

**Iron Workers  
Defined Contribution Pension Fund Plan**

**Effective and Adopted March 1, 2010**

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## ARTICLE 1 – DEFINITIONS

**Association** means the Great Lakes Fabricators and Erectors Association.

**Beneficiary** means:

- (1) If married, the means the Participant's Spouse, or such other person for whom the Spouse consents in writing to be designated as the Beneficiary in lieu of the Spouse, provided such election designates a beneficiary which may not be changed without Spousal consent (or the consent of the Spouse expressly permits designations by the Participant without any requirement of further consent by the spouse), and the Spouse's consent acknowledges the effect of such election and is witnessed by a plan representative or a notary public (however, such consent is not required where, as allowed by the Internal Revenue Code, the Spouse cannot be located, the Participant is legally separated from the Spouse, the Participant has been abandoned by the Spouse, or because of such other circumstances as the Secretary may by regulations prescribe.)
- (2) If single, the person designated as his/her beneficiary by the Participant. If no beneficiary designation is made, if the designated beneficiary predeceases the Participant, Beneficiary shall mean, in the following order, the Participant's living: (1) children under age 19; (2) children over age 19; (3) parents; or (4) brothers and sisters. In the event there are no such persons, the beneficiary shall be an individual(s) that is a beneficiary of the Participant's estate, to be distributed and apportioned under applicable estate law.
- (3) Upon divorce, an ex-spouse shall only be a Beneficiary if designated as such subsequent to the divorce.

**Collective Bargaining Agreement** means a collective bargaining agreement between the Association and Union and between the Association and the Union and Local Union No. 340 of the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers A.F.L.-C.I.O (Local 340).

**Contributions** means the payments made or required to be made to the Fund by an Employer. Contributions become vested Plan assets at the time they become due and owing to the Fund. An Employer shall have no right, title or interest in Contributions owing to or made to the Fund. Title to all Contributions paid into and/or due and owing the Fund shall be vested in and remain exclusively in the Trustees.

**Covered Employment** means employment covered by the Collective Bargaining Agreement for which Contributions are made to the Fund, or work performed by an Employee on whose behalf Contributions are made to the Fund under a written agreement with the Fund.

**Employee** means any person on whose account an Employer is, or has been, required to make Contributions to the Fund, or who is eligible for benefits as provided by the Plan. The "alumni

rule" as set forth in Treasury Regulation §1.410(b)-6(d)(2)(ii) is adopted for the purpose of defining a "collectively bargained employee" under the Internal Revenue Code.

**Employer** means:

- (a) any signatory to the Collective Bargaining Agreement or any member of the Association who has assigned collective bargaining rights to the Association with respect to Local 25 or Local 340; or
- (b) any other company, person, or entity obliged by a participation agreement or other written agreement acceptable to the Trustees to make Contributions to the Fund.

**ERISA** means the Employee Retirement Income Security Act of 1974, as amended.

**Fund or Trust Fund** means the fund established by the Iron Workers Defined Contribution Pension Fund Agreement and Declaration of Trust, and the entire assets thereof, including all Contributions, dividends, interest, refunds and other sums payable to the Fund on account of any contract or agreement, all investments (including accumulated income, increments, earnings and profits attributable to such investments) held by the Fund, any assets transferred to the Fund, and any and all other property or funds rightfully belonging to the Fund.

**Hour of Service** means each hour for which an Employee is paid, or entitled to payment, by an Employer, for the performance or non-performance of service as well as for each hour for which back pay, irrespective of mitigation of damages, is awarded or is agreed to by an Employer. Such hours shall be credited to the computation period in which the services were performed or to which the award or agreement pertains in accordance with D.O.L. regulation 2530.200b-2.

**Individual Account** means the account established for each Employee, pursuant to Article 4 of the Plan.

**Normal Retirement Age** means age 65.

**Participant** means a person who has a Contribution made on his behalf to this Fund and who has satisfied the participation requirements of Section 2.3.

**Plan** means the Iron Workers Defined Contribution Pension Fund Plan, as set forth in this document. The Plan is a profit sharing plan as defined in the Internal Revenue Code and related regulations.

**Plan Year** means the period from May 1 to the following April 30, inclusive, or for the initial plan year the period beginning with the commencement of the Plan and ending April 30 of such year.

**Qualified Domestic Relations Order** means a domestic relations order which has been reviewed by the Plan and determined to be a qualified order as defined in Section 203(d) of ERISA. Any benefits payable to an alternate payee under a Qualified Domestic Relations Order will reduce any benefits payable to a Participant, Spouse, or Beneficiary under this Plan.

**Required Beginning Date** means the later of April 1 of the calendar year following the calendar year in which the Participant attains age 70½ or April 1 of the calendar year in which the Participant retires (this latter date, however, does not apply to any Participant who is a 5% owner).

**Retires or Retired or Retirement** means the complete cessation of Covered Employment.

**Retirement Date** means the date the Participant commences benefits.

**Spouse** means the person married to the Participant on the earlier of the Participant's Retirement Date or the date of the Participant's death.

**Trustee** means any natural person appointed as such by the Union or the Association pursuant to the terms of the Trust Agreement.

**Trust or Trust Agreement** means the Agreement and Declaration of Trust of the Iron Workers Defined Contribution Pension Fund.

**Union** means the Local Union No. 25 of the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers A.F.L.-C.I.O (Local 25).

**Valuation Date** means April 30 of each Plan Year, or such other date during the Plan Year as of which the Trustees shall cause the Trust Fund and the Individual Accounts to be valued on a market value basis.

## ARTICLE 2 - CONTRIBUTIONS AND PARTICIPATION

### 2.1 Employer Contributions

Each Employer will contribute on behalf of each Employee for whom Contributions are required to be made to the Fund pursuant to the terms of a collective bargaining agreement, participation agreement, or any other written document requiring Contributions.

### 2.2 Employee Contributions

No Contributions are permitted by Employees.

### 2.3 Participation

Upon completion of one Hour of Service after the effective date of this Plan, an Employee shall become a Participant in the Plan.

### 2.4 Termination of Participation

An Employee is no longer a Participant in the Plan on the date on which final payment of his or her Individual Account balance has been made.

## ARTICLE 3 - INVESTMENTS

The Trustees will direct the investment of assets until October 31, 2010. Effective November 1, 2010, the Plan will become Participant directed under ERISA 404(c) and corresponding regulations. Accordingly, as of such date:

- a. The Trustees shall not make any investment decisions without the direction of the Participant or Beneficiary, if applicable;
- b. The Trustees shall not be responsible for reviewing any such investment direction and shall not be liable for following any investment direction or for any losses, taxes, or other consequences incurred as a result of investments selected by the Participant or Beneficiary, if applicable; and
- c. Until such time as affirmative investment directions are received, the assets will be placed in a qualified default investment alternative.

## ARTICLE 4 - INDIVIDUAL ACCOUNTS

### 4.1 Establishment of Accounts

An Individual Account will be established for each Participant when Contributions are received by the Fund on his/her behalf. Contributions are allocated to an Individual Account when they are actually received by the Fund. The maintenance of Individual Accounts is for recordkeeping purposes and segregation of the assets of the Trust to each Individual Account shall not be required until such time as the Plan becomes Participant directed.

Contributions are made on a monthly basis as required by the Collective Bargaining Agreement or other written agreement acceptable to the Trustees requiring Contributions to the Fund. If an Employer makes all of the required Contributions in a month, the Contributions are allocated to the Participants on whose behalf they are made. If an Employer does not pay all Contributions owed in any given month, the Employer's delinquency is allocated proportionally among the Employees on whose behalf Contributions were owed for that month.

### 4.2 Valuation

As of each Valuation Date, the value of all monies, securities and other property in the Trust Fund shall be appraised by the Trustees at the then fair market value.

As soon as practical after each Valuation Date, the Fund will determine the amount in each Individual Account as of the Valuation Date. Each Account will be allocated that portion of the investment gain or loss which bears the same ratio as the Individual Account's beginning balance for the Plan Year plus contributions, considered on a time-weighted basis, bears to the aggregate of all Individual Accounts beginning balance for the Plan Year plus contributions, considered on a time-weighted basis, until such time as the Plan becomes Participant directed. As of such date that the Plan becomes Participant

directed, earnings, losses, and expenses incurred as a result of Participant investment direction, or earnings, losses, and expenses incurred in the qualified default investment alternative, if applicable, shall be allocated to each Individual Account.

The fact that Individual Accounts are established and valued as of each Valuation Date does not give any Participant or others any right, title or interest in the Fund or its assets, or in a Participant's Individual Account, except at the time or times, and upon the terms and conditions provided in this Plan, or as required by law.

In no event and at no time will the total amount in all Individual Accounts at any Valuation Date exceed the total net assets of the Fund. The Trustees may, at any time, uniformly reduce the amount in each Individual Account if financial circumstances so require, as determined by the Trustees in their sole and absolute discretion. If such an event should occur, then all Individual Accounts will automatically be proportionately reduced so that the total of all Individual Accounts does not exceed the net assets of the Fund.

#### **4.3 Fees and Charges**

The Trustees may assess reasonable administrative fees, in an amount and frequency to be established in the sole discretion of the Trustees, against each Individual Account to pay operating expenses of the Fund.

#### **4.4 Termination of Accounts**

An Individual Account will be considered terminated as of the date on which final payment of the Individual Account is made.

#### **4.5 Statements**

Each Participant who has an Individual Account will receive a statement of his or her Individual Account as required by ERISA §105(a)(1)(A)(i) and (ii), as applicable.

### **ARTICLE 5 - BENEFITS AND ELIGIBILITY**

#### **5.1 Payment of Benefits**

Subject to the provisions of Article 5, the Participant's Individual Account, determined in accordance with Article 4, will be paid upon the Participant's Retirement, Break in Service, Disability or Death.

#### **5.2 Retirement**

A Participant at least age 55 may receive a distribution of his/her Individual Account upon Retirement.

### **5.3 Break in Service**

A Participant may receive a distribution of his/her Individual Account upon a Break in Service. A Break in Service occurs if no Contributions are received by the Fund on behalf of a Participant for a period of 36 consecutive months.

### **5.4 Disability**

A Participant may receive a distribution of his/her Individual Account upon becoming disabled. For purposes of this section, a Participant shall be considered to be disabled if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration. Proof of disability must be furnished in a form and manner acceptable to the Trustees, which may include an independent medical examination. The final determination of whether a Participant has a Disability shall be made by the Trustees in their sole discretion.

### **5.5 Death**

If a Participant dies before he/she has taken a distribution of his/her Individual Account, his Individual Account will be paid to his Beneficiary.

### **5.6 Application and Distribution**

- (a) Except as required by law, as a condition for payment of any benefit from the Plan, an application for the benefit must be made in writing in the form and manner required by the Trustees. An application may be withdrawn at any time before payment is made.
- (b) Upon application received and approved by the Fund Office, distribution of an Individual Account shall be made in one lump sum payment. The distribution will be made on the date specified by the Participant or, if later, as soon as administratively reasonable and practical.
- (c) If the value of a Participant's Individual Account does not exceed \$5,000, the Trustees shall immediately distribute such benefit in a single lump sum without such Participant's consent when the Participant incurs a Break in Service. In the event such distribution is greater than \$1,000, if the Participant does not elect to have such distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover or to receive the distribution as a direct payment, then the plan administrator will pay the distribution in a direct rollover to an individual retirement plan designated by the plan administrator.

### **5.7 Vesting**

Each Participant shall at all times be immediately and fully vested and shall have a non-forfeitable right to the balance in his Individual Account, as properly and correctly valued

from time to time under the provisions of this Plan and subject to the payment provisions of the Plan.

## ARTICLE 6 – MILITARY SERVICE

Contributions, benefits and service credits with respect to qualified military service will be provided in accordance with Section 414(u) of the Internal Revenue Code.

The following procedures shall be used to implement Section 414(u) of the Internal Revenue Code:

**Notification.** Prior to entering military service (i.e. service covered under the Uniformed Services Employment and Reemployment Act), a Participant is required to provide advance written or verbal notice to his employer unless giving such notice is precluded by military necessity or is otherwise impossible or unreasonable.

**Disclosure Requirement.** Upon application for re-employment, a Participant shall be required to provide documentation to establish the timeliness of his application for re-employment (a copy of the Participant's discharge papers shall be sufficient).

**Crediting Military Service.** To determine the number of hours to be credited for military service, the Board of Trustees shall review the Participant's work history during a period equal to at least two times the amount of time spent in military service.

**Allocation of Liability.** Contributions will be deposited into the individual account of each Participant who served in the military and satisfied the re-employment requirements. These contributions will be considered a Plan expense and subtracted from investment earnings before such earnings are allocated to Individual Accounts.

**Service and Discharge.** Credit will be given under this section only if service is for no more than 5 years, unless extended at the government's request, and the Participant is discharged under honorable conditions,

A Participant will only be entitled to the benefits of this section if he/she returns to Covered Employment under the Collective Bargaining Agreement within the following time frames: (1) for uniformed service of less than 31 days, by the next work day after the end of service plus eight hours, or as soon as possible after the end of the eight-hour period if reporting earlier is impossible through no fault of the Participant; (2) for service of more than 30 days but less than 181 days, within 14 days of completing the service, or the next full calendar day if returning earlier is impossible through no fault of the Participant; or (3) for service of more than 180 days, within 90 days after completion of the service.

## ARTICLE 7 - GENERAL PROVISIONS

### 7.1 Time of Distribution

Unless a Participant otherwise elects as provided in the Plan, distribution of a Participant's Individual Account shall commence no later than the 60th day after the close of the Plan Year in which occurs the latest of the following events:

- (a) the Participant attains Normal Retirement Age,
- (b) the tenth anniversary of the year in which the Participant commenced participation in the Plan, or
- (c) the Participant terminates service with the Employer.

### 7.2 Required Distribution

Notwithstanding any provision of the Plan to the contrary, the Account of a Participant must be distributed or commence to be distributed no later than April 1 of the calendar year following the calendar year in which the Participant attains age 70½; provided, however, that a Participant (other than a 5% owner) who has not retired by the end of the calendar year in which he attains age 70½ may elect to delay commencement of benefit distributions until no later than April 1 of the calendar year in which the Participant retires.

### 7.3 Minimum Distribution Requirements

- (a) This section sets forth the minimum distribution requirements.
- (b) The requirements of this Section will take precedence over any inconsistent provisions of the Plan.
- (c) Requirements of Treasury Regulations Incorporated. All distributions required under this Section will be determined and made in accordance with the Treasury regulations under Section 401(a)(9) of the Internal Revenue Code.
- (d) TEFRA Section 242(b)(2) Elections. Notwithstanding the other provisions of this Section, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the plan that relate to Section 242(b)(2) of TEFRA.
- (e) 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.

(f) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

- (1) If the Participant's surviving spouse is the Participant's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 ½, 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 paragraph (f), other than paragraph (f)(1), will apply as if the surviving spouse were the Participant.

For purposes of this paragraph (f) and paragraphs (j) and (k), unless paragraph (f)(4) applies, distributions are considered to begin on the Participant's required beginning date. If paragraph (f)(4) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under paragraph (f)(1). 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 (f)(1)), the date distributions are considered to begin is the date distributions actually commence.

(g) 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 paragraphs (h)(i)(j) and (k) 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.

(h) Amount of Required Minimum Distribution For Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

- (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.

(i) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under paragraph (h) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

(j) Death On or After Distribution Begin.

- (1) Participant Survived by Designated Beneficiary. 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 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.

(2) No Designated Beneficiary. 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 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.

(k) Death Before Date Distributions Begin.

(1) Participant Survived by Designated Beneficiary. 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 account balance by the remaining life expectancy of the Participant's designated beneficiary, determined as provided in paragraph (j).

(2) No Designated Beneficiary. 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.

(3) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. 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 paragraph (f)(1), this paragraph (k) will apply as if the surviving spouse were the Participant.

(l) Designated beneficiary means the individual who is designated as the Beneficiary as defined in Article 1 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.

(m) Distribution calendar year means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar

year is the calendar year in which distributions are required to begin under paragraph (f). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.

- (n) Life expectancy means life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.
- (o) Participant's account balance means the account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of the 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.
- (p) Required beginning date means the date specified in Section 7.2 of the Plan.

#### **7.4 Eligible Rollover Distribution**

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 Trustees, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

- (a) Eligible Rollover Distribution: Any distribution of all or any portion of the benefit to the Distributee, except that an Eligible Rollover Distribution does not include any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the Distributee and the Distributee's designated beneficiary; or for a specified period of 10 years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); any distribution that is a hardship distribution; and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).
- (b) Eligible Retirement Plan: An individual retirement account under IRC §408(a), Code, an individual retirement annuity under IRC §408(b), an annuity plan under IRC §403(a), a qualified trust under IRC §401(a), a Roth IRA, an annuity under IRC §403(b), or a governmental plan under IRC §457(b), that accepts the

Distributee's Eligible Rollover Distribution. For a designated nonspouse beneficiary, an Eligible Retirement Plan is an inherited IRA under IRC §408(d)(3)(C).

- (c) Distributee: An Employee or former Employee, the Employee's or former Employee's spouse or surviving spouse, or a former spouse who is the alternate payee under a Qualified Domestic Relations Order are Distributees with regard to the interest of the spouse or former spouse. A Distributee also includes an eligible designated nonspouse beneficiary.
- (d) Direct Rollover: Payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

#### 7.5 Maximum Annual Additions

- (a) Contributions to a Participant's Individual Account shall be adjusted or curtailed in any Plan Year, if required, to insure compliance with Section 415 of the Internal Revenue Code.
- (b) Annual Additions to a Participant's Individual Account will not exceed the lesser of:
  - (1) 100% of the Participant's compensation within the meaning of IRC §415(c)(3); or
  - (2) \$40,000, as adjusted for increases in the cost of living under IRC §415(d).

For purposes of this section, payments made by the later of 2 ½ months after severance from employment or the end of the limitation year that includes the date of severance from employment are included in compensation for the limitation year if, absent a severance from employment, such payments would have been paid to the employee while the employee continued in employment with the employer are regular compensation for service during the employee's regular working hours, compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar compensation.

- (c) For purposes of paragraph (b), Annual Additions are employer contributions, forfeitures, and employee contributions (if any), per IRC §415(c)(2) and corresponding regulations.
- (d) All defined contribution plans maintained by an Employer will be aggregated for the purposes of determining the maximum Annual Additions.
- (e) If Employer Contributions required to be made on behalf of a Participant plus other additions to a Participant's Individual Account exceed the Maximum Annual Addition, then the excess Contributions and/or other additions will be placed in a

suspense account. Since the Employer is contractually obligated to make the Contributions placed in the suspense account, the Contributions will then be reallocated to the Participant's Individual Account in the next Plan Year in which the Contributions made on behalf of the Participant plus other additions to the Participant's Individual Account do not exceed the Maximum Annual Addition. However, if a Participant does not have any Hours of Work in Covered Employment during a Plan Year, then all excess Contributions and/or additions made on behalf of a Participant which have not been reallocated to the Participant's Individual Account pursuant to this section will be reallocated to all other Participants in the Plan who have not exceeded Maximum Annual Addition for that Plan Year.

#### **7.6 Information and Proof**

At the request of the Trustees, a Participant or Beneficiary must provide any evidence reasonably required for the administration of the Plan or to enable the Trustees to make a determination of any matter that the Trustees may have before them. The Trustees will determine in their sole discretion what information will be necessary to make any such determination. Failure to furnish information requested on a timely basis, and in good faith, will be sufficient reason for the denial of benefits to a Participant or Beneficiary.

#### **7.7 Designation of Beneficiary**

A Participant may designate a Beneficiary on a form provided by the Trustees and delivered to the Trustees before death. A Participant may change his or her Beneficiary (without the consent of a non-Spouse Beneficiary) in the same manner.

#### **7.8 Incompetence or Incapacity**

If it is determined to the satisfaction of the Trustees that any Participant or Beneficiary is unable to care for his affairs because of mental or physical incapacity, any benefit due the Participant or Beneficiary may be paid, in the discretion of the Trustees, for the maintenance and support of the Participant or Beneficiary; or to a legal guardian, committee, or other legal representative. Any such payment will be made in the sole discretion of the Trustees and completely discharge the Trustees' liability with respect to the benefit.

#### **7.9 Anti-Alienation of Benefits**

No Participant or Beneficiary under this Plan will have the right to assign, alienate, transfer, sell, mortgage, encumber, pledge, or anticipate any payments. Payments will not in any way be subject to any legal process to levy, execution upon, or attachment or garnishment proceeding for the payment of any claim against the Participant or Beneficiary. Payments will not be subject to the jurisdiction of any bankruptcy court or insolvency proceedings by operation of law, or otherwise. Notwithstanding, a Participant's benefits may be alienated pursuant to QDRO, if required by a federal tax levy, or under IRC section 401(a)(13)(C) pertaining to criminal or civil judgments,

consent decrees, and settlement agreements offset pension benefits when the Participant committed fiduciary violations or crimes against the Plan.

#### **7.10 Severability**

In the event that any provision of this Plan is determined to be invalid by decision, act, or regulation of a duly constituted body or authority this will not nullify any of the other provision of the Plan.

#### **7.11 Merger**

In the event of any merger or consolidation with, or transfer of assets or liabilities to any other Plan, the amount which a Participant would receive upon a termination of the Plan immediately after such merger, consolidation or transfer will be no less than the amount he would have been entitled to receive immediately before the merger, consolidation, or transfer if the Plan had been terminated.

#### **7.12 Payments to Minors**

If benefits from this Fund are payable to a minor, the Trustees may pay the benefits due to the person who has been appointed to be the minor's legal conservator. Payment to the conservator will discharge the Trustees from any liability to the minor or anyone representing his or her interests. No payment will be made under this Section to a government agency.

#### **7.13 Abandoned Benefits**

Benefits not claimed within 5 years after distribution became mandatory are considered abandoned and the Trustees can take any action allowed by law to dispose of such property.

#### **7.14 Gender and Number**

The use of any word in this Plan in the masculine gender is also intended to be in the feminine gender, and vice versa, where appropriate. The use of any word in this Plan in the singular is also intended to be in the plural, and vice versa, where appropriate.

#### **7.15 Qualified Domestic Relations Order Distribution**

All rights and benefits, including elections, provided to a Participant in this Plan shall be subject to the rights afforded to any alternate payee under a Qualified Domestic Relations Order. Furthermore, a distribution to an alternate payee shall be permitted if such distribution is authorized by a Qualified Domestic Relations Order, even if the affected Participant has not separated from service and/or reached the earliest retirement age.

## **7.16 Reciprocity Agreements**

The Trustees may enter into reciprocity agreements. Reciprocated money received by the Fund under any such reciprocity agreement, whether from a defined benefit or defined contribution fund, will be allocated pursuant to policies and procedures adopted by the Trustees.

## **ARTICLE 8 - PARTICIPATION OF EMPLOYEES WHO DO NOT PERFORM WORK UNDER A COLLECTIVE BARGAINING AGREEMENT**

An Employee who does not perform work under the Collective Bargaining Agreement may not participate without the prior approval of the Trustees and subject to an appropriate written participation agreement.

## **ARTICLE 9 - CLAIMS AND APPEAL PROCEDURE**

### **9.1 Timing and Notification of Benefit Determination**

#### **(a) Retirement Benefits**

Claims for benefits under the Plan may be filed in writing with the Trustees. Written notice of the disposition of a claim shall be furnished to the claimant within 90 days after the application is filed.

This period may be extended by the Fund for up to 90 days, if special circumstances require an extension of the time for processing the claim. In such case, written notice of the extension shall be furnished to the claimant prior to the termination of the initial 90 day period. In no event shall such extension exceed 90 days from the end of such initial period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the plan expects to render the benefit determination.

#### **(b) Disability Benefits**

In the case of a claim for disability benefits, the Fund Office shall notify the claimant, in accordance with this Section of the Fund's adverse benefit determination within a reasonable period of time, but not later than 45 days after receipt of the claim by the Fund Office.

This period may be extended by the Fund for up to 30 days, provided that the Fund Office both determines that such an extension is necessary due to matters beyond the control of the Fund and notifies the claimant, prior to the expiration of the initial 45-day period, of the circumstances requiring the extension of time and the date by which the plan expects to render a decision. If, prior to the end of the first 30-day extension period, the Fund Office determines that, due to matters beyond the control of the Fund, a decision cannot be rendered within that extension period, the period for making the determination may be extended for up

to an additional 30 days, provided that the Fund Office notifies the claimant, prior to the expiration of the first 30-day extension period, of the circumstances requiring the extension and the date as of which the plan expects to render a decision. In the case of any extension under this provision, the notice of extension shall specifically explain the standards on which entitlement to a benefit is based, the unresolved issues that prevent a decision on the claim, and the additional information needed to resolve those issues, and the claimant shall be afforded at least 45 days within which to provide the specified information.

## **9.2 Manner and Content of Notification of Benefit Determination**

The Fund Office shall provide a claimant with written or electronic notification of any adverse benefit determination (i.e. denial of claim). The notification shall set forth, in a manner calculated to be understood by the claimant –

- (a) The specific reason or reasons for the adverse determination;
- (b) Reference to the specific plan provisions on which the determination is based;
- (c) 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;
- (d) A description of the Fund's review procedures and the time limits applicable to such procedures, including a statement of the claimant's right to bring a civil action under section 502(a) of ERISA following an adverse benefit determination on review; and
- (e) If the denial is of a request for disability benefits and an internal rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination, either the specific rule, guideline, protocol, or other similar criterion or a statement that such a rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination and that a copy of such rule, guideline, protocol, or other criterion will be provided free of charge to the claimant upon request.

## **9.3 Appeal of Adverse Benefit Determination**

- (a) Appeals must be forwarded to and received by the Fund Office within 60 days (180 days for appeals involving disability benefits) following receipt of a notification of an adverse benefit determination (i.e. denial of claim). As part of any such appeal, a claimant may submit written comments, documents, records, and other information relating to the claim for benefits.

- (b) A claimant, free of charge and upon request, shall be provided reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits.
- (c) Upon appeal, the Trustees will review 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) If the appeal is a denial of disability benefits:
  - (1) A review on appeal will not afford deference to the initial denial and an individual who made the initial denial, or a subordinate of such individual will not decide an appeal.
  - (2) In deciding an appeal of a benefit based on medical judgment, the fiduciary deciding the appeal shall consult with a health care professional who has appropriate training in the field of medicine involved (and who was not involved in reviewing the initial claim);
  - (3) A plan must provide for the identification of any medical or vocational experts whose advice was obtained by the plan in connection with the initial denial, regardless of whether the advice was relied upon.

#### **9.4 Trustees Decision on Appeal**

##### **(a) Timing of Decision**

The Trustees shall make a benefit determination on appeal no later than the date of the board meeting that immediately follows the Fund Office's receipt of an appeal, unless the appeal is filed within 30 days preceding the date of such meeting. In such case, the benefit determination may be made no later than the date of the second board meeting following the Fund Office's receipt of the request for review.

If special circumstances require a further extension of time for processing, a benefit determination shall be rendered not later than the third board meeting following the Fund Office's receipt of the request for review. If such an extension of time for review is required because of special circumstances, the Fund Office shall provide the claimant with written notice of the extension, describing the special circumstances and the date as of which the benefit determination will be made, prior to the commencement of the extension. The Fund Office shall notify the claimant of its decision on appeal but not later than 5 days after the benefit determination is made.

**(b) Manner and Content of Notification of Trustees Notice of Decision on Appeal**

The Fund Office shall provide a claimant with written or electronic notification of any adverse benefit determination on review. The notification shall set forth, in a manner calculated to be understood by the claimant –

- (1) The specific reason or reasons for the adverse determination;
- (2) Reference to the specific plan provisions on which the determination is based;
- (3) A statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits;
- (4) A statement of the claimant's right to bring a civil action under section 502(a) of ERISA; and
- (5) If the appeal is a denial of disability benefits and an internal rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination, either the specific rule, guideline, protocol, or other similar criterion; or a statement that such a rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination and that a copy of such rule, guideline, protocol, or other criterion will be provided free of charge to the claimant upon request.
- (6) If the appeal is a denial of disability benefits, the following statement: "You and your plan may have other voluntary alternative dispute resolution options, such as mediation. One way to find out what may be available is to contact your local U.S. Department of Labor Office and your State insurance regulatory agency."

**9.5 Discretion of Trustees**

The Trustees have full discretionary authority to determine eligibility for benefits, interpret plan documents, and determine the amount of benefits due. Their decision, if not in conflict with any applicable law or government regulation, shall be final and conclusive.

**9.6 Timely Submission of Appeals**

All appeals must be timely submitted. A participant or dependent who does not timely submit an appeal waives his/her right to have the benefit denial further reviewed by the Fund or in a court of law.

## 9.7 Limitations of Actions

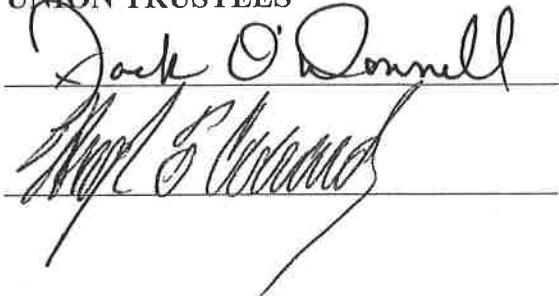
No action may be brought to recover benefits allegedly due under the terms of the Plan more than 180 days following the Notice of Decision on Appeal.

## ARTICLE 10 - OVERPAYMENTS

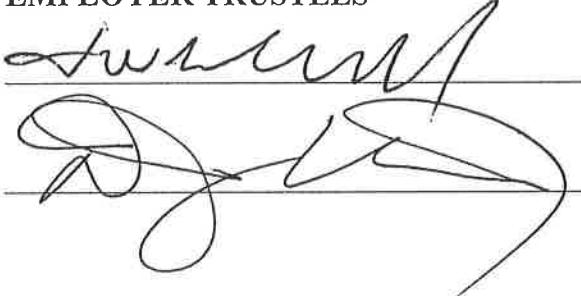
The Fund has the right to recover from any Participant, Retiree, Spouse, Surviving Spouse, Beneficiary, or other payee any amounts paid by the Fund which were not properly owing under the terms of the Plan, whether such amounts were paid by mistake, fraud, or any other reason. The Fund has the right to pursue the payee (including the Participant/Retiree and his/her Spouse and his/her other payee jointly and severally), for the full amount due and owing under this provision. At the Fund's sole option, it may enforce this provision by offsetting future benefits, or crediting Contributions received against the debt owed the Fund under this provision, until the amount owed has been recovered.

By their signatures below, the Board of Trustees has approved and adopted this Plan.

### UNION TRUSTEES

  
Jack O'Donnell

### EMPLOYER TRUSTEES

  
Susan J. DeGennaro

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