

**S. D. BECHTEL, JR. FOUNDATION  
AND  
STEPHEN BECHTEL FUND  
TRANSITION ASSISTANCE FUND POLICY  
Adopted date: July 1, 2017  
Eligibility date: January 1, 2019  
Revised: July 10, 2018**

The S. D. BECHTEL, JR. FOUNDATION AND STEPHEN BECHTEL FUND (collectively, the “Foundation”) is beginning the process of its spend down, which will lead to the cessation of Foundation activities and the elimination of all employment positions.

The Foundation acknowledges that it is essential to retain its employees during the period of spend down, due to a number of factors. These include each employee’s unique skill sets, historical knowledge, strong relationships with donees and others, contributions to its positive work culture, and the challenges of finding and training quality replacement personnel for a temporary position. At the same time, the Foundation recognizes that retaining employees who are aware their employment is ending due to the spend down will be difficult given the high cost of living in the San Francisco Bay Area and the extremely competitive job market which provides very competitive total reward packages. In addition, some duties may be adjusted due to the changing needs of the Foundation during the spend down, which further enhances the need for retention incentives.

To mitigate the effects of the spend down and with an aim to retain talent, the Foundation has adopted a Transition Assistance Fund Policy (the “TAF Policy”), which is a combined retention and severance program. The TAF Policy rewards those who remain with the Foundation during this time of transition by offering attractive benefits to employees who are employed until the position is no longer required, possibly through the final days of operations. The TAF rewards employees for assisting with a successful spend down. In addition, the TAF protects the Foundation from unknown legal risks by including severance and release provisions. This policy was adopted as of July 1, 2017.

### **Transition Benefits upon Termination**

**A. Eligibility.** To be eligible for transition benefits, the employee must continue to be actively employed and performing his or her duties in a satisfactory manner until separated by the Foundation. In the event a Foundation employee’s position is eliminated and the employee is separated from employment without cause on or after January 1, 2019, the employee will be offered transition assistance benefits as outlined here. Employees terminated for cause or who have voluntarily resigned, temporary employees, and contractors are not eligible for transition benefits.

**B. At-Will Status.** The Foundation’s adoption of this TAF Policy does not modify any employee’s “at-will” status. Both the Foundation and all employees retain the right to terminate employment with or without cause and with or without notice.

**C. Release of Claims.** The terms and conditions of the transition benefits payments (“Transition Benefits”) will be detailed in a written release agreement provided on or before the employee’s last day of employment. The conditions will include a general release of claims in favor of the Foundation, and require the employee’s return of all Foundation property as appropriate (the “Release Agreement”). The terms and timing of the payment of Transition Benefits shall be in accordance with the terms of the applicable Release Agreement. An Employee’s execution of the Release Agreement will not delay or accelerate the timing of the payment and ordinarily the payment shall be made within 75 days after the date employment ends. No Transition Benefits will be payable unless the employee signs the Release Agreement in the form provided by the Foundation, on or within 52 days of the specified termination date. Transition Benefits shall be reduced and/or offset by any amounts paid or owed in accordance with the Federal Worker Adjustment and Retraining Notification (“WARN”) Act or a similar state law.

**D. Transition Benefits.** The benefits offered under the TAF Policy have been developed to reward Foundation employees who remain actively employed during the spend down and to ease the process of obtaining new employment. Transition Benefit payments shall be subject to all required withholdings and will include the following benefits:

- 1. Transition Payments.** Employees will receive one month of base pay for every full year of employment, with a maximum of 12 months/52 weeks (“Transition Pay”). Partial years shall be pro-rated based on the number of months worked, rounding up to the next month. By way of example, if an employee has been employed with the Foundation for 5 years, 6 months and 12 days, the employee would be deemed to have been employed for 5 years and 7 months. The Transition Pay would be calculated as follows: 5 years and 7/12 (.58) x 1 month= 5.58. The employee would be eligible for 5.58 months of Transition Pay, which will be calculated based on the then-current base monthly or weekly pay, as applicable.

In the event the employee held both part-time and full-time positions, transition assistance will be determined by the following formula: for each year worked at full time, the employee will receive one month of pay at the current full time rate, for each year worked at less than full time, the employee will receive the equivalent portion of the month of compensation. For example, an employee who works full time for 5 years and 60% for one year will receive 5 months of pay at a full time rate and 1 month of pay at 60% of the full time rate. Any change to a part time or full time position will be subject to the approval of the Foundation.

- 2. Healthcare Benefits.** Foundation healthcare, dental, and vision benefits will remain in effect until the end of the month the employee is separated. If COBRA coverage is

available and the employee has elected coverage, he or she will be offered payment of COBRA benefits at the same level of coverage for a period of three months following termination of employment, unless the employee secures coverage through another means. Alternatively, the Foundation may in its discretion elect to offer employees a lump sum payment equal to four months of COBRA costs, which shall be paid on a post-tax basis.

- 3. Outplacement Services.** Employees will be offered up to five one-hour sessions with an outplacement services provider selected by the Foundation, which will include professional support to employees looking for new employment. In addition, outplacement workshops will be provided for all staff during the spend down period.

**E. Tax Treatment.** The Foundation makes no representations concerning the tax treatment under federal, state or local laws of amounts paid under this TAF Policy. Employees should consult with their accountant or tax advisor in this regard. Although the Foundation intends that the transition benefits will be exempt from IRS Code Section 409A, neither the Foundation, nor its employees, trustees, attorneys, funders, or their agents, shall have any obligation to hold an eligible employee harmless from any or all of such taxes. The Foundation shall have complete discretion to interpret and construe the TAF Policy and any associated documents in any manner that establishes exemption from the requirements of Section 409A. Employees shall be solely responsible for any taxes that may arise with respect to these benefits.

**F. Modification of Duties.** During the wind down process, the needs of the Foundation are expected to change. Accordingly, each employee's duties may, over time, be reassessed and modified in keeping with each employee's at-will status. Modification of duties will not result in a reduction in pay, so long as the employee does not also experience a reduction in hours. Changes in assigned duties will not qualify as a termination. While employees are free to decline a modification of duties and instead voluntarily resign, employees who resign will not be eligible for transition benefits.

This policy reflects the priorities of the Foundation at this time. This policy supersedes all prior policies, whether written, verbal or implied, and may only be amended in writing by the Foundation president or other authorized individual.

Please feel free to contact Teri Cirillo with any questions.

## **Transition Assistance Fund Policy**

### **FAQs**

#### **Transition Assistance Pay:**

1. What is the difference between a severance and transition assistance policy?
  - a. Transition assistance benefits reflect the long-term planning of the Foundation. These benefits are designed to reward employees who remain employed by the Foundation during the spend down, and will also provide you with a safety net. They are intended to retain staff by providing a generous plan.
2. How will TAF benefits be paid? Will it be a lump sum payment or paid over time?
  - a. TAF benefits (“Transition Pay”) will be paid in a lump sum amount.
3. When do we actually receive the Transition Pay?
  - a. You will receive the Transition Pay after your employment ends and you sign the release agreement. Human Resources will provide information regarding the option to defer severance into the next calendar year, if such an option is available at that time. The timing of the Transition Pay will be reflected in the release agreement. Your manager will work with you to provide as much notice as possible.
4. What if someone wants to negotiate their final payment? Is that an option?
  - a. We have adopted a generous and consistent policy benefiting all staff members that complies with our legal obligations as a non-profit, and we do not intend to negotiate individual agreements.

#### **Employment / Job Responsibilities:**

5. Why is the eligibility date for TAF January 1, 2019? Does this mean my employment will end prior to 2020?
  - a. We hope and plan for everyone to have work until the end of 2020. This will depend upon the needs of the Foundation. There may be some roles that wind down sooner than others. We designated January 1, 2019 to reflect the soonest date we could expect there would be any slowdown of work; however, the termination date is at the discretion of the Foundation.
6. Who will define the final date of employment for each person and how much notice will we receive?
  - a. Each manager and Director will work closely and directly with each staff member to plan for the reduction in work and eventual spend down of the Foundation. Although we currently believe there will be work available for everyone until the end of 2020, we cannot currently predict the end date of specific roles. Your manager will provide as much notice as is feasibly possible.
7. What if I feel forced to resign because my job duties change significantly?

- a. You should discuss this with your Manager or Human Resources. If you feel it is in your best interest to leave the Foundation for a new opportunity, we will understand. We would appreciate at least two full weeks of notice if possible.
  - b. The work may shift due to the needs of the Foundation. Each employee's duties may, over time, be reassessed and modified in keeping with each employee's at-will status. Modification of duties will not result in a reduction in pay, so long as the employee does not also experience a reduction in hours. Changes in assigned duties will not qualify as a termination. While employees are free to decline a modification of duties and instead voluntarily resign, employees who resign will not be eligible for transition benefits.
8. What happens if I resign?
- a. Because the TAF is intended as a retention plan, benefits are not offered to employees who resign. If you resign you will not be eligible for the Transition Pay or benefits.
9. When will we know what our end of employment date will be?
- a. Your manager will work directly with you to help determine the end of your employment based on the workload, and provide as much notice as feasibly possible.
10. What happens if I get a great opportunity before my employment ends with the Foundation?
- a. Discuss any opportunities with your manager. Our goal is to retain employees until the position is no longer required in order to avoid disruption to our operations during the spend down.
11. How much will my job change by 2020?
- a. Modifications in job duties are hard to predict; however, your manager will inform you of the needs and work with you to determine the best solution.
12. Will there be people who can help with the more transactional work associated with the spend down?
- a. It is possible there may be a need to hire temporary employees or contract employees for some of the work near the end of the spend down period.
13. What happens if I'm out on disability or maternity leave near the end date?
- a. Your manager will keep you informed and work with you directly to manage your protected time off. You will be eligible for Transition Pay if there is no break in service from your disability date to your spend down termination date.

**Benefits:**

14. What is COBRA? How does it work?
- a. **COBRA** stands for **C**onsolidated **O**mnibus **B**udget **R**econciliation **A**ct. This is the federal law that provides many workers with the right to continue coverage in a group health plan. This federal law applies to employers with 20 or more employees, including self-insured employers, who are also covered by a similar state law called Cal-COBRA. Once you receive notice, you have 60 days to choose **COBRA** continuation coverage. If you select **COBRA**, then your coverage will be

retroactive to the day you lost your health insurance benefits due to your employment separation (which is called a “Qualifying Event”).

15. Who is eligible for COBRA?
  - a. Eligibility depends upon whether other employees are still actively working for the Foundation and enrolled in the benefit plan. Once the Foundation ceases operations and closes its doors, the benefits plans will be terminated, and COBRA will no longer be available. At that point, individuals will need to find alternative coverage.
16. Why will some employees receive three months of COBRA and others receive four months of COBRA costs in a lump sum payment?
  - a. Staff members whose employment ends at least three months prior to termination of the Foundation’s benefit plan will be eligible for three months of COBRA on a pretax basis (e.g. not subject to withholdings or income taxes). Employees whose employment ends less than three months before the last active day of the Foundation’s benefit plan will be eligible for four months of payments in order to offset the additional impact of taxes, because those payments will be made on a post-tax basis. COBRA will not be available beyond the final day of operations of the Foundation.
17. How can I avoid a gap in my healthcare coverage?
  - a. Within a year of your termination you will receive information from expert resources to help you determine your best healthcare options. Given the many developments taking place in the health care area right now, it is difficult to predict exactly which options will be available at that time, but we will do our best to be sure everyone is thoroughly informed of their options.

#### **Outplacement Services:**

18. What will the outplacement services include?
  - a. There will be group outplacement sessions which may include networking, resume building, interviewing skills and also 1:1 career coaching sessions.
19. When can I start the outplacement services?
  - a. The outplacement services will be available prior to termination and more than likely will begin in 2019 for those who are interested.
20. How much flexibility will there be if I need time during the day for interviews or networking opportunities?
  - a. The Senior Management Committee will work directly with managers and staff members to provide support and flexibility for staff members who need time for interviews and pre-approved learning sessions regarding career exploration or development.
21. What will be offered to employees who do not want to pursue a new job or career and may want to retire or take time off from work?
  - a. The outplacement services will also provide an opportunity for people to explore their general interests and determine their next steps.

**Government and Tax Regulations:**

22. What is WARN?
- a. WARN stands for the Worker Adjustment and Retraining Notification and is the federal law which requires employers with 100 or more employees to provide at least 60 days' notice for a closure. Although the federal law does not apply to the Foundation, the California state equivalent to the WARN law does apply to us. As the termination dates grow nearer, the Foundation will insure that it has provided all required notices.
23. What is IRS Code Section 409A and how does it apply to the TAF payment?
- a. The IRS Code Section 409A refers to deferred compensation and additional taxes that apply in some circumstances to payments made after separation. The Foundation makes no representations concerning the tax treatment under federal, state or local laws of amounts paid under this TAF Policy. Employees should consult with their accountant or tax advisor in this regard. Although the Foundation intends that the transition benefits will be exempt from IRS Code Section 409A, neither the Foundation, nor its employees, trustees, attorneys, funders, or their agents, shall have any obligation to hold an eligible employee harmless from any or all of such taxes. The Foundation shall have complete discretion to interpret and construe the TAF Policy and any associated documents in any manner that establishes exemption from the requirements of Section 409A. Employees shall be solely responsible for any taxes that may arise with respect to these benefits.
24. Will there be any assistance to help us understand the tax ramifications?
- a. The Foundation will provide a variety of workshops to help educate employees about their options.