

**EIGHTH DISTRICT ELECTRICAL PENSION FUND**

**Restated Rules and Regulations**

**Effective April 1, 2014**

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09/05/14

## INTRODUCTION

Except as otherwise provided herein, this restated Plan is applicable only to pensions or other benefits that commence on and after April 1, 2014. Except as otherwise provided herein, pensions or benefits that commenced prior to April 1, 2014, as well as deferred vested benefits of former Employees whose participation terminated prior to April 1, 2014, are determined in accordance with the provisions of the Plan in existence at the end of the most recent Separation from Covered Employment.

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## ARTICLE 1. DEFINITIONS

**1.01 Actuarial Equivalence.** “Actuarial Equivalence” means two benefits of equal Actuarial Present Value based on the same actuarial factors and assumptions specified in the provision in which that phrase is used or, if not otherwise specified, based on the assumptions described in section 1.02.

**1.02 Actuarial Present Value.** “Actuarial Present Value” unless otherwise specified in the Plan means:

- a. For any Annuity Starting Date that is on or after April 1, 2008, a benefit that has the same actuarial value as another benefit based on the Applicable Mortality Table and Applicable Interest Rate as defined below:
  1. Applicable Mortality Table. The “Applicable Mortality Table” means the Table prescribed by the Secretary of the Treasury under Internal Revenue Code Section 417(e)(3)(B) for the Plan Year containing the Annuity Starting Date.
  2. Applicable Interest Rate. The “Applicable Interest Rate” means the interest rate or rates specified under Internal Revenue Code Section 417(e)(3)(C) for the month of February immediately preceding the Plan Year which contains the Annuity Starting Date. The stability period during which the interest rate(s) shall remain constant shall be the Plan Year.
- b. For any Annuity Starting Date that is on or after April 1, 2000 and prior to April 1, 2008, a benefit has the same actuarial value as another benefit based on the Applicable Mortality Table and Applicable Interest Rate as defined by below:
  1. Applicable Mortality Table. The “Applicable Mortality Table” for use in the calendar year that contains the Annuity Starting Date is the table prescribed for use in that year in Regulations under Internal Revenue Code Section 417(e), and which until modified or superseded, is the table set forth in Revenue Ruling 95-6. Notwithstanding any other Plan provisions to the contrary, effective for distributions with an Annuity Starting Date on or after January 1, 2003, any reference in the Plan to the Applicable Mortality Table or the mortality table set forth in Revenue Ruling 95-6 shall be construed as a reference to the Mortality Table prescribed in Revenue Ruling 2001-62 for all purposes.
  2. Applicable Interest Rate. The “Applicable Interest Rate” is the annual rate of interest on thirty (30) year Treasury securities as specified by the Commissioner of Internal Revenue for the month of February immediately preceding the Plan Year that contains the Annuity Starting Date. The stability period, within the

meaning of Treasury Regulations Section 1.417(e)-1(d)(4)(ii), shall be the Plan Year.

c. For any Annuity Starting Date that is on or after April 1, 2000 but before January 1, 2003, a benefit that has the same actuarial value as another benefit based on the Applicable Mortality Table and Applicable Interest Rate as defined below:

1. Applicable Mortality Table. The "Applicable Mortality Table" for use in the calendar year that contains the Annuity Starting Date is the table prescribed for use in that year in Regulations under Internal Revenue Code Section 417(e), and which until modified or superseded, is the table set forth in Revenue Ruling 95-6.
2. Applicable Interest Rate. The "Applicable Interest Rate" is the annual rate of interest on thirty (30) year Treasury securities as specified by the Commissioner of Internal Revenue for the month of February immediately preceding the Plan Year that contains the Annuity Starting Date. The stability period, within the meaning of Treasury Regulations Section 1.417(e)-1(d)(4)(ii), shall be the Plan Year.

d. For Annuity Starting Dates before April 1, 2000:

1. For lump sum payments other than pursuant to a Qualified Domestic Relations Order, the "Actuarial Present Value" of a benefit is determined using the full set of interest rates prescribed by the Pension Benefit Guaranty Corporation (PBGC) for valuing annuities under single-employer plans that terminate without a notice of sufficiency on the first day of the Plan Year in which the date as of which the benefit is valued occurs, or seven percent (7%) if that produces a larger Actuarial Present Value.

Notwithstanding the foregoing, if the value so calculated under the preceding paragraph exceeds \$25,000 the "Actuarial Present Value" of a lump sum benefit shall be determined using one hundred twenty percent (120%) of the full set of interest rates prescribed by the PBGC for valuing annuities under single employer plans that terminate without a notice of sufficiency on the first day of the Plan Year in which the date as of which the benefit is valued occurs. In no circumstances will the value determined under the preceding sentence be less than \$25,000 after application of one hundred twenty percent (120%) of the full set of interest rates prescribed by the PBGC.

2. For payments pursuant to a Qualified Domestic Relations Order, the "Actuarial Present Value" of a benefit shall be determined using the immediate interest rate prescribed by the PBGC for valuing annuities under single employer plans that terminate without a notice of sufficiency on the first day of the Plan Year in which the date as of which the benefit is valued occurs.

3. For lump sum payments the mortality assumption shall be based on the 1983 Group Annuity Mortality Table weighted as follows:
  - (a) for a Participant's benefit, one hundred percent (100%) male and zero percent (0%) female;
  - (b) for the benefit of a Participant's Spouse or former Spouse, Beneficiary, or any other case, zero percent (0%) male and one hundred percent (100%) female.

**1.03 Annuity Starting Date.**

- a. The "Annuity Starting Date" is the date as of which benefit may begin to be paid under the Plan. Except as provided in section 1.25, the Annuity Starting Date shall be the first day of the first calendar month after or coincident with the later of:
  1. the month following the month in which the claimant has fulfilled all conditions for entitlement to benefits, including the filing of a completed application for benefits, or
  2. thirty (30) days after the Plan advises the Participant in writing of the available benefit payment options.
- b. Notwithstanding subsection a. above, the Annuity Starting Date may occur and benefits may begin before the end of the thirty (30) day period provided:
  1. the benefit is being paid as a Participant and Spouse Pension at or after the Participant's Normal Retirement Age,
  2. the benefit is being paid out automatically as a lump sum under section 9.15, or
  3. the Participant and Spouse (if any) consent in writing to the commencement of payments before the end of that thirty (30) day period as described in subsection a. 2, and distribution of benefits begin more than seven (7) days after such written explanation was provided to the Participant and Spouse.
- c. The Annuity Starting Date will not be later than the Participant's Required Beginning Date as defined in section 1.24.
- d. The Annuity Starting Date for a Beneficiary or alternate payee under a Qualified Domestic Relations Order will be determined under subsections a. and b., except that references to the Participant and Spouse Pension and spousal consent do not apply.
- e. A Participant who retires before his or her Normal Retirement Age and then earns additional benefit accruals under the Plan through reemployment will have a separate Annuity Starting Date determined under subsection a. with respect to those additional accruals, except that an Annuity Starting Date that is on or after Normal

Retirement Age shall apply for any additional benefits accrued through reemployment after that date.

- 1.04 **Association.** "Association" means those designated Chapters or Divisions in the Trust Agreement or any other Chapter or Division of the National Electrical Contractors Association that is a party to any Collective Bargaining Agreement requiring Contributions to be paid to the Trust Fund.
- 1.05 **Beneficiary.** "Beneficiary" means a person designated under section 8.03 (other than an Employee, Participant or Pensioner) who is receiving or entitled to receive benefits under this Plan because of his or her designation for such benefits by a Participant or Pensioner or because of the provisions of this Plan.
- 1.06 **Board.** "Board" means the Board of Trustees established by the Trust Agreement and who have accepted the duties of Trustee thereunder.
- 1.07 **Collective Bargaining Agreement.** "Collective Bargaining Agreement" means all collective bargaining agreements entered into by and between certain Chapters and Divisions of the Association and certain Locals of Union and any other Agreement that specifically provides for the making of Contributions to the Trust Fund established by the Trust Agreement, and any extension or renewal of or amendment or supplement to any of said agreements.
- 1.08 **Compensation.** In addition to other applicable limitations set forth in the Plan, and notwithstanding any other provision of the Plan to the contrary, for Plan Years beginning on or after January 1, 1994, the annual Compensation of each Employee taken into account under the Plan shall not exceed the OBRA '93 annual compensation limit. The OBRA '93 annual compensation limit is \$150,000, as adjusted by the Commissioner for increases in the cost-of-living in accordance with Section 401(a)(17)(B) of the Internal Revenue Code. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding twelve (12) months, over which Compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than twelve (12) months, the OBRA '93 annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period and the denominator of which is twelve (12).

For Plan Years beginning on or after January 1, 1994, any reference in this Plan to the limitation under Section 401(a)(17) of the Internal Revenue Code shall mean the OBRA '93 annual compensation limit set forth in this provision.

If Compensation for any prior determination period is taken into account in determining an Employee's benefits accruing in the current Plan Year, the Compensation for that prior determination period is subject to the OBRA '93 annual compensation limit in effect for that prior determination period. For this purpose, for determination periods beginning before the first day of the first Plan Year beginning on or after January 1, 1994, the OBRA '93 annual compensation limit is \$150,000.

For Plan Years beginning after December 31, 1997, an Employee's Compensation, for purposes of limitations under Sections 415 and 401(a)(17) of the Internal Revenue Code, nondiscrimination under Sections 401(a)(4), 410(b) and 401(a)(26) of the Internal Revenue Code, the determination of Highly Compensated Employees, the computation of benefits and contributions, shall include any elective deferral (as defined in Section 401(g)(3) of the Internal Revenue Code), and any amount that is contributed or deferred by the Employer at the election of the Employee and which, by reason of Section 125, 132(f)(4), 402(e)(3), 402(h) or 457 of the Internal Revenue Code, is not includable in the gross income of the Employee.

The annual compensation of each Participant taken into account in determining benefit accruals in any Plan Year beginning after December 31, 2001 shall not exceed \$200,000 in accordance with Section 401(a)(17) of the Internal Revenue Code. For this purpose, annual compensation means compensation during the Plan Year or such other consecutive 12-month period over which compensation is determined under the Plan (the "determination period"). For the purposes of determining benefit accruals in a Plan Year beginning after December 31, 2001, compensation for determination periods beginning before January 1, 2002 shall also be \$200,000. The \$200,000 limit on annual compensation in shall be adjusted for cost-of-living increases in accordance with IRC §401(a)(17)(B). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

Effective for Plan Years and Limitation Years beginning on or after January 1, 2008, "Compensation" shall mean an Employee's compensation as defined in Section 1.415(c)-2(b) and 1.415(c)-2(c) of the Treasury Regulations for all purposes under the Plan.

**1.09 Contiguous Non-Covered Employment.** "Contiguous Non-Covered Employment" means employment for an Employer after the Contribution Date in a job not covered by a Collective Bargaining Agreement which is contiguous with a Participant's Covered Employment with the same Employer. A period of Non-Covered Employment will be considered to be contiguous with Covered Employment only if there is no quit, discharge or other termination of employment between the period of Covered and Non-Covered Employment.

**1.10 Contributions.** "Contributions" mean payments made or required to be made by Employers to the Trust Fund for work by Employees in Covered Employment.

The term "Contributions" shall include those contributions owed for periods of Qualified Military Service in the armed forces of the United States consistent with and to the extent required by the Uniformed Services Employment and Reemployment Rights Act, as amended, and Section 414(u) of the Internal Revenue Code, as amended. The Contributions required to be made to fund hours credited for periods of Qualified Military Service under section 5.07 will be allocated from general assets of the Trust Fund, and no Employer shall be individually liable to make contributions for such hours.

**1.11 Contribution Date.** "Contribution Date" means the first date for which an Employer is obligated by a Collective Bargaining Agreement to contribute to the Trust Fund. The

“Contribution Date” to be applied to each Participant shall be the date applicable to the first Employer who makes Contributions on behalf of such Participant.

1.12 **Covered Employment.** “Covered Employment” means employment or work covered by the Collective Bargaining Agreements. The term “Covered Employment” shall also mean work performed as an agent or representative of the Union, on whose behalf Contributions are made to the Trust Fund pursuant to regulations adopted by the Board. The term “Covered Employment” shall also mean employment, which is not covered by a Collective Bargaining Agreement, for an Employer party to a Collective Bargaining Agreement and for which the Employer has agreed with the Board to make Contributions to the Trust Fund, subject to the rules and regulations established by the Board.

1.13 **Employee.** “Employee” means:

- a. an individual in the employment of an Employer, whose work or work classification is covered by a Collective Bargaining Agreement with the Union; or
- b. an individual Employee on whose behalf an Employer otherwise makes Contributions to this Trust Fund pursuant to a written agreement as provided in the Trust Agreement; or
- c. a salaried officer or business representative of the Union, or other labor organization with whom the Union is affiliated or associated on whose behalf Contributions are made to this Trust Fund pursuant to written agreement and regulations adopted by the Board.
- d. The term “Employee” also means employees described above and employees not performing work under any of the collective bargaining agreements but who formerly performed services under any of the collective bargaining agreements. The Employer must notify the Trustees in advance in writing of an election to pay contributions on behalf of collective bargaining unit alumni pursuant to this subsection and pursuant to regulations adopted by the Board of Trustees and provided further that the inclusion of said employees is not a violation of any existing law or regulation.
- e. Participation in the Plan by non-collectively bargained employees shall be subject to a Participation Agreement duly executed by the Board of Trustees and the Employer.
- f. Employees not performing services under a collective bargaining agreement may only participate in the Plan if no more than five percent (5%) of the Employees covered under the Plan are non-collective bargaining unit employees. Employees who previously participated as collective bargaining unit employees and who continue participation in the Plan as collective bargaining unit alumni pursuant to this Section shall not be treated as collective bargaining unit employees for purposes of the five percent (5%) maximum but shall be considered collective bargaining unit employees to the fullest extent permissible under the Internal Revenue Code Section 410, Regulations related to that Section and all related Sections and Regulations. Except as may be required by law, collective bargaining unit alumni whose

participation is allowed pursuant to this Section of the Plan and other participants not performing services under the collective bargaining agreement participating pursuant to the provisions of this Section of the Plan, shall in no event accrue benefit under the Plan in a fashion more favorable than that applicable to similarly situated Employees who are performing services under the collective bargaining agreement.

g. In no event may an Employer that wishes to pay contributions to the Plan on behalf of non-collectively bargained unit employees do so without the prior approval of the Trustees. Should an Employer pay such contribution without the prior approval of the Trustees, those contributions less any investment losses but in no event with any investment gains, shall be returned by the Trustees to the Employer. The Trustees shall not permit initial or continued participation pursuant to this Section if such participation would result in the five percent (5%) limitation of this Section being violated.

“Employee” does not include any self employed person, whether a sole proprietor or partner.

Effective April 1, 1997, solely for purposes of testing for compliance with nondiscrimination regulations under Section 401(a)(4) of the Internal Revenue Code, all leased employees, who are defined in Code Section 414(n) or 414(o) as any persons (other than an employee recipient) who pursuant to an agreement between the recipient and any other person (“leasing organization”) have performed services for the recipient (or for the recipient and related persons determination in accordance with Section 414(n)(6) of the Internal Revenue Code) on a substantially full-time basis for a period of at least one year, and such services are performed under primary direction or control by the recipient, shall be treated as employed by an Employer except to the extent such leased employees are excluded under the safe harbor exemption of Code Section 414(n)(5).

**1.14 Employer.** “Employer” means:

- a. An employer who is a member of or is represented in collective bargaining by the Association and who is bound by a Collective Bargaining Agreement with the Union providing for the making of payments to the Trust Fund with respect to Employees performing work covered by the Collective Bargaining Agreement.
- b. An employer who is not a member of, nor represented in collective bargaining by, the Association, but who has duly executed or is bound by a Collective Bargaining Agreement with the Union providing for the making of payments to the Trust Fund with respect to Employees performing work covered by the Collective Bargaining Agreement.
- c. An employer who has entered into an agreement with the Board providing for the making of payments to the Trust Fund with respect to its Employees performing work not covered by a Collective Bargaining Agreement with the Union.

- d. The Union which, for the purpose of making the required Contributions into the Trust Fund, shall be considered as the Employer of the Employees of the Union for whom the Union contributes to the Trust Fund.

Employers as described in this section 1.14 shall, by the making of payments to the Trust Fund pursuant to Collective Bargaining Agreement or other written agreement, be deemed to have accepted and shall be bound by the Trust Agreement.

**1.15 Geographical Area.** “Geographical Area” means the area represented collectively by the National Electrical Contractors Association and the International Brotherhood of Electrical Workers within the jurisdiction of the Eighth District Electrical area.

**1.16 Highly Compensated Employee.**

- a. The term “Highly Compensated Employee” means highly compensated active employees and former employees of an Employer. Whether an individual is a Highly Compensated Employee is determined separately with respect to each Employer, based solely on that individual's Compensation from or status with respect to that Employer.
- b. Effective April 1, 1997, a Highly Compensated Employee is an employee who:
  - 1. was a five percent (5%) owner of the Employer at any time during the year or the preceding year, or
  - 2. for the preceding year, had Compensation from the Employer in excess of \$80,000 (as adjusted annually for increases in the cost-of-living in accordance with regulations prescribed by the Secretary of the Treasury). For purposes of determining if an Employee's Compensation from an Employer exceeds \$80,000 (as adjusted) in the preceding year, the preceding year shall be the calendar year beginning with the Plan Year immediately preceding the Plan Year for which the test is being applied.

**1.17 Hour of Service.** “Hour of Service” means:

- a. each hour for which an Employee is directly or indirectly paid, or entitled to payment, by the Employer for the performance of duties during the applicable computation period. These hours shall be credited to the Employee for the computation period or periods in which the duties were performed;
- b. each hour for which an Employee is paid, or entitled to payment, by the Employer on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), each hour for which the Employee is paid disability benefits from the Eighth District Electrical Benefit Fund, but excluding any time compensated under a workers' or workmen's compensation or unemployment compensation law or a plan pursuant to a mandatory disability benefits law, layoff, jury duty, military duty or leave of absence. Notwithstanding

the preceding sentence, no more than five hundred one (501) Hours of Service are required to be credited under this subsection b. to an Employee on account of any single continuous period during which the Employee performs no duties (whether or not such period occurs in a single computation period). These hours shall be credited to the Employee for the computation period or periods in which the performance period occurred. Hours of Service under this subsection b. shall be determined by dividing the payments received or due for reasons other than performance of duties by the lesser of:

1. the Employee's most recent hourly rate of compensation for the performance of duties; or
2. the Employee's average hourly rate of compensation for the performance of duties for the most recent computation period in which the Employee completed more than five hundred (500) Hours of Service.

c. each hour for which back pay, irrespective of mitigation of damages, has been either awarded or agreed to by the Employer. These hours shall be credited to the Employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement, or payment was made.

Hours under this section 1.17 will be calculated and credited pursuant to Section 2530.200b-2 of the Department of Labor Regulations which is incorporated herein by this reference.

**1.18 Normal Retirement Age.** Effective April 1, 1988, "Normal Retirement Age" means the later of:

- a. age sixty-five (65), or
- b. the earlier of:
  1. the fifth anniversary of the Participant's participation in the Plan, disregarding participation before the effective date of this section 1.18, or
  2. the tenth anniversary of the Participant's participation in the Plan.

Participation before a Permanent Break in Service, and participation before a One-Year Break in Service in the case of a former Participant who has not returned to Covered Employment and reestablished participation in accordance with section 2.03 are disregarded in applying this subsection.

**1.19 Participant.** "Participant" means an Employee who meets the requirements for participation in the Plan as set forth in section 2.01, or a Vested Participant.

**1.20 Pensioner.** "Pensioner" means a person to whom a pension under this Plan is being paid or to whom a pension would be paid but for time for administrative processing.

1.21 **Plan.** “Plan” means the Rules and Regulations of the Eighth District Electrical Pension Fund as adopted by the Board and as thereafter amended.

1.22 **Plan Year.** “Plan Year” means the Trust Fund’s fiscal year, the twelve (12) month period from April 1 of any calendar year through March 31 of the following year. For purposes of ERISA regulations, the Plan Year shall serve as the vesting computation period and benefit accrual computation period.

1.23 **Qualified Domestic Relations Order.** “Qualified Domestic Relations Order” means a domestic relations order that has been determined, pursuant to procedures established by the Board, to be a qualified domestic relations order as defined in Section 206(d)(3) of the Employee Retirement Income Security Act of 1974 and Section 414(p) of the Internal Revenue Code.

1.24 **Required Beginning Date.** For a Participant who attains age seventy and one-half (70 1/2) on or after January 1, 2000, other than a five percent (5%) owner, the Required Beginning Date is April 1 of the calendar year following the later of:

- a. the calendar year in which the Participant attains age seventy and one-half (70 1/2); or
- b. the calendar year in which he or she retires. For this purpose, a Participant shall be deemed retired upon having one calendar month elapse with no hours worked in Covered Employment, provided that such month is concurrent with or follows the April following the calendar year in which the Participant attains age seventy and one-half (70 1/2).

For an owner of five percent (5%) or more, the Required Beginning Date is April 1 of the calendar year following the calendar year in which the participant attains age seventy and one-half (70 1/2).

1.25 **Retroactive Annuity Starting Date.** “Retroactive Annuity Starting Date” means an Annuity Starting Date that is affirmatively elected by a Participant that occurs on or before the date the written explanation of benefit payment options is provided to the Participant. The Retroactive Annuity Starting Date may be no earlier than the later of (1) the first day of the month after the Participant has Retired under section 9.08 or (2) the first day of the month immediately preceding the month in which the completed application is filed. The Participant must request the Retroactive Annuity Starting Date in the pension application. A Retroactive Annuity Starting Date may not be elected in an application for a Pre-Retirement Surviving Spouse Pension under section 6.08, a Pre-Retirement Death Benefit under section 8.01, or a Disability Pension under Article 3.

1.26 **Spouse.** “Spouse” means the person to whom a Participant is married under applicable law, and if and to the extent provided in a Qualified Domestic Relations Order, a Participant’s former Spouse.

1.27 **Trust Agreement.** “Trust Agreement” means the Third Amended and Restated Agreement and Declaration of Trust of the Eighth District Electrical Pension Fund as amended through December 31, 1998, and as thereafter amended.

1.28 **Trust Fund.** “Trust Fund” means the Eighth District Electrical Pension Fund established under the Trust Agreement.

1.29 **Union.** “Union” means those designated local Unions in the Trust Agreement or any other local Union affiliated with The International Brotherhood of Electrical Workers located within the Geographical Area each being a labor organization that is a party to any Collective Bargaining Agreement requiring Contributions to be paid to the Trust Fund.

1.30 **Vested Participant.** “Vested Participant” means an Employee whose benefits are vested in accordance with section 3.07.

1.31 **Other Terms.** Additional terms are defined in other sections of this Plan as follows:

a.	Benefit Units	5.03
b.	Break in Service (One-Year Break in Service, Permanent Break in Service)	5.05
c.	Credited Service (Credited Past Service, Credited Future Service)	5.01 5.02
d.	Deferred Pension	3.07 and 3.08
e.	Disability	3.13
f.	Disability Pension	3.09 and 3.10
g.	Early Retirement Pension	3.05 and 3.06
h.	Participant and Spouse Pension	6.01
i.	Pre-retirement Surviving Spouse Pension	6.08
j.	Prohibited Employment	9.08
k.	Qualified Military Service	5.07
l.	Qualified Spouse	6.05
m.	Regular Pension	3.01 and 3.02
n.	Retired	9.08
o.	Separation from Covered Employment	3.19
p.	Service Pension	3.03 and 3.04
q.	Vested Status	3.07

## ARTICLE 2. PARTICIPATION

**2.01 Participation.** An Employee who is engaged in Covered Employment on or after the Contribution Date shall become a Participant on the earliest April 1 or October 1 following completion of a twelve (12) consecutive month period during which he completed at least five hundred (500) Hours of Service in Covered Employment or Contiguous Non-Covered Employment. If the Employee fails to work in Covered Employment for five hundred (500) hours during the twelve (12) month period from his date of hire, the eligibility computation period shall be the Plan Year that includes the Employee's first anniversary of his date of hire. Any succeeding eligibility computation period shall be based on a Plan Year.

**2.02 Termination of Participation.** A Participant who incurs a One-Year Break in Service as defined in section 5.05 b. shall cease to be a Participant as of the last day of the Plan Year in which the One-Year Break in Service occurred, unless he is a Vested Participant.

**2.03 Reinstatement of Participation.** An Employee who has lost his status as a Participant in accordance with section 2.02 shall again become a Participant by meeting the requirements of section 2.01 on the basis of Hours of Service after the Plan Year during which his Break in Service occurred. An Employee who meets these requirements shall be considered a Participant retroactively as of his reemployment commencement date in Covered Employment.

The reemployment commencement date is the first day the Employee is credited with an Hour of Service after the Plan Year in which he incurred his last One-Year Break in Service.

**2.04 Request for Employment Information.** Each Employee at the time Contributions are first made on such Employee's behalf and each Participant who incurs a One-Year Break in Service may be requested in writing by the Plan administrator to provide employment information relating to past Covered and Contiguous Non-Covered Employment in order that such Employee or Participant receives full credit for such employment for purposes of participation and vesting.

### ARTICLE 3. PENSION ELIGIBILITY AND AMOUNTS

3.01 **Regular Pension — Eligibility.** A Participant is eligible to receive a Regular Pension when he has attained Normal Retirement Age.

3.02 **Regular Pension — Amount.**

a. The amount of the Regular Pension effective on or after April 1, 1998, where there has been no Separation from Covered Employment, shall be a monthly amount equal to the sum of the amounts calculated in accordance with this section 3.02. The maximum amount of a Regular Pension will be determined by using the highest thirty (30) Benefit Units, five (5) of which must represent Hours of Service in Covered Employment worked after April 1, 1983.

1. The Benefit Units earned by the Participant prior to April 1, 1977 (or prior to his Contribution Date, if later) are multiplied by the monthly pension amount determined from the following table for the hourly contribution rate payable on March 31, 1977 (or on the Contribution Date, if later) for the Bargaining Unit applicable to the Participant on that date.

Hourly Contribution Rate Payable on <u>March 31, 1977*</u>	Monthly Pension Amount Payable for each <u>Benefit Unit</u>
\$0.16 per hour	\$ 5.40
\$0.25 per hour	\$ 7.60
\$0.35 per hour	\$10.00
\$0.45 per hour	\$12.40
\$0.50 per hour	\$13.60

\* Or on the Contribution Date, if later.

“Bargaining Unit” means, for purposes of this section 3.02, a group of Employees for which the Contribution rate to the Trust Fund is the same, and for which the Contribution Date is also the same. The Bargaining Unit applicable to an Employee or Pensioner is the one in which he worked the greatest number of hours in the period when he accumulated the last five (5) years of Credited Service.

2. With respect to work in Covered Employment on and after April 1, 1977, (or the Contribution Date if later) and before March 31, 2007, whenever a Participant works at least five hundred (500) Hours of Service in Covered Employment or earns a year of Credited Future Service in accordance with section 5.02 during a Plan Year, the monthly pension amount will be three and one-tenths percent (3.1%) of the Contributions made or required to be made on behalf of the Participant during such Plan Year. With respect to

work in Covered Employment on and after April 1, 2007 and before June 30, 2009, (or the Contribution Date if later), whenever a Participant works at least five hundred (500) Hours of Service in Covered Employment or earns a year of Credited Future Service in accordance with Section 5.02 during a Plan Year, the monthly pension amount will be two and three-tenths percent (2.3%) of the Contributions made or required to be made on behalf of the Participant during such Plan Year.

With respect to work in Covered Employment on and after July 1, 2009 (or the Contribution Date if later) and before October 1, 2013, whenever a Participant works at least five hundred (500) Hours of Service in Covered Employment or earns a year of Credited Future Service in accordance with Section 5.02 during a Plan Year, the monthly pension amount will be one and one-half percent (1.5%) of the Contributions made or required to be made on behalf of the Participant during such Plan Year. Any contributions which are designated as contributions which shall not be subject to benefit accruals under a Rehabilitation Plan required by the Pension Protection Act of 2006 will not be included in the above calculation and will receive no benefit accrual. However, for work in those geographic areas under a Collective Bargaining Agreement or Participation Agreement in which Rehabilitation Plan Alternative II is applicable, on and after the effective date of the adoption or implementation of Rehabilitation Plan Alternative II, whenever a Participant works at least five hundred (500) Hours of Service in Covered Employment or earns a year of Credited Future Service in accordance with Section 5.02 during a Plan Year, the monthly pension amount will be one percent (1%) of the Contributions made or required to be made on behalf of the Participant during such Plan Year. Any contributions to the Plan subject to a surcharge imposed pursuant to the Pension Protection Act of 2006 shall not be included in the above calculation and will receive no benefit accrual.

With respect to work in Covered Employment on and after October 1, 2013 (or the Contribution Date if later), whenever a Participant works at least five hundred (500) Hours of Service in Covered Employment or earns a year of Credited Future Service in accordance with Section 5.02, the monthly pension amount will be one and one half percent (1.5%) of all Contributions made or required to be made on behalf of the Participant during such Plan Year.

- b. The monthly amount of a Regular Pension payable to a Participant where there has been a Separation from Covered Employment, shall be the sum of:
  1. for work in Covered Employment which follows a Separation from Covered Employment as defined in section 3.19, a monthly amount determined in accordance with subsection a.;
  2. for work in Covered Employment which precedes a Separation from Covered Employment as defined in section 3.19, a monthly amount determined in

accordance with the terms of the Plan in effect at the end of the Plan Year in which the Separation from Covered Employment occurred.

**3.03 Service Pension – Eligibility.** A Participant is eligible for a Service Pension if:

- a. he has not previously received any monthly pension payments from the Plan other than for a Disability Pension;
- b. he has not incurred a Separation from Covered Employment since he last worked in Covered Employment;
- c. he is at least age fifty-five (55), but is not yet age sixty-five (65); and
- d. he has earned at least thirty (30) years of Credited Service within the exclusive jurisdiction of the Trust Fund without a Permanent Break in Service, of which at least one is earned after the Contribution Date.
- e. Effective for Pension Applications received on and after January 1, 2008, the requirement of having earned at least thirty (30) years of Credited Service as one of the eligibility criteria for a Service Pension may include Credited Service accrued under the jurisdiction of this Plan as well as Credited Service based on hours worked outside the jurisdiction of this Plan and reciprocated to this Plan pursuant to the International Reciprocal Agreement.

**3.04 Service Pension – Amount.** The Service Pension shall be a monthly amount determined as follows:

- a. The first step is to determine the amount of the Regular Pension to which the Participant would be entitled if he were sixty-five (65) years of age at the time his Service Pension is to be effective.
- b. The second step, if the Participant is younger than age sixty-two (62), is to reduce the amount from subsection a. above by one fourth of one percent (1/4 of 1%) for each month the Participant is younger than age sixty-two (62) but older than age sixty (60); and to reduce the amount from subsection a. above by one half of one percent (1/2 of 1%) for each month the Employee is younger than age sixty (60).

However, for Participants working under a Collective Bargaining Agreement or Participation Agreement that has adopted the provisions of Rehabilitation Plan Alternative I, if the Participant is younger than age 62, for pensions with an Annuity Starting Date on or after June 1, 2009, the Regular Pension is reduced by one-half of one percent ( $\frac{1}{2}$  of 1%) for each month that the Participant is younger than age sixty-two (62). For Participants working under a Collective Bargaining Agreement or Participation Agreement in those geographic areas which have adopted or are subject to the provisions of Rehabilitation Plan Alternative II, for pensions with an Annuity Starting Date on or after June 1, 2009, if the Participant is younger than age 65, the Regular Pension is reduced by one half of one percent ( $\frac{1}{2}$  of 1%) for each month that the Participant is younger than age sixty-five (65). For participants working under

the Asplundh Tree Service Collective Bargaining Agreement with Locals 44 and 532, the provisions stated above for Alternative 1 of the Rehabilitation Plan shall apply to benefits earned on and after January 1, 2012.

However, for Participants with an Annuity Starting Date on or after April 1, 2013, if a Participant is younger than age sixty-two (62), the Regular Pension is reduced by one fourth of one percent (1/4 of 1%) for each month the Participant is younger than age sixty-two (62) but older than age sixty (60); and is reduced by one half of one percent (1/2 of 1%) for each month the Participant is younger than age sixty (60).

**3.05 Early Retirement Pension — Eligibility.** A Participant is eligible for an Early Retirement Pension, if:

- a. he has not incurred a Separation from Covered Employment since he last worked in Covered Employment;
- b. he is at least age fifty-five (55), but is not yet age sixty-five (65);
- c. he earns at least one Hour of Service in Covered Employment, or if at least one Hour of Service has been transferred to this Plan on the Participant's behalf under the Electrical Industry Pension Reciprocal Agreement, on or after April 1, 1997 and he has at least five (5) years of Credited Service without a Permanent Break in Service, exclusive of any Credited Service earned as a result of Contiguous Non-Covered Employment; and
- d. he has earned at least eight hundred (800) hours of Credited Service after the Contribution Date.

If a Participant on an Early Retirement Pension establishes entitlement to a Disability Pension within the twenty-four (24) consecutive month period immediately following the Annuity Starting Date and the disability application and proof of Disability as required in section 3.14 is made to the fund office within sixty (60) days of the date of the receipt of a Social Security disability award by the Pensioner, he will be eligible to receive a Disability Pension from the Plan. Applications made after such sixty (60) day period shall be denied. The amount of the pension payments will be based upon his benefit computation at the time of his Early Retirement Annuity Starting Date and in accordance with section 3.10.

In the event such recomputation provides for a lower pension amount due to the option originally selected, the Participant's subsequent Disability Pension will be equal to the Early Retirement Pension then in effect.

**3.06 Early Retirement Pension — Amount.** An Early Retirement Pension shall be a monthly amount determined as follows:

- a. The first step is to determine the amount of the Regular Pension to which the Participant would be entitled under section 3.02 if he were sixty-five (65) years of age at the time his Early Retirement Pension is to be effective.

b. The second step, to take account of the fact the Participant is younger than age sixty-five (65), is to reduce the first amount by one fourth of one percent (1/4 of 1%) for each month that the Employee is younger than sixty-five (65) but older than age sixty (60); and to reduce the first amount by one half of one percent (1/2 of 1%) for each month that the Employee is younger than age sixty (60) but older than age fifty-five (55).

However, for Participants working under a Collective Bargaining Agreement or Rehabilitation Agreement which has adopted or are subject to the provisions of Rehabilitation Plan Alternative I or II, for pensions with an Annuity Starting Date on or after June 1, 2009, the Regular Pension shall be reduced by one half of one percent (½ of 1%) for each month the Participant is younger than age 65 but older than age 55. For participants working under the Asplundh Tree Service Collective Bargaining Agreement with Locals 44 and 532, the provisions stated above for Alternative 1 of the Rehabilitation Plan shall apply to benefits earned on and after January 1, 2012.

However, for Participants with an Annuity Starting Date on or after April 1, 2013, if a Participant is younger than age sixty-five (65), the Regular Pension is reduced by one fourth of one percent (1/4 of 1%) for each month the Participant is younger than age sixty-five (65) but older than age sixty (60); and is reduced by one half of one percent (½ of 1%) for each month the Participant is younger than age sixty (60) but older than age fifty-five(55) .

### **3.07 Deferred Pension — Eligibility.**

- a. A Deferred Pension is payable to a Participant who has achieved "Vested Status" as defined below:
  1. A Participant who earns at least one Hour of Service in Covered Employment, or if at least one Hour of Service has been transferred to this Plan on the Participant's behalf under the Electrical Industry Pension Reciprocal Agreement, on or after April 1, 1997 acquires Vested Status after completion of five (5) years of Credited Service.
  2. After March 31, 1976 and before April 1, 1997, a Participant will have achieved Vested Status if he has accumulated at least ten (10) years of Credited Service, without a Permanent Break in Service.
  3. Before April 1, 1976, a Participant achieved Vested Status if he:
    - (a) had accumulated at least ten (10) Benefit Units, without a Permanent Break in Service, and
    - (b) had accumulated at least two (2) quarters of a Benefit Unit in Covered Employment after his Contribution Date.

- b. A Deferred Pension shall be payable to a Vested Participant, on or after the Participant attains age sixty-five (65). In addition, if a Vested Participant has met the Credited Service requirements for an Early Retirement Pension as set forth in the Plan at the time he suffers a separation of Covered Employment, the Vested Participant can elect to retire and receive reduced monthly pension benefits between the ages of fifty-five (55) and sixty-five (65).
- c. A Participant's right to his Regular Pension is nonforfeitable upon his attainment of Normal Retirement Age, subject to the provisions of section 10.08.
- d. Years of Credited Service that are not taken into account because of a Permanent Break in Service do not count in determining a Participant's Vested Status.
- e. No amendment of this Plan may take away a Participant's Vested Status if earned at the time of the amendment. Also, an amendment may not change the schedule on the basis of which a Participant acquires Vested Status, unless each Participant who has at least three (3) years of Credited Service at the time the amendment is adopted or effective (whichever is later) is given the option of achieving Vested Status on the basis of the pre-amendment schedule. That option may be exercised within sixty (60) days after the latest of the following dates:
  - 1. when the amendment was adopted,
  - 2. when the amendment became effective, or
  - 3. when the Participant was given written notice of the amendment.

**3.08 Deferred Pension — Amount.**

- a. The monthly amount of the Deferred Pension payable at Normal Retirement Age shall be determined in the same manner as a Regular Pension under section 3.02. If a Deferred Pension is payable prior to age sixty-five (65), the benefit amount shall be the Regular Pension amount reduced by one-half of one percent (1/2 of 1%) for each month that the Vested Participant is younger than age sixty-five (65) on the pension effective date. Notwithstanding the above sentence, if a Deferred Pension is payable prior to age sixty-five (65) to a Vested Participant who was a Participant on April 1, 1994, the benefit amount shall be determined in the same manner as an Early Retirement Pension.

However, for pensions payable under this Section with an Annuity Starting Date on or after June 1, 2009; the Regular Pension is reduced by one half of one percent (1/2 of 1%) for each month that the Participant is younger than age sixty-five.

- b. The monthly pension amount payable to a Vested Participant who failed to earn eight hundred (800) hours of Credited Service in a two (2) consecutive calendar year period before April 1, 1976 (after he had accumulated ten (10) Benefit Units) will be determined in accordance with the provisions of the Plan in existence on the date of his termination of employment.

**3.09 Disability Pension — Eligibility and Commencement.** Effective for all Disability Pension received by the Pension Fund on or after January 1, 2007, a Participant may retire on a Disability Pension if:

- a. he is Disabled as defined in section 3.13,
- b. he has at least five (5) years of Credited Service without a Permanent Break in Service, exclusive of any Credited Service earned as a result of Contiguous Non-Covered Employment, and
- c. he has earned at least five hundred (500) Hours of Service in Covered Employment in either of the two (2) consecutive Plan Years immediately preceding the Plan Year in which he became Disabled., one of which may include the Plan Year in which he became Disabled.

This requirement for a Disability Pension shall only apply to Participants whose application for a Disability Pension is received by the Plan on or after April 1, 2001. If a Participant incurs a Separation from Covered Employment prior to April 1, 2001 and later becomes Disabled, such Participant will be required to meet the requirement set forth in this subsection c. in order to be eligible for a Disability Pension.

**3.10 Disability Pension — Amount.** The monthly amount of Disability Pension is determined in the same way as the monthly amount of the Regular Pension is determined under section 3.02.

**3.11 Non-Auxiliary Disability Benefit.**

- a. Notwithstanding any provision of the Plan to the contrary, effective as of April 1, 1989, the Disability Pension will be paid as a Participant and Spouse Pension, subject to a waiver in accordance with section 6.06, or any other benefit payment form of Actuarial Equivalence that would be available to the Participant under the Plan if he were retiring at Normal Retirement Age or, if the Participant is then eligible for it, Early Retirement.
- b. In converting the accrued benefit of a Participant retiring with a Disability Pension to Actuarially Equivalent alternate payment forms, the following factors shall be used in lieu of the factors otherwise prescribed for those payment forms:

Participant and Spouse Pension: See section 6.05.

100% Joint and Survivor: See section 7.01.

Effective April 1, 2009, 75% Joint and Survivor Option: See Section 7.01.1.

**3.12 Retroactive Payment of Supplemental Disability Benefit.**

- a. Effective as of April 1, 1989, if the Annuity Starting Date for a Participant who is Disabled is after the date payments would have begun if an application had been filed earlier, the Participant will be entitled to a Supplemental Disability Benefit (which is an auxiliary disability benefit under Section 1.401(a)-20(c) of the Treasury Regulations).
- b. "Supplemental Disability Benefit" means an amount, payable as a lump sum, equal to the monthly benefit payment payable as the Participant's Disability Pension (in the payment form elected for that pension) multiplied by the number of complete months between the Annuity Starting Date and the date the Disability Pension payments would have begun if the Participant had applied on the date of the Disability, provided that the Participant applied for a Disability Pension with the administrative office of the Trust Fund within two (2) years of the date of the determination by the Social Security Administration that the applicant is entitled to a Social Security disability benefit.

**3.13 Disability/Disabled Defined. A Participant is Disabled if:**

- a. the Participant is wholly and continuously disabled and prevented from engaging in or performing work in his own occupation or such other occupation for which he is reasonably qualified by reason of education, training and experience;
- b. such disability is expected to result in death or to be at least twelve (12) months duration; and
- c. such disability is not due to the self-infliction of any injury or illness, while sane or insane, or service in the armed forces of any country, or war or any act of war, declared or undeclared.

**3.14 Proof of Disability.**

a. Expedited Disability Pension for Terminal Illness.

If a Participant meets the requirements of the other provisions of this Article 3 for a Disability Pension except for the receipt of a Social Security Administration Disability Award, but has a pending application for a Social Security Administration Disability Award, then if the Trustees determine that the Participant is:

1. Unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long, continued and indefinite duration, and
2. The Participant submits a certification from a qualified physician or surgeon that is acceptable to the Trustees that the Participant is suffering from a condition that is life threatening and expected to be of a terminal nature, then

the Participant will be disabled for purposes of Section 3.13 and be entitled to a disability benefit date from the later of the first of the month on or after the date of that certification and the first of the month that is at least sixty (60) days before the application for this Expedited Disability Pension, notwithstanding the fact that the Participant has not been so disabled for five (5) months and has not yet been awarded a Social Security Disability Award. If the Social Security Administration subsequently determines that the Participant is not disabled, no further disability benefit payments will be paid or payable by this Plan from and after the date of that determination. The Participant shall not be obligated to repay the Plan the payments received prior to that Social Security Administration determination, unless those payments were obtained through fraud or similar means. The Trustees may at any time require the Participant to confirm continuing disability and entitlement to disability benefit payments under this Section through a medical examination by a physician or surgeon retained by and at the expense of the Plan. A Participant receiving disability benefits under this Section may at any time elect in writing on any form prescribed by the Trustees to stop these payments and elect any other benefits to which the Participant is entitled under the Plan.

- b. A Participant shall be deemed Disabled upon determination by the Social Security Administration that the Participant is entitled to and awarded a Social Security disability benefit in accordance with the Social Security Act. In the absence of a Social Security disability benefit award, the Board in its absolute discretion and based upon competent medical evidence may determine that a Participant is Disabled. The Board may at any time, or from time to time, require evidence of continued Disability or entitlement to a Social Security disability benefit and shall have the right and opportunity at its own expense to examine the Participant when and as often as it may reasonably require during any period of Disability. If at any time prior to Normal Retirement Age, the Board determines that a Participant is no longer Disabled or entitled to a Social Security disability benefit, or if a Participant refuses to submit proof of continued Disability or entitlement to a Social Security disability benefit when requested, the Board may discontinue his Disability Pension.

### **3.15 Disability Pension Payments.**

- a. Payment of the Disability Pension shall commence on the effective date of disability as determined by Social Security Administration or the requirement for advance application has been met, whichever is later; payment of the Disability Pension will continue for so long as the Disabled Pensioner remains Disabled as defined in section 3.13 or entitled to a Social Security disability benefit, except that upon attainment of age sixty-five (65) a Disabled Pensioner shall have his benefits continued regardless of whether he remains Disabled, provided, however, that he remains Retired as defined in section 9.08.
- b. A Disabled Pensioner who has received a Social Security disability benefit award shall not be entitled to a Disability Pension for any month he is not entitled to a

Social Security disability benefit, except for the five (5) month initial eligibility waiting period under Social Security Administration. The nonpayment of Social Security disability benefits during any re-entitlement period recognized by the Social Security Administration does not constitute the loss of entitlement to Social Security disability benefit within the meaning of this section. Work performed during such periods shall not be considered as showing the Disability has ended.

3.16 **Effect of Recovery by a Disability Pensioner.** If a Disability Pensioner is no longer Disabled or loses entitlement to his Social Security disability benefit or does not receive Social Security disability benefits for any month during a re-entitlement period prior to attainment of age sixty-five (65), such fact shall be reported in writing to the Board within twenty-one (21) days of the date he is no longer Disabled or the date he receives notice from the Social Security Administration of such loss or the month he does not receive Social Security disability benefits during any re-entitlement period. If such written report is not provided, he will, upon his subsequent retirement, have all disability payments, if not previously repaid to the Trust Fund, received by him from this Trust Fund for the months which may have elapsed since he was no longer Disabled or received notice of the termination of the Social Security disability benefit or the month he does not receive Social Security disability benefits during any re-entitlement period and in which he received a Disability Pension under this Plan, offset against retirement benefit payments.

3.17 **Reemployment of a Disability Pensioner.** A Disability Pensioner who is no longer Disabled or entitled to a Social Security disability benefit may again return to Covered Employment and resume the accrual of Credited Service and be entitled to a Regular, Early Retirement or Disability Pension unaffected by the prior receipt of a Disability Pension.

3.18 **Non-duplication.** A Participant shall be entitled to only one pension under this Plan, except that a Disability Pensioner who recovers may be entitled to a different kind of pension and a Pensioner may also receive a pension as the Spouse of a deceased Pensioner.

3.19 **Separation from Covered Employment.**

- a. If a Participant fails to earn at least five hundred (500) Hours of Service in Covered Employment in each of two (2) consecutive Plan Years after March 31, 1991, he shall be deemed to be Separated from Covered Employment. The Participant's pension benefit shall be calculated by using the Plan provisions in effect at the end of the two (2) year period.
- b. If a Participant fails to earn at least five hundred (500) Hours of Service in Covered Employment in any Plan Year after March 31, 1976 and prior to April 1, 1991, he shall be deemed to be Separated from Covered Employment. The Participant's pension benefit shall be calculated by using the Plan provisions in effect at the end of the Plan Year.
- c. If a Participant fails to earn at least one fourth (1/4) of a Benefit Unit in any two (2) consecutive Plan Year period prior to April 1, 1976, he shall be deemed to be

Separated from Covered Employment. The Participant's pension benefit shall be calculated by using the Plan provisions in effect at the end of the two (2) year period.

- d. Effective for retirements on or after April 1, 1991, a Separation from Covered Employment is repairable, in the sense that its effects are eliminated if, before incurring a Permanent Break in Service and immediately following the consecutive One-Year Break in Service period that includes the Separation from Covered Employment, a Participant works at least five hundred (500) Hours of Service in Covered Employment in a number of consecutive Plan Years that equals or exceeds the actual number of One-Year Breaks in Service that includes the Separation from Covered Employment.
- e. Notwithstanding subsection d. above, if a Participant returns to work in Covered Employment following a Separation from Covered Employment, the amount of his pension benefit earned before the Separation from Covered Employment shall be determined in accordance with the Plan provisions in effect at the time the Separation from Covered Employment occurred. The pension amount for Benefit Units earned after the Separation from Covered Employment shall be determined in accordance with the Plan provisions in effect after the Separation from Covered Employment.
- f. A Participant shall not incur a Separation from Covered Employment for periods of absence while engaged in Qualified Military Service as defined in section 5.07.

**3.20 Rounding of Benefit Amounts.** If the calculation of any benefit amount due under this Plan results in an amount which is not an exact multiple of \$0.50, then the amount so calculated shall be rounded by raising it to the next higher multiple of \$0.50 and the rounded amount shall be payable.

**3.21 Pension Adjustments.** From time to time, the Board may but shall not be required to increase the pension benefit being paid or payable to Pensioners and Beneficiaries. Any such adjustment shall be set forth in this section 3.21 in the chronological sequence in which such increases occurred.

- a. Effective April 1, 1980, the monthly pension benefit in effect prior to April 1, 1980, for a basic Pensioner or an existing pension is increased as follows:
  - 1. The basic Pensioner's benefit is increased by \$20.00 per month.
  - 2. The monthly benefit for all other existing Pensioners is increased five percent (5%).

- b. Effective April 1, 1988, all Pensioners and Beneficiaries receiving benefits on April 1, 1988, shall have their benefits increased by five percent (5%).
- c. Effective April 1, 1991, all Pensioners and Beneficiaries receiving benefits on April 1, 1991, shall have their monthly benefits increased by \$20.00.
- d. Effective January 1, 1992, all Pensioners and Beneficiaries receiving benefits on January 1, 1992, shall have their monthly benefits increased by the following amounts: an increase of \$60.00 per month if the effective date of pension was before July 1, 1975; an increase of \$35.00 per month if the effective date of pension was on or after July 1, 1975 and prior to April 1, 1980; an increase of \$20.00 per month if the effective date of pension was on or after April 1, 1980 and prior to February 1, 1992.
- e. Effective April 1, 1994, all Pensioners and Beneficiaries receiving benefits on March 1, 1994, shall receive an additional, one-time amount as follows:

\$450.00 for Pensioners, and \$250.00 for Beneficiaries.
- f. Effective April 1, 1996 and for Plan Years thereafter, the Board may elect to provide supplemental pension benefits based upon the following formulae:
  1. The net investment return for the Plan Year immediately preceding the Plan Year in which a supplemental pension benefit is to be provided will be determined based upon the difference between the beginning and ending market value of the Plan's assets less administrative and investment expenses.
  2. The excess, if any, of the prior Plan Year's actual net investment return over the actuarially assumed investment return for that year will be calculated.
  3. Twenty-five percent (25%) of such excess but not more than \$1,500,000 may be allocated among and distributed to the group composed of Pensioners and Beneficiaries receiving benefits on April 1 of the Plan Year in which a supplemental benefit is to be provided as the Board in its absolute discretion may determine.
  4. The above formulae may be cancelled, modified or amended at any time by the Board.
- g. Effective April 1, 1996, all Pensioners and Beneficiaries receiving benefits on April 1, 1996 shall receive an additional one-time amount of \$500.00.
- h. Effective December 1, 1997, all Pensioners and Beneficiaries receiving benefits on April 1, 1997 shall receive an additional one-time amount of \$500.00.
- i. Effective December 1998, all Pensioners and Beneficiaries receiving benefits on April 1, 1998 shall receive an additional one-time amount of \$500.00.

- j. Effective April 1, 1999, all Pensioners and Beneficiaries receiving benefits on April 1, 1999 shall have their monthly benefits increased by \$25.00.
- k. Effective January 1, 2001, all Pensioners and Beneficiaries receiving benefits on December 31, 2000 shall receive an additional one-time amount of \$500.00. In addition, all Beneficiaries receiving benefits on December 1, 2000 shall receive an additional one-time amount that is equal to \$500.00 divided by the total number of Beneficiaries who are receiving benefits on behalf of a single former Plan Participant or Pensioner.

#### ARTICLE 4. TRANSFERS OF CONTRIBUTIONS (MONEY-FOLLOWS-THE-MAN)

4.01 **Purpose.** On April 11, 1985, the Board adopted The Electrical Industry Pension Reciprocal Agreement, (Reciprocity Agreement) to be effective June 1, 1985. The purpose of this Reciprocity Agreement is to protect the pension rights of a Participant who may lack sufficient vesting service to be eligible for any pension because his years of employment are divided between different pension plans, or if eligible, his pension would be less than the full amount because of such division of employment. The Reciprocity Agreement provides for the transfer of contributions made to another pension fund (Participating Fund) to this Trust Fund (Home Fund) if the Participating Fund has adopted the Reciprocity Agreement and the Participant has signed a transfer authorization card with the Participating Fund. The Reciprocity Agreement also provides for the transfer of Contributions made to this Trust Fund to the Home Fund of the Participant who has signed a transfer authorization card with this Trust Fund. In no event will this Trust Fund accept contributions that were made to another pension fund (Participating Fund) more than six months prior to registration with ERTS providing for the transfer of contributions to this Trust Fund (Home Fund). In no event will this Trust Fund transfer contributions to another pension fund that were made more than six months prior to registration with ERTS.

4.02. Off-Benefit contributions payable under the Rehabilitation Schedules result in no benefit accruals and are devoted solely to improving the funding status of the Plan. The same is true in terms of any employer surcharge contributions received or payable for periods prior to the collective bargaining parties adoption and implementation of a Rehabilitation Plan Schedule. Accordingly, individuals who work inside the jurisdiction of this Plan and have employer contributions transferred to another Plan pursuant to the money-follows-the-person Reciprocity Agreement shall see all increased off-benefit contributions under any Schedule and all employer surcharge contributions remain in this Plan for funding purposes only. Only on-benefit contributions received will be transferred.

The benefits of an Alternative Schedule are available only for work performed under a Collective Bargaining Agreement or Subscription Agreement which specifically adopts the Alternative Schedule. When a Participant works outside the jurisdiction of this Plan, the individual, absent an extraordinary agreement, is not working under an agreement which adopts an Alternative Schedule. When such a participant reciprocates contributions to this Plan pursuant to the money-follows-the-person Reciprocity Agreement for work performed outside this Plan's jurisdiction, all contributions received via reciprocity will be credited to the participant.

If a Participant works under a particular Schedule and subsequently works under another Schedule benefits accrued during the first period of employment and for prior periods under the same collective bargaining agreement, will be determined under the applicable Schedule and benefits accrued during employment under a second Schedule shall be determined under the second Schedule. To the extent required by law this may result in separate and distinct

annuities being provided to an individual Plan Participant to assure compliance with all applicable laws.

**ARTICLE 5. ACCUMULATION OF BENEFIT UNITS AND  
YEARS OF CREDITED SERVICE**

**5.01 Years of Credited Service for Periods Prior to the Contribution Date (Credited Past Service).**

- a. In order for a Participant to be eligible for Credited Past Service prior to his Contribution Date, he must earn at least eight hundred (800) Hours of Service in Covered Employment toward Credited Future Service in the twenty-four (24) consecutive month period immediately following his Contribution Date.

Credited Past Service shall be granted to a Participant for each Plan Year, or portion thereof, he performed work prior to his Contribution Date if such employment would have resulted in Credited Future Service had the provisions establishing this Trust Fund been in existence during such period of employment. There shall be excluded from any such Credited Past Service any employment outside the Geographical Area embraced by the current Collective Bargaining Agreements, except as such employment outside the Geographical Area may be credited pursuant to rules and regulations to be adopted by the Board.

The Board in its discretion will interpret and apply this section 5.01 and withhold Credited Service for periods of employment or work that is not strictly embraced within the meaning of the above paragraph.

A Participant shall be entitled to a full year of Credited Past Service for each Plan Year he was so employed for one thousand six hundred (1,600) hours or more. If a Participant was so employed for less than one thousand six hundred (1,600) hours but for at least four hundred (400) hours in any Plan Year, he shall receive one quarter of Credited Past Service for each four hundred (400) hours of such employment.

- b. For new Employers whose Contribution Date is on or after April 1, 1987 and before April 1, 1992, the crediting of Credited Past Service for a Participant shall be contingent upon the Participant earning a year of Credited Future Service for each year of Credited Past Service credited. Such Credited Past Service credited under this provision shall not be used to repair a Permanent Break in Service.
- c. For new Employers whose Contribution Date is on or after April 1, 1992 and before April 1, 1998, the crediting of Credited Past Service for a Participant shall be contingent upon the Participant earning a year of Credited Future Service for each year of Credited Past Service credited for Hours of Service worked in Covered Employment either for an Employer or for a previous Employer that became subject to a Collective Bargaining Agreement within the two (2) year period after the Participant last worked for that Employer. The maximum years of Credited Past Service granted under this subsection c.

will be five (5) years. Such Credited Past Service credited under this provision shall be used to repair a Permanent Break in Service.

- d. For new Employers whose Contribution Date is on or after April 1, 1998 and prior to April 1, 2008, the crediting of Credited Past Service for a Participant shall not apply.
- e. It is recognized that, for periods prior to the Contribution Date, it may be difficult to establish with certainty the Credited Past Service of a Participant. In making the necessary determination as to Credited Past Service, the Board may consider and rely upon any relevant and material evidence including, without limitation, any or all of the following:
  - 1. A statement from the administrator of any health benefit fund within the jurisdiction of this Trust Fund certifying to the receipt of employer reports with respect to hours worked by the Participant and stating the number of hours reported for the period covered by the statement.
  - 2. A statement from an employer certifying that the Participant performed work for such employer entitling him to vesting service during such period if such employer was known or reported to be operating in the electrical industry in the geographical territory to which the Collective Bargaining Agreements are applicable during such period.
  - 3. A statement from the secretary or other authorized officer of the Union certifying that the Participant was a member in good standing in such Union during such period, or was employed by such Union during such period in a position included under the Plan pursuant to action taken by the Board.
  - 4. A W-2 form or check stub furnished for work performed during the period for any employer known or reputed to have been operating in the electrical industry in the geographical territory to which the Collective Bargaining Agreements are applicable during such period.
  - 5. A statement from the Social Security Administration to the effect that according to its records, the Participant was employed during the period by a named employer, which employer was known or reputed to be operating in the electrical industry in the geographical territory to which the Collective Bargaining Agreements are applicable during such period.
- f. For new Employers whose Contribution Date is on or after April 1, 2008, a Participant shall be credited with Credited Past Service contingent upon the Participant earning a year of Credited Future Service for each year of Credited Past Service credited, up to a maximum of five years of Credited Past Service. Such Credited Past Service credited under this provision shall

not be used to repair a Permanent Break in Service and shall not count toward vesting or eligibility for any form of benefit provided under this Plan. For purposes of benefit accrual, each year of Credited Past Service credited under this Section will be paid at an accrual rate of \$13.60 provided that the contribution rate is at least \$.50 per hour.

- g. Notwithstanding, subsections (a), (b), (c), (d), (e) and (f) above, a Participant will only be eligible for Credited Future Service based on the Participant's Past Service only if the Participant works for the same employer. The granting of Credited Past Service will be contingent on the Participant earning Credited Future Service with the same employer in which Past Service was earned.
- h. Notwithstanding anything in the Plan to the contrary, Participants employed by R.A. Waffensmith in Covered Employment on October 1, 2003 (the Contribution Date for R.A. Waffensmith) are granted Credited Past Service up to a maximum of two years of retroactive to their date of hire with R.A. Waffensmith, but not earlier than October 1, 2001. The Credited Past Service granted for this period of employment with R.A. Waffensmith counts for both benefit accrual and vesting and eligibility purposes. In addition, for continuous R.A. Waffensmith employment prior to October 1, 2001, up to one and one-half years of Credited Past Service is granted for vesting and eligibility purposes only (no benefit accrual). The Credited Past Service for employment prior to October 1, 2001 is contingent upon the Participant earning a year or partial year of Credited Future Service for each year or partial year of Credited Past Service credited.

**5.02 Years of Credited Service after the Contribution Date (Credited Future Service).**

- a. On and after the Contribution Date and prior to April 1, 1976, a Participant shall receive Credited Service for Hours of Service in Covered Employment during a Plan Year according to the following schedule:

<u>Hours of Service in Plan Year</u>	<u>Credited Service</u>
Less than 400 hours	None
400 - 799 hours	1/4
800 - 999 hours	1/2
1,000 hours or more	1 Year

- b. A Participant shall receive Credited Service for Hours of Service in Covered Employment on and after April 1, 1976 according to the following schedule:

<u>Hours of Service in Plan Year</u>	<u>Credited Service</u>
Less than 500 hours	None
500 - 599 hours	5/10
600 - 699 hours	6/10
700 - 799 hours	7/10
800 - 899 hours	8/10
900 - 999 hours	9/10
1,000 hours or more	1 Year

If a Participant works for an Employer in Contiguous Non-Covered Employment, his Hours of Service in such Contiguous Non-Covered Employment on and after the Contribution Date shall be counted toward a year of Credited Service. However, if the Participant does not work sufficient Hours of Service for Employer(s) to earn a full year of Credited Service in a Plan Year, he shall not be entitled to any portion of a year of Credited Service for Hours of Service in Contiguous Non-Covered Employment.

- c. Any hours a Participant receives due to employer contributions received in his Individual Account in the Eighth District Electrical Pension Fund Annuity Plan from an annuity fund not in the jurisdiction of the Eighth District Electrical Pension Fund that is signatory to an Annuity Fund Reciprocal Agreement, can be counted as Credited Service for vesting purposes only and not for Benefit Units accrual in the Eighth District Electrical Pension Fund. This subsection c. will only apply if there is no available defined benefit plan in the jurisdiction of the reciprocal annuity fund.
- d. Notwithstanding the foregoing, a Participant shall receive Credited Future Service for period(s) of Qualified Military Service as defined in section 5.07. Credited Future Service will be based on the number of hours worked by the Participant during the twelve (12) month period immediately preceding Qualified Military Service, to a maximum of one thousand (1,000) hours of Credited Future Service for each full year of Qualified Military Service. If the Participant serves less than a full year of Qualified Military Service, the Credited Future Service will be pro-rated on the basis of the number of hours worked by the Participant during the twelve (12) month period immediately preceding Qualified Military Service. Notwithstanding anything to the contrary, for a Participant who died on or after January 1, 2007 while performing Qualified Military Service as defined in Article 5.07 (excluding subsections a &g), the Participant shall be credited with Credited Future Service for the period of Qualified Military Service.
- e. A Participant shall not receive Credited Service for the following periods:

1. years preceding a Permanent Break in Service as defined in section 5.05 c. for periods prior to April 1, 1976;
2. years preceding a Permanent Break in Service as defined in section 5.05 d. or e. except as may be required by Regulation Section 2530 of the Department of Labor.

**5.03 Benefit Units.**

- a. A Participant shall receive one non-contributory Benefit Unit (or a portion thereof) earned before the Participant's Contribution Date for every year of Credited Past Service (or portion thereof) to which he is entitled under section 5.01.
- b. A Participant shall receive contributory Benefit Units for Hours of Service in Covered Employment on and after the Contribution Date and before April 1, 1976 according to the following schedule:

<u>Hours of Service in Plan Year</u>	<u>Contributory Benefit Units</u>
Less than 400 hours	None
400 to 799 hours	1/4
800 to 1,199 hours	2/4
1,200 to 1,599 hours	3/4
1,600 hours or more	One

- c. A Participant shall receive one contributory Benefit Unit (or portions thereof) for Hours of service in Covered Employment after March 31, 1976 according to the following schedule:

<u>Hours of Service in Plan Year</u>	<u>Contributory Benefit Units</u>
Less than 500 hours	None
500 to 599 hours	5/16
600 to 699 hours	6/16
700 to 799 hours	7/16
800 to 899 hours	8/16
900 to 999 hours	9/16
1,000 to 1,099 hours	10/16
1,100 to 1,199 hours	11/16
1,200 to 1,299 hours	12/16
1,300 to 1,399 hours	13/16
1,400 to 1,499 hours	14/16
1,500 to 1,599 hours	15/16
1,600 hours or more	One

If a Participant earns a year of Credited Service in a Plan Year after March 31, 1976, but works less than five hundred (500) Hours of Service in Covered Employment, he shall be credited with a pro-rated portion of a full Benefit Unit, in the ratio which his Hours of Service in Covered Employment bear to two thousand (2,000) hours.

- d. A Participant shall be credited with Benefit Units and Contributions for purposes of benefit accrual for period(s) of Qualified Military Service as defined in section 5.07. The hours used to determine the Benefit Units and amount of Contributions to be credited will be based on the number of hours worked by the Participant in the twelve (12) month period immediately preceding Qualified Military Service, to a maximum of one thousand six hundred (1,600) hours for each full year of Qualified Military Service. If the Participant serves less than a full year in Qualified Military Service, then Benefit Units and credited Contributions will be pro-rated on the basis of the number of hours worked by the Participant in the twelve (12) month period immediately preceding Qualified Military Service.
- e. A Participant shall not be entitled to Benefit Units for the following periods:
  1. for the period preceding a Permanent Break in Service as defined in section 5.05 c. for periods prior to April 1, 1976.
  2. for periods preceding a Permanent Break in Service as defined in section 5.05 d. or e.

**5.04 Credited Service and Benefit Units for Non-Working Periods On and After the Contribution Date.** A Participant shall earn Credited Service and Benefit Units as if he were in Covered Employment if his absence from Covered Employment is due to a Disability, for the period for which worker's compensation benefits were paid by an Employer, but not in excess of twenty-six (26) weeks.

Periods for which Credited Service and Benefit Units are granted under this section 5.04 shall be considered as if they were periods of work in Covered Employment in which the Employee worked the number of hours each week which constitute a regular week in the jurisdiction of the Union.

**5.05 Breaks in Service.**

a. General.

If a Participant has a Break in Service before he becomes a Vested Participant, it has the effect of canceling his participation, Credited Service, and Benefit Units. However, after March 31, 1976 a One-Year Break in Service may be temporary, subject to repair by a sufficient amount of subsequent Credited Service.

b. One-Year Break in Service.

1. After March 31, 1976 a Participant has a One-Year Break in Service in any Plan Year unless during the Plan Year he completes five hundred (500) Hours of Service in Covered Employment.
2. Periods of employment with an Employer in Contiguous Non-Covered Employment shall be counted as if it were Covered Employment in determining whether a One-Year Break in Service has been incurred under paragraph 1 above.
3. Benefit Units credited for non-working periods under section 5.04 shall be counted as if it were Covered Employment in determining whether a One-Year Break in Service has been incurred.
4. A One-Year Break in Service is repairable, in the sense that its effects are eliminated if, before incurring a Permanent Break in Service, the Employee subsequently meets the requirements of section 2.03. In such case, previously earned years of Credited Service and Benefit Units shall be restored. However, nothing in this subsection b. shall change the effect of a Permanent Break in Service.

c. Permanent Break in Service before April 1, 1976.

A Participant has a Permanent Break in Service if before April 1, 1976 he failed to earn at least eight hundred (800) Hours of Service in Covered Employment in a two (2) consecutive Plan Year period.

A Participant may be allowed grace periods if he failed to earn at least eight hundred (800) Hours of Service in Covered Employment in a two (2) consecutive Plan Year period before April 1, 1976 under the following circumstances:

1. Disability.

- (a) A Participant shall be allowed a grace period if his failure to earn Credited Service was due to Disability. This grace period consists of up to two (2) years for which the Participant failed to earn Credited Service because of Disability.
- (b) A Participant claiming Disability must give written notice to the Board and must present such written evidence and/or submit to such examination as the Board may determine. The Board of Trustees in their discretion shall determine Disability. An Employee shall not be granted any such grace periods which commenced more than one year prior to his filing the written notice required by this subparagraph (b), unless the Board finds that there were extenuating circumstances which prevented a timely filing.

2. Military Service.

A Participant whose failure to work in Covered Employment was due to service in the armed forces of the United States shall be allowed a grace period for such service and for the period during which the Participant retains reemployment rights under applicable Federal law, provided the Participant makes himself available for Covered Employment within the required time period after release from active duty or after recovery from a disability continuing after his release from active duty, and provided the Participant meets all other applicable requirements including submitting written notice of his availability for Covered Employment and such written information and proof concerning such military service as the Board may determine.

3. Employment in a Supervisory Capacity.

- (a) A Participant shall be allowed a grace period if he is employed in a supervisory capacity by an Employer. Employment in such supervisory capacity shall be determined to the satisfaction of the Board.

(b) A Participant claiming a grace period under this paragraph 3 must give written notice to the Board and present such written evidence as the Board may determine. A Participant shall not be granted any such grace period for a period which commences more than one year prior to his filing the written notice required by this subparagraph (b), unless the Board finds that there were extenuating circumstances which prevented a timely filing.

Grace periods are periods that are to be disregarded in determining whether during the two (2) consecutive Plan Year period of April 1, 1974 to March 31, 1976 the Participant failed to earn at least eight hundred (800) Hours of Service.

d. Permanent Break in Service after March 31, 1976 and before April 1, 1985.

A Participant has a Permanent Break in Service if the number of his consecutive One-Year Breaks in Service, including at least one after March 31, 1976, equal or exceed the number of years of Credited Service earned during the Contribution period with which he had been credited.

e. Permanent Break in Service after March 31, 1985.

A Participant who has not attained Vested Status has a Permanent Break in Service after March 31, 1985 if the number of his consecutive One-Year Breaks in Service equal or exceed the greater of five (5) years of Credited Service or the aggregate number of full and partial years of Credited Service with which he had been credited.

In applying the rules of this Plan with respect to cancellation of Credited Service, any period in which an Employee has earned Credited Service, in this Plan or the Eighth District Electrical Pension Fund Annuity Plan since April 1, 1992, shall be counted as Hours of Service in Covered Employment when determining whether there has been a Break in Service under this Plan.

A Participant with five (5) or more years of Credited Service on March 31, 1985 shall be eligible for an extension of one Plan Year after the Plan Year in which the Participant would otherwise incur a Permanent Break in Service to earn at least five hundred (500) Hours of Service in Covered Employment if the Permanent Break in Service was due to the Participant's inability after good faith efforts to be employed in Covered Employment.

In order to secure an extension, a Participant must return to Covered Employment prior to incurring a Permanent Break in Service and request such extension in writing within six (6) months after the end of the Plan Year in which he incurred the Permanent Break in Service and furnish such evidence as the Board may require to establish that his Permanent Break in

Service was due to his inability after good faith efforts to be employed in Covered Employment. Only one extension shall be granted to a Participant.

f. Family and Medical Leave Act. Solely for the purpose of determining whether a Participant has incurred a Break in Service, any leave of absence granted by an Employer, up to twelve (12) weeks, that qualifies under the Family and Medical Leave Act (FMLA) shall not be counted as a Break in Service for purposes of determining eligibility and vesting.

**5.06 Maternity/Paternity Credit against Break in Service.** With respect to Breaks in Service on or after April 1, 1985,

- a. a Participant absent from work by reason of:
  1. the pregnancy of the Participant,
  2. the birth of a child of the Participant,
  3. the placement of a child with the Participant or in connection with the adoption of a child by the Participant, or
  4. for the purpose of caring for such a child for a period beginning immediately following the birth or placement,

shall be credited with Hours of Service in accordance with section 1.17 for Break in Service purposes only.

- b. The hours described in this section 5.06 are:
  1. the Hours of Service which otherwise would have been credited to such individual but for such absence, or
  2. in any case in which the Plan is unable to determine the hours described in paragraph 1, eight (8) Hours of Service per day of such absence,

except that the total number of hours treated as Hours of Service under this section 5.06 by reason of any such pregnancy or placement shall not exceed five hundred one (501).

- c. The hours described in subsection b. shall be treated as Hours of Service as provided in this section 5.06:
  1. only in the Plan Year in which the absence from work begins, if a Participant would be prevented from incurring a One-Year Break in

Service in such Plan Year solely because periods of absence are treated as Hours of Service as provided in subsection a.; or

2. in any other case, in the immediately following Plan Year.

d. No credit will be given pursuant to this section 5.06 unless the individual furnishes to the Board such information as the Plan may reasonably require to establish:

1. that the absence from work is for reasons referred to in subsection a., and
2. the number of days for which there was such an absence.

**5.07 Qualified Military Service.** Notwithstanding any provision to the contrary, contributions, benefits and vesting service credit with respect to Qualified Military Service will be provided in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended (USERRA), and Section 414(u) of the Internal Revenue Code for Participants who return to Covered Employment from Qualified Military Service on or after December 12, 1994. Qualified Military Service will be counted for purposes of contributions, benefits and vesting service credit, provided all of the following conditions are satisfied:

- a. A Participant must have reemployment rights under USERRA in order for periods of Qualified Military Service to be recognized.
- b. A Participant must not have incurred a One-Year Break in Service at the time he entered Qualified Military Service.
- c. An Employee must have been an active Participant in the Plan when Qualified Military Service began.
- d. A Participant must have worked at least one thousand (1,000) hours in Covered Employment before entering Qualified Military Service.
- e. A Participant must have earned at least forty (40) Hours of Service in the three (3) months prior to the first day of Qualified Military Service.
- f. No more than five (5) years of Qualified Military Service may be recognized for any purpose except as required by law.
- g. A Participant who returns to service under a collective bargaining agreement which requires contributions to be paid to a Plan that is signatory to the Electrical Industry Pension Reciprocal Agreement within 90 days after Qualified Military Service and reciprocates such contributions to this Plan under Section 4.01 of this Plan shall accrue contributions, benefits, and vesting service credit under this Plan for period of Qualified Military Service.

- h. Contributions, benefits and vesting service credited granted under this Plan for Qualified Military Service shall be funded through the Plan.

## **ARTICLE 6. PARTICIPANT AND SPOUSE PENSION AND PRE-RETIREMENT SURVIVING SPOUSE PENSION**

**6.01 General.** Upon retirement the Participant and Spouse Pension provides a lifetime pension for the Participant, plus a lifetime pension for his surviving Spouse, starting after the death of the Participant. In the event of death before the Annuity Starting Date of a Participant's pension, the Pre-Retirement Surviving Spouse Pension provides a lifetime pension to the Participant's surviving Spouse. The monthly amount to be paid to the surviving Spouse is one-half (1/2) the monthly amount paid, or which would have been payable, to the deceased Participant. When a Participant and Spouse Pension is in effect, the monthly amount of the Participant's pension is reduced in accordance with section 6.05 from the full amount otherwise payable.

**6.02 Effective date.**

- a. If the Annuity Starting Date of a pension payable to a married Participant is after March 31, 1985, the benefit shall be paid as a Participant and Spouse Pension unless:
  1. the Participant and Spouse elect otherwise in accordance with section 6.06;
  2. the Spouse is not a Qualified Spouse as defined in section 6.05 c.; or
  3. the benefit is payable only in a single sum, under section 9.15.
- b. If a Vested Participant who is married and earns one or more Hours of Service after March 31, 1976, and dies after August 22, 1984, but before the Annuity Starting Date, a Pre-retirement Surviving Spouse Pension shall be payable as described in section 6.08.

**6.03 After Normal Retirement Age but Before Retirement.** If a married Participant who has attained Normal Retirement Age dies before retirement and/or pension payments commenced, a pension shall be paid to his/her surviving legal Spouse, if any, as if the Participant and Spouse Pension had been in effect on the day before the Participant died.

**6.04 Retirement on a Disability Pension Before Age 55.** If the Annuity Starting Date of a married Participant's Disability Pension occurs before he attains age 55, payment shall be made in the form of a Participant and Spouse Pension, subject to the same terms and conditions set forth in section 6.06.

**6.05 Participant and Spouse Pension at Retirement.**

- a. Except as provided in section 9.15, the pension of a Participant who is married to a Qualified Spouse as defined in subsection c. on the Annuity Starting Date shall be paid in the form of a Participant and Spouse Pension, unless a valid waiver of that form of payment has been filed with the Board,

which designates a specific beneficiary and another form is elected in accordance with the terms of the Plan and procedures adopted by the Board.

- b. A Participant and Spouse Pension means that the Participant will receive an adjusted monthly amount for life and, if the Participant dies before his Qualified Spouse, the Spouse will receive a monthly benefit for life in the amount of fifty percent (50%) of the Participant's adjusted monthly amount. The Participant's adjusted monthly amount shall be a percentage of the full monthly amount otherwise payable as a single life pension, after adjustment, if any, for early retirement, as follows:
  1. If the Participant's pension is not a Disability Pension, the percentage shall be ninety percent (90%) plus four tenths of one percent (0.4%) for each full year that the Spouse is older than the Participant or minus four tenths of one percent (0.4%) for each full year that the Spouse is younger than the Participant.
  2. If the Participant's pension is a Disability Pension, the percentage shall be eighty-two percent (82%) plus four tenths of one percent (0.4%) for each full year that the Spouse is older than the Participant or minus four tenths of one percent (0.4%) for each full year that the Spouse is younger than the Participant.
  3. In no event is the percentage to be greater than ninety-nine percent (99%).
- c. To be eligible to receive the survivor's pension as a Participant and Spouse Pension or a Pre-retirement Surviving Spouse Pension, the Spouse must be a "Qualified Spouse." A Spouse is a Qualified Spouse if the Participant and Spouse were married on the date of the Participant's death and had been married throughout the one-year period ending on the Annuity Starting Date or, if earlier, the date of death, or if the couple were divorced after being married for at least one year and the former Spouse is required to be treated as a Spouse or surviving Spouse under a Qualified Domestic Relations Order. A Spouse is also a Qualified Spouse if the Participant and Spouse became married within the year immediately preceding the date the Participant's pension payments start and they were married for at least a year before his death.

#### **6.06 Revocation and Waiver of Participant and Spouse Pension.**

- a. A Participant and Spouse Pension, once payments have begun, may not be revoked nor the Pensioner's benefits increased by reason of subsequent divorce or death of the Spouse before that of the Participant, except as provided for by election of the Single Life Reversion Option, as set forth in section 6.12.

If a Participant retires with a Participant and Spouse Pension and subsequently divorces, the ex-Spouse will receive the survivor benefit upon the participant's death unless the ex-Spouse consents or a Qualified Domestic Relations Order provides otherwise.

A retiring Participant shall be advised by the Board of the effect of payment on the basis of the Participant and Spouse Pension, including a comparison of the single life pension amount to the adjusted amount under a Participant and Spouse Pension.

If the Participant and Spouse Pension would be payable except that the Spouse is not a Qualified Spouse on the Participant's Annuity Starting Date because the Participant and Spouse have not been married for at least a year at that time, pension payments to the Participant shall be made in the amount adjusted for the Participant and Spouse Pension and if the Participant and Spouse have not been married to each other for at least a year before the death of the Participant, the difference between the amounts that had been paid and the amounts that would have been paid if the monthly amount had not been adjusted shall be paid to the Spouse, if then alive, and otherwise to the Participant's estate.

- b. The Participant and Spouse Pension may be waived in favor of another form of distribution only as follows:
  1. The Participant files the waiver with the Board, in writing, in such form as the Board may prescribe, and the Participant's Spouse acknowledges the effect of the waiver and consents to it in writing, witnessed by a notary public. Thereafter, the Participant cannot elect a different form of benefit other than the Participant and Spouse Pension without the written consent of his Spouse.
  2. Notwithstanding any other provision of the Plan, spousal consent in accordance with this section 6.06 is not required if the Participant establishes to the satisfaction of the Board:
    - (a) that there is no Spouse,
    - (b) that the Spouse cannot be located,
    - (c) that the Participant and Spouse are legally separated, or
    - (d) that the Participant has been abandoned by the Spouse as confirmed by a court order.

If the Spouse is legally incompetent, consent under this section 6.06 may be given by his or her legal guardian, including the Participant if authorized to act as the Spouse's legal guardian.

3. Except as provided in section 1.03(b), a waiver is valid only if a written explanation of the effect of the Participant and Spouse Pension has been provided to the Participant no earlier than one hundred eighty (180) days before the Annuity Starting Date and no later than thirty (30) days before the Annuity Starting Date. If the Participant is electing a Retroactive Annuity Starting Date under section 1.25, the waiver is valid only if a written explanation of the effect of the Participant and Spouse Pension has been provided to the Participant no earlier than one hundred eighty (180) days before payments commence and no later than seven (7) days before payments actually commence. The Participant may file a new waiver or revoke a previous waiver at any time during the one hundred eighty (180) day period prior to the date payments actually commence.

In the case of a Pre-retirement Surviving Spouse Pension, the election period is the period that begins on the first day of the Plan Year in which the Participant attains age thirty-five (35) and ends on the date of the Participant's death.

4. A Spouse's consent to a waiver of the Participant and Spouse Pension shall be effective only with respect to that Spouse, and shall be irrevocable unless the Participant revokes the waiver to which it relates.
5. A waiver of the Participant and Spouse Pension shall be void if:
  - (a) someone other than the Participant's Qualified Spouse is named as Beneficiary under the Plan for any share of the Participant's benefit that would otherwise be payable as a death benefit under the Participant and Spouse Pension, unless
  - (b) the Spouse has acknowledged the designation of the non-Spouse Beneficiary in connection with her consent to the Participant's waiver of the Participant and Spouse Pension in writing, witnessed by a notary public.

Thereafter, any changes of Beneficiary shall be void if the Participant has a Qualified Spouse at the date of death, unless the change of Beneficiary is consistent with the Spouse's written consent.

6. Subject to the requirements for documentation described in this section 6.06, a Participant must file with the Board before his Annuity Starting Date a written representation on which the Board are entitled to rely concerning that Participant's marital status that, if false, gives the Board the right to adjust the dollar amount of the pension

payments made to the alleged surviving Spouse so as to recover any benefits which may have been erroneously paid.

**6.07 Single Life Annuity Standard Form of Benefits.** In the case of a Participant to whom section 6.05 is not applicable, or a Participant to whom section 6.05 is applicable but who elects in writing to waive the Participant and Spouse Pension, the Participant shall receive retirement benefits payable in equal monthly installments for life only.

**6.08 Pre-retirement Surviving Spouse Pension.**

- a. If a Vested Participant who has a Qualified Spouse dies before his Annuity Starting Date, a Pre-retirement Surviving Spouse Pension shall be paid to the surviving Spouse, provided the Vested Participant has at least one Hour of Service on or after March 31, 1976.
- b. If the Participant's death occurred after attainment of age fifty-five (55), the Spouse shall be paid a survivor's pension as if the Participant had retired on a Participant and Spouse Pension on the day before death. If the Participant's death occurred on or before attainment of age fifty-five (55), the Spouse shall be paid a survivor's pension commencing with the month following the month in which the Participant would have reached age fifty-five (55) had he or she lived, and the amount of such pension shall be determined as if the Participant had terminated employment on the earlier of the date he or she last worked in Covered Employment or the date of death, retired on a Participant and Spouse Pension upon reaching age fifty-five (55), and died on the last day of the month in which age fifty-five (55) was reached.
- c. The Spouse may elect in writing, filed with the Board, and on whatever form the Board may prescribe, to defer commencement of the Pre-retirement Surviving Spouse Pension until a specified date that is no later than the first of the month following the date the Participant would have reached Normal Retirement Age. The benefit amount will be determined as if the Participant survived to the date the surviving Spouse elected to begin receiving that benefit, retired at that age with an immediate Participant and Spouse Pension and died the next day.

If for any reason payments have not already begun as prescribed in this subsection c., payment of the Pre-retirement Surviving Spouse Pension must commence by no later than December 31 of the calendar year in which the Participant would have attained age seventy and one-half (70 1/2) or, if later, December 31 of the calendar year following the year of the Participant's death. If the Board confirm the identity and location of a surviving Spouse who has not applied for benefits by that time, payments to that surviving Spouse in the form of a single life annuity will begin as of that date, subject to section 9.15.

- d. The amount of the Pre-retirement Surviving Spouse Pension shall be determined under the terms of the Plan in effect when the Participant last worked in Covered Employment, unless otherwise expressly specified.
- e. Notwithstanding any other provision of this section 6.08, a Pre-retirement Surviving Spouse Pension shall be subject to section 9.15.

**6.09 Relation to Qualified Domestic Relations Order.** Any rights of a former Spouse or other alternate payee under a Qualified Domestic Relations Order with respect to a Participant's pension, shall take precedence over those of any later Spouse of the Participant under this Article 6.

**6.10 Benefit Adjustments if Payment of Pre-retirement Surviving Spouse Pension Postponed.**

- a. Notwithstanding any other provisions of the Plan, if the Annuity Starting Date for the Pre-retirement Surviving Spouse Pension is after the Participant's earliest retirement date, the benefit shall be determined as if the Participant had died on the surviving Spouse's Annuity Starting Date after retiring with a Participant and Spouse Pension the day before, taking into account any actuarial adjustments to the Participant's accrued benefit that would have applied as of that date.
- b. If a surviving Spouse dies before the Annuity Starting Date for the Pre-retirement Surviving Spouse Pension, that benefit will be forfeited and unless an alternate Beneficiary has been designated by the Participant, with the acknowledgement and consent of the Participant's Spouse, under section 6.06, there will be no payments to any other party.

**6.11 Survivor Benefit Limitations.**

- a. Notwithstanding any other provision of the Plan, payment of the Participant and Spouse Pension, the Pre-retirement Surviving Spouse Pension and the optional benefits and death benefits provided under Articles 6, 7 and 8 shall comply with the limits of 401(a)(9) of the Internal Revenue Code and the incidental death benefit rule and the regulations prescribed thereunder including Sections 1.401(a)(9)-1 and 1.401(a)(9)-2 of the Treasury Regulations.
- b. The entire interest of a Participant must be distributed or begin to be distributed no later than the Participant's Required Beginning Date as defined in section 1.24.
- c. As of the first Distribution Calendar Year, as that term is defined in subsection h., distributions, if not made in a single lump sum, may only be made over one of the following periods:
  1. the life of the Participant,

2. the life of the Participant and a designated Beneficiary,
3. a period certain not extending beyond the life expectancy of the Participant, or
4. a period certain not extending beyond the joint and last survivor expectancy of the Participant and a designated Beneficiary.

d. If the Participant's interest is to be paid in the form of annuity distributions under the Plan, payments shall satisfy the following requirements:

1. the annuity distributions must be paid in periodic payments made at intervals not longer than one year;
2. the distribution period must be over the life (or lives) or over a period certain not longer than the life expectancy (or joint life and last survivor expectancy) described in Section 401(a)(9)(A)(ii) or Section 401(a)(9)(B)(iii) of the Internal Revenue Code, whichever is applicable;
3. the life expectancy (or joint life and last survivor expectancy) for purposes of determining the period certain shall be determined without recalculation of life expectancy;
4. once payments have begun over a period certain, the period certain may not be lengthened even if the period certain is shorter than the maximum permitted;
5. payments must either be non-increasing or increase only as follows:
  - (a) with any percentage increase in a specified and generally recognized cost-of-living index;
  - (b) to the extent of the reduction to the amount of the Participant's payments to provide for a survivor benefit upon death, but only if the Beneficiary whose life was being used to determine the distribution period described in subsection c. above dies and the payments continue otherwise in accordance with that subsection over the life of the Participant; or
  - (c) because of an increase in benefits under the Plan.
6. If the annuity is a life annuity, the amount that must be distributed on or before the Participant's Required Beginning Date (or, in the case of distributions after the death of the Participant, the date distributions are required to begin pursuant to subsection g. below) shall be the payment which is required for one payment interval. The second payment need not be made until the end of the next payment interval

even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bimonthly, monthly, semi-annually, or annually.

If the annuity is a period certain annuity without a life contingency, periodic payments for each Distribution Calendar Year shall be combined and treated as an annual amount. The amount which must be distributed by the Participant's Required Beginning Date (or, in the case of distributions after the death of the Participant, the date distributions are required to begin pursuant to subsection g. below) is the annual amount for the first Distribution Calendar Year. The annual amount for other Distribution Calendar Years, including the annual amount for the calendar year in which the Participant's Required Beginning Date (or the date distributions are required to begin pursuant to subsection g. below) occurs, must be distributed on or before December 31 of the calendar year for which the distribution is required.

- e. Annuities provided after December 31, 1988, are subject to the following additional conditions:
  1. Unless the Participant's Spouse is the designated Beneficiary, if the Participant's interest is being distributed in the form of a period certain annuity without a life contingency, the period certain as of the beginning of the first Distribution Calendar Year may not exceed the applicable period determined using the table set forth in Q&A A-5 of section 1.401(a)(9)-2 of the Treasury Regulations.
  2. If the Participant's interest is being distributed in the form of a one hundred percent (100%) Joint and Survivor option for the joint lives of the Participant and a non-spouse Beneficiary, annuity payments to be made on or after the Participant's Required Beginning Date to the designated Beneficiary after the Participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Participant using the table set forth in Q&A A-6 of Section 1.401(a)(9)-2 of the Treasury Regulations.
- f. If the form of distribution is an annuity made in accordance with subsection d. or e., any additional benefits accruing to the Participant after his or her Required Beginning Date shall be distributed as a separate and identifiable component of the annuity beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.
- g. If the Participant dies after distribution of his or her interest has begun, the remaining portion of such interest will continue to be distributed at least as

rapidly under the method of distribution being used prior to the Participant's death.

If the Participant dies before distribution of his or her interest begins, distribution of the Participant's entire interest shall be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death except to the extent that an election is made to receive distributions in accordance with paragraph 1 or 2 below:

1. if any portion of the Participant's interest is payable to a designated Beneficiary, distributions may be made over the life or over a period certain not greater than the life expectancy of the designated Beneficiary commencing on or before December 31 of the calendar year immediately following the calendar year in which the Participant died;
2. if the designated Beneficiary is the Participant's surviving Spouse, the date distributions are required to begin shall not be earlier than the later of (a) December 31 of the calendar year immediately following the calendar year in which the Participant died and (b) December 31 of the calendar year in which the Participant would have attained age seventy and one-half (70 1/2).

If the Participant has not made an election pursuant to this subsection g. by the time of his or her death, the Participant's designated Beneficiary must elect the method of distribution no later than the earlier of (a) December 31 of the calendar year in which distributions would be required to begin under this section, or (b) December 31 of the calendar year which contains the fifth anniversary of the date of death of the Participant. If the Participant has no designated Beneficiary, or if the designated Beneficiary does not elect a method of distribution, distribution of the Participant's entire interest must be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

If the surviving Spouse dies after the Participant, but before payments to such Spouse begin, the provisions of this subsection g. shall be applied as if the surviving Spouse were the Participant.

For purposes of this subsection g., distribution of a Participant's interest is considered to begin on the Participant's Required Beginning Date. If distribution in the form of an annuity described in subsection d. irrevocably commences to the Participant before the Required Beginning Date, the date distribution is considered to begin is the date distribution actually commences.

- h. For purposes of this section 6.11, "Distribution Calendar Year" means a calendar year for which a minimum distribution is required. For distributions

beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin pursuant to subsection g. above.

#### **6.12 Minimum Distribution Requirement**

- a. General. The provisions of this section will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year. To the extent that the provisions of this Plan, including sections 6.03 and 7.01 are inconsistent with this section 6.04, this section shall govern. All distributions required under this section will be determined and made in accordance with Treasury Regulations under Section 401(a)(9) of the Internal Revenue Code.

- b. Required Beginning Date

The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date, as defined in section 1.24.

- c. Death of Participant Before Distributions Begin

If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

1. If the Participant's surviving Spouse is the Participant's sole designated Beneficiary, then distributions to the surviving Spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 ½.
2. If the Participant's surviving Spouse is not the Participant's sole designated Beneficiary, then distributions to the designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
3. If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
4. If the Participant's surviving Spouse is the Participant's sole designated Beneficiary and the surviving Spouse dies after the Participant but before distributions to the surviving Spouse begin, this

subsection c, other than paragraph 1, will apply as if the surviving Spouse were the Participant.

For purposes of this subsection c. and subsection g., distributions are considered to begin on the Participant's Required Beginning Date (or, if paragraph 4 above applies, the date distributions are required to begin to the surviving Spouse under paragraph 1). If annuity payments irrevocably commence to the Participant before the Participant's Required Beginning Date (or to Participant's surviving Spouse before the date distributions are required to begin to the surviving Spouse under paragraph 1), the date distributions are considered to begin is the date distributions actually commence.

d. Forms of Distribution

Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first Distribution Calendar Year distributions will be made in accordance with subsections e., f., and g. of this section.

e. Determination of Amount to be Distributed Each Year. If the participant's interest is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements:

1. The annuity distributions will be paid in periodic payments made at intervals not longer than one year;
2. The distribution period will be over a live (or lives) or over a period certain not longer than the period described in subsection f. or g.
3. Once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;
4. Payments will either be non-increasing or increase only as follows:
  - (a) by an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;
  - (b) to the extent of the reduction in the amount of the participant's payments to provide for a survivor benefit upon death, but only if the Beneficiary whose life was being used to determine the distribution period described in subsection f. dies or is no longer the Participant's Beneficiary pursuant to Qualified Domestic Relations Order; or
  - (c) to pay increased benefits that results from a plan amendment.

The amount that must be distributed on or before the Participant's Required Beginning Date (or, if the Participant dies before distribution begin, the date distributions are required to begin under subsection c., paragraph 1 and 2) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the Participant's benefit accruals as of the last day of the first Distribution Calendar Year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Participant's Required Beginning Date.

Any additional benefits accruing to the Participant in a calendar year after the first Distribution Calendar Year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

f. Requirements for Annuity Distributions That Commence During Participant's Lifetime. If the Participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Participant and a non-spouse Beneficiary, annuity payments to be made on or after the Participant's Required Beginning Date to the designated Beneficiary after the Participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Participant using the table set forth in Q&A -2 of Section 1.401(a)(9)-6T of the Treasury Regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the Participant and a non-spouse Beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated Beneficiary after the expiration of the period certain.

Unless the Participant's Spouse is the sole designated Beneficiary and the form of distribution is for a period certain and no life annuity, the period certain for an annuity distribution commencing during the Participant's lifetime may not exceed the applicable distribution period for the Participant under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations for the calendar year that contains the Annuity Starting Date. If the Annuity Starting Date precedes the year in which the Participant reaches age seventy (70), the applicable distribution period for the Participant is the distribution period for age seventy (70) under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations, plus the excess of seventy (70) over the age of the Participant as of the Participant's birthday in the year that contains the Annuity Starting Date.

Effective January 1, 2006, the 100% Joint and Survivor Option with a non-spouse Beneficiary as described in Section 7.01 of the Plan will be distributed in accordance with Q&A-2(c) of Section 1.401(a)(9)-6 of the Treasury

Regulations. If the adjusted age difference between the Participant and Beneficiary is more than 10 years, the 100% Joint and Survivor Option is not available. The adjusted age difference between the Participant and Beneficiary is calculated by first subtracting the Beneficiary's age and the Participant's age on their respective birthdays in the calendar year of the annuity starting date. The difference is then reduced by the number of years that the Participant is younger than age 70 on the Participant's birthday in the calendar year of the annuity starting date.

g. Requirements for Minimum Distributions Where Participant Dies Before Date Distribution Begin. If the Participant dies before the date distribution of his or her interest begins and there is a designated Beneficiary, the participant's entire interest will be distributed, beginning no later than the time described in subsection c., paragraph 1 or 2, over the life of the designated beneficiary or over a period certain not exceeding:

1. Unless the Annuity Starting Date is before the first Distribution Calendar Year, the life expectancy of the designated Beneficiary determined using the Beneficiary's age as of the Beneficiary's birthday in the calendar year immediately following the calendar year of the Participant's death; or
2. If the Annuity Starting Date is before the first Distribution Calendar Year, the life expectancy of the designated Beneficiary determined using the Beneficiary's age as of the Beneficiary's birthday in the calendar year that contains the Annuity Starting Date.

If the Participant dies before the date distributions begin and there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

If the Participant dies before the date distribution of his or her interest begins, the Participant's surviving Spouse is the Participant's sole designated Beneficiary, and the surviving Spouse dies before distributions to the surviving Spouse begin, this subsection g will apply as if the surviving Spouse were the Participant, except that the time by which distributions must begin will be determined without regard to subsection c., paragraph 1.

h. Definitions.

1. Beneficiary. The individual who is designated as the Beneficiary in accordance with sections 1.05 and 8.03 of the Plan and is the designated Beneficiary under Section 401(a)(9) of the Internal Revenue Code and Section 1.401(a)(9)-1, Q&A-4, of the Treasury Regulations.
2. Distribution Calendar Year A calendar year for which a minimum distribution is required. For distributions beginning before the

Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin pursuant to subsection c.

3      Life Expectancy. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury Regulations.

4      Required Beginning Date. The date specified in Article 7, section 7.05(f) of the Plan.

6.13    **Single Life Reversion Option**.

- a. Effective for Participants with Annuity Starting Dates on or after April 1, 2009, a married Participant may, with written consent of his or her Spouse, elect the Single Life Reversion Option at the time of his retirement if his pension is to be paid in the form of a Participant and Spouse Pension, a 75% Joint and Survivor Option, or a 100% Joint and Survivor Option.
- b. The amount of pension payable under this Option shall be determined in accordance with Section 6.05(b), Section 7.01.1, or Section 7.01. However, an additional reduction of one percent (1%) shall be applied to the factors applicable under Section 6.05(b), an additional reduction of one and one half percent (1.5%) shall be applied to the factors applicable under Section 7.01.1, and an additional reduction of two percent (2%) shall be applied to the factors applicable under Section 7.01, for the type of pension being awarded.

If this Option is elected, then, if the Participant's Spouse predeceases him, the amount of the pension payable to the Participant shall thereafter be increased to the full amount that would be payable as a single life annuity.

- c. All other provisions of Article 6 shall apply to the election of this Option unless specifically stated otherwise.

## ARTICLE 7. OPTIONAL FORMS OF BENEFITS

7.01 **One Hundred Percent (100%) Joint and Survivor Option.** In lieu of Participant and Spouse Pension or single life pension payable under section 6.07, a Participant may elect in writing an option that provides a lifetime pension to the Participant plus an equivalent lifetime pension for his designated Beneficiary.

The Participant's adjusted monthly amount shall be a percentage of the full monthly amount otherwise payable as a single life pension, after adjustment, if any, for early retirement, as follows:

- a. If the Participant's pension is not a Disability Pension, the percentage shall be eighty-one percent (81%) plus seven-tenths of one percent (0.7%) for each full year that the Beneficiary is older than the Participant or minus seven-tenths of one percent (0.7%) for each full year that the Beneficiary is younger than the Participant.
- b. If the Participant's pension is a Disability Pension, the percentage shall be sixty-seven percent (67%) plus five-tenths of one percent (0.5%) for each full year that the Beneficiary is older than the Participant or minus five-tenths of one percent (0.5%) for each full year that the Beneficiary is younger than the Participant.
- c. In no event is the percentage to be greater than ninety-nine percent (99%).

All applicable conditions under Article 6 will apply as if the designated Beneficiary were the Participant's Spouse. A Participant's election for a 100% Joint and Survivor Option shall become effective immediately upon filing written election therefore with the Board.

This option may not be elected by a Participant prior to his Annuity Starting Date if it would provide all or part of his nonforfeitable interest in the Plan, which would otherwise become available to him during his lifetime, to be paid to his designated Beneficiary after his death, unless such payments to the designated Beneficiary are only incidental to the retirement income payable to the Participant.

Any payment method selected with a Beneficiary other than a Spouse, must be such that the present value of the payments to be made to the Participant is more than fifty percent (50%) of the present value of the total payments to be made to the Participant and his Beneficiaries.

7.01.1 **Seventy-Five Percent (75%) Joint and Survivor Option.** Effective for Annuity Starting Dates on or after April 1, 2009, a Participant may elect in writing an option that provides an adjusted lifetime pension to the Participant and, if the Participant dies before his Qualified Spouse, the Spouse will receive a monthly benefit for life in the amount of seventy-five percent (75%) of the

Participant's adjusted monthly amount. The Participant's adjusted monthly amount shall be a percentage of the full monthly amount otherwise payable as a single life pension, after adjustment, if any, for early retirement as follows:

- a. If the Participant's pension is not a Disability Pension, the percentage shall be eighty-five and one half percent (85.5%) plus five and one half tenths of one percent (0.55%) for each full year that the spouse is older than the Participant or minus five and one half tenths of one percent (0.55%) for each full year that the spouse is younger than the Participant.
- b. If the Participant's pension is a Disability Pension, the percentage shall be seventy-four and one half percent (74.5%) plus four and one half tenths of one percent (0.45%) for each full year that the spouse is older than the Participant or minus four and one half tenths of one percent (0.45%) for each full year that the spouse is younger than the Participant.
- c. In no event is the percentage to be greater than ninety-nine percent (99%).
- d. A Qualified Spouse is defined in Article 6, Section 6.05(c).

**7.02 Direct Rollover.**

- a. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this section 7.02, a Distributee may elect, at the time and in the manner prescribed by the Plan administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover, except that a Distributee may not elect a Direct Rollover of a distribution (or series of distributions) of less than \$200 in a single calendar year.
- b. A Distributee may elect to have any portion of the Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover. Effective March 28, 2005, in the event of a mandatory distribution greater than \$1,000.00 in accordance with the provisions of this Article, if the Participant does not elect to have such distribution paid directly to an Eligible Retirement Plan specified by the Participant in a Direct Rollover or to receive the distribution directly in accordance with this Article, then the plan administrator will pay the distribution in a Direct Rollover to an individual retirement plan designated by the plan administrator.

For distributions made on or after January 1, 2008, an Eligible Retirement Plan shall also include a Roth IRA as defined in section 408A of the Code.

Effective April 1, 2008, a Distributee shall also include a non-spouse beneficiary who is a designated beneficiary of the participant, provided that the distribution satisfies all other requirements to be an eligible rollover distribution under Code Section 401(a).

c. Definitions.

1. Eligible Rollover Distribution. An "Eligible Rollover Distribution" is any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include:
  - (a) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated Beneficiary, or for a specified period of ten (10) years or more;
  - (b) any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code;
  - (c) the portion of any distribution that is not includable in gross income (determined without regard to exclusion for net unrealized appreciation of Employer securities); and
  - (d) any hardship distribution under Code Section 401(k)(2) made after December 31, 1999.
2. Eligible Retirement Plan. An "Eligible Retirement Plan" is an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code, or a qualified trust described in Section 401(a) of the Internal Revenue Code, that accepts the Distributee's Eligible Rollover Distribution.

Effective for distributions made after December 31, 2001, an Eligible Retirement Plan shall also include an annuity contract described in Section 403(b) of the Internal Revenue Code and an eligible plan under Section 457(b) of the Internal Revenue Code, which is maintained by a state, political subdivision of a state, and which agrees to separately account for amounts transferred into such from this Plan. This definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving Spouse, or to a Spouse or former Spouse who is an alternate payee under a Qualified Domestic Relations Order.

3. Distributee. A “Distributee” includes a Participant or former Participant. In addition, the Participant’s or former Participant’s surviving Spouse and the Participant’s or former Participant’s Spouse or former Spouse who is the alternate payee under a Qualified Domestic Relations Order, are Distributees with regard to the interest of the Spouse or former Spouse.
4. Direct Rollover. A “Direct Rollover” is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

## **ARTICLE 8. DEATH BENEFITS**

### **8.01 Pre-Retirement Death Benefit.**

- a. If an Employee dies prior to being awarded a pension under this Plan, a lump-sum payment equivalent to the amount contributed to the Trust Fund on his behalf, up to a maximum of \$2,000 will be paid to his designated Beneficiary. In determining the amount of the lump sum payment, however, only Contributions received subsequent to the last Permanent Break in Service defined in section 5.05 will be counted. However, for Participants working under a Collective Bargaining Agreement or Participation Agreement which has adopted or is subject to the terms of Rehabilitation Plan Alternative II, this Article shall not be applicable in the event of the death of the Participant subsequent to adoption or implementation of Rehabilitation Plan Alternative II.
- b. Upon the death of a Participant who has attained Vested Status as defined in section 3.07, sixty (60) payments in a monthly amount calculated in accordance with section 3.02 will be paid to his Beneficiary. This is in addition to the benefit described in subsection a. However, for Participants working under a Collective Bargaining Agreement or Participation Agreement which has adopted or is subject to the terms of Rehabilitation Plan Alternative II, this Article shall not be applicable in the event of the death of the Participant subsequent to adoption or implementation of Rehabilitation Plan Alternative II.
- c. Upon the death of a married Participant who has attained Vested Status as defined in section 3.07, the Participant's surviving legal Spouse shall have the option to waive the Pre-retirement Surviving Spouse Pension payable in accordance with section 6.08 and elect instead to receive the benefits of subsections a. and b. above.

**8.02 Five-Year Guarantee or Certain Feature.** If a Pensioner elects the Single Life Annuity form of payment and dies prior to having received sixty (60) monthly payments, monthly payments shall be continued until a total of sixty (60) such payments have been made to the Pensioner and his Beneficiary. The payments will cease after a total of sixty (60) payments have been made. This benefit shall not be payable under the Participant and Spouse Pension, 75% Joint and Survivor Option, 100% Joint and Survivor Option, or the Pre-Retirement Surviving Spouse Pension. However, for Participants working under a Collective Bargaining Agreement or Participation Agreement which has adopted or is subject to the terms of Rehabilitation Plan Alternative II, this Article shall not be applicable with respect to Annuity Starting Dates on or after June 1, 2009.

**8.03 Designation of Beneficiary.** Subject to the spousal waiver requirements of section 6.06, an Employee, Participant or Pensioner may designate a Beneficiary or

Beneficiaries to receive any payments due and payable but not actually paid prior to the death of the Pensioner, or any benefits provided in accordance with sections 8.01 and 8.02 by forwarding such designation on a form acceptable to the Board to the administrative office. An Employee, Participant or Pensioner shall have the right to change his designation of Beneficiary without the consent of the Beneficiary but no such change shall be effective or binding on the Board unless it is received by the Board prior to the time any payments are made to the Beneficiary whose designation is on file with the administrative office of the Trust Fund. If a designated Beneficiary dies prior to the receipt of any payments, such payments shall then be paid in accordance with the procedure provided in section 8.04. If after designating a Spouse as Beneficiary, the Employee or Participant is divorced or his marriage to such Spouse is annulled, the divorce or annulment revokes the designation unless, by virtue of a subsequent marriage, the Employee or Participant is married to such Spouse at the time of his death.

**8.04 Lack of a Designated Beneficiary.** If no Beneficiary is designated by an Employee, Participant or Pensioner or if a designated Beneficiary predeceases the Employee, Participant or Pensioner, any benefits due and payable but not actually paid prior to his death or any benefits provided under sections 8.01 and 8.02 shall be paid to the Spouse of the Employee, Participant or Pensioner if then living or, if there is no Spouse then alive, such payments may be made to any other person who is an object of natural bounty of the Employee, Participant or Pensioner, or to his estate, as the Board may designate.

## **ARTICLE 9. APPLICATIONS, BENEFIT PAYMENTS, RETIREMENT AND BENEFIT SUSPENSIONS**

### **9.01 Benefit Payments Generally.**

- a. A Participant who is eligible to receive benefits under this Plan and who makes application in accordance with the rules of the Plan shall be entitled upon the Annuity Starting Date to receive benefits, subject to the provisions of this Plan.
- b. Pension benefits shall be payable commencing with the Annuity Starting Date. Effective April 1, 2004, a Participant may elect a Retroactive Annuity Starting Date as discussed in section 1.25. If a participant elects a Retroactive Annuity Starting Date, the Participant will receive a lump sum payment representing the payments due for the months commencing with the Retroactive Annuity Starting Date through the end of the month prior to the date payments actually commence. The lump sum payment will include interest on the retroactive monthly payments at the rate of five percent (5%) per annum.
- c. A monthly pension shall last be payable for the month in which the death of the Pensioner occurs except as provided in accordance with a survivor's benefit or any other provision of this Plan providing for payments after the death of the Pensioner.
- d. Payment of benefits may begin sooner, but shall not be delayed to a date more than sixty (60) days after the later of the following dates, unless requested by the Participant:
  1. the end of the Plan Year in which the Participant attained Normal Retirement Age;
  2. the end of the Plan Year in which the Participant reached his Annuity Starting Date.

### **9.02 Delayed Retirement.**

- a. Effective April 1, 1989, if the Annuity Starting Date is after the Participant's Normal Retirement Age but no later than April 1 following the calendar year in which the Participant attained age seventy and one-half (70 1/2), the monthly benefit will be the accrued benefit at Normal Retirement Age, actuarially increased for each complete calendar month between Normal Retirement Age and the Annuity Starting Date for which benefits were not suspended, and then converted as of the Annuity Starting Date to the benefit payment form elected in the pension application or to the automatic form of Participant and Spouse Pension.

1. If a Participant first becomes entitled to additional benefits after Normal Retirement Age, whether through additional service or because of a benefit increase, the actuarial increase in those benefits will start from the date they would first have been paid rather than Normal Retirement Age.
2. The actuarial increase will be one percent (1%) per month for the first sixty (60) months after Normal Retirement Age and one and one-half percent (1.5%) per month for each month thereafter.

b. If the Annuity Starting Date is after the April 1 following the calendar year in which the Participant attained age seventy and one-half (70 1/2), then the monthly benefit shall be determined as follows:

1. The first step shall be to determine the accrued monthly benefit, without adjustment for form of payment, that would have been payable as of the April 1 following the calendar year in which the Participant attained age seventy and one-half (70 1/2).
2. The second step shall be to redetermine, as of each Redetermination Date, the monthly amount determined in paragraph 1. The initial Redetermination Date shall be the December 31 of the year that includes the April 1 following the calendar year in which the Participant attained age seventy and one-half (70 1/2). The subsequent Redetermination Dates shall be each December 31 which falls on the anniversary of such initial Redetermination Date but precedes the Annuity Starting Date, except that the final Redetermination Date shall be the last day of the month immediately preceding the month that includes the Annuity Starting Date. The redetermined amount for any given Redetermination Date shall be the greater of:
  - (a) the monthly benefit to which the Participant was entitled as of the preceding Redetermination Date, or with respect to the initial Redetermination Date, the monthly benefit to which the Participant was entitled as of the April 1 following the calendar year in which the Participant attained age seventy and one-half (70 1/2), plus the monthly benefit attributable to accruals earned between such preceding Redetermination Date, or, if applicable, such April 1, and the Redetermination Date for which the benefit is being calculated; or
  - (b) the monthly benefit to which the Participant was entitled as of the preceding Redetermination Date, or with respect to the initial Redetermination Date, the monthly benefit to which the Participant was entitled as of the April 1 following the Calendar Year in which the Participant attained age seventy

and one-half (70 1/2), increased by one and one-half percent (1.5%), or three percent (3.0%) if the Participant is at least age seventy-five (75), for each month between such preceding Redetermination Date, or, if applicable, such April 1, and the Redetermination Date for which the benefit is being calculated.

3. The third and final step shall be to take the monthly amount to which the Participant is entitled as of the final Redetermination Date and convert it, as of the Annuity Starting Date, to the benefit payment form elected in the pension application or to the automatic form of Participant and Spouse Pension, if no other form is elected.
- c. Effective as of April 1, 1989, any additional benefits earned by a Participant in Covered Employment after the Annuity Starting Date will be determined at the end of each Plan Year and will be payable as of May 1 following the end of the Plan Year in which the benefit accrued.

**9.03 Applications.** A pension must be applied for in writing and filed with the Board.

A Participant must submit an application to the Board in writing no later than the second month after retirement or other work cessation that would entitle the Participant to pension payments. Such application must be given during or before the end of such month, except to the extent that the Board finds that failure to make timely application was due to extenuating circumstances.

**9.04 Information and Proof.** Every Participant, Pensioner or Beneficiary shall furnish, at the request of the Board, any information or proof reasonably required to determine his benefit rights. If the claimant makes a willfully false statement material to an application or furnishes fraudulent information or proof, material to his claim, benefits not vested under this Plan (as defined in section 3.07) may be denied, suspended or discontinued as determined by the Board. The Board shall have the right to recover any benefit payments made in reliance on any willfully false or fraudulent statement, information or proof submitted by a claimant.

**9.05 Appeals Procedure and Determination of Disputes.**

- a. No Employee, Participant, Pensioner, Beneficiary or other person shall have any right or claim to benefits under the Plan other than as specified in the Plan. Any dispute as to eligibility, type, amount or duration of benefits shall be resolved by the Board under and pursuant to the Trust Agreement and Plan and its decision shall be final and binding on all parties. No action may be brought for benefits under the Plan or any amendment or modification thereof, or to enforce any right thereunder, until after the claim therefor has been submitted to and determined by the Board, and thereafter the only action which may be brought is one to enforce the decision of the Board or to clarify

the rights of the parties under such decision. No such action may be brought at all unless brought within two (2) years after the date of such decision.

- b. If a claim for benefits under the Plan is wholly or partially denied by the administrative office, written notice of the denial shall be furnished to the affected Employee or Participant (claimant) within ninety (90) days after receipt by the administrative office of the notice of claim unless special circumstances require an extension of time for processing the claim. If such an extension of time for processing is required, written notice of the extension shall be furnished to the claimant prior to the termination of the initial ninety (90) day period. In no event shall such extension exceed a period of ninety (90) days from the end of such initial period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the administrative office expects to render final decision.

If notice of denial of a claim is not furnished to claimant in accordance with the preceding paragraph, the claim shall be deemed denied and the claimant shall be permitted to proceed to the review stage described in subsection c.

If the application for benefits is a claim for "disability benefits," the Plan shall notify the claimant of a denial in writing within a reasonable period of time, but not later than forty-five (45) days after the receipt by the Plan of the application or claim for benefits. This period may be extended for up to thirty (30) days, provided the Plan determines that such an extension is necessary due to matters beyond the control of the Plan and notifies the claimant, prior to the expiration of the initial forty-five (45) day period, of the circumstances requiring the extension and date by which a final decision is expected to be rendered. The period for making the determination may be extended by another thirty (30) day period if the Plan determines that the extension is necessary and notifies the claimant, prior to the end of the first thirty (30) day extension period of the circumstances requiring an extension and the date by which a final decision is expected to be rendered. Any notice of extension under this paragraph shall specifically explain the standards on which entitlement to a benefit is based, the unresolved issues that prevent a decision on the claim, and additional information needed to resolve those issues. The claimant shall be afforded at least forty-five (45) days to provide such additional information. The term "disability benefits" shall mean only a disability pension, the entitlement to which is based on medical evidence examined by the Plan and Board other than determination of disability by Social Security Administration.

The written notice of denial shall set forth in a manner calculated to be understood by the claimant:

1. the specific reason or reasons for the denial,

2. specific references to pertinent provisions of the Plan on which the denial is based,
3. a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary,
4. a description of the Plan's review procedures and the time limits applicable to such procedures, including a statement of the claimant's right to bring civil action under ERISA Section 502(a) following an adverse benefit determination on review; and
5. a copy of the internal rule, guideline, protocol or other similar criterion relied upon in making a decision on disability benefits, including the physician's written medical evidence and identification of any individual whose advice was obtained for the purpose of determining disability.

c. The claimant or his duly authorized representative may appeal a claim to the Board and obtain a full and fair review of the claim and its denial.

Written request for review shall be filed with the administrative office within ninety (90) days after receipt by the claimant of written notification of denial of the claim. If the request for review is for denial of disability benefits, the claimant shall be afforded one hundred eighty (180) days after written notification of denial is provided to file a written request for review. The request for review shall state in clear and concise terms the reason or reasons for disputing the denial and shall be accompanied by any pertinent documentary material not already furnished to the administrative office. The request for review may contain a description of the issues and comments relating thereto. The claimant or his authorized representative shall be provided, upon request and review of charge, and shall have access to review relevant documents relating to the claim and denial. Upon good cause shown, the Board may permit the request for review to be amended or supplemented prior to review. The request for review may include a written request for hearing. If a hearing is requested, the Board may, at its discretion, hold a hearing and shall receive and hear any evidence or argument that cannot be presented satisfactorily by correspondence. The administrative office shall advise the claimant in writing of the date, time and place of the hearing at least twenty (20) days prior thereto.

The failure to file a written request for review within the ninety (90) day period (or one hundred eighty (180) day period, as applicable) shall constitute a waiver of the claimant's right to a review of the denied claim. Such failure shall not, however, preclude the claimant from establishing his entitlement to benefits at a later date based on additional information and evidence which was not available to claimant at the time of decision on review. The failure

of a claimant to timely request a hearing, or the failure of a claimant to appear at a hearing scheduled upon his request, shall constitute a waiver of the claimant's right to a hearing.

Upon receipt of a request for review the Board shall proceed to review the administrative file, including the request for review and its contents. Review of an adverse determination shall take into account all comments, documents, records and other information submitted by the claimant relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination. Review of an adverse benefit determination for disability benefits shall not afford deference to the initial benefit determination.

All notices to claimant shall be deemed to have been received by claimant three (3) days after such notice shall have been mailed by first class mail, postage prepaid, addressed to claimant at his last known address appearing in the records of the administrative office.

d. The Board shall make a decision on review at regularly scheduled meetings held at least quarterly, and a decision on review shall be made no later than the date of the meeting of the Board that immediately follows the administrative office's receipt of the request for review, unless the request for review is filed within thirty (30) days preceding the date of such meeting. In such case, a decision may be made no later than the date of the second meeting following the receipt of the request for review. If special circumstances (such as the need to hold a hearing) require a further extension of time for review, a decision shall be rendered not later than the third meeting of the Board following the administrative office's receipt of the request for review.

If an extension of time for review is required because of special circumstances, written notice of the extension shall be furnished to the claimant prior to the commencement of the extension. The Plan shall notify the claimant of the decision of the Board as soon as possible after the meeting, but not later than five (5) days after the decision is made.

Notification of the decision upon review shall be in writing and shall include, written in a manner calculated to be understood by the claimant:

1. the specific reason or reasons for the adverse determination;
2. reference to specific Plan provisions on which the determination is based;
3. a statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information relevant to the claimant's claim for benefits;

4. a statement of the claimant's right to bring civil action under ERISA section 502(a); and
5. a copy of the internal rule, guideline, protocol or other similar criterion relied upon in making a decision on disability benefits, including the physician's written medical evidence and identification of any individual whose advice was obtained for purpose of determining disability.

The decision on review shall be furnished to the claimant within the appropriate time described in this subsection d. If the decision on review is not furnished within such time, the claim shall be deemed denied on review.

- e. The decision on review shall be final and binding upon all parties including the claimant and any person claiming by or under the claimant. The provisions of this section 9.05 shall apply to and include any and every claim to benefits under the Plan and all rights asserted or capable of being asserted thereunder or against the Plan, regardless of the grounds or basis asserted for the claim and regardless of when the act or omission upon which the claim is based occurred.

**9.06 Action of Board.** The Board is granted the discretionary authority to determine all controversies, eligibility and benefits and to construe the terms and meaning of this Plan and any rule or regulation. The Board shall exercise such powers in a uniform and non-discriminatory manner.

The Board shall, subject to the requirements of the law, be the sole judges of the standard of proof required in any case and the application and interpretation of this Plan, and decisions of the Board shall be final and binding.

All questions or controversies arising in any manner or between any parties or persons in connection with this Plan or its operation, whether as to any claim for benefits, as to the construction of the language of this Plan or any rules and regulations adopted by the Board, or as to any writing, decision, instrument or account in connection with the operation of the Plan or otherwise, shall be submitted to the Board for decision. In the event a claim for benefits has been denied, no lawsuit or other action against the Trust Fund or its Board may be filed until the matter has been submitted for review under the ERISA-mandated review procedure set forth in section 9.05. The decision on review shall be binding upon all persons dealing with the Plan or claiming any benefit hereunder.

**9.07 Mandatory Commencement of Benefits.**

- a. Notwithstanding any provision of the Plan to the contrary, the Trust Fund will begin benefit payments to all Participants by their Required Beginning Date, whether or not they apply for benefits.

- b. A Participant who earns additional Benefit Units after his Required Beginning Date and who is being paid a pension because he has attained the Required Beginning Date will have his pension recalculated each April 1, for the additional Benefit Units earned during the Plan Year without any offset of the payments received against the additional Benefit Units earned.
- c. A Participant who is definitely located, who has attained his Required Beginning Date, and fails to complete an application for benefits on a timely basis, shall have his Required Beginning Date as his Annuity Starting Date and his benefits paid as follows:
  - 1. If the Actuarial Present Value of the Participant's benefit is no more than \$5,000, or such higher amount as may be payable under Section 411(a)(11) of the Internal Revenue Code, in a single lump sum payment.
  - 2. In any other case, in the form of a Participant and Spouse Pension calculated on the assumptions that the Participant is and has been married for at least one year by the date payments start and that the husband is three (3) years older than the wife.
  - 3. The benefit payment form specified here will be irrevocable once it begins, with the sole exception that it may be changed to a single life annuity if the Participant proves that he did not have a Qualified Spouse (including an alternate payee under a Qualified Domestic Relations Order) on the Required Beginning Date, and the amounts of the future benefits will be adjusted based on the actual age difference between the Participant and Spouse if proven to be different from the foregoing assumptions.
  - 4. Federal, state, and local income tax, and any other applicable taxes, will be withheld from the benefit payments as required by law or determined by the Board to be appropriate for the protection of the Trust Fund and the Participant.

**9.08 Retired or Retirement.** To be considered Retired or in Retirement, a Participant must not be engaged in Prohibited Employment that results in the suspension of pension benefits under section 9.10.

**9.09 Prohibited Employment.**

- a. **Before Normal Retirement Age.** Before Normal Retirement Age, a Pensioner is engaged in Prohibited Employment if he works in Covered Employment or any employment anywhere for wages or profit of the type covered by the Collective Bargaining Agreement.

- b. After Normal Retirement Age. After Normal Retirement Age, a Pensioner is engaged in Prohibited Employment if he is working forty (40) hours or more during any calendar month in employment:
  - 1. in an industry in which Employees covered by the Plan were employed and accrued benefits under the Plan as a result of such employment when the payment of pension benefits to the Participant commenced, or would have commenced had the Participant not remained in or returned to employment;
  - 2. in work which requires, directly or indirectly, the same skills used by the Participant at any time while he was employed under the Plan; and
  - 3. in the Geographical Area covered by the Plan when the payment of pension benefits to the Participant commenced, or would have commenced had the Participant not remained in or returned to employment.
- c. Notwithstanding any other provision of this section, for months beginning on and after April 1 of the calendar year following the calendar year in which the Participant attained age seventy and one-half (70 1/2), no employment will be considered Prohibited Employment with respect to such Participant.
- d. It shall not be considered prohibited employment for a Pensioner to be employed, either before or after normal retirement age, as an instructor for a training program in the field of electrical work if the Pensioner is employed by an IBEW-NECA sponsored training program. Prior written notice of such employment should be provided to the Trustees by the Pensioner.
- e. It shall not be considered prohibited employment for a Pensioner to be employed either before or after normal retirement age, as an electrical inspector or as an instructor for an IBEW sponsored training trust. Prior written notice of such employment should be provided to the Trustees by the Pensioner.
- f. It shall not be considered prohibited employment for a Pensioner to be employed after Normal Retirement Age in non- Covered Employment or in a supervisory capacity for an employer who is obligated to make payments to the Trust Fund pursuant to a Collective Bargaining Agreement or other written agreement.

#### **9.10 Suspension of Pension Payments.**

- a. Before Normal Retirement Age. If, in any calendar year, a Pensioner employed in Prohibited Employment as described in section 9.09 a. earns, through work in Covered Employment, the maximum amount which then current laws and regulations allow retirees under age sixty-five (65) to earn without loss of Social Security benefits ("Maximum Social Security

Allowance for Early Retirees"), his pension payments shall be suspended for each calendar month thereafter in which he performs Prohibited Employment. If, in any calendar year, a Pensioner employed in Prohibited Employment as described in section 9.09 a. by an employer who has not entered into an agreement with the Board providing for the making of Contributions to the Trust Fund, his pension payments shall be suspended for each calendar month thereafter in which he performs Prohibited Employment for such non-contributory employer. Payment of pension benefits shall resume no later than the first day of the third calendar month following the calendar month in which the Pensioner ceases Prohibited Employment, provided that notice given to the Plan in accordance with subsection c.3.

However, if a Disability Pensioner becomes engaged in Prohibited Employment under section 9.09 a., subsequently retires and is again awarded a pension, such Pensioner shall not be required to satisfy the foregoing waiting period before his pension is effective.

If a Pensioner becomes engaged in Prohibited Employment under section 9.09 a., he must so notify the Board, in writing, in accordance with subsection c.2. If the Pensioner fails to give written notice as required in subsection c.2, his pension may be suspended by the Board for an additional period of six (6) months over and above the suspension period specified in this subsection a.

In the event a Pension is employed in Prohibited Employment within the geographic jurisdiction of any IBEW Local Union in the United States of America as otherwise described in Section 9.09(a) by an employer who has not entered into an agreement with the Board providing for the making of Contributions to the Trust Fund, benefits accrued on and after January 1, 2009 shall be suspended for each and every month until the calendar month following the month in which the Pensioner attains Normal Retirement Age.

- b. After Normal Retirement Age. If, in any calendar year, a Pensioner employed in Prohibited Employment under section 9.09 b. by an employer who has not entered into an agreement with the Board providing for the making of Contributions to the Trust Fund, his pension benefits shall be suspended for each calendar month thereafter in which he performs forty (40) or more hours in such Prohibited Employment for such non-contributory employer. Pension payment shall recommence effective the first day of the first calendar month following the calendar month in which the Pensioner ceases Prohibited Employment with a non-contributory employer, provided that notice is given to the Plan in accordance with subsection c.3, with payments beginning no later than the first day of the third calendar month following the calendar month for which benefits were suspended.
- c. Notices.

1. Upon commencement of pension payments, the Board shall notify the Pensioner of the Plan rules governing suspension of benefits. If benefits have been suspended, new notification shall, upon resumption of benefits, be given to the Participant if there have been any material changes in the suspension rules or the identity of the industries or area covered by the Plan.
2. A Pensioner shall notify the Plan in writing within twenty-one (21) days after starting work of a type that is or may be Prohibited Employment without regard to the number of hours of such work (that is, whether or not less than forty (40) hours in a month). If a Pensioner has worked in Prohibited Employment in any month and has failed to give timely notice to the Plan of such employment, the Board shall presume that the Pensioner worked for at least forty (40) hours in such month and any subsequent month before the Participant gives notice that he has ceased Prohibited Employment. The Participant shall have the right to overcome this presumption by establishing that such work was not in Prohibited Employment.

The Board shall inform all retirees at least once every twelve (12) months of the reemployment notification requirements and the presumptions set forth in this subsection c.

3. A Pensioner whose pension has been suspended shall notify the Board when Prohibited Employment has ended. The Board shall have the right to withhold benefit payments until such notice is filed with the Plan.
4. A Participant may ask the Board whether a particular employment will be Prohibited Employment. The Board shall provide the Participant with its determination.
5. The Board shall inform a Participant of any suspension of benefits by notice given by personal delivery or first class mail during the first calendar month in which benefits are withheld.

d. Review. A Participant shall be entitled to a review of a determination suspending benefits by written request filed with the Board within ninety (90) days of the notice of suspension.

A right of review shall also apply, under the same terms, to a determination by or on behalf of the Board that contemplated employment will be Prohibited Employment.

e. Resumption of Benefit Payments.

1. Overpayments attributable to payments made for any month or months for which the Participant's benefits have been suspended shall

be deducted from pension payments otherwise paid or payable subsequent to the period of suspension. A deduction from a monthly benefit for a month after the Participant attained Normal Retirement Age shall not exceed twenty-five percent (25%) of the pension amount, except that the Board may withhold up to one hundred percent (100%) of the first pension payment made upon resumption of benefits after a suspension.

2. A Participant who resumes retirement before Normal Retirement Age shall have one hundred percent (100%) of his benefit withheld until the amount of overpayments is recovered or, if earlier, until he reaches Normal Retirement Age, at which time the rules in paragraph 1 shall apply.
3. If a Pensioner dies before overpayments have been recovered, deductions shall be made from the benefits payable to his Beneficiary or surviving Spouse, subject to the above percentage limitations on the rate of deduction in paragraphs 1 and 2.

#### **9.11 Benefit Payments Following Suspension.**

- a. Nothing in this section 9.11 shall be understood to extend any benefit increase or adjustment effective after the Pensioner's initial retirement to the amount of pension upon resumption of payment, except to the extent that it may be expressly directed by provisions of the Plan.
  1. Resumption Before Normal Retirement Age. The amount shall be determined under this paragraph 1 if, upon resumption (the end of the first month for which payment is resumed), the Pensioner had not yet attained Normal Retirement Age. The amount shall be determined as if it were then being determined for the first time, but on the basis of an adjusted age. The adjusted age shall be the age of the Pensioner at the beginning of the first month for which payment is resumed, reduced by the months for which he previously received benefits to which he was entitled.
  2. Resumption After Normal Retirement Age. The amount shall be determined under this paragraph 2 if, upon resumption (the end of the first month for which payment is resumed), the Pensioner had attained Normal Retirement Age. If the Pensioner had previously been receiving an unreduced Regular Pension, the pension amount shall be determined based upon the Pensioner's Normal Retirement Age. If the Pensioner had previously been receiving a reduced Early Retirement Pension, the amount shall be determined as if it were then being determined for the first time, but on the basis of an adjusted age. The adjusted age shall be the Pensioner's Normal Retirement

Age, reduced by the months for which he previously received benefits to which he was entitled.

3. The amount determined under paragraphs 1 and 2 shall be adjusted for the Participant and Spouse Pension or any other optional form of benefit payable.
- b. Suspension of pension payments before Normal Retirement Age in accordance with section 9.10 a., because of employment of the type for which a pension would not be suspended after Normal Retirement Age, shall not reduce the Pensioner's pension below the amount payable at his Normal Retirement Age.
- c. A Pensioner who returns to employment and earns at least five hundred (500) Hours of Service in Covered Employment during any Plan Year shall upon his subsequent retirement, be entitled to a recomputation of his pension amount based on the benefits accrued during subsequent periods of Covered Employment.

A Pensioner who returns to employment and earns less than five hundred (500) Hours of Service in Covered Employment during any Plan Year shall upon his subsequent retirement, be entitled to a recomputation of his pension amount upon the completion of one year of Credited Service, based on the benefits accrued during subsequent periods of Covered Employment.
- d. If an Early Retirement Pensioner received at least twenty-four (24) monthly pension payments before returning to Covered Employment and accruing additional Benefit Units, the monthly benefit payable for each Benefit Unit earned before his previous period of retirement shall not be increased upon his subsequent retirement, even though there may have been a subsequent increase in the amount payable by the Plan for each Benefit Unit. He shall, however, upon subsequent retirement be entitled to receive an increased pension based on Benefit Units accumulated after his return to work in Covered Employment, at the benefit level then payable by the Plan.

If an Early Retirement Pensioner received less than twenty-four (24) monthly pension payments before returning to Covered Employment and accruing additional Benefit Units, then the monthly benefit payable for all Benefit Units earned before and after his previous period of retirement shall, upon his subsequent retirement, reflect the benefit level then payable by the Plan.

#### **9.12 Recomputation of Benefit Payments following Suspension.**

- a. A Pensioner, except a Disability Pensioner, who returns to Covered Employment and earns additional Credited Service and Benefit Units, shall have his pension recalculated as of the following April 1. If such a Pensioner whose benefits have been suspended under section 9.10 resumes receiving pension payments during a Plan Year, the monthly payment will be the

amount calculated as of the prior April 1 and the monthly amount shall be adjusted as of the following April 1 as described below.

- b. Each April 1 the new benefit amount will be the benefit payable prior to the date benefits were suspended and will include any additional accruals earned during the prior Plan Year.
- c. A Participant and Spouse Option in effect immediately prior to suspension of benefits, and any other benefit following the death of the Pensioner, shall remain effective if the Pensioner's death occurs while his benefits are in suspension.
- d. A Pensioner who returns to Covered Employment and earns additional accruals shall be entitled to a new election as to form of benefit payment for such additional accruals; provided, however, that the first election on or after Normal Retirement Age shall apply for any subsequent accruals earned.

**9.13 Optional Forms of Benefits.** Unless otherwise specified, any optional form of benefit under this Plan is intended to be at least the Actuarial Equivalent of the Participant's nonforfeitable accrued benefit payable at Normal Retirement Age or, if later, the Participant's Annuity Starting Date.

**9.14 Maximum Limitation.** Effective January 1, 20008, notwithstanding any other provision of the Plan, the annual retirement benefit to which an Employee shall be entitled hereunder shall not exceed the maximum amount permitted under Section 415 of the Internal Revenue Code, the provisions of which are incorporated herein by reference. The following subsections prescribe how Section 415 is to be applied when a provision of Section 415 can be applied in more than one manner or to clarify the application of Section 415 to this Plan. In accordance with Section 1.415(a)-1(d)(3) of the Treasury Regulations, if no language is set forth in this Plan Document, and a default rule exists, then the default rule applies.

- a. Limitation Year. The limitation year is the calendar year.
- b. Cost-of-Living Adjustments. The maximum dollar limitation under Section 415(b)(1)(A) is adjusted annually as provided for under Section 1.415(a)-1(d)(3)(v) of the Regulations. In addition, the annual increase in the maximum dollar limitation shall also apply to any Pensioner who has commenced receiving benefits and to any Participant who has severed employment from all Employers who are maintaining the Plan but has not commenced benefits. The limitations will be adjusted in accordance with Sections 1.415(d)-1(a)(4) and 1.415(d)-1(a)(5) of the Regulations.
- c. Aggregating Plans. No other multiemployer plan shall be aggregated with this Plan for purposes of applying the limits of Section 415. If an Employer maintains defined benefit plans which are not multiemployer plans in addition to this Plan, only the benefits under this Plan that are provided by the particular Employer shall be aggregated with the Employer's other defined

benefit plans in applying the dollar limitations under Section 415(b)(1)(A). This Plan shall not be aggregated with any other plan that is not a multiemployer plan for purposes of applying the compensation limit of Section 415(b)(1)(B).

- d. **Mortality Adjustments.** For purposes of adjusting the Section 415(b)(1)(A) dollar limitation for annuity starting dates prior to age 62 and after age 65, no adjustment is made to reflect the probability of a Participant's death in accordance with Section 1.415(b)-1(d)(2) of the Regulations.
- e. **Grandfather Rule.** For benefits accrued or payable as of December 31, 2007, Section 415 will be applied with respect to a Participant on an Employer by Employer basis. Notwithstanding the foregoing, a Participant shall not be entitled to accrual of additional benefits on or after January 1, 2008 unless such additional benefits plus the benefits accrued before January 1, 2008 satisfy the requirements of Section 415 in effect on January 1, 2008.

**9.15 Small Benefit Cashouts.** Notwithstanding any other provision of this Plan, if the Actuarial Present Value of a benefit payable under the Plan is not more than \$5,000, or such higher amount as may be payable under Section 411(a)(11) of the Internal Revenue Code, as of the Annuity Starting Date, the Board shall pay it in a single lump sum equal to that value.

This section 9.15 shall not apply after payment of the Participant's pension has begun unless the Participant or Beneficiary or surviving Spouse, whichever is applicable, consents in writing to the lump sum distribution.

**9.16. Overpayments and Underpayments of Benefits.**

- (a) Recoupment of Overpayments.

If the Plan discovers that a Participant, Beneficiary, Alternate Payee or any other person has erroneously received an overpayment of pension benefits to which the person was not entitled in accordance with the provisions of this Plan, the Trustees shall recover the overpayments in the following order of priority:

(1) The Trustees shall first seek recoupment of the overpayment in one lump sum payment with interest. Interest shall be based on the interest for retroactive payments as provided for in Article 9.01(b) of the Plan. Interest shall be applied from the annuity starting date to the date of repayment;

(2) If lump sum recoupment is not agreed to, the Trustees shall seek recoupment of the overpayment in the form of a partial lump sum payment plus a level installment repayment agreement. The maximum installment repayment period shall be sixty months and interest on the partial lump sum and installment repayment shall be based on the interest for retroactive payments as provided for in Article 9.01(b) of the Plan. Interest shall be applied from the annuity starting date to the dates of repayment;

(3) If lump sum recoupment or a partial lump sum payment plus a level installment repayment agreement is not agreed to, the Trustees shall seek recoupment of the overpayment in a level installment repayment agreement. The maximum installment repayment period shall be sixty months and interest on the installment repayment shall be based on the interest for retroactive payments as provided for in Article 9.01(b) of the Plan. Interest shall be applied from the annuity starting date to the dates of repayment;

(4) If a lump sum, partial lump sum plus an installment repayment agreement or an installment repayment agreement is not agreed to within sixty days of notification by the Trust to the Participant, Beneficiary, Alternate Payee or other persons of the overpayment, or if the Participant, Beneficiary, Alternate Payee or other person fails to abide by the lump sum or partial lump sum plus installment repayment agreement or the installment repayment agreement, the Trustees shall obtain recoupment of the overpayment by reducing future benefit payments so that the actuarial present value of the reduction is equal to the amount of the overpayment accumulated with interest from the annuity starting date to the date of the first reduced annuity payment. For the purpose of accumulating the overpayment with interest, the interest rate used shall be the interest for retroactive payments as provided for in Article 9.01(b) of the Plan. The actuarial present value of the reduction shall be based on the Applicable Mortality Table and Applicable Interest Rate provided for in Article 1.02.

Nothing in this provision shall prohibit the Trustees from taking additional action related to the recovery of overpayments from a Participant, Beneficiary, Alternate Payee or any other person who erroneously received pension benefits, including but not limited to, reserving the right to file suit or the pursuit of other legal action for the recovery of such overpayments.

(b) Underpayment

In the event that the Trustees determine that the payment of benefits has resulted in an underpayment, future payments shall be increased to the correct periodic amount while the amount of past underpayments shall be paid in a lump sum with appropriate interest. For purposes of interest to be added to the remedial payment under this Subsection, the rate of interest shall be the interest for retroactive payments as provided for in Article 9.01(b) of the Plan. Interest shall be applied from the annuity starting date to the date of payment.

## ARTICLE 10. GENERAL PROVISIONS

### **10.01 Non-Assignment of Benefits.**

- a. No Participant, Pensioner or Beneficiary entitled to any benefits under this Plan shall have the right to assign, alienate, transfer, encumber, pledge, mortgage, hypothecate, anticipate, or impair in any manner his legal or beneficial interests, or any interest in assets of the Trust Fund, or benefits of this Plan. Neither the Trust Fund nor any of the assets thereof, shall be liable for the debts of any Participant, Pensioner or Beneficiary, nor be subject to attachment or execution or process in any court action or proceeding.
- b. Notwithstanding subsection a. or any other provision of the Plan, benefits shall be paid in accordance with a Qualified Domestic Relations Order, and with written procedures adopted by the Board for compliance with such Qualified Domestic Relations Orders, which shall be binding on all Participants, Beneficiaries and other parties. In no event shall the existence or enforcement of a Qualified Domestic Relations Order cause the Trust Fund to pay benefits with respect to a Participant in excess of the Actuarial Present Value of the Participant's benefits, and benefits otherwise payable under the Plan shall be reduced by the Actuarial Present Value of any payment required pursuant to a Qualified Domestic Relations Order.

**10.02 Non-Reversion.** It is expressly understood that in no event shall any of the corpus or assets of the Trust Fund revert to the Employers or be subject to any claims of any kind or nature by the Employers, except that Contributions, or a payment of withdrawal liability under Part 1 of Subsection E of Title IV of ERISA, made by an Employer by mistake of fact or law (other than a mistake relating to whether the Plan is described in Section 401(a) of the Internal Revenue Code of 1986 or the Trust Fund which is part of such Plan is exempt from taxation under Section 501(a) of such Code) may, subject to approval by the Board, be returned to such Employer within six (6) months after the Plan administrator determines that the Contribution or payment was made by such a mistake.

**10.03 Incompetence or Incapacity of a Pensioner or Beneficiary.** In the event it is determined to the satisfaction of the Board that a Pensioner or Beneficiary is unable to care for his affairs because of mental or physical incapacity, any payment due may be applied to the maintenance and support of such Pensioner or Beneficiary or to such person as the Board finds to be an object of the natural bounty of the Pensioner or Beneficiary in the manner decided by the Board, unless, prior to such payment, claim shall have been made for such payment by a legally-appointed guardian, conservator, or other legal representative appropriate to receive such payments on behalf of the Pensioner or Beneficiary.

**10.04 No Right to Assets.** No one other than the Board shall have any right, title or interest in any of the income, or property of any funds received or held by or for the

account of the Trust Fund; and no person shall have any right to benefits provided by the Plan except as expressly provided herein.

**10.05 Limitation of Liability.** This Plan has been established on the basis of an actuarial calculation that has established, to the extent possible, that the Contributions will, if continued, be sufficient to maintain the Plan on a permanent basis, fulfilling the funding requirements of ERISA. Except for liabilities that may result from provisions of ERISA, nothing in this Plan shall be construed to impose any obligation to contribute beyond the obligation of the Employer to make Contributions as stipulated in its Collective Bargaining Agreement with the Union. There shall be no liability upon the Board of Trustees individually, or collectively, or upon the Union to provide the benefits established by this Plan, if the Trust Fund does not have assets to make such payments.

**10.06 Mergers.** The Plan may not merge or consolidate with, or transfer assets or liabilities to, any other plan after the date of the enactment of ERISA, unless each Participant in the Plan would (if the Plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the plan had then terminated). This section 10.06 shall apply in the case of this Plan only to the extent determined by the Pension Benefit Guaranty Corporation.

**10.07 New Employers.**

- a. If an Employer is sold, merged or otherwise undergoes a change of company identity, the successor company shall participate as to the Employees theretofore covered in the Plan just as if it were the original company, provided it remains an Employer as defined in section 1.14.
- b. A new Employer may be admitted to participation in the Trust Fund and this Plan as provided in the Trust Agreement.
- c. The participation of any such new Employer shall be subject to such terms and conditions as the Board may lawfully prescribe including, but not limited to, the imposition of waiting periods in connection with the commencement of benefits, a requirement for retroactive Contributions, or the application of modified benefit conditions, and amounts. In adopting applicable terms or conditions, the Board shall take into account such requirements as they may deem necessary to preserve the actuarial soundness of the Trust Fund and to preserve an equitable relationship with the Contributions required from other participating Employers and the benefits provided to their Employees.

**10.08 Cessation of Employer Contributions.**

- a. Participant's benefits accrued as a result of service with the Participant's Employer before the Employer had an obligation to contribute under the Plan

shall not be payable if the Employer ceases Contributions to the Plan unless the Participant immediately after notice thereof terminates employment with such Employer and, if thereafter employed, performs service in Covered Employment for a contributing Employer.

- b. In computing the period of service under the Plan for purposes of determining the nonforfeitable percentage as permitted under Section 203(b)(1)(G) of ERISA, years of service with an Employer after:
  1. a complete withdrawal of such Employer from the Plan or, to the extent permitted by regulations prescribed by the Secretary of Labor, a partial withdrawal described in Section 4205(b)(2)(A)(i) of ERISA in connection with the de-certification of the collective bargaining representative, and
  2. with any Employer under the Plan after termination date of the Plan under Section 4048 of ERISA, shall not be taken into account and shall be disregarded.

**10.09 Board's Reliance.** The Board shall be entitled to rely on written representations, consents, and revocations submitted by Participants, Spouses or other parties in making determinations under this Plan. The Board's determinations shall be final and binding, and shall discharge the Trust Fund and the Board from liability to the extent of the payments made. This means that, unless the Plan is administered in a manner determined to be inconsistent with the fiduciary standards of Part 4 of Title I of ERISA, the Trust Fund shall not be liable under this section for duplicate benefits with respect to the same Participant, or for surviving Spouse benefits in excess of the Actuarial Present Value of the benefits described in this section 10.09, determined as of the Annuity Starting Date or, if earlier, the date of the Participant's death.

**10.10 Gender/Number.** Wherever any words are used in this Plan in masculine gender, they should be construed as though they were also used in the feminine gender in all situations where they would so apply. Wherever any words are used in the Plan in the singular form they should be construed as though they were also in the plural form in all situations where they would so apply, and vice versa.

**10.11 Applicable Laws.** This Plan shall be governed by applicable laws of the State of Colorado on any matter not governed or determined by Federal law.

This Plan is intended to comply with the Employee Retirement Income Security Act of 1974 (ERISA) and with the requirements of Section 401(a) and Section 501 for tax qualification under the Internal Revenue Code and all regulations thereunder, and is to be interpreted and applied consistent with that intent.

## **ARTICLE 11. AMENDMENT AND TERMINATION**

**11.01 Amendment.** This Plan may be amended at any time by the Board, consistent with the provisions of the Trust Agreement. However, in accordance with Internal Revenue Code Section 411(d)(6), no amendment may decrease the accrued benefit of any Participant, except:

- a. as necessary to establish or maintain the qualification of the Plan or the Trust Fund under the Internal Revenue Code and to maintain compliance of the Plan with the requirements of ERISA, or
- b. if the amendment meets the requirements of Section 302(c)(8) of ERISA and Section 412(c)(8) of the Internal Revenue Code, and the Secretary of Labor has been notified of such amendment and has either approved of it or, within ninety (90) days after the date on which such notice was filed, failed to disapprove.

**11.02 Termination.** The Board shall have the right to discontinue or terminate this Plan in whole or in part. In the event of a termination of this Plan the rights of all affected Participants to benefits then accrued shall thereupon become 100% vested and nonforfeitable, to the extent then funded. No part of the assets shall be returned to any Employer or inure to the benefit of any Employer or Union. Upon a termination of the Plan, the Board shall take such steps as they determine to be necessary or desirable to comply with Sections 4041A and 4281 of ERISA.

**11.03 Severability.** If any provision of the Plan or any step in the administration of the Plan is held to be illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining provisions of the Plan, unless such illegality or invalidity prevents accomplishment of the purposes and objectives of the Plan. In the event of any such holding, the Board will immediately amend the Plan to remedy the defect.

## **ARTICLE 12. NON-BARGAINED EMPLOYEES**

### **12.01 Definitions.**

- a. **Employer.** For purposes of identifying Highly Compensated Employees and applying the rules on participation, vesting and statutory limits on benefits under the Trust Fund for such employees, but not for determining covered services, the term “Employer” includes all members of an affiliated service group with the Employer within the meaning of Section 414(m) of the Internal Revenue Code and all other businesses aggregated with the Employer under Code Section 414(o). For this purpose, an “Employer” also includes all corporations, trades or businesses under common control with the Employer within the meaning of Sections 414(b) and (c) of the Internal Revenue Code. For all other purposes, the term “Employer” shall have the meaning stated at Section 1.14.
- b. **Non-Bargained Employee.** A “Non-Bargained Employee” means a person who is employed by an Employer and who is not covered by a Collective Bargaining Agreement, but is covered by another written agreement requiring Employer Contributions on his or her behalf.
- c. **Highly Compensated Employee.** The term “Highly Compensated Employee” shall have the meaning stated in Section 1.16.

### **12.02 Nondiscrimination, Coverage and Participation.** Effective January 1, 1989, participation in the Plan by Non-Bargaining Employees shall be in compliance with Section 401(a)(4) (nondiscrimination rules, including the restrictions set forth in Treasury Regulations Sections 1.401(a)(4)-5(b)(4), 410(b)(coverage rules), and 401(A)(26)(minimum participation rules) of the Internal Revenue Code and regulations and ruling issued thereunder.

## ARTICLE 13. TOP HEAVY PROVISIONS

### Section 1. Definitions.

- (a) "Accrued Benefit" means, for any Top Heavy Plan Year, the pension benefit determined in accordance with Section 2 herein.
- (b) "Aggregate Account" means, for each Participant, the total value of his accounts, including Employer and Employee accounts, which are used to determine Top Heavy Plan status under the provisions of a defined contribution plan included in any Aggregation Group.
- (c) An Aggregation Group shall be either a Required Aggregation Group or a Permissive Aggregation Group as hereinafter determined. Only those plans of the Employer in which the Determination Dates fall within the same calendar year shall be aggregated to determine whether such plans are Top Heavy Plans.
  - (1) A "Required Aggregation Group" shall consist of each plan of the Employer in which a Key Employee is a Participant, and each other plan of the Employer which enables any plan in which a Key Employee is a Participant to meet the requirements of Sections 401(a)(4) or 410 of the Internal Revenue Code.

Each plan in a Required Aggregation Group shall be considered a Top Heavy Plan if the Required Aggregation Group is a Top Heavy Group. No plan in a Required Aggregation Group shall be considered a Top Heavy Plan if the Required Aggregation Group is not a Top Heavy Group.
  - (2) A "Permissive Aggregation Group" shall consist of the Required Aggregation Group in addition to any plan not required to be included in an Aggregation Group which the Employer decides to treat as being part of such group, providing the resulting group, taken as a whole, would continue to meet the requirements of Sections 401(a)(4) and 410 of the Internal Revenue Code.

Only a plan that is part of the Required Aggregation Group shall be considered a Top Heavy Plan if the Permissive Aggregation Group is a Top Heavy Group. No plan in a Permissive Aggregation Group shall be considered a Top Heavy Plan if the Permissive Aggregation Group is not a Top Heavy Group.
- (d) "Average Compensation" means the amount determined by averaging the Participant's Annual Earnings over a period of five (5) consecutive years preceding the Determination Date which produces the highest average. For any Top Heavy Plan Year, compensation in excess of \$200,000 in any year, whether or not such year was a Top Heavy Plan Year, shall be disregarded in accordance

with Internal Revenue Code Section 416. Such \$200,000 limit shall be automatically adjusted as provided in Internal Revenue Code Section 416(d)(2) to take into account increases in cost of living in accordance with the regulations prescribed by the Secretary of Treasury.

- (e) "Determination Date" means the last day of the preceding Plan Year.
- (f) "Key Employee" means any employee or former employee (including any deceased employee) who at any time during the Plan Year that includes the determination date was an officer of the Employer having annual compensation greater than \$130,000 (as adjusted under Section 416(i)(1) of the Internal Revenue Code for Plan Years beginning after December 31, 2002), a 5% owner of the Employer, or a 1% owner of the Employer having annual compensation of more than \$150,000. For this purpose, annual compensation means compensation within the meaning of Section 415(c)(3) of the Internal Revenue Code. The determination of who is a key employee will be made in accordance with Section 416(i)(1) of the Internal Revenue Code and the applicable regulations and other guidance of general applicability issued thereunder.
  - (1) A "five percent owner" of the Employer. "Five percent owner" means any person who owns (or is considered as owning within the meaning of Section 318 of the Internal Revenue Code) more than five percent (5%) of the outstanding stock of the Employer or stock possessing more than five percent (5%) of the total combined voting power of all stock of the Employer, or, in case of an unincorporated business, any person who owns more than five percent (5%) of the capital or profits interest in the Employer. In determining percentage ownership hereunder, employers that would otherwise be aggregated under Section 414(b), (c), and (m) of the Internal Revenue Code shall be treated as separate employers; or
  - (2) A "one percent owner" of the Employer having an annual Compensation (as defined in Treas. Reg. 1.415-2(d)) from the Employer of more than \$150,000. "One percent owner" means any person who owns (or is considered as owning within the meaning of Section 318 of the Internal Revenue Code) more than one percent (1%) of the outstanding stock of the Employer or stock possessing more than one percent (1%) of the total combined voting power of all stock of the Company, or, in case of an unincorporated business, any person who owns more than one percent (1%) of the capital or profits interest in the Employer. In determining percentage ownership hereunder, employers that would otherwise be aggregated under Sections 414(b), (c), and (m) of the Internal Revenue Code shall be treated as separate employers. However, in determining whether an individual has Compensation of more than \$150,000, Compensation from each employer required to be aggregated under Sections 414(b), (c), and (m) of the Internal Revenue Code shall be taken into account.

- (g) "Non-Key Employee" means any Employee who is not a Key Employee.
- (h) "Top Heavy Plan Year". The Plan shall be considered a Top Heavy Plan for any Plan Year in which (1) the Present Value of Accrued Benefits of Key Employees under this Plan and (2) the sum of the Aggregate Accounts of Key Employees in any plan of an Aggregation Group, exceeds sixty percent (60%) of the Present Value of Accrued Benefits under this Plan plus the Aggregate Accounts of all Participants in any plan of an Aggregation Group.

The amounts above shall be determined as of the Determination Date.

## **Section 2. Top Heavy Minimum Benefit.**

For any Top Heavy Plan Year, each Non-Key Employee who is a Participant shall be entitled to the greater of his benefit as computed under Article III or the following minimum benefit:

The lesser of two percent (2%) of the Participant's Average Compensation for each Top Heavy Plan Year, or twenty percent (20%) of his Average Compensation.

Such minimum benefit shall only be provided to an Active Participant who is a Non-Key Employee during the Plan Year. For purposes of satisfying the minimum benefit requirements of Section 416(c)(1) of the Internal Revenue Code and the Plan, in determining years of service with the Employer, any service with the Employer shall be disregarded to the extent that such service occurs during a Plan Year when the plan benefits (within the meaning of Section 410(b) of the Internal Revenue Code) no key employee or former key employee.

If a Non-Key Employee participates in both this defined benefit plan and in a defined contribution plan included in a Top Heavy Aggregation Group, the Employer is not required to provide the Non-Key Employee with both the full and separate minimum benefit under this Plan and the full and separate minimum contribution under the defined benefit plan. Such Non-Key Employee shall receive only the minimum benefits provided under this Plan.

To the extent that the minimum benefit of any Participant is vested in accordance with the Top Heavy vesting schedule provided in Section 5 of this Article, such minimum benefit may not be forfeited or suspended under Sections 411(a)(3)(B) or 411(a)(3)(D) of the Internal Revenue Code.

### **Section 3. Top Heavy Requirements.**

For any Top Heavy Plan Year, as determined in Section 1(h) of this Article, the Plan shall provide the following:

- (a) Special vesting requirements of Section 416(b) of the Internal Revenue Code pursuant to Section 5 of this Article, and
- (b) Special minimum benefit requirements of Section 416(c) of the Internal Revenue Code pursuant to Section 2 of this Article
- (c) Special compensation requirements of Section 416(d) of the Internal Revenue Code pursuant to Section 1(d) of this Article.

### **Section 4. Determination of Top Heavy Status.**

The Board shall determine, on a year by year basis, the Top Heavy status of the Plan. Such determination shall be made pursuant to this paragraph of the Plan and Section 416 of the Internal Revenue Code. For any Plan Year in which this Plan is a Top Heavy Plan, the Top Heavy provisions of the Plan will be followed.

For purposes of determining Top Heavy status, the following special rules shall apply:

- (a) If any Participant is a Non-Key Employee for any Plan Year, but such Participant was a Key Employee for any prior Plan Year, such Participant's Present Value of Accrued Benefit shall not be taken into account for purposes of determining whether this Plan is a Top Heavy Plan (or whether any Aggregation Group which includes this Plan is a Top Heavy Group).
- (b) For purposes of determining a Participant's account, such account shall:
  - (1) Include the present value of Accrued Benefit using the following actuarial assumptions of the Plan;
  - (2) Include any Plan distributions made to such Participant during the one-year period ending on the Determination Date, except that in the case of a distribution made for a reason other than severance from employment, death or disability, this provision shall be applied by substituting five-year period for one-year period. For purposes of this paragraph, a Participant shall include any Employee who is not employed as of the Determination Date but who was employed at any time during the one-year period. The foregoing shall also apply to distributions under a terminated qualified plan of the Employer which, if it had not been terminated, would have been required to be included in an aggregation group;
  - (3) Include any non-deductible Employee contributions, whether voluntary or mandatory;

- (4) Not include, except as otherwise provided in the Treasury Regulations, Employee initiated rollover contributions or similar transfers to the transferee Plan;
- (5) Include any rollover contributions, plan-to-plan transfers or similar transfers initiated by the Employer or made to a plan maintained by an Affiliated Company; and
- (6) Not include the Accounts and Accrued Benefits of a Participant who has not received Compensation from the Employer maintaining the Plan during the one-year period ending on the Determination Date.

**Section 5. Top Heavy Vesting.**

Notwithstanding the vesting provisions provided elsewhere in the Plan, for any Top Heavy Plan Year, a terminated Participant shall have a vested interest in his Accrued Benefit based on at least the following minimum schedule:

Years of Service	Nonforfeiture Percentage
2	20%
3	40
4	60
5	80
6 or more	100

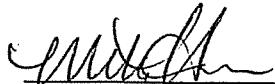
If, in any subsequent Plan Year, the Plan ceases to be a Top Heavy Plan, the Board may elect to (1) continue to apply this vesting schedule in determining the Vested portion of any Participant's Accrued Retirement Income, or (2) revert to the vesting schedule in effect before this Plan became a Top Heavy Plan. Any such reversion shall be treated as a Plan amendment pursuant to the provisions of Article XI.

**Section 6. Adjustment in Section 415 Limits for Top Heavy Plan Year.**

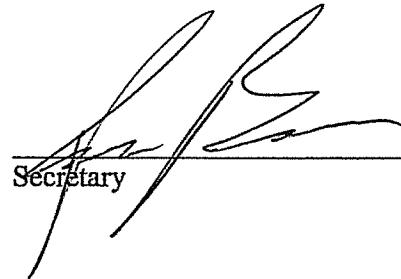
In any Top Heavy Plan Year, the denominators of the defined benefit and defined contribution fractions as described in Internal Revenue Code Section 415(e) are computed by substituting the factor 1.0 for 1.25.

For Limitation Years beginning on or after January 1, 2000, the 1.0 fraction limitation of Section 415(e) of the Internal Revenue Code and those provisions reflecting Section 416(h) of the Internal Revenue Code are hereby deleted from the Plan.

IN WITNESS WHEREOF, the Board of Trustees have hereby adopted this Restated Eighth District Electrical Pension Fund by affixing their signatures as of this 17<sup>th</sup> day of September, 2014.



Chairman



Secretary