

January 1, 2020 Summary Plan Description and Plan Document

# **Stationary Engineers Local 39 Annuity Trust Fund**

**I.U.O.E. STATIONARY ENGINEERS  
LOCAL 39**

**ANNUITY TRUST FUND**

**Summary Plan Description  
January 1, 2020**

**STATIONARY ENGINEERS LOCAL 39  
ANNUITY TRUST FUND**

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**AUDITOR**

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*This Summary Plan Description (SPD) is a brief explanation of the Annuity Plan amended and restated January 1, 2014, and all amendments thereto. This SPD should not be taken as an interpretation, extension, or any kind of change in the official .I.U.O.E. Stationary Engineers Local 39 Annuity Trust Fund itself. Your rights as an Annuity Plan Participant are governed by the official Annuity Plan Document. If any part of this SPD is inconsistent with the terms of the Annuity Plan, the actual Annuity Plan Document will govern. This SPD pertains to Annuity Plan benefits available to active Annuity Plan members. It supersedes the prior SPD for active Annuity Plan Participants, who have not retired or otherwise terminated Covered Employment before January 1, 2020.*

*No Individual may act as an Agent for the Stationary Engineers Local 39 Annuity Trust Fund unless specifically authorized in writing by the Trustees. No Employer or Union or representative of any Employer or Union, is authorized to interpret this Annuity Plan, and no individual may act as Agent of the Trustees. Only Individuals designated by the Board of Trustees are authorized to interpret this Annuity Plan within the scope of their respective authority. Only the Board of Trustees may give binding answers if you provide full and accurate information concerning your situation.*

# STATIONARY ENGINEERS LOCAL 39 ANNUITY TRUST FUND

## Summary Plan Description January 1, 2020

### To All Participants and Beneficiaries:

The I.U.O.E. Stationary Engineers Local 39 Annuity Trust Fund Plan (Annuity Plan) complements benefits available under the I.U.O.E. Stationary Engineers Local 39 Pension Plan (Pension Plan).

This updated Summary Plan Description (SPD) booklet describes the Annuity Plan as amended and restated January 1, 2014 and all amendments thereto. In addition to retirement benefits under the Pension Plan, the Annuity Plan provides benefits upon retirement, death, disability, or termination. Collective Bargaining and/or Subscriber Agreements require Employer contributions to this Annuity Plan on your behalf into Individual Accounts. You decide how your Individual Account funds are invested among the alternative investment funds available under the Plan. If you do not make an investment election, your Individual Account will be invested in the default investment option as described in the Plan.

What follows is a description highlighting the main features of the Annuity Plan. **You should refer to the Annuity Plan's underlying legal documents if you have more detailed questions or need clarification. For a copy, contact the Fund Administrator's Office listed on the previous page.**

We urge you and your family to read this booklet carefully. We also recommend keeping it handy for future reference. It contains information about what may be substantial sums of money that you or your Beneficiaries may be entitled to receive.

If you have any questions about your Annuity Plan, please contact the Fund Administrators Office.

Sincerely,

Board of Trustees

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# STATIONARY ENGINEERS LOCAL 39 ANNUITY TRUST FUND

## 1. What type of Plan is this and how do I benefit as a Participant?

The Stationary Engineers Local 39 Annuity Trust Fund, or “Annuity Plan,” is an Individual Account plan which means an account is established for you. The account consists of contributions made on your behalf through Collective Bargaining or Subscriber Agreements of participating Employers for whom you work and any earnings on the contributions.

There are some common terms used when describing the Annuity Plan provisions which are helpful to review before discussing the various Annuity Plan provisions:

**Account or Individual Account:** An account maintained by the Board of Trustees for a Participant that reflects the Participant’s interest in the Fund.

**Annuity Plan:** The Stationary Engineers Local 39 Annuity Trust Fund.

**Automatic Annuity Form:** Defines the way your benefit is paid from the Plan. There are two alternatives, both of which provide you with monthly payments for life. After starting to receive monthly payments, and if you are married at the time of your death, your surviving spouse will receive 50% of your monthly amount for life. This is called a Qualified Joint and Survivor Annuity. If you are not married, the payment is higher and stops upon your death and is called a Single Life Annuity.

**Beneficiary:** If you are married when you die, become disabled, or retire, your Beneficiary is automatically your spouse unless you and your spouse (by written consent) designate another person as the Beneficiary. If you are not married, your Beneficiary is whomever you designate. It is important to always have an updated designated Beneficiary form on file at all times with the Trust Fund Office. If you do not designate a Beneficiary, when you die your account balance will be distributed equally between your children. If you don’t have children, your estate will receive your account balance.

**Benefit Payment Date:** Either the first day an annuity payment starts or the first day you are eligible and elect to receive payment from your account balance.

**Collective Bargaining Agreement:** An agreement between an Employer and the Union under which the Employer agrees to be obligated to make contributions to the Annuity Plan on behalf of its Covered Employees.

**Fast Fact:**  
**The Stationary Local 39 Annuity Trust Fund is referred to as the Annuity Plan in this document.**

**Covered Employee:** You are considered a covered Employee if you work for an Employer who is obligated to make contributions on your behalf through Collective Bargaining or Subscriber Agreements.

**Covered Employment:** Means employment covered under the terms of the Collective Bargaining Agreement or a Subscriber's Agreement between the Employer and the Board of Trustees, and pursuant to which the Employer is required to make contributions to the Annuity Plan.

**Disabled:** Disabled means that you are entitled to receive Social Security Disability Benefits, are qualified for California State Disability Insurance, or for Workers' Compensation benefits for at least six months or other criteria as defined in the Plan.

**Non-elective Contributions:** The contributions Employers have agreed to make in accordance with Collective Bargaining or Subscriber Agreements.

**Normal Retirement Date:** You reach your normal retirement date at age 60.

**Optional Form of Payment:** Provided you make a Qualified Election, you may elect to receive distributions as a lump sum payment, in regular installments, or any other form of payments available from time to time.

**Participant:** Includes any current or past employee of a participating Employer who has an Individual Account under the Annuity Plan.

**Pension Enhancement Option:** Is a provision of the Stationary Engineers Local 39 Pension Plan that allows you to rollover some or all of your Individual Account balance (not less than \$10,000) for the purpose of providing additional monthly retirement income from the Pension Plan. The Pension Plan has restrictions on when it will accept a transfer from the Annuity Plan depending on the type of retirement under the Pension Plan.

**Qualified Election:** Means an election that is made during the qualified election period. You are required to elect the Optional Form of Payment, or if married any payment form other than a 50 percent or 75 percent Qualified Joint and Survivor Annuity. If you are married, your spouse will have to consent to the optional form of payment.

**Rollover Contributions:** A direct transfer of an account balance a Participant may have from another tax-qualified plan governed under the Internal Revenue Code.

**Settlement Date:** The date a Participant terminates as a Covered Employee, as defined in the Plan, with all Employers.

**Union:** The International Union of Operating Engineers, Stationary Engineers Local 39.

## 2. How do you become a Participant in the Annuity Plan?

In general, you start participating when you begin working for Employers covered by either a Collective Bargaining Agreement or Subscriber Agreement that requires your Employer to contribute to the Annuity Plan on your behalf. There are no minimum service requirements to become a Participant and you remain a Participant as long as the Annuity Plan holds an Individual Account for you. Contributions are always 100% vested.

**Fast Fact:**  
**In general, you start participating in the Annuity Plan when you begin working for participating Employers.**

## 3. What is your Individual Account?

An Individual Account is set up for you as soon as contributions are made on your behalf. You will receive a statement from the Recordkeeper every quarter that shows all Employer contributions related to your work in the previous quarter, earnings on your accumulated value in your Account and the current value of your Account. You will begin to receive the value of your account balance when you become eligible and elect an optional form of distribution.

## 4. What determines the amount of money in my Individual Account at any time?

Your Individual Account consists of the total contributions made on your behalf, as well as investment income on those contributions, and less operating expenses. You decide how to invest the contributions in different funds offered by the Annuity Plan. The total value of the Individual Accounts fluctuates depending upon changes in the value of your underlying investments.

The Annuity Plan's operating expenses are deducted quarterly from all Accounts. All the Individual Accounts are valued daily. You may access your account by phone or via the Annuity Plan's Web site at [www.retiresmart.com](http://www.retiresmart.com)



## 5. How is my Individual Account invested?

Under the Annuity Plan, you are responsible for investment elections in a manner and form prescribed by the Fund Administrator and Recordkeeper. The Board of Trustees may periodically change current investment options and offer new investment options to you.

If you do not make an investment election, your Individual Account will be invested in the default investment option. You may change the way you invest your Individual Account and transfer funds between the investment options according to the rules and election periods communicated to you by the Fund Administrator and/or Recordkeeper.

Your rights to your Individual Account are protected and administered in accordance with Federal Laws and Regulations that pertain specifically to this type of annuity plan.

**Fast Fact:**  
**If you fail to make an investment election, there will be a default investment made for your account.**

## 6. What should I do if the statement does not show contributions from my Employer(s)?

After carefully reviewing your Individual Account, notify the Fund Administrator in writing immediately if you detect any errors or omissions. If you do not promptly inform the Fund Administrator, it will be more difficult for them to collect any contributions that should have been made on your behalf.

## 7. When may I receive the money in my Individual Account?

You must meet one of the following requirements referred to in the Annuity Plan as your *Settlement Date* and be terminated from Covered Employment (with all Employers) to receive money from your Individual Account:

At Your Normal Retirement Date:	If you reach age 60 and no contributions have been made to your Individual Account for at least three consecutive months.
When you begin receipt of your Pension Fund benefits:	If you are receiving a pension from the Stationary Engineers Local 39 Pension Plan, you are considered retired and may apply for the money in your Individual Account.
When you stop working in the Industry:	Regardless of your age, you may apply for the money in your Individual Account if no contributions were made to it in the previous three consecutive months.
You are disabled as defined by the Plan.	Disabled means that you are entitled to receive Social Security Disability Benefits or, regardless of age, are qualified for California State Disability Insurance, or Workers' Compensation benefits for at least six months or other criteria as defined in the Plan. You will be required to provide proof of such eligibility for disability benefits.

## 8. How will payments be made from my Individual Account?

Payment of your benefit will begin on the first day of the month following the later of:

- The month you supply a completed application for benefits and signed election form, or
- 30 days after the Annuity Plan advises you of your available payment options.

Your benefit under the Annuity Plan is paid under an *automatic annuity form* unless you elect an optional form of payment. If you are married at the time of the benefit payment date your spouse must also elect the optional form of payment.

You will receive a written explanation of the forms of payment available under the Annuity Plan between 30 to 90 days before you start receiving the payments.

If you are married, your benefits will be paid as a 50% Joint and Survivor annuity unless you choose an optional form of payment and your spouse consents to this form of payment. Your spouse's consent must acknowledge approval of the choice, and the consent form must be witnessed by a Notary Public. You may revoke your decision within the 90-day period before your annuity payments begin. The annuity pays you a fixed amount every month based on the value of your Account at retirement, for the rest of your life. If you die before your spouse, your spouse will continue to receive 50% of the monthly payment for the rest of their life.

The Annuity Plan is required by law to give you at least 30 days before you start receiving payments to change your mind after you make your decision. However, you may decide to start receiving payments before the end of the 30-day period if you—and your spouse—waive the 30-day period.

If you or your Beneficiary are eligible for more than one type of benefit under the Annuity Plan, you or your Beneficiary may choose the type of benefit to receive, but neither you nor your Beneficiary may receive more than one annuity from the Annuity Plan.

**Fast Fact:**  
**If married, your benefits will be paid as a 50% Joint and Survivor form unless you choose an optional form.**

There are special forms provided by the Fund Administrator and Recordkeeper to elect

to waive the automatic 50% Joint and Survivor Annuity form of benefit.

If you are married at the Benefit Payment Date you may elect a 75% Qualified Joint and Survivor Annuity. Your spouse must agree to this different type of payment which pays a lower initial monthly benefit. Upon the death of the Participant the spouse continues to get 75% of the monthly benefit.

If you are not married at the time of your Benefit Payment Date, your *automatic annuity form* is payable as a single life annuity. This pays you a fixed amount each month for the rest of your life.

If you and, if married, your spouse, want an alternative form of payment you may elect from any of the optional forms available at the time of retirement, including a lump sum or partial lump sum. The amount of monthly payments under alternative payment forms will be determined when you retire. You will receive this choice at least 30 days before your Benefit Payment Date to allow you to consider which option best serves your retirement needs.

If you make an election and then change your mind, you may revoke your election and choose a different form of payment any time before your benefit payment date. If you are married, you and your spouse must both provide in writing the waiver of the *automatic annuity form* described above.

If your Individual Account does not exceed \$1,000 you will receive a lump-sum payment.

If you choose a lump sum, you may elect to have your Account balance rolled over to another *qualified plan*, including an Individual Retirement Account or IRA when you retire. You should check with the Fund Administrator to determine if the plan you are considering rolling over the account balance to is a *qualified plan*.

<b>Comparison Chart of Payment Options</b>		
Option	Monthly Amount	Survivor Amount
50% Joint and Survivor Annuity	Specific dollar amount based on the value of your Account	50% of monthly payment
75 % Joint and Survivor Annuity	Lower specific dollar amount	75% of monthly payment
Single Life Annuity	Larger specific dollar amount	No monthly payment
Lump Sum	Single payment	Not applicable
Installments	Can vary based on available alternatives	As elected

Based on what the Trustees approve as appropriate for Participants of the Annuity Plan, and what the Fund Administrator or Recordkeeper can offer, you may

periodically receive additional forms of payment options from the Annuity Plan.

**9. Are there other alternatives to consider in determining the best way to receive benefits from my Individual Account?**

To provide for additional lifetime income for you and your spouse you may elect to transfer some or all of your Individual Account balance, so long as it is at least \$10,000, to the IUOE Stationary Engineers Local 39 Pension Plan under the provision referred to as Pension Enhancement Option. Your transfer will be used to determine an additional monthly retirement income in accordance with the Pension Plan.

**10. May I leave the money in my Individual Account?**

Yes. You and your spouse may leave the money in your Individual Account and take the payment later. Your Individual Account funds will continue to be invested according to the investments you elect, and your Individual Account will continue paying a share of the Annuity Plan's expenses.

**11. What happens to my Individual Account when I die?**

If you were married at least a full year before your death, your spouse may receive the money in your Individual Account as a monthly annuity payment for life. Your surviving spouse may, however, choose to receive a lump-sum payment instead of the lifetime annuity. When an annuity has been purchased, the transaction cannot be changed.

**Fast Fact:  
You may leave the money  
in your Individual Account  
and take a payment at a  
later date of your choice.**

If you are not married, or if your spouse has consented to designating another Beneficiary, that Beneficiary may choose to receive payment of your Individual Account balance as a lump sum, or as a lifetime annuity with monthly payments.

If your Beneficiary elects to take payments other than in a single lump sum distribution, there are special rules under the Annuity Plan that may affect the timing and amount of distribution made over time.

**12. How do I designate a Beneficiary for my Individual Account?**

The Annuity Plan Administrator's Office or Recordkeeper will send you a designation of Beneficiary form upon request. If you are married, your spouse is

automatically your Beneficiary. If you are married and wish to designate someone other than your legal spouse as Beneficiary, you must obtain your spouse's written consent, witnessed by a Notary Public.

If your designated Beneficiary does not survive you or if you do not designate a Beneficiary, the balance will be paid to your surviving spouse. If you are single, or your spouse dies before you, your surviving children will receive equal shares of your Individual Account balance. If you do not have any children, your estate will receive your Individual Account.

For purposes of this Annuity Plan, the Qualified Survivor Annuities and spousal consent requirements are applicable if you have been married throughout the one-year period prior to your death or the date benefit payments begin. Spousal consent rights are revocable upon divorce.

**13. What happens if I withdraw the money in my Individual Account but start working again?**

If you return to work for an Employer participating in the Annuity Plan, a new Individual Account will be set up for you.

**14. Do I have to pay taxes on the value of my Individual Account?**

The contributions and investment earnings credited to your Individual Account are not considered taxable income while you work and participate in the Annuity Plan. However, when you begin receiving payments from the Individual Account those payment amounts become taxable income. The amount of taxes you pay depends on the form of payment you elect. For example, you may delay paying taxes by rolling over your Individual Account balance into an IRA. Or you may take your benefit as a monthly annuity instead of a lump sum so you will only be taxed on the monthly amount you receive instead of paying taxes on the full lump sum distribution of your Individual Account.

Because you may owe taxes on the money you withdraw, the federal government requires a withholding tax of 20 percent to be deducted from any lump-sum payment. You can avoid this withholding tax if you ask the Trust Fund Office to directly roll over your Individual Account balance to an IRA or another qualified pension or annuity plan.

You should consult a Tax Advisor before withdrawing any money out of your Individual Account because you could face penalties for early withdrawal as well as taxes. The different payment methods can have important tax consequences.

**15. What if I fail to apply for my Individual Account or request deferred payment?**

It is very important that you apply for payment of the Individual Account balance within three months from the date you terminate employment. If you do not file an application within that time, the Board of Trustees will retain the Individual Account balance until you contact the Fund.

If you do not apply for payment of the Individual Account balance and the Board of Trustees cannot locate you, or if you request deferred payment and the Board of Trustees cannot find you, your Individual Account balance may be used to defray the Annuity Plan's administrative costs until a claim is made along with an application for payment. However, you and your Beneficiaries have the right to claim your Individual Account balance at a later date.

## **16. Can I withdraw or borrow money from my Individual Account?**

The Annuity Plan prohibits loans or hardship withdrawals from your Individual Account. The Annuity Plan is dedicated to providing you with retirement security. You can receive the Individual Account balance only when you retire, become disabled, or in the event you leave the industry. You can receive your Individual Account balance as an annuity, or if you and your spouse elect to do so, as a lump sum, or another form of payment.

**Fast Fact:  
The Annuity Plan  
prohibits loans or  
hardship  
withdrawals from  
your account.**

## **17. May I assign my Individual Account funds — or any other rights or benefits under the Annuity Plan — to anyone else?**

Neither you nor any Beneficiary may assign any Annuity Plan rights or benefits. However, your benefits are subject to Internal Revenue Code provisions for garnishment of Individual Accounts for tax purposes. Your benefits are also subject to Qualified Domestic Relations Orders under state laws. You may request the procedures for filing Qualified Domestic Relations Orders from the Fund Administrator at no charge.

## **18. Are the Annuity Plan documents available to Participants and Beneficiaries?**

Yes. Copies of the Trust Agreement, Legal Plan Document and Amendments, statements of assets and liabilities and income and expenses of the Plan, and a summary of the annual report are available at the Trust Fund Office during regular business hours. If you prefer, you may request to receive the documents by mail or email.

In addition, you may inspect copies of the Collective Bargaining Agreements and a full annual report known as the Form 5500 in writing at the office of the Fund Administrator during regular business hours. You may request to receive them by mail after paying reasonable copying fees. You should inquire about the fees before ordering copies of these documents.



## 19. How do I file a claim for Annuity Plan benefits?

To file a claim for Annuity Plan benefits you, or your authorized representative must send an application and a signed election form showing how you choose to receive benefit payments. You should request these forms from the Fund Administrator well before you want your benefits to begin. The Fund Administrator must receive the completed forms before it accepts your benefit choice as valid and begins to pay you. The Fund Administrator will not make any retroactive payments, nor will they accept benefit payment election choices retroactively.

If the Annuity Plan denies your benefit when you elected to receive it, it will inform you of its decision on your application and election within 90 days after receipt of your claim by the Annuity Plan, unless there are special circumstances which require more time for processing the claim. If you're disabled, the Annuity Plan will inform you within 45 days after receipt of your claim by the Annuity Plan, unless there are special circumstances which require more time for processing the claim.

If the Annuity Plan needs more time to process your claim, it will inform you within the initial 90-day period. If your claim is based on a disability, the Annuity Plan will inform you within the initial 45-day period. The extension notice will include the reasons for the extension and the date by which the Annuity Plan expects to make its decision.

If the application is not based on a disability, the Annuity Plan may extend the initial 90-day period for another 90 days. If the application is based on a disability as defined by the Plan, the Annuity Plan may extend the initial 45-day period up to an additional 60 days in 30-day increments.

If your application is based on a disability, the Annuity Plan may require additional information to process your application and make a determination. If the Annuity Plan needs additional information, it will inform you within 45 days. You then have up to 45 days to supply the additional information to the Annuity Plan. If you do not provide the information within this time, your application will be processed without the requested information and your application may be denied. If the Annuity Plan needs more time to process your application because it hasn't received the necessary information from you, the extension period for making the determination will be from the date the extension notice is sent to you until the date you respond to the request for additional information.

**Fast Fact:**  
**To receive any Annuity Plan benefits you need:**  
**A written application and a signed "election" form showing how you choose to receive payment.**

## **20. What If my application is denied?**

If your application for benefits is denied, you will receive a written statement that includes the following:

- The specific reason(s) for the denial
- Reference to all pertinent Plan provisions of the Annuity Plan on which the denial is based
- A description of additional information needed to reconsider your application and why the information is needed
- A statement of your right to bring a civil action under ERISA Section 502(a)
- A detailed explanation of the steps needed to appeal the decision
- A copy of any internal rule, guideline, protocol, or similar criteria that the Plan relied on, or a statement that a copy is available to you at no cost for an annuity application based on a disability as defined by the Plan.

In many cases, you can resolve disagreements about benefit eligibility or amounts informally by calling the Fund Administrator. You have the right to have your application reconsidered if a disagreement is not resolved.

## **21. Can I appeal the decision to deny my claim for annuity benefits?**

Yes. If you disagree with a denial or benefit amount, you or your authorized representative may appeal the decision in writing within 60 days and must provide any supporting documentation. If you are disabled as defined by the Plan, you or your authorized representative may appeal the decision within 180 days.

The appeal should be sent to the Board of Trustees at the Fund Administrator's office. A participant or authorized representative who appeals a denial of a claim may include a written request for a hearing before the Board of Trustees with the appeal.

You, or your authorized representative, may submit a request for a review in writing and must clearly and concisely state the reasons for disputing the denial. You must submit all relevant documents and materials with the request. You have a right to examine and obtain copies of any Annuity Plan documents relevant to your application upon request and free of charge.

You automatically waive your right to a review of the denial of benefits if you do not submit your request for a review within the appropriate 60-day, or 180 day period.

The Board of Trustees will complete a full and fair review of your application using all

the information available. The Board of Trustees will not defer to the initial decision. The Board of Trustees' decision will be final.

The Board of Trustees, or a subcommittee appointed by the Board of Trustees, will make a decision about your appeal within 60 days after receiving the appeal. If the appeal is based on a disability, the Board of Trustees will decide within 45 days after receiving the appeal. If special circumstances require more time for processing the review, the petitioner will receive a notice of the extension within the review period. If the application is not based on a disability, the Annuity Plan may extend the initial 60-day period for another 60 days. If the application is based on a disability as defined by the Plan, the Annuity Plan may extend the initial 45-day period up to an additional 60 days in 30-day increments.

The extension notice will inform the claimant why the Board of Trustees or the subcommittee need more time to decide and the date when the Board of Trustees or the subcommittee expect to make a decision. If the claimant has not submitted all the information needed to decide the appeal, the period for deciding the appeal will be counted from the date the extension notice is sent to you until the date you respond to the request for additional information. A decision will then be made within 120 days after receiving the appeal or within 90 days if the appeal is based on a disability.

When reviewing a disability annuity appeal based on a medical judgment, the Board of Trustees will consult a trained healthcare professional involved in the medical judgment. You may request the identity of the professional consulted. The consulting healthcare professional must not be the same one consulted on the initial determination or in a subordinate position with the professional consulted on the initial determination.

All decisions will be in writing. The written notice will include:

- The specific reasons for the denial.
- Reference to all pertinent Annuity Plan provisions or other documents on which the denial was based.
- A reminder that you have the right to bring a civil action under Section 502(a) of ERISA following an appeal.
- A reminder that you have the right to request a free copy of any rule, guideline, protocol, or similar criteria on which the denial of an annuity benefit was based.
- A notice that if the denial of a disability annuity was based on medical judgment, you have the right to request a free copy of an explanation of the scientific or clinical judgment on which the denial was based.

The decision made by the Board of Trustees is final and binding. The Board of Trustees' decision will be given judicial deference in any legal action unless it is found to be

arbitrary and capricious. You or your representative cannot sue the Annuity Plan to recover a claim for benefits from the Annuity Plan if you do not request a review according to the Annuity Plan's procedures.

You may not bring legal action for Annuity Plan benefits until you have exhausted the Annuity Plan's claims and appeals procedures. No legal action may be started or maintained against the Plan or Board of Trustees more than two years after a claims appeal has been denied. By participating in the Plan, to the fullest extent permitted by law, whether in court or otherwise, Participants, Beneficiaries, Covered Employees, Eligible Employees, Employees and alternate payees under a qualified domestic relations order waive any right to commence, be a party to in any way, or be an actual or putative class member of any class, collective, or representative action arising out of or relating to any dispute, claim or controversy, and Participants, Beneficiaries, Covered Employees, Eligible Employees, Employees and alternate payees under a qualified domestic relations order agree that any dispute, claim or controversy may only be initiated or maintained and decided on an individual basis.

**Note:**

**If your application for benefits is denied, you (or your authorized representative) have the right to:**

- **Submit additional proof of entitlement to benefits**
- **Examine and obtain copies of any Annuity Plan documents related to your application upon request, free of charge**

## **DISCLAIMER**

This Summary Plan Description (SPD) is a brief explanation of Annuity Plan as amended and restated January 1, 2014 and all amendments thereto. This SPD should not be taken as an interpretation, extension, or any change in the official I.U.O.E. Stationary Engineers Local 39 Annuity Trust Fund itself. Your rights as an Annuity Plan Participant are governed by the official Annuity Plan Document. If any part of this SPD is inconsistent with the terms of the Annuity Plan, the actual Annuity Plan Document will govern. This SPD pertains to Annuity Plan benefits available to active Annuity Plan participants. It supersedes the previous SPD for active Annuity Plan Participants, who have not retired or otherwise terminated Covered Employment before January 1, 2020.

This explanation of the Annuity Plan is a brief description of key Annuity Plan provisions. It does not describe all the provisions. This summary does not interpret, extend, or change the provisions described in the legal Annuity Plan Document. Participant and Beneficiary rights should be determined by consulting the actual text of the Annuity Plan. The complete text of the Annuity Plan Document is at the end of this booklet.

The Annuity Plan Trust Agreement does not require participating Employers to make any further payments or contributions to the cost of operating the Annuity Plan, except as may be provided for in Collective Bargaining Agreements, Subscriber Agreements, and the Trust Agreement.

Only the full Board of Trustees is authorized to interpret the benefits described in this booklet. No Employer, Union, or either of their representatives are authorized to interpret the Annuity Plan on behalf of the Board, nor can they act as an Agent of the Board of Trustees. All questions should be directed to the Fund Administrator or Recordkeeper who will present the questions to the Board of Trustees.

## **INFORMATION REQUIRED BY ERISA**

### **1. NAME OF PLAN**

The name of the plan is:  
IUOE Stationary Engineers Local 39 Annuity Trust Fund

### **2. TYPE OF PLAN**

The IUOE Stationary Engineers Local 39 Annuity Trust Fund (“Annuity Plan”) is a defined contribution plan covered within the meaning of federal laws under the Employee Retirement Income Security Act of 1974 (ERISA) and not a plan covered by the termination insurance provisions of ERISA.

### **3. PLAN ADMINISTRATOR**

The Annuity Plan is administered by the Board of Trustees, equally consisting of Employee and Employer representatives:

**Name:** Board of Trustees  
**c/o BeneSys Administrators**

**Address:** 7180 Koll Center Parkway, Suite 200 Pleasanton, CA 94566

**Telephone Number:** (925) 208-2280 or (800) 622-0547

**EIN:** 94-2807340

**Plan Number:** 001

The names and business addresses of the members of the Board of Trustees are:

#### **EMPLOYER TRUSTEES**

Mr. Jim Johnson  
Able Engineering Services  
868 Folsom Street  
San Francisco, CA 94107

Mr. Danny Murtagh  
Boston Properties, Inc.  
Four Embarcadero Center  
Lobby Level Suite one  
San Francisco, CA 9411

#### **EMPLOYEE TRUSTEES**

Mr. Bart Florence  
Stationary Engineers Local 39  
1620 N. Market Blvd.  
Sacramento, CA 958

Mr. Jerry Kalmar  
Stationary Engineers Local 39  
337 Valencia Street  
San Francisco, CA 9410

BeneSys Administrators handles the administration for the Board of Trustees. BeneSys is at 7180 Koll Center Parkway, Suite 200, Pleasanton, CA 94566. The Board of Trustees also employs other service providers such as Recordkeepers, Consultants, Actuaries, Attorneys, and Accountants. All Annuity Plan benefits are provided directly from the Annuity Plan Trust Fund.

## **AGENT FOR SERVICE OF LEGAL PROCESS**

The name and address of the person designated as Agent for service of legal process is:

Bonnie Maraia  
c/o BeneSys Administrators  
7180 Koll Center Parkway, Suite 200  
Pleasanton, CA 94566  
Telephone: (925) 208-2280 or (800) 622-0547

Service of legal process also may be made upon an Annuity Plan Trustee.

## **COLLECTIVE BARGAINING AGREEMENTS**

The Annuity Plan operates in accordance with Collective Bargaining Agreements by various Employers and the International Union of Operating Engineers, Stationary Engineers Local 39. The Collective Bargaining and/or Subscriber Agreement require agreed upon contributions by Employers on a cents-per-hour basis. Employees do not contribute to the Annuity Plan.

Annuity Plan Participants or Beneficiaries may submit a written request to the Fund Administrator's Office to find out whether a particular Employer contributes to this Annuity Plan. Participants or Beneficiaries may also request a contributing Employer's address.

Agreements do not require individual Employers to contribute or pay for the cost of operating the Fund or the Annuity Plan, except as may be provided for in Collective Bargaining Agreements, Subscriber Agreements, or the Trust Agreement.

## **FISCALYEAR**

The Annuity Plan's fiscal year ends each December 31.

## **WHAT ARE MY LEGAL RIGHTS UNDER ERISA**

As a Participant in the Annuity Plan, you are entitled to certain rights and protections under Federal Law via the Employee Retirement Income Security Act of 1974, as amended, (ERISA). ERISA entitles all Annuity Plan Participants to certain rights, as outlined here.

## **INFORMATION ABOUT ANNUITY PLANS AND BENEFITS**

You have the right to:

- Examine all documents governing the Annuity Plan, including insurance contracts, Collective Bargaining Agreements, and a copy of the latest annual report or Form 5500 filed by the Annuity Plan with the U.S. Department of Labor and available at the Public Disclosure Room of the Employee Benefits Security Administration (EBSA). You may examine these documents without charge at the Fund Office and at other specified locations such as worksites and Union halls.
- You may write and request the Fund Administrator to provide copies of documents governing the operation of the Annuity Plan, including insurance contracts, Collective Bargaining Agreements, and copies of the latest annual report or Form 5500 series and updated Summary Annuity Plan Description. There may be a reasonable charge for the copies.
- Receive a summary of the Annuity Plan's annual financial report. The Fund Administrator is required by law to provide this to all Participants.
- A statement about your rights to receive an annuity at your Normal Retirement Date and, if so, what your benefits would be if you stopped working under the Annuity Plan now. If you do not have the right to an annuity, the statement will tell you how much longer you have to work to earn one. This statement must be requested in writing and may not be provided more than once every 12 months. The Annuity Plan must provide the statement free of charge

### **PRUDENT ACTIONS BY ANNUITY PLAN FIDUCIARIES**

In addition to creating rights for Annuity Plan Participants, ERISA imposes duties upon the people responsible for operating an Annuity Plan referred to as Annuity Plan fiduciaries. Annuity Plan fiduciaries have a duty to operate the plan prudently and in the best interests of you and other Annuity Plan Participants and Beneficiaries. No one, including your Employer, any other person, or your Union, may fire you or otherwise discriminate against you in any way to prevent you from obtaining an annuity benefit or exercising your rights under ERISA.

### **ENFORCE YOUR RIGHTS**

If your claim for an annuity benefit is denied or ignored, you have the right to learn why this was done, to obtain free copies of documents relating to the decision, and to appeal a denial within a certain amount of time.

Under ERISA, you can take steps to enforce the above rights. For instance, if you request a copy of the Annuity Plan documents or the latest annual report from the Annuity Plan and do not receive them within 30 days, you may file suit in a federal court.

In such a case, the court may require the Board of Trustees through the Fund Office to



provide the materials and pay you up to \$110 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the Board of Trustees.

If you have a claim for benefits that is denied or ignored you may file suit in a state or federal court. However, you may not begin any legal action, including proceedings before administrative agencies, until you have followed and exhausted the Annuity Plan's claims and appeals procedures.

In addition, if you disagree with the Annuity Plan's decision or lack thereof concerning the qualified status of a domestic relations order (QDRO), you may file suit in federal court.

If Annuity Plan fiduciaries misuse the Annuity Plan's money or if you are discriminated against for asserting your rights, you may seek help from the U.S. Department of Labor or file suit in a federal court. The court will decide who should pay court costs and legal fees. If you are successful, the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees, if, for example, it finds your claim to be frivolous.

## **ASSISTANCE WITH YOUR QUESTIONS**

If you have any questions about your Annuity Plan, you should contact the Fund Administrator at (925) 208-2280 or (800) 622-0547. If you have any questions about this statement or about your rights under ERISA, or if you need help obtaining documents from the Fund Office, you should contact the nearest office of the Employee Benefits Security Administration (EBSA), U.S. Department of Labor, listed in your telephone directory or the national office as follows:

### **National Office**

Division of Technical Assistance and Inquiries  
Employee Benefits Security Administration  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210  
866-444-3272

For more information about your rights and responsibilities under ERISA, visit [www.dol.gov/ebsa](http://www.dol.gov/ebsa).

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**I.U.O.E. STATIONARY ENGINEERS  
LOCAL 39**

**ANNUITY TRUST FUND**

**Plan Document  
January 1, 2020 Restatement  
and  
Amendments**

**STATIONARY ENGINEERS LOCAL 39 ANNUITY TRUST FUND**

**(January 1, 2014 Restatement)**

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## **PREAMBLE**

The Stationary Engineers Local 39 Annuity Trust Fund, originally effective as of October 1, 1981, is hereby amended and restated in its entirety. This amendment and restatement shall be effective as of January 1, 2014. The Plan, as amended and restated hereby, is intended to qualify as a profit-sharing plan under Code Section 401(a) and is a multiemployer plan within the meaning of Code Section 414(f). The Plan is maintained for the exclusive benefit of eligible Employees and their Beneficiaries.

Notwithstanding any other provision of the Plan to the contrary, a Participant's vested interest in his Account under the Plan on and after the effective date of this amendment and restatement shall be not less than his vested interest in his account on the day immediately preceding the effective date.

## ARTICLE I DEFINITIONS

### 1.1 Plan Definitions

As used herein, the following words and phrases have the meanings hereinafter set forth, unless a different meaning is plainly required by the context:

An "**Account**" means the account maintained by the Board of Trustees in the name of a Participant that reflects his interest in the Trust and any Sub-Accounts maintained thereunder, as provided in Article VIII.

The "**Administrator**" means the administrative manager designated by the Board of Trustees to handle the daily operations of the Trust.

An "**After-Tax Contribution**" means any after-tax employee contribution made by a Participant to the Plan as may be permitted under Article V.

The "**Beneficiary**" of a Participant means the person or persons entitled under the provisions of the Plan to receive distribution hereunder in the event the Participant dies before receiving distribution of his entire interest under the Plan.

A Participant's "**Benefit Payment Date**" means (i) if payment is made through the purchase of an annuity, the first day of the first period for which the annuity is payable or (ii) if payment is made in any other form, the first day on which all events have occurred which entitle the Participant to receive payment of his benefit.

The "**Board of Trustees**" means the joint board of Employer and Union Trustees established by the Trust Agreement, and the persons who at any time are acting in such capacity pursuant to the provisions of the Trust Agreement.

The "**Code**" means the Internal Revenue Code of 1986, as amended from time to time. Reference to a Code section includes such section and any comparable section or sections of any future legislation that amends, supplements, or supersedes such section.

The "**Collective Bargaining Agreement**" means an agreement by and between an Employer and the Union, as such agreement may be amended and modified from time to time, or any successor agreement thereafter entered into, that describes the terms and conditions of employment with respect to employees covered under the terms of the agreement and under the terms of which an Employer is obligated to make Employer Contributions to the Trust Fund.

A "**Contribution Period**" means the period specified in Article VI for which Employer Contributions shall be made.

A "**Covered Employee**" means any Employee, other than a Leased Employee, who is:

- (a) employed by an Employer under the terms of a Collective Bargaining Agreement and on whose behalf Employer Contributions are required to be made to the Trust Fund;
- (b) employed by the Union, upon being proposed by the Union and after acceptance by the Board of Trustees. As to such Union personnel, the Union shall be considered an Employer and shall, on account of such employment, make payments to the Trust Fund at the time and at the rate of payment not less than that made by any other Employer who is a party to the Trust Fund; and as to such Union personnel, employment by the Union shall be considered employment in the industry and covered under a Collective Bargaining Agreement; or
- (c) employed by an Employer's controlled group of trades or businesses to the extent that the member of the controlled group is required by a Subscriber's Agreement to make Employer Contributions on his behalf to the Trust Fund.

"**Covered Employment**" means employment covered under the terms of (i) the Collective Bargaining Agreement or (ii) a Subscriber's Agreement between the Employer and the Board of Trustees, and pursuant to which the Employer is required to make Employer Contributions to the Trust Fund.

An "**Eligible Employee**" means any Covered Employee who has met the eligibility requirements of Article III to participate in the Plan.

The "**Eligibility Service**" of an Employee means the period or periods of service credited to him under the provisions of Article II for purposes of determining his eligibility to participate in the Plan as may be required under Article III.

An "**Employee**" means any common law employee of an Employer or a Related Company and any Leased Employee.

An "**Employer**" means (i) a company or business that is required by the Collective Bargaining Agreement to make Employer Contributions to the Trust Fund on behalf of its Employees covered under the terms of the Collective Bargaining Agreement; (ii) the Union to the extent that it makes payments to the Trust Fund on behalf of its Employees pursuant to regulations adopted by the Board of Trustees; and (iii) a member of an individual Employer's controlled group of trades or businesses to the extent that it is required by a Subscriber's Agreement to make payments on behalf of its Employees to the Trust Fund.

An "**Employer Contribution**" means the amount, if any, that an Employer is obligated to contribute to the Trust Fund pursuant to the terms of the Collective Bargaining

Agreement or the Subscriber's Agreement, as may be provided under Article VI or Article XXII.

An "**Enrollment Date**" means the day immediately following the date the Covered Employee first satisfies the requirements of Section 3.1.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended from time to time. Reference to a section of ERISA includes such section and any comparable section or sections of any future legislation that amends, supplements, or supersedes such section.

The "**General Fund**" means a Trust Fund maintained by the Board of Trustees as required to hold and administer any assets of the Trust that are not allocated among any separate Investment Funds as may be provided in the Plan or the Trust Agreement. No General Fund shall be maintained if all assets of the Trust are allocated among separate Investment Funds.

A "**Highly Compensated Employee**" means any Covered Employee who is a "highly compensated active employee" as defined hereunder.

A "highly compensated active employee" includes any Employee who performs services for an Employer or any Related Company during the Plan Year and who (i) was a five percent owner at any time during the Plan Year or the "look back year" or (ii) received "compensation" from the Employers and Related Companies during the "look back year" in excess of the dollar amount in effect under Code Section 414(q)(1)(B)(i) adjusted pursuant to Code Section 415(d) (e.g., \$80,000 for "look back years" beginning in 1997, adjusted using as the base period the calendar quarter ending September 30, 1996) and was in the top paid group of Employees for the "look back year". An Employee is in the top paid group of Employees if he is in the top 20 percent of the Employees of his Employer and all Related Companies when ranked on the basis of compensation paid during the "look back year".

The determination of who is a Highly Compensated Employee hereunder, including determinations as to the number and identity of Employees in the top paid group, shall be made in accordance with the provisions of Code Section 414(q) and regulations issued thereunder.

For purposes of this definition, the following terms have the following meanings:

- An Employee's "compensation" means his "415 compensation" as defined in Section 7.1.
- The "look back year" means the 12-month period immediately preceding the Plan Year.

An "**Hour of Service**" with respect to an Employee means each hour, if any, that may be credited to him in accordance with the provisions of Article II.

An "**Investment Fund**" means any separate investment Trust Fund maintained by the Board of Trustees as may be provided in the Plan or the Trust Agreement or any separate investment fund maintained by the Board of Trustees, to the extent that there are Participant Sub-Accounts under such funds, to which assets of the Trust may be allocated and separately invested.

A "**Leased Employee**" means any person (other than an "excludable leased employee") who performs services for an Employer or a Related Company (the "recipient") (other than an employee of the "recipient") pursuant to an agreement between the "recipient" and any other person (the "leasing organization") on a substantially full-time basis for a period of at least one year, provided that such services are performed under primary direction of or control by the "recipient". An "excludable leased employee" means any Leased Employee of the "recipient" who is (a) covered by a money purchase pension plan maintained by the "leasing organization" which provides for (i) a nonintegrated employer contribution on behalf of each participant in the plan equal to at least ten percent of 415 compensation (as defined in Section 7.1), (ii) full and immediate vesting, and (iii) immediate participation by employees of the "leasing organization" or (b) performs substantially all of his services for the "leasing organization" or (c) whose compensation from the "leasing organization" in each Plan Year during the four-year period ending with the Plan Year is less than \$1,000. Notwithstanding the foregoing, a person shall not be treated as an "excludable leased employee" if Leased Employees (including any individual who would otherwise be considered an "excludable leased employee") constitute more than 20 percent of the "recipient's" nonhighly compensated work force. For purposes of this Section, contributions or benefits provided to a Leased Employee by the "leasing organization" that are attributable to services performed for the "recipient" shall be treated as provided by the "recipient".

Notwithstanding the foregoing, if any person who performed services for a "recipient" pursuant to an agreement between the "recipient" and the "leasing organization" becomes an Employee, all service performed by such person for the "recipient" shall be treated as employment with an Employer as a Covered Employee, even if performed on less than a full-time basis, for less than a full year, or while an "excludable leased employee."

A "**Nonelective Contribution**" means any Employer Contribution made to the Plan as provided in Article VI that is not contingent upon a Participant's "elective contributions" or "employee contributions" as those terms are defined in Section 7.1.

The "**Normal Retirement Date**" of an Employee means the date he attains age 60.

A "**Participant**" means any person who has an Account in the Trust.

The "**Plan**" means the Stationary Engineers Local 39 Annuity Trust Fund, as from time to time in effect.

A "**Plan Year**" means the 12-consecutive-month period ending each December 31.

A "**Qualified Joint and Survivor Annuity**" means an immediate annuity payable at earliest retirement age under the Plan, as defined in regulations issued under Code Section 401(a)(11), that is payable for the life of a Participant with a survivor annuity payable for the life of the Participant's Spouse that is equal to at least 50 percent, but not more than 100 percent, of the amount of the annuity payable during the joint lives of the Participant and his Spouse. No survivor annuity shall be payable to the Participant's Spouse under a Qualified Joint and Survivor Annuity if such Spouse is not the same person who was the Participant's Spouse on his Benefit Payment Date.

A "**Qualified Preretirement Survivor Annuity**" means an annuity payable for the life of a Participant's surviving Spouse if the Participant dies prior to his Benefit Payment Date.

A "**Related Company**" means any corporation or business, other than an Employer, that would be aggregated with an Employer for a relevant purpose under Code Section 414, including members of an affiliated service group under Code Section 414(m), a controlled group of corporations under Code Section 414(b), or a group of trades or businesses under common control under Code Section 414(c) of which the adopting Employer is a member, and any other entity required to be aggregated with the Employer pursuant to Code Section 414(o).

A Participant's "**Required Beginning Date**" means the following:

- for a Participant who is not a "five percent owner", April 1 of the calendar year following the calendar year in which occurs the later of the Participant's (i) attainment of age 70 1/2 or (ii) Settlement Date.
- for a Participant who is a "five percent owner", April 1 of the calendar year following the calendar year in which the Participant attains age 70 1/2.

A Participant is a "five percent owner" if he is a five percent owner, as defined in Code Section 416(i) and determined in accordance with Code Section 416, but without regard to whether the Plan is top-heavy, for the Plan Year ending with or within the calendar year in which the Participant attains age 70 1/2. The Required Beginning Date of a Participant who is a "five percent owner" hereunder shall not be redetermined if the Participant ceases to be a five percent owner as defined in Code Section 416(i) with respect to any subsequent Plan Year.

A "**Rollover Contribution**" means any rollover contribution to the Plan made by a Participant as may be permitted under Article V.

The "**Settlement Date**" of a Participant means the date on which a Participant's interest under the Plan becomes distributable in accordance with Article XV.

A "**Single Life Annuity**" means an annuity payable for the life of a Participant.

Effective June 26, 2013, a "**Spouse**" means the person to whom the Participant is legally married under the laws of the state or country in which the marriage originated. Effective September 16, 2013, such a person must be recognized as the Participant's Spouse even if the marriage is not recognized under the laws of the state or country in which the Participant resides. For the period June 26, 2013 through September 15, 2013, the Sponsor may, in accordance with its internal procedures, recognize a person as a Participant's Spouse only if the marriage is also recognized under the laws of the state or country in which the Participant resides.

A "**Sub-Account**" means any of the individual sub-accounts of a Participant's Account that is maintained as provided in Article VIII.

A "**Subscriber's Agreement**" means an individual agreement between an Employer and the Trust Fund establishing and maintaining the eligibility and participation of the Employer's non-bargained employees.

The "**Trust**" means the trust, custodial accounts, annuity contracts, or insurance contracts maintained by the Board of Trustees under the Trust Agreement.

The "**Trust Agreement**" means the Agreement and Declaration of Trust entered into as of January 1, 1982, establishing the Stationary Engineers Local 39 Annuity Trust Fund, and any modification, amendment, extension, or renewal thereof.

A "**Trust Fund**" means the Stationary Engineers Local 39 Annuity Trust Fund and its trust estate.

"**Union**" means the International Union of Operating Engineers, Stationary Engineers Local 39.

A "**Valuation Date**" means each day of the Plan Year.

The "**Vesting Service**" of an Employee means the period or periods of service credited to him under the provisions of Article II for purposes of determining his vested interest in his Employer Contributions Sub-Account.

## **1.2 Interpretation**

Where required by the context, the noun, verb, adjective, and adverb forms of each defined term shall include any of its other forms. Wherever used herein, the masculine

pronoun shall include the feminine, the singular shall include the plural, and the plural shall include the singular.



## **ARTICLE II SERVICE**

### **2.1 Crediting of Hours of Service**

Because there are no Hour of Service requirements under the Plan, there shall be no Hours of Service credited under the Plan.

### **2.2 Eligibility Service**

Because there are no Eligibility Service requirements to participate in the Plan, there shall be no Eligibility Service credited under the Plan.

### **2.3 Vesting Service**

Because contributions to the Plan are always 100 percent vested, there shall be no Vesting Service credited under the Plan.

## **ARTICLE III ELIGIBILITY**

### **3.1 Eligibility**

Each Covered Employee who was an Eligible Employee immediately prior to January 1, 2014 shall continue to be an Eligible Employee on January 1, 2014.

Each other Employee shall become an Eligible Employee as of the applicable Enrollment Date upon becoming a Covered Employee.

### **3.2 Transfers of Employment**

If an Employee is transferred or re-transferred directly to Covered Employment from employment with an Employer or Related Company other than Covered Employment, he shall become an Eligible Employee as of the date he is so transferred.

### **3.3 Reemployment**

If a person who terminated Covered Employment is reemployed in Covered Employment, he shall again become an Eligible Employee on the date he is reemployed.

### **3.4 Notification Concerning New Eligible Employees**

Each Employer shall notify the Administrator as soon as practicable of Employees becoming Eligible Employees as of any date.

### **3.5 Effect and Duration**

Upon becoming an Eligible Employee, an Employee shall be entitled to receive allocations of Employer Contributions in accordance with the provisions of Article VI (provided he meets any applicable requirements thereunder) and shall be bound by all the terms and conditions of the Plan and the Trust Agreement. A person shall continue as an Eligible Employee eligible to participate in allocations of Employer Contributions only so long as he continues in Covered Employment. All determinations with respect to the eligibility of an Employee to become a Participant under the Plan shall be made by the Board of Trustees on the basis of the records of the Employers and the Union, and all determinations so made shall be final and conclusive for all Plan purposes.

**ARTICLE IV**  
**NO 401(K) CONTRIBUTIONS**

**4.1 No Cash or Deferred Arrangement**

The Plan does not include a cash or deferred arrangement under Code Section 401(k).

**ARTICLE V**  
**AFTER-TAX AND ROLLOVER CONTRIBUTIONS**

**5.1 No After-Tax Contributions**

There shall be no After-Tax Contributions made to the Plan and no After-Tax Contributions may be transferred to the Plan.

**5.2 Rollover Contributions**

Subject to any restrictions contained in this Article, an Employee who is eligible to receive or receives an "eligible rollover distribution," within the meaning of Code Section 402(c)(4), or a distribution from an individual retirement account or annuity that is eligible for rollover to the Plan in accordance with the provisions of Code Section 408(d)(3)(B) may elect to make a Rollover Contribution to the Plan. The Administrator may require an Employee to provide it with such information as it deems necessary or desirable to show that he is entitled to roll over such distribution to a qualified retirement plan. An Employee shall make a Rollover Contribution to the Plan by delivering or causing to be delivered to the Trust Fund the cash that constitutes the Rollover Contribution amount.

**5.3 Direct Rollovers to Plan**

The Plan will accept "eligible rollover distributions" that are rolled over directly to the Plan ("direct rollovers") from the following:

- a qualified plan described in Code Section 401(a) or 403(a), excluding amounts attributable to designated Roth contributions, as described in Code Section 402A, and after-tax employee contributions
- an individual retirement account or annuity described in Code Section 408(a) or 408(b), excluding amounts attributable to designated Roth contributions, as described in Code Section 402A, and after-tax employee contributions

**5.4 Participant Rollovers to Plan**

The Plan will accept "eligible rollover distributions" that are first distributed to an Employee ("participant rollovers") from the following:

- a qualified plan described in Code Section 401(a) or 403(a), excluding amounts attributable to designated Roth contributions, as described in Code Section 402A, or after-tax employee contributions

- an individual retirement account or annuity described in Code Section 408(a) or 408(b), excluding amounts attributable to designated Roth contributions, as described in Code Section 402A, and after-tax employee contributions

An Employee who received a distribution that he is rolling over to the Plan, must deliver the cash constituting his Rollover Contribution to the Trust Fund within 60 days of receipt of the eligible rollover distribution. Such delivery must be made in the manner prescribed by the Administrator.

### **5.5 Restrictions on Rollover Contributions**

Rollover Contributions to the Plan are subject to the following:

- the Plan shall not accept a Rollover Contribution of any promissory note attributable to a plan loan

### **5.6 Vesting of Rollover Contributions**

A Participant's vested interest in his Rollover Contributions Sub-Account shall be at all times 100 percent.

**ARTICLE VI  
EMPLOYER CONTRIBUTIONS**

**6.1 Contribution Period**

The Contribution Period for Employer Contributions under the Plan is as specified in the applicable Collective Bargaining Agreement or Subscriber's Agreement.

**6.2 Nonelective Contributions**

Each Employer shall make a Nonelective Contribution to the Plan for the Contribution Period on behalf of each of its Eligible Employees during the Contribution Period who has met the allocation requirements for Nonelective Contributions described in this Article. The amount of such Nonelective Contribution shall be equal to the amount provided in the applicable Collective Bargaining Agreement or Subscriber's Agreement.

**6.3 Verification of Amount of Employer Contributions by the Board of Trustees**

The Board of Trustees shall verify the amount of Employer Contributions to be made by each Employer in accordance with the provisions of the Plan. Notwithstanding any other provision of the Plan to the contrary, the Board of Trustees shall determine the portion of the Employer Contribution to be made by each Employer with respect to an Employee who transfers from Covered Employment with one Employer to Covered Employment with another Employer.

**6.4 Payment of Employer Contributions**

Employer Contributions made for a Contribution Period shall be paid in cash to the Trust Fund within the period of time required under the Code in order for the contribution to be deductible by the Employer in determining its Federal income taxes for the Plan Year.

**6.5 Allocation Requirements for Employer Contributions**

A person who was an Eligible Employee at any time during a Contribution Period shall be eligible to receive an allocation of Nonelective Contributions for such Contribution Period.

Notwithstanding the foregoing or any other provision of the Plan to the contrary, Employer Contributions will be allocated as described in the applicable Collective Bargaining Agreement.

**6.6 Vesting of Employer Contributions**

A Participant's vested interest in his Employer Contributions Sub-Account shall be at all times 100 percent.

**ARTICLE VII  
LIMITATIONS ON CONTRIBUTIONS**

**7.1 Definitions**

For purposes of this Article, the following terms have the following meanings:

The "**annual addition**" with respect to a Participant for a "limitation year" means the sum of the following amounts credited to the Participant's account(s) for the "limitation year":

- (a) all employer contributions credited to the Participant's account for the "limitation year" under any qualified defined contribution plan maintained by an Employer or a Related Company, including "elective contributions" (other than "elective contributions" to an eligible deferred compensation plan under Code Section 457) and amounts attributable to forfeitures applied to reduce the employer's contribution obligation, but excluding "catch-up contributions" (within the meaning of Code Section 414(v));
- (b) all "employee contributions" credited to the Participant's account for the "limitation year" under any qualified defined contribution plan maintained by an Employer or a Related Company or any qualified defined benefit plan maintained by an Employer or a Related Company if either separate accounts are maintained under the defined benefit plan with respect to such employee contributions or such contributions are mandatory employee contributions within the meaning of Code Section 411(c)(2)(C) (without regard to whether the plan is subject to the provisions of Code Section 411);
- (c) all forfeitures credited to the Participant's account for the "limitation year" under any qualified defined contribution plan maintained by the Employer or a Related Company;
- (d) all amounts credited for the "limitation year" to an individual medical benefit account, as described in Code Section 415(l)(2), established for the Participant as part of a pension or annuity plan maintained by the Employer or a Related Company;
- (e) if the Participant is a key employee, as defined in Code Section 419A(d)(3), all amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after that date, that are attributable to post-retirement medical benefits credited for the "limitation year" to the Participant's separate account under a welfare benefit fund, as defined in Code Section 419(e), maintained by the Employer or a Related Company; and

- (f) all amounts credited to the Participant for the "limitation year" under a simplified employee pension.

Notwithstanding the foregoing, any restorative payment made to a plan by an Employer or a Related Company to make up for losses to the plan resulting from the action or non-action of a fiduciary for which there is a reasonable risk of liability for a breach of fiduciary duty under ERISA or other applicable federal or state law shall not be treated as an annual addition provided that similarly situated participants are treated similarly with respect to the restorative payment.

Except as otherwise specifically provided below, an amount will be treated as credited to a Participant's account for a "limitation year" if such amount is both (1) allocated to the Participant's account as of a date within such "limitation year" (provided that if allocation of an amount is contingent upon the satisfaction of a future condition, such amount shall not be treated as allocated for purposes of determining "annual additions" for a "limitation year" until the date all such conditions are satisfied) and (2) actually contributed to the account within the applicable period described herein. If contributions are made after the end of the applicable period, they shall be treated as credited to the Participant's account for the "limitation year" in which they are made. The applicable period for making "employee contributions" is within 30 days of the close of the "limitation year." The applicable period for making employer contributions is: (i) for contributions by a taxable entity, within 30 days of the close of the period described in Code Section 404(a)(6), as applicable to the entity's taxable year with or within which the "limitation year" ends; or (ii) for contributions by a non-taxable entity (including a governmental employer) within 15 days of the last day of the 10th calendar month following the end of the calendar year or fiscal year (as applicable, based on how the entity maintains its books) with or within which the "limitation year" ends.

Forfeitures re-allocated to a Participant's account are treated as credited to the Participant's account for the "limitation year" in which they are allocated to such account. Corrective contributions and contributions required by reason of qualified military service (as defined in Code Section 414(u)) are treated as "annual additions" for the "limitation year" to which they relate, rather than the "limitation year" in which they are made.

An "**elective contribution**" means any employer contribution made to a plan maintained by an Employer or a Related Company on behalf of a Participant in lieu of cash compensation pursuant to his election (whether such election is an active election or a passive election) to defer under any qualified CODA as described in Code Section 401(k), any simplified employee pension cash or deferred arrangement as described in Code Section 402(h)(1)(B), or any plan as described in Code Section 501(c)(18), and any contribution made on behalf of the Participant by an Employer or a Related Company for the purchase of an annuity contract under Code Section 403(b) pursuant to a salary reduction agreement. For purposes of applying the limitations described in this Article



VII, the term "elective contribution" includes designated Roth contributions and excludes "catch-up contributions" (within the meaning of Code Section 414(v)).

An "**employee contribution**" means any employee after-tax contribution allocated to an Eligible Employee's account under any qualified plan of an Employer or a Related Company.

The "**415 compensation**" of a Participant for any "limitation year" means his wages, salaries, fees for professional service, and all other amounts received for personal services actually rendered in the course of employment with an Employer or a Related Company paid to him for such "limitation year", but excluding (i) contributions (other than elective contributions described in Code Section 402(e)(3), 408(k)(6), 408(p)(2)(A)(i), or 457(b)) made on behalf of the Participant by an Employer or a Related Company to a plan of deferred compensation (including a simplified employee pension described in Code Section 408(k) or a simple retirement account described in Code Section 408(p)), whether or not qualified, to the extent that, before application of the limitations of Code Section 415 to such plan, the contributions are not includible in the gross income of the Participant for the taxable year in which contributed, (ii) any distributions from a plan of deferred compensation, whether or not qualified, (except amounts received pursuant to an unfunded non-qualified plan in the year such amounts are includible in the gross income of the Participant), (iii) amounts realized from the exercise of a non-qualified option or when restricted stock or other property held by the Participant either becomes freely transferable or is no longer subject to substantial risk of forfeiture, (iv) amounts received from the sale, exchange or other disposition of stock acquired under a qualified stock option, (v) any other amounts that receive special tax benefits, such as premiums for group term life insurance (but only to the extent that the premiums are not includible in the gross income of the Participant and are not salary reduction amounts that are described in Code Section 125), and (vi) other items that are similar to the items listed in (i) through (v) above.

"415 compensation" also includes (i) any elective deferral, as defined in Code Section 402(g)(3) and (ii) any amount contributed or deferred by the Employer or Related Company at the Participant's election which is not includable in the Participant's gross income by reason of Code Section 125, 132(f)(4), or 457. For purposes of this paragraph, amounts under a group health plan that a Participant cannot receive in cash in lieu of coverage under the group health plan because the Participant cannot certify that he has other health coverage will nevertheless be deemed to be excluded from the Participant's taxable income pursuant to Code Section 125.

Notwithstanding any other provision of the Plan to the contrary, effective for "limitation years" beginning on and after July 1, 2007, if a Participant has a severance from employment (as defined in Treasury Regulations Section 1.415(a)-1(f)(5)) with the Employer and all Related Companies, "415 compensation" does not include amounts received by the Participant following such severance from employment except amounts paid before the later of (a) the close of the "limitation year" in which the Participant's

severance from employment occurs or (b) within 2 ½ months of such severance if such amounts:

- would otherwise have been paid to the Participant in the course of his employment, are regular compensation for services during the Participant's regular working hours, compensation for services outside the Participant's regular working hours (such as overtime or shift differential pay), commissions, bonuses, or other similar compensation, and would have been included in the Participant's "415 compensation" if he had continued in employment.
- are payments for accrued bona fide sick, vacation or other leave, but only if the Participant would have been able to use such leave if his employment had continued and such amounts would have been includable in "415 compensation" if his employment had continued.

For purposes of this subsection, a Participant will not be considered to have incurred a severance from employment if his new employer continues to maintain the plan with respect to such Participant.

Notwithstanding any other provision of the Plan to the contrary, if a Participant is absent from employment as a Covered Employee to perform service in the uniformed services (as defined in Chapter 43 of Title 38 of the United States Code), his "415 compensation" will include any "differential pay", as defined hereunder, he receives or is entitled to receive from his Employer. For purposes of this paragraph, "differential pay" means any payment made to the Participant by the Employer after December 31, 2008, with respect to a period during which the Participant is performing service in the uniformed services while on active duty for a period of more than 30 days that represents all or a portion of the wages the Participant would have received if he had continued employment with the Employer as a Covered Employee.

To be included in a Participant's "415 compensation" for a particular "limitation year", an amount must have been received by the Participant (or would have been received, but for the Participant's election under Code Section 125, 132(f)(4), 401(k), 402(h)(1)(B), 403(b), 408(p)(2)(A)(i), or 457) within such "limitation year".

In no event, however, shall the "415 compensation" of a Participant taken into account under the Plan for any "limitation year" exceed the limit in effect under Code Section 401(a)(17) (\$260,000 for "limitation years" beginning in 2014, subject to adjustment annually as provided in Code Sections 401(a)(17)(B) and 415(d); provided, however, that the dollar increase in effect on January 1 of any calendar year, if any, is effective for "limitation years" beginning in such calendar year). If the "415 compensation" of a Participant is determined over a period of time that contains fewer than 12 calendar months, then the annual compensation limitation described above shall be adjusted with respect to that Participant by multiplying the annual compensation limitation in effect for the Plan Year by a fraction the numerator of which is the number of full months in the

period and the denominator of which is 12; provided, however, that no proration is required for a Participant who is covered under the Plan for fewer than 12 months.

A "**limitation year**" means the calendar year.

## **7.2 Code Section 415 Limitations on Crediting of Contributions and Forfeitures**

Notwithstanding any other provision of the Plan to the contrary, the "annual addition" with respect to a Participant for a "limitation year" shall in no event exceed the lesser of (i) the maximum dollar amount permitted under Code Section 415(c)(1)(A), adjusted as provided in Code Section 415(d) (e.g., \$52,000 for the "limitation year" beginning in 2014) or (ii) 100 percent of the Participant's "415 compensation" for the "limitation year"; provided, however, that the limit in clause (i) shall be pro-rated for any short "limitation year". The limit in clause (ii) shall not apply to any contribution to an individual medical account, as defined in Code Section 415(l), or to a post-retirement medical benefits account maintained for a key employee which is treated as an "annual addition" under Code Section 419A(d)(2).

For purposes of determining whether contributions to this multiemployer plan satisfy the above limitation, "annual additions" made on behalf of a Participant by all Employers participating in the multiemployer plan and "415 compensation" paid to such Participant by all Employers participating in the Plan shall be aggregated. However, in determining whether the "annual additions" made on behalf of a Participant to this multiemployer plan and any other defined contribution plan(s) maintained by a participating Employer (other than any other multiemployer plan) satisfy the above limitation, only "annual additions" made by the Employer (or a Related Company) to the multiemployer plan shall be aggregated with the "annual additions" to the Employer's other plan(s) and "415 compensation" shall include only compensation paid to the Participant by the Employer (or a Related Company). Multiemployer plans shall not be aggregated with one another in applying the above limitation.

If the "annual addition" to the Account of a Participant in any "limitation year" beginning on or after July 1, 2007, nevertheless exceeds the amount that may be applied for his benefit under the limitations described in clauses (i) and (ii) above, correction shall be made in accordance with the Employee Plans Compliance Resolution System, as set forth in Revenue Procedure 2013-12, or any superseding guidance.

## **7.3 Application of Code Section 415 Limitations Where Participant is Covered Under Other Qualified Defined Contribution Plan**

If a Participant is covered by any other qualified defined contribution plan (whether or not terminated) maintained by an Employer or a Related Company concurrently with the Plan, and if the "annual addition" to be made under the Plan for the "limitation year" when combined with the "annual addition" to be made under such other qualified defined contribution plan(s) would otherwise exceed the amount that may be applied for the

Participant's benefit under the limitation contained in the preceding Section, the "annual addition" to be made under the Plan shall be reduced, to the extent necessary so that the limitation in the preceding Section is satisfied.

If the "annual addition" to the Account of a Participant in any "limitation year" beginning on or after July 1, 2007, when combined with the "annual addition" made under any other qualified defined contribution plan maintained by an Employer or a Related Company nevertheless exceeds the amount that may be applied for the Participant's benefit under the limitation contained in the preceding Section, correction shall be made in accordance with the Employee Plans Compliance Resolution System, as set forth in Revenue Procedure 2013-12, or any superseding guidance.

#### **7.4 Scope of Limitations**

The Code Section 415 limitations contained in the preceding Sections shall be applicable only with respect to benefits provided pursuant to defined contribution plans described in Code Section 415(k).

**ARTICLE VIII  
TRUST FUNDS AND ACCOUNTS**

**8.1 General Fund**

The Board of Trustees shall maintain a General Fund as required to hold and administer any assets of the Trust that are not allocated among the Investment Funds as provided in the Plan or the Trust Agreement. The General Fund shall be held and administered as a separate common trust fund. The interest of each Participant or Beneficiary under the Plan in the General Fund shall be an undivided interest.

**8.2 Investment Funds**

The Board of Trustees shall determine the number and type of Investment Funds and shall communicate the same and any changes therein in writing to the Administrator. Each Investment Fund shall be held and administered as a separate common trust fund. The interest of each Participant or Beneficiary under the Plan in any Investment Fund shall be an undivided interest.

**8.3 Income on Trust**

Any dividends, interest, distributions, or other income received by the Board of Trustees with respect to any Trust Fund maintained hereunder shall be allocated by the Board of Trustees to the Trust Fund for which the income was received.

**8.4 Accounts**

As of the first date a contribution is made by or on behalf of an Employee there shall be established an Account in his name reflecting his interest in the Trust. Each Account shall be maintained and administered for each Participant and Beneficiary in accordance with the provisions of the Plan. The balance of each Account shall be the balance of the account after all credits and charges thereto, for and as of such date, have been made as provided herein.

**8.5 Sub-Accounts**

A Participant's Account shall be divided into such separate, individual Sub-Accounts as are necessary or appropriate to reflect the Participant's interest in the Trust.

**ARTICLE IX**  
**LIFE INSURANCE CONTRACTS**

**9.1 No Life Insurance Contracts**

A Participant's Account may not be invested in life insurance contracts on the life of the Participant.

**ARTICLE X**  
**DEPOSIT AND INVESTMENT OF CONTRIBUTIONS**

**10.1 Future Contribution Investment Elections**

Each Eligible Employee shall make an investment election in the manner and form prescribed by the Administrator directing the manner in which the contributions made on his behalf shall be invested. An Eligible Employee's investment election shall specify the percentage, in the percentage increments prescribed by the Administrator, of such contributions that shall be allocated to one or more of the Investment Funds with the sum of such percentages equaling 100 percent. The investment election by a Participant shall remain in effect until his entire interest under the Plan is distributed or forfeited in accordance with the provisions of the Plan or until he records a change of investment election with the Administrator, in such form as the Administrator shall prescribe. If recorded in accordance with any rules prescribed by the Administrator, a Participant's change of investment election may be implemented effective as of the business day on which the Administrator receives the Participant's instructions.

**10.2 Deposit of Contributions**

All contributions made on a Participant's behalf shall be deposited in the Trust and allocated among the Investment Funds in accordance with the Participant's currently effective investment election. If no investment election is recorded with the Administrator at the time contributions are to be deposited to a Participant's Account, his contributions shall be allocated among the Investment Funds as directed by the Administrator.

**10.3 Election to Transfer Between Funds**

A Participant may elect to transfer investments from any Investment Fund to any other Investment Fund. The Participant's transfer election shall specify either (i) a percentage, in the percentage increments prescribed by the Administrator, of the amount eligible for transfer, which percentage may not exceed 100 percent, or (ii) a dollar amount that is to be transferred. Any transfer election must be recorded with the Administrator, in such form as the Administrator shall prescribe. Subject to any restrictions pertaining to a particular Investment Fund, if recorded in accordance with any rules prescribed by the Administrator, a Participant's transfer election may be implemented effective as of the business day on which the Administrator receives the Participant's instructions.

Notwithstanding any other provision of this Section to the contrary, the Administrator may prescribe such rules restricting Participants' transfer elections as it deems necessary or appropriate to preclude excessive or abusive trading or market timing.

#### **10.4 404(c) Protection**

The Plan is intended to constitute a plan described in ERISA Section 404(c) and regulations issued thereunder. The fiduciaries of the Plan may be relieved of liability for any losses that are the direct and necessary result of investment instructions given by a Participant, his Beneficiary, or an alternate payee under a qualified domestic relations order.



**ARTICLE XI  
CREDITING AND VALUING ACCOUNTS**

**11.1 Crediting Accounts**

All contributions made under the provisions of the Plan shall be credited to Accounts in the Trust Fund by the Administrator, in accordance with procedures established in writing by the Board of Trustees, either when received or on the succeeding Valuation Date after valuation of the Trust Fund has been completed for such Valuation Date as provided in Section 11.2, as shall be determined by the Administrator.

**11.2 Valuing Accounts**

Accounts in the Trust Fund shall be valued by the Administrator on the Valuation Date, in accordance with procedures established in writing by the Board of Trustees, either in the manner adopted by the Board of Trustees or in the manner set forth in Section 11.3 as Plan valuation procedures, as determined by the Administrator.

**11.3 Plan Valuation Procedures**

With respect to the Trust Fund, the Administrator may determine that the following valuation procedures shall be applied. As of each Valuation Date hereunder, the portion of any Accounts in a Trust Fund shall be adjusted to reflect any increase or decrease in the value of the Trust Fund for the period of time occurring since the immediately preceding Valuation Date for the Trust Fund (the "valuation period") in the following manner:

- (a) First, the value of the Trust Fund shall be determined by valuing all of the assets of the Trust Fund at fair market value.
- (b) Next, the net increase or decrease in the value of the Trust Fund attributable to net income and all profits and losses, realized and unrealized, during the valuation period shall be determined on the basis of the valuation under paragraph (a) taking into account appropriate adjustments for contributions, loan payments, and transfers to and distributions, withdrawals, loans, and transfers from such Trust Fund during the valuation period.
- (c) Finally, the net increase or decrease in the value of the Trust Fund shall be allocated among Accounts in the Trust Fund in the ratio of the balance of the portion of such Account in the Trust Fund as of the preceding Valuation Date less any distributions, withdrawals, loans, and transfers from such Account balance in the Trust Fund since the Valuation Date to the aggregate balances of the portions of all Accounts in the Trust Fund similarly adjusted, and each Account in the Trust Fund shall be credited or charged with the amount of its allocated share.

#### **11.4 Finality of Determinations**

The Board of Trustees shall have exclusive responsibility for determining the value of each Account maintained hereunder. The Board of Trustees' determinations thereof shall be conclusive upon all interested parties.

#### **11.5 Notification**

Within a reasonable period of time after the end of each Plan Year quarter, the Administrator shall notify each Participant and Beneficiary of the value of his Account and Sub-Accounts as the most recent Valuation Date.

**ARTICLE XII**  
**LOANS**

**12.1 No Loans**

There shall be no loans made to Participants from the Plan.

**ARTICLE XIII  
WITHDRAWALS WHILE EMPLOYED**

**13.1 No In-Service Withdrawals**

Except as otherwise specifically provided in Article XV, no Participant who is employed by an Employer or a Related Company shall be eligible to withdraw any portion of his Account under the Plan.

**ARTICLE XIV**  
**TERMINATION OF EMPLOYMENT AND SETTLEMENT DATE**

**14.1 Termination of Employment and Settlement Date**

A Participant's Settlement Date shall occur on the date he terminates Covered Employment with all Employers under the Plan. Written notice of a Participant's Settlement Date shall be given by the Administrator to the Board of Trustees.

A Participant's vested interest in his Account shall become distributable upon:

- (a) attainment of age 60 and no Employer Contributions to the Account for at least three consecutive months;
- (b) regardless of age, there have been no Employer Contributions made to the Participant's Account for 24 consecutive calendar months;
- (c) the Participant's entitlement to a Social Security Disability Benefut under Title II of the Social Security Act;
- (d) regardless of age, on the date of application that the Participant has qualified for California State Disability Insurance or Workers' Compensation benefits for at least six months and submits one of the following:
  - (i) certification from a medical doctor (M.D.) acceptable to the Board of Trustees, on a form approval by the Board of Trustees, that the Participant has been deemed to be permanently disabled from performing work in the industry; or
  - (ii) verification of permanent disability from the industry based on a permanent disability award from Workers' Compensation; or
  - (iii) verification of waiver of life insurance premium as a result of disability under the Stationary Engineers Local 39 Health and Welfare Plan; or
- (e) receipt of a pension from the Stationary Engineers Local 39 Pension Fund.

## **ARTICLE XV DISTRIBUTIONS**

### **15.1 Distributions to Participants**

Subject to the provisions of Section 15.4, a Participant whose Settlement Date occurs shall receive distribution of his vested interest in his Account in the form provided under Article XVI beginning as soon as reasonably practicable following the later of (a) the date his Account becomes distributable, as provided in Section 14.1, or (b) the date his application for distribution is filed with the Administrator.

### **15.2 Partial Distributions to Retired or Terminated Participants**

A Participant whose Settlement Date has occurred and whose Account is distributable, as provided in Section 14.1, but who has not reached his Required Beginning Date may elect to receive distribution of all or any portion of his Account at any time prior to his Required Beginning Date in a cash withdrawal or in any other form provided in Article XVI, subject to any applicable spousal consent requirements.

### **15.3 Distributions to Beneficiaries**

Subject to the provisions of Section 15.4, if a Participant dies prior to his Benefit Payment Date, his Beneficiary shall receive distribution of the Participant's vested interest in his Account in the form provided under Article XVI beginning as soon as reasonably practicable following the date the Beneficiary's application for distribution is filed with the Administrator. If distribution is to be made to a Participant's Spouse, it shall be made available within a reasonable period of time after the Participant's death that is no less favorable than the period of time applicable to other distributions.

If a Participant dies after the date distribution of his vested interest in his Account begins under this Article, but before his entire vested interest in his Account is distributed, his Beneficiary shall receive distribution of the remainder of the Participant's vested interest in his Account beginning as soon as reasonably practicable following the Participant's date of death.

### **15.4 Code Section 401(a)(9) Requirements**

The provisions of this Section take precedence over any inconsistent provision of the Plan; provided, however, that the provisions of this Section are not intended to create additional forms of payment that are not otherwise provided under Article XVI. To the extent required under Code Section 401(a)(9), all distributions made from the Plan shall be determined and made in accordance with the provisions of Code Section 401(a)(9) and the Treasury Regulations issued thereunder, as set forth in this Section. If distribution is made through the purchase of an annuity contract, as provided in Article

XVI, the terms of such annuity contract shall satisfy the requirements of Code Section 401(a)(9) and the Treasury Regulations issued thereunder.

- (a) A Participant's vested interest in his Account shall be distributed, or begin to be distributed to the Participant no later than the Participant's Required Beginning Date.
- (b) Following the Participant's Required Beginning Date, the minimum amount that will be distributed for each "distribution calendar year", up to and including the "distribution calendar year" that includes the Participant's date of death, is the lesser of:
  - (i) the quotient obtained by dividing the Participant's "mrd account balance" by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9, Q & A-2 of the Treasury Regulations, using the Participant's age as of the Participant's birthday in the "distribution calendar year" or
  - (ii) if the Participant's sole "designated beneficiary" for a "distribution calendar year" is the Participant's Spouse, the quotient obtained by dividing the Participant's "mrd account balance" by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9, Q & A-3 of the Treasury Regulations, using the Participants and Spouse's attained ages as of the Participant's and Spouse's birthdays in the "distribution calendar year".
- (c) If a Participant dies on or after his Required Beginning Date, but before his vested interest in his Account has been distributed in full, the remainder of the Participant's vested Account balance shall be distributed, or begin to be distributed to the Participant's Beneficiary as soon as reasonably practicable following the Participant's death.
- (d) The minimum amount that will be distributed to a Participant's Beneficiary for each "distribution calendar year" following the year in which the Participant's death occurs is:
  - (i) If the Participant's Beneficiary is a "designated beneficiary", the quotient obtained by dividing the Participant's "mrd account balance" by the longer of:
    - (A) the remaining life expectancy of the Participant, calculated using the age of the Participant in the year of death, reduced by one for each subsequent year or
    - (B) the remaining life expectancy of the "designated beneficiary", calculated as provided in (1) or (2) below, as applicable.

- (1) If the Participant's Spouse is his sole "designated beneficiary", the Spouse's remaining life expectancy is calculated for each "distribution calendar year" using the surviving Spouse's age as of the Spouse's birthday during that calendar year. For "distribution calendar years" after the year of the surviving Spouse's death, the remaining life expectancy is calculated using the age of the surviving Spouse as of the Spouse's birthday in the calendar year of the Spouse's death, reduced by one for each subsequent year.
  - (2) If the Participant's Spouse is not the sole "designated beneficiary", the "designated beneficiary's" remaining life expectancy is calculated for each "distribution calendar year" using his age in the calendar year following the Participant's death, reduced by one for each subsequent year.
- (ii) If the Participant's Beneficiary is not a "designated beneficiary" (determined as of September 30 of the calendar year following the year of the Participant's death), the quotient obtained by dividing the Participant's "mrd account balance" by the Participant's remaining life expectancy calculated using the age of the Participant in the calendar year of death, reduced by one for each subsequent year.
  - (iii) Minimum distribution amounts shall be determined using the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations and the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations.
- (e) If a Participant dies before his Required Beginning Date and before his vested interest in his Account has been distributed in full, the Participant's vested Account balance shall be distributed or begin to be distributed as provided below:
- (i) If distribution is to be made in a single sum payment, distribution shall be made no later than December 31 of the calendar year containing the 5th anniversary of the Participant's death; provided, however, that if the Participant's Spouse is his sole "designated beneficiary" with respect to all or any portion of the Participant's vested Account, the Spouse may elect to postpone payment until December 31 of the calendar year in which the Participant would have attained age 70 1/2, if later. The Spouse's election to defer payment must be made no later than September 30 of the calendar year that contains the 5th anniversary of the Participant's death. If a Participant's "designated beneficiary" does not wish to receive payment in a single sum, but would prefer to receive minimum payments as provided



in the following paragraph, the Participant's "designated beneficiary" must notify the Administrator of her election no later than September 30 of the calendar year following the calendar year of the Participant's death; provided, however, that if the Participant's Spouse is his sole "designated beneficiary" with respect to all or any portion of the Participant's vested Account, the Spouse must notify the Administrator of her election no later than September 30 of the calendar year in which minimum distributions would be required to commence to the Participant's Spouse under this Section or, if earlier, September 30 of the calendar year that contains the 5th anniversary of the Participant's death.

- (ii) If distribution is to be made to a Participant's "designated beneficiary" in a form other than a single sum payment, distribution shall be made in accordance with the following requirements:
  - (A) Distribution shall commence to the Participant's "designated beneficiary" no later than December 31 of the calendar year following the calendar year of the Participant's death; provided, however, that if the Participant's Spouse is his sole "designated beneficiary" with respect to all or any portion of the Participant's vested Account, the Spouse may elect to postpone commencement until December 31 of the calendar year in which the Participant would have attained age 70 1/2, if later. The Spouse's election to defer payment must be made no later than September 30 of the calendar year following the calendar year of the Participant's death.
  - (B) The minimum amount that will be distributed to the "designated beneficiary" for each "distribution calendar year" during the "designated beneficiary's" lifetime is the quotient obtained by dividing the Participant's "mrd account balance" by the "designated beneficiary's" remaining life expectancy.
  - (C) The "designated beneficiary's" remaining life expectancy is determined for the first "distribution calendar year" using the Single Life Table in Section 1.401(a)(9)-9, Q & A-1 of the Treasury Regulations, and the "designated beneficiary's" age as of his or her birthday in the calendar year immediately following the calendar year of the Participant's death. In subsequent "distribution calendar years," the "designated beneficiary's" remaining life expectancy is determined as follows:
    - (1) If the Participant's Spouse is not the Participant's sole "designated beneficiary," the "life expectancy" determined above is reduced by one for each calendar year that has

elapsed after the calendar year immediately following the calendar year of the Participant's death.

- (2) If the Participant's surviving Spouse is the Participant's sole "designated beneficiary," the "designated beneficiary's" remaining "life expectancy" shall be re-determined for each subsequent "distribution calendar year" using the Single Life Table in Section 1.401(a)(9)-9 of the Treasury Regulations, and the "designated beneficiary's" age as of the "designated beneficiary's" birthday in the "distribution calendar year."
- (iii) A Participant's Spouse qualifies as the Participant's sole "designated beneficiary" if she is entitled to the Participant's entire vested interest in his Account or his entire vested interest in a segregated portion of the Participant's Account and no other "designated beneficiary" is entitled to any portion of that interest unless the Spouse dies prior to receiving full distribution of that interest.
- (iv) If the Participant's Spouse is a sole "designated beneficiary" with respect to all or any portion of the Participant's interest and the Spouse dies after the Participant but before distributions to the Spouse begin, the rules described above shall be applied with respect to the interest for which the Spouse was the sole "designated beneficiary," substituting the date of the Spouse's death for the date of the Participant's death.
- (v) If there is no "designated beneficiary" as of September 30 of the calendar year following the calendar year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the 5th anniversary of the Participant's death.
- (f) For purposes of this Section the following terms have the following meanings:
  - (i) A Participant's "**designated beneficiary**" means the individual who is the Participant's Beneficiary under Article XVII of the Plan and is the designated beneficiary under Code Section 401(a)(9) and Treasury Regulations Section 1.401(a)(9)-4.
  - (ii) A "**distribution calendar year**" means a calendar year for which a minimum payment is required. The first year for which a minimum payment is required depends on whether distribution begins before or after the Participant's death. If distribution begins before the Participant's death, the first "distribution calendar year" is the calendar year immediately preceding the calendar year that contains the Participant's Required Beginning Date. If distribution begins after the Participant's death, the first

"distribution calendar year" is the calendar year in which distributions are required to begin under paragraph (c) of this Section.

The required minimum payment for the Participant's first "distribution calendar year" must be made on or before the Participant's Required Beginning Date. The required minimum payment for other "distribution calendar years," including the required minimum payment for the "distribution calendar year" in which the Participant's Required Beginning Date occurs, must be made on or before December 31 of that "distribution calendar year."

- (iii) A Participant's "**mrd account balance**" means the Participant's Account balance as of the last Valuation Date in the calendar year immediately preceding the "distribution calendar year" (the "valuation calendar year"), adjusted as follows:
  - (A) Such Account balance shall be increased by the amount of any contributions made and allocated or forfeitures allocated to the Account balance as of dates in the "valuation calendar year" after the Valuation Date.
  - (B) Such Account balance shall be decreased by distributions made in the "valuation calendar year" after the Valuation Date.

The Account balance for the "valuation calendar year" includes any amounts rolled over or transferred to the Plan either in the "valuation calendar year" or in the "distribution calendar year" if distributed or transferred in the "valuation calendar year."

## 15.5 Cash Outs and Participant Consent

Notwithstanding any other provision of the Plan to the contrary, if a Participant's vested interest in his Account does not exceed \$1,000, distribution of such vested interest shall be made to the Participant in a single sum payment or through a direct rollover, as described in Article XVI, as soon as reasonably practicable following his Settlement Date.

If a Participant has no vested interest in his Account on his Settlement Date, he shall be deemed to have received distribution of such vested interest on his Settlement Date.

If a Participant's vested interest in his Account exceeds \$1,000, distribution shall not commence to such Participant prior to the date he attains age 62 without the Participant's written consent and, if the Participant has a Spouse, the written consent of such Spouse. Notwithstanding the foregoing, spousal consent shall not be required if distribution is made through the purchase of a Qualified Joint and Survivor Annuity or the Spouse

cannot be located or spousal consent cannot be obtained for other reasons set forth in Code Section 401(a)(11) and regulations issued thereunder.

### **15.6 Required Commencement of Distribution**

Unless the Participant elects a later date, distribution of his vested interest in his Account shall commence to the Participant no later than 60 days after the close of the Plan Year in which occurs the latest of (i) the earlier of the Participant's Normal Retirement Date or the Participant's attainment of age 65, (ii) the tenth anniversary of the year in which the Participant commenced participation, or (iii) the Participant's Settlement Date. A Participant who does not make application for his benefit to commence shall be deemed to have elected to postpone distribution hereunder.

### **15.7 Reemployment of a Participant**

If a Participant whose Settlement Date has occurred is reemployed in Covered Employment, he shall lose his right to any distribution or further distributions from the Trust arising from his prior Settlement Date and his interest in the Trust shall thereafter be treated in the same manner as that of any other Participant whose Settlement Date has not occurred.

### **15.8 Restrictions on Alienation**

Except as provided in Code Section 401(a)(13) (relating to qualified domestic relations orders), Code Section 401(a)(13)(C) and (D) (relating to offsets ordered or required under a criminal conviction involving the Plan, a civil judgment in connection with a violation or alleged violation of fiduciary responsibilities under ERISA, or a settlement agreement between the Participant and the Department of Labor in connection with a violation or alleged violation of fiduciary responsibilities under ERISA), Treasury Regulations Section 1.401(a)-13(b)(2) (relating to Federal tax levies and judgments), or as otherwise required by law, no benefit under the Plan at any time shall be subject in any manner to anticipation, alienation, assignment (either at law or in equity), encumbrance, garnishment, levy, execution, or other legal or equitable process; and no person shall have power in any manner to anticipate, transfer, assign (either at law or in equity), alienate or subject to attachment, garnishment, levy, execution, or other legal or equitable process, or in any way encumber his benefits under the Plan, or any part thereof, and any attempt to do so shall be void.

### **15.9 Facility of Payment**

If the Administrator finds that any individual to whom an amount is payable hereunder is incapable of attending to his financial affairs because of any mental or physical condition, including the infirmities of advanced age, such amount may, in the discretion of the Administrator, be paid to such individual's court appointed guardian or to another person with a valid power of attorney. The Administrator shall make such payment only upon

receipt of written instructions to such effect from the Board of Trustees. Any such payment shall be charged to the Account from which the payment would otherwise have been paid to the individual found incapable of attending to his financial affairs and shall be a complete discharge of any liability therefor under the Plan.

If distribution is to be made to a minor Beneficiary, the Administrator may, in its discretion, pay the amount to a duly qualified guardian or other legal representative, to an adult relative under the applicable state Uniform Gifts to Minors Act, as custodian, or to a trust that has been established for the benefit of the minor. Any such payment shall be charged to the Account from which the payment would otherwise have been paid to the minor and shall be a complete discharge of any liability therefor under the Plan.

#### **15.10 Inability to Locate Payee and Non-Negotiated Checks**

If any benefit becomes payable to any person, or to the executor or administrator of any deceased person, and if that person or his executor or administrator does not present himself to the Administrator within a reasonable period after the Administrator mails written notice of his eligibility to receive a distribution hereunder to his last known address and makes such other diligent effort to locate the person as the Administrator determines, such as (1) providing a distribution notice to the lost Participant at his/her last known address by certified mail, (2) use of a commercial locator service, the internet or other general search method, or (3) use of the Social Security Administration search program, that benefit will be forfeited. However, if the payee later files a claim for that benefit, the benefit will be restored.

If a distribution check has been issued and is outstanding for more than 180 days and the Administrator has been unable to locate the payee after diligent efforts have been made to do so, then except as specifically directed by the Administrator, the amount of the check shall be re-deposited to the Plan and forfeited. However, if the payee is subsequently located, the check amount will be restored to an Account established on the payee's behalf, without adjustment for investment gains or losses since the date of issuance.

#### **15.11 Distribution Pursuant to Qualified Domestic Relations Orders**

Notwithstanding any other provision of the Plan to the contrary, if a qualified domestic relations order so provides, distribution may be made to an alternate payee pursuant to a qualified domestic relations order, as defined in Code Section 414(p), regardless of whether the Participant's Settlement Date has occurred or whether the Participant is otherwise entitled to receive a distribution under the Plan.

#### **15.12 Special Provisions Applicable to 2009 Minimum Required Distributions**

Notwithstanding any other provision of the Plan to the contrary, including the provisions of the Section 15.4, no minimum distribution shall be made to a Participant who would otherwise be required to receive such distribution from the Plan in accordance with Code

Section 401(a)(9) for the 2009 calendar year, unless the Participant elects to receive a distribution for the 2009 calendar year. If a Participant's Beneficiary is receiving a distribution that is subject to the 5-year rule (full payment must be made within 5 years of the Participant's death), the 5-year period may be determined without taking 2009 into account, thereby extending the maximum distribution period to 6 years.

Notwithstanding any other provision of the Plan to the contrary, a Participant who is to receive a minimum distribution for the 2009 calendar year may make a direct rollover of such distribution to an "eligible retirement plan" in accordance with the provisions of Section 16.7 of the Plan. Notwithstanding any other provision of that Section, such distribution shall be considered an "eligible rollover distribution" for purposes of that Section.

The provisions of this Section are effective for minimum payments made for the 2009 calendar year and do not include any minimum payment that is made in 2009, but is attributable to a different year (i.e., the Participant reached his Required Beginning Date in 2008, but payment of the 2008 minimum is not made until 2009).

## ARTICLE XVI FORM OF PAYMENT

### 16.1 Definitions

For purposes of this Article, the following terms have the following meanings:

The "**automatic annuity form**" means the form of annuity that will be purchased on behalf of a Participant unless the Participant elects another form of annuity.

A "**qualified election**" means an election that is made during the qualified election period. A "qualified election" of a form of payment other than a Qualified Joint and Survivor Annuity must include the written consent of the Participant's Spouse, if any. A Participant's Spouse will be deemed to have given written consent to the Participant's election if the Participant establishes to the satisfaction of a Plan representative that such consent cannot be obtained because the Spouse cannot be located or because of other circumstances set forth in Code Section 401(a)(11) and regulations issued thereunder. The Spouse's written consent must acknowledge the effect of the Participant's election, must, if applicable, specify the form of payment selected instead of a Qualified Joint and Survivor Annuity and that such form may not be changed (except to a Qualified Joint and Survivor Annuity) without written spousal consent, must specify any non-Spouse Beneficiary designated by the Participant and that such Beneficiary may not be changed without written spousal consent, and must be witnessed by a Plan representative or a notary public. Any written consent given or deemed to have been given by a Participant's Spouse hereunder shall be irrevocable and shall be effective only with respect to such Spouse and not with respect to any subsequent Spouse.

The "**qualified election period**" with respect to the "automatic annuity form" means the 180-day period ending on a Participant's Benefit Payment Date.

### 16.2 Normal Form of Payment

Unless a Participant, or his Beneficiary, if the Participant has died, elects an optional form of payment, distribution shall be made to the Participant, or his Beneficiary, as the case may be, through the purchase of a single premium, nontransferable annuity contract. Subject to the automatic annuity and Qualified Preretirement Survivor Annuity requirements described in this Article, a Participant, or his Beneficiary, if the Participant has died, may elect any one of the following types of annuity contracts: any form of annuity available under an insurance contract, including a 75% Qualified Joint and Survivor Annuity. Notwithstanding any other provision of this Article, a Participant's Beneficiary may not elect to receive distribution of an annuity payable over the joint lives of the Beneficiary and any other individual. The terms of any annuity contract purchased hereunder and distributed to a Participant or his Beneficiary shall comply with the requirements of the Plan.

### **16.3 Optional Forms of Payment**

Subject to the automatic annuity requirements of this Article, a Participant, or his Beneficiary, as the case may be, may make a "qualified election" to receive distribution in a single sum cash payment, installment payments or any other optional form of payments made available by the Board of Trustees.

### **16.4 Change of Election**

Subject to the automatic annuity requirements of this Article, a Participant or Beneficiary who has elected an annuity form of payment or an optional form of payment may revoke or change his election at any time prior to his Benefit Payment Date by filing his election with the Administrator in the form prescribed by the Administrator. There is no limit on the number of elections or revocations a Participant or his Beneficiary may make prior to his Benefit Payment Date.

### **16.5 Automatic Annuity Requirements**

Distribution shall be made to a Participant through the purchase of an annuity contract that provides for payment in one of the following "automatic annuity forms", unless the Participant elects a different type of annuity or elects an optional form of payment.

- (a) The "automatic annuity form" for a Participant who has a Spouse on his Benefit Payment Date is the 50 percent Qualified Joint and Survivor Annuity; provided, however, that for Plan Years beginning on and after January 1, 2007, a Participant may elect an alternative 75 percent Qualified Joint and Survivor Annuity.
- (b) The "automatic annuity form" for a Participant who does not have a Spouse on his Benefit Payment Date is the Single Life Annuity.

A Participant's election of an annuity other than the "automatic annuity form" or of an optional form of payment shall not be effective unless it is a "qualified election"; provided, however, that spousal consent shall not be required if the form of payment elected by the Participant is a Qualified Joint and Survivor Annuity. A Participant may only change his election of a form of payment pursuant to a "qualified election"; provided, however, that spousal consent shall not be required if the form of payment elected by the Participant is a Qualified Joint and Survivor Annuity.

### **16.6 Qualified Preretirement Survivor Annuity Requirements**

If a Participant who has a Spouse dies before his Benefit Payment Date, his Spouse shall receive distribution of the value of the Participant's vested interest in his Account through the purchase of an annuity contract that provides for payment over the life of the Participant's Spouse. A Participant's Spouse may elect to receive distribution under any



one of the other forms of payment available under this Article instead of in the Qualified Preretirement Survivor Annuity form.

For purposes of this Section, a Participant shall be treated as unmarried if the Participant has not been married to his Spouse throughout the one-year period ending on the Participant's date of death.

## **16.7 Direct Rollover**

Notwithstanding any other provision of the Plan to the contrary, in lieu of receiving distribution in a form of payment provided under this Article, a "qualified distributee" may elect in writing, in accordance with rules prescribed by the Administrator, to have a portion or all of any "eligible rollover distribution" paid directly by the Plan to the "eligible retirement plan" designated by the "qualified distributee". Any such payment by the Plan to another "eligible retirement plan" shall be a direct rollover.

For purposes of this Section, the following terms have the following meanings:

- (a) An "eligible retirement plan" with respect to the Participant or the Participant's Spouse or former Spouse means any of the following: (i) an individual retirement account described in Code Section 408(a), (ii) an individual retirement annuity described in Code Section 408(b), (iii) an annuity plan described in Code Section 403(a) that accepts rollovers, (iv) a qualified trust described in Code Section 401(a) that accepts rollovers, (v) an annuity contract described in Code Section 403(b) that accepts rollovers, (vi) an eligible plan under Code Section 457(b) that 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 that agrees to separately account for amounts transferred into such plan from the Plan, or (vii) effective for distributions made on or after January 1, 2008, a Roth IRA, as described in Code Section 408A, provided that, for distributions made prior to January 1, 2010, such rollover shall be subject to the limitations contained in Code Section 408A(c)(3)(B).

An "eligible retirement plan" with respect to any other "qualified distributee" means either an individual retirement account described in Code Section 408(a) or an individual retirement annuity described in Code Section 408(b) (including any such individual retirement account or annuity designated as a Roth IRA pursuant to Code Section 408A) (an "IRA"). Such IRA must be treated as an IRA inherited from the deceased Participant by the "qualified distributee" and must be established in a manner that identifies it as such.

- (b) An "eligible rollover distribution" means any distribution of all or any portion of the balance of a Participant's Account; provided, however, that an eligible rollover distribution does not include the following:

- (i) any distribution to the extent such distribution is required under Code Section 401(a)(9).
  - (ii) any distribution that is one of a series of substantially equal periodic payments made not less frequently than annually for the life or life expectancy of the "qualified distributee" or the joint lives or life expectancies of the "qualified distributee" and the "qualified distributee's" designated beneficiary, or for a specified period of ten years or more.
- (c) A "qualified distributee" means a Participant, his surviving Spouse, a Participant's Spouse or former Spouse who is an alternate payee under a qualified domestic relations order, as defined in Code Section 414(p). A "qualified distributee" also includes a Participant's non-Spouse Beneficiary who is his designated beneficiary within the meaning of Code Section 401(a)(9)(E).

### **16.8 Notice Regarding Forms of Payment**

The Administrator shall provide each Participant with a written explanation of his right to defer distribution until age 62, or such later date as may be provided in the Plan, his right to make a direct rollover, the consequences of electing an immediate distribution instead of deferring payment, and (i) the terms and conditions of the "automatic annuity form" and the other forms of payment available under the Plan, (ii) the Participant's right to choose a form of payment other than the "automatic annuity form" or to revoke such choice, and (iii) the rights of the Participant's Spouse. The Administrator shall provide such explanation within the 150-day period ending 30 days before the Participant's Benefit Payment Date. Notwithstanding the foregoing, distribution of the Participant's Account may commence fewer than 30 days after such explanation is provided to the Participant if (i) the Administrator clearly informs the Participant of his right to consider his election of whether or not to make a direct rollover or to receive a distribution prior to age 62 and his election of a form of payment for a period of at least 30 days following his receipt of the explanation, (ii) the Participant, after receiving the explanation, affirmatively elects an early distribution with his Spouse's written consent, if necessary, (iii) the Participant may revoke his election at any time prior to the later of his Benefit Payment Date or the expiration of the seven-day period beginning the day after the date the explanation is provided to him, and (iv) distribution does not commence to the Participant before such revocation period ends.

### **16.9 Reemployment**

If a Participant is reemployed in Covered Employment prior to receiving distribution of the entire balance of his vested interest in his Account, his prior election of a form of payment hereunder shall become ineffective.

## **ARTICLE XVII BENEFICIARIES**

### **17.1 Designation of Beneficiary**

The Beneficiary of a Participant who does not have a Spouse shall be the person or persons designated by such Participant in accordance with rules prescribed by the Administrator. The Beneficiary of a Participant who has a Spouse shall be his Spouse, unless the Participant designates a person or persons other than his Spouse as Beneficiary with the written consent of his Spouse. For purposes of this Section, a Participant shall be treated as not having a Spouse and such Spouse's consent shall not be required if the Participant has not been married to his Spouse throughout the one-year period ending on the earlier of (i) the Participant's date of death or (ii) his Benefit Payment Date. A Participant's designation of a Beneficiary shall be subject to the Qualified Preretirement Survivor Annuity provisions of Article XVI.

If no Beneficiary has been designated pursuant to the provisions of this Section, or if no Beneficiary survives the Participant and he has no surviving Spouse, then the Beneficiary under the Plan shall be the deceased Participant's surviving children in equal shares or, if there are no surviving children, the Participant's estate. If a Beneficiary dies after becoming entitled to receive a distribution under the Plan but before distribution is made to him in full, and if the Participant has not designated another Beneficiary to receive the balance of the distribution in that event, the estate of the deceased Beneficiary shall be the Beneficiary as to the balance of the distribution.

### **17.2 Revocation of Beneficiary Designation Upon Divorce**

Notwithstanding any other provision of this Article XVII to the contrary, if a Participant designates his or her Spouse as Beneficiary under the Plan, such designation shall automatically become null and void as of the date of any final divorce or similar decree or order unless either (i) the Participant re-designates such former Spouse as his or her Beneficiary after the date of the final decree or order or (ii) such former Spouse is designated as the Participant's Beneficiary under a qualified domestic relations order; provided, however, that such former Spouse shall be the Participant's Beneficiary under this clause only to the extent required in accordance with the qualified domestic relations order.

## **ARTICLE XVIII ADMINISTRATION**

### **18.1 Authority of the Board of Trustees**

The Board of Trustees, which shall be the administrator for purposes of ERISA and the plan administrator for purposes of the Code, shall be responsible for the administration of the Plan and, in addition to the powers and authorities expressly conferred upon it in the Plan, shall have all such powers and authorities as may be necessary to carry out the provisions of the Plan, including the power and authority to interpret and construe the provisions of the Plan, to make benefit determinations, and to resolve any disputes which arise under the Plan. The Board of Trustees may employ such attorneys, agents, and accountants as it may deem necessary or advisable to assist in carrying out its duties hereunder. The Board of Trustees shall be a "named fiduciary" as that term is defined in ERISA Section 402(a)(2). The Board of Trustees, by action in accordance with the requirements of its organizational authority, may:

- (a) allocate any of the powers, authority, or responsibilities for the operation and administration of the Plan (other than trustee responsibilities as defined in ERISA Section 405(c)(3)) among named fiduciaries; and
- (b) designate a person or persons other than a named fiduciary to carry out any of such powers, authority, or responsibilities;

except that no allocation by the Board of Trustees of, or designation by the Board of Trustees with respect to, any of such powers, authority, or responsibilities to another named fiduciary or a person other than a named fiduciary shall become effective unless such allocation or designation shall first be accepted by such named fiduciary or other person in a writing signed by it and delivered to the Board of Trustees.

### **18.2 Discretionary Authority**

In carrying out its duties under the Plan, including making benefit determinations, interpreting or construing the provisions of the Plan, making factual determinations, and resolving disputes, the Board of Trustees (or any individual to whom authority has been delegated in accordance with Section 18.1) shall have absolute discretionary authority. The decision of the Board of Trustees (or any individual to whom authority has been delegated in accordance with Section 18.1) shall be final and binding on all persons and entitled to the maximum deference allowed by law.

### **18.3 Action of the Board of Trustees**

Any act authorized, permitted, or required to be taken under the Plan by the Board of Trustees and which has not been delegated in accordance with Section 18.1, may be taken

by a majority of the members of the Board of Trustees, either by vote at a meeting, or in writing without a meeting, or by the members of the Board of Trustees that are designated by the Board of Trustees to carry out such acts on its behalf. All notices, advice, directions, certifications, approvals, and instructions required or authorized to be given by the Board of Trustees under the Plan shall be in writing and signed by either (i) a majority of the members of the Board of Trustees or by such member or members as may be designated by an instrument in writing, signed by all the members thereof, as having authority to execute such documents on its behalf, or (ii) the employee or employees authorized to act for the Board of Trustees in accordance with the provisions of this Section.

#### **18.4 Claims Review Procedure**

Except to the extent that the provisions of any Collective Bargaining Agreement provide another method of resolving claims for benefits under the Plan, the provisions of this Section shall control whenever a claim for benefits under the Plan filed by any person (referred to in this Section as the "Claimant") is denied. The provisions of this Section shall also control whenever a Claimant seeks a remedy under any provision of ERISA or other applicable law in connection with any error regarding his Account (including a failure or error in implementing investment directions) and such claim is denied.

Whenever a claim under the Plan is denied, whether in whole or in part, the Administrator shall transmit a written notice of such decision to the Claimant within 90 days of the date the claim was filed or, if special circumstances require an extension, within 180 days of such date, which notice shall be written in a manner calculated to be understood by the Claimant and shall contain a statement of (i) the specific reasons for the denial of the claim, (ii) specific reference to pertinent Plan provisions on which the denial is based, (iii) a description of any additional material or information necessary for the Claimant to perfect the claim and an explanation of why such information is necessary, (iv) that the Claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, (v) records and other information relevant to the Claimant's claim, a description of the review procedures and in the event of an adverse review decision, a statement describing any voluntary review procedures and the Claimant's right to obtain copies of such procedures, and (vi) a statement that there is no further administrative review following the initial review, and that the Claimant has a right to bring a civil action under ERISA Section 502(a) if the Board of Trustees' decision on review is adverse to the Claimant. The notice shall also include a statement advising the Claimant that, within 60 days of the date on which he receives such notice, he may obtain review of such decision in accordance with the procedures hereinafter set forth. Within such 60-day period, the Claimant or his authorized representative may request that the claim denial be reviewed by filing with the Board of Trustees a written request therefor, which request shall contain the following information:

- (a) the date on which the Claimant's request was filed with the Administrator; provided, however, that the date on which the Claimant's request for review was

- in fact filed with the Administrator shall control in the event that the date of the actual filing is later than the date stated by the Claimant pursuant to this paragraph;
- (b) the specific portions of the denial of his claim which the Claimant requests the Board of Trustees to review;
  - (c) a statement by the Claimant setting forth the basis upon which he believes the Board of Trustees should reverse the previous denial of his claim for benefits and accept his claim as made; and
  - (d) any written material (offered as exhibits) which the Claimant desires the Board of Trustees to examine in its consideration of his position as stated pursuant to paragraph (c) of this Section.

Within 60 days of the date determined pursuant to paragraph (a) of this Section or, if special circumstances require an extension, within 120 days of such date, the Board of Trustees shall conduct a full and fair review of the decision denying the Claimant's claim for benefits and shall render its written decision on review to the Claimant. The Board of Trustees' decision on review shall be written in a manner calculated to be understood by the Claimant and shall specify the reasons and Plan provisions upon which the decision was based.

### **18.5 Special Rules Applicable to Claims Related to Investment Errors**

Any person alleging that there has been a failure or error in implementing investment directions with respect to a Participant's Account must file a claim with the Administrator on or before the earlier of (a) 60 days from the mailing of a trade confirmation, account statement, or any other document, from which the error can be discovered, or (b) one year from the date of the transaction related to the error. Any claim filed outside of such period shall be limited to the benefit that would have been determined if the claim were timely filed, and therefore any adjustments shall be calculated for such period only.

### **18.6 Qualified Domestic Relations Orders**

The Board of Trustees shall establish reasonable procedures to determine the status of domestic relations orders and to administer distributions under domestic relations orders which are deemed to be qualified orders. Such procedures shall be in writing and shall comply with the provisions of Code Section 414(p) and regulations issued thereunder.

### **18.7 Prudent Man Standard of Care**

Any fiduciary under the Plan shall discharge his duties under the Plan solely in the interests of Participants and Beneficiaries and, in accordance with the requirements of

ERISA Section 404(a)(1)(B), with the care, skill, prudence, and diligence under the prevailing circumstances that a prudent man acting in a like capacity and familiar with such matters would use in conducting an enterprise of like character with like aims.

### **18.8 Actions Binding**

Subject to the provisions of Section 18.4, any action taken by the Board of Trustees which is authorized, permitted, or required under the Plan shall be final and binding upon the Employers, the Administrator, the Union, all persons who have or who claim an interest under the Plan, and all third parties dealing with the Employers or the Board of Trustees.

**ARTICLE XIX  
AMENDMENT AND TERMINATION**

**19.1 Amendment**

Subject to the provisions of Section 19.2, the Board of Trustees may at any time and from time to time, by action in accordance with the requirements of its organizational authority, amend the Plan, either prospectively or retroactively. Any such amendment shall be by written instrument executed by the Board of Trustees.

**19.2 Limitation on Amendment**

The Board of Trustees shall make no amendment to the Plan that decreases the accrued benefit of any Participant or Beneficiary, except that nothing contained herein shall restrict the right to amend the provisions of the Plan relating to the administration of the Plan and Trust. Moreover, no such amendment shall be made hereunder which shall permit any part of the Trust to revert to an Employer or any Related Company or be used or be diverted to purposes other than the exclusive benefit of Participants and Beneficiaries. The Board of Trustees shall make no retroactive amendment to the Plan unless such amendment satisfies the requirements of Code Section 401(b) and/or Treasury Regulations Section 1.401(a)(4)-11(g), as applicable.

**19.3 Termination**

Subject to the terms of any Collective Bargaining Agreement, the Board of Trustees reserves the right, by action in accordance with the requirements of its organizational authority, to terminate the Plan as to all Employers at any time (the effective date of such termination being hereinafter referred to as the "termination date"). Upon any such termination of the Plan, the following actions shall be taken for the benefit of Participants and Beneficiaries:

- (a) As of the termination date, each Investment Fund shall be valued and all Accounts and Sub-Accounts shall be adjusted in the manner provided in Article XI, with any unallocated contributions or forfeitures being allocated as of the termination date in the manner otherwise provided in the Plan. In determining the net worth of the Trust, there shall be included as a liability such amounts as shall be necessary to pay all expenses in connection with the termination of the Trust and the liquidation and distribution of the property of the Trust, as well as other expenses, whether or not accrued, and shall include as an asset all accrued income.
- (b) All Accounts shall then be disposed of to or for the benefit of each Participant or Beneficiary in accordance with the provisions of Article XV as if the termination date were his Settlement Date.



Notwithstanding anything to the contrary contained in the Plan, upon any such Plan termination, the vested interest of each Participant and Beneficiary in his Employer Contributions Sub-Account shall be 100 percent; and, if there is a partial termination of the Plan, the vested interest of each Participant and Beneficiary who is affected by the partial termination in his Employer Contributions Sub-Account shall be 100 percent. For purposes of the preceding sentence only, the Plan shall be deemed to terminate automatically if there shall be a complete discontinuance of contributions hereunder by all Employers.

#### **19.4 Inability to Locate Payee on Plan Termination**

If distribution of a Participant's Account is to be made to the Participant, his Beneficiary, or an alternate payee under a qualified domestic relations order (a "payee") on account of the termination of the Plan, and such payee does not present himself to the Administrator within a reasonable period after the Administrator mails written notice of his eligibility to receive a distribution hereunder to his last known address and makes such other diligent effort to locate the person as the Administrator determines, distribution of such Account shall be made at the direction of the Administrator through a direct rollover to an individual retirement plan established on behalf of the payee with a provider selected by the Administrator, or purchase of an annuity contract on behalf of the payee, or transfer to another "eligible retirement plan", as defined in Section 16.7.

Effective for distributions made after the date final regulations implementing ERISA Section 4050(d) are prescribed, upon termination of the Plan, distribution of the Account of a missing payee may, at the discretion of the Administrator, be made to the Pension Benefit Guaranty Corporation missing participant program.

#### **19.5 Reorganization**

The merger, consolidation, or liquidation of any Employer with or into any other Employer or a Related Company shall not constitute a termination of the Plan as to such Employer.

#### **19.6 Withdrawal of an Employer**

An Employer who has adopted the Plan as may be provided under Article XX may withdraw from the Plan at any time upon notice in writing to the Administrator (the effective date of such withdrawal being hereinafter referred to as the "withdrawal date"), and shall thereupon cease to be an Employer for all purposes of the Plan. An Employer shall be deemed automatically to withdraw from the Plan in the event of its complete discontinuance of contributions. Upon the withdrawal of an Employer, the withdrawing Employer shall determine whether a partial termination has occurred with respect to its Employees. In the event that the withdrawing Employer determines a partial termination has occurred, the action specified in Section 19.3 shall be taken as of the withdrawal date, as on a termination of the Plan, but with respect only to Participants who are employed

solely by the withdrawing Employer. The Board of Trustees shall thereafter transfer, deliver, and assign Trust Fund assets allocable to the Participants of such Employer to such new trustee or insurer as shall have been designated by such Employer in the event that it has established a separate qualified retirement plan for its employees, provided, however, that no such transfer shall be made that results in the elimination or reduction of any Code Section 411(d)(6) protected benefits. If no successor is designated, the Board of Trustees shall retain such assets for the Employees of such Employer. The interest of any Participant employed by the withdrawing Employer who is transferred to or continues in Covered Employment, and the interest of any Participant employed solely by an Employer other than the withdrawing Employer, shall remain unaffected by such withdrawal; no adjustment to his Accounts shall be made by reason of the withdrawal; and he shall continue as a Participant hereunder subject to the remaining provisions of the Plan.

**ARTICLE XX**  
**ADOPTION BY OTHER ENTITIES**

**20.1 Adoption Only Pursuant to Agreement**

An entity that is not a participating Employer may only become an Employer hereunder by adopting a Collective Bargaining Agreement or entering into a Subscriber's Agreement approved by the Board of Trustees. Any such agreement shall specify the effective date of the adoption.

**20.2 Effective Plan Provisions**

An Employer who adopts the Plan shall be bound by the provisions of the Plan in effect at the time of the adoption and as subsequently in effect because of any amendment to the Plan.

**ARTICLE XXI  
MISCELLANEOUS PROVISIONS**

**21.1 No Commitment as to Employment**

Nothing contained herein shall be construed as a commitment or agreement upon the part of any person to continue his employment with an Employer, or as a commitment on the part of any Employer to continue the employment, compensation, or benefits of any person for any period.

**21.2 Benefits**

Nothing in the Plan or the Trust Agreement shall be construed as giving any Participant or any other person, firm, or corporation, any legal or equitable right as against the Employers, their officers, employees, or directors, or as against the Board of Trustees, except such rights as are specifically provided for in the Plan or Trust Agreement or hereafter created in accordance with the terms and provisions of the Plan.

**21.3 No Guarantees**

The Employers, the Administrator, and the Board of Trustees do not guarantee the Trust from loss or depreciation, nor do they guarantee the payment of any amount which may become due to any person hereunder.

**21.4 Expenses**

The expenses of administration of the Plan, including the expenses of the Administrator and fees of the Board of Trustees, shall be paid from the Trust as a general charge thereon. Notwithstanding the foregoing, the Board of Trustees may direct that administrative expenses that are allocable to the Account of a specific Participant shall be paid from that Account and that the costs incident to the management of the assets of an Investment Fund or to the purchase or sale of securities held in an Investment Fund shall be paid from such Investment Fund.

**21.5 Precedent**

Except as otherwise specifically provided, no action taken in accordance with the Plan shall be construed or relied upon as a precedent for similar action under similar circumstances.

**21.6 Duty to Furnish Information**

The Employers, the Administrator, and the Board of Trustees shall furnish to any of the others any documents, reports, returns, statements, or other information that the other reasonably deems necessary to perform its duties hereunder or otherwise imposed by law.

### **21.7 Merger, Consolidation, or Transfer of Plan Assets**

The Plan shall not be merged or consolidated with any other plan, nor shall any of its assets or liabilities be transferred to another plan, unless, immediately after such merger, consolidation, or transfer of assets or liabilities, each Participant in the Plan would receive a benefit under the Plan which is at least equal to the benefit he would have received immediately prior to such merger, consolidation, or transfer of assets or liabilities (assuming in each instance that the Plan had then terminated).

Any transfer of assets from the Plan to a nonqualified foreign trust or to a plan that satisfies Section 1165 of the Puerto Rico Code shall be treated as a distribution from the Plan and may not be made unless there has been a distribution event in accordance with the terms of the Plan.

### **21.8 Back Pay Awards**

The provisions of this Section shall apply only to an Employee or former Employee who becomes entitled to back pay by an award or agreement of an Employer without regard to mitigation of damages. If a person to whom this Section applies was or would have become an Eligible Employee after such back pay award or agreement has been effected and if any such Employee or former Employee would have been eligible to participate in the allocation of Employer Contributions under the provisions of Article VI or XXII for any prior Plan Year after such back pay award or agreement has been effected, his Employer shall make an Employer Contribution equal to the amount of the Employer Contribution which would have been allocated to such Participant under the provisions of Article VI or XXII as in effect during each such Plan Year. The amounts of such additional contributions shall be credited to the Account of such Participant. Any additional contributions made pursuant to this Section shall be made in accordance with, and subject to the limitations of the applicable provisions of the Plan.

### **21.9 Condition on Employer Contributions**

Notwithstanding anything to the contrary contained in the Plan or the Trust Agreement, any contribution of an Employer hereunder is conditioned upon the continued qualification of the Plan under Code Section 401(a), the exempt status of the Trust under Code Section 501(a), and the deductibility of the contribution under Code Section 404. Except as otherwise provided in this Section and Section 21.10, however, in no event shall any portion of the property of the Trust ever revert to or otherwise inure to the benefit of an Employer or any Related Company.

### **21.10 Return of Contributions to an Employer**

The Trust shall be for the exclusive benefit of Participants and persons claiming under or through them. All contributions pursuant hereof shall be based on the facts then

understood by the Board of Trustees and shall be conditioned upon the initial qualification of the Trust Agreement and Plan under Code Sections 401 and 501(a). Except as otherwise specifically provided herein, all such contributions shall be irrevocable and such contributions as well as the Trust, or any portion of the principal or income thereof, shall never revert to or inure to the benefit of the Employers or any Related Company.

Notwithstanding any other provision of the Plan or the Trust Agreement to the contrary, in the event any contribution of an Employer made hereunder is made under a mistake of fact such contribution, reduced for any losses experienced by the Trust Fund, may be returned to the Employer within 6 months after the payment of the contribution. In the event the Plan does not initially qualify under Code Section 401(a), any contribution of an Employer made hereunder may be returned to the Employer within one year of the date of denial of the initial qualification of the Plan, but only if an application for determination was made within the period of time prescribed under ERISA Section 403(c)(2)(B).

The Board of Trustees shall determine, in its sole discretion, whether the contributions described above shall be returned to an Employer. If any such contributions are to be returned, the Board of Trustees shall so direct the Administrator, in writing, no later than ten days prior to the last day upon which they may be returned.

#### **21.11 Validity of Plan**

The validity of the Plan shall be determined and the Plan shall be construed and interpreted in accordance with the laws of the state or commonwealth in which the Board of Trustees has its principal place of business, except as preempted by applicable Federal law. The invalidity or illegality of any provision of the Plan shall not affect the legality or validity of any other part thereof.

#### **21.12 Trust Agreement**

The Trust Agreement and the Trust maintained thereunder shall be deemed to be a part of the Plan as if fully set forth herein and the provisions of the Trust Agreement are hereby incorporated by reference into the Plan.

#### **21.13 Parties Bound**

The Plan shall be binding upon the Employers, all Participants and Beneficiaries hereunder, and, as the case may be, the heirs, executors, administrators, successors, and assigns of each of them.

#### **21.14 Application of Certain Plan Provisions**

For purposes of the general administrative provisions and limitations of the Plan, a Participant's Beneficiary or alternate payee under a qualified domestic relations order shall be treated as any other person entitled to receive benefits under the Plan. Upon any termination of the Plan, any such Beneficiary or alternate payee under a qualified domestic relations order who has an interest under the Plan at the time of such termination, which does not cease by reason thereof, shall be deemed to be a Participant for all purposes of the Plan. A Participant's Beneficiary, if the Participant has died, or alternate payee under a qualified domestic relations order shall be treated as a Participant for purposes of directing investments as provided in Article X.

#### **21.15 Merged Plans**

In the event another defined contribution plan (the "merged plan") is merged into and made a part of the Plan, each Employee who was eligible to participate in the "merged plan" immediately prior to the merger shall become an Eligible Employee on the date of the merger. In no event shall a Participant's vested interest in his Sub-Account attributable to amounts transferred to the Plan from the "merged plan" (his "transferee Sub-Account") on and after the merger be less than his vested interest in his account under the "merged plan" immediately prior to the merger. Notwithstanding any other provision of the Plan to the contrary, a Participant's service credited for eligibility and vesting purposes under the "merged plan" as of the merger, if any, shall be included as Eligibility and Vesting Service under the Plan to the extent Eligibility and Vesting Service are credited under the Plan. Special provisions applicable to a Participant's "transferee Sub-Account", if any, shall be specifically reflected in the Plan or in an Addendum to the Plan.

#### **21.16 Transferred Funds**

If funds from another qualified plan are transferred or merged into the Plan, such funds shall be held and administered in accordance with any restrictions applicable to them under such other plan to the extent required by law and shall be accounted for separately to the extent necessary to accomplish the foregoing.

#### **21.17 Veterans Reemployment Rights**

Notwithstanding any other provision of the Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with Code Section 414(u). Any contributions required to be made in accordance with this Section shall be contributed to the Plan within the time period prescribed under applicable regulations or other guidance. The Administrator shall notify the Board of Trustees of any Participant with respect to whom additional contributions are made because of qualified military service.

An Employee who is absent from employment because of qualified military service shall be treated as on furlough or leave solely for purposes of complying with the requirements of Code Section 414(u). Otherwise, such an Employee shall be treated as having terminated employment with the Employer if and to the extent provided under the Employer's standard policy governing absences because of military service.

If a Participant who is absent from employment as a Covered Employee because of military service dies after December 31, 2006, while performing qualified military service (as defined in Code Section 414(u)), the Participant shall be treated as having returned to employment as a Covered Employee on the day immediately preceding his death for purposes of determining the Participant's vested interest in his Account and his Beneficiary's eligibility for a death benefit under the Plan. Notwithstanding the foregoing, such a Participant shall not be entitled to additional contributions with respect to his period of military leave.

#### **21.18 Delivery of Cash Amounts**

To the extent that the Plan requires the Employers to deliver cash amounts to the Board of Trustees, such delivery may be made through any means acceptable to the Board of Trustees, including wire transfer.

#### **21.19 Written Communications**

Any communication among the Employers, the Administrator, and the Board of Trustees that is stipulated under the Plan to be made in writing may be made in any medium that is acceptable to the receiving party and permitted under applicable law. In addition, any communication or disclosure to or from Participants and/or Beneficiaries that is required under the terms of the Plan to be made in writing may be provided in any other medium (electronic, telephonic, or otherwise) that is acceptable to the Administrator and permitted under applicable law.

#### **21.20 Plan Correction Procedures**

The Board of Trustees shall take such action as it deems necessary to correct any Plan failure, including, but not limited to, operational failures, documentation failures (such as a failure to timely amend), failures affecting Plan qualification, etc. Subject to the requirements of the Employee Plans Compliance Resolution System, as set forth in Revenue Procedure 2013-12, or any superseding guidance ("EPCRS"), the Board of Trustees may adopt any correction method that it deems appropriate under the circumstances. In addition to any correction method specified in the Plan, the Board of Trustees may, where appropriate, make correction in accordance with EPCRS, including the making of a qualified nonelective contribution permitted under EPCRS, but not otherwise provided under the Plan.



In the event of a fiduciary breach or a prohibited transaction, correction shall be made in accordance with the requirements of ERISA and the Code.

**ARTICLE XXII  
TOP-HEAVY PROVISIONS**

**22.1 Definitions**

For purposes of this Article, the following terms shall have the following meanings:

The "**compensation**" of an employee means his "415 compensation" as defined in Section 7.1.

The "**determination date**" with respect to any Plan Year means the last day of the preceding Plan Year, except that the "determination date" with respect to the first Plan Year of the Plan, shall mean the last day of such Plan Year.

A "**key employee**" means any Employee or former Employee (including any deceased Employee) who at any time during the Plan Year that includes the "determination date" was an officer of an Employer or a Related Company having annual "compensation" greater than \$170,000 (as adjusted under Section 416(i)(1) of the Code for Plan Years beginning after December 31, 2013), a 5% owner of an Employer or a Related Company, or a 1% owner of an Employer or a Related Company having annual "compensation" of more than \$150,000.

A "**non-key employee**" means any Employee who is not a "key employee".

A "**permissive aggregation group**" means those plans included in each Employer's "required aggregation group" together with any other plan or plans of the Employer, so long as the entire group of plans would continue to meet the requirements of Code Sections 401(a)(4) and 410.

A "**required aggregation group**" means the group of tax-qualified plans maintained by an Employer or a Related Company consisting of each plan in which a "key employee" participates or participated at any time during the Plan Year containing the "determination date" or any of the 4 preceding Plan Years (regardless of whether the plan has terminated) and each other plan that enables a plan in which a "key employee" participates to meet the requirements of Code Section 401(a)(4) or Code Section 410.

A "**top-heavy group**" with respect to a particular Plan Year means a "required" or "permissive aggregation group" if the sum, as of the "determination date", of the present value of the cumulative accrued benefits for "key employees" under all defined benefit plans included in such group and the aggregate of the account balances of "key employees" under all defined contribution plans included in such group exceeds 60 percent of a similar sum determined for all employees covered by the plans included in such group.

A "**top heavy plan**" with respect to a particular Plan Year means (i) in the case of a defined contribution plan (including any simplified employee pension plan), a plan for which, as of the "determination date", the aggregate of the accounts (within the meaning of Code Section 416(g) and the regulations and rulings thereunder) of "key employees" exceeds 60 percent of the aggregate of the accounts of all participants under the plan, with the accounts valued as of the relevant valuation date and increased for any distribution of an account balance made during the 1-year period ending on the "determination date" (5-year period ending on the "determination date" if distribution is made for any reason other than severance from employment, death, or disability), (ii) in the case of a defined benefit plan, a plan for which, as of the "determination date", the present value of the cumulative accrued benefits payable under the plan (within the meaning of Code Section 416(g) and the regulations and rulings thereunder) to "key employees" exceeds 60 percent of the present value of the cumulative accrued benefits under the plan for all employees, with the present value of accrued benefits for employees (other than "key employees") to be determined under the accrual method uniformly used under all plans maintained by an Employer or, if no such method exists, under the slowest accrual method permitted under the fractional accrual rate of Code Section 411(b)(1)(C) and including the present value of any part of any accrued benefits distributed during the 1-year period ending on the "determination date" (5-year period ending on the "determination date" if distribution is made for any reason other than severance from employment, death, or disability), and (iii) any plan (including any simplified employee pension plan) included in a "required aggregation group" that is a "top heavy group". For purposes of this paragraph, the accounts and accrued benefits of any employee who has not performed services for an Employer during the 1 year period ending on the "determination date" shall be disregarded. For purposes of this paragraph, the present value of cumulative accrued benefits under a defined benefit plan for purposes of top heavy determinations shall be calculated using the actuarial assumptions otherwise employed under such plan, except that the same actuarial assumptions shall be used for all plans within a "required" or "permissive aggregation group". A Participant's interest in the Plan attributable to any Rollover Contributions, except Rollover Contributions made from a plan maintained by an Employer or a Related Company, shall not be considered in determining whether the Plan is a "top-heavy plan". Notwithstanding the foregoing, if a plan is included in a "required" or "permissive aggregation group" that is not a "top-heavy group", such plan shall not be a "top-heavy plan".

The "**valuation date**" with respect to any "determination date" means the most recent Valuation Date occurring within the 12-month period ending on the "determination date".

## **22.2 Applicability**

Notwithstanding any other provision of the Plan to the contrary, the provisions of this Article shall be applicable during any Plan Year in which the Plan is determined to be a "top-heavy plan" as hereinafter defined.

### **22.3 Minimum Employer Contribution**

If the Plan is determined to be a "top heavy plan" for a Plan Year, the Employer Contributions allocated to the Account of each "non-key employee" who is an Eligible Employee and who is employed in Covered Employment on the last day of such top heavy Plan Year shall be no less than the lesser of (i) three percent of his "compensation" or (ii) the largest percentage of "compensation" that is allocated as an Employer Contribution for such Plan Year to the Account of any "key employee"; except that, in the event the Plan is part of a "required aggregation group", and the Plan enables a defined benefit plan included in such group to meet the requirements of Code Section 401(a)(4) or 410, the minimum allocation of Employer Contributions to each such "non-key employee" shall be 3% of the "compensation" of such "non key employee". Any minimum allocation to a "non-key employee" required by this Section shall be made without regard to any social security contribution made on behalf of the "non-key employee", his number of hours of service, his level of "compensation", or whether he declined to make elective or mandatory contributions.

Employer Contributions allocated to a Participant's Account in accordance with this Section shall be considered "annual additions" under Article VII for the "limitation year" for which they are made and shall be separately accounted for. Employer Contributions allocated to a Participant's Account shall be allocated upon receipt among the Investment Funds in accordance with the Participant's currently effective investment election.

### **22.4 Exclusion of Collectively-Bargained Employees**

Notwithstanding any other provision of this Article, Employees who are covered by an agreement that the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers shall not be entitled to a minimum allocation under this Article, unless otherwise provided in the collective bargaining agreement.

**ADOPTION BY BOARD**

The Board of Trustees adopted this restatement at a regularly scheduled meeting held on October 23, 2014.

\* \* \*

EXECUTED AT Pleasanton, California, this 23rd day of October, 2014.

BOARD OF TRUSTEES OF THE  
STATIONARY ENGINEERS LOCAL 39  
ANNUITY TRUST FUND

By: Paul Bense  
Trustee

And: [Signature]  
Trustee

And: [Signature]  
Trustee

And: [Signature]  
Trustee

And: Bart Fleun  
Trustee

And: [Signature]  
Trustee

**AMENDMENT NO. 1  
TO  
STATIONARY ENGINEERS LOCAL 39 ANNUITY TRUST FUND  
JANUARY 1, 2014 RESTATEMENT**

The Stationary Engineers Local 39 Annuity Trust Fund, originally effective as of October 1, 1981, as presently maintained under an amendment and restatement made effective as of January 1, 2014 is hereby amended to comply with the Internal Revenue Service's request, effective as of January 1, 2014, in the following respect:

1. Section 6.5 of the Plan is amended in its entirety to provide as follows:

**6.2 Nonelective Contributions**

Each Employer shall make a Nonelective Contribution to the Plan for the Contribution Period on behalf of each of its Eligible Employees during the Contribution Period who has met the allocation requirements for Nonelective Contributions described in this Article. The amount of such Nonelective Contribution shall be equal to the amount provided in Appendix A or in the Collective Bargaining Agreement or Subscriber's Agreement to which the Employer is bound. If there is a conflict between the rate set out in Appendix A and the rate set out in the Employer's Collective Bargaining or Subscriber Agreement, the Collective Bargaining or Subscriber Agreement rate shall control.

2. Section 6.5 of the Plan is amended in its entirety to provide as follows:

**6.5 Allocation Requirements for Employer Contributions**

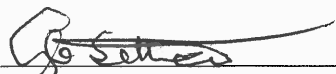
A person who was an Eligible Employee at any time during a Contribution Period shall be eligible to receive an allocation of Nonelective Contributions for such Contribution Period.


Notwithstanding the foregoing or any other provision of the Plan to the contrary, Employer Contributions will be allocated as described in Appendix A or in the Collective Bargaining Agreement or Subscriber's Agreement to which the Employer is bound.

IN WITNESS WHEREOF, this Amendment Number 1 has been duly adopted and executed by the Board of Trustees as of this 10th day of March, 2016.

By:  \_\_\_\_\_

By: Paul Bensi \_\_\_\_\_

By:  \_\_\_\_\_

By:  \_\_\_\_\_

By: Paul Bensi \_\_\_\_\_

By:  \_\_\_\_\_

## APPENDIX A

The Employer agrees to contribute into the Stationary Engineers Local 39 Defined Contribution Annuity Trust Fund, at its respective office in San Francisco, California, or such other designated place of payment, the following amount:

Effective September 1, 2012	\$1.25
Effective September 1, 2013	\$1.35
Effective September 1, 2014	\$1.45
Effective September 1, 2015	\$1.55
Effective September 1, 2016	\$1.65

for all straight time hours worked or paid for.

**AMENDMENT NO. 2  
TO  
STATIONARY ENGINEERS LOCAL 39 ANNUITY TRUST FUND  
JANUARY 1, 2014 RESTATEMENT**

The Stationary Engineers Local 39 Annuity Trust Fund (the "Plan") was adopted October 1, 1981, and most recently restated January 1, 2014.

**WHEREAS**, Article XIX, Section 19.1 of the Plan provides that the Board of Trustees reserves the right to amend the Plan;

1. Effective October 1, 2016, the following language is added to the end of Article XVIII, Section 18.4 of the Plan:

No legal action may be commenced or maintained against the Plan, or the Board of Trustees or the Trust Fund more than two (2) years after a claim's appeal has been denied.

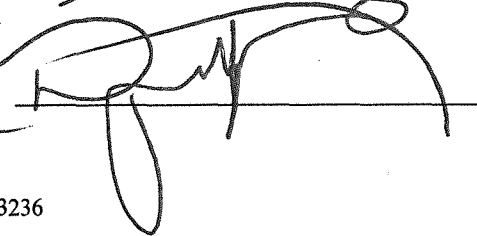
IN WITNESS WHEREOF, this Amendment Number 2 has been duly adopted and executed by the Board of Trustees as of this 21<sup>st</sup> day of July 2016.

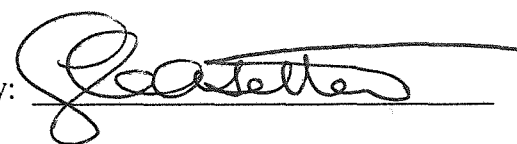
By: 

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**AMENDMENT NO. 3  
TO  
STATIONARY ENGINEERS LOCAL 39 ANNUITY TRUST FUND  
JANUARY 1, 2014 RESTATEMENT**

The Stationary Engineers Local 39 Annuity Trust Fund (the "Plan") was adopted October 1, 1981, and most recently restated January 1, 2014.

**WHEREAS**, Article XIX, Section 19.1 of the Plan provides that the Board of Trustees reserves the right to amend the Plan;

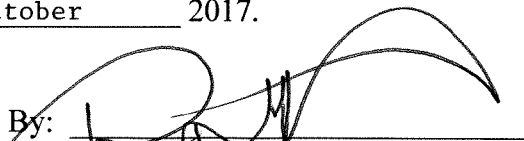
1. Effective January 1, 2014, the number "24" in Article XIV, Section 14.1(b) is deleted and replaced with the number "3".
2. Effective December 31, 2017, Article XIV, Section 14.1(d) is amended in its entirety as follows:
  - (d) regardless of age, on the date of application that the Participant has qualified for California State Disability Insurance or Workers' Compensation benefits for at least six months and submits one of the following:
    - (i) certification from a medical doctor (M.D.) supporting Participant's qualification for California State Disability Insurance; or
    - (ii) verification of permanent disability from the industry based on a permanent disability award from Workers' Compensation; or
    - (iii) verification of waiver of life insurance premium as a result of the disability under the Stationary Engineers Local 39 Health and Welfare Plan; or

IN WITNESS WHEREOF, this Amendment Number 3 has been duly adopted and executed by the Board of Trustees as of this 27th day of October 2017.

By: 

By: 

By: \_\_\_\_\_

By: 

By: 

By: \_\_\_\_\_

**AMENDMENT NO. 4  
TO  
STATIONARY ENGINEERS LOCAL 39 ANNUITY TRUST FUND  
JANUARY 1, 2014 RESTATEMENT**

The Stationary Engineers Local 39 Annuity Trust Fund (the "Plan") was adopted October 1, 1981, and most recently restated January 1, 2014.

**WHEREAS**, Article XIX, Section 19.1 of the Plan provides that the Board of Trustees reserves the right to amend the Plan;

1. Effective November 15, 2019, the following language is added to the end of Article XVIII, Section 18.4 of the Plan:

By participating in the Plan, to the fullest extent permitted by law, whether in court or otherwise, Participants, Beneficiaries, Covered Employees, Eligible Employees, Employees and alternate payees under a qualified domestic relations order waive any right to commence, be a party to in any way, or be an actual or putative class member of any class, collective, or representative action arising out of or relating to any dispute, claim or controversy, and Participants, Beneficiaries, Covered Employees, Eligible Employees, Employees and alternate payees under a qualified domestic relations order agree that any dispute, claim or controversy may only be initiated or maintained and decided on an individual basis.

IN WITNESS WHEREOF, this Amendment Number 4 has been duly adopted and executed by the Board of Trustees as of this 10th day of October 2019.

By: Bart Allen

By: [Signature]

By: [Signature]

By: Jim Johnson