

MIDWEST OPERATING ENGINEERS PENSION PLAN

**Amended and Restated Effective April 1, 2006
(Including all Amendments through April 1, 2006)**

**First Draft
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ARTICLE I
PURPOSE

On April 1, 1963, the Midwest Operating Engineers Pension Plan was established pursuant to a written agreement between the International Union of Operating Engineers Local No. 150 and the Contributing Employers.

In order to comply with the terms of the Retirement Protection Act of 1994, the Uniformed Services Employment and Reemployment Rights Act of 1994, the Small Business Job Protection Act of 1996 and the Taxpayer Relief Act of 1997, the Trustees amended and restated the Plan, effective as of April 1, 2001.

The Plan and Trust Fund maintained under the Trust Agreement are intended to meet the requirements of Sections 401(a) and 501(a) of the Internal Revenue Code of 1986.

The provisions of the Plan shall apply only to an Employee who retires or terminates Covered Employment on or after April 1, 2006 unless the Plan specifically provides otherwise. The rights and benefits, if any, of a former Employee who retired or terminated Covered Employment prior to April 1, 2006, shall, unless specifically provided herein, be determined in accordance with the provisions of the Plan in effect on the date of retirement or termination of Covered Employment, and in accordance with any modifications through March 31, 2006 of such provisions that apply to any such former Employee.

ARTICLE II
DEFINITIONS AND CONSTRUCTION

Section 2.1. Definitions

Words and phrases appearing in this Plan shall have the respective meanings set forth in this Article, unless the context clearly indicates to the contrary.

(a) Accrued Pension

The monthly amount of Pension payable on a Participant's Normal Retirement Date, as determined in accordance with Section 5.1, based on the Participant's Years of Service, Employer Contributions, and the applicable plan of benefits in effect at the time the Participant last worked in Covered Employment, but subject to the provisions of Section 5.5 and Article VII.

(b) Actuarial (or Actuarially) Equivalent

For payments other than the lump sum value of an accrued benefit, equality in value of the aggregate amounts expected to be received under:

- (i) two different forms of pension payment, or
- (ii) pensions commencing on different dates,

computed on the basis of an interest rate equal to the valuation interest rate used for Plan funding in effect on the first day of the Plan Year, compounded annually, for Pre-Normal Retirement Date and Post-Normal Retirement Date periods and the 1971 Group Annuity Mortality Table, weighted 100% Male (for Participants) and 100% Female (for Spouses and Beneficiaries). Conversion of the Pension payable on the Normal Form of Pension payments pursuant to Section 6.1 into an Optional Form of Pension payment pursuant to Section 6.2 shall be based upon Actuarially Equivalent factors.

For lump sum payments prior to April 1, 2000, the actuarial equivalent lump sum value of the Accrued Pension shall be determined on the basis of interest at the Pension Benefit Guaranty Corporation interest rate for immediate annuities in effect on the first day of the

Plan Year that determination is made and 1971 Mortality Table and the 1971 Group Annuity Mortality Table weighted 100% male (for Participants) and 100% Female (for Spouses and Beneficiaries).

For lump sum payments on or after April 1, 2000 and prior to October 1, 2004, the actuarial equivalent lump sum value of the Accrued Pension shall be determined using the applicable interest rate as specified by the Commissioner of Internal Revenue Service for the second full calendar month preceding the first day of the Plan Year containing the date of distribution, pursuant to Code Section 417(e)(3)(A) as amended by the Retirement Protection Act of 1994 and a Unisex Mortality Table prepared based on experience underlying the 1983 Group Annuity Mortality Table.

For lump sum payments on or after October 1, 2004, the Actuarial Equivalent lump sum value of the Accrued Pension shall be the greater of (i), (ii) or (iii) below:

- (i) The Actuarial Equivalent lump sum value of the Accrued Pension determined using the applicable interest rate as specified by the Commissioner of the Internal Revenue for the second full calendar month preceding the first day of the Plan Year containing the date of distribution, pursuant to Code Section 417(e)(3)(A) as amended by the Retirement Protection Act of 1994 and a Unisex Mortality Table prepared based on experience underlying the 1994 Group Annuity Reserving mortality table and excluding all early retirement subsidies under this Plan.
- (ii) The Actuarial Equivalent lump sum value of the Accrued Pension determined using an interest rate equal to the valuation interest rate used for Plan funding in effect on the first day of the Plan Year, compounded annually, containing the date of distribution and the 1971 Group Annuity Mortality Table weighted 100% male (for Participants) and 100% Female (for Spouses and Beneficiaries), including all early retirement subsidies under this Plan.
- (iii) The value of the contributions made to the Plan on behalf of the Participant.

Effective for distributions with Annuity Starting Dates on or after January 1, 2003, notwithstanding any other Plan provision to the contrary, any reference in the Plan to the applicable mortality table or the mortality table prescribed in Rev. Rul. 95-6 shall be

construed as a reference to the mortality table prescribed in Rev. Rul. 2001-62 for all purposes under the Plan.

For any distribution with an Annuity Starting Date on or after the effective date of this provision and before the adoption date of this provision, if application of the amendment as of the Annuity Starting Date would have caused a reduction in the amount of any distribution, such reduction is not reflected in any payment made before the adoption date of this provision. However, the amount of any such reduction that is required under Section 415(b)(2)(B) of the Code must be reflected actuarially over any remaining payments to the Participant.

(c) Actuary

The individual actuary or firm of actuaries (who is or shall include at least one “Enrolled Actuary” under ERISA) selected by the Trustees to provide actuarial services in connection with the administration of the Plan.

(d) Adjustment Factor

The cost of living adjustment factor prescribed by the Secretary of the Treasury under Section 415(d) of the Code for years beginning after December 31, 1987, applied to such items and in such manner as the Secretary shall prescribe.

(e) Administrative Manager

The person, firm or corporation employed by the Trustees, charged with the record keeping, reporting and disclosure, processing of application for benefits, and related ministerial functions attendant to the administration of the Pension Plan.

(f) Annuity Starting Date

(i) The “Annuity Starting Date” or “Effective Date” shall be the first day of the first month after or coincident with the later of:

(A) the first day of the month following submission by the Participant of a completed application for benefits, or

- (B) 30 days after the Plan advises the Participant of the available benefit payment options.

The Annuity Starting Date may occur and benefits may begin before the end of the 30-day period, provided:

- (1) the Participant and Spouse, if any, consent in writing to the commencement of payments before the end of the 30-day period, and distribution of the pension begins more than seven days after the written explanation was provided to the Participant and Spouse,
 - (2) the benefit is being paid as a Qualified Joint and Survivor Annuity at or after the Participant's Normal Retirement Age,
 - (3) the Participant's benefit was previously being paid because of an election after the Normal Retirement Age, or
 - (4) the benefit is being paid out automatically as a lump sum under the provisions of the Plan.
- (ii) The Annuity Starting Date will not be later than the Participant's Required Beginning Date.
 - (iii) The Annuity Starting Date for a Beneficiary or alternate payee under a Qualified Domestic Relations Order (within the meaning of Section 206(d)(3) of ERISA and Section 414(p) of the Internal Revenue Code) will be determined as stated in Subsections (i) and (ii) above, except that references to the Qualified Joint and Survivor Annuity and spousal consent do not apply.
 - (iv) A Participant who retires before his Normal Retirement Age and then earns additional benefit accruals under the Plan through reemployment:
 - (A) will have a new election of payment options with respect to those additional accruals, except that an election that is made on or after Normal Retirement Age shall apply for any additional benefits accrued through reemployment after that date, and

(B) will be entitled to a recomputation of his benefit at the end of each Plan Year payable as of April 1 following the end of the Plan Year in which those additional benefits accrued provided he earns at least 500 hours of Service in a Plan Year.

(v) In the event that the Annuity Starting Date of a Disability Pension, as determined above, is prior to the earliest Early Retirement Date at which a pension, other than a Disability Pension, would be payable, then the Disability Pensioner will have another Annuity Starting Date when the Participant reaches that age.

(g) Association

Employer Associations that have entered into a Collective Bargaining Agreement with the Union, where under it is agreed that the Employer Members of such Association shall make Employer Contributions to the Trust Fund.

(h) Beneficiary

A person (other than a Pensioner) who is receiving benefits under this Plan because of his designation for such benefits by a Participant or by the provisions of the Plan. For purposes of the joint and survivor form of payment, the Beneficiary shall be the Participant's Spouse. If there is no Beneficiary, any death benefits shall be payable in accordance with the provisions of Section 6.4(b)(iv).

(i) Calendar Year

The twelve-month period from January 1 to December 31.

(j) Code

The Internal Revenue Code of 1986, as amended from time to time.

(k) Compensation

“Compensation” for purposes of Internal Revenue Service Code Sections 415, 416 and 414(q) shall mean taxable income as defined in Code Section 3401(a) for purposes of Federal income tax withholding. Effective April 1, 1998, Compensation shall include pre-tax deferrals under Code Sections 125, 401(k), 457, and effective April 1, 2001 Section

132(f) of the Code.

Compensation shall be limited to the maximum amount as adjusted by the Commissioner of the Internal Revenue Service for increases in the cost of living in accordance with Section 401(a)(17)(B) of the Code.

The cost of living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which Compensation is determined (determination period) beginning in such Calendar Year. If a determination period consists of fewer than 12 months, the annual Compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

The annual Compensation of each Participant taken into account in determining benefit accruals in any Plan Year beginning after December 31, 2001 shall not exceed \$200,000 as adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Code. For this purpose, annual Compensation means Compensation during the Plan Year or such other consecutive 12-month period over which Compensation is determined under the Plan (the "determination period"). Effective January 1, 1998, pre-tax elective deferrals under qualified cash or deferred arrangements, Code Section 403(b) and 457(b) plans and salary deferrals under Code Section 125 plans shall be included in Compensation.

(l) Collective Bargaining Agreement

A written agreement to which the Union and an Employer are parties, providing for contributions by the Employer to the Fund on behalf of covered employees.

(m) Contiguous Non-Covered Employment

Effective October 1, 2004, Contiguous Non-Covered Employment is employment of an Employee with an Employer which does not require the Employer to make contributions to the Fund and which, without quit, discharge or Retirement having occurred, immediately precedes or follows the Employee's period of Covered Employment and which occurs when an Employer is required to contribute to the Fund on behalf of other Employees, as provided in ERISA. The Trustees may grant such Contiguous Non-

Covered Service, for purposes of vesting, only if the Trustees determine that it will not have a material adverse financial impact on the Plan.

If the Employer has a Collective Bargaining Agreement with the Union, and a non-covered Employee becomes a Covered Employee, such an Employee's service with the Employer immediately before the Employee's period of Covered Employment will be deemed Contiguous Non-Covered Service for the purposes of vesting.

(n) Contribution Date

The first date an Employer shall be obligated by a Collective Bargaining Agreement, a written declaration or other written agreement, to make Contributions to the Trust Fund. The Contribution Date to be applied to each Employee shall be the date applicable to the first Employer required to make contributions on his behalf.

(o) Covered Employment

Any period during which an Employee was employed by an Employer subject to the following:

- (i) With respect to the period on or after April 1, 1963 or, if later, after the Employee's Contribution Date, subject to Trustee approval, Covered Employment shall include those periods of work during which an Employer was obligated to make contributions as an Employer on behalf of the Employee;
- (ii) With respect to the period prior to April 1, 1963 or, if later, prior to the Employee's Contribution Date, subject to Trustee approval, Covered Employment shall include a period of work which, if performed after the Contribution Date would require an Employer to make contributions to the Fund.

(p) Defined Benefit Compensation Limit

The limitation set forth in Section 415(b)(1)(B) of the Code.

(q) Defined Benefit Dollar Limitation

The limitation set forth in Section 415(b)(1)(A) of the Code.

(r) Defined Contribution Dollar Limitation

\$30,000 (as indexed under the Code) or, if greater, one-fourth of the Defined Benefit Dollar Limitation in effect for the Limitation Year.

(s) Early Retirement Age

The term “Early Retirement Age” shall mean:

- (i) the attainment of a Participant’s 55th birthday, and
- (ii) the accumulation of at least ten (10) Vesting Service Years, and
- (iii) the attainment of 100% Vested Status.

(t) Early Retirement Date

The first day of the month immediately following the Participant’s Early Retirement Age.

(u) Effective Date

April 1, 2001, the date on which the provisions of this amended and restated Plan become effective; however, in order to comply with certain legislation and regulations, certain provisions of the Plan may have earlier or later effective dates.

(v) Employee

The term “Employee” shall mean:

- (i) A person employed by an Employer, on whose behalf the Employer is required to make Employer Contributions to the Trust Fund.
- (ii) A person employed by and under the direction and control of any of the following:
 - (A) The Union
 - (B) An Association

on whose behalf Employer Contributions are required to be made to the Trust Fund.

- (iii) A person employed full or part-time by and under the direction of any of the following:
 - (A) the Trustees of the Midwest Operating Engineers Pension Trust Fund,
 - (B) the Trustees of the Midwest Operating Engineers Welfare Fund,
 - (C) the Trustees of the Operating Engineers Local 150 Apprenticeship Fund,
 - (D) the Trustees of the Local 150, I.U.O.E., Vacation Savings Plan,
 - (E) the Trustees of the Midwest Operating Engineers Construction Industry Research Service Trust Fund.

on whose behalf Employer Contributions are required to be made to the Trust Fund.

- (iv) A person employed by an Employer as a “Supervisor”, as such term is defined in the Labor Management Relations Act of 1947, as amended:
 - (A) who, prior to June 1, 1973, had been an Employee included as a Member of the Bargaining Unit represented by the Union under any Collective Bargaining Agreement effective prior to June 1, 1973, and
 - (B) on whose behalf, during the period May 1, 1963 through May 31, 1973, Employer Contributions were required to be made to the Trust Fund for at least 2,000 hours of work, or wages received, as the case required.
- (v) A person employed by an Employer as a “Supervisor”, as such term is defined in the Labor Management Relations Act of 1947, as amended:
 - (A) who, on and after April 1, 1970, had been an Employee included as a Member of the Bargaining Unit represented by the Union under any Collective Bargaining Agreement effective after the 1st day of April, 1970, and

- (B) (1) on whose behalf, after April 1, 1970, Employer Contributions were required to be made for at least 5,000 hours of work, or wages received, as the case required; or
- (2) as otherwise provided under an applicable collective bargaining agreement.

(w) Employer

- (i) An individual, partnership or similar business entity, firm or corporation, that is bound to make Employer Contributions to the Trust Fund, under the provisions of a written Collective Bargaining Agreement entered into with the Union by the Associations as the Collective Bargaining Representative of their Employer Members who is such an individual, partnership or similar business entity, firm or corporation, on behalf of Employees included within the Bargaining Unit covered by such Collective Bargaining Agreement, or
- (ii) An individual, partnership or similar business entity, firm or corporation, that is bound to make Employer Contributions to the Trust Fund under the provisions of a written Collective Bargaining Agreement entered into with the Union, on behalf of the Employees included within the Bargaining Unit covered by such Collective Bargaining Agreement, or
- (iii) An Association which enters into a written agreement with the Trustees, whereunder it is bound to make Employer Contributions to the Trust Fund on behalf of its Employees included within (ii) of the definition of an Employee, or
- (iv) The trustees of the following:
 - (A) the Midwest Operating Engineers Pension Trust Fund, or
 - (B) the Midwest Operating Engineers Welfare Fund, or
 - (C) the Operating Engineers Local 150 Apprenticeship Fund, or
 - (D) the Local 150, I.U.O.E. Vacation Savings Plan, or

(E) the Midwest Operating Engineers Construction Industry Research and Service Trust Fund,

who enter into a written agreement with the Trustees, whereunder, they are bound to make Employer Contributions to the Trust Fund on behalf of their Employees included within (iii) of the definition of an Employee, or

(v) The Union, upon its written declaration delivered to the Trustees, whereunder the Union is bound to make Employer Contributions to the Trust Fund on behalf of its Employees included within (ii) of the definition of an Employee.

(x) ERISA

Public Law No. 93-406, the Employee Retirement Income Security Act of 1974, as amended from time to time.

(y) Fiduciaries

Any person, firm or corporation having power of control, management or disposition over the funds or property of the Trust Fund.

(z) Fiscal Year

The Fiscal Year is the 12-month period commencing on April 1 and ending on March 31.

(aa) Hour of Service

Each Employee will be credited with an Hour of Service for:

(i) Each hour for which an Employee is directly or indirectly paid or entitled to payment by the Employer as an Employee for the performance of duties. These hours shall be credited to the Employee for the computation period or periods in which the duties are performed.

(ii) Each hour (up to a maximum of 501 hours in any single continuous period) for which an Employee is directly or indirectly 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 other than for the performance of duties, except where such payment is made or due under a plan maintained solely for the purpose of complying with applicable worker's compensation, or unemployment compensation or disability insurance laws and except for payments which solely reimburse an Employee for medical or medically related expenses incurred by the Employee. These hours shall be credited to the Employee for the computation period or periods in which the nonperformance of duties occurred. Two periods of paid non-work time shall be deemed continuous if they are compensated for the same reason (e.g., disability) and are not separated by at least ninety (90) days.

- (iii) Each hour for which back pay, irrespective of mitigation of damages, has been either awarded or agreed to by the Employer. These hours shall be credited to the Employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement, or payment was made.
- (iv) The same hours shall not be credited to an Employee under Paragraphs (i), (ii) and (iii) above.
- (v) The provisions of Department of Labor Regulation 2530.200b-2 are incorporated herein and made part hereof and shall supersede any conflicting definition or application contained herein with respect to Hours of Employment and the crediting thereof.

(bb) Hour of Service in Covered Employment

Each hour for which an Employee's Employer is obligated to make a contribution as an Employer to the Pension Fund on the Participant's behalf.

(cc) Leased Employee

To the extent required by Section 414(n) of the Code and the regulations thereunder, a Leased Employee shall be treated as an Employee. A Leased Employee means any individual who provides services for a Contributing Employer if:

- (i) Such services are provided pursuant to an agreement between a contributing Employer and any other person;
- (ii) Such individual has performed such services for a contributing Employer (or a related person within the meaning of Section 144(a)(3) of the Code) on a substantially full-time basis for a period of at least one-year; and
- (iii) Such services are performed under the primary direction and control of a Contributing Employer.

Notwithstanding any other provision of the Plan, a Leased Employee shall be deemed, on an individual by individual basis, to be in a class of Employees not eligible to participate in this Plan, unless such participation is required as a condition of the Plan's qualification under Section 401(a) of the Code.

(dd) Limitation Year

For purposes of the limitation on contributions and benefits, as imposed by Section 415 of the Code, the Limitation Year shall be the Calendar Year.

(ee) Normal Retirement Age

The earlier of (1) the attainment of a Participant's 60th birthday, and the accumulation of at least ten (10) Vesting Service Years and the attainment of 100% Vested Status, or (2) the later of the attainment of the Participant's 65th birthday and the fifth anniversary of his participation in the Plan. Upon attainment of Normal Retirement Age, a Participant who is still working on Covered Employment shall be 100% vested.

(ff) Normal Retirement Date

The first day of the month immediately following the Participant's Normal Retirement Age.

(gg) PBGC

Pension Benefit Guaranty Corporation, a body corporate within the U.S. Department of Labor established under the provisions of Title IV of ERISA.

(hh) Participant

An Employee participating in the Plan in accordance with the provisions of Section 3.1.

(ii) Pension

A series of monthly amounts which are payable to a person who is entitled to receive benefits under the Plan.

(jj) Pension Fund (or Fund)

The Midwest Operating Engineers Pension Trust Fund, established to receive and invest contributions of the Employers and from which benefits are paid.

(kk) Pensioner

A person to whom a Pension under this Plan is being paid or to whom a Pension would be paid but for time for administrative processing.

(ll) Plan

The Midwest Operating Engineers Pension Plan, the Plan set forth herein, as amended from time to time.

(mm) Plan Administrator

The Board of Trustees, who shall be the named fiduciary under Section 402(a) of ERISA.

(nn) Plan Year

The 12-month period commencing on April 1 and ending on March 31. For the purpose of ERISA regulations, a Plan Year shall serve as the Vesting computation period, and the benefit accrual computation period.

(oo) Qualified Joint and Survivor Annuity

An annuity for the life of the Participant with a survivor annuity for the life of the Spouse which is 50 percent of the amount of the annuity which is payable during the joint lives

of the Participant and the Spouse and which is the Actuarial Equivalent of the normal form of benefit, or if greater, any optional form of benefit.

(pp) Required Beginning Date

A Participant's "Required Beginning Date" for a pre-retirement pension is generally April 1 of the Calendar Year following the Calendar Year in which the Participant attains age 70½. For a Participant who is less than a 5% owner and who attains age 70½ on or after April 1, 2001, the applicable Required Beginning Date is April 1 of the Calendar Year following the later of:

- (i) the Calendar Year in which the Participant attains age 70½, or
- (ii) the Calendar Year in which the Participant ceases working in Covered Employment, and applies for a retirement benefit.

(qq) Social Security Retirement Age

The age used as the retirement age for the Participant under Section 216(1) of the Social Security Act, except that such section shall be applied without regard to the age increased factor, and as if the early retirement age under Section 216(1)(2) of such Act were 62. Provided however, that for purposes of Section 6.2(f), Social Security Normal Retirement Age is the retirement age under Section 216(1) of the Social Security Act.

(rr) Spouse (Surviving Spouse)

The spouse or surviving spouse of the Participant, (provided that a former spouse will be treated as the Spouse or Surviving Spouse to the extent provided under a Qualified Domestic Relations Order as described in Section 414(p) of the Code).

For a spouse to be considered a Spouse for purposes of the Joint and Survivor Annuity under Sections 6.1 and 6.2, the spouse and the Participant must have been legally married on the Annuity Starting Date.

For the spouse to be considered a Surviving Spouse for purposes of the Qualified Pre-Retirement Surviving Spouse Pension in Section 6.4(a) or the 100% Pre-Retirement Surviving Spouse Annuity in Section 6.3, the spouse and Participant must have been legally married on the date of the Participant's death.

For the spouse to be considered a Spouse for purposes of the Pre-Retirement Death Benefits in Section 6.4(b) and the Post-Retirement Lump Sum Death Benefit in Section 6.5, the spouse and Participant must have been legally married on the date of the Participant's death.

(ss) Termination of Covered Employment

The earlier of (i) the scheduled date for commencement of benefits based on the first approved application for a pension by the Participant as discussed in Section 4.5 or (ii) the last day of the Plan Year following the last Plan Year in which the Participant earns a Vesting Service Year.

(tt) Trust Agreement

The Agreement and Declaration of Trust creating the Midwest Operating Engineers Pension Trust Fund, as amended from time to time.

(uu) Trustees

The persons selected under the Trust Agreement to administer the Plan and the Pension Fund, together with their successors, sometimes collectively referred to as the "Board of Trustees" or the "Board".

(vv) Union

International Union of Operating Engineers, Local 150, AFL-CIO.

Section 2.2. Construction

The masculine gender, where appearing in the Plan, shall be deemed to include the feminine gender, and the singular may include the plural, unless the context clearly indicates to the contrary. The words "hereof", "herein", "hereunder" and other similar compounds of the word "here" shall mean and refer to the entire Plan, not to any particular provision or Section.

ARTICLE III
PARTICIPATION, SERVICE AND VESTING

Section 3.1. Participant

A Participant is an Employee: (a) on whose behalf contributions are required to be made to the Fund, (b) who is Vested, or (c) who has not incurred a One-Year Break in Service.

A former Employee who is Vested in a Pension under the Plan shall continue as a Participant until the date of his death. Any Employee who meets the requirements of this Section 3.1, shall continue as a Participant until the date of his death or, if he is not Vested, his incurrence of a One-Year Break in Service. Any Employee who incurs a One-Year Break in Service (as defined in Section 3.7) shall cease to be an active Participant as of the last day of the Plan Year which constituted the One-Year Break in Service. An Employee who has lost his status as a Participant in accordance with the preceding sentence shall again become a new Participant on the date Employer contributions are again required to be made to the Fund on his behalf.

Section 3.2. Year of Service

A Plan Year during which a Participant is credited with 500 or more Hours of Service in Covered or Contiguous Noncovered Employment, except that, effective April 1, 1976, in the case of a new Participant, for the first Plan Year in which Employer Contributions are first required to be made on his behalf, such new Participant shall be credited with a Year of Service regardless of the number of Hours of Service credited to him. For Participants who leave service with an Employer to enter qualified military service, Years of Service shall be granted in accordance with the provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994.

Section 3.3. Vesting Service Year

A Plan Year during which a Participant is credited with 500 or more Hours of Service in Covered or Contiguous Noncovered Employment, except that, effective April 1, 1976, in the case of a new Participant, for the first Plan Year in which Employer Contributions are first required to be made on his behalf, such new Participant shall be credited with a Vesting Service Year regardless of the number of Hours of Service credited to him.

Section 3.4. Vested Status

A Participant shall attain Vested Status in accordance with the following:

- (a) During the Plan Years beginning on and after April 1, 1999, based on the Vesting Service Years of a Participant who is covered by a Collective Bargaining Agreement, Vested Status shall be determined as follows:

<u>Vesting Service Years</u>	<u>Percentage</u>
Less Than 3	None
3	20%
4	40%
5	60%
6	80%
7 or more	100%

In order to be eligible for this Vesting Schedule, a Participant must (a) work one or more hours in Covered Employment on or after April 1, 1999 and (b) must not have incurred a One-Year Break in Service for the Plan Year ending March 31, 1999. If an individual has incurred a One-Year Break in Service as of April 1, 1999, he must return to Covered Employment and work at least 500 hours in a Plan Year.

- (b) During the Plan Years beginning on and after April 1, 1986 and prior to April 1, 1999, based on the Vesting Service Years of a Participant who is covered by a Collective Bargaining Agreement, Vested Status shall be determined as follows:

<u>Vesting Service Years</u>	<u>Percentage</u>
Less than 5	None
5 or more, but less than 10	50%
10 or more	100%

- (c) During the Plan Years beginning on and after April 1, 1986, based on the Vesting Service Years of a non-collectively bargained Participant, Vested Status shall be determined as follows:

<u>Vesting Service Years</u>	<u>Percentage</u>
Less than 3	None
3	20%
4	40%
5	60%
6	80%
7 or more	100%

- (d) During the Plan Years beginning on and after April 1, 1976, and prior to April 1, 1986, based on the Vesting Service Years of a Participant, Vesting Status shall be determined as follows:

<u>Vesting Service Years</u>	<u>Percentage</u>
Less than 5	None
5 or more, but less than 11	50%
11	60%
12	70%
13	80%
14	90%
15 or more	100%

provided that:

- (i) in the case of a Participant in Covered Employment on April 1, 1976, on and after such date, his Vested Percentage shall be determined in accordance with (d), or (e) below, whichever shall produce the higher Vested Percentage.
- (ii) in the case of a Participant who, on or before March 31, 1976, has left Covered Employment, and on or after April 1, 1976, returns thereto, his Vested Percentage shall be determined in accordance with (d) above, but in no event shall be less than his Vested Percentage as of the date he left Covered Employment.
- (iii) In the case of a Participant who, on or before March 31, 1976, has left Covered Employment and thereafter shall not return thereto, his Vested Percentage, if any,

determined as of the date he left Covered Employment in accordance with (e) below, shall continue to be his Vested Percentage.

- (e) During the Plan Years beginning on or before April 1, 1976, provided the Participant shall have ten (10) years of Continuous Service immediately preceding the time of vesting, five (5) of which are after April 1, 1963, Vesting Status shall be determined based on his Index Number, as follows:

Index Number	Percentage
55 through 60	50%
61	55%
62	60%
63	65%
64	70%
65	75%
66	80%
67	85%
68	90%
69	95%
70 and over	100%

For the purposes of this Subsection (e), the Index Number of a Participant is that number which is the total of his attained age, plus his years of Continuous Service.

- (f) Effective April 1, 1997, a Participant's nonforfeitable percentage after any change in a vesting schedule shall never be less than such nonforfeitable percentage prior to such change. In the event any vesting schedule is changed or amended, a Participant who has completed at least three years of Vesting Service may elect to have his nonforfeitable percentage determined under the vesting schedule prior to such change or amendment.

Section 3.5. Excused Absences

Solely for the purpose of determining whether a Participant has incurred a One-Year Break in Service, as defined in Section 3.7(a), the Participant shall accrue Hours of Service while on an Excused Absence, (on the basis of hours or days which would otherwise have been normally scheduled), including any periods established as valid by the Trustees during which the Participant was absent from Covered Employment due to an illness, injury, or required military service. In addition, any leave of absence granted to a Participant, up to 12 weeks, that qualifies under the Family and Medical Leave Act (FMLA) shall also be considered an Excused Absence. Such hours shall be treated as Hours of Employment for the

Calendar Year in which the Excused Absence began, if necessary to prevent a One-Year Break in Service under Section 3.7(a).

Section 3.6. Maternity/Paternity Absence and Family and Medical Leave

Maternity/Paternity Absence shall mean an absence from work on or after April 1, 1985 by a Participant for any period:

- (a) by reason of the pregnancy of the Participant,
- (b) by reason of the birth of a child of the Participant,
- (c) by reason of the placement of a child with the Participant in connection with the adoption of such child by such Participant, or
- (d) for purposes of caring for such child for a period immediately following such birth or placement.

No credit will be given unless the Participant furnishes to the Trustees such timely information as they may reasonably require to establish that the absence is a Maternity/Paternity absence and the number of days for which there was such an absence. Solely for the purpose of determining whether a Participant has incurred a One-Year Break in Service, as defined in Section 3.7(a), the Participant shall accrue Hours of Service while on Maternity/Paternity Absence, on the basis of hours or days which would otherwise have been normally scheduled. Such hours shall be treated as Hours of Service for the Plan Year in which the Maternity/Paternity Absence began, if necessary to prevent a One-Year Break in Service under Section 3.7(a). If there is no One-Year Break in Service in the Plan Year the Maternity/Paternity Absence began, such Hours of Service may be used to prevent a One-Year Break in Service in the following Plan Year.

Leave which is considered qualified Family and Medical Leave shall not be counted toward determining a One-Year Break in Service up to the maximum period required by federal law.

Section 3.7. Breaks in Service

(a) One-Year Break in Service

Effective for Plan Years beginning on and after April 1, 1976 a Participant shall incur a One-Year Break in Service in any Plan Year on or after April 1, 1976 for which he failed to earn 500 Hours of Service.

(b) Permanent Break in Service

A Permanent Break in Service is an occurrence described below, which shall apply only in the case of a Participant who is not vested in his Accrued Benefit, the happening of which shall result in a forfeiture by such a Participant of all Years of Service and Vesting Service Years, completed prior to the first day of such an occurrence. With reference to each period specified below, the occurrence of a Permanent Break in Service shall be as follows:

(i) During the period ending March 31, 1963:

A consecutive two (2) year period during which the Participant has not been under the scope of work jurisdiction of the Union.

(ii) During the Plan Years beginning on and after April 1, 1963 and ending on and before March 31, 1976:

A consecutive two (2) year period during which Employer Contributions to the Trust Fund, on behalf of a Participant, are not received by the Trustees, except in the case where the same is due to:

(A) the illness or accident of a Participant, or

(B) service of a Participant in the Uniformed Services of the United States, provided such Participant shall, upon his discharge, have returned to Covered Employment within the period in which his reemployment rights are guaranteed by law, or

(C) employment of a Participant as a Supervisor, as such term is defined and limited in the Trust Agreement, or

(D) the failure of the employer to make required Employer Contributions, on behalf of a Participant.

(iii) For Plan Years on or after April 1, 1976 and prior to April 1, 1985, a Participant shall have a Permanent Break in Service if the number of his consecutive One-Year Breaks in Service equals or exceeds the number of his previously accrued Vesting Service Years.

(iv) For Plan Years on or after April 1, 1985, a Participant shall have a Permanent Break in Service if the number of his consecutive One-Year Breaks in Service equals or exceeds the greater of five (5) or the number of his previously accrued Vesting Service Years.

Section 3.8. Military Service

(a) Effective October 13, 1994 (or such earlier date as required under any predecessor Federal statute), a Participant who meets the conditions in this Section 3.8 shall earn Years of Service, Vesting Service Years, and benefit accruals for “qualified military service” for a period of up to five years (unless a longer period is required under Federal law). The cost of complying with this Section shall be absorbed by the Plan.

(b) In order to be eligible for Years of Service, Vesting Service Years and Contributions under this Section 3.8, a Participant must enter qualified military service prior to incurring a one-year Break-in-Service. The Participant shall accrue a benefit for each completed month of qualified military service, determined as follows. The benefit accrual shall be based on the average contribution rate and the average hours worked. The contribution rate shall be based on the relationship of prevailing employer contribution rates during the period of qualified military service to the average employer contribution rate applicable to the Participant in the plan year preceding qualified military service. Hours shall be made based on the average number of hours of Covered Employment worked by the Participant in the five (5) plan years preceding qualified military service.

(c) To be considered “qualified military service”, such service must meet the definition set forth in the Uniform Services Employment and Reemployment Rights Act (“USERRA”) or military service under any predecessor statute provided the Employee entered the uniformed services immediately after termination of Covered Employment, had at least

one hour of service in Covered Employment in the 90 days preceding his entry into military service, and complies with all of the applicable requirements of USERRA (or applicable federal law) which shall include but not be limited to:

- (i) receiving an honorable discharge; and
- (ii) reapplying for Covered Employment within 90 days of discharge or such other period as provided for in USERRA.

ARTICLE IV
REQUIREMENTS FOR RETIREMENT BENEFITS

Section 4.1. Normal Retirement

A Participant shall be eligible for a Normal Pension upon his Termination of Covered Employment on or after his Normal Retirement Age.

Section 4.2. Early Retirement

A Participant shall be eligible for an Early Pension upon his Termination of Covered Employment on or after his Early Retirement Age, but prior to his Normal Retirement Age. Payment of an Early Pension shall commence as of the first day of any month between his Early Retirement Date and Age 60. Payment is reduced for commencement prior to age 60 in accordance with Section 5.2. A Participant who is receiving a Disability Pension when he attains his Early Retirement Age shall be considered on Early Retirement and shall commence receipt of his Early Pension on the first day he is eligible. Payment is reduced for commencement prior to age 60 in accordance with Section 5.2.

Section 4.3. Disability Retirement

(a) In General

A Participant may be eligible for either an All Work Total Disability Pension or an Operating Engineer Total Disability Pension upon meeting certain requirements as set forth in this Section.

(b) (i) Eligibility - All Work Total Disability Pension

A Participant shall be eligible for an All Work Total Disability Pension upon his Termination of Covered Employment by reason of an All Work Total Disability and accumulation of at least five (5) Vesting Service Years. A Participant shall be deemed to have terminated Covered Employment by reason of an All Work Total Disability only if:

- (A) He worked in Covered Employment for a total of at least 900 hours for which contributions were required to be paid to the Fund in the three (3) Plan Years immediately preceding the disability;
- (B) He was actively employed or seeking employment as an Operating Engineer, with a Contributing Employer at the time the disability occurred;
- (C) Such disability occurs prior to the time such Participant shall be eligible to receive retirement benefits hereunder;
- (D) He is Totally and Permanently Disabled as defined in Section 4.3(c)(i);
- (E) He shall undergo such Medical examinations as may be required by the Trustees and shall furnish such reasonable information as may be required by the Trustees;
- (F) He has been granted a Social Security Disability Award; and
- (G) He has applied in writing for an All Work Total Disability Pension even if he is receiving or has received an Operating Engineer Total Disability Pension.

(ii) Eligibility – Operating Engineer Total Disability

A Participant shall be eligible for an Operating Engineer Total Disability Pension upon his Termination of Covered Employment by reason of an Operating Engineer Total Disability and accumulation of at least five (5) Vesting Service Years. A Participant shall be deemed to have terminated Covered Employment by reason of an Operating Engineer Total Disability only if:

- (A) He worked in Covered Employment for a total of at least 900 hours for which contributions were required to be paid to the Fund in the three (3) Plan Years immediately preceding the disability;
- (B) He was actively employed or seeking employment as an Operating Engineer, with a Contributing Employer at the time the disability occurred;

- (C) Such disability occurs prior to the time such Participant shall be eligible to receive retirement benefits hereunder;
- (D) He is Totally and Permanently Disabled as defined in Section 4.3(c)(ii);
- (E) He shall undergo such Medical examinations as may be required by the Trustees and shall furnish such reasonable information as may be required by the Trustees; and
- (F) He has applied in writing for an Operating Engineer Total disability Pension.

(c) (i) **All Work Total Disability Defined**

Effective October 1, 2004, in order to apply for an All Work Total Disability Pension, a Participant must have been awarded a Social Security Disability Award. Once an application has been made, an All Work Total Disability is defined as a physical or mental condition of a Participant, which the Trustees find on the basis of medical evidence to totally and permanently prevent such Participant from working in any occupation.

Provided, however, that All Work Total Disability, shall not include a permanent condition of a Participant, that:

- (A) Was contracted, suffered or incurred while he was engaged in a felonious enterprise, or resulted therefrom, or
- (B) Resulted from an intentional self-inflicted injury. Provided, however, that chronic alcoholism or addiction to narcotic drugs shall not be considered as a self-inflicted injury, or
- (C) Resulted from an injury, wound or disability incurred while serving in the Uniformed Services of the United States, or resulted from an injury, wound or disability suffered or arising out of an act of war. Provided that, where a Participant has returned to employment after service in the Uniformed Services of the United States, and shall become permanently

disabled more than five (5) years after the date of such return, it shall be conclusively presumed that his All Work Total Disability shall not have resulted from an injury, wound, or disability incurred while serving in the Uniformed Services of the United States, or arising out of an act of war.

(ii) **Operating Engineer Total Disability Defined:**

Once an application has been made, an Operating Engineer Total Disability is defined as a physical or mental condition of a Participant that the Trustees find on the basis of medical evidence to totally and permanently prevent such Participant from engaging in employment, within or without the geographical area covered by this Pension Plan, in work described in the scope of work provisions contained in the Collective Bargaining Agreements entered into between the Union and the Employers.

Provided, however, that an Operating Engineer Total Disability shall not include a permanent condition of a Participant, that:

- (A) Was contracted, suffered or incurred while he was engaged in a felonious enterprise, or resulted therefrom, or
- (B) Resulted from an intentional self-inflicted injury. Provided, however, that chronic alcoholism or addiction to narcotic drugs shall not be considered as a self-inflicted injury, or
- (C) Resulted from an injury, wound or disability incurred while serving in the Uniformed Services of the United States, or resulted from an injury, wound or disability suffered or arising out of an act of war. Provided that, where a Participant has returned to employment after service in the Uniformed Services of the United States, and shall become permanently disabled more than five (5) years after the date of such return, it shall be conclusively presumed that his Operating Engineer Total Disability shall not have resulted from an injury, wound, or disability incurred while serving in the Uniformed Services of the United States, or arising out of an act of war.

(d) Duration of Payments

Payment of an All Work Total Disability or Operating Engineer Total Disability Pension shall be effective as of the first day of the month next following the date that the Participant files an application for an All Work Total Disability or Operating Engineers Total Disability Pension. The last payment of an All Work Total Disability or Operating Engineer Total Disability Pension shall be made on the first day of the month preceding the earliest of the following:

- (i) for an Operating Engineer Total Disability Pension five (5) years;
- (ii) the date the disabled Participant attains his earliest Early Retirement Date; or
- (iii) the month in which the Trustees determine that cessation of the disability occurred.

A Participant's disability shall be considered to have ceased, and the All Work Total Disability or Operating Engineer Total Disability Pension shall be terminated, if the Participant:

- (iv) Returns to employment, within or without the geographical area covered by the Pension Plan in work described in the scope of work provisions contained in the Collective Bargaining Agreements entered into between the Union and the Employers, or
- (v) In the opinion of the Trustees based on medical findings, that the Employee has sufficiently recovered to be able to resume employment as described in (d)(i) above, or
- (vi) Refuses to undergo such medical examination or furnish such reasonable information as may be requested by the Trustees; provided, however that the Employee may not be required to undergo a medical examination more often than twice a year, or
- (vii) Attains his Earliest Early Retirement Date.

(e) Cessation of Disability

If the Participant whose disability ceases prior to his earliest Early Retirement Date:

- (i) Elects to resume employment with an Employer, his Pension upon subsequent retirement shall be determined in accordance with the provisions of Article V hereof, or
- (ii) Does not elect to resume employment with an Employer, he shall be considered an inactive Vested Participant.

(f) Auxiliary Disability Benefit

The Disability Pension provided under this Section 4.3 is an auxiliary disability benefit under Section 1.401(a)-20 of the Treasury regulations.

(g) Claim and Appeal Procedures

This section sets forth provisions relating to claims and appeals for Disability Pensions filed on or after January 1, 2002. Any claim for a Disability Pension filed prior to January 1, 2002, shall be subject to the same rules as claims for a non-disability pension, as set forth in Section 9.2. For purposes of this paragraph (g), the Administrative Manager is designated as a "Named Fiduciary" with respect to the Plan.

- (i) An Application for a Disability Pension must be in writing on a form provided by the Trustees. Each application for benefits hereunder received by the Trustees shall be forwarded to the Administrative Manager for determination by him as to the approval or disapproval thereof. The Administrative Manager shall inform the Participant of his initial decision within 45 days of the date the written application is received.

The Administrative Manager may extend the date for rendering an initial decision on an Application for a Disability Pension by two (2) separate periods of 30 days each, provided any extension is due to circumstances beyond the control of the Plan. Such circumstances shall include a delay in obtaining medical information from a physician or other provider. The Administrative Manager

shall notify the Participant in writing before the end of the 45 days if the first extension is utilized and prior to 75 days if the second extension is utilized.

Any request to the Participant for additional information shall be made within the initial 45-day period. The Participant shall then have 45 days to obtain the additional information. If the Participant does not provide the requested information, then the Application for Disability Pension shall be denied within 30 days of the Participant's deadline.

- (ii) Whenever a Participant has been notified by the Administrative Manager that his application for benefits has been disapproved, in whole or in part, he shall be sent a notice that sets forth:
 - (A) The specific reason or reasons for the disapproval.
 - (B) All pertinent provisions of this Plan and/or the Trust Agreement.
 - (C) A description of such materials or information deemed necessary for the Participant to perfect his claim to Disability Pension benefits, together with an explanation as to the necessity thereof.
 - (D) A detailed explanation of the procedures of appeals described in this Article IV available to the Participant for a review of the denial of his application for Disability Pension benefits.
 - (E) A statement of the Participant's rights to bring a civil action under ERISA Section 5.02(a), after an adverse decision on review.

If an adverse determination is based on a medical necessity or experimental treatment or similar exclusion or limit, the determination shall include a statement that the Participant may obtain a free copy of an explanation of the scientific or clinical judgment for the determination.

- (iii) A Participant may file a written appeal of a denied claim for a Disability Pension with the Administrative Manager within 180 days after receiving notice that his application has been denied. A Participant may authorize a representative to act on the Participant's behalf for this purpose. The Administrative Manager shall

provide the applicant with a form which may be used in filing the appeal and appointing a representative.

If the Participant files a timely written appeal for a Disability Pension:

- (A) He may submit additional materials, including any comments, statements or documents.
 - (B) He may review all relevant information (free of charge) upon reasonable request to the Trustees. A document, record or other information is relevant if:
 - (1) it was relied upon by the Plan in making the decision;
 - (2) it was submitted, considered or generated (regardless of whether it was relied upon); or
 - (3) it demonstrates compliance with the claims processing requirements.
 - (C) He shall have the right to be advised of the identity of any medical experts.
 - (D) He shall have the right to legal counsel.
 - (E) He and/or his legal counsel or representative, may, upon reasonable notice to the Administrative Manager, attend the Review Panel meeting, at the time his appeal is reviewed.
- (iv) Upon receipt of such written request, the same shall be forwarded by the Administrative Manager to the Review Panel, together with all files, papers, documents, materials and relevant information.

The Review Panel's review shall consider all comments, documents, records and other information submitted or considered in the initial determination. The review shall also consider all comments and records submitted by the participant. The appeal cannot defer to the initial claim determination.

If the determination of a Disability Pension is based on medical necessity or appropriateness, the Review Panel shall consult a medical professional who is not the same individual who consulted on the initial review of the claim, or a subordinate of that individual.

In the event the applicant or his representative fails to appear on the hearing date, or has failed to request a continuance prior to the hearing date as provided herein, the Review Panel shall proceed to review the decision based on all documents, information, and material forwarded and received.

A request for a continuance of the hearing date must be received by the Review Panel prior to the hearing date and shall be granted only in cases where special circumstances exist warranting such action. In the event a new hearing date is ordered, it shall be scheduled immediately and shall permit the Review Panel to render a decision not later than 90 days from the date of receipt of the written request for review.

- (v) Within 45 days after the submission of the written appeal for a denial of a Disability Pension, the Review Panel shall render a determination on the appeal of the claim in a written statement. If special circumstances require a delay in the decision, the Review Panel shall notify the Participant of the reason for the delay within the 45-day period. A delayed decision shall be issued no later than 90 days after the date the Trustees receive a request for review. The Review Panel shall notify the Participant of the decision within five (5) days of the date the decision is made.

Alternatively, the Board of Trustees may also render a decision on the Disability Pension at their next quarterly meeting. If a request for appeal is received within 30 days of a quarterly meeting, then the decision may be rendered at the subsequent quarterly meeting. The Participant shall be notified of the decision within five (5) days of the date the decision is made.

- (vi) The Review Panel shall have the right to legal counsel, the services of auditors, and other professionals retained by the Board of Trustees, to assist in the making of a decision on review or reconsideration.

Any hearing before the Review Panel to which a Participant or his representative is invited shall be conducted in an informal manner, and no Review Panel proceeding shall be recorded, electronically or stenographically.

- (vii) The decision of the Review Panel shall only be subject to a rehearing when additional new pertinent information is provided and the Participant, or his authorized representative, makes a written request within 30 days of the decision. The decision rendered shall thereafter be final, conclusive and binding upon the Participant and all other persons.

Notwithstanding the foregoing, if upon preliminary examination and review by the Review Panel of all relevant documents, information and materials, the Review Panel is of the opinion that it is required to reverse the determination of disapproval previously made and to grant to the Participant pension benefits in accordance with his application, its opinion relating thereto, reduced to writing, shall be forwarded to the Participant within five (5) days of the date of the decision, and the hearing shall be cancelled.

- (viii) The failure of the Participant to request, within the time herein provided, review of the determination made by the Administrative Manager or Review Panel disapproving his application for benefits, in whole or in part, shall be considered as consent by him to the determination so made.

For purposes of this paragraph (g) of Section 4.3, the term Participant means the Participant or the Participant's beneficiary.

Section 4.4. Vested Retirement

A Participant who has attained Vested Status, in accordance with Section 3.4, shall be entitled to a Vested Pension. A Vested Participant with ten (10) or more years of Vesting Service (seven (7) or more years of Vesting Service for Non-Bargained Employees) who has attained 100% Vested Status shall be eligible to receive a Vested Pension at age 60 (or an Early Retirement Pension at age 55). A Vested Participant with less than ten (10) years of Vesting Service (less than seven (7) years of Vesting Service for Non-Bargained Employees) shall be eligible to receive a Vested Pension at age 65.

Section 4.5. Application for Pension

In order to receive a Pension, a Participant shall file with the Trustees a written application therefor on a form prescribed by the Trustees. The Pension shall not become effective until the first day of the month following submission of a completed application for pension.

Section 4.6. Termination Benefits

Prior to April 1, 1976, the Plan provided certain termination benefits which shall be determined in accordance with the Plan as in effect at that time.

Section 4.7. Reciprocal Pensions

The Board of Trustees shall have the authority to enter into Reciprocal and Pro-Rata Agreements with the Trustees of other Pension Plans established by the Unions and Employers to provide for the reciprocal transfer of credited service and/or Employer Contributions between such Pension Plans and their Home Funds, as defined in the applicable reciprocity agreement.

ARTICLE V
AMOUNT OF RETIREMENT BENEFITS

Section 5.1. Normal Retirement Pension

The monthly amount of a Normal Retirement Pension, payable in the normal form, to a Participant who retires on a Normal Retirement Pension shall be equal to his Accrued Pension, which is determined as follows:

- (a) For a Participant who retires or terminates Covered Employment on or after April 1, 2000, and who worked at least 500 hours in Covered Employment during any one of the Plan Years beginning April 1, 1998 or April 1, 1999, the monthly benefit shall be 3.6% of all Employer Contributions required to be made prior to April 1, 2000. All Employer Contributions required to be made for the period of April 1, 2000 through March 31, 2006 shall be multiplied by 3.6%. All Employer Contributions required to be made on or after April 1, 2006 shall be multiplied by 3.0%.
- (b) For a Participant who retires or terminates Covered Employment on or after April 1, 2000, and who worked at least 500 hours in Covered Employment during any one of the Plan Years beginning April 1, 1998 or April 1, 1999, the monthly benefit shall be 3.6% of all Employer Contributions required to be made, which shall include all contributions prior to and after April 1, 2000. All Employer contributions required to be made on or after April 1, 2000 shall be multiplied by 3.6%.
- (c) For a Participant who retires or terminates Covered Employment on or after April 1, 1997, and who worked at least 500 hours in Covered Employment during any one of the Plan Years beginning April 1, 1996 or April 1, 1997, the monthly benefit shall be 3.25% of all Employer Contributions required to be made, which shall include all contributions prior to and after April 1, 1997. All Employer contributions required to be made on or after April 1, 1997 shall be multiplied by 3.25%.
- (d) For a Participant who retires or terminates Covered Employment on or after April 1, 1994, and who did not die prior to April 1, 1995, and who worked at least 500 hours during any one of the Plan Years within the four (4) Plan Years between April 1, 1991 and March 31, 1995 (or a Participant who does not meet the requirements of (c) above)

the monthly benefit shall be 3.0% of Employer Contributions required to be made, which shall include all contributions prior to and after April 1, 1994.

A Participant who does not meet the above service requirement shall have his benefit determined under this paragraph (d) if he returns to work on or after April 1, 1994 and prior to retirement or death works 500 hours during any Plan Year. All Employer contributions required to be made on or after April 1, 1994 and prior to April 1, 1997 shall be multiplied by 3.0%.

- (e) For a Participant who has a Termination of Covered Employment on or after April 1, 1991 and who worked at least 500 hours during any one of the Plan Years within the three (3) Plan Years between April 1, 1990 and March 31, 1993 (but does not meet the requirements of (d) above), the monthly retirement benefit shall be the sum of:
 - (i) 2.5% of all Employer Contributions required to be made between April 1, 1963 and March 31, 1976 plus 0.5% of the first \$500 of these contributions, plus
 - (ii) 2.5% of all Employer Contributions required to be made between April 1, 1976 and March 31, 1985, plus
 - (iii) 3.0% of all Employer Contributions required to be made after March 31, 1985.

- (f) For a Participant who has a Termination of Covered Employment on or after April 1, 1985 and does not meet the requirements in (e) above, the monthly retirement benefit shall be the sum of:
 - (i) 2.5% of 100% of all Employer Contributions required to be made between April 1, 1963 and March 31, 1976 plus 0.5% of the first \$500 of these contributions, plus
 - (ii) 2.5% of 82% of all Employer Contributions required to be made between April 1, 1976 and March 31, 1979, plus
 - (iii) 2.5% of 90% of all Employer Contributions required to be made between April 1, 1979 and March 31, 1985, plus
 - (iv) 2.8% of 100% of all Employer Contributions required to be made between April 1, 1985 and March 31, 1991, plus

- (v) 3.0% of all Employer Contributions required to be made on or after April 1, 1991.

- (g) For a Participant who has a Termination of Covered Employment between April 1, 1979 and March 31, 1985, the monthly retirement benefit shall be the sum of:
 - (i) 2.5% of 100% of all Employer Contributions required to be made on his behalf between April 1, 1963 and March 31, 1976 plus 0.5% of the first \$500 of these contributions, plus
 - (ii) 2.5% of 82% of all Employer Contributions required to be made on his behalf between April 1, 1976 and March 31, 1979, plus
 - (iii) 2.5% of 90% of all Employer Contributions required to be made on his behalf on and after April 1, 1979.

- (h) For a Participant who has a Termination of Covered Employment between April 1, 1976 and March 31, 1979, the monthly retirement benefit shall be the sum of:
 - (i) 2.5% of 100% of all Employer Contributions required to be made on his behalf between April 1, 1963 and March 31, 1976 plus 0.5% of the first \$500 of these contributions, plus
 - (ii) 2.5% of 82% of all Employer Contributions required to be made on his behalf on or after April 1, 1976.

- (i) For a Participant who has a Termination of Covered Employment prior to April 1, 1976, the monthly retirement benefit shall be the sum of:
 - (i) the positive difference, if any, between:
 - (A) the Participant's Years of Continuous Service between April 1, 1953 and March 31, 1963 multiplied by \$2, minus
 - (B) the product of the number of Plan Years between April 1, 1965 and March 31, 1975 during which the Participant was not in a retired status and receiving Plan benefits, multiplied by \$2; and

- (ii) 3% of the first \$500 of Employer Contributions required to be made on the Participant's behalf between April 1, 1963 and March 31, 1976; and
 - (iii) 2.5% of the excess over \$500 of Employer Contributions required to be made on the Participant's behalf between April 1, 1963 and March 31, 1976.
- (j) Notwithstanding the foregoing, a Participant shall be entitled to a Minimum Monthly Pension depending on when he last retired or worked in Covered Employment in accordance with the following:

Date of Retirement or Termination	Minimum Monthly Pension
Before January 1, 1966	\$ 25
Between January 1, 1966 and December 31, 1970	\$ 50
Between January 1, 1971 and December 31, 1977	\$100

The Minimum Monthly Pensions provided under this Subsection shall not be applicable to a Participant retired on Pro-Rata Pension.

- (k) The Board of Trustees has adopted certain benefit improvements for Pensioners, Surviving Spouses and Beneficiaries. Such improvements are described in Appendix A to the Plan Document.

Section 5.2. Early Retirement Pension

The monthly amount of the Early Retirement Pension shall be equal to the Participant's Accrued Pension determined as of the date he retired, as described in Section 5.1. The Pension shall be reduced at the rate of one-quarter of one percent (.25%) for each month such Participant is under age 60.

Section 5.3. Disability Pension

(a) **All Work Total Disability Pension**

A Participant who has incurred an All Work Total Disability (as defined in Section 4.3(b)(i) and (c)(i)) may be eligible for an All Work Total Disability Pension. The monthly amount of an All Work Total Disability Pension, payable in the Normal Form (as defined in Section 6.1), commencing on the first day of the month following application for an All Work Total Disability Pension, provided the Participant meets the requirements for an All Work Total Disability Pension, shall be an amount equal to seventy percent (70%) of his Accrued Benefit. Effective for all new All Work Total Disability Pensions beginning on or after September 16, 2003, the monthly amount payable under the All Work Total Disability Pension shall be reduced by any W-2 earnings the Participant earns. Such All Work Total Disability Pension shall be payable until he attains his earliest Early Retirement Date.

(b) **Operating Engineer Total Disability Pension**

A Participant who has incurred an Operating Engineer Total Disability (as defined in Section 4.3(b)(ii)) may be eligible for an Operating Engineer Total Disability Pension. The monthly amount of an Operating Engineer Total Disability Pension, payable in the Normal Form (as defined in Section 6.1), commencing on the first day of the month following application for an Operating Engineer Total Disability Pension, provided the Participant meets the requirements for an Operating Engineer Total Disability Pension, shall be an amount equal to fifty percent (50%) of his Accrued Benefit and shall be payable for a maximum of five (5) years or, if earlier, until the date he becomes eligible for an All Work Total Disability Pension or attains his earliest Early Retirement Date.

(c) A Participant who has filed an application for an All Work Total Disability Pension or an Operating Engineer Total Disability Pension under the Plan and who is eligible for both the All Work Total Disability Pension or an Operating Engineer Total Disability Pension and any other type of pension under this Plan, shall not be eligible for an All Work Total Disability Pension or an Operating Engineer Total Disability Pension but shall receive such other type of pension and shall be subject to the Qualified Joint and Survivor Annuity of Section 6.1.

Section 5.4. Vested Pension

The amount of the Vested Pension shall be the same as the Normal Retirement or Early Retirement Pension amount, depending upon when the benefit begins, as provided in Section 4.4 hereof.

Section 5.5. Retirement or Termination from Covered Employment Before April 1, 2001

The benefits payable under the Plan to any Participant who retired or had a Termination of Covered Employment prior to April 1, 2001, or to the Beneficiary of such a Participant, shall be determined in accordance with the provisions of the Plan covering the Participant in effect on the date of his Retirement or Termination of Covered Employment, whichever occurs first.

ARTICLE VI
MANNER OF PAYMENT AND OTHER BENEFITS

Section 6.1. Normal Form of Pension Payment

(a) Married Participants

If a Participant has a Spouse on the date his Pension payments commence, a Normal, Early or Vested Pension shall be paid in the form of a Qualified Joint and Survivor Annuity, unless the Participant and Spouse elect otherwise in writing. If a Participant receiving a Disability Pension has a Spouse on his earliest Early Retirement Date, his retirement pension payments from and after his earliest Early Retirement Date shall be made in the form of a Qualified Joint and Survivor Annuity, unless the Participant and Spouse elect otherwise in writing.

For benefits accrued on or after April 1, 1985, under a Qualified Joint and Survivor Annuity, a reduced amount shall be paid to the Participant for his lifetime and the Spouse, if surviving at the Participant's death, shall be entitled to receive thereafter a lifetime survivorship Pension in a monthly amount equal to 50% of the reduced monthly amount which had been payable to the Participant. The reduced amount payable to the Participant shall be determined so that the aggregate of the Pension payments expected to be made to the Participant and his Spouse shall be the Actuarial Equivalent of the Pension (a) determined under Article V; or (b) in the case of a Disability Retirement, payable from and after the Participant's earliest Early Retirement Date.

For benefits accrued prior to April 1, 1985, the Qualified Joint and Survivor Annuity was an unreduced amount paid to the Participant for his lifetime and the Spouse, if surviving, at the Participant's death was entitled to receive thereafter a lifetime survivorship Pension in a monthly amount equal to 50% of the unreduced monthly amount which had been payable to the Participant.

- (a) The last payment of the Qualified Joint and Survivor Annuity shall be made as of the first day of the month in which the death of the last to survive (i.e., the Participant and his Spouse) occurs. However, if a Participant and Spouse elect the Qualified Joint and Survivor Annuity and the Participant and Spouse die on or after July 1, 2004 and before

receiving total monthly payments equal to the amount of contributions made on behalf of the Participant, then monthly payments shall continue to the Participant's named Beneficiary until the total monthly payments equal such contributions. If there is no named Beneficiary, then the Beneficiary shall be determined under Section 6.4(b).

Disability Pension payments prior to the Participant's earliest Early Retirement Date shall be equal to the normal form of pension under the Plan described in (b) below. In the event of his death prior to his earliest Early Retirement Date of a Participant receiving a Disability Pension, the Pre-Retirement Surviving Spouse provisions of Section 6.4 shall be applicable.

In lieu of a Qualified Joint and Survivor Annuity (or if a Participant does not have an eligible Spouse), a Participant may elect in writing with his spouse's written consent, prior to his Annuity Starting Date (or his earliest Early Retirement Date, in the case of a Participant receiving a Disability Pension) to commence, to receive an optional form of payment, as described in this Article VI. Such consent must be witnessed by a Plan representative or notary public.

(b) Unmarried Participants

If a Participant does not have a Spouse on the date his Pension payments commence, his Pension shall be paid in the form of a 5 Year Certain and Life Annuity.

Under a 5 Year Certain and Life Annuity, upon the death of a Participant after he has retired and begun receiving Pension payments but before he has received 60 such payments, his named Beneficiary shall be entitled to receive monthly retirement benefits in the same amount received by such Participant for the remainder of the 60 month period.

(c) Actuarially Equivalent Benefits

Unless otherwise specified, any optional form of benefit under this Plan is intended to be at least the Actuarial Equivalent of the Participant's nonforfeitable accrued benefit payable at Normal Retirement Age or, if later, the Participant's Annuity Starting Date.

(d) Manner of Payment

Benefits are payable monthly at the first day of the month commencing on the Participant's Annuity Starting Date in accordance with the applicable form of payment and are subject to the Suspension of Benefits provisions of Article VII.

Section 6.2. Optional Forms of Payment

The aggregate of the Pension payments expected to be paid to a Participant and his Spouse (or Beneficiary) shall be the Actuarial Equivalent of the Participant's Accrued Benefit.

A Participant may elect, change or revoke an optional form of payment at any time prior to his Annuity Starting Date. An option may not be elected, changed or revoked on or after the Annuity Starting Date. Any optional election under this Section 6.2 shall be automatically canceled upon the death of the Participant or his Spouse prior to the Annuity Starting Date.

(a) 100% Joint and Survivor Option

Subject to the conditions and provisions set forth hereunder, a Participant who is eligible for a Pension may, by filing a written application with the Trustees on a form prescribed by the Trustees, in the case of a Participant who then has a Spouse, elect the 100% Joint and Survivor Option, as described hereunder, on behalf of his Spouse as his designated contingent pensioner.

Under the 100% Joint and Survivor Option, the Participant shall receive a reduced Pension payable for life, and payments in the same reduced amount shall, after the Participant's death, be continued to his spouse during the latter's lifetime.

If a Participant and Spouse elect the 100% Joint and Survivor Option and the Participant and Spouse die on or after July 1, 2004 and before receiving total monthly payments equal to the amount of contributions made on behalf of the Participant, then monthly payments shall continue to the Participant's named Beneficiary until the total monthly payments equal such contributions. If there is no named Beneficiary, then the Beneficiary shall be determined under Section 6.4(b).

(b) 75% Joint and Survivor Option

Subject to the conditions and provisions set forth hereunder, a Participant who is eligible for a Pension may, by filing a written application with the Trustees on a form prescribed

by the Trustees, in the case of a Participant who then has a Spouse, elect the 75% Joint and Survivor Option, as described hereunder, on behalf of his Spouse as his designated contingent pensioner.

Under the 75% Joint and Survivor Option, the Participant shall receive a reduced Pension payable for life, and payments in the same reduced amount shall, after the Participant's death, be continued to his spouse during the latter's lifetime.

If a Participant and Spouse elect the 75% Joint and Survivor Option and the Participant and Spouse die on or after July 1, 2004 and before receiving total monthly payments equal to the amount of contributions made on behalf of the Participant, then monthly payments shall continue to the Participant's named Beneficiary until the total monthly payments equal such contributions. If there is no named Beneficiary, then the Beneficiary shall be determined under Section 6.4(b).

(c) Joint and Survivor Option with Pop-Up

Subject to the conditions and provisions set forth hereunder, a Participant who is eligible for a Pension may, by filing a written application with the Trustees, on a form prescribed by the Trustees, elect to receive a Pension payable in accordance with any of the following Joint and Survivor Options with the pop-up feature, on behalf of his Spouse as his designated pensioner:

(i) 100% Option with Pop-Up

The Participant shall receive a reduced Pension payable for life, and payments in the same reduced amount shall, after the Participant's death, be continued to his Spouse during the latter's lifetime. In the event the Spouse predeceases the Participant, the Participant shall receive his monthly Pension unreduced for the 100% Option with Pop-Up feature for the remainder of his life. If a Participant and Spouse elect the 100% Joint and Survivor Option with Pop-Up and the Participant and Spouse die on or after July 1, 2004 and before receiving total monthly payments equal to the amount of contributions made on behalf of the Participant, then monthly payments shall continue to the Participant's named Beneficiary until the total monthly payments equal such contributions. If there is

no named Beneficiary, then the Beneficiary shall be determined under Section 6.4(b).

(ii) 75% Option with Pop-Up

The Participant shall receive a reduced Pension payable for life, and payments in the amount of 75% of such reduced Pension shall, after the Participant's death, be continued to the Spouse during the latter's lifetime. In the event the Spouse predeceases the Participant, the Participant shall receive his monthly Pension unreduced for the 75% Option with Pop-Up feature for the remainder of his life.

If a Participant and Spouse elect the 75% Joint and Survivor Option with Pop-Up and the Participant and Spouse die on or after July 1, 2004 and before receiving total monthly payments equal to the amount of contributions made on behalf of the Participant, then monthly payments shall continue to the Participant's named Beneficiary until the total monthly payments equal such contributions. If there is no named Beneficiary, then the Beneficiary shall be determined under Section 6.4(b).

(iii) 50% Option with Pop-Up

The Participant shall receive a reduced Pension payable for life, and payments in the amount of 50% of such reduced Pension shall, after the Participant's death, be continued to the Spouse during the latter's lifetime. In the event the Spouse predeceases the Participant, the Participant shall receive his monthly Pension unreduced for the 50% Option with Pop-Up feature for the remainder of his life.

If a Participant and Spouse elect the 50% Joint and Survivor Option with Pop-Up and the Participant and Spouse die on or after July 1, 2004 and before receiving total monthly payments equal to the amount of contributions made on behalf of the Participant, then monthly payments shall continue to the Participant's named Beneficiary until the total monthly payments equal such contributions. If there is no named Beneficiary, then the Beneficiary shall be determined under Section 6.4(b).

(d) 10 Year Certain and Life Annuity

Under a 10 Year Certain and Life Annuity, a Participant receives a reduced pension during his lifetime. If he dies before receiving 120 monthly payments, his named Beneficiary shall receive monthly retirement benefits in the same amount received by the Participant for the remainder of the 120 month period.

(e) 5 Year Certain and Life Annuity

Under a 5 Year Certain and Life Annuity, a Participant receives a reduced Pension during his lifetime. If he dies before receiving 60 monthly payments, his named Beneficiary shall receive monthly retirement benefits in the same amount received by the Participant for the remainder of the 60 month period.

(f) Accelerated Level Income Option

A Participant who initially retires on or after July 1, 2004 entitled to a Normal or Early Retirement Pension may elect to take his pension in the form of an Accelerated Level Income Option.

An Accelerated Level Income Option means that the Participant may elect to have the amount of his monthly pension payable as a 5 or 10 Year Certain and Life Annuity or , if the Participant is married, any Joint and Survivor Annuity option increased for the period of time between his age on his benefit commencement date and his whole age (65, 66 or 67) coincident with or next following his Social Security Normal Retirement Age, and reduced thereafter, so that he will receive, from this Plan and under the Social Security Act, an aggregate income in an approximately level amount for life. Such adjusted Pension payments shall be Actuarial Equivalent to the Pension otherwise payable to the Participant. The Accelerated Level Income Option may only be elected at the initial Annuity Starting Date and only if the monthly pension is payable continuously during the Participant's lifetime, subject to the conditions as specified herein.

The Trustees shall rely on reports from the Social Security Administration obtained within one-year preceding retirement in calculating the pension amounts to be paid from the Plan. Once the Accelerated Level Income Option begins, there will be no changes to the amounts of the monthly benefits paid by the Plan, regardless of the amount paid by Social Security or the date that the Social Security benefit commences.

The Accelerated Level Income Option is subject to the following conditions:

- (i) Once the Accelerated Level Income Option has been approved by the Trustees and the first monthly pension payment made, it cannot be revoked.
- (ii) The Accelerated Level Income Option may not be elected unless the Participant and his Qualified Spouse provide written consent in accordance with the provisions of Section 6.1(a).
- (iii) The Accelerated Level Income Option may not be elected by the Participant if it would reduce the monthly pension amount payable at his whole age (65, 66 or 67) coincident with or next following his Social Security Normal Retirement Age to less than \$100 a month.
- (iv) For a Participant who has elected the Accelerated Level Income Option in conjunction with the 5 or 10 Year Certain and Life Annuity, the Participant and Beneficiary shall be guaranteed to receive a combined total of 60 or 120 monthly Pension payments equal to the Accelerated Level Income Option pension that would have been payable to the Participant during the guarantee period.
- (v) For a Participant who has elected the Level Income Option in conjunction with the Joint and Survivor Options, the Participant and Spouse shall be guaranteed to receive monthly Pension payments for their lives equal to the appropriate percentage of the Accelerated Level Income Option pension that would have been payable to the Participant.

Section 6.3. Optional 100% Pre-Retirement Surviving Spouse Annuity

A Participant who has ten (10) or more Vesting Years of Service and attains age 55 within two (2) Plan Years after the Plan Year in which he last worked 500 hours, or more, may elect the 100% Pre-Retirement Surviving Spouse Annuity provided to a spouse under this Article, the benefit to be provided by substituting a 100% survivor annuity election for the 50% survivor annuity, provided:

- (a) A Participant first becomes eligible to make this election 90 days prior to the date the Participant would attain age 55 and the election period ends on the later of the Participant's 55th birthday or 90 days after he marries or remarries. A Participant who is not otherwise eligible to make the election provided under this Article or who would not

have a full 90 days to consider this election may make the election provided by this provision within 90 days of such Participant's date of hire, or 90 days following its notification to Participants.

- (b) An election made under this provision will result in the Pre-Retirement Surviving Spouse Pension being determined by substituting a 100% Joint and Survivor Option for the survivor annuity benefit otherwise provided. This benefit commences on the first month following the death of the Participant and the amount is determined as if the Participant had retired on the first month following his death and elected the 100% Joint and Survivor Option, except that a reduction in benefits which would otherwise be payable of 1/24th of 1% at retirement shall be made for each month of coverage.

Provided, however, that if the reduction is less than one dollar, it shall not be applied. A month of coverage shall be a calendar month after the Participant attains age 55 and prior to retirement during which the Participant has a Surviving Spouse, or ex-spouse for whom a Qualified Domestic Relations Order applies, and has the coverage in effect. Coverage may be cancelled at any time. The period of coverage is in effect from the date optional coverage is first elected to the date optional coverage is terminated. In the event a Participant whose elected coverage ceases because of divorce or death of the spouse, reduction in benefits which would otherwise be payable for months of coverage under this Section will be cancelled. Upon the Participant's subsequent remarriage, a new election of coverage would be made.

In no event will this benefit be less than the amount that would have been provided under the Pre-Retirement Surviving Spouse Pension described in paragraph (a) of this Section 6.3.

Section 6.4. Pre-Retirement Death Benefits

- (a) The Surviving Spouse or named Beneficiary of a Participant who has at least ten (10) Vesting Years of Service and dies within two (2) Plan Years after the Plan Year in which he last worked at least 500 hours, or a Participant who has at least ten (10) Vesting Years of Service and dies after attaining age 55, may elect a Pre-Retirement Death Benefit as outlined below:

(i) If a Participant with ten (10) or more Vesting Service Years earned under this Plan (excluding credited service pursuant to Reciprocal and Pro-Rata Agreements) dies within two (2) Plan Years after the Plan Year in which the Participant last worked at least 500 hours or a Participant who has at least ten (10) Vesting Years of Services and dies after attaining age 55, a monthly death benefit shall be payable to the Participant's Surviving Spouse or named Beneficiary. The Participant's Surviving Spouse or named Beneficiary may elect to receive this death benefit in one of the following options:

(A) **Qualified Pre-Retirement Surviving Spouse Pension:** If the Participant was married at the time of his death and his Surviving Spouse qualifies for a Qualified Pre-Retirement Surviving Spouse's Pension, his Surviving Spouse shall be entitled to receive a lifetime Pension for the remainder of her life. The monthly amount of the Qualified Pre-Retirement Surviving Spouse Pension shall be equal to 50% of the Participant's Accrued Pension determined as of the date he died, adjusted to reflect the 50% Joint and Survivor form of payment. If the Participant died within two (2) Plan Years after the Plan Year in which he worked at least 500 hours and the Surviving Spouse is older than, or less than five (5) years younger than, the Participant, no adjustment is made to reflect the 50% Joint and Survivor form of payment. Payment of the Qualified Pre-Retirement Surviving Spouse Pension shall commence on the first day of the month next following the death of the Participant. The last payment thereof shall be made as of the first day of the month in which the death of the Surviving Spouse occurs.

The Surviving Spouse of a Participant who dies prior to the date his Pension Payments commence may elect in writing, filed with the Trustees, and on whatever form the Trustees may prescribe, to defer commencement of the Qualified Pre-Retirement Surviving Spouse's Pension until a specified date that is no later than the first of the month following the date the Participant would have reached his

Required Beginning Date. The benefit amount will be determined as if the Participant survived to the date the Surviving Spouse elected to begin receiving that benefit, retired at that age with an immediate Qualified Pre-Retirement Surviving Spouse's Pension and died the next day.

Notwithstanding any other provisions of the Plan, if the Annuity Starting Date for the Pre-Retirement Surviving Spouse's Pension is after the Participant's earliest Early Retirement Date, the benefit shall be determined as if the Participant had died on the Surviving Spouse's Annuity Starting Date after retiring with a Qualified Joint and Survivor Annuity the day before, taking into account any actuarial adjustments to the Participant's accrued benefit that would have applied as of that date.

If a Surviving Spouse dies before the Annuity Starting Date for the Pre-retirement Surviving Spouse's Pension, that benefit will be forfeited and unless an alternate beneficiary has been designated by the Participant to receive the other Pre-Retirement Death Benefits in Section 6.4(b), with the acknowledgement and consent of the Participant's Spouse, under this Section 6.4, there will be no payments to any other party.

If a Participant is receiving a Disability Pension, and such Participant dies prior to the attainment of his earliest Early Retirement Date, the Surviving Spouse shall be entitled to a monthly Pre-Retirement Surviving Spouse Pension, commencing with the month following the month in which the Participant would have reached his earliest Early Retirement Date, had he lived. The amount of such monthly pension shall be determined as if the Participant had left Covered Employment upon reaching his earliest Early Retirement Date, retired with a Qualified Joint and Survivor Annuity upon reaching his earliest Early Retirement Date and died on the last day of the month in which his earliest Early Retirement Date was reached.

- (B) The Participant's named Beneficiary may elect to receive a monthly Pension beginning on the first day of the month next following the death of the Participant. The last payment thereof shall be made as of the first day of the month in which the death of the named Beneficiary occurs. The monthly amount of the Pension shall be equal to 50% of the Participant's Accrued Pension, determined as of the date he died (adjusted for early commencement, if applicable) as if the Participant had retired on that date, converted to an Actuarially Equivalent monthly benefit payable over the lifetime of the named Beneficiary.
- (C) The Participant's Surviving Spouse or named Beneficiary may elect to receive monthly payments for a period of 60 months beginning on the first day of the month next following the death of the Participant. The monthly amount of the Pension is equal to the monthly Pension payment such Participant would have received had he retired and commenced receipt of his Pension on the date of his death.
- (D) A Surviving Spouse or named Beneficiary may elect to receive a lump sum payment. The lump sum is equal to the following:
 - (1) The greatest Actuarial present Value of the Pension described in (A), (B) or (C) above, or
 - (2) The amount of contributions made on behalf of the Participant.
- (E) 50% of the single sum payment described in (D) above with the remaining death benefit (*i.e.*, 50% of (D) above) paid out in equal monthly payments over either a five (5) or ten (10) year period where the monthly payments are determined to be Actuarially Equivalent to the remaining death benefit.

The Surviving Spouse or named Beneficiary will have one (1) year from the Participant's date of death to elect one of the optional forms.

(b) A Surviving Spouse or named Beneficiary of a Participant who has at least ten (10) Vesting Years of Service and dies prior to attaining age 55 may elect a Pre-Retirement Death Benefit as outlined below:

(i) If a Participant with ten (10) or more Vesting Service Years earned under this Plan (excluding credited service pursuant to Reciprocal and Pro-Rata Agreements or Contiguous Noncovered Employment) dies prior to attaining age 55, a monthly death benefit shall be payable to the Participant's Surviving Spouse or named Beneficiary. The Participant's Surviving Spouse or named Beneficiary may elect to receive this death benefit in one of the following options:

(A) **Qualified Pre-Retirement Surviving Spouse Pension:** If the Participant was married at the time of his death and his Surviving Spouse qualifies for a Qualified Pre-Retirement Surviving Spouse's Pension, his Surviving Spouse shall be entitled to receive a lifetime Pension for the remainder of her life. The monthly amount of the Qualified Pre-Retirement Surviving Spouse Pension shall be equal to 50% of the Participant's Accrued Pension determined as of the date he died (adjusted for early commencement, if applicable, and to reflect the 50% Joint and Survivor form of payment). Payment of the Qualified Pre-Retirement Surviving Spouse Pension shall commence on the Participant's earliest Early Retirement Date. The last payment thereof shall be made as of the first day of the month in which the death of the Surviving Spouse occurs.

The Surviving Spouse of a Participant who dies prior to the date his Pension Payments commence may elect in writing, filed with the Trustees, and on whatever form the Trustees may prescribe, to defer commencement of the Qualified Pre-Retirement Surviving Spouse's Pension until a specified date that is no later than the first of the month following the date the Participant would have reached his Required Beginning Date. The benefit amount will be determined as if the Participant survived to the date the Surviving Spouse elected to

begin receiving that benefit, retired at that age with an immediate Qualified Pre-Retirement Surviving Spouse's Pension and died the next day.

Notwithstanding any other provisions of the Plan, if the Annuity Starting Date for the Pre-Retirement Surviving Spouse's Pension is after the Participant's earliest Early Retirement Date, the benefit shall be determined as if the Participant had died on the Surviving Spouse's Annuity Starting Date after retiring with a Qualified Joint and Survivor Annuity the day before, taking into account any actuarial adjustments to the Participant's accrued benefit that would have applied as of that date.

If a Surviving Spouse dies before the Annuity Starting Date for the Pre-retirement Surviving Spouse's Pension, that benefit will be forfeited and unless an alternate beneficiary has been designated by the Participant to receive the other Pre-Retirement Death Benefits in Section 6.4(b), with the acknowledgement and consent of the Participant's Spouse, under this Section 6.4, there will be no payments to any other party.

If a Participant is receiving a Disability Pension, and such Participant dies prior to the attainment of his earliest Early Retirement Date, the Surviving Spouse shall be entitled to a monthly Pre-Retirement Surviving Spouse Pension, commencing with the month following the month in which the Participant would have reached his earliest Early Retirement Date, had he lived. The amount of such monthly pension shall be determined as if the Participant had left Covered Employment upon reaching his earliest Early Retirement Date, retired with a Qualified Joint and Survivor Annuity upon reaching his earliest Early Retirement Date and died on the last day of the month in which his earliest Early Retirement Date was reached.

- (B) The Participant's named Beneficiary may elect to receive a monthly Pension beginning on the Participant's earliest Early Retirement Date. The last payment thereof shall be made as of the first day of the month in which the death of the named Beneficiary occurs. The monthly amount of the Pension shall be equal to 50% of the Participant's Accrued Pension, determined as of the Participant's earliest Early Retirement Date (adjusted for early commencement) as if the Participant had retired on that date, converted to an Actuarially Equivalent monthly benefit payable over the lifetime of the named Beneficiary.
- (C) The Participant's Surviving Spouse or named Beneficiary may elect to receive monthly payments for a period of 60 months beginning on the Participant's earliest Early Retirement Date. The monthly amount of the Pension is equal to the monthly Pension payment such Participant would have received had he retired and commenced receipt of his Pension on the date of his death.
- (D) A Surviving Spouse or named Beneficiary may elect to receive a lump sum payment. The lump sum is equal to the following:
- (1) The greatest Actuarial present Value of the Pension described in (A), (B) or (C) above, or
 - (2) The amount of contributions made on behalf of the Participant.
- (E) 50% of the single sum payment described in (D) above with the remaining death benefit (*i.e.*, 50% of (D) above) paid out in equal monthly payments over either a five (5) or ten (10) year period where the monthly payments are determined to be Actuarially Equivalent to the remaining death benefit.

The Surviving Spouse or named Beneficiary will have one (1) year from the Participant's date of death to elect one of the optional forms.

(c) A Surviving Spouse or named Beneficiary of a Participant who has less than ten (10) Vesting Years of Service may elect a Pre-Retirement Death Benefit as outlined below:

(i) If a Participant with less than ten (10) Vesting Service Years earned under this Plan (excluding credited service pursuant to Reciprocal and Pro-Rata Agreements) dies, a monthly death benefit shall be payable to the Participant's Surviving Spouse or named Beneficiary. The Participant's Surviving Spouse or named Beneficiary may elect to receive this death benefit in one of the following options:

(A) **Qualified Pre-Retirement Surviving Spouse Pension:** If the Participant was married at the time of his death and his Surviving Spouse qualifies for a Qualified Pre-Retirement Surviving Spouse's Pension, his Surviving Spouse shall be entitled to receive a lifetime Pension for the remainder of her life. The monthly amount of the Qualified Pre-Retirement Surviving Spouse Pension shall be equal to 50% of the Participant's Accrued Pension determined as of his Normal Retirement Date, adjusted to reflect the 50% Joint and Survivor form of payment. Payment of the Qualified Pre-Retirement Surviving Spouse Pension shall commence on the Participant's Normal Retirement Date. The last payment thereof shall be made as of the first day of the month in which the death of the Surviving Spouse occurs.

The Surviving Spouse of a Participant who dies prior to the date his Pension Payments commence may elect in writing, filed with the Trustees, and on whatever form the Trustees may prescribe, to defer commencement of the Qualified Pre-Retirement Surviving Spouse's Pension until a specified date that is no later than the first of the month following the date the Participant would have reached his Required Beginning Date. The benefit amount will be determined as if the Participant survived to the date the Surviving Spouse elected to begin receiving that benefit, retired at that age with an immediate

Qualified Pre-Retirement Surviving Spouse's Pension and died the next day.

Notwithstanding any other provisions of the Plan, if the Annuity Starting Date for the Pre-Retirement Surviving Spouse's Pension is after the Participant's earliest Early Retirement Date, the benefit shall be determined as if the Participant had died on the Surviving Spouse's Annuity Starting Date after retiring with a Qualified Joint and Survivor Annuity the day before, taking into account any actuarial adjustments to the Participant's accrued benefit that would have applied as of that date.

If a Surviving Spouse dies before the Annuity Starting Date for the Pre-retirement Surviving Spouse's Pension, that benefit will be forfeited and unless an alternate beneficiary has been designated by the Participant to receive the other Pre-Retirement Death Benefits in Section 6.4(b), with the acknowledgement and consent of the Participant's Spouse, under this Section 6.4, there will be no payments to any other party.

If a Participant is receiving a Disability Pension, and such Participant dies prior to the attainment of his earliest Early Retirement Date, the Surviving Spouse shall be entitled to a monthly Pre-Retirement Surviving Spouse Pension, commencing with the month following the month in which the Participant would have reached his earliest Early Retirement Date, had he lived. The amount of such monthly pension shall be determined as if the Participant had left Covered Employment upon reaching his earliest Early Retirement Date, retired with a Qualified Joint and Survivor Annuity upon reaching his earliest Early Retirement Date and died on the last day of the month in which his earliest Early Retirement Date was reached.

- (B) The Participant's named Beneficiary may elect to receive a monthly Pension beginning on the Participant's Normal Retirement Date. The

last payment thereof shall be made as of the first day of the month in which the death of the named Beneficiary occurs. The monthly amount of the Pension shall be equal to 50% of the Participant's Accrued Pension, determined as of his Normal Retirement Date as if the Participant had retired on that date, converted to an Actuarially Equivalent monthly benefit payable over the lifetime of the named Beneficiary.

- (C) The Participant's Surviving Spouse or named Beneficiary may elect to receive monthly payments for a period of 60 months beginning on the Participant's earliest Early Retirement Date. The monthly amount of the Pension is equal to the monthly Pension payment such Participant would have received had he retired and commenced receipt of his Pension on the date of his death.
- (D) A Surviving Spouse or named Beneficiary may elect to receive a lump sum payment. The lump sum is equal to the following:
 - (1) The greatest Actuarial present Value of the Pension described in (A), (B) or (C) above, or
 - (2) The amount of contributions made on behalf of the Participant.
- (E) 50% of the single sum payment described in (D) above with the remaining death benefit (*i.e.*, 50% of (D) above) paid out in equal monthly payments over either a five (5) or ten (10) year period where the monthly payments are determined to be Actuarially Equivalent to the remaining death benefit.

The Surviving Spouse or named Beneficiary will have one (1) year from the Participant's date of death to elect one of the optional forms.

- (d) In the event a Participant shall die, the Plan's Pre-Retirement Death Benefits shall be paid as follows:

- FIRST: To the Spouse of the deceased Participant,
- SECOND: If no Spouse survives him, to the Beneficiary designated in writing by the deceased Participant,
- THIRD: If no Spouse survives him and if the Participant failed to designate a Beneficiary as provided herein, to his natural or legally adopted children, in equal shares,
- FOURTH: If no Spouse or natural or legally adopted children survive him, and he failed to designate a Beneficiary as provided herein, then to his parents in equal shares.
- FIFTH: If no Spouse, natural or legally adopted children or parents survive him and if the Participant failed to designate a Beneficiary as provided herein, to his natural or legally adopted siblings, in equal shares.
- SIXTH: If no Spouse survives him, and no natural children or legally adopted children survive him, and his parents do not survive him and no natural or legally adopted siblings survive him and he failed to designate a Beneficiary as provided herein, then to the estate of such deceased Participant.

Section 6.5. Post-Retirement Lump Sum Death Benefit

Benefits payable under this Section 6.5 shall be paid to the latest designated Beneficiary on file with the Trustees. The Participant may designate any individual as Beneficiary for benefits payable under this paragraph Section 6.5. The designated Beneficiary may be changed at any time, without the consent of the designated Beneficiary. In the event the Participant shall die without having designated a Beneficiary, the Death Benefit shall be paid in the order described in Section 6.4(b)(iv).

- (a) Upon the death of a participant who retires on and after October 1, 1987 from Covered Employment and has commenced to receive a Normal Retirement, Early Retirement, or Disability Pension, his Beneficiary shall be entitled to a lump sum Death Benefit in the sum of \$5,000.

Provided, however, that such Beneficiary shall be entitled to a lump sum Death Benefit in the sum of \$10,000, if such retired Participant's death occurred on or after April 1, 1993.

Provided, further, that a Participant who hereafter retires, as set forth above, must have 10 or more Vesting Service Years and have earned at least five (5) Vesting Service Years as a Participant in the Midwest Operating Engineers Pension Plan to be eligible for such lump sum Death Benefits.

Provided, further, the Beneficiary of a retired Participant who was a Member of the Local 537 I.U.O.E. bargaining unit who became a Participant in the Midwest Operating Engineers Pension Plan effective April 1, 1993 shall be entitled to a lump sum Death Benefit in the sum of \$10,000, if such retired Participant's death occurred on or after April 1, 1993.

- (b) Effective with All Work Total Disability or Operating Engineer Total Disability pensions commencing on or after July 1, 2002, the \$2,000 lump sum Death Benefit payable to a disabled Participant upon the death of his spouse is no longer provided under the Plan.

Prior to July 1, 2002, the disabled Participant who has met the eligibility requirements for benefits payable under paragraph (a) and is receiving an All Work Total Work Disability Pension shall, upon the death of his Spouse, be entitled to receive a lump sum Death Benefit in the sum of \$2,000. This benefit is payable only to the surviving disabled Participant receiving an All Work Total Disability Pension.

- (c) The disabled Participant who has met the eligibility requirements for benefits payable under paragraph (a) and is receiving a Disability Pension shall, upon the death of his natural or legally adopted child under 19 years of age, be entitled to receive a lump sum Death Benefit in the sum of \$1,000. This benefit is payable only to the surviving disabled Participant receiving a Disability Pension.
- (d) Any benefit payable to a beneficiary pursuant to this Section 6.5 shall be in addition to, and not in lieu of, the Pension Plan normal benefit of a Qualified Joint and Survivor Annuity.

Section 6.6. Small Pensions

In accordance with rules of uniform application, the Board of Trustees shall direct that, in lieu of the payment of a Pension or survivor benefit of relatively small amount or value, the Actuarial Equivalent thereof shall be paid in a single lump sum; provided that such lump sum, provided that such lump sum settlement may not be directed if both the single sum value thereof exceeds \$5,000 (or as otherwise

determined by applicable law) and the Participant (and if applicable, his Spouse) declines to sign a written request to receive the lump sum settlement.

Effective for distributions made on or after March 28, 2005, the Board of Trustees shall direct that a small Pension benefit (other than a survivor benefit) payment, if not more than \$1,000, be distributed in a single lump sum whether or not an application for a Pension has been made. A small Pension benefit payment in excess of a \$1,000 (but not in excess of \$5,000) shall be distributed in a single lump sum payment following the Participant's (without spousal consent) written request. This paragraph shall not apply to a small benefit paid to a surviving spouse or an alternate payee.

If a lump sum is paid to a person, then such person shall thereafter lose all rights to any Pension Credits or Accrued Pension under the Plan.

Section 6.7. Direct Rollover Option

A distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of any distribution from the Plan which is an eligible rollover distribution, paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this paragraph, the following terms shall be defined as follows:

- (a) An "eligible rollover distribution" is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).
- (b) An "eligible retirement plan" is an individual account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, or a qualified trust described in Section 401(a) of the Code, 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 that accepts the distributee's eligible rollover distribution. The definition of eligible retirement plan also shall apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order as defined in Section 414(p) of the Code.

- (c) A "distributee" includes an Employee or former Employee. In addition, the Employee's or former Employee's Spouse or former Spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the Spouse or former Spouse.
- (d) A "direct rollover" is a payment by the Plan to an eligible retirement plan specified by the distributee.

Section 6.8. Election Period

A Participant's election period for the Qualified Joint and Survivor Annuity shall be no earlier than 90 calendar days nor later than 30 calendar days preceding the later of his Annuity Starting Date or, in the case of a Participant receiving a Disability Pension, his earliest Early Retirement Date.

Section 6.9. Notification to Participants

Prior to the date Pension payments commence, and within the time required by regulations under ERISA, the Trustees will supply the Participant with a written explanation of the nature, form and amount of the benefit to which he is entitled, as well as a written explanation of the normal form and optional forms of payment under the Plan.

Section 6.10. Qualified Election

Effective April 1, 1997, Qualified Election means a waiver of a Qualified Joint and Survivor Annuity. The waiver must be in writing and must be consented to by the Participant's Spouse. The Participant's waiver and Spouse's consent must state the specific nonspouse beneficiary and specific optional form of benefit. The Spouse's consent must acknowledge the effect of the election. The Spouse's consent to a waiver must be witnessed by a Plan representative or notary public. Notwithstanding this consent requirement, if the Participant establishes to the satisfaction of a Plan representative through an affidavit and witnessed by a notary public that such written consent may not be

obtained because there is no Spouse or the Spouse cannot be located, a waiver will be deemed a Qualified Election. Any consent necessary under this provision will be valid only with respect to the Spouse who signs the consent, or in the event of a deemed Qualified Election, the designated Spouse. Additionally, a revocation of a prior waiver may be made by a Participant without the consent of the Spouse at any time before the commencement of benefits. The number of revocations shall not be limited. Any new election must comply with the requirements of this Section 6.10. A former Spouse's waiver shall not be binding on a new Spouse.

A Participant's statement of his marital status shall be absolutely determinative thereof, and the Trustees may rely thereon. The Trustees are not required at any time to recognize the validity of any marriage, the effectiveness of a common-law relationship or the claim of any alleged spouse which is not consistent with the Participant's statement of his marital status and the identity of his spouse.

Section 6.11. Qualified Domestic Relations Order (QDRO)

(a) Definition:

Means any judgment, decree or order (including approval of a property settlement agreement) which is made pursuant to a State Domestic Relations Law (including a community property law) and which:

- (i) Relates to provision of child support, alimony payments, or marital property rights of a Spouse, former Spouse, child or other dependent of a Participant, and which
- (ii) Recognizes or creates an alternate payee's right to, or assigns to an alternate payee the right to receive all or a portion of the benefits payable with respect to a Participant under this Plan, and which
- (iii) Clearly specifies:
 - (A) Name and last known address of the Participant and of each alternate payee,
 - (B) The amount, percentage or the manner in which such could be determined, of the Participant's benefits to be paid to such alternate payee by the Plan,

- (C) The number of payments or time period the QDRO covers and
- (D) Each plan to which the QDRO applies.

A qualified domestic relations order cannot require any plan to provide a type or form of benefit, or any option not otherwise provided by the Plan, nor can it require the Plan to provide increased benefits. A QDRO cannot require payment to an alternate payee of benefits required to be paid to another alternate payee by virtue of a previous QDRO.

(b) Payment of Benefits

- (i) The amount of such benefit shall be as provided in the QDRO and may be adjusted to reflect that the benefit is payable over more than one life.
- (ii) A benefit payable under a QDRO shall commence on the date specified in the QDRO; provided, however, no benefit will commence earlier than the date on which the Participant attains (or would have attained) the earliest Early Retirement Date under the Plan. If a benefit was paid at such time to an alternate payee, the amount of the Participant's benefit to which the QDRO is applied shall be as if the Participant had retired on the date payments are to begin, considering the present value of benefits accrued to that date only. The interest rate used to determine the present value shall be the same as defined in Section 2.1(b). An alternate payee is permitted to begin receiving a benefit under the QDRO prior to the Participant's retirement.

(c) Administration

The Trustees will establish a written procedure for determining the qualified status of domestic relations orders and to administer distributions thereunder. Using these procedures, the Trustees will determine whether the order is a QDRO and notify the Participant and each alternate payee of this determination. During the period when the order's status is being determined, the Trustees will segregate into a separate account under the Plan (or establish an escrow account), the amount that would have been payable to an alternate payee and such amount, will be paid to the alternate payee when the order (or modification) is determined to be qualified. Within 18 months, if either the order is determined to be non-qualified, or the issue remains unresolved, the Trustees will

direct that the segregated amount, plus interest, be paid to the person who would have been entitled to it had there been no order. After 18 months, the Trustees will apply any determination that an order is qualified only prospectively.

Section 6.12. Benefit Payments Generally

- (a) A Participant who is eligible to receive benefits under this Plan and who makes application in accordance with the rules of the Pension Plan shall be entitled upon retirement to receive the monthly benefits provided for the remainder of his life, subject to the provisions of this Plan.
- (b) Pension benefits shall be payable commencing with the first month following the month in which the claimant has filed an application for benefits. The first day of such month is what is meant by the “Effective Date” of the pension (sometimes called the “Annuity Starting Date”).

A Participant may, however, elect in writing filed with the Trustees to receive benefits first payable for a later month provided that no such election filed on or after January 1, 1984 may postpone the commencement of benefits to a date later than the Required Beginning Date (unless he elects otherwise in accordance with Section 2.1(pp) hereof).

The Pension shall be payable for the month in which the death of the Pensioner occurs except as provided in accordance with a survivor’s pension option or any other provisions of this Plan for payment after the death of the Pensioner.

- (c) Payment of benefits may begin sooner but shall begin no later than 60 days after the end of the Plan Year in which the Participant attained Normal Retirement Age.
- (d) If the Annuity Starting Date is after the Participant’s Normal Retirement Age, the monthly benefit will be the accrued benefit at Normal Retirement Age, actuarially increased for each complete calendar month between Normal Retirement Age and the Annuity Starting Date, for which benefits were not suspended pursuant to Article VII, and then converted as of the Annuity Starting Date to the benefit payment form elected in the pension application or to the automatic form of the Qualified Joint and Survivor Annuity.

- (i) If a Participant first becomes entitled to additional benefits after Normal Retirement Age, whether through additional service or because of a benefit increase, the actuarial increase in those benefits will start from the date they would first have been paid rather than Normal Retirement Age.
- (ii) For purposes of this subsection, a pension shall not be considered due and payable for any month in which the Participant is engaged in Disqualifying Employment as defined in Article VII.

Effective January 1, 2004, this subsection (d) shall apply in the case of a retroactive annuity starting date (“RASD”). For purposes of the Plan, a RASD occurs when the Participant’s Annuity Starting Date is prior to the date the Participant receives the written explanation describing the Qualified Joint and Survivor Annuity (the “QJSA”), the Participant’s right to waive the QJSA and the rights of the Participant’s spouse.

- (e) Additional benefits earned by an Active Participant in Covered Employment after Normal Retirement Age will be determined at the end of each Plan Year and will be payable as of April 1, following the end of the Plan Year in which it accrued.

(f) Distribution Rules

- (i) Except for the Qualified Joint and Survivor Option, the requirements of this Section 6.12 shall apply to any distribution of a Participant’s accrued benefit.
- (ii) Distributions, if not made in a lump-sum, may only be made over one of the following periods (or a combination thereof):
 - (A) the life of the Participant,
 - (B) the life of the Participant and a designated Beneficiary,
 - (C) a period certain not extending beyond the life expectancy of the Participant, or
 - (D) a period certain not extending beyond the joint and last survivor expectancy of the Participant and a designated Beneficiary.

- (iii) If the Participant's entire interest is to be distributed in other than a lump sum, then the amount to be distributed each year must be at least an amount equal to the quotient obtained by dividing the Participant's entire interest by the life expectancy of the Participant or joint and last survivor expectancy of the Participant and designated Beneficiary. Life expectancy and joint and last survivor expectancy are computed by the use of the return multiples contained in Section 1.72-9 of the Income Tax Regulations. For purposes of this computation, a Participant's life expectancy may be recalculated no more frequently than annually, however, the life expectancy of a non-spouse Beneficiary may not be recalculated. If the Participant's Spouse is not the designated Beneficiary, the method of distribution selected must assure that at least 50 percent of the present value of the amount available for distribution is paid within the life expectancy of the Participant.
- (iv) Distributions must commence by the Participant's Required Beginning Date, as defined in Section 2.1(pp).
- (v) (A) If the Participant dies after distribution of his interest has commenced, the remaining portion of such interest will continue to be distributed at least as rapidly under the method of distribution being used prior to the Participant's death.

(B) If the Participant dies before distribution of his interest commences, the Participant's entire interest will be distributed no later than five (5) years after the Participant's death except to the extent that an election is made to receive distributions in accordance with (1) or (2) below:
 - (1) if any portion of the Participant's interest is payable to a designated Beneficiary, distributions may be made in substantially equal installments over the life or life expectancy of the designated Beneficiary commencing no later than one (1) year after the Participant's death;
 - (2) if the designated Beneficiary is the Participant's surviving Spouse, the date distributions are required to begin in accordance with Subparagraph (a) above shall not be earlier than the date on

which the Participant would have attained age 70½. and, if the Spouse dies before payments begin, subsequent distributions shall be made as if the Spouse had been the Participant.

For purposes of Subparagraph (B) above, payments will be calculated by use of the return multiples specified in Section 1.72-9 of the Income Tax Regulations. Life expectancy of a surviving Spouse may be recalculated annually, however, in the case of any other designated Beneficiary, such life expectancy will be calculated at the time payment first commences without further recalculation.

- (vi) Effective April 1, 1997, distributions under this Plan shall be made in accordance with the regulations under IRC Section 401(a)(9) including the minimum distribution incidental benefit requirements of IRC Section 1.401(a) 9-2 of the proposed regulations.

(g) Post Age 70½ Actuarial Increase

Effective April 1, 1997, the accrued benefit of an Employee (other than a 5% owner) who has an Annuity Starting Date after the April 1 following the Calendar Year in which the Employee attains age 70½ shall be actuarially increased for the period after such April 1 that he is not receiving benefits. The actuarial increase shall apply regardless of whether the Employee's monthly benefit has been suspended under Section 7.1(b) of the Plan.

Section 6.13. Return of Contributions

- (b) If a Surviving Spouse who is receiving a death benefit under Section 6.3 or 6.4 dies on or after July 1, 2004 and before the Surviving Spouse received total monthly payments equal to the amount of contributions made on behalf of the Participant, then the monthly payments shall continue to the Participant's named Beneficiary until the total monthly payments made to the Surviving Spouse and Beneficiary equal such contributions. If there is no named Beneficiary, then the Beneficiary shall be determined under Section 6.4(b).

ARTICLE VII
SUSPENSION OF BENEFITS

Section 7.1. Suspension of Benefits

(a) Before Normal Retirement Age

- (i) The monthly benefit shall be suspended for any month in which the Participant is employed in Disqualifying Employment before he has attained Normal Retirement Age.

“Disqualifying Employment” means employment or self-employment of the type that is described in the following Subparagraphs:

- (A) in the construction industry or any other industry in which Participants were employed as Operating Engineers and accruing Benefits under the Plan at the time Pension benefits commenced or would have commenced, if the Participant had not remained in or returned to such work; or in the employment of the Midwest Operating Engineers Pension Trust Fund, the Midwest Operating Engineers Welfare Fund, the Operating Engineers Local 150 Apprenticeship Fund, the Local 150, I.U.O.E. Vacation Savings Plan, or the Midwest Operating Engineers Construction Industry Research Service Trust Fund; or in the employment of Local 150 and its affiliates.
- (B) in the same “trade or craft” in which the Participant was employed at any time while covered by the Plan or supervisory activities relating to such trade or craft. Trade or craft extends to any job or occupation using the same skill or skills; and
- (C) the geographic area covered by the Plan includes any State of the United States or a Province of Canada in which Employer Contributions have been made, or have been required to be made to the Trust Fund, on behalf of the Participant, within the last five (5) years and any other area

covered by the Plan when a Participant's Pension began or, but for suspension under this Section, would have begun.

The geographic area covered by the Midwest Operating Engineers Pension Plan shall also include any area covered by a Plan, which under a Reciprocal Agreement, is required to forward contributions to the Trustees, or is required to provide pro rata pension credit for Participants covered under the terms of the Plan.

If a retired Participant reenters Covered Employment to an extent sufficient to cause a Suspension of Benefits, and his Pension payments are subsequently resumed, the industry and geographic area covered by the Plan, when the Participant's Pension commenced, may be defined by the Trustees as the industry and area covered by the Plan when his Pension was resumed.

(D) Disqualifying Employment shall include employment or self-employment by owner-operators and corporate shareholders who are contributing to the Plan pursuant to a participation agreement.

(ii) In addition, if the Participant has failed to notify the Trustees of employment that may be the basis for Suspension of Benefits in accordance with the notification requirements of Paragraph (d), or has willfully misrepresented to the Plan with respect to Disqualifying Employment, the monthly benefit shall be suspended for an additional period of three months.

The provisions of this paragraph shall not, however, result in the suspension of the benefit for any month after the Participant has attained Normal Retirement Age.

(b) After Normal Retirement Age

A Participant who has attained Normal Retirement Age shall have his monthly benefits suspended for any month in which he works or was paid for at least 41 hours in Disqualifying Employment. Disqualifying Employment, after the attainment of Normal Retirement Age, means employment or self-employment of the type that is described in the following paragraphs:

- (i) in the construction industry or any other industry in which Participants were employed as Operating Engineers and accruing benefits under the Plan at the time Pension benefits commenced or would have commenced, if the Participant had not remained in or returned to such work; or in the employment of the Midwest Operating Engineers Pension Trust Fund, the Midwest Operating Engineers Welfare Fund, the Operating Engineers Local 150 Apprenticeship Fund, the Local 150, I.U.O.E. Vacation Savings Plan, or the Midwest Operating Engineers Construction Industry Research Service Trust Fund; or in the employment of Local 150 and its affiliates.
- (ii) in the same trade or craft in which the Participant was employed at any time while covered by the Plan or supervisory activities relating to such trade or craft. Trade or craft extends to any job or occupation using the same skill or skills.
- (iii) the geographic area covered by the Plan includes any State of the United States or a Province of Canada in which Employer Contributions have been made, or have been required to be made, to the Trust Fund on behalf of a Participant, within the last five (5) years and any other area covered by the Plan when the Participant's Pension benefits commenced or, but for suspension under this Section, would have commenced.

The geographic area covered by the Midwest Operating Engineers Pension Plan shall also include any area covered by a Plan which, under a Reciprocal Agreement, has forwarded contributions to the Trustees, on the basis of which this Plan accrued benefits for the Participant.

If a retired Participant reenters Covered Employment to an extent sufficient to cause a Suspension of Benefits, and his Pension payments are subsequently resumed, the industry and geographic area covered by the Plan when the Participant's Pension benefits commenced, may be defined by the Trustees as the industry and area covered by the Plan when his Pension was resumed.

Notwithstanding any other provision of this subsection, as of April 1 of the calendar year following the calendar year in which the Participant attains age 70, no employment will be considered disqualifying employment for such Participant.

- (iv) Disqualifying Employment shall include employment or self-employment (before age 65) by owner-operators and corporate shareholders who are contributing to the Plan pursuant to a participation agreement.

(c) Definition of Suspension

Suspension of Benefits for a month means non-entitlement to benefits for the month. If benefits were paid for a month for which benefits were later determined to be suspended, the overpayment shall be recoverable through deductions from future Pension payments, pursuant to Subsection (f)(2) of this Section.

(d) Notices

- (i) upon commencement of Pension payments, the Trustees shall notify the Pensioner of the Plan rules governing Suspension of Benefits, including identity of the industries and geographic area covered by the Plan. If benefits have been suspended and payment resumed, new notification shall, upon resumption, be given to the Participant, if there has been any material change in the suspension rules or the identity of the industries or geographic area covered by the Plan.
- (ii) a Participant shall notify the Trustees, in writing, within 30 days after starting any work of a type that is or may be disqualifying under the provisions of the Plan and without regard to the number of hours of such work, that is, whether or not less than 41 hours in a month. If a Participant has worked in Disqualifying Employment in any month and has failed to give timely notice to the Trustees of such employment, the Trustees shall be entitled to presume that he worked for at least 41 hours in such month and any subsequent month before the Participant gives notice that he has ceased Disqualifying Employment. The Participant shall have the right to overcome such presumption by establishing that his work was not, in fact, an appropriate basis, under the Plan, for suspension of his benefits.

The Trustees shall inform all Retirees at least once every 12 months of the reemployment notification requirements and the presumptions set forth in this Paragraph.

- (iii) A Participant whose Pension has been suspended shall notify the Trustees when Disqualifying Employment has ended. The Trustees shall have the right to hold back benefit payments until such notice is filed with the Trustees.
- (iv) A Participant may ask the Trustees whether a particular employment will be disqualifying. The Trustees shall provide the Participant with its determination.
- (v) The Trustees shall inform any Participant of any suspension of his benefits by notice given by personal delivery or first class mail during the first calendar month in which his benefits are withheld.

(e) Review

A Participant shall be entitled to a review, in accordance with Section 9.2, by the Appeal Review Panel heretofore established by the Trustees, of a determination suspending his benefits, by written request filed with the Trustees within sixty (60) days of the Notice of Suspension.

The same right of review shall apply, under the same terms, to a determination by or on behalf of the Trustees that contemplated employment will be disqualifying.

(f) Resumption of Benefit Payments

- (i) benefits shall be resumed for months after the last month for which benefits were suspended, with payment no later than the third month after the last calendar month for which the Participant's benefit was suspended, provided the Participant has complied with the notification requirements of Paragraph (d)(iii) of this Section.
- (ii) overpayments attributable to payments made for any months for which the Participant had Disqualifying Employment shall be deducted from Pension payments otherwise paid or payable subsequent to the period of suspension. (A) Prior to Normal Retirement, there shall be no limit on the amount that a monthly benefit can be reduced to recover overpayments. (B) Once a Participant attains Normal Retirement Age, a deduction from a monthly benefit shall not exceed one-hundred (100%) percent, before deduction, of the first pension payment amount, and twenty-five (25%) percent of the Pension amount, before deduction,

for subsequent payments. If a Participant dies before recoupment of overpayments has been completed, deductions shall be made, if applicable, from the benefits payable to his Spouse or Beneficiary in accordance with other provisions of this Plan, subject to the percent limitations on the rate of deduction described above.

(g) Other

With respect to a Participant who is an Employee as defined in Section 2.1(v)(ii) or Section 2.1(v)(iii) the provisions of this section pertaining to employment in the same trade or craft shall not apply in the determination for suspension of his benefits.

Section 7.2. Benefit Payments Following Suspension

(a) The Monthly Retirement Benefit payable hereunder to a Participant who returns to Covered Employment, upon his later retirement, shall be as set forth below:

(i) in the case of a Participant who first retired on a Normal Retirement Pension:

In the same amount as payable to him upon his first retirement, unless otherwise required by applicable government regulations.

Notwithstanding the foregoing, only benefits accrued upon the return to employment shall qualify for any benefit improvements made during the return.

(ii) in the case of a Participant who first retired on an Early Retirement Pension:

(A) if the later retirement occurs prior to the date he would otherwise be entitled to retire on a Normal Retirement Pension, in the amount he would be entitled to if he were then first retiring under the provisions of an Early Retirement Pension (subject to reduction in accordance with Subsection (b) of this Section 7.2).

(B) if the later retirement occurs on or after the date he would otherwise be eligible to retire under provisions of a Normal Retirement Pension, in an amount he would be entitled to if he were then first retiring under the provisions of a Normal Retirement Pension.

- (C) Notwithstanding the foregoing, only benefits accrued upon the return to employment shall qualify for any benefit improvements made during the return.
- (iii) in the case of a Participant who has resumed employment after commencing to receive his Deferred Vested Benefits, Vesting Service Years credited to the date of later retirement shall be considered and the Vested Percentage of his Accrued Benefit shall be accordingly adjusted. Upon his later retirement, his Monthly Retirement Benefits shall be in the amount he would have been entitled to, if he were then first requesting payment of his Deferred Vested Benefits. Notwithstanding the following, only benefits accrued upon the return to employment shall qualify for any benefit improvements made during the return.
- (b) If a Participant who retired on a Pension payable before his Normal Retirement Age, except a Disability Pension, returns to work in Disqualifying Employment, he shall, upon resumption of his Pension, have his Pension amount, as determined in accordance with this Subsection (a), reduced by the actuarial equivalent of his previous Pension payments received before Normal Retirement Age.

For the purpose of this Subsection, the actuarial equivalent is determined by dividing the aggregate total amount of a Participant's previous Pension payments received before Normal Retirement Age by the actuarial factor appropriate to his age upon the resumption of his Pension, set forth in tables adopted by the Trustees.

If the monthly benefit resulting from the deduction of the actuarial equivalent of payments received prior to Normal Retirement Age is less than the most recent Pension amount received before Normal Retirement Age, the amount payable upon the resumption of his Pension will be set equal to the previous Pension amount before Normal Retirement Age.

Any overpayments shall be recovered in accordance with Section 7.1(f)(ii).

- (c) The amount determined under the above Paragraphs shall be adjusted for the Joint and Survivor Pension or any other optional form of benefit in accordance with which the benefits of the Participant and any contingent annuitant or beneficiary are payable.

- (d) A Joint and Survivor Option in effect immediately prior to Suspension of Benefits, and any other benefit following the death of the Participant shall remain effective, if the Participant's death occurs while his benefits are in suspension. If a Participant has returned to Covered Employment, he shall not be entitled to a new election as to the Joint and Survivor Option or any other form of benefit except if, upon such return, he had sufficient Covered Employment to earn at least two (2) consecutive Vesting Service Years.
- (e) A retired Participant who returns to Covered Employment and earns additional benefits shall have his pension recalculated the following April 1. If such Participant resumes receiving pension payments during a Plan Year, the monthly payment shall be adjusted as of the following April 1.

Section 7.3. Temporary Waiver of Suspension of Benefits

Upon the vote of the Board of Trustees, the suspension of benefits provisions in this Article VII may be waived for a specific period of time, based on the employment needs of the industry and subject to appropriate notification to participants.

ARTICLE VIII
PLAN FINANCING AND ASSETS

Section 8.1. Method of Funding

The Employers shall make contributions in such amounts and at such times as determined by the Plan Administrator in accordance with a funding method and policy to be established by the Plan Administrator which shall be consistent with Plan objectives. No contributions shall be required or permitted under the Plan from any Participant.

Section 8.2. Assets of Fund

All contributions made by the Employers under this Plan shall be deposited in the Fund. All assets of the Fund, including investment income, shall be retained for the exclusive benefit of Participants and their Beneficiaries, shall be used to pay benefits to such persons or to pay administrative expenses, and shall not revert to or inure to the benefit of the Employers. It is expressly understood that in no event shall any of the corpus or assets of the Fund revert to or inure to the benefit of the Employers or be subject to any claims of any kind or nature by the Employers, except for the return of an erroneous contribution (or other erroneous payments) within the time limits prescribed by law.

Section 8.3. Merger or Consolidation of Plans

Any merger or consolidation of the Plan with any other plan of deferred compensation maintained or to be established for the benefit of all or some of the Participants of this Plan, or any transfer in whole or in part of the assets and liabilities of the Trust Fund to another trust fund, or vice versa, shall not be effective unless:

- (a) no Participant's or Beneficiary's accrued benefit (if either this Plan or the other plan then terminated) will be lower immediately after the effective date of the merger or transfer than the benefit immediately before that date (if this Plan had then terminated);
- (b) resolutions of the Plan Administrator under this Plan and of the plan administrator, board of trustees or other corresponding agency of responsibility under the other plan shall authorize such transfer of assets; and the former (or latter) resolution shall include an assumption of liabilities with respect to participants transferred from (or to) the other plan; and

- (c) such other plan and trust are qualified under Sections 401(a) and 501(a) of the Internal Revenue Code.

This paragraph shall apply only to the extent determined by the Pension Benefit Guaranty Corporation.

ARTICLE IX
ADMINISTRATION

Section 9.1. Administration

The Trustees shall have all rights, duties and powers necessary or appropriate for the administration of the Plan. In particular, the Trustees shall have and shall exercise complete discretionary authority to construe, interpret and apply all of the terms of the Plan, including all matters relating to eligibility for benefits, amount, time or form of payment, and any disputed or allegedly doubtful terms. The Trustees may employ or retain the services of one or more individuals to carry out the day-to-day administration of the Plan on behalf of the Trustees, of whom the chief executive shall be known as the “Administrative Manager.”

Section 9.2. Claim and Appeal Procedures

This Section sets forth provisions relating to claims and appeals for benefits under the Plan. There are also special rules relating to claims for Disability Pensions filed on or after January 1, 2002 as set forth in Section 4.3(f). Any claim for a Disability Pension filed prior to January 1, 2002, shall be subject to the same rules as appear below. For purposes of this Article IX, the Administrative Manager is designated as a “Named Fiduciary” with respect to the Pension Plan.

- (a) Unless special circumstances exist, a Participant shall be informed of the Trustees’ decision on his claim within 90 days of the date the claim is received, whether or not all the information and evidence necessary to process the claim is received. Within such 90-day period, the Participant shall receive the Administrative Manager’s decision or a notice that:
 - (i) explains the special circumstances requiring a delay in the decision, and
 - (ii) sets a date, no later than 180 days after his claim has been received, by which he can expect to receive a decision.

The Participant may assume that his claim has been denied and may proceed to appeal the denial if the Participant does not receive any notice from the Administrative Manager within the 90-day period.

- (b) Whenever a Participant has been notified by the Administrative Manager that his application for benefits has been disapproved, in whole or in part, he will be sent a notice that sets forth in plain and concise language:
- (i) The specific reason or reasons for the disapproval.
 - (ii) All pertinent provisions of this Plan and/or the Trust Agreement.
 - (iii) A description of such materials or information deemed necessary for the Participant to perfect his claim to benefits, together with an explanation as to the necessity thereof.
 - (iv) A detailed explanation of the procedures of appeal described in this Article IX, available to the Participant for a review of the disapproval of his application for pension benefits.
 - (v) A statement of the Participant's rights to bring a civil action under ERISA Section 5.02(a), after an adverse decision on review.
- (c) A request for a review of disapproval, in whole or in part, of his application for benefits shall be made by the Participant, or by his duly authorized representative, by a written statement, delivered, in person, by facsimile or by registered or certified mail, to the Administrative Manager within 60 days of the date of receipt by the Participant of a notice of disapproval of his application for benefits, in whole or in part.
- Upon receipt of such written request, the same shall be forwarded by the Administrative Manager to the Review Panel, together with all files, papers, documents, materials and relevant information.
- (d) The Review Panel, on receipt of the request for review made by the Participant, shall set the same for a hearing thereon, and provide for a decision by the Review Panel within 60 days, unless special circumstances exist requiring an extension of time, in which event the decision shall be rendered not later than 120 days from the date of receipt of the written request for review.

The Participant shall have the right to legal counsel. At the time of or immediately after the request for review, upon reasonable notice to the Review Panel, the Participant by himself or by his legal counsel, shall have the right:

- (i) to review all pertinent documents, information and other materials relevant to his claim for benefits; and
 - (ii) to submit to the Review Panel, in writing, issues and comments for its consideration.
- (e) The Review Panel shall have the right to legal counsel, the services of auditors, and other professionals retained by the Board of Trustees, to assist in the making of a decision on review or reconsideration.

Any hearing before the Review Panel to which a Participant or his representative is invited shall be conducted in an informal manner, and no Review Panel proceeding shall be recorded, electronically or stenographically.

Each decision made by the Review Panel shall be in writing, and shall set forth therein the reason, or reasons, for the decision made and the pertinent provisions of the Plan and/or the Trust Agreement.

- (f) In the event the Participant or his representative fails to appear on the hearing date, or has failed to request a continuance prior to the hearing date, the Review Panel shall proceed to review the decision based on all documents, information, and material forwarded and received.

A request for a continuance of the hearing date by the Participant or his representative must be received by the Review Panel prior to the hearing date and shall be granted only in cases where special circumstances exist warranting such action. In the event a new hearing date is ordered, it shall be scheduled and shall permit the Review Panel to render a decision not later than 120 days from the date of receipt of the written request for review.

- (g) The decision of the Review Panel shall be subject to a rehearing only when additional new pertinent information is provided and the Participant, or his authorized representative, makes a written request, within 30 days of the decision. The decision

rendered shall thereafter be final, conclusive and binding upon the Participant and all other persons.

- (h) Notwithstanding the foregoing, if upon preliminary examination and review by the Review Panel of all relevant documents, information and materials, the Review Panel is of the opinion that it is required to reverse the determination of disapproval previously made and to grant to the Participant pension benefits in accordance with his application, its opinion relating thereto, reduced to writing, shall be forwarded to the Participant, and the hearing shall be cancelled.
- (i) On a request for reconsideration made by the Participant, the Review Panel shall set the same for hearing thereon, and provide for a decision on reconsideration within 60 days, unless special circumstances exist requiring an extension of time, in which event the decision on reconsideration shall be rendered not later than 120 days from the date of receipt of the written request for reconsideration.
- (j) The failure of the Participant to request, within the time herein provided, review of the determination made by the Administrative Manager or Review Panel disapproving his application for benefits, in whole or in part, shall be considered as consent by him to the determination so made.

For purposes of this Section 9.2 of Article IX, the term Participant means the Participant or the Participant's beneficiary.

Section 9.3. Review Panel

For the purposes of Section 2 of Article IX and Section 4.3 of Article IV, there shall be established a Review Panel, the membership of which shall be, at all times, even in number. Appointment to the Review Panel shall be for such term as designated by a resolution adopted by the Trustees as follows:

- (i) One-half of the number thereof to be designated by the Employer Trustees.
- (ii) One-half of the number thereof to be designated by the Union Trustees.

A member of the Review Panel may resign, at any time, by giving notice of his intention to resign, in writing, to the Trustees at least 30 days prior to the date therein set forth as the date his resignation is to take effect.

Upon the death, resignation, inability to act, or removal of a member of the Review Panel, the Trustees shall immediately appoint a successor to fill the vacancy.

Section 9.4. Facility of Payment

Whenever, in the Plan Administrator's opinion, a person entitled to receive any payment of a benefit or installment thereof hereunder is under a legal disability or is incapacitated in any way so as to be unable to manage his financial affairs, the Plan Administrator may make payments to such person or to his legal representative or to a relative or friend of such person for his benefit, or the Plan Administrator may apply the payment for the benefit of such person in such manner as the Plan Administrator considers advisable. Any payment of a benefit or installment thereof in accordance with the provisions of this Section shall be a complete discharge of any liability for the making of such payment under the provisions of the Plan.

ARTICLE X
GUARANTEES AND LIABILITIES

Section 10.1. Non-Guarantee of Employment

Nothing contained in this Plan shall be construed as a contract of employment between an Employer and any Employee, or as a right of any Employee to be continued in the employment of an Employer, or as a limitation on the right of any Employer to discharge any of its Employees, with or without cause.

Section 10.2. Rights to Fund Assets

No Employee shall have any right to, or interest in, any of the assets of the Fund upon termination of his employment or otherwise, except as provided from time to time under this Plan, and then only to the extent of the benefits payable to such Employee out of the Fund. Except as may be provided otherwise under Title IV of ERISA, all payments of benefits as provided for in this Plan shall be made solely out of the assets of the Fund and the Employers shall not be liable therefor in any manner.

Section 10.3. Non-Alienation of Benefits

- (a) Benefits payable under this Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution, or levy of any kind, either voluntary or involuntary, including any such liability which is for alimony or other payments for the support of a Spouse or former Spouse, or for the support of any other relative of an Employee, prior to actually being received by the person entitled to the benefit under the terms of the Plan, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right to benefits payable hereunder, shall be void. The Fund shall not in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to benefits hereunder. This paragraph shall also apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a Participant pursuant to a domestic relations order, unless such order is determined to be a qualified domestic relations order, as defined in Section 414(p) of the Code.

A withholding for self-payments to maintain coverage under the Midwest Operating Health and Welfare Fund, transferred directly to the Midwest Operating Engineers Health and Welfare Fund shall not be construed as an alienation of benefits.

(b) Special Offset Rule

Notwithstanding the first paragraph of this Section 10.3, a Participant's benefits provided under the Plan shall be offset by an amount that the Participant is ordered or required to pay the Plan if:

- (i) a court order or requirement to pay the Plan which was issued or entered into on or after [August 5, 1997] arises under: a judgment of conviction for a crime involving the Plan; a civil judgment, including a consent order or decree, entered by a court in an action brought in connection with a breach (or alleged breach) of fiduciary duty under ERISA; or a settlement agreement entered into by the Participant and either the Secretary of Labor or the Pension Benefit Guaranty Corporation in connection with a breach of fiduciary duty under ERISA by a fiduciary or any other person; and
- (ii) such court order, judgment, consent decree, or settlement agreement expressly provides for all or part of the amount to be paid to the Plan to be offset against the Participant's benefit.

If the Participant has an eligible Spouse when such offset is to be made and the Spouse has retained the right in such order, judgment, consent decree, or settlement agreement to receive a survivor annuity under Section 6.1 and 6.2 of the Plan, such annuity shall be payable to the eligible Spouse unless the Spouse: has consented in writing to such offset and the consent is notarized or witnessed by a Plan representative, or, if spousal consent cannot be obtained, it is established to the satisfaction of the Plan Administrator that there is no eligible Spouse or that the eligible Spouse cannot be located; previously has elected to waive the right to a survivor annuity under Sections 6.1 and 6.2; or has been ordered or required in such order, judgment, decree or settlement agreement to pay an amount to the Plan in connection with the fiduciary breach.

Section 10.4. Uniform Action

Any discretionary actions to be taken under the Plan by the Plan Administrator shall be uniform in their nature and applicable to all Employees similarly situated.

Section 10.5. Nonforfeitability of Benefits

Subject only to the specific provisions of this Plan, nothing shall be deemed to divest a Participant during his lifetime of his right to the nonforfeitable benefit to which he becomes entitled in accordance with the provisions of this Plan.

Section 10.6. Restrictions on Benefits Payable to Restricted Members

In the event of a distribution to a Restricted Member, or upon the termination of the Plan, annual payments to a Restricted Member (as defined below) shall be limited to an amount equal to the payment that would be made under a Life Only Benefit that is the Actuarial Equivalent of the sum of the Restricted Member's Accrued Benefit and other benefits under the Plan. The preceding sentence shall not apply if the value of the Restricted Member's benefits (including death benefits) is either: (i) less than or equal to \$5,000, or (ii) less than 1% of the value of all current liabilities if, after the payment of the Restricted Member's benefits, the value of Plan assets equals or exceeds 110% of the value of current liabilities. For the purposes of this Section 10.6, the term Restricted Members shall mean, for each Plan Year, the 25 highest paid highly compensated employees or former highly compensated employees (as defined in Section 414(q) of the Code).

ARTICLE XI
AMENDMENTS

The Trustees reserve the right to make from time to time any amendment or amendments to this Plan which do not cause any part of the Fund to be used for, or diverted to, any purpose other than the exclusive benefit of Participants and Plan Beneficiaries.

No amendment to the Plan (including a change in the actuarial basis for determining optional or early retirement benefits) shall be effective to the extent that it has the effect of decreasing a Participant's Accrued Normal Retirement Benefit. Notwithstanding the preceding sentence, a Participant's Accrued Pension may be reduced to the extent permitted under Section 412(c)(8) of the Internal Revenue Code. For purposes of this paragraph, a Plan amendment which has the effect of: (i) eliminating or reducing an early retirement benefit or a retirement-type subsidy, or (ii) eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment shall be treated as reducing his Accrued Normal Retirement Benefit. In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to a Participant who satisfies (either before or after the amendment) the pre-amendment conditions for the subsidy. In general, a retirement-type subsidy is a subsidy that continues after retirement. Furthermore, no amendment to the Plan shall have the effect of decreasing a Participant's vested interest determined without regard to such amendment as of the later of the date such amendment is adopted, or becomes effective.

The foregoing notwithstanding, the Trustees may amend the Plan:

- (a) as necessary to establish or maintain the qualification of the Plan or the Trust Fund under the Internal Revenue Code and to maintain compliance of the Plan with the requirements of ERISA, or
- (b) if the amendment meets the requirements of Section 302(c)(8) of ERISA and Section 412(c)(8) of the Internal Revenue Code, and the Secretary of Labor has been notified of such amendment and has either approved of it or, within 100 days after the date on which such notice was filed, he failed to disapprove.

ARTICLE XII
PLAN TERMINATION

Section 12.1. Right to Terminate

In accordance with the procedures set forth in this Article, the Plan Administrator may terminate the Plan at any time. Subject to applicable requirements, if any, or ERISA governing termination of “employee pension benefit plans”, the Plan Administrator shall liquidate the Fund, or the applicable portion thereof, in accordance with the provisions of this Article.

Section 12.2. Partial Termination

Upon termination of the Plan with respect to a group of Participants which constitute in the judgment of the Plan Administrator a partial termination of the Plan, the Plan Administrator shall cause the proportionate interest of the Participants affected by such partial termination to be determined. The determination of such proportionate interest shall be done in an equitable manner, considering the remaining Participants as well as the Participants affected by the termination, and on the basis of the contributions made by the Employers, the provisions of this Article, and other appropriate considerations. After such proportionate interest has been determined, the Trustees shall allocate and segregate the assets of the Fund according to such proportionate interest.

The assets of the Fund so allocated and segregated shall be used to pay benefits to or on behalf of Participants in accordance with Section 12.3.

Section 12.3. Liquidation of Fund

Upon termination of the Plan, or upon a partial termination of the Plan, the Accrued Pension of each Participant affected by the termination shall, as of the date of termination, become fully vested and nonforfeitable to the extent funded. The assets of the Fund, or the portion thereof segregated in accordance with Section 12.2, shall be liquidated (after provision is made for the expenses of liquidation) by the payment or provision for the payment of benefits in the following order of preferences:

(a) Certain Benefits Payable Three Years Prior to Termination

The available assets of the Fund shall first be allocated to provide Pensions that became payable three or more years before the effective date of Plan termination, or that could

have become payable at the beginning of such three-year period had the Participant not deferred the commencement of his Pension by failing to elect earlier commencement, or that could have become payable had a Participant's Retirement occurred immediately prior to the beginning of such three-year period, provided that,

- (i) the portion of the Pension payable to a Participant or the Beneficiary of a Participant (or that could have been payable) shall be based on the provisions of the Plan in effect five years prior to the effective date of Plan termination; and for this purpose, the first Plan Year in which an amendment became effective, or was adopted if later, shall constitute the first year an amendment was in effect; and further provided that,
- (ii) if the Pension payable under the Plan had been reduced, either by amendment or due to the form in which the Pension is being paid, during the three-year period ending on the effective date of Plan termination, then the lowest benefit in pay status during such three-year period shall be considered the benefit in pay status for purposes of this category (a).

(b) Other Benefits Eligible for Termination Insurance

To the extent that the amount of a Pension has not been provided in the foregoing category (a), the remaining assets shall be allocated to provide the Pension provided under the Plan for a Participant whose employment terminated prior to the effective date of Plan termination, or any immediate or deferred Pension that would have been payable to or on behalf of a Participant had his employment terminated for a reason other than death on the effective date of Plan termination, provided that the amount of a pension to be provided under this category (b) shall be determined as follows:

- (i) the portion of the Pension payable to a Participant or the Beneficiary of a Participant (or that could have been payable) based on the provisions of the Plan in effect five years prior to the effective date of Plan termination; and for this purpose, the first Plan Year in which an amendment became effective, or was adopted if later, shall constitute the first year an amendment was in effect; plus
- (ii) the portion of the Pension payable to a Participant or the Beneficiary of a Participant which would have been included in (i) above had the Plan or a Plan

amendment been in effect five years prior to the effective date of plan termination, determined as follows: 20% for each Plan Year (less than five) that the Plan or an amendment thereto was in effect, multiplied by the amount that would have been included under subparagraph (i) for such Participant or beneficiary had the Plan or the amendment been in effect for five Plan Years as of the effective date of Plan termination; provided that,

- (iii) no benefit payable under this category (b) to a Participant or Beneficiary shall exceed an amount with an actuarial value of a monthly benefit in the form of a life only annuity commencing at age 65 equal to \$750 multiplied by a fraction, the numerator of which is the contribution and benefit base determined under Section 230 of the Social Security Act in effect at the effective date of Plan termination and the denominator of which is such contribution and benefit base in effect in Calendar Year 1974.

(c) Other Vested Benefits

To the extent that the amount of a Pension has not been provided in the foregoing categories (a) and (b), the remaining assets shall be allocated to provide the benefit payable under the Plan to or on behalf of a Participant whose employment terminated prior to the effective date of Plan termination, or that would have been payable to or on behalf of a Participant had his employment terminated for a reason other than death on the effective date of Plan termination, in the following order of preference:

- (i) to any Participant who had retired prior to the effective date of Plan termination under either Section 4.1 or 4.3, or who was eligible to retire on the effective date of Plan termination under either of said Sections;
- (ii) to any Participant who had retired prior to the effective date of Plan termination under Section 4.2, or who was eligible to retire on the effective date of Plan termination under said Section;
- (iii) to any Participant whose employment had terminated prior to the effective date of Plan termination with entitlement to a Vested Pension under Section 4.4, or who would have been eligible for a Vested Pension under said Section had his employment terminated on the effective date of Plan termination.

(d) Other Benefits

To the extent that the amount of a Pension has not been provided in the foregoing categories (a), (b) and (c), the remaining assets shall be allocated to provide the benefit accrued under the Plan, without regard to the satisfaction of the vesting requirements of this Plan, with respect to each Participant whose employment had not terminated as of the effective date of Plan termination, according to the respective actuarial value of each such Participant's Accrued Pension.

If the assets of the Fund applicable to any of the above categories are insufficient to provide full benefits for all persons in such group, the benefits otherwise payable to such persons shall be reduced proportionately. The Actuary shall calculate the allocation of the assets of the Fund in accordance with the above priority categories, and certify his calculations to the Fiduciaries. The provisions of this Section 12.3 are intended to comply with the provisions of ERISA (and any regulations issued thereunder). If there is any discrepancy between the provisions of this Section 12.3, and the provisions of ERISA, such discrepancy shall be resolved in such a way as to comply with ERISA. No liquidation of assets and payments of benefits (or provisions therefor) shall actually be made until applicable requirements, if any, of ERISA governing termination of "employee pension benefit plans" have been, or are being, complied with or appropriate authorizations, waivers, exemptions or variances have been, or are being, obtained.

Section 12.4. Manner of Distribution

Subject to the foregoing provisions of this Article XII, to the extent that no discrimination in value results, any distribution after termination of the Plan may be made, in whole or in part, in cash, in securities or other assets in kind, or in non-transferable annuity contracts, as the Plan Administrator (in its discretion) may determine. All non-cash distributions shall be valued at fair market value as of the date of distribution.

Section 12.5. Residual Amounts

In no event shall the Employers receive any amounts from the Fund upon termination of the Plan, and such amounts, if any, as may remain after the satisfaction of all liabilities of the Plan and arising out of any variations between actual requirements and expected actuarial requirements shall be apportioned

among Participants and Plan beneficiaries in an equitable manner as determined by the Plan Administrator.

ARTICLE XIII
MAXIMUM BENEFITS

Section 13.1. General Rule

(a) Except as provided in subsection (c), and notwithstanding any other provision of this Plan, the annual benefit relating to employment with a contributing Employer that is payable with respect to any Participant shall not exceed:

(i) \$90,000 or, if lower,

(ii) 100 percent of the Participant's average Compensation from the Employer in the period of three consecutive Calendar Years, or 12-month periods, in which his Compensation was the highest. For this purpose, Compensation shall be determined based on wage rates established in Collective Bargaining Agreements and covered service as reported to the Fund, to the extent available, or on other records deemed by the Trustees to be reliable. Information on Participants' Compensation furnished to the Trustees by a contributing Employer shall be deemed reliable. In addition, the Trustees may rely on information on Compensation furnished by a Participant or Beneficiary unless the Trustees determine that it is not reliable.

Effective January 1, 2002, the dollar limitation in Section 13.1(a)(i) shall be \$160,000 at age 62 reduced for payment prior to age 62 as set forth in Section 13.1(b) and the compensation limit shall no longer apply.

(b) This limit shall not apply to any benefits payable in a year and attributable to the Employer that do not exceed \$1,000 a year for each Plan Year in which the Participant earns a Vesting Service Year with that Employer, up to a maximum of \$10,000. If the Participant earns a fraction of a year of service, the \$1,000 amount for that year is reduced by multiplication by that fraction.

This subsection (b) shall not apply if the Participant has also been covered by an individual account plan to which the Employer contributed on his behalf, and such plan was maintained as a result of collective bargaining involving the same employee representative as this Plan.

- (c) (i) The \$90,000 limit in subsection (a)(i) and a Participant's average Compensation shall be increased in each calendar year following his termination of service with the employer for increases in the cost of living, based on the procedures used to adjust benefit amounts under 215(i)(2)(A) of the Social Security Act.
- (ii) Benefit payments that are limited by this Article shall be increased annually to the level permitted by the limitations of this Article as adjusted for later years in accordance with this subsection.
- (d) For purposes of applying the limitations of this Section with respect to a Participant of an Employer, only the benefits accrued as a result of covered service with such Employer shall be taken into account. The benefit under this Plan considered as payable with respect to a Participant and an Employer shall be determined by multiplying the Participant's total benefit by the ratio of covered service with the Employer to total covered service.
- (e) The benefit limitations applied in this Article XIII will be applied by considering the Participant's benefits, service, Plan participation and Compensation as if attributable to a single Employer, to the extent that the resulting benefits payable to the Participant are no less than what would otherwise be payable.

Section 13.2 Adjustment of Dollar Limit for Early or Late Retirement

- (a) If a Participant's benefit payments begin before the Participant's Social Security Retirement Age, but on or after age 62, the dollar limit under Section 13.1(a)(i) is reduced as follows:
 - (i) If the Participant's Social Security Retirement Age is 65, the dollar limit is reduced by 5/9 of 1% for each month by which benefits begin before the month in which the Participant reaches 65.

- (ii) If the Participant's Social Security Retirement Age is later than 65, the dollar limit is reduced by $\frac{5}{9}$ of 1% for each of the first 36 months and $\frac{5}{12}$ of 1% for each additional month (up to 24) by which benefits begin before the month of the Participant's Social Security Retirement Age.
- (b) If a Participant's benefit payments begin prior to age 62, the dollar limit is reduced to the Actuarial Equivalent, as defined in Section 13.2(f), of the benefit payable at age 62.
- (c) If a Participant's benefit payments begin after Social Security Retirement Age, the limit is increased to the Actuarial Equivalent, as defined in Section 13.2(f), of the dollar limit otherwise payable at the Social Security Retirement Age.
- (d) For purposes of this Section, Social Security Retirement Age is:
 - (i) Age 65, for a Participant born before January 1, 1938;
 - (ii) Age 66, for a Participant born after December 31, 1937 and before January 1, 1955, and
 - (iii) Age 67, for a Participant born after December 31, 1954.
- (e) In the case of a Participant employed by a tax-exempt Employer:
 - (i) If the Participant's benefit payments begin before age 65, but on or after age 62, the dollar limit is not reduced.
 - (ii) If the Participant's benefit payments begin before age 62, but on or after age 55, the dollar limit is reduced to the Actuarial Equivalent of the benefit payable at age 62, but not below \$75,000.
 - (iii) If the Participant's benefit payments begin before age 55, the dollar limit is reduced to the Actuarial Equivalent of a benefit at age 55.
 - (iv) If the Participant's benefit payments begin after age 65, the dollar limit is increased to the Actuarial Equivalent of the benefit payable at age 65.
- (f) For purposes of Sections 13.2(b),(e)(ii) and (e)(iii), Actuarial Equivalent means the lesser of (1) the equivalent amount computed using the plan rate and plan mortality table (or

plan tabular factor) used for actuarial equivalence for early retirement benefits under the plan and (2) the amount computed using 5 percent interest and the Applicable Mortality Table. For purposes of Sections 13.2(c) and (e)(iv), Actuarial Equivalent means the lesser of (1) the equivalent amount computed using the plan rate and plan mortality table (or plan tabular factor) used for actuarial equivalence for late retirement benefits under the plan and (2) the amount computed using 5 percent interest and the Applicable Mortality Table.

Section 13.3. Adjustment for Optional Payment Form

If the Participant's benefit is to be paid in any form other than a single life annuity or a Qualified Joint and Survivor Annuity the limitations in Section 13.1(a) (as otherwise modified under this Article) are applied to the annual benefit in the form of a straight life annuity commencing at the same age that is actuarially equivalent to the plan benefit. If the plan benefit is not subject to IRC Section 417(e)(3), the equivalent to the plan benefit is equal to the greater of (1) the benefit computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial equivalence for the particular form of the benefit payable, and (2) the benefit computed using a 5% interest rate and the Applicable Mortality Table. If the plan benefit is subject to IRC Section 417(e)(3), the equivalent annual benefit is equal to the greater of (1) the benefit computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial equivalence for the particular form of benefit payable, and (2) the benefit computed using the Applicable Interest Rate and the Applicable Mortality Table.

Section 13.4. Plan Aggregation

- (a) In applying the limits of this Article, the benefits and contributions to all other retirement plans sponsored by the Employer or any other member of the same controlled group shall be taken into consideration, except for multiemployer plans.
- (b) Except as noted in subsection (a), all defined benefit plans sponsored by the Employer or any other member of the same controlled group are treated as a single plan. Benefits payable under this plan with respect to a Participant shall be reduced to the extent possible before any reduction will be made in his benefits under the General Pension Plan of the International Union of Operating Engineers, if necessary to observe these limits.
- (c) For Limitation Years beginning before 2000 and except as noted in subsection (a), if a Participant is covered under one or more defined contribution plans sponsored by the

Employer or any other member of the same controlled group, his combined benefits and annual additions under all such defined benefit and defined contribution plans shall not exceed the applicable plan limits under Code Section 415(e) and the rules and regulations thereunder. If necessary to observe these limits, benefits under any other defined benefit plans will be reduced before benefits under this Plan, but benefits under this Plan will be reduced to the extent necessary if benefits under the other plans cannot be reduced.

Section 13.5. Phase-In Over Years of Service

- (a) The limit in Section 13.1(a)(ii) shall be phased in, with respect to each Participant, at the rate of 10% for each Plan Year in which the Participant earns a Vesting Service Year with the Employer, up to 100%. If the Participant earns a fraction of a Vesting Service Year, the 10% rate for the year is reduced by multiplication by that fraction.
- (b) In applying this rule to benefits under other plans with which benefits under this Plan are aggregated under Section 13.4(a), the phase in for those other plan's benefits shall be based on Vesting Service Years as defined in those other plans.

Section 13.6. Phase-In Over Years of Participation

If a Participant has fewer than ten (10) years of participation in this Plan, the dollar limitation in Section 13.1(a)(i) shall be multiplied by a fraction, the numerator of which is the Participant's total years and fractional years of participation in this Plan and the denominator of which is ten (10). The limitation thus obtained shall not be less than 10% of the dollar limitation.

Section 13.7. Limitation Year

The annual limits of this Article shall be applied on a calendar year basis.

Section 13.8. Protection of Prior Benefits

- (a) For any year before 1983, the limitations prescribed by Section 415 of the Code as in effect before enactment of the Tax Equity and Fiscal Responsibility Act of 1982 shall apply, and no benefit earned under this Plan shall be reduced on account of the provisions of this Article if it would have satisfied those limitations under the prior law.
- (b) For any year before 1992, the limitations prescribed by Section 415 of the Code as in effect before enactment of the Tax Reform Act of 1986 shall apply, and no benefit earned

under this Plan as of the close of the last Limitation Year beginning before January 1, 1987 shall be reduced on account of the provisions of this Article if it would have satisfied those limitations under the prior year.

Section 13.9. Definition of Compensation

“Compensation” means Compensation as defined in Section 415(c) of the Internal Revenue Code. Effective April 1, 1998, Compensation shall include amounts contributed by an Employer pursuant to a salary reduction agreement which are excluded from an employee’s gross income under Sections 125, 401(a)(8), 401(k) or 403(b) and effective April 1, 2001, Section 132(f) of the Internal Revenue Code.

Section 13.10. Modification of Maximum Limitations on Benefits under EGTRRA

Effective for limitation years beginning after December 31, 2001, a Participant’s accrued benefit shall not exceed the maximum permissible benefit. To the extent that any provisions of Sections 13.1 through 13.9 are inconsistent with the provisions of this Section 13.10, the provisions of this Section 13.10 shall govern.

Benefit increases resulting from the increase in the Section 415(b) of the Code limitations enacted in EGTRRA will be provided to all Participants.

For purposes of this Subsection 13.10 the following definitions shall apply:

(a) 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) of the Code will apply to limitation years ending with or within the Calendar Year for which the adjustment applies.

(b) **Maximum Permissible Benefit**

The “Maximum Permissible Benefit” is the defined benefit dollar limitation (adjusted where required, as provided in (i) and, if applicable, in (ii) or (iii) below, and limited, if applicable, as provided in (iv) below).

(i) **Fewer Than 10 Years of Participation**

If the Participant has fewer than ten (10) years of participation in the Plan, the defined benefit dollar limitation shall be multiplied by a fraction, (1) the numerator of which is the number of years (or part thereof) of participation in the Plan and (2) the denominator of which is ten (10).

(ii) **Benefits Beginning before Age 62**

If the benefit of a Participant begins before the Participant attains 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 (i) above, if required). The defined benefit dollar limitation applicable at an age before age 62 is determined as the lesser of (1) 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 the Plan, if any, for purposes of determining actuarial equivalence for the most generous early retirement benefit for which the Participant qualifies as of the Annuity Starting Date and (2) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using a 5 percent interest rate and the Applicable Mortality Table.

(iii) **Benefits Beginning after Age 65**

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 (i) above, if required). The

actuarial equivalent of the defined benefit dollar limitation applicable at an age after age 65 is determined as (1) 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 the Plan, if any, for purposes of determining actuarial equivalence for late retirement (whether or not applicable in an individual case) and (2) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using a 5 percent interest rate and the Applicable Mortality Table. For these purposes, mortality between age 65 and the age at which benefits commence shall be ignored.

(iv) **Limitation Years Beginning before January 1, 2002**

Notwithstanding the above, for limitation years beginning before January 1, 2002, the maximum permissible benefit will not exceed the defined benefit compensation limitation. In the case of a participant who has fewer than ten (10) years of service with the employer, the defined benefit compensation limitation shall be multiplied by a fraction, (1) the numerator of which is the number of years (or part thereof) of service with the employer and (2) the denominator of which is ten (10). For this purpose, the “defined benefit compensation limitation” is the limitation set forth in Section 415(b)(1)(B) of the Code, including cost-of-living adjustments under Section 415(d) of the Code for years after termination of service.

- (c) Effective for limitation years beginning after December 31, 2001, this Plan shall not be combined or aggregated with a non-multiemployer plan for purposes of applying the Section 415(b)(1)(B) of the Code Compensation limit to the non-multiemployer plan.

APPENDIX A

- (a) Effective April, 1985, where retirement occurred during the periods set forth below, the monthly retirement benefit which a retired Participant is receiving shall be increased by a percentage of the monthly retirement benefit, as stated below, depending on the year in which retirement occurred:

Plan Year Which Initial Retirement Occurred	Percent of Increase
April 1, 1984 – March 31, 1985	4%
April 1, 1983 – March 31, 1984	8%
April 1, 1982 – March 31, 1983	12%
April 1, 1981 – March 31, 1982	16%
April 1, 1980 – March 31, 1981	20%
April 1, 1979 – March 31, 1980	24%
April 1, 1978 – March 31, 1979	28%
April 1, 1977 – March 31, 1978	32%
April 1, 1976 – March 31, 1977	36%
April 1, 1975 – March 31, 1976	40%
April 1, 1974 – March 31, 1975	44%
April 1, 1973 – March 31, 1974	48%
April 1, 1972 – March 31, 1973	52%
April 1, 1971 – March 31, 1972	56%
April 1, 1970 and prior	60%

- (b) For retired Participants, Spouses and Beneficiaries on the pension rolls as of March 31, 1988, the monthly retirement benefit shall be increased \$100, beginning April 1, 1987. Notwithstanding the foregoing, the following individuals shall not be eligible for this increase:
- (i) Retirees who did not become 100% Vested as a result of working under the jurisdiction of Local 150,
 - (ii) Retirees who died on or after April 1, 1987, and prior to October 1, 1987, and
 - (iii) Surviving spouses and beneficiaries of retirees who died prior to October 1, 1987.

- (c) For retired and disabled Participants receiving pension benefits in pay status as of March 31, 1989 and who retired on or after April 1, 1988, the monthly retirement benefit shall be increased \$75. Retirees who did not become 100% Vested as a result of working under the jurisdiction of Local 150 shall not be eligible for this increase.
- (d) For retired and disabled Participants receiving pension benefits in pay status as of March 31, 1990 and who retire on or after April 1, 1989, the monthly retirement benefit shall be increased \$50. Retirees who did not become 100% Vested as a result of working under the jurisdiction of Local 150 shall not be eligible for this increase.
- (e) For retired and disabled Participants receiving pension benefits in pay status as of March 31, 1991 and who retire on or after April 1, 1990, the monthly benefit shall be increased \$25. Retirees who did not become 100% Vested as a result of working under the jurisdiction of Local 150 shall not be eligible for this increase.
- (f) The monthly increases described in paragraphs (b), (c), (d) and (e) above are independent of the Participant's Accrued Benefit and are payable for his lifetime. Upon death, if the Participant had elected the 50% or 100% Joint and Survivor Annuity, the Surviving Spouse shall receive one-half (1/2) of the increase in (b), (c), (d) or (e) above. If the Participant elected the 5 or 10 Year Certain and Life Annuity, the named Beneficiary shall receive the increase in (b), (c), (d) or (e) above for the remainder of the 60 or 120 month period (if any).
- (g) For retired and disabled Participants who retired prior to the following dates and who are still living on October 1, 1991, the monthly benefit (on form of payment elected) shall be increased as follows:

Initial Retirement Date	Monthly Pension Increase
Prior to April 1, 1971	\$150
April 1, 1971 – March 31, 1976	\$125
April 1, 1976 – March 31, 1981	\$100
April 1, 1981 – March 31, 1991	\$ 75

The above increases do not apply to Surviving Spouses and Beneficiaries receiving benefits on behalf of retirees who died prior to October 1, 1991. For those Participants retired on a Pro-Rata pension, only a Participant who attained Vested Status based on Years of Service under this Plan will qualify for the benefit.

- (h) Effective April 1, 1997, for retired and disabled Participants receiving pension benefits in pay status on April 1, 1997, an Annual Supplemental Benefit Supplement shall be payable in December of each Calendar Year for the remaining lifetime of the Participant with the amount based on the Participant's Initial Retirement Date, as follows:

Initial Retirement Date	Annual Supplemental Benefit
April 1, 1994 – March 31, 1997	\$300
April 1, 1990 – March 31, 1994	\$600
April 1, 1985 – March 31, 1990	\$900
Prior to April 1, 1985	\$1,200

This benefit shall be payable to those Participants who are retired on a Normal, Early or Disability Pension and who were active at the time of retirement (i.e., did not have a One-Year Break in Service). Only a Participant who attained Vested Status based on Years of Service under this Plan will qualify for the benefit.

In the event the retired or disabled Participant's pension benefits are suspended during a year as the result of Disqualifying Employment, the Annual Supplemental Benefit shall be pro-rated based on the number of months the Participant was entitled to pension payments during such year.

In the event a Retired or disabled Participant dies prior to the December payment date, the Annual Supplemental Benefit is no longer payable unless the form of payment elected by the Retired or disabled Participant provides for continuation to the Surviving Spouse or designated beneficiary. The Annual Supplemental Benefit shall be payable to such Surviving Spouse or designated Beneficiary in the applicable form of payment. In addition, in the year of the Participant's death, the Surviving Spouse or designated Beneficiary shall receive a pro-rata portion of the Annual Supplemental Benefit based on the number of months remaining in the year after the Participant's Death. Such benefit shall be payable the month following the Participant's death rather than as of the December payment date.

- (i) Effective April 1, 1999, for retired and disabled Participants receiving pension benefits in pay status on April 1, 1999, the Annual Supplemental Benefit shall be increased by 66-2/3%. The Annual Supplemental Benefit shall be payable in December of each Calendar Year for the remaining lifetime of the Participant, with the amount based on the Participant's Initial Retirement Date, as follows:

Initial Retirement Date	Annual Supplemental Benefit
April 1, 1994 - March 31, 1999	\$500
April 1, 1990 – March 31, 1994	\$1,000
April 1, 1985 – March 31, 1990	\$1,500
Prior to April 1, 1985	\$2,000

This benefit shall be payable to those Participants who are retired on a Normal, Early, or Disability Pension and who were active at the time of retirement (i.e., did not have a One-Year Break in Service). Only a Participant who attained Vested Status based on Years of Service under this Plan will qualify for the benefit.

In the event the retired or disabled Participant’s pension benefits are suspended during a year as the result of Disqualifying Employment, the Annual Supplemental Benefit shall be pro-rated based on the number of months the Participant was entitled to pension payments during such year.

In the event a retired or disabled Participant dies prior to the December 1st payment date, the Annual Supplemental Benefit is no longer payable unless the form of payment elected by the retired or disabled Participant provides for continuation to the Surviving Spouse or designated beneficiary. The Annual Supplemental Benefit shall be payable to such Surviving Spouse or designated Beneficiary in the applicable form of payment.

IN WITNESS HEREOF, we have affixed our signatures and approved this restated Pension Plan document this _____ day of _____, 2006.

APPROVED:

