

**BAY AREA PAINTERS AND TAPERS ANNUITY PLAN  
RULES AND REGULATIONS**

**RESTATED PLAN**

**(Plan Effective June 1, 2016)**

**BAY AREA PAINTERS AND TAPERS ANNUITY PLAN  
RESTATED PLAN**

**ADOPTION**

In accordance with Section 5.14 of the Bay Area Painters and Tapers Annuity Plan, the Board of Trustees of the Bay Area Painters and Tapers Pension Trust Fund does hereby adopt the Fifth Revision of the Annuity Plan.

**Bay Area Painters and Tapers Pension Trust Fund**

  
\_\_\_\_\_  
**CHAIRMAN**

  
\_\_\_\_\_  
**SECRETARY**

5-12-16  
\_\_\_\_\_  
**DATE**

**BAY AREA PAINTERS AND TAPERS ANNUITY PLAN**

**RESTATED PLAN**

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# BAY AREA PAINTERS AND TAPERS ANNUITY PLAN

## RESTATED PLAN

**This document sets forth the Rules and Regulations of the Annuity Plan as amended effective June 1, 2016, and constitutes an amendment, restatement and continuation of the Plan. This revised Annuity Plan is intended to comply with the Employee Retirement Income Security Act of 1974 and with the requirements for tax qualification under the Internal Revenue Code and all regulations there under, and is to be interpreted and applied consistent with that intent.**

### **ARTICLE 1. DEFINITIONS**

(As used herein)

Unless the context of subject matter otherwise requires, the following definitions shall govern the Plan:

Section 1.01. “Accumulated Share” means the amount payable from an Individual Account as determined in Section 4.01.

Section 1.02. An “Alumni” is a Non-Bargained Employee who benefits under the Plan and is treated as a Collectively Bargained Employee for purpose of meeting federal rules on minimum participation and anti-discrimination. To be an Alumni, the employee must have accrued a benefit under this Plan while being a Collectively Bargained Employee, must be employed by an Employer having a Collective Bargaining Agreement requiring contributions to this Plan, or the Union or the Plan and must participate in the Plan pursuant to a written subscription agreement which provides for the employee to benefit under the Plan.

Section 1.03. “Annuitant” means an Employee who Retirees and who receives a benefit from the Plan.

Section 1.04. “Annuity Plan” or “Plan” means the Bay Area Painters and Tapers Annuity Plan established pursuant to the Collective Bargaining Agreements and the Trust Agreement and any modification, amendment, or extension of said Plan.

Section 1.05. “Annuity Starting Date” for a Participant means the first day of the first calendar month starting after the Participant has fulfilled all of the conditions for benefits including the filing of an application.

Section 1.06. “Association” means the Chapters of the Painting and Decorating Contractors Association or the Northern California Drywall Contractors Association, which are parties signatory to the Trust Agreement.

Section 1.07. “Beneficiary” means a person designated by a Participant pursuant to the Plan or by the terms of the Plan who is or who may become entitled to a benefit under the terms of the Plan.

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

Section 1.09. “Collective Bargaining Agreement” means any contract by and between the Association, or any Employer, and any Local Union or District Council, including any and all extensions, amendments or renewals thereof.

Section 1.10. “Contribution” means the payment made or required to be made to the Annuity Plan by an Employer as determined from time to time by the Board of Trustees. “Contributions” shall also include:

- a. Any supplemental payments made or required to be made to the Annuity Plan by an Employer under the provisions of a Collective Bargaining Agreement or as allowed under Section 1.3 of the Trust Agreement.
- b. Contributions owed for period of Qualified Military Service in the armed forces of the United States consistent with and to the extent required by the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended (USERRA), and Section 414(u) of the Internal Revenue Code, as amended. Contributions owed to the Individual Account of any Participant for a period of Qualified Military Service shall come from investment income or forfeitures, if any, before coming from the Participant’s last employer prior to the period of Qualified Military Service.

A Participant who has reemployment rights under USERRA shall be credited with hours worked equal to the average amount of hours earned by the Participant 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 such period).

The hourly Contribution rate shall be the average of Contributions for all Participants during the Plan Year in which the Qualified Military Service was performed.

- c. The term “Contribution” shall also include Rollovers to the Plan as described in Section 5.12.

Section 1.11. “Covered Employment” means work as an Employee as defined in Section 1.13.

“Continuous Non-Covered Employment” means employment for a Contributing Employer in a job not covered by this Plan which is continuous with a Participant’s Covered Employment with the same Contributing Employer. A period of Non-Covered Employment will be considered to be continuous with Covered Employment only if there is no termination of employment between the periods of Covered and Non-Covered Employment.

Section 1.12. “District Council” means any District Council affiliated with the International Brotherhood of Painters and Allied Trades and which is signatory to the Trust Agreement.

Section 1.13. “Employee” means (a) any person who performs work covered by a Collective Bargaining Agreement between the District Council or Local Union and the Association or other employers, and for whom the Employer is obligated to make Contributions to the Annuity Plan and any person who has previously performed work covered by a Collective Bargaining Agreement between an Employer and a Local Union or District Council and who satisfies the definition of Alumni contained in Section 1.02 and the requirements of Section 2.05; (b) any full time salaried officer or representative of a District Council or Local Union which extends pension coverage to such officers or representatives pursuant to regulations adopted by the Trustees; (c) any employee of the Board of Trustees who, pursuant to resolution of the Board of Trustees, is included under the Annuity Plan; (d) any other persons who, pursuant to resolution of the Board of Trustees, are included under the Annuity Plan. The term “Employee” does not include any self employed person, whether a sole proprietor or a partner.

Solely for purposes of testing for compliance with the non-discrimination rules under Section 401(a)(4) of the Internal Revenue Code, all leased employees as defined in Code Section 414(n) or 415(o) who have performed services for a Contributing Employer on a substantially full-time basis for a period of at least one year shall be treated as employed by a Contributing Employer except to the extent such leased employees are excluded under the safe harbor exemption of Code Section 414(n)(5).

Section 1.14. “Employer” or “Contributing Employer” means any corporation, individual or partnership which has presently in force, or hereafter executes, or is a member of a chapter of the Association or is a member of any employer association, which has executed on its behalf, or is otherwise bound by, a Collective Bargaining Agreement with a Local Union or District Council, which Agreement provides for Contributions into the Annuity Plan, and shall also include any employer who may be authorized by the Trustees to make payments into the Annuity Plan on behalf of particular employees, and any District Council or Local Union which extends pension coverage to its full-time salaried officers and representatives pursuant to regulations adopted by the Board of Trustees, and also the Board of Trustees. An employer shall not be deemed a Contributing Employer simply because it is part of a controlled group of corporations (within the meaning of §1563(a) of the Internal Revenue Code, determined without regard to §1563(a)(4) and (e)(3)(C), or of a trade or business under common control (within the meaning of §414(c) of the Internal Revenue Code), some other part of which is a Contributing Employer.

Section 1.15. “ERISA” means the Employee Retirement Income Security Act of 1974 as amended and any regulations issued pursuant thereto.

Section 1.16. “Fiscal Year” means January 1 to December 31 of any one year.

Section 1.17. “Fund” means the Bay Area Painters and Tapers Pension Trust Fund and shall include all Contributions - designated for the Bay Area Painters and Tapers Annuity Plan - to the Fund created under the Trust Agreement received by the Trustees under the said Collective Bargaining Agreements and any additional Contributions thereto that may hereafter be agreed upon by the parties under these said Collective Bargaining Agreements, or other collective bargaining agreements between the parties, or any modification, amendment, revision or extension thereof, together with all income, increments, earnings and profits therefrom, and all other funds (as defined in the Trust Agreement) received by the Trustees for the uses, purposes and trusts set forth in the Trust Agreement.

Section 1.18. “Highly Compensated Employee” means each highly compensated active employee and highly compensated former employee of a Contributing Employer. Whether an individual is a highly compensated employee is determined separately with respect to each Contributing Employer, based solely on that individual’s compensation from or status with respect to that Contributing Employer. Compensation shall have the same meaning as defined in Section 5.09 b.(1) of the Plan.

A highly compensated active employee is an employee of the Contributing Employer who performs service for the Contributing Employer during the determination year and who:

- a. During the look-back year received compensation from the Contributing Employer in excess of \$80,000 (as adjusted under Section 414(q) of the Internal Revenue Code) and was one of the top 20 percent (20%) of the employees of the Contributing Employer during the look-back year when ranked on the basis of the compensation during that year.
- b. Is a five percent (5%) owner at any time during the look-back year or the determination year.
- c. 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 that Plan Year.

A “highly compensated former employee” is an employee who was a Highly Compensated Employee when he or she separated from service or was a Highly Compensated Employee at any time after attaining age 55. The determination of who is Highly Compensated Employee will be made in accordance with Section 414(q) of the Internal Revenue Code and the regulations thereunder.

Section 1.19. “Hours of Work” means hours for which an Employee, as defined in Section 1.13, is paid, or entitled to payment, for the performance of duties for a Contributing Employer. “Hours of Work” shall also include hours for which back pay, irrespective of mitigation of damages, is awarded or agreed to by an Employer, to the extent that such award or agreement is intended to compensate an Employee for periods during which the Employee would have been engaged in the performance of duties for the Employer.

Section 1.20. “Individual Account” means the account established for each Participant pursuant to Section 3.01 of the Plan.

Section 1.21. “Local Union” means any local union affiliated with District Council Nos. 8 or 16 of the International Brotherhood of Painters and Allied Trades, which local union is a party to a Collective Bargaining Agreement requiring Contributions to the Annuity Plan.

Section 1.22. “Non-Bargained Employee” means an Employee whose participation in the Annuity Plan is not covered by a Collective Bargaining Agreement.

Section 1.23. “Normal Retirement Age” means age 65.

Section 1.24. “Participant” means any Employee who meets the requirements of Article 2 for participation in the Annuity Plan.

Section 1.25. “Plan” means the rules and regulations set forth herein.

Section 1.26. “Qualified Domestic Relations Order” means a domestic relations order which has been determined, pursuant to procedures established by the Board of Trustees, to be a qualified domestic relations order as defined in §206(d) of ERISA.

Section 1.27. “Qualified Military Service.” Notwithstanding any provision in the Plan to the contrary, a Participant's benefits shall include Contributions (but not investment income or forfeitures) owed for periods of Qualified Military Service in the armed forces of the United States consistent with and to the extent required by the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended (USERRA), and Section 414(u) of the Internal Revenue Code, as amended. Exception: However, no Contributions will be provided under subsection b.

a. Qualified Military Service will be counted for purposes of crediting a Participant's Individual Account with Contributions provided the following conditions are satisfied:

- (1) Participant must have reemployment rights under USERRA in order for his period of Qualified Military Service to be recognized.
- (2) The Participant must be an active Participant in the Plan.
- (3) After discharge from Qualified Military Service, the Participant must return to work within the time frame required by USERRA.
- (4) No more than five years of Qualified Military Service may be recognized for any purpose, except as required by law.

b. If a Participant dies on or after January 1, 2007, while performing Qualified Military Service (as defined in Code §414(u)(5), the deceased Participant's Beneficiaries shall be entitled to any additional benefits (other than contributions relating to the period of Qualified Military Service) that would have been provided under the Plan if such Participant had resumed covered employment and then terminated covered employment on account of death. In addition, the period of such Participant's Qualified Military Service shall be treated as vesting service under the Plan.

Section 1.28. “Required Beginning Date” means the April 1 following the calendar year in which the Participant attains age 70½ or, if later, Retires. Effective January 1, 1989, Required Beginning Date means the April 1 following the calendar year in which the Participant attains age 70½, regardless of whether the Participant Retires.

Section 1.29. “Retires” or “Retired” means the complete withdrawal by a Participant from employment for wages or profit as a painter or taper in the geographic area covered by the Annuity Plan.

The date of retirement shall be deemed to be (a) the first day on the month following the sixth consecutive month for which Contributions cease to be required on the Participant's behalf, or (b) the effective date of pension payments from the Bay Area Painters and Tapers Pension Plan or (c) the date of commencement of primary Social Security Benefits, whichever is the earliest date.

Section 1.30. “Spouse” means a person to whom a Participant or Annuitant is legally married.



Section 1.31. “Trust Agreement” means the Trust Agreement dated January 1, 1960, establishing the Bay Area Painters Pension Trust Fund and any modification, amendment, extension or renewal thereof.

Section 1.32. “Valuation Date” means each day when financial markets are open.

## **ARTICLE 2. PARTICIPATION**

**Section 2.01. Purpose.** This Article contains definitions to meet certain requirements of the Employee Retirement Income Security Act of 1974 (otherwise referred to as ERISA). Once an Employee has become a Participant, an Individual Account is established for him to which

Contributions made with respect to his work are credited in accordance with the provisions of Article 3.

**Section 2.02. Participation.** An Employee who works in Covered Employment shall become a Participant in the Plan at such time as he completes his first Hour of Work.

**Section 2.03. Termination of Participation.** A Participant who receives payment of his Accumulated Share or has an annuity purchased for him shall cease to be a Participant as of the date on which the Accumulated Share is paid to him or an annuity is purchased for him in accordance with the provisions of Article 4. A Participant shall also cease to be a Participant when there is no payment to be made to him because there is no balance remaining in his Individual Account after the assessment of the administrative charge.

**Section 2.04. Reinstatement of Participation.** An Employee who has lost his status as a Participant in accordance with Section 2.03 shall again become a Participant at such time as he satisfies the requirements of Section 2.02.

**Section 2.05. Alumni Participation.** An Alumni's Hours of Work will be treated as Hours of Work in Covered Employment for all purposes of Plan in accordance with the following rules:

- a. An Alumni who works for one or more Employers, for the Plan, or for the Union, both under a Collective Bargaining Agreement and as a Non-Bargained Employee during a Plan Year will be treated as working under a Collective Bargaining Agreement for the entire Plan Year if at least half of the Alumni's Hours of Service during the Plan Year were performed under a Collective Bargaining Agreement if the subscription agreement between the Employer and the Plan covering the Alumni, so provides.
- b. An Alumni who worked under a Collective Bargaining Agreement during a Plan Year (or was treated as such under Section 2.05.a.) will be treated as having worked under a Collective Bargaining Agreement with respect to all his Hours of Service for the duration of the Collective Bargaining Agreement in effect during the Plan Year, or if later, until the end of the following Plan Year if the subscription agreement between the Employer and the Plan covering the Alumni, so provides.
- c. An Alumni who was treated as having worked under a Collective Bargaining Agreement pursuant to Section 2.05.b., above, will be treated as working under a Collective Bargaining Agreement, providing the Alumni is working for an Employer, the Plan or the Union, and the subscription agreement between the Plan and his Employer, so provides.
- d. Section 2.05.c. will not apply if more than five percent of the Employees covered by the Plan are Non-Bargained Employees determined without application of Section 2.05.c. Employees treated as working under a Collective Bargaining Agreement under Sections 2.05.a. and b. will be deemed to not be Non-Bargaining Employees for purposes of this Section 2.05.d.

### **ARTICLE 3. INDIVIDUAL ACCOUNTS**

**Section 3.01. Establishment of Accounts.** As of each Valuation Date following the adoption of this Plan, an Individual Account consisting of the amount of Contributions made or required to be made with respect to a Participant's work shall be established for him, unless an Individual Account has already been so established.

**Section 3.02. Individual Account Expense Charge.** The Individual Account Expense Charge will be an equal per capita charge to each account as necessary from time to time to pay the Plan's administrative expenses.

**Section 3.03. Investment Results and Expense.** Account balances are adjusted to reflect actual investment income and expenses ("net income") and investment gains and losses ("net gains").

- a. To the extent invested in individually directed investments, net income and net gains during a period will be allocated according to the results of those investments.
- b. To the extent invested in a pooled investment vehicle directed by the Board, net income and net gains during a period shall be allocated proportionately based on the value of each Participant's account invested in the pooled investment vehicle during a period.
- c. The value of Participant's account invested in a mutual fund will equal the value of a share of such fund multiplied by the number of shares credited to the Participant's account.
- d. The Board, or its designee, shall have the right to re-determine the value of Participants' accounts if a previous allocation or valuation was performed incorrectly for whatever reason.

**Section 3.04. Employer Contributions.** Contributions made or required to be made on behalf of a Participant for Covered Employment will be allocated to his or her own account. In the absence of an investment election by the Participant to the contrary, his or her account will be invested in a qualified default investment arrangement consisting of a pooled investment vehicle directed by the Board which shall:

- a. Apply generally accepted investment theories;
- b. Be diversified so as to minimize the risk of large losses; and
- c. Be designed to provide long-term appreciation and capital preservation through a mix of equity and fixed income exposures consistent with a target level of risk appropriate for Participants as a whole.

Section 3.05. Valuation of Accounts.

- a. The Plan permits Participants to exercise control over assets in their accounts in accordance with ERISA § 404(c).
- b. All accounts will be valued daily when financial markets are open (the “Valuation Dates”).
- c. The value of a Participant’s account on any day shall take into account any contributions or distributions credited or charged to the account and any administrative expenses payable from the account.

Section 3.06. Termination of Account. An Individual Account shall be considered terminated:

- a. On a Valuation Date if the amount in the Individual Account is zero or less;
- b. On the date in which payment of the Accumulated Share is made in full; or
- c. On a Valuation Date if the amount in the Individual Account is greater than zero but less than the Individual Account Expense charge for the Fiscal Year. However, if the Participant returns to Covered Employment during the following Fiscal Year or the Participant requests distribution of his Accumulated Share during the following Fiscal Year his Individual Account shall be reinstated.

Section 3.07. Limitation of Accounts. The Trustees may, at any time, uniformly reduce the amount in each Individual Account so that in no event on any Valuation date shall the total amounts in all Individual Accounts plus amounts established for expenses and reserves at the time, exceed the market value of the total net assets of the Plan and if such an event should occur then all existing Individual Accounts shall automatically be proportionately reduced so that the total of all Individual Accounts plus amounts established for expenses and reserves is not more than the total net assets.

Section 3.08. Restrictions on Vesting. The fact that Individual Accounts are established and valued as of each Valuation Date shall not give any Employee or other person any right, title or interest in the Plan or its assets, or in the Individual Account, except at the time or times and upon the terms and conditions herein provided. Subject to such terms, an Employee’s right to the value of the assets in his Individual Account is non-forfeitable from the time that such Individual Account is established.

Section 3.09. Annual Statements. As soon as practicable after the close of each Plan Year, each Participant who has an Individual Account shall receive a statement reflecting the balance of his Individual Account as of the most recent Valuation Date.

## **ARTICLE 4. BENEFITS AND ELIGIBILITY**

**Section 4.01. Amount to be Paid.** Upon the happening of any event calling for the payment of any benefit from the Plan, the amount to be paid known as the “Accumulated Share” shall be determined in accordance with Section 3.05.

**Section 4.02. Payment of Accumulated Share.** A Participant’s Accumulated Share shall become payable, if an application is filed, in the manner set forth in Section 4.03 under the following circumstances:

- a. Receipt of a pension from the Bay Area Painters and Tapers Pension Trust Fund.
- b. Death before Retirement.
- c. Total disability before Retirement which shall be evidenced by a Participant’s receipt of a determination of entitlement to a Social Security Disability Benefit.
- d. Failure to work at least 400 hours in Covered Employment in any two consecutive Plan Years.
- e. Verification that no Contributions were made or required to be made to the Participant’s Individual Account for a period of at least six consecutive calendar months and evidence that the Participant has not otherwise engaged nor, at the time of qualification for the distribution, is engaged in any employment for wages or profit as a painter or taper in the geographic area covered by the Annuity Plan.
- f. Payment to a designated “alternate payee” pursuant to the terms of a Qualified Domestic Relations Order. Upon application by the alternate payee, such payment shall be made without regard to whether the Participant is similarly entitled to payment under the other provisions of this Section 4.02.
- g. Upon retirement any time after a Participant’s Normal Retirement Age as defined in Section 1.23 of the Plan.

**Section 4.03. Payment Forms.**

- a. A Participant may request in writing to the Trustees to pay his Accumulated Share in any of the following forms:
  - (1) By purchase of an annuity which provides for the payment of fixed monthly installments over a certain period of time not to exceed the life of the Annuitant (except as provided under a life annuity with a period certain guarantee), under terms which may be available under an insured annuity contract which the Trustees may arrange may arrange with an insurance company, or
  - (2) A lump sum payment, or
  - (3) A combination of (1) and (2).

In the absence of an election by a Participant for a specific form of distribution and subject to Subsection b. below, the Board of Trustees shall arrange for a non-transferable annuity contract purchased from a licensed insurance company providing monthly annuity payments over the life of the Participant.

- b. Notwithstanding Subsection a. above, a Participant who is married on his Annuity Starting Date shall receive his Accumulated Share in the form of a qualified joint and survivor annuity unless the Participant has filed with the Board, in writing, a timely rejection of that form of annuity subject to all of the conditions of this Subsection b. No rejection shall be effective unless the Spouse of the Participant has consented in writing to such rejection, such election designates a beneficiary (or form of payments) which may not be changed without spousal consent (or the consent of the Spouse expressly permits designations by the Participant without any requirement of further consent by the Spouse) and the Spouse's consent acknowledges the effect of such election and is witnessed by a notary public. No consent shall be required if it has been established to the satisfaction of the Board of Trustees that there is no Spouse or the Spouse cannot be located, or if such consent cannot be obtained for extenuating circumstances.

Within a period of no more than 90 days and no fewer than 30 days before the Annuity Starting Date or 30 days after the date the written explanation is provided, if later, (and consistent with Treasury regulations), the Trustees shall provide the Participant and his Spouse, if any, with a written explanation of:

- (1) the terms and conditions of the 50% Qualified Joint and Survivor Annuity and the 75% Qualified Optional Survivor Annuity;
- (2) the Participant's right to make and the effect of an election to waive the Qualified Joint and Survivor Annuity;
- (3) the right of the Participant's Spouse to consent to any election to waive the Qualified Joint and Survivor Annuity;
- (4) the right of the Participant to elect and revoke such election any number of times during the election period that ends on the Annuity Starting Date, and the effect of such elections and revocations;
- (5) the relative values of the various optional forms of benefit under the Plan; and
- (6) the right to defer any distribution and the consequences of failing to defer distribution of benefits including a description of the investment options available under the Plan (including fees) if commencement of distributions is deferred.

Qualified Joint and Survivor Annuity: A qualified joint and survivor annuity shall be the actuarial equivalent of a single life annuity payable for the life of the Participant with a survivor annuity continuing for the life of the Spouse which shall be one-half (50%) of the amount of the annuity payable during the joint lives of the Participant and his Spouse.

Qualified Optional Survivor Annuity. A qualified optional survivor annuity shall be the actuarial equivalent of a single life annuity payable for the life of the Participant with a survivor annuity continuing for the life of the Spouse which shall be three-quarters (75%) of the amount of the annuity payable during the joint lives of the Participant and his Spouse.

- c. In the event that a distribution shall be made as a result of the Participant's death prior to his retirement, the forms of distribution set forth in Subsection a. shall be available to the surviving Spouse (if the Employee and Spouse were married throughout the year ending on the date of death), or if there is no surviving Spouse, or if the Employee and his surviving Spouse had not been married to each other throughout the year ending on the date of death to his designated Beneficiary. Upon a married Participant's death, such Participant's Spouse may direct the commencement of payments within a reasonable period after the Participant's death.

In the absence of an election by a surviving Spouse for a specific form of distribution, the Board of Trustees shall arrange for a nontransferable annuity contract purchased from a licensed insurance company providing monthly annuity payments over the life of the surviving Spouse.

Section 4.04. Failure to Apply for Accumulated Share. If an Employee Retires, as described in Section 1.29, and an application for payment or an election of payment deferral of his Accumulated Share pursuant to Section 5.04 is not received within three months from the date of such Retirement, the Board of Trustees shall place the Employee's Individual Account in inactive status at the end of the three-month period. Individual Accounts in inactive status continue to be included in all Valuations as described in Section 3.05. If the Board of Trustees is unable to locate such Retired Employee within five (5) years of the date at which the payment of his Accumulated Share was to have been made, then no benefits are payable and such amount shall be used to defray the non-investment expenses of the Plan in accordance with Section 3.02. However, if such a Retired Employee subsequently makes claim for such benefit, the benefit shall again become payable to such Retired Employee in the amount of his Accumulated Share as of the end of the five-year period.

Section 4.05. Lump-Sum Payments. Notwithstanding Section 4.04 above, effective January 1, 2009, if the Accumulated Share payable to a Participant or his Beneficiary does not exceed \$1,000.00, after application as provided for in Section 5.01, the Trustees shall make payment in a lump sum.

## **ARTICLE 5. GENERAL PROVISIONS**

**Section 5.01. Application for Benefits; Initial Date.** Application for all payments of a Participant's Accumulated Share must be made in writing in a form and manner prescribed by the Board of Trustees, at least 30 days prior to the date payment of the Participant's Accumulated Share is to be made in accordance with Section 4.02. No benefits shall be paid prior to the establishment and crediting to Individual Accounts of Contributions and investment earnings, or prior to the receipt of written confirmation from the Internal Revenue Service of the United States that the Trust is an exempt trust and that the Plan is a qualified Plan under the provisions of the Internal Revenue Code, whichever is later.

**Section 5.02. Proof to be Furnished; Penalties for Fraud.**

- a. Every Employee, Annuitant, or Beneficiary shall furnish, at the request of the Board of Trustees, any information or proof reasonably required for the administration of the Plan or for the determination of any matter that the Board of Trustees may legitimately have before it. Failure to furnish such information or proof promptly and in good faith shall be sufficient reason for the denial of benefits to such Employee or Beneficiary, or the suspension or discontinuance of benefits to such Annuitant. The falsity of any statement material to an application or furnishing of fraudulent information or proof shall be sufficient reason for the denial, suspension or discontinuance of benefits under this Plan except to the extent that the benefits are non-forfeitable and, in any such case, the Board of Trustees shall have the right to recover any benefit payments made in reliance on such false statement or fraudulent information or proof.
- b. Without limitation of the provisions of Subsection a., every Participant must file, before his benefit effective date, a written statement on which the Board of Trustees or other Plan representative is entitled to rely, concerning the Participant's current and prior marital status, including, without limitation, whether or not he is currently legally married, and if married, as to when such marriage occurred. If a Participant states that he was not married throughout the year before his benefit payments began, no person shall be entitled to benefits under this Plan on the grounds that she was, in fact, his Spouse, or if his Spouse, was in fact legally married to him throughout the year before his benefit payments began.
- c. Any payment made in good faith on the basis of a written statement of a Participant or Beneficiary shall discharge all obligations of the Plan to the extent of such payment, and shall entitle the Board of Trustees to exercise all rights of recoupment or other remedies, including the right to adjust the dollar amount of payments made to a surviving Spouse or other Beneficiary in order to recoup any excess benefits which may have been erroneously paid.
- d. The rights of a former Spouse or other alternate payee to any share of a Participant's benefit, as set forth in a Qualified Domestic Relations Order, take precedence over any claims of the Participant's Spouse at the time of retirement or death to the extent provided by such Order or by any federal law or regulation.



- e. The consent of a Spouse or former Spouse given pursuant to any provision of this Plan, or for any other purpose in connection with the administration of the Plan, may not be revoked.

Section 5.03. Right to Appeal and Determination of Disputes.

- a. No Participant, Annuitant, Beneficiary or other person shall have any right or claim to benefits under the Annuity Plan, other than as specified in the Annuity Plan. If any person shall have a dispute with the Board of Trustees as to eligibility, type, amount or duration of such benefits, the dispute shall be resolved by the Board of Trustees under and pursuant to the Annuity Plan, and its decision of the dispute shall be final and binding upon all parties thereto.
- b. Any person whose application for benefits under the Plan has been denied in whole or in part, or whose claim to benefits or against the Fund is otherwise denied, will be notified in writing of the denial within 90 days after receipt of the application or claim. An extension of time not exceeding 90 days may be required by special circumstances. If so, notice of the extension, indicating what special circumstances exist, and the date by which a final decision is expected to be made available, will be furnished to the claimant prior to the expiration of the initial 90-day period.

The period of time within which a benefit determination is required to be made will begin at the time an application for benefits is filed with the Fund Office without regard to whether all the information necessary to make a benefit determination accompanies the filing. In the event that a period of time is extended, as permitted above, due to an applicant's failure to submit information necessary to make a determination, the period for making the benefit determination will be tolled from the date on which the notification of the extension is sent to the applicant until the date on which the applicant responds to the request for additional information.

The notice of denial must set forth in a manner calculated to be understood by the claimant (1) the specific reason or reasons for the denial; (2) specific reference to pertinent Plan provisions on which the denial is based; (3) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why that material or information is necessary; and (4) appropriate information as to the steps to be taken if the claimant wishes to submit his or her claim for review, and (5) a statement of the claimant's right to bring civil action under §502(a) of ERISA.

- c. Any person may petition the Board for a review of the denial of a claim. A petition for review must be in writing, must state in clear and concise terms the reason or reasons for disputing the denial, must be accompanied by any pertinent documentary material not already furnished to the Fund, and must be filed by the petitioner or his duly authorized representative with the Secretary of the Board within 60 days after the petitioner received notice of the denial. The petitioner or his duly authorized representative will be permitted to review pertinent documents and submit issues and comments in writing.
- d. Upon good cause shown, the Board may permit the petition to be amended or supplemented and may grant a hearing on the petition before a hearing panel consisting of a least one Employer Trustee and one Employee Trustee to receive and hear any

evidence or argument which cannot be presented satisfactorily by correspondence. The failure to file a petition for review within the 60-day period or the failure to appear and participate in any hearing, constitutes a waiver of the claimant's right to review of the denial, provided that the Board may relieve a claimant of any waiver for good cause if application for relief is made within one year after the date shown on the notice of denial.

- e. Upon request, the petitioner or the petitioner's duly authorized representative will be provided, free of charge, reasonable access to, and copies of, all documents, records and other information relevant to the petitioner's claim for benefits. A document, record or other information shall be considered relevant to a petitioner's claim if it was relied upon in making the benefit determination; was submitted, considered or generated in the course of making the benefit determination, without regard to whether it was relied upon in making the benefit determination; demonstrates that the benefit determination was made in accordance with the Plan provisions and that such provisions have been applied consistently with respect to similarly situated claims.

The review of the determination will take into account all comments, documents, records, and other information submitted by the claimant relating to the claim without regard to whether such information was submitted or considered in the initial benefit determination.

- f. A decision by the Board shall be made at the first regularly scheduled quarterly Trust meeting after the Trust's receipt of the petition for review, except that an extension of time until the next meeting may be required if the appeal was received within thirty (30) days of the Trust meeting. If special circumstances require a further extension of time for processing, a benefit determination will be rendered no later than the third meeting following the Trust's receipt of the petition for review and the Trustees will provide the petitioner with a written notice of the extension, describing the special circumstances and the date as of which the benefit determination will be made prior to the commencement of the extension. The Trustees will notify the petitioner of the benefit determination as soon as possible but not later than 5 days after the benefit determination is made.

The petitioner will be advised of the Board's decision in writing. The decision must include specific reasons for the decision, written in a manner calculated to be understood by the petitioner, and specific references to the pertinent Plan provisions on which the decision is based. It will also include a statement that the petitioner 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 claim for benefits.

- g. The denial of an application or claim to which the right to review has been waived or the decision of the Board with respect to a petition for review, is final and binding upon all parties, including the applicant, claimant or petitioner and any person claiming under the applicant, claimant or petitioner, subject only judicial review as provided in Subsection a.

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

Section 5.04. Benefit Payments Generally. 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 upon retirement or termination of participation to receive the benefits provided herein. Benefit payments shall be payable commencing with the first day of the month following the month in which the Participant has fulfilled all the conditions for entitlement to benefits, including the filing of an application. Such first day is the “Annuity Starting Date”.

A Participant may, however, elect in writing filed with the Board of Trustees to receive benefits first payable for a later month, provided that no such election may postpone the commencement of benefits to a date later than the Participant’s Required Beginning Date.

If the Beneficiary is not the Participant’s surviving Spouse, the payment of any benefits under the Plan that become payable on account of the Participant’s death shall begin no later than one year from the date of such death or, if later, as soon as practicable after the Board of Trustees learns of the death, and shall be distributed in accordance with Section 4.03.c. If the Beneficiary is the Participant’s surviving Spouse, payment of any Plan benefits shall commence not later than the date the Participant would have attained his Required Beginning Date had he lived.

In no event shall a Participant be allowed to defer receipt of benefits to the extent that it creates a death benefit that is more than incidental.

Section 5.05. Designation of Beneficiary. Subject to the provisions of Section 4.03.c., a Participant may designate a Beneficiary on a form provided by or acceptable to the Trustees and delivered to the Trustees before death. A Participant may change his Beneficiary (without the consent of the Beneficiary) in the same manner. If no Beneficiary has been designated, or no designated Beneficiary has survived the Participant, distribution of the Participant’s Accumulated Share shall be made to any person who is an object of natural bounty of the Participant, or his estate, as the Board of Trustees, in its sole discretion, may designate.

Section 5.06. Incompetence or Incapacity of a Pensioner or Beneficiary. In the event it is determined to the satisfaction of the Board of Trustees that an Annuitant or Beneficiary is unable to care for his affairs because of mental or physical incapacity, any payment due may be applied, in the discretion of the Board of Trustees, to the maintenance and support of such Annuitant or Beneficiary or to such person as the Board of Trustees, in its sole discretion, finds to be an object of the natural bounty of the Annuitant or Beneficiary in the manner decided by the Board of Trustees, unless, prior to such payment, claims shall have been made for such payment by a legally appointed guardian, committee, or other legal representative appropriate to receive such payments on behalf of the Annuitant or Beneficiary.

Section 5.07. Non-Assignment of Benefits. No Participant, Annuitant or Beneficiary entitled to any benefits under this Annuity 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 Annuity Plan, or benefits of this Annuity Plan. Neither the Annuity Plan nor any of the assets thereof, shall be liable for the debts of any Participant, Annuitant or Beneficiary entitled to any benefits under this Plan, nor be subject to attachments or execution or process in any court of action or proceeding.

Notwithstanding the foregoing, benefits shall be paid in accordance with the applicable requirements of any Qualified Domestic Relations Order.

Section 5.08. Powers of the Board of Trustees. The Board of Trustees shall be the sole judge of the standard of proof required in any case. In the application and interpretation of any of the provisions of this Plan, the decisions of the Board of Trustees shall be final and binding on all parties including Employees, Employers, Local Unions, District Councils, and the Beneficiaries.

Section 5.09. Limitations on Annual Allocations under Section 415.

a. In addition to any other limitations set forth in the Plan and notwithstanding any other provisions of the Plan, effective for Limitation Years beginning on and after January 1, 2008, contributions and other amounts (“annual additions”) under the Plan shall be limited in accordance with Section 415 of the Code and the Treasury Regulations thereunder, in accordance with this Section. This Section 5.09 is intended to incorporate the requirements of Section 415 of the Code by reference except as otherwise specified herein.

b. Definitions.

For purposes of this Section 5.09, the following terms shall have the following meanings.

(1) Compensation. For Limitation Years beginning on or after July 1, 2007 for all purposes under the Plan, including this Section 5.09, “Compensation” means remuneration as defined in Treasury Regulation § 1.415(c)-2(d)(4).

Compensation shall also be subject to the following rules:

- (A) Compensation must be paid within the Limitation Year, and paid or treated as paid before Severance from Employment in accordance with the general timing rule of Treasury Regulation § 1.415(c)-2(e)(1) and in accordance with §1.415(c)-2(e)(2).
- (B) 415 Compensation must include amounts paid by the later of 2½ months after Severance from Employment or the end of the Limitation Year that includes the Severance from Employment date in accordance with §1.415(c)-2(e)(3)(i). Such post-severance compensation includes regular pay as defined in §1.415(c)-2(e)(3)(ii), leave cashouts and deferred compensation as defined in §1.415(c)-2(e)(3)(iii), salary continuation payments for military service and disabled participants in accordance with §1.415(c)-2(e)(4)], deemed Section 125 compensation as defined in §1.415(c)-2(g)(6)], deemed compensation for periods of permanent and total disability in accordance with §1.415(c)-2(g)(4)], but not other post-severance payments as defined in §1.415(c)-2(e)(3)(iv). Compensation shall also include elective deferrals under Internal Revenue Code §401(k), §402(e)(3), §402(h), §457, and §408(p)(2)(A)(I), and under a savings incentive plan (SIMPLE) or Internal Revenue Code §125 cafeteria plan, and elective reductions under Internal Revenue Code §132(f).
- (C) 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) Effective for years beginning after December 31, 2008, Compensation shall include military differential wage payments (as defined in Section 3401(h) of the Code).

(2) Limitation Year. “Limitation Year” means the calendar year.

(3) Severance from Employment. “Severance from Employment” has occurred when a Participant is no longer an employee of any Employer maintaining the Plan.

c. Limit on Annual Additions.

For Limitation Years beginning on or after January 1, 2008, in no event shall the total annual additions credited with respect to any Participant for a Limitation Year exceed the limits determined in accordance with Section 415 of the Code and the Treasury regulations thereunder (the “maximum annual addition”). If a Participant’s total annual additions for a Limitation Year beginning on or after January 1, 2008 would exceed the maximum annual addition for that Limitation Year, annual additions with respect to the Participant shall be frozen or reduced so that the annual additions with respect to the Participant do not exceed the maximum annual addition for that Limitation Year.

d. Aggregation of Plans.

(1) For purposes of applying the limits of this Section 5.09, if a Participant also participates in another tax-qualified defined contribution plan of the Employer that is not a multiemployer plan, only the annual additions under this Plan that are provided by the Employer are aggregated with the annual additions under the other plan.

(2) In the event that the aggregate annual addition in any Plan Year by a Participant exceeds the limits under Section 415 of the Code and the Treasury Regulations thereunder as a result of the mandatory aggregation of the annual additions under this Plan with the Annual additions under another plan maintained by the Employer, the annual additions under such other plan shall be reduced to the extent necessary to comply with Section 415 of the Code and the Treasury Regulations thereunder.

e. General.

(1) To the extent that a Participant’s annual additions are subject to provisions of Section 415 of the Code and the Treasury Regulations thereunder that have not been set forth in the Plan, such provisions are hereby incorporated by reference into this Plan and for all purposes shall be deemed a part of the Plan.

- (2) This Section 5.09 is intended to satisfy the requirements imposed by Section 415 of the Code and the Treasury Regulations thereunder and shall be construed in a manner that will effectuate this intent. This Section 5.09 shall not be construed in a manner that would impose limitations that are more stringent than those required by Section 415 of the Code and the Treasury Regulations thereunder.
- (3) If and to the extent that the rules set forth in this Section 5.09 are no longer required for qualification of the Plan under Section 401(a) and related provisions of the Code and the Treasury Regulations thereunder, they shall cease to apply without the necessity of an amendment to the Plan.

f. Interpretation or Definition of Other Terms

The terms used in this Section 5.09 that are not otherwise expressly defined for this Section, shall be defined as provided in the Plan, or if not defined in the Plan, shall be defined interpreted and applied for purposes of this Section 5.09 as prescribed in Section 415 of the Code and the Treasury Regulations thereunder.

Section 5.10. Merger or Consolidation. In the event of any merger or consolidation with, or transfer of assets or liabilities to, any other plan, the amount of benefit which a Participant would receive upon a termination of the Plan immediately after such merger, consolidation, or transfer shall be not less than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer if the Plan had been terminated.

Section 5.11. Special Provisions for Eligible Rollover Distributions. 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 any Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the distributee in a direct rollover. For purposes of this Section, the following definitions apply:

As used in this Section 5.11, the following terms shall have the following meanings:

- a. 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:
  - (1) 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; or
  - (2) Any distribution to the extent such distribution is required under §401(a)(9) of the Internal Revenue Code; or
  - (3) 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).

- (4) Any distribution which is made upon hardship of the Participant.
- b. 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 defined contribution plan described in Section 401(a) of the Code, that accepts the Distributee’s Eligible Rollover Distribution. Effective for distributions made after December 31, 2001, an Eligible Retirement Plan also includes an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code 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. Effective for distributions made after December 31, 2007, an Eligible Retirement Plan shall also include a Roth IRA described in Code section 408A, subject to the restrictions that currently apply to rollovers from a traditional IRA into a Roth IRA.
- c. A “Distributee” includes any Participant or former Participant. In addition, the surviving Spouse of a Participant or former Participant and a former Spouse of a Participant or former Participant 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 for distributions after December 31, 2008, a Distributee also includes the Participant’s non-Spouse designated Beneficiary. In the case of a non-Spouse Beneficiary, the direct rollover may be made only to an individual retirement account or annuity described in Code § 408(a) or § 408(b) (“IRA”) or a Roth individual retirement account or annuity (“Roth IRA”) that is established on behalf of the designated Beneficiary and that will be treated as an inherited IRA or Roth IRA.

Section 5.12. Rollovers to the Plan. This Plan will accept direct plan-to-plan transfers or Eligible Rollover Distributions from other qualified plans or direct payments from a conduit individual retirement account, no part of which is attributable to any source other than a rollover contribution to that individual retirement account from a qualified plan, but only if the following conditions are met:

- a. Form of Payment to the Plan. The Plan will accept payment only in lump sum cash amounts for individuals who are currently Participants in the Plan.
- b. Time of Payment. A Participant’s account attributable to transfers under this provision will be payable only at the times permitted under the terms of this Plan.
- c. Form of Payment from Plan. A Participant’s account attributable to transfers under this provision will at all times be vested, and will be payable in any form permitted by the Plan at the time of distribution.

Section 5.13. Miscellaneous. Wherever any words are used in this Plan in the masculine gender, they should be construed as though they were also used in the feminine gender in all situations where they would so apply.

Wherever any words are used in this Plan in the singular form they should be construed as though they were also in the plural form in all situations where they would so apply, and vice versa.

Section 5.14. Plan Amendment. The Board of Trustees may amend or modify the Plan at any time in accordance with the Trust Agreement, except that no amendment or modification may reduce any benefits which have been approved for payment prior to amendment, so long as funds are available for payment of such benefits.

Section 5.15. Plan Termination. In the event of termination or partial termination of the Plan, the assets then remaining, after providing for the expenses of the Plan and for the payment of any Accumulated Share theretofore approved, shall be distributed among the Participants. Each Participant shall receive that part of the total remaining assets in the same ratio as his Accumulated Share bears to the aggregate amount of the Accumulated Share of all Participants. No part of the assets shall be returned to any Employer or inure to the benefit of any Employer, the Association, a Local Union, or District Council.

Section 5.16. Partial Invalidity. If any provision of the Plan or any step in the administration of the Plan is held to be illegal or invalid for any reason, such illegality or invalidity prevents accomplishment of the purposes and objectives of the Plan. In the event of any such holding, the Board of Trustees will immediately amend the Plan to remedy the defect.

Section 5.17. Effective Date. The Plan restatement is effective on June 1, 2016.



## **ARTICLE 6. MINIMUM DISTRIBUTION REQUIREMENTS**

### **Section 6.01. General Rules.**

- a. **Effective Date.** The provisions of this Article will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.
- b. **Precedence.**
  - (1) The requirements of this Article will take precedence over any inconsistent provisions of the Plan.
  - (2) Except to the extent inconsistent with this Article, all distribution options provided under the Plan are preserved.
  - (3) This Article does not authorize any distribution options not otherwise provided under the plan.
- c. **Requirements of Treasury Regulations Incorporated.** All distributions required under this Article will be determined and made in accordance with the Treasury regulations under Section 401(a)(9) of the Internal Revenue Code.

### **Section 6.02. Time and Manner of Distribution.**

- a. **Required Beginning Date.** The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date as defined in Section 1.28 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<sup>st</sup> 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 designated beneficiary, then, the Participant's spouse may elect, in lieu of Section 6.02.a., to have distributions to the surviving spouse begin by December 31<sup>st</sup> of the calendar year immediately following the calendar year in which the Participant died, or by December 31<sup>st</sup> of the calendar year in which the Participant would have attained age 70 1/2, 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 Section 6.02.b.(2), or if earlier, Section 6.02.b.(1).
  - (3) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, then, the designated beneficiary may elect, in lieu of Section 6.02.b.(1), to have distributions begin by December 31<sup>st</sup> of the calendar year immediately following the calendar year in which the Participant died. The

election must be made no later than September 30<sup>th</sup> of the calendar year in which distribution would be required to begin under this Section 6.02.b.(3).

- (4) If there is no designated beneficiary as of September 30<sup>th</sup> of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31<sup>st</sup> 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 6.02.b., other than Section 6.02.b.(2), will apply as if the surviving spouse were the Participant.

For purposes of this Section 6.02.b. and Section 6.04, unless Section 6.02.b.(5) applies, distributions are considered to begin on the Participant's Required Beginning Date. If Section 6.02.b.(5) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under this Section 6.02.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 required to begin to the surviving spouse under an election made under Section 6.02.b.(2)), the date distributions are considered to begin is the date distributions actually commence.

- c. 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 6.03 and 6.04 of this Article. If the Participant's or designated beneficiary's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Treasury regulations.

### Section 6.03. Required Minimum Distributions During Participant's Lifetime.

- a. Amount of Required Minimum Distribution for Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:
  - (1) The quotient obtained by dividing the Participant's account balance by the distribution period in the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year; or
  - (2) If the Participant's sole designated beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's account balance by the number in the Joint and Last Survivor Table set forth in section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

- b. Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this Section 6.03 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 6.04. Required Minimum Distributions After Participant's Death.

a. 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 year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.
- (C) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, the designated beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.
- (2) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no designated beneficiary as of September 30<sup>th</sup> of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

b. Death Before Date Distributions Begin.

- (1) Participant Survived by Designated Beneficiary. If the Participant dies before the date distributions begin and there is a designated beneficiary, if the designated beneficiary has made an election under Section 6.02.b.(2) or 6.02.b.(3), the

minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant's designated beneficiary, determined as provided in Section 6.04.a.

- (2) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated beneficiary as of September 30<sup>th</sup> of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31<sup>st</sup> 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 after having made an election under Section 6.02.b.(2), this Section 6.04.b. will apply as if the surviving spouse were the Participant.

#### Section 6.05. Definitions.

- a. Designated Beneficiary. The individual who is designated as the beneficiary under Section 1.07 of the Plan and is the designated beneficiary under Section 401(a)(9) of the Internal Revenue Code and Section 1.401(a)(9)-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 6.02.b. The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31<sup>st</sup> 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 dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

Section 6.06. Treatment of 2009 Required Minimum Distributions. Notwithstanding any other provision in this Article 6, amounts that would have been 2009 required minimum distributions in the absence of Section 401 (a)(9)(H) of the Code, as added by the Worker, Retiree and Employer Recovery Act of 2008, including amounts that would have been first required minimum distributions payable in 2010 were paid as scheduled for 2009.

Section 6.07. The Board of Trustees has elected to not allow participants or beneficiaries to suspend the required minimum distributions required under Sections 6.01 through 6.04 of the Plan as allowed under the Internal Revenue Code Section 401(a)(9)(H), which was amended by the Worker, Retiree, and Employer Recovery Act of 2008.

## ARTICLE 7. CONTINGENT TOP HEAVY RULES

Section 7.01. General Rule. If the Plan is determined to be Top-Heavy (as defined in Section 7.02) for any Plan Year, then for any such year, the special minimum benefit limitations of Section 7.03 shall apply to any employee not included in a unit of employees covered by a Collective Bargaining Agreement between the union and one or more employers.

Section 7.02. Determination of Top-Heavy Status.

- a. Determination Date. The determination date for any Plan Year is the last day of the preceding Plan Year.
- b. Top-Heavy Status. The Plan is Top-Heavy for any Plan Year if, as of the determination date, the present value of the individual accounts under the Plan for Key Employees exceeds 60 percent of the present value of the individual accounts under the Plan for all employees.
- c. Key Employees. Whether or not a Participant is a Key Employee depends on his or her status with the contributing employer that employs the Participant. For any Plan Year, a Contributing Employer's Key Employees are those who, at any time during the Plan Year that includes the determination date for such Plan Year, is or was:
  - (1) An officer of the employer having an annual compensation greater than \$130,000 (as adjusted under IRC Section 416(i)(1) for plan years beginning after December 31, 2002);
  - (2) A 5-percent owner of the employer; or
  - (3) A 1-percent owner of the employer having an annual compensation from the employer of more than \$150,000.

For this purpose compensation means compensation within the meaning of IRC Section 415(c)(3). The determination of who is a Key Employee will be made in accordance with IRC Section 416(i)(1) and the applicable regulations and other guidance of general applicability issued thereunder.

- d. Aggregation Rules. In determining if the Plan is Top-Heavy, the Plan shall be aggregated with each other Plan in the required aggregation group as defined in Section 416(g)(2)(A)(i) of the Internal Revenue Code and may, in the Trustees' discretion, be aggregated with any other plans in the permissive aggregation group as defined in Section 416(g)(2)(A)(ii) of the Internal Revenue Code.
- e. Special Rules.
  - (1) Distributions During Year Ending on the Determination Date. The present values of accrued benefits and the amounts of account balances of an Employee as of the determination date shall be increased by the distributions made with respect to the Employee under the Plan and any plan aggregated with the Plan under IRC Section 416(g)(2) during the one-year period ending on the determination date or

the four preceding plan years. The preceding sentence also shall apply to distributions under a terminated plan which, had it not been terminated, would have been aggregated with the Plan under IRC Section 416(g)(2)(A)(i). In the case of a distribution made for a reason other than severance of employment, death, or disability, this provision shall be applied by substituting “five-year period” for “one-year period.”

- (2) If an individual is not a Key Employee for any Plan Year but was a Key Employee for any prior Plan Year, any accrued benefit for such employee shall not be taken into account for purposes of determining if the Plan is Top-Heavy.
- (3) For purposes of this Article 6, “Compensation” for a Plan Year means the amount required to be included in the Employee’s Form W-2 for the Plan Year.
- (4) The Board is authorized to adopt any other rules or regulations necessary to insure that the Plan complies in all respects with the top-heavy rules of the Internal Revenue Code.

Section 7.03. Special Minimum Benefit Rules. The following rules will apply only to employees not included in a unit of employees covered by a collective bargaining agreement requiring contribution to this Plan and only if the Plan as a whole becomes Top-Heavy. Such employees are referred to herein as Top-Heavy Employees.

a. Special Minimum Benefit Rules.

- (1) Applicability. If the Plan becomes Top-Heavy, then for the first year that the Plan is Top-Heavy, and for all subsequent years during which it is Top-Heavy, the minimum benefit set forth in Subsection a.(2) below shall apply to all Top-Heavy Employees (other than Key Employees) who have a year of Credited Service during any such Plan Year.
- (2) Special Minimum Benefit. If the Plan becomes Top-Heavy, the minimum annual addition for Top-Heavy Employees (other than Key Employees) shall be 3 percent of Compensation.

## APPENDIX A

### **MERGER RULES FOR CENTRAL COAST COUNTIES FLOOR COVERERS ANNUITY PLAN**

The following special rules will be applied to effectuate the merger of the Central Coast Counties Floor Covering Industry Annuity Plan into the Plan effective September 1, 2014.

1. Assumption of Liabilities. This Plan assumes the Central Coast Counties Floor Covering Industry Annuity Plan's obligations to pay its benefits which were accrued before September 1, 2014, in accordance with the terms of that plan in effect on August 31, 2014. No benefits will accrue under that plan after August 31, 2014, but benefits already accrued will continue to be 100% vested.

2. Power to Amend. If after August 31, 2014, it is necessary to amend the terms of the Central Coast Counties Floor Covering Industry Annuity Plan to retain this Plan's tax qualified status, this Plan shall have full authority to make such amendments.

3. Benefits Preserved. To the extent required by law or Internal Revenue Service regulations, the merger shall not eliminate or reduce the accrued benefit of any participant or beneficiary under the Central Coast Counties Floor Covering Industry Annuity Plan as of August 31, 2014, specifically including any early retirement benefit or retirement-type subsidy or optional forms of benefits applicable to such accrued benefits, except as permitted by law.

4. Incorporation By reference. In order to assure that all benefits earned under the Central Coast Counties Floor Covering Industry Annuity Plan before September 1, 2014, are maintained, that plan, as it exists on August 31, 2014, is hereby incorporated into this Plan by reference to the extent necessary to preserve those benefits.