

**INTERNATIONAL UNION OF OPERATING ENGINEERS  
LOCAL 98  
ANNUITY FUND**

**SUMMARY PLAN DESCRIPTION**

January 1, 2014

INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 98 ANNUITY FUND

A "Defined Contribution" Plan

Plan Number: 002; Employer I.D. Number: 04-3030313

Fiscal Year of the Plan: January 1 through December 31

PLAN SPONSOR

Board of Trustees, International Union of Operating Engineers  
Local 98 Annuity Fund

Two Center Square, P.O. Box 217  
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Telephone: (413) 525-4221

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#### **PLAN ADMINISTRATOR**

The Board of Trustees is considered the “Plan Administrator.” The Plan is administered by and for the Trustees through the

Annuity Fund Office  
Two Center Square, P.O. Box 217  
East Longmeadow, Massachusetts 01028

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

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#### **LEGAL COUNSEL**

Blitman & King, LLP

#### **FUND ACCOUNTANT**

Schultheis & Panettieri, LLP

## **IMPORTANT NOTICE**

In the event that there appears to be a conflict between the description of any Plan provisions in this booklet and its statement in the Annuity Plan itself, the language contained in the Annuity Plan is the official and governing language.

Nothing in this Summary Plan Description is meant to interpret or extend or change, in any way, the provisions expressed in the Plan. The Trustees reserve the right to amend, modify, or discontinue all or part of this Plan whenever, in their judgment, conditions so warrant.

## **CAUTION**

This booklet and the personnel at the Fund Office are authorized sources of Plan information for you. The Trustees of the Plan have not empowered anyone else to speak for them regarding the Annuity Plan. No employer, Union representative, supervisor, or shop steward is in a position to discuss your rights under this Plan with authority.

## **COMMUNICATIONS**

If you have a question about any aspect of your participation in the Plan, you should, for your own permanent record, write to the Trustees. You will then receive a written reply that will provide you with a permanent reference.

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## **ANNUITY PLAN**

Your Annuity Plan was born on December 1, 1988. The main purpose of an Annuity Plan is to provide you with a tax deferred pension benefit or lump sum benefit when you retire or leave the Industry.

The I.U.O.E. Local 98 Annuity Plan is governed by a Board of Trustees, comprised of equal representatives from Local 98 and the Employers Associations. It is administered through the Fund Office Staff and has been approved by the Internal Revenue Service and has adopted all the rules and regulations required by the Employee Income Security Act of 1974 (ERISA). The Trustees reserve the right to amend, modify or discontinue all or part of the Plan whenever, in their judgment, conditions so warrant.

The purpose of this booklet (Summary Plan Description) is to describe the benefits available to you as a Participant in the Local 98 Annuity Plan. We suggest you read it thoroughly and carefully, so that you will understand the Plan and its many benefits. You may obtain further information from the Annuity Fund Office if you have any questions after reading this booklet.

In the next few pages, you will be given answers to questions which we think will first come to your mind and which will give you, in non-technical language, an outline of the most important provisions of the Plan. While we believe the question and answer section describes the Plan faithfully, the Plan must govern, of course, in case of any conflict. The text of the Plan, including all amendments to date, is available for review at the Fund Office.

Your Board of Trustees

## **GENERAL**

### **1. WHAT IS AN ANNUITY PLAN?**

It is a system under which you can save money for your retirement . . . and under which you pay no tax on the contributions made to your account, and no tax on the interest earned and credited to your account, until you actually receive payments from your account.

The I.U.O.E. Local 98 Annuity Plan is a profit sharing plan, as described in section 404(c) of the Employee Retirement Income Security Act, and title 29 of the Code of Federal Regulations Section 2550.440c-1. The Participants direct the investments of monies in their individual accounts. The fiduciaries of the Plan may be relieved of liability for any losses which are the direct and necessary result of investment instructions given by any Participant or Beneficiary.

The Plan is administered by a Board of Trustees on which the Union and the Contributing Employers are equally represented. Thus, the Board as a whole is the Plan Administrator. As such, the Trustees are responsible for making decisions regarding, for example, the: rules of eligibility, types of benefits offered, administrative policies, interpretation of Plan terms and provisions, interpretation of the provisions and terms contained in documents and agreements involving or impacting this Plan, and determination of facts necessary to determine eligibility for benefits from this Plan. The Trustees administer the Plan through the Annuity Fund Office, located at Two Center Square, P.O. Box 217, East Longmeadow, Massachusetts 01028.

### **2. DOES THIS ANNUITY PLAN ONLY PROVIDE RETIREMENT BENEFITS?**

No. Your accumulated contributions and interest could be used to provide a pension to you when you retire; or it could be paid to you in other ways, as explained later.

## **EFFECTIVE DATE**

### **3. WHEN DID THE PLAN START?**

The Plan started on December 1, 1988.

## PARTICIPATION IN THE PLAN

### 4. WHO IS COVERED BY THE PLAN?

An employee who works under an International Union of Operating Engineers Local 98 Collective Bargaining Agreement which requires contributions to be made by the contractor(s) to the Annuity Fund or other written agreement requiring contributions to the Annuity Fund. Any such employee who was a participant in the Pension Fund of Local Union No. 98 of the International Union of Operating Engineers on December 1, 1988 automatically became a participant in the Annuity Plan. After that date and up until December 31, 2006, a covered employee became a participant in the Annuity Plan as of the first day he or she completed 500 hours of service in a Plan Year (January 1 through December 31). Effective January 1, 2007, a covered employee becomes a participant in the Annuity Plan as of the first day he or she completes 500 hours of service in any twelve (12) consecutive month period.

### 5. DO I HAVE A CHOICE OF PARTICIPATING IN THE PLAN OR NOT?

No. In order to get favorable tax status, everyone has to be covered.

### 6. WHEN AM I VESTED?

You will be vested in all amounts contributed to the Plan on your behalf, as soon as you have met the eligibility requirements described in Question 4 above.

## CONTRIBUTIONS

### 7. WHO CONTRIBUTES TO THE PLAN AND HOW MUCH?

Employers contribute directly to the Annuity Fund in amounts specified in the applicable Collective Bargaining Agreement (or other written agreement).

### 8. MAY I MAKE ADDITIONAL VOLUNTARY CONTRIBUTIONS TO THE PLAN?

In general, participants are not permitted to make contributions to the Plan. However, if you have received an eligible distribution from another qualified retirement plan which is eligible to be transferred directly to this Plan, or if you wish to make a rollover contribution to this Plan, the Trustees will credit the amount received to a separate rollover account in the Plan for you. However, you may make a rollover contribution from an Individual Retirement Account if the amount in the IRA includes ONLY the proceeds of a distribution you received from another qualified retirement plan. You are

allowed to direct the investments of your rollover account as discussed below at Questions 10 and 11.

**9. IF I RETURN TO EMPLOYMENT FROM FULL-TIME MILITARY SERVICE, AM I ENTITLED TO ANY CONTRIBUTIONS FOR THE TIME THAT I WAS IN THE MILITARY?**

Under Federal law, participants returning to covered employment from full-time military service, subject to certain terms and conditions, shall, upon reemployment, have their Qualified Military Service be deemed to constitute service with the employers maintaining the Plan for the purpose of determining their right to benefits under the Plan. This means that you might have contributions made on your behalf for the time period within which you were in the military. Assuming you meet all the requirements of Federal law, contributions to your account will be made upon such reemployment. The credit to be provided for each week of such absence shall only be provided upon return to Covered Employment within the time limits set by Federal law and shall be determined solely by the Trustees.

If you die on or after January 1, 2007 while performing qualified military service, your survivors are entitled to any other additional benefits (other than benefit accruals/contributions relating to the period of qualified military service) provided under the Plan as if you had resumed and then terminated employment on account of death.

## **THE RETIREMENT FUND; INDIVIDUAL ACCOUNTS**

**10. WHAT HAPPENS TO THE MONEY CONTRIBUTED FOR ME?**

You direct the investments of your Individual Account assets by selecting among the various investment options offered by the Plan. Periodically, you will receive a description of the available investment options. Currently, the entity responsible for working with you in selecting and monitoring your investment decisions is MassMutual having offices at 1295 State Street, Springfield, Mass. If you fail to exercise your right to direct investment of your Individual Account assets, your Individual Account assets will be placed in an investment fund offered through MassMutual.

## **ALLOCATIONS TO ACCOUNTS**

**11. WHAT INVESTMENT OPTIONS DO I HAVE FOR MY ACCOUNT?**

Each participant will direct the investment of contributions made on his or her behalf. Investment gains or losses applicable to the Investment Option you select will be

credited to your Individual Account. Investment Management fees are deducted directly from Plan assets. A number of investment options are offered by a recognized entity which is expert in determining investment strategies, which are available for your direction. As indicated above, periodically, you will receive a description of the available investment options. Currently, the entity responsible for working with you in selecting and monitoring your investment decisions is MassMutual having offices at 1295 State Street, Springfield, Mass.

The investment options available under the Plan are generally intended to be long-term investments suitable for retirement savings and are not designed to accommodate frequent exchanges (purchases and sales) by participants. An exchange occurs anytime you transfer all or a portion of your account from one investment option to another. Frequent exchanges by participants may be harmful to the performance of the Plan's investments by increasing transaction costs that are shared by all investors and by interfering with portfolio management. Therefore, the Administrator and/or the entities that provide investments and administrative services to the Plan may adopt procedures to discourage these activities. Procedures may include, but are not limited to, the following:

- A. Limit on the frequency with which you may submit investment directions;
- B. Limit on the frequency with which you may transfer in and out of investment options;
- C. Limit on the dollar value of transactions;
- D. Fees applied when you transfer out of an investment option within a certain period of time after transferring into the investment option;
- E. Restrictions on the means by which you may submit investment directions; and
- F. Other procedures which the Administrator or the Plan's service provider determine to be appropriate to prevent or discourage frequent trading activity.

You will be notified of any such procedures applicable under the Plan. You should keep in mind that such procedures may not detect or prevent all frequent trading in the Plan's investment options and that these activities may be harmful to investment performance.

## 12. WHO PAYS FOR THE EXPENSES OF THE FUND

The Plan permits the payment of Plan related expenses to be made from the Plan assets. If the Employer does not pay these expenses from its own assets, then the expenses paid using the Plan's assets will be allocated among the accounts of all

participants in the Plan. Specifically, each Participant's Individual Account will be reduced by the Account's per capita share of any administrative expenses charged by the Plan's mutual fund platform provider, the Account's pro rata share of any other administrative expenses (such as professional fees), and any other expense payments normally taken into account by the Fund's accountant in accordance with generally accepted accounting principles. When a distribution of benefits occurs (including effective at the end of the Plan Year), you will receive a pro-rata share of investment gains or losses for the Plan Year in which the distribution occurs, which shall be tendered to you some time after the end of the Plan Year when your fair share can be determined. The Administrator at the time of any distribution of benefits is entitled to withhold assets from your account sufficient to pay your share of Plan expenses for that Plan Year.

There are certain expenses that may be paid just from your account. These are expenses that are specifically incurred by, or attributable to, you. For example, if you are requesting a distribution check, the Plan may incur additional expenses. These additional expenses may be paid directly from your account (and not the accounts of other participants) because they are directly attributable to your benefit under the Plan.

The Plan, from time to time, may change the manner in which expenses are allocated. The items below indicate the Plan expenses that may be paid directly from an individual participant's account rather from the accounts of all participants.

The Plan may assess, against an individual participant's account, the following Plan expenses, which are incurred by, or are attributable to, a particular participant based on use of a particular plan feature, listed by type:

**QDRO:** Upon divorce, qualified domestic relations order ("QDRO") review and processing, including notices to parties and preparation of QDRO distribution check. The Plan may charge the participant's account for actual legal expenses and costs if the Plan consults with legal counsel regarding the qualified status of the order.

**Investment Advice:** Charges related to your election of investment advice service.

**Adjustment Charge:** Charges for certain non-standard processing, for example the re-issuance of a check.

### 13. HOW CAN I TELL HOW MUCH IS IN MY ACCOUNT?

You will be furnished a statement at the end of each calendar quarter showing the credits and charges to your account during the previous quarter.

Participants can also monitor their accounts online at [www.massmutual.com/retire](http://www.massmutual.com/retire) or by phone at 1-800-743-5274.

## BENEFITS

14. WHEN MAY I COLLECT RETIREMENT BENEFITS FROM THIS PLAN?

You are considered retired under this Plan, and thus eligible to receive retirement benefits, if you cease working in covered employment (and contiguous non-covered employment) after age 55.

15. WILL I BE PAID EVERYTHING IN MY ACCOUNT?

Benefits payable to you (or your beneficiary in the event of your death) are based on the entire balance in your account as of the day payment is made. Once this amount is determined, however, actual settlement may be made in a number of different ways, as described in Questions 28, 29, and 30. See Question 42 for information concerning taxes on your benefits.

16. ARE THERE ANY PAST SERVICE BENEFITS UNDER THIS PLAN?

No. There is no source of money to pay benefits based on service or Union membership before this Plan started.

17. UNDER WHAT CIRCUMSTANCES MAY I BE ELIGIBLE FOR BENEFITS PRIOR TO MY RETIREMENT?

Under the Annuity Plan you are entitled to benefits if you die, become totally and permanently disabled, or become eligible for the termination benefit as described in Questions 24 and 25.

18. CAN I RECEIVE A DISTRIBUTION FROM THE PLAN IN THE EVENT OF A FINANCIAL HARDSHIP?

Yes. To obtain a hardship withdrawal, you must submit to the Trustees a written request which will include the amount of the requested withdrawal and the facts establishing a financial hardship. Any hardship withdrawal will be subject to the determination of the Trustees that the requirements have been met. The determination by the Trustees will be made under uniform rules applied in a like manner to all Participants. Amounts you withdraw may not be returned to this Plan.

The term "financial hardship" shall mean the presence of an immediate and heavy financial need on your part, determined on the basis of all of the facts and circumstances. This need will be deemed to exist in the event of any of the following:

- (A) Medical expenses incurred by you, your spouse, your children or other dependents;
- (B) Expenses related to the purchase of your principal residence, except those related to regular payments due on a mortgage;
- (C) Expenses of tuition for the next semester or quarter of post-secondary education for you, your spouse, your children or other dependents;
- (D) Expenses necessary to prevent your eviction from your principal residence or to prevent the foreclosure of the mortgage on such residence;
- (E) Expenses for the repair of damage to your principal residence that would qualify for the casualty deduction under Internal Revenue Code Section 165 (determined without regard to whether the loss exceeds 10% of adjusted gross income); or
- (F) Payments for burial or funeral expenses for your deceased parent, spouse, children or dependents (as defined in Internal Revenue Code Section 152, and, for taxable years beginning on or after January 1, 2005, without regard to Internal Revenue Code Section 152(d)(1)(B)).

In no event shall the amount of the withdrawal permitted due to financial hardship exceed the lesser of the value of your Annuity Account as of the last Valuation Date, or the amount necessary to relieve your financial hardship. The amount required to relieve your financial need shall be determined by evidence the Trustees shall determine to be relevant and shall be paid only if the Trustees determine that the need cannot reasonably be met by you from other sources. If the requirements of either A or B below are met, it will be determined that you have demonstrated that the need cannot be met from other sources.

- A. On the basis of your representations, the Trustees determine that your financial need cannot be relieved by:
  - (1) Reimbursement or compensation to be received by you through insurance or otherwise;
  - (2) A reasonable liquidation of your assets (including such assets of your spouse and minor children as are reasonably available to you) to the extent the liquidation would not itself create a financial hardship;
  - (3) All other distributions or all non-taxable loans from all deferred compensation plans (whether or not qualified) maintained by any of your employers; or

- (4) Borrowing from commercial sources on reasonable commercial terms.
- B. A proposed withdrawal shall meet the requirements of this paragraph if:
- (1) You have obtained all distributions (other than hardship distributions) and all non-taxable loans currently available to you from all deferred compensation plans in which you participate;
  - (2) You agree to suspend any salary deferral contributions which you make to any cash or deferred arrangement in which you participate for twelve (12) months after receipt of the hardship withdrawal distribution; and
  - (3) You agree not to make salary deferral contributions to any cash or deferred arrangement in which you participate for the calendar year immediately following the calendar year in which you receive the withdrawal if such contributions are in excess of the limitations contained in the Internal Revenue Code, less the amount of your salary deferral contributions for the year in which the withdrawal is received.

The Trustees may limit the amount of any hardship distribution to the extent deemed necessary to satisfy the requirements of the Internal Revenue Code or of the regulations of the Internal Revenue Service.

Hardship distributions will be made as soon as practicable after the determination by the Trustees that the distribution meets the requirements.

Any hardship withdrawal will be paid in the form of a single lump sum payment. If you are married, you are not eligible to receive a hardship withdrawal unless both you and your spouse file a Qualified Election waiving payment of all pre-retirement and post-retirement survivor benefits otherwise payable from your Annuity Account. Such waiver is effective only for the balance of your Annuity Account accrued prior to the waiver and shall not be effective for benefits subsequently accrued.

**CAUTION:** Before requesting this hardship withdrawal, consult your tax advisor to be sure that receipt of such payment creates no unfavorable tax consequences to you. The most favorable tax advantages are usually obtained by waiting until your retirement before you receive annuity benefit payments.

**19. WHAT PRE-RETIREMENT DEATH BENEFITS ARE AVAILABLE UNDER THE PLAN?**

If you are married and die prior to retirement, the Fund will use at least one-half of the value of your Individual Account on your death to purchase a commercial annuity which will provide monthly pension payments to your surviving spouse for life. However, your surviving spouse may elect to receive this benefit in a lump sum payment. Payment will begin when your surviving spouse requests distribution and must begin by not later than the date you would have attained age 62. You may designate the remaining value of your Individual Account to another beneficiary.

**20. WHAT HAPPENS TO THE REMAINING 50% OF MY INDIVIDUAL ACCOUNT?**

If you do not name someone other than your spouse as the designated beneficiary of your death benefit, your spouse will receive a benefit equal to 100% of your Individual Account on the date of death. If you designate a beneficiary other than your spouse, the remaining 50% of your Individual Account that is not paid to your spouse will be paid to your designated beneficiary. Certain restrictions apply, however, to any designation of a beneficiary other than your spouse.

**21. ARE THERE ANY PRE-RETIREMENT DEATH BENEFITS FOR PARTICIPANTS WHO ARE UNMARRIED?**

Yes. If you are unmarried and die before you retire, your designated beneficiary will be paid a Death Benefit based upon 100% of your Individual Account. The Fund will pay this benefit by purchasing a commercial annuity payable to your designated beneficiary and providing benefits to your designated beneficiary for life. However, your designated beneficiary may elect to receive this benefit in the form of a lump sum payment or in installments over a period not to exceed 10 years.

**22. IS THERE A BENEFIT IF I DIE AFTER RETIREMENT?**

If you die after retirement, benefits will continue only if you have selected the Joint and Survivor Pension or a pension paid in installment form. Of course, if you elected the installment pension and have already received ten (10) years of payments, or if you choose a lump sum payment at retirement, no further benefits would be paid at your death.

**23. WHO GETS THESE DEATH BENEFITS?**

Except for the benefits paid to your spouse (described in the above questions) the Death Benefit is paid to the person you have designated as beneficiary. If you leave no beneficiary, the Fund will pay the benefit as follows:

- (1) First – to your widowed spouse; or if your widowed spouse is not living, then

- (2) Second – to your children in equal shares; or if there are no children, then
- (3) Third – to your parents in equal shares, or your brothers and sisters in equal shares if the parents are deceased, then
- (4) Fourth – to your duly appointed and qualified executor or administrator, or, if no executor or administrator is appointed and qualified within sixty (60) days following receipt by the Trustees of notice of your death, then
- (5) Fifth – the Trustees will take appropriate action to obtain a judicial determination as to the distribution of any death benefit.

If the Beneficiary is a minor, such death benefit may be paid, at the sole discretion of the Trustees, in a lump sum or in installments, to such person as is, in the sole discretion of the Trustees, caring for and supporting such minor.

#### 24. WHAT TERMINATION BENEFITS ARE AVAILABLE UNDER THE PLAN?

You are eligible to receive a termination benefit under the Plan when: 1) you cease your employment with a covered employer, and have performed no work which is of the same type as that performed by individuals represented by the Union for a period of 12 consecutive months; or 2) you enter the armed forces. The termination benefit is an amount equal to the value of your Individual Account. This benefit may be paid in installments or a lump sum payment but only if you and your spouse (if any) waive the survivor benefits which may otherwise be payable to your spouse upon your death.

**CAUTION:** Before requesting any of the above described payments, consult your tax advisor to be sure that receipt of such payment creates no unfavorable tax consequences for you. The most favorable tax advantages are usually obtained by awaiting retirement.

#### 25. WHAT PARTIAL TERMINATION BENEFITS ARE AVAILABLE UNDER THE PLAN?

You may apply for a Partial Termination Benefit if you have a credit balance in your Individual Account and you have had no contributions tendered to the Fund for a period of twelve (12) consecutive months. In order to be eligible for this benefit, you may not work in the industry in any state within the jurisdiction of the Union for twelve (12) consecutive months. The minimum amount that you may apply for is \$1,000. This benefit will only be paid in a lump-sum. You and your spouse (if any) must waive the survivor benefits which would otherwise be payable from the proceeds of the Partial Termination Benefit.

**CAUTION:** Before requesting any of the above-described payments, consult your tax advisor. Be sure that receipt of such payment creates no unfavorable tax consequences for you. The most favorable tax advantages are usually obtained by awaiting retirement.

26. MAY I TAKE A LOAN FROM MY INDIVIDUAL ACCOUNT?

You may apply for a loan from your Individual Account if you have a vested account balance in the Plan. A participant may only have up to two outstanding loans at any time.

If you experience a financial emergency, then the Board of Trustees may grant you a loan for a period which may not exceed five (5) years. However, a loan used to acquire or construct a dwelling used as a principal residence of the participant may be for a term in excess of five (5) years but not more than ten (10) years. Loan proceeds are to pay for the following types of expenses:

- (A) Unpaid medical bills for yourself or your dependents that have not been reimbursed by the International Union of Operating Engineers Local 98 Health and Welfare Fund;
- (B) Expenses relating to the purchase of a home or similar residence which you occupy as your primary residence, including down payments, contract and title expenses. A loan of this nature may be granted by the Board of Trustees for a period which may not exceed ten (10) years;
- (C) Tuition (including room and board) expenses for yourself, your spouse or a dependent child, related to attendance at an educational institution beyond the high school level;
- (D) Mortgage or rental payments, which if not paid, would result in the foreclosure and/or sale of or eviction from the home in which you reside;
- (E) Expenses for the repair of damage to your principal residence that would qualify for the casualty deduction under Internal Revenue Code Section 165 (determined without regard to whether the loss exceeds 10% of adjusted gross income); or
- (F) Payments for burial or funeral expenses for your deceased parent, spouse, children or dependents (as defined in Internal Revenue Code Section 152, and, for taxable years beginning on or after January 1, 2005, without regard to Internal Revenue Code Section 152(d)(1)(B)).

It is important to remember that the mere fact that you experience a financial emergency which causes the expenses listed above does not necessarily indicate that you will receive a loan, or the amount of the loan requested. You must apply, and the Trustees will decide each case on the merits according to uniform standards.

In addition, you will not be granted a loan unless your spouse, if any, consents to it in writing.

All loan payments must be made on a monthly basis.

The maximum amount you may borrow, on your loan from this Plan, shall not exceed the lesser of:

- (1) \$50,000; or
- (2) One-half of your non-forfeitable (vested) account balance.

A loan made to you will bear a reasonable interest rate based upon the prevailing rates offered by major lending institutions at the time the loan is made. MassMutual will calculate the amount of interest on your loan, and you will be notified of the monthly principal and interest payments that are due. MassMutual will also notify you concerning any delinquencies in your loan repayments.

In addition, you must provide a security for your loan. Your vested Individual Account Balance serves as such security. Also, your loan must be evidenced by a written loan agreement signed by all of the relevant parties to the loan and evidenced by your Promissory Note, wherein you personally guarantee the repayment of the loan.

If you die or retire prior to fully repaying your loan, then upon your death or retirement, the loan amount plus any interest accrued on the amount of the loan will be considered paid to you or your beneficiaries, as the case may be, in accordance with the appropriate Plan provisions.

You become delinquent on the monthly principal and interest payments on your outstanding loan balance if you do not pay such monthly amounts on time. If you remain delinquent at the end of the calendar quarter following the quarter you became delinquent, all remaining unpaid principal and accrued interest will immediately be considered a taxable distribution (deemed distributed), taxed as ordinary income, will be reported to the Internal Revenue Service, and will be reflected on a Form 1099. If your delinquency causes you to receive a "deemed distribution", you may not receive another loan from the Plan.

**27. ARE THERE ANY SPECIAL PROVISIONS REGARDING SMALL AMOUNTS?**

If your Individual Account Plan balance is less than \$5,000 (or such greater amount as may hereafter be allowed by Internal Revenue Code Section 411(a)(11) governing qualified retirement plans) when you have reached your Annuity Starting Date, the Trustees may distribute it to you in a lump sum if you specifically request it.

Finally, if the amount of the Death Benefit payable to your eligible surviving spouse, if you die before your Annuity Starting Date, is less than \$1,000 (or such greater amount as may hereafter be allowed by Internal Revenue Code Section 411(a)(11) governing qualified retirement plans) she must take it in a lump sum; she will not have an annuity option.

## FORM OF RETIREMENT BENEFITS

**28. DO I HAVE A CHOICE OF HOW MY RETIREMENT BENEFITS ARE PAID TO ME?**

Yes. However, that choice is subject to special rules if you are married. If you are married upon retirement, you will automatically receive payment of your benefits in the form of a Joint and Survivor Pension. The Joint and Survivor Pension provides a lifetime monthly pension for you, and upon your death, a lifetime monthly pension for your spouse. The value of your spouse's monthly pension will not be less than 50% of the monthly amount paid to you. This type of pension applies unless you and your spouse select another option of payment on the form provided by the Fund Office.

**29. WHAT IF MY SPOUSE AND I SELECT ANOTHER PAYMENT OPTION?**

If you and your spouse do not want to receive benefits in the Joint and Survivor form, you may elect to receive benefits under the installment option or the lump sum payment option or the 75% qualified optional survivor annuity option.

If you choose the lump sum option, the net balance in your account is paid to you in a single lump sum.

If you choose the installment form of benefit, the net balance in your account would be paid to you in not more than 10 annual installments, or 120 monthly installments. Installments would be, insofar as possible, in equal amounts, but the unpaid balance in your account each year during the payout period would continue to share in allocations of investment income and Administration expenses. If you die before receiving everything in your account, whatever remains unpaid at your death would go to your beneficiary.

If you choose the 75% qualified optional survivor annuity option, such benefit provides a lifetime monthly pension for you, and upon your death, a lifetime monthly pension for your spouse. The value of your spouse's monthly pension will equal 75% of the monthly amount paid to you. The amount of the reductions in monthly benefits from the Joint and Survivor form will be determined based on factors set forth in the Plan.

**30. IF I AM UNMARRIED, WHAT ARE MY OPTIONS OF PAYMENT?**

If you are unmarried upon retirement, your benefit will be paid in the form of a life annuity. You may, however, elect to receive your benefit in either the form of a lump sum or installments over a period not to exceed 10 years, both of which are explained in Question 29.

**31. MAY I DIRECTLY TRANSFER MY BENEFIT TO ANOTHER QUALIFIED RETIREMENT PLAN OR TO AN INDIVIDUAL RETIREMENT ACCOUNT?**

All or part of certain distributions may be transferred directly from this Plan to another qualified retirement plan or to an Individual Retirement Account. These are referred to as Eligible Distributions. However, the following ARE NOT Eligible Distributions:

- (A) Any distribution which is one of a series of payments to be made for your life (or life expectancy) or the joint lives (or joint life expectancies) of you and your spouse or other beneficiary; or
- (B) Any distribution which is one of a series of payments being made over a period of at least ten (10) years; or
- (C) Any distribution which is a minimum distribution required to be made by law after you attain age 70-1/2; or
- (D) The portion of any distribution which is not includable in your gross income; or
- (E) Any distribution made after December 31, 1999 for hardship withdrawals.

Effective for distributions made after December 31, 2006, Eligible Distributions include distributions made to a nonspouse designated beneficiary but only if such distribution is directly transferred to an IRA and the IRA is treated as inherited for federal tax purposes.

If you make a direct transfer of an Eligible Distribution you will not generally be liable for income taxes on the amount transferred and the Plan will not be required to withhold taxes from the distribution. Even if you do not make a direct transfer of an Eligible Distribution, you can generally avoid paying income taxes on the Eligible Distribution if

you pay that amount to another qualified retirement plan or to an Individual Retirement Account within sixty (60) days after you receive it. Such a payment is referred to as a "Rollover Contribution." However, in that case, the Plan must withhold taxes from the distribution.

When you are entitled to receive a distribution from the Plan, the Fund Office will provide you with information about the distribution, any tax withholding requirements, and a form for you to elect to have an Eligible Distribution transferred directly to another qualified retirement plan or to an Individual Retirement Account. You should consult your tax advisor to get more specific information about the tax consequences of any distribution.

**32. IF I RETURN TO WORK FOR A CONTRIBUTING EMPLOYER WHILE RECEIVING PAYMENTS OVER A PERIOD OF YEARS, WHAT HAPPENS?**

Benefit payments to you would stop and the remaining unpaid balance would stay in your account. Contributions made for you by your employer would again be credited to your account, as for any other employee.

**33. IF I REMAIN IN EMPLOYMENT WITH A CONTRIBUTING EMPLOYER AFTER AGE 70 1/2, WHAT HAPPENS?**

Benefit payments to you would not need to start as long as you remain in employment requiring contributions to the Fund by a Contributing Employer. Contributions made for you by your employer would be credited to your account, as for any other employee. You would need to complete an Election and provide it to the Fund Office annually.

## RISK

**34. IS THERE A CHANCE I COULD LOSE MONEY?**

Investments can go down as well as up. If you happen to apply for and receive benefits when the value of the Annuity Fund is temporarily depressed (particularly in the early years of your participation in the Plan) your benefits could be less than the amounts contributed to your account. However, you are able to monitor your Individual Account and you should be able to know how well it is doing. Also, the Trustees monitor the investments that you have available for your Annuity Fund assets and will make changes periodically as they determine it to be necessary. In the long run you can expect that investment experience will produce benefits much greater than the amount of contributions paid in.

## DESIGNATION OF BENEFICIARY

### 35. WHO RECEIVES MY BENEFITS IF I DIE PRIOR TO RETIREMENT?

If you are married, your spouse will automatically receive a benefit equaling 50% of the value of your Individual Account upon your death. Your designated beneficiary will receive the remaining 50% of your Account, although your spouse must consent if you designate anyone other than your spouse. If you name your spouse as your designated beneficiary (s)he will automatically receive a benefit equalling 100% of the value of your Account. If you are unmarried, any beneficiary you designate will receive your death benefits. Beneficiary designation forms are available at the Annuity Fund Office for use in naming your beneficiary. Note that you may change your beneficiary at any time.

## CLAIMS PROCEDURE

### 36. DO I HAVE TO APPLY IN WRITING FOR MY BENEFITS?

Yes, you must apply for benefits in writing. Application forms may be obtained from the Annuity Fund Office, and should be left with or sent to the Annuity Fund Office, after you fill them out.

### 37. MAY PLAN BENEFITS BE ASSIGNED OR ALIENATED?

No. Your interest in this Plan is not subject to assignment or alienation, whether voluntary or involuntary. Your benefits cannot be sold, assigned or pledged to anyone, nor can they be security for a loan, except for a qualified loan as described in Q & A 26. However, this rule does not apply to a Qualified Domestic Relations Order. Also, under most circumstances, they are not subject to attachment or execution under court order unless they are in pay status.

A Qualified Domestic Relations Order, as defined in Section 414(p) of the Internal Revenue Code, is a domestic relations order which states that another person, known as an "alternate payee", is entitled to a certain portion of your benefits from this Plan. After this Plan receives a domestic relations order, a copy of this Plan's procedures concerning such an order will be forwarded to you and to each alternate payee named in the order. If the order is subsequently determined to be a Qualified Domestic Relations Order, this Plan will promptly notify and mail a copy of the order to you and to all of the alternate payees.

The Plan will then determine the dollar amount payable to each alternate payee, and will distribute the amount so payable when due. If there is a dispute as to whether the order is a Qualified Domestic Relations Order, then any amounts which are payable

before the dispute is resolved will be segregated into a separate account until a final determination is made. For more information concerning Qualified Domestic Relations Orders, please contact the Annuity Fund office.

38. SUPPOSE THE FUND OFFICE WON'T GIVE ME THE BENEFITS I THINK I DESERVE?

While the Fund Office makes the day-to-day decisions about the Plan, the final authority is the Board of Trustees. If you are not satisfied with a ruling from the Fund Office, you may appeal by writing to the Trustees, at the Fund Office address, within 60 days of the ruling. (Note the 60 days may be extended if the Trustees believe there is a good reason for your delay.) The full Claims Appeal Procedure is discussed in detail below.

39. HOW DO I KNOW WHEN I CAN APPEAL A CLAIM DENIAL?

If your claim for annuity benefits is denied, in whole or in part, you will be notified in writing by the Fund Office, such notice shall include: (1) the specific reason for the denial; (2) the particular Plan provision upon which the denial is based; and (3) an explanation of the Plan's claim review procedure. If you do not receive a decision on a claim within ninety (90) days of filing the claim (or 180 days in special circumstances) you may treat that claim as denied, and file an appeal.

If additional information or documentation is required to perfect a claim, you will be so notified and an explanation given as to why such additional material is necessary.

40. WHAT HAPPENS IF MY APPLICATION FOR BENEFITS UNDER THE PLAN IS DENIED?

**Claims other than Disability Pension Claims**

If your claim for benefits is denied in whole or in part for any reason, then within 90 days after this Plan receives your claim, this Plan will send you written notice of its decision, unless special circumstances require an extension, in which case the Plan will send you written notice of the decision no later than 180 days after the Plan receives your claim. If an extension is necessary, you will be given written notice of the extension before the expiration of the initial 90-day period, which shall indicate the special circumstances requiring the extension of time and the date by which the Plan expects to render the benefit determination.

The Plan's written notice of its decision will include the specific reason or reasons for the adverse benefit determination; reference to specific Plan provisions on which the determination is based; a description of any additional material or information necessary for you to complete your claim and an explanation of why such material or information is necessary (if applicable); and a description of the Plan's review procedures and the time limits applicable to such procedures, including a statement of

your right to bring a civil action under Section 502(a) of the Employee Retirement Income Security Act following an adverse benefit determination on review.

### **Disability Pension Claims**

If your claim for disability pension benefits is denied in whole or in part for any reason, then within 45 days after this Plan receives your claim, this Plan will send you written notice of its decision. This period may be extended for up to two 30-day periods due to matters beyond the control of the Plan. For any extensions, the Plan will provide advance written notice indicating the circumstances requiring the extension and the date by which the Plan expects to render a decision. Any notice of extension shall specifically explain the standards on which entitlement to a benefit is based, the unresolved issues that prevent a decision on the claim, and the additional information needed to resolve those issues (if any), and you shall be afforded at least 45 days within which to provide specified information (if applicable).

The Plan's written notice of its decision regarding a disability pension claim will include the information described above in regard to non-disability pension claims. In addition, if an internal rule, guideline, protocol, or other similar criterion was relied upon in making the adverse benefit determination, the notice will provide either the specific rule, guideline, protocol, or other similar criterion, or a statement that such rule, guideline, protocol, or other similar criterion was relied upon in making the adverse benefit determination and that a copy of such rule, guideline, protocol, or other criterion will be provided free of charge upon request. Further, if the adverse benefit determination is based on medical necessity or experimental treatment or similar exclusion or limit, the written notice shall contain an explanation of the scientific or clinical judgment for the determination, applying the terms of the Plan to the claimant's medical circumstances, or a statement that such explanation will be provided upon request.

### **Appeal of Adverse Benefit Determinations**

If you are not satisfied with the reason or reasons why your claim was denied, then you may appeal to the Board of Trustees. To appeal, you must write to the Trustees within 60 days (180 days in the case of disability pension claims only) after you receive this Plan's initial adverse benefit determination. Your correspondence (or your representative's correspondence) must include the following statement: "I AM WRITING IN ORDER TO APPEAL YOUR DECISION TO DENY ME BENEFITS. YOUR ADVERSE BENEFIT DETERMINATION TO ME WAS DATED \_\_\_\_\_, 20\_\_\_\_." If this statement is not included, then the Trustees may not understand that you are making an appeal, as opposed to a general inquiry. If you have chosen someone to represent you in making your appeal, then your letter (or your representative's letter) must state that you have authorized him or her to represent you with respect to your appeal, and you must sign such statement. Otherwise, the Trustees may not be sure that you have actually

authorized someone to represent you, and the Trustees do not want to communicate about your situation to someone unless they are sure he or she is your chosen representative.

You shall have the opportunity to submit written comments, documents, records, and other information related to the claim for benefits. You shall also be provided, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to your claim for benefits. A document, record, or other information is relevant to a claim if it was relied upon in making the benefit determination; was submitted, considered, or generated in the course of making the benefit determination, without regard to whether such document, record, or other information was relied upon in making the benefit determination; demonstrates compliance with the administrative processes and safeguards required in making the benefit determination; or, in the case of disability pension claims only, constitutes a statement of policy or guidance with respect to the Plan concerning the denied benefit, without regard to whether such advice or statement was relied upon in making the benefit determination. The review will take into account all comments, documents, records, and other information submitted by the claimant relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination.

In addition, with regard to disability claims: (1) the review will not afford deference to the initial adverse benefit determination and will be conducted by an appropriate named fiduciary of the Plan who is neither the individual who made the adverse benefit determination nor the subordinate of such individual; (2) insofar as the adverse benefit determination is based on medical judgment, the Board will consult with a health care professional who has appropriate training and experience in the field of medicine involved in the medical judgment; (3) such health care professional shall not be the individual, if any, who was consulted in connection with the adverse benefit determination that is the subject of the appeal, nor the subordinate of such individual; and (4) medical or vocational experts whose advice was obtained on behalf of the Plan, without regard to whether the advice was relied upon in making the adverse benefit determination, will be identified.

### **Determinations on Appeal**

The Trustees at their next regularly scheduled meeting will make a determination of the appeal. However, if the appeal is received less than thirty (30) days before the meeting, the decision may be made at the second meeting following receipt of the request. If special circumstances require an extension of time for processing, then a decision may be made at the third meeting following the date the appeal is made. Before an extension of time commences, you will receive written notice of the extension, describing the special circumstances requiring the extension. The Plan will notify you of the benefit determination not later than 5 days after the determination is made.

If your appeal is denied, the Plan's written notice of the Board's decision will include the specific reason or reasons for the adverse benefit determination; reference to specific Plan provisions on which the determination is based; a statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to your claim for benefits; and a statement of your right to bring a civil action under Section 502(a) of the Employee Retirement Income Security Act.

In addition, for disability pension claims, if an internal rule, guideline, protocol, or other similar criterion was relied upon in making the adverse benefit determination, the notice will provide either the specific rule, guideline, protocol, or other similar criterion, or a statement that such rule, guideline, protocol, or other similar criterion was relied upon in making the adverse benefit determination and that a copy of such rule, guideline, protocol, or other criterion will be provided free of charge upon request. Further, if the adverse benefit determination is based on medical necessity or experimental treatment or similar exclusion or limit, the written notice shall contain an explanation of the scientific or clinical judgment for the determination, applying the terms of the Plan to the claimant's medical circumstances, or a statement that such explanation will be provided upon request.

The Trustees' final decision with respect to their review of your appeal shall be final and binding upon you, since the Trustees have exclusive authority and discretion to determine all questions of eligibility and entitlement under this Plan. Nonetheless, if you disagree with the final decision of the Trustees with respect to your appeal, then you may start a legal action against this Plan. However, no legal action may be commenced or maintained against this Plan more than 180 days after the Plan Trustees' final decision on appeal is deposited in the mail to the participant's or beneficiary's last known address.

#### 41. WHEN WILL THE TRUSTEES DECIDE MY APPEAL?

A determination of the appeal will be made by the Board of Trustees at its next regularly scheduled meeting. However, if the appeal is received less than thirty (30) days before a meeting, the decision on that appeal may be made at the second meeting following receipt.

This decision of the Board of Trustees with respect to your appeal shall be final and binding upon you since the Trustees shall have exclusive authority and discretion to determine all questions of eligibility and entitlement under the Plan (see Question 48).

## TAXES

### 42. DO I HAVE TO PAY TAXES ON MY BENEFITS UNDER THIS PLAN?

As mentioned earlier, you do not pay income taxes on contributions at the time they are paid into the Fund for you, and the investment income earned in the Fund is exempt from tax when it is earned. When you receive benefit payments from the Plan, however, they are taxable, but at that time you may be retired and in a lower tax bracket. Also, part of the benefits payable may, under certain circumstances, be subject to special income tax treatment, which would save you more money.

**CAUTION:** You should get tax advice before telling the Trustees how you would like your benefits paid to you.

## TERMINATION OF THE PLAN

### 43. WILL THIS PLAN ALWAYS BE IN EFFECT?

The Plan was negotiated as a permanent program. However, it could be terminated at any time through collective bargaining negotiations, or by the Trustees but only with the consent of International Union of Operating Engineers Local 98, and the employer or the employer's association which is a party to the negotiations.

### 44. WHAT HAPPENS TO MY ACCOUNT IF THE PLAN IS TERMINATED?

Your Individual Account is valued separately from all other accounts and receives credit for the investment earnings based upon the investments you select. Administration expenses associated with termination would be deducted from your account. The remaining balance in your individual account would then be paid out to you.

## MISCELLANEOUS

### 45. WHERE CAN I GET A COPY OF THE COLLECTIVE BARGAINING AGREEMENT?

You may examine a copy of the Collective Bargaining Agreement at any time during regular hours at the Annuity Fund Office. Alternatively, if you request such from the Fund Office in writing, the Fund Office will mail you a copy.

**46. IF I RECEIVE A GREATER BENEFIT THAN I AM DUE, WHAT HAPPENS TO THE OVERPAYMENT?**

In the event that a participant or a third party is paid benefits from the Fund in an improper amount or otherwise receives Plan assets not in compliance with the Plan (hereinafter overpayments or mistaken payments), the Fund has the right to start paying the correct benefit amount. In addition, the Trustees have the right to recover any overpayment or mistaken payment made to you or to a third party. The claimant (you), third party, or other individual or entity receiving the overpayment or mistaken payment must pay back the overpayment or mistaken payment to the Fund with interest at 12% per annum. Such a recovery may be made by reducing other benefit payments made to or on behalf of you, by commencing a legal action or by such other methods as the Trustees, in their discretion, determine to be appropriate. The claimant, third party, or other individual or entity shall reimburse the Fund for attorneys' fees and paralegal fees, court costs, disbursements, and any expenses incurred by the Fund in attempting to collect and in collecting the overpayment or mistaken payment of benefits. The determination as to these matters is solely made by the Trustees.

## YOUR RIGHTS UNDER ERISA

**47. STATEMENT OF ERISA RIGHTS**

As a participant in the Plan, you are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974 (ERISA). ERISA provides that all Plan participants shall be entitled to:

### RECEIVE INFORMATION ABOUT YOUR PLAN AND BENEFITS

- Examine without charge, at the Fund Office, all documents governing the Plan, including insurance contracts and collective bargaining agreements, and a copy of the latest annual report (Form 5500 Series) filed by the Plan with the U.S. Department of Labor and available at the Public Disclosure Room of the Employee Benefits Security Administration (formerly the Pension and Welfare Benefit Administration).
- Obtain, upon written request to the Plan Administrator, copies of documents governing the operation of the Plan, including insurance contracts and collective bargaining agreements, and copies of the latest annual report (Form 5500 Series) and updated Summary Plan Description. The Administrator may make a reasonable charge for the copies.

- Receive a summary of the Plan's annual financial report. The Plan Administrator is required by law to furnish each participant with a copy of the Summary Annual Report.
- Obtain a statement telling you whether you have a right to receive pension payments at retirement, and if so, what your benefits would approximately be if you stopped working under the Plan now. This statement must be requested in writing and is not required to be given more than once every twelve (12) months. The Plan must provide the statement free of charge.

#### PRUDENT ACTIONS BY PLAN FIDUCIARIES

In addition to creating rights for the Plan participants, ERISA imposes duties upon the people who are responsible for the operation of the Plan. The people who operate your Plan, called "fiduciaries" of the Plan, have a duty to do so prudently and in the interest of you and other Plan participants and beneficiaries. No one, including your employer, your union, or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a pension benefit or exercising your rights under ERISA.

#### ENFORCE YOUR RIGHTS

If your claim for a benefit is denied or ignored, in whole or in part, you have a right to know why this was done, to obtain copies of documents relating to the decision without charge, and to appeal any denial, all within certain time schedules.

Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request a copy of the Plan documents or the latest annual report from the Plan and do not receive them within 30 days, you may file suit in a Federal court. In such a case, a court may require the Plan Administrator to provide the materials and pay you up to \$110 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the Administrator. If you have a claim for benefits which is denied or ignored, in whole or in part, you may file a suit in a State or Federal court after exhaustion of the Plan's internal claims procedures. In addition, if you disagree with the Plan's decision or lack thereof concerning the qualified status of a Domestic Relations Order, you may file suit in Federal court. If it should happen that Plan fiduciaries misuse the Plan's money, or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in Federal court. The court will decide who should pay court costs and legal fees. If you are successful, the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees, for example, if it finds your claims are frivolous.

## ASSISTANCE WITH YOUR QUESTIONS

If you have any questions about your Plan, you should contact the Plan Administrator. If you have any questions about this statement or about your rights under ERISA, or if you need assistance in obtaining documents from the Plan Administrator, you should contact the nearest office of the Employee Benefits Security Administration, U.S. Department of Labor, JFK Federal Building, Room 575, Boston, Massachusetts 02203, (617) 565-9600, or the Division of Technical Assistance and Inquiries, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. You may also obtain certain publications about your personal rights and responsibilities under ERISA by calling the publications hotline of the Employee Benefits Security Administration.

The Department of Labor requires that this Summary Plan Description contain this description of your ERISA rights. Its inclusion in this Summary Plan Description is not, and should not be considered to be offered as, legal advice of any kind. For legal advice, you should consult with a licensed attorney.

## PLAN INTERPRETATION AND DETERMINATIONS

### 48. WHO IS RESPONSIBLE FOR INTERPRETING THE PLAN AND FOR MAKING DETERMINATIONS UNDER THE PLAN?

The Trustees are responsible for interpreting this booklet and for making determinations under the Annuity Plan. In order to carry out this responsibility, the Trustees, have exclusive authority and discretion: to determine whether an individual is eligible for any benefits under the Plan; to determine the amount of benefits, if any, an individual is entitled to from the Plan; to determine or find facts that are relevant to any claim for benefits from the Plan; to interpret all of this booklet's provisions; to interpret the provisions of any Collective Bargaining Agreement or written Participation Agreement involving or impacting this Plan; to interpret all the provisions of any other document or instrument involving or impacting this Plan; and, to interpret all of the terms used in this booklet and in all of the other previously-mentioned agreements, documents, and instruments; to administer and value Employees' Individual Accounts; and, to uniformly reduce the amount in each Employee's Individual Account.

All such interpretations and determinations made by the Trustees, or their designee: shall be final and binding upon any individual claiming benefits under the Plan and upon all Employees, all Employers, the Union, and any party who has executed any agreement with the Trustees or the Union; will be given deference in all courts of law, to the greatest extent allowed by applicable law; and, will not be overturned or set aside by

any court of law unless the court finds that the Trustees, or their designee, abused their discretion in making such determination or rendering such interpretation.