OPERATING ENGINEERS LOCAL 12
DEFINED CONTRIBUTION PLAN

PLAN DOCUMENT (2018)

ARTICLE I

DEFINITIONS

Section 1: Unless the context or subject matter otherwise requires, as determined by the Board of Trustees, the words and terms used in this Defined Contribution Plan shall have the same meaning as in the Agreement and Declaration of Trust. Any conflicts between the provisions of this Defined Contribution Plan and the Trust Agreement shall be resolved in favor of the provisions of the Trust Agreement.

Section 2: Accumulated Share. The term "Accumulated Share" as used herein shall mean the amount payable from an Individual Account as defined and described in Article III.

Section 3: Alternate Payee. The term "Alternate Payee" shall mean a payee, other than the Participant, designated pursuant to a QDRO to receive all or part of a Participant's Accumulated Share. For purposes of this Section and for purposes of Article IX, Section 7, "QDRO" means a Qualified Domestic Relations Order as defined in Internal Revenue Code Section 414(p).

Section 4: Annuitant. The term "Annuitant" as used herein shall mean an Employee who retired and who receives a benefit from the Plan.

Section 5: Beneficiary. The term "Beneficiary" as used herein shall mean a person, other than an Employee, who is receiving or entitled to receive benefits from the Plan which may be payable in the event of the death of the Participant.

Section 6: Code. The term "Code" as used herein shall mean the Internal Revenue Code of 1986, as amended.

Section 7: Compensation Shall Include All Compensation. Compensation shall include any elective deferral as defined in Section 402(g)(3) and any amount which is contributed or deferred by the employer at the election of the employee and which is not includible in gross income of the employee by reason of section 125, 132 (f)(4) or 457.

Section 8: Construction Contracting Industry. "Construction Contracting Industry" includes all employers who pay contributions to the Plan pursuant to the terms of a

collective bargaining agreement and all employers performing comparable work who are not bound to collective bargaining agreements requiring contributions to the Plan.

Section 9: Contribution Agreement. The term "Contribution Agreement" means a written agreement as specified in the Trust Agreement, which requires payments to the Plan on behalf of Covered Employees, including collective bargaining agreements, non-bargaining unit employee participation agreements, subscription agreements, and project labor agreements requiring contributions to the Plan.

Section 10: Contributions. The term "Contributions" as used herein shall mean the payments made or required to be made to the Fund by an Employer pursuant to a Contribution Agreement.

Section 11: Covered Employee. The term "Covered Employee" means any Employee in Covered Employment. The term "Covered Employee" shall also include employees of Unions, or the Administrative Corporation, on whose behalf contributions are made to the Plan pursuant to regulations adopted by the Board of Trustees, provided the inclusion of said employees is not a violation of any existing regulation.

The term "Covered Employee" may also include employees of an Employer not performing work under any of the collective bargaining agreements but who formerly performed services under any of the collective bargaining agreements. The Employer must notify the Trustees in advance in writing of an election to pay contributions on behalf of these collective bargaining unit alumni pursuant to this subsection and pursuant to regulations adopted by the Board of Trustees and provided further that the inclusion of said employees is not a violation of any existing law or regulation.

Participation in the Plan by non-collectively bargained employees shall be subject to a Participation Agreement duly executed by the Board of Trustees and the Employer.

Employees not performing services under a collective bargaining agreement may only participate in the Plan if no more than five percent (5%) of the Covered Employees covered under the Plan are non-collective bargaining unit employees. Covered Employees who previously participated as collective bargaining unit employees and who continue participation in the Plan as collective bargaining unit alumni pursuant to this Section shall not be treated as collective bargaining unit employees for purposes of the five percent (5%) maximum but shall be considered collective bargaining unit employees to the fullest extent permissible under Internal Revenue Code Section 410,

Regulations related to that Section and all related Sections and Regulations. Except as may be required by law, collective bargaining unit alumni whose participation is allowed pursuant to this Section of the Plan and other participants not performing services under the collective bargaining agreement participating pursuant to the provisions of this Section of the Plan, shall in no event accrue benefits under the Plan in a fashion more favorable than that applicable to similarly situated Employees who are performing services under the collective bargaining agreement. In no event may an Employer that wishes to pay contributions to the Plan on behalf of non-collectively bargained unit employees do so without the prior approval of the Trustees. Should an Employer pay such contributions without the prior approval of the Trustees, those contributions less any investment losses but in no event with any investment gains, shall be returned by the Trustees to the Employer. The Trustees shall not permit initial or continued participation pursuant to this Section if such participation would result in the five percent (5%) limitation of this Section being violated.

The term "Covered Employee" does not include any self-employed person, whether a sole proprietor or a partner.

Section 12: Covered Employment. The term "Covered Employment" means employment with an Employer in a position subject to a Contribution Agreement.

Section 13: Covered Hour. A Covered Hour includes each hour for which a Covered Employee is paid, or is entitled to payment, for the performance of duties, or on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated), or for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the employer. The number of Covered Hours to be credited for periods during which the Covered Employee performs no duties and the crediting of Covered Hours to specific plan years shall be determined by the Trustees in accordance with subsections (b) and (c) of Department of Labor Regulations §2530.200b-2.

Section 14: Effective Date. The Plan is to be effective on and after July 1, 2018.

Section 15: Employee. The term "Employee" means an Employee who works for an Employer.

Section 16: Employer. The term "Employer" means any employer which has agreed to be bound by the Agreement and Declaration of Trust and is obligated to make

Contributions to the Plan pursuant to the terms of a Contribution Agreement. "Employer" also means any employer who does in fact make one or more contributions to the Plan or who is the employer of employees admitted pursuant to the provisions of the Trust Agreement. The term "Employer" shall also include any Union which makes contributions to the Plan on behalf of its employees provided that the inclusion of said Union(s) is not a violation of any existing law or regulation. The term Employer shall also include any of the employers who make contributions to the Plan on behalf of their employees pursuant to regulations adopted by the Board of Trustees.

An employer shall not be deemed a Contributing Employer simply because it is part of a controlled group of corporations (within the meaning of Section 1563(a) of the Internal Revenue Code, determined without regard to Section 1563(a)(4) and (e)(3)(C), or of a trade or business under common control within the meaning of Section 414(c) of the Internal Revenue Code), some other part of which is a Contributing Employer.

For purposes of identifying Highly Compensated Employees and applying the rules on participation, vesting and statutory limits on benefits under the Plan but not for determining Covered Employment, the term "Employer" includes all members of an affiliated service group with the Employer within the meaning of Internal Revenue Code Section 414(m) and all other businesses aggregated with the Employer under Internal Revenue Code Section 414(b).

Section 17: Highly Compensated Employee. "Highly Compensated Employee" means each Highly Compensated Active Employee and Highly Compensated Former Employee of an Employer. Whether an individual is a Highly Compensated Employee is determined separately with respect to each Employer, based solely on the individual's compensation from or status with respect to that Employer.

A Highly Compensated Active Employee is an Employee of the Employer who performs service for the Employer during the determination year and who:

(a) for the preceding calendar year received Compensation from the Employer in excess of $105,000 (as adjusted pursuant to IRC Section 415(d)), was a member of the top-paid group of Employees of such Employer for such preceding calendar year and is not otherwise excluded pursuant to IRC Section 414(q)(8) by virtue of his or her inclusion in the bargaining unit of employees covered by a collective bargaining agreement. For this purpose, the top-paid group of Employees shall

consist of the top twenty percent (20%) of the Employees when ranked on the basis of Compensation paid during such year; or

(b) was a five percent (5%) owner at any time during the calendar year or preceding calendar year.

The determination of who is a Highly Compensated Employee, including the determination of the number and identity of Employees in the top-paid group, the top one hundred (100) Employees, and the number of Employees treated as officers and the Compensation that is considered, will be made in accordance with IRC Section 414(q) and the regulations there under. No Employee who is a collective bargaining unit alumni, who is included in a collective bargaining unit under, or whose Compensation is governed by the collective bargaining agreements shall be considered a Highly Compensated Employee and, pursuant to IRC Section 414(q)(8), no such Employee shall be taken into account in determining the number of employees in the top-paid group.

Section 18: Individual Account. The term "Individual Account" as used herein shall mean the account established for each Employee, pursuant to Article III of the Plan.

Section 19: Market Value. The term "Market Value" as used herein shall mean the value of the assets which takes into account fair market value.

Section 20: Participant. The term "Participant" as used herein shall mean any Covered Employee or former Covered Employee who is or may become eligible to receive a benefit under this Plan. Covered Employees become Participants on meeting the requirements of Article II.

Section 21: Pension Plan. The term "Pension Plan" as used herein shall mean the Operating Engineers Pension Plan (Defined Benefit Plan).

Section 22: Plan. The term "Plan" means the Operating Engineers Local 12 Defined Contribution Plan. The Plan is established as a separate Plan under the Agreement and Declaration of Trust of the Operating Engineers Defined Contribution Trust Fund. The term "Plan" as used herein shall also mean the rules and regulations set forth herein, as they may be amended from time to time.

Section 23: *Plan Administrator.* The Plan Administrator is the Board of Trustees of the Operating Engineers Local 12 Defined Contribution Trust Fund, except as follows: _____ Services is the Plan Administrator for purposes of daily account valuation, distribution processing and QDRO implementation.

Section 24: Plan Year. The term "Plan Year" as used herein shall mean the twelve month period from July 1 through June 30.

Section 25: Retires. The term "Retires" or "Retired" or "Retirement" shall mean the complete withdrawal by an Employee from any employment or self-employment in the Construction Contracting Industry which is within the geographical jurisdiction of the Plan and regardless of whether a collective bargaining agreement actually exists with respect to the employment or self-employment involved.

Section 26: Spouse. "Spouse" means a person to whom a Participant is legally married.

Section 27: Valuation Date. The Plan utilizes a daily valuation system for Individual Accounts, which requires that the net asset value of each Individual Account be valued on a daily basis on every day the securities markets are open.

ARTICLE II

ELIGIBILITY FOR PARTICIPATION

Section 1: Each Covered Employee will automatically become a Participant in the Plan on July 1, 2018.

Section 2: Each Covered Employee not identified in Article II, Section 1 above, will become a Participant in the Plan on the first day of the month immediately following the month that he works one full or partial Covered Hour for which contributions are required to be paid into this Plan.

Section 3: Employees of the sponsoring organizations of this Plan and other non-bargaining unit employees shall be permitted to participate in this Plan upon execution of a Participation Agreement approved by the Board of Trustees of the Operating Engineers Local 12 Defined Contribution Trust.

ARTICLE III

INDIVIDUAL ACCOUNTS

Section 1: *Establishment of Individual Account.* An Individual Account shall be established for each Covered Employee for whom any contribution to this Plan is required to be paid on behalf of a Covered Employee. The Individual Account is maintained only for accounting purposes, and a segregation of the assets of the Fund to each Individual Account shall not be required.

Section 2: *Individual Account Balance*. The Plan utilizes a daily valuation system for Individual Accounts, which requires that the net asset value of each Individual Account be valued on a daily basis. Expenses are charged to individual accounts on the 25th day of each month commencing August 1, 20__.

Section 3: Termination of Account. An Individual Account shall be considered terminated in the month in which payment of the Accumulated Share is completely distributed, or commences if payable as a life or other form of annuity.

Section 4: Limitation of Accounts. In no event and at no time shall the total amounts in all Individual Accounts, plus amounts previously established for expenses and reserves

at the time, exceed the total net assets of the Fund. Should such an event occur, then all existing Individual Accounts shall automatically be proportionately reduced so that the total of all Individual Accounts plus amounts established for expenses and reserves is no more than the Fund's total net assets.

ARTICLE IV

VESTING

Section 1: Vesting.

The Individual Account of each Covered Employee will automatically be immediately vested.

ARTICLE V

PAYMENT OF INDIVIDUAL ACCOUNTS AT RETIREMENT

Section 1: Normal Retirement Date. A Participant's Normal Retirement Date is the first of the month coinciding with or next following attainment of his 65th birthday.

Section 2: Early Retirement Date.

(a) A Participant may elect to retire early under this Plan if he has commenced and is receiving early retirement benefits under the Operating Engineers Pension Plan and has severed all employment with all Contributing Employers through the date of distribution of his or her Individual Account. A Participant who does not elect to apply for early retirement benefits under the Operating Engineers Pension Plan is not eligible for a distribution of benefits under the Defined Contribution Plan unless he satisfies the criteria of Article VI, Section 1.

(b) A Participant who is not a Participant in the Operating Engineers Pension Plan, may also retire early if he has attained age 55 and earned 15,000 Covered Hours under the Defined Contribution Plan. A Participant's Early Retirement Date is the first day of any month coinciding with or following attainment of early retirement eligibility, and severance of all employment with all Contributing Employers through the date of distribution of his or her Individual Account.

Distributions under this Section shall be distribution of accrued contributions at the earliest possible date upon receipt of application by the Pension Trust Fund Administrative Office and satisfaction of the eligibility criteria therefore, with any subsequently received contributions to be distributed thereafter;

Section 3: Amount of Distribution

The amount of the distribution shall be the value of the Individual Account valued as of the date of the distribution.

Section 4: Form of Distribution.

(a) Automatic 50% Joint and Survivor Annuity. If a Participant is married on his retirement date, and he and his spouse do not elect otherwise, his

Individual Account will be payable in the form of a 50% Joint and Survivor Annuity.

Under the Automatic 50% Joint and Survivor Annuity, monthly payments will be made to the Participant as long as he survives. If, at the death of the Participant, he is survived by his spouse, monthly payments will continue to the spouse during her remaining lifetime in an amount equal to 50% of the monthly amount payable to the Annuitant under the Automatic 50% Joint and Survivor Annuity.

A Participant and his spouse may, pursuant to subsection (d) of this Section 4, elect not to receive the Automatic 50% Joint and Survivor Annuity, and may elect instead to receive an optional form of Annuity described in section (b) or (c) below.

(b) Normal Form of Annuity. If a Participant is not married on his retirement date, and does not elect an optional form described in subsection (c), his Individual Account will be payable in the form of a monthly annuity payable to the Participant for his lifetime only.

(c) The optional forms are as follows:

1. For a married Participant, the optional forms are:

(A) The Normal Form of Annuity described in subsection (b) above.

(B) A single lump sum payment of his Individual Account.

(C) 66 2/3% Joint and Survivor Annuity. Under the 66 2/3% Joint and Survivor Annuity, monthly payments will be made to the Participant as long as he survives. If, at the death of the Participant, he is survived by his spouse, monthly payments will continue to the spouse during her remaining lifetime in an amount equal to 66 2/3% of the monthly amount payable to the Annuitant under the 66 2/3% Joint and Survivor Annuity.

(D) 75% Joint and Survivor Annuity. Under the 75% Joint and Survivor Annuity, monthly payments will be made to the Participant as long as he survives. If, at the death of the Participant, he is survived by his spouse, monthly payments will continue to the spouse during her remaining lifetime in an amount equal to 75% of the monthly amount payable to the Annuitant under the 75% Joint and Survivor Annuity.

(E) 100% Joint and Survivor Annuity. Under the 100% Joint and Survivor Annuity, monthly payments will be made to the Participant as long as he survives. If, at the death of the Participant, he is survived by his spouse, monthly payments will continue to the spouse during her remaining lifetime in an amount equal to 100% of the monthly amount payable to the Annuitant under the 100% Joint and Survivor Annuity.

(F) Certain and Life Annuity. This Annuity provides for monthly annuity payments commencing on the Participant's Annuity Starting Date and is payable over the lifetime of the Participant. Monthly payments end with the payment due on or before the day the Participant dies but not before the guarantied period of monthly payments have been made. If the Participant dies during the guarantied period, the payments will continue for the remainder of the guarantied period to the Participant's beneficiary. One hundred and twenty (120) monthly annuity payments are guaranteed under the Certain and Life Annuity.

(G) Full Cash Refund Annuity. This form of benefit provides for monthly annuity payments commencing on the Participant's Annuity Starting Date and continuing during the Participant's lifetime. The annuity benefit will end with the last monthly payment due on or before the Participant's date of death. However, upon receipt of the Participant's death certificate, the beneficiary will receive the excess of the cost of the annuity over the total of the annuity benefit payments due the Participant up to and including their date of death.

2. For an unmarried Participant, the optional forms will be the single sum payment described in subsection (c)(1)(B), the Certain and Life Annuity described in subsection (c)(1)(F) and the Full Cash Refund Annuity described in subsection (c)(1)(G).

(d) Election of Optional Forms.

An optional form must be elected by the Participant, and, if the Participant is married, by the Participant and his spouse. Such election must be in writing. A spouse's election must be witnessed by a notary public.

The election must be made during the one hundred and eighty (180) day period ending on the date distribution of the Participant's benefit will be made or will begin.

(e) Notice Requirements.

Election of any form of distribution must be made in writing. The period during which any such election may be made ("Election Period") shall be the one hundred and eighty (180) day period ending on the date of benefit commencement which has been elected by the Participant. However, if the Participant has not received the description and explanation of the optional forms of benefits available under the Plan at least 30 days before his elected benefit commencement date, the election period shall end 60 days after the date the description and explanation of optional benefit forms are mailed to the Participant.

Any such election of a form of distribution or benefit commencement date shall be revocable during the Election Period, except as provided in an individual annuity contract. However, if benefits have commenced, no change in effective date or form of distribution shall be recognized unless arrangements, under reasonable rules established by the Trustees, are made for repayment of any amounts owing to the Plan as a result of the previously elected benefit commencement date.

Once the election period has expired, a Participant may not change his form of distribution, except as provided in an individual annuity contract.

After benefits have commenced to a Participant pursuant to an Automatic Joint and Survivor form, the Participant may not designate a new spouse to be entitled to any benefits payable under said Automatic Joint and Survivor form.

If a Participant is married on the date distribution commences and is electing a form of distribution other than an Automatic Joint and Survivor, described under Section 4(a) above, the election must be made jointly by the Participant and his spouse, and must be made only after the Trustees have provided the Participant and his spouse with a written explanation of the results of an election not to elect an Automatic Joint and Survivor option. A spouse's election must be witnessed by a notary public.

(f) Purchase of Annuities.

If an annuity becomes payable under Article V, VI, VII or VIII, the Trustees shall provide such annuity through purchase of an annuity contract from an insurance company.

(g) Required Distribution.

A Participant is not required to receive a distribution of his account under this Plan even if the Participant has retired under the Operating Engineers Pension Plan (Defined Benefit Plan) unless the Participant has attained age 70½. In no event will distribution of a Participant's account be made or commence later than April 1 of the calendar year following the calendar year in which the Participant attains age 70½. However, if a participant is not a 5% owner as defined by applicable Treasury Regulations, the Participant attained age 70½ before January 1988, and the Participant is still employed, distributions are required to commence on the date that Covered Employment is terminated. Moreover, if a participant is a 5% owner and the Participant attained age 70½ before January 1, 1988, distributions are required to commence April 1 of the calendar year following the later of:

(1) The calendar year in which he attains age 70½ or

(2) The earlier of

(i) The calendar year with or within which ends the Plan Year in which he becomes a 5% owner, or

(ii) The calendar year in which he terminates Covered Employment.

At the option of the Participant, distribution of benefits will commence upon the later of April 1 of the calendar year following actual retirement or attainment of age 70½, if the Participant is not a 5% owner of an Employer. If the Participant opts to defer commencement of benefits under this Section until after actual retirement, the Participant shall file an election form with the Administrative Office of the Trust Fund.

Distributions will be made in accordance with the Regulations under Section 401(a)(9) of the Code, including the minimum distribution incidental benefit requirement of Code Section 401(a)(9)(G).

Subject to Treasury Regulation 1.411(a)-11(c)(7) and the provisions of this Plan upon receipt of an application from a Participant, a Participant's benefits shall become payable no later than 60 days after the last to occur of:

(1) The last day of the Plan Year in which the Participant attains age 65,

(2) The last day of the Plan Year in which the Participant separates from employment with all Employers, or

(3) The 5th anniversary of the last day of the Plan Year in which the Participant commenced participation in the Plan.

Distributions must be made over the life of the Participant or life of the Participant and the Participant's Beneficiary, or over a period not extending beyond the life expectancy of the Participant or life expectancy of the Participant and his Beneficiary.

ARTICLE VI

PAYMENT OF INDIVIDUAL ACCOUNTS ON TERMINATION OF EMPLOYMENT PRIOR TO RETIREMENT

Section 1: Eligibility. A Participant who severs all employment with all Contributing Employers through the date of distribution of his or her Individual Account prior to his Normal or Early Retirement Date will be eligible for a distribution of his Individual Account upon the latter of the following:

(a) Twelve consecutive months after the Participant's most recent Covered Hour provided that the Participant must both apply for and actually receive his benefit prior to his return to any employment with any contributing Employer through the date of distribution of his or her Individual Account; or

(b) At least twelve (12) consecutive months after the Participant's last hour of suspendible employment under the Operating Engineers Pension Fund; or

(c) Any distribution made prior to the attainment of age 65 shall require that the Participant has severed all employment with all Contributing Employers through the date of distribution of his or her Individual Account.

(d) Notwithstanding subdivisions (a) thru (c) above if the Participant severs all employment with Contributing Employers, has no outstanding loan balance and his individual account balance is valued at the time of application at $3,000.00 or less the Participant will be entitled to receive a distribution of his account balance upon the filing of the required application and submission of all other required documents. For a distribution pursuant to this subdivision the Participant must both apply for and actually receive his benefit prior to return to any employment with a Contributing Employer.

(e) A participant who continues employment with a Contributing Employer outside of the jurisdiction of the Plan has not severed all employment with contributing Employers as required by Section 1 of this Article.

Section 2: Amount of Distribution. The amount of a Distribution under this Article will be as set forth in Article V, Section 3.

Section 3: Form of Distribution.

(a) Married Participants.

If a Participant is married on the date his Individual Account is to be distributed, and he and his spouse do not elect otherwise, his Individual Account will be payable in the form of an Automatic 50% Joint and Survivor Annuity as described in Article V, Section 4(a). A Participant and his spouse may jointly elect not to receive the Automatic 50% Joint and Survivor Annuity, and instead may elect the single sum payment described in Article V, Section 4(c)(1)(B), a 66 2/3% Joint and Survivor Annuity as described in Article V, Section 4(c)(1)(C), a 75% Joint and Survivor Annuity as described in Article V, Section 4(c)(1)(D), a 100% Joint and Survivor Annuity as described in Article V, Section 4(c)(1)(E), the Certain and Life Annuity described in Article V, Section 4(c)(1)(F) and the Full Cash Refund Annuity described in Article V, Section 4(c)(1)(G).

Such election must be made in accordance with Article V, Section 4(d).

(b) Unmarried Participants.

If a Participant is not married on the date his Individual Account is to be distributed, and does not elect otherwise, his Individual Account will be payable in the Normal Form of Annuity as described in Article V, Section 4(b). Instead of the Normal Form of Annuity, such Participant may elect a single sum payment as described in Article V, Section 4(c)(1)(B), the Certain and Life Annuity described in Article V, Section 4(c)(1)(F) and the Full Cash Refund Annuity described in Article V, Section 4(c)(1) (G).

Such election must be made in accordance with Article V, Section 4(d).

ARTICLE VII

PAYMENT OF INDIVIDUAL ACCOUNTS ON TERMINATION OF EMPLOYMENT DUE TO TOTAL AND PERMANENT DISABILITY

Section 1: Eligibility. On severance of all employment with all Contributing Employers through the date of distribution of his or her Individual Account due to Total and Permanent Disability, a Participant may elect to receive a distribution of his Individual Account. The date of disability shall be determined by the Trustees.

Section 2: Total and Permanent Disability. Total and Permanent Disability means a physical or mental condition resulting from bodily injury, disease or mental disorder. Objective proof of disability consists solely of a Social Security Administration Disability Award.

Section 3: Distribution of Benefits on Disability. The amount of Distribution under this Article will be as set forth in Article V, Section 3.

Section 4: Form of Distribution.

(a) Married Participants.

If a Participant is married on the date his Individual Account is to be distributed, and he and his spouse do not elect otherwise, his Individual Account will be payable in the form of an Automatic 50% Joint and Survivor Annuity as described in Article V, Section 4(a). A Participant and his spouse may jointly elect not to receive the Automatic 50% Joint and Survivor Annuity, and instead may elect the single sum payment described in Article V, Section 4(c)(1)(B), a 66 2/3% Joint and Survivor Annuity as described in Article V, Section 4(c)(1)(C), a 75% Joint and Survivor Annuity as described in Article V, Section 4(c)(1)(D), a 100% Joint and Survivor Annuity as described in Article V, Section 4(c)(1)(E), the Certain and Life Annuity described in Article V, Section 4(c)(1)(F) and the Full Cash Refund Annuity described in Article V, Section 4(c)(1)(G).

Such election must be made in accordance with Article V, Section 4(d).

(b) Unmarried Participants.

If a Participant is not married on the date his Individual Account is to be distributed, and does not elect otherwise, his Individual Account will be payable in the Normal Form of Annuity as described in Article V, Section 4(b). Instead of the Normal Form of Annuity, such Participant may elect a single sum payment as described in Article V, Section 4(c)(1)(B), the Certain and Life Annuity described in Article V, Section 4(c)(1)(F) and the Full Cash Refund Annuity described in Article V, Section 4(c)(1)(G).

Such election must be made in accordance with Article V, Section 4(d).

ARTICLE VIII

DISTRIBUTION OF INDIVIDUAL ACCOUNTS AT DEATH

Section 1: Death After Commencement of Distribution. Death benefits with respect to an Individual Account (or portion thereof) for which distribution had commenced at the time of the Participant's death will be payable according to the form of payment selected by the Participant. Death benefits with respect to an Individual Account (or portion thereof) for which distribution had not commenced will be payable according to the provisions of Sections 2 and 3 below.

Section 2: Death Prior to Commencement of Distribution. Upon the death of a Participant, his Beneficiary will be entitled to a distribution of the Participant's Individual Account. The Amount of such distribution will be as set forth in Article V, Section 3.

Section 3: Form of Payment. Death prior to Commencement of Distribution.

(a) Payments to surviving spouse.

If the Participant's Beneficiary is his spouse, and the spouse does not elect otherwise, the Participant's Individual Account will be payable as a monthly annuity payable for the spouse's lifetime. The spouse may direct that such payments will commence within a reasonable time following the Participant's death. In no event will payments commence prior to the Participant's Normal Retirement Date (or date the Participant would have attained his Normal Retirement Date) unless the Participant's Individual Account is $5,000.00 or less, or the spouse consents. Payments will commence on such Normal Retirement Date if the spouse has not consented to an earlier distribution.

Instead of the life annuity described above, a spouse may elect to receive a single sum payment of the Participant's Individual Account. Such election must be made in writing, witnessed by a notary public, and made within 90 days preceding distribution.

(b) Non-spouse Beneficiary.

If the Participant's Beneficiary is not his spouse, payment will be made in a single sum, as soon as practicable following the Participant's death.

Section 4: Beneficiary. If a Participant is married, his Beneficiary will be his spouse, unless his spouse has provided written and notarized consent to the designation of another beneficiary. If a Participant is not married, his Beneficiary will be the person designated by the Participant in a form satisfactory to the Trustees. If no Beneficiary has been designated by an unmarried Participant, or if a designated Beneficiary predeceases an unmarried Participant, payment will be made to the surviving person or persons in the first of the following classes of successive preference Beneficiaries in which a member survives the Participant.

(a) his children, including legally adopted children,

(b) his parents, and

(c) his brothers and sisters.

In determining such person or persons, the Trustees may rely upon an affidavit by a member of any of the classes of preference Beneficiaries. Payment based upon such affidavit shall be full acquittance of any benefit payable under the Plan and release of liability against the Board of Trustees unless, before the payment is made, the Trustees have received written notice of a valid claim by some other person. If two or more in a class persons become entitled to benefits as preference Beneficiaries, they shall share equally. If no preference beneficiaries survive the Participant, then the Participant's account shall be distributed to the Participant's estate in accordance with applicable state law.

Any death benefit payable to a minor under age 18 may be paid to the legally appointed guardian of the minor or, if there be no such guardian, to such adults as have, in the opinion of the Trustees, assumed the custody and principal support of said minor.

ARTICLE IX

GENERAL PROVISIONS

Section 1: Administration of Plan by Board of Trustees. The Trustees shall be the named fiduciaries for, and, as such, shall administer the Plan according to the powers and duties granted them in accordance with the Trust Agreement.

Section 2: Application for Benefits. Application for benefits must be made in writing in a form and manner prescribed by the Trustees.

Section 3: Proof to be Furnished. Every Participant, Annuitant, or Beneficiary shall furnish, at the request of the Trustees, any information or proof reasonably required for the administration of this Plan or for the determination of any matter that the Trustees may legitimately have before them. Failure to furnish such information or proof promptly, accurately and completely shall be grounds for the denial of benefits to such person. The falsity of any statement material to an application or the furnishing of fraudulent information or proof shall be grounds for denial, suspension or discontinuance of benefits under this Plan and in any such case, the Trustees are entitled to recovery of any erroneous benefit payments made in reliance thereon.

Section 4: Powers of Trustees. The Trustees shall be the sole judges of the standard of proof required in any case. In the application and interpretation of any of the provisions of this Plan, the decisions of the Trustees shall be final and binding on all parties, including Employers, the Union, the Association, Employees, and Beneficiaries, subject to applicable federal law. The Trustees shall be the sole judges of interpretations and applications of Plan rules.

Section 5: Benefit Payments Generally. Notwithstanding anything herein to the contrary:

(a) If an Accumulated Share is payable which amounts to less than $5,000.00, then such Accumulated Share shall be paid, only in a single sum. Once an annuity or installment payments have commenced, however, no distribution may be made under this subsection (a).

(b) If a retired or terminated Participant is reemployed after his account has been distributed, and additional Contributions are paid on his behalf, he

may, when he again retires, request distribution of his Individual Account Balance attributable to such additional Contributions, provided either:

(1) Twelve months have elapsed since his most recent hour of employment in the Construction Contracting Industry, or

(2) He has reached the later of his Normal Retirement Date and the first anniversary of the date his distribution was most recently made (in the case of a single sum payment) or commenced (in the case of installment or annuity payments).

The Participant may request that his Account Balance attributable to Additional Contributions be payable in any form available under Article V or VI, as applicable.

Section 6: Mental Incompetency. In the event it is determined by the Trustees that a Participant, Annuitant, or Beneficiary is unable to care for his personal affairs because of mental or physical incapacity, any benefit due such person, unless claim therefore has been made by a legal guardian or legal representative, may be applied at the discretion of the Trustees for maintenance and support of such Participant, Annuitant or Beneficiary.

Section 7: Prohibition Against Assignment. No Participant, Annuitant, or Beneficiary hereunder shall have any right to assign, alienate, transfer, sell, hypothecate, mortgage, encumber, pledge, commute, or anticipate any payments, and such payments shall not in any way be subject to any legal process, levy of execution, attachment or garnishment proceedings for the payment of any claim against any Participant, Annuitant or Beneficiary; nor shall such payments be subject to the jurisdiction of any bankruptcy court or insolvency proceedings by operation of law or otherwise, and any such assignment shall be void and of no effect whatsoever, and in such event the Trustees shall have the right to terminate any payments to such Participant, alienation or transfer. If a domestic relations order is determined to be a Qualified Domestic Relations Order under the Plan and creates the existence of an Alternate Payee's right to, or assigns to the Alternate Payee the right to receive, all or a portion of a Participant's Individual Account under the Plan, the Alternate Payee's interest shall be distributed in accordance with the terms and conditions of the Qualified Domestic Relations Order following receipt thereof by the Administrative Office even though such distribution may be made prior to the Participant's distribution of benefits under the Plan.

Section 8: Maximum Annual Additions. The provisions of Code Section 415 are hereby incorporated herein by reference. For purposes of the limitations of these sections 8 and 9, "compensation" shall mean wages within the meaning of Code section 3401(a) and all other payments of compensation in which an Employer is required to furnish the Participant with a statement under Code sections 6401, 6051 and 6052, if applicable, including elective amounts that are not includible in the gross income of the Employee by reason of Code sections 125,132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k) or 457(b) that are paid to or on account of the Participant from the Employer for that Plan Year. Compensation shall also include post-severance compensation (such as overtime, shift differential, commission, bonuses or other similar compensation) paid by the later of 2½ months after severance from employment or the end of the Plan year that includes the dates of severance from employment.

Section 9: Limitation on Contributions and Annual Additions.

(a) The amount of annual additions which may be credited to a Participant's account during any limitation year shall in no event exceed the lesser of:

(1) Forty thousand dollars ($40,000.00) or, if greater, one-fourth of the dollar limitation in effect under Section 415(d) of the Code as in effect for the limitation year; or

(2) One hundred percent (100%) of the Participant's compensation for the Plan Year.

The compensation limitation referred to above shall not apply to any contribution for medical benefits (within the meaning of Section 401(h) or Section 419A(f)(2) of the Code) which is otherwise treated as an annual addition under Section 419A(d)(3) of the Code. If the Employer contribution that would otherwise be contributed or allocated to the Participant's account would cause the annual additions for the limitation year to exceed the maximum permissible amount, the amount contributed or allocated shall be reduced so that the annual additions for the limitation year shall equal the maximum permissible amount. For these purposes, the maximum permissible amount is the maximum annual additions permitted on behalf of a Participant. However, for limitation, the annual contribution limit to the Defined Contribution Plan for a participant shall not be affected by the annual contributions to the Operating Engineers Pension Plan.

(b) Definition of Annual Addition

The term "annual additions" shall mean the sum of the following amounts credited to a Participant's Account for the limitation year:

(1) Employer contributions;

(2) Forfeitures;

(3) Excess contributions and excess aggregate contributions; and

(4) Amounts allocated to an individual medical account, as defined in Section 415(1)(2) of the Code, which is part of a pension or annuity plan maintained by the Employer and amounts derived from contributions paid or accrued in taxable years which are attributable to post-retirement medical benefits, allocated to the separate accounts of a key employee, as defined in Section 419A(d)(3) of the Code, under a welfare benefit fund as defined in Section 419(e) of the Code, maintained by the Employer.

Section 10: Plan Amendment. The Trustees may amend or modify the Plan at any time in accordance with the Trust Agreement and subject to the applicable federal law. No amendment or modification may reduce any benefits which have been approved for payment prior to amendment, so long as funds are available for payment of such benefits.

Where the vesting schedule is being amended, for every employee who is a participant on the amendment adoption date or the amendment effective date, whichever is later, the non-forfeitable percentage of the Participant's right the employer-derived accrued benefit may not be less than the Participant's percentage figured under the plan without regard to the amendment.

Section 11: Plan Merger, Spin-off or Consolidation. In the event of any merger, spin-off or consolidation with, or transfer of assets or liabilities to, any other plan, the amount of benefit which a Participant would receive upon a termination of the Plan immediately after such merger, consolidation or transfer shall be equal to or greater

than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer if the Plan had then been terminated.

Section 12: Plan Termination. In the event of termination of this Plan or in the event of complete discontinuance of contributions, each Participant shall have a nonforfeitable right to his Individual Account and the assets then remaining, after providing for the expenses of the Plan and for the payment to any Individual Account therefore approved, shall be distributed among the Participants. No part of the assets shall be returned to any Employer or inure to the benefit of any Employer, Association or Union.

Section 13: Claims Review and Appeals Procedure.

(a) No Participant, Annuitant, Beneficiary or other person shall have any right or claim to benefits under this Plan, other than as specified in this Plan. If any person shall have a dispute with the Trustees as to eligibility, type, amount, or duration of such benefits, the dispute shall be resolved solely by the Trustees under and pursuant to this Plan, and its decision of the dispute shall be final and binding upon all parties thereto, subject to applicable federal law.

(b) Any person whose application for benefits under the Plan has been denied in whole or in part, or whose claim to benefits or against the Fund is otherwise denied, shall be notified in writing of such denial within 90 days after receipt of such application or claim. An extension of time not exceeding 90 days may be required by special circumstances; if so, notice of such extension, indicating what special circumstances exist therefor and the date by which a final decision is expected to be rendered, shall be furnished the claimant prior to the expiration of the initial 90 day period. The notice of denial shall set forth in a manner calculated to be understood by the claimant,

(1) The specific reason or reasons for the denial;

(2) Specific reference to pertinent Plan provisions on which the denial is based;

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

(4) Appropriate information as to the steps to be taken if the claimant wishes to submit his or her claim for review; and

(5) A description of the Plan's review procedures and time limits applicable to such procedures, including a statement of the participant's right to bring a civil action under ERISA Section 502(a) following exhaustion of the Plan's appeal procedures.

(c) Any such person may petition the Trustees for a review of the denial. A petition for review shall be in writing, shall state in clear and concise terms the reason or reasons for disputing the denial, shall be accompanied by any pertinent documentary material not already furnished to the Trustees, and shall be filed by the petitioner or his duly authorized representative with the Trustees within 60 days after the petitioner received notice of the denial. The petitioner or his duly authorized representative shall be permitted to review pertinent documents and submit issues and comments in writing.

(d) Upon good cause shown, the Trustees shall permit the petition to be amended or supplemented and shall grant a hearing on the petition before a hearing panel to receive and hear any evidence or argument which cannot be presented satisfactorily by correspondence. The failure to file a petition for review within such 60 day period or the failure to appear and participate in any such hearing, shall constitute a waiver of the claimant's right to review of the denial, provided that the Trustees may relieve a claimant of any such waiver for good cause if application for such relief is made within one year after the date shown on the notice of denial.

(e) A decision by the Trustees shall be made promptly and not less than 60 days after the Trustees' receipt of the petition for review, unless special circumstances require an extension of such time for processing, in which case notice of such extension shall be furnished to the claimant prior to the expiration of the 60 day period. A decision shall be rendered as soon as possible, but no later than 120 days after receipt of the petition for

review. The petitioner shall be advised of the Trustees' decision in writing. The decision shall include specific reasons for the decision, written in a manner calculated to be understood by the petitioner and specific references to the pertinent Plan provisions on which the decision is based. The decision shall also include 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 relative to the claimant's claim for benefits and a statement of the claimant's right to bring a civil action under ERISA Section 502(a).

(f) The decision of the Trustees with respect to a claim or petition for reconsideration shall be final and binding upon all parties, including the petitioner and any person claiming under the petitioner. The provisions of this section shall apply to and include any and every claim to benefits from the Fund, and any claim or right asserted under this Plan or against the Fund, regardless of when the act or omission upon which the claim is based occurred.

Section 14: Quarterly Statements to Participants. At the end of each calendar quarter, a Participant shall receive a quarterly statement showing the amount of the Participant's Individual Account Balance as of the last business day of the calendar quarter from _____.

Section 15: Military Service. Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with §414(u) of the Internal Revenue Code. For purposes of crediting hours and contributions for a Participant during a period of Military Service, the Plan shall credit hours and contributions at the greater of 125 hours per month for each complete month of Military Service or the average monthly hours worked in the twelve months prior to the Participant's commencement of Military Service, and eight (8) hours per day (but not more than 125 hours) for any additional fraction of a month. Contributions shall be credited to the Participant's Individual Account in accordance with the hourly employer contribution rate for the Defined Contribution Plan in effect in the collective bargaining agreement which governs the jurisdiction of the Participant's membership for the month in which the hours are being credited. Contributions shall be credited to a Non-Bargaining Unit Employee's Individual Account in accordance with the terms of any Non-Bargaining

Agreement in effect for the Participant's last employer prior to the commencement of Military Service in accordance with the hourly employer contribution rate specified in such Non-Bargaining Agreement for the month in which hours are being credited.

Contributions credited under this Section are paid out of Plan assets.

Section 16: Acceptance of Rollovers. This Plan shall accept rollovers from qualified retirement plans and conduit IRAs pursuant to the written request of the Participant. The funds transferred under the rollover shall be added to the Participant's Individual Account. The Plan may accept rollovers from IRA's of participants in the Plan.

Section 17: Directed Rollovers. Notwithstanding any provision of this Plan to the contrary that would otherwise limit a Distributee's election under this Plan, a Distributee may elect, at the time and in the manner prescribed by the Trustees, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover. For these purposes, the following definitions apply:

(a) An Eligible Rollover Distribution is any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of 10 years or more; any distribution to the extent that distribution is required under Section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income. For Distributions made on or after July 1, 2008, an Eligible Retirement Plan shall also include a Roth IRA as defined in section 408A of the Code.

(b) An Eligible Retirement Plan is an individual retirement account described in code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), or a qualified trust described in Code Section 401(a), that accepts the Distributee's Eligible Rollover Distribution. However, in the case of an Eligible Rollover Distribution to the surviving spouse, an Eligible Retirement Plan is an individual retirement account or individual

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

(c) A Distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), are Distributees with regard to the interest of the spouse or former spouse.

(d) A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

(e) A non-spouse beneficiary may receive a distribution in the form of a direct transfer to a Section 408(a) individual retirement account or a Section 408(b) individual retirement annuity but only to the extent permitted by all applicable provisions of the Code and all related regulations.

Section 18: Type of Plan. The Plan is a money purchase pension plan.

ARTICLE X

TOP HEAVY PROVISIONS

Section 1. Definitions.

(a). "Accrued Benefit" means, for any Top Heavy Plan Year, the pension benefit determined in accordance with Section 2 herein.

(b). "Aggregate Account" means, for each Participant, the total value of his accounts, including Employer and Employee accounts, which are used to determine Top Heavy Plan status under the provisions of a defined contribution plan included in any Aggregation Group.

(c). An Aggregation Group shall be either a Required Aggregation Group or a Permissive Aggregation Group as hereinafter determined. Only those plans of the Employer in which the Determination Dates fall within the same calendar year shall be aggregated to determine whether such plans are Top Heavy Plans.

1. A "Required Aggregation Group" shall consist of each plan of the Employer in which a Key Employee is a Participant, and each other plan of the Employer which enables any plan in which a Key Employee is a Participant to meet the requirements of Sections 401(a)(4) or 410 of the Internal Revenue Code.

   Each plan in a Required Aggregation Group shall be considered a Top Heavy Plan if the Required Aggregation Group is a Top Heavy Group. No plan in a Required Aggregation Group shall be considered a Top Heavy Plan if the Required Aggregation Group is not a Top Heavy Group.

2. A "Permissive Aggregation Group" shall consist of the Required Aggregation Group in addition to any plan not required to be included in an Aggregation Group which the Employer decides to treat as being part of such group, providing the resulting group, taken as a whole, would continue to meet the requirements of Sections 401(a)(4) and 410 of the Internal Revenue Code.

Only a plan that is part of the Required Aggregation Group shall be considered a Top Heavy Plan if the Permissive Aggregation Group is a Top Heavy Group. No plan in a Permissive Aggregation Group shall be considered a Top Heavy Plan if the Permissive Aggregation Group is not a Top Heavy Group.

(d). "Average Compensation" means the amount determined by averaging the Participant's Annual Earnings over a period of five (5) consecutive years preceding the Determination Date which produces the highest average. For any Top Heavy Plan Year, compensation in excess of $200,000 in any year, whether or not such year was a Top Heavy Plan Year, shall be disregarded in accordance with Internal Revenue Code Section 416. Such $200,000 limit shall be automatically adjusted as provided in Internal Revenue Code Section 416(d)(2) to take into account increases in cost of living in accordance with the regulations prescribed by the Secretary of Treasury.

(e). "Determination Date" means the last day of the preceding Plan Year.

(f). "Key Employee" means any employee or former employee (including any deceased employee) who at any time during the Plan Year that includes the determination date was an officer of the Employer having annual compensation greater than $130,000 (as adjusted under Section 416(i)(1) of the Internal Revenue Code for Plan Years beginning after December 31, 2002), a 5% owner of the Employer, or a 1% owner of the Employer having annual compensation of more than $150,000. For this purpose, annual compensation means compensation within the meaning of Section 415(c)(3) of the Internal Revenue Code. The determination of who is a key employee will be made in accordance with Section 416(i)(1) of the Internal Revenue Code and the applicable regulations and other guidance of general applicability issued thereunder.

1. A "five percent owner" of the Employer. "Five percent owner" means any person who owns (or is considered as owning within the meaning of Section 318 of the Internal Revenue Code) more than five percent (5%) of the outstanding stock of the Employer or stock possessing more than five percent (5%) of the total combined voting power of all stock of the Employer, or, in case of an unincorporated business, any person who owns more than five percent (5%) of the capital or profits interest in the Employer. In determining percentage ownership hereunder, employers

that would otherwise be aggregated under Section 414(b), (c), and (m) of the Internal Revenue Code shall be treated as separate employers; or

2. A "one percent owner" of the Employer having an annual Compensation (as defined in Treas. Reg. 1.415–2(d)) from the Employer of more than $150,000. "One percent owner" means any person who owns (or is considered as owning within the meaning of Section 318 of the Internal Revenue Code) more than one percent (1%) of the outstanding stock of the Employer or stock possessing more than one percent (1%) of the total combined voting power of all stock of the Company, or, in case of an unincorporated business, any person who owns more than one percent (1%) of the capital or profits interest in the Employer. In determining percentage ownership hereunder, employers that would otherwise be aggregated under Sections 414(b), (c), and (m) of the Internal Revenue Code shall be treated as separate employers. However, in determining whether an individual has Compensation of more than $150,000, Compensation from each employer required to be aggregated under Sections 414(b), (c), and (m) of the Internal Revenue Code shall be taken into account.

(g). "Non-Key Employee" means any Employee who is not a Key Employee.

(h). "Top Heavy Plan Year". The Plan shall be considered a Top Heavy Plan for any Plan Year in which (1) the Present Value of Accrued Benefits of Key Employees under this Plan and (2) the sum of the Aggregate Accounts of Key Employees in any plan of an Aggregation Group, exceeds sixty percent (60%) of the Present Value of Accrued Benefits under this Plan plus the Aggregate Accounts of all Participants in any plan of an Aggregation Group.

The amounts above shall be determined as of the Determination Date.

Section 2. Top Heavy Minimum Benefit.

For any Top Heavy Plan Year, each Non–Key Employee who is a Participant shall be entitled to the greater of his benefit as computed under Article III or the following minimum benefit:

The lesser of two percent (2%) of the Participant's Average Compensation for each Top Heavy Plan Year, or twenty percent (20%) of his Average Compensation.

Such minimum benefit shall only be provided to an Active Participant who is a Non-Key Employee during the Plan Year. For purposes of satisfying the minimum benefit requirements of Section 416(c)(1) of the Internal Revenue Code and the Plan, in determining years of service with the Employer, any service with the Employer shall be disregarded to the extent that such service occurs during a Plan Year when the plan benefits (within the meaning of Section 410(b) of the Internal Revenue Code) no key employee or former key employee.

If a Non–Key Employee participates in both this defined benefit plan and in a defined contribution plan included in a Top Heavy Aggregation Group, the Employer is not required to provide the Non–Key Employee with both the full and separate minimum benefit under this Plan and the full and separate minimum contribution under the defined benefit plan. Such Non–Key Employee shall receive only the minimum benefits provided under this Plan.

To the extent that the minimum benefit of any Participant is vested in accordance with the Top Heavy vesting schedule provided in Section 5 of this Article, such minimum benefit may not be forfeited or suspended under Sections 411(a)(3)(B) or 411(a)(3)(D) of the Internal Revenue Code.

Section 3. Top Heavy Requirements.

For any Top Heavy Plan Year, as determined in Section 1(h) of this Article, the Plan shall provide the following:

a. Special vesting requirements of Section 416(b) of the Internal Revenue Code pursuant to Section 5 of this Article, and
b. Special minimum benefit requirements of Section 416(c) of the Internal Revenue Code pursuant to Section 2 of this Article.
c. Special compensation requirements of Section 416(d) of the Internal Revenue Code pursuant to Section 1(d) of this Article.

Section 4. Determination of Top Heavy Status.

The Board shall determine, on a year by year basis, the Top Heavy status of the Plan. Such determination shall be made pursuant to this paragraph of the Plan and Section 416 of the Internal Revenue Code. For any Plan Year in which this Plan is a Top Heavy Plan, the Top Heavy provisions of the Plan will be followed.

For purposes of determining Top Heavy status, the following special rules shall apply:

a. If any Participant is a Non–Key Employee for any Plan Year, but such Participant was a Key Employee for any prior Plan Year, such Participant's Present Value of Accrued Benefit shall not be taken into account for purposes of determining whether this Plan is a Top Heavy Plan (or whether any Aggregation Group which includes this Plan is a Top Heavy Group).

b. For purposes of determining a Participant's account, such account shall:

   1. Include the present value of Accrued Benefit using the following actuarial assumptions of the Plan;
   2. Include any Plan distributions made to such Participant during the one–year period ending on the Determination Date, except that in the case of a distribution made for a reason other than severance from employment, death or disability, this provision shall be applied by substituting five-year period for one-year period. For purposes of this paragraph, a Participant shall include any Employee who is not employed as of the Determination Date but who was employed at any time during the one–year period. The foregoing shall also apply to distributions under a terminated qualified plan of the Employer which, if it had not been terminated, would have been required to be included in an aggregation group;
   3. Include any non–deductible Employee contributions, whether voluntary or mandatory;
   4. Not include, except as otherwise provided in the Treasury Regulations, Employee initiated rollover contributions or similar transfers to the transferee Plan;

5. Include any rollover contributions, plan–to–plan transfers or similar transfers initiated by the Employer or made to a plan maintained by an Affiliated Company; and
6. Not include the Accounts and Accrued Benefits of a Participant who has not received Compensation from the Employer maintaining the Plan during the one–year period ending on the Determination Date.

Section 5. Top Heavy Vesting.

Notwithstanding the vesting provisions provided elsewhere in the Plan, for any Top Heavy Plan Year, a terminated Participant shall have a vested interest in his Accrued Benefit based on at least the following minimum schedule:

Years of Service	Nonforfeiture Percentage
2	20%
3	40
4	60
5	80
6 or more	100

If, in any subsequent Plan Year, the Plan ceases to be a Top Heavy Plan, the Board may elect to (1) continue to apply this vesting schedule in determining the Vested portion of any Participant's Accrued Retirement Income, or (2) revert to the vesting schedule in effect before this Plan became a Top Heavy Plan. Any such reversion shall be treated as a Plan amendment pursuant to the provisions of Article XI.

Section 6. Adjustment in Section 415 Limits for Top Heavy Plan Year.

In any Top Heavy Plan Year, the denominators of the defined benefit and defined contribution fractions as described in Internal Revenue Code Section 415(e) are computed by substituting the factor 1.0 for 1.25.

For Limitation Years beginning on or after January 1, 2000, the 1.0 fraction limitation of Section 415(e) of the Internal Revenue Code and those provisions reflecting Section 416(h) of the Internal Revenue Code are hereby deleted from the Plan.

ARTICLE XI

MINIMUM DISTRIBUTION REQUIREMENTS

Section 1. General Rules.

(a) Effective Date. The provisions of this Article will apply for purposes of determining required minimum distributions.

(b) Precedence. The requirements of this Article will take precedence over any inconsistent provisions of the Plan.

(c) Requirements of Treasury Regulations Incorporated. All distributions required under this Article will be determined and made in accordance with the Treasury Regulations under Section 401(a)(9) of the Internal Revenue Code.

Section 2. Time and Manner of Distribution.

(a) Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date.

(b) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(1) If the Participant's surviving spouse is the Participant's sole "designated beneficiary," then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by

December 31 of the calendar year in which the Participant would have attained age 70½, if later.

(2) If the Participant's surviving spouse is not the Participant's sole "designated beneficiary," then distributions to the "designated beneficiary" will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(3) If there is no "designated beneficiary" as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(4) If the Participant's surviving spouse is the Participant's sole "designated beneficiary" and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 2(b), other than Section 2(b)(1), will apply as if the surviving spouse were the Participant.

For purposes of this Section 2(b) and Section 4, unless Section 2(b)(4) applies, distributions are considered to begin on the Participant's Required Beginning Date. If Section 2(b)(4) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 2(b)(1). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 2(b)(1), the date distributions are considered to begin is the date distributions actually commence.

(c) Forms of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first "distribution calendar year" distributions will be made in accordance with Section 3 and 4 of this Article. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Treasury Regulations.

Section 3. Required Minimum Distributions During Participant's Lifetime.

(a) Amount of Required Minimum Distribution for Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each "distribution calendar year" is the lesser of the following amounts:

(1) The quotient obtained by dividing the Participant's "account balance" by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's age as of the Participant's birthday in the "distribution calendar year"; or

(2) If the Participant's sole "designated beneficiary" for the "distribution calendar year" is the Participant's spouse, the quotient obtained by dividing the Participant's "account balance" by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the "distribution calendar year."

(b) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this Section 3 beginning with the first "distribution calendar year" and up to and including the "distribution calendar year" that includes the Participant's date of death.

Section 4. Required Minimum Distributions After Participant's Death.

(a) Death on or After Date Distributions Begin. If the Participant dies on or after the date distributions begin, the following rules shall apply:

(1) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a "designated beneficiary," the minimum amount that will be distributed for each "distribution calendar year" after the year of the Participant's death is the quotient obtained by dividing the Participant's "account balance" by the longer of the remaining "life expectancy" of the Participant or the remaining "life expectancy" of the Participant's "designated beneficiary," determined as follows:

(A) The Participant's remaining "life expectancy" is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(B) If the Participant's surviving spouse is the Participant's sole "designated beneficiary," the remaining "life expectancy" of

the surviving spouse is calculated for each "distribution calendar year" after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For "distribution calendar years" after the year of the surviving spouse's death, the remaining "life expectancy" of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(C) If the Participant's surviving spouse is not the Participant's sole "designated beneficiary," the designated beneficiary's" remaining "life expectancy" is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(2) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no "designated beneficiary" as of September 30 or the year after the year of the Participant's death, the minimum amount that will be distributed for each "distribution calendar year" after the year of the Participant's death is the quotient obtained by dividing the Participant's "account balance" by the Participant's remaining "life expectancy" calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(b) Death Before Date Distributions Begin. If the Participant dies before the date distributions begin, the following rules shall apply:

(1) Participant Survived by Designated Beneficiary. If the Participant dies before the date distributions begin and there is a "designated beneficiary," the minimum amount that will be distributed for each "distribution calendar year" after the year of the Participant's death is the quotient obtained by dividing the Participant's "account balance" by the remaining "life expectancy" of the Participant's "designated beneficiary," determined as provided in Section 4(a).

(2) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no "designated beneficiary" as of

September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(3) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole "designated beneficiary," and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 2(b)(1) of this Article, this Section 4(b) will apply as if the surviving spouse were the Participant.

Section 5. Definitions

(a) Designated Beneficiary. The term "designated beneficiary" means the individual who is designated as the Participant's Beneficiary under Article VIII, Section 4 of the Plan and is the designated beneficiary under Section 401(a)(9) of the Internal Revenue Code and Section 1.401(a)(9)-1, Q&A-4, of the Treasury Regulations.

(b) Distribution Calendar Year. The term "distribution calendar year" means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first "distribution calendar year" is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, first "distribution calendar year" is the calendar year in which distributions are required to begin under Section 2(b). The required minimum distribution for the Participant's first "distribution calendar year" will be made on or before the Participant's Required Beginning Date. The required minimum distribution for other "distribution calendar years," including the required minimum distribution for the "distribution calendar year" in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that "distribution calendar year."

(c) Life Expectancy. The term "life expectancy" means the life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury Regulations.

(d) Participant's Account Balance. The term Participant's "Account Balance" means the Account Balance as of the last valuation date in the calendar year immediately preceding the "distribution calendar year" (the "valuation calendar year") increased by the amount of any contributions made and allocated or forfeitures allocated to the Account Balance as of dates in the "valuation calendar year" after the Valuation Date and decreased by distributions made in the "valuation calendar year" after the Valuation Date. The Account Balance for the "valuation calendar year" includes any amounts rolled over or transferred to the Plan either in the "valuation calendar year" or in the "distribution calendar year" if distributed or transferred in the "valuation calendar year."

(e) Required Beginning Date. The date specified in Article V, Section 4(g) of the Plan.

ARTICLE XII

SIGNATURES OF TRUSTEES

The foregoing revised and restated Operating Engineers Local 12 Defined Contribution Plan Document is adopted this ____ day of _____, 2018 and is effective July 1, 2018.

By:_____
CHAIRMAN, Board of Trustees

By:_____
SECRETARY, Board of Trustees

ARTICLE XII

SIGNATURES OF TRUSTEES

The foregoing revised and restated Operating Engineers Local 12 Defined Contribution Plan Document is adopted this 14 day of June, 2018 and is effective July 1, 2018.

By: _____
CHAIRMAN, Board of Trustees

By: _____
SECRETARY, Board of Trustees

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