firefighters that is not earlier than age 40 or later than age 70½. Alternatively, qualified police or firefighters may be permitted to designate a normal retirement age that is between age 40 and age 70½.

- 2.16 Participant.** Any Employee who has joined the Plan pursuant to the requirements of Article IV. For purposes of section 6.11 of the Plan, the term Participant includes an employee or former Employee of the Employer who has not yet received all of the payments of benefits to which he/she is entitled under the Plan.
- 2.17 Percentage Limitation.** 100 percent of the participant's Includible Compensation available to be contributed as Deferred Compensation for the taxable year.
- 2.18 Plan Year.** The calendar year.
- 2.19 Retirement.** The first date upon which both of the following shall have occurred with respect to a participant: Severance Event and attainment of age 65.
- 2.20 Severance Event.** A severance of the Participant's employment with the Employer within the meaning of Section 457(d)(1)(A)(ii) of the Code.

In general, a Participant shall be deemed to have experienced a Severance Event for purposes of this Plan when, in accordance with the established practices of the Employer, the employment relationship is considered to have actually terminated. In the case of a Participant who is an independent contractor of the Employer, a Severance Event shall be deemed to have occurred when the Participant's contract under which services are performed has completely expired and terminated, there is no foreseeable possibility that the Employer will renew the contract or enter into a new contract for the Participant's services, and it is not anticipated that the Participant will become an Employee of the Employer, or such other events as may be permitted under the Code.

- 2.21 Trust.** The Trust created under Article VI of the Plan which shall consist of all compensation deferred under the Plan, plus any income and gains thereon, less any losses, expenses and distributions to Participants and Beneficiaries.

Article III. Administration

- 3.01 Duties of the Employer.** The Employer shall have the authority to make all discretionary decisions affecting the rights or benefits of Participants which may be required in the administration of this Plan. The Employer's decisions shall be afforded the maximum deference permitted by applicable law.
- 3.02 Duties of Administrator.** The Administrator, as agent for the Employer, shall perform nondiscretionary administrative functions in connection with the Plan, including the maintenance of Participants' Accounts, the provision of periodic reports of the status of each Account, and the disbursement of benefits on behalf of the Employer in accordance with the provisions of this Plan.

Article IV. Participation in the Plan

- 4.01 Initial Participation.** An Employee may become a Participant by entering into a Joinder Agreement prior to the beginning of the calendar month in which the Joinder Agreement is to become effective to defer compensation not yet earned, or such other date as may be permitted under the Code. A new employee may defer compensation in the calendar month during which he or she first becomes an employee if a Joinder Agreement is entered into on or before the first day on which the employee performs services for the Employer.
- 4.02 Amendment of Joinder Agreement.** A Participant may amend an executed Joinder Agreement to change the amount of Includible Compensation not yet earned which is to be deferred (including the reduction of such future deferrals to zero). Such amendment shall become effective as of the beginning of the calendar month commencing after the date the amendment is executed, or such other date as may be permitted under the Code. A Participant may at any time amend his or her Joinder Agreement to change the designated Beneficiary, and such amendment shall become effective immediately.

Article V. Limitations on Deferrals

5.01 Normal Limitation. Except as provided in Section 5.02, the maximum amount of Deferred Compensation for any Participant for any taxable year, shall not exceed the lesser of the Dollar Limitation or the Percentage Limitation.

5.02 Catch-Up Limitations.

- (a) *Catch-up Contributions for Participants Age 50 and Over:* A Participant who has attained the age of 50 before the close of the Plan Year, and with respect to whom no other elective deferrals may be made to the Plan for the Plan Year by reason of the Normal Limitation of Section 5.01, may enter into a Joinder Agreement to make elective deferrals in addition to those permitted by the Normal Limitation in an amount not to exceed the lesser of:
- (1) The applicable dollar amount as defined in Section 414(v)(2)(B) of the Code, as adjusted for the cost-of-living in accordance with Section 414(v)(2)(C) of the Code; or
 - (2) The excess (if any) of
 - (i) The Participant's Includible Compensation for the year, or
 - (ii) Any other elective deferrals of the Participant for such year which are made without regard to this Section 5.02(a).

An additional contribution made pursuant to this Section 5.02(a) shall not, with respect to the year in which the contribution is made, be subject to any otherwise applicable limitation contained in Section 5.01 above, or be taken into account in applying such limitation to other contributions or benefits under the Plan or any other plan. This Section 5.02(a) shall not apply in any year to which a higher limit under Section 5.02(b) applies.

- (b) *Last Three Years Catch-up Contribution:* For each of the last three (3) taxable years for a Participant ending before his or her attainment of Normal Retirement Age, the maximum amount of Deferred Compensation shall be the lesser of:
- (1) The 457 Catch-Up Dollar Limitation, or
 - (2) The sum of
 - (i) The Normal Limitation for the taxable year, and
 - (ii) The Normal Limitation for each prior taxable year of the Participant commencing after 1978 less the amount of the Participant's Deferred Compensation for such prior taxable years. A prior taxable year shall be taken into account under the preceding sentence only if (x) the Participant was eligible to participate in the Plan for such year, and (y) compensation (if any) deferred under the Plan (or such other plan) was subject to the Normal Limitation.

5.03 Sick, Vacation and Back Pay. If the Employer so elects, a Participant may defer all or a portion of the value of the Participant's accumulated sick pay, accumulated vacation pay and/or back pay, provided that such deferral does not cause total deferrals on behalf of the Participant to exceed the Dollar Limitation or Percentage Limitation (including any Catch-up Dollar Limitation) for the year of deferral. The election to defer such sick, vacation and/or back pay must be made in a manner and at a time permitted under Section 1.457-4(d) of the Income Tax Regulations.

For Plan Years beginning before January 1, 2009, pursuant to proposed IRS regulations issued under Section 415 of the Code, the Plan may permit deferrals from compensation, including sick, vacation and back pay, so long as the amounts are paid within 2½ months following severance from employment and the other requirements of Sections

457(b) and 415 of the Code are met. For Plan Years beginning on or after January 1, 2009, pursuant to final IRS regulations issued under Section 415 of the Code, the Plan may permit deferrals from compensation, including sick, vacation and back pay, so long as the amounts are paid by the later of: (i) 2½ months following severance from employment, and (ii) the end of the calendar year that includes the date of such severance from employment, and the other requirements of Sections 457(b) and 415 of the Code are met. Additionally, the agreement to defer such amounts must be entered into prior to the first day of the month in which the amounts otherwise would be paid or made available.

- 5.04 Other Plans.** Notwithstanding any provision of the Plan to the contrary, the amount excludible from a Participant's gross income under this Plan or any other eligible deferred compensation plan under Section 457(b) of the Code shall not exceed the limits set forth in Sections 457(b) and 414(v) of the Code.
- 5.05 Excess Deferrals.** Any amount that exceeds the maximum Dollar Limitation or Percentage Limitation (including any applicable Catch-Up Dollar Limitation) for a taxable year, shall constitute an excess deferral for that taxable year. Any excess deferral shall be distributed in accordance with the requirements for excess deferrals under the Code and Section 1.457-4(e) of the Income Tax Regulations or other applicable Internal Revenue Service guidance.
- 5.06 Protection of Person Who Serves in a Uniformed Service.** An Employee whose employment is interrupted by qualified military service under Section 414(u) of the Code or who is on leave of absence for qualified military service under Section 414(u) of the Code may elect to contribute additional Deferred Compensation upon resumption of employment with the Employer equal to the maximum Deferred Compensation that the Employee could have elected during that period if the Employee's employment with the Employer had continued (at the same level of Includible Compensation) without the interruption or leave, reduced by Deferred Compensation, if any, actually made for the Employee during the period of the interruption or leave. This right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave).

Article VI. Trust and Investment of Accounts

- 6.01 Investment of Deferred Compensation.** A Trust is hereby created to hold all the assets of the Plan (except Deemed IRA contributions and earnings thereon held pursuant to Article IX) for the exclusive benefit of Participants and Beneficiaries, except that expenses and taxes may be paid from the Trust as provided in Section 6.03. The trustee shall be the Employer or such other person that agrees to act in that capacity hereunder.
- 6.02 Investment Powers.** The trustee or the Administrator, acting as agent for the trustee, shall have the powers listed in this Section with respect to investment of Trust assets, except to the extent that the investment of Trust assets is directed by Participants, pursuant to Section 6.05 or to the extent that such powers are restricted by applicable law.
- (a) To invest and reinvest the Trust without distinction between principal and income in common or preferred stocks, shares of regulated investment companies and other mutual funds, bonds, loans, notes, debentures, certificates of deposit, contracts with insurance companies including but not limited to insurance, individual or group annuity, deposit administration, guaranteed interest contracts, and deposits at reasonable rates of interest at banking institutions including but not limited to savings accounts and certificates of deposit. Assets of the Trust may be invested in securities that involve a higher degree of risk than investments that have demonstrated their investment performance over an extended period of time.
 - (b) To invest and reinvest all or any part of the assets of the Trust in any common, collective or commingled trust fund that is maintained by a bank or other institution and that is available to Employee plans described under Sections 457 or 401 of the Code, or any successor provisions thereto, and during the period of time that an investment through any such medium shall exist, to the extent of participation of the Plans the declaration of trust of such commonly collective, or commingled trust fund shall constitute a part of this Plan.
 - (c) To invest and reinvest all or any part of the assets of the Trust in any group annuity, deposit administration or guaranteed interest contract issued by an insurance company or other financial institution on a commingled

or collective basis with the assets of any other 457 plan or trust qualified under Section 401(a) of the Code or any other plan described in Section 401(a)(24) of the Code, and such contract may be held or issued in the name of the Administrator, or such custodian as the Administrator may appoint, as agent and nominee for the Employer. During the period that an investment through any such contract shall exist, to the extent of participation of the Plan, the terms and conditions of such contract shall constitute a part of the Plan.

- (d) To hold cash awaiting investment and to keep such portion of the Trust in cash or cash balances, without liability for interest, in such amounts as may from time to time be deemed to be reasonable and necessary to meet obligations under the Plan or otherwise to be in the best interests of the Plan.
- (e) To hold, to authorize the holding of, and to register any investment to the Trust in the name of the Plan, the Employer, or any nominee or agent of any of the foregoing, including the Administrator, or in bearer form, to deposit or arrange for the deposit of securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by any other person, and to organize corporations or trusts under the laws of any jurisdiction for the purpose of acquiring or holding title to any property for the Trust, all with or without the addition of words or other action to indicate that property is held in a fiduciary or representative capacity but the books and records of the Plan shall at all times show that all such investments are part of the Trust.
- (f) Upon such terms as may be deemed advisable by the Employer or the Administrator, as the case may be, for the protection of the interests of the Plan or for the preservation of the value of an investment, to exercise and enforce by suit for legal or equitable remedies or by other action, or to waive any right or claim on behalf of the Plan or any default in any obligation owing to the Plan, to renew, extend the time for payment of, agree to a reduction in the rate of interest on, or agree to any other modification or change in the terms of any obligation owing to the Plan, to settle, compromise, adjust, or submit to arbitration any claim or right in favor of or against the Plans to exercise and enforce any and all rights of foreclosure, bid for property in foreclosure, and take a deed in lieu of foreclosure with or without paying consideration therefor, to commence or defend suits or other legal proceedings whenever any interest of the Plan requires it, and to represent the Plan in all suits or legal proceedings in any court of law or equity or before any body or tribunal.
- (g) To employ suitable consultants, depositories, agents, and legal counsel on behalf of the Plan.
- (h) To open and maintain any bank account or accounts in the name of the Plan, the Employer, or any nominee or agent of the foregoing, including the Administrator, in any bank or banks.
- (i) To do any and all other acts that may be deemed necessary to carry out any of the powers set forth herein.

6.03 Taxes and Expenses. All taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws upon the Plan, or in respect to the Trust, or the income thereof, and all commissions or acquisitions or dispositions of securities and similar expenses of investment and reinvestment of the Trust, shall be paid from the Trust. Such reasonable compensation of the Administrator, as may be agreed upon from time to time by the Employer and the Administrator, and reimbursement for reasonable expenses incurred by the Administrator in performance of its duties hereunder (including but not limited to fees for legal, accounting, investment and custodial services) shall also be paid from the Trust.

6.04 Payment of Benefits. The payment of benefits from the Trust in accordance with the terms of the Plan may be made by the Administrator, or by any custodian or other person so authorized by the Employer to make such disbursement. The Administrator, custodian or other person shall not be liable with respect to any distribution of Trust assets made at the direction of the Employer.

6.05 Investment Funds. In accordance with uniform and nondiscriminatory rules established by the Employer and the Administrator, the Participant may direct his or her Accounts to be invested in one (1) or more investment

funds available under the Plan; provided, however, that the Participant's investment directions shall not violate any investment restrictions established by the Employer. Neither the Employer, the Administrator, nor any other person shall be liable for any losses incurred by virtue of following such directions or with any reasonable administrative delay in implementing such directions.

- 6.06 Valuation of Accounts.** As of each Accounting Date, the Plan assets held in each investment fund offered shall be valued at fair market value and the investment income and gains or losses for each fund shall be determined. Such investment income and gains or losses shall be allocated proportionately among all Account balances on a fund-by-fund basis. The allocation shall be in the proportion that each such Account balance as of the immediately preceding Accounting Date bears to the total of all such Account balances as of that Accounting Date. For purposes of this Article, all Account balances include the Account balances of all Participants and Beneficiaries.
- 6.07 Participant Loan Accounts.** Participant loan accounts shall be invested in accordance with Section 8.03 of the Plan. Such Accounts shall not share in any investment income and gains or losses of the investment funds described in Sections 6.05 and 6.06.
- 6.08 Crediting of Accounts.** The Participant's Account shall reflect the amount and value of the investments or other property obtained by the Employer through the investment of the Participant's Deferred Compensation pursuant to Sections 6.05 and 6.06. It is anticipated that the Employer's investments with respect to a Participant will conform to the investment preference specified in the Participant's Joinder Agreement, but nothing herein shall be construed to require the Employer to make any particular investment of a Participant's Deferred Compensation. Each Participant shall receive periodic reports, not less frequently than annually, showing the then current value of his or her Account.
- 6.09 Post-Severance Transfers Among Eligible Deferred Compensation Plans.**
- (a) *Incoming Transfers:* A transfer may be accepted from an eligible deferred compensation plan maintained by another employer and credited to a Participant's or Beneficiary's Account under the Plan if:
- (1) In the case of a transfer for a Participant, the Participant has had a Severance Event with that employer and become an Employee of the Employer;
 - (2) The other employer's plan provides that such transfer will be made; and
 - (3) The Participant or Beneficiary whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer.
- The Employer may require such documentation from the predecessor plan as it deems necessary to effectuate the transfer in accordance with Section 457(e)(10) of the Code, to confirm that such plan is an eligible deferred compensation plan within the meaning of Section 457(b) of the Code, and to assure that transfers are provided for under such plan. The Employer may refuse to accept a transfer in the form of assets other than cash, unless the Employer and the Administrator agree to hold such other assets under the Plan.
- (b) *Outgoing Transfers:* An amount may be transferred to an eligible deferred compensation plan maintained by another employer, and charged to a Participant's or Beneficiary's Account under this Plan, if:
- (1) In the case of a transfer for a Participant, the Participant has a Severance Event with the Employer and becomes an employee of the other employer;
 - (2) The other employer's plan provides that such transfer will be accepted;
 - (3) The Participant or Beneficiary and the employers have signed such agreements as are necessary to assure that the Employer's liability to pay benefits to the Participant has been discharged and assumed by the other employer; and

- (4) The Participant or Beneficiary whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer.

The Employer may require such documentation from the other plan as it deems necessary to effectuate the transfer, to confirm that such plan is an eligible deferred compensation plan within the meaning of Section 457(b) of the Code, and to assure that transfers are provided for under such plan. Such transfers shall be made only under such circumstances as are permitted under Section 457 of the Code and the regulations thereunder.

6.10 Transfers Among Eligible Deferred Compensation Plans of the Employer.

- (a) *Incoming Transfers.* A transfer may be accepted from another eligible deferred compensation plan maintained by the Employer and credited to a Participant's or Beneficiary's Account under the Plan if:
 - (1) The Employer's other plan provides that such transfer will be made;
 - (2) The Participant or Beneficiary whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer; and
 - (3) The Participant or Beneficiary whose deferred amounts are being transferred is not eligible for additional annual deferrals in the Plan unless the Participant or Beneficiary is performing services for the Employer.
- (b) *Outgoing Transfers.* A transfer may be accepted from another eligible deferred compensation plan maintained by the Employer and credited to a Participant's or Beneficiary's Account under the Plan if:
 - (1) The Employer's other plan provides that such transfer will be accepted;
 - (2) The Participant or Beneficiary whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer; and
 - (3) The Participant or Beneficiary whose deferred amounts are being transferred is not eligible for additional annual deferrals in the Employer's other eligible deferred compensation plan unless the Participant or Beneficiary is performing services for the Employer.

6.11 Eligible Rollover Distributions.

- (a) *Incoming Rollovers:* An eligible rollover distribution may be accepted from an eligible retirement plan and credited to a Participant's Account under the Plan. The Employer may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Section 402 of the Code and to confirm that such plan is an eligible retirement plan within the meaning of Section 402(c)(8)(B) of the Code. The Plan shall separately account (in one or more separate accounts) for eligible rollover distributions from any eligible retirement plan.
- (b) *Outgoing Rollovers:* Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the 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.
- (c) *Definitions:*
 - (1) *Eligible Rollover Distribution:* An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not

include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Sections 401(a)(9) and 457(d)(2) of the Code; and any distribution made as a result of an unforeseeable emergency of the employee. For purposes of distributions from other eligible retirement plans rolled over into this Plan, the term eligible rollover distribution shall not include the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities), such as after-tax contributions.

- (2) *Eligible Retirement Plan:* An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Sections 403(a) or 403(b) of the Code, a qualified trust described in Section 401(a) of the Code, or an eligible deferred compensation plan described in Section 457(b) of the Code which is maintained by an eligible governmental employer described in Section 457(e)(1)(A) of the Code, that accepts the distributee's eligible rollover distribution.
- (3) *Distributee:* A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.
- (4) *Direct Rollover:* A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

6.12 Trustee-to-Trustee Transfers to Purchase Permissive Service Credit. All or a portion of a Participant's Account may be transferred directly to the trustee of a defined benefit governmental plan (as defined in Section 414(d) of the Code) if such transfer is (a) for the purchase of permissive service credit (as defined in Section 415(n)(3)(A) of the Code) under such plan, or (b) a repayment to which Section 415 of the Code does not apply by reason of subsection (k)(3) thereof, within the meaning of Section 457(e)(17) of the Code.

6.13 Treatment of Distributions of Amounts Previously Rolled Over From 401(a) and 403(b) Plans and IRAs. For purposes of Section 72(t) of the Code, a distribution from this Plan shall be treated as a distribution from a qualified retirement plan described in Section 4974(c)(1) of the Code to the extent that such distribution is attributable to an amount transferred to an eligible deferred compensation plan from a qualified retirement plan (as defined in Section 4974(c) of the Code).

6.14 Employer Liability. In no event shall the Employer's liability to pay benefits to a Participant under this Plan exceed the value of the amounts credited to the Participant's Account; neither the Employer nor the Administrator shall be liable for losses arising from depreciation or shrinkage in the value of any investments acquired under this Plan.

Article VII. Benefits

7.01 Retirement Benefits and Election on Severance Event.

- (a) *General Rule:* Except as otherwise provided in this Article VII, the distribution of a Participant's Account shall commence as of a Participant's Automatic Distribution Date, and the distribution of such benefits shall be made in accordance with one of the payment options described in Section 7.02. Notwithstanding the foregoing, but subject to the following paragraphs of this Section 7.01, the Participant may elect following a Severance Event to have the distribution of benefits commence on a fixed determinable date other than that described in the preceding sentence, but not later than April 1 of the year following the year of the Participant's Retirement or attainment of age 70½, whichever is later. The Participant's right to change his or her election with respect to commencement of the distribution of benefits shall not be restrained by this Section 7.01.

Notwithstanding the foregoing, the Administrator, in order to ensure the orderly administration of this provision, may establish a deadline after which such election to defer the commencement of distribution of benefits shall not be allowed.

- (b) *Loans:* Notwithstanding the foregoing provisions of this Section 7.01, no election to defer the commencement of benefits after a Severance Event shall operate to defer the distribution of any amount in the Participant's loan account in the event of a default of the Participant's loan.

7.02 Payment Options. As provided in Sections 7.01, 7.04 and 7.05, a Participant may elect to have value of the Participant's Account distributed in accordance with one of the following payment options, provided that such option is consistent with the limitations set forth in Section 7.03:

- (a) Equal monthly, quarterly, semi-annual or annual payments in an amount chosen by the Participant, continuing until his or her Account is exhausted;
- (b) One lump-sum payment;
- (c) Approximately equal monthly, quarterly, semi-annual or annual payments, calculated to continue for a period certain chosen by the Participant;
- (d) Annual Payments equal to the minimum distributions required under Section 401(a)(9) of the Code, including the incidental death benefit requirements of Section 401(a)(9)(G), over the life expectancy of the Participant or over the life expectancies of the Participant and his or her Beneficiary;
- (e) Payments equal to payments made by the issuer of a retirement annuity policy acquired by the Employer;
- (f) A split distribution under which payments under options (a), (b), (c) or (e) commence or are made at the same time, as elected by the Participant under Section 7.01, provided that all payments commence (or are made) by the latest benefit commencement date permitted under Section 7.01;
- (g) Any other payment option elected by the Participant and agreed to by the Employer and Administrator.

A Participant's selection of a payment option under Subsections (a), (c), or (g) above may include the selection of an automatic annual cost-of living increase. Such increase will be based on the rise in the Consumer Price Index for All Urban Consumers (CPI-U) from the third quarter of the last year in which a cost-of-living increase was provided to the third quarter of the current year. Any increase will be made in periodic payment checks beginning the following January.

7.03 Limitation on Options. No payment option may be selected by a Participant under subsections 7.02(a) or (c) unless the amount of any installment is not less than \$100. No payment option may be selected by a Participant under Sections 7.02, 7.04, or 7.05 unless it satisfies the requirements of Sections 401(a)(9) and 457(d)(2) of the Code, including that payments commencing before the death of the Participant shall satisfy the incidental death benefit requirements under Section 401(a)(9)(G) of the Code.

7.04 Minimum Required Distributions. Notwithstanding any provision of the Plan to the contrary, the Plan shall comply with the minimum required distribution rules set forth in Sections 457(d)(2) and 401(a)(9) of the Code, including the incidental death benefit requirements of Section 401(a)(9)(G) of the Code.

7.05 Post-Retirement Death Benefits.

- (a) Should the Participant die after he or she has begun to receive benefits under a payment option, the remaining payments, if any, under the payment option shall continue until the Administrator receives notice of the Participant's death. Upon notification of the Participant's death, benefits shall be payable to the Participant's Beneficiary commencing not later than December 31 of the year following the year of the Participant's death, provided that the Beneficiary may elect to begin benefits earlier than that date.

- (b) In the event that the Beneficiary dies before the payment of death benefits has commenced or been completed, the remaining benefits payable under the payment option applicable to the Beneficiary shall, subject to the requirements set forth in Section 7.04, be paid to an additional beneficiary designated by the Beneficiary. If no additional beneficiary is named, payment shall be made to the Beneficiary's estate in a lump sum.
- (c) In the event that the Participant's estate is the Beneficiary, payment shall be made to the estate in a lump sum.

7.06 Pre-Retirement Death Benefits.

- (a) Should the Participant die before he or she has begun to receive the benefits provided by Section 7.01, the value of the Participant's Account shall be payable to the Beneficiary commencing not later than December 31 of the year following the year of the Participant's death, provided that the Beneficiary may elect to begin benefits earlier than that date.
- (b) In the event that the Beneficiary dies before the payment of death benefits has commenced or been completed, the remaining value of the Participant's Account shall be paid to the estate of the Beneficiary in a lump sum. In the event that the Participant's estate is the Beneficiary, payment shall be made to the estate in a lump sum.

7.07 Unforeseeable Emergencies.

- (a) In the event an unforeseeable emergency occurs, a Participant or Beneficiary may apply to the Employer to receive that part of the value of his or her Account that is reasonably needed to satisfy the emergency need. If such an application is approved by the Employer, the Participant or Beneficiary shall be paid only such amount as the Employer deems necessary to meet the emergency need, but payment shall not be made to the extent that the financial hardship may be relieved through cessation of deferral under the Plan, insurance or other reimbursement, or liquidation of other assets to the extent such liquidation would not itself cause severe financial hardship.
- (b) An unforeseeable emergency shall be deemed to involve only circumstances of severe financial hardship of a Participant or Beneficiary resulting from an illness or accident of the participant or beneficiary, the Participant's or Beneficiary's spouse, or the Participant's or Beneficiary's dependent (as defined in Section 152 of the Code, and, for taxable years beginning on or after January 1, 2005, without regard to Sections 152(b)(1), (b)(2), and (d)(1)(B) of the Code); loss of the Participant's or Beneficiary's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant or the Beneficiary. For example, the imminent foreclosure of or eviction from the Participant's or Beneficiary's primary residence may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication, may constitute an unforeseeable emergency. Finally, the need to pay for the funeral expenses of a spouse or a dependent (as defined in section 152 of the Code, and, for taxable years beginning on or after January 1, 2005, without regard to Sections 152(b)(1), (b)(2), and (d)(1)(B) of the Code) may also constitute an unforeseeable emergency. Except as otherwise specifically provided in this Section 7.07(b), the purchase of a home and the payment of college tuition are not unforeseeable emergencies.

7.08 In-Service Distribution of Rollover Contributions. Effective January 1, 2006, the Employer may elect to allow Participants to receive an in-service distribution of amounts attributable to rollover contributions to the Plan. If the Employer has elected to make such distributions available, a Participant that has a separate account attributable to rollover contributions to the Plan may at any time elect to receive a distribution of all or any portion of the amount held in the rollover account.

7.09 In-Service Distribution to Participants Age 70½ or Older. A Participant who has reached age 70½ and has not yet had a Severance Event, may, at any time, request a distribution of all or a part of his or her Account. A Participant may only receive two (2) such distributions pursuant to this Section 7.09 in any calendar year.

7.10 Distribution De Minimis Accounts. Notwithstanding the foregoing provisions of this Article VII:

- (a) *Mandatory Distribution.* If the value of a Participant's Account is less than \$1,000, the Participant's Account shall be paid to the Participant in a single lump sum distribution, provided that:
 - (1) No amount has been deferred under the Plan with respect to the Participant during the 2-year period ending on the date of the distribution; and
 - (2) There has been no prior distribution under the Plan to the Participant pursuant to this Section 7.10.
- (b) *Voluntary Distribution.* If the value of the Participant's Account is at least \$1,000 but not more than the dollar limit under Section 411(a)(11)(A) of the Code, the Participant may elect to receive his or her entire Account in a lump sum payment if:
 - (1) No amount has been deferred under the Plan with respect to the Participant during the 2-year period ending on the date of the distribution; and
 - (2) There has been no prior distribution under the Plan to the Participant pursuant to this Section 7.10.

Article VIII. Loans to Participants

8.01 Availability of Loans to Participants.

- (a) The Employer may elect to make loans available to Participants in this Plan. If the Employer has elected to make loans available to Participants, a Participant may apply for a loan from the Plan subject to the limitations and other provisions of this Article. However, no loans are available from Deemed IRAs.
- (b) The Employer shall establish written guidelines governing the granting of loans, provided that such guidelines are approved by the Administrator and are not inconsistent with the provisions of this Article, and that loans are made available to all Participants on a reasonably equivalent basis.

8.02 Terms and Conditions of Loans to Participants. Any loan by the Plan to a Participant under Section 8.01 of the Plan shall satisfy the following requirements:

- (a) *Availability.* Loans shall be made available to all Participants on a reasonably equivalent basis.
- (b) *Interest Rate.* Loans must be adequately secured and bear a reasonable interest rate.
- (c) *Loan Limit.* No Participant loan shall exceed the present value of the Participant's Account.
- (d) *Foreclosure.* In the event of default on any installment payment, the outstanding balance of the loan shall be a deemed distribution. In such event, an actual distribution of a plan loan offset amount will not occur until a distributable event occurs in the Plan.
- (e) *Reduction of Account.* Notwithstanding any other provision of this Plan, the portion of the Participant's Account balance used as a security interest held by the Plan by reason of a loan outstanding to the Participant shall be taken into account for purposes of determining the amount of the Account balance payable at the time of death or distribution, but only if the reduction is used as repayment of the loan.
- (f) *Amount of Loan.* At the time the loan is made, the principal amount of the loan plus the outstanding balance (principal plus accrued interest) due on any other outstanding loans to the Participant from the Plan and from all other plans of the Employer that are either eligible deferred compensation plans described in section 457(b) of the Code or qualified employer plans under Section 72(p)(4) of the Code shall not exceed the lesser of:

- (1) \$50,000, reduced by the excess (if any) of
 - (i) The highest outstanding balance of loans from the Plan during the one (1) year period ending on the day before the date on which the loan is made; or
 - (ii) The outstanding balance of loans from the Plan on the date on which such loan is made; or
- (2) One-half of the value of the Participant's interest in all of his or her Accounts under this Plan.
- (g) *Application for Loan.* The Participant must give the Employer adequate written notice, as determined by the Employer, of the amount and desired time for receiving a loan. No more than one (1) loan may be made by the Plan to a Participant's in any calendar year. No loan shall be approved if an existing loan from the Plan to the Participant is in default to any extent.
- (h) *Length of Loan.* Any loan issued shall require the Participant to repay the loan in substantially equal installments of principal and interest, at least monthly, over a period that does not exceed five (5) years from the date of the loan; provided, however, that if the proceeds of the loan are applied by the Participant to acquire any dwelling unit that is to be used within a reasonable time (determined at the time of the loan is made) after the loan is made as the principal residence of the Participant, the five (5) year limit shall not apply. In this event, the period of repayment shall not exceed a reasonable period determined by the Employer. Principal installments and interest payments otherwise due may be suspended for up to one (1) year during an authorized leave of absence, if the promissory note so provides, but not beyond the original term permitted under this subsection (h), with a revised payment schedule (within such term) instituted at the end of such period of suspension.
- (i) *Prepayment.* The Participant shall be permitted to repay the loan in whole or in part at any time prior to maturity, without penalty.
- (j) *Promissory Note.* The loan shall be evidenced by a promissory note executed by the Participant and delivered to the Employer, and shall bear interest at a reasonable rate determined by the Employer.
- (k) *Security.* The loan shall be secured by an assignment of the participant's right, title and interest in and to his or her Account.
- (l) *Assignment or Pledge.* For the purposes of paragraphs (f) and (g), assignment or pledge of any portion of the Participant's interest in the Plan and a loan, pledge, or assignment with respect to any insurance contract purchased under the Plan, will be treated as a loan.
- (m) *Other Terms and Conditions.* The Employer shall fix such other terms and conditions of the loan as it deems necessary to comply with legal requirements, to maintain the qualification of the Plan and Trust under Section 457 of the Code, or to prevent the treatment of the loan for tax purposes as a distribution to the Participant. The Employer, in its discretion for any reason, may also fix other terms and conditions of the loan, including, but not limited to, the provision of grace periods following an event of default, not inconsistent with the provisions of this Article and Section 72(p) of the Code, and any applicable regulations thereunder.

8.03 Participant Loan Accounts.

- (a) Upon approval of a loan to a Participant by the Employer, an amount not in excess of the loan shall be transferred from the Participant's other investment fund(s), described in Section 6.05 of the Plan, to the Participant's loan account as of the Accounting Date immediately preceding the agreed upon date on which the loan is to be made.

- (b) The assets of a Participant's loan account may be invested and reinvested only in promissory notes received by the Plan from the Participant as consideration for a loan permitted by Section 8.01 of the Plan or in cash. Uninvested cash balances in a Participant's loan account shall not bear interest. Neither the Employer, the Administrator, nor any other person shall be liable for any loss, or by reason of any breach, that results from the Participant's exercise of such control.
- (c) Repayment of principal and payment of interest shall be made by payroll deduction or, where repayment cannot be made by payroll deduction, by check, and shall be invested in one (1) or more other investment funds, in accordance with Section 6.05 of the Plan, as of the next Accounting Date after payment thereof to the Trust. The amount so invested shall be deducted from the Participant's loan account.
- (d) The Employer shall have the authority to establish other reasonable rules, not inconsistent with the provisions of the Plan, governing the establishment and maintenance of Participant loan accounts.

Article IX. Deemed IRAs

9.01 General. This Article IX of the Plan reflects section 602 of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"), as amended by the Job Creation and Worker Assistance Act of 2002. This Article is intended as good faith compliance with the requirements of EGTRRA and is to be construed in accordance with EGTRRA and guidance issued thereunder. This Article IX shall supersede the provisions of the Plan to the extent that those provisions are inconsistent with the provisions of this Article IX.

Effective for Plan Years beginning after December 31, 2002, the Employer may elect to allow Employees to make voluntary employee contributions to a separate account or annuity established under the Plan that complies with the requirements of Section 408(q) of the Code and any regulations promulgated thereunder (a "Deemed IRA"). The Plan shall establish a separate account for the designated Deemed IRA contributions of each Employee and any earnings properly allocable to the contributions, and maintain separate recordkeeping with respect to each such Deemed IRA.

9.02 Voluntary Employee Contributions. For purposes of this Article, a voluntary employee contribution means any contribution (other than a mandatory contribution within the meaning of Section 411(c)(2) of the Code) that is made by the Employee and which the Employee has designated, at or prior to the time of making the contribution, as a contribution to which this Article applies.

9.03 Deemed IRA Trust Requirements. This Article shall satisfy the trust requirement under Section 408(q) of the Code and the regulations thereto. IRAs established pursuant to this Article shall be held in one or more trusts or custodial accounts (the "Deemed IRA Trusts"), which shall be separate from the Trust established under the Plan to hold contributions other than Deemed IRA contributions. The Deemed IRA Trusts shall satisfy the applicable requirements of Sections 408 and 408A of the Code, which requirements are set forth in section 9.05 and 9.06, respectively, and shall be established with a trustee or custodian meeting the requirements of Section 408(a)(2) of the Code ("Deemed IRA Trustee"). To the extent that the assets of any Deemed IRAs established pursuant to this Article are held in a Deemed IRA Trust satisfying the requirements of this Section 9.03, such Deemed IRA Trust, and any amendments thereto, is hereby adopted as a trust maintained under this Plan with respect to the assets held therein, and the provisions of such Deemed IRA Trust shall control so long as any assets of any Deemed IRA are held thereunder.

9.04 Reporting Duties. The Deemed IRA Trustee shall be subject to the reporting requirements of Section 408(i) of the Code with respect to all Deemed IRAs that are established and maintained under the Plan.

9.05 Deemed Traditional IRA Requirements. Deemed IRAs established in the form of traditional IRAs shall satisfy the following requirements:

- (a) *Exclusive Benefit.* The Deemed IRA account shall be established for the exclusive benefit of an Employee or his or her Beneficiaries.

(b) *Maximum Annual Contributions.*

- (1) Except in the case of a rollover contribution (as permitted by Sections 402(c), 402(e)(6), 403(a)(4), 403(b)(8), 403(b)(10), 408(d)(3) and 457(e)(16) of the Code), no contributions will be accepted unless they are in cash, and the total of such contributions shall not exceed:

\$3,000 for any taxable year beginning in 2002 through 2004;

\$4,000 for any taxable year beginning in 2005 through 2007; and

\$5,000 for any taxable year beginning in 2008 and years thereafter.

After 2008, the limit will be adjusted by the Secretary of the Treasury for cost-of-living-increases under Section 219(b)(5)(C) of the Code. Such adjustments will be in multiples of \$500.

- (2) In the case of an Employee who is 50 or older, the annual cash contribution limit is increased by:

\$500 for any taxable year beginning in 2002 through 2005; and

\$1,000 for any taxable year beginning in 2006 and thereafter.

- (3) No contributions will be accepted under a SIMPLE IRA plan established by any employer pursuant to Section 408(p) of the Code. Also, no transfer or rollover of funds attributable to contributions made by a particular employer under its SIMPLE IRA plan will be accepted from a SIMPLE IRA, that is an IRA used in conjunction with a SIMPLE IRA plan, prior to the expiration of the 2-year period beginning on the date the Employee first participated in that employer's SIMPLE IRA plan.

- (c) *Collectibles.* If the Deemed IRA Trust acquires collectibles with within the meaning of Section 408(m) of the Code after December 31, 1981, Deemed IRA Trust assets will be treated as a distribution in an amount equal to the cost of such collectibles.

- (d) *Life Insurance Contracts.* No part of the Deemed IRA Trust funds will be invested in life insurance contracts.

(e) *Minimum Required Distributions.*

- (1) Notwithstanding any provision of this Deemed IRA to the contrary, the distribution of the Employee's interest in the account shall be made in accordance with the requirements of Section 408(a)(6) of the Code and the Income Tax Regulations thereunder, the provisions of which are herein incorporated by reference. If distributions are made from an annuity contract purchased from an insurance company, distributions thereunder must satisfy the requirements of Q&A-4 of Section 1.401(a)(9)-6T of the Income Tax Regulations (or Section 1.401(a)(9)-6 of the Income Tax Regulations, as applicable), rather than paragraphs (2), (3) and (4) below and Section 9.05(f). The minimum required distributions calculated for this IRA may be withdrawn from another IRA of the Employee in accordance with Q&A-9 of Section 1.408-8 of the Income Tax Regulations.
- (2) The entire value of the account of the Employee for whose benefit the account is maintained will commence to be distributed no later than the first day of April following the calendar year in which such Employee attains age 70½ (the "required beginning date") over the life of such Employee or the lives of such Employee and his or her Beneficiary.
- (3) The amount to be distributed each year, beginning with the calendar year in which the Employee attains age 70½ and continuing through the year of death shall not be less than the quotient obtained by dividing the value of the IRA (as determined under section 9.05(f)(3)) as of the end of the preceding year by the distribution period in the Uniform Lifetime Table in Q&A-2 of Section 401(a)(9)-9 of the Income Tax Regulations, using the Employee's age of his or her birthday in the year. However, if the Employee's sole Beneficiary is his or her surviving spouse and such spouse is more than 10 years younger than the Employee, then the distribution period is determined under the Joint

and Last Survivor Table in Q&A-3 of Section 1.401(a)(9)-9 of the Income Tax Regulations, using the ages as of the Employee's and spouse's birthdays in the year.

- (4) The required minimum distribution for the year the Employee attains age 70½ can be made as late as April 1 of the following year. The required minimum distribution for any other year must be made by the end of such year.
- (f) *Distribution Upon Death.*
- (1) *Death On or After Required Beginning Date.* If the Employee dies on or after the required beginning date, the remaining portion of his or her interest will be distributed at least as rapidly as follows:
 - (i) If the Beneficiary is someone other than the Employee's surviving spouse, the remaining interest will be distributed over the remaining life expectancy of the Beneficiary, with such life expectancy determined using the Beneficiary's age as of his or her birthday in the year following the year of the Employee's death, or over the period described in paragraph (1)(iii) below if longer.
 - (ii) If the Employee's sole Beneficiary is the Employee's surviving spouse, the remaining interest will be distributed over such spouse's life or over the period described in paragraph (1)(iii) below if longer. Any interest remaining after such spouse's death will be distributed over such spouse's remaining life expectancy determined using the spouse's age as of his or her birthday in the year of the spouse's death, or, if the distributions are being made over the period described in paragraph (1)(iii) below, over such period.
 - (iii) If there is no Beneficiary, or if applicable by operation of paragraph (1)(i) or (1)(ii) above, the remaining interest will be distributed over the Employee's remaining life expectancy determined in the year of the Employee's death.
 - (iv) The amount to be distributed each year under paragraph (1)(i), (ii), or (iii), beginning with the calendar year following the calendar year of the Employee's death, is the quotient obtained by dividing the value of the IRA as of the end of the preceding year by the remaining life expectancy specified in such paragraph. Life expectancy is determined using the Single Life Table in Q&A-1 of Section 1.401(a)(9)-9 of the Income Tax Regulations. If distributions are being made to a surviving spouse as the sole Beneficiary, such spouse's remaining life expectancy for a year is the number in the Single Life Table corresponding to such spouse's age in the year. In all other cases, remaining life expectancy for a year is the number in the Single Life Table corresponding to the Beneficiary's or Employee's age in the year specified in paragraph 1(i), (ii), or (iii) and reduced by 1 for each subsequent year.
 - (2) *Death Before Required Beginning Date.* If the Employee dies before the required beginning date, his or her entire interest will be distributed at least as rapidly as follows:
 - (i) If the Beneficiary is someone other than the Employee's surviving spouse, the entire interest will be distributed, starting by the end of the calendar year following the calendar year of the Employee's death, over the remaining life expectancy of the Beneficiary, with such life expectancy determined using the age of the Beneficiary as of his or her birthday in the year following the year of the Employee's death, or, if elected, in accordance with paragraph (2)(iii) below.
 - (ii) If the Employee's sole Beneficiary is the Employee's surviving spouse, the entire interest will be distributed, starting by the end of the calendar year following the calendar year of the Employee's death (or by the end of the calendar year in which the Employee would have attained age 70½, if later), over such spouse's life, or, if elected, in accordance with paragraph (2)(iii) below. If the surviving spouse dies before distributions are required to begin, the

remaining interest will be distributed, starting by the end of the calendar year following the calendar year of the spouse's death, over the spouse's Beneficiary's remaining life expectancy determined using such Beneficiary's age as of his or her birthday in the year following the death of the spouse, or, if elected, will be distributed in accordance with paragraph (2)(iii) below. If the surviving spouse dies after distributions are required to begin, any remaining interest will be distributed over the spouse's remaining life expectancy determined using the spouse's age as of his or her birthday in the year of the spouse's death.

- (iii) If there is no Beneficiary, or if applicable by operation of paragraph (2)(i) or (2)(ii) above, the entire interest will be distributed by the end of the calendar year containing the fifth anniversary of the Beneficiary's death (or of the spouse's death in the case of the surviving spouse's death before distributions are required to begin under paragraph (2)(ii) above).
- (iv) The amount to be distributed each year under paragraph (2)(i) or (ii) is the quotient to be obtained by dividing the value of the IRA as of the end of the preceding year by the remaining life expectancy specified in such paragraph. Life expectancy is determined using the Single Life Table in Q&A-1 of Section 1.401(a)(9)-9 of the Income Tax Regulations. If distributions are being made to a surviving spouse as the sole Beneficiary, such spouse's remaining life expectancy for a year is the number in the Single Life Table corresponding to the Beneficiary's age in the year specified in paragraph (2)(i) or (ii) and reduced by 1 for each subsequent year.
- (v) The "value" of the IRA includes the amount of any outstanding rollover, transfer and recharacterization under Q&As-7 and -8 of Section 1.408-8 of the Income Tax Regulations.
- (vi) If the sole Beneficiary is the Employee's surviving spouse, the spouse may elect to treat the IRA as his or her own IRA. This election will be deemed to have been made if such surviving spouse makes a contribution to the IRA or fails to take required distributions as a Beneficiary.
- (g) *Nonforfeitable.* The interest of an Employee in the balance in his or her Deemed IRA account is nonforfeitable at all times.
- (h) *Reporting.* The Deemed IRA Trustee of a Deemed Traditional IRA shall furnish annual calendar-year reports concerning the status of the Deemed IRA account and such information concerning required minimum distributions as is prescribed by the Commissioner of Internal Revenue.
- (i) *Substitution of Deemed IRA Trustee.* If the Deemed IRA Trustee is a non-bank trustee or custodian, the non-bank trustee or custodian shall substitute another trustee or custodian if the non-bank trustee or custodian receives notice from the Commissioner of Internal Revenue that such substitution is required because it has failed to comply with the requirements of Section 1.408-2(e) of the Income Tax Regulations and Section 1.408-2T of the Income Tax Regulations.

9.06 Deemed Roth IRA Requirements. Deemed IRAs established in the form of Roth IRAs shall satisfy the following requirements:

- (a) *Exclusive Benefit.* The Deemed Roth IRA shall be established for the exclusive benefit of an Employee or his or her Beneficiaries.
- (b) *Maximum Annual Contributions.*
 - (1) *Maximum Permissible Amount.* Except in the case of a qualified rollover contribution or recharacterization (as defined in (6) below), no contribution will be accepted unless it is in cash and the total of such contributions to all the Employee's Roth IRAs for a taxable year does not exceed

the applicable amount (as defined in (2) below), or the Employee's compensation (as defined in (8) below) if less, for that taxable year. The contribution described in the previous sentence that may not exceed the lesser of the applicable amount or the Employee's compensation is referred to as a "regular contribution." A "qualified rollover contribution" is a rollover contribution that meets the requirements of Section 408(d)(3) of the Code, except the one-rollover-per-year rule of Section 408(d)(3)(B) does not apply if the rollover contribution is from another IRA other than a Roth IRA (a "nonRoth IRA"). Contributions may be limited under (3) through (5) below.

(2) *Applicable Amount.* The applicable amount is determined under (i) or (ii) below:

- (i) If the Employee is under age 50, the applicable amount is:
 - \$3,000 for any taxable year beginning in 2002 through 2004;
 - \$4,000 for any taxable year beginning in 2005 through 2007; and
 - \$5,000 for any taxable year beginning in 2008 and years thereafter.
- (ii) If the Employee is 50 or older, the applicable amount is:
 - \$3,500 for any taxable year beginning in 2002 through 2004;
 - \$4,500 for any taxable year beginning in 2005;
 - \$5,000 for any taxable year beginning in 2006 through 2007; and
 - \$6,000 for any taxable year beginning in 2008 and years thereafter.

After 2008, the limits in paragraph (2)(i) and (ii) above will be adjusted by the Secretary of the Treasury for cost-of-living increases under Section 219(b)(5)(C) of the Code. Such adjustments will be in multiples of \$500.

- (3) If (i) and/or (ii) below apply, the maximum regular contribution that can be made to all the Employee's Roth IRAs for the taxable year is the smaller amount determined under (i) or (ii).
 - (i) The maximum regular contribution is phased out ratably between certain levels of modified adjusted gross income ("modified AGI," defined in (7) below) in accordance with the following table:

Filing Status	Modified AGI		
	Full Contribution	Phase-out Range	No Contribution
Single or Head of Household	\$95,000 or less	Between \$95,000 and \$110,000	\$110,000 or more
Joint Return or Qualifying Widower	\$150,000 or less	Between \$150,000 and \$160,000	\$160,000 or more
Married-Separate Return	\$0	Between \$0 and \$10,000	\$10,000 or more

If the Employee's modified AGI for a taxable year is in the phase-out range, the maximum regular contribution determined under this table for that taxable year is rounded up to the next multiple of \$10 and not reduced below \$200.

- (ii) If the Employee makes regular contributions to both Roth and nonRoth IRAs for a taxable year, the maximum regular contribution that can be made to all the Employee's Roth IRAs for that taxable year is reduced by the regular contributions made to the Employee's nonRoth IRAs for the taxable year.
- (4) *Qualified Rollover Contribution Limit.* A rollover from a nonRoth IRA cannot be made to this IRA if, for the year the amount is distributed from the nonRoth IRA, (i) the Employee is married and files a separate return, (ii) the Employee is not married and has modified AGI in excess of \$100,000 or (iii) the Employee is married and together the Employee and the Employee's spouse have modified AGI in excess of \$100,000. For purposes of the preceding sentence, a husband and wife are not treated as married for a taxable year if they have lived apart at all times during that taxable year and file separate returns for the taxable year.
- (5) *SIMPLE IRA Limits.* No contributions will be accepted under a SIMPLE IRA plan established by any employer pursuant to Section 408(p) of the Code. Also, no transfer or rollover of funds attributable to contributions made by a particular employer under its SIMPLE IRA plan will be accepted from a SIMPLE IRA, that is, an IRA used in conjunction with a SIMPLE IRA plan, prior to the expiration of the 2-year period beginning on the date the Employee first participated in that employer's SIMPLE IRA plan.
- (6) *Recharacterization.* A regular contribution to a nonRoth IRA may be recharacterized pursuant to the rules in Section 1.408A-5 of the Income Tax Regulations as a regular contribution to this IRA, subject to the limits in (3) above.
- (7) *Modified AGI.* For purposes of (3) and (4) above, an Employee's modified AGI for a taxable year is defined in Section 408A(c)(3)(C)(i) of the Code and does not include any amount included in adjusted gross income as a result of a rollover from a nonRoth IRA (a "conversion").
- (8) *Compensation.* For purposes of (1) above, compensation is defined as wages, salaries, professional fees, or other amounts derived from or received for personal services actually rendered (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips and bonuses) and includes earned income, as defined in Section 401(c)(2) of the Code (reduced by the deduction the self-employed individual takes for contributions made to a self-employed retirement plan). For purposes of this definition, Section 401(c)(2) of the Code shall be applied as if the term trade or business for purposes of Section 1402 of the Code included service described in subsection (c)(6). Compensation does not include amounts derived from or received as earnings or profits from property (including but not limited to interest and dividends) or amounts not includible in gross income. Compensation also does not include any amount received as a pension or annuity or as deferred compensation. The term "compensation" shall include any amount includible in the Employee's gross income under Section 71 of the Code with respect to a divorce or separation instrument described in subparagraph (A) of Section 71(b)(2) of the Code. In the case of a married Employee filing a joint return, the greater compensation of his or her spouse is treated as his or her own compensation but only to the extent that such spouse's compensation is not being used for purposes of the spouse making a contribution to a Roth IRA or a deductible contribution to a nonRoth IRA.
- (c) *Collectibles.* If the Deemed IRA Trust acquires collectibles within the meaning of Section 408(m) of the Code after December 31, 1981, Deemed IRA Trust assets will be treated as a distribution in an amount equal to the cost of such collectibles.

- (d) *Life Insurance Contracts.* No part of the Deemed IRA Trust funds will be invested in life insurance contracts.
- (e) *Distributions Before Death.* No amount is required to be distributed prior to the death of the Employee for whose benefit the account was originally established.
- (f) *Minimum Required Distributions.*
 - (1) Notwithstanding any provision of this IRA to the contrary, the distribution of the Employee's interest in the account shall be made in accordance with the requirements of Section 408(a)(6) of the Code, as modified by section 408A(c)(5), and the regulations thereunder, the provisions of which are herein incorporated by reference. If distributions are made from an annuity contract purchased from an insurance company, distributions thereunder must satisfy the requirements of section 1.401(a)(9)-6T of the Temporary Income Tax Regulations (taking into account Section 408A(c)(5) of the Code) (or Section 1.401(a)(9)-6 of the Income Tax Regulations, as applicable), rather than the distribution rules in paragraphs (2), (3) and (4) below.
 - (2) Upon the death of the Employee, his or her entire interest will be distributed at least as rapidly as follows:
 - (i) If the Beneficiary is someone other than the Employee's surviving spouse, the entire interest will be distributed, starting by the end of the calendar year following the year of the Employee's death, over the remaining life expectancy of the Beneficiary, with such life expectancy determined using the age of the beneficiary as of his or her birthday in the year following the year of the Employee's death, or, if elected, in accordance with paragraph (2)(iii) below.
 - (ii) If the Employee's sole Beneficiary is the Employee's surviving spouse, the entire interest will be distributed starting by the end of the calendar year following the calendar year of the Employee's death (or by the end of the calendar year in which the Employee would have attained age 70½, if later), over such spouse's life, or, if elected, in accordance with paragraph (2)(iii) below. If the surviving spouse dies before distributions are required to begin, the remaining interest will be distributed, starting by the end of the calendar year following the calendar year of the spouse's death, over the spouse's Beneficiary's remaining life expectancy determined using such Beneficiary's age as of his or her birthday in the year following the death of the spouse, or, if elected, will be distributed in accordance with paragraph (2)(iii) below. If the surviving spouse dies after distributions are required to begin, any remaining interest will be distributed over the spouse's remaining life expectancy determined using the spouse's age as of his or her birthday in the year of the spouse's death.
 - (iii) If there is no Beneficiary, or if applicable by operation of paragraph (2)(i) or (2)(ii) above, the entire interest will be distributed the end of the calendar year containing the fifth anniversary of the Employee's death (or of the spouse's death in the case of the surviving spouse's death before distributions are required to begin under paragraph 2(ii) above).
 - (iv) The amount to be distributed each year under paragraph (2)(i) or (ii) is the quotient obtained by dividing the value of the IRA as of the end of the preceding year by the remaining life expectancy specified in such paragraph. Life expectancy is determined using the Single Life Table in Q&A-1 of Section 1.401(a)(9)-9 of the Income Tax Regulations. If distributions are being made to a surviving spouse as the sole Beneficiary, such spouse's remaining life expectancy for a year is the number in the Single Life Table corresponding to such spouse's age in the year. In all other cases, remaining life expectancy for a year is the number in the Single Life Table corresponding to the Beneficiary's age in the year specified in paragraph (2)(i) or (ii) and reduced by 1 for each subsequent year.

- (3) The “value” of the IRA includes the amount of any outstanding rollover, transfer and recharacterization under Q&As-7 and -8 of Section 1.408-8 of the Income Tax Regulations.
- (4) If the sole Beneficiary is the Employee’s surviving spouse, the spouse may elect to treat the IRA as his or her own IRA. This election will be deemed to have been made if such surviving spouse makes a contribution to the IRA or fails to take required distributions as a Beneficiary.
- (g) *Nonforfeitable.* The interest of an Employee in the balance in his or her account is nonforfeitable at all times.
- (h) *Reporting.* The Deemed IRA Trustee of a Deemed Roth IRA shall furnish annual calendar-year reports concerning the status of the Deemed IRA account and such information concerning required minimum distributions as is prescribed by the Commissioner of Internal Revenue.
- (i) *Substitution of Deemed IRA Trustee.* If the Deemed IRA Trustee is a non-bank trustee or custodian, the non-bank trustee or custodian shall substitute another trustee or custodian if the non-bank trustee or custodian receives notice from the Commissioner of Internal Revenue that such substitution is required because it has failed to comply with the requirements of Section 1.408-2(e) of the Income Tax Regulations and Section 1.408-2T of the Income Tax Regulations.

Article X. Non-Assignability

10.01 General. Except as provided in Article VIII and Section 10.02, no Participant or Beneficiary shall have any right to commute, sell, assign, pledge, transfer or otherwise convey or encumber the right to receive any payments hereunder, which payments and rights are expressly declared to be non-assignable and non-transferable.

10.02 Domestic Relations Orders.

- (a) *Allowance of Transfers:* To the extent required under a final judgment, decree, or order (including approval of a property settlement agreement) that (1) relates to the provision of child support, alimony payments, or marital property rights and (2) is made pursuant to a state domestic relations law, and (3) is permitted under Sections 414(p)(11) and (12) of the Code, any portion of a Participant’s Account may be paid or set aside for payment to a spouse, former spouse, child, or other dependent of the Participant (an “Alternate Payee”). Where necessary to carry out the terms of such an order, a separate Account shall be established with respect to the Alternate Payee who shall be entitled to make investment selections with respect thereto in the same manner as the Participant. Any amount so set aside for an Alternate Payee shall be paid in accordance with the form and timing of payment specified in the order. Nothing in this Section shall be construed to authorize any amount to be distributed under the Plan at a time or in a form that is not permitted under Section 457(b) of the Code and is explicitly permitted under the uniform procedures described in Section 10.2(d) below. Notwithstanding the foregoing sentence, if a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a Participant is made pursuant to the domestic relations law of any State, then the amount of the Participant’s Account shall be paid in the manner and to the person or persons so directed in the domestic relations order. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan. The Administrator shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the domestic relations order. Any payment made to a person pursuant to this Section shall be reduced by any required income tax withholding.
- (b) *Release from Liability to Participant:* The Employer’s liability to pay benefits to a Participant shall be reduced to the extent that amounts have been paid or set aside for payment to an Alternate Payee to paragraph (a) of this Section and the Participant and his or her Beneficiaries shall be deemed to have released the Employer and the Plan Administrator from any claim with respect to such amounts.

- (c) *Participation in Legal Proceedings:* The Employer and Administrator shall not be obligated to defend against or set aside any judgment, decree, or order described in paragraph (a) or any legal order relating to the garnishment of a Participant's benefits, unless the full expense of such legal action is borne by the Participant. In the event that the Participant's action (or inaction) nonetheless causes the Employer or Administrator to incur such expense, the amount of the expense may be charged against the Participant's Account and thereby reduce the Employer's obligation to pay benefits to the Participant. In the course of any proceeding relating to divorce, separation, or child support, the Employer and Administrator shall be authorized to disclose information relating to the Participant's Account to the Alternate Payee (including the legal representatives of the Alternate Payee), or to a court.
- (d) *Determination of Validity of Domestic Relations Orders:* The Administrator shall establish uniform procedures for determining the validity of any domestic relations order. The Administrator's determinations under such procedures shall be conclusive and binding on all parties and shall be afforded the maximum amount of deference permitted by law.

10.03 IRS Levy. Notwithstanding Section 10.01, the Administrator may pay from a Participant's or Beneficiary's Account balance the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

10.04 Mistaken Contribution. To the extent permitted by applicable law, if any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then after the payment of the contribution, and upon receipt in good order of a proper request approved by the Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Participant or, to the extent required or permitted by the Administrator, to the Employer.

10.05 Payments to Minors and Incompetents. If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits will be paid to such persons as the Administrator may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

10.06 Procedure When Distributee Cannot Be Located. The Administrator shall make all reasonable attempts to determine the identity and address of a Participant or a Participant's Beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt means (a) the mailing by certified mail of a notice to the last known address shown on the Employer or Administrator's records, (b) notification sent to the Social Security Administration or the Pension Benefit Guarantee Corporation (under their program to identify payees under retirement plans), and (c) the payee has not responded within 6 months. If the Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the Trust shall continue to hold the benefits due such person.

Article XI. Relationship to Other Plans and Employment Agreements

This Plan serves in addition to any other retirement, pension, or benefit plan or system presently in existence or hereinafter established for the benefit of the Employer's employees, and participation hereunder shall not affect benefits receivable under any such plan or system. Nothing contained in this Plan shall be deemed to constitute an employment contract or agreement between any Participant and the Employer or to give any Participant the right to be retained in the employ of the Employer. Nor shall anything herein be construed to modify the terms of any employment contract or agreement between a Participant and the Employer.

Article XII. Amendment or Termination of Plan

The Employer may at any time amend this Plan provided that it transmits such amendment in writing to the Administrator at least 30 days prior to the effective date of the amendment. The consent of the Administrator shall not be required in order for

such amendment to become effective, but the Administrator shall be under no obligation to continue acting as Administrator hereunder if it disapproves of such amendment.

The Administrator may at any time propose an amendment to the Plan by an instrument in writing transmitted to the Employer at least 30 days before the effective date of the amendment. Such amendment shall become effective unless, within such 30-day period, the Employer notifies the Administrator in writing that it disapproves such amendment, in which case such amendment shall not become effective. In the event of such disapproval, the Administrator shall be under no obligation to continue acting as Administrator hereunder.

The Employer may at any time terminate this Plan. In the event of termination, assets of the Plan shall be distributed to Participants and Beneficiaries as soon as administratively practicable following termination of the Plan. Alternatively, assets of the Plan may be transferred to an eligible deferred compensation plan maintained by another eligible governmental employer within the same State if (a) all assets held by the Plan (other than Deemed IRAs) are transferred; (b) the receiving plan provides for the receipt of transfers; (c) the Participants and Beneficiaries whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer; and (d) the Participants or Beneficiaries whose deferred amounts are being transferred is not eligible for additional annual deferrals in the receiving plan unless the Participants or Beneficiaries are performing services for the employer maintaining the receiving plan.

Except as may be required to maintain the status of the Plan as an eligible deferred compensation plan under Section 457(b) of the Code or to comply with other applicable laws, no amendment or termination of the Plan shall divest any Participant of any rights with respect to compensation deferred before the date of the amendment or termination.

Article XIII. Applicable Law

This Plan and Trust shall be construed under the laws of the state where the Employer is located and is established with the intent that it meet the requirements of an “eligible deferred compensation plan” under Section 457(b) of the Code, as amended. The provisions of this Plan and Trust shall be interpreted wherever possible in conformity with the requirements of that Section of the Code.

In addition, notwithstanding any provision of the Plan to the contrary, the Plan shall be administered in compliance with the requirements of Section 414(u) of the Code.

Article XIV. Gender and Number

The masculine pronoun, whenever used herein, shall include the feminine pronoun, and the singular shall include the plural, except where the context requires otherwise.

DECLARATION OF TRUST

This Declaration of Trust (the “Group Trust Agreement”) is made as of the 19th day of May, 2001, by Vantage Trust Company, which declares itself to be the sole Trustee of the trust hereby created.

WHEREAS, the ICMA Retirement Trust was created as a vehicle for the commingling of the assets of governmental plans and governmental units described in Section 818(a)(6) of the Internal Revenue Code of 1986, as amended, pursuant to a Declaration of Trust dated October 4, 1982, as subsequently amended, a copy of which is attached hereto and incorporated by reference as set out below (the “ICMA Declaration”); and

WHEREAS, the trust created hereunder (the “Group Trust”) is intended to meet the requirements of Revenue Ruling 81-100, 1981-1 C.B. 326, and is established as a common trust fund within the meaning of Section 391:1 of Title 35 of the New Hampshire Revised Statutes Annotated, to accept and hold for investment purposes the assets of the Deferred Compensation and Qualified Plans held by and through the ICMA Retirement Trust.

NOW, THEREFORE, the Group Trust is created by the execution of this Declaration of Trust by the Trustee and is established with respect to each Deferred Compensation and Qualified Plan by the transfer to the Trustee of such Plan’s assets in the ICMA Retirement Trust, by the Trustees thereof, in accord with the following provisions:

- (a) *Incorporation of ICMA Declaration by Reference; ICMA By-Laws.* Except as otherwise provided in this Group Trust Agreement, and to the extent not inconsistent herewith, all provisions of the ICMA Declaration are incorporated herein by reference and made a part hereof, to be read by substituting the Group Trust for the Retirement Trust and the Trustee for the Board of Trustees referenced therein. In this respect, unless the context clearly indicates otherwise, all capitalized terms used herein and defined in the ICMA Declaration have the meanings assigned to them in the ICMA Declaration. In addition, the By-Laws of the ICMA Retirement Trust, as the same may be amended from time-to-time, are adopted as the By-Laws of the Group Trust to the extent not inconsistent with the terms of this Group Trust Agreement.

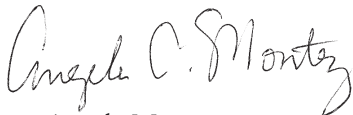
Notwithstanding the foregoing, the terms of the ICMA Declaration and By-Laws are further modified with respect to the Group Trust created hereunder, as follows:

- 1. any reporting, distribution, or other obligation of the Group Trust vis-à-vis any Deferred Compensation Plan, Qualified Plan, Public Employer, Public Employer Trustee, or Employer Trust shall be deemed satisfied to the extent that such obligation is undertaken by the ICMA Retirement Trust (in which case the obligation of the Group Trust shall run to the ICMA Retirement Trust); and
 - 2. all provisions dealing with the number, qualification, election, term and nomination of Trustees shall not apply, and all other provisions relating to trustees (including, but not limited to, resignation and removal) shall be interpreted in a manner consistent with the appointment of a single corporate trustee.
- (b) *Compliance with Revenue Procedure 81-100.* The requirements of Revenue Procedure 81-100 are applicable to the Group Trust as follows:
 - 1. Pursuant to the terms of this Group Trust Agreement and Article X of the By-Laws, investment in the Group Trust is limited to assets of Deferred Compensation and Qualified Plans, investing through the ICMA Retirement Trust.
 - 2. Pursuant to the By-Laws, the Group Trust is adopted as a part of each Qualified Plan that invests herein through the ICMA Retirement Trust.
 - 3. In accord with the By-Laws, that part of the Group Trust’s corpus or income which equitably belongs to any Deferred Compensation and Qualified Plan may not be used for or diverted to any purposes other than for the exclusive benefit of the Plan’s employees or their beneficiaries who are entitled to benefits under such Plan.

4. In accord with the By-Laws, no Deferred Compensation Plan or Qualified Plan may assign any or part of its equity or interest in the Group Trust, and any purported assignment of such equity or interest shall be void.
- (c) *Governing Law.* Except as otherwise required by federal, state or local law, this Declaration of Trust (including the ICMA Declaration to the extent incorporated herein) and the Group Trust created hereunder shall be construed and determined in accordance with applicable laws of the State of New Hampshire.
- (d) *Judicial Proceedings.* The Trustee may at any time initiate an action or proceeding in the appropriate state or federal courts within or outside the state of New Hampshire for the settlement of its accounts or for the determination of any question of construction which may arise or for instructions.

IN WITNESS WHEREOF, the Trustee has executed this Declaration of Trust as of the day and year first above written.

VANTAGETRUST COMPANY

By: 

Name: Angela Montez

Title: Assistant Secretary

ICMA-RC Services LLC, a wholly owned broker-dealer subsidiary of ICMA-RC, member FINRA/SIPC.



**ATTN.: RECORDS MANAGEMENT UNIT
P.O. BOX 96220
WASHINGTON, DC 20090-6220
1-800-669-7400
WWW.ICMARC.ORG
EN ESPAÑOL LLAME AL 1-800-669-8216**

BKT000-014-200902-454

ICMA RETIREMENT CORPORATION
GOVERNMENTAL 457 DEFERRED COMPENSATION
AMENDMENT FOR POST-EGTRRA LEGISLATIVE AND REGULATORY CHANGES

Pursuant to Article XII of the ICMA Retirement Corporation Governmental Deferred Compensation Plan & Trust (the “Plan”), ICMA Retirement Corporation, as Plan Administrator, hereby adopts this Amendment on behalf of all adopting Employers to add a new Appendix A as follows, effective as provided therein.

Appendix A

ARTICLE I
PREAMBLE

- 1.01 Applicability.** This Appendix memorializes the operation of the Plan in accordance with the following legislative and regulatory items.
- (a) Pension Protection Act of 2006;
- (b) Emergency Economic Stabilization Act of 2008;
- (c) Worker, Retiree, and Employer Recovery Act of 2008;
- (d) Katrina Emergency Tax Relief Act of 2005; and
- (e) Gulf Opportunity Zone Act of 2005.
- 1.02 Superseding of Inconsistent Provisions.** This Appendix supersedes the provisions of the Plan and Adoption Agreement to the extent those provisions are inconsistent with the provisions of this Appendix.
- 1.03 Construction.** Except as otherwise provided herein, any reference to “Section” in this Appendix refers only to sections within this Appendix and is not a reference to the Plan. The Article and Section numbering in this Appendix is solely for purposes of this Appendix and does not relate to any Plan article, section, or other numbering designations.

ARTICLE II
PENSION PROTECTION ACT OF 2006

- 2.01 Background.** On August 17, 2006, the Pension Protection Act, Pub. L. No. 109-280 (“PPA”), became law. It amended the Code to provide for a number of changes with regard to Code section 401(a) plans and Code section 457 plans. This Article incorporates the relevant provisions of PPA into the Plan.
- 2.02 Required Notice for Participant Distributions.** With respect to any distribution notice and election form that is, under the terms of the Plan, to be delivered 90 days before the date as of which a distribution is to be made, the window for giving Participants such distribution notices and election forms shall be extended to 180 days before the date as of which a distribution is to commence. This Section 2.02 shall be effective for calendar years beginning after December 31, 2006.
- 2.03 Rollover by a Non-Spouse Designated Beneficiary.**
- (a) Unless otherwise elected by the Employer, for Plan Years beginning after December 31, 2006 but on or before December 31, 2009, a non-spouse Beneficiary who qualifies as a “designated beneficiary” under Code section 401(a)(9)(E) may establish an individual retirement plan that will be treated as an Inherited IRA pursuant to the provisions of Code section 402(c)(11) into which all or a portion of a death benefit distribution from this Plan can be transferred directly. A trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a designated beneficiary.

- (b) Notwithstanding the election made in subsection (a), for Plan Years beginning after December 31, 2009, a non-spouse Beneficiary who qualifies as a “designated beneficiary” under Code section 401(a)(9)(E) may establish an individual retirement plan that will be treated as an Inherited IRA pursuant to the provisions of Code section 402(c)(11) into which all or a portion of a death benefit distribution from this Plan can be transferred directly. A trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a designated beneficiary.
- (c) Notwithstanding anything herein to the contrary, a death benefit distribution shall not be eligible for transfer to an Inherited IRA to the extent such distribution is a required minimum distribution under Code section 401(a)(9).

2.04 Distributions for Unforeseen Financial Emergencies.

- (a) Unless otherwise elected by the Employer, after August 31, 2007, the determination of any unforeseen emergency will be expanded to include circumstances of severe financial hardship resulting from an illness or accident of a Primary Beneficiary or other similar extraordinary and unforeseeable circumstances of a Primary Beneficiary that result in a severe financial hardship.
- (b) A “Primary Beneficiary” is an individual or individuals who are named as a Beneficiary under the terms of the Plan and who have a right to all or a portion of the Participant’s account balance upon the Participant’s death.

2.05 Distributions for Health and Long-Term Care Insurance for Public Safety Officers.

- (a) If elected by the Employer, for Plan Years beginning after December 31, 2006, Eligible Retired Public Safety Officers may elect after separation from service to have up to \$3,000 distributed tax-free annually from the Plan in order to pay for Qualified Health Insurance Premiums for an accident or health plan (including a self-insured plan) or a qualified long-term care insurance contract. The Plan shall make such distributions directly to the provider of the accident or health plan or qualified long-term care insurance contract.
- (b) The term “Eligible Retired Public Safety Officer” means an individual who, by reason of disability or attainment of normal retirement age, is separated from service as a Public Safety Officer with the employer who maintains the eligible retirement plan from which distributions pursuant to this Article are made. The term “Public Safety Officer” has the same meaning given such term by section 1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968.
- (c) The term “Qualified Health Insurance Premiums” means premiums for coverage for the Eligible Retired Public Safety Officer, his spouse, and dependents, by an accident or health insurance plan or qualified long-term care insurance contract (as defined in Code section 7702(B)).

2.06 Rollovers to Roth IRAs. Effective for distributions after December 31, 2007, a Participant may elect to have any portion of an Eligible Rollover Distribution paid directly to a Roth IRA described in Code section 408A.

ARTICLE III EMERGENCY ECONOMIC STABILIZATION ACT OF 2008

3.01 Background. On October 3, 2008, the Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343 (“EESA”), became law. With regard to retirement plans, EESA generally permits plans to allow repayments of certain prior qualified distributions for home purchases for participants affected by certain 2008 Midwestern severe storms, tornadoes, and flooding and to permit repayments of prior qualified distributions for home purchases. This Article incorporates the relevant provisions of EESA into the Plan.

3.02 Qualified Disaster Recovery Assistance Distributions and Repayment Thereof. The provisions relating to qualified disaster recovery assistance distributions and repayment thereof set forth in section 702 of EESA shall apply to the Plan.

- 3.03 Repayment of Prior Qualified Distributions for Home Purchases to Plan.** The provisions relating to repayment of prior qualified distributions for home purchases set forth in section 702 of EESA shall apply to the Plan.

ARTICLE IV WORKER, RETIREE, AND EMPLOYER RECOVERY ACT OF 2008

- 4.01 Background.** On December 23, 2008, the Worker, Retiree, and Employer Recovery Act of 2008, Pub. L. No. 110-458 (“WRERA”), became law. WRERA amended Code section 401(a)(9) to suspend required minimum distributions for 2009. It is also possible that legislation will be enacted in the future that suspends required minimum distributions for 2010 or a later year. This Article incorporates the relevant provisions of WRERA into the Plan and describes the Plan terms that will apply in the event that required minimum distributions are suspended in a year subsequent to 2009.
- 4.02 Application of Minimum Distribution Requirements.** The minimum distribution requirements of section 401(a)(9) of the Code shall only apply to the Plan to the extent that such requirements are applicable by law for a year.
- 4.03 Special Rule for Scheduled Installment Payments.** All installment payments scheduled to be distributed to a Participant prior to the effective date of a suspension of the required minimum distribution provisions of Code section 401(a)(9) shall be distributed as scheduled unless the Participant affirmatively elects to have the payments stopped. Notwithstanding the foregoing, for purposes of this Section 4.03, the effective date of the suspension of the required minimum distribution provisions for 2009 shall be deemed January 6, 2009.

ARTICLE V KATRINA EMERGENCY TAX RELIEF ACT OF 2005 AND GULF OPPORTUNITY ZONE ACT OF 2005

- 5.01 Background.** On September 23, 2005, the Katrina Emergency Tax Relief Act of 2005, Pub. L. No. 109-73 (“KETRA”), became law, and on December 21, 2005, the Gulf Opportunity Zone Act of 2005, Pub. L. No. 109-135 (“GOZA”), became law. Generally, KETRA and GOZA permit plans to allow repayments of certain prior qualified distributions for home purchases for Participants affected by Hurricanes Katrina, Rita, and/or Wilma. This Article incorporates the relevant provisions of KETRA and GOZA into the Plan.
- 5.02 Qualified Hurricane Distributions and Repayment Thereof.** The provisions relating to qualified hurricane distributions and repayment thereof set forth in section 1400Q(a) of the Code shall apply to the Plan.
- 5.03 Repayment of Prior Qualified Distributions for Home Purchases to Plan.** The provisions relating to repayment of prior qualified distributions for home purchases set forth in Code section 1400Q(b) shall apply to the Plan.



**ICMA RETIREMENT CORPORATION
GOVERNMENTAL 457 DEFERRED COMPENSATION PLAN & TRUST
ROTH PROVISIONS AMENDMENT
(OCTOBER 2014)**

Pursuant to Article XIII of the ICMA Retirement Corporation 457 Governmental Deferred Compensation Plan & Trust (the "Plan"), ICMA Retirement Corporation, as Plan Administrator, hereby adopts this Amendment on behalf of all adopting Employers to provide for In-Plan Roth Conversions of otherwise nondistributable amounts pursuant to the American Taxpayer Relief Act of 2012 ("ATRA"). This Amendment shall modify and restate Article X of the Plan, which provides for Roth Elective Deferrals and In-Plan Roth Conversions. This Amendment is effective as of January 1, 2013, or, if later, the date that the Employer elects to allow Roth Elective Deferrals and In-Plan Roth Conversions under the Plan.

Article X. Roth Provisions

This Article X has no effect unless and until the Employer affirmatively elects to offer Designated Roth Accounts.

10.01 Definitions. The following definitions shall apply for purposes of this Article X.

- (a) *Designated Roth Account.* A bookkeeping account established and maintained to record the Participant's Roth Elective Deferrals, In-Plan Roth Conversions, rollovers from designated Roth accounts under other eligible retirement plans, and the income gains and losses thereon. Unless specifically stated otherwise, all references in the Plan to a Participant's Account shall include a Participant's Designated Roth Account.
- (b) *In-Plan Roth Conversion.* (1) A distribution from a Participant's Pre-Tax Account that is rolled over to the Participant's Designated Roth Account under the Plan, as described in Code section 402A(c)(4)(B); or (2) a transfer from an amount in the Participant's Pre-Tax Account not otherwise distributable from the Plan to the Participant's Designated Roth Account under the Plan, as described in Code section 402A(c)(4)(E), to the extent permitted by Section 10.05(e).
- (c) *Pre-Tax Account.* A bookkeeping account established and maintained to record the portion of the Participant's Account attributable to amounts other than Roth Elective Deferrals, In-Plan Roth Conversions, rollovers from designated Roth accounts under other eligible retirement plans, and the income gains and losses thereon. Unless specifically stated otherwise, all references in the Plan to a Participant's Account shall include a Participant's Pre-Tax Account.
- (d) *Qualified Roth Contribution Program.* A program described in paragraph (1) of Code section 402A(b), under which a Participant may make Roth Elective Deferrals in lieu of all or a portion of the elective deferrals the Participant is otherwise eligible to make under the Plan.
- (e) *Roth Elective Deferrals.* Deferred Includible Compensation contributed pursuant to Section 10.02 by a Participant, which amounts are:
 - (1) designated irrevocably by the Participant at the time of the deferral election as a Roth elective deferral that is being made in lieu of all or a portion of the pre-tax deferrals the Participant is otherwise eligible to make under the Plan; and
 - (2) treated by the Employer as includible in the Participant's income at the time the Participant otherwise would have received that amount as Includible Compensation.

10.02 Permitted Roth Elective Deferrals

- (a) As of the effective date, a Participant shall be permitted to make Roth Elective Deferrals from his or her Includible Compensation in such amount or percentage as may be specified in the Joinder Agreement. A Participant's Roth Elective Deferrals will be allocated to a separate Designated Roth Account maintained for such deferrals as defined in Section 10.01(a) above.
- (b) Unless specifically stated otherwise, Roth Elective Deferrals will be treated as Deferred Compensation for all purposes under the Plan.

10.03 Separate Accounting

- (a) Contributions and withdrawals of Roth Elective Deferrals, In-Plan Roth Conversions and rollovers from a designated Roth account under an eligible retirement plan will be credited and debited to a Participant's Designated Roth Account.
- (b) The Plan will maintain a record of the amount of Roth Elective Deferrals, In-Plan Roth Conversions, and rollovers from a designated Roth account under an eligible retirement plan in each Participant's Designated Roth Account.
- (c) Gains, losses, and other credits or charges must be separately allocated on a reasonable and consistent basis to each Participant's Designated Roth Account and Pre-Tax Account under the Plan.
- (d) No contributions other than Roth Elective Deferrals, In-Plan Roth Conversions, and rollovers from a designated Roth account under an eligible retirement plan and properly attributable earnings thereon will be credited to each Participant's Designated Roth Account.

10.04 Direct Rollovers

- (a) Notwithstanding anything to the contrary in the Plan, a direct rollover of a distribution from a Designated Roth Account under the Plan shall be made only to another designated Roth account under an eligible retirement plan described in section 402A(e)(1) of the Code or to a Roth IRA described in section 408A of the Code, and only to the extent the rollover is permitted under the rules of section 402(c) of the Code.
- (b) Notwithstanding anything to the contrary in the Plan, unless otherwise provided by the Employer in the Adoption Agreement, the Plan will accept a rollover contribution to a Designated Roth Account only if it is a direct rollover from another designated Roth account under an eligible retirement plan described in section 402A(e)(1) of the Code, or if the rollover is an In-Plan Roth Conversion defined in Section 10.05.
- (c) Eligible rollover distributions from a Participant's Designated Roth Account are taken into account in determining whether the total amount of the Participant's Account balances under the Plan exceeds \$1,000 for purposes of mandatory distributions from the Plan.

10.05 In-Plan Roth Conversions. Unless otherwise elected by the Employer, as of the effective date of this Article the Plan shall allow for In-Plan Roth Conversions.

- (a) *Tax Treatment.* The amount of an In-Plan Roth Conversion shall be includible in the Participant's gross income, as though it were not part of a qualified rollover contribution.
- (b) *Irrevocability.* Any election made by the Participant pursuant to Section 10.05(a) to do an In-Plan Roth Conversion shall be irrevocable.
- (c) *Treatment of Loans.* Outstanding plan loans shall be excluded from In-Plan Roth Conversions. Notwithstanding anything herein to the contrary, an In-Plan Roth Conversion shall not accelerate or otherwise cause a Participant to default on an outstanding plan loan.
- (d) *Spousal Consent.* Notwithstanding anything herein to the contrary, if the Plan requires spousal consent for a distribution, a married Participant shall not be required to obtain spousal consent in connection with an election to make an In-Plan Roth Conversion.
- (e) *In-Plan Roth Conversions of Non-Distributable Amounts.* A Participant may transfer, as part of an In-Plan Roth Conversion, an amount that is not otherwise distributable from the Participant's Pre-Tax Account to the Participant's Designated Roth Account. Such transfer shall be treated as a distribution which was contributed in a qualified rollover contribution within the meaning of Code section 408A(e). Any distribution restrictions that were applicable to the amount before the In-Plan Roth Conversion shall apply to such amount (and earnings and losses thereon) in the Participant's Designated Roth Account. If the Participant's Account or a portion of the Account is subject to a vesting schedule, an In-Plan Roth Conversion is available only if the Account or portion of the Account is fully vested. The Participant may not transfer under this Section 10.05(e) any portion of the Account that is partially vested.

10.06 Availability of Loans from Designated Roth Accounts. A Participant's Designated Roth Account balance can be included to determine a Participant loan amount under Article VIII. However, unless the Employer elects otherwise, Designated Roth Accounts will not be available as a source for loans under the Plan.

By the addition of Article X regarding Roth Provisions, former Articles X (Non-Assignability) through XIV (Gender and Number) of the Plan have been re-numbered XI through XV.



ICMA RETIREMENT CORPORATION
GOVERNMENTAL 457 DEFERRED COMPENSATION
PLAN & TRUST AMENDMENT FOR
THE HEROES EARNINGS ASSISTANCE AND RELIEF TAX ACT OF 2008

Pursuant to Section XII of the ICMA Retirement Corporation 457 Governmental Deferred Compensation Plan & Trust (the "Plan") to add a new Appendix B as follows, effective as provided therein.

Appendix B

ARTICLE I
PREAMBLE

- 1.01 Applicability. This Appendix memorializes the operation of the Plan in accordance with the Heroes Earnings Assistance and Relief Tax Act.
- 1.02 Superseding of Inconsistent Provisions. This Appendix supersedes the provisions of the Plan and Adoption Agreement to the extent those provisions are inconsistent with the provisions of this Appendix.
- 1.03 Construction. Except as otherwise provided herein, any reference to "Section" in this Appendix refers only to sections within this Appendix and is not a reference to the Plan. The Article and Section numbering in this Appendix is solely for purposes of this Appendix and does not relate to any Plan article, section, or other numbering designations.

ARTICLE II
ACCRUAL OF ADDITIONAL BENEFITS

- 2.01 Death Benefits with Respect to Qualified Military Service. In the case of a Participant who dies on or after January 1, 2007 while performing qualified military service (as defined in Code section 414(u)) with respect to the Employer, his/her Beneficiary shall have a Nonforfeitable Interest in all employer contributions to the Participant to the extent that he/she would have had had the Participant resumed and then terminated employment on account of death.
- 2.02 Benefit Accruals with Respect to Qualified Military Service. Notwithstanding any provision of the Plan to the contrary, effective as elected by the Employer but no earlier than January 1, 2007, if the Employer so elects, Participants who die or become Disabled while

performing qualified military service (as defined in Code section 414(u)) with respect to the Employer shall receive Plan contributions as permitted under Code section 414(u)(9).

- 2.03 Benefit Accruals with Respect to Differential Wage Payments. If the Employer so elects, effective as elected by the Employer but no earlier than January 1, 2009, Plan contributions shall be made based on differential wage payments (as such term is defined in Code section 3401(h)(2)).

2.04 Deemed Severance from Employment.

- (a) Unless otherwise elected by the Employer, effective January 1, 2009, a Participant shall be deemed to have a severance from employment solely for purposes of eligibility to receive distributions from the Plan during any period the individual is performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code) for more than 30 days.
- (b) If a Participant receives a distribution pursuant to subsection (a), then the Participant shall not be permitted to defer compensation during the six-month period beginning on the date of the distribution.

- (c) If a Participant receives a distribution which could be attributable to:

- (i) a deemed severance from employment described in subsection (a); or

- (ii) another distribution event under the Plan,

then the distribution shall be considered made pursuant to the distribution event referenced in paragraph (ii), and the Participant shall not be subject to the limitation on Deferred Compensation as set forth in subsection (b).

ICMA RETIREMENT CORPORATION

GOVERNMENTAL MONEY PURCHASE PLAN & TRUST



ICMA RETIREMENT CORPORATION GOVERNMENTAL MONEY PURCHASE PLAN & TRUST

TABLE OF CONTENTS

I. PURPOSE	1
II. DEFINITIONS	1
2.01 Account	1
2.02 Accounting Date	1
2.03 Adoption Agreement	1
2.04 Beneficiary	1
2.05 Break in Service	1
2.06 Code	1
2.07 Covered Employment Classification	1
2.08 Disability	2
2.09 Earnings	2
2.10 Effective Date	3
2.11 Employee	3
2.12 Employer	3
2.13 Hour of Service	3
2.14 Nonforfeitable Interest	3
2.15 Normal Retirement Age	3
2.16 Participant	3
2.17 Period of Service	4
2.18 Period of Severance	4
2.19 Plan	4
2.20 Plan Administrator	4
2.21 Plan Year	4
2.22 Trust	4
III. ELIGIBILITY	4
3.01 Service	4
3.02 Age	4
3.03 Return to Covered Employment Classification	4
3.04 Service Before a Break in Service	5
IV. CONTRIBUTIONS	5
4.01 Employer Contributions	5
4.02 Forfeitures	5
4.03 Mandatory Participant Contributions	5
4.04 Employer Matching Contributions of Voluntary Participant Contributions	5
4.05 Voluntary Participant Contributions	5
4.06 Deductible Employee Contributions	6
4.07 Final Pay Contributions	6
4.08 Accrued Leave Contributions	6
4.09 Military Service Contributions	6
4.10 Accrual of Additional Benefits for Qualified Military Service	6
4.11 Changes in Participant Election	6
4.12 Portability of Benefits	7
4.13 Return of Employer Contributions	7
V. LIMITATION ON ALLOCATIONS	8
5.01 Participants Only in This Plan	8

5.02	Participants in Another Defined Contribution Plan	8
5.03	Definitions	9
5.04	Aggregation and Disaggregation of Plans	13
5.05	Effective Date	13
VI.	TRUST AND INVESTMENT OF ACCOUNTS	14
6.01	Trust	14
6.02	Investment Powers	14
6.03	Taxes and Expenses	15
6.04	Payment of Benefits	15
6.05	Investment Funds	15
6.06	Valuation of Accounts	15
6.07	Participant Loan Accounts	15
6.08	Deemed IRAs	15
VII.	VESTING	16
7.01	Vesting Schedule	16
7.02	Crediting Periods of Service	16
7.03	Service After Break in Service	16
7.04	Vesting Upon Normal Retirement Age	16
7.05	Vesting Upon Death or Disability	16
7.06	Forfeitures	17
7.07	Reinstatement of Forfeitures	17
VIII.	BENEFITS CLAIM	17
8.01	Claim of Benefits	17
8.02	Appeal Procedure	17
IX.	COMMENCEMENT OF BENEFITS	17
9.01	Normal and Elective Commencement of Benefits	17
9.02	Restrictions on Immediate Distributions	17
9.03	Transfer to Another Plan	18
9.04	De Minimis Accounts	20
9.05	Withdrawal of Voluntary Contributions	20
9.06	Withdrawal of Deductible Employee Contributions	20
9.07	In-Service Distribution from Rollover Account	20
9.08	In-Service Distributions	20
9.09	Latest Commencement of Benefits	21
9.10	Spousal Consent	21
9.11	Deemed Severance from Employment	21
9.12	Distributions for Health and Long-Term Care Insurance for Public Safety Officers	21
X.	DISTRIBUTION REQUIREMENTS	22
10.01	General Rules	22
10.02	Time and Manner of Distribution	23
10.03	Required Minimum Distributions During Participant's Lifetime	23
10.04	Required Minimum Distributions After Participant's Death	24
10.05	Definitions	25
10.06	Application of Minimum Distribution Requirements	25
10.07	Special Rule for Scheduled Installment Payments	25
XI.	MODES OF DISTRIBUTION OF BENEFITS	26
11.01	Normal Mode of Distribution	26
11.02	Elective Mode of Distribution	26
11.03	Election of Mode	26
11.04	Death Benefits	26

XII. SPOUSAL DEATH BENEFIT REQUIREMENTS	26
12.01 Application	26
12.02 Spousal Death Benefit	27
12.03 Waiver of Spousal Death Benefit	27
12.04 Definitions	27
XIII. LOANS TO PARTICIPANTS	28
13.01 Availability of Loans to Participants	28
13.02 Terms and Conditions of Loans to Participants	28
13.03 Participant Loan Accounts	30
XIV. PLAN AMENDMENT, TERMINATION AND OPTIONAL PROVISIONS	30
14.01 Amendment by Employer	30
14.02 Amendment of Vesting Schedule	31
14.03 Termination by Employer	32
14.04 Discontinuance of Contributions	32
14.05 Amendment by Plan Administrator	32
14.06 Optional Provisions	32
14.07 Failure of Qualification	32
XV. ADMINISTRATION	32
15.01 Powers of the Employer	33
15.02 Duties of the Plan Administrator	33
15.03 Protection of the Employer	33
15.04 Protection of the Plan Administrator	33
15.05 Resignation or Removal of Plan Administrator	34
15.06 No Termination Penalty	34
15.07 Decisions of the Plan Administrator	34
XVI. MISCELLANEOUS	34
16.01 Nonguarantee of Employment	34
16.02 Rights to Trust Assets	34
16.03 Nonalienation of Benefits	34
16.04 Qualified Domestic Relations Order	34
16.05 Nonforfeitability of Benefits	34
16.06 Incompetency of Payee	35
16.07 Inability to Locate Payee	35
16.08 Mergers, Consolidations, and Transfer of Assets	35
16.09 Employer Records	35
16.10 Gender and Number	35
16.11 Applicable Law	35
16.12 Electronic Communication and Consent	36
XVII. SPOUSAL BENEFIT REQUIREMENTS	36
17.01 Application	36
17.02 Qualified Joint and Survivor Annuity	36
17.03 Qualified Optional Survivor Annuity	36
17.04 Qualified Preretirement Survivor Annuity	36
17.05 Notice Requirements	36
17.06 Definitions	38
17.07 Annuity Contracts	39

XVIII. FINAL PAY CONTRIBUTIONS	39
18.01 Eligibility.....	39
18.02 Contribution Amount.....	39
18.03 Equivalencies.....	40
18.04 Excess Contributions	40
XIX. ACCRUED LEAVE CONTRIBUTIONS	40
19.01 Eligibility.....	40
19.02 Contribution Amount.....	40
19.03 Equivalencies.....	40
19.04 Excess Contributions	40
DECLARATION OF TRUST.....	41
IRS OPINON LETTER.....	42

ICMA RETIREMENT CORPORATION GOVERNMENTAL MONEY PURCHASE PLAN & TRUST

I. PURPOSE

The Employer hereby adopts this Plan and Trust to provide funds for its Employees' retirement, and to provide funds for their Beneficiaries in the event of death. The benefits provided in this Plan shall be paid from the Trust. The Plan and the Trust forming a part hereof are adopted and shall be maintained for the exclusive benefit of eligible Employees and their Beneficiaries. Except as provided in Sections 4.13 and 14.03, no part of the corpus or income of the Trust shall revert to the Employer or be used for or diverted to purposes other than the exclusive benefit of Participants and their Beneficiaries.

II. DEFINITIONS

- 2.01 Account.** A separate record which shall be established and maintained under the Trust for each Participant, and which shall include all Participant subaccounts created pursuant to Article IV, plus any Participant Loan Account created pursuant to Section 13.03. Each subaccount created pursuant to Article IV shall include any earnings of the Trust and adjustments for withdrawals, and realized and unrealized gains and losses allocable thereto. The term "Account" may also refer to any of such separate subaccounts.
- 2.02 Accounting Date.** Each day that the New York Stock Exchange is open for trading, and such other dates as may be determined by the Plan Administrator, as provided in Section 6.06 for valuing the Trust's assets.
- 2.03 Adoption Agreement.** The separate agreement executed by the Employer through which the Employer adopts the Plan and elects among the various alternatives provided thereunder, and which upon execution, becomes an integral part of the Plan.
- 2.04 Beneficiary.** The person or persons (including a trust) designated by the Participant who shall receive any benefits payable hereunder in the event of the Participant's death. The designation of such Beneficiary shall be in writing to the Plan Administrator. A Participant may designate primary and contingent Beneficiaries. Where no designated Beneficiary survives the Participant or no Beneficiary is otherwise designated by the Participant, the Participant's Beneficiary shall be his/her surviving spouse or, if none, his/her estate.
- Notwithstanding the foregoing, the Beneficiary designation is subject to the requirements of Article XII unless the Employer elects otherwise in the Adoption Agreement. Notwithstanding the foregoing, where elected by the Employer in the Adoption Agreement (the "QJSA Election"), the Beneficiary designation is subject to the requirements of Article XVII. Notwithstanding the foregoing, to the extent permitted by the Employer, a Beneficiary receiving required minimum distributions in accordance with Article X and not in a benefit form elected under Article XI or XII, may designate a Beneficiary to receive the required minimum distributions that would have otherwise been payable to the initial Beneficiary but for his or her death.
- 2.05 Break in Service.** A Period of Severance of at least twelve (12) consecutive months. In the case of an individual who is absent from work for maternity or paternity reasons, the twelve (12) consecutive month period beginning on the first anniversary of the first date of such absence shall not constitute a Break in Service. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence (1) by reason of the pregnancy of the individual, (2) by reason of the birth of a child of the individual, (3) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or (4) for purposes of caring for such child for a period beginning immediately following such birth or placement.
- 2.06 Code.** The Internal Revenue Code of 1986, as amended from time to time.
- 2.07 Covered Employment Classification.** The group or groups of Employees eligible to make and/or have contributions to this Plan made on their behalf, as specified by the Employer in the Adoption Agreement.

2.08 Disability. A physical or mental impairment which is of such permanence and degree that, as determined by the Employer, a Participant is unable because of such impairment to perform any substantial gainful activity for which he/she is suited by virtue of his/her experience, training, or education and that has lasted, or can be expected to last, for a continuous period of not less than twelve (12) months, or can be expected to result in death. The permanence and degree of such impairment shall be supported by medical evidence. If the Employer maintains a long-term disability plan, the definition of Disability shall be the same as the definition of disability in the long-term disability plan.

2.09 Earnings.

- (a) **General Rule.** Earnings, which form the basis for computing Employer Contributions, are all of each Participant's W-2 earnings which are actually paid to the Participant during the Plan Year, plus any contributions made pursuant to a salary reduction agreement which are not includible in the gross income of the Employee under section 125, 402(e)(3), 402(h)(1)(B), 403(b), 414(h)(2), 457(b), or, effective January 1, 2001, 132(f)(4) of the Code. Earnings shall include any pre-tax contributions (excluding direct employer contributions) to an integral part trust of the Employer providing retiree health care benefits. Earnings shall also include any other earnings as defined and elected by the Employer in the Adoption Agreement. Unless the Employer elects otherwise in the Adoption Agreement, Earnings shall exclude overtime compensation and bonuses.
- (b) **Limitation on Earnings.** For any Plan Year beginning after December 31, 2001, the annual Earnings of each Participant taken into account in determining allocations shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code. Annual Earnings means Earnings during the Plan Year or such other consecutive 12-month period over which Earnings is otherwise determined under the Plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual Earnings for the determination period that begins with or within such calendar year.

If a determination period consists of fewer than twelve (12) months, the annual Earnings limit is an amount equal to the otherwise applicable annual Earnings limit multiplied by the fraction, the numerator of which is the number of months in the short Plan Year and the denominator of which is twelve (12).

If Earnings for any prior determination period are taken into account in determining a Participant's allocations for the current Plan Year, the Earnings for such prior year are subject to the applicable annual Earnings limit in effect for that prior year.

- (c) **Limitations for Governmental Plans.** In the case of an eligible participant in a governmental plan (within the meaning of section 414(d) of the Code), the dollar limitation shall not apply to the extent the Earnings which are allowed to be taken into account under the Plan would be reduced below the amount which was allowed to be taken into account under the Plan as in effect on July 1, 1993, as adjusted for increases in the cost-of-living in accordance with section 401(a)(17)(B) of the Code. For purposes of this Section, an eligible participant is an individual who first became a Participant in the Plan during a Plan Year beginning before the first Plan Year beginning after December 31, 1993.
- (d) **Earnings Paid After Severance from Employment.** Earnings for purposes of allocations under the Plan shall not include amounts paid after a Participant's severance from Employment with the Employer except as provided in this Section 2.09(d).
 - (1) **Leave Cashouts.** Earnings shall include payment for unused accrued bona fide sick, vacation, or other leave, but only if (i) the Participant would have been able to use the leave if employment had continued, and (ii) such amounts are paid by the later of 2½ months after severance from employment with the Employer maintaining the Plan or by the end of the calendar year that includes the date of such severance from employment.

(2) **Regular Pay.** Earnings shall include regular pay after severance from employment if:

- (a) The payment is included in the Participant's W-2 earnings;
- (b) The payment would have been paid to the Participant prior to a severance from employment if the Participant had continued in employment with the Employer; and
- (c) Such amounts are paid by the later of 2½ months after severance from employment with the Employer maintaining the Plan or by the end of the calendar year that includes the date of such severance from employment.

Notwithstanding anything to the contrary in this subsection (b), unless the Employer has specifically elected to include overtime compensation and bonuses in Earnings, Earnings shall exclude overtime compensation and bonuses paid after severance from employment.

(3) **Effective Date.** This Section 2.09(d) is effective for Plan Years beginning on or after January 1, 2009. For Plan Years beginning before January 1, 2009, the amounts specified in subsections (a) and (b) must be paid within 2½ months after severance from employment with the Employer maintaining the Plan.

- 2.10 Effective Date.** The first day of the Plan Year during which the Employer adopts the Plan, unless the Employer elects in the Adoption Agreement an alternate date as the Effective Date of the Plan.
- 2.11 Employee.** Any individual who has applied for and been hired in an employment position and who is employed by the Employer as a common law employee; provided, however, that Employee shall not include any individual who is not so recorded on the payroll records of the Employer, including any such person who is subsequently reclassified by a court of law or regulatory body as a common law employee of the Employer. For purposes of clarification only and not to imply that the preceding sentence would otherwise cover such person, the term Employee does not include any individual who performs services for the Employer as an independent contractor, or under any other non-employee classification.
- 2.12 Employer.** The unit of state or local government or an agency or instrumentality of one (1) or more states or local governments that executes the Adoption Agreement.
- 2.13 Hour of Service.** Each hour for which an Employee is paid or entitled to payment for the performance of duties for the Employer.
- 2.14 Nonforfeitable Interest.** The nonforfeitable interest of the Participant or his/her Beneficiary (whichever is applicable) is that percentage of his/her Employer Contribution Account balance, which has vested pursuant to Article VII. A Participant shall, at all times, have a one hundred percent (100%) Nonforfeitable Interest in his/her Participant Contribution, Rollover, and Voluntary Contribution Accounts.
- 2.15 Normal Retirement Age.** The age which the Employer specifies in the Adoption Agreement. If the Employer enforces a mandatory retirement age, the Normal Retirement Age is the lesser of that mandatory age or the age specified in the Adoption Agreement.
- 2.16 Participant.** An Employee or former Employee for whom contributions have been made under the Plan and who has not yet received all of the payments of benefits to which he/she is entitled under the Plan. A Participant is treated as benefiting under the Plan for any Plan Year during which the participant received or is deemed to receive an allocation in accordance with Treas. Reg. section 1.410(b)-3(a).

- 2.17 Period of Service.** For purposes of determining an Employee's initial or continued eligibility to participate in the Plan or the Nonforfeitable Interest in the Participant's Account balance derived from Employer Contributions, an Employee will receive credit for the aggregate of all time period(s) commencing with the Employee's first day of employment or reemployment and ending on the date a Break in Service begins. The first day of employment or reemployment is the first day the Employee performs an Hour of Service. An Employee will also receive credit for any Period of Severance of less than twelve (12) consecutive months. Fractional periods of a year will be expressed in terms of days.

Notwithstanding anything to the contrary herein, if the Plan is an amendment and restatement of a plan that previously calculated service under the hours of service method, service shall be credited in a manner that is at least as generous as that provided under Treas. Regs. section 1.410(a)-7(g).

- 2.18 Period of Severance.** A continuous period of time during which the Employee is not employed by the Employer. Such period begins on the date the Employee retires, quits or is discharged, or if earlier, the twelve (12) month anniversary of the date on which the Employee was otherwise first absent from service.
- 2.19 Plan.** This Plan, as established by the Employer, including any elected provisions pursuant to the Adoption Agreement.
- 2.20 Plan Administrator.** The person(s) or entity named to carry out certain nondiscretionary administrative functions under the Plan, as hereinafter described, which is the ICMA Retirement Corporation or any successor Plan Administrator. Unless otherwise provided in the Plan, the Plan Administrator shall act at the direction of the Employer and shall be fully protected in acting on such direction.
- 2.21 Plan Year.** The twelve (12) consecutive month period designated by the Employer in the Adoption Agreement.
- 2.22 Trust.** The Trust created under Article VI of the Plan which shall consist of all of the assets of the Plan derived from Employer and Participant contributions under the Plan, plus any income and gains thereon, less any losses, expenses and distributions to Participants and Beneficiaries.

III. ELIGIBILITY

- 3.01 Service.** Except as provided in Sections 3.02 and 3.03 of the Plan, an Employee within the Covered Employment Classification who has completed a twelve (12) month Period of Service shall be eligible to participate in the Plan at the beginning of the payroll period next commencing thereafter. The Employer may elect in the Adoption Agreement to waive or reduce the twelve (12) month Period of Service.

If the Employer maintains the plan of a predecessor employer, service with such employer shall be treated as Service for the Employer.

- 3.02 Age.** The Employer may designate a minimum age requirement, not to exceed age twenty-one (21), for participation. Such age, if any, shall be declared in the Adoption Agreement.
- 3.03 Return to Covered Employment Classification.** In the event a Participant is no longer a member of Covered Employment Classification and becomes ineligible to make contributions and/or have contributions made on his/her behalf, such Employee will become eligible for contributions immediately upon returning to a Covered Employment Classification. If such Participant incurs a Break in Service, eligibility will be determined under the Break in Service rules of the Plan.

In the event an Employee who is not a member of a Covered Employment Classification becomes a member, such Employee will be eligible to participate immediately if such Employee has satisfied the minimum age and service requirements and would have otherwise previously become a Participant.

- 3.04 Service Before a Break in Service.** All Periods of Service with the Employer are counted toward eligibility, including Periods of Service before a Break in Service.

IV. CONTRIBUTIONS

- 4.01 Employer Contributions.** For each Plan Year, the Employer will contribute to the Trust an amount as specified in the Adoption Agreement. The Employer's full contribution for any Plan Year shall be due and paid not later than thirty (30) working days after the close of the Plan Year. Each Participant will share in Employer Contributions for the period beginning on the date the Participant commences participation under the Plan and ending on the date on which such Employee severs employment with the Employer or is no longer a member of a Covered Employment Classification, and such contributions shall be accounted for separately in his Employer Contribution Account. Notwithstanding anything to the contrary herein, if so elected by the Employer in the Adoption Agreement, an Employee shall be required to make contributions as provided pursuant to Section 4.03 or 4.04 in order to be eligible for Employer Contributions to be made on his/her behalf to the Plan.
- 4.02 Forfeitures.** All amounts forfeited by terminated Participants, pursuant to Section 7.06, shall be used no later than the end of the next Plan Year. Forfeitures will be used to reduce dollar for dollar Employer Contributions otherwise required under the Plan. Forfeitures may first be used to pay the reasonable administrative expenses of the Plan, with any remainder being applied to reduce Employer Contributions.
- 4.03 Mandatory Participant Contributions.** If the Employer so elects in the Adoption Agreement, each eligible Employee shall make contributions at a rate prescribed by the Employer or at any of a range of specified rates, as set forth by the Employer in the Adoption Agreement, as a requirement for his/her participation (1) in the Plan or (2) in this portion of the Plan. Once an eligible Employee becomes a Participant and makes an election hereunder, he/she shall not thereafter have the right to discontinue or vary the rate of such Mandatory Participant Contributions. Such contributions shall be accounted for separately in the Participant Contribution Account. Such Account shall be at all times nonforfeitable by the Participant.

If the Employer so elects in the Adoption Agreement, the Mandatory Participant Contributions shall be "picked up" by the Employer in accordance with Code section 414(h)(2). Any contribution picked-up under this Section shall be treated as an employer contribution in determining the tax treatment under the Code, and shall not be included as gross income of the Participant until it is distributed.

To constitute a Pick-Up Contribution, (1) the Employer must specify in a contemporaneous written document by a person duly authorized by the Employer that the contributions are being paid by the Employer in lieu of contributions by the Employee, and (2) the Employee must not be given the option of choosing to receive the contributed amounts directly instead of having them paid by the Employer to the Plan.

- 4.04 Employer Matching Contributions of Voluntary Participant Contributions.** If the Employer so elects in the Adoption Agreement, Employer Matching Contributions shall be made on behalf of an eligible Employee for a Plan Year only if the Employee agrees to make Voluntary Participant Contributions for that Plan Year. The rate of Employer Contributions shall, to the extent specified in the Adoption Agreement, be based upon the rate at which Voluntary Participant Contributions are made for that Plan Year. Employer Matching Contributions shall be accounted for separately in the Employer Contribution Account.
- 4.05 Voluntary Participant Contributions.** If the Employer so elects in the Adoption Agreement, an eligible Employee may make after-tax voluntary (unmatched) contributions under the Plan for any Plan Year in any amount up to twenty-five percent (25%) of his/her Earnings for such Plan Year. Matched and unmatched contributions shall be accounted for separately in the Participant's Voluntary Contribution Account. Such Account shall be at all times nonforfeitable by the Participant.

- 4.06 Deductible Employee Contributions.** The Plan will not accept deductible employee contributions which are made for a taxable year beginning after December 31, 1986. Contributions made prior to that date will be maintained in a Deductible Employee Contribution Account. The Account will share in the gains and losses under the Plan in the same manner as described in Section 6.06 of the Plan. Such Account shall be at all times nonforfeitable by the Participant. No part of the deductible voluntary contribution account will be used to purchase life insurance.
- 4.07 Final Pay Contributions.** If the Employer so elects in the Adoption Agreement, eligible Participants shall be eligible to make or receive Final Pay Contributions under this Plan in accordance with Article XVIII. This election may be made even if the Employer does not elect to make contributions under Section 4.01.
- 4.08 Accrued Leave Contributions.** If the Employer so elects in the Adoption Agreement, eligible Participants shall be eligible to make or receive Accrued Leave Contributions under this Plan in accordance with Article XIX. This election may be made even if the Employer does not elect to make contributions under Section 4.01.
- 4.09 Military Service Contributions.** Notwithstanding any provision of the Plan to the contrary, effective December 12, 1994, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with section 414(u) of the Code.

Effective December 12, 1994, if the Employer has elected in the Adoption Agreement to make loans available to Participants, loan repayments shall be suspended under the Plan as permitted under section 414(u)(4) of the Code.

4.10 Accrual of Additional Benefits for Qualified Military Service.

- (a) **Death Benefits with Respect to Qualified Military Service.** In the case of a Participant who dies on or after January 1, 2007, while performing qualified military service (as defined in Code section 414(u)) with respect to the Employer, his/her Beneficiary shall have a Nonforfeitable Interest in the Participant's entire Employer Contribution Account to the extent that he/she would have had had the Participant resumed and then terminated employment on account of death.
- (b) **Benefit Accruals with Respect to Differential Wage Payments.** If the Employer so elects in the Adoption Agreement, effective as elected by the Employer but no earlier than January 1, 2009, Plan contributions shall be made based on differential wage payments (as such term is defined in Code section 3401(h)(2)). Solely for purposes of applying the limits of Code section 415, differential wage payments shall be treated as compensation.
- (c) **Benefit Accruals with Respect to Qualified Military Service.** Notwithstanding any provision of the Plan to the contrary, effective as elected by the Employer but no earlier than January 1, 2007, if the Employer so elects in the Adoption Agreement, Participants who die or become Disabled while performing qualified military service (as defined in Code section 414(u)) with respect to the Employer shall receive Plan contributions as permitted under Code section 414(u)(9).

- 4.11 Changes in Participant Election.** A Participant may elect to change his/her rate of Voluntary Participant Contributions at any time or during an election period as designated by the Employer. A Participant may discontinue such contributions at any time or during an election period as designated by the Employer.

4.12 Portability of Benefits.

- (a) Unless otherwise elected by the Employer in the Adoption Agreement, the Plan will accept Participant (which shall include, for purposes of this subsection, an Employee within the Covered Employment Classification whether or not he/she has satisfied the minimum age and service requirements of Article III) rollover contributions and/or direct rollovers of distributions (including after-tax contributions) made after December 31, 2001 that are eligible for rollover in accordance with Section 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), or 457(e)(16) of the Code, from all of the following types of plans:
- (1) A qualified plan described in Section 401(a) or 403(a) of the Code;
 - (2) An annuity contract described in Section 403(b) of the Code;
 - (3) An eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state; and
 - (4) An individual retirement account or annuity described in Section 408(a) or 408(b) of the Code (including SEPs, and SIMPLE IRAs after two years of participating in the SIMPLE IRA).
- (b) Notwithstanding the foregoing, the Employer may reject the rollover contribution if it determines, in its discretion, that the form and nature of the distribution from the other plan does not satisfy the applicable requirements under the Code to make the transfer or rollover a nontaxable transaction to the Participant;
- (c) For indirect rollover contributions, the amount distributed from such plan must be rolled over to this Plan no later than the sixtieth (60th) day after the distribution was made from the plan, unless otherwise waived by the IRS pursuant to Section 402(c)(3) of the Code.
- (d) The amount transferred shall be deposited in the Trust and shall be credited to a Rollover Account. Such Account shall be one hundred percent (100%) vested in the Participant.
- (e) The Plan will accept accumulated deductible employee contributions as defined in section 72(o)(5) of the Code that were distributed from a qualified retirement plan and transferred (rolled over) pursuant to section 402(c), 403(a)(4), 403(b)(8), or 408(d)(3) of the Code. Notwithstanding the above, this transferred (rolled over) amount shall be deposited to the Trust and shall be credited to a Deductible Employee Contributions Account. Such Account shall be one-hundred percent (100%) vested in the Participant.
- (f) A Participant may, upon approval by the Employer and the Plan Administrator, transfer his/her interest in another plan maintained by the Employer that is qualified under section 401(a) of the Code to this Plan, provided the transfer is effected through a one-time irrevocable written election made by the Participant. The amount transferred shall be deposited in the Trust and shall be credited to sources that maintain the same attributes as the plan from which they are transferred. Such transfer shall not reduce the accrued years or service credited to the Participant for purposes of vesting or eligibility for any Plan benefits or features.

4.13 Return of Employer Contributions. Any contribution made by the Employer because of a mistake of fact must be returned to the Employer within one year of the date of contribution.

V. LIMITATION ON ALLOCATIONS

5.01 Participants Only in This Plan.

- (a) If the Participant does not participate in, and has never participated in another qualified plan or a welfare benefit fund, as defined in section 419(e) of the Code, maintained by the Employer, or an individual medical account, as defined by section 415(l)(2) of the Code, maintained by the Employer, which provides an Annual Addition, the amount of Annual Additions which may be credited to the Participant's Account for any Limitation Year will not exceed the lesser of the Maximum Permissible Amount or any other limitation contained in this Plan. If the Employer Contribution that would otherwise be contributed or allocated to the Participant's Account would cause the Annual Additions for the Limitation Year to exceed the Maximum Permissible Amount, the amount contributed or allocated will be reduced so that the Annual Additions for the Limitation Year will equal the Maximum Permissible Amount.
- (b) Prior to determining the Participant's actual Compensation for the Limitation Year, the Employer may determine the Maximum Permissible Amount for a Participant on the basis of a reasonable estimation of the Participant's Compensation for the Limitation Year, uniformly determined for all Participants similarly situated.
- (c) As soon as is administratively feasible after the end of the Limitation Year, the Maximum Permissible Amount for the Limitation Year will be determined on the basis of the Participant's actual Compensation for the Limitation Year.

5.02 Participants in Another Defined Contribution Plan.

- (a) Unless the Employer provides other limitations in the Adoption Agreement, this Section applies if, in addition to this Plan, the Participant is covered under another qualified defined contribution plan maintained by the Employer, or a welfare benefit fund, as defined in section 419(e) of the Code, maintained by the Employer, or an individual medical account, as defined by section 415(l)(2) of the Code, maintained by the Employer, which provides an Annual Addition, during any Limitation Year. The Annual Additions which may be credited to a Participant's Account under this Plan for any such Limitation Year will not exceed the Maximum Permissible Amount reduced by the Annual Additions credited to a Participant's Account under the other plans and welfare benefit funds for the same Limitation Year. If the Annual Additions with respect to the Participant under other defined contribution plans and welfare benefit funds maintained by the Employer are less than the Maximum Permissible Amount and the Employer contribution that would otherwise be contributed or allocated to the Participant's Account under this Plan would cause the Annual Additions for the Limitation Year to exceed this limitation, the amount contributed or allocated will be reduced so that the Annual Additions under all such plans and funds for the Limitation Year will equal the Maximum Permissible Amount. If the Annual Additions with respect to the Participant under such other defined contribution plans and welfare benefit funds in the aggregate are equal to or greater than the Maximum Permissible Amount, no amount will be contributed or allocated to the Participant's Account under this Plan for the Limitation Year.
- (b) Prior to determining the Participant's actual Compensation for the Limitation Year, the Employer may determine the Maximum Permissible Amount for a Participant in the manner described in Section 5.01(b).
- (c) As soon as is administratively feasible after the end of the Limitation Year, the Maximum Permissible Amount for the Limitation Year will be determined on the basis of the Participant's actual Compensation for the Limitation Year.

- (d) If, pursuant to Subsection (c) or as a result of the allocation of forfeitures, a Participant's Annual Additions under this Plan and such other plans would result in an Excess Amount for a Limitation Year, the Excess Amount will be deemed to consist of the Annual Additions last allocated, except that Annual Additions attributable to a welfare benefit fund or individual medical account will be deemed to have been allocated first regardless of the actual allocation date.
- (e) If an Excess Amount was allocated to a Participant on an allocation date of this Plan which coincides with an allocation date of another plan, the Excess Amount attributed to this Plan will be the product of,
 - (1) The total Excess Amount allocated as of such date, multiplied by
 - (2) The ratio of (i) the Annual Additions allocated to the Participant for the Limitation Year as of such date under this Plan to (ii) the total Annual Additions allocated to the Participant for the Limitation Year as of such date under this and all the other qualified prototype defined contribution plans.

5.03 Definitions. For the purposes of this Article, the following definitions shall apply:

- (a) Annual Additions. The sum of the following amounts credited to a Participant's account for the Limitation Year:
 - (1) Employer Contributions (including contributions "picked up" by the Employer under Section 4.03);
 - (2) Forfeitures;
 - (3) Employee contributions (including after-tax Voluntary Contributions under Section 4.05 and Mandatory Participant Contributions under Section 4.03 not "picked up" by the Employer); and
 - (4) Allocations under a simplified employee pension. Amounts allocated, after March 31, 1984, to an individual medical account, as defined in section 415(l)(2) of the Code, which is part of a pension or annuity plan maintained by the Employer, are treated as Annual Additions to a defined contribution plan.
- (5) Notwithstanding the above, the term Annual Additions does not include the following:
 - (a) Restorative Payments. Annual Additions for purposes of Code section 415 shall not include restorative payments. For this purpose, restorative payments are payments made to restore losses to a plan resulting from actions by a fiduciary for which there is reasonable risk of liability for breach of a fiduciary duty under applicable federal or state law, where Participants who are similarly situated are treated similarly with respect to the payments. Generally, payments to a defined contribution plan are restorative payments only if the payments are made in order to restore some or all of the plan's losses due to an action (or a failure to act) that creates a reasonable risk of liability for such a breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the plan). This includes payments to a plan made pursuant to a court-approved settlement to restore losses to a qualified defined contribution plan on account of the breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the plan). Payments made to a plan to make up for losses due merely to market fluctuations and other payments that are not made on account of a reasonable risk of liability for breach of a fiduciary duty are not restorative payments and generally constitute contributions that give rise to Annual Additions.

- (b) Other Amounts. Annual Additions for purposes of Code section 415 shall not include (i) the direct transfer of a benefit or employee contributions from a qualified plan to this Plan; (ii) rollover contributions (as described in Code sections 401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)); (iii) repayments of loans made to a Participant from the Plan; (iv) repayments of amounts described in Code section 411(a)(7)(B) (in accordance with Code sections 411(a)(7)(C)) and 411(a)(3)(D) or repayment of contributions to a governmental plan (as defined in Code section 414(d)) as described in Code section 415(k)(3), as well as Employer restorations of benefits that are required pursuant to such repayments; (v) Employee Contributions to a qualified cost of living arrangement within the meaning of Code section 415(k)(2)(B); (vi) catch-up contributions made in accordance with section 414(v) and §1.414(v)-1 and (vii) excess deferrals that are distributed in accordance with §1.402(g)-1(e)(2) or (3).
- (c) Date of Employer Contributions. Notwithstanding anything in the Plan to the contrary, Employer Contributions are treated as credited to a Participant's account for a particular Limitation Year only if the contributions are actually made to the plan no later than the 15th day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable, depending on the basis on which the Employer keeps its books) with or within which the particular Limitation Year ends.
- (b) Compensation. Participant's wages, salaries, fees for professional services, and other amounts received (without regard to whether an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer, to the extent that the amounts are includible in gross income (or to the extent amounts would have been received and includible in gross income but for an election under Code section 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b)). These amounts include, but are not limited to, bonuses, fringe benefits, and reimbursements or other expense allowances under a nonaccountable plan as described in Treas. Reg. section 1.62-2(c).
- (1) Notwithstanding the foregoing, Compensation does not include:
- (i) Contributions (other than elective contributions described in Code section 402(e)(3), 408(k)(6), 408(p)(2)(A)(i), or 457(b)) made by the Employer to a plan of deferred compensation (including a simplified employee pension described in Code section 408(k) or a simple retirement account described in Code section 408(p), and whether or not qualified) to the extent that the contributions are not includible in the gross income of the Participant for the taxable year in which contributed. In addition, any distributions from a plan of deferred compensation (whether or not qualified) are not considered as Compensation for Code section 415 purposes, regardless of whether such amounts are includible in the gross income of the Participant when distributed; and
 - (ii) Other amounts that receive special tax benefits, such as premiums for group-term life insurance (but only to the extent that the premiums are not includible in the gross income of the Participant and are not salary reduction amounts that are described in Code section 125).
 - (iii) Other items of remuneration that are similar to the items listed in subparagraph (i) or (ii) of this subsection (b).
- (2) Compensation Paid After Severance or Deemed Severance from Employment. Compensation shall be adjusted as set forth herein for the following types of compensation paid after a Participant's severance from employment (as determined under section 415 of the Code and the regulations thereunder) with the Employer. Any payment that is not described in subsection (i), (ii), (iii), or (iv) of this Section is not considered Compensation within the meaning of section 415 of the Code if paid after severance from employment with the Employer.

(i) Regular Pay.

- (A) Compensation shall include regular pay after severance of employment if the payment is regular compensation for services during the Participant's regular working hours, or compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments;
- (B) The payment would have been paid to the Participant prior to a severance from employment if the Participant had continued in employment with the Employer; and
- (C) Such amounts are paid:
 - 1. for Limitation Years beginning before January 1, 2009, within 2½ months after severance from employment with the Employer maintaining the Plan; and
 - 2. for Limitation Years beginning on or after January 1, 2009, by the later of 2½ months after severance from employment with the Employer maintaining the Plan or by the end of the calendar year that includes the date of such severance from employment.
- (D) The date January 1, 2009 in subsections (b)(2)(i)(C)(1) and (2) of this Section shall be substituted for an earlier effective date if provided in Article II of the Adoption Agreement but no earlier than July 1, 2007.

(ii) Leave Cashouts.

- (A) For Limitation Years beginning before January 1, 2009, Compensation shall include payment for unused accrued bona fide sick, vacation, or other leave, but only if (I) the Participant would have been able to use the leave if employment had continued, (II) such amounts are paid within 2½ months after severance from employment with the Employer maintaining the Plan, and (III) such amounts would be included in Compensation if the individual had continued to perform services for the Employer.
- (B) For Limitation Years beginning on or after January 1, 2009, Compensation shall include payment for unused accrued bona fide sick, vacation, or other leave, but only if (I) the Participant would have been able to use the leave if employment had continued, (II) such amounts are paid by the later of 2½ months after severance from employment with the Employer maintaining the Plan or by the end of the calendar year that includes the date of such severance from employment, and (III) such amounts would be included in Compensation if the individual had continued to perform services for the Employer.
- (C) The date January 1, 2009 in subsections (b)(2)(ii)(A) and (B) of this Section shall be substituted for an earlier effective date if provided in Article II of the Adoption Agreement but no earlier than July 1, 2007.

(iii) Salary Continuation Payments for Military Service Participants.

- (A) Compensation includes payments to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code section 414(u)(1)) to the extent:
 - 1. Those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service; and

2. Those payments would be included in Compensation if the individual had continued to perform services for the Employer rather than entering qualified military service.

(B) Notwithstanding the foregoing, Compensation does not include distributions from this Plan to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code section 414(u)(1)).

(iv) Salary Continuation Payments for Disabled Participants.

(A) Compensation includes amounts paid to a Participant who is permanently and totally disabled (as defined in Code section 22(e)(3)) to the extent:

1. Salary continuation applies to all Participants who are permanently and totally disabled for a fixed or determinable period or the Participant was not a highly compensated employee (as defined in Code section 414(q)) immediately before becoming disabled.
2. Those amounts would be included in Compensation if the Participant had continued to perform services for the Employer.

(B) Notwithstanding the foregoing, Compensation does not include distributions from this Plan to a Participant who is permanently and totally disabled (as defined in Code section 22(e)(3)).

For purposes of applying the limitations of this Article, Compensation for a Limitation Year is the Compensation actually paid or made available during such year. Compensation for a Limitation Year shall not include amounts earned but not paid during the Limitation Year solely because of the timing of pay periods and pay dates.

(c) Defined Contribution Dollar Limitation: \$40,000, as adjusted for increases in the cost of-living in accordance with section 415(d) of the Code.

(d) Employer: The Employer that adopts this Plan.

(e) Excess Amount: The excess of the Participant's Annual Additions for the Limitation Year over the Maximum Permissible Amount. Any Excess Amount shall include allocable income. The income allocable to an Excess Amount is equal to the sum of allocable gain or loss for the Plan Year and the allocable gain or loss for the period between the end of the Plan Year and the date of distribution (the gap period). The Plan may use any reasonable method for computing the income allocable to an Excess Amount, provided that the method is used consistently for all Participants and for all corrective distributions under the Plan for the Plan Year, and is used by the Plan for allocating income to Participants' Accounts.

(f) Limitation Year: A calendar year, or the twelve (12) consecutive month period elected by the Employer in section IX. 2 of the Adoption Agreement. All qualified plans maintained by the Employer must use the same Limitation Year. If the Limitation Year is amended to a different twelve (12) consecutive month period, the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made. The Limitation Year may only be changed by Plan amendment. Furthermore, if the Plan is terminated effective as of a date other than the last day of the Plan's Limitation Year, then the Plan is treated as if the Plan had been amended to change its Limitation Year and the maximum permissible amount shall be prorated for the resulting short Limitation Year.

- (g) Maximum Permissible Amount: The maximum Annual Addition that may be contributed or allocated to a Participant's Account under the Plan for any Limitation Year shall not exceed the lesser of:

- (1) The Defined Contribution Dollar Limitation, or
- (2) One hundred percent (100%) of the Participant's Compensation for the Limitation Year.

The compensation limit referred to in (2) shall not apply to any contribution for medical benefits after separation from service (within the meaning of section 401(h) or section 419A(f)(2) of the Code) which is otherwise treated as an annual addition.

If a short Limitation Year is created because of an amendment changing the Limitation Year to a different twelve (12) consecutive month period, the Maximum Permissible Amount will not exceed the Defined Contribution Dollar Limitation multiplied by the following fraction:

Number of months in the short Limitation Year

12

5.04 Aggregation and Disaggregation of Plans.

- (a) Generally. For purposes of applying the limitations of Code section 415, all defined contribution plans (without regard to whether a plan has been terminated) ever maintained by the Employer (or a "predecessor employer") under which the Participant receives Annual Additions are treated as one defined contribution plan. The "Employer" means the Employer that adopts this Plan and any other entity which the Employer determines, based on a reasonable, good faith interpretation of existing law in accordance with Notice 89-23, 1989-1 C.B. 654, as modified by Notice 96-64, 1996-2 C.B. 229, should be aggregated for purposes of applying the limitations of Code section 415. For purposes of this Section:
- (1) A former employer is a "predecessor employer" with respect to a Participant if the Employer maintains a plan under which the Participant had accrued a benefit while performing services for the former employer, but only if that benefit is provided under the plan maintained by the Employer. For this purpose, the formerly affiliated plan rules in Treas. Reg. section 1.415(f)-1(b)(2) apply as if the Employer and predecessor employer constituted a single employer under the rules described in Treas. Reg. section 1.415(a)-1(f)(1) and (2) immediately prior to the cessation of affiliation (and as if they constituted two, unrelated employers under the rules described in Treas. Reg. section 1.415(a)-1(f)(1) and (2) immediately after the cessation of affiliation) and cessation of affiliation was the event that gives rise to the predecessor employer relationship, such as a transfer of benefits or plan sponsorship.
 - (2) With respect to an Employer, a former entity that antedates the Employer is a "predecessor employer" with respect to a Participant if, under the facts and circumstances, the Employer constitutes a continuation of all or a portion of the trade or business of the former entity.
- (b) Midyear Aggregation. Two or more defined contribution plans that are not required to be aggregated pursuant to Code section 415(f) and the Treasury Regulations thereunder as of the first day of a Limitation Year do not fail to satisfy the requirements of Code section 415 with respect to a Participant for the Limitation Year merely because they are aggregated later in that Limitation Year, provided that no Annual Additions are credited to the Participant's account after the date on which the plans are required to be aggregated.
- 5.05 Effective Date.** Except as otherwise provided in Section 5.03(b)(2), this Article shall apply to limitation years beginning on or after July 1, 2007. The Employer may elect a delayed effective date for this Article in Section IX. 3 of the Adoption Agreement, however, such effective date must apply to limitation years that begin on or after the date that is 90 days after the close of the first legislative session of the legislative body with authority to amend the plan that begins on or after July 1, 2007.

VI. TRUST AND INVESTMENT OF ACCOUNTS

- 6.01 Trust.** A Trust is hereby created to hold all of the assets of the Plan for the exclusive benefit of Participants and Beneficiaries, except that expenses and taxes may be paid from the Trust as provided in Section 6.03. The trustee shall be the Employer or such other person which agrees to act in that capacity hereunder.
- 6.02 Investment Powers.** The trustee or the Plan Administrator, acting as agent for the trustee, shall have the powers listed in this Section with respect to investment of Trust assets, except to the extent that the investment of Trust assets is controlled by Participants, pursuant to Sections 6.05 and 13.03.
- (a) To invest and reinvest the Trust without distinction between principal and income in common or preferred stocks, shares of regulated investment companies and other mutual funds, bonds, notes, debentures, mortgages, certificates of deposit, contracts with insurance companies including but not limited to insurance, individual or group annuity, deposit administration, guaranteed interest contracts, and deposits at reasonable rates of interest at banking institutions including but not limited to savings accounts and certificates of deposit. Assets of the Trust may be invested in securities that involve a higher degree of risk than investments that have demonstrated their investment performance over an extended period of time.
 - (b) To invest and reinvest all or any part of the assets of the Trust in any common, collective or commingled trust fund that is maintained by a bank or other institution and that is available to Employee plans qualified under section 401 of the Code, or any successor provisions thereto, and during the period of time that an investment through any such medium shall exist, to the extent of participation of the Plan, the declaration of trust of such common, collective, or commingled trust fund shall constitute a part of this Plan.
 - (c) To invest and reinvest all or any part of the assets of the Trust in any group annuity, deposit administration or guaranteed interest contract issued by an insurance company or other financial institution on a commingled or collective basis with the assets of any other plan or trust qualified under section 401(a) of the Code or any other plan described in section 401(a)(24) of the Code, and such contract may be held or issued in the name of the Plan Administrator, or such custodian as the Plan Administrator may appoint, as agent and nominee for the Employer. During the period that an investment through any such contract shall exist, to the extent of participation of the Plan, the terms and conditions of such contract shall constitute a part of the Plan.
 - (d) To hold cash awaiting investment and to keep such portion of the Trust in cash or cash balances, without liability for interest, in such amounts as may from time to time be deemed to be reasonable and necessary to meet obligations under the Plan or otherwise to be in the best interests of the Plan.
 - (e) To hold, to authorize the holding of, and to register any investment to the Trust in the name of the Plan, the Employer, or any nominee or agent of any of the foregoing, including the Plan Administrator, or in bearer form, to deposit or arrange for the deposit of securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by any other person, and to organize corporations or trusts under the laws of any jurisdiction for the purpose of acquiring or holding title to any property for the Trust, all with or without the addition of words or other action to indicate that property is held in a fiduciary or representative capacity but the books and records of the Plan shall at all times show that all such investments are part of the Trust.
 - (f) Upon such terms as may be deemed advisable by the Employer or the Plan Administrator, as the case may be, for the protection of the interests of the Plan or for the preservation of the value of an investment, to exercise and enforce by suit for legal or equitable remedies or by other action, or to waive any right or claim on behalf of the Plan or any default in any obligation owing to the Plan, to renew, extend the time for payment of, agree to a reduction in the rate of interest on, or agree to any other modification or change in the terms of any obligation owing to the Plan, to settle, compromise, adjust, or submit to arbitration any

claim or right in favor of or against the Plan, to exercise and enforce any and all rights of foreclosure, bid for property in foreclosure, and take a deed in lieu of foreclosure with or without paying consideration therefor, to commence or defend suits or other legal proceedings whenever any interest of the Plan requires it, and to represent the Plan in all suits or legal proceedings in any court of law or equity or before any body or tribunal.

- (g) To employ suitable consultants, depositories, agents, and legal counsel on behalf of the Plan.
- (h) To open and maintain any bank account or accounts in the name of the Plan, the Employer, or any nominee or agent of the foregoing, including the Plan Administrator, in any bank or banks.
- (i) To do any and all other acts that may be deemed necessary to carry out any of the powers set forth herein.

6.03 Taxes and Expenses. All taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws upon, or in respect to the Trust, or the income thereof, and all commissions or acquisitions or dispositions of securities and similar expenses of investment and reinvestment of the Trust, shall be paid from the Trust. Such reasonable compensation of the Plan Administrator, as may be agreed upon from time to time by the Employer and the Plan Administrator, and reimbursement for reasonable expenses incurred by the Plan Administrator in performance of its duties hereunder (including but not limited to fees for legal, accounting, investment and custodial services) shall also be paid from the Trust. However, no person who is a fiduciary within the meaning of section 3(21)(A) of ERISA and regulations promulgated thereunder, and who receives full-time pay from the Employer may receive compensation from the Trust, except for expenses properly and actually incurred.

6.04 Payment of Benefits. The payment of benefits from the Trust in accordance with the terms of the Plan may be made by the Plan Administrator, or by any custodian or other person so authorized by the Employer to make such disbursement. Benefits under this Plan shall be paid only if the Plan Administrator, custodian or other person, or the Employer if directing such person, decides in his/her discretion that the applicant is entitled to them. The Plan Administrator, custodian or other person shall not be liable with respect to any distribution of Trust assets made at the direction of the Employer.

6.05 Investment Funds. In accordance with uniform and nondiscriminatory rules established by the Employer and the Plan Administrator, the Participant may direct his/her Accounts to be invested in one (1) or more investment funds available under the Plan; provided, however, that the Participant's investment directions shall not violate any investment restrictions established by the Employer and shall not include any investment in collectibles, as defined in section 408(m) of the Code.

6.06 Valuation of Accounts. As of each Accounting Date, the Plan assets held in each investment fund offered shall be valued at fair market value and the investment income and gains or losses for each fund shall be determined. Such investment income and gains or losses shall be allocated proportionately among all Account balances on a fund-by-fund basis. The allocation shall be in the proportion that each such Account balance as of the immediately preceding Accounting Date bears to the total of all such Account balances, as of that Accounting Date. For purposes of this Article, all Account balances include the Account balances of all Participants and Beneficiaries.

6.07 Participant Loan Accounts. Participant Loan Accounts shall be invested in accordance with Section 13.03 of the Plan. Such Accounts shall not share in any investment income and gains or losses of the investment funds described in Section 6.05.

6.08 Deemed IRAs. If deemed IRAs are available pursuant to section 408(q) of the Code, the assets of such deemed IRAs may be commingled with the Plan assets for investment purposes but, if held in the same trust, the trustee shall maintain a separate account for each deemed IRA.

VII. VESTING

7.01 Vesting Schedule. The portion of a Participant's Account attributable to Mandatory Participant Contributions and Voluntary Participant Contributions, and the earnings thereon, shall be at all times nonforfeitable by the Participant. A Participant shall have a Nonforfeitable Interest in the percentage of his/her Employer Contribution Account established under Section 4.01, 4.04, 18.02(a) and 19.02(a) determined pursuant to the schedule elected by the Employer in the Adoption Agreement.

7.02 Crediting Periods of Service. Except as provided in Section 7.03, all of an Employee's Periods of Service with the Employer are counted to determine the nonforfeitable percentage in the Employee's Account balance derived from Employer Contributions. If the Employer maintains the plan of a predecessor employer, service with such employer will be treated as service for the Employer.

For purposes of determining years of service and Breaks in Service for the purposes of computing a Participant's nonforfeitable right to the Account balance derived from Employer Contributions, the twelve (12) consecutive month period will commence on the date the Employee first performs an Hour of Service and each subsequent twelve (12) consecutive month period will commence on the anniversary of such date.

7.03 Service After Break in Service. In the case of a Participant who has a Break in Service of at least five (5) years, all Periods of Service after such Breaks in Service will be disregarded for the purpose of determining the nonforfeitable percentage of the Employer-derived Account balance that accrued before such Break, but both pre-Break and post-Break service will count for the purposes of vesting the Employer-derived Account balance that accrues after such Break. Both Accounts will share in the earnings and losses of the fund.

In the case of a Participant who does not have a Break in Service of at least five (5) years, both the pre-Break and post-Break service will count in vesting both the pre-Break and post-Break Employer-derived Account balance.

In the case of a Participant who does not have any nonforfeitable right to the Account balance derived from Employer Contributions, years of service before a period of consecutive one (1) year Breaks in Service will not be taken into account in computing eligibility service if the number of consecutive one (1) year Breaks in Service in such period equals or exceeds the greater of five (5) or the aggregate number of years of service. Such aggregate number of years of service will not include any years of service disregarded under the preceding sentence by reason of prior Breaks in Service.

If a Participant's years of service are disregarded pursuant to the preceding paragraph, such Participant will be treated as a new Employee for eligibility purposes. If a Participant's years of service may not be disregarded pursuant to the preceding paragraph, such Participant shall continue to participate in the Plan, or, if terminated, shall participate immediately upon reemployment.

7.04 Vesting Upon Normal Retirement Age. Notwithstanding Section 7.01 of the Plan, a Participant shall have a Nonforfeitable Interest in his/her entire Employer Contribution Account, to the extent that the balance of such Account has not previously been forfeited pursuant to Section 7.06 of the Plan, if he/she is employed on or after his/her Normal Retirement Age.

7.05 Vesting Upon Death or Disability. Notwithstanding Section 7.01 of the Plan, in the event of Disability or death, a Participant or his/her Beneficiary shall have a Nonforfeitable Interest in his/her entire Employer Contribution Account, to the extent that the balance of such Account has not previously been forfeited pursuant to Section 7.06 of the Plan.

- 7.06 Forfeitures.** Except as provided in Sections 7.04 and 7.05 of the Plan or as otherwise provided in this Section 7.06, a Participant who separates from service prior to obtaining full vesting shall forfeit that percentage of his/her Employer Contribution Account balance which has not vested as of the date such Participant incurs a Break in Service of five (5) consecutive years or, if earlier, the date such Participant receives, or is deemed under the provisions of Section 9.04 to have received, distribution of the entire Nonforfeitable Interest in his/her Employer Contribution Account. No forfeiture will occur solely as a result of a Participant's withdrawal of Employee Contributions. Forfeitures shall be allocated in the manner described in Section 4.02.
- 7.07 Reinstatement of Forfeitures.** If the Participant returns to the employment of the Employer before incurring a Break in Service of five (5) consecutive years, any amounts forfeited pursuant to Section 7.06 shall be reinstated to the Participant's Employer Contribution Account on the date of repayment by the Participant of the amount distributed to such Participant from his/her Employer Contribution Account; provided, however, that if such Participant forfeited his/her Account balance by reason of a deemed distribution, pursuant to Section 9.04, such amounts shall be automatically restored upon the reemployment of such Participant. Such repayment must be made before the earlier of five (5) years after the first date on which the Participant is subsequently reemployed by the Employer, or the date the Participant incurs a Break in Service of five (5) consecutive years.

VIII. BENEFITS CLAIM

- 8.01 Claim of Benefits.** A Participant or Beneficiary shall notify the Plan Administrator in writing of a claim of benefits under the Plan. The Plan Administrator shall take such steps as may be necessary to facilitate the payment of such benefits to the Participant or Beneficiary.
- 8.02 Appeal Procedure.** If any claim for benefits is initially denied by the Plan Administrator, the claimant shall file the appeal with the Employer, whose decision shall be final, to the extent provided by Section 15.07.

IX. COMMENCEMENT OF BENEFITS

- 9.01 Normal and Elective Commencement of Benefits.** A Participant who retires, becomes Disabled or incurs a severance from employment for any other reason may elect by written notice to the Plan Administrator to have his or her vested Account balance benefits commence on any date, provided that such distribution complies with Section 9.02. Such election must be made in writing during the one-hundred eighty (180) day period ending on the date as of which benefit payments are to commence. A Participant's election shall be revocable and may be amended by the Participant.

The failure of a Participant to consent to a distribution while a benefit is immediately distributable, within the meaning of section 9.02 of the Plan, shall be deemed to be an election to defer commencement of payment of any benefit sufficient to satisfy this section.

- 9.02 Restrictions on Immediate Distributions.** Notwithstanding anything to the contrary contained in Section 9.01 of the Plan, if the value of a Participant's vested Account balance is at least \$1,000, and the Account balance is immediately distributable, the Participant must consent to any distribution of such Account balance. The Participant's consent shall be obtained in writing during the one-hundred eighty (180) day period (ninety (90) day period for Plan Years beginning before January 1, 2007) ending on the date as of which benefit payments are to commence. No consent shall be required, however, to the extent that a distribution is required to satisfy section 401(a)(9) or 415 of the Code.

The Plan Administrator shall notify the Participant of the right to defer any distribution until the Participant's Account balance is no longer immediately distributable. Such notification shall include a general description of the material features, and an explanation of the relative values of, the optional forms of benefit available

under the Plan in a manner that would satisfy section 417(a)(3) of the Code, and shall be provided no less than thirty (30) and no more than one-hundred eighty (180) days (ninety (90) days for Plan Years beginning before January 1, 2007) before the date as of which benefit payments are to commence. However, distribution may commence less than thirty (30) days after the notice described in the preceding sentence is given, provided (i) the distribution is one to which sections 401(a)(11) and 417 of the Code do not apply or, if the QJSA Election is made by the Employer in the Adoption Agreement, the waiver requirements of Section 17.05(a) are met; (ii) the Plan Administrator clearly informs the Participant that the Participant has a right to a period of at least thirty (30) days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option); and (iii) the Participant, after receiving the notice, affirmatively elects a distribution.

In addition, upon termination of this Plan, if the Plan does not offer an annuity option (purchased from a commercial provider) and if the Employer does not maintain another 401(a) defined contribution plan, the Participant's Account balance will, without the Participant's consent, be distributed to the Participant in a lump sum. However, if the Employer maintains another 401(a) defined contribution plan, the Participant's Account will be transferred, without the Participant's consent, to the other plan if the Participant does not consent to an immediate distribution.

An Account balance is immediately distributable if any part of the Account balance could be distributed to the Participant (or surviving spouse) before the Participant attains or would have attained (if not deceased) the later of Normal Retirement Age or age sixty-two (62).

For purposes of determining the applicability of the foregoing consent requirements to distributions made before the first day of the first plan year beginning after December 31, 1988, the Participant's vested Account balance shall not include amounts attributable to accumulated deductible employee contributions within the meaning of section 72(o)(5)(B) of the Code.

9.03 Transfer to Another Plan.

- (a) If a Participant becomes eligible to participate in another plan maintained by the Employer that is qualified under section 401(a) of the Code, the Plan Administrator shall, at the written election of such Participant, transfer all or part of such Participant's Account to such plan, provided the Plan Administrator for such plan certifies to the Plan Administrator that its plan provides for the acceptance of such a transfer. Such transfers shall include those transfers of the nonforfeitable interest of a Participant's Account made for the purchase of service credit in defined benefit plans maintained by the Employer. For purposes of this Plan, any such transfer shall not be considered a distribution to the Participant subject to spousal consent as described in Section 9.10.
- (b) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Section, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.
- (c) Definitions. For the purposes of Subsection (b), the following definitions shall apply:
 - (1) Eligible Rollover Distribution. 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:
 - (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of ten years or more;

- (ii) any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and
- (iii) the portion of any other distribution(s) that is not includible in gross income.

A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408(a) or (b) of the Code, or, for distributions occurring after December 31, 2007, to a Roth IRA described in § 408A of the Code, or to a qualified defined contribution plan described in section 401(a) or a qualified annuity contract described in section 403(b) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(2) Eligible Retirement Plan.

- (i) an individual retirement account described in section 408(a) of the Code or an individual retirement annuity described in section 408(b) of the Code (collectively, an “IRA”);
- (ii) an annuity plan described in section 403(a) of the Code;
- (iii) an annuity contract described in section 403(b) of the Code;
- (iv) an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan;
- (v) a qualified plan described in section 401(a) of the Code, that accepts the Distributee’s Eligible Rollover Distribution; or
- (vi) for distributions occurring after December 31, 2007, a Roth IRA described in Code section 408A. The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code.

- (3) Distributee. Participant; in addition, the Participant’s surviving spouse and the spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, are Distributions with regard to the interest of the spouse or former spouse. For distributions after December 31, 2006 (unless a later date is elected by the Employer pursuant to subsection (d)(1) below, but no later than Plan Years beginning after December 31, 2009), a distributee includes the Employee’s or former Employee’s nonspouse designated Beneficiary, in which case, the distribution can only be transferred to a traditional or Roth IRA established on behalf of the nonspouse designated Beneficiary for the purpose of receiving the distribution.

- (4) Direct Rollover. A payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

(d) Rollover by a Non-Spouse Designated Beneficiary.

- (1) Unless otherwise elected by the Employer in the Adoption Agreement, for distributions beginning after December 31, 2006 but on or before December 31, 2009, a non-spouse Beneficiary who qualifies as a “designated beneficiary” under Code section 401(a)(9)(E) may establish an individual retirement plan

that will be treated as an inherited IRA pursuant to the provisions of Code section 402(c)(11) into which all or a portion of a death benefit distribution from this Plan can be transferred directly. A trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a designated beneficiary.

- (2) Notwithstanding paragraph (1), for Plan Years beginning after December 31, 2009, a non-spouse Beneficiary who qualifies as a “designated beneficiary” under Code section 401(a)(9)(E) may establish an individual retirement plan that will be treated as an inherited IRA pursuant to the provisions of Code section 402(c)(11) into which all or a portion of a death benefit distribution from this Plan can be transferred directly. A trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a designated beneficiary.
- (3) Notwithstanding anything herein to the contrary, a death benefit distribution shall not be eligible for transfer to an inherited IRA to the extent such distribution is a required minimum distribution under Code section 401(a)(9).
- (e) Rollover by a Surviving Spouse Distributee. If any distribution attributable to a Participant is paid to the Participant’s surviving spouse, section 402(c) applies to the distribution in the same manner as if the spouse were the Participant. However, a qualified plan (as defined in Treasury Regulation section 1.402(c)-2 Q&A-2) is not treated as an eligible retirement plan with respect to a surviving spouse. Only an individual retirement plan is treated as an eligible retirement plan with respect to an eligible rollover distribution to a surviving spouse.

9.04 De Minimis Accounts. Notwithstanding the foregoing provisions of this Article, if a Participant terminates service, and the value of his/her Nonforfeitable Interest in his/her Account is less than \$1,000, the Participant’s benefit shall be paid as soon as practicable to the Participant in a single lump sum distribution. If the value of the Participant’s Account is at least \$1,000 but not more than the dollar limit under section 411(a)(11) (A) of the Code, the Participant may elect to receive his/her Nonforfeitable Interest in his/her Account. Such distribution shall be made as soon as practicable following the request, in a lump sum.

For purposes of this Section, if a Participant’s Nonforfeitable Interest in his/her Account is zero, the Participant shall be deemed to have received a distribution of such Nonforfeitable Interest in his/her Account.

9.05 Withdrawal of Voluntary Contributions. A Participant may upon written request withdraw a part of or the full amount of his/her Voluntary Contribution Account. Such withdrawals may be made at any time, provided that no more than two (2) such withdrawals may be made during any calendar year. No forfeiture will occur solely as the result of any such withdrawal.

9.06 Withdrawal of Deductible Employee Contributions. A Participant may upon written request withdraw a part of or the full amount of his/her Deductible Employee Contribution Account. Such withdrawals may be made at any time, provided that no more than two (2) such withdrawals may be made during any calendar year. No forfeiture will occur solely as the result of any such withdrawal.

9.07 In-Service Distribution from Rollover Account. Where elected by the Employer in the Adoption Agreement, a Participant that has a separate account attributable to rollover contributions to the Plan, may at any time elect to receive a distribution of all or any portion of the amount held in the Rollover Account.

9.08 In-Service Distributions.

- (a) Unless otherwise elected by the Employer in the Adoption Agreement, a Participant who has reached age 70½ regardless of his Nonforfeitable Interest in his/her entire Employer Contribution Account, shall, upon written request, receive a distribution of a part of or the full amount of the balance in any or all of his vested Accounts.

- (b) If elected by the Employer, in-service distributions may be made beginning after June 1, 2009 to a Participant who has attained Normal Retirement Age or an alternate age (after Normal Retirement Age) elected by the Employer, and who has not yet incurred a severance from employment.
- (c) A Participant's benefit under the Plan may not be distributed before the Participant attains age 62 or, if earlier, the Participant separates from employment (or has a deemed separation), attains Normal Retirement Age under the plan, dies, or becomes disabled, or upon termination of the Plan.
- (d) Distributions under Section 9.08 may be requested at any time, provided that no more than two (2) such distributions may be made during any calendar year.

9.09 Latest Commencement of Benefits. Notwithstanding anything to the contrary in this Article, benefits shall begin no later than the Participant's Required Beginning Date, as defined under Section 10.05, or as otherwise provided in Section 10.04.

9.10 Spousal Consent. Notwithstanding the foregoing, if the Employer elected the QJSA Election in the Adoption Agreement, a married Participant must first obtain his or her spouse's notarized consent to request a distribution (other than a Qualified Joint and Survivor Annuity), withdrawal, or rollover under this Article IX.

9.11 Deemed Severance from Employment.

- (a) Unless otherwise elected by the Employer in the Adoption Agreement, effective January 1, 2009, a Participant shall be deemed to have a severance from employment solely for purposes of eligibility to receive distributions from the Plan during any period the individual is performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code) for more than 30 days.
- (b) If a Participant receives a distribution pursuant to subsection (a), then the Participant shall not be permitted to make an after-tax voluntary contribution during the six-month period beginning on the date of the distribution.
- (c) If a Participant receives a distribution which could be attributable to:
 - (i) a deemed severance from employment described in subsection (a); or
 - (ii) another distribution event under the Plan,

then the distribution shall be considered made pursuant to the distribution event referenced in paragraph (ii), and the Participant shall not be subject to the limitation on after-tax voluntary contributions set forth in subsection (b).

9.12 Distributions for Health and Long-Term Care Insurance for Public Safety Officers.

- (a) If elected by the Employer, for Plan Years beginning after December 31, 2006, Eligible Retired Public Safety Officers may elect after separation from service to have up to \$3,000 distributed tax-free annually from the Plan in order to pay for Qualified Health Insurance Premiums for an accident or health plan (including a self-insured plan) or a qualified long-term care insurance contract. The Plan shall make such distributions directly to the provider of the accident or health plan or qualified long-term care insurance contract.
- (b) The term "Eligible Retired Public Safety Officer" means an individual who, by reason of disability or attainment of normal retirement age, is separated from service as a Public Safety Officer with the Employer who maintains the eligible retirement plan from which distributions pursuant to this Section are made. The term "Public Safety Officer" has the same meaning given such term by section 1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968.

- (c) The term “Qualified Health Insurance Premiums” means premiums for coverage for the Eligible Retired Public Safety Officer, his spouse, and dependents, by an accident or health insurance plan or qualified long-term care insurance contract (as defined in Code section 7702(B)).

X. DISTRIBUTION REQUIREMENTS

10.01 General Rules.

- (a) Generally. Subject to the provisions of Article XII or XVII if so elected by the Employer in the Adoption Agreement, the requirements of this Article shall apply to any distribution of a Participant’s interest and will take precedence over any inconsistent provisions of this Plan. Unless otherwise specified, the provisions of this Article X apply to calendar years beginning after December 31, 2002. With respect to distributions under the Plan made in or for Plan Years beginning on or after January 1, 2002 and prior to January 1, 2003, the Plan will apply the minimum distribution requirements of section 401(a)(9) of the Code in accordance with the regulations under section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provision of the Plan to the contrary.
- (b) Distributions in Accordance with 401(a)(9). All distributions required under this Article shall be determined and made in accordance with the regulations under section 401(a)(9) of the Code, and the minimum distribution incidental benefit requirement of section 401(a)(9)(G) of the Code.
- (c) Limits on Distribution Periods. As of the first Distribution Calendar Year, distributions to a Participant, if not made in a single-sum, may only be made over one of the following periods:
- (1) The life of the Participant,
 - (2) The joint lives of the Participant and a designated Beneficiary,
 - (3) A period certain not extending beyond the life expectancy of the Participant, or
 - (4) A period certain not extending beyond the joint and last survivor expectancy of the Participant and a designated Beneficiary.
- (d) TEFRA Section 242(b)(2) Elections. Notwithstanding the other provisions of this Article X, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the Plan that relate to Section 242(b)(2) of TEFRA.
- (e) EESA Provisions. The provisions relating to qualified disaster recovery assistance distributions for Participants affected by certain 2008 severe storms, flooding, and tornadoes and repayment thereof, and relating to repayment of prior qualified distributions for home purchases, set forth in section 702 of the Emergency Economic Stabilization Act of 2008 (“EESA”) shall apply to the Plan.
- (f) KETRA and GOZA Provisions. The provisions relating to qualified hurricane distributions and repayment thereof set forth in section 1400Q(a) of the Code, and relating to repayment of prior qualified distributions for home purchases set forth in Code section 1400Q(b), shall apply to the Plan. These provisions added to the Code by the Katrina Emergency Tax Relief Act of 2005 (“KETRA”) and the Gulf Opportunity Zone Act of 2005 (GOZA), permit plans to allow repayments of certain prior qualified distributions for home purchases for Participants affected by Hurricanes Katrina, Rita, and Wilma.

10.02 Time and Manner of Distribution

- (a) Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date.
- (b) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
 - (1) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, then, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.
 - (2) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, then distributions to the designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
 - (3) If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
 - (4) If the Participant's surviving spouse is the Participant's sole designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 10.02(b), other than Section 10.02(b)(1), will apply as if the surviving spouse were the Participant.

For purposes of this Section 10.02(b) and Section 10.04, unless Section 10.02(b)(4) applies, distributions are considered to begin on the Participant's required beginning date. If Section 10.02(b)(4) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 10.02(b)(1). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 10.02(b)(1)), the date distributions are considered to begin is the date distributions actually commence.

- (c) Forms of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with Sections 10.03 and 10.04. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9) and the Treasury Regulations.

10.03 Required Minimum Distributions During Participant's Lifetime

- (a) Amount of Required Minimum Distribution For Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:
 - (1) the quotient obtained by dividing the Participant's Account Balance by the distribution period set forth in the Uniform Lifetime Table found in Section 1.401(a)(9)-9, Q&A-2, of the Final Income Tax Regulations using the Participant's age as of the Participant's birthday in the distribution calendar year; or

- (2) if the Participant's sole designated Beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9, Q&A-3, of the regulations using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.
- (b) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this Section 10.03 beginning with the first distribution calendar year and continuing up to, and including, the distribution calendar year that includes the Participant's date of death.

10.04 Required Minimum Distributions After Participant's Death

(a) Death On or After Date Distributions Begin.

- (1) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated Beneficiary, determined as follows:
- (i) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
 - (ii) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.
 - (iii) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, the designated Beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.
- (2) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(b) Death Before Date Required Distributions Begin.

- (1) Participant Survived by Designated Beneficiary. If the Participant dies before the date required distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining life expectancy of the Participant's designated Beneficiary, determined as provided in Section 10.04(a).

- (2) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (3) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 10.02(b)(1), this Section 10.04(b) will apply as if the surviving spouse were the Participant.

10.05 Definitions

- (a) Designated Beneficiary. The individual who is designated by the Participant (or the Participant's surviving spouse) as the Beneficiary of the Participant's interest under the Plan and who is the designated Beneficiary under Code Section 401(a)(9) and Section 1.401(a)(9)-4 of the regulations.
- (b) Distribution Calendar Year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under Section 10.02(b). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.
- (c) Life Expectancy. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9, Q&A-1, of the regulations.
- (d) Participant's Account Balance. The Account Balance as of the last Accounting Date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the Account Balance as of dates in the valuation calendar year after the Accounting Date and decreased by distributions made in the valuation calendar year after the Accounting Date. The Account Balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.
- (e) Required Beginning Date. The Required Beginning Date of a Participant is April 1 of the calendar year following the later of the calendar year in which the Participant attains age seventy and one-half (70½), or the calendar year in which the Participant retires.

10.06 Application of Minimum Distribution Requirements. The minimum distribution requirements of section 401(a)(9) of the Code shall only apply to the Plan to the extent that such requirements are applicable by law for a year. Pursuant to the Worker, Retiree, and Employer Recovery Act of 2008 ("WRERA"), required minimum distributions were suspended for 2009.

10.07 Special Rule for Scheduled Installment Payments. All installment payments scheduled to be distributed to a Participant prior to the effective date of a suspension of the required minimum distribution provisions of Code section 401(a)(9) shall be distributed as scheduled unless the Participant affirmatively elects to have the payments stopped. Notwithstanding the foregoing, for purposes of this Section 10.07, the effective date of the suspension of the required minimum distribution provisions for 2009 shall be deemed January 6, 2009.

XI. MODES OF DISTRIBUTION OF BENEFITS

11.01 Normal Mode of Distribution. Unless an elective mode of distribution is elected as provided in Section 11.02, benefits shall be paid to the Participant in the form of a lump sum payment.

Notwithstanding the foregoing, where the Employer made the “QJSA Election” in the Adoption Agreement, unless an elective mode of distribution is elected in accordance with Article XVII, benefits shall be paid to the Participant in the form provided for in Article XVII.

11.02 Elective Mode of Distribution. Subject to the requirements of Articles X, XII and XVII, a Participant may revocably elect to have his/her Account distributed in any one (1) of the following modes in lieu of the mode described in Section 11.01:

- (a) Equal Payments. Equal monthly, quarterly, semi-annual, or annual payments in an amount chosen by the Participant continuing until the Account is exhausted.
- (b) Period Certain. Approximately equal monthly, quarterly, semi-annual, or annual payments, calculated to continue for a period certain chosen by the Participant.
- (c) Other. Any other sequence of payments requested by the Participant.
- (d) Lump Sum. Where the Employer did make the QJSA Election in the Adoption Agreement, a Participant may also elect a lump sum payment.

11.03 Election of Mode. A Participant’s election of a payment option must be made in writing between thirty (30) and one-hundred eighty (180) days (ninety (90) days for Plan Years beginning before January 1, 2007) before the payment of benefits is to commence.

11.04 Death Benefits. Subject to Article X (and Article XII or XVII if so elected by the Employer in the Adoption Agreement),

- (a) In the case of a Participant who dies before he/she has begun receiving benefit payments, the Participant’s entire Nonforfeitable Interest shall then be payable to his/ her Beneficiary within ninety (90) days of the Participant’s death. A Beneficiary who is entitled to receive benefits under this Section may elect to have benefits commence at a later date, subject to the provisions of Article X. The Beneficiary may elect to receive the death benefit in any of the forms available to the Participant under Sections 11.01 and 11.02. If the Beneficiary is the Participant’s surviving spouse, and such surviving spouse dies before payment commences, then this Section shall apply to the beneficiary of the surviving spouse as though such surviving spouse were the Participant.
- (b) Should the Participant die after he/she has begun receiving benefit payments, the Beneficiary shall receive the remaining benefits, if any, that are payable, under the payment schedule elected by the Participant. Notwithstanding the foregoing, the Beneficiary may elect to accelerate payments of the remaining balances, including but not limited to, a lump sum distribution.

XII. SPOUSAL DEATH BENEFIT REQUIREMENTS

12.01 Application. Unless otherwise elected by the Employer in the Adoption Agreement, on or after January 1, 2006, the provisions of this Article shall take precedence over any conflicting provision in this Plan. The provisions of this Article, known as the “Beneficiary Spousal Consent Election,” shall apply to any Participant who is credited with any Period of Service with the Employer on or after August 23, 1984, and such other Participants as provided in Section 12.04.

12.02 Spousal Death Benefit.

- (a) On the death of a Participant, the Participant's Vested Account Balance will be paid to the Participant's Surviving Spouse. If there is no Surviving Spouse, or if the Participant has waived the spousal death benefit, as provided in Section 12.03, such Vested Account Balance will be paid to the Participant's designated Beneficiary.
- (b) The Surviving Spouse may elect to have distribution of the Vested Account Balance commence within the one-hundred eighty (180) day period following the date of the Participant's death, or as otherwise provided under Section 11.04. The Account balance shall be adjusted for gains or losses occurring after the Participant's death in accordance with the provisions of the Plan governing the adjustment of Account balances for other types of distributions.

12.03 Waiver of Spousal Death Benefit.

The Participant may waive the spousal death benefit described in Section 12.02 at any time; provided that no such waiver shall be effective unless: (a) the Participant's Spouse consents in writing to the election; (b) the election designates a specific Beneficiary, including any class of Beneficiaries or any contingent Beneficiaries, which may not be changed without spousal consent (or the Spouse expressly permits designations by the Participant without any further spousal consent); (c) the Spouse's consent acknowledges the effect of the election; and (d) the Spouse's consent is witnessed by a Plan representative or notary public. If it is established to the satisfaction of a Plan representative that there is no Spouse or that the Spouse cannot be located, a waiver will be deemed to meet the requirements of this Section.

Any consent by a Spouse obtained under this provision (or establishment that the consent of a Spouse may not be obtained) shall be effective only with respect to such Spouse. A consent that permits designations by the Participant without any requirement of further consent by such Spouse must acknowledge that the Spouse has the right to limit consent to a specific Beneficiary, and a specific form of benefit where applicable, and that the Spouse voluntarily elects to relinquish either or both of such rights. A revocation of a prior waiver may be made by a Participant without the consent of the Spouse at any time before the commencement of benefits. The number of revocations shall not be limited.

12.04 Definitions. For the purposes of this Section, the following definitions shall apply:

- (a) Spouse (Surviving Spouse). The Spouse or Surviving Spouse of the Participant, provided that a former Spouse will be treated as the Spouse or Surviving Spouse and a current Spouse will not be treated as the Spouse or Surviving Spouse to the extent provided under a qualified domestic relations order as described in section 414(p) of the Code.
- (b) Vested Account Balance. The aggregate value of the Participant's vested Account balances derived from Employer and Employee contributions (including rollovers), whether vested before or upon death, including the proceeds of insurance contracts, if any, on the Participant's life. The provisions of this Article shall apply to a Participant who is vested in amounts attributable to Employer Contributions, Employee contributions (or both) at the time of death or distribution.

XIII. LOANS TO PARTICIPANTS

13.01 Availability of Loans to Participants.

- (a) If the Employer has elected in the Adoption Agreement to make loans available to Participants, a Participant may apply for a loan from the Plan subject to the limitations and other provisions of this Article.
- (b) The Employer shall establish written guidelines governing the granting of loans, provided that such guidelines are approved by the Plan Administrator and are not inconsistent with the provisions of this Article, and that loans are made available to all applicable Participants on a reasonably equivalent basis.

13.02 Terms and Conditions of Loans to Participants. Any loan by the Plan to a Participant under Section 13.01 of the Plan shall satisfy the following requirements:

- (a) Availability. Loans shall be made available to all Participants who are active Employees on a reasonably equivalent basis. Loans shall not be made available to terminated Employees, Beneficiaries, or alternate payees.
- (b) Nondiscrimination. Loans shall not be made to highly compensated Employees in an amount greater than the amount made available to other Employees.
- (c) Interest Rate. Loans must be adequately secured and bear a reasonable interest rate.
- (d) Loan Limit. No Participant loan shall exceed the present value of the Participant's Nonforfeitable Interest in his/her Account.
- (e) Foreclosure. In the event of default, foreclosure on the note and attachment of security will not occur until a distributable event occurs in the Plan.
- (f) Reduction of Account. Notwithstanding any other provision of this Plan, the portion of the Participant's vested Account balance used as a security interest held by the Plan by reason of a loan outstanding to the Participant shall be taken into account for purposes of determining the amount of the Account balance payable at the time of death or distribution, but only if the reduction is used as repayment of the loan. If less than one hundred percent (100%) of the Participant's nonforfeitable Account balance (determined without regard to the preceding sentence) is payable to the surviving spouse, then the Account balance shall be adjusted by first reducing the nonforfeitable Account balance by the amount of the security used as repayment of the loan, and then determining the benefit payable to the surviving spouse.
- (g) Amount of Loan. At the time the loan is made, the principal amount of the loan plus the outstanding balance (principal plus accrued interest) due on any other outstanding loans to the Participant or Beneficiary from the Plan and from all other plans of the Employer that are qualified employer plans under section 72(p)(4) of the Code shall not exceed the lesser of:
 - (1) \$50,000, reduced by the excess (if any) of
 - (i) The highest outstanding balance of loans from the Plan during the one (1) year period ending on the day before the date on which the loan is made, over
 - (ii) The outstanding balance of loans from the Plan on the date on which such loan is made; or

- (2) One-half (½) of the value of the Participant's Nonforfeitable Interest in all of his/her Accounts under this Plan (or \$10,000, if greater, for loans prior to January 1, 2006).

For the purpose of the above limitation, all loans from all qualified employer plans of the Employer, including 457(b) plans, under Code section 72(p)(4) are aggregated.

- (h) Application for Loan. The Participant must give the Employer adequate written notice, as determined by the Employer, of the amount and desired time for receiving a loan. No more than one (1) loan may be made by the Plan to a Participant in any calendar year. No loan shall be approved if an existing loan from the Plan to the Participant is in default to any extent.
- (i) Length of Loan. The terms of any loan issued or renegotiated after December 31, 1993, shall require the Participant to repay the loan in substantially equal installments of principal and interest, at least quarterly (except as otherwise provided in Treasury Regulation section 1.72(p)-1, Q&A-9 for certain leave of absence and military leave), over a period that does not exceed five (5) years from the date of the loan; provided, however, that if the proceeds of the loan are applied by the Participant to acquire any dwelling unit that is to be used within a reasonable time after the loan is made as the principal residence of the Participant, the five (5) year limit shall not apply. In this event, the period of repayment shall not exceed a reasonable period determined by the Employer. Principal installments and interest payments otherwise due may be suspended during an authorized leave of absence, if the promissory note so provides, but not beyond the original term permitted under this Subsection (i), with a revised payment schedule (within such term) instituted at the end of such period of suspension. If the Participant fails to make any installment payment, the Plan Administrator may, according to Treasury Regulation 1.72(p)-1, allow a cure period, which cure period cannot continue beyond the last day of the calendar quarter following the calendar quarter in which the required installment payment was due.
- (j) Prepayment. The Participant shall be permitted to repay the loan in whole or in part at any time prior to maturity, without penalty.
- (k) Note. The loan shall be evidenced by a promissory note executed by the Participant and delivered to the Employer, and shall bear interest at a reasonable rate determined by the Employer. Unless waived by a Participant, any plan loan that is outstanding on the date that active duty military service begins will accrue interest at a rate of no more than 6% during the period of military service in accordance with the provisions of the Servicemembers Civil Relief Act (SCRA), 50 USC App. § 526 and subject to the notice requirements contained therein. This limitation applies even if loan payments are suspended during the period of military service as permitted under the Plan and Treasury regulations.
- (l) Security. The loan shall be secured by an assignment of that portion the Participant's right, title and interest in and to his/her Employer Contribution Account (to the extent vested), Participant Contribution Account, and Rollover Account that is equal to fifty percent (50%) of the Participant's Account (to the extent vested).
- (m) Assignment or Pledge. For the purposes of paragraphs (h) and (i), assignment or pledge of any portion of the Participant's interest in the Plan and a loan, pledge, or assignment with respect to any insurance contract purchased under the Plan, will be treated as a loan.
- (n) Spousal Consent. If the Employer elected the QJSA Election in the Adoption Agreement, the Participant must first obtain his or her spouse's notarized consent to the loan. Spousal consent shall be obtained no earlier than the beginning of the one-hundred eighty (180) day period (ninety (90) day period for plan years beginning before January 1, 2007) that ends on the date on which the loan is to be so secured. The consent

must be in writing, must acknowledge the effect of the loan, and must be witnessed by a Plan representative or notary public. Such consent shall thereafter be binding with respect to the consenting spouse or any subsequent spouse with respect to that loan. A new consent shall be required if the account balance is used for renegotiation, extension, renewal, or other revision of the loan.

- (o) Other Terms and Conditions. The Employer shall fix such other terms and conditions of the loan as it deems necessary to comply with legal requirements, to maintain the qualification of the Plan and Trust under section 401(a) of the Code, or to prevent the treatment of the loan for tax purposes as a distribution to the Participant. The Employer, in its discretion for any reason, may fix other terms and conditions of the loan, not inconsistent with the provisions of this Article, including:
 - (1) the circumstances under which a loan becomes immediately due and payable, provided, however, with respect to loans issued after December 31, 2012, that the loan program shall not provide that a loan becomes due and payable solely because the Participant requests or receives a partial distribution of the Participant's account balance after termination of employment;
 - (2) rules relating to reamortization of loans; and
 - (3) rules relating to refinance of loans.

13.03 Participant Loan Accounts.

- (a) Upon approval of a loan to a Participant by the Employer, an amount not in excess of the loan shall be transferred from the Participant's other investment fund(s), described in Section 6.05 of the Plan, to the Participant's Loan Account as of the Accounting Date immediately preceding the agreed upon date on which the loan is to be made.
- (b) The assets of a Participant's Loan Account may be invested and reinvested only in promissory notes received by the Plan from the Participant as consideration for a loan permitted by Section 13.01 of the Plan or in cash. Uninvested cash balances in a Participant's Loan Account shall not bear interest. No person who is otherwise a fiduciary of the Plan shall be liable for any loss, or by reason of any breach, that results from the Participant's exercise of such control.
- (c) Repayment of principal and payment of interest shall be made by payroll deduction or Automated Clearing House (ACH) transfer, or with respect to a terminated Employee solely by ACH, and shall be invested in one (1) or more other investment funds, in accordance with Section 6.05 of the Plan, as of the next Accounting Date after payment thereof to the Trust. The amount so invested shall be deducted from the Participant's Loan Account. A payment intended to be a Prepayment or payment of the loan in full may also be made by cashier's check or money order, and shall be invested in accordance with this provision.
- (d) The Employer shall have the authority to establish other reasonable rules, not inconsistent with the provisions of the Plan, governing the establishment and maintenance of Participant Loan Accounts.

XIV. PLAN AMENDMENT, TERMINATION AND OPTIONAL PROVISIONS

14.01 Amendment by Employer. The Employer reserves the right, subject to Section 14.02 of the Plan, to amend the Plan from time to time by either:

- (a) Filing an amended Adoption Agreement to change, delete, or add any optional provision, or
- (b) Continuing the Plan in the form of an amended and restated Plan and Trust.

No amendment to the Plan shall be effective to the extent that it has the effect of decreasing a Participant's accrued benefit. Notwithstanding the preceding sentence, a Participant's Account balance may be reduced to the extent permitted under section 412(d)(2) of the Code. For purposes of this paragraph, a Plan amendment which has the effect of decreasing a Participant's Account balance or eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment shall be treated as reducing an accrued benefit. Furthermore, if the vesting schedule of the Plan is amended, in the case of an Employee who is a Participant as of the later of the date such amendment is adopted or the date it becomes effective, the nonforfeitable percentage (determined as of such date) of such Employee's right to his/her Employer-derived accrued benefit will not be less than his percentage computed under the plan without regard to such amendment.

No amendment to the Plan shall be effective to eliminate or restrict an optional form of benefit. The preceding sentence shall not apply to a Plan amendment that eliminates or restricts the ability of a Participant to receive payment of his or her Account balance under a particular optional form of benefit if the amendment provides a single-sum distribution form that is otherwise identical to the optional form of benefit being eliminated or restricted. For this purpose, a single-sum distribution form is otherwise identical only if the single-sum distribution form is identical in all respects to the eliminated or restricted optional form of benefit (or would be identical except that it provides greater rights to the Participant) except with respect to the timing of payments after commencement.

The Employer may (1) change the choice of options in the Adoption Agreement, (2) add overriding language in the Adoption Agreement when such language is necessary to satisfy sections 415 or 416 of the Code because of the required aggregation of multiple plans, (3) amend administrative provisions of the trust or custodial document in the case of a nonstandardized plan and make more limited amendments in the case of a standardized plan such as the name of the plan, employer, trustee or custodian, plan administrator and other fiduciaries, the trust year, and the name of any pooled trust in which the Plan's trust will participate, (4) add certain sample or model amendments published by the Internal Revenue Service or other required good faith amendments which specifically provide that their adoption will not cause the plan to be treated as individually designed, and (5) add or change provisions permitted under the Plan and/or specify or change the effective date of a provision as permitted under the Plan and correct obvious and unambiguous typographical errors and/or cross-references that merely correct a reference but that do not in any way change the original intended meaning of the provisions. An Employer that amends the Plan for any other reason will be considered to have an individually designed plan.

14.02 Amendment of Vesting Schedule. If the Plan's vesting schedule is amended, or the Plan is amended in any way that directly or indirectly affects the computation of the Participant's nonforfeitable percentage, each Participant may elect, within a reasonable period after the adoption of the amendment or change, to have the nonforfeitable percentage computed under the Plan without regard to such amendment or change.

The period during which the election may be made shall commence with the date the amendment is adopted or deemed to be made and shall end on the latest of:

- (a) Sixty (60) days after the amendment is adopted;
- (b) Sixty (60) days after the amendment becomes effective; or
- (c) Sixty (60) days after the Participant is issued written notice of the amendment by the Employer or Plan Administrator.

14.03 Termination by Employer. The Employer reserves the right to terminate this Plan. However, in the event of such termination no part of the Trust shall be used or diverted to any purpose other than for the exclusive benefit of the Participants or their Beneficiaries, except as provided in this Section.

Upon Plan termination or partial termination, all Account balances shall be valued at their fair market value and the Participant's right to his/her Employer Contribution Account shall be one hundred percent (100%) vested and nonforfeitable. Such amount and any other amounts held in the Participant's other Accounts shall be maintained for the Participant until paid pursuant to the terms of the Plan.

Any amounts held in a suspense account, after all liabilities of the Plan to Participants and Beneficiaries have been satisfied or provided for, shall be paid to the Employer in accordance with the Code and regulations thereunder.

In the event that the Commissioner of Internal Revenue determines that the Plan is not initially qualified under the Internal Revenue Code, any contribution made by the Employer incident to that initial qualification must be returned to the Employer within one year after the date the initial qualification is denied, but only if the application for the qualification is made by the time prescribed by law for filing the Employer's return for the year in which the Plan is adopted, or such later date as the Secretary of the Treasury may prescribe.

14.04 Discontinuance of Contributions. A permanent discontinuance of contributions to the Plan by the Employer, unless an amended and restated Plan is established, shall constitute a Plan termination. In the event of a complete discontinuance of contributions under the Plan, the Account balance of each affected Participant shall be nonforfeitable.

14.05 Amendment by Plan Administrator. The Plan Administrator may amend this Plan upon thirty (30) days written notification to the Employer; provided, however, that any such amendment must be for the express purpose of maintaining compliance with applicable federal laws and regulations, revenue rulings, other statements published by the Internal Revenue Service (including model and sample amendments that specifically provide that their adoption will not cause such Plan to be individually designed), or corrections of prior approved Plans may be applied to all Employers who have adopted the Plan. Such amendment shall become effective unless, within such 30-day period, the Employer notifies the Administrator, in writing, that it disapproves such amendment, in which case such amendment shall not become effective. In the event of such disapproval, the Administrator shall be under no obligation to continue acting as Administrator hereunder.

For purposes of reliance on the advisory letter, the Plan Administrator shall no longer have authority to amend the Plan on behalf of the Employer as of the date of the adoption of an Employer amendment to the Plan to incorporate a type of plan not allowable in the volume submitter program described in section 16.03 of Revenue Procedure 2011-49 (or successor guidance) or as of the date the Internal Revenue Service notifies the Plan Administrator that the Plan is being treated as an individually designed plan pursuant to section 24.03 of Revenue Procedure 2011-49 (or successor guidance).

14.06 Optional Provisions. Any provision which is optional under this Plan shall become effective if and only if elected by the Employer and agreed to by the Plan Administrator.

14.07 Failure of Qualification. If the Employer's plan fails to attain or retain qualification, such plan will no longer participate in this Plan and will be considered an individually designed plan.

XV. ADMINISTRATION

15.01 Powers of the Employer. The Employer shall have the following powers and duties:

- (a) To appoint and remove, with or without cause, the Plan Administrator;
- (b) To amend or terminate the Plan pursuant to the provisions of Article XIV;

- (c) To appoint a committee to facilitate administration of the Plan and communications to Participants;
- (d) To decide all questions of eligibility (1) for Plan participation, and (2) upon appeal by any Participant, Employee or Beneficiary, for the payment of benefits;
- (e) To engage an independent qualified public accountant, when required to do so by law, to prepare annually the audited financial statements of the Plan's operation;
- (f) To take all actions and to communicate to the Plan Administrator in writing all necessary information to carry out the terms of the Plan and Trust; and
- (g) To notify the Plan Administrator in writing of the termination of the Plan.

15.02 Duties of the Plan Administrator. The Plan Administrator shall have the following powers and duties, subject to the oversight by the Employer:

- (a) To construe and interpret the provisions of the Plan;
- (b) To maintain and provide such returns, reports, schedules, descriptions, and individual Account statements as are required by law within the times prescribed by law; and to furnish to the Employer, upon request, copies of any or all such materials, and further, to make copies of such instruments, reports, descriptions, and statements as are required by law available for examination by Participants and such of their Beneficiaries who are or may be entitled to benefits under the Plan in such places and in such manner as required by law;
- (c) To obtain from the Employer such information as shall be necessary for the proper administration of the Plan;
- (d) To determine the amount, manner, and time of payment of benefits hereunder;
- (e) To appoint and retain such agents, counsel, and accountants for the purpose of properly administering the Plan;
- (f) To distribute assets of the Trust to each Participant and Beneficiary in accordance with Article X of the Plan;
- (g) To pay expenses from the Trust pursuant to Section 6.03 of the Plan; and
- (h) To do such other acts reasonably required to administer the Plan in accordance with its provisions or as may be provided for or required by the Code.

15.03 Protection of the Employer. The Employer shall not be liable for the acts or omissions of the Plan Administrator, but only to the extent that such acts or omissions do not result from the Employer's failure to provide accurate or timely information as required or necessary for proper administration of the Plan.

15.04 Protection of the Plan Administrator. The Plan Administrator may rely upon any certificate, notice or direction purporting to have been signed on behalf of the Employer which the Plan Administrator believes to have been signed by a duly designated official of the Employer.

15.05 Resignation or Removal of Plan Administrator. The Plan Administrator may resign at any time effective upon sixty (60) days prior written notice to the Employer. The Plan Administrator may be removed by the Employer at any time upon sixty (60) days prior written notice to the Plan Administrator. Upon the resignation or removal of the Plan Administrator, the Employer may appoint a successor Plan Administrator; failing such appointment, the

Employer shall assume the powers and duties of Plan Administrator. Upon the resignation or removal of the Plan Administrator, any Trust assets invested by or held in the name of the Plan Administrator shall be transferred to the trustee in cash or property, at fair market value, except that the return of Trust assets invested in a contract issued by an insurance company shall be governed by the terms of that contract.

15.06 No Termination Penalty. The Plan Administrator shall have no authority or discretion to impose any termination penalty upon its removal.

15.07 Decisions of the Plan Administrator. All constructions, determinations, and interpretations made by the Plan Administrator pursuant to Section 15.02(a) or (d) or by the Employer pursuant to Section 15.01(d) shall be final and binding on all persons participating in the Plan, given deference in all courts of law to the greatest extent allowed by applicable law, and shall not be overturned or set aside by any court of law unless found to be arbitrary or capricious, or made in bad faith.

XVI. MISCELLANEOUS

16.01 Nonguarantee of Employment. Nothing contained in this Plan shall be construed as a contract of employment between the Employer and any Employee, or as a right of an Employee to be continued in the employment of the Employer, as a limitation of the right of the Employer to discharge any of its Employees, with or without cause.

16.02 Rights to Trust Assets. No Employee or Beneficiary shall have any right to, or interest in, any assets of the Trust upon termination of his/her employment or otherwise, except as provided from time to time under this Plan, and then only to the extent of the benefits payable under the Plan to such Employee or Beneficiary out of the assets of the Trust. All payments of benefits as provided for in this Plan shall be made solely out of the assets of the Trust and none of the fiduciaries shall be liable therefor in any manner.

16.03 Nonalienation of Benefits. Except as provided in Sections 16.04 and 16.06 of the Plan, benefits payable under this Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution, or levy of any kind, either voluntary or involuntary, prior to actually being received by the person entitled to the benefit under the terms of the Plan; and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right to benefits payable hereunder, shall be void. The Trust shall not in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to benefits hereunder.

16.04 Qualified Domestic Relations Order. Notwithstanding Section 16.03 of the Plan, amounts may be paid with respect to a Participant pursuant to a domestic relations order, but if and only if the order is determined to be a qualified domestic relations order within the meaning of section 414(p) of the Code or any domestic relations order entered before January 1, 1985.

16.05 Nonforfeitability of Benefits. Subject only to the specific provisions of this Plan, nothing shall be deemed to deprive a Participant of his/her right to the Nonforfeitable Interest to which he/ she becomes entitled in accordance with the provisions of the Plan.

16.06 Incompetency of Payee. In the event any benefit is payable to a minor or incompetent, to a person otherwise under legal disability, or to a person who, in the sole judgment of the Employer, is by reason of advanced age, illness, or other physical or mental incapacity incapable of handling the disposition of his/her property, the Employer may apply the whole or any part of such benefit directly to the care, comfort, maintenance, support, education, or use of such person or pay or distribute the whole or any part of such benefit to:

- (a) The parent of such person;
- (b) The guardian, committee, or other legal representative, wherever appointed, of such person;
- (c) The person with whom such person resides;
- (d) Any person having the care and control of such person; or
- (e) Such person personally.

The receipt of the person to whom any such payment or distribution is so made shall be full and complete discharge therefor.

- 16.07 Inability to Locate Payee.** Anything to the contrary herein notwithstanding, if the Employer is unable, after reasonable effort, to locate any Participant or Beneficiary to whom an amount is payable hereunder, such amount shall be forfeited and held in the Trust for application against the next succeeding Employer Contribution or contributions required to be made hereunder. Notwithstanding the foregoing, however, such amount shall be reinstated, by means of an additional Employer contribution, if and when a claim for the forfeited amount is subsequently made by the Participant or Beneficiary or if the Employer receives proof of death of such person, satisfactory to the Employer. To the extent not inconsistent with applicable law, any benefits lost by reason of escheat under applicable state law shall be considered forfeited and shall not be reinstated.
- 16.08 Mergers, Consolidations, and Transfer of Assets.** The Plan shall not be merged into or consolidated with any other plan, nor shall any of its assets or liabilities be transferred into any such other plan, unless each Participant in the Plan would (if the Plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer that is equal to or greater than the benefit he/she would have been entitled to receive immediately before the merger, consolidation, or transfer (if the Plan had then terminated).
- 16.09 Employer Records.** Records of the Employer as to an Employee's or Participant's Period of Service, termination of service and the reason therefor, leaves of absence, reemployment, Earnings, and Compensation will be conclusive on all persons, unless determined to be incorrect.
- 16.10 Gender and Number.** The masculine pronoun, whenever used herein, shall include the feminine pronoun, and the singular shall include the plural, except where the context requires otherwise.
- 16.11 Applicable Law.** The Plan shall be construed under the laws of the State where the Employer is located, except to the extent superseded by federal law. The Plan is established with the intent that it meets the requirements under the Code. The provisions of this Plan shall be interpreted in conformity with these requirements.
- In the event of any conflict between the Plan and a policy or contract issued hereunder, the Plan provisions shall control; provided, however, no Plan amendment shall supersede an existing policy or contract unless such amendment is required to maintain qualification under section 401(a) and 414(d) of the Code.
- 16.12 Electronic Communication and Consent.** Unless expressly provided otherwise, where this Plan provides that a document, election, notification, direction, signature, or consent will be in writing, such writing may occur through an electronic medium, including but not limited to electronic mail, intranet or internet web posting and online account access, to the fullest extent permitted by applicable law.

XVII. SPOUSAL BENEFIT REQUIREMENTS

- 17.01 Application.** Effective as of January 1, 2006, where elected by the Employer in the Adoption Agreement (the “QJSA Election”), the provisions of this Article shall take precedence over any conflicting provision in this Plan. If elected, the provisions of this Article shall apply to any Participant who is credited with any Period of Service with the Employer on or after August 23, 1984, and such other Participants as provided in Section 17.06.
- 17.02 Qualified Joint and Survivor Annuity.** Unless an optional form of benefit is selected pursuant to a Qualified Election within the one-hundred eighty (180) day period ending on the Annuity Starting Date, a married Participant’s Vested Account Balance will be paid in the form of a Qualified Joint and Survivor Annuity and an unmarried Participant’s Vested Account Balance will be paid in the form of a Straight Life Annuity. The Participant may elect to have such annuity distributed upon the attainment of the Earliest Retirement Age under the Plan.
- 17.03 Qualified Optional Survivor Annuity.** For plan years beginning after December 31, 2007, if a married participant elects to waive the qualified joint and survivor annuity, the participant may elect the qualified optional survivor annuity at any time during the applicable election period, provided, however, that this Section shall apply only to the extent the Plan makes another survivor annuity available.
- 17.04 Qualified Preretirement Survivor Annuity.** If a Participant dies before the Annuity Starting Date, then fifty percent (50%) of the Participant’s Vested Account Balance shall be applied toward the purchase of an annuity for the life of the Surviving Spouse; the remaining portion shall be paid to such Beneficiaries (which may include such Spouse) designated by the Participant. Notwithstanding the foregoing, the Participant may waive the spousal annuity by designating a different Beneficiary within the Election Period pursuant to a Qualified Election. To the extent that less than one hundred percent (100%) of the vested Account balance is paid to the Surviving Spouse, the amount of the Participant’s Account derived from Employee contributions will be allocated to the Surviving Spouse in the same proportion as the amount of the Participant’s Account derived from Employee contributions is to the Participant’s total Vested Account Balance. The Surviving Spouse may elect to have such annuity distributed within a reasonable period after the Participant’s death. Further, such Spouse may elect to receive any death benefit payable to him/her hereunder in any of the forms available to the Participant under Section 11.02.
- 17.05 Notice Requirements.**
- (a) In the case of a Qualified Joint and Survivor Annuity as described in Section 17.02, the Plan Administrator shall, no less than thirty (30) days and no more than one-hundred eighty (180) days (or ninety (90) days for notices given in Plan Years before January 1, 2007) prior to the Annuity Starting Date, provide each Participant a written explanation of: (i) the terms and conditions of a Qualified Joint and Survivor Annuity; (ii) the Participant’s right to make and the effect of an election to waive the Qualified Joint and Survivor Annuity form of benefit; (iii) the rights of a Participant’s Spouse; and (iv) the right to make, and the effect of, a revocation of a previous election to waive the Qualified Joint and Survivor Annuity. However, if the Participant, after having received the written explanation, affirmatively elects a form of distribution and the Spouse consents to that form of distribution (if necessary), benefit payments may commence less than thirty (30) days after the written explanation was provided to the Participant, provided that the following requirements are met:
 - (1) The Plan Administrator provides information to the Participant clearly indicating that the Participant has a right to at least thirty (30) days to consider whether to waive the Qualified Joint and Survivor Annuity and consent to a form of distribution other than a Qualified Joint and Survivor Annuity;

- (2) The Participant is permitted to revoke an affirmative distribution election at least until the Annuity Starting Date, or if later, at any time prior to the expiration of the 7-day period that begins the day after the explanation of the Qualified Joint and Survivor Annuity is provided to the Participant;
 - (3) The Annuity Starting Date is after the date that the explanation of the Qualified Joint and Survivor Annuity is provided to the Participant; and
 - (4) Distribution in accordance with the affirmative election does not commence before the expiration of the 7-day period that begins after the day after the explanation of the Qualified Joint and Survivor Annuity is provided to the Participant.
- (b) In the case of a Qualified Preretirement Survivor Annuity as described in Section 17.04, the Plan Administrator shall provide each Participant within the applicable period for such Participant a written explanation of the Qualified Preretirement Survivor Annuity in such terms and in such manner as would be comparable to the explanation provided for meeting the requirements of Subsection (a) applicable to a Qualified Joint and Survivor Annuity.

The applicable period for a Participant is whichever of the following periods ends last:

- (i) the period beginning with the first day of the Plan Year in which the Participant attains age thirty-two (32) and ending with the close of the Plan Year preceding the Plan Year in which the Participant attains age thirty-five (35);
- (ii) a reasonable period ending after the individual becomes a Participant;
- (iii) a reasonable period ending after Subsection (c) ceases to apply to the Participant;
- (iv) a reasonable period ending after this Article first applies to the Participant. Notwithstanding the foregoing, notice must be provided within a reasonable period ending after separation from service in the case of a Participant who separates from service before attaining age thirty-five (35).

For purposes of applying the preceding paragraph, a reasonable period ending after the enumerated events described in (ii), (iii) and (iv) is the end of the two (2) year period beginning one (1) year prior to the date the applicable event occurs, and ending one (1) year after that date. In the case of a Participant who separates from service before the Plan Year in which age thirty-five (35) is attained, notice shall be provided within the two (2) year period beginning one (1) year prior to separation and ending one (1) year after separation. If such a Participant thereafter returns to employment with the Employer, the applicable period for such Participant shall be redetermined.

- (c) Notwithstanding the other requirements of this Section, the respective notices prescribed by this Section need not be given to a Participant if (1) the Plan “fully subsidizes” the costs of a Qualified Joint and Survivor Annuity or Qualified Preretirement Survivor Annuity, and (2) the Plan does not allow the Participant to waive the Qualified Joint and Survivor Annuity or Qualified Preretirement Survivor Annuity and does not allow a married Participant to designate a non-Spouse Beneficiary. For purposes of this Subsection (c), a plan fully subsidizes the costs of a benefit if no increase in cost or decrease in benefits to the Participant may result from the Participant’s failure to elect another benefit.

17.06 Definitions. For the purposes of this Section, the following definitions shall apply:

- (a) Annuity Starting Date. The first day of the first period for which an amount is paid as an annuity or any other form.

- (b) Election Period. The period which begins on the first day of the Plan Year in which the Participant attains age thirty-five (35) and ends on the date of the Participant's death. If a Participant separates from service prior to the first day of the Plan Year in which age thirty-five (35) is attained, with respect to the Account balance as of the date of separation, the Election Period shall begin on the date of separation. Pre-age thirty-five (35) waiver: A Participant who will not yet attain age thirty-five (35) as of the end of any current Plan Year may make a special Qualified Election to waive the Qualified Preretirement Survivor Annuity for the period beginning on the date of such election and ending on the first day of the Plan Year in which the Participant will attain age thirty-five (35). Such election shall not be valid unless the Participant receives a written explanation of the Qualified Preretirement Survivor Annuity in such terms as are comparable to the explanation required under Section 17.05(a). Qualified Preretirement Survivor Annuity coverage will be automatically reinstated as of the first day of the Plan Year in which the Participant attains age thirty-five (35). Any new waiver on or after such date shall be subject to the full requirements of this Article.
- (c) Earliest Retirement Age. The earliest date on which, under the Plan, the Participant could elect to receive retirement benefits.
- (d) Qualified Election. A waiver of a Qualified Joint and Survivor Annuity or a Qualified Preretirement Survivor Annuity. Any waiver of a Qualified Joint and Survivor Annuity or a Qualified Preretirement Survivor Annuity shall not be effective unless: (a) the Participant's Spouse consents in writing to the election; (b) the election designates a specific Beneficiary, including any class of Beneficiaries or any contingent Beneficiaries, which may not be changed without spousal consent (or the Spouse expressly permits designations by the Participant without any further spousal consent); (c) the Spouse's consent acknowledges the effect of the election; and (d) the Spouse's consent is witnessed by a Plan representative or notary public. Additionally, a Participant's waiver of the Qualified Joint and Survivor Annuity shall not be effective unless the election designates a form of benefit payment which may not be changed without spousal consent (or the Spouse expressly permits designations by the Participant without any further Spousal consent). If it is established to the satisfaction of a Plan representative that there is no Spouse or that the Spouse cannot be located, a waiver will be deemed a Qualified Election.

Any consent by a Spouse obtained under this provision (or establishment that the consent of a Spouse may not be obtained) shall be effective only with respect to such Spouse. A consent that permits designations by the Participant without any requirement of further consent by such Spouse must acknowledge that the Spouse has the right to limit consent to a specific Beneficiary, and a specific form of benefit where applicable, and that the Spouse voluntarily elects to relinquish either or both of such rights. A revocation of a prior waiver may be made by a Participant without the consent of the Spouse at any time before the commencement of benefits. The number of revocations shall not be limited. No consent obtained under this provision shall be valid unless the Participant has received notice as provided in Section 17.05.

- (e) Qualified Joint and Survivor Annuity. An immediate annuity for the life of the Participant with a survivor annuity for the life of the Spouse which is fifty percent (50%) of the amount of the annuity which is payable during the joint lives of the Participant and the Spouse and which is the amount of benefit which can be purchased with the Participant's Vested Account Balance.
- (f) Spouse (Surviving Spouse). The Spouse or Surviving Spouse of the Participant, provided that a former Spouse will be treated as the Spouse or Surviving Spouse and a current Spouse will not be treated as the Spouse or Surviving Spouse to the extent provided under a qualified domestic relations order as described in section 414(p) of the Code.
- (g) Straight Life Annuity. An annuity payable in equal installments for the life of the Participant that terminates upon the Participant's death.

- (h) Vested Account Balance. The aggregate value of the Participant's vested Account balances derived from Employer and Employee contributions (including rollovers), whether vested before or upon death, including the proceeds of insurance contracts, if any, on the Participant's life. The provisions of this Article shall apply to a Participant who is vested in amounts attributable to Employer Contributions, Employee contributions (or both) at the time of death or distribution.

17.07 Annuity Contracts. Where benefits are to be paid in the form of a life annuity pursuant to the terms of this Article, a nontransferable annuity contract shall be purchased from a life insurance company and distributed to the Participant or Surviving Spouse, as applicable. The terms of any annuity contract purchased and distributed by the Plan shall comply with the requirements of this Plan and section 417 of the Code.

XVIII. FINAL PAY CONTRIBUTIONS

18.01 Eligibility. Effective as of January 1, 2006, if elected by the Employer in the Adoption Agreement, Final Pay Contributions on behalf of each eligible Participant equal to the equivalent of the accrued unpaid final pay, as defined in the Adoption Agreement ("Final Pay"), shall be contributed to the Plan. Eligibility for Final Pay Contributions is limited to only those Participants or class of Participants that the Employer elects in the Adoption Agreement.

18.02 Contribution Amount. At the election of the Employer in the Adoption Agreement, the Final Pay Contributions may be made as either (a) Employer Final Pay Contributions, or (b) Employee Designated Final Pay Contributions, as described below.

- (a) Employer Final Pay Contributions. The Employer shall contribute to the Plan for each eligible Participant the equivalent of a designated amount of accrued unpaid final pay upon termination of employment of the Participant, as the Employer so elects in the Adoption Agreement. The Employer's contribution for any Plan Year shall be due and paid not later than the time prescribed by applicable law. The Employer Final Pay Contributions shall be accounted for in the Employer Contribution Account.
- (b) Employee Designated Final Pay Contributions. The Employer shall contribute to the Plan for each eligible Participant all or any portion of a Participant's Final Pay, as elected by the Participant. The Employer may limit the amount of Final Pay to be elected to be contributed to the Plan. Once elected, an Employee's election shall remain in force and may not be revised or revoked.

The Employee Designated Final Pay Contributions shall be accounted for in the Participant Contribution Account, and are nonforfeitable by the Participant at all times.

The Employee Designated Final Pay Contributions shall be "picked up" by the Employer in accordance with Code section 414(h)(2). The contributions shall be treated as an employer contribution in determining the tax treatment under the Code, and shall not be included as gross income of the Participant until it is distributed.

A Participant cannot elect to receive cash in lieu of any Final Pay Contribution.

18.03 Equivalencies. The Final Pay Contribution shall be determined by multiplying the Participant's current daily rate of pay from the Employer times the amount of accrued unpaid leave being converted.

18.04 Excess Contributions. Final Pay Contributions are limited to the extent of applicable law and any Code limitation. No Final Pay Contribution shall be made to the extent that it would exceed the applicable Code section 415 limitation, as set forth in Article V. Any excess contributions as a result of the Code section 415 limitation shall remain in the Participant's leave bank.

XIX. ACCRUED LEAVE CONTRIBUTIONS

19.01 Eligibility. Effective as of January 1, 2006, if elected by the Employer in the Adoption Agreement, Accrued Leave Contributions on behalf of each eligible Participant equal to the equivalent of the accrued unpaid leave, as defined in the Adoption Agreement (“Accrued Leave”), shall be contributed to the Plan. Eligibility for Accrued Leave Contributions is limited to only those Participants or class of Participants that the Employer elects in the Adoption Agreement.

19.02 Contribution Amount. At the election of the Employer in the Adoption Agreement, the Accrued Leave Contributions may be made as either (a) Employer Accrued Leave Contributions, or (b) Employee Designated Accrued Leave Contributions, as described below.

- (a) Employer Accrued Leave Contributions. The Employer shall contribute to the Plan for each eligible Participant the equivalent of a designated amount of accrued unpaid leave each year, as the Employer so elects in the Adoption Agreement. The Employer’s contribution for any Plan Year shall be due and paid not later than the time prescribed by applicable law. The Employer Accrued Leave Contributions shall be accounted for in the Employer Contribution Account.
- (b) Employee Designated Accrued Leave Contributions. The Employer shall contribute to the Plan for each eligible Participant all or any portion of a Participant’s Accrued Leave, as elected by the Participant. The Employer may limit the amount of Accrued Leave to be elected to be contributed to the Plan. Once elected, an Employee’s election shall remain in force and may not be revised or revoked.

The Employee Designated Accrued Leave Contributions shall be accounted for in the Participant Contribution Account, and are nonforfeitable by the Participant at all times.

The Employee Designated Accrued Leave Contributions shall be “picked up” by the Employer in accordance with Code section 414(h)(2). The contributions shall be treated as an employer contribution in determining the tax treatment under the Code, and shall not be included as gross income of the Participant until it is distributed.

A Participant cannot elect to receive cash in lieu of any Accrued Leave Contribution.

19.03 Equivalencies. The Accrued Leave Contribution shall be determined by multiplying the Participant’s current daily rate of pay from the Employer times the amount of accrued unpaid leave being converted.

19.04 Excess Contributions. Accrued Leave Contributions are limited to the extent of applicable law and any Code limitation. No Accrued Leave Contribution shall be made to the extent that it would exceed the applicable Code section 415 limitation, as set forth in Article V. Any excess contributions as a result of the Code section 415 limitation shall remain in the Participant’s leave bank.

DECLARATION OF TRUST

This Declaration of Trust (the “Group Trust Agreement”) is made as of the 19th day of May, 2001, by Vantage Trust Company, which declares itself to be the sole Trustee of the trust hereby created.

WHEREAS, the ICMA Retirement Trust was created as a vehicle for the commingling of the assets of governmental plans and governmental units described in Section 818(a)(6) of the Internal Revenue Code of 1986, as amended, pursuant to a Declaration of Trust dated October 4, 1982, as subsequently amended, a copy of which is attached hereto and incorporated by reference as set out below (the “ICMA Declaration”); and

WHEREAS, the trust created hereunder (the “Group Trust”) is intended to meet the requirements of Revenue Ruling 81-100, 1981-1 C.B. 326, and is established as a common trust fund within the meaning of Section 391:1 of Title 35 of the New Hampshire Revised Statutes Annotated, to accept and hold for investment purposes the assets of the Deferred Compensation and Qualified Plans held by and through the ICMA Retirement Trust.

NOW, THEREFORE, the Group Trust is created by the execution of this Declaration of Trust by the Trustee and is established with respect to each Deferred Compensation and Qualified Plan by the transfer to the Trustee of such Plan’s assets in the ICMA Retirement Trust, by the Trustees thereof, in accord with the following provisions:

- (a) *Incorporation of ICMA Declaration by Reference; ICMA By-Laws.* Except as otherwise provided in this Group Trust Agreement, and to the extent not inconsistent herewith, all provisions of the ICMA Declaration are incorporated herein by reference and made a part hereof, to be read by substituting the Group Trust for the Retirement Trust and the Trustee for the Board of Trustees referenced therein. In this respect, unless the context clearly indicates otherwise, all capitalized terms used herein and defined in the ICMA Declaration have the meanings assigned to them in the ICMA Declaration. In addition, the By-Laws of the ICMA Retirement Trust, as the same may be amended from time-to-time, are adopted as the By-Laws of the Group Trust to the extent not inconsistent with the terms of this Group Trust Agreement.

Notwithstanding the foregoing, the terms of the ICMA Declaration and By-Laws are further modified with respect to the Group Trust created hereunder, as follows:

1. any reporting, distribution, or other obligation of the Group Trust vis-à-vis any Deferred Compensation Plan, Qualified Plan, Public Employer, Public Employer Trustee, or Employer Trust shall be deemed satisfied to the extent that such obligation is undertaken by the ICMA Retirement Trust (in which case the obligation of the Group Trust shall run to the ICMA Retirement Trust); and
 2. all provisions dealing with the number, qualification, election, term and nomination of Trustees shall not apply, and all other provisions relating to trustees (including, but not limited to, resignation and removal) shall be interpreted in a manner consistent with the appointment of a single corporate trustee.
- (b) *Compliance with Revenue Procedure 81-100.* The requirements of Revenue Procedure 81-100 are applicable to the Group Trust as follows:
1. Pursuant to the terms of this Group Trust Agreement and Article X of the By-Laws, investment in the Group Trust is limited to assets of Deferred Compensation and Qualified Plans, investing through the ICMA Retirement Trust.
 2. Pursuant to the By-Laws, the Group Trust is adopted as a part of each Qualified Plan that invests herein through the ICMA Retirement Trust.

3. In accord with the By-Laws, that part of the Group Trust's corpus or income which equitably belongs to any Deferred Compensation and Qualified Plan may not be used for or diverted to any purposes other than for the exclusive benefit of the Plan's employees or their beneficiaries who are entitled to benefits under such Plan.
 4. In accord with the By-Laws, no Deferred Compensation Plan or Qualified Plan may assign any or part of its equity or interest in the Group Trust, and any purported assignment of such equity or interest shall be void.
- (c) *Governing Law.* Except as otherwise required by federal, state or local law, this Declaration of Trust (including the ICMA Declaration to the extent incorporated herein) and the Group Trust created hereunder shall be construed and determined in accordance with applicable laws of the State of New Hampshire.
- (d) *Judicial Proceedings.* The Trustee may at any time initiate an action or proceeding in the appropriate state or federal courts within or outside the state of New Hampshire for the settlement of its accounts or for the determination of any question of construction which may arise or for instructions.

IN WITNESS WHEREOF, the Trustee has executed this Declaration of Trust as of the day and year first above written.

VANTAGETRUST COMPANY

By:

Name: Paul F. Gallagher

Title: Assistant Secretary





TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Plan Description: Volume Submitter Money Purchase Pension Plan
FFN: 315D0880003-001 Case: 201200590 EIN: 23-7268394
Letter Serial No: J593644a
Date of Submission: 04/02/2012

ICMA RETIREMENT CORP
777 NORTH CAPITOL ST. NE, SUITE 600
WASHINGTON, DC 20002

Contact Person:
Janell Hayes
Telephone Number:
513-263-3602
In Reference To: TEGE:EP:7521
Date: 03/31/2014

Dear Applicant:

In our opinion, the form of the plan identified above is acceptable under section 401 of the Internal Revenue Code for use by employers for the benefit of their employees. This opinion relates only to the acceptability of the form of the plan under the Internal Revenue Code. It is not an opinion of the effect of other Federal or local statutes.

You must furnish a copy of this letter, a copy of the approved plan, and copies of any subsequent amendments to adopting employers if the practitioner is authorized to amend the plan on their behalf, to each employer who adopts this plan. Effective on or after 10/31/2011, interim amendments adopted by the practitioner on behalf of employers must provide the date of adoption by the practitioner.

This letter considers the changes in qualification requirements contained in the 2010 Cumulative List of Notice 2010-90, 2010-52 I.R.B. 909.

Our opinion on the acceptability of the form of the plan is not a ruling or determination as to whether an employer's plan qualifies under Code section 401(a). However, an employer that adopts this plan may rely on this letter with respect to the qualification of its plan under Code section 401(a), as provided for in Rev. Proc. 2011-49, 2011-44 I.R.B. 608, and outlined below. The terms of the plan must be followed in operation.

Except as provided below, our opinion does not apply with respect to the requirements of Code sections 401(a)(4), 401(l), 410(b), and 414(s). Our opinion does not apply for purposes of Code section 401(a)(10)(B) and section 401(a)(16) if an employer ever maintained another qualified plan for one or more employees who are covered by this plan. For this purpose, the employer will not be considered to have maintained another plan merely because the employer has maintained another defined contribution plan(s), provided such other plan(s) has been terminated prior to the effective date of this plan and no annual additions have been credited to the account of any participant under such other plan(s) as of any date within the limitation year of this plan. Also, for this purpose, an employer is considered as maintaining another plan, to the extent that the employer maintains a welfare benefit fund defined in Code section 419(e), which provides postretirement medical benefits allocated to separate accounts for key employees as defined in Code section 419A(d)(3), or an individual medical account as defined in Code section 415(l)(2), which is part of a pension or annuity plan maintained by the employer, or a simplified employee pension plan.

Our opinion does not apply for purposes of the requirement of section 1.401(a)-1(b)(2) of the regulations applicable to a money purchase plan or target benefit plan where the normal retirement age under the employer's plan is lower than age 62.

Letter 4333

ICMA RETIREMENT CORP
FFN: 315D0880003-001
Page: 2

This is not a ruling or determination with respect to any language in the plan that reflects Section 3 of the Defense of Marriage Act, Pub. L. 104-199, 110 Stat. 2419 (DOMA) or U.S. v. Windsor, 133 S. Ct. 2675 (2013), which invalidated that section.

This letter is not a ruling with respect to the tax treatment to be accorded contributions which are picked up by the governmental employing unit within the meaning of section 414(h)(2) of the Internal Revenue Code.

Our opinion applies with respect to the requirements of Code section 410(b) if 100 percent of all nonexcludable employees benefit under the plan. Employers that elect a safe harbor allocation formula and a safe harbor compensation definition can also rely on an advisory letter with respect to the nondiscriminatory amounts requirement under section 401(a)(4). If this plan includes a CODA or otherwise provides for contributions subject to sections 401(k) and/or 401(m), the advisory letter can be relied on with respect to the form of the nondiscrimination tests of 401(k)(3) and 401(m)(2) if the employer uses a safe harbor compensation definition. In the case of plans described in section 401(k)(12) or (13) and/or 401(m)(11) or (12), employers may also rely on the advisory letter with respect to whether the form of the plan satisfies the requirements of those sections unless the plan provides for the safe harbor contribution to be made under another plan.

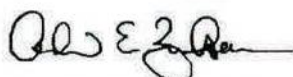
The employer may request a determination (1) as to whether the plan, considered with all related qualified plans and, if appropriate, welfare benefit funds, individual medical benefit accounts, and simplified employee pension plans, satisfies the requirements of Code section 401(a)(16) as to limitations on benefits and contributions in Code section 415 and the requirements of Code section 401(a)(10)(B) as to the top-heavy plan requirements in Code section 416; (2) with respect to whether a money purchase or target benefit plan's normal retirement age which is earlier than age 62 satisfies the requirements of section 401(a)-1(b)(2) of the Income Tax Regulations; (3) that the plan is a multiple employer plan; (4) whether there has been a partial termination; and (5) to comply with published procedures of the Service (e.g. minimum funding waiver request). The employer may request a determination letter by filing an application with Employee Plans Determinations on Form 5307, with regard to item (1) above, and Form 5300, for items (2), (3), (4) and (5), without restating for the Cumulative List in effect when the application is filed.

If you, the volume submitter practitioner, have any questions concerning the IRS processing of this case, please call the above telephone number. This number is only for use of the practitioner. Individual participants and/or adopting employers with questions concerning the plan should contact the volume submitter practitioner. The plan's adoption agreement, if applicable, must include the practitioner's address and telephone number for inquiries by adopting employers.

If you write to the IRS regarding this plan, please provide your telephone number and the most convenient time for us to call in case we need more information. Whether you call or write, please refer to the Letter Serial Number and File Folder Number shown in the heading of this letter.

You should keep this letter as a permanent record. Please notify us if you modify or discontinue sponsorship of this plan.

Sincerely Yours,



Andrew E. Zuckerman
Director, Employee Plans Rulings and Agreements



ICMA RETIREMENT CORPORATION
777 NORTH CAPITOL STREET, NE | WASHINGTON, DC 20002-4240
800-669-7400
WWW.ICMARC.ORG
BRC000-212-21266-201405-W1371
REV 3/2015

Attachment H

Government Section Code 84308
List of Consultant(s)/Contractor(s)

Firm Name	Name	Role	Location
ICMA-RC	Roxanna Zavas	Director, Relationship Management	Corporate Headquarters: Suite 600 777 North Capitol Street, NE Washington, DC 20002-4240 (202) 536-7144



Date: February 11, 2016
 Current Meeting: February 18, 2016
 Board Meeting: March 3, 2016

BOARD MEMORANDUM

TO: Santa Clara Valley Transportation Authority
 Administration & Finance Committee

THROUGH: General Manager, Nuria I. Fernandez

FROM: Director of Engr. & Trans. Infrastructure Dev., Carolyn M. Gonot

SUBJECT: Private Utility Services - Agreement Amendments
 Silicon Valley Berryessa Extension Project Construction Safety Oversight and
 Inspection Services

Policy-Related Action: No

Government Code Section 84308 Applies: No

ACTION ITEM

RECOMMENDATION:

Authorize the General Manager to amend agreements with private utility owners totaling \$2,120,000 for construction safety oversight and inspection services related to VTA's BART Silicon Valley Berryessa Extension Project (SVBX), thereby increasing the total value of these agreements to \$7,200,000 and extending their periods of performance through August 2017.

BACKGROUND:

The extension of Bay Area Rapid Transit (BART) services into Santa Clara County, known as VTA's BART Silicon Valley Extension Project, is being implemented under a comprehensive agreement between BART and VTA. VTA is implementing the extension in stages. The first stage is a two-station extension of approximately ten miles, extending from BART's Warm Springs station in Alameda County to VTA's planned Berryessa Station in the City of San Jose.

The initial segment is known as the Silicon Valley Berryessa Extension (SVBX) Project. On June 6, 2013, the VTA Board of Directors authorized the General Manager to enter into agreements totaling \$5,080,000 with private utility owners for services related to the SVBX Project through December 2015. These agreements assured that various Utility Owners provided on-site representatives to monitor the work of SVBX contractors when in the vicinity of the existing private utility facilities. These services enabled vital coordination between the various Utility Owners and the Project, and have been essential to public and project safety, and are expected to be needed through August of 2017.

DISCUSSION:

When SVBX construction activities are in close proximity to a utility (10-15 feet), representatives of the affected utility monitor and inform the work of SVBX contractors work to ensure the utility's facilities are not compromised.

To provide for this inspection and oversight VTA has entered into agreements with private utility owners Chevron, Kinder Morgan, Verizon (MCI), AT&T, PG&E, and others. Under these agreements, VTA reimburses the utility owner for their costs related to assisting in locating existing utilities, monitoring SVBX construction activities, and advising VTA of potentially unsafe or damaging activities. The estimated additional cost by utility for these extended inspection services are indicated below.

Silicon Valley Berryessa Extension Additional Estimated Utility Inspection Costs through August 2017.

Chevron	\$1,100,000
Kinder Morgan	\$150,000
Verizon (MCI)	\$670,000
AT&T	\$100,000
PG&E	\$100,000
Others	\$100,000
Remaining from Prior Authorization	-\$100,000
Total Estimated Costs	\$2,120,000

The Project recently passed the 75% completion mark and awarded its last major construction contract. Based on the current SVBX Project schedule, an assessment of the remaining utility oversight requirements was performed and indicated continued inspection oversight is needed through August 2017. This increase for safety oversight and inspection services is within the projects allocated contingency.

ALTERNATIVES:

There are no practical alternatives to the recommended action.

FISCAL IMPACT:

This action will authorize \$2,120,000 in contractual commitments to third party utilities. Appropriation for this expenditure is included in the FY16 Adopted 2000 Measure A Transit Improvement Program Fund Capital Budget.

Prepared by: John Donahue
Memo No. 5456



Date: February 11, 2016
 Current Meeting: February 18, 2016
 Board Meeting: March 3, 2016

BOARD MEMORANDUM

TO: Santa Clara Valley Transportation Authority
 Administration & Finance Committee

THROUGH: General Manager, Nuria I. Fernandez

FROM: Director of Engr. & Trans. Infrastructure Dev., Carolyn M. Gonot

SUBJECT: WMH Corporation – Contract Amendment (VTA Contract S12019F)
 Silicon Valley Berryessa Extension Project Campus, Roadway, and Parking
 Facilities Design and Engineering Services

Policy-Related Action: No

Government Code Section 84308 Applies: Yes

ACTION ITEM

RECOMMENDATION:

Authorize the General Manager to execute a contract amendment with WMH Corporation (WMH) to provide continued design and engineering services for the Silicon Valley Berryessa Extension Project Campus, Roadway and Parking Facilities in the amount of \$2,000,000, thereby increasing the total agreement value to be authorized by the VTA Board to \$12,605,000, and extending the contract period from June 30, 2016, to December 31, 2017.

BACKGROUND:

The extension of Bay Area Rapid Transit (BART) services into Santa Clara County, known as VTA's BART Silicon Valley Extension Project, is being implemented under a comprehensive agreement between BART and VTA. VTA is implementing the extension in stages. The first stage is a two-station extension of approximately ten miles, extending from BART's Warm Springs station in Alameda County, now under construction, to VTA's planned Berryessa Station in the City of San Jose. The initial segment is known as the Silicon Valley Berryessa Extension (SVBX) Project.

On March 1, 2012, the VTA Board approved the execution of a contract to WMH Corporation in the amount of \$6,500,000 to perform engineering services and to produce bid documents for the Campus, Roadway and Parking Facilities elements of the SVBX Project.

WMH Corporation has prepared contract documents, and provided bidding and construction support services for the following campus contracts:

- C730 - Parking Structures at Milpitas and Berryessa Stations (Design-Build)
- C740 - Milpitas Station Surface Parking and Roadway (Design-Bid-Build)
- C742 - Berryessa Station Campus Area and Roadways (Design-Bid-Build)
- C640 - Montague Expressway and South Milpitas Boulevard Extension Improvements (Design-Bid-Build)
- C741 - Milpitas and Berryessa Campus Area Landscaping (Design-Bid-Build)

In December 2013, the VTA Board approved amendment of the WMH contract to provide design and engineering services for new and additional campus scope items, resulting in an updated contract value of \$8,650,000.

In November 2014, the VTA Board approved amendment of the WHM contract to include additional services resulting from coordination with third parties, output from the Regional Flood Study update, the addition of the C741 - Milpitas and Berryessa Campus Area Landscaping contract, and to establish an initial budget for design support during construction (DSDC). These changes resulted in a revised contract value of \$10,605,000, and extended the period of performance through June 30 2016.

DISCUSSION:

Since March of 2012, WMH provided engineering design services for the campus facilities construction contracts. All but one of these contracts is under construction, with the remaining contract planned to be issued for bid in the second quarter of 2016.

Design-related services required by WMH after the last amendment were more significant than anticipated. The need for these additional services have resulted from:

- New third-party requirements
- Extensive coordination of scope with design-build contract packages
- Modification of property requirements resulting from real estate settlements
- Incorporating detailed operational requirements resulting from real estate settlements

A portion of the initial budget established for design support during construction was used to fund these additional services. Design services are now complete. However, to provide design support during construction for the Campus, Roadway and Parking Facilities contracts through their completion, the WMH contract will need additional amendment

The recommended action would authorize and increase in the contract value from \$10,605,000 to \$12,605,000. Additionally, consistent with the updated Integrated Master Schedule for SVBX Project, the contract period for performance would be extended from June 30, 2016 to December 31, 2017.

The following table summarizes key Board approved contract values and the pending request.

Summary of Design and Engineering Services Contract with WMH Corporation

Vendor Name: WMH Corporation	Original Contract Amount: \$6,500,000
Contract Number: S12019F	Prior Modifications: December 2013 - \$2,150,000 November 2014 - \$1,955,000
Original Contract Term(s): March 2, 2012 through December 31, 2013	Current Contract Amount: \$10,605,000
Revised Contract Term: March 2, 2012 through December 31, 2017	Amount Requested: \$2,000,000
Solicitation Type: RFP	Total Amount Including Request: \$12,605,000
Procurement Type: Competitive	% of Request to Current Amount 20.8%
DBE Goal: 25%	% Modifications including request to original contract: 93.9%
SBE Goal: N/A	Funding Source(s): Measure A, FFGA, JPA, OBAG, COM

ALTERNATIVES:

The VTA Board could consider recommending the additional scope be performed by others, however WMH has extensive design history with the project and is the Engineer-of-Record for the majority of the campus design. Third party agencies routinely require approvals from the Engineer-of-Record for field changes and submittals. Introducing a new designer is not practical during the construction phase, and will be less efficient, less effective, and potentially more costly than the recommended action.

FISCAL IMPACT:

This action will authorize \$2,000,000 for design and engineering services. Appropriation for this expenditure is included in the FY16 Adopted 2000 Measure A Transit Improvement Program Fund Capital Budget. Funding for the effort will include 2000 Measure A and Federal Transit Administration (FTA) New Starts Funds. Additionally, certain items are funded through the One Bay Area Grant (OBAG) and by the City of Milpitas.

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION:

In connection with performance of the contract, a Disadvantaged Business Enterprise (DBE) goal of 25% was established based on identifiable subcontracting opportunities. The Contractor has made good faith efforts to utilize DBE firms and has achieved a 20.8% DBE participation to date and expects to maintain or improve this percentage under the proposed contract amendment.

Prepared by: Margaret Simmons-Cross
Memo No. 5458

ATTACHMENTS:

- 5458 Board Memo Attachment A (PDF)

**Silicon Valley Rapid Transit-Amendment to Engineering Services Contract
With WMH Corporation**

Attachment A

Firm Name	Name	Role	Location
WMH	William Hedayat	Principal/President Prime Consultant	50. W. San Fernando St. Suite 950 San Jose, CA 95113
Kimley Horn	John Atz	President Sub-consultant	100 W. San Fernando St. Suite 250 San Jose, CA 95113
Parikh Consultants, Inc.	Gary Parikh	Principal Sub-consultant	2360 Qume Drive, #A San Jose, CA 95131
Rail Surveyors and Engineers, Inc.	Phil Leong	President Sub-consultant	16660 Oakview Circle Morgan Hill, CA 95037
TRC Solutions	Kevin Perry	Principal Sub-consultant	405 Clyde Avenue Mountain View, CA 94043
Anil Verma Associates	Anil Verma	Principal Sub-consultant	1970 Broadway, #525 Oakland, CA 94612
Merrill-Morris Partners	Dan Morris	Principal Sub-consultant	249 Front Street San Francisco, CA 94111
Taradigm	Brien Harvey	President Sub-consultant	4227 Sunrise Blvd, #220 Fair Oaks, CA 95628
Y&C Transportation Consultants	Daniel Yau	Principal Sub-consultant	3250 Ramos Circle Sacramento, CA 95827



Date: February 11, 2016
 Current Meeting: February 18, 2016
 Board Meeting: March 3, 2016

BOARD MEMORANDUM

TO: Santa Clara Valley Transportation Authority
 Administration & Finance Committee

THROUGH: General Manager, Nuria I. Fernandez

FROM: Director of Engr. & Trans. Infrastructure Dev., Carolyn M. Gonot

SUBJECT: ICF International – Contract Amendment (VTA Contract S13070)
 VTA’s BART Silicon Valley Extension – Phase II Environmental Planning
 Services

Policy-Related Action: No

Government Code Section 84308 Applies: Yes

ACTION ITEM

RECOMMENDATION:

Authorize the General Manager to execute a contract amendment with ICF International for additional environmental planning services related to VTA’s BART Silicon Valley Phase II Extension Project in the amount of \$1,750,000, thereby increasing the total agreement value to \$3,750,000 and extending the contract term to July 1, 2018.

BACKGROUND:

In May 2013, the VTA Board of Directors authorized the General Manager to execute a contract with ICF International in an amount up to \$2,000,000 for professional services in the preparation of a combined National Environmental Policy Act (NEPA)/California Environmental Quality Act (CEQA) environmental document for the six-mile, four-station Phase II Extension Project of VTA’s BART Silicon Valley Program. Work has been progressing on preparation of the Supplemental Environmental Impact Statement/Subsequent Environmental Impact Report (SEIS/SEIR).

DISCUSSION:

ICF International began the preparation of a combined NEPA/CEQA environmental update document in May 2013. VTA staff continued planning efforts to consider the alignment, station locations and entrances, and construction methodologies with an aim to minimize community impacts during construction; and to assess the project’s competitiveness under evaluation

guidelines established by the Federal Transit Administration (FTA) for its New Starts funding program.

One of the key results from the planning effort is the potential for including transit-oriented joint development in the environmental document. VTA evaluated and embraced transit-oriented joint development for potential implementation with the BART Silicon Valley Phase II Extension Project after FTA released its circular (FTA C 7050.1) on joint development in August 2014. Consequently, ICF International was directed to incorporate joint development into their studies. Transit-oriented joint development is now being considered at all the four stations (Alum Rock, Downtown, Diridon, and Santa Clara). This will allow for the integration of a mixed-use development consisting of office, retail, and/or residential land uses that will support ridership for the BART extension. Joint development is also proposed at two ventilation structure locations (Santa Clara and 13th Streets; and on Stockton Avenue south of Taylor Street).

Incorporating transit-oriented joint development into the environmental analysis creates the need to perform a variety of new studies. These efforts include:

- Environmental impact analysis of transit-oriented joint development addressing all of the topical areas required by CEQA
- New Traffic Impact Analysis studies and coordination with the Cities of San Jose and Santa Clara
- Additional visual simulations will be prepared to depict the size and mass of the proposed joint development
- Revised cultural Area of Potential Effect analysis to include the effects of the proposed joint development
- Additional archaeological and historical building impacts analysis
- Additional analysis regarding consistency with local land-use plans and policies
- Additional hazardous materials records search
- New community services and utility availability and capacity analysis
- Revised cumulative impact assessment to address the effects of transit-oriented joint development under NEPA guidelines
- Expanded Section 4(f)/6(f) Evaluation for NEPA evaluating the use of public lands

VTA staff continue to focus on tunnel construction methodology with the objective of minimizing disruption to the public and businesses along the alignment. To reduce tunnel construction impacts, various approaches may be proposed that will require a reassessment or additional environmental analysis. At a minimum, this would involve preparing additional air quality, cultural, geological, greenhouse gas, hazardous materials, land use, and noise and vibration studies and technical reports. The results of this analysis would determine the need for any changes to the SEIS/SEIR.

To address the foregoing evolution of the project scope, the recommended contract amendment is needed. This amendment would extend the period of performance by 18 months from December 31, 2016 to June 30, 2018, and increase the total agreement value by \$1,750,000. Work assignments for the amended contract amount will be issued only as needed to support the

analysis required for processing the SEIS/SEIR and securing Federal Transit Administration's Record of Decision. In order to complete the Phase II environmental studies, the Board of Directors' will need to authorize the General Manager to amend the ICF contract as noted below.

Vendor Name: ICF International (formerly Jones & Stokes, Inc.)	Original Contract Amount: Board authorized up to \$2,000,000 for environmental services.
Contract Number: S13070F	Prior Modifications: Work was authorized through work assignments. Contract amendments reflected evolution of scope and are within the Board authorization.
Original Contract Term(s): Commitments through work assignments through December 31, 2016	Current Contract Amount: \$1,985,836
Revised Contract Term: Extended contract 18 months to June 30, 2018	Amount Requested: \$1,750,000.00
Solicitation Type: RFP	Total Amount Including Request: \$3,750,000
Procurement Type: NA	% of Request to Current Amount : 87.5%
DBE Goal: 12.47%	% Modifications including request to original contract: 87.5%
SBE Goal: NA	Funding Source(s): 2000 Measure A

ALTERNATIVES:

The Board may defer the recommended action, direct staff to exclude transit-oriented joint development from the environmental analysis, or direct staff to engage a different consultant to perform this work. These alternatives will have negative impacts on the timely completion of environmental analyses for VTA's BART Silicon Valley Phase II Extension and/or VTA's ability to integrate development with the project during construction.

FISCAL IMPACT:

This action will authorize an amount of \$1,750,000 for environmental planning professional services for VTA's BART Silicon Valley Phase II Extension Project. Appropriation for this expenditure is included in the FY 16 Adopted 2000 Measure A Transit Improvement Program Fund Capital Budget. This amendment is funded by 2000 Measure A funds.

ALTERNATIVES:

The DBE goal of 12.47 % established for the original contract would also apply to this amendment.

Prepared by: Krishna Davey
Memo No. 5457

ATTACHMENTS:

- 5457 - ICF Attachment A (PDF)

Attachment A

Environmental Services for the BART Silicon Valley Santa Clara Extension Project
List of Contractor(s)

Firm Name	Name	Role	Location
ICF International	Mike Davis	Prime Contractor	75 East Santa Clara Street, Suite 300 San Jose, CA
ICF International	Maggie Townsley	Prime Contractor	75 East Santa Clara Street, Suite 300 San Jose, CA
Baseline Environmental Consulting	Yane Nordhav	Subcontractor	5900 Hollis Street, Suite D, Emeryville, CA 94608
Circlepoint	Scott Steinwert	Subcontractor	1814 Franklin Street, Suite 1000, Oakland, CA 94612
David J. Powers & Associates	John Hesler	Subcontractor	1871 The Alameda, Suite 200, San Jose, CA 95126
Hexagon Transportation Consultants, Inc.	Gary Black	Subcontractor	111 W St. John Street, Suite 850 San Jose, CA 95113
JRP Historical Consulting, LLC	Meta Bunse	Subcontractor	2850 Spafford Street, Davis, CA 95168
Keish Environmental, PC	Rachael Keish	Subcontractor	6768 Crosby Court, San Jose, CA 95229
Parikh Consultants, Inc.	Gary Parikh	Subcontractor	2360 Qume Drive, Suite A, San Jose, CA 95131

Terry A. Hayes & Associates	Terry A. Hayes	Subcontractor	8522 National Blvd., Suite 102, Culver City, CA 90232
William Kanemoto & Associates	Bill Kanemoto	Subcontractor	6428 Hillegass Avenue, Oakland, CA 94618
Wilson Ihrig & Associates	Richard Carman	Subcontractor	6001 Shellmound Street, Suite 400, Emeryville, CA 94608
WRECO	HanBin Liang	Subcontractor	1243 Alpine Road, Suite 108, Walnut Creek, CA 94596



Date: February 11, 2016
 Current Meeting: February 18, 2016
 Board Meeting: March 3, 2016

BOARD MEMORANDUM

TO: Santa Clara Valley Transportation Authority
 Administration & Finance Committee

THROUGH: General Manager, Nuria I. Fernandez

FROM: Director of Engr. & Trans. Infrastructure Dev., Carolyn M. Gonot

SUBJECT: Alum Rock/Santa Clara Bus Rapid Transit Project – Amendment Between the City of San Jose and the Santa Clara Valley Transportation Authority for Engineering Support of Traffic Signals and Street Lights

Policy-Related Action: No

Government Code Section 84308 Applies: No

ACTION ITEM

RECOMMENDATION:

Authorize the General Manager to execute an Amendment to perform additional Engineering Support for traffic signal and street light design for \$375,000 with the City of San Jose for the Alum Rock/Santa Clara Bus Rapid Transit Project for a new contract amount of \$1,955,000.

BACKGROUND:

The Alum Rock/Santa Clara Bus Rapid Transit (AR/SC BRT) Project is included in the VTA 2000 Measure A Transit Improvement Program (see Attachment A). The AR/SC BRT Project is located in the City of San Jose and extends approximately 7.2 miles from the western terminus at the Arena on Santa Clara Street to the Alum Rock Transit Center on Capitol Avenue and terminating at the Eastridge Transit Center.

The improvements for this project include the construction of traffic signals and street lights along Santa Clara Street and Alum Rock Avenue. In order to be most efficient and ensure that the engineering for these critical items were designed according to the latest City Standard and in compliance with the most recent City lighting criteria, it was decided that City design staff should provide the preparation of the construction plans and specifications for the street lights and traffic signals for the project. Therefore, in August 2012, VTA and the City entered into a Cooperative Agreement in an amount of \$580,000 to perform the engineering of 11 traffic signals and all of the street lights on Alum Rock Avenue. In August 2014, the VTA Board further approved an amendment to the agreement for \$1,000,000 to cover new scope for the design of 14 additional signal locations and for Design Services during Construction (DSDC).

DISCUSSION:

VTA awarded the main civil/stations construction contract (C830) for the Alum Rock/Santa Clara Bus Rapid Transit Project (BRT) to Goodfellow Top Grade Construction (GTGC) in 2013. This contract included the scope for traffic signals and street lights. However, after a safety shutdown in July 2015, VTA entered into a Closeout Agreement with GTGC in September 2015 for the resolution of disputes related to safety, community impacts and delay concerns. The agreement lead to the prompt and orderly closeout and demobilization of GTGC from the Project.

Since then, certain subcontractors that were assigned to VTA as part of the closeout agreement have continued to perform critical work and VTA has repackaged the remaining work into two separate follow-on construction contracts to complete the project.

This new strategy, in combination with delays in the original C830 contract has resulted in an overall delay to the project of approximately one year.

This amendment will cover additional City of San Jose support services for extended DSDC and design services for traffic signal and street lighting scope in the new repackaged construction contract. The additional scope will require an amendment in the amount of \$375,000 for a total contract amount of \$1,955,000. The term of the Agreement also needs to be extended to December 31, 2016.

ALTERNATIVES:

The Board could choose to not approve this amendment. This alternative would require consultant support to provide the related traffic signal and street light engineering with an increased cost and schedule delay.

FISCAL IMPACT:

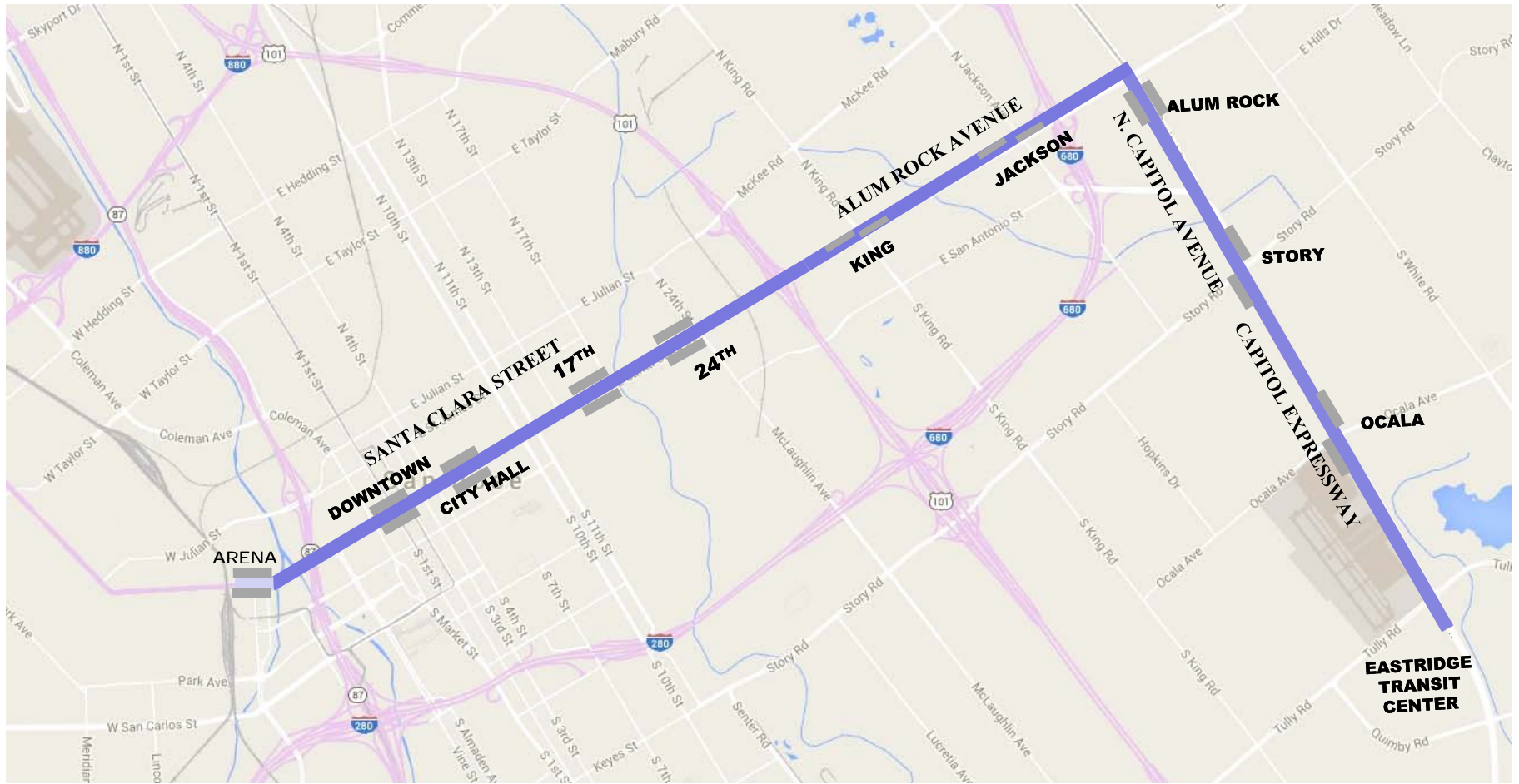
This action will authorize \$375,000 for additional City of San Jose design support services and design support during construction for the Alum Rock/Santa Clara BRT Project. Appropriation for this expenditure is available in the FY16 Adopted 2000 Measure A Transit Improvement Program Fund Capital Budget. This contract is funded with 2010 State Transportation Improvement Program and 2000 Measure A funds.

Prepared by: Mohamed Basma, Program Manager
Memo No. 5448

ATTACHMENTS:

- 5448 -Attachment A for CSJ Amendment (PDF)

Exhibit A – Alum Rock/Santa Clara Bus Rapid Transit Project
Amendment for City of San Jose Engineering Support Services





Date: February 11, 2016
 Current Meeting: February 18, 2016
 Board Meeting: March 3, 2016

BOARD MEMORANDUM

TO: Santa Clara Valley Transportation Authority
 Administration & Finance Committee

THROUGH: General Manager, Nuria I. Fernandez

FROM: Director of Planning and Program Development, John Ristow

SUBJECT: Adopt Resolution of Support and Certifications & Assurances for VTA's 2016 Low Carbon Transit Operations Program

Policy-Related Action: No

Government Code Section 84308 Applies: No

Resolution

ACTION ITEM

RECOMMENDATION:

Adopt a program resolution and Certifications & Assurances for VTA's 2016 Low Carbon Transportation and Operations Program (LCTOP) of projects and augment the FY 2016 VTA Transit Fund Capital Budget by \$4,852,500 for the VTA Zero Emission Bus Pilot project.

BACKGROUND:

The California's Global Warming Solutions Act of 2006 was enacted through Assembly Bill 32 (AB 32). AB32 establishes the California Air Resources Board (CARB) as the administering body for the programs and sets a series of policies and programs across all major industry sectors to return California's greenhouse gas (GHG) emissions to 1990 levels by 2020.

One of the mechanisms identified to implement AB 32 was the creation of the Cap & Trade Program. The "cap" in Cap & Trade refers to setting limits on emissions from industries that exceed annual emissions of 25,000 metric tons of GHG. These limits were enacted on industrial (stationary emissions) sectors in 2013. In 2015, the transportation (mobile emissions) sector will be added to the program. The "trade" refers to the creation of a free market for the sale of carbon allowances, encouraging companies to be innovative, in order to meet (or exceed) their allocated limit and avoid fines. Companies that emit less than their "cap" can sell the allowances to the companies that exceed their cap. The purchasing companies "trade" purchase of the allowances in lieu of paying the fines associated with the exceeding their cap. Assembly Bill 1532 (Perez, 2012) created the Greenhouse Gas Reduction Fund (GGRF) and directed that the proceeds from

the auctions of GHG allowances (not to include fines and penalties) be deposited in the GGRF account and be available for appropriation by the legislature. The purchase of the allowances is accomplished through quarterly and reserve auctions.

Senate Bill 862 (2012) uses Cap & Trade proceeds to create the Low Carbon Transportation and Operations Program (LCTOP). LCTOP is a formula program designed to fund transit projects that reduce GHG emissions, improve mobility, and enhance or expand public transit. Beginning in fiscal year 2015/16, five percent (5%) of the annual proceeds of the GGRF are to be continuously appropriated to the LCTOP. The LCTOP apportionments are divided into two funding designations consistent with the California Public Utilities Code Sections 99313 (population based apportionments) and 99314 (revenue based apportionments).

DISCUSSION:

VTA is an eligible recipient for both the population and revenue based LCTOP funding. VTA's available funds for the 2016 LCTOPS program include \$2,576,819 in Section 99314 revenue based funds, and \$985,763 in Section 99313 population-based funds from MTC. VTA is beginning to transition its diesel-electric hybrid transit bus fleet to low and no emissions vehicles. Staff recommends programming these funds to purchase five electric transit buses and related fueling infrastructure.

On March 5, 2015, the VTA Board programmed \$1,107,878 in 2014 & 2015 LCTOPS funds for construction of Light Rail improvements on North First Street. The North First Street improvements are proving to be more complicated to design than originally anticipated, and the project isn't projected to begin construction until at least 2018. VTA staff recommends that the Board re-program these funds to the electric bus purchase as well. Staff's recommended 2016 LCTOP actions and the electric bus funding plan are summarized in the following table.

Electric Bus & Infrastructure Funding Plan

Line Item Description	Cost/Funds
Cost of 5 Electric Buses and supporting fueling infrastructure	\$8,852,500
2016 Revenue-Based LCTOP funds	(\$2,576,819)
2016 Population-Based LCTOP funds	(\$ 985,763)
2015 LCTOP funds (from North First Street LRT project)	(\$1,107,878)
FTA Low/No Emission Vehicle Grant*	(\$2,800,000)
<i>Subtotal Grant Funding</i>	<i>(\$7,470,460)</i>
VTA Local Funding	(\$1,382,040)
Balance	\$ 0

*application to Federal Transit Administration (FTA) pending

The VTA FY 2016 Capital Budget currently includes \$4,000,000 for VTA's electric bus pilot project. An augmentation of budget authority of \$4,852,500 will be required for VTA to deliver this project. As shown in the plan, \$7,470,460 of the actual funding is anticipated to come from State and Federal grants. A total of \$1,382,040 in VTA local funding will be required. Staff recommends that the VTA Board augment the FY 2016 VTA Transit Fund Capital Budget.

Pursuant to the Caltrans Guidelines for Low Carbon Transit Operations Plan, a resolution and signed Certifications and Assurances are required from the VTA Board of Directors in order for Caltrans to accept VTA's LCTOP funding applications. VTA staff recommends that the Board adopt the attached resolution and sign the attached Certifications and Assurances.

ALTERNATIVES:

The VTA Board may choose to fund alternative projects. The VTA Board may choose not to accept LCTOP funds.

FISCAL IMPACT:

This action will add \$4,852,500 to the FY 2016 Adopted VTA Transit Fund Capital Budget and enable VTA to collect \$4,670,460 in LCTOP grants.

Prepared by: Marcella Rensi
Memo No. 5429

RESOLUTION #_____

**AUTHORIZATION FOR THE EXECUTION OF THE
THE LOW CARBON TRANSIT OPERATIONS PROGRAM (LCTOP) PROJECT:
BATTERY-ELECTRIC ZERO EMISSION BUS & INFRASTRUCTURE**

WHEREAS, the Santa Clara Valley Transportation Authority (VTA) is an eligible project sponsor and may receive state funding from the Low Carbon Transit Operations Program (LCTOP) now or sometime in the future for transit projects; and

WHEREAS, the statutes related to state-funded transit projects require a local or regional implementing agency to abide by various regulations; and

WHEREAS, Senate Bill 862 (2014) named the Department of Transportation (Department) as the administrative agency for the LCTOP; and

WHEREAS, the Department has developed guidelines for the purpose of administering and distributing LCTOP funds to eligible project sponsors (local agencies); and

WHEREAS, the VTA wishes to implement the LCTOP project(s) listed above,

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the VTA that the fund recipient agrees to comply with all conditions and requirements set forth in the applicable statutes, regulations and guidelines for all LCTOP funded transit projects.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the VTA that it hereby authorizes the submittal of the following project nomination(s) and allocation request(s) to the Department in FY 2015-16 LCTOP funds:

Project Title: Battery-Electric Zero Emission Bus and Infrastructure Project:

Amount of LCTOP funds requested: \$4,670,460.00

*Short description of project: Purchase five (5) new forty-foot zero emission electric transit buses,
purchase three (3) fast-speed electric vehicle charging stations and
make all related connectivity improvements at VTA's bus yards.*

Effective March 3, 2016

PASSED AND ADOPTED by the Santa Clara Valley Transportation Authority Board of Directors on March 3, 2016 by the following vote:

AYES:

NOES:

ABSENT:

Cindy Chavez, Chairperson
Board of Directors

I HEREBY CERTIFY AND ATTEST that the foregoing resolution was duly and regularly introduced, passed and adopted by the vote of the Board of Directors of the Santa Clara Valley Transportation Authority, California, at a meeting of said Board of Directors on the date indicated, as set forth above.

Date: _____

Elaine Baltao, Board Secretary

APPROVED AS TO FORM:

Robert Fabela, General Counsel

Low Carbon Transit Operations Program (LCTOP) CERTIFICATIONS AND ASSURANCES

Project Sponsor: Santa Clara Valley Transportation Authority (VTA)

Agency Name: Santa Clara Valley Transportation Authority

Effective Date of this Document: March 3, 2016

The California Department of Transportation (Department) has adopted the following certifications and assurances for the Low Carbon Transit Operations Program. As a condition of the receipt of LCTOP funds, project lead must comply with these terms and conditions.

A. General

- (1) The project lead agrees to abide by the current LCTOP Guidelines and applicable legal requirements.
- (2) The project lead must submit to the Department a signed Authorized Agent form designating the representative who can submit documents on behalf of the project sponsor and a copy of the board resolution appointing the Authorized Agent.

B. Project Administration

- (1) The project lead certifies that required environmental documentation is complete before requesting an allocation of LCTOP funds. The project lead assures that projects approved for LCTOP funding comply with Public Resources Code § 21100 and § 21150.
- (2) The project lead certifies that a dedicated bank account for LCTOP funds only will be established within 30 days of receipt of LCTOP funds.
- (3) The project lead certifies that when LCTOP funds are used for a transit capital project, that the project will be completed and remain in operation for its useful life.
- (4) The project lead certifies that it has the legal, financial, and technical capacity to carry out the project, including the safety and security aspects of that project.
- (5) The project lead certifies that they will notify the Department of pending litigation, dispute, or negative audit findings related to the project, before receiving an allocation of funds.
- (6) The project lead must maintain satisfactory continuing control over the use of project equipment and facilities and will adequately maintain project equipment and facilities for the useful life of the project.
- (7) Any interest the project lead earns on LCTOP funds must be used only on approved LCTOP projects.
- (8) The project lead must notify the Department of any changes to the approved project with a Corrective Action Plan (CAP).
- (9) Under extraordinary circumstances, a project lead may terminate a project prior to completion. In the event the project lead terminates a project prior to completion, the project lead must (1) contact the Department in writing and follow-up with a phone call verifying receipt of such notice; (2) pursuant to

verification, submit a final report indicating the reason for the termination and demonstrating the expended funds were used on the intended purpose; (3) submit a request to reassign the funds to a new project within 180 days of termination.

- (10) Funds must be encumbered and liquidated within the time allowed.

C. Reporting

- (1) The project lead must submit the following LCTOP reports:
 - a. Semi-Annual Progress Reports by May 15th and November 15th each year.
 - b. A Final Report within six months of project completion.
 - c. The annual audit required under the Transportation Development Act (TDA), to verify receipt and appropriate expenditure of LCTOP funds. A copy of the audit report must be submitted to the Department within six months of the close of the year (December 31) each year in which LCTOP funds have been received or expended.
- (2) Other Reporting Requirements: ARB is developing funding guidelines that will include reporting requirements for all State agencies that receive appropriations from the Greenhouse Gas Reduction Fund. Caltrans and project sponsors will need to submit reporting information in accordance with ARB's funding guidelines, including reporting on greenhouse gas reductions and benefits to disadvantaged communities.

D. Cost Principles

- (1) The project lead agrees to comply with Title 2 of the Code of Federal Regulations 225 (2 CFR 225), Cost Principles for State and Local Government, and 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- (2) The project lead agrees, and will assure that its contractors and subcontractors will be obligated to agree, that:
 - a. Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allow ability of individual project cost items and
 - b. Those parties shall comply with Federal administrative procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Every sub-recipient receiving LCTOP funds as a contractor or sub-contractor shall comply with Federal administrative procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- (3) Any project cost for which the project lead has received funds that are determined by subsequent audit to be unallowable under 2 CFR 225, 48 CFR, Chapter 1, Part 31 or 49 CFR, Part 18, are subject to repayment by the project lead to the State of California (State). All projects must reduce greenhouse gas emissions, as required under Public Resources Code section 75230, and any project that fails to reduce greenhouse gases shall also have its project costs submit to repayment by the project lead to the State. Should the project lead fail to reimburse moneys due to the State within thirty (30) days of demand, or within such other period as may be agreed in writing between the Parties hereto, the State is authorized to intercept and withhold future payments due the project lead from the State or any third-party source, including but not limited to, the State Treasurer and the State Controller.

E. Record Retention

- (1) The project lead agrees, and will assure that its contractors and subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred project costs and matching funds by line item for the project. The accounting system of the project lead, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles (GAAP), and enable the determination of incurred costs at interim points of completion. All accounting records and other supporting papers of the project lead, its contractors and subcontractors connected with LCTOP funding shall be maintained for a minimum of three (3) years after the “Project Closeout” report or final Phase 2 report is submitted (per ARB Funding Guidelines, Vol. 3, page 3.A-16), and shall be held open to inspection, copying, and audit by representatives of the State and the California State Auditor. Copies thereof will be furnished by the project lead, its contractors, and subcontractors upon receipt of any request made by the State or its agents. In conducting an audit of the costs claimed, the State will rely to the maximum extent possible on any prior audit of the project lead pursuant to the provisions of federal and State law. In the absence of such an audit, any acceptable audit work performed by the project lead’s external and internal auditors may be relied upon and used by the State when planning and conducting additional audits.
- (2) For the purpose of determining compliance with Title 21, California Code of Regulations, Section 2500 et seq., when applicable, and other matters connected with the performance of the project lead’s contracts with third parties pursuant to Government Code § 8546.7, the project sponsor, its contractors and subcontractors and the State shall each maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts. All of the above referenced parties shall make such materials available at their respective offices at all reasonable times during the entire project period and for three (3) years from the date of final payment. The State, the California State Auditor, or any duly authorized representative of the State, shall each have access to any books, records, and documents that are pertinent to a project for audits, examinations, excerpts, and transactions, and the project lead shall furnish copies thereof if requested.
- (3) The project lead, its contractors and subcontractors will permit access to all records of employment, employment advertisements, employment application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission, or any other agency of the State of California designated by the State, for the purpose of any investigation to ascertain compliance with this document.

F. Special Situations

The Department may perform an audit and/or request detailed project information of the project sponsor’s LCTOP funded projects at the Department’s discretion at any time prior to the completion of the LCTOP.

I certify all of these conditions will be met.

BY:

Cindy Chavez, Chairperson
Santa Clara Valley Transportation Authority Board of Directors



Date: February 10, 2016
 Current Meeting: February 18, 2016
 Board Meeting: March 3, 2016

BOARD MEMORANDUM

TO: Santa Clara Valley Transportation Authority
 Administration & Finance Committee

THROUGH: General Manager, Nuria I. Fernandez

FROM: Chief Financial Officer, Raj Srinath

SUBJECT: Joint Development Program Progress Briefing

FOR INFORMATION ONLY

BACKGROUND:

VTA's *Joint Development Policy* and *Implementation Plan* documents, approved by the Board in 2009, set forth the process for staff to evaluate VTA real estate holdings, identify those parcels with potential for joint development, and undertake the evaluation and setting of priorities for sites to be offered for joint development. This item provides an update on current joint development program activities, and staff's anticipated work this calendar year to create additional successful joint development offerings.

DISCUSSION:

I. Opportunities and Challenges

Joint development is a key component of VTA's transit mission because it can: (i) generate long-term stable revenue sources to support VTA activities and projects, (ii) increase ridership on VTA's multi-modal transit system and enhance operational infrastructure, and (iii) create community benefits and assets that enhance the value of transit to residents, businesses, and existing VTA patrons. The last valuation of VTA joint development properties, in 2009, estimated a value of more than \$500 million. Based on current market conditions, an updated value would be much higher.

There are a range of challenges that VTA must often address in order to create viable joint development opportunities that are attractive to real estate developers and investors. These can vary from site to site and may include the need to: (i) work with local jurisdictions to adopt zoning that realizes market potential and fully leverages VTA transit assets - and allows the flexible mixed-use development demanded by the market; (ii) address site specific development constraints or required improvements; (iii) address the potential loss of parking spaces at park

and ride lots, (iv) reconfigure or relocate adjacent VTA facilities; (v) engage local communities and other stakeholders to incorporate their visions and goals for projects; and (vi) streamline internal VTA processes and build organizational capacity to successfully complete multiple highly complex ground lease transactions that meet VTA, developer, investor, and lender requirements.

II. Status of Current Joint Development Projects

VTA staff has worked diligently to advance the joint development projects previously presented to the Board. This work is tailored to each project and includes coordination with local jurisdictions on entitlements, engagement with local communities and other stakeholders, and assessment and planning on adjustment or relocation of VTA facilities. The status of VTA's three priority joint development projects for the first half of 2016 are described below.

- **NORTH YARD.** VTA staff, working with VTA's General Counsel and Chief Operating Officer, have determined that it would be more advantageous to structure a transaction for the North Yard as a land exchange where a developer provides a new parcel of sufficient size and in a superior location that better supports VTA's bus operations than the current yard. The difference in value between the current North Yard, and the site VTA obtains in exchange, would cover the cost of construction for a new bus yard and provide a substantial contribution to the Joint Development Fund.

The City of Mountain View is currently in the midst of a two-year long update of the North Bayshore Precise Plan, whose boundaries include the North Yard, that commenced in 2015. The update will potentially allow for residential uses. The City Council is scheduled to hold a public hearing on March 1st with an agenda item for the North Bayshore Precise Plan update that includes approval of a preferred alternative for residential uses. This decision from the City Council will affect developers' assessment of the value of the North Yard property. Therefore, a new VTA solicitation should be issued after action by the Council. Staff is preparing a revised competitive solicitation for release immediately after City Council action, and is working to refine facility requirements for a new site.

- **TAMIEN STATION.** The City of San Jose is expected to shortly commence a 30-day public comment period on the draft environmental document, with a Planning Commission meeting anticipated for March during the review period. Based on the feedback from both the Planning Commission and public comment on the draft environmental document, the rezoning action will be presented to the City Council for project approval. City staff have indicated that this may be as soon as late April. Council approval of rezoning will substantially increase the value of the property, and for this reason a joint development competitive offering is planned for release immediately after Council action.
- **CERONE DIVISION.** This represents the most immediate opportunity to issue a competitive offering. Staff is working to evaluate how current facilities necessary for the operation of the bus yard will be relocated on-site so that more suitable land for joint development is made available. Work is also underway to evaluate how different zoning on parts of the site may affect development potential and future development parcels. A joint development competitive offering is targeted for release by early March.

III. Setting the Stage for Additional Joint Development Projects

Real estate market conditions continue to be extremely favorable for development. Even with a recent softening in the rate of increase in multifamily residential rental rates, Silicon Valley continues to be one of the strongest U.S. real estate markets. At this point, the local real estate market cycle, at five-plus years since the bottom of the previous recession, can be considered to be at the peak of the current cycle or even starting to transition beyond the peak of the cycle.

Joint development public-private partnerships take time to develop and implement. Between the time needed to prepare and conduct a competitive offering for a joint development opportunity, select a bidder and negotiate agreements, complete design and financing, and construct a project, it can take up to 36 months or more from when VTA begins its pre-development work to when a new joint development project is built and ready to open.

Given where we are in the current market cycle, Staff believes that there is an opportunity to initiate and complete several additional joint development projects before a shift in market conditions decreases interest in new development. Foreseeing future market conditions is notoriously difficult, however staff believes that there are strong prospects for joint development projects initiated in 2016 and into early 2017. As we proceed further into 2017 and beyond, the potential increases for a change in market conditions that could reduce opportunities for VTA joint development projects.

Staff's evaluation of how to enhance VTA's capability to more implement joint development is focused on the following items:

- **UPDATE THE JOINT DEVELOPMENT PRIORITY SCHEDULE.** The VTA Board last approved the *Joint Development Priority Schedule* ("Priority Schedule") in 2009. The *Priority Schedule* is intended to identify those sites with the greatest near-term potential for joint development. The *Priority Schedule* serves to focus staff pre-development efforts and provides a targeted list for competitive offerings. Other joint development properties not on the *Priority Schedule* remain in the *Joint Development Portfolio*, and along with other properties in the *VTA Real Estate Inventory*, are considered to have the potential for a greater return to VTA if they are treated as longer-term opportunities.

Staff has updated its evaluation of the sites in VTA's Portfolio based on the criteria in the Policy, including market potential and local jurisdiction and local community support. An updated *Priority Schedule* reflecting Staff's analysis is included as Attachment A for Board comment, and serves as a preview of a forthcoming action item to be considered at the April Board meeting.

- **PROACTIVELY IDENTIFY AND ADDRESS DEVELOPMENT ISSUES.** This primarily involves five categories of issues where VTA either needs to take the lead, or actively collaborate with selected developers, on:

Allowable Development. Several cities are currently updating General Plans or other area plans (including the City of San Jose's Envision 2040 effort) that will affect development potential for VTA properties, and thus their value. The timing of these efforts and their outcomes will directly affect developer interest and when VTA properties can be offered for

joint development. Staff will be working with these jurisdictions on zoning and development standards that can maximize joint development benefits.

Replacement Parking. The amount of replacement parking that a developer is required to provide for joint development on a park and ride lot has a substantial effect on development feasibility and potential revenues to VTA. For lots that have underutilized parking, there may be greater ridership growth from new joint development households and employers than preserving currently vacant spaces for future ridership growth. Staff has commenced a *Comprehensive Parking Demand and Management Study* to evaluate options for future use of park and ride lots, and will continue to address this issue on a site by site basis.

VTA Operations and/or Site Issues. Some of the identified priority development sites involve reconfiguration of VTA operations, constraints related to how VTA acquired the properties, or other issues that can affect developer interest and potential. Staff is currently updating its assessment of the *Priority Schedule* to identify which issues must be dealt with prior to a competitive offering to avoid reduced developer interest, versus those items which can be addressed after selection of a developer for exclusive negotiations.

Affordable Housing. The region's continuing shortfall in producing sufficient quantities of affordable housing, and the rapid growth in rental rates and sales prices, has led advocates to focus on publicly owned properties as key opportunities to increase affordable housing production. This issue is expected to arise each time the Board considers joint development projects. Staff is preparing a draft Affordable Housing Policy that is informed by the recent actions of other transit agencies in California to increase affordable housing production, as well as the programs of local cities. This draft policy would be an addition to the *Joint Development Implementation Plan*, and Staff intends to present it to the Advisory Committees in March, and to the Board for consideration in April.

Community Opportunities. In addition to the abovementioned issues, Staff believes that joint development can provide a bridge to opportunities for members of disadvantaged communities as well as local residents. These opportunities can include apprentice training in the construction trades; job creation for the unemployed; and first source or local hire programs, as well as other policies and programs. Per California law, prevailing wage must be paid on all joint development construction because it involves development on VTA land. Staff will be coordinating with local jurisdictions on how to incorporate into individual joint development projects a variety of programs and policies to increase opportunities for all.

- **RETAIN CONSULTANT EXPERTISE TO ENHANCE CAPABILITIES.** The last on-call consultant contract for development services was established in 2010. A new contract is needed to arrange the full array of development-related services to support VTA pre-development activities, competitive offerings, proposal evaluation, negotiation of agreements and ground leases, and oversight of developer construction projects. The required services will include architecture, planning, engineers, economics, development advisors, and construction managers and cost estimators. The discussion and Board action request regarding engagement of consultant services is included in a separate Board item for *Joint*

Development Fund Capital Budget Augmentation. The process for requesting a new list of on-call consultants is also underway and Staff will return to the Board for approval once the solicitation is completed.

- **USE A VARIETY OF APPROACHES TO EFFICIENTLY CONDUCT COMPETITIVE OFFERINGS FOR JOINT DEVELOPMENT OPPORTUNITIES.** Perhaps the overarching challenge for creating a larger number of joint development projects is the significant work that is required to address the above items. Trying to resolve all issues for a project prior to issuing a competitive offering is likely to slow down how much joint development can be created, without necessarily producing superior results.

One of the premises for public-private partnerships, including joint development, is that it should seek to leverage the capabilities of each party. VTA could, in many situations, benefit from a more collaborative approach towards working with developers to resolve project challenges and issues, in order to maximize the benefits for each party. This includes using the expertise of experienced and capable developers on how to successfully work with local communities to generate support for proposed projects.

VTA's work prior to a competitive offering should generally be more focused on addressing those items that can help expedite project development and negotiations after the selection of a developer. Those items where a developer's expertise and involvement would enable a more beneficial outcome should be a subject for collaborative efforts by VTA and its selected developer after the competitive offering.

Staff intends to use the flexibility provided in the *Joint Development Policy* to match the method for competitive offerings to each joint development opportunity. In unique situations, Staff may propose an innovative approach for a competitive offering to the Board.

For some sites, such as Tamien, where development issues are resolved in advance and there is a great deal of certainty on all aspects of the joint development project, Staff would issue a Request for Proposals (RFP) that seeks detailed development proposals for evaluation.

For other sites where substantial work is required to refine the joint development project, such as Cerone, Staff would first issue a Request for Qualifications (RFQ) to identify the most qualified development teams and their suggested development concepts, while VTA concurrently works with the local jurisdiction to refine the parameters for the potential project. The RFQ submittals would be used to identify a short list of the most capable developers to participate in a subsequent RFP, and would inform preparation of the RFP offering. That RFP would seek detailed development proposals, recognizing that after the selection of a developer there would still be a significant amount of work to be done by VTA and the developer to refine the joint development project, including the final terms and conditions of the ground lease.

A more flexible approach to joint development competitive offerings would provide the Board with multiple opportunities to provide its guidance on development concepts for sites, along with its decisions on the developers selected for negotiations, and its approval of the final terms and conditions of Joint Development Agreements and ground leases.

IV. Summary

Joint development presents VTA with substantial opportunities to advance its transit mission and generate financial and other benefits. Three joint development projects are now being prepared for competitive offerings through the 2nd Quarter of 2016. There is potential to commence additional joint development projects this year and into 2017, and Staff is ready to advance multiple projects. Successful completion of multiple joint development projects, prior to a shift in market conditions, will require VTA to focus on key development issues, enhance its joint development capabilities, and pursue a more flexible and efficient approach to competitive offerings and negotiations with potential developers and other interested parties.

Prepared By: Ron Golem
Memo No. 5454

ATTACHMENT A
JOINT DEVELOPMENT PRIORITY SCHEDULE

Pursuant to the *Joint Development Policy*, staff has completed an updated evaluation of VTA joint development sites against these criteria: parcel size and improvements; transit access and impacts; site availability; location efficiency; developer and market interest; land use policy; municipal interest; environmental constraints; and revenue potential. The updated Priority Schedule includes those properties that have the greatest potential near-term benefit to VTA and near-term likelihood of success for entering into a Joint Development Agreement with a developer.

Joint Development Priority Schedule Sites

1. Blossom Hill Station
2. Capitol LRT Station
3. Cerone Division (a)
4. Cottle Station
5. Curtner Station
6. Diridon Station Arena Parking Lot (b)
7. Evelyn Station
8. I-880/Milpitas BART
9. North Yard (a)
10. Santa Clara Transit Center
11. Tamien (a)
 - (a) Pending competitive offering to developers.
 - (b) Joint City of San Jose-VTA effort in conjunction with Diridon Intermodal Station Working Group.

(continued on next page)

Joint Development Portfolio Sites (Excludes Priority Sites)

These properties have previously been identified as having long-term potential for suitable joint development, however one or more criteria indicate that site-specific factors at present limit the potential enter into a near-term Joint Development Agreement; or that there is potential for VTA to realize greater revenues in the long-run by a delay of near-term joint development on the site and/or coordination with other property owners or projects.

1. Almaden Station
2. Alum Rock Transit Center
3. Branham Station
4. Gilroy Transit Center
5. Hostetter Station
6. Mitchell Block, Downtown San Jose
7. Morgan Hill Caltrain Station
8. Mountain View Transit Center Plaza
9. Ohlone/Chynoweth Station
10. San Martin Caltrain Station
11. Santa Teresa Station
12. Snell Station
13. VTA Administration (River Oaks)
14. Winchester Station



Date: February 4, 2016
 Current Meeting: February 18, 2016
 Board Meeting: March 3, 2016

BOARD MEMORANDUM

TO: Santa Clara Valley Transportation Authority
 Administration & Finance Committee

THROUGH: General Manager, Nuria I. Fernandez

FROM: Chief Financial Officer, Raj Srinath

SUBJECT: Joint Development Program Fund Capital Budget Augmentation

Policy-Related Action: Yes

Government Code Section 84308 Applies: No

ACTION ITEM

RECOMMENDATION:

Augment the Joint Development Program Fund Capital Budget by \$3,000,000 for professional services support related to predevelopment, offering of development opportunities, Joint Development Agreement negotiations, and monitoring of development activities.

BACKGROUND:

The current on-call consultant services list for joint development-related services was established in 2010. That contract will end soon, and does not provide the full range of services needed to support joint development projects from initial VTA work through to completion of construction oversight. The new procurement will provide the full range of consultant services needed to support VTA staff in its effort to simultaneously plan, negotiate, and implement multiple joint development offerings.

DISCUSSION:

Staff seeks to accelerate the pace of VTA joint development activities in 2016 and beyond. There are currently three joint development projects in predevelopment that have been reviewed by the Board, with competitive developer offerings to be issued in the next couple months. Staff is seeking to implement additional joint development projects.

A new on-call list of consultant services to support joint development will enable VTA staff to more quickly and more effectively plan, implement, and oversee multiple joint development projects. For each joint development project, the services to be provided during each phase could

include, but is not limited to:

- **PREDEVELOPMENT.** Architecture, planning, engineering, and environmental services to identify potential development envelope under current and potential future zoning; identify and evaluate alternatives to address site development issues (including reconfiguration of any involved VTA facilities); financial modeling to identify potential financial return to VTA.
- **COMPETITIVE OFFERINGS.** Continued use of consultants from predevelopment to answer developer technical questions, and assist in the evaluation of developer submittals, leading to the recommendation to the Board of a developer for exclusive negotiations.
- **NEGOTIATION OF AGREEMENTS.** Continued use of consultants from earlier phases, along with a construction manager / cost estimator, to evaluate multiple rounds of developer design submittals and resulting project costs; evaluate proposed solutions to project issues related to design, engineering, environmental, and other issues; and perform ongoing financial modeling to evaluate returns to both the developer and VTA.
- **PROJECT OVERSIGHT.** Once the Board has approved the terms of the Joint Development Agreement, the same consultant team would assist with review and approval of final design documents, and provide owners' representative services to oversee construction. The team would also provide support if any subsequent changes in project costs, market conditions, or other factors require amendment of the Joint Development Agreement.

ALTERNATIVES:

The primary alternative would be to scale back the extent to which consultants are used. This could be done by focusing the use of consultants on specific critical issues, rather than providing broader on-going assistance for a full range project pre-development, selection, negotiation, and construction management activities. Doing so could potentially reduce the cost of consultant services by up to 50 percent or more, with two potential impacts.

The first impact of a more limited use of consultants is that it would reduce the number of joint development transactions that could be completed over the next several years, since staff would need to dedicate significantly more time to each transaction, and would be challenged to make up for more limited access to technical expertise. The second impact is that staff would be required to place greater reliance upon developer representations, with a more limited ability to evaluate proposals, negotiating positions, and other assertions. This could have the potential to result in ground lease terms somewhat less advantageous to VTA. Over the term of a 50- to 60-year ground lease even slight reductions in ground rent payments can add up to a substantial loss in total receipts to VTA. By not using a construction manager to provide "owners' representative" services overseeing construction, VTA would have greater difficulty guaranteeing that the project that VTA seeks to see built as negotiated is the one that actually gets built.

If necessary, VTA could forego use of consultant assistance for joint development. This would limit staff's ability to create and implement joint development projects to one or two at a time, and would lengthen the time needed to complete each phase of a joint development project. The challenge to obtain the most advantageous possible terms for VTA in Joint Development

Agreements would be even greater than with the reduced use of consultants alternative.

FISCAL IMPACT:

This action will add \$3,000,000 to the FY16 Adopted Joint Development Program Fund Capital Budget. There is potential for reimbursement of a majority of this expense from developers selected for Exclusive Negotiations for Joint Development Agreements.

Prepared by: Ron Golem
Memo No. 5455



Date: February 17, 2016
 Current Meeting: February 18, 2016
 Board Meeting: March 3, 2016

BOARD MEMORANDUM

TO: Santa Clara Valley Transportation Authority
 Administration and Finance Committee

THROUGH: General Manager, Nuria I. Fernandez

FROM: Director of System Safety & Security, Steven Keller

SUBJECT: Closed-Circuit Television (CCTV) Policy Update

FOR INFORMATION ONLY

BACKGROUND

Public agencies across the state of California have increasingly implemented closed-circuit television (CCTV) systems for safety, security and business purposes. Public transportation agencies have placed cameras strategically in the interior and exterior of agency buses, light rail vehicles, facilities, property and platforms. The ability to monitor and preserve footage when necessary has been instrumental in deterring crime as well as aiding in criminal, disciplinary and risk management fact-finding investigations.

Public agencies such as LA Metro, SF Muni and SacRT have developed protocols for the handling of CCTV footage, including but not limited to requiring law enforcement agencies to submit formal requests for video, dealing with public record requests on a case-by-case basis and requiring supervisory approval of the respective department for video requested for a legitimate business reason. Presently, VTA staff follows similar protocols for the handling of CCTV footage and will be establishing a policy formalizing these protocols.

The purpose of this memo is to provide the Board of Directors an update on the guidance VTA's CCTV Policy will encompass.

DISCUSSION:

The Policy will be applicable to VTA Board Members, divisions and employees, as well as any VTA consultants, contractors and agents with respect to the monitoring and use of video footage collected from CCTV systems on VTA's buses, trains, platforms and premises. In addition, the Policy will set forth responsibilities for System Safety & Security, Protective Services, the Office of the General Counsel and Division Supervisors and Superintendents. Protective Services within System Safety & Security will be the monitoring and record-keeping division for the CCTV system and footage.

The Policy will ensure that VTA complies with state and federal law in the monitoring and treatment of CCTV footage as well as remain compliant with its own policies, including the non-discrimination policy, sexual harassment policy and other relevant policies.

The Policy will set forth that VTA shall use its CCTV system only for legitimate safety, security and business purposes and provide the following delineated list for VTA staff as guidance for what purposes CCTV monitoring may take place:

- Protection of persons, property and buildings;
- Video of public areas;
- Criminal investigations;
- Protection of pedestrians;
- Disciplinary investigations;
- Accident/incident investigations;
- Customer Service Complaints;
- Legal holds; and
- Any purpose that serves a legitimate business need of VTA.

By providing the above-referenced list, VTA will balance VTA's concern for security and safety as well as legitimate business needs with the public's reasonable expectation of privacy.

VTA's CCTV system is set up in such a way that unless footage is preserved ("downloaded") for one of the purposes listed above, new footage will override the previous footage approximately every three weeks, depending on the age of the equipment in place. The Policy will provide that the availability of unpreserved footage (footage not downloaded from the CCTV system) will generally not exceed 30 days. The purpose of this provision is to avoid unnecessary monitoring and preservation of miscellaneous footage that does not serve one of the legitimate purposes for which VTA implemented the CCTV system. Footage preserved for legitimate purposes will be destroyed in accordance with VTA's Record Retention Schedule, Policy and Procedure.

Accordingly, the Policy will provide guidance to VTA concerning requests for footage and how the footage should be handled. For example, the Policy will allow law enforcement agencies to request footage by submitting a CCTV Data Release Form. Being that time is crucial to criminal investigations, the goal here is to allow law enforcement agencies to request and view video footage in an efficient manner, without additional obstacles that may delay an investigation, but to nonetheless require certain standards to be met, as monitored by VTA. Requests from internal VTA staff will need to come from a supervisor or superintendent as to identify a proper business reason. The General Counsel's Office will oversee requests made under the California Public Records Act on a case-by-case basis and determine whether the public interest served by not disclosing the footage outweighs the public interest served by disclosure of the footage. In addition, staff shall direct all other requests made pursuant to law to the General Counsel's office for response and processing.

Lastly, the Policy will allow System Safety & Security management to make decisions regarding the CCTV technology and safeguards for handling of that technology so that VTA may continue to prioritize the safety and security of the public as well as the best interests of VTA.

Prepared By: Steve Keller, Director of System Safety & Security
Memo No. 5476



Date: February 11, 2016
 Current Meeting: February 18, 2016
 Board Meeting: March 3, 2016

BOARD MEMORANDUM

TO: Santa Clara Valley Transportation Authority
 Administration & Finance Committee

THROUGH: General Manager, Nuria I. Fernandez

FROM: Chief Financial Officer, Raj Srinath

SUBJECT: Monthly Investment Report December 2015

FOR INFORMATION ONLY

BACKGROUND:

The investment activities of the Santa Clara Valley Transportation Authority are in compliance with the Investment of Non-Trust Held Funds Investment Policy, the VTA Retirees' Other Post-Employment Benefits Trust Investment Policy and the ATU, Local 265 Pension Plan's Investment Policy.

DISCUSSION:

Economic Watch

Real gross domestic product (GDP) increased 0.7% in the fourth quarter of 2015 at a seasonally adjusted annual rate, according to the "advance" estimate released by the Bureau of Economic Analysis.

Headline consumer prices, as measured by the consumer price index (CPI), rose 0.7% year over year as of December 2015, on a seasonally adjusted basis. Core CPI, which excludes volatile food and energy prices increased at a rate of 2.1% year over year as of December 2015 on a seasonally adjusted basis. The Federal Reserve continues to target an inflation rate of 2.00%.

The unemployment rate in the San Jose-Sunnyvale-Santa Clara MSA was 3.8% in December 2015, down from a revised 3.9% in November 2015, and below the year-ago estimate of 4.5%. This compares with an unadjusted unemployment rate of 5.8% for California and 4.8% for the nation during the same period.

Market Watch

The S&P 500 Index returned -1.58% in December 2015. Large cap stocks returned -1.80% and small cap stocks returned -5.02%. Within the large cap space, growth stocks outperformed value stocks, returning -1.47% and -2.16% respectively. The top-performing sectors were consumer staples, utilities, and health care. The worst-performing sectors were producer durables, materials and processing and energy.

The Barclays Aggregate index returned -0.32% in December 2015. Treasuries returned -0.16% and government related securities returned -0.56%. Investment grade corporate debt returned -0.78%, and high yield corporate debt returned -2.20%. As widely expected, the Federal Reserve raised short-term interest rates by 0.25% on December 16th, the first interest rate increase by the Federal Reserve since 2006.

VTA Enterprise Funds

VTA Enterprise Funds are invested in portfolios managed by Payden & Rygel and in the LAIF investment account or an interest bearing checking account. Investment performance for the Payden & Rygel managed accounts is included in the table below.

The Payden & Rygel composite portfolio outperformed its policy benchmark by 0.02% in the current month, and by 0.28% calendar year-to-date. The current yield for the Payden long-term portfolio is 1.52%, the mid-term portfolio is 1.00%, and the short-term portfolio is 0.63%.

The current yield for funds invested in LAIF is 0.40% and VTA's checking accounts is 0.11%.

Market performance for each Payden & Rygel account is summarized in the following table:

Investment Performance as of December 2015									
Asset Class	Fund Manager	Dec	3 Mo	Y-T-D	1 Yr	3 Yr	5 Yr	10 Yr	I-T-D
Long-Term Fixed Income	Payden & Rygel	-0.16%	-0.52%	1.35%	1.35%	0.91%	2.24%	3.68%	4.22%
<i>Barclays Cap US Govt. Intermediate Index</i>		<i>-0.19%</i>	<i>-0.84%</i>	<i>1.18%</i>	<i>1.18%</i>	<i>0.80%</i>	<i>2.02%</i>	<i>3.73%</i>	<i>4.18%</i>
Mid-Term Fixed Income ¹	Payden & Rygel	-0.06%	-0.19%	0.81%	0.81%	0.69%	0.96%	-	1.40%
<i>Merrill Lynch 1 to 3 Year Treasury Index</i>		<i>-0.09%</i>	<i>-0.44%</i>	<i>0.54%</i>	<i>0.54%</i>	<i>0.50%</i>	<i>0.70%</i>	-	<i>1.00%</i>
Short-Term Fixed Income ²	Payden & Rygel	0.01%	0.02%	0.43%	0.43%	0.35%	0.43%	1.72%	1.75%
<i>iMoneynet Money Market Index</i>		<i>0.01%</i>	<i>0.01%</i>	<i>0.01%</i>	<i>0.01 %</i>	<i>0.01%</i>	<i>0.03%</i>	<i>1.28%</i>	<i>1.29%</i>
Composite Portfolio Returns		-0.07%	-0.22%	0.87%	0.87%	0.63%	1.40%	2.68%	3.58%
<i>Policy Benchmark Returns</i>		<i>-0.09%</i>	<i>-0.43%</i>	<i>0.59%</i>	<i>0.59%</i>	<i>0.43%</i>	<i>1.13%</i>	<i>2.48%</i>	<i>3.42%</i>

¹ Implemented February 11, 2009

² Implemented February 14, 2003

VTA Retirees' Other Post Employment Benefits (OPEB) Trust

The VTA Retirees' OPEB Trust Investment Policy requires the following asset allocation:

<u>Asset Allocation</u>	<u>Range</u>	<u>Target</u>	<u>Actual</u>
Domestic Fixed Income	35-70%	48%	34%
Domestic Large Cap Index	25-60%	50%	54%
Cash	0-5%	2%	12%

The Retirees' OPEB composite portfolio underperformed its policy benchmark by 0.34% in the current month, and by 0.13% calendar year-to-date. The current yield for the fixed income portfolio is 4.34%.

Market performance for each money manager is summarized in the following table:

Investment Performance as of December 2015									
Asset Class	Fund Manager	Dec	3 Mo	Y-T-D	1 Yr	3 Yr	5 Yr	10 Yr	I-T-D
Fixed Income	Dodge & Cox	-0.85%	-0.10%	-0.27%	-0.27%	1.99%	3.65%	5.24%	5.90%
<i>Barclays Cap US Aggregate Bond Index</i>		-0.32%	-0.56%	0.57%	0.57%	1.44%	3.26%	4.52%	5.37%
Large Cap Index	State Street	-1.57%	7.04%	1.39%	1.39%	15.08%	12.53%	7.32%	4.34%
<i>S&P 500 Index</i>		-1.58%	7.05%	1.41%	1.41%	15.14%	12.57%	7.31%	4.21%
Composite Portfolio Returns		-1.29%	4.28%	1.10%	1.10%	10.03%	9.26%	7.19%	6.36%
<i>Policy Benchmark Returns</i>		-0.95%	3.26%	1.23%	1.23%	8.25%	8.02%	6.22%	5.16%

DODGE & COX - The Fixed Income portfolio manager underperformed its benchmark in December 2015 by 0.53%, and by 0.84% calendar year-to-date. For the month of December, the main contributors to relative under performance were the portfolio's exposures to commodity related credit holdings, an overweight to industrials and an underweight to treasuries.

A 7.00% rate of return assumption is used in the annual actuarial analysis for the Retirees' OPEB. The results of the actuarial analysis determine VTA's annual contribution rates. Any difference between actual investment returns and the 7.00% assumed annual return is recognized in the same year. The annual returns for the Retirees' OPEB portfolio have been equivalent to or exceeded the 7.00% assumed rate of return in 8 out of 14 years.

Historic Portfolio Performance for the last six calendar years:

Year	Performance	Year	Performance
2010	12.5%	2013	18.9%
2011	4.0%	2014	10.8%
2012	12.4%	2015	1.1%

SCVTA-ATU, Local 265 Pension Plan Assets

It is the policy of the SCVTA-ATU Board of Pensions to have a well-managed investment program that provides for the financial needs of the pension plan and allows the investments to be appropriately diversified and prudently invested to protect the safety of the principal while maintaining a reasonable return. Assets are invested within the following investment guidelines:

<u>Asset Allocation</u>	<u>Range</u>	<u>Target</u>	<u>Actual</u>
Domestic Fixed Income	20-35%	30%	33%
Domestic Large-Cap Value	12-22%	17%	15%
Domestic Large-Cap Index	7-17%	12%	12%
Domestic Small-Cap Value	5-15%	10%	10%
Int'l Equity Developed Markets	10-20%	15%	13%
Int'l Equity Emerging Markets US	0-10%	5%	5%
Core Real Estate	5-15%	10%	11%
Cash	0-5%	1%	1%

The SCVTA-ATU Pension Plan composite portfolio underperformed its policy benchmark in December 2015 by 0.65%, but outperformed its policy benchmark by 0.63% calendar year-to-date. The current yield of the Dodge & Cox Fixed Income portfolio is 4.41%.

Market performance for each money manager is summarized in the following table:

Investment Performance as of December 2015									
Asset Class	Fund Manager	Dec	3 Mo	Y-T-D	1 Yr	3 Yr	5 Yr	10 Yr	I-T-D
Fixed Income	Dodge & Cox	-0.75%	0.10%	-0.02%	-0.02%	2.02%	3.71%	5.29%	6.20%
<i>Barclays Cap US Aggregate Bond Index</i>		-0.32%	-0.56%	0.57%	0.57%	1.44%	3.26%	4.52%	4.95%
Large-Cap Value Stocks	Boston Partners	-2.66%	4.86%	-4.45%	-4.45%	13.48%	12.40%	8.14%	9.06%
<i>Russell 1000 Value Index</i>		-2.15%	5.64%	-3.84%	-3.84%	13.08%	11.27%	6.05%	6.30%
Large-Cap Index	State Street	-1.57%	7.04%	1.39%	1.39%	15.08%	12.53%	7.33%	6.22%
<i>S&P 500 Index</i>		-1.58%	7.05%	1.41%	1.41%	15.14%	12.57%	7.31%	6.11%
Small-Cap Value Stocks	Wedge ⁴	-6.91%	3.10%	-2.35%	-2.35%	13.09%	11.00%	6.11%	9.58%
<i>Russell 2000 Value Index</i>		-5.27%	2.88%	-7.47%	-7.47%	9.06%	7.67%	5.57%	8.81%
Int'l Equity Dev. Markets Growth	MFS ⁵	-2.08%	4.03%	1.30%	1.30%	3.49%	3.57%	-	2.36%
<i>MSCI AC World ex-US Growth Index</i>		-1.29%	5.00%	-1.25%	-1.25%	3.55%	2.13%	-	-0.52%
US Core Real Estate	UBS ⁶		3.43%	9.63%	12.94%	11.30%	11.77%	-	12.30%
<i>NCREIF NFI-ODCE</i>			3.68%	11.29%	14.92%	13.46%	14.03%	-	14.47%
Emerging Market	ROBECO E. M. ⁷	-3.17%	1.82%	-14.76%	-14.76%	-6.44%	-5.00%		-3.61%
<i>MCSI World Emerging Market</i>		-2.23%	0.66%	-14.91%	-14.91%	-6.77%	-4.81%		-3.43%
Composite Portfolio Returns ⁸		-1.99%	2.60%	0.19%	0.19%	7.73%	7.80%	7.34%	7.97%
<i>Policy Benchmark Returns</i>		-1.34%	2.66%	-0.44%	-0.44%	6.81%	6.75%	5.51%	5.67%

⁴ Funded April 1, 2009. Prior manager was Brandywine with the same benchmark.

⁵ Funded December 14, 2007. Prior managers were Putnam and Fidelity with MSCI EAFE as their benchmark.

⁶ Initially funded July 1, 2010. UBS Realty Investors LLC with NCREIF NFI-ODCE as their benchmark. Performance report 45 days after quarter ended.

⁷ Initially funded December 1, 2010

⁸ Investment performances by prior managers are included in composite returns and historical policy benchmark returns.

DODGE & COX - The Fixed Income portfolio manager underperformed its benchmark in December 2015 by 0.43%, and by 0.59% calendar year-to-date. For the month of December, the main contributors to relative under performance were the portfolio's exposures to commodity related credit holdings, an overweight to industrials and an underweight to treasuries.

BOSTON PARTNERS - The Domestic Large Cap Value Equity manager underperformed its policy benchmark in December 2015 by 0.51%, and by 0.61% calendar year-to-date. The main contributors to underperformance were the energy, capital goods, REITs and technology sectors. Healthcare, transportation, finance and utilities all contributed positively to the portfolio.

WEDGE - The Domestic Small Cap Value Equity manager underperformed its policy benchmark in December 2015 by 1.64%, but outperformed its policy benchmark by 5.12% calendar year-to-date. Relative underperformance for the month was driven by an underweight position to finance sector and an overweight position to the capital goods sector.

MFS - The International Equity manager underperformed its policy benchmark in December 2015 by 0.79%, but outperformed its policy benchmark by 2.55% calendar year-to-date. An overweight to consumer staples and an underweight to the utilities sector both contributed to relative performance. An overweight to healthcare detracted from relative performance.

ROBECO - The Emerging Markets Equity manager underperformed its policy benchmark in December 2015 by 0.94%, but outperformed its policy benchmark by 0.15% calendar year-to-date. An underweight position in Malaysia and overweight positions in Russia and India all contributed to relative underperformance for the month of December.

A 7.50% rate of return assumption is used in the annual actuarial analysis for the ATU Pension Plan. The results of the actuarial analysis determine VTA's annual contribution rates. The annual returns for the ATU Pension Plan portfolio have been equivalent to or exceeded the 7.50% assumed rate of return 7 out of 14 years.

Historic Portfolio Performance (calendar year) for the last six calendar years:

Year	Performance	Year	Performance
2009	25.7%	2012	14.5%
2010	14.0%	2013	16.5%
2011	1.7%	2014	7.2%

ATU Spousal Medical Trust Fund, Dental, and Vision Plan

Asset allocation for the ATU Spousal Medical Trust Fund (including funds for dental and vision plans) is provided for in the SCVTA-ATU Pension Plan Investment Policy.

<u>Asset Allocation</u>	<u>Range</u>	<u>Target</u>	<u>Actual</u>
Domestic Fixed Income	30-50%	38%	36%
Domestic Large Cap Index	50-70%	60%	62%
Cash	0-5%	2%	2%

The ATU Spousal Medical Trust Fund composite portfolio underperformed its policy benchmark in the current month by 0.21%, and by 0.32% calendar year-to-date. The current yield for the fixed income portfolio is 4.41%

Market performance for each money manager is summarized in the following table:

Investment Performance as of December 2015									
Asset Class	Fund Manager	Dec	3 Mo	Y-T-D	1 Yr	3 Yr	5 Yr	10 Yr	I-T-D
Fixed Income	Dodge & Cox	-0.83%	0.14%	-0.60%	-0.60%	1.80%	3.59%	5.04%	4.75%
<i>Barclays Cap US Aggregate Bond Index</i>		<i>-0.32%</i>	<i>-0.56%</i>	<i>0.57%</i>	<i>0.57%</i>	<i>1.44%</i>	<i>3.26%</i>	<i>4.52%</i>	<i>4.30%</i>
Large-Cap Index	State Street	-1.57%	7.04%	1.39%	1.39%	15.08%	12.53%	7.33%	7.82%
<i>S&P 500 Index</i>		<i>-1.58%</i>	<i>7.05%</i>	<i>1.41%</i>	<i>1.41%</i>	<i>15.14%</i>	<i>12.57%</i>	<i>7.31%</i>	<i>7.81%</i>
Composite Portfolio Returns		-1.29%	4.48%	0.99%	0.99%	10.24%	9.43%	7.23%	7.27%
<i>Policy Benchmark Returns</i>		<i>-1.08%</i>	<i>4.02%</i>	<i>1.31%</i>	<i>1.31%</i>	<i>9.62%</i>	<i>8.92%</i>	<i>6.47%</i>	<i>6.65%</i>

DODGE & COX - The Fixed Income portfolio manager underperformed its benchmark in December 2015 by 0.51%, and by 1.17% calendar year-to-date. For the month of December, the main contributors to relative under performance were the portfolio's exposures to commodity related credit holdings, an overweight to industrials and an underweight to treasuries.

Other Data

The valuation of VTA's securities is provided by Interactive Data Corporation (IDC), Merrill Lynch Securities Pricing Service and Bloomberg Generic Pricing Service. These firms are the leading providers of global securities data. They offer the largest information databases with current and historical prices on securities traded in all major markets.

This report complies with VTA's adopted investment policies. Based on budgeted revenues and expenditures as well as actual transfers to/from reserves, there are sufficient funds available to meet expenditure requirements for the six months ending June 30, 2016.

Prepared By: Sean Bill, Investment Program Manager
Memo No. 5345

VTA INVESTMENT COMPOSITE PORTFOLIO PERFORMANCE.

PER GENERAL LEDGER BALANCE - SETTLEMENT DATE

FOR THE MONTH OF DECEMBER 2015

SUMMARY: DECEMBER 31, 2015

Description	(1)		Fiscal 16	Fiscal 16	Change for the Month
	Nov-15	Dec-15	Year-to-Date	Year-to-Date	
	Book Value	Book Value	Nov 2015	Dec 15 Realized	Realized
	/Cost	/Cost	Earnings - \$	Earnings - \$	Earnings - \$
VTA FUNDS					
1 - Fixed Income - Long-Term Investment Pool	253,699,241	253,504,151	1,644,947	1,520,589	-124,358
2 - Fixed Income - Mid-Term Investment Pool	564,444,870	564,434,026	1,658,826	1,992,702	333,876
3 - Fixed Income - Short-Term Investment Pool	236,641,895	236,721,130	323,118	451,293	128,175
4 - Fixed Income - Collateral	1,688,855	1,688,869	80	109	29
5 - VTA Bond Funds with Fiscal Agent (2)	74,831,719	79,321,277	49,586	52,156	2,570
6 - Funds with LAIF Investment Pool	25,000,000	50,000,000	59,561	71,473	11,912
7 - Funds with Union Bank-Congestion Management	11,760,087	12,809,401	4,189	5,314	1,125
8 - Funds with Union Bank-Measure B	7,501,089	3,310,378	3,406	4,065	659
9 - Funds with Union Bank Pooled DDA account	30,001,095	53,126,180	2,964	3,002	38
Total VTA Funds	1,205,568,851	1,254,915,412	3,746,677	4,100,703	354,026
RETIREEES' OPEB FUNDS					
1 - Retirees' OPEB -Fixed Income	90,747,874	91,821,291	1,738,362	2,671,820	933,458
2 - Retirees' OPEB -State Street - Index	70,802,619	70,802,619	5,007,417	19,115,540	14,108,123
Total Retirees' OPEB Funds	161,550,493	162,623,910	6,745,779	21,787,360	15,041,581
ATU PENSION FUNDS					
1 - VTA/ATU Pension Fund -Fixed Income	157,909,384	158,441,729	2,838,291	3,381,858	543,567
2 - VTA/ATU Pension Fund -Stock Large Cap Value - BOSTON	64,398,151	64,911,397	3,619,797	4,133,023	513,226
3 - VTA/ATU Pension Fund -State Street - Index	20,282,135	20,282,135	6,797,571	6,797,571	0
4 - VTA/ATU Pension Fund -Stock Small Cap Value - WEDGE	43,298,065	43,500,638	2,361,642	2,564,221	202,579
5 - VTA/ATU Pension Fund -Int'l - Equity Growth - MFS	48,574,856	48,574,856	484,695	484,695	0
6 - VTA/ATU Pension Fund -Emerging Markets - ROBECO (3)	28,500,000	28,500,000	0	0	0
7 - VTA/ATU Pension Fund -US Core Real Estate - UBS (4)	35,000,000	35,000,000	0	0	0
Total ATU Pension Funds	397,962,591	399,210,755	16,101,996	17,361,368	1,259,372
ATU SPOUSAL MEDICAL PLAN FUNDS					
1 - ATU Spousal Med Fund -Dodge & Cox - Index	5,927,234	5,927,234	0	0	0
2 - ATU Spousal Med Fund -State Street - Index	7,607,187	7,607,187	0	0	0
Total ATU Spousal Plan Funds	13,534,421	13,534,421	0	0	0
Total Investments	1,778,616,356	1,830,284,498	26,594,452	43,249,431	16,654,979

Legend:

- (1) Total includes contributions / withdrawals made during current month.
- (2) Bonds Reserves and/or Debt Service Funds
- (3) Initial funding 12/1/2010
- (4) initial funding 7/1/2010

VTA INVESTMENT COMPOSITE PORTFOLIO PERFORMANCE

MONEY MANAGERS' TOTAL MARKET RETURN - TRADE DATE

FOR THE MONTH OF DECEMBER 2015

SUMMARY: December 31, 2015

<u>Description</u>	<u>Total Market Value</u>		<u>Dec Total Market Return</u>		<u>Total Market Return</u>	
	<u>(1)</u> <u>Prior</u> <u>Month</u>	<u>Current</u> <u>Month</u>	<u>\$Unrealized</u> <u>Gain/Loss</u>	<u>%Unrealized</u> <u>Gain/Loss</u>	<u>VTA</u> <u>Calendar</u> <u>YTD</u>	<u>Benchmark</u> <u>Calendar</u> <u>YTD</u>
1 - Fixed Income Long-Term Investment Pool	253,442,338	253,044,161	(398,177)	-0.16%	1.35%	1.18%
1 - Fixed Income Mid-Term Investment Pool	564,288,670	563,953,748	(334,922)	-0.06%	0.81%	0.54%
2 - Fixed Income Short-Term Investment Pool	236,544,901	236,557,365	12,464	0.01%	0.43%	0.01%
3 - Fixed Income Collateral Investment Pool (3)	1,688,869	1,688,869				
4 - VTA Bond Funds with Fiscal Agents (2)	74,831,719	79,321,277				
5 - Funds with LAIF Investment Pool	25,000,000	50,000,000				
6 - Funds with Union Bank-Congestion Management	11,760,087	12,809,401				
7 - Funds with Union Bank-Measure B	7,501,089	3,310,378				
8 - Funds with Union Bank DDA account	30,001,095	53,126,180				
Total VTA Funds	1,205,058,768	1,253,811,379				
1 - Retirees' OPEB - Fixed Income	92,981,256	92,046,475	(934,781)	-0.85%	-0.27%	0.57%
2 - Retirees' OPEB - State Street - Index	148,326,833	145,833,895	(2,492,938)	-1.57%	1.39%	1.41%
Total Retirees' OPEB Funds	241,308,089	237,880,370				
1 - VTA/ATU Pension Fund-Fixed Income	160,900,722	159,693,501	(1,207,221)	-0.75%	-0.02%	0.57%
2 - VTA/ATU Pension Fund-Stock Large Cap Value	75,752,523	73,741,062	(2,011,461)	-2.66%	-4.45%	-3.84%
3 - VTA/ATU Pension Fund-State Street - Index	51,671,412	50,862,253	(809,159)	-1.57%	1.39%	1.41%
4 - VTA/ATU Pension Fund-Stock Small Cap Value	53,442,928	49,751,042	(3,691,886)	-6.91%	-2.35%	-7.47%
5 - VTA/ATU Pension Fund- Int'l - Equity Growth	66,239,652	64,861,084	(1,378,568)	-2.08%	1.30%	-1.25%
6 - VTA/ATU Pension Fund- Emerging Markets (4)	25,540,237	24,748,539	(791,698)	-3.17%	-14.76%	-14.91%
7 - VTA/ATU Pension Fund- US Core Real Estate (5)	55,226,268	55,226,268				
Total Pension Fund	488,773,742	478,883,749				
1 - ATU Spousal Med Fund - Dodge & Cox - Index	8,323,402	8,254,396	(69,006)	-0.83%	-0.60%	0.57%
2 - ATU Spousal Med Fund-State Street - Index	14,057,728	13,837,588	(220,140)	-1.57%	1.39%	1.41%
Total ATU Spousal Funds	22,381,130	22,091,984				
Total Investments	1,957,521,729	1,992,667,482				

Legend:

- (1) Total includes contributions / withdrawals made during current month.
- (2) Bonds Reserves for Debt Service Funds and Measure A Project Funds. During August 2015 no cash was drawn from 2010 project fund for Measure A Projects.
- (3) Funded 7/23/2012 \$202,149.96 and \$2,840,114.82 on 7/15/2013; withdraw \$414,890.44 on 8/8/2014; withdraw \$944,706.75 on 8/7/2015
- (4) Initial funded December 1, 2010 - Performance reported quarterly.
- (5) Initial funded July 1, 2010 - Performance reported quarterly.



Date: February 9, 2016
 Current Meeting: February 18, 2016
 Board Meeting: March 3, 2016

BOARD MEMORANDUM

TO: Santa Clara Valley Transportation Authority
 Administration & Finance Committee

THROUGH: General Manager, Nuria I. Fernandez

FROM: Director of Government Affairs, Jim Lawson

SUBJECT: Legislative Update Matrix

FOR INFORMATION ONLY

BACKGROUND:

The Legislative Update Matrix describes the key bills that are being considered by the California State Legislature during the second year of the 2015-2016 regular session, as well as during the special session called by Gov. Jerry Brown to address issues related to transportation funding. The matrix indicates the status of these measures and any VTA positions with regard to them.

DISCUSSION:

The Legislature reconvened the 2015-2016 regular session on January 4, 2016, after a three-month recess. Immediately, lawmakers were faced with determining the fate of several hundred bills left over from 2015 that were still lingering in their house of origin. The deadline for moving these bills out of their house of origin was January 31. Those measures that did not meet this deadline are now dead.

Running concurrent with the regular session is a special session that was called by Gov. Jerry Brown last June to encourage lawmakers to take the necessary steps to address the significant funding shortfalls that exist for maintenance and rehabilitation work on both the state highway and local roadway systems, to improve the state's key trade corridors, and to determine how the state can best complement local infrastructure efforts. In response, the legislative leadership appointed a conference committee consisting of five Assemblymembers and five Senators to work on possible solutions to the challenges identified by the Governor. This committee held two informational hearings in October 2015. While there have been no hearings of the conference committee since then, conversations are taking place behind the scenes to try to figure out how to merge three separate transportation funding proposals that have surfaced since the special session was convened - SBX1-1 (Beall), AB 1591 (Frazier) and the Governor's plan - into one package that has a chance of obtaining the two-thirds majority vote needed to pass both

the Assembly and Senate, and that Gov. Brown would be willing to sign into law.

Transportation Funding Special Session: SBX1-1, AB 1591 and the Governor's plan all seek to generate new, ongoing revenues to support two major transportation initiatives: (1) state highway and local roadway maintenance and rehabilitation; and (2) trade corridor improvements. However, the revenue sources that are being proposed differ, as follows:

	<u>SBX1-1</u>	<u>AB 1591</u>	<u>Governor's Plan</u>
Total Annual Amount	\$5 billion	\$8 billion	\$3.6 billion
Gas Tax Increase	12 cents	22.5 cents	None
Diesel Tax Increase	22 cents	30 cents	11 cents
Road User Charge	\$35	None	\$65
Vehicle Registration Fee	\$35	\$38	None
ZEV Surcharge	\$100	\$165	None

All three proposals call for accelerating the repayment of approximately \$879 million in prior-year loans to the General Fund from various transportation accounts, but would distribute this one-time funding in different ways. SBX1-1 would expend these revenues on maintenance and rehabilitation work on both the state highway and local roadway systems, while AB 1591 would send all of the money to cities and counties for local streets/roads. Gov. Brown's plan would use the loan repayments for the following four purposes: (1) trade corridors (\$334 million); (2) Transit and Intercity Rail Capital Program (\$265 million); (3) state highway maintenance and rehabilitation (\$132 million); and (4) Traffic Congestion Relief Program (\$148 million).

AB 1591 and the Governor's plan tap into cap-and-trade auction proceeds for additional ongoing investments in transportation, while SBX1-1 does not. Specifically, AB 1591 increases the percentage of cap-and-trade auction proceeds that would be dedicated to the Transit and Intercity Rail Capital Program from 10 percent to 20 percent, and requires 20 percent of all cap-and-trade auction proceeds to be distributed to the Trade Corridors Improvement Fund for goods movement projects selected by the California Transportation Commission (CTC). In both cases, the funding would be continuously appropriated. Meanwhile, Gov. Brown is proposing to appropriate an additional \$500 million in cap-and-trade auction proceeds per year for transportation purposes, with \$400 million going to the Transit and Intercity Rail Capital Program, and \$100 million to a new Low Carbon Road Program. However, this additional \$500 million would require annual appropriations on the part of the Legislature in order to be realized.

Unlike the other two plans, AB 1591 calls for keeping vehicle weight fee revenues currently being transferred to the General Fund for bond debt service in the State Highway Account for transportation purposes. While Republicans also have suggested this idea, it is doubtful that Gov. Brown would support it. In his recommended budget for FY 2017, the Governor specifically noted that any transportation funding package approved by the Legislature must avoid impacting the General Fund.

In addition to generating new revenues for transportation purposes, all three plans would:

- Address the volatility of the variable portion of the state's gasoline excise tax by ending the Board of Equalization's annual adjustments and, instead, fixing the rate at 18 cents per gallon (the Governor's plan) or at 17.3 cents per gallon (SBX1-1 and AB 1591).
- End the erosion of the purchasing power of the gasoline and diesel excise taxes by indexing them to inflation. Indexing would occur annually under Gov. Brown's plan, and every three years under SBX1-1 and AB 1591.
- Push Caltrans to become more efficient. In his plan, the Governor is assuming that improving the efficiency of Caltrans would result in \$100 million in annual savings, which could be reinvested in capital projects. This \$100 million assumption is built into the \$3.6 billion in new, ongoing revenues that his plan proposes to generate annually. Neither SBX1-1 nor AB 1591 makes any assumptions about the amount of savings that might be realized through Caltrans reform, though SBX1-1 does require Caltrans to present to the CTC a plan to increase its efficiency by up to 30 percent over the next three years.

Unlike SBX1-1 and AB 1591, Gov. Brown's transportation funding package also includes a number of policy proposals, including:

- Requiring Caltrans to increase its annual use of contracting with private entities, so that 20 percent of its capital outlay support consists of such resources by FY 2021.
- Requiring Caltrans to develop performance measures for major highway projects and to report those measures to the CTC.
- Extending existing statutory authority for regional transportation agencies, as defined, to use public-private partnerships for transportation projects to January 1, 2027.
- Exempting roadway maintenance and repair projects located within existing rights-of-way from the California Environmental Quality Act (CEQA).

Cap-and-Trade: In his recommended FY 2017 budget, Gov. Brown proposed a \$3.1 billion cap-and-trade expenditure plan that seeks to invest a significant amount of auction proceeds in transportation-related programs. The \$3.1 billion identified in the Governor's budget reflects an estimate of revenues expected to be generated from four allowance auctions that will be held by the California Air Resources Board (CARB) during the upcoming fiscal year, as well as the balance of auction proceeds from FY 2016 that were not appropriated by the Legislature. In his budget, Gov. Brown is recommending that the following amounts be distributed to programs related to transportation:

- Low Carbon Transit Operations Program = \$100 million.
- Transit and Intercity Rail Capital Program = \$600 million.
- Affordable Housing and Sustainable Communities Program = \$400 million.
- High-Speed Rail = \$500 million.
- Low Carbon Transportation and Fuels = \$500 million.

- Low Carbon Road Program = \$100 million.

STA: Gov. Brown's recommended budget forecasts that funding for the State Transit Assistance Program (STA) will continue to decline in both the current fiscal year and in FY 2017. STA revenues are derived entirely from the sales tax on diesel fuel. Because these revenues are highly volatile and are difficult to predict, the budget typically includes an estimate, rather than a line-item appropriation for this program. The enacted budget for FY 2016 assumed that funding for STA would be \$351.5 million. The Governor's FY 2017 budget estimates that this number will now be closer to \$299 million. For FY 2017, the projection for STA is \$315 million. These decreases in STA funding reflect a continued decline in the price of diesel fuel.

Variable Gas Tax: The variable gas tax continues to cause problems for transportation funding. The variable gas tax is a product of the complex transportation funding swap that was enacted by the Legislature in 2010-2011. Under the swap, the state's share of the sales tax on gasoline was eliminated and replaced with a variable excise tax that the Board of Equalization is required to adjust annually to ensure that the same amount of money is being generated as by the former sales tax. Revenues derived from the variable gas tax are allocated 44 percent to cities and counties for local streets and roads; 44 percent to the State Transportation Improvement Program (STIP); and 12 percent to the State Highway Operation and Protection Program (SHOPP).

Last year, the Board of Equalization, as required under current law, lowered the variable gas tax rate by 6 cents per gallon because of the decline in fuel prices, resulting in a loss of \$876 million in transportation funding in FY 2016. This was a 33 percent reduction. The Board of Equalization may have to take action this year to cut the rate by another 2 to 3 cents per gallon, costing transportation at least \$400 million in FY 2017, if the Legislature does not take steps to fix this problem as part of a transportation funding package.

The CTC is in the process of developing the 2016 STIP, which will cover FY 2017 through FY 2021. The Fund Estimate for the 2016 STIP prepared by Caltrans takes into account the loss of revenues resulting from current and potentially future downward adjustments to the variable gas tax rate by the Board of Equalization. According to the Fund Estimate, there is no capacity to add any new projects to the 2016 STIP. In fact, with the reduction in funding, the STIP actually is over-programmed by \$754 million, meaning that some projects that were programmed in the 2014 STIP may have to be deleted in order to bring the 2016 STIP into balance.

New Bills: The deadline for Senators and Assemblymembers to introduce new bills was February 19, 2016. Several pieces of legislation of interest have popped up, including the following:

- **AB 1595 (Campos):** Inspired by VTA's partnership with the county, AB 1595 requires a private or public employer providing mass transportation services in California to train its employees on how to recognize the signs of human trafficking and how to report those signs to the appropriate law enforcement agencies.
- **AB 1640 (Stone):** This measure clarifies that public transit employees hired between January 1, 2013, and December 31, 2014, are permanently exempt from the Public

Employees' Pension Reform Act of 2013 (PEPRA). AB 1640 represents a "fallback" strategy if VTA's appeal to the CalPERS Board on this issue is not successful.

- AB 1641 (Allen): A reintroduction of a bill from last year that did not pass the Legislature, AB 1641 allows a public transit agency to permit private shuttles to stop to load or unload passengers alongside any curb spaces designated for users of the transit agency's buses.
- AB 1746 (Stone): This legislation authorizes VTA and five other agencies, with the concurrence of Caltrans and the California Highway Patrol (CHP), to operate buses on the shoulders of state highways in order to minimize congestion-related interruptions of operations, and improve travel times for public transit relative to cars in a manner that is low-cost and easy to implement.
- SB 824 (Beall): This bill would put in place more tools and flexibility to allow public transit agencies to more effectively and efficiently manage and utilize their formula shares under the Low Carbon Transit Operations Program.
- SB 882 (Hertzberg): This measure prohibits a public transit agency from charging a minor with an infraction or misdemeanor for acts of fare evasion.

Under the Legislature's rules of procedure, a bill, once introduced, must be in print for 30 days before it can be scheduled for a hearing, meaning that the first round of Assembly and Senate policy committee meetings probably will not occur until late March or early April.

Prepared By: Kurt Evans, Government Affairs Manager
Memo No. 5300

LEGISLATIVE UPDATE MATRIX
2015 - 2016 State Legislative Session
February 5, 2016

2016 Regular Session Calendar

DAY	JANUARY
1	Statutes signed into law in 2015 take effect.
4	Legislature reconvenes.
10	Budget must be submitted by the Governor to the Legislature on or before this date.
15	Last day for policy committees to hear and report fiscal bills introduced in their house of origin in 2015.
22	Last day for any committee to hear and report to the floor bills introduced in their house of origin in 2015.
22	Last day to submit bill requests to the Legislative Counsel's Office.
31	Last day for bills introduced in 2015 to be passed out of their house of origin.

DAY	FEBRUARY
19	Last day for new bills to be introduced.

DAY	MARCH
17	Spring Recess begins upon adjournment.
28	Legislature reconvenes from Spring Recess.

DAY	APRIL
22	Last day for policy committees to hear and report fiscal bills introduced in their house of origin in 2016.

DAY	MAY
6	Last day for policy committees to hear and report to the floor non-fiscal bills introduced in their house of origin in 2016.
27	Last day for fiscal committees to hear and report to the floor bills introduced in their house of origin in 2016.

DAY	JUNE
3	Last day for bills introduced in 2016 to be passed out of their house of origin.
15	Budget must be passed by midnight.
30	Last day for legislative measures to qualify for placement on November 8 general election ballot.

DAY	JULY
1	Last day for policy committees to hear and report bills introduced in the other house. Summer Recess begins upon adjournment, provided that the Budget Bill has been enacted.

DAY	AUGUST
1	Legislature reconvenes from Summer Recess.
12	Last day for fiscal committees to hear and report to the floor bills introduced in the other house.
19	Last day to amend bills on the Assembly and Senate floors.
31	Last day for each house to pass bills. Final Recess begins at the end of this day's session.

DAY	SEPTEMBER
30	Last day for the Governor to sign or veto bills passed by the Legislature before September 1, and in his possession on or after September 1.

DAY	DECEMBER
5	2017-2018 Regular Session convenes.

State Assembly Bills

State Assembly Bills	Subject	Last Amended	Status	VTA Position
AB 4 (Linder) Vehicle Weight Fee Revenues	Until January 1, 2020, prohibits vehicle weight fee revenues from being used to pay debt service on transportation-related, general obligation bonds or from being loaned to the General Fund.	As Introduced	Assembly Transportation Committee: Failed Passage	Support
AB 6 (Wilk) High-Speed Rail: Bond Funding	Specifies that no further bonds shall be sold for high-speed rail purposes pursuant to the Safe, Reliable High-Speed Passenger Train Bond Act for the 21 st Century (Proposition 1A), except as specifically provided with respect to an existing appropriation for early improvement projects related to the Phase I blended system. Upon appropriation by the Legislature, requires the unspent proceeds received from outstanding bonds issued and sold for high-speed rail purposes prior to the effective date of the provisions of this bill to be redirected to retiring the debt incurred from the issuance and sale of those outstanding bonds. Allows the remaining unissued bonds, as of the effective date of the provisions of this bill, that were authorized for high-speed rail purposes to be issued and sold. Upon appropriation by the Legislature, requires the net proceeds from the sale of these remaining unissued bonds to be made available to fund the construction of school facilities for K-12 and higher education. Makes no changes to the authorization under Proposition 1A for the issuance of \$950 million in bonds for rail purposes other than high-speed rail.	As Introduced	Assembly Transportation Committee: Failed Passage	
AB 12 (Cooley) State Agency Regulations	By January 1, 2018, requires each state agency to do all of the following: (1) review all provisions of the California Code of Regulations adopted by that state agency; (2) identify any regulations that are duplicative, overlapping, inconsistent, or out-of-date; and (3) adopt, amend or repeal regulations to reconcile or eliminate any duplication, overlap, inconsistencies, or out-of-date provisions.	8/19/15	Senate Appropriations Committee	
AB 23 (Patterson) Cap-and-Trade: Transportation Fuels	Prohibits the inclusion of suppliers of transportation fuels in the cap-and-trade system administered by the California Air Resources Board (CARB). Applies the provisions of the bill retroactively from January 1, 2015.	As Introduced	Assembly Natural Resources Committee: Failed Passage	
AB 24 (Nazarian) Transportation Network Companies: Public Safety Requirements	Requires a transportation network company to do all of the following: (1) participate in the Department of Motor Vehicles (DMV) pull-notice system to regularly check the driving records of all participating drivers; (2) register any vehicle used to transport passengers for compensation with the California Public Utilities Commission (CPUC) and display an identifying symbol prescribed by the CPUC on the vehicle; and (3) provide for a mandatory controlled substance and alcohol testing certification program as adopted by the CPUC. Requires drivers hired or initially retained by a transportation network company on or after January 1, 2016, to be subject to mandatory drug and alcohol testing prior to employment or retention. For drivers hired or initially retained before January 1, 2016, requires a drug and alcohol test to be completed before January 1, 2017.	4/22/15	Assembly Appropriations Committee: Failed Passage	

State Assembly Bills	Subject	Last Amended	Status	VTA Position
AB 51 (Quirk) Motorcycles: Lane Splitting	Allows a motorcycle that has two wheels in contact with the ground to be driven between rows of stopped or moving vehicles in the same lane, including both divided and undivided streets, roads or highways, if both of the following conditions are present: (1) the motorcycle is not driven at a speed of more than 50 miles per hour (mph); and (2) the motorcycle is not driven more than 15 mph faster than the speed of traffic moving in the same direction. Specifies that the provisions of the bill do not authorize a motorcycle to be driven in contravention of other laws relating to the safe operation of a vehicle.	5/22/15	Senate Transportation & Housing Committee	
AB 61 (Allen) Private Shuttles	Allows a public transit agency, by ordinance or resolution, to permit the vehicles of a private shuttle service provider to stop for the loading or unloading of its passengers alongside any or all curb spaces designated for the passengers of the public transit agency's buses. States that it is not the intent of the Legislature to replace public transit service.	4/20/15	Assembly Transportation Committee: Failed Passage	
AB 102 (Rodriguez) Railroad and Surface Transportation Safety and Emergency Planning	Requires the Office of Emergency Services to develop a state regional railroad and surface transportation accident preparedness and immediate response plan. Requires the office to biennially review the training of all emergency response personnel with responsibilities along rail lines and other surface transportation routes to ascertain the level of readiness to respond to an accident involving hazardous materials. As part of this review, requires the office to determine where there are gaps in the ability to respond to spills of hazardous materials in California, and to specify what is required to continue funding the training and response teams to close those gaps. Creates the Regional Railroad and Surface Transportation Accident Preparedness and Immediate Response Force within the Office of Emergency Services. Requires the force to be responsible for providing regional and onsite response capabilities in the event of: (1) a release of hazardous materials from a rail car, or a railroad accident involving a rail car; or (2) a hazardous materials release from a truck accident. Requires the Office of Emergency Services to establish a schedule of fees to be impose on any person owning hazardous materials that are transported by rail or surface transportation in California. Upon appropriation by the Legislature, requires the revenues generated by these fees to be used for purposes related to the transportation of hazardous materials. Requires every person who operates a railroad that transports hazardous materials by rail car to register with the Board of Equalization.	3/26/15	Assembly Environmental Safety & Toxic Materials Committee: Failed Passage	

State Assembly Bills	Subject	Last Amended	Status	VTA Position
AB 156 (Perea) Cap-and-Trade: Disadvantaged Communities Technical Assistance Program	Requires the California Air Resources Board (CARB) to prepare and post on its Internet Web site a report on the projects being funded with cap-and-trade auction proceeds from the Greenhouse Gas Reduction Fund. Requires this report to include all of the following: (1) a general description of each project; (2) the location where each project will be implemented; (3) the estimated date of completion of each project; (4) the amount awarded to each project; and (5) the status of any revenues in the Greenhouse Gas Reduction Fund not awarded to projects and the reasons why those moneys have not been awarded. Upon an appropriation of cap-and-trade auction proceeds from the Greenhouse Gas Reduction Fund, requires CARB to establish a comprehensive technical assistance program for eligible applicants assisting disadvantaged communities that CARB determines require technical assistance in accessing programs funded with cap-and-trade auction proceeds. Requires this program to provide assistance to eligible applicants with regard to any of the following: (1) identifying state agencies with appropriate grant programs; (2) developing competitive project proposals to apply for cap-and-trade funding available through state agencies; (3) coordinating existing local programs to reduce greenhouse gas emissions with new programs receiving cap-and-trade funding; or (4) conducting community outreach to residents of disadvantaged communities that CARB determines require such assistance. Requires the technical assistance provided pursuant to the bill to promote programs that reduce greenhouse gas emissions and demonstrate a direct, meaningful benefit to disadvantaged communities.	8/18/15	Senate Appropriations Committee	
AB 239 (Gallagher) Global Warming Solutions Act: Regulations	Beginning January 1, 2016, prohibits the California Air Resources Board (CARB) from adopting or amending regulations pursuant to the Global Warming Solutions Act. Authorizes CARB to submit to the Legislature recommendations on how to achieve the goals of the act.	As Introduced	Assembly Natural Resources Committee: Failed Passage	

State Assembly Bills	Subject	Last Amended	Status	VTA Position
AB 318 (Chau) Lost Items Found on Public Transit Property	<p>If a lost or unclaimed item worth \$100 or more in value is found on a vehicle or the property of a public transit agency, requires the person who found the item to turn it in to the public transit agency, rather than to law enforcement. Provides 90 days for the owner of the item to reclaim it from the public transit agency. Allows the public transit agency to require payment by the owner of a reasonable charge to defray the costs of storage and care of the property. If the reported value of the item is \$250 or more, and no owner appears and proves his or her ownership of the item within 90 days, requires the public transit agency to cause notice of the item to be published at least once in a newspaper of general circulation. If, after seven days, no owner appears and proves his or her ownership of the item, and the person who found or saved the item pays the cost of the publication, provides that the title shall vest in that person. If the item was found in the course of employment by an employee of the public transit agency, requires the item to be sold at public auction. If the reported value of the item is less than \$250, and no owner appears and proves his or her ownership of the item within 90 days, provides that the title shall vest in the person who found the item. If the item was found in the course of employment by an employee of the public transit agency, requires the item to be sold at public auction. Applies all of the following with respect to lost or unclaimed bicycles turned in to or held by a public transit agency: (1) if the owner of a bicycle appears within 45 days after receipt by the public transit agency, proves his or her ownership, and pays all reasonable charges, requires the public transit agency to restore the bicycle to the owner; (2) if the bicycle remains unclaimed after 45 days, allows the public transit agency to dispose of it by sale at a public auction to the highest bidder; (3) requires the public transit agency to give notice of the sale at least five days prior to the auction by publication in a newspaper of general circulation in the county in which the bicycle was found; (4) if a bicycle remains unsold after the auction, allows the public transit agency to destroy or otherwise dispose of it; and (5) allows a public transit agency to donate an unclaimed bicycle after 45 days to a charitable organization if the agency's board of directors holds a public hearing to determine the organization that would receive the bicycle and the agency provides notice at least five days prior to the donation by publication in a newspaper of general circulation in the county in which the agency operates. Prohibits a public transit agency from donating unclaimed bicycles more than two times per calendar year. Provides that the number of bicycles donated shall not exceed 25 percent of the total number of lost or unclaimed bicycles found or saved by the public transit agency during the prior six months. Requires any public transit agency that donates unclaimed bicycles to a charitable organization pursuant to the provisions of this bill to submit a report, as specified, to the Assembly and Senate Judiciary Committees by January 1, 2020. Repeals all of the provisions of the bill on January 1, 2021.</p>	6/11/15	Senate Judiciary Committee	

State Assembly Bills	Subject	Last Amended	Status	VTA Position
AB 338 (R. Hernandez) LA Metro: Local Transportation Sales Taxes	In addition to any other tax that it is authorized to impose or has imposed, allows the Los Angeles County Metropolitan Transportation Authority (LA Metro) to impose a transactions and use tax at the rate of 0.5 percent for a period not to exceed 30 years that would be applicable in the incorporated and unincorporated areas of Los Angeles County. Requires the ordinance imposing the tax to contain the following: (1) an expenditure plan that lists the transportation projects and programs to be funded from net revenues from the tax; (2) a requirement that the expenditure plan include measures to ensure that net revenues are share equitably between regions of the county; (3) a provision limiting LA Metro's costs of administering the ordinance and the net revenues from the tax to 1.5 percent of the total tax revenues; (4) a requirement that the net revenues from the tax, defined to mean the total tax revenues less any refunds, costs of administration by the state Board of Equalization and LA Metro's administrative costs, be used to fund the transportation projects and programs identified in the expenditure plan; (4) a requirement that LA Metro, during the period that the ordinance is operative, allocate 20 percent of all net revenues from the tax for operating costs associated with bus service provided by LA Metro and the municipal transit operators in Los Angeles County; and (5) a requirement that LA Metro, during the period that the ordinance is operative, allocate 5 percent of all net revenues from the tax for rail operations. Requires LA Metro to notify the Legislature prior to taking action on any amendments to the adopted expenditure plan. Provides that the ordinance shall become operative if approved by a two-thirds vote of the electorate in Los Angeles County. Authorizes LA Metro to incur bonded indebtedness payable from the net revenues of the tax.	4/13/15	Senate Transportation & Housing Committee	
AB 378 (Mullin) US 101 Corridor	Requires Caltrans, in coordination with the City/County Association of Governments of San Mateo County and the San Mateo County Transportation Authority, to create an integrated corridor management team to consider transportation projects addressing congestion relief in the US 101 Corridor located in San Mateo County.	1/4/16	Assembly Transportation Committee: Failed Passage	
AB 397 (Mathis) High-Speed Rail: Bond Funding	Specifies that no further bonds shall be sold for high-speed rail purposes pursuant to the Safe, Reliable High-Speed Passenger Train Bond Act for the 21 st Century (Proposition 1A), except as specifically provided with respect to an existing appropriation for early improvement projects related to the Phase I blended system. Upon appropriation by the Legislature, requires the unspent proceeds received from outstanding bonds issued and sold for high-speed rail purposes prior to the effective date of the provisions of this bill to be redirected to retiring the debt incurred from the issuance and sale of those outstanding bonds. Allows the remaining unissued bonds, as of the effective date of the provisions of this bill, that were authorized for high-speed rail purposes to be issued and sold. Upon appropriation by the Legislature, requires the net proceeds from the sale of these remaining unissued bonds to be made available to fund the construction of water capital projects, including desalination facilities, wastewater treatment and recycling facilities, reservoirs, water conveyance infrastructure, and aquifer recharge. Makes no changes to the authorization under Proposition 1A for the issuance of \$950 in bonds for rail purposes other than high-speed rail.	4/14/15	Assembly Transportation Committee: Failed Passage	

State Assembly Bills	Subject	Last Amended	Status	VTA Position
AB 457 (Melendez) Express Lanes: CTC Reporting Requirements	Requires the California Transportation Commission (CTC) to prepare and submit a report to the Legislature every two years, as opposed to annually, on the progress of the development and operation of express lanes that the commission previously approved for implementation by the Metropolitan Transportation Commission (MTC) and the Riverside County Transportation Commission (RCTC).	3/26/15	Assembly Transportation Committee: Failed Passage	
AB 516 (Mullin) Temporary License Plates	No later than January 1, 2018, requires the Department of Motor Vehicles to develop and implement an operational system that allows a vehicle dealer or lessor-retailer to electronically report the sale of a vehicle and provide a temporary license plate. Requires the dealer or lessor-retailer to attach a temporary license plate at the point of sale. Allows a vehicle to operate with temporary license plates until either: (1) the permanent license plates and registration card are received by the vehicle owner; or (2) 90 days have lapsed from the vehicle's selling date. Allows a vehicle to continue to display a report-of-sale form or temporary license plates after 90 days if the owner has not yet received the permanent license plates, and provides proof that he or she has submitted an application to the DMV. Requires the DMV to assess a fee for the recording of notices of delinquent parking and toll evasion violations given to the department by a processing agency that is sufficient to provide a total amount equal to at least its actual costs related to administering the electronic report-of-sale and temporary license plate system. Beginning January 1, 2018, authorizes vehicle dealers to raise their document processing fees by \$10. In addition, allows vehicle dealers to impose an electronic filing charge for reporting vehicle sales and producing temporary license plates. Specifies that it is a felony for a person to alter, forge, counterfeit, or falsify a temporary license plate.	7/16/15	Senate Floor	Support
AB 518 (Frazier) Caltrans Reporting Requirements	Eliminates a requirement in existing law for Caltrans to annually compile information and report to the Legislature on the number of projects for which an agreement to transfer funds to a local or regional agency was not executed within 90 days from the date on which the California Transportation Commission (CTC) approved an allocation request for the project, as well as the reasons for that occurrence.	As Introduced	Assembly Transportation Committee: Failed Passage	
AB 528 (Baker) BART Employees: Strike Prohibition	Prohibits the employees of the Bay Area Rapid Transit District (BART) from engaging in a strike or work stoppage if the BART Board of Directors maintains the compensation and benefit provisions of an expired contract, and an employee or union has agreed to a provision prohibiting strikes in the expired or previous written labor contract. Provides that an employee whom BART finds willfully engaged in a strike or work stoppage in violation of the provisions of this bill is subject to dismissal if that finding is sustained upon conclusion of the appropriate proceedings necessary for the imposition of a disciplinary action.	As Introduced	Assembly Public Employees, Retirement & Social Security Committee: Failed Passage	

State Assembly Bills	Subject	Last Amended	Status	VTA Position
AB 590 (Dahle) Cap-and-Trade: Biomass Power Generation	Allows cap-and-trade auction proceeds deposited into the Greenhouse Gas Reduction Fund to be made available to the State Energy Resources Conservation and Development Commission, upon appropriation by the Legislature, for purposes related to maintaining the current level of biomass power generation and geothermal energy generation in California, and revitalizing currently idle facilities in strategically located regions. To be eligible for funding, requires a generation facility to satisfy all of the following: (1) the energy is generated on and after January 1, 2016; (2) the energy is generated using biomass wood wastes and residues or geothermal resources, and is sold to a load-serving entity; (3) the energy is generated at a facility with a generation capacity of more than three megawatts; and (4) the energy is generated within California and sold to customers within the state. In prioritizing projects for funding, requires the State Energy Resources Conservation and Development Commission to maximize the reduction of greenhouse gas emissions achieved by a project for each dollar awarded. Working in consultation with the California Air Resources Board (CARB), requires the State Energy Resources Conservation and Development Commission to ensure that projects receiving funding achieve net reductions in greenhouse gas emissions.	7/9/15	Senate Appropriations Committee	
AB 620 (R. Hernandez) LA Metro Express Lanes: Low-Income Assistance Program	Requires the Los Angeles County Metropolitan Transportation Authority (LA Metro) to take additional steps to increase enrollment and participation in its existing low-income assistance program related to its I-10 and I-110 express lanes. In this regard, requires LA Metro to improve the awareness of the program through advertising, and by working with local community groups and social service agencies to distribute information about the program. Requires LA Metro to consider offering greater incentives to encourage participation in the program.	1/27/16	Senate Rules Committee	
AB 645 (Williams) Electricity: California Renewables Portfolio Standard	Pursuant to the California Renewables Portfolio Standard, requires the California Public Utilities Commission (CPUC), by January 1, 2017, to establish the quantity of electricity products from eligible renewable energy resources to be procured by each retail seller for specified compliance periods sufficient to ensure that the procurement of electricity products from these resources achieves 50 percent of retail sales by December 31, 2030. Requires the quantities to reflect reasonable progress in each of the intervening years sufficient to ensure that the procurement of electricity products from eligible renewable energy resources achieves 25 percent of retail sales by December 31, 2016; 33 percent by December 31, 2020; 38 percent by December 31, 2023; 44 percent by December 31, 2026; and 50 percent by December 31, 2030. Requires the CPUC to require retail sellers to procure not less than 50 percent of retail sales of electricity products from eligible renewable energy resources in all subsequent years.	As Introduced	Senate Appropriations Committee	

State Assembly Bills	Subject	Last Amended	Status	VTA Position
AB 678 (O'Donnell) Energy Efficiency and Greenhouse Gas Reductions Ports Program	Requires the California Air Resources Board (CARB), in conjunction with the State Energy Resources Conservation and Development Commission, to develop and implement an Energy Efficiency and Greenhouse Gas Reductions Ports Program. Provides that the purpose of this program is to fund energy efficiency upgrades and investments at public ports that help reduce the emissions of criteria pollutants, toxic air contaminants and greenhouse gases. Authorizes CARB to expend cap-and-trade auction proceeds that it receives from an appropriation from the Greenhouse Gas Reduction Fund to implement the program. In order to receive funding from the program for energy-related projects, requires a port to develop and adopt, in consultation with the respective electric utility providing service to the port, an energy plan. Requires a port's energy plan to be approved by the State Energy Resources Conservation and Development Commission. Provides that the plan shall: (1) adhere to the state's preferred energy loading order; and (2) require benchmarking for energy retrofit projects and reporting of measurable energy savings. In prioritizing projects for funding, requires CARB to consider the extent to which a project would reduce greenhouse gas emissions, and provide environmental and public health co-benefits, including improved air and water quality.	8/18/15	Senate Appropriations Committee	
AB 720 (Cooley) Cap-and-Trade: Market-Based Compliance Mechanisms	For any market-based compliance mechanism that the California Air Resources Board (CARB) might adopt pursuant to the Global Warming Solutions Act of 2006, requires CARB to allow participating entities to freely sell or transfer greenhouse gas emissions allowances held in a holding account or compliance account, except for allowances that have been expressly retired to meet a compliance obligation. In addition, requires CARB to set a price cap on any allowances offered for purchase through the board.	As Introduced	Assembly Natural Resources Committee: Failed Passage	
AB 742 (Gallagher) Heavy-Duty Diesel-Fueled Vehicles	Prohibits the California Air Resources Board (CARB) from enforcing regulations relating to the reduction of emissions of diesel particulate matter, oxides of nitrogen and other criteria pollutants from in-use diesel-fueled vehicles until CARB receives from an independent private firm a completed study of the safety of any particulate-matter filters required to be installed on those affected vehicles.	1/4/16	Assembly Transportation Committee: Failed Passage	
AB 754 (Ridley-Thomas) Small Business Tax Relief in LA County	States the intent of the Legislature to enact a bill to provide tax relief to small businesses in Los Angeles County during periods of disruption caused by transit-related construction activities conducted by the Los Angeles County Metropolitan Transportation Authority (LA Metro) that result in decreased business revenues.	As Introduced	Assembly Desk: Failed Passage	

State Assembly Bills	Subject	Last Amended	Status	VTA Position
AB 779 (Garcia) Congestion Management Programs	<p>Makes a number of modifications to state statutes pertaining to congestion management programs (CMPs). Eliminates the requirement that an infill opportunity zone must be located within one-half mile of a major transit stop and, instead, allows a city or county to designate an area as an infill opportunity zone if it is a transit priority area within a sustainable communities strategy or alternative planning strategy adopted by the applicable metropolitan planning organization (MPO). Replaces traffic level of service standards within a CMP with “measures of effectiveness” established for a system of highways and roadways designed by the congestion management agency (CMA). Requires the performance element of a CMP to include performance measures that support greenhouse gas emissions reduction objectives, as well as mobility, air quality, land-use, and economic objectives. Requires the land-use element of a CMP to analyze the relationship between land-use decisions made by local jurisdictions and regional transportation systems, instead of analyzing the impacts of local land-use decisions on regional transportation systems. If the capital improvement program (CIP) element of a CMP includes capacity enhancement projects, requires the CIP to evaluate the potential for those enhancement projects to induce additional travel. Requires a CMA to develop a uniform data base on transportation conditions for use in a countywide transportation computer model, instead of a uniform data base on traffic impacts. At least biennially, requires a CMA to determine if the applicable county and cities are conforming to its CMP, including, but not limited to, the following: (1) achieving performance standards for the transportation system as provided in the performance element of the CMP; (2) adoption and implementation of a program to analyze the relationship between land-use decisions and the regional transportation system; and (3) adoption and implementation of a deficiency plan, if required. Requires a city or county to prepare a deficiency plan if the CMA determines that it is not conforming with the CMP. Regarding the preparation of a deficiency plan, adds the following to the list of exclusions from an analysis of the cause of a deficiency: (1) traffic generated by any mixed-use development located within a transit priority project area or infill opportunity zone; (2) traffic generated by any transit priority project, as defined; and (3) improvements to facilities for bicyclists, pedestrians and public transportation. Specifies that the CMP statutes shall not be interpreted to require a local agency to implement improvements to reduce delay at intersections or roadway segments that the local agency determines would impede the development of a balanced, multimodal transportation network that meets the needs of all users of streets, roads and highways for safe and convenient travel in a manner set forth in the circulation element of the local agency’s general plan.</p>	8/19/15	Senate Transportation & Housing Committee	
AB 828 (Low) Regulated Transportation Services	<p>Until January 1, 2018, excludes any motor vehicle operated in connection with a transportation network company from the definition of “commercial vehicle” if the vehicle: (1) is operated only for passenger service; (2) is limited to seven passengers, not including the driver; (3) is operated exclusively by the person to whom it is registered or insured; (4) is not a paratransit vehicle; (5) is not operated for public transit services; and (6) is not operated for school bus services. Requires the California Public Utilities Commission (CPUC) to conduct an investigation to consider whether existing statutes and regulations relating to transportation services meet the public interest, encourage innovation, and create a fair and competitive transportation market between companies that provide regulated transportation services. Requires the CPUC to complete this investigation, and report its conclusions and recommendations to the Legislature by January 1, 2017.</p>	7/14/15	Senate Energy, Utilities & Communications Committee	

State Assembly Bills	Subject	Last Amended	Status	VTA Position
AB 869 (Cooper) Fare Evasion and Prohibited Conduct on Transit Vehicles	For those public transit agencies that use an administrative adjudication process for fare evasion and passenger misconduct violations, provides that a person who fails to pay the administrative penalty when due or to have the violation dismissed may be subject to criminal penalties. Requires the public transit agency to include in the notice of fare evasion or passenger misconduct a printed statement indicating that the person may be charged with an infraction or misdemeanor if the administrative penalty is not paid when due or is not dismissed. Requires the public transit agency to dismiss the original notice of fare evasion or passenger misconduct, and to make no further attempts to collect the administrative penalty if the person is charged with an infraction or misdemeanor after failing to pay the administrative penalty or failing to successfully complete the administrative adjudication process. Requires the public transit agency to serve the person charged with an infraction or misdemeanor with a new notice of fare evasion or passenger misconduct that sets forth the criminal violation.	6/18/15	Senate Floor	
AB 875 (Harper) Low-Speed Electric Bicycles	Allows a low-speed electric bicycle to be operated on a bicycle path or trail; bikeway; bicycle lane; equestrian trail; or hiking or recreational trail. Defines “low-speed electric bicycle” to mean a two- or three-wheeled device that has fully operative pedals for propulsion by human power and has an electric motor that meets all of the following requirements: (1) has a power output of not more than 750 watts; (2) is incapable of propelling the device at a speed of more than 20 miles per hour on a paved level surface when ridden by an operator who weighs 170 pounds; (3) is incapable of further increasing the speed of the device when human power is used to propel the device faster than 20 miles per hour; and (4) has a weight of not more than 80 pounds.	As Introduced	Assembly Transportation Committee: Failed Passage	
AB 877 (Chu) California Transportation Commission and Transportation Funding	Expands the California Transportation Commission (CTC) to 15 members, with one additional ex officio, non-voting member being appointed by the Assembly Speaker and one additional ex officio, non-voting member being appointed by the Senate Rules Committee. States the intent of the Legislature to enact a bill to find a revenue stream to supplement the fuel excise tax to provide additional funding for transportation infrastructure projects in California.	3/26/15	Assembly Transportation Committee: Failed Passage	
AB 946 (Ting) Electric Vehicle Charging Stations	Provides that electric vehicle charging infrastructure projects in disadvantaged communities are eligible for funding under the state’s Alternative and Renewable Fuel Vehicle Technology Program.	4/21/15	Assembly Appropriations Committee: Failed Passage	
AB 1030 (Ridley-Thomas) Cap-and-Trade: Disadvantaged Workers	For projects involving hiring that are seeking an allocation of cap-and-trade auction proceeds from the Greenhouse Gas Reduction Fund, requires priority to be given to those projects that support the targeted training and hiring of workers from disadvantaged communities for career-track jobs.	7/7/15	Senate Appropriations Committee	

State Assembly Bills	Subject	Last Amended	Status	VTA Position
AB 1068 (Allen) CEQA: Priority Projects	Enacts the Priority Project Parity Act of 2015. By November 15 of each year, authorizes each member of the Legislature to annually nominate and submit to the Governor one project within his or her respective district as a priority project. Requires the Governor to designate a project as a priority project if all of the following are met: (1) the project will result in at least 100 new or retained full-time jobs; (2) the project is consistent with an adopted sustainable communities strategy for the region in which the project is located; and (3) the project applicant certifies its intent to remain in the location of the project for a minimum of five years. For purposes of complying with the requirements of the California Environmental Quality Act (CEQA), allows the environmental impact report (EIR) for a priority project to tier from an earlier EIR completed for the existing or earlier versions of the project. Requires the tiered EIR to be limited to the consideration of significant adverse impacts resulting from the project: (1) that were not previously identified in the earlier EIR; or (2) that were identified in the earlier EIR, but are more severe than previously identified. Provides that a new EIR is not required for a priority project that has already been included in an EIR prepared and certified under CEQA; however, requires the lead agency to prepare an addendum to the prior EIR to explain to the public and other interested stakeholders the manner in which the project had been addressed in the prior EIR. Prohibits a court from staying or enjoining the implementation of a priority project unless the court finds either of the following: (1) the continued implementation of the priority project presents an imminent threat to public health and safety; or (2) the priority project site contains unforeseen important Native American artifacts; or unforeseen important historical, archaeological or ecological values that would be materially, permanently and adversely affected by the continued implementation of the project.	As Introduced	Assembly Natural Resources Committee: Failed Passage	
AB 1087 (Grove) Cap-and-Trade: High-Speed Rail	Restates that cap-and-trade auction proceeds allocated from the Greenhouse Gas Reduction Fund for high-speed rail purposes shall be used for the following components of the initial operating segment and Phase 1 blended system as described in the California High-Speed Rail Authority's 2012 Business Plan: (1) acquisition and construction; (2) environmental review and design; (3) other capital costs; and (4) repayment of any loans made to the High-Speed Rail Authority to fund the project.	As Introduced	Assembly Transportation Committee: Failed Passage	

State Assembly Bills	Subject	Last Amended	Status	VTA Position
AB 1098 (Bloom) Congestion Management Programs	Eliminates traffic level of service standards as an element of a congestion management program, as well as the requirement that a city or county prepare a deficiency plan when highway or roadway level of service standards are not met. Instead, requires a congestion management program to include, at a minimum, performance measures related to vehicle miles traveled, air emissions, and bicycle, pedestrian and public transit mode share, as determined by the applicable regional agency. Requires the travel demand element of a congestion management program to include a broad range of transportation options. Requires a congestion management program to analyze the interaction between land-use decisions made by local jurisdictions and the regional transportation system. For roadway capacity expansion projects included in the capital improvement program element of a congestion management program, requires an analysis of the potential for induced vehicle travel. Requires the applicable regional agency to evaluate: (1) the consistency between a county congestion management program and the regional transportation plan, including any adopted sustainable communities strategy; and (2) how a county congestion management program contributes to achieving the greenhouse gas emissions reduction target that has been assigned to the region by the California Air Resources Board (CARB).	3/26/15	Assembly Transportation Committee: Failed Passage	
AB 1138 (Patterson) High-Speed Rail: Eminent Domain	Prohibits the California High-Speed Rail Authority, and the State Public Works Board acting on behalf of the authority, from adopting a resolution of necessity to commence an eminent domain proceeding to acquire a parcel of real property on a corridor or usable segment of the state's proposed high-speed train system unless the resolution includes both of the following: (1) identification of the sources of all funds that are to be invested in that corridor or usable segment, and the anticipated time of receipt of those funds; and (2) a certification that the authority has completed all necessary project level environmental clearances necessary to proceed to construction of the corridor or usable segment.	As Introduced	Assembly Transportation Committee: Failed Passage	
AB 1160 (Harper) Automated Traffic Enforcement Systems	Beginning January 1, 2016, prohibits a governmental agency from installing an automated traffic enforcement system. Allows a governmental agency that has an automated traffic enforcement system in place on January 1, 2016, to continue to operate the system after that date only if the agency begins conducting a traffic safety study at each intersection where the system is in use to determine whether the system resulted in a reduction in the number of traffic accidents involving failing to stop at a red light or failing to stop at a red light when making a right turn at that intersection. Requires the traffic safety study to be completed by January 1, 2017. If the traffic safety study shows that the use of an automated traffic enforcement system did not reduce the number of traffic accidents occurring at an intersection by a statistically significant number, requires the governmental agency to terminate the use of the system at that intersection no later than January 1, 2018.	4/14/15	Assembly Transportation Committee: Failed Passage	
AB 1169 (Gomez) Strategic Growth Council: Signs for Project Funding	Requires recipients of state grant funding from the Strategic Growth Council or any of its member state agencies for a project located in a public place and that provides public benefits to post signs acknowledging the sources of funds for the project pursuant to guidelines adopted by the council. If the state funding equals 50 percent or more of the total cost of the project, requires the state funding sources to be listed first on the signs.	9/4/15	Senate Floor	

State Assembly Bills	Subject	Last Amended	Status	VTA Position
AB 1176 (Perea) Advanced Low-Carbon Diesel Fuels Access Program	Establishes the Advanced Low-Carbon Diesel Fuels Access Program to be administered by the State Energy Resources Conservation and Development Commission, in consultation with the California Air Resources Board (CARB). Specifies that the purpose of the program is to reduce greenhouse gas emissions of diesel motor vehicles by providing capital assistance for projects that expand advanced low-carbon diesel fueling infrastructure in communities that are disproportionately impacted by environmental hazards and where the greatest air quality impacts can be identified. Requires cap-and-trade auction proceeds from the Greenhouse Gas Reduction Fund to be available, upon appropriation by the Legislature, for implementing this program.	8/18/15	Senate Appropriations Committee	
AB 1179 (Rendon) Cap-and-Trade: Reporting Requirements	Requires the California Air Resources Board (CARB) to prepare and post on its Internet Web site a report on the projects being funded with cap-and-trade auction proceeds from the Greenhouse Gas Reduction Fund. Requires the report to include all of the following: (1) a general description of each project; (2) the location where each project will be implemented; (3) the estimated date of completion of each project; (4) the amount awarded to each project; and (5) the status of any revenues in the Greenhouse Gas Reduction Fund not awarded to projects and the reasons why.	As Introduced	Assembly Appropriations Committee: Failed Passage	
AB 1265 (Perea) Public-Private Partnerships	Extends existing statutory authority for Caltrans and regional transportation agencies, including the Santa Clara Valley Transportation Authority (VTA), to utilize public-private partnerships for transportation infrastructure projects to January 1, 2030.	4/29/15	Assembly Appropriations Committee: Failed Passage	Support
AB 1315 (Alejo) Public Contracts: Water Pollution Prevention Plans	Prohibits a public entity from delegating to a contractor the development of a plan used to prevent or reduce water pollution or runoff on a public works contract.	4/21/15	Assembly Appropriations Committee: Failed Passage	

State Assembly Bills	Subject	Last Amended	Status	VTA Position
AB 1335 (Atkins) Building Homes and Jobs Act	<p>Enacts the Building Homes and Jobs Act. Beginning January 1, 2016, imposes a fee of \$75 to be paid at the time of recording of every real estate instrument, paper or notice required or permitted by law to be recorded per each single transaction per single parcel of real property. Specifies that this fee shall not exceed \$225. Prohibits the fee from being imposed on any real estate instrument, paper or notice recorded in connection with a transfer of real property that is a residential dwelling to an owner-occupier. Deposits the revenues derived from the fee in the Building Homes and Jobs Trust Fund for expenditure by the Department of Housing and Community Development. Upon appropriation by the Legislature, requires 20 percent of the revenues in the trust fund to be expended for affordable owner-occupied workforce housing, and 10 percent to address affordable homeownership and rental housing opportunities for agricultural workers and their families. Requires the remainder of the money in the trust fund to be expended for the following purposes: (1) the development, acquisition, rehabilitation, and preservation of rental housing that is affordable to extremely low-income, very low-income, low-income, and moderate-income households; (2) affordable rental and ownership housing that meets the needs of a growing workforce up to 120 percent of area median income; (3) matching portions of funds placed into local or regional housing trust funds; (4) matching portions of funds available through the Low and Moderate Income Housing Asset Fund; (5) capitalized reserves for services connected to the creation of new permanent supportive housing, including developments funded through the Veterans Housing and Homelessness Prevention Program; (6) emergency shelters, transitional housing and rapid rehousing; (7) accessibility modifications; (8) efforts to acquire and rehabilitate foreclosed or vacant homes; and (9) homeownership opportunities, including down payment assistance. At the time of the Department of Finance's adjustments to the proposed FY 2016 budget, requires the Department of Housing and Community Development to submit to the Legislature an initial Building Homes and Jobs Investment Strategy. Beginning with FY 2021, and every five years thereafter, requires the department to update this investment strategy and submit it to the Legislature concurrent with the release of the Governor's proposed budget. Requires the investment strategy to do all of the following: (1) identify the statewide needs, goals, objectives, and outcomes for housing for a five-year period; (2) provide for a geographically balanced distribution of funds, including a 50-percent direct allocation to local governments; (3) emphasize investments that serve households that are at or below 60 percent of area median income; (4) encourage economic development and job creation by helping to meet the housing needs of a growing workforce up to 120 percent of area median income; (5) identify opportunities for coordination among state departments and agencies; (6) incentivize the use and coordination of non-traditional funding sources; and (7) incentivize innovative approaches that produce cost savings to local and state services by reducing the instability of housing for frequent, high-cost users of hospitals, jails, detoxification facilities, psychiatric hospitals, and emergency shelters. Requires expenditure requests in the Governor's proposed budget to be consistent with the Building Housing and Jobs Investment Strategy. Declares the intent of the Legislature to enact a bill to create a Secretary of Housing within state government to oversee all activities related to housing in California.</p>	6/3/15	Assembly Floor: Failed Passage	

State Assembly Bills	Subject	Last Amended	Status	VTA Position
AB 1336 (Salas) Community Climate Improvement Program	Requires the Strategic Growth Council, in coordination with the California Air Resources Board (CARB), to establish and administer a Community Climate Improvement Program to be funded with cap-and-trade auction proceeds from the Greenhouse Gas Reduction Fund to provide grants for the development and implementation of regional projects that reduce or sequester greenhouse gas emissions. Requires the Strategic Growth Council, in coordination with CARB, to develop guidelines for the program that do all of the following: (1) promote projects that benefit the most disadvantaged communities; (2) maximize the delivery of multiple climate benefits, including advanced clean vehicles, renewable energy generation, energy efficiency and weatherization, organic waste diversion and compost development, and other measures that reduce or sequester greenhouse gas emissions; (3) ensure that all ancillary elements of project development and implementation are eligible for funding if they lead to better implementation, program delivery and reduction of greenhouse gas emissions; (4) ensure that projects funded under the program use consistent accounting and modeling approaches to estimate and monitor greenhouse gas emissions, as well as emissions reductions over time; (5) promote projects that assist the state in reaching its climate goals beyond 2020; (6) promote investments in projects that include co-benefits, including achieving state and federal air quality standards; and (7) ensure that the projects that receive funding maximize the dollars appropriated for the program, create job opportunities and are consistent with other laws. In evaluating projects to be funded under this program, requires the Strategic Growth Council to give priority to projects that demonstrate one or more of the following characteristics: (1) regional implementation; (2) the ability to leverage additional public and private funding; (3) the potential for co-benefits or multi-benefit attributes; (4) the potential for the project to be replicated; (5) the use of existing regional infrastructure and institutions; or (6) the inclusion of technical assistance.	1/14/16	Assembly Appropriations Committee: Failed Passage	
AB 1340 (Chau) Bike Racks on Public Transit Buses	Amends current state law to prohibit a folding device attached to the front of a public transit bus that is designed and used exclusively for transporting bicycles from extending more than 40 inches from the front of the bus, rather than from the front body of the bus, when fully deployed.	1/4/16	Assembly Transportation Committee: Failed Passage	
AB 1360 (Ting) Transportation Network Companies: Ridesharing	Allows a transportation network company or a charter-party carrier of passengers that prearranges a ride among multiple passengers who share the ride in whole or in part to charge an individual fare, rather than a vehicle-mileage or time-of-use fare, provided that all of the following conditions are met: (1) the vehicle seats no more than seven passengers, not including the driver; (2) the driver is a participating driver, as defined; (3) the vehicle is not used to provide public transit services or to carry passengers over a fixed route; (4) the vehicle is not used to provide pupil transportation or public paratransit services; and (5) the individual fare for each passenger is less than the fare that would be charged for the same ride to a passenger traveling alone.	7/2/15	Senate Energy, Utilities & Communications Committee	
AB 1364 (Linder) California Transportation Commission	Excludes the California Transportation Commission (CTC) from the California State Transportation Agency (CalSTA), and establishes it as a separate and independent entity in state government.	As Introduced	Senate Rules Committee	

State Assembly Bills	Subject	Last Amended	Status	VTA Position
AB 1384 (Baker) Bay Area Toll Authority	Allows the Bay Area Toll Authority (BATA) to make direct contributions to the Metropolitan Transportation Commission (MTC) in furtherance of the exercise of the authority's powers and duties, so long as those contributions do not exceed an amount equal to 1 percent of the funds available to BATA in the fiscal year in which the contributions are made. Provides comparable authority for BATA to make additional contributions in the form of loans to MTC on a reimbursement-for-cost basis, subject to the same 1 percent cap and a requirement that the loans be fully repaid with interest.	1/4/16	Assembly Transportation Committee: Failed Passage	
AB 1398 (Wilk) CEQA: Sustainable Environmental Protection Act	Enacts the Sustainable Environmental Protection Act. Prohibits a cause of action on the grounds of non-compliance with the California Environmental Quality Act (CEQA) that relates to any topical area or criteria for which compliance obligations are identified. Also prohibits challenges to environmental documents based on non-compliance with CEQA if: (1) the environmental document discloses compliance with applicable environmental laws; (2) the project conforms with the use designation, density or building intensity in an applicable plan; and (3) the project approval incorporates applicable mitigation requirements into the environmental document. Specifies that the provisions of this bill only apply if the lead agency or project applicant has agreed to provide to the public in a readily accessible electronic format an annual compliance report prepared pursuant to a mitigation monitoring and reporting program required by CEQA.	As Introduced	Assembly Natural Resources Committee: Failed Passage	
AB 1459 (Kim) Toll Lanes: Orange County	Prohibits Caltrans from seeking or providing funding for construction of a toll lane on a public highway in Orange County unless the project is first approved by a two-thirds vote of the board of directors of the Orange County Transportation Authority (OCTA).	4/14/15	Assembly Transportation Committee: Failed Passage	
AB 1549 (Wood) State Highway Rights-of-Way: Fiber-Optic Cables	Requires Caltrans to maintain an inventory of all conduits owned by the department that: (1) house fiber optic communication cables; (2) are located in state highway rights-of-way; and (3) were installed on or after January 1, 2017.	1/14/16	Senate Rules Committee	
AB 1550 (Gomez) Greenhouse Gas Reduction Fund: Investment Plan	Requires the three-year investment plan prepared by the Department of Finance for the expenditure of cap-and-trade auction proceeds deposited in the Greenhouse Gas Reduction Fund to do the following: (1) allocate a minimum of 25 percent of available dollars in the fund to projects located within disadvantaged communities; and (2) allocate a minimum of 25 percent to projects that benefit low-income households, which must be separate from the minimum 25 percent required for disadvantaged communities.	As Introduced	Assembly Desk	
AB 1555 (Gomez) Cap-and-Trade Auction Proceeds: FY 2016 Uncommitted Funds	States the intent of the Legislature to enact a bill to appropriate \$1.7 billion in uncommitted cap-and-trade auction proceeds from the Greenhouse Gas Reduction Fund for the following purposes in amounts to be determined in the bill: (1) low carbon transportation and infrastructure; (2) clean energy communities; (3) community climate improvements; (4) wetlands and watershed restoration; and (5) carbon sequestration.	As Introduced	Assembly Desk	

State Assembly Bills	Subject	Last Amended	Status	VTA Position
AB 1569 (Steinorth) CEQA: Exemption for Certain Transportation Projects	Exempts from the California Environmental Quality Act (CEQA) a project that consists of the inspection, maintenance, repair, rehabilitation, replacement, or removal of existing transportation infrastructure, including highways, roadways, bridges, tunnels, culverts, public transit systems, bikeways, paths and sidewalks serving bicycles or pedestrians, and the addition of auxiliary lanes or bikeways to existing transportation infrastructure, if the project meets all of the following conditions: (1) the project is located within an existing right-of-way; (2) any area surrounding the right-of-way that is to be altered as a result of construction activities that are necessary for the completion of the project will be restored to its condition before the project; and (3) the project does not add additional motor vehicle lanes, except auxiliary lanes.	As Introduced	Assembly Desk	
AB 1572 (Campos) School Transportation	Provides that a pupil attending a school that is eligible for Title 1 federal funding shall be entitled to free transportation from the local educational agency to and from school if either of the following conditions are met: (1) the pupil resides more than one-half mile from the school; or (2) the neighborhood through which the pupil must travel to get to school is unsafe due to stray dogs, no sidewalks, known gang activity, or other reasons documented by stakeholders. Requires a local educational agency to designate a liaison to be responsible for implementing a plan to ensure that free transportation is provided to all pupils who are entitled to it pursuant to this bill. Requires the local educational agency to develop its plan in consultation with teachers, school administrators, regional and local transit authorities, the California Air Resources Board (CARB), Caltrans, parents, pupils, and other stakeholders. Specifies that if free, dependable and timely transportation is currently not available for pupils who are entitled to it pursuant to this bill, the local educational agency must ensure that such pupils are provided free transportation using its existing funds, unless the local educational agency determines that the lack of transportation does not reduce pupil school attendance.	As Introduced	Assembly Desk	

State Assembly Bills	Subject	Last Amended	Status	VTA Position
AB 1591 (Frazier) Transportation Funding	<p>Proposes to generate new revenues for transportation purposes from the following sources: (1) an increase in the gasoline excise tax of 22.5 cents per gallon; (2) an increase in the diesel excise tax of 30 cents per gallon; (3) a registration surcharge of \$38 per year imposed on all motor vehicles; and (4) a registration surcharge of \$165 per year imposed on zero-emission vehicles. Requires the repayment over the next two years of approximately \$879 million in outstanding loans owed by the General Fund to the State Highway Account, the Motor Vehicle Fuel Account, the Highway Users Tax Account (HUTA), and the Motor Vehicle Account. Beginning July 1, 2019, and every three years thereafter, indexes the gas tax and the diesel excise tax to inflation. Calls for the revenues derived from the 30-cent-per-gallon increase in the diesel excise tax to be deposited into the Trade Corridors Improvement Fund and used for goods movement projects programmed by the California Transportation Commission (CTC). Requires the revenues derived from the 22.5-cent-per gallon increase in the gas tax and the two vehicle registration surcharges to be deposited into a new Road Maintenance and Rehabilitation Account. Requires the revenues in the account to be used for the following purposes: (1) road maintenance and rehabilitation; (2) safety projects; (3) railroad grade separations; and (4) active transportation and pedestrian/bicycle safety projects in conjunction with any other allowable project. Requires 5 percent of the funds in the Road Maintenance and Rehabilitation Account to be set aside for counties that currently do not have a local transportation sales tax, but gain voter approval for one after July 1, 2016. Allocates the remaining balance in the account after the 5-percent set-aside as follows: (1) 50 percent to Caltrans for state highway maintenance, or State Highway Operation and Protection Program (SHOPP) projects; and (2) 50 percent to cities and counties for their local roadway systems. In the latter case, equally divides the funds between cities and counties, with the cities' portion being allocated by a formula based on population, and the counties' share by a formula based on vehicle registrations and miles of maintained county roads. Requires cities and counties to use their formula shares for any of the following: (1) improvements to transportation facilities that will assist in reducing further deterioration of the existing roadway system; (2) to satisfy a local match requirement for federal or state funds for similar purposes; or (3) an active transportation or pedestrian/bicycle safety project that is done in conjunction with any other eligible project. Allows a city or county to spend its formula share for other priorities only if it has an average Pavement Condition Index that meets or exceeds 85. In order to remain eligible for an allocation from the Road Maintenance and Rehabilitation Account, requires cities and counties to maintain their historic commitment of local funds for street/road purposes by annually spending not less than the average of its expenditures from FY 2010, FY 2011 and FY 2012. Increases the percentage of cap-and-trade auction proceeds distributed to the Transit and Intercity Rail Program from 10 percent to 20 percent. Requires 20 percent of cap-and-trade auction proceeds to be distributed to the Trade Corridors Improvement Fund. Converts the variable gas tax rate to a fixed rate of 18 cents per gallon and indexes it to inflation every three years, beginning July 1, 2019. Eliminates the Board of Equalization's annual adjustments to the diesel excise tax rate pursuant to the 2010-2011 transportation funding swap. Prohibits vehicle weight fee revenues from being used to pay debt service on transportation general obligation bonds or from being loaned to the General Fund.</p>	As Introduced		

State Assembly Bills	Subject	Last Amended	Status	VTA Position
AB 1595 (Campos) Mass Transportation Employees: Human Trafficking Training	Requires a private or public employer that provides mass transportation services in California to train its relevant employees in recognizing the signs of human trafficking and how to report those signs to the appropriate law enforcement agency. By January 1, 2018, requires this training to be incorporated into the initial training process for all new employees who are likely to interact or come into contact with victims of human trafficking. Requires all existing employees who are likely to interact or come into contact with victims of human trafficking to receive this training by January 1, 2018. Exempts taxi services and airlines from the provisions of the bill.	As Introduced	Assembly Desk	
AB 1640 (Stone) Retirement: Public Transit Employees	Clarifies that public transit employees whose interests are protected under Section 5333(b) of Title 49 of the United States Code and who became a member of a state or local public retirement system prior to December 30, 2014, are exempt from the California Public Employees' Pension Reform Act of 2013 (PEPRA).	As Introduced	Assembly Desk	Sponsor
AB 1641 (Allen) Private Shuttles	Allows a public transit agency, by ordinance or resolution, to permit the vehicles of a private shuttle service provider to stop for the loading or unloading of its passengers alongside any or all curb spaces designated for the passengers of the public transit agency's buses. States that it is not the intent of the Legislature to replace public transit service.	As Introduced	Assembly Desk	
AB 1661 (McCarthy) Sexual Harassment Training and Education	Requires local agency officials to receive sexual harassment training and education if the agency provides any type of compensation, salary or stipend to those officials. Defines "local agency official" to mean any member of a local agency governing board and any elected local agency official. Allows a local agency to also require any of its employees to receive such training and education. Requires each local agency official or employee who is so required to receive at least two hours of sexual harassment training and education within the first six months of taking office or commencing employment, and every two years thereafter. Requires a local agency to maintain records indicating both of the following: (1) the dates that local agency officials or employees satisfied the requirements of this bill; and (2) the entity that provided the training.	As Introduced	Assembly Desk	
AB 1665 (Bonilla) Contra Costa Transportation Authority: Transactions and Use Taxes	Until December 31, 2024, allows the Contra Costa Transportation Authority to impose a transactions and use tax for the support of countywide transportation programs at a rate of not more than 0.5 percent that would, in combination with all other such taxes imposed in the county, exceed the state's limit of 2 percent, subject to the following conditions: (1) the authority adopts an ordinance imposing the tax by the appropriate voting approval requirement; and (2) the ordinance is submitted to the county's electorate on a November general election ballot and is approved by the voters pursuant to Article XIII C of the California Constitution.	As Introduced	Assembly Desk	
AB 1669 (R. Hernandez) Solid Waste Collection and Transportation Services Contracts	Requires local agencies to give a bidding preference to any bidder on a contract to provide solid waste collection and transportation services who agrees to retain employees of the prior contractor or subcontractor.	As Introduced	Assembly Desk	

State Assembly Bills	Subject	Last Amended	Status	VTA Position
AB 1707 (Linder) Public Records Requests	Requires a local agency's response to any request for public records that includes a denial of the request, in whole or in part, to be in writing. Requires the written response to include a list containing the title or other identification of each record requested but withheld due to an exemption, and the specific exemption that applies to that record.	As Introduced	Assembly Desk	
ACA 3 (Gallagher) Public Employees' Retirement	Calls for placing before the voters an amendment to the California Constitution to make several changes to retirement benefits for public employees. Requires any enhancement to a public employee's retirement formula or benefit adopted on or after the effective date of this constitutional amendment to apply only to service performed on and after the operative date of the enhancement, and not to any service performed prior to that date. Provides that if a change to a public employee's retirement membership classification or a change in employment results in an enhancement to the retirement formula or benefit applicable to that employee, requires that enhancement to apply only to service performed on or after the operative date of the change, and not to service performed prior to that date. Specifies that an increase to a retiree's annual cost-of-living adjustment within existing statutory limits is not considered to be an enhancement to a retirement benefit.	As Introduced	Assembly Public Employees, Retirement & Social Security Committee	
ACA 4 (Frazier) Local Transportation Special Taxes	Calls for placing before the voters an amendment to the California Constitution to allow a city, county or special district to impose, extend or increase a sales and use or a transactions and use tax for the purpose of providing funding for local transportation projects, if approved by a 55 percent majority vote. Defines "local transportation project" to mean the planning, design, development, financing, construction, reconstruction, rehabilitation, improvement, acquisition, lease, operation, or maintenance of local streets, roads and highways; state highways and freeways; and public transit systems. Specifies that this constitutional amendment shall become effective upon approval by the voters, and shall apply to any local measure imposing, extending or increasing a sales and use or transactions and use tax to fund local transportation projects that is submitted at the same election.	8/17/15	Assembly Appropriations Committee	Support
ABX1-1 (Alejo) Transportation Funding	Retains the revenues generated by vehicle weight fees in the State Highway Account, and requires the General Fund to pay debt service on transportation general obligation bonds. With regard to the revenues derived from increases in the state gasoline excise tax resulting from the transportation funding swap initially enacted in 2010 and reaffirmed in 2011, requires all of the money to be allocated in the following manner: (1) 44 percent to the State Transportation Improvement Program (STIP); (2) 44 percent to cities and counties for local streets and roads; and (3) 12 percent to the State Highway Operation & Protection Program (SHOPP). With respect to any loans made to the General Fund from the State Highway Account, the Public Transportation Account, the Bicycle Transportation Account, the Motor Vehicle Fuel Account, the Highway Users Tax Account, the Pedestrian Safety Account, the Transportation Investment Fund, the Traffic Congestion Relief Fund, the Motor Vehicle Account, and the Local Airport Loan Account with a repayment date of January 1, 2019, or later to be repaid to the account from which the loan was made by December 31, 2018. Recaptures revenues generated by Caltrans through the rental or sale of property, the sale of documents and other miscellaneous services to the public for transportation purposes.	As Introduced	Assembly Desk	Support

State Assembly Bills	Subject	Last Amended	Status	VTA Position
ABX1-2 (Perea) Public-Private Partnerships	Extends existing statutory authority for Caltrans and regional transportation agencies, including the Santa Clara Valley Transportation Authority (VTA), to utilize public-private partnerships for transportation infrastructure projects indefinitely.	As Introduced	Assembly Desk	Support
ABX1-3 (Frazier) Transportation Funding: State Highways and Local Roadways	Declares the intent of the Legislature to enact a bill to establish permanent, sustainable sources of transportation funding to maintain and repair highways, local roads, bridges, and other critical transportation infrastructure.	9/3/15	Conference Committee	
ABX1-4 (Frazier) Transportation Funding: Trade Corridors and Local Transportation Infrastructure	Declares the intent of the Legislature to enact a bill to establish permanent, sustainable sources of transportation funding to improve the state's key trade corridors, and support efforts by local governments to repair and improve local transportation infrastructure.	As Introduced	Senate Rules Committee	
ABX1-6 (R. Hernandez) Cap-and-Trade: Affordable Housing and Sustainable Communities Program	Requires 20 percent of the cap-and-trade auction proceeds provided to the Affordable Housing and Sustainable Communities Program to be allocated to rural areas. Requires half of these funds to be allocated to eligible affordable housing projects. Requires the Strategic Growth Council to amend its guidelines for the Affordable Housing and Sustainable Communities Program to be consistent with the provisions of this bill.	As Introduced	Assembly Desk	
ABX1-7 (Nazarian) Cap-and-Trade: Public Transit Funding	Increases the amount of cap-and-trade auction proceeds continuously appropriated from the Greenhouse Gas Reduction Fund to the Low Carbon Transit Operations Program from 5 percent to 10 percent, and to the Transit and Intercity Rail Capital Program from 10 percent to 20 percent.	As Introduced	Assembly Desk	Support
ABX1-8 (Chiu) Diesel Sales Tax	Increases the sales and use tax rate on diesel fuel by 3.5 percent. Dedicates the revenues derived from this increase to the State Transit Assistance Program (STA).	As Introduced	Assembly Desk	Support

State Assembly Bills	Subject	Last Amended	Status	VTA Position
ABX1-9 (Levine) Richmond-San Rafael Bridge	By September 30, 2015, requires Caltrans to implement an operational improvement project that does the following: (1) temporarily restores to automobile traffic the third eastbound lane on I-580 that existed prior to 1977 and that was temporarily restored immediately following the Loma Prieta earthquake, from the beginning of the Richmond-San Rafael Bridge in Marin County to Marine Street in Contra Costa County; and (2) temporarily converts the existing one-way bicycle lane along the north side of westbound I-580 from the Marine Street Interchange to Stenmark Drive and the toll plaza in Contra Costa County into a bidirectional bicycle and pedestrian lane. Requires Caltrans to keep the temporary third automobile lane and the temporarily bidirectional bicycle lane in place until the department has completed the Richmond-San Rafael Bridge Access Improvement Project.	As Introduced	Assembly Desk	
ABX1-10 (Levine) Public Works Contracts: Mega-Infrastructure Projects	Prohibits a state entity in a mega-infrastructure project contract from providing for the payment of extra compensation to the contractor until the project has been completed, and an independent third party has verified that the project meets all architectural or engineering plans and safety specifications of the contract. Applies to contracts entered into or amended on or after the effective date of the bill. Defines “mega-infrastructure project” to mean the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind that exceeds \$1 billion in cost.	As Introduced	Assembly Desk	
ABX1-12 (Nazarian) LA Metro: Public-Private Partnerships	Authorizes the Los Angeles County Metropolitan Transportation Authority (LA Metro) to enter into agreements with private entities for transportation projects in Los Angeles County, including on the state highway system, subject to various terms and requirements. Allow LA Metro to impose tolls and user fees for use of those projects. Requires LA Metro to implement such projects on the state highway system in cooperation with Caltrans pursuant to an agreement that addresses all matters related to design, construction, maintenance, and operation of state highway facilities in connection with the project. Authorizes LA Metro to issue bonds to finance any costs necessary to implement such a project, payable from revenues generated from the project or other available resources.	As Introduced	Assembly Desk	
ABX1-13 (Grove) Cap-and-Trade: State Highways and Local Streets/Roads	For FY 2016, reduces the amount of cap-and-trade auction proceeds deposited into the Greenhouse Gas Reduction Fund that are continuously appropriated to the Affordable Housing and Sustainable Communities Program from 20 percent to 10 percent. Beginning in FY 2017, continuously appropriates 50 percent of the cap-and-trade auction proceeds deposited into the Greenhouse Gas Reduction Fund to the State Highway Operation and Protection Program (SHOPP), and 50 percent to cities and counties for local streets/roads.	As Introduced	Assembly Desk	
ABX1-14 (Waldron) General Fund Appropriations: State Highways and Local Streets/Roads	Continuously appropriates \$1 billion from the General Fund to be distributed as follows: (1) 50 percent to the State Highway Operation and Protection Program (SHOPP); and (2) 50 percent to cities and counties for local streets/roads.	As Introduced	Assembly Desk	

State Assembly Bills	Subject	Last Amended	Status	VTA Position
ABX1-15 (Patterson) Caltrans: Capital Outlay Support	Reduces the FY 2016 appropriation to Caltrans for capital outlay support by \$500 million and, instead, distributes this money as follows: (1) 50 percent to the State Highway Operation and Protection Program (SHOPP); and (2) 50 percent to cities and counties for local streets/roads.	As Introduced	Assembly Desk	
ABX1-16 (Patterson) Pilot Program: Transferring State Highways to Local Agencies	Establishes a five-year pilot program under which two counties, one in Northern California and one in Southern California, would be selected to operate, maintain and make improvements to all state highways within their respective jurisdictions. For the duration of the pilot program, requires Caltrans to convey all of its authority and responsibility over state highways in a participating county to the applicable county or regional transportation agency. Requires the pilot program to begin no later than January 1, 2017. Requires the California Transportation Commission (CTC) to administer and oversee the pilot program, and to select the counties that will participate in the program from applications received by the commission. For the duration of the pilot program, requires funding to be appropriated as block grants in the annual Budget Act to the participating counties in an amount equivalent to federal and state dollars otherwise to be expended by Caltrans on state highways in those counties, including money for operations, maintenance, capital outlay support, the State Highway Operation and Protection Program (SHOPP), and the State Transportation Improvement Program (STIP). In consultation with Caltrans, requires the CTC to determine the applicable grant amounts for each participating county, and to submit its recommendations to the Governor and the Legislature. Provides that any cost savings realized by a participating county, compared to comparable expenditures that otherwise would have been undertaken by Caltrans on state highways in the county in the absence of the pilot program, may be used by the county for other transportation priorities consistent with eligible expenditures for the funding sources involved, subject to approval by the CTC.	As Introduced	Assembly Desk	
ABX1-17 (Achadjian) Cap-and-Trade: State Highway Operation and Protection Program	Beginning in FY 2017, continuously appropriates 25 percent of the cap-and-trade auction proceeds deposited into the Greenhouse Gas Reduction Fund to the State Highway Operation and Protection Program (SHOPP).	As Introduced	Assembly Desk	
ABX1-18 (Linder) Vehicle Weight Fee Revenues	Beginning January 1, 2016, prohibits vehicle weight fee revenues from being used to pay debt service on transportation-related, general obligation bonds.	As Introduced	Assembly Desk	Support
ABX1-19 (Linder) California Transportation Commission	Excludes the California Transportation Commission (CTC) from the California State Transportation Agency (CalSTA), and establishes it as a separate and independent entity in state government.	As Introduced	Assembly Desk	

State Assembly Bills	Subject	Last Amended	Status	VTA Position
ABX1-20 (Gaines) State Government: Elimination of Vacant Positions	Requires the Department of Human Resources to eliminate 25 percent of the vacation positions in state government that are funded by the General Fund. Continuously appropriates \$685 million from the General Fund, with 50 percent to be made available to Caltrans for maintenance of the state highway system or for projects funded under the State Highway Operation and Protection Program (SHOPP), and 50 percent to be made available to cities and counties for local streets/roads.	As Introduced	Assembly Desk	
ABX1-21 (Obernolte) Environmental Quality: Highway Projects	Prohibits a court in a judicial action or proceeding under the California Environmental Quality Act (CEQA) from staying or enjoining a project related to constructing or improving a highway unless the court finds either of the following: (1) the project presents an imminent threat to the public health and safety; or (2) the project site contains unforeseen important Native American artifacts, or unforeseen important historical, archaeological or ecological values that would be materially, permanently and adversely affected by the project unless the court stays or enjoins the project.	As Introduced	Assembly Desk	
ABX1-22 (Patterson) Design-Build Contracting: Highway Projects	Authorizes Caltrans to utilize design-build contracting for an unlimited number of state highway projects, and requires the department to contract with consultants to perform construction inspection services related to those projects. For design-build contracts for state highway projects administered by regional transportation agencies, including the Santa Clara Valley Transportation Agency (VTA), eliminates the requirement in existing law that Caltrans perform construction inspection services related to those projects.	As Introduced	Assembly Desk	
ABX1-23 (E. Garcia) Transportation Projects: Disadvantaged Communities	By January 1, 2017, requires the California Transportation Commission (CTC) to establish a process whereby Caltrans and local agencies receiving funding for highway capital improvement projects from the State Highway Operation and Protection Program (SHOPP), or from the State Transportation Improvement Program (STIP) prioritize projects that provide meaningful benefits to the mobility and safety needs of disadvantaged community residents, as identified by the community through strong public participation. In this regard, requires the CTC to do all of the following: (1) establish a funding floor where no less than 35 percent of rehabilitation and reconstruction projects are located in urban and rural disadvantaged communities, and provide meaningful benefits to the residents of those communities; (2) include robust public stakeholder engagement with regard to the development of guidelines relating to the prioritization of projects in disadvantaged communities; and (3) prioritize projects that recruit, hire and train low-income, formerly incarcerated, or disconnected youth and adults, as well as other individuals with barriers to employment. Specifies that a “disadvantaged community” means a community with any of the following characteristics: (1) an area with a median household income that is less than 80 percent of the statewide median household income based on the most current census-tract-level data from the American Community Survey; (2) an area identified as among the most disadvantaged 25 percent of areas in the state according to the California Environmental Protection Agency (CalEPA), based on the latest version of CalEnviroScreen scores; or (3) an area where at least 75 percent of public school students are eligible to receive free or reduced-price meals under the National School Lunch Program. Requires \$125 million to be appropriated annually from the State Highway Account to the Active Transportation Program, with these additional funds to be used for network grants that prioritize projects in underserved areas.	As Introduced	Assembly Desk	

State Assembly Bills	Subject	Last Amended	Status	VTA Position
ABX1-24 (Levine) Bay Area Transportation Commission	Effective January 1, 2017, redesignates the Metropolitan Transportation Commission (MTC) as the Bay Area Transportation Commission. Requires commissioners to be elected by districts comprised of approximately 750,000 residents, based on the 2010 Census. Declares the intent of the Legislature that the district boundaries should be drawn by a citizen's redistricting commission. Requires each district to elect one commissioner, except that a district with a toll bridge within its boundaries would elect two commissioners. Requires the initial elections for commissioners to occur in 2016. Requires the elected commissioners to take office on January 1, 2017. Declares the intent of the Legislature that campaigns for commissioners should be publicly financed. Specifies that each commissioner's term of office is four years. Effective January 1, 2017, deletes the Bay Area Toll Authority's status as a separate entity from MTC and merges the authority into the Bay Area Transportation Commission.	As Introduced	Assembly Desk	

State Senate Bills

State Senate Bills	Subject	Last Amended	Status	VTA Position
SB 1 (Gaines) Cap-and-Trade: Transportation Fuels	Delays the inclusion of suppliers of transportation fuels in the cap-and-trade system administered by the California Air Resources Board (CARB) from January 1, 2015, to January 1, 2025.	As Introduced	Senate Environmental Quality Committee: Failed Passage	
SB 3 (Leno) Minimum Wage	Increases the minimum wage for all industries as follows: (1) to \$11 per hour beginning January 1, 2016; and (2) to \$13 per hour beginning July 1, 2017. Commencing on January 1, 2019, requires the Industrial Welfare Commission to automatically adjust the minimum wage each year to maintain employee purchasing power diminished by the rate of inflation that occurred during the previous year. Requires the automatic adjustment to be calculated using the California Consumer Price Index. Prohibits the Industrial Welfare Commission from adjusting the minimum wage if the average percentage of inflation for the previous year was negative. Specifies that the provisions of the bill apply to all industries, including public and private employment.	3/11/15	Assembly Appropriations Committee	
SB 5 (Vidak) Cap-and-Trade: Transportation Fuels	Delays the inclusion of suppliers of transportation fuels in the cap-and-trade system administered by the California Air Resources Board (CARB) from January 1, 2015, to January 1, 2020. Applies the provisions of the bill retroactively from January 1, 2015.	As Introduced	Senate Environmental Quality Committee: Failed Passage	
SB 8 (Hertzberg) Sales and Use Tax: Services	Imposes a state sales and use tax on the gross receipts from the sale of, or the receipt of the benefits of, services at an unspecified rate.	2/10/15	Senate Governance & Finance Committee: Failed Passage	

State Senate Bills	Subject	Last Amended	Status	VTA Position
SB 16 (Beall) Road Maintenance and Rehabilitation Program	<p>Establishes the Road Maintenance and Rehabilitation Program for an initial five-year period running through FY 2020. Allows the Legislature to reauthorize the program beyond FY 2020. Proposes to generate between \$2 billion and \$4 billion per year in new revenues for transportation purposes from the following sources: (1) a temporary 10-cent increase in the gasoline excise tax; (2) a temporary 12-cent increase in the diesel excise tax; (3) a temporary registration surcharge of \$35 per year imposed on all motor vehicles; (4) an additional, permanent registration surcharge of \$100 per year imposed on zero-emission vehicles; (5) full repayment over the next three years of all outstanding loans owed by the General Fund to the State Highway Account, the Motor Vehicle Fuel Account, the Highway Users Tax Account (HUTA), and the Motor Vehicle Account; and (6) permanent recapture of vehicle weight fee revenues for transportation projects to be accomplished incrementally over a five-year period. Provides for an incremental increase over a five-year period in the vehicle license fee from 0.65 percent to 1 percent of the market value of a vehicle to backfill the General Fund for the loss of vehicle weight fee revenues. Dedicates these license fee revenues to paying debt service for transportation-related general obligation bonds. Terminates the increases in the gasoline and diesel excise taxes, as well as the \$35 vehicle registration surcharge, if the Road Maintenance and Rehabilitation Program is not reauthorized. Calls for 2 cents of the 12-cent increase in the diesel excise tax to be deposited into the Trade Corridors Improvement Fund and used for goods movement projects programmed by the California Transportation Commission (CTC). Requires the balance to be deposited into a new Road Maintenance and Rehabilitation Account. Requires 5 percent of the funds in the Road Maintenance and Rehabilitation Account to be set aside for allocation to counties that currently do not have a local transportation sales tax in place, but gain voter approval for one after July 1, 2015. Requires the CTC to develop guidelines to define the specific methodology that would be used to distribute these funds to eligible counties. Specifies that any of the 5-percent set-aside that is not allocated to counties in a given fiscal year would be split 50/50 between the State Highway Operation and Protection Program (SHOPP) and local streets/roads. Allocates the remaining balance in the account after the 5-percent set-aside as follows: (1) 50 percent to the SHOPP; and (2) 50 percent to cities and counties for maintenance and rehabilitation work on their local roadway systems. In order to remain eligible for an allocation under the Road Maintenance and Rehabilitation Program, requires cities and counties to maintain their historic commitment of local funds for street/road purposes by annually spending not less than the average of its expenditures from FY 2010, FY 2011 and FY 2012. Establishes a substantial oversight role for the CTC to ensure that the funds allocated under the Road Maintenance and Rehabilitation Program are used by Caltrans and cities/counties in the most efficient and effective manner possible. Requires Caltrans, by April 1, 2016, to submit a plan to the CTC to increase the department's efficiency by up to 30 percent over the subsequent three years.</p>	6/1/15	Senate Floor: Failed Passage	Support

State Senate Bills	Subject	Last Amended	Status	VTA Position
SB 32 (Pavley) Greenhouse Gas Emissions Limit	<p>Requires the California Air Resources Board (CARB), based on the best available scientific, technological and economic assessments, to approve a statewide greenhouse gas emissions limit that is equivalent to 40 percent below the 1990 level to be achieved by 2030. Requires CARB to make recommendations to the Governor and the Legislature on how to continue reductions of greenhouse gas emissions beyond 2030. Provides that the Legislature and appropriate state agencies should adopt complementary policies ensuring that long-term emissions reductions advance all of the following: (1) job growth and local economic benefits; (2) public health benefits for California residents, particularly in disadvantaged communities, that result from direct onsite reductions of greenhouse gas emissions; (3) innovation in technology, as well as in energy, water and resource management practices; and (4) regional and international collaboration to adopt similar greenhouse gas emissions reduction policies. Specifies that CARB shall not take any action to implement the next update of its scoping plan for reducing greenhouse gas emissions unless it has conducted an evaluation of both of the following: (1) the current and projected actions that other jurisdictions within the United States and around the world are taking to reduce greenhouse gas emissions, and how those actions compare to and complement California's efforts; and (2) the cost effectiveness of the various emissions reduction strategies that CARB has undertaken to achieve the 2020 statewide greenhouse gas emissions limit. Requires CARB to submit the next update of its scoping plan to the Legislature. Allows the Legislature to modify, reject or delay some or all of the scoping plan update before its approval by CARB. By January 1, 2017, and each year thereafter, requires CARB to submit to the Legislature a report that contains both of the following: (1) a detailed list of regulatory policies that have been adopted and implemented by state agencies in furtherance of achieving the statewide greenhouse gas emissions limit; and (2) the amounts, sources and locations of greenhouse gas emissions reductions achieved toward the statewide limit. By July 1, 2017, requires the Office of Environmental Health Hazard Assessment to prepare and make available a report analyzing the impacts of the statewide greenhouse gas emissions limit on disadvantaged communities. Requires this report to include all of the following: (1) tracking and analysis of greenhouse gas emissions, criteria air pollutants and other pollutant emission levels in disadvantaged communities; (2) compliance strategies used for greenhouse gas emissions sources in disadvantaged communities; and (3) analysis of public health and other relevant environmental health exposure indicators related to air pollutants in disadvantaged communities.</p>	9/10/15	Assembly Natural Resources Committee	
SB 39 (Pavley) HOV Lanes: Low-Emission and Fuel-Efficient Vehicles	<p>Increases the number of green stickers that can be issued by the Department of Motor Vehicles (DMV) to allow certain low-emission and fuel-efficient vehicles to use high-occupancy vehicle (HOV) lanes regardless of the number of occupants from 70,000 to 85,000.</p>	4/8/15	Assembly Transportation Committee	

State Senate Bills	Subject	Last Amended	Status	VTA Position
SB 122 (Jackson) CEQA: Record of Proceedings	At the request of a project applicant, requires the lead agency for California Environmental Quality Act (CEQA) purposes to prepare a record of proceedings concurrently with the preparation of a negative declaration, mitigated negative declaration, environmental impact report (EIR), or other environmental documents for the project, as specified. Requires the Office of Planning and Research to establish and maintain a database for the collection, storage, retrieval, and dissemination of environmental documents, notices of exemption, notices of preparation, notices of determination, and notices of completion provided to the office. Requires a lead agency to submit a sufficient number of copies, in either a hard copy or electronic form as required by the Office of Planning and Research, of its draft environmental document, proposed negative declaration or proposed mitigated negative declaration to the State Clearinghouse for review and comment by state agencies. Requires a lead agency to accept comments on these documents through electronic mail and to treat such comments as equivalent to written comments.	6/1/15	Assembly Appropriations Committee	
SB 158 (Huff) Public-Private Partnerships: I-710 Gap Closure Project	Allows Caltrans to enter into an agreement to implement a public-private partnership for the I-710 Gap Closure Project in Los Angeles County on or after January 1, 2017, which is when current state statutory authority for utilizing public-private partnerships for transportation projects expires.	3/26/15	Senate Transportation & Housing Committee: Failed Passage	
SB 189 (Hueso) Clean Energy and Low-Carbon Economic and Jobs Growth Blue Ribbon Committee	Creates the Clean Energy and Low-Carbon Economic and Jobs Growth Blue Ribbon Committee within the California Environmental Protection Agency (CalEPA) to be comprised of seven members appointed by the Governor, the Speaker of the Assembly and the Senate Rules Committee. Requires the committee to consist solely of persons with expertise in economic, financial or policy aspects of clean energy, economic growth, job creation, workforce standards, or employment opportunities for disadvantaged workers. Requires the committee to advise state agencies on the most effective ways to: (1) expend funds related to clean energy and the reduction of greenhouse gas emissions; and (2) implement policies in order to maximize California's economic and employment benefits. In addition, requires the committee to do all of the following: (1) develop guidance for tracking, reporting and evaluating jobs outcomes for state clean energy and low-carbon investments; (2) develop guidance to measure the quantity and quality of jobs created by state clean energy and low-carbon investments, as well as the geographic and demographic distribution of those jobs; (3) advise state agencies on the most effective ways to require responsible contractor standards, as applicable, and minimum training and skill certifications for workers to ensure high-quality work for state clean energy and low-carbon investments; (4) advise state agencies on the most effective ways to connect disadvantaged communities to good quality jobs and career pathways created by state clean energy and low-carbon investments; and (5) advise state agencies on the most effective ways to align state clean energy and low-carbon training funds with existing state workforce development investments and strategies.	8/17/15	Assembly Appropriations Committee	
SB 192 (Liu) Bicycle Helmets	Requires the Office of Traffic Safety to conduct a comprehensive study of bicycle helmet use in California. Requires this study to include: (1) a determination of the percentage of California bicyclists who do not wear helmets; and (2) the fatalities and serious injuries that could have been avoided if helmets had been worn. Requires a report of the study's findings to be submitted to the Legislature by January 1, 2017.	4/30/15	Senate Appropriations Committee: Failed Passage	

State Senate Bills	Subject	Last Amended	Status	VTA Position
SB 206 (Gaines) Vehicle Information Systems	Prohibits the California Air Resources Board (CARB) from obtaining locational data from a vehicle information system, except to assist the vehicle owner or operator to use as a defense in an enforcement action brought by CARB.	5/6/15	Senate Appropriations Committee: Failed Passage	
SB 207 (Wieckowski) Greenhouse Gas Reduction Fund: State Agency Reporting	Requires any state agency expending cap-and-trade auction proceeds from the Greenhouse Gas Reduction Fund to post on its Internet Website a record describing each expenditure and how that expenditure would reduce greenhouse gas emissions.	3/24/15	Assembly Natural Resources Committee	
SB 254 (Allen) State Highways: Relinquishments	Authorizes the California Transportation Commission (CTC), without legislative action, to relinquish portions of the state highway system to a city or county, provided that the state highway facility is not an interstate highway or part of the state's interregional road network. Requires Caltrans to enter into an agreement with the local jurisdiction before the state highway facility can be relinquished. Requires this agreement to transfer all legal liability for the relinquished state highway facility from Caltrans to the local jurisdiction, as well as include any financial terms. Requires Caltrans and the local jurisdiction to agree on the condition of the relinquished state highway facility at the time of its transfer from the department to the local jurisdiction. Specifies that relinquishment shall not occur unless all of the following conditions are met: (1) the CTC has determined that the relinquishment is in the best interest of the state; (2) Caltrans completes a cost-benefit analysis on behalf of the state; and (3) the CTC holds a public hearing on the proposed relinquishment. In the case of a state highway that has been superseded by relocation, prohibits relinquishment until Caltrans has placed the facility in a state of good repair. By April 1, 2016, and biennially thereafter, requires Caltrans to report to the CTC on which state highway routes or segments primarily serve regional travel, and do not primarily facilitate the interregional movement of people and goods. Requires this report to: (1) identify those routes or segments that are the best candidates for relinquishment; and (2) include an aggregate estimate of future maintenance and preservation costs of the identified routes and segments. Requires the CTC to compile a list of all portions of the state highway system that have been relinquished in the previous 12 months and to include this information in its annual report to the Legislature.	6/2/15	Assembly Transportation Committee	
SB 321 (Beall) Variable Gas Tax Rate	In calculating adjustments to the variable gas tax rate to be made for FY 2017 and each fiscal year thereafter in order to ensure that the same amount of revenue is generated as by the former state sales tax on gasoline pursuant to the 2010-2011 transportation funding swap, requires the Board of Equalization to use a combined average based on an estimate of fuel prices for the current fiscal year and the actuals for the four previous fiscal years, rather than using projections of fuel prices for only the upcoming fiscal year.	8/18/15	Senate Floor: Concurrence	Support

State Senate Bills	Subject	Last Amended	Status	VTA Position
SB 344 (Monning) Commercial Driver's License: Education	Beginning January 1, 2018, requires a person, in addition to a written and driving test, to successfully complete a course of instruction from either a commercial driver training institution or a program offered by an employer that has been certified by the Department of Motor Vehicles (DMV) before he or she is issued an original commercial driver's license. Provides an exemption to this course of instruction requirement in the following cases: (1) a commercial motor vehicle driver with military motor vehicle experience who is currently licensed with the U.S. Armed Forces; (2) a commercial motor vehicle driver who presents a valid certificate of driving skill from an approved employer-testing program that includes a course of instruction that meets the minimum standards set by the DMV; (3) a commercial motor vehicle driver who presents a certificate issued by the California Highway Patrol (CHP) or a Transit Driver Training Record DL 260 form signed by an employer trainer certified by the Federal Transit Administration's "Train-the-Trainer" Program; or (4) a commercial motor vehicle driver who has received and documented training in compliance with the Education Code.	6/23/15	Assembly Appropriations Committee	
SB 389 (Berryhill) CEQA: Sustainable Environmental Protection Act	Enacts the Sustainable Environmental Protection Act. Prohibits a cause of action on the grounds of non-compliance with the California Environmental Quality Act (CEQA) that relates to any topical area or criteria for which compliance obligations are identified. Also prohibits challenges to environmental documents based on non-compliance with CEQA if: (1) the environmental document discloses compliance with applicable environmental laws; (2) the project conforms with the use designation, density or building intensity in an applicable plan; and (3) the project approval incorporates applicable mitigation requirements into the environmental document. Specifies that the provisions of this bill only apply if the lead agency or project applicant has agreed to provide to the public in a readily accessible electronic format an annual compliance report prepared pursuant to a mitigation monitoring and reporting program required by CEQA.	4/6/15	Senate Environmental Quality Committee: Failed Passage	
SB 391 (Huff) Assault and Battery: Public Transit Employees	Makes an assault committed against a public transit employee punishable by imprisonment in a county jail for up to one year, by a fine not to exceed \$2,000, or by both imprisonment and that fine. Makes a battery committed against a public transit employee punishable by imprisonment in a county jail for up to one year, by a fine not to exceed \$2,000, or by both imprisonment and that fine. Makes a battery committed against a public transit employee that results in an injury punishable by imprisonment in a county jail for up to one year, by a fine not to exceed \$2,000, or by both imprisonment and that fine; or by imprisonment in a county jail for 16 months, or two or three years.	4/21/15	Senate Public Safety Committee: Failed Passage	
SB 398 (Leyva) Green Assistance Program	Establishes the Green Assistance Program to be administered by the California Environmental Protection Agency (CalEPA). Requires the Green Assistance Program to provide technical assistance to small businesses, small non-profit organizations and disadvantaged communities in applying for an allocation of cap-and-trade auction proceeds from the Greenhouse Gas Reduction Fund. Specifies that the Green Assistance Program may include the following: (1) basic information on available programs funded with cap-and-trade auction proceeds, and the eligibility requirements and deadlines for those programs; and (2) referrals to designated contact people in public agencies administering programs funded with cap-and-trade auction proceeds. Requires CalEPA to use existing resources appropriated by the Legislature in the annual Budget Act to administer the Green Assistance Program.	6/2/15	Assembly Appropriations Committee	

State Senate Bills	Subject	Last Amended	Status	VTA Position
SB 400 (Lara) Cap-and-Trade: High-Speed Rail	Requires not less than 25 percent of the cap-and-trade auction proceeds continuously appropriated to the California High-Speed Rail Authority from the Greenhouse Gas Reduction Fund to be allocated for projects that either reduce or offset greenhouse gas emissions directly associated with the construction of the high-speed rail project and provide a co-benefit of improving air quality. Requires priority to be given to measures and projects in communities that are located in areas designated as extreme non-attainment. Provides that measures and project eligible for funding may include the following: (1) public transit improvements that reduce congestion; (2) transportation improvements that reduce congestion, including network improvements and roadway modifications; (3) alternative transportation options, including infrastructure improvements that support clean transportation, facilitate bicycle and pedestrian use, and connect bicycle and pedestrian routes to public transit facilities; (4) natural systems, including rural and urban forests, that reduce greenhouse gas emissions or increase the sequestration of carbon to mitigate the impacts of greenhouse gas emissions, and create greater climate resiliency; and (5) the use of low- and zero-emission equipment for transportation and construction.	6/1/15	Assembly Appropriations Committee	
SB 433 (Berryhill) Variable Gas Tax Rate: Department of Finance	For FY 2017 through FY 2021, requires the Department of Finance, rather than the Board of Equalization, to calculate any adjustments to the variable gas tax rate that would be needed to ensure that the same amount of revenue is generated as by the former state sales tax on gasoline pursuant to the 2010 transportation funding swap. Similarly, for FY 2017 through FY 2021, requires the Department of Finance, rather than the Board of Equalization, to adjust the diesel excise tax rate to maintain revenue neutrality with the increase in the state sales tax rate on diesel fuel that was enacted as part of the 2010 transportation funding swap.	5/7/15	Assembly Revenue & Taxation Committee	
SB 564 (Cannella) Traffic Violations: School Zones	Adds \$35 to the base fine for certain traffic violations that occur: (1) when passing a school building or grounds contiguous to a highway; or (2) when passing any school grounds not separated from the highway by a fence, gate or other physical barrier while in use by children. Requires the revenues from these additional fines to be deposited in the State Transportation Fund for school zone safety projects in the Active Transportation Program.	As Introduced	Assembly Transportation Committee	
SB 578 (Block) Income and Corporate Tax Credit for Electric Vehicle Charging Stations	For taxable years beginning on or after January 1, 2016, allows a tax credit in an amount equal to 30 percent of the cost of purchasing Level 2 or direct current fast charger electric vehicle charging stations to be used in the trade or business of the taxpayer. Provides that this tax credit may not exceed \$30,000 per taxable year.	4/13/15	Senate Appropriations Committee: Failed Passage	
SB 627 (Galgiani) Commuting Miles Tax Credit	For taxable years beginning on or after January 1, 2015, allows a tax credit in an amount computed by multiplying an unspecified dollar figure by the total number of a taxpayer's commuting miles.	As Introduced	Senate Governance & Finance Committee: Failed Passage	

State Senate Bills	Subject	Last Amended	Status	VTA Position
SB 681 (Hill) Vehicles: Right Turn Violations	Decreases the penalty for failing to come to a complete stop before making a right turn, or a left turn from a one-way street onto another one-way street, when a traffic light is red from \$100 to \$35.	1/5/16	Senate Appropriations Committee: Failed Passage	
SB 698 (Cannella) Cap-and-Trade: School Zone Safety Projects	Requires an unspecified amount of cap-and-trade auction proceeds from the Greenhouse Gas Reduction Fund to be continuously appropriated to the State Highway Account for purposes of funding school zone safety projects under the state's Active Transportation Program.	As Introduced	Senate Environmental Quality Committee: Failed Passage	
SB 706 (Pavley) Cap-and-Trade: Alternative Fuels	Allows cap-and-trade auction proceeds deposited into the Greenhouse Gas Reduction Fund to be used to encourage the in-state production of alternative fuels with low-carbon intensity from new and existing facilities using sustainable feedstocks.	4/6/15	Senate Appropriations Committee: Failed Passage	
SB 757 (Wieckowski) South Bay Area Public Transit Service	States the intent of the Legislature to enact a bill to do the following: (1) require the Alameda County Transportation Commission to explore the feasibility of a multimodal station in the city of Fremont at a location that can be served by both Bay Area Rapid Transit District (BART) and Altamont Commuter Express (ACE) trains; and (2) require the Santa Clara Valley Transportation Authority (VTA) to explore expansion of light rail service to Levi's Stadium in the city of Santa Clara.	As Introduced	Senate Rules Committee: Failed Passage	
SB 773 (Allen) Vehicle Registration Fraud Study	Requests the University of California to conduct a study on motor vehicle registration fraud and failure to register a motor vehicle. If conducted, requires the study to include all of the following: (1) quantification of the magnitude of the problem; (2) the strategies being used by motorists to commit motor vehicle registration fraud; (3) the reasons for the behaviors of motorists who commit motor vehicle registration fraud or who fail to register their motor vehicles; (4) the costs to the state and local governments in lost revenues; (5) increases in air pollution; (6) other costs and consequences of these behaviors; and (7) recommended strategies for increasing compliance with registration requirements. Requires the Department of Motor Vehicles (DMV) to enter into an agreement with the University of California to share its vehicle registration information with university researchers for purposes of conducting the study. Requests the University of California to post a report regarding the study on its Internet Web site by January 1, 2017.	6/23/15	Assembly Transportation Committee	

State Senate Bills	Subject	Last Amended	Status	VTA Position
SB 824 (Beall) Low Carbon Transit Operations Program	Makes a number of changes to the structure of the Low Carbon Transit Operations Program. For capital projects, requires a recipient transit agency to do all of the following: (1) specify the phases of work for which the agency is seeking an allocation of funding from the Low Carbon Transit Operations Program; (2) identify the sources and timing of all funding required to undertake and complete any phase of a project for which the agency is seeking an allocation from the program; and (3) described intended sources and timing of funding to complete any subsequent phases of the project through construction or procurement. Allows a recipient transit agency that does not submit a project for funding in a particular fiscal year to retain its funding share, and to accumulate and utilize that funding share in a subsequent fiscal year for a larger expenditure. Allows a recipient transit agency, in a particular fiscal year, to loan or transfer its funding share to another recipient transit agency with an identified eligible project. Allows a group of recipient transit agencies, in a particular fiscal year, to enter into an agreement to pool their funding shares for an identified eligible project. Allows a recipient transit agency to apply to Caltrans to do either of the following: (1) reassign any savings of Low Carbon Transit Operations Program funding allocated for a completed project to another eligible project; or (2) reassign to another eligible project any Low Carbon Transit Operations Program funding previously allocated to a project that the agency has determine is no longer a high priority. Allows for the use of Letters of No Prejudice (LONPs), so that recipient transit agencies can advance their projects with local money and then get reimbursed with Low Carbon Transit Operations Program dollars when that funding becomes available.	As Introduced	Senate Transportation & Housing Committee	Support
SB 879 (Beall) Housing Bond Act	Declares the intent of the Legislature to enact a bill that would authorize the issuance of bonds for financing housing-related programs that would serve the homeless, as well as extremely low-income and very low-income Californians over the course of the next decade.	As Introduced	Senate Rules Committee	
SB 882 (Hertzberg) Fare Evasion: Minors	Prohibits a public transit agency from charging a minor with an infraction or misdemeanor for acts of fare evasion.	As Introduced	Senate Public Safety Committee	
SB 885 (Wolk) Design Professionals: Claims	Commencing with contracts entered into on or after January 1, 2017, provides that a design professional shall only have the duty to defend claims that arise out of, pertain to or relate to the negligence, recklessness or willful misconduct of the design professional. Provides that a design professional shall have no duty to defend claims against other persons or entities.	As Introduced	Senate Judiciary Committee	
SB 901 (Bates) Advanced Mitigation Program	Requires Caltrans to establish an Advanced Mitigation Program to accelerate project delivery and improve the outcomes of environmental mitigation for transportation infrastructure projects. Allows the program to utilize mitigation instruments, including mitigation banks and conservation easements. Beginning with FY 2017, requires Caltrans to set aside at least \$30 million per year from the annual appropriations for the State Transportation Improvement Program (STIP), and the State Highway Operation and Protection Program (SHOPP) for the planning and implementation of projects in the Advanced Mitigation Program.	As Introduced	Senate Rules Committee	

State Senate Bills	Subject	Last Amended	Status	VTA Position
SB 902 (Cannella) Federal Environmental Review Process	Extends indefinitely the statutory authorization for Caltrans to participate in a federal program that allows states to assume the responsibilities of the Federal Highway Administration (FHWA) under the National Environmental Policy Act (NEPA). In addition, extends indefinitely provisions in existing law that authorize Caltrans to consent to the jurisdiction of the federal court's with regard to the assumption of FHWA's responsibilities under NEPA and that waive the state's Eleventh Amendment protection against NEPA-related lawsuits brought in federal court for as long as Caltrans participates in the program.	As Introduced	Senate Rules Committee	
SB 903 (Nguyen) Transportation Loans	Acknowledges that as of June 30, 2015, there is \$879 million in loans of certain transportation revenues still outstanding, and requires this amount to be repaid by the General Fund from the Budget Stabilization Account no later than June 30, 2016. Requires the loan repayments to be distributed as follows: (1) \$148 million to be allocated by the California Transportation Commission (CTC) to fund construction and associated support costs for projects that are programmed in the Traffic Congestion Relief Program (TCRP), but which have not received their full allocations pursuant to current law; (2) \$334 million to the Trade Corridors Improvement Fund; (3) \$265 million to the Transit and Intercity Rail Capital Program; and (4) \$132 million to the State Highway Operation and Protection Program (SHOPP).	As Introduced	Senate Rules Committee	
SCA 7 (Huff) Motor Vehicle Fees and Taxes: Restrictions on Expenditures	Calls for placing before the voters an amendment to the California Constitution to prohibit the Legislature from borrowing revenues derived from fees and taxes imposed by the state on motor vehicles or their use or operations, and from using these revenues other than for state highways, local streets and roads, and fixed guideway mass transit as specified in Article 19 of the Constitution. Also prohibits these revenues from being pledged or used for the payment of principal and interest on bonds, or for other indebtedness. Requires the revenues derived from that portion of the vehicle license fee that exceeds 0.65 percent of the market value of a vehicle to be used for street and highway purposes. Prohibits the Legislature from borrowing these revenues and from using them other than as specifically permitted. Also prohibits these revenues from being pledged or used for the payment of principal and interest on bonds, or for other indebtedness.	5/28/15	Senate Transportation & Housing Committee	

State Senate Bills	Subject	Last Amended	Status	VTA Position
SBX1-1 (Beall) Transportation Funding	<p>Proposes to generate between \$4 billion and \$5 billion per year in new revenues for transportation purposes from the following sources: (1) an increase in the gasoline excise tax of 12 cents per gallon; (2) an increase in the diesel excise tax of 22 cents per gallon; (3) a registration surcharge of \$35 per year imposed on all motor vehicles; (4) a registration surcharge of \$100 per year imposed on zero-emission vehicles; and (5) a road access charge of \$35 per year imposed on all motor vehicles to be collected by the Department of Motor Vehicles (DMV) as part of the annual vehicle registration process. Requires the repayment over the next three years of approximately \$879 million in outstanding loans owed by the General Fund to the State Highway Account, the Motor Vehicle Fuel Account, the Highway Users Tax Account (HUTA), and the Motor Vehicle Account. Beginning July 1, 2019, and every three years thereafter, indexes the gas tax and the diesel excise tax to inflation. Calls for 12 cents of the 22-cent increase in the diesel excise tax to be deposited into the Trade Corridors Improvement Fund and used for goods movement projects programmed by the California Transportation Commission (CTC). Requires the balance of the new revenues generated from the five tax and fee increases, as well as the one-time revenues from the General Fund loan repayments, to be deposited into a new Road Maintenance and Rehabilitation Account. Requires the revenues in the account to be used for the following purposes: (1) road maintenance and rehabilitation; (2) safety projects; (3) railroad grade separations; (4) active transportation and pedestrian/bicycle safety projects in conjunction with any other allowable project; or (5) wildlife crossings. Every year, requires 5 percent of the funds in the Road Maintenance and Rehabilitation Account to be set aside for allocation to counties that currently do not have a local transportation sales tax, but gain voter approval for one after July 1, 2015. Requires the CTC to develop guidelines to define the specific methodology that would be used to distribute these funds to eligible counties. Requires any of the 5-percent set-aside that is not allocated to counties in a given fiscal year to be split 50/50 between Caltrans and cities/counties. Allocates the remaining balance in the account after the 5-percent set-aside as follows: (1) 50 percent to Caltrans for state highway maintenance, State Highway Operation and Protection Program (SHOPP) projects, or other eligible purposes; and (2) 50 percent to cities and counties for their local roadway systems. In the latter case, equally divides the funds between cities and counties, with the cities' portion being allocated by a formula based on population, and the counties' share by a formula based on vehicle registrations and miles of maintained county roads. Requires cities and counties to use their formula shares for any of the following: (1) improvements to transportation facilities that will assist in reducing further deterioration of the existing roadway system; (2) to satisfy a local match requirement for federal or state funds for similar purposes; (3) an active transportation project that is done in conjunction with a roadway maintenance, repair or rehabilitation project; or (4) any other eligible project, as specified. Allows a city or county to spend its formula share for other priorities only if it has an average Pavement Condition Index that meets or exceeds 85. In order to remain eligible for an allocation from the Road Maintenance and Rehabilitation Account, requires cities and counties to maintain their historic commitment of local funds for street/road purposes by annually spending not less than the average of its expenditures from FY 2010, FY 2011 and FY 2012. Establishes a substantial oversight role for the CTC to ensure that the funds allocated from the Road Maintenance and Rehabilitation Account are used by Caltrans and cities/counties in manner that is consistent with performance criteria adopted by the commission related to highway/roadway performance, greenhouse gas emissions, social equity impacts, and public health impacts. Requires Caltrans, by April 1, 2016, to submit a plan to the CTC to increase its efficiency by up to 30 percent over the subsequent three years.</p>	9/1/15	Senate Appropriations Committee	Support

State Senate Bills	Subject	Last Amended	Status	VTA Position
SBX1-2 (Huff) Cap-and-Trade: State Highways and Local Roadways	Requires the Legislature to appropriate cap-and-trade auction proceeds generated from the transportation fuels sector for transportation infrastructure, including public streets and highways, but excluding high-speed rail.	As Introduced	Senate Transportation & Infrastructure Development Committee	
SBX1-3 (Vidak) High-Speed Rail: Bond Funding	Specifies that no further bonds shall be sold for high-speed rail purposes pursuant to the Safe, Reliable High-Speed Passenger Train Bond Act for the 21 st Century (Proposition 1A), except as specifically provided with respect to an existing appropriation for early improvement projects related to the Phase I blended system. Upon appropriation by the Legislature, requires the unspent proceeds received from outstanding bonds issued and sold for high-speed rail purposes prior to the effective date of the provisions of this bill to be redirected to retiring the debt incurred from the issuance and sale of those outstanding bonds. Allows the remaining unissued bonds, as of the effective date of the provisions of this bill, that were authorized for high-speed rail purposes to be issued and sold. Upon appropriation by the Legislature, requires the net proceeds from the sale of these remaining unissued bonds to be made available as follows: (1) 50 percent to Caltrans to fund repair and new construction projects on state highways and freeways; and (2) 50 percent to Caltrans to create a program to fund repair and new construction projects on local streets and roads, with each county receiving a base amount of funding, and any additional funding being allocated based on a county's population. Makes no changes to the authorization under Proposition 1A for the issuance of \$950 million in bonds for rail purposes other than high-speed rail.	8/17/15	Senate Transportation & Infrastructure Development Committee	
SBX1-4 (Beall) Transportation Funding: State Highways and Local Roadways	Declares the intent of the Legislature to enact statutory changes to establish permanent, sustainable sources of transportation funding to maintain and repair the state's highways, local roads, bridges, and other critical transportation infrastructure.	9/4/15	Conference Committee	
SBX1-5 (Beall) Transportation Funding: Trade Corridors and Local Transportation Infrastructure	Declares the intent of the Legislature to enact a bill to establish permanent, sustainable sources of transportation funding to improve the state's key trade corridors, and support efforts by local governments to repair and improve local transportation infrastructure.	As Introduced	Assembly Desk	
SBX1-6 (Runner) Cap-and-Trade: High-Speed Rail	Prohibits the use of cap-and-trade auction proceeds for the state's high-speed rail project. Requires 65 percent of the cap-and-trade auction proceeds deposited into the Greenhouse Gas Reduction Fund to be distributed to the California Transportation Commission (CTC) for allocation to high-priority transportation projects, as determined by the commission. Requires the CTC to allocate these funds as follows: (1) 40 percent to state highway projects; (2) 40 percent to local street/road projects, equally divided between cities and counties; and (3) 20 percent to public transit projects.	As Introduced	Senate Transportation & Infrastructure Development Committee	

State Senate Bills	Subject	Last Amended	Status	VTA Position
SBX1-7 (Allen) Diesel Sales Tax	Increases the sales and use tax rate on diesel fuel by 3.5 percent. Dedicates the revenues derived from this increase to the State Transit Assistance Program (STA). Restricts the expenditure of these revenues to transit capital projects, or services to maintain or repair a public transit agency's existing vehicle fleet or facilities, including the following: (1) rehabilitation or modernization of existing vehicles or facilities; (2) design, acquisition and construction of new vehicles or facilities that improve existing public transit services or that enable the implementation of future planned services; or (3) services that complement local efforts for repair and improvement of local transportation infrastructure.	9/3/15	Senate Appropriations Committee	Support
SBX1-8 (Hill) Cap-and-Trade: Public Transit Funding	Increases the amount of cap-and-trade auction proceeds continuously appropriated from the Greenhouse Gas Reduction Fund to the Low Carbon Transit Operations Program from 5 percent to 10 percent, and to the Transit and Intercity Rail Capital Program from 10 percent to 20 percent.	As Introduced	Senate Appropriations Committee	Support
SBX1-9 (Moorlach) Caltrans: Architectural and Engineering Services	Prohibits Caltrans from using any non-recurring funds, including loan repayments, bond funds or grant funds, to pay the salaries or benefits of any permanent civil service position within the department. Beginning on July 1, 2016, requires Caltrans to contract with qualified private entities for a minimum of 15 percent of the total annual value of architectural and engineering services with respect to public works projects undertaken by the department. Increases this percentage each year to a minimum of 50 percent by July 1, 2023.	As Introduced	Senate Transportation & Infrastructure Development Committee	
SBX1-10 (Bates) State Transportation Improvement Program	Revises the process for programming and allocating the 75-percent share of federal and state funds available for regional transportation improvement programs (RTIPs). Requires the California Transportation Commission (CTC) to compute the annual county share amounts for each county for programming and allocation under the RTIPs. Requires these funds, along with an appropriate amount of capital outlay support dollars, to be appropriated annually through the Budget Act. Upon the enactment of the Budget Act, requires Caltrans to apportion the RTIP county shares for each county as block grants to the applicable regional transportation planning agency (RTPA). Requires the RTPAs to identify the transportation capital improvement projects to be funded with these dollars in their RTIPs. Requires the CTC to incorporate the RTIPs into the State Transportation Improvement Program (STIP). Eliminates the role of the CTC in programming and allocating funding for RTIP projects, but retains certain oversight roles of the commission with respect to the expenditure of these dollars. Repeals provisions in current law governing the computation of county shares over multiple fiscal years.	As Introduced	Senate Transportation & Infrastructure Development Committee	

State Senate Bills	Subject	Last Amended	Status	VTA Position
SBX1-11 (Berryhill) CEQA: Exemption for Certain Transportation Projects	Exempts from the California Environmental Quality Act (CEQA) a project that consists of the inspection, maintenance, repair, restoration, reconditioning, relocation, replacement, or removal of existing transportation infrastructure, including highways, roadways, bridges, tunnels, public transit systems, and paths and sidewalks serving either bicycles or pedestrians, if the project meets all of the following conditions: (1) the project is located within an existing right-of-way; (2) any area surrounding the right-of-way that is altered as a result of construction activities that are necessary for the completion of the project will be restored to its condition before the project; and (3) the project applicant agrees to comply with all conditions otherwise authorized by law or imposed by a city or county as part of any local agency permit process that are required to mitigate potential impacts of the project. Prohibits a court in a judicial action or proceeding under CEQA from staying or enjoining a transportation infrastructure project that is included in a regional sustainable communities strategy (SCS) or alternative planning strategy unless the court finds either of the following: (1) the project presents an imminent threat to the public health and safety; or (2) the project site contains unforeseen important Native American artifacts, or unforeseen important historical, archaeological or ecological values that would be materially, permanently and adversely affected by the project unless the court stays or enjoins the project.	9/4/15	Senate Transportation & Infrastructure Development Committee	
SBX1-12 (Runner) California Transportation Commission	Excludes the California Transportation Commission (CTC) from the California State Transportation Agency (CalSTA) and, instead, establishes the commission as a separate entity in state government to act in an independent oversight role. Requires Caltrans to submit its proposed program of projects for the State Highway Operation and Protection Program (SHOPP) to the CTC for review by January 31 of each even-numbered year. Requires Caltrans to program capital outlay support resources for each project included in the SHOPP. Requires Caltrans to provide the CTC with detailed information for all programmed SHOPP projects, including cost, scope and schedule. Specifies that the CTC is not required to approve the SHOPP in its entirety, as submitted by Caltrans, and may approve or reject individual SHOPP projects programmed by the department. Requires Caltrans to submit to the CTC for approval any changes in a programmed SHOPP project's cost, scope or schedule.	8/20/15	Senate Appropriations Committee	

State Senate Bills	Subject	Last Amended	Status	VTA Position
SBX1-13 (Vidak) Office of the Transportation Inspector General	Creates the Office of the Transportation Inspector as an independent state government entity to ensure that Caltrans; the California High-Speed Rail Authority; and all other state agencies expending state transportation funds are operating efficiently, effectively, and in compliance with applicable federal and state laws. Requires the Governor to appoint a transportation inspector general, subject to confirmation by the Senate, to a six-year term. Provides that the transportation inspector general cannot be removed from office during that term, except for good cause. Requires the transportation inspector general to review policies, practices and procedures, and to conduct audits and investigations of activities involving state transportation funds in consultation with all affected state agencies. Specifically, requires the transportation inspector general to do all of the following: (1) examine the operating practices of Caltrans, the High-Speed Rail Authority and all other state agencies expending state transportation funds to identify fraud and waste, opportunities for efficiencies, and opportunities to improve the data used to determine appropriate project resource allocations; (2) identify best practices in the delivery of transportation projects, and develop policies or recommend proposed legislation enabling state agencies to adopt these practices when practicable; (3) provide objective analysis of, and when possible, offer solutions to, concerns raised by the public or generated within agencies involving the state's transportation infrastructure and project delivery methods; (4) conduct, supervise and coordinate audits and investigations relating to the programs and operations of all state transportation agencies with state-funded transportation projects; and (5) recommend policies promoting economy and efficiency in the administration of programs and operations of all state transportation agencies with state-funded transportation projects. Prohibits the Office of the Transportation Inspector General from conducting any audit or investigation that would be redundant to or concurrent with any audit or investigation of the same matter.	9/3/15	Senate Appropriations Committee	
SBX1-14 (Cannella) Public-Private Partnerships	Extends existing statutory authority for Caltrans and regional transportation agencies, including the Santa Clara Valley Transportation Authority (VTA), to utilize public-private partnerships for transportation infrastructure projects indefinitely.	As Introduced	Senate Transportation & Infrastructure Development Committee	Support
SCAX1-1 (Huff) Motor Vehicle Fees and Taxes: Restrictions on Expenditures	Calls for placing before the voters an amendment to the California Constitution to prohibit the Legislature from borrowing revenues derived from fees and taxes imposed by the state on motor vehicles or their use or operations, and from using these revenues other than for state highways, local streets and roads, and fixed guideway mass transit as specified in Article 19 of the Constitution. Also prohibits these revenues from being pledged or used for the payment of principal and interest on bonds, or for other indebtedness. Requires the revenues derived from that portion of the vehicle license fee that exceeds 0.65 percent of the market value of a vehicle to be used for street and highway purposes. Prohibits the Legislature from borrowing these revenues and from using them other than as specifically permitted. Also prohibits these revenues from being pledged or used for the payment of principal and interest on bonds, or for other indebtedness.	As Introduced	Senate Appropriations Committee	