



# Board of Retirement Regular Meeting

## Sacramento County Employees' Retirement System

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### Agenda Item 13

**MEETING DATE:** May 21, 2025

**SUBJECT:** Sacramento Area Sewer District—Replacement Benefits Plan Memorandum of Understanding

**SUBMITTED FOR:**   X   Action        Information

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#### **RECOMMENDATION**

Approve Memorandum of Understanding between SCERS and Sacramento Area Sewer District (SacSewer) to coordinate a Replacement Benefits Plan for members subject to IRC 415 limits.

#### **PURPOSE**

This item supports the Strategic Management Plan goals regarding stakeholder relations by promoting transparent policies and communications to members and employers about roles and responsibilities.

#### **DISCUSSION**

Section 415(b) of the Internal Revenue Code places a dollar limit on the annual benefit amount a tax-qualified plan like SCERS can pay to a retiree or beneficiary. In certain situations, the Section 415(b) limit can prevent SCERS from paying a retiree the full amount of the benefit that he or she has earned under the provisions of the 1937 Act. In order for the retiree or beneficiary to receive his or her full benefit in such a case, the retiree's former employer must adopt a "replacement benefits plan" that conforms to the requirements of Section 415.

The Replacement Benefits Plan (RBP) is a special benefit plan that is separate and apart from the SCERS plan. It is separately funded, maintained, and administered by the employer. As suggested by its name, the sole purpose of the RBP is to pay those benefits that SCERS cannot provide due to the Section 415 limits. The payments are made directly from the employer's RBP to the affected retiree or beneficiary. Depending on the amount that will need to be paid by the RBP, the RBP payments commence at the point in the calendar year when the SCERS payments hit the Section 415 limit, and for the remainder of the year, the retiree or beneficiary receives monthly benefit payments from only the RBP. At the end of the calendar year the RBP payment stops, and with the start of the new calendar year, the regular full SCERS benefit resumes until the Section 415 limit is again reached and it is necessary to stop the SCERS payment.

The RBP is intended to be cost neutral with respect to the overall cost to the employer for providing retirement benefits. This means that if the Section 415 limit requires the employer to

pay a second time – via the RBP – for a benefit that it has previously provided full funding to SCERS through regular retirement contributions, an offsetting reduction will be made to the employer's contributions the following year. The determination of when and to what extent such an adjustment would be appropriate will be determined by SCERS' actuary.

SCERS must determine when it is necessary for staff to coordinate with the employer's RBP. For example, SCERS must determine which retirees or beneficiaries will be affected by the Section 415 limits, the date when the Section 415 limit will be reached, and the amount that will have to be paid by the RBP. These and other issues related to the implementation of the RBP are addressed through an MOU between SCERS and the sponsor/provider of the RBP. SCERS has previously entered into similar MOUs with the County and the Sacramento County Superior Court concerning administration of their RBPs.

The Sacramento Area Sewer District (SacSewer), which formally separated from the County in December 2024, is now requesting that SCERS enter into an MOU for its RBP. The replacement benefits are only available for pre-PEPRA (Public Employees' Pension Reform Act) members generally hired before January 1, 2013. PEPRA established a compensation limit for new employees that effectively prevented members in the PEPRA tier from receiving pensions that would exceed the Section 415 limits. For 2025, the Section 415 limit is \$280,000; the PEPRA compensation limit is \$155,081 for members in Social Security.

PEPRA also prohibits an employer from establishing a new RBP after December 31, 2012, for its legacy members. However, legislation signed into law last year (AB 2301) authorized SacSewer to establish an RBP to ensure employees transferring from the County would continue to receive the same benefits they previously received.

This MOU facilitates the legislative intent of AB 2301 and implements the tri-party agreement that SCERS entered into last year with the County and SacSewer regarding the administration of pension benefits.

### **ATTACHMENTS**

- Board Order
- MOU
- SacSewer RBP Plan Document

Prepared by:

/S/

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Eric Stern  
Chief Executive Officer



# **Retirement Board Order**

## **Sacramento County Employees' Retirement System**

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**Before the Board of Retirement  
May 21, 2025**

**AGENDA ITEM:**

**Sacramento Area Sewer District–Replacement Benefits Plan  
Memorandum of Understanding**

THE BOARD OF RETIREMENT hereby accepts the recommendation of staff to approve Memorandum of Understanding between SCERS and Sacramento Area Sewer District (SacSewer) to coordinate a Replacement Benefits Plan for members subject to IRC 415 limits.

I HEREBY CERTIFY that the above order was passed and adopted on May 21, 2025, by the following vote of the Board of Retirement, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

ALTERNATES:  
(Present but not voting)

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James Diepenbrock  
Board President

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Eric Stern  
Chief Executive Officer and  
Board Secretary

MEMORANDUM OF UNDERSTANDING  
BETWEEN SACRAMENTO AREA SEWER DISTRICT  
AND THE SACRAMENTO COUNTY EMPLOYEES' RETIREMENT SYSTEM  
REGARDING THE SACRAMENTO COUNTY REPLACEMENT BENEFITS PLAN

This Memorandum of Understanding ("MOU") is entered into by and between the Sacramento County Employees' Retirement System ("SCERS") and Sacramento Area Sewer District ("District") to be effective January 1, 2025 ("Effective Date").

**WHEREAS**, prior to the Effective Date, the District and the County of Sacramento ("County") were parties to an arrangement under which the County funded retirement benefits under SCERS for eligible District employees and retirees; and

**WHEREAS**, that arrangement also provided for County payment of any benefits owed to eligible District retirees under the County's 415(m) plan, the Sacramento County Replacement Benefit Plan, which provides supplemental retirement benefits to certain eligible SCERS members whose benefits are limited because of application of section 415(b) of the Internal Revenue Code of 1986 ("Section 415(b)" and "IRC"); and

**WHEREAS**, effective December 15, 2024, the County, SCERS, and the District entered into a tri-party agreement ("Tri-Party Agreement") shifting these County funding and payment responsibilities to the District; and

**WHEREAS**, the Tri-Party Agreement further mandated that the District adopt its own 415(m) plan for eligible retirees of the District whose SCERS benefits are limited by Section 415(b); and

**WHEREAS**, the IRC provides that the District may establish a replacement benefits plan to pay the full benefits earned by District retirees whose SCERS benefits are limited by Section 415(b); and

**WHEREAS**, the District's adoption of the Plan is authorized and mandated by California Government Code Section 31577, which provides that such adoption is not deemed the creation of a new replacement benefit program; and

**WHEREAS**, there will be no net increase in the total cost of retirement benefits to the District or SCERS by providing such a replacement benefits plan; and

**WHEREAS**, consistent with the tri-party agreement and applicable federal and state law, effective January 1, 2025, the District adopted the Sacramento Area Sewer District Section 415(m) Replacement Benefit Plan ("Plan"), a copy of which is attached, to provide supplemental retirement benefits to such eligible retirees of the District and their beneficiaries; and

**WHEREAS**, the District and SCERS wish to enter into a memorandum of understanding setting out their respective responsibilities regarding the Plan.

**THEREFORE, IT IS HEREBY AGREED BY AND BETWEEN THE DISTRICT AND SCERS AS FOLLOWS:**

1. Purpose of Agreement

This memorandum of understanding (“MOU”) is entered into by the District and SCERS to facilitate the efficient operation of the Plan.

2. Payment of Replacement Benefits

(a) In accordance with the Plan, the District shall pay to eligible District retirees, and to their surviving beneficiaries (if any), the excess of the benefits that would be payable from SCERS without regard to the limits of Section 415(b) over the benefits that can be paid by SCERS without violating Section 415(b). These benefits are called “replacement benefits.”

(b) The District shall pay replacement benefits from its general assets. No assets of SCERS will be used to pay benefits under the Plan or any expenses associated with administering and operating the Plan.

(c) Notwithstanding anything to the contrary, benefits under the Plan will be provided only to those eligible individuals specified in the Plan.

3. Determination of Amount of Replacement Benefits

(a) In accordance with its responsibilities under Section 415(b), SCERS shall determine the amount of (i) benefits for eligible District retirees and surviving beneficiaries that would be paid from SCERS without the limits of Section 415(b), and (ii) the benefits that can be paid to such persons within the limits of Section 415(b). Any excess of the former over the latter is the amount of replacement benefits payable by the District under the Plan.

(b) SCERS shall make this determination for the first calendar year (beginning with 2025) that the benefits of any eligible District retiree or surviving beneficiary are limited by Section 415(b) and for each year thereafter. Annual determination is needed because both the Section 415(b) limit and the SCERS benefit amounts may change annually.

(c) To the extent that the amount of benefits that are limited by Section 415(b) change at any time, and in accordance with its responsibilities under Section 415(b), SCERS shall recalculate the benefits payable by the District under the Plan.

(d) In accordance with the Plan, the District will rely on the calculations by SCERS set out in preceding subsections (a), (b), and (c) for purposes of determining the replacement benefits payable under the Plan. SCERS’s calculations will be conclusive for purposes of determining the District’s obligations under the Plan, absent manifest error.

(e) As provided in Section 5 of the MOU, SCERS shall communicate to the District the information determined under this Section 3.

4. Effect on District Contributions to SCERS of Section 415(b) Limits

(a) In accordance with the recommendation of SCERS' actuary, District contributions to SCERS will be adjusted to reflect the fact that SCERS cannot pay benefits that are greater than the limits imposed by Section 415(b) in the manner set forth in in Section 31899.4 of the California Government Code.

(b) Upon recommendation of SCERS' actuary and in accordance with its obligation to recommend District contribution rates under Section 31453, 31453.1 and 31899.4 of the California Government Code, SCERS shall adjust the contributions required to be contributed by the District to account for the limits of Section 415(b).

5. Communication Between the District and SCERS

(a) SCERS shall communicate to the District, in writing and as soon as reasonably practicable, all information SCERS determines is necessary or appropriate for the efficient administration of the Plan. This communication includes but is not limited to the following: the names and identifying numbers of the eligible District retirees and surviving beneficiaries whose benefits are limited in any year; the amounts of their replacement benefits (if any) and the calculations that support these amounts; the date as of which the replacement benefits will become payable during each year (if any); the amount by which the replacement benefits change during the year (if at all); the amount of reduction in the District's contribution to SCERS that will occur under Section 7(a) hereof (if any); and the date that any replacement benefits must cease (for example, the death of an eligible District retiree) to the extent known by SCERS. The District shall keep confidential all information received from SCERS for the purpose of administering the Plan, to the extent permitted by law.

(b) The District shall communicate to SCERS, in writing and as soon as reasonably practicable, all information that is necessary or appropriate for the efficient administration of the Plan. This communication includes but is not limited to the following: the names and identifying numbers of the Plan participants and eligible surviving beneficiaries who are paid replacement benefits; the amount of such payments; and the dates on which such payments occurred during the year.

6. Communication With Retirees

(a) SCERS shall inform eligible District retirees, generally, that if their SCERS benefits are limited by Section 415(b), the limited benefits will be replaced by the District in accordance with the Plan.

(b) In accordance with its responsibilities under Section 415(b), SCERS is responsible for testing whether members' benefits exceed the limits imposed by Section 415(b). If an eligible District retiree's (or the surviving beneficiary's) benefits exceed those limits, SCERS will so inform the affected individual in writing, and will inform the individual about the Plan and generally how it works.

(c) Upon receiving the needed information from SCERS with respect to the amounts and timing of payment of replacement benefits, the District shall inform each affected individual about how the Plan works with respect to him or her, including the amounts that will be paid under the Plan for the particular year, the timing of such payments, any tax withholding elections available and all other information that is necessary or appropriate for operation of the Plan.

7. Reconciliation

(a) Reconciliation of payments between SCERS and the District.

The District and SCERS shall take all reasonable steps to reconcile, after the end of each year, the amounts of replacement benefits that have been identified as payable under the Plan by SCERS and the amounts of replacement benefits that have actually been paid. Underpayments or overpayments shall be corrected by the District in accordance with the Plan. In the event the Plan has paid benefits which SCERS determines should have been paid by SCERS within the limits of Section 415(b), SCERS shall reduce the District's contribution to SCERS for the next Plan Year in an equivalent amount. In the event that SCERS has paid benefits which SCERS determines should have been paid under the Plan, the Plan shall reimburse SCERS for the payments of such benefits by SCERS.

(b) Underpayment or overpayments to Plan Participants

Underpayments or overpayments to Plan Participants and beneficiaries shall be corrected by the District in accordance with the Plan or as required by law. The District is solely responsible for collecting any such overpayments and paying any such underpayments.

8. Tax Reporting

SCERS and the District shall be separately responsible for their required reporting to the tax authorities, and neither shall be responsible for the other's reporting. In no event shall SCERS be responsible for any reporting for payments made by the Plan.

9. Indemnification and Hold Harmless

The District shall indemnify and hold SCERS harmless for any costs, damages, or other liabilities incurred hereunder to the extent such amounts result from the District's negligence or willful misconduct.

Nothing in this MOU will be construed to limit the District's rights to pursue claims against SCERS for any act or omission by SCERS that results in liability to the District.

10. Miscellaneous

(a) Integration

This Memorandum of Understanding and the documents referenced herein constitute the entire agreement of the parties with respect to the subject matter hereof and supersede all prior agreements and understanding, both written and oral.

(b) Amendment to MOU

This Memorandum of Understanding may only be amended pursuant to a written agreement properly executed by both parties hereto.

(c) Notice of Amendment to Plan

The District will provide 30 days' written notice to SCERS of any proposed amendment to the Plan. Notice will be addressed to the President of the Board of Retirement.

(d) Termination of MOU

This MOU is effective on the Effective Date and will continue in effect unless and until terminated by either party on 30 days' written notice to the other. Notice will be addressed to the District Engineer for the District, and to the President of Board of Retirement for SCERS.

(e) One Year Review

At the written request of either party, the District and SCERS will meet within a year of the Effective Date to review the operation of this MOU and to make such revisions hereto as are mutually agreeable.

**IN WITNESS WHEREOF, THIS MEMORANDUM OF UNDERSTANDING HAS BEEN ENTERED INTO AS OF THE DATE SET FORTH ON THE FIRST PAGE HEREOF.**

**SACRAMENTO AREA  
SEWER DISTRICT**

**SACRAMENTO COUNTY  
EMPLOYEES' RETIREMENT SYSTEM**

By \_\_\_\_\_

By \_\_\_\_\_

DATED: \_\_\_\_\_

DATED: \_\_\_\_\_



**SACRAMENTO AREA SEWER DISTRICT**  
**SECTION 415(M) REPLACEMENT BENEFITS PLAN**

(Effective January 1, 2025)

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**SACRAMENTO AREA SEWER DISTRICT  
SECTION 415(M) REPLACEMENT BENEFITS PLAN**

**ARTICLE 1**

**Establishment and Purpose**

Section 1.1. Establishment. Sacramento Area Sewer District (“District”) hereby establishes and adopts a retirement plan titled the “Sacramento Area Sewer District Section 415(m) Replacement Benefits Plan” (the “Plan”), effective January 1, 2025 (“Effective Date”).

Section 1.2. Background and Purpose.

(a) Prior to the Effective Date, the District and the County of Sacramento (“County”) were parties to an arrangement, under which the County funded retirement benefits under the Sacramento County Employees’ Retirement System (“SCERS”) for eligible District employees. The arrangement also provided for County payment of any benefits owed to eligible District retirees under the County’s 415(m) plan, the Sacramento County Replacement Benefit Plan, which provides supplemental retirement benefits to certain eligible SCERS members whose benefits are limited because of application of section 415(b) of the Internal Revenue Code of 1986, as amended (the “Code”).

(b) Effective December 15, 2024, the County, SCERS, and the District entered into a tri-party agreement shifting these funding responsibilities to the District. The agreement mandated that the District adopt its own 415(m) plan for Eligible Retirees of the District whose SCERS benefits are limited by section 415(b) of the Code.

(c) Consistent with the tri-party agreement, the purpose of the Plan is to provide supplemental retirement benefits to such Eligible Retirees (and their Beneficiaries).

Section 1.3. Statutory Authority. The District’s adoption of this Plan is mandated and authorized by section 31577 of the California Government Code (“Government Code”), which provides that for purposes of Government Code sections 7522.43 and 31899(c), this Plan’s creation will not be deemed to be the creation of a new replacement benefit program, and the continued provision of benefits to Eligible Retirees will not be deemed the offering of a new plan to any employee.

Section 1.4. Tax Status. The Plan is intended to be a “qualified governmental excess benefit arrangement” under Code section 415(m). As such, this Plan is intended to be exempt from application of Code sections 409A and 457(f). This Plan is deemed a portion of SCERS solely to the extent required by, and within the meaning of, section 415(m)(3) of the Code, and not for any other purpose. It is also intended that this Plan be treated as an “exempt governmental deferred compensation plan” as described in Code section 3121(v)(3), and that, therefore payments from the Plan are not included as wages subject to Social Security and Medicare taxes. The provisions of the Plan will be construed and interpreted as necessary to comply with the purpose and intended tax status as set forth in this Article 1 of the Plan.

## ARTICLE 2

### Definitions

The capitalized words and phrases used in this Plan shall have the meanings set forth below:

Section 2.1. Beneficiary. The person or persons named under the provisions of Section 4.4 of this Plan.

Section 2.2. Code. The Internal Revenue Code of 1986, as amended, or as it may be amended from time to time, and any rules and regulations issued thereunder.

Section 2.3. Commencement Date. As defined in Section 3.2.

Section 2.4. District. Sacramento Area Sewer District.

Section 2.5. Effective Date. January 1, 2025.

Section 2.6. Eligible Retiree. An individual who (i) is a former employee of the District, (ii) is a member of SCERS, (iii) was a covered individual under the Sacramento County Replacement Benefit Plan as of December 14, 2024, and (iv) terminates employment from the District and retires from SCERS. For this purpose, termination from the District includes termination of employment from either the Sacramento Area Sewer District or Sacramento Regional County Sanitation District before the January 2024 merger of these two entities into the District.

Section 2.7. Participant. An Eligible Retiree who participates in the Plan pursuant to Section 3.2 of the Plan.

Section 2.8. Plan. This Sacramento Area Sewer District Section 415(m) Replacement Benefits Plan, as may be amended from time to time.

Section 2.9. Plan Administrator. The party or parties designated as the Plan Administrator pursuant to Section 5.1 of the Plan.

Section 2.10. Plan Year. A calendar year.

Section 2.11. Retirement Committee. The Retirement Committee of the Sacramento Area Sewer District. If no Retirement Committee has been appointed, the District's Board of Directors will serve as the Retirement Committee.

Section 2.12. SCERS. The Sacramento County Employee Retirement System.

## ARTICLE 3

### Eligibility

Section 3.1. Eligibility. Any Eligible Retiree is eligible to participate in the Plan if the amount of retirement benefits payable under SCERS in any Plan Year is reduced because of application of the limits in Code section 415(b).

Section 3.2. Participation. An Eligible Retiree's participation in the Plan will commence on the first date, on or after the Effective Date, when the amount of benefits paid under SCERS is limited because of application of Code section 415(b), as determined below in Section 4.1. This is referred to herein as the Commencement Date. Participation in this Plan will cease as of the first date for which contributions are no longer limited by Code section 415(b) or when the Participant's benefits under SCERS otherwise cease. If any Participant has ceased participating in the Plan, but at a later date his or her SCERS benefits are again limited by Code section 415(b), he or she shall again commence participation as provided in this Section 3.2.

## ARTICLE 4

### Benefits

Section 4.1. Amount of Benefits.

(a) The benefit paid under this Plan in any Plan Year shall be initially determined for each Participant at the Participant's Commencement Date under the following steps:

(1) Determine Total SCERS Benefit: Determine the Participant's benefits payable at the time of the Commencement Date under SCERS without regard to the limits of Code section 415(b) and after considering the form of SCERS benefit selected by the Participant.

(2) Determine SCERS Benefits Not Subject to 415(b): Determine the amount of the Participant's SCERS benefits (if any) attributable, at the Commencement Date, to after-tax employee contributions, rollovers and direct transfers which are excluded from the limits of Code section 415(b), after taking into account the form of SCERS benefit selected by the Participant.

(3) Determine SCERS Benefits Subject to 415(b): Subtract the amount determined in (2) from the amount determined in (1); this is the amount subject to the Code section 415(b) limits for the Participant.

(4) Determine Maximum Benefits under 415(b): Determine the maximum benefits payable to the Participant from SCERS under the then current benefit payment limits of Code section 415(b), ignoring any benefits determined under (2). The determination under this step (4) will consider items such as the applicable dollar limits, the form of benefit payment chosen, the date that the

Participant first became a District employee and member of SCERS, and whether he or she qualifies for special limits under Code section 415(b).

(5) Compare 415(b) Maximum Benefits and SCERS Benefits Subject to 415(b): Subtract the amount determined under (4) from the amount determined under (3).

(6) Determine the Initial Amount Payable Under This Plan (if any): If the amount in (3) is greater than the amount in (4), the difference is the initial benefit paid under this Plan. If the amount in (4) is equal to or greater than the amount in (3), then no benefits are payable under this Plan.

(b) The total retirement benefit that will be paid to a Participant in any year will be the sum of the benefit paid under this Plan and the benefit paid under SCERS, including amounts attributable to both District and after-tax employee contributions. Therefore, the total retirement benefit that will be paid to a Participant under the Plan and SCERS is the sum of the amounts in (2), (4) and (5) above. However, this Plan and SCERS are separate entities and will be administered separately. In addition, separate checks will be paid for the benefits under this Plan and SCERS; the Plan Administrator shall provide separate tax reporting for the benefits paid under this Plan; and no assets of SCERS will be used, directly or indirectly, to pay for benefits or administration or any other costs of this Plan.

Section 4.2. Form of Benefit Payments. Benefits payable to or on behalf of a Participant or his or her Beneficiary resulting from the provisions of Section 4.1 will be in the same form as the Participant selects under SCERS.

Section 4.3. Time of Benefit Payments. Benefits payable to or on behalf of a Participant or his or her Beneficiary under this Plan will be paid at the same time as benefit payments under SCERS or, in the sole discretion of the Plan Administrator, in a single lump sum payment no later than December 31<sup>st</sup> of each Plan Year that a benefit is payable to a Participant or his or her Beneficiary under SCERS.

Section 4.4. Beneficiary in the Event of Death. Upon the death of a Participant, any remaining benefit payments due under this Plan (considering the form of benefit elected by the Participant under SCERS) shall be distributed to (1) the Beneficiary designated by the Participant under this Plan, or if none, (2) the Beneficiary designated by the Participant under SCERS, or if none, (3) the estate of the deceased Participant. The designation of Beneficiary under this Plan must be made on a form specified by the District (or if applicable SCERS) and may be changed from time to time in the manner prescribed by the District.

Section 4.5. Benefits Unfunded. Benefits payable under this Plan will be paid by the District each year out of its general assets and will not be funded in any manner. The District shall also pay all costs, charges and expenses relating to establishing and maintaining this Plan.

Section 4.6. Vesting. A Participant is always 100% vested in benefits under this Plan.

Section 4.7. Taxes. The District has full authority to withhold any taxes that are or may be due from all amounts paid under the Plan (including but not limited to income and employment taxes),

to pay them to the appropriate government agency, and to file and distribute necessary or appropriate tax reports and forms.

## **ARTICLE 5**

### **Administration**

Section 5.1. Duties of the Administrator. The Plan Administrator shall administer this Plan in accordance with its terms. The initial Plan Administrator is the District employee holding the position of District Engineer. The person serving as Plan Administrator serves at the pleasure of the Retirement Committee, and the Retirement Committee may appoint a different person or persons to serve as Plan Administrator at any time and for any reason. The Plan Administrator shall determine the amount and manner of benefit payments due to or on behalf of each Participant or his or her Beneficiary from this Plan and shall cause them to be paid accordingly. The Plan Administrator has full discretionary authority to administer the Plan on a day-to-day basis. The Plan Administrator may designate other persons to assist in performing such administrative duties, including, but not limited to, agents, accountants, legal counsel, consultants and record keepers.

Section 5.2. Finality of Decisions. The decisions made by, and the actions taken by, the Plan Administrator in the administration of this Plan shall be final and conclusive on all persons.

Section 5.3. Claims Procedure. A claim for benefits under the Plan must be made to the Plan Administrator in writing. The Plan Administrator shall provide adequate notice in writing within 60 days of the receipt of the claim for benefits to any Participant, contingent annuitant or Beneficiary whose claim for benefits under the Plan has been denied, setting forth the specific reasons for such denial, written in as simple language as possible. If a claim is denied, in whole or in part, the Plan Administrator shall send the claimant a notice of denial explaining the reasons for denial of the claim. A claimant whose claim has been denied, or his authorized representative, may request a review of the denial, but such a request must be in writing, and must be submitted to the Plan Administrator within 90 days after date of mailing of the notice of denial. Upon appeal for review by a claimant whose claim for benefits from the Plan has been denied in whole or in part, the claimant shall be given an opportunity to review the Plan document with a representative of the Plan Administrator and shall further be given the opportunity to submit in writing any statement or comments material or relevant to the claim.

The review of a claim which has been denied shall be made by the Plan Administrator within 60 days of the receipt of the request for review, unless the Plan Administrator determines that special circumstances require additional time, in which case a decision will be rendered not later than 120 days after receipt of the request for review. The decision of the review will be in writing and will include specific reasons for the decision, written in as simple language as possible with specific reference to the pertinent Plan provisions on which the decision is based.

No action at law or equity will be brought to recover benefits under the Plan unless such action is commenced within one year after the date the claimant is notified of the Plan Administrator's final decision on review. Except as required by applicable law, no action at law or equity will be brought to recover benefits under this Plan unless and until the claimant has: (a) submitted a claim for benefits; (b) been notified in writing by the Plan Administrator that the requested benefits (or



portion thereof) are denied; (c) filed a written request for a review of the Plan Administrator denial; and (d) been notified in writing that the denial has been affirmed.

Section 5.4. Correction of Errors. If an error or omission is discovered in the administration of the Plan, the Plan Administrator, or its authorized designee, shall take such equitable action as may be necessary or appropriate to correct the error consistent with guidance from the Internal Revenue Service. Any overpayment of benefits from this Plan must be returned to the District immediately on demand by the Plan Administrator. The Plan Administrator may take all necessary or appropriate action, including but not limited to filing suit, to recover overpayments of benefits under the Plan. Overpayments may be set off against subsequent benefit payments owed under the Plan. Additionally, any person who receives or holds any overpayments must hold such amounts in trust for the benefit of the District.

## **ARTICLE 6**

### **Amendment and Termination**

Section 6.1. Amendment and Termination. While the District intends to maintain this Plan in conjunction with SCERS for as long as necessary, the District acting through its Retirement Committee or other delegate, reserves the right to amend or terminate it at any time for whatever reasons it may deem appropriate.

## **ARTICLE 7**

### **Miscellaneous**

Section 7.1. No Employee Deferrals. No employee contributions or deferrals will be made or allowed under the Plan at any time. In accordance with Code section 415(m), no election to defer compensation under this Plan will be provided, at any time or in any manner, to any person.

Section 7.2. No Use of Retirement Plan or SCERS Assets. Except as specifically allowed by governing federal and state law (including but not limited to governing federal and state tax laws), District assets used to provide benefits under this Plan will not be commingled with the moneys of SCERS or any other qualified plans, nor will this Plan ever receive or use any assets from SCERS.

Section 7.3. No Employment Rights. Nothing in this Plan will be construed as a contract of employment between the District and any employee, or as a right of any employee to be continued in employment or as a limitation of the right of the District to discharge any employee with or without cause.

Section 7.4. Unsecured Creditor. Participants and their Beneficiaries, heirs and successors under this Plan have solely those rights of an unsecured creditor of the District. Any and all assets of the District will not be deemed to be held in trust for any person, their Beneficiaries, heirs and successors, nor will any assets be considered security for the performance of obligations of the District and said assets will at all times remain unpledged, unrestricted general assets of the District. The District's obligation under the Plan is an unsecured and unfunded promise to pay benefits at a future date.

Section 7.5. Non-Assignability. The Participant and their Beneficiaries, heirs and successors will not have any right to commute, sell, pledge, assign, transfer or otherwise convey the right to receive any payment under this Plan. The right to any payment of benefit is non-assignable and non-transferable. This Section 7.5 shall not apply to any benefit payable to an alternate payee pursuant to an order determined by the Plan Administrator to be a qualified domestic relations order under applicable law.

Section 7.6. Withholding Taxes. The District may make any appropriate arrangements to deduct from all amounts paid under the Plan any taxes required to be withheld by any government or governmental agency.

Section 7.7. Invalidity of Certain Provisions. If any provision of this Plan is held invalid or unenforceable, such invalidity or unenforceability will not affect any other provision hereof and this Plan shall be construed and enforced as if such provision had not been included.

Section 7.8. Incapacity. If any Participant is unable to care for his affairs because of illness or accident, any payment due may be paid to the Participant's spouse, parent, brother, sister or other person deemed by the Plan Administrator to have incurred expenses for the care of such Participant, unless a duly qualified guardian or other legal representative has been appointed.

Section 7.9. Applicable Law. This Plan will be governed by the laws of the State of California and applicable federal law.

Section 7.10. Preservation of Retirement Plan Tax Status. This Plan will not in any way jeopardize the tax qualified status of SCERS. The Plan Administrator has the authority to take all necessary or appropriate action, including but not limited to amending this Plan and the rules governing this Plan, solely for the purpose of complying with applicable federal tax laws and regulations. The Plan Administrator shall inform the Retirement Committee of any such changes as soon as possible.

Section 7.11. Preservation of Section 415(m) Status. The Plan Administrator has the authority to make appropriate amendments to the Plan to accommodate changes in the Code and United States Treasury Regulations in a manner that will preserve the status of the Plan under section 415(m) of the Code; provided such amendment does not materially increase the cost to the District of benefits paid under the Plan. The Plan Administrator also has the authority to make appropriate amendments to the Plan to comply with changes in California State law, to the extent applicable; provided such amendment does not materially increase the cost to the District of benefits paid under the Plan. The Plan Administrator shall inform the Retirement Committee of any such changes as soon as possible.