

**CONSTRUCTION WORKERS  
LOCAL 1  
PENSION PLAN**

Pursuant to of the Bargaining Agreement between Local 1, Construction Workers Union, and the Construction Contractors Association dated June 1, 1970, the Trustees of the Pension Trust created under such Agreement adopted the following Pension Plan for such trust:

**ARTICLE I  
Name and Effective Date**

**I.1** The name of this Pension Plan is the Construction Workers Local 1 Pension Plan. For brevity, the term "Plan" is used herein to refer to such Pension Plan.

**I.2** The Plan was effective as of January 1, 1970.

**ARTICLE II  
Definitions**

**II.1 Board** means the Board of Trustees of the Construction Workers Local 1 Pension Trust.

**II.2 Collective Bargaining Agreement** means any labor agreement now or hereafter in effect between a Union and an Employer, whether as a member of an Employer Association or otherwise, which requires an Employer to make contributions to the Construction Workers Local 1 Pension Trust for the benefit of its covered Employees, and any extensions, amendments,

modifications or renewals thereof, or any substitute or successor agreements thereto.

**II.3 Covered Hours of Employment** means the hours of employment of any Employee with respect to which an Employer contribution is paid or payable.

**II.4 Credited Future Service** means the period of service of an Employee for which Employer contributions are paid or payable on or after January 1, 1970.

**II.5 Credited Past Service** means the period of service of an Employee prior to the effective date of the Plan, credited under this Plan in accordance with Article VI, Paragraph 6.02 or 6.03.

**II.6 Credited Service** means the sum of an Employee's Credited Past Service, if any, and his Credited Future Service.

**II.7 Construction Workers Local 1 Pension Trust or Trust Agreement** means that certain trust agreement entered into as of January 1, 1970, between the Construction Contractors Association, and Local 1, Construction Workers Union, AFL-CIO, and as may hereafter be amended from time to time.

**II.8 Effective Date of Coverage** means January 1, 1970, or such later date as an Employee's Employer first becomes obligated to make contributions to the Construction Workers Local 1 Pension Trust if his Employer was not subject thereto on January 1, 1970. Such term shall be used only for purposes of determining eligibility for and calculation of Credited Future Service.

**II.9** Employee means a person employed within a bargaining unit of employees of an Employer which is represented by a Union, and any other person who performs one or more hours of work of the type covered by a Collective Bargaining Agreement or by any other agreement which obligates his Employer to make contributions to the Construction Workers Local 1 Pension Trust.

**II.10 Hour of Service** means the following:

- (1) An hour for which an Employee is paid or entitled to payment for the performance of duties for an Employer during the applicable computation period; and
- (2) An hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer.

For purposes of applying the above definition of Hour of Service, the following rules shall apply:

- (1) An Hour of Service shall not be credited under both (a) and (b) above.
- (2) No Hours of Service prior to the Effective Date of the Plan shall be granted to any Participant except for periods for which Credited Past Service is awarded.
- (3) Only those hours for which Credited Service is awarded plus those hours during which contiguous non-covered service with the same Employer is being completed shall be counted.

**II.11 Participant** means any Employee, or anyone else, either of whom has accumulated at least one Hour of Service under the Plan; provided however no one shall be deemed a participant at the end of any Plan Year if he or she has not to that date accumulated at least 500 Hours of Service in any one Plan Year which have not been lost because of a break in service.

**II.12 Pensioner** means any Employee who has terminated his employment and is receiving pension benefits hereunder.

**II.13 Plan** means this Pension Plan, together with all amendments which may hereafter be adopted by the Trustees.

**II.14 Plan Year** means a twelve-month period commencing June 1, 1970, and ending December 31, 1970, and each twelve-month period ending December 31st thereafter.

**II.15 Qualified Spouse** means a person to whom an Employee is married as of the date of his or her death.

**II.16 Trust Fund** means all property held by the Trustees pursuant to the Trust Agreement.

**II.17 Trustees** means the Board of Trustees which holds the Trust Fund and administers this Plan under the provisions of the Trust Agreement and this Plan, as the same may be amended from time to time.

**II.18 Year of Service** means a Plan Year in which a Participant earns at least 1000 Hours of Service.

**ARTICLE III**  
**Eligibility**

**III.1 Coverage**

This Plan covers all Employees for whom contributions are made for purposes of this Plan or for whom contributions are required to be made pursuant to the Collective Bargaining Agreement then in effect.

**III.2 Retirement Benefits**

In order for an Employee or his beneficiary to receive any benefits under this Plan, he must meet all applicable requirements, as herein set forth. Any Employee or beneficiary not meeting the requirements specified herein shall not be entitled to any benefits under this Plan.

**ARTICLE IV**  
**Eligibility for Retirement Benefits**

**IV.1 Normal Retirement**

An Employee shall be eligible for Normal Retirement Benefits on the first day of the month following the month in which he has attained age 65, provided he has completed at least five (5) years of Credited Service.

For Participants not eligible under the preceding, the prior eligibility rules shall continue to apply.

## **IV.2 Early Retirement**

An Employee who:

- (1) has attained age 55, and
- (2) has at least 10 years of Credited Service, and
- (3) two or more years of Credited Future Service

may elect to receive Early Retirement Benefits commencing the first day of any month immediately following the completion of the above requirements, but prior to his 65th birthday.

## **IV.3 Late Retirement**

If an Employee elects to continue to work after he becomes eligible to receive retirement benefits, he will continue to earn Credited Future Service and Future Service Benefits (as provided in Paragraphs 5.01 and 6.01).

## **IV.4 Disability Retirement**

An Employee who:

- (1) has at least 10 years of Credited Service, and
- (2) two or more years of Credited Future Service,

and

(3) who becomes permanently and totally disabled (as provided in ARTICLE VII) prior to the date he becomes eligible to receive Normal Retirement Benefits is eligible for

Disability Retirement Benefits commencing the first month following six full consecutive calendar months throughout which he has been under such disability provided application is made in accordance with paragraph 5.07. Disability benefits will not be paid for the first six months of such disability. A Participant who has elected to receive Early Retirement Benefits will not be eligible for Disability Retirement Benefits.

## **ARTICLE V**

### **Retirement Benefit**

#### **V.1 Monthly Calculated Benefit**

An Employee's Monthly Calculated Benefit as that term is used in this Pension Plan shall be the sum of his Past Service Benefits and his Future Service Benefits determined in the following manner:

(a) *Past Service Benefits.* For each year of Credited Past Service, not in excess of ten years, the benefit will be \$5.00 per month. Past service shall be determined in accordance with paragraph 6.02.

(b) *Future Service Benefits.* The monthly Future Service Benefit for all Service rendered on or after January 1, 1970 shall be 2.0% of all contributions made or required to be made for that period.

(c) *Maximum Annual Benefit.* Notwithstanding any provision to the contrary, the Monthly Calculated Benefit payable to a Participant under this plan in a calendar year shall equal the lesser of ninety thousand dollars divided by twelve ( $\$90,000 \div 12$ )

or one hundred percent (100%) of the Participant's average monthly compensation over the three consecutive calendar years during which the Employee had the greatest aggregate compensation from all Employers. The Maximum Annual Benefit under this Plan shall also be reduced to the extent such monthly benefit may violate any other provisions of Section 415 of the Code or for any regulations issued thereunder and the ninety thousand dollar (\$90,000) limitation shall be increased as provided in the Internal Revenue Code.

### **V.2 Normal Retirement Benefit**

Upon Normal Retirement, an Employee "who is married," will be entitled to a Normal Retirement Benefit which will be a monthly annuity equal to the actuarial equivalent of his Monthly Calculated Benefit and payable in the form of a 50% Joint and Survivor Annuity. If he or she is not married at his date of retirement, or he has elected not to take a 50% Joint and Survivor Annuity, then an Employee will be entitled to a monthly annuity which will be the actuarial equivalent of his Monthly Calculated Benefit.

### **V.3 Early Retirement Benefit**

Upon early retirement, an employee's monthly annuity and, if applicable, his qualified spouse's annuity after his death, shall be equal to the Normal Retirement Benefit earned to the date of Early Retirement, reduced by  $\frac{1}{2}$  of 1% for each month that such date of Early Retirement precedes his 65th birthday.

#### **V.4 Late Retirement Benefit**

Upon Late Retirement an Employee's monthly benefit, and if applicable, his qualified spouse's monthly benefit, shall be calculated in the same manner as are Normal Retirement Benefits taking into consideration Future Service Benefits, if any, earned after becoming eligible for Normal Retirement Benefits.

#### **V.5 Disability Retirement Benefit**

(1) The benefit payable for Disability Retirement shall be equal to such disabled Employee's Normal Retirement Benefit earned to the date of his Disability Retirement.

(2) The Disability Retirement Benefit is payable in addition to workman's compensation, Social Security, or any other benefits to which the Employee may be entitled.

#### **V.6 Application for Retirement**

Retirement benefit payments under this Plan will become payable to, or on behalf of vested Employees or former Employees as of the first of the month immediately following receipt of the Employee's written application requesting the commencement of such retirement benefit payments or as soon thereafter as such recipient is otherwise eligible to receive the particular Normal, Early, Late or Disability Retirement Benefit.

A Participant who has a vested benefit under the Plan and who has become a 5% or more owner who has elected to defer retirement benefits beyond Normal Retirement, shall nonetheless be required to commence receiving Late Retirement

Benefits not later than the April 1st following the calendar year in which such Participant obtains age 70½. No other Participant shall be required to begin receiving benefits on that date.

#### **V.7 Normal Form of Retirement Benefit Payments**

The normal form of retirement benefits payable under this Plan is a monthly annuity commencing on the date of the Employee's Normal, Early, Late or Disability Retirement and continuing at ½ of that amount to his Qualified Spouse upon his death. The last monthly payment shall be for the month in which the Employee's death occurs, or if he is survived by a Qualified Spouse, for the month in which her death occurs. However, if the total amount paid on behalf of an Employee is less than 60 times the monthly life annuity he was receiving upon retirement, then the difference shall be paid in accordance with Paragraph 5.13.

#### **V.8 Optional Forms of Retirement Benefit**

In lieu of the normal form of Retirement Benefit provided in Paragraphs 5.02 and 5.08, a retiring Employee may elect any of the following options on an actuarially equivalent basis:

##### **(1) Modified Joint and Survivor Annuity with Qualified Spouse**

In lieu of the Joint and Survivor Annuity provided in Paragraphs 5.02 and 5.08, an Employee may elect a monthly annuity which will be continued to be paid after his death in the same amount each month, or at ¾ of that amount, to his qualified spouse. If his qualified spouse dies before the

Employee retires, the Normal Retirement Benefit as set forth in Paragraphs 5.02 and 5.08 will become payable to the Employee, but the Employee shall be free to again elect another optional benefit as provided hereunder.

**(2) Joint and Survivor Annuity with Other than Qualified Spouse**

An Employee may elect a monthly annuity commencing on his retirement date and continuing after his death in the same amount, 3/4 thereof, or 1/2 thereof, as the Employee may elect, to the joint annuitant designated by the Employee, provided the joint annuitant survives the Employee. If the joint annuitant dies before the Employee retires, the Normal Retirement Benefits as set forth in Paragraphs 5.02 and 5.08 will become payable as if this Joint and Survivor Annuity had not been elected, but the Employee shall be free to again elect another optional retirement benefit as provided hereunder. This option may only be elected with the consent of the Employee's spouse if he is married at the time of such election. If he later marries, any such election made prior to his marriage shall be deemed revoked.

**(3) Benefit Equal to Monthly Calculated Benefit**

In lieu of the Joint and Survivor Annuity provided in Paragraph 5.02 and 5.08, an Employee may elect a monthly annuity payable at retirement, which will be equal to his Monthly Calculated Benefit.

#### **(4) Level Income Option**

An Employee who retires prior to age 62 may elect to receive his benefits in the form of an adjusted annuity payable in a greater amount during the period before becoming eligible for Social Security benefits at age 62 and a correspondingly reduced amount, actuarially determined, after becoming eligible for Social Security benefits at age 62, such that the total income, including both the adjusted benefit payable under this Plan and the Social Security benefit to which such person shall be entitled, shall be as nearly uniform as possible both before and after becoming eligible for Social Security benefits at age 62.

#### **(5) Pop-Up Option**

An Employee may elect a monthly annuity commencing on his retirement date and continuing after his death in the same amount,  $\frac{3}{4}$  thereof, or  $\frac{1}{2}$  thereof, as the Employee may elect, to the joint annuitant designated by the Employee, provided that the joint annuitant survives the Employee. If the joint annuitant dies before the Employee but after the Employee retires, the amount of the monthly annuity shall increase to the amount payable as a single life benefit at the time of retirement to reflect the death of the joint annuitant. The amount of the monthly annuity under this form of benefit shall be less than that provided under other joint and survivor annuity options to reflect the actuarial cost of this benefit.

Notwithstanding the preceding, if the total number of payments made under this option to both the employee and his designated beneficiary is less than 60, the payments being

made as of the date of death of the survivor of the Employee or the Employee's beneficiary, shall be continued at the rate in effect as of the date of the death of the survivor until 60 monthly payments have been made in the aggregate under this benefit option. The Trustees may, in their discretion, either continue to make the remaining payments for the remainder of the 60 months, or pay such amount out in accordance with the provisions of paragraph 5.13.

#### **(6) Roll-Over Distributions**

Notwithstanding any provision of this Plan to the contrary, a distributee may elect at the time and in the manner prescribed by the Trustees, to have any portion of an eligible roll-over distribution paid directly to an eligible retirement plan specified by the distributee in a direct roll-over.

For this purpose, the following definitions shall apply:

1) Eligible Roll-Over Distribution. An eligible roll-over distribution is any distribution of all or a portion of the balance to the credit of the distributee that has not previously been distributed from the Trust.

2) Eligible Retirement Plan. An eligible retirement plan is an individual retirement account, an individual retirement annuity, an annuity plan or a qualified trust that accepts the distributee's eligible roll-over distribution. However, in the case of an eligible roll-over distribution to a surviving spouse, an eligible retirement plan is an individual retirement account or an individual retirement annuity.

3) Distributee. A distributee includes a Participant or former Participant. In addition, the Participant or former Participant's surviving spouse and the Participant or former Participant's spouse or former spouse who is an alternate payee under a qualified domestic relations order shall be treated as distributees with regard to the interest of the spouse or former spouse.

4) Direct Roll-Over. A direct roll-over is a payment by the Plan to the eligible retirement plan specified by the distributee.

#### **V.9 Provisions Pertaining to all Joint and Survivor Annuity Payments and Other Options**

The following provisions shall apply to all Joint and Survivor Annuity payments or other options:

(1) Monthly payments terminate with the last payment due as of the month of the death of the Employee or joint annuitant, whichever occurs last.

(2) If a joint annuitant predeceases the Employee after he retires, and if no further payments are to be made under Paragraph 5.08, then the joint and survivor payments shall cease upon the Employee's death.

(3) Determination of the amount of benefit payments to be made under any of the options contained in this Plan shall be made by the Trustees on the basis of the advice of an enrolled actuary, taking into account all pertinent factors such as age and sex of the Employee and if applicable) his contingent

annuitant and using generally accepted mortality tables and actuarial assumptions.

The current actuarial assumptions are based upon the 1983 Group Annuity Mortality Table for all Participants and all spouses of Participants, regardless of sex. Disability benefits are based on the 1944 Disabled Railway Employees Ultimate Mortality Table for Participants. The interest assumption is six and three-quarters percent (6.75%) per annum computed annually.

(4) Any Joint and Survivor Annuity payable under this Plan except the one provided in Paragraph 5.11 below, may be reduced by an amount which takes into account in any equitable manner (as determined by the Secretary of the Treasury or his delegate) any increased costs resulting from providing Joint and Survivor Annuity Benefits.

(5) At least thirty (30) days and no more than ninety (90) days before the Annuity Starting Date, the Trustees shall provide to the Participant a written explanation of: (i) the terms and conditions of the Joint and Survivor Annuity, (ii) the Participant's right to make, and the effect of, an election to waive the Joint and Survivor Annuity, (iii) the right of the Participant's Spouse to consent to any election to waive the Joint and Survivor Annuity, and (iv) the right of the Participant to revoke such election and the effect of such revocation. The Plan may provide the foregoing information by a method other than mail delivery such as permanent posting at local Union Offices or publication in Union Newspapers, provided that such method is reasonably calculated to reach the attention of the Participant on or about the dates prescribed in this Section 5.10(e).

## **V.10 Joint and Survivor Annuity Before Retirement**

If a Participant was eligible for normal Retirement Benefits at the date of his death and dies after reaching age sixty-five (65) and before retirement, or if an Employee was eligible for Early Retirement Benefits at his death, and dies after reaching the age of fifty-five (55) and before retirement, his Qualified Spouse shall receive the 50% Joint and Survivor Annuity as provided in paragraphs 5.02 and 5.08. The benefit payable to his Qualified Spouse shall be the amount to which the spouse would be entitled if the Employee had taken Normal Retirement or Early Retirement on the date before his death.

If an Employee would be eligible for Normal Retirement Benefits but has not reached age 55 prior to the date of his death, his Qualified Spouse shall receive a 50% Joint and Survivor Annuity as provided in Paragraph 5.09 (a) commencing in the month following the month in which such Participant would have reached age 55. The amount of such annuity payment shall equal the benefits which such Employee's surviving spouse would have received if such Employee had separated from service on the date of death, survived until age 55, retired and elected a 50% Joint and Survivor Annuity at age 55, and died on the next day.

The Trustees shall provide a written explanation of the Pre-Retirement Survivor Annuity to each Participant during whichever of the following periods ends last:

- (1) The period beginning with the first day of the Plan Year in which the Participant attains age 32 and ending with

the close of the Plan Year preceding the Plan Year in which the Participant attains age 35 or

(2) a reasonable period after the individual becomes a Participant.

### **V.11 Time of Election**

Any election of the form of Retirement Benefit may be made, or if previously made, changed, prior to an Employee's date of retirement. After that it may not be changed.

Failure by the Participant (or the Qualified Spouse in the event of death or if the form of distribution is other than a joint and survivor annuity) to consent to an immediate distribution of any part of accrued benefit is an election to defer the required form of benefits to Normal Retirement Age. The consent of any nonspouse beneficiary need not be obtained to revoke or change any options previously elected.

### **V.12 Payment of Guaranteed Benefits After Death**

If the total amount paid on behalf of an Employee is less than sixty times the monthly life annuity he was receiving upon retirement, then the difference shall be paid to his designated beneficiary, or if the designated beneficiary is then deceased, to the estate of the designated beneficiary, or if the designated beneficiary predeceased the Employee, or the Employee failed to name a designated beneficiary, then to the Employee's estate. That difference shall be paid in monthly payments over a period not in excess of 36 months, or the Trustees may, in their

discretion, make a lump sum payment equal to the total balance due discounted to its present value on the date of payment.

### **V.13 Suspension of Payments During Reemployment**

If an Employee commences Early, Normal or Late Retirement, but later returns to work for an Employer, or otherwise begins working in the Construction Industry, his Retirement Benefit Payments will be forfeited as hereafter set forth until he later retires (as provided in Paragraph 8.04). Following his return to work he will earn no additional Retirement Benefits during any Plan Year in which he fails to complete at least 500 Covered Hours of Employment. The foregoing sentence does not apply if retirement was for disability, and the Employee, immediately prior to return to work, was receiving a Disability Retirement Benefit. A Pensioner shall be considered to have returned to work for an Employer during any month in which he earns over 40 Covered Hours of Employment. For purposes of paragraphs 5.15 and 8.04 "Covered Hours of Employment" will include any hours that constitute "Working in the Construction Industry" within the jurisdiction of this Plan.

### **V.14 Small Payments**

The Trustees shall have the right to pay to a retiring or terminating Participant or to any other beneficiary, in cash, in a single sum, the actuarial equivalent at time of termination of the retirement income to which he or she is entitled hereunder in the event that the said retirement income is actuarially equivalent to less than the sum of \$5,000.

For purposes of determining the present value of a lump sum distribution, the interest rate assumptions used by the actuary shall not be greater than the rate used by the Pension Benefit Guaranty Corporation for valuing lump sum distributions upon man terminations. The interest rate applicable to distributions to be made in any Plan Year shall be the rate in effect at the beginning of that Plan Year.

### **V.15 Spousal Consent**

No employee may designate any beneficiary other than his spouse as his primary beneficiary or elect not to receive payment in the normal form of a 50% qualified Joint and Survivor Annuity or a 50% qualified pre-retirement survivor annuity as provided for in Sections 5.08 and 5.11 without the consent of his spouse unless:

(a) The Employee is not married; (b) the Employee's spouse cannot be located; or (c) other circumstances exist under which no spousal consent is required in accordance with applicable IRS regulations.

Such spousal consent must specify the beneficiary and/or form of benefits elected, must be in writing, must acknowledge the effect of such election and must be witnessed by a Plan Representative or a notary public. Spousal consent must be obtained within 90 days prior to the commencement of the payment of any benefits requiring spousal consent.

**ARTICLE VI**  
**Credited Service**

**VI.1 Credited Future Service**

Credited Future Service shall be the period of service of an Employee on or after January 1, 1970, or his entry date, if later, for which Employer contributions have been made to this Plan. An Employee shall receive one year of Credited Future Service for each Plan Year in which he has earned at least 1,000 Hours of Service.

**VI.2 Credited Past Service**

(1) In order to be eligible for Credited Past Service, an Employee must have earned at least:

(1) 1,000 Hours of Service during a single Plan Year during the period January 1, 1970 to December 31, 1973, and

(2) Have accumulated at least two years of Credited Future Service under the Plan at any time subsequent to January 1, 1970.

(3) Credited Past Service shall be the number of completed Years of Service (not to exceed 10 years) rendered by an Employee immediately prior to the effective date of the Plan. Past Service shall be determined on the basis of hours worked during each 12 month period beginning on January 1, 1958. However, no service performed prior to January 1, 1958, shall be recognized as Credited Past Service.

The following types of employment shall be eligible for Past Service Credit:

(1) all past employment of an Employee with his current Employer in an operation of the Employer covered by this Plan; and/or

(2) all past employment of an Employee with any other participating Employer hereunder in an operation of the Employer covered by this Plan; and/or

(3) all past employment of an Employee under an agreement between any Union participating in this Plan and a concern engaged in the same or similar employment or operations as Employers herein if such concern is no longer in business.

## **ARTICLE VII**

### **Permanent Total Disability**

#### **VII.1 Determination of Disability**

For purposes of this Plan, permanent total disability is disability resulting from any medically determinable physical or mental impairment which can be expected to be of long, continued or indefinite duration and which will render the Employee incapable of continuing in the employment of an Employer or engaging in any other regular employment for an Employer or engaging in any regular employment or occupation substantially gainful in character which he would otherwise be expected to be capable of performing in light of his training, experience and ability. Disability Retirement Benefits will not be payable to an

Employee where the disability results from a self-inflicted injury or the habitual use of narcotics or the habitual use of alcoholic beverages.

Disability will not be considered established until it has continued for a period of at least six consecutive months. It shall be the responsibility of the Employee to submit proof of disability satisfactory to the Trustees, and the Trustees may require that the Employee be examined by a physician of their choice before awarding Disability Retirement Benefits under this Plan.

Once an Employee's application for Disability Retirement Benefits has been approved by the Trustees, they thereafter may, at their option, require one or both of the following from the Employee:

(1) Medical proof of the continuance of said disability, but that proof shall not be required more frequently than once in twelve months.

(2) A certification by the Employee, but not more frequently than every three months, that he is still totally and permanently disabled and setting forth the details of any gainful employment.

The Trust may withhold the payment of benefits when either of the foregoing reports have not been timely furnished by the Employee. In addition thereto, the Employee may be required to submit to a physical examination to be given by a physician or surgeon designated by the Trustees at the expense of the Trust.

## **VII.2 Termination of Disability Benefits**

As long as an Employee's disability continues, payments will continue for the lifetime of the Employee and will otherwise be payable and terminate in conformity with Paragraph 5.08.

Payment of Disability Retirement Benefits shall cease, and any benefits paid after that date shall be returned to the Trust, upon an Employee's return to Covered Employment, his engaging in substantial gainful employment, his recovery from the disability, as determined by a physician selected by the Trustees or by other evidence presented to the Trustees, or upon the discontinuance of the payment of a Social Security disability pension, whichever first occurs.

## **ARTICLE VIII Terminations**

### **VIII.1 Termination of Participation in the Plan**

#### **(1) Definition of two year break in service**

As used in this Plan, the term "two year break in service" means two consecutive Plan Years during which the Participant has not earned at least 500 Hours of Service in either one of those Plan Years.

#### **(2) Definition of one year break in service**

As used in this Plan, the term "one year break in service" means one Plan Year during which the Participant has not earned at least 500 Hours of Service.

**(3) Waiting period after two year break in service**

For the purpose of computing Credited Service, in the case of any Participant who has a two year break in service, Credited Service before such break shall not be taken into consideration until the Participant has earned one year of Credited Future Service after his return.

**(4) Break in service**

In the case of a Participant who under Paragraph 8.03 does not have a non-forfeitable right to any accrued benefit, Credited Service before any two year break in service shall not be taken into account if the number of consecutive one year breaks in service equals or exceeds the greater of five consecutive one Year Breaks in Service or the aggregate number of years of Credited Service prior to any two year break in service.

In the case of a Participant who prior to January 1, 1985, did not have a non-forfeitable right to any accrued benefit, Credited Service before any two-year break in service shall not be taken into account if the number of consecutive one-year breaks in service equals or exceeds the aggregate number of years of Credited Service prior to any such two-year break in service. This pre-January 1, 1985 break in service rule shall only apply if the Participant had experienced a two-year break in service as of December 31, 1984 and shall only affect the computation of a Participant's Credited Service accrued prior to that date.

The aggregate number of years of Credited Service before such breaks shall be deemed not to include any Credited Service not required to be taken into account by reason of any prior break in service, under the above two paragraphs.

**(5) Termination of Participation**

Upon a break in service being established as set forth in subparagraph (d) above, and the Participant no longer has any Credited Service as a result of such break in service, then such Participant shall have no rights under the Plan nor receive any payments from the Trust Fund.

**VIII.2 Postponement of Termination**

An Employee's failure to earn Hours of Service shall not be counted for purposes of establishing a termination under Paragraph 8.01 above during any period such failure is attributable to any of the following causes (any such failure attributable to any other cause shall not postpone termination):

(1) Voluntary or involuntary service with the Armed Forces of the United States, or substitute non-military services as required by law;

(2) The Participant is available for, but is unable to obtain sufficient work in Covered Employment, provided the Trustees shall determine on a non-discriminatory basis, if conditions in the Industry warrant, postponement of termination for this reason;

(3) Permanent and total disability (as defined in Paragraph 7.01). However, no Participant shall defer a termination as a result of a permanent and total disability unless such Participant notifies the Trustees in writing within two years of the onset of such permanent and total disability and unless that individual first becomes a Participant prior to reaching age 55. The requirement to notify the Trustees within two years of the onset of permanent and total disability will be retroactively tolled during any time where the Participant can demonstrate that he or she was receiving Labor & Industries payments, time loss payments or other comparable payments from a private insurance carrier on account of total disability, provided the Participant has not gone back to work for thirty (30) or more consecutive work days since the date of the onset of the disability.

(4) Leave of Absence approved, in advance, by the Trustees;

(5) The Employee is absent from work (i) by reason of the pregnancy of the Employee, (ii) by reason of the birth of the child of the Employee, (iii) by reason of the placement of the child in connection with the adoption of the child by the Employee, or (iv) for purposes of caring for the child during the period immediately following the birth or placement for adoption. The Hours of Service required to be credited from Break in Service purposes under this 8.02 (i) shall only be credited (i) in the Plan Year in which the absence begins for one of the permitted reasons, if the crediting is necessary to prevent a Break in Service in that Plan Year or (ii) in the following Plan Year. The Break in Service will only be waived if prior to the commencement of the date of the break or within 60 days thereafter, the Employee certifies to the Trustees that the leave was taken for one of the permitted

reasons set forth in this 8.02 (i).

Absence for any of the foregoing causes shall postpone the computation of the two consecutive Plan Years during which a minimum of 500 Hours of Service must be earned in one of those years. At the end of the period allowed for such absence, the balance of the time remaining in such two year period, computed as of the date such absence begins, shall begin to run, regardless of whether or not the last day of such balance coincides with the end of a Plan Year.

Any of the foregoing absences may be limited in time and in scope by regulations of the Trustees uniformly applicable to all Participants in similar circumstances.

### **VIII.3 Vesting of Benefits on Termination of Participation**

An Employee shall have a 100% fully vested, nonforfeitable right to monthly benefits under this Plan, if on the date of his termination of participation in this Plan he has earned five (5) Years of Credited Service under this Plan.

If a non-vested Participant's participation terminates before satisfying the aforementioned conditions, he will not receive any benefits under this Plan. If a non-vested former Participant again becomes a Participant hereunder, his aggregate Years of Service for purposes of this paragraph 8.04 shall be computed by using the same break in service rules as are used in computing Years of Credited Future Service.

#### **VIII.4 Reemployment After Retirement**

In order to be considered retired, a Participant must withdraw and completely refrain from Working in the Construction Industry. For this purpose, a Participant shall be considered as withdrawing and completely refraining from Working in the Construction Industry if such Participant elects retirement and completes zero hours for one or more calendar months. If a Participant who has been receiving retirement benefits returns to Work in the Construction Industry, he shall not receive a Retirement Benefit Payment for any month in which he has been employed for over 40 Covered Hours as defined in Paragraph 5.15.

Any Participant who is receiving benefits under the Plan and who contemplates re-employment may request the Trustees for an advance determination of whether specific contemplated employment will result in suspension of benefits. Such request for an advance determination shall be made in writing to the Trustees. In the event of an adverse determination, the individual Participant may request a hearing before the Board of Trustees as provided for in the appeals provisions of the Plan.

### **ARTICLE IX Miscellaneous Provisions**

#### **IX.1 Information to be Furnished**

An Employee shall furnish any information or proof that the Trustees deem necessary or reasonable in order to administer this Plan. Employees shall cooperate in complying with all reasonable requests of the Trustees.

## **IX.2 Contribution**

Contributions to this Plan will be made by the Employers and in amounts specified in their respective Collective Bargaining Agreements or by special agreement in writing between the Employer and the Trustees.

## **IX.3 Hearings before Board of Trustees and Arbitration**

Any Employee or beneficiary who applies for benefits and is ruled ineligible, or who is otherwise adversely affected by any action of the Trustees, shall have the following exclusive remedies, which shall be in lieu of the other remedies which such Employee or beneficiary might otherwise have at law or in equity.

(1) Within sixty (60) days after written notice has been mailed, postage prepaid by certified mail, to the Employee or beneficiary at his or her last known address as reflected on the records of the Plan administrator, the affected Employee or beneficiary may request a hearing before the Board of Trustees.

(2) The notice shall set forth the specific reason for the denial or adverse action, specific references to any pertinent Plan provisions, a description of any additional material or information necessary for the claimant to perfect the claim, an explanation of why such material information is needed, and an explanation of the Plan's review and hearing procedures.

(3) The request for hearing shall be mailed to the Board of Trustees in care of the Plan administrator within the period set forth in subparagraph (a) above.

(4) The Board shall then hold a hearing on the matter at a special meeting within fifty (50) days after receiving the written request for hearing, or at the next regular quarterly meeting.

(5) The Employee or beneficiary shall be notified of the date and place of the hearing at least ten (10) days prior thereto.

(6) At the hearing, the Employee or beneficiary may present his or her position in writing, may personally appear and present his or her position and/or may be represented by counsel to present his or her position. At the hearing, the claimant and his or her counsel may review any and all pertinent documents which relate to the matter.

(7) Within ten (10) days after the hearing the Trustees shall render a written decision on the matter either reaffirming, modifying or setting aside their former action. That written decision shall be mailed to the Employee or beneficiary.

(8) If the Employee or beneficiary is dissatisfied with the written decision of the Trustees, he or she shall have the right to request the appointment of an impartial arbitrator to review the matter in accordance with the rules of the American Arbitration Association. Such request must be filed, in writing, with the Trustees within sixty (60) days after written notice of the decision has been mailed, postage prepaid by certified mail, to the Employee or beneficiary at his or her last known address as reflected in the records of the Plan administrator. The administrator will assist in the preparation of the request for arbitration, if asked to do so.

(9) In the event the matter is submitted to arbitration, the question for the arbitrator shall be whether, in the particular instance, the Trustees (1) were in error upon any issue of law, (2) acted arbitrarily or capriciously in the exercise of their discretion, or (3) whether their findings of fact were supported by substantial evidence. The expenses of arbitration, including reasonable attorney's fees, shall be borne by the losing party. The decision of the arbitrator shall be final and binding upon the Trustees and upon the appealing party.

#### **IX.4 Availability of Documents**

Copies of the Plan and Trust Agreement, together with all amendments thereto, and other reports under the Employee Retirement Income Security Act of 1974 will be available to interested parties at the administrative office of the Plan.

#### **IX.5 Expenses of Administration**

The expenses of administering the Plan will be paid from the Trust Fund.

#### **IX.6 Employer-Employee Relationship not Affected**

This Plan is not intended to affect in any way the Employer-Employee relationship between any Employee and Employer hereunder. Such relationship shall continue under any Collective Bargaining Agreement or other agreement between those parties which may be in effect from time to time.

## **IX.7 Merger or Consolidation**

This Plan shall not be merged or consolidated with, nor shall any assets or liabilities be transferred to, any other plan, unless the benefits payable to each participant, if the Plan was terminated immediately after such action, would be equal to or greater than the benefits to which such participant would have been entitled if this Plan had been terminated immediately before such action.

## **IX.8 Assignment**

A participant, or surviving beneficiary or estate of a participant, or a former participant, shall have no right to assign, transfer, hypothecate, encumber, or anticipate his interest in, or any payment payable to him under, this Plan, nor shall any such interest or payment be subject to garnishment, attachment, levy, execution, or other legal or equitable process. If any such person shall attempt to assign, transfer, or dispose of such right, or should such right be subject to attachment, execution, garnishment, sequestration, levy, or other legal equitable process, then such assignment, transfer, disposition, attachment, execution, garnishment, sequestration, levy, or other legal or equitable process shall be null and void. Nothing in this Section 11.08 shall prevent the entry of a valid qualified domestic relations order as defined in the Internal Revenue Code.

**ARTICLE X**  
**Compliance with Federal Law**

**X.1 Submission to Internal Revenue Service  
and Department of Labor**

This Plan and the Trust Agreement will be submitted to the Internal Revenue Service and the Department of Labor for determination letters, or other appropriate action by those agencies, approving the terms thereof and specifically determining that contributions made by Employers to the Plan are allowable as deductions from gross income and that the Trust is qualified for tax exemption. Any modification or amendment of the Plan may be made retroactively if necessary or appropriate to qualify or maintain a Plan and Trust in connection therewith as a Plan and Trust meeting the requirements of Section 401, 404 and 501 (a) of the Internal Revenue Code as now in effect and/or as amended by the Employee Retirement Income Security Act of 1974, or any other applicable provisions of Federal Law as now in effect or hereafter amended or adopted and the regulations issued thereunder.

**X.2 Ineligible Contributions**

Notwithstanding any other provisions of this Plan, the Trustees shall have the privilege of refusing to accept contributions from any Employer on behalf of any Employee if the acceptance of those contributions would adversely affect the ability of Employers to deduct from gross income contributions to the Trust or would adversely affect the Trust's status as a qualified and tax exempt trust under the Internal Revenue Code. Any contributions which must be returned to Employers under this

paragraph, shall be refunded without interest.

### **X.3 Reversion of Funds to Participating Employers**

Except as otherwise provided herein, the assets of this Plan shall never inure to the benefit of any Employer and shall be held for the exclusive purposes of providing benefits to Participants in the Plan and their beneficiaries and deferring reasonable expenses of administering the Plan. Notwithstanding the preceding, in the event that any contributions or payments are made by an Employer because of a mistake of fact or law, this provision shall not prohibit the return of such contributions, without any earnings thereon, provided such repayment is made within six months after the Trustees determine that the contribution was made because of such a mistake and further determine that the return of such contributions is not inconsistent with the Plan's then current policy regarding refunds of such contributions. This provision is intended to comply with ERISA Section 403 and shall be interpreted in a manner consistent therewith, but shall not impose on the Trustees an obligation to return any contributions if such return is inconsistent with its then current policy.