

**OPERATING ENGINEERS  
ANNUITY PLAN**

**SUMMARY PLAN DESCRIPTION**

**and**

**Text of the  
Operating Engineers Annuity Plan**

[Union “Bug”]

**2016 Edition**

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Claims and Health Benefits: 1-800-251-5013

August 2016

### **TO: ALL PARTICIPANTS AND BENEFICIARIES**

We are pleased to provide you with this up-to-date summary describing the terms of your Annuity Plan. There have been several changes in the Annuity Plan since we shared the last booklet, so we encourage you to read this new booklet very carefully. Pay particular attention to the rules governing the following terms:

- Contributions for Military Service
- Failure to Apply for Payment of Accumulated Share
- Claims and Appeals Procedures
- Acceptance of Rollover Transfers from Other Plans
- Required Beginning Date
- Loan Program

The Annuity Plan provides an additional measure of financial security and flexibility for you and your family when you retire. In addition to retirement benefits, this Annuity Plan provides benefits in case of death, disability, or termination of service.

The information that follows in the "At a Glance" overview on page iii and the Summary Plan Description starting on page 1 merely highlights some of the features of the Annuity Plan. In all cases, the actual Annuity Plan (Rules and Regulations) governs every aspect of participation, eligibility, benefit payments, and, in general, the administration of the Annuity Plan. The complete text of the Annuity Plan appears in the second half of this booklet.

We suggest that you share this booklet with your family, since they may have an interest in the Annuity Plan. We also suggest that you keep this booklet for future reference and let members of your family know where they can find it. This booklet contains information about what may be substantial sums of money to which you or your Beneficiary may be entitled.

If you have any questions about the Annuity Plan or would like any additional information, please contact the Fund Office. You should understand, however, that only the full Board of Trustees is authorized to interpret the terms of the Annuity Plan. No Union or Employer, or any representative of any Union or Employer, is authorized to answer your questions or interpret the Plan on behalf of the Board nor can that person act as an agent of the Board of Trustees.

Sincerely,

**BOARD OF TRUSTEES**

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# Operating Engineers Annuity Plan

**This explanation of the Annuity Plan is no more than a brief and very general description of the most important terms of the Annuity Plan. No general statement such as this can completely reflect all of the details of the Annuity Plan. Nothing in this statement is meant to interpret or extend or change in any way the rules stated in the Annuity Plan rules.**

**An Employee or Participant's rights can only be determined by consulting the actual text of the Annuity Plan rules, which appears in the last part of this booklet.**

**Only the full Board of Trustees, or an appeals subcommittee which has been given this duty, is authorized to interpret the Annuity Plan described in this booklet. No Union or Employer, or any representative of any Union or Employer, is authorized to interpret the Annuity Plan on behalf of the Board of Trustees—and this person cannot act as an agent of the Board of Trustees, either.**

**Only answers given by the Board of Trustees or the appeals subcommittee are official and then only if you have provided full and accurate information about your situation. To be official, information or opinions about your rights under the Annuity Plan must be communicated to you in writing, signed on behalf of the full Board of Trustees.**

**The Board of Trustees has authorized the Fund Office to answer your questions regarding the Annuity Plan. However, only information and answers provided in writing can be relied on in any disputes about your benefits.**

## HOW TO USE THIS BOOKLET

The Operating Engineers Annuity Plan booklet has three sections. Each one offers you a different level of detail – from a quick reference to the complete rules and regulations of the Annuity Plan.

**At a Glance.** This table gives you an overview of how the Annuity Plan works and the benefits it provides. If you're new to the Plan or want to learn the basics of the Plan quickly, this is a good place to start.

**Summary Plan Description (SPD).** This is just that – a summary of all the terms of the Plan. Use the SPD to get a plain English overview of the Plan. Refer to the SPD when you want to understand the Plan and how you can get the most out of it. Sections include:

- Participation
- Right to Benefits
- Applying for Benefits

**The Annuity Plan – Rules and Regulations.** This is the official document of the Annuity Plan. As such, it's the “final word” on how the Plan works, your participation in the Plan, your rights and your responsibilities. If there's a difference between the information in the other parts of the booklet and this section, the information in The Annuity Plan – Rules and Regulations rules.

➤ **Important** ◀

**In each section of the Summary Plan Description, you will find italicized section references to related parts of the official Annuity Plan document. When you're using the SPD, you can use these references to look up the official language in the Rules and Regulations.**

## Annuity Plan at a Glance

<b>What is the Annuity Plan?</b>	<ul style="list-style-type: none"> <li>• The Annuity Plan is designed to provide you with regular monthly payments after you retire. You can also receive payments if you're unable to work, for example, if you become disabled or unemployed.</li> <li>• Your employer makes all of the contributions to the Plan. You don't have to contribute anything. The contributions your employer makes are held in an account for you.</li> <li>• You are responsible for investing the funds in your account, choosing from a range of investment options. It is critical that you pay attention to how your account is invested. Investments can increase in value, but you can also lose money in an investment. You are responsible for choosing investments that are appropriate for you, based on your needs and preferences.</li> <li>• The Plan is a tax-deferred plan, which means that it uses provisions of federal tax law to help build your savings.</li> </ul>
<b>Who can participate?</b>	<p>In general, you're a Participant in the Annuity Plan if:</p> <ul style="list-style-type: none"> <li>• You're working for an Employer under a Collective Bargaining Agreement with the Operating Engineers Union Local No. 3 of the International Union of Operating Engineers; AND</li> <li>• This agreement requires the Employer to contribute to the Annuity Plan on your behalf.</li> </ul>
<b>Who contributes to my account?</b>	All Employers who have agreed to do so in a Collective Bargaining Agreement.
<b>When am I vested in my account?</b>	You are immediately vested in Employer contributions to your account and any investment returns on your account investment. Vesting means that you have a non-forfeitable right to your benefit.
<b>What determines the value of the funds in my account?</b>	<p>The value of the funds in your account is determined by a number of things, including:</p> <ul style="list-style-type: none"> <li>• The amount of Contributions that your Employer makes for you;</li> <li>• Any distributions you have transferred into this Annuity Plan from another qualified defined contribution plan;</li> <li>• Changes in the value of the investments made with the funds in your account.</li> </ul>
<b>Can I contribute to my account?</b>	No. Only Employers who are required to do so may contribute to your account.
<b>Can I roll over money into my account?</b>	Yes. If you are an active Participant, you may make direct rollovers from another qualified retirement plan into the Annuity Plan.
<b>When can I receive the money in my account?</b>	Typically, you will begin to receive the money in your account when you retire. You may also be eligible to receive the money if you become disabled or unemployed.
<b>How much money will I receive?</b>	The amount you receive will depend on the value of your account when you are eligible for benefits. That value will depend on investment results, so the exact amount you will receive cannot be determined until you are close to the date when your benefit payments would begin.



<p><b>How can I see the value of my account?</b></p>	<p>You can see the value of your account and manage it online, by going to <a href="http://www.ibenefitcenter.com">www.ibenefitcenter.com</a> and logging in.</p> <ul style="list-style-type: none"> <li>• When you visit the Plan website for the first time, you will need to register.</li> <li>• You can also call the Plan Administrator, Mercer, for personalized assistance. You can reach Mercer at 877-864-6644, from 8:00 a.m. to 10:00 p.m. Eastern time, Monday through Friday.</li> <li>• In addition to the online information, you will also receive personalized account statements quarterly, mailed to your home address. It is important that you keep the Plan updated on your address, especially if you stop working for an Employer that participates in the Plan but are not yet eligible to receive your benefits.</li> </ul>
<p><b>What are my investment options?</b></p>	<p>The Plan offers a range of investment options, which you can review by visiting the Plan website at <a href="http://www.ibenefitscenter.com">www.ibenefitscenter.com</a>.</p> <p>If you do not choose an investment option, your account will be invested in the Vanguard Target Retirement Fund with the target retirement date closest to your 65<sup>th</sup> birthday.</p>
<p><b>How will the Plan provide my money to me?</b></p>	<p>Depending on your circumstances and your choice, you may receive the money in your account as a:</p> <ul style="list-style-type: none"> <li>• Lump Sum</li> <li>• Life Annuity</li> <li>• Qualified Joint and Survivor Annuity</li> </ul>
<p><b>How can I name a beneficiary?</b></p>	<p>Simply fill out and return a Beneficiary Designation Form, available from the Fund Office.</p>
<p><b>Do I pay taxes on the money in my account?</b></p>	<p>Your funds become taxable when you actually receive them. However, you may be able to defer taxes by rolling over your money to an IRA or another tax-deferred account.</p>
<p><b>Can I take out a loan from my account?</b></p>	<p>Yes, in certain instances. But we strongly encourage you <b>not</b> to do so if possible, as the purpose of the Annuity Plan is to give you some financial security when you retire. If you take out loans, you reduce your opportunity to benefit from investment gains on your account.</p>

# SUMMARY PLAN DESCRIPTION

## A. PARTICIPATION

1. How do I know if I am a Participant in the Annuity Plan?  
(Refer to Sections 1.09, 2.01, 2.09 of Rules and Regulations)

In general, you are a Participant in the Annuity Plan if:

- You are working for an Employer under a Collective Bargaining Agreement with the Operating Engineers Union Local No. 3 of the International Union of Operating Engineers or for any successor labor organization with the approval of the Union; AND
- This agreement requires your Employer to make Contributions to this Annuity Plan for your work.

If you are a Participant, you will receive a statement from the Fund Office at least once every quarter showing the actual Employer Contributions made on your behalf in the previous fiscal year and the value of your Individual Account.

## B. INDIVIDUAL ACCOUNTS

2. What is an Individual Account?  
(Refer to Section 2.01 of Rules and Regulations)

An “Individual Account” is the account established in your name to receive the Contributions your Employers make on your behalf. An Individual Account is set up on your behalf when the Plan first receives a Contribution on your behalf.

### ➤ Important ◀

**The Annuity Plan uses Individual Accounts to manage Participant benefits under the Plan, but the only rights you have to your account and its balance are those provided according to the Plan terms. According to the Plan terms, you have a non-forfeitable right to the value of the assets in your Individual Account, but neither you nor anyone else has any right, title, or interest in the Fund or its assets or in your Individual Account beyond the rights provided according to the Plan terms.**

3. What is an Accumulated Share?  
(Refer to Section 3.01 of Rules and Regulations)

Your Accumulated Share is the balance in your Individual Account.

4. What determines the value of the Accumulated Share in my Individual Account at any time?  
(Refer to Article 2 and Section 3.01 of Rules and Regulations)

Several factors determine the value of your Accumulated Share in your Individual Account. These include:

- The amount of the Contributions that your Employer makes on your behalf;
- Any money you have transferred into this Annuity Plan from another qualified defined contribution plan;
- Any interest or dividends you receive from investments made with the money in your Individual Account;
- Changes in the value of these investments (these can increase or decrease the value of your Accumulated Share);
- Investment expenses of the investments you have selected (these are deducted from your account);
- Your equal share of the expenses for operating the Annuity Plan (these are also deducted from your account).

5. What is the Valuation Date?  
(Refer to Section 1.29 of Rules and Regulations)

The “Valuation Date” means each day that the financial markets are open. The income and losses to each Individual Account are applied each day the financial markets are open.

6. When am I vested in my account?  
(Refer to Section 2.08 of Rules and Regulations)

You are immediately vested in Employer contributions to your account and any investment returns on your account investment. Vesting means that you have a non-forfeitable right to your benefit.

## **C. CONTRIBUTIONS**

7. Can I contribute to my Individual Account?  
(Refer to Section 1.08 of Rules and Regulations)

No. Only Employers can make contributions.

8. Can I roll over money from another retirement plan into my Individual Account?  
(Refer to Sections 1.08 and 4.10 of Rules and Regulations)

Yes. You can transfer money into your Individual Account from another qualified defined contribution plan.

9. Will my Account receive Contributions while I am on military service?  
(Refer to Sections 1.23 and 3.08 of Rules and Regulations)

If you serve in the United States military and are then reemployed by an Employer, you may qualify for Contributions for the period(s) while you were in service, according to the terms of the Uniformed Services Employment and Reemployment Rights Act of 1994, or USERRA. In order to qualify for these contributions, you must satisfy the following requirements:

- Worked for an Employer in Covered Employment when your military service began.
- Be discharged from military service under honorable conditions.
- Satisfy USERRA’s advance notice (to Employer) requirement before your leave.
- Remain on leave for no more than five years, except as otherwise specified by USERRA.
- Apply for reemployment within the time frame specified by USERRA, as shown in the chart below:

<b>Length of Military Service</b>	<b>Reemployment Deadline</b>
Less than 31 days	Within 1 day after discharge (plus 8 hours for travel)
31 through 180 days	Within 14 days after discharge
181 days or more	Within 90 days after discharge

Contributions on your behalf will be based on your average hours of work during the 12-month period immediately before your military service or, if shorter, the period of employment immediately before your military service. Contributions for periods of military service will be an expense of the Annuity Plan. In addition, if you die while on military service, your beneficiaries will be entitled to any benefits guaranteed by the Heroes Earnings Assistance and Relief Tax Act of 2008.

10. Will I receive a statement describing the status of my Individual Account?  
(Refer to Section 2.09 of Rules and Regulations)

Every quarter, the Fund Office will send you a statement showing the status of your Individual Account in terms of Contributions, expenses and investment earnings as of the last Valuation Date. Carefully check your statement and notify the Fund Office immediately if there are any errors.

11. What should I do if the statement doesn’t show Contributions from an Employer for whom I have worked for during the year?

If you believe that one of your Employers hasn’t made the required Contributions on your behalf, you should notify the Fund Office. Keep in mind that the statement sent to you each quarter contains only the Contributions that the Fund Office should receive, on your behalf, by the end of that quarter. If your Employer’s report is late, these Contributions may not appear on your statement. These late Contributions will be included in your next statement.

The Fund’s Collection Department keeps late Employer reports to a minimum and makes every effort to keep your individual quarterly statement up to date.

## D. INVESTING YOUR ACCOUNT

12. What are my investment options?  
(Refer to Section 2.02 of Rules and Regulations)

The Plan offers a range of investment options, which you can review by visiting the Plan website at [www.ibenefitscenter.com](http://www.ibenefitscenter.com).

If you do not choose an investment option, your account will be invested in the Vanguard Target Retirement Fund with the target retirement date closest to your 65<sup>th</sup> birthday.

13. How can I see the value of my account?  
You can see the value of your account and manage it online, by going to [www.ibenefitcenter.com](http://www.ibenefitcenter.com) and logging in.
- When you visit the Plan website for the first time, you will need to register.
  - You can also call the Plan Administrator, Mercer, for personalized assistance. You can reach Mercer at 877-864-6644, from 8:00 a.m. to 10:00 p.m. Eastern time, Monday through Friday.
  - In addition to the online information, you will also receive personalized account statements quarterly, mailed to your home address. It is important that you keep your address on file with the Plan up to date, especially if you stop working for an Employer that participates in the Plan but are not yet eligible to receive your benefits.

14. How do I register at [www.ibenefitcenter.com](http://www.ibenefitcenter.com)?

The plan's website provides you with interactive planning tools to help you make your investment decisions. You will need to set up a user name and password to protect the security of your account online.

- The first time you visit the site, click on "Get Started" and follow the prompts to register your account.
- Once you've created a user name and password, you can use them to access your account anytime.
- During the registration process, you will also be asked to provide answers to three security questions. This will allow you to retrieve your login information if you forget your username or password in the future.

## **E. PAYMENT OF BENEFITS**

15. When can I receive the money in my Individual Account?  
(Refer to Section 3.02 and Section 3.03.c. of Rules and Regulations)

You can receive the money in your Individual Account at any of the following times:

■ **AT RETIREMENT**

If you have reached age 62 and no Contributions have had to be made to your Individual Account for at least three consecutive months, you can receive the money in your Individual Account. Receiving a pension from the Pension Trust Fund for Operating Engineers will also establish your retirement status.

■ **WHEN YOU STOP WORKING AS AN OPERATING ENGINEER WITHIN THE UNION'S JURISDICTION**

Regardless of your age, you can apply to receive the money in your Individual Account if for two consecutive Calendar Years you have been employed less than 300 hours in:

- Work covered by a Collective Bargaining Agreement; OR
- The kind of covered work performed within the jurisdiction of the Union; OR
- The type of work for which contributions were made (or required to be made) on your behalf.

■ **IF YOU'RE TOTALLY AND PERMANENTLY DISABLED AND ENTITLED TO A SOCIAL SECURITY DISABILITY BENEFIT**

Regardless of your age, if you're totally and permanently disabled and entitled to a Social Security Disability Benefit, you can apply for the money in your Individual Account.

■ **IF YOU'RE UNEMPLOYED**

If you're unemployed and eligible to receive California, Nevada, or Utah State Unemployment Benefits, you can apply for the money in your Individual Account after you've received unemployment benefits for six consecutive months.

This requirement can also be satisfied if you're unemployed and would be entitled to Unemployment Benefits for six consecutive months, except that your State unemployment benefit account has run out of funds before you have received six months of payments. To verify your loss of unemployment benefits and continued unemployment status, you must get documentation from your State's Unemployment Office.

■ **IF YOU'RE ENTITLED TO STATE DISABILITY OR WORKERS' COMPENSATION BENEFITS**

If you're disabled and eligible to receive California, Nevada or Utah State Disability or Workers' Compensation Benefits (whichever is applicable), you can apply for the money in your Individual Account after you've received these benefits for six consecutive months.

■ IF YOU'RE ENTITLED TO A COMBINATION OF STATE BENEFITS

If you receive any combination of State (California, Nevada, or Utah) Unemployment, Disability, or Workers' Compensation Benefits for six consecutive months, you can apply for the money in your Individual Account.

■ IF YOU DIE

If you die, any money in your Individual Account will be paid to your surviving Spouse or your designated Beneficiary. (For information on how to name a Beneficiary, see "DESIGNATION OF BENEFICIARY AND ASSIGNMENT OF BENEFITS" on page 9.)

■ IF YOU'RE ON TEMPORARY ASSIGNMENT UNDER THE JURISDICTION OF THE ANNUITY PLAN

If normally you do **not** live within the jurisdiction of the Operating Engineers Annuity Plan, but perform work for a contributing Employer in the jurisdiction of the Plan on a **temporary assignment** for a specified period of time, you can request to receive the money in your Individual Account following completion of your employment, provided:

- You have not previously received payment of your Individual Account under this temporary assignment rule; AND
- Your Individual Account balance is \$2,500 or less; AND
- You can provide proof that you've completed your temporary assignment and you don't expect additional work for contributing Employers in the jurisdiction of the Annuity Plan.

■ WHEN A DESIGNATED "ALTERNATE PAYEE" (FORMER SPOUSE) MAKES AN APPLICATION

A distribution of all or a portion of your account can be made according to the terms of a Qualified Domestic Relations Order (QDRO) (for details see "Qualified Domestic Relations Orders (QDROs)" on page 11).

16. Do I have to withdraw my Accumulated Share when I retire or stop working as an Operating Engineer within the Union's jurisdiction?  
(Refer to Sections 1.24 and 4.01.c. of Rules and Regulations)

You don't have to withdraw your Accumulated Share immediately, but you **cannot** postpone the start of your benefits beyond your Required Beginning Date.

If you're not a 5% owner, your Required Beginning Date is your choice of either (1) April 1<sup>st</sup> following the calendar year in which you reach age 70½ or, if later, (2) April 1<sup>st</sup> following the calendar year in which you retire. You must take one of these options when you reach age 70½.

17. What is the exact amount of money I will get when I'm eligible for benefits?  
(Refer to Article 2 and Section 3.01 of Rules and Regulations)

Yields on investments can vary over time, so the exact amount you will receive when you're eligible for benefits cannot be determined now. Here is how the Plan calculates the amount you receive:

- The sum of all the Contributions made on your behalf, plus
- All actual investment earnings credited to your Individual Account, plus or minus
- Changes in the value of the Individual Account's investments, minus

- Any outstanding loans, minus
- Your share of the expenses of operating the Annuity Plan.

You will receive a quarterly statement showing you what has happened in your Individual Account in terms of Contributions, expenses and investment yields as of the most recent Valuation Date.

18. How will my Individual Account balance be paid out?  
(Refer to Sections 3.03 and 3.04 of Rules and Regulations)

When you qualify for a payment, you can receive your Individual Account balance in one of the forms described below. Here's what you should know about how your payment will be made:

- If your Individual Account balance is \$5,000 or less, it will automatically be paid in a lump sum.
- If your Individual Account balance is \$1,000 or more, and the Plan has been unable to contact you at your last known address, the Board of Trustees may decide to distribute your account balance to an automatic rollover IRA.
- If you're a single Participant, and your Individual Account is greater than \$5,000, the normal form of payment (unless otherwise specified) is the Life Annuity.
- If you're a married Participant, and your Individual Account is greater than \$5,000, the normal form of payment is the Joint and Survivor Annuity.

You can reject payment of benefits in the normal form of payment, and elect another form of payment, subject to the terms described later in this section.

- **Life Annuity** – An annuity that provides payments for as long as you are alive. The annuity will be purchased from an insurance company with your Accumulated Share.
- **Lump Sum** – A single payment equal to the value of your Accumulated Share.
- **Qualified Joint and Survivor Annuity** – An annuity that provides a fixed monthly amount while you are alive. After your death, your Spouse will receive a lifetime monthly benefit of either 50% or 75% of the amount you were receiving, depending on the election you make. The amount you receive at retirement will be reduced to take into account your expected life span as well as that of your Spouse. Once your payments start, the amount will not be increased if your Spouse dies before you, or if you and your Spouse are later divorced. (See the next question for additional rules of the Joint and Survivor Annuity.) The annuity will be purchased from an insurance company with your Accumulated Share.
- **Combination of Partial Lump Sum and Life Annuity**
- **Periodic Payments if Receiving State Unemployment, Disability or Workers' Compensation Benefits** – If you're applying for distribution of your Individual Account because you're receiving California, Nevada or Utah State Unemployment, Disability or Workers' Compensation Benefits or a combination of these, your Individual Account will be distributed as follows:
  - 50% of the Individual Account balance as of the first day of the month following the **sixth** month that you're entitled to State benefits.
  - 50% of the remaining Individual Account balance as of the first day of the month following the **ninth** month that you're entitled to State benefits.



- 100% of the remaining Individual Account balance as of the first day of the month following the **twelfth** month that you're entitled to State benefits.

**NOTE:** This periodic payment method applies only if you qualify for payment because you've received State (California, Nevada, or Utah) Unemployment, Disability, or Workers' Compensation benefits as described on page 5. The previously described forms of payment apply to each of these distributions.

**If you elect to receive your distribution in the form of a lump sum or under the Annuity Plan's "State Unemployment, Disability, or Workers' Compensation benefits provisions," special tax requirements may apply. (For details see Taxes on p. 11)**

19. What are the rules for payment of a qualified joint and survivor annuity?  
(Refer to Subsection 3.03.b. of Rules and Regulations)

Under the qualified joint and survivor annuity, you will receive a lifetime annuity, and your Spouse will receive either 50% or 75% of your annuity amount following your death. The continuing percentage amount depends on the election you make. Payments will be made to your Spouse for his or her lifetime. The following are some of the rules that apply to the qualified joint and survivor annuity:

- The qualified joint and survivor annuity protects only the Spouse legally married to you on your Annuity Starting Date.
- After payments begin, the qualified joint and survivor annuity cannot be cancelled or increased, even if your Spouse dies or if you and your Spouse get divorced.
- If you divorce and remarry, the rights of a former spouse as outlined in a "Qualified Domestic Relations Order" may reduce or eliminate any benefits payable to your current spouse.

20. What if I am married and do *not* want a qualified joint and survivor annuity when I retire?  
(Refer to Subsection 3.03.b. of Rules and Regulations)

If you're legally married, your Accumulated Share will automatically be used to purchase a qualified joint and survivor annuity from an insurance company. However, you can waive the qualified joint and survivor annuity with your Spouse's consent. Your Spouse must agree to the waiver in writing in the presence of a Notary Public or authorized Fund Representative unless you establish to the satisfaction of the Board of Trustees that you cannot get this consent because you have no legal Spouse, your Spouse cannot be located, or other valid reasons exist. The waiver form is available from the Fund Office.

At least 30 days before your Annuity Starting Date, you will receive a written explanation of the terms of the qualified joint and survivor annuity and the effect of the waiver of this annuity. (You can waive the requirement that the written explanation be provided at least 30 days before your Annuity Starting Date if your annuity begins more than 7 days after the written explanation has been provided.) You and your Spouse can waive the qualified joint and survivor annuity or revoke a previous waiver at any time not more than 180 days before your Annuity Starting Date. The waiver period ends on the 30<sup>th</sup> day after the date on which the written explanation is provided, if the written explanation is provided after your Annuity Starting Date.

If you decide not to take the qualified joint and survivor annuity and have gotten your Spouse's written consent, you can elect to have your Individual Account balance paid in any of the other forms described on page 7. **You may wish to consult your personal financial advisor or your tax consultant to decide which form of payment may be best for you and your Spouse.**

21. Can I change my mind if I have waived the qualified joint and survivor annuity?  
(Refer to Subsection 3.03.b. of Rules and Regulations)

Yes. You and your Spouse can revoke a previous waiver at any time not more than 180 days before your Annuity Starting Date or up to 30 days after being told of the terms of the qualified joint and survivor annuity.

22. What if I die before retirement and have *not* withdrawn my Accumulated Share?  
(Refer to Subsection 3.03.c. of Rules and Regulations)

Your Accumulated Share will be paid to your surviving Spouse or your Beneficiary (if applicable) in one of the payment forms described on page 7.

If you and your Spouse have been married to each other throughout the one-year period ending on the date of your death, your Accumulated Share will be paid to your surviving Spouse, unless you – with your Spouse’s consent – have named someone other than your Spouse as Beneficiary. If you and your Spouse have not been married to each other throughout the one-year period ending on the date of your death, your Accumulated Share will be paid to your Beneficiary (who could be your Spouse).

23. Can I roll over my money from the Annuity Plan into another retirement plan or an IRA?  
(Refer to Sections 3.03 and 4.09 of Rules and Regulations)

Yes. When you’re entitled to a distribution from your Individual Account, you can transfer the money you receive from this Annuity Plan to another eligible plan that accepts transfers, or to an Individual Retirement Account (IRA).

There are different ways to make these transfers, and the tax rules for each one are different. You should consult a tax advisor to decide which transfer is appropriate for your needs, or even if you should make a transfer.

## **F. DESIGNATION OF BENEFICIARY AND ASSIGNMENT OF BENEFITS**

24. How do I name a Beneficiary for my Accumulated Share?  
(Refer to Subsection 4.04 of Rules and Regulations)

You can name a Beneficiary by filling out a Beneficiary Designation Form and sending it to the Fund Office. You can also change your Beneficiary at any time in the same way. However, if you’re legally married and want to name someone other than your Spouse as Beneficiary, you must get your Spouse’s consent in writing, witnessed by a Notary Public or authorized Fund Representative. Spousal consent is required any time you want to name a Beneficiary other than your Spouse.

In addition, if you have named your Spouse as Beneficiary, the designation is automatically cancelled if you become divorced, unless a Qualified Domestic Relations Order provides otherwise, or you re-name your ex-spouse as your Beneficiary following the divorce.

**NOTE:** In the case of a previous marriage, the rights of a previous spouse under a Qualified Domestic Relations Order may eliminate or reduce the benefits to which you, your new Spouse or new Beneficiary, would otherwise be entitled. You should also realize that you can only name a Beneficiary to receive your Individual Account as long as it hasn’t already been assigned by a Qualified Domestic Relations Order. (For more information see “QUALIFIED DOMESTIC RELATIONS ORDERS (QDROS)” on page 11.)

You can also name a trust to be the Beneficiary for survivor benefits that may become payable after your death.

25. What happens if my Beneficiary dies before I do and I don't name another Beneficiary?  
(Refer to Subsection 4.04.b. of Rules and Regulations)

If there is no designated Beneficiary or no Beneficiary has survived you, your Accumulated Share will be paid in the following order of succession:

- To your surviving Spouse or registered domestic partner;
- To your surviving children, including legally adopted children, in equal shares;
- To your surviving grandchildren, including legally adopted grandchildren, in equal shares;
- To your surviving parents in equal shares;
- To your surviving siblings, in equal shares;
- To the executor or administrator of your estate, or according to any state procedure for transferring small estates without probate or directly to a living trust if provided in your Will.

If your Beneficiary dies and benefits are still payable, the remaining benefits will be paid to the living relatives of the Beneficiary according to the order of succession above.

**> IMPORTANT <**

**It's your responsibility to have an up-to-date Beneficiary Designation Form on file with the Fund Office. If you're not sure whether you have an up-to-date form on file, or you wish to change your Beneficiary, you can get the required form by writing or calling the Fund Office. The Fund Office can also rely on trust fund Beneficiary designations on file with the Union.**

26. Can I assign my Individual Account or any other right or benefit under the Plan?  
(Refer to Section 4.06 of Rules and Regulations)

No. Neither you nor any Beneficiary can assign any Individual Account, right or benefit under the Annuity Plan. However, your benefits will be subject to Qualified Domestic Relations Orders (QDROs) according to a State Domestic Relations Law. (For more information, see "QUALIFIED DOMESTIC RELATIONS ORDERS (QDROS)" on page 11.) In addition, at the time of payment, your benefits will be subject to the Internal Revenue Service rules for garnishment of Individual Accounts for income tax purposes under the Internal Revenue Code. This means that if you owe income taxes, the IRS could force you to use the money in your account to pay your taxes.

## **G. QUALIFIED DOMESTIC RELATIONS ORDERS (QDROS)**

27. What is a “Qualified Domestic Relations Order”?  
(Refer to Sections 1.22 and 4.06 of Rules and Regulations)

If you become divorced, you can divide the benefits you earned while you were married as part of your marital settlement. Dividing your benefits with a former spouse requires a special court order called a Qualified Domestic Relations Order (QDRO). Please contact the Fund Office to learn more about the Annuity Plan’s QDRO process.

A QDRO is a judgment, decree, or order according to state law relating to child support, alimony, or marital property rights directing that all or part of a Participant’s benefit be paid to an Alternate Payee. A QDRO must meet the requirements of Federal Law.

A QDRO must be delivered to the Annuity Plan before payments can be made to an Alternate Payee, and the Annuity Plan must approve it. The order must clearly specify:

- The name and mailing addresses of the Participant and each Alternate Payee covered by the order;
- The amount or formula for determining the amount payable to each Alternate Payee;
- The number of payments or period to which the order applies; AND
- The name of the Plan to which the order applies.

The order cannot require the Annuity Plan to:

- Provide any type or form of benefit not otherwise provided under the Annuity Plan;
- Provide an increased benefit determined on the basis of actuarial equivalence; OR
- Pay benefits in conflict with a previously issued QDRO.

The Annuity Plan has non-required sample forms that can help you or your attorney prepare a QDRO. You can request a copy of the Annuity Plan’s QDRO procedures, free of charge, by contacting the Fund Office.

## **H. TAXES**

28. Do I have to pay taxes on the money in my Individual Account?  
(Refer to Section 4.09 of Rules and Regulations)

The amount credited to your Individual Account for Employer Contributions isn’t considered taxable income to you until you actually receive the money. The date you start receiving money is used to determine any tax liability you may have. The form of payment you elect also affects the taxes you may be required to pay. For example, you can elect to roll over the distribution into an Individual Retirement Account (IRA), which in most cases will postpone your tax liability.

Since you may owe taxes on the money you withdraw, the federal government requires that if you (or your surviving Spouse) are receiving benefits under certain payment forms from the Annuity Plan, 20% **must** be withheld for Income Tax purposes. The payment forms that require a 20% Income Tax withholding are:

- A lump sum payment;

- Installment payments over a period of less than 10 years; OR
- Certain death benefit payouts.

However, these types of payments are also eligible for “rollover” into an IRA or other eligible retirement plan willing to accept the distribution. If the payments are rolled over, withholding is not required. You will be given complete information on the 20% withholding requirement and the opportunity to roll over your distribution when you apply for benefits. *(Refer to Section 4.09 of Rules and Regulations)*

In addition to regular federal income tax, if you elect to receive payment of your Accumulated Share **before age 59½**, you may also be subject to an additional 10% tax penalty for early distribution unless the distribution is one of the exempt payments listed on page 17. In some instances, failure to repay a loan before the time you reach age 59½ may qualify as a “premature distribution,” which would also result in an additional tax penalty. (See page 13 for additional information.)

**➤ Important <**

**When you close out your account, the taxes you owe can vary a lot, based on how your account is paid to you. It’s very important that you talk with a competent tax advisor about how you should take the money out of your Individual Account. The Fund Office cannot provide this kind of advice. The Fund Office will have to report to the appropriate government tax agencies any payments to you, your Spouse or your Beneficiary.**

## **I. ANNUITY LOAN PROGRAMS**

29. Can I borrow money from the Annuity Plan?  
*(Refer to Section 3.06 of Rules and Regulations)*

Yes. The Operating Engineers Annuity Plan provides for loans to its Participants under its Annuity Loan Program under certain circumstances described below. Mercer has been authorized to administer the Program for the Trust Fund. Here are the steps you should know when applying for a loan from the Annuity Loan Program:

1. You must file a written request with the Board of Trustees at the Fund Office. If you’re legally married, you must get your Spouse’s written consent to the loan in the presence of a Fund Representative or Notary Public. You must also include a loan origination fee with the loan application to cover the cost of processing the loan. A “loan origination fee” is a fee charged for processing the loan application. The Board of Trustees sets the amount of the loan origination fee, and they may change it from time to time.
2. In order for your loan request to be considered, you must submit documentation to prove that one or more of the following events apply to you:
  - Expenses of at least \$1,000 because of sickness or injury that are not covered by medical insurance or other resources;
  - Expenses for tuition and/or room and board for your dependent child at an educational institution beyond the high school level;

- Purchase of a home in which you will immediately live;
  - Your disability under a State Unemployment Disability Law or State Workers' Compensation Law;
  - You are in danger of foreclosure, an eviction or tax lien at any moment;
  - Funeral expenses resulting from the death of a Spouse, child, or parent.
3. Your Individual Account must have been in effect for five or more years.
  4. The minimum loan is \$1,000, as long as that amount doesn't exceed 50% of the amount in your Individual Account. You can check with the Fund Office to find out the amount available.
  5. The maximum loan amount is the lesser of:
    - \$50,000 or
    - 50% of the amount in your Individual Account.
  6. You cannot receive a loan if you had a deemed distribution as described in item 8 below within the seven-year period immediately before the date of the loan application.
  7. The term of the loan cannot exceed five years, except a loan for the purpose of purchasing your principal residence may be paid back over a period of 10 years. The interest charged is the same as the prime rate as listed in the Wall Street Journal on the first business day of the month in which the loan is requested plus 1%, The loan and any accrued interest must be entirely repaid within the five-year period (or 10 year period if applicable).
  8. A late charge will be applied for any payments received 11 or more days after the date the payment is due. If any single installment payment is not received by the last business day of the calendar quarter following the calendar quarter in which the last payment was missed, the remaining unpaid balance will be considered a "deemed distribution." This means that it will be treated as if that amount had been paid out to you from your Individual Account. The Fund is then required by law to report such distributions to the Internal Revenue Service and Franchise Tax Board as income to you and such distributions are subject to income tax and additional penalties.
 

If you have an outstanding loan balance not paid in full at the time you file an application for benefits, the loan balance will also be reported as a "deemed distribution".
  9. You may have only one loan outstanding at any one time and only one loan will be approved in any 12-month period

The rules of the Annuity Loan Program are contained in a separate manual, which you can get from the Fund Office.

**REMEMBER, the purpose of this Annuity Plan is to help provide you with a secure income if you become disabled and in your retirement years. Taking a loan from your Individual Account can reduce the amount of money you will have in the account when you retire.** Although there can be emergencies and hardships that may make a loan necessary, you shouldn't treat your Individual Account like a savings account.

The Internal Revenue Service has strict standards governing loans from Individual Accounts and the Fund Office must follow these rules to maintain the Annuity Plan as a tax-exempt qualified Annuity Plan. The Board of Trustees reserves the right to terminate the Loan Program if they find the program has been abused.

## **J. APPLYING FOR BENEFITS AND CLAIMS AND APPEALS PROCEDURES**

30. How do I apply for payment of my Accumulated Share?  
*(Refer to Subsection 4.01.a. of Rules and Regulations)*

To receive payment of your Accumulated Share, you must fill out an application for benefits and file it with the Fund Office at least 60 days before payment of your Accumulated Share is to be made. You can get an application of benefits form from the Fund Office.

31. What if I don't apply for payment of my Accumulated Share?

Generally, benefits will not be payable until an application is filed with the Fund Office. However, the Plan requires that your benefit payments begin no later than your Required Beginning Date. *(Refer to Subsection 4.01.c. of Rules and Regulations)*

If an application isn't received following the date an event occurs as described in "Payment of Benefits" on page 5, the Fund will continue to maintain your Individual Account until you (or your Beneficiary, if you're deceased) make an application. *(Refer to Section 3.05 of Rules and Regulations)*

32. What if my Application is denied?  
*(Refer to Article 5 of Rules and Regulations)*

You (or your Beneficiary) must follow the claims procedures listed in the Annuity Plan rules. Here is a summary:

### **Determining Initial Claim**

Your claim will be considered filed when the Fund Office receives your application, even if all the information needed to make a benefit determination isn't included with your application. If this is the case, the Fund Office will notify you in writing regarding what is needed to complete your claim.

The initial determination of benefits will be made within 90 calendar days after the Fund Office receives your application for benefits and all required information. (If all the required information isn't received with your application, the 90-day period for making the initial determination will be suspended during the time you are getting the additional information.)

If the Fund Office determines that special circumstances require an extension of time for processing the claim, the Fund Office will notify you, in writing, before the end of the 90 days. They will tell you why an extension is necessary and the date by which the Annuity Plan expects to make a determination. The extension cannot be more than 90 calendar days from the end of the initial 90-day period.

**If an application for benefits isn't acted on within these periods, you can proceed to the appeal procedures as if the claim had been denied.**

### **Notice of Denial of Claim**

If the Annuity Plan denies your application for benefits, in whole or in part, you will be notified in writing and given the opportunity for a full and fair review of the benefit decision. The written notice of denial will include:

1. The specific reason(s) for the denial;
2. The specific reference to pertinent Annuity Plan rule(s) on which the denial is based;

3. A description of any additional material or information necessary for you to complete your claim and an explanation of why this material or information is necessary;
4. A description of the Annuity Plan's review procedures and the time limits applicable to these procedures, including a statement of your rights to bring civil action under §502(a) of ERISA if your appeal is denied.

### **Right to Appeal**

If you apply for benefits and your claim is denied, or if you believe that you didn't receive the full amount of benefits to which you're entitled, you have the right to petition the Board of Trustees for reconsideration of its decision. Your petition for reconsideration:

1. Must be in writing; AND
2. Must state clearly the reason(s) for your disagreement with the decision of the Board of Trustees; AND
3. May include documents, records and other information related to the claim for benefits; AND
4. Must be **filed** by you or your authorized representative with the Fund Office **within 60 days after you receive notice of the denial**. Failure to file an appeal within this time limit will be considered a waiver of your rights to a review of the denial of your claim. A late application may be considered if the Board of Trustees finds that the delay in filing was for reasonable causes.

If you request it, you will be provided, free of charge, reasonable access to and copies of all documents, records and other information relevant to your claim for benefits.

### **Review of Appeal**

The Board of Trustees will review your properly filed appeal within 60 calendar days after they receive it. If special circumstances require an extension of time, you will be notified, in writing, before the end of the 60 days. You will be told why an extension is necessary and the date by which the Board of Trustees expects to make a determination. The extension cannot be longer than 60 calendar days from the end of the initial 60 days.

The Board of Trustees will review all submitted comments, documents, records and other information related to your claim, regardless of whether the information was submitted or considered in the initial benefit determination. The decision of the Board of Trustees will not be influenced by the initial denial of your benefit.

You will receive written notification of the Board's decision within five calendar days of the date that the determination is made. This notification will include the reason(s) for the decision, including references to the specific Annuity Plan rules on which the decision is based. The written notification will also include a statement that you're entitled to receive, if you request and free of charge, reasonable access to and copies of all documents, records and other information relevant to your claim for benefits.

**If your claim is still denied after this process, this result is final and binding on all parties. Its subject only to any civil action you may bring under ERISA. Once the Board of Trustees issues its written decision regarding your appeal, you have no further right of appeal to the Board of Trustees or right to arbitration.**

You must follow these procedures if you believe you should not have been denied Annuity Plan benefits, or if you disagree with the computation of your Accumulated Share.



## **K. RIGHT TO BENEFITS**

33. Could I lose some or all of the money in my Individual Account?

Yes. The money in your Individual Account is not guaranteed. You or your Beneficiary could lose Contributions made on your behalf, related earnings or some or all of your Individual Account balance under the Annuity Plan, under any of the following circumstances:

1. Your Individual Account experiences investment losses.
2. Your share of Annuity Plan expenses exceeds your Contributions and earnings in a year.
3. You fail to provide information or give false information to verify disability, age, Beneficiary information or other vital information. (Refer to Section 4.02 of Rules and Regulations)
4. All or a portion of your Individual Account is assigned by a QDRO to your Spouse, your former spouse, or for support of your children or other dependents. (See "QUALIFIED DOMESTIC RELATIONS ORDERS (QDROS)" on page 11.)

34. What will happen if the Annuity Plan is terminated?  
(Refer to Section 7.02 of Rules and Regulations)

We don't intend to terminate the Annuity Plan. However, future changes in the law or economic conditions may make it necessary to do so. If the Annuity Plan is terminated, after payment of termination expenses the balance of the Annuity Plan's assets will be distributed to the Participants. None of the assets will be returned to any Employer.

If the value of the assets on the date of termination is less than the total of all Individual Account balances plus expenses, the Board of Trustees will have the option of paying all Individual Account balances to Participants over a period of not more than 10 years up to the amount allowed by the assets.

## **L. AVAILABILITY OF PLAN DOCUMENTS**

35. Are Plan Documents available to Participants and Beneficiaries?

Yes. You can inspect copies of any of the following at the Fund Office during regular business hours:

- Applicable Collective Bargaining Agreements;
- The Trust Agreement;
- Annuity Plan rules (and Plan Amendments);
- Statements of assets and liabilities;
- Income and expenses of the Annuity Plan; and
- A full Annual Report (Form 5500).

In addition, you can make a written request and receive a copy of any of these documents by mail. There is a charge for this, so you should find out what the charge is before writing and

asking for copies of these documents. A Summary of the full Annual Report will be sent to you without charge.

## **M. NOTICE OF EARLY DISTRIBUTION PENALTY**

If you receive a payment of your Accumulated Share before you reach age 59½ and do not roll it over, you may have to pay a penalty tax equal to 10% of the taxable portion of the payment. This tax is in addition to any regular federal income tax due.

In some instances, defaulting on a Participant loan prior to age 59½ may qualify as a premature distribution subject to the additional tax penalty. If you default on a loan from the Annuity Plan and the Plan then offsets your account balance and treats you as having received a distribution of an amount equal to the unpaid loan balance, you cannot make a direct rollover. In that case, when you receive any additional distribution, the Annuity Plan will withhold the amount necessary to satisfy the withholding requirement for the unpaid loan balance that is treated as a distribution.

Unless you meet the requirements of the exceptions shown below, any lump sum payment of your Accumulated Share before you reach age 59½ will be subject to this additional tax.

The following distributions made before age 59½ are exempt from the early distribution penalty:

1. Payment made in the form of a life annuity (including a qualified joint and survivor annuity) following separation from service;
2. Payment made when you're at least age 55 after you have separated from service, provided that you separated from service after age 55;
3. Payment made due to your death or permanent and total disability, or to an Alternate Payee as decreed by a Qualified Domestic Relations Order (QDRO); OR
4. Payment used to pay your medical expenses otherwise deductible under Internal Revenue Code Section 213.

If you have general questions about this information, please contact the Fund Office for assistance. **In order to determine if this penalty tax applies to you, you should consult with a tax professional.**

## **N. INFORMATION REQUIRED BY THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 (ERISA)**

The Plan is administered and maintained by the Joint Board of Trustees.

The Board of Trustees is the Plan Administrator. This means that the Board of Trustees is responsible for seeing that information regarding the Plan is reported to government agencies and disclosed to Plan Participants and Beneficiaries according to ERISA. The Board of Trustees employs Zenith American Solutions to provide day-to-day administrative services to the Plan.

The Fund Office is located at:

Board of Trustees  
Operating Engineers Annuity Plan  
1600 Harbor Bay Parkway, Suite 200  
Alameda, CA 94502  
(510) 433-4422  
(510) 271-0222  
(800) 251-5014

The Fund Office will provide any Plan Participant or Beneficiary, when they make a written request, information as to whether a particular employer is contributing to this Fund with respect to the work of Participants in the Fund, and if so, that employer's address.

The Employer Identification Number (EIN) issued to the Board of Trustees by the Internal Revenue Service is 94-6090764. The Plan number is 002.

The Plan is a defined contribution plan within the meaning of the Employee Retirement Income Security Act of 1974. As such, it is not a plan covered by the plan termination insurance rules of the Act and the benefits of the Plan are not insured under Title IV of the Act.

The designated agent for service of legal process is:

Zenith American Solutions  
1600 Harbor Bay Parkway, Suite 200  
Alameda, CA 94502

Service of legal process may also be made on the Board of Trustees at the address shown above or on any Trustee.

The names, titles, and addresses of the Trustees are shown just after the cover page.

The Plan is maintained according to various Collective Bargaining Agreements. Copies of the Collective Bargaining Agreements are available for inspection at the Fund Office during regular business hours (Monday-Friday 9:00 a.m. to 5:00 p.m.) and, if you make a written request, will be provided by mail.

All contributions to the Fund are made by contributing employers according to Collective Bargaining Agreements in force with Local Union No. 3 of the International Union of Operating Engineers at fixed rates per hour.

The Trust Agreement provides that Individual Employers shall not be required to make any further payments or contributions to the cost of operation of the Fund or of the Plan, except as may be provided in the Collective Bargaining Agreements, subscriber agreements, the Trust Agreement or Federal law.

The procedure for applying for benefits is described on page 14; and the rules for appealing the denial of a benefit in whole or in part is set forth on page 14 of this booklet.

Benefits are provided directly from the Fund's assets, which are accumulated under the terms of the Trust Agreement and are held in custody by the corporate co-trustee.

The fiscal year of the Fund is the twelve-month period ending each December 31<sup>st</sup>.

Participant eligibility requirements and the rules for the payment of benefits are stated in Section 3.02 of the Rules and Regulations.

The Board of Trustees may amend, change or terminate the Annuity Plan according to its authority under Article 7 of the Annuity Plan rules. No amendment or change may reduce any benefits which have been approved for payment before these amendments, so long as enough funds are available to provide these benefits.

If the Plan is terminated, the assets remaining, after providing for Plan expenses and for the payments of any Accumulated Share already approved, shall be distributed among the Plan Participants. The termination of the Annuity Plan will not cause any assets to be returned to any Employer.

You (or your Beneficiary) must provide any information or proof that the Board of Trustees requests that's reasonably required for the administration of the Annuity Plan or for the determination of any matter that the Board of Trustees has before it. If you don't provide this information or proof promptly and honestly, your benefits may be denied or discontinued. If any necessary information you give is false, your benefits may also be denied, suspended, or discontinued, except to the extent that the benefits are non-forfeitable and, in any case, the Board of Trustees will have the right to recover any benefit payments made based on such false statement or false information or proof.

## **O. STATEMENT OF ERISA RIGHTS**

As a Participant in the Operating Engineers Annuity Plan, you are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974 (ERISA). ERISA provides that all Plan Participants shall be entitled to:

### 36. Receive Information About Your Plan and Benefits

- Examine, without charge, at the Fund Office and at other specified locations, such as worksites and union halls, all documents governing the Annuity Plan, including insurance contracts, collective bargaining agreements and a copy of the latest annual report (Form 5500 series) filed by the Annuity Plan with the U.S. Department of Labor and available at the Public Disclosure Room of the Employee Benefits Security Administration.
- Obtain, upon written request to the Plan Administrator, copies of documents governing the operation of the Annuity Plan, including Collective Bargaining Agreements, and copies of the latest annual report (Form 5500 Series) and updated Summary Plan Description. The administrator may require a reasonable charge for the copies.
- Receive a summary of the Annuity Plan's annual financial report. The Plan Administrator is required by law to furnish each Participant with a copy of this Summary Annual Report.
- Obtain a statement telling you whether you have a right to receive an annuity at Normal Retirement Age (age 65) and if so, what your benefits would be at Normal Retirement Age if you stop working under the Annuity Plan now. If you do not have a right to an annuity, the statement will tell you how many more years you have to work to get a right to an annuity. This statement must be requested in writing and is not required to be given more than once every twelve (12) months. The Annuity Plan must provide the statement free of charge.

37. Prudent Actions by Plan Fiduciaries

In addition to creating rights for Plan Participants, ERISA imposes duties upon the people who are responsible for the operation of the employee benefit plan. The people who operate your Annuity Plan, called “fiduciaries” of the Plan, have a duty to do so prudently and in the interest of you and other Plan Participants and Beneficiaries. No one, including your Employer, your Union, or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining an annuity benefit or exercising your rights under ERISA.

38. Enforce Your Rights

If your claim for an annuity benefit is denied or ignored, in whole or in part, you have a right to know why this was done, to obtain copies of documents relating to the decision without charge, and to appeal any denial, all within certain time schedules.

Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request a copy of Annuity Plan documents or the latest annual report from the Annuity Plan and do not receive them within 30 days, you may file suit in a Federal court. In such a case, the court may require the Plan Administrator to provide the materials and pay you up to \$110 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the Administrator. If you have a claim for benefits which is denied or ignored, in whole or in part, you may file suit in a state or Federal court. In addition, if you disagree with the Annuity Plan’s decision or lack thereof concerning the qualified status of a domestic relations order, you may file suit in Federal court. If it should happen that Annuity Plan fiduciaries misuse the Annuity Plan’s money, or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor or you may file suit in a Federal court. The court may decide who should pay court costs and legal fees. If you are successful, the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees for example, if it finds your claim is frivolous.

39. Assistance with Your Questions

If you have any questions about your Annuity Plan, you should contact the Fund Office. If you have any questions about this statement or about your rights under ERISA, or if you need assistance in obtaining documents from the Fund Office, you should contact the nearest office of the Employee Benefits Security Administration (formerly Pension and Welfare Benefits Administration), U.S. Department of Labor, listed in your telephone directory or:

The Division of Technical Assistance and Inquiries  
Employee Benefits Security Administration  
U.S. Department of Labor  
200 Constitution Avenue N.W.  
Washington, D.C. 20210

You may also obtain certain publications about your rights and responsibilities under ERISA by calling the publications hotline of the Employee Benefits Security Administration (“EBSA”). For single copies of publications, contact the Employee Benefits Security Administration Brochure Request Line at 866-444-3272 or contact the EBSA field office nearest you. You may also find answers to your Annuity Plan questions at the website of the EBSA at <http://www.dol.gov/ebsa/>.

**Rules and Regulations  
of the  
OPERATING ENGINEERS ANNUITY PLAN  
Restated as of July 1, 2016**

**OPERATING ENGINEERS ANNUITY PLAN**

**Rules and Regulations**

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## **Rules and Regulations**

### **OPERATING ENGINEERS ANNUITY PLAN 2016 RESTATEMENT**

By resolution, the Board of Trustees of the Operating Engineers Annuity Plan adopted the following Annuity Plan to be effective July 1, 1985. The Plan was most recently restated effective July 1, 2016 and is intended to comply with the Employee Retirement Income Security Act of 1974 and with the requirements for tax qualification under the Code and all regulations thereunder for money purchase plans, and is to be interpreted and applied consistent with that intent.

#### **ARTICLE 1. DEFINITIONS**

Section 1.01. Accumulated Share. The term “Accumulated Share” means the amount payable from an Individual Account as defined in Section 1.14 and described in Section 3.01.

Section 1.02. Annuitant. The term “Annuitant” means an Employee who Retires and who receives a benefit from the Fund.

Section 1.03. Annuity Starting Date. The term “Annuity Starting Date” for a Participant means the first day of the first calendar month starting after the Participant has fulfilled all of the conditions for benefits, including the filing of an application.

Section 1.04. Beneficiary. The term “Beneficiary” means a person (including a trust) designated either by a Participant pursuant to the Plan or by the terms of the Plan who is or who may become entitled to a benefit under the terms of the Plan.

Section 1.05. Board. The term “Board” means the Board of Trustees established by the Trust Agreement.

Section 1.06. Code. The term “Code” means the Internal Revenue Code, 26 U.S.C. § 1 et seq. as amended, including any regulations.

Section 1.07. Collective Bargaining Agreement. The term “Collective Bargaining Agreement” means any written agreement entered into by the Union with any employer as that term is defined in the Labor-Management Relations Act, 1947, as amended (29 U.S.C. §141 et seq.) covering wages, rates of pay, hours of labor or other conditions of employment or any of the employees represented for the purposes of collective bargaining by the Union or any other labor organization with the approval of the Union, and which provides for payments by Individual Employers into the Annuity Fund.

Section 1.08. Contribution. The term “Contribution” means the payment made or required to be made to the Fund by any Individual Employer pursuant to a Collective Bargaining Agreement as defined in Section 1.07 above or a subscription agreement entered into between an Individual Employer and the Fund. Contributions will also include any Eligible Rollover Contributions made to the Fund in accordance with Section 4.10.

Section 1.09. Employee. The term “Employee” or “Covered Employee” means:

- a. Any employee of an Individual Employer whose work or work classification is covered by a Collective Bargaining Agreement;
- b. All full-time paid officers and all employees classified as representatives (regardless of grade), administrative staff specialists, dispatchers and accountants on which the Union pays into the Annuity Fund on the same basis as Individual Employers covered by the



Master Agreement between the Associated General Contractors of California Inc. and Operating Engineers Local Union No. 3 pay on their employees who are Covered Employees; and

- c. All employees of a Joint Labor Management Fund or Joint Apprenticeship Committee or committees on which the Union is represented, and all employees of the Operating Engineers Local Union No. 3 Credit Union with respect to which the appropriate Joint Labor-Management Fund or Joint Apprenticeship Committee or Credit Union pay into the Annuity Fund on the same basis as the Union pays into that Fund, excluding in the case of a Joint Apprenticeship Committee and the Credit Union those employees covered by a Labor Agreement with a Labor Organization.

Effective January 1, 1997, solely for purposes of testing for compliance with the nondiscrimination regulations under Section 401(a)(4) of the Internal Revenue Code, all leased employees as defined in Code §414(n) or §414(o) who have performed services for a Contributing Employer on a substantially full-time basis for a period of at least one year shall be treated as employed by a Contributing Employer except to the extent such leased employees are excluded in accordance with Code Section 414(n)(5).

The term “Employee” or “Covered Employee” does not include any self-employed person, whether a sole proprietor or a partner, nor a key employee as described in IRC §416(i)(1)(A).

Section 1.10. ERISA. The term “ERISA” means the Employee Retirement Income Security Act, 29 U.S.C. §1001 et seq., as amended, including any regulations.

Section 1.11. Fiscal Year. The term “Fiscal Year” means the period from January 1 through December 31 of the same year.

Section 1.12. Fund. The term “Fund” or “Annuity Fund” means the trust fund created by the Trust Agreement establishing the Operating Engineers Annuity Plan.

Section 1.13. Highly Compensated Employee. Effective for Plan Years beginning after December 31, 1996, “Highly Compensated Employee” means each highly compensated active employee and highly compensated former employee of an Individual Employer. Whether an individual is a highly compensated employee is determined separately with respect to each Individual Employer, based solely on that individual’s compensation from or status with respect to that Individual Employer.

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

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

The “determination year” is the Plan Year for which the test is being applied, and the “look-back year” is the 12-month period immediately preceding that Plan Year.

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

Section 1.14. Individual Account. The term “Individual Account” means the account established for each Employee, pursuant to Section 2.01 of the Plan.

Section 1.15. Individual Employer or Contributing Employer. The term “Individual Employer” or “Contributing Employer” means any person or entity, who or which may be required by a Collective Bargaining Agreement to make payments into the Annuity Fund or who does in fact make one or more payments into that Fund. An Employer is not deemed an Individual Employer or Contributing Employer simply because it is part of a controlled group of corporations or of a trade or business under common control, or some other part of which is an Individual Employer.

The term “Individual Employer” or “Contributing Employer” also includes the Union, a Joint Labor-Management Fund or Joint Apprenticeship Committee or committee on which the Union is represented and the Operating Engineers Local No. 3 Credit Union. These entities are Individual Employers or Contributing Employers solely for the purpose of making contributions with respect to the work of its respective Covered Employees, and have no other rights or privileges under the Trust Agreement as an Individual Employer.

For purposes of identifying highly compensated employees and applying the rules of participation, vesting and statutory limits on benefits under the Plan but not for determining covered employment, the term “Employer” includes all corporations, trades or businesses under common control with the Employer within the meaning of Code Section 414(b) and (c) as modified by Sections 414(h) and 415(h), all members of an affiliated service group with the Employer within the meaning of Code Service 414(m) and all other businesses aggregated with the Employer under Code Section 414(o).

Section 1.16. Local Union. The term “Local Union” means Operating Engineers Local Union No. 3 of the International Union of Operating Engineers, a Labor Organization, as defined in the Labor-Management Relations Act, 1947, as amended (29 U.S.C. §141 et seq.)

Section 1.17. Market Value. The term “Market Value” means the value of assets at fair market value.

Section 1.18. Non-Bargained Employee. The term “Non-Bargained Employee” means an Employee whose participation is not covered by a Collective Bargaining Agreement.

Section 1.19. Normal Retirement Age. The term “Normal Retirement Age” means age 65.

Section 1.20. Participant. The term “Participant” means any Employee or former Employee who is or who may become eligible to receive a benefit of any type from the Fund or whose Beneficiaries may be or become eligible to receive a benefit.

Section 1.21. Plan. The term “Plan” means the Operating Engineers Annuity Plan established pursuant to the Collective Bargaining Agreement and the Trust Agreement including any amendment, extension or renewal.

Section 1.22. Qualified Domestic Relations Order. The term “Qualified Domestic Relations Order” means a domestic relations order which has been determined, pursuant to procedures established by the Board, to be a qualified domestic relations order as defined in Section 206(d)(3) of ERISA, 29 U.S.C. §1056(d)(3).

Section 1.23. Qualified Military Service. Effective December 12, 1994, the term “Qualified Military Service” means a Participant’s qualified military or other uniformed service period under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 USC Chapter 43.

Section 1.24. Required Beginning Date. The term “Required Beginning Date” with respect to a Participant who attained age 70½ before 1997 and with respect to a Participant who is a 5% owner, means the April 1 following the calendar year in which the Participant attains age 70½.

With respect to a Participant who is not a 5% owner and attains age 70½ after 1996, the “Required Beginning Date” means the April 1 following the calendar year in which the Participant attains age 70½ or if later, the calendar year in which the Participant stops working in Covered Employment, whichever the Participant chooses through a one-time election upon the attainment of age 70½.

Section 1.25. Retires. The term “Retires” or “Retired” or “Retirement” means withdrawal from employment covered by the Plan as established in accordance with the provisions of Section 3.02.a. of the Plan.

Section 1.26. Spouse. The term “Spouse” means a person to whom a Participant or Annuitant is legally married.

Section 1.27. Termination Date. The term “Termination Date” means the date actual payment is made other than December 31.

Section 1.28. Trust Agreement. The term “Trust Agreement” means the Trust Agreement entered into as of December 30, 1959, establishing the Pension Trust Fund for Operating Engineers, including any amendment, extension or renewal.

Section 1.29. Valuation Date. The term “Valuation Date” means:

- a. December 31, 1986, March 31, 1987, June 30, 1987, September 30, 1987 and December 31, 1987.
- b. After 1987, it means December 31 of each year through December 31, 2008.
- c. Beginning on the date the blackout period starting February 1, 2008, terminates, the term shall mean each day that the financial markets are open.

## **ARTICLE 2. INDIVIDUAL ACCOUNTS**

**Section 2.01. Establishment of Accounts.** An Individual Account will be established for every Employee when a Contribution is received by the Plan on behalf of such Employee.

**Section 2.02. Investment of Accounts.** Each Individual Account will be invested as directed by the Employee in one or more investment funds offered by the Plan. If an Employee does not direct the investment of the Individual Account, 100 percent of the Individual Account, plus any future contributions, will be invested in the Annuity Plan's qualified default investment alternative. The Plan's qualified default investment alternative is intended to meet the requirements of a "qualified default investment alternative" under U.S. Department of Labor regulations. Employees will receive an annual notice explaining the default investment alternative's investment objectives, risk and return characteristics, and fees and expenses.

This Annuity Plan is intended to constitute a plan described in Section 404(c) of the Employee Retirement Income Security Act of 1974 and Title 29 of the Code of Federal Regulations Sections 2550.404.c-1. This means that the Employee controls the investment of his or her Individual Account. Generally, as a result, the Board of Trustees, and other fiduciaries of the Annuity Plan are relieved of liability for any losses that such Individual Account experiences as a result of investment choices made by the Employee.

This Annuity Plan will not invest in Employer Securities as defined in Treasury Regulation § 1.401(a)(35)-1(f)(3).

**Section 2.03. Investment Income Factor.** Each Individual Account will have net investment income factor determined by the net investment earnings for that Individual Account.

**Section 2.04. Allocation of Investment Income to Individual Accounts.** The income and losses attributable to each Individual Account after February 1, 2008 will be allocated on each day the financial markets are open.

**Section 2.05. Individual Account Expense Charge.** Each month beginning February 2008, an Individual Account Expense Charge in an amount determined in advance by the Board of Trustees from time to time will be deducted from each Individual Account, but shall not reduce an account below zero. The Individual Account Expense Charge will be a set amount determined in advance, which applies equally to every Individual Account.

**Section 2.06. Amount of Individual Account.** Generally the amount of an Individual Account shall be its value on the last previous Valuation Date.

**Section 2.07. Termination of Account.** An Individual Account will be considered terminated:

- a. On a Valuation Date if the amount in the Individual Account is zero or less; or,
- b. On the date in which payment of the Accumulated Share is made in full.

**Section 2.08. Restrictions on Vesting.** The fact that Individual Accounts are established and valued as of each Valuation Date will not give any Employee or others any right, title or interest in the Fund or its assets, or in the Individual Account, except at the time or times and upon the terms and conditions provided in this Plan. Subject to the terms of the Plan, an Employee's right to the value of the assets in his or her Individual Account is non-forfeitable from the time that the Individual Account is established.

**Section 2.09. Statements.** As soon as practicable after the close of each calendar quarter Fiscal Year, each Participant who has an Individual Account will receive a statement reflecting the balance of his or her Individual Account as of the last most recent Valuation Date in the preceding calendar quarter.

### **ARTICLE 3. BENEFITS AND ELIGIBILITY**

#### **Section 3.01. Amount to be Paid.**

- a. Upon the happening of an event calling for the payment of any annuity, lump-sum amount, or other benefit from this Fund, the amount to be paid, subject to the specific provisions of the following Sections, will be the Employee's "Accumulated Share" determined as of the Termination Date, as follows:
  - (1) Determine the Employee's Individual Account as of the last preceding Valuation Date.
  - (2) Subtract the security interest held by the Fund by reason of any loans granted to the Employee.
  - (3) Add all Contributions required to be made with respect to the work of the Employee.
  - (4) The resultant total of (1) through (3) is the Employee's "Accumulated Share".
- b. For the purpose of determining the Accumulated Share pursuant to Subsection a., the happening of the event calling for a payment is deemed to be the month in which the application for payment is made and received by the Board.
- c. An Employee who has Retired, as defined in Section 3.02(a), may elect in writing to defer the payment of his or her Accumulated Share, but no later than his or her Required Beginning Date. In which case, the happening of an event calling for a payment pursuant to Subsection a. is deemed to be the month in which application for payment is received by the Board.

#### **Section 3.02. Payment of Accumulated Share.**

- a. In the event that an Employee Retires, the amount in his or her Individual Account, if any, will be paid to the Employee in accordance with Section 3.03 of the Plan. Retirement by an Employee is established by either:
  - (1) Attainment of age 62 and no Contributions to the Employee's Individual Account for at least three consecutive months; or
  - (2) Regardless of age there has been less than 300 hours of work covered by a Collective Bargaining Agreement, or work of the type or kind of covered work performed within the territorial jurisdiction of the Union or work of the type for which Contributions were made or required to be made on your behalf to the Plan, in any two consecutive calendar years; or
  - (3) Entitlement to a Social Security Disability Benefit; or
  - (4) Receipt of a pension from the Pension Trust Fund for Operating Engineers; or
  - (5) Six months of continuous entitlement to a California, Nevada, or Utah Unemployment Benefit, whichever is applicable; or

**Exception:** The requirement for six months of continuous entitlement to Unemployment Benefits is satisfied if the employee remains unemployed and would otherwise be entitled to Unemployment Benefits for six consecutive

months except for the depletion of the employee's Unemployment Benefit account.

- (6) Six months of continuous entitlement to a California, Nevada or Utah Disability Benefit or Temporary Workers' Compensation Benefit, whichever is applicable; or
- (7) Six months of continuous entitlement to a combination of California, Nevada or Utah (whichever is applicable) Unemployment, Disability or Workers' Compensation Benefits.
- (8) During the four year period from July 1, 2010 through June 30, 2014, Retirement by an Employee can also be established in the following ways:
  - (a) The Employee has had less than 300 hours of work contributed, or required to be contributed, on his or her behalf to the Plan during any 12 consecutive month period ending on or after March 31, 2010, provided that (i) the Employee applies for distribution within 90 days after the end of such 12 consecutive month period, and (ii) during that 90 day period no significant contributions to the plan were made, or required to be made, on the Employee's behalf.
  - (b) The Employee has been paid for 26 weeks of California, Nevada, or Utah Unemployment Benefits, or any combination thereof, during any consecutive weekly testing period of 39 weeks or less ending on or after March 31, 2010, provided that (i) the Employee applies for distribution within 90 days after the end of the weekly testing period, and (ii) during that 90 day period no significant contributions to the Plan were made, or required to be made, on the Employee's behalf.

- b. The Board may require documentary proof or other evidence as it deems necessary or desirable to implement this Section.

In the event that an Employee dies before he becomes an Annuitant his or her Accumulated Share will be paid to his or her Beneficiary, as elected by his or her Beneficiary, on the same terms as are set forth in Section 3.03, subject to the provisions of the Retirement Equity Act of 1984. In the event an Employee dies before the Valuation Date that first establishes his or her Individual Account, his or her Accumulated Share will be equal to the total Contributions received on his or her behalf.

- c. A Participant who normally does not reside within the jurisdiction of this Plan, but who performs work for a Contributing Employer in the jurisdiction of this Plan on a temporary assignment may, upon request, receive a distribution of his or her Individual Account following cessation of employment. This distribution is not permitted under the following circumstances:

- (1) The Individual Account balance is more than \$2,500; and
- (2) The individual has previously requested and received payment of his or her Individual Account under the provisions of this Subsection.

In order to receive payment of his or her Individual Account, the individual must provide proof as the Board may require that the temporary assignment has been completed and there is no expectation of additional work for Contributing Employers in the jurisdiction of this Plan.

- d. In no event will payment of the Employee's Accumulated Share be made when benefits are immediately distributable, unless the payment is consented to in writing by the Employee, or in the event of the Employee's death, the surviving Spouse.
- e. Upon application by designated "alternate payee," a distribution of all or a portion of the Participant's Individual Account shall be made pursuant to the terms of a Qualified Domestic Relations Order without regard to whether the Participant is similarly entitled to payment under the other provisions of this Section 3.02.

Section 3.03. Payment Options.

- a. A Participant may, at least 30 days prior to the time when a distribution is made, request that the Board pay his or her Accumulated Share in any of the following forms:
  - (1) An annuity under terms which may be available under the insured group annuity contract which the Board may arrange with an insurance company, or
  - (2) A lump-sum payment, or
  - (3) A combination of (1) and (2), or
  - (4) A qualified rollover distribution pursuant to the provisions of the 1992 Unemployment Compensation Act.

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

- b. A Participant who is married on his or her Annuity Starting Date will receive his or her Accumulated Share in the form of a qualified joint and survivor annuity unless the Participant has filed with the Board, in writing, a timely election to waive that form of annuity subject to all of the conditions of this Section 3.03.b. No election is effective unless the Spouse of the Participant has consented in writing to the election, the consent acknowledges the effect of the election, and the consent is witnessed by an authorized Fund Representative, or a Notary Public. No consent is required if it has been established to the satisfaction of the Board that there is no Spouse or the Spouse cannot be located, or if the consent cannot be obtained because of any other circumstances as the Secretary of the Treasury may by regulations prescribe.

The Board will provide to the Participant, no less than 30 days and no more than 180 days before the Annuity Starting Date, a written explanation of the terms and conditions of the qualified joint and survivor annuity, the Participant's right to make, and the effect of, a rejection of the annuity, the rights of his or her legal spouse, and the right of the Participant to revoke the rejection and the effect of that revocation. The Participant (with any applicable spousal consent) may waive the requirement that the written explanation be provided at least 30 days before the Annuity Starting Date if the Participant's pension commences more than 7 days after the written explanation is provided.

A Participant and his or her legal spouse may reject the joint and survivor form of annuity or revoke that rejection, at any time not more than 180 days or less than 30 days before the Annuity Starting Date, and any number of times within the applicable election period. However, the election period shall end on the 30th day after the date on which the written explanation is provided, if the written explanation is provided after the Annuity Starting Date.

**Qualified joint and survivor annuity:** A qualified joint and survivor annuity is an annuity payable for the life of the Participant with a survivor annuity continuing for the life of the Spouse. Participants will be offered the chance of both a 50% continuance and a 75% continuance to the Spouse.

- c. In the event that a distribution is made as a result of the Participant's death prior to his or her Retirement, the forms of distribution set forth above are available to the surviving Spouse (if the Employee and Spouse were married throughout the year ending on the date of death), or if there is no surviving Spouse, or if the Employee and his or her surviving Spouse had not been married to each other throughout the year ending on the date of death, to his or her designated Beneficiary, subject to the provisions of the Retirement Equity Act of 1984. Upon a married Participant's death, the Participant's Spouse may direct the commencement of payments within a reasonable period after the Participant's death.
- d. If Retirement is established under Section 3.02.a.(5), (6), (7) an Employee's Accumulated Share will be distributed as follows:
  - (1) 50% of the balance in an Employee's Individual Account on the first day of the month following the sixth month after his or her date of entitlement to a combination of California, Nevada or Utah State Unemployment, Disability or Temporary Workers' Compensation Benefits, whichever is applicable.
  - (2) 50% of the remaining balance in his or her Individual Account on the first day of the month following the ninth month after his or her date of entitlement to a combination of California, Nevada or Utah State Unemployment, Disability or Workers' Compensation Benefits, whichever is applicable.
  - (3) 100% of the remaining balance in his or her Individual Account on the first day of the month following the twelfth month after his or her date of entitlement to a combination of California, Nevada or Utah State Unemployment, Disability or Workers' Compensation Benefits, whichever is applicable.

Section 3.04. Lump-Sum Payment. Notwithstanding anything to the contrary, if an Accumulated Share is less than \$5,000, the Accumulated Share will be paid only in a lump sum and the provisions of Section 3.01.c. do not apply.

The Board may decide, after attempting to contact a Participant or Beneficiary at his or her last known address, to make distribution of such accounts of \$1,000 or more directly to an automatic rollover IRA established for this purpose.

Section 3.05. Failure to Apply for Accumulated Share. If an Employee Retires, as described in Section 3.02, and an application for payment or an election of payment deferral of his or her Accumulated Share pursuant to Section 3.01.c. is not received within three months from the date of his or her Retirement, the Employee's Individual Account will continue to be maintained by the Fund in accordance with Article 2 until such time as the Participant or his or her Beneficiary (if he is deceased) files an application for the benefits in writing in a form and manner prescribed by the Board.



Section 3.06. Loans.

- a. An Employee who has had an Individual Account for five years or more may apply to the Board for a loan from his or her Individual Account for amount not to exceed the lesser of (i) \$50,000, or (ii) one-half of the present value of the Employee's Individual Account. To qualify for a loan an Employee must provide documentation sufficient to demonstrate that the purpose of the loan is to pay for expenses incurred as a result of one or more of the following circumstances:
  - (1) Expenses of at least \$1,000 incurred (and which the Employee is obligated to pay) because of sickness or injury which have not been reimbursed by, or for which the Employee has no right to reimbursement from, any public or private plan or program including, but not limited to, Social Security, a health and welfare plan maintained pursuant to a Collective Bargaining Agreement, any other employer, union or joint employer-union welfare plan or program, or Workers' Compensation.
  - (2) Expenses incurred in connection with the payment of tuition and/or room and board to maintain a dependent child at an educational institution beyond the high school level. A loan pursuant to this Subsection will be made to an Employee only once per dependent child. For the purpose of this Section, the term "dependent child" means the unmarried child (including stepchildren, adopted children and foster children substantially supported by the Employee) of an eligible Employee.
  - (3) The Employee has purchased a home, cooperative or condominium apartment, in which he will immediately reside and has thereby incurred a down payment, contract, and title expenses. A loan for the purpose of this Subsection will be made to an Employee only once.
  - (4) Disability of the Employee under a State Unemployment Disability Law (UCD) or State Workers' Compensation Law.
  - (5) The Employee is in danger of imminent foreclosure, an eviction or tax lien.
  - (6) Funeral expenses incurred because of the death of a spouse, child or parent.
- b. The Board will be the sole and absolute judge of whether or not these contingencies have occurred and, if they have occurred, whether they are of the nature as to require the granting of a loan from this Fund. Its judgment in this connection will be final and binding on all parties.
- c. The loan when made will bear simple interest on the outstanding balance and the loan and any accrued interest must be entirely repaid on a monthly basis within five years from the date of making of the loan. A loan that is taken for the purpose of purchasing the Employee's principal residence may be paid back over a period of 10 years. The rate of interest to be charged on loans will be the same as the prime rate, as listed in the Wall Street Journal on the first business day of the month in which the loan is requested, plus 1%.
- d. A late charge equal to twenty percent (20%) of the monthly outstanding interest or \$5.00, whichever is greater, will be assessed on any and all installments received eleven (11) or more days following the date the installment was due. This late charge will continue to

be assessed per installment, per month, until the delinquent payment or payments, are received by the Plan.

- e. If any single installment payment is not received by the last business day of the calendar quarter following the calendar quarter in which the last payment was missed, all remaining installment payments under the note become immediately due and payable to the Plan. The Fund will declare a partial distribution to the Participant/Borrower in the amount which is unpaid and report the distribution to the Internal Revenue Service and the State of California Franchise Tax Board as income to the Participant which may be subject to penalties and income tax.
- f. Notwithstanding any other provision of this Section, an Employee can not receive a loan if a deemed partial distribution was made with respect to the Employee in accordance with Subsection e. within the seven year period immediately preceding the date of the Employee's application for a loan.
- g. Upon making application for a loan, the Employee must acknowledge that any payment made by the Board pursuant to this Section constitutes a bona fide loan and not a distribution of money in his or her account.

The Board, in its discretion, may avail itself of any legal remedy to compel payment in full of the loan and accrued interest.

- h. Loans do not participate in Valuations of Individual Accounts but interest payments on the loans will be credited to the Individual Account.
- i. An application by a married Employee for a loan under this Section 3.06 will not be considered by the Board unless the Employee's Spouse consents in writing to the loan application during the 90-day period ending on the date on which the loan is secured by the Participant's accrued benefit, and the Spouse's consent acknowledges the effect of the loan application, and the consent is witnessed by a designated Fund Representative or a Notary Public.  
  
No consent is required if it is established to the satisfaction of a designated Fund Representative that the consent cannot be obtained because there is no Spouse, because the Spouse cannot be located, or because of any other circumstances as the Secretary of the Treasury may by regulations prescribe.
- j. Only one loan under this Section may be outstanding at any one time and only one loan will be approved for an individual in any twelve month period.

### Section 3.07. Temporary Loan Provisions for Financial Hardship.

Unless extended in a written resolution adopted by the Board, the following temporary loan provisions will apply until June 1, 2013. Effective June 1, 2013, no new loans will be made under this Section 3.07 Temporary Loan Provisions for Financial Hardship.

- a. A Participant (not necessarily limited to Employees) who has had an Individual Account for five years or more may apply to the Board for a loan from his or her Individual Account of an amount not to exceed the lesser of (i) one-half of the Participant's Individual Account, or (ii) \$7,500.00, provided that the Participant has no other loans from the Plan outstanding or a deemed partial distribution was not made with respect to the Participant in accordance with Section 3.06.e within the seven year period

immediately preceding the date of the Participant's application for a hardship loan under this temporary hardship loan provision.

- b. Loans will be approved in the sole and absolute discretion of the Board, or the person to whom this function is delegated, only if the Participant can prove to the Board's satisfaction that the Participant is suffering from a financial hardship. A financial hardship will exist only in the following situations:
  - (1) The Participant can demonstrate that he has an immediate and heavy financial need, and that the loan is necessary to satisfy that financial need.
  - (2) Whether the Participant has an immediate and heavy financial need is to be determined based on all the relevant facts and circumstances of his or her situation. A financial need may be immediate and heavy even if it is reasonably foreseeable or voluntarily incurred by the Participant.
  - (3) Loans will not be made in excess of the amount required to satisfy the Participant's financial need, after other assets reasonably available to the Participant have been exhausted including those of the Participant's spouse.
  - (4) Loans will be available only to Participants who have worked less than 161 hours in the 3 month period prior to application in any capacity, not limited to work for contributing Employers. In addition the Participant must be on the Union's out of work list, and must not have rejected a geographically practical work assignment from the Union dispatch office within the 3 months prior to application.
- c. Any loan under this provision must also meet the following requirements:
  - (1) It must be repaid within 3 years; and
  - (2) It must be paid in substantially level monthly payments including both principal and interest over the term of the loan.
- d. The rate of interest on the loan will be the same as the interest rate charged on an unsecured loan from the Operating Engineers Union Local 3 Federal Credit Union at the time the loan is made.
- e. In its discretion, the Board may delay the required first monthly payment to no more than 90 days from the initial date of the loan, but if it does, level monthly amortization shall begin at the date of the first deferred payment and end no later than three years after the date of the loan.
- f. The provisions of Section 3.06 not directly in conflict with these temporary loan provisions will also apply to loans under this Section 3.07.

Section 3.08. HEART Act. If a participant dies while performing qualified military service, the survivors of the participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the plan had the participant resumed and then terminated employment on account of death. In addition, the period of such participant's qualified military service shall be treated as vesting service under the plan.

## **ARTICLE 4. GENERAL PROVISIONS**

### **Section 4.01. Benefit Payments Generally.**

- a. As a condition to payment of any benefit, an application for benefits must be made in writing in a form and manner prescribed by the Board and must be filed with the Fund Office at least 60 days before payment of an Employee's Accumulated Share is to be made. No benefits can be paid prior to the establishment and crediting of Individual Accounts or prior to the receipt of written confirmation from the Internal Revenue Service of the United States that the Trust is an exempt trust and that the Plan is a qualified plan under the provisions of the Internal Revenue Code, whichever is later.

If, upon attainment of an Employee's Required Beginning Date, an application for benefits is not made in writing in a form and manner prescribed by the Board, benefits will begin as provided in Section 3.03.a.

- b. An Employee entitled to payment of his or her Accumulated Share will receive benefit payments beginning on the Annuity Starting Date.
- c. An Employee may elect in writing to delay payment of benefits, however no election may postpone the commencement of benefits to a date later than the Required Beginning Date.
- d. If an Employee's Beneficiary is not his or her surviving Spouse, the payment of any benefits under the Plan that become payable on account of the Employee's death can begin no later than one year from the date of the death or, if later, as soon as practicable after the Board learns of the death, and will be distributed in accordance with Section 3.03.c. If the Beneficiary is the Employee's surviving Spouse, payment of any Plan benefits will begin not later than the Employee's Required Beginning Date.

### **Section 4.02. Proof To Be Furnished; Penalties for Fraud.**

- a. Every Employee, Annuitant, or Beneficiary must furnish, at the request of the Board, any information or proof reasonably required for the administration of the Plan or for the determination of any matter that the Board may legitimately have before it. Failure to furnish this information or proof promptly and in good faith is sufficient reason for the denial of benefits to an Employee or Beneficiary, or the suspension or discontinuance of benefits to an Annuitant. The falsity of any statement material to an application or the furnishing of fraudulent information or proof is sufficient reason for the denial, suspension or discontinuance of benefits under this Plan except to the extent that the benefits are non-forfeitable and, in that case, the Board has the right to recover any benefit payments made in reliance on the false statement or fraudulent information or proof.
- b. Without limitation of the provisions of Subsection a., every Participant must file, before his or her benefit effective date, a written statement on which the Board or other Plan representative is entitled to rely, concerning the Participant's current and prior marital status, including, without limitation, whether or not he is currently legally married, and if married, as to when the marriage occurred. If a Participant states that he was not married throughout the year before his or her benefit payments began, no person is entitled to benefits under this Plan on the ground that she was, in fact, his or her Spouse, or if his or her Spouse, was in fact legally married to him throughout the year before his or her benefit payments began.

- c. Any payment made in good faith on the basis of a written statement of a Participant or Beneficiary will discharge all obligations of the Fund to the extent of any payment, and will entitle the Board to exercise all rights of recoupment or other remedies, including the right to adjust the dollar amount payments made to a surviving spouse or other Beneficiary in order to recoup any excess benefits which may have been erroneously paid.
- d. The rights of a former spouse or other alternate payee to any share of a Participant's benefit, as set forth in a Qualified Domestic Relations Order, takes precedence over any claims of the Participant's Spouse at the time of retirement or death to the extent provided by the Order or by any federal law or regulation.
- e. The Consent of a Spouse or former Spouse given pursuant to any provision of this Plan, or for any other purpose in connection with the administration of the Plan, may not be revoked.

Section 4.03. Powers of the Board. The Board is the sole judge of the standard of proof required in any case. In the application and interpretation of any of the provisions of this Plan, the decisions of the Board will be final and binding on all parties or person affected by that decision including Employees, Individual Employers, the Union, Annuitants and Beneficiaries subject only to judicial review as may be in harmony with federal labor law.

Section 4.04. Designation of Beneficiary.

- a. A Participant may designate a Beneficiary in a form and manner required by the Board and may be changed from time to time in the same manner insofar as permitted under the Plan. Any designation of a Beneficiary by a married Participant is subject to the provisions of Subsection 3.03.b.
- a. Subject to Subsection 3.03.b., payment of any benefit as the result of the death of the Participant will be made to his or her Beneficiary. If no designated Beneficiary is alive at the time any benefits are payable as a result of the Participant's death, then any benefits due and payable but not actually paid prior to his or her death, will be paid as follows:
  - (1). If any of the following relatives of the Participant is living, in the following order of succession:
    - Lawful spouse or registered domestic partner;
    - Children, including legally adopted children, in equal shares;
    - Grandchildren, including legally adopted grandchildren, in equal shares;
    - Parents, in equal shares;
    - Siblings, in equal shares;
  - (2). If none of the relatives listed in Subsection (1). above are living, to the executor of decedent's estate, or pursuant to any state procedure for transferring small estates without probate, or directly to a living trust of the decedent if the decedent's Will so provides, as the Board in its discretion may decide.

If a Beneficiary dies with benefits remaining payable, the remaining benefits shall be paid to the living relatives of the Beneficiary or other entities handling the disposition of the Beneficiary's assets according to the order of succession set forth above.

- b. A Participant's designation of his or her Spouse as Beneficiary is automatically revoked upon entry of a final decree of dissolution of marriage, unless a Qualified Domestic Relations Order provides otherwise.

Section 4.05. Incompetence or Incapacity of a Participant or Beneficiary. In the event it is determined to the satisfaction of the Board that a Participant or Beneficiary is unable to care for his or her affairs because of mental or physical incapacity, any payment due may be applied, at the discretion of the Board, to the maintenance and support of the Participant or Beneficiary unless, prior to payment, a claim has been made by a legally-appointed guardian, committee, or other legal representative to receive any payments on behalf of the Participant or Beneficiary. Any payment will completely discharge the Board's liability with respect to that payment.

Section 4.06. Non-Assignment of Benefits.

- a. Except to the extent otherwise provided by a Qualified Domestic Relations Order, or equivalent, authorized by ERISA, the Code or the Retirement Equity Act, each Employee, Annuitant or Beneficiary under the Annuity Plan is restrained from selling, transferring, anticipating, assigning, alienating, hypothecating or otherwise disposing of his or her annuity, prospective annuity, individual account, accumulated share or any other right or interest under the Plan. The Board will not recognize, or be required to recognize, any sale, transfer, anticipation, assignment, alienation, hypothecation or other disposition. Any annuity, prospective annuity, individual account, accumulated share, right or interest will not be subject in any manner to voluntary transfer or transfer by operation of law or otherwise, and will be exempt from the claims of creditors or other claimants and from all orders, decrees, garnishments, executions or other legal or equitable process or proceedings to the fullest extent permitted by the laws of the United States or regulation. However, in the event that through mistake or other circumstance an Employee, Annuitant or Beneficiary has been paid or credited with more than he is entitled to under the Plan or the law or has become obligated to the Fund under an indemnity agreement or in any other way, the Board may set off, recoup and recover the amount of the overpayment, excess credit or obligation from benefits accrued or thereafter accruing to the Employee, Annuitant or Beneficiary (or the Beneficiary of the Employee or Annuitant) as not yet distributed.
- b. The Board will adopt and prescribe reasonable rules and regulations for the implementation of the Qualified Domestic Relations Order provisions of ERISA, the Code and the Retirement Equity Act.
- c. In the event that a Qualified Domestic Relations Order directs that a portion of a Participant's Accumulated Share be paid to an alternate payee, the Board, in its sole discretion, may authorize the distribution of a portion to the alternate payee within a reasonable period of time after the determination of the qualified status of the Order. If the alternate payee is the former Spouse of the Participant, that distribution will only be made upon the condition that the former spouse relinquish all right, title or interest in the Participant's Accumulated Share, either under the Qualified Domestic Relations Order or otherwise, and any claim to treatment as the surviving Spouse of the Participant with respect to the Plan or any other benefits, or to be considered a Beneficiary under the Plan.

Section 4.07. Maximum Annual Additions.

- a. General Rule.
  - (1) Notwithstanding any other provision of this Plan, the total annual additions relating to employment with a Contributing Employer payable with respect to

any Participant can not exceed the limitations of Section 415 of the Internal Revenue Code of 1986, as amended from time to time, as follows:

The amount of Contributions allocated to an Individual Account for any year shall not exceed the lesser of:

- (a) \$40,000 or
- (b) 100 percent of the Participant's Compensation from all Employers for the year.

The 100% of compensation limit referred to in Subsection (b) above shall not apply to any contribution for medical benefits after separation from service (within the meaning of IRC §§ 401(h) or 419A(f)(2)) that otherwise is treated as an annual addition.

- (2)
  - (a) The \$40,000 limit in Subsection (1)(a) will be increased in accordance with IRS rulings and regulations under Code §415(d)(1).
  - (b) For purposes of the compensation limit on annual additions in Subsection (1)(b), "Compensation" means amounts defined in Code §3401(a) for purposes of federal income tax withholding at the source determined without regard to limitations relating to the nature or location of employment, plus all other payments for which the employer is required to furnish the employee a written statement under Code §6041(d), §6051(a)(3), or §6052. For Plan Years beginning after December 31, 1997, Compensation shall also include elective deferrals under Code §401(k), §402(e)(3), §402(h), §457, and §408(p)(2)(A)(I), and under a savings incentive plan (SIMPLE) or Code §125 cafeteria plan, and elective reductions under Code §132(f)(4). Effective January 1, 2009, Compensation includes military differential wage payments as defined in Code Section 3401(h).
- (3) "Annual Addition", with respect to a Participant for a Fiscal Year, means the sum of the following amounts credited to the Participant's account(s), if any, under any other defined contribution plan(s) maintained by the Employer.
  - (a) The Participant's share of the Contributions made by the Employer under the defined contribution plan(s) for the Fiscal Year.
  - (b) The Participant's share of the forfeitures for the Fiscal Year, under the defined contribution plan(s); and
  - (c) The Participant's share of Employee contributions.
- (4) For Limitation Years beginning on or after January 1, 2008, in no event shall the total annual additions credited with respect to any Participant for a Limitation Year exceed the limits determined in accordance with section 415 of the Code and the Treasury regulations thereunder (the "maximum annual addition").

b. Plan Aggregation.

- (1) In applying the limits of this Article, the benefits of and contributions to all other retirement plans sponsored by the Employer or any Affiliate will be taken into consideration, except for multiemployer plans.

The limitations of this Section 4.07 will be applied to multiemployer plans by taking into account the benefits and contributions of all the employers maintaining the Plan.

- (2) For Fiscal Years beginning before 2000, except as noted in Subsection b.(1), if a Participant is covered under one or more defined contribution plans sponsored by the Employer or any Affiliate, his or her combined benefits and annual additions under all defined benefit and defined contribution plans can not exceed the applicable combined plan limits under Code §415(e) including rules and regulations. If necessary to observe these limits, benefits under any other defined benefit plans will be reduced before benefits under this Plan, but benefits under this Plan will be reduced to the extent necessary if benefits under the other plans cannot be reduced.

c. Limitation Year. The annual limits of this Article will be applied on a calendar year basis.

d. Interpretation or Definition of Other Terms. The term “Affiliate”, and all terms used in this article not otherwise expressly defined in the Plan, are defined, interpreted and applied as prescribed in Code §415 rules including regulations and rulings.

Section 4.08. Merger or Consolidation. In the event of any merger or consolidation with, or transfer of assets or liabilities to any other plans, the amount of benefit which an Employee would receive upon termination of the Plan immediately after a merger, consolidation, or transfer may be not less than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer if the Plan had been terminated.

Section 4.09. Special Provisions for Eligible Rollover Distributions. This Section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee’s election under this Section, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of any eligible rollover distribution paid directly to an eligible retirement plan specified by the Distributee in a direct rollover.

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

a. “Eligible Rollover Distribution” means any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include:

- (1) Any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee’s Designated Beneficiary, or for a specified period of ten years or more;
- (2) Any distribution to the extent that distribution is required under Section 401(a)(9) of the Code;



- (3) A loan offset amount which occurs when, under circumstances set forth any hardship distribution as referred in Section 401(k) (2)(B)(i)(IV) of the Internal Revenue Code or under circumstances set forth in Section 3.02.a. of the Plan calling for a distribution of an Individual Account, the Individual Account is reduced in order to repay the loan; and
- (4) The portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).
- b. “Eligible Retirement Plan” means an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code or a qualified trust described in Section 401(a) of the Code, and (effective for distributions made after December 31, 2001) an annuity contract described in Section 403(b) of the Code that accepts the Distributee’s eligible rollover distribution. Effective for distributions made after December 31, 2001 an eligible retirement plan shall also include an eligible plan under Section 457(b) of the Code, which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. Effective for distributions made after December 31, 2007, an eligible retirement plan shall also include a Roth individual retirement account or Roth individual retirement annuity described in Section 408A of the Code.
- Effective for distributions made after December 31, 2001, the above definition of eligible retirement plan shall also apply in the case of a distribution to a Surviving Spouse, or to a spouse or former spouse who is the alternate payee under a Qualified Domestic Relations Order, as defined in Section 414(p) of the Code.
- c. Distributee includes an Employee or former Employee. In addition, 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 Section 414(p) of the Internal Revenue Code, are Distributees with regard to the interest of the Spouse or former Spouse. A Distributee also includes, for distributions after December 31, 2009, a non-spouse Beneficiary. In the case of a nonspouse Beneficiary, the direct rollover may be made only to an individual retirement account or annuity described in Code Sections 408(a) or 408(b) (“IRA”) or a Roth individual retirement account or annuity described in Code Section 408A, provided that such IRA or Roth IRA is established on behalf of the designated Beneficiary and will be treated as an inherited IRA pursuant to the provisions of Code Section 402(c)(11). Also, in this case, the determination of any required minimum distribution under Code Section 401(a)(9) that is ineligible for rollover shall be made in accordance with Notice 2007-7, Q&A 17 and 18, 2007-5 I.R.B. 395.
- d. Direct rollover is a payment by the Plan directly to the eligible retirement plan specified by the Distributee.

#### Section 4.10. Eligible Rollover Contributions.

- a. Effective January 1, 2000, a Participant may make a rollover contribution to the Fund of all or any portion of the entire amount which is an eligible rollover distribution, as defined in Section 402(c)(4) of the Internal Revenue Code and temporary Treasury Regulation 1.402(c)-2, Q&A 3 and 4, provided this rollover contribution is a direct

transfer from a qualified defined contribution plan in the jurisdiction of the Operating Engineers Local Union No. 3 of the International Union of Operating Engineers.

- b. An Employee must complete and sign this Fund's rollover request form and provide any evidence requested by the Board of Trustees, including evidence supporting the satisfaction of the remaining provisions of this Section.
- c. Rollover contributions are not be considered annual additions for the purposes of Section 4.07.a.(3).
- d. A Participant's accrued benefit attributable to the rollover distribution is fully and immediately vested and will be payable in accordance with the terms and payment forms of this Plan as provided in Section 3.03.
- e. The Board of Trustees will credit the fair market value of any rollover contribution and investment earnings attributable to an Individual Account for the Employee on the same basis as any other Contribution made or required to be made to the Plan.

## **ARTICLE 5. RIGHT OF APPEAL AND DETERMINATION OF DISPUTES**

**Section 5.01. General.** No Participant, Beneficiary or other person has any right or claim to benefits under the Plan, or any right or claim to payments from the Fund, other than as specified in the Plan. Any dispute as to eligibility, type, amount or duration of benefits or any right or claim to payments from the Fund will be resolved by the Board under and pursuant to the Plan, and its decision of the dispute, right or claim will be final and binding upon all parties, subject only to judicial review as may be in harmony with federal labor law.

### **Section 5.02. Notice of Denial and Appeal Procedures.**

- a. Any person whose application for benefits under the Plan has been denied in whole or in part, or whose claim to benefits or against the Fund is otherwise denied, will be notified in writing of the denial within 90 days after receipt of the application or claim. An extension of time not exceeding 90 days may be required by special circumstances. If so, notice of the extension, indicating what special circumstances exist, and the date by which a final decision is expected to be made available, will be furnished to the claimant prior to the expiration of the initial 90-day period. The notice of denial must set forth in a manner calculated to be understood by the claimant (1) the specific reason or reasons for the denial; (2) specific reference to pertinent Plan provisions on which the denial is based; (3) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why that material or information is necessary; (4) appropriate information as to the steps to be taken if the claimant wishes to submit his or her claim for review; and (5) a statement of the claimant's right to bring civil action under §502(a) of ERISA.

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

- b. Any person may petition the Board for a review of the denial of a claim. A petition for review must be in writing, must state in clear and concise terms the reason or reasons for disputing the denial, must be accompanied by any pertinent documentary material not already furnished to the Fund, and must be filed by the petitioner or his or her duly authorized representative with the Secretary of the Board within 60 days after the petitioner received notice of the denial. The petitioner or his or her duly authorized representative will be permitted to review pertinent documents and submit issues and comments in writing.
- c. Upon good cause shown, the Board may permit the petition to be amended or supplemented and may grant a hearing on the petition before a hearing panel consisting of a least one Employer Trustee and one Employee Trustee to receive and hear any evidence or argument which cannot be presented satisfactorily by correspondence. The failure to file a petition for review within the 60-day period or the failure to appear and participate in any hearing, constitutes a waiver of the claimant's right to review of the denial, provided that the Board may relieve a claimant of any waiver for good cause if application for relief is made within one year after the date shown on the notice of denial.
- d. Upon request, the petitioner or the petitioner's duly authorized representative will be provided, free of charge, reasonable access to, and copies of, all documents, records and

other information relevant to the petitioner's claim for benefits. A document, record or other information shall be considered relevant to a petitioner's claim if it was relied upon in making the benefit determination; was submitted, considered or generated in the course of making the benefit determination, without regard to whether it was relied upon in making the benefit determination; demonstrates that the benefit determination was made in accordance with the Plan provisions and that such provisions have been applied consistently with respect to similarly situated claims.

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

- e. A decision by the Board will be made promptly and not more than 60 days after the Board's receipt of the petition for review, unless special circumstances require an extension of time for processing, in which case notice of the extension will be furnished to the claimant prior to the expiration of the 60-day period. A decision will be made available as soon as possible, but not later than 120 days after receipt of the petition for review. The petitioner will be advised of the Board's decision in writing. The decision must include specific reasons for the decision, written in a manner calculated to be understood by the petitioner, and specific references to the pertinent Plan provisions on which the decision is based. It will also include a statement that the petitioner is entitled to receive, upon request and free of charge, reasonable access to, and copies of all documents, records and other information relevant to the claim for benefits.
- f. The denial of an application or claim to which the right to review has been waived or the decision of the Board with respect to a petition for review, is final and binding upon all parties, including the applicant, claimant or petitioner and any person claiming under the applicant, claimant or petitioner, subject only judicial review as provided in Subsection a.

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

## ARTICLE 6. AMENDMENTS TO COMPLY WITH EGTRRA

Section 6.01. Purpose and Scope. The Plan amendments set forth in this Article are adopted to reflect certain provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). These amendments are intended to constitute good faith compliance with the requirements of EGTRRA and are to be construed in accordance with EGTRRA and the guidance issued thereunder. Except as otherwise provided herein, the amendments contained in this Article shall be effective January 1, 2002. The provisions of this Article shall supersede the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Article.

Section 6.02. Plan Loans for Owner-Employees and Shareholder-Employees. Effective for Plan loans made after December 31, 2001, any provision of this Plan that would prohibit such loan to be made to an owner-employee (within the meaning of IRC §401(C)(3)) or a shareholder-employee (within the meaning of IRC §4975(f)(6)(C)) shall cease to apply.

Section 6.03. Increase in Limit on Compensation Taken into Account. The annual compensation of each Participant taken into account in determining allocations for any Plan Year beginning after December 31, 2001, shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with IRC §401(a)(17)(B). Annual compensation for this purpose means compensation during the Plan Year or such other consecutive 12-month period over which compensation otherwise is determined under the Plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

## **ARTICLE 7. AMENDMENT AND TERMINATION**

Section 7.01. The Board may amend or modify the Plan at any time in accordance with the Trust Agreement, except that no amendment or modification may reduce any benefits which have been approved for payment prior to the amendment or modification, so long as funds are available for payment of those benefits.

Section 7.02. In the event of termination of the Plan, the remaining assets, after providing for the expenses of the Plan and for the payment of any Accumulated Share already approved, will be distributed among the Employees. Each Employee will receive that part of the total remaining assets in the same ratio as his or her Accumulated Share bears to the aggregate amount of the Accumulated Shares of all Employees. No part of the assets can be returned to any Individual Employer or inure to the benefit of any Individual Employer or the Union. In the event that an Employee cannot be located and no claim is made by him for payment of his or her Accumulated Share within ninety (90) days following the sending of notice by certified mail to the Employee's last known address, the Board of Trustees will attempt to locate the missing Employee in accordance with applicable DOL guidance. If the Board of Trustees is unable to locate a missing Employee, the Board of Trustees will distribute his or her Accumulated Share in accordance with applicable DOL guidance.

In the event the liquidation value of the assets on the date of termination is less than the total of all Accumulated Shares plus expenses, the Board has the option of paying all Accumulated Shares to Employees over a period not to exceed 10 years to the extent permitted by the assets available.

Section 7.03. If any provision of the Plan or any step in the administration of the Plan is held to be illegal or invalid for any reason, that illegality or invalidity will not affect the remaining provisions of the Plan unless that illegality or invalidity prevents accomplishment of the purposes and objectives of the Plan. In the event of any such holding, the Board will immediately amend the Plan to remedy the defect.

## **ARTICLE 8. MINIMUM DISTRIBUTION REQUIREMENTS**

### **Section 8.01. General Rules.**

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

### **Section 8.02. Time and Manner of Distribution.**

- a. **Required Beginning Date.** The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date as defined in Section 1.24 of the Plan.
- b. **Death of Participant Before Distributions Begin.** If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
  - (1) If the Participant dies before distributions begin and there is a designated Beneficiary, the Participant's entire interest must be distributed to the designated Beneficiary by December 31st of the calendar year containing the fifth anniversary of the Participant's death.
  - (2) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, then, the Participant's spouse may elect, in lieu of Section 8.02.a., to have distributions to the surviving spouse begin by December 31st of the calendar year immediately following the calendar year in which the Participant died, or by December 31st of the calendar year in which the Participant would have attained age 70½, if later. The election must be made no later than September 30th of the calendar year in which distribution would be required to begin under this Section 8.02.b.(2), or if earlier, Section 8.02.b.(1).
  - (3) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, then, the designated Beneficiary may elect, in lieu of Section 8.02.b.(1), to have distributions begin by December 31st of the calendar year immediately following the calendar year in which the Participant died. The election must be made no later than September 30th of the calendar year in which distribution would be required to begin under this Section 8.02.b.(3).

- (4) If there is no designated Beneficiary as of September 30th of the year following the year of the Participant's death, the Participant's entire interest will be distributed in accordance with the provisions of Plan Section 4.04 by December 31st of the calendar year containing the fifth anniversary of the Participant's death.
- (5) If the Participant's surviving spouse is the Participant's sole designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 8.02.b., other than Section 8.02.b.(2), will apply as if the surviving spouse were the Participant.

For purposes of this Section 8.02.b. and Section 8.04, unless Section 8.02.b.(5) applies, distributions are considered to begin on the Participant's Required Beginning Date. If Section 8.02.b.(5) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under this Section 8.02.b.(2), if such election is made. If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under an election made under Section 8.02.b.(2)), the date distributions are considered to begin is the date distributions actually commence.

- c. Forms of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first distribution calendar year distributions will be made in accordance with Sections 8.03 and 8.04 of this Article 8. If the Participant's or designated Beneficiary's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Treasury regulations.

#### Section 8.03. Required Minimum Distributions During Participant's Lifetime.

- a. Amount of Required Minimum Distribution for Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:
  - (1) The quotient obtained by dividing the Participant's account balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year; or
  - (2) If the Participant's sole designated Beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's account balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.
- b. Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this Section 8.03 beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.



Section 8.04. Required Minimum Distributions After Participant's Death.

a. Death On or After Date Distributions Begin.

- (1) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated Beneficiary, determined as follows:
  - (A) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
  - (B) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.
  - (C) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, the designated Beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.
- (2) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no designated Beneficiary as of September 30th of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year. Such distribution shall be made in accordance with provisions of Plan Section 4.04.

b. Death Before Date Distributions Begin.

- (1) Participant Survived by Designated Beneficiary. If the Participant dies before the date distributions begin and there is a designated Beneficiary, if the designated Beneficiary has made an election under Section 8.02.b.(2) or 8.02.b.(3), the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant's designated Beneficiary, determined as provided in Section 8.04.a.
- (2) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated Beneficiary as of September 30th of the year following the year of the Participant's death, distribution of the Participant's

entire interest will be made in accordance with provisions of Plan Section 4.04 and completed by December 31st of the calendar year containing the fifth anniversary of the Participant's death.

- (3) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse after having made an election under Section 8.02.b.(2), this Section 8.04.b. will apply as if the surviving spouse were the Participant.

Section 8.05. Definitions.

- a. Designated Beneficiary. The individual who is designated as the Beneficiary under Section 1.04 of the Plan and is the designated Beneficiary under Section 401(a)(9) of the Internal revenue Code and Section 1.401(a)(9)-4, Q&A-1 of the Treasury regulations.
- b. Distribution calendar year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under Section 8.02.b. The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's Required Beginning Date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's Required Beginning Date occurs, will be made on or before December 31st of that distribution calendar year.
- c. Life expectancy. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.
- d. Participant's account balance. The account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

Section 8.06. Non-Suspension of Required Minimum Distributions. The Board of Trustees has elected to not allow Participants or Beneficiaries to suspend the minimum distributions required under Sections 8.01 through 8.04 of the Plan as allowed under Code Section 401(a)(9)(H), which was amended by the Worker, Retiree, and Employer Recovery Act of 2008.

**[BACK COVER]**

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