

# OPERATING ENGINEERS LOCAL NO. 77 PENSION PLAN

*February 2012*



*Summary  
Plan  
Description*



**OPERATING ENGINEERS LOCAL NO. 77  
PENSION PLAN**

**FUND OFFICE**

911 Ridgebrook Road  
Sparks, Maryland 21152-9451  
Toll Free: 1 (877) 850-0977

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**FUND COUNSEL**

William P. Dale, Esquire  
McChesney & Dale, P.C.

**ADMINISTRATIVE MANAGER**

Associated Administrators, LLC

Dear Plan Participant,

The International Union of Operating Engineers Local No. 77, together with contributing Employers, through the Board of Trustees that has been appointed to administer your Pension Plan, has for many years maintained a Pension Plan to help you provide for your retirement security. This summary describes the Operating Engineers Local No. 77 Pension Plan only, and does not relate to other plans in which you might participate.

The Plan described in this booklet is based on the terms of the Plan as amended through February 2012. If the last contributions were made to the Plan on your behalf before 2012, your benefits and eligibility may differ from the information presented in this booklet. If you wish information about the Plan before 2012, please contact the Administrative Agent.

This booklet contains a summary of the benefits, rights and obligations you have under your Pension Plan. In this booklet, the term “he” or “his” is often used to refer to a plan participant for convenience, but you should be aware that these rules are equally applicable to female participants. **You should understand that this is a summary only, and if there is a discrepancy between this summary and the written Plan, the terms of the written Plan control.** A copy of the written Plan follows this Summary Plan Description. You may also obtain a copy of the written Plan from the Fund Office. You should also understand that the full Board of Trustees is authorized to interpret the terms of the Plan in its sole discretion, and to amend the Plan from time to time. Please note that the Administrator, Employer and Union representatives and individual Trustees are not authorized to interpret the Plan, or to make statements or promises on behalf of the Plan. If you have questions after reading the booklet or if you would like to discuss the details further, we will be glad to help you. If you need help in understanding the Plan, please contact us.

Sincerely,

Board of Trustees

## TABLE OF CONTENTS

Dear Plan Participant .....	2
Facts about The Plan .....	5
Board of Trustees .....	6
What Does The Plan Mean To Me? .....	7
Who Pays For My Benefits? .....	7
What Words Have Special Meaning? .....	8
When Do I Become A Participant In The Plan? .....	13
How Is The Plan Funded? .....	13
What Types of Retirement Benefits Are Available .....	14
Normal Retirement .....	14
Early Retirement .....	14
Unreduced Early Retirement .....	14
Disability Benefit .....	14
Occupational Disability Benefit .....	15
Deferred Pension .....	15
How Are Plan Benefits Calculated? .....	16
How Are Normal Retirement Benefits Calculated? .....	16
How Are Early Retirement Benefits Calculated? .....	27
How Are Disability Retirement Benefits Calculated? .....	30
How Are Occupational Disability Retirement Ben. Calculated? ...	30
How Are Deferred Retirement Benefits Calculated? .....	30
How Are Plan Benefits Paid? .....	32
How Is The 50% Joint and Survivor Pension Calculated? .....	34
How Is The 75% Joint and Survivor Pension Calculated? .....	36
Are Death Benefits Available under The Plan? .....	38
What Is The Pre-Retirement Surviving Spouse's Benefits? .....	38

What Is The Pre-Retirement Lump Sum Death Benefit? .....	39
What Is The Retiree Lump Sum Death Benefit? .....	39
Can I Lose Benefit Units After I Have Earned Them? .....	39
After I Retire, Will My Benefits Ever Be Reduced Or Increased? ..	39
Suspension of Benefit Rules .....	40
Recalculation of Benefits Earned after Retirement .....	43
How Long Will This Plan Continue? .....	43
Benefit Restrictions .....	43
How Do I Apply for Benefits? .....	44
What Can I Do If My Claim for Benefits Is Denied? .....	44
Who Administers The Plan? .....	45
Are Benefits under This Plan Insured? .....	45
Can My Pension Benefits Be Attached By My Creditors? .....	46
Can I Assign My Rights To Pension Benefits to Someone Else? ...	46
What Happens To My Pension Benefits If I Get Divorced? .....	46
Your Rights under ERISA .....	47
Operating Engineers Local No. 77 Pension Plan Document .....	
	(following page 49)

## FACTS ABOUT THE PLAN

**Name of Plan:** Operating Engineers Local No. 77 Pension Plan

**Plan Administrator and Plan Sponsor:**

Board of Trustees  
Operating Engineers Local No. 77 Pension Plan  
c/o Associated Administrators, LLC  
911 Ridgebrook Road  
Sparks, Maryland 21152-9451  
(877) 850-0977  
[www.associated-admin.com](http://www.associated-admin.com)

**Agent for Service of Legal Process:**

William P. Dale, Esq.  
McChesney & Dale, P.C.  
4000 Mitchellville Road  
Suite 222  
Bowie, MD 20716

*Note:* Service of legal process may also be served on any Plan Trustee or the Plan Administrator.

**Employer Identification Number:** 52-6038506

**Plan Number:** 001

**Plan Year:** January 1 – December 31

**Effective Date:** January 1, 1960

## BOARD OF TRUSTEES

### Union Trustees

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4546 Britannia Way  
Suitland, MD 20746-4274

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3329 8<sup>th</sup> Street, NE  
2<sup>nd</sup> Floor  
Washington, DC 20017

## **WHAT DOES THE OPERATING ENGINEERS LOCAL NO. 77 PENSION PLAN MEAN TO ME?**

If you meet the requirements to receive Pension benefits under the terms of the Plan, the Operating Engineers Local No. 77 Pension Plan provides you with:

- A monthly income for life when you retire, separate from your Social Security benefits,
- Normal retirement at age 65 or upon reaching the 5<sup>th</sup> anniversary date of your participation in the Plan, if later,
- Early retirement if you are age 55 or older,
- Disability benefits if you become totally and permanently disabled, or become unable to do bargaining unit work and have 15 Years of Vesting Service,
- The right to deferred pension benefits if you stop working for a contributing Employer after you have 5 years of Vesting Service,
- Benefits payable to your beneficiary upon your death,
- Different ways to receive your pension benefits.

## **WHO PAYS FOR MY BENEFITS?**

The full cost of your Plan is paid for by contributions made on your behalf by your Employer in accordance with a collective bargaining agreement or other agreement. The contributions which are made for you are paid into the Pension Trust Fund. The Pension Fund is held in trust under a trust agreement. Investment Managers, selected by the Board of Trustees, are responsible for investing the money in the Pension Fund.



## WHAT WORDS HAVE SPECIAL MEANINGS?

Throughout this booklet, you will come across certain words or terms which are used frequently and which you should know. These terms have been capitalized in order that you might identify them.

### **Active Participant**

A person becomes an Active Participant when he begins working in Covered Employment. The employee remains an Active Participant until he experiences a One Year Break in Service. An individual who returns to Covered Employment after a One Year Break in Service again becomes an Active Participant. The term "Active Participant", however, does not include any Pensioner or Employee who has no Vesting Hours of Service on or after January 1, 1976.

### **Covered Employment**

Employment for which an Employer has agreed to pay contributions to the Plan pursuant to a collective bargaining agreement or other written agreement.

### **Employer**

An organization that makes contributions to the Plan in accordance with a collective bargaining agreement or other agreement.

### **Union**

The International Union of Operating Engineers Local No. 77

### **Vesting Hour**

Each hour for which you are paid by an Employer under a collective bargaining agreement plus each hour, up to a total of 501 hours, for any one continuous period of time that you do not work for which you are paid by an Employer or for which you receive accident and sickness benefits under the Operating Engineers Trust Fund of Washington, D.C.

## **Break in Service**

You have a One-Year Break in Service when the number of your Vesting Hours is less than:

- 500, for any Plan Year than begins on or after January 1, 1976.
- 400, for any Plan Year than begins before January 1, 1976.

Special rules apply for purposes of determining whether you have suffered a One-Year Break in Service. These include periods of time

1. during which you are on a leave of absence due to a pregnancy, the birth of a child, the adoption of a child by you or the caring by you of your child immediately following its birth or adoption,
2. time spent on Family Medical Leave, and
3. period of time in which you will not suffer a break in service if you are called to Active Duty with the Armed Forces of the United States.

The total number of Vesting Hours to be credited under these special rules for an absence may not exceed 501. Also, the Trustees may require that you furnish proof that the absence from work is for one of the reasons mentioned above.

## **Vesting Service**

Your number of years of Vesting Service is used to determine whether you are eligible to receive a pension benefit. The definition of Vesting Service has changed several times:

**Service After December 31, 1975 For All Participants**

You receive Vesting Service for Plan Years 1976 and later in accordance with the following table:

<b>Vesting Hours During Plan Year</b>	<b>Years of Vesting Service</b>
0 – 499	None
500 – 749	½ Year
750 – 999	¾ Year
1,000 or More	1 Year

**The Vesting Schedules Before 1976 Depended Upon Whether You Were Employed by a Paving Contractor or Not:**

**Service between December 31, 1959 and January 1, 1976**

**Not an Employee of a Paving Contractor:**

You receive years of Vesting Service for the period January 1, 1960 through December 31, 1975 which is equal to the number of Future Benefit Units that you have for this same period.

**Service Before 1960**

**Not an Employee of a Paving Contractor:**

You receive years of Vesting Service equal to the number of your Past Benefit Units for Plan Years prior to January 1, 1960.

**Service between December 31, 1969 and January 1, 1976**

**Employee of a Paving Contractor:**

You receive one year of Vesting Service for each year you are credited with a Future Benefit Unit.

**Service between December 31, 1960 and January 1, 1970**

**Employee of a Paving Contractor:**

You receive one year of Past Vesting Service for each Plan Year that begins before January 1, 1970, and after December 31, 1960, any part of which you worked under a collective bargaining agreement of the Union.

## **Benefit Hour**

Each hour for which an Employer makes or is obligated to make a contribution to the Plan on your behalf. In addition, a participant who leaves Covered Employment on or after January 1, 1960 to enter military service will receive credit for 400 Benefit Hours for each calendar quarter he is in military service.

## **Percentage Benefit Amount for Service After December 31, 2007**

If you have service after December 31, 2007, your percentage benefit amount shall be calculated by multiplying the total amount of contributions received by the Plan based on your hours of service by the Benefit Accrued Rate established by the Plan from time to time.

- The benefit accrued rate for years 2008 through 2010 is 3%.
- The benefit accrued rate beginning January 1, 2011 is 2.5%.
- The Board of Trustees may change the benefit accrued rate from time to time, but you will receive notice of any such change before it takes effect.

## **Benefit Units – For Service Before 2008**

Your Benefit Units for service before January 1, 2008 are used to figure the amount of your Benefit. Benefit Units include Future Benefit Units and Past Benefit Units, defined as follows:

### **Future Benefit Units**

Future Benefit Units shall be granted based on service after December 31, 1959, and before January 1, 2008, (December 31, 1969 and service before January 1, 2008 for employees of Paving Contractors) equal to the **smaller** of:

- The number of years and completed quarters of a year measured from the first day of the month that you become a Plan Participant to the end of the last Plan Year that you have at least 400 Benefit Hours (if you have less than 400 Benefit Hours in the last calendar year, you may also have a partial year credit). If you retired on or after July 1, 2001, your service will be measured from the first day of the Plan year in which Benefit

Hours are credited, regardless of the number of Hours of Service.

- The number years and quarters (to nearest completed quarter) of a year determined by dividing the number of your Benefit Hours by 1,600.

### **Past Benefit Units**

If you are **not** an employee of a paving contractor you receive one Past Benefit Unit for each Plan Year that begins before January 1, 1960, any part of which you worked under a collective bargaining agreement of the Union or were a salaried employee of the Union. If you are an employee of a paving contractor, you are **not** entitled to any Past Benefit Units under the Plan.

### **Total and Permanent Disability**

You are considered Totally and Permanently Disabled if the Trustees determine that you are unable to work in any job for wage or profit due to a bodily injury or disease except such employment which the Trustees find to be for purposes of rehabilitation and not incompatible with a finding of total and permanent disability. In order to qualify for a Total and Permanent Disability Pension, you must have 15 years of Vesting Service. The Trustees may require, as proof of your disability, the determination of the Social Security Administration that you are entitled to a disability benefit under the Social Security Act, as a condition of eligibility for award of disability benefits. However, disability resulting from the following will not be the basis for disability retirement under the Plan:

- alcoholism or drug addition
- self-inflicted injury
- participation in a crime
- military service

## **Occupational Disability**

You are considered to have an Occupational Disability if the Trustees determine that you are unable to work in covered employment or any bargaining unit work, and it is reasonably certain that your condition will continue for your remaining lifetime. In order to qualify for Occupational Disability, you must have 15 years of Vesting Service. However, disability resulting from the following will not be the basis for disability retirement under the Plan:

- habitual drunkenness or illegal use of narcotics
- self-inflicted injury
- participation in a crime
- military service

## **Normal Retirement Age**

This is the later of the date you reach your 65<sup>th</sup> birthday or the 5<sup>th</sup> anniversary of the date you commenced participation in the Plan.

## **WHEN DO I BECOME A PARTICIPANT IN THE PLAN?**

You become a participant in the Plan when contributions are made to the Plan by an Employer on your behalf.

## **HOW IS THE PLAN FUNDED?**

A contribution is made by your Employer for each hour that you work, in an amount as set forth in a collective bargaining agreement or other agreement. This money is paid into the pension fund which is held in trust by the Board of Trustees under a written Trust Agreement.

## **WHAT TYPES OF RETIREMENT BENEFITS ARE AVAILABLE UNDER THE PLAN?**

Depending upon your circumstances you may qualify for one of several types of benefits under the Plan. These include normal retirement benefit, early retirement benefit, disability benefit, occupation disability benefit or deferred pension benefit.

### **NORMAL RETIREMENT**

If you are an Active Participant in the Plan when you reach Normal Retirement Age (age 65), you may retire and become eligible for a Normal Retirement.

### **EARLY RETIREMENT**

If you are an Active Participant in the Plan and you are between 55 and 65 years old with at least 5 years of Vesting Service you may retire with an early retirement pension. An Early Retirement pension is reduced based upon your age at early retirement.

### **UNREDUCED EARLY PENSION**

If you are age 60 and have at least one (1) hour of service on or after January 1, 1989, and have at least 35 years of Adjusted Vesting Service, you may receive a pension before Normal Retirement Age in an unreduced amount.

### **DISABILITY BENEFIT**

Regardless of your age, if you have at least 15 years of Vesting Service and become Totally and Permanently Disabled by Social Security while an Active Participant in the Plan, you may retire and become eligible for

a disability retirement pension. The Disability Retirement Pension is payable for your lifetime, but ends if you cease being totally and permanently disabled before Normal Retirement Age. The Trustees may require you to be reexamined by a physician periodically (but not more often than twice a year) to determine whether you continue to be totally and permanently disabled.

### **OCCUPATIONAL DISABILITY BENEFIT**

If you have at least 15 years of Vesting Service, and after January 1, 1993, while an Active Participant in the Plan you become unable to perform bargaining unit employment due to a physical or mental condition and arises as a result of bodily injury or disease, you may become eligible for an Occupational Disability Pension. The determination of whether you are eligible for occupational disability retirement will be made at the discretion of the Trustees, based upon all information available to them, including a certification from your doctor. The Trustees may require that you submit to a medical examination by a doctor selected by the Fund in order to prove your eligibility or continuing eligibility for this benefit. In the event the Trustees later find that you again become capable of performing bargaining unit work, your Occupational Disability benefits will cease.

### **DEFERRED PENSION**

If you have at least 5 years of Vesting Service and are no longer an Active Participant, you may retire at Normal Retirement Age with a deferred retirement pension.



## **HOW ARE PLAN BENEFITS CALCULATED?**

The amount of your monthly benefit depends upon several factors, including what type of benefit you are receiving, whether you are an employee of a paving contractor, and whether the form of your benefit includes survivor benefits for your spouse.

## **HOW ARE NORMAL RETIREMENT BENEFITS CALCULATED?**

An employee who is an Active Participant as of the date he attains his Normal Retirement Age, shall be eligible to receive a Normal Pension upon his retirement.

The amount of your Normal Retirement Pension (before reduction for the 50% Joint and Survivor benefit) is the sum of:

- (1) your Percentage Benefit Amount (for service on or after January 1, 2008), plus
- (2) your Future Benefit Units (for service January 1, 1960 to December 31, 2007), plus your Past Benefit Unit amount (if you are not an Employee of a Paving Contractor). Your Future Service Benefits equal the applicable future services benefit level times your number of Future Benefit Units. Your Past Service Benefits equal the applicable past service benefit times the number of Past Benefit Units.

Your future service benefit amount and your past service benefit amount can be determined from the following table, based on the date you ceased to be an Active Participant in the Plan. If you have two or more separate periods of active participation, and you retain the Vesting Service and Benefit Units you earned during each period (see the section in this booklet on “Can I lose Benefit Units after I have earned them?”), your normal retirement pension will be calculated separately for each period of active participation based on the benefit level in effect

on each date you cease to be an Active Participant. However, if you complete at least 25 years of Vesting Service as of the date you last ceased to be an Active Participant, your normal retirement pension will be based on the benefit level in effect at the time your pension is approved.

A special rule applies for purposes of determining benefit levels for unemployment during certain periods of time. In determining when an individual ceased to be an Active Participant for the purpose of establishing his benefit level, the following One-Year Break in Service will be ignored:

1. Unemployment during the years 1982 through 1984, provided that an additional One-Year Break in Service did not occur during 1985, or
2. Unemployment during the years 1991 through 1993, provided that an additional One-Year Break in Service did not occur during 1994, and provided that the employee was available for, and actively sought, Union employment during the period.
3. Periods of employment related disability after June 30, 1977, (not to exceed 3 years) provided the employee returns to covered employment afterwards and accrues at least one benefit unit.

**PARTICIPANTS WHO ARE NOT AN EMPLOYEE OF A  
PAVING CONTRACTOR**

<b>Date You Cease To Be An Active Participant</b>	<b>Pension Benefit Unit in Effect for Service Before 2008</b>
January 1, 2008 and thereafter	\$13.25 per month for each Past Benefit Unit, plus \$88.15 per month for each Future Benefit Unit (with a minimum of \$100.00 monthly benefit for non-Pro-rata pensions).
January 1, 2000 – December 31, 2007	\$13.25 per month for each Past Benefit Unit, plus \$86.00 per month for each Future Benefit Unit (with a minimum of \$100.00 monthly benefit for non-Pro-rata pensions).
January 1, 1999 – December 31, 1999	\$13.25 per month for each Past Benefit Unit, plus \$72.00 per month for each Future Benefit Unit (with a minimum \$100.00 monthly benefit for non-Pro-rata pensions).
January 1, 1998 – December 31, 1998	\$13.25 per month for each Past Benefit Unit, plus \$66.00 per month for each Future Benefit Unit (with a minimum \$100.00 monthly benefit for non-Pro-rata pensions).
January 1, 1997 – December 31, 1997	\$13.25 per month for each Past Benefit Unit, plus \$61.00 per month for each Future Benefit Unit (with a minimum \$100.00 monthly benefit for non-Pro-rata pensions).

<b>Date You Cease To Be An Active Participant</b>	<b>Pension Benefit Unit in Effect for Service Before 2008</b>
January 1, 1996 – December 31, 1996	\$13.25 per month for each Past Benefit Unit, plus \$57.00 per month for each Future Benefit Unit (with a minimum \$100.00 monthly benefit for non-Pro-rata pensions).
January 1, 1994 – December 31, 1995	\$13.25 per month for each Past Benefit Unit, plus \$50.00 per month for each Future Benefit Unit (with a minimum \$100.00 monthly benefit for non-Pro-rata pensions).
January 1, 1993 – December 31, 1993	\$13.25 per month for each Past Benefit Unit, plus \$48.75 per month for each Future Benefit Unit (with a minimum \$100.00 monthly benefit for non-Pro-rata pensions).
January 1, 1991 – December 31, 1992	\$13.25 per month for each Past Benefit Unit, plus \$47.00 per month for each Future Benefit Unit (with a minimum \$100.00 monthly benefit for non-Pro-rata pensions).
January 1, 1990 – December 31, 1990	\$13.25 per month for each Past Benefit Unit, plus \$41.00 per month for each Future Benefit Unit (with a minimum \$100.00 monthly benefit for non-Pro-rata pensions).

<b>Date You Cease To Be An Active Participant</b>	<b>Pension Benefit Unit in Effect for Service Before 2008</b>
January 1, 1989 – December 31, 1989	\$13.25 per month for each Past Benefit Unit, plus \$32.00 per month for each Future Benefit Unit.
January 1, 1987 – December 31, 1988	\$13.25 per month for each Past Benefit Unit, plus \$25.00 per month for each Future Benefit Unit.
October 1, 1985 – December 31, 1986	\$13.25 per month for each Past Benefit Unit, plus \$22.00 per month for each Future Benefit Unit.
January 1, 1984 – September 30, 1985	\$13.25 per month for each Past Benefit Unit, plus \$21.00 per month for each Future Benefit Unit.
July 1, 1977 – December 31, 1983	\$13.25 per month for each Past Benefit Unit, plus \$14.00 per month for each Future Benefit Unit.
January 1, 1975 – June 30, 1977	\$12.75
May 1, 1972 – December 31, 1974	\$7.05
January 1, 1970 – April 30, 1972 (with a maximum of 35 Benefit Units)	\$6.65
October 1, 1967 – December 31, 1969 (with a maximum of 35 Benefit Units)	\$4.10

**PARTICIPANTS WHO ARE EMPLOYEES OF A  
PAVING CONTRACTOR**

<b>Date You Cease To Be An Active Participant</b>	<b>Pension Benefit Unit in Effect For Service Before 2008</b>
January 1, 2008 and thereafter	\$56.40 (with a minimum \$100 monthly benefit for Non-Pro-rata pensions).
January 1, 2000 – December 31, 2007	\$55.00 (with a minimum \$100 monthly benefit for Non-Pro-rata pensions).
January 1, 1999 – December 31, 1999	\$46.00 (with a minimum \$100 monthly benefit for Non-Pro-rata pensions).
January 1, 1998 – December 31, 1998	\$41.50 (with a minimum \$100 monthly benefit for Non-Pro-rata pensions).
January 1, 1997 – December 31, 1997	\$38.00 (with a minimum \$100 monthly benefit for Non-Pro-rata pensions).
January 1, 1996 – December 31, 1996	\$35.00 (with a minimum \$100 monthly benefit for Non-Pro-rata pensions).
January 1, 1994 – December 31, 1995	\$32.25 (with a minimum \$100 monthly benefit for Non-Pro-rata pensions).
January 1, 1993 – December 31, 1993	\$31.15 (with a minimum \$100 monthly benefit for Non-Pro-rata pensions).
January 1, 1991 – December 31, 1992	\$30.00 (with a minimum \$100 monthly benefit for Non-Pro-rata pensions).
January 1, 1990 – December 31, 1990	\$25.75 (with a minimum \$100 monthly benefit for Non-Pro-rata pensions).

<b>Date You Cease To Be An Active Participant</b>	<b>Pension Benefit Unit in Effect For Service Before 2008</b>
January 1, 1989 – December 31, 1989	\$20.00 (with minimum \$70.00 monthly benefit)
January 1, 1987 – December 31, 1988	\$12.50 (with minimum \$70.00 monthly benefit)
October 1, 1985 – December 31, 1986	\$11.00 (with minimum \$70.00 monthly benefit)
January 1, 1984 – September 30, 1985	\$10.50 (with minimum \$70.00 monthly benefit)
July 1, 1977 – December 31, 1983	\$7.00
January 1, 1975 – June 30, 1977	\$5.70

***Example of Normal Benefit Calculation:***

Suppose you were not an employee of a Paving Contractor and you retire on January 1, 2011 at age 65 (Normal Retirement Age), unmarried and have never suffered a One-Year Break in Service with 30 years of Benefit/Vesting service. The 30 years of Benefit/Vesting service is based on 27 years of Benefit years prior to January 1, 2008 and the contributions received from your employer(s) for 6,452 hours worked in 2008-2010, which totals \$10,323.2. Based upon the Benefit Rates in effect on January 1, 2011, (a) the current Benefit Accrual Rate and (b) the date you retire, your total monthly accrued pension benefit will be calculated as follows:

- a) Service prior to January 1, 2008

$$27 \text{ years} \times \$88.15 = \$2,380.05$$

**PLUS**

- b) Contributions for hours of service  
after December 31, 2007

$$\$10,323.20 \times 3\%$$

$$(\text{Benefit Accrual Rate}) = \$309.70$$

**EQUALS**

$$\text{Total monthly Pension of } \$2,689.75$$



***Example of Normal Benefit Calculation for Employee of Paving Contractor:***

Suppose you retire under the same facts as the previous example, but you were an employee of a Paving Contractor. You have 27 Benefit Units prior to January 1, 2008 and contributions received from your employer for 6,100 hours in 2008-2010, which totals \$9,760.00. Your benefit would be calculated as follows:

- a) Service prior to January 1, 2008

$$\$56.40 \times 27 = \$1,522.80$$

- b) Service after December 31, 2007

$$\$9,760 \times 3\% = \$292.80$$

Your monthly pension is

$$\$1,522.80 + \$292.80 = \$1,815.60$$

***Example of Benefit Units with one or more Breaks in Service:***

Suppose you are unmarried, not an employee of a Paving Contractor, and retire on January 1, 2008, at age 65 (Normal Retirees Age) with 23 years of service. Assume further that you suffered a One-Year Break in Service (due to no hours), which were not excused, for each of the years 1987, 1989, 1995 and 1999. Your benefit calculation is as follows:

- a) Years between 1981 and 1986

$$\$22.00 \times 6 \text{ (units)} = \$132.00$$

(The rate in effect in 1986, when you ceased to be an Active Participant applies).

b) Year 1988

$$\$25.00 \times 1 \text{ (unit)} = \$25.00$$

(The rate in effect in 1988 when you ceased to be an Active Participant applies).

c) Years between 1990 and 1994

$$\$50.00 \times 5 \text{ (units)} = \$250.00$$

(The rate in effect in 1994 when you ceased to be an Active Participant applies).

d) Years between 1996 and 1998

$$\$66.000 \times 3 \text{ (units)} = \$198.00$$

(The rate in effect in 1998 when you ceased to be an Active Participant applies).

e) Years between 2000 and 2007

$$\$86.00 \times 8 \text{ (units)} = \$688.00$$

Your monthly benefit is the total of each of these amounts:

a	=	\$ 132.00
b	=	\$ 25.00
c	=	\$ 250.00
d	=	\$ 198.00
e	=	<u>\$ 688.00</u>
		\$1,293.00

***Example of Benefit Units with one or more Breaks in Service due to excused unemployment:***

Suppose you are unmarried, not an employee of a Paving Contractor, and retire on January 1, 2008 at age 65 (Normal Retirees Age) with 23 years of service, with 0 Benefit Units before January 1, 1960, and 23 Benefit Units after December 31, 1959. Assume further that you suffered a One-Year Break in Service (due to unemployment), for each of the years 1982, 1983, 1991 and 1993 and you were available for employment between 1991 and 1993. Your benefit calculation is as follows:

Years after 1960

$$\$86.00 \times 23 \text{ (units)} = \$1978.00$$

(Your pension is calculated at levels in effect when you retire because all of your One-Year Breaks in Service are excused).

## HOW ARE EARLY RETIREMENT BENEFITS CALCULATED?

Your early retirement pension is figured in the same way as your normal retirement pension, based on your Benefit Units and the benefit levels in effect when you ceased to be an Active Participant in the Plan. If you retire with 25 or more years of Vesting Service, your early retirement pension will be based on the benefit levels in effect at the time your pension is approved. You can choose to start receiving your benefit at any time after your 55th birthday.

If you elect early retirement benefits and you have 5 but less than 35 years of Vesting Service, your pension will be reduced by 1/2% for each month (6% for each year) by which the commencement date of your pension precedes your Normal Retirement Age (age 65).

If you are age 55 but not age 60 with at least 35 years of Vesting Service, your pension is reduced 1/4% (3% for each year) for each month that the early retirement date precedes age 60.

If you are over age 60, with 35 years or more of Vesting Service, your benefits will *not* be reduced.

### ***Early Retirement Example:***

Assume you are unmarried, are not an employee of a Paving Contractor, and retire on your 58<sup>th</sup> birthday (February 1, 2008) with 30 years of Vesting and Benefit Service. Your pension is reduced by 42% (1/2% for each of the 84 months between your date of early retirement and your Normal Retirement Age). To calculate your early retirement benefit, you first determine the Normal Retirement Benefit:

$$\$88.15 \times 30 \text{ (units)} = \$2,644.50$$

$$\$528.00 \text{ (contributions for Jan. 2008)} \times 3\% = \$15.84$$

$$\$2644.50 + \$15.84 = \$2660.34$$

Determine the early retirement reduction factor

Early retirement reduction factor:

$$42\% \times \$2,660.34 = \$1,117.34$$

Your monthly benefit is your normal benefit amount less the early retirement reduction factor

$$\$2,660.34 - \$1,117.34 = \$1,543.00$$

***Early Retirement Example, Pre age 60, with 35 years of Vesting Service:***

Assume you are unmarried, are not an employee of a Paving Contractor, and retire on your 58<sup>th</sup> birthday (February 1, 2008) with 35 years of Vesting and Benefit Service. Since you have 35 years of Vesting Service, your pension is reduced by 6% (1/4% for each of the 24 months between your date of early retirement and age 60). To calculate your early retirement benefit, you first determine the Normal Retirement Benefit:

$$\$88.15 \times 35 \text{ (units)} = \$3,085.25$$

$$\$528.00 \text{ (contributions for Jan. 2008)} \times 3\% = \$15.84$$

$$\$3,085.25 + \$15.84 = \$3,101.09$$

Determine the early retirement reduction factor

Early retirement reduction factor:

$$6\% \times \$3,101.09 = \$186.07$$

Your monthly benefit is your normal benefit amount less the early retirement reduction factor

$$\$3,101.09 - \$186.07 = \$2,915.02$$

***Early Retirement Example, after age 60, with 35 years of Vesting Service:***

Assume you are unmarried, are not an employee of a Paving Contractor, and retire on your 60<sup>th</sup> birthday (February 1, 2008) with 35 years of Vesting and Benefit Service. Your pension is not reduced and equals the Normal Retirement Benefit:

$$\$88.15 \times 35 \text{ (units)} = \$3,085.25$$

$$\$528.00 \text{ (contributions for Jan. 2008)} \times 3\% = \$15.84$$

$$\$3,085.25 + \$15.84 = \$3,101.09$$

## **HOW ARE DISABILITY RETIREMENT BENEFITS CALCULATED?**

Your disability retirement pension is figured in the same way as your Normal Retirement pension, based on your Benefit Units and the benefit levels in effect when you terminate active participation in the Plan plus the Percentage Benefit Amount for service after December 31, 2007. No reduction is made for early payment of this benefit.

## **HOW ARE OCCUPATIONAL DISABILITY RETIREMENT BENEFITS CALCULATED?**

Your Occupational Disability Retirement Pension is figured in the same way as your normal retirement pension, based on your Benefit Units and the benefit levels in effect when you terminate active participation in the Plan plus the Percentage Benefit Amount for service after December 31, 2007. No reduction is made for early payment of this benefit.

## **HOW ARE DEFERRED RETIREMENT BENEFITS CALCULATED?**

If you have at least one Vesting Hour on or after January, 1989 and you have at least 5 years of Vesting Service, but are not an Active Participant upon your retirement, you are eligible to receive a deferred pension at your Normal Retirement Age. Your deferred pension is figured in the same way as your normal retirement pension, based on your Benefit Units and the benefit levels in effect when you cease to be an Active Participant in the Plan. However, if you terminate participation in the Plan with 25 or more years of Vesting Service, your deferred pension will be based on the level of benefits in effect at the time your pension is approved.

### ***Deferred Retirement Example:***

Assume you retire on January 1, 2008, at age 65. You are unmarried and not an employee of a Paving Contractor. You have 21 ½ years of

Vesting and Future Benefit Service, but last worked in covered employment in January 1991. Your deferred pension benefit is calculated as follows:

$$\$47.00 \times 21 \frac{1}{2} \text{ (units)} = \$1,010.50$$

(The benefit levels in effect in 1991 are used).

***Deferred Retirement Example, 25 years of Service:***

Assume you retire on January 1, 2011, at age 65. You are unmarried and not an employee of a Paving Contractor. You have 26 years of Vesting and Future Benefit Service, but last worked in covered employment in January 1994. Your deferred pension benefit is calculated as follows:

$$\$88.15 \times 26 \text{ (units)} = \$2,291.90$$

(The benefit level in effect in 2011 is used because you have 25 years of Vesting Service).



## HOW ARE PLAN BENEFITS PAID?

The form of your benefit payment depends upon whether you have a spouse when you retire.

### **36 Month Payment Guarantee Benefit**

If you have no spouse at the time your pension is to commence, you will receive a monthly pension which is payable for your lifetime, with the provision that not less than 36 monthly payments will be made to you and your designated beneficiary. This is called **36-payment guarantee** benefit.

### **50% Joint and Survivor Annuity**

If you are married at the time your pension is to commence, you will, unless you and your spouse choose the **36-month guarantee** benefit, receive a somewhat smaller monthly pension for as long as you live, and after your death, one-half of your pension will be paid to your surviving spouse for the rest of his or her lifetime. This form of payment provides valuable protection for you and your spouse and is called a **50% Joint and Survivor** benefit. Because this arrangement will usually result in benefit payments being made over a longer period of time than under the **36-payment guarantee** benefit, the amount of your monthly benefit is reduced to take this into account. If you do not want to receive your pension in the form of the **50% Joint and Survivor** benefit you and your spouse must indicate your written notarized decision, on a form provided by the Administrative Agent, during the election period. The election period is the 90-day period ending on the first day on which you are entitled to receive benefit payments under the Plan.

If you are receiving your pension on the basis of the **50% Joint and Survivor** benefit and your spouse dies before you do, your pension will be increased, the first of the month following receipt of a death certificate, to the amount which would have been payable had you retired with the **36-payment guarantee** benefit.

### **75% Joint and Survivor Annuity**

If you are married at the time your pension is to commence, and you retire after January 1, 2009, you and your spouse also have the option to choose a 75% Joint and Survivor benefit. Under this form of benefit, you would receive a smaller monthly pension than the 50% Joint and Survivor benefit for as long as you live, and after your death, 75% of your pension will be paid to your surviving spouse for the rest of his or her lifetime. This form of payment provides valuable protection for you and your spouse as does the **50% Joint and Survivor benefit**, but results in different monthly benefit amounts both during your lifetime and for your surviving spouse.

If you are receiving your pension on the basis of the 75% **Joint and Survivor** benefit and your spouse dies before you do, your pension will be increased, the first of the month following receipt of a death certificate, to the amount which would have been payable had you retired with the **36-payment guarantee benefit**.

**If you and your spouse do elect not to receive the 50% Joint and Survivor option or the 75% Joint and Survivor option, your pension will be paid in the form of the 36-payment guarantee benefit, but upon your death your spouse will not receive a survivor benefit.**

### **Lump Sum Benefit**

Usually, monthly benefits will be payable for your lifetime. But, if the lump-sum actuarial value of your pension is less than \$5,000, you will receive the actuarial value of your pension in a lump sum instead of monthly payments.

### **Mandatory Distribution of Benefits**

Regardless of whether you are retired or elect to begin taking benefits, benefits must begin to be paid no later than April 1 of the year after the year when you reach age 70 ½.

## HOW IS THE 50% JOINT AND SURVIVOR PENSION CALCULATED?

For participants retiring before January 1, 2001, the factor is based upon a mortality table, and depends upon your age and that of your spouse. The calculation based upon this table can be provided by the Fund Office.

For participants retiring after December 31, 2000, the 50% Joint and Survivor factor is based upon the following formula:

92% plus 0.5% for each year by which your spouse is older than you minus 0.5% for each year by which your spouse is younger than you (The total cannot be more than 100%)

### *50% Joint and Survivor factor examples:*

1. Suppose you retire at age 65 and your spouse is 6 years younger than you. The Joint and Survivor factor is 89% calculated as follows:

$$92\% - (0.5\% \times 6 \text{ years})$$

or

$$92\% - 3\% = 89\%$$

2. Suppose your spouse is 2 years older than you. The Joint and Survivor factor is 93% calculated as follows:

$$92\% + (2 \text{ years} \times 0.5\%)$$

or

$$92\% + 1\% = 93\%$$

### *Here is an example comparing the 36 month guarantee pension to the 50% Joint and Survivor pension:*

Suppose Joe is eligible in 2008 to retire at age 65, with 35 years of continuous years of vesting and

service credit. Joe's wife is 69 years old.

If Joe and his wife selected the **36 payment guarantee**, his pension would be calculated as follows:

$$\$88.15 \times 35 \text{ (units)} = \$3,085.25$$

$$\$528.00 \text{ (contributions for Jan. 2008)} \times 3\% = \$15.84$$

$$\$3,085.25 + \$15.84 = \$3,101.09$$

Joe would be entitled to a monthly pension for his lifetime of \$3,101.09. If Joe died before 36 months of benefits, his beneficiary would get the rest of the 36 payments. But after that, his spouse would receive no pension.

If Joe and his wife were to receive the **50% Joint and Survivor pension**, the pension would be calculated as follows, because Joe is 4 years younger than his wife:

$$\text{(Normal Pension)} \times \text{(50\% Joint and Survivor Factor)} = \text{50\% Joint and Survivor Pension}$$

$$\$3,101.09 \times 94\% \text{ (because Joe is 4 years } \underline{\text{younger}} \text{ than his wife)} = \$2,915.02$$

Joe would be paid \$2,915.02 for the rest of his life. Upon his death, his spouse would receive \$1,457.51 for the rest of her life. If Joe's wife dies while Joe is alive, his pension would increase from \$2,915.02 to \$3,101.09, after the Administrative Agent receives written proof of his wife's death.

## HOW IS THE 75% JOINT AND SURVIVOR PENSION CALCULATED?

For participants retiring after December 31, 2008, the 75% Joint and Survivor factor is based upon the following formula:

88% plus 0.6% for each year by which your spouse is older than you minus 0.6% for each year by which your spouse is younger than you (The total cannot be more than 100%).

*Here is how the 75% Joint and Survivor calculations works using the same examples:*

1. Suppose you retire at age 65 and your spouse is 6 years younger than you. The Joint and Survivor factor is 84.4% calculated as follows:

$$88\% - (0.6\% \times 6 \text{ years})$$

or

$$88\% - 3.6\% = 84.4\%$$

2. Suppose your spouse is 2 years older than you. The Joint and Survivor factor is 89.2% calculated as follows:

$$88\% + (2 \text{ years} \times 0.6\%)$$

or

$$88\% + 1.2\% = 89.2\%$$

*Here is an example comparing the 36 month guarantee pension and the 50% Joint and Survivor pension to the 75% Joint and Survivor pension:*

Suppose Joe is eligible in 2008 to retire at age 65, with 35 years of continuous years of vesting and service credit. Joe's wife is 69 years old.

From the previous example, we know that if Joe and his wife selected the 36 payment guarantee, Joe would be entitled to a monthly pension for his lifetime of \$3,101.09. If Joe died before 36 months of benefits,

his beneficiary would get the rest of the 36 payments. But after that, his spouse would receive no pension.

If Joe and his wife were to receive the **50% Joint and Survivor pension**, Joe would be paid \$2,915.02 for the rest of his life. Upon his death, his spouse would receive \$1,457.51 for the rest of her life. If Joe's wife dies while Joe is alive, his pension would increase from \$2,915.02 to \$3,101.09, after the Administrative Agent receives written proof of his wife's death.

If Joe and his wife were to receive the **75% Joint and Survivor pension**, Joe's pension would be calculated as follows:

(Normal Pension) x (75% Joint and Survivor Factor) = 75% Joint and Survivor Pension

\$3,101.09 x 90.4% (because Joe is 4 years younger than his wife) = \$2,803.39

Joe would be paid \$2,803.39 for the rest of his life. Upon his death, his spouse would receive \$2,102.54 for the rest of her life. If Joe's wife dies while Joe is alive, his pension would increase from \$2,803.39 to \$3,101.09 after the Administrative Agent receives written proof of his wife's death.

When you retire, the Administrative Agent will help you understand the different forms of benefits you may elect.

## **ARE DEATH BENEFITS AVAILABLE UNDER THE PLAN?**

Certain death benefits are available under the Plan. These include the Pre Retirement Surviving Spouse's Benefit, the Pre Retirement Lump Sum Death Benefit and the Retiree Lump Sum Death Benefit.

If you die while receiving a 36-Payment Guarantee benefit and after you have received 36 monthly pension payments, no benefits are payable after your death except for the \$5,000 lump-sum benefit. If you die while receiving a 50% Joint and Survivor benefit and your spouse dies before you do, no benefits are payable after your death except for the \$5,000 lump-sum benefit. If you have not yet reached your benefit commencement date, no benefits are payable after your death unless you die while an Active Participant and after you have completed at least 5 years of Vesting Service or you die while married (for at least one year) and after you have completed at least 5 years (10 years if you do not have a Vesting Hour on or after January 1, 1989) of Vesting Service.

### **WHAT IS THE PRE-RETIREMENT SURVIVING SPOUSE'S BENEFIT?**

If,

1. you are a vested Participant and have completed 5 years of Vesting Service,
2. you performed some work after June 1, 1994,
3. you have been married for a year or longer,
4. you die before you retire,

upon your death, your spouse will receive a monthly pension for life beginning the first day of the month following your death. Your spouse's pension is equal to 50% of the pension you would have received (based on the pension benefits calculated at the time of your death) under the 50% Joint and Survivor benefit form including appropriate reductions for early retirement under the Plan. The amount of reduction for early retirement, however, will not exceed 10%.

## **WHAT IS THE PRE-RETIREMENT LUMP SUM DEATH BENEFIT?**

If you die while an Active Participant in the Plan and after you have completed 5 years of Vesting Service, your beneficiary will receive a lump-sum payment of \$5,000. This death benefit is in addition to any pre-retirement surviving spouse's benefit that may be payable.

## **WHAT IS THE RETIREE LUMP SUM DEATH BENEFIT?**

If you die while receiving a pension from the Plan, your beneficiary will receive a lump-sum payment of \$5,000. This death benefit is in addition to any other benefit that may be payable under the Plan.

## **CAN I LOSE BENEFIT UNITS AFTER I HAVE EARNED THEM?**

Under certain circumstances, you may lose Benefit Units you have earned. If you have worked after January 1, 1989, and you have five years of Vesting Service, the benefit units you have earned are non-forfeitable and cannot be taken away from you. If, however, you have less than 5 years of Vesting Service and you suffer 5 consecutive one year Break in Service, you will lose any Benefit Units. The rules for participants who have not worked since December 31, 1980, are different and can be obtained from the Administrative Agent.

## **AFTER I RETIRE, WILL MY BENEFITS EVER BE REDUCED OR INCREASED?**

Unless you engage in prohibited employment, which is discussed below, your benefits will not be reduced during your lifetime. The Board of Trustees may, from time to time, decide to increase the benefits of retirees, but you have no right to receive an increase and it is solely with the discretion of the Trustees to establish any increases.



If you return to employment for an Employer who contributes to the Plan after you retire, you will accrue benefits at the formula in effect at the time of your Re-retirement, for all service you accrue after Retirement.

## **SUSPENSION OF BENEFIT RULES**

### **What if I become employed after I retire?**

Certain employment after retirement will result in a permanent suspension of your pension payments during the period of your employment, or will result in a delay in the start of your pension, if you have not yet retired. This is called prohibited employment. The prohibited employment that will result in suspension of pension benefits before you reach age 65 is any employment of the type for which contributions are made to this Plan on your behalf by an Employer. After you reach age 65, the prohibited employment that will result in suspension of pension benefits is any employment or self-employment that is:

- In the same industry in which employees covered by this Plan are working;
- In the same trade or craft in which you were employed at any time while covered by the Plan; and
- In the same geographical area covered by the Plan.

You will not be entitled to receive a pension payment for any month in which you have any Vesting Hours of prohibited employment before age 65. You will not be entitled to receive a pension payment for any month in which you are paid for 40 or more hours of prohibited employment after attaining age 65. The hours which are counted for this purpose include paid hours for non-work, such as vacation. The Board of Trustees may, from time to time, determine to permit retirees working in prohibited employment and not enforce the Plan; prohibited employment rules. If the Trustees make that determination, you will receive written notice of that decision. If, after you retire, you work in prohibited employment you must provide written notification of this

work to the Administrative Agent within 15 days of starting the work, regardless of the number of expected paid hours per month. If you do not furnish the requested information by the Administrative Agent, or if you do not inform the Trustees that you have started working and the Trustees become aware of it the Trustees may assume that you are working in prohibited employment for 40 hours per month for the entire period that your employer has been working at its site and may withhold your pension payments until you furnish information indicating that pension payments should not be withheld.

During the period that you are receiving pension payments, the Trustees may ask you to provide periodic proof that you are not working in prohibited employment. If you do not furnish the requested proof, the Trustees may withhold your pension payments commencing with the payment for the third month following the month in which you were requested to provide the proof. Pension payments will again be made to you commencing with the second month following the month in which proof is received that you are not working in prohibited employment. Your initial payment will include any previously withheld pension payments for months in which you were not working in prohibited employment, less an offset for any amounts owed the Plan.

If you receive a pension payment for a month in which you were working in prohibited employment you are obligated to repay the amount you received.

When your pension payments are withheld, the Administrative Agent will furnish you with a notice describing the reason for the suspension, plus certain other related information. You can request a review of the decision to suspend your pension payments by submitting a written request to the Trustees within 60 days after receipt of the suspension notice. The request for review will be handled in the same manner as a review of a denial of pension benefits.

When you stop working in prohibited employment you must notify the Administrative Agent in writing of the date you stopped working in such employment. Pension payments will be made to you commencing

the later of (1) the third month following the month in which you stopped working in prohibited employment or (2) the second month following the month in which notice is received that you have stopped working in such employment. Your initial payment will include previously withheld pension payments for months in which you were not working in prohibited employment, less an offset for any amounts owed the Plan.

You may request an advanced determination as to whether certain employment is considered prohibited employment.

If, after you retire, your early retirement benefit or vested benefit is suspended during the period before you reach age 65, the pension you receive when benefits are again payable will be actuarially adjusted to reflect the payments you received before reaching age 65.

No pension benefits are payable for any month in which you receive weekly accident and sickness benefits from the Welfare Plan of the Operating Engineers Trust Fund of Washington, D.C. or any other construction trades welfare fund.

## **RECALCULATION FOR BENEFITS EARNED AFTER RETIREMENT**

The Fund Office will only re-calculate pensions for participants who retire and then return to work in covered employment under the “Suspension of Benefit Rules” *once per year* on December 31<sup>st</sup>. No re-calculation will be performed at that time for a participant who has earned any Benefit Service in the six months prior to December 31<sup>st</sup> (meaning from July 1 - December 31). If you “re-retire” and have earned even an hour of Benefit Service between July and December, that additional service will be counted and your pension adjusted the *following* December 31<sup>st</sup>.

## **HOW LONG WILL THIS PLAN CONTINUE?**

It is intended that the Plan will continue indefinitely. Because of changing circumstances, the Board of Trustees reserves the right to change or amend the Plan, and, if necessary, discontinue it. If it becomes necessary to terminate the Plan, the assets of the Plan must be used to provide benefits according to the Plan document. The amounts which are eventually paid depend on the sufficiency of assets and if there is an insufficiency of assets, the extent to which benefits are guaranteed by the Pension Benefit Guaranty Corporation. A reduction in the amount of Plan benefits may also occur before Plan termination if the Plan is not sufficiently funded or if the Plan cannot pay the full amount of the benefits when due.

## **BENEFIT RESTRICTIONS**

The Internal Revenue Code limits the amount of benefits that may be paid from a plan or from a combination of plans. The benefits provided by this Plan alone would not, based on present levels, exceed the limitations. However, no advanced determination has been made as to whether the benefits from this Plan in combination with the benefits from other plans in which employees participate would exceed the

limitations. If the limitations would otherwise be exceeded, it would be necessary to reduce benefits.

### **HOW DO I APPLY FOR BENEFITS?**

If you wish to file a claim for benefits under the Pension Plan, the Administrative Agent will supply you with all the forms necessary for the proper filing of your claim. Benefits are not required to be paid for any period before the date you file a claim.

### **WHAT CAN I DO IF MY CLAIM FOR BENEFITS IS DENIED?**

If you make a claim for benefits under the Plan, and all or part of it is denied, the Administrative Agent will notify you in writing within 90 days (180 days if you receive a written notice from the Administrative Agent that the Trustees need extra time to reach a decision).

Within 60 days after you receive the notice of denial, you or your authorized representative may appeal the decision in writing. The Trustees will review your appeal at the next scheduled meeting. However, if it is received within 30 days of the meeting, the Trustees will review your appeal at the second scheduled meeting after receiving the appeal or, if extra time is needed because of special circumstances, at its third scheduled meeting after receiving your appeal.

As soon as possible after the Board of Trustees reviews your appeal you will be notified in writing of the final decision and the specific reasons for that decision.

## **WHO ADMINISTERS THE PLAN?**

The Board of Trustees is the Plan Administrator. The Trustees have selected an Administrative Agent to carry out, on a contract basis, the day-to-day operation of the Plan. Also, the Board of Trustees has delegated certain of the fiduciary responsibilities to investment managers.

## **ARE BENEFITS UNDER THIS PLAN INSURED?**

Benefits under this Plan are insured by the Pension Benefit Guaranty Corporation (PBGC). Insured benefits are payable if a plan is unable to pay such benefits when due. If this occurs, the plan is considered to be insolvent. Generally, the PBGC guarantees most vested normal retirement benefits, early retirement benefits, and certain disability and survivor's pensions. However, PBGC does not guarantee all types of benefits under covered plans, and the amount of benefit protection is subject to certain limitations.

If a plan has been in effect less than five years, or if the benefits have been increased within the five years before plan insolvency, the plan's vested benefits or the benefit increases are not guaranteed. In addition, there is a ceiling on the amount of monthly benefit that PBGC guarantees.

For more information on the PBGC insurance protection and its limitations, ask the Administrative Agent or the PBGC. Inquiries to the PBGC should be addressed to the Office of Programs Operations, Pension Benefit Guaranty Corporation, 1200 K Street, N.W., Washington, D.C. 20005. The PBGC may also be reached by calling (202) 956-5000.

**CAN MY PENSION BENEFITS BE ATTACHED BY MY CREDITORS? CAN I ASSIGN MY RIGHTS TO PENSION BENEFITS TO SOMEONE ELSE?**

For the protection of your interest and those of your dependents, your benefits under this Plan cannot be assigned and, to the extent permitted by law, are not subject to garnishment or attachment.

**WHAT HAPPENS TO MY PENSION BENEFITS IF I GET DIVORCED?**

If you are eligible for benefits under the Plan, and you get divorced, your spouse may be granted certain rights in your pension if the court issues what is called a Qualified Domestic Relations Order. Because pension rights are important to you as a participant and to your spouse, each of you should seek experienced counsel to advise you regarding your rights in the event of a divorce.

## **YOUR RIGHTS UNDER ERISA**

As a participant in the Operating Engineers Local No. 77 Pension Plan, you are entitled to certain rights and protection under the Employee Retirement Income Security Act of 1974 (ERISA). ERISA provides that all plan participants shall be entitled to:

- Examine without charge, at the Administrative Agent's office, and at other locations, such as worksites and Union halls, all plan documents, collective bargaining agreements and copies of all documents filed by the plan with the U.S. Department of Labor, such as detailed annual reports and plan descriptions.
- Obtain copies of all plan documents and other plan information upon written request to the Administrative Agent. The Board of Trustees may make a reasonable charge for the copies.
- Receive a summary of the Plan's annual financial report. The Board of Trustees 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 a pension at normal retirement age and, if so, what your benefits would be at normal retirement age if you stopped working under the plan now. If you do not have a right to a pension, the statement will tell you how many more years you have to work to get a right to a pension. This statement must be in writing and is not required to be given more than once a year. The Plan must provide the statement free of charge.

In addition to creating rights for plan participation, ERISA imposes duties upon the people who are responsible for the operation of this employee benefit plan. The people who operate your 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 or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a pension benefit or exercising your rights under ERISA.

If your claim for a pension benefit is denied in whole or in part you must receive a written explanation of the reason for the denial. You have the right to have the Board of Trustees reconsider your claim. Under ERISA, there are steps you can take to enforce the above rights.

For instance, if you request materials from the plan and do not receive them within 30 days, you may file suit in federal court. In such case, the court may require the Board of Trustees 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 Board of Trustees. 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.

If Plan fiduciaries misuse the 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 will 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.

If you have any questions about this statement or your ERISA rights, you should contact the Board of Trustees. If you have any questions about your rights under ERISA, or if you need assistance in obtaining documents from the Plan Administrator, you should contact the nearest area office of the Pension and Welfare Benefits Administration, U.S. Department of Labor, listed in your telephone directory or the Division of Technical Assistance and Inquiries, Pension and Welfare Benefits 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 Pension and Welfare Benefits Administration.

## **Employers under the Plan**

You may receive from the Administrative Agent or the Union, upon written request, information as to whether a particular employer is a sponsor of the Plan and, if the employer is a Plan sponsor, the employer's address. Also, you may examine a list of the sponsoring employers during normal business hours at the office of the Administrative Agent or the Union.

## **Collective Bargaining Agreements**

Your Plan is maintained pursuant to one or more collective bargaining agreements. A copy of the agreements may be obtained from the Administrative Agent upon written request. Also, you may examine the agreements during normal business hours at the office of the Administrative Agent, or, within 10 days of a written request to the Administrative Agent, at the office of the Union or at worksites where 50 or more Plan participants customarily work.

## **Plan Documents**

A copy of the Plan documents may be obtained from the Administrative Agent upon written request. Also, you may examine the Plan documents during normal business hours at the office of the Administrative Agent or, within 10 days of a written request to the Administrative Agent, at the office of the Union or at worksites where 50 or more Plan participants customarily work.

*We have tried to write this summary in clear, understandable and informal language. However, you should refer to the official Plan documents for more information about your benefits. In the event there is any conflict between the information in this summary and the official plan documents, the plan documents will govern. The Board of Trustees has the authority to interpret the terms of the Plan and to make factual determinations that will be binding on all parties.*



OPERATING ENGINEERS LOCAL NO. 77

PENSION PLAN

RESTATED

January 1, 2010



# TABLE OF CONTENTS

ARTICLE I - DEFINITIONS .....	
1.01	“NUMBER AND GENDER” .....
1.02	“PENSION FUND” or “FUND” .....
1.03	“PENSION PLAN” or “PLAN” .....
1.04	“UNION” .....
1.05	“EMPLOYER” .....
1.06	“EMPLOYEE” .....
1.07	“TRUST AGREEMENT” .....
1.08	“TRUSTEES” .....
1.09	“PLAN YEAR” .....
1.10	“COVERED EMPLOYMENT” .....
1.11	“EMPLOYER CONTRIBUTIONS” .....
1.12	“RETIREMENT” .....
1.13	“PENSIONER” .....
1.14	“ACTIVE PARTICIPANT” .....
1.15	“NORMAL RETIREMENT AGE” .....
1.16	“ELIGIBLE SPOUSE” .....
1.17	“BENEFICIARY” .....
1.18	“EMPLOYEE OF PAVING CONTRACTOR” .....
1.19	“MILITARY SERVICE” .....
1.20	“ANNUITY STARTING DATE” .....
1.21	“LUMP SUM DISTRIBUTION AMOUNT” .....
ARTICLE II - VESTING SERVICE, BENEFIT UNITS AND BREAKS IN SERVICE .....	
2.01	IN GENERAL .....
2.02	YEAR OF VESTING SERVICE .....
2.03	VESTING HOUR OF SERVICE .....
2.04	PAST BENEFIT UNITS .....
2.05	FUTURE BENEFIT UNITS .....
2.06	BENEFIT HOUR OF SERVICE .....
2.07	ONE YEAR BREAK IN SERVICE .....
2.08	CANCELLATION AND REINSTATEMENT OF SERVICE .....
	(a) RULE OF PARITY .....
	(b) TRANSITIONAL RULE .....
	(c) RULE POST-JANUARY 1, 1979 .....
2.09	VESTING AND BENEFIT HOURS FOR MILITARY SERVICE .....
2.10	NON-FORFEITABILITY OF NORMAL RETIREMENT BENEFIT. ....
ARTICLE III - RECIPROCITY AGREEMENTS .....	
3.01	PRO-RATA PENSIONS .....
3.02	TRANSFER OF CONTRIBUTIONS .....
ARTICLE IV - BENEFITS .....	
4.01	NORMAL PENSION .....
4.01	NORMAL PENSION .....
	EMPLOYEE WHO IS NOT AN EMPLOYEE .....
	EMPLOYEES OF PAVING CONTRACTORS .....
4.02	EARLY RETIREMENT PENSION .....
4.03(a)	DISABILITY PENSION .....

4.03(b)	OCCUPATIONAL DISABILITY PENSION.....
	(1) Eligibility. ....
	(2) Definition of Totally and Permanently Occupationally Disabled. ....
	(3) Proof of Disability. ....
	(i) Initial Determination of Disability.....
	(ii) Continuing Disability.....
	(4) Amount and Form of Occupational Disability Pension. ....
4.04	DEFERRED PENSION.....
4.05	PRE-RETIREMENT SURVIVOR ANNUITY. ....
4.06	CHANGE OF VESTING SCHEDULE .....
ARTICLE V - NORMAL, EARLY, DISABILITY, OCCUPATIONAL DISABILITY AND DEFERRED PENSIONS .....	
5.01	BASIC FORM OF BENEFIT.....
5.02	INFORMATION AND ELECTION TO EMPLOYEES.....
5.03	ELECTION PERIOD. ....
5.04	ADDITIONAL INFORMATION.....
5.05	OPTIONAL FORM OF BENEFIT.....
5.06	OPTIONAL BENEFIT FORMS AVAILABLE TO CERTAIN EMPLOYEES PURSUANT TO RETIREMENT EQUITY ACT OF 1984. ....
5.07	SMALL MONTHLY BENEFIT PAYMENTS. ....
5.08	WRITTEN EXPLANATION TO RECIPIENT THAT LUMP SUM DISTRIBUTIONS ARE ELIGIBLE FOR ROLLOVER TREATMENT. ...
ARTICLE VI - DEATH BENEFITS .....	
6.01	EARLY SURVIVOR PENSION. ....
6.02.	LUMP SUM BENEFITS.....
6.03	CERTAIN APPLICATION AND EFFECTIVE DATES.....
ARTICLE VII - PENSIONERS.....	
7.01	RECOMPUTING CERTAIN BENEFITS.....
ARTICLE VIII - GENERAL PAYMENT PROVISIONS.....	
8.01	COMMENCEMENT OF BENEFITS.....
8.02	COMPETENCE OF RECIPIENT. ....
8.03	PAYMENTS TO MINORS.....
8.04	PAYMENTS TO TWO OR MORE PERSONS. ....
8.05	NON-ASSIGNMENT OF BENEFITS.....
8.06	ACTUARIAL EQUIVALENCE.....
8.07	ACTUARIAL ADJUSTMENT OF DELAYED BENEFITS.....
8.08	EFFECT OF ACTUARIAL ADJUSTMENTS ON BENEFITS ACCRUED AFTER NORMAL RETIREMENT AGE.....
ARTICLE IX - APPLICATION FOR BENEFITS.....	
9.01	CLAIMS AND APPEALS PROCEDURE BEFORE JANUARY 1, 2002 .....
9.02	CLAIMS AND APPEALS PROCEDURE AFTER DECEMBER 31, 2001.....
ARTICLE X - DISQUALIFICATION, SUSPENSION AND ADJUSTMENT OF BENEFITS.....	
10.01	EMPLOYMENT AFTER RETIREMENT.....

	(a) Suspension of Benefit Payments .....
	(b) Amount of Suspended Benefit .....
	(c) Resumption of Benefit Payments .....
	(d) Proof of Employment Status .....
	(e) Presumptions Regarding Employment .....
	(f) Offsets .....
	(g) Prohibited Employment .....
	(h) Notice of Suspension .....
	(i) Advance Determination Regarding Prohibited Employment .....
	(j) Special Rules for Employment After Early Retirement Age and Before Normal Retirement Age .....
	(k) Right of Review .....
10.02	ADJUSTMENTS .....
10.03	ACCIDENT AND SICKNESS BENEFITS .....
10.04	OFFSET .....
ARTICLE XI	- AMENDMENT, TERMINATION AND MERGER OF THE PLAN .....
11.01	AMENDMENT .....
11.02	TERMINATION .....
11.03	MERGER .....
ARTICLE XII	- MISCELLANEOUS PROVISIONS .....
12.01	NO REVERSION TO EMPLOYER .....
12.02	INVALIDITY OF CERTAIN PROVISIONS .....
12.03	INTERPRETATION OF PLAN LANGUAGE .....
12.04	LIMITATION ON BENEFITS .....
	(a) Maximum Annual Benefit .....
	(b) Adjustment Where Benefit Begins Before Age 62 .....
	(c) Adjustment Where Benefit Begins After Age 65 .....
	(d) Notwithstanding subsections (a) - (c) .....
	(e) If an Employee has less than 10 Years of Service .....
	(f) Multiple Plan Reduction .....
	(g) Cost-of-Living Adjustments .....
	(h) If an Employee's Employer has ever maintained or ever maintains another defined benefit plan or defined contribution plan .....
	(i) Limitations on Benefits for Years after December 31, 2001 .....
	(j) Definitions .....
	(1) Annual Benefit .....
	(2) Average Compensation for High 3 Years .....
	(3) Compensation .....
	(4) Limitation Year .....
	(5) Defined Benefit Plan Fraction .....
	(6) Defined Contributions Plan Fraction .....
	(7) Annual Addition .....
	(8) Projected Annual Benefit .....
	(k) Effective date .....
	(l) Non-spousal rollover .....
ARTICLE XIII	- EXECUTION .....



## ARTICLE I – DEFINITIONS

### 1.01 “NUMBER AND GENDER”

In this Plan, whenever the context so indicates, the singular or plural number and masculine, feminine or neuter gender shall each be deemed to include the other.

### 1.02 “PENSION FUND” or “FUND”

“PENSION FUND” or “FUND” means the Operating Engineers Local No. 77 Pension Trust Fund.

### 1.03 “PENSION PLAN” or “PLAN”

“PENSION PLAN” or “PLAN” means the Operating Engineers Local No. 77 Pension Plan, as amended.

### 1.04 “UNION”

“UNION” means the International Union of Operating Engineers, Local No. 77, its predecessors or successors and its subordinate branches.

### 1.05 “EMPLOYER”

“EMPLOYER” means:

(a) An Employer who contributes, or is required to contribute, to the Fund pursuant to the terms of a collective bargaining agreement or other written agreement with the Union or the Fund.

(b) The Union, which shall be considered as the Employer of the employees of the Union for whom contributions are made, or required to be made, to the Fund pursuant to the terms of an agreement with the Fund, provided that coverage of such employees satisfies the requirements of the Internal Revenue Code of 1986 relating to the tax-qualified status of the Plan and the tax-exempt status of the Fund.

(c) The Fund, the Operating Engineers Trust Fund of Washington, D.C., the Operating Engineers Skill Improvement and Joint Apprenticeship Training Committee, or any other affiliated trust fund covering the same membership as covered under the Plan, which, if permitted by the Trustees, shall be considered as Employers of the employees of such trust funds for whom contributions are made, or required to be made, to the Fund pursuant to the terms of an agreement with the Fund, provided that coverage of such employees satisfies the requirements of the Internal Revenue Code of 1986 relating to the tax-qualified status of the Plan and the tax-exempt status of the Fund.

(d) Notwithstanding subsections (a) - (c), an employer shall not be deemed to be an “Employer” solely by virtue of its membership in a controlled group of corporations (within the meaning of §1563 of the Internal Revenue Code), one of which is an “Employer.”

### 1.06 “EMPLOYEE”

“EMPLOYEE” means:

(a) an employee of an Employer for whom contributions are made, or required to be made, to the Fund pursuant to a collective bargaining agreement or other agreement with the Union the Fund.

(b) an employee who was an Active Participant, who is credited with at least 15 Benefit Units, and who goes to work full-time for the organized labor movement in employment which relates directly to the labor movement or to the construction industry; provided that contributions paid to the Fund on behalf of such an employee are made pursuant to a written agreement with

the Union or the Fund at the rate prescribed in the then current collective bargaining agreement between the Union and the contributing employers of the fund; and provided further that participation by such an employee is permitted by the Trustees and does not adversely affect the tax-qualified status of the Plan or the tax-exempt status of the Fund under the Internal Revenue Code of 1986.

(c) an employee of an Employer whose participation in the Plan is permitted by the Trustees and does not adversely affect the tax-qualified status of the Plan or the tax-exempt status of the Fund under the Internal Revenue Code of 1986.

(d) Notwithstanding subsections (a) - (c), the term "Employee" shall not include anyone who is not permitted to participate in the Plan by any provision of applicable law, or except as to employees of the Union, the Fund, the Operating Engineers Trust Fund of Washington, D.C., or the Operating Engineers Skill Improvement and Joint Apprenticeship Training Committee, anyone who has never been in a collective bargaining unit represented by the Union.

### **1.07 "TRUST AGREEMENT"**

"TRUST AGREEMENT" means the Operating Engineers Pension Trust Fund Agreement and Declaration of Trust initially entered into by the Union and the Construction Contractors Council and AGC Labor Division, Inc., as amended.

### **1.08 "TRUSTEES"**

"TRUSTEES" means the persons who are acting as Trustees under the provisions of the Trust Agreement.

### **1.09 "PLAN YEAR"**

"PLAN YEAR" shall be the period from January 1 through December 31.

### **1.10 "COVERED EMPLOYMENT"**

"COVERED EMPLOYMENT" means employment by an Employee for which the Employer has agreed to contribute to the Fund for the Employee under collectively bargained agreements or other agreements.

### **1.11 "EMPLOYER CONTRIBUTIONS"**

"EMPLOYER CONTRIBUTIONS" shall mean the amount of money which an Employer is obligated by its collective bargaining agreement or other agreement to pay to the Fund.

### **1.12 "RETIREMENT"**

"RETIREMENT" shall mean complete cessation of all employment (except employment that is not "Prohibited Employment" as defined in Article X, 10.01(g)) regardless of whether or not such employment is Covered Employment.

### **1.13 "PENSIONER"**

"PENSIONER" means an Employee who is receiving or is scheduled to receive retirement benefits under this Plan.

### **1.14 "ACTIVE PARTICIPANT"**

"ACTIVE PARTICIPANT" shall mean an Employee who is or has been in Covered Employment and who has not experienced a One Year Break in Service or who has returned to Covered Employment after a One Year Break in Service without experiencing an additional One Year Break in Service. The term "Active Participant" shall not include Pensioners, or any Employee with no Vesting Hours of Service on or after January 1, 1976.

### **1.15 “NORMAL RETIREMENT AGE”**

“NORMAL RETIREMENT AGE” means:

(a) in the case of an Employee who does not have at least one hour of service on or after January 1, 1988, the later of:

- (1) the date an Employee attains age sixty five (65); or
- (2) the 10th anniversary of the date on which an Employee commenced participation in the Plan; or

(b) in the case of an Employee with an hour of service on or after January 1, 1988, the later of:

- (1) the date an Employee attains age sixty five (65); or
- (2) the 5th anniversary of the date on which the Employee commenced participation in the plan.

### **1.16 “ELIGIBLE SPOUSE”**

“ELIGIBLE SPOUSE” shall mean the spouse of the Employee who is either:

- (a) married to the Employee on the Annuity Starting Date, or
- (b) married to the Employee throughout the twelve month period next preceding the Employee’s death, if the employee dies before the Annuity Starting Date.

### **1.17 “BENEFICIARY”**

“BENEFICIARY” shall mean the person or persons from time to time designated by the Employee as the person or persons entitled to receive any amount payable to such Employee’s Plan Beneficiary from the Fund upon his death. Each such designation shall be in writing, filed with the Trustees and shall be in such form as may be required by the Trustees. If no such designation is on file with the Trustees at the time of the death of the Employee, or if such designated Beneficiary shall have predeceased the Employee, or if the designation is ineffective for any reason, as determined by the Trustees, then the Employee shall be deemed to have designated the following as his Beneficiary with priority in the order named:

- Widow or widower of the Employee;
- Children of the Employee;
- Parents of the Employee;
- Brothers and sisters of the Employee;
- Personal Representative of the Employee’s estate.

### **1.18 “EMPLOYEE OF PAVING CONTRACTOR”**

“EMPLOYEE OF PAVING CONTRACTOR” shall mean an Employee working for an Employer who is bound to a collective bargaining agreement with the Metropolitan D.C. Paving, Highway and Construction Materials Council, AFL-CIO and its affiliated locals, including the Union.

### **1.19 “MILITARY SERVICE”**

“MILITARY SERVICE” shall mean the period of time during which an Employee leaves Covered Employment to enter the Armed Forces of the United States of America; provided that the Employee must have been drafted, called, enlisted in lieu of draft or otherwise required by law to enter the Armed Forces. Periods of voluntary re-enlistment not effected during a national emergency of time of war shall not be considered Military Service. In addition, to constitute Military Service, the Employee must return to Covered Employment within three months

following the date of discharge or release from the Armed Forces. Any Employee entering the United States Armed Forces under the conditions enumerated above must complete a form prior to his entry into the Armed Forces and a form after his discharge from the Armed Forces. These forms will be obtainable from and must be submitted to the Trustees. Effective December 12, 1994, notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with §414(u) of the Internal Revenue Code.

**1.20 “ANNUITY STARTING DATE”**

“ANNUITY STARTING DATE” shall mean (regardless of when benefits actually begin to be paid) the first day of the month coincident with or next following the date the Employee becomes eligible to receive benefits under the Plan.

**1.21 “LUMP SUM DISTRIBUTION AMOUNT”**

“LUMP SUM DISTRIBUTION AMOUNT” shall mean:

- a) prior to July 1, 1998, the sum of \$3,500.00.
- b) after June 30, 1998, the sum of \$5,000.00.

**1.22 “APPLICABLE INTEREST RATE”**

“APPLICABLE INTEREST RATE” shall mean the average annual rate of interest on 30-year Treasury securities, as determined by Regulation or other Internal Revenue Service guidance for this purpose, determined during the second month preceding the first day of the Plan Year during which the Annuity Starting Date occurs.

**1.23 “APPLICABLE MORTALITY TABLE”**

“APPLICABLE MORTALITY TABLE” shall mean the mortality table based on the prevailing Commissioners’ standard table (described in Code Section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on the date as of which present value is being determined (without regard to any other subparagraph of Code Section 807(d)(5)), that is prescribed by the Commissioner in revenue rulings, notices and other guidelines published in the Internal Revenue Bulletin.

**1.24 BENEFIT ACCRUAL RATE**

“Benefit Accrual Rate” shall be the percentage established by the Plan from time to time that is used to determine the Employee’s Percentage Benefit Amount.

**1.25 PERCENTAGE BENEFIT AMOUNT**

“Percentage Benefit Amount” is the monthly benefit amount to be paid to Employees who qualify for a Pension Benefit under the terms of the Plan for service after December 31, 2007.

**ARTICLE II - VESTING SERVICE, BENEFIT UNITS AND BREAKS IN SERVICE**

**2.01 IN GENERAL.**

In order to determine the Years of Vesting Service to which an Employee is entitled in establishing his eligibility for retirement, and to determine the Benefit Units to which an Employee is entitled in calculating the amount of his pension payment, the Employee shall be credited as set forth in this Article.

**2.02 YEAR OF VESTING SERVICE.**

A Year of Vesting Service is

(a) In the case an Employee who is not an Employee of a Paving Contractor, and who is an Active Participant on January 1, 1976:

- (1) a Plan Year prior to January 1, 1960, for which an Employee has been credited with a Past Benefit Unit, and
- (2) Plan Year after December 31, 1959, and prior to January 1, 1976 in which the Employee is credited with a Future Benefit Unit, and
- (3) a Plan Year after December 31, 1975 in which the Employee is credited with at least 1000 Vesting Hours of Service.

(b) In the case of Employees who are Employees of Paving Contractors, and who were Active Participants on January 1, 1976:

- (1) a Plan Year prior to January 1, 1970, and after December 31, 1960, any part of which the Employee was employed under collectively bargained agreements of the Union, or as an Employee as defined in Article I, and
- (2) a Plan Year after December 31, 1969 and prior to January 1, 1976 in which the Employee is credited with a Future Benefit Unit.
- (3) a Plan Year after December 31, 1975 in which the Employee is credited with at least 1000 Vesting Hours of Service.

(c) All of an Employee's Years of Service for Vesting as computed above shall be taken into account for purposes of determining an Employee's non-forfeitable right to benefits derived from this Plan. If an Active Participant engages in non-Covered Employment with an Employer and such employment is contiguous with his Covered Employment with that Employer (i.e., immediately precedes or follows such Covered Employment) his Hours of Service in such non-Covered Employment after December 31, 1975 shall be counted for purposes of crediting his Vesting Service.

The following Years of Service shall be disregarded by the Plan:

- (1) Years of Vesting Service before January 1, 1976, if such service would have been disregarded under the rules of this Plan with regard to Breaks in Service as such rules existed on December 31, 1975.
- (2) Years of Vesting Service after December 31, 1975, as are disregarded under the Break in Service rules of this Plan.

(d) Effective January 1, 1976, an Employee shall be credited with the one Year of Vesting Service (beginning with the Plan Year beginning on January 1, 1976) for every Plan Year in which the Employee has been credited with 1000 or more Vesting Hours of Service. It shall be impossible for an Employee to be credited with more than one Year of Vesting Service in any single Plan Year; however, Employees shall receive credit for partial and full Years of Vesting Service under the Plan according to the following schedule:

EMPLOYEE'S VESTING HOURS OF SERVICE IN A SINGLE PLAN YEAR	CREDITED YEARS OF VESTING SERVICE
0 - 499	0
500 - 749	1/2
750 - 999	3/4
1000 or more	1

### **A Vesting Hour of Service is**

(a) An Hour for which an Employee is paid, or entitled to payment for the performance of duties for the Employer during the applicable computation period.

(b) An Hour for which an Employee is paid, or entitled to payment, by the Employer on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence. Notwithstanding the preceding sentence,

- (1) Except as provided in Section 2.09, no more than 501 Hours shall be credited under this subsection (b) to an Employee on account of any single continuous period during which the Employee performs no duties (whether or not such period occurs in a single computation period).
- (2) An Hour for which an Employee is directly, or indirectly paid, or entitled to payment, on account of a period during which no duties are performed shall not be credited to the Employee if such payment is made or due under a plan maintained solely for the purpose of complying with applicable workers' compensation, or unemployment compensation or disability insurance laws.
- (3) Hours shall not be credited for a payment which solely reimburses an Employee for medical or medically related expenses incurred by the Employee.

For purposes of this subsection (b), a payment shall be deemed to be made by or due from the Employer regardless of whether such payment is made by or due from the Employer directly or indirectly through, among others, a trust fund, or insurer, to which the Employer contributes or pays premiums and regardless of whether contributions made or due to the trust fund, insurer or other entity are for the benefit of particular employees or are on behalf of a group of employees in the aggregate.

(c) An Hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer. The same Hours shall not be credited both under subsection (a) or subsection (b), as the case may be, and under this subsection (c). Crediting of Hours for back pay awarded or agreed to with respect to periods described in subsection (b) shall be subject to the limitations set forth in that subsection.

(d) For Plan Years beginning on or after January 1, 1985, solely for the purpose of determining whether an Employee has incurred a One Year Break in Service, the Employee shall be credited with Vesting Hours of Service for Period during which he is on a maternity or paternity leave of absence. The term "maternity or paternity leave of absence" shall mean an absence from work for any period by reason of the Employee's pregnancy, birth of the Employee's child, placement of a child with the Employee in connection with the adoption of such child, or any absence for the purpose of caring for such child for a period immediately following such birth or placement. For this purpose, Vesting Hours of Service shall be credited for the Plan Year in which the absence from work begins, only if credit therefore is necessary to prevent the Employee from incurring a One Year Break in Service in that Plan Year, or, in any other case, in the immediately following Plan Year. The Vesting Hours of Service credited for a maternity or paternity leave of absence shall be those which would normally have been credited to such Employee but for such absence, or, in any case in which the Trustees are unable to determine the manner in which such hours would normally have been credited, eight (8) Vesting Hours of Service per day. The total number of Vesting Hours of Service to be credited

for a maternity or paternity leave of absence shall not exceed 501. The Trustees may require an Employee to submit appropriate proof that an absence from work qualifies as a maternity or paternity leave of absence.

#### **2.04 PAST BENEFIT UNITS.**

An Employee who is not an Employee of a Paving Contractor shall be granted one Past Benefit Unit for each Plan Year prior to January 1, 1960, any part of which the Employee was employed under collectively bargained agreements of the Union or as an Employee as defined in Article I.

#### **2.05 FUTURE BENEFIT UNITS.**

An Employee shall be granted Future Benefit Units based on his service after December 31, 1959 (after December 31, 1969 for Employees of Paving Contractors) and before January 1, 2008, (or after a subsequent loss of credited service under Section 2.08 and subject to Article X) equal to the lesser of:

- (a) his actual Years of Participation in the Plan, or
- (b) his number of years and quarters (computed to the nearest completed quarter year) determined by dividing his number of Benefit Hours of Service by 1600.

“Years of Participation” for purposes of this Section 2.05 shall mean

- (1) For Participants first retiring prior to July 1, 2001:

the period, in terms of years and fractions of a year (to completed quarters) between:

- (a) the first day of the month in which Benefit Hours are first credited to an Employee under the Plan, and
- (b) the later of:
  - (i) December 31 of the Plan Year in which the Employee is last credited with at least 400 Benefit Hours of Service, or
  - (ii) The last day of the month in which the Employee is last credited with any Benefit Hours; provided that the Employee’s Benefit Hours with respect to the Plan Year which includes such month equal fewer than 400 Benefit Hours; and provided further that the Employee is credited with at least 400 Benefit Hours in the immediately preceding Plan Year.

The foregoing notwithstanding, Years of Participation shall not include any period for which there has been a cancellation of Years of Vesting Service and Benefit Units in accordance with Sections 2.08 or 2.02(c).

- (2) For Participants first retiring after June 30, 2001:

the period, in terms of years and fractions of a year (to completed quarters) between:

- (a) the first day of the Plan Year in which Benefit Hours are first credited to an Employee under the Plan, and
- (b) the later of:
  - (i) December 31 of the Plan Year in which the Employee is last credited with at least 400 Benefit Hours of Service, or
  - (ii) The last day of the month in which the Employee is last credited with any Benefit Hours; provided that the Employee’s Benefit Hours with respect to the Plan Year which includes such month equal fewer than 400 Benefit Hours; and provided further that

the Employee is credited with at least 400 Benefit Hours in the immediately preceding Plan Year.

The foregoing notwithstanding, Years of Participation shall not include any Plan Year,

- (A) for which there has been a cancellation of Years of Vesting Service in accordance with Article 2.08, or,
- (B) for Plan Years after the Plan Year in which Benefit Hours are first credited to the Employee under the Plan, during which a Participant has suffered a One Year Break in Service under the terms of the Plan, unless the One Year Break in Service shall have been disregarded pursuant to Article IV, 4.01(b) of this Plan.

## **2.06 BENEFIT HOUR OF SERVICE.**

Benefit Hour of Service shall mean:

- (a) each Hour for which an Employer makes Employer Contributions or is obligated to make Employer Contributions into the Fund on behalf of an Employee; and
- b) Benefit Hours granted under Section 2.09.

## **2.07 ONE YEAR BREAK IN SERVICE.**

A One Year Break in Service shall mean any Plan Year prior to January 1, 1976 during which an Employee has not completed at least 400 Vesting Hours of Service and any Plan Year after December 31, 1975 during which an Employee has not completed at least 500 Vesting Hours of Service.

## **2.08 CANCELLATION AND REINSTATEMENT OF SERVICE.**

### **(a) RULE OF PARITY**

If an Active Participant who has not satisfied the service requirements for a Deferred Pension incurs, on or after January 1, 1976 and before January 1, 1986, a number of consecutive One Year Breaks in Service that equal or exceed the total number of prior Plan Years in which the Employee has been granted at least 1,000 Vesting Hours of Service, said Employee shall suffer a total cancellation of service. In such case, all of the Employee's credited Years of Vesting Service and all of the Employee's credited Benefit Units granted to the time of such total cancellation of service shall be disregarded under the Plan. Once cancelled, no such Years of Vesting Service or Benefit Units shall again be counted for any purpose under the Plan. If an Active Participant who has not satisfied the service requirements for a Deferred Pension incurs, on or after January 1, 1986, a number of consecutive One Year Breaks in Service that equal or exceed the greater of (1) five or (2) the total number of prior Plan Years in which the Employee has been granted at least 1,000 Vesting Hours of Service, all of such Employee's Years of Vesting Service and Benefit Units shall be disregarded by the Plan and shall not again be counted for any purpose under the Plan.

### **(b) TRANSITIONAL RULE**

Notwithstanding subsection (a) (but subject to subsection (c)), no Employee during the period January 1, 1976 through December 31, 1978 shall suffer a cancellation of Years of Vesting Service or Benefit Units if such Employee is able to avoid such cancellation either under subsection (a) or the Break in Service Rules of the Plan as they existed on December 31, 1975.

### **(c) RULE POST-JANUARY 1, 1979**

Notwithstanding subsections (a) and (b), any person who becomes an Active Participant on or after January 1, 1979 shall be governed with regard to cancellation of Years of Vesting Service and Benefit Units solely by subsection (a).



## **2.09 VESTING AND BENEFIT HOURS FOR MILITARY SERVICE.**

Effective December 31, 1959, an Employee who leaves Covered Employment to enter Military Service shall receive credit for 400 Vesting Hours of Service and 400 Benefit Hours of Service for each calendar quarter in Military Service. The period of Military Service which counts as service for receiving such credit under the Plan shall not exceed the actual period during which the Employee was required to serve plus three months.

## **2.10 NON-FORFEITABILITY OF NORMAL RETIREMENT BENEFIT.**

Notwithstanding any other Plan provision, if an Employee is entitled to a Normal Pension upon the attainment of Normal Retirement Age pursuant to Section 4.01, the Employee's right to Normal Pension benefits shall not thereafter be forfeitable.

## **2.11 PERCENTAGE BENEFIT AMOUNT**

An Employee shall be entitled to a Percentage Benefit Amount based upon his service after December 31, 2007, subject to the Break in Service rules of the Plan. An Employee's Percentage Benefit Amount shall be calculated by multiplying the total amount of contributions received by the Plan based upon the Employee's Hours of Service after December 31, 2007 by the Benefit Accrual Rate established by the Plan from time to time.

# **ARTICLE III - RECIPROCITY AGREEMENTS**

## **3.01 PRO-RATA PENSIONS.**

Pro-rata pensions are provided under this Plan for Employees who would otherwise lack sufficient service credits to be eligible for any pension because their years of employment were divided between different pension plans or, if eligible, whose pensions would be of a lesser amount because of such divisions of employment. The provisions controlling Pro-rata Pensions are attached hereto (See Appendix) and are hereby incorporated by reference and made a part hereof.

## **3.02 TRANSFER OF CONTRIBUTIONS.**

Pensions are provided under this Plan for Employees who would otherwise lack sufficient service credits to be eligible for any pension because their years of employment were divided between different pension plans, or, if eligible, whose pension would be less than the full amount because of such divisions of employment. Cooperating plans collect and forward employer contributions on behalf of traveling Employees to the Employee's home pension plan. The provisions controlling the reciprocal Transfer of Contributions plans are attached hereto (See Appendix) and are hereby incorporated by reference and made a part hereof.

# **ARTICLE IV - BENEFITS**

## **4.01 NORMAL PENSION.**

## **4.01 NORMAL PENSION.**

### **(a) Calculation of Normal Retirement Pension**

An Employee who is an Active Participant as of the date he attains his Normal Retirement Age, with five Years of Vesting Service shall be eligible to receive a Normal Pension upon his Retirement.

#### **i. Method of Calculation**

The monthly benefit to which an Employee is entitled upon his retirement shall be calculated as the total sum of

(A) the Employee's Past Benefit Units (for employment before January 1, 1960 for Employees who are not Employees of Paving Contractors) calculated in accordance with paragraphs (b), (c) and (d) below,

(B) the Employee's Future Benefits Units (for employment between December 31, 1959 (December 31, 1969 for Employees of Paving Contractors) and January 1, 2008) calculated in accordance with paragraphs (b), (c) and (d) below, and

(C) the Employee's Percentage Benefit Amount (for employment after December 31, 2007) calculated in accordance with paragraph (e), below.

ii. Rules Applicable to Past and Future Benefit Units

If the Employee

- (1) has been credited with less than 25 Years of Vesting Service at the time of his Retirement, or does not satisfy the conditions of sub-paragraph (c) of this Section, and
- (2) ceased to be an Active Participant one or more times during his working career, and
- (3) subsequently returned to Covered Employment before Retirement,

the monthly amount of Normal Pension shall be an amount equal to the number of Past and Future Benefit Units with which the Employee was credited at the time he first ceased to be an Active Participant multiplied by the rates in effect for Past and Future Benefit Units, set forth below, at the time he ceased to be an Active Participant plus an amount or amounts calculated in the same manner for any subsequent period(s) during which the Employee was an Active Participant. If an Employee never ceased to be an Active Participant during his working career, the monthly amount of Normal Pension shall be based on the rates in effect for Past and Future Benefits Units, set forth below, at the time such Employee's application for benefits is approved.

(b) Special Rules Regarding One Year Breaks in Service

Notwithstanding the other subsections of this Section 4.01:

(1) Any One-year Break in Service suffered by an Employee between January 1, 1982 and December 31, 1984 shall be disregarded for purposes of locking in that Employee's benefit rate(s) for prior units of service and for purposes of application of Article II, 2.05 for Participants first retiring after June 30, 2001, and for no other purpose, provided such Employee did not suffer an additional One-Year Break in Service in 1985.

(2) Any One-year Break in Service suffered by an Employee between January 1, 1991 and December 31, 1993 shall be disregarded for purposes of locking in that Employee's benefit rate(s) for prior units of service and for purposes of application of Article II, 2.05 for Participants first retiring after June 30, 2001, and for no other purpose, provided such Employee did not suffer an additional One-Year Break in Service in 1994, provided, however, that the Employee must have been available for employment during the above mentioned time periods and actively sought employment through Local No. 77 of the Operating Engineers.

(3) A One Year Break in Service occurring after June 30, 1977, solely as a result of an injury suffered arising out of and in the course of employment with a contributing employer, shall be disregarded for purposes of locking in that Employee's benefit rates for prior units of service and for purposes

of application of Article II, 2.05 for Participants first retiring after June 30, 2001, and for no other purpose under the plan, provided the individual returns to covered employment following his employment injury, and thereafter continues to accrue one or more benefit units. In no event, however, shall the number of consecutive One Year Breaks in Service, which are disregarded pursuant to the terms of this paragraph, exceed three years. The disregarded one year breaks in service covered pursuant to the terms of this paragraph may be added to and considered with the waiver of One Year Breaks in Service due to high periods of unemployment as defined in Section 4.01(b)(1) and (2) of the plan, provided such individual in fact was ready, willing, and physically capable of employment during such periods of time as are set forth in Section 4.01(b)(1) and (2) of the plan.

(c) Calculation of Pension for Employees With 25 Years of Vesting Service

If an Employee satisfies the conditions of paragraph (1) or (2) below, the monthly amount of Normal Pension shall be equal to the number of Past and Future Benefit Units with which the Employee has been credited multiplied by the rates for Past and Future Benefit Units set forth below in effect at the time such Employee's application for benefits is approved.

(1) Employees Credited with 25 Years of Vesting Service Prior to October 1, 2004

If an Employee has been credited with at least 25 Years of Vesting Service prior to October 1, 2004, the monthly amount of Normal Pension shall be equal to the number of Past and Future Benefit Units with which the Employee has been credited multiplied by the rates for Past and Future Benefit Units set forth below in effect at the time such Employee's application for benefits is approved.

(2) Employees First Credited with 25 Years of Vesting Service After September 30, 2004

If an Employee is first credited with at least 25 Years of Vesting Service after September 30, 2004, the monthly amount of Normal Pension shall be equal to the number of Past and Future Benefit Units with which the Employee has been credited multiplied by the rates for Past and Future Benefit Units set forth below in effect at the time such Employee's application for benefits is approved, provided, however, that for any period in which the employee has suffered multiple one year breaks in service, he shall thereafter have been credited with a number of Years of Vesting Service that shall equal the lesser of

- (A) the number of One Year Breaks in Service suffered, or
- (B) five.

(3) Rule for Vesting Service Earned in Central Pension Fund

Effective with respect to participants first retiring after December 31, 2000, solely for the purposes of determining whether an individual shall have been credited with 25 years of Vesting Service under paragraphs (1) and (2), a participant shall be deemed to have One Year of Vesting Service for each Plan Year during which the participant meets the following requirements:

1. The participant was employed within the geographical jurisdiction of Local No. 77 under a collection bargaining agreement between his employer and the Union, that requires contributions to the Central Pension Fund of the International Union of Operating Engineers;

2. The participant earned one year of Vesting Service pursuant to the terms of the Central Pension Fund of the International Union of Operating Engineers;
3. The participant did not earn one year of Vesting Service under this plan.

(d) Benefit Unit Rates

**(1) EMPLOYEE WHO IS NOT AN EMPLOYEE OF A PAVING CONTRACTOR:**

<b>CESSATION OF ACTIVE PARTICIPATION IN PLAN BETWEEN</b>	<b>PAST AND FUTURE PENSION BENEFIT UNIT IN EFFECT</b>
October 1, 1967 - December 31, 1969 (with a maximum of 35 Benefit Units)	\$4.10
January 1, 1970 - April 30, 1972 (with a maximum of 35 Benefit Units)	\$6.65
May 1, 1972 - December 31, 1974	\$7.05
January 1, 1975 - June 30, 1977	\$12.75
July 1, 1977 - December 31, 1983	\$13.25 per month for each Past Benefit Unit plus \$14.00 per month for each Future Benefit Unit.
January 1, 1984 - September 30, 1985	\$13.25 per month for each Past Benefit Unit plus \$21.00 per month for each Future Benefit Unit.
October 1, 1985 - December 31, 1986	\$13.25 per month for each Past Benefit Unit plus \$22.00 per month for each Future Benefit Unit.
January 1, 1987 - December 31, 1988	\$13.25 per month for each Past Benefit Unit plus \$25.00 per month for each Future Benefit Unit.
January 1, 1989 - December 31, 1989	\$13.25 per month for each Past Benefit Unit plus \$32.00 per month for each Future Benefit Unit.
January 1, 1990 - December 31, 1990	\$13.25 per month for each Past Benefit Unit plus \$41.00 per month for each Future Benefit Unit (with a minimum \$100.00 monthly benefit for non Pro-rata pensions).

<p align="center"><b>CESSATION OF ACTIVE PARTICIPATION IN PLAN BETWEEN</b></p>	<p align="center"><b>PAST AND FUTURE PENSION BENEFIT UNIT IN EFFECT</b></p>
<p>January 1, 1991 - December 31, 1992</p>	<p>\$13.25 per month for each Past Benefit Unit plus \$47.00 per month for each Future Benefit Unit (with a minimum \$100.00 monthly benefit for non-Pro-rata pensions).</p>
<p>January 1, 1993 - December 31, 1993</p>	<p>\$13.25 per month for each past Benefit Unit plus \$48.75 per month for each future Benefit Unit (with a minimum \$100 monthly benefit for non-Pro-rata pensions)</p>
<p>January 1, 1994 - December 31, 1995</p>	<p>\$13.25 per month for each Past Benefit Unit, plus \$50.00 per month for each Future Benefit Unit (with a minimum \$100.00 for non-Pro-rata pensions).</p>
<p>January 1, 1997 – December 31, 1996</p>	<p>\$13.25 per month for each Past Benefit Unit, plus \$57.00 per month for each Future Benefit Unit (with a minimum \$100.00 monthly benefit for non-Pro-rata pensions.)</p>
<p>January 1, 1998 – December 31, 1997</p>	<p>\$13.25 per month for each Past Benefit Unit, plus \$61.00 per month for each Future Benefit Unit (with a minimum \$100.00 monthly benefit for non-Pro-rata pensions.)</p>
<p>January 1, 1999 – December 31, 1998</p>	<p>\$13.25 per month for each Past Benefit Unit, plus \$66.00 per month for each Future Benefit Unit (with a minimum \$100.00 monthly benefit for non-Pro-rata pensions.)</p>
<p>January 1, 1999 – December 31, 1999</p>	<p>\$13.25 per month for each Past Benefit Unit, plus \$72.00 per month for each Future Benefit Unit (with a minimum \$100.00 monthly benefit for non-Pro-rata pensions.)</p>

<b>CESSATION OF ACTIVE PARTICIPATION IN PLAN BETWEEN</b>	<b>PAST AND FUTURE PENSION BENEFIT UNIT IN EFFECT</b>
January 1, 2000 – December 31, 2007	\$13.25 per month for each Past Benefit Unit, plus \$86.00 per month for each Future Benefit Unit (with a minimum \$100.00 monthly benefit for non-Pro-rata pensions.)
January 1, 2008 and thereafter	\$13.25 per month for each Past Benefit Unit, plus \$88.15 per month for each Future Benefit Unit (with a minimum \$100.00 monthly benefit for non-Pro-rata pensions.)

**(2) EMPLOYEES OF PAVING CONTRACTORS:**

<b>CESSATION OF ACTIVE PARTICIPATION IN PLAN BETWEEN</b>	<b>PAST AND FUTURE PENSION BENEFIT UNIT IN EFFECT</b>
January 1, 1975 - June 30, 1977	\$5.70 (with minimum \$50.00 monthly benefit)
July 1, 1977 - December 31, 1983	\$7.00 (with minimum \$70.00 monthly benefit)
January 1, 1984 - September 30, 1985	\$10.50 (with minimum \$70.00 monthly benefit)
October 1, 1985 - December 31, 1986	\$11.00 (with minimum \$70.00 monthly benefit)
January 1, 1987 - December 31, 1988	\$12.50 (with minimum \$70.00 monthly benefit)
January 1, 1989 - December 31, 1989	\$20.00 (with minimum \$70.00 monthly benefit)
January 1, 1990 - December 31, 1990	\$25.75 (with a minimum \$100.00 monthly benefit for non Pro-rata pensions).
January 1, 1991 - December 31, 1992	\$30.00 (with a minimum \$100.00 monthly benefit for non Pro-rata pensions)
January 1, 1993 - December 31, 1993	\$31.15 (with a minimum \$100 monthly benefit for Non-Pro-rata pensions).
January 1, 1994-December 31, 1995	\$32.25 (with a minimum \$100.00 monthly benefit for non-Pro-rata pensions).

CESSATION OF ACTIVE PARTICIPATION IN PLAN BETWEEN	PAST AND FUTURE PENSION BENEFIT UNIT IN EFFECT
January 1, 1996 - December 31, 1996	\$35.00 (with a minimum \$100.00 monthly benefit for non-Pro-rata pensions)
January 1, 1997 - December 31, 1997	\$38.00 (with a minimum \$100.00 monthly benefit for Non-Pro-rata pensions).
January 1, 1998 - December 31, 1998	\$41.50 (with a minimum \$100.00 monthly benefit for Non-Pro-rata pensions).
January 1, 1999 - December 31, 1999	\$46.00 (with a minimum \$100.00 monthly benefit for Non-Pro-rata pensions)
January 1, 2000 - December 31, 2007	\$55.00 (with a minimum \$100.00 monthly benefit for Non-Pro-rata pensions).
January 1, 2008 and thereafter	\$56.40 (with a minimum \$100.00 monthly benefit for Non-Pro-rata pensions).

(e) Percentage Benefit Amount

The amount of an Employee's Percentage Benefit Amount for service after December 31, 2007, shall be equal to the amount of contributions received by the Plan on behalf of the Employee for Hours of Service after December 31, 2007 multiplied by the Benefit Accrual Rate. Effective January 1, 2008, the Benefit Accrual Rate is 3%.

**4.02 EARLY RETIREMENT PENSION.**

An Employee shall be eligible to receive an Early Retirement Pension if he is an Active Participant upon Retirement after:

- (a) he has attained age 55, but not 65, and
- (b) he has been credited with at least five (5) Years of Vesting Service

The monthly amount of Early Retirement Pension shall be determined in accordance with the rules set forth in Section 4.01, reduced by one-half of 1% for each month that the date on which benefits actually begin to be paid precedes Normal Retirement Age. On or after January 1, 1993, if a participant is under age 60 at the time of retirement but at least age 55 with 35 years of vesting service or more, the monthly amount of the early retirement pension shall be reduced by one quarter of one percent for each month that the early retirement date precedes age 60.

Notwithstanding the above, if an Employee has at least one (1) hour of service on or after January 1, 1987, is age 62 or older, and has at least 35 years of Vesting Service, the Employee may receive a pension under this section before Normal Retirement Age in an unreduced amount.

Notwithstanding the above, if an Employee has at least one (1) hour of service on or after January 1, 1989, is age 60 or older, and has at least 35 years of Adjusted Vesting Service, the Employee may receive a pension under this section before Normal Retirement Age in an unreduced amount. Solely for purposes of this paragraph, the term "Adjusted Vesting Service"

shall mean the number of Years of Vesting Service determined without regard to this paragraph plus one year for each of the One Year Breaks in Service disregarded under the plan pursuant to Section 4.01(b), provided, however, that the term Adjusted Vesting Service shall not be construed in a way which would provide more than one year of Adjusted Vesting Service for any Plan Year.

Effective for persons first retiring after December 31, 2000, notwithstanding the above, if an Employee has at least one (1) hour of service on or after January 1, 1989, is age 60 or older, and has at least 35 years of Adjusted Vesting Service, the Employee may receive a pension under this section before Normal Retirement Age in an unreduced amount. Solely for purposes of this paragraph, the term "Adjusted Vesting Service" shall mean:

1. The number of Years of Vesting Service determined without regard to this paragraph, plus
2. One year for each of the One Year Breaks in Service disregarded under the plan pursuant to Section 4.01(b), plus
3. One year for each Plan Year during which the participant meets the following requirements:
  - a. The participant was employed within the geographical jurisdiction of Local No. 77 under a collective bargaining agreement between his employer and the Central Pension Fund of the International Union of Operating Engineers,
  - b. The participant earned one year of Vesting Service pursuant to the terms of the Central Pension Fund of the International Union of Operating Engineers,
  - c. The participant did not earn one year of Vesting Service under this plan.
4. One year for the Plan Year in which the Participant retires, provided the Participant meets the following conditions:
  - a. Prior to the Plan Year in which the Participant retires, he shall have accumulated 34 Years of Adjusted Vesting Service, and
  - b. For the Plan Year in which the Participant retires, he shall have been credited with at least 400 Benefit Hours of Service.

provided, however, that the term Adjusted Vesting Service shall not be construed in a way which would provide more than one year of Adjusted Vesting Service for any Plan Year.

#### **4.03(a) DISABILITY PENSION.**

An Active Participant shall be eligible to receive a Disability Pension if he becomes Totally and Permanently Disabled through some Unavoidable Cause and retires at any age if he has at least 15 Years of Vesting Service.

For an Employee who is not an Employee of a Paving Contractor the monthly amount of Disability Pension shall be determined on the basis of the Normal Pension formula as applicable to an Employee who is not an Employee of a Paving Contractor for Benefit Units at the date of the occurrence of the Disability.

For an Employee of a Paving Contractor the monthly amount of Disability Pension shall be determined on the basis of the Normal Pension formula as applicable to an Employee of a Paving Contractor for Future Benefit Units at the date of the occurrence of the Disability.

Disability Pensions shall be payable monthly for life during the continuation of the Disability. Payments of Disability Pensions shall cease with the payment due on or most recently preceding the earlier of the date on which recovery from Total and Permanent Disability occurs,



or the death of the Employee; but if the Employee dies before receiving monthly benefits for 36 months, monthly payments shall be continued to his Beneficiary until a total of 36 monthly payments have been made to him and his Beneficiary.

An Employee shall be determined to be Permanently and Totally Disabled only if,

(1) The physical or mental condition is medically determinable and arises as a result of bodily injury or disease which prevents him from engaging in any occupation or employment for wage or profit except such employment which is found by the Trustees to be for the purpose of rehabilitation and not incompatible with the findings of Total and Permanent Disability, and

(2) In the opinion of a competent physician, physicians or medical clinic selected by the Trustees, the Employee will be Totally and Permanently Disabled through the remainder of his life, and

(3) The Trustees determine that the Employee is Totally and Permanently Disabled.

The Trustees may require that an Employee be awarded a Social Security Administration Award of Disability Benefits as evidence of Total and Permanent Disability and as a condition to eligibility for a Disability Pension under this Plan.

For purposes of this section, an Employee will be considered Totally and Permanently Disabled as of the date immediately prior to the date he ceased to be an Active Participant, if:

(a) he first became Totally Disabled while an Active Participant and while employed or available for employment under an applicable Collective Bargaining Agreement "in covered employment", and

(b) he has remained Totally Disabled continuously and without interruption from the moment he first became Totally Disabled until the date he is determined to be both Totally and Permanently Disabled.

The Trustees shall have absolute discretion in determining whether an Employee qualifies hereunder for a Disability Benefit.

An Employee applying for a Disability Pension shall be required to submit to an examination by a competent physician or physicians selected by the Trustees and shall be required to submit to re-examination, not more often than semi-annually, as shall be deemed necessary by the Trustees to make a determination concerning his physical or mental condition, provided, however, that an Employee receiving a Disability Pension who attains Normal Retirement Age shall no longer be subjected to the re-examination provision of this paragraph.

Total and Permanent Disability shall be deemed to have resulted from an Unavoidable Cause unless,

(1) It was contracted, suffered, or incurred while the Employee was engaged in, or resulted from his having engaged in a criminal enterprise, or

(2) It resulted from the Employee's habitual drunkenness or from the use of narcotics, or

(3) It resulted from self-inflicted injury.

Total and Permanent Disability resulting from any such enumerated causes, or from Military Service for which the Employee receives a military pension from the United States shall not entitle the Employee to a Disability Pension. A Disability Pension otherwise payable shall be payable for a disability resulting from Military Service, if such disability is compensable by a

military pension, except if such military pension is less than the benefit to which the Employee would be entitled hereunder, the difference shall be paid to him under this Plan.

#### **4.03(b) OCCUPATIONAL DISABILITY PENSION.**

(1) Eligibility. Effective January 1, 1993, an Active Participant who becomes Totally and Permanently Occupationally Disabled (as defined in subsection (2) subsequent to the date upon which he has been credited with at least (15) Years of Vesting Service and at a time when he is working for an Employer, shall be eligible to receive an Occupational Disability Pension, provided that the disability did not result from the employee's habitual drunkenness or from the illegal use of narcotics, the employee engaging in a criminal enterprise, a self-inflicted injury, or active service in the Armed Forces of the United States or of any State.

(2) Definition of Totally and Permanently Occupationally Disabled. An Active Participant shall be deemed to be Totally and Permanently Occupationally Disabled if, as a result of an injury, illness, or mental disorder, he becomes completely unable to engage in Covered Employment or any bargaining unit work, provided that it is reasonably certain such condition will continue during his remaining lifetime.

(3) Proof of Disability.

(i) Initial Determination of Disability.

The initial determination of whether an Active Participant is Totally and Permanently Occupationally Disabled shall be made solely by the Trustees whose decision shall be final and binding on such Active Participant. In making such determination, the Trustees may require such Active Participant to submit a medical report or reports, sufficient in their determination for the Trustees to render a decision on the question of disability; they may require such Active Participant to be examined by a physician or physicians of the Trustees' choosing; or they may require that any combination of the foregoing types of proof be provided.

(ii) Continuing Disability.

The Trustees may require a Pensioner who is receiving an Occupational Disability Pension to submit periodic proof of the type(s) specified in paragraph (i) of this subsection (3) that he remains Totally and Permanently Occupationally Disabled. The decision of whether such a Pensioner continues to be Totally and Permanently Occupationally Disabled shall be made solely by the Trustees whose decision shall be final and binding on such Pensioner. In no event, however, shall such a Pensioner be required to submit proof that he remains Totally and Permanently Occupationally Disabled more frequently than semi-annually or after he has attained his Normal Retirement Age.

(4) Amount and Form of Occupational Disability Pension. The amount of the Occupational Disability Pension shall be determined on the basis of the Normal Pension formula provided in Section 4.01 that is in effect on the date the Occupational Disability pension commences.

#### **4.04 DEFERRED PENSION.**

(a) an Employee who has been credited with 10 or more Years of Vesting Service and who ceases to be an Active Participant in the Plan prior to attaining age 55 for any reason other than death will retain a vested right under the Plan. The vested right will entitle the Employee to receive, commencing at age 65 (or after age 55 but before age 65; in which case any amount computed shall be reduced by one-half of 1% for each month that the date on which benefits actually begin to be paid precedes the Employee's Normal Retirement Age) a monthly

benefit. The Monthly amount of Deferred Pension shall be determined in accordance with the rules set forth in Section 4.01, reduced, if applicable, in accordance with the provisions of the previous sentence.

(b) for Employees with at least one (1) hour of service on or after January 1, 1989, the terms of paragraph (a) above apply except that the Employee must be credited with five (5) or more years of Vesting Service instead of 10 or more such years.

#### **4.05 PRE-RETIREMENT SURVIVOR ANNUITY.**

(a) A surviving spouse may elect a Qualified Pre-Retirement Survivor Annuity under the following conditions:

1. The surviving spouse of an Employee:
  - (i) who is credited with at least one (1) Vesting Hour of Service on or after August 23, 1984;
  - (ii) who dies on or after August 23, 1984 but before his Annuity Starting Date;
  - (iii) who is credited with either (A) at least ten (10) years of Vesting Service on his date of death, or (B) at least five (5) years of Vesting Service on his date of death, if such Employee had at least one (1) hour of service on or after January 1, 1989, whichever is applicable; and
  - (iv) who dies before the date of his 55th birthday,

shall be entitled to choose between receiving any other Plan benefit for which she qualifies, determined without regard to this Section 4.05, or a Qualified Pre-Retirement Survivor Annuity, as defined in subsection (b), payable commencing on the first day of the month following the month in which the Employee would have attained age 55. In no event shall such a surviving spouse be entitled to receive both a Qualified Pre-Retirement Survivor Annuity and another Plan benefit for which she would otherwise qualify.

2. The surviving spouse of an Employee:
  - (i) who is credited with at least one (1) Vesting Hour of Service on or after June 1, 1994;
  - (ii) who dies on or after June 1, 1994 but before his Annuity Starting Date;
  - (iii) who is credited with at least five (5) years of Vesting Service on his date of death,

shall be entitled to choose between receiving any other Plan benefit for which she qualifies, determined without regard to this Section 4.05, or a Qualified Pre-Retirement Survivor Annuity, as defined in subsection (b), payable commencing on the first day of the month following the month in which the Employee dies, and the amount of the benefit will be calculated in accordance with the applicable terms of this Plan, provided that the reduction in benefits which would otherwise have been made due to retirement or death before Normal Retirement Age shall not exceed 10%. In no event shall such a surviving spouse be entitled to receive both a Qualified Pre-Retirement Survivor Annuity and another Plan benefit for which she would otherwise qualify.

(b) The term “Qualified Pre-Retirement Survivor Annuity” shall mean an annuity payable monthly for the life of the surviving spouse in a monthly amount equal to the amount

that would have been paid to such spouse in accordance with Section 5.01 on the following assumptions:

- (1) For an Employee who dies prior to age 55, on the assumptions that the Employee had:
    - (i) separated from service on the date of his death;
    - (ii) survived to age 55;
    - (iii) retired at age 55 and elected to begin receiving immediately a pension and in the form provided by Section 5.01; and
    - (iv) died on the day after his 55th birthday.
  - (2) For an Employee who dies after age 55, on the assumption that the Employee had separated from service, retired and qualified for a pension on the day immediately prior to his date of death.
- (c) In the event of the death of an Employee:
- (1) whose surviving spouse is eligible to elect a Qualified Pre-Retirement Survivor Annuity; and
  - (2) whose Beneficiary is not his surviving spouse,

notwithstanding any other provision of the Plan, there shall be no Plan benefits payable to such Beneficiary, and the only benefit payable on account of such Employee's participation in the Plan shall be the Qualified Pre-Retirement Survivor Annuity which shall be payable only to such Employee's surviving spouse.

(d) In the event that the present value of the Qualified Pre-Retirement Survivor Annuity payable to a surviving spouse of an Employee does not exceed the Lump Sum Distribution Amount, then such present value shall be distributed to such surviving spouse in one lump sum payment as soon as practicable following the Employee's death, assuming that such spouse elects, in accordance with subsection (a), to receive the Qualified Pre-Retirement Survivor Annuity.

For Plan years prior to January 1, 1998, the present value of the Qualified Pre-Retirement Survivor Annuity shall be determined using the UP-1984 Mortality Table (set forward one year in age), and interest rates which would be used by the Pension Benefit Guaranty Corporation as of January of the applicable Plan Year for purposes of determining the value of a lump sum distribution on plan termination. For Plan Years after December 31, 1997, the present value of the Qualified Pre-Retirement Survivor Annuity shall be determined using the Applicable Interest Rate and Applicable Mortality Table for purposes of determining the value of a lump sum distribution.

In the event the surviving spouse elects the Qualified Pre-Retirement Survivor Annuity in which the present value does exceed the Lump Sum Distribution Amount and the monthly amount of the benefit would be less than \$25.00, then such surviving spouse may elect to receive such present value in one lump payment, to be paid as soon as practicable following the Employee's death.

(e) An Employee may elect not to have his benefits paid in the form of a Qualified Pre-Retirement Survivor Annuity. Such election must be made by the Employee in writing during the election period and shall require the spouse's consent in the same manner provided for in Section 5.02. The election period to waive the Qualified Pre-Retirement Survivor Annuity shall begin on the first day of the Plan Year in which the Employee attains age thirty-five (35) and end on the date of the Employee's death. In the event that either (1) an Employee who has

been credited with at least ten (10) years of Vesting Service, or (2) an Employee who has at least one (1) hour of service on or after January 1, 1989 and who has at least five (5) years of Vesting Service, whichever is applicable, separates from service prior to the beginning of the election period, the election period shall begin on the date of such separation from service.

#### **4.06 CHANGE OF VESTING SCHEDULE.**

For any year in which there shall be a change in the vesting schedule of the Plan, each Participant who has been credited with at least 3 years of service and whose non-forfeitable percentage is determined under the new vesting schedule may elect to have the non-forfeitable percentage calculated under the prior vesting schedule. An election under this paragraph must be made during the period beginning with the date the plan amendment is adopted and ending at the latest of (i) 60 days after the date the plan amendment is adopted, (ii) 60 days after the plan amendment is effective, or (iii) 60 days after the Participant shall have been issued written notice of the plan amendment.

### **ARTICLE V – NORMAL, EARLY, DISABILITY, OCCUPATIONAL DISABILITY AND DEFERRED PENSIONS**

#### **5.01 BASIC FORM OF BENEFIT.**

In the case of an Employee who has an Eligible Spouse and who begins to receive payments under this Plan, unless the election provided in Section 5.02 has been made, any such Employee will be paid in a form having the effect of a 50% qualified joint and survivor pension. In such case, the retired Employee will receive a reduced monthly benefit (which shall be the actuarial equivalent to the otherwise payable Optional Form of Benefit) payable during the lifetime of the retired Employee. Fifty percent of such reduced monthly benefit will become payable for life to the retired Employee's Eligible Spouse (if such Spouse survives the retiree) after the retired Employee's death. Should the retired Employee's Eligible Spouse die prior to the Annuity Starting Date of the Employee, the 50% joint and survivor form of payment shall be automatically annulled. Should the retired Employee's Eligible Spouse die after the retired Employee's benefits actually begin to be paid, all payments made to the retired Employee after such time as the Trustees have received written notice and other good proof of the Eligible Spouse's death, shall be in the amount which would have been paid to the retired Employee had the 50% joint and survivor form of payment not been in effect on the Annuity Starting Date.

(a) For Plan Years prior to January 1, 2001, the actuarial equivalent calculation of the joint and survivor benefit shall be calculated pursuant to the terms of Article VIII, Section 8.06 of this Plan.

(b) For Plan Years after December 31, 2000, the actuarial equivalent of the joint and survivor benefit shall be calculated pursuant to the terms of this sub-paragraph (b). If the Employee retires after December 31, 2000, multiply the number of whole years by which his spouse's age differs from his age by one-half percent. If the spouse is older than the Employee, add the result to 92 percent (the sum cannot exceed 100 percent); if the spouse is younger than the Employee, subtract the result from 92 percent. Multiply the resulting percentage by the Optional Form of Benefit to obtain the reduced monthly benefit payable to the Participant, provided, however, that the amount of the reduced monthly benefit calculated pursuant to this paragraph shall not be less than the reduced monthly benefit to which the Participant would have been entitled had he retired on December 31, 2000 and had his benefit calculated in accordance with sub-paragraph (a) hereof.

## 5.02 INFORMATION AND ELECTION TO EMPLOYEES.

(a) The Trustees shall provide Employees with the relevant information describing the qualified joint and survivor annuity provided pursuant to Section 5.01 and the option not to have Plan benefits paid in such form. The notice will be provided no less than 30 days and no more than 90 days before the Annuity Starting Date. Such written notice shall include an explanation of:

- (1) the terms and conditions of the joint and survivor annuity, including a general explanation of the financial effect on a participant's annuity of an election to waive the joint and survivor annuity;
- (2) the Employee's right to make an election to waive the joint survivor annuity;
- (3) the right of the Employee's spouse to consent to any election to waive the joint and survivor annuity; and
- (4) the right of the Employee to revoke such election, and the effect of such revocation.

Such information shall be provided in such time as to reasonably assure that it will be received on or about the date which is nine months before the Employee attains age 55 (or if the Employee begins participation in the Plan at age 55, the information may be provided on or about such date). In addition to the foregoing, the plan administrator will furnish to a particular participant, upon a timely written request, a written explanation of the terms and conditions of the qualified joint and survivor annuity and the financial effect upon the particular participant's annuity of making any election under this paragraph. The plan administrator will comply with one such request made by a particular participant. This explanation will be personally delivered or mailed (first class mail, postage prepaid) to the participant within 30 days from the date of the participant's written request.

(b) Each Employee with spouse may elect not to receive a qualified joint and survivor annuity. Such election shall be in writing and clearly indicate that the Employee is electing to receive Plan benefits in a form other than that of a qualified joint and survivor pension. Any election made under this subsection, or under Article IV, Section 4.05(e), may be revoked in writing during the period specified in Section 5.03. After any such election is revoked, another election under this subsection may be made during the election period specified in Section 5.03. In the case of any Plan benefits to be paid beginning after December 31, 1984, any election to waive the joint and survivor annuity must be made by the Employee in writing during the election period and be consented to by the Employee's spouse. Such spouse's consent must acknowledge the effect of such election and be witnessed by a Plan representative or a notary public. The spouse must also consent to the naming of the specific person named as the Employee's Beneficiary. Such consent shall not be required if it is established to the satisfaction of the Trustees that the required consent cannot be obtained because there is no spouse, the spouse cannot be located, or other circumstances that may be prescribed by Treasury regulations. The election made by the Employee and consented to by his spouse may be revoked by the Employee in writing without the consent of the spouse at any time during the election period. Any new election must comply with the requirements of this subsection. A former spouse's waiver shall not be binding on a new spouse.

(c) Rollovers by participants and spousal beneficiaries. Effective for distributions made on or after January 1, 2007, Participants and spousal Beneficiaries are permitted to directly rollover distributions to Roth IRAs. However, for tax years beginning before January 1, 2010, Participants and spousal Beneficiaries may not make a rollover from an eligible plan (including

designated Roth 401(k) or 403(b) contributions) to a Roth IRA if the Beneficiary's modified adjusted gross income (MAGI) exceeds \$100,000, or he is married and files a separate federal tax return. If a Beneficiary wants to make a direct rollover to a Roth IRA, his own MAGI and tax filing status determine his eligibility to make the rollover. The plan administrator is not responsible for ensuring that the beneficiary is eligible to make a rollover to a Roth IRA. Participants are responsible for the tax consequences of the rollover. A spousal beneficiary who makes a rollover to a Roth IRA may elect to treat the Roth IRA as the spouse's own IRA or as an inherited IRA.

(d) Rollovers by non-spouse beneficiaries. Effective for distributions made on or after January 1, 2007, the Plan shall permit non-spouse beneficiaries to roll over any portion of a deceased employee's eligible retirement plan distributions in a direct trustee-to-trustee transfer to an individual retirement plan as described in section 402(c)(11) of the Internal Revenue Code of 1986, as amended. Any non-spouse beneficiary, including a parent, child, sibling or domestic partner can roll over inherited retirement benefits to an IRA on a tax-free basis. These retirement benefits must be rolled over directly from the plan to the IRA established in the name of the decedent with the non-spouse as the beneficiary or the Beneficiary will be subject to significant tax penalties. While they are not subject to the 20% mandatory federal income tax withholding, the beneficiary may elect voluntary withholding.

### **5.03 ELECTION PERIOD.**

(a) An Employee may only make any election described in Section 5.02 to receive benefit payments in a form other than that of a qualified joint and survivor pension during the Election Period. Effective for plan years beginning after December 31, 2006, the Election Period shall include the period of the 180 days following the furnishing of all of the applicable information required by Section 4.02 and ending prior to commencement of benefits. The Election Period shall not begin prior to the 180th day before the commencement of benefits and shall end upon the commencement of benefits date. The commencement of benefits may be delayed until the end of the Election Period because the amount of payments to be made to a participant cannot be ascertained before the end of the period. If a participant makes a request for additional information as provided in Section 5.02 on or before the last day of the election period, the election period shall be extended, effective December 31, 2006, to the extent necessary to include the 180 calendar days immediately following the day the requested information is personally delivered or mailed to the participant. Notwithstanding the immediately preceding sentence, in cases in which the participant has been furnished by mail or personal delivery all of the applicable information required by Section 5.02, a request for such additional information must be made on or before a date which is not less than 60 days from the date of such mailing or delivery. Under those circumstances, the election period shall be extended to the extent necessary to include the 60 calendar days following the day the requested additional information is personally delivered or mailed to the participant.

(b) An Employee must make any election described in Section 5.02 not to receive benefits in the form of the Qualified Pre-Retirement Survivor Annuity during the period beginning on the first day of the Plan year in which the Employee attains age thirty-five (35) and ending on the date of the Employee's death.

### **5.04 ADDITIONAL INFORMATION.**

(a) Upon written request made on or before the last day of the election period in Article 5.03, the Trustees shall furnish any Employee with a written explanation of the terms and conditions of the benefit provided pursuant to Article 5.01 and the financial ramifications to such Employee of making such an election. The Trustees shall only provide this additional information once. Such additional information shall be provided within 30 days from the date

of the Trustees' receipt of the Employee's written request. If an Employee makes a timely request for additional information as provided herein, the election period outlined in Article 5.03 shall be extended 180 days from the day the requested additional information is delivered to the employee.

(b) Effective January 1, 2009, Participants are entitled to a copy of the following documents within 30 days of a written request for such documents to the Plan Administrator:

- (1) Any periodic actuarial reports for any plan year that has been in the Plan's possession for at least thirty (30) days.
- (2) Any quarterly, semi-annual, or annual financial report prepared for the Plan by any Plan investment manager, adviser, or other fiduciary which has been in the plan's possession for at least thirty (30) days.
- (3) Any application filed with the IRS requesting amortization extension and the result of such application.

The Plan will provide participants with a Participant Benefit Statements once every three years and upon request, or in the alternative, the Plan may notify participants annually that a statement is available and how a participant may obtain a copy.

#### **5.05 OPTIONAL FORM OF BENEFIT.**

(a) In the case of an Employee who is eligible to receive payments under the Plan and

- (1) whose Annuity Starting Date occurs on or after January 12, 1976, and
- (2) who is ineligible to receive the Plan's Basic Form of Benefit, or
- (3) elects not to receive the Plan's Basic Form of Benefit, such Employee's Normal, Early, Disability, Occupational Disability or Deferred Pension (as the case may be) shall be payable monthly for life, unless the Employee elects the benefit set forth in sub-paragraph (b) hereof. The last payment due shall be the payment due on or most recently preceding the date of the Employee's death; but if the Employee dies before receiving monthly benefits for 36 months, monthly payments shall be continued to his Beneficiary until a total of 36 monthly payments have been made to him and his Beneficiary.

Whenever a Pensioner who is receiving the Plan's Optional Form of Benefit (or the Plan's Disability or Occupational Disability Benefit) dies before receiving monthly benefits for 36 months, the Trustees may authorize the actuarially determined present value of the Pensioner's remaining monthly payments to be paid in a single lump sum to the Pensioner's Beneficiary.

(b) Effective January 1, 2009, an Employee may elect to receive the Qualified

Optional Survivor Annuity described in this paragraph in lieu of the guaranteed 36 monthly payments described in Section 5.05(a)(3) above.

- (1) If an Employee elects the benefits set forth in this paragraph, the Employee shall receive benefits in the form and payable as a Qualified Optional Survivor Annuity (QOSA), calculated in accordance with sub-paragraph (2) hereof. For an Employee who waives the Qualified Joint and Survivor Annuity in Section 5.01, or the Qualified Pre-Retirement Survivor Annuity (QPSA) in Section 4.05, the Employee may elect a QOSA at any time during the election period described in Section 5.03. This benefit shall be paid in a form having the



effect of a 75% qualified optional survivor pension. The QOSA is actuarially equivalent to a single life annuity for the life of the Pensioner. Should the Employee's spouse die prior to the Employee's Annuity Starting Date, the 75% optional survivor form of payment shall be automatically annulled, and the Employee's benefits shall be payable in the form provided for in Section 4.05. Should the Employee's spouse survive the Employee, the spouse shall receive a monthly payment for life equal to 75% of the Employee's benefit, calculated under sub-paragraph (2).

(2) The Qualified Optional Survivor Annuity established by this paragraph shall be calculated as follows. Multiply the number of whole years by which an Employee's spouse's age differs from his age by six-tenths of one percent (0.6%). If the spouse is older than the Employee, add the result to 88 percent (the sum cannot exceed 100 percent); if the spouse is younger than the Employee, subtract the result from 88 percent. Multiply the resulting percentage by the monthly benefit amount that is payable as a benefit for the lifetime of the retired Employee only. The result of this multiplication gives the monthly benefit amount payable to the retired Employee under this optional form of benefit.

#### **5.06 OPTIONAL BENEFIT FORMS AVAILABLE TO CERTAIN EMPLOYEES PURSUANT TO RETIREMENT EQUITY ACT OF 1984.**

(a) An Employee:

- (1) who is credited with at least one Hour of Service on or after September 2, 1974;
- (2) who is not credited with any Hours of Service after August 22, 1984;
- (3) who was not an Active Participant on or after January 1, 1976;
- (4) who dies after August 22, 1984; and
- (5) whose Annuity Starting Date occurs after August 22, 1984,

may elect to receive his Plan benefits in any form provided in Article V. When an Employee who qualifies under this subsection (a) applies for benefits under the Plan, the Trustees shall advise him of his right to make such an election.

(b) The surviving spouse of an Employee:

- (1) who was credited with at least one Hour of Service on or after January 1, 1976;
- (2) who is not credited with any Hours of Service after August 22, 1984;
- (3) who is credited with at least ten (10) Years of Vesting Service;
- (4) whose Annuity Starting Date occurs after August 22, 1984; and
- (5) who dies after August 22, 1984 but before his Annuity Starting Date,

shall be eligible to receive a Qualified Pre-Retirement Survivor Annuity under Article IV, Section 4.05.

**5.07 SMALL MONTHLY BENEFIT PAYMENTS.** Effective January 1, 1986, in the event that any pension benefit awarded pursuant to Article V, except for a disability benefit, would result in a monthly pension benefit of less than \$25.00, the benefit will be offered in a lump sum in an amount calculated pursuant to the interest rates which would be used by the Pension Benefit Guaranty Corporation as of January of the applicable Plan Year for purposes of

determining the value of a lump sum distribution on plan termination. If the lump sum is less than the Lump Sum Distribution Amount, the only benefit provided under the plan shall be the lump sum payment. If the lump sum is the Lump Sum Distribution Amount or greater, then it shall be offered as an optional alternative which may be elected in lieu of any other benefit by the participant, and if married, the participant and participant's spouse jointly.

Effective January 1, 1986, in the event that any pension benefit awarded pursuant to Article V, except for a disability benefit, would result in a monthly pension benefit of less than \$25.00, the benefit will be offered in a lump sum in an amount calculated pursuant to the interest rates which would be used by the Pension Benefit Guaranty Corporation as of January of the applicable Plan Year for purposes of determining the value of a lump sum distribution on plan termination. Effective January 1, 1998, in the event that any pension benefit awarded pursuant to Article V, except for a disability benefit, would result in a monthly pension benefit of less than \$25.00, the benefit would be offered in a lump sum in an amount calculated pursuant to the Applicable Interest Rate and the Applicable Mortality Table for purposes of determining the value of a lump sum distribution. If the lump sum is less than the Lump Sum Distribution Amount, the only benefit provided under the plan shall be the lump sum payment. If the lump sum is the Lump Sum Distribution Amount or greater, then it shall be offered as an optional alternative which may be elected in lieu of any other benefit by the participant, and if married, the participant and participant's spouse jointly.

#### **5.08 WRITTEN EXPLANATION TO RECIPIENT THAT LUMP SUM DISTRIBUTIONS ARE ELIGIBLE FOR ROLLOVER TREATMENT.**

(a) No more than 90 days and no less than 30 days, prior to the date the distributee receives a lump sum distribution, the Plan Administrator shall provide a written explanation to the recipient:

- (1) of the provisions under which the recipient may elect to have any portion of the lump sum distribution be treated as an eligible rollover distribution and have it paid directly to an eligible retirement plan in a direct rollover;
- (2) of the provisions which require the withholding of the tax on the eligible lump distribution if it is not directly transferred to another eligible retirement plan;
- (3) of the provisions under which the distribution will not be subjected to tax if transferred to an Eligible Retirement Plan within sixty (60) days after the date on which the recipient received the distribution; and
- (4) if applicable, the provisions with respect to a tax of lump sum distributions and alternate payees.

(b) For purposes of this section, the term "eligible retirement plan" has the meaning given such term as an individual retirement account described in Internal Revenue Code §408(a), an individual retirement annuity described in Internal Revenue Code §408(b), an annuity plan described in Internal Revenue Code §403(a), that accepts the distributees' eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

(c) The term "eligible roll-over distribution" for the purposes of this section, means any distribution to an employee of all or any portion of the balance of the credit of the employee in a qualified trust, except that such term shall not include any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made

- (1) for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary or
- (2) for a specified period of ten years or more, and any distribution to the extent of such distribution is required under ERISA Section 401(a)(9).

(d) For purposes of this section, the term "distributee" shall mean an employee or former employee, the employee's or former employee's surviving spouse or former spouse who is the alternate payee under a qualified domestic relations order defined under Internal Revenue Code §414(p).

(e) For purposes of this section, the term "direct rollover" is a payment by the plan to the eligible retirement plan specified by the distributee.

(f) The provisions of Section 5.08 are effective as of January 1, 1993.

## **ARTICLE VI -- DEATH BENEFITS**

### **6.01 EARLY SURVIVOR PENSION.**

In the case of an Employee who:

- (a) has an Eligible Spouse;
- (b) could elect to receive an Early, Normal or Deferred Pension under the Plan;
- (c) for an Employee who is not credited with any Hours of Service after August 22, 1984, was an Active Participant on or after age 55; and
- (d) dies on or after age 55 and prior to having received benefits under the Plan,

the Early Survivor Pension shall be the only form of benefit payable under the Plan and this benefit shall be payable only to the deceased Employee's Eligible Spouse.

The Early Survivor Pension shall be a benefit for the life of the Eligible Spouse, the payments for which shall equal the payments that would have been made to the Eligible Spouse under the 50% joint and survivor pension if the Employee had retired immediately prior to his death with the 50% joint and survivor pension in effect.

Effective January 1, 1986, in the event the present value of the Early Survivor Pension payable to a surviving spouse of an Employee does not exceed the Lump Sum Distribution Amount, determined in accordance with the interest rates which would be used by the Pension Benefit Guaranty Corporation as of January of the applicable Plan Year for purposes of determining the value of a lump sum distribution on plan termination, the surviving spouse may elect to receive such present value in one lump sum payment, to be paid as soon as practicable following the Employee's death, provided, however, that for any pension benefit awarded in which the present value is less than the Lump Sum Distribution Amount and the monthly pension benefit would be less than \$25.00, the only benefit provided under the Plan shall be the lump sum payment. For Plan Years prior to January 1, 1998, the present value of the Early Survivor Pension shall be determined using the UP-1984 Mortality Table (set forward one year in age), and interest rates which would be used by the Pension Benefit Guaranty Corporation as of January of the applicable year for purposes of determining the value of a lump sum distribution on plan termination. For Plan Years after December 31, 1997, the present value of the Early Survivor Pension shall be determined using the Applicable Interest Rate and the Applicable Mortality Table for purposes of determining the value of a lump sum distribution.

## **6.02. LUMP SUM BENEFITS.**

(a) Effective January 1, 1976, in the case of the death of an Active Participant who:

- (1) is not an Employee of a Paving Contractor,
- (2) is not eligible for the Plan's Early Survivor Pension, and
- (3) has at least 10 Years of Vesting Service,

the Beneficiary designated by him shall receive an amount equal to \$100.00 times the Employee's Future Benefit Units up to a maximum of \$2,000.00.

(b) In the case of the death after December 31, 1988 of either

- (1) a Pensioner who was a Pensioner on December 31, 1988 or
- (2) an Active Participant who has at least one (1) hour of service on or after January 1, 1989, and who had at least five (5) years of Vesting Service, or
- (3) any person who retires after January 31, 1989, regardless of whether the retiree had an hour of service after January 1, 1989,

the Beneficiary designated by such Pensioner or Active Participant shall receive a lump-sum benefit of \$5,000.00. Effective January 1, 1992, for purposes of this subparagraph, any One-year Break in Service suffered by an Employee between January 1, 1991 and December 31, 1993 shall be disregarded for an Active Participant, provided that the Employee must have been available for employment during the above-mentioned time periods and actively sought employment through Local No. 77 of the Operating Engineers.

(c) Effective after December 31, 2001, for purposes of the direct rollover provisions in sections of the plan, an eligible retirement plan shall also mean an annuity contract described in section 403(b) of the Code and an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in section 414(p) of the Code.

## **6.03 CERTAIN APPLICATION AND EFFECTIVE DATES.**

Articles V, Sections 5.01, 5.02, 5.03, 5.04, 5.05, VI, Sections 6.01 and 6.02 shall apply to the Plan Years beginning on and after January 1, 1976 and shall apply only if:

(a) The Employee's Annuity Starting Date did not fall within a Plan Year beginning before January 1, 1976, and

(b) The Employee was an Active Participant in the Plan on or after January 1, 1976.

## **ARTICLE VII - PENSIONERS**

### **7.01 RECOMPUTING CERTAIN BENEFITS.**

(a) In the case of a Pensioner who:

- (1) was not an Employee of a Paving Contractor, and
- (2) receives a Normal, Early, or Disability Pension payable as of July 1, 1977,

the amount payable as of July 1, 1977 shall be recomputed on the basis of \$13.25 for each Past Benefit Unit and \$14.00 for each Future Benefit Unit.

(b) In the case of a Pensioner who:

(1) was an Employee of a Paving Contractor, and

(2) receives a Normal, Early or Disability Pension payable as of July 1, 1977,

the amount payable as of July 1, 1977 shall be recomputed on the basis of \$7.00 for each Future Benefit Unit with a minimum \$70.00 monthly payment.

(c) In no case shall Deferred or Pro-rata Pensions be recomputed pursuant to subsections (a) or (b).

(d) In the case of a Pensioner (including a Pensioner receiving a Deferred Pension but not including a Beneficiary) who was receiving pension benefits under the Plan as of December 31, 1983 and who was not an Employee of a Paving Contractor, such Pensioner's monthly benefit payment under the Plan shall be increased by \$65.00, effective July 1, 1983. In the case of a Pensioner (including a Pensioner receiving a Deferred Pension but not including a Beneficiary) who was receiving pension benefits under the Plan as of December 31, 1983 and who was an Employee of a Paving Contractor, such Pensioner's monthly benefit payment under the Plan shall be increased by \$18.00, effective July 1, 1983. If a Pensioner worked for both Paving and non-Paving Contractors, his monthly benefit shall be increased by \$65.00 if the majority of his Benefit Units were earned while working for a non-Paving Contractor and shall be increased by \$18.00 if the majority of his Benefit Units were earned while working for a Paving Contractor.

(e) The amount of the monthly benefit payable to Pensioners who were Pensioners on January 1, 1989 shall be increased by 10%. The amount of the monthly benefit payable to Beneficiaries who were receiving pension benefits of January 1, 1989 shall be increased by 10%.

(f) The amount of the monthly benefit payable to Pensioners who were Pensioners on January 1, 1990 shall be increased by 10%. The amount of the monthly benefit payable to Beneficiaries who were receiving pension benefits as of January 1, 1990 shall be increased by 10%.

(g) The amount of the monthly benefit payable to Pensioners who were Pensioners on January 1, 1991 shall be increased by 5%. The amount of the monthly benefit payable to Beneficiaries who were receiving pension benefits as of January 1, 1991 shall be increased by 5%.

(h) The amount of the monthly benefit payable to Pensioners who were Pensioners on December 31, 1992 shall be increased by \$26.00 per month starting with the January, 1993 monthly payment.

(i) The amount of the monthly benefit payable to Pensioners who were Pensioners on December 31, 1993 shall be increased by \$25.00, starting with the January, 1994 monthly payment.

(j) The amount of the monthly benefit payable to Pensioners who were Pensioners on December 31, 1995 shall be increased by 2% per month plus \$25.00 starting with the January, 1996 monthly payment.

(k) The amount of the monthly benefit payable to Pensioners who were Pensioners on December 31, 1996 shall be increased by 5% starting with the January, 1997 monthly payment.

(l) The amount of the monthly benefit payable to Pensioners who were Pensioners on December 31, 1997 shall be increased by 8% per month with a minimum increase of \$25.00 starting with the January, 1998 monthly payment.

(m) The amount of the monthly benefit payable to Pensioners who were Pensioners on December 31, 1998 shall be increased by 9% per month with a minimum increase of \$50.00 starting with the January, 1999 monthly payment.

(n) The amount of the monthly benefit payable to Pensioners who were Pensioners on December 31, 1999 shall be increased by 16% per month with a minimum increase of \$100.00 starting with the January, 2000 monthly payment.

(o) The amount of the monthly benefit payable to Pensioners who were Pensioners on December 31, 2007 shall be increased by 2.5% per month starting with the January, 2008 monthly payment.

## **ARTICLE VIII - GENERAL PAYMENT PROVISIONS**

### **8.01 COMMENCEMENT OF BENEFITS.**

Benefits shall be payable commencing the first day of the month following the month in which the Trustees approve the written application for benefits submitted by an Employee or Beneficiary or, if applicable, surviving spouse who has fulfilled all eligibility requirements for the requested benefits. Unless a participant elects otherwise, payment of benefits will begin not later than the latest of the close of the plan year in which the participant attains Normal Retirement Age, occurs the 10th anniversary of the year in which the Participant commenced participation in the Plan or the Participant terminates his service under the Plan, provided the Participant has filed a claim for benefits under the terms of the Plan. Notwithstanding this or any other provision of the Plan, however, the benefits of an Employee who attains age 70-1/2 (or in the case of a surviving spouse, whose participant would have attained the age of 70 ½) after December 31, 1987 (age 70 after June 30, 1987) must commence no later than April 1 of the calendar year following the calendar year in which the Employee attains (or would have attained) 70 ½, regardless of whether the Employee has retired. The benefits of an Employee who attains age 70 ½ before January 1, 1988 (Age 70 before July 1, 1987) must commence no later than April 1 of the calendar year following the later of (1) the calendar in which the Employee attains age 70 ½, or (2) the calendar year in which the Employee retires.

### **8.02 COMPETENCE OF RECIPIENT.**

In the event it is determined that any person receiving or scheduled to receive Plan benefits is unable to care for his affairs because of illness, or incapacity, either mental or physical, any payment due, may, unless claim shall have been made therefore by a legally appointed guardian, committee, or other legal representative, be paid to the spouse or such other object of the natural bounty of such person as the Trustees shall determine in their sole discretion.

### **8.03 PAYMENTS TO MINORS.**

Where benefits become payable to a minor, the amount may be paid to such person -- without requiring the appointment of a guardian -- by paying such amount to anyone over the age of 21 who submits satisfactory proof that he or she is supporting and maintaining such person, and gives assurance to the Trustees in form satisfactory to them that the money so paid over will be used for such purposes.

### **8.04 PAYMENTS TO TWO OR MORE PERSONS.**

In case two or more persons become entitled to a benefit payment, the entire benefit shall be equally divided among them. In the event one of them has paid the funeral expenses of the

deceased Employee or Pensioner the balance may be divided after the one who paid the funeral expenses has been reimbursed.

#### **8.05 NON-ASSIGNMENT OF BENEFITS.**

(a) To the end of making it impossible for Employees or Pensioners covered by the Pension Plan improvidently to imperil the provisions made for their support and welfare by directly anticipating, pledging, or disposing of their retirement payments hereunder, it is hereby expressly stipulated that no Employee or Pensioner hereunder shall have any right to assign, alienate, transfer, sell, hypothecate, mortgage, encumber, pledge, commute, or anticipate any retirement payments, and that such payment shall not in any way be subject to any legal process to levy execution upon or attachment or garnishing proceedings against the same for the payment of any claim against any Employee or Pensioner nor shall such payments be subject to the jurisdiction of any bankruptcy court or insolvency proceedings by operation of law or otherwise and any such assignment, etc., shall be void and of no effect whatsoever.

(b) Notwithstanding any other provision of the Plan, effective January 1, 1985, benefits shall be paid in accordance with a Qualified Domestic Relations Order as defined in §206(d)(3) of the Employee Retirement Income Security Act of 1974, as amended, and with written procedures adopted by the Trustees in connection with such Orders. Such procedures shall be binding on all Active Participants, Employees, Beneficiaries, Pensioners, and other parties. In no event shall the existence of a Qualified Domestic Relations Order cause the Plan to pay benefits with respect to an Employee in excess of the actuarial present value (determined in accordance with Section 8.06) of the Employee's benefits without regard to the Order, and benefits otherwise payable under the Plan shall be reduced, in accordance with Section 8.06, by the actuarial present value of any payment ordered to be made under a Qualified Domestic Relations Order.

#### **8.06 ACTUARIAL EQUIVALENCE.**

For purposes of determining an actuarially equivalent benefit of an Employee under the Plan, the applicable (a) or (b) below shall apply:

(a) For determinations between January 1, 1984 and August 31, 1984, the actuarial equivalent benefit shall be based on The 1965 Projected Annuity Mortality Table (set backward 5 years in age for females) and 5 1/2% interest, which were also the basis for determinations immediately prior to January 1, 1984.

(b) For determinations after August 31, 1984 and before January 1, 2001, the actuarially equivalent benefit shall be based on the UP 1984 Mortality Table (set forward one year in age) and 8% interest; provided, however, that the resulting actuarially equivalent benefit shall in no event be less than the actuarial equivalent of the Employee's accrued pension as of August 31, 1984 determined on the basis of the mortality table and interest specified in Section 8.06(a).

(c) For determinations after December 31, 2000, the actuarially equivalent benefit shall be calculated pursuant to the provisions of Article V, Section 5.01(b).

#### **8.07 ACTUARIAL ADJUSTMENT OF DELAYED BENEFITS.**

For each month that a Participant does not receive pension benefits from the Plan between his Normal Retirement Age and the month he elected to begin to receive benefits, his monthly benefit will be increased at the rate of 1% per month for the first 60 months following Normal Retirement Age, and 1.5% per month thereafter, unless his benefits have been suspended pursuant to the terms of Article X hereof.

## **8.08 EFFECT OF ACTUARIAL ADJUSTMENTS ON BENEFITS ACCRUED AFTER NORMAL RETIREMENT AGE.**

Notwithstanding any provision to the contrary, benefits accrued after Normal Retirement Age shall be reduced (but not below zero) by the amount of any actuarial adjustment under the plan in the benefit payable for the plan year with respect to the participant because of a delay in the payment of plan benefits after the participant's attainment of Normal Retirement Age. For this purpose, the actuarial adjustment may be taken into account for a plan year only to the extent it is made to the greater of the participant's retirement benefit as of the close of the prior plan year, including any actuarial adjustment made under the plan for the prior plan year, and the participant's normal retirement benefit as of the close of the prior plan year determined by including benefit accruals after Normal Retirement Age. If the retirement benefit, as actuarially adjusted for the plan year for delayed payment, exceeds the normal retirement benefit, as determined by including benefit accruals after Normal Retirement Age, the retirement benefit, as actuarially adjusted, will be paid.

## **ARTICLE IX - APPLICATION FOR BENEFITS**

### **9.01 CLAIMS AND APPEALS PROCEDURE BEFORE JANUARY 1, 2002.**

All persons requesting benefits under the Plan shall be required to file a written claim for benefits on forms provided at the office of the Plan's administrative agent.

The Plan's administrative agent shall examine all written claims for benefits filed with it. The administrative agent shall have the right to require submission of all necessary information in addition to that filed with the claim application needed to determine the claimant's eligibility for any benefit claimed. No benefit payments shall be made under the Plan until an application or written claim is made therefore to the administrative agent and all additional information required by the administrative agent to substantiate the claim has been submitted. Benefits shall not be required to be paid for any period preceding the date of filing a written claim.

If a claimant makes a false statement material to his claim for benefits, the Trustees shall have the right to recover any payments made in reliance on such false statement.

The Trustees shall be the sole judges of the standard of proof required in any case. In the application and interpretation of this Plan, the decision of the Trustees shall be final and binding on all parties, including Employees, Employers, Union, claimants, and Beneficiaries.

A claimant shall comply with all requests for information or proof promptly and in good faith and the failure to do so shall be sufficient grounds for denying or discontinuing benefits to such person.

Within 90 days of receipt of the claim by the Plan, the administrative agent shall determine the eligibility of the applicant for Plan benefits and shall notify the applicant of its determination and the amount of any benefit payable.

If special circumstances require an extension of time for processing the claim, written notice of the extension shall be furnished to the claimant prior to the termination of the initial 90-day period. In no event shall such extension exceed a period of 90 days from the end of such initial period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the Plan expects to render the final decision.

If a claim is wholly or partially denied, the administrative agent shall provide a written notice to the applicant setting forth:

- (a) The specific reason or reasons for the denial;



(b) Specific reference to pertinent Plan provisions, claims procedures or other evidence on which the denial is based;

(c) A description of any additional material or information necessary for the claimant to perfect the claim and any explanation of why such material or information is necessary; and

(d) An explanation of the Plan's claim review procedure, including:

- (1) A statement informing the claimant of his opportunity to appeal, the time limit therefore and the procedure by which an appeal may be made;
- (2) A statement that the claimant, or duly authorized representative may review pertinent documents, setting forth the times and places at which such documents may be reviewed and/or obtained; and
- (3) A statement that the claimant, or other duly authorized representative may submit issues and comments in writing upon filing a request for review of denial of claim with the Trustees.

Every claimant whose application for benefits has been denied in whole or in part shall have the opportunity to appeal the denial to the Trustees. An appeal in writing may be perfected by the claimant himself or any duly authorized representative acting on the claimant's behalf.

The written request for review must be received by the Trustees within 90 days of the claimant's receipt of the administrative agent's notification of denial of claim. Failure to request in writing a review of the denial of a claim within the foregoing 90 days shall constitute a waiver of further review of the claim in question and the denial of the claim shall be binding and conclusive on all questions of fact or law, unless consideration of the claim is permitted in the discretion of the Trustees. A request for review shall be considered "received" by the Trustees at the time it comes into the administrative agent's actual possession.

The Trustees shall render a decision on review no later than the date of the meeting of the Trustees which immediately follows the Plan's receipt of a request for review, unless the request for review is received within 30 days preceding the date of such meeting. In such case, a decision may be made by no later than the date of the second meeting following the Plan's receipt of the request for review. If special circumstances (such as the need to hold a hearing) require a further extension of time for processing, a decision shall be rendered no later than the third meeting of the Trustees following the Plan's receipt of the request for review.

If an extension of time for review is required because of special circumstances, written notice of the extension shall be furnished to the claimant prior to the commencement of the extension.

The decision on review shall be written in a manner calculated to be understood by the claimant and shall include specific reasons for the decision, as well as specific references to the pertinent Plan provisions on which the decision is based.

The decision on review shall be furnished to the claimant within a reasonable period of time after it is rendered by the Trustees.

Notification to the claimant, whenever required by the terms of these claims and appeals procedures, shall be sent by certified mail, return receipt requested. Notices to the claimant shall be sent to him or her at the last known address, as indicated in the files at the office of the administrative agent. Whenever a claimant desires to file a claim for benefits or a request for review, or whenever a claimant is required by these claims and appeals procedures to provide any

other information, such claim, request, or other communication shall be sent by first class mail or hand delivered to the appropriate office as designated by the provisions of these procedures.

## **9.02 CLAIMS AND APPEALS PROCEDURE AFTER DECEMBER 31, 2001.**

Effective for all Claims for Benefits filed on or after January 1, 2002, Section 9.01 of the Plan shall be superseded by the Claims and Appeals Procedure Revised December 2001, as adopted by the Trustees December 31, 2001 and as hereby incorporated by reference herein to comply with the final rule enacted by the Department of Labor on November 21, 2000, as amended July 9, 2001, entitled Rules and Regulations for Administration and Enforcement; Claims Procedure; Final Rule.

## **ARTICLE X - DISQUALIFICATION, SUSPENSION AND ADJUSTMENT OF BENEFITS**

### **10.01 EMPLOYMENT AFTER RETIREMENT.**

#### **(a) Suspension of Benefit Payments**

No benefits shall be payable for any month in which a Pensioner is employed in "Prohibited Employment" as defined in subsection (g). In the event that an Employee is employed in Prohibited Employment on or after his Annuity Starting Date, no benefits shall be paid for any month in which he is employed in Prohibited Employment.

#### **(b) Amount of Suspended Benefit**

The amount of a Pensioner's benefit to be suspended pursuant to this Section 10.01 shall be the full amount of the monthly benefit, provided that such benefit is payable in the form of a monthly annuity for life (or lives). In the event that a Pensioner's benefit is payable in a form other than a monthly annuity for life (or lives), the amount to be suspended for each month such Pensioner is employed in "Prohibited Employment" shall be an amount equal to the lesser of:

- (1) the amount of benefits which would have been payable to such Pensioner if he had been receiving monthly benefits under the Plan since actual retirement based on a single life annuity commencing at actual retirement age; or
- (2) the actual amount paid or scheduled to be paid to such Pensioner for such month.

#### **(c) Resumption of Benefit Payments**

Benefit payments suspended pursuant to this Section 10.01 shall not be resumed until the Pensioner provides written notice to the Plan that he has ceased to be employed in Prohibited Employment. A Pensioner's benefit payments shall resume on the later of:

- (1) the first day of the third month following the month in which such Pensioner ceases to be employed in Prohibited Employment; or
- (2) the first day of the second month following the month in which the Plan receives written notice from such Pensioner that he had ceased to be employed in Prohibited Employment.

The initial payment upon resumption shall include the payment scheduled to occur in the month payments resume and any amounts not paid during the period between the cessation of Prohibited Employment and the resumption of payments, less any amounts which are offset pursuant to subsection (f).

#### **(d) Proof of Employment Status**

A Pensioner shall be required to provide written notice to the Plan within 15 days of the date that he commences work in Prohibited Employment. The Trustees may require a Pensioner to provide periodic proof of the type to be determined by the Trustees that he is not employed in Prohibited Employment. If a Pensioner fails to provide such proof, the Trustees may authorize a suspension of his benefit payments commencing on the first day of the third month following the month in which such Pensioner was requested to provide such proof. Benefit payments shall resume on the first day of the second month following the month in which proof satisfactory in the determination of the Trustees is received. In the event such Pensioner provides adequate proof that he was not employed in Prohibited Employment for any month with respect to which his benefits were suspended, the initial payment upon resumption shall include the benefit payments for such months, less any amounts which are offset pursuant to subsection (f).

(e) Presumptions Regarding Employment

A rebuttable presumption shall exist that any Pensioner discovered to be employed in Prohibited Employment at a construction site has been employed in Prohibited Employment for the entire period that his Employer has been working at such site. A rebuttable presumption shall also exist that any Pensioner discovered to be employed in Prohibited Employment (without regard to the number of hours worked per month) was employed for more than 40 Vesting Hours of Service in the relevant month. If a Pensioner provides proof satisfactory to the Trustees that he was not employed in Prohibited Employment during any month with respect to which a presumption was applied, he shall be entitled to receive the benefit payments for such months, less any amounts which are offset pursuant to subsection (f).

(f) Offsets

If any benefit payment is made to a Pensioner for a month in which such Pensioner was employed in Prohibited Employment, the Plan shall be entitled to recover the amount of such payment through any legal means available, including by way of offset against future benefit payments. The amount of the offset shall not exceed 25% of the amount of the regularly scheduled monthly payment, except that the initial payment upon resumption of benefits shall not be subject to such limitation and shall be reduced by the full amount owed to the Plan. In the event that a Pensioner dies before the Plan has recovered all amounts due, any survivor benefits payable under the Plan shall be subject to the Plan's offset rules.

(g) Prohibited Employment

- (1) A Pensioner shall be deemed to be employed in Prohibited Employment with respect to a month if he is employed for more than 40 Vesting Hours of Service:
  - (a) in an "industry" in which Employees were employed and accruing benefits as a result of such employment under the Plan on the date such Pensioner's benefits commenced or would have commenced but for the fact that he remained in or returned to Prohibited Employment;
  - (b) in a "trade or craft" in which such Pensioner was employed at any time that he was accruing benefits under the Plan; and
  - (c) in the "geographic area" covered by the Plan on the date such Pensioner's benefits commenced or would have commenced but for the fact that he remained in or returned to Prohibited Employment.

The terms “industry”, “trade or craft”, and “geographic area” shall have the same meaning as set forth in §203(a)(3)(B) of the Employee Retirement Income Security Act of 1974 and the regulations promulgated thereunder.

- (2) Notwithstanding the provisions of subparagraph (1) above, a Pensioner who attains age 70-1/2 after December 31, 1987, shall not be deemed to be engaged in Prohibited Employment within the meaning of such subparagraph (1) during any period after the Pensioner attains age 70-1/2.

(h) Notice of Suspension

The Plan shall notify a Pensioner in writing by first class mail during the first month in which such Pensioner’s benefits are to be suspended. Such notice shall contain:

- (1) an explanation of the specific reasons for the suspension;
- (2) a general description of this Section 10.01 and a copy thereof;
- (3) a statement that applicable Department of Labor regulations may be found at §2530.203 3 of Title 29 of the Code of Federal Regulations;
- (4) information concerning the Plan’s procedure for reviewing a suspension of benefits;
- (5) a statement notifying such Pensioner of his obligation to notify the Plan that he has ceased to be employed in Prohibited Employment before his benefit payments will be resumed, a description of the procedure therefore, and a copy of any forms required to be filed with the Plan in connection therewith; and
- (6) an explanation of the Plan’s offset rules set forth in subsection (f) and, if the Trustees intend to apply such rules to recover benefits actually paid to such Pensioner during periods of Prohibited Employment, an explanation of the manner in which such offset is to be made, including a description of the specific periods of Prohibited Employment to which such offset applies and of the amounts which are subject to offset.

(i) Advance Determination Regarding Prohibited Employment

Any Pensioner may submit a request in writing to the Trustees for a determination whether certain employment shall be considered to be Prohibited Employment.

(j) Special Rules for Employment After Early Retirement Age and Before Normal Retirement Age

In addition to and notwithstanding the other provisions of this Section 10.01:

- (1) Prior to Normal Retirement Age, no benefits shall be paid under the Plan to an Employee for any month in which he engages in any Prohibited Employment, regardless of the number of hours per month of such employment. The suspension and resumption of such Employee’s benefits shall be governed by the provisions of this Section 10.01.
- (2) In the event an Employee is engaged in any Prohibited Employment (without regard to the number of hours per month of such employment) on the date he would otherwise be eligible to begin receiving an Early Retirement Pension under Article IV, Section 4.02, no benefits shall be paid until he has ceased such employment. Should he later, upon Retirement, elect to begin receiving an Early Retirement Pension, such benefit shall

be calculated in accordance with the early retirement reduction factor set forth in Article IV, Section 4.02.

- (3) In the event an Employee who has retired and begun receiving an Early Retirement Pension returns to employment which would qualify as Prohibited Employment but for the fact that the Employee is employed in such employment for 40 or fewer hours per month, such Employee's benefits shall be suspended as provided in paragraph (1) of this subsection (j). Upon resumption, after such Employee has once again ceased all such employment, his benefit amount shall be actuarially increased to provide him with a benefit which is equivalent to the benefit he was receiving prior to such return to employment, taking into account the amount of benefits paid to him prior to his returning to employment and his age on the date his benefits are scheduled to be resumed.

(k) Right of Review

Effective January 1, 1999, notwithstanding the provisions of this Section 10.01, the Board of Trustees may determine from time to time to suspend application of the provisions of paragraphs (a) and/or (j), provided,

- (i) That the Board of Trustees shall have,
  1. passed a resolution suspending application of paragraphs (a) and/or (j)
  2. provided notice to retirees that the Board of Trustees has suspended application of paragraphs (a) and/or (j) and, provided further
- (ii) That the suspension of application of paragraphs (a) and/or (j) shall be applicable only with respect to a retiree who has:
  1. returned to prohibited employment after having received the notice set forth in subparagraph (i) (2) above, and,
  2. actually retired pursuant to the Normal or Early Retirement provisions of the plan, and
  3. not engaged in any hours of employment described in subparagraphs (a) (b) and (c) of Section 10.01 (g) (i) for a period not less than 30 days immediately following retirement, and
  4. subsequently obtained employment in covered employment by referral through Local 77's referral office.
- (l). In the event the Board of Trustees shall have suspended application of paragraphs (a) and/or (j), the Board shall have the authority to reinstate application of the provisions of paragraphs (a) and/or (j) upon the earlier of
  - i. the date set forth in the notice described in subparagraph (i) (2) above, or
  - ii. an earlier date certain, provided that Board of Trustees has provided written notice to the retiree of the earlier date certain of reinstatement of the provisions of paragraphs (a) and/or (j).

A Pensioner may submit a request in writing to the Trustees to review any question or determination made with respect to his benefits in connection with this Section 10.01. Such request shall be made and resolved in accordance with the provisions of Article IX, Section 9.01.

## **10.02 ADJUSTMENTS.**

A Pensioner who has attained his Normal Retirement Age and who continues employment in or re-enters Covered Employment as a Covered Employee and whose retirement benefits are suspended during such Covered Employment, shall be entitled to accumulate additional Years of Vesting and Benefit Units Service as a result of such employment in accordance with the normal rules of the plan.

## **10.03 ACCIDENT AND SICKNESS BENEFITS.**

A Pensioner shall not be entitled to a Pension for any month for any part of which he received or is entitled to received Weekly Accident and Sickness Benefits under the Welfare Plan of the Operating Engineers Trust Fund of Washington, D.C. and vicinity and any other construction trades welfare fund.

## **10.04 OFFSET**

Effective August 5, 1997, a participant's benefits may be offset in the discretion of the Trustees by amounts the participant is required to pay to the Plan because of civil or criminal judgments or settlement agreements with the Department of Labor or the Pension Benefit Guaranty Corporation.

## **10.05 RECALCULATION FOR BENEFITS EARNED AFTER RETIREMENT**

In the event a Pensioner shall accrue additional Benefit Units after Retirement, and in the further event that the Trustees have elected pursuant to the terms of Paragraph 10.01 to suspend the application of paragraphs 10.01(a) and/or 10.01(j), the Pensioner shall be entitled to have his monthly benefit recalculated at such time as the Pensioner shall finally cease working, and not before he shall finally cease working. Recalculations of Pensioner monthly benefit amounts shall be made once each Plan Year, as of December 31 of each year. For purposes of this paragraph, a Pensioner shall be deemed to have finally ceased working as of December 31, if

(a) such Pensioner is no longer engaged in employment for which contributions are due under a Collective Bargaining Agreement or other Agreement, and

(b) such Pensioner has not earned any Benefit Hours of Service for the six months immediately preceding the December 31,

provided, however, that nothing in this paragraph shall be construed or operate to reduce the aggregate amount of pension benefits to be received by the Pensioner below the aggregate benefit he would have received had his benefits been suspended pursuant to Paragraph 10.01(a) and recalculated to include post retirement earned benefit units at the end of the period of Suspension of Benefits.

# **ARTICLE XI - AMENDMENT, TERMINATION AND MERGER OF THE PLAN**

## **11.01 AMENDMENT.**

The Trustees may amend or modify this Plan at any time in accordance with the Trust Agreement, provided however, that no amendment shall permit the use of funds held in the Fund other than for the exclusive benefit of the eligible Employees and their Beneficiaries except as otherwise provided in this Plan.

Without limiting the generality of the foregoing and notwithstanding anything to the contrary in this Plan contained, this Plan may at any time and from time to time be amended in any respect so as to qualify this Plan and the Trust as exempt pursuant to Sections 401(a) and 501(a) of the Internal Revenue Code of 1986 and like provisions of subsequent Revenue acts,

regardless of whether any such amendment may change, alter, or amend the relative benefits under this Plan and the Trust of any Employee or any Beneficiary of a deceased Employee.

### **11.02 TERMINATION.**

It is expected that this Plan will be continued in effect indefinitely. The Plan shall terminate (although the Trust assets shall continue to be held by the Trustees for distribution, the intent of the parties being that the exempt status of the Trust will continue) if and when it is declared terminated in a writing by resolution of the Trustees.

Upon termination or partial termination of the Plan, the rights of each Employee to the benefits accrued to date of such termination to the extent then funded, with the rights of each Employee to the amounts credited to his account at such time, shall be non-forfeitable.

In the event of termination of the Plan, the Pension Fund then in the possession of the Trustees after payment of all reasonable expenses, taxes, or proper charges shall be allocated in accordance with Section 4044 of the Employee Retirement Income Security Act of 1974, as amended.

### **11.03 MERGER.**

To the extent determined by the Pension Benefit Guaranty Corporation, in the event that this Plan and Trust merges or consolidates with, or transfers its assets or liabilities to any other qualified plan of deferred compensation, each Employee shall (if the Plan then terminates) receive a benefit immediately after the merger, consolidation or transfer which is equal to or greater than the benefit he would have been entitled to received immediately before the merger, consolidation or transfer if this Plan had then been terminated.

## **ARTICLE XII - MISCELLANEOUS PROVISIONS**

### **12.01 NO REVERSION TO EMPLOYER.**

The Plan and Trust are created for the exclusive benefit of the Employees of the Employers and their Beneficiaries, and shall be interpreted in a manner consistent with their being part of an Employees' Trust, as defined in Section 401(a) of the Internal Revenue Code of 1986, or any subsequent amendments or laws of like intent or purpose. Except as permitted by law and specifically provided for in the Plan, the assets of the Trust including principal and income shall never inure to the benefit of the Employer and shall be held for the exclusive purposes of providing benefits to Employees and their Beneficiaries and defraying reasonable expenses of administering the Plan.

Notwithstanding the above, any contribution made by an Employer on account of a good faith mistake of fact may be returned to the Employer in the manner and to the extent approved by the Trustees under circumstances satisfying the requirements of §403(c) of the Employee Retirement Income Security Act of 1974 and other applicable law. No contribution made by an employer based upon a mistake of fact may be returned to an employer more than six months after the date the plan administrator determines that the contribution was made by such a mistake. Earnings attributable to excess mistaken contributions may not be returned to any Employer. Losses attributable to excess mistaken contributions shall reduce amounts so returned.

### **12.02 INVALIDITY OF CERTAIN PROVISIONS.**

If any provision of this Plan shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions hereof and this Plan shall be construed and enforced as if such provision had not been included. Further, this Plan has been amended and restated in order to comply with certain requirements of the Internal Revenue Code of 1986. If it

shall be necessary to modify or further amend the terms of the Plan in order to comply with those provisions, the Trustees reserve the right to do so.

### **12.03 INTERPRETATION OF PLAN LANGUAGE.**

Headings or titles of articles and sections of this Plan are for general information and indexing purposes only and this Plan shall not be construed by reference to such titles and headings.

Nothing contained in this Plan shall be construed as conferring any rights upon any person for a continuation of his employment, or as in any way affecting such employment, nor shall the Plan be construed as limiting in any way the right of any Employer to terminate the employment of, or to retire, an Employee.

This Pension Plan has been adopted on the basis of an actuarial calculation which has established, to the extent possible, that the Employer contributions will, if continued, be sufficient to maintain the Plan on a permanent basis. However, if it is recognized that the benefits provided by this Pension Plan can be paid only to the extent that the Plan has available adequate resources for those payments, the Trustees may take any action, including reducing benefits, to the extent permitted by law, or terminating the Plan, as they in their discretion determine to be in the best interests of Employees and their Beneficiaries. Neither individual Employers nor the Employers collectively, shall have any liability, directly or indirectly, to provide the benefits established by this Plan beyond the obligation of the individual Employer to make contributions as stipulated in any collectively bargained or other agreement. In the event that at any time the Pension Fund does not have sufficient assets to permit continued payments under this Pension Plan, nothing contained in this Pension Plan and the Trust Agreement shall be construed as obligating any individual Employer to make benefit payments or contributions (other than the contributions for which the individual Employer may be obligated by any collectively bargained or other agreement) in order to provide for the benefits established by the Plan. It is recognized as possible that in the future the income or the liabilities of the Fund may be substantially different from those previously anticipated. It is understood that this Pension Plan can be fulfilled only to the extent that the Fund has assets available from which to make payments. Consequently, the Trustees may have prepared actuarial evaluations of the Fund and shall take the actuarial status of the Fund into account in determining amendment or modification of this Pension Plan.

The Trustees shall be responsible for establishing the nature and level of benefits to be paid hereunder and shall periodically review same, giving due consideration to economic considerations, actuarial studies, investment factors and the like. Modifications of the nature and or level of benefits shall be made by the Trustees as such reviews may require or permit, so as to maximize benefits as may be prudent but also so as to protect the Fund, as far as is reasonable, against future inability to dispense benefits equitably to those still actively employed at the time such reviews are made.

The Trustees have the absolute right to construe the terms, provisions, and rules of the Plan and any such construction adopted by the Trustees shall be final and binding on all parties, participants, beneficiaries, administrators, employers, employees, and the Union. In no event whatsoever shall any Employer (other than acting in the role of Trustee hereunder) have any voice in the Trustees' determinations made from time to time pursuant to the aforementioned reviews, whether such determination shall involve increasing, decreasing or simply retaining the benefit payable under the provisions of the Plan.

### **12.04 LIMITATION ON BENEFITS.**

(a) Maximum Annual Benefit. Notwithstanding any other provision of the Plan, benefits payable to or on account of an Employee shall be limited in accordance with the terms



of §415 of the Internal Revenue Code of 1986 and regulations issued thereunder. Except to the extent in which the following rules may be inconsistent with such §415 and regulations issued thereunder, in applying the §415 limitations, the following provisions of this Article 12.04 shall be applicable. Subject to the exceptions set forth in subsections (b) (f), and (i), the Annual Benefit payable to or on account of an Employee under the Plan shall not exceed the lesser of:

- (1) \$90,000, as adjusted for cost-of-living increases (\$185,000 in 2008; \$195,000 in 2009), or
- (2) 100 percent of the Employee's Average Compensation for his High 3 Years.

(b) Adjustment Where Benefit Begins Before Age 62. If an Employee's benefits begin before age 62, the dollar limitation set forth in paragraph (1) of subsection (a) shall be reduced in the manner set forth in the following sentence, and an Employee's Annual Benefit shall not exceed such limitation as so reduced. Such limitation shall be reduced so as to be equal to an annual benefit beginning when the Employee's benefits are to begin which is actuarially equivalent, in accordance with the rules and regulations prescribed by the Secretary of the Treasury, to a \$90,000.00 annual benefit beginning at age 62. Notwithstanding the foregoing provisions of this subsection (b), the dollar limitation set forth in paragraph (1) of subsection (a) shall not be reduced to less than:

- (1) \$75,000.00, if the benefit begins at or after age 55, or
- (2) the amount which is the actuarial equivalent of the \$75,000.00 limitation for age 55, if the benefit begins before age 55.

For purposes of adjusting any benefit or limitation under this subsection (b), the interest rate assumption shall be the greater of 5% or the rate specified in Article VIII, Section 8.06 and no adjustments under subsection (g) shall be taken into account before the Limitation Year for which such adjustment first takes place.

For limitation years beginning after December 31, 1994, the maximum benefit shall not exceed the age 62 reduced limitation as calculated in this Plan section further reduced for each month by which the benefits commenced before the months in which the participant obtained age 62. The benefit may not exceed the lesser of the equivalent amount computed using the Applicable Interest Rate and Applicable Mortality Table in the Plan, or the amount computed using 5% interest and the Applicable Mortality Table regardless of whether the benefit is or is not subject to §417(e)(3).

(c) Adjustment Where Benefit Begins After Age 65. If an Employee's benefits begin after age 65, the dollar limitation set forth in paragraph (1) of subsection (a) shall be increased in the manner set forth in the following sentence, and an Employee's Annual Benefit shall not exceed such limitation as so increased. Such limitation shall be increased so as to be equal to an annual benefit beginning when the Employee's benefits are to begin which is actuarially equivalent, in accordance with rules and regulations prescribed by the Secretary of the Treasury, to a \$90,000.00 annual benefit beginning at age 65. For purposes of adjusting any benefit or limitation under this subsection (c), the interest rate assumption shall be the lesser of 5% or the rate specified in Article VIII, Section 8.06 and no adjustments under subsection (g) shall be taken into account before the Limitation Year for which such adjustment first takes place.

If an Employee's benefits begin after the effective date of the Social Security Administrative Reformat of 1994, the increase in the dollar limitation described in this paragraph shall be limited to the lesser of

(a) the equivalent amount computed using the Applicable Interest Rate of the Plan and the Applicable Mortality Table; and

(b) the amount computed using a 5% interest rate and the Applicable Mortality Table regardless of whether or not the benefit is subject to §417(e)(3).

(d) Notwithstanding subsections (a) - (c), an Employee's Annual Benefit (determined without regard to the age at which benefits commence) shall not be deemed to exceed the limitations of this Article 12.04 if the benefits payable with respect to such Employee under this Plan do not exceed \$10,000.00 (not adjusted upward for early retirement provisions and benefits which are not in the form of a straight life annuity (whether or not directly related to retirement benefits)) for the Limitation Year, or for any prior Limitation Year, provided that if his Employer ever maintained one or more other plans in which the Employee participated, none of such other plans were maintained as a result of collective bargaining with the Union. If such Employee's Employer ever maintained one or more plans in which such Employee participated and any of such plans were maintained as a result of collective bargaining with the Union, then, notwithstanding subsections (a) - (c), such Employee's Annual Benefit (determined without regard to the age at which benefits commence) shall not be deemed to exceed the limitations of this Article 12.04 if the benefits payable with respect to such Employee under this Plan and all other defined benefit plans maintained by his Employer do not in the aggregate exceed \$10,000.00 (not adjusted upward for early retirement provisions and benefits which are not in the form of a straight life annuity (whether or not directly related to retirement benefits)) for the Limitation Year, or for any prior Limitation Year, provided that such Employer has not at any time maintained a defined contribution plan in which such Employee participated. Additionally, any reference to the \$90,000 limit must be based on the calendar quarter ending September 30 of the preceding calendar year with the base periods defined in IRC § 415(d)(3) and any COLA increase will be rounded to the next lowest multiple of \$5,000, in accordance with IRC § 415(d).

(e) If an Employee has less than 10 Years of Service at the time he begins to receive benefits under the Plan, the limitations described in subsections (a) and (d) shall be reduced by multiplying the otherwise applicable limitation by a fraction:

(1) the numerator of which is the number of Years of Vesting Service with which the Employee has been credited as of, and including, the current Limitation Year, and

(2) the denominator of which is 10.

(f) Multiple Plan Reduction: Effective through December 31, 1999, notwithstanding the limitations set forth in subsections (a) - (e), if an Employee is a participant in one or more defined benefit plans and one or more defined contribution plans maintained by the Employer, his benefits under the Plan may be further reduced, to the extent determined necessary by the Trustees -

(1) so that the sum of the "Defined Benefit Plan Fraction" and the "Defined Contribution Plan Fraction" with respect to such Employee's benefits for any Limitation Year does not exceed 1.0, or

(2) to prevent disqualification of the Plan for failing to satisfy the requirements of §415 of the Internal Revenue Code of 1986.

Notwithstanding any other provision of the Plan, effective for limitation years beginning after December 31 of 2001, the Plan shall operate in accordance with the repeal of IRC § 415(e), provided that nothing contained in the Plan or in this Amendment shall be construed to cause unintended benefit increases.

(g) Cost-of-Living Adjustments. The maximum dollar limitations set forth in subsections (a), (b), and (i)(7) shall be automatically increased, effective as of January 1 of each calendar year and applying to the Limitation Year commencing on that date, to reflect the cost-of-living adjustments made by the Secretary of the Treasury pursuant to the provisions of §415(d) of the Internal Revenue Code of 1986. Effective December 31, 2001, the COLA for Highly Compensated Employees shall be adjusted at the same time and in the same manner as IRC § 415(d), except that the base period is calendar quarter ending September 30 of the previous year.

(h) If an Employee's Employer has ever maintained or ever maintains another defined benefit plan or defined contribution plan in addition to this Plan in which such Employee was or is a participant, for purposes of applying the limitations of this Section 12.04, all defined benefit plans (whether or not terminated) of such Employer shall be treated as one defined benefit plan and all defined contributions plans (whether or not terminated) of the Employer shall be treated as one defined contribution plan. Notwithstanding the preceding sentence, if an Employee's Employer maintains one or more multi-employer plans in addition to this Plan, such other multi-employer plan(s) shall be not aggregated with this Plan for purposes of applying the limitations of this Section 12.04. If such Employer maintains another plan which is not a multi-employer plan, such other plan shall be aggregated with this Plan to the extent that benefits provided under this Plan are provided by such Employer. The benefits provided by such Employer under this Plan shall be deemed to be the excess of the benefit provided under this Plan over the benefit which would otherwise be provided under this Plan if the Employee had no service with such Employer.

(i) Limitation on Benefits for Years after December 31, 2001.

(a) Effective date. This section shall be effective for limitation years ending after December 31, 2001.

(b) Effect on participants. Benefit increases resulting from the increase in the limitations of section 415(b) of the Code will be provided to those participants specified by the employer in the adoption agreement.

(i) For limitation years beginning after December 31, 1994, the actuarially equivalent straight life annuity, for purposes of applying the limitations under §415(b) to benefits that are not subject to §417(e)(3) is equal to the greater of

(A) the equivalent annual benefit computed using the Applicable Interest Rate and the Applicable Mortality Table specified in the Plan for actuarial equivalence; and

(B) the equivalent annual benefit computed using a 5% interest rate and the Applicable Mortality Table.

(ii) For benefits that are subject to §417(e)(3), the equivalent annual benefit shall be equal to the greater of

(A) the equivalent annual benefit computer using the Applicable Interest Rate and the Applicable Mortality Table in the Plan; and

(B) the equivalent annual benefit using the Applicable Interest Rate and the Applicable Mortality Table.

(c) Definitions.

(1) Defined benefit dollar limitation. The ‘defined benefit dollar limitation’ is \$160,000, as adjusted, effective January 1 of each year, under section 415(d) of the Code in such manner as the Secretary shall prescribe, and payable in the form of a straight life annuity. A limitation as adjusted under section 415(d) will apply to limitation years ending with or within the calendar year for which the adjustment applies.

(2) Maximum permissible benefit: The ‘maximum permissible benefit’ is the lesser of the defined benefit dollar limitation or the defined benefit compensation limitation (both adjusted where required, as provided in (a) and, if applicable, in (b) or (c) below).

(i) If the participant has fewer than 10 years of participation in the plan, the defined benefit dollar limitation shall be multiplied by a fraction, (i) the numerator of which is the number of years (or part thereof) of participation in the plan and (ii) the denominator of which is 10. In the case of a participant who has fewer than 10 years of service with the employer, the defined benefit compensation limitation shall be multiplied by a fraction, (i) the numerator of which is the number of years (or part thereof) of service with the employer and (ii) the denominator of which is 10.

(ii) If the benefit of a participant begins prior to age 62, the defined benefit dollar limitation applicable to the participant at such earlier age is an annual benefit payable in the form of a straight life annuity beginning at the earlier age that is the actuarial equivalent of the defined benefit dollar limitation applicable to the participant at age 62 (adjusted under (a) above, if required). The defined benefit dollar limitation applicable at an age prior to age 62 is determined as the lesser of (i) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using the interest rate and mortality table (or other tabular factor) specified in section 8.06 of the plan and (ii) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using a 5 percent interest rate and the applicable mortality table as defined in section 8.06 of the plan. Any decrease in the defined benefit dollar limitation determined in accordance with this paragraph (b) shall not reflect a mortality decrement if benefits are not forfeited upon the death of the participant. If any benefits are forfeited upon death, the full mortality decrement is taken into account.

(iii) If the benefit of a participant begins after the participant attains age 65, the defined benefit dollar limitation applicable to the participant at the later age is the annual benefit payable in the form of a straight life annuity beginning at the later age that is actuarially equivalent to the defined benefit dollar limitation applicable to the participant at age 65 (adjusted under (a) above, if required). The actuarial equivalent of the defined benefit dollar limitation applicable at an age after age 65 is determined as (i) the lesser of the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using the interest rate and mortality table (or other tabular factor) specified in section 8.06 of the plan and (ii) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using a 5 percent interest rate assumption and the applicable mortality table as defined in section 8.06 of the plan. For these purposes, mortality between age 65 and the age at which benefits commence shall be ignored.

(j) Definitions. For the purposes of this Section 12.04, the following definitions shall apply:

- (1) Annual Benefit. The term “Annual Benefit” shall mean with respect to an Employee the benefit payable annually in the form of a straight life annuity with no ancillary benefits. If the Employee’s benefit is payable in any other form, such benefit shall be adjusted to a straight life annuity beginning at the same age which is the actuarial equivalent of such benefit in accordance with the rules and regulations prescribed by the Secretary of the Treasury and, as adjusted, shall be considered such Employee’s “Annual Benefit” for purposes of applying the limitation of this Section 12.04. For purposes of adjusting any benefit or limitation payable in a form other than a straight life annuity with no ancillary benefits:
  - (a) the interest rate assumption shall be the greater of 5% of the rate specified in Article VIII, Section 8.06, and
  - (b) no adjustments under subsection (g) shall be taken into account before the Limitation Year for which such adjustment first takes effect.
- (2) Average Compensation for High 3 Years. The term “Average Compensation for High 3 Years” shall mean the period of 3 consecutive calendar years during which the Employee had the greatest aggregate Compensation from the employer, and the Average Compensation for the period of the Employee’s High-3 years of service is determined by dividing the aggregate Compensation for this period by 3. For purposes of determining a participant’s High-3 years of service, the plan may use any 12-month period to determine a year of service instead of the calendar year, provided that it is uniformly and consistently applied in a manner that is specified in the Plan. In the case of a participant who has had a break in service and is subsequently rehired by the employer, the period of the participant’s High-3 years of service is calculated by excluding all years for which the participant has a break in service (performs no service for and receives no compensation from the employer maintaining the plan) and by treating the year of service immediately prior to and the year of service immediately after the break period as if such years of service were consecutive.
- (3) Compensation.
  - (a) The term “Compensation” shall mean, with respect to an Employee:
    - (i) The Employee’s wages, salaries, fees for professional service and other amounts received for personal services actually rendered in the course of employment with an Employer maintaining the Plan (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips and bonuses, fringe benefits).
    - (ii) For purposes of subdivision (i), earned income from sources outside the United States (as defined in section 911(b) of the Internal Revenue Code of 1986), whether or not excludable

from gross income under section 911 or deductible under section 913 of the Internal Revenue Code of 1986.

- (iii) Amounts described in sections 104(a)(3), 105(a) and 105(h) of the Internal Revenue Code of 1986, but only to the extent that these amounts are includable in the gross income of the Employee.
  - (iv) Amounts described in section 105(d) of the Internal Revenue Code of 1986, whether or not these amounts are excludable from the gross income of the Employee under that section.
  - (v) Amounts paid or reimbursed by the Employer for moving expenses incurred by an Employee, but only to the extent that these amounts are not deductible by the Employee under section 217 of the Internal Revenue Code of 1986.
  - (vi) The value of a non-qualified stock option granted to an Employee by the Employer, but only to the extent that the value of the option is includable in the gross income of the Employee for the taxable year in which granted.
  - (vii) The amount includable in the gross election described in section 83(b) of the Internal Revenue Code of 1986.
  - (viii) For limitation years beginning after December 31, 1997, the amount of salary deferral contributions and for limitation years beginning after December 31, 2000, qualified transportation subsidies under Internal Revenue Code §132(f).
- (b) The term “Compensation” shall not include:
- (i) Contributions made by the Employer to a plan of deferred compensation to the extent that, before the application of the limitations imposed on that plan by section 415 of the Internal Revenue Code of 1986, the contributions are not includable in the gross income of the Employee for the taxable year in which contributed. In addition, Employer contributions made on behalf of an Employee to a simplified employee pension described in section 408(k) of the Internal Revenue Code of 1986 are not considered as Compensation for the taxable year in which contributed to the extent such contributions are deductible by the Employee under section 219(b)(7) of the Internal Revenue Code of 1986. Additionally, any distributions from a plan of deferred compensation are not considered as Compensation for purposes of section 415 of the Internal Revenue Code of 1986, regardless of whether such amounts are includable in the gross income of the Employee when distributed. However, any amounts received by an Employee pursuant to an unfunded non-qualified plan may be considered as Compensation for purposes of section 415 of the Internal Revenue Code of 1986 in the year such amounts are includable in the gross income of the employee.

- (ii) Amounts realized from the exercise of a non-qualified stock option, or when restricted stock (or property) held by an Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture.
  - (iii) Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option.
  - (iv) Other amounts which receive special tax benefits, such as premiums for group term life insurance (but only to the extent that the premiums are not includable in the gross income of the Employee), or contributions made by an Employer (whether or not under a salary reduction agreement) towards the purchase of an annuity contract described in section 403(b) of the Internal Revenue Code of 1986 (whether or not the contributions are excludable from the gross income of the Employee).
- (4) Limitation Year. The term "Limitation Year" shall mean the Plan Year.
- (5) Defined Benefit Plan Fraction. Effective through December 31, 1999, the term "Defined Benefit Plan Fraction" for any Limitation Year shall mean a fraction:
- (a) the numerator of which is the Projected Annual Benefit of the Employee under the Plan (determined as of the close of the Limitation Year), and
  - (b) the denominator of which is the lesser of:
    - (i) the product of 1.25 multiplied by the maximum dollar limitation in effect under §415(b)(1)(A) of the Internal Revenue Code of 1986 for such Limitation Year, or
    - (ii) the product of 1.4 multiplied by the amount which may be taken into account under §415(b)(1)(B) of the Internal Revenue Code of 1986 with respect to such Employee under the Plan for such Limitation Year.
- (6) Defined Contributions Plan Fraction. Effective through December 31, 1999, the term "Defined Contribution Plan Fraction" for any Limitation Year shall mean a fraction:
- (a) the numerator of which is the sum of the Annual Additions to the Employee's Account as of the close of the Limitation Year and for all prior Limitation Years, and
  - (b) the denominator of which is the sum of the lesser of the following amounts determined for such Limitation Year and each prior Limitation Year in which the Employee has been in the service of his Employer:
    - (i) the product of 1.25 multiplied by the dollar limitation in effect under §415(c)(1)(A) of the Internal Revenue Code of 1986 for such Limitation Year (determined without regard to §415(c)(6) of the Internal Revenue Code of 1986), or
    - (ii) the product of 1.4 multiplied by the amount which may be taken into account under §415(c)(1)(B) of the Internal Code

of 1986 with respect to such Employee under the Plan for such Limitation Year.

For the purposes of this paragraph, the term “Employee’s Account” shall mean the account established and maintained for such Employee with respect to his total interest in any defined contribution plan maintained by the Employer resulting from the Employer’s contributions.

(c) Notwithstanding any other provision of the Plan, effective for limitation years beginning after December 31 of 1999, the Plan shall operate in accordance with the repeal of IRC § 415(e), provided that nothing contained in the Plan or in this Amendment shall be construed to cause unintended benefit increases.

(7) Annual Addition.

(a) The term “Annual Addition” shall mean the sum for any Limitation Year of:

(i) Employer contributions,

(ii) the lesser of:

(I) the amount of contributions made by the Employee in excess of 6 percent of such Employee’s Compensation in the Limitation Year, or

(II) one-half of the contributions made by the Employee, and

(iii) forfeitures.

(b) Notwithstanding subparagraph (A), for any Limitation Year, an Employee’s Annual Addition shall not exceed the lesser of:

(i) \$30,000.00, or

(ii) 25 percent of the Employee’s Compensation for the relevant Limitation Year.

(8) Projected Annual Benefit. The term “Projected Annual Benefit” shall mean with respect to an Employee the Annual Benefit to which such Employee would be entitled under the terms of the Plan on the assumptions that he continues to be employed in Covered Employment until his Normal Retirement Age, that his Compensation continues at the same rate as in effect in the relevant Limitation Year until his Normal Retirement Age, and that all other relevant factors used to determine benefits under the Plan remain constant as of the relevant Limitation Year for all future Limitation Years.

(j) The Limitation of Benefits provisions of Section 12.04 are effective as of January 1, 1987.

(k) Effective for distributions after January 1, 2008, the Plan shall permit non-spouse beneficiaries to roll over any portion of a deceased employee’s eligible retirement plan distributions in a direct trustee-to-trustee transfer to an individual retirement plan as described in section 402(c)(11) of the Internal Revenue Code of 1986, as amended. Any non-spouse beneficiary, including a parent, child, sibling or domestic partner can roll over inherited retirement benefits to an IRA on a tax-free basis. These inherited retirement benefits must be



rolled over directly from the plan to the IRA or the beneficiary will be subject to significant tax penalties.

**ARTICLE XIII - EXECUTION**

By resolution of February 9, 2010, the Trustees of the Operating Engineers Pension Trust Fund hereby adopt the foregoing restatement of the Operating Engineers Local No. 77 Pension Plan, effective as of January 1, 2010, except as otherwise specified herein in accordance with Article XI, Section 11.01 of the Plan and Article VII, Section 3 of the Operating Engineers Pension Trust Fund Agreement and Declaration of Trust.

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**AMENDMENT OF AUGUST 10, 2010  
TO THE OPERATING ENGINEERS LOCAL NO. 77 PENSION PLAN  
RESTATED JANUARY 1, 2010 (FIRST AMENDMENT)**

The Trustees of the Operating Engineers Local No. 77 Pension Plan, hereby adopt the followin amendment of August 10, 2010. The following amendments have previously been made to the Plan restated January 1, 2010: None.

I. Sub-paragraph (e) of Article IV, Section 4.01 “Normal Pension” is hereby amended and restated to state as follows:

(e) Percentage Benefit Amount

The amount of an Employee’s Percentage Benefit Amount for service after December 31, 2007, shall be equal to the amount of contributions received by the Plan on behalf of the Employee for Hours of Service after December 31, 2007 multiplied by the Benefit Accrual Rate. The Benefit Accrual Rate is as follows:

- (i) For Hours of Service from January 1, 2008 to December 31, 2010, the Benefit Accrual Rate is 3%; and,
- (ii) For Hours of Service from January 1, 2011 and thereafter, the Benefit Accrual Rate is 2.5%.

By resolution hereof, the undersigned Trustees in accordance with Article X of the Operating Engineers Local No. 77 Pension Plan, as restated January 1, 2010 hereby adopt this August 10, 2010 Amendment effective as of the dates indicated herein and except as hereby amended, the terms of the Plan, as previously amended, remain in full force and effect.

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**AMENDMENT OF FEBRUARY 25, 2011  
TO THE OPERATING ENGINEERS LOCAL NO. 77 PENSION PLAN  
RESTATED JANUARY 1, 2010 (SECOND AMENDMENT)**

The Trustees of the Operating Engineers Local No. 77 Pension Plan, hereby adopt the following amendment of February 25, 2011. The following amendments have previously been made to the Plan restated January 1, 2010: August 10, 2010.

I. Article I, Section 1.22 is hereby amended and restated to state as follows:

“APPLICABLE INTEREST RATE” shall mean the interest rate prescribed under Section 417(e)(3)(C) of the Internal Revenue Code (as further defined in Revenue Ruling 2007-67 or superseding guidance).

II. Article I, Section 1.23 is hereby amended and restated to state as follows:

“APPLICABLE MORTALITY TABLE” shall mean the mortality table prescribed under Section 417(e)(3)(B) of the Internal Revenue Code (as further defined in Revenue Ruling 2007-67 or superseding guidance).

III. The first sentence of Article IV, Section 4.01(a) is hereby amended and restated to state as follows:

An Employee who is an Active Participant as of the date he attains his Normal Retirement Age shall be eligible to receive a Normal Pension upon his Retirement.

IV. Article V, Section 5.02 “Information and Election to Employees” is hereby amended to add a new paragraph at the conclusion of subparagraph (a) that states as follows:

The Plan Administrator will notify the participant when a benefit under the plan is requested. Such notification shall include a general description of the material features, and an explanation of the relative values of, the optional forms of benefit available under the plan in a manner that would satisfy the notice requirements of IRC 417(a)(3) and Treasury Regulation 1.417(a)(3)-1.

V. Article V, Section 5.08 “Written Explanation to Recipient that Lump Sum Distributions are Eligible for Rollover Treatment” is hereby amended to add a new paragraph at the conclusion of subparagraph (b) that states as follows:

For purposes of the direct rollover provisions in sections of the plan, an eligible retirement plan shall also mean an annuity contract described in section 403(b) of the Code and an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in section 414(p) of the Code.

VI. Article XII, Section 12.04 “Limitation on Benefits” is hereby amended to add a new subparagraph (m). Article 12.04, subparagraph (a) is amended and restated to reference the new subparagraph (m) as follows:

(a) Maximum Annual Benefit. Notwithstanding any other provision of the Plan, benefits payable to or on account of an Employee shall be limited in accordance with the terms of §415 of the Internal Revenue Code of 1986 and regulations issued thereunder. Except to the extent in which the following rules may be inconsistent with such §415 and regulations issued thereunder, in applying the §415 limitations, the following provisions of this Article 12.04 shall be applicable. Subject to the exceptions set forth in subsections (b) (f), (i) and (m), the Annual Benefit payable to or on account of an Employee under the Plan shall not exceed the lesser of:

- (1) \$90,000, as adjusted for cost-of-living increases (\$185,000 in 2008; \$195,000 in 2009), or
- (2) 100 percent of the Employee’s Average Compensation for his High 3 Years.

In addition, Article XII, Section 12.04 “Limitation on Benefits” is hereby amended to add a new subparagraph (m) as follows:

(m) Additional Rules for Limitation on Benefits.

In addition to and notwithstanding the other provisions of Section 12.04:

- (1) For purposes of applying the limits of section 415, a retirement benefit that is payable in any form other than a straight life annuity and that is not subject to section 417(e)(3) must be adjusted to an actuarially equivalent straight life annuity that equals:
  - (i) for limitation years beginning on or after July 1, 2007, the greater of the annual amount of the straight life annuity (if any) payable under the plan at the same annuity starting date, and the annual amount of a straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant’s form of benefit computed using an interest rate of 5 percent and the applicable mortality table under section 417(e)(3).
  - (ii) for limitation years beginning before July 1, 2007, the annual amount of a straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant’s form of benefit computed using whichever of the following produces the greater annual amount: (1) the interest rate and mortality table or other tabular factor specified in the plan for adjusting benefits in the same form; and (2) a 5 percent interest rate assumption and the applicable mortality table.
- (2) For purposes of applying the limits of section 415, a retirement benefit that is payable in any form other than a straight life annuity and that is subject to section 417(e)(3) must be adjusted to an actuarially equivalent straight life annuity that equals:
  - (i) if the annuity starting date is in a plan year beginning after 2005, the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant’s form of benefit, using whichever of the following produces the greatest annual amount: (1) the interest rate and the mortality table or other tabular factor specified in

the plan for adjusting benefits in the same form; (2) a 5.5 percent interest rate assumption and the applicable mortality table; and (3) the applicable interest rate under section 417(e)(3) and the applicable mortality table, divided by 1.05.

(ii) if the annuity starting date is in a plan year beginning in 2004 or 2005, the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit payable, using whichever of the following produces the greater annual amount: (1) the interest rate and mortality table or other tabular factor specified in the plan for adjusting benefits in the same form; and (2) 5.5 percent interest and the applicable mortality table.

(iii) if the annuity starting date is on or after the first day of the first plan year beginning in 2004 and before December 31, 2004, and the plan applies the transition rule in section 101(d)(3) of PFEA '04 in lieu of the rule in (ii), the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit, determined in accordance with Notice 2004-78.

- (3) For purposes of applying the limits of section 415, if the annuity starting date for the participant's benefit is prior to age 62 and occurs in a Limitation Year beginning before July 1, 2007, the Defined Benefit Dollar Limitation for the participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the participant's annuity starting date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under the plan for years of participation less than 10, if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (1) the interest rate specified in section 1.22 of the plan and the mortality table (or other tabular factor) specified in section 1.23 of the plan; or (2) a 5 percent interest rate assumption and the applicable mortality table as defined in section 1.23 of the plan.
- (4) For purposes of applying the limits of section 415, if the annuity starting date for the participant's benefit is prior to age 62 and occurs in a Limitation Year beginning on or after July 1, 2007, and the plan does not have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the Defined Benefit Dollar Limitation for the participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the participant's annuity starting date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under the plan for years of participation less than 10, if required) with actuarial equivalence computed using a 5 percent interest rate assumption and the applicable mortality table for the annuity starting date as defined in section 1.23 of the plan (and expressing the participant's age based on completed calendar months as of the annuity starting date).
- (5) For purposes of applying the limits of section 415, if the annuity starting date for the participant's benefit is prior to age 62 and occurs in a Limitation Year beginning on or after July 1, 2007, and the plan has an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the Defined Benefit Dollar Limitation for the participant's annuity starting date is the lesser of the limitation determined under paragraph 4 above and the Defined Benefit Dollar Limitation (adjusted under the plan

for years of participation less than 10, if required) multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the plan at the participant's annuity starting date to the annual amount of the immediately commencing straight life annuity under the plan at age 62, both determined without applying the limitations of this article.

- (6) For purposes of applying the limits of section 415, if the annuity starting date for the participant's benefit is after age 65 and occurs in a Limitation Year beginning before July 1, 2007, the Defined Benefit Dollar Limitation for the participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the participant's annuity starting date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under the plan for years of participation less than 10, if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (1) the interest rate specified in section 1.22 of the plan and the mortality table (or other tabular factor) specified in section 1.23 of the plan; or (2) a 5-percent interest rate assumption and the applicable mortality table as defined in section 1.23 of the plan.
- (7) For purposes of applying the limits of section 415, if the annuity starting date for the participant's benefit is after age 65 and occurs in a Limitation Year beginning on or after July 1, 2007, and the plan does not have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the Defined Benefit Dollar Limitation at the participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the participant's annuity starting date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under the plan for years of participation less than 10, if required), with actuarial equivalence computed using a 5 percent interest rate assumption and the applicable mortality table for that annuity starting date as defined in section 1.23 of the plan (and expressing the participant's age based on completed calendar months as of the annuity starting date).
- (8) For purposes of applying the limits of section 415, if the annuity starting date for the participant's benefit is after age 65 and occurs in a Limitation Year beginning on or after July 1, 2007, and the plan has an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the Defined Benefit Dollar Limitation at the participant's annuity starting date is the lesser of the limitation determined under paragraph 7 above and the Defined Benefit Dollar Limitation (adjusted under the plan for years of participation less than 10, if required) multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the plan at the participant's annuity starting date to the annual amount of the adjusted immediately commencing straight life annuity under the plan at age 65, both determined without applying the limitations of this article. For this purpose, the adjusted immediately commencing straight life annuity under the plan at the participant's annuity starting date is the annual amount of such annuity payable to the participant, computed disregarding the participant's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under the plan at age 65 is the annual amount of such annuity that would be payable under the plan to a

hypothetical participant who is age 65 and has the same accrued benefit as the participant.

VII. Article VIII, Section 8.01 "Commencement of Benefits" is hereby amended and restated to state as follows:

**8.01 COMMENCEMENT OF BENEFITS**

Benefits shall be payable commencing the first day of the month following the month in which the Trustees approve the written application for benefits submitted by an Employee or Beneficiary or, if applicable, surviving spouse who has fulfilled all eligibility requirements for the requested benefits. Unless a participant elects otherwise, payment of benefits will begin not later than the latest of the close of the plan year in which the participant attains Normal Retirement Age, occurs the 10th anniversary of the year in which the Participant commenced participation in the Plan or the Participant terminates his service under the Plan, provided the Participant has filed a claim for benefits under the terms of the Plan.

Notwithstanding this or any other provision of the Plan, however, the retirement and death benefits under the Plan may not violate Section 401(a)(9) of the Code (including the incidental death benefit requirements of Code Section 401(a)(9)(G)) and the corresponding requirements of Treasury Regulations 1.401(a)(9)-2 through 1.401(a)(9)-9. Distributions will be made by the Required Beginning Date, which is defined generally as the April 1 of the calendar year following the later of: (i) the calendar year in which the employee attains age 70½, or (ii) the calendar year in which the employee retires. A 5% owner as defined in IRC 416(i)(1)(i) must begin receiving a benefit by the date specified in (i) above without regard to (ii).

By resolution hereof, the undersigned Trustees in accordance with Article X of the Operating Engineers Local No. 77 Pension Plan, as restated January 1, 2010 hereby adopt this February 25, 2011 Amendment effective as of the dates indicated herein and except as hereby amended, the terms of the Plan, as previously amended, remain in full force and effect.

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**AMENDMENT OF MAY 10 , 2011  
TO THE OPERATING ENGINEERS LOCAL NO. 77 PENSION PLAN  
RESTATED JANUARY 1, 2010 (THIRD AMENDMENT)**

The Trustees of the Operating Engineers Local No. 77 Pension Plan, hereby adopt the following amendment of May 10, 2011, effective as of December 31, 2010. The following amendments have previously been made to the Plan restated January 1, 2010: August 10, 2010, and February 25, 2011.

I. Article VI, "Death Benefits" is hereby amended to add a new Section 6.04 that states as follows:

**6.04 DEATH WHILE PERFORMING QUALIFIED MILITARY SERVICE**

Notwithstanding the above, in the case of a death occurring on or after January 1, 2007, if an Employee dies while performing qualified military service (as defined in Internal Revenue Code §414(u)), the survivors of the Employee are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Employee had resumed and then terminated employment on account of death.

By resolution hereof, the undersigned Trustees in accordance with Article X of the Operating Engineers Local No. 77 Pension Plan, as restated January 1, 2010 hereby adopt this May 10, 2011 Amendment effective as of December 31, 2010 and except as hereby amended, the terms of the Plan, as previously amended, remain in full force and effect.

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