

**MINUTES OF VIDEOCONFERENCE MEETING NO. 2369
COMMISSIONERS OF
JEFFERSON COUNTY DRAINAGE DISTRICT NO. 7**

Place: 4749 Twin City Highway, Suite 300
Port Arthur, Texas

Date: April 5, 2022

Present: Commissioners
Richard Beaumont
Lester Champagne
James Gamble, Sr.
Albert Moses, Jr.
Matthew Vincent
Phil Kelley, General Manager
Pete Steele, District Attorney

Visitors: Allen Sims, DD7
Brady Girouard, DD7
Garrett Boudoin, DD7

The meeting was called to order at 2:00 p.m. by Chairman Beaumont after ascertaining that the Notice of Meeting had been posted in accordance with the law. Commissioner Moses gave the invocation.

Minutes of Meeting No. 2368

The Minutes of Meeting No. 2368 was approved as read.

Mr. Kelley submitted a copy of the engagement letter the District received from Charles E. Reed & Associates, who is the company that is performing the District's audit. The letter sets forth the company's responsibilities under the generally accepted auditing standards and the planned scope and timing of the audit. No action is required on this matter. Auditing standards simply requires the District to note receipt of the letter by the Board of Commissioners.

Award Seasonal Mowing Bid

The bids were opened February 15, 2022 and read aloud in the public bid opening. A recommendation letter was received from Department Supervisor, Ronnie Hollier, Jr. for awarding the bid for the Seasonal Mowing Contract. The letter stated that based on the low bid of GP Evans Contractors, an inspection of equipment, the company's capability and work history, Mr. Hollier recommended GP Evans Contractors be awarded the 2022-2024 Seasonal Mowing Services Contract for mowing the District's rights-of-way and levees. Commissioner Champagne made a motion to award the bid for the 2022-2024 Seasonal Mowing Services to GP Evans Contractors, LLC on the recommendation of Mr. Hollier. Commissioner Gamble seconded the motion. The motion carried.

Consider Resolution Authorizing Qualified Replacement Benefit Arrangement with Texas County & District Retirement System

Resolution No. 488 Authorizing Qualified Replacement Benefit Arrangement with Texas County & District Retirement System was submitted to the Board for consideration. Mr. Kelley advised the District received a notice from the Texas County & District Retirement System (TCDRS) regarding an actuarial report that is done every year for retirees that may possibly be affected by Section 415 of the Internal Revenue Code ("IRS") on their annual retirement benefit amount. This could pertain to employees that are eligible to retire and are approaching retirement age. The current maximum benefit for an employee that retires at the age of 62 or older allowed under the IRS Code is \$245,000 per

year. TCDRS offers the District the option to enter into a Qualified Replacement Benefit Arrangement in the event a District retiree's annual benefit amount exceeds the maximum benefit wherein the District would pay the amount over the maximum benefit to the retiree for the remainder of that year and receive credit on its contribution to the TCDRS. Commissioner Champagne made a motion to approve Resolution No. 488 Authorizing Qualified Replacement Benefit Arrangement with Texas County & District Retirement System. Commissioner Gamble seconded the motion. The motion carried.

Consider Acceptance of Drainage Easement from ExxonMobil Oil Corporation and Authorize Manager to Execute the Drainage Easement

Mr. Kelley advised that ExxonMobil Oil Corporation has agreed to grant the District an additional sixty-foot easement along the Pure Oil Ditch. The additional easement will give the District better access to the current restricted easement which has to be cut by hand. ExxonMobil Oil Corporation has removed tanks from the bordering tank farm which will allow the District better access to repair the fence and the washed-out portions of the bank from the tank farm side. Commissioner Vincent motioned that the District accept the Drainage Easement from ExxonMobil Oil Corporation and authorize the Manager to execute the Drainage Easement. Commissioner Moses seconded the motion. The motion carried.

Consider Acceptance of General Warranty Deed from Jefferson County and Authorize Manager to Execute the General Warranty Deed

Mr. Kelley advised that Jefferson County has agreed to deed the District approximately 94 acres of land located near the prisons off Hwy 69. Mr. Sims identified the property boundaries on a map provided and explained that the land will provide the District an area to construct a flowline (no pump) detention pond which will ease the burden on the Rodair Gully and Beauxart Garden systems. Commissioner Moses motioned that the District accept the General Warranty Deed from Jefferson County and authorize the Manager to execute the General Warranty Deed. Commissioner Champagne seconded the motion. The motion carried.

Sabine Pass to Galveston Bay Project Summary

Mr. Brady Girouard stated that there was no substantial change since the last meeting. Mr. Girouard advised that in the next couple weeks Corps personnel will be touring various locations that will include the east west pipe rack, addressing environmental issues regarding Contract 3, and holding discussions on a potential soil borrow area which the District owns that is being considered as a soil source for future contracts.

Manager's Miscellaneous Reports

Since the date of the last Commissioner's meeting, the following work has been done:

Construction Notes – Alligator Bayou Pump Station Annex
March 7, 2022 – March 25, 2022

Monday, March 7:

Alligator Project; Allco worked on site today. Weather conditions were cloudy with a few showers early. The site conditions were dry.

Allco superintendent (1) on site with (4) operators/laborers reported.

Allco is cleaning up the construction area, hauling off steel, and loading up equipment.

Tuesday, March 8:

Alligator Project; Allco worked on site today. Weather conditions were cloudy with a few showers. The site conditions were dry.

Allco superintendent (1) on site with (4) operators/laborers reported.

Allco is cleaning up the construction area, hauling off steel, and loading up equipment.

Wednesday, March 9:

Alligator Project; Allco did not work on site today. Weather conditions were partly cloudy. The site conditions were dry.

Thursday, March 10:

Alligator Project; Allco worked on site today. Weather conditions were sunny. The site conditions were dry.

Allco superintendent (1) on site with (4) operators/laborers reported.

Allco is cleaning up the construction area and hauling off steel from the job site.

Friday, March 11:

Alligator Project; Allco worked on site today. Weather conditions were cloudy. The site conditions were dry.

Allco superintendent (1) on site with (4) operators/laborers reported.

Allco is cleaning up the construction area and hauling off steel from the job site.

Monday, March 14:

Alligator Project; Allco worked on site today. Weather conditions were partly cloudy. The site conditions were dry.

Allco superintendent (1) on site with (4) operators/laborers reported.

Allco is cleaning up the construction area and hauling off mats from the job site.

Tuesday, March 15:

Alligator Project; Allco did not work on site today. Weather conditions held rain early. The site conditions were muddy.

Wednesday, March 16:

Alligator Project; Allco worked on site today. Weather conditions were sunny. The site conditions were dry.

Allco superintendent (1) on site with (4) operators/laborers reported.

Allco is cleaning up the construction area and hauling off mats from the job site.

Thursday, March 17:

Alligator Project; Allco worked on site today. Weather conditions were sunny. The site conditions were dry.

Allco superintendent (1) on site with (4) operators/laborers reported.

Allco is getting crushed limestone delivered for the levee road base between the new parking lot and the existing levee road. They are also continuing to haul off mats.

Friday, March 18:

Alligator Project; Allco did not work on site today. Weather conditions held rain late last night. The site conditions were muddy.

Monday, March 21:

Alligator Project; Allco worked on site today. Weather conditions were partly cloudy. The site conditions were dry.

Allco superintendent (1) on site with (5) operators/laborers reported.

Allco is hauling off mats from the job site. They are also shaping up the backside of the levee and ramp at the northeast corner of the parking lot.

Tuesday, March 22:

Alligator Project; Allco did not work on site today. Weather conditions held rain. The site conditions were muddy.

Wednesday, March 23:

Alligator Project; Allco worked on site today. Weather conditions were sunny. The site conditions were dry.

Allco superintendent (1) on site with (5) operators/laborers reported.

Allco is cleaning up the construction area and hauling off mats from the job site.

Thursday, March 24:

Alligator Project; Allco worked on site today. Weather conditions were sunny. The site conditions were dry.

Allco superintendent (1) on site with (4) operators/laborers reported.

Allco is cleaning up the construction area and hauling off mats from the job site. They also came and replaced the doorknob to the office door into the pump station. They are working on the door long on the fuel building (Allco says the door handle hardware of will need to be replaced). They also tried to fix the walking door on the southwest side of the building (door has been hitting jam when it closes).

Friday, March 25:

Alligator Project; Allco worked on site today. Weather conditions were sunny. The site conditions were dry.

Allco superintendent (1) on site with (4) operators/laborers reported.

Allco is cleaning up the construction area and hauling off mats from the job site.

Permits

City of Port Arthur – Proposed 16-Inch Waterline in 24-Inch Steel Casing at Grade Crossing of the HFPL Near Sta. 1314+00. Mr. Garrett Boudoin recommended approval contingent upon repayment of Corps' Section 408 fees by the City of Port Arthur, with the permit fee waived and no bond required. Commissioner Vincent moved that the permit be approved on Mr. Boudoin's recommendation contingent upon repayment of Corps' Section 408 fees by the City of Port Arthur, with the permit fee waived and no bond required. Commissioner Champagne seconded the motion. The motion carried.

Checks & Purchase Orders

Maintenance Fund

Ck. No. 19926 – Dannenbaum Engineering Corp.
\$40,095.31 – Sabine Pass to Galveston Bay Project

Ck. No. 19927 – KT Trucking & Cattle Co.
\$345.00 – Sabine Pass to Galveston Bay Project

Ck. No. 19928 – LJA Surveying Inc.
\$5,460.00 – Sabine Pass to Galveston Bay Project

Ck. No. 19929 – Sunbelt Rentals
\$1,419.77 – Sabine Pass to Galveston Bay Project

Ck. No. 19930 – Dan Delich Consulting
\$1,621.41 – Legislative Consulting Fees

Ck. No. 19931 – Duck’s Dragline Service, Inc.
\$18,990.00 – Trackhoe Rental 3/11-3/31/22

Ck. No. 19932 – Environmental Tree Service
\$2,200.00 – Trim Camphor Tree, Cut, Haul & Grind Hackberry Tree over House
(Groves) Trim Tom Tree Limbs on Oak Tree (Nederland)

Ck. No. 19933 – FILMR, LLC
\$192.00 – Social Media Posts

Ck. No. 19934 – Function 4, LLC
\$505.77 – Copier Lease (Feb & March), Property Tax

Ck. No. 19935 – Groves Equipment Rental Co., Inc.
\$235.00 – A-3-A Detention HMGP Project

Ck. No. 19936 – Herc Rentals Corporation
\$8064.96 – Dump Truck Rental (2/9-3/9/22)

Ck. No. 19937 – James Gamble, Sr.
\$270.00 – Health Insurance Payment

Ck. No. 19939 – KT Trucking & Cattle Co.
\$4,333.00 – Transport Truck Rental (11/9/21, 3/15/22 & 2/24/22) & Dump Truck
Rental (10/13-10/14/21 – Hauling Clay)

Ck. No. 19940 – LJA Surveying, Inc.
\$2,800.00 – Fee Boundary Between DD7 & Angel Mid Jeff

Ck. No. 19941 – M & S Unlimited Services, LLC
\$900.00 – Transport Truck Rental 12/16/21

Ck. No. 19942 – Mazzanti & Associates, LLC
\$2,500.00 – Legislative Consulting Fees

Ck. No. 19943 – Mustang Rental Services
\$6,094.03 – D5K/D3 Dozer Rental 2/25-3/25/22

Ck. No. 19944 – Nerbert Frelow
\$4,560.00 – Dump Truck Rental 3/17-4/1/22 – Main C Loop Ext.

Ck. No. 19945 – Ray Russo
\$4,939.48 – Legislative Consulting Fees

Ck. No. 19946 – Ritter Forest Products Nederland
\$11,550.00 – Mat Rental 2/23-3/29/22

Ck. No. 19947 – Ronnier Hollier
\$179.44 – Medical/Dental Insurance Reimbursement

Ck. No. 19948 – Sprint Waste Service, L.P.
\$2,227.95 – Roll Box / Holding Tank Rental for Various Pump Stations 2/1-2/28/22

Ck. No. 19949 – Texan Engineering & Consulting, LLC
\$10,890.00 – Reviews/Permits/HMGP Projects/Block's Bayou

Ck. No. 19950 – Tidal Basin Government Consulting, LLC
\$412.50 – HMGP A-3-A Detention Project

Ck. No. 19952 – Wells Fargo
\$1,029.64 – Travel & Meeting Expenses

Ck. No. 19984 – Waukesha-Pearce Industries, Inc.
\$3,559.00 – Compactor Rental 3/2-3/30/22

Ck. No. 19985 – Waukesha-Pearce Industries, Inc.
\$2,280.00 – Mini Excavator Rental 3/4-3/14/22

GLO Fund

Ck. No. 5034 – Dannenbaum Engineering Corp.
\$462.07 – Sabine Pass to Galveston Bay Project

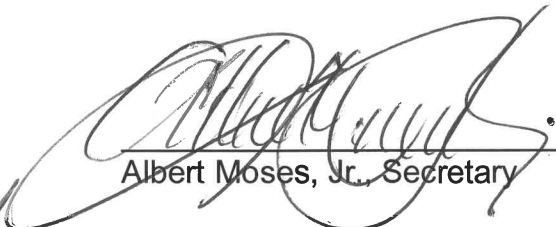
Ck. No. 5035 – Texan Engineering
\$20,163.94 – Sabine Pass to Galveston Bay Project AWC Subcontract

Commissioner Champagne moved that the checks from the Maintenance and GLO Funds be approved for payment. Commissioner Moses seconded the motion. The motion carried.

Commissioner Champagne asked for an update on the progress of the new administration building. Mr. Kelley advised that the District is still evaluating whether it would be more cost effective to build the pad in house or include the costs in the contract.

At 2:28 p.m., Commissioner Vincent moved that the meeting be adjourned. Commissioner Champagne seconded the motion. The motion carried.


Richard Beaumont, Chairman


Albert Moses, Jr., Secretary

RESOLUTION NO. 488
AUTHORIZING QUALIFIED REPLACEMENT BENEFIT ARRANGEMENT
WITH TEXAS COUNTY & DISTRICT RETIREMENT SYSTEM

STATE OF TEXAS

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COUNTY OF JEFFERSON

WHEREAS, Jefferson County Drainage District No. 7 (the "District") is a member of the Texas County & District Retirement System ("TCDRS") which serves as the retirement program for the District's employees; and

WHEREAS, District employees receive a monthly benefit from TCDRS upon their retirement for the remainder of his/her life; and

WHEREAS, the District desires to adopt a Qualified Replacement Benefit Arrangement with the TCDRS in the event a District retiree should receive an annual benefit payment higher than is allowable by the Internal Revenue Service ("IRS") under Section 415 of the Internal Revenue Code ("IRC"); and

WHEREAS, the IRC 415 limitations cap the total amount of annual retirement benefit payments an individual retiree can receive from the TCDRS, and the Qualified Replacement Benefit Arrangement would allow the District to make up for payments that may be reduced by IRC Section 415; and

WHEREAS, in the event a cap is reached on an individual's retirement benefit payments and the District makes up the payments that would be reduced, the District will receive a credit on its monthly contribution payments to the TCDRS; and

WHEREAS, the District wishes to authorize the District's Chairman of the Board to execute the Agreement for the Adoption of the TCDRS Qualified Replacement Benefit Arrangement.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSIONERS OF JEFFERSON COUNTY DRAINAGE DISTRICT NO. 7:

THAT it is in the best interest of the District to adopt the TCDRS Qualified Replacement Benefit Arrangement and enter into an Agreement authorizing said arrangement pursuant to the terms and agreements set forth in said Agreement attached hereto and to authorize its Chairman of the Board to execute on behalf of the District the attached instrument.

THAT the Chairman be, and hereby is, authorized to take any and all action and is authorized to execute any and all instruments, documents, or filings in connection with the accomplishment of the transactions outlined in this resolution and to certify the adoption of such resolutions to such parties which such Chairman deems necessary or appropriate.

I, Albert Moses, Jr., Secretary of the Board of Commissioners of Jefferson County Drainage District No. 7, do hereby certify that the above is a true and correct copy of a resolution adopted by the Board of Commissioners of Jefferson County Drainage District No. 7, at their meeting No. 2369 held on the 5th day of April, 2022, upon motion made by Commissioner Champagne and seconded by Commissioner Gamble and adopted unanimously by said Board, a quorum being present.

Given under my hand this 5th day of April 2022.


Secretary
JEFFERSON COUNTY DRAINAGE DISTRICT NO. 7



Agreement for the Adoption of the Texas County & District Retirement System Qualified Replacement Benefit Arrangement by Employer Name

1. ADOPTION OF ARRANGEMENT

_____ (“Employer”) hereby agrees to adopt the Texas County & District Retirement System (“TCDRS”) Qualified Replacement Benefit Arrangement (“Arrangement”) attached hereto as Exhibit A with respect to Participants under the Arrangement and with respect to certain retirement benefits accrued under TCDRS in accordance with the provisions of Government Code, Title 8, Subtitle F (all capitalized terms in this Agreement have the meaning set forth in the Arrangement). The signatory represents that they have the authority to sign this Agreement and to bind the Employer to the terms hereof. The signatory further represents that they and the Employer have taken all actions necessary to effectuate the terms of this Agreement, including but not limited to obtaining any approval required by the Employer’s board or other governing body. The signatory acknowledges that the Employer’s adoption of the Arrangement allows for the payment of certain benefits in accordance with Internal Revenue Code Section 415(m); such benefits which would not be eligible to be paid to a Member or other Benefit Recipient by TCDRS without the Employer’s adoption of the Arrangement.

2. AGREEMENT TO BE BOUND BY TERMS OF ARRANGEMENT

Employer agrees to be bound by the terms of the Arrangement, as the same may be amended from time to time. Employer further agrees to be bound by all actions, decisions, and interpretations of TCDRS or the board of trustees of TCDRS, in connection with the administration of the Arrangement. Employer specifically acknowledges that it will be responsible for the payment of benefits under the Arrangement, as calculated by TCDRS, and also to be responsible for all applicable tax withholdings and tax reporting, both state and federal.

3. CERTIFICATION

I certify that _____ (“Employer”) adopted the Arrangement effective for the 2022 plan year and future plan years unless terminated. The Arrangement was adopted by official action taken during a properly posted and noticed meeting on _____ (date), and such action is properly recorded in the official meeting minutes.

County Judge or Presiding Officer:

Print Name and Title

Signature

Date



Texas County & District Retirement System Qualified Replacement Benefit Arrangement Exhibit A

PURPOSE OF THIS EXHIBIT

The purpose of this exhibit is to set out the terms of the Texas County & District Retirement System Qualified Replacement Benefit Arrangement. In accordance with Section 415(m) of the Internal Revenue Code and as authorized under Section 845.504 of the Texas Government Code, the Texas County & District Retirement System by rule established a qualified governmental excess benefit program entitled the Texas County & District Retirement System Qualified Replacement Benefit Arrangement. The administrative rules governing the Texas County & District Retirement System Qualified Replacement Benefit Arrangement are found in Title 34, Part 5, Chapter 113 of the Texas Administrative Code (Chapter 113 Rules). Consistent with the Chapter 113 Rules, the terms of the Arrangement are as follows:

SECTION 1. DEFINITIONS

The following words and terms, when used in the Arrangement, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) "Act" means the provisions of Texas Government Code, Title 8, Subtitle F, as amended from time to time, establishing the Texas County & District Retirement System.
- (2) "Arrangement" means the Texas County & District Retirement System Qualified Replacement Benefit Arrangement, as set forth herein and as amended from time to time.
- (3) "TCDRS" or "System" means the Texas County & District Retirement System, as established under the provisions of the Act.
- (4) "Benefit Recipient" means any individual who receives a retirement benefit from TCDRS as a Retiree or as a surviving beneficiary of a deceased Member or Retiree. The term may include an alternate payee of a deceased Member or Retiree.
- (5) "Benefit" means a retirement benefit accrued under the provisions of the Act.
- (6) "Board" means the Board of Trustees of TCDRS.
- (7) "Code" means the Internal Revenue Code of 1986, as amended (and corresponding provisions of any subsequent federal tax laws) and the regulations there under.
- (8) "Eligible Member" means a Retiree or a deceased Member or Retiree with respect to an Employer, from and after the date the Employer adopts the Arrangement.
- (9) "Employer" means an Employer whose employees are Members of TCDRS with respect to retirement benefits paid by TCDRS under the provisions of the Act; provided that the Employer signs an adoption agreement in the form specified by the Board to adopt the Arrangement.
- (10) "Restricted Benefit" means the maximum Benefit permitted to be paid to a Benefit Recipient under the Retirement Plan of the Employer, as limited by Code Section 415, in accordance with Section 844.008 of the Act.
- (11) "Member" means any individual who accrues or has accrued a Benefit under the Act.
- (12) "Participant" means any Benefit Recipient with respect to an Employer who is eligible to participate in the Arrangement in accordance with Section 2 below.
- (13) "Plan Year" means the calendar year.
- (14) "Retirement Plan" means the defined benefit plan established under TCDRS for employees of the Employer, and their beneficiaries, in accordance with the Act, and qualified under Code Section 401(a).
- (15) "Retiree" means a Member who receives a Benefit under the Act with respect to an Employer.
- (16) "Unrestricted Benefit" means the benefit that would be payable to a Benefit Recipient under the Retirement Plan of the Employer if the limits of Code Section 415 were not applicable in accordance with Section 844.008 of the Act.



Texas County & District Retirement System Qualified Replacement Benefit Arrangement Exhibit A

SECTION 2. ELIGIBILITY AND PAYMENTS

(a) Eligibility to Receive Payments.

If, at the time an Eligible Member becomes a Retiree or dies or at any time thereafter, the Unrestricted Benefit of the Benefit Recipient under the Retirement Plan of the Employer exceeds the Restricted Benefit payable to the Benefit Recipient at that time, the Benefit Recipient shall become a Participant and shall be entitled to receive payments under this Arrangement, in accordance with the terms hereof, and may not waive or defer the receipt of such payments. A Benefit Recipient shall in no event become a Participant until the effective date of the applicable Employer's adoption of the Arrangement.

(b) Amount of Payments.

A Participant shall receive payments under this Arrangement equal to the difference between the Participant's Unrestricted Benefit and his or her Restricted Benefit, provided that the amount of payments so determined shall be subject to change and to such adjustments as TCDRS deems appropriate, from time to time. In no event shall a Participant be entitled to receive a payment under this Arrangement if such payment, when combined with other payments under this Arrangement and under the Retirement Plan of the Employer, would result in the Participant receiving total payments in excess of the Participant's Unrestricted Benefit.

(c) Form and Timing of Payments.

Payments under this Arrangement shall be paid by the applicable Employer to each Participant at the time and in the form and manner as the System may direct. Any election made by an Eligible Member with regard to the distribution of Benefits under the System, including the designation of a named beneficiary, as defined in Section 841.001(4) of the Act, shall be equally applicable to and binding on such Eligible Member and on all persons who at any time have or claim to have any interest in connection with payments under this Arrangement.

(d) Effect on TCDRS.

Any Benefit payable under the Retirement Plan of the Employer established under TCDRS shall be paid solely in accordance with the terms and provisions thereof and shall be subject to Section 415 of the Code and other applicable tax limitations; nothing in this Arrangement shall operate or be construed in any way to modify, amend or affect the Benefits payable there under.

(e) Tax Withholding.

All payments under this Arrangement shall be subject to and reduced by applicable federal, state, and local income, payroll and other tax withholding requirements and all other applicable deductions required by this Arrangement or by law

(f) Participation Determined Annually.

Participation in the Arrangement shall be determined annually for each plan year. In any plan year, benefits shall only be paid under the Arrangement to a Participant after the date in the plan year that the benefits paid to such person from TCDRS under the Retirement Plan of the Employer have reached the maximum annual benefit that can be paid by TCDRS under Code Section 415 for that plan year. The date the maximum annual benefit payment from TCDRS is reached is the beginning date of participation by the Participant for that plan year. The beginning date of a Participant's participation in the Arrangement may change from plan year to plan year as the amount payable under this Arrangement is predetermined. An individual's participation in the Arrangement will cease for any plan year or portion of a plan year for which the individual's Benefit is not limited by Code Section 415.

(g) No Election to Defer Compensation.

No election shall be provided at any time to a Participant or any other individual, directly or indirectly, to defer compensation under the Arrangement.



Texas County & District Retirement System Qualified Replacement Benefit Arrangement Exhibit A

Revised
04/2021

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SECTION 3. ADMINISTRATION

(a) Administrator.

TCDRS shall be the Administrator of the Arrangement and shall be responsible for the supervision and control of the operation and administration of the Arrangement, except as otherwise provided herein. Subject to the authority of the Board, TCDRS shall have the exclusive right and full discretion to construe and interpret the Arrangement, to establish rules and procedures for its operation and administration, and to decide any and all questions of fact, actuarial valuation, interpretation, definition or administration arising under or in connection with the administration of the Arrangement. The interpretation and construction of any provisions of the Arrangement by the Administrator and its exercise of any discretion granted under the Arrangement shall be binding and conclusive on all persons who at any time have or claim to have any interest whatever under this Arrangement.

(b) Contributions and Payments.

- (1) As soon as administratively feasible and before the receipt of Employer contributions, TCDRS shall calculate the portion of the contributions necessary to make the payments due to Participants of that Employer for the next payment period and for any applicable expenses under this Arrangement. Before depositing its contributions with TCDRS, the Employer shall deduct the calculated amounts and make payment directly to its Participants; and directly to TCDRS for any applicable expenses under the Arrangement. Notwithstanding the foregoing, if TCDRS determines, in its sole discretion, that the allocation of contributions to the Arrangement would jeopardize the actuarial soundness of the Retirement Plan of the Employer, TCDRS shall terminate the Arrangement and shall notify the participating Employer and Participants.
- (2) Amounts deducted for payments and expenses under the Arrangement shall be separately accounted for and shall be used exclusively for payments and expenses under the Arrangement.
- (3) The Employer from whom the Eligible Member retired or died while a Member with respect to such Employer shall be solely responsible for paying any amounts due to the Participant under the terms of the Arrangement. TCDRS shall have no obligation to pay any amounts due under the terms of the Arrangement.
- (4) The Employer shall be responsible for satisfying all tax withholding, payroll tax payments, other applicable tax payments and reporting requirements applicable to the Arrangement, if any, and shall be responsible for administering all payments due under the Arrangement.

(c) Plan Unfunded.

This Arrangement shall at all times be entirely unfunded within the meaning of the federal tax laws. Nothing contained herein shall be construed as providing for assets to be held in trust for the Participants. No Participant or any other person shall have any interest in any assets of TCDRS or any Employer by reason of the right to receive a payment under the Arrangement. Nothing contained herein shall be construed as a guarantee by TCDRS, any Employer, or any other entity or person that the assets of the Employer will be sufficient to pay any benefit hereunder.

(d) Appeal Procedure.

In the event a dispute arises between the Employer and the Administrator relating to the determination of the Administrator or the interpretation, operation or administration of this Arrangement, the Administrator's decision shall be final, conclusive and binding unless the Employer submits an appeal directly to the Board within 20 days from the date of notice of the decision, for consideration and action in accordance with the administrative review procedures set forth in 34 TAC Sections 101.19 – 101.23. The action of the Board, taken on its own motion or as the result of an appeal, is final, conclusive, and binding.



Texas County & District Retirement System Qualified Replacement Benefit Arrangement Exhibit A

SECTION 4. AMENDMENT AND TERMINATION

(a) Amendment and Termination of the Arrangement.

The Board reserves the right, in its sole discretion, to amend or terminate the Arrangement at any time and from time to time. By way of example, and not limitation, the Arrangement may be amended or terminated to eliminate all payments with respect to any Member or other individual who has not become eligible to participate in the Arrangement as of the date of such amendment or termination by reason of retirement or death in accordance with Section 113.3(a) of the Chapter 113 Rules. In addition, an amendment or termination may be retroactive to the extent that the Board deems such action necessary, in its sole discretion, to maintain the tax-qualified status of the System or the status of this Arrangement as a qualified governmental excess benefit arrangement as defined in Code Section 415(m) or to avoid jeopardizing the actuarial soundness of the Retirement Plan of the Employer.

(b) Termination of Employer's Participation.

- (1) An Employer may terminate its participation in the Arrangement at any time with the consent of and on terms established by the Administrator.
- (2) The Administrator may terminate the participation of an Employer if the Employer fails to comply with the rules established by the Board for the administration of the Arrangement as from time to time amended or modified, or fails to perform in accordance with the adoption agreement. The determination of an Employer's failure to comply and subsequent involuntary termination of participation is within the sole discretion and authority of the Administrator. The Administrator's decision is final, conclusive, and binding unless timely appealed directly to the Board in accordance with Section 113.3(d) of the Chapter 113 Rules.

(c) Participants.

If an Employer's participation in the Arrangement is voluntarily or involuntarily terminated, then any person who is a Benefit Recipient with respect to that Employer and who is a Participant in the Arrangement shall immediately cease such participation and shall be entitled to no benefits under this Arrangement and no benefits shall be paid or due to such Participant on or after the date of such termination. On the termination of an Employer in the Arrangement, the Employer shall have sole and complete responsibility and liability for paying any benefits that would otherwise be payable under the Arrangement with respect to its Participants, and the System and all other participating Employers shall have no responsibility or liability for any such benefits.

SECTION 5. GENERAL PROVISIONS

(a) Applicable Law.

- (1) All questions pertaining to the validity, construction and administration of the Arrangement shall be determined in conformity with the laws of the State of Texas, except to the extent federal law preempts state law.
- (2) If any provision of the Arrangement or the application thereof to any circumstance or person is invalid, the remainder of the Arrangement and the application of such provision to other circumstances or persons shall not be affected thereby.

(b) Indemnification

To the extent allowed by law, an Employer electing to participate in the Arrangement must agree to indemnify, defend, and hold harmless the System, the employees of the System, the Board, and all other Employers participating in the Arrangement from and against any and all direct or indirect liabilities, demands, claims, losses, costs and expenses, including reasonable attorney's fees, arising out of or resulting from the Employer's participation in the Arrangement and/or the Employer's voluntary or involuntary termination of participation in the Arrangement. The agreement of the Employer to



Texas County & District Retirement System Qualified Replacement Benefit Arrangement Exhibit A

indemnify, defend and hold harmless survives the termination of the Employer's participation in the Arrangement and the termination of the Arrangement.

(c) Nonalienation.

Benefits under this Arrangement shall not be subject to alienation or legal process, except to the extent permitted under Government Code, Chapter 804.

(d) No Enlargement of Employment Rights.

The establishment of the Arrangement shall not confer any legal rights upon any employee or other person for a continuation of employment, nor shall it interfere with the rights of the Employer to discharge any employee and to treat the employee without regard to the effect which that treatment might have upon the employee as a Participant in the Arrangement.

(e) Information Required by Arrangement.

Benefit Recipients, other individuals and Employers shall furnish to the Administrator such evidence, data and information as the Administrator considers necessary or desirable for the purpose of administering the Arrangement.

(f) Paying Benefits, Costs and Expenses from TCDRS Assets is prohibited.

No assets of the System shall be used directly or indirectly to pay benefits under the Arrangement or to pay any costs or expenses of administering the Arrangement. Expenses of administering the Arrangement may include expenses for professional, legal, accounting, and other services, and other necessary or appropriate costs of administration.



Tax Guidance

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FEDERAL INCOME TAX WITHHOLDING FOR MEMBERS

Payments made by the Employer from the 415 Qualified Replacement Benefit Arrangement (QRBA) are subject to federal income tax withholding as wages. **Because the income tax withholding is governed by Internal Revenue Code Section 3401, the retiree does not have an option of electing out of federal tax withholding (unlike withholding on qualified plan payments under Internal Revenue Code Section 3405). Generally, the member should complete a separate Form W-4 for withholding purposes.** When a QRBA payment is being made to a member who also concurrently receives another wage payment from a Participating Employer (for example, when the member is a reemployed retiree of a Participating Employer at the same time the member is being paid by the QRBA), the QRBA payment should be treated as supplemental wages. See Rev. Rul. 82-46, 1982-1 C.B. 158; IRS Notice 2000-38. IRS Publication 15, Circular E, Employer's Tax Guide explains how to withhold on **supplemental** wages.

FEDERAL REPORTING FOR MEMBERS

Reporting is done on a **Form W-2**, and the income tax withheld is reported on Form 941. IRS Notice 2000-38. This reporting is not optional.

FEDERAL INCOME TAX WITHHOLDING FOR BENEFICIARIES

No federal income tax withholding is applied to QRBA payments made to a survivor of the employee. IRS Notice 2000-38; see, e.g., Rev. Rul. 59-64.

FEDERAL REPORTING FOR BENEFICIARIES

QRBA benefits paid after the death of the member to a survivor are reported on a **Form 1099-MISC**, issued to the beneficiary. See Form 1099-MISC Instructions.

WITHHOLDING FOR FICA AND MEDICARE

As stated above, payments from a QRBA are subject to federal income tax withholding as wages. See also PLRs 201132028 and 201132029. Although excess benefits are treated as supplemental wages, despite the instructions in Publication 15, the issue of whether social security taxes also should be deducted from the excess benefit is not settled. Neither the IRS nor Social Security Administration have issued any guidance on the issue of whether social security taxes also should be deducted. Based on advice from TCDRS outside tax counsel, we believe that an Employer reasonably can take the position that the excess benefits are not subject to FICA withholding because benefits from the QRBA are related to income for which FICA withholding already was paid (for those Employers which participate in Social Security) or because the underlying wages on which the benefit is being paid were not subject to Social Security and the retirement benefit is not subject to Social Security taxes (for those Employers which do not participate in Social Security).