

**RULES AND REGULATIONS FOR  
THE SOUTHERN CALIFORNIA  
BRICKLAYERS PENSION FUND**

**(“THE PLAN”)**

**(May 1, 2015)  
(including Amendments No. 1 to 8)**

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## **SOUTHERN CALIFORNIA BRICKLAYERS PENSION FUND**

This document sets forth the terms and conditions of the above-named Pension Plan as of May 1, 2015 except as provided in this Plan document and any subsequent amendments. The Plan was formed on May 1, 2008 as a result of the merger of the Brick and Tile Pension Trust Funds of the Inland Empire Bricklayers into the Local Union No. 4 Money Purchase Pension Plan.

### **Article I. Definitions**

The following terms when used herein shall have the designated meaning, unless a different meaning is plainly required by the context or a different meaning is specifically provided. Wherever appropriate, words used in the singular may include the plural, the plural may include the singular, and the masculine may include the feminine.

#### **A. Anniversary Date**

“Anniversary Date” means April 30, 1985 and the last day of April of each year thereafter until a new date is adopted.

#### **B. Annuity Starting Date**

- (1) Section (2), below, a Participant’s “Annuity Starting Date” is the first day of the first calendar month starting after the Participant has fulfilled all of the conditions for entitlement to benefits and after the later of:
  - (a) the submission by the Participant of a completed application for benefits, or
  - (b) 30 days after the Plan advises the Participant of the available benefit payment options, unless
    - (i) the benefit is being paid as a 50% joint and survivor annuity at or after the Participant’s Normal Retirement Age,
    - (ii) the benefit is being paid out automatically as a lump sum under Article IX, Section A., or
    - (iii) the Participant and spouse (if any) consent in writing to the commencement of payments at the end of that 30-day period.
- (2) The Annuity Starting Date shall not be later than the Participant’s Required Beginning Date as defined in Article IX, Section A.
- (3) The Annuity Starting Date for a Beneficiary or Alternate Payee shall be determined under subsections (1) and (2), except that references to the 50% joint and survivor annuity and spousal consent do not apply.

- (4) For distributions on or after May 1, 1997, the Annuity Starting Date may be a date prior to the date the written explanation is provided to the participant if the distribution does not commence until at least 30 days after such written explanation is provided, subject to waiver of the 30-day period as provided by Article IX, Section E.

C. Association

The term "Association" shall mean the California Conference of Mason Contractors Exchange of Southern California, Inc., and any other association permitted to become a party to the Trust.

D. Beneficiary

"Beneficiary" means a person who is legally entitled to receive benefits under this Plan because of his or her designation for such benefits by a Participant or (b) who is legally entitled to and receiving or is entitled to receive benefits by operation of law.

E. Break in Service

A "Break in Service" occurs when a Participant has completed no Hours of Service at the end of any 24 consecutive months.

F. Code

"Code" means the Internal Revenue Code of 1986, as from time to time amended.

G. Collective Bargaining Agreement

"Collective Bargaining Agreement" means:

- (1) The agreement of May 1, 1962 by and between Local 2, 13, 15 and 26 of the Brick Masons and Plasterers International Union and the Masons Contractors Exchange of Southern California, Inc.;
- (2) Any other collective bargaining agreement between the Union or any other union signatory to this Agreement and any Employer or Employer Association which provides for the making of employer contributions to the Trust Fund; or
- (3) Any extensions, amendments, modifications, or renewals of any of the above described agreements, or any successor agreements to them which provide for the making of employer contributions to the Trust Fund.

H. Compensation

- (1) Solely for the Highly Compensated Employees and establishing the limitations under Section 415 of the Internal Revenue Code, a Participant's annual Compensation shall mean the total wages, salaries and fees for professional services and other amounts received during a calendar year (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the employer maintaining the Plan to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe

benefits, reimbursements and expense allowances). In addition, Compensation shall include any elective deferrals (as defined under Code § 402(g)(3)), and any amount which is contributed or deferred by the Employer at the election of the Employee, and which, by reason of Code §§ 125 or 457, is not includible in the gross income of the Employee.

(2) Compensation shall not include:

- (a) Amounts realized from the exercise of a 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;
- (c) Other amounts which received special tax benefits, other than amounts referred to in subsection (a); and
- (d) All Compensation in excess of the limits contained in IRC §401 (a)(17). I.

I. Covered Employment

“Covered Employment” means employment in work covered by a Collective Bargaining Agreement. The term “Covered Employment” shall also mean work performed by a person regularly employed on a full-time basis by the Trust Fund and by any Union participating in this plan pursuant to regulations adopted by the Trustees. A person who is credited with at least 1,000 Hours of Service in a Plan Year shall be considered regularly employed on a full-time basis.

J. Early Retirement Date

“Early Retirement Date” means a Participant’s 55th birthday.

K. Effective Date

“Effective Date” means May 1, 1984.

L. Employee

Effective May 1, 1998, the term “Employee” means (i) any employee of an Employer whose wage rate and working conditions are established by a Collective Bargaining Agreement negotiated by either the Union or the Association, (ii) any regular employee of the Union or the Trust Fund provided contributions are paid for such individual’s by the Union or Trust Fund, and (iii) shall also mean an individual who is employed by an Employer, such as a supervisor or estimator, or who is less than a 100% shareholder in an Employer which is incorporated, such as a Corporate Officer, provided that any such individual was a Participant in the Trust Fund as stated in (i) and (ii) above and provided further that contributions to the Brick Masons’ Pension, Health and Welfare, Vacation and Apprentice Funds on any such individual shall be made on all hours worked or paid subject to a minimum of 160 hours per month. The term “Employee” shall not include any self-employed person or sole proprietor of a business organization which is an Employer.

M. Employer

“Employer” means any association, individual, partnership, joint venture, or corporation which has agreed to be bound by the terms and provisions of the Agreement and Declaration of Trust and is obligated to make employer contributions to the Trust Fund in accordance with a Collective Bargaining Agreement. “Employer” shall also mean any Union, signatory hereto, Trust Funds which make contributions hereto on behalf of its employees, unless the inclusion of said Union or Trust Fund as an Employer constitutes a violation of any applicable law or statute. An employer shall not be deemed an Employer simply because it is part of a controlled group of corporations or of a trade or business under common control, some other part of which is a contributing Employer.

For purposes of identifying highly compensated employees and applying the rules on participation, vesting and statutory limits on benefits under the Fund but not for determining Covered Employment, the term “Employer” includes all corporations, trades or businesses under common control with the Employer within the meaning of Code §414(b) and (c), all members of an affiliated service group with the Employer within the meaning of Code §414(m) and all other businesses aggregated with the Employer under Code §414(o).

N. ERISA

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as from time to time amended.

O. Highly Compensated Employee

- (1) The term “Highly Compensated Employee” includes highly compensated active employees and highly compensated 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.
- (2) Effective January 1, 1997, a Highly Compensated Employee is any employee who:
  - (a) was a 5-percent owner of the Employer at any time during the calendar year or the preceding calendar year, or
  - (b) for the preceding calendar year
    - (i) had Compensation from the Employer in excess of \$80,000 (as adjusted annually for increases in the cost-of-living in accordance with regulations prescribed by the Secretary of the Treasury), and
    - (ii) was in the top-paid group of employees of such Employer for such preceding year. For this purpose, the top-paid group of employees shall consist of the top 20 percent of the employees when ranked on the basis of Compensation paid during such year.

- (3) Effective prior to January 1, 1997, a Highly Compensated Employee is any Employee who is an employee of the Employer who performs service for the Employer during the determination year and who;
- (a) during the look-back year:
    - (i) received compensation from the Employer in excess of \$75,000 (as adjusted under §414(q) of the Internal Revenue Code);
    - (ii) received compensation from the Employer in excess of \$50,000 (as adjusted under §414(q) of the Internal Revenue Code) and was a member of the top-paid group for that year, or
    - (iii) was an officer of the Employer and received compensation from the Employer in an amount greater than 50% of the dollar limitation in effect for that year under §415Xb)(1)(A) of the Internal Revenue Code; or
  - (b) meets one of the criteria listed in (a) above for the determination year and is one of the 100 employees who received the most compensation from the Employer during the determination year, or
  - (c) is a 5% owner at any time during the look-back year or the determination year.

If no officer received compensation in the determination year or look-back year at the level described in (1)(C), above, the officer who received the highest pay in that year shall be treated as a highly compensated employee.

- (d) A highly compensated former employee is an employee who separated from service (or was deemed to have separated) before the determination year, performs no service for the Employer during the determination year, and was a highly compensated active employee either for the separation year or for any determination year ending on or after the individual's 55th birthday.
- (e)
  - (i) The "determination year" is the plan year for which the test is being applied, and the look-back year is the 12-month period immediately preceding the plan year.
  - (ii) An Employer may elect to make the look-back year calculation for a determination year on the basis of the calendar year ending with or within the applicable determination year, in accordance with Treas. Reg. §1.414(q)-1T.



(f)

- (i) If an employee is, during a determination year or look-back year, a family member of a Highly Compensated Employee who is either a 5% owner or one of the 10 most highly paid employees of the Employer during that year, then the family member and the Highly Compensated Employee shall, to the extent required by specific provisions of the Internal Revenue Code, be treated as a single aggregated individual receiving compensation and benefits equal to the sum of the compensation and benefits of the persons aggregated. For this purpose, someone is a family member of a Highly Compensated Employee if he or she is a spouse, lineal ascendant or descendant, or the spouse of the person's lineal ascendant or descendant. In applying specific provisions of the Internal Revenue Code the definition of "family member" may be more limited, as set forth in those provisions.
- (ii) The determination of who is a highly compensated employee, including the determinations of the number and identity of employees in the top-paid group, 100 employees, the number of employees treated as officers and the compensation that is considered, shall be made in accordance with §414(q) of the Internal Revenue Code and the regulations thereunder.

P. Hour of Service

"Hour of Service" means:

- (1) Each hour for which an Employee is paid, or entitled to payment by the Employer(s), for the performance of duties for an Employer in Covered Employment during the Plan Year;
- (2) Each hour for which an Employee is paid, or entitled to payment, by an Employer on account of a period of time during which no duties are performed (regardless of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty, or leave of absence. For this purpose Hours of Service shall not be credited to an Employee either for a period during which no duties are performed if payment is made or due under a plan maintained solely for purpose of complying with applicable workers' compensation, unemployment compensation, or disability insurance laws., or on account of any payment made or due an Employee solely in reimbursement of medical or medically related expenses incurred by the Employee; and
- (3) Each hour not otherwise credited under this Plan for which back pay, irrespective of mitigation of damages, has either been awarded or agreed to by an Employer, such hours to be credited to the period or periods to which the award or agreement pertains. If this provision results in an Employee becoming a Participant for a

Plan Year when he was not otherwise a Participant under Article III, the Trustees shall establish equitable procedures therefore.

Payment for other than the performance of duties shall be converted into Hours of Service on the basis of the Participant's rate of pay immediately prior to such payments. If the Employee is not entitled to be paid for such time, he shall not receive credit for Hours of Service.

The calculation of the number of Hours of Service to be credited under Subsections (2) and (3) above for periods during which no duties are performed, and the crediting of such Hours of Service to periods of time for purposes of computations under the Plan, shall be determined by the Trustees in accordance with the rules set forth in paragraphs (b) and (c) of Regulation Section 2530.200b-2 prescribed by the Department of Labor, which rules shall be consistently applied with respect to all Employees within the same job classifications. Except for an Employer-approved leave of absence, no more than 501 Hours of Service shall be credited under Subsections (2) or (3) above to an Employee on account of any single continuous period of time during which the Employee performs no duties for an Employer. Two periods of paid non-work time shall be deemed continuous if they are compensated for the same reason (e.g., disability) and are not separated by at least ninety (90) days.

Solely for purposes of determining whether there has occurred a Break in Service, an Employee who is absent from work, whether or not paid or entitled to payment by an Employer, (i) by reason of the pregnancy of the Employee, (ii) by reason of the birth of a child of the Employee, (iii) by reason of the placement of a child in connection with the adoption of the child by the Employee, or (iv) for purposes of caring for the child during the period following such birth or placement for adoption shall be credited with (A) the number of hours that normally would have been credited to such Employee but for such absence or (B), if such normal work hours are not known, eight Hours of Service for each normal work day during such absence. The credit provided to an Employee under this paragraph shall be reduced by each Hour of Service credited to the Employee during, such absence under subsection (1), (2), or (3) of this section. An Employee may be credited under this paragraph with no more than 501 Hours of Service for any such absence. An Employee shall be credited with Hours of Service under this paragraph in the Plan Year during which the absence begins, unless in such Plan Year such Employee has already completed at least one (1) Hour of Service, in which case the Employee shall be credited with Hours of Service under this paragraph only in the following Plan Year. An Employee will not be credited with Hours of Service under this paragraph unless the absence is specifically for one or more of the reasons permitted under this paragraph and the Employee so certifies to the Trustees in writing.

Q. Key Employee

“Key Employee” means any Participant described in Section 416(i)(1) of the Code which is hereby incorporated by this reference.

R. Normal Retirement Age

“Normal Retirement Age” means age 62.

S. Participant

“Participant” means an Employee who is eligible to be and becomes a Participant in the Plan pursuant to Article III.

T. Plan

“Plan” means the provisions herein set forth, as they may be amended from time to time.

U. Plan Year

“Plan Year” shall mean the period of twelve consecutive months, beginning on May 1 of each year and ending on April 30 of the following year.

V. Top-Heavy

“Top-Heavy” shall have the meaning set forth in Article XIII.

W. Trust Agreement

“Trust Agreement” means the Southern California Bricklayers Pension Fund Agreement and Declaration of Trust, as of May 1, 2008, as that instrument may from time to time be amended.

X. Trustees

“Trustees” means the Board of Trustees as appointed or elected under the Trust Agreement and as constituted from time to time in accordance with the provisions of the Trust Agreement.

Y. Trust Fund

“Trust Fund” means the trust fund created and established by the Trust Agreement.

Z. Union

“Union” means (i) the Bricklayers and Allied Craftsmen Local Union No. 4-A (Orange County), 4-B (San Bernardino and Riverside County), 4-H (Los Angeles County) any other Local Unions of the International Union of Bricklayers and Allied Craftsmen which have a Collective Bargaining Agreement in effect with an Employer and have agreed to be bound by the terms and provisions of the Trust Agreement.

AA. Year of Service

“Year of Service” means a Plan Year in which an Employee is credited with not less than one (1) Hour of Service.

BB. Single Life Annuity

A “Single Life Annuity” means the payment of level monthly payments to the Participant beginning with the Participant’s “Annuity Starting Date” and ceasing with the Participant’s death, with the last payment due for the month of the Participant’s death. This is accomplished by the purchase of a single premium non-transferable contract from a legal reserve life insurance company.

#### CC. Joint and Survivor Annuity

A "Joint and Survivor Annuity" means the payment of level monthly "joint" payments to the Participant beginning with the Participant's "Annuity Starting Date" and continuing to the surviving spouse of the Participant in level monthly "survivor" amounts equal to 50% of the "joint" payment. The last "joint" payment is due for the month of the Participant's death. This is accomplished by the purchase of a single premium non-transferable contract from a legal reserve life insurance company; provided the spouse survives the Participant, the last "survivor" payment is due for the month of the spouse's death.

#### DD. Qualified Military Service

Notwithstanding any provision to the contrary, the benefits of an individual who was absent from Covered Employment by reason of, and who returns to Covered Employment from, a period of Qualified Military Service in the uniformed services of the United States, shall include contributions (but not investment income or forfeitures) consistent with and to the extent required by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), as amended, and Section 414(u) of the Internal Revenue Code, as amended. Qualified Military Service will be counted for purposes of crediting a Participant's Individual Account with contributions provided the following conditions are satisfied.

- (1) An individual must have re-employment rights under USERRA in order for his period of Qualified Military Service to be recognized.
- (2) After discharge from Qualified Military Service, the individual must return to work in Covered Employment within the time required by USERRA in order for any period of Qualified Military Service to be recognized.
- (3) No more than five years of Qualified Military Service may be recognized for any purpose except as required by law.
- (4) The Board of Trustees determines, in accordance with USERRA, that an individual is entitled to a period of Qualified Military Service.

In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in section 414(u) of the Code), the Participant's Beneficiary is entitled to any additional benefits provided under the Plan as if the Participant had resumed employment and then terminated employment on account of death. Moreover, the Plan will credit the Participant's qualified military service as service, as though the Participant had resumed employment under USERRA immediately prior to the Participant's death.

#### EE. Qualified Optional Survivor Annuity

A "Qualified Optional Survivor Annuity" means the payment of level monthly "joint" payments to the Participant beginning with the Participant's "Annuity Start Date" and continuing to the surviving spouse in level monthly "survivor" amounts equal to 75% of the joint payment. The last "joint" payment is due for the month of the Participant's death; provided the spouse survives the Participant, the last "survivor" payment is due for the month of the spouse's death. This is accomplished by the purchase of a non-transferable contract from a legal reserve life insurance company.

## **Article II. Plan Administration**

The Trustees, on behalf of the Participants, their Beneficiaries, and all other persons interested in the Plan, shall enforce the Plan in accordance with the terms hereof and shall have all powers necessary for that purpose, including, without limiting the generality of the foregoing, the power:

- A. To determine all questions relating to the eligibility of Employees to become Participants;
- B. To compute the amount and kind of benefits payable to Participants or Beneficiaries;
- C. To employ or engage such agents and employees, investment counsel, legal counsel, and accountants, and to procure or obtain such supplies and services, as the Trustees may require in carrying out the provisions of this Plan;
- D. To make and publish such uniform and nondiscriminatory rules for administration of the Plan as are not inconsistent with the provisions of this instrument; and
- E. To interpret this instrument, and the interpretations of the Trustees shall be binding upon the Employers, all Participants, Beneficiaries, all retired or terminated Participants, the successors, assigns, heirs and personal representatives, of all of them, and all other persons directly or indirectly interested in the Plan.

The Trustees are the fiduciaries under this Plan who have the authority to control and manage the operation and administration of the Plan. As such, each Trustee is a “named fiduciary” as defined in Section 402(a) of ERISA and a “plan administrator” for purposes of Section 3(16) of ERISA and Section 414(g) of the Code.

### **Article III. Participation**

- A. Every Employee who is employed by an Employer in Covered Employment as of the Effective Date shall become a Participant in the Plan as of the Effective Date. Every other Employee shall become a Participant as of the date he completes one Hour of Service in Covered Employment.
- B. Every Employee who becomes a Participant shall continue to participate in the Plan until his participation is terminated by reason of retirement, death, total disability, or a 24 consecutive month period in which the Participant has completed no Hours of Service, excluding any period of time served in Qualified Military Service. An Employee whose participation in the Plan terminates and who is later re-employed by an Employer shall become a Participant as of his date of reemployment.
- C. Participation in the Plan shall not be deemed to have been interrupted in the case of Qualified Military Service; or in the case of jury duty or a leave of absence approved by an Employer for a period of not more than one (1) year, provided that the Employee returns to the employ of an Employer within ninety (90) days after the termination of such jury duty or leave of absence.
- D. Reciprocity. If an Employee participates in the Plan in accordance with the International Reciprocal Agreement for Bricklayers and Allied Craftworkers Defined Contribution and Defined Pension Plans (and elects to have his contributions transferred) and if contribution rate at the Participating Trust (as defined in the Reciprocity Agreement) is less than the contribution rate under the Collective Bargaining Agreement, the Plan will transfer contributions at the contribution rate in effect at the Participating Trust. Any excess contributions for such Employee shall be credited to his Individual Account in accordance with Article III A of this Plan and such Employee shall be 100% vested in his Individual Account at all times.

If an Employee is working in the area covered by this Plan and transfers contributions to another Plan, he shall be considered a Participant in this Plan and shall not be subject to the provisions of Article VIII, Section G. No excess contributions shall be withheld if the Participating Trust maintains a defined contribution plan, all contributions will be transferred even if the contribution rate at the Participating Trust is less than that going into the Southern California Bricklayers Pension Fund.

#### **Article IV. Contributions**

- A. As of the dates established from time to time pursuant to Collective Bargaining Agreements, each Employer shall contribute to the Trust Fund such amounts as are established pursuant to such Collective Bargaining Agreements. All contributions shall be allocated to the respective Participant's Account.

In addition, a Participant's Individual Account shall be credited with contributions (but not investment income or forfeitures) for every week of Qualified Military Service based on the average amount of hours worked by the Participant under this Plan during the 12-month period of employment immediately prior to the period of Qualified Military Service (or if shorter, the period of employment immediately preceding the period of Qualified Military Service). The hourly rate of contribution shall be equal to the rate of contributions the individual would have earned during the period in which the Qualified Military Service was performed.

- B. In the case of any Employer contribution that is made because of a mistake of fact, the Employer may direct the return to it of such contribution within six months after the plan administrator determines that the contributions were made by such a mistake.
- C. Contributions by Employers are conditioned upon the deductibility of each such contribution under Section 404 of the Code, and an Employer may direct the return to it of any contribution (to the extent a deduction therefore is disallowed) within one year after the disallowance.

## **Article V. Allocation of Employer Contributions**

- A. For purposes of allocating Employer contributions, the Trustees shall establish and maintain a separate account ("Participant Account") in the name of each Participant and former Participant. Employer contributions shall be allocated as set forth in the Collective Bargaining Agreements then in effect.
- B. The amount allocated to the account of a Participant hereunder shall not vest in him any right, title, or interest in or to any assets of the Trust Fund except at the times and upon the terms and conditions expressly set forth in this instrument.

### **C. Maximum Limitations**

Notwithstanding any other provision to the contrary, the annual additions to which an Employee shall be entitled hereunder shall not exceed the maximum amount permitted under Code Section 415 and the final Treasury Regulations promulgated thereunder, the provisions of which are incorporated herein by reference. In accordance with Treasury Regulation Section 1.415(a)-1(d)(3), if no language is set forth in the provisions of this Plan, and a default rule exists, then the default rule applies. The following subsections clarify the application of Code Section 415 and the final Treasury regulations to this Plan:

- (1) "Limitation Year" means the calendar year.
- (2) "Compensation" means, for purposes of Code Section 415, "compensation" as defined in Treasury Regulations Sections 1.415(c)-2(b) and 1.415(c)-2(c) actually paid and includable in gross income for the limitation year, including regular pay paid after severance from employment as permitted under Treasury Regulation Section 1.415(c)-2(e)(3)(i)-(ii).
- (3) Cost of Living Adjustments. The maximum dollar limitation under Code Section 415(c)(1)(A) is adjusted annually as provided for under Treasury Regulation Section 1.415(a)-1(d)(3)(v). The limitations will be adjusted in accordance with Treasury Regulation Section 1.415(d)-1(b).
- (4) Distribution of Excess Amounts Caused by This Plan. Notwithstanding any provision of this Plan to the contrary, if the annual additions are exceeded for any Participant, then this Plan may only correct such excess in accordance with the Employee Plans Compliance Resolution System as set forth in Revenue Procedure 2008-50 or any superseding guidance, including, but not limited to, the preamble of the final Code Section 415 Treasury Regulations.
- (5) Plan Aggregation. No other multiemployer plan shall be aggregated with this Plan for purposes of applying the limits of Code Section 415. For purposes of applying the limitations of Code Section 415, all defined contribution plans (without regard to whether a plan has been terminated) ever maintained by a contributing Employer (or a "predecessor employer") under which the Participant receives annual additions are treated as a single defined contribution plan. The "Employer"



means an employer that contributes to this Plan and all members of a controlled group or an affiliated service group that includes the Employer (within the meaning of Code Section 414(b), (c), (m) or (o)), except that for purposes of this section, the determination shall be made by applying Code Section 415(h), and shall take into account tax exempt organizations under Treasury Regulation Section 1.414(c)-5, as modified by Treasury Regulation Section 1.415(a)-1(f)(1). The Trustees shall be entitled to rely on a representation by an Employer that the benefits payable to an Employee participating under this Plan B to the extent attributable to employment with the Employer, do not, together with any other pension benefits payable to him under any other plan maintained by the Employer (and to the extent attributable to employment with that Employer), exceed the limits of Code Section 415.

## **Article VI. Trust Agreement**

- A. Each Employer shall make its contributions in trust for use in accordance with the purposes of this Plan, under the Trust Agreement. The Trust Agreement is an integral part of the Plan, and all references herein to the Plan include reference to the Trust Agreement. The Trust Agreement may from time to time be amended in the manner therein provided.
- B. In the event of any conflict between the provisions of this Plan and the provisions of the Trust Agreement regarding the duties and obligations of the Trustees, the Trust Agreement shall control.

## **Article VII. Adjustments for Revaluations**

- A. For the purpose of reflecting the effect of any valuation of the Trust Fund pursuant to the provisions of the Trust Agreement, on each valuation date all Participant Accounts shall be credited with contributions owed under the Collective Bargaining Agreement on behalf of the Participant since the prior valuation date. In addition, all Participant Accounts (except accounts of those Employees who have become Participants as of the date of the current valuation) shall be adjusted to reflect the effect of increases or decreases of the fair market value of the Trust Fund, dividends, interest, or other income or profit received and losses. Such adjustment shall be made by debiting or crediting each Participant Account with that portion of the net increase or decrease in the value of the Trust Fund which value of each Participant Account bears to the total value of all the Participants' Accounts immediately before giving effect to said adjustment. The expense of investing funds, e.g. charges of investing the monies and a third party service of monitoring the investments shall also be charged on a proportionate basis based on the size of the Participant Account as compared to the total assets invested in the Trust Fund. All other expenses, such as the cost of the administrator, the auditor, the plan consultant and the legal counsel, shall be charged to the Participant's Account on a per capita basis.
- B. Such adjustments shall be made by debiting or crediting each Participant Account on the date of valuation. If a Participant's Account has not had any Employer Hours of Service for twenty four (24) consecutive months, but the Participant's Account has not been forfeited in accordance with Article VIII, Section G hereof, no gross investment yield shall be allocated to said account for that Fiscal Year.
- C. Calculation of Participant Accounts at time of retirement, withdrawal or partial withdrawal
- When an application for retirement or withdrawal has been approved under Article IX of these Rules and Regulations, the amount paid shall be the value of the Participant's account as of the last valuation date for which a valuation has been completed. The payment will be subject to withholding taxes, unless a tax deferred roll-over is selected
- D. For purposes of this Article, the term "valuation date" shall mean April 30 of any Plan Year. In addition, it shall mean July 31, October 31, and January 31 of any Plan Year beginning after April 30, 2011.

## Article VIII. Benefits

- A. Retirement Benefit. A Participant who retires on his Early Retirement Date or at Normal Retirement Age or on any date between such dates shall be entitled to receive the retirement benefit obtainable from the full balance required to be credited to his Participant Account pursuant to the terms of Article VII hereof, as of the preceding valuation date, plus any Employer contribution required to be allocated to his Participant Account for the Plan Year in which he retires. Such retirement benefit shall be paid in the manner set forth in Article IX.
- B. Deferred Retirement Benefit. When a Participant continues in Covered Employment after Normal Retirement Age, such Participant Account shall continue to participate in Employer contributions in accordance with the applicable Collective Bargaining Agreements from time to time in effect, and in adjustments of the Trust Fund, until he actually retires. The deferred retirement benefit of a Participant shall be the retirement benefit which is obtainable from the full balance required to be credited to his Participant Account as of the valuation date preceding his actual retirement date, plus any Employer contribution required to be allocated to his Participant Account for the Plan Year in which he actually retires. A Participant's deferred retirement benefit shall be paid in the manner set forth in Article IX.
- C. Death Benefit. Subject to Article IX, Section C, upon the death of a Participant prior to his Annuity Starting Date, his Beneficiary or Beneficiaries, determined as provided in Article X, shall be entitled to receive as a death benefit the balance of such Participant's account as of the valuation made on the Anniversary Date preceding his death, plus any Employer contribution required to be allocated to his Participant Account for the year of death. Payment of the death benefit shall be made in the manner set forth in Article IX. The death benefit, if any, payable by reason of the death of a retired Participant shall be governed by the arrangement made pursuant to Article IX hereof with respect to payment of the retirement benefit of such Participant.
- D. Disability Benefits. When a Participant becomes totally disabled, he shall be entitled to receive the disability benefit obtainable from the full balance required to be credited to his Participant Account pursuant to the terms of Article VII hereof, as of the preceding valuation date, plus any Employer contribution required to be allocated to his Participant Account for the Plan Year in which he becomes disabled. A Participant shall be deemed totally disabled upon determination by the Social Security Administration that he is entitled to a Social Security Disability Benefit in connection with his Old Age Survivors and Disability Insurance coverage. The Trustees may at any time, or from time to time, require evidence of continued entitlement to such Social Security Disability Benefits.
- E. Leave of Absence. If a Participant does not return to an Employer's employ within ninety (90) days after his leave of absence expires, or if he fails to remain in the Employer's employ for more than thirty (30) days after he returns from a leave of absence, then the participation of such Participant in the Plan shall terminate as of the expiration of his, leave of absence, and the termination benefit which he shall be entitled

to receive under Article IX hereof shall be determined under Section F of this Article VIII.

- F. Termination Benefit. If a Participant's participation in the Plan is terminated for any reason other than his normal retirement, deferred retirement, death, or disability or if a Participant has a Break in Service, he shall cease to be a Participant in this Plan. The balance in his Participant Account shall be determined under the terms of Section C of Article VII, and he shall be entitled to receive the full balance of his Participant Account at the time and in the manner provided in Article IX.

G. Failure to apply for Individual Account

- (1) If a Participant, whose participation is terminated, fails to make a written application for payment of his individual account (as Provided in Article IX, Section A), the Board of Trustees shall write to the last known address of such Participant and, if no application is received by the Board of Trustees within six (6) years after said Employee's participation in the Fund is terminated, his Individual Account shall be forfeited and applied toward the administrative expenses incurred by the Plan. It is the Participant's responsibility to keep the Board of Trustees apprised of any changes in his or her mailing address; any letter sent by the Board of Trustees advising the Participant that he or she is eligible for Termination Benefits will be deemed to have conclusively received the Participant of the Board of Trustees, or their delegate, uses the last known address of the Participant for such notice.
- (2) If an Employee whose participation in the Fund is terminated, makes the required application but on the date that payment of his Individual Account is made, the Board of Trustees is unable to locate him, the Trustees shall attempt to locate such former Employee but if unable to do so within (6) years of the date on which the payment of the Individual Account was to have been made, his Individual Account shall be forfeited and applied toward the administrative expenses incurred by the Plan.
- (3) If an Individual Account of a former Employee has been allocated in accordance with this Section and the former Employee or his designated Beneficiary thereafter makes a written application for his Individual Account, an amount equal to the Individual Account shall be paid to the former Employee or his designated Beneficiary. No investment yield shall be paid on that sum. A benefit which is lost by reason of escheat under applicable state law is not treated as a forfeiture and need not be paid upon subsequent application.

## Article IX. Payment of Benefits

### A. Benefit Payments Generally

- (1) Commencement of Benefits. A Participant who is eligible to receive benefits under this Plan and who makes application in accordance with the rules of this Plan shall be entitled to receive payment within a reasonable time after meeting such requirements.

However in no event, unless the Participant elects otherwise, shall a payment of benefits begin later than the 60th day after the later of the close of the Plan Year in which:

- (a) The Participant attains Normal Retirement Age; or
  - (b) The Participant's employment with an Employer is terminated and he retires; provided, however, that no such election filed on or after May 1, 1989 may postpone the commencement of benefits to a date later than the Participant's Required Beginning Date.
- (2) Required Beginning Date. The Participant's Required Beginning Date shall be April 1 of the calendar year following the calendar year in which the Participant attains age 70½.
- (3) Automatic Form of Payment.
- (a) Married Participant. In the case of a Participant who is married on his Annuity Starting Date, benefits hereunder shall automatically be paid in the form of a joint and 50% survivor annuity over the joint lifetimes of the Participant and his spouse, unless the Participant, with the consent of his spouse (given in a manner described in Section 417(a)(2) of the Code), has elected to the contrary in the manner prescribed by the Trustees prior to the expiration of the applicable Election Period, pursuant to Section E hereof.
  - (b) Unmarried Participant. In the case of a Participant who is not married on his Annuity Starting Date, benefits hereunder shall automatically be paid in the form of a life annuity, unless the Participant has elected to the contrary in the manner prescribed by the Trustees prior to the expiration of the applicable Election Period, pursuant to Section E hereof.
- (4) Optional Forms of Payment. A Participant who has properly rejected the automatic form of payment under subsection A (3) above, may elect to receive payment in one of the following forms:
- (a) A single lump sum payment, or
  - (b) A single life annuity, or

(c) If the Participant is married, a Qualified Optional Survivor Annuity.

- (5) Lump Sum. If at the time a distribution is to be made to a Participant or a Beneficiary, the present value of the Participant Account does not exceed \$1,000 (\$3,500 effective for distributions prior to May 1, 1998 and \$5,000 effective for distributions from May 1, 1998 through March 27, 2005), then the Trustees shall pay such benefit in a single lump sum and no other form of payment shall be available.

If the present value of a Participant's Account derived from Employer contributions exceeds \$1,000 (\$3,500 effective for distributions prior to May 1, 1998 and \$5,000 effective for distributions from May 1, 1998 through March 27, 2005), and the accrued benefit is immediately distributable, the Participant and the Participant's spouse (or where either the Participant or the spouse has died, the survivor) must consent to any distribution of such accrued benefit.

An accrued benefit is immediately distributable if any part of the accrued benefit could be distributed to the Participant (or surviving spouse) before the Participant attains (or would have attained if not deceased) Normal Retirement Age.

- B. If distributions to a Participant have commenced and the Participant dies before his entire interest hereunder has been distributed, the remaining portion of such interest, if any, shall be distributed not less rapidly than under the method of distribution in effect as of the date of the Participant's death. If distributions to a Participant have not commenced at the time of the Participant's death, the Participant's entire account shall be distributed not later than five (5) years after the death of the Participant. The preceding sentence shall not apply to the extent (1) the distribution of the Participant's account is made to a Beneficiary over a period not exceeding the life expectancy of such Beneficiary, and distributions commence not later than one year following the date of the Participant's death (or such later date as may be prescribed pursuant to Regulations promulgated by the Secretary of the Treasury), or (2) the Participant's account is distributed to the Participant's surviving spouse, if such distribution commences not later than December 1 of the calendar year in which the Participant would have attained age 70½ and is made over a period not exceeding the life expectancy of such surviving spouse (determined as of the date such payments commence).

If a surviving spouse dies before the Annuity Starting Date of the spousal survivor annuity, the benefit shall be paid to the spouse's designated Beneficiary, or if none, to the person or persons determined in accordance with Article X, provided the Participant did not elect to waive the spousal annuity as provided in Section E.

All survivor benefits shall comply with the limits of Section 401 (a)(9) of the Code and the incidental benefit rule and the regulations proscribed under them, including proposed Treas. Reg. Sections 1.401 (a)(9)-1 and 1.401 (a)(9)-2.

- C. Notwithstanding anything to the contrary contained in Sections A through C above or Article VIII, Section C, effective May 1, 2000, in the case of a Participant who is married on the date of his death, 100% of such Participant's account shall be distributed to his surviving spouse in the form of an annuity for the life of the surviving spouse, calling for equal monthly payments commencing, at the direction of the surviving spouse, within a reasonable time after the Participant's death but not later than the Participant's Normal Retirement Age.
- D. For purposes of the joint and survivor annuity or life annuity payable pursuant to Section A.3, "Election Period" shall mean the period not more than one hundred eighty (180) days prior to the Participant's Annuity Starting Date or less than thirty (30) days after the Participant and spouse are provided a detailed explanation of the amount payable under the automatic form of payment and a financial comparison of the other payment options.

The Trustees shall provide each Participant with written notification of the availability of an election to waive the joint and survivor annuity. Such notification shall be provided, not later than nine months prior to the beginning of the Election Period. In such notification, the Trustees shall also provide to the Participant, in non-technical language, an explanation of (i) the terms and conditions of the joint and survivor annuity, (ii) the Participant's right to make, and the general effect of, an election to waive such annuity form of benefit, (iii) the rights of the Participant's spouse concerning such election, (iv) a general description of the material features and an explanation of the relative values of the optional forms of benefit available under the Plan in a manner that would satisfy the notice requirements of IRC 417(a)(3) and Treas. Reg. 1.417(a)(3)-1, and (v) the Participant's right to make, and the effect of, a revocation of a previous election to waive such annuity. In such notification, the Trustees shall also inform the Participant that, within 60 days after the date of personal delivery or mailing of the notification, the Participant may request additional information regarding the financial effect of an election to waive such annuity and that the Trustees, within 30 days after the date of such request, shall furnish a written explanation in non-technical language of the financial effect of such election upon the particular Participant based on the Participant's account balance as of the most recent valuation date preceding the Participant's request. The applicable Election Period shall not expire prior to the 60th calendar day following the day the requested additional information is personally delivered or mailed to the Participant.

A Participant may revoke an election in writing and, with the consent of his spouse (given in a manner described in Section 417(a) (2) of the Code), may make a new election at any time prior to the expiration of the applicable Election Period. Any election or revocation of an election made after the applicable Election Period by a Participant who has not received the information required to be given to him by this Section E within the period specified therefore will be deemed to have been made on the last day of the applicable Election Period.

Any written election, rejection or revocation (including any change of a previous choice) made shall not take effect unless (1) the spouse of the Participant consents in writing to such election, (2) such election designates a Beneficiary (or a form of benefits) 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 (3) the spouse's consent acknowledges the effect of such election and is witnessed by a plan representative or notary public. Notwithstanding the preceding sentence, no spousal consent shall be required if it is established to the satisfaction of the Trustees that spousal consent may not be obtained because there is no spouse, because the spouse cannot be located, or because of such other circumstances as the Internal Revenue Service may by regulations prescribe.

The Trustees shall be entitled to rely on a written representation last filed by the Participant before the Annuity Starting Date of his pension as to whether he or she is married. If such representation later proves to be false, the Trustees may adjust for any excess benefits paid as the result of the misrepresentation. This reliance shall include the right to deny benefits to a person claiming to be the legal spouse of a Participant in contradiction to the aforementioned representation of the Participant.

Election or rejection may not be made or altered after a pension has commenced (including commencement but for administrative delay). Any written election or revocation (including any change of a previous choice) made under this Article shall bear the notarized signatures of both the Participant and his spouse.

For distributions on or after May 1, 2000, a Participant may ask that his or her benefits commence less than 30 days after the written explanation of the normal form of retirement benefit was provided to him or her. This request will be granted as long as the Participant is (1) informed of the right to take at least 30 days to consider whether to waive the normal form of retirement benefit and consents to receive any other benefit for which the Participant is then eligible, (2) the Participant is given at least seven days to change his/her mind and cancel an election to waive the normal form of retirement benefit, and (3) distribution of benefits does not begin until after the seven-day period expires.

- E. If the Trustees approve the deferral of payment of a Participant's benefits hereunder, the fully vested unpaid balance of such Participant's account may be segregated and invested in a fixed income account, such as a saving account. Any investments segregated and invested in such an account, together with earnings thereon, shall be accounted for separately, for the benefit of such Participant or Beneficiary, and shall not participate in the periodic revaluations of the Trust Fund. Payment of benefits from such separate investment shall continue to be made at such time and in such amounts as the Participant shall have determined as herein provided. However, any person who becomes entitled to receive benefits hereunder, whether as a Participant or as the Beneficiary of a deceased Participant, may, at the time his right to receive such benefit arises, request the Trustees to (a) hold the vested, unpaid balance of his account as apart of the Trust Fund, and (b) as provided in Article VII herein, adjust the same for all gains and losses realized by the Trust Fund during each valuation period except Employer contributions. Any such request must be given in writing, in such form, and at such time as the Trustees shall determine.

- F. Application for Claim or Benefits. Every Participant shall furnish, at the request of the Trustees, any information or proof reasonably required to determine his benefit rights. An application for benefits hereunder shall be made in writing, on a form, and in such manner as may be prescribed by the Trustees, and shall contain such information as the Trustees may deem necessary. Such application shall be a condition for payment of benefits hereunder and must be filed with the Trustees prior to payment of any benefits hereunder. If an application for a Disability Benefit is filed within 60 days after a determination by the Social Security Administration of entitlement to a Social Security Disability benefit, such application shall be considered timely, and payment of the Disability Benefit shall commence as of the effective date of such award.

If a person willfully makes a false statement material to an application or furnishes fraudulent information or proof, benefits under this Plan may be denied, suspended, or discontinued. The Trustees shall have the right to recover (by recoupment, offset or by other lawful means) any benefit payments made in reliance on any false or fraudulent statement, information or proof submitted by a Participant.

When given discretionary powers, the Trustees shall exercise such powers in a uniform and non-discriminatory manner and shall be the sole judges of the standard of proof required in any case. The Trustees' application and interpretation of this Plan and other decisions of the Trustees shall be final and binding on all parties.

No Participant, Beneficiary, or other person shall have any right or claim to benefits under this Plan, other than as specified in the Plan. If any person shall have a dispute with the Trustees as to eligibility, type, amount, or duration of such benefits, the dispute shall be resolved by the Trustees under the Plan, and the Trustees' decision concerning such dispute shall be final and binding upon all parties thereto.

- G. Who May File a Claim. A Participant or Beneficiary, or an authorized representative of a Participant or Beneficiary (collectively referred to in this Section as the "claimant"), may file a claim for benefits or appeal a denied claim. A Participant or Beneficiary may be required to furnish documentation showing that an individual is, in fact, an authorized representative.
- H. Failure to Follow Procedures. If the Plan fails to follow these claims and appeals procedures, and it does not correct the error without prejudice to the claimant, then the claimant will be deemed to have exhausted the administrative remedies available under the Plan and will be entitled to pursue any available remedies under ERISA Section 502(a).
- I. Filing of a Claim Form. All claims for benefits shall be filed in writing on forms provided by the Trustees, which will be available from the Plan's administrative office and such other places as may from time to time be designated by the Trustees. A claim is considered to be filed as soon as it is received by the Plan at its administrative office or such other location as may be indicated on the claim form, regardless of whether it contains all the information necessary to render a decision. If the form is not substantially

complete, or if required documentation has not been furnished, the claimant will be notified as soon as reasonably possible of what is necessary to complete the claim.

J. Initial Benefit Determination. The Plan shall approve or deny the claim within a reasonable time not to exceed ninety (90) days' after the claim is filed, unless special circumstances require an extension of time for processing the claim. If such an extension is required, the claimant shall be notified in writing within the initial 90-day period of the special circumstances-requiring the extension of time and the date by which the Trustees expect to render a decision, which will not be more than 180 days from the date the claim was filed.

K. Notice of Adverse Benefit Determination. If the claim is wholly or partially denied, written notice of denial will be mailed to the claimant within the time permitted for review in accordance with paragraph J above. The notice shall set forth, in language calculated to be understood by the claimant:

- (1) The specific reason or reasons for the denial;
- (2) Reference to specific Plan provisions on which the denial is based;
- (3) A description of any additional material or information necessary to perfect the claim and an explanation of why such material or information is necessary; and
- (4) A description of the Plan's procedures to be followed to appeal the denial of a claim and the time limits applicable to such procedure, including a statement of the claimant's right to bring a civil action under ERISA Section 502(a) following a denial of the claim on appeal.

L. Appeals Procedure. If a claim has been denied, the claimant may ask for the denial to be reviewed on appeal under the following procedures.

- (1) Application for Review. The claimant must file a written request for an appeal with the Plan's administrative office within sixty (60) days after the claimant receives the written denial notice. The Trustees may consider a late application if it concludes the delay in filing was for reasonable cause. An appeal is considered to be filed when it is received by the Plan's administrative office or other designated location, regardless of whether it contains all the information necessary to render a decision.
- (2) Review Procedure. When an application for an appeal is received, the claim and its denial shall receive a full and fair review by the Trustees or any committee to which it delegates this function.

As part of the review procedure, the claimant shall be entitled to submit written comments, documents, records, and other information relevant to the claimant's claim for benefits. The claimant shall be provided 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. The review procedure

will also 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 decision on the claim. The claimant shall have no right to appear personally before the Trustees or committee unless the Trustees or committee concludes that such an appearance would be of value in enabling it to perform its obligations hereunder.

- (3) Notice of Decision on Review. If a claim is wholly or partially denied on review, the claimant shall receive a written notice of denial as follows:

- (a) Content of Notice. The notice of denial shall contain the following, written in a manner calculated to be understood by the claimant:

- (i) The specific reason or reasons for the denial on review;
- (ii) Specific references to the pertinent Plan provisions on which the decision was based;
- (iii) 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; and
- (iv) A statement notifying the claimant of the right to file suit under Section 502(a) of ERISA,

- (b) Time of Notice. The period of time within which a decision on review is required to be made shall begin at the time an appeal is filed in accordance with the reasonable procedures of the Plan, without regard to whether all the information necessary to make a decision on review accompanies the filing. The decision on review shall be made no later than the date of the first Trustees or committee meeting which occurs at least 30-days after the appeal is filed, unless special circumstances require an extension of time for processing. If such an extension is required, the claimant shall be notified in writing, prior to the commencement of the extension, of the special circumstances requiring the extension of time and the date by which the decision will be rendered, which shall be no later than the third regular meeting following the date the appeal was filed. If the reason for taking the extension is to obtain additional information from a claimant, the decision on review will be made by the later of: (1) the third regular meeting following the date the appeal was filed; or (2) the first regular meeting that is at least 30 days after the claimant responds. If, after a reasonable period of time, but not less than 90 days, the claimant has not responded to a request for additional information, the Trustees may decide the appeal, provided the claimant is notified in writing at least 60 days before the decision on review is made that such decision will be made

regardless of whether the claimant responds. The claimant shall be notified of the decision on review within five (5) days after it is made.

## **Article X. Designation of Beneficiaries**

- A. Every Participant may designate a Beneficiary or Beneficiaries and successor Beneficiaries to receive any death benefits provided herein, in the manner specified by the Trustees. However, in the case of a married Participant no one other than such Participant's spouse shall be designated as Beneficiary of the Participant for purposes of receiving any pre-retirement survivor benefits. In the case of a married Participant no one other than such Participant's spouse shall be designated as Beneficiary without the consent of such spouse for purposes of receiving any joint and survivor benefits (given in manner described in Section 417(a)(2) of the Code). Only Beneficiaries so designated will be recognized by the Trustees as entitled to benefits that may become payable hereunder, except in the absence of any such designation. Such designation may be changed from time to time by an unmarried Participant by filing a new designation with the Trustees in such form as they may prescribe.
- B. If the Participant shall fail to designate a Beneficiary, the Trustees shall be empowered to designate the Beneficiaries on his behalf, but only from among the following, if living, in the order named; the spouse, children, parents, brothers and sisters, nephews and nieces, or estate of the Participant.
- C. Limitations on the rights of Participants shall apply to their Beneficiaries, and no Beneficiary shall have any greater right or interest hereunder than the Participant through whom the Beneficiary claims, except for death benefits.
- D. Notwithstanding the foregoing, any beneficiary designation made before the date a Participant becomes married shall automatically be void unless, following the marriage, the Participant re-designates such beneficiary for purposes of receiving a joint and survivor annuity with spousal consent in the manner described in Section 417(a)(2) of the Code.
- E. Effect of Qualified Domestic Relations Order. The rights of a prior spouse or other family member to any share of a Participant's benefit, as set forth in a Qualified Domestic Relations Order within the meaning of Section 414(p) of the Code, shall take precedence over any claims of the Beneficiary or other person entitled to benefits under this Plan at the time of the Participant's death.

## **Article XI. Amendment and Termination**

- A. This Plan may be amended at any time by the Trustees, consistent with the provisions of the Agreement and Declaration of Trust. However, no amendment may decrease the accrued benefit of any Participant, except:
  - (1) As necessary to establish or maintain the qualification of the Plan or the Trust Fund under the Code or to maintain compliance by the Plan or the Trust Fund with the requirements of ERISA; or
  - (2) If the amendment meets the requirements of Section 302(c)(8) of ERISA and Section 412(c)(8) of the Code, and the Secretary of Labor has been notified of such and has either approved of it or, within 90 days after the date on which such notice was filed, failed to disapprove it.
- B. If an Employer's participation in the Trust Fund with respect to a bargaining unit terminates, neither the Trustees nor the Employers who remain nor the Union shall be obligated to make any contributions to the Trust Fund on behalf of such Employee.
- C. The Trustees may discontinue or terminate this Plan in whole or in part. The rights of all affected Participants in their Participant Account hereunder, as of the date of such termination, partial termination, or discontinuance, shall be fully vested and non-forfeitable.

## **Article XII. Miscellaneous**

- A. In the event that this Plan merges or consolidates with, or transfers its assets or liabilities to any other qualified plan of deferred compensation, no Participant herein shall, solely on account of such merger, consolidation, or transfer, be entitled to a benefit on the date following such event which is less than the benefit to which he was entitled on the date preceding such event. For purposes of this Section, the benefit to which a Participant is entitled shall be calculated based upon the assumption that Plan termination and distribution of assets occurred on the day as of which the amount of the Participant's benefit is being determined.
- B. Participation in this Plan shall not give to any Employee the right to be retained in an Employer's employ or any right or interest in this Plan other than is herein specifically provided.
- C. Any payment to a Participant or his legal representative or his Beneficiary in accordance with the terms of the Plan and Trust Agreement shall (to the extent thereof) be in full satisfaction of all claims such person may have against the Trustees and the Employers hereunder. The Trustees may require such Participant's legal representative or Beneficiary, as a condition precedent to such payment, to execute a receipt and release therefore in such form as shall be determined by the Trustees.
- D. The headings and subheadings of this instrument are inserted for convenience of reference only and are not to be considered in the construction of this Plan.
- E. In the event it is determined to the satisfaction of the Trustees that a Pensioner or Beneficiary is unable to care for his affairs because of mental or physical incapacity, any payment due may be suspended until a guardian or conservator is appointed for the person and estate of such Pensioner or Beneficiary, and thereafter all payments, including those suspended shall be made to the duly appointed guardian or conservator.
- F. No person other than the Trustees of the Trust Fund shall have any right, title or interest in any of the income, or property of any funds received or held by or for the account of the Trust Funds, and no person shall have any vested right to benefits provided by the Pension Plan except as expressly provided herein.
- G. This Plan may be executed in several counterparts; each and any of them shall be deemed an original, and said counterparts shall constitute but one and the same instrument, which may be sufficiently evidenced by one counterpart.
- H. This instrument creating the Plan shall be construed, administered and governed in all respects under and by the laws of the State of California.
- I. No Employee or Participant, entitled to any benefits under this Pension Plan shall have the right to assign, alienate, transfer, encumber, pledge, mortgage, hypothecate, anticipate, or impair in any manner his legal or beneficial interest, or any interest in assets of the Trust Fund, or benefits of this Pension Plan. Neither the Trust Fund nor any of the



assets thereof, shall be liable for the debts of any Participant entitled to any benefits under this Plan, nor be subject to attachment or execution or process in any court of action or proceeding.

- J. All benefits payable under the Plan shall be paid and provided for solely from the Trust Fund, and the Employers assume no liability or responsibility therefor.
- K. Direct Rollovers. 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. A distributee who has completed no Hours of Service for 24 consecutive months and is eligible to withdraw his or her account balance may elect to rollover his account balance to another qualified pension plan maintained by the Union without satisfying the conditions of Article VIII, (A) through (D) hereof.
- (1) Eligible rollover distribution. An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated Beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); 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); and, effective for distributions after April 30, 1999, a hardship distribution as described in Section 401(k)(2)(b)(i)(iv) of the Internal Revenue Code and in an amount consistent with regulations prescribed by the Secretary of the Treasury.
  - (2) Eligible Retirement Plan. An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, or a qualified trust described in Section 401 (a) of the Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving Spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity,
  - (3) Distributee. A distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving 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 Code, are distributees with regard to the interest of the Spouse or former Spouse. Effective January 1, 2010, "Distributee" shall also include a non-Spouse Beneficiary.

- (4) Direct rollover. A direct rollover is payment by the plan to the eligible Retirement plan specified by the distribute.

L. Transfers from Other Qualified Plans

- (a) A Participant may transfer an Eligible Rollover Distribution, subject to review and acceptance by the Trust Administrator, from a qualified plan [as defined in Code §401 (a)], provided that the amount transferred is an amount equal to the portion of the distribution the Participant received from the other qualified plan and such transfer is made within sixty (60) days following the Participant's receipt of such distribution. For purposes of this Section L, the term "Eligible Rollover Distribution" shall mean a distribution as defined in I.R.C. §402(c)(4), pursuant to Code §401 (a)(31) and regulations thereunder.
- (b) The amounts transferred under subsection (a) above shall be deposited into the Trust Fund and shall be credited to a separate account herein referred to as a "Participant Rollover Account". Such Participant Rollover Account shall be fully vested at all times and shall not be subject to forfeitures for any reason. A Participant Rollover Account shall be established in accordance with this Section I, J, and adjusted for revaluations in accordance with Article VII of the Plan, for each Participant who transfers funds pursuant to this Section L.

- M. Law Applicable. This Plan is intended to comply with the Employee Retirement Income Security Act of 1974 and with the requirement for tax qualification under the Code and all regulations thereunder, and is to be interpreted and applied consistent with that intent.

### **Article XIII. Top-Heavy Provisions**

The Plan will be considered Top-Heavy if, as of the Anniversary Date of the preceding Plan Year, either (1) the value of the Participant Accounts of Participants who are Key Employees exceeds sixty percent (60%) of the value of the Participant Accounts of all Participants (the "60% Test") or (2) the Plan is part of a required aggregation group and the value of the Participant Accounts (plus, in the case of a defined benefit plan, the sum of the present values of the accrued benefits) of the Participants in all plans which are part of such required aggregation group who are Key Employees exceeds sixty (60%) of the value of the Participant Accounts (plus, in the case of a defined benefit plan, the sum of the present values of the accrued benefits) of all Participants in all plans which are part of the required aggregation group. Notwithstanding the above, the Plan shall not be considered Top-Heavy for any Plan Year in which the Plan is a part of a required or permissive aggregation group, if the value of the Participant Accounts (plus, in the case of a defined benefit plan, the sum of the present values of the accrued benefits) of all Participants of all plans in the required or permissive aggregation group who are Key Employees does not exceed sixty percent (60%) of the value of the Participant Accounts (plus, in the case of a defined benefit plan, the sum of the present values of the accrued benefits) of all Participants of all plans which are part of the required or permissive aggregation group. For purposes of this Article, whether the Plan is part of a required or permissive aggregation group and the plans constituting such required or permissive aggregation group shall be determined in accordance with the provisions of Section 416(g)(2) of the Code and the Regulations thereunder; and the determination whether the 60% Test is satisfied shall be made in accordance with the provisions of Section 416(g) of the Code, which is hereby incorporated by this reference.

- A. Minimum Contribution. For any Plan Year in which the Plan is Top-Heavy, the Contributions under Article IV allocated to any non-Key Employee shall not be less than 3% of such Employee's Compensation. In the event the Contributions allocated to each Key Employee's account do not exceed 3% of his or her Compensation, Contributions for non-Key Employees are only required to equal the highest percentage of Compensation, including amounts contributed as a result of a salary reduction agreement, allocated to any Key Employee's account for that Plan Year. The minimum contribution must be made on behalf of all non-Key Employees who are employed on the last day of the Plan Year.

Where this Plan and a defined benefit plan belong to an aggregation group that is determined to be Top-Heavy, the minimum contribution required under this Section shall be increased to 5%.

- B. Maximum Limitations. For any Top-Heavy Plan Year in which the Employer does not make the extra minimum allocation provided below, 1.0 shall replace the 1.25 factor found in the denominators of the defined benefit and defined contribution plan fractions under IRC 415(e).

If this Plan is Top-Heavy but is not Super Top-Heavy, the fractions set forth in IRC 415(e) shall remain unchanged provided the Employer makes an extra minimum allocation for non-Key Employees. The extra allocation (in addition to the minimum

contribution set forth in subsection A shall equal at least 1% of a non-Key Employee's Compensation.

- C. Compensation shall mean Compensation as defined in Article I, Section H except that for purposes of determining whether a Participant is a Key Employee, Compensation shall include amounts contributed by the Employer pursuant to a salary reduction agreement.

## **Article XIV. Amendments To Comply With EGTRAA**

### **A. Purpose and Scope**

The plan amendments set forth in this Article are adopted to reflect certain provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). These amendments are intended to constitute good faith compliance with the requirements of EGTRRA and are to be construed in accordance with EGTRRA and the guidance issued there under. Except as otherwise provided herein, the amendments contained in this Article shall be effective as of the first day of the first Plan Year beginning after December 31, 2001. The provisions of this Article shall supersede the provisions of the Plan to the extent these provisions are inconsistent with the provisions of this Article.

### **B. Limitation on Allocations to an Employee's Account**

- (1) **Effective Date.** This Section shall apply to limitation years beginning after December 31, 2001.
- (2) **Maximum Annual Addition.** The annual addition that may be contributed or allocated to a Participant's account under the Plan for any Limitation Year shall not exceed the lesser of:
  - (a) \$40,000, as adjusted for increases in the cost-of-living under IRC § 415(d), or
  - (b) 100% of the Participant's compensation, within the meaning of IRC § 415(c)(3), for the limitation year.

The compensation limit referred to in paragraph (2)(b) above shall not apply to any contribution for medical benefits after separation from service (within the meaning of IRC §§ 401(h) or 419A(f)(2)) that otherwise is treated as an annual addition.

### **C. Increase in Limit on Compensation Taken into account**

The annual compensation of each Participant taken into account in determining allocations for any Plan Year beginning after December 31, 2001, shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with IRC § 401(a)(17)(B). Annual compensation for this purpose means compensation during the Plan Year or such other consecutive 12-month period over which compensation otherwise 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.

### **D. Direct Rollovers of Plan Distributions**

- (1) **Effective Date.** This Section shall apply to distributions made after December 31, 2001.
- (2) **Modification of Definition of Eligible Retirement Plan.** An "eligible retirement plan" also shall include an annuity contract described in IRC § 403(b) and an eligible plan under IRC § 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political

subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of “eligible retirement plan” also shall apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order.

## **Article XV. Minimum Distribution Requirements**

### **Section 1 General Rules**

- a. Adoption and Effective date of Amendment. This Amendment of the rules and regulations is adopted for purposes of determining minimum distributions for purposes of determining minimum distributions for calendar years beginning January 1, 2003.
- b. Precedence. The requirements of this Minimum Distributions Requirements Section will take precedence over any inconsistent provisions of the Plan. Except to the extent inconsistent with this Section, all distributions options provided does not authorize any distribution options not otherwise provided under the Plan.
- c. Treasury Regulations. 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.
- d. TEFRA Section 242 (b) (2) Elections. Notwithstanding the other provisions of this article, 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.

### **Section 2 Time and Manner of Distributions**

- a. Required Beginning Date. The Participant's entire interest will be distributed to the Participant no later than the required beginning date as defined in Article IX, Section (A) (2) of the Plan.
- b. 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 dies before distributions begin and there is a designated Beneficiary, the Participant's entire interest must be distributed to the designated Beneficiary by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
  2. If the Participant's surviving spouse is the Participant's sole beneficiary, then the Participant's spouse may elect, in lieu of section 2 (b) (1), hereof to have distributions to the surviving spouse 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 70½, if later. The election must be made no later than September 30 of the calendar year in which distribution would be required to begin under this subsection, or if earlier, section 2 (b) (1) hereof.

3. If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, the designated Beneficiary may elect in lieu of section 2 (b) (1) to have distributions begin by December 31 of the calendar year in which the Participant died. The election must be made no later than September 30 of the calendar year in which distribution would be required under this subsection.
4. 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.
5. 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 section 2 (b) will apply as if the surviving spouse were the Participant.

For purposes of this section 2 (b) and unless section 4 hereof, applies, distributions are considered to begin on the Participant's required beginning date. If section 2 (b) (2) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under section 2 (b) (2), if such election is made. 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 to begin to the surviving spouse under Section 2 (b) (2), the date distributions are considered to begin is the date distributions actually commence.

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 sections 3 and 4 of this Article. 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 Treasury Regulations.

### Section 3      Amount of Required Minimum Distribution for Each Calendar Distribution Year.

During the Participant's lifetime, the minimum amount that will be distributed for each calendar year is the lesser of:

- a. 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 the Participant's birthday in the distribution calendar year; or
- b. 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 attained ages as of The Participant's and spouse's birthdays in the distribution calendar year.



- c. Lifetime Required Minimum Distributions continue through year of Participant's death. Required minimum distributions will be determined under this section (3) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

#### Section 4 Required Minimum Distributions after Participant's Death.

##### Death On or After Date Distributions 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 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 life expectancy is calculated using the age of the beneficiary in each 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 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.

##### b. Death Before Date Distributions Begin

1. Participant survived by designated Beneficiary.

Where the Participant dies before the date distributions begin and there is a designated Beneficiary, if the designated Beneficiary has made an election under section 2 (b) or (c), the minimum amount that will be distributed for each distributions 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 by Section 4 (1).

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 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 section 2 (b) (5), this subsection will apply as if the surviving spouse were the Participant.

#### Section 5 Definitions.

Notwithstanding the definitions contained in Article I, which pertain to Article IX of the Plan are as follows:

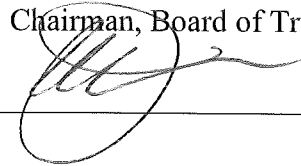
- a. Designated Beneficiary. The individual who is designated as the Beneficiary under Article I, Section D of the Plan is the designated Beneficiary under Section 401 (a) (9) of the Internal Revenue Code and section 1.401 (a) (9)-4, Q & A-1 of the Treasury Regulations.
- b. Distribution Calendar Year. 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 under Section 2 (2). 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 on or before December 31 of that distribution calendar year.
- c. Life expectancy. Life expectancy as computed by use of the Single Life Table in section 1.401 (a) (9) -9 of the Treasury Regulations.
- d. Participant's Account Balance. 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. 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.

#### CERTIFICATION OF ADOPTION

IN WITNESS WHEREOF, the Trustees have approved and adopted these rules and regulations of the Southern California Bricklayers Pension Fund as of May 1, 2015 at a duly convened Trust Meetings held on December 8, 2015

Chairman, Board of Trustees



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Secretary, Board of Trustees



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