SAN DIEGO COUNTY
REGIONAL AIRPORT AUTHORITY

STAFF REPORT

Item No. 15

Meeting Date: **JUNE 7, 2012**

Subject:

Approve and Authorize the President/CEO to Execute Amendment No. 1 to the Amended and Restated San Diego County Regional Airport Authority Retirement Plan and Trust of 2008.

Recommendation:

Adopt Resolution No. 2012-0069, approving and authorizing the President/CEO to execute Amendment No. 1 to the Amended and Restated San Diego County Regional Airport Authority Retirement Plan and Trust of 2008

Background/Justification:

For the benefit of the employees of the Authority and their beneficiaries, on January 1, 2003, the Board of the San Diego County Regional Airport Authority adopted the San Diego City Employees' Retirement System Retirement Plan for Airport Authority Employees. On May 3, 2004, the Board amended this Plan by approving the San Diego City Employees' Retirement System First Amended Retirement Plan for Airport Authority Employees. Subsequently, on June 5, 2008, the Board once again amended the Plan by approving the Amended and Restated San Diego County Regional Airport Authority Retirement Plan and Trust of 2008 (the "Plan").

The Plan is a qualified governmental pension plan under §401(a) and §414(d) of the Internal Revenue Code of 1986, as amended. The Plan is administered by the San Diego City Employees' Retirement System ("SDCERS") pursuant to the terms of the San Diego City Employees' Retirement System Participation and Administration Agreement ("P & A Agreement") which was approved by the Board in 2008. SDCERS administers the Plan under a Group Trust (as set forth in the Declaration of Trust effective July 1, 2007 and adopted by the Board on March 16, 2007) pursuant to IRS Code §401(a)(24) and in accordance with Revenue Ruling 81-100, as revised by Revenue Ruling 2004-67. In accordance with the P & A Agreement, San Diego Municipal Code §24.1806 and the provisions of the Group of San Diego Trust, the Authority's Plan is treated as a separate retirement plan from that of the City or San Diego Unified Port District with a separate trust, however with the assets of the three plans commingled for investment purposes only.

The Authority has been notified by the General Counsel of SDCERS and by SDCERS' outside counsel (the law firm of Ice Miller) that certain amendments to the plan are required based on federal law and based on the advice of the IRS. Attached as "Exhibit A" is Amendment No. 1 [DRAFT] which proposes to amend the Plan to incorporate the

required changes as identified by legal counsel. Attached as "Exhibit B" is a matrix prepared by Ice Miller explaining the legal authority requiring the amendments as contained in Amendment No. 1 and a history of past amendments since passage of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, 115 Stat. 38 (codified in scattered sections of 26 U.S.C.). Described below is a summary of the proposed amendments.

The first amendment: Sec. 1 amend Plan §1000(d) and relates to the Required Minimum Distributions provision (IRS §401(a)(9)) of the Plan to add a reference to SDCERS' "good faith interpretation" in accordance with new regulations. (Exhibit B, Matrix, Page 2.)

The second amendment: Sec. 2 amends Plan §1000(g) and pertains to the definition of "eligible rollover distribution" to clarify some unclear language on one point. Ice Miller is recommendingd that the provisions relating to separate accounting for after-tax rollovers be clearly stated to apply to both IRAs and defined contribution plans. (Exhibit B, Matrix, page 3.)

A third amendment: Sec. 3 amend Plan §1000(h) of the Plan and pertains to updating the IRS§415 provisions of the Plan to ensure compliance with the Worker, Retiree, and Employee Recovery Act of 2008 ("WRERA"). This relates to stating the applicable Mortality table within the meaning of §415(e)(3)(B). (Exhibit B, Matrix, page 5.)

The fourth amendment: Sec. 4 amends Plan §1000(j) and relates to the Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART Act"), Pub. L. 110-225, 122 Stat. 1624 (2008) which made changes to §401(a) and §414(u) of the Internal Revenue Code to extend pension protections afforded to non-career military members under the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"). 38 U.S.C. §§4301-4335. The HEART Act provisions relate to death and disability and alter the return-to-work paradigm set forth under USERRA. Attached as "Exhibit C" is a detailed explanation of the mandatory (and optional) provisions in the HEART Act. Proposed Amendment No. 1 includes only those provisions that are mandatory. (Exhibit B, Matrix, pages 2 and 3.)

Ice Miller advises that these proposed amendments address issues that may be raised in the next Cycle C filing which it anticipates will occur in 2013.

Fiscal Impact:

None anticipated.

Authority Strategies:

This item supports one or more of the Authority Strategies, as follows:

☐ Community Strategy ☐ Customer Strategy ☒ Employee Strategy ☒ Financial Strategy ☒ Operations Strategy

Environmental Review:

California Environmental Quality Act ("CEQA"): This Board action is not a project that would have a significant effect on the environment as defined by CEQA, as amended. 14 Cal. Code Regs. § 15378. The Board action is not a "project" subject to CEQA. Cal. Pub. Res. Code § 21065.

California Coastal Act ("CCA"). This Board action is not a "development" as defined by the CCA. Cal. Pub. Res. Code § 30106.

Equal Opportunity Program:

Not applicable

Prepared by:

BRETON K. LOBNER
GENERAL COUNSEL

City of San Diego Retirement Plan and Trust ("City Plan")
San Diego Unified Port District Retirement Plan and Trust ("UPD Plan")
San Diego County Regional Airport Authority Retirement Plan and Trust ("Airport Authority Plan")

Post-EGTRRA Amendments Through 2010 Cumulative List Notice 2010-90

Guidance	Amendment Deadlines and Compliance	Plan Section Reference and Compliance Date			Explanation of Necessity
		City Plan	UPD Plan	Airport Authority Plan	
401(a)(36) – Normal Retirement Age Added by PPA §905 addressing in-service distributions. Final Regulations were published on May 22, 2007. Notice 2009–86, 2009–46 I.R.B. 629, states intent to extend effective date for governmental plans to plan years beginning on or after January 1, 2013. Notice 2012-29 states intent to provide that governmental plan only needs compliant definition of NRA if it allows in-service distributions before age 62. Also clarifies that age 50 safe harbor for public safety officers is applicable to group even if officers are not in a separate plan.	Amendment Period Ends: Final Regulations do not apply to governmental plans until 2013 per Notice 2009-86. **No amendments necessary.**	City Charter Article IX, Section 141. Municipal Code § 24.0405(b) and (c). Municipal Code §§ 24.0405.0002, 24.0405.0003, and 24.0405.0004. Municipal Code §§ 24.1105 and 24.1106. Municipal Code § 24.1705(a) and (b).	City Charter Article IX, Section 141. §§ 0300(a), 0301(b), and 0302(a) of the UPD Plan On 9/28/11, we sent a letter to Dua at the IRS discussing the normal retirement benefit eligibility provisions.	City Charter Article IX, Section 141. § 0300(a) of the Airport Authority Plan	N/A

Guidance	Amendment Deadlines and Compliance	Plan Section Reference and Compliance Date			Explanation of Necessity
		City Plan	UPD Plan	Airport Authority Plan	
401(a)(9) – Required Minimum Distributions PPA §823 requires Treasury to issue regulations under which, for all years to which 401(a)(9) applies, a 414(d) governmental plan shall be treated as having complied with 401(a)(9) if it complies with a reasonable good faith interpretation of 401(a)(9). Final regulations were published on September 8, 2009 (74 Fed. Reg. 45993).	Amendment Period Ends: No amendment period specified. **Timely Adopted. However, we are suggesting one change to add reference to "good faith interpretation" in the plans.**	Municipal Code § 24.1004(d). Adopted 4/28/08. **See Proposed Amendment.**	§ 1000(d) of the UPD Plan. Adopted 3/21/08. **See Proposed Amendment.**	§ 1000(d) of the Airport Authority Plan. Adopted 6/11/08. **See Proposed Amendment.**	This amendment is not required, but will ensu that the plans have the most flexibility availab under the RMD requirements.
401(a)(37) – HEART Act As added by §104(a) of the HEART Act, relates to benefits payable on the death of a plan participant while performing qualified military service. Notice 2010–15, 2010–6 I.R.B. 390, provides guidance.	Amendment Period Ends: June 30, 2013. **Amendment needed.**	**See Proposed Amendment.**	§ 0103 of the UPD Plan. Adopted 12/16/09. **See Proposed Amendment (expanding existing language).**	**See Proposed Amendment.**	This is a required amendment under the HEART Act. Failure t timely amend will resu in the need to file a VC with the next determination letter request.

Guidance	Amendment Deadlines and Compliance	Plan Section Reference and Compliance Date			Explanation of Necessity
		City Plan	UPD Plan	Airport Authority Plan	
414(u) – HEART Act					
Added 414(u)(9) addressing how a plan may provide benefit accruals for a person who dies or becomes disabled while performing qualified military service. Notice 2010–15, 2010–6 I.R.B. 390, provides guidance regarding death/disability benefits.	Amendment Period Ends: June 30, 2013. **Optional Amendment.**	**See Proposed Amendment.**	**See Proposed Amendment.**	**See Proposed Amendment.**	This is an optional amendment under the HEART Act.
Added 414(u)(12) relating to the treatment of differential wage payments received by a person while on active duty performing service in the uniformed services. Notice 2010–15, 2010–6 I.R.B. 390, provides guidance regarding differential wages.	Amendment Period Ends: June 30, 2013. **Amendment needed.**	**See Proposed Amendment.**	§ 0103 of the UPD Plan. Adopted 12/16/09. **See Proposed Amendment (expanding existing language).**	**See Proposed Amendment.**	This is a required amendment under the HEART Act. Failure t timely amend will resu in the need to file a VC with the next determination letter request.
402(c)(2)(A) – After-Tax Rollovers Amended by PPA '06 §822(a) to permit nontaxable distributions from a qualified plan to be directly rolled over tax-free to	Amendment Period Ends: June 30, 2012. **Timely Adopted.**	Municipal Code § 24.1004(g)(1)(A). Adopted 4/28/08. **See Proposed**	§ 1000(g)(1)(A) of the UPD Plan. Adopted 3/21/08. **See Proposed**	§ 1000(g)(1)(A) of the Airport Authority Plan. Adopted 6/11/08. **See Proposed**	We are recommending an amendment to clarif the language. Howeve the required amendmer has already been

Guidance	Amendment Deadlines and Compliance	Plan Section Reference and Compliance Date			Explanation of Necessity
		City Plan	UPD Plan	Airport Authority Plan	
either another qualified plan or a 403(b) plan if the separate accounting requirements are met.	**However, we are recommending a clarifying amendment.**	**Amendment.**	**Amendment.**	**Amendment.**	adopted.
402(c)(11) – Nonspouse Beneficiary Rollovers Added by PPA '06 §829(a)(1) to allow nonspouse beneficiaries to directly roll over distributions from a qualified plan to an individual retirement plan. Notice 2007-7, 2007-1 C.B. 395, provides guidance. WRERA §108(f) clarified mandatory nature of provision, effective for plan years beginning after December 31, 2009.	Amendment Period Ends: June 30, 2012. **Timely Adopted.**	Municipal Code § 24.1004(g)(1)(D). Adopted 4/28/08.	§ 1000(g)(1)(D) of the UPD Plan. Adopted 3/21/08.	§ 1000(g)(1)(D) of the Airport Authority Plan. Adopted 6/11/08.	N/A
408A(e) – Rollovers to Roth IRAs Added by PPA '06 §824 to permit rollovers to Roth IRAs from accounts that are not designated Roth accounts that are part of qualified plans, §403(b) plans, and §457 plans.	Amendment Period Ends: June 30, 2012. **Timely Adopted.**	Municipal Code § 24.1004(g)(1)(B)(vii). Adopted 4/28/08.	§ 1000(g)(1)(B)(vii) of the UPD Plan. Adopted 3/21/08.	§ 1000(g)(1)(B)(vii) of the Airport Authority Plan. Adopted 6/11/08.	N/A

Guidance	Amendment Deadlines and Compliance	Plan Section Reference and Compliance Date			Explanation of Necessity
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Notice 2008-30, 2008-1 C.B. 638, provides guidance regarding §408A(e).					
415 – Benefit and Contribution Limits					
415(b)(2)(E)(ii), as amended by §303 of PPA '06, relates to the interest rate assumption for applying benefit limitations to lump sum distributions.	Amendment Period Ends: June 30, 2012. **Timely Adopted.**	Municipal Code § 24.1004(h). Adopted 4/28/08.	§ 1000(h) of the UPD Plan. Adopted 3/21/08.	§ 1000(h) of the Airport Authority Plan. Adopted 6/11/08.	N/A
415 Final Regulations were published on April 5, 2007 (72 Fed. Reg. 16878).	Amendment Period Ends: **January 31, 2009.** **Timely Adopted.**	Municipal Code § 24.1004(h). Adopted 4/28/08.	§ 1000(h) of the UPD Plan. Adopted 3/21/08.	§ 1000(h) of the Airport Authority Plan. Adopted 6/11/08.	N/A
415(b)(2)(E)(v) was amended by WRERA §103(b)(2)(B)(i) to change the mortality table to the applicable mortality table within the meaning of §417(e)(3)(B).	Amendment Period Ends: June 30, 2012. **Amendment needed.**	Municipal Code § 24.1004(h)(3)(D). **See Proposed Amendment.**	§ 1000(h)(3)(D) of the UPD Plan. **See Proposed Amendment.**	§ 1000(h)(3)(D) of the Airport Authority Plan. **See Proposed Amendment.**	This is a required amendment under the Worker, Retiree and Employer Recovery A Failure to timely amen will result in the need t file a VCP with the ne determination letter

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		City Plan	UPD Plan	Airport Authority Plan	
					request.
Leave Conversion Rev. Rul. 2009-31, 2009-39 I.R.B. 395, provides guidance with respect to annual paid time off contributions. Rev. Rul. 2009-32, 2009-39 I.R.B. 398, provides guidance with respect to paid time off contributions at termination of employment.	No specified amendment period **No amendment required.**	If the plans allow for leave conversions, - *i.e.*, if the member has any choice between converting sick leave to service or receiving payment for the sick leave - then the program will not fall within the guidance and we should discuss this further. However, we are not aware that any of the plans permit such conversions.			N/A

HEROES EARNINGS ASSISTANCE AND RELIEF TAX ACT OF 2008

The Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART Act"), Pub. L. 110 245, 122 Stat. 1624 (2008), signed into law on June 17, 2008, makes several important changes and additions (among other things) to Sections 401(a) and 414(u) of the Internal Revenue Code ("Code") that extend the pension protections afforded to noncareer military members under USERRA. The HEART Act provisions related to death and disability significantly alter the return to work paradigm set under USERRA. Below we have summarized those provisions applicable to a qualified governmental defined benefit pension plan.

1. **Mandatory Military Death Benefit Provision: Code Section 401(a)(37)** – New qualification requirement that plan **must** provide that, for a participant who dies while performing qualified military service, the survivors of the participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the plan as if the participant had resumed employment the day before death and then terminated employment on account of death. Thus, if a plan provides for accelerated vesting, ancillary life insurance or lump sum death benefits, or other survivor benefits contingent on a participant's termination of employment on account of death, the plan must provide those same benefits to the beneficiary of a participant who dies during qualified military service.

2. **Optional Provision for Benefit Accrual for Periods of Qualified Military Service Upon Death or Disability: Code Section 414(u)(9)** – For benefit accrual purposes, an employer sponsoring a retirement plan **may** treat an individual who dies or becomes disabled (as defined under the terms of the plan) while performing qualified military service with respect to the employer maintaining the plan as if the individual (a) had resumed employment in accordance with the individual's reemployment rights under USERRA on the day preceding death or disability (as the case may be), (b) and had terminated employment on the actual date of death or disability.

In other words, a plan is permitted to treat an individual who leaves service with the plan's sponsoring employer for qualified military service, and who cannot be reemployed on account of death or disability, as if he had been rehired as of the day before his death or disability (a "deemed rehired employee"), and then terminated employment on the date of his death or disability. For such a "deemed rehired employee," a plan may comply fully or partially with the benefit accrual restoration provisions that would be mandatory under Code Section 414(u)(8) had the individual actually been rehired. Joint Committee on Taxation, Technical Explanation of H.R. 6081, *the "Heroes Earnings Assistance and Relief Tax Act of 2008," as Scheduled for Consideration by the House of Representatives on May 20, 2008* (JCX-44-08) ("Comm. Rep.") at 9, May 20, 2008.

If a plan complies fully or partially with the benefit accrual requirements of Code Section 414(u), the special Section 414(u) rules regarding the interaction of USERRA with the otherwise applicable benefit limitation and nondiscrimination rules apply. The first condition is that all employees performing qualified military service of the employer maintaining the plan who die or become disabled must be credited with benefits on a reasonably equivalent basis. Thus, differences in credited benefits on account of different compensation levels are permissible, but complying fully with the Section 414(u) benefit accrual requirements with respect to highly compensated employees and complying partially with respect to nonhighly compensated employees is not permissible. Comm. Rep. at 10.

The second condition is that if the plan credits deemed rehired employees with benefits that are contingent on employee contributions or elective contributions, then the amount of employee contributions and the amount of elective deferrals of a deemed rehired employee for purposes of applying Code Section 414(u)(8)(C) (USERRA's treatment of employee contributions and elective deferrals) is determined on the basis of the individual's average actual employee contributions, or elective deferrals, for the lesser of:

(1) the 12 month period of service with the employer immediately before the qualified military service, or

(2) if service with the employer is less than a 12 month period, the actual length of continuous service with the employer.

26 U.S.C. § 414(u)(9)(C), as added by HEART Act § 104(b). Although neither the HEART Act nor the committee reports explain who pays for the employee's contributions and elective contributions where the employee has died, it is presumably the surviving spouse or other beneficiary of the employee's retirement plan who may contribute. While application of Code Section 415 would place significant restrictions on the ability of such individuals to make contributions, it would seem that these provisions of the HEART Act would operate to permit such contributions so long as they fully comply with the applicable provisions of Code Section 414(u).

3. Differential Pay: Code Section 414(u)(12) – Active military service members receiving differential pay **must** be treated as employees with compensation for retirement plan purposes.

Revenue Ruling 2009-11 provided guidance on reporting and withholding differential wage payments under Form W-2. Under this Revenue Ruling, for an employee in active military service for periods exceeding 30 days, any differential wage payments paid by the employer is subject to the following:

- Differential wage payments are treated as wages for federal income tax withholding purposes, and the employer must withhold federal income taxes on these payments. These payments are treated as supplemental wage payments, and an employer may use either the aggregate method or optional flat rate withholding to calculate the amount required to be withheld on differential wage payments which do not exceed $1,000,000 when added to all other supplemental wages paid by the same employer to the individual during the calendar year (these rules are explained more fully in Revenue Ruling 2009-11, attached).

- Differential wage payments are not treated as wages for purposes of FICA and FUTA taxes.

- Differential wage payments must be reported on Form W-2.

CIRCULAR 230 DISCLOSURE: Except to the extent that this advice concerns the qualification of any qualified plan, to ensure compliance with recently-enacted U.S. Treasury Department Regulations, we are now required to advise you that, unless otherwise expressly indicated, any federal tax advice contained in this communication, including any attachments, is not intended or written by us to be used, and cannot be used, by anyone for the purpose of avoiding federal tax penalties that may be imposed by the federal government or for promoting, marketing or recommending to another party any tax-related matters addressed herein.

RESOLUTION NO. 2012-0069

A RESOLUTION OF THE BOARD OF THE SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY APPROVING AND AUTHORIZING THE PRESIDENT/CEO TO EXECUTE AMENDMENT NO. 1 TO THE AMENDED AND RESTATED SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY RETIREMENT PLAN AND TRUST OF 2008.

WHEREAS, on January 1, 2003, for the benefit of the employees of the Authority and their beneficiaries, the Board of the San Diego County Regional Airport Authority ("Board") adopted the San Diego City Employees' Retirement System Retirement Plan for Airport Authority Employees; and

WHEREAS, on May 3, 2004, the Board amended the Plan by approving the San Diego City Employees' Retirement System First Amended Retirement Plan for Airport Authority Employees; and

WHEREAS, on June 5, 2008, the Board amended the Plan by approving the Amended and Restated San Diego County Regional Airport Authority Retirement Plan and Trust of 2008 (the "Plan"); and

WHEREAS, the Plan is a qualified governmental pension plan under §401(a) and §414(d) of the Internal Revenue Code of 1986, as amended and is administered by the San Diego City Employees' Retirement System ("SDCERS") pursuant to the terms of the San Diego City Employees' Retirement System Participation and Administration Agreement ("P & A Agreement") approved by the Board in 2008; and

WHEREAS, SDCERS administers the Plan under a Group Trust (as set forth in the Declaration of Trust effective July 1, 2007, and adopted by the Board on March 16, 2007) pursuant to IRS Code §401(a)(24) and in accordance with Revenue Ruling 81-100, as revised by Revenue Ruling 2004-67; and

WHEREAS, in accordance with the P & A Agreement, San Diego Municipal Code §24.1806 and the provisions of the Group Trust, the Authority's Plan is treated as a separate retirement plan from that of the City of San Diego or San Diego Unified Port District with a separate trust, however with the assets of the three plans commingled for investment purposes only; and

WHEREAS, The Authority has been notified by the General Counsel of SDCERS and by SDCERS' outside counsel (the law firm of Ice Miller) that because of certain changes in federal law and pursuant to the advice of the IRS, the Plan should be amended; and

WHEREAS, the federal laws identified or affected include the Worker, Retiree, and Employee Recovery Act of 2008 ("WRERA"), the Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART Act"), Pub. L. 110-225, 122 Stat. 1624 (2008), and the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"), 38 U.S.C. §§4301-4335, and the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, 115 Stat. 38 (codified in scattered sections of 26 U.S.C.); and

WHEREAS, attached as "Exhibit A" is proposed Amendment No. 1 which proposes to amend the Plan to incorporate the required changes as identified by legal counsel.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves and authorizes the President/CEO to execute Amendment No. 1 ("Exhibit A") to the Amended and Restated San Diego County Regional Airport Authority Retirement Plan and Trust of 2008; and

BE IT FURTHER RESOLVED that the Board FINDS that this action is not a project that would have a significant effect on the environment as defined by the California Environmental Quality Act ("CEQA"), as amended, 14 Cal. Code Regs. §15378, and is not a "project" subject to CEQA, Cal. Pub. Res. Code §21065.

BE IT FURTHER RESOLVED that the Board FINDS that this action is not a "development" as defined by the California Coastal Act, Cal. Pub. Res. Code §30106.

PASSED, ADOPTED, AND APPROVED by the Board of the San Diego County Regional Airport Authority at a regular meeting this 7TH day of June, 2012, by the following vote:

AYES: Board Members:

NOES: Board Members:

ABSENT: Board Members:

ATTEST:

_____

TONY R. RUSSELL
DIRECTOR, CORPORATE SERVICES/
AUTHORITY CLERK

APPROVED AS TO FORM:

_____

BRETON K. LOBNER
GENERAL COUNSEL

AMENDMENT NO. 1 TO THE AMENDED AND RESTATED SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY RETIREMENT PLAN AND TRUST OF 2008

RECITALS

WHEREAS, the San Diego County Regional Airport Authority ("Employer") adopted the San Diego City Employees' Retirement System Retirement Plan for Airport Authority Employees effective January 1, 2003, which was amended by the San Diego City Employees' Retirement System Retirement Plan for Airport Authority Employees on May 3, 2004, and further amended by the Amended and Restated San Diego County Regional Airport Authority Retirement Plan and Trust of 2008 on June 5, 2008 (hereinafter the "Plan") for the benefit of its Employees and their Beneficiaries, and

WHEREAS, it is necessary to amend the Plan to comply with certain provisions of the Internal Revenue Code; and

WHEREAS, this Amendment No. 1 shall supersede the provisions of the above-named Plan to the extent those provisions are inconsistent with the provisions of this Amendment No.1.

AMENDMENT

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

1. §1000(d) is amended in its entirety to read as follows:

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

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

(2) The Member's entire interest must be distributed over the Member's life or the lives of the Member and a designated Beneficiary, or over a period not extending beyond the

life expectancy of the Member, or of the Member and a designated Beneficiary. Death benefits must be distributed in accordance with Internal Revenue Code Section 401(a)(9), including the incidental death benefit requirement in Internal Revenue Code Section 401(a)(9)(G), and the regulations implementing that section.

(3) The life expectancy of a Member, the Member's spouse or, on and after January 1, 2005, Domestic Partner, or the Member's Beneficiary may not be recalculated after the initial determination for purposes of determining benefits.

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

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

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

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

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

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

2. §1000(g) is amended in its entirety to read as follows:

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

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

(A) Eligible Rollover Distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the Distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Internal Revenue Code

Section 401(a)(9); the portion of any distribution that is not includible in gross income; and any other distribution that is reasonably expected to total less than $200 during the year. A portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax Employee Contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Internal Revenue Code Section 408(a) or (b), or to a qualified defined contribution plan described in Internal Revenue Code Section 401(a) or to a qualified plan described in Internal Revenue Code Section 403(a), that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible, or on or after January 1, 2007, to a qualified defined benefit plan described in Internal Revenue Code Section 401(a) or to an annuity contract described in Internal Revenue Code Section 403(b), that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible.

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

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

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

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

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

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

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

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

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

(D) Distributee: A Distributee includes an employee or former employee. It also includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a

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

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

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

3. §1000(h) is amended in its entirety to read as follows:

"(h) Internal Revenue Code Section 415 (Benefit and Compensation Limits):

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

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

individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service.

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

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

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

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

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

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

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

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

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

(D) in no event will a Member's annual benefit payable under the Plan in any limitation year be greater than the limit applicable at the annuity starting date, as increased

in subsequent years pursuant to Internal Revenue Code Section 415(d) and the regulations thereunder. If the form of benefit without regard to the automatic benefit increase feature is not a straight life or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the Internal Revenue Code Section 415(b) limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent straight life annuity benefit determined using the following assumptions that takes into account the death benefits under the form of benefit:

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

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

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

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

a. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;

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

the applicable mortality tables described in section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e)(3)(B) of the Internal Revenue Code); or

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

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

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

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

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

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

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

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

purposes of applying subparagraph (ii), the Plan will not fail to meet the percentage limitation under Internal Revenue Code Section 415(c)(1)(B) solely by reason of this paragraph (4).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) Nothing contained in this section will limit the Administrator from modifying benefits to the extent such modifications are required by the City Charter and applicable state and federal law."

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

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

(1) Effective with respect to deaths occurring on or after January 1, 2007, while a Member is performing qualified military service (as defined in chapter 43 of title 38, United States Code), to the extent required by section 401(a)(37) of the Internal Revenue Code, survivors of a Member in the Plan are entitled to any additional benefits that the Plan would provide if the Member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the Member's death while employed. In any event, a deceased Member's period of qualified military service must be counted for vesting purposes.

(2) Beginning January 1, 2009, to the extent required by section 414(u)(12) of the Internal Revenue Code, an individual receiving differential wage payments (as defined under section 3401(h)(2) of the Internal Revenue Code) from the Airport Authority shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under section 415(c) of the

Internal Revenue Code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner."

IN WITNESS WHEREOF, the Employer has caused this Amendment No. 1 to be executed as of this 7th day of June, 2012 to be effective as stated herein.

SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY:	TRUSTEE:
	BOARD OF ADMINISTRATION FOR THE SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____