

AGENDA

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

REGULAR MEETING OF DECEMBER 16, 2020

IMPORTANT NOTICE REGARDING THE DECEMBER 16, 2020 COMMISSION MEETING

The Local Agency Formation Commission for San Bernardino County (LAFCO or Commission) will conduct this meeting virtually by videoconference and/or teleconference in compliance with waivers to certain Brown Act provisions under the Governor's Executive Order N-29-20, and members of the Commission or LAFCO staff will participate in this meeting telephonically or electronically. The public may participate in the meeting by joining the meeting virtually, by phone, or viewing the meeting live, and may provide general comments and comments on specific agenda items, as described below:

Instructions for Viewing or Listening to the meeting:

Members of the public may:

- Join the virtual meeting on Zoom using the following link: <https://zoom.us/j/89428560422>
- Listen to the meeting by calling (669) 900-9128 and enter the Meeting ID: 89428560422#
- Watch the meeting via YouTube live stream using the following link: https://www.youtube.com/channel/UCpEpEankM-uoTTa8c_OyV1Q

Instructions for Making Comments and Testimony:

If you wish to make comment on a specific agenda item or a general comment under public comment you can do so by:

- On Zoom video conference via the web or the Zoom App, click the 'Raise Hand' button when the item you wish to comment on is being discussed.
- On Zoom via phone, you can also raise your hand by pressing *9 when the item you wish to comment on is being discussed.

Alternatively, if you wish to make written comments on specific agenda items, make general comments, or submit testimony for public hearings, you can send comments and testimony to LAFCO, limited to a maximum of 250 words, by email at laico@lafco.sbcounty.gov, online at www.sbclafco.org/AgendaandNotices/Agendas/PublicComments.aspx, or by mail to LAFCO, 1170 West 3rd Street, Unit 150, San Bernardino, CA 92415-0490, for receipt no later than 7:30 a.m. on the meeting day. These comments and testimony will be read on to the meeting record at the appropriate time.

This change in public participation will continue until further notice and supersede any LAFCO standard public comment and testimony policies and procedures to the contrary.

9:00 A.M. – CALL TO ORDER – FLAG SALUTE

ANNOUNCEMENT: Anyone present at the hearing who is involved with any of the changes of organization to be considered and who has made a contribution of more than \$250 in the past twelve (12) months to any member of the Commission will be asked to state for the record the Commission member to whom the contribution has been made and the matter of consideration with which they are involved.

1. **PUBLIC COMMENTS ON CLOSED SESSION**

2. **CONVENE CLOSED SESSION**

Conference with Legal Counsel – Significant Exposure to Litigation (Government Code Section 54956.9(d)(2) - - 1 Potential Case

3. **RECONVENE PUBLIC SESSION**

CONSENT ITEMS:

The following consent items are expected to be routine and non-controversial and will be acted upon by the Commission at one time without discussion, unless a request has been received prior to the hearing to discuss the matter.

4. [Approval of Minutes for Regular Meeting of September 16, 2020 and Summary of November 18, 2020 Proceedings](#)
5. [Approval of Executive Officer's Expense Report](#)
6. [Ratify Payments as Reconciled and Note Cash Receipts for the Months of August, September, and October 2020](#)
7. [First Quarter Financial Review for Period July 1 through September 30, 2020](#)
8. [Consideration of Approval of the Participating Employer Agreement for the 457 Plan, as Amended and Restated, Sponsored by the County of San Bernardino](#)
9. Consent Items Deferred for Discussion

PUBLIC HEARING ITEMS:

10. [Consideration of: \(1\) CEQA Exemption for LAFCO 3245 and \(2\) LAFCO 3245 –Countywide Service Review of Public Cemetery Districts](#)
11. [Consideration of: \(1\) CEQA Exemption for LAFCO SC#457, and \(2\) LAFCO SC#457 –City of Fontana Out of Area Sewer Service Agreement \(APN 0229-072-31\)](#)

DISCUSSION ITEMS:

12. [LAFCO SC#454– Request for Exemption from the Provisions of Government Code Section 56133 for Agreement between Big Bear City Community Services District and the City of Big Bear Lake Department of Water and Power](#)

INFORMATION ITEMS:

13. Legislative Oral Report

14. [Executive Officer's Oral Report](#)

15. Commissioner Comments

(This is an opportunity for Commissioners to comment on issues not listed on the agenda, provided that the subject matter is within the jurisdiction of the Commission and that no action may be taken on off-agenda items unless authorized by law.)

16. Comments from the Public

(By Commission policy, the public comment period is limited to five minutes per person for comments related to other items under the jurisdiction of LAFCO not on the agenda.)

The Commission may adjourn for lunch from 12:00 to 1:30 p.m. The Commission may take action on any item listed in this Agenda whether or not it is listed for Action. In its deliberations, the Commission may make appropriate changes incidental to the above-listed proposals.

Materials related to an item on this Agenda submitted to the Commission or prepared after distribution of the agenda packet will be available for public inspection in the LAFCO office at 1170 West Third Street, Unit 150, San Bernardino, during normal business hours, on the LAFCO website at www.sbclafco.org, and at the hearing.

Current law and Commission policy require the publishing of staff reports prior to the public hearing. These reports contain technical findings, comments, and recommendations of staff. The staff recommendation may be accepted or rejected by the Commission after its own analysis and consideration of public testimony.

IF YOU CHALLENGE ANY DECISION REGARDING ANY OF THE ABOVE PROPOSALS IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED DURING THE PUBLIC TESTIMONY PERIOD REGARDING THAT PROPOSAL OR IN WRITTEN CORRESPONDENCE DELIVERED TO THE LOCAL AGENCY FORMATION COMMISSION AT, OR PRIOR TO, THE PUBLIC HEARING.

The Political Reform Act requires the disclosure of expenditures for political purposes related to a change of organization or reorganization proposal which has been submitted to the Commission, and contributions in support of or in opposition to such measures, shall be disclosed and reported to the same extent and subject to the same requirements as provided for local initiative measures presented to the electorate (Government Code Section 56700.1). Questions regarding this should be directed to the Fair Political Practices Commission at www.fppc.ca.gov or at 1-866-ASK-FPPC (1-866-275-3772).

A person with a disability may contact the LAFCO office at (909) 388-0480 at least 72-hours before the scheduled meeting to request receipt of an agenda in an alternative format or to request disability-related accommodations, including auxiliary aids or services, in order to participate in the public meeting. Later requests will be accommodated to the extent feasible.

12/16/20

**DRAFT
ACTION MINUTES OF THE
LOCAL AGENCY FORMATION COMMISSION
FOR SAN BERNARDINO COUNTY**

REGULAR MEETING

9:00 A.M.

SEPTEMBER 16, 2020

The Commission conducts the meeting virtually by videoconference (via Zoom) and teleconference (via Zoom phone) and broadcast live via YouTube live stream in compliance with the Governor's Executive Order N-29-20 in response to the COVID-19 pandemic.

**PRESENT:
COMMISSIONERS:**

Regular Member	Alternate Member
Larry McCallon, Chair	Dieter Dammeier
James Bagley	Steven Farrell
Kimberly Cox	Janice Rutherford
James Curatalo, Vice-Chair	
Dawn Rowe	
Acquanetta Warren	

STAFF:

Samuel Martinez, Executive Officer
Paula de Sousa, LAFCO Legal Counsel
Michael Tuerpe, Senior Analyst
Angela Schell, Administrative Assistant

ABSENT:

COMMISSIONERS: Robert Lovingood
Rick Dennison

9:00 A.M. – CALL TO ORDER – FLAG SALUTE AND ROLL CALL

Chair McCallon makes an announcement regarding the meeting/hearing being conducted via videoconference and teleconference as well as broadcast live via YouTube in compliance with waivers to certain Brown Act provisions under the Governor's Executive Orders due to the COVID-19 Coronavirus pandemic.

ANNOUNCEMENT OF CONTRIBUTIONS

CONSENT ITEMS:

- 1. Approval of Minutes for Regular Meeting of September 16, 2020**
- 2. Approval of Executive Officer's Expense Report**

Recommendation: Approve the Executive Office's Expense for Procurement Card Purchases from June 23, 2020, to July 22, 2020 and July 23, 2020 to August 24, 2020.

3. Ratify Payments as Reconciled and Note Cash Receipts for Months of June and July 2020

Recommendation: Ratify payments as reconciled for the months of June and July 2020 and note revenue receipts for the same period.

4. Review of Service Review Schedule for FY 2020-21

Recommendation: Staff recommends that the Commission receive and file revised service review schedule for FY 2020/21 (cemetery districts and recreation and park functions of local agencies).

5. Consideration of: (1) CEQA Statutory Exemption for LAFCO SC#452; and (2) LAFCO SC#452 – City of San Bernardino Irrevocable Agreement to Annex No. 2020-003 for Sewer Service (APNs 0268-291-32, -33, & -34)

Recommendation: Staff recommends that the Commission approve LAFCO SC#452 by taking the following actions:

1. Certify that LAFCO SC#452 is exempt from environmental review and direct the Executive Officer to file a Notice of Exemption within five (5) days of this action.
2. Approve LAFCO SC#452 authorizing the City of San Bernardino to extend sewer service outside its boundaries to three parcels, Assessor Parcel Numbers 0268-291-32, 0268-291-33, and 0268-291-34.
3. Adopt Resolution #3314 setting forth the Commission's determination and approval of the agreement for service outside the City of San Bernardino's boundaries.

6. Note Receipt of Proposal Initiated by City Council Resolution – LAFCO 3243 – Reorganization to Include Annexation to the City of Fontana, the Fontana Fire Protection District, the West Valley Water District and the San Bernardino Valley Municipal Water District, and Detachment from the San Bernardino County Fire Protection District, its Valley Service Zone and its Zone FP-5, and County Service Area 70

No action is required of the Commission other than to note receipt of the proposal.

7. Consent Items Deferred for Discussion (none)

Commissioner Bagley moves the approval of the Consent Items. Second by Commissioner Rutherford. The motion passes with the following roll call vote:

Ayes: Bagley, Curatalo, Farrell, McCallon, Rowe, Rutherford, and Warren.

Noes: None.

Abstain: None.

Absent: Cox (Farrell voting in her stead), Lovingood (Rutherford voting in his stead).

PUBLIC HEARING ITEMS:

8. LAFCO SC#453 – City of Redlands Pre-Annexation Agreement No. 20-51 for Water and Sewer Service (Assessor Parcel Number 0298-412-01)

Recommendation: Staff recommends that the Commission approve LAFCO SC#453 by taking the following actions:

1. For Environmental review as the responsible agency:
 - a. Certify that the Commission, its staff, and its Environmental Consultant have reviewed and considered the environmental assessment and Mitigated Negative Declaration prepared by the County of San Bernardino for a Conditional Use Permit for the development of a gas station, convenience store and car wash on approximately 1.28 acres, and found them to be adequate for Commission use;
 - b. Determine that the Commission does not intend to adopt alternatives or additional mitigation measures for this project; that all mitigation measures are the responsibility of the County of San Bernardino and/or others, not the Commission, and are self-mitigating through implementation of the Conditions of Approval; and,
 - c. Note that this proposal is exempt from Department Fish and Wildlife fees because the filing fees was the responsibility of the County as CEQA lead agency, and direct the Executive Officer to file a Notice of Determination within five (5) days of this action.
2. Approve LAFCO SC#453 authorizing the City of Redlands to extend water and sewer service outside its boundaries to Assessor Parcel Number 0298-412-01.
3. Approve LAFCO Resolution #3315 setting forth the Commission's determinations and approval of the agreement for service outside the City of Redlands' boundaries.

Commissioner Bagley moves approval of staff recommendation. Second by Commissioner Warren. The motion passes with the following roll call vote:

*Ayes: Bagley, Curatalo, Farrell, McCallon, Rowe, Rutherford, and Warren.
Noes: None.
Abstain: None.
Absent: Cox (Farrell voting in her stead), Lovingood (Rutherford voting in his stead).*

9. LAFCO 3241 – Request for Reconsideration Submitted by Patrick Kaemerle (on behalf of Inland Real Estate Group, LLC) of the Commission's Approval of LAFCO 3241 – Reorganization to Include Annexation to the City of Rancho Cucamonga and Detachment from County Service Area 70 (Etiwanda Heights Neighborhood and Conservation Plan)

Recommendation: Deny the Request for Reconsideration submitted by Mr. Kaemerle (on behalf of the Inland Real Estate Group, LLC) of the Commission's approval of LAFCO 3241 as outlined in LAFCO Resolution No. 3312 and proceed with the protest proceedings for LAFCO 3241.

Public comment was provided by:

Patrick Kaemerle, representing Inland Real Estate Group, LLC

Matthew Burris, Deputy City Manager, City of Rancho Cucamonga

Commissioner Curatalo moves to approve staff recommendation. Second by Commissioner Bagley. The motion passes with the following roll call vote:

Ayes: Bagley, Curatalo, Farrell, McCallon, Rowe, Rutherford, and Warren.

Noes: None.

Abstain: None.

Absent: Cox (Farrell voting in her stead), Lovingood (Rutherford voting in his stead).

10. Reorganization of Staff Composition to Include:

- **Recruitment for an Analyst-GIS/Database Management**
- **Review and Adoption of Amendments to LAFCO Policy and Procedure Manual Section III – Human Resources**
- **Reclassify the Administrative Assistant**

Recommendation: Staff recommends that the Commission take the following actions:

1. For the unfilled Analyst-GIS/Database Management position:
 - a. Authorize recruitment to fill the position.
 - b. Authorize the Executive Officer to sign a contract with an employment/recruitment firm for an amount not to exceed \$5,000, following review by LAFCO Legal Counsel.
2. Modify the Policy and Procedure Manual Section III – Human Resources, Chapter 5 – Benefits Plan:
 - a. Policy 1B – Benefit Plan Groups (new category for new employees).
 - b. Policy 8A – 401K Savings Plan (reduction for new employees).
3. For Angie Schell's position of Administrative Assistant (Range 42):
 - a. Reclassify to Clerk (Range 50) in order for compensation to be commensurate with duties performed.
 - b. Enter the Clerk position with a two-step increase at Step 8 of Range 50 pursuant to Policy and Procedure Manual Section III – Human Resources, Chapter 2 – Employment, Policy 4E – Promotions.
 - c. Retroactively enter Range 50 effective September 14, 2020, the start of a pay period.
4. Approve LAFCO Draft Resolution No. 3316.

Commissioner Bagley moves to approve staff recommendation. Second by Commissioner Farrell. The motion passes with the following roll call vote:

Ayes: Bagley, Curatalo, Farrell, McCallon, Rowe, Rutherford, and Warren.

Noes: None.

Abstain: None.

Absent: Cox (Farrell voting in her stead), Lovingood (Rutherford voting in his stead).

Commissioner Cox attends the Zoom meeting at 10:04 a.m.

DISCUSSTION ITEM:

11. Update on Sustainability of the City of Adelanto, related to LAFCO 3232 – Sphere of Influence Amendment for the City of Adelanto

Recommendation: Staff recommends that the Commission:

1. Receive and file this report.
2. Schedule an update for the City for the January 2021 meeting, unless otherwise directed by the Commission.

Public comment was provided by:

Ward Kormers, Finance Director, City of Adelanto

Gabriel Reyes, Mayor, City of Adelanto

Jessie Flores, City Manager, City of Adelanto

Commissioner Cox moves to approve staff recommendation. Second by Commissioner Warren. The motion passes with the following roll call vote:

Ayes: Bagley, Cox, Curatalo, McCallon, Rowe, Rutherford, and Warren.

Noes: None.

Abstain: None.

Absent: Lovingood (Rutherford voting in his stead).

12. Continued Monitoring from LAFCO 3231 (Countywide Fire Service Review) for Barstow Fire Protection and the City of Barstow (TO BE CONTINUED TO THE JANUARY 20, 2021 MEETING)

Recommendation: Staff recommends that the Commission continue this item to January 20, 2021 meeting.

Commissioner Rutherford moves to approve staff recommendation. Second by Commissioner Curatalo. The motion passes with the following roll call vote:

Ayes: Bagley, Cox, Curatalo, McCallon, Rowe, Rutherford, and Warren.

Noes: None.

Abstain: None.

Absent: Lovingood (Rutherford voting in his stead).

13. Continued Monitoring from LAFCO 3231 (Countywide Fire Service Review) for San Bernardino County Fire Protection District (TO BE CONTINUED TO THE JANUARY 20, 2021 MEETING)

Recommendation: Staff recommends that the Commission continue this item to the January 20, 2021 meeting.

Commissioner Rutherford moves to approve staff recommendation. Second by Commissioner Curatalo. The motion passes with the following roll call vote:

Ayes: Bagley, Cox, McCallon, Rowe, Rutherford, and Warren.
Noes: None.
Abstain: None.
Absent: Lovingood (Rutherford voting in his stead).

14. Appointment of Voting Delegate and Alternate Voting Delegate for the 2020 CALAFCO Board of Directors Election and Nominations for CALAFCO Board Member

Recommendation: Staff recommends that the Commission:

1. Select Commission Chair Larry McCallon as voting delegate (and Jim Curatalo as alternate voting delegate) to cast this Commission's vote for CALAFCO Board Member election and any items for the Annual Business Meeting, should CALAFCO have one; and,
2. For CALAFCO Board Member election nomination/selection:
 - Option 1 – If any of our City and/or a Public member Commissioner from this Commission is interested to serve on the CALAFCO Board of Directors, nominate said City and/or Public member Commissioner and direct the voting delegate to select this LAFCO's nominated City and/or Public Member as the Southern Region representatives to the CALAFCO Board of Directors; or,
 - Option 2 – Direct the voting delegate to select the incumbents Cheryl Brothers (Orange LAFCO) for the City Member Seat and David West (Imperial LAFCO) for the Public Member Seat as the Southern Region representatives to the CALAFCO Board of Directors.

Commissioner Bagley moves to approve staff recommendation. Second by Commissioner Cox. The motion passes selecting Option 2 with the following roll call vote:

Ayes: Bagley, Cox, Curatalo, McCallon, Rowe, Rutherford, and Warren.
Noes: None.
Abstain: None.
Absent: Lovingood (Rutherford voting in his stead).

INFORMATION ITEMS:

15. Legislative Oral Report

Executive Officer Samuel Martinez states the legislative year has ended September 1. He noted that the Legislature was focused on addressing mostly COVID 19 related bills and, therefore, all of the bills that LAFCO and CALAFCO were tracking will likely be introduced next year.

16. Executive Officer's Oral Report

Executive Officer Samuel Martinez states the next meeting will be in November and the Commission is scheduled to have the cemetery districts service review.

He also requests that the Commission provide direction on whether staff should move forward with the session it was putting together for the CALAFCO Annual Conference given that CALAFCO is now moving forward with a series of webinars due to the cancellation of this year's in-person conference and he wants to make sure he follows the Commission's expectation given its stance from the last meeting of not having any virtual sessions for the Conference.

17. Commissioner Comments

Commissioner Bagley expresses concerns on cancelling meetings and the financial implications, and asked the status of how we're doing at the moment?

Mr. Martinez responds by saying that we are not cancelling due to lack of applications but rather as part of our budget, the Commission approved reducing our meetings to six for the year as a cost saving measure.

18. Comments from the Public

There is none.

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COMMISSION, THE MEETING ADJOURNS AT 10:46 A.M.

ATTEST:

ANGELA SCHELL, Clerk to the Commission

LOCAL AGENCY FORMATION COMMISSION

LARRY McCALLON, Chair

DRAFT
PROCEEDING SUMMARY OF THE
LOCAL AGENCY FORMATION COMMISSION
FOR SAN BERNARDINO COUNTY

NOTICE: Due to a typographical error on the agenda for the November 18, 2020 Regular Meeting of the Local Agency Formation Commission for San Bernardino County, public viewing of the meeting was not available. Once this issue was identified, the Commission adjourned the meeting. As a result, all action items on the November 18, 2020 Regular Meeting agenda will be presented to the Commission for consideration at its next Regular Meeting to be held on December 16, 2020.

MEETING

9:00 A.M.

NOVEMBER 18, 2020

The Commission conducts the meeting virtually by videoconference (via Zoom) and teleconference (via Zoom phone) and broadcast live via YouTube live stream in compliance with the Governor's Executive Order N-29-20 in response to the COVID-19 pandemic.

PRESENT:

COMMISSIONERS:

Regular Member	Alternate Member
Larry McCallon, Chair	Dieter Dammeier
James Bagley	Steven Farrell
Kimberly Cox	
Robert Lovingood	
Dawn Rowe	
Acquanetta Warren	

STAFF:

Samuel Martinez, Executive Officer
Paula de Sousa, LAFCO Legal Counsel
Michael Tuerpe, Senior Analyst
Angela Schell, Administrative Assistant

ABSENT:

COMMISSIONERS:

James Curatalo
Janice Rutherford, Alternate

9:00 A.M. – CALL TO ORDER – FLAG SALUTE AND ROLL CALL

Chair McCallon makes an announcement regarding the meeting/hearing being conducted via videoconference and teleconference as well as broadcast live via YouTube in compliance with waivers to certain Brown Act provisions under the Governor's Executive Orders due to the COVID-19 Coronavirus pandemic.

Executive Officer Martinez interrupts the meeting to notify the Commission that he just became aware that the agenda notice for the meeting included an incorrect link thereby preventing individuals from accessing the virtual meeting and the ability to provide public comment.

LAFCO Legal Counsel recommends that the Commission terminate the November 18, 2020 meeting and redo the entire meeting agenda at a later date.

Chair McCallon suggests moving all items appearing on the November 18, 2020 meeting agenda to the Commission's next regular meeting date of December 16, 2020.

Commissioner Bagley moves the approval of redoing the entire meeting on December 16, 2020. Second by Commissioner Cox. The motion passes with the following roll call vote:

Ayes: Bagley, Cox, Lovingood, McCallon, Rowe, Warren and Farrell.

Noes: None.

Abstain: None.

Absent: Curatalo (Farrell voting in his stead), Rutherford.

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COMMISSION, THE MEETING ADJOURNS AT 9:45 A.M.

ATTEST:


ANGELA SCHELL, Clerk to the Commission

LOCAL AGENCY FORMATION COMMISSION

LARRY McCALLON, Chair

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

1170 West 3rd Street, Unit 150 San Bernardino, CA 92415-0490
(909) 388-0480 • Fax (909) 388-0481
lafco@lafco.sbcounty.gov
www.sbclafco.org

DATE : DECEMBER 9, 2020
FROM: SAMUEL MARTINEZ, Executive Officer 
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: AGENDA ITEM #5 – APPROVAL OF EXECUTIVE OFFICERS' EXPENSE
REPORT

RECOMMENDATION:

Approve the Executive Officers' Expense Report for Procurement Card Purchases from August 24, 2020 to September 22, 2020; September 23, 2020 to October 22, 2020; and October 23, 2020 to November 23, 2020.

BACKGROUND INFORMATION:

The Commission participates in the County of San Bernardino's Procurement Card Program to supply the Executive Officer a credit card to provide for payment of routine official costs of Commission activities as authorized by LAFCO Policy and Procedure Manual Section II – Accounting and Financial Policies #3(H). Staff has prepared an itemized report of purchases that covers the billing periods of:

- August 24, 2020 to September 22, 2020
- September 23, 2020 to October 22, 2020
- October 23, 2020 to November 23, 2020

The September statement shows a credit for a laptop (\$1,511.99) that was billed, delayed in transit, and routed back to the vendor (Staples Direct) in August. In turn, staff purchased a different laptop from a different vendor in September (Golden Star Tech).

Staff recommends that the Commission approve the Executive Officers' expense reports as shown on the attachments.

SM/MT

Attachments


Approving Official (Print & Sign)	Date
Larry McCallon	11/19/20

Approving Official (Print & Sign)	Date
Larry McCallon	11/19/20

Approving Official (Print & Sign)	Date
Larry McCallon	12/16/20

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

1170 West 3rd Street, Unit 150, San Bernardino, CA 92415-0490
(909) 388-0480 • Fax (909) 388-0481
lafco@lafco.sbcounty.gov
www.sbclafco.org

DATE : DECEMBER 9, 2020 
FROM: SAMUEL MARTINEZ, Executive Officer
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: AGENDA ITEM #6 - RATIFY PAYMENTS AS RECONCILED FOR
THE MONTHS OF AUGUST, SEPTEMBER, AND OCTOBER 2020
AND NOTE REVENUE RECEIPTS

RECOMMENDATION:

Ratify payments as reconciled for the months of August, September, and October 2020 and note revenue receipts for the same period.

BACKGROUND INFORMATION:

Staff has prepared a reconciliation of warrants issued for payments to various vendors, internal transfers for payments to County Departments, cash receipts and internal transfers for payments of deposits or other charges that cover the period of August 1, 2020 through August 31, 2020; September 1, 2020 through September 30, 2020; and October 1 through October 31.

Staff recommends that the Commission ratify the payments for August, September, and October 2020 as outlined on the attached listings and note the revenues received.



SM/MT

Attachments

MONTH OF AUGUST 2020 PAYMENTS PROCESSED							
Document Number	Account	Posting Date	Vendor	Invoice	Reference	Amount	
1900832097	5200 2041	08/24/20	Century Link	140864213		\$ 345.38	
1900824899	5200 2080	08/14/20	Calif Assoc. of Public Cemeteries	1090	Handbook	\$ 35.00	
1900822927	5200 2090	08/12/20	Jan Pro	73066		\$ 490.00	
1900793400	5200 2090	08/14/20	City Com	6/26/2020	Air Conditioner Maintenance	\$ 345.00	
1900832093	5200 2180	08/24/20	So Cal Edison	2-39-945-2309		\$ 372.39	
1900821597	5200 2305	08/12/20	Shred It	8180231643		\$ 2.79	
1900819580	5200 2315	08/10/20	Storetrieve	136157		\$ 64.37	
1900821568	5200 2400	08/12/20	Best Best & Krieger	883123	Litigation	\$ 92.70	
1900821570	5200 2400	08/12/20	Best Best & Krieger	883122	Labor & Employment	\$ 154.50	
1900821572	5200 2400	08/12/20	Best Best & Krieger	883121	San Antonio Heights	\$ 418.80	
1900821575	5200 2400	08/12/20	Best Best & Krieger	883120	San Antonio Heights	\$ 48.00	
1900821577	5200 2400	08/12/20	Best Best & Krieger	883119	General	\$ 1,340.00	
1900825855	5200 2424	08/18/20	Tom Dodson	LAFCO 20-7		\$ 815.00	
1900801304	5200 2445	08/14/20	Janice Rutherford	7/15/2020	Commission meeting stipend	\$ 200.00	
1900825830	5200 2445	08/18/20	James Curatalo	7/21/2020	Commission meeting stipend	\$ 200.00	
1900824233	5200 2449	08/14/20	Colantuono Hishsmith & Whatley	43337	Spring Valley Lake CSD	\$ 165.00	
1900824892	5200 2895	08/14/20	Konica Minolta	35956004		\$ 428.47	
1900793400	5200 2905	08/14/20	City Com	6/26/2020	Lease Payment	\$ 15,057.90	
TOTAL						\$ 20,575.30	
MONTH OF AUGUST 2020 INTERNAL TRANSFERS PROCESSED							
4101486689	5200 2031	08/01/20	ISD		JUL 2020 Payroll System Services (EMACS)	\$ 102.00	
4101486693	5200 2037	08/01/20	ISD		JUL 2020 Dial Tone	\$ 255.06	
4101507668	5200 2305	08/31/20	Purchasing		7312715100000001	\$ 23.38	
4101507669	5200 2305	08/31/20	Purchasing		7312909287000001	\$ 3.42	
4101486696	5200 2322	08/01/20	ISD		JUL 2020 Enterprise Printing (EMACS)	\$ 7.14	
4101486702	5200 2420	08/01/20	ISD		JUL 2020 Wireless Device (Exchange Active Sync)	\$ 17.59	
4101486759	5200 2421	08/01/20	ISD		JUL 2020 Desktop Support Services	\$ 935.55	
4101476764	5241 2410	08/01/20	ISD		IT Infrastructure - Period 01	\$ 806.00	
4101486697	5241 2410	08/01/20	ISD		IT Infrastructure - Period 02	\$ 806.00	
4101476767	5241 2417	08/01/20	ISD		Enterprise Content Management - Period 01	\$ 157.00	
4101486700	5241 2417	08/01/20	ISD		Enterprise Content Management - Period 02	\$ 157.00	
4101476768	5241 2418	08/01/20	ISD		Storage - Tier 3 - Period 01	\$ 192.00	
4101476768	5241 2418	08/01/20	ISD		Storage - Tier 1 - Period 01	\$ 211.00	
4101486701	5241 2418	08/01/20	ISD		Storage - Tier 3 - Period 02	\$ 192.00	
4101486701	5241 2418	08/01/20	ISD		Storage - Tier 1 - Period 02	\$ 211.00	
4101507668	5540 5012	08/31/20	Purchasing		7312715100000001	\$ 194.80	
4101507669	5540 5012	08/31/20	Purchasing		7312909287000001	\$ 28.47	
4200061223	5200 2424	08/31/20	Clerk of the Board		NOE - LAFCO 3239	\$ 50.00	
4200061224	5200 2424	08/31/20	Clerk of the Board		NOD - LAFCO 3241	\$ 50.00	
4200060730	5200 2445	08/26/20	Payroll		3rd Quarter Tax Filing	\$ 851.40	
4200059769	5200 2310	08/03/20	Mail		Mail Services - DEL	\$ 143.00	
4200059770	5200 2310	08/03/20	Mail		Mail Services - HAN	\$ 161.79	

4200059778	5200	2310	08/03/20	Mail		Mail Services - FLAT	\$ 38.05
TOTAL							\$ 5,593.65
MONTH OF AUGUST 2020 CASH RECEIPTS							
4200060535	4070	9555	08/21/20	City of Upland		LAFCO 3216 Indemnification	\$ 233.40
4101494623	various		08/24/20	Town of Apple Valley		LAFCO 3244	\$ 14,972.00
4101496205	4070	9800	08/25/20	Town of Apple Valley		LAFCO 3244	\$ 800.00
4101494623	4070	9655	08/24/20	City of Loma Linda		LAFCO 3239 GIMS Fees	\$ 975.00
4101494623	4075	9930	08/24/20	Special Districts Risk Mgmt Assoc		SDRMA refund	\$ 157.98
4101494623	4075	9930	08/24/20	Inland Real Estate Group, LLC		LAFCO 3241 Reconsideration	\$ 2,500.00
TOTAL							\$ 19,638.38
MONTH OF AUGUST 2020 INTERNAL TRANSFERRED RECEIVED							
4200059951	4060	8842	08/07/20	County Auditor		Apportionment	\$ 756,998.00
	4075	9595	08/24/20	County Administrative Office		LAFCO 3233 Cost Recovery	\$ 4,839.61
TOTAL							\$761,837.61
COMPLETED BY: MICHAEL TUERPE Senior Analyst				APPROVED BY: SAMUEL MARTINEZ Executive Officer			
Date: 11/5/2020				Date: 11/5/2020			

MONTH OF SEPTEMBER 2020 PAYMENTS PROCESSED							
Document Number	Account		Posting Date	Vendor	Invoice	Reference	Amount
1900848050	5200	2085	09/22/20	Daily Journal	B3390858		\$ 708.40
1900848061	5200	2085	09/22/20	Daily Journal	B3390861		\$ 1,231.93
1900836415	5200	2090	09/01/20	Jan Pro	73570		\$ 490.00
1900852886	5200	2090	09/30/20	City Comm	9/28/2020	Air Conditioner	\$ 345.00
1900848943	5200	2180	09/23/20	So Cal Edison	2-39-945-2309		\$ 503.65
1900843306	5200	2305	09/14/20	Shred It	8180422033		\$ 22.04
1900843308	5200	2315	09/14/20	Storetrieve	0137990	7/1/ to 7/31/2020	\$ 64.37
1900843311	5200	2315	09/14/20	Storetrieve	0140029	8/1 to 8/31/20	\$ 64.37
1900851574	5200	2335	09/28/20	Kelly Services	38017552	Temporary Services Wk Ending 09/20	\$ 312.90
1900851590	5200	2335	09/28/20	Kelly Services	37014625	Temporary Services Wk Ending 9/13	\$ 208.60
1900851558	5200	2400	09/28/20	BB&K Invoice 885434 General	885434	General	\$ 402.00
1900851562	5200	2400	09/28/20	Best Best & Krieger	885435	San Antonio Heights	\$ 16.00
1900851564	5200	2400	09/28/20	Best Best & Krieger	885436	San Antonio Heights	\$ 94.00
1900851570	5200	2400	09/28/20	Best Best & Krieger	885437	Employee Benefits	\$ 667.10
1900851572	5200	2400	09/28/20	Best Best & Krieger	885438	Litigation	\$ 154.50
1900848948	5200	2424	09/23/20	Tom Dodson	LAFCO 20-8		\$ 815.00
1900846651	5200	2445	09/18/20	Jum Bagley	9/16/2020	LAFCO meeting stipend	\$ 200.00
1900847280	5200	2445	09/21/20	Kimberly Cox	9/17/2020	LAFCO meeting stipend	\$ 200.00
1900847282	5200	2445	09/21/20	Kimberly Cox	9/18/2020	LAFCO meeting stipend	\$ 200.00
1900847288	5200	2445	09/21/20	Steve Farrell	9/19/2020	LAFCO meeting stipend	\$ 200.00
1900847291	5200	2445	09/21/20	Acquanetta Warren	9/20/2020	LAFCO meeting stipend	\$ 200.00
1900847295	5200	2445	09/21/20	Dieter Dammeier	9/21/2020	LAFCO meeting stipend	\$ 200.00
1900847296	5200	2445	09/21/20	Dawn Rowe	9/22/2020	LAFCO meeting stipend	\$ 200.00
1900847298	5200	2445	09/21/20	Janice Rutherford	9/23/2020	LAFCO meeting stipend	\$ 200.00
1900847299	5200	2445	09/21/20	Larry McCallon	9/24/2020	LAFCO meeting stipend	\$ 200.00
1900852886	5200	2905	09/30/20	City Com	9/28/2020	Lease	\$ 8,464.50
1900852886	5200	2905	09/30/20	City Com	9/28/2020	Amortization	\$ 6,593.40
TOTAL							\$ 22,957.76
MONTH OF SEPTEMBER 2020 INTERNAL TRANSFERS PROCESSED							
4101534457	5200	2031	09/01/20	Information Services		AUG 2020 Payroll System Services (EMACS)	\$ 68.00
4101534031	5200	2033	09/01/20	Information Services		AUG 2020 Network Labor Services	\$ 509.60
4101534031	5200	2033	09/01/20	Information Services		AUG 2020 Network Parts and Material	\$ 496.16
4101534458	5200	2037	09/01/20	Information Services		AUG 2020 Dial Tone	\$ 255.06
4101534034	5200	2322	09/01/20	Information Services		AUG 2020 Enterprise Printing (EMACS)	\$ 7.14
4101534462	5200	2420	09/01/20	Information Services		AUG 2020 Wireless Device (Exchange Active Sync)	\$ 17.59
4101534038	5200	2421	09/01/20	Information Services		AUG 2020 Desktop Support Services	\$ 935.55
4101534460	5241	2410	09/01/20	Information Services		IT Infrastructure - Period 03	\$ 806.00
4101534036	5241	2417	09/01/20	Information Services		Enterprise Content Management - Period 03	\$ 157.00
4101534037	5241	2418	09/01/20	Information Services		Storage - Tier 1 - Period 03	\$ 211.00
4101534037	5241	2418	09/01/20	Information Services		Storage - Tier 3 - Period 03	\$ 192.00
4200062460	5200	2080	09/24/20	County		Supplies	\$ 1,411.61
4200062460	5294	2941	09/24/20	County		Training session	\$ 75.00

4200061430	5200	2310	09/02/20	Mail		Mail Services - DEL	\$ 136.50
4200061431	5200	2310	09/02/20	Mail		Mail Services - FLAT	\$ 19.07
4200061433	5200	2310	09/02/20	Mail		Mail Services - HAN	\$ 670.80
4200061741	5200	2415	09/09/20	Administrative Office		2020/2021 COWCAP-QTR1 (Local Agency Formation	\$ 1,145.22
TOTAL							\$ 7,113.30
MONTH OF SEPTEMBER 2020 CASH RECEIPTS							
TOTAL				NONE			\$ -
MONTH OF SEPTEMBER 2020 INTERNAL TRANSFERRED RECEIVED							
TOTAL				NONE			\$ -
							
COMPLETED BY: MICHAEL TUERPE Senior Analyst							
							
Date: 11/5/2020				Date: 11/5/2020			

MONTH OF OCTOBER 2020 PAYMENTS PROCESSED							
Document Number	Account	Posting Date	Vendor	Invoice	Reference	Amount	
1900855819	5200 2041	10/05/20	Century Link	150786328	Conference phone	\$ 54.33	
1900860156	5200 2085	10/13/20	Daily Journal	B3402233	Legal advertisement	\$ 1,140.73	
1900853874	5200 2090	10/01/20	Jan Pro	74065	Janitorial services	\$ 490.00	
1900856015	5200 2315	10/05/20	Storetrieve	0141488	File storage	\$ 64.37	
1900854501	5200 2335	10/01/20	Kelly Services	35015501	Temporary staff	\$ 104.30	
1900860154	5200 2335	10/13/20	Kelly Services	40018298	Temporary staff	\$ 104.30	
1900855810	5200 2445	10/05/20	Bob Aldrich	#1	Supplemental staff	\$ 1,425.00	
1900855829	5200 2449	10/05/20	Colantuono Highsmith & Whlatley	43944	Special legal counsel	\$ 110.00	
1900853848	5200 2905	10/01/20	City Com	# TEN AM 14	Tenant amortization	\$ 8,448.33	
TOTAL						\$ 11,941.36	
MONTH OF OCTOBER 2020 INTERNAL TRANSFERS PROCESSED							
4101564640	5200 2031	10/01/20	Information Services		SEP 2020 Payroll System Services (EMACS)	\$ 61.20	
4101564644	5200 2037	10/01/20	Information Services		SEP 2020 Dial Tone	\$ 255.06	
4101564647	5241 2410	10/01/20	Information Services		IT Infrastructure - Period 04	\$ 806.00	
4101564650	5241 2417	10/01/20	Information Services		Enterprise Content Management - Period 04	\$ 157.00	
4101564651	5241 2418	10/01/20	Information Services		Storage - Tier 3 - Period 04	\$ 192.00	
4101564651	5241 2418	10/01/20	Information Services		Storage - Tier 1 - Period 04	\$ 211.00	
4101564652	5200 2420	10/01/20	Information Services		SEP 2020 Wireless Device (Exchange Active Sync)	\$ 17.59	
4101564654	5200 2421	10/01/20	Information Services		SEP 2020 Desktop Support Services	\$ 935.55	
4101564655	5200 2460	10/01/20	Information Services		SEP 2020 Aerial Imagery	\$ 3,000.00	
4200062398	5200 2424	10/01/20	Clerk to the Board		NOE - LAFCO SC#452	\$ 50.00	
4200062400	5200 2424	10/01/20	Clerk to the Board		NOD-LAFCO SC#453	\$ 50.00	
4200063045	5200 2424	10/19/20	Clerk to the Board		NOE - LAFCO SC #455	\$ 50.00	
4200063295	5200 2445	10/19/20	Registrar of Voters		Voter certification	\$ 52.88	
4200063296	5200 2445	10/19/20	Registrar of Voters		Voter certification	\$ 104.93	
4200063297	5200 2445	10/19/20	Registrar of Voters		Voter certification	\$ 104.93	
4200063298	5200 2445	10/19/20	Registrar of Voters		Voter certification	\$ 104.93	
4200063300	5200 2445	10/19/20	Registrar of Voters		Voter certification	\$ 104.93	
4200063387	5540 5012	10/28/20	Information Services		20/21 Microsoft licenses, reimburse ISD	\$ 3,089.76	
4200062898	5200 2310	10/01/20	Mail		Mail Services - FLAT	\$ 5.54	
4200062899	5200 2310	10/1/2020	Mail		Mail Services - HAN	\$ 157.52	
4200062904	5200 2310	10/1/2020	Mail		Mail Services - DEL	\$ 130.00	
TOTAL						\$ 9,640.82	
MONTH OF OCTOBER 2020 CASH RECEIPTS							
4101563378	4070 9555	10/6/2020	City of Upland		LAFCO 3216 legal reimbursement	\$ 233.40	
4101583422	various	10/27/2020	City of Rancho Cucamonga		LAFCO 3241 completion charges	\$ 2,600.00	
4101563378	4070 9800	10/6/2020	City of Fontana		LAFCO SC456 Fees	\$ 1,100.00	

4101563378	4070	9800	10/6/2020	City of Upland	LAFCO SC455 Fees	\$ 2,384.00
4101583422	4070	9800	10/27/2020	City of San Bernardino	LAFCO SC458 Fees	\$ 550.00
TOTAL						\$ 6,867.40


MONTH OF OCTOBER 2020 INTERNAL TRANSFERRED RECEIVED

100462559	4030	8500	10/27/2020	County Treasury	Interest apportioned quarter ending 9/30/20	\$ 1,521.63
4300000094	4060	8842	10/7/2020	County Auditor	Apportionment received	\$ 10,000.00
TOTAL						\$ 11,521.63

						
COMPLETED BY: MICHAEL TUERPE				APPROVED BY: SAMUEL MARTINEZ		
Senior Analyst				Executive Officer		
Date: 12/8/2020				Date: 12/8/2020		

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

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(909) 388-0480 • Fax (909) 388-0481
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DATE: DECEMBER 9, 2020 
FROM: SAMUEL MARTINEZ, Executive Officer
MICHAEL TUERPE, Senior Analyst
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: Agenda Item #7: First Quarter Financial Review for Period
July 1 through September 30, 2020

RECOMMENDATION:

Staff recommends that the Commission note receipt of this report and file.

NOVEMBER HEARING:

The November 18 hearing was continued to December 16. The section on the Apportionment on page 4 has been updated (shown in italics on page 4). The remainder of the staff report is unchanged.

BACKGROUND:

The first quarter of Fiscal Year 2020-21 has concluded and staff is presenting the Commission with its first financial report. This report includes a review of the financial activities and the presentation of a spreadsheet (Attachment #1) showing the line item expenditures and receipts during the period. The summary table below shows that Total Expenditures are on-track with First Quarter makers. For Revenues, Fees and Deposits are slightly below the 25% mark. However, apportionment receipts usually are 100% by this point. This matter is discussed below.

Expenditures		Revenues	
Salaries and Benefits	26% (<i>on par</i>)	Apportionment	68% (<i>does not meet goal</i>)
Services and Supplies	30% (<i>on par</i>)	Fees and Deposits	23% (<i>slightly below goal</i>)
TOTAL	27%	TOTAL	62%

The following narrative provides a discussion of expenditures and reserves, revenues received, an update on special project activities, and a breakdown of the fund balance at the end of the quarter.

Expenditures and Reserves

Expenditures are comprised of two categories of accounts: 1) Salaries and Benefits, and 2) Services and Supplies. Through the first quarter, total expenditures are at 27% of Approved Budget authority. No request is being presented, at this time, by staff for authorization to utilize funds maintained in the Contingency or Reserve accounts. A more detailed analysis of the categories is as follows:

1. Salaries and Benefits (1000 series)

A. First Quarter Activity

The Salaries and Benefits series of accounts (1000 series) had expenditures of \$216,812 through the first quarter, representing 26% of Approved Budget authority – one percent above the 25% mark. The additional one percent is due to the mandatory payouts of accrued leave due to Jeffrey Lum's separation.

B. Anticipated Activity

Two employees separated towards the end of the first quarter. At the September meeting, the Commission:

- Approved the reclassification of Angie Schell from Administrative Secretary to Clerk to the Commission. The Administrative Secretary position remains unfilled, and temporary help is supplementing staffing needs when needed (see Account 2335 – Temporary Services).
- Approved the recruitment for the vacant GIS Analyst position. We anticipate a new employee beginning employment early January.

2. Services and Supplies (2000 and 5000 series)

A. First Quarter Activity

For the first quarter, the Services and Supplies series of accounts (2000 and 5000 series) had expenditures of \$106,706, or 30% of Approved Budget authority. The first quarter includes full-year and one-time payments. Payments that are typical to the first quarter that have taken place include: California Association of LAFCOs (CALAFCO) membership, the CALAFCO Annual conference (registration), the Commission's property and liability insurance, and the annual payment to SBCERA for GASB 68 processing. These one-time and full-year expenditures are generally on target for the fiscal year.

B. Second Quarter Anticipated Expenditures

Anticipated activities for the second quarter include significant expenditures, identified as:

- Full-year payments for the annual financial audit (\$11,668).
- Subscription to the County Street Network (\$10,500) for maintenance of digital mapping.
- Payments for the processing of proposals and countywide public cemetery district service review (legal costs, advertising and mailing) are anticipated.

C. Status of Ongoing Commission-approved Projects and Programs

The following provides an update on expenditures and progress on projects approved by the Commission.

Service Reviews:

At this November meeting, the Commission will consider the *Countywide Service Review for Public Cemetery Districts*. Pursuant to the service review schedule that the Commission approved in September, in December staff will commence the service review for park and recreation services.

Governance Training Program:

Due to the pandemic, the Governance Training Program is on hiatus. The year included one course: LAFCO 101. There are no plans to conduct this course online. When restrictions on gatherings lift, staff will gauge the interest of potential attendees.

Fiscal Indicators Program:

Due to temporary reduction in staffing from five to three, work has not begun on the new round of Fiscal Indicators. When the GIS Analyst position is filled, staff will commence work on the new round.

3. Reserves (6000 series)

No spending activity has been requested by staff or authorized by the Commission to take place in the Reserve accounts during the first quarter.

Revenues

1. Revenues through First-Quarter

The Commission has received 62% of Adopted Budget revenues through the first quarter. The items below outline the revenue activity:

- Interest (Account 8500) – Interest rates have steady increased over the past two years, albeit still providing a minimal cash amount. \$2,767 in interest revenue was earned from the Commission's cash in the County Treasury reflecting the final quarter of Fiscal Year 2019-20 cash. The bulk of LAFCO's revenues are received during the first half of the fiscal year through receipt of its annual apportionment. However, it is anticipated that the annual interest rate will remain low for the balance of the year providing limited resources.
- Apportionment (Account 8842) - *68% of the mandatory apportionment payments from the County, cities, and independent special districts billed by the County Auditor have been received. As for cities, a calculation error was made by the County Auditor in the cities apportionment related to subsidiary districts. The error was a double counting of subsidiary district revenues, which resulted in an incorrect distribution amongst the cities. The error would not have occurred if the State Controller identified a change in its methodology. On November 3, the County Auditor issued the credit/invoice memos to all cities.*

Since the close of the first quarter, apportionment receipts increased from 68% (September 30) to 97% (December 8).

- Fees and Deposits (Accounts 9545 – 9800) – Through the first quarter, the Fees and Deposits series of accounts have received 23% of its budgeted revenue (\$27,170). This amount is made up of a combination of application fees, service contract filing fees and legal cost recovery.
- Carryover from Prior Year (Account 9970)

Prior Year Contingency and Reserve funds have been carried forward, \$278,745.

2. Proposal Activity

The table below identifies the number of proposals and service contracts received through the first quarter. The table identifies that one proposal and one service contract were received in the first quarter.

Activity	Budget	Through September	
		No.	% of Budget
Proposals	9	1	11%
Service Contracts - Commission approval	2	1	50%
Service Contracts - Admin (E.O.) approval	2	0	0%

The second quarter anticipates the receipt of two annexations.

Cash in Treasury

As of September 30, the Commission's cash in the County Treasury was \$745,944. A breakdown of this amount is shown below. As shown, the Commission is anticipated to contribute its Net Pension Liability Reserve amount of \$43,852 to SBCERA in June 2021 to reduce its net pension liability.

September 30, 2020 Balance		\$745,944
Cash Balance is composed of the following:		
<i>Committed (constrained to specific purposes)</i>		
Net Pension Liability Reserve (Account 6010) <i>June 2021 payment to SBCERA</i>		43,852
Compensated Absences Reserve (Account 6030)		142,623
<i>Assigned (intended for specific purposes)</i>		
Contingency (Account 6000)		18,600
General Reserve (Account 6025)		150,000
<i>Budgeted Remaining Expenditures</i>		866,104
<i>Budgeted Remaining Revenues (shown as negative)</i>		(475,235)

CONCLUSION:

For the first quarter, expenditures are on track, 68% of the apportionment receipts were received, and proposal activity is slightly less than on par for one quarter.

Staff will be happy to answer any questions from the Commission prior to or at the hearing regarding the items presented in this report.

SM/MT

Attachment:

Spreadsheet of First-Quarter Expenditures, Reserves, and Revenues

Attachment #1

Budget Spreadsheets

ACCT. #	ACCOUNT NAME	ACTUAL YEAR-END FY 18-19	PROJECTED YEAR-END FY 19-20	APPROVED FY 20-21	JULY	AUG	SEPT	AMOUNT THRU 1ST Q	% THRU 1ST Q
	SALARIES AND BENEFITS								
1010	Earnable Compensation	\$ 503,704	\$ 485,548	\$ 507,972	\$ 54,538.76	\$ 36,360.71	\$ 42,550.44	\$ 133,450	26%
1030	Auto and Cell Phone Allowances	19,269	9,735	9,485	1,050.00	700.00	700.00	2,450	26%
1035	Overtime						2.97	3	
1045	Termination Payment						1,838.50	1,839	
1110	General Member Retirement	173,050	185,575	183,251	20,109.65	13,125.94	11,545.55	44,781	24%
1130	Survivors Benefits	179	176	183	20.25	13.50	9.45	43	24%
1135	Retirement Subsidy (no longer active)	1,995						-	
1200	Medical Premium Subsidy	53,970	55,906	55,860	6,459.78	4,342.56	3,306.36	14,109	25%
1205	Long-Term Disability	1,068	1,110	1,184	129.66	83.44	65.65	279	24%
1207	Vision Care Insurance	782	779	812	88.80	57.80	40.46	187	23%
1215	Dental Insurance Subsidy	1,230	1,237	1,282	143.16	95.44	66.22	305	24%
1222	Short-Term Disability	4,990	5,636	6,072	667.47	418.64	328.02	1,414	23%
1225	Social Security Medicare	6,277	5,827	6,170	657.15	438.55	533.18	1,629	26%
1235	Workers' Compensation	3,019	1,152	5,266	2,534.32			2,534	48%
1240	Life Insurance & Medical Trust Fund	9,251	9,906	11,853	1,129.62	752.68	701.47	2,584	22%
1305	Medical Reimbursement Plan	3,900	5,496	6,392	450.00	325.92	216.29	992	16%
1310	Annuitant Employee Medical (no longer active)	3,774						-	
1314	457/401a Contribution	2,695	2,929	3,378	331.23	220.82	195.62	748	22%
1315	401k Contribution	35,173	37,051	39,482	4,320.00	2,880.00	2,265.98	9,466	24%
	TOTAL SALARIES & BENEFITS	\$ 824,325	\$ 808,062	\$ 838,641	\$ 92,629.85	\$ 59,816.00	\$ 64,366.16	\$ 216,812	26%
	Staffing (Full time equivalent units)	5.25	5.0	5.0					
	SERVICES AND SUPPLIES								
	General Services & Supplies								
2031	Payroll System Services		\$ 654	\$ 826		\$ 102.00	\$ 68.00	\$ 170	21%
2033	Payroll Systems						1,005.76	1,006	
2035	Communications							-	
2037	COMNET Charge (ISF)	\$ 3,593	3,148	3,434		255.06	255.06	510	15%
2040	Relocation Charges - Phone Service		0					-	
2041	Phone Service/Outside Company	8,644	7,598	8,400	1,417.10	345.38		1,762	21%
2043	Electronic Equipment Maintenance	92	-	-				-	
2075	Membership Dues	10,303	11,822	12,039	10,662.00			10,662	89%
2076	Tuition Reimbursement	-	999	1,000				-	0%
2080	Publications	2,723	3,448	3,343	700.08	35.00	499.38	1,234	37%

Attachment #1

Budget Spreadsheets

ACCT. #	ACCOUNT NAME	ACTUAL YEAR-END FY 18-19	PROJECTED YEAR-END FY 19-20	APPROVED FY 20-21	JULY	AUG	SEPT	AMOUNT THRU 1ST Q	% THRU 1ST Q
2085	Legal Notices	21,188	12,180	11,250	3,212.80	-	1,940.33	5,153	46%
2090	Building Expense	6,466	7,627	7,000	490.00	835.00	835.00	2,160	31%
2115	Computer Software	3,054	2,259	3,054				-	0%
2125	Inventoriable Equipment			-				-	
2130	Moving Expenses							-	
2135	Utilities		2,557					-	
2180	Electricity	3,576	5,817	7,200	399.93	372.39	503.65	1,276	18%
2182	Electricity		-					-	
2195	Reimbursement Services and Supplies							-	
2245	Other Insurance	14,285	12,683	14,238	13,292.13			13,292	93%
2305	General Office Expense	4,918	4,354	1,250	459.35	29.59	934.27	1,423	114%
2308	Credit Card Clearing Account	(1,276)	311	-	(1,301.61)	1,486.61	815.88	1,001	
2309	Visa Temp Card		-					-	
2310	Postage - Direct Charge	7,121	9,201	5,316	400.66	342.84	826.37	1,570	30%
2315	Records Storage	808	1,305	900	64.37	64.37	128.74	257	29%
2316	Surplus Handling		-			7.14	7.14	14	
2323	Reproduction Services	162		-				-	
2335	Temporary Services	699	89	-			521.50	522	
	Consultant & Special Services:								
2400	Legal Counsel	94,182	39,584	30,870	341.10	2,054.00	1,333.60	3,729	12%
2405	Auditing	8,000	14,528	11,668				-	0%
2410	Data Processing	12,851	11,255	8,439		1,612.00	806.00	2,418	29%
2414	Application Development Maint.		-	-				-	
2415	COWCAP	10,109	13,328	7,345			1,145.22	1,145	16%
2416	Enterprise Printing		36	31		314.00	157.00	471	1519%
2418	Enterprise Data Storage		8,459	7,200		806.00	403.00	1,209	17%
2420	Wireless Device Access	300	262	286		17.59	17.59	35	12%
2421	Desktop Support Services	17,417	14,761	15,085		935.55	935.55	1,871	12%
2424	Environmental Consultant	10,605	25,526	10,600	3,990.00	915.00	815.00	5,720	54%
2444	Security Services	480	691	492				-	0%
2445	Other Professional Services	96,029	64,545	34,161	4,710.59	1,251.40	1,800.00	7,762	23%
2449	Outside Legal (Litigation & Special Counsel)	3,216	4,115	-		165.00		165	
2450	Application Development Support	-	-	-				-	
2460	GIMS Charges	13,518	13,500	16,500				-	0%
	Lease/Purchases:								

Attachment #1

Budget Spreadsheets

ACCT. #	ACCOUNT NAME	ACTUAL YEAR-END FY 18-19	PROJECTED YEAR-END FY 19-20	APPROVED FY 20-21	JULY	AUG	SEPT	AMOUNT THRU 1ST Q	% THRU 1ST Q
2895	Rent/Lease Equipment (copier)	5,289	6,004	5,100	533.29	428.47		962	19%
2905	Office/Hearing Chamber Rental	99,052	99,474	101,201	8,448.33	15,057.90	15,057.90	38,564	38%
	Travel Related Expenses:								
2940	Private Mileage	4,952	4,025	4,632				-	0%
2941	Conference/Training	5,231	5,205	4,710	300.00		75.00	375	8%
2942	Hotel	5,886	6,151	7,610				-	0%
2943	Meals	456	724	1,100				-	0%
2944	Car Rental	-	-	-				-	
2945	Air Travel	1,011	1,792	800				-	0%
2946	Other Travel	122	848	300				-	0%
	Other:								
5012	Services Out (Staples)	283	2,619.44	3,600	43.40	223.27		267	7%
TOTAL SERVICES & SUPPLIES		\$ 475,345	\$ 423,483	\$ 350,981	\$ 48,163.52	\$ 27,655.56	\$ 30,886.94	\$ 106,706	30%
TOTAL EXPENDITURES		\$ 1,299,670	\$ 1,231,546	\$ 1,189,622	\$ 140,793.37	\$ 87,471.56	\$ 95,253.10	\$ 323,518	27%
	RESERVES (Increases)								
6000	Contingency (Assigned)								
6010	Net Pension Liability Reserve (Committed)			43,852					
6025	General Reserve (Assigned)								
6030	Compensated Absences Reserve (Committed)			32,477					
6035	Salary Reserve for Extra Pay Period (Committed)								
TOTAL CONTINGENCIES & RESERVES		\$ -	\$ -	\$ 76,329	\$ -	\$ -	\$ -	\$ -	0%
TOTAL APPROPRIATION		\$ 1,299,670	\$ 1,231,546	\$ 1,265,951	\$ 140,793.37	\$ 87,471.56	\$ 95,253.10	\$ 323,518	26%

Attachment #1

Budget Spreadsheets

ACCT #	ACCOUNT NAME	ACTUAL YEAR-END FY 18-19	PROJECTED YEAR-END FY 19-20	APPROVED FY 20-21	JULY	AUG	SEPT	AMOUNT THRU 1ST Q	% THRU 1ST Q
	CONTRIBUTION REVENUES								
	Use of Money:								
8500	Interest	\$ 16,191	\$ 15,823	\$ 19,000	\$ 2,766.69			2,767	15%
	Mandatory Contribution from Governments:								
8842	Apportionment	1,105,497	1,090,497	1,120,497		756,998.00		756,998	68%
	Fees and Deposits (Current Services):								
9545	Individual Notice	8,916	5,429	11,000	1,000.00	1,000.00		2,000	18%
9555	Legal Services	70,067	14,050	19,400	2,050.47	2,233.40		4,284	22%
9595	Protest Hearing	3,000		6,000		4,839.61		4,840	81%
9655	GIMS Fees	825	1,055	765		975.00		975	127%
9660	Environmental	10,619	5,705	10,400	700.00	1,000.00		1,700	16%
9800	LAFCO Fees	69,389	62,895	68,889	1,600.00	11,772.00		13,372	19%
	Total Fees and Deposits	162,816	89,135	116,454	5,350.47	21,820.01	-	27,170	23%
	TOTAL CONTRIBUTION REVENUES	1,284,504	1,195,454	1,255,951	8,117.16	778,818.01	-	786,935	63%
	OTHER REVENUES								
9910	Prior Year Activity (refunds, collections)	\$ (373)						-	
9930	Miscellaneous Revenues	265	580			2,657.98		2,658	
9970	Carryover of Open Proposals/Projects	(50)		10,000	1,122.84			1,123	11%
9970	Carryover from Prior Year, Assigned	50						-	
9973	State-dated Checks	1,000	38					-	
9970	SBCERA Contributions	(184,963)						-	
	TOTAL OTHER REVENUES	(184,071)	618	10,000	1,122.84	2,657.98	-	3,781	38%
	TOTAL REVENUES	\$ 1,100,434	\$ 1,196,072	\$ 1,265,951	\$ 9,240.00	\$ 781,475.99	\$ -	\$ 790,716	62%

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

1170 West Third Street, Unit 150, San Bernardino, CA 92415-0490
(909) 388-0480 • Fax (909) 388-0481
lafco@lafco.sbcounty.gov
www.sbclafco.org

DATE: DECEMBER 9, 2020
FROM: MICHAEL TUERPE, Senior Analyst
TO: LOCAL AGENCY FORMATION COMMISSION



SUBJECT: Agenda Item #8: Consideration of Approval of the Participating Employer Agreement for the 457(b) Deferred Compensation Plan, as Amended and Restated, Sponsored by the County of San Bernardino

RECOMMENDATIONS:

Staff recommends that the Commission take the following actions:

1. Approve the Participating Employer Agreement for the 457(b) Deferred Compensation Plan, as Amended and Restated, Sponsored by the County of San Bernardino
2. Adopt LAFCO Resolution No. 3321.

BACKGROUND:

LAFCO is a participating employer in the County's 457(b) Deferred Compensation Plan. The County of San Bernardino Defined Contribution Committee recently approved an updated 457(b) Deferred Compensation Plan document.

County Human Resources requests that all participating employers review the Plan and sign the attached Participating Employer Agreement. LAFCO staff reviewed the Plan and the Agreement and questioned the effective date of January 1, 2020. According to County Human Resources, the January 2020 effective date relates to several collective bargaining agreements for multiple unions throughout 2020 that included an automatic enrollment provision for employees in those unions. This does not apply to LAFCO.

Other than the automatic enrollment addition (which must be collectively bargained), the Plan's provisions are generally the same. The new plan document format provides a more streamlined document that is maintained by the County's record keeper (currently Voya).

As the signatory employer, the County Board of Supervisors is scheduled to consider this item for approval at its December 15 meeting. As a participating employer, staff recommends that the Commission approve the Participating Employer Agreement and adopt Resolution No. 3321. Should the County Board take any action other than approval

on December 15, LAFCO staff will recommend that the Commission continue this item or defer for Discussion.

SM/MT

Attachments:

1. [Draft Participating Employer Agreement](#)
2. [Draft Resolution No. 3321 with Exhibit A \(The San Bernardino County 457\(b\) Deferred Compensation Plan, as Amended and Restated\)](#)

Draft Participating Employer Agreement

Attachment 1

PARTICIPATION AGREEMENT

The Employer, by executing this Participation Agreement, elects to become a Participating Employer in the Plan, to continue participation in the Plan or to cease status as a Participating Employer. The Participating Employer accepts, and agrees to be bound by, all of the elections granted under the provisions of the Plan as made by the Signatory Employer to the Execution Page of the Adoption Agreement, except as otherwise provided in this Participation Agreement. **[Note: Each Participating Employer must execute a separate Participation Agreement.]**

A. PARTICIPATING EMPLOYER INFORMATION

- a. Name: Local Agency Formation Commission - LAFCO
- b. Address: 1170 W. Third Street, Unit 150
Street
San Bernardino CA 92415
City State Zip
- c. Telephone: (909) 388-0480
- d. Taxpayer Identification Number (TIN): 32-0422397

B. EFFECTIVE DATE(S)

- e. ☐ NEW PLAN. The Participating Employer's adoption of this Plan constitutes the adoption of a new plan by the Participating Employer, effective as of: _____.
- f. ☒ RESTATEMENT. The Participating Employer's adoption of this Plan constitutes the adoption of an amendment and restatement of the Plan effective as of: January 1, 2020.
- g. ☐ RESTATEMENT AND MERGER. The Participating Employer's adoption of this Plan constitutes the amendment and restatement of the Participating Employer's plan known as: _____ which plan is being merged into this Plan effective as of: _____.
- h. ☐ CESSATION. The Participating Employer is ceasing its participation in the Plan effective as of: _____.
- i. ☐ SPECIAL EFFECTIVE DATES: _____.

C. ALLOCATION OF CONTRIBUTIONS AND FORFEITURES

- Contributions and Forfeitures will be allocated together for Participating Employers unless a selection is made below (select j. or all that apply at k. - l.)
- j. ☒ N/A.
- k. ☐ Contributions made by a Participating Employer will only be allocated to Participants employed by such Participating Employer.
- l. ☐ Forfeitures of amounts attributable to a Participating Employer will only be used for the benefit of the Participants of such Participating Employer.

PARTICIPATING EMPLOYER: Local Agency Formation Commission - LAFCO

By: _____

DATE SIGNED _____

SIGNATORY EMPLOYER: County of San Bernardino

By: _____

DATE SIGNED _____

**Draft Resolution No. 3321
with Exhibit A (The San
Bernardino County 457(b)
Deferred Compensation Plan,
as Amended and Restated)**

Attachment 2

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

1170 West Third Street, Unit 150, San Bernardino, CA 92415-0490
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RESOLUTION NO. 3321

A RESOLUTION OF THE LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY, STATE OF CALIFORNIA, APPROVING AND ADOPTING THE PARTICIPATING EMPLOYER AGREEMENT FOR THE 457(B) DEFERRED COMPENSATION PLAN, AS AMENDED AND RESTATED, SPONSORED BY THE COUNTY OF SAN BERNARDINO

On Wednesday, December 16, 2020, on motion of _____, duly seconded by Commissioner _____, and carried, the Local Agency Formation Commission adopts the following resolution:

SECTION 1. The Local Agency Formation Commission for San Bernardino County, State of California (hereafter shown as "LAFCO"), hereby certifies that this resolution was adopted by LAFCO on December 16, 2020, and that this resolution has not been modified or rescinded as of the date certified hereof.

SECTION 2. RESOLVED, that the form of the Participation Agreement of the Local Agency Formation Commission, a Participating Employer, which evidences the adoption of the amended 457 Plan sponsored by the County of San Bernardino is hereby approved and adopted and that the Executive Officer is hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more counterparts of the Participation Agreement.

SECTION 3. LAFCO hereby certifies that attached hereto as Exhibit A is a true copy of The San Bernardino County 457(b) Deferred Compensation Plan, as amended and restated, which is hereby approved and adopted.

THIS ACTION APPROVED AND ADOPTED BY THE LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSENT: COMMISSIONERS:

STATE OF CALIFORNIA)
)ss.
COUNTY OF SAN BERNARDINO)

RESOLUTION NO. 3321

I, SAMUEL MARTINEZ, Executive Officer of the Local Agency Formation Commission for San Bernardino County, California, do hereby certify this record to be a full, true, and correct copy of the action taken by said Commission, by vote of the members present, as the same appears in the Official Minutes of said Commission at its meeting of December 16, 2020.

DATED:

SAMUEL MARTINEZ
Executive Officer



COUNTY OF SAN BERNARDINO

457(b) Deferred Compensation Plan Document

Adopted by the Board of Supervisors, January 27, 1975
Amendment approved by the Board of Supervisors, June 3, 1997
Amendment approved by the Board of Supervisors, October 1, 2000
Amendment approved by the Board of Supervisors, June 3, 2003
Amendment approved by the Board of Supervisors, March 23, 2004
Amendment approved by the Board of Supervisors, July 19, 2005
Amendment approved by the Board of Supervisors, November 8, 2005
Amendment approved by the Board of Supervisors, August 15, 2006
Amendment approved by the Board of Supervisors, June 17, 2008
Amendment approved by the Board of Supervisors, February 23, 2010
Amendment approved by the Board of Supervisors, April 23, 2013
Amendment approved by the Board of Supervisors, June 16, 2015
Amendment approved by the Board of Supervisors, December 15, 2020

The San Bernardino County 457(b) Deferred Compensation Plan became effective January 27, 1975 and constitutes a deferred compensation plan (section 457(b) of the Internal Revenue Code) for the exclusive benefit of eligible employees and their beneficiaries.

The present document represents a restatement in its entirety of the Plan provisions, effective December 15, 2020.

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1. Basic Plan Document
2. Appendices
 - a) Adoption Agreement
 - b) Adopting Resolution
 - c) QDRO Procedure
 - d) Loan Policy
 - e) Special Tax Notice
 - f) Participating Employers
 - g) Summary of Plan Provisions

**THE SAN BERNARDINO COUNTY 457(B) DEFERRED COMPENSATION PLAN
BASIC PLAN DOCUMENT**

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**ARTICLE I
DEFINITIONS**

1.01 **"Account"** means the separate Account(s) which the Plan Administrator or the Trustee maintains under the Plan for a Participant's Deferred Compensation. The Plan Administrator or Trustee may establish separate Accounts for multiple Beneficiaries of a Participant to facilitate required minimum distributions under Section 4.03 based on each Beneficiary's life expectancy.

1.02 **"Accounting Date"** means the last day of the Plan Year. The Plan Administrator will allocate Employer contributions and forfeitures for a particular Plan Year as of the Accounting Date of that Plan Year, and on such other dates, if any, as the Plan Administrator determines, consistent with the Plan's allocation conditions and other provisions.

1.03 **"Beneficiary"** means a person who the Plan or a Participant designates and who is or may become entitled to a Participant's Account upon the Participant's death. A Beneficiary who becomes entitled to a benefit under the Plan remains a Beneficiary under the Plan until the Plan Administrator or Trustee has fully distributed to the Beneficiary his or her Plan benefit. A Beneficiary's right to (and the Plan Administrator's or a Trustee's duty to provide to the Beneficiary) information or data concerning the Plan does not arise until the Beneficiary first becomes entitled to receive a benefit under the Plan.

1.04 **"Code"** means the Internal Revenue Code of 1986, as amended.

1.05 **"Compensation"**

(A) Uses and Context. Any reference in the Plan to Compensation is a reference to the definition in this Section 1.05, unless the Plan reference, or the Employer in the Adoption Agreement, modifies this definition. Except as the Plan otherwise specifically provides, the Plan Administrator will take into account only Compensation actually paid during (or as permitted under the Code, paid for) the relevant period. A Compensation payment includes Compensation paid by the Employer through another person under the common paymaster provisions in Code §§3121 and 3306. In the case of an Independent Contractor, Compensation means the amounts the Employer pays to the Independent Contractor for services, except as the Employer otherwise specifies in the Adoption Agreement. The Employer in the Adoption Agreement may elect to allocate contributions based on a Compensation within specified 12-month period which ends within a Plan Year.

(B) Base Definitions and Modifications. The Employer in the Adoption Agreement must elect one of the following base definitions of Compensation: W-2 Wages, Code §3401(a) Wages, or 415 Compensation. The Employer may elect a different base definition as to different Contribution Types. The Employer in the Adoption Agreement may specify any modifications thereto, for purposes of contribution allocations under Article III. If the Employer fails to elect one of the above-referenced definitions, the Employer is deemed to have elected the W-2 Wages definition.

(1) W-2 Wages. W-2 Wages means wages for federal income tax withholding purposes, as defined under Code §3401(a), plus all other payments to an Employee in the course of the Employer's trade or business, for which the Employer must furnish the Employee a written statement under Code §§6041, 6051, and 6052, but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or services performed (such as the exception for agricultural labor in Code §3401(a)(2)).

(2) Code §3401(a) Wages (income tax wage withholding). Code §3401(a) Wages means wages within the meaning of Code §3401(a) for the purposes of income tax withholding at the source, but determined without regard to any rules that limit the remuneration included in wages based on the nature or the location of the employment or the services performed (such as the exception for agricultural labor in Code §3401(a)(2)).

(3) Code §415 Compensation (current income definition/simplified compensation under Treas. Reg. §1.415(c)-2(d)(2)). Code §415 Compensation means the Employee's wages, salaries, fees for professional service and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits and reimbursements or other expense allowances under a nonaccountable plan as described in Treas. Reg. §1.62-2(c)).

Code §415 Compensation does not include:

(a) Deferred compensation/SEP/SIMPLE. Employer contributions (other than Elective Deferrals) to a plan of deferred compensation (including a simplified employee pension plan under Code §408(k) or to a simple retirement account under Code §408(p)) to the extent the contributions are not included in the gross income of the Employee for the Taxable Year in which contributed, and any distributions from a plan of deferred compensation (whether or not qualified), regardless of whether such amounts are includible in the gross income of the Employee when distributed.

(b) Option exercise. Amounts realized from the exercise of a non-qualified stock option (an option other than a statutory option under Treas. Reg. §1.421-1(b)), or when restricted stock or other property held by an Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture under Code §83.

(c) Sale of option stock. Amounts realized from the sale, exchange or other disposition of stock acquired under a statutory stock option as defined under Treas. Reg. §1.421-1(b).

(d) Other amounts that receive special tax benefits. 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 Employee and are not salary reduction amounts under Code §125).

(e) Other similar items. Other items of remuneration which are similar to any of the items in Sections 1.11(B)(3)(a) through (d).

(4) Alternative (general) 415 Compensation. Under this definition, Compensation means as defined in Section 1.05(B)(3) but with the addition of: (a) amounts described in Code §§104(a)(3), 105(a), or 105(h) but only to the extent that these amounts are includible in Employee's gross income; (b) amounts paid or reimbursed by the Employer for moving expenses incurred by the Employee, but only to the extent that at the time of payment it is reasonable to believe these amounts are not deductible by the Employee under Code §217; (c) the value of a nonstatutory option (an option other than a statutory option under Treas. Reg. §1.421-1(b)) granted by the Employer to the an Employee, but only to the extent that the value of the option is includible in the Employee's gross income for the Taxable Year of the grant; (d) the amount includible in the Employee's gross income upon the Employee's making of an election under Code §83(b); and (e) amounts that are includible in the Employee's gross income under Code §409A or Code §457(f)(1)(A) or because the amounts are constructively received by the Participant. [Note if the Plan's definition of Compensation is W-2 Wages or Code §3401(a) Wages, then Compensation already includes the amounts described in clause (e).]

(C) Deemed 125 Compensation. Deemed 125 Compensation means, in the case of any definition of Compensation which includes a reference to Code §125, amounts under a Code §125 plan of the Employer that are not available to a Participant in cash in lieu of group health coverage, because the Participant is unable to certify that he/she has other health coverage.

(D) Modification to Compensation. The Employer must specify in the Adoption Agreement the Compensation the Plan Administrator is to take into account in allocating Deferral Contributions to a Participant's Account. For all Plan Years other than the Plan Year in which the Employee first becomes a Participant, the Plan Administrator will take into account only the Compensation determined for the portion of the Plan Year in which the Employee actually is a Participant.

(E) Elective Contributions. Compensation under Section 1.05 includes Elective Contributions unless the Employer in the Adoption Agreement elects to exclude Elective Contributions. "Elective Contributions" are amounts excludible from the Employee's gross income under Code §§125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 403(b), 408(p) or 457, and contributed by the Employer, at the Employee's election, to a cafeteria plan, a qualified transportation fringe benefit plan, a 401(k) arrangement, a SARSEP, a tax-sheltered annuity, a SIMPLE plan or a Code §457 plan.

(F) Post-Severance Compensation. Compensation includes Post-Severance Compensation to the extent the Employer elects in the Adoption Agreement or as the Plan otherwise provides. Post-Severance Compensation is Compensation paid after a Participant's Severance from Employment from the Employer, as further described in this Section 1.05(F). As the Employer elects, Post-Severance Compensation may include any or all of regular pay, leave cash-outs, or deferred compensation paid within the time period described in Section 1.05(F)(1), and may also include salary continuation for disabled Participants, all as defined below. Any other payment paid after Severance from Employment that is not described in this Section 1.05(F) is not Compensation even if payment is made within the time period described below. Post-Severance Compensation does not include severance pay, parachute payments under Code §280G(b)(2) or payments under a nonqualified unfunded deferred compensation plan unless the payments would have been paid at that time without regard to Severance from Employment.

(1) Timing. Post-Severance Compensation includes regular pay, leave cashouts, or deferred compensation only to the extent the Employer pays such amounts by the later of 2 1/2 months after Severance from Employment or by the end of the Limitation Year that includes the date of such Severance from Employment.

(a) Regular pay. Regular pay means the payment of 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, but only if 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.

(b) Leave cash-outs. Leave cash-outs means payments for unused accrued bona fide sick, vacation, or other leave, but only if the Employee would have been able to use the leave if employment had continued and if Compensation would have included those amounts if they were paid prior to the Participant's Severance from Employment.

(c) Deferred compensation. As used in this Section 1.05(F), deferred compensation means the payment of deferred compensation pursuant to an unfunded deferred compensation plan, if Compensation would have included the Deferred Compensation if it had been paid prior to the Participant's Severance from Employment, but only if the payment would have been paid at the same time if the Participant had continued in employment with the Employer and only to the extent that the payment is includible in the Participant's gross income.

(2) Salary continuation for disabled Participants. Salary continuation for disabled Participants means Compensation paid to a Participant who is permanently and totally disabled (as defined in Code §22(e)(3)).

(G) Differential Wage Payments. An individual receiving a Differential Wage Payment, as defined by Code §3401(h)(2), shall be treated as an employee of the employer making the payment and the Differential Wage Payment shall be treated as compensation for purposes of Code §457(b) and any other Internal Revenue Code section that references the definition of compensation under Code §415, including the definition of Includible Compensation as provided in Section 1.15.

1.06 "Deferral Contributions" means as the Employer elects on the Adoption Agreement, Salary Reduction Contributions, Nonelective Contributions and Matching Contributions. The Plan Administrator in applying the Code §457(b) limit will take into account Deferral Contributions in the Taxable Year in which deferred, or if later, in the Taxable Year in which the Deferral Contributions are no

longer subject to a Substantial Risk of Forfeiture. The Plan Administrator in determining the amount of a Participant's Deferral Contributions disregards the net income, gain and loss attributable to Deferral Contributions unless the Deferral Contributions are subject to a Substantial Risk of Forfeiture. If a Deferral Contribution is subject to a Substantial Risk of Forfeiture, the Plan Administrator takes into the Deferral Contribution as adjusted for allocable net income, gain or loss in the Taxable Year in which the Substantial Risk of Forfeiture lapses.

1.07 **"Deferred Compensation"** means as to a Participant the amount of Deferral Contributions, Rollover Contributions and Transfers adjusted for allocable net income, gain or loss, in the Participant's Account.

1.08 **"Effective Date"** of this Plan is the date the Employer specifies in the Adoption Agreement. The Employer in the Adoption Agreement may elect special effective dates for Plan provisions the Employer specifies provided any such date(s) are permitted by the Code, by Treasury regulations, or by other applicable guidance.

1.09 **"Elective Deferrals"** means a contribution the Employer makes to the Plan pursuant to a Participant's Salary Reduction Agreement, as described in Section 3.02. The term "Elective Deferrals" includes Pre-Tax Elective Deferrals and Roth Elective Deferrals.

1.10 **"Employee"** means an individual who provides services for the Employer, as a common law employee of the Employer. The Employer in the Adoption Agreement must elect or specify any Employee, or class of Employees, not eligible to participate in the Plan (an "Excluded Employee"). See Section 1.16 regarding potential treatment of an Independent Contractor as an Employee.

1.11 **"Employer"** means the entity specified in the Adoption Agreement, any successor which shall maintain this Plan; and any predecessor which has maintained this Plan. In addition, where appropriate, the term Employer shall include any Participating Employer.

1.12 **"Employer Contribution"** means Nonelective Contributions or Matching Contributions.

1.13 **"ERISA"** means the Employee Retirement Income Security Act of 1974, as amended.

1.14 **"Excess Deferrals"** means Deferral Contributions to a Governmental Eligible 457 Plan or to a Tax-Exempt Organization Eligible 457 Plan for a Participant that exceed the Taxable Year maximum limitation of Code §§457(b) and (e)(18).

1.15 **"Includible Compensation"** means, for the Employee's Taxable Year, the Employee's total Compensation within the meaning of Code §415(c)(3) paid to an Employee for services rendered to the Employer. Includible Compensation includes Deferral Contributions under the Plan, compensation deferred under any other plan described in Code §457, and any amount excludible from the Employee's gross income under Code §§401(k), 403(b), 125 or 132(f)(4) or any other amount excludible from the Employee's gross income for Federal income tax purposes. The Employer will determine Includible Compensation without regard to community property laws.

1.16 **"Independent Contractor"** means any individual who performs service for the Employer and who the Employer does not treat as an Employee or a Leased Employee. The Employer in the Adoption Agreement may elect to permit Independent Contractors to participate in the Plan. To the extent that the Employer permits Independent Contractor participation, references to Employee in the Plan include Independent Contractors and Compensation means the amounts the Employer pays to the Independent Contractor for services, except as the Employer otherwise specifies in the Adoption Agreement.

1.17 **"Leased Employee"** means an Employee within the meaning of Code §414(n).

1.18 **"Matching Contribution"** means an Employer fixed or discretionary contribution made or forfeiture allocated on account of Salary Reduction Contributions.

1.19 **"Nonelective Contribution"** means an Employer fixed or discretionary contribution not made as a result of a Salary Reduction Agreement and which is not a Matching Contribution.

1.20 **"Normal Retirement Age"** means the age the Employer specifies in the Adoption Agreement consistent with Section 3.05(B).

1.21 **"Participant"** is an Employee other than an Excluded Employee who becomes a Participant in accordance with the provisions of Section 2.01.

1.22 **"Plan"** means the 457 plan established or continued by the Employer in the form of this basic Plan and (if applicable) Trust Agreement, including the Adoption Agreement. The Employer in the Adoption Agreement must designate the name of the Plan. All section references within the Plan are Plan section references unless the context clearly indicates otherwise.

1.23 **"Plan Administrator"** is the Employer unless the Employer designates another person to hold the position of Plan Administrator. The Plan Administrator may be a Participant.

1.24 **"Plan Entry Date"** means the dates the Employer elects in Adoption Agreement.

1.25 **"Plan Year"** means the consecutive 12-month period the Employer elects in the Adoption Agreement.

1.26 **"Pre-Tax Elective Deferrals"** means a Participant's Salary Reduction Contributions which are not includible in the Participant's gross income at the time deferred and have been irrevocably designated as Pre-Tax Elective Deferrals by the Participant in his or her Salary Reduction Agreement. A Participant's Pre-Tax Elective Deferrals will be separately accounted for, as will gains and losses attributable to those Pre-Tax Elective Deferrals.

1.27 **"Rollover Contribution"** means the amount of cash or property which an eligible retirement plan described in Code §402(c)(8)(B) distributes to an eligible Employee or to a Participant in an eligible rollover distribution under Code §402(c)(4) and which

the eligible Employee or Participant transfers directly or indirectly to a Governmental Eligible 457 Plan. A Rollover Contribution includes net income, gain or loss attributable to the Rollover Contribution. A Rollover Contribution excludes after-tax Employee contributions, as adjusted for net income, gain or loss.

1.28 **"Roth Elective Deferrals"** means a Participant's Salary Reduction Contributions that are includible in the Participant's gross income at the time deferred and have been irrevocably designated as Roth Elective Deferrals by the Participant in his or her Salary Reduction Agreement. A Participant's Roth Elective Deferrals will be separately accounted for, as will gains and losses attributable to those Roth Elective Deferrals. However, forfeitures may not be allocated to such account. The Plan must also maintain a record of a Participant's investment in the contract (i.e., designated Roth contributions that have not been distributed) and the year in which the Participant first made a Roth Elective Deferral.

1.29 **"Salary Reduction Agreement"** means a written agreement between a Participant and the Employer, by which the Employer reduces the Participant's Compensation for Compensation not available as of the date of the election and contributes the amount as a Salary Reduction Contribution to the Participant's Account.

1.30 **"Salary Reduction Contribution"** means a contribution the Employer makes to the Plan pursuant to a Participant's Salary Reduction Agreement.

1.31 **"Service"** means any period of time the Employee is in the employ of the Employer. In the case of an Independent Contractor, Service means any period of time the Independent Contractor performs services for the Employer on an independent contractor basis. An Employee or Independent Contractor terminates Service upon incurring a Severance from Employment.

(A) **Qualified Military Service.** Service includes any qualified military service the Plan must credit for contributions and benefits in order to satisfy the crediting of Service requirements of Code §414(u). A Participant whose employment is interrupted by qualified military service under Code §414(u) or who is on a leave of absence for qualified military service under Code §414(u) may elect to make additional Salary Reduction Contributions upon resumption of employment with the Employer equal to the maximum Deferral Contributions that the Participant could have elected during that period if the Participant's employment with the Employer had continued (at the same level of Compensation) without the interruption of leave, reduced by the Deferral Contributions, if any, actually made for the Participant 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). The Employer shall make appropriate make-up Nonelective Contributions and Matching Contributions for such a Participant as required under Code §414(u). The Plan shall apply limitations of Article III to all Deferral Contributions under this paragraph with respect to the year to which the Deferral Contribution relates.

(B) **"Continuous Service"** as the Adoption Agreement describes means Service with the Employer during which the Employee does not incur a Severance from Employment.

(C) **"Severance from Employment."**

(1) **Employee.** An Employee has a Severance from Employment when the Employee ceases to be an Employee of the Employer. A Participant does not incur a Severance from Employment if, in connection with a change in employment, the Participant's new employer continues or assumes sponsorship of the Plan or accepts a Transfer of Plan assets as to the Participant.

(2) **Independent Contractor.** An Independent Contractor has a Severance from Employment when the contract(s) under which the Independent Contractor performs services for the Employer expires (or otherwise terminates), unless the Employer anticipates a renewal of the contractual relationship or the Independent Contractor becoming an Employee. The Employer anticipates renewal if it intends to contract for the services provided under the expired contract and neither the Employer nor the Independent Contractor has eliminated the Independent Contractor as a potential provider of such services under the new contract. Further, the Employer intends to contract for services conditioned only upon the Employer's need for the services provided under the expired contract or the Employer's availability of funds. Notwithstanding the preceding provisions of this Section 1.31, the Plan Administrator will consider an Independent Contractor to have incurred a Severance from Employment: (a) if the Plan Administrator or Trustee will not pay any Deferred Compensation to an Independent Contractor who is a Participant before a date which is at least twelve months after the expiration of the Independent Contractor's contract (or the last to expire of such contracts) to render Services to the Employer; and (b) if before the applicable twelve-month payment date, the Independent Contractor performs Service as an Independent Contractor or as an Employee, the Plan Administrator or Trustee will not pay to the Independent Contractor his or her Deferred Compensation on the applicable date.

(3) **Deemed Severance.** Notwithstanding Section 1.05(F), if the Employer elects in the Adoption Agreement, then if a Participant performs service in the uniformed services (as defined in Code §414(u)(12)(B)) on active duty for a period of more than 30 days, the Participant will be deemed to have a severance from employment solely for purposes of eligibility for distribution of amounts not subject to Code §412. However, the Plan will not distribute such a Participant's Account on account of this deemed severance unless the Participant specifically elects to receive a benefit distribution hereunder. If a Participant elects to receive a distribution on account of this deemed severance, then no Deferral Contributions may be made for the Participant during the 6-month period beginning on the date of the distribution. If a Participant would be entitled to a distribution on account of a deemed severance, and a distribution on account of another Plan provision, then the other Plan provision will control and the 6-month suspension will not apply.

1.32 **"State"** means (a) one of the 50 states of the United States or the District of Columbia, or (b) a political subdivision of a State, or any agency or instrumentality of a State or its political subdivision. A State does not include the federal government or any agency or instrumentality thereof.

1.33 **"Substantial Risk of Forfeiture"** exists if the Plan expressly conditions a Participant's right to Deferred Compensation upon the Participant's future performance of substantial Service for the Employer.

1.34 **"Tax-Exempt Organization"** means any tax-exempt organization other than a governmental unit or a church or qualified church-controlled organization within the meaning of Code §3121(w)(3).

1.35 **"Taxable Year"** means the calendar year or other taxable year of a Participant.

1.36 **"Transfer"** means a transfer of Eligible 457 Plan assets to another Eligible 457 Plan which is not a Rollover Contribution and which is made in accordance with Section 9.03.

1.37 **"Trust"** means the Trust created under the adopting Employer's Plan. A Trust required under a Governmental Eligible 457 Plan is subject to Article VIII. Any Trust under a Tax-Exempt Organization Eligible 457 Plan is subject to Section 5.09.

1.38 **"Trustee"** means the person or persons who as Trustee execute the Employer's Adoption Agreement, or any successor in office who in writing accepts the position of Trustee.

1.39 **Type of 457 Plan.** This Plan is an Eligible 457 Plan, which is a plan which satisfies the requirements of Code §457(b) and Treas. Reg. §§1.457-3 through -10. The Employer in the Adoption Agreement must specify whether the plan is either a Governmental Eligible 457 Plan or a Tax-Exempt Organization Eligible 457 Plan, as defined below:

(A) **"Governmental Eligible 457 Plan"** means an Eligible 457 Plan established by a State.

(B) **"Tax-Exempt Organization Eligible 457 Plan"** means an Eligible 457 Plan established by a Tax-Exempt Organization.

1.40 **"Vested"** means a Participant's Deferral Contributions that are not subject to a Substantial Risk of Forfeiture, including a vesting schedule.

**ARTICLE II
ELIGIBILITY AND PARTICIPATION**

2.01 ELIGIBILITY. Each Employee who is not an Excluded Employee becomes a Participant in the Plan in accordance with the eligibility conditions and as of the Plan Entry Date the Employer elects in the Adoption Agreement. If this Plan is a restated Plan, each Employee who was a Participant in the Plan on the day before the Effective Date continues as a Participant in the Plan, irrespective of whether he/she satisfies the eligibility conditions in the restated Plan, unless the Employer indicates otherwise in the Adoption Agreement.

2.02 PARTICIPATION UPON RE-EMPLOYMENT. A Participant who incurs a Severance from Employment will re-enter the Plan as a Participant on the date of his or her re-employment. An Employee who satisfies the Plan's eligibility conditions but who incurs a Severance from Employment prior to becoming a Participant will become a Participant on the later of the Plan Entry Date on which he/she would have entered the Plan had he/she not incurred a Severance from Employment or the date of his or her re-employment. Any Employee who incurs a Severance from Employment prior to satisfying the Plan's eligibility conditions becomes a Participant in accordance with the Adoption Agreement.

2.03 CHANGE IN EMPLOYMENT STATUS. If a Participant has not incurred a Severance from Employment but ceases to be eligible to participate in the Plan, by reason of becoming an Excluded Employee, the Plan Administrator must treat the Participant as an Excluded Employee during the period such a Participant is subject to the Adoption Agreement exclusion. The Plan Administrator determines a Participant's sharing in the allocation of Employer Contributions by disregarding his or her Compensation paid by the Employer for services rendered in his or her capacity as an Excluded Employee. However, during such period of exclusion, the Participant, without regard to employment classification, continues to share fully in Plan income allocations under Section 5.07 and to accrue vesting service if applicable.

**ARTICLE III
DEFERRAL CONTRIBUTIONS/LIMITATIONS**

3.01 AMOUNT.

(A) Contribution Formula. For each Plan Year, or other period the Employer specifies in the Adoption Agreement, the Employer will contribute to the Plan the type and amount of Deferral Contributions the Employer elects in the Adoption Agreement.

(B) Return of Contributions. The Employer contributes to this Plan on the condition its contribution is not due to a mistake of fact. If the Plan has a Trust, the Trustee, upon written request from the Employer, must return to the Employer the amount of the Employer's contribution (adjusted for net income, gain or loss) made by the Employer on account of a mistake of fact. The Trustee will not return any portion of the Employer's contribution under the provisions of this paragraph more than one year after the Employer made the contribution on account of a mistake of fact. In addition, if any Participant Salary Reduction Contribution is due to a mistake of fact, the Employer or the Trustee upon written request from the Employer shall return the Participant's contribution (adjusted for net income, gain or loss), within one year after payment of the contribution.

The Trustee will not increase the amount of the Employer contribution returnable under this Section 3.01 for any earnings attributable to the contribution, but the Trustee will decrease the Employer contribution returnable for any losses attributable to it. The Trustee may require the Employer to furnish it whatever evidence the Trustee deems necessary to enable the Trustee to confirm the amount the Employer has requested be returned is properly returnable.

(C) Time of Payment of Contribution. If the Plan has a Trust, the Employer may pay its contributions for each Plan Year to the Trust in one or more installments and at such time(s) as the Employer determines, without interest. A Governmental Employer shall deposit Salary Reduction Contributions to the Trust within a period that is not longer than is reasonable for the administration of Participant Accounts.

3.02 SALARY REDUCTION CONTRIBUTIONS. The Employer in the Adoption Agreement must elect whether the Plan permits Salary Reduction Contributions, and also the Plan limitations, if any, which apply to Salary Reduction Contributions. Unless the Employer elects otherwise in the Adoption Agreement, all such limitations apply on a payroll basis.

(A) Deferral from Sick, Vacation and Back Pay. The Employer in the Adoption Agreement must elect whether to permit Participants to make Salary Reduction Contributions from accumulated sick pay, from accumulated vacation pay or from back pay.

(B) Automatic Enrollment. The Employer in the Adoption Agreement may provide for automatic Salary Reduction Contributions of a specified amount, subject to giving notice to affected Participants of the automatic election and of their right to make a contrary election.

A Governmental Employer under an Eligible 457 Plan may elect to provide an Eligible Automatic Contribution Arrangement ("EACA"). If the Employer elects to provide an EACA, the Employer will amend the Plan to add necessary language.

(C) Application to Leave of Absence and Disability. Unless a Participant in his or her Salary Reduction Agreement elects otherwise, the Participant's Salary Reduction Agreement shall continue to apply during the Participant's leave of absence or the Participant's disability (as the Plan Administrator shall establish), if the Participant has Compensation other than imputed compensation or disability benefits.

(D) Post-severance deferrals limited to Post-Severance Compensation. Deferrals are permitted from an amount received following Severance from Employment only if the amount is Post-Severance Compensation.

3.03 MATCHING CONTRIBUTIONS. The Employer in the Adoption Agreement must elect whether the Plan permits Matching Contributions and, if so, the type(s) of Matching Contributions, the time period applicable to any Matching Contribution formula, and as applicable, the amount of Matching Contributions and the Plan limitations, if any, which apply to Matching Contributions. Any Matching Contributions apply to age 50 catch-up contributions, if any, and to any Normal Retirement Age catch-up contributions unless the Employer elects otherwise in the Adoption Agreement.

3.04 NORMAL LIMITATION. Except as provided in Sections 3.05 and 3.06, a Participant's maximum Deferral Contributions (excluding Rollover Contributions and Transfers) under this Plan for a Taxable Year may not exceed the lesser of:

(a) The applicable dollar amount as specified under Code §457(e)(15) (or such larger amount as the Commissioner of the Internal Revenue may prescribe), or

(b) 100% of the Participant's Includible Compensation for the Taxable Year.

3.05 NORMAL RETIREMENT AGE CATCH-UP CONTRIBUTION. If selected in the Adoption Agreement, a Participant may elect to make this catch-up election. For one or more of the Participant's last three Taxable Years ending before the Taxable Year in which the Participant attains Normal Retirement Age, the Participant's maximum Deferral Contributions may not exceed the lesser of:

(a) Twice the dollar amount under Section 3.04(a) Normal Limitation, or (b) the underutilized limitation.

(A) Underutilized Limitation. A Participant's underutilized limitation is equal to the sum of: (i) the normal limitation for the Taxable Year, and (ii) the normal limitation for each of the prior Taxable Years of the Participant commencing after 1978 during which the Participant was eligible to participate in the Plan and the Participant's Deferral Contributions were subject to the Normal Limitation or any other Code §457(b) limit, less the amount of Deferral Contributions for each such prior Taxable Year, excluding age 50 catch-up contributions.

(B) Normal Retirement Age. Normal Retirement Age is the age the Employer specifies in the Adoption Agreement provided that the age may not be: (i) earlier than the earliest of age 65 or the age at which Participants have the right to retire and receive under the Employer's defined benefit plan (or money purchase plan if the Participant is not eligible to participate in a defined benefit plan) immediate retirement benefits without actuarial or other reduction because of retirement before a later specified age; or (ii) later than age 70 1/2.

(1) Participant Designation. The Employer in the Adoption Agreement may permit a Participant to designate his or her Normal Retirement Age as any age including or between the foregoing ages.

(2) Multiple 457 Plans. If the Employer maintains more than one Eligible 457 Plan, the Plans may not permit any Participant to have more than one Normal Retirement Age under the Plans.

(3) Police and Firefighters. In a Governmental Eligible 457 Plan with qualified police or firefighter Participants within the meaning of Code §415(b)(2)(H)(ii)(I), the Employer in the Adoption Agreement may elect (or permit the qualified Participants to elect) a Normal Retirement Age as early as age 40 and as late as age 70 1/2.

(C) Pre-2002 Coordination. In determining a Participant's underutilized limitation, the Plan Administrator, in accordance with Treas. Reg. §1.457-4(c)(3)(iv), must apply the coordination rule in effect under now repealed Code §457(c)(2). The Plan Administrator also must determine the Normal Limitation for pre-2002 Taxable Years in accordance with Code §457(b)(2) as then in effect.

3.06 AGE 50 CATCH-UP CONTRIBUTION. An Employer sponsoring a Governmental Eligible 457 Plan must specify in the Adoption Agreement whether the Participants are eligible to make age 50 catch-up contributions.

If an Employer elects to permit age 50 catch-up contributions, all Employees who are eligible to make Salary Reduction Contributions under this Plan and who have attained age 50 before the close of the Taxable Year are eligible to make age 50 catch-up contributions for that Taxable Year in accordance with, and subject to the limitations of, Code §414(v). Such catch-up contributions are not taken into account for purposes of the provisions of the Plan implementing the required limitations of Code §457. If, for a Taxable Year, an Employee makes a catch-up contribution under Section 3.05, the Employee is not eligible to make age 50 catch-up contributions under this Section 3.06. A catch-up eligible Participant in each Taxable Year is entitled to the greater of the amount determined under Section 3.05 or Section 3.06 Catch-Up Amount plus the Section 3.04 Normal Limitation.

3.07 CONTRIBUTION ALLOCATION. The Plan Administrator will allocate to each Participant's Account his or her Deferral Contributions. The Employer will allocate Employer Nonelective and Matching Contributions to the Account of each Participant who satisfies the allocation conditions in the Adoption Agreement in the following manner:

(a) Fixed match. To the extent the Employer makes Matching Contributions under a fixed Adoption Agreement formula, the Plan Administrator will allocate the Matching Contribution to the Account of the Participant on whose behalf the Employer makes that contribution. A fixed Matching Contribution formula is a formula under which the Employer contributes a specified percentage or dollar amount on behalf of a Participant based on that Participant's Salary Reduction Contributions.

(b) Discretionary match. To the extent the Employer makes Matching Contributions under a discretionary Adoption Agreement formula, the Plan Administrator will allocate the Matching Contributions to a Participant's Account in the same proportion that each Participant's Salary Reduction Contributions taken into account under the formula bear to the total Salary Reduction Contributions of all Participants.

(c) Tiered match. If the Matching Contribution formula is a tiered formula, the Plan Administrator will allocate separately the Matching Contributions with respect to each tier of Salary Reduction Contributions, in accordance with the tiered formula.

(d) Discretionary nonelective. The Plan Administrator will allocate discretionary Nonelective Contributions for a Plan Year in the same ratio that each Participant's Compensation for the Plan Year bears to the total Compensation of all Participants for the Plan Year, unless the Employer elects otherwise in the Adoption Agreement.

(e) Fixed nonelective. The Plan Administrator will allocate fixed Nonelective Contributions for a Plan Year in the same ratio that each Participant's Compensation for the Plan Year bears to the total Compensation of all Participants for the Plan Year, unless the Employer elects otherwise in the Adoption Agreement.

(f) Other nonelective. The Plan Administrator will allocate Nonelective Contributions for a Plan Year as specified in the Adoption Agreement.

3.08 ALLOCATION CONDITIONS. The Plan Administrator will determine the allocation conditions applicable to Nonelective Contributions or to Matching Contributions (or to both) in accordance with the Employer's elections in the Adoption Agreement. The Plan Administrator will not allocate to a Participant any portion of an Employer Contribution (or forfeiture if applicable) for a Plan Year or applicable portion thereof in which the Participant does not satisfy the applicable allocation condition(s).

3.09 ROLLOVER CONTRIBUTIONS. If elected in the Adoption Agreement, an Employer sponsoring a Governmental Eligible 457 Plan may permit Rollover Contributions.

(A) Operational Administration. The Employer, operationally and on a nondiscriminatory basis, may elect to limit an eligible Employee's right or a Participant's right to make a Rollover Contribution. Any Participant (or as applicable, any eligible Employee), with the Employer's written consent and after filing with the Trustee the form prescribed by the Plan Administrator, may make a Rollover Contribution to the Trust. Before accepting a Rollover Contribution, the Trustee may require a Participant (or eligible Employee) to furnish satisfactory evidence the proposed transfer is in fact a "Rollover Contribution" which the Code permits an employee to make to an eligible retirement plan. The Trustee, in its sole discretion, may decline to accept a Rollover Contribution of property which could: (1) generate unrelated business taxable income; (2) create difficulty or undue expense in storage, safekeeping or valuation; or (3) create other practical problems for the Trust.

(B) Pre-Participation Rollover. If an eligible Employee makes a Rollover Contribution to the Trust prior to satisfying the Plan's

eligibility conditions, the Plan Administrator and Trustee must treat the Employee as a limited Participant (as described in Rev. Rul. 96-48 or in any successor ruling). A limited Participant does not share in the Plan's allocation of any Employer Contributions and may not make Salary Reduction Contributions until he/she actually becomes a Participant in the Plan. If a limited Participant has a Severance from Employment prior to becoming a Participant in the Plan, the Trustee will distribute his or her Rollover Contributions Account to the limited Participant in accordance with Article IV.

(C) Separate Accounting. If an Employer permits Rollover Contributions, the Plan Administrator must account separately for: (1) amounts rolled into this Plan from an eligible retirement plan (other than from another Governmental Eligible 457 plan); and (2) amounts rolled into this Plan from another Governmental Eligible 457 Plan. The Plan Administrator for purposes of ordering any subsequent distribution from this Plan, may designate a distribution from a Participant's Rollover Contributions as coming first from either of (1) or (2) above if the Participant has both types of Rollover Contribution Accounts.

(D) May Include Roth Deferrals. If this Plan is an eligible governmental 457(b) plan which accepts Roth Elective Deferrals, then a Rollover Contribution may include Roth Deferrals made to another plan, as adjusted for Earnings. Such amounts must be directly rolled over into this Plan from another plan which is qualified under Code §401(a), from a 403(b) plan, or from an eligible governmental 457 plan. The Plan must account separately for the Rollover Contribution, including the Roth Deferrals and the Earnings thereon.

(E) In-Plan Roth Rollover Contributions. A Governmental Employer under an Eligible 457 Plan may elect to permit In-Plan Roth Rollover Contribution. If the Employer decides to permit In-Plan Roth Rollover Contributions, the Employer will amend the Plan to add necessary language.

3.10 DISTRIBUTION OF EXCESS DEFERRALS. In the event that a Participant has Excess Deferrals, the Plan will distribute to the Participant the Excess Deferrals and allocable net income, gain or loss, in accordance with this Section 3.10.

(A) Governmental Eligible 457 Plan. The Plan Administrator will distribute Excess Deferrals from a Governmental Eligible 457 Plan as soon as is reasonably practicable following the Plan Administrator's determination of the amount of the Excess Deferral.

(B) Tax-Exempt Organization Eligible 457 Plan. The Plan Administrator will distribute Excess Deferrals from a Tax-Exempt Organization Eligible 457 Plan no later than April 15 following the Taxable Year in which the Excess Deferral occurs.

(C) Plan Aggregation. If the Employer maintains more than one Eligible 457 Plan, the Employer must aggregate all such Plans in determining whether any Participant has Excess Deferrals.

(D) Individual Limitation. If a Participant participates in another Eligible 457 Plan maintained by a different employer, and the Participant has Excess Deferrals, the Plan Administrator may, but is not required, to correct the Excess Deferrals by making a corrective distribution from this Plan.

3.11 DEEMED IRA CONTRIBUTIONS. A Governmental Employer under an Eligible 457 Plan may elect to permit Participants to make IRA contributions to this Plan in accordance with the Code §408(q) deemed IRA rules. If the Employer elects to permit deemed IRA contributions to the Plan, the Employer will amend the Plan to add necessary IRA language and either the Rev. Proc. 2003-13 sample deemed IRA language or an appropriate substitute.

3.12 ROTH ELECTIVE DEFERRALS. The Employer may elect in the Adoption Agreement to permit Roth Elective Deferrals. Unless elected otherwise, Roth Elective Deferrals shall be treated in the same manner as Elective Deferrals. The Employer may, in operation, implement deferral election procedures provided such procedures are communicated to Participants and permit Participants to modify their elections at least once each Plan Year.

(A) Elective Deferrals. "Elective Deferral" means a contribution the Employer makes to the Plan pursuant to a Participant's Salary Reduction Agreement, as described in Section 3.02. The term "Elective Deferrals" includes Pre-tax Elective Deferrals and Roth Elective Deferrals.

(B) Pre-Tax Elective Deferrals. "Pre-Tax Elective Deferrals" means a Participant's Salary Reduction Contributions which are not includible in the Participant's gross income at the time deferred and have been irrevocably designated as Pre-Tax Elective Deferrals by the Participant in his or her Salary Reduction Agreement. A Participant's Pre-Tax Elective Deferrals will be separately accounted for, as will gains and losses attributable to those Pre-Tax Elective Deferrals.

(C) Roth Elective Deferrals. "Roth Elective Deferrals" means a Participant's Salary Reduction Contributions that are includible in the Participant's gross income at the time deferred and have been irrevocably designated as Roth Elective Deferrals by the Participant in his or her Salary Reduction Agreement. A Participant's Roth Elective Deferrals will be separately accounted for, as will gains and losses attributable to those Roth Elective Deferrals. However, forfeitures may not be allocated to such account. The Plan must also maintain a record of a Participant's investment in the contract (i.e., designated Roth contributions that have not been distributed) and the year in which the Participant first made a Roth Elective Deferral.

(D) Ordering Rules for Distributions. The Administrator operationally may implement an ordering rule procedure for withdrawals (including, but not limited to, withdrawals on account of an unforeseeable emergency) from a Participant's accounts attributable to Pre-Tax Elective Deferrals or Roth Elective Deferrals. Such ordering rules may specify whether the Pre-Tax Elective Deferrals or Roth Elective Deferrals are distributed first. Furthermore, such procedure may permit the Participant to elect which type of Elective Deferrals shall be distributed first.

(E) Corrective distributions attributable to Roth Elective Deferrals. For any Plan Year in which a Participant may make both Roth Elective Deferrals and Pre-Tax Elective Deferrals, the Administrator operationally may implement an ordering rule procedure for the distribution of Excess Deferrals (Treas. Reg. §1.457-4(e)). Such an ordering rule may specify whether the Pre-Tax Elective

Deferrals or Roth Elective Deferrals are distributed first, to the extent such type of Elective Deferrals was made for the year. Furthermore, such procedure may permit the Participant to elect which type of Elective Deferrals shall be distributed first.

(F) Loans. If Participant loans are permitted under the Plan, then the Administrator may modify the loan policy or program to provide limitations on the ability to borrow from, or use as security, a Participant's Roth Elective Deferral account. Similarly, the loan policy or program may be modified to provide for an ordering rule with respect to the default of a loan that is made from the Participant's Roth Elective Deferral account and other accounts under the Plan.

(G) Rollovers. A direct rollover of a distribution from Roth Elective Deferrals shall only be made to a Plan which includes Roth Elective Deferrals as described in Code §402A(e)(1) or to a Roth IRA as described in Code §408A, and only to the extent the rollover is permitted under the rules of Code §402(c).

The Plan shall accept a rollover contribution of Roth Elective Deferrals only if it is a direct rollover from another Plan which permits Roth Elective Deferrals as described in Code §402A(e)(1) and only to the extent the rollover is permitted under the rules of Code §402(c). The Employer, operationally and on a uniform and nondiscriminatory basis, may decide whether to accept any such rollovers.

The Plan shall not provide for a direct rollover (including an automatic rollover) for distributions from a Participant's Roth Elective Deferral account if the amount of the distributions that are eligible rollover distributions are reasonably expected to total less than \$200 during a year. In addition, any distribution from a Participant's Roth Elective Deferrals are not taken into account in determining whether distributions from a Participant's other accounts are reasonably expected to total less than \$200 during a year. Furthermore, the Plan will treat a Participant's Roth Elective Deferral account and the Participant's other accounts as held under two separate plans for purposes of applying the automatic rollover rules. However, eligible rollover distributions of a Participant's Roth Elective Deferrals are taken into account in determining whether the total amount of the Participant's account balances under the Plan exceed the Plan's limits for purposes of mandatory distributions from the Plan.

The provisions of the Plan that allow a Participant to elect a direct rollover of only a portion of an eligible rollover distribution but only if the amount rolled over is at least \$500 is applied by treating any amount distributed from a Participant's Roth Elective Deferral account as a separate distribution from any amount distributed from the Participant's other accounts in the Plan, even if the amounts are distributed at the same time.

(H) Automatic Enrollment. If the Plan utilizes an automatic enrollment feature as described in Section 3.02(B), then any such automatic contribution shall be a Pre-Tax Elective Deferral.

(I) Operational Compliance. The Plan Administrator will administer Roth Elective Deferrals in accordance with applicable regulations or other binding authority.

3.13 BENEFIT ACCRUAL. If the Employer elects to apply this Section, then effective as of the date adopted, for benefit accrual purposes, the Plan treats 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 as if the individual 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) and terminated employment on the actual date of death or disability.

(A) Determination of benefits. The amount of Matching Contributions to be made pursuant to this Section 3.13 shall be determined as though the amount of Salary Reduction Contributions of an individual treated as reemployed under this Section on the basis of the individual's average actual Salary Reduction Contributions for the lesser of: (i) the 12-month period of service with the Employer immediately prior to qualified military service; or (ii) the actual length of continuous service with the Employer.

3.14 ELIGIBLE AUTOMATIC CONTRIBUTION ARRANGEMENT (EACA). As elected in the Adoption Agreement, the Employer maintains a Plan with automatic enrollment provisions as an Eligible Automatic Contribution Arrangement ("EACA"). Accordingly, the Plan will satisfy the (1) uniformity requirements, and (2) notice requirements under this Section.

(A) Uniformity. The Automatic Deferral Percentage must be a uniform percentage of Compensation. All Participants in the EACA, are subject to Automatic Deferrals, except to the extent otherwise provided in this Plan. If a Participant's Affirmative Election expires or otherwise ceases to be in effect, the Participant will immediately thereafter be subject to Automatic Deferrals, except to the extent otherwise provided in this Plan. However, the Plan does not violate the uniform Automatic Deferral Percentage merely because the Plan applies any of the following provisions:

(a) Years of participation. The Automatic Deferral Percentage varies based on the number of plan years the Participant has participated in the Plan while the Plan has applied EACA provisions;

(b) No reduction from prior default percentage. The Plan does not reduce an Automatic Deferral Percentage that, immediately prior to the EACA's effective date was higher (for any Participant) than the Automatic Deferral Percentage;

(c) Applying statutory limits. The Plan limits the Automatic Deferral amount so as not to exceed the limits of Code Section 457(b)(2) (determined without regard to Age 50 Catch-Up Deferrals).

(B) EACA notice. The Plan Administrator annually will provide a notice to each Participant a reasonable period prior to each plan year the Employer maintains the Plan as an EACA ("EACA Plan Year").

(a) Deemed reasonable notice/new Participant. The Plan Administrator is deemed to provide timely notice if the Plan Administrator provides the EACA notice at least 30 days and not more than 90 days prior to the beginning of the EACA Plan Year.

(b) Mid-year notice/new Participant or Plan. If: (a) an Employee becomes eligible to make Salary Reduction Contributions in the Plan during an EACA Plan Year but after the Plan Administrator has provided the annual EACA notice for that plan year; or (b) the Employer adopts mid-year a new Plan as an EACA, the Plan Administrator must provide the EACA notice no later than the date the Employee becomes eligible to make Salary Reduction Contributions. However, if it is not practicable for the notice to be provided on or before the date an Employee becomes a Participant, then the notice will nonetheless be treated as provided timely if it is provided as soon as practicable after that date and the Employee is permitted to elect to defer from all types of Compensation that may be deferred under the Plan earned beginning on that date.

(c) Content. The EACA notice must provide comprehensive information regarding the Participants' rights and obligations under the Plan and must be written in a manner calculated to be understood by the average Participant in accordance with applicable guidance.

(C) EACA permissible withdrawal. If elected in in the Adoption Agreement, a Participant who has Automatic Deferrals under the EACA may elect to withdraw all the Automatic Deferrals (and allocable earnings) under the provisions of this Section 3.14. Any distribution made pursuant to this Section will be processed in accordance with normal distribution provisions of the Plan.

(a) Amount. If a Participant elects a permissible withdrawal under this Section, then the Plan must make a distribution equal to the amount (and only the amount) of the Automatic Deferrals made under the EACA (adjusted for allocable gains and losses to the date of the distribution). The Plan may separately account for Automatic Deferrals, in which case the entire account will be distributed. If the Plan does not separately account for the Automatic Deferrals, then the Plan must determine earnings or losses in a manner similar to the rules of Treas. Reg. §1.401(k)-2(b)(2)(iv) for distributions of excess contributions.

(b) Fees. Notwithstanding the above, the Plan Administrator may reduce the permissible distribution amount by any generally applicable fees. However, the Plan may not charge a greater fee for distribution under this Section than applies to other distributions. The Plan Administrator may adopt a policy regarding charging such fees consistent with this paragraph.

(c) Timing. The Participant may make an election to withdraw the Automatic Deferrals under the EACA no later than 90 days, or such shorter period as specified in the Adoption Agreement, after the date of the first Automatic Deferral under the EACA. For this purpose, the date of the first Automatic Deferral is the date that the Compensation subject to the Automatic Deferral otherwise would have been includible in the Participant's gross income. Furthermore, a Participant's withdrawal right is not restricted due to the Participant making an Affirmative Election during the 90 day period (or shorter period as specified in Adoption Agreement.).

(d) Rehired Employees. For purposes of this Section, an Employee who for an entire Plan Year did not have contributions made pursuant to a default election under the EACA will be treated as having not had such contributions for any prior Plan Year as well.

(e) Effective date of the actual withdrawal election: The effective date of the permissible withdrawal will be as soon as practicable, but in no event later than the earlier of (1) the pay date of the second payroll period beginning after the election is made, or (2) the first pay date that occurs at least 30 days after the election is made. The election will also be deemed to be an Affirmative Election to have no Salary Reduction Contributions made to the Plan.

(f) Related matching contributions. The Plan Administrator will not take any deferrals withdrawn pursuant to this section into account in computing the contribution and allocation of matching contributions, if any. If the Employer has already allocated matching contributions to the Participant's account with respect to deferrals being withdrawn pursuant to this Section, then the matching contributions, as adjusted for gains and losses, must be forfeited. Except as otherwise provided, the Plan will use the forfeited contributions to reduce future contributions or to reduce plan expenses.

(D) Compensation. Compensation for purposes of determining the amount of Automatic Deferrals has the same meaning as Compensation with regard to Salary Reduction Contributions in general.

(E) Definitions.

(a) Definition of Automatic Deferral. An Automatic Deferral is a Salary Reduction Contribution that results from the operation of this Article III. Under the Automatic Deferral, the Employer automatically will reduce by the Automatic Deferral Percentage as elected the Compensation of each Participant subject to the EACA. The Plan Administrator will cease to apply the Automatic Deferral to a Participant who makes an Affirmative Election as defined in this Section.

(b) Definition of Automatic Deferral Percentage/Increases. The Automatic Deferral Percentage is the percentage of Automatic Deferral (including any scheduled increase to the Automatic Deferral Percentage the Employer may elect).

(c) Effective date of EACA Automatic Deferral. The effective date of an Employee's Automatic Deferral will be as soon as practicable after the Employee is subject to Automatic Deferrals under the EACA, consistent with (a) applicable law, and (b) the objective of affording the Employee a reasonable period of time after receipt of the notice to make an Affirmative Election (and, if applicable, an investment election).

(d) Definition of Affirmative Election. An Affirmative Election is a Participant's election made after the EACA's Effective Date not to defer any Compensation or to defer more or less than the Automatic Deferral Percentage.

(e) Effective Date of Affirmative Election. A Participant's Affirmative Election generally is effective as of the first payroll period which follows the payroll period in which the Participant made the Affirmative Election. However, a Participant may make an Affirmative Election which is effective: (a) for the first payroll period in which he or she becomes a Participant if the Participant makes an Affirmative Election within a reasonable period following the Participant's entry date and before the Compensation to which the Election applies becomes currently available; or (b) for the first payroll period following the EACA's effective date, if the Participant makes an Affirmative Election not later than the EACA's effective date.

3.15 IN-PLAN ROTH ROLLOVER CONTRIBUTION

(a) **Employer Election.** The Employer in its Adoption Agreement in which the Employer has elected to permit Roth Deferrals also will elect whether to permit an In-Plan Roth Rollover Contribution in accordance with this Section with regard to otherwise distributable amounts and/or otherwise nondistributable amounts. If the Employer elects to permit such contributions, the Employer in its Adoption Agreement will specify the Effective Date thereof which may not be earlier than distributions made after September 27, 2010, and may not be earlier than January 1, 2013 in the case of rollovers of otherwise nondistributable amounts. An In-Plan Roth Rollover Contribution means a Rollover Contribution to the Plan that consists of a distribution or transfer from a Participant's Plan Account, other than a Roth Deferral Account, that the Participant transfers to the Participant's In-Plan Roth Rollover Contribution Account in the Plan, in accordance with Code §402(c)(4). In-Plan Roth Rollover Contributions will be subject to the Plan rules related to Roth Deferral Accounts, subject to preservation of protected benefits.

(b) **Eligibility for Distribution and Rollover.** A Participant may not make an In-Plan Roth Rollover Contribution with regard to an otherwise distributable amount which is not an Eligible Rollover Distribution.

(1) **Parties eligible to elect.** For purposes of eligibility for an In-Plan Roth Rollover, the Plan will treat a Participant's surviving spouse Beneficiary or alternate payee spouse or alternate payee former spouse as a Participant. A non-spouse Beneficiary may not make an In-Plan Roth Rollover.

(2) **Distribution from partially Vested account.** In-Plan Roth Rollovers are permitted only from Vested amounts allocated to a qualifying source but may be made from partially Vested Accounts. If a distribution is made to a Participant who has not incurred a Severance from Employment and who is not fully Vested in the Participant's Account from which the In-Plan Roth Rollover Contribution is to be made, and the Participant may increase the Vested percentage in such Account.

(c) **Form and Source of Rollover.**

(1) **Direct Rollover.** An In-Plan Roth Rollover Contribution may be made only by a Direct Rollover.

(2) **Account source.** A Participant may make an In-Plan Roth Rollover from any account (other than a Roth account).

(3) **Cash or in-kind.** The Plan Administrator will effect an In-Plan Roth Rollover Contribution by rolling over the Participant's current investments to the In-Plan Roth Rollover Account. A Plan loan so rolled over without changing the repayment schedule is not treated as a new loan. However the Employer may provide that loans cannot be rolled over in an In-Plan Roth Rollover.

(4) **No Rollover or Distribution Treatment.** Notwithstanding any other Plan provision, an In-Plan Roth Rollover Contribution is not a Rollover Contribution for purposes of the Plan. Accordingly: (a) if the Employer in its Adoption Agreement has elected \$5,000 as the Plan limit on Mandatory Distributions, the Plan Administrator will take into account amounts attributable to an In-Plan Roth Rollover Contribution, in determining if the \$5,000 limit is exceeded, regardless of the Employer's election as to whether to count Rollover Contributions for this purpose; (b) no spousal consent is required for a Participant to elect to make an In-Plan Roth Rollover Contribution; (c) protected benefits with respect to the amounts subject to the In-Plan Roth Rollover are preserved; and (d) mandatory 20% federal income tax withholding does not apply to the In Plan Roth Rollover Contribution.

(5) **In-Plan Roth Rollover Contribution Account.** An In-Plan Roth Rollover Contribution Account is a sub-account the Plan Administrator may establish to account for a Participant's Rollover Contributions attributable to the Participant's In-Plan Roth Rollover Contributions. The Plan Administrator has authority to establish such a sub-account, and to the extent necessary, may establish sub-accounts based on the source of the In-Plan Roth Rollover Contribution. The Plan Administrator will administer an In-Plan Roth Rollover Contribution Account in accordance with Code and the Plan provisions.

ARTICLE IV TIME AND METHOD OF PAYMENT OF BENEFITS

4.01 DISTRIBUTION RESTRICTIONS. Except as the Plan provides otherwise, the Plan Administrator or Trustee may not distribute to a Participant the amounts in his or her Account prior to one of the following events:

- (a) The Participant's attaining age 70 1/2;
- (b) The Participant's Severance from Employment; or
- (c) The Participant's death.

4.02 TIME AND METHOD OF PAYMENT OF ACCOUNT. The Plan Administrator, or Trustee at the direction of the Plan Administrator, will distribute to a Participant who has incurred a Severance from Employment the Participant's Vested Account under one or any combination of payment methods and at the time(s) the Adoption Agreement specifies. If the Adoption Agreement permits more than one time or method, the Plan Administrator, in the absence of a Participant election described below, will determine the time and method applicable to a particular Participant. In no event will the Plan Administrator direct (or direct the Trustee to commence) distribution, nor will the Participant elect to have distribution commence, later than the Participant's required beginning date, or under a method that does not satisfy Section 4.03.

(A) **Participant Election of Time and Method.** The Employer in the Adoption Agreement must elect whether to permit Participants to elect the timing and method of distribution of their Account in accordance with this Section 4.02. The Plan Administrator must consent to the specific terms of any such Participant election and the Plan Administrator in its sole discretion may withhold consent. Subject to the foregoing conditions, a Participant: (1) may elect to postpone distribution of his or her Account beyond the time the Employer has elected in the Adoption Agreement, to any fixed or determinable date including, but not beyond, the Participant's required beginning date; and (2) may elect the method of payment. A Participant in a Tax Exempt Organization Eligible 457 Plan may elect the timing and method of payment of his or her Account no later than 30 days before the date the Plan Administrator or Trustee

first would commence payment of the Participant's Account in accordance with the Adoption Agreement. The Plan Administrator must furnish to the Participant a form for the Participant to elect the time and a method of payment. A Participant in a Governmental Eligible 457 Plan is not subject to any such requirement in election the timing or method of payment.

(B) Number of Initial Elections/Subsequent Elections. A Participant in a Tax-Exempt Organization Eligible 457 Plan may make any number of elections or revoke any prior election under Section 4.02(A) within the election period. Once the initial election period expires, a Participant, before payment would commence under the Participant's initial election, may make one additional election to defer (but not to accelerate) the timing of payment of his or her Account and also as to the method of payment.

(C) No Election/Default. If the Participant does not make a timely election regarding the time and method of payment, the Plan Administrator will pay or direct the Trustee to pay the Participant's Account in accordance with the Adoption Agreement.

(D) Mandatory Distribution. The Employer in the Adoption Agreement will elect whether the Plan will make Mandatory Distributions. If the Employer elects Mandatory Distributions, the Employer may determine operationally whether to include Rollover Contributions in determining whether the Participant is subject to Mandatory Distributions.

4.03 REQUIRED MINIMUM DISTRIBUTIONS. The Plan Administrator may not distribute nor direct the Trustee to distribute the Participant's Account, nor may the Participant elect any distribution his or her Account, under a method of payment which, as of the required beginning date, does not satisfy the minimum distribution requirements of Code §401(a)(9) or which is not consistent with applicable Treasury regulations.

(A) General Rules.

(1) Precedence. The requirements of this Section 4.03 will take precedence over any inconsistent provisions of the Plan.

(2) Requirements of Treasury Regulations Incorporated. All distributions required under this Section 4.03 will be determined and made in accordance with the Treasury regulations under Code §401(a)(9).

(B) Time and Manner of Distribution.

(1) 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.

(2) Death of Participant Before Distribution Begins. 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:

(a) Spouse Designated Beneficiary. If the Participant's surviving spouse is the Participant's sole designated Beneficiary, then, except as the Employer may elect in the Adoption Agreement, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant dies, or by December 31 of the calendar year in which the Participant would have attained age 70 1/2, if later.

(b) Non-Spouse Designated Beneficiary. If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, then, except as the Employer may elect in the Adoption Agreement, distributions to the designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(c) No Designated Beneficiary. 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.

(d) Death of Spouse. 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 4.03(B)(2) other than Section 4.03(B)(2)(a), will apply as if the surviving spouse were the Participant.

For purposes of this Section 4.03(B) and Section 4.03(D), unless Section 4.03(B)(2)(d) applies, distributions are considered to begin on the Participant's required beginning date. If Section 4.03(B)(2)(d) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 4.03(B)(2)(a). 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 4.03(B)(2)(a), the date distributions are considered to begin is the date distributions actually commence.

(3) 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 4.03(C) and 4.03(D). 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 §401(a)(9) and the Treasury regulations.

(C) Required Minimum Distributions during Participant's Lifetime.

(1) 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:

(a) ULT. The quotient obtained by dividing the Participant's account balance by the number in the Uniform Life Table set forth in Treas. Reg. §1.401(a)(9)-9, using the Participant's attained age as of the Participant's birthday in the distribution calendar year; or

(b) Younger Spouse. 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 Treas. Reg. §1.401(a)(9)-9, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

(2) **Lifetime Required Minimum Distributions Continue Through Year of Participant's Death.** Required minimum distributions will be determined under this Section 4.03(C) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

(D) Required Minimum Distributions after Participant's Death.

(1) Death On or After Distributions Begin.

(a) **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) **Participant's Life Expectancy.** The Participant's remaining life expectancy is calculated using the attained age of the Participant as of the Participant's birthday in the calendar year of death, reduced by one for each subsequent calendar year.

(ii) **Spouse's Life Expectancy.** 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 attained 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) **Non-Spouse's Life Expectancy.** 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 attained age of the Beneficiary as of the Beneficiary's birthday in the calendar year following the calendar year of the Participant's death, reduced by one for each subsequent calendar year.

(b) **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 calendar year after the calendar year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the calendar 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 attained age of the Participant as of the Participant's birthday in the calendar year of death, reduced by one for each subsequent calendar year.

(2) Death before Date Distributions Begin.

(a) **Participant Survived by Designated Beneficiary.** Except as the Employer may elect in the Adoption Agreement, if the Participant dies before 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 remaining life expectancy of the Participant's designated Beneficiary, determined as provided in Section 4.03(D)(1).

(b) **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.

(c) **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 4.03(B)(2)(a), this Section 4.03(D)(2) will apply as if the surviving spouse were the Participant.

(d) **5-year or Life Expectancy rule; possible election.** The Employer in its Adoption Agreement will elect whether distribution of the Participant's Account will be made in accordance with the life expectancy rule under Section 4.03(D)(2)(a) or the 5-year rule under Section 4.03(D)(2)(b). The Employer's election may permit a Designated Beneficiary to elect which of these rules will apply or may specify which rule applies. However, the life expectancy rule (whether subject to election or not) applies only in the case of a Designated Beneficiary. The 5-year rule applies as to any Beneficiary who is not a Designated Beneficiary. A permitted election under this Section must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under Section 4.03(D)(2)(a), or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving spouse's) death.

(E) Definitions.

(1) **Designated Beneficiary.** The individual who is designated as the Beneficiary under the Plan and is the designated beneficiary under Code §401(a)(9) and Treas. Reg. §1.401(a)(9)-1, Q&A-4.

(2) **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 the distributions are required to begin under Section 4.03(B)(2). 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.

(3) **Life expectancy.** Life expectancy as computed by use of the Single Life Table in Treas. Reg. §1.401(a)(9)-9.

(4) **Participant's account balance.** The account balance as of the last valuation 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 valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any Rollover Contributions or Transfers to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

(5) **Required beginning date.** A Participant's required beginning date is the April 1 of the calendar year following the later of: (1) the calendar year in which the Participant attains age 70 1/2, or (2) the calendar year in which the Participant retires or such other date under Code §401(a)(9) by which required minimum distributions must commence.

4.04 **DEATH BENEFITS.** Upon the death of the Participant, the Plan Administrator must pay or direct the Trustee to pay the Participant's Account in accordance with Section 4.03. Subject to Section 4.03, a Beneficiary may elect the timing and method of payment in the same manner as a Participant may elect under Section 4.02, if such elections apply.

If a Participant dies while performing qualified military service (as defined in Code §414(u)), 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 and then terminated employment on account of death.

4.05 **DISTRIBUTIONS PRIOR TO SEVERANCE FROM EMPLOYMENT.** The Employer must elect in the Adoption Agreement whether to permit in-service distributions of a Participant's Vested Account under this Section 4.05, notwithstanding the Section 4.01 distribution restrictions.

(A) **Unforeseeable Emergency.** In the event of a Participant's or the Participant's spouse, dependents or beneficiaries' unforeseeable emergency, the Plan Administrator may make a distribution to a Participant who has not incurred a Severance from Employment (or who has incurred a Severance but will not begin to receive payments until some future date). In the event of an unforeseeable emergency, the Plan Administrator also may accelerate payments to a Participant or to a Beneficiary. The Plan Administrator will establish a policy for determining whether an unforeseeable emergency exists. An unforeseeable emergency is a severe financial hardship of a Participant or Beneficiary resulting from: (1) illness or accident of the Participant, the Beneficiary, or the Participant's or Beneficiary's spouse or dependent (as defined in Code §152(a)); (2) loss of the Participant's or Beneficiary's property due to casualty; (3) the need to pay for the funeral expenses of the Participant's or Beneficiary's spouse or dependent (as defined in Code §152(a)); or (4) other similar extraordinary and unforeseeable circumstances arising from events beyond the Participant's or Beneficiary's control, or which applicable law may define as an unforeseeable emergency. The Plan Administrator will not pay the Participant or the Beneficiary more than the amount reasonably necessary to satisfy the emergency need, which may include amounts necessary to pay taxes or penalties on the distribution. The Plan Administrator will not make payment to the extent the Participant or Beneficiary may relieve the financial hardship by cessation of deferrals under the Plan, through insurance or other reimbursement, or by liquidation of the individual's assets to the extent such liquidation would not cause severe financial hardship.

The Participant's Beneficiary is a person who a Participant designates and who is or may become entitled to a Participant's Plan Account upon the Participant's death.

(B) **De minimis distribution.** In accordance with the Employer's Adoption Agreement elections, the Plan Administrator may allow a Participant to elect to receive a distribution or the Plan Administrator will distribute (without a Participant election) any amount of the Participant's Account where: (1) the Participant's Account (disregarding Rollover Contributions) does not exceed \$5,000 (or such other amount as does not exceed the Code §411(a)(11)(A) dollar amount); (2) the Participant has not made or received an allocation of any Deferral Contributions under the Plan during the two-year period ending on the date of distribution; and (3) the Participant has not received a prior distribution under this Section 4.05(B).

(C) **Distribution of Rollover Contributions.** The Employer in the Adoption Agreement may elect to permit a Participant to request and to receive distribution of the Participant's Account attributable to Rollover Contributions (but not to Transfers) before the Participant has a distributable event under Section 4.01.

4.06 **DISTRIBUTIONS UNDER QUALIFIED DOMESTIC RELATIONS ORDERS (QDROs).** Notwithstanding any other provision of this Plan, the Employer in the Adoption Agreement may elect to apply the QDRO provisions of this Section 4.06. If Section 4.06 applies, the Plan Administrator (and any Trustee) must comply with the terms of a QDRO, as defined in Code §414(p), which is issued with respect to the Plan.

(A) **Time and Method of Payment.** This Plan specifically permits distribution to an alternate payee under a QDRO at any time, notwithstanding any contrary Plan provision and irrespective of whether the Participant has attained his or her earliest retirement age (as defined under Code §414(p)) under the Plan. A distribution to an alternate payee prior to the Participant's attainment of earliest retirement age is available only if the QDRO specifies distribution at that time or permits an agreement between the Plan and the alternate payee to authorize an earlier distribution. Nothing in this Section 4.06 gives a Participant a right to receive distribution at a time the Plan otherwise does not permit nor authorizes the alternate payee to receive a form of payment the Plan does not permit.

(B) **QDRO Procedures.** The Plan Administrator must establish reasonable procedures to determine the qualified status of a domestic relations order. Upon receiving a domestic relations order, the Plan Administrator promptly will notify the Participant and any alternate payee named in the order, in writing, of the receipt of the order and the Plan's procedures for determining the qualified status of the order. Within a reasonable period of time after receiving the domestic relations order, the Plan Administrator must determine the qualified status of the order and must notify the Participant and each alternate payee, in writing, of the Plan Administrator's determination. The Plan Administrator must provide notice under this paragraph by mailing to the individual's address specified in the domestic relations order.

(C) **Accounting.** If any portion of the Participant's Account Balance is payable under the domestic relations order during the period the Plan Administrator is making its determination of the qualified status of the domestic relations order, the Plan Administrator must maintain a separate accounting of the amounts payable. If the Plan Administrator determines the order is a QDRO within 18 months of the date amounts first are payable following receipt of the domestic relations order, the Plan Administrator will distribute or will direct the Trustee to distribute the payable amounts in accordance with the QDRO. If the Plan Administrator does not make its

determination of the qualified status of the order within the 18-month determination period, the Plan Administrator will distribute or will direct the Trustee to distribute the payable amounts in the manner the Plan would distribute if the order did not exist and will apply the order prospectively if the Plan Administrator later determines the order is a QDRO.

To the extent it is not inconsistent with the provisions of the QDRO, the Plan Administrator may segregate or may direct the Trustee to segregate the QDRO amount in a segregated investment account. The Plan Administrator or Trustee will make any payments or distributions required under this Section 4.06 by separate benefit checks or other separate distribution to the alternate payee(s).

(D) Permissible QDROs. A domestic relations order that otherwise satisfies the requirements for a qualified domestic relations order ("QDRO") will not fail to be a QDRO: (i) solely because the order is issued after, or revises, another domestic relations order or QDRO; or (ii) solely because of the time at which the order is issued, including issuance after the annuity starting date or after the Participant's death.

4.07 DIRECT ROLLOVER OF ELIGIBLE ROLLOVER DISTRIBUTIONS – GOVERNMENTAL PLAN.

(A) Participant Election. A Participant (including for this purpose, a former Employee) in a Governmental Eligible 457 Plan may elect, at the time and in the manner the Plan Administrator prescribes, to have any portion of his or her eligible rollover distribution from the Plan paid directly to an eligible retirement plan specified by the Participant in a direct rollover election. For purposes of this election, a "Participant" includes as to their respective interests, a Participant's surviving spouse and the Participant's spouse or former spouse who is an alternate payee under a QDRO.

(B) Rollover and Withholding Notice. At least 30 days and not more than 180 days prior to the Trustee's distribution of an eligible rollover distribution, the Plan Administrator must provide a written notice (including a summary notice as permitted under applicable Treasury regulations) explaining to the distributee the rollover option, the applicability of mandatory 20% federal withholding to any amount not directly rolled over, and the recipient's right to roll over within 60 days after the date of receipt of the distribution ("rollover notice").

(C) Default distribution or rollover. Except as provided in Paragraph (D), in the case of a Participant who does not elect timely to roll over or to receive distribution of his or her Account, the Plan Administrator or the Trustee, at the Plan Administrator's direction, may distribute to the Participant or may directly roll over the Participant's Account in accordance with the Plan's rollover notice.

(D) Mandatory default rollover. If (1) the Plan is a Governmental Eligible 457 Plan, (2) the Plan makes a mandatory distribution after the Code §401(a)(31)(B) Effective Date, greater than \$1,000, and (3) the Participant does not elect to have such distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover or to receive the distribution directly, then the Plan Administrator will pay the distribution in a direct rollover to an individual retirement plan designated by the Plan Administrator.

(E) Non-spouse beneficiary rollover right. A non-spouse beneficiary who is a "designated beneficiary" under Section 4.03(E)(1), by a direct trustee-to-trustee transfer ("direct rollover"), may roll over all or any portion of his or her distribution to an individual retirement account the beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an eligible rollover distribution.

(1) Certain requirements not applicable. Although a non-spouse beneficiary may roll over directly a distribution as provided in Section 4.07(E), the distribution is not subject to the direct rollover requirements of Code §401(a)(31) (including the automatic rollover provisions of Code §401(a)(31)(B)), the notice requirements of Code §402(f) or the mandatory withholding requirements of Code §3405(c). If a non-spouse beneficiary receives a distribution from the Plan, the distribution is not eligible for a "60-day" rollover.

(2) Trust beneficiary. If the Participant's named beneficiary is a trust, the Plan may make a direct rollover to an individual retirement account on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of Code §401(a)(9)(E).

(3) Required minimum distributions not eligible for rollover. A non-spouse beneficiary may not roll over an amount which is a required minimum distribution, as determined under applicable Treasury regulations and other Revenue Service guidance. If the Participant dies before his or her required beginning date and the non-spouse beneficiary rolls over to an IRA the maximum amount eligible for rollover, the beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Treas. Reg. §1.401(a)(9)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse beneficiary's distribution.

(F) Definitions. The following definitions apply to this Section:

(1) Eligible rollover distribution. An eligible rollover distribution is any distribution of all or any portion of a Participant's Account, except an eligible rollover distribution does not include: (a) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Participant or the joint lives (or joint life expectancies) of the Participant and the Participant's designated Beneficiary, or for a specified period of ten years or more; (b) any Code §401(a)(9) required minimum distribution; (c) any unforeseeable emergency distribution; and (d) any distribution which otherwise would be an eligible rollover distribution, but where the total distributions to the Participant during that calendar year are reasonably expected to be less than \$200.

(2) Eligible retirement plan. An eligible retirement plan is an individual retirement account described in Code §408(a), an individual retirement annuity described in Code §408(b), an annuity plan described in Code §403(a), a qualified plan described in Code §401(a), an annuity contract (or custodial agreement) described in Code §403(b), or an eligible deferred compensation plan described in Code §457(b) and maintained by an Employer described in Code §457(e)(1)(A), which accepts the Participant's, the Participant's spouse or alternate payee's eligible rollover distribution.

A Participant or beneficiary may elect to roll over directly an eligible rollover distribution to a Roth IRA described in Code §408A(b). For this purpose, the term "eligible rollover distribution" includes a rollover distribution described in this Section.

(3) **Direct rollover.** A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

(4) **Mandatory distribution.** A mandatory distribution is an eligible rollover distribution without the Participant's consent before the Participant attains the later of age 62 or Normal Retirement Age (see paragraph 3.05 (B)). A distribution to a beneficiary is not a mandatory distribution.

(5) **401(a)(31)(B) Effective Date.** The 401(a)(31)(B) Effective Date is the date of the close of the first regular legislative session of the legislative body with the authority to amend the Plan that begins on or after January 1, 2006.

4.08 ELECTION TO DEDUCT FROM DISTRIBUTION. An Eligible Retired Public Safety Officer may elect annually for that taxable year to have the Plan deduct an amount from a distribution which the Eligible Retired Public Safety Officer otherwise would receive and include in income. The Plan will pay such deducted amounts directly to pay qualified health insurance premiums.

(A) **Direct payment.** The Plan will pay directly to the provider of the accident or health insurance plan or qualified long-term care insurance contract the amounts the Eligible Retired Public Safety Officer has elected to have deducted from the distribution. Such amounts may not exceed the lesser of \$3,000 or the amount the Participant paid for such taxable year for qualified health insurance premiums, and which otherwise complies with Code §402(l).

(B) Definitions.

(1) **Eligible retired public safety officer.** An "Eligible Retired Public Safety Officer" is 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.

(2) **Public safety officer.** A "Public Safety Officer" has the same meaning as in Section 1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b(9)(A)).

(3) **Qualified health insurance premiums.** The term "qualified health insurance premiums" means premiums for coverage for the Eligible Retired Public Safety Officer, his or her spouse, and dependents, by an accident or health insurance plan or qualified long-term care insurance contract (as defined in Code §7702B(b)).

**ARTICLE V
PLAN ADMINISTRATOR - DUTIES WITH RESPECT TO PARTICIPANTS' ACCOUNTS**

5.01 TERM/VACANCY. The Plan Administrator will serve until his or her successor is appointed. In case of a vacancy in the position of the Plan Administrator, the Employer will exercise any and all of the powers, authority, duties and discretion conferred upon the Plan Administrator pending the filling of the vacancy.

5.02 POWERS AND DUTIES. The Plan Administrator will have the following powers and duties:

- (a) To select a committee to assist the Plan Administrator;
- (b) To select a secretary for the committee, who need not be a member of the committee;
- (c) To determine the rights of eligibility of an Employee to participate in the Plan and the value of a Participant's Account;
- (d) To adopt rules and procedures and to create administrative forms necessary for the proper and efficient administration of the Plan provided the rules, procedures and forms are not inconsistent with the terms of the Plan;
- (e) To construe and enforce the terms of the Plan and the rules and regulations the Plan Administrator adopts, including interpretation of the Plan documents and documents related to the Plan's operation;
- (f) To direct the distribution of a Participant's Account;
- (g) To review and render decisions respecting a claim for (or denial of a claim for) a benefit under the Plan;
- (h) To furnish the Employer with information which the Employer may require for tax or other purposes;
- (i) To establish a policy in making distributions for unforeseeable emergencies;
- (j) To establish under a Governmental Eligible 457 Plan, policies regarding the receipt of Rollover Contributions and default rollover distributions;
- (k) To establish a policy regarding the making and the receipt of Transfers;
- (l) To establish a policy regarding Participant or Beneficiary direction of investment;
- (m) To engage the services of any person to invest any Account under this Plan and to direct such person to make payment to a Participant of his or her Vested Account;
- (n) To establish under a Governmental Eligible 457 Plan, a policy (see Section 5.02(A)) which the Trustee must observe in making loans, if any, to Participants and Beneficiaries;
- (o) To undertake correction of any Plan failures as necessary to preserve eligible Plan status; and
- (p) To undertake any other action the Plan Administrator deems reasonable or necessary to administer the Plan.

The Plan Administrator shall have total and complete discretion to interpret and construe the Plan and to determine all questions arising in the administration, interpretation and application of the Plan. Any determination the Plan Administrator makes under the Plan is final and binding upon any affected person.

(A) Loan Policy. In a Governmental Eligible 457 Plan, the Plan Administrator, in its sole discretion, may establish, amend or terminate from time to time, a nondiscriminatory policy which the Trustee must observe in making Plan loans, if any, to Participants and to Beneficiaries. If the Plan Administrator adopts a loan policy, the loan policy must be a written document and must include: (1) the identity of the person or positions authorized to administer the participant loan program; (2) the procedure for applying for a loan; (3) the criteria for approving or denying a loan; (4) the limitations, if any, on the types and amounts of loans available; (5) the procedure for determining a reasonable rate of interest; (6) the types of collateral which may secure the loan; and (7) the events constituting default and the steps the Plan will take to preserve Plan assets in the event of default. A loan policy the Plan Administrator adopts under this Section 5.02(A) is part of the Plan, except that the Plan Administrator may amend or terminate the policy without regard to Section 9.01.

(B) QDRO Policy. If the QDRO provisions of Section 4.06 apply, the Plan Administrator will establish QDRO procedures.

5.03 COMPENSATION. The Plan Administrator and the members of the Committee will serve without compensation for services, but the Employer will pay all expenses of the Plan Administrator and Committee.

5.04 AUTHORIZED REPRESENTATIVE. The Plan Administrator may authorize any one of the members of the Committee, if any, or the Committee's Secretary, to sign on the Plan Administrator's behalf any Plan notices, directions, applications, certificates, consents, approvals, waivers, letters or other documents.

5.05 INDIVIDUAL ACCOUNTS/RECORDS. The Plan Administrator will maintain a separate Account in the name of each Participant to reflect the value of the Participant's Deferred Compensation under the Plan. The Plan Administrator will maintain records of its activities.

5.06 VALUE OF PARTICIPANT'S ACCOUNT. The value of each Participant's Account consists of his or her accumulated Deferred Compensation, as of the most recent Accounting Date or any later date as the Plan Administrator may determine.

5.07 ACCOUNT ADMINISTRATION, VALUATION AND EXPENSES.

(A) Individual Accounts. The Plan Administrator, as necessary for the proper administration of the Plan, will maintain, or direct the Trustee to maintain, a separate Account, or multiple Accounts, in the name of each Participant to reflect the Participant's Account Balance under the Plan. The Plan Administrator will make its allocations of Employer Contributions and of Earnings, or will request the Trustee to make such allocations, to the Accounts of the Participants as necessary to maintain proper Plan records and in accordance with the applicable: (i) Contribution Types; (ii) allocation conditions; (iii) investment account types; and (iv) Earnings allocation methods. The Plan Administrator may also maintain, or direct the Trustee to maintain, a separate temporary Account for Participant forfeitures which occur during a Plan Year, pending their accrual and allocation in accordance with the Plan terms, or for other special items as the Plan Administrator determines is necessary and appropriate for proper plan administration.

(1) By Contribution Type. The Plan Administrator, will establish Plan Accounts for each Participant as necessary to reflect his or her Accounts attributable to the following Contribution Types and the Earnings attributable thereto: Pre-Tax Deferrals, Roth Deferrals, Matching Contributions, Nonelective Contributions, Rollover Contributions (including Roth versus pre-tax amounts), and Transfers.

(2) By investment account type. The Plan Administrator will establish separate Accounts for each Participant as necessary to reflect his or her investment account types as described below:

(a) Pooled Accounts. A Pooled Account is an Account which for investment purposes is not a Segregated Account or a Participant-Directed Account. If any or all Plan investment Accounts are Pooled Accounts, each Participant's Account has an undivided interest in the assets comprising the Pooled Account. In a Pooled Account, the value of each Participant's Account Balance consists of that proportion of the net worth (at fair market value) of the Trust Fund which the net credit balance in his or her Account (exclusive of the cash value of incidental benefit insurance contracts) bears to the total net credit balance in the Accounts of all Participants plus the cash surrender value of any insurance contracts held by the Trustee on the Participant's life. As of each Valuation Date, the Plan Administrator must reduce a Participant-Directed Account for any forfeiture arising from Section 5.07 after the Plan Administrator has made all other allocations, changes or adjustments to the Account (excluding Earnings) for the valuation period.

(b) Participant-Directed Accounts. A Participant-Directed Account is an Account that the Plan Administrator establishes and maintains or directs the Trustee to establish and maintain for a Participant to invest in one or more assets that are not pooled assets held by the Trust, such as assets in a brokerage account or other property in which other Participants do not have any interest. As the Plan Administrator determines, a Participant-Directed Account may provide for a limited number and type of investment options or funds, or may be open-ended and subject only to any limitations imposed by applicable law. A Participant may have one or more Participant-Directed Accounts in addition to Pooled or Segregated Accounts. A Participant-Directed Account is credited and charged with the Earnings. As of each Valuation Date, the Plan Administrator must reduce a Participant-Directed Account for any forfeiture arising from Section 5.07 after the Plan Administrator has made all other allocations, changes or adjustments to the Account (excluding Earnings) for the valuation period.

(c) Segregated Accounts. A Segregated Account is an Account the Plan Administrator establishes and maintains or directs the Trustee to establish and maintain for a Participant: (i) to facilitate installment payments; (ii) to hold a QDRO amount; (iii) to prevent a distortion of Plan Earnings allocations; or (iv) for such other purposes as the Plan Administrator may direct. A Segregated Account receives all income it earns and bears all expense or loss it incurs. The Trustee will invest the assets of a Segregated Account consistent with the purpose for which the Plan Administrator or Trustee established the Account. As of each Valuation Date, the Plan Administrator must reduce a Segregated Account for any forfeiture arising after the Plan Administrator has made all other allocations, changes or adjustments to the Account (excluding Earnings) for the Valuation Period. Notwithstanding anything in this Section to the contrary, transferred amounts are not required to be separately accounted for and may be combined with the corresponding Account maintained in this Plan provided all rights, benefits and features and other attributes are identical with respect to each account, or are identical after the combination and such combination does not result in the impermissible elimination of any Code §411(d)(6) protected benefits.

(3) Amount of Account/distributions. The amount of a Participant's Account, as determined by the Plan Administrator, is equal to the sum of all contributions, Earnings and other additions credited to the Account, less all distributions (including distributions to Beneficiaries and to alternate payees and also including disbursement of Plan loan proceeds), expenses and other charges against the Account as of a Valuation Date or other relevant date. For purposes of a distribution under the Plan, the amount of a Participant's Account Balance is determined based upon its value on the Valuation Date immediately preceding or coinciding with the date of the distribution. If any or all Plan investment Accounts are Participant-Directed Accounts, the directing Participant's Account Balance consists of the assets held within the Participant-Directed Account and the value of the Account is determined based upon the fair market value of such assets.

(4) Account statements. As soon as practicable after the Accounting Date of each Plan Year, the Plan Administrator will deliver to each Participant (and to each Beneficiary) a statement reflecting the amount of his or her Account Balance in the Trust as of the statement date or most recent Valuation Date. No Participant, except the Plan Administrator/Participant or Trustee/Participant, has the right to inspect the records reflecting the Account of any other Participant.

(B) Allocation of Earnings. This Section 5.07(B) applies solely to the allocation of Earnings of the Trust Fund. The Plan Administrator will allocate Employer Contributions and Participant forfeitures, if any, in accordance with Article III. Earnings means the net income, gain or loss earned by a particular Account, by the Trust, or with respect to a contribution or to a distribution, as the context requires.

(1) Allocate as of Valuation Date. As of each Valuation Date, the Plan Administrator must adjust Accounts to reflect Earnings for the Valuation Period since the last Valuation Date.

(2) Definition of Valuation Date. A Valuation Date under this Plan is each: (a) Accounting Date; (b) Valuation Date the Employer elects in the Adoption Agreement; or (c) Valuation Date the Plan Administrator establishes. The Employer in the Adoption Agreement or the Plan Administrator may elect alternative Valuation Dates for the different Contribution Types which the Plan Administrator maintains under the Plan.

(3) Definition of Valuation Period. The Valuation Period is the period beginning on the day after the last Valuation Date and ending on the current Valuation Date.

(4) Allocation methods. The Plan Administrator will allocate Earnings to the Participant Accounts in accordance with the daily valuation method, balance forward method, balance forward with adjustment method, weighted average method, Participant-Directed Account method, or other method the Employer elects under the Adoption Agreement. The Employer in the Adoption Agreement may elect alternative methods under which the Plan Administrator will allocate the Earnings to the Accounts reflecting different Contribution Types or investment Account types which the Plan Administrator maintains under the Plan. The Plan Administrator first will adjust the Participant Accounts, as those Accounts stood at the beginning of the current Valuation Period, by reducing the Accounts for any forfeitures, distributions, and loan disbursement payments arising under the Plan, for expenses charged during the Valuation Period to the Accounts (expenses directly related to a Participant's Account). The Plan Administrator then, subject to the restoration allocation requirements of the Plan, will allocate Earnings under the applicable valuation method.

(a) Daily valuation method. If the Employer in the Adoption Agreement elects to apply the daily valuation method, the Plan Administrator will allocate Earnings on each day of the Plan Year for which Plan assets are valued on an established market and the Trustee is conducting business. Under the daily valuation method, all assets subject to such method are subject to daily valuation. The assets may be held in Participant-Directed Accounts or in Accounts which are subject to Trustee or other fiduciary investment direction.

(b) Balance forward method. If the Employer in the Adoption Agreement elects to apply the balance forward method, the Plan Administrator will allocate Earnings pro rata to the adjusted Participant Accounts, since the last Valuation Date.

(c) Balance forward with adjustment method. If the Employer in the Adoption Agreement elects to apply the balance forward with adjustment method, the Plan Administrator will allocate pursuant to the balance forward method, except it will treat as part of the relevant Account at the beginning of the Valuation Period the percentage of the contributions made as the Employer elects in the Adoption Agreement, during the Valuation Period the Employer elects in the Adoption Agreement.

(d) Weighted average method. If the Employer in the Adoption Agreement elects to apply a weighted average allocation method, the Plan Administrator will allocate pursuant to the balance forward method, except it will treat a weighted portion of the applicable contributions as if includible in the Participant's Account as of the beginning of the Valuation Period. The weighted portion is a fraction, the numerator of which is the number of months in the Valuation Period, excluding each month in the Valuation Period which begins prior to the contribution date of the applicable contributions, and the denominator of which is the number of months in the Valuation Period. The Employer in the Adoption Agreement may elect to substitute a weighting period other than months for purposes of this weighted average allocation.

(e) Participant-Directed Account method. The Employer in the Adoption Agreement must elect to apply the Participant-Directed Account method to any Participant-Directed Account under the Plan. Under the Participant-Directed Account method: (i) each Participant-Directed Account is credited and charged with the Earnings such Account generates; (ii) the Employer's election, if any, in the Adoption Agreement of another method for the allocation of Earnings will not apply to any Participant-Directed Account; and (iii) the Participant-Directed Account may be valued as often as daily, but will be valued at least annually, and all assets in the Account are not necessarily valued on the same frequency. An Account which is subject to the Participant-Directed Account method includes an individual brokerage account or similar account in title to the Trustee for the benefit of the Participant.

(C) Allocation of Net Income, Gain or Loss (No Trust). In a Tax-Exempt Eligible 457 Plan that does not maintain a trust the Plan Administrator will allocate net income, gain or loss in accordance with this provision. As of each Accounting Date (and each other valuation date determined under the Adoption Agreement), the Plan Administrator will adjust Accounts to reflect net income, gain or loss, if any, since the last Accounting Date or Account valuation. The Employer in the Adoption Agreement will elect the method for allocating net income gain or loss. The Plan Administrator will continue to allocate net income, gain and loss to a Participant's Account subject to an installment distribution, until the Account is fully distributed.

5.08 ACCOUNT CHARGED. The Plan Administrator will charge all distributions made to a Participant or to his or her Beneficiary, or transferred under Section 9.03 from his or her Account, against the Account of the Participant when made.

5.09 OWNERSHIP OF FUND/TAX-EXEMPT ORGANIZATION. If the Employer is a Tax-Exempt Organization, the Plan is an unfunded plan and all Deferred Compensation, property and rights to property purchased by Deferred Compensation and all income attributable thereto remain, until paid or made available under the Plan, the sole property and rights of the Employer, subject only to the claims of the Employer's general creditors. No Participant or Beneficiary will have any vested interest or secured or preferred position with respect to an Account or have any claim against the Employer except as a general creditor. No Participant or Beneficiary shall have any right to sell, assign, transfer or otherwise convey his or her Account or any interest in his or her Deferred Compensation. The Employer or the Plan Administrator, acting as the Employer's agent, may enter into a trust agreement solely for the purpose of investing all or part of the Accounts, which will be subject to the claims of the Employer's general creditors, and in which the Participants or Beneficiaries will not have a vested interest nor a secured or preferred position or have any claim except as the Employer's general creditor. The Employer may not purchase life insurance contracts under this Plan unless the Employer retains all incidents of ownership in such contracts, the Employer is the sole beneficiary of such contracts and the Employer is not under any obligation to transfer the contracts or pass through the proceeds to any Participant or to his or her Beneficiary. The Employer may adopt and attach to the Plan as "Appendix A," the Internal Revenue Service Model Rabbi Trust under Rev. Proc. 92-64 (as amended)

to hold the assets of a Tax-Exempt Organization Eligible 457 Plan. If the Employer adopts the Model Rabbi Trust, the Plan incorporates by reference the provisions of the Model Rabbi Trust as if fully set forth herein.

5.10 PARTICIPANT DIRECTION OF INVESTMENT. Subject to the terms of the Plan Administrator's adopted policy, if any, and also to written consent of the Trustee, if the Plan has a Trust, a Participant will have the right to direct the investment or re-investment of the assets comprising the Participant's Account. The Plan Administrator will account separately for the Participant-Directed Accounts. The Participant's right to direct investment does not give the Participant any vested interest or secured or preferred position with respect to assets over which he/she has investment responsibility.

5.11 VESTING/SUBSTANTIAL RISK OF FORFEITURE. The Employer in the Adoption Agreement may elect to apply a vesting schedule or to specify any other Substantial Risk of Forfeiture applicable to any or all Deferral Contributions.

(A) Forfeiture Allocation. The Employer in the Adoption Agreement must elect the method the Plan Administrator will use to allocate any Participant forfeitures, including those related to lost Participants under Section 5.14. The Plan Administrator will allocate a forfeiture in the Plan Year in which the forfeiture occurs or in the next following Plan Year.

5.12 PRESERVATION OF ELIGIBLE PLAN STATUS. The Plan Administrator may elect to sever from this Plan and to treat as a separate 457 plan, the Accounts of any Participants who have Excess Deferrals that the Plan Administrator has not corrected in accordance with Section 3.10 or in the case of any other Code §457(b) failure that the Employer may not otherwise correct, and which failure would result in the Plan ceasing to be an Eligible 457 Plan. In such event, the Plan Administrator will take any necessary or appropriate action consistent with the Employer's maintenance of separate 457 plans and with preservation of Eligible 457 Plan status of this Plan.

5.13 LIMITED LIABILITY. The Employer will not be liable to pay plan benefits to a Participant in excess of the value of the Participant's Account as the Plan Administrator determines in accordance with the Plan terms. Neither the Employer nor the Plan Administrator will be liable for losses arising from depreciation or shrinkage in the value of any investments acquired under this Plan.

5.14 LOST PARTICIPANTS. If the Plan Administrator is unable to locate any Participant or Beneficiary whose Account becomes distributable (a "lost Participant"), the Plan Administrator will apply the provisions of this Section 5.14.

(A) Attempt to Locate. The Plan Administrator will attempt to locate a lost Participant and may use one or more of the following methods: (1) provide a distribution notice to the lost Participant at his or her last known address by certified or registered mail; (2) use a commercial locator service, the internet or other general search method; (3) use the Social Security Administration or PBGC search program; or (4) use such other methods as the Plan Administrator believes prudent.

(B) Failure to Locate. If a lost Participant remains unlocated for 6 months following the date the Plan Administrator first attempts to locate the lost Participant using one or more of the methods described in Section 5.14(A), the Plan Administrator may forfeit the lost Participant's Account. If the Plan Administrator forfeits the lost Participant's Account, the forfeiture occurs at the end of the above-described 6-month period and the Plan Administrator will allocate the forfeiture in accordance with Section 5.11. The Plan Administrator under this Section 5.14(B) will forfeit the entire Account of the lost Participant, including Salary Reduction Contributions.

If a lost Participant whose Account was forfeited thereafter at any time but before the Plan has been terminated makes a claim for his or her forfeited Account, the Plan Administrator will restore the forfeited Account to the same dollar amount as the amount forfeited, unadjusted for net income, gains or losses occurring subsequent to the forfeiture. The Plan Administrator will make the restoration in the Plan Year in which the lost Participant makes the claim, first from the amount, if any, of Participant forfeitures the Plan Administrator otherwise would allocate for the Plan Year, then from the amount, if any, of Trust net income or gain for the Plan Year and last from the amount or additional amount the Employer contributes to the Plan for the Plan Year. The Plan Administrator will distribute the restored Account to the lost Participant not later than 60 days after the close of the Plan Year in which the Plan Administrator restores the forfeited Account.

(C) Nonexclusivity and Uniformity. The provisions of this Section 5.14 are intended to provide permissible but not exclusive means for the Plan Administrator to administer the Accounts of lost Participants. The Plan Administrator may utilize any other reasonable method to locate lost Participants and to administer the Accounts of lost Participants, including the default rollover under Section 4.07(C) and such other methods as the Revenue Service or the U.S. Department of Labor ("DOL") may in the future specify. The Plan Administrator will apply Section 5.14 in a reasonable manner, but may in determining a specific course of action as to a particular Account, reasonably take into account differing circumstances such as the amount of a lost Participant's Account, the expense in attempting to locate a lost Participant, the Plan Administrator's ability to establish and the expense of establishing a rollover IRA, and other factors. The Plan Administrator may charge to the Account of a lost Participant the reasonable expenses incurred under this Section 5.14 and which are associated with the lost Participant's Account.

5.15 PLAN CORRECTION. The Plan Administrator, in conjunction with the Employer and Trustee as appropriate, may undertake such correction of Plan errors as the Plan Administrator deems necessary, including but not limited to correction to maintain the Plan's status as an Eligible 457 Plan. The Plan Administrator under this Section 5.15 also may undertake Plan correction in accordance with any correction program that the Internal Revenue Service makes applicable to 457 plans.

**ARTICLE VI
PARTICIPANT ADMINISTRATIVE PROVISIONS**

6.01 BENEFICIARY DESIGNATION. A Participant from time to time may designate, in writing, any person(s) (including a trust or other entity), contingently or successively, to whom the Plan Administrator or Trustee will pay the Participant's Account (including any life insurance proceeds payable to the Participant's Account) in the event of death. A Participant also may designate the method of payment of his or her Account. The Plan Administrator will prescribe the form for the Participant's written designation of Beneficiary and, upon the Participant's filing the form with the Plan Administrator, the form revokes all designations filed prior to that date by the same Participant. A divorce decree, or a decree of legal separation, revokes the Participant's designation, if any, of his or her spouse as his or her Beneficiary under the Plan unless the decree or a QDRO provides otherwise. The foregoing revocation provision (if applicable) applies only with respect to a Participant whose divorce or legal separation becomes effective on or following the date the Employer executes the Adoption Agreement, unless the Employer in the Adoption Agreement specifies a different effective date.

6.02 NO BENEFICIARY DESIGNATION. If a Participant fails to name a Beneficiary in accordance with Section 6.01, or if the Beneficiary named by a Participant predeceases the Participant, then the Plan Administrator will pay the Participant's remaining Account in accordance with Article IV in the following order of priority, to:

- (a) The Participant's surviving spouse; or
- (b) The Participant's children (including adopted children), in equal shares by right of representation (one share for each surviving child and one share for each child who predeceases the Participant with living descendants); and if none to
- (c) The Participant's estate.

If the Beneficiary survives the Participant, but dies prior to distribution of the Participant's entire Account, the Trustee will pay the remaining Account to the Beneficiary's estate unless: (1) the Participant's Beneficiary designation provides otherwise; or (2) the Beneficiary has properly designated a beneficiary. A Beneficiary only may designate a beneficiary for the Participant's Account Balance remaining at the Beneficiary's death, if the Participant has not previously designated a successive contingent beneficiary and the Beneficiary's designation otherwise complies with the Plan terms. The Plan Administrator will direct the Plan Record Keeper in writing to pay any benefits payable under the Plan in the following order of priority:

- (a) Spouse, if living; otherwise
- (b) Natural or legally adopted children in equal shares, if living; otherwise
- (c) Parents in equal shares, if living, otherwise
- (d) Siblings in equal shares, if living, otherwise
- (e) The estate of the Participant.

In the event any amount is payable under the Plan to a person for whom a conservator has been legally appointed, the payment shall be distributed to the duly appointed and currently acting conservator, without any duty on the part of the Defined Contribution Committee to supervise or inquire into the application of any funds so paid.

6.03 SALARY REDUCTION AGREEMENT.

(A) General. A Participant must elect to make Salary Reduction Contributions on a Salary Reduction Agreement form the Plan Administrator provides for this purpose. The Salary Reduction Agreement must be consistent with the Employer's Adoption Agreement elections and the Plan Administrator in a Salary Reduction Agreement may impose such other terms and limitations as the Plan Administrator may determine.

(B) Election Timing. A Participant's Salary Reduction Agreement may not take effect earlier than the first day of the calendar month following the date the Participant executes the Salary Reduction Agreement and as to Compensation paid or made available in such calendar month. However, if an Employee is eligible to become a Participant during the Employee's calendar month of hire, the Employee may execute a Salary Reduction Agreement on or before the date he/she becomes an Employee, effective for the month in which he/she becomes an Employee.

(C) Sick, Vacation and Back Pay. If the Employer in the Adoption Agreement permits Participants to make Salary Reduction Contributions from accumulated sick pay, from accumulated vacation pay or from back pay, a Participant who will incur a Severance from Employment may execute a Salary Reduction Agreement before such amounts are paid or made available provided: (i) such amounts are paid or made available before the Participant incurs the Severance; and (ii) the Participant is an Employee in that month.

(D) Modification of Salary Reduction Agreement. A Participant's Salary Reduction Agreement remains in effect until a Participant modifies it or ceases to be eligible to participate in the Plan. A Participant may modify his or her Salary Reduction Agreement by executing a new Salary Reduction Agreement. Any modification will become effective no earlier than the beginning of the calendar month commencing after the date the Participant executes the new Salary Reduction Agreement. Filing a new Salary Reduction Agreement will revoke all Salary Reduction Agreements filed prior to that date. The Employer or Plan Administrator may restrict the Participant's right to modify his or her Salary Reduction Agreement in any Taxable Year.

6.04 PERSONAL DATA TO PLAN ADMINISTRATOR. Each Participant and each Beneficiary of a deceased Participant must furnish to the Plan Administrator such evidence, data or information as the Plan Administrator considers necessary or desirable for the purpose of administering the Plan. The provisions of this Plan are effective for the benefit of each Participant upon the condition precedent that each Participant will furnish promptly full, true and complete evidence, data and information when requested by the Plan Administrator, provided the Plan Administrator advises each Participant of the effect of his or her failure to comply with its request.

6.05 ADDRESS FOR NOTIFICATION. Each Participant and each Beneficiary of a deceased Participant must file with the Plan Administrator from time to time, in writing, his or her address and any change of address. Any communication, statement or notice addressed to a Participant, or Beneficiary, at his or her last address filed with the Plan Administrator, or as shown on the records of the Employer, binds the Participant, or Beneficiary, for all purposes of this Plan.

6.06 PARTICIPANT OR BENEFICIARY INCAPACITATED. If, in the opinion of the Plan Administrator or of the Trustee, a Participant or Beneficiary entitled to a Plan distribution is not able to care for his or her affairs because of a mental condition, a physical condition, or by reason of age, the Plan Administrator or at the direction of the Plan Administrator, the Trustee, may make the distribution to the Participant's or Beneficiary's guardian, conservator, trustee, custodian (including under a Uniform Transfers or Gifts to Minors Act) or to his or her attorney-in-fact or to other legal representative upon furnishing evidence of such status satisfactory to the Plan Administrator and to the Trustee. The Plan Administrator and the Trustee do not have any liability with respect to payments so made and neither the Plan Administrator nor the Trustee has any duty to make inquiry as to the competence of any person entitled to receive payments under the Plan.

**ARTICLE VII
MISCELLANEOUS**

7.01 NO ASSIGNMENT OR ALIENATION. A Participant or Beneficiary does not have the right to commute, sell, assign, pledge, transfer or otherwise convey or encumber the right to receive any payments under the Plan or Trust and the Plan Administrator and the Trustee will not recognize any such anticipation, assignment, or alienation. The payments and the rights under this Plan are nonassignable and nontransferable. Furthermore, a Participant's or Beneficiary's interest in the Trust is not subject to attachment, garnishment, levy, execution or other legal or equitable process.

7.02 EFFECT ON OTHER PLANS. This Plan does not affect benefits under any other retirement, pension, or benefit plan or system established for the benefit of the Employer's Employees, and participation under this Plan does not affect benefits receivable under any such plan or system, except to the extent provided in such plan or system.

7.03 WORD USAGE. Words used in the masculine will apply to the feminine where applicable, and wherever the context of the Plan dictates, the plural will be read as the singular and the singular as the plural.

7.04 STATE LAW. The laws of the state of the Employer's principal place of business will determine all questions arising with respect to the provisions of this Plan, except to the extent Federal law supersedes State law.

7.05 EMPLOYMENT NOT GUARANTEED. Nothing contained in this Plan, or any modification or amendment to the Plan, or in the creation of any Account, or the payment of any benefit, gives any Employee, Participant or Beneficiary any right to continue employment, any legal or equitable right against the Employer, the Plan Administrator, the Trustee, any other Employee of the Employer, or any agents thereof except as expressly provided by the Plan.

7.06 NOTICE, DESIGNATION, ELECTION, CONSENT AND WAIVER. All notices under the Plan and all Participant or Beneficiary designations, elections, consents or waivers must be in writing and made in a form the Plan Administrator specifies or otherwise approves. To the extent permitted by Treasury regulations or other applicable guidance, any Plan notice, election, consent or waiver may be transmitted electronically. Any person entitled to notice under the Plan may waive the notice or shorten the notice period except as otherwise required by the Code.

**ARTICLE VIII
TRUST PROVISIONS—GOVERNMENTAL ELIGIBLE 457 PLAN**

8.01 GOVERNMENTAL ELIGIBLE 457 PLAN. The provisions of this Article VIII apply to a Governmental Eligible 457 Plan and do not apply to a Tax-Exempt Organization Eligible 457 Plan. The Employer in the Adoption Agreement may elect to substitute another trust (attached to this Plan as "Appendix A") or to modify any provision of Article VIII, consistent with Code §457(g) and applicable Treasury regulations.

8.02 ACCEPTANCE/HOLDING. The Trustee accepts the Trust created under the Plan and agrees to perform the duties and obligations imposed. The Trustee must hold in trust under this Article VIII, all Deferred Compensation until paid in accordance with the Plan terms.

8.03 RECEIPT OF CONTRIBUTIONS. The Trustee is accountable to the Employer for the funds contributed to it by the Employer or the Plan Administrator, but the Trustee does not have any duty to see that the contributions received comply with the provisions of the Plan.

8.04 FULL INVESTMENT POWERS. The Trustee has full discretion and authority with regard to the investment of the Trust, except with respect to a Trust asset under Participant direction of investment, in accordance with Section 8.12. The Trustee is authorized and empowered, but not by way of limitation, to exercise and perform the following powers, rights and duties:

- (a) To invest any part or all of the Trust in any common or preferred stocks, open-end or closed-end mutual funds, put and call options traded on a national exchange, United States retirement plan bonds, corporate bonds, debentures, convertible debentures, commercial paper, U. S. Treasury bills, U. S. Treasury notes and other direct or indirect obligations of the United States Government or its agencies, improved or unimproved real estate situated in the United States, limited partnerships, insurance contracts of any type, mortgages, notes or other property of any kind, real or personal, and to buy or sell options on common stock on a nationally recognized options exchange with or without holding the underlying common stock, as a prudent person would do under like circumstances. Any investment made or retained by the Trustee in good faith will be proper but must be of a kind constituting a diversification considered by law suitable for trust investments;
- (b) To retain in cash so much of the Trust as it may deem advisable to satisfy liquidity needs of the Plan and to deposit any cash held in the Trust in a bank account at reasonable interest;
- (c) To invest, if the Trustee is a bank or similar financial institution supervised by the United States or by a State, in any type of deposit of the Trustee (or a bank related to the Trustee within the meaning of Code §414(b)) at a reasonable rate of interest or in a common trust fund as described in Code §584, or in a collective investment fund, the provisions of which the Trust incorporates by this reference, which the Trustee (or its affiliate, as defined in Code §1504) maintains exclusively for the collective investment of money contributed by the bank (or its affiliate) in its capacity as Trustee and which conforms to the rules of the Comptroller of the Currency;
- (d) To manage, sell, contract to sell, grant options to purchase, convey, exchange, transfer, abandon, improve, repair, insure, lease for any term even though commencing in the future or extending beyond the term of the Trust, and otherwise deal with all property, real or personal, in such manner, for such considerations and on such terms and conditions as the Trustee decides;
- (e) To credit and distribute the Trust as directed by the Plan Administrator of the Plan. The Trustee will not be obliged to inquire as to whether any payee or distributee is entitled to any payment or whether the distribution is proper or within the terms of the Plan, or as to the manner of making any payment or distribution. The Trustee will be accountable only to the Plan Administrator for any payment or distribution made by it in good faith on the order or direction of the Plan Administrator;
- (f) To borrow money, to assume indebtedness, extend mortgages and encumber by mortgage or pledge;
- (g) To compromise, contest, arbitrate or abandon claims and demands, in the Trustee's discretion;
- (h) To have with respect to the Trust all of the rights of an individual owner, including the power to exercise any and all voting rights associated with Trust assets, to give proxies, to participate in any voting trusts, mergers, consolidations or liquidations, to tender shares and to exercise or sell stock subscriptions or conversion rights;
- (i) To lease for oil, gas and other mineral purposes and to create mineral severances by grant or reservation; to pool or unitize interest in oil, gas and other minerals; and to enter into operating agreements and to execute division and transfer orders;
- (j) To hold any securities or other property in the name of the Trustee or its nominee, with depositories or agent depositories or in another form as it may deem best, with or without disclosing the trust relationship;
- (k) To perform any and all other acts in its judgment necessary or appropriate for the proper and advantageous management, investment and distribution of the Trust;
- (l) To retain any funds or property subject to any dispute without liability for the payment of interest, and to decline to make payment or delivery of the funds or property until a court of competent jurisdiction makes a final adjudication;
- (m) To file all tax returns required of the Trustee;
- (n) To furnish to the Employer and the Plan Administrator an annual statement of account showing the condition of the Trust and all investments, receipts, disbursements and other transactions effected by the Trustee during the Plan Year covered by the statement and also stating the assets of the Trust held at the end of the Plan Year, which accounts will be conclusive on all persons, including the Employer and the Plan Administrator, except as to any act or transaction concerning which the Employer or the Plan Administrator files with the Trustee written exceptions or objections within 90 days after the receipt of the accounts; and

(o) To begin, maintain or defend any litigation necessary in connection with the administration of the Trust, except that the Trustee will not be obliged or required to do so unless indemnified to its satisfaction.

(A) Nondiscretionary Trustee. The Employer in the Adoption Agreement may elect to appoint a Nondiscretionary Trustee, subject to this Section 8.04(A). The Nondiscretionary Trustee does not have any discretion or authority with regard to the investment of the Trust, but must act solely as a directed Trustee hereunder. The Nondiscretionary Trustee is authorized and empowered to exercise and perform the above Section 8.04 powers, rights and duties provided that the Trustee shall act solely as a directed Trustee and only in accordance with the written direction of the Employer, the Plan Administrator or of a Participant as applicable. The Nondiscretionary Trustee is not liable for making, retaining or disposing of any investment or for taking or failing to take any other action, in accordance with proper Employer, Plan Administrator or Participant direction.

8.05 RECORDS AND STATEMENTS. The records of the Trustee pertaining to the Trust will be open to the inspection of the Plan Administrator and the Employer at all reasonable times and may be audited from time to time by any person or persons as the Employer or Plan Administrator may specify in writing. The Trustee will furnish the Plan Administrator whatever information relating to the Trust the Plan Administrator considers necessary.

8.06 FEES AND EXPENSES FROM FUND. The Trustee will receive reasonable annual compensation in accordance with its fee schedule as published from time to time. The Trustee will pay from the Trust all fees and expenses the Trustee reasonably incurs in its administration of the Trust, unless the Employer pays the fees and expenses.

8.07 PROFESSIONAL AGENTS. The Trustee may employ and pay from the Trust reasonable compensation to agents, attorneys, accountants and other persons to advise the Trustee as in its opinion may be necessary. The Trustee may delegate to any agent, attorney, accountant or other person selected by it any non-Trustee power or duty vested in it by the Trust, and the Trustee may act or refrain from acting on the advice or opinion of any agent, attorney, accountant or other person so selected.

8.08 DISTRIBUTION OF CASH OR PROPERTY. The Trustee may make distribution under the Plan in cash or property, or partly in each, at its fair market value as determined by the Trustee.

8.09 RESIGNATION AND REMOVAL. The Trustee or the Custodian may resign its position by giving written notice to the Employer and to the Plan Administrator. The Trustee's notice must specify the effective date of the Trustee's resignation, which date must be at least 30 days following the date of the Trustee's notice, unless the Employer consents in writing to shorter notice.

The Employer may remove a Trustee or a Custodian by giving written notice to the affected party. The Employer's notice must specify the effective date of removal which date must be at least 30 days following the date of the Employer's notice, except where the Employer reasonably determines a shorter notice period or immediate removal is necessary to protect Plan assets.

8.10 SUCCESSOR TRUSTEE.

(A) Appointment. In the event of the resignation or the removal of a Trustee, where no other Trustee continues to service, the Employer must appoint a successor Trustee if it intends to continue the Plan. If two or more persons hold the position of Trustee, in the event of the removal of one such person, during any period the selection of a replacement is pending, or during any period such person is unable to serve for any reason, the remaining person or persons will act as the Trustee. If the Employer fails to appoint a successor Trustee as of the effective date of the Trustee resignation or removal and no other Trustee remains, the Trustee will treat the Employer as having appointed itself as Trustee and as having filed the Employer's acceptance of appointment as successor Trustee with the former Trustee.

(B) Automatic Successor. Any corporation which succeeds to the trust business of the Trustee, or results from any merger or consolidation to which the Trustee is a party, or is the transferee of substantially all the Trustee's assets, will be the successor to the Trustee under this Trust. The successor Trustee will possess all rights, duties and powers under this Trust as if the successor Trustee were the original Trustee. Neither the Trustee nor the successor Trustee need provide notice to any interested person of any transaction resulting in a successor Trustee. The successor Trustee need not file or execute any additional instrument or perform any additional act to become successor Trustee.

8.11 VALUATION OF TRUST. The Trustee will value the Trust as of each Accounting Date to determine the fair market value of the Trust assets. The Trustee will value the Trust on such other date(s) the Plan Administrator may direct.

8.12 PARTICIPANT DIRECTION OF INVESTMENT. Consistent with the Plan Administrator's policy adopted under Section 5.02(I), the Trustee may consent in writing to permit Participants in the Plan to direct the investment to the Trust assets. The Plan Administrator will advise the Trustee of the portion of the Trust credited to each Participant's Account under the Plan, and subject to such Participant direction. As a condition of Participant direction, the Trustee may impose such conditions, limitations and other provisions as the Trustee may deem appropriate and as are consistent with the Plan Administrator's policy. The Trustee will report to the Plan Administrator the net income, gain or losses incurred by each Participant-Directed Account separately from the net income, gain or losses incurred by the general Trust during the Trust Year.

8.13 THIRD PARTY RELIANCE. No person dealing with the Trustee will be obliged to see to the proper application of any money paid or property delivered to the Trustee, or to inquire whether the Trustee has acted pursuant to any of the terms of the Trust. Each person dealing with the Trustee may act upon any notice, request or representation in writing by the Trustee, or by the Trustee's duly authorized agent, and will not be liable to any person whomsoever in so doing. The certificate of the Trustee that it is acting in accordance with the Trust will be conclusive in favor of any person relying on the certificate.

8.14 INVALIDITY OF ANY TRUST PROVISION. If any clause or provision of this Article VIII proves to be or is adjudged to be invalid or void for any reason, such void or invalid clause or provision will not affect any of the other provisions of this Article VIII and the balance of the Trust provisions will remain operative.

8.15 EXCLUSIVE BENEFIT. The Trustee will hold all the assets of the Trust for the exclusive benefit of the Participants and their Beneficiaries and neither the Employer nor the Trustee will use or divert any part of the corpus or income of the Trust for purposes other than the exclusive benefit of the Participants and Beneficiaries of the Plan. The Employer will not have any right to the assets held by the Trustee and the Trust assets will not be subject to the claims of the Employer's creditors or, except as provided in Section 4.06, of the creditors of any Participant or Beneficiary. No Participant or Beneficiary shall have any right to sell, assign, transfer or otherwise convey his or her Account or any interest in his or her Deferred Compensation. Notwithstanding the foregoing, the Plan Administrator may pay from a Participant's or Beneficiary's Account the amount the Plan 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. The Trust created under the Employer's Plan is irrevocable and its assets will not inure to the benefit of the Employer.

8.16 SUBSTITUTION OF CUSTODIAL ACCOUNT OR ANNUITY CONTRACT. The Employer in the Adoption Agreement may elect to use one or more custodial accounts or annuity contracts in lieu of or in addition to the Trust established in this Article VIII. Any such custodial account or annuity contract must satisfy the requirements of Code §457(g)(3) and applicable Treasury regulations.

8.17 GROUP TRUST AUTHORITY. Notwithstanding any contrary provision in this Plan, the Trustee may, unless restricted in writing by the Plan Administrator, transfer assets of the Plan to a group trust that is operated or maintained exclusively for the commingling and collective investment of monies provided that the funds in the group trust consist exclusively of trust assets held under plans qualified under Code §401(a), individual retirement accounts that are exempt under Code §408(e), and eligible governmental plans that meets the requirements of Code §457(b). For this purpose, a trust includes a custodial account that is treated as a trust under Code §401(f) or under Code §457(g)(3). For purposes of valuation, the value of the interest maintained by the Plan in such group trust shall be the fair market value of the portion of the group trust held for Plan, determined in accordance with generally recognized valuation procedures.

**ARTICLE IX
AMENDMENT, TERMINATION, TRANSFERS**

9.01 AMENDMENT BY EMPLOYER/SPONSOR. The Employer has the right at any time and from time to time:

- (a) To amend this Plan and Trust Agreement and the Adoption Agreement in any manner it deems necessary or advisable in order to continue the status of this Plan as an Eligible 457 Plan; and
- (b) To amend this Plan and Trust Agreement and the Adoption Agreement in any other manner, including deletion, substitution or modification of any Plan, Trust or Adoption Agreement provision.

The Employer must make all amendments in writing. The Employer may amend the Plan by an Adoption Agreement election, by addenda, by separate amendment, or by restatement of the Adoption Agreement or Plan. Each amendment must state the date to which it is either retroactively or prospectively effective. The Employer also may not make any amendment that affects the rights, duties or responsibilities of the Trustee or the Plan Administrator without the written consent of the affected Trustee or the Plan Administrator.

9.02 TERMINATION/FREEZING OF PLAN. The Employer has the right, at any time, to terminate this Plan or to cease (freeze) further Deferral Contributions to the Plan. Upon termination or freezing of the Plan, the provisions of the Plan (other than provisions permitting continued Deferral Contributions) remain operative until distribution of all Accounts. Upon Plan termination, the Plan Administrator or Trustee shall distribute to Participants and Beneficiaries all Deferred Compensation as soon as is reasonably practicable following termination.

9.03 TRANSFERS. The Employer may enter into a Transfer agreement with another employer under which this Plan: (a) may accept a Transfer of a Participant's Account in the other employer's Eligible 457 Plan; or (b) may Transfer a Participant's (or Beneficiary's) Account in this Plan to the other employer's Eligible 457 Plan. The plan sponsors of the plans involved in the Transfer both must be States or both must be Tax-Exempt Organizations and the plans must provide for Transfers. The Participant or Beneficiary, after the Transfer will have Deferred Compensation in the recipient plan at least equal to his or her Deferred Compensation in the transferring plan immediately before the Transfer. Any Transfer also must comply with applicable Treasury regulations, and in particular Treas. Reg. §§1.457-10(b)(2) as to post-severance transfers between Governmental Eligible 457 Plans; 1.457-10(b)(3) as to transfers of all assets between Governmental Eligible 457 Plans; 1.457-10(b)(4) as to transfers between Governmental Eligible 457 Plans of the same Employer; and 1.457-10(b)(5) as to post-severance transfers between Tax-Exempt Organization Eligible 457 Plans. The Plan Administrator will credit any Transfer accepted under this Section 9.03 to the Participant's Account and will treat the transferred amount as a Deferral Contribution for all purposes of this Plan except the Plan Administrator, will not treat such Transfer as a Deferral Contribution subject to the limitations of Article III. In addition, in the case of a Transfer between Tax-Exempt Organization Eligible Plans, the recipient plans shall apply a Participant's distribution elections made under the transferor plan in accordance with Treas. Reg. §1.457-10(b)(6)(ii). The Plan's Transfer of any Participant's or Beneficiary's Account under this Section 9.03 completely discharges the Employer, the Plan Administrator, the Trustee and the Plan from any liability to the Participant or Beneficiary for any Plan benefits.

9.04 PURCHASE OF PERMISSIVE SERVICE CREDIT. A Participant in a Governmental Eligible 457 Plan, prior to otherwise incurring a distributable event under Article IV, may direct the Trustee to transfer all or a portion of his or her Account to a governmental defined benefit plan (under Code §414(d)) for: (a) the purchase of permissive service credit (under Code §415(n)(3)(A)) under such plan, or (b) the repayment of contributions and earnings previously refunded with respect to a forfeiture of service credited under the plan (or under another governmental plan within the same State) to which Code §415 does not apply by reason of Code §415(k)(3).

MODIFICATIONS

The following modifications from the approved specimen plan have been made to this Plan:

6.02 NO BENEFICIARY DESIGNATION. If a Participant fails to name a Beneficiary in accordance with Section 6.01, or if the Beneficiary named by a Participant predeceases the Participant, then the Plan Administrator will pay the Participant's remaining Account in accordance with Article IV in the following order of priority, to:

- (a) The Participant's surviving spouse; or
- (b) The Participant's children (including adopted children), in equal shares by right of representation (one share for each surviving child and one share for each child who predeceases the Participant with living descendants); and if none to
- (c) The Participant's estate.

If the Beneficiary survives the Participant, but dies prior to distribution of the Participant's entire Account, the Trustee will pay the remaining Account to the Beneficiary's estate unless: (1) the Participant's Beneficiary designation provides otherwise; or (2) the Beneficiary has properly designated a beneficiary. A Beneficiary only may designate a beneficiary for the Participant's Account Balance remaining at the Beneficiary's death, if the Participant has not previously designated a successive contingent beneficiary and the Beneficiary's designation otherwise complies with the Plan terms. The Plan Administrator will direct the Plan Record Keeper in writing to pay any benefits payable under the Plan in the following order of priority:

- (a) Spouse, if living; otherwise
- (b) Natural or legally adopted children in equal shares, if living; otherwise
- (c) Parents in equal shares, if living, otherwise
- (d) Siblings in equal shares, if living, otherwise
- (e) The estate of the Participant.

In the event any amount is payable under the Plan to a person for whom a conservator has been legally appointed, the payment shall be distributed to the duly appointed and currently acting conservator, without any duty on the part of the Defined Contribution Committee to supervise or inquire into the application of any funds so paid.

And will Matching Contributions be made with respect to Elective Deferrals?

1. ☐ **Yes.** See Question 16.
2. ☒ **No.**

And will **Roth Elective Deferrals** be made?

3. ☒ **Yes.** [Note: The Employer may not limit Deferrals to Roth Deferrals only.]
4. ☐ **No.**

c. ☐ **Nonelective Contributions.** See Question 17.

d. ☒ **Rollover Contributions.** See Question 30.

6. **EXCLUDED EMPLOYEES (1.10).** The following Employees are Excluded Employees and are not eligible to participate in the Plan (Choose one of a. or b.):

- a. ☒ **No exclusions.** All Employees are eligible to participate.
- b. ☐ **Exclusions.** The following Employees are Excluded Employees (Choose one or more of 1. through 4.):
 1. ☐ **Part-time Employees.** The Plan defines part-time Employees as Employees who normally work less than _____ hours per week.
 2. ☐ **Hourly-paid Employees.**
 3. ☐ **Leased Employees.** The Plan excludes Leased Employees.
 4. ☐ **Specify:** _____.

7. **INDEPENDENT CONTRACTOR (1.16).** The Plan (Choose one of a., b. or c.):

- a. ☐ **Participate.** Permits Independent Contractors to participate in the Plan.
- b. ☒ **Not Participate.** Does not permit Independent Contractors to participate in the Plan.
- c. ☐ **Specified Independent Contractors.** Permits the following specified Independent Contractors to participate: _____

[Note: If the Employer elects to permit any or all Independent Contractors to participate in the Plan, the term Employee as used in the Plan includes such participating Independent Contractors.]

8. **COMPENSATION (1.05).** Subject to the following elections, Compensation for purposes of allocation of Deferral Contributions means:

Base Definition (Choose one of a., b. or c.):

- a. ☒ Wages, tips and other compensation on Form W-2.
- b. ☐ Code §3401(a) wages (wages for withholding purposes).
- c. ☐ 415 safe harbor compensation.

[Note: The Plan provides that the base definition of Compensation includes amounts that are not included in income due to Code §§401(k), 125,132(f)(4), 403(b), SEP, 414(h)(2), & 457. Compensation for an Independent Contractor means the amounts the Employer pays to the Independent Contractor for services, except as the Employer otherwise specifies below.]

Modifications to Compensation definition. The Employer elects to modify the Compensation definition as follows (Choose one of d. or e.):

- d. ☐ **No modifications.** The Plan makes no modifications to the definition.
- e. ☒ **Modifications** (Choose one or more of 1. through 5.):
 1. ☐ **Fringe benefits.** The Plan excludes all reimbursements or other expense allowances, fringe benefits (cash and noncash), moving expenses, deferred compensation and welfare benefits.
 2. ☐ **Elective Contributions.** [1.05(E)] The Plan excludes a Participant's Elective Contributions.
 3. ☐ **Bonuses.** The Plan excludes bonuses.
 4. ☐ **Overtime.** The Plan excludes overtime.
 5. ☒ **Specify:** Compensation shall not include payment made through the County's Medical Emergency Leave or Workers' Compensation Programs

Compensation taken into account. For the Plan Year in which an Employee first becomes a Participant, the Plan Administrator will determine the allocation of matching and nonelective contributions by taking into account (*Choose one of f. or g.*):

- f. ☒ **Plan Year.** The Employee's Compensation for the entire Plan Year.
- g. ☐ **Compensation while a Participant.** The Employee's Compensation only for the portion of the Plan Year in which the Employee actually is a Participant.

9. **POST-SEVERANCE COMPENSATION (1.05(F)).** Compensation includes the following types of Post-Severance Compensation paid within any applicable time period as may be required (*Choose one of a. or b.*):

- a. ☐ **None.** The Plan does not take into account Post-Severance Compensation as to any Contribution Type except as required under the basic plan document.
- b. ☒ **Adjustments.** The following Compensation adjustments apply (*Choose one or more*):
1. ☐ **Regular Pay.** Post-Severance Compensation will include Regular Pay and it will apply to all Contribution Types.
 2. ☒ **Leave-Cashouts.** Post-Severance Compensation will include Leave Cashouts and it will apply to all Contribution Types.
 3. ☐ **Nonqualified Deferred Compensation.** Post-Severance Compensation will include Deferred Compensation and it will apply to all Contribution Types.
 4. ☐ **Salary Continuation for Disabled Participants.** Post-Severance Compensation will include Salary Continuation for Disabled Participants and it will apply to all Contribution Types.
 5. ☒ **Differential Wage Payments.** Post-Severance Compensation will include Differential Wage Payments (military continuation payments) and it will apply to all Contribution Types.
 6. ☐ **Describe alternative Post-Severance Compensation definition, limit by Contribution Type, or limit by Participant group:** _____.

10. **NORMAL RETIREMENT AGE (1.20).** A Participant attains Normal Retirement Age under the Plan (*Choose one of a. or b.*):

- a. ☐ **Plan designation.** [Plan Section 3.05(B)] When the Participant attains age _____. [Note: The age may not exceed age 70 ½. The age may not be less than age 65, or, if earlier, the age at which a Participant may retire and receive benefits under the Employer's pension plan, if any.]
- b. ☒ **Participant designation.** [Plan Section 3.05(B) and (B)(1)] When the Participant attains the age the Participant designates, which may not be earlier than age 55 and may not be later than age 70 ½. [Note: The age may not exceed age 70 ½.]
- c. ☒ **Participant designation.** [Plan Section 3.05(B) and (B)(1)] For safety members of SBCERA the Participant attains the age the Participant designates, which may not be earlier than age 50 and may not be later than age 70 ½. [Note: The age may not exceed age 70 ½.]
- d. ☒ **Participant designation.** [Plan Section 3.05(B) and (B)(1)] For a participant who continues in the service of the Employer after age 70 ½, the Normal Retirement Age means the age at which the Participant separates from service with the Employer.

Special Provisions for Police or Fire Department Employees (*Choose c. and/or d. as applicable*):

- c. ☐ **Police department employees.** [Plan Section 3.05(B)(3)] (*Choose 1. or 2.*):
1. ☐ **Plan designation.** [Plan Section 3.05(B)] When the Participant attains age _____. [Note: The age may not exceed age 70 1/2 and may not be less than age 40.]
 2. ☐ **Participant designation.** [Plan Section 3.05(B) and (B)(1)] When the Participant attains the age the Participant designates, which may not be earlier than age _____ (no earlier than age 40) and may not be later than age _____. [Note: The age may not exceed age 70 1/2.]
- d. ☐ **Fire department employees.** [Plan Section 3.05(B)(3)] (*Choose 1. or 2.*):
1. ☐ **Plan designation.** [Plan Section 3.05(B)] When the Participant attains age _____. [Note: The age may not exceed age 70 1/2 and may not be less than age 40.]
 2. ☐ **Participant designation.** [Plan Section 3.05(B) and (B)(1)] When the Participant attains the age the Participant designates, which may not be earlier than age _____ (no earlier than age 40) and may not be later than age _____. [Note: The age may not exceed age 70 1/2.]

11. **ELIGIBILITY CONDITIONS (2.01).** (*Choose one of a. or b.*):

- a. ☒ **No eligibility conditions.** The Employee is eligible to participate in the Plan as of his/her first day of employment with the employer.
- b. ☐ **Eligibility conditions.** To become a Participant in the Plan, an Eligible Employee must satisfy the following eligibility conditions (*Choose one or more of 1., 2. or 3.*):
1. ☐ **Age.** Attainment of age _____.

2. ☐ **Service.** Service requirement (Choose one of a. or b.):
- a. ☐ **Year of Service.** One year of Continuous Service.
- b. ☐ **Months of Service.** _____ month(s) of Continuous Service.
3. ☐ **Specify:** _____.
12. **PLAN ENTRY DATE (1.24).** "Plan Entry Date" means the Effective Date and (Choose one of a. through d.):
- a. ☐ **Monthly.** The first day of the month coinciding with or next following the Employee's satisfaction of the Plan's eligibility conditions.
- b. ☐ **Annual.** The first day of the Plan Year coinciding with or next following the Employee's satisfaction of the Plan's eligibility conditions.
- c. ☐ **Date of hire.** The Employee's employment commencement date with the Employer.
- d. ☒ **Specify:** Date of hire. The Employee's employment commencement date with the Employer is subject to IRS regulations _____.
13. **SALARY REDUCTION CONTRIBUTIONS (1.30).** A Participant's Salary Reduction Contributions under Election 5b. are subject to the following limitation(s) in addition to those imposed by the Code (Choose one of a. or b.):
- a. ☐ **No limitations.**
- b. ☒ **Limitations.** (Choose one or more of 1., 2. or 3.):
1. ☐ **Maximum deferral amount.** A Participant's Salary Reductions may not exceed: _____ (specify dollar amount or percentage of Compensation).
2. ☒ **Minimum deferral amount.** A Participant's Salary Reductions may not be less than: \$10 dollars per pay period (specify dollar amount or percentage of Compensation).
3. ☐ **Specify:** _____.
- [Note: Any limitation the Employer elects in b.1. through b.3. will apply on a payroll basis unless the Employer otherwise specifies in b.3.]
- Special NRA Catch-Up Contributions (3.05).** The Plan (Choose one of c. or d.):
- c. ☒ **Permits.** Participants may make NRA catch-up contributions.
- AND, Special NRA Catch-Up Contributions (Choose one of 1. or 2.):**
1. ☐ will be taken into account in applying any matching contribution under the Plan.
2. ☒ will not be taken into account in applying any matching contribution under the Plan.
- d. ☐ **Does not permit.** Participants may not make NRA catch-up contributions.
- Age 50 Catch-Up Contributions (3.06).** The Plan (Choose one of e. or f.):
- e. ☒ **Permits.** Participants may make age 50 catch-up contributions.
- f. ☐ **Does not permit.** Participants may not make age 50 catch-up contributions.
14. **SICK, VACATION AND BACK PAY (3.02(A)).** The Plan (Choose one of a. or b.):
- a. ☒ **Permits.** Participants may make Salary Reduction Contributions from accumulated sick pay, from accumulated vacation pay or from back pay.
- b. ☐ **Does Not Permit.** Participants may not make Salary Reduction Contributions from accumulated sick pay, from accumulated vacation pay or from back pay.
15. **AUTOMATIC ENROLLMENT (3.02(B)).** Does the Plan provide for automatic enrollment (Choose one of the following) [Note: if Eligible Automatic Contribution Arrangement (EACA), select 15c and complete Questions 31 & 32]:
- a. ☐ **Does not apply.** Does not apply the Plan's automatic enrollment provisions.
- b. ☒ **Applies.** Applies the Plan's automatic enrollment provisions. The Employer as a Pre-Tax Elective Deferral will withhold 1 % from each Participant's Compensation unless the Participant elects a different percentage (including zero) under his/her Salary Reduction Agreement. The automatic election will apply to (Choose one of 1. through 3.):
1. ☐ **All Participants.** All Participants who as of _____ are not making Pre-Tax Elective Deferrals at least equal to the automatic amount.
2. ☐ **New Participants.** Each Employee whose Plan Entry Date is on or following: _____.

3. ☒ **Describe Application of Automatic Deferrals:** Union Employees as collectively bargained to include 1 or both of the following arrangements: (A) Automatic enrollment of all non-participating Union represented employees as of a pre-determined effective date; (B) Automatic enrollment of all new Union represented employees hired on or after a pre-determined date.

c. ☒ **EACA.** The Plan will provide an Eligible Automatic Contribution Arrangement (EACA). Complete Questions 31 & 32.

16. **MATCHING CONTRIBUTIONS (3.03).** The Employer Matching Contributions is *(Choose one or more of a. through d.):*

- a. ☐ **Fixed formula.** An amount equal to _____ of each Participant's Salary Reduction Contributions.
- b. ☐ **Discretionary formula.** An amount (or additional amount) equal to a matching percentage the Employer from time to time may deem advisable of each Participant's Salary Reduction Contributions.
- c. ☐ **Tiered formula.** The Employer will make matching contributions equal to a uniform percentage of each tier of each Participant's Salary Reduction Contributions, determined as follows:

NOTE: Fill in only percentages or dollar amounts, but not both. If percentages are used, each tier represents the amount of the Participant's applicable contributions that equals the specified percentage of the Participant's Compensation (add additional tiers if necessary):

Tiers of Contributions (indicate \$ or %)	Matching Percentage
First _____	_____ %
Next _____	_____ %
Next _____	_____ %
Next _____	_____ %

d. ☐ **Specify:** _____.

Time Period for Matching Contributions. The Employer will determine its Matching Contribution based on Salary Reduction Contributions made during each *(Choose one of e. through h.):*

- e. ☐ **Plan Year.**
- f. ☐ **Plan Year quarter.**
- g. ☐ **Payroll period.**
- h. ☐ **Specify:** _____.

Salary Reduction Contributions Taken into Account. In determining a Participant's Salary Reduction Contributions taken into account for the above-specified time period under the Matching Contribution formula, the following limitations apply *(Choose one of i. through l.):*

- i. ☐ **All Salary Reduction Contributions.** The Plan Administrator will take into account all Salary Reduction Contributions.
- j. ☐ **Specific limitation.** The Plan Administrator will disregard Salary Reduction Contributions exceeding _____% of the Participant's Compensation.
- k. ☐ **Discretionary.** The Plan Administrator will take into account the Salary Reduction Contributions as a percentage of the Participant's Compensation as the Employer determines.
- l. ☐ **Specify:** _____.

Allocation Conditions. To receive an allocation of Matching Contributions, a Participant must satisfy the following allocation condition(s) *(Choose one of m. or n.):*

- m. ☐ **No allocation conditions.**
- n. ☐ **Conditions.** The following allocation conditions apply to Matching Contributions *(Choose one or more of 1. through 4.):*
 - 1. ☐ **Service condition.** The Participant must complete the following number of months of Continuous Service during the Plan Year: _____.
 - 2. ☐ **Employment condition.** The Participant must be employed by the Employer on the last day of the Plan Year.
 - 3. ☐ **Limited Severance Exception.** Any condition specified in 1. or 2. does not apply if the Participant incurs a Severance from Employment during the Plan Year on account of death, disability or attainment of Normal Retirement Age in the current Plan Year or in a prior Plan Year.
 - 4. ☐ **Specify:** _____.

17. **NONELECTIVE CONTRIBUTIONS (1.19).** The Nonelective Contributions under Election 5c. are made as follows: *(Choose one):*

- a. ☐ **Discretionary - Pro-Rata.** An amount the Employer in its sole discretion may determine.
- b. ☐ **Fixed - Pro Rata.** _____% of Compensation.

c. ☐ **Other.** A Nonelective Contribution may be made as follows:

Allocation Conditions. (3.08). To receive an allocation of Nonelective Contributions, a Participant must satisfy the following allocation condition(s) (*Choose one of d. or e.*):

d. ☐ **No allocation conditions.**

e. ☐ **Conditions.** The following allocation conditions apply to Nonelective Contributions (*Choose one or more of 1. through 4.*):

1. ☐ **Service condition.** The Participant must complete the following number of months of Continuous Service during the Plan Year: _____.

2. ☐ **Employment condition.** The Participant must be employed by the Employer on the last day of the Plan Year.

3. ☐ **Limited Severance Exception.** Any condition specified in 1. or 2. does not apply if the Participant incurs a Severance from Employment during the Plan Year on account of death, disability or attainment of Normal Retirement Age in the current Plan Year or in a prior Plan Year.

4. ☐ **Specify:** _____.

18. TIME AND METHOD OF PAYMENT OF ACCOUNT (4.02). The Plan will distribute to a Participant who incurs a Severance from Employment his/her Vested Account as follows:

Timing. The Plan, in the absence of a permissible Participant election to commence payment later, will pay the Participant's Account (*Choose one of a. through e.*):

a. ☐ **Specified Date.** _____ days after the Participant's Severance from Employment.

b. ☐ **Immediate.** As soon as administratively practicable following the Participant's Severance from Employment.

c. ☐ **Designated Plan Year.** As soon as administratively practicable in the _____ Plan Year beginning after the Participant's Severance from Employment.

d. ☐ **Normal Retirement Age.** As soon as administratively practicable after the close of the Plan Year in which the Participant attains Normal Retirement Age.

e. ☒ **Specify:** If the Participant fails to select a payment option for any event that causes amounts to become available under the Plan, the Participant shall be deemed to have elected to postpone distribution of his or her benefit until the year in which the Participant attains age 70 ½.

Method. The Plan, in the absence of a permissible Participant election, will distribute the Participant's Account under one of the following method(s) of distribution (*Choose one or more of f. through j. as applicable*):

f. ☒ **Lump sum.** A single payment.

g. ☒ **Installments.** Multiple payments made as follows: Participant may elect to have payments made either monthly, quarterly, semi-annually or annually. However, no payment option may be selected by the Participant unless the amount of any installment is at least \$100.

h. ☒ **Installments for required minimum distributions only.** Annual payments, as necessary under Plan Section 4.03.

i. ☒ **Annuity distribution option(s):** Life Annuity with Period Certain Guaranteed. An annuity payable during the lifetime of the Participant, or his/her Beneficiary, with the guarantee that if, at the Participant's death, payments have not been made for the guaranteed period as elected, payments will continue to the Beneficiary. The guaranteed period to be elected must be either ten (10) or fifteen (15) years if the Beneficiary is not a spousal Beneficiary. For a spousal Beneficiary, the guaranteed period to be elected may be ten (10), fifteen (15) or twenty (20) years but may not exceed the life expectancy of the Participant and his or her spousal Beneficiary.

j. ☒ **Specify:** Designated Amount. A method of account liquidation of a specific dollar amount monthly until account funds are exhausted.

Participant Election. [Plan Sections 4.02(A) and (B)] The Plan (*Choose one of k., l. or m.*):

k. ☒ **Permits.** Permits a Participant, with Plan Administrator approval of the election, to elect to postpone distribution beyond the time the Employer has elected in a. through e. and also to elect the method of distribution (including a method not described in f. through j. above).

l. ☐ **Does not permit.** Does not permit a Participant to elect the timing and method of Account distribution.

m. ☐ **Specify:** _____.

Mandatory Distributions. Notwithstanding any other distribution election, following Severance from Employment (*Choose n. or o.*):

- n. ☐ **No Mandatory Distributions.** The Plan will not make a Mandatory Distribution.
- o. ☒ **Mandatory Distribution.** If the Participant's Vested Account is not in excess of \$5,000 (unless a different amount selected below) as of the date of distribution, the Plan will make a Mandatory Distribution following Severance from Employment.
1. ☐ **Mandatory Distribution.** If the Participant's Vested Account is not in excess of \$_____ as of the date of distribution, the Plan will make a Mandatory Distribution following Severance from Employment.

Exclusion of rollovers in determination of \$5,000 threshold. In determining the \$5,000 threshold (or other dollar threshold above), rollover contributions will be:

- p. ☒ **included.**
- q. ☐ **excluded.**

19. **BENEFICIARY DISTRIBUTION ELECTIONS.** Distributions following a Participant's death will be made as follows (*Choose one of a. through d.*):

- a. ☐ **Immediate.** As soon as practical following the Participant's death.
- b. ☐ **Next Calendar Year.** At such time as the Beneficiary may elect, but in any event on or before the last day of the calendar year which next follows the calendar year of the Participant's death.
- c. ☐ **As Beneficiary elects.** At such time as the Beneficiary may elect, consistent with Section 4.03.
- d. ☒ **Describe:** In the event of the Participant's death, the full amount credited to the Participant's Participant Account, including earnings and net gain or loss, less any federal or state income tax required to be withheld, shall be distributed according to the following requirements:

(a) If distribution has commenced prior to the death of the Participant, the balance of a Participant's Participant Account shall be paid to the Beneficiary in accordance with the payment option already selected by the Participant so that the remaining distribution will be completed at least as rapidly as under the method of payment used before the Participant's death; or

(b) If the distribution has not commenced prior to the death of the Participant, a non-spousal beneficiary must either: (i) elect a distribution payable over a period not extending beyond the life expectancy of the non-spousal Beneficiary, commencing no later than the end of the calendar year following the calendar year in which the Participant dies; or (ii) elect a single-lump sum payment to be made no later than the end of the calendar year which contains the fifth anniversary of the date of death of the Participant employee, otherwise, such single sum payment shall be made by the end of such calendar year. A spousal Beneficiary may elect a single lump sum payment or a distribution payable over a period not extending beyond the life expectancy of the spousal Beneficiary. Distribution to the spousal Beneficiary must commence on or before the later of: (i) the calendar year immediately following the calendar year in which the Participant died; or

(c) The year the deceased Participant would have reached age 70 ½.

[Note: The Employer under Election 19d. may describe an alternative distribution timing or afford the Beneficiary an election which is narrower than that permitted under Election 19c., or include special provisions related to certain beneficiaries, (e.g., a surviving spouse). However, any election under Election 19d. must require distribution to commence no later than the Section 4.03 required date.]

20. **DISTRIBUTIONS PRIOR TO SEVERANCE FROM EMPLOYMENT (4.05).** A Participant prior to Severance from Employment may elect to receive a distribution of his/her Vested Account under the following distribution options (*Choose one of a. or b.*):

- a. ☐ **None.** A Participant may not receive a distribution prior to Severance from Employment.
- b. ☒ **Distributions.** Prior to Severance from Employment are permitted as follows (*Choose one or more of 1. through 4.*):
1. ☒ **Unforeseeable emergency.** A Participant may elect a distribution from his/her Account in accordance with Plan Section 4.05(A) (for the Participant, spouse, dependents or beneficiaries)
2. ☒ **De minimis exception.** [Plan Section 4.05(B)] If the Participant: (i) has an Account that does not exceed \$5,000; (ii) has not made or received an allocation of any Deferral Contributions under the Plan during the two-year period ending on the date of distribution; and (iii) has not received a prior Plan distribution under this de minimis exception, then (*Choose one of a., b. or c.*):
- a. ☐ **Participant election.** The Participant may elect to receive all or any portion of his/her Account.
- b. ☒ **Mandatory distribution.** The Plan Administrator will distribute the Participant's entire Account.
- c. ☐ **Hybrid.** The Plan Administrator will distribute a Participant's Account that does not exceed \$_____ and the Participant may elect to receive all or any portion of his/her Account that exceeds \$_____ but that does not exceed \$5,000.
3. ☒ **Age 70 ½.** A Participant who attains age 70 ½ prior to Severance from Employment may elect distribution of any or all of his/her Account.

4. ☒ **Specify:** Qualified Reservist distributions and Deemed Severance Distributions allowed.

[Note: An Employer need not permit any in-service distributions. Any election must comply with the distribution restrictions of Code Section 457(d).]

21. **QDRO (4.06).** The QDRO provisions (Choose one of a., b. or c.):

- a. ☒ **Apply.**
b. ☐ **Do not apply.**
c. ☐ **Specify:** _____.

22. **ALLOCATION OF EARNINGS (5.07(B)).** The Plan allocates Earnings using the following method (Choose one or more of a. through f.):

- a. ☒ **Daily.** See Section 5.07(B)(4)(a).
b. ☐ **Balance forward.** See Section 5.07(B)(4)(b).
c. ☐ **Balance forward with adjustment.** See Section 5.07(B)(4)(c). Allocate pursuant to the balance forward method, except treat as part of the relevant Account at the beginning of the Valuation Period _____% of the contributions made during the following Valuation Period: _____.
d. ☐ **Weighted average.** See Section 5.07(B)(4)(d). If not a monthly weighting period, the weighting period is _____.
e. ☐ **Directed Account method.** See Section 5.07(B)(4)(e).
f. ☐ **Describe Earnings allocation method:** _____.

[Note: The Employer under Election 22f. may describe Earnings allocation methods from the elections available under Election 22 and/or a combination thereof as to any: (i) Participant group (e.g., Daily applies to Division A Employees OR to Employees hired after "x" date. Balance forward applies to Division B Employees OR to Employees hired on/before "x" date.); (ii) Contribution Type (e.g., Daily applies as to Discretionary Nonelective Contribution Accounts. Participant-Directed Account applies to Fixed Nonelective Contribution Accounts); (iii) investment type, investment vendor or Account type (e.g., Balance forward applies to investments placed with vendor A and Participant-Directed Account applies to investments placed with vendor B OR Daily applies to Participant-Directed Accounts and balance forward applies to pooled Accounts).]

23. **HEART ACT PROVISIONS (1.31(C)(3)/3.13).** The Employer elects to (Choose one of a. or b. and c. or d.):

Continued Benefit Accruals.

- a. ☐ **Not apply the benefit accrual provisions of Section 3.13.**
b. ☒ **Apply the benefit accrual provisions of Section 3.13.**

Distributions for deemed severance of employment (1.31(C)(3))

- c. ☐ **The Plan does NOT permit distributions for deemed severance of employment.**
d. ☒ **The Plan permits distributions for deemed severance of employment.**

24. **VESTING/SUBSTANTIAL RISK OF FORFEITURE (5.11).** A Participant's Deferral Contributions are [Note: If a Participant incurs a Severance from Employment before the specified events or conditions, the Plan will forfeit the Participant's non-vested Account. Caution: if a Deferral is subject to vesting schedule or other substantial risk of forfeiture, it does not count as a deferral for purposes of the annual deferral limit until the year it is fully vested.] (Choose all that apply of a. through d.):

- a. ☒ **100% Vested/No Risk of Forfeiture.** Immediately Vested without regard to additional Service and no Substantial Risk of Forfeiture. The following contributions are 100% Vested:

1. ☒ **All Contributions.** (skip to 25.)
2. ☐ **Only the following contributions.** (select all that apply):
a. ☐ **Salary Reduction Contributions.**
b. ☐ **Nonelective Contributions.**
c. ☐ **Matching Contributions.**
b. ☐ **Forfeiture under Vesting Schedule.** Vested according to the following:

Contributions affected. The following contributions are subject to the vesting schedule (Choose one or more of 1., 2. or 3.):

1. ☐ **Salary Reduction Contributions.**
2. ☐ **Nonelective Contributions.**
3. ☐ **Matching Contributions.**
4. ☐ **Vesting Schedule.**

Years of Service

Vested Percentage

_____%
_____%
_____%
_____%
_____%

For vesting purposes, a "Year of Service" means:

5. _____.

[Note: It is extremely rare to apply a vesting schedule to Salary Reduction Contributions.]

c. ☐ **Substantial Risk of Forfeiture.** Vested only when no longer subject to the following Substantial Risk of Forfeiture as follows:

Contributions affected. The following contributions are subject to the substantial risk of forfeiture under c. (Choose one or more of 1., 2. or 3.):

1. ☐ **Salary Reduction Contributions.**

2. ☐ **Nonelective Contributions.**

3. ☐ **Matching Contributions.**

Risk Provisions: Vested only when no longer subject to the following Substantial Risk of Forfeiture as follows (Choose one of 4. or 5.):

4. ☐ The Participant must remain employed by the Employer until _____, unless earlier Severance from Employment occurs on account of death or disability, as the Plan Administrator shall establish.

5. ☐ **Specify:** _____.

Additional Provisions (Choose d. if applicable)

d. ☐ **Specify:** _____.

FORFEITURE ALLOCATION. [Plan Sections 5.11(A) and 5.14] The Plan Administrator will allocate any Plan forfeitures as selected below. The Employer has the option to use forfeitures to pay plan expenses first and then allocate the remaining forfeitures in accordance with the selections below: (Choose one of the following):

e. ☐ **Additional Contributions.** As the following contribution type (Choose one of 1. or 2.):

1. ☐ **Nonelective.** As an additional Nonelective Contribution.

2. ☐ **Matching.** As an additional Matching Contribution.

f. ☐ **Reduce Fixed Contributions.** To reduce the following fixed contribution (Choose one of 1. or 2.):

1. ☐ **Nonelective.** To reduce the Employer's fixed Nonelective Contribution.

2. ☐ **Matching.** To reduce the Employer's fixed Matching Contribution.

g. ☐ **Specify:** _____.

25. **TRUST PROVISIONS.** The following provisions apply to Article VIII of the Plan (Choose as applicable; leave blank if not applicable):

a. ☐ **Modifications.** The Employer modifies the Article VIII Trust provisions as follows: _____. The remaining Article VIII provisions apply.

b. ☐ **Substitution.** The Employer replaces the Trust with the Trust Agreement attached to the Plan.

26. **CUSTODIAL ACCOUNT/ANNUITY CONTRACT (8.16).** The Employer will hold all or part of the Deferred Compensation in one or more custodial accounts or annuity contracts which satisfy the requirements of Code §457(g) (Choose a. or b., c. if applicable):

a. ☒ **Custodial account(s).**

b. ☒ **Annuity contract(s).**

c. ☐ **Specify:** _____.

[Note: The Employer under c. may wish to identify the custodial accounts or annuity contracts or to designate a portion of the Deferred Compensation to be held in such vehicles versus held in the Trust.]

27. VALUATION. In addition to the last day of the Plan Year, the Trustee (or Plan Administrator as applicable) must value the Trust Fund (or Accounts) on the following Valuation Date(s) (Choose one of a. or b.):

a. ☐ **No additional Valuation Dates.**

b. ☒ **Additional Valuation Dates.** (Choose one or more of 1., 2. or 3.):

1. ☒ **Daily Valuation Dates.** Each business day of the Plan Year on which Plan assets for which there is an established market are valued and the Trustee or Employer is conducting business.

2. ☐ **Last day of a specified period.** The last day of each _____ of the Plan Year.

3. ☐ **Specified Valuation Dates:** _____.

[Note: The Employer under Election 26b.3. may describe Valuation Dates from the elections available under Election 26b. and/or a combination thereof as to any: (i) Participant group (e.g., No additional Valuation Dates apply to Division A Employees OR to Employees hired after "x" date. Daily Valuation Dates apply to Division B Employees OR to Employees hired on/before "x" date.); (ii) Contribution Type (e.g., No additional Valuation Dates apply as to Discretionary Nonelective Contribution Accounts. The last day of each Plan Year quarter applies to Fixed Nonelective Contribution Accounts); (iii) investment type, investment vendor or Account type (e.g., No additional Valuation Dates apply to investments placed with vendor A and Daily Valuation Dates apply to investments placed with vendor B OR Daily Valuation Dates apply to Participant-Directed Accounts and no additional Valuation Dates apply to pooled Accounts).]

28. TRUSTEE (Select all that apply; leave blank if not applicable.):

a. ☐ Individual Trustee(s) who serve as Trustee(s) over assets not subject to control by a corporate Trustee. (Add additional Trustees as necessary.)

Name(s) Title(s)

_____	_____
_____	_____
_____	_____
_____	_____

Address and Telephone number (Choose one of 1. or 2.):

1. ☐ Use Employer address and telephone number.

2. ☐ Use address and telephone number below:

Address: _____

Street

_____ City State Zip

Telephone: _____

b. ☐ Corporate Trustee

Name: _____

Address: _____

Street

_____ City State Zip

Telephone: _____

AND, the Corporate Trustee shall serve as:

c. ☐ a Directed (nondiscretionary) Trustee over all Plan assets except for the following:

d. ☐ a Discretionary Trustee over all Plan assets except for the following:

29. PLAN LOANS (5.02(A)). The Plan permits or does not permit Participant Loans (Choose one of a. or b.):

a. ☐ **Does not permit.**

b. ☒ **Permitted pursuant to the Loan Policy.**

30. ROLLOVER CONTRIBUTIONS (3.09). The Plan permits Rollover Contributions subject to approval by the Plan Administrator and as further described below:

Who may roll over (Choose one of a. or b.):

- a. ☐ **Participants only.**
- b. ☒ **Eligible Employees or Participants.**

Sources/Types. The Plan will accept a Rollover Contribution (Choose one of c. or d.):

- c. ☒ **All.** From any Eligible Retirement Plan and as to all Contribution Types eligible to be rolled into this Plan.
- d. ☐ **Limited.** Only from the following types of Eligible Retirement Plans and/or as to the following Contribution Types:

_____.

Distribution of Rollover Contributions (Choose one of e., f. or g.):

- e. ☒ **Distribution without restrictions.** May elect distribution of his/her Rollover Contributions Account in accordance with Plan Section 4.05(C) at any time.
- f. ☐ **No distribution.** May not elect to receive distribution of his/her Rollover Contributions Account until the Plan has a distributable event under Plan Section 4.01.
- g. ☐ **Specify:** _____

31. EACA Automatic Deferral Provisions (3.14).

Participants subject to the Automatic Deferral Provisions. The Automatic Deferral Provisions apply to Employees who become Participants after the Effective Date of the EACA (except as provided in d. below). Employees who became Participants prior to such Effective Date are subject to the following (a. – d. are optional):

- a. ☐ **All Participants.** All Participants, regardless of any prior Salary Reduction Agreement, unless and until a Participant makes an Affirmative Election after the Effective Date of the EACA.
- b. ☐ **Election of at least Automatic Deferral amount.** All Participants, except those who, on the Effective Date of the EACA, are deferring an amount which is at least equal to the Automatic Deferral Percentage.
- c. ☐ **No existing Salary Reduction Agreement.** All Participants, except those who have in effect a Salary Reduction Agreement on the effective date of the EACA regardless of the Salary Reduction Contribution amount under the Agreement.
- d. ☒ **Describe:** Automatic Enrollment will apply to certain Union-represented groups if/as collectively bargained. Union Employees as collectively bargained to include 1 or both of the following arrangements: (A) Automatic enrollment of all non-participating Union represented employees as of a pre-determined effective date; (B) Automatic enrollment of all new Union represented employees hired on or after a pre-determined date.

Automatic Deferral Percentage. Unless a Participant makes an Affirmative Election, the Employer will withhold the following Automatic Deferral Percentage (select e. or f.):

- e. ☒ **Constant.** The Employer will withhold 1 % of Compensation each payroll period.

Escalation of deferral percentage (select one or leave blank if not applicable)

- 1. ☐ **Scheduled increases.** This initial percentage will increase by _____ % of Compensation per year up to a maximum of _____ of Compensation.
- 2. ☐ **Other** (described Automatic Deferral Percentage): _____

Automatic Deferral Optional Elections

- f. ☐ **Optional elections** (select all that apply or leave blank if not applicable)

Suspended Salary Reduction Contributions. If a Participant's Salary Reduction Contributions are suspended pursuant to a provision of the Plan (e.g., distribution due to military leave covered by the HEART Act), then a Participant's Affirmative Election will expire on the date the period of suspension begins unless otherwise elected below.

- 1. ☐ A Participant's Affirmative Election will resume after the suspension period.

Special Effective Date. Provisions will be effective as of the earlier of the Effective Date of the EACA provisions unless otherwise specified below.

- 2. ☐ Special Effective Date: _____

32. **Other EACA Provisions.**

- a. ☒ Applies

Effective Date (enter date)

- 1. ☒ EACA Effective Date: July 1, 2019 (not earlier than December 31, 2007)

EACA Termination Date (leave blank if not applicable)

a. ☐ EACA provisions no longer apply. The EACA provisions applied as of the Effective Date specified in 1. but the provisions no longer apply effective as of: _____.

Permissible Withdrawals. Does the Plan permit Participant permissible withdrawals within 90 days (or less) of first automatic deferral? (select one)

2. ☐ No.

3. ☒ Yes, within 90 days of first automatic deferral

4. ☐ Yes, within _____ days (may not be less than 30 nor more than 90 days)

Affirmative Election. For Plan Years beginning on or after January 1, 2010, will Participants who make an Affirmative Election continue to be covered by the EACA provisions (*i.e.*, their Affirmative Election will remain intact but they must receive an annual notice)? (select one)

5. ☒ Yes (if selected, then the annual notice must be provided to Participants).

6. ☐ No.

33. **In-Plan Roth Rollover Contributions.**

a. ☒ Yes, allowed.

34. **In-Plan Roth Rollover Transfers.**

a. ☐ Yes, allowed.

35. **PLAN-TO-PLAN TRANSFER (9.03).** (*Plan-to-Plan transfers are only permitted to/from another eligible 457 Plan.*)

a. ☐ Does not permit plan-to-plan transfers.

b. ☒ Does Permit plan-to-plan transfers.

This Plan is executed on the date(s) specified below:

Use of Adoption Agreement. Failure to complete properly the elections in this Adoption Agreement may result in disqualification of the Employer's Plan. The Employer only may use this Adoption Agreement only in conjunction with the corresponding basic plan document.

EMPLOYER: County of San Bernardino

By: _____

DATE SIGNED

ADOPTING RESOLUTION

The undersigned authorized representative of County of San Bernardino (the Employer) hereby certifies that the following resolutions were duly adopted by the Employer on _____, and that such resolutions have not been modified or rescinded as of the date hereof:

RESOLVED, that the form of amended 457 Plan and Trust effective January 1, 2020, presented to this meeting is hereby approved and adopted and that an authorized representative of the Employer is hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more counterparts of the Plan.

The undersigned further certifies that attached hereto as Exhibits A and B, respectively, are true copies of The San Bernardino County 457(b) Deferred Compensation Plan as amended and restated and the Summary of 457 Provisions, which are hereby approved and adopted.

Date: _____

Signed: _____

[print name/title]

THE SAN BERNARDINO COUNTY 457(B) DEFERRED COMPENSATION PLAN

QUALIFIED DOMESTIC RELATIONS ORDER (QDRO) PROCEDURE

In the case of any Domestic Relations Order (DRO) received by The San Bernardino County 457(b) Deferred Compensation Plan, its status as a Qualified Domestic Relations Order (QDRO) under the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code will be determined under the following procedures. The Plan Administrator is responsible for administering the QDRO Procedure. The purpose of the QDRO Procedure is to establish a reasonable and consistent procedure for determining the qualified status of a Domestic Relations Order and for making distributions pursuant to a Domestic Relations Order which qualifies under Internal Revenue Code Section 414(p).

Procedure prior to receipt of order: The Plan will apply the following procedure prior to the Plan's receipt of a Domestic Relations Order.

1. **Suspension of Participant distributions or loans.** If the Plan Administrator is on notice (verbal or written) regarding a pending domestic relations action (e.g., a divorce) and has a reasonable belief the participant's account may become subject to a QDRO, the Plan Administrator may suspend processing the participant's distribution or loan requests pending resolution.
2. **Removing hold on the account.** After placing a hold on the account, the Plan Administrator should notify the participant of the hold on the account. In order to remove the hold, the Plan Administrator should request the Participant to provide written confirmation that a court will not issue a QDRO with respect to the account; such as a property settlement agreement awarding the entire account to the Participant.

Procedure after receipt of order: The Plan will apply the following procedure whenever it receives a DRO which purports to be a QDRO.

1. **Notice to Participant and to alternate payee.** Within a reasonable time period after receipt of a domestic relations order, the Plan Administrator will notify the participant and any alternate payee of the receipt of the order, and will deliver to the participant and to each alternate payee a copy of this QDRO Procedure. Any alternate payee may designate a representative to receive copies of notices that are to the alternate payee regarding a domestic relations order.
2. **Notice to issuer of the annuity contract.** The Plan Administrator, within a reasonable time period after receipt of a Domestic Relations Order, will notify the issuer of the annuity contract of the receipt of the order. The Plan Administrator, for any period during which the Plan Administrator (or a court of competent jurisdiction) is determining the issue of whether the order is a QDRO, will account separately for the amount of the participant's benefit which is subject to the order. The Plan Administrator will direct the issuer of the annuity contract to segregate the "QDRO amount" if possible.
3. **Review of order.** The Plan Administrator will review the order within a reasonable time to determine its qualified status. The Plan Administrator will complete a QDRO DETERMINATION CHECKLIST with respect to each order the Plan receives. In most circumstances, the Plan Administrator will complete review of the order within 30 days of receipt. After review, the Administrator will determine whether the order is a QDRO.
4. **Source of distributions: Roth vs. non-Roth.** Unless the QDRO provides otherwise, if the participant's account includes both a Roth deferral account and one or more other accounts (e.g., profit sharing, pre-tax deferral and match), the Plan will distribute any amounts payable under the QDRO pro rata from all of the participant's accounts, including the Roth deferral account.
5. **Suspension of distributions.** If the participant is receiving benefits from the Plan at the time of receipt of the order, the Plan Administrator will suspend distributions to the participant to the extent the Plan Administrator deems necessary to comply with the order should the Plan Administrator determine the order is a QDRO.
6. **Determination order is a QDRO.** If the Plan Administrator determines the order is a QDRO:
 - a. The Plan Administrator will notify the participant and each alternate payee that the order is a QDRO and the Plan will distribute amounts pursuant to the QDRO. The Plan Administrator will notify the participant and each alternate payee of the decision within ten days of the determination by mailing to each party a copy of the QDRO DETERMINATION CHECKLIST, which will include the Plan Administrator's certification.
 - b. If the QDRO requires immediate payment, the Plan will pay the designated amounts as soon as administratively feasible. Payment of any amount the order required the Plan to pay during the determination period will include interest from the date the QDRO required the first payment, at the rate of interest determined to be reasonable. The rate of interest payable on a regular savings account is a reasonable rate of interest for this purpose.
 - c. If the Plan cannot make the distribution within 30 days of the determination of qualified status of the QDRO, the Plan Administrator will advise the parties of the delay, of the reason for the delay and of the date by which the Plan expects to make payment.
 - d. The Plan Administrator will advise the participant when the Plan has completed payment to the alternate payee.

- e. The Plan will maintain a separate accounting (which may include a segregated account) for each alternate payee until the Plan has completed benefit payments under the QDRO.
 - f. Each alternate payee is entitled to file with the Plan a beneficiary designation in the same manner as a participant in the Plan, except that the joint and survivor annuity provisions do not apply to the alternate payee's spouse.
7. **Determination order is not a QDRO.** If the Plan Administrator determines the order is not a QDRO:
- a. The Plan Administrator will advise the participant and each alternate payee of the adverse decision and of the reasons for the adverse decision. The Plan will advise the participant and each alternate payee of the decision within ten days of the determination by mailing to each party a copy of the QDRO DETERMINATION CHECKLIST, which will include the Plan Administrator's certification of the decision.
 - b. The Plan Administrator will discontinue separate accounting for the amounts payable under the order. The Plan will pay the benefits to the party entitled to receive the benefits. If the participant is not entitled to a present distribution of any of the segregated benefits, the Plan will continue to account for the participant's benefits as if the Plan had not received the order.
 - c. If the Plan Administrator determines the status of the order within the 18-month period beginning on the date the order would require the first payment, the Plan Administrator may delay distribution of any benefits subject to the order if the Plan Administrator has reason to believe a party will seek to cure the defects in the order. The Plan Administrator will continue to delay distribution during the period the Plan Administrator determines to be necessary to fulfill the Plan Administrator's duties under the Plan.
 - d. **Consultation with legal counsel.** The Plan Administrator will consult with the Plan's legal counsel in case of questions which arise with respect to the interpretation of any provision of the order or with respect to the qualified status of the order.

Signature of Plan Administrator
The San Bernardino County 457(b) Deferred Compensation Plan

THE SAN BERNARDINO COUNTY 457(B) DEFERRED COMPENSATION PLAN

PARTICIPANT LOAN POLICY

The San Bernardino County 457(b) Deferred Compensation Plan permits loans to be made to Participants pursuant to a written loan policy. All references to Participants in this loan policy is limited to Participants who are active employees.

The Plan Administrator is authorized to administer the Participant loan policy. A Participant must apply to the Plan Administrator for a loan in the manner set forth by the Plan Administrator.

1. **LOAN APPLICATION/BORROWER QUALIFICATION.** Any Participant may apply for a loan from the Plan. A Participant must apply for each loan with an application that specifies the amount of the loan desired, the requested duration for the loan and the source of security for the loan.

All loan applications will be considered by the Plan Administrator within a reasonable time after the Participant applies for the loan.

2. **LOAN LIMITATIONS.** The Plan Administrator will not approve any loan to a Participant in an amount which exceeds 50% of his or her non-forfeitable account balance. The maximum aggregate dollar amount of loans outstanding to any Participant may not exceed \$50,000, reduced by the excess of the Participant's highest outstanding Participant loan balance during the 12-month period ending on the date of the loan over the Participant's current outstanding Participant loan balance on the date of the loan. With regard to any loan made pursuant to this loan policy, the following rule(s) and limitation(s) will apply, in addition to such other requirements set forth in the Plan:

- No general loan in an amount less than \$1,000 will be granted to any Participant.
- No residential loan in an amount less than \$5,000 will be granted to any Participant
- A Participant can have one (1) residential and/or one (1) general loan(s) currently outstanding from the Plan.
- Loan refinancing is not permitted.
- Loans will be permitted only for the purposes of those items permitted by the Plan Record Keeper.

3. **EVIDENCE AND TERMS OF LOAN.** The Plan Administrator will document every loan in the form of a promissory note signed by the Participant for the face amount of the loan, together with a commercially reasonable rate of interest.

Any loan granted or renewed under this policy will bear an interest rate equal to 1% above the prime rate.

The loan must provide at least monthly payments under a level amortization schedule. The Plan Administrator will require the Participant receiving a loan from the Plan to enter into either a payroll deduction or an ACH agreement to repay the loan.

The Plan Administrator will fix the term for repayment of any loan; however, in no instance may the term of repayment be greater than five years, unless the loan qualifies as a home loan. A "home loan" is a loan used to acquire a dwelling unit which, within a reasonable time, the Participant will use as a principal residence. The term for a home loan will be 20 years.

A loan, if not otherwise due and payable, is due and payable on the date of the Participant's termination of employment. The Investment Provider may provide the option for Participants to continue repayment of loan(s) post termination of employment via automated clearing house (ACH) payment.

Participants should note the law treats the amount of any loan (other than a "home loan") not repaid five years after the date of the loan as a taxable distribution on the last day of the five year period or, if sooner, at the time the loan is in default. If a Participant extends a non-home loan having a five year or less repayment term beyond five years, the balance of the loan at the time of the extension is a taxable distribution to the Participant.

4. **SECURITY FOR LOAN.** The Plan will require that adequate security be provided by the Participant before a loan is granted. For this purpose, the Plan will consider a Participant's interest under the Plan (account balance) to be adequate security. However, in no event will more than 50% of a Participant's vested interest in the Plan (determined immediately after origination of the loan) be used as security for the loan. Generally, it will be the policy of the Plan not to make loans which require security other than the Participant's vested interest in the Plan. However, if additional security is necessary to adequately secure the loan, then the Plan Administrator will require that such security be provided before the loan will be granted.

5. **FORM OF PLEDGE.** The pledge and assignment of a Participant's account balances will be in the form prescribed by the Plan Administrator.

6. **LEAVE OF ABSENCE/SUSPENSION OF PAYMENT.** The Plan Administrator will suspend loan repayments for a period not exceeding one year which occurs during an approved leave of absence, either without pay from the Employer or at a rate of pay (after applicable employment tax withholdings) that is less than the amount of the installment payments required under the terms of the loan. The Plan Administrator will provide the Participant with a written explanation of the effect of the leave of absence upon his or her Plan loan.

7. PAYMENTS AFTER LEAVE OF ABSENCE. When payments resume following a payment suspension in connection with a leave of absence authorized above, the Participant will select one of the following methods to repay the loan, plus accumulated interest:

- The Participant will increase the amount of the required installments to an amount sufficient to amortize the remaining balance of the loan, plus accrued interest, over the remaining term of the loan.
- The Participant will pay a balloon payment of the remaining unpaid principal and interest, at the conclusion of the term of the loan as determined in the promissory note.
- The Participant may extend the maturity of the loan and re-amortize the payments over the remaining term of the loan. In no event will the amount of the adjusted installment payment be less than the amount of the installment payment provided under the promissory note. In the case of a non-military leave of absence, the revised term of the loan will not exceed the maximum term permitted under item 3 above. In the case of a military leave of absence, the revised term of the loan will not exceed the maximum term permitted under item 3 above, augmented by the time the Participant was actually in United States military service.

8. DEFAULT. The Plan Administrator will treat a loan as in default if:

- any scheduled payment is missed (no grace period)

Upon default, the Participant will have the opportunity to repay the loan, resume current status of the loan by paying any missed payment plus interest or, if distribution is available under the Plan, request distribution of the note. If the loan remains in default, the Plan Administrator will offset the Participant's vested account balances by the outstanding balance of the loan to the extent permitted by law. The Plan Administrator will treat the note as repaid to the extent of any permissible offset. Pending final disposition of the note, the Participant remains obligated for any unpaid principal and accrued interest.

9. FEES. If you apply for a loan, you will be charged for Plan expenses associated with the loan. The application fee (including processing and document preparation) is \$75 Per Loan. The annual maintenance fee is \$0.00 Per Loan. All fees are subject to change.

Adopted on _____. This loan policy may be amended from time to time.

Signature of Plan Administrator
The San Bernardino County 457(b) Deferred Compensation Plan

THE SAN BERNARDINO COUNTY 457(B) DEFERRED COMPENSATION PLAN

YOUR ROLLOVER OPTIONS

You are receiving this notice because all or a portion of a payment you are receiving from The San Bernardino County 457(b) Deferred Compensation Plan (the "Plan") is eligible to be rolled over to an IRA or an employer plan. This notice is intended to help you decide whether to do such a rollover.

This notice describes the rollover rules that apply to payments from the Plan that are not from a designated Roth account (a type of account with special tax rules in some employer plans). If you also receive a payment from a designated Roth account in the Plan, you will be provided a different notice for that payment, and the Plan Administrator or the payor will tell you the amount that is being paid from each account.

Rules that apply to most payments from a plan are described in the "General Information About Rollovers" section. Special rules that only apply in certain circumstances are described in the "Special Rules and Options" section.

GENERAL INFORMATION ABOUT ROLLOVERS

How can a rollover affect my taxes?

You will be taxed on a payment from the Plan if you do not roll it over. If you are under age 59 1/2 and do not do a rollover, you will also have to pay a 10% additional income tax on early distributions (unless an exception applies). However, if you do a rollover, you will not have to pay tax until you receive payments later and the 10% additional income tax will not apply if those payments are made after you are age 59 1/2 (or if an exception applies).

Where may I roll over the payment?

You may roll over the payment to either an IRA (an individual retirement account or individual retirement annuity) or an employer plan (a tax-qualified plan, section 403(b) plan, or governmental section 457(b) plan) that will accept the rollover. The rules of the IRA or employer plan that holds the rollover will determine your investment options, fees, and rights to payment from the IRA or employer plan (for example, no spousal consent rules apply to IRAs and IRAs may not provide loans). Further, the amount rolled over will become subject to the tax rules that apply to the IRA or employer plan.

How do I do a rollover?

There are two ways to do a rollover. You can do either a direct rollover or a 60-day rollover.

If you do a direct rollover, the Plan will make the payment directly to your IRA or an employer plan. You should contact the IRA sponsor or the administrator of the employer plan for information on how to do a direct rollover.

If you do not do a direct rollover, you may still do a rollover by making a deposit into an IRA or eligible employer plan that will accept it. You will have 60 days after you receive the payment to make the deposit. If you do not do a direct rollover, the Plan is required to withhold 20% of the payment for federal income taxes (up to the amount of cash and property received other than employer stock). This means that, in order to roll over the entire payment in a 60-day rollover, you must use other funds to make up for the 20% withheld. If you do not roll over the entire amount of the payment, the portion not rolled over will be taxed and will be subject to the 10% additional income tax on early distributions if you are under age 59 1/2 (unless an exception applies).

How much may I roll over?

If you wish to do a rollover, you may roll over all or part of the amount eligible for rollover. Any payment from the Plan is eligible for rollover, except:

- Certain payments spread over a period of at least 10 years or over your life or life expectancy (or the lives or joint life expectancy of you and your beneficiary)
- Required minimum distributions after age 70 1/2 (or after death)
- Hardship distributions
- Corrective distributions of contributions that exceed tax law limitations
- Loans treated as deemed distributions (for example, loans in default due to missed payments before your employment ends)
- Contributions made under special automatic enrollment rules that are withdrawn pursuant to your request within 90 days of enrollment

The Plan Administrator or the payor can tell you what portion of a payment is eligible for rollover.

If I don't do a rollover, will I have to pay the 10% additional income tax on early distributions?

Distributions from this Plan generally are *not* subject to the additional 10% tax that applies to the taxable portion of a distribution from other types of plans. However, any distribution from the Plan that is attributable to an amount you rolled over to the Plan (including earnings) from another type of eligible employer plan or an IRA will become subject to the additional 10% tax if it is distributed to you before you reach age 59 1/2, unless an exception applies. This tax is in addition to the regular income tax on the payment not rolled over.

The 10% additional income tax does not apply to the following payments from the Plan:

- Payments made after you separate from service if you will be at least age 55 in the year of the separation
- Payments that start after you separate from service if paid at least annually in equal or close to equal amounts over your life or life expectancy (or the lives or joint life expectancy of you and your beneficiary)
- Payments made due to disability
- Payments after your death
- Corrective distributions of contributions that exceed tax law limitations
- Payments made directly to the government to satisfy a federal tax levy
- Payments made under a qualified domestic relations order (QDRO)
- Payments up to the amount of your deductible medical expenses
- Certain payments made while you are on active duty if you were a member of a reserve component called to duty after September 11, 2001 for more than 179 days
- Payments of certain automatic enrollment contributions requested to be withdrawn within 90 days of the first contribution.

If I do a rollover to an IRA, will the 10% additional income tax apply to early distributions from the IRA?

If you receive a payment from an IRA when you are under age 59 1/2, you will have to pay the 10% additional income tax on early distributions from the IRA, unless an exception applies. In general, the exceptions to the 10% additional income tax for early distributions from an IRA are the same as the exceptions listed above for early distributions from a plan. However, there are a few differences for payments from an IRA, including:

- There is no exception for payments after separation from service that are made after age 55.
- The exception for qualified domestic relations orders (QDROs) does not apply (although a special rule applies under which, as part of a divorce or separation agreement, a tax-free transfer may be made directly to an IRA of a spouse or former spouse).
- The exception for payments made at least annually in equal or close to equal amounts over a specified period applies without regard to whether you have had a separation from service.
- There are additional exceptions for (1) payments for qualified higher education expenses, (2) payments up to \$10,000 used in a qualified first-time home purchase, and (3) payments after you have received unemployment compensation for 12 consecutive weeks (or would have been eligible to receive unemployment compensation but for self-employed status).

Will I owe State income taxes?

This notice does not describe any State or local income tax rules (including withholding rules).

SPECIAL RULES AND OPTIONS

If your payment includes after-tax contributions

After-tax contributions included in a payment are not taxed. If a payment is only part of your benefit, an allocable portion of your after-tax contributions is generally included in the payment.

You may roll over to an IRA a payment that includes after-tax contributions through either a direct rollover or a 60-day rollover. You must keep track of the aggregate amount of the after-tax contributions in all of your IRAs (in order to determine your taxable income for later payments from the IRAs). If you do a direct rollover of only a portion of the amount paid from the Plan and a portion is paid to you, each of the payments will include an allocable portion of the after-tax contributions. If you do a 60-day rollover to an IRA of only a portion of the payment made to you, the after-tax contributions are treated as rolled over last. For example, assume you are receiving a complete distribution of your benefit, which totals \$12,000, of which \$2,000 is after-tax contributions. In this case, if you roll over \$10,000 to an IRA in a 60-day rollover, no amount is taxable because the \$2,000 amount not rolled over is treated as being after-tax contributions.

You may roll over to an employer plan all of a payment that includes after-tax contributions, but only through a direct rollover (and only if the receiving plan separately accounts for after-tax contributions and is not a governmental section 457(b) plan). You can do a 60-day rollover to an employer plan of part of a payment that includes after-tax contributions, but only up to the amount of the payment that would be taxable if not rolled over.

If you miss the 60-day rollover deadline

Generally, the 60-day rollover deadline cannot be extended (but see the section entitled "If you have an outstanding loan that is being offset" for a longer deadline for certain loan offsets). The IRS, however, has the limited authority to waive the deadline under certain extraordinary circumstances, such as when external events prevented you from completing the rollover by the 60-day rollover deadline (or the later deadline for certain loan offsets). There are three ways to obtain a waiver from the IRS: (1) you qualify for an automatic waiver, (2) you self-certify that you met the requirements of a waiver, or (3) you request and receive from the IRS a private letter ruling granting a waiver (private letter ruling requests require the payment of a nonrefundable user fee). For more information, see IRS Publication 590, Individual Retirement Arrangements (IRAs).

If your payment includes employer stock that you do not roll over

If you do not do a rollover, you can apply a special rule to payments of employer stock (or other employer securities) that are either attributable to after-tax contributions or paid in a lump sum after separation from service (or after age 59 1/2, disability, or the participant's death). Under the special rule, the net unrealized appreciation on the stock will not be taxed when distributed from the Plan and will be taxed at capital gain rates when you sell the stock. Net unrealized appreciation is generally the increase in the value of employer stock after it was acquired by the Plan. If you do a rollover for a payment that includes employer stock (for example, by selling the stock and rolling over the proceeds within 60 days of the payment), the special rule relating to the distributed employer stock will not apply to any subsequent payments from the IRA or employer plan. The Plan Administrator can tell you the amount of any net unrealized appreciation.

If you have an outstanding loan that is being offset

If you have an outstanding loan from the Plan, your Plan benefit may be offset by the amount of the loan, typically when your employment ends. The loan offset amount is treated as a distribution to you at the time of the offset and will be taxed (including the 10% additional income tax on early distributions, unless an exception applies) unless you do a 60-day rollover in the amount of the loan offset to an IRA or employer plan. If, however, a loan offset occurs due to your termination of employment (or due to the termination of the Plan), then instead of 60 days to rollover the loan offset you have until the due date of your Federal individual income tax return (including extensions) for the year in which the plan offsets the loan offset to complete a rollover.

If you were born on or before January 1, 1936

If you were born on or before January 1, 1936 and receive a lump sum distribution that you do not roll over, special rules for calculating the amount of the tax on the payment might apply to you. For more information, see IRS Publication 575, Pension and Annuity Income.

Exceptions for distributions from this plan

The same rules described elsewhere in this notice generally apply, allowing you to roll over the payment to an IRA or an employer plan that accepts rollovers. One difference is that, if you do not do a rollover, you will not have to pay the 10% additional income tax on early distributions from the Plan even if you are under age 59 1/2 (unless the payment is from a separate account holding rollover contributions that were made to the Plan from a tax-qualified plan, a section 403(b) plan, or an IRA). However, if you do a rollover to an IRA or to an employer plan that is not a governmental section 457(b) plan, a later distribution made before age 59 1/2 will be subject to the 10% additional income tax on early distributions (unless an exception applies). Other differences are that you cannot do a rollover if the payment is due to an "unforeseeable emergency" and the special rules under "If your payment includes employer stock that you do not roll over" and "If you were born on or before January 1, 1936" do not apply.

If you roll over your payment to a Roth IRA

If you roll over the payment to a Roth IRA, a special rule applies under which the amount of the payment rolled over (reduced by any after-tax amounts) will be taxed. However, the 10% additional income tax on early distributions will not apply (unless you take the amount rolled over out of the Roth IRA within 5 years, counting from January 1 of the year of the rollover).

If you roll over the payment to a Roth IRA, later payments from the Roth IRA that are qualified distributions will not be taxed (including earnings after the rollover). A qualified distribution from a Roth IRA is a payment made after you are age 59 1/2 (or after your death or disability, or as a qualified first-time homebuyer distribution of up to \$10,000) and after you have had a Roth IRA for at least 5 years. In applying this 5-year rule, you count from January 1 of the year for which your first contribution was made to a Roth IRA. Payments from the Roth IRA that are not qualified distributions will be taxed to the extent of earnings after the rollover, including the 10% additional income tax on early distributions (unless an exception applies). You do not have to take required minimum distributions from a Roth IRA during your lifetime. For more information, see IRS Publication 590, Individual Retirement Arrangements (IRAs).

You cannot roll over a payment from the Plan to a designated Roth account in an employer plan.

If you are not a plan participant

Payments after death of the participant. If you receive a distribution after the participant's death that you do not roll over, the distribution will generally be taxed in the same manner described elsewhere in this notice. However, the 10% additional income tax on early distributions does not apply, and the special rule described under the section "If you were born on or before January 1, 1936" applies only if the participant was born on or before January 1, 1936.

If you are a surviving spouse. If you receive a payment from the Plan as the surviving spouse of a deceased participant, you have the same rollover options that the participant would have had, as described elsewhere in this notice. In addition, if you choose to do a rollover to an IRA, you may treat the IRA as your own or as an inherited IRA.

An IRA you treat as your own is treated like any other IRA of yours, so that payments made to you before you are age 59 1/2 will be subject to the 10% additional income tax on early distributions (unless an exception applies) and required minimum distributions from your IRA do not have to start until after you are age 70 1/2.

If you treat the IRA as an inherited IRA, payments from the IRA will not be subject to the 10% additional income tax on early distributions. However, if the participant had started taking required minimum distributions, you will have to receive required minimum distributions from the inherited IRA. If the participant had not started taking required minimum distributions from the

Plan, you will not have to start receiving required minimum distributions from the inherited IRA until the year the participant would have been age 70 1/2.

If you are a surviving beneficiary other than a spouse. If you receive a payment from the Plan because of the participant's death and you are a designated beneficiary other than a surviving spouse, the only rollover option you have is to do a direct rollover to an inherited IRA. Payments from the inherited IRA will not be subject to the 10% additional income tax on early distributions. You will have to receive required minimum distributions from the inherited IRA.

Payments under a qualified domestic relations order. If you are the spouse or former spouse of the participant who receives a payment from the Plan under a qualified domestic relations order (QDRO), you generally have the same options the participant would have (for example, you may roll over the payment to your own IRA or an eligible employer plan that will accept it). Payments under the QDRO will not be subject to the 10% additional income tax on early distributions.

If you are a nonresident alien

If you are a nonresident alien and you do not do a direct rollover to a U.S. IRA or U.S. employer plan, instead of withholding 20%, the Plan is generally required to withhold 30% of the payment for federal income taxes. If the amount withheld exceeds the amount of tax you owe (as may happen if you do a 60-day rollover), you may request an income tax refund by filing Form 1040NR and attaching your Form 1042-S. See Form W-8BEN for claiming that you are entitled to a reduced rate of withholding under an income tax treaty. For more information, see also IRS Publication 519, U.S. Tax Guide for Aliens, and IRS Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities.

Other special rules

If a payment is one in a series of payments for less than 10 years, your choice whether to make a direct rollover will apply to all later payments in the series (unless you make a different choice for later payments).

If your payments for the year are less than \$200 (not including payments from a designated Roth account in the Plan), the Plan is not required to allow you to do a direct rollover and is not required to withhold for federal income taxes. However, you may do a 60-day rollover.

Unless you elect otherwise, a mandatory cashout of more than \$1,000 (not including payments from a designated Roth account in the Plan) will be directly rolled over to an IRA chosen by the Plan Administrator or the payor. A mandatory cashout is a payment from a plan to a participant made before age 62 (or normal retirement age, if later) and without consent, where the participant's benefit does not exceed \$5,000 (not including any amounts held under the plan as a result of a prior rollover made to the plan).

You may have special rollover rights if you recently served in the U.S. Armed Forces. For more information, see IRS Publication 3, Armed Forces' Tax Guide.

FOR MORE INFORMATION

You may wish to consult with the Plan Administrator or payor, or a professional tax advisor, before taking a payment from the Plan. Also, you can find more detailed information on the federal tax treatment of payments from employer plans in: IRS Publication 575, Pension and Annuity Income; IRS Publication 590, Individual Retirement Arrangements (IRAs); and IRS Publication 571, Tax-Sheltered Annuity Plans (403(b) Plans). These publications are available from a local IRS office, on the web at www.irs.gov, or by calling 1-800-TAX-FORM.

THE SAN BERNARDINO COUNTY 457(B) DEFERRED COMPENSATION PLAN

YOUR ROLLOVER OPTIONS

You are receiving this notice because all or a portion of a payment you are receiving from The San Bernardino County 457(b) Deferred Compensation Plan (the "Plan") is eligible to be rolled over to a Roth IRA or designated Roth account in an employer plan. This notice is intended to help you decide whether to do a rollover.

This notice describes the rollover rules that apply to payments from the Plan that are from a designated Roth account. If you also receive a payment from the Plan that is not from a designated Roth account, you will be provided a different notice for that payment, and the Plan Administrator or the payor will tell you the amount that is being paid from each account.

Rules that apply to most payments from a designated Roth account are described in the "General Information About Rollovers" section. Special rules that only apply in certain circumstances are described in the "Special Rules and Options" section.

GENERAL INFORMATION ABOUT ROLLOVERS

How can a rollover affect my taxes?

After-tax contributions included in a payment from a designated Roth account are not taxed, but earnings might be taxed. The tax treatment of earnings included in the payment depends on whether the payment is a qualified distribution. If a payment is only part of your designated Roth account, the payment will include an allocable portion of the earnings in your designated Roth account.

If the payment from the Plan is not a qualified distribution and you do not do a rollover to a Roth IRA or a designated Roth account in an employer plan, you will be taxed on the earnings in the payment. If you are under age 59 1/2, a 10% additional income tax on early distributions will also apply to the earnings (unless an exception applies). However, if you do a rollover, you will not have to pay taxes currently on the earnings and you will not have to pay taxes later on payments that are qualified distributions.

If the payment from the Plan is a qualified distribution, you will not be taxed on any part of the payment even if you do not do a rollover. If you do a rollover, you will not be taxed on the amount you roll over and any earnings on the amount you roll over will not be taxed if paid later in a qualified distribution.

A qualified distribution from a designated Roth account in the Plan is a payment made after you are age 59 1/2 (or after your death or disability) and after you have had a designated Roth account in the Plan for at least 5 years. In applying the 5-year rule, you count from January 1 of the year your first contribution was made to the designated Roth account. However, if you did a direct rollover to a designated Roth account in the Plan from a designated Roth account in another employer plan, your participation will count from January 1 of the year your first contribution was made to the designated Roth account in the Plan or, if earlier, to the designated Roth account in the other employer plan.

Where may I roll over the payment?

You may roll over the payment to either a Roth IRA (a Roth individual retirement account or Roth individual retirement annuity) or a designated Roth account in an employer plan (a tax-qualified plan or section 403(b) plan) that will accept the rollover. The rules of the Roth IRA or employer plan that holds the rollover will determine your investment options, fees, and rights to payment from the Roth IRA or employer plan (for example, no spousal consent rules apply to Roth IRAs and Roth IRAs may not provide loans). Further, the amount rolled over will become subject to the tax rules that apply to the Roth IRA or the designated Roth account in the employer plan. In general, these tax rules are similar to those described elsewhere in this notice, but differences include:

- If you do a rollover to a Roth IRA, all of your Roth IRAs will be considered for purposes of determining whether you have satisfied the 5-year rule (counting from January 1 of the year for which your first contribution was made to any of your Roth IRAs).
- If you do a rollover to a Roth IRA, you will not be required to take a distribution from the Roth IRA during your lifetime and you must keep track of the aggregate amount of the after-tax contributions in all of your Roth IRAs (in order to determine your taxable income for later Roth IRA payments that are not qualified distributions).
- Eligible rollover distributions from a Roth IRA can only be rolled over to another Roth IRA.

How do I do a rollover?

There are two ways to do a rollover. You can do either a direct rollover or a 60-day rollover.

If you do a direct rollover, the Plan will make the payment directly to your Roth IRA or designated Roth account in an employer plan. You should contact the Roth IRA sponsor or the administrator of the employer plan for information on how to do a direct rollover.

If you do not do a direct rollover, you may still do a rollover by making a deposit within 60 days into a Roth IRA, whether the payment is a qualified or nonqualified distribution. In addition, you can do a rollover by making a deposit within 60 days into a designated Roth account in an employer plan if the payment is a nonqualified distribution and the rollover does not exceed the amount of the earnings in the payment. You cannot do a 60-day rollover to an employer plan of any part of a qualified distribution. If you receive a distribution that is a nonqualified distribution and you do not roll over an amount at least equal to the earnings allocable to the distribution, you will be taxed on the amount of those earnings not rolled over, including the 10% additional income tax on early distributions if you are under age 59 1/2 (unless an exception applies).

If you do a direct rollover of only a portion of the amount paid from the Plan and a portion is paid to you, each of the payments will include an allocable portion of the earnings in your designated Roth account.

If you do not do a direct rollover and the payment is not a qualified distribution, the Plan is required to withhold 20% of the earnings for federal income taxes (up to the amount of cash and property received other than employer stock). This means that, in order to roll over the entire payment in a 60-day rollover to a Roth IRA, you must use other funds to make up for the 20% withheld.

How much may I roll over?

If you wish to do a rollover, you may roll over all or part of the amount eligible for rollover. Any payment from the Plan is eligible for rollover, except:

- Certain payments spread over a period of at least 10 years or over your life or life expectancy (or the lives or joint life expectancy of you and your beneficiary)
- Required minimum distributions after age 70 1/2 (or after death)
- Hardship distributions
- Corrective distributions of contributions that exceed tax law limitations
- Loans treated as deemed distributions (for example, loans in default due to missed payments before your employment ends)
- Contributions made under special automatic enrollment rules that are withdrawn pursuant to your request within 90 days of enrollment

The Plan Administrator or the payor can tell you what portion of a payment is eligible for rollover.

If I don't do a rollover, will I have to pay the 10% additional income tax on early distributions?

If a payment is not a qualified distribution and you are under age 59 1/2, you will have to pay the 10% additional income tax on early distributions with respect to the earnings allocated to the payment that you do not roll over (including amounts withheld for income tax), unless one of the exceptions listed below applies. This tax is in addition to the regular income tax on the earnings not rolled over.

The 10% additional income tax does not apply to the following payments from the Plan:

- Payments made after you separate from service if you will be at least age 55 in the year of the separation
- Payments that start after you separate from service if paid at least annually in equal or close to equal amounts over your life or life expectancy (or the lives or joint life expectancy of you and your beneficiary)
- Payments made due to disability
- Payments after your death
- Corrective distributions of contributions that exceed tax law limitations
- Payments made directly to the government to satisfy a federal tax levy
- Payments made under a qualified domestic relations order (QDRO)
- Payments up to the amount of your deductible medical expenses
- Certain payments made while you are on active duty if you were a member of a reserve component called to duty after September 11, 2001 for more than 179 days
- Contributions made under special automatic enrollment rules that are withdrawn pursuant to your request within 90 days of enrollment

If I do a rollover to a Roth IRA, will the 10% additional income tax apply to early distributions from the IRA?

If you receive a payment from a Roth IRA when you are under age 59 1/2, you will have to pay the 10% additional income tax on early distributions on the earnings paid from the Roth IRA, unless an exception applies or the payment is a qualified distribution. In general, the exceptions to the 10% additional income tax for early distributions from a Roth IRA listed above are the same as the exceptions for early distributions from a plan. However, there are a few differences for payments from a Roth IRA, including:

- There is no special exception for payments after separation from service.
- The exception for qualified domestic relations orders (QDROs) does not apply (although a special rule applies under which, as part of a divorce or separation agreement, a tax-free transfer may be made directly to a Roth IRA of a spouse or former spouse).
- The exception for payments made at least annually in equal or close to equal amounts over a specified period applies without regard to whether you have had a separation from service.
- There are additional exceptions for (1) payments for qualified higher education expenses, (2) payments up to \$10,000 used in a qualified first-time home purchase, and (3) payments after you have received unemployment compensation for 12 consecutive weeks (or would have been eligible to receive unemployment compensation but for self-employed status).

Will I owe State income taxes?

This notice does not describe any State or local income tax rules (including withholding rules).

SPECIAL RULES AND OPTIONS**If you miss the 60-day rollover deadline**

Generally, the 60-day rollover deadline cannot be extended (but see the section entitled "If you have an outstanding loan that is being offset" for a longer deadline for certain loan offsets). The IRS, however, has the limited authority to waive the deadline under certain extraordinary circumstances, such as when external events prevented you from completing the rollover by the 60-day rollover deadline (or the later deadline for certain loan offsets). There are three ways to obtain a waiver from the IRS: (1) you qualify for an automatic waiver, (2) you self-certify that you met the requirements of a waiver, or (3) you request and receive from the IRS a private letter ruling granting a waiver (private letter ruling requests require the payment of a nonrefundable user fee). For more information, see IRS Publication 590, Individual Retirement Arrangements (IRAs).

If your payment includes employer stock that you do not roll over

If you receive a payment that is not a qualified distribution and you do not roll it over, you can apply a special rule to payments of employer stock (or other employer securities) that are paid in a lump sum after separation from service (or after age 59 1/2, disability, or the participant's death). Under the special rule, the net unrealized appreciation on the stock included in the earnings in the payment will not be taxed when distributed to you from the Plan and will be taxed at capital gain rates when you sell the stock. If you do a rollover to a Roth IRA for a nonqualified distribution that includes employer stock (for example, by selling the stock and rolling over the proceeds within 60 days of the distribution), you will not have any taxable income and the special rule relating to the distributed employer stock will not apply to any subsequent payments from the Roth IRA or employer plan. Net unrealized appreciation is generally the increase in the value of the employer stock after it was acquired by the Plan. The Plan Administrator can tell you the amount of any net unrealized appreciation.

If you receive a payment that is a qualified distribution that includes employer stock and you do not roll it over, your basis in the stock (used to determine gain or loss when you later sell the stock) will equal the fair market value of the stock at the time of the payment from the Plan.

If you have an outstanding loan that is being offset

If you have an outstanding loan from the Plan, your Plan benefit may be offset by the amount of the loan, typically when your employment ends. The loan offset amount is treated as a distribution to you at the time of the offset and, if the distribution is a nonqualified distribution, the earnings in the loan offset will be taxed (including the 10% additional income tax on early distributions, unless an exception applies) unless you do a 60-day rollover in the amount of the earnings in the loan offset to a Roth IRA or designated Roth account in an employer plan. If, however, a loan offset occurs due to your termination of employment (or due to the termination of the Plan), then instead of 60 days to rollover the loan offset you have until the due date of your Federal individual income tax return (including extensions) for the year in which the plan offsets the loan offset to complete a rollover.

If you receive a nonqualified distribution and you were born on or before January 1, 1936

If you were born on or before January 1, 1936, and receive a lump sum distribution that is not a qualified distribution and that you do not roll over, special rules for calculating the amount of the tax on the earnings in the payment might apply to you. For more information, see IRS Publication 575, Pension and Annuity Income.

Exceptions for distributions from this plan

The same rules described elsewhere in this notice generally apply, allowing you to roll over the payment to an IRA or an employer plan that accepts rollovers. One difference is that, if you do not do a rollover, you will not have to pay the 10% additional income tax on early distributions from the Plan even if you are under age 59 1/2 (unless the payment is from a separate account holding rollover contributions that were made to the Plan from a tax-qualified plan, a section 403(b) plan, or an IRA). However, if you do a rollover to an IRA or to an employer plan that is not a governmental section 457(b) plan, a later distribution made before age 59 1/2 will be subject to the 10% additional income tax on early distributions (unless an exception applies). Other differences are that you cannot do a rollover if the payment is due to an "unforeseeable emergency" and the special rules under "If your payment includes employer stock that you do not roll over" and "If you were born on or before January 1, 1936" do not apply.

If you are not a plan participant

Payments after death of the participant. If you receive a distribution after the participant's death that you do not roll over, the distribution will generally be taxed in the same manner described elsewhere in this notice. However, whether the payment is a qualified distribution generally depends on when the participant first made a contribution to the designated Roth account in the Plan. Also, the 10% additional income tax on early distributions does not apply, and the special rule described under the section "If you receive a nonqualified distribution and you were born on or before January 1, 1936" applies only if the participant was born on or before January 1, 1936.

If you are a surviving spouse. If you receive a payment from the Plan as the surviving spouse of a deceased participant, you have the same rollover options that the participant would have had, as described elsewhere in this notice. In addition, if you choose to do a rollover to a Roth IRA, you may treat the Roth IRA as your own or as an inherited Roth IRA.

A Roth IRA you treat as your own is treated like any other Roth IRA of yours, so that you will not have to receive any required minimum distributions during your lifetime and earnings paid to you in a nonqualified distribution before you are age 59 1/2 will be subject to the 10% additional income tax on early distributions (unless an exception applies).

If you treat the Roth IRA as an inherited Roth IRA, payments from the Roth IRA will not be subject to the 10% additional income tax on early distributions. An inherited Roth IRA is subject to required minimum distributions. If the participant had started taking required minimum distributions from the Plan, you will have to receive required minimum distributions from the inherited Roth IRA. If the participant had not started taking required minimum distributions, you will not have to start receiving required minimum distributions from the inherited Roth IRA until the year the participant would have been age 70 1/2.

If you are a surviving beneficiary other than a spouse. If you receive a payment from the Plan because of the participant's death and you are a designated beneficiary other than a surviving spouse, the only rollover option you have is to do a direct rollover to an inherited Roth IRA. Payments from the inherited Roth IRA, even if made in a nonqualified distribution, will not be subject to the 10% additional income tax on early distributions. You will have to receive required minimum distributions from the inherited Roth IRA.

Payments under a qualified domestic relations order. If you are the spouse or a former spouse of the participant who receives a payment from the Plan under a qualified domestic relations order (QDRO), you generally have the same options the participant would have (for example, you may roll over the payment as described in this notice).

If you are a nonresident alien

If you are a nonresident alien and you do not do a direct rollover to a U.S. IRA or U.S. employer plan, instead of withholding 20%, the Plan is generally required to withhold 30% of the payment for federal income taxes. If the amount withheld exceeds the amount of tax you owe (as may happen if you do a 60-day rollover), you may request an income tax refund by filing Form 1040NR and attaching your Form 1042-S. See Form W-8BEN for claiming that you are entitled to a reduced rate of withholding under an income tax treaty. For more information, see also IRS Publication 519, U.S. Tax Guide for Aliens, and IRS Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities.

Other special rules

If a payment is one in a series of payments for less than 10 years, your choice whether to make a direct rollover will apply to all later payments in the series (unless you make a different choice for later payments).

If your payments for the year (only including payments from the designated Roth account in the Plan) are less than \$200, the Plan is not required to allow you to do a direct rollover and is not required to withhold for federal income taxes. However, you can do a 60-day rollover.

Unless you elect otherwise, a mandatory cashout from the designated Roth account in the Plan of more than \$1,000 will be directly rolled over to a Roth IRA chosen by the Plan Administrator or the payor. A mandatory cashout is a payment from a plan to a participant made before age 62 (or normal retirement age, if later) and without consent, where the participant's benefit does not exceed \$5,000 (not including any amounts held under the plan as a result of a prior rollover made to the plan).

You may have special rollover rights if you recently served in the U.S. Armed Forces. For more information, see IRS Publication 3, Armed Forces' Tax Guide.

FOR MORE INFORMATION

You may wish to consult with the Plan Administrator or payor, or a professional tax advisor, before taking a payment from the Plan. Also, you can find more detailed information on the federal tax treatment of payments from employer plans in: IRS Publication 575, Pension and Annuity Income; IRS Publication 590, Individual Retirement Arrangements (IRAs); and IRS Publication 571, Tax-Sheltered Annuity Plans (403(b) Plans). These publications are available from a local IRS office, on the web at www.irs.gov, or by calling 1-800-TAX-FORM.

PARTICIPATION AGREEMENT

The Employer, by executing this Participation Agreement, elects to become a Participating Employer in the Plan, to continue participation in the Plan or to cease status as a Participating Employer. The Participating Employer accepts, and agrees to be bound by, all of the elections granted under the provisions of the Plan as made by the Signatory Employer to the Execution Page of the Adoption Agreement, except as otherwise provided in this Participation Agreement. **[Note: Each Participating Employer must execute a separate Participation Agreement.]**

A. PARTICIPATING EMPLOYER INFORMATION

- a. Name: Superior Court of California, County of San Bernardino
- b. Address: 172 West Third Street
Street
San Bernardino CA 92415
City State Zip
- c. Telephone: Human Resources, (909) 521-3635
- d. Taxpayer Identification Number (TIN): 33-0939001

B. EFFECTIVE DATE(S)

- e. ☐ NEW PLAN. The Participating Employer's adoption of this Plan constitutes the adoption of a new plan by the Participating Employer, effective as of: _____.
- f. ☒ RESTATEMENT. The Participating Employer's adoption of this Plan constitutes the adoption of an amendment and restatement of the Plan effective as of: January 1, 2020.
- g. ☐ RESTATEMENT AND MERGER. The Participating Employer's adoption of this Plan constitutes the amendment and restatement of the Participating Employer's plan known as: _____ which plan is being merged into this Plan effective as of: _____.
- h. ☐ CESSATION. The Participating Employer is ceasing its participation in the Plan effective as of: _____.
- i. ☐ SPECIAL EFFECTIVE DATES: _____.

C. ALLOCATION OF CONTRIBUTIONS AND FORFEITURES

Contributions and Forfeitures will be allocated together for Participating Employers unless a selection is made below (select j. or all that apply at k. - l.)

- j. ☒ N/A.
- k. ☐ Contributions made by a Participating Employer will only be allocated to Participants employed by such Participating Employer.
- l. ☐ Forfeitures of amounts attributable to a Participating Employer will only be used for the benefit of the Participants of such Participating Employer.

PARTICIPATING EMPLOYER: Superior Court of California, County of San Bernardino

By: _____

DATE SIGNED

SIGNATORY EMPLOYER: County of San Bernardino

By: _____

DATE SIGNED

ADOPTING RESOLUTION

The undersigned authorized representative of Superior Court of California, County of San Bernardino (the Employer) hereby certifies that the following resolutions were duly adopted by the Employer on _____, and that such resolutions have not been modified or rescinded as of the date hereof:

RESOLVED, that the form of the Participation Agreement of Superior Court of California, County of San Bernardino, a Participating Employer, which evidences the adoption of the amended 457 Plan sponsored by County of San Bernardino is hereby approved and adopted and that an authorized representative of the Participating Employer is hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more counterparts of the Participation Agreement.

The undersigned further certifies that attached hereto as Exhibit A is a true copy of The San Bernardino County 457(b) Deferred Compensation Plan, as amended and restated, which is hereby approved and adopted.

Date: _____

Signed: _____

[print name/title]

PARTICIPATION AGREEMENT

The Employer, by executing this Participation Agreement, elects to become a Participating Employer in the Plan, to continue participation in the Plan or to cease status as a Participating Employer. The Participating Employer accepts, and agrees to be bound by, all of the elections granted under the provisions of the Plan as made by the Signatory Employer to the Execution Page of the Adoption Agreement, except as otherwise provided in this Participation Agreement. **[Note: Each Participating Employer must execute a separate Participation Agreement.]**

A. PARTICIPATING EMPLOYER INFORMATION

- a. Name: San Bernardino County Employees' Retirement Association
- b. Address: 348 W. Hospitality Lane, Suite 100
Street
San Bernardino CA 92408
City State Zip
- c. Telephone: Debby Cherney, Chief Executive Officer (909) 885-7980
- d. Taxpayer Identification Number (TIN): 95-6193238

B. EFFECTIVE DATE(S)

- e. ☐ NEW PLAN. The Participating Employer's adoption of this Plan constitutes the adoption of a new plan by the Participating Employer, effective as of: _____.
- f. ☒ RESTATEMENT. The Participating Employer's adoption of this Plan constitutes the adoption of an amendment and restatement of the Plan effective as of: January 1, 2020.
- g. ☐ RESTATEMENT AND MERGER. The Participating Employer's adoption of this Plan constitutes the amendment and restatement of the Participating Employer's plan known as: _____ which plan is being merged into this Plan effective as of: _____.
- h. ☐ CESSATION. The Participating Employer is ceasing its participation in the Plan effective as of: _____.
- i. ☐ SPECIAL EFFECTIVE DATES: _____.

C. ALLOCATION OF CONTRIBUTIONS AND FORFEITURES

Contributions and Forfeitures will be allocated together for Participating Employers unless a selection is made below (select j. or all that apply at k. - l.)

- j. ☒ N/A.
- k. ☐ Contributions made by a Participating Employer will only be allocated to Participants employed by such Participating Employer.
- l. ☐ Forfeitures of amounts attributable to a Participating Employer will only be used for the benefit of the Participants of such Participating Employer.

PARTICIPATING EMPLOYER: San Bernardino County Employees' Retirement Association

By: _____ DATE SIGNED _____

SIGNATORY EMPLOYER: County of San Bernardino

By: _____ DATE SIGNED _____

ADOPTING RESOLUTION

The undersigned authorized representative of San Bernardino County Employees' Retirement Association (the Employer) hereby certifies that the following resolutions were duly adopted by the Employer on _____, and that such resolutions have not been modified or rescinded as of the date hereof:

RESOLVED, that the form of the Participation Agreement of San Bernardino County Employees' Retirement Association, a Participating Employer, which evidences the adoption of the amended 457 Plan sponsored by County of San Bernardino is hereby approved and adopted and that an authorized representative of the Participating Employer is hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more counterparts of the Participation Agreement.

The undersigned further certifies that attached hereto as Exhibit A is a true copy of The San Bernardino County 457(b) Deferred Compensation Plan, as amended and restated, which is hereby approved and adopted.

Date: _____

Signed: _____

[print name/title]

PARTICIPATION AGREEMENT

The Employer, by executing this Participation Agreement, elects to become a Participating Employer in the Plan, to continue participation in the Plan or to cease status as a Participating Employer. The Participating Employer accepts, and agrees to be bound by, all of the elections granted under the provisions of the Plan as made by the Signatory Employer to the Execution Page of the Adoption Agreement, except as otherwise provided in this Participation Agreement. **[Note: Each Participating Employer must execute a separate Participation Agreement.]**

A. PARTICIPATING EMPLOYER INFORMATION

- a. Name: San Bernardino County Board Governed Special Districts
- b. Address: address same as primary employer

Street

City State Zip
- c. Telephone: Human Resources, Employee Benefits & Services (909) 387-5787
- d. Taxpayer Identification Number (TIN): 95-6002748

B. EFFECTIVE DATE(S)

- e. ☐ NEW PLAN. The Participating Employer's adoption of this Plan constitutes the adoption of a new plan by the Participating Employer, effective as of: _____.
- f. ☒ RESTATEMENT. The Participating Employer's adoption of this Plan constitutes the adoption of an amendment and restatement of the Plan effective as of: January 1, 2020.
- g. ☐ RESTATEMENT AND MERGER. The Participating Employer's adoption of this Plan constitutes the amendment and restatement of the Participating Employer's plan known as: _____ which plan is being merged into this Plan effective as of: _____.
- h. ☐ CESSATION. The Participating Employer is ceasing its participation in the Plan effective as of: _____.
- i. ☐ SPECIAL EFFECTIVE DATES: _____.

C. ALLOCATION OF CONTRIBUTIONS AND FORFEITURES

- Contributions and Forfeitures will be allocated together for Participating Employers unless a selection is made below (select j. or all that apply at k. - l.)
- j. ☒ N/A.
- k. ☐ Contributions made by a Participating Employer will only be allocated to Participants employed by such Participating Employer.
- l. ☐ Forfeitures of amounts attributable to a Participating Employer will only be used for the benefit of the Participants of such Participating Employer.

PARTICIPATING EMPLOYER: San Bernardino County Board Governed Special Districts

By: _____ DATE SIGNED _____

SIGNATORY EMPLOYER: County of San Bernardino

By: _____ DATE SIGNED _____

ADOPTING RESOLUTION

The undersigned authorized representative of San Bernardino County Board Governed Special Districts (the Employer) hereby certifies that the following resolutions were duly adopted by the Employer on _____, and that such resolutions have not been modified or rescinded as of the date hereof:

RESOLVED, that the form of the Participation Agreement of San Bernardino County Board Governed Special Districts, a Participating Employer, which evidences the adoption of the amended 457 Plan sponsored by County of San Bernardino is hereby approved and adopted and that an authorized representative of the Participating Employer is hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more counterparts of the Participation Agreement.

The undersigned further certifies that attached hereto as Exhibit A is a true copy of The San Bernardino County 457(b) Deferred Compensation Plan, as amended and restated, which is hereby approved and adopted.

Date: _____

Signed: _____

[print name/title]

PARTICIPATION AGREEMENT

The Employer, by executing this Participation Agreement, elects to become a Participating Employer in the Plan, to continue participation in the Plan or to cease status as a Participating Employer. The Participating Employer accepts, and agrees to be bound by, all of the elections granted under the provisions of the Plan as made by the Signatory Employer to the Execution Page of the Adoption Agreement, except as otherwise provided in this Participation Agreement. **[Note: Each Participating Employer must execute a separate Participation Agreement.]**

A. PARTICIPATING EMPLOYER INFORMATION

- a. Name: Local Agency Formation Commission - LAFCO
- b. Address: 1170 W. Third Street, Unit 150
Street
San Bernardino CA 92415
City State Zip
- c. Telephone: (909) 388-0480
- d. Taxpayer Identification Number (TIN): 32-0422397

B. EFFECTIVE DATE(S)

- e. ☐ NEW PLAN. The Participating Employer's adoption of this Plan constitutes the adoption of a new plan by the Participating Employer, effective as of: _____.
- f. ☒ RESTATEMENT. The Participating Employer's adoption of this Plan constitutes the adoption of an amendment and restatement of the Plan effective as of: January 1, 2020.
- g. ☐ RESTATEMENT AND MERGER. The Participating Employer's adoption of this Plan constitutes the amendment and restatement of the Participating Employer's plan known as: _____ which plan is being merged into this Plan effective as of: _____.
- h. ☐ CESSATION. The Participating Employer is ceasing its participation in the Plan effective as of: _____.
- i. ☐ SPECIAL EFFECTIVE DATES: _____.

C. ALLOCATION OF CONTRIBUTIONS AND FORFEITURES

- Contributions and Forfeitures will be allocated together for Participating Employers unless a selection is made below (select j. or all that apply at k. - l.)
- j. ☒ N/A.
- k. ☐ Contributions made by a Participating Employer will only be allocated to Participants employed by such Participating Employer.
- l. ☐ Forfeitures of amounts attributable to a Participating Employer will only be used for the benefit of the Participants of such Participating Employer.

PARTICIPATING EMPLOYER: Local Agency Formation Commission - LAFCO

By: _____ DATE SIGNED _____

SIGNATORY EMPLOYER: County of San Bernardino

By: _____ DATE SIGNED _____

ADOPTING RESOLUTION

The undersigned authorized representative of Local Agency Formation Commission - LAFCO (the Employer) hereby certifies that the following resolutions were duly adopted by the Employer on _____, and that such resolutions have not been modified or rescinded as of the date hereof:

RESOLVED, that the form of the Participation Agreement of Local Agency Formation Commission - LAFCO, a Participating Employer, which evidences the adoption of the amended 457 Plan sponsored by County of San Bernardino is hereby approved and adopted and that an authorized representative of the Participating Employer is hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more counterparts of the Participation Agreement.

The undersigned further certifies that attached hereto as Exhibit A is a true copy of The San Bernardino County 457(b) Deferred Compensation Plan, as amended and restated, which is hereby approved and adopted.

Date: _____

Signed: _____

[print name/title]

PARTICIPATION AGREEMENT

The Employer, by executing this Participation Agreement, elects to become a Participating Employer in the Plan, to continue participation in the Plan or to cease status as a Participating Employer. The Participating Employer accepts, and agrees to be bound by, all of the elections granted under the provisions of the Plan as made by the Signatory Employer to the Execution Page of the Adoption Agreement, except as otherwise provided in this Participation Agreement. *[Note: Each Participating Employer must execute a separate Participation Agreement.]*

A. PARTICIPATING EMPLOYER INFORMATION

- a. Name: San Bernardino County Transportation Authority - SBCTA
- b. Address: 1170 W. Third Street
Street
San Bernardino CA 92410
City State Zip
- c. Telephone: (909) 884-8276
- d. Taxpayer Identification Number (TIN): 33-0478781

B. EFFECTIVE DATE(S)

- e. ☐ NEW PLAN. The Participating Employer's adoption of this Plan constitutes the adoption of a new plan by the Participating Employer, effective as of: _____.
- f. ☒ RESTATEMENT. The Participating Employer's adoption of this Plan constitutes the adoption of an amendment and restatement of the Plan effective as of: January 1, 2020.
- g. ☐ RESTATEMENT AND MERGER. The Participating Employer's adoption of this Plan constitutes the amendment and restatement of the Participating Employer's plan known as: _____ which plan is being merged into this Plan effective as of: _____.
- h. ☐ CESSATION. The Participating Employer is ceasing its participation in the Plan effective as of: _____.
- i. ☐ SPECIAL EFFECTIVE DATES: _____.

C. ALLOCATION OF CONTRIBUTIONS AND FORFEITURES

Contributions and Forfeitures will be allocated together for Participating Employers unless a selection is made below (select j. or all that apply at k. - l.)

- j. ☒ N/A.
- k. ☐ Contributions made by a Participating Employer will only be allocated to Participants employed by such Participating Employer.
- l. ☐ Forfeitures of amounts attributable to a Participating Employer will only be used for the benefit of the Participants of such Participating Employer.

PARTICIPATING EMPLOYER: San Bernardino County Transportation Authority - SBCTA

By: _____ DATE SIGNED _____

SIGNATORY EMPLOYER: County of San Bernardino

By: _____ DATE SIGNED _____

ADOPTING RESOLUTION

The undersigned authorized representative of San Bernardino County Transportation Authority - SBCTA (the Employer) hereby certifies that the following resolutions were duly adopted by the Employer on _____, and that such resolutions have not been modified or rescinded as of the date hereof:

RESOLVED, that the form of the Participation Agreement of San Bernardino County Transportation Authority - SBCTA, a Participating Employer, which evidences the adoption of the amended 457 Plan sponsored by County of San Bernardino is hereby approved and adopted and that an authorized representative of the Participating Employer is hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more counterparts of the Participation Agreement.

The undersigned further certifies that attached hereto as Exhibit A is a true copy of The San Bernardino County 457(b) Deferred Compensation Plan, as amended and restated, which is hereby approved and adopted.

Date: _____

Signed: _____

[print name/title]

THE SAN BERNARDINO COUNTY 457(B) DEFERRED COMPENSATION PLAN
SUMMARY OF 457 PLAN PROVISIONS

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THE SAN BERNARDINO COUNTY 457(B) DEFERRED COMPENSATION PLAN

SUMMARY OF 457 PLAN PROVISIONS ("Summary" or "SPP")

INTRODUCTION TO YOUR PLAN

The San Bernardino County 457(b) Deferred Compensation Plan ("Plan") has been adopted to provide you with the opportunity to save for retirement on a tax-advantaged basis. This Plan is a type of retirement plan commonly referred to as a Governmental Eligible 457 Plan. This Summary of 457 Plan Provisions contains valuable information regarding when you may become eligible to participate in the Plan, your Plan benefits, your distribution options, and many other features of the Plan. You should take the time to read this Summary to get a better understanding of your rights and obligations under the Plan.

We have attempted to answer most of the questions you may have regarding your benefits in the Plan. If this Summary does not answer all of your questions, please contact the Plan Administrator. The Plan Administrator may be contacted at:

County of San Bernardino
Human Resources
157 West Fifth Street, 1st Floor
San Bernardino, CA 92415
(909) 387-5787

This Summary describes the Plan's benefits and obligations as contained in the legal Plan document, which governs the operation of the Plan. The Plan document is written in much more technical and precise language. If the non-technical language under this Summary and the technical, legal language of the Plan document conflict, the Plan document always governs. If you wish to receive a copy of the legal Plan document, please contact the Plan Administrator.

This Summary describes the current provisions of the Plan. The Plan is subject to federal laws, such as the Internal Revenue Code and other federal and state laws, which may affect your rights. The provisions of the Plan are subject to revision due to a change in laws or due to pronouncements by the Internal Revenue Service (IRS). The Employer may also amend or terminate this Plan. The Plan Administrator will notify you if the provisions of the Plan that are described in this Summary change. This Summary does not address the provisions of specific investment products.

**ARTICLE I
PARTICIPATION IN THE PLAN**

Am I eligible to participate in the Plan?

All employees are eligible once they satisfy the eligibility conditions described in the next question. Independent contractors are not eligible to participate in the Plan.

When am I eligible to participate in the Plan?

Provided you are an eligible employee, you will be eligible on your date of hire

When is my entry date?

The following applies with regard to entry dates: Date of hire. The Employee's employment commencement date with the Employer is subject to IRS regulations

**ARTICLE II
CONTRIBUTIONS**

What kind of contributions may I make to the Plan and how do my contributions affect my taxes?

As a participant under the Plan, you may elect to reduce your compensation by a specific percentage or dollar amount and have that amount contributed to the Plan. The Plan refers to this as an "elective deferral." There are two types of elective deferrals, pre-tax deferrals and Roth deferrals. For purposes of this summary "deferrals" or "elective deferrals" generally means both pre-tax deferrals and Roth deferrals.

If you make pre-tax deferrals, your taxable income is reduced by the deferral contributions so you pay less in federal income taxes. Later, when the Plan distributes the deferrals and earnings, you will pay the taxes on those deferrals and the earnings. Federal income taxes on the pre-tax deferral contributions and on the earnings are only postponed.

If you elect to make Roth deferrals, the deferrals are subject to federal income taxes in the year of deferral. However, the Roth deferrals and, if you meet certain conditions, the earnings on the Roth deferrals are not subject to federal income taxes when distributed to you. This means that the earnings on the Roth deferrals may never be subject to Federal income tax. See "What are my tax consequences when I receive a distribution from the Plan?"

Is there a limit on the amount of elective deferrals that can be made each year?

As a participant, you may elect to defer not less than \$10 dollars per pay period of your compensation and no more than the maximum amount allowed by law. The Plan Administrator will notify you of the maximum percentage you may defer.

You may make deferrals from your accumulated sick pay, from accumulated vacation pay or from back pay.

Your total elective deferrals in any calendar year may not exceed a certain dollar limit which is set by law ("elective deferral limit"). The elective deferral limit for 2020 is \$19,500. After 2020, the elective deferral limit may increase for cost-of-living adjustments.

If you are age 50 or will attain age 50 before the end of a calendar year, you may make additional deferrals (called "age 50 catch-up deferrals") for that year and following years. If you meet the age 50 requirement and your salary deferrals exceed the elective deferral limit described above, then any excess will be an age 50 catch-up deferral. The maximum catch-up deferral that you can make in 2020 is \$6,500. After 2020, the maximum age 50 catch-up contribution limit may increase for cost-of-living adjustments.

Instead of the "age 50-catch-up deferrals," there is an alternative catch-up limit that is available in the three years prior to your normal retirement age. This increased limit (called "Special NRA Catch-Up Contributions") is designed to allow make-up contributions for prior years when contributions to the plan were less than the maximum contribution that could have been made in those years. The additional catch-up amount is equal to the difference between the amounts that could have been contributed in the prior years less the amounts that actually were contributed in those years. However, the additional catch-up for the year cannot exceed the general limit for the year. Thus, if you are entitled to the full Special NRA Catch-up Contribution, your contributions in the last three years prior to your normal retirement age cannot exceed two times the regular elective deferral limit for the year.

How do I make an election to defer?

The amount you elect to defer will be deducted from your pay in accordance with a procedure established by the Plan Administrator. If you wish to defer, the procedure will require that you enter into a salary reduction agreement. You may elect to defer a portion of your compensation payable on or after your Entry Date. Such election must be made prior to the first day of a calendar month in which you wish to defer and will become effective as soon as administratively feasible after it is received by the Plan Administrator. Your election will remain in effect until you modify or terminate it. You may revoke or make modifications to your salary deferral election in accordance with procedures that the Employer provides. See the Plan Administrator for further information.

Does the Plan provide for automatic deferrals?

Automatic Deferral. Effective July 1, 2019, the Plan includes an automatic salary deferral feature. Automatic deferrals only apply to certain Union-represented groups if/as collectively bargained. If applicable, your Employer will automatically withhold a portion of your compensation from your pay each payroll period and contribute that amount to the Plan as a salary deferral.

Automatic deferral provisions. The following provisions apply to these automatic deferrals:

- You may select an alternative deferral amount or elect not to defer under the Plan in accordance with the deferral procedures of the Plan. If your Employer automatically enrolled you and you did not want to participate in the Plan, then your Employer can refund your deferrals to you within 90 days of the first payroll in which money was deferred, provided you notify the Plan Record Keeper prior to the end of the 90-day period.
- The amount to be automatically withheld from your pay each payroll period will be equal to 1% of your compensation.

Contact the Plan Administrator if you have any questions concerning the application of this automatic deferral provision.

What are rollover contributions?

Rollover contributions. If you are a participant or an eligible employee, you may be permitted to deposit into the Plan distributions you have received from other retirement plans. Such a deposit is called a "rollover" and may result in tax savings to you. You may ask the Plan Administrator or Trustee of the other plan or IRA to directly transfer (a "direct rollover") to this Plan all or a portion of any amount that you are entitled to receive as a distribution from such plan. Alternatively, you may elect to deposit any amount eligible to be rolled over within 60 days of your receipt of the distribution. You should consult qualified counsel to determine if a rollover is in your best interest.

Rollover account. Your rollover will be accounted for in a "rollover account." You will always be 100% vested in your "rollover account." This means that you will always be entitled to all amounts in your rollover account. Rollover contributions will be affected by any investment gains or losses.

Withdrawal of rollover contributions. You may withdraw the amounts in your "rollover account" at any time.

What are In-Plan Roth Rollover Contributions?

In-Plan Roth Rollover Contributions. If you are eligible for a distribution from an account and you are currently an employee, you may elect to roll over the distribution to a designated Roth contribution account in the Plan (referred to as an In-Plan Roth Rollover Contribution). You may only roll over the distribution directly.

Taxation and irrevocable election. You do not pay taxes on the contributions or earnings of your pre-tax accounts until you receive an actual distribution. In other words, the taxes on the contributions and earnings in your pre-tax accounts are deferred until a distribution is made. Roth accounts, however, are the opposite. With a Roth account, you pay current taxes on the amounts contributed. When a distribution is made to you from the Roth account, you do not pay taxes on the amounts you had contributed. In addition, if you have a "qualified distribution" (explained below), you do not pay taxes on the earnings that are attributable to the contributions.

If you elect an In-Plan Roth Rollover Contribution, then the contribution will be included in your income for the year. Once you make an election, it cannot be changed. It is important that you understand the tax effects of making the election and ensure you have adequate

resources outside of the Plan to pay the additional taxes. The In-Plan Roth Rollover Contribution does not affect the timing of when a distribution may be made to you under the Plan; the contribution only changes the tax character of your account. You should consult with your tax advisor prior to making such a rollover.

Qualified distribution. As explained above, a distribution of the earnings on your Roth account will not be subject to tax if the distribution is a "qualified distribution." A "qualified distribution" is one that is made after you have attained age 59 1/2 or is made on account of your death or disability. In addition, in order to be a "qualified distribution," the distribution cannot be made prior to the expiration of a 5-year participation period. The 5-year participation period is the 5-year period beginning on the calendar year in which you first make the Roth rollover and ending on the last day of the calendar year that is 5-years later. See "What are my tax consequences when I receive a distribution from the Plan?" later in this SPD.

What compensation is used to determine my Plan benefits?

Definition of compensation. For the purposes of the Plan, compensation has a special meaning. Compensation is generally defined as your total compensation that is subject to income tax and paid to you by your Employer during the Plan Year. The Plan takes into account elective deferrals to retirement plans (including this one) cafeteria plans, or qualified transportation fringe benefit plans. The following describes the adjustments to compensation that may apply for the different types of contributions provided under the Plan. Compensation:

- Compensation shall not include payment made through the County's Medical Emergency Leave or Workers' Compensation Programs
- Compensation paid after you terminate is generally excluded for Plan purposes. However, the following amounts will be included in compensation even though they are paid after you terminate employment, provided these amounts would otherwise have been considered compensation as described above and provided they are paid within 2 1/2 months after you terminate employment, or if later, the last day of the Plan Year in which you terminate employment:
 - Compensation paid for unused accrued bona fide sick, vacation or other leave, if such amounts would have been included in compensation if paid prior to your termination of employment and you would have been able to use the leave if employment had continued.
 - Wage continuation payments (referred to as military differential pay)

For the Plan Year in which you first participate, for any contributions other than salary reductions, we take into account your full Plan Year compensation.

ARTICLE III DISTRIBUTIONS

When will I be entitled to a distribution from the Plan?

Distributions under the Plan may generally not be made prior to your termination of employment (for whatever reason, including death). The rules are explained in more detail below.

If you terminate employment for any reason and at any age (including retirement), then you will be entitled to a distribution within a reasonable time after you terminate employment. If the Participant fails to select a payment option for any event that causes amounts to become available under the Plan, the Participant shall be deemed to have elected to postpone distribution of his or her benefit until the year in which the Participant attains age 70 1/2. (See the question "How will my benefits be paid?" for a further explanation of how benefits are paid from the Plan.)

If your benefit does not exceed \$5,000 then the distribution will automatically be paid to you as soon as administratively practical following your termination of employment. If your benefit exceeds \$5,000, then you will be given the opportunity to elect to defer payment of the benefit, subject to certain limitations. In determining whether your vested account balance exceeds the \$5,000 threshold, "rollovers" (and any earnings allocable to "rollover" contributions) will be taken into account.

If the Plan Administrator approves, you (1) may elect to postpone distribution of your benefit to any fixed or determinable date including, but not beyond, your "required beginning date" described below; and (2) you may elect the method of payment.

Military Service. If you are a veteran and are reemployed under the Uniformed Services Employment and Reemployment Rights Act of 1994, your qualified military service may be considered service with the Employer. There may also be benefits for employees who die or become disabled while on active duty. Employees who receive wage continuation payments while in the military may benefit from various changes in the law. If you think you may be affected by these rules, ask the Plan Administrator for further details.

Distributions while on military duty. If you are on active military duty for more than 30 days, then the Plan treats you as having terminated employment for distribution purposes. This means that you may request a distribution from the Plan. If you request a distribution on account of this deemed termination of employment, then you are not permitted to make any contributions to the Plan for 6 (six) months after the date of the distribution.

Required beginning date.

Regardless of the above, the law requires that certain minimum distributions be made from the Plan. Distributions are required to begin no later than the April 1st following the later of the end of the year in which you reach age 70 1/2 or terminate employment. You should see the Plan Administrator if you think you may be affected by these rules.

What is the Plan's normal retirement age?

For general members of the San Bernardino County Employees' Retirement Association (SBCERA) you will attain your normal retirement age when you reach the age that you designate, which may not be earlier than age 55 and may not be later than age 70 1/2.

For safety members of SBCERA you will attain your normal retirement age when you reach the age that you designate, which may not be earlier than age 50 and may not be later than age 70 1/2.

If you are an employee who continues in the service of the Employer after age 70 1/2, the normal retirement age means the age at which you separate from service with the Employer.

What is my vested interest in my account?

You are always 100% vested in all your accounts under our plan.

How will my benefits be paid?

You may, subject to the approval of the Plan Administrator, elect to receive your distribution under one of the methods described below:

- a single lump-sum payment.
- multiple payments as follows: Participant may elect to have payments made either monthly, quarterly, semi-annually or annually. However, no payment option may be selected by the Participant unless the amount of any installment is at least \$100..
- installments over your life expectancy, but only if you are required to take distributions under the law because you reached your "required beginning date" (generally the later of age 70 1/2 or the date you terminate employment).
- the following annuity options: Life Annuity with Period Certain Guaranteed. An annuity payable during the lifetime of the Participant, or his/her Beneficiary, with the guarantee that if, at the Participant's death, payments have not been made for the guaranteed period as elected, payments will continue to the Beneficiary. The guaranteed period to be elected must be either ten (10) or fifteen (15) years if the Beneficiary is not a spousal Beneficiary. For a spousal Beneficiary, the guaranteed period to be elected may be ten (10), fifteen (15) or twenty (20) years but may not exceed the life expectancy of the Participant and his or her spousal Beneficiary..
- Designated Amount. A method of account liquidation of a specific dollar amount monthly until account funds are exhausted..
- Any other method agreed to by the Plan Administrator.

May I elect to roll over my account to another plan or IRA?

If you are entitled to a distribution, then you may elect whether to receive the distribution or to roll over the distribution to another retirement plan such as an individual retirement account ("IRA"). For this purpose, your Roth deferral account is treated separately.

What happens if I get divorced?

The Plan Administrator will honor a "qualified domestic relations order." A "qualified domestic relations order" is defined as a decree or order issued by a court that obligates you to pay child support or alimony, or otherwise allocates a portion of your assets in the Plan to your spouse, former spouse, child or other dependent. If a qualified domestic relations order is received by the Plan Administrator, all or a portion of your benefits may be used to satisfy the obligation. The Plan Administrator will determine the validity of any domestic relations order received. You and your beneficiaries can obtain from the Plan Administrator, without charge, a copy of the procedure used by the Plan Administrator to determine whether a qualified domestic relations order is valid.

**ARTICLE IV
DEATH BENEFITS**

What happens if I die while working for the Employer?

If you die while still employed by the Employer, your entire account balance will be used to provide your beneficiary with a death benefit.

Your beneficiary is the person or persons whom you designate on a form the Plan Administrator provides for this purpose. If you are married, your spouse will be the beneficiary of the death benefit, unless you elect to change the beneficiary.

In the absence of such a designation, or if no designated person is living when a benefit is payable, the Plan Administrator will direct the Plan Record Keeper in writing to pay any benefits payable under the Plan in the following order of priority:

- (a) Spouse, if living; otherwise
- (b) Natural or legally adopted children in equal shares, if living; otherwise
- (c) Parents in equal shares, if living, otherwise
- (d) Siblings in equal shares, if living, otherwise
- (e) The estate of the Participant.

In the event any amount is payable under the Plan to a person for whom a conservator has been legally appointed, the payment shall be distributed to the duly appointed and currently acting conservator, without any duty on the part of the Defined Contribution Committee to supervise or inquire into the application of any funds so paid.

When will the death benefit be paid to my beneficiary?

Your death benefit will be paid to your beneficiary. In the event of your death, the full amount credited to your account, including earnings and net gain or loss, less any federal or state income tax required to be withheld, shall be distributed according to the following requirements: (a) If distribution has commenced prior to your death, the balance of your account shall be paid to the beneficiary in accordance with the payment option you already selected so that the remaining distribution will be completed at least as rapidly as under the method of payment used before your death; or (b) If the distribution has not commenced prior to your death, a non-spousal beneficiary must either: (i) elect a distribution payable over a period not extending beyond the life expectancy of the non-spousal beneficiary, commencing no later than the end of the calendar year following the calendar year in which you died; or (ii) elect a single-lump sum payment to be made no later than the end of the calendar year which contains the fifth anniversary of the date of your death, otherwise, such single sum payment shall be made by the end of such calendar year.

A spousal beneficiary may elect a single lump sum payment or a distribution payable over a period not extending beyond the life expectancy of the spousal beneficiary. Distribution to the spousal beneficiary must commence on or before the later of: (i) the calendar year immediately following the calendar year in which you died; or (ii) the year you would have reached age 70 ½. See the Plan Administrator for further details.

You should immediately report any change in your marital status to the Plan Administrator. If you have specifically named your spouse as your beneficiary on a designation form, then the designation will be invalid upon your divorce.

What happens if I'm a participant, terminate employment, and die before receiving all my benefits?

If you terminate employment with us and subsequently die, your beneficiary will be entitled to any remaining benefits that you were entitled to as of the date of your death.

**ARTICLE V
IN-SERVICE DISTRIBUTIONS**

Can I withdraw money from my account while working for the Employer?

You may receive a distribution from the Plan prior to your termination of employment if you satisfy certain conditions. These conditions are described below. However, this distribution will reduce the value of the benefits you will receive when you retire. Any in-service distribution is made at your election and will be made in accordance with the forms of distribution available under the investment product you have selected or under the Plan.

You may receive a distribution if you have an "unforeseeable emergency," which is severe financial hardship resulting from an accident or illness to you, your spouse, dependent(s) or beneficiaries, a loss of property due to casualty, or other extraordinary and unforeseeable circumstances beyond your control.

You may request a distribution of up to your entire account once you reach age 70 1/2.

Qualified Reservist Distributions and Deemed Severance Distributions are permissible. Please contact the Plan Record Keeper for information regarding questions related to eligibility for a Qualified Reservist and/or Deemed Severance Distribution.

ARTICLE VI TAX TREATMENT OF DISTRIBUTIONS

What are my tax consequences when I receive a distribution from the Plan?

Generally, you must include any Plan distribution in your taxable income in the year in which you receive the distribution. The tax treatment may also depend on your age when you receive the distribution.

If you receive distribution of a Roth deferral, since you paid current federal income tax on the deferral contribution in the year of deferral, the deferrals are not subject to federal income taxes when distributed to you. The earnings on Roth deferrals are also tax free upon distribution if you receive a "qualified distribution" from your Roth deferral account.

In order to be a "qualified distribution," the distribution must occur after one of the following: (1) your attainment of age 59 1/2, (2) your disability, or (3) your death. In addition, the distribution must occur after the expiration of a 5-year participation period. The 5-year participation period is the 5-year period beginning on the calendar year in which you first make a Roth contribution to the Plan (or to another 401(k) plan or 403(b) plan if such amount was rolled over into the Plan) and ending on the last day of the calendar year that is 5 - years later. For example, if you made your first Roth deferral under this Plan on November 30, 2012, your participation period would end on December 31, 2016. This means that you could take a qualified distribution as early as January 1, 2017. It is not necessary that you make a Roth contribution in each of the five years.

If a distribution from your Roth deferral account is not a qualified distribution, the earnings distributed with the Roth deferrals will be taxable to you at the time of distribution (unless you roll over the distribution to another 457(b) plan, a Roth IRA, or a 401(k) plan that will accept the rollover). In addition, in some cases, there may be a 10% excise tax on the earnings that are distributed.

Can I reduce or defer tax on my distribution?

You may reduce, or defer entirely, the tax due on your distribution through use of one of the following methods:

(a) The rollover of all or a portion of the distribution you actually receive to a traditional Individual Retirement Account (IRA) or another eligible employer plan. This will result in no tax being due until you begin withdrawing funds from the traditional IRA or other eligible employer plan. The rollover of the distribution, however, MUST be made within strict time frames (normally, within 60 days after you receive your distribution). Under certain circumstances all or a portion of a distribution may not qualify for this rollover treatment. In addition, most distributions will be subject to mandatory federal income tax withholding at a rate of 20%. This will reduce the amount you actually receive. For this reason, if you wish to roll over all or a portion of your distribution amount, the direct rollover option described in paragraph (b) below would be the better choice.

(b) For most distributions, you may request that a "direct rollover" of all or a portion of the distribution to either a traditional Individual Retirement Account (IRA) or another employer plan willing to accept the rollover. A direct rollover will result in no tax being due until you withdraw funds from the traditional IRA or other qualified employer plan. Like the 60-day rollover, under certain circumstances all or a portion of the amount to be distributed may not qualify for this direct rollover, e.g., a distribution of less than \$200 will not be eligible for a direct rollover. If you elect to actually receive the distribution rather than request a direct rollover, then in most cases 20% of the distribution amount will be withheld for federal income tax purposes.

WHENEVER YOU RECEIVE A DISTRIBUTION THAT IS AN ELIGIBLE ROLLOVER DISTRIBUTION, THE PLAN ADMINISTRATOR WILL DELIVER TO YOU A MORE DETAILED EXPLANATION OF THESE OPTIONS. HOWEVER, THE RULES WHICH DETERMINE WHETHER YOU QUALIFY FOR FAVORABLE TAX TREATMENT ARE VERY COMPLEX. YOU SHOULD CONSULT WITH A QUALIFIED TAX ADVISOR BEFORE MAKING A CHOICE.

ARTICLE VII LOANS

Is it possible to borrow money from the Plan?

Yes. Loans are permitted in accordance with the Plan Loan Policy. If you wish to receive a copy of the Loan Policy, please contact the Plan Administrator.

ARTICLE VIII CLAIMS AND BENEFITS

Can the Plan be amended?

Yes. The Employer may amend the Plan at any time. No amendment will cause any reduction in the amount credited to your account.

What happens if the Plan is discontinued or terminated?

The Employer may terminate the Plan at any time. Upon termination, no more contributions may be made to the Plan. The Plan Administrator will notify you of any modification or termination of the Plan.

How do I submit a claim for Plan benefits?

You may file a claim for benefits by submitting a written request for benefits to the Plan Administrator. You should contact the Plan Administrator to see if there is an applicable distribution form that must be used. If no specific form is required or available, then your written request for a distribution will be considered a claim for benefits. In the case of a claim for disability benefits, if disability is determined by the Plan Administrator (rather than by a third party such as the Social Security Administration), then you must also include with your claim sufficient evidence to enable the Plan Administrator to make a determination on whether you are disabled.

Decisions on the claim will be made within a reasonable period of time appropriate to the circumstances. "Days" means calendar days. If the Plan Administrator determines the claim is valid, then you will receive a statement describing the amount of benefit, the method or methods of payment, the timing of distributions and other information relevant to the payment of the benefit.

For purposes of the claims procedures described below, "you" refers to you, your authorized representative, or anyone else entitled to benefits under the Plan (such as a beneficiary). A document, record, or other information will be considered relevant to a claim if it:

- was relied upon in making the benefit determination;
- was submitted, considered, or generated in the course of making the benefit determination, without regard to whether it was relied upon in making the benefit determination;
- demonstrated compliance with the administrative processes and safeguards designed to ensure and to verify that benefit determinations are made in accordance with Plan documents and Plan provisions have been applied consistently with respect to all claimants; or
- constituted a statement of policy or guidance with respect to the Plan concerning the denied treatment option or benefit.

The Plan may offer additional voluntary appeal and/or mandatory arbitration procedures other than those described below. If applicable, the Plan will not assert that you failed to exhaust administrative remedies for failure to use the voluntary procedures, any statute of limitations or other defense based on timeliness is tolled during the time a voluntary appeal is pending; and the voluntary process is available only after exhaustion of the appeals process described in this section. If mandatory arbitration is offered by the Plan, the arbitration must be conducted instead of the appeal process described in this section, and you are not precluded from challenging the decision under ERISA §501(a) or other applicable law.

**ARTICLE IX
GENERAL INFORMATION ABOUT THE PLAN**

There is certain general information that you may need to know about the Plan. This information has been summarized for you in this Article.

The full name of the Plan is The San Bernardino County 457(b) Deferred Compensation Plan.

This Plan was originally effective on January 27, 1975. The amended and restated provisions of the Plan become effective on January 1, 2020.

The Plan's records are maintained on a twelve-month period of time. This is known as the "Plan Year." The Plan Year begins on January 1 and ends on December 31.

Valuations of the Plan are generally made daily.

The Plan will be governed by the laws of the State of California.

Employer Information

Your Employer's name, address, business telephone number, and identification number are:

County of San Bernardino
157 West 5th Street
San Bernardino, California 92415
(909) 387-5787
95-6002748

The Plan allows other employers to adopt its provisions. Other Employers who have adopted the provisions of the Plan are:

Superior Court of California, County of San Bernardino
172 W. Third Street
San Bernardino, CA 92415
Human Resources (909) 521-3635
33-0939001

San Bernardino County Employees' Retirement Association
348 W. Hospitality Lane, Suite 100
San Bernardino, CA 92408
(909) 885-7980
95-6193238

San Bernardino County Board Governed Special Districts
address same as primary employer
Human Resources, Employee Benefits & Services (909) 387-5787
95-6002748

Local Agency Formation Commission - LAFCO
1170 W. Third Street, Unit 150
San Bernardino, CA 92415
(909) 388-0480
32-0422397

San Bernardino County Transportation Authority - SBCTA
1170 W. Third Street
San Bernardino, CA 92410
(909) 884-8276
33-0478781

Plan Administrator Information

The Employer is the Plan Administrator. The Plan Administrator is responsible for the day-to-day administration and operation of the Plan. For example, the Plan Administrator maintains the Plan records, including your account information, provides you with the forms you need to complete for Plan participation and directs the payment of your account at the appropriate time. If you have any questions about the Plan and your participation, you should contact the Plan Administrator. The Plan Administrator may designate other parties to perform some duties of the Plan Administrator, and some duties are the responsibility of the investment provider(s) to the Plan.

The Plan Administrator and the Defined Contribution Committee have the complete power to determine all questions arising in connection with the administration, interpretation, and application of the Plan (and any related documents and underlying policies), subject to applicable Federal Law and the Internal Revenue Code. Any such determination by the Administrator and Defined Contribution Committee is conclusive and binding upon all persons.

Plan Funding Medium

All money that is contributed to the Plan is held in custodial accounts and/or annuity contracts.

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

1170 West Third Street, Unit 150, San Bernardino, CA 92415-0490
(909) 388-0480 • Fax (909) 388-0481
lafco@lafco.sbcounty.gov
www.sbclafco.org

DATE: DECEMBER 9, 2020
FROM: SAMUEL MARTINEZ, Executive Officer
MICHAEL TUERPE, Senior Analyst
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: Agenda Item #10: LAFCO 3245 - Countywide Service Review for
Public Cemetery Districts

This staff report supersedes the staff report dated November 12, 2020 for this item.

RECOMMENDATIONS:

Staff recommends that the Commission take the following actions related to LAFCO 3245:

1. For environmental review, certify that the service review is exempt from environmental review and direct the Executive Officer to file the Notice of Exemption within five (5) days.
2. Accept and file the Countywide Service Review for Public Cemetery Districts which sets forth the written statements for the six determinations outlined in Government Code Section 56430 made by the Commission.
3. As outlined in the service review presented to the Commission, take the following actions for specific agencies/entities:
 - a) Direct LAFCO staff to continue to monitor the Barstow Cemetery District and return to the Commission at its May 19, 2021 meeting.
 - b) Direct LAFCO staff to continue to monitor the Twentynine Palms Public Cemetery District and return to the Commission at its May 19, 2021 meeting.
4. Adopt LAFCO Resolution No. 3319 reflecting the Commission's determinations and directions as required by Government Code Section 56430 and Commission policy.

NOVEMBER HEARING

The Commission determined to continue all items on the November 18, 2020 Agenda to the December 16, 2020 meeting due to an error on the prior agenda notice. Before the hearing was terminated, the Commission directed staff to include information regarding the embezzlement occurrences at Twentynine Palms Public Cemetery District. This information

has been incorporated in the Service Review (Attachment #1 to this staff report) on pages 7 and 62.

BACKGROUND:

The primary objective of this service review is to provide the Commission with recommendations to: (1) update the determinations from previous service reviews, (2) initiate sphere of influence updates where appropriate, and (3) monitor specific agencies where appropriate.

The Executive Summary summarizes the content of the review, identifies key facts found during the review's preparation, and lists recommendations for Commission action.

Agency Outreach

LAFCO staff conducted an extensive outreach effort with the agencies addressed in this report, including, but not limited to:

- *Questionnaire and Survey.* LAFCO requested each cemetery district to complete a questionnaire and a confidential online survey.
- *In Person Interviews.* LAFCO staff met individually with staffs from the Barstow Cemetery District and the Twentynine Palms Cemetery District. In addition, interviews were conducted with County Special Districts staff regarding public cemeteries within CSA 29 (Lucerne Valley Memorial Park) and CSA 82 (Searles Valley Cemetery).
- *Working Copy.* Each agency was provided with a working copy of its agency profile for review and input.
- *First Draft.* Each agency and stakeholder was provided with the first draft of the service review for review and comment. No comments were received. (Appendix A to this service review).
- *Notice of the LAFCO hearing.* LAFCO provided the required notice of the Commission hearing to all agencies, stakeholders, and interested parties, which is also noticed on the LAFCO website.
- *Staff report with final draft.* The staff report, outlining recommendations for Commission action, along with the final draft, was provided to all agencies, stakeholders, and interested parties, which is also available on the LAFCO website.

ENVIRONMENTAL CONSIDERATION:

The Commission's Environmental Consultant, Tom Dodson of Tom Dodson and Associates, has indicated his recommendation that LAFCO 3245 is exempt from California Environmental Quality Act (CEQA). This recommendation is based on the finding that the service review is not judged to pose any significant effect to the environment; therefore, the service review is exempt from the requirements of CEQA, as outlined in the State CEQA Guidelines, Section 15061(b)(3). Staff recommends that the Commission adopt the

“Common Sense” Exemption for the service review. A copy of Mr. Dodson’s analysis is included as Attachment #2 to this report.

ADDITIONAL DETERMINATIONS:

1. As required by State Law, notice of the hearing was provided through publication in newspapers of general circulation within the area, *The Leader* and *The Sun*. Individual notice was not provided as allowed under Government Code Section 56157 as such mailing would include more than 1,000 individual notices. As outlined in State Law and Commission Policy, in-lieu of individual notice the notice of hearing publication was provided through an eighth page legal ad.
2. As required by State law, individual notification of the hearing was provided to affected and interested agencies, County departments, and those agencies and individuals requesting mailed notice.
3. A first draft of the service review document was released to all affected agencies on November 4, 2020.
4. The final draft of the service review was released on November 10, 2020 to all parties as well as the Commission and posted on the LAFCO website.
5. The Commission continued the November 18, 2020 hearing to December 16, 2020. The revised staff report and service review were released on December 10, 2020 to all parties as well as the Commission and posted on the LAFCO website.
6. Comments from the public and any affected agency will be reviewed and considered by the Commission in making its determinations.

CONCLUSION:

Staff recommends that the Commission take the actions outlined on page 1 for the Countywide Service Review for Public Cemetery Districts and other actions for continued monitoring.

SM/MT

Attachments:

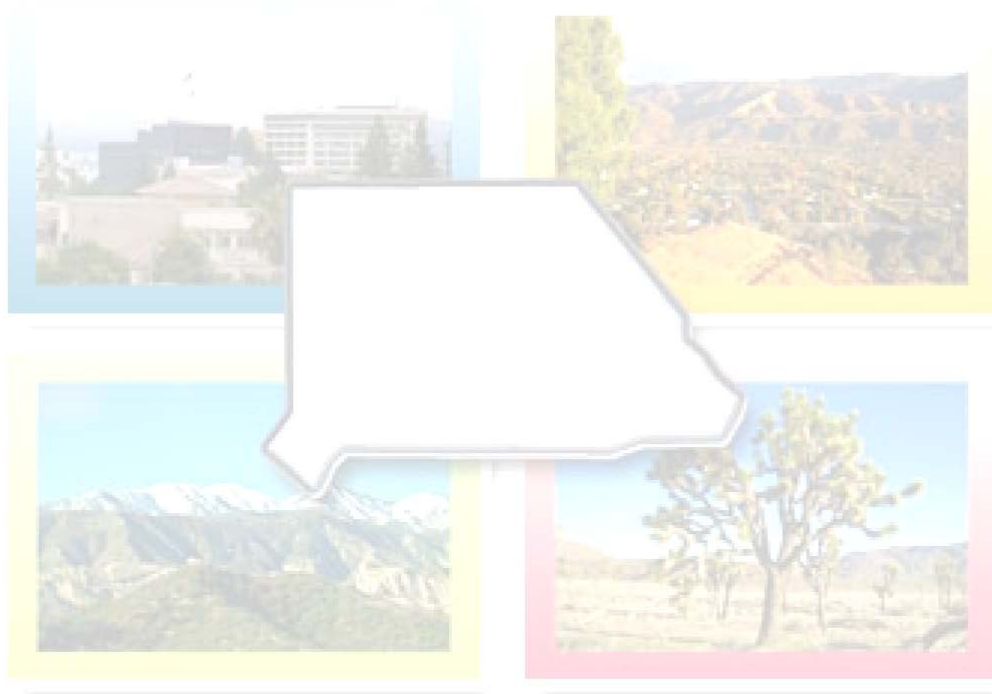
1. [Countywide Service Review for Public Cemetery Districts](#)
2. [Environmental Recommendation from Tom Dodson](#)
3. [Draft Resolution No. 3319](#)

Countywide Service Review for Public Cemetery Districts

Attachment 1

***Countywide Service Review for:
Public Cemetery Districts***

LAFCO 3245



LAFCO

for San Bernardino County

**Samuel Martinez, Executive Officer
Michael Tuerpe, Senior Analyst
Robert Aldrich, Consultant
Jeffrey Lum, former GIS Analyst**

Accepted and Filed _____

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Executive Summary

This service review consists of a countywide service review for public cemetery districts within San Bernardino County. It fulfills the service review requirements identified in the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code §56000 et. seq.).

LAFCO has a state-mandated role to review the ability of an agency to provide a service, if that service is efficient and effective, and if the agency is accountable for community service needs. In order to focus on LAFCO's mandate, this service review forgoes lengthy descriptions and explanations, instead referring to other documents, inserting footnotes, or providing further description in Appendix B.

Approach

The primary objective of this service review is to provide the Commission with recommendations to: (1) update the determinations from previous service reviews, (2) initiate sphere of influence updates where appropriate, and (3) monitor specific agencies where appropriate.

This Executive Summary summarizes the content of the report, identifies key facts found during the report's preparation, and lists recommendations for Commission action. Additionally, staff has identified an opportunity for the agencies and the cemetery community at large to consider – this does not have recommendations for Commission action.

The structure of this Executive Summary is as follows:

1. What Did We Learn?
2. Opportunity for At-Large Consideration
3. Barstow Cemetery District
4. County Service Area 29
5. County Service Area 82
6. Twentynine Palms Public Cemetery District

1. What did we Learn?

The following are items that LAFCO learned during the service review process. The items below are for all the audiences for this report (governing bodies, District staff, LAFCO Commission, and the public).

Cemetery Services - General

- 1-1** If not owned by a city or fraternal or beneficial association or society, public cemeteries are under the jurisdiction and control of the board of supervisors of the county in which they are situated.
- 1-2** Board of Trustees are appointed by the County Board of Supervisors.
- 1-3** The Board of Trustees can consist of either three or five members.
- 1-4** The County Board of Supervisors may appoint itself to the board of trustees and the Board of Supervisors may divest itself of that authority.
- 1-5** At the outset, the county treasurer shall act as the district treasurer, and shall receive no compensation for the receipt and disbursement of money of the district.
- 1-6** Cemetery districts, its board members, and officers, shall not engage in the business of selling monuments or markers. This is an absolute prohibition. However, cemetery districts are permitted to sell items that are necessary or convenient to internments such as burial vaults, liners, flower vases – excluding monuments or makers.
- 1-7** A cemetery district may lease unmarked land to a public agency for recreational use.
- 1-8** A district may convey a cemetery owned by the district to any cemetery authority.
- 1-9** Funds are to remain under the control of the county treasurer if annual revenues are less than \$500,000. Districts with revenues over \$500,000 can appoint their own treasurer and manage their own funds.

Economic/Staffing Challenges

- 1-10** Districts rely primarily upon property tax, special taxes, fees for service, and development mitigation fees, and have little opportunity to increase fees. The most significant financing constraints for services are legal requirements that limit property taxes and require voter approval of new taxes and tax increases. Because agency financial resources are primarily tied to property taxes, districts continue to be greatly affected by the Great Recession. Several agencies are exploring additional revenue sources to sustain service levels.
- 1-11** Throughout California, the rapidly escalating pension obligations are pushing some agencies to the brink of insolvency, forcing them to slash spending for not only safety services but other municipal services as well. To close budget gaps, a proliferation of

revenue measures has been presented to voters throughout California with mixed results. Land use planning has also been impacted as agencies look to promote development that maximizes property tax and/or sales tax revenues.

- 1-12** An agency may appear to be cash solvent, budget solvent, and long-run solvent, yet it may not be service-level solvent. Service level solvency is the ability of an agency to fund the services at levels that its citizens desire. An agency may appear to be financially solvent, but it may not be able to support general activities at an adequate level. An increase in service level or large expense would affect cash, budget, or long-run solvency.
- 1-13** Increasing pension payments as a percentage of general fund spending will affect an agency's ability to fund operations and capital investment of all general fund activities, to include but not limited to fire protection, emergency medical services, law enforcement, park and recreation, streetlighting, roads, social services, etc.... In other words, increasing pension and OPEB payments affect service level solvency.

2. Opportunity for At-Large Consideration

LAFCO encourages the cemetery districts to consider or further the following opportunity:

- 2-1** Tell your own story. Cemetery districts are relatively unknown to the community. It is important for each district to tell their own story so their constituents and other elected officials can better understand how these important services are provided and governing bodies can make more informed decisions.

3. Barstow Cemetery District

- 3-1** LAFCO concludes that the Barstow Cemetery District:
- a. From an organizational perspective, has historically lacked the proper foundations on governance, and the financial resources to adequately fund bookkeeping and the overall operations of a special district. In response to the First Draft, the District identifies that it is currently searching for a financial advisor.
 - b. Experienced frequent changes in personnel, as well as limited financial resources, perpetuating the District's ongoing operational issues.
 - c. Operated without legal counsel until October 2020, exposing the District to unnecessary risk. In response to the First Draft, the District identifies that it has retained legal counsel.
 - d. Is making strides to organize the office records, and there is movement towards digitization of the plot mapping.

- e. Infrastructure is adequate, in light of revenue and operating constraints, and irrespective of the water and well issues. As for the water well issues, in response to the First Draft, the District states that Mojave Water Agency has offered their experience and professional resources to implement a plan for significant water reduction along with grounds beautification.
 - f. As of October 1, 2020, the most recent available audit for the District is for FY 2016/17. Therefore, this service review does not include a complete and accurate financial analysis for the District.
 - g. General Fund is operating on a running deficit.
 - h. The circumstances identified by the 2013/14 Grand Jury have returned.
 - i. Current auditor has made so many ledger and journal entries that it can no longer conduct an independent audit, as its role shifted from independent auditor to bookkeeper.
 - j. Endowment Fund appears to be healthy, with annual increases in the fund balance and relatively minor transfers out.
- 3-2** LAFCO recommends that the Barstow Cemetery District should focus on the implementation of governance and financial policies and practices.
- 3-3** LAFCO determines that continued monitoring take place for the Barstow Cemetery District. The first status report is scheduled for LAFCO's May 19, 2021 meeting.

4. County Service Area 29

- 4-1** This review has no conclusions or recommendations for County Service Area 29.

5. County Service Area 82

- 5-1** For CSA 82, LAFCO concludes that:
- a. Should there be a discontinuance of water or electricity service by Searles Valley Minerals, CSA 82, as the responsible and liable entity for the cemetery, would be responsible for providing a mechanism to assure water and electrical service.
 - b. Should the Searles Valley Cemetery Association cease capability to provide operations and maintenance of the cemetery, then the County Board of Supervisors would assume control of the cemetery operations and management.

- c. CSA 82 has not conducted an inspection of the cemetery or its operations for some time, thereby exposing the County to any material weaknesses or significant deficiencies, should any exist. The County is currently conducting an operational inspection of the Searles Valley Cemetery Association practices and procedures. The County conducted its most recent onsite facility inspection in October 2020.

5-2 LAFCO recommends that:

- a. The County renew the agreement with the Searles Valley Cemetery Association prior to the agreement's termination in August 2022, to include the clause whereby the County indemnifies the Cemetery Association. In response to the working copy of this service review, County Special Districts indicates that it intends to renew the agreement with the Searles Valley Cemetery Association.
- b. The County periodically inspect the cemetery and its operations. In response to the working copy of this service review, County Special Districts identifies that it has placed the cemetery into its quarterly facility routine inspections and that it will generate and file a quarterly formal report.

6. Twentynine Palms Public Cemetery District

6-1 LAFCO concludes that:

- a. The Twentynine Palms Cemetery District suffers from historical governance and operational challenges resulting in lack of continuity, training, and numerous structural deficiencies due to neglect and maintenance backlog. The two previous general managers of the Twentynine Palms Cemetery District were terminated with cause based on evidence of misconduct pertaining to suspected embezzlement and fraud. The successive general managers were terminated in 2012 and 2020, respectively. In both cases, according to court records, the defendants pleaded guilty to embezzlement. Restitution was ordered and satisfied in the first case and is pending for the second case.
- b. Since Spring 2020, current District staff have commenced with governance training, general upkeep, correcting structural deficiencies, and health and safety improvements.

6-2 LAFCO determines continued monitoring take place for the Twentynine Palms Public Cemetery District, with the first status report scheduled for LAFCO's May 19, 2021 meeting.

Part I: Introduction

SECTION 1: The Service Review Process

Purpose of Report

The California State Legislature established the Public Cemetery District Law in 1909. It authorized the creation of public cemetery districts to assume ownership and operation of burial grounds, and to provide interment services from fraternal, pioneer, religious, social and other organizations that were unable to maintain those cemeteries.

Cemetery districts give communities the means to publicly finance cemetery operations, and to provide respectful and reasonably priced interment services, particularly in rural or semi-rural areas of the state. Public cemeteries in California are among the earliest and oldest public facilities in the state. They did not exist before the public cemetery district law was enacted in 1909.

Within San Bernardino County, there are two independent public cemetery districts - the Barstow Cemetery District and the Twentynine Palms Cemetery District, each with an independent governing Board of Trustees. In addition, the County is home to two additional dependent cemetery districts - one within County Service Area 82 (Searles Valley) and one within County Service Area 29 (Lucerne Valley). Both are under the jurisdiction and control of the San Bernardino Board of Supervisors.

Report Scope

The service review fulfills the requirements as identified in the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code §56000 et. seq.). In general, service reviews evaluate how agencies currently provide municipal services within their service area and the impacts on those services that may occur over the long-term due to population growth and other issues. While most reports limit an agency evaluation to its current boundary, service reviews take a broader view and explore, where appropriate, a full range of service provision options that are not limited by existing agency boundaries.

Given the countywide scale of this review, this approach provides value to the Commission, the affected agencies, and the public by focusing on those areas and agencies that face significant challenges in the short and long-term.

Report Objective

At a minimum, service reviews require LAFCO to prepare written statements of six determinations:

1. Growth and population projections for the affected area;
2. Location and characteristics of any disadvantaged unincorporated communities within or contiguous to the sphere of influence;

3. Present and planned capacity of public facilities, adequacy of public services, and infrastructure needs or deficiencies;
4. Financial ability of agencies to provide service;
5. Status of, and opportunities for, shared facilities; and,
6. Accountability for community service needs, including governmental structure and operational efficiencies.

LAFCO may then use this service review as a basis to:

- Initiate a focused service review for an agency or defined area.
- Continue to monitor an agency. Periodic updates will be presented to the Commission until the Commission determines otherwise.
- Initiate agency sphere of influence updates, where warranted, to help address identified service deficiencies. “Sphere of influence” means a plan for the probable physical boundaries and service area of a local agency, as determined by the Commission (§56076). Spheres are designed to both proactively guide and respond to the need for the extension of infrastructure and delivery of municipal services to areas of emerging growth and development. The requirement for LAFCOs to conduct service reviews was established to acknowledge the importance of spheres, and recognize that periodic updates of agency spheres should be conducted with the benefit of current information available through service reviews.

Methodology

San Bernardino LAFCO conducted its initial round of service reviews on a community-by-community basis, consistent with its sphere of influence policies, addressing the full range of public services. In April 2016, in an effort to more efficiently conduct the mandatory service reviews, the Commission modified the scope of all of the second round service reviews to address individual services on a countywide basis. The first round exposed us to the community as a whole and how the organizations operate. The second round is to take a holistic approach to the service, while updating agency reviews from the first round.

Agency Outreach

LAFCO staff conducted an extensive outreach effort with the agencies addressed in this report, including, but not limited to:

- *Questionnaire and Survey.* LAFCO requested each cemetery district to complete a questionnaire and a confidential online survey.
- *In Person Interviews.* LAFCO staff met individually with staffs from the Barstow Cemetery District and the Twentynine Palms Cemetery District. In addition, interviews

were conducted with County Special Districts staff regarding public cemeteries within CSA 29 (Lucerne Valley Memorial Park) and CSA 82 (Searles Valley Cemetery).

- *Working Copy.* Each agency was provided with a working copy of its agency profile for review and input.
- *First Draft.* Each agency and stakeholder was provided with the first draft of the service review for review and comment. No comments were received. (Appendix A to this service review).
- *Notice of the LAFCO hearing.* LAFCO provided the required notice of the Commission hearing to all agencies, stakeholders, and interested parties, which is also noticed on the LAFCO website.
- *Staff report with final draft.* The staff report, outlining recommendations for Commission action, along with the final draft, was provided to all agencies, stakeholders, and interested parties, which is also available on the LAFCO website.

Sources:

This service review relies upon all the cemetery districts in the county, a review of plans and studies of the said agencies and associations within the county, and a review of the literature. LAFCO staff also utilized the use of GIS mapping and aerial imagery to identify population growth areas and disadvantaged communities. LAFCO conducted interviews in the field with specific agencies.

Report Organization

Part I – Introduction

- **Section 1** – The Service Review Process
- **Section 2** – What is a Public Cemetery District?

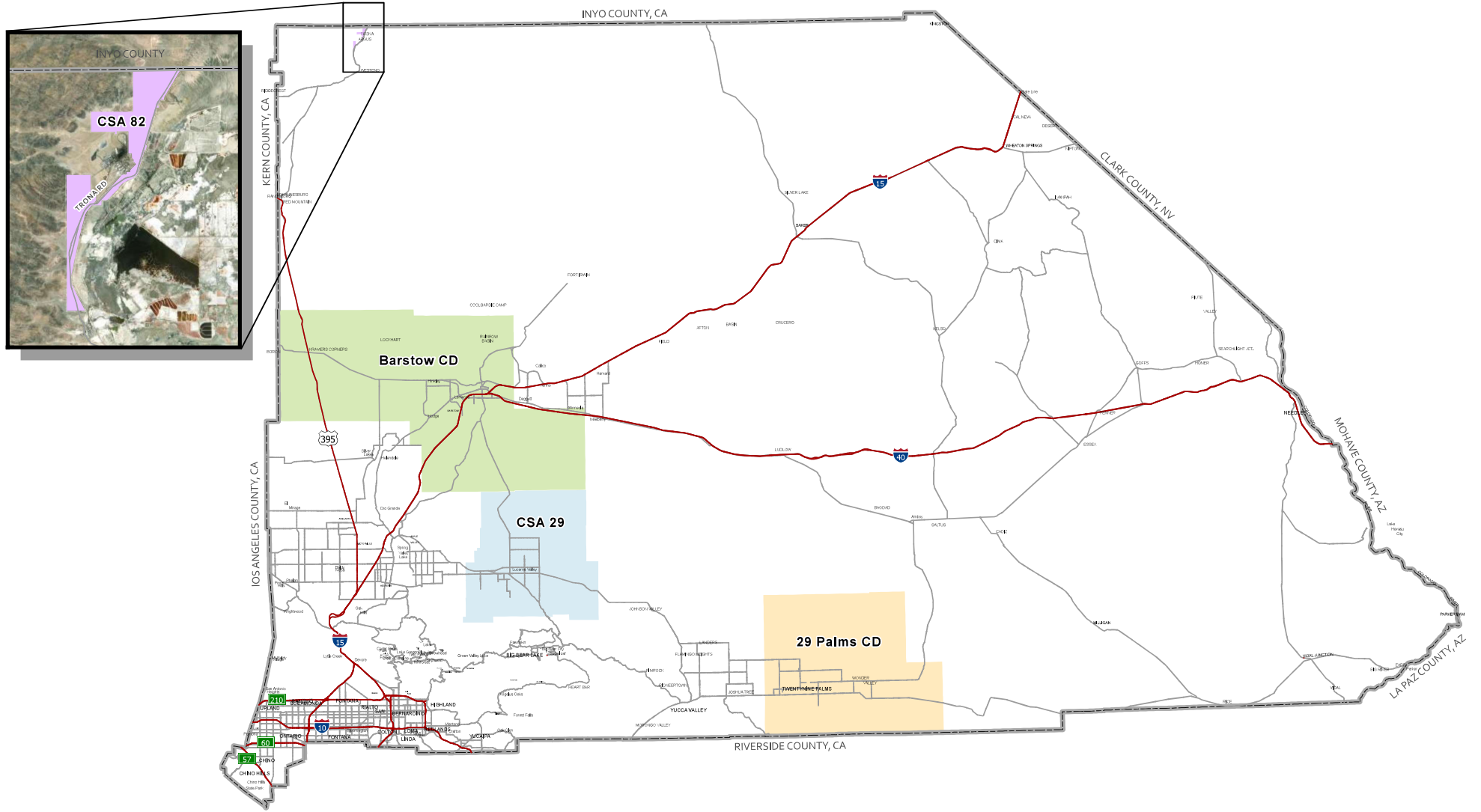
Part II – District Service Reviews

Appendix A – Comments to the First Draft with LAFCO Staff Responses

Appendix B – Acronyms and Definitions

Appendix C – Primers

The map on the next page displays the four cemetery districts within the county.



San Bernardino County Cemetery Service Providers Overview



Disclaimer: The information shown is intended to be used for general display only and is not to be used as an official map.

0 10 20 40 Miles



- Barstow Cemetery District
- County Service Area 29
- County Service Area 82
- Twentynine Palms Cemetery District

Author: Jeffrey Lum Map Created: 8/11/2020

Part I: Introduction

SECTION 2: What is a Public Cemetery District?

Cemetery districts are authorized to provide standard cemetery functions, including land acquisition, cemetery maintenance, interment/disinterment services and grounds keeping. In private religious and fraternal cemeteries, the costs of these services are reflected entirely in the prices of grave spaces, burial fees, and charges against endowment funds. Public cemetery districts finance these services through property taxes and fees for services (i.e. the sale of burial plots, charges for openings, and setting of markers).

Public cemeteries are among the earliest and oldest public facilities in the state and were in existence prior to the enactment of the first public cemetery district law in 1909. Public cemetery districts are organized and have powers pursuant to Division 8 of the California Health and Safety Code relating to cemeteries and specifically pursuant to the Public Cemetery District Law (Health and Safety Code §9000 et seq.). This law was revised in its entirety and re-codified effective January 1, 2004.

Public cemetery districts are special districts that are legally separate from any other unit of local government. A governing body composed of three or five members is solely responsible for all aspects of district operations. Trustees, who must be registered voters within the district, are appointed by county board of supervisors to fixed, four-year terms of office. Alternatively, a board of supervisors can appoint itself as the board of trustees. Today, there are 253 public cemetery districts in California, including four districts in San Bernardino County (two independent and two dependent). Cemetery districts rank fourth in the total number of special districts in California, behind water districts, fire districts and community services districts.

Benefits to Residents Residing within a Cemetery District

The key benefit for residents residing in a public cemetery district is access to low-cost burial and, if available, cremation services. The Health and Safety Code prescribes those who may be interred in district cemeteries. The deceased should have been a resident or taxpayer of the district, or former resident or taxpayer of the district who purchased lots prior to leaving the area or selling his/her land. Family members are eligible for interment but are limited to spouses, grandparents, children and siblings. The law mandates that districts have local policies and fees for non-residents.

Fiscal Challenges Facing Public Cemetery Districts

Unlike most special districts, cemetery districts do not hold monopoly service authority. Private cemeteries, both religious and secular, can and do compete with public cemeteries particularly in more urbanized areas. Therefore, existing cemetery districts face market pressures usually not associated with the delivery of most other government services. As a result, the formation of new public cemetery districts has been uncommon in California.

Relationship between Counties and Public Cemetery Districts

From a governance and financial perspective, public cemetery districts have a unique relationship with counties. For example:

- Board trustees of cemetery districts are appointed by a county board of supervisors to fixed, four-year terms of office. Alternatively, a board of supervisors can appoint itself to be the board of trustees.
- For those cemetery districts with annual revenues of \$500,000 or less, the county treasurer serves as the district treasurer and receives no compensation for the receipt and disbursement of money of the district. (If a district has total annual revenues of \$500,000 or greater, the district may withdraw its funds from control of the county treasurer, appoint its own district treasurer, and manage its own funds.)
- A board of supervisors, at the request of the district board of trustees, may increase or decrease the number of members of the board of trustees.
- A cemetery district may request the purchasing agent of the county to make purchases of materials, equipment, or supplies on its behalf or may request the purchasing agent of the county to contract with persons to provide authorized projects, services, and programs.
- Existing law allows special districts to get cash advances from the county treasurer to pay authorized expenses. Government Code §53961 allows cemetery districts to have larger revolving funds with the county treasurer (up to 110 percent of one-twelfth of the district's adopted budget for that fiscal year) than most special districts.

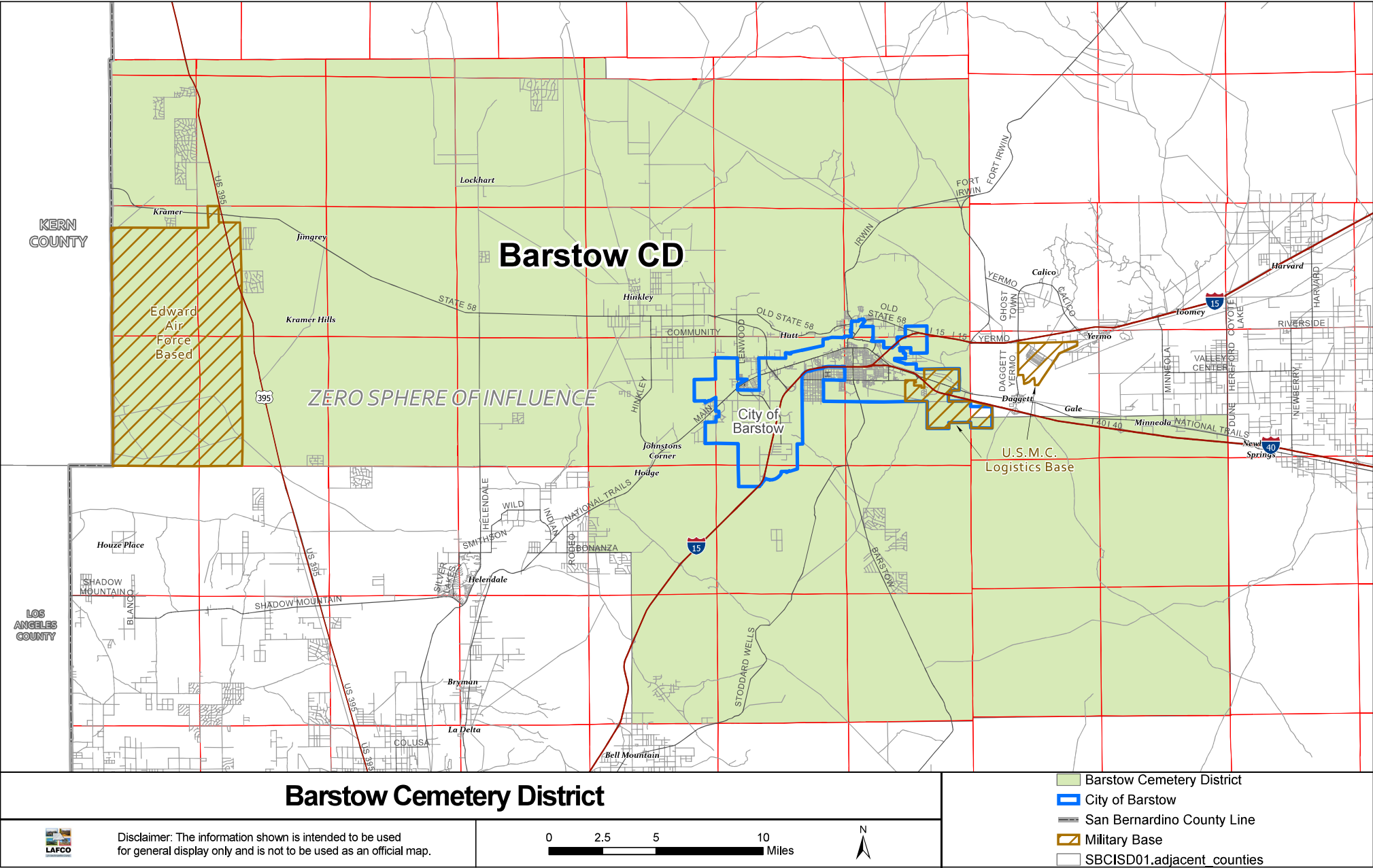
PART II:
District Profiles and Reviews

Section 1: Barstow Cemetery District

Section 2: County Service Area 29

Section 3: County Service Area 82

Section 4: Twentynine Palms Public Cemetery District



1. LAFCO Conclusion and Recommendation

LAFCO concludes that the Barstow Cemetery District:

- *From an organizational perspective, has historically lacked the proper foundations on governance, and the financial resources to adequately fund bookkeeping and the overall operations of a special district. In response to the First Draft, the District identifies that it is currently searching for a financial advisor.*
- *Experienced frequent changes in personnel, as well as limited financial resources, perpetuating the District's ongoing operational issues.*
- *Operated without legal counsel until October 2020, exposing the District to unnecessary risk. In response to the First Draft, the District identifies that it has retained legal counsel.*
- *Is making strides to organize the office records, and there is movement towards digitization of the plot mapping.*
- *Infrastructure is adequate, in light of revenue and operating constraints, and irrespective of the water and well issues. As for the water well issues, in response to the First Draft, the District states that Mojave Water Agency has offered their experience and professional resources to implement a plan for significant water reduction along with grounds beautification.*
- *As of October 1, 2020, the most recent available audit for the District is for FY 2016/17. Therefore, this service review does not include a complete and accurate financial analysis for the District.*
- *General Fund is operating on a running deficit.*
- *The circumstances identified by the 2013/14 Grand Jury have returned.*
- *Current auditor has made so many ledger and journal entries that it can no longer conduct an independent audit, as its role shifted from independent auditor to bookkeeper.*
- *Endowment Fund appears to be healthy, with annual increases in the fund balance and relatively minor transfers out.*

LAFCO recommends that:

- *The Barstow Cemetery District should focus on the implementation of governance and financial policies and practices.*
- *Continued monitoring take place for the Barstow Cemetery District. The first status report is scheduled for LAFCO's May 19, 2021 meeting.*

2. Overview and Brief History

The Barstow Cemetery District is an independent special district formed in 1947 following approval by the County of San Bernardino Board of Supervisors and the electorate. The District's boundaries have not changed since its formation and comprise approximately 1,111 square miles. The District's service area includes the City of Barstow and territory southwest of Fort Irwin; east of Daggett and Yermo communities; north of the Victor Valley communities of Apple Valley, Helendale and Victorville; and east of the Kern County line. The District's governing board consists of five trustees appointed at-large to four-year staggered terms.

Currently, the Barstow Cemetery District manages one cemetery - Mountain View Memorial Park - located at 37067 Irwin Road, Barstow. Mountain View Memorial Park started as a "for profit" cemetery in the 1930s and, as referenced above, transitioned to a public cemetery managed and operated by an independent special district in 1947. According to the Memorial Park's website, there are approximately 8,900 interments in this cemetery.

3. Boundary and Sphere of Influence Review

This review identifies no boundary or sphere of influence matters for the Barstow Cemetery District.

4. Previous Service Review and Other Reports

A. 2008 Service Review

LAFCO conducted the first service review for the Barstow Cemetery District in 2008. At that time, LAFCO staff raised concerns regarding the District's fiscal health, lack of a master plan, and non-compliance with providing annual audits and budgets to the State Controller and County Auditor. Based on the determinations in the 2008 service review, LAFCO designated a zero sphere of influence for the District and stated its position that either the County of San Bernardino or the City of Barstow succeed to the cemetery's operations. The Commission also referred the matter to the County Auditor for further investigation of the District's financial matters with notification to the Grand Jury.¹

B. San Bernardino County Grand Jury

The 2009/10 San Bernardino County Grand Jury reviewed the District's operations, expenditures, and bookkeeping methods utilized by the District. The 2009/10 Grand Jury Report issued findings and assigned recommendations to improve the District's operations to LAFCO, County Special Districts Department, County Auditor, and the

¹ http://www.sbcounty.gov/uploads/lafco/proposals/servicereviews/barstow/Reso_3039_LAFCO_3034.pdf

District.² As required by law, each agency provided a response to the Grand Jury's recommendations.³ Over the next year, the following actions occurred:

- Representatives from LAFCO and County Special Districts Department attended the District's November 10, 2010 meeting to discuss the findings and recommendations from the Grand Jury Report.
- Following the November 10, 2010 District meeting, County Auditor and LAFCO staffs assisted District staff in an effort to address deficiencies in its operations.

The 2013/14 Grand Jury reviewed the 2009/10 recommendations to determine the District's compliance.⁴ The 2013/14 report conclusion states that the District's operation has improved since the 2009/10 Grand Jury review. However, two recommendations were outstanding:

- (1) The Barstow Cemetery needs to again look into the possibility of drilling its own well for water.

The District offered the following response to the 2013/14 Grand Jury:

"The District received a grant from former First District Supervisor Brad Mitzelfelt in the amount of \$31,000.00 for this project and construction of the new well was started in May 2013. According to the [former] General Manager, the electrical wiring should be installed within the next two months and the new well will be up and running."

On LAFCO's September 25, 2020 site visit, District staff impressed that the well has not worked since the time of their employment, roughly 2017. The use of the \$31,000 grant is unclear to District staff.

- (2) The Barstow Cemetery needs to contact the California Association of Special Districts and consider joining so they can obtain health insurance and workers compensation at a considerable savings.

5. Growth and Population Projections

The District's population is primarily concentrated in the Barstow area. Outside of Barstow, the population is relatively sparse. As shown in Figures 1-1 and 1-2 below, the population estimates for 2012 and 2040 do not identify any significant growth areas.

² <https://wp.sbcounty.gov/grandjury/wp-content/uploads/sites/15/2019/10/2009-10-Grand-Jury-Final-Report.pdf> (beginning on page 51)

³ <https://wp.sbcounty.gov/grandjury/wp-content/uploads/sites/15/2017/10/responses0910.pdf> [PDF pages 6-7 (County Special Districts Department), 9 (County Auditor), 20-21 (LAFCO), 28-29 (Barstow Cemetery District)]

⁴ <https://wp.sbcounty.gov/grandjury/wp-content/uploads/sites/15/2017/10/2013-14-Final-Report.pdf> (beginning on page 31)

Figure 1-1: 2012 Population

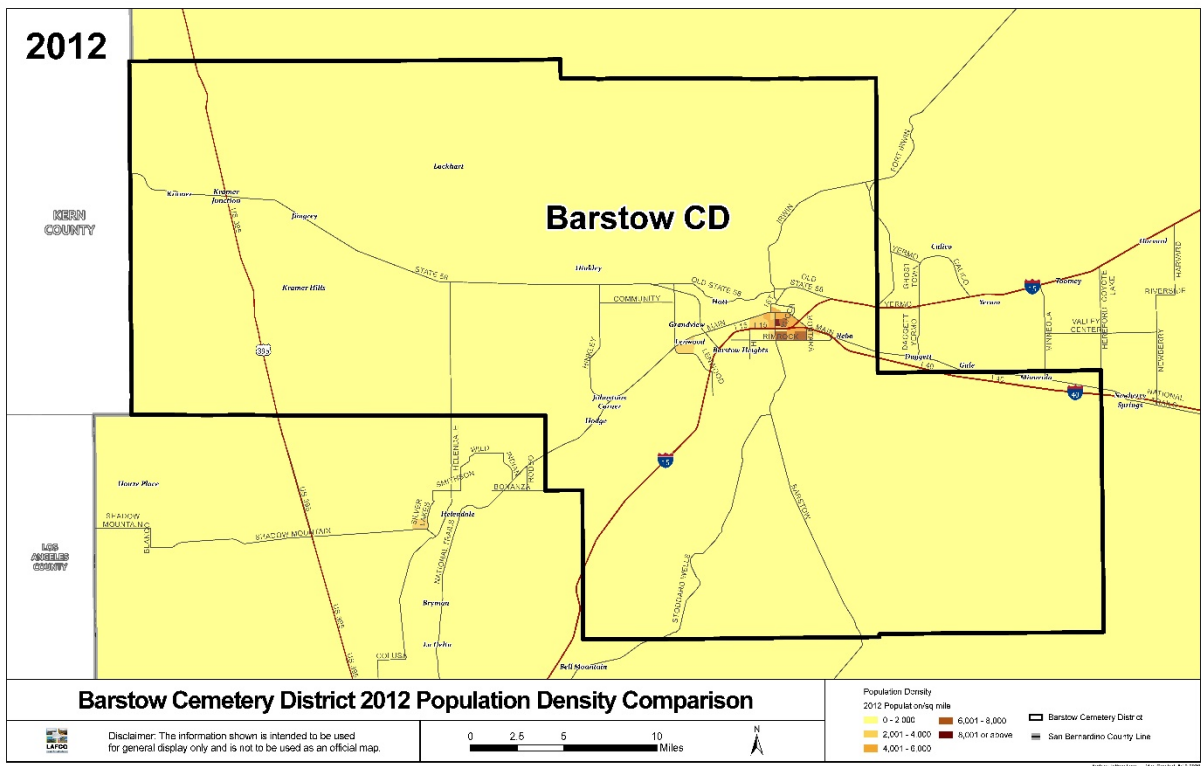
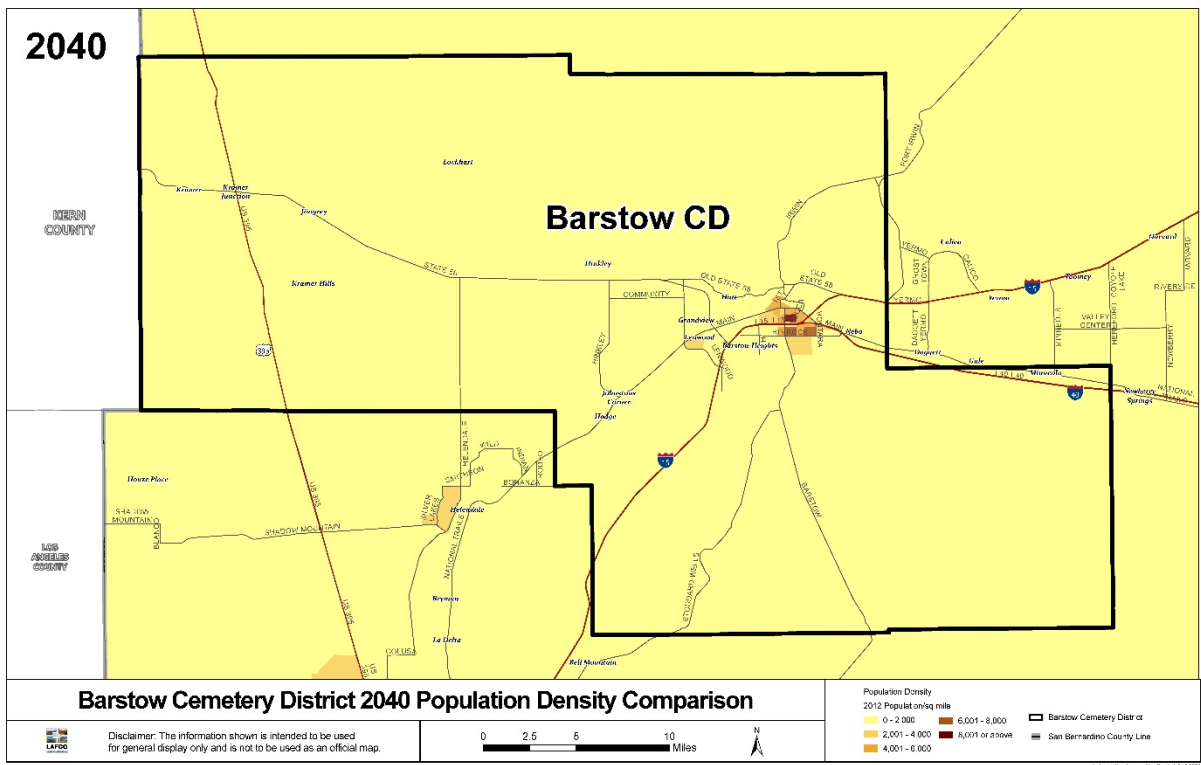


Figure 1-2: 2040 Population

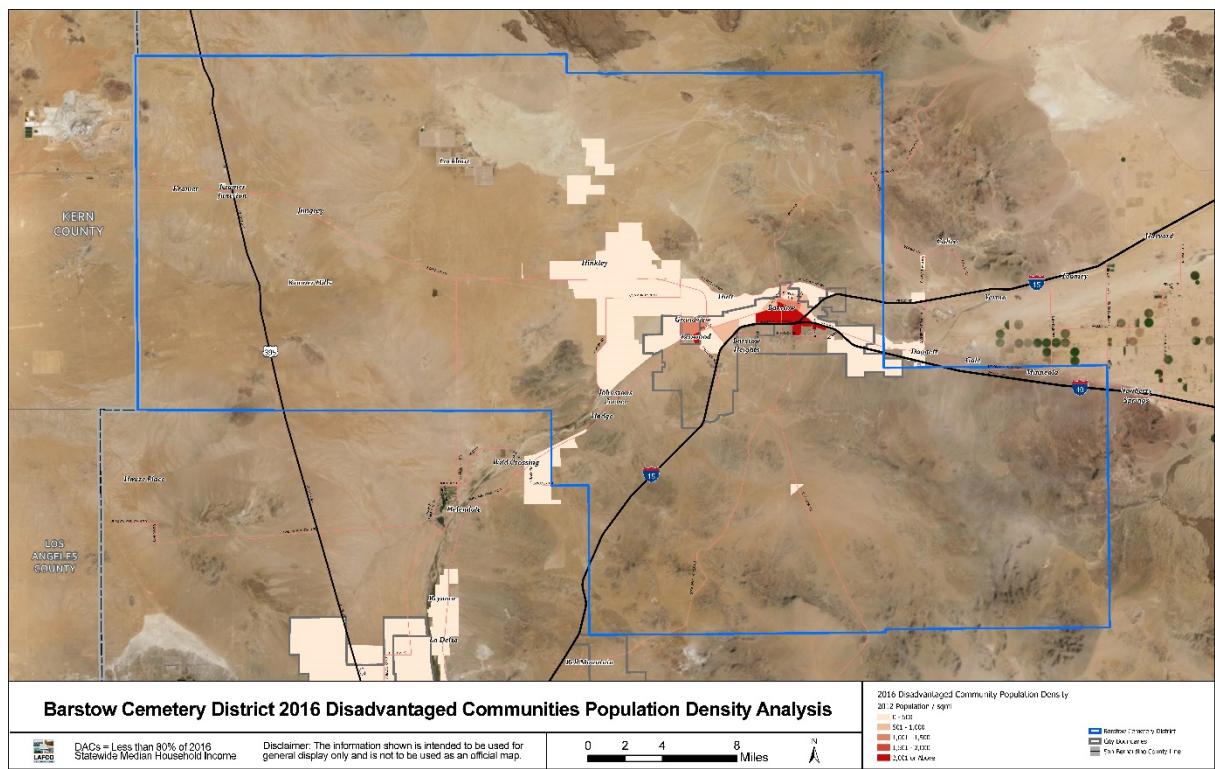


6. Disadvantaged Communities, Location and Characteristics

State law requires various entities (i.e. LAFCO, cities and counties, and water agencies) to, in some manner, identify disadvantaged communities, which can be located in both incorporated and unincorporated areas. More information on the laws and requirements regarding Disadvantaged Communities is available in [Appendix C: Primers](#) to this report.

The figure below identifies the location of the disadvantaged communities with the District overlay in blue outline. For this region, LAFCO uses a density factor of 1,500 people or more per square mile.

**Figure 1-3:
Disadvantaged Communities with Population Density**



**Table 1-1:
Characteristics of Disadvantaged Areas within Barstow CD**

Population	11,853	Median Household Income	\$38,529
Households	4,249	Per Capita Income	\$19,162
Median Age	30.7	Unemployment Rate	19.8%

Source: ESRI, August 2020

7. Facilities and Services

The District completed a LAFCO questionnaire regarding governance and operations. The District's response is included at the rear of this agency's profile.

A. Present and Planned Capacity of Public Facilities

The District owns three parcels (one is vacant) comprising 22 acres. Two parcels contain the memorial park on 17 acres, and the vacant parcel comprises five acres. The site address of the memorial park—operated in the name of Mountain View Memorial Park—is 37067 Irwin Road, which is approximately one mile outside the City of Barstow corporate limits but within its sphere of influence.

According to the District, there are roughly 100 internments a year, with roughly 8,900 internments to date and 13 acres that are unmarked.

B. Adequacy of Public Services

The District board hired the current general manager in August 2016. She inherited an organization that lacked the proper foundations on governance, and the financial resources to adequately fund bookkeeping and the overall operations of a special district.

Frequent changes in personnel, as well as limited financial resources, have perpetuated the District's ongoing operational issues. Records, both internment and financial, have been subject to the methodology of the staff at that time, only for new records to have a different filing methodology. During LAFCO's site visit, the general manager explained and showed the disparate record keeping methods of previous administrations. The current general manager further explained and showed how she has reorganized the on-site internment records into a comprehensive methodology.

However, the available technology is not sufficient to conduct an efficient business. Hand-written plot maps remain in vellum/Mylar paper form at the District office with additional plot information housed in a DOS-based computer program. The District attempted to move towards a more comprehensive digital solution by contracting with a firm from Ohio to upgrade the District's existing BSM (Burial Space Manager) system into a modern product that incorporates plot information with plot mapping. LAFCO staff understands that this project has never been completed and it is unclear to District staff why the contractor has not delivered the program. Nonetheless, some type of conversion to a more user-friendly system would move toward an improvement in public service.

According to the District, it does not use legal counsel for its operations. However, for litigation matters, the District either hires legal counsel or has been covered by its insurance company. LAFCO's position is that operating without legal counsel exposes the District to unnecessary risk, which could lead to the need to have legal

counsel for representation. Since the August 2016 hiring of the current general manager, she estimates that there have been at least six litigation matters regarding prior employee errors regarding plots. In response to the First Draft, the District identifies that it has retained legal counsel beginning October 2020.

In sum, the historical level of service in light of revenue and operating constraints is not adequate. Strides have been made to organize the office records, and there have been efforts to digitize plot mapping. The availability of resources (fiscal, adopted service or work plans) are not present to provide adequate service.

Considering the income levels of existing households and the need for the public cemetery, efforts should focus on governance and training to build a proper foundation for future success.

C. Infrastructure Needs and Deficiencies

As noted previously by LAFCO in 2008 and the Grand Jury in 2009/10 and 2013/14, the District irrigates with domestic water and not from a well. The District identified that of its four wells, three do not work, and one is almost dry and will need to undergo well deepening. Domestic water from the Golden State Water Company is costlier than pumping untreated water from a well. The District pays the Water Company on average \$10,000 to \$20,000 per month, depending on the season. The District struggles to pay for its water consumption, and as of this writing, the District owes the Water Company roughly \$80,000.

As identified as far back as 2008 service review, the District should repair its wells and/or convert to xeriscape landscaping. The District discussed the possibility with Golden State Water Company of extending a line from the Water Company's water source to the cemetery, and it was deemed not feasible. The District then turned to the Mojave Water Agency ("MWA") to seek assistance on a solution. As of this writing, MWA is partnering with the Mojave Desert Resource Conservation District to assist the District in the possible xeriscape conversion.

Unfortunately, as discussed in the financial review portion below, the General Fund is operating on a running deficit. Any major capital improvements, to include xeriscaping, would mostly need to come from a source other than the District. In response to the First Draft, the District states that Mojave Water Agency has offered their experience and professional resources to implement a plan for significant water reduction along with grounds beautification.

Irrespective of the well and water issues, the condition of infrastructure in light of revenue and operating constraints is adequate.

8. Financial Ability to Provide Services

To make the required service review determination of an agency's financial ability to provide services, LAFCO referenced the agency's own financial documents (audits, budgets). Additionally, LAFCO's Fiscal Indicators Program shows fiscal trends for an

agency and allows for an agency comment.⁵⁵ The information below incorporates all of the information and sources identified above.

As of October 1, 2020, the most recent available audit for the District is for FY 2016/17. Therefore, this service review does not include a complete and accurate financial analysis for the District. The District has provided bookkeeper statements for FY 2017/18 and 2018/19.

A. Overview

Revenues are comprised of service fees, the District's share of the general property tax levy, and interest. The vast majority of the revenues are derived from service fees. The District utilizes the County for payroll and a local bank for paying invoices.

The 2009/10 Grand Jury recommended that the District hire a bookkeeper, keep monthly financial statements and prepare an annual budget. Whereas the 2013/14 Grand Jury stated that this recommendation was accomplished, the circumstances returned. During LAFCO's site visit on September 25, 2020, District staff stated that its current auditor had made so many ledger and journal entries that it could no longer conduct an independent audit, as its role shifted from independent auditor to bookkeeper. Therefore, the District should focus on the implementation of appropriate financial practices. In response to the First Draft, the District identifies that it is currently searching for a financial advisor.

B. Funds

The most recent audit for the District is for FY 2016/17. This portion of the report provides a comparative analysis for the six most-recent audits with a five-year variance is below (FY 2011/12 through FY 2016/17).

General Fund

The fund labeled "General" is the government's primary operating fund. It accounts for all financial resources of the general government, except those required to be accounted for in another fund.

A trend of operating gains or deficits is a key indicator of the financial health of an agency. Table 1-2 shows the General Fund balance for the period of FY 2011/12 through FY 2016/17. The fund balance has decreased by 86% within five years with Total Revenues decreasing by 13% and Total Expenditures increasing by 2%. Expenditures generally exceed revenues, resulting in an annual decline in fund balance. The General Fund balance decline of 86% from \$527,365 to \$75,741 is of serious concern. During this period, annual expenditures varied slightly with some revenue fluctuation. This means that historically, revenues have not been adequate to support operations. For example, the District historically has not had adequate funds to cover payroll at the beginning of the

⁵⁵ <http://sbclafco.org/FiscalIndicators/IndependentDistricts/TwentyNinePalmsCemeteryDistrict.aspx>

fiscal year. In turn, the County has fronted the payroll disbursement with the credited amount deducted from the District's proceeds of property taxes.

For the year ended June 30, 2017, the District reported an ending fund balance of \$75,741, a decrease of \$129,343 from the prior year. The Management Discussion and Analysis section of the audit states that, "This decrease was due to an increase due in overall expenses." At this time, any unexpected expenses could further challenge the General Fund, prompt service reduction, fee increases, or cause the General Fund to enter into negative territory and result in a running deficit. In short, the District lacks the availability of reasonable emergency reserves.

**Table 1-2:
General Fund Balance - Audits**

	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	5 yr Var
REVENUES							
Charges for services	239,050	141,145	267,495	276,235	207,845	158,267	-34%
Property taxes	111,003	149,918	126,626	125,787	129,888	143,541	29%
Other	2,816	1,116	468	268	5,810	5,852	108%
Total Revenue	\$ 352,869	\$ 292,179	\$ 394,589	\$ 402,290	\$ 343,543	\$ 307,660	-13%
EXPENDITURES							
Salaries & Benefits	230,632	292,123	269,514	239,694	195,476	232,590	1%
Services & Supplies	191,517	192,426	186,237	181,335	117,071	199,426	4%
Total Expenditures	\$ 422,149	\$ 484,549	\$ 455,751	\$ 421,029	\$ 312,547	\$ 432,016	2%
Revenues less Expend.	(69,280)	(192,370)	(61,162)	(18,739)	30,996	(124,356)	
OTHER FINANCING							
Transfers In/Adjustments	48,891	3,340	(20,696)	5,999	5,565	11,443	
Trust Fund Adjust					(75,214)	(16,430)	
Fund Balance Begin	547,754	527,365	338,335	256,477	243,737	205,084	-63%
Fund Balance End	\$ 527,365	\$ 338,335	\$ 256,477	\$ 243,737	\$ 205,084	\$ 75,741	-86%

The District provided LAFCO with bookkeeper statements for FY 2017/18. The chart below summarizes the information. Note that this information has not been independently verified. As shown, the District experienced lower revenues and expenditures in comparison with previous years. Still, the year ended with a deficit of roughly \$51,000 – further decreasing fund balance.

**Table 1-3:
General Fund Profit & Loss – FY 2017/18**

Gross Profit	\$297,028
Total Expense	349,183
Other Income	1,473
Net Income	\$(50,682)

The bookkeeper statements also identify that the General Fund owes substantial amounts to the Endowment Care Fund and Pre-Need Trust Fund. This reveals that the General Fund is operating on a running deficit. During the LAFCO site visit, District staff stated a prior administration paid the groundskeeper salaries from Pre-Need for at least one year. In turn, the General Fund owes the Pre-Need Fund for those expenses. Moreover, in the table below, the amount the General Fund owes the Endowment Fund and Pre-need Trust essentially double in one year.

**Table 1-4:
General Fund Due To**

	June 30, 2018		June 30, 2019	
	Due To:		Due To:	
	Endowment Care Fund	Pre-Need Trust	Endowment Care Fund	Pre-Need Trust
Due from General Fund	\$13,078	\$103,606	\$21,551	\$218,559

General Fund Liquidity

The Government Finance Officers Association (“GFOA”) currently recommends that regardless of size, general-purpose governments should maintain unreserved fund balance in their General Fund of “no less than two months of regular general fund operating revenues or expenditures.” A General Fund balance of a lesser level exposes the General Fund to the risk of not being able to meet cash flow requirements, economic uncertainties, or other financial hardships. As shown on the chart below, the District’s unreserved fund balance has exceeded the general rule of more than two months of regular General Fund operating expenditures.

By this measure alone, it would seem that the liquidity of the District is adequate. However, when considering the Total General Fund balance (unreserved plus reserved), the liquid health of the District is of concern. As shown in Figure 4-3 below, total General Fund balance has decreased from \$527,365 to \$75,741.

**Table 1-5:
General Fund Liquidity**

General Fund (GF)	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17
Total GF expenditures	\$ 422,149	\$ 484,549	\$ 455,751	\$ 421,029	\$ 312,547	\$ 432,016
Unreserved GF fund balance	40,540	56,207	44,795	133,661	205,084	75,741
(as a % of total expenditures)	10%	12%	10%	32%	66%	18%
Total fund GF balance	\$ 527,365	\$ 338,335	\$ 256,477	\$ 243,737	\$ 205,084	\$ 75,741
(as a % of total expenditures)	125%	70%	56%	58%	66%	18%

sources: Balance Sheet and Statement of Revenues, Expenditures, and Changes in Fund Balance

Endowment Fund

The District maintains an Endowment Fund to account for the portion of the monies paid for every interned person to be held as a perpetual endowment. Pursuant to State law, the board of trustees may not spend the principal of the Endowment Fund. However, the principal can be invested in securities and obligations, and the interest and gains may be spent from the investments (§9065(e)). Note that in FY 2015/16, the District made a one-time transfer from the Endowment Fund to the General Fund. The purpose of the transfer was related to capital improvements. The figure below shows the fund balance of the Endowment Care fund for the same period.

The Endowment Funds appears to be healthy, with annual increases in the fund balance and relatively minor transfers out. However, it appears that the gains from interest are low for an endowment nearing \$800,000. Recognizing the low returns, the District transferred a significant portion of its Endowment Funds from Wells Fargo to the Cooperative Funeral Fund.

**Table 1-6:
Endowment Fund**

	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	5 yr Var
REVENUES							
Charges for services	13,239	24,351	24,930	32,039	22,889	27,016	104%
Interest & investment	3,736	2,332	8,791	10,860	20,747	1,506	-60%
Total Revenue	\$ 16,975	\$ 26,683	\$ 33,721	\$ 42,899	\$ 43,636	\$ 28,522	68%
EXPENDITURES	\$ -	\$ -	\$ 10	\$ -	\$ -	\$ -	
Total Expenditures	\$ -	\$ -	\$ 10	\$ -	\$ -	\$ -	
Revenues less Expend.	16,975	26,683	33,711	42,899	43,636	28,522	68%
OTHER FINANCING							
Other	29,787	(10,443)	7,036				
Transfers In (Out)	-	-	15,550	(6,000)	(5,565)	(11,443)	
Fund Balance Begin	581,333	628,095	644,335	700,632	737,531	775,602	33%
Fund Balance End	\$ 628,095	\$ 644,335	\$ 700,632	\$ 737,531	\$ 775,602	\$ 792,681	26%
*Endowment Principal	\$623,067	\$643,334	\$695,022	\$727,085	\$775,602	\$792,682	27%
sources: Statement of Revenues, Expenditures, and Fund Balances and Balance Sheets							

Pre-Need Burial Fund (fiduciary fund)

Fiduciary funds are used to account for assets held by the District as an agent or trustee for individuals, private organizations, other governments and/or other funds. The Pre-Need Burial Fund is a private-purpose trust fund that transfers funds from its earnings to the General Fund to finance burial expenditures.

The financial statements before FY 2015/16 do not provide separate accounting of the Pre-Need Fund. Therefore, a proper analysis of the Pre-Need Fund cannot be conducted.

**Table 1-7:
Pre-Need Fund**

	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	5 yr Var
NET ASSETS							
Unrestricted							
Restricted					45,563	133,627	#DIV/0!
Total net assets	\$ -	\$ -	\$ -	\$ -	\$ 45,563	\$ 133,627	#DIV/0!
source: Statement of Fiduciary Net Position							

C. Capital Outlay

LAFCO staff did not notice any significant structural deficiencies during its site visit on September 25, 2020. The District does not have a master plan or capital improvement plan.

D. Pension Liability and Contributions

CalPERS administers the District's retirement plan. However, the required GASB 68 and related information are not included in the FY 2015/16 and FY 2016/17 audits. Therefore, the financial statements, which the governing body and management are responsible for, lack transparency by not including the required pension information. Instead, this service review sought information from the parent source, CalPERS. For general information on pension liabilities and contributions, please refer to Appendix C of this service review.

Liability

The CalPERS July 2020 valuation report identifies that the District had a Net Pension Liability as of June 30, 2019, with a funded ratio of 76.6%

Contributions

As shown in the table below, pension contributions dropped precipitously in 2018-19. That year the general manager was on injury leave (workers compensation) which resulted in a number of the mandatory retirement contributions not made. The agreement with CalPERS allows the District to make additional, incremental, contributions to be whole with its requirements.⁶

⁶ <https://www.calpers.ca.gov/page/employers/actuarial-resources/public-agency-actuarial-valuation-reports>

**Table 1-8:
CalPERS Historical Contributions**

Plan Type	Contribution	2017-18	2018-19	2019-20	2020-21
Miscellaneous	Normal Cost %	7.9%	8.3%	8.7%	9.4%
Plan	UAL Payment	\$ 40,505	\$ 7,569	\$ 33,860	\$ 35,026
PEPRA	Normal Cost %			7.1%	7.9%
Plan	UAL Payment			\$ 400	\$ 705

Source: CalPERS Actuarial Reports, July 2020

The following table provides a breakdown of required retirement contributions for the District over the next six fiscal years. The agency includes more than one retirement plan, depending on date of hire or job classification, shown as PEPRA. It is unclear as to why CalPERS identifies low contribution rates beginning in 2024-25 for the Miscellaneous Plan.

**Table 1-9:
CalPERS Projected Contributions**

Plan Type	Contribution	2021-22	2022-23	2023-24	2024-25	2025-26	2026-27
Miscellaneous	Normal Cost %	9.3%	9.3%	9.3%	9.3%	9.3%	9.3%
Plan	UAL Payment	\$ 36,869	\$ 38,000	\$ 40,000	\$ 3,300	\$ 3,500	\$ 3,500
PEPRA	Normal Cost %	7.7%	7.7%	7.7%	7.7%	7.7%	7.7%
Plan	UAL Payment	\$ 236	\$ -	\$ -	\$ -	\$ -	\$ -

Source: CalPERS Actuarial Reports, July 2020

9. Shared Facilities

A. Status of Shared Facilities

The District identified that it does not share facilities with other agencies.

B. Opportunities for Shared Facilities

An opportunity may exist for the District to lease its non-dedicated land to other public agencies. Section 9054 permits a district to use or lease land acquired for future cemetery use to a public agency for recreational use. The District identifies that there are unused areas at this time.

10. Accountability

A. Board Members

Records show that community interest in board membership historically has been low. An option afforded in Public Cemetery District law is for the board to request

through resolution that the County Board of Supervisors reduce board membership from five members to three members (§9020, §9025). In the LAFCO staff's view, limiting membership to three members for such a large geographical area would not promote any oversight efficiencies; a full membership of five members should be sought by the District and the County Board of Supervisors to promote adequate oversight of District affairs and community participation in an important service.

Alternatively, the County Board of Supervisors may appoint itself to be the board of trustees (§9026). Such an action would not require LAFCO approval as it would not be a change of organization, rather the District remains, but the governing body would be different.

B. Internment Records

Currently, the District lacks a digital archive of its marked sites. The District has contracted with a firm from Ohio that has not completed a digital archiving project. According to District staff, there is no written contract for this project, which remains incomplete for over a year.

C. Completion and Filing of Financial Documents

The District is not current with completion of its financial statements.

D. Policy Manual

The District could not identify if certain policies have been adopted. The historical record of the District is inadequate.

E. Website Transparency

Senate Bill 929 added Government Code Sections 6279.6 and 53087.8 to provide the public easily accessible and accurate information through agency websites. By January 1, 2020, every California independent district is required to maintain a website.

The table, below, is not an exhaustive inventory of website criteria required under current law. Rather, it identifies key components (required by the Government Code and/or recommended by the California Special Districts Association and other organizations) for websites to enhance transparency and accountability.

Government Code Sections 54954.2 and 54957.5 require agencies to post all agendas 72 hours in advance on their websites. Government Code Section 6253 requires that agencies post content most requested by constituents (and most often requested via Public Record Act requests). Because of the difficulty for LAFCO staff to verify this information, these criteria are not included in the website checklist. However, agencies should address these criteria to comply with current website requirements.

**Table 1-10:
Website Checklist**

Barstow Cemetery District (Mountain View Memorial Park) Website Checklist			
website accessed 9/4/2020 www.mountainviewmemorial.specialdistrict.org			
<i>Required</i>			
		Yes	No
Government Code §53087.8	Agency maintains a website with current contact information? (<i>required for independents special districts by 1/1/2020</i>)	✓	
Government Code §6270.5	Agency has created an Enterprise System Catalog and posted it to website?		✓
Government Code §54954.2	Agency has current agenda posted to website homepage and is accessible through a prominent, direct link?	✓	
Government Code §53908	Agency's website provides information on compensation of elected officials, officers and employees or has link to State Controller's Government Compensation website?	✓	
<i>The following are recommended for agency websites by a number of governance associations and organizations.</i>			
		Yes	No
Description of Services?			✓
Service area map?			✓
Budgets (past 3 years)?			✓
Board meeting schedule?		✓	
Audits (past 3 years)?			✓
List of elected officials and terms of office?			✓
List of key agency staff with contact information?			✓
Meeting agendas (last six months)?		✓	
Meeting minutes (last six months)?			✓
<i>Notes: Board/staff names missing. No mention of "Barstow Cemetery District".</i>			

11. Government Structure Options

While the discussion of some government structure options may be theoretical, a service review should address possible options. Such options should consider:

- Improving public participation, local accountability, and governance;
- Producing economies of scale and improving buying power in order to reduce service costs;
- Enhancing capital improvement plans;
- Improving the ability to provide and explain budget and financial data; and
- Improving the quality and/or levels of service.

Evaluation of these options should weigh:

- Long-term savings of the change versus related transition costs;
- Cost-benefit of restructuring the current governing body and/or administration to any proposed alternative;
- Impact on operating cost (short and long-term) due to government structure changes; and
- Impact of government structure options on an agency's financial stability.

Structure Options that include LAFCO

1. Consolidate the two independent cemetery districts (Barstow and Twentynine Palms). This option would consolidate the two independent districts under one governing body. Administratively, there could be economies of scale – fewer administrative staff. Operationally, there would not be economies of scale due to the need to house heavy equipment at each location since the distance between cemeteries is roughly 100 miles. For the governing body, an independent district with two zones roughly 100 miles apart does not lend to local governance. Therefore, this option is not feasible.
2. Combine all public cemeteries (Barstow, Twentynine Palms, Lucerne Valley, and Searles Valley) by forming a County Service Area, governed by the County Board of Supervisors, to function as a single-purpose agency for all public cemeteries. Administratively and operationally, there would be economies of scale, as a single entity would conduct administration and operations. For the governing body, there would be a single body to govern all public cemeteries in the county. However, the two dependent districts (Lucerne Valley and Searles Valley) provide more than one function and separating these functions would reduce the community nature of the current form of governance in these communities. Further, this option would require an election. Therefore, this option is not feasible.

Structure Options that do not include LAFCO

3. Cemetery service to be provided by the City of Barstow. Current law (Health and Safety Code §8125) authorizes cities to survey, lay out, and dedicate for burial purposes no more than five acres of public lands. The District operates more than five acres. If the City were to succeed to the District's cemetery services, special legislation would need to occur and there is statutory precedent for authorization. In 2008, AB 1932 (Smyth) authorized the City of Simi Valley to operate a cemetery on public lands containing five acres or more. Should the City desire to succeed to the District's services and facilities, special legislation would be required.
4. The County Board of Supervisors may appoint itself to be the board of trustees (§9026). Such an action would not require LAFCO approval as it would not be a change of organization, rather the District remains but the governing body would be different. This would provide the District with resources that it currently lacks.
5. Outsourcing financial and/or administrative duties. The board of trustees would have to weigh the cost-benefits of outsourcing versus in-house management.

Sources:

Barstow Cemetery District
Financial Statements

Website. www.mountainviewmemorial.specialdistrict.org. Accessed 16 August 2020

CalPERS
Actuarial Reports

Grand Jury
2009/10 Report
2013/14 Report

LAFCO
Fiscal Indicators Program
LAFCO 3034 – Service Review and Sphere of Influence Update for the Barstow Cemetery District (2008)
Site Visit 25 September 2020

Agency Name	BARSTOW CEMETERY DISTRICT
Agency Contact Name	Melinda Johnson

1. Please provide a roster of board members.

Member Name	Position	Term Expiration
Mark Franey	Chair	2022
Stanley "Ed" Hignett	Vice-Chair	2020
Teresa Quiroz	Director	2020
Beverly Stoops	Secretary	2022
Vacant Position		

2. Government Code Section 9028(b) requires the appointment of a Secretary, which may be either a trustee or district employee. Provide the name of the appointee (trustee or employee). Beverly Stoops

3. If the District has appointed a Finance Director to manage its funds, it must require a bond for that person. If the District has a Finance Director, please confirm that person is bonded. San Bernardino County & Cooperate Funeral Fund both are bonded

4. What is the current size (sq. miles) of your district's territory? How much unused land remains for future cemetery use? Roughly 10 acres incorporated, and 13 acres incorporated

5. Cemetery Districts are permitted to lease currently unused land which is set aside for future cemetery use. Does your District lease any land to private organizations (e.g. cell phone towers, non-profits) or public agencies (e.g. city, schools) for continual or one-time use? No

6. Has the District adopted policies and procedures, including bidding regulations, governing the purchase of supplies and equipment?
Yes

7. Please provide copies of:

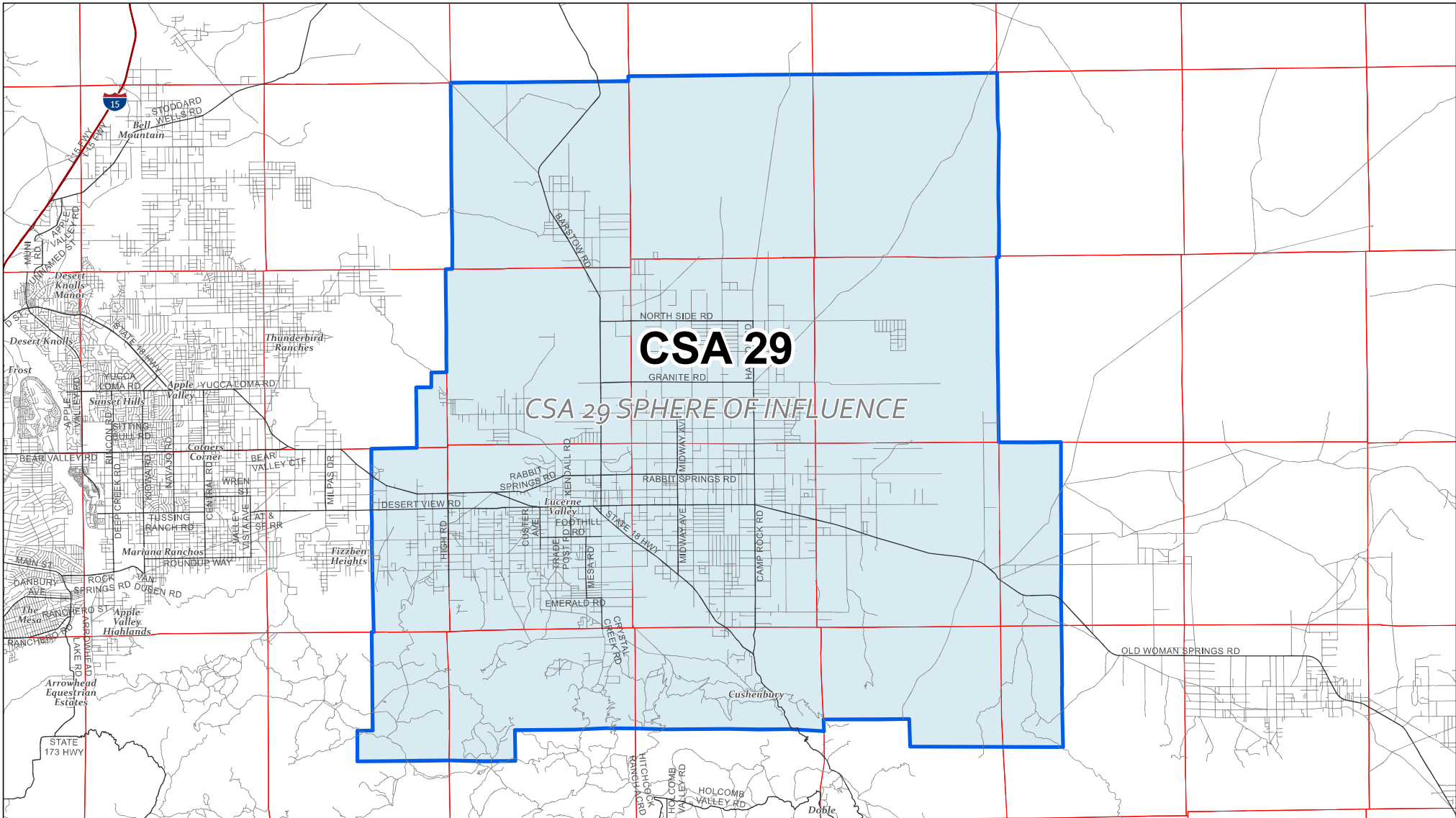
- Most recent budget approved by the board.
- Five most recent audits accept by the board, of you have not already provided them to LAFCO.
- Fee Schedule
- Endowment Policies

8. AB 1234 (State Ethics Requirements)

- Does your district have a written policy to compensate board members for attendance at events beyond just board meetings, committee meetings and conferences? Yes
- Does your district have a written policy to reimburse board members for expenses? Yes
- Does your district use IRS reimbursement rates or adopt a policy that specifies reasonable reimbursement rates? Yes
- Are expense report forms provided to board members who require reimbursement? Yes. Are these completed forms retained on file as public documents? Yes
- Do all board members and any board-designated employees take at least two hours of ethics training at least every two years and receive a certificate of completion? General Manager is certified

Please return this questionnaire and any materials to LAFCO to either:

- LAFCO, 1170 W. Third Street, Unit 150, San Bernardino, CA 92415-0490
- mtuerpe@lafco.sbcounty.gov



County Service Area 29



Disclaimer: The information shown is intended to be used for general display only and is not to be used as an official map.

0 2 4 8 Miles



- County Service Area 29
- County Service Area 29 Sphere of Influence

Author: Jeffrey Lum Map Created: 7/29/2020

1. LAFCO Conclusion and Recommendation

This review has no conclusions or recommendations for County Service Area 29.

2. Overview and Brief History

Community History

In the early 1900s, the area now known as Lucerne Valley was an important area for the growth of alfalfa in the western United States. Due to the potential of agriculture, the first parts of the community formed along the central valley and the crossroads of the two major corridors, now known as Highways 18 and 247. To recognize the viability and success of alfalfa farming in the area, the name of the community was changed to Lucerne (the French word for alfalfa) in 1916. In 1947, the “Dunton Quarry” limestone mine opened midway up the Cushenbury Canyon.

The first form of government for the community was the Lucerne Valley Park and Recreation District, which formed in 1948. Significant growth occurred in the 1950s following extension of the railroad into Lucerne Valley by Kaiser Industries to construct a cement plant and limestone quarry. The Lucerne Valley Fire Protection District formed in 1962 and the high school opened in 1991.¹ Lucerne Valley continues to be an important source for alfalfa and is one of the largest limestone producing areas in the country with the major mining companies digging into the north face of the San Bernardino Mountains.

CSA 29

County Service Area 29 (“CSA 29”) was formed in December 1964 by action of the County of San Bernardino Board of Supervisors for the primary purpose of providing cemetery services to central Lucerne Valley. CSA 29 is a dependent special district governed by the Board of Supervisors, and LAFCO currently authorizes CSA 29 the following functions: cemetery, TV translator, park and recreation, streetlighting, water, and sewer. Although authorized, CSA 29 does not actively provide sewer service and only supplies water to its own facilities. However, CSA 29 has these powers in order to plan for future water and sewer delivery.

Since its formation, LAFCO considered the annexation or expansion/reduction of powers of CSA 29 four times. These actions further defined the boundary of the community of Lucerne Valley, and the addition of powers moved towards centralization of municipal services.

- LAFCO 1935 in 1980 - Annexation to CSA 29, dissolution of Lucerne Valley Park and Recreation District and Lucerne Valley Fire Protection District, and addition of fire, park and recreation powers.

¹ County of San Bernardino, Lucerne Valley Community Plan, (Adopted March 13, 2007).

- LAFCO 2359 in 1986 - Expansion of water (domestic – to its own facilities) and sewer (engineering and planning) powers to allow the community to plan for providing these services.
- LAFCO 2474 in 1989 - Annexation to CSA 29 and detachment from CSA 38, Apple Valley Fire Protection District, and Apple Valley Park and Recreation District.
- LAFCO 3000 in 2008 – County Fire Reorganization, which transferred CSA 29's fire and ambulance functions to the San Bernardino County Fire Protection District.

CSA 29 is located in the north desert portion of the County and is located approximately 35 miles south of the City of Barstow, 45 miles northwest of the Town of Yucca Valley, 15 miles southeast of the Town of Apple Valley, and 20 miles north of Big Bear Lake. The District's boundary and sphere of influence are coterminous and comprise approximately 433 square miles.

Cemetery

Currently, CSA manages one cemetery - Lucerne Valley Memorial Park - located at 32522 Highway 18, Lucerne Valley. Lucerne Valley Memorial Park is located on land which was donated by the Goulding family to the Baptist Church. The Church turned over administration of the cemetery to the County after the formation of CSA 29.

3. Boundary and Sphere of Influence Review

This review identifies no boundary or sphere of influence matters for the CSA 29.

4. Previous Service Reviews and Other Reports

This agency's first service review from 2008 did not identify any areas of concern for CSA 29.² The companion sphere of influence update reaffirmed a coterminous sphere of influence for CSA 29.

5. Growth and Population Projections

Historically, Lucerne Valley can be characterized as a rural community that has experienced slow growth. The community had 4,986 residents in 1990 and 5,377 in 2000. According to the latest Census data ("ACS 2018"), Lucerne Valley currently has approximately 5,423 residents. Overall, the community has grown by roughly one percent annually over the last 30 years. Due to the rural nature of the community, continued slow growth is anticipated through 2040.

6. Disadvantaged Communities, Location and Characteristics

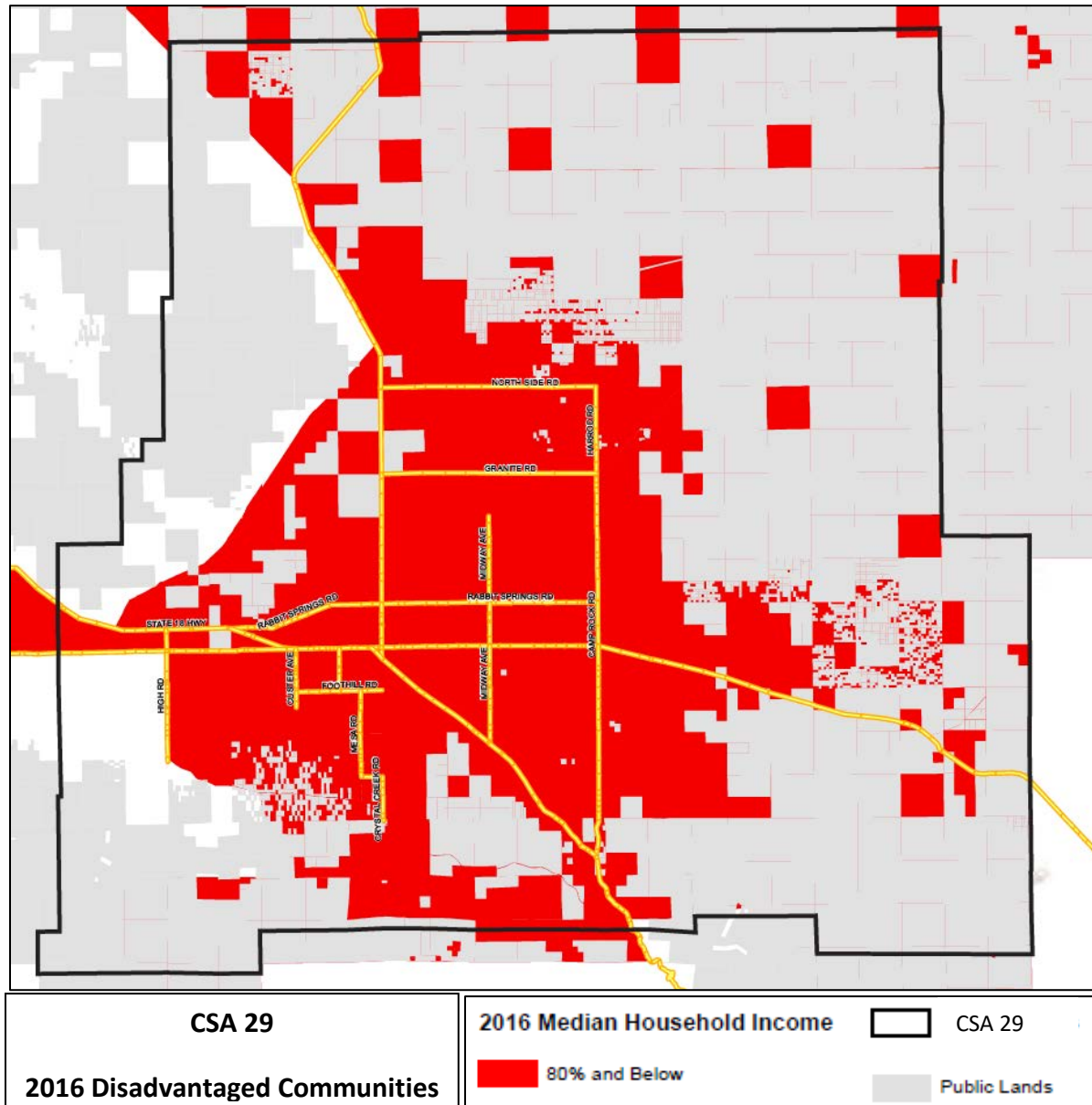
State law requires various entities (i.e. LAFCO, cities and counties, and water agencies) to, in some manner, identify disadvantaged communities, which can be located in both

² http://www.sbcounty.gov/lafco/items/feb2008/item_7.pdf

incorporated and unincorporated areas. More information on the laws and requirements regarding Disadvantaged Communities is available in [Appendix C: Primers](#) to this report.

The figure below identifies the location of the disadvantaged communities with the District overlay in black outline.

**Figure 2-1:
Disadvantaged Communities**



The table below identifies the characteristics of incorporated Disadvantaged Communities within and surrounding CSA 29.

**Table 2-1:
Characteristics of Disadvantaged Areas within CSA 29**

Population	5,423	Median Household Income	\$36,547
Households	2,169	Per Capita Income	\$20,478
Median Age	36.4	Unemployment Rate	28.8%

Source: ESRI, August 2020

7. Facilities and Services

The District completed a LAFCO questionnaire to LAFCO's questions regarding governance and operations. The District's response is included at the rear of this agency's profile.

A. Present and Planned Capacity of Public Facilities

Currently, CSA 29 manages one cemetery - Lucerne Valley Memorial Park - located at 32522 Highway 18, Lucerne Valley. The original cemetery contains 1,246 plots on roughly two acres, all which have been sold. In 2006, an extension to the Memorial Park (the Annex) opened. This four-acre section is located on the south side of the original Park. According to the District, internments for the past three years were nine (2017), 10 (2018), and 12 (2019), and 13 as of October 31, 2020.

As of October 29, 2020, the cemetery had:

- 1,192 filled sites
- 28 sold but empty sites
- 1,550 unsold sites

Cemetery plot space is subject to the Board governed fee schedule. Anyone can be buried at the cemetery. The burial fee structure has three categories, each with different fees: 1) property owner, 2) resident/non-property owner, 3) and non-resident/non-property owner. At present, there is no master plan for cemetery service.

B. Adequacy of Public Services

Given the remote nature of the District, as well as the need for internment services, the public service is adequate.

C. Infrastructure Needs and Deficiencies

The grounds are maintained pursuant to maintenance schedule.

8. Financial Ability to Provide Services

To make the required service review determination of an agency's financial ability to provide services, LAFCO referenced the agency's own financial documents (audits, budgets, capital improvement program). Additionally, LAFCO's Fiscal Indicators Program shows fiscal trends for an agency and allows for an agency comment.³ The information below incorporates all of the information and sources identified above.

A. Overview

Revenues are comprised of service fees, the District's share of the general property tax levy, and interest.

B. Funds

The District maintains three major governmental funds with the County Treasury, which are listed below.

- General, a special revenue fund: for regular income and expenses
- Cemetery, a permanent fund: provides maintenance and upkeep for cemetery grounds
- CIP, a capital projects fund: to account for various improvements to the cemetery, senior center, and communications center

General Fund

The fund labeled "General" is the government's primary operating fund. It accounts for all financial resources of the general government, except those required to be accounted for in another fund.

A trend of operating gains or deficits is a key indicator of the financial health of an agency. The figure below shows the General Fund balance for the period of FY 2013/14 through FY 2018/19. The fund balance has increased by 266% within five years with Total Revenues increasing by 16% and Total Expenditures increasing by 13%. Note that this represents CSA 29 as a whole, not just its cemetery functions, as cemetery general operations are not identified as a separate column in the financial statements.

³ <http://www.sbclafco.org/FiscalIndicators/BOS/CSA29.aspx>

**Table 2-2:
General Fund Balance**

	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	5 yr Var
REVENUES							
Charges for services	3,063	11,675	8,668	27,583	27,071	15,537	407%
Property taxes	412,564	419,251	435,363	457,238	481,764	491,160	19%
Other	39,404	137,130	30,521	48,157	67,526	22,808	-42%
Total Revenue	\$ 455,031	\$ 568,056	\$ 474,552	\$ 532,978	\$ 576,361	\$ 529,505	16%
EXPENDITURES							
Salaries & Benefits	328,145	276,300	262,338	244,314	282,433	248,385	-24%
Services & Supplies	175,844	244,983	167,532	192,815	212,006	313,908	79%
Other						5,441	
Total Expenditures	\$ 503,989	\$ 521,283	\$ 429,870	\$ 437,129	\$ 494,439	\$ 567,734	13%
Revenues less Expend.	(48,958)	46,773	44,682	95,849	81,922	(38,229)	
OTHER FINANCING							
Transfers In			(70,000)	11,035	4,941		
Fund Balance Begin	115,553	66,595	113,368	88,050	194,934	281,797	144%
Fund Balance End	\$ 66,595	\$ 113,368	\$ 88,050	\$ 194,934	\$ 281,797	\$ 243,568	266%

General Fund Liquidity

As a measure of the General Fund's liquidity, it may be useful to compare both unassigned fund balance and total fund balance to total fund expenditures. At the end of FY 2018/19, unreserved fund balance of the General Fund was \$7,123, one percent of total General Fund expenditures. It would appear that the liquidity is not adequate.

The Government Finance Officers Association ("GFOA") currently recommends that regardless of size, general-purpose governments should maintain unreserved fund balance in their General Fund of "no less than two months of regular general fund operating revenues or expenditures." A General Fund balance of a lesser level exposes the General Fund to the risk of not being able to meet cash flow requirements, economic uncertainties, or other financial hardships. As shown on the chart below, the District's unreserved fund balance is below the general rule of more than two months of regular General Fund operating expenditures.

However, CSA 29 operates as a part of County Special Districts with an overlaying county service area, CSA 70, which provides overall administration for all board-governed districts. CSA 70 has its own operational and reserve funds. Further, CSA 29's annual gains have been placed into Reserved/Restricted funds. Therefore, this report concludes that the overall liquidity of CSA 29 is adequate when taking into account all funds and administrative mechanisms available to it.

**Table 2-3:
General Fund Liquidity**

General Fund (GF)	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
Total GF expenditures	\$ 503,989	\$ 521,283	\$ 429,870	\$ 437,129	\$ 494,439	\$ 567,734
Unreserved GF fund balance	7,123	7,123	7,123	7,123	7,123	7,123
(as a % of total expenditures)	1%	1%	2%	2%	1%	1%
Total fund GF balance	\$ 66,595	\$ 113,368	\$ 88,050	\$ 194,934	\$ 281,797	\$ 243,568
(as a % of total expenditures)	13%	22%	20%	45%	57%	43%

sources: Balance Sheet and Statement of Revenues, Expenditures, and Changes in Fund Balance

Endowment Fund

The District maintains an Endowment Fund to account for the portion of the monies paid for every interned person to be held as a perpetual endowment. Pursuant to State law, the board of trustees may not spend the principal of the Endowment Fund. However, the principal can be invested in securities and obligations, and the interest and gains may be spent from the investments (§9065(e)). The figure below shows the fund balance of the Endowment Care fund for the same time period.

**Table 2-4:
Endowment Fund**

	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	5 yr Var
REVENUES							
Charges for services					1,550		
Interest & investment	481	396	722	460	730	3,158	557%
Total Revenue	\$ 481	\$ 396	\$ 722	\$ 460	\$ 2,280	\$ 3,158	557%
EXPENDITURES							
Total Expenditures	\$ 1,073	\$ -	\$ -	\$ -	\$ -	\$ -	
Revenues less Expend.	(592)	396	722	460	2,280	3,158	-633%
OTHER FINANCING							
Other			550	1,900	202	549	
Transfers In (Out)	-	-		-	-	-	
Fund Balance Begin	93,189	92,597	92,993	94,265	96,625	99,107	6%
Fund Balance End	\$ 92,597	\$ 92,993	\$ 94,265	\$ 96,625	\$ 99,107	\$ 102,814	11%
*Endowment Principal	\$92,597	\$92,993	\$94,265	\$96,627	\$99,107	\$102,814	11%

sources: Statement of Revenues, Expenditures, and Fund Balances and Balance Sheets

Long-term Debt

As of June 30, 2019, the District's long-term debt obligations consist of:

• Net Pension Liability <i>(see details below)</i>	\$202,216
• Due to other governments <i>(according to County Special Districts staff, this amount is for accruals in 2019 to reimburse CSA 70 (county special districts admin) for labor and services/ supplies)</i>	\$121,785
• Compensated absences payable	\$ 33,312
• Salary and benefits payable	\$ 11,788
• Other	\$ 746

C. Capital Outlay

In 2006, an extension to the Lucerne Valley Memorial Park (the Annex) opened. This four-acre section is located on the south side of the original Park.

D. Pension Liability and Contributions

Employees are members in the San Bernardino County Employees' Retirement Association ("SBCERA").

Liability

At June 30, 2019, CSA 29 reported a liability of \$202,216, which represents a 3.7% share of the County of San Bernardino Special District's proportionate share of the County's net pension liability. The CSA's proportion was allocated based on FY 2019 total salaries and benefits relative to the total salaries and benefits of the County of San Bernardino Special Districts as a whole.

Contributions

For FY 2020-21, the employer contribution rate assigned by SBCERA is 25.84% (Tier 1) and 23.32% (Tier 2). The County Administrative Office assigns an additional 11.0% for pension obligations bonds, which are paid directly to the County. The last payments for the two bonds will occur in FY 2021/22 and FY 2023/24.

9. Shared Facilities

A. Status of Shared Facilities

The County identifies that it does not share its cemetery land with other agencies.

B. Opportunities for Shared Facilities

An opportunity may exist for CSA 29 to lease its non-used land to other public agencies. Section 9054 permits a district to use or lease land acquired for future cemetery use to a public agency for recreational use. The County identifies that approximately 3.7 acres are unused at this time.

10. Accountability

A. Board Members

CSA 29 is a dependent district, governed by the County Board of Supervisors, and operates under the auspices of County Special Districts, a part of the County's Department of Public Works.

B. Internment Records

In 1994, a land probe was done to determine how many sites were unmarked graves. Twenty-four burials were found for which there were no records. These circumstances pre-date the formation of CSA 29.

Current records are well kept. A site book is updated once a year. The District uses digital archiving to account and mark its sites. The online system is available to the public via the District's website.

C. Completion and Filing of Financial Documents

The District is current with completion of its financial statements.

D. Policy Manual

CSA 29 operates under the policies adopted by the County.

E. Website Transparency

Senate Bill 929 added Government Code Sections 6279.6 and 53087.8 to provide the public easily accessible and accurate information through agency websites. By January 1, 2020, every California independent district is required to maintain a website.

The table, below, is not an exhaustive inventory of website criteria required under current law. Rather, it identifies key components (required by the Government Code and/or recommended by the California Special Districts Association and other organizations) for websites to enhance transparency and accountability.

Government Code Sections 54954.2 and 54957.5 require agencies to post all agendas 72 hours in advance on their websites. Government Code Section 6253

requires that agencies post content most requested by constituents (and most often requested via Public Record Act requests). Because of the difficulty for LAFCO staff to verify this information, these criteria are not included in the website checklist. However, agencies should address these criteria to comply with current website requirements.

**Table 2-6:
Website Checklist**

CSA 29 Website Checklist			
website accessed 10/22/2020 http://csa29.com/Home.html			
<i>Required</i>			
		Yes	No
Government Code §53087.8	Agency maintains a website with current contact information? <i>(required for independents special districts by 1/1/2020)</i>	✓	
Government Code §6270.5	Agency has created an Enterprise System Catalog and posted it to website?	✓	
Government Code §54954.2	Agency has current agenda posted to website homepage and is accessible through a prominent, direct link?	✓	
Government Code §53908	Agency's website provides information on compensation of elected officials, officers and employees or has link to State Controller's Government Compensation website?	✓	
<i>The following are recommended for agency websites by a number of governance associations and organizations.</i>			
		Yes	No
	Description of Services?	✓	
	Service area map?	✓	
	Budgets (past 3 years)?	✓	
	Board meeting schedule?	✓	
	Audits (past 3 years)?	✓	
	List of elected officials and terms of office?	✓	
	List of key agency staff with contact information?	✓	
	Meeting agendas (last six months)?	✓	
	Meeting minutes (last six months)?	✓	
<i>Notes: Items identified with "Yes" are satisfied via the CSA 29 site, Special Districts site (www.specialdistricts.org) or the County's site (www.sbcounty.gov)</i>			

11. Government Structure Options

While the discussion of some government structure options may be theoretical, a service review should address possible options. Such options should consider:

- Improving public participation, local accountability, and governance;
- Producing economies of scale and improving buying power in order to reduce service costs;
- Enhancing capital improvement plans;
- Improving the ability to provide and explain budget and financial data; and
- Improving the quality and/or levels of service.

Evaluation of these options should weigh:

- Long-term savings of the change versus related transition costs;
- cost-benefit of restructuring the current governing body and/or administration to any proposed alternative;
- Impact on operating cost (short and long-term) due to government structure changes; and
- Impact of government structure options on an agency's financial stability.

Structure Options that include LAFCO

1. Combine all public cemeteries (Barstow, Twentynine Palms, Lucerne Valley, and Searles Valley) by forming a County Service Area, governed by the County Board of Supervisors, to function as a single-purpose agency for all public cemeteries. Administratively and operationally, there would be economies of scale, as a single entity would conduct administration and operations. For the governing body, there would be a single body to govern all public cemeteries in the county. However, the two dependent districts (Lucerne Valley and Searles Valley) provide more than one function and separating these functions would reduce the community nature of the current form of governance in these communities. Further, this option would require an election. Therefore, this option is not feasible.
2. One option would be for the residents within the community to submit an application to LAFCO to form an independent community services district ("CSD"). Through this formation, the CSD would have a choice to provide 33 different services, including cemetery services, and the voters would select the board of directors, which must reside within the district. The formation application must show that the proposed CSD would be financially viable. Since 1964, the Commission has considered three proposals to form a CSD in the Lucerne Valley. In each case, the proposal was not successful, with two of the proposals defeated at election. At this time, there is no expressed desire by the residents to look at the formation of a CSD.

Structure Options that do not include LAFCO

3. Outsourcing the cemetery operations and/or administrative duties. The County Board of Supervisors would have to weigh the cost-benefits of outsourcing versus in-house management.

Sources:

CSA 29

Financial Statements

Interview. 29 September 2020.

Website. www.csa29.com/home.html Accessed 19 September 2020.

LAFCO

Fiscal Indicators Program

LAFCO 3021 – Service Review and Sphere of Influence Update for the County
Service Area 29

Lucerne Valley Root Diggers Genealogy Association

Website. <http://www.lucernevalley.net/orgs/roots/> Accessed 22 October 2020.

Agency Name	SAN BERNARDINO COUNTY SPECIAL DISTRICTS DEPARTMENT COUNTY SERVICE AREA 29 – LUCERNE VALLEY
Agency Contact Name	Luther Snoke - DEO

1. Please provide a roster of board members.

Member Name	Position	Term Expiration
Curt Hagman	Chair	12/05/2022
Josie Gonzales	Vice-Chair	12/07/2020
Robert Lovingood	1 st District	12/07/2020
Janice Rutherford	2 nd District	12/05/2022
Dawn Rowe	3 rd District	12/07/2020

2. Government Code Section 9028(b) requires the appointment of a Secretary, which may be either a trustee or district employee. Provide the name of the appointee (trustee or employee). **Frank Haggard – Recreation Superintendent**
3. If the District has appointed a Finance Director to manage its funds, it must require a bond for that person. **Dennis Stout Jr. Division Manager- Fiscal & Administrative Services**. If the District has a Finance Director, please confirm that person is bonded. **YES, bonded at \$25,000**
4. What is the current size (sq. miles) of your district's territory? **Approx. 30 acres**
How much unused land remains for future cemetery use? **3.7 acres.**
5. Cemetery Districts are permitted to lease currently unused land which is set aside for future cemetery use. Does your District lease any land to private organizations (e.g. cell phone towers, non-profits) or public agencies (e.g. city, schools) for continual or one-time use? **NO**
6. Has the District adopted policies and procedures, including bidding regulations, governing the purchase of supplies and equipment? **YES Guided by County Policy.**
7. Please provide copies of:
- Most recent budget approved by the board. **See Attached**
 - Five most recent audits accepted by the board, if you have not already provided them to LAFCO. **See attached 2019 Financial Statement**
 - Fee Schedule **See attached**
 - Endowment Policies **None**

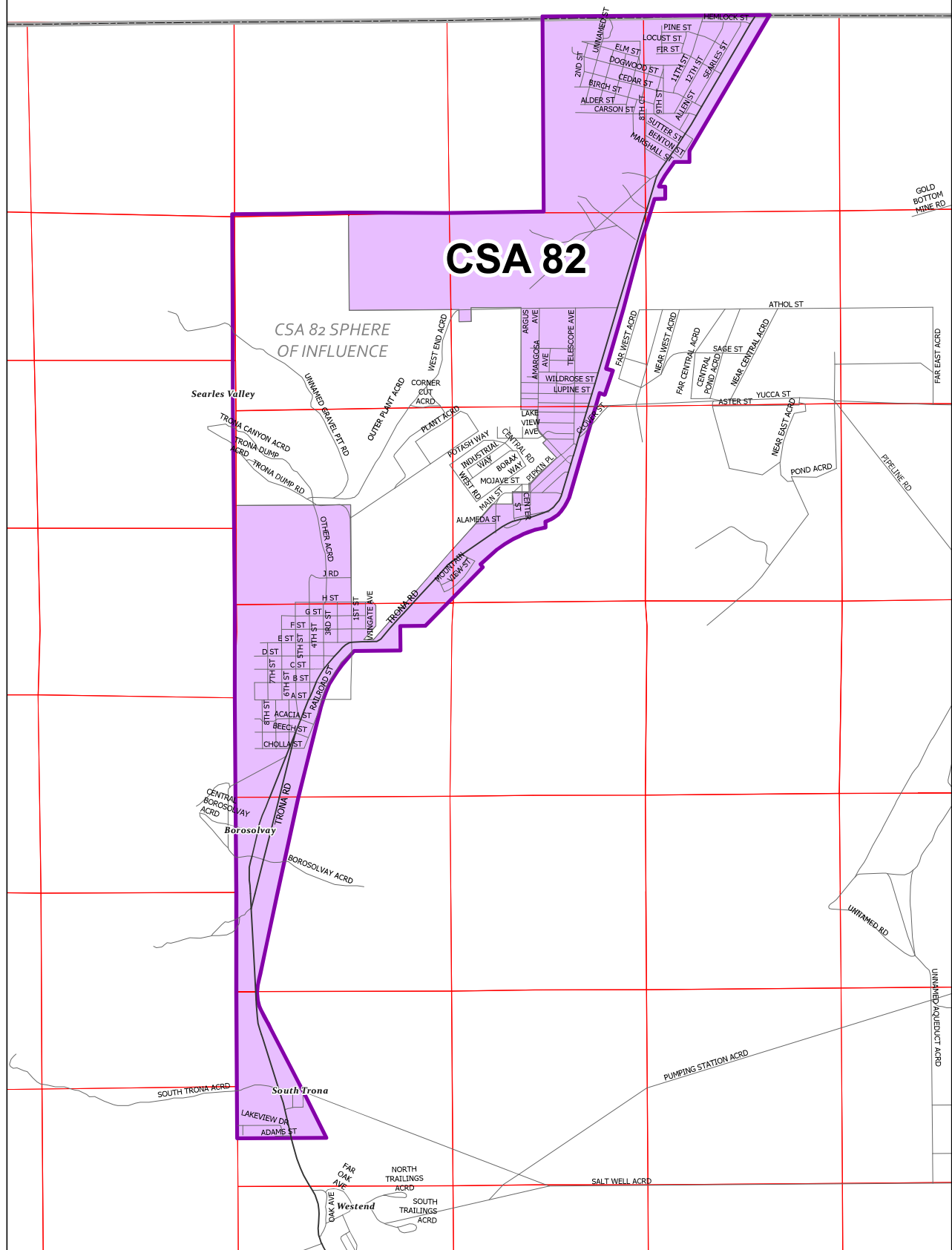
8. AB 1234 (State Ethics Requirements)

- Does your district have a written policy to compensate board members for attendance at events beyond just board meetings, committee meetings and conferences? **No**.
- Does your district have a written policy to reimburse board members for expenses? **Yes**.
- Does your district use IRS reimbursement rates or adopt a policy that specifies reasonable reimbursement rates? **Yes, guided by County Policy**.
- Are expense report forms provided to board members who require reimbursement? **Yes**. Are these completed forms retained on file as public documents? **Yes**.
- Do all board members and any board-designated employees take at least two hours of ethics training at least every two years and receive a certificate of completion? **Yes**.

Please return this questionnaire and any materials to LAFCO to either:

- LAFCO, 1170 W. Third Street, Unit 150, San Bernardino, CA 92415-0490
- mtuerpe@lafco.sbcounty.gov

INYO
COUNTY



County Service Area 82

- County Service Area 82
- County Service Area 82 Sphere of Influence
- San Bernardino County Line



Disclaimer: The information shown is intended to be used for general display only and is not to be used as an official map.

0 0.25 0.5 1 Miles



1. LAFCO Conclusion and Recommendation

A. County Jurisdiction

If not owned by a city or fraternal or beneficial association or society, public cemeteries are under the jurisdiction and control of the board of supervisors of the county in which they are situated.

LAFCO concludes that should there be a discontinuance of water or electricity service by Searles Valley Minerals, CSA 82, as the responsible and liable entity for the cemetery, would be responsible for providing a mechanism to assure water and electrical service.

LAFCO concludes that should the Searles Valley Cemetery Association cease capability to provide operations and maintenance of the cemetery, then the County Board of Supervisors would assume control of the cemetery operations and management.

B. Agreement between CSA 82 and the Searles Valley Cemetery Association

In October 2012, acting as the governing body of CSA 82, the County Board of Supervisors approved a Memorandum of Understanding (Agreement No. 12-776) with Searles Valley Cemetery Association (Association) formalizing the agreement for management of the Searles Valley Cemetery for a term of ten years through August 21, 2022. Pursuant to the agreement, the County indemnifies the Association, and the County has the right to inspect the cemetery grounds and operations.

LAFCO concludes that the County has not conducted an inspection of the cemetery or its operations for some time, thereby exposing the County to any material weaknesses or significant deficiencies, should any exist. The County is currently conducting an operational inspection of the Searles Valley Cemetery Association practices and procedures. The County conducted its most recent onsite facility inspection in October 2020.

LAFCO recommends that the County renew the agreement with the Searles Valley Cemetery Association prior to the agreement's termination in August 2022, to include the clause whereby the County indemnifies the Cemetery Association. In response to the working copy of this service review, County Special Districts indicates that it intends to renew the agreement with the Searles Valley Cemetery Association.

LAFCO recommends that the County periodically inspect the cemetery and its operations. In response to the working copy of this service review, County Special Districts identifies that it has placed the cemetery into its quarterly facility routine inspections and that it will generate and file a quarterly formal report.

2. Overview and Brief History

Community History

The overall Searles Valley area is located along Highway 178 in the northwestern most portion of the County bordering the southern boundary of Inyo County. Within the Searles Valley are the communities of Pioneer Point, Trona, and Argus. The surrounding geography confines the Searles Valley community. It is located west of the Argus mountain range, south of the Inyo County line, east of the Searles Dry Lake, and north of Poison Canyon. The community is further isolated due to its enclosure by public lands and being located between the western and eastern portions of the China Lake Naval Weapons Center. Therefore, access to the community is restricted to Highway 178 from the south or north. Located southerly of the community is the Trona Pinnacles, a landscape of natural spires rising from the dry lake bed of Searles Lake. The Trona Pinnacles were designated by the Department of the Interior as a National Natural Landmark in 1968.

The following narrative provides a historical perspective of the community from information gathered from local history publications¹ and the Searles Valley Historical Society.

In 1862, John W. Searles came looking for gold and found borax instead in the area known today as Searles Dry Lake. In 1913, the Trona railway was completed connecting the town to the railway in Searles, Kern County. Named after a kind of sodium carbonate, Trona was officially established in the same year as a self-contained company town, wholly-operated by its resident mining company to house employees. The company even issued its own money called Trona Script to be used in town.

The community peaked in population of around 6,000 during World War I, when Trona was the only reliable American source of potash, an important element used in the production of gunpowder. In 1954, the company town disbanded and sold its homes to employees. In 1962, Searles Valley was declared a California Registered Historic Landmark. Since the late 1950s/early 1960s, the population has dwindled to its current population of roughly 1,900. The heart of the town remains the mining industry, operated by Searles Valley Minerals.

CSA 82

In 1964, the Searles Valley Cemetery Association lobbied for the formation of the former County Service Area 22 (CSA 22) to provide cemetery services to the Searles Valley community. The impetus for forming a public agency was to operate the community's cemetery as a public cemetery rather than a private cemetery, which would have required an initial endowment fund balance of \$25,000. The former American Potash and Chemical Corporation donated the land for the cemetery to the Association. The land was subsequently transferred to CSA 22, as the responsible entity.

¹ Various, Once Upon a Desert. Mojave River Valley Museum Association, Barstow, CA, 1994; Patricia Keeling, Editor.

County Service Area 82 (CSA 82) was formed in 1976 as a reorganization of five overlapping or adjacent agencies in the Searles Valley area to provide sanitation and sewer, streetlighting, fire protection, cemetery, animal control, and parks and recreation service. CSA 82 is a dependent special district governed by the County of San Bernardino Board of Supervisors and operates under County Service Area Law (Government Code Section 25210 et seq.). Currently, CSA 82 is authorized by LAFCO to provide cemetery, park and recreation, streetlighting, and sewer service. Therefore, since 1964 CSA 22 and then CSA 82 have been the responsible entities to provide cemetery services within the community.

CSA 82 encompasses approximately 3.5 square miles and has not altered its boundaries since its formation in 1976. The boundaries of CSA 82 generally follow the geography of the area, excluding the Searles Valley Minerals plants, and are enclosed by public lands. In the formation of CSA 82, the mineral plants requested not to be included in CSA 82 due to their opposition to paying the additional tax rate that would have applied. There have been no annexations since its formation.

Cemetery

County Assessor records identify that the cemetery comprises two parcels totaling 10.29 acres (APN 048504128 - 4.69 acres and APN 048502121 - 5.60). In 2008 the Searles Valley Minerals Operations, Inc, donated the 5.6-acre parcel to the County of San Bernardino, "for the use and benefit of County Service Area No. 82" as stated in the grant deed transferring the property. This transfer was accepted by the Director of Special Districts on June 11, 2008. The additional parcel is located across the street from the original cemetery for use as cemetery grounds.

3. Boundary and Sphere of Influence Review

CSA 82 is bordered by a combination of the Searles mountain range and the self-sustaining Searles Valley Minerals plant on the west; the Inyo County line on the north; the Searles Dry Lake on the east; and a combination of the Searles Valley Minerals plant and Poison Canyon on the south.

This review identifies no boundary or sphere of influence matters for the CSA 82.

4. Previous Service Reviews and Other Reports

This agency's first service review from 2009 identified that the agreement between CSA 82 and the Searles Valley Cemetery Association was not formal as it lacked a written agreement.² As a result, in 2012 the County entered into a formal agreement with the Cemetery Association.

The companion sphere of influence update (2009) expanded the sphere of influence for CSA 82 by approximately 2.1 square miles to encompass the Searles Valley community.

² http://www.sbcounty.gov/lafco/items/201001/item_11.pdf

5. Growth and Population Projections

Historically, Seales Valley can be characterized as a rural community that has experienced slow growth. According to the staff report for the formation of CSA 82, in 1976 the population was roughly 4,500. Since then, it has declined to 2,740 (1990) and 1,885 (2000). Since 2000, the population has been stable at roughly 1,900³. The change in population for this community is not projected to be significant, if any.

6. Disadvantaged Communities, Location and Characteristics

State law requires various entities (i.e. LAFCO, cities and counties, and water agencies) to, in some manner, identify disadvantaged communities, which can be located in both incorporated and unincorporated areas. More information on the laws and requirements regarding Disadvantaged Communities is available in Appendix C: Primers to this report.

The entire Searles Valley community is designated as a disadvantaged community.

7. Facilities and Services

The District completed a LAFCO questionnaire to LAFCO's questions regarding governance and operations. The District's response is included at the rear of this agency's profile.

A. Present and Planned Capacity of Public Facilities

The County owns the cemetery property for the benefit and use of County Service Area 82, which is authorized to provide cemetery services. Since 1964, the Searles Valley Cemetery Association, a non-profit 501(c)(13) association, has managed the Searles Valley Cemetery (Cemetery).

In October 2012, acting as the governing body of CSA 82, the County Board of Supervisors approved a Memorandum of Understanding (Agreement No. 12-776) with Searles Valley Cemetery Association (Association) formalizing the agreement for management of the Cemetery for a term of ten years through August 21, 2022.

The Association is located in the community and is better able to provide cemetery services by this proximity. CSA 82 does not employ full time employees, therefore, the County would have to hire staff or utilize staff from other districts in order to provide cemetery service. Through the MOU, the Association continues to oversee the burials, maintain the cemetery grounds, and maintain the burial plot map and location. Additionally, the MOU authorizes the Association to provide management services of the Cemetery and indemnify the Association for liability arising from the performance of their duties for ten years.

In 2012, there were 1,305 purchased plots and 1,907 future plots available.

³ U.S. Census, Census 2000, 1990 Census

B. Adequacy of Public Services

Given the remote nature of the District, as well as the need for internment services, the public service is adequate.

The Association holds quarterly meetings at the Trona Senior Center. According to the Association, a copy of each burial permit is provided to the Registrar of the County Health Department. The Association's goal and practice is to provide free burial to the residents in the area. There are no fees charged to local residents, but non-local residents are charged for burial and for cremated remains. Volunteers do the upkeep of the grounds and digging of the graves for burial. Electricity and water service to the cemetery is provided, at no cost, by Searles Valley Minerals Inc.

C. Infrastructure Needs and Deficiencies

The grounds are maintained pursuant to maintenance schedule set by the Cemetery Association. Should there be a discontinuance of water or electricity service by Searles Valley Minerals, CSA 82, as the responsible and liable entity for the cemetery, would be responsible for providing a mechanism to assure water and electrical service.

8. Financial Ability to Provide Services

Even though CSA 82 receives a share of the one percent ad valorem general levy, the cemetery operation does not receive proceeds from the ad valorem taxes for its operations. The Association provides free burials and cemetery plots to residents of Searles Valley funded through donations and by volunteers in the Searles Valley community and the Searles Valley Mineral Company.

9. Shared Facilities

A. Status of Shared Facilities

The County identifies that it does not share the cemetery land with other agencies.

B. Opportunities for Shared Facilities

An opportunity may exist for CSA 82 to lease its non-used land to other public agencies. Section 9054 permits a district to use or lease land acquired for future cemetery use to a public agency for recreational use.

10. Accountability

A. Board Members

CSA 82 is a dependent district, governed by the County Board of Supervisors, and operates under the auspices of County Special Districts, a part of the County's Department of Public Works.

The Association operates with 11 Trustees who are residents of Searles Valley. The Board of Trustees meet quarterly. According to the Association, all members are volunteers and receive no payments for their services.

B. Internment Records

Since 2013, all records are digitized in dropbox on file with SVCA. There are no dedicated websites for either CSA or the Searles Valley Cemetery (although the Cemetery Association has a Facebook page).

C. Completion and Filing of Financial Documents

The District is current with completion of its financial statements, which do not include cemetery operations.

D. Policy Manual

CSA 82 operates under the policies adopted by the County. The Cemetery Association operates with its own bylaws and policies.

E. Website Transparency

The County's Special Districts website contains a dedicated page for CSA 82's sewer function but lacks any information on its other functions: park and recreation, cemetery, and streetlighting. Should the public desire to access information about CSA 82, it cannot do so via a direct link. Therefore, this section is incomplete. Items identified with "Yes" in the table below are satisfied via the Special Districts site (www.specialdistricts.org) or the County's site (www.sbcounty.gov). In response to the working copy of this report, Special Districts states that it is adding CSA 82 to its website to comply with these recommendations

Senate Bill 929 added Government Code Sections 6279.6 and 53087.8 to provide the public easily accessible and accurate information through agency websites. By January 1, 2020, every California independent district is required to maintain a website.

The table, below, is not an exhaustive inventory of website criteria required under current law. Rather, it identifies key components (required by the Government Code and/or recommended by the California Special Districts Association and other organizations) for websites to enhance transparency and accountability.

Government Code Sections 54954.2 and 54957.5 require agencies to post all agendas 72 hours in advance on their websites. Government Code Section 6253 requires that agencies post content most requested by constituents (and most often requested via Public Record Act requests). Because of the difficulty for LAFCO staff to verify this information, these criteria are not included in the website checklist. However, agencies should address these criteria to comply with current website requirements.

**Table 2-6:
Website Checklist**

CSA 82 Website Checklist			
<i>Required</i>			
		Yes	No
Government Code §53087.8	Agency maintains a website with current contact information? (<i>required for independents special districts by 1/1/2020</i>)		✓
Government Code §6270.5	Agency has created an Enterprise System Catalog and posted it to website?	✓	
Government Code §54954.2	Agency has current agenda posted to website homepage and is accessible through a prominent, direct link?	✓	
Government Code §53908	Agency's website provides information on compensation of elected officials, officers and employees or has link to State Controller's Government Compensation website?	✓	
<i>The following are recommended for agency websites by a number of governance associations and organizations.</i>			
		Yes	No
Description of Services?			✓
Service area map?			✓
Budgets (past 3 years)?		✓	
Board meeting schedule?		✓	
Audits (past 3 years)?		✓	
List of elected officials and terms of office?		✓	
List of key agency staff with contact information?		✓	
Meeting agendas (last six months)?		✓	
Meeting minutes (last six months)?		✓	
<i>Notes: Items identified with "Yes" are satisfied via the Special Districts site (www.specialdistricts.org) or the County's site (www.sbcounty.gov)</i>			

11. Government Structure Options

While the discussion of some government structure options may be theoretical, a service review should address possible options. Such options should consider:

- Improving public participation, local accountability, and governance;
- Producing economies of scale and improving buying power in order to reduce service costs;
- Enhancing capital improvement plans;
- Improving the ability to provide and explain budget and financial data; and
- Improving the quality and/or levels of service.

Evaluation of these options should weigh:

- Long-term savings of the change versus related transition costs;
- Cost-benefit of restructuring the current governing body and/or administration to any proposed alternative;
- Impact on operating cost (short and long-term) due to government structure changes; and
- Impact of government structure options on an agency's financial stability.

Structure Options that include LAFCO

1. Combine all public cemeteries (Barstow, Twentynine Palms, Lucerne Valley, and Searles Valley) by forming a County Service Area, governed by the County Board of Supervisors, to function as a single-purpose agency for all public cemeteries. Administratively and operationally, there would be economies of scale, as a single entity would conduct administration and operations. For the governing body, there would be a single body to govern all public cemeteries in the county. However, the two dependent districts (Lucerne Valley and Searles Valley) provide more than one function and separating these functions would reduce the community nature of the current form of governance in these communities. Further, this option would require an election. Therefore, this option is not feasible.
2. One option would be for the residents within the community to submit an application to LAFCO to form an independent community services district ("CSD"). Through this formation, the CSD would have a choice to provide 33 different services, including cemetery services, and the voters would select the board of directors, which must reside within the district. The formation application must show that the proposed CSD would be financially viable. At this time, there is no expressed desire by the residents to look at the formation of a CSD.

Structure Options that do not include LAFCO

The County already outsources the cemetery operations and management.

Sources:

CSA 82

Interview with Special Districts Staff. 29 September 2020.

LAFCO

LAFCO 3025 – Service Review and Sphere of Influence Update for County Service Area 82

Searles Valley Cemetery Association

Website. <https://www.facebook.com/pages/category/Nonprofit-Organization/Searles-Valley-Cemetery-Association-169975463342132/>

Searles Valley Historical Society

Agency Name	SAN BERNARDINO COUNTY SPECIAL DISTRICTS DEPARTMENT COUNTY SERVICE AREA 82 – SEARLES VALLEY
Agency Contact Name	Luther Snoke - DEO

1. Please provide a roster of board members.

Member Name	Position	Term Expiration
Curt Hagman	Chair	12/05/2022
Josie Gonzales	Vice-Chair	12/07/2020
Robert Lovingood	1 st District	12/07/2020
Janice Rutherford	2 nd District	12/05/2022
Dawn Rowe	3 rd District	12/07/2020

2. Government Code Section 9028(b) requires the appointment of a Secretary, which may be either a trustee or district employee. Provide the name of the appointee (trustee or employee). [Andrew Ledesma \(President Searles Valley Cemetery Assc\)](#) or [Glenn Jacklin Division Manager Operations \(CSA 82\)](#)
3. If the District has appointed a Finance Director to manage its funds, it must require a bond for that person. [Treasurer \(Searles Valley Cemetery Assc\)](#) or [Dennis Stout Jr. Division Manager- Fiscal & Administrative Services County Special Districts](#). If the District has a Finance Director, please confirm that person is bonded. [YES, County Special Districts is bonded at \\$25,000](#)
4. What is the current size (sq. miles) of your district's territory? [10 Acres](#) How much unused land remains for future cemetery use? [5.6 Acres](#)
5. Cemetery Districts are permitted to lease currently unused land which is set aside for future cemetery use. Does your District lease any land to private organizations (e.g. cell phone towers, non-profits) or public agencies (e.g. city, schools) for continual or one-time use? [NO](#)
6. Has the District adopted policies and procedures, including bidding regulations, governing the purchase of supplies and equipment? [YES guided by County Policy](#)
7. Please provide copies of:
 - a. Most recent budget approved by the board. [No financial Data obtained for the CSA 82 Cemetery.](#)

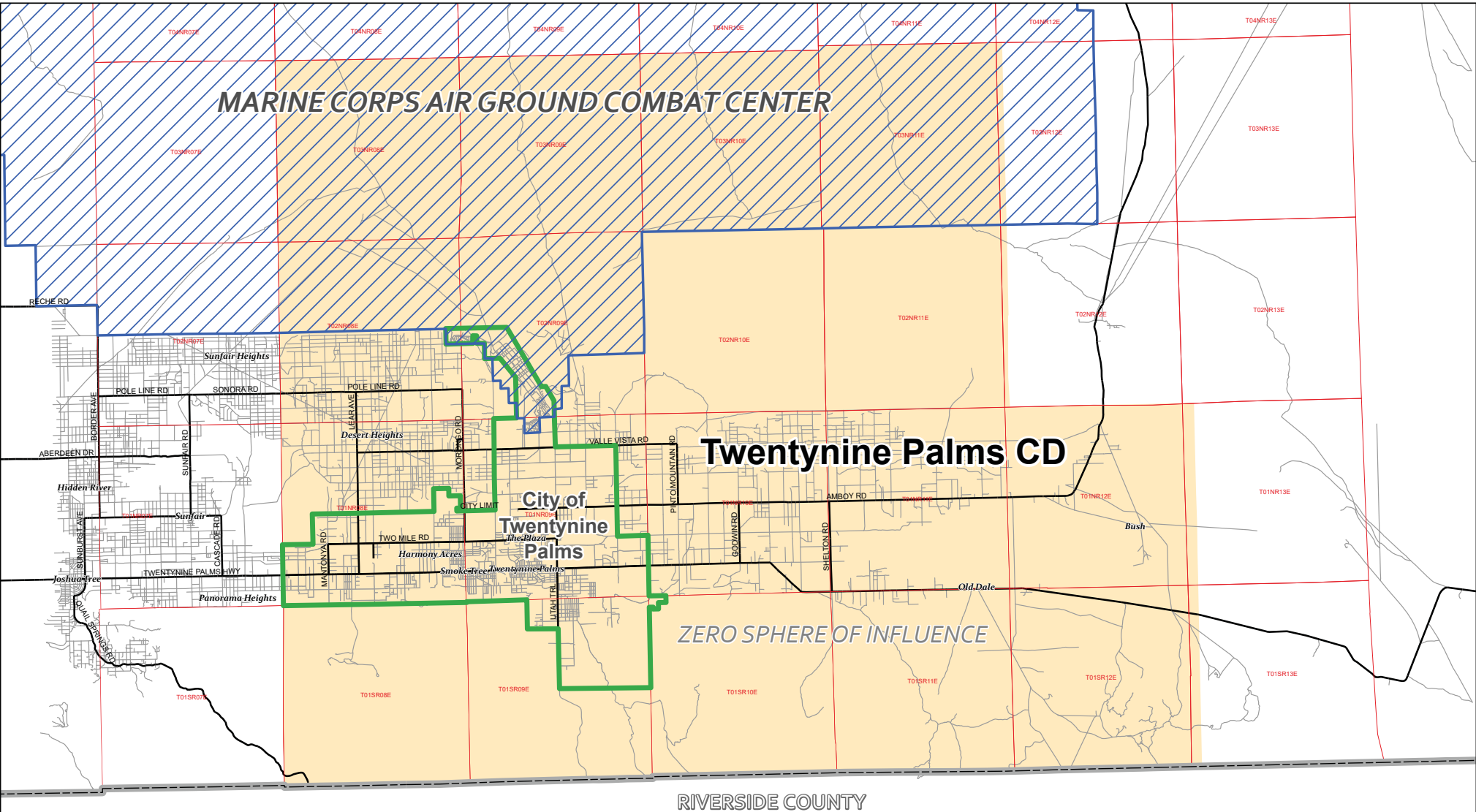
- b. Five most recent audits accepts by the board, of you have not already provided them to LAFCO. [See attached 2019 Financial Statement.](#)
[Limited information regarding cemetery included.](#)
- c. Fee Schedule [Free burials and cemetery plots for locals per Contract with Searless Valley Cemetery Association.](#) [See Attached.](#)
- d. Endowment Policies [No Endowment policy of record.](#)


8. AB 1234 (State Ethics Requirements)

- Does your district have a written policy to compensate board members for attendance at events beyond just board meetings, committee meetings and conferences? [No.](#)
- Does your district have a written policy to reimburse board members for expenses? [Yes.](#)
- Does your district use IRS reimbursement rates or adopt a policy that specifies reasonable reimbursement rates? [Yes, guided by County Policy.](#)
- Are expense report forms provided to board members who require reimbursement? [Yes.](#) Are these completed forms retained on file as public documents? [Yes.](#)
- Do all board members and any board-designated employees take at least two hours of ethics training at least every two years and receive a certificate of completion? [Yes.](#)

Please return this questionnaire and any materials to LAFCO to either:


- LAFCO, 1170 W. Third Street, Unit 150, San Bernardino, CA 92415-0490
- mtuerpe@lafco.sbcounty.gov









Disclaimer: The information shown is intended to be used for general display only and is not to be used as an official map.

0 2.5 5 10 Miles



-  Twentynine Palms Public Cemetery
-  District City of Twentynine Palms
-  Marine Corps Air Ground Combat Center
-  San Bernardino County Line

1. LAFCO Conclusion and Recommendation

LAFCO concludes that the Twentynine Palms Cemetery District suffers from historical governance and operational challenges resulting in lack of continuity, training, and numerous structural deficiencies due to neglect and maintenance backlog. The two previous general managers of the District were terminated with cause based on evidence of misconduct pertaining to suspected embezzlement and fraud. The successive general managers were terminated in 2012¹ and 2020², respectively. Restitution was ordered and satisfied in the first case and is pending for the second case.

LAFCO concludes that since Spring 2020, current district staff have commenced with governance training, general upkeep, correcting structural deficiencies, and health and safety improvements.

LAFCO recommends that the Commission continue to monitor the Twentynine Palms Public Cemetery District, with the first status report scheduled for LAFCO's May 19, 2021 meeting.

2. Overview and Brief History

In 1934, voters approved the formation of the Twentynine Palms Cemetery District to provide cemetery services to Twentynine Palms, Wonder Valley, and outlying areas. The District is an independent special district with a five-member appointed board of trustees and operates under Public Cemetery District Law (Division 8, Part 4 of the Health and Safety Code). The District's boundaries cover approximately 650 square miles and includes portions of the Twentynine Palms Marine Corps Base and Joshua Tree National Park. Currently, the District operates one cemetery located at 5350 Encelia Avenue in Twentynine Palms. The District owns 30 acres, 20 which are developed. According to the District website, there are approximately 4,215 interments.

3. Boundary and Sphere of Influence Review

This review identifies no boundary or sphere of influence matters for the District.

4. Previous Service Review and Other Reports

This agency's first service review from 2012 raised concerns regarding the District's fiscal health, lack of a master plan, and other financial and operational issues.³ Based on the reasons described in the May 2012 service review, LAFCO designated a zero sphere of influence for the District. Further financial and organizational issues were discovered subsequent to the approval of the service review and a reconsideration of the service review was conducted in November 2012 allowing further public testimony and Commission consideration. The Commission made no change to the zero sphere determination.

5. Growth and Population Projections

The District's population is primarily concentrated around central Twentynine Palms, with limited development throughout the remainder of the District. As shown below, the population estimates for 2012 and 2040 do not identify any significant growth areas.

¹ Superior Court of California. *People of the State of California vs. Cassandra Dobler*. Case Number: FMB1400595

² Superior Court of California. *People of the State of California vs. Stacey Lynn Lee*. Case Number: FMB20000014

³ http://www.sbcounty.gov/lafco/items/201211/Item_7.pdf

Figure 4-1: 2012 Population

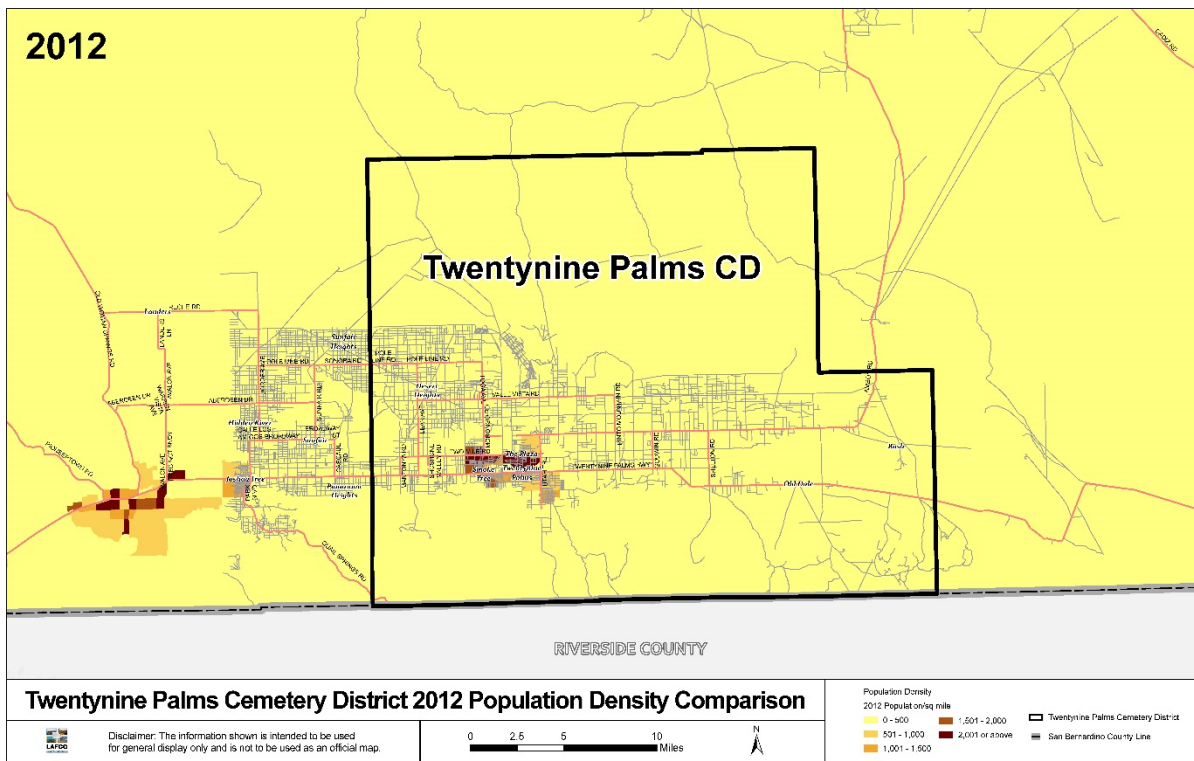
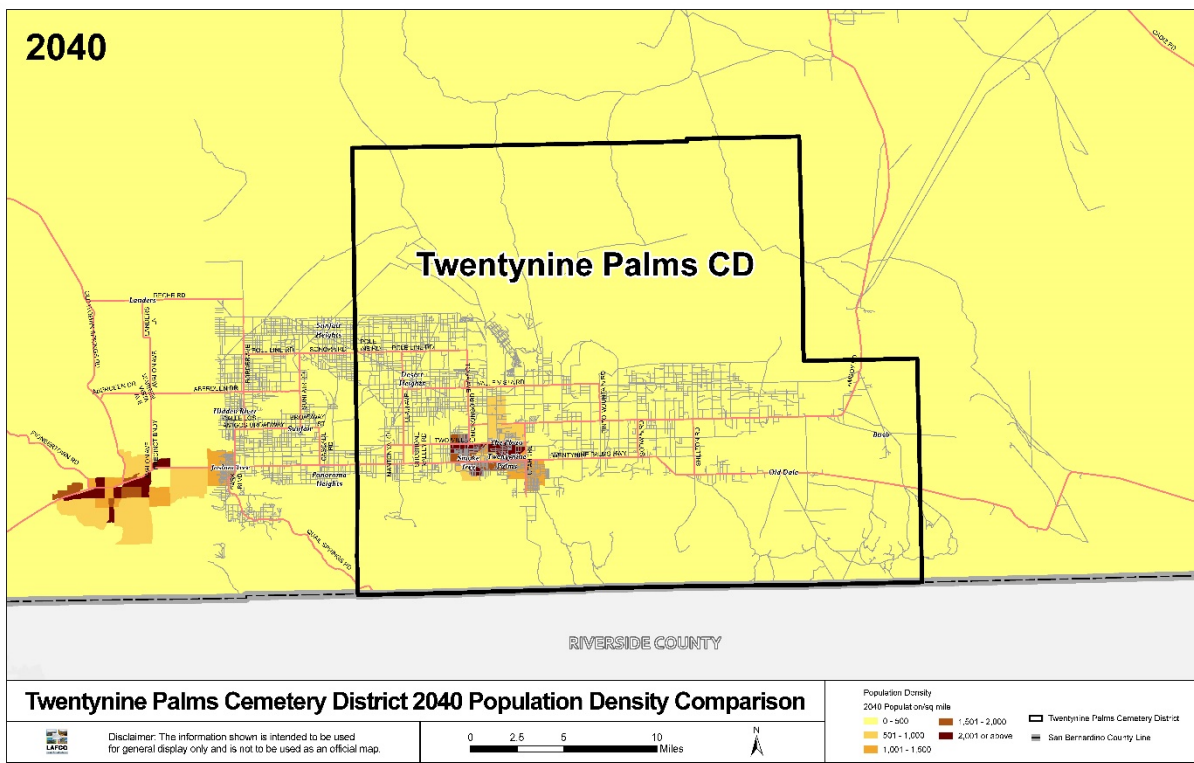


Figure 4-2: 2040 Population

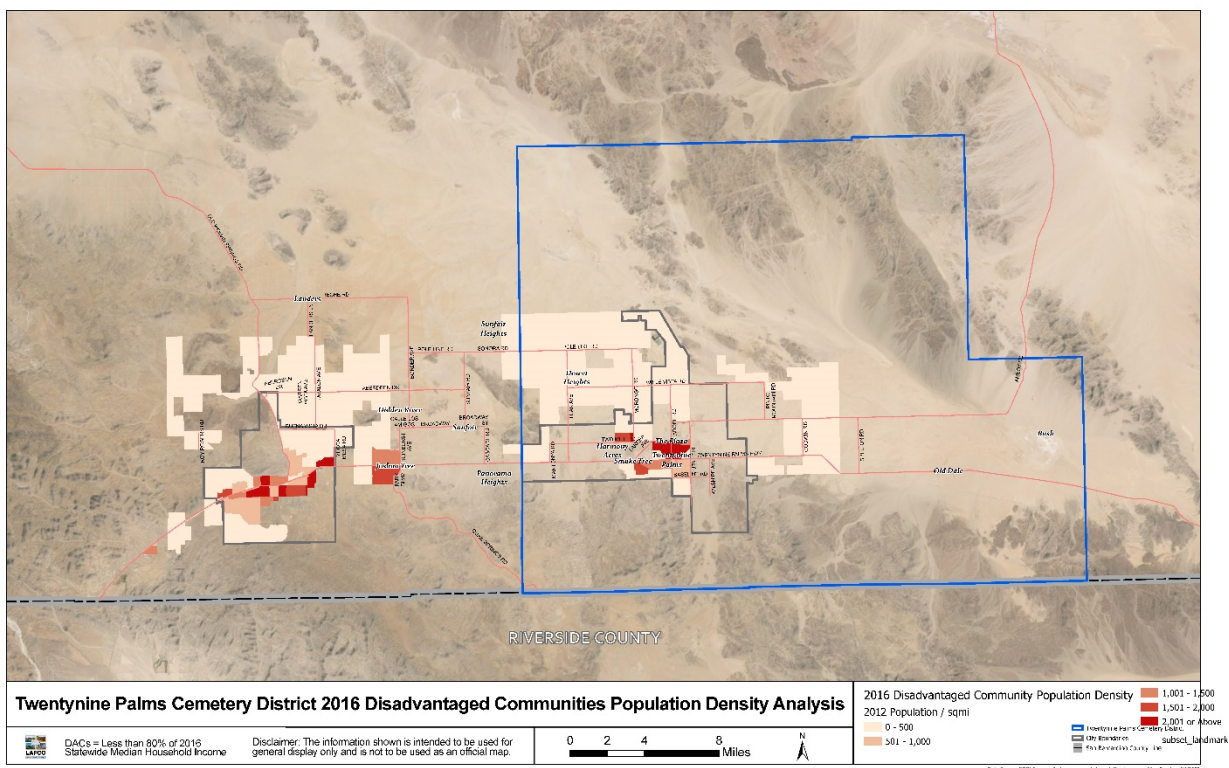


6. Disadvantaged Communities, Location and Characteristics

State law requires various entities (i.e. LAFCO, cities and counties, and water agencies) to, in some manner, identify disadvantaged communities, which can be located in both incorporated and unincorporated areas. More information on the laws and requirements regarding Disadvantaged Communities is available in [Appendix C: Primers](#) to this report.

The figure below identifies the location of the disadvantaged communities with the District overlay in blue outline. For this region, LAFCO uses a density factor of 500 people or more per square mile.

**Figure 4-3:
Disadvantaged Communities with Population Density**



The table below identifies the characteristics of incorporated Disadvantaged Communities with population densities of more than 500 people per square mile.

**Table 4-1:
Characteristics of Disadvantaged Areas within Twentynine Palms Public CD**

Population	7,528	Median Household Income	\$39,633
Households	3,045	Per Capita Income	\$21,424
Median Age	27.8	Unemployment Rate	26.4%

Source: ESRI, August 2020

7. Facilities and Services

The District completed a LAFCO questionnaire regarding governance and operations. The District's response is included at the rear of this agency's profile.

A. Present and Planned Capacity of Public Facilities

The District operates one cemetery located at 5350 Encelia Drive in Twentynine Palms. The grounds cover 30 acres, 20 of which are developed. As of September 24, 2020, the cemetery had:

- 4,215 filled sites
- 629 sold but empty sites
- 2,606 unsold sites

According to the District, internments for the past three years were 29 (2017), 29 (2018) and 23 (2019). At this rate, it would take 112 years for the cemetery to reach capacity, not counting the additional 10 acres of empty land.

B. Adequacy of Public Services

Given the remote nature of the District, as well as the need for internment services, the public service is adequate.

C. Infrastructure Needs and Deficiencies

During a site visit, LAFCO staff noticed deferred maintenance and historical lack of general upkeep. The current staff have commenced with general upkeep, correcting structural deficiencies, and health and safety improvements.

The District irrigates with domestic water and not from a well. Domestic water from the Twentynine Palms Water District is more costly than pumping untreated water from a well.

8. Financial Ability to Provide Services

To make the required service review determination of an agency's financial ability to provide services, LAFCO referenced the agency's own financial documents (audits, budgets). Additionally, LAFCO's Fiscal Indicators Program shows fiscal trends for an agency and allows for an agency comment.²² The information below incorporates all of the information and sources identified above.

A. Overview

Revenues are comprised of service fees, the District's share of the general property tax levy, and interest. The vast majority of the revenues are derived from service

²² <http://sbclafco.org/FiscalIndicators/IndependentDistricts/TwentyninePalmsCemeteryDistrict.aspx>

fees. The District does not offer a defined payment retirement plan to its employees; therefore, it does not have any pension liability.

The most recent audit, FY 2018/19, offers the following highlights:

- The assets of the District exceeded its liabilities at the close of the year by \$593,159. Of this amount, \$104,430 may be used to meet the District's ongoing obligations to citizens and creditors.
- As of the close of the current fiscal year, the District governmental funds reported combined ending fund balances of \$348,384, an increase of \$58,272 in comparison with the prior year.
- At the end of the current year, unreserved fund balance for the general fund was \$99,547 or 45% of the total general fund expenditures.

B. Funds

The District maintains three operating funds with the County Treasury, which are listed below. A local checking account is maintained for depositing cash and monies received until they are transferred to the County Treasury.

- General Fund: for regular income and expenses
- Pre-Need Fund: for the sale of reserve space for future burial
- Endowment Fund: remains in perpetuity, only the interest and gains can be used

General Fund

The fund labeled "General" is the government's primary operating fund. It accounts for all financial resources of the general government, except those required to be accounted for in another fund.

A trend of operating gains or deficits is a key indicator of the financial health of an agency. The figure below shows the General Fund balance for the period of FY 2013/14 through FY 2018/19. The fund balance has decreased by 29% within five years with Total Revenues increasing by 36% and Total Expenditures increasing by 13%. Expenditures have exceeded revenues annually from at least 2013/14 through 2017/18, resulting in an annual decline in fund balance. However, the Pre-Need Burial Fund receives revenues for burial expenditures and transfers funds to the General Fund for this purpose. Note that in 2015/16, a large capital expense accounts for the deficit for that year. What this reveals is a lack of reserves to cushion necessary capital purchases. Moreover, any unexpected expenses could further challenge the General Fund, prompt service reduction, fee increases, or cause the General Fund to enter into negative territory and result in a running deficit.

**Table 4-2:
General Fund Balance**

	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	5 yr Var
REVENUES							
Charges for services	7,627	18,244	19,571	23,464	26,508	53,777	605%
Property taxes	176,768	179,914	183,587	186,353	192,777	197,292	12%
Other	2,680	2,949	11,718	4,858	16,876	3,426	28%
Total Revenue	\$ 187,075	\$ 201,107	\$ 214,876	\$ 214,675	\$ 236,161	\$ 254,495	36%
EXPENDITURES							
Salaries & Benefits	148,949	173,204	186,404	188,507	185,153	154,418	4%
Services & Supplies	23,150	33,695	49,891	51,733	53,474	37,415	62%
Other	21,162	22,283	177,540	18,796	34,266	25,996	23%
Total Expenditures	\$ 193,261	\$ 229,182	\$ 413,835	\$ 259,036	\$ 272,893	\$ 217,829	13%
Revenues less Expend.	(6,186)	(28,075)	(198,959)	(44,361)	(36,732)	36,666	
OTHER FINANCING							
Transfers In	28,646	45,816	143,144	11,924	19,971	9,572	
Fund Balance Begin	118,121	140,581	158,322	102,507	70,070	53,309	-55%
Fund Balance End	\$ 140,581	\$ 158,322	\$ 102,507	\$ 70,070	\$ 53,309	\$ 99,547	-29%

General Fund Liquidity

As a measure of the General Fund's liquidity, it may be useful to compare both unassigned fund balance and total fund balance to total fund expenditures. At the end of FY 2018/19, unreserved fund balance of the General Fund was \$99,547, which is the same as total fund balance. Unassigned fund balance represents a 46 percent of total General Fund expenditures. Therefore, the liquidity of the General Fund is adequate.

The Government Finance Officers Association ("GFOA") currently recommends that regardless of size, general-purpose governments should maintain unreserved fund balance in their General Fund of "no less than two months of regular general fund operating revenues or expenditures." A General Fund balance of a lesser level exposes the General Fund to the risk of not being able to meet cash flow requirements, economic uncertainties, or other financial hardships. As shown on the chart below, the District's unreserved fund balance has exceeded the general rule of more than two months of regular General Fund operating expenditures.

**Table 4-3:
General Fund Liquidity**

General Fund (GF)	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
Total GF expenditures	\$ 193,261	\$ 229,182	\$ 413,835	\$ 259,036	\$ 272,893	\$ 217,829
Unreserved GF fund balance	140,581	158,322	102,507	70,070	53,309	99,547
(as a % of total expenditures)	73%	69%	25%	27%	20%	46%
Total fund GF balance	\$ 140,581	\$ 158,322	\$ 102,507	\$ 70,070	\$ 53,309	\$ 99,547
(as a % of total expenditures)	73%	69%	25%	27%	20%	46%

sources: Balance Sheet and Statement of Revenues, Expenditures, and Changes in Fund Balance

Endowment Fund

The District maintains an Endowment Fund which includes monies paid for every interned person to be held as a perpetual endowment. Pursuant to State law, the board of trustees may not spend the principal of the Endowment Fund. However, the principal can be invested in securities and obligations, and the interest and gains may be spent from the investments (§9065(e)). Note that in FY 2015/16, the District made a one-time transfer from the Endowment Fund to the General Fund. The purpose of the transfer was related to capital improvements. The figure below shows the fund balance of the Endowment Care fund for the same time period.

**Table 4-4:
Endowment Fund**

	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	5 yr Var
REVENUES							
Charges for services	930	4,315	2,289	5,094	3,775	5,369	477%
Interest & investment	4,036	5,720	3,809	1,827	557	6,665	65%
Total Revenue	\$ 4,966	\$ 10,035	\$ 6,098	\$ 6,921	\$ 4,332	\$ 12,034	142%
EXPENDITURES							
Total Expenditures	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Revenues less Expend.	4,966	10,035	6,098	6,921	4,332	12,034	142%
OTHER FINANCING							
Other							
Transfers In (Out)	-	-	(138,521)	-	-	-	
Fund Balance Begin	342,972	347,938	357,973	225,550	232,471	236,803	-31%
Fund Balance End	\$ 347,938	\$ 357,973	\$ 225,550	\$ 232,471	\$ 236,803	\$ 248,837	-28%
*Endowment Principal	\$217,322	\$222,196	\$224,935	\$212,812	\$232,524	\$214,563	-1%

sources: Statement of Revenues, Expenditures, and Fund Balances and Balance Sheets

Pre-Need Burial Fund (fiduciary fund)

Fiduciary funds are used to account for assets held by the District as an agent or trustee for individuals, private organizations, other governments and/or other funds. The Pre-Need Burial Fund is a private-purpose trust fund that transfers funds from its earnings to the General Fund to finance burial expenditures.

The District provided information demonstrating adequate tracking of the Pre-Need Burial Fund. This fund experiences an annual increase and appears to be healthy.

**Table 4-5:
Pre-Need Fund**

	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	5 yr Var
NET ASSETS							
Unrestricted	2,381						
Restricted	215,929	203,899	217,239	228,905	226,239	232,738	8%
Total net assets	\$ 218,310	\$ 203,899	\$ 217,239	\$ 228,905	\$ 226,239	\$ 232,738	7%
source: Statement of Fiduciary Net Position							

Long-term Debt

The District's long-term debt obligations consist of compensated absences payable. District employees have accumulated unpaid vested benefits of \$2,391 as of June 30, 2019.

C. Capital Outlay

During LAFCO's site visit on September 22, 2020, District staff identified numerous structural deficiencies due to neglect and maintenance backlog. Since Spring 2020, the District has approved a number of capital repairs.

9. Shared Facilities

A. Status of Shared Facilities

The District identified that it does not share facilities with other agencies.

B. Opportunities for Shared Facilities

An opportunity may exist for the District to lease its non-used land to other public agencies. Section 9054 permits a district to use or lease land acquired for future cemetery use to a public agency for recreational use. The District identifies that approximately ten acres are unused at this time.

10. Accountability

A. Board Members

Records show that community interest in board membership historically has been low. An option afforded in Public Cemetery District law is for the board to request through resolution that the County Board of Supervisors reduce board membership from five members to three members (§9020, §9025). In the LAFCO staff's view, limiting membership to three members for such a large geographical area would not promote any oversight efficiencies; a full membership of five members should be sought by the District and the County Board of Supervisors to promote adequate oversight of District affairs and community participation in an important service.

Alternatively, the County Board of Supervisors may appoint itself to be the board of trustees (§9026). Such an action would not require LAFCO approval as it would not be a change of organization, rather the District remains, but the governing body would be different.

B. Internment Records

The District uses a cloud based archive (CemSites) to account and mark its sites. The online system is available to the public via the District's website.

C. Completion and Filing of Financial Documents

The District is current with completion of its financial statements.

D. Policy Manual

The District identifies that it is currently updating its policies and resolutions with the aid of its attorney.

E. Website Transparency

Senate Bill 929 added Government Code §6279.6 and 53087.8 to provide the public easily accessible and accurate information through agency websites. By January 1, 2020, every California independent district is required to maintain a website.

The table, below, is not an exhaustive inventory of website criteria required under current law. Rather, it identifies key components (required by the Government Code and/or recommended by the California Special Districts Association and other organizations) for websites to enhance transparency and accountability.

Government Code Sections 54954.2 and 54957.5 require agencies to post all agendas 72 hours in advance on their websites. Government Code Section 6253 requires that agencies post content most requested by constituents (and most often requested via Public Record Act requests). Because of the difficulty for LAFCO staff to verify this information, these criteria are not included in the website checklist.

However, agencies should address these criteria to comply with current website requirements.

**Table 4-6:
Website Checklist**

Twentynine Palms Public Cemetery District Website Checklist			
website accessed 9/16/2020 www.29palmscemetery.org			
<i>Required</i>			
		Yes	No
Government Code §53087.8	Agency maintains a website with current contact information? (<i>required for independents special districts by 1/1/2020</i>)	✓	
Government Code §6270.5	Agency has created an Enterprise System Catalog and posted it to website?	✓	
Government Code §54954.2	Agency has current agenda posted to website homepage and is accessible through a prominent, direct link?	✓	
Government Code §53908	Agency's website provides information on compensation of elected officials, officers and employees or has link to State Controller's Government Compensation website?	✓	
<i>The following are recommended for agency websites by a number of governance associations and organizations.</i>			
		Yes	No
Description of Services?		✓	
Service area map?		✓	
Budgets (past 3 years)?		✓	
Board meeting schedule?		✓	
Audits (past 3 years)?		✓	
List of elected officials and terms of office?		✓	
List of key agency staff with contact information?		✓	
Meeting agendas (last six months)?		✓	
Meeting minutes (last six months)?		✓	
Notes:			

11. Government Structure Options

While the discussion of some government structure options may be theoretical, a service review should address possible options. Such options should consider:

- Improving public participation, local accountability, and governance;
- Producing economies of scale and improving buying power in order to reduce service costs;
- Enhancing capital improvement plans;
- Improving the ability to provide and explain budget and financial data; and
- Improving the quality and/or levels of service.

Evaluation of these options should weigh:

- Long-term savings of the change versus related transition costs;
- Cost-benefit of restructuring the current governing body and/or administration to any proposed alternative;
- Impact on operating cost (short and long-term) due to government structure changes; and
- Impact of government structure options on an agency's financial stability.

Structure Options that include LAFCO

1. Consolidate the two independent cemetery districts (Barstow and Twentynine Palms). This option would consolidate the two independent districts under one governing body. Administratively, there could be economies of scale – fewer administrative staff. Operationally, there would not be economies of scale due to the need to house heavy equipment at each location since the distance between cemeteries is roughly 100 miles. For the governing body, an independent district with two zones roughly 100 apart does not lend to local governance. Therefore, this option is not feasible.
2. Combine all public cemeteries (Barstow, Twentynine Palms, Lucerne Valley, and Searles Valley) by forming a County Service Area, governed by the County Board of Supervisors, to function as a single-purpose agency for all public cemeteries. Administratively and operationally, there would be economies of scale, as a single entity would conduct administration and operations. For the governing body, there would be a single body to govern all public cemeteries in the county. However, the two dependent districts (Lucerne Valley and Searles Valley) provide more than one function and separating these functions would reduce the community nature of the current form of governance in these communities. Further, this option would require an election. Therefore, this option is not feasible.

Structure Options that do not include LAFCO

3. Cemetery service to be provided by the City of Twentynine Palms. Current law (Health and Safety Code §8125) authorizes cities to survey, lay out, and dedicate for burial purposes no more than five acres of public lands. The District operates more than five acres. If the City were to succeed to the District's cemetery services, special legislation would need to occur and there is statutory precedent for authorization. In 2008, AB 1932 (Smyth) authorized the City of Simi Valley to operate a cemetery on public lands containing five acres or more. Should the City desire to succeed to the District's services and facilities, special legislation would be required.
4. The County Board of Supervisors may appoint itself to be the board of trustees (§9026). Such an action would not require LAFCO approval as it would not be a change of organization, rather the District remains but the governing body would be different.
5. Outsourcing financial and/or administrative duties. The board of trustees would have to weigh the cost-benefits of outsourcing versus in-house management.

Sources:

Twentynine Palms Cemetery District

Financial Statements

Website. www.29palmscemetery.org. Accessed 16 August 2020

LAFCO

Fiscal Indicators Program

LAFCO 3152 - Service Review and Sphere of Influence Update for the

Twentynine Palms Public Cemetery District

Site Visit 22 September 2020

Agency Name	TWENTYNINE PALMS PUBLIC CEMETERY DISTRICT
Agency Contact Name	Emily Barry Helm

1. Please provide a roster of board members.

Member Name	Position	Term Expiration
Mary Kay Sherry	Chair	January 2022
Kathleen Arbaczewski	Vice-Chair	January 2022
Rebecca Rinkes	Trustee	January 2024
Jo Ann Larsen	Trustee	January 2024

2. Government Code Section 9028(b) requires the appointment of a Secretary, which may be either a trustee or district employee. Provide the name of the appointee (trustee or employee). Emily Barry Helm, District General Manager

3. If the District has appointed a Finance Director to manage its funds, it must require a bond for that person. If the District has a Finance Director, please confirm that person is bonded. N/A

4. What is the current size (sq. miles) of your district's territory? How much unused land remains for future cemetery use? 15 Miles / Approx. 10 Acres

5. Cemetery Districts are permitted to lease currently unused land which is set aside for future cemetery use. Does your District lease any land to private organizations (e.g. cell phone towers, non-profits) or public agencies (e.g. city, schools) for continual or one-time use? No

6. Has the District adopted policies and procedures, including bidding regulations, governing the purchase of supplies and equipment? We are currently in the process of updating all Policies and Resolutions, with the aid of our Attorney, pertaining to the District.

7. Please provide copies of:

- Most recent budget approved by the board.
- Five most recent audits accepted by the board, if you have not already provided them to LAFCO.
- Fee Schedule
- Endowment Policies

8. AB 1234 (State Ethics Requirements)

- Does your district have a written policy to compensate board members for attendance at events beyond just board meetings, committee meetings and conferences? No, our Board of Trustees does not receive any compensation.
- Does your district have a written policy to reimburse board members for expenses? I am not aware of this document. If necessary, we will have our Attorney compose a Policy with an appropriate Resolution or if the county has a current Policy that would be specific to San Bernardino's regulations, we will follow their direction.
- Does your district use IRS reimbursement rates or adopt a policy that specifies reasonable reimbursement rates? When applicable, the district uses the most current IRS reimbursement rate.
- Are expense report forms provided to board members who require reimbursement? Are these completed forms retained on file as public documents? I am not aware of this document. If necessary, we will have our Attorney compose a Policy with an appropriate Resolution or if the county has a current Policy that would be specific to San Bernardino's regulations, we will follow their direction.
-
- Do all board members and any board-designated employees take at least two hours of ethics training at least every two years and receive a certificate of completion? The Twentynine Palms Public Cemetery is aware of the requirement of Ethics Training and as of this date 3 Trustees have completed the training and the remaining Trustee and General Manager will have it completed by Sept 15, 2020.

Please return this questionnaire and any materials to LAFCO to either:

- LAFCO, 1170 W. Third Street, Unit 150, San Bernardino, CA 92415-0490
- mtuerpe@lafco.sbcounty.gov

APPENDIX A:
Comments to the First Draft and LAFCO Staff Responses

LAFCO provided each agency the opportunity to provide technical review and input to a working copy.

In addition, the Barstow Cemetery District provided comments to the First Draft.

From: Tuerpe, Michael
To: ["Barstow Cemetery"](#)
Cc: [Martinez, Samuel](#)
Subject: RE: LAFCO First Draft
Date: Monday, November 9, 2020 11:37:00 AM

Melinda,

Thank you for taking the time to review the draft staff report.

Your comments below will be added to the report text and will be included in their entirety as a part of Appendix A (Comments).

Michael Tuerpe

Senior Analyst

Local Agency Formation Commission for San Bernardino County

1170 West Third Street, Unit 150

San Bernardino, CA 92415-0490

(909) 388-0488 Direct

(909) 388-0481 Fax

www.sbclafco.org

CONFIDENTIALITY NOTICE:

This email and any files or attachments transmitted with it may contain privileged or otherwise confidential information. If you are not the intended recipient, or believe that you may have received this communication in error, please advise the sender via reply email and immediately delete the email you received.

From: Barstow Cemetery <barstowcemetery@hotmail.com>

Sent: Friday, November 6, 2020 10:11 AM

To: Tuerpe, Michael <mtuerpe@lafco.sbcounty.gov>

Subject: Re: LAFCO First Draft

Hi Michael,

Since your visit, I have been in touch with CSDA, CAPC and other small special district cemeteries. They are sharing their resources and experience and I am soaking it up.

Last week Barstow Cemetery District's Board of Directors retained legal counsel. Our lawyer will be helping us to update our policies.

We are currently searching for the right financial advisor. Mojave Water Agency has offered their experience and professional resources to implement a plan for significant water reduction along with grounds beautification.

We are now applying for grants to help with other deficiencies. I have attached some of

the requested documents and will be sending more on Monday.

I want to thank both you and Sam for pointing me in the right direction.

*Thank you,
Melinda*

APPENDIX B:

Acronyms and Definitions

Acronyms

BSM	Burial Space Manager
CAFR	Comprehensive Annual Financial Report
CalPERS	California Public Employees Retirement System
CIP	Capital Improvement Plan/Program
CSA	County Service Area
CSD	Community Services District
DAC	Disadvantaged Community
DUC	Disadvantaged Unincorporated Community
FY	Fiscal Year
GIS	Geographic Information System
LAFCO	Local Agency Formation Commission
MSR	Municipal Service Review
NPL	Net Pension Liability
OPEB	Other Post-Employment Benefits
PEPRA	Public Employees Pension Reform Act
SBCERA	San Bernardino County Employees' Retirement Association
SOI	Sphere of Influence
UAL	Unfunded Accrued Liability

Definitions

Capital Improvement Plan/Program – A capital improvement plan or program is a short range plan, usually five to ten years, which identifies capital projects and equipment purchases, provides a planning schedule and identifies options for financing the plan.

Dependent Special District – A special district whose board of directors is another legislative body, such as a city council or board of supervisors.

Fiduciary Fund – A fund used to account for assets held by the District in a trustee or agency capacity that cannot be used to support the District's own programs. The Pre-Need Burial Fund is a private-purpose trust fund which transfers funds from its earnings to the general fund to finance burial expenditures.

Governmental Fund – A fund used to account for activities that are governmental in nature. Governmental activities are typically tax-supported and include the operations and maintenance of the cemetery.

Independent Special District – A special district that has a directly elected board of directors.

Other Post-Employment Benefits - Benefits (other than pensions) that are provided to retired employees. These benefits principally involve health care benefits, but may also include life insurance, disability, legal and other services.

Pre-Need Burial Fund - The Pre-Need Burial Fund is a private-purpose trust (fiduciary) fund which transfers funds from its earnings to the general fund to finance burial expenditures.

Special District – A local government agency formed pursuant to general law of the state or special act.

Sphere of Influence – A plan for the probable physical boundary and service area of a local agency.

Subsidiary District – A district of limited powers for which a city council is designated as the ex-officio board of directors of the district. At least 70 percent of district territory and 70 percent of the district's registered voters must be within the city limits for a district to become a subsidiary district.

APPENDIX C: Primers

Disadvantaged Communities

Pension Liability and Contributions

Spheres of Influence

Disadvantaged Communities

The State of California adopted a definition of disadvantaged community (or “DAC”) through passage of Proposition 50, the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002. This measure added §79505.5(a) to the California Water Code and defines a disadvantaged community as a *“community with an annual median household income that is less than 80 percent of the statewide annual median household income.”*¹ For 2016, 80% of the statewide median household income is \$50,043.¹ State law requires various entities (i.e. LAFCO, cities and counties, and water agencies) to, in some manner, identify disadvantaged communities, which can be located in both incorporated and unincorporated areas.

Disadvantaged Unincorporated Communities

Gov. Code §56033.5 defines DUCs as *“...inhabited territory [12 or more registered voters]...or as determined by Commission policy, that constitutes all or a portion of a “disadvantaged community”... with less than 80% of the median household income.*

Particular to LAFCOs, the state mandate is to identify the location and characteristics of disadvantaged unincorporated communities (or “DUCs”). Gov. Code §56375 specifically prohibits an annexation to a city of any territory greater than ten acres where there exists a disadvantaged unincorporated community that is contiguous to the area of proposed annexation unless an application to annex the entire disadvantaged unincorporated community has also been filed.

Need for Consistency

The DAC definition, as defined in Water Code §79505.5(a), differs from the definition of a DUC in two important ways: (1) a DUC must be inhabited, and (2) DUCs comprise unincorporated territory only, not territory within cities. For purposes of further defining a DUC, San Bernardino LAFCO policy defines a community as an *inhabited area comprising no less than 10 dwelling units adjacent or in close proximity to one another.*

Alternatively, Gov. Code §65302.10 (General Plans) identifies a DUC as being 80% or less than the median household income. This is in contrast to Water Code §79505.5 and Gov. Code §56033.5 which reads less than 80%.

Other State agencies, such as the California EPA, use alternative criteria to identify disadvantaged communities for grant funding purposes. The different criteria used to identify disadvantaged communities at the local and state government levels is confusing and complicates implementation of a consistent approach to addressing our disadvantaged residents. While staff recognizes the difficulty in developing a one-size-fits-all definition, LAFCO staff’s position is that additional work should occur Statewide to develop a method for identifying disadvantaged communities that is more consistent yet recognizes the diversity of communities and geographies in California.

¹ Environmental Systems Research Institute (ESRI)

Pensions – Liability and Contributions

Public agencies can belong to the California State Public Employees Retirement System (“CalPERS”). This plan experienced lower than projected earnings combined with investment losses during the recession. This increased each member agency’s Unfunded Actuarial Liability (“UAL”)², which in turn increased employer contribution rates and UAL payments.

With the recent adoption of amortization and smoothing policy changes by the CalPERS Board to address the severity of the underfunding, significant employer contribution rate increases have already begun. A League of California Cities 2018 study states that, “Rising pension costs will require cities over the next seven years to nearly double the percentage of their general fund dollars they pay to CalPERS. For many cities, pension costs will dramatically increase to unsustainable levels.”³ The 2018 study also revealed that increasing pension costs as a percentage of General Fund spending would affect cities more than the state.

Many factors determine an agency’s long-term fiscal health, but an important element is developing and articulating clear fiscal policies. Such policies will help mitigate fiscal crisis and allow for a prudent response. The important thing is not the size of the liability, as the monthly payments and the agency’s ability to make those payments given their resources.

In July 2020, CalPERS, the nation’s largest pension trust fund, issued actuarial reports for each agency plan that identifies annual contributions that participating agencies must make to CalPERS through FY 2026-27. The minimum required employer contribution includes two components:

- **Normal Cost %** - this represents the annual cost of service accrual for the upcoming fiscal year, for active employees. Normal cost is shown as a percentage of payroll and paid as part of the payroll reporting process. This cost is often divided between the employer and its employees.
- **Unfunded Accrued Liability (“UAL”) Payment** – this represents the amortized dollar amount needed to fund past service credit earned (or accrued) for members who are currently receiving benefits, active members, and for members entitled to deferred benefits.

CalPERS saw its trust fund plummet in value during the Great Recession as its pension obligations mushroomed, leaving it with only slightly more than 70 percent of the assets needed to satisfy promised pensions. To reduce its unfunded liability, CalPERS has been ramping up mandatory payments from local governments. Agencies that employ

² Colloquially, the phrase “unfunded liabilities” is interchangeable with “unfunded actuarially accrued liabilities” (UAAL), “unfunded actuarial liability” (UAL), or “net pension liability” (NPL).

³ League of California Cities. League of California Cities Retirement System Sustainability Study and Findings. January 2018.

large numbers of police officer and firefighters are hit hardest because they have the highest pensions and therefore the highest pension costs.

PEPRA

The Public Employees' Pension Reform Act of 2013 ("PEPRA") became effective on January 1, 2013. CalPERS expects employer rates to stop growing around 2024 as more new employees are hired with lower pensions under PEPRA.

EFFECTS ON SERVICE DELIVERY

The annual CalPERS *Funding Levels and Risks Review*, clearly states that the ability of local government employers to pay their annual pension costs is a primary concern. The report states, "The greatest risk to the system continues to be the ability of employers to make their required contributions."⁴

Throughout California, the rapidly escalating pension obligations are pushing some agencies to the brink of insolvency, forcing them to slash spending for not only safety services but other municipal services as well. To close budget gaps, a proliferation of sales tax ballot measures have been presented to voters throughout California with mixed results. Land use planning has also been impacted as agencies look to promote development that maximizes property tax and/or sales tax revenues. Unfortunately, as the figures indicate, the squeeze will tighten.

Whereas any agency may be cash solvent, budget solvent, and long-run solvent, it may not be service-level solvent. Service level solvency is the ability of an agency to fund the services at levels that its citizens desire. An agency may appear to be financially solvent, but it may not be able to support general activities at an adequate level. An increase in service level or large expense would affect cash, budget, or long-run solvency.

Increasing pension payments as a percentage of general fund spending will affect an agency's ability to fund operations and capital investment of all general fund activities, to include but not limited to fire protection, emergency medical services, law enforcement, park and recreation, streetlighting, roads, social services, etc.... In other words, increasing pension and OPEB payments affect service level solvency.

⁴ California Public Employees' Retirement System. *2019 Annual Review of Funding Levels and Risks*. November 2019. https://www.calpers.ca.gov/docs/board-agendas/201911/financeadmin/item-7a-01_a.pdf

Spheres of Influence

Government Code Section 56076 defines a "sphere of influence" as a plan for the probable physical boundaries and service area of a local agency, as determined by LAFCO.

The purpose of a sphere of influence is to encourage the logical and orderly development and coordination of local government agencies to provide for the present and future needs of the county and its communities. The statement of purpose adopted by San Bernardino LAFCO for spheres of influence include seven points. Those pertinent to this study are:

- To promote orderly growth of communities, whether or not services are provided by a city or district (board governed or independently governed);
- To encourage economical use and extension of facilities by assisting governmental agencies in planning the logical and economical extension of governmental facilities and services, thereby avoiding duplication of services;
- To provide assistance to property owners in relating to the proper agency to comprehensively plan for the use of their property;
- To encourage the establishment of urban-type services only within an adopted sphere of influence.

San Bernardino LAFCO has adopted ten policies related to a sphere of influence. Those pertinent to this analysis are:

- **RESPONSIBILITY/OBLIGATION FOR A SPHERE OF INFLUENCE AREA**

When a sphere of influence is assigned, a city or district is required to commence long range land use and service planning activities, thereby enabling it to respond to any annexation requests it might receive from landowners or residents within the sphere. By accepting a sphere of influence, a city or district agrees to plan for the provision of services.

- **URBAN DEVELOPMENT WITHIN A CITY SPHERE**

LAFCO takes the position that any new urban development which occurs within a city sphere of influence should take place as close to the city's urban area as possible. This position is emphasized for two reasons: first, so that contiguous areas may easily be annexed to the city; and secondly, so that the new urban area can be served by reasonable extension of the city's already developed municipal services.

**Environmental Recommendation
from Tom Dodson**

Attachment 2

TOM DODSON & ASSOCIATES

Mailing Address: PO Box 2307, San Bernardino, CA 92406

Physical Address: 2150 N. Arrowhead Avenue, San Bernardino, CA 92405

Tel: (909) 882-3612 ♦ **Fax:** (909) 882-7015 ♦ **Email:** tda@tdaenv.com



November 9, 2020

Mr. Samuel Martinez
Local Agency Formation Commission
1170 W 3rd Street, Unit 150
San Bernardino, CA 92415-0490

Dear Sam:

The Local Agency Formation Commission (LAFCO) is proceeding with a County-wide review of certain service providers. The service review being considered by LAFCO at this time is a Countywide Service Review for Public Cemetery Districts (LAFCO 3245). Thus, this service review environmental evaluation addresses the findings in the Staff review document that has been submitted to the Commission as a “receive and file” report. It is not essential that an environmental determination be rendered for an action that will not modify the physical environment, but in an abundance of caution we are providing this environmental review to verify to the Commission and the interested public that the Commission’s action on this County-wide service review is not subject to review under the California Environmental Quality Act (CEQA).

As we have learned from the previous service reviews, the retention of existing services, which focuses on existing services provided by individual public agencies, does not by itself cause any modifications to the physical environment. Only when the subsequent step is taken to physically revise the jurisdictional boundary or the range of services of a service provider does a potential for physical change in the environment occur. Based on the preceding assumption, and the fact that the receipt and filing of the County-wide Service Review for Public Cemetery Districts by LAFCO does not authorize any activities that could cause physical changes in the environment (even when it is County-wide), I recommend that the Commission notice LAFCO 3245 as Exempt under the “Common Sense” CEQA Exemption.

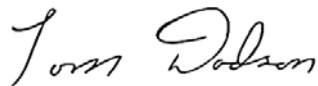
Therefore, based on the lack of adverse impacts from receiving and filing the service review for County Public Cemetery Districts, I recommend that the Commission find that an Exemption (as defined in CEQA) applies to this action under the CEQA “Common Sense” Rule (Section 15061 (b) (3) of the State CEQA Guidelines), which states: *“A project is exempt from CEQA if the activity is covered by the common sense exemption that CEQA applies only to projects which have the potential for causing significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.”* It is my opinion, and recommendation to the Commission, that this circumstance applies to the Commission’s action for the County-wide Service Review for Public Cemetery Districts.

In this case, receipt and filing of the service scope for the Public Cemetery Districts of the County does not alter the existing operations or obligations of any District and does not adversely affect any existing physical facilities. Based on this review of the County-wide Service Review for Public Cemetery Districts and the pertinent sections of CEQA and the State CEQA Guidelines, I conclude that the approval of LAFCO 3245 does not constitute a project under CEQA and adoption of an Exemption and filing of a Notice of Exemption is the most appropriate determination

to comply with CEQA for this action. The Commission can approve the review and findings for this action and I recommend that you notice this action as Exempt from CEQA for the reasons outlined in the State CEQA Guideline section cited above. The Commission needs to file a Notice of Exemption (NOE) with the County Clerk to the Board for this action once the Commission action is completed.

A copy of this memorandum and the NOE should be retained in LAFCO's project file to serve as verification of this evaluation and as the CEQA environmental determination record. If you have any questions, please feel free to give me a call.

Best Regards,

A handwritten signature in black ink that reads "Tom Dodson". The signature is written in a cursive, flowing style.

Tom Dodson

TD/cmc

LA-3245 Service Review Memo

Draft Resolution No. 3319

Attachment 3

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

1170 West Third Street, Unit 150, San Bernardino, CA 92415-0490
(909) 388-0480 • Fax (909) 388-0481
lafco@lafco.sbcounty.gov
www.sbclafco.org

PROPOSAL NO.: LAFCO 3245

HEARING DATE: NOVEMBER 18, 2020

RESOLUTION NO. 3319

A RESOLUTION OF THE LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY MAKING DETERMINATIONS ON LAFCO 3245 – COUNTYWIDE SERVICE REVIEW FOR PUBLIC CEMETERY DISTRICTS.

On motion of Commissioner ____, duly seconded by Commissioner ____, and carried, the Local Agency Formation Commission adopts the following resolution:

WHEREAS, a service review mandated by Government Code 56430 has been conducted by the Local Agency Formation Commission for San Bernardino County (hereinafter referred to as “the Commission”) in accordance with the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code Sections 56000 et seq.); and,

WHEREAS, at the times and in the form and manner provided by law, the Executive Officer has given notice of the public hearing by the Commission on this matter; and,

WHEREAS, the Executive Officer has reviewed available information and prepared a report including his recommendations thereon, the filings and report and related information having been presented to and considered by this Commission; and,

WHEREAS, a public hearing by this Commission was called for November 18, 2020 at the time and place specified in the notice of public hearing and in any order or orders continuing the hearing; and,

WHEREAS, at the hearing, this Commission heard and received all oral and written support and opposition; the Commission considered all objections and evidence which were made, presented, or filed; and all persons present were given an opportunity to hear and be heard in respect to any matter relating to the service review, in evidence presented at the hearing; and,

WHEREAS, at this hearing, this Commission certified that the service review is exempt from environmental review pursuant to the provisions of the California Environmental Quality Act (CEQA) and such exemption was adopted by this Commission on November 18, 2020. The Commission directed its Executive Officer to file a Notice of Exemption within five working days of its adoption; and,

WHEREAS, the determinations required by Government Code Section 56430 and local

RESOLUTION NO. 3319

Commission policy are included in the service review prepared and submitted to the Commission dated November 11, 2020 and was recommended for acceptance and filing by the Commission on November 18, 2020, a complete copy the service review is on file in the LAFCO office.

WHEREAS, the following additional determinations are made in conformance with the Government Code and local Commission policy:

- As required by State Law, notice of the hearing was provided through publication in newspapers of general circulation within the area, *The Sun* and *The Leader*. Individual notice was not provided as allowed under Government Code Section 56157 as such mailing would include more than 1,000 individual notices. As outlined in State Law and Commission Policy, in-lieu of individual notice the notice of hearing publication was provided through an eighth page legal ad.
- As required by State law, individual notification of the hearing was provided to affected and interested agencies, County departments, and those agencies and individuals requesting mailed notice.
- A first draft of the service review document was released to all affected agencies on November 4, 2020.
- The final draft of the service review was released on November 10, 2020 to all parties as well as the Commission and posted on the LAFCO website.
- Comments from the public and any affected agency were reviewed and considered by the Commission in making its determinations.

NOW, THEREFORE, BE IT RESOLVED by the Local Agency Formation Commission for San Bernardino County, State of California, that this Commission shall:

1. For environmental review, certify that the service review is exempt from environmental review and direct the Executive Officer to file the Notice of Exemption within five (5) days.
2. Accept and file the Countywide Service Review for Public Cemetery Districts which sets forth the written statements for the six determinations outlined in Government Code Section 56430 made by the Commission.
3. As outlined in the service review presented to the Commission, take the following actions for specific agencies/entities:
 - a) Direct LAFCO staff to continue to monitor the Barstow Cemetery District and return to the Commission at its May 19, 2021 meeting.
 - b) Direct LAFCO staff to continue to monitor the Twentynine Palms Public Cemetery District and return to the Commission at its May 19, 2021 meeting.

THIS ACTION APPROVED AND ADOPTED by the Local Agency Formation Commission for San Bernardino County by the following vote:

RESOLUTION NO. 3319

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSENT: COMMISSIONERS:

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN BERNARDINO)


I, SAMUEL MARTINEZ, Executive Officer of the Local Agency Formation Commission for San Bernardino County, California, do hereby certify this record to be a full, true, and correct copy of the action taken by said Commission, by vote of the members present, as the same appears in the Official Minutes of said Commission at its meeting of November 18, 2020.

DATED:

SAMUEL MARTINEZ
Executive Officer

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

1170 West Third Street, Unit 150, San Bernardino, CA 92415-0490
(909) 388-0480 • Fax (909) 388-0481
lafco@lafco.sbcounty.gov
www.sbclafco.org

DATE: DECEMBER 9, 2020 
FROM: SAMUEL MARTINEZ, Executive Officer
MICHAEL TUERPE, Senior Analyst
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: Agenda Item #11: LAFCO SC#457 – City of Fontana Out of Area
Sewer Service Agreement (APN 0229-072-31)

INITIATED BY:

City of Fontana, on behalf of the property owner/developer

RECOMMENDATION:

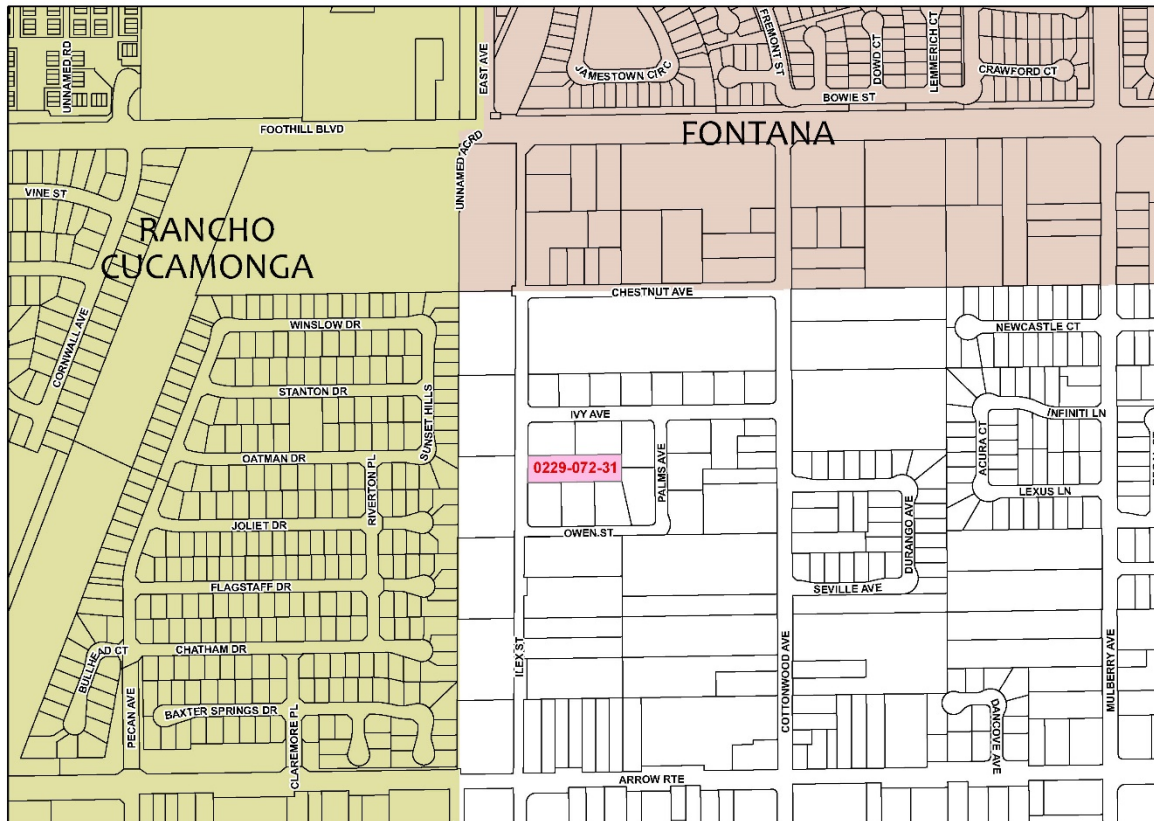
Staff recommends that the Commission approve LAFCO SC#457 by taking the following actions:

1. Certify that LAFCO SC#457 is exempt from environmental review and direct the Executive Officer to file a Notice of Exemption within five (5) days of this action.
2. Approve LAFCO SC #457 authorizing the City of Fontana to extend sewer service outside its boundaries to Assessor Parcel Number 0229-072-31.
3. Adopt LAFCO Resolution #3320 setting forth the Commission's determinations and approval of the agreement for service outside the City of Fontana's boundaries.

BACKGROUND:

The City of Fontana (hereinafter the "City") has submitted a request for approval of an out-of-agency service agreement that outlines the terms by which it will extend sewer service. The agreement relates Assessor Parcel Number 0229-072-31, encompassing approximately 0.98 acres, which is generally located on the east side of Ilex Street between Foothill Boulevard and Arrow Route, within the City of Fontana's western sphere of influence. The map below, which is also included as Attachment #1, provides a

location and vicinity map of the site. In addition, Attachment #2 outlines the City's application including a map that provides the location of the infrastructure to be extended.



LAFCO SC#457 – City of Fontana Out of Area Sewer Service Agreement (APN 0229-072-31)

The property owner/developer is proposing to develop a 14-unit residential building complex on the project site that requires connection to the City's sewer facilities. Therefore, the City, on behalf of the property owner/developer, has requested that the Commission authorize the extension of sewer service to the parcels pursuant to the provisions of Government Code Section 56133. Authorization of this agreement is required before the City can take the final actions to implement the terms of the agreement.

PLAN FOR SERVICE:

The City's application identifies that the City would provide sewer service to the parcel through connection to the existing 20-inch sewer main in Ilex Street. A sewer lateral will be extended into the property.

Pursuant to the Commission's application requirements for service contracts, information has been provided regarding all financial obligations for the extension of service outside the agency's boundaries. The City has submitted an estimated cost of \$7,832 for the extension of sewer service to the parcel. Following is a table with a detailed calculation of the fees:

Description of Fees/Charges	Cost	Total Cost
Sewer Connection Master Fee	\$876.61/EDU	\$876.61
Sanitary Sewage Facility Expansion Fee (IEUA)	\$6,955/EDU	\$6,955.00
TOTAL		\$7,831.61

In addition to the cost outlined above, the property owner/developer will be responsible for the entire cost of the construction and installation of the lateral extension from the sewer main.

ENVIRONMENTAL DETERMINATION:

As the CEQA lead agency, the Commission's Environmental Consultant, Tom Dodson from Dodson and Associates, has reviewed this proposal and has indicated that it is his recommendation that the review of LAFCO SC#457 is exempt from the California Environmental Quality Act (CEQA). This recommendation is based on the finding that the Commission's approval of the out-of-agency service agreement has no potential to cause a significant adverse impact on the environment; and therefore, the proposal is exempt (under the "Common Sense Rule") from the requirements of CEQA, as outlined in the State CEQA Guidelines, Section 15061(b)(3).

CONCLUSION:

The purpose of the service contract application is for the City to receive authorization to provide sewer service outside its boundaries via contract to the parcel that requires connection to the City of Fontana's sewer facilities. In order for the property owner/developer to build the proposed multi-unit residential building complex, said property owner/developer must show proof of their ability to connect to the City of Fontana's sewer facilities—which is the Commission's authorization for this agreement.

Staff has reviewed this request for authorization to provide sewer service from the City of Fontana outside its corporate boundaries against the criteria established by Commission policy and Government Code Section 56133. The area to be served is within the sphere of influence assigned the City of Fontana and is anticipated to become a part of the City sometime in the future. Staff supports the City's request for authorization to provide sewer service to Assessor Parcel Number 0229-072-31, since its facilities are adjacent to the parcel, and there is no other existing entity available to provide this service within the area.

DETERMINATIONS:

1. The parcel, Assessor Parcel Number 0229-072-31, is within the sphere of influence assigned the City of Fontana and is anticipated to become a part of that City sometime in the future. The application requests authorization to receive

City of Fontana sewer service. Water service is to be provided by Fontana Water Company.

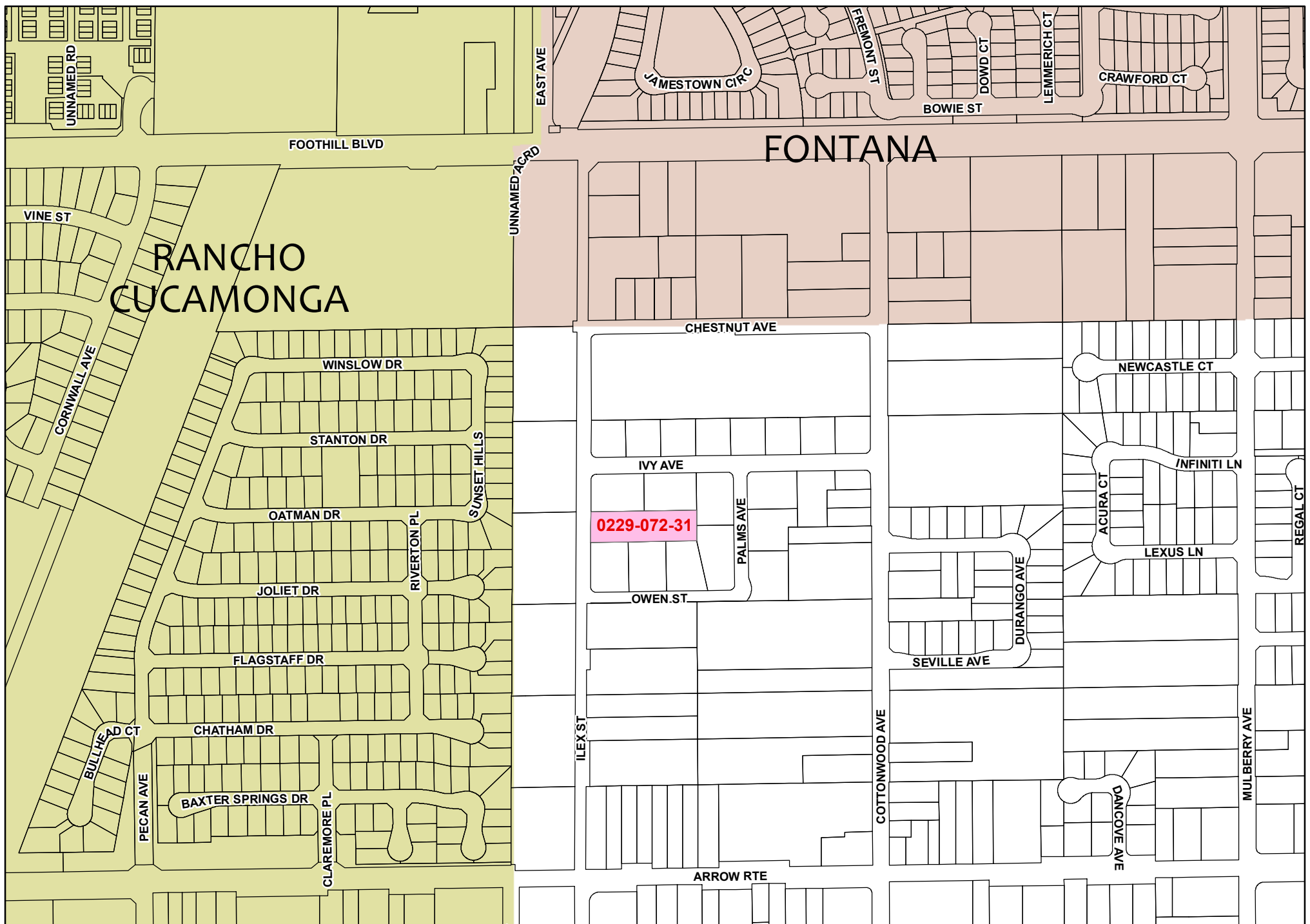
2. The City of Fontana's Out-of-Area Sewer Service Agreement being considered is for the provision of sewer service to Assessor Parcel Number 0229-072-31, generally located on the east side of Ilex Street between Foothill Boulevard and Arrow Route, within the City of Fontana's western sphere of influence. This contract will remain in force in perpetuity or until such time as the area is annexed. Approval of this request will allow the property owner/developer and the City of Fontana to proceed in finalizing the contract for the extension of sewer service.
3. The fees charged this project by the City of Fontana for the extension of sewer service are identified as totaling \$7,832 (for a breakdown of charges, see table on page 3). Payment of these fees is required prior to connection to the City's sewer facilities. In addition, the property owner/developer will be responsible for the entire costs of the construction and installation of the sewer lateral extension.
4. As the CEQA lead agency, the Commission's Environmental Consultant, Tom Dodson and Associates, has reviewed the service contract submitted by the City of Fontana and recommended that this application is exempt from environmental review. A copy of Mr. Dodson's response is included as Attachment #4 to this report.

Attachments:

1. [Vicinity Map](#)
2. [City of Fontana's Application and Contract](#)
3. [Response from Tom Dodson and Associates](#)
4. [Draft Resolution #3320](#)

Vicinity Map

Attachment 1



LAFCO SC#457 – City of Fontana Out of Area Sewer Service Agreement (APN 0229-072-31)

City of Fontana's Application and Contract

Attachment 2

**SAN BERNARDINO LAFCO
APPLICATION FOR
EXTENSION OF SERVICE BY CONTRACT**

(A certified copy of the City Council/District Board of Directors resolution or a letter from the City Manager/General Manager requesting approval for an out-of-agency service agreement must be submitted together with this application form.)

AGENCY TO EXTEND SERVICE:

AGENCY NAME: City of Fontana, California
CONTACT PERSON: George Velarde, Assistant Planner
ADDRESS: 8353 Sierra Avenue, Fontana CA 92335
PHONE: (909) 350-6569
EMAIL: gvelarde@fontana.org

CONTRACTING PARTY:

NAME OF
PROPERTY OWNER: Akram Diab
CONTACT PERSON: Akram Diab
MAILING ADDRESS: 17284 Newhope Street, Suite 215
Fountain Valley, CA 92708
PHONE: (714) 401-0849
EMAIL: admin@anareit.com
ADDRESS OF PROPERTY
PROPOSED FOR CONTRACT: 8305 Ilex Street, Fontana CA 92335
CONTRACT NUMBER/IDENTIFICATION: Irrevocable Agreement to Annex No. 19-002
PARCEL NUMBER(S): 0229-072-31
ACREAGE: 0.98 +/- Acres

*Extension of Service by Contract
Application Form*

(FOR LAFCO USE ONLY)

The following questions are designed to obtain information related to the proposed agreement/contract to allow the Commission and staff to adequately assess the proposed service extension. You may include any additional information which you believe is pertinent. Please use additional sheets where necessary.

1. (a) List the type or types of service(s) to be provided by this agreement/contract.

Sewer service will be provided by the City of Fontana.

- (b) Are any of the services identified above "new" services to be offered by the agency? ☐ YES ☒ NO. If yes, please provide explanation on how the agency is able to provide the service.

2. Is the property to be served within the agency's sphere of influence? ☒ YES ☐ NO

3. Please provide a description of the service agreement/contract.

The Agreement is for the provision of sewer service to a proposed 14-unit multi-family residential project located in the City of Fontana Sphere of Influence.

4. (a) Is annexation of the territory by your agency anticipated at some point in the future? ☐ YES ☒ NO. If yes, please provide a projected timeframe when it anticipates filing an application for annexation of territory that would include the area to be served. If no, please provide an explanation as to why a jurisdictional change is not possible at this time.

The parcel is located within the City of Fontana's sphere of influence. The request is provision to connect to the City's sanitary sewer service for health and safety purposes.

- (b) Is the property to be served contiguous to the agency's boundary? ☐ YES ☒ NO. If yes, please provide explanation on why annexation to the agency is not being contemplated.

5. Is the service agreement/contract outside the Agency's sphere of influence in response to a threat to the public health and safety of the existing residents as defined by Government Code Section 56133(c)? ☐ YES ☒ NO. If yes, please provide documentation regarding the circumstance (i.e. letter from Environmental Health Services or the Regional Water Quality Control Board).

6. (a) What is the existing use of the property?

The property previously contained a single-family dwelling.

- (b) Is a change in use proposed for the property? ☒ YES ☐ NO. If yes, please provide a description of the land use change.

The land use will remain residential however the proposed development is for a

*Extension of Service by Contract
Application Form*

(FOR LAFCO USE ONLY)

14-unit multi-family project.

7. If the service agreement/contract is for development purposes, please provide a complete description of the project to be served and its approval status.

The parcel is located within the City of Fontana's sphere of influence. The request is provision to connect to the City's sanitary sewer service for health and safety purposes.

8. Are there any land use entitlements/permits involved in the agreement/contract?
☐ YES ☒ NO. If yes, please provide documentation for this entitlement including the conditions of approval and environmental assessment that are being processed together with the project. Please check and attach copies of those documents that apply:

Tentative Tract Map / Parcel Map	<input type="checkbox"/>
Permit (Conditional Use Permit, General Plan Amendment, etc.)	<input type="checkbox"/>
Conditions of Approval	<input type="checkbox"/>
Negative Declaration (Initial Study)	<input type="checkbox"/>
Notice of Determination (NOD)/Notice of Exemption (NOE)	<input type="checkbox"/>
Department of Fish and Game (DFG) Receipt	<input type="checkbox"/>
Others (please identify below)	<input type="checkbox"/>

9. Has the agency proposing to extend service conducted any CEQA review for this contract? ☐ YES ☒ NO. If yes, please provide a copy of the agency's environmental assessment including a copy of the filed NOD/NOE and a copy of the DFG Receipt.

10. Plan for Service:

- (a) Please provide a detailed description of how services are to be extended to the property. The response should include, but not be limited to, a description of: 1) capacity of existing infrastructure, 2) type of infrastructure to be extended or added to serve the area, 3) location of existing infrastructure in relation to the area to be served, 4) distance of infrastructure to be extended to serve the area, and 5) other permits required to move forward with the service extension.

There is an existing 20-inch sewer main along Ilex Street. A 6-inch sewer lateral is proposed and will connect from the sewer main to the project property. There will be no infrastructure extensions required for this development.

- (b) Please provide a detailed description of the overall cost to serve the property. The response should include the costs to provide the service (i.e. fees, connection charges, etc.) and also the costs of all improvements necessary to serve the area (i.e. material/equipment costs, construction/installation costs, etc.).

Estimated
Development Impact Fees
Sewer Connection Charges/LAFCO Fee
PER MOU between City and County (Western Sphere Area)

Engineering Fees			
² City Sewer Connection Master Fee	\$876.61 per EDU	1 EDU ¹	\$876.61
² Sanitary Sewage Facilities Expansion Fee (Inland Empire Utilities Agency)	\$6,955 Per EDU	1 EDU ¹	\$6,955
³ LAFCO Fee			
Total			

¹ Equivalent Dwelling Units (EDU's) have been estimated for the project and will be adjusted at time of plan check for the "Sewer Connection" permit.

² Indicates a pass-through fee collected for other agencies.

³ Subject to LAFCO's adopted fee resolution.

All Fees shall be due and payable prior to issuance of the "Sewer Connection" permit issued by the Building & Safety Division. Additional fees will apply for the permit issuance and inspection. The estimated fee will be collected at the actual rate when the construction permit is issued.

- (c) Please identify any unique costs related to the service agreement such as premium outside City/District rates or additional 3rd-party user fees and charges (i.e. fees/charges attributable to other agencies).

There are no unique costs related to this service.

- (d) If financing is to occur, please provide any special financial arrangement between the agency and the property owner, including a discussion of any later repayment or reimbursement (If available, a copy of the agreement for repayment/reimbursement is to be provided).

The property owner is responsible for hiring a contractor for the installation and connection of the project site to the City's existing sewer system. The costs of improvements and financing are borne by the property owner.

11. Does the City/District have any policies related to extending service(s) outside its boundary? X YES ☐ NO. If yes, has a copy been provided to LAFCO? X YES ☐ NO. If not, please include a copy of the policy or policies (i.e. resolution, municipal code section, etc.) as part of the application.

CERTIFICATION

As a part of this application, the City/Town of Fontana, or the _____ District/Agency agree to defend, indemnify, hold harmless, promptly reimburse San Bernardino LAFCO for all reasonable expenses and attorney fees, and release San Bernardino LAFCO, its agents, officers, attorneys, and employees from any claim, action, proceeding brought against any of them, the purpose of which is to attack, set aside, void, or annul the approval of this application or adoption of the environmental document which accompanies it.

This indemnification obligation shall include, but not be limited to, damages, penalties, fines and other costs imposed upon or incurred by San Bernardino LAFCO should San Bernardino LAFCO be named as a party in any litigation or administrative proceeding in connection with this application.

The agency signing this application will be considered the proponent for the proposed action(s) and will receive all related notices and other communications. I understand that if this application is approved, the Commission will impose a condition requiring the applicant to indemnify, hold harmless and reimburse the Commission for all legal actions that might be initiated as a result of that approval.

I hereby certify that the statements furnished above and in the attached exhibits present the data and information required for this evaluation of service extension to the best of my ability, and that the facts, statement and information presented herein are true and correct to the best of my knowledge and belief.

SIGNED



NAME:

George Velarde

POSITION TITLE:

Assistant Planner

DATE:

11/25/20

REQUIRED EXHIBITS TO THIS APPLICATION:

1. Copy of the agreement/contract.
2. Map(s) showing the property to be served, existing agency boundary, the location of the existing infrastructure, and the proposed location of the infrastructure to be extended.
3. Certified Plan for Service (if submitted as a separate document) including financing arrangements for service.

*Extension of Service by Contract
Application Form*

(FOR LAFCO USE ONLY)

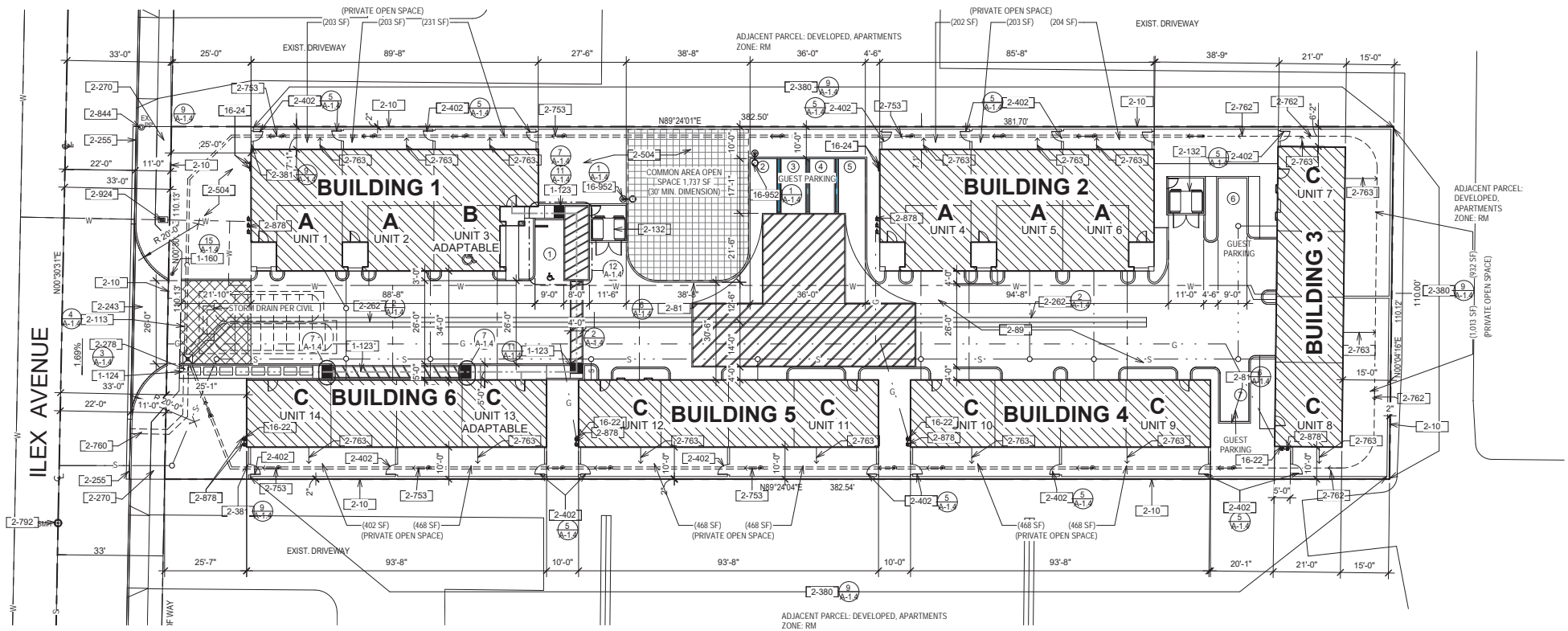
Please forward the completed form and related information to:

Local Agency Formation Commission for San Bernardino County

1170 West 3rd Street, Unit 150
San Bernardino, CA 92415-0490
PHONE: (909) 388-0480 • FAX: (909) 388-0481

Rev: krm – 8/19/2015

Proposed 14 - Units Apartments For:
A & A REIT
 8305 Ilex Street, Fontana, CA 92335



Site Plan
 1" = 20'-0"



RECORDING REQUESTED BY:

Order No:

WHEN RECORDED MAIL

DOCUMENT TO:

City of Fontana
8353 Sierra Avenue
Fontana, California 92335
Attn.: City Clerk

Space Above This Line for Recorder's Use Only
Exempt from Recording Fees Pursuant
to Gov. Code §§ 27383, 6103

OUT-OF-AREA SEWER SERVICE AGREEMENT

BETWEEN

**THE CITY OF FONTANA,
a California municipal corporation**

and

Akram Diab

**Date effective upon authorization of Local Agency Formation Commission
(LAFCO) for reference purposes**

OUT-OF-AREA SEWER SERVICE AGREEMENT

This Out-of-Area Sewer Service Agreement (this "**Agreement**") is entered into by and between the City of Fontana, a California municipal corporation ("**City**") and Akram Diab, [a/an] individual ("**Owner**"). City and Owner may each be individually referred to herein as a "**Party**" and collectively as the "**Parties**."

RECITALS

A. Owner is the fee title holder of one (1) parcel in the County of San Bernardino, State of California ("**County**") with Assessor's Parcel Number 0299-072-31 (the "**Property**"). The Property is located outside the City's boundaries but within the City's sphere of influence, and is more particularly described in Exhibit A, attached hereto and incorporated herein.

B. The Property is currently vacant. ("**Existing Development**").

C. The Owner is proposing to develop a fourteen (14) unit multi-family residential project with six (6) buildings totaling approximately 14,311 square feet in size on the Property ("**Proposed Development**").

D. The County of San Bernardino is requiring that the Proposed Development connect to a public sewer system to receive sewer service ("**Service**").

E. In light of the above, Owner has requested to connect to the City's sewer system and receive Service for the Proposed Development pursuant to subsection (b) of Section 56133 of the California Government Code and the policies and procedures of the San Bernardino Local Agency Formation Commission ("**SBLAFCO**").

F. Owner shall, at Owner's sole cost and expense, and subject to the City's ordinances, rules, regulations, policies, procedures and orders, install one or more private laterals and any necessary appurtenances (collectively, "**Private Improvements**"), as well as any public improvements or appurtenances (generally, "**City Facilities**") which the City deems necessary to provide Service to the Property. The City Facilities and Private Improvements shall collectively be known as the "**Improvements**" for purposes of this Agreement.

G. Owner and the City wish to set forth the circumstances and terms and conditions under which the City will provide Service to the Property.

H. Pursuant to California Government Code Section 56133, an out-of-area service agreement must be approved by SBLAFCO. Under California Government Code Section 56133, SBLAFCO may authorize a city to provide new or extended services outside its jurisdictional boundary but within its sphere of influence in anticipation of a later change of organization.

I. Following execution by the Parties, the City will submit this Agreement to SBLAFCO for approval.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants as well as for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1. PROVISION OF SERVICES

1.1. City Provision of Service. The City hereby agrees to furnish, and Owner hereby agrees to accept, Service to the Property in accordance with the terms and conditions in this Agreement, subject to the Owner completing the Improvements in accordance with the City's ordinances, rules, regulations, policies, procedures and orders ("**Rules and Regulations**").

1.2. Construction, Ownership and Responsibility for Private Improvements. Owner shall install and connect the Private Improvements in accordance with all applicable federal, state, and local statutes and regulations and all of the terms and conditions of this Agreement, including, but not limited to, review and approval of the planning materials for the Private Improvements, obtaining all inspections, City or County permits, or other authorizations required to install and connect the Private Improvements. Owner specifically agrees that ownership and maintenance of the Private Improvements shall be and remain Owner's responsibility.

1.3. Service Strictly Limited to Existing Development and Proposed Development. The Parties agree that City's Service under this Agreement is exclusively limited to sewer service to the Proposed Development as described in the Recitals. Owner understands and agrees that no additional construction, development, or subdivision of the Property shall receive sewer service from the City under this Agreement. Any sewer service to structures or facilities on the Property other than the Proposed Development shall require SBLAFCO review and approval prior to the addition/extension of any such services. Further, Owner understands and agrees that, in the event of any material change to the nature of the Proposed Development, or increase in size thereof, this Agreement must be amended by the Parties, and such amendment shall be subject to review and approval by SBLAFCO.

2. PAYMENT FOR CONNECTION AND SERVICES

Owner hereby agrees to and shall timely pay to the City any monthly or yearly charges for the Service, a sewer connection fee, plan check fee, inspection fee, capacity charge, and any other applicable one-time or recurring fees and charges in effect and paid by the owners of similarly situated real property at the rate(s) established therefore by the City (subject to any adjustments provided for by the City from time to time), including any applicable penalties or interest lawfully imposed by the City ("**Fees and Charges**"). The City reserves the right to collect the Fees and Charges (or any delinquencies thereof) in any lawful manner, including, but not limited to, having them collected on the property tax bill for the Property.

3. CONDITIONS AND COVENANTS

3.1. Conditions Prior to Services. Prior to and as a condition of providing Service to the Property, the Owner shall complete the City Facilities, which shall be subject to acceptance by the City under its Rules and Regulations.

3.2. Compliance with Applicable Law. Developer will comply with all applicable laws, ordinances, statutes, codes, rules, regulations, orders, and decrees of the United States, the State

of California, the County of San Bernardino, the City, or any other political subdivision with jurisdiction over the Property, and of any other political subdivision, agency, or instrumentality exercising jurisdiction over the City, Owner, or the Property, including all applicable federal, state, and local occupation, safety and health laws, rules, regulations and standards, applicable state and labor standards, zoning and development standards, City or County permits and approvals, building, plumbing, mechanical and electrical codes, as they apply to work undertaken pursuant to this Agreement, and all other provisions of the City and its Rules and Regulations. Without limiting the generality or applicability of the foregoing, Owner shall not discharge into the Improvements any waste oil, acid, storm water, ground water, or any other matter detrimental to the City's sewer system or treatment processes and shall otherwise comply with City requirements related thereto. Further, if Owner makes or allows any such non-permitted discharge, the City may perform repairs, mitigation, or maintenance work at the expense of Owner, who agrees to pay for such repair, mitigation, or maintenance work.

3.3. Failure to Construct City Facilities and Connect. Owner understands and agree that this Agreement and the City's obligations, duties and responsibilities hereunder shall be null and void and of no further force or effect in the event that Owner fails, neglects, or refuses to construct the City Facilities to the satisfaction of the City Engineer and actually connect the Private Improvements to the City Facilities.

3.4. Submission of Plans; Notification of Construction and Connection. Before Owner may submit its plans for the Private Improvements to the County for approval, Owner shall submit such plans to the City Engineer, which he or she may review and reasonably approve or deny within 15 days. Owner shall provide at least 48-hours written notice to the City prior to commencing any construction activity and prior to making connection to the City's sewer system.

3.5. Indemnification.

3.5.1. Indemnification of City. Owner agrees and covenants to indemnify, defend and hold the City and its officers, employees, contractors and agents ("Indemnitees") harmless from and against any and all liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) (collectively, "Claims") arising from or as a result of Owner's failure to comply with any provision of this Agreement, or occasioned wholly or in part by any act or omission of Owner or Owner's officers, employees, contractors and agents arising out of or in connection with this Agreement or the design, construction or installation of the Improvements. In case the City shall, without fault, be made a party to any litigation commenced by or against Owner or any other person, or if the City shall, in its sole and reasonable discretion, determine that it must intervene in such litigation to protect its interest hereunder, including, without limitation, the incurring of costs, expenses, and attorneys' fees, then Owner shall protect and hold the City harmless by attorneys satisfactory to the City and shall pay all costs, expenses and reasonable attorneys' fees incurred or paid by the City in connection with such litigation.

3.5.2. City's Right to Engage Attorneys. The City shall have the right to engage its own attorneys in connection with any of the provisions of this section or any other provision of this Agreement, including, without limitation, any defense of the City or intervention by the City, notwithstanding any contrary provisions of the laws or court decisions of the state.

3.5.3. Survival. Owner's obligations under this Section 3.5 (Indemnification) shall survive the expiration or termination of this Agreement.

3.6. Further Construction and Dedication Requirements. City and Owner anticipate that they may enter into a Facilities Agreement or other separate agreement(s) regarding the construction of the City Facilities. Any such agreement shall not limit or abrogate City's or Owner's obligations under this Agreement.

4. NO EFFECT ON ANNEXATION OR PROVISION OF OTHER SERVICES

Notwithstanding any other provision of this Agreement, the City does not waive any rights with regard to future annexation of the Property to the City, or commit itself to any future decisions or actions related thereto. Further, the City shall have no obligation to provide any other service to the Property except as expressly set forth in this Agreement.

5. DEPOSIT FOR CITY PROCESSING COSTS

Owner will submit one thousand four-hundred and thirty dollars (\$1,430) to City as an initial deposit to cover City costs and expenses related to the processing and approval of this Agreement ("Initial Deposit"). Payment of the Initial Deposit shall be made prior to or concurrently with the execution of this Agreement. The City shall use Owner's deposited funds toward City staff or consultant expenses, attorney review costs, SBLAFCO fees, and other direct expenses the City incurs related to the processing or approval of this Agreement. Owner will deposit additional funds with the City, as necessary, to maintain sufficient funds to cover the City's costs as outlined in this section. Owner will deposit additional funds within 15 days of written notice to Owner by the City. If applicable after the Effective Date, any balance of deposited funds remaining will be refunded to Owner. Owner will pay any outstanding balance due as of the Effective Date within 10 days of notification of said balance due.

Owner acknowledges and agrees that the deposit described in this section is not intended to cover fees or costs described in Section 2 of this Agreement, and such amounts shall be separately due and payable to the City as provided under Section 2 and the City's Rules and Regulations.

6. SBLAFCO APPROVAL; EFFECTIVE DATE; TERM

Because this Agreement is an out-of-area service agreement, California Government Code Section 56133 requires that Agreement be submitted for approval by SBLAFCO. The effective date of this Agreement is the date on which SBLAFCO approves this Agreement ("**Effective Date**"). The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect unless terminated: (i) by the mutual agreement of the Parties; (ii) by annexation of the Property into the City (after which time the Property will receive Service in the same manner as other properties situated within the boundaries of the City and subject to the City's Rules and Regulations), or (iii) as otherwise specified herein.

7. DEFAULT; REMEDIES.

Owner shall be in default under this Agreement if Owner fails to comply with any obligation hereunder, has been given a written notice specifying the failure, and: (a) with respect to a default involving the payment of money, fails to cure it within the period of ten (10) days, or (b) with respect to any other type of default, (i) fails to cure it within the period of thirty (30) days, or

(ii) commences to cure the default within such period of time, and if the default cannot be cured within the time specified above in (i), thereafter does not diligently proceed to complete the curing of the default. In addition to any other available rights in law or equity, in the event Owner defaults under this Agreement, the City shall have the right to seek damages, immediately terminate this Agreement (including the right thereafter to plug or disconnect the Private Improvements from the City's sewer system), or enjoin such violation or threatened violation in a court of competent jurisdiction.

8. RECORDATION

This Agreement shall be recorded in the Official Records of the County of San Bernardino, State of California at Owner's sole cost.

9. MISCELLANEOUS PROVISIONS

9.1. Recitals. The above Recitals are true and correct and fully incorporated in this Agreement.

9.2. Scope of Agreement. Nothing contained in this Agreement shall be construed as representing the establishment of any precedent or the formation of any policy by the City to provide Service or any other type of City service in the future to any unincorporated territory on the terms and conditions contained herein or on any terms and conditions whatsoever.

9.3. No Third Party Beneficiaries. This Agreement is intended to benefit only the parties hereto and no other person or entity has or shall acquire any rights hereunder. This Agreement does not create any third party beneficiary rights.

9.4. Binding Effect; Assignment. All of the terms, conditions and provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. No assignment of this Agreement shall be made without the prior written consent of the parties to the Agreement, which consent may not be unreasonably withheld.

9.5. Covenants Running with the Land. All of the benefits and obligations described herein, including any and all covenants, conditions, and restrictions set forth in this Agreement shall be binding on the Parties and their heirs, successors, grantees, transferees and permissible assigns and shall run with the land comprising the Property.

9.6. Performance. Whenever performance is required of any party hereunder, that party shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, or damage to work in progress by reason of fire or other casualty or cause beyond the reasonable control of a party (acts by the performing party causing the situation to be beyond reasonable control excepted), then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused.

9.7. Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person or circumstance, by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other person or circumstance and the same shall remain in full force and effect, unless enforcement of this

Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

9.8. Notice.

9.8.1. Form of Notice. Any notice to any party shall be in writing and given by delivering the same to such party in person or by sending the same by certified mail, return receipt requested, with postage prepaid to the party's mailing address. The respective mailing addresses of the parties thereto are, until changed as hereinafter provided, the following:

To the City: City of Fontana
8353 Sierra Avenue
Fontana, CA 92335
Attn: George Velarde, Assistant Planner

To Owner: Akram Diab
17284 Newhope Street, Suite 215
Fountain Valley, CA 92708

9.8.2. Change of Address. Any party may change its mailing address at any time by giving written notice of such change to the other parties in the manner provided herein at least ten days prior to the date such change is effective.

9.8.3. Effective Date of Notice. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

9.9. Entire Agreement. This writing constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all oral or written representations or written agreements which may have been entered into between the parties. This Agreement may be cancelled, changed, modified or amended in whole or in part only by a written and recorded instrument executed by the Parties (or their respective successors and assigns).

9.10. Time is of the Essence. Time is of the essence of this Agreement and each and every provision hereof.

9.11. Governing Law; Venue. This Agreement shall be governed by the laws of the State of California. Any legal action concerning or arising out of this Agreement shall be filed in a court of the State of California having jurisdiction of the subject matter, and venue shall be in the County of San Bernardino, California.

9.12. Section Headings. All section headings and subheadings are inserted for convenience only and will not affect any construction or interpretation of this Agreement.

9.13. Attorney Fees. The prevailing party in any action or proceeding to enforce or interpret this Agreement or otherwise arising out of or in connection with the subject matter hereof (including, but not limited to, any suit, arbitration, entry of judgment, post-judgment motion or enforcement, appeal, bankruptcy litigation, attachment, or levy) shall be entitled to recover its

costs and expenses, including, but not limited to, reasonable attorneys', experts', and consultants' fees and costs.

9.14. Non-Waiver. No waiver by any Party of any default in performance on the part of the another Party, or of any breach or series of breaches of the terms, covenants, or conditions of this Agreement, will constitute a waiver of any subsequent breach or a waiver of any term, covenant, or condition.

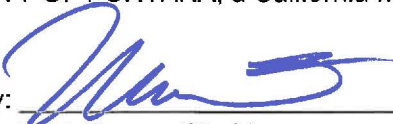
9.15. Counterparts. This Agreement may be executed in one or more counterparts, each of which counterparts shall, for all purposes, be deemed an original and all of which counterparts, when taken together, shall constitute one and the same instrument.

SIGNATURES AND APPROVAL ON THE FOLLOWING PAGES

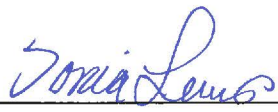
IN WITNESS WHEREOF, this Out-of-Area Sewer Service Agreement has been executed and delivered by City and Owner as of a date effective upon authorization of the Local Agency Formation Commission (LAFCO).

CITY

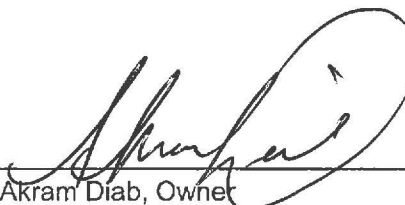
CITY OF FONTANA, a California municipal corporation

Date: 9/17/20 ^{C.H.} By: 
₃₀₁ Mark Denny, City Manager

Attest:

By: 
Tonia Lewis, City Clerk

OWNER

Date: 8/31/2020 By: 
Akram Diab, Owner

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Orange)

on August 31, 2020 before me, Laura E. Muniz, Notary Public
(insert name and title of the officer)

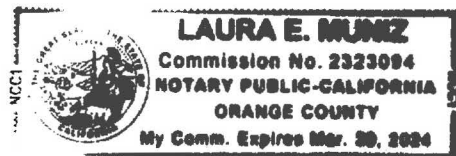
personally appeared Akram Diab,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature

[Signature] (Seal)



ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of San Bernardino

On September 17, 2020 before me, Tanya Ruiz, Notary Public
(insert name and title of the officer)

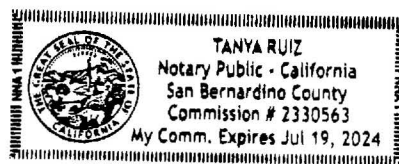
personally appeared Mark Denny
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

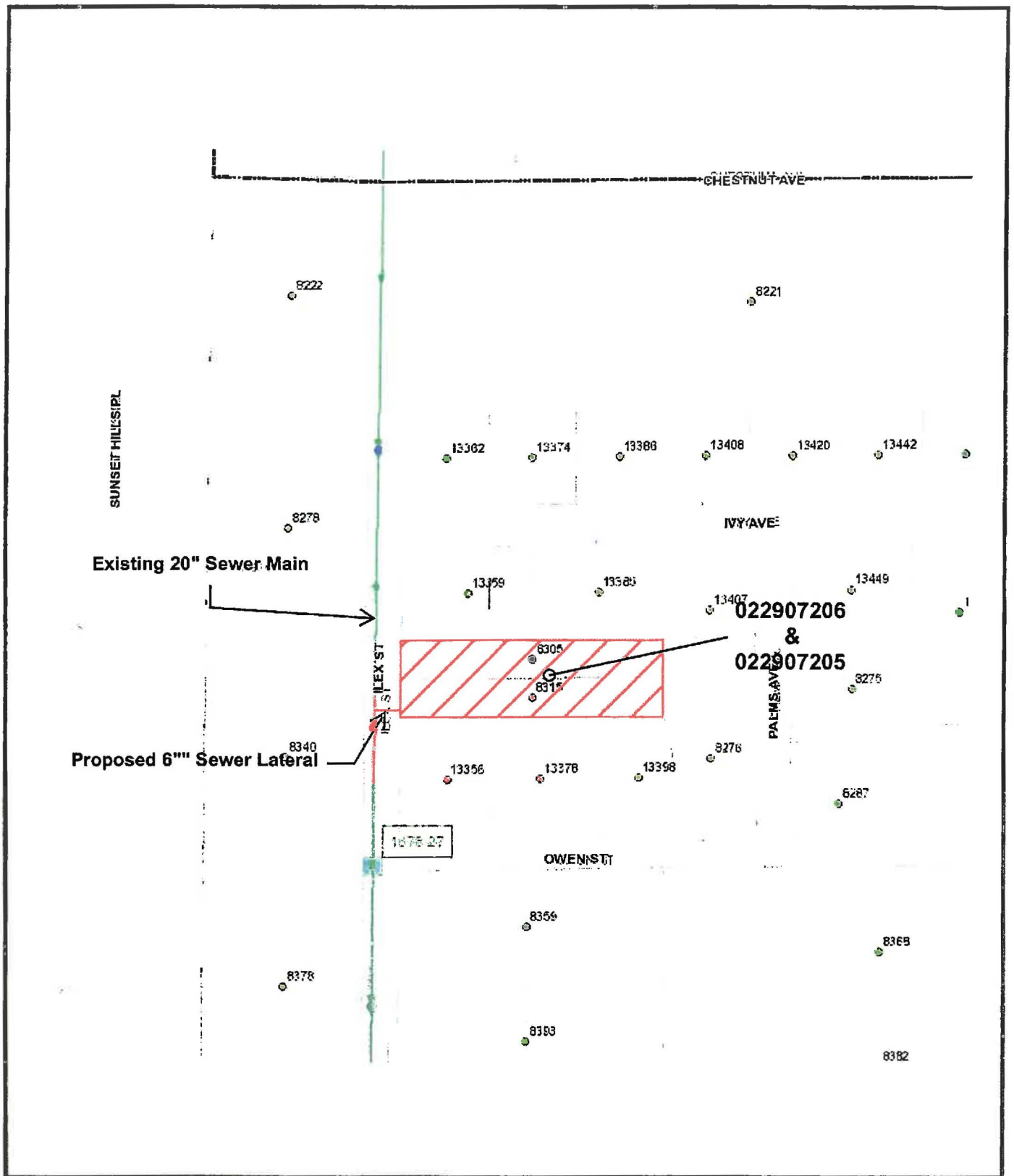
WITNESS my hand and official seal.

Signature [Signature]

(Seal)



IRREVOCABLE AGREEMENT NO. 19-002 (9305 Ilex Street)
(SEWER SERVICE)



Response from Tom Dodson and Associates

Attachment 3

TOM DODSON & ASSOCIATES

Mailing Address: PO Box 2307, San Bernardino, CA 92406

Physical Address: 2150 N. Arrowhead Avenue, San Bernardino, CA 92405

Tel: (909) 882-3612 ♦ **Fax:** (909) 882-7015 ♦ **Email:** tda@tdaenv.com



December 7, 2020

Mr. Samuel Martinez
Local Agency Formation Commission
1170 W 3rd Street, Unit 150
San Bernardino, CA 92415-0490

Dear Sam:

I have completed the California Environmental Quality Act (CEQA) review of out-of-area service contract, SC#457 for the Commission. LAFCO SC#457 would permit the City of Fontana to extend sewer service to a single parcel of land located in unincorporated territory on the west side of the City in the unincorporated area which is in the City's western Sphere of Influence. The parcel encompasses approximately one are and it is located at 8305 Ilex Street. If approved, the service extension would provide sewer service and allow a 14-unit multi-family residential project to be constructed in the near-term future. If approved, this project would be connected to City of Fontana wastewater collection system. In return, the owner makes a commitment to ultimately annex this parcel to the City. At the present time the property is noncontiguous with the City's boundary.

Based on the above proposal and the findings presented below, it appears that LAFCO SC#457 can be implemented without causing significant adverse environmental impacts. The administrative record does not identify any action to comply with the California Environmental Quality Act (CEQA) for this proposed project. Therefore, LAFCO will consider this extension of service contract as the CEQA lead agency. Based on the limited number of units (14) that can ultimately be developed on this property, this project has no potential to cause a significant adverse impact on the environment. Therefore, I conclude that LAFCO SC#457 does not constitute a project under CEQA and adoption of a "common sense" exemption and filing of a Notice of Exemption is the most appropriate determination to comply with the CEQA. This exemption is found in Section 15061(b)(3). The Commission can approve this review and finding for this action and I recommend that you notice LAFCO SC#457 as exempt from CEQA for the reasons outlined in the State CEQA Guideline section cited above. The Commission needs to file a Notice of Exemption (NOE) with the County Clerk to the Board for this action once a decision is made for this out-of-area service agreement.

Thus, after independent review of this proposed action, the proposed sewer service extension to this lot near Fontana does not appear to have any potential to significantly alter the existing physical environment. Extending sewer service has no effect on land uses which are governed by the County. Thus, this service extension does not involve any change in the authorized end use, which will consist of 14 multi-family residences in the near future. Since no other project is pending or will occur as a result of approving this application, no other potential significant physical changes in the environment are forecast to result from this action. Further, extending sewer service to this parcel is not forecast to create growth inducement because the sewer line is located adjacent to the parcel in Ilex Street.

Based on a review of LAFCO SC#457 and the pertinent sections of CEQA and the State CEQA Guidelines, I believe it is appropriate for the Commission's CEQA environmental determination to cite the "Common Sense" exemption, as adequate documentation in accordance with the Commission's CEQA lead agency status. If you have any questions regarding these recommendations, please feel free to give me a call.

Sincerely,

A handwritten signature in black ink that reads "Tom Dodson". The signature is written in a cursive, flowing style.

Tom Dodson

TD/cmc

LAFCO SC-457 Exemption Letter

Draft Resolution #3320

Attachment 4

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

1170 West Third Street, Unit 150, San Bernardino, CA 92415-0490
(909) 388-0480 • Fax (909) 388-0481
lafco@lafco.sbcounty.gov
www.sbclafco.org

PROPOSAL NO.: LAFCO SC#457

HEARING DATE: DECEMBER 16, 2020

RESOLUTION NO. 3320

A RESOLUTION OF THE LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY MAKING DETERMINATIONS ON LAFCO SC#457 – CITY OF FONTANA OUT-OF-AREA SEWER SERVICE AGREEMENT (ASSESSOR PARCEL NUMBERS 0229-072-31)

On motion of Commissioner _____, duly seconded by Commissioner _____ and carried, the Local Agency Formation Commission adopts the following resolution:

WHEREAS, Government Code Section 56133 requires the Local Agency Formation Commission to review and approve or deny applications for agencies to provide services outside their existing boundaries; and,

WHEREAS, an application for the proposed service extension in San Bernardino County was filed with the Executive Officer of this Local Agency Formation Commission in accordance with the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code Sections 56000 et seq.), and the Executive Officer has examined the application and determined that the filings are sufficient; and,

WHEREAS, at the times and in the form and manner provided by law, the Executive Officer has given notice of the public hearing by the Commission on this matter; and,

WHEREAS, the Executive Officer has reviewed available information and prepared a report including his recommendations thereon, the filings and report and related information having been presented to and considered by this Commission; and,

WHEREAS, the public hearing by this Commission was called for December 16, 2020 at the time and place specified in the notice of public hearing; and,

WHEREAS, at the hearing, this Commission heard and received all oral and written protests; and all persons present were given an opportunity to hear and be heard in respect to any matter relating to the contract, in evidence presented at the hearing;

RESOLUTION NO. 3320

NOW, THEREFORE, BE IT RESOLVED, that the Local Agency Formation Commission for San Bernardino County does hereby determine, find, resolve and order as follows:

DETERMINATIONS:

SECTION 1. The following determinations are noted in conformance with Commission policy:

1. The property, identified as Assessor Parcel Number 0229-072-31, is within the sphere of influence assigned the City of Fontana and is anticipated to become a part of that City sometime in the future. The application requests authorization to receive City of Fontana sewer service.
2. The City of Fontana Out-of-Area Sewer Service Agreement being considered is for the provision of sewer service to Assessor Parcel Number 0229-072-31. This contract will remain in force in perpetuity or until such time as the area will be annexed. Approval of this application will allow the property owner/developer and the City of Fontana to proceed in finalizing the contract for the extension of sewer service.
3. The fees charged this project by the City of Fontana for sewer service are identified as totaling \$7,832 (a breakdown of charges is on file in the LAFCO office). Payment of these fees is required prior to connection to the City's sewer facilities. In addition, the property owner/developer shall bear all costs to complete improvements needed to extend the sewer service to the property.
4. The Local Agency Formation Commission for San Bernardino County has determined that this service contract is exempt from environmental review under the "Common Sense Rule" since it has no potential to cause a significant adverse impact on the environment (Section 15061[b][3] of the State California Environmental Quality Act Guidelines). Therefore, this proposal is not subject to environmental review under the provisions of the State CEQA Guidelines section cited above or the Commission's adopted CEQA Guidelines. The Commission hereby adopts the Exemption and directs its Executive Officer to file a Notice of Exemption within five (5) working days with the San Bernardino County Clerk of the Board of Supervisors.

SECTION 2. CONDITION. The City of Fontana shall indemnify, defend, and hold harmless the Local Agency Formation Commission for San Bernardino County from any legal expense, legal action, or judgment arising out of the Commission's approval of this service contract, including any reimbursement of legal fees and costs incurred by the Commission.

SECTION 3. The Local Agency Formation Commission for San Bernardino County does hereby determine to approve the service extension contract submitted by the City of Fontana to provide sewer service to Assessor Parcel Number 0229-072-31.

SECTION 4. The Commission instructs the Executive Officer of this Local Agency Formation Commission to notify the affected agencies that the application identified as LAFCO SC#457 – City of Fontana Out-of-Area Sewer Service Agreement (APN 0229-072-31), has been approved.

RESOLUTION NO. 3320

THIS ACTION APPROVED AND ADOPTED by the Local Agency Formation Commission for San Bernardino County by the following vote:

AYES: **COMMISSIONERS:**

NOES: COMMISSIONERS:

ABSENT: COMMISSIONERS:

* * * * *

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN BERNARDINO)


I, SAMUEL MARTINEZ, Executive Officer of the Local Agency Formation Commission for San Bernardino County, California, do hereby certify this record to be a full, true, and correct copy of the action taken by said Commission by vote of the members present as the same appears in the Official Minutes of said Commission at its regular meeting of December 16, 2020.

DATED:

SAMUEL MARTINEZ
Executive Officer

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

1170 West Third Street, Unit 150, San Bernardino, CA 92415-0490
(909) 388-0480 • Fax (909) 388-0481
lafco@lafco.sbcounty.gov
www.sbclafco.org

DATE: DECEMBER 9, 2020 
FROM: SAMUEL MARTINEZ, Executive Officer
MICHAEL TUERPE, Senior Analyst
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: Agenda Item #12: LAFCO SC#454 – Request for Exemption from Provisions of Government Code Section 56133 for Agreement between Big Bear City Community Services District and the City of Big Bear Lake Department of Water and Power for Water Service

RECOMMENDATION:

Staff recommends that the Commission:

Determine that LAFCO SC#454 complies with the exemption provisions outlined within Government Code Section 56133 (e) and, therefore, does not require Commission approval.

NOVEMBER HEARING:

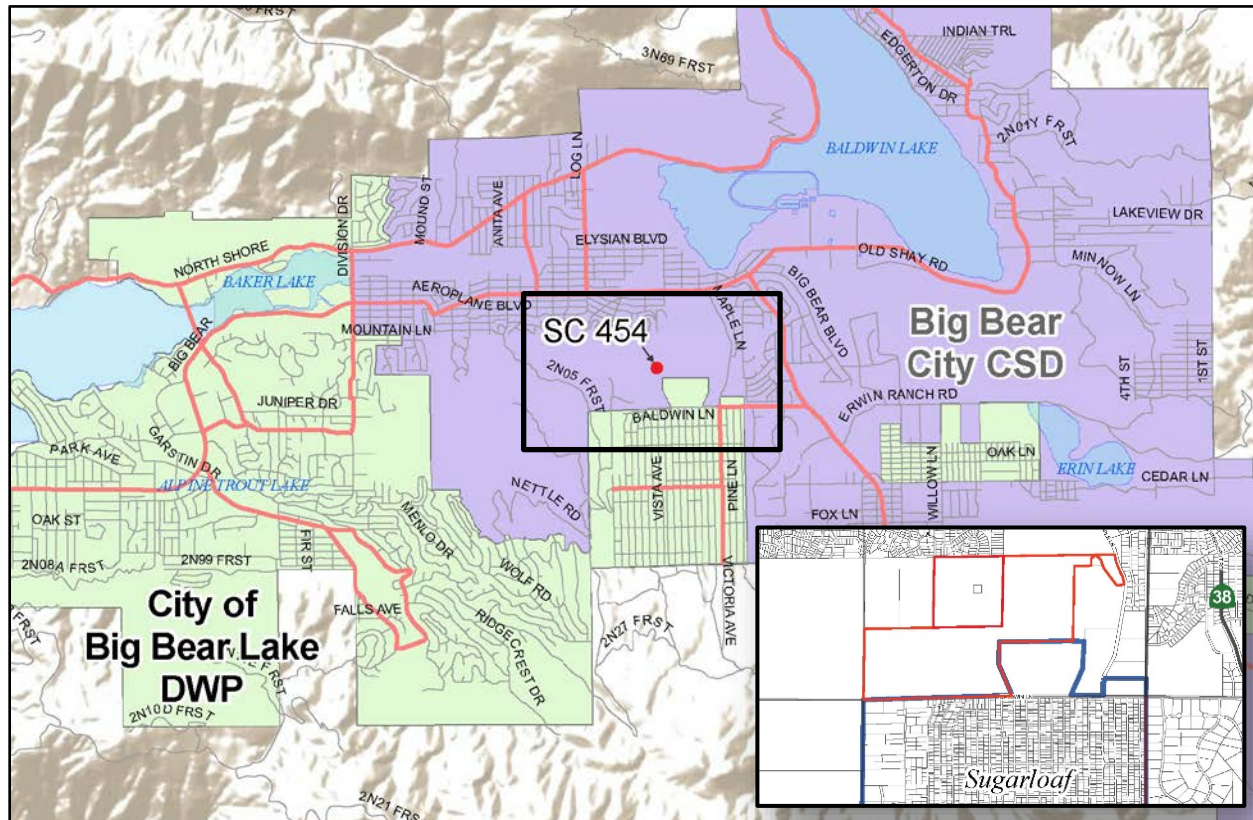
The Commission determined to continue all items on the November 18, 2020 Agenda to the December 16, 2020 meeting due to an error on the prior agenda notice. No change in the recommendation has taken place in the interim.

BACKGROUND:

The City of Big Bear Lake Department of Water and Power (“DWP”) submitted a letter dated September 22, 2020 requesting the Commission determine that the proposed agreement between the DWP and the Big Bear City Community Services District (“CSD”) is exempt from the provisions of Government Code Section 56133 as outlined in Subsection (e). Per the Commission’s policy, this is being presented to the Commission since the exemption request is development-related.

The agreement is for the DWP to provide water service to portions of parcels, Assessor Parcel Numbers 0312-311-25 and 0312-321-05, which are developing as sports fields

known as Maple Hill Fields. The parcels, which are properties of the Bear Valley Unified School District, are located adjacent to the Baldwin Lane Elementary School located north of Baldwin Lane (44450 Baldwin Lane) within the CSD's boundary. The Maple Hill Fields is a public recreational facility with soccer and baseball/softball fields. According to the materials provided by DWP, the contract with CSD is necessary because the CSD's nearest waterline is approximately 1,700 linear feet east of the proposed fields whereas the DWP already provides water service to the Baldwin Lane Elementary School and has an existing 6-inch water main in Baldwin Lane.



A copy of the exemption request letter (Attachment #1) and signed agreement (Attachment #2) are included as a part of this report.

The request has cited the relevant exemption language within Government Code Section 56133 (e) for its request. The section reads as follows:

“(e) This section does not apply to... ..[t]wo or more public agencies where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is consistent with the level of service contemplated by the existing service provider.”

In the present case, staff believes that the exemption outlined above is based on the following facts:

1. The agreement is between the CSD and DWP, both of which are public agencies.
2. The public service to be provided is water service, which both agencies actively provide. Therefore, this is a substitute for public services currently being provided in compliance with requirements of 56133 (e).
3. The level of service to be provided by the DWP through this contractual relationship is consistent with the level of service currently provided by the CSD.

Note that the agreement to provide water service by the DWP only applies to the Maple Hill Fields portion of the parcels.

CONCLUSION:

Based on the determinations outlined above, staff recommends that the Commission determine that pursuant to Government Code Section 56133 (e), the water service agreement between the City of Big Bear Lake Department of Water and Power and the Big Bear City Community Services District is exempt from further review and approval by the Commission.

Attachments:

1. [LAFCO SC#454 Request for Exemption dated September 22, 2020](#)
2. [Copy of Agreement for Service between the City's DWP and Big Bear City CSD](#)

LAFCO SC#454
Request for Exemption
dated September 22, 2020

Attachment 1

DEPARTMENT OF WATER



Service, Quality, Community

RECEIVED
2020 SEP 30 AM 10:03
LOCAL AGENCY
FORMATION COMMISSION

September 22, 2020

Samuel Martinez, Executive Officer
Local Agency Formation Commission
1170 West Third Street, Unit 150
San Bernardino, CA 92415-0490

REQUEST FOR EXEMPTION – PARCEL NUMBER APN 0312-311-025

Dear Sam,

The City of Big Bear Lake Department of Water and Power (DWP) has negotiated an Outside Service Agreement for Potable Water Services (Agreement) with Big Bear City Community Services District (CSD) to provide potable water service to the development known as Maple Hill Fields, located outside the northwest corner of Baldwin Lane Elementary School. The Agreement is necessary because CSD's nearest mainline is approximately 1,700 linear feet east of the proposed fields. It is cost prohibitive for the developer of the proposed public recreational facility to construct a mainline extension to CSD's facilities. DWP provides water service to Baldwin Lane Elementary School and has a watermain within Baldwin Lane right-of-way.

The DWP hereby requests that the Local Agency Formation Commission (LAFCO) determine that the Agreement between the DWP and CSD is exempt from the provisions of Government Code Section 56133 as allowed under subsection (e), for the following reasons:

1. The Agreement for potable water services is between the DWP and CSD, both public agencies;
2. The public service to be provided is an alternative to, or substitute for, public services already being provided by an existing service provider; and,
3. The level of service to be provided is consistent with the level of service contemplated by the existing service provider.

Enclosed with this request for exemption is a copy of the Agreement. As we discussed, the matter should be scheduled for the November LAFCO for San Bernardino County agenda.

Thank you for your assistance with` this matter.

Sincerely,

Reginald A. Lamson,
General Manager

**Copy of Agreement for Service
between the City's DWP and
Big Bear City CSD**

Attachment 2

OUTSIDE SERVICE AGREEMENT FOR POTABLE WATER SERVICES

This Outside Service Agreement to provide potable water service to the development known as Maple Hill Fields, located outside the northwest corner of Baldwin Lane Elementary School in the Sugarloaf area ("Agreement") is executed this 21st day of September, 2020, by and between Big Bear City Community Services District (CSD) and City of Big Bear Lake, Department of Water and Power (DWP), as follows:

RECITALS

A. The DWP is a department of the City of Big Bear Lake, a municipality of the State of California governed by its own charter. The charter for the City of Big Bear Lake provides the DWP with the power and duty to operate and maintain works and property for the purpose of supplying its inhabitants with water, and to hold in the name of the City any and all property within and without the City that may be necessary or convenient for such purpose.

B. CSD is a community services district formed by the County of San Bernardino, California, for the purpose of serving their customers with clean and safe water, and to provide collection of solid waste and wastewater within the area of Big Bear City, including the Sugarloaf area where the Maple Hill Fields will be located.

C. The Maple Hill Fields will be the site of proposed soccer and softball fields. The proposed fields will require potable water services.

D. The DWP operates potable water facilities located outside the City limits of the City of Big Bear Lake, including facilities located within the Sugarloaf area. DWP's potable water facilities are adjacent to the proposed Maple Hill Fields. The DWP provides potable water service to Baldwin Lane Elementary School and has a watermain within Baldwin Lane right-of-way

E. CSD has the jurisdictional authority to provide potable water services to the Maple Hill Fields. CSD currently does not have potable water facilities for the Maple Hill Fields and it would not be economical for the CSD to provide potable water service to the proposed fields. According to CSD, their nearest mainline is approximately 1,700 linear feet east of the proposed fields. The proposed field layout is identified on Exhibit A attached hereto.

F. The DWP has filed an exemption request with the Local Agency Formation Commission for San Bernardino County ("LAFCO") to provide potable water services to the Maple Hill Fields, identified on Exhibit A. CSD is agreeable for the DWP to provide potable water services to the Maple Hill Fields. DWP has agreed to provide such services for the compensation and pursuant to the terms hereinafter set forth.

G. This agreement only applies to the provision of water service to the Maple Hill Fields, and not for water services that may be provided to any other portion of the parcel upon which the Maple Hill Fields is located that is not used for recreational uses.

TERMS

1. Potable Water Services. DWP agrees to provide potable water services for the Maple Hill Fields in the same manner and to the same extent that such services are currently being provided for DWP's Big Bear Service Area, for the term of this Agreement.

2. Compensation. DWP will be compensated for said potable water services in compliance with its Commercial Rate Schedule. The Maple Hill Fields developer will be responsible for construction of the on-site and off-site potable water facilities required to serve the proposed fields.

3. Payment. The property owner of the Maple Hill Fields will be responsible to pay DWP the required capacity fees, meter installation fees and water service fees.

4. Term. The term of this Agreement shall commence upon the effective date of LAFCO's approval of DWP's exemption request to provide potable water service outside of their service area, and shall continue for a period of twenty (20) years from the effective date. However, CSD and the DWP shall each have the right to terminate this Agreement, with or without cause, upon ninety (90) days' written notice to the other party. If at the end of the twenty year term, this Agreement has not been terminated by either Party by giving to the other written notice of an intention to terminate it at least three (3) months prior to the end of such term, this Agreement shall continue in force upon the same terms and conditions for a further term of one (1) year and for one (1) year terms thereafter until terminated by either Party by giving to the other written notice of its intention to so terminate at least three (3) months prior to the end of such term.

5. Disputes. Should a dispute arise regarding the interpretation, application or enforcement of this Agreement, the parties hereto agree to meet and utilize good faith efforts to resolve the dispute amicably, through negotiated settlement. In the event that such efforts are unsuccessful and legal action on this Agreement is initiated by either party against the other, each party, regardless of whether a party is the prevailing party in such action, shall bear its own costs and reasonable attorneys' fees.

6. CSD agrees to indemnify, defend (with counsel reasonably approved by DWP) and hold harmless DWP and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this Agreement from any cause whatsoever, including CSD's acts, errors or omissions of any person and for any costs or expenses incurred by DWP on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. CSD's indemnification obligation applies to DWP's "active" as well as "passive" negligence but does not apply to DWP's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

DWP agrees to indemnify, defend (with counsel reasonably approved by CSD) and hold harmless CSD and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this Agreement from any cause whatsoever, including DWP's acts, errors or omissions of any person and for any costs or expenses incurred by CSD on account of any claim except where such indemnification is

prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. DWP's indemnification obligation applies to CSD's "active" as well as "passive" negligence but does not apply to CSD's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

In the event the both parties are found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under the Agreement, the parties shall indemnify the other to the extent of its comparative fault. In the event of litigation arising from this Agreement, each party to the Agreement shall bear its own costs, including attorney fees.

7. CSD and DWP are authorized self-insured public entities for purposes of Professional Liability, General Liability, Automobile Liability and Workers' Compensation and warrant that through their respective programs of self-insurance, they have adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this agreement.

IN WITNESS WHEREOF the parties have executed this Agreement on the date set forth above.

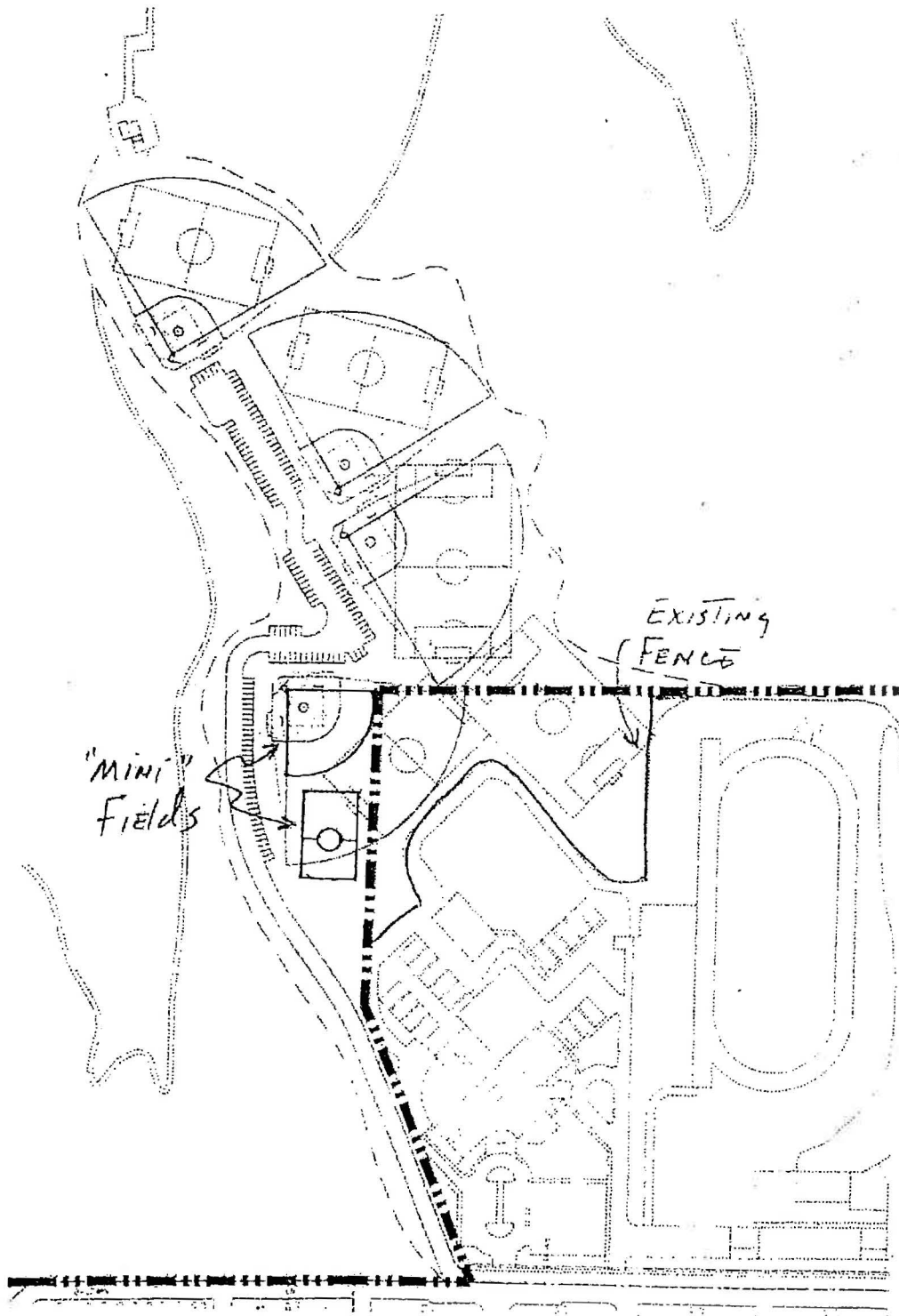
BIG BEAR CITY COMMUNITY SERVICES
DISTRICT

By Mary T. Reeves
Mary Reeves
General Manager

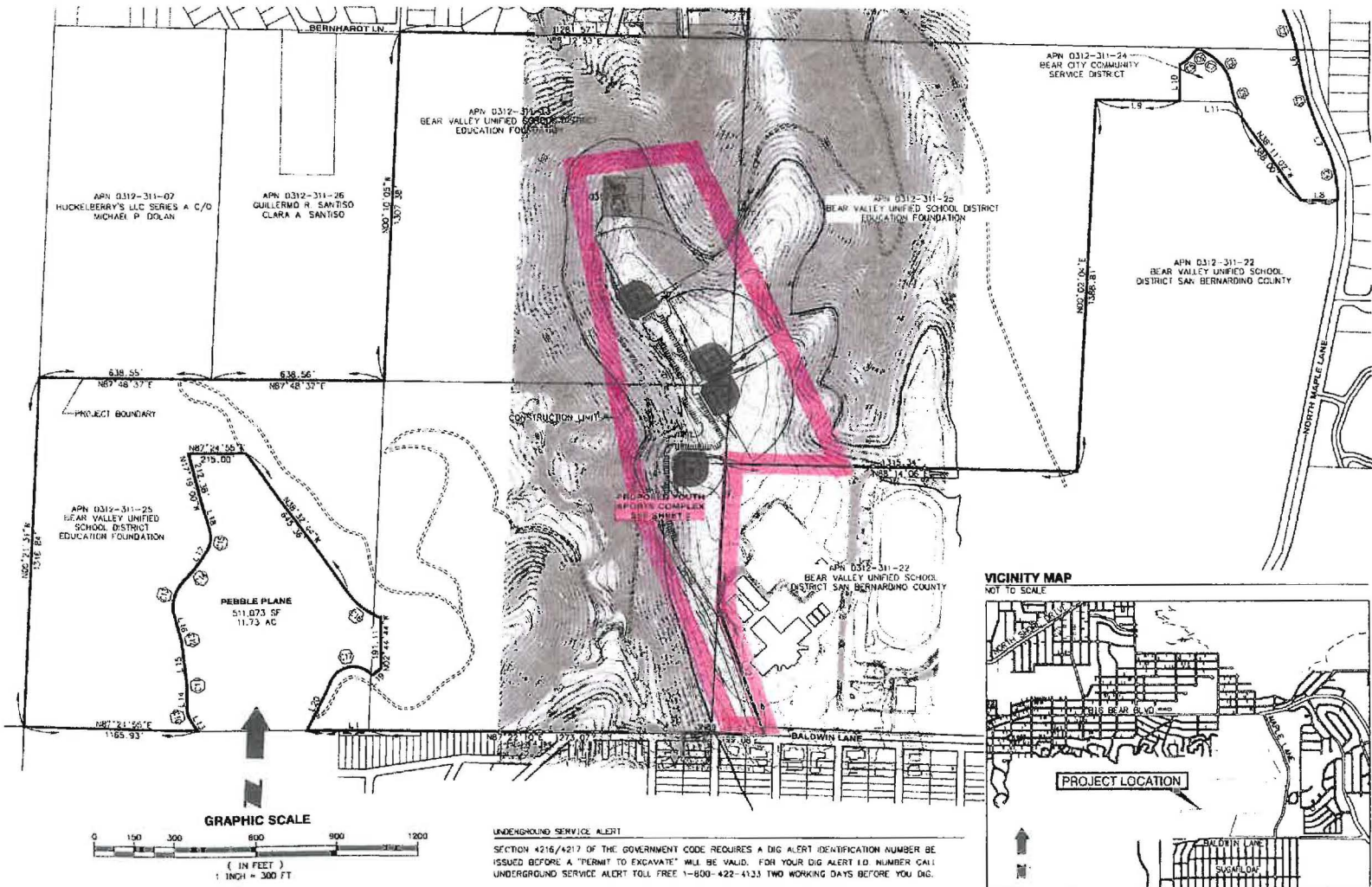
CITY OF BIG BEAR LAKE, DEPARTMENT OF
WATER AND POWER

By Reginald A. Lamson
Reginald A. Lamson
General Manager

Exhibit A



Field Layout without school Property



PROPOSED AREA TO BE
SERVED BY DWP VIA AN
OUTSIDE SERVICE AGREEMENT
BETWEEN CSD AND DWP.

Exhibit A

COUNTY OF SAN BERNARDINO

DESIGNED BY _____
DRAWN BY _____
CHECKED BY _____
RECOMMENDED BY _____

APPROVED BY _____

DATE _____

DATE _____

C.U.P. MAP NO. XXXX

APN 312-311-25, -321-05 & -311-13

BIG BEAR LAKE, CALIFORNIA

W. O. NO. _____

ROAD NO. _____


FILE NO. _____

SHEET 1 OF 2

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LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

1170 West Third Street, Unit 150, San Bernardino, CA 92415-0490
(909) 388-0480 • Fax (909) 388-0481
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www.sbclafco.org

DATE: DECEMBER 9, 2020 
FROM: SAMUEL MARTINEZ, Executive Officer
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: AGENDA ITEM #14: EXECUTIVE OFFICER'S REPORT

1. LAFCO Ad Hoc Administrative and Finance Committee Appointment

LAFCO staff has reached out to the Commission Chair on forming the three-member Ad Hoc Administrative Committee to review the Commission's upcoming audit, to review next year's budget, and any other matters necessary prior to formal review by the Commission.

In April, the Commission approved a number of changes to its Policy Manual. As an outgrowth of that session, the Commission modified its practice on the Ad Hoc Administrative and Finance Committee composition. The new practice is that the Committee shall be composed of the Chair, the Vice Chair, and a new member from the regular membership to be selected by the Chair. Based on LAFCO staff's consultation with the Commission Chair, the Commission Chair has chosen Commissioner Rowe to be the third member of the Committee. Therefore, the Ad Hoc Administrative and Finance Committee for Fiscal Year 2020-21 is composed of the following members:

- Chair McCallon
- Vice Chair Curatalo
- Commissioner Rowe

On December 18, the Committee is scheduled to review the draft FY 2019-20 audit with the independent auditor, and will meet early next year to review the FY 2021-22 Budget.

2. CY 2021 LAFCO Calendar

Every year, LAFCO staff provides the Commission with its proposed schedule for the upcoming calendar year, which include the Commission's meeting dates for the year, the holidays, as well as the Fridays that the LAFCO Office is closed. Attached is the proposed 2021 LAFCO Calendar.

Attachment: CY 2021 LAFCO Calendar

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LAFCO Office Calendar – 2021

JANUARY 2021

1 *New Year's Holiday (Office Closed)*
8 *Office Closed*
18 *Martin Luther King Jr. Holiday (Office Closed)*
20 LAFCO Hearing
22 *Office Closed*

FEBRUARY 2021

5 *Office Closed*
15 *President's Day Holiday (Office Closed)*
17 **NO LAFCO HEARING**
19 *Office Closed*

MARCH 2021

5 *Office Closed*
17 LAFCO Hearing
19 *Office Closed*

APRIL 2021

2 *Office Closed*
16 *Office Closed*
21 LAFCO Hearing
30 *Office Closed*

MAY 2021

14 *Office Closed*
19 LAFCO Hearing
28 *Office Closed*
31 *Memorial Day Holiday (Office Closed)*

JUNE 2021

11 *Office Closed*
16 **NO LAFCO HEARING**
25 *Office Closed*

JULY 2021

5 *Independence Day Observance (Office Closed)*
9 *Office Closed*
21 LAFCO Hearing
23 *Office Closed*

AUGUST 2021

6 *Office Closed*
18 LAFCO Hearing
20 *Office Closed*

SEPTEMBER 2021

3 *Office Closed*
6 *Labor Day Holiday (Office Closed)*
15 LAFCO Hearing
17 *Office Closed*

OCTOBER 2021

1 *Office Closed*
11 *Columbus Day Holiday (Office Closed)*
15 *Office Closed*
20 LAFCO Hearing
29 *Office Closed*

NOVEMBER 2021

11 *Veteran's Day Holiday (Office Closed)*
12 *Office Closed*
17 LAFCO Hearing
25- *Thanksgiving Holiday (Office Closed)*
26

DECEMBER 2021

10 *Office Closed*
15 **NO LAFCO HEARING**
20- *Christmas & New Year Holidays (Office Closed)*
31