S400
9-10-07

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER (FOR AUDITOR'S USE ON

TO:	2. FROM (ORIGINATING DEPARTMENT):	3. DATE:
THE CITY COUNCIL	SDCERS	May 16, 2007

4. SUBJECT:
APPROVAL OF PARTICIPATION AND ADMINISTRATION AGREEMENTS IN SDCERS GROUP TRUST

5. PRIMARY CONTACT (NAME, PHONE & MAIL STA.)	6. SECONDARY CONTACT (NAME, PHONE & MAIL STA.)	7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED
Roxanne Story Parks, 525-3644	David B. Wescoe, 525-3620	

8.COMPLETE FOR ACCOUNTING PURPOSES

FUND				
DEPT.				
ORGANIZATION				
OBJECT ACCOUNT				
JOB ORDER				
C.I.P. NUMBER				
AMOUNT				

9. ADDITIONAL INFORMATION / ESTIMATED COST:
There is no financial impact associated with this action.

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIGINATING AGENCY – SDCERS BOARD PRESIDENT	Thomas C Hebrank	5/16/07	8	RETIREMENT ADMINISTRATOR	[illegible]	5.16.07
2				9	CFO	[illegible]	
3				10	COO	[illegible]	5-21-07
4							
5							
6							
7							

DOCKET COORD: _____ COUNCIL LIAISON: EP 6/4/07

✓ COUNCIL PRESIDENT [illegible] ☐ SPOB ☐ CONSENT ☒ ADOPTION ☐ REFER TO: _____ COUNCIL DATE: 6/18/07

11. PREPARATION OF: X RESOLUTION(S) ☐ ORDINANCE(S) ☐ AGREEMENT(S) ☐ DEED(S)

1. Approve the Participation and Administration Agreement between the City of San Diego and SDCERS to participate in the SDCERS Group Trust.
2. Approve the Participation and Administration Agreement between the San Diego Unified Port District (Port) and SDCERS to participate in the SDCERS Group Trust.
3. Approve the Participation and Administration Agreement between the San Diego County Regional Airport Authority (Airport Authority) and SDCERS to participate in the SDCERS Group Trust.
4. Direct the City Attorney to prepare the necessary Resolution. (see attached example)

11A. STAFF RECOMMENDATIONS:
Approve the three SDCERS Group Trust Participation and Administration Agreements and Direct the City Attorney to Prepare the Necessary Council Resolution.

12. SPECIAL CONDITIONS:

COUNCIL DISTRICT(S): **N/A**

COMMUNITY AREA(S): **N/A**

ENVIRONMENTAL IMPACT: **NONE**

HOUSING IMPACT: **NONE**

OTHER ISSUES:

EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE ISSUED: May 16, 2007 REPORT NO:
ATTENTION: The Council President and City Council
ORIGINATING DEPARTMENT: San Diego City Employees' Retirement System (SDCERS)
SUBJECT: Approval of Participation and Administration Agreements in SDCERS Group Trust
COUNCIL DISTRICT(S): n/a
CONTACT/PHONE NUMBER: Roxanne Story Parks, Chief Compliance Officer 525-3644

REQUESTED ACTION:

1. Approve the Participation and Administration Agreement between the City of San Diego and SDCERS to participate in the SDCERS Group Trust.

2. Approve the Participation and Administration Agreement between the San Diego Unified Port District (Port) and SDCERS to participate in the SDCERS Group Trust.

3. Approve the Participation and Administration Agreement between the San Diego County Regional Airport Authority (Airport Authority) and SDCERS to participate in the SDCERS Group Trust.

4. Direct the City Attorney to prepare the necessary Resolution. (see attached example)

STAFF RECOMMENDATION:

SDCERS recommends approval of the three SDCERS Group Trust Participation and Administration Agreements, in order to safeguard the assets of each employer's retirement plan from claims against and liabilities of the other plans participating in the SDCERS Group Trust.

EXECUTIVE SUMMARY:

Along with the City, the Port and the Airport Authority participate in SDCERS under City Charter section 149 and San Diego Municipal Code sections 24.1801 *et seq.* These provisions allow a public agency to contract with SDCERS to participate in the SDCERS Trust Fund, after the City Council makes a finding that the public agency is eligible and approves the contract between the agency and SDCERS. In 2002, the City Council found that the Port and the Airport Authority were eligible to participate in SDCERS under Charter section 149, and approved the initial contracts between SDCERS and each agency.

Under Charter section 149 and Municipal Code section 24.1806, all funds contributed by a contracting public agency and its employees must be held in trust and used only to pay benefits and necessary expenses related to administering the retirement benefits of that agency. In order to carry out the intent of these provisions, and prevent the use of any contracting agency's plan assets to pay the liabilities associated with another agency's plan, tax counsel advised SDCERS to establish a Group Trust, within which SDCERS would administer each public agency's plan as a separate trust. Based on this advice, on March 16, 2007, the SDCERS Board unanimously

approved a "Declaration of Trust" establishing the SDCERS Group Trust effective July 1, 2007. At that same time, the Board unanimously approved the three attached Participation and Administration Agreements with the City, the Port and the Airport Authority.

The Port and Airport Authority Boards have unanimously approved their respective Participation and Administration Agreements. Municipal Code section 24.1802(j) requires that the Participation and Administration Agreements between SDCERS and each contracting public agency be approved by the City Council by Resolution.

A Council vote to approve the Participation and Administration Agreements of the City, Port and Airport will ensure that the plan assets associated with each plan sponsor currently participating in SDCERS are unavailable to satisfy the liabilities of each other plan sponsor's plan.

Both the Port and Airport Boards have made it clear that the participation of their assets in the SDCERS Group Trust is critical to their continued participation in SDCERS. If the City Council does not approve their Participation and Administration Agreements, the Port and Airport may be forced to seek out another pension alternative to SDCERS.

FISCAL CONSIDERATIONS:

There is no financial impact associated with this action.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

None.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

n/a

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The key stakeholders are the City, Port and Airport Authority, as well as their employees and retirees. Council approval of the three SDCERS Group Trust Participation and Administration Agreements will assure the employees and retirees of all three agencies that the assets in their retirement plans are safe from claims by or against the other SDCERS-administered plans.

Thomas C Hebrank

Tom Hebrank
President, Board of Administration
San Diego City Employees' Retirement System

David B. Wescoe
Retirement Administrator
San Diego City Employees' Retirement System

COUNCIL RESOLUTION NO. R _____

ADOPTED ON _____2007

A RESOLUTION OF THE CITY COUNCIL APPROVING THE PARTICIPATION AND ADMINISTRATION AGREEMENTS OF THE CITY OF SAN DIEGO, THE SAN DIEGO UNIFIED PORT DISTRICT AND THE SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY TO PARTICIPATE IN THE SDCERS GROUP TRUST

WHEREAS, the San Diego City Employees' Retirement System (SDCERS) was created by ordinance pursuant to Section 141 of the Charter for the City of San Diego (Charter); and

WHEREAS, under Charter section 144, the SDCERS Board of Administration (Board) has exclusive control of the administration and investment of the SDCERS Trust Fund (Trust Fund), and sole authority to determine the rights to benefits under SDCERS; and

WHEREAS, under Charter section 145, all funds contributed to SDCERS are held in the Trust Fund and may be used only to pay benefits consistent with, and to carry out the provisions of, Article IX, and no payments may be made from the Trust Fund unless ordered by the Board; and

WHEREAS, Charter section 145 prohibits the merging of funds in the Trust Fund with other funds of the City; and

WHEREAS, Charter section 149 allows public agencies, in addition to the City of San Diego (City), to participate in the Trust Fund by contract with the Board, after the San Diego City Council (Council) finds that the public agency is eligible to participate in

the Trust Fund and approves the contract between the public agency and the Board; and

WHEREAS, Charter section 149 requires a public agency that contracts with the Board to establish its own benefits and vesting schedule in a separate retirement plan; and

WHEREAS, Charter section 149 requires a contracting public agency and its employees to pay all costs associated with the agency's participation in the Trust Fund and administration of the agency's benefits; and

WHEREAS, under Charter section 149, all funds contributed by a contracting public agency and its employees must be deposited into the Trust Fund to be held in trust and used only to pay benefits and necessary expenses related to administering the retirement benefits of that agency; and

WHEREAS, in 2002, the Council found that the San Diego Unified Port District (Port) and the San Diego County Regional Airport Authority (Airport Authority) were eligible under City Charter section 149 to participate in the Trust Fund and to contract with SDCERS to provide the retirement benefits of their employees and retirees; and

WHEREAS, on January 7, 2003, the Council adopted Ordinance O-191490, which enacted Division 18 of Chapter II, Article 4 of the San Diego Municipal Code (SDMC) entitled "Contracting Public Agencies"; and

WHEREAS, SDMC section 24.1806, which is contained in Division 18, states that "no assets of any Public Agency's retirement plan may be used to pay the benefits or costs of administering any other retirement plan administered by the Board"; and

WHEREAS, the Board has been advised by tax counsel that in order to carry out the intent of Charter section 149 and SDMC section 24.1806 and prevent the use of any contracting agency's plan assets to pay the liabilities associated with another contracting agency's plan, the Board was required to establish a Group Trust, within which SDCERS would administer each public agency's plan as a separate trust; and

WHEREAS, on March 16, 2007, the Board unanimously approved a "Declaration of Trust: SDCERS Group Trust," establishing a SDCERS Group Trust effective July 1, 2007; and

WHEREAS, on March 16, 2007, the Board also unanimously approved the three attached Participation and Administration Agreements between SDCERS and the City, the Unified Port District and the Airport Authority, respectively; and

WHEREAS, on April 10, 2007, the Board of Port Commissioners unanimously approved the attached Participation and Administration Agreement between SDCERS and the Port; and

WHEREAS, on May 3, 2007, the Airport Authority's Board unanimously approved the attached Participation and Administration Agreement between SDCERS and the Airport Authority; and

WHEREAS, the Participation and Administration Agreements between SDCERS and each contracting public agency must be approved by the Council by Resolution pursuant to Charter section 149 and SDMC section 24.1802(j);

NOW, THEREFORE, BE IT RESOLVED, that City Council approves the attached Participation and Administration Agreement between SDCERS and the Unified Port District; and

BE IT FUTHER RESOLVED, that the City Council approves the attached Participation and Administration Agreement between SDCERS and the Airport Authority; and

BE IT FUTHER RESOLVED, that the City Council approves the attached Participation and Administration Agreement between SDCERS and the City of San Diego.

ADOPTED: _____, 2007

_____

SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM PARTICIPATION AND ADMINISTRATION AGREEMENT

This Agreement is entered into by and among the City of San Diego (the "City"), the San Diego City Employees' Retirement System (the "Plan"), and the Board of Administration of the San Diego City Employees' Retirement System (the "Board"). (The "Board" refers to the Board acting in any of the following capacities, as is appropriate given the context: as the governing body of the San Diego City Employees Retirement System; as the trustee of the Group Trust; or as the administrator of the Plan.) Capitalized terms used but not defined in this Agreement have the meanings assigned to them in the Plan.

I.
PARTICIPATION IN THE GROUP TRUST

WHEREAS, the City is the sponsoring employer of the Plan;

WHEREAS, the Plan is a qualified governmental pension plan under Sections 401(a) and 414(d) of the Internal Revenue Code of 1986, as amended (the "Code");

WHEREAS, Charter section 149 and San Diego Municipal Code section 24.1806 require that all funds contributed by an agency participating in the SDCERS Trust Fund, and its employees, be held in trust and used only to pay benefits and necessary expenses related to administering the retirement benefits of that agency; and

WHEREAS, in order to carry out the intent of these provisions, and prevent the use of any agency's plan assets to pay the liabilities associated with another agency's plan, tax counsel advised SDCERS to establish a Group Trust, within which SDCERS would administer each public agency's plan as a separate trust; and

WHEREAS, based on this advice, on March 16, 2007, the SDCERS Board unanimously approved a "Declaration of Trust" establishing the SDCERS Group Trust effective July 1, 2007; and

WHEREAS, the Plan wishes to participate in the SDCERS Group Trust pursuant to Code Section 401(a)(24) and Revenue Ruling 81-100, as revised by Revenue Ruling 2004-67;

WHEREAS, the Board is the Trustee of the Group Trust;

WHEREAS, the San Diego City Council approved this Agreement on June 18, 2007; and

WHEREAS, the Plan satisfies the requirements of Sections 5.1 and 5.2 of the Group Trust as one of the initial Participating Trusts.

NOW, THEREFORE, the City, the Plan and the Board agree as follows:

Section 1.1. Administration of Group Trust. The Board will at all times administer the Group Trust in accordance with the terms of the Group Trust.

Section 1.2. Participation in Group Trust. The Plan agrees to abide by the terms of the Group Trust with respect to its participation in the Group Trust.

Section 1.3. Termination. Article I of this Agreement will terminate only upon termination of the Plan's participation in the Group Trust in accordance with Article V of the Group Trust.

II.
ADMINISTRATION OF THE PLAN

The Board serves as the Trustee of and administers the Plan in accordance with California Constitution Article XVI, Section 17, City Charter Article IX, Sections 141 – 149 and Municipal Code §§ 24.0100 – 24.1809.

III.
GENERAL PROVISIONS

Section 3.1. Applicable Law. This Agreement is governed by the laws of the State of California and of the City of San Diego, except where Federal law and requirements apply.

Section 3.2. Entire Understanding. This Agreement, the Group Trust and the Plan contain the entire understanding between the Board and the Plan with respect to the subject matter of this Agreement and supersede all other agreements and understandings.

The governing body of the City and the Board of Administration of the San Diego City Employees' Retirement System have each caused this Participation and Administration Agreement to be signed by an appropriate and duly authorized officer on the dates set forth below. This Agreement may be signed in any number of counterparts, any one of which need not contain the signature of more than one party, but all such counterparts together will constitute one agreement. The effective date of this Agreement is July 1, 2007.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

CITY OF SAN DIEGO

By:_____

Title:_____

Date:_____

TRUSTEE OF THE SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM

By:_____
President of the Board of Administration for the San Diego City Employees' Retirement System

Date:_____

SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM BOARD OF ADMINISTRATION

By:_____
President

Date:_____

SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM
PARTICIPATION AND ADMINISTRATION AGREEMENT

This Participation and Administration Agreement (this "Agreement") is entered into by and among the San Diego Unified Port District (the "UPD"), the Amended and Restated San Diego Unified Port District Retirement Plan and Trust (the "Plan"), and the Board of Administration of the San Diego City Employees' Retirement System (the "Board"). (The "Board" refers to the Board acting in any of the following capacities, as is appropriate given the context; as the governing body of the San Diego City Employees' Retirement System; as the trustee of the Group Trust; or as the administrator of this Plan.) Except as otherwise set forth herein, capitalized terms used but not defined in this Agreement have the meanings assigned to them in the Plan.

I.
PARTICIPATION IN THE GROUP TRUST

WHEREAS, the UPD is the sponsoring employer of the Plan;

WHEREAS, the Board is the trustee and administrator of the Plan;

WHEREAS, the Plan is a qualified governmental pension plan under Sections 401(a) and 414(d) of the Internal Revenue Code of 1986, as amended (the "Code");

WHEREAS, the Plan wishes to participate in the SDCERS Group Trust (as set forth in the Declaration of Trust effective July 1, 2007, and duly adopted by the Board on March 16, 2007 (the "Group Trust")), pursuant to Code Section 401(a)(24) and in accordance with Revenue Ruling 81-100, as revised by Revenue Ruling 2004-67;

WHEREAS, the Board is the trustee of the Group Trust;

WHEREAS, the governing body of the UPD took action on December 5, 2006, to approve in concept the participation of the Plan in the Group Trust;

WHEREAS, the governing body of the UPD approved this Agreement on April 10, 2007; and

WHEREAS, the Plan has satisfied the requirements of Sections 5.1 and 5.2 of the Group Trust as one of the initial Participating Trusts (as defined in the Group Trust).

NOW, THEREFORE, the UPD, the Plan and the Board agree as follows:

Section 1.1. Administration of Group Trust. The Board will at all times administer the Group Trust in accordance with the terms of the Group Trust.

Section 1.2. Participation in Group Trust. The Plan agrees to abide by the terms of the Group Trust with respect to its participation in the Group Trust.

Section 1.3. Termination. Article I of this Agreement will terminate only upon termination of the Plan's participation in the Group Trust in accordance with Article V of the Group Trust and Section 3.10 of this Agreement.

II.
ADMINISTRATION OF THE PLAN

WHEREAS, pursuant to § 0900 of the Plan, the UPD and the Board may contract with a qualified entity to administer the Plan; and

WHEREAS, the Board is a qualified entity and, furthermore, has experience with the administration of the Plan.

NOW, THEREFORE, the UPD, the Plan and the Board agree as follows:

Section 2.1. Powers and Duties of the Board as Administrator of the Plan.

(a) General Statement. The Board will administer the retirement benefits of the Members according to the terms of this Agreement, the Plan, the Group Trust, the applicable San Diego City Charter provisions and City ordinances, and applicable State and Federal laws and regulations.

(b) Administrative Decisions. Subject to the terms of the Plan and Section 2.7 of this Agreement, the Board has the exclusive and plenary authority and discretion to determine the benefits due under the Plan and to interpret the provisions of the Plan. Subject to the Plan, this Agreement, and the Board's rules, the Board may correct benefits for service and disability, may determine who are Members, and determine whether a Member has met the conditions to receive benefits from the Plan, all as required by this Agreement and the Plan. The Board may also secure and pay reasonable compensation for the medical services and advice it deems necessary to discharge its duties with respect to the awarding and payment of disability benefits. The Board will not knowingly make any decisions material to the UPD or the Members or Beneficiaries without first informing the UPD, allowing it an opportunity to provide input, and considering the UPD's input, except in circumstances where to do so would negatively impact the Board's exercise of its fiduciary duties or the qualified status of the Plan under the Code. To the maximum extent allowed by law, the Board's decisions are final and binding on the UPD, the Members, Beneficiaries, and all other persons claiming any rights under the Plan to the extent such decisions are arrived at reasonably and in good faith. However, the Board may not unilaterally modify the benefits due to the Members or Beneficiaries under any circumstances.

(c) Adoption of Rules. The Board may adopt the rules it reasonably and in good faith deems proper to administer the Plan consistent with its fiduciary duties. The Board will identify those rules that are incorporated by reference into the Plan or this Agreement. Before the Board amends an existing rule in a manner that materially affects the rights or benefits of

the Members or Beneficiaries, it will allow the UPD an opportunity to provide input regarding the proposed amendment, and will consider any input received except in circumstances where to do so would negatively impact the Board's exercise of its fiduciary duties or the qualified status of the Plan under the Code.

(d) Provision of Benefits. The Board will provide the benefits set forth in the Plan to eligible Members and Beneficiaries in accordance with the terms of the Plan and applicable law.

(e) Employment of Actuary. The Board will employ an Actuary as needed. Each year, on a fiscal year established for this purpose, the Board will employ an Actuary to value the Plan's assets and liabilities. At least once every five years, the Board will employ an Actuary to conduct a thorough investigation of the mortality, service and compensation experience of Members and other persons receiving benefits, along with an actuarial valuation of the Plan's assets and liabilities. From time to time, the Board will also determine by rule the assumed rate of interest earnings for the Plan. The rule adopted for this purpose will be used to determine interest rates for Member contribution accounts and is incorporated by reference into the Plan and this Agreement.

(f) Employment of Investment Counselors. Consistent with its duties under, and the provisions of, the Plan, the Group Trust and this Agreement, the Board may also employ independent investment counselors as needed to provide professional services to support the Board's investment responsibilities.

(g) Adoption of Mortality, Service, Interest Rates, and Other Tables. Each year, on a fiscal year established for this purpose, and based upon its investigations, valuations, and determination of the Actuary, the Board will adopt by rule the mortality, service and other tables and interest rates it deems proper, and will revise by rule the Members' contribution rates as it deems necessary, to provide the benefits of the Plan. The UPD will have the opportunity to provide input to the Board as to the appropriateness of these tables for the Plan's actuarial valuation. The Board's decisions on matters covered by this section are conclusive, if arrived at reasonably and in good faith, and the rules adopted under this section are incorporated by reference into the Plan and this Agreement.

(h) Employee Contribution Balances. The Board will provide the following to the UPD: (i) on a bi-weekly basis, a current electronic file of the year to date contribution balances of the Members; and (ii) on an annual basis, a current electronic file of the life to date contribution balances of the Members.

(i) Employee Statements. The Board will provide every Member with an annual statement of the Member's retirement account balance.

(j) Board Meeting Materials. Before noticed Board meetings, the Board will provide the UPD a Board packet, including the agendas for the Board and committee meetings and the related reports, excluding any confidential reports that do not relate to the UPD. The Board packet will be provided to the UPD at the same time as it is provided to the Board.

(k) Financial Records. Upon reasonable request, the Board will make available for inspection and copying at SDCERS' office all relevant financial records, actuarial studies

and audits that relate to the Plan. The UPD, at its own expense, may audit the funds on deposit with the Board that relate to the Plan, as well as the expenses and costs charged to the Plan by the Board. Such audit also may verify that all applicable funds are accurately attributed to and deposited in favor of the Plan.

(l) Annual Actuarial Valuation. The Board will provide UPD with the annual actuarial valuation of the assets and liabilities of the Plan performed pursuant to (e) above. When requested, the Board will provide to the UPD, at the UPD's expense, all records and data bases used in the actuarial assumptions and calculations relating to the Plan.

(m) Actuarial Experience Study. The Board will provide to the UPD the periodic actuarial experience study performed pursuant to (e) above.

(n) Cost of Benefit Changes. Upon the UPD's written request, and at the UPD's sole expense, the Board will request that the Actuary determine and provide the cost of any change the UPD wishes to make to the Plan. The Board will advise the UPD of the fees involved in such determination of costs prior to authorizing the Actuary to proceed with the determination.

Section 2.2. Duties of the UPD.

(a) Payroll Disclosure Requirements. On a bi-weekly basis, the UPD will provide the Board with electronic payroll files and reports in the format specified by the Board, including the bi-weekly electronic transmittal, the bi-weekly batch control file and the bi-weekly payroll adjustment register.

(b) Audit of Payroll. On reasonable notice by the Board, the UPD will provide all payroll records requested by the Board for audit to verify that the Board is receiving the appropriate level of contributions.

(c) New Hires and Terminations. The UPD will notify the Board of all Members that it hires or terminates within five business days after the effective date of employment or termination, and will provide all information reasonably requested by the Board in order to process the hiring or termination.

Section 2.3. Transfers to be Made by the Board. Based on its investigations, valuations, determinations and the Actuary's recommendations, the Board will transfer the proper amount from the employer and employee contribution accounts to the reserve for retiree benefits.

Section 2.4. Interest Crediting. The Board credits interest to the employer and employee contribution accounts at a rate determined by the Board, compounded each June 30th.

Section 2.5. Expenses.

(a) General. The Board will charge against the Plan all expenses directly attributable to the administration of the Plan. Notwithstanding anything provided herein, expenses will be allocated and apportioned only as provided in Section 7.2 of the Group Trust. Prior to charging any expenses against the Plan, the Board will provide to the UPD a description

of the expenses to be charged against the Plan, allow the UPD a reasonable opportunity to provide input with respect to those proposed expenses, and consider any input provided by the UPD in a manner consistent with its fiduciary duties as administrator of the Plan.

(b) Special Services. If the UPD requests any special service not specifically covered in this Article, the Board will inform the UPD of the cost of the special service before any work on the special service begins.

Section 2.6. Discount for Prepayment of Employer Contributions. If the UPD pays its full annual Employer Contribution for a plan year by the first business day of July in any year, the UPD will be entitled to a discount on its Employer Contribution for the plan year beginning on that July 1, in an amount determined by the Board based upon the Actuary's recommendation, as set forth in the annual actuarial valuation.

Section 2.7. Benefit Changes.

(a) Authority to Change Benefits. Only the UPD may effect changes in Member benefits under the Plan.

(b) Notice of Benefit Changes. The UPD will provide a detailed written description to the Board of any changes it intends to make to the benefits provided under this Plan at least 180 days before the date the changes are to take effect or, if not administratively feasible due to the UPD's meet and confer obligations as set forth in the Myers-Milias Brown Act and the applicable provisions of the UPD's MOUs with its recognized bargaining units, as soon as administratively feasible. Subject to this requirement, the Board will prepare necessary amendments to this Plan and make the requested changes effective on the date designated by the UPD if administratively feasible given the notice provided by the UPD. Any changes must be made pursuant to the Plan document and must be incorporated therein.

Section 2.8. Preparation of the Annual Budget. Each year, the Board will prepare an annual budget of reasonable expenses of administering the Plan, including the direct expenses properly and actually incurred in the performance of a fiduciary's duties, and determine the portion allocable to this Plan pursuant to Section 7.2 of the Group Trust. The Board will submit the annual budget to the UPD. After consultation with the UPD, the Board will finalize the annual budget and the UPD will take the action necessary to appropriate a sum sufficient to meet the portion of the budgeted administrative costs for the fiscal year with respect to the Plan. The appropriated amounts will be payable from Plan assets.

Section 2.9. Annual Report. The Board will prepare a comprehensive annual financial report ("CAFR") at the end of each fiscal year to provide information to all Members concerning the Plan. The Board will post the CAFR on its web site. In addition, a Member may request a single copy of the CAFR in writing and the Board will provide such copy in person or by mail, as requested by the Member. The Board will keep a copy of each year's CAFR in its primary business office.

Section 2.10. Confidentiality of Member Records. Information submitted to the Board by any Member or Beneficiary is confidential. It must not be divulged by any staff member or

representative of the Board to any person other than the Member or Beneficiary to whom the information relates, the Member's personal representative, the UPD, or an agent or contractor of the Board. The Board may use this information only for administering the Plan.

III.
GENERAL PROVISIONS

Section 3.1. Applicable Law. This Agreement is governed by the laws of the State of California and of the City of San Diego, except where Federal law and regulations apply.

Section 3.2. Entire Understanding. This Agreement, the Group Trust and the Plan contain the entire understanding among the UPD, the Board and the Plan with respect to the subject matter of this Agreement and supersede all other agreements and understandings.

Section 3.3. Notices. Any notice or other communication required or permitted by the Plan between the Board and the UPD must be in writing and must be given by United States mail, hand delivery, or a nationally recognized overnight courier service. All notices and communications to the Board or the UPD will be given at the following addresses unless and until a new notice address is provided by either in writing pursuant to this section.

If to the UPD:	If to the Board:
San Diego Unified Port District	Board of Administration
Attn: _____	San Diego City Employees' Retirement System
_____	401 B Street, Suite 400
San Diego, CA _____	San Diego, CA 92101

Section 3.4. Indemnification.

(a) By the UPD. The UPD will indemnify and hold harmless SDCERS and its Board, officers, employees and service providers (collectively, the "SDCERS Parties"), from all liabilities, claims, losses and expenses, including reasonable attorneys' fees, resulting directly from the UPD's negligence, wrongful conduct or intentional acts or omissions. Without limiting the generality of this section, the UPD will indemnify and hold harmless the SDCERS Parties with respect to: (i) the wrongful termination of this Agreement under Section 3.10; (ii) claims made by or on behalf of any former or current Member or any representative, survivor or Beneficiary of a Member; and (iii) claims made by any person related to the Plan, which in the case of (i), (ii) or (iii) result from the UPD's negligence, wrongful conduct or intentional acts or omissions. However, the UPD will have no liability that results solely from the negligence, wrongful conduct or intentional acts or omissions of any of the SDCERS Parties.

(b) By the Board. The Board in its capacities as administrator and trustee of the Plan and Trustee of the Group Trust will indemnify and hold harmless the UPD and its officers, employees, retirees, Members, Beneficiaries and service providers and the UPD's

governing board (collectively, the "UPD Parties"), from all liabilities, claims, losses and expenses, including reasonable attorneys' fees, resulting directly from SDCERS' negligence, wrongful conduct or intentional acts or omissions. Without limiting the generality of this section, the Board will indemnify and hold harmless the UPD Parties with respect to: (i) the wrongful termination of this Agreement under Section 3.10; (ii) claims made by or on behalf of any former or current Member or any representative, survivor or Beneficiary of a Member; and (iii) claims made by any person related to the Plan, which in the case of (i), (ii) or (iii) result directly from SDCERS' negligence, wrongful conduct or intentional acts or omissions. However, SDCERS will have no liability that results solely from the negligence, wrongful conduct or intentional acts or omissions of the UPD.

Section 3.5. Dispute Resolution.

(a) Arbitration. The Board and the UPD agree to submit any controversy or claim arising out of or relating to the administrative services provided by the Board, or the breach thereof, to binding arbitration before a mutually agreed upon arbitrator in San Diego, California in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrator may be entered in any Court having jurisdiction. Each party to the arbitration will pay one half of the arbitrator's expenses and fees, together with other expenses of the arbitration incurred or approved by the arbitrator, except that counsel fees or witness fees or other expenses incurred by a party for its own benefit will be borne as specified in subsection (b). The Board and the UPD expressly reserve the right to bring a civil legal action to seek and obtain relief by way of injunction, writ, declaratory relief, or other extraordinary relief not involving monetary damages.

(b) Dispute Resolution Costs. If any litigation or other dispute resolution proceedings arise between the Board and the UPD in connection with the administrative services provided by the Board, the losing party will reimburse the prevailing party for all reasonable costs, including reasonable attorneys' fees, incurred in connection with the proceedings or the enforcement of any judgment or award rendered in such proceedings. "Prevailing party" includes a party who dismisses an action for recovery in exchange for payment of the sums allegedly due, performance of covenants allegedly breached or consideration substantially equal to the relief sought in the action.

Section 3.6. Waiver or Breach. Failure of either the Board or the UPD to insist on strict performance of any of its duties and responsibilities under this Agreement will not be construed as a waiver of any terms or conditions of this Agreement; all terms and conditions will remain in full force.

Section 3.7. Change of Status. The UPD will promptly notify the Board of any change in the UPD's organization or legal status that may affect the terms of the Plan.

Section 3.8. Assignment. No assignment of the rights and obligations arising under this Agreement is valid without the written consent of both the Board and the UPD.

Section 3.9. Acts Beyond the Parties' Control. Neither the Board nor the UPD will be liable to the other for failure to perform its duties under this Agreement due to circumstances beyond its reasonable control, to the extent and during the period of the prevention or delay. The affected performing party must promptly notify the other party of the nature and anticipated length of continuance of the circumstances.

Section 3.10. Termination of the Board.

(a) Termination by the UPD. The UPD may terminate the Board as administrator and trustee of the Plan at any time by resolution of its governing body. The UPD must at the same time terminate its participation in the Group Trust. The UPD must give the Board no less than one year advance written notice of the termination except as otherwise provided herein or as provided in the Declaration of Trust of the SDCERS Group Trust.

(b) Termination by the Board. The Board may terminate its service as administrator and trustee of the Plan at any time by resolution of the Board. The Board must give the UPD no less than one year advance written notice of the termination. The Board may terminate only in the following circumstances:

(i) The UPD fails, for 30 days or more after written demand by the Board, to pay any invoice for services or expenses or any installment of contributions required under the Plan.

(ii) The UPD fails, for three months or more after demand by the Board, to provide any information reasonably required by the Board to administer the Plan.

(iii) The Board reasonably determines that the UPD no longer exists.

(iv) The Board reasonably determines that it is necessary or appropriate to terminate in order to avoid adversely affecting the administration of SDCERS or any other retirement plan administered by the Board in a material manner.

(v) The Board reasonably determines that termination is a prudent exercise of its fiduciary duties.

(c) Duties Upon Termination. No later than the effective date of the termination, the Board will transfer all appropriate records, information and assets to the successor trustee of the Plan. The Board will distribute the assets to the successor trustee of the Plan in cash, assets or otherwise as determined by the Board after consultation with the UPD and the successor trustee of the Plan. The Board will cooperate in good faith with the UPD and/or the successor trustee in order to ensure that the transition does not delay or otherwise affect benefits payable to the Members and Beneficiaries.

(d) Termination Expenses. Within thirty days of the date of termination of this Agreement, the UPD will pay to the Board an administrative fee equal to the total costs to SDCERS resulting directly or indirectly from the termination, which will be determined reasonably and in good faith by the Board after consultation with the UPD. The Board will provide to the UPD full documentation of the costs in writing. The UPD will not unreasonably

withhold prompt payment of the costs submitted. At the Board's reasonable request, the UPD will provide security as provided for in San Diego Municipal Code § 24.1809.

(e) Termination Date. If the UPD or the Board elects to exercise its termination rights, the preferred termination date would be at fiscal year end (June 30). Alternately, the termination date will be the beginning of the first month after the notification period.

The governing body of the UPD, the trustee of the Plan and the Board of Administration of the San Diego City Employees' Retirement System have each caused this Agreement to be signed by an appropriate and duly authorized officer on the dates set forth below. This Agreement may be signed in any number of counterparts, any one of which need not contain the signature of more than one party, but all such counterparts together will constitute one agreement. The effective date of this Agreement is July 1, 2007.

SAN DIEGO UNIFIED PORT DISTRICT

By:_____

Title:_____

Date:_____

AMENDED AND RESTATED SAN DIEGO UNIFIED PORT DISTRICT RETIREMENT PLAN AND TRUST

By:_____
President of the Board of Administration for the San Diego City Employees' Retirement System, as its Trustee

Date:_____

SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM BOARD OF ADMINISTRATION

By:_____
President

Date:_____

SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM
PARTICIPATION AND ADMINISTRATION AGREEMENT

This Participation and Administration Agreement (this "Agreement") is entered into by and among the San Diego County Regional Airport Authority (the "Airport Authority"), the Amended and Restated San Diego County Regional Airport Authority Retirement Plan and Trust (the "Plan"), and the Board of Administration of the San Diego City Employees' Retirement System (the "Board"). (The "Board" refers to the Board acting in any of the following capacities, as is appropriate given the context: as the governing body of the San Diego City Employees' Retirement System; as the trustee of the Group Trust; or as the administrator of the Plan.) Except as otherwise set forth herein, capitalized terms used but not defined in this Agreement have the meanings assigned to them in the Plan.

I.
PARTICIPATION IN THE GROUP TRUST

WHEREAS, the Airport Authority is the sponsoring employer of the Plan;

WHEREAS, the Board is the trustee and administrator of the Plan;

WHEREAS, the Plan is a qualified governmental pension plan under Sections 401(a) and 414(d) of the Internal Revenue Code of 1986, as amended (the "Code");

WHEREAS, the Plan wishes to participate in the SDCERS Group Trust (as set forth in the Declaration of Trust effective July 1, 2007, and duly adopted by the Board on March 16, 2007 (the "Group Trust")), pursuant to Code Section 401(a)(24) and in accordance with Revenue Ruling 81-100, as revised by Revenue Ruling 2004-67;

WHEREAS, the Board is the trustee of the Group Trust;

WHEREAS, the governing body of the Airport Authority took action on December 4, 2006, to approve in concept the participation of the Plan in the Group Trust;

WHEREAS, the governing body of the Airport Authority approved this Agreement on May 3, 2007; and

WHEREAS, the Plan has satisfied the requirements of Sections 5.1 and 5.2 of the Group Trust as one of the initial Participating Trusts (as defined in the Group Trust).

NOW, THEREFORE, the Airport Authority, the Plan and the Board agree as follows:

Section 1.1. Administration of Group Trust. The Board will at all times administer the Group Trust in accordance with the terms of the Group Trust.

Section 1.2. Participation in Group Trust. The Plan agrees to abide by the terms of the Group Trust with respect to its participation in the Group Trust.

Section 1.3. Termination. Article I of this Agreement will terminate only upon termination of the Plan's participation in the Group Trust in accordance with Article V of the Group Trust and Section 3.10 of this Agreement.

II.
ADMINISTRATION OF THE PLAN

WHEREAS, pursuant to § 0900 of the Plan, the Airport Authority and the Board may contract with a qualified entity to administer the Plan; and

WHEREAS, the Board is a qualified entity and, furthermore, has experience with the administration of the Plan.

NOW, THEREFORE, the Airport Authority, the Plan and the Board agree as follows:

Section 2.1. Powers and Duties of the Board as Administrator of the Plan.

(a) General Statement. The Board will administer the retirement benefits of the Members according to the terms of this Agreement, the Plan, the Group Trust, applicable San Diego City Charter provisions and City ordinances, and applicable State and Federal laws and regulations.

(b) Administrative Decisions. Subject to the terms of the Plan and Section 2.7 of this Agreement, the Board has the exclusive and plenary authority and discretion to determine the benefits due under the Plan and to interpret the provisions of the Plan. Subject to the Plan, this Agreement, and the Board's rules, the Board may correct benefits for service and disability, may determine who are Members, and may determine whether a Member has met the conditions to receive benefits from the Plan, all as required by this Agreement and the Plan. The Board may also secure and pay reasonable compensation for the medical services and advice it deems necessary to discharge its duties with respect to the awarding and payment of disability benefits. The Board will not knowingly make any decisions material to the Airport Authority or the Members or Beneficiaries without first informing the Airport Authority, allowing it an opportunity to provide input, and considering the Airport Authority's input, except in circumstances where to do so would negatively impact the Board's exercise of its fiduciary duties or the qualified status of the Plan under the Code. To the maximum extent allowed by law, the Board's decisions are final and binding on the Airport Authority, the Members, Beneficiaries, and all other persons claiming any rights under the Plan to the extent such decisions are arrived at reasonably and in good faith. However, the Board may not unilaterally modify the benefits due to the Members or Beneficiaries under any circumstances.

(c) Adoption of Rules. The Board may adopt the rules it reasonably and in good faith deems proper to administer the Plan consistent with its fiduciary duties. The Board will identify those rules that are incorporated by reference into the Plan or this Agreement. Before the Board amends an existing rule in a manner that materially affects the rights or benefits of the Members or Beneficiaries, it will allow the Airport Authority an opportunity to provide input regarding the proposed amendment, and will consider any input received

except in circumstances where to do so would negatively impact the Board's exercise of its fiduciary duties or the qualified status of the Plan under the Code.

(d) Provision of Benefits. The Board will provide the benefits set forth in the Plan to eligible Members and Beneficiaries in accordance with the terms of the Plan and applicable law.

(e) Employment of Actuary. The Board will employ an Actuary as needed. Each year, on a fiscal year established for this purpose, the Board will employ an Actuary to value the Plan's assets and liabilities. At least once every five years, the Board will employ an Actuary to conduct a thorough investigation of the mortality, service and compensation experience of Members and other persons receiving benefits, along with an actuarial valuation of the Plan's assets and liabilities. From time to time, the Board will also determine by rule the assumed rate of interest earnings for the Plan. The rule adopted for this purpose will be used to determine interest rates for Member contribution accounts and is incorporated by reference into the Plan and this Agreement.

(f) Employment of Investment Counselors. Consistent with its duties under, and the provisions of, the Plan, the Group Trust and this Agreement, the Board may also employ independent investment counselors as needed to provide professional services to support the Board's investment responsibilities.

(g) Adoption of Mortality, Service, Interest Rates, and Other Tables. Each year, on a fiscal year established for this purpose, and based upon its investigations, valuations, and determination of the Actuary, the Board will adopt by rule the mortality, service and other tables and interest rates it deems proper, and will revise by rule the Members' contribution rates as it deems necessary, to provide the benefits of the Plan. The Airport Authority will have the opportunity to provide input to the Board as to the appropriateness of these tables for the Plan's actuarial valuation. The Board's decisions on matters covered by this section are conclusive, if arrived at reasonably and in good faith, and the rules adopted under this section are incorporated by reference into the Plan and this Agreement.

(h) Employee Contribution Balances. The Board will provide the following to the Airport Authority: (i) on a bi-weekly basis, a current electronic file of the year to date contribution balances of the Members; and (ii) on an annual basis, a current electronic file of the life to date contribution balances of the Members.

(i) Employee Statements. The Board will provide every Member with an annual statement of the Member's retirement account balance.

(j) Board Meeting Materials. Before noticed Board meetings, the Board will provide the Airport Authority a Board packet, including the agendas for the Board and committee meetings and the related reports, excluding any confidential reports that do not relate to the Airport Authority. The Board packet will be provided to the Airport Authority at the same time as it is provided to the Board.

(k) Financial Records. Upon reasonable request, the Board will make available for inspection and copying at SDCERS' office all relevant financial records, actuarial studies

and audits that relate to the Plan. The Airport Authority, at its own expense, may audit the funds on deposit with the Board that relate to the Plan, as well as the expenses and costs charged to the Plan by the Board. Such audit also may verify that all applicable funds are accurately attributed to and deposited in favor of the Plan.

(l) Annual Actuarial Valuation. The Board will provide the Airport Authority with the annual actuarial valuation of the assets and liabilities of the Plan performed pursuant to (e) above. When requested, the Board will provide to the Airport Authority, at the Airport Authority's expense, all records and data bases used in the actuarial assumptions and calculations relating to the Plan.

(m) Actuarial Experience Study. The Board will provide to the Airport Authority the periodic actuarial experience study performed pursuant to (e) above.

(n) Cost of Benefit Changes. Upon the Airport Authority's written request, and at the Airport Authority's sole expense, the Board will request that the Actuary determine and provide the cost of any change the Airport Authority wishes to make to the Plan. The Board will advise the Airport Authority of the fees involved in such determination of costs prior to authorizing the Actuary to proceed with the determination.

Section 2.2. Duties of the Airport Authority.

(a) Payroll Disclosure Requirements. On a bi-weekly basis, the Airport Authority will provide the Board with electronic payroll files and reports in the format specified by the Board, including the bi-weekly electronic transmittal, the bi-weekly batch control file and the bi-weekly payroll adjustment register.

(b) Audit of Payroll. On reasonable notice by the Board, the Airport Authority will provide all payroll records requested by the Board for audit to verify that the Board is receiving the appropriate level of contributions.

(c) New Hires and Terminations. The Airport Authority will notify the Board of all Members that it hires or terminates within five business days after the effective date of employment or termination, and will provide all information reasonably requested by the Board in order to process the hiring or termination.

Section 2.3. Transfers to be Made by the Board. Based on its investigations, valuations, determinations and the Actuary's recommendations, the Board will transfer the proper amount from the employer and employee contribution accounts to the reserve for retiree benefits.

Section 2.4. Interest Crediting. The Board credits interest to the employer and employee contribution accounts at a rate determined by the Board, compounded each June 30th.

Section 2.5. Expenses.

(a) General. The Board will charge against the Plan all expenses directly attributable to the administration of the Plan. Notwithstanding anything provided herein, expenses will be allocated and apportioned only as provided in Section 7.2 of the Group Trust. Prior to charging any expenses against the Plan, the Board will provide to the Airport Authority a

description of the expenses to be charged against the Plan, allow the Airport Authority a reasonable opportunity to provide input with respect to those proposed expenses, and consider any input provided by the Airport Authority in a manner consistent with its fiduciary duties as administrator of the Plan.

(b) Special Services. If the Airport Authority requests any special service not specifically covered in this Article, the Board will inform the Airport Authority of the cost of the special service before any work on the special service begins.

Section 2.6. Discount for Prepayment of Employer Contributions. If the Airport Authority pays its full annual Employer Contribution for a Plan year by the first business day of July in any year, the Airport Authority will be entitled to a discount on its Employer Contribution for the Plan year beginning on that July 1, in an amount determined by the Board based upon the Actuary's recommendation, as set forth in the annual actuarial valuation.

Section 2.7. Benefit Changes.

(a) Authority to Change Benefits. Only the Airport Authority may effect changes in Member benefits under the Plan.

(b) Notice of Benefit Changes. The Airport Authority will provide a detailed written description to the Board of any changes it intends to make to the benefits provided under this Plan at least 180 days before the date the changes are to take effect or, if not administratively feasible due to the Airport Authority's meet and confer obligations as set forth in the Myers-Milias Brown Act and the applicable provisions of the Airport Authority's MOUs with its recognized bargaining units, as soon as administratively feasible. Subject to this requirement, the Board will prepare necessary amendments to this Plan and make the requested changes effective on the date designated by the Airport Authority if administratively feasible given the notice provided by the Airport Authority. Any changes must be made pursuant to the Plan document and must be incorporated therein.

Section 2.8. Preparation of the Annual Budget. Each year, the Board will prepare an annual budget of reasonable expenses of administering the Plan, including the direct expenses properly and actually incurred in the performance of a fiduciary's duties, and determine the portion allocable to this Plan pursuant to Section 7.2 of the Group Trust. The Board will submit the annual budget to the Airport Authority. After consultation with the Airport Authority, the Board will finalize the annual budget and the Airport Authority will take the action necessary to appropriate a sum sufficient to meet the portion of the budgeted administrative costs for the fiscal year with respect to the Plan. The appropriated amounts will be payable from Plan assets.

Section 2.9. Annual Report. The Board will prepare a comprehensive annual financial report ("CAFR") at the end of each fiscal year to provide information to all Members concerning the Plan. The Board will post the CAFR on its web site. In addition, a Member may request a single copy of the CAFR in writing and the Board will provide such copy in person or by mail, as requested by the Member. The Board will keep a copy of each year's CAFR in its primary business office.

Section 2.10. Confidentiality of Member Records. Information submitted to the Board by any Member or Beneficiary is confidential. It must not be divulged by any staff member or representative of the Board to any person other than the Member or Beneficiary to whom the information relates, the Member's personal representative, the Airport Authority, or an agent or contractor of the Board. The Board may use this information only for administering the Plan.

III.
GENERAL PROVISIONS

Section 3.1. Applicable Law. This Agreement is governed by the laws of the State of California and of the City of San Diego, except where Federal law and regulations apply.

Section 3.2. Entire Understanding. This Agreement, the Group Trust and the Plan contain the entire understanding among the Airport Authority, the Board and the Plan with respect to the subject matter of this Agreement and supersede all other agreements and understandings.

Section 3.3. Notices. Any notice or other communication required or permitted by the Plan between the Board and the Airport Authority must be in writing and must be given by United States mail, hand delivery, or a nationally recognized overnight courier service. All notices and communications to the Board or the Airport Authority will be given at the following addresses unless and until a new notice address is provided by either in writing pursuant to this section.

If to the Airport Authority:	If to the Board:
San Diego County Regional Airport Authority	Board of Administration
Attn: President/CEO	San Diego City Employees' Retirement System
3225 North Harbor Drive	401 B Street, Suite 400
San Diego, CA 92101	San Diego, CA 92101

Section 3.4. Indemnification.

(a) By the Airport Authority. The Airport Authority will indemnify and hold harmless SDCERS and its Board, officers, employees and service providers (collectively, the "SDCERS Parties"), from all liabilities, claims, losses and expenses, including reasonable attorneys' fees, resulting directly from the Airport Authority's negligence, wrongful conduct or intentional acts or omissions. Without limiting the generality of this section, the Airport Authority will indemnify and hold harmless the SDCERS Parties with respect to: (i) the wrongful termination of this Agreement under Section 3.10; (ii) claims made by or on behalf of any former or current Member or any representative, survivor or Beneficiary of a Member; and (iii) claims made by any person related to the Plan, which in the case of (i), (ii) or (iii) result from the Airport Authority's negligence, wrongful conduct or intentional acts or omissions. However, the Airport Authority will have no liability that results solely from the negligence, wrongful conduct or intentional acts or omissions of any of the SDCERS Parties.

(b) By the Board. The Board, in its capacities as administrator and trustee of the Plan and Trustee of the Group Trust, will indemnify and hold harmless the Airport Authority and its officers, employees, retirees, Members, Beneficiaries and service providers and the

Airport Authority's governing board (collectively, the "Airport Authority Parties"), from all liabilities, claims, losses and expenses, including reasonable attorneys' fees, resulting directly from SDCERS' negligence, wrongful conduct or intentional acts or omissions. Without limiting the generality of this section, the Board will indemnify and hold harmless the Airport Authority Parties with respect to: (i) the wrongful termination of this Agreement under Section 3.10; (ii) claims made by or on behalf of any former or current Member or any representative, survivor or Beneficiary of a Member; and (iii) claims made by any person related to the Plan, which in the case of (i), (ii) or (iii) result directly from SDCERS' negligence, wrongful conduct or intentional acts or omissions. However, SDCERS will have no liability that results solely from the negligence, wrongful conduct or intentional acts or omissions of the Airport Authority.

Section 3.5. Dispute Resolution.

(a) Arbitration. The Board and the Airport Authority agree to submit any controversy or claim arising out of or relating to the administrative services provided by the Board, or the breach thereof, to binding arbitration before a mutually agreed upon arbitrator in San Diego, California in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. Each party to the arbitration will pay one half of the arbitrator's expenses and fees, together with other expenses of the arbitration incurred or approved by the arbitrator, except that counsel fees or witness fees or other expenses incurred by a party for its own benefit will be borne as specified in subsection (b). The Board and the Airport Authority expressly reserve the right to bring a civil legal action to seek and obtain relief by way of injunction, writ, declaratory relief, or other extraordinary relief not involving monetary damages.

(b) Dispute Resolution Costs. If any litigation or other dispute resolution proceedings arise between the Board and the Airport Authority in connection with the administrative services provided by the Board, the losing party will reimburse the prevailing party for all reasonable costs, including reasonable attorneys' fees, incurred in connection with the proceedings or the enforcement of any judgment or award rendered in such proceedings. "Prevailing party" includes a party who dismisses an action for recovery in exchange for payment of the sums allegedly due, performance of covenants allegedly breached or consideration substantially equal to the relief sought in the action.

Section 3.6. Waiver or Breach. Failure of either the Board or the Airport Authority to insist on strict performance of any of its duties and responsibilities under this Agreement will not be construed as a waiver of any terms or conditions of this Agreement; all terms and conditions will remain in full force.

Section 3.7. Change of Status. The Airport Authority will promptly notify the Board of any change in the Airport Authority's organization or legal status that may affect the terms of the Plan.

Section 3.8. Assignment. No assignment of the rights and obligations arising under this Agreement is valid without the written consent of both the Board and the Airport Authority.

Section 3.9. Acts Beyond the Parties' Control. Neither the Board nor the Airport Authority will be liable to the other for failure to perform its duties under this Agreement due to circumstances beyond its reasonable control, to the extent and during the period of the prevention or delay. The affected performing party must promptly notify the other party of the nature and anticipated length of continuance of the circumstances.

Section 3.10. Termination of the Board.

(a) Termination by the Airport Authority. The Airport Authority may terminate the Board as administrator and trustee of the Plan at any time by resolution of its governing body. The Airport Authority must at the same time terminate its participation in the Group Trust. The Airport Authority must give the Board no less than one year advance written notice of the termination except as otherwise provided herein or as provided in the Declaration of Trust of the SDCERS Group Trust.

(b) Termination by the Board. The Board may terminate its service as administrator and trustee of the Plan at any time by resolution of the Board. The Board must give the Airport Authority no less than one year advance written notice of the termination. The Board may terminate only in the following circumstances:

(i) The Airport Authority fails, for 30 days or more after written demand by the Board, to pay any invoice for services or expenses or any installment of contributions required under the Plan.

(ii) The Airport Authority fails, for three months or more after demand by the Board, to provide any information reasonably required by the Board to administer the Plan.

(iii) The Board reasonably determines that the Airport Authority no longer exists.

(iv) The Board reasonably determines that it is necessary or appropriate to terminate in order to avoid adversely affecting the administration of SDCERS or any other retirement plan administered by the Board in a material manner.

(v) The Board reasonably determines that termination is a prudent exercise of its fiduciary duties.

(c) Duties Upon Termination. No later than the effective date of the termination, the Board will transfer all appropriate records, information and assets to the successor trustee of the Plan. The Board will distribute the assets to the successor trustee of the Plan in cash, assets or otherwise as determined by the Board after consultation with the Airport Authority and the successor trustee of the Plan. The Board will cooperate in good faith with the Airport Authority and/or the successor trustee in order to ensure that the transition does not delay or otherwise affect benefits payable to the Members and Beneficiaries.

(d) Termination Expenses. Within thirty days of the date of termination of this Agreement, the Airport Authority will pay to the Board an administrative fee equal to the total costs to SDCERS resulting from the termination, which will be determined reasonably and in

good faith by the Board after consultation with the Airport Authority. The Board will provide to the Airport Authority full documentation of the costs in writing. At the Board's reasonable request, the Airport Authority will not unreasonably withhold prompt payment of the costs submitted. At the Board's reasonable request, the Airport Authority will provide security as provided for in San Diego Municipal Code § 24.1809.

(e) Termination Date. If the Airport Authority or the Board elects to exercise its termination rights, the preferred termination date would be at fiscal year end (June 30). Alternately, the termination date will be the beginning of the first month after the notification period.

The governing body of the Airport Authority, the trustee of the Plan, and the Board of Administration of the San Diego City Employees' Retirement System have each caused this Agreement to be signed by an appropriate and duly authorized officer on the dates set forth below. This Agreement may be signed in any number of counterparts, any one of which need not contain the signature of more than one party, but all such counterparts together will constitute one agreement. The effective date of this Agreement is July 1, 2007.

SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY

By:_____
President and CEO

Date:_____

AMENDED AND RESTATED SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY RETIREMENT PLAN AND TRUST

By:_____
President of the Board of Administration for the San Diego City Employees' Retirement System, as its Trustee

Date:_____

SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM BOARD OF ADMINISTRATION

By:_____
President

Date:_____