

# OE3 Trust Funds

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## HAWAII ANNUITY TRUST FUND FOR OPERATING ENGINEERS

### SUMMARY PLAN DESCRIPTION

2022

**HAWAII ANNUITY TRUST FUND  
FOR  
OPERATING ENGINEERS**

**SUMMARY PLAN DESCRIPTION  
and  
Rules and Regulations of the  
Hawaii Annuity Trust Fund  
for Operating Engineers**

**2022 Edition**

# **HAWAII ANNUITY TRUST FUND FOR OPERATING ENGINEERS**

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FOR OPERATING ENGINEERS**

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TO ALL PARTICIPANTS AND BENEFICIARIES:

We are pleased to provide you with this summary describing the provisions of the Annuity Plan of the Hawaii Annuity Trust Fund for Operating Engineers.

The Annuity Plan provides an additional measure of financial security and flexibility for you upon retirement. We encourage you to read this booklet carefully and share it with your family since they may also have an interest in the Annuity Plan. We also suggest that you keep this booklet for future reference and let your family know where it is being kept. Please remember to keep the Hawaii Annuity Trust Fund Office informed of any changes in your address to ensure that you receive all communications and updates to the Plan. In addition to retirement benefits, the Hawaii Annuity Trust Fund also provides benefits upon death, disability or termination of service.

The QUESTIONS AND ANSWERS which follow are only intended to highlight some of the features of the Hawaii Annuity Trust Fund and its Annuity Plan in effect as of January 1, 2020. In all cases, the actual Rules and Regulations of the Annuity Plan govern every aspect of participation, eligibility, benefit payments and, in general, the administration of the Hawaii Annuity Trust Fund. The complete text of the Annuity Plan appears in the second half of this booklet.

Only the Board of Trustees has full discretion and authority to interpret the Rules and Regulations, and to decide any factual questions regarding the nature and extent of, as well as eligibility for benefits, provided by the Hawaii Annuity Trust Fund.

If you have any questions about the Annuity Plan or desire any additional information, please contact the Fund Office or the Hawaii Fringe Benefits Service Center.

Sincerely,

BOARD OF TRUSTEES

This explanation of the Annuity Plan is no more than a brief and very general statement of the most important provisions of the Annuity Plan. No general statement such as this can adequately 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 provisions expressed in the Annuity Plan itself.

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

Except as otherwise specified herein, the Board of Trustees shall have sole and exclusive discretionary authority and responsibility for administering, construing and interpreting the provisions of the Plan, determining eligibility for benefits, and making all determinations, including factual determinations, hereunder.

Only the full Board of Trustees is authorized to interpret the Annuity Plan described in this booklet. Only answers given by the Board of Trustees are official, and then only if you have furnished full and accurate information concerning your situation. To be official, information or opinions concerning your rights under the Hawaii Annuity Trust Fund must be communicated to you in writing, and signed on behalf of the full Board of Trustees. No Union or Employer, nor any representative of any Union or Employer, is authorized to interpret the Annuity Plan on behalf of the Board—nor can such person act as an agent of the Board of Trustees.

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## **I. TYPE OF PLAN**

### **A. What type of plan is the Annuity Plan of the Hawaii Annuity Trust Fund for Operating Engineers?**

*(Refer to Section 1.19 of the Plan)*

The Annuity Plan is a money purchase defined contribution retirement plan designed to provide its Participants with benefits at retirement. It is qualified under Internal Revenue Code § 401(a).

## II. PARTICIPATION

### **A. How do I know if I am a Participant in the Hawaii Annuity Trust Fund?**

*(Refer to Sections 1.08, 1.18 and 2.09 of the Plan)*

In general, if you are an Employee working for an Employer under a Collective Bargaining Agreement with the Operating Engineers Local Union No. 3 of the International Union of Operating Engineers (the “Union”), or any other labor organization with the approval of the Union, and such agreement requires Contributions to be made to this Annuity Trust Fund with respect to your work, you are a Participant in the Hawaii Annuity Trust Fund.

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

### **B. What is an Individual Employer?**

*(Refer to Section 1.13 of the Plan)*

The term “Individual Employer” means any person or entity who is required by a Collective Bargaining Agreement to make payments to the Hawaii Annuity Trust Fund or who does in fact make one or more payments to the Hawaii Annuity Trust Fund. Note that an employer may not be considered an Individual Employer under the Hawaii Annuity Trust Fund 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 considered an Individual Employer.

### III. INDIVIDUAL ACCOUNTS

**A. What is an Individual Account?**

*(Refer to Sections 1.12 and 2.01 of the Plan)*

The term “Individual Account” describes the account established in your name to receive Contributions made by your Individual Employers on your behalf. Your Individual Account is set up as of the first Valuation Date on which you become a Participant in the Hawaii Annuity Trust Fund.

**B. What is an Accumulated Share?**

*(Refer to Sections 1.02 and 3.01 of the Plan)*

Your “Accumulated Share” is the dollar balance in your Individual Account.

**C. What determines the value of the Accumulated Share in my Individual Account at any time?**

*(Refer to Article 2 and Section 3.01 of the Plan)*

First, of course, is the amount of Contributions (including any voluntary contributions and rollover contributions – see page 12) that are required to be made on your behalf by your Employer. This money, along with the Contributions in all other Individual Accounts, is invested under policies established by the Board of Trustees of the Hawaii Annuity Trust Fund. Accordingly, a proportionate share of any interest or dividends received is added to the Contributions. Changes in the value of investments also result in increases or decreases in the value of each Individual Account. The outstanding disposition of any loans made by the Hawaii Annuity Trust Fund, which were formerly authorized, could also affect the value of your Individual Account. From this accumulation is deducted a uniform share of the expenses for operating the Hawaii Annuity Trust Fund. All of these things taken together determine the value of your Accumulated Share in your Individual Account at any Valuation Date.

**D. What is the Valuation Date?**

*(Refer to Sections 1.09 and 1.25 of the Plan)*

The Hawaii Annuity Trust Fund’s Fiscal Year runs from November 1 through October 31. The value of each Individual Account is fixed on January 31, April 30, July 31 and October 31. These are referred to as Valuation Dates and fall on the last business day of each quarter following the beginning of the Hawaii Annuity Trust Fund’s Fiscal Year. At the end of every fiscal quarter (January 31, April 30, July 31, and October 31), you will receive a statement concerning the status of your Individual Account by showing your Contributions, expenses and investment returns as of the close of the quarter. Your statement will also include information about your employers, the months you worked, your total hours worked and contributions received. *(Refer to Section 2.09 of the Plan)*

**E. What should I do if the statement does not show Contributions from an Employer for whom I have worked during the year?**

If you believe that the amount of Contributions required to be made on your behalf by one of your Employers or the total Contributions shown is incorrect, you should notify the Fund Office. You should also keep in mind that the statement sent to you each year contains only the information received by the Fund Office as of October 31 of that year. It may not include all Contributions if your Employer's report is late. These late Contributions are not lost but will be included in the statement you will receive the following year.

Late Employer reports and Contributions are kept to a minimum by the Fund Office and every effort is made to keep your Individual Account annual statement up to date. However, it is important that you give prompt written notice to the Fund Office of any discrepancy in amounts that should be credited to your Individual Account. This will make it easier for your Individual Account to be properly credited and for the Hawaii Annuity Trust Fund to collect any delinquent Contributions. With the passage of time, it becomes increasingly more difficult to obtain the documentation necessary to properly credit your Individual Account.

**F. Will Contributions be made on my behalf for periods of military service?**  
(Refer to Section 1.19 of the Plan)

If you serve in the uniformed services of the United States and are subsequently re-employed by an Employer, you may qualify for Contributions to be made to the Annuity Plan for such period(s) under the Uniformed Services Employment and Reemployment Rights Act of 1994 or "USERRA." In order to qualify for the contributions you must satisfy the following requirements:

- Have worked for an Employer prior to the beginning of your military service.
- Satisfy USERRA's advance notice requirement (to your last Employer) prior to your period of military service. Be discharged from the military service under honorable conditions.
- Remain in military service 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                 | By the first regularly scheduled day of work after discharge, allowing at least 8 hours between discharge and application for reemployment |
| 31 through 180 days               | Within 14 days after discharge   |
| 181 days or more                  | Within 90 days after discharge   |

Contributions payable on your behalf will be based on your average hours of work during the 12-month period immediately preceding the military service or, if shorter, the period of employment immediately preceding the military service. Contributions credited to Individual Accounts for periods of qualified military service are treated as an expense of the Annuity Plan.

**G. Am I allowed to direct the investment of monies in my Individual Account?**

No. The Board of Trustees hires an investment consultant and individual investment managers to invest the Hawaii Annuity Trust Fund assets on behalf of all Participants.

**► IMPORTANT ◀**

The fact that Individual Accounts are established and valued as of each Valuation Date shall not give you or others any right, title or interest in the Hawaii Annuity Trust Fund or its assets, or in the Individual Account, except at the time or times and upon the terms and conditions provided in the Hawaii Annuity Trust Fund. Subject to such terms, your right to the value of the assets in your Individual Account is non-forfeitable from the time that such Individual Account is established.

## IV. PAYMENT OF BENEFITS

### A. When can I receive the money in my Individual Account?

*(Refer to Section 3.02 of the Plan)*

You may receive the money in your Individual Account (“Accumulated Share” or “Individual Account balance”) at any of the following times:

#### ➤ AT RETIREMENT

You are considered Retired and entitled to receive payment of your Accumulated Share if you have attained the age of 62 and no Contributions have been made or have been required to be made to your Individual Account for at least three consecutive months. You are also considered Retired if you are receiving a pension from the Pension Trust Fund for Operating Engineers.

#### ➤ WHEN YOU LEAVE THE INDUSTRY

You are considered to have “left the industry” and entitled to receive payment of your Accumulated Share under the circumstances described below.

You have attained age 55 and your most recent employment was with an Employer that is only obligated to pay fringe benefit contributions on your behalf to the Hawaii Annuity Trust Fund (and not other funds affiliated with the Union) and you have withdrawn completely from any employment in the building and construction industry.

#### ➤ REGARDLESS OF YOUR AGE

- You have been employed less than 300 hours in work in the building and construction industry in a 24-consecutive-month period; or
- You cease to be employed in work or a work classification covered by a Collective Bargaining Agreement with a Contributing Employer; or
- Your Employer is no longer obligated to pay fringe benefit contributions on your behalf to any employee benefit plan affiliated with the Union.
- In no event will any of the provisions described above result in an in-service distribution of your Individual Account prior to your attainment of age 62.

#### ➤ WHEN YOUR EMPLOYMENT CEASES WITH AN EMPLOYER IN THE JURISDICTION OF THE HAWAII ANNUITY TRUST FUND AND YOU COMMENCE WORKING WITH AN EMPLOYER WITHIN THE JURISDICTION OF THE OPERATING ENGINEERS ANNUITY PLAN

If you stop working for an Employer in the jurisdiction of the Hawaii Annuity Trust Fund and begin working within six months for an Employer in the jurisdiction of the Operating Engineers Annuity Plan, you may receive payment of your Individual Account in the form of a rollover distribution to the Operating Engineers Annuity Plan or any other qualified retirement plan.

In order to qualify for a rollover distribution under these rules, you (1) must not have already requested and received payment of your Individual Account as a rollover, and (2) there must have been Contributions made or required to be made to the Hawaii Annuity Trust Fund on your behalf within the six-consecutive month period preceding the date of your application for the rollover distribution.

➤ **IF YOU ARE ON TEMPORARY ASSIGNMENT UNDER THE JURISDICTION OF THE HAWAII ANNUITY TRUST FUND FOR OPERATING ENGINEERS**

If you do **not** normally reside within the jurisdiction of the Annuity Trust Fund, but have traveled to the area for the sole purpose of working for a Contributing Employer in the jurisdiction of the Hawaii Annuity Trust Fund on a **temporary assignment** for a specified period of time, you may, upon request, receive the money in your Individual Account following completion of such employment, provided you meet all three of the criteria below:

- (1) You have not previously received payment of your Individual Account under this temporary assignment provision; and
- (2) The Contributions required to be made with respect to your work have been received by the Hawaii Annuity Trust Fund within the six-month period prior to your request; and
- (3) You provide proof, as required by the Board of Trustees, that the temporary assignment has been completed and you have no expectation of residing or obtaining additional work for Contributing Employers in the jurisdiction of the Hawaii Annuity Trust Fund.

➤ **IF YOU ARE UNEMPLOYED**

If you are unemployed and eligible to receive unemployment benefits from the State of Hawaii or another state in the United States of America, you may apply for the money in your Individual Account after you cease to be entitled to receive the Unemployment Benefits.

➤ **IF YOU ARE TOTALLY AND PERMANENTLY DISABLED AND ENTITLED TO A SOCIAL SECURITY DISABILITY BENEFIT**

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

➤ **IF YOU DIE**

If you die prior to Retirement, the money in your Individual Account will be paid to your surviving spouse (if you have been married throughout the year prior to the date of your death) or designated Beneficiary (if applicable) in one of the payment forms described on page 9. (The procedures for designating a Beneficiary are summarized on page 13.)

➤ **IF YOU MADE VOLUNTARY EMPLOYEE CONTRIBUTIONS**

Since November 1, 2012, Participants have not been permitted to elect to make personal (“voluntary”) contributions to the Hawaii Annuity Trust Fund. You may receive all or part of your voluntary contributions made to your Individual Account at any time. See Section V for further details.

**B. If I satisfy one of the requirements above, do I have to withdraw my Accumulated Share or can I leave my money in my Individual Account?**

*(Refer to Subsection 4.01(C) of the Plan)*

You do not have to withdraw your Accumulated Share immediately. Until withdrawn, the monies in your Individual Account will continue to receive its share of changes in the Hawaii Annuity Trust Fund's investments and be assessed its share of Hawaii Annuity Trust Fund expenses. However, you **cannot** postpone commencement of your benefits to a date later than your Required Beginning Date.

If you are not a 5% owner, your Required Beginning Date is your choice of either (1) the April 1<sup>st</sup> following the calendar year in which you attain age 72 or, if later, (2) the April 1<sup>st</sup> following the calendar year in which you retire.

Please note that the failure to withdraw your Accumulated Share by your Required Beginning Date not only violates the Plan rules, but may expose you to significant federal tax penalties. Therefore, it is important that you contact the Fund Office or Fringe Benefits Office well in advance of your Required Beginning Date so that you will receive a distribution on a timely basis.

**► IMPORTANT ◀**

You should keep the Fund Office informed of any changes in your mailing address to make sure you receive all communications. The Hawaii Fringe Benefit Service Center is located at 2181 Lauwiliwili Street, Kapolei, Hawaii 96707. The telephone number is (808) 847-1289 or (800) 660-9126 Outer Islands.

**C. What is the exact amount of money I will get when I am eligible for benefits?**

*(Refer to Article 2 and Section 3.01 of the Plan)*

Due to the fluctuation in the amount of yield on investments, the exact amount you will receive in the future when you are eligible for benefits cannot be determined now. Here is how the amount you will receive will be calculated:

- The sum of all the Contributions required to be made on your behalf, **plus**
- All actual investment earnings credited to your Individual Account, **plus or minus**
- Changes in the value of the Hawaii Annuity Trust Fund's investments, **minus**
- Your share of the expenses of operating the Hawaii Annuity Trust Fund.

A statement will be sent to you annually informing you of your Individual Account's balance in terms of Contributions, expenses and investment yields.



**D. How will my Individual Account balance be paid out?**

*(Refer to Section 3.03 of the Plan)*

When you qualify for a payment, you may receive your Individual Account balance in one of the forms described below. If your Individual Account balance is \$5,000 or less, it will automatically be paid in a lump sum. *(Refer to Section 3.04 of the Plan)*

If you are 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 are a married Participant, and your Individual Account is greater than \$5,000, the normal form of payment is the Qualified Joint and Survivor Annuity subject to the terms described later in this section.

- **LIFE ANNUITY** – An annuity purchased from an insurance company with your Accumulated Share that provides a fixed monthly payment for the duration of your life. Following your death, no further benefits are payable.
- **LUMP SUM** – A single payment equal to the value of your Accumulated Share. After the lump sum payment, no further benefits are payable.

In lieu of a lump sum payment made directly to you, you may elect to rollover your distribution into an individual retirement account or other tax exempt retirement plan (see “TAXES” on page 17).

- **QUALIFIED JOINT AND SURVIVOR ANNUITY** (available to married participants only) – An annuity purchased from an insurance company with your Accumulated Share that provides a fixed monthly amount for your lifetime. After your death, your spouse receives a lifetime monthly benefit equal to **50%** of the amount you were receiving. The monthly amount that you receive during your lifetime is reduced to take into account your expected life span as well as that of your spouse. Once your payments start, your monthly payments will not be increased if your spouse predeceases you, or if you and your spouse are later divorced.
- **QUALIFIED OPTIONAL SURVIVOR ANNUITY** (available to married participants only) – An annuity purchased from an insurance company with your Accumulated Share that provides a fixed monthly amount for your lifetime. After your death, your spouse receives a lifetime monthly benefit equal to **75%** of the amount you were receiving. The monthly amount that you receive during your lifetime is reduced to take into account your expected life span as well as that of your spouse. Once your payments start, your monthly payments will not be increased if your spouse predeceases you, or if you and your spouse are later divorced.

**COMBINATION OF PARTIAL LUMP SUM AND LIFE ANNUITY** – You elect the portions of your Accumulated Share that you wish to have paid directly to you in a lump sum or rolled over into an individual retirement account or other tax exempt retirement plan, with the remainder payable as a life annuity.

- **SPECIAL PAYMENT FORM IF YOUR DISTRIBUTION IS BASED ON LOSS OF STATE UNEMPLOYMENT BENEFITS** – If you are applying for distribution of your Individual Account because you have ceased to be entitled to a State Unemployment Benefit as explained on page 7, your Individual Account will be distributed in the following manner:
  - 50% of the Account balance as of the first day of the month following the month you cease to be entitled to a Hawaii State Unemployment Benefit.

- 50% of the remaining Account balance as of the first day of the month following the third month after you cease to be entitled to a Hawaii State Unemployment Benefit.
- 100% of any remaining Account balance as of the first day of the month following the sixth month after you cease to be entitled to a Hawaii State Unemployment Benefit.

**E. Can I change my election once I receive payment under one of the payment forms described above?**

No. Once an annuity is purchased from an insurance company to provide you with a Life Annuity, Qualified Joint and Survivor Annuity or Qualified Optional Survivor Annuity, you cannot change your payment form. If you receive payment directly as a lump sum, you are responsible for making your own arrangements for the future handling of those monies. If your Accumulated Share is rolled over into an eligible retirement plan, it is subject to the rules and regulations of that plan.

**F. What are the rules for payment of the Qualified Joint and Survivor Annuity or Qualified Optional Survivor Annuity?**

Under the Qualified Joint and Survivor Annuity or Qualified Optional Survivor Annuity, you will receive a lifetime annuity. If you die prior to your spouse, 50% (or 75% in the case of the Qualified Optional Survivor Annuity) of your monthly annuity amount will be continued to your spouse following your death. Payments will be made to your spouse for his or her lifetime. The following are some of the rules governing both these payment forms:

- The Qualified Joint and Survivor Annuity and Qualified Optional Survivor Annuity only protect the spouse legally married to you on your Annuity Starting Date.
- After payments begin, neither payment form can be cancelled or the amount of your benefit increased because of the death of your spouse or because you and your spouse become divorced. You may not name a subsequent spouse to receive any survivor benefits.
- 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 you and/or your current spouse.

**G. What if I am married and do not want a Qualified Joint and Survivor Annuity or Qualified Optional Survivor Annuity when I retire?**

*(Refer to Subsection 3.03(B) of the Plan)*

If you are 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 on a form available from the Fund Office 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 the consent cannot be obtained because you have no legal spouse, your spouse cannot be located, or extenuating reasons exist. If you and your spouse also do not wish to receive payment under the Qualified Optional Survivor Annuity payment form, you both must also waive that payment form in the same manner described above.

No less than 30 or more than 180 days before your Annuity Starting Date, you will receive a written explanation of the terms and conditions of the Qualified Joint and Survivor Annuity and Qualified Optional Survivor Annuity and the effect of the waiver of such annuities. (You may 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 may waive the Qualified Joint and Survivor Annuity or Qualified Optional Survivor Annuity or revoke a previous waiver at any time not more than 180 days before your Annuity Starting Date. The waiver period shall end 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 Qualified Optional Survivor Annuity and have obtained your spouse's written consent, you can elect to have your account balance paid in any of the other forms described on page 9. YOU MAY WISH TO CONSULT WITH YOUR PERSONAL FINANCIAL ADVISOR OR YOUR TAX CONSULTANT TO DECIDE WHICH FORM OF PAYMENT MAY BE MOST BENEFICIAL TO YOU AND YOUR SPOUSE. THE FUND OFFICE AND ITS STAFF CANNOT PROVIDE YOU WITH FINANCIAL PLANNING OR TAX ADVICE.

**H. Can I change my mind prior to my Annuity Starting Date if I have waived the Qualified Joint and Survivor Annuity or Qualified Optional Survivor Annuity?**

You and your spouse may elect to waive the Qualified Joint and Survivor Annuity and Qualified Optional Survivor Annuity or revoke a previous rejection at any time (not to exceed 180 days) prior to the Annuity Starting Date. You and your spouse will have the right to exercise this choice up to 30 days after being advised of the terms and conditions of the Qualified Joint and Survivor Annuity and Qualified Optional Survivor Annuity, but can waive the full 30 day period provided that the distribution does commence more than 7 days after the written explanation was provided.

**I. What if I die before retirement and have not withdrawn my Accumulated Share?**  
(Refer to Subsection 3.02(D) of the Plan)

Your Accumulated Share will be paid to your surviving spouse or designated Beneficiary (if applicable) in one of the payment forms described on page 9.

If you and your spouse have been married 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 designated 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 designated Beneficiary (who could be your spouse if so named).

**J. What happens if I withdraw the money in my Individual Account and then start working again?**  
(Refer to Section 2.01 of the Plan)

A new Individual Account will be established for you when you once again satisfy the requirements for participation as discussed in the Participation section on page 2.

**K. Does the Hawaii Annuity Trust Fund for Operating Engineers currently have a loan program?**

No. The Board of Trustees does not currently have a loan program.

## **V. VOLUNTARY EMPLOYEE CONTRIBUTIONS**

*(Refer to Section 3.07 of the Plan)*

**A. May I make personal contributions to the Hawaii Annuity Trust Fund in addition to the amounts contributed by my Employer?**

The Plan is not a 401(k) plan and is not permitted to accept any pre-tax wage deferrals from your paycheck.

**B. When can I receive the voluntary contributions made to my Individual Account?**

You may receive all or part of your voluntary contributions made to your Individual Account at any time. However, any portion of the investment earnings from your voluntary contributions may not be withdrawn until final distribution of your Individual Account. In addition, if you are married, your spouse must consent to the withdrawal of any voluntary contributions.

**C. How will the voluntary contributions in my Individual Account be paid out?**

You may receive payment of the voluntary contributions in your Individual Account in any one of the payment forms described on page 9. You must elect the same form of payment for all distributions from the Fund.

**D. May I make rollover contributions to the Hawaii Annuity Trust Fund?**

Yes. While the decision to make a rollover to the Hawaii Annuity Trust Fund is “voluntary,” rollovers are not treated in the same way as “voluntary contributions” from your Hawaii Operating Engineers Vacation and Holiday Pay Plan Account. Subject to the rule below, your ability to make a rollover to the Hawaii Annuity Trust Fund is not affected by the closure of the voluntary contribution program to contributions that have not already been elected.

You may make a rollover contribution to the Hawaii Annuity Trust Fund of all or any portion of the entire amount of an eligible rollover distribution, provided your 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.

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

### **A. How do I designate a Beneficiary for my Accumulated Share?**

*(Refer to Section 4.04 of the Plan)*

You may designate a Beneficiary to receive your Accumulated Share if you die prior to receiving a distribution of your Accumulated Share and are unmarried or have not been married throughout the year prior to your death. This requires that the Beneficiary be designated on a form provided by the Board of Trustees and filed with the Fund Office prior to your death. You may change your Beneficiary at any time in the same manner. However, if you are legally married and wish to designate someone other than your spouse as Beneficiary, you must obtain written spousal consent which is witnessed by a Notary Public or authorized Plan Representative. Spousal consent is required any time you wish to designate 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.

**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 designate a Beneficiary to receive your Individual Account to the extent it has not been previously assigned by a Qualified Domestic Relations Order. (For more information, see the section entitled “QUALIFIED DOMESTIC RELATIONS ORDERS (QDROs)” on page 15).

If you have no spouse and do not have a designated Beneficiary, your Accumulated Share will be distributed in the manner described in the section entitled “What happens if my Beneficiary dies before I do and I fail to designate another Beneficiary?” (see Question VI.C. on page 14). This may not be the manner in which you wish to have your Accumulated Share distributed

### **B. May I assign my Individual Account or any other right or benefit under the Hawaii Annuity Trust Fund?**

*(Refer to Section 4.06 of the Plan)*

Neither you, your spouse or any Beneficiary can assign any account, right or benefit under the Hawaii Annuity Trust Fund. However, your benefit will be subject to any Qualified Domestic Relations Order (QDRO) issued pursuant to a State Domestic Relations Law. (For more information, see the section entitled “QUALIFIED DOMESTIC RELATIONS ORDERS (QDRO)” on page 15). In addition, at the time of payment, your benefits will also be subject to the Internal Revenue Service provisions for garnishment of Individual Accounts for income tax purposes under the Internal Revenue Code.

**C. What happens if my Beneficiary dies before I do and I fail to designate another Beneficiary?**

*(Refer to Section 4.04 of the Plan)*

If there is no designated Beneficiary or no Beneficiary has survived you, payment of your Accumulated Share shall be made to classes of individuals in the following order:

- To your surviving spouse; or if none
- To your surviving children in equal shares; or if none
- To your surviving parents in equal share; or if none
- To your executor or administrator of your estate.

If there is no estate, no payment of any kind will be made.

## VII. QUALIFIED DOMESTIC RELATIONS ORDERS (QDROS)

### A. What is a “Qualified Domestic Relations Order”?

If you become divorced, your Accumulated Share may be divided as part of your marital settlement. Dividing your benefits with a former spouse requires a special court order called a Qualified Domestic Relations Order, or “QDRO”. It is recommended that you contact the Fund Office to obtain written information regarding the Annuity Plan’s QDRO Procedures. This information is furnished without charge.

A QDRO is a judgment, decree or order pursuant to state domestic relations law relating to child support, alimony, or marital property rights directing that all or part of your benefit be paid to an Alternate Payee. A QDRO must meet the requirements of the Retirement Equity Act as set forth in 26 USC §414(p) and 29 USC §1056(d).

- a. Any such order must be delivered to the Annuity Plan before payments can be made to an Alternate Payee, and the Annuity Plan must approve its form. 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, in this case, the Hawaii Annuity Trust Fund for Operating Engineers.
- b. 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;
  - Pay benefits in conflict with a previously issued QDRO; and
  - Begin payment of benefits to the Participant before the Participant is eligible for benefits.

**B. When can an Alternate Payee receive his or her share of your Accumulated Share?**  
*(Refer to Section 3.02(E) of the Plan)*

Upon receipt of a QDRO and subject to the Hawaii Annuity Trust Fund's application requirements, an Alternate Payee can receive payment of his or her share at any time, regardless of whether the Participant is eligible for payment or has applied for payment.



## VIII. TAXES

### **A. Do I have to pay tax on the money in my Individual Account?**

Your ongoing Accumulated Share based on amounts credited to your Individual Account for Employer Contributions and your share of investment income and interest are not considered taxable income to you until you actually receive the money. This is when any tax liabilities are determined.

### **B. Can the Fund Office assist me in determining my tax liabilities in connection with my Individual Account?**

No. While the Fund Office can provide general tax information, it is required to report certain tax information to the Internal Revenue Service and the State of Hawaii Department of Taxation and withhold amounts required by law or at your individual direction, its staff cannot provide individual tax advice of any kind.

The information on taxes contained in this booklet should be considered as being general in nature. You should consult with your own tax or financial advisor prior to applying to withdraw your Accumulated Share and electing its form of payment.

### **C. Does the form of payment affect my taxes?**

The form of payment you elect also affects the taxation of your Individual Account. For example, you may elect to roll over certain types of distributions (“eligible rollovers”) into an Individual Retirement Account (IRA) or other “eligible retirement plan.” Such rollovers are intended to postpone tax liability until distributed from the successor plan.

When you apply for the withdrawal of your Accumulated Share, you will be provided with general information concerning taxes and tax withholding.

### **D. Is money withheld from a distribution of my Accumulated Share?**

Depending upon the payment form and other factors, the Plan may be required to withhold monies from your distribution. In other cases, you may voluntarily request that amounts be withheld. Please note that the withholding, itself, is not a tax but is applied towards any taxes that you may owe as a result of receiving a distribution. Again, in cases involving voluntary withholding, the Fund Office cannot advise you as to how much to withhold.

Since you may owe taxes on the money you withdraw, the federal government requires that if you (or your surviving spouse or beneficiary) are receiving payment of your Accumulated Share in the form of what is called an “eligible rollover distribution,” 20% **must** be withheld for income tax purposes. Eligible rollovers include lump sum payments and may be “rolled over” into an IRA or other eligible retirement plan that is willing to accept the distribution, in which case the 20% mandatory withholding will not apply. You will be given information on

the 20% mandatory withholding requirement and the opportunity to elect or reject rollover treatment when you apply for benefits. (*Refer to Section 4.09 of the Plan*)

**E. Does my receipt of my Accumulated Share prior to attaining age 59 ½ affect the taxes that I may owe?**

Yes. If you receive a payment of your Accumulated Share before you reach age 59½ and you do not elect to rollover the distribution, 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.

Unless payment of your Accumulated Share is made under one of the circumstances shown below, payment of your Accumulated Share before you reach age 59½ may be subject to this premature distribution penalty tax:

- Payment made in the form of life annuity (including a Qualified Joint and Survivor Annuity or Qualified Optional Survivor Annuity) following separation from service;
- Payment made following separation from service in or after the year you reached age 55;
- Payment made due to your death or permanent and total disability, or to an Alternate Payee as decreed by a Qualified Domestic Relations Order; or
- Payment used to pay your medical expenses otherwise deductible under Internal Revenue Code Section 213.

In order to determine if this penalty tax applies to you, you should seek the advice of a tax professional.

**► IMPORTANT ◀**

When you withdraw your Individual Account, significant tax consequences may result from the way that payment is made to you. It is very important that you discuss with a competent tax advisor the manner in which you should take the money out of your Individual Account. Advice of this nature cannot be provided by the Fund Office. The Fund Office is required to report to the appropriate government tax agencies any payments to you, your spouse or your Beneficiary.

## **IX. APPLICATION AND APPEALS PROCEDURES**

### **A. What is the application procedure for payment of my Accumulated Share?**

*(Refer to Section 4.01 of the Plan)*

Your application for benefits must be made in writing on a form established by the Board of Trustees and must be filed with the Fund Office prior to the payment of any benefits.

Your claim will be considered filed when your application is received by the Fund Office, without regard to whether all information necessary to make a benefit determination accompanies your application. If all necessary information does not accompany your application, the Fund Office will notify you in writing of:

- The standards on which entitlement to benefits is based;
- Any unresolved issues that prevent a decision on the claim; and
- Any additional information needed to resolve those issues.

### **B. When and how is my application acted upon?**

*(Refer to Subsection 5.02(A) of the Plan)*

The initial determination of benefits will be made within a reasonable period of time but not longer than 90 calendar days after the Fund Office receives your application for benefits.

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 prior to the expiration of the 90 days of the circumstances requiring the extension of time and the date by which the 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 is not acted on within these time periods, you may proceed to the appeal procedures as if the claim had been denied.

### **C. How will I be notified if my claim is denied?**

*(Refer to Subsection 5.02(A) of the Plan)*

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

- The specific reason(s) for the denial;
- The specific reference to pertinent Plan provision(s) on which the denial is based;

- A description of any additional material or information necessary for you to perfect your claim and an explanation of why such material or information is necessary;
- A description of the Plan's review procedures and the time limits applicable to such procedures, including a statement of your rights to bring civil action under §502(a) of ERISA following an adverse benefit determination.

**D. What is the procedure to follow if my Application is denied?**

*(Refer to Subsections 5.02(B), (C) and (D) of the Plan)*

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

- Must be in writing;
- Must state in clear and concise terms the reason(s) for your disagreement with the decision of the Board of Trustees;
- May include documents, records, and other information related to the claim for benefits; and
- Must be filed by you or your authorized representative with the Fund Office within 60 days after you received notice of denial. Failure to file an appeal within this time limit will constitute 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 good cause.

Upon request, 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.

**E. How is my appeal reviewed?**

*(Refer to Subsections 5.02(E) and (F) of the Plan)*

A properly filed appeal will be reviewed by the Board of Trustees at its next regularly scheduled quarterly meeting. However, if the appeal is received within 30 days prior to such meeting, the appeal may be reviewed at the second quarterly meeting following the receipt of your appeal. If special circumstances require an extension of time, the Board of Trustees will render a decision at the third scheduled quarterly meeting following the receipt of your appeal. The Fund Office will notify you in writing before the beginning of the extension of the special circumstances and the date that the Board of Trustees will make its decision.

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 Board of Trustees will not give deference to the initial adverse benefit determination.

The Fund Office will send you written notification of the benefit determination on an appeal no later than 5 calendar days after the benefit determination is made. It will include the

reason(s) for the determination, including references to the specific Plan provisions on which the determination is based. The written notification will also include a statement that you are entitled to receive, upon request and free of charge, reasonable access to and copies of all documents, records and other information relevant to your claim for benefits.

The denial of a claim to which the right to review has been waived, or a decision of the Board of Trustees or its designated committee with respect to a petition for review, is final and binding upon all parties, subject only to any civil action you may bring under ERISA. Following issuance of the written decision of the Board of Trustees on an appeal, there is no further right of appeal to the Board of Trustees or right to arbitration.

**F. What if I fail to 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 benefits commence no later than your Required Beginning Date. (*Refer to Subsection 4.01(A) of the Plan*)

If an application is not received following the date an event occurs as described on page 6-8, your Individual Account will continue to be maintained by the Hawaii Annuity Trust Fund until an application is submitted by you or your Beneficiary (if you are deceased).

**G. What if I attain my Required Beginning Date but fail to apply for payment of my Accumulated Share?**

If you do not receive a distribution of your Accumulated Share by the April 1 following the later of (1) the calendar year in which you attain age 72, or (2) the calendar year in which you cease working and are retired, you may incur significant federal tax penalties. Therefore, it is very important that you keep the Fund Office informed of any changes in address/telephone number and file an application for payment of your Accumulated Share prior to that date.

## **X. RIGHT TO BENEFITS**

### **A. Could I lose some or all of the money in my Individual Account?**

Yes. The money in your Individual Account is not guaranteed. The money in your Individual Account could decrease under one or more of the following circumstances:

- The Hawaii Annuity Trust Fund experiences investment losses.
- Your share of Hawaii Annuity Trust Fund expenses exceeds your Contributions and investment earnings in a year.
- 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 the Plan*)
- All or a portion of your Individual Account is assigned by a QDRO to your former spouse, or for support of your children or other dependents. (For more information, see the section entitled “QUALIFIED DOMESTIC RELATIONS ORDERS (QDRO)” on page 15).

### **B. What will happen if the Hawaii Annuity Trust Fund is terminated?**

(*Refer to Section 6.02 of the Plan*)

There is no intent to terminate the Hawaii Annuity Trust Fund. Few multiemployer pension plans are ever terminated. However, future changes in the law or economic conditions may make it advisable to do so. If it is terminated, after payment of the Hawaii Annuity Trust Fund termination expenses, the balance of the Hawaii Annuity Trust Fund’s assets shall be distributed to the then Participants with each Participant receiving a share of the remaining assets in proportion to the ratio his/her Individual Account balance bears to the total of all the Participants’ Individual Account balances. None of the assets shall be returned to any Employer.

In the event a Participant cannot be located, the Board of Trustees will send a notice by registered mail to the Participant’s last known mailing address. If the Participant does not file an application for payment of his Individual Account within 90 days following the Board’s sending of the notice, the Participant’s Individual Account will be forfeited and redistributed among the remaining Individual Accounts in the Annuity Plan.

In the event the liquidation 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 shall have the option of paying all Individual Account balances to Participants over a period not to exceed 10 years to the extent permitted by the assets.

## **XI. AVAILABILITY OF PLAN DOCUMENTS**

### **A. Are Plan Documents available to Participants and Beneficiaries?**

Yes. Copies of applicable Collective Bargaining Agreements, the Trust Agreement, Plan Document (and Plan Amendments), statements of assets and liabilities and income and expenses of the Hawaii Annuity Trust Fund, and a full Annual Report (Form 5500) are available for inspection at the Fund Office during regular business hours and, upon written request, will be furnished by mail upon payment of reasonable charges. You should therefore find out what that charge will be before writing and asking for copies of these documents. A Summary of the full Annual Report will be sent to you annually without charge.

Further information and application forms can be obtained from the Fund Office, the Hawaii Fringe Benefits Service Center or one of the District Offices:

#### **FUND OFFICE**

Zenith American Solutions  
1141 Harbor Bay Parkway, Suite 100  
Alameda, California 94502  
(800) 251-5014

Pension/Annuity Department and Billing and Eligibility Department  
(800) 251-5014 or (510) 271-0222

#### **FRINGE BENEFITS SERVICE CENTER**

2181 Lauwiliwili Street,  
Kapolei, Hawaii 96707  
(808) 847-1289 or (800) 660-9126

#### **DISTRICT OFFICES**

##### **Oahu and Kauai**

2181 Lauwiliwili Street  
Kapolei, HI 96707  
(808) 847-1289

##### **Maui, Molokai and Lanai:**

Operating Engineers Local Union No. 3  
2145 Wells Street  
Suite 405  
Wailuku, HI 96793  
(808) 871-1193

**Hawaii:**

Operating Engineers Local Union No. 3  
99 Aupuni Street  
Suite 101  
Hilo, HI 96720  
808-935-8709



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

1. The name of the Plan is the Hawaii Annuity Trust Fund for Operating Engineers. It is administered and maintained by the Joint Board of Trustees consisting of individual Employee and Employer Trustees with equal voting power
2. The Board of Trustees is the Plan sponsor and Plan Administrator. This means that the Board of Trustees has the discretion to interpret the Rules and Regulations of the Plan and to determine the eligibility for benefits. Such decisions shall receive judicial deference to the extent that they do not constitute an abuse of discretion. The Board is also responsible for seeing that information regarding the Hawaii Annuity Trust Fund is reported to government agencies and disclosed to Hawaii Annuity Trust Fund participants and beneficiaries in accordance with the ERISA.

The Board of Trustees employs Zenith American Solutions to provide day-to-day administrative services to the Hawaii Annuity Trust Fund. The Fund Office is located as follows:

Board of Trustees  
Hawaii Annuity Trust Fund for Operating Engineers  
c/o Zenith American Solutions  
1141 Harbor Bay Parkway, Suite 100  
Alameda, California 94502  
(800) 251-5014

Pension/Annuity Department and Billing and Eligibility Department  
(800) 251-5014 or (510) 271-0222

3. The Fund Office will provide any Hawaii Annuity Trust Fund Participant or Beneficiary, upon written request, information as to whether a particular employer is contributing to this Fund with respect to the work of Participants in the Hawaii Annuity Trust Fund and if the employer is a contributing employer, the employer's address.
4. The Employer Identification Number (EIN) issued to the Board of Trustees by the Internal Revenue Service is 94-2959994. The Plan Number (PN) is 004.
5. The Hawaii Annuity Trust Fund is a defined contribution money purchase 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 provisions of that Act and the benefits of the Plan are not insured under Title IV of the Act.

This Plan provides retirement and termination benefits to eligible employees or, in the case of a deceased Participant, to his or her surviving spouse or Beneficiary in accordance with its rules and regulations.

6. The designated agent for service of legal process is:

FRINGE BENEFITS SERVICE CENTER  
2181 Lauwiliwili Street,  
Kapolei, Hawaii 96707  
(808) 847-1289 (800) 660-9126

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

7. The names, titles, and addresses of the Trustees are shown on page ii.
8. The procedure for applying for benefits is described on page 19; and the rules for appealing the denial of a benefit in whole or in part is set forth on pages 20-21 of this booklet.
9. The Plan is maintained in accordance with Collective Bargaining Agreements negotiated between various Individual Employers and Operating Engineers Local Union No. 3 of the International Union of Operating Engineers. These Collective Bargaining Agreements call for Individual Employer Contributions to be made to the Hawaii Annuity Trust Fund on a cents-per-hour basis. With the exception of voluntary employee contributions made from the Hawaii Operating Engineers Vacation and Holiday Pay Plan Accounts and eligible rollover distributions made from a qualified defined contribution plan within the jurisdiction of the Operating Engineers Local Union No. 3, no Employee contributions are permitted. Benefits are provided directly from the Hawaii Annuity Trust Fund's assets which are accumulated under the provisions of the Trust Agreement and held in custody by the Hawaii Annuity Trust Fund's contracted corporate co-trustee.
10. The Fiscal Year of the Hawaii Annuity Trust Fund is the twelve-month period beginning November 1 and ending the following October 31.
11. The Hawaii Annuity Trust Fund's requirements with respect to eligibility for participation are described on page 2 and in Plan Sections 1.08, 1.18 and 2.09 and the eligibility for benefits is set forth on pages 6-8 and in Plan Section 3.02.
12. The Board may amend, modify or terminate the Hawaii Annuity Trust Fund pursuant to its authority under Article 6 of the Rules and Regulations of the Hawaii Annuity Trust Fund. No amendment or modification may reduce any benefits which have been approved for payment prior to such amendments, so long as sufficient funds are available to provide such benefits.

Upon termination, the assets remaining, after providing for Hawaii Annuity Trust Fund expenses and for the payments of any Accumulated Share already approved, shall be distributed among the Hawaii Annuity Trust Fund Participants. In no event will the termination of the Hawaii Annuity Trust Fund result in a reversion of any assets to any Employer.

Every Employee, Annuitant or Beneficiary shall furnish, at the request of the Board, any information or proof reasonably required for the administration of the Hawaii Annuity Trust Fund or for the determination of any matter that the Board may legitimately have before it. Failure to furnish such information or proof promptly and in good faith shall be sufficient reason for the denial of benefits to such Employee or Beneficiary, or the suspension or discontinuance of benefits to such Annuitant. The falsity of any statement material to an application or the furnishing of fraudulent information or proof shall be sufficient reason for the denial, suspension or discontinuance of benefits under the Hawaii Annuity Trust Fund except to the extent that the benefits are non-forfeitable and, and in any such case, the Board shall have the right to recover any benefit payments made in reliance on such false statement or fraudulent information or proof.

## **STATEMENT OF ERISA RIGHTS**

As a Participant in the Hawaii Annuity Trust Fund for Operating Engineers, 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:

### **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 Benefit 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 62) 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 Plan benefit, the statement will tell you how many more years you have to work to get a right to an Annuity Plan benefit. 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.

### **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.

### **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.

### **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 the 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 <https://www.dol.gov/agencies/ebsa>.

**Rules and Regulations  
of the  
HAWAII ANNUITY TRUST FUND FOR  
OPERATING ENGINEERS  
September 1, 2022 Restatement  
(Incorporates Amendments to the November 1, 2014 Restatement)**

**Rules and Regulations  
of the  
HAWAII ANNUITY TRUST FUND  
FOR OPERATING ENGINEERS**

**September 1, 2022 Restatement**

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**Rules and Regulations  
of the  
HAWAII ANNUITY TRUST FUND  
FOR OPERATING ENGINEERS**

**September 1, 2022 Restatement  
(with subsequent Amendment No. 1)**

This document sets forth the Rules and Regulations of the Pension Plan as amended effective September 1, 2022, and constitutes an amendment, restatement and continuation of the Plan. This revised Pension Plan is intended to comply with the Employee Retirement Income Security Act of 1974 and with the requirements for tax qualification under the Internal Revenue Code and all regulations there under, and is to be interpreted and applied consistent with that intent.

**ARTICLE 1. DEFINITIONS**

Section 1.01. Annuitant. The term “Annuitant” as used herein shall mean an Employee who Retires and who receives a benefit from the Fund.

Section 1.02. Accumulated Share. The term “Accumulated Share” as used herein shall mean the amount payable from an Individual Account as defined and described in Section 3.01.

Section 1.03. Annuity Starting Date. The term “Annuity Starting Date” as used herein shall mean for a Participant 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” as used herein shall mean a person designated 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” as used herein shall mean those persons designated as Trustees pursuant to Article III of the Trust Agreement.

Section 1.06. Collective Bargaining Agreement. The term “Collective Bargaining Agreement” shall mean any agreement, oral or written, expressed or implied, entered into by the Union with any employer as such term is defined in the Labor-Management Relations Act, 1947, as Amended (26 U.S.C. 141 et seq.) covering wages, rates or pay, hours of labor or other conditions of employment or any of them 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 agreement provides for payment by an employer or employers into the Fund established by this Trust Agreement, and any extension or renewal of any said agreements, or any substitute for or successor to any such agreements which provides for the making of employer contributions to the Fund.

Section 1.07. Contribution. The term “Contribution” as used herein shall mean:

- (A) The payment made or required to be made to the Fund by an Individual Employer under the provisions of a Collective Bargaining Agreement or Subscribers Agreement; or
- (B) The funds transferred by an Employee from his Hawaii Operating Engineers Vacation and Holiday Pay Plan Account to his Individual Account.
- (C) Any Eligible Rollover Contributions made to the Fund in accordance with Section 4.10.

Section 1.08. Employee. The term “Employee” shall mean any employee whose work or work classification is covered by a Collective Bargaining Agreement.

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 1.09. Fiscal Year. The term “Fiscal Year” as used herein shall mean any period from November 1 through the following October 31.

Section 1.10. Fund. The term “Fund” or “Annuity Fund” as used herein shall mean the trust fund created by the Trust Agreement establishing the Hawaii Annuity Trust Fund for Operating Engineers.

Section 1.11. Highly Compensated Employee. Effective November 1, 1997, “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.
- (C) 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 Highly Compensated Employee will be made in accordance with Section 414(q) of the Internal Revenue Code and the regulations thereunder.

For purposes of this Section 1.11, “compensation” shall have the same meaning as that defined in Section 4.07(A)(2)(b).

Section 1.12. Individual Account. The term “Individual Account” as used herein shall mean the account established for each Employee, pursuant to Section 2.01 of the Plan.

Section 1.13. Individual Employer. The term “Individual Employer” shall mean any person or entity, who or which is now or hereafter may be required by any such Collective Bargaining Agreements to make payments to this Fund or who does in fact make one or more payments into this Fund. An Employer shall not be deemed an Individual 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.

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 Internal Revenue 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 Internal Revenue Code Section 414(m) and all other businesses aggregated with the Employer under Internal Revenue Code Section 414(o).

Section 1.14. Local Union. The term “Local Union” shall mean 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 (26 U.S.C. 141 et seq.).

Section 1.15. Market Value. The term “Market Value” as used herein shall mean the value of the assets at fair market value.

Section 1.16. Non-Bargained Employee. The term “Non-Bargained Employee” as used herein shall mean an Employee whose participation is not covered by a Collective Bargaining Agreement.

Section 1.17. Normal Retirement Age. The term “Normal Retirement Age” as used herein shall mean age 62.

Section 1.18. Participant. The term “Participant” as used herein shall mean any Employee for whom an Individual Account has been established, and any former Employee who is or may become eligible to receive a benefit of any type from the Fund; or the beneficiaries of an Employee or former Employee who may be or become eligible to receive any such benefit.

In no event however, shall the term “Participant” include a Highly Compensated Employee.

Section 1.19. Plan. The term “Plan” as used herein means the Annuity Plan established pursuant to the Collective Bargaining Agreement and the Trust Agreement and any modification, amendment, extension or renewal of said Plan. The Plan is a money purchase pension plan.

Section 1.20. 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.

Notwithstanding any provision in the Plan to the contrary, contributions and benefits with respect to qualified military service will be provided in accordance with §414(u) of the Internal Revenue Code. The cost for contributions attributable to periods of qualified military service shall be the liability of the Plan. Contributions allocated to an Employee’s Individual Account for qualified military service shall be based upon the Employee’s average hours of work during the 12-month period immediately preceding qualified military service or, if shorter, the period of employment immediately preceding the qualified military service.

Effective for deaths on and after January 1, 2007, if a Participant dies while performing Qualified Military Service (as defined in Code §414(u)(5)), the deceased Participant’s beneficiaries shall be entitled to any additional benefits (other than contributions relating to the period of Qualified Military Service) that would have been provided under the Plan if such Participant had resumed Covered Employment and then terminated Covered 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.

Section 1.21. Required Beginning Date. The term “Required Beginning Date” with respect to a Participant who attained age 70½ before 1997, 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 but before 2020, the “Required Beginning Date” means the April 1 following the calendar year in which the Participant attains age 70½. With respect to a Participant who is a 5% owner and attains age 70 ½ after 2019, the “Required Beginning Date” means the April 1 following the calendar year in which the Participant attains age 72.

With respect to a Participant who is not a 5% owner and attains age 70 ½ after 1996 but before 2020, the “Required Beginning Date” means the April 1 following the calendar year in which the Participant attains age 70 ½ or if later, the calendar year in which the Participant stops working in Covered Employment, whichever the Participant chooses.

With respect to a Participant who is not a 5% owner and attains age 70 ½ after 2019, the “Required Beginning Date” means the April 1 following the calendar year in which the Participant attains age 72 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 attainment of age 72.

Section 1.22. Retires. The terms “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 1.23. Termination Date. The term “Termination Date” as used herein shall mean the date actual payment is made other than October 31.

Section 1.24. Trust Agreement. The term “Trust Agreement” as used herein means the Trust Agreement entered into as of November 1, 1983, establishing the Hawaii Annuity Trust Fund for Operating Engineers, and any modification, amendment, extension or renewal thereof.

Section 1.25. Valuation Date. The term “Valuation Date” as used herein shall mean January 31, April 30, July 31 or October 31 each of which is the last business day of each three-month fiscal quarter within the Fund’s November 1, through October 31 Fiscal Year. Prior to November 1, 2009, Valuation Date shall mean October 31.

## **ARTICLE 2. INDIVIDUAL ACCOUNTS**

Section 2.01. Establishment of Accounts. As of each Valuation Date following the adoption of this Plan, an Individual Account consisting of the amount of Contributions made or required to be made with respect to an Employee's work shall be established for him, unless an Individual Account has already been established.

An Employee for whom Contributions are required to be made on his behalf pursuant to a Collective Bargaining Agreement or otherwise will be full and immediately vested upon becoming a Participant in the Plan as provided in Section 1.18.

Section 2.02. Investment Income Factor. The Investment Income Factor shall be determined as follows:

- (A) Determine the total investment income for the fiscal quarter ending with the Valuation Date, net of any investment related expenses, minus the amount of Contributions determined by the Trustees to be delinquent and uncollectible, and minus Contributions required to be made in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §4301 et seq., as amended, and Section 414(u) of the Internal Revenue Code, as amended.
- (B) For the first Valuation Date after the inception of the Fund, determine the total Contributions required to be made during the Fiscal Year.
- (C) For the second and subsequent Valuation Dates prior to November 1, 1988, determine the sum of the Individual Account balance on the preceding Valuation Date (net of any outstanding loan amounts on that date and any new loans granted during the current Fiscal Year) for those accounts that were in existence on the preceding Valuation Date and remain in existence on the current Valuation Date.
- (D) Beginning with Valuation Dates after November 1, 1988 and prior to November 1, 2009, determine the sum of the Individual Account balance as of the preceding Valuation Date (net of any outstanding loan amounts on that date) adjusted according to the following procedure:
  - (1) Add the total amount of outstanding loans as of the preceding Valuation Date; and
  - (2) Subtract the average of all outstanding monthly loan balances for the current Fiscal Year.
- (E) Beginning with Valuation Dates after November 1, 2009, determine the sum of the Individual Account balance as of the preceding Valuation Date (net of any outstanding loan amounts on that date) adjusted according to the following procedure:
  - (1) Add the total amount of outstanding loans as of the preceding Valuation Date; and
  - (2) Subtract the average of all outstanding monthly loan balances for the current fiscal quarter.

- (F) For the first Valuation Date, divide (A) by (B). For the second and subsequent Valuation Dates, divide (A) by (C), (D) or (E) as appropriate to the Fiscal Year or fiscal quarter. The result is the Investment Income Factor.

Section 2.03. Allocation of Investment Income to Individual Accounts. The investment income to be allocated to the Employee's Individual Account for the Fiscal Year or fiscal quarter as appropriate is obtained as follows:

- (A) For the first Valuation Date after the inception of the Fund, multiply the Investment Income Factor by the total Contributions required to be made during the Fiscal Year.
- (B) For the second and subsequent Valuation Dates prior to November 1, 1988, multiply the Investment Income Factor by the Individual Account balance on the preceding Valuation Date (net of any outstanding loan amounts on that date and any new loans granted during the current Fiscal Year).
- (C) Beginning with Valuation Dates after November 1, 1988 and prior to November 1, 2009, multiply the Investment Income Factor by the Individual Account balance on the preceding Valuation Date (net of any outstanding loan amount on that date) adjusted according to the following procedure:
- (1) Add the amount of the Employee's outstanding loan balance as of the preceding Valuation Date; and
  - (2) Subtract the Employee's average outstanding monthly loan balance for the current Fiscal Year.
- (D) Beginning with Valuation Dates after November 1, 2009, multiply the Investment Income Factor by the Individual Account balance on the preceding Valuation Date (net of any outstanding loan amount on that date) adjusted according to the following procedure:
- (1) Add the amount of the Employee's outstanding loan balance as of the preceding Valuation Date; and
  - (2) Subtract the Employee's average outstanding monthly loan balance for the current fiscal quarter.

Section 2.04. Individual Account Expense Charge. The Individual Account Expense Charge shall be determined as follows:

- (A) Determine the total of all operating expenses incurred by the Fund during the Fiscal Year or fiscal quarter as appropriate, including contributions required to be made in accordance with USERRA and §414(u) of the Internal Revenue Code. It excludes all investment related expenses.
- (B) For the first Valuation Date after the inception of the Fund, determine the number of accounts for which Contributions were required to be made during the year.
- (C) For the second and subsequent Valuation Dates, determine the number of accounts that were in existence on the preceding Valuation Date and remain in existence for the current Valuation Date.

- (D) For the first Valuation Date, divide (A) by (B). For the second and subsequent Valuation Dates, divide (A) by (C). The result is the Individual Account Expense Charge for the Fiscal Year or fiscal quarter as appropriate. The Valuation Dates after November 1, 1988, in no event shall the Individual Account Expense Charge exceed the investment income amount determined in Section 2.03 above.

Section 2.05. Amount of Individual Account. The amount in an Individual Account as of a Valuation Date is determined as follows:

- (A) Take the Individual Account balance on the preceding the Valuation Date (net of any outstanding loan amount).
- (B) Add in the Contributions required to be made to the Employee's Individual Account for the Fiscal Year or fiscal quarter as appropriate.
- (C) Add in the investment income allocated to the Employee's Individual Account for the Fiscal Year or fiscal quarter as appropriate.
- (D) Subtract the Individual Account Expense Charge for the Fiscal Year or fiscal quarter as appropriate.
- (E) Subtract any new loans granted to the Employee.
- (F) Add any loan interest and principal payments. For this purpose, the interest portion of any loan repayment to be credited to the Individual Account will be 1.25%

Section 2.06. Termination of Account. An Individual Account shall be considered terminated in the month in which payment of the Accumulated Share is made, or commenced if on a monthly basis.

Section 2.07. Limitation of Accounts. The Board may, at any time, uniformly reduce the amount in each Individual Account so that in no event on any Valuation Date shall the total amounts in all Individual Accounts plus amounts established for expenses and reserves at that time, exceed the Market Value of the total net assets of the Fund and if such an event should occur then all existing Individual Accounts shall automatically be proportionately reduced so that the total of all Individual Accounts plus amounts established for expenses and reserves is not more than the total net assets.

Section 2.08. Restriction on Vesting. The fact that Individual Accounts are established and valued as of each Valuation Date shall 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 herein provided. Subject to such terms, an Employee's right to the value of the assets in his Individual Account is non-forfeitable from the time that such Individual Account is established.

Section 2.09. Annual Statements. As soon as practicable after the close of each Quarterly Valuation Date, each Participant who has an Individual Account shall receive a statement reflecting the balance of his Individual Account as of each Valuation Date.



### **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, shall be the Employee's Accumulated Share determined as of the Annuity Starting Date, as follows:
- (1) Take the Employee's Individual Account balance (inclusive of any outstanding loan amount) as of the last preceding Valuation Date.
  - (2) Subtract the amount of any outstanding loan as of the preceding Valuation Date.
  - (3) Subtract any new loans granted to the Employee.
  - (4) Add all Contributions required to be made with respect to the work of the Employee.
  - (5) Add any loan interest and principal payments.
  - (6) The resultant total of (1) through (5) shall be the Employee's Accumulated Share.
- (B) For the purpose of determining the Accumulated Share pursuant to paragraph (A) of this Section, the happening of the event calling for a payment shall be deemed to be the month for which payment is finally made, provided an application was previously 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 Accumulated Share but no later than his Required Beginning Date, in which case, the happening of an event calling for a payment pursuant to paragraph (A) of this Section 3.01 shall be 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 Individual Account, if any, shall be paid to the Employee in accordance with Section 3.04 of the Plan. Retirement by an Employee shall be 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;
    - (i) an Employee defined in Section 1.08 had less than 300 hours of work in the building and construction industry in the 24 months immediately preceding the Employee's application; or

- (ii) any person who is no longer an Employee as defined in Section 1.08 because he has moved to a position that is not covered by a Collective Bargaining Agreement with a Contributing Employer; or
- (iii) cessation of an Employer's obligation to submit fringe contributions on behalf of an Employee; or

However, in no event will any of the provisions described above result in an in-service distribution of the Participant's Individual Account prior to his attainment of his age 62 Normal Retirement Age.

- (3) The date upon which an Employee ceases to be entitled to receive unemployment benefits from the State of Hawaii or another state in the United States of America; or
  - (4) Entitlement to a Social Security Disability Benefit; or
  - (5) Receipt of a pension from the Pension Trust Fund for Operating Engineers; or
  - (6) Attainment of his Required Beginning Date; or
  - (7) Attainment of age 55, and the Employee's most recent employment was with an Individual Employer that contributed only to this Fund, and the Employee has withdrawn completely and refrained from any employment in the building and construction industry.
- (B) A Participant who normally does not reside within the jurisdiction of this Plan, but who performs work for an Individual Employer in the jurisdiction of this Plan on a temporary assignment for a specified period of time may, upon request, receive a distribution of his Individual Account following cessation of such employment. Such distribution shall not be permitted under the following circumstances:
- (1) The individual has previously requested and received payment of his Individual Account under the provisions of this Subsection (B); and
  - (2) Contributions made with respect to an individual's work have been received within the six-month period prior to such request.

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

- (C) On and after May 1, 1998, a Participant whose employment with an Individual Employer in the jurisdiction of this Plan is followed by employment with an individual employer in the jurisdiction of the Operating Engineers Annuity Plan may, upon request following cessation of the employment in the jurisdiction of this Plan, receive payment of his Individual Account in the form of a rollover distribution to the Operating Engineers Annuity Plan or any other qualified retirement plan that accepts rollovers. Such distribution shall be subject to the following requirements:

- (1) The individual becomes employed in the jurisdiction of the Operating Engineers Annuity Plan within six calendar months after the cessation of employment in the jurisdiction of the Hawaii Annuity Trust Fund for Operating Engineers.
- (2) The individual has not previously requested and received payment of his Individual Account under the provisions of this Subsection (C); and
- (3) Contributions made with respect to the individual's work have been received within the six-month period prior to such request.

In order to receive payment of his Individual Account under this Subsection (C), the individual must provide such proof as the Board may require that the employment with an Individual Employer in the jurisdiction of this Plan has terminated and there is no expectation of residing or obtaining additional work for Individual Employers in the jurisdiction of the Plan.

- (D) In the event that a distribution shall be made as a result of the Participant's death prior to his Retirement, distribution of the Participant's Accumulated Share shall be available to the surviving legal spouse (if the Employee and spouse were married throughout the year ending on the date of death) on the same terms as are set forth in Section 3.03, subject to the provisions of the Retirement Equity Act of 1984.
- (E) If there is no Surviving Spouse, or if the Employee and his or her Surviving Spouse had not been married to each other through the year ending on the date of death, a distribution pursuant to subsection (D) above may be made to the Employee's designated beneficiary, subject to the provisions of the Retirement Equity Act of 1984. However, any distribution to a designated Beneficiary other than the Surviving Spouse of the Employee, an individual not more than 10 years younger than the Employee, the minor child of the Employee, or a chronically ill or disabled Beneficiary must be distributed no later than the end of the 10<sup>th</sup> calendar year following the death of the Employee. Accordingly, such designated Beneficiary may not elect a distribution in the form of an annuity under Sections 3.03(A)(1) or (3).
- (F) Upon application by a 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.
- (G) The Board may require such documentary proof or other evidence as it deems necessary or desirable to implement this Section.

### Section 3.03. Payment Options.

- (A) A Participant may, at least 30 days prior to the time when a distribution shall be made, request the Trustees, pay his 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 Trustees 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 paragraph (B) below, the Trustees shall arrange for a nontransferable annuity contract purchased from a licensed insurance company providing monthly annuity payments over the life of the Participant.

- (B) Notwithstanding Subsection (A) above, if Participant is married on the Annuity Starting Date, the Participant shall receive his accumulated share in the form of a Qualified Joint and Survivor Annuity unless the Participant has filed with the Trustees, in writing, a timely rejection of that form of annuity subject to all of the conditions of this Subsection 3.03(B). No rejection shall be effective unless the legal spouse of the Participant has consented in writing to such rejection, and the rejection acknowledges the effect thereof, and such rejection witnessed by an authorized Fund Representative or Notary Public. No consent shall be required if it has been established to the satisfaction of the Trustees that there is no legal spouse or the spouse cannot be located, or if such consent cannot be obtained because of such other circumstances as the Secretary of the Treasury may by regulations prescribe. In addition, no consent shall be required if the Participant elects a Qualified Optional Survivor Annuity in lieu of the Qualified Joint and Survivor Annuity.

The Board will provide to the Participant, no less than 30 days and no more than 180 days before the Annuity Starting Date (and consistent with Treasury regulations), a written explanation of:

- (1) the terms and conditions of the Qualified Joint and Survivor Annuity and the Qualified Optional Survivor Annuity;
- (2) the Participant's right to make, and the effect of a rejection of the Qualified Joint and Survivor Annuity and Qualified Optional Survivor Annuity;
- (3) the right of his legal spouse, and the right of the Participant to revoke the rejection any number of times within the election period – ending on the later of the Annuity Starting Date or 30<sup>th</sup> day after the date that the written explanation is provided – and the effect of that revocation(s);
- (4) the right of the Participant (with any applicable spousal consent) to 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;
- (5) the relative values of the various optional forms of benefit under the Plan; and
- (6) the right to defer any distribution and the consequences of failing to defer distribution of benefits including a description of the investment options available under the Plan (including fees) if the commencement of distributions is deferred.

***Qualified Joint and Survivor Annuity.*** A Qualified Joint and Survivor Annuity shall be an annuity payable for the life of the Participant with a survivor annuity continuing for the life

of the legal spouse which shall be at least one-half (50%) of the amount of the annuity payable during the joint lives of the Participant and his legal spouse to whom he was married on his Annuity Starting Date.

***Qualified Optional Survivor Annuity.*** A Qualified Optional Survivor Annuity shall be an annuity payable for the life of the Participant with a survivor annuity continuing for the life of the legal spouse which shall be at least three-quarters (75%) of the amount of the annuity payable during the joint lives of the Participant and his legal spouse to whom he was married on his Annuity Starting Date.

- (C) If Retirement is established under Section 3.02(A)(3), an Employee's Accumulated Share shall be distributed as follows:
- (1) 50% of the balance in an Employee's Individual Account on the first day of the month following the month he ceases to be entitled to receive an unemployment benefit in any State in the United States of America.
  - (2) 50% of the balance in an Employee's Individual Account on the first day of the third month after he ceases to be entitled to receive an unemployment benefit in any State in the United States of America.
  - (3) 100% of the balance in an Employee's Individual Account on the first day of the sixth month after he ceases to be entitled to receive an unemployment benefit in any State in the United States of America.

Section 3.04. Lump-Sum Payment. Notwithstanding anything herein to the contrary, if an Accumulated Share is payable which amounts to \$5,000 or less, then such Accumulated Share shall be paid only on a lump-sum basis and the provisions of Section 3.01(C) shall not be applicable.

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 (pursuant to Section 3.01(C)) of his Accumulated Share is not received within three months from the date of such Retirement, the Employee's Individual Account shall continue to be maintained by the Fund in accordance with Article 2 until such time as the Participant or his Beneficiary (if he is deceased) files an application for such benefits in writing in a form and manner prescribed by the Board.

Section 3.06. Terminated Loan Program. The following provisions shall apply only to loans granted prior to January 1, 1991, and which remain outstanding after that date. The provisions of this Section shall otherwise be terminated effective January 1, 1991.

- (A) A Participant who has had an Individual Account for five years or more may apply to the Board for a loan from his Individual Account if, in the sole and absolute discretion of the Board, a financial Hardship exists. Such loan if granted shall not be for less than \$3,000, and shall not exceed the lesser of \$50,000 or 50% of the amount in the Participant's Individual Account.
- (B) For purposes of this Section 3.06, the Hardship of a Participant means an immediate and heavy financial need of the Participant caused as a result of:
- (1) natural catastrophe,

- (2) need for down payment on principle residence,
- (3) need to pay tuition or other costs of post-secondary education of spouse or dependent,
- (4) lengthy unemployment not caused by strike or lockout,
- (5) medical costs from illness of spouse or dependent,
- (6) other circumstances as designated under applicable laws and approved by the Trustees.

The Board shall be the sole and absolute judge of whether or not a financial Hardship exists, and if one does exist, whether it is of such severity as to require the granting of a loan from this Fund, and its judgment in this connection shall be final and binding on all parties.

- (C) The loan when made shall bear simple interest on the outstanding balance thereof, 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. The rate of interest to be charged on loans shall be the prime rate at the time the loan is funded, as stated in the Wall Street Journal, plus 2%, provided such rate constitutes a reasonable rate of interest, otherwise such reasonable rate of interest shall be used. This rate is fixed for the term of the loan.
- (D) A loan fee of \$30.00 for processing the loan will be charged. The fee will be subtracted from the loan proceeds check. In addition, 3 percentage points of the loan interest rate shall be charged to the Participant to cover administration.
- (E) A late charge equal to 20% of the monthly outstanding interest or \$5.00, whichever is greater, shall be assessed on any and all installments received eleven or more days following the date such installment was due. Such late charge shall continue to be assessed per installment, per month, until the delinquent payment, or payments, are received by the Plan.
- (F) Only one loan may be outstanding at any one time and only one loan will be approved in any twelve-month period.
- (G) If a Participant is more than 120 days delinquent on any single installment payment, all remaining installment payments under the promissory note shall accelerate and become immediately due and payable. The Fund will declare a partial distribution to the Participant in the amount which is unpaid and report such distribution to the Internal Revenue Service and the State of Hawaii Department of Taxation as income to the Participant which is subject to income tax and applicable penalties.

Nothing hereunder shall be deemed to preclude the Board, in its discretion, from availing itself of any other legal remedy to effectuate payment in full of the loan and accrued interest.

- (H) Loans shall not participate in Valuations of Individual Accounts but interest payments on such loans in excess of the 3% for administration shall be credited to the Individual Account.

- (I) An application by a married Participant for a loan under this Section 3.06 shall not be considered unless the Participant's legal spouse consents to such loan request on a form and in a manner approved by the Board. Such consent shall be provided in a manner consistent with the provisions of Section 3.03(B), except that the 30- and 90-day election periods applicable to the Participant's Annuity Starting Date shall be determined instead with respect to the date that the loan is secured.
- (J) The Board may adopt and amend rules from time to time to properly administer Participant loans under this Section 3.06.

Section 3.07. Voluntary Employee Contributions. An Employee as defined in Section 1.08 may elect to make voluntary contributions to the Plan subject to the following:

- (A) An Employee may elect to commence or cease making contributions on each November 1 prior to November 1, 2012. Effective November 1, 2012, no new election by an Employee to commence making voluntary contributions will be accepted by the Plan. An Employee's elections made prior to November 1, 2012 to commence making contributions will remain in effect until such November 1 that the Employee elects to cease making contributions. Such Employee who elects on or after November 1, 2012 to cease making contributions shall not be permitted at a later date to again elect to make contributions.
- (B) Voluntary contributions shall only be made from an Employee's Hawaii Operating Engineers Vacation and Holiday Plan Account in an amount equal to the contributions actually made to such Account.
- (C) In no event shall voluntary contributions exceed ten percent (10%) of an Employee's annual compensation.
- (D) All contributions shall be non-forfeitable at all times.
- (E) An Employee may withdraw all or part of his voluntary contributions at any time. Any portion of the investment earnings from these contributions may not be withdrawn until final distribution of the Employee's Individual Account.

The Board shall maintain separate accounting with respect to an Employee's voluntary contributions. However, such contributions shall be aggregated with all other Contributions for purposes of valuation of Individual Accounts as described in Section 2.02.

Section 3.08. Temporary Loan Provisions for Financial Hardship.

The Board originally adopted the following temporary loan provisions to apply until October 1, 2010, unless extended in the form of a written resolution or other documented action by the Board. Subsequently, the following extensions were adopted by the Board:

- At its September 28, 2010 meeting, the Board of Trustees extended the loan provisions contained herein until October 1, 2011.

- At its October 24, 2011 meeting, the Board of Trustees extended the loan provisions contained herein until April 1, 2012.
  - At its March 20, 2012 meeting, the Board of Trustees extended the loan provisions contained herein until October 1, 2012.
- (A) A Participant may apply to the Board for a loan from his 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:
- (1) The Participant has had an Individual Account for five years or more; and
  - (2) The Participant has no other loans from the Plan outstanding or is delinquent in any obligation to the Plan; and
  - (3) The Participant has worked less than 161 hours in any capacity, not limited to work for Individual Employers, during the three-month period immediately prior to loan application. 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 three months prior to loan application.
- (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 demonstrates 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 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, and only after other assets reasonably available to the Participant have been exhausted including those of the Participant's spouse.
  - (4) An application by a married Participant for a loan under this Section 3.08 shall be submitted together with a written consent from the Participant's legal spouse on a form and in a manner approved by the Board. Such consent must be provided in a manner consistent with the provisions of Section 3.03(B), except that the 30- and 90-day periods applicable to the Participant's Annuity Starting Date shall instead be determined with respect to the date that the loan is secured.
- 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 legal spouse, because the legal spouse cannot be located, or because of any other circumstances as the Secretary of the Treasury may be regulations prescribe.
- (C) Any loan under this provision must also meet the following requirements:



- (1) It must be repaid within three years from the date of making of the loan, which is the same date that the promissory note for the loan is signed by the Participant; 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 throughout the term of the loan will be 4.25%.
- (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 making of the loan.
- (F) A late charge equal to twenty percent (20%) of the monthly outstanding interest or \$5.00, whichever is greater, will be assessed on each and every installment received eleven (11) or more days following the date the installment was due. This late charge will continue to be assessed each month on the unpaid delinquent amounts until all of the delinquent amounts are received by the Plan.

If a Participant has not paid an installment more than 120 days after the due date, the Participant shall be in default status for the entire unpaid balance of the loan. The Fund will declare a distribution to the Participant for the unpaid balance and the Fund shall report such distribution to the Internal Revenue Service and the State of Hawaii Department of Taxation as income to the Participant which is subject to income tax and applicable penalties.

Nothing hereunder shall be deemed to preclude the Board, in its discretion, from availing itself of any other legal remedy to effectuate payment in full of the loan and accrued interest.

## **ARTICLE 4. GENERAL PROVISIONS**

### Section 4.01. Benefit Payments Generally.

- (A) As a condition to payment of any benefit, an application for such benefit must be made in writing in a form and manner prescribed by the Board. No benefits shall 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 such benefit is not made in writing in a form and manner prescribed by the Board, benefits shall commence as provided in Section 3.03.(A).

- (B) An Employee entitled to payment of his Accumulated Share shall receive benefit payments payable commencing on the Annuity Starting Date.
- (C) Unless an Employee elects otherwise, benefits shall begin no later than the 60<sup>th</sup> day after the later of the close of the Fiscal year in which:
- (1) the Employee attains normal retirement age; or
  - (2) the Employee Retires as described in Section 3.02.

An Employee may elect in writing to receive benefits first payable for a later month, provided that no such 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 legal spouse, the payment of any benefits under the Plan that become payable on account of the Employee's death shall begin no later than one year from the date of such death, and shall be distributed in accordance with Section 3.03. If the Beneficiary is the Employee's legal spouse, payment of any Plan benefits shall commence not later than the date of the Employee's Required Beginning Date.

Section 4.02. Proof Furnished; Penalties for Fraud. Every Employee, Annuitant or Beneficiary shall 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 such information or proof promptly and in good faith shall be sufficient reason for the denial of benefits to such Employee or Beneficiary, or the suspension or discontinuance of benefits to such Annuitant. The falsity of any statement material to an application or the furnishing of fraudulent information or proof shall be 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 any case, the Board shall have the right to recover any benefit payments made in reliance on such false statement or fraudulent information or proof.

Section 4.03. Powers of the Board. The Board shall be the sole judges 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 shall be final and binding on all parties or persons affected thereby including

Employees, Individual Employers, the Union, Annuitants and the Beneficiaries subject only to such judicial review as may be in harmony with federal labor policy.

Section 4.04. Designation of Beneficiary. An Employee may designate a Beneficiary in a form provided by the Board and delivered to the Board before death. An Employee may change his Beneficiary (without the consent of the Beneficiary) in the same manner. Payment of any extended or other benefit due as the result of the death of such an Employee shall be made to the Beneficiary. If no Beneficiary has been designated or no Beneficiary has survived the Employee, payment shall be made to the deceased Employee's surviving lawful spouse, or if none, to his surviving children in equal shares, or if none, to his surviving parent or parents in equal share, or if none, to his executor or administrator. If there is no estate of the Participant, no payment of any kind will be made.

Notwithstanding the foregoing, a married Participant's designation of a Beneficiary who is not the Participant's legal spouse, shall be subject to the requirement of spousal consent as set forth in Section 2.05c. of ERISA.

A Participant's designation of his Spouse as Beneficiary is automatically revoked upon entry of a final decree of dissolution of marriage, unless a qualified domestic relations order provided otherwise.

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

Section 4.06. Non-Assignment of Benefits. Except to the extent otherwise specifically provided in this Plan, each Participant or Beneficiary under the Annuity Plan is hereby restrained from selling, transferring, anticipating, assigning, alienating, hypothecating or otherwise disposing of his annuity, prospective annuity, individual account, accumulated share or any other right or interest under the Plan, and the Board of Trustees shall not recognize, or be required to recognize, any such sale, transfer, anticipation, assignment, alienation, hypothecation or other disposition. Any such annuity, prospective annuity, individual account, accumulated share, right or interest shall not be subject in any manner to voluntary transfer or transfer by operation of law or otherwise, and shall 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; provided that in the event that through mistake or any other circumstance, a Participant 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 of Trustees may set off, recoup and recover the amount of such overpayment, excess credit or obligation from benefits accrued or thereafter accruing to such Participant or his Beneficiary, or Beneficiaries and not yet distributed. The rights of a spouse of any Participant shall be limited to a share of the annuity actually received by the Participant, after such receipt, and to rights as the Beneficiary of a Participant or other rights specifically provided in the Annuity Plan, and no annuity, prospective annuity, individual account, accumulated share, right or interest of a Participant shall be subject to

any order, decree, execution or other legal or equitable process or proceeding for the benefit of such spouse directed to the Fund.

Notwithstanding the foregoing, benefits shall be paid in accordance with the applicable requirements of any qualified domestic relations order as defined by Section 2.06(d)(3) of ERISA.

Section 4.07. Limitations on Annual Allocations under Section 415

(A) In addition to any other limitations set forth in the Plan and notwithstanding any other provisions of the Plan, effective for Limitation Years beginning on and after January 1, 2008, contributions and other amounts (“annual additions”) under the Plan shall be limited in accordance with section 415 of the Code and the Treasury Regulations thereunder, in accordance with this Section. This Section 4.07 is intended to incorporate the requirements of section 415 of the Code by reference except as otherwise specified herein.

(B) Definitions.

For purposes of this Section 4.07, the following terms shall have the following meanings.

(1) Compensation.

For Limitation Years beginning on or after July 1, 2007 for all purposes under the Plan, including this Section 4.07, “Compensation” means remuneration as defined in Treasury Regulation § 1.415(c)-2(d)(4).

Compensation shall also be subject to the following rules:

- (a) Compensation must be paid within the Limitation Year, and paid or treated as paid before Severance from Employment in accordance with the general timing rule of Treasury Regulation § 1.415(c)-2(e)(1) and in accordance with §1.415(c)-2(e)(2).
- (b) 415 Compensation must include amounts paid by the later of 2½ months after Severance from Employment or the end of the Limitation Year that includes the Severance from Employment date in accordance with §1.415(c)-2(e)(3)(i). Such post-severance compensation includes regular pay as defined in §1.415(c)-2(e)(3)(ii), leave cash outs and deferred compensation as defined in §1.415(c)-2(e)(3)(iii), salary continuation payments for military service and disabled participants in accordance with §1.415(c)-2(e)(4), deemed section 125 compensation as defined in §1.415(c)-2(g)(6), deemed compensation for periods of permanent and total disability in accordance with §1.415(c)-2(g)(4), but not other post-severance payments as defined in §1.415(c)-2(e)(3)(iv).
- (c) 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.

- (d) Military Differential Wages. Effective for years beginning after December 31, 2008, Compensation shall include military differential wage payments (as defined in section 3401(h) of the Code).

- (2) Limitation Year.

“Limitation Year” means the calendar year.

- (3) Severance from Employment.

“Severance from Employment” has occurred when a Participant is no longer an employee of any Employer maintaining the Plan.

- (C) Limit on Annual Additions.

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”). If a Participant’s total annual additions for a Limitation Year beginning on or after January 1, 2008 would exceed the maximum annual addition for that Limitation Year, annual additions with respect to the Participant shall be frozen or reduced so that the annual additions with respect to the Participant do not exceed the maximum annual addition for that Limitation Year.

- (D) Aggregation of Plans.

- (1) For purposes of applying the limits of this Section 4.07, if a Participant also participates in another tax-qualified defined contribution plan of the Employer that is not a multiemployer plan, only the annual additions under this Plan that are provided by the Employer are aggregated with the annual additions under the other plan.
- (2) In the event that the aggregate annual addition in any Plan Year by a Participant exceeds the limits under section 415 of the Code and the Treasury Regulations thereunder as a result of the mandatory aggregation of the annual additions under this Plan with the Annual additions under another plan maintained by the Employer, the annual additions under such other plan shall be reduced to the extent necessary to comply with section 415 of the Code and the Treasury Regulations thereunder.

- (E) General.

- (1) To the extent that a Participant’s annual additions are subject to provisions of section 415 of the Code and the Treasury Regulations thereunder that have not been set forth in the Plan, such provisions are hereby incorporated by reference into this Plan and for all purposes shall be deemed a part of the Plan.

- (2) This Section 4.07 is intended to satisfy the requirements imposed by section 415 of the Code and the Treasury Regulations thereunder and shall be construed in a manner that will effectuate this intent. This Section 4.07 shall not be construed in a manner that would impose limitations that are more stringent than those required by section 415 of the Code and the Treasury Regulations thereunder.
- (3) If and to the extent that the rules set forth in this Section 4.07 are no longer required for qualification of the Plan under section 401(a) and related provisions of the Code and the Treasury Regulations thereunder, they shall cease to apply without the necessity of an amendment to the Plan.

(F) Interpretation or Definition of Other Terms

The terms used in this Section 4.07 that are not otherwise expressly defined for this Section, shall be defined as provided in the Plan, or if not defined in the Plan, shall be defined interpreted and applied for purposes of this Section 4.07 as prescribed in section 415 of the Code and the Treasury Regulations thereunder.

Section 4.08. Merger or Consolidation. In the event of any merger or consolidation with, or transfer of assets or liabilities to, any other plan, the amount of benefit which an Employee would receive upon termination of the Plan immediately after such merger, consolidation, or transfer shall be no 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 4.09, the following terms shall have the following meanings:

- (A) Eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:
- (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 such distribution is required under Section 401(a)(9) of the Internal Revenue Code;
  - (3) A loan offset amount which occurs when, 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 is an eligible plan under § 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, an individual retirement account described in § 408(a) of the Code, an individual retirement annuity described in § 408(b) of the Code, an annuity plan described in § 403(a) of the Code, an annuity contract described in § 403(b) of the Code, or a qualified defined contribution plan described in § 401(a) of the Code, that accepts the distributee's eligible rollover distribution. Effective for distributions made after December 31, 2007, an eligible retirement plan shall also include a Roth IRA described in Code § 408A, subject to the restrictions that currently apply to rollovers from a traditional IRA into a Roth IRA.
- (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 Code, are distributees with regard to the interest of the spouse or former spouse. Effective for distributions after December 31, 2008, a distributee also includes the participant's non-spouse designated beneficiary under Section 4.04. In the case of a non-spouse beneficiary, the direct rollover may be made only to an individual retirement account or annuity described in Code § 408(a) or § 408(b) ("IRA") or a Roth individual retirement account or annuity ("Roth IRA") that is established on behalf of the designated beneficiary and that will be treated as an inherited IRA or Roth IRA.
- (D) Direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

#### Section 4.10. Eligible Rollover Contributions.

- (A) Effective June 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)-2T, Q&A 3 and 4, provided such 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) Such Employee must complete and sign this Fund's rollover request form and provide such evidence as is requested by the Board of Trustees, including evidence supporting the satisfaction of the remaining provisions of this Section 4.10.
- (C) Such rollover contributions shall not be considered annual additions for purposes of Section 4.07(A)(3).
- (D) A Participant's accrued benefit attributable to the rollover distribution shall be full 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 shall credit the fair market value of any rollover contribution and investment earnings attributable thereto 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 Employee, Beneficiary or other person shall have any right or claim to benefits under the Plan, or any right or claim to payments from the Fund, other than as specified herein. Any dispute as to eligibility, type, amount or duration of benefits or any right or claim to payments from the Fund shall be resolved by the Board under and pursuant to the Plan, and its decision of the dispute, right or claim shall be final and binding upon all parties thereto, subject only to such judicial review as may be in harmony with federal labor policy and the Plan's statute of limitations provisions in Section 5.02.(E).

### 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, shall be notified in writing of such denial within 90 days after receipt of such application or claim. An extension of time not exceeding 90 days may be required by special circumstances. If so, notice of such extension, indicating what special circumstances exist therefore and the date by which a final decision is expected to be rendered, shall be furnished the claimant prior to the expiration of the initial 90-day period. The notice of denial shall 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 such material or information is necessary; and (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.

- (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 duly authorized representative with the Secretary of the Board within 60 days after the petitioner received notice of the denial. The petitioner or his 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 benefit determination on review will be made by the Board or by a committee designated by them no later than the date of the quarterly meeting of the Officers of the Board of Trustees that immediately follows the Plan's receipt of the request for review unless the request for review is filed within thirty (30) days preceding the date of such meeting. In such case, a benefit determination will be made no later than the date of the second meeting following the Fund Office's receipt of the request for review. If special circumstances require a further extension of time for processing, a benefit determination will be rendered no later than the third meeting following the Fund Office's receipt of the request for review and the Board will provide the petitioner with a written notice of the extension, describing the special circumstances and the date as of which the benefit determination will be made, prior to the commencement of the extension. The Board will notify the petitioner of the benefit determination as soon as possible but not later than 5 days after the benefit determination is made.

The notification of a benefit determination upon review will be in writing and will include the reason(s) for the determination, including references to the specific Plan provisions on which the determination 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. 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, and a statement of the petitioner's right to bring an action under Section 502(a) of ERISA following an adverse benefit determination.

- (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 and any person claiming under the applicant, subject only judicial review as provided in Subsection (A). No decision of the Board shall be revised, changed, or modified by any arbitrator or court unless the party seeking such action is able to show by clear and convincing evidence that the Board's decision was an abuse of discretion in light of the information available at the time of its decision.

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. AMENDMENT AND TERMINATION**

Section 6.01. Plan Amendment. The Trustees 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 amendment, so long as funds are available for payment of such benefits, nor may an amendment or modification reduce an Employee's Individual Account other than for losses in the Trust.

Section 6.02. Plan Termination.

- (A) In the event of termination of the Plan, the assets then remaining, after providing for the expenses of the Plan and for the payment of any Accumulated Shares theretofore approved, shall be distributed among the Employees. Each Employee shall receive that part of the total remaining assets in the same ratio as his Accumulated Share bears to the aggregate amount of the Accumulated Shares of all Employees. No part of the assets shall 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 Accumulated Share within ninety (90) days following the sending of notice by registered mail to the Employee's last known address, his Accumulated Share shall be forfeited and redistributed on a uniform basis among Employees to whom payments have or can be made.
- (B) 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 shall have 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.
- (C) The preceding provisions shall operate in a manner so as to ensure that upon termination an Employee Accumulated Share is non-forfeitable to the extent that it is funded.

Section 6.03. 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, such illegality or invalidity shall not affect the remaining provisions of the Plan, unless such 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 7. MINIMUM DISTRIBUTION REQUIREMENTS**

### Section 7.01. General Rules.

- (A) Effective Date. The provisions of this Article 7 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 7 will take precedence over any inconsistent provisions of the Plan.
  - (2) Except to the extent inconsistent with this Article 8, all distribution options provided under the Plan are preserved.
  - (3) This Article 7 does not authorize any distribution options not otherwise provided under the Plan.
- (C) Requirements of Treasury Regulations Incorporated. All distributions required under this Article 7 will be determined and made in accordance with the Treasury regulations under Section 401(a)(9) of the Internal Revenue Code.
- (D) TEFRA Section 242(b)(2) Elections. Notwithstanding the other provisions of this Article 7, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the Plan that relate to Section 242(b)(2) of TEFRA.

### Section 7.02. 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 1.21 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 31<sup>st</sup> of the calendar year containing the fifth anniversary of the Participant's death.
  - (2) If the Participant's surviving legal spouse is the Participant's sole designated Beneficiary, then, the Participant's legal spouse may elect, in lieu of Section 7.02(B)(1), to have distributions to the surviving legal spouse begin by December 31<sup>st</sup> of the calendar year immediately following the calendar year in which the Participant died, or by December 31<sup>st</sup> of the calendar year in which the Participant would have attained age 70½, if later. The election must be made no later than September 30<sup>th</sup> of the calendar year in which distribution would be required to begin under this Section 7.02(B)(2), or if earlier, Section 7.02(B)(1).

- (3) If the Participant's surviving legal spouse is not the Participant's sole designated Beneficiary, then, the designated Beneficiary may elect, in lieu of Section 7.02(B)(1), to have distributions begin by December 31<sup>st</sup> of the calendar year immediately following the calendar year in which the Participant died. The election must be made no later than September 30<sup>th</sup> of the calendar year in which distribution would be required to begin under this Section 7.02(B)(3).
- (4) If there is no designated Beneficiary as of September 30<sup>th</sup> of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31<sup>st</sup> of the calendar year containing the fifth anniversary of the Participant's death.
- (5) If the Participant's surviving legal spouse is the Participant's sole designated Beneficiary and the surviving legal spouse dies after the Participant but before distributions to the surviving legal spouse begin, this Section 7.02(B), other than Section 7.02(B)(1), will apply as if the surviving legal spouse were the Participant.

For purposes of this Section 7.02(B) and Section 7.04, unless Section 7.02(B)(5) applies, distributions are considered to begin on the Participant's Required Beginning Date. If Section 7.02(B)(5) applies, distributions are considered to begin on the date distributions are required to begin to the surviving legal spouse under this Section 7.02(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 legal spouse before the date distributions are required to begin to the surviving legal spouse under an election made under Section 7.02(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 7.03 and 7.04 of this Article 7. 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 7.03. 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 legal 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 legal spouse's attained ages as of the Participant's and legal 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 7.03 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 7.04. 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 legal spouse is the Participant's sole designated Beneficiary, the remaining life expectancy of the surviving legal spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving legal spouse's age as of the legal spouse's birthday in that year. For distribution calendar years after the year of the surviving legal spouse's death, the remaining life expectancy of the surviving legal spouse is calculated using the age of the surviving legal spouse as of the legal spouse's birthday in the calendar year of the legal spouse's death, reduced by one for each subsequent calendar year.
- (c) If the Participant's surviving legal 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 30<sup>th</sup> 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.

- (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 7.02(B)(2) or 7.02(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 7.04(A).
- (2) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated Beneficiary as of September 30<sup>th</sup> of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31<sup>st</sup> of the calendar year containing the fifth anniversary of the Participant's death.
- (3) Death of Surviving Legal Spouse Before Distributions to Surviving Legal Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving legal spouse is the Participant's sole designated Beneficiary, and the surviving legal spouse dies before distributions are required to begin to the surviving legal spouse after having made an election under Section 7.02(B)(2), this Section 7.04(B) will apply as if the surviving legal spouse were the Participant.

#### Section 7.05. 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 7.02(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 31<sup>st</sup> 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 7.06. Treatment of 2009 Required Minimum Distributions.

Notwithstanding any provisions in this Article 7, amounts that would have been 2009 required minimum distributions in the absence of Section 401(a)(9)(H) of the Internal Revenue Code, as added by the Worker, Retiree and Employer Recovery Act of 2008, including amounts that would have been first required minimum distributions payable in 2010, were paid as scheduled for 2009.



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