

ORDINANCE NO. 13795

AN ORDINANCE, repealing Ordinance No. 13180, as adopted December 9, 2010, and enacting a new ordinance in lieu thereof establishing a Defined Contribution Plan and Trust for certain employees of the Metropolitan St. Louis Sewer District.

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE METROPOLITAN ST. LOUIS SEWER DISTRICT:

Section One. Ordinance No. 13180, as adopted December 9, 2010, is hereby repealed, effective January 1, 2014, without, however, altering or extinguishing the legal relationships established by such Ordinance.

Section Two. There is hereby established a Defined Contribution Plan to provide a means whereby the Employer may encourage its Employees to establish a regular method of savings and to create a fund available for their use at retirement or in the event of death. This Ordinance is effective January 1, 2014, unless otherwise indicated.

METROPOLITAN ST. LOUIS SEWER DISTRICT

DEFINED CONTRIBUTION PLAN

The primary purpose of this Metropolitan St. Louis Sewer District Defined Contribution Plan (“Plan”) is to provide retirement benefits to those employees of the Metropolitan St. Louis Sewer District who do not accrue benefits under the Metropolitan St. Louis Sewer District Employees’ Pension Plan. In addition, this Ordinance establishes a Trust to hold all of the assets and income of the Plan.

The foregoing Ordinance was adopted on January 9, 2014.

**METROPOLITAN ST. LOUIS SEWER DISTRICT
DEFINED CONTRIBUTION PLAN**

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**METROPOLITAN ST. LOUIS SEWER DISTRICT
DEFINED CONTRIBUTION PLAN**

ARTICLE I – INTRODUCTION

1.1 ***History of Plan.*** The Metropolitan St. Louis Sewer District (“Employer”) establishes the Metropolitan St. Louis Sewer District Defined Contribution Plan (“Plan”) effective January 1, 2011. The Employer now desires to amend and restate the Plan in connection with a pending determination letter application.

1.2 ***Effective Date of Plan Amendments.*** Except as otherwise provided herein this restated Plan is effective as of January 1, 2014.

The rights and benefits of any person entitled to benefits under the Plan shall be determined in accordance with the applicable provisions of the Plan in effect at the time the applicable event occurs, except as otherwise explicitly provided in the Plan.

1.3 ***Purpose and Type of Plan.*** This Plan is intended to provide a means whereby the Employer may provide retirement benefits to eligible Employees and encourage such Employees to establish a regular method of savings, thereby providing a measure of financial security for such Employees and their Beneficiaries upon retirement or in the event of death or disability. It is intended that the Plan shall qualify as a profit sharing plan under Section 401 of the Internal Revenue Code of 1986, as amended (the “Code”).

ARTICLE II – GENERAL DEFINITIONS

2.1 **Amendment Date** means the date on which an amendment to the Plan is adopted or becomes effective, whichever is later.

2.2 **Annuity Contract** means any group annuity contract issued by an insurance company to fund the benefits provided under the Plan, as such contract may be amended from time to time.

2.3 **Beneficiary** means the person or persons (natural or otherwise) designated as such by a Participant in accordance with the Plan.

2.4 **Board** means the Board of Trustees of the Metropolitan St. Louis Sewer District.

2.5 **Code** means the Internal Revenue Code of 1986, as amended. Reference to a section of the Code shall include that section and any comparable section or sections of any future legislation that amends, supplements or supersedes said section.

2.6 **Compensation** means:

- (a) **Employer Basic Contributions.** For purposes of Sections 4.1, 5.5(a) and 5.6, the total base remuneration scheduled to be paid to the Employee from the Employer for services rendered for a Plan Year, excluding unpaid leaves of absence (other than on account of military service), bonuses, overtime and any other form of additional compensation, determined without regard to salary reduction amounts contributed by the Employee to plans or arrangements described in Code Section 125, 132 or 457. For purposes of this Section, “an unpaid leave of absence” shall not include absences less than twenty-nine (29) consecutive days. In order to be taken into account pursuant to this Section 2.6(a), compensation generally must be paid or treated as paid to the Employee before the Severance from Service of the Employee. However, compensation paid by the later of two and one-half months after the Severance from Service of an Employee or the end of the limitation year that includes the date of Severance from Service of the Employee shall be treated as compensation to the extent such amounts are compensation for services rendered that would have been paid absent a Severance from Service. Compensation does not include accrued and unused sick leave or accrued vacation payable upon the Severance from Service of the Employee.
- (b) **Employer Matching Contributions.** For purposes of Sections 4.2, 5.5(b) and 5.7, all cash compensation for services to the Employer for a Plan Year, including salary, wages, fees, commissions, bonuses, and overtime pay, that is includible in the Employee's gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under section 125, 132(f), 401(k), 403(b), or 457(b) of the Code. In order to be taken into account pursuant to this Section 2.6(b), compensation generally must be paid or treated as paid to the Employee before the Severance from Service of the Employee. However, compensation paid by the later of two and one-half

months after the Severance from Service of an Employee or the end of the limitation year that includes the date of Severance from Service of the Employee shall be treated as compensation to the extent such amounts are compensation for services rendered that would have been paid absent a Severance from Service. Compensation does not include accrued and unused sick leave or accrued vacation payable upon the Severance from Service of the Employee.

Compensation of each Participant taken into account under the Plan shall in no event exceed the amount specified in Section 401(a)(17) of the Code as adjusted by the Commissioner for increases in the cost of living in accordance with Section 401(a)(17)(B) of the Code (\$260,000 for 2014).

2.7 ***Continuous Service*** means service with the Employer commencing on the date on which the Participant first performs service for the Employer and ending on the date on which the Participant has a Severance from Service; provided, however, Continuous Service shall include (i) periods during which a Participant is on an authorized leave of absence, (including those periods during which the Participant receives workers compensation benefits), (ii) periods during which a Participant is on leave on account of military service (provided the Participant retains his re-employment rights pursuant to the provisions of the Uniform Services Employment and Reemployment Rights Act of 1994) or (iii) any other absence of a Participant which does not constitute a termination of employment under the District's Civil Service Rules and Regulations.

2.8 ***Covered Compensation*** means the Compensation of an Employee while he is a Participant.

2.9 ***Deferred Compensation Plan*** means the Metropolitan St. Louis Sewer District Deferred Compensation Plan, as amended from time to time.

2.10 ***Defined Contribution Plan Committee*** means the committee consisting of the following six (6) persons: two members appointed by the Chairman of the Board, one of whom is a member of the Board from the City of St. Louis and one of whom is a member of the Board from St. Louis County. In addition, the Executive Director, Secretary-Treasurer, General Counsel and the Director of Finance shall be members of the Defined Contribution Plan Committee.

2.11 ***Employee*** means an individual classified by the Employer as a common law employee (regardless of retroactive reclassification) and employed on a regular, full-time permanent basis who has been appointed to a position in the classified service in accordance with Civil Service Rules. An Employee shall also include those individuals in the unclassified service; but shall not include (a) an individual hired before January 1, 2011 for any period for which such individual accrues benefits under the Metropolitan St. Louis Sewer District Employees' Plan, (b) technical personnel employed on special occasions, or (c) an independent contractor. An individual customarily employed by the Employer for at least one thousand (1,000) hours per year shall be deemed to be employed on a full-time permanent basis.

2.12 ***Employer*** means the Metropolitan St. Louis Sewer District.

2.13 **Individual Account** means the separate account reflecting the share of each Participant in the Trust Fund, including any or all sub-accounts established by the Plan Administrator in accordance with Article V.

2.14 **Investment Manager** means any fiduciary (other than a trustee or named fiduciary) (A) who has the power to manage, acquire or dispose of any asset of the Plan; (B) who is (i) registered as an investment adviser under the Investment Advisors Act of 1940; (ii) a bank or (iii) an insurance company qualified to perform services described in (A) under the laws of more than one state; and (B) has acknowledged in writing that he is a fiduciary with respect to the Plan.

2.15 **Normal Retirement Age** means the first day of the month coinciding with or next following a person's sixty-fifth (65th) birthday and completion of sixty (60) months of continuous service.

2.16 **Participant** means any Employee who has met the requirements of Article III, or a former Employee who has amounts credited to an account under the Plan.

2.17 **Permanent Disability** means an illness or injury that:

(i) results from an unavoidable cause;

(ii) renders an Employee incapable of carrying on the duties of any occupation;

(ii) continues for a period of at least six (6) consecutive months; and

(iii) results in the Employee being qualified for disability benefit under the Federal Social Security Act (based on written evidence from the Social Security Administration, satisfactory to the District which certifies that the Employee's disability is permanent and total, based on the Federal Social Security Act criteria for same.

A disability is deemed to have resulted from an unavoidable cause unless:

(1) it was contracted, suffered or incurred while the Employee was engaged in , or it resulted from his having engaged in, a felony; or

(2) it resulted from his habitual use of drugs, intoxicants, or narcotics; or

(3) it resulted from a deliberately self-inflicted injury or self-induced sickness; or

(4) it resulted from injury received or disease contracted in service in the Armed Forces.

The determination of "Permanent Disability" shall be subject to similar rules and procedures as applied in determining disability under the Metropolitan .St. Louis Sewer District Employees' Pension Plan

2.18 **Plan** means the Metropolitan St. Louis Sewer District Defined Contribution Plan as set forth herein and as amended from time to time.

2.19 **Plan Administrator** means the person or persons designated by the Defined Contribution Plan Committee in accordance with Article XIII.

2.20 **Plan Year** means the twelve month period ending on each December 31.

2.21 **Pooled Investment Fund** means a portion of the Trust Fund invested in a portfolio in which the Individual Account of more than one Participant shares the investment performance ratably.

2.22 **Severance from Service** means an individual ceases to be an Employee of the Employer.

2.23 **Trust Agreement** means the trust agreement entered into by and between the Employer and the Trustee in accordance herewith for the purpose of holding and investing the Trust Fund; provided that, to the extent that funds are invested in an Annuity Contract, the Annuity Contract shall constitute the Trust Agreement.

2.24 **Trustee** means the person or persons that may be designated by the Board from time to time to serve as trustee of the Trust Fund, or any successor(s) thereto; provided that to the extent that funds are invested in an Annuity Contract, the insurance company shall be the Trustee.

2.25 **Trust Fund** means all of the Plan assets held by the Trustee in accordance with the Trust Agreement.

2.26 **Valuation Date** means the last day of each Plan Year or such segment of each Plan Year as may be designated by the Plan Administrator before the beginning of such period.

ARTICLE III – ELIGIBILITY PROVISIONS

3.1 **General Rule.** Employees eligible to participate in the Plan include (i) Employees first hired on or after January 1, 2011, and (ii) Employees hired prior to January 1, 2011 who elect to terminate participation in the Metropolitan St. Louis Sewer District Employees' Pension Plan, effective as of April 1, 2011, in accordance with the provisions of such Pension Plan, and (iii) Employees rehired on or after January 1, 2011 who are not eligible to accrue benefits under the Metropolitan St. Louis Sewer District Employees' Pension Plan. An Employee shall become a Participant in the Plan on the first day on which he performs an hour of service for the Employer.

3.2 **Rehired Former Employee.** An Employee who incurs a Severance from Service and is later reemployed shall become a Participant on the date of such reemployment.

ARTICLE IV – CONTRIBUTIONS

4.1 ***Employer Basic Contributions.*** Subject to the provisions of Article VI (with respect to the reduction of Employer contributions on account of the limitations on benefits) (and with respect to the reduction of Employer contributions on account of forfeitures, if applicable), the Employer shall contribute for each payroll period to the Trust Fund an amount, if any, equal to 7% of the Covered Compensation earned during such period by each Participant entitled to an allocation of such contribution in accordance with Section 5.6. The Employer does not intend to contribute for any Plan Year amounts in excess of the maximum deductible amount for federal income tax purposes. Contributions made pursuant to this section shall be entitled “Employer Basic Contributions” and shall be allocated to the Participant’s Employer Basic Contributions Account in accordance with Article V.

4.2 ***Employer Matching Contributions.*** Subject to the provisions of Article VI (with respect to the reduction of Employer contributions on account of the limitations on benefits), the Employer shall contribute for each payroll period to the Trust Fund on behalf of each Participant eligible in accordance with Section 5.7 an amount, if any, equal to 50% of the Covered Compensation of such Participant withheld as an Annual Deferral (as defined in the Deferred Compensation Plan) pursuant to the Deferred Compensation Plan for the payroll period (including catch-up contributions withheld from the Covered Compensation of such Participant pursuant to the Deferred Compensation Plan); provided that, Before-Tax Contributions in excess of 4% of the Covered Compensation of the Participant for the payroll period shall not be considered for purposes of Employer Matching Contributions. Employer Matching Contributions shall be based on Covered Compensation paid during the period that the Participant elects to make Annual Deferrals (as defined in the Deferred Compensation Plan) pursuant to the Deferred Compensation Plan up to the maximum amount of Compensation that may be taken into account for the Plan Year pursuant to the last paragraph of Section 2.6.

Contributions made pursuant to this section shall be entitled “Employer Matching Contributions” and shall be allocated to the Participant’s Employer Matching Contributions Account in accordance with Article V.

4.3 ***Transfer of Employer Contributions.*** The Employer may pay the Employer contributions contributed for a Plan Year pursuant to Section 4.1 and 4.2 to the Trustee after the end of each biweekly payroll.

4.4 ***Return of Employer Contributions.*** In the event an Employer contribution is made by reason of a mistake of fact, the excess of the amount contributed over the amount that would have been contributed had there not occurred a mistake of fact (without earnings attributable to such excess, but after reduction of losses attributable thereto) may be returned to the Employer within one year after such a mistaken payment. Also, the excess of an amount contributed for a Plan Year over the amount that would have been contributed for such year had there not occurred a mistake in determining the amount deductible for such year under Section 404 of the Code (without earnings attributable to such excess, but after reduction of losses

attributable thereto) may be returned to the Employer within one year after disallowance of the deduction. Notwithstanding anything to the contrary in this section, if the return of the amount attributable to a mistaken contribution would cause the balance of an Individual Account of any Participant to be reduced to less than the balance which would have been in such account had the mistaken amount not been contributed, the amount to be returned to the Employer shall be limited to the extent necessary to avoid such a reduction.

4.5 ***Exclusive Benefit of Participants.*** All contributions under the Plan shall be paid to the Trustee and deposited in the Trust Fund. All assets of the Trust Fund, including investment income, shall be held for the exclusive benefit of Participants and Beneficiaries and shall be used to pay benefits to such persons or to pay administrative expenses of the Plan and the Trust Fund and shall not be diverted to or used for any other purpose and shall not revert to or inure to the benefit of the Employer, except as provided in Section 4.4.

4.6 ***Make-Up Allocations.*** In the event that a Participant who shall have been entitled under the terms of the Plan to an allocation of Employer contributions for a prior Plan Year was denied or failed to receive such an allocation, and it is subsequently demonstrated or discovered that such Participant shall have been entitled to such an allocation, at the direction of the Plan Administrator, in addition to the regular contribution for the Plan Year, the Employer may contribute an amount equal to the amount of the allocation to which such Participant was otherwise entitled but failed to receive for the prior year and such amount shall be allocated to the appropriate Account of such Participant.

In the event that the account of a Participant was credited with an amount for a prior year, and it is subsequently demonstrated or discovered that such amount should not have been so credited, at the direction of the Plan Administrator, such amount shall be treated as a forfeiture for the current Plan Year.

4.7 ***Rollover Contributions.*** The Trustee, at the sole discretion of the Plan Administrator, in each case, may accept Participant rollover contributions or (inclusively) direct rollovers as specified in this paragraph. The Plan may accept a direct rollover of an eligible rollover distribution or a Participant contribution of an eligible rollover distribution from a qualified plan described in Section 401(a) or 403(a) of the Code, an annuity contract described in Section 403(b) of the Code, or 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. The Plan may accept a Participant rollover contribution of the portion of a distribution from an individual retirement account or annuity described in Section 408(a) or 408(b) of the Code that is eligible to be rolled over and would otherwise be includible in gross income.

A separate Rollover Account shall be established for each such contribution. In the event an amount contributed to the Plan pursuant to this section shall be determined not to qualify as an eligible rollover distribution as defined above, such amount shall be distributed to the Employee who made the rollover contribution to the Plan. An Employee who is not eligible to participate in the Plan in accordance with Article III who is allowed to make such a rollover contribution will be deemed a Participant solely for purposes of such Rollover Account.

The Plan Administrator may establish such procedures as it deems appropriate to assure that such contribution will not adversely affect the qualified status of the Plan.

ARTICLE V – BENEFIT ALLOCATION

5.1 **Individual Accounts.** The Plan Administrator shall establish and maintain a separate Individual Account for each Participant (which may consist of various sub-accounts established by the Plan Administrator) to reflect the Participant's share of Contributions made pursuant to Article IV, if any, and the income, loss, appreciation and depreciation attributable thereto. A Participant's Individual Account shall consist of the following accounts in addition to such other accounts or subaccounts as the Plan Administrator may at any time deem appropriate.

- (a) An “**Employer Basic Contributions Account**” to reflect the Participant's interest in the Trust Fund attributable to Employer Basic Contributions made to the Trust Fund by the Employer on behalf of the Participant.
- (b) An “**Employer Matching Contributions Account**” to reflect the Participant's interest in the Trust Fund attributable to Employer Matching Contributions made to the Trust Fund by the Employer on behalf of the Participant.
- (c) A “**Rollover Account**” to reflect the Participant's interest in the Trust Fund attributable to rollover contributions made to the Trust Fund by an Employee in accordance with Section 4.7 of the Plan.
- (d) A “**Pension Elective Transfers Account**” to reflect the Participant's interest in the Trust Fund attributable to amounts transferred on behalf of the Participant from the Metropolitan St. Louis Sewer District Employees' Pension Plan in accordance with a Participant's election under terms of such pension plan.
- (e) A “**Pension Mandatory Transfers Account**” to reflect the Participant's interest in the Trust Fund attributable to amounts transferred on behalf of the Participant from the Metropolitan St. Louis Sewer District Employees' Pension Plan, as required under the terms of such pension plan relating to certain rehired Employees.

The Plan Administrator shall keep accurate records of all contributions, receipts, investment distributions and all other transactions, including, if applicable, the portion of each Individual Account that is invested in a Pooled Investment Fund.

The amount credited to the Individual Account of a Participant from time to time as of the most recent Valuation Date shall constitute the entire interest of the Participant in the Plan.

5.2 **Valuation of Accounts.** As soon as practicable after each Valuation Date, the Trustee shall determine the fair market value of the Trust Fund as of such Valuation Date. The fair market value of a Pooled Investment Fund means the net value of all of the assets and

liabilities of such Pooled Investment Fund as of the close of business on the Valuation Date, including income, loss, appreciation, and depreciation since the immediately preceding Valuation Date; less the dollar amount of all contributions paid to the Trustee for the period elapsed since the immediately preceding Valuation Date that have not yet been credited to Individual Accounts.

5.3 Accounting Procedure. As of each Valuation Date within a reasonable time after the fair market value of the Trust Fund on such date has been determined and, with respect to a year-end Valuation Date, after the amount of the Employer contribution for the Plan Year has been determined, the Plan Administrator shall:

- (a) First, charge to the appropriate Individual Accounts all payments or distributions made from Participants' accounts that have not been charged previously, in accordance with Section 5.4;
- (b) Next, in the event assets are invested in a Pooled Investment Fund or Funds, adjust the net credit balances of the Individual Accounts of all Participants in each Pooled Investment Fund upward or downward, pro rata, in proportion to the net credit balances of such Individual Accounts before such adjustment, so that the total of the net credit balances of such Individual Accounts after such adjustment will equal the fair market value of that Pooled Investment Fund as of such date;
- (c) Next, as of each year-end Valuation Date, reduce Individual Account balances to reflect forfeitures, if any, in accordance with Article IX; and
- (d) Finally, allocate and credit contributions in accordance with Section 5.5 or any other relevant Plan provision.

5.4 Accounting for Payments and Distributions. The Plan Administrator shall charge to the appropriate Individual Account of each Participant all payments and distributions made under the Plan to or for the benefit of such Participant or his Beneficiary since the immediately preceding Valuation Date.

5.5 Employer Contribution Allocations. Subject to the limitations of Article VI, the Plan Administrator shall allocate contributions to Participants' Individual Accounts as follows:

- (a) As of the end of each period for which such contributions are made, Employer Basic Contributions made pursuant to Section 4.1 shall be allocated to the Employer Basic Contributions Account of each Participant entitled to an allocation of such contribution in accordance with Section 5.6 in proportion to the relationship which the Covered Compensation of such Participant for the period for which such contribution is made bears to the total Covered Compensation of all such Participants for the period for which such contribution is made; and
- (b) As of the last day of the period for which each such contribution is made, Employer Matching Contributions made for a Participant pursuant to Section 4.2 shall be allocated

to the Employer Matching Contributions Account of each Participant entitled to an allocation of such contribution in accordance with Section 5.7.

5.6 ***Participants Entitled to an Allocation of Employer Basic Contributions.*** Each Participant who receives Covered Compensation during a payroll period shall be entitled to receive an allocation of the Employer Basic Contribution for such payroll period.

5.7 ***Participants Entitled to an Allocation of Employer Matching Contributions.*** Each Participant who elected to make Annual Deferrals (as defined in the Deferred Compensation Plan) from his Covered Compensation during the Plan Year shall be entitled to receive an allocation of the Employer Matching Contribution for such Plan Year.

ARTICLE VI – LIMITATIONS ON ANNUAL ADDITIONS

6.1 ***General Rule.*** In no event shall the sum of the Employer contributions, Employee contributions allocated to the account of a Participant for the Plan Year exceed the lesser of:

- (a) The amount specified in Section 415(c)(1)(A) of the Code, as adjusted annually for any applicable increases in the cost of living in accordance with Section 415(d) of the Code, as in effect as of the last day of the Plan Year (\$52,000 for 2014); and
- (b) 100% of the Participant's compensation for such year.

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

“Compensation” means wages within the meaning of Section 3401(a) of the Code (for purposes of income tax withholding at the source) but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exceptions for agricultural labor and services performed outside the United States), plus the amount of salary reduction as a result of an election pursuant to a plan or plans governed by Section 125, 132(f)(4), 401(k), 403(b), or 457(b) of the Code (inclusively); plus deemed Section 125 compensation in a cafeteria plan with automatic enrollment where the Participant is unable to certify other health coverage and the Employer does not collect information regarding the Participant's other health coverage as part of the enrollment process. In order to be taken into account for purposes of this section, compensation generally must be paid or treated as paid to the Employee before the severance from employment of the Employee. However, compensation paid by the later of two and one-half months after the severance from employment of an Employee or the end of the limitation year that includes the date of severance from employment of the Employee shall be treated as compensation to the extent such amounts are compensation for services rendered that would have been paid absent a severance from employment, payments of accrued vacation or other leave the Employee would have been able to use if employment had continued, or payments of unfunded nonqualified

compensation that would have been paid at the same time if the Employee had continued in employment.

For purposes of this Article, Section 415 of the Code, which limits the benefits and contributions under qualified plans is hereby incorporated by reference. The limitation year shall be the Plan Year.

6.2 **Reduction of Benefits.** Reduction of contributions to all defined contribution plans where required to comply with Section 415 of the Code shall be accomplished by reducing contributions for the Participant for defined contribution plans maintained by the Employer, such reduction to be made beginning with the plan to which the amount contributed on behalf of the Participant is the largest without regard to the reduction provided for in this Section.

Amounts that cannot be credited to the Individual Account in the Plan of a particular Participant for a Plan Year because of the limitations of this Section shall be disposed of as follows in accordance with the principles set out in the Employee Plans Compliance Resolution System.

ARTICLE VII – VESTING

7.1 **General Rule.** As of any time before the Normal Retirement Age of a Participant (other than upon death or Permanent Disability), the vested percentage of the amounts credited to the Participant's Employer Basic Contributions Account and Pension Mandatory Transfers Account shall be determined in accordance with the following schedule:

Months of Continuous Service	Vested (Nonforfeitable) Percentage
Less than 12	0%
12 but less than 24	20%
24 but less than 36	40%
36 but less than 48	60%
48 but less than 60	80%
60	100%

7.2 **Fully Vested Accounts.** The amounts credited to the Individual Account of a Participant who is an Employee when he attains his Normal Retirement Age, or who incurs a Severance from Service because of death or Permanent Disability, or who has completed the applicable number of months of Continuous Service in accordance with Section 7.1, shall be fully vested at all times.

The amount credited to the Employer Matching Contributions Account, Pension Elective Transfers Account and Rollover Account of a Participant shall be fully vested at all times.

7.3 **Creditation of Months of Continuous Service.** A Participant shall be credited

with all months of Continuous Service, except that a Participant's months of Continuous Service completed after such Participant is rehired more than two years after a prior Severance from Service, shall be disregarded for purposes of determining the nonforfeitable percentage of his Individual Account which accrued on or before the date upon which such break occurred.

A Participant who was a former participant in the Metropolitan St. Louis Sewer District Employees' Pension Plan shall receive credit for months of Continuous Service credited to such Participant under the terms of the Metropolitan St. Louis Sewer District Employees' Pension Plan.

ARTICLE VIII – PAYMENT OF BENEFITS

8.1 ***Payment of Benefits.*** Upon the Severance from Service of a Participant, the amount credited to his Individual Account shall be payable in accordance with the provisions of Section 8.2 to the extent such Individual Account is vested.

8.2 ***Time of Distribution of Benefits.*** Subject to the consent requirement of Section 8.4, if applicable, the value of a Participant's vested Individual Account balance shall be distributed as soon as administratively feasible after the Participant's Severance from Service. The amount payable to a Participant shall be the vested amount credited to his Individual Account as of the Valuation Date immediately preceding such distribution.

8.3 ***Form of Benefit Distribution.*** The vested amount credited to a Participant's Individual Account shall be distributed in any one or a combination of the following forms as the Participant may elect in accordance with such procedures as the Plan Administrator may specify:

- (a) In one lump sum payment (which may represent either all of such Participant's benefits or only the portion remaining after distribution of a portion thereof pursuant to subsection (b) hereof); or
- (b) In annual installments of reasonably equal amounts over a period not exceeding the life expectancy of such Participant and his Beneficiary. At the Participant's election, annual payments may be made in monthly or quarterly installments.

Notwithstanding the foregoing, the forms of payment available to any Participant shall be subject to such forms of payment as are available from the particular Pooled Investment Funds among which such Participant's Individual Account is allocated.

8.4 ***Consent to Distribution.*** If the Participant's vested Individual Account balance exceeds \$1,000 at the time of the distribution to the Participant, amounts payable to such Participant shall not be distributed before the Participant attains Normal Retirement Age without the consent of the Participant. Such consent to distribution must be made in accordance with such procedures as the Plan Administrator may specify.

8.5 ***Distribution of Small Amounts.*** If a Participant's vested Individual Account

balance does not exceed \$1,000 at the time of the distribution to the Participant (including Rollover Accounts), the Plan Administrator shall direct the distribution of such amount to the Participant in a single lump sum payment as soon as administratively feasible after such amount becomes payable in accordance with this Article.

8.6 *Accounts of Former Employees.* The vested amount credited to the Individual Account of the Participant, if any, after the Severance from Service of such Participant shall be adjusted in accordance with Article V as of each Valuation Date following such Severance from Service until such amount shall have been distributed in full in accordance with this Article. Distribution of the balance of the vested amount credited to the Individual Account of a Participant as of the Valuation Date (on the date for valuing Individual Accounts in accordance with the terms of an Annuity Contract) immediately preceding the distribution shall constitute payment in full of the benefits of such Participant hereunder. Any balance of such Individual Account remaining unpaid at the death of a Participant shall be distributed in accordance with Article X.

8.7 *Direct Rollover of Eligible Rollover Distributions.* 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 (a “direct rollover”). A distributee includes an Employee or former Employee. In addition, the Employee’s or former Employee’s surviving spouse is a distributee with regard to the interest of the spouse or former spouse. For purposes of this Section 8.7, effective September 16, 2013, the term “spouse” means the person to whom a Participant is legally married (as determined under applicable law of any state of the United States or any domestic or foreign jurisdiction having the legal authority to sanction marriages at the time and location that the marriage was entered into) at the Participant’s annuity starting date, the term “surviving spouse” means the individual of the to whom the Participant is legally married (as determined under applicable law of any state of the United States or any domestic or foreign jurisdiction having the legal authority to sanction marriages at the time and location that the marriage was entered into) on the date of death of the Participant, and the term “Participant’s annuity starting date” means the date distributions commence.

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; and any hardship distribution. A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or effective January 1, 2007, such amount may be transferred in a direct trustee-to-trustee transfer to a qualified trust described in Section 401(a) of the Code or an annuity contract described in Section 403(b) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is

includible in gross income and the portion of such distribution which is not so includible.

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, a Roth IRA described in Section 408A(b) of the Code (effective for distributions after December 31, 2007), an annuity plan described in Section 403(a) of the Code, or a qualified plan described in Section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. An eligible retirement plan shall also mean 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.

ARTICLE IX – FORFEITURES

9.1 **Forfeitures.** Upon the Valuation Date coincident with or next following the Participant's Severance from Service, the amount credited to the Employer Basic Contributions Account and the Pension Mandatory Transfers Account of such Participant shall be forfeited to the extent such amount is not then vested as provided in Article VIII.

Amounts forfeited upon each Valuation Date in accordance with this section shall be used to reduce Employer Basic Contributions or to restore forfeitures (as described in Section 9.2) for the year of the forfeiture.

9.2 **Rehired Former Partially Vested Participants.** This section shall apply only to a Participant who incurred a Severance from Service before his Individual Account was fully vested and who is later rehired by the Employer.

- (a) **Rehire After Forfeiture.** If such a Participant is rehired before incurring two consecutive One Year Breaks in Service, the amount previously forfeited, if any, in accordance with Section 9.1 shall be restored.
- (b) **No Forfeiture Restoration.** If a Participant is rehired after incurring two consecutive One Year Breaks in Service, amounts previously forfeited shall not be restored.
- (c) **Source of Restored Forfeitures.** The amount of the restoration to which such a Participant is entitled shall be allocated out of Employee forfeitures prior to the time such forfeitures are used to reduce Employer Basic Contributions for the Plan Year and, if such amounts are insufficient, out of an additional Employer contribution for the Plan Year with respect to which such restoration is made.
- (d) **Time of Restoration.** Restorations shall be made as soon as administratively practicable after the Participant is rehired.
- (e) **Vested Accounts After Forfeiture.** If a Participant is rehired before the entire vested

portion of his Individual Account has been distributed, but after incurring a forfeiture that is not restored after rehire, the amount payable to him at the time of rehire shall be held in a separate "Prior Account" which shall be fully vested and a separate Employer Basic Contributions Account shall be established and maintained for such Participant to reflect any subsequent Employer contributions.

ARTICLE X – PAYMENT OF DEATH BENEFITS

10.1 ***Distribution of Death Benefits.*** The amount credited to the Individual Account of a Participant at the death of the Participant shall be distributed to the Beneficiary of the Participant in one lump sum payment as soon as administratively feasible after the Participant's death; provided, however, that subject to Section 11.2, the Beneficiary of a Participant who is receiving installment payments at the time of his death may elect to continue to receive such installment payments in accordance with procedures established by the Plan Administrator.

A non-spouse Beneficiary may elect to receive his or her distribution from the Plan in a direct trustee-to-trustee transfer to an eligible retirement plan in accordance with Section 402(c)(11) of the Code.

10.2 ***Beneficiary Designation.*** Each Participant from time to time, may designate on a form acceptable to the Plan Administrator, any Beneficiary (including a trust) or Beneficiaries (concurrently, contingently or successively) to whom his benefits under the Plan are to be paid if he dies before he receives all of such benefits. A beneficiary designation form shall be effective only when the form is filed in writing with the Plan Administrator while the Participant is alive and shall cancel all beneficiary designation forms previously signed and filed by the Participant. In the manner and within the limits prescribed by the Plan Administrator, a Participant may designate more than one Beneficiary to share a death benefit; provided, however, if a Participant names his/her spouse to receive a death benefit, the Participant may not name any other non-spousal co-Beneficiary to receive a benefit with such spouse. If the Participant does not name his/her spouse as a Beneficiary, the Participant may name multiple non-spousal co-Beneficiaries who will receive the death benefit in the respective percentage interests designated by the Participant. A Participant may change or revoke a Beneficiary designation at any time without the consent of the Beneficiary by filing a new Beneficiary designation form with the Plan Administrator. Any change of Beneficiary designation shall revoke all prior Beneficiary designations made by a Participant.

10.3 ***Failure to Designate.*** If a Participant shall not have validly designated a Beneficiary or no Beneficiary or Beneficiaries entitled to receive distribution of all of the amount payable under the Plan survives the Participant, then that portion of the amount payable as to which there is no qualified surviving Beneficiary shall be paid to the estate of the Participant.

10.4 ***Renunciation of Death Benefit.*** A Beneficiary of a Participant entitled to a benefit under the Plan may disclaim his right to all or any portion of such benefit by filing a written irrevocable and unqualified refusal to accept such a benefit with the Plan Administrator before payment to him of any such benefit but no later than nine months after the death of such a

Participant. Any benefit so disclaimed shall be distributable to the person or persons (and in the proportions) to which such benefit would have been distributable if the Beneficiary who so disclaims such benefit had predeceased such Participant.

ARTICLE XI – LATEST TIME OF PAYMENT

This Article does not contain the general rules of the Plan governing the time and form of distributions. In particular, this Article in and of itself does not give any right to a Participant or Beneficiary to defer distributions beyond the time of distribution provided in the preceding Articles. The provisions of this Article, which are included to comply with the Code, in certain limited circumstances as specifically provided in this Article, merely may accelerate the time of distribution provided by the preceding Articles.

11.1 **Sixty-Day Rule.** Unless the Participant elects otherwise in writing, the latest date on which payment of benefits must commence shall be the sixtieth day after the close of the Plan Year in which the *latest* of the following events occurs:

- (a) The Participant attains Normal Retirement Age;
- (b) The Participant incurs a Severance from Service; or
- (c) Ten years have elapsed from the date the Participant commenced participation in the Plan.

11.2 **Age Seventy and One-Half Minimum Distribution Requirements.**

- (a) **General Rules.** The requirements of this section will take precedence over any inconsistent provisions of the Plan. All distributions required under this section will be determined and made in accordance with the Treasury Regulations under Section 401(a)(9) of the Code, including the minimum distribution incidental death benefit requirements of Section 401(a)(9)(G) of the Code and Treas. Reg. §§1.401(a)(9)-2 through 1.401(a)(9)-9.
- (b) **Required Minimum Distributions During Participant's Lifetime.** The Participant's entire interest will be distributed, or will begin to be distributed, to the Participant no later than the April 1st of the calendar year following the *later* of: the calendar year in which the Participant attains 70½ years of age; or the calendar year in which the Participant incurs a Severance from Service. If the Participant is a 5% owner, as defined in Section 416(i) of the Code, the required beginning date is the April 1st of the calendar year following the calendar year in which the Participant attains seventy and one-half years of age. (Such date is referred to as the Participant's "**Required Beginning Date**").

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

- (i) the quotient obtained by dividing the Participant's Individual Account balance by the distribution period in the Uniform Lifetime Table set forth in Treas. Reg. § 1.401(a)(9)-9, using the Participant's age as of the Participant's birthday in the distribution calendar year; or
- (ii) 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 Individual Account balance by the number in the Joint and Last Survivor Table set forth in Treas. Reg. § 1.401(a)(9)-9, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

Required minimum distributions will be determined under this subsection beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

- (c) **Distributions Directly From the Trust Upon Death of Participant.** Upon the death of the Participant, the Participant's entire interest will be distributed in accordance with this Section 11.2(c) or as provided in Section 11.2(d) or Section 11.2(e).

If the Participant dies before distributions begin, the Participant's entire interest will be distributed by December 31st of the calendar year containing the fifth anniversary of the Participant's death; provided however, if because of administrative infeasibility, such distribution to the applicable Beneficiary is not completed by such fifth anniversary, such Beneficiary shall be deemed to have elected the life expectancy rule of paragraph 11.2(d)(i) or (ii), whichever is applicable.

If the Participant dies on or after distributions begin, 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 Individual 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.

- (d) **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:

- (i) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, then distributions to the surviving spouse will begin by December 31st of the calendar year immediately following the calendar year in which the Participant died, or by December 31st of the calendar year in which the Participant would have attained age seventy and one-half years, if later.
- (ii) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, then distributions to the designated beneficiary will begin by December 31st of the calendar year immediately following the calendar year in

which the Participant died.

- (iii) If there is no designated Beneficiary as of September 30th of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31st of the calendar year containing the fifth anniversary of the Participant's death.
- (iv) If the Participant's surviving spouse is the Participant's sole designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this subsection, other than Section 12.2(d)(i) above, will apply as if the surviving spouse were the Participant.

For purposes of this subsection, unless Section 11.2(d)(iv) above applies, distributions are considered to begin on the Participant's Required Beginning Date (or, if Section 11.2(d)(iv) above applies, the date distributions are required to begin to the surviving spouse under Section 11.2(d)(i) above). If annuity payments 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 Section 11.2(d)(i) above), the date distributions are considered to begin is the date distributions actually commence.

If the Participant dies before the date distribution of his or her interest begins 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 Individual Account balance by the remaining life expectancy of the Participant's designated Beneficiary, determined in accordance with the provisions in Section 11.2(e)(i) below applicable to death after distributions have begun.

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

If the Participant dies before the date distribution of his or her interest begins, the Participant's surviving spouse is the Participant's sole designated Beneficiary, and the surviving spouse dies before distributions to the surviving spouse are required to begin to the surviving spouse under Section 12.2(d)(i) above, this subsection will apply as if the surviving spouse were the Participant.

(e) **Death of Participant On or After Distributions Begin.**

- (i) *Participant Survived by Designated Beneficiary.* If this subsection applies, and 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 Individual 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:

- (1) 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.
 - (2) 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.
 - (3) 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.
- (ii) *No Designated Beneficiary.* If this subsection applies, and if the Participant dies on or after the date distributions begin and there is no designated Beneficiary as of September 30th 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 Individual 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.

(f) **Definitions.**

- (i) *Annuity Starting Date:* The date distributions commence.
- (i) *Designated Beneficiary:* The individual who is designated as the Beneficiary under Section 10.2 of the Plan and is the designated Beneficiary under Section 401(a)(9) of the Code and Treas. Reg. §1.401(a)(9)-4.
- (ii) *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 11.2(c). 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 31st of that distribution calendar year.

- (iii) *Life expectancy*: Life expectancy as computed by use of the Single Life Table in Treas. Reg. §1.401(a)(9)-9.
- (iv) *Participant's Individual Account balance*: The Participant's Individual 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 to the Individual 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 Individual 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.
- (v) *Spouse*: Effective September 16, 2013, the person to whom a Participant is legally married (as determined under applicable law of any state of the United States or any domestic or foreign jurisdiction having the legal authority to sanction marriages at the time and location that the marriage was entered into) at the Participant's annuity starting date.
- (vi) *Surviving Spouse*: Effective September 16, 2013, in the case of a Participant who dies before his annuity starting date, the person to whom a Participant is legally married (as determined under applicable law of any state of the United States or any domestic or foreign jurisdiction having the legal authority to sanction marriages at the time and location that the marriage was entered into) on the date of death of the Participant.
- (g) Notwithstanding the other provisions of this section, distributions on behalf of any Participant, including a 5% owner, who have made a designation in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) (a "Section 242(b)(2) Election") may be made in accordance with the following requirements (regardless of when such distribution commences):
 - (i) The distribution by the Plan is one which would not have disqualified the Plan under Section 401(a)(9) of the Internal Revenue Code as in effect prior to amendment by the Deficit Reduction Act of 1984.
 - (ii) The distribution is in accordance with a method of distribution designated by the

Participant whose interest in the Plan is being distributed or, if the Participant is deceased, by a beneficiary of such Participant.

- (iii) Such designation was in writing, was signed by the Participant or the beneficiary, and was made before January 1, 1984.
- (iv) The Participant had accrued a benefit under the plan as of December 31, 1983.
- (v) The method of distribution designated by the Participant or the beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and in the case of any distribution upon the Participant's death, the beneficiaries of the Participant employee listed in order of priority.

A distribution upon death will not be covered by this transitional rule unless the information in the designation contains the required information described above with respect to the distributions to be made upon the death of the Participant.

For any distribution which commences before January 1, 1984, but continues after December 31, 1983, the Participant, or the beneficiary, to whom such distribution is being made, will be presumed to have designated the method of distribution under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirements in paragraphs (i) and (v) above.

If a designation is revoked, any subsequent distribution must satisfy the requirements of Section 401(a)(9) of the Code and the regulations thereunder. If a designation is revoked subsequent to the date distributions are required to begin, the Plan must distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed which would have been required to have been distributed to satisfy Section 401(a)(9) of the Code and the regulations thereunder, but for the Section 242(b)(2) Election. For calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life).

In the case in which an amount is transferred or rolled over from one plan to another plan, the rules in Treas. Reg. §1.401(a)(9)-8, Q&A-14 and Q&A-15, shall apply.

ARTICLE XII – CLAIMS AND REVIEW PROCEDURE

12.1 *Claims for Benefits.* A Participant or Beneficiary who believes that he is entitled

to benefits under the Plan may file a written request for such benefits with the Plan Administrator setting forth his claim.

12.2 ***Written Denials of Claims.*** Within ninety days after receipt of the request, the Plan Administrator shall provide to every claimant who is denied a claim for benefits, written notice setting forth in a manner calculated to be understood by the claimant:

- (a) The specific reason or reasons for the denial;
- (b) Specific reference to pertinent Plan provisions on which the denial is based;
- (c) A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and
- (d) An explanation of the claim review procedure and the time limits applicable to such procedures.

The Plan Administrator may extend the reply period for an additional ninety days for reasonable cause.

12.3 ***Appeal of Denial.*** If a claimant receives notice from the Plan Administrator that a claim for benefits has been denied in whole or in part, the claimant or the claimant's duly authorized representative may, within sixty days after receipt of notice of such denial:

- (a) Make written application to the Plan Administrator for a review of the decision. Such application shall be made on a form specified by the Plan Administrator and submitted with such documentation as the Plan Administrator shall prescribe;
- (b) Review, upon request and free of charge, all documents, records and other information in the possession of the Plan Administrator which are relevant to the claim; and
- (c) Submit written comments, documents, records and other information relating to the claim.

If the claimant or his duly authorized representative fails to file such appeal within sixty days after the claim is denied, the claimant shall be deemed to have waived any right to appeal the denial of the claim.

If review of a decision is requested, such review shall be made by the Plan Administrator who shall review all comments, documents, records, and other information submitted by the claimant relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination.

The Plan Administrator shall furnish a written decision on review not later than sixty days after the notice of appeal is filed by the claimant. If special circumstances require an

extension of time beyond the initial sixty day period, prior to the end of such initial sixty day period the Plan Administrator shall provide to the claimant, written notice of the extension, the special circumstances requiring the extension, and the date by which the Plan Administrator expects to render the final decision. In no event shall such extension exceed a period of sixty days from the end of the initial sixty day period.

Any denial shall inform the claimant of the specific reason or reasons for the denial, refer to the specific Plan provisions on which the denial is based, shall be written in a manner calculated to be understood by the claimant, and shall be final.

ARTICLE XIII – ADMINISTRATION

13.1 **Administrator.** The Plan shall be administered by a committee of not more than four persons appointed by the Executive Director from employees holding unclassified positions. This entity shall be referred to as the Administrator. The Administrator shall act as the agent of the Employer in administering the Plan and shall have full and complete authority and discretion to control and manage the operation of, and shall decide all matters under, the Plan, and shall have any and all powers as may be necessary or advisable to discharge its duties under the Plan. The Administrator has complete discretionary authority to decide all matters under the Plan and its decisions shall be conclusive and binding on all persons.

13.2 **Duties.** The Administrator shall have such duties and powers as may be necessary to discharge its duties hereunder, including, by way of example but not by way of limitation, the following:

- (a) To construe and interpret the provisions of the Plan;
- (b) To decide all questions of eligibility and participation hereunder;
- (c) To prescribe such rules and procedures as are consistent with the provisions of the Plan and as are deemed necessary and proper by the Administrator;
- (d) To prepare and distribute, in such manner as the Administrator determines to be appropriate, information explaining the Plan;
- (e) To receive from the Employer and from Participants such information as shall be necessary for the proper administration of the Plan;
- (f) To maintain and furnish to the Employer, upon request, such reports with respect to the Administration of the Plan as are reasonable and appropriate;
- (g) To file with any state or federal authorities or agencies such records and reports as may be required by law regarding the Plan;
- (h) To make recommendations to the Employer regarding the employment of agents,

attorneys, accountants, consultants or other persons for such purposes as the Administrator considers necessary or desirable;

- (i) To review on an annual or periodic basis the performance of investment alternatives offered under the Plan;
- (j) To add or delete investment alternatives offered under the Plan;
- (k) Make recommendations to the Employer regarding institution of legal action regarding matters pertaining to the Plan;
- (l) Maintain and be custodian of all records, including financial records, relating to the Plan or to the Plan Participants; and
- (m) To do all such acts, take all such action and exercise all such rights, although not specifically mentioned herein, as the Administrator may deem necessary or convenient to administer this Plan and to carry out the purposes of this Plan.

13.3 ***Role of Employees.*** Any Employee who is a member of the administrative committee may participate in the Plan but may not participate in any discretionary action taken in connection with his participation.

13.4 ***Agents.*** The Administrator may contract with an agent or agents to implement the Plan and to perform some or all administrative services in connection therewith. All contracts for service shall be executed in the same manner as other contracts between the Employer and third parties.

13.5 ***Expenses.*** The general administrative expenses shall be paid by the Employer. Any expenses incurred in connection with the selection of an investment or an optional form of settlement under Section 8.3, however, shall be borne by the Participant or his Beneficiary, as the case may be. For purposes of this section, general administrative expenses shall include by way of example but not by way of limitation, legal and accounting expenses.

ARTICLE XIV – PROVISIONS RELATING TO THE TRUSTEE

14.1 ***Trustee Duties.*** All amounts of contributions made pursuant to the terms of the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held and invested in the Trust Fund in accordance with this Plan. The Trust Fund, and any subtrust established under the Plan, shall be established pursuant to the provisions of this Article XIV and shall constitute a valid trust under the law of Missouri. The Trustee shall ensure that all investments, amounts, property, and rights held under the Trust Fund are held for the exclusive benefit of Participants and their Beneficiaries. The Trust Fund shall be held in trust pursuant to the Trust Agreement for the exclusive benefit of Participants and their Beneficiaries and defraying reasonable expenses of the Plan and of the Trust Fund. It shall be impossible, prior to the satisfaction of all liabilities with respect to Participants and their

Beneficiaries, for any part of the assets and income of the Trust Fund to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries.

14.2 ***Earnings of Trust Fund.*** All income and earnings of the Trust Fund shall be accumulated by the Trustee and held, invested and reinvested as part of the principal of said Trust Fund. No part of such income and earnings shall be applied otherwise than for the benefit of the Participants of the Plan, and their beneficiaries, named, or provided for, in the Plan.

14.3 ***Acceptance of Contributions.*** The Trustee shall add to the principal of the Trust Fund, as originally constituted, all subsequent contributions made by the Employer in accordance with the Plan, but the Trustee shall be under no duty to inquire as to the correctness of the amounts paid by the Employer, or the value of the property contributed, nor to bring proceedings or otherwise seek to enforce payment of contributions from the Employer.

14.4 ***Investment Powers of Trustee.*** Subject to the provisions of Article XV, the Trustee shall have the powers described in this Article. The Trustee may, to the extent prudent under all of the circumstances, retain part of the funds of the Trust Fund in a cash reserve or in time deposits, savings deposits or certificates of deposit so as to enable the Trustee to meet the liabilities payable under the Plan. The Trustee shall have full power and authority to manage and control the Trust Fund and to sell, exchange, lease (for terms extending beyond the termination of the Trust, or otherwise), grant options on, rent, mortgage, pledge, assign, transfer or otherwise dispose of all or any part thereof, upon such terms and conditions as the Trustee may see fit. The Trustee may invest and reinvest all or any part of the Trust Fund in such domestic securities, including stocks, common or preferred, debentures, shares or participation in any common trust fund, insurance company contracts, shares or participation, in any pooled investment fund issued by any investment company, insurance company, or by any other issuer, bonds, notes, securities or other property (real and/or personal), as the Trustee may, in the Trustee's absolute discretion, select, and the Trustee may make and change such investments from time to time, according to the Trustee's discretion.

14.5 ***Trustee's Determination of Principal and Income.*** The Trustee shall have full power to determine, in computing the earnings of the Trust for the purpose of the determinations required by the Plan, whether any money or other property coming into the Trustee's hands, concerning which there may be any doubt, shall be considered as part of the principal or income of the Trust Fund, and to apportion between such principal and income any loss or expenditure in connection with the Trust, in such manner as the Trustee may deem just and equitable.

14.6 ***Other Powers of Trustee.*** In addition to such other powers as are herein otherwise conferred upon the Trustee, the Trustee is authorized and empowered to the extent not inconsistent with Article XV hereof:

- (a) To employ such agents and counsel as may be reasonably necessary in managing, protecting and administering the Trust, and to pay such agents and counsel reasonable compensation. Any legal counsel shall be of the Trustee's own selection and may be of counsel to the Trustee, in the Trustee's individual capacity, or of counsel to the Employer.

- (b) To borrow money from any lender, upon such terms, for such periods of time, at such rates of interest, and upon the giving of such collateral, as the Trustee may determine.
- (c) To register any securities or any property held by the Trustee in the Trustee's name, or in the name of his nominee, with or without disclosure that the same are held in a fiduciary capacity, to take or keep the same unregistered, and to retain the same or any part thereof in such manner that title thereto will pass by delivery; provided, however, that on the books and records of the Trustee, such investments shall be shown to be part of the Trust Fund and no such registration or holding, as herein provided, shall relieve the Trustee of liability for the safe custody and proper disposition of such investments, in accordance with the terms and provisions hereof.
- (d) To vote any stocks, bonds or other securities of any company, or other issuer; at any time held in the Trust Fund, and to give general or special proxies or powers of attorney, with or without substitutions, with respect thereto; to consent to, participate in, and take any action in connection with, reorganizations, recapitalizations, consolidations, mergers, liquidations and similar transactions with respect to issuers of securities constituting assets of the Trust, and to receive and retain any securities resulting from any such transactions; to deposit the securities of any issuers in any voting trust or with any protective or like committee, or trustee, and to exercise any subscription rights, conversion, or other rights or privileges, with respect to any securities in the Trust Fund.
- (e) To adjust, compromise or otherwise settle any obligation or liability due to, or from, the Trustee, as Trustee hereunder, including any claim that may be asserted for taxes under present or future laws, state or federal, or to enforce or contest the same by appropriate legal procedures; but the Trustee shall not be required to institute or continue litigation unless the Trustee is in possession of funds adequate for that purpose, or unless the Trustee is indemnified to the Trustee's satisfaction by the Employer with respect to the Trustee's counsel fees and all other expenses, costs and liabilities to which, in the Trustee's judgment, the Trustee may be subjected by any such action; provided, however, that the Trustee shall have no power or authority to deviate from such directions as the Employer may give to the Trustee with respect to payment of money, either as to amount or the time or times of such payments, or as to the persons entitled thereto.

14.7 ***Disbursements.*** Disbursements of the funds of this Trust shall be made by the Trustee only to, or for the benefit of, the Participants of the Plan, or their Beneficiaries, and only at the time, in the amount, and in the manner prescribed by written instructions from the Employer, delivered by the Employer to the Trustee. The Trustee shall be under no obligation to check or verify the correctness of the instructions given to the Trustee by the Employer, the Trustee's only duty being to follow the directions of the Employer.

14.8 ***Transfers to Other Trust.*** Upon written instructions of the Employer delivered to the Trustee, the Trustee shall transfer funds held hereunder to any other trust, which is now or hereafter may be utilized by the Employer to fund benefits previously funded by this Trust. The Trustee shall be under no obligation to check or verify the correctness of the instructions given to

the Trustee by the Employer, the Trustee's only liability being to follow the directions of the Employer.

14.9 ***Authority of Trustee.*** The Trustee shall have exclusive authority and complete discretion with respect to the investment, management and control of the assets of the Trust. Notwithstanding the foregoing, the Employer may appoint an Investment Manager who shall have the authority to direct the Trustee with respect, to the management (including the manner in which to vote securities), acquisition or disposition of any assets in the Trust Fund. Any Investment Manager shall certify in writing to the Trustee that it is qualified to act in such capacity under the preceding sentence, shall accept its appointment as an Investment Manager, shall acknowledge that it is a fiduciary under this Trust and the Plan, and shall undertake to perform the duties imposed on it under this section. The Employer shall certify to the Trustee (a) that it has appointed the Investment Manager, and (b) that there has been duly delegated to the Investment Manager all of the powers and authorities required to be exercised by it under the Trust. The Trustee may continue to rely upon all certifications, agreements and undertakings under this section unless otherwise modified in writing by the Employer or the Investment Manager as the case may be.

14.10 ***Assets to be Maintained in the United States.*** The Trustee shall not permit the indicia of ownership of any of the assets of the Trust to be maintained at a location outside the jurisdiction of the district courts of the United States.

14.11 ***Breach of Duty by Fiduciary Other than Trustee.*** The Employer shall indemnify the Trustee against all liabilities and claims (including reasonable attorney's fees and expenses in defending against such liabilities and claims) against the Trustee arising from any breach of fiduciary responsibility by a fiduciary other than the Trustee unless the Trustee knowingly participates in such breach, knowingly undertakes to conceal such breach, has actual knowledge of such breach or, through the Trustee's negligence, has enabled such other fiduciary to commit a breach of the latter's fiduciary responsibilities.

14.12 ***Reliance on Instructions.*** The Trustee shall not be obligated or required to determine whether any instructions issued to the Trustee by the Employer are, in fact, so issued in accordance with the terms of this Plan, or the powers and duties thereunder of the Employer, but may rely absolutely on written instructions signed by the Employer.

14.13 ***Records.*** The Trustee shall keep accurate and detailed accounts of all investments, receipts and disbursements, and other transactions relating to the administration of the Trust Fund. The Trustee shall, within 60 days after the close of each Plan Year, render to the Employer an account of the Trustee's administration of the Trust for the Plan Year.

14.14 ***Limitations on Claims.*** As between the Trustee and persons dealing with the Trustee in any manner regarding the Plan or the Trust, the claims of such persons shall be limited to the assets of the Trust, and the Trustee shall not be responsible for any claims in connection therewith.

14.15 ***Reliance on Information from the Employer.*** The Trustee, and any expert

assistant engaged by the Trustee, shall be fully protected in relying upon information furnished by the Employer which is required for the purpose of the administration and operation of the Plan and the Trust created hereunder, and shall not be liable for any action taken, or omitted, in reliance on such information.

14.16 ***Trustee Authorized to Act.*** No person dealing with the Trustee shall be required to make inquiry as to the authority of the Trustee to do any act which the Trustee may do hereunder; any such person shall be entitled, conclusively, to assume that the Trustee is properly authorized to do any act which he purports to do hereunder, and any such person shall be under no liability to any person, whomsoever, for any act done hereunder pursuant to the written direction of the Trustee. Any such person may conclusively assume that the Trustee has full power and authority to receive and give receipt for any money or property becoming due and payable to the Trustee, and no such person shall be bound to inquire as to the disposition or application of any money or property paid or delivered to the Trustee, or paid or delivered in accordance with the written direction of the Trustee.

14.17 ***Termination.*** This Trust shall be irrevocable. In case of the termination of the Plan, then the assets of this Trust shall be distributed, as provided in said Plan, subject to any and all amendments to said Plan which may have theretofore become effective. In case of such termination, the Trustee shall liquidate the assets of the Trust and disburse the same to, or for the exclusive benefit of the Participants (or their Beneficiaries) in such Plan, in the manner contemplated in the Plan, but subject to the designation by the Employer of the particular individuals entitled to receive payment under the Plan and the amount of payments thereunder. In no event shall any part of the principal or income of the Trust be paid to, or for the benefit of, the Employer, except as provided under the Plan from time to time.

14.18 ***Resignation.*** The Trustee may resign at any time by giving sixty (60) days written notice to the Employer; provided that the Employer may accept such resignation at any time within such sixty (60) day period that the Employer may fix. Upon such resignation becoming effective, the Trustee shall perform all acts necessary to transfer the assets of this Trust to such successor Trustee, as the Employer shall appoint and designate.

14.19 ***Removal of Trustee.*** The Employer may remove the Trustee at any time by giving sixty (60) days written notice to the Trustee. Upon such removal becoming effective, the Trustee shall perform all acts necessary to transfer the assets of this Trust to such successor Trustee as the Employer shall appoint and designate.

14.20 ***Vacancies.*** In the event of any vacancy in the trusteeship of this Trust, at any time, whether by reason of the resignation of the then incumbent Trustee, the removal of the Trustee, or any other cause, the Employer shall designate and appoint a successor Trustee. Any such successor Trustee shall have all the powers herein conferred upon the original Trustee.

14.21 ***Payment of Administration Expenses.*** The expenses of administration of this Trust, shall be paid by the Employer.

14.22 ***Payment of Taxes.*** All taxes which may be imposed upon the Trust shall be

considered as an expense of, and shall be paid from, the Trust, and, until so paid, shall constitute a lien upon the assets of the Trust, without any right of repayment from, or recourse against, the Employer or the Trustee.

14.23 *Acceptance of Trust Provisions.* The Trustee, by executing an Acceptance of Trusteeship shall be deemed to have accepted the foregoing terms and conditions and to have agreed to carry out the provisions thereof to be performed by the Trustee.

ARTICLE XV – PARTICIPANT CONTROL OF INVESTMENTS

15.1 *Directed Investments.* The Board may establish one or more Pooled Investment Funds, with different investment objectives, from time to time; and establish procedures consistent with the Plan permitting Participants to direct investment of all or a designated portion of their Individual Accounts among such Pooled Investment Funds.

If the Board establishes or designates Participant directed investment options, each Participant shall be entitled to direct the manner in which assets credited to his Individual Account shall be invested and reinvested at the times and in the manner provided in this Article.

The Board reserves the right to change any investment options which may be established pursuant to this Article, including the right to eliminate particular funds, at any time.

15.2 *Directed Investment Procedures.* To the extent that the Board has established Participant-directed funds pursuant to Section 16.1, each Participant shall direct the investment of all assets credited to his Individual Account in any one or a combination of such funds.

Each Participant, at the time he elects to become a Participant, shall direct investment of contributions made to his respective accounts in one or more of the funds. From time to time, at such times and upon such effective dates as the Plan Administrator may determine, a Participant may change his direction governing investment of contributions to be made to his respective accounts in the manner determined by the Plan Administrator.

Once given, an investment direction shall be deemed to be a continuing direction until explicitly changed by the Participant by a subsequent direction delivered in the manner determined by the Plan Administrator. The direction in effect at the time of receipt by the Trustee of contributions on behalf of a Participant shall govern the manner of investment of such contributions.

In addition to directing the manner of investment of contributions made to his Individual Account, a Participant may direct reinvestment of existing assets held in his Individual Account in accordance with the procedures established by the Plan Administrator.

Investment directions by a Participant shall cover the full amount credited to his Individual Account. In the event a Participant fails to direct the manner in which assets credited to his Individual Account shall be invested, the Trustee shall invest the assets with respect to

which no Participant investment direction is effective in the investment vehicle designated by the Plan Administrator as the default fund.

The Plan Administrator in its sole discretion may establish conditions, rules and procedures for directing investments by Participants, including, but not limited to, limits on the time and frequency of changing investment directions. The Plan Administrator in its sole discretion also may establish “black-out” periods, when specified changes are not permitted, to facilitate changes in the available funds or recordkeeping system. Such conditions, rules and procedures shall be disseminated in a manner reasonably determined to be available to all affected Plan Participants within a reasonable time before the effective date of such condition, rule or procedure.

The Plan Administrator shall deliver to the Trustee all investment directions received by the Plan Administrator in accordance with this section.

15.3 *Charges to Accounts.* Brokerage commissions, transfer taxes and other charges and expenses in connection with the purchase or sale for each segregated account shall be added to the cost of such securities or be deducted from the proceeds thereof, as the case may be; and expenses directly allocable to the execution of such transactions and administration with respect to such a segregated account, including charges of mutual fund managers and underwriters, may be charged to such segregated account, at the discretion of the Plan Administrator.

15.4 *Investment of Death Benefits.* Assets held in the Individual Account of a deceased Participant that are scheduled for distribution in a lump sum payment as soon as administratively feasible after the death of the Participant shall continue to be invested in the same manner in which such assets were invested at the time of the death of the Participant until such assets are distributed to the Beneficiary or Beneficiaries of the Participant in accordance with the Plan.

15.5 *Accounting for Transfers Between Pooled Investment Funds.* The following procedures shall apply in the case of any transfers between Pooled Investment Funds. The amount credited to the Individual Account of a Participant who delivers a direction to transfer assets from a Pooled Investment Fund, determined as of the effective Valuation Date, shall be transferred as soon as administratively feasible after such Valuation Date. An amount equal to the fair market value of the assets so transferred to another Pooled Investment Fund shall be credited to the Individual Account of such a Participant as of the Valuation Date immediately preceding the actual transfer for the purpose of the accounting procedures applicable to the recipient fund.

ARTICLE XVI – AMENDMENT AND TERMINATION

16.1 *Amendment.* The Board reserves the right at any time and from time to time to amend the Plan in whole or in part; provided that, no such amendment shall reduce the accrued benefit of a Participant as of the Amendment Date, and further provided that no amendment may increase or affect the duties of the Trustee without the consent of the Trustee.

16.2 **Termination.** The Board reserves the right at any time to terminate the Plan in its entirety or in part. Although the Employer intends to maintain the Plan indefinitely, the Plan is entirely voluntary on the part of the Employer and the continuation of the Plan and the contributions hereunder should not be construed as a contractual obligation of the Employer. The Board reserves the right to terminate the Plan in its entirety and to suspend or discontinue (in whole or in part) all contributions to the Trust Fund under the Plan. The right is subject to the condition that no part of the assets of the Plan, shall, by reason of any amendment or termination be used for or diverted to purposes other than the exclusive benefit of the Participants and their Beneficiaries under the Plan, unless and until all liabilities of the Plan have been satisfied, in which case any remaining assets shall revert to the District. Upon termination or complete discontinuance of contributions under the Plan, the rights of all Participants to benefits accrued to the date of such termination or discontinuance shall be nonforfeitable, to the extent then funded.

ARTICLE XVII – MISCELLANEOUS

17.1 **Anti-Assignation.** The payments, benefits or interest provided for under the Plan shall not be subject to any claim of any creditor of any Participant in law or in equity and shall not be subject to attachment, garnishment, execution or other legal process by any such creditor, nor shall the Participant have any right to assign, transfer, encumber, anticipate or otherwise dispose of any such payments, benefits, or interest.

Notwithstanding anything in this section to the contrary, the Plan Administrator may:

- (a) Surrender to the government of the United States of America any portion of the Trust Fund which is subject to a federal tax levy made pursuant to Section 6331 of the Code; and
- (b) Satisfy a judgment against a Participant for a crime involving the Plan, as described in Section 401(a)(13) of the Code.

If any portion of the Trust Fund which is attributable to the benefits, rights, or interest of any Participant is transferred to any other entity pursuant to this section to satisfy a debt or other obligation of such Participant, the amount credited to the Individual Account of such Participant shall be reduced by the amount so transferred.

17.2 **Military Leave Benefits.** Notwithstanding any provision of the Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Code. Effective for years beginning after December 31, 2008, the Plan shall not be treated as failing to meet the requirements of any provision described in Section 414(u)(1)(C) of the Code by reason of any contribution or benefit which is based on the differential wage payment (as described in Section 3401(h)(2) of the Code). The preceding sentence shall apply only if all Employees who are performing service in the uniformed services (as described in Section 3401(h)(2)(A) of the Code) are entitled to receive

differential wage payments on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the Employer, to make contributions based on the payments on reasonably equivalent terms (taking into account Sections 410(b)(3), (4), and (5) of the Code).

If a Participant dies while performing qualified military service, the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed employment and then experienced a Severance from Service on account of death.

An individual performing service in the uniformed services (as described in Section 3401(h)(2)(A) of the Code) for a period of more than 30 days receiving a differential wage payment from the Employer shall be treated as an Employee, and the differential wage payment (as described in Section 3401(h)(2) of the Code) shall be treated as Compensation. Notwithstanding the preceding paragraph, a Participant shall be treated as having experienced a Severance from Service during any period such Participant is performing service in the uniformed services (as described in Section 3401(h)(2)(A) of the Code).

17.3 *Rights of Employee.* Neither the action of the Employer in maintaining the Plan, nor any action taken by the Employer or the Trustee, nor any provision of the Plan shall be construed as giving to any Employee the right to be retained in the employ of the Employer, or the right to any payments other than those expressly provided for in the Plan to be paid from the Trust Fund. The Employer expressly reserves the right at any time to dismiss any Employee without any liability for any claim against the Employer or against the Trust Fund other than with respect to the benefits provided for by the Plan.

17.4 *Source of Benefits.* All benefits to be paid under the Plan shall be paid solely out of the Trust Fund and no Employer assumes any liability or responsibility therefor. Except as may be provided in Article XIV or Article XV, any interest in the Trust Fund of any Participant or Beneficiary shall be an undivided interest therein and no Participant or Beneficiary shall be deemed to have any claim to or interest in any specific asset or amount of money of the Trust Fund.

17.5 *Rules of Construction.* The terms and provisions of the Plan shall be construed according to the principles, and in the priority, as follows: first, in accordance with the meaning under, and which will bring the Plan into conformity with the Code; and secondly, in accordance with the laws of the State of Missouri. The Plan shall be deemed to contain the provisions necessary to comply with such laws. If any provision of the Plan shall be held illegal or invalid, the remaining provisions of the Plan shall be construed as if such provision had never been included. Wherever applicable, the masculine pronoun as used herein shall include the feminine, and the singular shall include the plural. The term profit shall mean profit or loss, as the case may be, and the term credit shall mean credit or charge, as the case may be.

17.6 *Plan Mergers.* In the event of any merger or consolidation with, or transfer of assets or liabilities to, any other plan, each Participant in the Plan, if the other plan then terminates, shall be entitled to a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer if the Plan then had been terminated.

17.7 ***Information from Participants.*** Each former Employee who is a Participant shall file in the form acceptable to the Plan Administrator (which may be submitted by electronic or other means as designated by the Plan Administrator) his post office address and each change of post office address with the Plan Administrator from time to time. Any communication, statement or notice addressed to such a Participant at his last post office address filed with the Plan Administrator will be binding upon the Participant for all purposes of the Plan, and the Trustee and the Plan Administrator shall not be obligated to search for or to ascertain the whereabouts of any such Participant.

17.8 ***Conclusiveness of Records.*** The records of the Employer and the Plan Administrator as to all information furnished shall be conclusive on all persons unless proved to the satisfaction of the Employer or the Plan Administrator furnishing the same to be incorrect.

17.9 ***Applicability of Plan.*** The provisions of the Plan shall be binding upon all persons entitled to benefits under the Plan and their respective heirs and legal representatives, upon the Employer, its successors and assigns, and upon the Trustee and the Trustee's successors.

17.10 ***Mistaken Contributions.*** If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one year after the payment of the contribution, and upon receipt in good order of a proper request approved by the Plan Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Participant or, to the extent required or permitted by the Plan Administrator, to the Employer.

17.11 ***No Contract of Employment.*** Participation in this Plan by a Employee shall not be construed to give a contract of employment to the Participant or to alter or amend an existing employment contract of the Participant, nor shall participation in this Plan be construed as affording to the Participant any representation or guarantee regarding his continued employment.

17.12 ***Distribution to Minors or Incompetents.*** If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Plan Administrator, benefits will be paid to such person as the Plan Administrator may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

17.13 ***Transfers from and to Other Qualified Plans.*** The Plan Administrator may accept a transfer on behalf of a Participant from the trustee of a profit sharing plan which meets the requirements of Section 401(a) of the Code. Unless the Plan is amended to so provide, the Plan Administrator shall not accept any transfer on behalf of a Participant from the trustee of any defined benefit plan or any defined contribution plan subject to the funding standards of Section 412 of the Code. The Plan Administrator may, subject to Section 18.6, direct the Trustee to transfer specified assets and liabilities to any other Plan. For purposes of this section a rollover

contribution is not considered a transfer.

17.14 ***Lost Participants.*** The Plan Administrator shall make all reasonable attempts to determine the identity and address of the Participant or the Participant's Beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt means (a) the mailing by certified mail of a notice to the last known address shown on the Employer's or the Plan Administrator's records, (b) notification sent to the Social Security Administration or the Pension Benefit Guaranty Corporation (under their program to identify payees under retirement plans), and (c) the payee has not responded within 6 months. If the Plan Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the Trust Fund shall continue to hold the benefits due such person.