

SMUD
457(b) DEFERRED COMPENSATION PLAN

Amended And Restated
Effective As Of December 31, 2019

SMUD
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SMUD
457(b) DEFERRED COMPENSATION PLAN

Sacramento Municipal Utility District (SMUD) hereby adopts the SMUD 457(b) Deferred Compensation Plan (Plan), on the date set forth on the signature page hereof, for the exclusive benefit of its eligible employees, members of the board of directors of SMUD, and their beneficiaries.

RECITALS

Whereas:

- A. SMUD is a governmental employer that is an eligible employer within the meaning of section 457(e)(1)(A) of the Internal Revenue Code of 1986, as amended (Code).
- B. SMUD has previously established a deferred compensation plan that is an eligible deferred compensation plan pursuant to Code section 457(b), under which its eligible employees or board members may defer a portion of their compensation.
- C. SMUD amended and restated the Plan on May 3, 2004.
- D. SMUD amended the Plan on May 3, 2005 to eliminate mandatory distributions in excess of one thousand dollars (\$1,000).
- E. SMUD amended the Plan on January 1, 2007 to include the provisions of the Pension Protection Act of 2006 that clarified the circumstances under which Plan assets can be transferred to a governmental defined benefit plan.
- F. SMUD amended and restated the Plan effective as of January 1, 2008 to conform to changes in the law including the revised Treasury regulations under Code section 457(b) published on April 5, 2007; the Pension Protection Act of 2006; and the provisions of the Heroes Earnings Assistance and Relief Tax Act of 2008.
- G. SMUD amended the Plan effective as of January 1, 2013 to (i) comply with the applicable provisions of the California Public Employees' Pension Reform Act of 2013 (PEPRA), (ii) comply with the applicable provisions of the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA), (iii) provide for the cashout of accounts of less than five thousand dollars (\$5,000), and (iv) add a six (6) month suspension of contributions after receiving a distribution upon an unforeseeable emergency.

- H. SMUD amended the Plan effective as of April 15, 2013 to (i) limit the number of loans a Participant may obtain during a Plan Year, (ii) replace the Wall Street Journal prime interest rate with the Reuters prime interest rate, and (iii) require spousal consent if a Participant designates a Beneficiary other than the spouse.
- I. SMUD amended the Plan effective as of June 1, 2016 to allow rollover distributions from all eligible retirement plans except rollover distributions from a Roth individual retirement account or other after-tax account.
- J. SMUD amended the Plan effective as of September 18, 2017 to allow the Plan to provide Roth accounts, in-Plan Roth conversions, and accept rollover contributions from Roth accounts.
- K. SMUD amended the Plan effective as of April 5, 2018 to allow the Plan to provide clarify and confirm the conditions for obtaining a distribution based upon an unforeseeable emergency.
- L. SMUD amended the Plan effective as of October 11, 2018 to incorporate by reference the Declaration of Trust for the American Century Strategic Allocation certified investment trust and the declarations of trust for the Conestoga Capital Advisors Small Cap Growth Collective Fund. By incorporating the terms of those declarations of trust and making that investment vehicle available to participants in the plan, SMUD is enabling participants to invest in funds that SMUD believes offers similar market exposure as was being previously offered but with more reasonable fees. The incorporation by reference will remain valid as long as SMUD continues to allow plan participants the opportunity to invest in the corresponding certified investment trusts, and this amendment will automatically expire when SMUD no longer offers these investments to participants in its standard investment lineup.
- M. Whereas SMUD now wishes to (1) restate its Plan, (2) remove the provision prohibiting contributions to a plan for six months after obtaining a distribution for an unforeseeable emergency, and (3) amend the plan to remove any of the amendments made to the plan on October 11, 2018 effective the date Russell Investment Trust Company begins to operate as the investment advisor for this Plan and its participants.
- N. SMUD now wishes to amend and restate the Plan to incorporate the amendments adopted since the most recent restatement.

OPERATIVE PROVISIONS

Now, therefore, SMUD hereby amends and restates the Plan upon the following terms and conditions:

ARTICLE 1. GENERAL

1.01. Plan Name.

The name of this Plan is the "Sacramento Municipal Utility District 457(b) Deferred Compensation Plan."

1.02. Effective Date.

Except as otherwise indicated, the effective date of this amended and restated Plan is December 31, 2019.

1.03. Exclusive Benefit.

It is the intention of SMUD that the Plan and Trust are created and maintained for the exclusive benefit of SMUD's eligible Employees or Board Members and their Beneficiaries.

1.04. Income Tax And ERISA Status.

- A. This Plan is intended to be an "eligible deferred compensation plan" as that term is defined in Code section 457(b), such that the Employees and Board Members who participate in the Plan will have gross income by virtue of the operation of the Plan only in the taxable year in which amounts deferred under the Plan are paid to the participating Employees, participating Board Members or their Beneficiaries.
- B. The Plan is intended to qualify as a governmental plan that is exempt from the provisions of the Employee Retirement Income Security Act of 1974, as amended (ERISA). However, the Plan is subject to the fiduciary standards set forth in Article 16 of the California Constitution and in the California Government Code applicable to Code section 457(b) plans.
- C. SMUD believes this Plan to be in compliance with all applicable sections of the Code. However, this Plan has not been submitted to the Internal Revenue Service for approval and there is no assurance that the intended tax benefits under this Plan will be available. Neither SMUD, nor the Trustee, nor the Administrator, nor its designated representative makes any commitment or guarantee that any particular federal or State tax treatment will apply to, or be available to, any Participant. Each Participant, by accepting a benefit under this Plan, agrees to be liable for any taxes, tax penalties and interest that may be imposed by the

Internal Revenue Service, or any other governmental agency, with respect to these benefits.

1.05. Plan Administrator.

SMUD's board of directors delegated the administration of the Plan to SMUD's General Manager. The deferred compensation committee appointed by SMUD shall be the Administrator of the Plan. The Administrator may engage the services of one or more third parties to assist the Administrator with the administration of the Plan.

1.06. Assets Held In Trust.

In accordance with Code section 457(g), all amounts of compensation deferred under this Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights, shall be held in trust, in a custodial account described in Code section 401(f), or an annuity contract described in Code section 401(f).

1.07. Defined Terms.

All initially capitalized terms (other than headings) are defined terms and will be defined in the General Definitions article.

ARTICLE 2. GENERAL DEFINITIONS

For purposes of this Plan, the following definitions shall apply:

2.01. Account.

"Account" means the following separate accounts maintained by the Administrator on behalf of a Participant:

A. Deferred Compensation Account.

"Deferred Compensation Account" means the Participant's Pre-Tax Account, the Participant's Roth Account, and the Participant's In-Plan Roth Conversion Account as defined below:

1. Pre-Tax Account.

"Pre-Tax Account" means the account maintained by the Administrator for each Participant representing Pre-Tax Deferred Compensation, if any, adjusted for withdrawals, income, expenses, and realized and unrealized gains and losses attributable thereto.

2. Roth Account.

“Roth Account” means the account maintained by the Administrator for each Participant representing Roth Deferred Compensation by the Participant, if any, adjusted for withdrawals, income, expenses, and realized and unrealized gains and losses attributable thereto.

3. In-Plan Roth Conversion Account.

In-Plan Roth Conversion Account” means the account maintained by the Administrator for each Participant representing the amounts, if any, that the Participant has converted to Roth contributions described in Code section 402A pursuant to the In-Plan Roth Conversions section, below, adjusted for withdrawals, income, expenses, and realized and unrealized gains and losses attributable thereto.

B. Rollover Account.

“Rollover Account” means the account maintained by the Administrator for each Participant representing the rollover of distributions received by the Participant from another plan, if any, or the direct transfer of an Eligible Rollover Distribution (excluding rollover contributions from a Roth account described in Code section 402A) from another plan, if any, adjusted for withdrawals, income, expenses and realized and unrealized gains and losses attributable thereto.

C. Roth Rollover Account.

“Roth Rollover Account” means the account maintained by the Administrator for each Participant representing the direct transfer of an Eligible Rollover Distribution that consists of Roth contributions described in Code section 402A from another plan, if any, adjusted for withdrawals, income, expenses, and realized and unrealized gains and losses attributable thereto.

2.02. Administrator.

"Administrator" means the deferred compensation committee appointed by the General Manager from time to time with authority and responsibility to manage and direct the operation and administration of the Plan. If the General Manager does not appoint an Administrator, the General Manager shall be the Administrator.

2.03. Beneficiary.

"Beneficiary" means any one or more person(s) entitled under the provisions of this Plan to receive benefits after the death of a Participant.

2.04. Board Member.

"Board Member" means a member of the board of directors of SMUD.

2.05. Civil Service Employee.

"Civil Service Employee" means an Employee who either is (i) a permanent, full-time Employee hired pursuant to the SMUD Civil Service Rules, or (ii) a permanent, part-time employee hired prior to July 1, 1991.

2.06. Code.

"Code" means the Internal Revenue Code of 1986, as it may be amended from time to time.

2.07. Compensation And Includible Compensation.

The terms "Compensation" and "Includible Compensation" are defined in this section.

A. Compensation.

Except as otherwise provided, "Compensation" means:

1. Basic Compensation.

"Compensation" means Includible Compensation.

2. Exclusions To Compensation.

"Compensation" shall not include:

- a. Noncash compensation, reimbursements or other expense allowances, fringe benefits (cash and noncash), moving expenses, deferred compensation, and welfare benefits, even if includible in gross income.
- b. Any amount which is contributed by SMUD pursuant to a salary reduction agreement and which is not includible in the gross income of the Employee or

Board Member under Code section 125, 132(f)(4), 402(e)(3), 402(h)(1)(B) or 402(k).

- c. Accumulated sick pay, accumulated vacation pay, or back pay for a Participant who has not had a Severance From Employment.

3. Adjustments To Compensation.

For the purpose of determining contributions under the Plan, Compensation shall include only amounts that were earned while the Employee or Board Member is a Participant.

4. Inclusion Of Differential Wage Payments.

"Compensation" shall include differential wage payments to Participants on active duty to the extent required by the provisions of Code section 414(u)(12)(A)(ii), the Treasury regulations thereunder and any subsequent guidance issued under Code section 414(u)(12)(A)(ii).

5. Payments After Severance From Employment.

"Compensation" shall not include any amounts paid after the Employee has a Severance From Employment, as described in Treasury regulations section 1.415(c)-2(e)(3) except for payments to an individual who does not currently perform services for SMUD by reason of qualified military service (within the meaning of Code section 414(u)(1)) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for SMUD rather than entering qualified military service.

B. Includible Compensation.

1. Includible Compensation In General.

"Includible Compensation" means the Employee's or Board Member's "compensation" as determined under Code section 415(c)(3), including any amount contributed or deferred by SMUD at the election of the Employee or Board Member that is not includible in the gross income of the Employee or Board Member under Code section 125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k) or 457(b).

Compensation shall be determined without regard to any community property laws.

2. Differential Wage Payments.

"Includible Compensation" shall include differential wage payments to Participants on active duty to the extent required by the provisions of Code section 414(u)(12)(A)(ii), the Treasury regulations thereunder and any subsequent guidance issued under Code section 414(u)(12)(A)(ii).

3. Payments After Severance From Employment.

"Includible Compensation" includes amounts paid after the Employee's Severance From Employment if paid by the later of (i) two and one-half (2-1/2) months after the Employee's Severance From Employment, or (ii) the end of the calendar year that includes the date of the Employee's Severance From Employment subject to the following requirements:

- a. The payment is regular compensation for services during the Employee's regular working hours, or compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments and the payment would have been made to the Employee prior to a Severance From Employment if the Employee had continued in employment with SMUD.
- b. The following amounts are excluded:
 - (1) Amounts paid for unused accrued bona fide sick, vacation, or other leave; and
 - (2) Amounts received by the Employee pursuant to a nonqualified unfunded deferred compensation plan.

Notwithstanding the provisions of this Payments After Severance From Employment paragraph, Includible Compensation shall include all payments to an individual who does not currently perform services for SMUD by reason of qualified military service (within the meaning of Code section 414(u)(1)) to the extent these payments do not

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

2.08. Deferred Compensation.

"Deferred Compensation" means the amount of the Participant's Compensation, not yet earned by the Participant that the Participant designates as the amount that shall be deferred in accordance with the provisions of this Plan. Deferred Compensation may consist of Pre-Tax Deferred Compensation or Roth Deferred Compensation.

2.09. Designated Beneficiary.

"Designated Beneficiary" means the individual who is designated as the Participant's Beneficiary and is the designated beneficiary under Code section 401(a)(9) and Treasury regulations section 1.401(a)(9)-4.

2.10. Disabled.

"Disabled" means the Participant has a physical or mental condition resulting from bodily injury, disease or mental disorder which renders the Participant incapable of continuing any gainful occupation as evidenced by presentation of medical evidence satisfactory to the Administrator.

2.11. Distributee.

"Distributee" means:

- A. An Employee or former Employee who receives a distribution from the Plan. "Distributee" also means the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code section 414(p), with regard to the interest of the spouse or former spouse. "Distributee" also means the Employee's designated Beneficiary who is not the Employee's spouse.
- B. A Board Member or former Board Member who receives a distribution from the Plan. "Distributee" also means the Board Member or former Board Member's surviving spouse and the Board Member or former Board Member's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code section 414(p), with regard to the interest of the spouse or former spouse. "Distributee" also

means the Board Member's Designated Beneficiary who is not the Board Member's spouse.

2.12. Distribution Calendar Year.

"Distribution Calendar Year" means a calendar year for which a minimum distribution is required under Code section 401(a)(9), the Treasury regulations promulgated thereunder, and the provisions of the Plan that implement these requirements. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year that contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin under the Payment Of Death Benefits section, below.

2.13. Eligible Retirement Plan.

"Eligible Retirement Plan" means a qualified trust described in Code section 401(a), an annuity plan described in Code section 403(a), an annuity contract described in Code section 403(b), an individual retirement account described in Code section 408A, a Roth individual retirement account described in Code section 408A, an individual retirement annuity described in Code section 408(b) other than an endowment contract, or an eligible deferred compensation plan described in Code section 457(b) that is maintained by a State, political subdivision of a State, or any agency or instrumentality of a State or political subdivision of a State and that agrees to separately account for amounts transferred into such plan from this Plan, that accepts the Distributee's Eligible Rollover Distribution; provided, however, that in the case of an Eligible Rollover Distribution to a designated Beneficiary who is not the Employee's or Board Member's surviving spouse, (i) an Eligible Retirement Plan shall be either an individual retirement account described in Code section 408A, a Roth individual retirement account described in Code section 408A, or an individual retirement annuity described in Code section 408(b) other than an endowment contract and (ii) a direct trustee-to-trustee transfer is made to such an account or annuity.

2.14. Eligible Rollover Distribution.

"Eligible Rollover Distribution" means any distribution of all or any portion of the balance to the credit of the Distributee; provided, however, that an Eligible Rollover Distribution does not include:

- A. Any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the

life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated Beneficiary, or for a specified period of ten (10) years or more;

- B. Any distribution to the extent such distribution is required under Code section 401(a)(9);
- C. The portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); provided, however, that:
 - 1. A portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax Employee or after-tax Board Member contributions that are not includible in gross income; and
 - 2. Notwithstanding the preceding clause, such portion may be transferred in a direct trustee-to-trustee transfer only to:
 - a. An individual retirement account described in Code section 408A;
 - b. A Roth individual retirement account described in Code section 408A;
 - c. An individual retirement annuity described in Code section 408(b); or
 - d. A qualified plan described in Code section 401(a) (whether or not a defined contribution plan) or an annuity contract or custodial account described in Code section 403(b) that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution that is includible in gross income and the portion of such distribution that is not so includible; or
- D. Any distribution that is made upon hardship of the Employee or Board Member.

2.15. Employee.

"Employee" means any individual who is employed by SMUD as a common law employee of SMUD.

2.16. ERISA.

"ERISA" means the Employee Retirement Income Security Act of 1974, as it may be amended from time to time.

2.17. General Manager.

"General Manager" means SMUD's General Manager.

2.18. Normal Retirement Age.

"Normal Retirement Age" means the age designated by the Participant between (i) age fifty-five (55) and (ii) age seventy and one-half (70-1/2).

2.19. Participant.

"Participant" means any Employee or former Employee, Board Member or former Board Member, who has met the Plan's eligibility requirements, commenced participation in the Plan, and is or may become eligible to receive a benefit under the Plan, or whose Beneficiary(ies) may be eligible to receive any such benefit.

2.20. Plan.

"Plan" means the Code section 457(b) eligible deferred compensation plan as set forth herein and any amendments hereto.

2.21. Required Beginning Date.

"Required Beginning Date" means April 1 of the calendar year following the later of (i) the calendar year in which the Participant attains age seventy and one-half (70-1/2) or (ii) the calendar year in which the Participant retires.

2.22. Severance From Employment.

"Severance From Employment" means the Employee ceases to be an Employee of SMUD within the meaning of Code section 457(d)(1)(A)(ii). A Participant shall be deemed to have severed employment with SMUD for purposes of this Plan when both parties consider the employment relationship to have terminated and neither party anticipates any future

employment of the Participant by SMUD. A Participant shall be treated as having incurred a Severance From Employment on the date SMUD determines that the Participant is Disabled. In the case of a Participant who is a Board Member of SMUD, "Severance Of Employment" shall be deemed to have occurred when the Participant is no longer a Board Member and there is no foreseeable possibility that the Participant will become an Employee or Board Member.

2.23. SMUD.

"SMUD" means the Sacramento Municipal Utility District.

2.24. Trust.

"Trust" means the retirement trust created by SMUD, which trust shall be a part of this Plan, as described in a separate trust agreement. "Trust" shall include any custodial accounts and contracts established under Code section 401(f) for the purpose of holding funds under the Plan.

2.25. Trustee.

"Trustee" means the trustee(s) signing the Trust and any duly appointed successor trustee(s). "Trustee" shall also include any Trustee or insurance company holding the Trust assets in a custodial account or contract established under Code section 401(f).

2.26. Trust Fund.

"Trust Fund" means all property and income held by the Trustee pursuant to the terms of the Trust and for the purpose of this Plan.

2.27. USERRA.

"USERRA" means the Uniformed Services Employment And Reemployment Rights Act of 1994, as it may be amended from time to time.

2.28. Valuation Calendar Year.

"Valuation Calendar Year" means the calendar year immediately preceding the Participant's Distribution Calendar year.

2.29. Valuation Date.

"Valuation Date" means:

- A. With respect to each segregated Account, every day that the Trustee, any transfer agent appointed by the Trustee or SMUD, and any stock exchange used by such agent, are open for business (daily valuation); or
- B. With respect to each non-segregated Account, if any, the last day of the calendar year and any such other date(s) selected by the Trustee or the Administrator, in its sole and absolute discretion.

2.30. Pre-Tax Deferred Compensation.

"Pre-Tax Deferred Compensation" means Deferred Compensation that is not Roth Deferred Compensation and is made on a pre-tax basis pursuant to the SMUD Contributions - Deferred Compensation section, below.

2.31. Roth Deferred Compensation.

"Roth Deferred Compensation" means Deferred Compensation that consists of Roth contributions described in Code section 402A made in accordance with the SMUD Contributions - Deferred Compensation section, below, and is (i) designated irrevocably by the Participant at the time of the cash or deferred election as Roth Deferred Compensation that is made in lieu of all or a portion of the Pre-Tax Deferred Compensation the Participant is otherwise eligible to make under the Plan, and (ii) treated by SMUD as includible in the Participant's income at the time the Participant would have received that amount in cash if the Participant had not made a cash or deferred election.

ARTICLE 3. ELIGIBILITY AND PARTICIPATION

3.01. Eligible Employees; Excluded Employees.

All Employees and Board Members of SMUD, who are not otherwise excluded from participation in the Plan are eligible to participate in the Plan in accordance with the Participation section, below. The Plan excludes the following Employees and Board Members (even if they might otherwise satisfy the eligibility criteria specified in the Plan):

- A. Employees who are nonresident aliens and who receive no earned income (within the meaning of Code section 911(d)(2)) from SMUD that constitutes income from sources within the United States (within the meaning of Code section 861(a)(3));

- B. A worker whom SMUD did not treat as an Employee even if either (i) the individual might otherwise satisfy certain legal tests or criteria to be considered a common law employee of SMUD or (ii) the individual is subsequently determined to be a common law employee of SMUD by a local State or federal governmental entity or by a court of competent jurisdiction;
- C. Leased Employees; and
- D. Casual Employees who are temporary at-will non-Civil Service Employees who are scheduled to work less than twenty (20) hours per week and not more than nine hundred and sixty (960) hours (including overtime) during the Plan Year as described in SMUD's benefit guides.

3.02. Eligibility Requirements.

There are no age or service requirements under the Plan and an Employee or Board Member not excluded under the Eligible Employees; Excluded Employees section, above, shall be eligible to participate in the Plan as described in the Commencement Of Participation section, below.

3.03. Commencement Of Participation.

Each Employee or Board Member who is not otherwise excluded from participation in the Plan may participate in the Plan by entering into a compensation reduction agreement with SMUD in accordance with the requirements of the Compensation Reduction Agreements Requirements subsection, below.

3.04. Participation.

The Administrator, using employment dates certified by SMUD, shall determine which Employees and Board Members are eligible to participate, and the Administrator shall furnish such information and attendant data to the Trustee. The Administrator shall notify each eligible Employee or Board Member of the Employee's or Board Member's eligibility and of any application or other requirements for participation. By becoming a Participant, the Employee or Board Member agrees to be bound by all terms, conditions and covenants of this Plan as then in effect or as thereafter amended.

3.05. Beneficiary Designation.

- A. Each Participant shall have the right to designate, in writing, on forms provided by the Administrator, or online a Beneficiary or Beneficiaries to receive the Participant's death benefits, and shall have the right, at any time, to revoke such designation or to substitute another such Beneficiary or Beneficiaries without the consent of any Beneficiary; provided, however, that a married Participant and spouse shall both designate any non-spouse Beneficiary or Beneficiaries, unless the spouse cannot be located or unless otherwise permitted by law. Any designation by a married Participant and spouse of a non-spouse Beneficiary must be made by the Participant in writing and be consented to in writing by the Participant's spouse. Such spouse's written consent must designate a Beneficiary who may not be changed without spousal consent (unless the spousal consent expressly permits designations by the Participant without any requirement of further spousal consent), acknowledge the effect of such election, and be witnessed by a Plan representative or a notary public. Such consent shall not be required if it is established to the satisfaction of the Administrator that the required consent cannot be obtained because there is no spouse, the spouse cannot be located, or other circumstances that may be prescribed by Treasury regulations. The election made by the Participant and consented to by the Participant's spouse may be revoked by the Participant in writing without the consent of the spouse at any time prior to the Participant's death. Any new election must comply with the requirements of this subsection. A former spouse's waiver shall not be binding on a new spouse.
- B. If a Participant has designated the Participant's spouse as the Participant's Beneficiary under this Plan, such designation shall be deemed to have been revoked in the event of a judgment, decree, order, or approval of a settlement agreement, issued either (i) by a court of competent jurisdiction, or (ii) through the administrative process established under State law having the force and effect of law under applicable State law, dissolving such marriage, unless the Participant designates the Participant's ex-spouse as the Participant's Beneficiary by a new designation signed by the Participant and delivered to the Administrator after the entry of such judgment, decree, order or approval of a settlement agreement and prior to the Participant's death.
- C. If, upon the death of a Participant, there is no valid designation of Beneficiary on file with the Administrator, or the Participant's

Beneficiary is not alive, the Administrator shall designate as the Beneficiary, in order of priority:

1. The surviving spouse;
2. The surviving children, including adopted children, in equal shares, or their issue by right of representation;
3. Surviving parents, in equal shares; or
4. The Participant's heirs at law.

The determination of the Administrator as to which persons, if any, qualify within the aforementioned categories shall be final and conclusive upon all persons, but the Administrator may seek a declaratory judgment of a court of competent jurisdiction to determine the identity of Beneficiaries and their respective shares at the expense of the Participant's Account.

3.06. Military Leaves.

- A. Each period served by a person in the uniformed services shall, upon reemployment under USERRA, be deemed to constitute service with SMUD for the purpose of determining the accrual of benefits under the Plan, all to the extent required by and as provided under USERRA. Notwithstanding any provision in the Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code section 414(u).
- B. The Plan specifically incorporates herein by reference the requirements of Code section 401(a)(37), the Treasury regulations thereunder and any subsequent guidance under Code section 401(a)(37) requiring that if a Participant dies while performing qualified military service (as defined in Code section 414(u)), the Beneficiary(ies) of the Participant shall be entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan had the Participant resumed employment on the date before the Participant's date of death and then had a Severance From Employment on account of death.
- C. For purposes of the Restrictions On Distributions subsection and the Restrictions On Distributions To Board Members subsection of the Commencement Of Payment Of Benefits section, below, a Participant shall be treated as having a Severance From

Employment during any period the Participant is performing service in the uniformed services described in Code section 3401(h)(2)(A). If a Participant elects to receive a distribution from the Plan as result of the application of this subsection, the Participant may not make Deferred Compensation to the Plan during the six (6) month period beginning on the date of the distribution.

3.07. Eligibility Of Reemployed Employees Or Board Member.

If a Participant who has had a Severance From Employment is reemployed by SMUD within an eligible class, the Employee may again become a Participant in the Plan on the first day of the calendar month next following the execution of a new compensation reduction agreement. If a Participant who was a Board Member had a Severance From Employment and again becomes a Board Member or Employee, such person may again become a Participant in the Plan on the first day of the calendar month next following the execution of the new compensation reduction agreement.

3.08. Eligibility Of Excluded Employees Or Board Member.

If a Participant becomes ineligible to continue to participate because the Participant is no longer a member of an eligible class of Employees or a Board Member, such Employee or Board Member may again become a Participant in the Plan upon return to an eligible class of Employees or becoming a Board Member on the first day of the calendar month next following the execution of a new compensation reduction agreement. If an Employee or Board Member who is not a member of the eligible class of Employees or a Board Member becomes a member of the eligible class, such Employee or Board Member may become a Participant in the Plan on the first day of the calendar month next following the execution of a compensation reduction agreement.

3.09. Omission Of Eligible Employee Or Board Member.

If an Employee or Board Member who should have been included as a Participant for a calendar year is erroneously omitted and discovery of the omission is made after the calendar year, SMUD and the Administrator may correct the erroneous omission of the Employee or Board Member in accordance with the requirements of the Internal Revenue Service through standards that are similar to those set forth in the Employee Plans Compliance Resolution System as described in Rev. Proc. 2013-12 and any subsequent guidance or standards similar to such requirements.

3.10. Inclusion Of Ineligible Individual.

If any person is erroneously included as a Participant in the Plan and discovery of the erroneous inclusion is made after the calendar year, SMUD and the Administrator may correct the erroneous inclusion of the Employee or Board Member in accordance with the requirements of the Internal Revenue Service through standards that are similar to those set forth in the Employee Plans Compliance Resolution System as described in Rev. Proc. 2013-120 and any subsequent guidance or standards similar to such requirements.

ARTICLE 4. CONTRIBUTIONS AND ALLOCATIONS

4.01. SMUD Contributions - Deferred Compensation.

A. SMUD Contributions - Deferred Compensation In General.

1. Each calendar year, SMUD shall make contributions to this Plan and the Trust in an amount equal to the total compensation deferred by all Participants pursuant to this SMUD Contributions - Deferred Compensation section. Except as provided in paragraph 2, below, such deferred compensation shall be allocated to the Participant's Pre-Tax Account.
2. A Participant may specify that any portion of the Participant's compensation that the Participant elects to defer under this SMUD Contributions - Deferred Compensation section may be classified as Roth Deferred Compensation. Roth Deferred Compensation will be deposited in the Participant's Roth Account under the Plan. No contributions other than Roth Contributions and earnings will be credited to this account and gains, losses, and other credits or charges will be allocated on a reasonable and consistent basis to this account. The Plan will maintain a record of the amount of Roth Deferred Compensation in each Participant's Roth Account. Roth Deferred Compensation shall be taken into account for the provisions of this Plan implementing the requirements of Code section 402(g) and Code section 415.

B. Compensation Reduction Agreements In General.

A Participant may elect to enter into a written compensation reduction agreement with SMUD or the Administrator whereby the Participant agrees to accept a reduction in cash compensation

from SMUD and to have SMUD contribute such amount to this Plan and the Trust. Such amount shall be equal to either (i) any percentage of such Participant's compensation per payroll period or (ii) a fixed dollar amount per payroll period as specified in the Participant's compensation reduction agreement. A Participant must agree to defer a minimum of ten dollars (\$10) of compensation in each biweekly pay period. In addition, if any extraordinary compensation is payable to a Participant (such as a year-end bonus), the Participant may elect to enter into a separate written compensation reduction agreement with SMUD or the Administrator whereby the Participant agrees to accept a reduction in cash compensation from SMUD with respect to such extraordinary compensation equal to either (i) any percentage of such extraordinary compensation or (ii) a fixed dollar amount of such extraordinary compensation.

C. Compensation Reduction Agreements Requirements.

Compensation reduction agreements shall be subject to the following:

1. A compensation reduction agreement entered into no later than the twenty-fourth (24th) day of the month shall become effective no earlier than the first day of the calendar month next following the execution of the compensation reduction agreement. A compensation reduction agreement entered into after the twenty-fourth (24th) day of the month shall become effective on the first day of the second calendar month after the execution of the compensation reduction agreement.
2. Thereafter, the compensation reduction agreement shall apply to each payroll period during which a compensation reduction agreement is on file with SMUD or the Administrator; provided, however, that a compensation reduction agreement with respect to any extraordinary compensation shall apply only to that extraordinary compensation and shall not affect the Participant's compensation reduction agreement then in effect with respect to each payroll period.
3. Except as provided below, a Participant's compensation reduction agreement with respect to each payroll period (i.e., not a compensation reduction agreement with respect to any extraordinary compensation) may be entered into or

amended by a Participant at such times as SMUD shall prescribe for the purpose of:

- a. Decreasing the amount of such Participant's compensation which is subject to compensation reduction during the remainder of such calendar year; or
- b. Increasing the amount of such Participant's compensation that is subject to compensation reduction during the remainder of such calendar year.

Any such modified compensation reduction agreement shall provide that SMUD shall provide the Employee or Board Member with modified SMUD Contributions - Deferred Compensation effective no earlier than the first day of the calendar month next following the execution of the modified compensation reduction agreement.

4. A Participant may revoke the Participant's compensation reduction agreement then in effect with respect to each payroll period at any time, thereby ceasing SMUD Contributions - Deferred Compensation as of first day of the next following payroll period. A Participant who has revoked the Participant's compensation reduction agreement may again become an active Participant in accordance with rules established by SMUD. Any subsequent compensation reduction agreement shall provide that SMUD shall provide the Employee with SMUD Contributions - Deferred Compensation effective no earlier than the first day of the calendar month next following the execution of the subsequent compensation reduction agreement.
5. The aggregate amount of a Participant's SMUD Contributions - Deferred Compensation during a calendar year shall not exceed the amount that would cause the Plan to violate the provisions of the Limitation On Contributions And Benefits article, below. SMUD may modify or revoke its compensation reduction agreement with any Participant at any time if SMUD determines that such revocation or amendment is necessary to ensure that the Plan will not exceed this limitation.
6. Except as provided above, a compensation reduction agreement applicable to any given calendar year, once

made, may not be revoked or amended by the Participant or SMUD.

4.02. Rollover Contributions.

- A. There may be transferred to the Trustee, subject to the approval of the Administrator and the Trustee, and, if deemed advisable by the Administrator by means of an Eligible Rollover Distribution, all or any of the assets held (whether by a trustee, custodian or otherwise) on behalf of an Eligible Retirement Plan that is maintained for the benefit of any person who is or is about to become a Participant in this Plan. Prior to accepting any such rollover contribution, the Administrator may require that the Participant or Employee or Board Member establish to the satisfaction of the Administrator that the amount to be rolled over to the Plan is an Eligible Rollover Distribution from an Eligible Retirement Plan. Except as provided in subsection B, below, the Plan will not accept a rollover from an after-tax account.

- B. This Plan will accept a direct rollover from another Roth elective deferral account under another plan as described in Code section 402A(e)(1); provided, however, that:
 - 1. The rollover is permitted under the rules of Code section 402(c);

 - 2. The other plan must provide to the Administrator either (i) a statement indicating the first year of the five (5) taxable-year period described in Code section 402A(d)(2)(B) and the portion of the distribution that is attributable to investment in the contract under Code section 72 or (ii) a statement that the distribution is a qualified distribution as described in Code section 402A(d)(2); and

 - 3. The direct rollover shall be held in the separate Roth Rollover Account.

4.03. Transfers From Other Plans.

If (i) an Employee or Board Member is entitled to benefits under this Plan, (ii) such Employee or Board Member was previously covered by a Code section 457(b) eligible deferred compensation plan maintained by an employer that is an eligible employer within the meaning of Code section 457(e)(1)(A), and (iii) such plan provided for the transfer of such benefits pursuant to the provisions of Code section 457(e)(10) and the Treasury regulations promulgated thereunder, then this Plan will accept the transfer

of such amounts if SMUD is satisfied, in its sole and absolute discretion, that such transfer and acceptance is permissible under Code section 457.

4.04. Time Of Contributions.

Deferred Compensation accumulated through payroll deductions shall be paid to the Trustee as of the earliest date on which such contributions can reasonably be segregated from SMUD's general assets, but in any event within fifteen (15) business days following the end of the month in which such amounts would otherwise have been payable to the Participant in cash.

ARTICLE 5. ALLOCATIONS OF CONTRIBUTIONS AND VALUATION

5.01. Valuation Of The Trust.

The Trustee, as of the close of business on each Valuation Date, shall determine the net worth of the assets of the Trust at their fair market value (using criteria and sources of information that the Trustee, in the Trustee's sole and absolute discretion, deems appropriate), and, except as provided in the Allocation Of Investment Results And Plan Expenses section, below, shall deduct all fees and expenses for which the Trustee has not yet obtained reimbursement from SMUD or from the Trust. Such valuation shall not include any segregated accounts (which shall be valued separately) or subsequent contributions for the current calendar year made by SMUD, the Employee or Board Member as of such Valuation Date or thereafter, which shall be valued separately.

5.02. Allocation Of Investment Results And Plan Expenses.

A. Income or loss generated since the immediately-preceding Valuation Date by a segregated account described in the Participant-Directed Individual Accounts section, or the Participant Loans article, less the portion of the Plan's investment-related cost attributable thereto, shall be allocated solely to the account or investment involved. As of any Valuation Date, the income or loss attributable to the remaining assets of the Plan, reduced by expenses as described below incurred since the preceding Valuation Date, shall be allocated to the non-segregated Accounts of the Participants and Beneficiaries who had unpaid balances in their non-segregated Accounts as of such Valuation Date in proportion to the balances in such non-segregated Accounts as of the prior Valuation Date, taking into account amounts withdrawn or distributed since such Valuation Date, if any.

- B. Expenses incurred by the Administrator or the Trustee from the services of third-party vendors provided to the Plan may be paid by the Plan. Fees incurred as a result of recordkeeping and compliance reporting for the Plan may be assessed directly to Participant Accounts on a pro rata basis based on Account balances as of the Plan's most recent Valuation Date, or on a per capita basis based on the number of Participant Account balances in the Plan at the time the fees are paid. Expenses incurred by the Plan as a result of Participant processing elections, or as a result of legal judgments issued against the Plan on behalf of a Participant's benefits, or as a result of a separated Participant's failure to provide the Administrator or Trustee with current contact information, shall be assessed directly against the Participant's Account. These expenses shall include but not be limited to distribution processing, fees incurred by the Plan as a result of a domestic relations order involving the Participant, and fees incurred by the Plan while conducting of a search for a lost Participant. A Participant or Beneficiary shall be considered "lost" when correspondence sent to such person via first-class mail is returned as undeliverable. SMUD reserves the right to pay any fees for Participants who are currently employed.

5.03. Allocation Of Deferred Compensation.

- A. Pre-Tax Deferred Compensation, if any, shall be allocated to the Pre-Tax Accounts of those Participants electing to make Pre-Tax Deferred Compensation to this Plan under the SMUD Contributions - Deferred Compensation section, above, in the amount so elected by each Participant.
- B. Roth Deferred Compensation, if any, shall be allocated to the Roth Accounts of those Participants electing to make Roth Deferred Compensation to this Plan under the SMUD Contributions - Deferred Compensation section, above, in the amount so elected by each Participant.

5.04. Correction Of Allocation.

If a Participant's Account was improperly included or excluded in any Plan Year from a Deferred Compensation allocation, the Administrator shall correct the error in accordance with the requirements of the Employee Plans Compliance Resolution System as described in Revenue Procedure 2013-12, and any subsequent guidance issued by the Internal Revenue Service.

ARTICLE 6. LIMITATION ON CONTRIBUTIONS AND BENEFITS

6.01. Limitations In General.

Except as provided in the Limitations – Last Three Years Of Participation and Limitations – Age Fifty Catch-Up Contributions sections, below, the maximum amount of Deferred Compensation under the Plan for any Participant for any calendar year, taken into account at its present value, shall not exceed the lesser of:

- A. Seventeen thousand five hundred dollars (\$17,500) or such larger amount as may be permitted by the Secretary of the Treasury pursuant to Code section 457(e)(15)(B); or
- B. One hundred percent (100%) of the Participant's Includible Compensation for such calendar year.

6.02. Limitations – Last Three Years Of Participation.

In any of the Participant's last three (3) years ending before the Participant's Normal Retirement Age, instead of the amount set forth in the Limitations In General section, above, the maximum amount of Deferred Compensation under the Plan for the Participant for the calendar year, taken into account at its present value, shall not exceed the lesser of:

- A. Two (2) times the dollar amount set forth in subsection A of the Limitations In General section, above (e.g., thirty-five thousand dollars (\$35,000) in 2013); or
- B. The sum of:
 - 1. The limitation established for purposes of the Limitations In General section, above, for the year, determined without regard to this Limitations – Last Three Years Of Participation section; plus
 - 2. So much of the limitation established for purposes of the Limitations In General section, above, for years before the year that has not previously been used under the Limitations In General section, above, or this Limitation – Last Three Years Of Participation section; provided, however, that taxable years commencing before January 1, 1979 and taxable years when the Participant was not a Participant shall not be taken into account.

6.03. Limitations – Age Fifty Catch-Up Contributions.

- A. If a Participant (i) would be at least age fifty (50) by the end of a calendar year and (ii) cannot make any other elective deferrals, as defined in Code section 414(u)(2)(C), for the year by reason of any limitation or restriction set forth in Code section 414(v)(3) or comparable limitation or restriction contained in the Plan, the Participant may defer additional Deferred Compensation in excess of the limitation specified in the Limitations In General section, above, not in excess of the lesser of:
1. Five thousand five hundred dollars (\$5,500) or such larger amount as may be permitted by the Secretary of the Treasury pursuant to Code section 414(v)(2)(C); or
 2. The excess (if any) of (i) one hundred percent (100%) of the Participant's Includible Compensation for the year over (ii) any other elective deferrals, as defined in Code section 414(u)(2)(C), for the year that are made without regard to Code section 414(v).
- B. Notwithstanding the above, the provisions of this section shall not apply if (i) the limitations under the Limitations – Last Three Years Of Participation section, above, apply to the Participant for the year and (ii) the sum of the Participant's limitations under the Limitations In General section, above, and this Limitations – Age Fifty Catch-Up Contributions section do not exceed the limitation under the Limitations – Last Three Years Of Participation section, above, for the year.
- C. In accordance with the provisions of the Code section 414(v)(2)(D) and the regulations thereunder, a Participant who also participates in the SMUD 401(k) Savings Plan may make catch-up contributions in accordance with this Limitations – Catch-Up Contributions section under this Plan and also under the SMUD 401(k) Savings Plan.

6.04. Distribution Of Excess Deferred Compensation.

- A. The maximum amount of the Compensation that any individual may defer under Code section 457(a) during any taxable year under the Plan and any other eligible deferred compensation plans shall not exceed the limitation set forth in this Limitation On Contributions And Benefits article.

- B. If a Participant's Deferred Compensation for the calendar year would be more than the amount permitted (Excess Deferred Compensation), the following provisions shall apply:
1. Any direction for such Excess Deferred Compensation shall be invalid and directed deferral shall not be made.
 2. Notwithstanding any other provision of the Plan, Excess Deferred Compensation under the Plan and any other Code section 457(b) eligible deferred compensation plan(s) maintained by SMUD, computed without regard to any other Code section 457(b) eligible deferred compensation plan(s) maintained by any employer(s) other than SMUD, and any income allocable to such amount shall be distributed from the Plan or such other plan(s), as determined by the Administrator in its sole and absolute discretion, as soon as administratively practicable after the Administrator determines that the amount is Excess Deferred Compensation to the Participant to whose Account Excess Deferred Compensation was assigned.
 3. If Excess Deferred Compensation occurs solely because of combined Deferred Compensation under (i) the Plan and any other Code section 457(b) eligible deferred compensation plan(s) maintained by SMUD and (ii) any other Code section 457(b) eligible deferred compensation plan(s) maintained by any employer(s) other than SMUD, the Plan (or any other Code section 457(b) eligible deferred compensation plan(s) maintained by SMUD, as determined by the Administrator in its sole and absolute discretion) may distribute the Excess Deferred Compensation and any income allocable to such amount, as soon as administratively practicable after the Administrator determines that the amount is Excess Deferred Compensation, to each Participant to whose Account Excess Deferred Compensation was assigned for the preceding calendar year. Each such Participant shall notify SMUD or the Administrator of how much Excess Deferred Compensation the Administrator should distribute from the Plan (or any other Code section 457(b) eligible deferred compensation plan(s) maintained by SMUD) in accordance with rules established by the Administrator.
 4. A Participant may designate the extent to which the Excess Deferred Compensation are composed of Pre-Tax Deferred Compensation and/or Roth Deferred Compensation, but

only to the extent that both types of Deferred Compensation were made during the calendar year. If the Participant does not designate which type of Deferred Compensation are to be distributed, the Participant's Pre-Tax Deferred Compensation shall be distributed first.

ARTICLE 7. PARTICIPANT-DIRECTED INDIVIDUAL ACCOUNT

7.01. Directed Individual Accounts Permitted.

The Administrator may, in its sole and absolute discretion, permit each Participant or Beneficiary to direct the Trustee as to the investment of all or a portion of the Participant's Accounts in any one or more of the investment options made available under the Plan by the Administrator. If such authorization is given by the Administrator, each Participant and Beneficiary may, subject to a procedure established by the Administrator, in a uniform, nondiscriminatory manner, direct the Trustee in writing to invest all or any portion of the Participant's Accounts in the one or more of the investment options made available by the Administrator.

7.02. Separate Account Established.

A separate participant-directed individual account shall be established for each Participant (or Beneficiary) who has directed an investment. Transfers between the Participant's other accounts and the Participant's participant-directed individual account shall be charged and credited as the case may be to each account. The participant-directed individual account shall not share in the Trust Fund investment results, but it shall be charged or credited as appropriate with the net earnings, gains, losses, expenses, taxes and unrealized appreciation or depreciation in market value, during each calendar year attributable to such account, and it shall be subject to all of the other provisions of the Plan and the Trust. Neither shall the investment results of the participant-directed individual accounts be included in the calculation of the Trust investment results generally. Participant Account values shall be maintained on a daily valuation basis using the most recent values provided by the Trustee.

7.03. Fiduciary Duty.

The Administrator, the Trustee and any other Plan fiduciary are relieved of liability for any losses which are the direct and necessary result of the investment instructions given by a Participant or Beneficiary. However, such relief shall be conditioned upon the Administrator's or the Trustee's compliance with communication and education requirements similar to those prescribed in ERISA section 404(c), as well as any such requirements under applicable State law. Neither the Trustee nor any

other person shall be under any duty to question any direction from any Participant or Beneficiary or to review any investment or to make any investment suggestion to any Participant or Beneficiary, except as otherwise required by applicable State law.

ARTICLE 8. PARTICIPANT LOANS

Loans to Participants shall be permitted pursuant to the following provisions.

8.01. Authorization For Participant Loans; Participant Loan Rules.

Loans to Participants, who are actively employed by SMUD as of the date of funding of the Participant's loan, shall be permitted only pursuant to the terms and conditions set forth in this article and any other nondiscriminatory rules established by the Administrator. All loan limits are determined as of the date the Trustee reserves funds for the loan. The funds will be disbursed to the Participant as soon as is administratively feasible after all required documents have been completed and sufficient Trust Fund assets have been liquidated, if necessary.

8.02. Loan Funding And Repayments.

The loan amount must meet the following criteria:

A. Minimum Loan Amount.

The minimum amount for any loan is one thousand dollars (\$1,000.00).

B. Maximum Loan Amount.

No loan shall be made to a Participant that causes the aggregate amount of all loans made to the Participant by the Plan or by any other qualified employer plan, as defined in Code section 72(p)(4), maintained by SMUD or another employer required to be aggregated with SMUD, to exceed the lesser of:

1. Fifty thousand dollars (\$50,000), reduced by the excess of the highest outstanding loan balance during the twelve (12)-month period ending on the day before the date on which the loan is made over the outstanding balance of the loans on the date on which the loan is made; or
2. One-half (1/2) of the present value of the vested interest of the Participant's accrued benefit under all qualified employer

plans, as defined in Code section 72(p)(4), maintained by SMUD or any other employer required to be aggregated with SMUD.

C. Maximum Number Of Loans.

A Participant may have no more than two (2) loans outstanding from the Plan at any given time and a Participant may not obtain more than two (2) loans during a Plan Year.

D. Source Of Loan Funding.

A loan to a Participant shall be made solely from the assets of such Participant's own Account(s) and all interest paid shall be credited to said Account(s). Any loan from the Participant's Deferred Compensation Account shall be treated as coming first from the Participant's Pre-Tax Account and then from the Participant's Roth Account and/or In-Plan Roth Conversion Account, to the extent that funds are available.

E. Interest Rate.

Each loan shall bear a reasonable rate of interest. The interest rate charged on each Participant loan shall bear interest at the lesser of (i) the Reuters Prime Rate as determined on the first day of the calendar month preceding the date the loan is made, plus one percent (1%) or (ii) the maximum legal rate.

F. Repayment.

1. The loan repayment period shall be as mutually agreed upon by the Participant and the Administrator, not to exceed five (5) years. However, the term may be for any period not to exceed fifteen (15) years if the purpose of the loan is to acquire the Participant's principal residence.
2. Each loan shall require substantially level amortization over the term of the loan with payments made at least monthly, through payroll deduction; provided, however, that payment can be made by check for advance loan payments. Loans may be prepaid in full or in part at any time.

8.03. Loan Application, Note And Security.

A Participant shall apply for any loan in accordance with the procedures established by the Administrator. The Administrator shall administer

Participant loans and shall specify the time frame for approving loan applications. All loans shall be evidenced by a promissory note and secured only by a Participant's Account balance. The Plan shall have a lien on fifty percent (50%) of a Participant's Account to the extent of any outstanding loan balance.

8.04. Default, Suspension And Call Feature.

- A. A loan is treated as in default if any scheduled loan payment is not made when due in accordance with the terms of the loan; provided, however, that a Participant shall have a cure period in which to make the loan payment, which cure period shall not extend beyond the end of the calendar quarter following the calendar quarter that includes the due date for such payment. The Administrator may agree to a suspension of loan payments for up to twelve (12) months for a Participant who is on a leave of absence. In the event of default, the Administrator may direct the Trustee to execute upon its security interest in the Participant's Account by deducting the unpaid loan balance from the Participant's Account, including interest to the date of default and report the default as a taxable distribution; provided, however, that:
 - 1. The Trustee shall neither act nor fail to act in such a manner that would adversely affect the qualified status of the Plan; and
 - 2. The Trustee shall not execute upon its security interest in the Participant's Account until such time as the Plan may make a distribution to the Participant.
- B. As soon as a Plan distribution to such Participant would otherwise be permitted, the Administrator may instruct the Trustee to distribute the note to the Participant.
- C. The Administrator shall have the right to call any Participant loan once the Participant's employment with SMUD terminates.

ARTICLE 9. VESTING

9.01. Full Vesting.

A Participant shall at all times have an unconditional, nonforfeitable right that is legally enforceable against the Plan in the Participant's Account.

9.02. No Divestment For Cause.

Except as provided in the Lost Participant Or Beneficiary section, below, the Plan does not permit divestment for cause. No benefit provided hereunder to a Participant or Beneficiary shall be forfeited or divested for any reason or cause whatsoever.

9.03. Lost Participant Or Beneficiary.

A. If, according to the records of the Plan, a Participant who had a Severance From Employment or the Beneficiary of a deceased Participant has not made a claim for benefits, and the Participant or Beneficiary cannot be located after (i) mailing a letter to the last known mailing address of the Participant or Beneficiary according to the records of the Plan and (ii) further diligent efforts to locate the missing Participant or Beneficiary, the Participant's Account balance shall be held in the Plan until the earliest to occur of the following:

1. The Participant or Beneficiary is located, in which case the Administrator shall follow the Plan's normal distribution provisions;
2. The Plan is terminated, in which case the Administrator shall follow subsections B and C, below; or
3. A distribution is required by the Plan (e.g., pursuant to the Commencement Of Payments Of Benefits section or the Cash Outs subsection), in which case the Administrator shall transfer the Participant's Account to the unclaimed property fund of the State in which the last known mailing address of the Participant or Beneficiary was located according to the records of the Plan.

B. Upon Plan termination, prior to taking any action to distribute the Account of a missing Participant or Beneficiary, the Administrator shall take the following steps to locate the missing Participant or Beneficiary:

1. Mail a letter to the last known mailing address of the Participant or Beneficiary according to the records of the Plan;
2. Check related plan records, if any, to determine if one or more of the related plans may have more up-to-date information with respect to the Participant or Beneficiary;

3. Attempt to identify and contact the individual(s) who the Participant has designated as a Beneficiary;
 4. Use the Social Security Administration letter-forwarding service; and
 5. Use any other search method or methods, including Internet search tools, commercial locator services and credit reporting agencies that the Administrator determines is a prudent method to use to locate the Participant or Beneficiary based on the particular facts and circumstances.
- C. If, after Plan termination and use of the search methods specified in the previous subsection, the Administrator is still unable to locate a missing Participant or Beneficiary, then the Administrator shall transfer the Participant's Account to the unclaimed property fund of the State in which the last known mailing address of the Participant or Beneficiary was located according to the records of the Plan.

ARTICLE 10. PAYMENT OF BENEFITS

10.01. Measure Of Benefits.

Except as otherwise indicated, the benefit distributable to a Participant upon Severance From Employment, or to the Participant's Beneficiary or Beneficiaries in the event of the Participant's death, shall be the Participant's Account.

10.02. Method Of Payment Of Benefits.

The Administrator shall determine the amount of the Participant's Account and the time when benefit payments commence. The Administrator shall distribute the Participant's Account in accordance with the method of payment of benefits selected by the Participant (or the Beneficiary of a deceased Participant) in accordance with the provisions of the Plan from among the following:

A. Form Of Distribution.

The Participant or the Participant's Beneficiary shall receive the Participant's Account in the following form:

1. A single sum distribution, in whole or in part;

2. Installment payments (payable on a monthly, quarterly, semi-annual, or annual basis);
3. Combination of lump sum and installment payments;
4. Annuity payments (payable on a monthly, quarterly, or annual basis) for the life of the Participant or for the life of the Participant and the Participant's Beneficiary); or
5. Such other installment payments as may be approved by the Administrator in accordance with the provisions of this Payment Of Benefits Article.

B. Cash Outs.

1. If the value of the Participant's Account does not exceed five thousand dollars (\$5,000), the Administrator may distribute such benefit as soon as is administratively feasible after the Participant's Severance From Employment without such Participant's consent. If the value of the Participant's Account exceeds one thousand dollars (\$1,000), but does not exceed five thousand dollars (\$5,000), the Administrator shall pay the distribution in a direct rollover to an individual retirement plan designated by the Administrator unless the Participant elects to have the distribution paid directly to an Eligible Retirement Plan or consents to receive the distribution directly.
2. If the value of the Participant's Account exceeds five thousand dollars (\$5,000), the Administrator shall not distribute such benefit without the written consent of the Participant; provided, however, that if the value of a Participant's Account exceeds five thousand dollars (\$5,000) and the Participant has a Severance From Employment and has attained the later of (i) age sixty-two (62) or (ii) Normal Retirement Age, the Administrator may distribute the benefit in the normal form of distribution without the Participant's consent.
3. For purposes of determining the one thousand dollars (\$1,000) amount under this Cash Outs subsection, the value of a Participant's Account shall be determined by including that portion of the Participant's Account that is attributable to rollover contributions (and earnings allocable thereto) within the meaning of Code sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16).

However, for purposes of determining the five thousand dollars (\$5,000) amount under this Cash Outs subsection, the value of the Participant's Account shall exclude rollover contributions (and earnings allocable thereto).

C. Incidental Benefits.

Death and other nonretirement benefits payable under the Plan shall be incidental to the primary purpose of the Plan. Thus, distributions to the Participant under the Plan shall be in sufficient amounts so that the relationship of a Participant's total benefits under the Plan to the deferred compensation payable to the Participant under the Plan is such that the primary purpose of the Plan is to provide deferred compensation to the Participant, all as required by Code section 401(a)(9)(G) and the Treasury regulations promulgated thereunder.

D. Eligible Rollover Distributions.

1. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Method Of Payment Of Benefits section, a Distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.
2. If the Participant or the Participant's Beneficiary elects, in the manner set forth above, a distribution that constitutes an Eligible Rollover Distribution, and if the Distributee of the Eligible Rollover Distribution (i) elects to have such distribution paid directly to an Eligible Retirement Plan and (ii) specifies the Eligible Retirement Plan to which such distribution is to be paid, in such form and at such time as the Administrator may prescribe, then such distribution shall be made in the form of a direct trustee-to-trustee transfer to the Eligible Retirement Plan so specified.
3. A Beneficiary other than a Participant's surviving spouse or a Participant's former spouse who is an "alternate payee" under a qualified domestic relations order is a person eligible to make a rollover with regard to the interest of the Participant or former Participant, subject to the limitation for such a Beneficiary that an Eligible Retirement Plan is an individual retirement account or individual retirement annuity

that will be treated as an inherited individual retirement account or annuity under Code section 402(c)(11).

4. Each annuity contract purchased pursuant to the Plan shall contain, and shall be subject to, requirements similar to the requirements set forth in Code section 401(a)(31) pursuant to regulations prescribed by the Secretary of the Treasury.
5. Notwithstanding any of the provisions of the Eligible Rollover Distributions subsection, a direct rollover of a distribution from a Roth Account or In-Plan Roth Conversion Account under the Plan will be made only to another Roth elective deferral account under an applicable retirement plan described in Code section 402A(e)(1) or to a Roth IRA (as defined below) and only to the extent the rollover is permitted under the rules of Code section 402(c). For purposes of this subsection, a "Roth IRA" is defined as an individual retirement plan described in Code section 7701(a)(37) which is designated as a Roth IRA at the time of establishment in such manner as required by the Code and other regulations.

E. Transfers To Other Code Section 457(b) Plans.

If (i) a Participant has a Severance From Employment, (ii) such Participant is entitled to benefits under this Plan, (iii) such Participant is subsequently employed by another employer that is an eligible employer within the meaning of Code section 457(e)(1)(A), and (iv) such employer maintains a Code section 457(b) eligible deferred compensation plan, the Participant may request (before the Participant's Account is paid) that the Participant's Account under the Plan shall not be distributed to the Participant, but shall be transferred to such employer's plan; provided that:

1. Such employer and such employer's plan will accept the transfer;
2. Such a transfer in no way reduces such employer's obligations to the Participant under such employer's plan;
3. Such transfer is accomplished in accordance with the requirements of Code section 457(e)(10) and the Treasury regulations promulgated thereunder; and

4. SMUD and the Participant have entered into such agreements as SMUD deems necessary or appropriate, in SMUD's sole and absolute discretion, to assure that SMUD's obligations to pay benefits to the Participant under this Plan have been fulfilled by virtue of such a transfer and that SMUD shall have no further obligations to the Participant under the Plan.

SMUD may require such documentation as it deems necessary or appropriate, in its sole and absolute discretion, from the other employer in order to ensure that the requirements set forth above have been satisfied, and in order to effect the transfer.

F. Distribution Elections.

Elections under this Payment Of Benefits article shall be made in such form and manner as the Administrator may specify from time to time. Any prior irrevocable elections as to the form or timing of distributions may be revoked by mutual agreement of the Administrator and the affected Participant.

10.03. Commencement Of Payment Of Benefits.

A. Benefits Commencement In General.

Unless a Participant elects a later commencement date, distribution of a terminated Participant's Account will be payable to such terminated Participant as soon as is administratively feasible after the Participant's Severance From Employment.

B. Required Minimum Distributions.

1. Notwithstanding anything contained in the Plan to the contrary, the Participant's entire interest either (i) will be distributed to the Participant not later than the Required Beginning Date, or (ii) will begin to be distributed beginning not later than the Required Beginning Date over the life of the Participant or over the lives of the Participant and the Participant's Designated Beneficiary (or over a period not extending beyond the life expectancy of the Participant or the life expectancy of the Participant and the Participant's Designated Beneficiary).
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. Unless the Participant's interest is distributed in the form of a single sum on or before the Required Beginning Date, as of the first Distribution Calendar Year, distributions will be made in accordance with this Required Minimum Distributions subsection or the Payment Of Death Benefits section, below, if applicable.
4. All minimum distributions under this subsection will be made in accordance with the provisions of Code section 401(a)(9), the Treasury regulations promulgated under Code section 401(a)(9), and any other provisions reflecting Code section 401(a)(9) that are prescribed by the Commissioner of Internal Revenue in revenue rulings, notices and other guidance published in the Internal Revenue Bulletin.
5. The provisions of the Required Minimum Distributions subsection will override any distribution options in the Plan inconsistent with Code section 401(a)(9).
6. This Required Minimum Distributions subsection and the provisions under the Payment Of Death Benefits section set forth the minimum required distributions pursuant to Code section 401(a)(9) and the Treasury regulations promulgated thereunder, and shall not be construed as creating any payment method under the Plan not otherwise provided under the Method Of Payment Of Benefits section, provided that the method or methods of payment under the Method Of Payment Of Benefits section meet or exceed the requirements of this Required Minimum Distributions subsection.
7. Each annuity contract purchased pursuant to the Plan shall contain, and shall be subject to, requirements similar to (i) the requirements set forth in Code section 401(a)(9), and (ii) the incidental death benefit requirements of Code section 401(a), all as pursuant to regulations prescribed by the Secretary of the Treasury.
8. A Participant or a Beneficiary who would have been required to receive required minimum distributions for 2009 but for

the enactment of Code section 401(a)(9)(H) (2009 RMDs) and who would have satisfied that requirement by receiving distributions that are (i) equal to the 2009 RMDs or (ii) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated beneficiary, or for a period of at least ten (10) years will receive those distributions for 2009 unless the Participant or Beneficiary chooses not to receive such distributions. Such Participants and Beneficiaries will be given the opportunity to elect not to receive such distributions. Solely for purposes of applying the direct rollover provisions of the Plan, 2009 RMDs will be treated as Eligible Rollover Distributions.

C. Restrictions On Distributions.

Notwithstanding the foregoing provisions and except as provided in the In-Service Distributions section, below, the payment of a Participant's benefits under the Plan may not commence earlier than the earliest of:

1. The calendar year in which the Participant attains age seventy and one-half (70-1/2);
2. When the Participant has a Severance From Employment;
or
3. When the Participant is faced with an unforeseeable emergency as provided in the Distributions Upon An Unforeseeable Emergency section, below.

D. Restrictions On Distributions To Board Members.

Notwithstanding the provisions of the Plan providing that payment of a Participant's benefits under the Plan may commence when the Participant has a Severance From Employment, payments to a Board Member are subject to the following:

1. No amount will be paid to the Participant before a date at least twelve (12) months after the date on which the Board Member is no longer a Board Member; and
2. No amount payable to the Participant on that date will be paid to the Participant if, after the Board Member is no

longer a Board Member and before that date, the Participant performs services for SMUD as an Employee or again becomes a Board Member.

10.04. Distributions To Rehired Employees.

- A. Distributions scheduled to be paid under this article based upon the Participant's Severance From Employment shall not commence if the Participant is reemployed by SMUD before distribution is otherwise required to be paid pursuant to this article.
- B. Except as provided in the Restrictions On Distributions To Board Members, a Participant who is receiving benefit payments under this Plan or who previously received a single sum distribution of the Participant's benefits under this Plan, and who is subsequently reemployed by SMUD, shall not have benefits suspended and shall receive an additional benefit equal to the benefit that the Participant accrues after the Participant's reemployment commencement date. Such additional benefit shall commence upon the Participant's subsequent Severance From Employment, unless such additional benefit must commence at an earlier date as required by the provisions of Code section 401(a)(9). There shall be no duplication of benefits to such a Participant. Such additional benefit shall be paid to the Participant in the same form as the benefits that had already commenced.

10.05. Distributions Upon An Unforeseeable Emergency.

- A. At any time, a Participant may apply in writing to the Administrator for a distribution upon an unforeseeable emergency in an amount equal to all or a portion of the Participant's Account. A Participant is limited to two (2) withdrawals on account of an unforeseeable emergency during the plan year.
- B. The Administrator shall determine, in its sole and absolute discretion, the amount of the distribution that is necessary to alleviate the unforeseeable emergency. The determination by the Administrator of the existence of an unforeseeable emergency and of the amount necessary to meet the need shall be made in a nondiscriminatory and uniform manner. This determination by the Administrator shall be final and binding.
- C. A distribution is on account of an unforeseeable emergency only if the distribution is made on account of a severe financial hardship of the Participant resulting from an illness or accident of the Participant, the Participant's spouse, or the Participant's dependent (as defined

in Code section 152 without regard to Code sections 152(b)(1), (b)(2) and (d)(1)(B)), loss of the Participant's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, such as damage that is the result of a natural disaster), or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant.

D. Except as otherwise specifically provided in the Treasury regulations, the purchase of a home or the payment of college tuition are not unforeseeable emergencies.

E. The following may constitute an unforeseeable emergency:

1. A need to rebuild the Participant's home following damage to it not otherwise covered by insurance, such as damage that is the result of a natural disaster;
2. The imminent foreclosure of or eviction from the Participant's primary residence;
3. The need to pay for medical expenses, including non-refundable deductibles and the cost of prescription drug medication; or
4. The need to pay funeral expenses of the Participant's spouse or a dependent (as defined in Code section 152 without regard to Code sections 152(b)(1), (b)(2) and (d)(1)(B)).

F. Whether a Participant is faced with an unforeseeable emergency permitting a distribution is to be determined based on the relevant facts and circumstances of each case, but a distribution on account of an unforeseeable emergency of the Participant may not be made if such emergency can be relieved by:

1. Reimbursement or compensation by insurance or otherwise;
2. Liquidation of the Participant's assets, to the extent that such liquidation of the Participant's assets would not itself cause a severe financial hardship;
3. Cessation of deferrals under the Plan;
4. If allowed, by taking out a loan under the Plan, provided that the repayment of such loan does not in itself cause financial hardship; or

5. Obtaining a sell back under the SMUD Personal/Annual Leave Sell Back Policy For Unforeseen Emergencies.
- G. The amount of any financial hardship distribution shall not exceed the lesser of:
1. The amount reasonably necessary, as determined by SMUD, to satisfy the hardship (which may include any amounts necessary to pay any federal, State, or local income taxes or penalties reasonably anticipated to result from the distribution); or
 2. The amount of the Participant's Account.
- H. Any distribution under this Distributions Upon An Unforeseeable Emergency section shall be made in a single sum.

10.06. In-Service Distributions.

The Plan may distribute to a Participant, who has not had a Severance From Employment with SMUD, the total amount payable to the Participant under the Plan if all of the following requirements are satisfied:

- A. The total amount payable to the Participant under the Plan that is not attributable to rollover contributions as defined in Code section 411(a)(11)(D), does not exceed the greater of (i) five thousand dollars (\$5,000) or (ii) the dollar limit then in effect under Code section 411(a)(11)(A);
- B. The Participant's total Account balance under the Plan, including the Rollover Account, exceeds one thousand dollars (\$1,000);
- C. No amount has been deferred under the Plan with respect to the Participant during the two (2) year period ending on the date of the in-service distribution;
- D. There has been no prior distribution under the Plan to such Participant under this In-Service Distributions section; and
- E. The Participant elects to receive the distribution. If the Participant's total Account balance under the Plan, including the Rollover Account, does not exceed one thousand dollars (\$1,000), SMUD, in its sole and absolute discretion, can make a distribution without the Participant's consent.

10.07. Purchase Of Defined Benefit Plan Service Credit.

- A. Until December 31, 2012, if a Participant is also a participant in the California Public Employee Retirement System (CalPERS) or another tax-qualified defined benefit governmental plan as defined in Code section 414(d) (Recipient Plan) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to have a portion of the Participant's Plan account transferred to the Recipient Plan in accordance with this section.
- B. A transfer to a Recipient Plan may be made under subsection A, above, only if the transfer is either for the purchase of permissive service credit, as defined in Code section 415(n)(3)(A) (other than nonqualified service credit), under the Recipient Plan, or is a repayment to which Code section 415 does not apply by reason of Code section 415(k)(3).
- C. Permissive service credit as defined in Code section 415(n)(3)(A) includes actual service credit as well as service credit for periods during which there is no performance of service and which is defined as nonqualified service credit in Code section 415(n)(3)(C). A Participant may also purchase service credit for an increased benefit under the Recipient Plan even if the credit applies to service already earned under such plan.
- D. Subject to the provisions of the Recipient Plan, the limitations on the amount of nonqualified service credit that may be taken into account under Code section 415(n)(3)(B) shall not apply to a trustee-to-trustee transfer from this Plan to such Recipient Plan.
- E. In accordance with Code section 415(n)(3)(D), amounts transferred to a Recipient Plan under subsection B, above, shall be subject to the distribution rules that apply to such Recipient Plan.
- F. A Participant's request to transfer assets from the Plan to a Recipient Plan on a trustee-to-trustee basis shall be approved in the sole discretion of the Administrator. Once approved, such transfer shall be made directly from the Trustee to the trustee or custodian of the Recipient Plan.
- G. Transfers that are made pursuant to this section may be made while the Participant is an Employee or after the Participant's Severance From Employment with SMUD.
- H. Effective as of January 1, 2013, a Participant will no longer have the ability to make an election to transfer funds to purchase

nonqualified service credits in a defined benefit plan pursuant to Code section 415(n)(3)(C).

10.08. Payment Of Death Benefits.

- A. Upon the death of a Participant the Participant's Account shall be payable to the Participant's Beneficiary or Beneficiaries.
- B. Notwithstanding anything contained in the Plan to the contrary:
 - 1. If distribution has been commenced to the Participant and the Participant dies before the Participant's entire interest has been distributed, then the remaining portion of the Participant's interest shall be distributed at least as rapidly as under the method of distributions being utilized as of the date of the Participant's death.
 - a. 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:
 - (1) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
 - (2) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each Distribution Calendar Year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For Distribution Calendar Years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death,

reduced by one for each subsequent calendar year.

- (3) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.
 - b. If the Participant dies on or after the date distributions begin and there is no Designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
2. If the Participant dies before the distribution of the Participant's interest has begun pursuant to the Required Minimum Distributions subsection, above, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
 - a. If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age seventy and one-half ($70\frac{1}{2}$), if later. 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 surviving spouse.
 - b. If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, then distributions to the Designated Beneficiary will begin

by December 31 of the calendar year immediately following the calendar year in which the Participant died. 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.

- c. 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 (5th) anniversary of the Participant's death.
 - d. 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 subsection will apply as if the surviving spouse were the Participant.
3. For purposes of this subsection, distributions are considered to begin on the Participant's Required Beginning Date; provided, however, that 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, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under subparagraph a of paragraph 2, above.
4. If the Participant dies before the distribution of the Participant's interest has begun pursuant to the Required Minimum Distributions subsection, above, and there is a Designated Beneficiary, the Participant or the Participant's Beneficiaries may elect, on an individual basis, whether the five (5)-year rule or the life expectancy rule set forth above applies to distributions after the death of a Participant who has a Designated Beneficiary. The election must be made no later than the earlier of (i) September 30 of the calendar year in which distribution would be required to begin or (ii) September 30 of the calendar year which contains the fifth (5th) anniversary of the Participant's (or, if applicable, surviving spouse's) death. If neither the Participant nor the

Participant's Beneficiary makes an election under this section, distributions will be made in accordance with either the five (5)-year rule or the life expectancy rule, as required by the preceding provisions of the Plan.

5. For purposes of this section, any amount paid to a child shall be treated as if it had been paid to the surviving spouse if such amount will become payable to the surviving spouse upon such child reaching majority or such other designated event all as prescribed by the Secretary of the Treasury.

10.09. Distributions To Incapacitated Individuals.

If the Administrator determines that a Participant or Beneficiary who is entitled to a payment under the Plan is not able to care for his or her affairs due to a mental condition, a physical condition, or by reason of age, the Administrator may make all benefit distributions to the Participant's or Beneficiary's parent, guardian, conservator, trustee, custodian (including a custodian under the Uniform Transfers to Minors Act or the Uniform Gifts to Minors Act) or to his or her attorney-in-fact or other legal representative upon receiving evidence of such status satisfactory to the Administrator, in its sole discretion. Payments made pursuant to the terms of this Distributions To Incapacitated Individuals section shall constitute a distribution to the Participant or Beneficiary entitled thereto, and shall immediately discharge SMUD, Administrator, Trustee, the Plan and the Trust of any further liability therefor. Neither the Administrator nor the Trustee has a duty to inquire or investigate the competence of any Participant or Beneficiary entitled to receive payments under the Plan.

10.10. Repayment Of Overpayment Of Benefits.

By accepting payment of benefits under this Plan, the Participant or Beneficiary receiving the payment agrees that, in the event of overpayment, the Participant or Beneficiary will promptly repay the amount of overpayment, without interest, upon notice by the Administrator; provided that, if the Participant or Beneficiary has not repaid the overpayment within thirty (30) days after notice:

- A. The Participant or Beneficiary will also pay an amount equal to simple interest at the rate of ten percent (10%) per annum (or the highest rate allowable, if less) on the unpaid amount from the date of overpayment to the date of repayment, and, in addition, will pay all legal fees, court costs and the reasonable time value of the Trustee, Administrator or SMUD, or any of their employees or agents, related to the collection of such overpayment; and

- B. The Administrator may deduct all or any portion of the overpayment, with interest, that is not timely repaid, from any amount that would otherwise then be payable or that may become payable, to the Participant or Beneficiary under the Plan.

10.11. Qualified Domestic Relations Order Payments.

- A. All rights and benefits, including elections, provided to a Participant shall be subject to the rights afforded to any "alternate payee" under a "qualified domestic relations order" as those terms are defined in Code section 414(p). A domestic relations order will not fail to be a qualified domestic relations order (i) because the order is issued after, or revises another domestic relations order or qualified domestic relations order, or (ii) because of the time at which the order is issued, including the issuance after the Participant's death.
- B. The Administrator may segregate assets for an alternate payee in accordance with a qualified domestic relations order. All rights and benefits, including elections, provided to a Participant shall be subject to the rights afforded to any alternate payee under a qualified domestic relations order.
- C. A distribution may be made to an alternate payee pursuant to a qualified domestic relations order prior to the times otherwise specified in this Plan, if the qualified domestic relations order requires such a distribution, even if the Participant is not yet entitled to receive a distribution; provided, however, that nothing contained in this provision nor such qualified domestic relations order shall entitle a Participant to a distribution prior to the time as otherwise determined under the Plan.
- D. The Administrator shall establish reasonable procedures to determine whether a domestic relations order is a qualified domestic relations order and to administer distributions under such an order. If any domestic relations order is received by the Plan, the Administrator shall:
 - 1. Promptly notify the Participant and any alternate payee that the order has been received and of the Plan's procedures for determining whether the order is a qualified domestic relations order; and
 - 2. Determine within a reasonable period after receipt of the order whether it is a qualified domestic relations order and

notify the Participant and each alternate payee of the Administrator's determination.

- E. During any period when the issue of whether a domestic relations order is a qualified domestic relations order is being determined by the Administrator, a court of competent jurisdiction or otherwise, the Administrator shall segregate the amounts which would have been payable to the alternate payee during such period if the order had been determined to be a qualified domestic relations order. If the order, or a modification of the order, is determined within eighteen (18) months to be a qualified domestic relations order, the Administrator shall segregate the amounts (as adjusted by attributable investment income or loss), in accordance with the Plan's provisions, for the entitled individual(s). If, within eighteen (18) months, the order is determined not to be a qualified domestic relations order or its status as a qualified domestic relations order is not resolved, the Administrator may pay the segregated amounts (as adjusted by attributable investment income or loss) to the individual(s) entitled to receive such amounts absent such order. Any determination that an order is a qualified domestic relations order made after the close of the eighteen (18) month period shall be applied prospectively only.

10.12. Nonliability.

SMUD does not guarantee the Trust, the Participants or their Beneficiaries against loss of or depreciation in value of any right or benefit that any of them may acquire under the terms of this Plan. All of the benefits payable hereunder shall be paid or provided for solely from the Trust.

10.13. Mechanics Of Payment.

The Trustee, with respect to any benefit, is authorized to pay benefits directly from the Trust to such person and in such amounts as authorized and specified by the Administrator.

10.14. Withholding.

The Administrator hereby specifically delegates to the Trustee the responsibility and liability for income tax withholding and to withhold the appropriate amount from any payment made from the Trust to a Participant or Beneficiary under the provisions of applicable law and Treasury regulations. The Administrator shall furnish the Trustee with all information necessary to accomplish such withholding function, as set forth in the Treasury regulations, or, if such information is not provided to the Trustee, the Administrator shall assume all relevant liability.

10.15. Distribution From Roth Accounts.

Any “qualified distribution” as defined below, from an Employee’s or Board Member’s Roth Account, In-Plan Roth Conversion Account, or Roth Rollover Account, other than a distribution of any Excess Deferred Compensation under Code section 402(g)(2) and any income on the Excess Deferred Compensation, shall not be includible in such Participant’s gross income. A “qualified distribution” is a distribution in accordance with Code Section 408A(d)(2)(A) (without regard to clause (iv) thereof). Furthermore, a distribution from an Employee’s or Board Member’s Roth Account, In-Plan Roth Conversion Account, or Roth Rollover Account shall not be treated as a qualified distribution if such distribution is made within the five (5) taxable year period beginning with the earlier of:

- A. The first taxable year for which the individual made Roth Deferred Compensation to this Plan;
- B. The first taxable year for which the Participant converted a portion of the Participant’s Pre-Tax Account in an In-Plan Roth Conversion as described in the In-Plan Roth Conversions section, below, or
- C. If a rollover contribution was made to a Roth Rollover Account from a designated Roth elective deferral account previously established for such individual under another applicable retirement plan, the first taxable year for which the individual made a designated Roth elective deferral to such previously established account.

10.16 In-Plan Roth Conversions.

A Participant may convert, in an “In-Plan Roth Conversion,” any portion of the Participant’s Account, other than a Roth Deferral Account or Roth Rollover Account, to an In-Plan Roth Conversion Account pursuant to Code section 402A(c)(4) and the following:

- A. This section shall apply to a deceased Participant’s Beneficiary if the Beneficiary is the Participant’s surviving spouse and to an alternate payee who is a spouse or a former spouse of the Participant, as if such an individual were the Participant.
- B. A Participant loan may not be distributed as part of an In-Plan Roth Conversion.
- C. A Participant must include in gross income the taxable amount of an In-Plan Roth Conversion in the taxable year when the conversion occurs.

- D. Any distribution restrictions that otherwise apply with respect to a specific contribution source will continue to apply if such contribution source is converted as part of an In-Plan Roth Conversion.
- E. Any election to make an In-Plan Roth Conversion may not be changed after the In-Plan Roth Conversion is completed.

ARTICLE 11. PLAN ADMINISTRATION

11.01. Employment Records.

SMUD shall maintain sufficient employment records to calculate benefits under this Plan for each Employee. SMUD shall make such records available to the Administrator, in a timely manner, and SMUD shall be responsible for the accuracy of such information upon which the Administrator is entitled to rely.

11.02. Reports And Disclosure.

The Administrator shall prepare, file and distribute, in a timely manner, all reports and information to be disclosed to Participants as may be required by the Code or California Law. The Administrator shall prepare such reports from records kept by it and information furnished by SMUD and the Trustee.

11.03. Retention Of Records.

Every person subject to a requirement to file any description or report or to certify any information thereof, or who would be subject to such a requirement but for an exemption or simplified reporting requirement under the Code or California Law, shall maintain records on the matters of which disclosure is required which will provide in sufficient detail the necessary basic information and data from which the documents thus required may be verified, explained or clarified and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts and applicable resolutions, and shall keep such records available for examination for a period of not less than six (6) years after the filing date of the documents based on the information which they contain, or six (6) years after the date on which such documents would have been filed but for an exemption or simplified reporting requirement under the Code or California law.

11.04. Powers And Responsibilities.

- A. SMUD shall be empowered to appoint and remove the Administrator, from time to time, as it deems necessary for the proper administration of the Plan and to assure that the Plan is being operated for the exclusive benefit of the Participants and their Beneficiaries in accordance with the terms of the Plan and the Code.
- B. SMUD or its delegate shall establish an investment policy or guidelines to ensure the prudent selection and monitoring of Plan investments or investment options. Such investment policy or guidelines shall be consistent with the objectives of this Plan and with the requirements of California law.
- C. SMUD shall periodically review the performance of any fiduciary or other person to whom duties have been delegated or allocated by it under the provisions of this Plan, or pursuant to procedures established hereunder, or under the provisions of the Custodial Agreement. This requirement may be satisfied by formal periodic review by SMUD or by a qualified person specifically designated by SMUD, through day-to-day conduct and evaluation, or through other appropriate means.

11.05. Designation Of Administrative Authority.

- A. SMUD has delegated to the General Manager the authority to exercise administrative oversight, make decisions, and enter into administrative service agreements for the Plan.
- B. The General Manager shall appoint a committee to be the Administrator. Any person, including, but not limited to, the Employees of SMUD, shall be eligible to serve as an Administrator. Any person so appointed shall signify such appointee's acceptance by filing written acceptance with the General Manager. An Administrator may resign by delivering a written resignation to the General Manager or may be removed by the General Manager with or without cause by delivery of written notice of removal, to take effect at a date specified therein, or upon delivery to the Administrator if no date is specified.
- C. The General Manager, upon the resignation or removal of an Administrator, shall promptly designate, in writing, a successor to this position. If the General Manager does not appoint a successor Administrator, the General Manager will function as the Administrator.

11.06. Allocation And Delegation Of Responsibilities.

If more than one person is appointed as the Administrator, the responsibilities of each appointed person may be specified by the General Manager and accepted in writing by each Administrator, with written notice to the Trustee. In the event that the General Manager makes no such delegation, the Administrators may allocate the responsibilities among themselves, in which event the Administrators shall notify the General Manager and the Trustee in writing of such action and specify the responsibilities of each Administrator. The Trustee thereafter shall accept and rely upon any documents executed by the appropriate Administrator, until such time as SMUD or the Administrator files with the Trustee a written revocation of such designation. Except where there has been an allocation and delegation of administrative authority pursuant to this section, if there shall be more than one Administrator, they shall act by a majority of their number, but may authorize one or more of them to sign all papers on their behalf. The Administrators may act with or without a meeting being called or held and shall keep minutes of all meetings held and a record of all actions taken by written consent. No Administrator may participate in any decision that involves solely the Administrator's interest as a Participant in the Plan.

11.07. Powers And Duties Of The Administrator.

The primary responsibility of the Administrator is to administer the Plan for the exclusive benefit of the Participants and their Beneficiaries, subject to the specific terms of the Plan. The Administrator shall administer the Plan in accordance with its terms and shall have the power and discretion to interpret and construe the terms of the Plan, to decide any disputes and resolve any ambiguities which may arise relative to the rights of the Employees and Board Members, past and present, and their Beneficiaries, under the terms of the Plan, and to determine all questions arising in connection with the administration, interpretation and application of the Plan. Any such determination by the Administrator shall be conclusive and binding upon all persons. The Administrator may establish procedures, correct any defect, supply any information, or reconcile any inconsistency in such manner and to such extent as shall be deemed necessary or advisable to carry out the purpose of the Plan; provided, however, that any such procedure, discretionary act, interpretation or construction shall be done in a nondiscriminatory manner based upon uniform principles consistently applied, and shall be consistent with the intent that the Plan shall continue to meet the requirements of Code section 457(b) and all regulations issued pursuant thereto. The

Administrator shall have all powers necessary or appropriate to accomplish its duties under this Plan.

11.08. Administrative Functions.

The Administrator shall:

- A. Determine Participant eligibility;
- B. Compute and allocate Plan contributions;
- C. Compute and allocate Trust Fund gains and losses;
- D. Calculate distributable benefits and instruct the Trustee as to the amount and frequency of payments to the distributee;
- E. Process claims and appeals from claims denied; and
- F. Make recommendations to SMUD, the General Manager and the Trustee concerning any phase of Plan management or administration.

11.09. Interpretation Of Trust.

The Administrator or its designee shall, in its discretion, interpret and construe the provisions of the Trust, shall resolve any ambiguities in the Trust, and shall resolve any conflicts between the Plan and the Trust. The Administrator or its designee shall give instructions and directions to the Trustee as necessary and, in general, shall direct the administration of the Plan. The Administrator shall not, through interpretation of the Plan or the Trust or action under the Plan, increase the burden imposed upon the Trustee without the consent of the Trustee.

11.10. Settlement Of Disputes.

If any dispute arises between the Trustee and any other person, including, without limitation, the Administrator, SMUD or any Participant or Beneficiary under the Plan with respect to the interpretation of the Plan or the Trust or the duties of the Trustee, the Administrator or any other fiduciary, then neither the Trustee nor the Administrator shall be obligated to take any other action in connection with the matter involved in the controversy until such time as the controversy is resolved, unless this would clearly be imprudent or not in the best interest of the Participants and Beneficiaries. In addition, the Trustee may deposit (or the Administrator may direct the deposit) of the affected assets of the Trust in

an interpleader action with the court of jurisdiction under applicable State law.

11.11. Appointment And Responsibility Of Representatives.

- A. With the consent of SMUD or its designee, the Administrator shall have the right and the power to appoint one or more representatives, accountants, counsel, specialists, and other advisory and clerical persons as it deems necessary or desirable to assist the Administrator in the administration of the Plan. All usual and reasonable expenses of such representatives, accountants, counsel, specialists, and other advisory and clerical persons may be paid in whole by the Plan, in whole by SMUD (if SMUD agrees to do so in advance), or in part by the Plan and in part by SMUD (if SMUD agrees to do so in advance).
- B. The Administrator may designate any person as its agent for any purpose. The designated representative of the Administrator shall be responsible only for those specific powers, duties, responsibilities and obligations specifically given to it by the Administrator. The Administrator, SMUD and any person to whom the Administrator may delegate any duty or power in connection with the Plan's administration, may rely upon all tables, valuations, certificates, reports and opinions furnished by any duly appointed actuary, accountant (including employees who are actuaries or accountants), legal counsel, or other specialist, and they shall be fully protected whenever they take action based in good faith in reliance thereon. All actions taken in good faith reliance on advice from the advisors are conclusive upon all persons. Any benefits not paid by the Plan shall not be the responsibility of the designated representatives.

11.12. Appointment Of Fiduciaries And Agents.

SMUD or its designee shall have the right to hire and fire any fiduciary or agent, including the Trustee, the Administrator, or any agent designated pursuant to the Appointment And Responsibility Of Representatives section, above.

11.13. Compensation Of Administrator.

The Administrator(s) shall receive no compensation from the Trust for acting as such, but the Trust shall reimburse the Administrator(s) for all necessary and proper expenses incurred in carrying out its duties under the Plan.

11.14. Use Of Electronic Media.

In accordance with Treasury regulation section 1.401(a)-21, the Administrator may use telephonic or electronic media to satisfy the notice requirements under this Plan and to make appropriate administrative pronouncements.

ARTICLE 12. CLAIMS PROCEDURES

The Administrator shall have sole and absolute discretion to determine Participants' and Beneficiaries' rights to benefits under the Plan. All benefit claim decisions will be made in accordance with the terms of the Plan documents and the Plan terms will be applied consistently to all claimants.

12.01. Request For Information.

A Participant or Beneficiary may request such information concerning the Participant's or Beneficiary's rights or benefits under this Plan and the Trust as is required to be disclosed under applicable State law. The Administrator shall respond, in writing, within a reasonable time, not to exceed thirty (30) days, unless the failure to respond results from matters reasonably beyond the Administrator's control.

12.02. Claims For Benefits.

In order to receive benefits under this Plan, a Participant must submit satisfactory proof of entitlement to such a benefit as set forth in this Claims Procedures article.

12.03. Filing Claims.

A Participant, Beneficiary, or duly authorized representative of a Participant or Beneficiary (Claimant) may file a claim for benefits to which such Claimant believes he or she is entitled. Claims must be made in writing and delivered to the Administrator in accordance with this Claims Procedures article. Claimants shall provide the Administrator with such information and evidence, and shall sign such documents as may reasonably be requested from time to time for the purpose of administration of the Plan. A Claimant can initiate the claim process by submitting to the Administrator fully completed distribution election forms, if needed, or a letter clearly stating that a claim is being filed. However, a claim shall not be considered to be "filed" for the purposes of these claim and appeals procedures until all necessary and applicable forms are completed and submitted to the Administrator. A claim will be considered submitted if delivered to the Administrator directly or in care of the office of SMUD that handles personnel and human resources matters.

12.04. Initial Determination Of Claim.

- A. The Administrator shall have full discretion to grant or deny a claim in whole or in part.
- B. The Administrator will notify the Claimant, in writing, of the granting or denying, in whole or in part, of such claim, within ninety (90) days after receipt of such claim, unless special circumstances require an extension of time for processing the claim. In no event may the extension exceed ninety (90) days from the end of the initial ninety (90) day period.
- C. If an extension of time is necessary, the Claimant must be given a written notice to this effect prior to the expiration of the initial ninety (90) day period, and the notice must indicate the special circumstances requiring the extension and the date by which a decision will be made.
- D. If a claim is denied in whole or in part, the Administrator's notice denying such claim shall set forth, in a manner calculated to be understood by the Claimant, the following:
 - 1. The specific reason or reasons for the denial;
 - 2. Specific reference to pertinent Plan provisions on which the denial is based;
 - 3. A description of any additional material or information necessary for the Claimant to perfect the claim and an explanation of why such material information is necessary; and
 - 4. An explanation of the Plan's claim review procedures.
- E. If notice of the granting or denying of a claim is not furnished in accordance with the preceding provisions, the claim shall be deemed denied and the Claimant shall be permitted to exercise the Claimant's right to review pursuant to the Claims Appeals section, below.

12.05. Claims Appeals.

- A. If a Claimant wishes to appeal a denial of a claim, the Claimant or the Claimant's duly authorized representative:

1. May request a review upon written application to the Administrator;
 2. May submit written comments, documents, records and other information relating to the claim; and
 3. May obtain, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant (determined in accordance with Department of Labor regulations section 2560.503-1(m)(8) as if it applied to this Plan) to the Claimant's claim for benefits.
- B. The written request for review must be received by the Administrator no later than sixty (60) days after the Claimant receives notice that the Claimant's claim for Plan benefits has been denied.
- C. The decision on the review shall be made by the Administrator, who may, in its discretion, hold a hearing on the denied claim.
- D. The Administrator shall make its decision promptly, and not later than sixty (60) days after the Administrator's receipt of the request for a review, unless the Administrator determines that special circumstances require an extension of time for processing the claim. If the Administrator determines that an extension of time for processing is required, this period may be extended no more than sixty (60) days from the end of the initial sixty (60) day period, in which case the Administrator shall give the Claimant a written notice to this effect prior to the expiration of the initial sixty (60) day period and the notice shall indicate the special circumstances requiring the extension of time and the date by which a decision will be made on review.
- E. The decision on review must be written in a manner calculated to be understood by the Claimant. In the case of an adverse benefit determination, the notification to the Claimant shall set forth, in a manner calculated to be understood by the Claimant, the following:
1. The specific reason or reasons for the denial;
 2. Specific reference to pertinent Plan provisions on which the denial is based; and
 3. A statement that the Claimant is entitled to receive, upon request and free of charge, reasonable access to, and

copies of, all documents, records, and other information relevant (determined in accordance with Department of Labor regulations section 2560.503-1(m)(8) as if it applied to this Plan) to the Claimant's claim for benefits.

- F. If the decision on review is not furnished to the Claimant within the time required in this section, the claim shall be deemed denied on review and the Claimant shall be permitted to exercise the Claimant's right to legal remedy pursuant to the remaining sections of this Claims Procedures article.

12.06. Resolution Of Disputes.

Any claim under this Plan that has not been resolved under the preceding provisions of this Plan shall be resolved pursuant to the provisions of this Resolution Of Disputes section. A Claimant may not commence resolution of a claim pursuant to this section more than three (3) years after the final decision denying the claim. This section will not apply to any claim for disability benefits if disability is not defined in the Plan in accordance with the requirements of the federal Social Security Act.

A. Negotiation/Mediation.

To commence the dispute resolution process, any party may serve written notice on the other parties specifically identifying the dispute and requesting negotiation. For a period of thirty (30) days, the parties shall use their best efforts to resolve the dispute by negotiation. If the parties are unable to agree after reasonable negotiations among them, any party may initiate mediation by making a written request to the other parties. The parties shall select a retired judge of the California Superior Court (or above) or United States courts to conduct the mediation. The parties shall select a mediator as soon as reasonably possible but in no event later than thirty (30) days following service of the written request to initiate mediation. If the parties are unable to agree upon a mediator during this time period, the matter shall be submitted to Judicial Arbitration and Mediation Services, Inc. (JAMS) for selection of a JAMS panel mediator (Mediator). If practical, the Mediator shall have expertise in employee benefits.

B. Binding Arbitration.

If the parties' good faith efforts at resolving the dispute pursuant to the Negotiation/Mediation subsection are unsuccessful, such dispute shall be submitted to, and conclusively determined by, binding arbitration in accordance with this Binding Arbitration

subsection. Any party may initiate arbitration by making a written request to the other parties. The parties must request arbitration within thirty (30) days of the completion of the negotiation/mediation process.

1. An Arbitrator shall be selected by the parties from the list of individuals affiliated with JAMS (Arbitrator). If practical, the Arbitrator shall have expertise in employee benefits. If the parties are unable to agree upon an Arbitrator, each party shall select an Arbitrator and the Arbitrators so selected shall select a third Arbitrator.
2. Any arbitration hearing shall be conducted in Sacramento County. The law applicable to the arbitration of any dispute shall be the applicable federal or California State law if this matter was tried in Federal court in California. Except as otherwise provided in this Plan, the arbitration shall be governed by the applicable JAMS arbitration rules.
3. In no event shall the Arbitrator's award include any component of punitive or exemplary damages. The parties shall equally bear all costs of arbitration.

12.07. Administration Pending Resolution Of Disputes.

If a dispute arises with respect to any matter under this Plan, the Administrator may refrain from taking any other or further action in connection with the matter involved in the controversy until the dispute has been resolved under the Plan. If a dispute arises as to the proper amount or recipient of any payment of benefits, the Administrator, in the Administrator's sole and absolute discretion, may withhold or cause to be withheld such payment until the dispute has been settled by the parties concerned, or the Administrator may deposit such funds or property with the court in an interpleader action brought under the law of the State having jurisdiction.

ARTICLE 13. AMENDMENT AND TERMINATION

13.01. Amendments.

- A. SMUD reserves the right to amend this Plan and the Trust at any time without the consent of the Administrator, any Trustee, any fiduciary, or any Participant or Beneficiary; provided, however, that except in accordance with the provisions of the Plan or as otherwise specifically permitted by law, no such amendment shall:

1. Cause any of the assets of the Trust Fund to be used for or diverted to purposes other than for the exclusive benefit of Participants and their Beneficiaries;
 2. Have any retroactive effect so as to deprive any Participant or Beneficiary of any nonforfeitable benefits, except that such changes may be made as may be required to permit the Plan and the Trust to meet the requirements of Code section 457, or any similar statutes enacted in lieu thereof; or
 3. Increase the duties or liabilities of the Trustee without the Trustee's consent.
- B. Any such Plan amendment shall be made by means of a written instrument identified as an amendment of the Plan effective as of a specified date.
- C. Notwithstanding any other provision of the Plan to the contrary, if there is a scrivener's error in properly transcribing the provisions of this Plan, it shall not be a violation of the Plan terms to operate the Plan in accordance with its proper provisions, rather than in accordance with the term of the Plan, pending correction of the Plan through amendment. In addition, any provisions of the Plan improperly added as a result of scrivener's error shall be considered null and void as of the date such error occurred.
- D. SMUD has delegated to the General Manager the right to adopt future amendments to the Plan, consistent with regulatory requirements or by negotiations.

13.02. No Amendment To Reduce Prior Earned Benefits.

Except as otherwise specifically permitted by law, SMUD shall not have the right to modify or amend the Plan retroactively in such manner as to deprive any Participant or Beneficiary of any benefit to which such Participant or Beneficiary was entitled under the Plan by reason of contributions made prior thereto, unless such modification or amendment is necessary to conform the Plan to, or to satisfy the conditions of, any law, governmental regulations or rulings, and to permit the Plan and the Trust to meet the requirements of Code section 457 or any similar statutes enacted in lieu thereof.

13.03. Plan Termination.

SMUD expects to continue the Plan indefinitely, but reserves the right to terminate the Plan in part or in whole at any time by appropriate action. SMUD shall thereupon give written directions to the Administrator and the Trustee to either:

- A. Terminate the Plan and the Trust and direct the Trustee to distribute the Plan assets to the Participants; or
- B. Cease future contributions under the Plan, with distributions to be made to a Participant pursuant to the Plan upon the Participant's Severance From Employment.

13.04. Reversions.

Except as provided below and as otherwise specifically permitted by law, it shall be impossible by operation of the Plan or of the Trust, by termination of either, by power of revocation or amendment, by the happening of any contingency, by collateral arrangement or by any other means, for any part of the corpus or income of the Trust Fund maintained pursuant to the Plan or any funds contributed thereto to be used for, or diverted to, purposes other than the exclusive benefit of the Participants or their Beneficiaries; provided, however, in the case of a contribution that is made by SMUD by a mistake of fact, the Trustee may return such contribution to SMUD within one (1) year after the payment of the contribution.

13.05. Transfer To New Plan.

If SMUD establishes another Code section 457 plan providing comparable benefits to the Plan, and SMUD intends to discontinue contributions under the Plan due to the liabilities created under the new plan, then, subject to the prior approval of SMUD, SMUD may direct the Trustee to cause the Trust Funds to be transferred to such newly-created Plan. Thereafter, notwithstanding the provisions of the Plan Termination section, above, all further obligations to Participants, their Beneficiaries or SMUD under the Plan shall cease and shall instead be determined by the terms of the new plan. Neither SMUD nor the Trustee shall be required to ascertain the proper applicability of such fund after the transfer is made.

13.06. Plan Merger.

In the event of any merger or consolidation with, or the transfer of assets or liabilities to any other plan, each Participant in the Plan shall (if the Plan then terminated) receive a benefit immediately after the merger,

consolidation or transfer which is equal to or greater than the benefit that the Participant would have been entitled to receive immediately before the merger, consolidation or transfer (if the Plan then terminated). Any Employee or Board Member whose employment is continued by such successor employer shall not be deemed to have had a Severance From Employment for any Plan purposes.

13.07. Revoking Terms for Specific CIT Accounts

Effective the date Russell Investment Trust Company begins to operate as the new investment manager for this Plan and its participants, SMUD hereby rescinds the term added to the plan by amendment on October 11, 2018 that effectively:

“incorporate[d] by reference the Declaration of Trust for the American Century Strategic Allocation certified investment trust and the declarations of trust for the Conestoga Capital Advisors Small Cap Growth Collective Fund. By incorporating the terms of those declarations of trust and making that investment vehicle available to participants in the plan, SMUD [has been] enabling participants to invest in funds that SMUD believes offered similar market exposure as was being previously offered but with more reasonable fees. The incorporation by reference will remain valid as long as SMUD continues to allow plan participants the opportunity to invest in the corresponding certified investment trusts, and this amendment will automatically expire when SMUD no longer offers these investments to participants in its standard investment lineup.”

ARTICLE 14. MISCELLANEOUS

14.01. Nonalienation Of Benefits.

- A. Subject to the exceptions provided below and as otherwise specifically permitted by law, no assets or benefits under the Plan and the Trust shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge. Any attempt to so anticipate, alienate, sell, transfer, assign, pledge, encumber or charge the same shall be void. Nor shall any such benefits in any manner be liable for or subject to the debts, contracts, liabilities or torts of the person entitled to such benefits.
- B. The prohibitions contained in this Nonalienation Of Benefits section shall not apply to a "qualified domestic relations order" as defined in Code section 414(p), and those other domestic relations orders permitted to be so treated by the Administrator under the provisions of the Retirement Equity Act of 1984. The Administrator shall establish a written procedure to determine the qualified status of

domestic relations orders and to administer distributions under such qualified orders.

- C. The prohibitions contained in this Nonalienation Of Benefits section shall not apply to any arrangement for the recovery by the Plan of overpayments of benefits previously made to a Participant or Beneficiary.
- D. The prohibitions contained in this Nonalienation Of Benefits section shall not apply to any offset of a Participant's benefits provided under the Plan against the amount that the Participant is ordered or required to pay to the Plan; provided, however, that the following requirements are satisfied:
 - 1. The order or requirement to pay arises under one of the following circumstances:
 - a. Under a judgment or conviction for a crime involving the Plan;
 - b. Under a civil judgment, including a consent order or decree, entered by a court; or
 - c. Pursuant to a settlement agreement between the Plan and the Participant; and
 - 2. The judgment, order, decree or settlement agreement expressly provides for the offset of all or a part of the amount ordered or required to be paid to the Plan against the Participant's Plan benefits.

14.02. Employee Plans Compliance Resolution System.

In accordance with standards that are similar to those set forth in the Employee Plans Compliance Resolution System as described in Rev. Proc. 2013-12 and any subsequent guidance, the Administrator has the authority to correct any Plan document, operational, demographic and employer eligibility failures through self correction (if applicable) or voluntary correction with Internal Revenue Service approval.

14.03. Limitation Of Rights; Employment Relationship.

Nothing contained in this Plan shall be construed as a contract of employment between SMUD and any Employee or Board Member, or as a right of any Employee or Board Member to be continued in the employment of SMUD, or as creating or modifying the terms of an

Employee's employment or Board Member's position, or as a limitation on the right of SMUD to discharge any Employee or Board Member, with or without cause. Unless the law or this Plan explicitly provides otherwise, rights under any other employee benefit plan maintained by SMUD (for example, benefits upon an Employee's or Board Member's death, retirement, or other termination) do not create any rights under this Plan to benefits or continued participation. The fact that an individual is eligible to receive benefits under this Plan does not create any rights under any other employee benefit plan maintained by SMUD, unless that plan or the law explicitly provides otherwise.

14.04. Limitation Of Rights Of Participants And Others.

Neither the establishment of the Plan or the Trust, nor any modifications thereof, nor the creation of any fund or account, nor the payment of any benefits, shall be construed as giving to any Participant or any other person any legal or equitable right against SMUD, the Administrator, or its designated representative, or the Trustee, except as expressly provided herein or as provided by law.

14.05. Release From Liability.

Any payment to any Participant, or to the Participant's legal guardian or Beneficiary, in accordance with the provisions of the Plan, shall to the extent thereof be in full satisfaction of all claims hereunder against the Plan, SMUD, the Administrator, the Trustee and any Plan fiduciary, any of whom may require such Participant, legal guardian or Beneficiary, as a condition precedent to such payment, to execute a receipt and release therefor in such form as shall be determined by SMUD, the Administrator or the Trustee, as the case may be.

14.06. Indemnity.

SMUD hereby agrees to indemnify and hold harmless each present and future Administrator and its employees, and all duly authorized agents, against all liabilities, costs and expenses, including, without limitation, attorneys' fees reasonably incurred by, or imposed upon, such person in connection with, or arising out of, any claims, demands, suits, actions or proceedings in which such indemnified party may be involved (other than in the capacity of Participant or Beneficiary), except in the case of the willful misconduct of any such indemnified party. Expenses shall include the cost of reasonable settlement made with the view to curtailment of costs of litigation. The foregoing right of indemnification shall not be exclusive of other rights to which such indemnified party may be entitled as a matter of law.

14.07. Expenses.

Upon written instructions from the Administrator, the Trustee shall pay from the Trust Fund the expenses necessary to carry out the administration of the Plan that are not paid by SMUD.

14.08. Construction.

No provision of this Plan shall be construed to conflict with any Treasury Department, Department of Labor or Internal Revenue Service regulation, ruling, release or proposed regulation or other order which affects, or could affect, the terms of this Plan. If any provision is susceptible of more than one interpretation, such interpretation shall be given thereto as is consistent with the Plan being in conformity with Code section 457 and administered in conformity with other federal or State laws that apply to the Plan.

14.09. Headings.

The headings and subheadings of this Plan have been inserted for convenience of reference and are to be ignored in any construction of the provisions hereof.

14.10. Uniformity.

All provisions of this Plan shall be interpreted and applied in a uniform, nondiscriminatory manner.

14.11. Gender And Number.

Any reference in the masculine gender herein shall be deemed to also include the feminine gender, unless expressly provided otherwise. Wherever appropriate, any reference in this document in the singular shall include the plural and any reference in the plural shall include the singular.

14.12. Controlling Law.

Unless otherwise provided in this Plan, the Plan shall be construed and enforced according to the laws of the United States of America to the extent applicable, otherwise by the laws of California including California's choice-of-law rules, except to the extent those laws would require application of a State other than California.

14.13. Amendment Of Laws.

All references to sections of the Code, or any Treasury regulations or rulings thereunder, shall be deemed to refer to such sections as they may subsequently be modified, amended, replaced or amplified by any federal statutes, regulations or rulings of similar application and importance.

14.14. Severability.

In the event that any provisions of this Plan shall be held illegal or invalid for any reason by operation of law or a court of competent jurisdiction, said illegality or invalidity shall not affect the remaining legal and valid provisions of this document. This Plan shall continue as if said illegal or invalid provisions had not been included herein either initially, or beyond the date it is first held to be illegal or invalid, but only if the basic purposes hereof can be effected through the remaining valid and legal provisions.

14.15. Waiver.

Failure to insist upon strict compliance with any provision of the Plan shall not be deemed to be a waiver of such provision or any other provision; waiver of breach of any provision of this Plan shall not be deemed to be a waiver of any other provision or subsequent breach of such provision. No term, condition, or provision of the Plan shall be deemed waived unless the purported waiver is in writing, signed by the party to be charged. No written waiver shall be deemed a continuing waiver unless so specifically stated in the writing, and such waiver shall operate only as to the specific term, condition, or provision waived.

14.16. Entire Document.

This document and any appendices or supplements hereto shall constitute the entire document and shall govern the rights, liabilities and obligations of the parties under the Plan, except as it may be modified.

Executed this 31 day of December, 2019.

SACRAMENTO MUNICIPAL
UTILITY DISTRICT

By: _____



Title: _____

CEO & GM

RJH
LEGAL