

SEIU/ATU GENERAL PROVISIONS

6/3/13

SECTION 1.2 TERM OF AGREEMENT

The term of this Agreement shall be from and including the first day of July 2013~~09~~ up to and including the 30th day of June 2013~~09~~ or one hundred (100) days following receipt of notice of a desire to modify or terminate this Agreement, whichever occurs later. Each party shall comply with the provisions of California Government Code Section 3611 ~~Section 1137.1, Par. B of Chapter 9, Part 3, of Division 2 of the California Labor Code, as amended.~~ In the event either party serves notice upon the other party of a desire to modify or terminate the Agreement, the parties shall meet and make all reasonable efforts to reach agreement on the subject matters of such proposed modifications.

The parties shall respond to any requests for information reasonably necessary for intelligent negotiations and the standards and guidelines in accordance with California Government Code Section 3611 ~~(c) 1137.1, Par. C, of Chapter 9, Part 3 of Division 2 of California Labor Code, as amended~~ Each party shall supply to the other party such reasonable data as are requested by the other party.

To the fullest extent possible the parties shall endeavor to complete their negotiations at least seven (7) days prior to the date any lawful economic action may be taken in connection with any dispute concerning any proposed changes in any Collective Bargaining Agreement.

SEIU/ATU – GENERAL PROVISIONS – EFFICIENCY

SECTION 1.5 BENEFICIAL PRACTICES

Rules or regulations or practices within the scope of representation affecting employees beneficially may be discontinued or modified provided that the District provides notice to the Union of its intention to discontinue or modify the practice. If the union objects to the discontinuation or modification, the District shall meet and confer with the Union regarding the impact of the discontinuation or modification. ~~will not be changed without mutual agreement, provided that District Management has accepted the past practice over a reasonable period of time as an established practice that is unequivocal, clearly enunciated and acted upon. For purposes of this provision, "District Management" does not include any individuals represented by ATU/SEIU.~~



SEIU/ATU GENERAL PROVISIONS

1.8 CONTRACTING WORK – HOUSEKEEPING**1.8 CONTRACTING WORK ***

It is in the intent of the parties that work connected with the operation and maintenance of the system be performed by the bargaining unit employees, consistent with the basic Bay Area Rapid Transit District operations and maintenance philosophy.

Should it become necessary to deviate from this practice, the Unions shall be informed of the reason work is being contracted. The District shall email or –fax a Contract Notification Form to the individual designated by each Union. Such designation shall be provided to the District by the Unions and updated as required. ~~President of the ATU, or the BART Chapter President, the President of the Professional Chapter, and the Chair of the SEIU Contracting Out Committee, whichever Union is directly affected, prior to submitting the Contract Notification Form to the Procurement Department.~~ The Contract Notification Form will identify the date it is transmitted~~faxed~~. The Union shall have seven (7) workdays after receipt of ~~the Contract Notification Form is faxed to~~ provide any comments to the department manager. If comments are received within the seven (7) workday period, the Department Manager will consider the comments before making his or her final decision to contract.

It is agreed that prior to contracting work, the District will give consideration to whether adequate numbers of qualified employees are available to perform the necessary work within time limits available, whether sufficient and suitable equipment is available within the District to perform the work, whether shop capacity is adequate,

whether the use of District employees shall involve extra cost to the District, or whether the performance of the work presents added hazards to existing employees which are not present in their normal assignments. Temporary work load, over and above normal positions, including overtime, may be contracted out. Suppliers' personnel performing work related to their equipment and clearly not bargaining unit work will not be prohibited.

Contracts in effect at the time of this Agreement will not be voided by terms of this Agreement.

*** Minute Clarification**

District procedures regarding contracting out work which include prior notice to the Unions at the commencement of the contracting process shall continue during the term of this Agreement.

SEIU/ATU – GENERAL PROVISIONS – BENEFITS

The District withdraws its proposal related to Section 4.1 except as noted herein:

4.1 VACATION

The District will grant three (3) weeks of vacation following one (1) year of service, four (4) weeks of vacation after eight (8) years of service, five (5) weeks vacation after fifteen (15) years of service and six (6) weeks vacation after twenty (20) years of service.

Employees may carry over up to sixty (60) days (up to forty-eight [48] days for employees on a 4-10 Plan) of vacation. Employees with four (4) or more weeks of accumulated vacation will be allowed to buy back up to forty (40) hours of such vacation. The election of such buy-back shall be made in December with determination of the four (4) week eligibility threshold to be made in December the following year with payment made in the second February following the election. Subject to applicable law and policies applicable to the MPPP program, employees may elect to have such payment deposited in their MPPP account on a post tax basis. ~~This shall take effect when BAP Phase 4 goes live.~~

Employees will select their vacation in accordance with the applicable seniority provisions consistent with the scheduling ability of their department, division or section.

In the event an employee terminates or retires, he/she shall be granted pro rata vacation compensation based upon his/her accrued credits.

Vacation allocation will be scheduled throughout the calendar year; however, to the maximum extent possible, consideration consistent with operating requirements will be given to allow employees to take their vacation during the summer months.

Should a contractual holiday fall within the employee's vacation period, compensation will be applied consistent with holiday provisions of this Agreement.

Years of service shall be based upon the employee's date of employment by the Bay Area Rapid Transit District or in the case of 13(c) employees, in accordance with the 13(c) Award.

Vacation accrual will not be continued beyond thirty-one (31) days in the event an employee is in a non-pay status.

4.10pm

SEIU/ATU – GENERAL PROVISIONS - BENEFITS**SECTION 5.2 PERS-MEDICAL & PRESCRIPTION DRUG BENEFITS *****A. PERS Medical and Prescription Drug Benefits**

The District will provide group medical and prescription drug benefits, as provided below, through the Public Employees' Retirement System (PERS). The PERS rules, regulations and plan documents will control on all issues concerning benefits, including the types and levels of benefits offered and eligibility for those benefits.

The Unions acknowledge that they understand these benefits may not equate to benefits previously available to employees and retirees through the various optional medical plans and the prescription drug plan. Because coverage will be provided through PERS, the District and the Unions understand that PERS may terminate or change covered expenses, benefit payments and co-payments on covered benefits, deductibles, lifetime and/or annual maximums and may implement various cost control features.

Except for Survivors Benefits, as provided for in Section 5.8, the Unions waive the right to any group medical or prescription drug benefit granted expressly or impliedly under other sections of this Agreement, or by any other agreement between the parties or by any District guideline, policy or practice if that benefit is not offered through the PERS medical plan.

B. Employee and Retiree Contributions for Health Insurance

1. All employees eligible for PERS medical benefits who enroll for such benefits shall be responsible for a premium contribution towards the District's premium cost for the plan and level chosen except as further defined in Section C as follows:
 - a. Commencing no later than January 1, 2014, employees shall be responsible for a contribution of six percent (6%) of the premium cost for the plan and level chosen;
 - b. Commencing FY 2015, such contribution shall increase to eight percent (8%) of the premium;
 - c. Commencing FY 2016 such contributions shall increase to twelve percent (12%) of the premium, and
 - d. Commencing FY 2017, such contribution shall increase to sixteen percent (16%) of the premium;

~~in the amount of twenty five dollars (\$25.00) per month, except as provided below.~~

4-10-13

1. The employee's twenty-five dollar (\$25.00) monthly employee contribution toward the medical insurance premium shall increase by fifty dollars (\$50) on January 1, 2006. Each January 1 thereafter, the monthly employee contribution shall increase by an escalator amount of three percent (3%). For example, the total monthly employee contribution on January 1, 2007 will be seventy-seven dollars and twenty-five cents per month. (The calculation that arrives at this number is as follows: $\$25 + \$50 = \$75 \times 1.03 = \77.25 .) The employee contribution amounts provided below shall be in addition to any costs for coverage in excess of the amounts specified in paragraph C below.

<u>DATE</u>	<u>Maximum Employee Monthly Contribution</u>
01 Jan. 06	\$75.00
01 Jan. 07	\$77.25
01 Jan. 08	\$79.57
01 Jan. 09	\$81.95
01 Jan. 10	\$84.41
01 Jan. 11	\$86.95
01 Jan. 12	\$89.55
01 Jan. 13	\$92.24
01 Jan. 14	\$95.01
01 Jan. 15	\$97.86
01 Jan. 16	\$100.79
01 Jan. 17	\$103.82
01 Jan. 18	\$106.93
01 Jan. 19	\$110.14
01 Jan. 20	\$113.44
01 Jan. 21	\$116.85
01 Jan. 22	\$120.35
01 Jan. 23	\$123.96

4.10 form

01 Jan. 24	\$127.68
01 Jan. 25	\$131.51
01 Jan. 26	\$135.46
01 Jan. 27	\$139.52
01 Jan. 28	\$143.02
01 Jan. 29	\$148.02
01 Jan. 30	\$152.46
01 Jan. 31	\$157.03
01 Jan. 32	\$161.74
01 Jan. 33	\$166.60
01 Jan. 34	\$171.59

2. 2. Each eligible retiree shall pay the same premium contribution as active employees. Employees' premium contributions will be paid for through tax-exempt payroll deductions. Retiree premium contributions will be deducted from the retirement allowance paid by PERS. If a retiree's retirement allowance is not sufficient to pay the entire contribution, the retiree must pay the balance due on such premium contribution directly to PERS. If such payment is not received by the due date, health care coverage will automatically, immediately and permanently cease. These rules are intended to comply with the premium contribution procedures established by PERS, which may be modified by PERS. The District, Unions and employees shall comply with the PERS procedures in effect from time to time.

C Maximum District Contributions for Health Insurance

Beginning on January 1, 2010, the District's maximum shall contribution shall be the remainder of the premium above the employee's contribution for the applicable plan and level of plan and participation (i.e. one party, two party, or family) and the same Medicare status as elected by the eligible employee or retiree capped by equal to the Bay Area Basic Premium Rates for the PERS HMO BlueShield Access and/or PERS HMO Kaiser HMO Plan, whichever is greater, less the employee and retiree contributions provided for in 5.2B above. This District contribution shall be the District's maximum payment toward employee health insurance premiums. Employees and retirees electing a coverage with a cost greater than the District's maximum contribution shall have the difference deducted automatically from the unit member's

4:10pm

pay or as set forth in 5.2 B 2. above, in addition to amounts to be deducted in accordance with subsection B above.

4. D Retiree Insurance Funding

4. Beginning July 1, 2007, the District shall contribute into its Retiree Health Benefit Trust (“RHBT”) amounts that, at minimum, reflect an eight (8) year “ramp up” to District payment of the full Government Accounting Standards Board (“GASB”) compliant Annual Required Contribution (“ARC”) beginning July 1, 2013 using an open group valuation method with a closed 30-year amortization schedule for unfunded liability ending June 30, 2034. Except as provided in paragraph 3 below, each pay period the District shall contribute to the RHBT an amount equal to the below listed percentages of straight time bargaining unit base pay paid to bargaining unit members in that pay period into the RHBT. (For example, if base pay in the pay period in FY 07 is one million dollars [\$1,000,000], the District will contribute \$34,900 into the RHBT for that pay period).

1. Date	3. Percentage
4.	6.
7. July 1, 2007 (FY 08)	9. 3.49%
10.	12.
13. July 1, 2008 (FY 09)	15. 3.64%
16.	18.
19. July 1, 2009 (FY 10)	21. 3.79%
22.	24.
25. July 1, 2010 (FY 11)	27. 3.94%
28.	30.
31. July 1, 2011 (FY 12)	33. 4.10%

4:10pm

~~34.~~

~~36.~~

~~37. July 1, 2012 (FY
13)~~

~~39. 4.27%~~

~~40. In addition, on or before June 30, 2009 the District shall, at minimum, contribute into the RHBT an amount equal to three and twenty two one hundredths percent (3.22%) of straight time bargaining unit base pay paid in FY 06 and three and thirty six one hundredths percent (3.36%) of straight time bargaining unit base pay paid in FY 07. These figures represent the “ramp up” percentages for those fiscal years.~~

~~1. The District shall perform an actuarial study of the retiree medical insurance plan liabilities and funding needs (including the Annual Required Contribution “ARC”) after the end of each fiscal year. For each fiscal year beginning with FY 2007, the actuaries shall adjust the above ramp up percentages for the fiscal year for which the study was prepared and for each remaining fiscal year in the ramp up period. The last such adjustment will be in the study performed prior to July 1, 2013 for FY 2013. The revised percentages shall be the percentages contributed by the District to the RHBT for those years, except that the District shall pay no less than the percentages specified in subsections 1 and 2 above.~~

~~2.1. Beginning July 1, 2013, the District shall, at minimum, contribute to the RHBT each pay period an amount equal to the full GASB compliant Annual Required Contribution (ARC) percentage of straight time base pay paid to bargaining unit members during that pay period using an open group valuation method with a closed thirty (30) year amortization schedule for unfunded liability ending June 30, 2034. (For example, if the base pay during the pay period is one million dollars [\$1,000,000] and the ARC percentage is fourteen percent [14%], the District will contribute one hundred forty thousand dollars [\$140,000] to the RHBT for that pay period.)~~

~~4.2. The District shall continue to retain all of the one and six hundred twenty-seven one-thousandths percent (1.627%) Money Purchase Plan contribution for the term of this agreement Commencing July 1, 2017 that contribution shall be retained to referred to in subsection D.5 above to the extent necessary to compensate the District for paying the difference between the actual ARC and the baseline ARC described below. The District shall retain this amount through June 30, 2034. In any year in which the actual ARC does not exceed the baseline ARC by an amount equal to the amount of the retained 1.627% MPPP contribution, the District shall pay the appropriate portion of the 1.627% into the employees’ MPPP accounts, but only to the extent that the difference between the actual ARC and the baseline ARC is less than the dollar value of the retained MPPP 1.627%.~~

4:10 pm

EXAMPLE: Assume that the actual ARC is fifteen percent (15%) in the particular year, the baseline ARC is fourteen percent (14%) in the particular year, and that the difference between the two is one million dollars (\$1,000,000). Assume further that the value of the retained 1.627% is one million five hundred thousand dollars (\$1,500,000). The District would then pay a total of five hundred thousand dollars (\$500,000) into the employees' collective MPPP accounts. These payments would be prorated in the same manner as would result from full payment of the 1.627% into the employee accounts.

The baseline ARC is as follows:

<u>FY Year Beginning</u>	<u>Baseline ARC</u>
7/1/13	11.88%
7/1/14	11.94%
7/1/15	12.00%
7/1/16	12.06%
7/1/17	12.12%
7/1/18	12.18%
7/1/19	12.24%
7/1/20	12.30%
7/1/21	12.36%
7/1/22	12.42%
7/1/23	12.48%
7/1/24	12.54%
7/1/25	12.60%
7/1/26	12.66%
7/1/27	12.72%
7/1/28	12.78%
7/1/29	12.84%
7/1/30	12.90%

4.0

7/1/31	12.96%
7/1/32	13.02%
7/1/33	13.08%

7. Effective July 1, 2013 the District shall direct the Trustee of the RHBT to pay retiree health insurance premiums from the RHBT. No premiums will be paid from the RHBT prior to July 1, 2013.

E. In Lieu of Medical Payments

During any open enrollment period after July 1, 2009, an eligible employee who has medical coverage under a spousal or other alternate plan may elect, in accordance with procedures established by the District to opt out of the group medical and prescription drug benefits covered under Section 5.2(A) ("5.2A Coverage").

The District shall make a monthly payment of \$350.00 "in lieu of medical" to each eligible employee who opts out of 5.2A coverage.

Tax treatment of these payments will be subject to applicable Internal Revenue Code ("IRC") and Internal Revenue Service ("IRS") rules. The payments will be made in a manner that will not impact the income tax status of medical premiums under IRC requirements and to allow an employee to receive the amounts as cash monthly payments.

An eligible employee who opts out of 5.2(A) coverage may subsequently enroll in such coverage as permitted under the terms of the plan(s) described in Section 5.2(A).

F. Trust Review Committee

1. The District's five (5) unions shall each appoint one (1) member to serve on a trust review committee ("TRC"). The District Labor Relations Manager and Human Resources Manager shall serve on the TRC for the District. The TRC shall meet quarterly. Employee members of the TRC will be released from regularly scheduled duty with pay for quarterly TRC meetings.
2. The District will direct the Trustee of the Trust to provide the Unions with quarterly reports of all RHBT operations, including audited and unaudited financial statements and investment performance reports, and other consultant reports in advance of the quarterly TRC meeting. (The parties acknowledge that audited financial statements are performed only once per year.)

4-10-13

3. The Trustee will attend the TRC meeting to answer questions concerning the information provided to the TRC. However, the TRC shall in no way attempt to assist, direct, or otherwise involve itself in matters concerning the investment of Trust assets. However, the TRC may advise the Trustee on other Trust matters to the extent such advisory activity does not affect the legal status of the Trust. It shall be within the sole discretion of the Trustee whether to follow or not follow such advice.
4. The TRC members shall be released from regularly scheduled duty with pay to attend meetings of the Human Resources Manager and Labor Relations Manager with the District's actuaries and other professionals to discuss assumptions to be included in annual GASB valuation studies, the preliminary and final results of such studies, etc. Such studies shall include ARC projections through at least 2035. The District will provide the unions with a copy of the final version of such study on or before February 1 each year or as soon thereafter as is practicable.

G. Retiree Health Benefits Trust

Within one hundred twenty (120) days after the signing of this agreement by the parties hereto, the District shall amend the Trust Agreement to provide that:

1. Trust assets shall be held for the sole and exclusive purpose of providing health benefits to eligible BART retirees and to defray the reasonable expenses of administering the RHBT.
2. The only District benefit plans for which payments may be made from the RHBT shall be those retiree health benefit plans offered to eligible District retirees as a result of its collective bargaining agreements, or District policy which extends such plans to non-represented employees. In addition, for District personnel on a District plan that is no longer generally offered to District employees, payments may be made from the RHBT. However, the District shall ensure sufficient separate funding and the Trustee shall separately account for benefits paid for such personnel.
3. The District may terminate the RHBT, subject to its duty to bargain in good faith to agreement or impasse over such termination with the union. If the District gives the Unions notice of the termination of the RHBT, the Trust shall not terminate until the assets then remaining are exhausted. Such assets shall be used only as provided in paragraph 1 above.

The District reserves the right to terminate or change any part or all of the health benefits program at any time with respect to active or retired employees, however, any such action will be taken only after the District has satisfied its obligations under applicable Collective Bargaining Agreements. The District's contractual obligation to provide health benefits coverage to retired

4:00pm

employees shall terminate upon the expiration of this Agreement. By providing benefits to retirees, the parties do not intend to vest retirees with such benefits.

*** Minute Clarification**

Members who would like to realize the benefit of the in lieu payment as a pre-tax contribution to their deferred compensation accounts can accomplish this result by increasing their deferral amount for the deferred compensation plan by the amount of the in lieu payment, subject to Internal Revenue Code limitations on maximum annual contributions.

*** Minute Clarification**

The parties mutually understand that the only obligation to continue the health benefits of active employees after the expiration of the Agreement is that which may arise from the general legal duty to bargain in good faith.

4:10pm

SEIU/ATU – GENERAL PROVISIONS - BENEFITS**8.0 PAY PROCEDURES****8.1 PAY PERIODS ***

All hourly employees shall be paid bi-weekly on every other Friday, on an hourly rate basis., ~~except that Staff Assistants shall continue to be considered salaried and shall be paid twice a month on the 15th and last day of the month, until such time as the District is able to establish and implement a bi-weekly payroll system for all District represented and non-represented employees. When that occurs, Staff Assistants shall continue to be considered salaried and shall be paid bi-weekly every other Friday.~~

The District shall make available an electronic direct deposit system for payroll checks. As a condition for participating in the electronic direct deposit payroll system, any correction necessary for payment made in error, other than for regular straight time hours worked, which cannot be adjusted in the current pay period will be adjusted in full on the next following pay period's direct deposit subsequent to receipt of written notification to Payroll. If the correction is not made in the next following pay period's direct deposit, the District will make the correction as set forth below.

Except for employees participating in direct deposit, employees whose regular day off/holiday falls on a payday shall receive their payroll checks prior to the end of their shifts on the preceding day. Should checks be available at the employee's work site on the day preceding the regular payday, they shall be distributed to such employees requesting same, but in no event prior to 4:00 p.m. on the day preceding the regular payday.

Pay periods shall remain as established unless changed by mutual agreement.

There shall not be more than five (5) days' holdback of pay for any employee.

4.10
mm
1

The District shall continue the present system of itemized deductions, and all adjustments shall be clearly defined on the statement portion of the check. All shortages above one hundred ~~fifty~~ dollars (\$1050) shall be corrected within the time limits set below. The employee's immediate or appropriate supervisor shall assure that the documentation necessary to correct the shortage has been delivered to Payroll within one (1) work day, exclusive of weekends and holidays, after he/she receives written notification of the shortage from the employee. Payroll shall correct the shortage and cause a check to be available at the employee's normal work location within three (3) Accounting work days, exclusive of weekends and holidays, after receipt of written notification.

All other shortages shall be added to the next paycheck.

No deductions for overpayments shall be made without express specific written authorization from the employee.

In the event an overpayment of fifty one hundred dollars (\$1050) or less is made in error, it may shall be deducted from the employee's first regular paycheck, following discovery of such overpayment upon express written authorization from the employee.

Except for employees participating in direct deposit, any employee taking a scheduled vacation shall be provided an advance paycheck, provided such payday falls within the scheduled vacation period and provided a written request is submitted to the District no less than five (5) Accounting workdays prior to the scheduled vacation.

Final termination paychecks shall be issued to terminating employees within seventy-two (72) hours after such termination becomes effective.

The District will promptly process Public Employees' Retirement System refund forms following an employee's termination.

SEIU/ATU - GENERAL PROVISIONS - HOUSEKEEPING

5/10/13 - 11:37 AM

8.2 COST OF LIVING / WAGE ADJUSTMENT

All employees covered by this Agreement shall be covered by the provisions for a cost of living increase as set forth in this Section.

The wage rates as contained in this Agreement shall not be reduced by application of this Cost of Living Provision. In addition to the wage rates contained in this Agreement, all employees shall be paid cost of living adjustments to be determined on the basis of the "Urban Wage Earners and Clerical Workers" Consumer Price Index (United States Average, revised base 1967 = 100), published by the Bureau of Labor Statistics, United States Department of Labor, in the manner described in this Section (hereafter referred to as the "Index").

A. Effective on June 30, 2013, a Cost of Living Adjustment shall be granted to the wages/salaries of all employees subject to this Agreement equal to one cent (1¢) per hour for each full point four (.4) of a point change in the Consumer Price Index as measured on the basis of movement of the Index published for the month of May, 2013 over the Index published for the month of February, 2013.

B. All Cost of Living Adjustments specified in Paragraph A of this Section for salaried employees shall be at the monthly equivalent of the hourly adjustment (the cost of living cent adjustment times two thousand eighty hours [2,080] hours divided by twelve [12] months = monthly equivalent of the hourly adjustment.)

C. The resulting Cost of Living Allowance shall be used in the computation of pensions, straight time and overtime pay exactly as though the wage rates had been changed by the allowance. However, the allowance shall not be added to the base wage rates.

D. The District, during the negotiations for a succeeding term after June 30, 2013, shall not assert that the Cost of Living Allowance increase effective on June 30, 2013 is included as part of any increased wage offer made by the District for the succeeding contract.



SEIU/ATU – GENERAL PROVISIONS

9.1 SICK LEAVE

A. **Accrual:** Covered employees shall accrue one (1) day of sick leave for each full month of employment. Sick leave credits may be accumulated to a total of two hundred fifty (250) working days.

B. Incentives for Sick Leave Accrued and Unused on or After October 19, 2009:

To encourage employees to maintain maximum attendance and to improve performance, the District offers employees the following two (2) incentives beginning October 19, 2009:

1. **PERS Retirement Service Credit For Sick Leave:** ~~In 2009,~~ The District ~~amended~~ will ~~amend~~ its contract with CalPERS to provide the California Government Code Section 20965 option for service credit for unused sick leave for eligible CalPERS members in the bargaining unit, with an effective date of October 19, 2009. The Public Employees Retirement Law (PERL) and CalPERS rules will govern the eligibility of unused sick leave earned on or after October 19, 2009 for service credit. Those rules presently grant 0.004 years of service credit for each certified unused day of sick leave accrued by the member during the normal course of his/her employment. For employees whose effective date of retirement is within four months of separation from employment with the District, the District shall certify to CalPERS all such unused days of sick leave that were accrued by the employee on or after October 19, 2009. For purposes of Government Code Section 20965, leave accrued prior to October 19, 2009 ~~is shall not be~~ considered “unused” sick leave and the District will not certify such sick leave to CalPERS, unless the employee has made the one-time election to convert such pre-October 19, 2009 sick leave to PERS credit eligible sick leave, ~~pursuant to Paragraph C~~ below.

The parties agree to jointly take reasonable steps to permit the District to cease participation in the PERS Retirement Service Credit for Sick Leave program within thirty (30) days following the signing of this Agreement.

2.. **Annual Buy-Back Or MPPP Incentive:** The District shall give employees the option each year to make an irrevocable election on the schedule indicated below to buy-back or to deposit into their Money Purchase Pension Plan (MPPP) accounts, the dollar value of the sick leave earned within the annual accrual period indicated in paragraph B(2)(a) below, less sick leave taken during that same period, on an after tax basis.

a. **Sick Leave Accrual/Election Periods:** The maximum sick leave which may be earned for each accrual period is ninety-six (96) hours for employees on a 5-8 or 9/80 Work Plan and one hundred twenty (120) hours for employees on a 4-10 Work Plan. Sick leave for which such an election has been made shall not be included by the

District in the certification to CalPERS under the retirement service credit plan described above.

Election Period	Accrual Period
9/1/ 1309 – 9/15/ 0913	9/21/ 1309 – 9/19/140
9/1/ 140 – 9/15/140	9/20/140 – 9/18/151
9/1/ 151 – 9/15/151	9/19/151 – 9/16/162
9/1/ 162 – 9/15/162	9/17/162 – 9/15/173

- b. Buy-Back/MPPP Deposit Amounts:** An election to “buy-back” or to deposit into the MPPP must also include an election as to the percentage amount of the ‘buy-back”, based on the percentage increments and maximums provided below. The maximum Buy-Back percentage that will be allowed is based on the employee’s attendance record during the accrual period.

Days	Eligible Percentage of Unused Earned Sick Leave
0	5% up to 50% (in 5% increments)
1-3	5% up to 40% (in 5% increments)

Buy-Back and MPPP amounts shall be calculated at the employee’s base rate of pay at the end of the accrual period, less applicable tax withholding.

- c. Impact Of Buy-Back/MPPP Election:** Employees may select only one option (Buy-Back or MPPP) for each accrual period.

Once the buy-back or MPPP Incentive election is made for any accrual period it may not be changed. Employees will receive the buy-back checks or MPPP credit no later than December 1 following the end of the accrual period.

Unused sick leave hours for which an election to buy-back or transfer into the MPPP is not made shall be carried over to the next year, subject to maximum accumulation limits, and will no longer be available for any future Annual Buy-Back/MPPP incentive election.

~~C. One-Time Election To Convert Sick Leave Accrued Prior To October 19, 2009 To PERS Creditable Sick Leave~~

~~During the month of October 2009, employees will be given a one-time opportunity to convert unused sick leave that has been accrued prior to October 19, 2009 to PERS credit-eligible sick leave (described in paragraph B(1) above). This election shall be irrevocable, and will include all of the employee’s unused sick leave, including banked sick leave pursuant to D(1), and/or unbanked sick leave pursuant to D(3) below. If an employee makes this election, such accrued leave will no longer be eligible for pay-out at termination/retirement (previously banked leave) or at retirement (unbanked leave). All leave converted pursuant to this paragraph C will be subject to CalPERS rules for service credit eligibility. Leave converted under this paragraph will thereafter be considered, for~~

~~purpose of disposition at the end of employment only, to have been accrued on or after October 19, 2009.~~

C. Sick Leave Accrued Prior To October 19, 2009

Sick leave accrued prior to October 19, 2009, which ~~was~~ not converted to PERS creditable sick leave pursuant ~~under the terms of the 2009-2013 Agreement to paragraph C above,~~ shall continue to be preserved in accounts separate from sick leave accrued on or after October 19, 2009, and shall be used pursuant to the terms of this paragraph C, including subsections (1) – (2).

1. Banked Sick Leave (Under Previously Exercised Option)

This section refers to sick leave which has been 'banked' in accordance with Labor Agreement Section 9.1B(2) as it was in effect on June 30, 2009, or banked pursuant to Agreements previously in effect. It excludes sick leave electively converted to PERS-creditable sick leave, ~~pursuant to paragraph C above.~~ It includes sick leave for which a banking election was made during the 2008 or earlier option periods.

Banked sick leave, as defined above, will be preserved in a separate account for use by the employee in accordance with the provisions of former Section 9.1B(2), including the following:

- a. Such bank shall be set aside for payment upon death/retirement/termination and shall not be included in the calculation of unused sick leave pursuant to paragraph B(1) above or Government Code Section 20965.
- b. Sick leave hours banked will be paid at the employee's base rate of pay, effective on the employee's date of death or retirement/termination from District's employment.
- c. Employees who experience an illness/injury and exhaust their existing sick leave that is available, may utilize sick leave that has been banked under prior Section 9.1b(2) provided they make a written request to do so through their Department Manager at the time of the illness/injury and the circumstances qualify for sick leave under section F ("sick leave payment") below.

~~2. Sick Leave Buy Back (Under Previously Exercised Option)~~

~~Employees who exercised the option during the September 2008 option period specified in Labor Agreement Section 9.1B(3) in effect on June 30, 2009 to make an irrevocable election to buy back or deposit into the MPPP the value of sick leave earned during the annual accrual period, less sick leave taken during the annual accrual period shall receive the buy back payments and the MPPP deposits required by the prior Labor Agreement.~~

~~Buy back checks for the 2009 accrual period under former Labor Agreement Section 9.1B will be distributed to employees no later than December 1 following the end of the accrual period, and MPPP elections for that period will be deposited by that same date.~~

23. Retirement Buy-Back

Sick leave accrued prior to October 19, 2009, and not (1) banked pursuant to paragraph 1 above; (2) bought back or deposited in the MPPP pursuant to paragraph 2 above; (3) converted to PERS creditable sick leave pursuant to paragraph C above; or (4) used pursuant to E and F below, shall be available for use as a Retirement Buy Back incentive. Employees leaving District service on a service retirement shall be paid fifty percent (50%) of this accrued sick leave balance upon the effective date of service retirement. This accrued sick leave shall not be included in the calculation of unused sick leave pursuant to paragraph B above or Government Code Section 20965.

D. Order Of Use Of Sick Leave From Separate Accounts

When using sick leave with pay pursuant to Section E below, employees' sick leave balances will be deducted in the following order:

1. Sick leave accrued on or after October 19, 2009, if any, including any sick leave accrued before October 19, 2009 which an employee has elected to convert to PERS creditable sick leave pursuant to paragraph C above, if any.
2. If the accruals described in paragraph D(1) are exhausted, unbanked sick leave accrued prior to October 19, 2009, if any.
3. If the accruals described in paragraphs D(1) and D(2) above are exhausted, banked sick leave, if any, may be used subject to the terms of paragraph C(1)(c) above.

- E. **Sick Leave Payment:** Employees shall receive sick leave with pay up to the amount of sick leave accrued at the time of illness, provided the requirements of this section are met. Employees shall accrue sick leave credits during the probationary period, however, they shall not be eligible for sick leave pay until after completion of the probation period.

An employee who is absent from work for reasons that qualify for use of sick leave under Section 9.1 who has no accumulated sick leave to cover such absence must use accumulated vacation, personal holiday, and compensatory time off before unpaid leave may be granted. Even though such charges are made, the employee's absence remains subject to the contract provisions governing the use of sick leave. ~~The employee must advise the employee's appropriate absence report recipient, as designated by the District, shall, based on the information provided by the employee, determine of the category of paid leave that shall be charged for such absence. If the employee does not do so,~~ In the absence of requested verification or information, the absence shall be charged by default against the employee's accumulated vacation, holiday and compensatory time off in that order. Sick leave preserved under section 9.1.F last paragraph (below) will not be available for such charges. Holidays may not be charged if such charge would reduce the number of holidays in the employee's account below the number of designated contractual holidays remaining in the fiscal year.

Employees shall be eligible for paid sick leave as follows, without limitation on their rights under state and federal law.

1. Illness, including the appropriate use of required prescribed medication which would impair the employee's work performance, injury, quarantine, or similar exposure to contagious disease;
2. Verifiable medical and/or dental appointments which cannot be scheduled outside the normal working hours, provided that a minimum of forty-eight (48) hours advance notice is given and provided subsequent confirmation that the appointment was kept is given if requested by Management.
3. Doctor's visits associated with pregnancy, subject to the provisions in "2." above;
4. Hospitalization or serious illness/accident and resulting subsequent related scheduled doctor's visits, subject to the provisions in "2." above;
5. Required attendance upon a seriously ill spouse, eligible domestic partner, or child. The District may require a written statement from the attending physician that the employee's attendance was required.
6. Required transportation to doctor for employee's spouse, eligible domestic partner, or child if spouse, eligible domestic partner, or child has serious accident or serious illness (subsequent verified and scheduled doctor's visits resulting from initial visit are also included). The District may require a written statement verifying the doctor's appointment.
7. Industrial injury and resulting subsequent related scheduled doctor's visits.

Sick leave with pay shall apply to each separate sick leave incident. For purposes of this section, "sick leave with pay" means pay calculated at the straight time day shift rate for the number of hours the employee was regularly scheduled to work each day, had the illness or injury not occurred.

If an employee's absence which qualifies for paid sick leave also qualifies as statutory family and medical leave (i.e. FMLA/CFRA), the employee may elect to preserve eligibility for participation in the annual buy-back or transfer into the MPPP of eligible accruals, if elected during the election period, by requesting to substitute vacation, floating holidays (for increments of a full day only), or compensatory leave pay, if applicable, or, if he/she has no accrued vacation, floating holidays or compensatory leave, requesting to take the leave unpaid. The request must be made before receipt of sick pay.

- F. Sick Leave Verification:** The District may take reasonable means to verify the employee's eligibility for sick leave. Upon prior written notice, an employee, at his or her expense may be required to provide a doctor's statement which demonstrates to the satisfaction of the District, eligibility for sick leave as defined above, for any sick leave incident.

Employees shall furnish a doctor's statement for each sick leave incident involving absences of more than three (3) working days

In instances where the District requires a doctor's statement, either to verify sick leave or determine an employee's fitness to return to work, that statement must include the following:

1. date and time of treatment;
2. duration of illness;
3. date cleared to return to work.

~~Otherwise,~~ An employee returning to work from a sick leave incident must submit a required doctor's statement and other documentation within three (3) ~~seven (7)~~ calendar days of his/her return to work. Failure to submit required documentation within the time provided shall result in denial of sick leave pay, and may result in disciplinary action.

The District may require any employee to submit to a medical examination by a doctor designated by the District, at the District's expense, as a condition of return to work from a sick leave incident or to verify the continuing need for sick leave.

Pattern use, misuse or abuse of sick leave will be governed by the District's disciplinary procedures and handled on a case-by-case basis.

- G. Sick Leave Reporting:** It is the responsibility of every employee absent from work because of illness or injury to report such absences to his/her immediate supervisor or the supervisor's designated representative. This report must include information as to the expected date of return to work and where the employee can be reached during his/her normal work hours. The employee will promptly notify his/her supervisor or supervisor's designee of any change which affects his/her ability to return to work.

SEIU/ATU – GENERAL PROVISIONS – ATTENDANCE

5/20/13 - 3:33pm

9.5 TEMPORARY MODIFIED ASSIGNMENT PROCEDURE

~~The parties recognize that offering Temporary Modified Work Assignments (TMA's) can be a form of reasonable accommodation and a benefit to both the District and the employee. When properly administered, benefit the District and employees financially and in accelerating rehabilitation. Temporary modified work or temporary work assignments will be provided where available to those employees who require accommodation as a result of a disability permanently (who volunteer to participate) and temporarily disabled BART employees, when in the judgment of the District, Temporary modified work may be a short term modification of the employee's regular employment or may be the assignment of the employee to an alternative temporary position which is specified for use for employee who cannot temporarily perform their essential job function. work is available which can be provided without adversely affecting operations or services. Temporary modified work will be considered on a case-by-case basis.~~

The District proposes that the remainder of this provision be deleted and revised in its entirety. The District is interested in development of a robust temporary modified assignment program that will provide employees with the ability to continue to work in accordance with limited work restriction or during disability. The District further intends to develop a pilot transitional work program which is designed to allow employees to perform transitional work for a limited period of time to assist those who have been absent because of injury or disability to prepare to return to the workplace full time. The District intends, through these programs to encourage employee who are off work to return to work in a manner that does not result in re-injury

1.2 TERM OF AGREEMENT

The term of this Agreement shall be from and including the first day of July ~~2009-2013~~ up to and including the 30th day of June ~~2013~~ 2016 or one hundred (100) days following receipt of notice of a desire to modify or terminate this Agreement, whichever occurs later. Each party shall comply with Section 1137.1, Par. B of Chapter 9, Part 3, of Division 2 of the California Labor Code, as amended. In the event either party serves notice upon the other party of a desire to modify or terminate the Agreement, the parties shall meet and make all reasonable efforts to reach agreement on the subject matters of such proposed modifications.

The parties shall respond to any requests for information reasonably necessary for intelligent negotiations and the standards and guidelines in accordance with 1137.1, Par. C, of Chapter 9, Part 3 of Division 2 of California Labor Code, as amended. Each party shall supply to the other party such reasonable data as are requested by the other party.

To the fullest extent possible the parties shall endeavor to complete their negotiations at least seven (7) days prior to the date any lawful economic action may be taken in connection with any dispute concerning any proposed changes in any Collective Bargaining Agreement.

ATU-SEIU proposes to change the time limits from seven (7) days to twenty (20) days. *4/2/13*

1.8 CONTRACTING WORK

It is ~~in~~ the intent of the parties that work connected with the operation and maintenance of the system be performed by the bargaining unit employees, consistent with the basic Bay Area Rapid Transit District operations and maintenance philosophy.

~~Should~~ After all existing and internal labor resources are exhausted, and should it become necessary to deviate from this practice contract out work, the Unions shall be informed of the reason work is being reviewed for contract ~~contracted~~. The District shall fax a Contract Notification Form to the President of the ATU or the BART Chapter President, the President of the Professional Chapter, and the Chair of the SEIU Contracting Out Committee, whichever Union is directly affected, prior to submitting the Contract Notification Form to the Procurement Department. The Contract Notification Form will identify the date it is faxed to the President(s), the best estimate of the cost of the contract, the expected duration of the contract, the funding source of the contract, and the reason the work is not being assigned to the bargaining unit. The Union shall have ~~seven (7)~~ twenty (20) workdays after the Contract Notification Form is faxed to provide make a request to meet and confer ~~any comments~~ to the department manager. If a request to meet and confer ~~is~~ ~~comments are~~ received within the ~~seven (7)~~ twenty (20) workday period, the Department Manager will meet and confer ~~prior~~ ~~consider the comments before making his or her final decision to contracting out any work~~.

It is agreed that prior to ~~contracting work~~ submitting a Contract Notification Form requesting to contract out work, the District will give consideration to whether adequate numbers of qualified employees are available to perform the necessary work within time limits available, whether sufficient and suitable equipment is available within the District to perform the work, whether shop capacity is adequate, whether the use of District employees shall involve extra cost to the District, or whether the performance of the work presents added hazards to existing employees which are not present in their normal assignments. ~~Temporary work load, over and above normal positions, including overtime, may be contracted out.~~ Suppliers' personnel performing work related to their equipment and clearly not bargaining unit work will not be prohibited.

Contracts in effect at the time of this Agreement will not be voided by terms of this Agreement.

* Minute Clarification

District procedures regarding contracting out work which include prior notice to the Unions at the commencement of the contracting process shall continue during the term of this Agreement.

ATU / SEIU
6/27/13
9:02 AM

ATU & SEIU PROPOSAL

6/27/13

4.1 VACATION

The District will grant three (3) weeks of vacation following one (1) year of service, four (4) weeks of vacation after ~~eight (8)~~ five (5) years of service, five (5) weeks vacation after ~~fifteen (15)~~ fourteen (14) years of service and six (6) weeks vacation after ~~twenty (20)~~ nineteen (19) years of service, seven (7) weeks vacation after twenty five (25) years of service. Employees may carry over up to sixty (60) days (up to forty-eight [48] days for employees on a 4-10 Plan) of vacation. Employees with four (4) or more weeks of accumulated vacation will be allowed to buy back up to forty (40) hours of such vacation. The election of such buy-back shall be made in December with determination of the four (4) week eligibility threshold to be made in December the following year with payment made in the second February following the election. Subject to applicable law and policies applicable to the MPPP Program, employees may elect to have such payment deposited in their MPPP account on a post tax basis. ~~This shall take effect when BAP Phase I goes live.~~

Employees will select their vacation in accordance with the applicable seniority provisions consistent with the scheduling ability of their department, division or section.

In the event an employee terminates or retires, he/she shall be granted pro rata vacation compensation based upon his/her accrued credits.

Vacation allocation will be scheduled throughout the calendar year; however, to the maximum extent possible, consideration consistent with operating requirements will be given to allow employees to take their vacation during the summer months.

Should a contractual holiday fall within the employee's vacation period, compensation will be applied consistent with holiday provisions of this Agreement.

Years of service shall be based upon the employee's date of employment by the Bay Area Rapid Transit District or in the case of 13(c) employees, in accordance with the 13(c) Award.

Vacation accrual will not be continued beyond thirty-one (31) days in the event an employee is in a non-pay status.

4:12 pm

5.9 DISABILITY COVERAGE

A. **Short-Term Disability Coverage** - The District will continue to maintain Short-Term Disability coverage at the following rates:

Weeks of Disability	Maximum Salary	Maximum Benefit
1 st - 26 th	\$1260-\$2000 x 66 3/4%	\$840-\$1332

At no time will disability coverage be less than level mandated by State law.

B. **Long-Term Disability** - The District will continue to maintain Long-Term Disability coverage with a maximum monthly weekly benefit of sixty-six and two-thirds percent (66%) of the base monthly weekly salary up to two thousand dollars (\$2000.) to a maximum insured salary of two thousand dollars (\$2,000) per month. Maximum benefit - one thousand four hundred fifty-six dollars (\$1,456.00) one thousand three hundred and thirty two dollars (\$1,332) per month week, for weeks twenty-seven (27) through fifty-two (52) and one thousand three hundred thirty-four dollars (\$1,334.00) for weeks fifty-three (53) and any subsequent week.

C. **Employee Purchase of Additional Coverage**

Employee has the ability to purchase additional Short Term and/or Long Term Disability coverage up to the dollar amount(s) to be made whole.

1. Short-Term Disability Coverage - Employees may purchase additional Short-Term Disability coverage up to the following rates:

Weeks of Disability	Maximum Salary	Maximum Benefit
<u>1st - 4th</u>	<u>\$800.00 x 66 %</u>	<u>\$533.00</u>
<u>5th - 26th</u>	<u>\$931.00 x 66 %</u>	<u>\$621.00</u>

Premiums for this additional coverage shall be fully paid by the employee.

2. Long-Term Disability Coverage - Employees may purchase additional Long-Term Disability coverage to assure payment of up to sixty-six and two-thirds percent (66-2/3%) of the employee's base monthly salary to a maximum insured salary of three thousand dollars (\$3,000) per month. The maximum monthly benefit is two thousand dollars (\$2,000). Premiums for this additional coverage shall be fully paid by the employee.

Eligibility of employees to purchase additional Short-Term and/or Long-Term Disability coverage shall be subject to medical certification of insurability.

5.9 DISABILITY COVERAGE

A. Short-Term Disability Coverage - The District will continue to maintain Short-Term Disability coverage at the following rates:

Weeks of Disability	Maximum Salary	Maximum Benefit
1 st - 26 th	\$1260 Base Monthly Salary x 66 ⅔%	\$840

At no time will disability coverage be less than level mandated by State law.

B. Long-Term Disability - The District will continue to maintain Long-Term Disability coverage with a maximum monthly benefit of sixty-six and two-thirds percent (66-⅔%) of the base monthly salary to a maximum insured salary of two thousand dollars (\$2,000) per month. Maximum benefit one thousand four hundred fifty six dollars (\$1,456.00) per month for weeks twenty-seven (27) through fifty two (52) and one thousand three hundred thirty four dollars (\$1,334.00) for weeks fifty-three (53) and any subsequent week.

C. Employee Purchase of Additional Coverage

Employees shall have the ability to purchase additional Short Term and/or Long Term Disability coverage up to the dollar amount(s) to be made whole.

~~1. Short-Term Disability Coverage - Employees may purchase additional Short Term Disability coverage up to the following rates:~~

Weeks of Disability	Maximum Salary	Maximum Benefit
1 st - 4 th	\$800.00 x 66 ⅔%	\$533.00
5 th - 26 th	\$931.00 x 66 ⅔%	\$621.00

Premiums for this additional coverage shall be fully paid by the employee.

~~Long-Term Disability Coverage - Employees may purchase additional Long-Term Disability coverage to assure payment of up to sixty-six and two-thirds percent (66-⅔%) of the employee's base monthly salary to a maximum insured salary of three thousand dollars (\$3,000) per month. The maximum monthly benefit is two thousand dollars (\$2,000). Premiums for this additional coverage shall be fully paid by the employee.~~

Eligibility of employees to purchase additional Short-Term and/or Long-Term Disability coverage shall be subject to medical certification of insurability.

5.10 EMPLOYEE ASSISTANCE PROGRAM

The parties agree that the District will continue a referral program for the purpose of assisting, in a confidential manner, employees and their families with marital, psychological, alcohol, drug, child, elder and other dependent care needs, domestic violence, financial, legal and other problems to obtain counseling and other services. A twenty-four (24) hour crisis intervention service will be available at all times. Child care and other dependent care services, including those with emergency availability, are also available.

The Unions agree to cooperate with the District in the administration of this program.

The District shall retain a consultant to provide referrals as appropriate in the above-described problem areas. The District shall pay the cost of this consultant's referral services, which will constitute the entire District monetary contribution to this program.

The costs for all other services provided to employees or their families under this program shall be borne by the participating employee/family member to the extent such services are not covered by the employee's medical or other benefit plans.

The District shall distribute informational materials in order to inform employees of the EAP Program and the services provided and shall provide union stewards and officials, on an annual basis, with training regarding the nature and extent of said programs and otherwise provide the unions with information as may be requested regarding the nature and extent of all such programs.

The District shall provide reimbursements for parents who are unable to use their regular childcare provider. Employees shall receive reimbursement up to \$100 a day, to a maximum of \$500 a year. The District shall provide resource and referral services for families who need such care.

The District shall provide a Dependent Care referral service, for programs such as child and elder care, counseling, seminars, education and information services.

The parties agree that all employees have the right to a work environment free of and safe from domestic violence, which may involve physical, psychological, economic violence or stalking, against a current or former intimate partner. The District shall use early prevention strategies to avoid or to minimize the occurrence and effects of domestic violence in the workplace and to offer assistance and a supportive environment to its employees experiencing domestic violence. In all responses to domestic violence, the employer shall respect employees' confidentiality.

The EAP shall include professionals trained specifically in domestic violence and its potential impacts.

7.4 FREE PARKING AT BART STATIONS (NEW)

400/mo.

Existing practices in regards to employee parking and the current dollar amount that employees pay for parking shall remain in effect for the life of the contract.

4/1 2/2013

8.1 PAY PERIODS *

All hourly employees shall be paid bi-weekly on every other Friday on an hourly rate basis, ~~except that Staff Assistants shall continue to be considered salaried and shall be paid twice a month on the 15th and last day of the month, until such time as the District is able to establish and implement a bi-weekly payroll system for all District represented and non-represented employees. When that occurs, Staff Assistants shall continue to be considered salaried and shall be paid bi-weekly every other Friday.~~

The District shall make available an electronic direct deposit system for payroll checks. As a condition for participating in the electronic direct deposit payroll system, any correction necessary for payment made in error, other than for regular straight time hours worked, which cannot be adjusted in the current pay period will be adjusted in full on the next following pay period's direct deposit subsequent to receipt of written notification to Payroll. If the correction is not made in the next following pay period's direct deposit, the District will make the correction as set forth below.

Except for employees participating in direct deposit, employees whose regular day off/holiday falls on a payday shall receive their payroll checks prior to the end of their shifts on the preceding day. Should checks be available at the employee's work site on the day preceding the regular payday, they shall be distributed to such employees requesting same, but in no event prior to 4:00 p.m. on the day preceding the regular payday.

Pay periods shall remain as established unless changed by mutual agreement.

There shall not be more than five (5) days' holdback of pay for any employee.

The District shall continue the present system of itemized deductions, and all adjustments shall be clearly defined on the statement portion of the check. All shortages above fifty dollars (\$50) shall be corrected within the time limits set below. The employee's immediate or appropriate supervisor shall assure that the documentation necessary to correct the shortage has been delivered to Payroll within one (1) work day, exclusive of weekends and holidays, after he/she receives written notification of the shortage from the employee. Payroll shall correct the shortage and cause a check to be available at the employee's normal work location within three (3) Accounting work days, exclusive of weekends and holidays, after

receipt of written notification. If the employee does not receive the shortage pay as defined in this section, the employee shall be paid a five (5) percent penalty per day until employee receives the check for shortage.

All other shortages shall be added to the next paycheck.

No deductions for overpayments shall be made without express specific written authorization from the employee.

~~In the event an overpayment of fifty dollars (\$50) or less is made in error, it shall be deducted from the employee's first regular paycheck, following discovery of such overpayment.~~

Except for employees participating in direct deposit, any employee taking a scheduled vacation shall be provided an advance paycheck, provided such payday falls within the scheduled vacation period and provided a written request is submitted to the District no less than five (5) Accounting workdays prior to the scheduled vacation.

Final termination paychecks shall be issued to terminating employees within seventy-two (72) hours after such termination becomes effective.

The District will promptly process Public Employees' Retirement System refund forms following an employee's termination.

* Minute Clarification

The parties have reached the following understanding with respect to repayment of overpayments made to employees. This understanding also applies to overpayments made pursuant to the electronic direct deposit system.

Where repayment of the entire amount of the overpayment in a lump sum would work a hardship on the affected employee, the Union may request development of a reasonable repayment schedule through Human Resources. Such request will not be unreasonably denied by Human Resources.

8.2 COST OF LIVING / WAGE ADJUSTMENT

All employees covered by this Agreement shall be covered by the provisions for a cost of living increase as set forth in this Section.

The wage rates as contained in this Agreement shall not be reduced by application of this Cost of Living Provision. In addition to the wage rates contained in this Agreement, all employees shall be paid cost of living adjustments to be determined on the basis of the "Urban Wage Earners and Clerical Workers" Consumer Price Index for the San Francisco Bay Area (United States Average, San Francisco-Oakland-San Jose, CA area base period revised base 1967 = 100 1982-84 = 100), published by the Bureau of Labor Statistics, United States Department of Labor, in the manner described in this Section (hereafter referred to as the "Index").

- A. ~~Effective on June 30, 2013, a Cost of Living Adjustment shall be granted to the wages/salaries of all employees subject to this Agreement equal to one cent (1¢) per hour for each full point four (.4) of a point change in the Consumer Price Index as measured on the basis of movement of the Index published for the month of May, 2013 over the Index published for the month of February, 2013.~~ Effective July 1, 2013, a Cost of Living Adjustment shall be granted to the wages/salaries of all employees subject to this Agreement equal to the percentage change in the Index as measured by movement of the Index published for the month of May, 2013 over the Index published for May, 2012.
- B. ~~All Cost of Living Adjustments specified in Paragraph A of this Section for salaried employees shall be at the monthly equivalent of the hourly adjustment (the cost of living cent adjustment times two thousand eighty hours (2,080) hours divided by twelve (12) months = monthly equivalent of the hourly adjustment.)~~ Effective July 1, 2014, a Cost of Living Adjustment shall be granted to the wages/salaries of all employees subject to this Agreement equal to the percentage change in the Index as measured by the movement of the Index published for the month of May, 2014 over the Index published for May, 2013.
- C. ~~The resulting Cost of Living Allowance shall be used in the computation of pensions, straight time and overtime pay exactly as though the wage rates had been changed by the allowance. However, the allowance shall not be added to the base wage rates.~~ Effective July 1, 2015, a Cost of Living Adjustment shall be granted to the wages/salaries of all employees subject to this Agreement equal to the percentage change in the Index as measured by the movement of the Index published for the month of May, 2015 over the Index published for May, 2014.
- D. Such succeeding base rates shall include cost of living adjustments granted during the preceding year which shall be added to and become a part of the base wage rate. In computing adjustments due on any July 1, the first step shall be to add the previous accumulated cost of living adjustment for the prior year to the base before calculating the percentage adjustment due.

E. All Cost of Living Adjustments specified in Paragraphs A, B, C of this Section for salaried employees shall be at the monthly equivalent of the hourly adjustment (the cost of living cent adjustment times two thousand eighty hours [2,080] hours divided by twelve [12] months= monthly equivalent of the hourly adjustment.)

~~D. The District, during the negotiations for a succeeding term after June 30, 2013 shall not assert that the Cost of Living Allowance increase effective on June 30, 2013 is included as part of any increased wage offer made by the District for the succeeding contract.~~

6/30/13
7.5 years

ATU & SEIU GENERAL PROPOSAL

6/30/13

9.1 SICK LEAVE

A. Accrual: Covered employees shall accrue one (1) day of sick leave for each full month of employment. Sick leave credits may be accumulated to a total of two hundred fifty (250) working days.

B. Incentives For Sick Leave Accrued And Unused On Or After October 19, 2009

To encourage employees to maintain maximum attendance and to improve performance, the District offers employees the following ~~two (2)~~ incentives beginning October 19, 2009:

1. **PERS Retirement Service Credit For Sick Leave:** The District will amend its contract with CalPERS to provide the California Government Code Section 20965 option for service credit for unused sick leave for eligible CalPERS members in the bargaining unit, with an effective date of October 19, 2009. The Public Employees Retirement Law (PERL) and CalPERS rules will govern the eligibility of unused sick leave earned on or after October 19, 2009 for service credit. Those rules presently grant 0.004 years of service credit for each certified unused day of sick leave accrued by the member during the normal course of his/her employment. For employees whose effective date of retirement is within four months of separation from employment with the District, the District shall certify to CalPERS all such unused days of sick leave that were accrued by the employee on or after October 19, 2009. For purposes of Government Code Section 20965, leave accrued prior to October 19, 2009 shall not be considered "unused" sick leave and the District will not certify such sick leave to CalPERS, unless the employee has made the one-time election to convert such pre-October 19, 2009 sick leave to PERS credit eligible sick leave pursuant to Paragraph C below.

- i. The parties agree that they shall take all necessary steps to cease participation in the PERS Retirement Service Credit for Sick Leave program within 30 days following signing of this agreement to be replaced with the incentives identified in 9.1B(3) and 9.1B(4).

2. **Annual Buy-Back Or MPPP Incentive:** The District shall give employees the option each year to make an irrevocable election on the schedule indicated below to buy-back or to deposit into their Money Purchase Pension Plan (MPPP) accounts, the dollar value of the sick leave earned within the annual accrual period indicated in paragraph B(2)(a) below, less sick leave taken during that same period, on an after tax basis.

- a. **Sick Leave Accrual/Election Periods:** The maximum sick leave which may be earned for each accrual period is ninety-six (96) hours for employees on a 5-8 or 9/80 Work Plan and

one hundred twenty (120) hours for employees on a 4-10 Work Plan. Sick leave for which such an election has been made shall not be included by the District in the certification to CalPERS under the retirement service credit plan described above.

Election Period	Accrual Period
9/1/09 - 9/15/09	9/21/09 - 9/19/10
9/1/10 - 9/15/10	9/20/10 - 9/18/11
9/1/11 - 9/15/11	9/19/11 - 9/16/12
9/1/12 - 9/15/12	9/17/12 - 9/15/13
9/1/13 - 9/15/13	9/21/13 - 9/19/14
9/1/14 - 9/15/14	9/20/14 - 9/18/15
9/1/15 - 9/15/15	9/19/15 - 9/16/16

- b. **Buy-Back/MPPP Deposit Amounts:** An election to “buy-back” or to deposit into the MPPP must also include an election as to the percentage amount of the “buy-back”, based on the percentage increments and maximums provided below. The maximum Buy-Back percentage that will be allowed is based on the employee’s attendance record during the accrual period.

Days	Eligible Percentage of Unused Earned Sick Leave
0	5% up to 50% (in 5% increments)
1-3	5% up to 40% (in 5% increments)

Buy-Back and MPPP amounts shall be calculated at 1.25 the employee’s base rate of pay at the end of the accrual period, less applicable tax withholding.

- c. **Impact Of Buy-Back/MPPP Election:** Employees may select only one option (Buy-Back or MPPP) for each accrual period.

Once the buy-back or MPPP Incentive election is made for any accrual period it may not be changed. Employees will receive the buy-back checks or MPPP credit no later than December 1 following the end of the accrual period.

Unused sick leave hours for which an election to buy-back or transfer into the MPPP is not made shall be carried over to the next year, subject to maximum accumulation limits, and will no longer be available for any future Annual Buy-Back/MPPP incentive election.

3. Limiting Sick Leave Usage Incentive: An Employee who does not use any sick leave during each of the Accrual Period(s) described in Section 9.2a, shall be granted one (1) additional day (extra day) of paid leave. This extra day is to be used in the same manner as a floating holiday, and be deposited to the employees holiday accrual account no later than December 1 following the end of the accrual period
4. Retirement Buy-Back: Employees leaving District service on a service retirement (non-disability retirement) shall be paid eighty percent (80%) of any and all of their accrued sick leave balance(s) upon the effective date of service retirement.

C. One Time Election To Convert Sick Leave Accrued Prior To October 19, 2009 To PERS Creditable Sick Leave

During the month of October 2009, employees will be given a one-time opportunity to convert unused sick leave that has been accrued prior to October 19, 2009 to PERS-credit-eligible sick leave (described in paragraph B(1) above). This election shall be irrevocable, and will include all of the employee's unused sick leave, including banked sick leave pursuant to D(1), and/or unbanked sick leave pursuant to D(3) below. If an employee makes this election, such accrued leave will no longer be eligible for pay-out at termination/retirement (previously banked leave) or at retirement (unbanked leave). All leave converted pursuant to this paragraph C will be subject to CalPERS rules for service credit eligibility. Leave converted under this paragraph will thereafter be considered, for purposes of disposition at the end of employment only, to have been accrued on or after October 19, 2009.

D. Sick Leave Accrued Prior To October 19, 2009

Sick leave accrued prior to October 19, 2009, which is not converted to PERS creditable sick leave pursuant to paragraph C above, shall be preserved in accounts separate from sick leave accrued on or after October 19, 2009, and shall be used pursuant to the terms of this paragraph D, including subsections (1) – (3).

1. Banked Sick Leave (Under Previously Exercised Option)

This section refers to sick leave which has been 'banked' in accordance with Labor Agreement Section 9.1B(2) as it was in effect on June 30, 2009, or banked pursuant to Agreements previously in effect. It excludes sick leave electively converted to PERS-credit-eligible sick leave pursuant to paragraph C above. It includes sick leave for which a banking election was made during the 2008 or earlier option periods.

Banked sick leave, as defined above, will be preserved in a separate account for use by the employee in accordance with the provisions of former Section 9.1B(2), including the following:

- a. Such bank shall be set aside for payment upon death/retirement/termination and shall not be included in the calculation of unused sick leave pursuant to paragraph B(1) above or Government Code Section 20965.
- b. Sick leave hours banked will be paid at the employee's base rate of pay, effective on the employee's date of death or retirement/termination from District's employment.
- c. Employees who experience an illness/injury and exhaust their existing sick leave that is available, may utilize sick leave that has been banked under prior Section 9.1b(2) provided they make a written request to do so through their Department Manager at the time of the illness/injury and the circumstances qualify for sick leave under section F ("sick leave payment") below.

2. Sick Leave Buy-Back (Under Previously Exercised Option)

Employees who exercised the option during the September 2008 option period specified in Labor Agreement Section 9.1B(3) in effect on June 30, 2009 to make an irrevocable election to buy-back or deposit into the MPPP the value of sick leave earned during the annual accrual period, less sick leave taken during the annual accrual period shall receive the buy-back payments and the MPPP deposits required by the prior Labor Agreement.

Buy back checks for the 2009 accrual period under former Labor Agreement Section 9.1B will be distributed to employees no later than December 1 following the end of the accrual period, and MPPP elections for that period will be deposited by that same date.

3. Retirement Buy-Back

Sick leave accrued prior to October 19, 2009, and not (1) banked pursuant to paragraph 1 above; (2) bought back or deposited in the MPPP pursuant to paragraph 2 above; (3) converted to PERS creditable sick leave pursuant to paragraph C above; or (4) used pursuant to E and F below, shall be available for use as a Retirement Buy Back incentive. Employees leaving District service on a service retirement shall be paid fifty percent (50%) of this accrued sick leave balance upon the effective date of service retirement. This accrued sick leave shall not be included in the calculation of unused sick leave pursuant to paragraph B above or Government Code Section 20965.

E. Order Of Use Of Sick Leave From Separate Accounts

When using sick leave with pay pursuant to Section F below, employees' sick leave balances will be deducted in the following order:

1. Sick leave accrued on or after October 19, 2009, if any, including any sick leave accrued before October 19, 2009 which an employee has elected to convert to PERS creditable sick leave pursuant to paragraph C above, if any.
2. If the accruals described in paragraph E(1) are exhausted, unbanked sick leave accrued

prior to October 19, 2009, if any.

3. If the accruals described in paragraphs E(1) and E(2) above are exhausted, banked sick leave, if any, may be used subject to the terms of paragraph D(1)(c) above.

F. Sick Leave Payment: Employees shall receive sick leave with pay up to the amount of sick leave accrued at the time of illness, provided the requirements of this section are met. Employees shall accrue sick leave credits during the probationary period, however, they shall not be eligible for sick leave pay until after completion of the probation period.

An employee who is absent from work for reasons that qualify for use of sick leave under Section 9.1 who has no accumulated sick leave to cover such absence must use accumulated vacation, personal holiday, and compensatory time off unpaid leave may be granted. Even though such charges are made, the employee's absence remains subject to the contract provisions governing the use of sick leave. The employee must advise the employee's appropriate absence report recipient, as designated by the District, of the category of paid leave that shall be charged for such absence. If the employee does not do so, the absence shall be charged by default against the employee's accumulated vacation, holiday and compensatory time off in that order. Sick leave preserved under section 9.1.F last paragraph (below) will not be available for such charges. Holidays may not be charged if such charge would reduce the number of holidays in the employee's account below the number of designated contractual holidays remaining in the fiscal year.

If an employee is on unpaid sick status or other unpaid time (i.e. a leave of absence not protected by statute) for three (3) or more of his or her regularly scheduled work days during the workweek, he or she will not be eligible to work on his or her RDOs in that work week.

Employees shall be eligible for paid sick leave as follows, without limitation on their rights under state and federal law.

1. Illness, including the appropriate use of required prescribed medication which would impair the employee's work performance, injury, quarantine, or similar exposure to contagious disease;
2. Verifiable medical and/or dental appointments which cannot be scheduled outside the normal working hours, provided that a minimum of forty-eight (48) hours advance notice is given and provided subsequent confirmation that the appointment was kept is given if requested by Management.
3. Doctor's visits associated with pregnancy, subject to the provisions in "2." above;
4. Hospitalization or serious illness/accident and resulting subsequent related scheduled doctor's visits, subject to the provisions in "2." above;

5. Required attendance upon a seriously ill spouse, eligible domestic partner, or child. The District may require a written statement from the attending physician that the employee's attendance was required.
6. Required transportation to doctor for employee's spouse, eligible domestic partner, or child if spouse, eligible domestic partner, or child has serious accident or serious illness (subsequent verified and scheduled doctor's visits resulting from initial visit are also included).
7. Industrial injury and resulting subsequent related scheduled doctor's visits.

Sick leave with pay shall apply to each separate sick leave incident. For purposes of this section, "sick leave with pay" means pay calculated at the straight time day shift rate for the number of hours the employee was regularly scheduled to work each day, had the illness or injury not occurred.

If an employee's absence which qualifies for paid sick leave also qualifies as statutory family and medical leave (i.e. FMLA/CFRA), the employee may elect to preserve eligibility for participation in the annual buy-back or transfer into the MPPP of eligible accruals, if elected during the election period, by requesting to substitute vacation, floating holidays (for increments of a full day only), or compensatory leave pay, if applicable, or, if he/she has no accrued vacation, floating holidays or compensatory leave, requesting to take the leave unpaid. The request must be made before receipt of sick pay.

G. Sick Leave Verification: The District may take reasonable means to verify the employee's eligibility for sick leave. Upon prior written notice, an employee, at his or her expense may be required to provide a doctor's statement which demonstrates to the satisfaction of the District, eligibility for sick leave as defined above, for any sick leave incident.

Employees shall furnish a doctor's statement for each sick leave incident involving absences of more than three (3) working days

If the employee remains off work for a period in excess of thirty (30) work days, the District may request that the employee provide a doctor's verification of the continuing need for sick leave.

In instances where the District requires a doctor's statement, either to verify sick leave or determine an employee's fitness to return to work, that statement must include the following:

1. date and time of treatment;
2. duration of illness;
3. date cleared to return to work.

Otherwise, an employee returning to work from a sick leave incident must submit a required doctor's statement and other documentation within seven (7) calendar days of his/ her return to

work. Failure to submit required documentation within the time provided shall result in denial of sick leave pay, and may result in disciplinary action.

The District may require any employee to submit to a medical examination by a doctor designated by the District, at the District's expense, as a condition of return to work from a sick leave incident or to verify the continuing need for sick leave.

Pattern use, misuse or abuse of sick leave will be governed by the District's disciplinary procedures and handled on a case-by-case basis.

H. Sick Leave Reporting: It is the responsibility of every employee absent from work because of illness or injury to report such absences to his/her immediate supervisor or the supervisor's designated representative. This report must include information as to the expected date of return to work and where the employee can be reached during his/her normal work hours. The employee will promptly notify his/her supervisor or supervisor's designee of any change which affects his/her ability to return to work.

ATU/SEIU

6/04/13

6:53pm

SEIU/ATUGENERAL

PROVISIONS

Formatted: Font: 12 pt

Formatted: Font: 12 pt

District Proposal 6-4-2013

Formatted: Normal, Indent: Left: 0", First line: 0"

Formatted: Font: 12 pt

9.5 TEMPORARY MODIFIED ASSIGNMENT/REASONABLE ACCOMODATION PROCEDURE

A. Temporary Modified Assignment

The parties recognize that offering Temporary Modified Work Assignments (TMA's) can, when properly administered, administered; benefit the District and employees financially and in accelerating rehabilitation. Temporary modified work or temporary work assignments will be provided to permanently (who volunteer to participate) and temporarily disabled BART employees, when in the judgment of the District, District; work is available which can be provided without adversely affecting operations or services. Temporary modified work will be considered on a case-by-case basis.

Formatted: Font: 16 pt

Formatted: Font: 16 pt

Formatted: Font: 16 pt

The District is obligated under statue to conduct an extensive program of interaction with employees who are disabled from performing their usual duties on either a temporary or permanent basis. Processes are in place, and continually subject to refinement and/or modification, to accomplish this proactive program, which includes solutions such as temporary modification of the employee's own job; temporary placement of the employee in another District position, subject to the District's collective bargaining agreements; temporary provision of work for the employee that is not 'regular' District work, and so forth. These evaluations are conducted on an ongoing basis, and incorporate the best advice of both the employee, as well as the District and its advisors as to appropriate accommodations. shall evaluate and determine whether an employee shall be placed in a temporary

Formatted: Do not check spelling or grammar

modified assignment and/or any other reasonable accommodation that may be required, in accordance with all applicable laws and regulations.

B. Transitional Work Pilot Program(s) Return to Work Program

Employees who have been off work as the result of a work related injury or other ~~ies~~ or temporary disability may benefit from a transitional ~~modified~~ work assignment for a limited period of time before undertaking their ~~his~~ or ~~her~~ regular work assignments.

Such a program may include elements such as work in another unit, classification or related work; a program of physical therapy or other 'case hardening' activities under professional supervision and/or direction to promote return to normal duties and to reduce the risk of re-injury. For example, the Transportation Department has indicated interest in such a program within the ATU bargaining unit to provide an opportunity for employees who are unable to perform their essential job functions to return to work as customer service assistants, whose function would be limited to providing additional public assistance on the platforms and in the paid areas of the stations. Such assistance shall not be and is not intended to circumvent the station agent job duties but rather to provide additional customer assistance and to provide those employees with the opportunity to regain strength and make a successful return to the workplace.

Formatted: Underline

The District proposes to enter into discussions with the union in an effort to establish one or more such pilot programs in addition to solutions already available that do not impact the terms of the collective bargaining agreement. After such pilot program is in operations for six (6) months, the District and Unions shall meet with respect to whether to continue the program and if the parties agree the District shall investigate and initiate additional pilot programs in other departments.

Formatted: Font: 16 pt

Formatted: Do not check spelling or grammar

~~Each employee who desires a TMA shall submit a written notice of such desire simultaneously to his or her immediate supervisor and the District's Disability Programs Office, Department of Human Resources. Promptly after receipt of such notice, the Disability Program Office shall provide the employee with a Return-to-Work questionnaire for completion by the employee's physician, an instruction sheet on how to complete these forms, and a copy of section 9.5 of the Labor Agreement. The employee must simultaneously return this form completed to the Disability Program Office and the employee's immediate supervisor. Temporary modified work may involve modification of an employee's own job or assignment to work outside of an employee's current position or bargaining unit, as provided herein. The Disability Programs Office, in consultation with the applicable department, will determine eligibility for participation in the temporary modified work program and will coordinate temporary work positions/assignments.~~

~~To aid in the administration of this program, the (SEIU and ATU) shall appoint two persons from their bargaining unit to serve on a TMA committee. The duties of the committee include (a) identifying potential TMA opportunities not otherwise identified by the District and recommending them to the Senior Personnel Analyst of the Disability Programs Office for consideration, (b) evaluating proposed TMA assignments and (c) advising the Senior Personnel Analyst of the Disability Programs Office on potential improvements in program administration. The Senior Personnel Analyst of the Disability Programs Office shall periodically train new committee members concerning the TMA Program, and shall periodically offer such training to union officers, stewards, supervisors, and managers.~~

~~The Senior Personnel Analyst of the Disability Programs Office shall provide committee members with a quarterly report of all requests for~~

Formatted: Do not check spelling or grammar

~~TMA application materials, completed Return to Work questionnaires, and TMA's that have been implemented. In addition, the committee shall have access to the completed Return to Work questionnaires as they are submitted. The Senior Personnel Analyst of the Disability Programs Office may propose a TMA that crosses bargaining unit lines or that is intra-unit but not on the list described in 9.5.C.3. The committee may by unanimous vote approve assignments that cross bargaining unit lines. The representatives of the Union affected by a proposed intra-unit TMA not on the list may unanimously approve such assignment. If the Senior Personnel Analyst of the Disability Programs Office, the union presidents and Labor Relations Manager agree in writing, additional TMA's may be added to or removed from the list set forth in section 9.5.C.3.~~

~~On written notice delivered to the others within 150 and 180 days before the expiration date of this agreement, (either SEIU, ATU, or the District) may terminate further use or consideration of inter-bargaining unit TMA's and such use or consideration as occurs during the life of this agreement shall not be deemed precedent setting. The parties further agree that the relaxation of jurisdictional boundaries or rights permitted under this section is experimental in nature, restricted exclusively to this section, and may not be relied on as a precedent in any future dealings between them or any other bargaining unit.~~

~~A. **Medical Evaluation:** The Benefits Analyst will review all requests for temporary modified work. The Benefits Analyst may, after obtaining all necessary authorizations to release medical information, review the employee's medical records, confer with the employee's doctor and/or schedule an examination with a District-selected doctor to determine what type of work accommodations are required. All proposed accommodations or temporary modified positions/ assignments will be reviewed by a District-accepted physician, which may be the employee's physician, if said physician is selected by the District for this~~

Formatted: No bullets or numbering

Formatted: Do not check spelling or grammar

~~purpose, to determine if the job requirements/assignments are within the employee's physical and mental abilities. Any disputes will be handled in accordance with Section 9.3 of the Agreement.~~

~~B. **Accommodation Review:** The Benefits Analyst will discuss accommodation options with a Department representative to determine if accommodations can be made for the employee's disability on a limited term basis without adversely affecting operations or services.~~

~~Accommodations may include but are not limited to:~~

- ~~1. Reduced work schedules at a minimum of twenty (20) hours per week. Schedules which will result in mid-shift interruptions will not be available;~~
- ~~2. reassignment of non-essential duties; and~~
- ~~3. alternate temporary work assignments.~~

Formatted: Indent: Left: 0.5", No bullets or numbering

~~C. **Alternate Temporary Modified Positions/ Assignments:**~~

- ~~1. The Senior Personnel Analyst of the Disability Office will follow the sequence outlined below in determining whether alternate temporary modified work positions/ assignments may be made:
 - ~~a. consider returning the employee to work in his/her current position in a modified capacity;~~
 - ~~b. when, in the District's judgment, this is not possible, consider an alternate temporary position/ assignment in the employee's department (Alternate placement within the employee's department will not involve placement in a position represented by a different bargaining unit.);~~
 - ~~c. thereafter, consider an alternate position/ assignment outside the department (Placement outside the department will not~~~~

Formatted: Do not check spelling or grammar

involve placement in a position represented by a different bargaining unit.); and

~~d. consider an alternate non-represented position/assignment outside the bargaining unit. Employees placed in non-represented positions/assignments retain the contractual protections provided for in the CBA of their respective Unions.~~

- ~~2. If temporary modified work is not available within the employee's own department, the Senior Personnel Analyst of the Disability Office will determine if there are any unfilled temporary help requests which the employee may be able to fill.~~
- ~~3. A list of temporary modified positions/assignments in which employees who are temporarily disabled may be placed will be developed. Departments who have temporary modified positions/assignments with which they need assistance may submit work requests to the Benefits Office.~~
- ~~4. If there are no temporary help requests available which the employee is qualified to fill, the Benefits Office will determine if there are any assignments on the modified assignment list which the employee is medically qualified to perform.~~
- ~~5. If a temporary modified position/assignment is available, for which the employee meets the minimum qualifications, the Benefits Analyst will confer with the appropriate department regarding placing the disabled employee in the temporary modified position/assignment.~~
- ~~6. If the Department Head or designee agrees with the recommendation, the employee and the Union will be so notified.~~
- ~~7. If the hiring department for the potential position/assignment believes the disabled employee is not qualified, for any reason, to~~

Formatted: Do not check spelling or grammar

~~perform the duties of the temporary modified position/assignment, the employee will remain off work. The Senior Personnel Analyst of the Disability Programs Office will, after consultation with the District's Office of Civil Rights, review the matter with the Department Manager of Human Resources whose decision will be binding on the hiring department except as provided in (8) below.~~

~~8. The hiring department may, within three days following notice of the Department Manager of Human Resources' decision, appeal the decision to the Deputy General Manager, whose decision will be final and binding.~~

~~D. General Requirements:~~

Formatted: No bullets or numbering, Tab stops: Not at 0.6"

~~1. If an assignment is identified which, in the judgment of the District, is within the employee's medical limitations and restrictions, the employee shall return to work. The District may change regular days off and work hours while an employee is in the temporary modified assignment program. However, employees shall have the option to decline any initial or subsequent temporary modified position/assignment which is a change from the employee's last regular bidded shift, RDO or location. If an employee declines a temporary modified position/assignment because it is a change from the employee's last regular bidded shift, RDO or location, the District and the employee shall meet to determine if an alternate position/assignment is available subject to the employee's rights set forth above.~~

~~2. Employees in temporary modified positions/ assignments shall schedule medical appointments, when possible, during non work hours. Should this not be possible, the examination shall be scheduled at either the beginning or end of the shift so as to~~

Formatted: Do not check spelling or grammar

~~minimize lost time from work. If the employee is working a reduced number of hours per week, all medical appointments must be scheduled during non-work hours.~~

- ~~3. After sixty (60) days in a temporary modified work assignment, eligibility for continuation in the assignment will be reviewed by the Benefits Office and a department representative. If the employee is not expected to return to regular work within thirty (30) days, the employee may be removed from the temporary modified work assignment or reassigned to another temporary modified work assignment. The Union will receive notification and explanation of such a removal or reassignment.~~
- ~~4. An employee may be transferred from one temporary modified work assignment to another if his/her functional limitations change or he/she completes an assignment subject to the employee's rights set forth in D.1. The Union will receive notification and explanation of such a transfer.~~
- ~~5. Pay will be at the employee's regular rate of pay. No assignments or combination of assignments will result in an employee earning less than he/she was eligible for while on disability. Any employee placed in a temporary modified assignment/position shall be in a paid status.~~
- ~~6. The District may require an independent medical evaluation by a District-selected physician to determine the current medical status of an employee on temporary modified work. Any disputes will be handled in accordance with Section 9.3 of the Agreement.~~
- ~~7. Temporary modified work will only be provided where, in the judgment of the District, it is available and where it may be accommodated without adverse consequences to the department or disruption in services or operations.~~

Formatted: Do not check spelling or grammar

- ~~8. The District may terminate a temporary modified work assignment at any time, particularly if it begins to affect operations, services, or the productivity of other employees.~~
- ~~9. Vacancies shall first be filled in accordance with the other applicable sections of this Agreement prior to the use of the Temporary Modified Assignment Program.~~
- ~~10. Should a provision in this program be in conflict with applicable law (e.g., the Americans with Disabilities Act, the Rehabilitation Act of 1973, the California Fair Employment and Housing Act, etc.), applicable law will prevail.~~
- ~~11. For the purposes of this program, "department" shall be defined as designated in the BART organizational charts, (i.e., Rolling Stocks & Shops, Power & Way, etc.) and as may be changed with future reorganizations.~~
- ~~12. For the purposes of this program, assignment within any of the following enumerated groupings shall not be considered a change in location:
 - ~~a. Records Center, Interstate Bank Building, TransPacific Center, Lake Merritt Administration Building, Metro Center, Madison Square Building, 4th Street Training Building, Cash Handling Building, Lake Merritt Administration Building, Oakland Shop, Oakland Shop Annex;~~
 - ~~b. Concord Shop, Concord Transportation Building, Concord Yard, and all locations between Concord Shop and Bay Point;~~
 - ~~c. Daly City Shop, Daly City Transportation Building, Daly City Yard; all work locations on the SFX extension;~~~~

Formatted: Do not check spelling or grammar

d. ~~Hayward Shop, Hayward Transportation Building, Hayward Training Center, Hayward Test Track, Hayward Yard, all locations between Hayward Shop and Dublin;~~

e. ~~Richmond Shop, Richmond Transportation Building, Richmond Yard.~~

Formatted: Do not check spelling or grammar

ATU & SEIU GENERALS REVISED PROPOSAL

3:30pm

~~1:30pm~~, 7/19/2013

9.7 ERGONOMICS & REASONABLE ACCOMMODATION

- A. Within the first week of each month, the Employer shall provide each Union, as well as each member of the Labor-Management Ergonomics/Accommodation Committee with a copy of the updated OSHA log of workplace injuries for the prior month. The parties agree to review the documentation together to identify the causes of workplace injuries and address them in an effective manner so as to prevent future injuries.
- B. The District shall provide the Union as well as each member of the Labor-Management Ergonomics/Accommodation Committee with a copy of each ergonomic evaluation and performed as required by the Injury and Illness Prevention Program and shall work with the Union regarding the resulting recommendation and its implementation. The parties shall work together to identify recurring sources of injury in the workplace, evaluate and implement appropriate ergonomic measures in a prompt manner so as to avoid further incidents, injuries, and re-injuries.
- C. Within 30 days of the ratification of this Agreement, the District shall draft a written update of its written Reasonable Accommodation policy and procedures and provide the Union with a copy of the proposed changes. Once the changes, if any, are agreed upon, the District shall make a good faith effort to provide a copy of its updated Reasonable Accommodation policy and procedures to all employees and to ensure that the policy and procedures are published in a manner that is readily accessible to all employees.
- D. Within 30 days of adopting an updated Reasonable Accommodation policy and related procedures, the District shall create and implement joint training(s) for Department Managers and ATU 1555/ SEIU1021 shop stewards. Topics to be addressed include: what is a reasonable accommodation, when are employees entitled to accommodation and what accommodations are reasonable; an overview of the interactive process, requests for medical information and/or evaluation of work restrictions.
- E. The District agrees to work with the Unions through the Ergonomics/Accommodation committee to identify potential accommodations and/or the identification of assistive devices that may be useful in accommodating certain types of medical conditions in relation to District positions.

ATU & SEIU GENERALS REVISED PROPOSAL

1:30pm, 7/19/2013

1. When an employee seeks reasonable accommodation the District shall advise the employee of the right to Union representation during the interactive process and shall permit such representation as may be requested. It is mutually understood that the District shall first consider potential accommodations that would enable the employee to return to or continue working in his or her regular position

2. Where warranted, the District shall arrange for functional capacity testing and/or an ergonomic evaluation to assist with identifying appropriate accommodations

F. This provision is intended to confirm the District's commitment to provide all employees with all legally required benefits and protections under Cal-OSHA, the District's Injury and Illness Prevention Plan, the ADA and FEHA. Nothing in this provision shall be construed as a waiver of any employee's individual statutory rights, remedies and/or procedural protections.

9.7 REASONABLE ACOMMODATIONS

- A. The parties shall create and implement joint training(s) for Department Managers and ATU 1555/ SEIU 1021 shop stewards. Topics to be addressed include: what is a reasonable accommodation, when are employees entitled to accommodation and what accommodations are reasonable; an overview of the interactive process, requests for medical information and/or evaluation of work restrictions.
- B. The District shall provide a copy of its Reasonable Accommodation policy to every individual who files a worker's compensation claim and shall also provide a copy to all employees who inform the District of an injury, condition or disability that might impact or limit their ability to work.
1. At the outset of the interactive process, the District shall provide the employee with a list of potential accommodations that might enable them to perform essential functions of their position and clarify for the employee that the list is not exhaustive but intended to spur discussion of specific aides, tools or equipment that would be beneficial.
 2. The District shall not exclude a Union representative from discussions about possible accommodations to be provided, when the employee requests that a Union representative be present, or when discussions involve mandatory subjects of bargaining.
 3. If, during the interactive process described in BART policy, the employee and the District are unable to agree on appropriate accommodations that would enable the employee to perform the essential functions of his or her position, the District shall arrange for either an ergonomic evaluation or functional capacity testing to explore the scope of the employee's physical abilities and limitations and evaluate specific accommodations.
- C. The District and the Union recognize that within any particular classification, there may be a range of assignments that are not identical in terms of the amount of physical strenuous activity required. The District and the Union shall review all job descriptions to identify essential functions of each bargaining unit position and ensure that they are accurately described therein, and reflect the range of duties required of individual employees within the classification. Employees seeking reasonable accommodation into an alternative position shall be placed in a position for which they meet the minimum qualifications,

9.8 WORKPLACE ERGONOMICS

- A. Within the first week of each month, the Employer shall provide the Union with a copy of the OSHA log of workplace injuries for the prior month, for each and every department in which bargaining unit members work; with the number of active workers compensation claims there are for each classification and department, the average number of new claims filed in each department and for each classification in the unit. The parties agree to review the documentation together to identify the causes of workplace injuries and address them in an effective manner so as to prevent future injuries.
- B. The District agrees to perform an ergonomic evaluation of all bargaining unit positions in order to identify possible ways to reduce injury rates, and to include at least two union representatives in each Department in the evaluation process. The District shall prioritize the evaluation of those positions in which the highest number of musculoskeletal injuries/disorders or other repetitive strain injuries (RSIs) have occurred over the past two years. The District shall provide the Union with a copy of each evaluation and final report, including all attachments and all documents used in rendering the evaluation and will meet and confer regarding any recommendations contained therein.
- C. The evaluation shall include an assessment of workers performance of the following tasks, and possible approaches to minimize the risk of injury from their repeated performance:
1. repeated performance of the same motion;
 2. fixed or awkward positions;
 3. use of weighted t-handles;
 4. manual handling of objects weighing more than 25 pounds;
 5. other;
- D. Where the ergonomic evaluation indicates that there exists a moderate to high risk of injury, the Employer shall introduce effective and appropriate control measures to reduce the risk of injury.
- E. All ergonomic assessments and the development of control measures shall be conducted in consultation with the union, the joint health and safety committee and employees performing jobs with an identifiable risk for injury.
- F. The Employer shall ensure that Union representatives, including employees who perform the work of position in question, are involved of all stages of the ergonomic assessment including identification, assessment, control and evaluation of controls.
- G. The Employer shall ensure that employees with risky jobs are trained in ergonomic awareness and how to use control measures properly.