


5. Authorization to Amend the Recordkeeping Agreement with Empower for the 401(a) and 457(b) Plans, Allowing Empower to Retain Float Income as Earnings



**EAST BAY REGIONAL PARK DISTRICT
BOARD OF DIRECTORS MEETING
AGENDA STAFF REPORT**

DATE	April 1, 2025
TITLE	Authorization to Amend the Recordkeeping Agreement with Empower for the 401(a) and 457(b) Plans, Allowing Empower to Retain Float Income as Earnings
DIVISION	Finance and Management Services
FROM	Katie Dignan, Assistant Finance Officer Deborah Spaulding, Assistant General Manager of Finance and Management Services
APPROVED	Sabrina Landreth, General Manager 

RECOMMENDATION

The General Manager recommends that the Board of Directors approve the proposed amendment to the Recordkeeping Agreement between the East Bay Regional Park District (Park District) and Empower, allowing Empower to retain the float on uninvested contributions and distributions as additional compensation.

BACKGROUND

The East Bay Regional Park District (Park District) has provided a 457 Deferred Compensation Plan (457 Plan) to its employees since 1981. A 401(a) Plan was later added for managers. On October 3, 2023, the Board of Directors authorized the Park District to enter into an agreement with Empower Personal Wealth, LLC for Deferred Compensation Advisory Services for administration of the Park District's 457(b) and 401(a) Plans. The Park District's Board of Directors, the named fiduciary responsible for administering the Plans and investing Plan assets, administers the Plans as participant-directed individual account plans, such that participants and beneficiaries are permitted to direct the investment of their individual accounts into the Plan investment options designated by the participant or beneficiary.

In February 2025, Empower proposed an amendment to the existing Recordkeeping Agreement regarding the Park District's 401(a) and 457(b) Plans, which will allow Empower to retain the float on uninvested contributions and distributions as additional compensation.

When assets are held in the Omnibus Account that Empower utilizes to facilitate transactions for or in connection with the Park District's 401(a) and 457(b) Plans the assets may generate income, which are commonly referred to as "float". It can be earned in the form of interest resulting from several scenarios. Float accrues when plan contributions cannot be invested immediately due to: (a) late-day receipt, causing the funds to earn overnight interest, or (b) unclear investment instructions, where contributions generate float income until instructions are clarified, and investments proceed. Float is also earned during the lag period between a participant's distribution request and the completion of payment, either when (a) a check is cashed or (b) an ACH or wire transfer is completed.

ANALYSIS

Empower does not currently retain float income. In the past, the float was used to defray aggregate expenses for the maintenance of bank accounts, with any excess kept by the bank holding the plan funds. This proposed change does not impact the Park District or Plan Participants.

With this change in the agreement to allow Empower to retain float income, Empower earns additional compensation from plan assets for the services it provides to the plans. This type of income should be fully transparent and disclosed to the plans' fiduciaries (e.g., the EBRPD's Board of Directors) to allow for regular reasonableness checks, ensuring Empower's compensation remains appropriate. Since Empower accrues/earns interest during the lag time between a participant's plan distribution request and the issuance of payment, it is crucial that they disclose the general timeframe for mailing checks. Empower has provided estimated processing times of approximately seven to ten business days to process and mail a check and five business days for ACH once the participant requests a distribution.

If a check remains uncashed, Empower will continue to earn float on the associated interest; however, they have a policy in place to address uncashed checks on a monthly basis. If a check is returned from the post office as undeliverable or remains uncashed for 180 days from the date of issuance (and the check amount is greater than \$25), Empower puts a stop payment on the check and mails a Notice for Stale-Dated Checks to the payee's address of record. If no response is received from the payee with alternate direction or if the uncashed check amount is less than \$25, Empower will deposit the uncashed check proceeds into the plan's Unclaimed Property (UCP) account. From there, it is the responsibility of the plan administrator to provide instructions for the handling of such amounts under the plan's terms.

If the amendment to the Recordkeeping Agreement with Empower is approved, Staff will perform quarterly reviews of the uncashed checks and quarterly estimated float earning report.

FISCAL IMPACT

There is no direct cost to the Park District for this recommendation. Any fees charged by Empower as the Plan Administrator are borne by plan participants. The current Basic Plan Administration Fee charged by Empower is .0185% (1.85 basis points). The float income is generated as interest resulting from participant activity, such as delays in investment processing or distribution payments, as outlined above. The Park District does not pay any fees related to Empower retaining the float income, as it is derived solely from the timing of participant transactions. If the amendment was in place last quarter, the estimated float earning for Q4 2024 would have been \$2,726 using an assumed rate of interest of 4.59%.

ATTACHMENTS

None.



**EAST BAY REGIONAL PARK DISTRICT
RESOLUTION NO. 2025 – 04 -
APRIL 1, 2025**

**AUTHORIZATION TO AMEND THE RECORDKEEPING AGREEMENT WITH
EMPOWER FOR THE 401(A) AND 457(B) PLANS, ALLOWING EMPOWER TO
RETAIN FLOAT INCOME AS EARNINGS**

WHEREAS, the East Bay Regional Park District (Park District) has provided a 457(b) Deferred Compensation Plan to its employees since 1981, and a 401(a) Plan was later added for managers; and

WHEREAS, on October 3, 2023, the Board of Directors authorized the Park District to enter into an agreement with Empower Personal Wealth, LLC for Deferred Compensation Advisory Services for administration of the Park District's 457(b) and 401(a) Plans; and

WHEREAS, in February 2025, Empower proposed an amendment to the existing Recordkeeping Agreement regarding the Park District's 457(b) and 401(a) Plans, which will allow Empower to retain the float on uninvested contributions and distributions as additional compensation; and

WHEREAS, there is no direct cost to the Park District as a result of this amendment; and

NOW, THEREFORE BE IT RESOLVED, that the Board of Directors of the East Bay Regional Park District hereby provides authorization to amend the existing Recordkeeping Agreement for the Park District's 401(a) and 457(b) Plans, allowing Empower to retain float income as earnings, as presented to the Board on April 1, 2025; and

BE IT FURTHER RESOLVED, that the General Manager is hereby authorized and directed, on behalf of the Park District and in its name, to execute and deliver such documents and to do such acts as may be deemed necessary or appropriate to accomplish the intentions of this resolution.

Moved by Director _____, and seconded by Director _____, and
adopted April 1, 2025, by the following vote:

FOR:

AGAINST:

ABSTAIN:

ABSENT: