

**AGREEMENT AND DECLARATION OF TRUST
of the
ELECTRICAL WORKERS LOCAL NO. 292
PENSION PLAN
(2005 RESTATEMENT)**

THIS AGREEMENT, effective as of the 1st day of September 2005 and a restatement of a similar agreement that was effective in 1997, by and among the **LOCAL UNION NO. 292, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO** (hereinafter the "Union"), and **MINNEAPOLIS CHAPTER, NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION, INC.** (hereinafter the "Association"), and Tim Dulas, Jeffrey Ohman, and Bruce Young (hereinafter the "Association Trustees"), and Stephen Claypatch, Rodger Kretman, and Andrew Snope (hereinafter the "Union Trustees"), all of which Association Trustees and Union Trustees and their successors from time to time being collectively hereafter referred to as the "Trustees";

NOW THEREFORE, the Union and the Association have entered into this Agreement and Declaration of Trust of the Electrical Workers Local No. 292 Pension Plan, and; in addition, the Trustees have duly executed this Agreement and Declaration of Trust, indicating their acceptance of the respective duties imposed upon them as Trustees thereunder, and in consideration of the premises and mutual covenants and agreements contained, it is hereby agreed as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Agreement and Declaration of Trust or Trust Agreement. As used herein, these terms will mean this instrument, including all Amendments and modifications as may from time to time be made.

Section 1.2. Employer. The term "Employer" means:

- (a) An employer who is a member of or is represented in collective bargaining by the Association and who is bound by a collective bargaining agreement or other

written agreement with the Union which agreement provides for the making of contributions to the Trust Fund with respect to employees represented by the Union.

- (b) An employer who is accepted for participation by the Trustees and who is bound by a collective bargaining agreement with the Union which agreement provides for the making of contributions to the Trust Fund with respect to employees represented by the Union.
- (c) The Union and the Trust Fund which entities, for the sole purpose of making the required contributions to the Trust Fund, will be considered as the Employer of their respective Employees on whose behalf they agree to contribute to the Trust Fund. The Union and the Trust Fund, however, will have no right to participate in the selection of any of the Employer Trustees to this Fund or to exercise any of the rights granted to contributing employers under this Agreement.
- (d) Employers as described in this Section will, by the making of one or more contributions to the Trust Fund pursuant to a collective bargaining or other written agreements, be deemed to have accepted and be bound by this Trust Agreement.

Section 1.3. Local Union or Union. The term "Union" means Local Union No. 292, International Brotherhood of Electrical Workers, AFL-CIO.

Section 1.4. Association. The term "Association" means the Minneapolis Chapter, National Electrical Contractors Association, Inc.

Section 1.5. Employee. The term "Employee" as used herein will mean:

- (a) Any employee represented by the Union and employed by an Employer as defined herein, and with respect to whose employment an Employer is required to make contributions into the Trust Fund.
- (b) An officer or employee of the Union and for whom the Union agrees in writing to contribute to the Trust Fund at the rate fixed for contributions by other Employers subject to the collective bargaining agreement with the Union and the Association.
- (c) Employees of the Trust Fund on whose behalf the Trust Fund agrees in writing to contribute on the same terms as for other Employees as set forth in the collective bargaining agreement between the Union and the Association.
- (d) Also any other employees of an Employer who is contributing to the Trust Fund as the Trustees may agree to include, on whose behalf contributions are made pursuant to written agreement, and whose inclusion will not impair, in the sole judgment of the Trustees, the tax exempt status of the Fund.

Section 1.6. Trustees. The term "Trustees" as used herein will mean the Trustees designated in this Trust Agreement, together with their successors designated and appointed in accordance with the terms of this Trust Agreement. The Trustees, collectively, will be the "named fiduciaries" of this Fund as that term is used in ERISA.

Section 1.7. Employer Contributions. The term "Employer Contributions" means payments required to be made to the Trust by an Employer under the provisions, as applicable, of any Collective Bargaining Agreement, Participation Agreement or other approved written agreement, and this Agreement and Declaration of Trust.

Section 1.8. Collective Bargaining Agreement. Any written contract, governing terms and conditions of employment and which requires the Employer to make contributions to the Trust Fund, to which an Employer and the Union are parties and any and all extensions, renewals, or modifications thereof, whether by further agreement or operation of law, and any successor agreements thereto.

For the purpose of collection of delinquent employer contributions, "Collective Bargaining Agreement" will also mean a participation agreement or other written agreement requiring an Employer to make contributions to this Trust Fund.

Section 1.9. Trust Fund. "Trust," "Trust Fund" and "Fund" as used herein will mean the entire trust estate of the Electrical Workers Local No. 292 Pension Plan as it may be constituted, including, but not limited to, all bank accounts, savings accounts or certificates, and other investments, and the income from such investments, Employers' contributions and any and all other assets, property or money received by or held by the Trustees for the uses and purposes of this Trust.

Section 1.10. ERISA. The term "ERISA" as used herein will mean the Employee Retirement Income Security Act of 1974, any amendments as may from time to time be made, and any regulations promulgated pursuant to the provisions of that Act.

Section 1.11. Participant. The term "Participant" as used herein will mean any Employee or former Employee of an Employer who is or may become eligible to receive a benefit of any type provided for by the Plan Document or whose Beneficiaries or dependents may be eligible to receive any benefit.

Section 1.12. Beneficiary. The term "Beneficiary" as used herein will mean a person who by written designation or by reason of his or her relationship to a present or former Participant is or may become entitled to a benefit provided for by the Plan Document.

Section 1.13. Plan Year. The Plan Year or fiscal year of the Plan and Trust Fund will begin on May 1 of each year.

Section 1.14. Plan Document; Plan. The terms "Plan Document" or "Plan" will mean the separate written instrument or instruments adopted by the Trustees (including amendments thereto, as may be made by the Trustees) which will specify the classification or classifications of Employees and former Employees eligible for benefits under the Plan, the detailed basis upon which payments are to be made to Participants (or for their Beneficiaries), any requirements which must be satisfied by Participants to be eligible for benefits under the Plan, the categories of Employees or their Beneficiaries or dependents who are eligible to participate under the Plan, the benefits which are provided under the Plan, the procedures for claiming benefits under the Plan, the procedure for amending the Plan Document or terminating the Plan and other matters as the Trustees may determine to include.

Section 1.15. Gender, Number, Compounds and Headings. Whenever appropriate, words used herein in the singular may be read in the plural, or words used herein in the plural may be read in the singular; the masculine may include the feminine (and the feminine may include the masculine); and the words "hereof," "herein" or "hereunder" or other similar compounds of the word "here" will mean and refer to the entire Agreement and not to any particular paragraph or section of this Agreement unless the context clearly indicates to the contrary. The titles given to the various sections of this Agreement are inserted for convenience

of reference only and are not part of this Agreement, and they will not be considered in determining the purpose, meaning or intent of any provision hereof.

ARTICLE II

CREATION AND PURPOSE OF THE TRUST

Section 2.1. Purpose. The Electrical Workers Local No. 292 Pension Plan is hereby established as an employee pension benefit plan as that term is defined in ERISA for the exclusive purpose of providing pension benefits for eligible participants and their beneficiaries, and which is exempt from federal income taxation under Sections 401(a) and 501(a) of the Internal Revenue Code and in accordance with ERISA, for the payment of reasonable expenses incurred in the administration of the Plan.

ARTICLE III

BOARD OF TRUSTEES

Section 3.1. Number, Appointment, Term. The Fund will be administered by six (6) Trustees, three (3) of whom will be appointed by the Union and will act as Employee Trustees, and three (3) of whom will be appointed by the Association and will act as Employer Trustees. The Association and the Union may also each appoint up to one (1) Alternate Trustee. An Alternate Trustee will be qualified to act only in the absence of a Trustee. The respective Trustees will serve without compensation and at the will of the Union or the Association respectively, but they will be reimbursed for reasonable and necessary expenses properly and actually incurred by them in connection with the performance of their official duties as Trustees. Trustees may also be reimbursed for actual loss of salary or wages incurred in the performance of their duties with the Fund to the extent such reimbursement is permitted by ERISA and the policies of the Trust Fund. The Union or the Association will select successor Trustees whenever vacancies occur among their respective appointees as provided in this Trust Agreement.

Section 3.2. Resignation and Removal. A Trustee may resign and become and remain fully discharged from all further duty or responsibility hereunder upon giving five (5) days' notice in writing to the remaining Trustees and to the party by whom the Trustee was appointed, or such shorter notice as the remaining Trustees may accept as sufficient. Such notice will state the date, subject to these restrictions, on which the resignation is to take effect. The resignation will take effect on the date specified in the notice unless a successor Trustee is appointed sooner, in which event the resignation will take effect immediately upon the appointment of the successor Trustee and the successor Trustee's acceptance of the trusteeship.

An Employer Trustee may be removed from office at any time by resolution of the Association. An Employee Trustee may be removed from office at any time upon resolution of the Union. Removal of a Trustee will be effective upon written notice delivered to the Chairman and Secretary of the Fund of such resolution having been duly adopted by the Association or by the Union, respectively. Such removal will not be effective unless the written notice further identifies the Successor Trustee designated to fill the vacancy created by the removal and is accompanied by the Successor Trustee's written acceptance of the Trusteeship.

Section 3.3. Successor Trustees, Appointment. If a Trustee dies, becomes incapacitated, resigns or is removed, a successor Trustee will be immediately appointed by the party having authority pursuant to Section 3.1 hereof. Written notice of the appointment will be delivered to the Chairman and Secretary of the Board of Trustees. The Fund will at all times be administered by an equal number of Employer Trustees and Employee Trustees. If a Trustee is appointed for a specified term of office, the written appointment will so state.

Section 3.4. Successor Trustee, Assumption of Office. Immediately upon appointment and upon written acceptance of the Trusteeship, as provided in Section 3.5, a Successor Trustee will become vested with all the rights, powers and duties of a Trustee hereunder without the necessity of any further conveyance or other instrument of title.

Section 3.5. Acceptance of the Trust by Trustees. A Trustee will execute a written acceptance in a form satisfactory to the Trustees and consistent with ERISA and thereby will be deemed to have accepted the Trust created and established by this Trust Agreement and to have consented to act as Trustee and to have agreed to administer the Trust Fund as provided herein. Such written acceptance will be filed with the Fund's Plan Administrator who will notify the remaining Trustees of the receipt of such acceptance.

Section 3.6. Limitation of Liability of Trustees. No Trustee will be liable or responsible for his/her own acts or for any acts or defaults of any other fiduciary or party in interest or any other person except in accordance with applicable federal law. No Trustee will be liable with regard to a breach of fiduciary duty committed either before he or she became a Trustee or after he or she ceased being a Trustee hereunder.

Section 3.7. Office of the Fund. The principal office of the Trust Fund will, so long as such location is feasible, be located and maintained in the City of Minneapolis, Minnesota or environs and such place will be deemed to be the situs of the Trust Fund. The location of the principal office will be made known to all persons interested in the Trust Fund. The books and records pertaining to the Trust Fund and its administration will be maintained at the principal office and at such other places as the law may require.

Section 3.8. Officers. The Trustees will elect from among themselves a Chairman and a Secretary and such other officers as they may deem advisable. When the Chairman is elected from the Employer Trustees, then the Secretary will be elected from the Employee Trustees; and when the Chairman is elected from the Employee Trustees, then the Secretary will be elected from the Employer Trustees. Such officers will hold office for a term of three (3) years; provided, however, that any officer may be removed with or without cause by the affirmative vote of a majority of the Trustees.

Section 3.9. Power to Act in Case of Vacancy. No vacancy or vacancies on the Board of Trustees will impair the power of the remaining Trustees to administer the affairs of the Trust Fund.

Section 3.10. Meetings; Notices. The Trustees will meet at least once each year and at such other times as they deem necessary. The Chairman and the Secretary of the Board of Trustees may, and upon the written request of any two (2) Trustees will, call a meeting of the Trustees at any time by giving at least five (5) days' written notice to the Trustees of the time and place thereof. A meeting of the Trustees may be held at any time without notice if all of the Trustees so consent.

Section 3.11. Attendance at Meetings; Minutes. All official meetings of the Trustees will be attended only by the Trustees and will not be open to the public, except that there may attend such other persons as may be designated by the Trustees to assist them in the administration of the Trust Fund or when invited so to do, by the Trustees and as may be otherwise required by law. Written minutes, a copy of which will be furnished with reasonable promptness to each Trustee, will be kept of all business transacted at Trustee meetings and of all matters upon which voting occurs. The minutes will be approved by the signature of each Employer Trustee and of each Employee Trustee who was present at such meeting.

Section 3.12. Quorum; Voting; Action Without Meeting.

- (a) A majority of the full Board of Trustees will constitute a quorum for the transaction of business at any regular or special meeting of the Trustees. If at any meeting the number of Employer and Employee Trustees present is unequal, then the group of Trustees lesser in number will be entitled to form a block and cast the same number of votes as the other group of Trustees. In the event there will be present at any meeting less than all of the Trustees of a group and if a group of Trustees cannot agree as to the manner in which the vote of the absent Trustee is to be cast, then action on the matter under consideration will be postponed until all Trustees of the group are present.
- (b) A quorum of a committee of the Board of Trustees, established in accordance with Section 5.6 of this Trust Agreement or otherwise, will be a majority of the members of the committee, except as may be provided otherwise by law.

- (c) Any action taken by the Trustees, except as herein otherwise provided, will be by the affirmative vote of a majority of the Trustees cast at a meeting.
- (d) The Board of Trustees may meet by means of conference telephone call provided a majority of all of the Trustees so agrees. Conference telephone call will mean a telephone call in which all present can hear and be heard by all others present. The provisions of this Agreement concerning conduct of meetings will apply to meetings conducted by conference telephone call.
- (e) Action by the Trustees on any issue may also be taken without a meeting if all of the Trustees agree. If circumstances arise which require action on an issue in the absence of meeting, any Trustee may require that the Chairman or his designee poll the Trustees by telephone, facsimile or e-mail. A resolution of such issue by this means will be effective if all Trustees concur that a telephone, facsimile or e-mail poll is appropriate for resolution of the issue to be resolved. If any Trustee objects to polling of an issue, a formal meeting, as provided in Section 3.12(a) or (d) will then be required to act upon the issue. Any action taken pursuant to such a poll will be entered on the minutes of the next scheduled meeting of the Trustees and will be subject to ratification by a vote of the Trustees in accordance with Section 3.12(a).

Section 3.13. Manner of Acting in the Event of Deadlock.

- (a) A deadlock will be deemed to exist whenever a question coming before the Trustees for discussion results in a tie vote and a block of Trustees notifies the other block of Trustees in writing that a deadlock exists.
- (b) If a deadlock arises, the Trustees will agree upon an impartial umpire to decide the dispute in question. If the Trustees cannot, within a reasonable time not to exceed thirty (30) days, agree upon an impartial umpire, then any three (3) Trustees may petition one of the judges of the United States District Court for the District of Minnesota, who will appoint an impartial umpire. Such impartial umpire will immediately hear and decide the dispute between the Trustees, and the decision and award of the umpire will be final and binding upon the parties. The reasonable compensation of the umpire and the costs and expenses (including, without limitation, attorneys' and reporter fees) incidental to any proceedings instituted to break a deadlock will be paid by the Trust Fund.
- (c) Any impartial umpire selected or designated to break a deadlock will be required to enter his decision within a reasonable time fixed by the Trustees. The scope of any proceeding before an impartial umpire will be limited to the provisions of this Trust Agreement and to the provisions of the rules, regulations and by-laws adopted by the Trustees and to the plan of benefits established by them. The impartial umpire will have no jurisdiction or authority to change or modify the provisions of this Trust Agreement or to decide any issue arising under or involving the interpretation of any collective bargaining agreements between the Union, the Employers, nor will the umpire have power or authority to change or modify any provisions of any such collective bargaining agreements.

