

**EIGHTH DISTRICT ELECTRICAL PENSION FUND
ANNUITY PLAN**

RESTATED RULES AND REGULATIONS

Effective April 1, 2014

INTRODUCTION

Except as otherwise provided herein, this restated Plan is applicable only to pensions or other benefits that commence on or after April 1, 2014. Except as otherwise provided herein, pensions or benefits that commenced prior to April 1, 2014 are determined in accordance with the provisions of the Plan in existence at termination. This plan is a profit sharing plan that is intended to satisfy the requirements of Sections 401 and 501 of the Internal Revenue Code of 1986 and its associated regulations.

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ARTICLE 1. DEFINITIONS

1.01 Accumulated Share. “Accumulated Share” means the amount payable from an Individual Account and Individual 401(k) Account as of a Valuation Date less any outstanding loans and accrued loan interest due from the Employee. Notwithstanding anything herein to the contrary, “Accumulated Share” as used in connection with an Employee who dies before the Valuation Date that first establishes his Individual Account or Individual 401(k) Account means the total Contributions and Elective Deferrals received on his behalf.

1.02 Actuarial Equivalent. “Actuarial Equivalent” means an amount payable in an alternative benefit form which is equivalent to an amount payable in a given benefit form under the Plan, determined on an actuarial basis as may from time to time be approved by the Board based on the recommendations of a qualified actuary as being reasonable.

1.03 Administrator. “Administrator” means the Board or the person or persons designated by the Board and any successor(s) thereto.

1.04 Annuitant. “Annuitant” means an Employee who Retires and receives a benefit from the Fund.

1.05 Annuity Starting Date.

a. The “Annuity Starting Date” is the date as of which benefits may begin to be paid under the Plan and shall be the first day of the first month after or coincident with the later of:

1. the month following the month in which the claimant has fulfilled all of the conditions for entitlement to benefits, including the filing of an 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 Participant and Spouse (if any) consent in writing to the commencement of payments before the end of the thirty (30) day period described in subsection a. 2 and distribution of benefits begins more than seven (7) days after such written explanation was provided to the Participant and Spouse, or

2. the Participant’s benefit is being paid as a qualified joint and 50% survivor annuity at or after the Participant’s Normal Retirement Date, or

3. the benefit is being paid out automatically as a lump sum under section 5.06 a. or section 6.04 of the Plan.

- c. The Annuity Starting Date will not be later than the Participant's Required Beginning Date as defined in section 5.05 b.
- d. The Annuity Starting Date for a Beneficiary or alternate payee under a Qualified Domestic Relations Order will be determined as stated in subsections a. and b. above, except that references to the qualified joint and 50% survivor annuity and spousal consent do not apply.
- e. A Participant who Retires before his Normal Retirement Date and then earns additional 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 Date shall apply for any additional benefits accrued through reemployment after that date.
- f. Notwithstanding subsections a. and b., the Annuity Starting Date is the first day of the first period for which an amount is paid as an annuity or any other form.

1.06 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.

1.07 Beneficiary. “Beneficiary” means a person designated under section 9.05 (other than an Annuitant, Employee or Participant), who is receiving or entitled to receive benefits from the Plan because of designation for such benefits by an Annuitant or Participant or because of the provisions of this Plan.

1.08 Board. “Board” means the Board of Trustees established by the Trust Agreement.

1.09 Collective Bargaining Agreement. “Collective Bargaining Agreement” means the Collective Bargaining Agreement entered into by and between certain Chapters of Association and certain locals of the Union and any other Agreement that specifically provides for the making of defined contributions to the Fund herein established, and any extension or renewal of or amendment or supplement to any of said agreements.

1.10 Compensation. “Compensation” means an Employee's earned income, wages, salaries, and fees for professional services, and other amounts received for personal services actually rendered in the course of employment with the Employer.

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 allocations in any Plan Year beginning after December 31, 2001 shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Internal Revenue Code. For this purpose, annual compensation means compensation during the Plan Year or such other consecutive twelve (12) month period over which compensation is determined under the Plan (the "determination period"). 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.

1.11 Contributions. "Contributions" means the payments required to be made to the Fund by an Employer under a Collective Bargaining Agreement. 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 (USERRA), and Section 414(u) of the Internal Revenue Code, as amended. Contributions are based on an hourly contribution rate for each Participant.

1.12 Early Retirement Date. “An Employee shall who has attained age 55 and has separated from Covered Employment shall be entitled to receive a distribution.

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 Fund 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 Fund pursuant to a written agreement and regulations adopted by the Board.

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

Solely for purposes of testing for compliance with nondiscrimination regulations under Section 401(a)(4) of the Internal Revenue Code, all ‘leased employees’ 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). For the purposes of this paragraph, the term ‘leased employee’ mean any person who is not an employee of the recipient and who provides services to the recipient if: i) such services are provided pursuant to an agreement between the recipient and any other person (for this paragraph referred to as leasing organization); ii) such person has performed such services for the recipient (or for the recipient and related persons) on substantially full-time basis for a period of at least 1 year, and iii) such services are performed under primary direction or control by the recipient.

- d. 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 non-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.

- e. 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.

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 Fund with respect to Employees performing work covered by a 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 Fund with respect to Employees performing work covered by a Collective Bargaining Agreement.
- c. an association, joint apprenticeship training fund or union that has entered into an agreement with the Board providing for the making of payments to the Fund with respect to its Employees not covered by a Collective Bargaining Agreement with the Union. The term “Employer” does not include any regulated entity performing any private sector work.
- d. The Union, for the purpose of making the required Contributions into the Fund, shall be considered as the Employer of the Employees of the Union for whom the Union contributes to the Fund.

Employers, as described in this section 1.13, shall, by the making of payments to the Fund pursuant to such Collective Bargaining Agreement or other written agreements, be deemed to have accepted and shall be bound by the Trust Agreement.

1.15 Fund. “Fund” or “Trust Fund” means the Eighth District Electrical Pension Fund Annuity Plan.

1.16 Individual Account. “Individual Account” means the account established for each Employee, pursuant to section 3.01 of the Plan.

1.17 Normal Retirement Date. “Normal Retirement Date” means the first day of the month following the Employee’s sixty-fifth (65th) birthday.

1.18 Participant. “Participant” includes an Annuitant and, as of any Valuation Date, each Employee for whom an Individual Account is being maintained.

1.19 Plan. “Plan” means these rules and regulations and any modification, amendment, extension or renewal thereof. The Plan shall be a profit sharing plan.

1.20 Plan Year. “Plan Year” means the Fund’s fiscal year, the twelve (12) month period from April 1 of any calendar year through March 31 of the following calendar year.

1.21 Qualified Domestic Relations Order. “Qualified Domestic Relations Order” means a domestic relations order which 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 and Section 414(p) of the Internal Revenue Code.

1.22 Retires. “Retires” or “Retired” or “Retirement” means withdrawal from employment covered by the Plan and election to receive benefits in accordance with sections 4.14 and 5.01 of the Plan.

1.23 Spouse. “Spouse” means a 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.

1.24 Trust Agreement. “Trust Agreement” means the trust agreement under which the Fund is created and maintained and any modification, amendment, extension or renewal thereof.

1.25 Union. “Union” means the designated local Unions or any other local Union affiliated with The International Brotherhood of Electrical Workers each being a labor organization that is a party to any Collective Bargaining Agreement requiring Contributions to be paid to the Fund.

1.26 Valuation Date. “Valuation Date” shall be daily at the end of each business day.

1.27 Other Terms. Additional terms are defined in other sections of the Plan as follows:

Terms	Sections
a. Actual Deferral Percentage	4.15 a.

b.	Actual Deferral Ratio	4.15 b.
c.	Adjustment Factor	4.15 c.
d.	Direct Rollover	6.06 b. 4.
e.	Distributee	6.06 b. 3.
f.	Distribution Calendar Year	6.03
g.	Elective Deferrals	4.15 d.
h.	Eligible Retirement Plan	6.06 b. 2.
i.	Eligible Retirement Distribution	6.06 b. 1.
j.	Excess Contributions	4.15 e.
k.	Excess Elective Deferrals	4.15 f.
l.	Highly Compensated Employee	4.15 g.
m.	Non-Highly Compensated Employee	4.15 h.
n.	Qualified Military Service	3.09
o.	Required Beginning Date	5.05
p.	Rollover Amount	6.07 b.
q.	Rollover Contributions	6.07 b.

ARTICLE 2. PARTICIPATION

- 2.01 **Eligible Employees.** Each Employee is eligible to participate in the Plan.
- 2.02 **Participation.** Each Employee shall participate in the Plan on the date he or she begins work for an Employer.
- 2.03 **Termination of Participation.** A Participant terminates participation in the Plan in the month in which the Participant's entire Accumulated Share has been paid.

ARTICLE 3. ESTABLISHMENT AND VALUATION OF PARTICIPANT ACCOUNTS

3.01 Establishment of Individual Accounts. As of each Valuation Date following the adoption of this Plan, an Individual Account shall be established for each Employee unless an Individual Account has already been so established.

3.02 Valuation of Accounts. As of each Valuation Date, the Individual Accounts and Individual 401(k) Accounts of each Participant shall be adjusted to reflect any realized and unrealized gains or losses and income or expense of the investment fund according to nondiscriminatory procedures uniformly applied based on the value of the Participant's Individual Accounts and Individual 401(k) Accounts as of the preceding Valuation Date, adjusted in accordance with section 3.03. The fair market value of the investment fund shall be determined by the Board and communicated to the Plan Administrator in writing. The Board's determination shall be final and conclusive for all purposes of this Plan. The valuation process shall be performed separately for each investment fund. Each Participant shall be furnished with a statement as soon as practicable after each Valuation Date setting forth the value of his Individual Account and Individual 401(k) Account. The Board shall establish an individual account expense charge for the Plan Year for each Participant in an amount not to exceed the total amount in the Participant's Individual Accounts and Individual 401(k) Accounts.

3.03 Adjustment of Accounts. When determining the value of a Participant's Individual Accounts and Individual 401(k) Accounts, any Contribution or Elective Deferral received by the Fund for deposit that has not been deposited to the investment fund on behalf of the Participant shall be added to his Individual Accounts and Individual 401(k) Accounts; and any withdrawals or distributions made which have not been paid out shall be subtracted from the Individual Accounts and Individual 401(k) Accounts according to nondiscriminatory procedures uniformly applied. Similarly, adjustment of Individual Accounts and Individual 401(k) Accounts for appreciation or depreciation of an investment fund shall be deemed to have been made as of the Valuation Date on which the adjustment relates, notwithstanding that they are actually made as of a later date.

The Contributions required to be made on behalf of an Employee since the previous Valuation Date shall include any Contributions owed for a period 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 of 1994 and Section 414(u) of the Internal Revenue Code.

3.04 Directed Investments. The Plan's Participants may direct the investment of their Individual Accounts by selecting from a range of investment alternatives that are offered by the Plan. The Board intends this Plan to constitute a Plan as described in ERISA Section 404(c). The Plan fiduciaries, including the members of the Board,

may be relieved of liability for any losses that are the direct and necessary result of investment instructions given by a Participant or Beneficiary. A Participant's Individual Account and Individual 401(k) Account shall be invested as directed by each Participant in one or more of the following investment funds:

Investment Fund	Type of Investments
Money Market Fund	Short-term fixed income investments such as, but not limited to, certificates of deposit, Treasury Bills, commercial paper and other short-term investments. This fund seeks preservation of capital, liquidity and an investment return with low volatility.
Investment Grade Bond Fund	Longer-term fixed income investments such as, but not limited to, U.S. government obligations, debt instruments backed by agencies of the U.S. government, and investment grade debentures or other instruments of corporate indebtedness. This fund seeks a yield in excess of inflation with limited risk associated with instruments of high security.
Balanced Fund	Invests in a mix of publicly traded common and preferred stocks, and foreign or domestic fixed income instruments. This fund seeks capital appreciation from the equity investments coupled with diversity and stability from the fixed income securities.
Value Stock Fund	This fund seeks capital appreciation by investing primarily in undervalued, income producing, publicly traded, foreign or domestic common and preferred stocks.
Small Capitalization Growth Stock Fund	This fund seeks capital appreciation through growth of common stocks of smaller capitalization companies.

Retirement Goals Fund

This is the fund in which a Participant's contributions will be placed if no investment selection has been received from a Participant.

A Participant shall submit to the Plan Administrator in writing his investment selection. The Participant may select one or more investment funds in multiples of one percent (1%). The investment selection of a Participant shall apply uniformly to all of his Individual Accounts and Individual 401(k) Accounts.

3.05 Administration of Investments. Contributions and Elective Deferrals made on behalf of a Participant shall be invested in the investment fund or funds selected by the Participant until the effective date of a new designation that has been properly completed and filed with the Plan Administrator. A designation filed by a Participant changing his investment option shall apply to investment of future deposits and/or to amounts already accumulated in his Individual Accounts and Individual 401(k) Accounts. A Participant shall be allowed to change his investments more than one (1) time per month.

Notwithstanding the foregoing, if a Participant files a designation with the Plan Administrator that changes his investment selection with regard to amounts already accumulated in his Individual Accounts and Individual 401(k) Accounts, the Plan Administrator shall make the investment change by making an estimated transfer between investment funds in accordance with the designation filed by the Participant, based on the value of the Participant's Individual Accounts and Individual 401(k) Accounts as of the Valuation Date preceding the effective date of the designation, plus deposits and less withdrawals between the preceding Valuation Date and the effective date of the designation. This estimated transfer shall be made by the Plan Administrator as soon as practicable after the effective date of the designation. Any remaining adjustments to the transfer between investment funds on behalf of a Participant pursuant to a valid designation shall occur after the valuation of Plan assets for the preceding period is completed. No Participant shall have any recourse against the Plan Administrator, Board or any Plan fiduciary for any losses sustained or earnings lost as a result of the timeliness or accuracy of any transfer between investment funds made pursuant to a valid designation.

3.06 Investments for Terminated Members. Any Participant who ceases to be an Employee shall continue to have the authority to direct the investment of his Individual Accounts and Individual 401(k) Accounts in accordance with sections 3.04 and 3.05.

3.07 Limited Rights to Assets. The fact that Individual Accounts and Individual 401(k) Accounts are established and valued as of each Valuation Date shall not give any Employee or others any right, title or interest in the Fund or its assets, or in the Individual Account and Individual 401(k) Account except at the time or times and upon the terms and conditions provided in this Plan.

3.08 **Nonforfeitable Benefits.** An Employee's right to the value of the assets in his Individual Account and Individual 401(k) Account is nonforfeitable from the time that such Individual Account and Individual 401(k) Account are established.

3.09 **Qualified Military Service.** Notwithstanding any provision to the contrary, an Employee's benefits shall include Contributions owed for periods of military service in the armed forces of the United States consistent with and to the extent required by the Uniformed Services Employment and Re-Employment Rights Act of 1994, as amended (USERRA), and Section 414(u) of the Internal Revenue Code for Participants who return to covered employment on or after December 12, 1994. Qualified Military Service will be counted for purposes of crediting an Employee's Individual Account with Contributions provided the following conditions are satisfied:

- a. An Employee must have re-employment rights under USERRA in order for periods of military service to be recognized.
- b. An Employee must have worked at least one thousand (1,000) hours for an Employer before entering military service.
- c. An Employee must have worked at least five hundred (500) hours during the Plan Year immediately preceding the Plan Year in which the Employee entered military service. For this purpose, the hours must have been worked in a position for which the Employer was obligated to contribute to the Fund on the Employee's behalf. The five hundred (500) hours may also include hours of Covered Employment under the Eighth District Electrical Pension Plan provided such hours were not the same hours for which Contributions were owed to this Plan.

An Employee shall be credited with Contributions for periods of Qualified Military Service based on the number of hours the Participant worked in Covered Employment in the twelve (12) month period immediately preceding Qualified Military Service, to a maximum of one thousand (1,000) hours for each full year of Qualified Military Service. If an Employee does not serve a full year, his military service shall be prorated on the basis of the number of hours the Participant worked in Covered Employment in the twelve (12) month period immediately preceding Qualified Military Service for the purpose of determining the amount of Contributions due on his behalf. Additionally, the basis for determining the amount of Contributions to be credited to the Employee's Individual Account for Qualified Military Service will be based on the average rate of Contributions for all Employees during the year in which the military service was performed. Contributions to be credited to the Employee's Individual Account for Qualified Military Service shall come from the last Employer for whom the Employee worked sufficient hours to satisfy the above conditions. If such last Employer is no longer functional, the Plan shall be liable for such contributions.

In addition, an Employee who is reemployed under USERRA, shall be entitled to accrued benefits that are contingent on the making of, or derived from, Elective Deferrals, only to the extent the Employee makes payment to the Plan with respect to

such Elective Deferrals. No such payment may exceed the amount the Employee would have been permitted to defer had the Employee remained continuously employed by an Employer during his period of Qualified Military Service. Any payment to the Plan described in this paragraph shall be made during a period that begins on the date of reemployment under USERRA and whose duration is three (3) times the period of the Employee's Qualified Military Service, not to exceed five (5) years.

ARTICLE 4. 401(k) ACCOUNTS

4.01 Purpose. This Article 4 of the Plan is established to provide a 401(k) salary reduction feature for each Employee who is employed by an Employer whose Collective Bargaining Agreement requires Employer Contributions to the Plan and provides for such salary reduction. Effective July 1, 2009, the prohibition against permitting voluntary wage deferrals by Employees who are working under a Collective Bargaining Agreement unless such Collective Bargaining Agreement also requires Employer Contributions shall no longer exist. Accordingly, effective July 1, 2009, an Employee may contribute voluntary wage deferrals to his or her Individual Account under the salary reduction feature of this Plan if such Employee is working under a Collective Bargaining Agreement that permits only voluntary wage deferrals under the 401(k) salary reduction feature of this Plan.

4.02 Voluntary Participation. Participation of any Participant in this 401(k) feature of the Plan shall be voluntary. Participation shall only be permitted by Participants covered by a Collective Bargaining Agreement. Participation can begin on or after April 1, 1999.

4.03 Authorization and Amounts of Elective Deferrals.

- a. If permitted by the Employer's Collective Bargaining Agreement, a Participant may elect to participate in this Article 4 of the Plan by signing the Elective Deferral authorization form requesting the Employer to reduce his hourly pay by units of \$.50 per hour not to exceed \$8.00 per hour with such amounts of Elective Deferrals to be transferred to the Participant's Individual 401(k) Account.
- b. Copies of the Elective Deferral authorization form shall be sent to the Participant's Employer and to the Plan Administrator.
- c. A Participant may elect to participate as of the first day of the payroll period that starts on or after the date specified on the authorization form, which date must be at least fifteen (15) days after the Elective Deferral authorization form is received by the Plan Administrator and the Employer.

4.04 Termination or Discontinuance of Elective Deferrals. A Participant may elect to terminate and revoke the authorization for the Elective Deferral in writing as of the end of any payroll period.

4.05 Change of Elective Deferral Amount. A Participant may, in writing, change the amount of the Elective Deferral at the beginning of the next payroll period after January 1, April 1, July 1, and October 1, in units of \$.50 but in no case shall the total be in an amount greater than \$8.00 per hour. A Participant may also change the amount of the Elective Deferral at any time he changes Employers. Changes in the

amount of the Elective Deferral shall be accomplished by filing a modified Elective Deferral authorization form with the Employer and Administrator.

4.06 Deposit of Elective Deferral Amount into Fund. Each month a Participant's Elective Deferral shall be paid to and deposited by the Employer on behalf of the Participant with the Fund, accompanied by the written report prescribed by the Board.

4.07 Establishment of Individual 401(k) Accounts. As of each Valuation Date, an Individual 401(k) Account shall be established for each Employee for whom Elective Deferrals are received unless an Individual 401(k) Account has already been so established. An Employee's right to the value of the assets in his Individual 401(k) Account is nonforfeitable from the time such Account is established. All Elective Deferrals are fully vested at the time made by the Employee.

4.08 Maximum Amount of Elective Deferrals. No Participant shall be permitted to have Elective Deferrals made under this Plan during any calendar year in excess of the dollar limitation under Section 402(g) of the Internal Revenue Code in effect for the taxable year. This dollar limitation may be adjusted annually, as provided in Section 415(d) of the Internal Revenue Code, pursuant to Treasury regulations. The adjusted limitation may be effective as of January 1 of each calendar year.

4.09 Actual Deferral Percentage. For each Employer, the Actual Deferral Percentage for Highly Compensated Employees for each current Plan Year and the Actual Deferral Percentage for Non-Highly Compensated Employees for the prior Plan Year must satisfy one of the following tests:

- a. The Actual Deferral Percentage for the group of eligible Highly Compensated Employees for the Plan Year shall not exceed the Actual Deferral Percentage for the group of eligible Non-Highly Compensated Employees for the prior Plan Year multiplied by 1.25; or
- b. The Actual Deferral Percentage for the group of eligible Highly Compensated Employees for the Plan Year shall not exceed the Actual Deferral Percentage for the group of eligible Non-Highly Compensated Employees for the prior Plan Year multiplied by 2, provided that the Actual Deferral Percentage for the group of eligible Highly Compensated Employees does not exceed the Actual Deferral Percentage for the group of eligible Non-Highly Compensated Employees by more than two percent (2%) or such lesser amount as the Secretary of the Treasury shall prescribe to prevent the multiple use of this alternative limitation with respect to any Highly Compensated Employee.

4.10 Excess Contribution. The amount of Elective Deferrals for a Highly Compensated Employee in excess of that permitted under section 4.10 shall be Excess Contributions and shall be determined in the following manner. First, the Actual

Deferral Ratio of the Highly Compensated Employee with the highest Actual Deferral Ratio is reduced to the extent necessary to satisfy the Actual Deferral Percentage test under section 4.10 or cause such Actual Deferral Ratio to equal the Actual Deferral Ratio of the Highly Compensated Employee with the next highest Actual Deferral Ratio. This process is repeated until the Actual Deferral Percentage test is satisfied.

4.11 **Distribution of Excess Contributions.** Notwithstanding any other provision of this Plan, Excess Contributions, plus any income and minus any loss and expenses allocable thereto, shall be distributed no later than the last day of each calendar year to Participants to whose Individual 401(k) Accounts such Excess Contributions were allocated for the preceding calendar year. If such excess amounts are distributed after March 15 following the last day of the calendar year in which such excess amounts arose, a ten percent (10%) excise tax will be imposed on the Employer maintaining the Plan with respect to such amounts. Excess Contributions shall be allocated to the Highly Compensated Employees with the largest amounts of Elective Deferrals taken into account in performing the Actual Deferral Percentage test for the year in which the excess arose, beginning with the Highly Compensated Employee with the largest amount of such Elective Deferrals and continuing in descending order until all Excess Contributions have been allocated. For purposes of the preceding sentence, the "largest amount" of Elective Deferrals is determined after distribution of any Excess Contributions.

The amount of Excess Contributions to be distributed under this section 4.12 with respect to an Employee for a Plan Year will be reduced by Excess Elective Deferrals previously distributed to the Employee for the taxable year ending in the same Plan Year.

4.12 **Distribution of Excess Elective Deferrals.** Notwithstanding any other provision of the Plan, Excess Elective Deferrals, plus any income and minus any loss allocable thereto, shall be distributed no later than April 15 to any Participant to whose Individual 401(k) Account Excess Elective Deferrals were assigned for the preceding calendar year and who claims Excess Elective Deferrals for such calendar year. The amount of Excess Elective Deferrals to be distributed under this section 4.13 with respect to an Employee for a taxable year will be reduced by Excess Contributions previously distributed for the Plan Year beginning in such taxable year.

4.13 **Eligibility for Benefits.** An Employee's Individual 401(k) Account is distributable upon the occurrence of one of the following events:

- a. The Employee attains Normal Retirement Date;
- b. The Employee attains age fifty-nine and one-half (59 ½);

- c. The Employee has separated from covered employment. For this purpose a separation from covered employment occurs when an Employee has not worked in covered employment with an Employer for six (6) months.;
- d. The Employee has become entitled to a Social Security disability benefit under Title II of the Social Security Act or is certified by a physician as being disabled due to his inability to perform the duties required by any classification of employee working under an IBEW-NECA collective bargaining agreement;
- e. The Employee is found to have suffered a financial hardship. Distributions because of hardship are subject to the restrictions and rules of section 5.07.
- f. The Employee has reached his Required Beginning Date. In no event shall distribution of an Employee's Accumulated Share commence later than his Required Beginning Date.
- g. The Employee is a member of a reserve component of the military and is ordered or called to active duty for a period of more than 180 days or for an indefinite period and the distribution request is made during the period beginning on the date of such order or call to duty and ending at the close of the act duty requirement. An Employee who takes a qualified reservist distribution is prohibited from making elective deferrals to the Plan for six months from the date of the qualified reservist distribution.

4.14 Definitions. The following definitions are applicable to this Article 4:

- a. **Actual Deferral Percentage.** “Actual Deferral Percentage” means the average (expressed as a percentage) of Actual Deferral Ratios of Employees in the eligible group considered for purposes of the tests that must be performed under Section 401(k) of the Internal Revenue Code and applicable regulations.
- b. **Actual Deferral Ratio.** “Actual Deferral Ratio” means the ratio (expressed as a percentage) of the Elective Deferrals of a Participant for the calendar year to the Participant's Compensation for the calendar year. The Actual Deferral Ratio of an Employee who is eligible to but does not make Elective Deferrals is zero.
- c. **Adjustment Factor.** “Adjustment Factor” means the cost-of-living factor prescribed by the Secretary of Treasury under Section 415(d) of the Internal Revenue Code for years beginning after December 31, 1987, as applied to such items and in such manner as the Secretary shall provide.
- d. **Elective Deferrals.** “Elective Deferral” means contributions made to the Plan during the Plan Year by the Employer at the election of the Participant, in

lieu of cash compensation and shall include contributions that are made pursuant to a salary reduction agreement. Such contributions must be nonforfeitable when made and distributed only as specified in section 4.14.

- e. **Excess Contributions.** “Excess Contributions” means with respect to any calendar year, the aggregate amount of Elective Deferrals actually paid to the Fund on behalf of Highly Compensated Employees for the calendar year, which is in excess of the maximum amount of such contributions permitted under section 4.10.
- f. **Excess Elective Deferrals.** “Excess Elective Deferrals” means those Elective Deferrals that are includable in a Participant's gross income under Section 402(g) of the Internal Revenue Code to the extent such Participant's Elective Deferrals for a taxable year exceed the dollar limitation under such Code Section 402(g). Excess Elective Deferrals shall be treated as Annual Additions under the Plan unless such amounts are distributed no later than the first April 15 following the close of the Participant's taxable year.
- g. **Highly Compensated Employee.** “Highly Compensated Employee” means highly compensated active 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.

Effective April 1, 1997, a Highly Compensated Employee is any Employee who:

- 1. was a five percent (5%) owner of the Employer at any time during the year or preceding year, or
- 2. for the preceding year had compensation in excess of \$80,000 (as adjusted annually for increases in cost-of-living in accordance with the regulations prescribed by the Secretary of Treasury). For purposes of determining if an Employee's compensation from an Employer exceeds the \$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.
- h. **Non-Highly Compensated Employee.** “Non-Highly Compensated Employee” means any Employee of the Employer who is not a Highly Compensated Employee.

4.15 Catch-Up Contributions. Effective December 1, 2006, a Participant who is over age 50 shall be permitted to make catch-up contributions to the Plan in the following amount: \$5,000 for 2006.

This amount shall be increased as permitted by the Internal Revenue Service pursuant to its annual announcement of Pension Plan Limitations. Catch-up contributions are not subject to the maximum annual addition limitations or annual limits on cash or deferred wage contributions to the Plan as otherwise provided in this Plan.

ARTICLE 5. DISTRIBUTION OF BENEFITS

5.01 Eligibility for Benefits. An Employee's Individual Account is distributable upon the occurrence of one of the following events:

- a. The Employee attains Normal Retirement Date. Unless the Participant elects otherwise, distribution of benefits will begin no later than the sixtieth (60th) day after the latest of the close of the Plan Year in which:
 1. the Participant attains age sixty-five (65); or
 2. the Participant separates from service with the Employer.

Notwithstanding the foregoing, the failure of an Employee and Spouse to consent to a distribution while a benefit is immediately distributable under this section 5.01 shall be deemed to be an election to defer commencement of payment of any benefit sufficient to satisfy this subsection a.

- b. The Employee has separated from covered employment. For this purpose a separation from covered employment occurs when an Employee has not worked in covered employment with an Employer for six (6) months;
- c. The Employee has attained age fifty-five (55) and has separated from Covered Employment.
- d. The Employee has become entitled to a Social Security disability benefit under Title II of the Social Security Act or is certified by a physician as being disabled due to his inability to perform the duties required by any classification of employee working under an IBEW-NECA collective bargaining agreement.
- e. The Employee is found to have suffered a financial hardship. Distributions because of hardship are subject to the restrictions and rules of section 5.07.
- f. The Employee has reached his Required Beginning Date. In no event shall distribution of an Employee's Accumulated Share commence later than his Required Beginning Date.

5.02 Determination of Distributable Benefits.

- a. If an Employee is eligible to receive a distribution of benefits under section 5.01 or section 4.13, the amount of benefits so payable are determined as of the Valuation Date in which application for benefits is processed by the Administrator.

- b. The amount of benefits distributable is the Employee's Accumulated Share determined as of the Valuation Date determined under subsection a.
- c. Subject to section 5.05, an Employee may elect to defer receipt of benefits by making proper application to the Administrator.
- b. Notwithstanding any provision herein to the contrary, if the value of the Participant's Accumulated Share is greater than \$5,000, or such higher amount as may be payable under Section 411(a)(11) of the Internal Revenue Code, written consent of the Participant and his Spouse to a partial or total distribution may not be made before the Participant attains (or would have attained if not deceased) age sixty-five (65) without appropriate spousal consent.
- e. In the event that an Employee's or Beneficiary's distribution check is not cashed then the proceeds of the Employee's or Beneficiary's un-cashed check shall be invested in the Guaranteed Income Fund until the Employee or Beneficiary subsequently makes claim for such benefit. If the proceeds from the Employee's or Beneficiary's un-cashed check remains in the Guaranteed Income Fund for a period of five (5) years and the Employee or Beneficiary cannot be located after reasonable efforts to do so, the amounts in the Guaranteed Income Fund representing the proceeds of the un-cashed check shall be used to defray the non-investment expenses of the Fund. However, if such Employee, or Beneficiary subsequently makes claim for the forfeited amount or benefit, the amount or benefit shall become payable to the claimant in the amount accumulated or due, as of the end of the five (5) year period.
- f. If the amount distributable is less than the Employee's Accumulated Share, then the distribution shall be from all of the Employee's investments on a pro-rata basis.

5.03 Lost Participants Accounts.

- a. If the Administrator is unable to locate any Employee whose Individual Account has been placed in inactive status within the five (5) years of the date on which payment of his Accumulated Share was to have been made, then no benefit is payable and such amount shall be used to defray administrative costs of the Fund. However, if such an Employee subsequently makes claim for such forfeited benefit, the benefit shall again become payable to such Employee.
- b. In the event that there have been no Contributions to an Employee's Individual Account for a period of five (5) years and the Employee cannot be located after reasonable efforts to do so, or if benefits have remained due for such period but have not been claimed by an Annuitant or by a Beneficiary or other person designated in section 9.05, and such Annuitant, Beneficiary or

other person cannot be located after reasonable efforts to do so, the amount in the Individual Account and Individual 401(k) Account or the benefits due, as the case may be, shall be used to defray the non-investment expenses of the Fund. However, if such Employee, Annuitant, Beneficiary or other person subsequently makes claim for the forfeited amount or benefit, the amount or benefit shall become payable to the claimant in the amount accumulated or due, as of the end of the five (5) year period.

5.04 Required Beginning Date.

- a. Notwithstanding any provision of the Plan to the contrary, benefit payments must begin to all Participants and Beneficiaries by their Required Beginning Date, whether or not they apply for benefits.
- b. 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:
 1. the calendar year in which the Participant attains age seventy and one-half (70 1/2); or
 2. the calendar year in which he 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 attained 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)

5.05 Failure To File Application For Benefits. If a Participant who is definitely located fails to file a completed application for benefits on a timely basis, the Fund will establish the Participant's Required Beginning Date as the Annuity Starting Date and begin benefit payments as follows:

- a. If the Accumulated Share of the Participant's Individual Account and Individual 401(k) Account is no more than \$5,000, or such other higher amount as may be payable under Section 411(a)(11) of the Internal Revenue Code, in a single sum payment.
- b. In any other case, in the form of a qualified joint and 50% survivor annuity 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 Participant is three (3) years older than his Spouse.
- c. 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; also, the amounts of 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.

- d. 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 Fund and the Participant.

5.06 Hardship Distribution. A Participant may receive a distribution of his Individual Account and Individual 401(k) Account, subject to the following restrictions and rules:

- a. For distribution applications received on or after February 1, 2002, a participant who has been on the out of work book for a sponsoring IBEW Local Union can receive a hardship distribution in the amount of \$2,000 per month for each month in which the participant has been on the out of work books for a sponsoring IBEW Local Union of this Plan if he has been available for work during such period, up to a maximum hardship withdrawal of \$8,000.
- b. The Participant must represent in writing that he or she requires the distribution to meet an immediate and heavy financial need that must fall under one of the following categories:
 1. Medical expenses (as defined in Internal Revenue Code Section 213(d)), which are incurred by the Participant, or his or her family or his or her primary beneficiary under the Plan.
 2. Purchase of a principal residence for the Participant. This does not include making mortgage payments on the Participant's principal residence.
 3. Payment of tuition, related education fees and room and board expenses for the next twelve (12) months of post-secondary education for the Participant, or his or her family or his or her primary beneficiary under the Plan.
 4. To prevent eviction or foreclosure on the mortgage of the Participant from his or her principal residence. A Participant shall be limited to a hardship distribution under this paragraph 4 no more often than once every two (2) Plan Years, unless the Participant has been unemployed for at least six (6) consecutive months and provides proof that he is registered on a sponsoring Local Union dispatch list and is available for work, unless he is disabled.

5. Payments for burial or funeral expenses for the Participant's deceased parent, Spouse, child, dependents, or primary beneficiary under the Plan.
6. Expenses for repairing damages to the Participant's principal residence that would qualify for a casualty deduction under Section 165 of the Internal Revenue Code, without regard to whether the loss exceeds ten percent (10%) of the Participant's adjusted gross income.
7. Any other financial need permitted by the Secretary in regulations or other official guidance that allows the Plan to make hardship distributions, including any immediate and heavy need based on all of the relevant facts and circumstances as required by Treasury Regulation Section 1.401(k)-1(d)(3)(iii)(A).
8. The Board may expand the list above as long as the standard is an immediate and heavy financial need, the Board documents the reason in writing, and the Board applies these reasons consistently and uniformly to all Participants.

The Participant's family includes the Participant's Spouse or dependents as defined in Internal Revenue Code Section 152(d).

A "primary beneficiary under the Plan" is an individual who is named as a beneficiary under the Plan and has an unconditional right to all or a portion of the Participant's account balance under the Plan upon the death of the Participant.

- c. The Participant must represent to the Board that the immediate and heavy financial need (as described above) cannot be relieved:
 1. through reimbursement or compensation by insurance or otherwise;
 2. by reasonable liquidation of the Participant's assets to the extent this liquidation would not cause any immediate and heavy financial need;
 3. by borrowing from commercial sources on reasonable commercial terms;
 4. by cessation of Elective Deferrals; or
 5. by other distributions or loans from the Plan.

The Board shall have no duty or obligation to verify or investigate to the Participant's representations. The Board may rely on these representations where it is reasonable to do so. The Participant's resources include assets owned by the Participant and the Participant's Spouse and minor children,

where these assets are reasonably available to the Participant. However, property held in an irrevocable trust or under a state uniform gifts to minors act, for the benefit of a child, shall not be considered a resource of the Participant.

- d. The hardship distribution may not be in excess of the amount of the immediate and heavy financial need of the Participant.
- e. A Participant may withdraw part or all of the Participant's Elective Deferrals in his Individual 401(k) Account (but not earnings thereon) and the Participant's account balance of his Individual Account.
- f. All distributions the Plan makes under this section 5.07 shall be made in a single lump sum. Prior to receiving any distribution, the Participant and the Participant's Spouse (if the Participant is married) must consent in writing to this single sum distribution without regard to the dollar amount of the distribution.
- g. The Plan shall make distributions under this section 5.07 as soon as administratively feasible. However, if the value of the Participant's Individual Account and Individual 401(k) Account is not readily ascertainable at the time the distribution would otherwise be made, then the Administrator shall defer the distribution until the next Valuation Date of the Fund, unless the Board can determine with reasonable certainty that the distribution requested does not exceed the value of the Individual Account and Individual 401(k) Account at the time the distribution is made.
- h. A distribution will be considered as necessary to satisfy an immediate and heavy financial need of the Participant if:
 - 1. The Participant has obtained all distributions, other than hardship distributions, and all non-taxable loans under the Plan;
 - 2. The Participant's Elective Deferrals will be suspended for six (6) months after the receipt of the hardship distribution, effective for hardship distributions received after December 31, 2001;
 - 3. The distribution is not in excess of the amount of the immediate and heavy financial need (including amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the distribution); and

ARTICLE 6. FORM OF BENEFIT PAYMENTS

6.01 Normal Benefit Form.

- a. Unless otherwise provided in section 6.04, or otherwise elected under subsection c. below, a married Participant who becomes entitled to receive his Accumulated Share upon Retirement, will receive payments under the Plan in the form of a qualified joint and 50% survivor annuity, which provides monthly payments upon the Participant's death for the life of his Spouse in an amount equal to 50% of the rate at which such benefit was payable to the Participant during his lifetime. The benefit payments under the joint and 50% survivor annuity shall be the Actuarial Equivalent of the Participant's Accumulated Share at the time of the Participant's Retirement.
- b. A qualified joint and survivor annuity for an unmarried Participant is an unadjusted annuity for the life of the Participant.
- c. Any Participant who becomes entitled to receive his Accumulated Share upon Retirement may elect to waive payment of his Accumulated Share in the form of a joint and 50% survivor annuity, by making a written election, in the form and manner required by the Board within the one hundred eighty (180) day period ending on his Annuity Starting Date, that directs payment of his Accumulated Share in another form allowed under section 6.02 a. and designates a specific beneficiary. Such written election shall not take effect unless the Spouse of the Participant consents in writing to such election, and the Spouse's consent acknowledges the effect of such election and is witnessed by a notary public.
- d. Any consent by a Spouse (or establishment that the consent of a Spouse may not be obtained) shall be effective only with respect to such Spouse.
- e. Any election that specifies benefits are to be paid to a Beneficiary other than the Participant's Spouse shall have the Spouse's written consent.
- f. Notwithstanding the previous subsections above, a Participant who is married on his Annuity Starting Date shall receive his Accumulated Share in the form of a qualified joint and 50% survivor annuity unless the Participant has filed with the Board, in writing, a timely rejection of that form of annuity subject to all of the conditions of this subsection. No rejection shall be effective unless the Spouse of the Participant has consented in writing to such rejection, the consent acknowledges the effect of the rejection, and the consent is witnessed by an authorized Fund representative, or a notary public.
- g. Notwithstanding any other provision of the Plan, spousal consent in accordance with this section is not required if the Participant establishes to the satisfaction of the Board:

1. that there is no Spouse,
2. that the Spouse cannot be located,
3. that the Participant and Spouse are legally separated, or
4. that the Participant has been abandoned by the Spouse as confirmed by court order.

If the Spouse is legally incompetent, consent under this section 6.01 may be given by his or her legal guardian, including the Participant if authorized to act as the Spouse's legal guardian.

- h. A Participant and his Spouse may reject the joint and survivor form of annuity or revoke any previous rejection, at any time before the Annuity Starting Date. A Participant and his Spouse shall in any event have the right to exercise the rights herein provided up to one hundred eighty (180) days after they have been provided with a written explanation of the terms and conditions of the qualified joint and survivor annuity, but before the Annuity Starting Date.
 - i. Notwithstanding any other provisions of the Plan, a waiver of the qualified joint and 50% survivor's annuity shall not be effective if given more than one hundred eighty (180) days before the Annuity Starting Date.
 - j. The Board shall provide a written explanation of the survivor's benefit described in this section 6.01 to each married Participant no less than thirty (30) days and no more than one hundred eighty (180) days prior to the Annuity Starting Date. The written explanation shall consist of:
 1. the terms and conditions of a qualified joint and survivor annuity;
 2. the Participant's right to make and the effect of an election to waive the qualified joint and 50% survivor annuity form of benefit;
 3. the rights of a Participant's Spouse; and
 4. the right to make, and the effect of, a revocation of a previous election to waive the qualified joint and 50% survivor annuity.

The consent of a Spouse given pursuant to this section may not be revoked.

6.02 Optional Benefit Forms.

- a. Subject to the provisions of section 6.01, a Participant or a Participant's Spouse who becomes entitled to receive a Participant's Accumulated Share may elect to receive his Accumulated Share in a lump sum of a Participant's total Individual Account and 401(k) Account or a lump sum payment of any

portion thereof, or other form of payment which may be authorized by the Board. The benefit payments under an alternative form of payment shall be the Actuarial Equivalent of the Participant's benefit payable at Retirement or death, whichever is applicable.

- b. Unless otherwise provided in this section 6.02, the Spouse of a deceased Participant may elect for the distribution of the Participant's Accumulated Share on the same terms as are set forth in subsection a. in lieu of any other benefit to which the Spouse is entitled under the Plan.
- c. Notwithstanding anything herein to the contrary, in the event of the death of a Participant who was not an Annuitant, the distribution of a Participant's Accumulated Share at the time of his death to a Beneficiary other than the Spouse to whom the Participant had been married throughout the one-year period ending on the Participant's date of death shall be paid to his Beneficiary in a lump sum.
- d. Notwithstanding anything in Article 6 to the contrary, a Participant who elects to waive the qualified joint and 50% survivor annuity shall be entitled to elect a 75% Qualified Optional Survivor Annuity. Under this option, the annuity paid is reduced for the life of the Participant and a survivor annuity is payable to a surviving spouse which is equal to 75% of the reduced amount payable during the joint lives of the Participant and Participant's Spouse. This subsection (d) shall not apply unless the Participant and the Participant's Spouse consent in writing to payment of the 75% Qualified Optional Survivor Annuity.
- e. Subject to the provisions of section 6.01, a Participant or a Participant's Spouse who becomes entitled to receive a Participant's Accumulated Share may elect to receive his Accumulated Share in monthly installments for a specified period of not less than ten years, subject to the provisions of IRC section 401(a)(9). The benefit payments under an alternative form of payment shall be the Actuarial Equivalent of the Participant's benefit payable at Retirement or death, whichever is applicable.

6.03 Required Distributions. Notwithstanding any other provision of the Plan, all survivor benefits shall comply with the limits of Internal Revenue Code Section 401(a)(9) and the incidental benefit rule and the regulations prescribed under them, including Treasury Regulations Sections 1.401(a)(9)-1 and 1.401(a)(9)-2.

As of the first Distribution Calendar Year, distributions, if not made in a single lump sum, may only be made over one of the following periods (or a combination thereof):

- a. the life of the Participant;
- b. the life of the Participant and a designated Beneficiary;

- c. a period certain not extending beyond the life expectancy of the Participant; or
- d. a period certain not extending beyond the joint and last survivor expectancy of the Participant and a designated Beneficiary.

"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 that 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 Article 7.

6.04 Minimum Distribution Requirements.

- 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 5.05.
- 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 1/2, if later.
 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. (unless paragraph 4 above applies), distributions are considered to begin on the Participant's Required Beginning Date. If paragraph 4 applies, distributions are considered to begin on the date distributions are required to begin to the surviving Spouse under paragraph 1 above. If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under paragraph 1 above), 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. and f. below. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Treasury Regulations.
- e. **Required Minimum Distributions During Participant's Lifetime.** During the Participant's lifetime, the minimum amount that will be distributed for each Distribution Calendar Year is the lesser of the following amounts:
 1. The quotient obtained by dividing the Participant's account balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's age as of the Participant's birthday in the Distribution Calendar Year; or
 2. If the Participant's sole designated Beneficiary for the Distribution Calendar Year is the Participant's Spouse, the quotient obtained by dividing the Participant's account balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's and Spouse's attained ages as of the Participant's and Spouse's birthdays in the Distribution Calendar Year.

f. Required Minimum Distributions After Participant's Death.

1. If the Participant dies on or after the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's total account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated Beneficiary, determined as follows:
 - a. The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
 - b. If the Participant's surviving spouse is the Participant's sole designated Beneficiary, the remaining life expectancy of the surviving Spouse is calculated for each Distribution Calendar Year after the year of the Participant's death using the surviving Spouse's age as of the Spouse's birthday in that year. For Distribution Calendar Years after the year of the surviving Spouse's death, the remaining life expectancy of the surviving Spouse is calculated using the age of the surviving Spouse as of the Spouse's birthday in the calendar year of the Spouse's death, reduced by one for each subsequent calendar year.
 - c. If the Participant's surviving Spouse is not the Participant's sole designated Beneficiary, the designated Beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

If the Participant dies on or after the date distributions begin and there is no designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's total account balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

2. If the Participant dies before the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's total account balance by the remaining life expectancy of the Participant's designated Beneficiary, determined as provided in paragraph 1 above.

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 distributions begin, the Participant's surviving Spouse is the Participant's sole designated Beneficiary, and the surviving Spouse dies before distributions are required to begin to the surviving Spouse under subsection c., paragraph 1, then this paragraph 2 will apply as if the surviving Spouse were the Participant.

g. Definitions

1. **Beneficiary.** The individual who is designated as the Beneficiary in accordance with section 1.07 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. **Participant's total account balance.** The term Participant's Individual Account and Individual 401(k) Account balances as of the last valuation date in the calendar year immediately preceding the Distribution Calendar Year (the valuation calendar year) increased by the amount of any Contributions made and allocated or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the Valuation Date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the plan either in the valuation calendar year or in the Distribution Calendar Year if distributed or transferred in the valuation calendar year.

h. 2009 Required Minimum Distributions

Notwithstanding Article VI, Section 6.04, of the Plan, a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of section 401(a)(9)(H) of the Code (“2009 RMDs”), and who would have satisfied that requirement by receiving distributions that are 1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the participant, the joint lives (or joint life expectancy) of the participant and the participant’s designated beneficiary, or for a period of at least 10 years (“Extended 2009 RMDs”), will receive those distributions for 2009 unless the participant or beneficiary chooses not to receive such distributions. Participants and beneficiaries described in the preceding sentence will be given the opportunity to elect to stop receiving the distributions described in the preceding sentence. In addition, notwithstanding Article VI, Section 6.07(c) of the Plan, and solely for purposes of applying the direct rollover provisions of the Plan, 2009 RMDs and Extended 2009 RMDs will be treated as eligible rollover distributions.

6.05 Small Benefit Cash-Out.

- a. Notwithstanding anything herein to the contrary, the Board shall direct that the payment of a Participant’s Accumulated Share be made in a lump sum upon his Retirement, or upon his death, if the value of the Participant’s Accumulated Share is not greater than \$5,000, or such higher amount as may be payable under Section 411(a)(11) of the Internal Revenue Code.
- b. Notwithstanding anything herein to the contrary, written consent of the Participant and his Spouse to a partial or total distribution may not be made after the Annuity Starting Date regardless of the present value of the nonforfeitable accrued benefit without appropriate spousal consent.

6.06 Benefit Options For Post-Retirement Benefit Accruals.

- a. For a Participant who first Retires after Normal Retirement Date, any additional Contributions made on the Participant’s behalf after Retirement will be paid in the payment form in effect for the Participant as of the Annuity Starting Date most recently preceding the date the additional benefits became payable.
- b. For a Participant who first Retires and begins receiving benefits before Normal Retirement Date, any additional Contributions made on the Participant’s behalf after Retirement will be subject to a separate Annuity Starting Date in accordance with section 1.05 e. In this case the Participant’s additional benefits will be subject to new election as to form of payment.

The previously accrued benefits will continue to be paid in the payment form elected as of the original Annuity Starting Date.

6.07 Direct Rollovers.

- a. This section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this section, 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 or the portion of any distribution that is used to offset the unpaid balance of a loan from the Plan to the Distributee.
- b. A Distributee may elect to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover. Mandatory distributions shall be made only if the sum of the Individual Account and Individual 401(k) Account is \$1,000 or less.
- c. For purposes of applying this section 6.06, the following definitions shall apply:
 1. **Eligible Rollover Distribution.** An "Eligible Rollover Distribution" is any distribution of all or any portion of the balance of an Individual Account or Individual 401(k) Account 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 his 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 a Distributee's gross income (determined without regard to the exclusion for net unrealized appreciation with respect to Employer securities);
 - (d) any distribution that is deemed to result from a default on a loan from the Plan to the Distributee, and any other loan

treated as a distribution under Section 72(p) of the Internal Revenue Code and not excepted by Code Section 72(p)(2); or

(e) any hardship distribution as described in Section 401(k)(2)(B)(i)(IV) of the Internal Revenue Code made after December 31, 1999 or any amount that is distributed on account of hardship after December 31, 2001.

2. **Eligible Retirement Plan.** An “Eligible Retirement Plan” is an individual retirement account described in Section 408(a) of the Internal Revenue Code, an annuity plan described in Code Section 408(b), an annuity plan described in Code Section 403(a), or a qualified trust described in Code Section 401(a) 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. 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.

3. **Distributee.** A “Distributee” includes an Employee or former Employee. In addition, the Employee’s or former Employee’s Spouse or former Spouse and the Employee’s or former Employee’s Spouse or former Spouse who is the alternate payee under a Qualified Domestic Relations Order, as defined in Section 414(p) of the Internal Revenue Code, are Distributees with regard to the interest of the Spouse or former Spouse. Effective April 1, 2007, a Distributee shall also include a non-spouse beneficiary of the participant, provided the distribution satisfied all other requirements to be an eligible rollover distribution under Code Section 401(a).

4. **Direct Rollover.** A “Direct Rollover” is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

6.08 Rollover Contributions.

a. Any Participant may make a Rollover Contribution to the Fund. Upon receipt of a Rollover Contribution, the Board shall credit the amount of any Rollover Contribution to the contributing Participant’s Individual Account in

the Fund in accordance with the provisions of Article 3, and shall invest such amount in accordance with the provisions of the Fund. Distributions of Rollover Amounts shall be governed by the provisions of section 5.01.

- b. For purposes of this section 6.07, a "Rollover Contribution" is a contribution to the Fund of a Rollover Amount on or before the sixtieth (60th) day following the receipt thereof by a contributing Participant. "Rollover Amount" means a qualified distribution (as defined in Section 402 of the Internal Revenue Code) of a vested benefit from another qualified trust which meets the requirements of Code Section 402. Notwithstanding the foregoing, no amount tendered as a qualified distribution shall be treated as a Rollover Amount if any portion of such amount is attributable to accumulated qualified voluntary employee contributions ("QVECs") made and deducted under the provisions of Section 219 of the Internal Revenue Code prior to amendment by the Tax Reform Act of 1986. No qualified distribution shall be treated as a "Rollover Amount" if such distribution is made on or after the Required Beginning Date as defined in section 5.05. After tax and Roth contributions shall not be eligible as a Rollover Amount.
- c. For purposes of determining whether any amount tendered by a Participant for rollover is a qualified distribution, the contributing Participant shall establish to the satisfaction of the Board that the amount tendered as a Rollover Amount represents a qualified distribution of the Participant from a qualified plan maintained by the former employer(s) of the Participant. The Board shall have the authority to determine whether or not a contribution proposed by a Participant constitutes a "Rollover Contribution" eligible for rollover treatment in accordance with this section 6.07 and Section 402 of the Internal Revenue Code. In making such determination, the Board may require reasonable proof of demonstration by the Participant of the eligibility of the proposed contribution for rollover treatment. The Board may rely conclusively upon the opinion of legal counsel for the Fund in making any such determination.
- d. For purposes of the small benefit cash-out provisions of sections 5.06a and 6.05, the value of a Participant's Accumulated Share shall be determined without regard to the amount that is attributable to Rollover Contributions (and earnings allocable thereto).

ARTICLE 7. PRE-RETIREMENT DEATH BENEFITS

7.01 Pre-Retirement Death Benefits.

- a. Unless otherwise provided in subsection b. or in section 6.04, or otherwise elected under subsection c., the Spouse of a deceased Participant who was not an Annuitant, shall receive a survivor benefit upon the Participant's death in the form of an immediate annuity payable monthly for the Spouse's lifetime in an amount that has been determined to be the Actuarial Equivalent of the Participant's Accumulated Share at the time of the Participant's death.

Subject to the paragraph below, the surviving Spouse of a Participant who dies before the Participant's Annuity Starting Date may apply for and receive the pre-retirement surviving Spouse benefit to which he or she is entitled at any time after the death of the Participant. Payments will begin as of the surviving Spouse's Annuity Starting Date.

Payment of the pre-retirement surviving Spouse benefit must start by no later than December 1 of the calendar year in which the Participant would have reached age seventy and one-half (70 1/2) or, if later, December 1 of the calendar year following the year of the Participant's death. If the Board confirms the identity and whereabouts 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 (subject to the provisions of section 6.04 on small benefit cashouts) will begin automatically as of that date.

- b. Notwithstanding anything herein to the contrary, a survivor annuity payable monthly for the lifetime of a deceased Participant's Spouse shall not be provided unless the Participant and his Spouse had been married throughout the one year period ending on the Participant's date of death.
- c. A Participant who is not an Annuitant may elect, in the Election Period defined in subsection i. below, to waive payment of his Accumulated Share upon his death under this section 7.01 in the form of a survivor annuity payable monthly for his Spouse's lifetime, by making a written election, in the form and manner required by the Board, that designates an individual other than his Spouse to receive his Accumulated Share in the event of his death prior to Retirement. Such written election shall not take effect unless:
 1. The Spouse of the Participant consents in writing to such election, and the Spouse's consent acknowledges the effect of such election and is witnessed by a designated Plan representative or a notary public; or
 2. It is established to the satisfaction of the Board that the consent required under paragraph 1 may not be obtained because there is no Spouse, because the Spouse cannot be located, or because of such

other circumstances as the Secretary of Treasury may by regulations prescribe.

- d. Any consent by a Spouse (or establishment that the consent of a Spouse may not be obtained) shall be effective only with respect to such Spouse.
- e. In the event that a distribution shall be made as a result of the Participant's death prior to his Retirement, the forms of distribution set forth in this section 7.01 and in section 6.02 shall be available to the surviving Spouse (if the Participant and Spouse were married throughout the year ending on the date of death), or if there is no surviving Spouse, or if the Participant and his surviving Spouse had not been married to each other throughout the year ending on the date of death, to his designated Beneficiary.

If the Participant dies after a distribution has begun, the remaining portion of such distribution shall continue to be distributed at least as rapidly as under the method of distribution being used prior to the Participant's death.

- f. If the pre-retirement death benefit is being paid to someone other than the Participant's surviving Spouse, payments must either:
 - 1. be completed by December 31 of the fifth (5th) calendar year following the year of the Participant's death, or
 - 2. begin by December 1 of the year following the year of the Participant's death and be paid out over a period no longer than the Beneficiary's life or life expectancy, as determined under Table V of Treasury Regulation Section 1.72-9 as of the date payments commence, except that they can continue until the end of the fifth (5th) calendar year following the year of the Participant's death if longer.
- g. The Board shall provide a written explanation of the survivor's benefit described in this section 7.01 to each married Participant within the following period which ends the latest of:
 - 1. The period beginning on the first day of the Plan Year in which the Participant attains age thirty-two (32) and ending on the last day of the Plan Year in which the Participant attains age thirty-four (34).
 - 2. A reasonable period after an Employee becomes a Participant.
 - 3. A reasonable period after separation from participation if a Participant separates from participation before attaining age thirty-five (35).
 - 4. A reasonable period after the joint and survivor rules become applicable to the Participant.

5. A reasonable period after a fully–subsidized pre-retirement survivor’s benefit no longer satisfies the requirements for a fully–subsidized benefit.

For purposes of applying this subsection g., a reasonable period ending after the enumerated events described in paragraphs 2, 3 and 4 of this subsection g. is the end of the two (2) year period beginning one year prior to the date the applicable event occurs, and ending one year after that date. In the case of a Participant who separates from service before the Plan Year in which age thirty-five (35) is attained, notice shall be provided within the two (2) year period beginning one year prior to separation and ending one year after separation. If such a Participant thereafter returns to employment with the Employer, the applicable period for such Participant shall be redetermined.

- h. The consent of a Spouse given pursuant to this section 7.01 may not be revoked.
- i. "Election Period" means 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. If a Participant separates from service prior to the first day of the Plan Year in which age thirty-five (35) is attained, with respect to the Individual Account and Individual 401(k) Account as of the date of separation, the Election Period shall begin on the date of separation.

ARTICLE 8. LIMITATIONS ON CONTRIBUTIONS AND BENEFITS

8.01 Limitations on Contributions and Benefits.

- a. This section 8.01 is included in order to guarantee compliance with Section 415 of the Internal Revenue Code.
- b. Notwithstanding anything contained in this section 8.01 to the contrary, the total Annual Addition of a Participant shall not exceed the lesser of \$40,000 or one hundred percent (100%) of the Participant's Compensation (as defined in Section 415(c)(3) of the Internal Revenue Code) for such Plan Year, except that such \$40,000 shall be increased as permitted by Internal Revenue Service regulations to reflect cost-of-living adjustments. Notwithstanding the foregoing, the other permissible Annual Additions for any Participant under this Plan may be further reduced to the extent necessary, as determined by the Board, to prevent disqualification of the Plan under Section 415 of the Internal Revenue Code. The one hundred percent (100%) of Compensation referred to in this subsection b. shall not apply to any contribution for medical benefits after separation from service (within the meaning of Sections 401(h) and 419(A)(f)(2) of the Internal Revenue Code) that otherwise is treated as an Annual Additional. Compensation shall also include post-severance compensation (such as overtime, shift differential, commission, bonuses, or other similar compensation) paid by the later of 2 ½ month after severance from employment or the end of the limitation year that includes the dates of severance from employment.

Effective for limitation years beginning on or after December 31, 1994, the \$40,000 (as adjusted) dollar limit under Section 415(c)(1)(A) of the Internal Revenue Code as described in the preceding paragraph shall not be linked to one-fourth (1/4) the defined benefit dollar limit set forth in Section 415(b)(1)(A) of the Internal Revenue Code.

1. Annual Addition. "Annual Addition", with respect to a Participant for a Plan Year, means the sum of the following amounts credited to the Participant's Individual Account and Individual 401(k) Account for the Plan Year:
 - (a) Employer Contributions,
 - (b) Employee contributions,
 - (c) forfeitures, and
 - (d) amounts allocated after March 31, 1984 to an individual medical account, as defined in Section 415(l)(2) of the Internal Revenue Code, which is part of a pension or annuity plan maintained by the Employer, are treated as annual additions in

a defined contribution plan. Also, amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, which are attributable to post-retirement medical benefits allocated to the separate account of a key employee, as defined in Code Section 419A(d)(3), under a welfare benefit fund, as defined in Section 419(e) of the Internal Revenue Code, maintained by the Employer, are treated as annual additions to a defined contribution plan.

2. **Compensation.** Under this section 8.01 “Compensation” means all earnings and other taxable compensation received for a year from any Employer, or from any company in an Employer’s controlled group or affiliated service group within the meaning of Section 414(b), (c), or (m) of the Internal Revenue Code. Effective for Limitation Years beginning after December 31, 1997, Compensation includes any elective deferral, as defined in Section 402(g)(3) of the Internal Revenue Code, and any amount which is contributed or deferred by the employer at the election of the employee and which is not includable in the gross income of the employee by reason of Code Section 125 or 457. Compensation does not include the following:
 - (a) Amounts realized from the exercise of non-qualified stock option, or when restricted stock (or property) held by the Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;
 - (b) Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option; and
 - (c) Other amounts which received special tax benefits, or contributions made by the Employer (whether or not under a salary reduction agreement) toward the purchase of an annuity described in Section 403(b) of the Internal Revenue Code (whether or not the amounts are actually excludable from the gross income of the Employee).
3. **Combined Plan Limits.** Notwithstanding any other provision of this Plan, if the Participant is or has been covered under a defined benefit plan maintained by the same Employer, the annuity payable with respect to him under this Plan shall be reduced to the extent necessary to make sure that the total amounts payable with respect to him under this Plan and the defined benefit plan do not exceed the limitations prescribed by Section 415(e) of the Internal Revenue Code.

Effective for all Plan Years beginning on or after January 1, 2000, the limitations prescribed by Code Section 415(e) are repealed and do not apply to this Plan.

4. **Employer.** For purposes of this section 8.01, the term "Employer" means the Employer as defined in section 1.13 and all members of a controlled group of corporations (as defined in Section 144(b) of the Internal Revenue Code as modified by Code Section 415(h)), all commonly controlled trades or businesses (as defined in Section 414(c) of the Internal Revenue Code as modified by Code Section 415(h)), or affiliated service groups (as defined in Code Section 414(m)) of which the Employer is a part, and any other entity required to be aggregated with the Employer pursuant to regulations under Section 414(c) of the Internal Revenue Code.
5. **Excess Amount.** "Excess Amount" means the excess of the Participant's Annual Additions over the maximum permissible amount under Section 415(c) of the Internal Revenue Code.
6. **Limitation Year.** "Limitation Year" means the Plan Year.

c. To the extent the regular allocation of Contributions results in an Excess Amount with respect to a Participant for a Plan Year, the Contributions and forfeitures that make up the Excess Amount will be allocated among all other Participants for that Plan Year. This allocation of Contributions and forfeitures shall be made as if the Participant for whom the Contributions and forfeitures constituted an Excess Amount was not a Participant in the Plan. The Excess Amount shall be reduced in the following order of priority:

1. Refund to the Participant any nondeductible voluntary contributions made to this Plan during the plan year, to the extent that the refund would reduce the annual additions and any earnings on such additions.
2. Refund to the Participant any nondeductible voluntary contributions made to any other defined contribution plan that would be aggregated with the annual additions to this Plan, if such refund is authorized under the terms of the other plan, and any earnings on such additions.
3. For Plan Years beginning prior to July 1, 2007, reduce any Employer contributions (other than wage deferral elective contributions) to this Plan that are made on behalf of the Participant for the plan year in which the excess arises. Employer contributions reduced under this Section 8.01(c)(3) shall only be reduced in the amount required to satisfy the applicable limitations of Section 8.01(b).

4. For Plan Years beginning prior to July 1, 2007, reduce and refund to the Participant the excess amount of any wage deferral election contributions to this Plan that are made on behalf of the Participant for the plan year in which the excess arises. Wage deferral election contributions reduced and refunded under this Section 8.01(c)(4) shall only be reduced in the amount required to satisfy the applicable limitations of Section 8.01(b).
- d. This subsection applies if, in addition to this Plan, the Participant is covered under another qualified defined contribution plan maintained by the Employer, a welfare benefit fund (as defined in Section 419(e) of the Internal Revenue Code) maintained by the Employer, or an individual medical account (as defined in Code Section 415(l)(2)) maintained by the Employer, which provides an Annual Addition during any Plan Year. The Annual Additions which may be credited to a Participant's Individual Account under this Plan for any such Plan Year will not exceed the maximum permissible amount reduced by the annual additions credited to a Participant's account under the other plans and welfare benefit funds for the same Plan Year. If the annual additions with respect to the Participant under other defined contribution plans and welfare benefit funds maintained by the Employer are less than the maximum permissible amounts and the Employer Contribution that would otherwise be contributed or allocated to the Participant's Individual Account under this Plan would cause the Annual Additions for the Plan Year to exceed this limitation, the amount contributed or allocated will be reduced so that the annual additions under all such plans and funds for the Plan Year will equal the maximum permissible amount. If the annual additions with respect to the Participant under such other defined contribution plans and welfare benefit funds in the aggregate are equal to or greater than the maximum permissible amount, no amount will be contributed or allocated to the Participant's Individual Account under this Plan for the Plan Year.

ARTICLE 9. GENERAL PROVISIONS

9.01 Written Application Required. As a condition to payment of any benefit, an application for such benefit must be made in writing in a form and manner prescribed by the Board.

9.02 Condition on Accrual of Benefits. No benefits shall be accrued prior to the establishment and crediting of Individual Accounts or prior to the receipt of written confirmation from the Internal Revenue Service that the Fund is an exempt trust and that the Plan is a qualified plan under the provisions of the Internal Revenue Code, whichever is later.

9.03 Required Information.

- a. Every Employee, Annuitant or Beneficiary shall furnish, at the request of the Board, any information or proof reasonably required for the administration of the Plan or for the determination of any matter that the Board may legitimately have before it. Failure to furnish such information or proof promptly and in good faith shall be sufficient reason for the denial of benefits to such Employee or Beneficiary, or the suspension or discontinuance of benefits to such Annuitant. The falsity of any statement material to an application or the furnishing of fraudulent information or proof shall be sufficient reason for the denial, suspension or discontinuance of benefits under this Plan except such benefits that are nonforfeitable and in any such case, the Board shall have the right to recover any benefit payments made in reliance thereon.
- b. Every Participant must file, before his Annuity Starting Date, a written statement on which the Board is entitled to rely, concerning the Participant's current and prior marital status, including, without limitation, whether or not he is currently legally married, and if married, as to when such marriage occurred. If a Participant states that he was not married or that he had not been legally married throughout the year before his benefit payments began, no person shall be entitled to benefits under this Plan on the ground that she was, in fact his Spouse, or if his Spouse, was in fact legally married to him throughout the year before his benefit payments began.
- c. Any payment made in good faith on the basis of a written statement of a Participant or Beneficiary shall discharge all obligations of the Fund to the extent of such payment, and shall entitle the Board to exercise all rights of recoupment or other remedies, including the right to adjust the dollar amount of payments made to a surviving Spouse or other Beneficiary in order to recoup any excess benefits which may have been erroneously paid.

9.04 Interpretation of Plan. The Board shall be the sole judge of the standard of proof required in any case. The Board shall have complete discretion to construe, interpret and apply all terms and provisions of the Plan document and the Trust Agreement in resolving any dispute. In the application and interpretation of any of the provisions of this Plan, the decisions of the Board shall be final and binding on all parties or persons affected thereby including Employees, Employers, the Union, Annuitants and the Beneficiaries subject only to arbitration pursuant to section 11.02 e.

9.05 Designation of Beneficiary.

- a. A Participant's designation of his Beneficiary shall be in writing in the form and manner required by the Board and may be changed from time to time in the same manner as permitted by the Board. Any designation of a Beneficiary by a married Participant is subject to the requirements of the applicable terms set forth in sections 6.01 and 7.01.
- b. If there is no valid designation of a Participant's Beneficiary on file, then payment shall be made to the following parties in the following order of priority:
 1. To the deceased Participant's surviving Spouse; or, if none,
 2. To the deceased Participant's surviving children in equal shares; or, if none,
 3. To the deceased Participant's surviving parent or parents in equal shares; or, if none,
 4. To the deceased Participant's executor or administrator.

9.06 Incapacitated Participants and Beneficiaries. In the event it is determined to the satisfaction of the Board that an Participant or Beneficiary is unable to care for his affairs because of mental or physical incapacity, any payment due shall be applied to the maintenance and support of such Participant or Beneficiary unless, prior to such payment, claim shall have been made for such payment by a legally-appointed guardian, committee, or other legal representative appropriate to receive such payments on behalf of the Participant or Beneficiary. Any such payment shall completely discharge the Board's liability with respect to such payment.

9.07 Alienation of Benefits.

- a. Except to the extent otherwise provided by a Qualified Domestic Relations Order, each Employee, Annuitant or Beneficiary under the Plan is hereby restrained from selling, transferring, anticipating, assigning, alienating, hypothecating or otherwise disposing of his annuity, prospective annuity, Individual Account, Individual 401(k) Account, Accumulated Share or any other right or interest under the Plan, and the Board shall not recognize, or be required to recognize, any such sale, transfer, anticipation, assignment,

alienation, hypothecation, or other disposition. Any such annuity, prospective annuity, Individual Account, Individual 401(k) Account, Accumulated Share, right or interest shall not be subject in any manner to voluntary transfer or transfer by operation of law or otherwise, and shall be exempt from the claims of creditors or other claimants and from all orders, decrees, garnishments, executions or other legal or equitable process or proceedings to the fullest extent permissible by the laws of the United States or any regulation pursuant thereto; provided that in the event that through mistake or any other circumstances an Employee, Annuitant or Beneficiary has been paid or credited with more than the amount to which he is entitled under the Plan or the law or has become obligated to the Fund under an indemnity agreement or in any other way, the Board may set off, recoup and recover the amount of such overpayment, excess credit or obligation from benefits accrued or thereafter accruing to such Employee, Annuitant or Beneficiary and not yet distributed.

- b. The Board shall adopt and prescribe reasonable rules and regulations for the implementation of the Qualified Domestic Relations Order provisions of the Employee Retirement Income Security Act, the Internal Revenue Code and the Retirement Equity Act.
- c. If a domestic relations order is determined to be a Qualified Domestic Relations Order under the Plan and creates the existence of an alternate payee's right to, or assigns to the alternate payee the right to receive, all or a portion of a Participant's Accumulated Share (the "Alternate Payee's Interest"), the Alternate Payee's Interest shall be distributed in accordance with the terms and conditions of the Qualified Domestic Relations Order, even though such distribution may be made prior to the Participant's distribution of benefits under the Plan. If the Alternate Payee's Interest is not immediately distributed and remains in the Plan, the alternate payee may direct investment of the Alternate Payee's Interest in the same manner as a Participant but shall not be eligible to receive a hardship distribution or a loan.
- d. The right of a former Spouse or other alternate payee to any share of a Participant's benefit, as set forth in a Qualified Domestic Relations Order, takes precedence over any claims of the Participant's Spouse at the time of the Retirement or death, to the extent provided by such order or by any federal law or regulation.

9.08 Merger or Consolidation. In the event of any merger or consolidation with, or transfer of assets or liabilities to, any other plan, the amount of benefit which a Participant would receive upon a termination of the Plan immediately after such merger, consolidation, or transfer shall be 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 been terminated.

9.09 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.

9.10 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 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 10. LOAN PROGRAM

10.01 Eligibility For Plan Loan. A Participant who has had an Individual Account shall be eligible for a loan from his Individual Account and Individual 401(k) Account, subject to the limitations and requirements set forth in this Loan Program. Neither a Spouse nor a Beneficiary of a Participant, nor an alternate payee, shall be eligible for a loan.

10.02 Maximum Amounts. The maximum dollar amount available to a Participant for a loan will be the lesser of:

- a. \$50,000, reduced by the highest outstanding balance of loans from the Fund to the Participant during the one-year period ending on the day before the date of the new loan, or
- b. Fifty percent (50%) of the value of the Participant's vested interest in his or her Individual Account and Individual 401(k) Account as of the Valuation Date most recently preceding the date of the loan. For this purpose the Employee's vested interest does not include any amount to which an alternate payee is entitled to under a Qualified Domestic Relations Order.
- c. Notwithstanding anything to the contrary, for loan applications received on and after February 1, 2002, a loan will be permitted in the amount of \$2,000 per month for each month in which the Participant has been on the out of work book for a sponsoring IBEW Local Union of this Plan if he has been available for work during such period, up to a maximum loan amount of \$8,000.

A participant who has received a prior loan for being on the out of work book will have any subsequent loans issued solely for being on the out of work book reduced by the amount of each prior loan issued for being on the out of work book. This provision applies even if the prior loan has been repaid in full. If a loan or loans have been issued for a total amount of \$8,000 due to unemployment, no further loans will be permitted due to being out of work.

However, for loans issued due to being on the out of work book on or after June 1, 2008, subsequent loans will be permitted in the amount of \$2,000 per month for each month in which the participant has been on the out of work book for a sponsoring IBEW Local Union of this Plan if he has been available for work during such period, up to a maximum loan amount of \$8,000.

For all loans issued under this subsection (c), the participant must be out of work at the time the participant applies for a loan for being on the out of work book.

10.03 Minimum Amount. A loan must be for at least \$1,000.

10.04 Eligible Purposes. Loans will be made only for the following purposes:

- a. Expenses of at least \$1,000 incurred (and which the Participant is obligated to pay) because of sickness or injury which have not been reimbursed by, or for which the Participant has no right to reimbursement from, any public or private plan or program including, but not limited to, Social Security, Medicaid, any Employer, Union or joint employer-union welfare plan or program, or Workers' Compensation.
- b. Expenses incurred in connection with the payment of tuition and/or room and board to maintain a dependent child at an educational institution beyond the high school level. A participant may obtain a loan for the current semester and/or quarter only. A participant may obtain a new loan for each subsequent semester and/or quarter so long as the total of all loans outstanding does not exceed the maximum allowable amount stated in section 10.02 above. For purposes of this section 10.04, the term "dependent child" shall mean the unmarried child (including stepchildren, adopted children and foster children substantially supported by the Employee) of an eligible Participant.
- c. Expenses due to the purchase or substantial rehabilitation (when such expenses of rehabilitation exceed \$5,000) of a home, or cooperative or condominium apartment, in which he will reside and he has thereby incurred down payment, contract, and title expenses, provided however that a loan pursuant to this subsection c. shall be made to a Participant only once.
- d. The Participant is threatened with the loss of his principal residence as a result of any foreclosure or eviction proceedings brought against him or any tax lien proceeding that is based on his failure to pay real estate taxes on such property. For loans for substantial rehabilitation of a home, or cooperative or condominium apartment, expenses incurred or for completion of improvement will qualify so long as the expenses were incurred or the improvement was completed no earlier than one year prior to the date of the loan application.
- e. Funeral expenses incurred because of the death of a Spouse, child or parent.

10.05 Basis for Granting or Denying Loans. Every eligible Participant shall be entitled to a loan from his Individual Account and/or Individual 401(k) Account under the Fund, provided that:

- a. the loan meets the standards of sections 10.01, 10.02, 10.03, and 10.04, and
- b. the loan is fully secured in accordance with section 10.07, and

- c. Effective for any loan application received by the Trust Fund on or after June 1, 2008, if a Participant has defaulted on a prior loan and received a deemed distribution of said loan under the Plan, the Participant will not be eligible for a subsequent loan until the prior outstanding loan has been repaid in full.

10.06 Rate of Interest. The interest rate shall be the prime rate plus 1%.

10.07 Security for the Loan.

- a. No loan shall be made under this program unless the Participant executes and delivers to the Fund an acceptable assignment of the Participant's claim against the Eighth District Electrical Pension Fund Annuity Plan for an amount equal to the outstanding balance of the loan plus accrued interest, as collateral to secure repayment of the loan plus accrued interest and any related expenses including attorneys' fees and other collection charges.
- b. An assignment of the Participant's claim for a corresponding amount from the Fund shall not be accepted unless the following surviving-spouse waiver requirements are met:
 1. No more than ninety (90) days before the date of the loan, the Participant and the Participant's Spouse, if any, file a written consent to the assignment of the future benefit claim as security for the loan and to the possible forfeiture of that claim in the event of a default and acknowledging the potential impact on their benefits, in the form prescribed by the Fund and witnessed by a notary public, or
 2. No more than ninety (90) days before the date of the loan, the Participant files a statement, on the prescribed form and witnessed by a notary public, consenting to the possible forfeiture of the future benefit claim in the event of a default and representing that he or she is (and by the date of the loan will continue to be):
 - (a) not married,
 - (b) legally separated, or
 - (c) unable to locate the Spouse and provides supporting documentation as required by the Plan Administrator.
- c. A surviving-spouse waiver is required for all loans.
- d. A surviving-spouse waiver that is valid under these rules at the time it is given will be treated as a valid and binding consent to the Board's later enforcement of the assignment of the Participant's benefit claim, regardless of any change in the Participant's marital status after the date of the loan.

10.08 Repayment Terms.

- a. Each loan will be made effective the business day following the approval of the loan.
- b. Loans must be repaid in twenty (20) equal quarterly installments starting with the first day of the first calendar quarter beginning after the date of the loan.
- c. Prepayments of outstanding principal and accrued interest are permitted at any time, without penalty.
- d. Notwithstanding subsection b., above, if the loan is for the purchase or construction of the Participant's principal residence and the Participant provides the Fund with documentation of that, the loan may be repaid over ten (10) years, in monthly installments.
- e. In the event an Employee, with an outstanding loan against his Individual Account and/or Individual 401(k) Account, leaves employment with the Employer to serve in Qualified Military Service, his repayments will be suspended for such period of service as permitted under Section 414(u)(4) of the Internal Revenue Code.
- f. Any outstanding loan balance at the time an Employee elects a distribution from his Individual Account and/or Individual 401(k) Account must be paid off in full or the loan shall be considered in default.

10.09 Default and Collection Procedures.

- a. A payment shall be considered to be delinquent if it is not paid in full when it is due or within thirty (30) days thereafter. The Fund shall notify the borrower of a delinquency and, if the delinquency is not cured within fifteen (15) days after the Fund gives the notice the Fund will impose a fifteen dollar (\$15.00) late fee for each late payment up to a maximum of two (2) consecutive quarters in which the borrower is delinquent, in addition to accruing interest. This will not, however, excuse the Participant from the obligation to make the full payment.
- b. A loan shall be considered to be in default if more than two (2) quarterly payments are delinquent, unless the delinquency is cured within fifteen (15) days after the Fund notifies the Participant of the delinquent payments. A loan shall also be considered to be in default if at the time an Employee elects a distribution from his Individual Account and/or Individual 401(k) Account the Employee fails to pay off the loan in full. In the event of a loan default:
 - 1. The outstanding balance of the loan shall be due and payable and interest shall continue to accrue until payment is made either directly or through foreclosure on the collateral,
 - 2. The Fund will report the outstanding principal and interest as taxable income to the Participant and to the Internal Revenue Service. This

will not, however, excuse the Participant from any repayment obligations, and

3. The Fund will foreclose on the security by canceling the Participant's claim for the outstanding balance of the defaulted loan. Cancellation of part of the Participant's benefit shall be considered a distribution of the funds, and shall occur as soon as the Fund would be permitted to make a distribution to the Participant.
- c. The Board may sue to collect amounts due on a loan.
- d. All expenses incurred by the Fund in any collection action, including any fees or other expenses specially incurred in enforcing security other than a pledge of the borrower's Individual Account and/or Individual 401(k) Account, shall be charged against the borrower's Individual Account or Individual 401(k) Account balance, rather than allocated as general expenses of Fund administration.

10.10 Death of Borrower. If a Participant dies before repaying a loan in full, the obligation to repay any amount outstanding shall be cancelled as of the date of death. The outstanding principal amount of the loan and interest thereon so forgiven shall not be taken into account in determining the amount of any qualified pre-retirement surviving Spouse benefit payable with respect to the Participant, but shall be treated by the Fund and reported to the Internal Revenue Service as a distribution to the Participant as of the date of death.

10.11 Procedure for Applying for Loans. A Participant requesting a loan shall make written application for it on the form prescribed by the Board, copies of which shall be available upon request to the Plan Administrator. The borrower shall also provide a completed promissory note in the prescribed form and any other written loan documentation that the Fund may require regarding security for the loan, including a legally binding waiver of any future Spouse or family member of the Participant or any current or future Spouse or family member of the Participant may have to a qualified joint and survivor annuity or qualified pre-retirement survivor annuity in connection with a pledge of any share of the Participant's account balance in the Fund as security for the loan. The borrower shall also provide, upon request, any evidence that may be needed to demonstrate the borrower's qualification for the loan and the receipt of adequate information concerning the loan. Loan distributions shall be made from all of the Employee's investments on a pro-rata basis.

10.12 Loan Processing Fee. A \$50 loan-processing fee will be deducted from each borrower's Individual Account or Individual 401(k) Account at the time a loan is made, to cover the Fund's expenses in establishing and monitoring the loan.

ARTICLE 11. RIGHT OF APPEAL AND DETERMINATION OF DISPUTES

11.01 Participant Claim to Benefits. No Participant, Beneficiary or other person shall have any right or claim to benefits under the Plan, or any right or claim to payments from the Fund, other than as specified herein. Any dispute as to eligibility, type, amount or duration of benefits or any right or claim to payments from the Fund shall be resolved by the Board pursuant to the terms of the Plan, and its decision of the dispute, right or claim shall be binding upon all parties thereto.

11.02 Claims Appeal. Effective for claims filed on or after January 1, 2002.

No participant, beneficiary or other person shall have any right or claim to benefits under the Plan, or any right or claim to payments from the Fund, other than as specified herein. Any dispute as to eligibility, type, amount or duration of benefits or any right or claim to payments from the Fund shall be resolved by the Board pursuant to the terms of the Plan, and its decision of the dispute, right or claim shall be binding upon all parties thereto.

a. Any person whose application for benefits under the Plan has been denied in whole or in part, or whose claim to benefits or against the Fund is otherwise denied, shall be notified in writing of such denial within 90 days (or 45 days for disability claim not based on a Social Security Disability award only) after receipt of such application or claim. An extension of time not exceeding 90 days (or 30 days for disability claim not based on a Social Security Disability award only) may be required by special circumstances. For disability claim not based on a Social Security Disability award only, the time may be extended for up to another 30 days (for a total of 105 days). If so, notice of such extension, indicating what special circumstances exist therefor and the date by which a final decision is expected to be rendered, shall be furnished the claimant prior to the expiration of the initial 90-day period (or 45 days or 75 days for disability claim not based on a Social Security Disability award only). If notice of denial of a claim is not furnished in accordance with this paragraph, the claims shall be deemed denied and the claimant shall be permitted to proceed to the review stage described below. The 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 reference to pertinent Plan provisions 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; and (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.

- b. Any such person may petition the Board for a review of the denial. A petition for review shall be in writing, shall state in clear and concise terms the reason or reasons for disputing the denial, shall be accompanied by any pertinent documentary material not already furnished to the Fund, and shall be filed by the claimant or his duly authorized representative with the Administrator of the Fund within 60 days (or 180 days for disability claim not based on a Social Security Disability award only) after the claimant received notice of the denial. The claimant or his duly authorized representative shall be provided, upon request and free of charge, copies of and shall have access to and be permitted to review relevant documents and submit issues and comments in writing.
- c. Upon good cause shown, the Board shall permit the request for review to be amended or supplemented and shall grant a hearing on the request for review before the Board to receive and hear any evidence or argument. The claimant may be represented at such hearing by an attorney or any other representative of his choosing. The failure to file a petition for review within such 60-day period or 180-day period for a disability claim not based on a Social Security Disability award only or the failure to appear and participate in any such hearing, shall constitute a waiver of the claimant's right to review of the denial, provided that the Board may relieve a claimant of any such waiver for good cause if application for such relief is made within 120 days or 180 days for a disability claim not based on a Social Security Disability award after the date shown on the notice of denial. Such failure shall not, however, preclude the applicant or claimant from establishing his entitlement at a later date based on additional information and evidence which was not available to him at the time of the decision. Review of an adverse benefit 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.
- d. The Board shall make a decision on any request for 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 Administrator'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. The Plan shall notify the claimant of the decision of the Trustees 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 describing the procedures for submitting to arbitration as a voluntary level of appeal and the claimant's right to obtain additional information about arbitration upon request, as described in subsection e; and
5. a statement of the claimant's right to bring civil action under ERISA section 502(a).

e. If the claimant is dissatisfied with the written decision presented by the Board on such appeal, he or she may request a further appeal by arbitration in accordance with the Employee Benefit Plan Claim Rules of the American Arbitration Association, incorporated by reference herein; provided such request is submitted in writing to any American Arbitration Association office within sixty (60) days of receipt of the written appeal decision.

The Plan waives the right to assert that a claimant failed to exhaust administrative remedies because the claimant did not elect to submit a benefit dispute to any such voluntary arbitration. The Plan agrees that any statute of limitations or other defense based on timeliness is tolled during the time that arbitration is pending. A claimant may elect to subject to voluntary arbitration only after exhaustion of the required review to the Board of Trustees.

The Plan will provide to any claimant, upon request, sufficient information relating to arbitration to enable the claimant to make an informed decision about whether to submit or not submit to arbitration , including a statement that the decision to submit or not submit to arbitration has no effect on the claimants rights to any other benefit under the Plan, information about the rules of arbitration, the claimant's right to representation, a description of the process for selecting a decision maker, and any circumstances that may affect the impartiality of the decision maker.

The question for consideration by the arbitrator shall be whether, in the particular instance, the Board:

1. was in error upon an issue of law;
2. acted arbitrarily or capriciously in the exercise of discretion; or
3. whether their findings of fact were supported by substantial evidence.

No fees or costs are imposed on the claimant as part of arbitration. The decision of the arbitrator is considered to be final and binding on all parties and judgment upon the award may be entered in any court having jurisdiction thereof.

The provisions of this section 11.02 shall apply to and include any and every claim or right asserted under the Plan or against the Fund, regardless of when the act or omission upon which the claim is based occurred and regardless of whether or not the claimant is a “Participant” or “Beneficiary” of the Plan within the meaning of those terms as defined in ERISA.

ARTICLE 12. AMENDMENT AND TERMINATION

12.01 Amendment of Plan. The Board may amend or modify the Plan at any time in accordance with the Trust Agreement, except that no amendment or modification may reduce any benefits that have been approved for payment prior to amendment.

12.02 Termination of Plan. The Board shall have the right to discontinue or terminate this Plan in whole or in part. In the event of termination or partial termination of this Plan, or the complete discontinuance of contributions, the benefits of all affected participants will be fully vested. 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 deem necessary or desirable to comply with Sections 4041A and 4281 of ERISA.

12.03 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 13. RECIPROCITY

13.01 Purpose. By resolution duly adopted, the Board may recognize one or more other annuity funds which have executed an Annuity Fund Reciprocal Agreement (herein after referred to for purposes of this Article 13 as "Agreement"), to which this Plan is a party as a signatory fund. Individual accounts have been or will be established and are being or will be maintained by each of the signatory funds to the Agreement on behalf of their participants. The purpose of establishing reciprocity between the funds, is to provide for the collection and transfer of employer contributions received by one of the signatory funds with respect to the work of a participant to the other signatory fund in cases where the individual account of the participant has been or should be established and is being or should be maintained by such other fund.

13.02 Receipt and Transfer of Contributions.

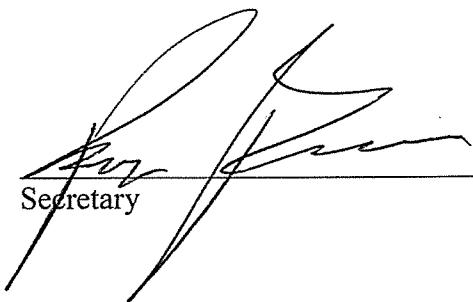
- a. If a signatory fund receives employer contributions with respect to the work of a participant whose individual account has been established and maintained or should be established and maintained by the other signatory fund, such contributions will be transferred to the other fund during the calendar month following the calendar month in which the contributions were received. If delinquency procedures are necessary in connection with the collection of such contributions, the receiving fund will be credited with and retain any liquidated damages, interest and attorneys fees recovered through such procedures.
- b. The contributions will not be credited with interest nor will an administrative charge be made against the individual account of the participant for the period during which the contributions were held by the receiving fund. Contributions transferred pursuant to the terms of the Agreement, shall be accompanied by any necessary or appropriate reports or records, and shall be subject to such accounting procedures as are recommended by the accountant or accountants for the signatory funds.
- c. 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.

13.03 Disposition of Transferred Contributions. The fund to which contributions are transferred pursuant to the terms of the Agreement shall treat such contributions in the same way as contributions received directly from the employer and shall assume full responsibility therefor, indemnifying and saving harmless the receiving fund from any further responsibility or liability with respect thereto.

IN WITNESS WHEREOF, the Board of Trustees of the Eighth District Electrical Pension Fund Annuity Plan have hereby adopted this Plan by affixing their signatures as of this 17 day of September, 2014.



Chairman



Secretary

109140/01991.025