

**Rules and Regulations
of the
HAWAII ANNUITY TRUST FUND FOR
OPERATING ENGINEERS
Restated Effective November 1, 2014
(Incorporates Amendment Nos. 1 and 2
to the November 1, 2009 Restatement)**

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HAWAII ANNUITY TRUST FUND
FOR OPERATING ENGINEERS**

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**Restated Effective November 1, 2014
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This document sets forth the Rules and Regulations of the Pension Plan as amended effective November 1, 2014, 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 (29 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. 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 1.18. 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 1.19. 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 1.20. Required Beginning Date. The term “Required Beginning Date” with respect to a Participant who attained age 70½ before 1997 and with respect to a Participant who is a 5% owner, means the April 1 following the calendar year in which the Participant attains age 70½.

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

Section 1.21. 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 1.22. Termination Date. The term “Termination Date” as used herein shall mean the date actual payment is made other than October 31.

Section 1.23. 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 1.24. 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 1.17.

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 Fiscal Year, each Participant who has an Individual Account shall receive a statement reflecting the balance of his Individual Account as of the most recent October 31 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) Add interest to the last day of the month preceding the Annuity Starting Date, as follows:
 - (a) For Annuity Starting Dates before November 1, 1988:

Credit interest on the net total of (1), (2) and (3).
 - (b) For Annuity Starting Dates after November 1, 1988 and prior to November 1, 2009:

Credit interest on (1) minus the average of the outstanding monthly loan balances from the beginning of the Fiscal Year to the Annuity Starting Date.
 - (c) For Annuity Starting Dates after November 1, 2009:

Credit interest on (1) minus the average of the outstanding monthly loan balances from the beginning of the fiscal quarter to the Annuity Starting Date.
 - (d) Interest will be equal to the Passbook Savings and Loan Rate in effect for the Fund's Corporate Co-trustee as of the preceding November 1.
 - (7) The resultant total of (1) through (6) 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 Employees 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 any 24-consecutive-month period; 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
 - (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), or if there is no surviving legal spouse, to his designated Beneficiary, on the same terms as are set forth in Section 3.03, subject to the provisions of the Retirement Equity Act of 1984.
- (E) 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.

- (F) 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 90 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 30th 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 a Hawaii State Unemployment Benefit.
 - (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 a Hawaii State Unemployment Benefit.
 - (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 a Hawaii State Unemployment Benefit.

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 60th 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 cashouts 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 nonspouse designated beneficiary under Section 4.04. In the case of a nonspouse 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.

- (F) The denial of an application or claim to which the right to review has been waived or the decision of the Board with respect to a petition for review, is final and binding upon all parties, including the applicant, claimant or petitioner and any person claiming under the applicant, claimant or petitioner, subject only judicial review as provided in Subsection (A).

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

ARTICLE 6. 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 1.20 of the Plan.
- (B) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
 - (1) If the Participant dies before distributions begin and there is a designated Beneficiary, the Participant's entire interest must be distributed to the designated Beneficiary by December 31st of the calendar year containing the fifth anniversary of the Participant's death.

- (2) If the Participant's surviving 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 31st of the calendar year immediately following the calendar year in which the Participant died, or by December 31st of the calendar year in which the Participant would have attained age 70½, if later. The election must be made no later than September 30th of the calendar year in which distribution would be required to begin under this Section 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 31st of the calendar year immediately following the calendar year in which the Participant died. The election must be made no later than September 30th of the calendar year in which distribution would be required to begin under this Section 7.02(B)(3).
- (4) If there is no designated Beneficiary as of September 30th of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31st 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 30th of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
- (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 30th of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31st 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

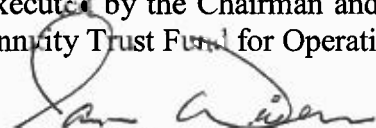
death, the first distribution calendar year is the calendar year in which distributions are required to begin under Section 7.02(B). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The required 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 31st of that distribution calendar year.

- (C) Life expectancy. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.
- (D) Participant's account balance. The account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

Section 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.

Executed by the Chairman and Co-Chairman on behalf of the Board of Trustees of the Hawaii Annuity Trust Fund for Operating Engineers on the 9th of December, 2014.



CHAIRMAN

DATE: December 9, 2014



CO-CHAIRMAN

DATE: December 9, 2014