



Bogner/Purnell

RESOLUTION NO. 6633

WHEREAS, the Board of Directors of the Omaha Public Power District has adopted the Omaha Public Power District 457 Retirement Savings Plan (as amended and restated effective August 1, 2018) (the "457 Plan"); and

WHEREAS, the Board of Directors of the Omaha Public Power District has adopted the Omaha Public Power District 401(k) Retirement Savings Plan (as amended and restated effective August 1, 2018) (the "401(k) Plan"); and

WHEREAS, pursuant to Section 9.1 of the 457 Plan, the Board of Directors of the Omaha Public Power District has reserved the right at any time, and from time to time, to modify or amend the 457 Plan in whole or in part; and

WHEREAS, pursuant to Section 12.1 of the 401(k) Plan, the Board of Directors of the Omaha Public Power District has reserved the right at any time, and from time to time, to modify or amend the 401(k) Plan in whole or in part; and

WHEREAS, the Board of Directors desires to restate the 457 Plan and the 401(k) Plan effective January 1, 2024 as provided herein; and

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of the Omaha Public Power District,

1. The Omaha Public Power District 457 Retirement Savings Plan is hereby amended and restated in its entirety effective January 1, 2024 pursuant to the Plan document attached hereto as Exhibit "A" and incorporated herein by this reference.

2. The Omaha Public Power District 401(k) Retirement Savings Plan is hereby amended and restated in its entirety effective January 1, 2024 pursuant to the Plan document attached hereto as Exhibit "B" and incorporated herein by this reference.



Action Item

BOARD OF DIRECTORS

March 19, 2024

ITEM

Omaha Public Power District 457(b) Retirement Savings Plan

PURPOSE

Restatement of the Omaha Public Power District 457(b) Retirement Savings Plan

FACTS

- a. District Management has been working with the General Counsels, Fraser Stryker, PC LLO and Kutak Rock LLP, to make several changes to the Omaha Public Power District 457(b) Retirement Savings Plan (the "Plan"), as required by OPPD. The specific changes are as follows:
 - a. Revised Section 3.1 and provisions throughout the 457(b) Plan to include certain part-time employee eligibility to contribute to the plan without employer match.
 - b. Revised Section 6.2 to include SECURE 2.0 Act emergency distribution provisions for qualified federally declared disaster distributions, personal or family emergencies, and early distributions for terminally ill employees under new Sections 6.2(e), (f), and (g).
 - c. Revised provisions throughout the 457(b) Plan document referencing Required Minimum Distribution ("RMD") age changes required by SECURE 2.0 Act.
 - d. Revised provisions throughout the 457(b) Plan document to reflect increase from \$5,000 to \$7,000 of mandatory cash-outs of small account balances of terminated participants effective January 1, 2024, under the SECURE 2.0 Act.
 - e. Revised Section 4.1(d) to include SECURE 2.0 Act provision eliminating the "first day of month" requirement for salary reduction agreements for 457(b) plans.
 - f. Revised Section 5.1 to include generalized language providing for a "savings" vehicle in the event the 457(b) Plan chooses to add annuities as a savings vehicle in the future.
 - g. Revised Section 6.2(c) by removing the requirement that no more than one withdrawal may be permitted within a three-month period by actively employed participants who have reached age 59½ as there is no legal requirement to limit withdrawals in such a manner nor is it administratively efficient to require such a limitation.
 - h. Revised Section 6.2(d) to include CARES Act Amendment effective May 1, 2020.
 - i. Revised Section 6.7 to include:
 - i. RMD provision to include SECURE 2.0 Act requirement that Roth contribution accounts are no longer subject to RMD rules effective January 1, 2024.
 - ii. SECURE 2.0 Act requirement that spouse be given the option to be treated as the deceased employee for purposes of RMDs.
 - iii. SECURE 2.0 Act provision allowing participants to elect to aggregate annuity distributions (if annuities are added as a savings option to the 457(b) Plan) and remaining accounts when determining whether required minimum distribution requirements are satisfied.
 - j. Removed Sections 8.9 through 8.13 referencing the Retirement Board.
 - k. Section 8.9, previously Section 8.14, now addresses Recovery of Overpayments.

- I. Revised Section 9.1 to include Amendment effective January 1, 2021, more closely reflecting Plan operations and Plan administration procedures.
- b. General Counsels have prepared a finalized restatement of the Plan Document with an effective date of 1/1/2024 (the "2024 457(b) Plan Restatement).
- c. The 2024 457(b) Plan Restatement also incorporates all amendments made to the Plan since its restatement effective August 1, 2018.

ACTION

Board approval of the Restatement of the Omaha Public Power District 457(b) Retirement Savings Plan.

RECOMMENDED:

APPROVED FOR BOARD CONSIDERATION:

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McKell V. Purnell
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McKell V. Purnell
Vice President, Human Capital

DocuSigned by:
L. Javier Fernandez
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L. Javier Fernandez
President and Chief Executive Officer

Attachments: Exhibit A
Resolution

**Omaha Public Power District
457 Retirement Savings Plan**

Amended and Restated January 1, 2024

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Article 1. The Plan

1.1 Establishment and Amendment

Omaha Public Power District (the "District") previously established and presently maintains a deferred compensation plan (the "Deferred Compensation Plan") which was established effective January 1, 1982. The Deferred Compensation Plan was amended and restated effective January 1, 1988, and renamed the Omaha Public Power District Supplemental Retirement Savings Plan (the "Plan"). The Plan was again amended and restated effective as of January 1, 1997, and renamed the Omaha Public Power District Supplemental Retirement Savings Plan-457. The Plan was again amended and restated, generally effective January 1, 2002; and January 1, 2005. The Plan was amended and restated effective September 1, 2007, and renamed the Omaha Public Power District 457 Retirement Savings Plan. The Plan was amended and restated effective January 1, 2013; and August 1, 2018. The Plan is hereby amended and restated in its entirety effective January 1, 2024, except as otherwise specifically provided herein.

1.2 Purpose

The Plan is intended to be an "eligible deferred compensation plan" within the meaning of that term in Section 457 of the Internal Revenue Code of 1986.

1.3 Applicability

Except as otherwise specified herein or required by law—

- (a) the provisions of the Plan as set forth in this document apply only to eligible employees who are currently employed by the District on or after January 1, 2005; and
- (b) any person who was covered under the Plan as in effect before January 1, 2005, and whose employment terminated before that date and who as of December 31, 2004, was entitled to benefits under the provisions of the Plan in effect on December 31, 2004, will continue to be entitled to the same amount of benefits without change under the Plan.

Article 2. Definitions

2.1 Definitions

Whenever used in the Plan, the following terms shall have the respective meanings set forth below unless the context clearly indicates otherwise.

- (a) **“Applicable Age”** means the age in which a Participant must begin receiving required minimum distributions from the Plan which is no later than April 1 of the calendar year following the later of the calendar year in which the employee attains age 73, or the calendar year in which the employee retires.
- (1) For employees who turned age 72 before January 1, 2023, the Applicable Age is age 72 (or age 70 1/2 if they were born before July 1, 1949).
 - (2) For employees who will turn age 72 after December 31, 2022 and age 73 before January 1, 2033, the Applicable Age is age 73.
 - (3) For employees who will turn age 74 after December 31, 2032, the Applicable Age is age 75.
- (b) **"Authorization Agreement"** means the agreement between a Participant and the District under which the Participant—
- (1) elects to have Compensation reduced pursuant to Section 4.1 of this Plan and/or Section 4.1 of the Section 401(k) Plan; and
 - (2) specifies whether such Compensation deferrals pursuant to Section 4.1 of this Plan will be matched under Section 4.2 of this Plan, or whether such Compensation deferrals pursuant to Section 4.1 of the Section 401(k) Plan will be matched under Section 4.2 of the Section 401(k) Plan, as described in Section 4.2(a) of this Plan.
- Compensation will be deferred for any period only if an Authorization Agreement for such deferral has been entered into before the beginning of such period. The Authorization Agreement shall be in such form as the Plan Administrator, in its discretion, shall prescribe.
- (c) **"Beneficiary"** means the beneficiary or beneficiaries most recently designated by the Participant pursuant to Section 6.6 and placed on file with the District and/or record keeper, as directed..
- (d) **“Board of Directors”** means the Board of Directors of the District
- (e) **"Code"** means the Internal Revenue Code of 1986, as amended from time to time, together with any regulations issued thereunder.
- (f) **"Compensation"** means a Participant's base salary before any deductions for—
- (1) Federal or State taxes;
 - (2) pension plan contributions other than applicable contributions pursuant to Code Section 414(h);

- (3) contributions to this Plan, to the Section 401(k) Plan, or to a cafeteria plan under Code Section 125; or
- (4) special compensation.
- (g) **"Compensation Reduction"** means the amount deferred either pre-tax or after-tax pursuant to the Participant's election to reduce Compensation under the terms of the Authorization Agreement.
- (h) **"District"** means Omaha Public Power District.
- (i) **"Includible Compensation"** means Compensation for service performed for the District which (taking into account the provisions of this Plan) is currently includible in base income.
- (j) **"Normal Retirement Age"** means age 65.
- (k) **"Participant"** means an individual who is eligible to defer Compensation and who fulfills the eligibility requirements of Article 3.
- (l) **"Participant's Account"** means the total amount credited to the separate account maintained in the Plan in accordance with the provisions of the Plan for each Participant which represents the Participant's total proportionate interest in the Trust Fund as of any valuation date, and which consists of the sum of all applicable sub-accounts for such Participant.
- (m) **"Plan"** means the Omaha Public Power District 457 Retirement Savings Plan, as set forth in this document.
- (n) **"Plan Year"** means the calendar year.
- (o) **"Plan Administrator"** means an individual or individuals appointed pursuant to Section 8.1 to administer and interpret the plan.
- (p) **"Section 401(k) Plan"** means the Omaha Public Power District 401(k) Retirement Savings Plan.
- (q) **"Termination of Service"** means severance of the Participant's employment with the District by reason other than death.
- (r) **"Trust"** means a trust established to receive, hold, invest, and dispose of the Trust Fund.
- (s) **"Trust Agreement"** means any agreement in the nature of a trust established to form a part of the Plan to receive, hold, invest, and dispose of the Trust Fund.
- (t) **"Trustee"** means the individual or individuals, or corporate fiduciary or combination thereof, acting as trustee under the Trust at any time of reference.
- (u) **"Trust Fund"** means the assets of the Plan held under any Trust forming a part of the Plan.
- (v) **"Underutilized Deferrals"** means the amount by which the Compensation actually included in the Participant's income for the previous taxable years for which the Participant reduced and deferred Compensation as specified in Section 4.1 is exceeded by the amount

which would have been included in income had the maximum deferral under Section 4.1(a) been utilized for such taxable years.

2.2 Gender and Number

The provisions of this agreement are intended to be gender neutral and gender inclusive, and the definition of any term herein in the singular may also include the plural.

Article 3. Participation

3.1 Eligibility

Any full-time or part-time employee of the District who, with the consent of the District, elects to reduce and defer Compensation as specified in Section 4.1 will be eligible to become a Participant. However, if a part-time employee of the District is included in a unit of employees covered by a collective bargaining agreement, such employee is not eligible to become a Participant unless the collective bargaining agreement specifically provides for the part-time employee's coverage under the Plan. Such part-time employee must meet all eligibility requirements set forth in the applicable collective bargaining agreement.

For purposes of the Plan, an employee shall be considered to be "full-time" if the employee works forty (40) or more hours per week. An employee shall be considered to be "part-time" if the employee works fewer than forty (40) hours per week.

3.2 Time of Participation

An eligible employee will become a Participant on the first day of any pay period following the District's receipt of notice of the eligible employee's intention to become a Participant. Notice shall be provided to the District by an eligible employee in writing or in another manner prescribed by and acceptable to the District or the Plan Administrator.

Article 4. Compensation Reduction and Matching Contributions

4.1 Reduction of Compensation

Each Participant's Compensation, which would otherwise be receivable during a period of employment, will be reduced as specified in the most recent Authorization Agreement on file with the District and/or the recordkeeper, as directed. The amount of the Compensation Reduction will be determined in accordance with the provisions of this Section. Specifically—

- (a) The annual Compensation Reduction amount, when combined with matching contributions under Section 4.2, will not exceed the lesser of—
 - (1) 100 percent of Includible Compensation for the calendar year; or
 - (2) the "applicable dollar amount" as defined in Code Section 457(b) and adjusted under Code Section 457(e)(15).
- (b) For one or more of the Participant's last three taxable years ending before the Participant attains Normal Retirement Age, the ceiling set forth in (a) above shall be the lesser of—
 - (1) twice the dollar amount in effect under (a)(2) above; or
 - (2) the sum of—
 - (A) the ceiling established for purposes of (a) above for the taxable year (determined without regard to this subsection (b)); plus
 - (B) the participant's Underutilized Deferrals.
- (c) Subject to (a) and (b) above, the amount of each Participant's Compensation Reduction will not be less than \$15 per pay period or such other amount as the District may determine. Effective January 1, 2003, the amount of each Participant's Compensation Reduction shall not be less than 1 percent of Compensation or such other amount as the District may determine, and, at the election of the Participant, such amount may be designated as a percentage of Compensation per pay period or as a flat dollar amount of Compensation per pay period.
- (d) A Participant shall have the right to elect to increase or decrease the Compensation Reduction for the ensuing period by executing another Authorization Agreement. In the absence of such an election, the Participant's most recent Authorization Agreement shall continue to be effective from pay period to pay period.
- (e) A Participant may elect to discontinue Compensation Reductions for any subsequent pay period following the effective date of the Participant's Authorization Agreement; provided, however, the Participant shall give the District sufficient notice of such discontinuance to enable the District to comply as of the desired pay period.

- (f) A Participant who has attained age 50 before the close of the Plan Year may elect to make catch-up contributions to the Plan in accordance with, and subject to the limitations of Code Section 414(v). Such amounts shall be in addition to the Participant's Compensation Reduction and shall not be taken into account for purposes of the limitations in subsection (a).
- (g) If a Participant's annual deferral for any calendar year exceeds the limitations of Sections 4.1(a), (b), or (f), or the Participant's annual deferral for any calendar year exceeds the limitations of Sections 4.1(a), (b), or (f) when combined with other amounts deferred by the Participant under another eligible deferred compensation plan under Code Section 457(b), then the annual deferral, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto), will be distributed to the Participant as soon as administratively practicable.

4.2 Matching Contributions

For each payroll period, the District will make a matching contribution on behalf of each Qualifying Participant whose Compensation for such payroll period has been reduced pursuant to Section 4.1. However, the District shall not make such a matching contribution to this Plan unless the Qualifying Participant has elected to have matching contributions made for such payroll period to this Plan pursuant to subsection (a) of this Section 4.2. Notwithstanding any other provision in this Plan to the contrary, the District shall not make such a matching contribution to this Plan for any Compensation Reductions made under Section 4.1 (f) or (g).

(a) Election of Matching Contributions.

Upon first electing Compensation Reductions pursuant to Section 4.1 of this Plan in an Authorization Agreement, each Qualifying Participant shall specify in the same Authorization Agreement, with respect to pay periods beginning in the Plan Year in which such Compensation Reductions commence, either—

- (1) that all Compensation Reductions made on the Participant's behalf pursuant to Section 4.1 of this Plan for such pay periods shall be matched pursuant to this Section 4.2 in this Plan; or
- (2) that all Compensation Reductions made on the Participant's behalf pursuant to Section 4.1 of the Section 401(k) Plan for such pay periods shall be matched in the Section 401(k) Plan.

An election pursuant to this subsection (a) may be revoked, and a new election made, in accordance with rules established by the Plan Administrator, provided, however, that no such revocation and new election shall be effective prior to the first day of the first pay period beginning after such election is received by the Plan Administrator (or such later date as is provided in rules established by the Plan Administrator) and provided further that the total amount of Matching Contributions made under this Plan and under the Section 401(k) Plan shall not exceed the Matching Amount described in subsection (b).

If a Participant fails to specify the plan in which Compensation Reductions shall be matched, they shall be matched in the plan elected in the Participant's most recent Authorization Agreement, provided that in the absence of such election, the Plan

Administrator shall determine, in its discretion, the plan to which the matching contributions shall be made.

- (b) **Matching Contribution.** Matching Contributions, if any, for a Plan Year will be the amount prescribed for a Qualifying Participant pursuant to a collective bargaining agreement applicable to such Participant for the Plan Year; or, if the Participant is not covered by a collective bargaining agreement for the Plan Year, the amount determined by the District for the Plan Year. The maximum Matching Contribution under this Plan shall be reduced by any matching contribution(s) for the same Participant under the Section 401(k) Plan.
- (c) **Definitions and Limitations.** For purposes of this Section 4.2—
- (1) "Compensation" shall mean Compensation as defined in Section 2.1(f) plus applicable contributions by the District pursuant to Code Section 414(h).
 - (2) Effective on and after January 1, 1999, "Compensation Reduction" shall mean Compensation Reductions under both this Plan and the Section 401(k) Plan, as applicable pursuant to the Participant's designation described in subsection (a) of this Section 4.2; provided, however, that for purposes of this Section 4.2, such Compensation Reductions for any Plan Year shall not be matched to the extent that they exceed the maximum amount of Compensation Reductions that could be made on the Participant's behalf under Section 4.1 of this Plan for that Plan Year.
 - (3) Matching Contributions to this Plan for any Participant for a calendar year shall be limited to the extent necessary to ensure that such matching contributions, in combination with the total amount of the Participant's Compensation Reductions to this Plan under Section 4.1 for the year, do not exceed the limits specified in Section 4.1(a) and (b).
 - (4) "Qualifying Participant" shall mean a Participant who is entitled to receive Matching Contributions under this Section 4.2. Full-time Employees not covered by collective bargaining agreement are Qualifying Participants. Part-time Employees not covered by a collective bargaining agreement are not Qualifying Participants. Employees covered by a collective bargaining agreement are Qualifying Participants to the extent such collective bargaining agreement provides for Matching Contributions under the Plan.

4.3 Protection of Persons Who Serve in a Uniformed Service.

A Participant whose employment is interrupted by qualified military service under Code Section 414(u) or who is on a leave of absence for qualified military service under Code Section 414(u) may elect to make additional annual deferrals upon resumption of employment with the District equal to the maximum annual deferrals that the Participant could have elected during that period if the Participant's employment with the District had continued (at the same level of Compensation) without the interruption or leave, reduced by the annual deferrals, if any, actually made for the Participant during the period of the interruption or leave. This right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave).

Article 5. Investment of Deferred Amounts

5.1 Participant Direction of Investment

Investment and savings vehicles available under the Plan will be as designated from time-to-time by the District and communicated to each Participant. All amounts of Compensation deferred under Section 4.1 and Matching Contributions under Section 4.2 will be held to be paid to the Participant pursuant to the Plan's provisions as if such amounts were invested in accordance with the Participant's investment selections from time-to-time filed with the District and/or the recordkeeper, as directed. Contributions made under Sections 4.1 and 4.2 will be maintained in separate sub-accounts to reflect the pre-tax or post-tax nature of the deferral.

All assets and income of the Plan shall be held in a Trust, or in a custodial account or contract described in Code Section 401(f), for the exclusive benefit of Participants and their beneficiaries in accordance with Code Section 457(g).

5.2 Account Balances

The District and/or the record keeper, as directed, shall maintain and adjust each account in each investment vehicle to reflect net appreciation or depreciation in the aggregate fair market value of said investment vehicle fund's assets, said investment vehicle's income and expenses, and gains or losses from the sale or other disposition of said investment vehicle's assets since the last preceding Participant's adjustment under this Section. In addition, if the Participant's Account exceeded \$10,000.00 as of the beginning of the Plan Year, the Participant's Account may be reduced by Plan or Trust Fund per capita or proportional balance (taking into account only Participants' Accounts that exceeded \$10,000.00 on the first day of the Plan Year) administrative or other fees (other than Settlor's fees) incurred by or in connection with the Plan and/or the Trust Fund.

5.3 Waiver

Notwithstanding any other provision of the Plan, the District shall not be liable to any Participant or Beneficiary under the Plan for any mistakes in judgment in the making or retaining of any investments, nor for any loss from investing the funds so long as the District performs its obligations under the Plan in good faith.

Article 6. Benefits

6.1 Participant's Accounts and Conversion Factors

A Participant's or Beneficiary's benefits under the Plan will be dependent upon the amount that has accumulated in the District's general account or the funding vehicle described in Section 5.1 (as the case may be) with respect to that Participant or Beneficiary under the investment vehicles selected. In converting an account from a lump-sum amount to an optional form of benefit, the District will use reasonable actuarial factors.

6.2 Entitlement to Benefits

Amounts payable under the Plan will be made available to Participants or Beneficiaries not earlier than when the Participant is separated from service with the District, faced with an unforeseeable emergency, incurred unforeseeable immediate financial needs relating to personal or family emergency expenses, sustained economic loss due to a federally declared disaster, death, or after attainment of age 59 1/2.

- (a) **Termination.** A Participant who has a Termination of Service will receive or begin receiving the Participant's deferred amounts (including matching contributions under Section 4.2), adjusted to take account of investment gains and losses determined under Section 5.2 and any prior withdrawals under Section 6.2, upon the later of April 1 following the year in which the Participant attains the Applicable Age as defined in Section 2.1(a) or the date that is as soon after the Participant's Termination of Service as the District determines to be administratively reasonable; provided, however, that—
- (1) receipt of benefits may be accelerated in accordance with Section 6.5(a); and
 - (2) the minimum distribution requirements of Section 6.7 will be satisfied.
- (b) **Death.** In the event of a Participant's death, the Participant's Beneficiary will be entitled to receive or begin receiving the Participant's deferred amounts (including matching contributions under Section 4.2), adjusted to take account of investment gains and losses determined under Section 5.2 and any prior withdrawals under Section 6.2, at the time determined as follows:
- (1) if the Beneficiary is the Participant's surviving spouse, upon the later of the date on which the Participant would have attained the Applicable Age as defined in Section 2.1(a) or the date that is as soon after the Participant's death as the District determines to be administratively reasonable; or
 - (2) if the Beneficiary is not the Participant's surviving spouse, one year after the Participant's death, if the Beneficiary receives the account in a form other than a lump-sum payment, or five years after the Participant's death if the Beneficiary receives the account in a lump-sum payment; provided that receipt of benefits may be accelerated in accordance with Section 6.5(b) and the minimum distribution requirements of Section 6.7 will be satisfied.
- (c) **Age 59½.** A Participant may withdraw all or part (but not including any loan amount(s) and not less than \$1,000) of the Participant's Account after attaining age 59½.

- (d) **Unforeseeable Emergency.** An unforeseeable emergency is severe financial hardship to a Participant resulting from a sudden and unexpected illness or accident of the Participant or a dependent (as defined in Code Section 152(a)) of the Participant, loss of the Participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the Participant's control. The circumstances that will constitute an unforeseeable emergency will depend upon the facts of each case but, in any case, payment may not be made to the extent that the hardship is or may be relieved—
- (1) through reimbursement or compensation by insurance or otherwise;
 - (2) by liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship; or
 - (3) by cessation of deferrals under the Plan.

Examples of what are **not** considered to be unforeseeable emergencies include the need to send a Participant's child to college or the desire to purchase a home. Withdrawals of amounts because of an unforeseeable emergency will be permitted only to the extent reasonably necessary, in the view of the District, to satisfy the emergency need.

- (e) **Federally Declared Disaster.** A Participant is eligible to receive a Federally Declared Disaster Distribution if the Participant's sustained economic loss due to a Major Disaster and their principal residence is in the disaster area during the disaster incident period.
- (1) A "Major Disaster" is a disaster declared by the President under Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act after December 27, 2020. The "disaster area" is the area with respect to which the Major Disaster was declared. The "incident period" is the period specified by the Federal Emergency Management Agency for the Major Disaster.
 - (2) The maximum amount distributable with respect to any disaster is the lesser of \$22,000 or the Participant's vested account balance. A Federally Declared Disaster Distribution must be made within 179 days after the later of the first day of the incident period or the date of the disaster declaration.
- (f) **Emergency Expenses Distribution.** Effective October 1, 2024, an Emergency Expenses Distribution is a distribution under the Plan for purposes of meeting unforeseeable or immediate financial needs relating to necessary personal or family emergency expenses.
- (1) Only one emergency distribution is permitted per Participant, per calendar year, which cannot exceed \$1,000. No further Emergency Expenses Distributions are permissible during the immediately following three calendar years unless the Participant fully repays such distribution to the Plan or the aggregate of the Participant's contributions to the Plan subsequent to such distribution is at least equal the amount of the such previous distribution.
 - (2) Emergency Expenses Distributions may be made from any sub-account within a Participant's account.

- (g) **Terminal Illness Distribution.** Effective October 1, 2024, a Terminal Illness Distribution is a distribution under the Plan to an Employee who is a terminally ill individual on or after the date on which the Employee has been certified by a physician as having a terminal illness or condition.
- (1) A terminally ill individual means an individual who has been certified by a physician as having an illness or physical condition that can reasonably be expected to result in death in 84 month or less after the date of the certification.
 - (2) The term “physician” generally means a doctor of medicine or osteopathy that is legally authorized to practice medicine and surgery by the State in which the doctor performs such function or action.
 - (3) The certification of terminal illness must include the following:
 - (A) A statement that the individual’s illness or physical condition can be reasonably expected to result in death in 84 months or less after the date of the certification;
 - (B) A narrative description of the evidence that was used to support the statement of illness or physical condition;
 - (C) The name and contact information of the physician making the statement;
 - (D) The date the physician examined the individual or reviewed the evidence provided by the individual, and the date the certification is signed by the physician; and
 - (E) The signature of the physician making the statement, and an attestation form the physician that, by signing the form, the physician confirms that the physician composed the narrative description based on the physician’s examination of the individual or the physician’s review of the evidence provided by that individual.
 - (4) An individual may, at any time during the three-year period beginning on the date such distribution was received, repay the distribution by making one or more contributions in an aggregate amount not to exceed the amount of such distribution to the Plan.

6.3 Forms of Benefits

(a) **Lump Sums.**

- (1) If the total amount of a Participant's interest under the Plan is \$5,000 or less (\$7,000 or less, effective January 1, 2024) at the time payment to the Participant is due, or

if payment is made to a Participant under Section 6.2(d) because of unforeseeable emergency, the total amount will be paid to the Participant in a single-sum cash payment.

- (2) Notwithstanding paragraph (1), if—
 - (A) the total amount of a Participant's interest under the Plan is in excess of \$1,000 at the time payment to the Participant is due; and
 - (B) the distributee does not make an election to have such distribution paid directly to an eligible retirement plan specified by the distributee as a direct rollover and does not make an election to receive such a distribution directly in cash, then the Plan Administrator will pay the distribution in a direct rollover to an individual retirement plan designated by the Plan Administrator. The Plan Administrator shall notify the distributee in writing that the distribution may be so transferred. The provisions of this Section 6.3(a)(2) shall be applied as if regulations implementing Section 657(c)(2) of the Economic Growth and tax Reduction Reconciliation Act of 2001 and IRS Notice 2005-5 applied to this Plan.

(b) **Other Forms.**

- (1) Prior to January 1, 2002. Subject to the provisions of Sections 6.5 and 6.7, if the total amount of a Participant's interest under the Plan exceeds \$5,000 (\$7,000, effective January 1, 2024) at the time payment is due, the total amount will be paid to the Participant in such form as is mutually agreeable to the Participant and the District or, in the absence of a mutually agreeable form, as a life annuity. Once the benefit payments have commenced, the form of payment will be irrevocable except that if the Participant later experiences an unforeseeable emergency (as defined in Section 6.2(d)) the Participant may vary the stream of payments and the size of the payments to the extent necessary to meet the emergency.
- (2) On and After January 1, 2002. Subject to the provisions of Sections 6.5 and 6.7, if the total amount of a Participant's interest under the Plan exceeds \$5,000 (\$7,000, effective January 1, 2024) at the time payment is due, the Participant shall elect to receive the Participant's interest in one of the following forms:
 - (A) a single-sum cash payment equal to the entire Participant interest; or
 - (B) periodic installments over a period of 60, 120, or 180 substantially equal monthly installments.

Once the benefit payments under this Section 6.3(b) have commenced, the form of payment will be irrevocable except that if the Participant later experiences an unforeseeable emergency (as defined in Section 6.2(d)), the Participant may vary the election to the extent necessary to meet the emergency.

- (c) **Periodic Withdrawals.** In addition to the distribution options stated in Section 6.3(b) above, and subject to the provisions of Sections 6.5 and 6.7, if the total amount of a Participant's interest under the Plan exceeds \$5,000 (\$7,000, effective January 1, 2024) at the time payment is due, a Participant may periodically elect to withdraw all or part (but

not including any loan amount(s) and not less than \$1,000.00) of the Participant's Account. Notwithstanding the foregoing, if any withdrawal will cause the total amount of a Participant's interest under the Plan to equal \$5,000 (\$7,000, effective January 1, 2024) or less, the entire remainder of the Participant's interest will be paid to the Participant in an immediate single-sum cash payment.

6.4 Death Benefits

- (a) **Before Distribution Has Begun.** Subject to the provisions of Section 6.7, if a Participant dies before having begun to receive a distribution under Section 6.2(a), the Participant's interest in the Plan will be paid to the Participant's Beneficiary or, if there is no surviving designated Beneficiary, to the Participant's estate.
- (1) If the amount of the Participant's interest in the Plan is \$5,000 (\$7,000, effective January 1, 2024) or less as of the date distribution to the Beneficiary is due, or if the Participant's account is payable to the Participant's estate, payment will be made in one lump-sum distribution of the entire account.
- (2) If the amount of the Participant's account exceeds \$5,000 (\$7,000, effective January 1, 2024) as of the date distribution to the Beneficiary is due, and if the Beneficiary is someone other than the Participant's estate, the total amount will be paid to the Beneficiary in accordance with the provisions of Section 6.3(b) as if the Beneficiary were the Participant.
- (b) **After Distribution Has Begun.** If a Participant dies after beginning to receive a distribution under Section 6.2(a), the Participant's Beneficiary will receive a benefit, if any, in accordance with the form of benefit the Participant was receiving at the time of death. If the Beneficiary under the form of benefit selected by the Participant has predeceased the Participant, the remaining value of the Participant's interest in the Plan due to a Beneficiary will be paid to the Participant's estate in one lump-sum amount.

6.5 Benefit Elections

- (a) **Termination.** A Participant whose account would otherwise be payable at the time specified in Section 6.2(a) may irrevocably elect to accelerate payment of the account to any date following the Participant's Termination of Service, provided that such an election to accelerate payment must be made no later than 30 days before the date the Participant desires payment to be made or commence.
- (b) **Death.** A Beneficiary who would otherwise be entitled to receive payment of a Participant's account at the time specified in Section 6.2(b) may irrevocably elect to accelerate payment of the account to any date following the Participant's death, provided that such an election to accelerate payment must be made no later than 30 days before the date the Beneficiary desires payment to be made or commence.
- (c) **Timing for Agreement on Optional Form.** If a Participant's account is to be paid (pursuant to Section 6.3(b)(1) or Section 6.4(a)(2)) in a form mutually agreeable to the Participant or Beneficiary and the District, the form of payment will be agreed upon no later than 30 days before payment of the Participant's account actually is made or begins.

6.6 Designation of Beneficiary

Each Participant will have the right to designate a Beneficiary or Beneficiaries, including contingent Beneficiaries, to receive any benefits which may be payable upon the death of the Participant. A Beneficiary designation is binding only if it has been made in a manner acceptable to the District and is recorded or filed according to procedures provided for such purpose by the Plan Administrator prior to the payment of the amounts that become due. In the case of a Married Participant, the designation of any beneficiary other than the Participant's spouse shall require the consent of the Participant's spouse. If no Beneficiary designation is on file with the District and/or record keeper, as directed, or all designated Beneficiaries have pre-deceased the Participant, the Participant's Account will be paid to the surviving member(s) of the first class of beneficiaries named below:

- (a) spouse;
- (b) children;
- (c) parents;
- (d) estate.

6.7 Minimum Distribution Requirements

Notwithstanding the preceding provisions of this Article, distributions under the Plan will comply with the provisions of this Section.

- (a) **Before Participant's Death.** The entire interest in the Plan of each Participant will be distributed to the Participant, or will begin to be distributed, not later than April 1 following the calendar year in which occurs the later of--
 - (1) the Participant's termination of employment; or
 - (2) the Participant reaches the Applicable Age as defined in Section 2.1.

The distribution, if not in a lump-sum payment, must be over the Participant's life, or over the lives of the Participant and Beneficiary, or over a period not extending beyond the life expectancy of the Participant or the life expectancy of the Participant and Beneficiary.

Beginning January 1, 2024, Required Minimum Distributions during the Participant's lifetime are not applicable to a Participant's Roth accounts.

- (b) **After Participant's Death.**
 - (1) If the distribution of the Participant's interest in the Plan has begun in accordance with paragraph (a) and the Participant dies before the entire interest has been distributed, the remaining portion of such interest will be distributed at least as rapidly as under the method of distribution being used under paragraph (a) as of the date of the Participant's death. If the Beneficiary is a Designated Beneficiary that is not an Eligible Designated Beneficiary, the remaining portion of such interest in full no later than December 31 of the tenth year following the year of the Participant's death.

- (2) If a Participant dies before the distribution of the Participant's interest has begun in accordance with paragraph (a), the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
- (A) **No Designated Beneficiary** If there is no Designated Beneficiary as of September 30 of the year following the calendar year of the Participant's death, the Beneficiary's entire interest will be distributed under the 5-Year Rule.
 - (B) **Eligible Designated Beneficiary.** If the distributee of a Participant's account is an Eligible Designated Beneficiary, the Beneficiary's entire interest will be distributed over the life expectancy of that Eligible Designated Beneficiary.
 - (C) **Other Designated Beneficiaries.** If the distributee of the Participant's account is a Designated Beneficiary who is not an Eligible Designated Beneficiary, then the Beneficiary's entire interest will be distributed no later than December 31 of the tenth year following the year of the Participant's death.
- (3) If the Beneficiary referred to in (B) of the preceding paragraph is the Participant's surviving spouse--
- (A) the date on which the distributions are required to begin need not be earlier than the date on which the Participant would have attained the Applicable Age as defined in Section 2.1; or, effective January 1, 2024, if the spouse so elects, the date in which the spouse attains the Applicable Age as defined in Section 2.1.
 - (B) if the surviving spouse dies before the distributions to such spouse begin, paragraphs (2) and (3) of this subsection shall be applied as if the surviving spouse were the Participant.
- (4) For purposes of this subsection, any amount paid to a child will be treated as if it had been paid to the surviving spouse if such amount will become payable to the surviving spouse upon such child's attainment of majority (or other designated event permitted under regulations).
- (c) **Definitions.** The following definitions apply for this Article 7:
- (1) **Designated Beneficiary.** A distributee of a Participant's account is a "Designated Beneficiary" if the distributee is an individual or trust who is a beneficiary of the account (whether pursuant to a designation by the v or application of the Plan terms) and who is a designated beneficiary under Code §401(a)(9) and Treas. Reg. §1.401(a)(9)-4.
 - (2) **Eligible Designated Beneficiary.** An individual is an "Eligible Designated Beneficiary" of a Participant if the individual qualifies as a Designated Beneficiary

and is (1) the Participant's spouse, (2) the Participant's child who has not reached the age of majority, (3) an individual not more than 10 years younger than the Participant, (4) a disabled individual, as defined in Code §72(m)(7), or (5) an individual who has been certified to be chronically ill (as defined in Code §7702B(c)(2)) for a reasonably lengthy period, or indefinitely. Certain trusts may be treated as Eligible Designated Beneficiaries pursuant to Code §401(a)(9)(H)(iv) and (v).

- (d) **Distributions to be Made in Accordance with Treasury Regulations.** Notwithstanding anything to the contrary contained in this Article 7, all distributions under this Plan shall be made in accordance with Section 401(a)(9) of the Code and the regulations thereunder. If a Participant partially annuitizes an account, the Participant may elect to aggregate distributions from the Participant's annuity and the Participant's remaining accounts when determining whether required minimum distribution requirements are satisfied.

6.8 Transfers Between Plans

- (a) If the Participant has an interest in an eligible deferred compensation plan (within the meaning of Code Section 457(b)) of an employer other than the District, and if such other plan permits the transfer of such an interest to a plan such as this Plan pursuant to Code Section 457(e)(10), the Participant may, in accordance with procedures approved by the District, request that all of such interest be transferred from such other plan to this Plan. If the District approves such a request, the District will, upon its receipt of assets corresponding to the transferred interest, which shall thereafter be subject only to the terms and provisions of this Plan. Such transferred amounts will not be considered an annual deferral.
- (b) **Transfers from the Plan.** If a Participant's employment with the District has terminated and the Participant is eligible to participate in an eligible deferred compensation plan (within the meaning of Code Section 457(b)) of another eligible employer (within the meaning of Code Section 457(e)(1)), and if such other plan provides for the transfer of interests from plans such as this Plan to such other plan pursuant to Code Section 457(e)(10), the Participant may, in accordance with procedures approved by the District, request that the Participant's interest in the Plan, together with assets corresponding to such interest, be transferred to the sponsor of such other plan. If the District approves such a request, the Participant shall cease to be a Participant and the District shall cease to be responsible for the payment of such interest after such transfer.

6.9 Direct Rollovers of Eligible Rollover Distributions

The Administrator shall establish procedures under which a Participant entitled to a distribution under this Article 6 which equals \$200 or more may authorize a direct rollover of all of such distribution, or part of such distribution if the amount rolled over is at least \$500, in cash, to a single individual retirement account established by the Participant or to an eligible retirement plan (within the meaning of Code Section 402(c)(8)(B)) maintained by a subsequent employer.

Article 7. Loans

7.1 Loans

Each Participant who meets the conditions set forth below may, with the approval of the Plan Administrator, borrow amounts from the Participant's deferred amounts (including matching contributions under Section 4.2 and transferred amounts under Section 6.8(a)). The Plan Administrator may establish rules relating to loans made under this Section. Each request for a loan shall be submitted in such form as the Plan Administrator shall prescribe. Each loan shall, at the Participant's election, be made as soon as practicable, or be deferred to the valuation date after the Plan Administrator's receipt of the Participant's application for the loan. The Plan Administrator shall then direct the Trustee to make a loan to a Participant, secured by Participant's remaining deferral amounts (including matching contributions and transferred amounts).

The terms of such loan shall be determined under rules established by the Plan Administrator and shall be subject to the following conditions:

- (a) A Participant who is not a full-time employee shall not be eligible for a loan.
- (b) The term of such loan shall not exceed five years or, in the case of a loan for the purchase (excluding mortgage payments) of a principal residence for the Participant, a reasonable time allowed under Code Section 72.
- (c) The maximum number of outstanding loans at any one time is two. Any outstanding loan from this Plan and any outstanding loan from the Section 401(k) Plan shall be taken into account in determining whether a Participant has taken the maximum number of loans from the Plan.
- (d) The minimum loan amount shall be \$1,000 or such greater amount as the Plan Administrator may prescribe.
- (e) Such loan shall bear a reasonable rate of interest, which must provide the Plan with a return commensurate with the interest rates charged by persons in the business of lending money for loans which would be made under similar circumstances.
- (f) The amount of such nontaxable loan (when added to the outstanding balance of all other loans to the Participant from the Participant's deferral amounts (including matching contributions and transferred amounts) under this Plan and from any Section 401(k) Plan account as described thereunder) shall not exceed the lesser of—
 - (1) \$50,000, reduced by the excess (if any) of—
 - (A) the highest outstanding balance of loans from the Plan and the Section 401(k) Plan during the one-year period ending on the day before the loan is made, or
 - (B) the outstanding balance of loans from the Plan and the Section 401(k) Plan on the date the loan is made; or
 - (2) the greater of—
 - (A) 50 percent of the vested and nonforfeitable portion of such Participant's

deferral amount (including matching contributions and transferred amounts) under the Plan; or

(B) \$10,000.

- (g) Such loan shall be evidenced by a promissory note, in such form and containing such terms and conditions as the Plan Administrator from time-to-time directs.
- (h) Payments of principal and interest shall be made by approximately equal payments, at least monthly, on a basis that would permit such loan to be levelly amortized over its term. Prepayments of principal and interest may be made, in whole or in part, without penalty. Loans shall be repaid by payroll deductions. In the case where a Participant with an outstanding loan balance transfers to a nonparticipating affiliate, where the Participant is no longer employed by the District or nonparticipating affiliate, or the Participant employee's payroll check does not have sufficient funds, loan payments may be made by personal check or money order.
- (i) Appropriate disclosure shall be made pursuant to the Truth in Lending Act to the extent applicable.
- (j) Amounts of principal and interest received on a loan shall be credited to the Participant's deferral amounts, and the outstanding loan balance shall be considered an investment of the assets of such Participant's deferral amounts. For this purpose, loans shall be deemed to be made out of the various types of deferral amounts (including matching contributions and transferred amounts) in such order as the Plan Administrator may prescribe.
- (k) Loans shall be deemed to have been made from the available funds of each of the investment vehicles as if the Participant's deferral amounts (including matching contributions and transferred amounts) were invested in accordance with the Participant's investment selections, in such order as the Plan Administrator may from time-to-time specify.
- (l) To the extent not specifically set forth herein, the Plan Administrator shall develop written guidelines which incorporate the following rules, and such guidelines are incorporated herein by this reference:
 - (1) the identity of the person or positions authorized to administer the loan program;
 - (2) the procedure for applying for loans;
 - (3) the basis on which loans will be approved or denied;
 - (4) limitations on the types and amounts of loans offered;
 - (5) the procedure for determining a reasonable rate of interest;
 - (6) the types of collateral which may be used as security for a loan; and
 - (7) the events constituting default and the steps that will be taken to preserve Plan assets in the event of a default.

Article 8. Administration and General Provisions

8.1 Administration

The Plan Administrator of the Plan is the employee of the Omaha Public Power District who is responsible for carrying out all phases of administration of the Plan, except those connected with the management of Plan assets.

8.2 Funding of the Plan

(a) **Prior to Implementation of Section 457(g).** Prior to the date on which benefits under the Plan are funded pursuant to Code Section 457(g)—

- (1) such benefits shall be paid out of the general assets of the District;
- (2) such benefits shall be reflected on the accounting records of the District but shall not be construed to create or require the creation of a trust, custodial, or escrow account;
- (3) no Participant shall have any right, title, or interest whatsoever in or to any investment reserves, accounts, or funds that the District may purchase, establish, or accumulate to aid in providing benefits under the Plan;
- (4) nothing contained in the Plan, and no action taken pursuant to its provisions, shall create a trust or fiduciary relationship of any kind between the District and a Participant or any other person; and
- (5) neither a Participant nor survivor or beneficiary of a Participant shall acquire any interest greater than that of an unsecured creditor.

(b) **After Funding.** Notwithstanding subsection (a) of this Section 8.2, the Plan shall be funded pursuant to Code Section 457(g) no later than October 1, 1997.

8.3 Payment of Expenses

All expenses of the Plan Administrator shall be paid from the Trust Fund unless paid by the District. Such expenses shall include any expenses incident to the functioning of the Plan Administrator, including, but not limited to, fees of the recordkeepers, accountants, counsel, and other specialists and other costs of administering the Plan.

8.4 Indemnity for Liability

The District shall indemnify each person acting as Plan Administrator, and each other person acting at the direction of the Plan Administrator, against any and all claims, losses, damages, expenses, including counsel fees, incurred by such persons and any liability, including any amounts paid in settlement with the Plan Administrator's approval, arising from such person's action or failure to act, except when the same is judicially determined to be attributable to the gross negligence or willful misconduct of such person.

8.5 Incapacity

Every person receiving or claiming benefits under the Plan shall be conclusively presumed to be mentally competent until the date on which the Plan Administrator receives a written notice, in a form and manner acceptable to the Plan Administrator, that such person is incompetent, and that a guardian, conservator, or other person legally vested with the care of such person's person or estate

has been appointed; provided, however, that if the Plan Administrator shall find that any person to whom a benefit is payable under the Plan is unable to care for such person's affairs because of incompetency, any payment due (unless a prior claim therefor shall have been made by a duly appointed legal representative) may be paid to the person's spouse, a child, a parent or other blood relative, or a person with whom the incapacitated person resides. Any such payment so made shall be a complete discharge of liability therefor under the Plan.

8.6 Employer-Employee Relationship

The establishment of this Plan shall not be construed as conferring any legal or other rights upon any Participant or any person for a continuation of employment, nor shall it interfere with the rights of the District to discharge any employee or otherwise act with relation to the employee. The District may take any action (including discharge) with respect to any employee or other person and may treat such person without regard to the effect which such action or treatment might have upon such person as a Participant of this Plan.

8.7 Tax Liability

The District may withhold from any payment of benefits hereunder any taxes required to be withheld and such sum as the District may reasonably estimate to be necessary to cover any taxes for which the District may be liable and which may be assessed with regard to such payment.

8.8 Appeal of Denial of Claims

If any claim for benefits under the Plan is denied, the Plan Administrator shall give notice in writing, within a reasonable period of time after receipt of the claim by the Plan (not to exceed 90 days or, if special circumstances require an extension of time, not to exceed a period of up to 180 days after receipt of the claim) by registered or certified mail, of such denial to the Participant or beneficiary. The notice shall set forth the specific reasons for such denial, specific reference to pertinent Plan provisions on which the denial is based, a description of any additional material or information necessary for the claimant to perfect the claim with an explanation of why such material or information is necessary, and an explanation of the Plan's claim review procedure. The Plan Administration shall also advise the claimant that a full and fair review by the Plan Administrator of the decision denying the claim may be requested by the Claimant by filing with the Plan Administrator, within 90 days after such notice has been mailed, a request for such review. In the event a claimant chooses to appeal, the claimant or the claimant's authorized representative may review pertinent documents, records, and other information relevant to the claim for benefits. If such request is so filed, such review shall be made by the Plan Administrator within 60 days of receipt of such request (or, if special circumstances require an extension of time, within a period not to exceed 210 days after receipt of such request) at a date set by the Plan Administrator, and the Participant or beneficiary shall be given written notice of the result of such review.

8.9 Recovery of Overpayments

The Plan Administrator has the right to recover overpayments, under the plan, as the Plan Administrator determines, in its sole discretion, from the plan either directly or through an offset against future payments.

Article 9. Amendment and Termination

9.1 Amendment

- (a) The District reserves the right to amend any provision of the Plan at any time to the extent it may deem advisable without the consent of any Participant or Beneficiary.
- (b) Except as otherwise provided in this Plan, the officers of the District are hereby delegated the power to amend this Plan as they may determine to be necessary or appropriate to comply with the qualification requirements of the Internal Revenue Code or to provide for the efficient administration of this Plan.
- (c) In addition to the foregoing, the Chief Executive Officer of the District shall have the power to amend the Plan without approval and/or direction from the Board of Directors in the following instances:
 - (1) To amend the Plan to clarify provisions and modify administrative procedures so that the District can more efficiently serve Plan Participants; and
 - (2) To amend the Plan to comply with federal and state law.

This Section 9.1(c) will not apply to amendments that increase the value of benefits or that increase any liability under the Plan assumed by the District.

All plan amendments made under this Section 9.1(c) must be communicated to the Board of Directors within sixty (60) days of the amendment.

9.2 Termination

The District reserves the right to terminate the Plan at any time. Upon termination, the District will pay to each Participant an amount of money which would have been available had the Participant incurred a Termination of Service at that time. The District will make payments in a lump sum as soon as administratively practicable, but not later than 90 days after the termination of the Plan.

Article 10. Miscellaneous

10.1 Nonassignability

No benefit payable at any time under the Plan shall be subject in any manner to alienation, sale, transfer, assignment, pledge, attachment, garnishment, or encumbrance of any kind, and shall not be subject to or reached by any legal or equitable process (including execution, garnishment, attachment, pledge, or bankruptcy) in satisfaction of any debt, liability or obligation, prior to receipt. Any attempt to alienate, sell, transfer, assign, pledge, or otherwise encumber any such benefit, whether presently or thereafter payable, shall be void. The Trust Fund shall not in any manner be liable for or subject to the debts or liabilities of any Participant, Beneficiary, or other person entitled to receive benefits hereunder. This Section 10.1 shall not preclude the enforcement of a Federal tax levy pursuant to Code Section 6331, nor the collection by the United States of a judgment result from an unpaid tax assessment.

Notwithstanding the foregoing provisions, the Plan Administrator shall direct the Trustee to make all payments required by a qualified domestic relations order within the meaning of Code Section 414(P). The Plan Administrator shall establish reasonable procedures to determine the qualified status of domestic relations orders and to administer distributions under such orders.

10.2 Headings

Headings and subheadings in the Plan are inserted for convenience of reference only and constitute no part of the Plan.

10.3 Applicable Law

The Plan shall be construed under the law of the State of Nebraska and Section 457 of the Code.

[Remainder of page left intentionally blank; signature page to follow.]

In Witness Whereof, Omaha Public Power District has caused this instrument to be executed on this ____ day of _____, 20____, by its duly authorized officers, effective as set forth herein.

Omaha Public Power District

By _____

Its _____



Action Item

BOARD OF DIRECTORS

March 19, 2024

ITEM

Omaha Public Power District 401(k) Retirement Savings Plan

PURPOSE

Restatement of the Omaha Public Power District 401(k) Retirement Savings Plan

FACTS

- a. District Management has been working with the General Counsels, Fraser Stryker, PC LLO and Kutak Rock LLP, to make several changes to the Omaha Public Power District 401(k) Retirement Savings Plan (the "Plan"), as required by OPPD. The specific changes are as follows:
 - a. Revised Section 2.1(k) and provisions throughout the 401(k) Plan to include certain part-time employee eligibility to contribute to the plan without employer match.
 - b. Moved and revised Section 14.8 on Hardship Distributions to include CARES Act Amendment effective May 1, 2020 under new Section 6.2 and SECURE 2.0 Act emergency distribution provisions for personal or family emergencies and for early distributions for terminally ill employees under new Sections 6.3 and 6.4 respectively.
 - c. Revised provisions throughout the 401(k) Plan document referencing Required Minimum Distribution ("RMD") age changes required by SECURE 2.0 Act.
 - d. Revised provisions throughout the 401(k) Plan document to reflect increase from \$5,000 to \$7,000 of mandatory cash-outs of small account balances of terminated participants effective January 1, 2024, under the SECURE 2.0 Act.
 - e. Removed the three-month suspension provision under Section 2.1(p) "Inactive Participant," as there is no legal requirement to limit Plan participation in such a manner nor is it administratively efficient to require such a limitation.
 - f. Revised Sections 5.1 and 5.4 to align more closely Plan operations with regard to record keeping and investment of pre-tax and post-tax contribution accounts.
 - g. Revised Section 5.4 and provisions throughout the 401(k) Plan to include generalized language providing for "annuity options" in the event the 401(k) Plan chooses to add annuities as a savings vehicle in the future.
 - h. Revised Article 6 to include Hardship Distribution Provisions (previously under Section 14.8).
 - i. Revised Section 7.5(a)(1) RMD provision to include SECURE 2.0 Act requirement that Roth contribution accounts are no longer subject to RMD rules effective January 1, 2024.
 - j. Revised Section 7.5(a)(3)(A) to include SECURE 2.0 Act requirement that spouse be given the option to be treated as the deceased employee for purposes of RMDs.
 - k. Revised Section 7.5(b) to include SECURE 2.0 Act provision allowing participants to elect to aggregate annuity distributions (if annuities are added as a savings option to the 401(k) Plan) and remaining accounts when determining whether required minimum distribution requirements are satisfied.
 - l. Removed Section 7.5(c) on 2009 RMDs, as this section is no longer relevant to current Plan operations.


- m. Removed Sections 10.9 through 10.13 referencing the Retirement Board.
 - n. Section 10.9, previously Section 10.14, now addresses Recovery of Overpayments.
 - o. Removed language in Section 11.7 that required the Plan provide any notice only in writing via pre-paid postage mail.
 - p. Revised Section 12.1 to include Amendment effective January 1, 2021, more closely reflecting Plan operations and administration procedures.
 - q. Removed Sections 14.1 through 14.7 and 14.9 referring to unnecessary and/or redundant language regarding governing regulations and previous amendments.
 - r. Removed Sections 14.10 through 14.29 referencing ERISA required Actual Deferral Percentage (“ADP”) and Actual Contribution Percentage (“ACP”) testing.
- b. General Counsels have prepared a finalized restatement of the Plan Document with an effective date of 1/1/2024 (the “2024 401(k) Plan Restatement”).
- c. The 2024 401(k) Plan Restatement also incorporates all amendments made to the Plan since its restatement effective August 1, 2018.

ACTION

Board approval of the Restatement of the Omaha Public Power District 401(k) Retirement Savings Plan.

RECOMMENDED:

APPROVED FOR BOARD CONSIDERATION:

DocuSigned by:

70617B100E7B45D...
McKell V. Purnell
Vice President- Human Capital

DocuSigned by:

AC399FDCE56247E...
L. JAVIER FERNANDEZ
President and Chief Executive Officer

Attachments: Exhibit B
Resolution

**Omaha Public Power District
401(k) Retirement Savings Plan**

Amended and Restated January 1, 2024

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Article 1. Establishment of the Plan

1.1 Establishment and Purpose

Omaha Public Power District (the “District”) previously established and currently maintains the Omaha Public Power District 401(k) Retirement Savings Plan (the “Plan”) for the benefit of its eligible Employees. The plan is intended to meet the qualification requirements of Code Section 401(a) as a rural cooperative pension plan with a qualified cash or deferred arrangement as described in Code Sections 401(k) and 402(e)(3). The related Trust is intended to meet the requirements for tax exemption under Code Section 501(a).

This plan is also intended to be a “governmental plan” as described in Section 3(32) of the Act and Code Section 414(d). References herein to the Act, or the incorporation herein of provisions of the Act, shall not be construed as subjecting this plan to the provisions of the Act.

The Plan is hereby amended and restated in its entirety effective January 1, 2024, except as otherwise specifically provided herein.

1.2 Amendment and Restatement

The provisions of this Plan as set forth in this document are applicable only to the Members (or Beneficiaries of Members) who are Eligible Employees in current employment on or after January 1, 2005, except as otherwise specifically provided. Except as so provided, any person who was entitled to benefits under the Plan as in effect on December 31, 2004, shall continue to be entitled to the same benefits under this Plan.

Article 2. Definitions

2.1 Definitions

Whenever used in the Plan, the following terms shall have the respective meanings set forth below unless the context clearly indicates otherwise.

- (a) **“Affiliate”** means-
- (1) the District and any corporation, i.e., either a subsidiary corporation or an affiliated or associated corporation of the District, which together with the District is a member of a “controlled group” of corporations (as defined in Code Section 414(b));
 - (2) any organization (whether or not incorporated) which together with the District is under “common control” (as defined in Code Section 414(c));
 - (3) any organization (whether or not incorporated) which together with the District is an “affiliated service group” (as defined in Code Section 414(m)); or
 - (4) any other entity required to be aggregated with the District pursuant to regulations under Code Section 414(o).
- (b) **“Applicable Age”** means the age in which a Member must begin receiving required minimum distributions from the Plan which is no later than April 1 of the calendar year following the later of the calendar year in which the Employee attains age 73, or the calendar year in which the Employee retires.
- (1) For Employees who turned age 72 before January 1, 2023, the Applicable Age is age 72 (or age 70 1/2 if they were born before July 1, 1949).
 - (2) For Employees who will turn age 72 after December 31, 2022, and age 73 before January 1, 2033, the Applicable Age is age 73.
 - (3) For Employees who will turn age 74 after December 31, 2032, the Applicable Age is age 75.
- (c) **“Authorization Agreement”** means the agreement between a Participant and the District under which the Participant--
- (1) elects to have Compensation reduced pursuant to Section 4.1 of this Plan and/or Section 4.1 of the Section 457 Plan; and
 - (2) specifies whether such Compensation deferrals pursuant to Section 4.1 of this Plan will be matched under Section 4.2 of this Plan, or whether such Compensation deferrals pursuant to Section 4.1 of the Section 457 Plan will be matched under Section 4.2 of the Section 457 Plan, as described in Section 4.2(a) of this Plan.

Compensation will be deferred for any period only if an Authorization Agreement for such deferral has been entered into before the beginning of such period. The Authorization Agreement shall be in such form as the Plan Administrator, in its discretion, shall prescribe.

- (d) **“Beneficiary”** means the beneficiary or beneficiaries most recently designated by the Member pursuant to Section 8.1 and placed on file with the District and/or with the record keeper as directed.
- (e) **“Board of Directors”** means the Board of Directors of the District.
- (f) **“Code”** means the Internal Revenue Code of 1986, as amended from time to time, together with any regulations issued thereunder.
- (g) **“Compensation”** means a Participant’s base salary before any deduction for--
 - (1) federal or state taxes;
 - (2) pension plan contributions other than applicable contributions pursuant to Code Section 414(h);
 - (3) contributions to this Plan, to the Section 457 Plan, or to a cafeteria plan under Code Section 125; or
 - (4) special compensation.

Notwithstanding the foregoing, the annual Compensation that may be taken into account under the Plan for any Plan Year shall not exceed the annual compensation limit as indexed from time-to-time for the cost of living as provided in Code Section 401(a)(17)(B).

- (h) **“Compensation Reduction”** means the amount deferred pursuant to the Participant’s election to reduce Compensation under the terms of the Authorization Agreement.
- (i) **“Discretionary Contributions”** means the Employer contributions described in Section 4.4.
- (j) **“District”** means Omaha Public Power District.
- (k) **“Eligible Employee”** means each full-time and part-time Employee employed by the Employer; provided, however, that it shall not include an Employee who is included in a unit of Employees covered by a collective bargaining agreement unless such agreement specifically provides coverage for the Employee under the Plan..

For purposes of the Plan, an Employee shall be considered to be "full-time" if the Employee works at least forty (40) hours per week and an Employee working less than forty (40) hours per week shall be considered to be "part-time."

A person who is not designated as an “Employee” in the Employer’s employment records during a particular period of time, including a person designated as an “independent

contractor,” is not considered to be an Eligible Employee during that period of time. Such a person shall not be considered an Eligible Employee, even if a determination is made by the Internal Revenue Service, the Department of Labor, or any other government agency, court, or other tribunal, that such person is an employee for any purpose, unless and until the Employer in fact designates such person as an Eligible Employee for purposes of this Plan. If such a designation is made, the designation shall be applied prospectively only, unless the Employer specifically provides otherwise.

- (l) **“Employee”** means any person employed by the District or an Affiliate, but shall not include any person who-
 - (1) is a “leased employee” as described in Code Section 414(n)(2) and Section 3.5; or
 - (2) is not a common law employee of the Employer.
- (m) **“Employer”** means the District and any Affiliate which, with the approval of the Board of Directors, elects to become a party to the Plan by adopting the Plan for the benefit of its Eligible Employees in the manner prescribed in Article 13, or any one or more or all of them, as the context indicates. For all purposes of the Plan, the District shall act as agent for each Affiliate that becomes an Employer.
- (n) **“Former Participant”** means a Member who has participated in the Plan and who has an account under the Plan, but who is no longer employed by the District or an Affiliate.
- (o) **“Inactive Participant”** means a Member who is not currently eligible to have Compensation Reduction Contributions made on the Member’s behalf, but whose account remains with the Plan, for any reason including, without limitation, transfer to employment--
 - (1) as an Employee of an Employer where the person is not an Eligible Employee, (e.g., transfer to part-time status); or
 - (2) as an Employee of a nonparticipating Affiliate.
- (p) **“Investment Fund”** means such funds within the Trust Fund as the Plan Administrator may designate as Investment Funds from time-to-time.
- (q) **“Matching Contributions”** means the Employer contributions described in Section 4.2.
- (r) **“Member”** means-
any Eligible Employee who has become a Participant in the Plan;
 - (1) any Inactive Participant or Former Participant who has an account in the Plan;
 - (2) any spouse or other Beneficiary who has an account balance in the Plan; and

- (3) an alternate payee under a qualified domestic relations order for whom a segregated account is maintained under the Plan.
- (s) **“Participant”** means any Eligible Employee who has met the eligibility requirements of the Plan set forth in Section 3.1 to be and become a Participant and who has elected to participate as provided in Section 3.2.
- (t) **“Plan”** means the Omaha Public Power District 401(k) Retirement Savings Plan, as set forth in this document.
- (u) **“Plan Administrator”** means an individual or individuals appointed pursuant to Section 10.1 to administer and interpret the Plan.
- (v) **“Plan Year”** means the calendar year.
- (w) **“Rollover Contributions”** means the contributions described in Section 4.7.
- (x) **“Section 457 Plan”** means the Omaha Public Power District 457 Retirement Savings Plan.
- (y) **“Termination of Service”** means severance of a Member’s employment with the District and Affiliates by reason other than death.
- (z) **“Trust”** means a trust established to receive, hold, invest, and dispose of the Trust Fund.
- (aa) **“Trust Agreement”** means any agreement in the nature of a trust established to form a part of the Plan to receive, hold, invest, and dispose of the Trust Fund.
- (bb) **“Trustee”** means the individual or individuals, or corporate fiduciary or combination thereof, acting as trustee under the Trust at any time of reference.
- (cc) **“Trust Fund”** means the assets of the Plan held under any Trust forming a part of the Plan.
- (dd) **“Valuation Date”** means the last day of each calendar quarter, or such other dates as may be determined by the Plan Administrator.

2.2 Gender and Number

The provisions of this agreement are intended to be gender neutral and gender inclusive, and the definition of any term herein in the singular may also include the plural.

Article 3. Eligibility, Participation, and Crediting of Service

3.1 Eligibility

- (a) **Effective Date.** Each person who is an Eligible Employee on December 31, 2004, shall continue to be eligible to participate in the Plan on January 1, 2005.
- (b) **After the Effective Date.** Each other person who is or who becomes an Eligible Employee after January 1, 2005, shall be eligible to participate in the Plan as of the first payroll period occurring after the individual becomes an Eligible Employee.

3.2 Participation

An Eligible Employee's participation in the Plan and election to make Compensation Reduction Contributions shall be voluntary. An Eligible Employee who is eligible to participate under Section 3.1 may become a Participant and make Compensation Reduction Contributions as provided in Section 4.1 as of any payroll period (after becoming an Eligible Employee) by completing an Authorization Agreement at such time and in such manner as the Plan Administrator shall determine. In entering into an Authorization Agreement, the Eligible Employee shall signify acceptance of the terms and conditions of the Plan and shall be bound thereby.

3.3 Duration of Participation

An Eligible Employee who becomes a Participant shall continue to be a Participant or Inactive Participant until there is a Termination of Service and also shall continue to be a Member thereafter for as long as the individual has an account under the Plan. Upon ceasing to have an account under the Plan, the individual shall cease to be a Member. If a Member incurs a Termination of Service and thereafter returns to employment as an Eligible Employee, the individual shall immediately again be eligible to become a Participant in the Plan as of the date of reemployment.

3.4 Transferred Employees

- (a) An Employee who is transferred into employment that renders the individual eligible to become a Participant shall, subject to Section 3.1(b), be eligible to become a Participant.
- (b) Any Participant who is transferred to employment where the individual becomes an Inactive Participant shall not be eligible to make Compensation Reduction Contributions for the period in which that individual is an Inactive Participant. The account of such an Inactive Participant shall continue to be held and administered under the Plan; shall be adjusted as provided in Section 5.1; shall be subject to all other Plan provisions pertaining to Inactive Participants; and shall be distributed only upon Termination of Service with the District and Affiliates as provided in Article 7.

3.5 Leased Employees

The term "leased employee" means any person (other than an employee of the recipient) who pursuant to an agreement between the recipient and any other person ("leasing organization") has performed services for the recipient (or for the recipient and related persons determined in accordance with Section 414(n)(6) of the Code) on a substantially full-time basis for a period of at

least one year, and such services are performed under the primary direction or control of the recipient. A person who is considered a leased employee of the District or Affiliate shall not be considered an Eligible Employee for purposes of participating in this Plan or receiving any contribution or benefit under this Plan. A leased employee shall be excluded from this Plan regardless of whether the individual participates in any plan maintained by the leasing organization. Notwithstanding the preceding provisions of this Section, a leased employee shall be treated as an Employee to the extent necessary to comply with the requirements described in Code Section 414(n)(3).

Article 4. Compensation Reduction and Matching Contributions

4.1 Reduction of Compensation

Each Participant's Compensation, which would otherwise be receivable during a period of employment, will be reduced as specified in the most recent Authorization Agreement on file with the District and/or record keeper, as directed. The amount of the Compensation Reduction will be determined in accordance with the provisions of this Section, subject to the limitations on compensation reduction amounts and annual account additions contained in Sections 4.3 and 4.6 respectively. Specifically--

- (a) The amount of each Participant's Compensation Reduction will not be less than \$15 per pay period or such other amount as the District may determine. Effective January 1, 2003, the amount of each Participant's Compensation Reduction shall not be less than 1 percent of Compensation or such other amount as the District may determine, and, at the election of the Participant, such amount may be designated as a percentage of Compensation per pay period or as a flat dollar amount of Compensation per pay period.
- (b) A Participant shall have the right, exercisable with such notice as the Plan Administrator shall prescribe, to elect to increase or decrease the Compensation Reduction for the ensuing period by executing another Authorization Agreement. In the absence of such an election, the Participant's most recent Authorization Agreement shall continue to be effective from pay period to pay period.
- (c) A Participant may elect to discontinue Compensation Reductions for any subsequent pay period following the effective date of the Participant's Authorization Agreement; provided, however, the Participant shall give the District sufficient notice of such discontinuance to enable the District to comply as of the desired pay period.
- (d) **Catch-up Contributions.** Notwithstanding Sections 4.3 and 4.6, a Participant who has attained age 50 before the close of the Plan year may elect to make catch-up contributions to the Plan in accordance with, and subject to the limitations of, Code Section 414(v). Such amounts shall be in addition to the Participant's Compensation Reduction (but shall not be taken into account for purposes of the limitations in Section 4.3 and 4.6) and shall be specified in a Participant's Authorization Agreement. No portion of a Participant's Compensation Reduction attributable to a Participant's catch-up contributions under this Section 4.1(d) shall be matched under Section 4.2.
- (e) **Roth Contributions.** As of August 1, 2018, the Plan will accept Roth Elective Deferral Contributions, Roth Rollover Contributions, Roth In-Plan Conversion Contributions, Roth RIPC I Contributions, and Roth RIPC II Contributions made on behalf of participants. A Participant's Roth Elective Deferral Contributions, Roth Rollover Contributions, Roth In-Plan Conversion Contributions, Roth RIPC I Contributions, and Roth RIPC II Contributions will be allocated to a separate account maintained for such deferrals as described in Section 5.1.

Roth Elective Deferral Contributions, Roth Rollover Contributions, Roth In-Plan Conversion Contributions, Roth RIPC I Contributions, and Roth RIPC II Contributions shall collectively be referred to as "Roth Contributions."

Unless specifically stated otherwise, Roth elective deferrals will be treated as elective deferrals for all purposes under the Plan.

- (1) **Separate Accounting.** Contributions and withdrawals of Roth Contributions will be credited and debited to the applicable Roth Contribution account maintained for each Participant. The Plan will maintain a record of the amount of Roth Contributions in each Participant's applicable Roth Contribution account.

Gains, losses, and other credits or charges must be separately allocated on a reasonable and consistent basis to each Participant's applicable Roth Contribution account and the Participant's other accounts under the Plan. No contributions other than Roth Contributions and properly attributable earnings will be credited to each Participant's applicable Roth Contribution account.

- (2) **Direct Rollovers.** Notwithstanding any Plan provision stating otherwise, a direct rollover of a distribution from a Roth elective deferral account under the Plan will only be made to another Roth elective deferral account under an applicable retirement plan described in § 402A(e)(1) or to a Roth IRA described in § 408A, and only to the extent the rollover is permitted under the rules of § 402(c).

The Plan will accept a rollover contribution to a Roth Contribution account only if it is a direct rollover from another Roth Contribution account under an applicable retirement plan described in § 402A(e)(1) and only to the extent the rollover is permitted under the rules of § 402(c).

The Plan will not provide for a direct rollover (including an automatic rollover) for distributions from a Participant's applicable Roth Contribution account if the amount of the distributions that are eligible rollover distributions are reasonably expected to total less than \$200 during a year. In addition, any distribution from a Participant's applicable Roth Contribution account is not taken into account in determining whether distributions from a Participant's other Plan accounts are reasonably expected to total less than \$200 during a year. However, eligible rollover distributions from a Participant's applicable Roth Contribution account are taken into account in determining whether the total amount of the Participant's account balances under the Plan exceeds \$5,000 (\$7,000, effective January 1, 2024) for purposes of mandatory distributions from the Plan.

Any provision of the Plan that allows a Participant to elect a direct rollover of only a portion of an eligible rollover distribution shall be applied by treating any amount distributed from the Participant's applicable Roth Contribution account as a separate distribution from any amount distributed from the Participant's other accounts in the Plan, even if the amounts are distributed at the same time.

- (3) Correction of Excess Contributions. In the case of a distribution of excess contributions, a highly compensated Employee may designate the extent to which the excess amount is composed of Pre-Tax Elective Deferral Contributions and Roth Elective Deferral Contributions but only to the extent such types of deferrals were made for the year.

If the highly compensated Employee does not designate which type of elective deferrals are to be distributed, the Plan will distribute Pre-Tax Elective Deferral Contributions first.

- (4) Roth Elective Deferral Contributions. A Roth Elective Deferral Contribution is an elective deferral that is:

- (A) Designated irrevocably by the Participant at the time of the cash or deferred election as a Roth Elective Deferral Contribution that is being made in lieu of all or a portion of the Pre-Tax Elective Deferral Contributions the Participant is otherwise eligible to make under the Plan; and

- (B) Treated by the District as includible in the Participant's income at the time the Participant would have received that amount in cash if the Participant had not made a cash or deferred election.

- (5) Roth In-Plan Conversion Contributions, Roth RIPC I Contributions and Roth RIPC II Contributions. Roth In-Plan Conversion Contributions are after-tax in-plan conversion contributions that consist of sources of money that are completely unrestricted for distribution. Roth RIPC I Contributions are after-tax conversion in-plan conversion contributions that consist of sources of money that are restricted Employee contributions to the Plan. RIPC II Contributions are in-plan conversion contributions that consist of sources of money that are restricted Employer contributions to the Plan.

- (A) Eligibility and Type of Rollover. Only Participants who are Employees may elect a Roth In-Plan Conversion Contribution, Roth RIPC I Contribution, or Roth RIPC II Contribution.

- (B) No transfer of loans. Loans may not be distributed as part of a Roth In-Plan Conversion Contribution, Roth RIPC I Contribution, or Roth RIPC II Contribution.

- (C) Additional distribution for withholding. A Participant may elect to take a distribution solely for purposes of federal or state income tax withholding related to the Roth In-Plan Conversion Contribution, Roth RIPC I Contribution, or Roth RIPC II Contribution.
- (D) Right to elect Roth In-Plan Conversion Contribution, Roth RIPC I Contributions and Roth RIPC II Contributions. A Participant may elect to roll over a distribution directly to a Roth In-Plan Conversion Account, Roth RIPC I Account, or Roth RIPC II Account in accordance with the provisions of the Plan and this article. Roth In-Plan Conversion Contributions, Roth RIPC I Contributions, and Roth RIPC II Contributions will be subject to the Plan rules related to designated Roth accounts.
- (E) Form of Conversion. The Plan Administrator may permit a Roth In-Plan Conversion Contribution, Roth RIPC I Contribution or Roth RIPC II Contribution either by converting to cash any non-cash investments prior to rolling over the Participant's distribution election amount to the Roth In-Plan Conversion Account, Roth RIPC I Account, or Roth RIPC II Account, as applicable, or by rolling over the Participant's current investments to the applicable Roth In-Plan Conversion Account, Roth RIPC I Account, or Roth RIPC II Account.
- (F) Amount of Roth In-Plan Conversion Contribution, Roth RIPC I Contribution or Roth RIPC II Contribution. A Participant may take an in-service distribution otherwise prohibited by the Plan only for purposes of electing a direct rollover to a Roth In-Plan Conversion Account, Roth RIPC I Account, or Roth RIPC II Account, or such amount plus, at the Participant's election, an additional distribution, subject to 100% federal or state income tax withholding, made solely for purposes of satisfying the Participant's anticipated tax obligations regarding the amount includible in the Participant's gross income by reason of the Roth In-Plan Conversion Contribution, Roth RIPC I Contribution, or Roth RIPC II Contribution (and the additional withholding distribution). The Plan Administrator may limit the amount of the additional 100% withholding distribution to the amount the Plan Administrator reasonably determines is sufficient to satisfy the Participant's federal and/or state income tax liability relating to the Plan distribution.
- (G) No Rollover Treatment. Notwithstanding any other Plan provision, a direct Roth In-Plan Conversion Contribution, Roth RIPC I Contribution or Roth RIPC II Contribution is not a rollover

contribution for purposes of the Plan. Accordingly, the Plan will take into account, in determining whether a Participant's vested account balance exceeds \$5,000 (\$7,000, effective January 1, 2024) for purposes of Code § 411(a)(11), the amounts attributable to a Roth In-Plan Conversion Contribution, Roth RIPC I Contribution, or Roth RIPC II Contribution.

- (H) Withdrawal of Roth In-Plan Conversion Contributions, Roth RIPC I Contributions and Roth RIPC II Contributions. A Participant may withdraw amounts from the Participant's Roth In-Plan Conversion Account, Roth RIPC I Account, or Roth RIPC II Account only when the Participant is eligible for a distribution from the Plan account that is the source of the Roth In-Plan Conversion Contribution, Roth RIPC I Contribution, or Roth RIPC II Contribution, as applicable.

This provision does not expand (except, if elected, for distributions for withholding) or eliminate any distribution rights on amounts that a Participant elects to treat as a Roth In-Plan Conversion Contribution, Roth RIPC I Contribution, or Roth RIPC II Contribution.

- (I) Participant includes spousal beneficiary/alternate payee. For purposes of eligibility for a Roth In-Plan Conversion Contribution, Roth RIPC I Contribution or Roth RIPC II Contribution, the Plan will treat a Participant's surviving spouse beneficiary or alternate payee spouse or former spouse as a Participant (unless the right to elect an In-Plan Roth Rollover is limited to Employees). A non-spouse beneficiary may not make a Roth In-Plan Conversion Contribution, Roth RIPC I Contribution, or Roth RIPC II Contribution.

4.2 Matching Contributions

For each payroll period, the District will make a Matching Contribution on behalf of each Qualifying Participant whose Compensation for such payroll period has been reduced pursuant to Section 4.1. However, the District shall not make such a Matching Contribution to this Plan unless the Qualifying Participant has elected to have Matching Contributions made on the individual's behalf for such payroll period to this Plan pursuant to subsection (a) of this Section 4.2. Notwithstanding any other provision in this Plan to the contrary, the District shall not make matching contributions to this Plan for any Compensation Reductions made under Section 4.1(d).

- (a) **Election of Matching Contributions** Upon first electing Compensation Reductions pursuant to Section 4.1 in an Authorization Agreement, each Qualifying Participant shall specify in the same authorization Agreement, with respect to pay periods beginning in the Plan Year in which such Compensation Reductions commence, either--

- (1) that all Compensation Reductions made on the Participant's behalf pursuant to Section 4.1 of this Plan for such pay periods shall be matched pursuant to this Section 4.2 in this Plan; or
- (2) that all Compensation Reductions made on the Participant's behalf pursuant to Section 4.1 of the Section 457 Plan for such pay periods shall be matched in the Section 457 Plan.

An election pursuant to this subsection (A) may be revoked, and a new election made, in accordance with rules established by the Plan Administrator, provided, however, that no such revocation and new election shall be effective prior to the first day of the first pay period beginning after such election is received by the Plan Administrator (or such later date as is provided in rules established by the Plan Administrator) and provided further that the total amount of Matching Contributions made under this Plan and under the Section 457 Plan shall not exceed the Matching Amount described in this subsection (B).

If a Participant fails to specify the plan in which Compensation Reductions shall be matched on any Authorized Agreement, they shall be matched in the plan elected in the Participant's most recent Authorization Agreement, provided that in the absence of such election, the Plan Administrator shall determine, in its discretion, the plan to which the matching contributions shall be made.

- (b) **Matching Contribution.** Matching Contributions, if any, for a Plan Year will be the amount prescribed for a Qualifying Participant pursuant to a collective bargaining agreement applicable to such Participant for the Plan Year; or, if the Participant is not covered by a collective bargaining agreement for the Plan Year, the amount determined by the District for the Plan Year. The maximum Matching Contribution under this Plan shall be reduced by any matching contribution(s) for the same Participant under the Section 457 Plan.
- (c) **Definitions and Limitations.** For purposes of this Section 4.2--
 - (1) "Compensation" shall mean Compensation as defined in Section 2.1 plus contributions to a District-sponsored pension plan picked up by the District pursuant to Code Section 414(h).
 - (2) "Compensation Reduction" shall mean Compensation Reductions under both this Plan and the Section 457 Plan, as applicable pursuant to the Participant's designation described in subsection (a) of this Section 4.2.
 - (3) "Qualifying Participant" shall mean a Participant who is entitled to receive Matching Contributions under this Section 4.2. Full-time Employees not covered by collective bargaining agreement are Qualifying Participants. Part-time Employees not covered by a collective bargaining agreement are not Qualifying Participants. Employees covered by a collective bargaining agreement are Qualifying Participants to the extent such collective bargaining agreement provides for Matching Contributions under the Plan.

- (4) Matching Contributions shall be subject to the limitations on annual account additions contained in Section 4.6.

4.3 Dollar Limitation on Compensation Reduction Amounts

- (a) **Dollar Limit.** In no event shall a Member's aggregate Compensation Reduction contributions under the Plan for any calendar year, when combined with any other elective pre-tax and Roth deferrals under Code Section 402(g) made on behalf of the Member for such calendar year, exceed the amount as may be determined under Code Section 402(g) or by the Secretary of the Treasury to reflect increases in the cost of living. The Plan Administrator shall have the discretion to vary Compensation Reduction Contributions for any Member in order to prevent the occurrence of Excess Deferrals.
- (b) **Distribution of Excess Deferrals.** In the event that in a calendar year a Member's Compensation Reduction Contributions reach the level of an Excess Deferral, payroll deductions therefore shall automatically cease, and the Member shall be entitled to a refund of any Excess Deferral. A distribution of Excess Deferrals, adjusted for earnings and losses, shall be made no later than April 15 of the calendar year following the calendar year in which such Excess Deferrals were made.

4.4 Discretionary Employer Contributions

- (a) **Discretionary Contributions.** Subject to the limitations on annual account additions contained in Section 4.6, for each Plan Year, the District may, at the discretion of the Board of Directors, make a Discretionary Contribution in an amount determined by the Board of Directors, in its discretion, by resolution adopted and communicated to the Members as soon as administratively feasible after the end of the Plan Year.
- (b) **Deposit of Contributions.** The Employer's Discretionary Contribution shall be paid by the District to the Trustee and credited to the Trust as soon as practicable after the end of the Plan Year for which it was made.
- (c) **Allocation.** The Employer's Discretionary Contribution for the Plan Year shall be allocated and credited as of the last day of each Plan Year to the Discretionary Contributions accounts of all persons who are eligible to share in the allocation of such contribution for the year. A person shall be eligible for a Discretionary Contribution only if the person was a Qualifying Participant for purposes of Section 4.2 and active at work on the last day of the Plan Year. A person whose employment terminated during but before the last day of the Plan Year, and a person on layoff on such last day, shall not be eligible to share in the allocation; provided, however, that a Qualifying Participant who is absent from employment on an approved medical leave of absence or other approved leave of absence shall share in the allocation. Such allocation and credit shall be in the proportion that the Compensation for the Plan Year of each such Qualifying Participant bears to the aggregate Compensation of all such Qualifying Participants for such Plan Year.

4.5 Return from Military Service

Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with Code Section 414(u).

4.6 Limitations on Annual Account Additions

- (a) **Defined Contribution Plan Limitations.** For each Plan Year, which shall be the “limitation year,” the “annual addition” (as described in Code Section 415(c)(2)) for any Member shall not exceed the annual limitation for defined contribution plans as described in Code Section 415(c) and related Code Sections, the provisions of which are incorporated herein by reference. For purposes of this Section 4.6, compensation shall mean compensation as defined in Code Section 415(c)(3) (including elective deferrals under Code Section 402(g)(3) and elective amounts that are not includible in the gross income of the Employee by reason of Code Sections 125, 457, and, effective for limitation years beginning on or after January 1, 2001, Code Section 132(f)(4)).
- (b) **Dual Plan Limitation.** If a Member is also a participant in any defined benefit plan of the Affiliates, and if the sum of the Member’s defined benefit plan fraction and defined contribution fraction for any year exceeds one, the amount of annual benefit under the defined benefit plan shall be reduced to the extent necessary to reduce such sum to one, determined in accordance with Code Section 415(e) and related Code Sections, the provisions of which are incorporated herein by reference. This subsection shall not apply for limitation years beginning on and after January 1, 2000.

4.7 Rollover Contributions

An Eligible Employee (whether or not the Eligible Employee has become a Participant) may, in accordance with procedures approved by the Plan Administrator, contribute to the Eligible Employee’s Rollover Contributions account all or any part of an amount that constitutes an “eligible rollover distribution” or a “rollover amount” within the meaning of Code Sections 402(c)(4), 403(a)(4), and 408(d)(3)(A)(ii).

Such a contribution, if received personally by the Eligible Employee, must be paid over to the Trustee on or before the sixtieth day after the Eligible Employee receives or is deemed to have received the distribution (except as provided by the IRS for a hardship under Code Section 402(c)(3)). Such a contribution may also be made to the Plan by means of a direct rollover as described in Section 7.9. The contribution shall be allocated and credited to the Eligible Employee’s Rollover contributions account as of the Valuation Date coincident with or next following the date the contribution is paid to the Trust Fund. The Rollover Contributions account of each Eligible Employee shall be fully vested at all times.

Except as otherwise specifically provided in the Plan, a Rollover Contributions account established to hold any Rollover Contributions shall be subject to the same investment provisions as Member’s Compensation Reduction contributions account under the Plan and shall be distributable to the Member or Beneficiary as provided in Section 7.2, 7.3, or 7.4, as applicable.

4.8 Vesting

The contributions to each Member's account, and any earnings thereon, shall at all times be fully vested.

Article 5. Accounts and Records of the Plan

5.1 Accounts and Records

The accounts and records of the Plan shall be maintained by the Plan Administrator and shall accurately disclose the status of the accounts of each Member or Beneficiary in the Plan. The Plan Administrator shall establish and maintain a separate account in the appropriate Investment Funds for each Member to which shall be credited, or against which shall be debited, from time-to-time. Contributions made under Sections 4.1 and 4.2 will be maintained in separate sub-accounts to reflect the pre-tax or post-tax nature of the contributions. The establishment and maintenance of such separate accounts shall not require any segregation of the assets of the Trust.

5.2 Records

The books of account, forms, and accounting methods used in the administration of the Plan shall be prescribed by and under the supervision and control of the Plan Administrator. Except as otherwise provided by law, a Member or Beneficiary shall not have the right to inspect any of the records of the Plan except the individual accounts maintained and established for said Member. The Plan Administrator may appoint an agent to maintain all or any part of the records showing the interest of each Member under the Plan, in such form and manner as the Plan Administrator may direct.

5.3 Statements to Members

The Plan Administrator shall provide to each Member a statement, at such times and in such form as the Plan Administrator shall determine, of the Member's account.

5.4 Investment of Contributions

Each Participant shall elect, in such form as the Plan Administrator prescribes for that purpose, that such Participant's contributions be invested 100 percent in any of the Investment Funds or Annuity options, if any, in such combination of such Investment Funds and Annuity options, if any, totaling 100 percent as the Plan Administrator permits. Such election shall continue in effect thereafter until the Participant makes a new investment election as to such Contributions as provided below.

A Participant may, with such frequency as the Plan Administrator permits, change such election as to such future Contributions by making a new election in accordance with rules established by the Plan Administrator.

5.5 Transfers Among Investment Funds

Each Member may elect, with such frequency as the Plan Administrator permits, in accordance with rules established by the Plan Administrator, to transfer and reallocate among the Investment Funds the Member's aggregate balances in all sub-accounts comprising their account. The Member may elect, in accordance with rules prescribed by the Plan Administrator, that, following such transfer and reallocation, each of such sub-accounts be invested in any of such Investment Funds or in such combination of Investment Funds as the Plan Administrator permits. Such election, when made, shall be effective at such time as the Plan Administrator shall reasonably

prescribe and shall be applicable to the Member's aggregate account balances as described above, but shall not affect how the Member's future contributions are invested under Section 5.4.

5.6 Valuations

As of each Valuation Date, the Trustee shall determine the value, at current market values, of all assets then comprising each of the Investment Funds of the Trust Fund.

5.7 Account Balances

As of each Valuation Date, the Plan Administrator shall adjust each account in each Investment Fund to reflect net appreciation or depreciation in the aggregate fair market value of said Investment Fund's assets, said Investment Fund's income and expenses, and gains or losses from the sale or other disposition of said Investment Fund's assets since the last preceding adjustment under this Section 5.7. In addition, if the Member's account exceeded \$10,000.00 as of the beginning of the Plan Year, the Member's account may be reduced by Plan or Trust Fund per capita or proportional balance (taking into account only Members' accounts that exceeded \$10,000.00 on the first day of the Plan Year) administrative or other fees (other than settlor's fees) incurred by or in connection with the Plan and/or the Trust Fund.

Article 6. Loans and In-Service Distributions

6.1 Loans

Each Member who meets the conditions set forth below may, with the approval of the Plan Administrator, borrow amounts from the Member's account. The Plan Administrator may establish rules relating to loans made under this Section. Each request for a loan shall be submitted in such form as the Plan Administrator shall prescribe. Each loan shall, at the Member's election, be made as soon as practicable, or be deferred to the Valuation Date after the Plan Administrator's receipt of the Member's application for the loan. The Plan Administrator shall then direct the Trustee to make a loan to a Member, secured by the amount in the Member's account.

The terms of such loan shall be determined under rules established by the Plan Administrator and shall be subject to the following conditions:

- (a) A Member who is not an Employee shall not be eligible for a loan.
- (b) The term of such loan shall not exceed five years or, in the case of a loan for the purchase (excluding mortgage payments) of a principal residence for the Member, a reasonable time allowed under Code Section 72.
- (c) The maximum number of outstanding loans at any one time is two. Any outstanding loan from this Plan and any outstanding loan from the Section 457 Plan shall be taken into account in determining whether a Member has taken the maximum number of loans from the Plan.
- (d) The minimum loan amount shall be \$1,000 or such greater amount as the Plan Administrator may prescribe.
- (e) Such loan shall bear a reasonable rate of interest, which must provide the Plan with a return commensurate with the interest rates charged by persons in the business of lending money for loans which would be made under similar circumstances.
- (f) The amount of such nontaxable loan, when added to the outstanding balance of all other loans to the Member from the Member's account under this Plan and from any deferral amounts under the Section 457 Plan (including matching contributions and transferred amounts) as described thereunder), shall not exceed the lesser of-
 - (1) \$50,000, reduced by the excess (if any) of--
 - (A) the highest outstanding balance of loans from the Plan and the Section 457 Plan during the one-year period ending on the day before the loan is made, or,
 - (B) the outstanding balance of loans from the Plan and the Section 457 Plan on the date the loan is made; or

- (2) 50 percent of the vested and nonforfeitable portion of such Member's account at the relevant time.
- (g) Such loan shall be evidenced by a promissory note, in such form and containing such terms and conditions as the Plan Administrator from time-to-time directs.
- (h) Prepayments of principal and interest may be made, in whole or in part, without penalty.
- (i) The Plan Administrator shall have sole responsibility for both the discretionary and administrative tasks necessary to establish and maintain participant loans under the Plan.

6.2 Hardship Distributions

A Hardship Distribution is a distribution under the Plan that is hereby deemed to be on account of an immediate and heavy financial need of an Employee if the distribution is for one of the following or any other item permitted under Regulation Section 1.401(k)-1(d)(3)(iii)(B):

- (a) Expenses for (or necessary to obtain) medical care that would be deductible under Code Section 213(d) (determined without regard to whether the expenses exceed 7.5% of adjusted gross income).
- (b) Costs directly related to the purchase of a principal residence for the Employee (excluding mortgage payments).
- (c) Payment of tuition, related educational fees, and room and board expenses, for up to the next twelve (12) months of post-secondary education for the Employee, the Employee's spouse, children, or dependents (as defined in Code Section 152, and, for taxable years beginning on or after January 1, 2005, without regard to Code Section 152(b)(1), (b)(2), and (d)(1)(B)).
- (d) Payments necessary to prevent the eviction of the Employee from the Employee's principal residence or foreclosure on the mortgage on that residence.
- (e) Payments for burial or funeral expenses for the Employee's deceased parent, spouse, children or dependents (as defined in Code Section 152, and, for taxable years beginning on or after January 1, 2005, without regard to Code Section 152(d)(1)(B)).
- (f) Expenses for the repair of damage to the Employee's principal residence that would qualify for the casualty deduction under Code Section 165 (determined without regard to whether the loss exceeds 10% of adjusted gross income).
- (g) Expenses or losses incurred due to a federally declared disaster if the Employee's principal residence or principal place of employment is in an area designated by the Federal Emergency Management Agency ("FEMA") as eligible for individual assistance.

The amount of a Hardship Distribution may not exceed the amount necessary to satisfy the Participant's immediate and heavy financial need. The amount of immediate and heavy financial need may include any amounts necessary to pay any federal, state, or local income taxes or

penalties reasonably anticipated to result from the distribution. Hardship Distributions may be made from any sub-account within an Employee's account.

If the Plan provides for hardship distributions upon satisfaction of the safe harbor standards set forth in Regulation Sections 1.401(k)-1(d)(3)(iii)(B) (deemed immediate and heavy financial need) and 1.401(k)-1(d)(3)(iv)(E) (deemed necessary to satisfy immediate need), then there shall be no reduction in the maximum amount of elective deferrals that a Participant may make pursuant to Code Section 402(g) solely because of a Hardship Distribution made by this Plan or any other plan of the District.

6.3 Emergency Expenses Distributions

Effective October 1, 2024, an Emergency Expenses Distribution is a distribution under the Plan for purposes of meeting unforeseeable or immediate financial needs relating to necessary personal or family emergency expenses.

- (a) Only one Emergency Expenses Distribution is permitted per Employee, per calendar year, which cannot exceed \$1,000. No further Emergency Expenses Distributions are permissible during the immediately following three calendar years unless the Employee fully repays such distribution to the Plan or the aggregate of the Employee's contributions to the Plan subsequent to such distribution is at least equal the amount of such previous distribution.
- (b) Emergency Expenses Distributions may be made from any sub-account within an Employee's account.

6.4 Terminal Illness Distributions

Effective October 1, 2024, a Terminal Illness Distribution is a distribution under the Plan to an Employee who is a terminally ill individual on or after the date on which the Employee has been certified by a physician as having a terminal illness or condition.

- (a) A terminally ill individual means an individual who has been certified by a physician as having an illness or physical condition that can reasonably be expected to result in death in 84 month or less after the date of the certification.
- (b) The term "physician" generally means a doctor of medicine or osteopathy that is legally authorized to practice medicine and surgery by the State in which the doctor performs such function or action.
- (c) The certification of terminal illness must include the following:

- (1) A statement that the individual's illness or physical condition can be reasonably expected to result in death in 84 months or less after the date of the certification;
 - (2) A narrative description of the evidence that was used to support the statement of illness or physical condition;
 - (3) The name and contact information of the physician making the statement;
 - (4) The date the physician examined the individual or reviewed the evidence provided by the individual, and the date the certification is signed by the physician; and
 - (5) The signature of the physician making the statement, and an attestation from the physician that, by signing the form, the physician confirms that the physician composed the narrative description based on the physician's examination of the individual or the physician's review of the evidence provided by that individual.
- (d) An individual may, at any time during the three-year period beginning on the date such distribution was received, repay the distribution by making one or more contributions in an aggregate amount not to exceed the amount of such distribution to the Plan.
- (e) A Terminal Illness Distribution does not meet the distribution restriction requirements of Code Section 401(k)(2)(B)(i). Therefore, an Employee must be otherwise eligible for a permissible in-service distribution under the Plan.

Article 7. Benefits

7.1 Members' Accounts

A Member's or Beneficiary's benefits under the Plan will be dependent upon the amount that has accumulated in the Member's account with respect to that Member or Beneficiary under the Investment Funds and Annuity options, if any, selected.

7.2 Entitlement to Benefits

Amounts (other than loans pursuant to Section 6.1) payable under the Plan will be made available to Members or Beneficiaries not earlier than the Member's Termination of Service, a hardship event, unforeseeable or immediate financial needs relating to necessary personal or family emergency expenses, death, or after attainment of age 59 1/2.

- (a) **Termination.** A Member who has a Termination of Service will receive or begin receiving the Member's account as soon as practicable following Termination of Service; provided, however, that if the total value of the Member's account as of the Valuation Date immediately following Termination of Service exceeds \$5,000 (or \$7,000, effective January 1, 2024)-
- (1) The Member may defer receipt of this Member's account, adjusted to take account of investment gains and losses determined under Section 5.7, to a date no later than April 1 following the year in which the Member attains the Applicable Age as defined in Section 2.1;
 - (2) and the minimum distribution of requirements of Section 7.5 will be satisfied.
- (b) **Death.** In the event of a Member's death, the Member's Beneficiary will be entitled to receive or begin receiving the Member's account, as soon as practicable following the Member's death; provided, however, that if the total value of the Member's account exceeds \$5,000 (or \$7,000, effective January 1, 2024), the Beneficiary may defer receipt of the Member's account, adjusted to take account of investment gains and losses determined under Section 5.7-
- (1) if the Beneficiary is the Member's surviving spouse, to a date no later than the date on which the Member would have attained the Applicable Age as defined in Section 2.1, or if the surviving spouse elects, to a date on which the surviving spouse attains the Applicable Age as defined in Section 2.1; or,
 - (2) if the Beneficiary is not the Member's surviving spouse, to the date that is one year after the Member's death, if the Beneficiary receives the account in a form other than a lump-sum payment, or five years after the Member's death if the Beneficiary receives the account in a lump-sum payment,
- provided that the minimum distribution requirements of Section 7.5 will be satisfied.

A Member may withdraw all or part (but not including any loan amount(s) and not less than \$1,000.00) of the Member's account after attaining age 59 1/2.

7.3 Forms of Distribution

(a) Required Lump Sum.

- (1) If the total value of a Member's account is \$5,000 or less (or \$7,000 or less, effective January 1, 2024) as of the Valuation Date immediately following the Member's Termination of Service, the entire Member's account will be paid to the Member in an immediate single-sum cash payment as soon as practicable following such Valuation Date.
- (2) Notwithstanding the provision of Section 7.3(a)(1), if—
 - (A) a mandatory distribution in excess of \$1,000 payable with respect to a member; and
 - (B) the distributee does not make an election to have such distribution paid directly to an eligible retirement plan specified by the Member in a direct rollover and does not make an election to receive such distribution directly in cash then the Plan Administrator will pay the distribution in a direct rollover to an individual retirement plan designated by the Plan Administrator. The Plan Administrator shall notify the distributee in writing that the distribution may be so transferred. The provision of this Section 7.3(a)(2) shall apply and become effective only as required under final regulations implementing Section 657(c)(2) of the Economic Growth and Tax Reduction Reconciliation Act of 2001 and IRS Notice 2005-5.

(b) **Lump Sum or Installments.** Subject to the minimum distribution requirements of Section 7.5, if the total value of a Member's account exceeds \$5,000 (\$7,000, effective January 1, 2024) as of the Valuation Date immediately following the Member's Termination of Service, the Member shall elect to receive the Member's account in one of the following forms:

- (1) a single-sum cash payment equal to the entire Member's account;
- (2) periodic installments over a period of 60, 120 or 180 substantially equal monthly installments.

(c) **Periodic Withdrawals.** In addition to the distribution options stated in Section 7.3(b) above, and subject to the minimum distribution requirements of Section 7.5, if the total value of a Member's Account exceeds \$5,000 (\$7,000, effective January 1, 2024) as of the Valuation Date immediately following the Member's Termination of Service (or other applicable Valuation Date), a Member may periodically elect to withdraw all or part (but not including any loan amount(s) and not less than \$1,000.00) of the Member's account. Notwithstanding the foregoing, if any withdrawal will cause the total value of the Member's

account to equal \$5,000 or less (\$7,000 or less, effective January 1, 2024), the entire Member's account will be paid to the Member in an immediate single-sum cash payment.

7.4 Death Benefits

- (a) **Before Distribution Has Begun.** Subject to the provisions of Section 7.5, if a Member dies before receiving a distribution under Section 7.2(a), the Member's interest in the Plan will be paid to the Member's Beneficiary.
- (1) If the total value of the Member's account is \$5,000 or less (\$7,000 or less, effective January 1, 2024) as of the Valuation Date immediately following the Member's death, or if the Member's account is payable to the Member's estate, payment will be made in one lump-sum distribution of the entire account as soon as practicable following such Valuation Date.
 - (2) Notwithstanding the provisions of Section 7.4(a)(1), if—
 - (A) a mandatory distribution in excess of \$1,000 is payable with respect to a Member; and
 - (B) the distributee does not make an election to have such distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover and does not make an election to receive such distribution directly in cash then the Plan Administrator will pay the distribution in a direct rollover to an individual retirement plan designated by the Plan Administrator. The Plan Administrator shall notify the distributee in writing that the distribution may be so transferred. The provisions of this Section 7.4(a)(2) shall apply and become effective only as required under final regulations implementation Section 657(c)(2) of the Economic Growth and Tax Reduction Reconciliation Act of 2001 and IRS Notice 2005-5.
 - (C) If the total value of the Member's account exceeds \$5,000 (\$7,000, effective January 1, 2024) as of the Valuation Date immediately following the Member's death, and if the Beneficiary is someone other than the Member's estate, the total amount will be paid to the Beneficiary in accordance with the provisions of Section 7.3(b) as if the Beneficiary were the Member, subject to the provisions of Section 7.5.
- (b) **After Distribution Has Begun.** If a Member dies after beginning to receive a distribution in installments as described in Section 7.3(b)(2), the Member's Beneficiary will receive a benefit, if any, in accordance with the form of benefit the Member was receiving at the time of death. If the Beneficiary under the form of benefit selected by the Member has predeceased the Member, the remaining value of the Member's interest in the Plan due to a Beneficiary will be paid to the Member's estate in one lump-sum amount.

7.5 Minimum Distribution Requirements

Notwithstanding the preceding provisions of this Article, distributions under the Plan will comply with the provisions of this Section.

- (a) **Before Member's Death.** The entire interest in the Plan of each Member will be distributed to the Member, or will begin to be distributed, not later than April 1 following the calendar year in which occurs the later of--
- (1) the Member's termination of employment; or
 - (2) the Member reaches the Applicable Age as defined in Section 2.1.

The distribution, if not in a lump-sum payment, must be over the Member's life, or over the lives of the Member and Beneficiary, or over a period not extending beyond the life expectancy of the Member or the life expectancy of the Member and Beneficiary.

Beginning January 1, 2024, Required Minimum Distributions during the Member's lifetime are not applicable to a Member's Roth accounts.

(b) **After Member's Death.**

- (1) If the distribution of the Member's interest in the Plan has begun in accordance with paragraph (a) and the Member dies before the entire interest has been distributed, the remaining portion of such interest will be distributed at least as rapidly as under the method of distribution being used under paragraph (a) as of the date of the Member's death. If the Beneficiary is a Designated Beneficiary that is not an Eligible Designated Beneficiary, the remaining portion of such interest in full no later than December 31 of the tenth year following the year of the Member's death.
- (2) If a Member dies before the distribution of the Member's interest has begun in accordance with paragraph (a), the Member's entire interest will be distributed, or begin to be distributed, no later than as follows:
 - (A) **No Designated Beneficiary** If there is no Designated Beneficiary as of September 30 of the year following the calendar year of the Member's death, the Beneficiary's entire interest will be distributed under the 5-Year Rule.
 - (B) **Eligible Designated Beneficiary.** If the distributee of a Member's account is an Eligible Designated Beneficiary, the Beneficiary's entire interest will be distributed over the life expectancy of that Eligible Designated Beneficiary.
 - (C) **Other Designated Beneficiaries.** If the distributee of the Member's account is a Designated Beneficiary who is not an Eligible Designated

Beneficiary, then the Beneficiary's entire interest will be distributed no later than December 31 of the tenth year following the year of the Member's death.

- (3) If the Beneficiary referred to in (B) of the preceding paragraph is the Member's surviving spouse--
 - (A) the date on which the distributions are required to begin need not be earlier than the date on which the Member would have attained the Applicable Age as defined in Section 2.1; or, effective January 1, 2024, if the spouse so elects, the date in which the spouse attains the Applicable Age as defined in Section 2.1.
 - (B) if the surviving spouse dies before the distributions to such spouse begin, paragraphs (2) and (3) of this subsection shall be applied as if the surviving spouse were the Member.
- (4) For purposes of this subsection, any amount paid to a child will be treated as if it had been paid to the surviving spouse if such amount will become payable to the surviving spouse upon such child's attainment of majority (or other designated event permitted under regulations).

(c) **Definitions.** The following definitions apply for this Article 7:

- (1) **Designated Beneficiary.** A distributee of a Member's account is a "Designated Beneficiary" if the distributee is an individual or trust who is a beneficiary of the account (whether pursuant to a designation by the Member or application of the Plan terms) and who is a designated beneficiary under Code §401(a)(9) and Treas. Reg. §1.401(a)(9)-4.
 - (2) **Eligible Designated Beneficiary.** An individual is an "Eligible Designated Beneficiary" of a Member if the individual qualifies as a Designated Beneficiary and is (1) the Member's spouse, (2) the Member's child who has not reached the age of majority, (3) an individual not more than 10 years younger than the Member, (4) a disabled individual, as defined in Code §72(m)(7), or (5) an individual who has been certified to be chronically ill (as defined in Code §7702B(c)(2)) for a reasonably lengthy period, or indefinitely. Certain trusts may be treated as Eligible Designated Beneficiaries pursuant to Code §401(a)(9)(H)(iv) and (v).
- (d) **Distributions to be Made in Accordance with Treasury Regulations.** Notwithstanding anything to the contrary contained in this Article 7, all distributions under this Plan shall be made in accordance with Section 401(a)(9) of the Code and the regulations thereunder. If a Member partially annuitizes an account, the Member may elect to aggregate distributions from the Member's annuity and the Member's remaining accounts when determining whether required minimum distribution requirements are satisfied.

7.6 Deferred Payments

In the event that a Member's account is deferred for future distribution as provided herein, the Member's account shall continue to be adjusted on each Valuation Date to reflect the current value of the Trust Fund until the final Valuation Date applicable to their Member's account.

7.7 Application for Distribution

Each person eligible to receive a distribution under the Plan shall furnish the Plan Administrator with such documents, evidence, data, or information in support of the person's eligibility as the Plan Administrator considers necessary or desirable. If the distributable benefit is more than \$5,000 (\$7,000, effective January 1, 2024), then no such distribution shall begin unless and until the distributee has made a claim to the Plan Administrator for the person's benefit, and has furnished such documents, receipts, and other information as the Plan Administrator may deem necessary or desirable in order to assure that proper distribution is made.

7.8 Effect of Reemployment

In the event a Former Participant is reemployed as an Eligible Employee before distribution of the entire Member's account has been made to the Member, distribution of the Member's account shall be suspended and the Member's account shall continue to be held in the Trust until the Member's employment again terminates.

7.9 Direct Rollovers of Eligible Rollover Distributions

The Plan Administrator shall establish procedures under which a Member entitled to a distribution under Article 7 which equals \$200 or more may authorize a direct rollover of all of such distribution, or part of such distribution if the amount rolled over is at least \$500, in cash, to a single individual retirement account established by the Member or to a single eligible retirement plan (as defined in Code Section 402(a)(8)(B)) maintained by a subsequent employer.

7.10 Roth IRA Rollover

For distributions made after December 31, 2007, a participant may elect to roll over directly an eligible rollover distribution to a Roth IRA described in Code § 408A(b).

7.11 Direct Rollover of Non-Spousal Distribution

- (a) **Non-spouse beneficiary rollover right.** For distributions after December 31, 2009, a non-spouse beneficiary who is a "designated beneficiary" under Code § 401(a)(9)(E) and the Treasury Regulations thereunder, by a direct trustee-to-trustee transfer ("direct rollover"), may roll over all or any portion of their distribution to an individual retirement account the beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an eligible rollover distribution.
- (b) **Certain requirements not applicable.** Although a non-spouse beneficiary may roll over directly a distribution as provided in Section 7.11(a), any distribution made prior to January 1, 2010 is not subject to the direct rollover requirements of Code § 401(a)(31) (including Code § 401(a)(31)(B), the notice requirements of Code § 402(f), or the mandatory

withholding requirements of Code §3405(c)). If a non-spouse beneficiary receives a distribution from the Plan, the distribution is not eligible for a “60-day” rollover.

- (c) **Trust beneficiary.** If the Participant’s named beneficiary is a trust, the Plan may make a direct rollover to an individual retirement account on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of Code § 401(a)(9)(E).
- (d) **Required minimum distributions not eligible for rollover.** A non-spouse beneficiary may not roll over an amount which is a required minimum distribution, as determined under applicable Treasury Regulations and other Internal Revenue Service guidance. If the Participant dies before the required beginning date and the non-spouse beneficiary rolls over to an IRA the maximum amount eligible for rollover, the beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Treas. Reg. § 1.401(a)(9)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse beneficiary’s distribution.

7.12 HEART Act Provisions

- (a) **Death benefits.** In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code § 414(u)), the Participant’s Beneficiary is 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 terminated employment on account of death. Moreover, the Plan will credit the Participant’s qualified military service as service for vesting purposes, as though the Participant had resumed employment under USERRA immediately prior to the Participant’s death.
- (b) **Differential wage payments.** For years beginning after December 31, 2008: (i) an individual receiving a differential wage payment, as defined by Code § 3401(h)(2), is treated as an Employee of the employer making the payment; (ii) the differential wage payment is treated as compensation for purposes of Code § 415(c)(3) and Treasury Reg. § 1.415(c)-2 (e.g., for purposes of Code § 415, top-heavy provisions of Code § 416, determination of highly compensated Employees under Code § 414(q), and applying the 5% gateway requirement under the Code § 401(a)(4) regulations); and (iii) the Plan is not treated as failing to meet the requirements of any provision described in Code § 414(u)(1)(C) (or corresponding Plan provisions) by reason of any contribution or benefit which is based on the differential wage payment. The Plan Administrator operationally may determine, for purposes of the provisions described in Code § 414(u)(1)(C), whether to take into account any deferrals, and if applicable, any matching contributions, attributable to differential wages. Differential wage payments (as described herein) will also be considered compensation for all Plan purposes.

Section 7.12(b)(iii) above applies only if all Employees of the District performing service in the uniformed services described in Code § 3401(h)(2)(A) are entitled to receive differential wage payments (as defined in Code § 3401(h)(2)) on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the District, to make

contributions based on the payments on reasonably equivalent terms (taking into account Code §§ 410(b)(3), (4), and (5)).

- (c) **Deemed Severance.** Notwithstanding Section 7.12(b)(i), if a Participant performs service in the uniformed services (as defined in Code § 414(u)(12)(B)) on active duty for a period of more than 30 days, the Participant will be deemed to have a severance from employment solely for purposes of eligibility for distribution of amounts not subject to Code § 412. However, the Plan will not distribute such a Participant's account on account of this deemed severance unless the Participant specifically elects to receive a benefit distribution hereunder. If a Participant elects to receive a distribution on account of this deemed severance, then the individual may not make an elective deferral or Employee contribution during the 6-month period beginning on the date of the distribution. If a Participant would be entitled to a distribution on account of a deemed severance, and a distribution on account of another Plan provision (such as a qualified reservist distribution), then the other Plan provision will control and the 6-month suspension will not apply.

Article 8. Beneficiary Designation

8.1 Beneficiary Designation

- (a) **Initial Designation.** Each Member may designate, in such manner as may be provided for that purpose by the Plan Administrator, a Beneficiary or Beneficiaries, including contingent Beneficiaries, to receive the Member's interest in the Plan in the event of the Member's death, but the designation of a Beneficiary shall not be effective for any purpose unless and until it has been filed by the Member with the Plan Administrator in such manner as the Plan Administrator shall prescribe before benefits become due. In the case of a married Member, the designation of any beneficiary other than the Member's spouse shall require the consent of Member's spouse. If no Beneficiary designation is on file with the Plan Administrator or if all designated beneficiaries have pre-deceased the Member, the Member's Account will be paid to the surviving member(s) of the first class of beneficiaries named below:
- (1) spouse;
 - (2) children;
 - (3) parents;
 - (4) estate.
- (b) **Change of Beneficiary.** A Member may, from time-to-time, in such manner as may be provided by and filed with the Plan Administrator and/or record keeper, as directed, change the Beneficiary in the manner heretofore stated, without the consent of the Beneficiary but subject to the Member's spouse's consent as described in subsection (a) above, unless pursuant to such spouse's prior written consent the Member is permitted to change the Beneficiary without renewed spousal consent. The District, the Plan Administrator, and any Trustee may rely upon the designation last filed in accordance with the terms of this Section.
- (c) **Presumed Beneficiary.** In the event that a designation is not made, or is legally ineffective, or all designated beneficiaries predecease the Member or die simultaneously with the Member, then payment shall be made to the surviving member of the following classes of persons, with preference for classes in the order listed, in equal shares among members of a class if there should be more than one member of a class then living: the Member's--
- (1) spouse;
 - (2) children (including children by adoption);
 - (3) parents (including parents by adoption); and
 - (4) executor or administrator of the Member's estate.

Article 9. Financing

9.1 Trust Agreement

The District has entered into a Trust Agreement with the Trustee to establish the Trust, and any and all rights and benefits which may accrue to any Member or Beneficiary under the Plan shall be subject to all of the terms and provisions of the Trust Agreement. Any Trust Agreement is designated as, and shall constitute, a part of this Plan, and all rights that may accrue to any person under this Plan shall be subject to all the terms and provisions of the Trust Agreement. The Employer shall make payments of contributions to such Trust and payments under the Plan shall be made therefrom. The District may modify any Trust Agreement or remove any Trustee at any time.

9.2 Exclusive Benefit of Members

It is hereby declared to be the District's intention that this Plan shall be maintained for the exclusive benefit of Members and their Beneficiaries and is intended to be a qualified plan under the provisions of the Code. In no event shall the Employer have any right, claim, or beneficial or reversionary interest in any Trust asset, and the Trustee shall make no payment or other distribution to the Employer, except as provided in Section 9.3. Nothing contained in the Plan or Trust shall be construed to impair the District's right to see to the proper administration of the Trust in accordance with Plan provisions.

9.3 Nonreversion

No Employer shall have any right, title, or interest in the contributions made by it under the Plan and no part of the Trust Fund shall revert to it or for its benefit, except that--

- (a) Employer contributions hereunder are expressly conditioned upon initial qualification of the Plan as to the District. In the event that the Internal Revenue Service initially determines that the Plan does not constitute a qualified plan meeting the requirements of Code Section 401(a) and 401(k) with respect to any Employer's initial adoption of the Plan, then the Plan shall be null and void from the date the Plan is first effective with respect to such Employer, and any funds in the Trust Fund at the time of such unfavorable determination which have been contributed on behalf of Members of that Employer shall be returned to that Employer within one year after the date of such denial of qualification unless the Plan is amended and a favorable determination obtained;
- (b) Employer contributions hereunder are expressly conditioned upon deductibility of contributions under Code Section 404, to the extent Code Section 404 is applicable, and if any part or all of a contribution is disallowed as a deduction under Code Section 404 with respect to any Employer, then to the extent a contribution is disallowed as a deduction, it shall be returned to that Employer within one year after the disallowance; and
- (c) If a contribution is made to the Trust on behalf of any Member or Members of any Employer by a mistake of fact, then such contribution shall be returned to that Employer within one year after the payment of the contribution.

Any contributions returned hereunder shall not include any investment earnings thereon, but shall be net of any investment losses thereon. Any Compensation Reduction Contributions returned to an Employer pursuant to this Section 9.3 shall be paid over to the Member or Members on whose behalf such contributions were made as soon as administratively feasible after receipt thereof by the Employer.

9.4 Absence of Guaranty

Each Member and Beneficiary assumes all risk connected with any decrease in the market value of any assets held under the Plan. Neither the Plan Administrator nor the District in any way guarantees the Trust from loss or depreciation or the payment of any amount that may be or become due to any person from the Trust. The Trust shall be the sole source of distributions to be made under this Plan, and any persons having any claim under the Plan and Trust shall look solely to the assets of the Trust for satisfaction.

Article 10. Administration and General Provisions

10.1 Administration

The Plan Administrator of the Plan is an Employee of the Omaha Public Power District who is responsible for carrying out all phases of administration of the Plan, except those connected with the management of Plan assets.

10.2 Employment of Specialists

The Plan Administrator may authorize one or more peers or any agent to execute or deliver any instrument or instruments on the Plan Administrator's behalf, and may employ such counsel, auditors, and other specialists and such clerical, medical, actuarial, and other services as the Plan Administrator may require in carrying out the provisions of the Plan, with the expenses therefore paid from the Trust Fund unless the District pays such expenses.

10.3 Delegation

The Plan Administrator shall have the right to delegate from time-to-time in writing to any person or persons, on and subject to such terms, conditions, and restrictions as the Plan Administrator in its sole discretion prescribe, such of its rights, powers, limitations, and duties as to the administration of the Plan as the Plan Administrator may deem appropriate, and all actions taken by such persons or persons pursuant to and in accordance with any such delegation shall be effective and binding on all parties to the same extent as though taken by the Plan Administrator.

10.4 Manner of Action

If the Plan Administrator comprises more than one individual, a majority of the members of the Plan Administrator at the time in office shall constitute a quorum for the transaction of business. All resolutions adopted, and other actions taken by the Plan Administrator at any meeting shall be by the vote of a majority of those present at any such meeting. Upon concurrence in writing of all the members at the time in office, action of the Plan Administrator may be taken otherwise than at a meeting.

10.5 Compensation and Expenses

- (a) A member of the Plan Administrator shall serve without compensation for services as a member of the Administrator if receiving full-time pay from the District as an Employee. Any other member of the Plan Administrator may receive compensation for services, as a member, from the District and not from the Plan. Any member of the Plan Administrator may receive reimbursement by the District of expenses properly and actually incurred.
- (b) All expenses of the Plan Administrator shall be paid from the Trust Fund unless paid by the District. Such expenses shall include any expenses incident to the functioning of the Plan Administrator, including, but not limited to, fees of the record keepers, accountants, counsel, and other specialists and other costs of administering the Plan.

10.6 Indemnity for Liability

The District shall indemnify each person acting as Plan Administrator, and each other person acting at the direction of the Plan Administrator, against any and all claims, losses, damages, amounts paid in settlement with the Plan Administrator's approval, arising from such person's action or failure to act, except when the same is judicially determined to be attributable to the willful misconduct of such person.

10.7 Information for Benefits and Data

All persons claiming benefits from the Trust Fund must furnish to the Plan Administrator or its designated agent such documents, evidence, or information as the Plan Administrator or its designated agent considers necessary or desirable for the purpose of administering the Plan.

10.8 Appeal of Denial of Claims

If any claim for benefits under the Plan is denied, the Plan Administrator shall give notice in writing, within a reasonable period of time after receipt of the claim by the Plan (not to exceed 90 days or, if special circumstances require an extension of time, not to exceed a period of up to 180 days after receipt of the claim) of such denial to the Member or beneficiary. The notice shall set forth the specific reasons for such denial, specific reference to pertinent Plan provisions on which the denial is based, a description of any additional material or information necessary for the claimant to perfect the claim with an explanation of why such material or information is necessary, and an explanation of the Plan's claim review procedure. The Plan Administration shall also advise the claimant that a full and fair review of the decision denying the claim may be requested by the claimant by filing an appeal with the Plan Administrator, within 90 days after such notice has been delivered, as required for such review. Effective January 1, 2002, in the event that a claimant chooses to appeal, the claimant or claimant's authorized representative may review pertinent documents, records, and other information relevant to the claim for benefits. If such request is so filed, such review shall be made by the Plan Administrator within 60 days of receipt of such request (or, if special circumstances require an extension of time, within a period not to exceed 210 days after receipt of such request) at a date set by the Plan Administrator, and the Member or beneficiary shall be given written notice of the result of such review.

10.9 Recovery of Overpayments

The Plan Administrator has the right to recover overpayments, under the Plan, as the Plan Administrator determines, in its sole discretion, from the Plan either directly or through an offset against future payments.

Article 11. Miscellaneous Provisions

11.1 Incapacity

Every person receiving or claiming benefits under the Plan shall be conclusively presumed to be mentally competent until the date on which the Plan Administrator receives a written notice, in a form and manner acceptable to the Plan Administrator, that such person is incompetent, and that a guardian, conservator, or other person legally vested with the care of such person's person or estate has been appointed; provided, however, that if the Plan Administrator shall find that any person to whom a benefit is payable under the Plan is unable to care for the person's affairs because of incompetency, any payment due (unless a prior claim therefore shall have been made by a duly appointed legal representative) may be paid to the person's spouse, a child, a parent or other blood relative, or a person with whom the incapacitated person resides. Any such payment so made shall be a complete discharge of liability therefore under the Plan.

In the event a guardian or conservator of the estate of any person receiving or claiming benefits under the Plan shall be appointed by a court of competent jurisdiction, a distribution may be made to such guardian or conservator provided that proper proof of appointment and continuing qualification is furnished in a form and manner acceptable to the Plan Administrator. Any such payment so made shall be a complete discharge of any liability therefore under the Plan, to the extent permitted by law.

11.2 Nonalienation

No benefit payable at any time under the Plan shall be subject in any manner to alienation, sale, transfer, assignment, pledge, attachment, garnishment, or encumbrance of any kind, and shall not be subject to or reached by any legal or equitable process (including execution, garnishment, attachment, pledge, or bankruptcy) in satisfaction of any debt, liability or obligation, prior to receipt. Any attempt to alienate, sell, transfer, assign, pledge, or otherwise encumber any such benefit, whether presently or thereafter payable, shall be void. The Trust Fund shall not in any manner be liable for or subject to the debts or liabilities of any Member, Beneficiary, or other person entitled to receive benefits hereunder. This Section 11.2 shall not preclude the enforcement of a Federal tax levy pursuant to Code Section 6331, nor the collection by the United States of a judgment resulting from an unpaid tax assessment.

Notwithstanding the foregoing provisions, the Plan Administrator shall direct the Trustee to make all payments required by a qualified domestic relations order within the meaning of Code Section 414(P). The Plan Administrator shall establish reasonable procedures to determine the qualified status of domestic relations orders and to administer distributions under such orders.

11.3 Employer-Employee Relationship

The establishment of this Plan shall not be construed as conferring any legal or other rights upon any Member or any other person for a continuation of employment, nor shall it interfere with the rights of the District to discharge any Employee or otherwise act with relation to the Employee. The District may take any action (including discharge) with respect to any Employee or other person and may treat such person without regard to the effect which such action or treatment might have upon such person as a Member of this Plan.

11.4 Data from Employer

The Employer shall furnish to the Plan Administrator, on request, information for its Eligible Employees pertaining to their eligibility, Compensation, Termination of Service and any other information necessary for proper administration of this Plan.

11.5 Notice of Address

Each person entitled to benefits from the Trust Fund must file with the District, in writing, the person's post office address and each change of post office address. Any communication, statement, or notice addressed to the person at the latest reported post office address will be binding upon the person for all purposes of the Plan and neither the Plan Administrator, nor the District, nor the Trustee shall be obliged to search for or ascertain the person's whereabouts.

11.6 Unclaimed Payments

If a Member or Beneficiary fails to apprise the Plan Administrator of changes in address, and the Plan Administrator is unable to communicate with the Member or Beneficiary at the address last recorded by the Plan Administrator within six months after any benefit becomes due and payable from the Plan to any Member or Beneficiary, the Plan Administrator may mail a notice by certified mail, return receipt requested, to the last known address outlining the following action to be taken unless the Member or Beneficiary makes written reply to the Plan Administrator within 60 days from the mailing of such notice: The Plan Administrator may direct that the Member's account balance at the end of such six-month period shall be forfeited and all liability for the payment thereof shall terminate; provided, however, that in the event of the subsequent reappearance of the Member or Beneficiary prior to termination of the Plan, the amount forfeited shall be reinstated without past adjustments. Any forfeitures under this Section 11.6 shall be applied to reduce Employer contributions.

11.7 Notices

Any notice to the Plan Administrator or the District shall be properly given or filed if delivered or mailed, postage prepaid, to the Plan Administrator or the District, as the case may be, at such address as may be specified from time-to-time by the Plan Administrator.

11.8 Action by District

Any action required or permitted to be taken hereunder by the District or the Board of Directors shall be taken by the Board of Directors, or by any committee of the Board of Directors, or by any officer of the District, or by any person or persons authorized by any of them.

11.9 Effect of Mistake

In the event of any mistake or misstatement as to the age, eligibility, Compensation, or participation of a Member or Beneficiary, or the amount of any contribution or benefit payment made or to be made to a Member or Beneficiary, the Plan Administrator shall, to the extent it deems it appropriate, make such adjustments in allocations to accounts and in the future benefit payments as will in its judgment accord to such Member or Beneficiary the benefits to which the Member or Beneficiary is entitled to under the Plan.

11.10 Severability

In the event any provision of the Plan shall be held invalid or illegal for any reason, any illegality or invalidity shall not affect the remaining parts of the Plan, but the Plan shall be construed and enforced as if said illegal or invalid provision had never been inserted, and the District shall have the privilege and opportunity to correct and remedy such questions of illegality or invalidity by amendment as provided in the Plan.

11.11 Counterparts

This Plan has been established by the District and may be executed in any number of counterparts, each of which shall be considered as the original and no requirements to produce another counterpart shall exist.

11.12 Applicable Law

The Plan and all rights hereunder shall be governed, construed, and administered in accordance with the laws of the State of Nebraska and of the United States of America. The Trust and all rights thereunder shall be governed, construed, and administered in accordance with the laws of the state where the Trustee thereunder is located.

11.13 Headings

Headings and subheadings in the Plan are inserted for convenience of reference only and constitute no part of the Plan.

Article 12. Amendment and Termination

12.1 Amendments

- (a) Except as otherwise provided in this Plan, the officers of the District are hereby delegated the power to amend the Plan as they may determine to be necessary or appropriate to comply with the qualification requirements of the Internal Revenue Code or to provide for the efficient administration of the Plan.
- (b) In addition to the foregoing, the Chief Executive Officer of the District shall have the power to amend the Plan without approval and/or direction from the Board of Directors in the following instances:
 - (1) To amend the Plan to clarify provisions and modify administrative procedures so that the District can more efficiently serve Plan Participants; and
 - (2) To amend the Plan to comply with federal and state law.

This Section 12.1(b) will not apply to amendments that increase the value of benefits or that increase any liability under the Plan assumed by the District.

All plan amendments made under this Section 12.1(b) must be communicated to the Board of Directors within sixty (60) days of the amendment.

12.2 Provision Against Diversion

No part of the assets of the Trust shall, by reason of any modification or amendment or otherwise, be used for, or diverted to, purposes other than for the exclusive benefit of Members or their Beneficiaries under the Plan and administrative expenses to the Plan prior to the satisfaction of all liabilities to such Members and their Beneficiaries for distributions hereunder and such expenses, except as provided in Section 9.3.

12.3 Termination

The District reserves the right to terminate the Plan and Trust by action of the Board of Directors. In the event that an Employer shall be judicially declared bankrupt or insolvent or shall be dissolved, merged, consolidated, or reorganized, or sell substantially all of its assets, the Plan and Trust shall terminate with respect to the Employees of such Employer unless, in the case of any such merger, consolidation, reorganization, or sale, provision is made for the appropriate assets of the Trust to be transferred to the credit of such Employees in a trust established by said Employer's successor.

Upon the termination of the Plan and Trust, in whole or in part, or upon complete discontinuance of Employer contributions hereunder, each Member's Account shall continue to be 100 percent vested and nonforfeitable. In such event, the Plan Administrator may hold, administer, and distribute the Plan assets held under the Trust on the same terms and conditions and with the same powers, authorities, and immunities set forth in the Plan and Trust, as if there had been no termination. Alternatively, the Plan Administrator may direct the Trustee to distribute the Member's accounts of each Member affected by the termination, after payment of all expenses

and proportional adjustment of Member's accounts to reflect expenses, Trust earnings or losses, and allocations of any previously unallocated funds to the date of termination, but any such distribution shall be subject to the restrictions on in-service distributions of Compensation Reduction Contributions under Code Section 401(k)(10) and regulations thereunder.

When all Trust assets have been distributed, the Trustee, and the Plan Administrator shall be discharged. The Trust shall nevertheless continue as a legal entity during the period of distribution and for the purpose of distributing all property to the persons entitled hereunder. If the Trust should terminate only with respect to the Employees of one Employer, the provisions hereof governing the determination and distribution of terminated Plan and Trust accounts shall apply only to the Members who are Employees of such Employer.

12.4 Successor Employer

In the event of the dissolution, merger, consolidation, or reorganization of the Employer, provision may be made by which the Plan and Trust will be continued by the successor; and, in that event, such successor shall be substituted for the Employer under the Plan. The substitution of the successor shall constitute an assumption of Plan liabilities by the successor and the successor shall have all of the powers, duties, and responsibilities of the Employer under the Plan.

Article 13. Participation by Affiliates

13.1 Participation in the Plan

Any Affiliate of the District which is a domestic United States corporation which desires to become an Employer may elect to become a party to the Plan and Trust by adopting the Plan for the benefit of one or more groups of its Eligible Employees, effective as date specified in such adoption-

- (a) by filing with the Plan Administrator a certified copy of a resolution of its board of directors to that effect, together with such other instruments as the Plan Administrator may require; and
- (b) by the Plan Administrator's filing with the then Trustee a copy of such resolution, together with a certified copy of resolutions of the District's Board of Directors approving such adoption.

In Witness Whereof, Omaha Public Power District has caused this instrument to be executed on this _____ day of _____, 20____ by its duly authorized officer, effective as set forth herein.

Omaha Public Power District

By _____

Its _____