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December 15, 2016

To: Retirement System Participants

From: Board of Trustees

Subject: Additional Administrative Rule Part13 – Compliance Addendum.

The provisions of Chapter 218 (Plan Document) specifically Section 218:6 V, provide that the Board of Trustees “shall produce a Summary Plan Description, By-Laws, and Administrative Rules which are not inconsistent with this act.”

The By-Laws of the Board of Trustees, Article XIV, paragraph 14.06 require that proposed amendments to Administrative Rules be posted thirty (30) days before their adoption “in order to afford interested persons an opportunity to submit data and make their views known either orally or in writing...”

The trustees are seeking to add a new rule designed to ensure ongoing compliance with Internal Revenue Code Section 401.

Comments may be submitted in writing before the close of business on Friday, January 20, 2017.

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Or by email to Gfleury@ManchesterRetirement.org

Questions and comments may also be directed to Gerard Fleury by phone at 624-6506 Monday through Friday between 8:00 AM and 4:00 PM

Explanation for this new Rule.

The Manchester Employees' Contributory Retirement System, (MECRS) has operated as a tax exempt retirement plan pursuant to the Tax Code since the Plan was created by a New Hampshire statute in 1973. From time to time, Tax Code, related Federal Tax Regulations and the Plan provisions have evolved, making it important that any revised requirements in the Federal Tax Regulations continue to be in sync with the Plan.

In January of 2016, the Board of Trustee filed an application with the Internal Revenue Service Determination Letter Program to receive a new Determination Letter which is a written verification that the various provisions of the Plan remain compliant with all required provisions of the Tax Code and the related Federal Tax Regulations. The Board of Trustees expects to receive a favorable Determination Letter in 2017.

In connection with the Determination Letter application, the Board of Trustees also applied for, and has already received, approval by the Internal Revenue Service to add additional language to certain technical provisions of the MECRS statute on a retroactive basis that do not impact Member benefits. This technical correction is being accomplished by the addition of a new Section 13 to the MECRS Administrative Rules called the "Compliance Addendum." New Hampshire Law allows for certain Plan features to exist through the issuance of By-Laws or Administrative Rules. Because the Administrative Rule process is more robust than enacting changes to the MECRS statute, it is the chosen method for supplementing the statute to ensure continued compliance with the Tax Code and related Federal Tax Regulations.

This rule will not result in any changes to benefits or other entitlements presently in existence. What this rule will do, is provide a vehicle for rapid compliance with future changes to the Tax Code and Federal Tax Regulations which might otherwise jeopardize the continued favorable tax treatment, which the Plan currently receives. In addition, to the extent that in connection with the issuance of the Determination Letter, the Internal Revenue Service requests technical changes be made to the Plan, they would be made via the Compliance Addendum.

In summary, the successful implementation of this new Administrative Rule will help to ensure the continued tax free status of the MECRS. Again, this new Rule will not impact Member benefits.

Compliance Addendum to Manchester Employees' Contributory Retirement System Administrative Rules

13.1 Purpose and Definitions. This new Part 13, Compliance Addendum has been approved by the board of trustees of the City of Manchester Employees' Contributory Retirement System to satisfy the terms of the compliance statement issued by the Internal Revenue Service on September 24, 2016, and the determination letter to be issued by the Internal Revenue Service. The Retirement System will satisfy the qualification requirements in Internal Revenue Code Section 401, as applicable. In order to meet those requirements, the Retirement System is subject to the following provisions, notwithstanding any other provision of New Hampshire law.

Definitions

(a) "Plan year" means the calendar year.

13.2 Limit on Compensation under Internal Revenue Code Section 415

For purposes of determining "Earnings" and "Final average earnings" as defined in Chapter 218:4, VIII, and X, in the final 12 months of service ending with the termination of employment of a Member shall include amounts paid after separation from service only if such amounts are paid by the later of 2½ months after an employee's severance from employment or the end of the plan year that includes the date of the employee's severance from employment and if:

- a) the payment is regular compensation for services during the Member's regular working hours, or compensation for services outside the Members regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the employee while the employee continued in employment with the employer; or
- b) the payment is for unused accrued bona fide sick, vacation or other leave that the employee would have been able to use if employment had continued.

13.2 Internal Revenue Code Section 401(a)(9)

Effective as of January 1, 1989, the Retirement System will pay all benefits in accordance with a good faith interpretation of the requirements of Internal Revenue Code Section 401(a)(9) and the regulations in effect under that section, as applicable to a governmental plan within the meaning of Internal Revenue Code Section 414(d). All distributions required under this Section 13.2 will be determined and made in accordance with Sections 1.401(a)(9)-1 through 1.401(a)(9)-9 of the Treasury regulations under Section 401(a)(9) of the Code. Notwithstanding the other provisions of this Section 13.2, other than the regulations cited above, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the Plan that relate to Section 242(b)(2) of TEFRA. Notwithstanding any other provision of this Compliance Addendum and Chapter 218, effective on and after January 1, 2002, the Retirement System is subject to the following provisions:

Benefits must begin by the required beginning date, which is the later of April 1 of the calendar year following the calendar year in which the member reaches 70½ years of age or April 1 of the calendar year following the calendar year in which the member terminates employment. If a member fails to apply for retirement benefits by April 1 of the calendar year following the calendar year in which he or she reaches 70½ years of age or April 1 of the calendar year

following the calendar year in which he or she terminates employment, whichever is later, the board of trustees will begin distributing the benefit as required by this Rule. The member's entire interest must be distributed over the member's life or the lives of the member and a designated Beneficiary, or over a period not extending beyond the life expectancy of the member or of the member and a designated Beneficiary.

The life expectancy of a member, the member's spouse, or the member's Beneficiary may not be recalculated after the initial determination for purposes of determining benefits.

If a member dies after the required distribution of benefits has begun, the remaining portion of the member's interest must be distributed at least as rapidly as under the method of distribution before the member's death.

If a member dies before required distribution of the member's benefits has begun, the member's entire interest must be either (i) distributed (in accordance with federal regulations) over the life or life expectancy of the designated Beneficiary, with the distributions beginning no later than December 31 of the calendar year following the calendar year of the member's death, or (ii) distributed within five years of the member's death.

The amount of an annuity paid to a member's Beneficiary may not exceed the maximum determined under the incidental death benefit requirement of Internal Revenue Code Section 401(a)(9)(G), and effective for any annuity commencing on or after January 1, 2008, the minimum distribution incidental benefit rule under Treasury Regulation Section 1.401(a)(9)-6, Q&A-2.

The death and disability benefits provided by the Retirement System are limited by the incidental benefit rule set forth in Internal Revenue Code Section 401(a)(9)(G) and Treasury Regulation Section 1.401-1(b)(1)(i) or any successor regulation thereto. As a result, the total death or disability benefits payable may not exceed 25% of the cost for all of the members' benefits received from the Retirement System.

Once payments have commenced over a period, the period may only be changed in accordance with Q&A-13 of Section 1.401(a)(9)-6 of the Treasury regulations under the following circumstances, or as may be expressly permitted in other IRS guidance under Section 401(a)(9) of the Internal Revenue Code, if permitted under applicable provisions of Chapter 218: (a) at the time the Participant retires or in connection with termination of the Plan; (b) where distribution prior to the change is being made in the form of a period-certain-only annuity without life contingencies; or (c) where the annuity payments after the change are paid under a joint and survivor Annuity over the joint lives of the Participant and a designated beneficiary, the Participant's spouse is the sole designated beneficiary, and the change occurs in connection with the Participant becoming married to such spouse.

If the Participant's interest is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements: (a) the annuity distributions will be paid in periodic payments made at intervals not longer than one year; (b) the distribution period will be over a life (or lives) or over a period certain not longer than the period described in Section 13.2 below; (c) once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted; and (d) payments will either be non-increasing or increase only as follows:

(i) by an annual percentage increase that does not exceed the annual percentage increase in an eligible cost-of-living index, as defined in Q&A-14(b) of Section 1.401(a)(9)-6 of the Treasury regulations, for a 12-month period ending in the year during which the increase occurs or the prior year, that is based on prices of all items and issued by the Bureau of Labor Statistics;

(ii) by a percentage increase that occurs at specified times, such as at specified ages, and does not exceed the cumulative total of annual percentage increases in an eligible cost-of-living index as defined in clause (i) above since the Annuity Starting Date or, if later, the date of the most recent percentage increase, provided that in cases providing such a cumulative increase an actuarial increase may not be provided to reflect the fact that increases were not provided in the interim years;

(iii) to the extent of the reduction in the amount of the Participant's payments to provide for a survivor benefit upon death, but only if the Beneficiary whose life was being used to determine the distribution period dies or is no longer the Participant's Beneficiary pursuant to a qualified domestic relations order within the meaning of Section 414(p) of the Internal Revenue Code;

(iv) to pay increased benefits that result from a Plan amendment;

(v) to allow a beneficiary to convert the survivor portion of a joint and survivor annuity into a single-sum distribution upon the employee's death; or

(vi) to the extent increases are permitted in accordance with paragraph (c) or (d) of Q&A-14 of Section 1.401(a)(9)-6 of the Treasury regulations.

13.3 Internal Revenue Code Section 401(a)(17)

(1) Effective January 1, 1996, in accordance with the Omnibus Budget Reconciliation Act of 1993 (OBRA '93), except as provided in this section, the annual compensation the Retirement System takes into account for any purpose, including contributions or benefits, may not exceed the amount allowed by Internal Revenue Code Section 401(a)(17) as of the first day of the plan year.

(2) The annual compensation of each member taken into account in determining benefits or contributions for any plan year beginning on or after January 1, 1996, and prior to January 1, 2002, may not exceed \$150,000, as adjusted for cost-of-living increases in accordance with Internal Revenue Code Section 401(a)(17)(B).

(3) Effective only for the 1996 plan year, the rules of Internal Revenue Code Section 414(q)(6) will apply in determining the annual compensation limitation, except that a member of the family group will include only the spouse of the member and any lineal descendant of the member who has not attained age nineteen (19) before the close of the year. If the annual compensation of a member and his family members is so limited, the annual compensation of the member and each such family member will be equal to the compensation of each such individual determined without regard to Internal Revenue Code Sections 401(a)(17) and 414(q)(6) divided by such annual compensation for all such individuals as so determined and the quotient multiplied by the applicable Internal Revenue Code Section 401(a)(17) limitation amount, as described above.

(4) The annual compensation of each member taken into account in determining benefits or contributions for any plan year beginning on or after January 1, 2002, may not exceed \$200,000, as adjusted for cost-of-living increases in accordance with Internal Revenue Code Section 401(a)(17)(B).

(5) For purposes of paragraphs 13.3(1) through 13.3(4), annual compensation means compensation during the plan year. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If the determination period consists of fewer than 12 months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12. If the compensation for any prior determination period is taken into account in determining a member's contributions or benefits for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period.

(6) The limits referenced in paragraph 13.3(1) through 13.3(5) above apply only to plan years beginning on or after January 1, 1996, and only to individuals who first become members in plan years beginning on and after January 1, 1996. Individuals who become members before plan years beginning on and after January 1, 1996, are not subject to the limits of Internal Revenue Code Section 401(a)(17). Pursuant to Section 13212(d)(3)(A) of OBRA '93, and the regulations issued under that section, the annual compensation in effect under Internal Revenue Code Section 401(a)(17) does not apply to any such member in any year.

13.4 Internal Revenue Code Section 401(a)(31):

This subsection applies to distributions made on or after January 1, 1993. Notwithstanding any contrary provision or retirement law that would otherwise limit a distributee's election under this Compliance Addendum, a distributee may elect, at the time and in the manner prescribed by the board of trustees, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(1) Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Internal Revenue Code Section 401(a)(9); the portion of any distribution that is not includible in gross income; and any other distribution that is reasonably expected to total less than \$200 during the year. Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Internal Revenue Code Section 408(a) or (b), or to a qualified defined contribution plan described in Internal Revenue Code Section 401(a) or to a qualified plan described in Internal Revenue Code Section 403(a), or on or after January 1, 2007, to a qualified defined benefit plan described in Internal Revenue Code Section 401(a) or to an annuity contract described in Internal Revenue Code Section 403(b), that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible.

(2) Eligible retirement plan: An eligible retirement plan is: (a) effective January 1, 2002, a plan eligible under Internal Revenue Code Section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state that agrees to separately account for amounts transferred into the plan from the Retirement System, (b) an individual retirement account described in Internal Revenue Code Section 408(a), (c) an individual retirement annuity described in Internal Revenue Code Section 408(b), (d) an annuity plan described in Internal Revenue Code Section 403(a), (e) effective January 1, 2002, an annuity contract described in Internal Revenue Code Section 403(b), f. a qualified trust described in Internal Revenue Code Section 401(a), that accepts the distributee's eligible rollover distribution, or g. effective January 1, 2008, a Roth IRA described in Internal Revenue Code Section 408A.

(3) Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a domestic relations order, as defined in Internal Revenue Code Section 414(p).

(4) Distributee: A distributee includes an employee or former employee. It also includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Internal Revenue Code Section 414(p). Effective January 1, 2007, it further includes a non-spouse beneficiary who is a designated beneficiary as defined by Internal Revenue Code Section 401(a)(9)(E). However, a non-spouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution and the account or annuity will be treated as an "inherited" individual retirement account or annuity.

(5) Direct rollover: A direct rollover is a payment by the Retirement System to the eligible retirement plan specified by the distributee.

13.5 Automatic Rollovers under Internal Revenue Code Section 401(a)(31)(B):

Effective January 1, 2006, in the event of a mandatory distribution greater than \$1,000, if a member does not elect to have such distribution paid directly to an eligible retirement plan specified by the member in a direct rollover or to receive the distribution directly, the board of trustees will pay the distribution in a direct rollover to an individual retirement plan designated by the board of trustees in accordance with Internal Revenue Code Section 401(a)(31)(B) and IRS Notice 2005-5.

13.6 Internal Revenue Code Section 415:

(1) General. Effective as of January 1, 1989, member post-tax contributions paid to, and retirement benefits paid from, the Retirement System may not exceed the annual limits on contributions and benefits, respectively, allowed by Internal Revenue Code Section 415 and the regulations thereunder. The foregoing section of the Code and the regulations thereunder are incorporated herein by reference. Notwithstanding the foregoing, effective January 1, 2004, the Plan shall comply with the provisions of the Pension Funding Equity Act of 2004 modifying the rules set forth in section 415 of the Code, to the extent applicable.

(2) Applicable Compensation. For purposes of applying the limits under Internal Revenue Code Section 415, the definition of compensation where applicable will be compensation as defined in Treasury Regulation Section 1.415(c)-2(d)(3), or successor regulation; provided, however, that the definition of compensation will exclude member contributions picked up under Internal Revenue Code Section 414(h)(2), and for limitation years beginning after December 31, 1997, compensation will include the amount of any elective deferrals, as defined in Internal Revenue Code Section 402(g)(3), and any amount contributed or deferred by the employer at the election of the member and which is not includible in the gross income of the member by reason of Internal Revenue Code Section 125 or 457, and for limitation years beginning on and after January 1, 2001, Internal Revenue Code Section 132(f)(4). For limitation years beginning on and after January 1, 2007, compensation for the limitation year will also include compensation paid by the later of 2½ months after an employee's severance from employment or the end of the limitation year that includes the date of the employee's severance from employment if: (a) the payment is regular compensation for services during the employee's regular working hours, or compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the employee while the employee continued in employment with the employer; or (b) the payment is for unused accrued bona fide sick, vacation or other leave that the employee would have been able to use if employment had continued.

(3) Defined Benefit Limits:

(a). Before January 1, 1995, a member may not receive an annual benefit that exceeds the limits specified in Internal Revenue Code Section 415(b), subject to the applicable adjustments in that section. On and after January 1, 1995, a member may not receive an annual benefit that exceeds the dollar amount specified in Internal Revenue Code Section 415(b)(1)(A), subject to the applicable adjustments in Internal Revenue Code Section 415(b).

(b) On and after January 1, 1995, in no event shall a member's annual benefit payable under the Retirement System in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Internal Revenue Code Section 415(d) and the regulations thereunder. If the form of benefit without regard to the automatic benefit increase feature is not a straight life or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the Internal Revenue Code Section 415(b) limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent straight life annuity benefit determined using the following assumptions that takes into account the death benefits under the form of benefit:

(i) For a benefit paid in a form to which section Internal Revenue Code Section 417(e)(3) does not apply, the actuarially equivalent straight life annuity benefit which is the greater of (or the reduced Internal Revenue Code Section 415(b) limit applicable at the annuity starting date which is the lesser of when adjusted in accordance with the following assumptions):

(A). The annual amount of the straight life annuity (if any) payable to the participant under the plan commencing at the same annuity starting date as the form of benefit payable to the participant, or

(B). The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the participant, computed using a 5 percent interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables described in Treasury

Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Rulings 2001-62), and (ii) for years beginning on or after January 1, 2009, the applicable mortality tables described in Internal Revenue Code Section 417(e)(3)(B) (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Internal Revenue Code Section 417(e)(3)(B)); or

(ii) For a benefit paid in a form to which Internal Revenue Code Section 417(e)(3) applies, the actuarially equivalent straight life annuity benefit which is the greatest of (or the reduced Internal Revenue Code Section 415(b) limit applicable at the annuity starting date which is the least of when adjusted in accordance with the following assumptions):

(A). The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;

(B). The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years beginning on or after January 1, 2009, the applicable mortality tables described in Internal Revenue Code Section 417(e)(3)(B) (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Internal Revenue Code Section 417(e)(3)(B)); or

(C). the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treas. Reg. § 1.417(e)-1(d)(3) (the 30-year Treasury rate (prior to January 1, 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate in effect for the first day of the plan year with a one-year stabilization period)) and (i) for years prior to January 1, 2009, the applicable mortality tables for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years beginning on or after January 1, 2009, the applicable mortality tables described in Internal Revenue Code Section 417(e)(3)(B) (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Internal Revenue Code Section 417(e)(3)(B)), divided by 1.05.

13.7 Internal Revenue Code Section 414(u):

Effective December 12, 1994, notwithstanding any other provision of Chapter 218, contributions, benefits and service credit with respect to qualified military service are governed by Internal Revenue Code Section 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994.

Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in chapter 43 of title 38, United States Code), death benefits shall be provided by the Retirement System Chapter 218:16 to the survivors of a member to the extent required by Internal Revenue Code Section 401(a)(37). A deceased member's period of qualified military service must be counted for vesting purposes.

Beginning January 1, 2009, to the extent required by Internal Revenue Code Sections 3401(h) and 414(u)(2), any differential wage payments to an individual from an employer (while the individual is performing qualified military service (as defined in chapter 43 of title 38, United States Code)) shall be treated as compensation for purposes of applying the limits on annual additions under Internal Revenue Code Section 415(c).