

AGREEMENT

ESTABLISHING

THE

OPERATING ENGINEERS

PENSION TRUST

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AGREEMENT ESTABLISHING THE OPERATING ENGINEERS PENSION TRUST

THIS AGREEMENT, made and entered into in the State of California this 17th day of August, 1979, by and between ASSOCIATED GENERAL CONTRACTORS OF CALIFORNIA, INC.; BUILDING INDUSTRY ASSOCIATION OF CALIFORNIA, INC.; ENGINEERING CONTRACTORS' ASSOCIATION, INC.; SOUTHERN CALIFORNIA CONTRACTORS ASSOCIATION, INC.; ASSOCIATED GENERAL CONTRACTORS OF AMERICA, SAN DIEGO CHAPTER, INC.; SAN DIEGO BUILDING CONTRACTORS ASSOCIATION; ENGINEERING AND GENERAL CONTRACTORS ASSOCIATION; NEVADA CHAPTER ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.; (hereinafter called "Employers"), and INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION NO. 12, affiliated with the Building and Construction Trades Department of the AFL-CIO (hereinafter called "Union").

That certain Agreement Establishing the Operating Engineers Pension Trust, as amended (hereinafter called "Agreement"), made and entered into on December 13, 1960, by the Employers and the Union is hereby amended as follows:

RECITALS

1. WHEREAS, the Employers and the Union are parties to Collective Bargaining Agreements which provide that each contractor covered by such agreements will make contributions to a Joint Pension Trust with respect to each hour worked (or paid) each employee covered by any of such agreements and employed by such contractor; and

2. WHEREAS, it is further provided that the details of such plan shall be negotiated by a Joint Committee on which the contractors and the Union shall be equally represented with all expenses incurred, including the costs of professional assistance, to be paid from the Fund; and

3. WHEREAS, pursuant to said provisions of said Collective Bargaining Agreements, the said Joint Committee was established upon which contractors and Union were equally represented and said Joint Committee has negotiated the details of the Pension Plan referred to in said agreement and the details of the Trust for which provision is made; and

4. WHEREAS, the Joint Committee has agreed to the establishment of this Trust to be known as the Operating Engineers Pension Trust; and

5. WHEREAS, this Trust is being created and the Pension Plan implemented, each of which shall at all times conform to the applicable requirements of the Labor-Management Relations Act of 1947, as amended, and be qualified pursuant to the applicable provisions of the Internal Revenue Code, as amended, and the laws of the State of California, for all available exemptions and immunities; and

6. WHEREAS, the Joint Committee referred to has negotiated the following terms and provisions as the terms and provisions of the Trust Agreement governing the establishment and administration of the Operating Engineers Pension Trust;

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING AND OF THE MUTUAL PROMISES HEREINAFTER PROVIDED, the parties agree as follows:

ARTICLE I DEFINITIONS

Section 1. The term "Collective Bargaining Agreements" includes:

(a) Any Collective Bargaining Agreement between the Union and any individual employer or employer association which provides for the making of employer contributions to this Fund and concerning which agreement the Board of Trustees approves, or has approved the sufficiency of any provisions therein purporting to obligate employer contributions to this Fund.

(b) Any extensions, amendments, modifications or renewals of any of the said agreements, or any substitute or successor agreements to them which provide for the making of employer contributions to this Fund.

Section 2. The term "Individual Employer" means any individual employer (including any individual, partnership, corporation, contractor, joint venture or other entity) who is required by any of the Collective Bargaining Agreements to make Contributions to the Pension Fund or who in fact makes one or more Contributions to the Fund. The term "Individual Employer" shall also include the Union if it elects to include its regular employees as participants in the Fund and Plan and notifies the Board of Trustees in writing of its election; provided the inclusion of said Union as an Individual Employer shall be on the same basis as other Individual Employers and shall not be a violation of any law or regulation.

Likewise, the term "Individual Employer" shall also include the Board of Trustees of the Southern California Operating Engineers Journeyman and Apprentice Training Trust, the Board of Trustees of the Apprentice and Journeyman Training Trust Fund of the Civil Engineering and Land Surveying Industry of California, or the Board of Trustees of the Southern Nevada Operating Engineers Journeyman and Apprenticeship Trust if request is made by a Board of Trustees for the inclusion of its supervisory employees as participants in the Fund and Plan and the Board of Trustees of this Trust shall have approved such request; provided the approval and inclusion of the Board of Trustees of the Southern California Operating Engineers Journeyman and Apprentice Training Trust, the Board of Trustees of the Apprentice and Journeyman Training and Trust Fund of the Civil Engineering and Land Surveying Industry of California, or the Board of Trustees of the Southern Nevada Operating Engineers Journeyman and Apprenticeship Trust as an Individual Employer shall be on the same basis as other Individual Employers and shall not be a violation of any law or regulation.

Likewise, the term "Individual Employer" shall also include an AFL-CIO Building Trades Council as to any employee who was, immediately preceding his employment with the Building Trades Council, a member of or in the employ of International Union of Operating Engineers Local No. 12 or in the employ of an Individual Employer and, in either case, covered by the Plan. The Building Trades Council shall be required to notify the Board of Trustees of this Trust in writing of its request to participate and the Board shall have the power to approve or deny the request. The

approval and inclusion of the Building Trades Council as an Individual Employer shall be on the same basis as other Individual Employers, provided such participation shall not be a violation of any law or regulation.

Section 3. The term "Employee" means any employee of an Individual Employer who performs one or more hours of work covered by any of the Collective Bargaining Agreements. The term "Employee" shall also include employees of the Union or of the Board of Trustees of the Southern California Operating Engineers Apprentice Training Trust, the Board of Trustees of the Apprentice and Journeymen Training Trust Fund of the Civil Engineering and Land Surveying Industry of California, or the Board of Trustees of the Southern Nevada Operating Engineers Apprenticeship Trust on whose behalf Contributions are made to the Pension Fund; provided the inclusion of said employees is not in violation of any law or regulation.

The term "Employee" shall also include any employee of any AFL-CIO Building Trades Council, who was a member of or in the employ of International Union of Operating Engineers, Local Union No. 12 or in the employ of an Individual Employer immediately preceding his employment with the Building Trades Council and, in either case, covered by the Plan, and on whose behalf Contributions are made to the Pension Fund under the conditions set forth in Article I, Section 2 and 11 of this Trust Agreement.

Section 4. The term "Union" means International Union of Operating Engineers, Local Union No. 12.

Section 5. The term "Signatory Association" means any employer organization, other than one of the Employers, which signs any of the Collective Bargaining Agreements and this Trust Agreement, or a counterpart thereof, on behalf of its members or executes on behalf of such members any agreement to be bound by the terms of this Trust Agreement or a written acceptance or authorization of this Trust Agreement and any such Collective Bargaining Agreements; provided, however, with respect to any such writing, the Board of Trustees approves, or has approved, the sufficiency of any provisions therein purporting to obligate contributions by members of such employer organizations to this Fund and approves or has approved any provisions therein purporting to bind members of such employer organizations to this Trust Agreement.

Section 6. The term "Trustee" means any natural person designated as Trustee pursuant to ARTICLE IV hereof, but shall not include the Corporate Co-Trustee hereinafter defined.

Section 7. The terms "Board of Trustees" or "Board" mean the Board of Trustees established by this Trust Agreement.

Section 8. The terms "Pension Fund" or "Fund" mean the Trust Fund created and established by this Trust Agreement.

Section 9. The terms "Pension Plan" or "Plan" mean the Pension Plan created pursuant to the Collective Bargaining Agreements and this Trust Agreement and any modification, amendment, extension or renewal of said Plan.

Section 10. The term "Trust Agreement" means this agreement and any modification, amendment, extension or renewal thereof.

Section 11. The term "Contributions" means the payment made or to be made to the Fund by an Individual Employer under the provisions of any Collective Bargaining Agreements. The term "Contributions" shall also include a

payment made on behalf of an Employee of the Union or an Employee of the Operating Engineers Journeyman and Apprentice Training Trust, the Board of Trustees of the Apprentice and Journeyman Training Trust Fund of the Civil Engineering and Land Surveying Industry of California, or the Board of Trustees of the Southern Nevada Operating Engineers Journeyman and Apprentice Training Trust, or an Employee of the Southern California Operating Engineers Benefits Administration, Inc., or an Employee of a Building Trades Council as described in Article I, Sections 2 and 3 and shall be on the same basis and rate as other Individual Employers, except that the Union or the Southern California Operating Engineers Benefits Administration, Inc. may specify in writing a different rate or rates of Contributions to be applicable to its Employees if such rate or rates do not violate any law or regulation.

Section 12. The term "Corporate Co-Trustee" means the Corporate Co-Trustee appointed for the purpose specified in this Trust Agreement.

Section 13. The term "Retired Employee" shall have the meaning given it in the Pension Plan.

Section 14. The parties to the Trust Agreement recognize as Trustors to this Agreement and Declaration of Trust, the following: Associated General Contractors of California, Inc., as successor to Associated General Contractors of America, Southern California Chapter; Building Industry Association of California, Inc. as successor to Building Contractors Association of California, Inc., and Home Builders Association of Los Angeles, Orange and Ventura Counties; Engineering Contractors' Association, Inc., as successor to Engineering and Grading Contractors Association, Inc.; Southern California Contractors Association, Inc.; Nevada Chapter, Associated General Contractors of America, Inc., as successor to Associated General Contractors of America, Nevada Chapter; Associated General Contractors of America, San Diego Chapter, Inc., as successor to Associated General Contractors of America, San Diego Chapter; San Diego Building Contractors Association; and Engineering and General Contractors Association, as successor to Engineering and Grading Contractors Association, Inc., San Diego Chapter. The parties to the Trust Agreement further recognize as Trustor to this Agreement and Declaration of Trust the International Union of Operating Engineers, Local Union No. 12.

ARTICLE II TRUST FUND

Section 1. There is hereby created the Operating Engineers Pension Trust, which shall consist of all Contributions required by the Collective Bargaining Agreements to be made for the establishment and maintenance of the Pension Plan, and all interest, income and other returns thereon of any kind whatsoever, and any other property received or held by reason of or pursuant to this Trust.

Section 2. The Fund shall have its principal office in the County of Los Angeles, State of California.

Section 3. No Employee, Retired Employee or Beneficiary shall be entitled to receive any part of the Contributions made or required to be made to the Fund in lieu of the benefits provided by the Pension Plan.

Section 4. Subject to the powers which may be given to the Corporate Co-Trustee by the Board of Trustees under ARTICLE VII, the Board of Trustees shall have the continuing supervision, control and direction of the Fund for the

uses, purposes and duties set forth in this Trust Agreement and be vested with all right, title and interest to it; provided, however, the Board may hold title to the property in the name of the Corporate Co-Trustee or its nominee. The Fund shall be administered by the Board of Trustees for the exclusive benefit of Employees and Retired Employees and their beneficiaries, pursuant to the provisions of the Pension Plan. Notwithstanding anything to the contrary contained in this Trust Agreement or in the Plan, any modification, amendment, extension or renewal hereof or of the Plan, no portion of the Fund shall at any time revert to, or be recoverable by, any of the Employers, any Signatory Association, any Individual Employer, or the Union, or be used for or diverted to, purposes other than for the exclusive benefit of Employees, Retired Employees or their beneficiaries under the Plan, and the payment of the administrative expenses of the Fund and the Plan, or refund of erroneous payments.

Section 5. Neither the Employers, any Signatory Association, any Individual Employer, the Union, any Employee, Retired Employee or beneficiary under the Pension Plan nor any other person shall have any right, title or interest in or to the Fund other than as specifically provided in this Trust Agreement or in the Pension Plan. Neither the Fund nor any Contributions to the Fund shall be in any manner liable for or subject to the debts, contracts or liabilities of any of the Employers, any Signatory Association, any Individual Employer, the Union, any Employee, Retired Employee or beneficiary.

Section 6. Each Employee, Retired Employee or beneficiary under the Pension Plan is hereby restrained from selling, transferring, anticipating, assigning, hypothecating or otherwise disposing of this pension, prospective pension or any other right or interest under the Plan, and the Board of Trustees shall not recognize, nor be required to recognize any such sale, transfer, anticipation, assignment, hypothecation or other disposition. Any such pension, prospective pension, right or interest shall not be subject in any manner to voluntary transfer or transfer by operation of law or otherwise, and shall be exempt from the claims of creditors or other claimants and from all orders, decrees, garnishments, executions or other legal or equitable process or proceedings to the fullest extent permissible by law.

Section 7. Neither the Employers nor any Signatory Association, nor officer, agent, employee or committee member of the Employers or any Signatory Association, shall be liable to make Contributions to the Fund or be under any liability to the Fund or with respect to the Pension Plan, except to the extent that he or it may be an Individual Employer required to make Contributions to the Fund with respect to his or its own individual or joint venture operations, or to the extent he or it may incur liability as a Trustee as hereinafter provided. Except as provided in Article III hereof, the liability of any Individual Employer to the Fund, or with respect to the Pension Plan, shall be limited to the payments required by the Collective Bargaining Agreements with respect to his or its individual or joint venture operations, and in no event shall he or it be liable or responsible for any portion of the Contributions due from other Individual Employers with respect to the operations of such Individual Employers. The Individual Employers shall not be required to make any further payments or Contributions to the cost of operations of the Fund or of the Pension Plan, except as may be hereinafter provided in the Collective Bargaining Agreements.

Section 8. Neither the Employers, any Signatory Association, any Individual Employer, the Union, nor any Employee shall be liable or responsible for any debts, liabilities or obligations of the Fund or the Trustees.

ARTICLE III CONTRIBUTIONS

Section 1. Contributions shall be paid into the Trust in such a manner and with such reports as the Board of Trustees may prescribe in the amounts obligated by the Collective Bargaining Agreements.

Section 2. Contributions shall be paid at the principal office of the Trust in the County of Los Angeles, State of California, in regular and continuing monthly payments subject to the provisions of the Collective Bargaining Agreements. Each monthly payment shall be payable on or before the tenth day of the month following the month in which work was performed and shall include all contributions since the last such payment which have accrued for work performed up to the close of the Individual Employer's payroll period ending nearest to the last day of the preceding calendar month.

Section 3. The failure of an Individual Employer to pay the contribution required by the Trustees shall constitute a violation of such Individual Employer's obligation to make payment of his required contribution as herein provided and shall not relieve any other Individual Employer of his obligation to make payment of his required contributions. The Trustees may take any lawful action necessary to enforce payment of the contributions due hereunder, including the right to sue such Individual Employer in a court of competent jurisdiction; and the delinquent Employer shall be liable to the Trust for all expenses of collection thereof, including reasonable attorney's fees incurred by the Trustees.

Section 4. (a) If an Individual Employer establishes a record of delinquency, the Trustees may in their own discretion, require of such Individual Employer a good faith deposit or a performance bond with sufficient surety in an amount not more than the maximum amount of delinquent monies owed by said Individual Employer and outstanding at any given date. For the purposes of this section, a record of delinquency shall be failure to pay contributions timely for any three (3) or more months within any twelve (12) consecutive months.

(b) The Trustees may, in their exclusive discretion, require a good faith deposit or a performance bond with sufficient surety from any Individual Employer where the Trustees find that such Individual Employer is composed of one or more persons, firms or corporations who were, or are, principals or stockholders in any other Individual Employer which owes an indebtedness to the Trust on account of unpaid contributions or liquidated damages, or which at any time had a record of delinquency within the meaning of Section 4(a) of this Article. The amount of such good faith deposit or bond shall be not more than the maximum amount of delinquent contributions owed by said other Individual Employer.

(c) Notwithstanding any contrary provision of Section 2 of this Article III, the Trustees may, in their exclusive discretion, require an Individual Employer with a record of delinquency to report and pay contributions to the Trust at weekly intervals, or to make weekly deposits with the Trust based

upon estimates of hours worked during such week. Such weekly reports and payments or deposits shall be due and payable at the principal office of the Trust in Los Angeles, California, not later than the second business day of the week following the week in which work was performed.

Section 5. Nothing contained herein shall be deemed to authorize or prevent economic action by the Union against any Individual Employer who is delinquent in his contributions to the Trust. All rights of the Union to refuse to furnish men to any delinquent Individual Employer, or to withdraw employees from the job of any delinquent Employer, or to strike or take other economic action against a delinquent Individual Employer, shall be determined by the provisions of the Collective Bargaining Agreements and by applicable rules of law, and shall not be deemed affected in any way by this Agreement.

Section 6. Upon request in writing from the Board of Trustees, any Individual Employer shall permit a person or persons selected by the Board to enter upon the premises of such Individual Employer during business hours, at a reasonable time or times, and to examine and copy such books, records, papers or reports of such Individual Employer as may be necessary to determine whether the Individual Employer is making full and prompt payment of all sums required to be paid by him or it to the Trust. Any individual Employer determined by the audit to be delinquent in sums owed to the Trust shall pay to the Trust, in addition to such delinquent sums, the full amount of auditing costs incurred by the Trust in connection with such delinquency.

ARTICLE IV BOARD OF TRUSTEES

Section 1. (a) The Fund shall be administered by a Board of Trustees which shall consist of fourteen (14) Trustees. Seven (7) Trustees shall be appointed by the Union (known as Union Trustees) and seven (7) Trustees shall be appointed by the Employers (known as Employer Trustees).

(b) The seven (7) Trustees designated currently by the Union are:

Duncan Campbell
Wm. A. Cobb, Jr.
Donald Fager
H. D. Gibford
P. A. Judd, Jr.
Cecil Montgomery
J. J. Twombly

(c) The seven (7) Trustees designated currently by the Employers are:

Phil Bailey
Richard D. Chase
H. C. Dennis
Leo Majich
Richard Spicer
E. J. Strecker
Leo J. Volk

(d) After July 15, 1969, in the event that any signatory employer association party to this Trust Agreement merges or amalgamates with another signatory employer association party to this Trust Agreement and one entity remains, the number of employer trustees serving on this Trust shall be reduced by one Trustee and the number of Union Trustees serving on this Trust shall be reduced by one Trustee.

In no event shall the number of trustees be reduced below six trustees, three of whom shall be designated "Employer Trustees" and three of whom shall be designated "Union Trustees."

Section 2. (a) The Employer Trustees shall be appointed in writing by the respective Employers, which Employers are irrevocably designated by each Individual Employer as his or its attorney's-in-fact for the purpose of appointing and removing Trustees and successor Trustees.

(b) The Employer Trustees and their successors, if any, shall be appointed by the respective Signatory Associations, as follows:

- (1) Five Trustees shall be appointed by Associated General Contractors of California, Inc., Building Industry Association of California, Inc., Engineering Contractors' Association, Inc., and Southern California Contractors Association, Inc., acting jointly;
- (2) One Trustee shall be appointed by Associated General Contractors of America, San Diego Chapter, Inc., San Diego Building Contractors Association, and Engineering and General Contractors Association, acting jointly;
- (3) One Trustee shall be appointed by Nevada Chapter, Associated General Contractors of America, Inc.

Section 3. The Union Trustees shall be appointed in writing by the Union.

Section 4. Except as provided in Section 7(b) of this Article, the procedures through which the Union Trustees and Employer Trustees are to be appointed, removed or replaced by the Union and by the Employers are to be determined exclusively by such Union and by such Employers respectively.

Section 5. The Trustees so appointed shall sign this Trust Agreement, or a counterpart thereof, and such signature shall constitute their acceptance of office and their agreement to act under and be subject to all of the terms and conditions of this Trust Agreement.

Section 6. Each original Trustee and each successor Trustee shall serve until his death, incapacity, resignation or removal, as herein provided. Any retiring Trustee shall forthwith turn over to the remaining Trustees any and all records, books, documents, monies and other property in his possession owned by the Trust or incident to the administration of the Trust.

Section 7. (a) Any Employer Trustee may be removed at will, with or without cause, by the Employer Association which appointed him, by an instrument in writing signed by that Employer Association and served on the Trustee, the Chairman of the Board of Trustees and the Union. Any Union Trustee may be removed at will, with or without cause, by the Union, by an instrument in writing signed by the Union and served on the Trustee, the Chairman of the Board of Trustees and the Employer Associations.

(b) If a Trustee shall be absent either from two (2) consecutive scheduled or called meetings of the Board of Trustees or from two (2) consecutive scheduled or called meetings of any Committee of this Board of which he is a regular member without it appearing to the Board that there was just cause for such absences, the Board of Trustees may give written notice of that Trustee's failure to attend such meetings to the party or parties which appointed such Trustee. If thereafter within the period of twelve calendar months following the time of the first of such absences the Trustee

concerning whom such notice was given, as aforesaid, shall again be absent either from two (2) consecutive scheduled or called meetings of the Board of Trustees, or from two (2) consecutive scheduled or called meetings of any Committee of this Board of which that Trustee is a regular member, without it appearing to the Board that there was just cause for such absence, the Board of Trustees shall have the right, but shall not be required to request the removal of such Trustee. In such event, upon written notice of the facts by the Board to the party or parties which appointed such Trustee, the party or parties which so appointed him shall remove him from office and shall appoint a successor Trustee forthwith.

(c) Removal of a Trustee shall be made in writing in the same manner as an appointment of a Trustee.

Section 8. A Trustee may resign and become and remain fully discharged from further duty or responsibility hereunder upon giving thirty (30) days written notice to the Board of Trustees and to the party which shall have appointed or selected such Trustee.

Section 9. Whenever a vacancy shall occur in the Board of Trustees, whether by death, removal, resignation or otherwise, the party possessing the original power to appoint a Trustee to that position shall forthwith designate a successor Trustee. Appointment of a successor Trustee shall be evidenced in the same manner as appointment of original Trustees; and the successor Trustee shall execute a written acceptance of office of Trustee in the same manner as the original Trustees. Any successor Trustee appointed by and in accordance with the foregoing provisions shall, upon his acceptance of such Trusteeship in writing and filed with the Trustees, become vested with all rights, powers and duties of a Trustee hereunder with like effect as if originally named as a Trustee in this instrument.

Section 10. The powers of the remaining Trustees to act as herein provided shall not be impaired or limited in any way pending the designation of a successor Trustee to fill any vacancy.

Section 11. The following procedure shall govern in the event any one or more of the Employer Associations who had a right to designate a Trustee shall at any time fail to ratify and sign a Collective Bargaining Agreement between it and International Union of Operating Engineers, Local No. 12, upon completion of negotiations by the respective joint Contractor Negotiating Committees. These provisions shall supersede any contrary provisions contained elsewhere in this Agreement; provided, however, nothing in this section will permit an Association to withdraw from this Trust Agreement during the term of a Collective Bargaining Agreement which requires any contribution to this Fund;

(a) The term of office of any Trustee who is an appointee of such Employer shall immediately terminate and the office of such Trustee on the Board of Trustees shall be deemed vacant; subject, however, to the right of the Board of Trustees to extend such date of termination and vacancy.

(b) A successor to any office so terminated shall be named by the remaining Employers who shall thereupon be vested with the sole and exclusive powers of appointment and removal of such Trustees, and with all other powers previously vested in all of the original Employers.

(c) Except as otherwise provided in this section, the appointment of successor Trustees shall be in accordance with the provisions of this Article.

Section 12. The officers of the Board of Trustees shall be

a Chairman and a Secretary-Treasurer who shall be elected annually by the Trustees from among themselves. One officer shall be an Employer Trustee and the other officer shall be a Union Trustee. The officers shall serve for a period of one year, except that the term of the first officers shall expire on December 31, 1961. Nothing herein shall prohibit any officer or his alternate from being re-elected or succeeding himself.

Section 13. The Chairman shall be responsible for the conduct of meetings of the Board of Trustees. The Secretary-Treasurer shall be responsible for the keeping of minutes or records of all meetings, proceedings and acts of the Trustees; and shall make the same available to all Trustees. Such minutes need not be verbatim. The Chairman and Secretary-Treasurer shall jointly execute written instruments authorized by the Trustees, and shall jointly sign checks drawn on the Fund. However, the Board of Trustees may designate an alternate for the Chairman and an alternate for the Secretary-Treasurer, which alternate shall be chosen from the same Trustee Group as the officer for whom he serves as alternate. In the event of the absence or disability of such officer, instruments and checks may be signed by his alternate.

ARTICLE V FUNCTIONS AND POWERS OF THE BOARD OF TRUSTEES

Section 1. The Employers, the Individual Employers and the Union irrevocably grant Power of Attorney to the Trustees now in office or subsequently appointed in accordance with the provisions of the aforesaid Agreement to administer said Fund as the representatives of such parties and with full authority to act for the Employers, the Individual Employers and the Union as their representatives in the administration of said Fund.

Section 2. The Board of Trustees shall have the power to administer the Fund and to administer and maintain the Pension Plan in effect, having and performing all powers and duties reasonably necessary to maintain and operate the Plan in such a way as to accomplish its objectives. The detailed basis on which pension benefits are to be paid shall be as set forth in the Appendix attached hereto and designated as the Pension Plan of the Operating Engineers Pension Trust. The Board of Trustees may at any time, and from time to time, amend or modify such Pension Plan. In no event shall any amendment or modification of the Plan cause or result in any portion of the Fund reverting to, or being recoverable by, any of the Employers, any Signatory Association, any Individual or the Union, or cause or result in the diversion of any portion of the Fund to any purpose other than the exclusive benefit of Employees, Retired Employees or their beneficiaries under the Plan and the payment of the administrative expenses of the Fund and the Plan, or refund of erroneous payments.

Consistent with the other provisions of the Trust Agreement, the Board of Trustees shall be governed by and all decisions made shall meet all of the following criteria:

- (a) Is there a need?
- (b) Can the Trust Fund afford it?
- (c) Will there be a benefit?
- (d) Is it legal?

Section 3. All Contributions to the Fund shall be due and payable in the County of Los Angeles, California. If so provided in an agreement with a Corporate Co-Trustee, Con-

tributions shall be paid to, received and held by the Corporate Trustee subject to the Trust established by this Trust Agreement and all of the terms and provisions hereof. The acceptance and cashing of any checks for such Contributions, and the disposition of the moneys covered thereby in accordance with this Trust Agreement, shall not release or discharge the Individual Employer from his or its obligation under the Collective Bargaining Agreements for hours worked under said Agreements for which no Contribution has actually been received, notwithstanding any statement, restriction or qualification appearing on the check or any attachment thereto.

Section 4. The Trustees shall have the power in the name of such Corporate Co-Trustee, in their own names or otherwise, as in their discretion may be deemed necessary or desirable, to demand and enforce the prompt payment of Contributions to the Fund, including payments due to delinquencies as provided in Article III, and to assert and enforce all priorities, lien rights, and other claims or rights with respect to any Contributions or payments belonging to the Fund, this Trust or any of its beneficiaries, including the rights to file priority and other claims in bankruptcy or other proceedings. If any Individual Employer defaults in the making of such Contributions or payments and if the Board consults or causes to be consulted legal counsel with respect thereto, or files or causes to be filed any suit or claim with respect thereto, there shall be added to the obligation of the Individual Employer who is in default, reasonable attorneys' fees, court costs and all other reasonable expenses incurred in connection with such suit or claim, including any and all appellate proceedings therein.

Section 5. Without limitation of the provisions of Section 2 of this Article, the Board of Trustees shall have power:

(a) To pay or cause to be paid out of the Fund the reasonable expenses incurred in the establishment of the Fund and the Pension Plan.

(b) To establish and accumulate such reserve funds as may be adequate in the discretion of the Board to provide for administration expenses and other obligations of the Fund, including the maintenance in effect of the Pension Plan.

(c) To employ, engage or contract with such executive, consultant, actuarial, accounting, investment, administrative, clerical, secretarial and legal personnel and other employees or assistants, whether individual or corporate, as may be necessary in connection with the administration of the Fund and the Pension Plan and to pay or cause to be paid, out of the Fund, the compensation and necessary expenses of such personnel and assistants and the cost of office space, furnishings and supplies and other essentials required in such administration.

(d) To incur and pay or cause to be paid out of the Fund any other expense reasonably incidental to the administration of the Fund or the Pension Plan.

(e) To compromise, settle or release claims or demands in favor of or against the Fund on such terms and conditions as the Board may deem desirable; provided, however, that this clause shall not excuse any violation of any of the Collective Bargaining Agreements.

(f) To invest and reinvest, or cause to be invested and reinvested, the assets of the Fund in such manner as in its judgment may seem beneficial and appropriate for the protection and preservation of the Fund, without being limited or bound by any rule or custom relating to investments by

Trustees, except that no investment shall be made in the obligation or property of any Individual Employer, any of the Employers or any Signatory Association nor in any of their securities.

(g) To enter into contracts and procure insurance policies in its own name or in the name of the Fund, to provide any or all of the benefits specified in the Pension Plan, to terminate, modify or renew any such contracts or policies subject to the provisions of the Plan, and to exercise and claim all rights and benefits granted to the Board or the Fund by any such contracts or policies.

(h) With or without any of the contracts or policies mentioned in paragraph (g) of this section, to pay or cause to be paid all or any part of the benefits provided in the Pension Plan, to the persons entitled thereto under the Plan, and in accordance with the terms and provisions of the Plan.

(i) To purchase, sell, exchange, lease, convey or otherwise dispose of or to cause to be purchased, sold, exchanged, leased, conveyed or otherwise disposed of, any property of any kind forming a part of the Fund upon such terms, as it may deem proper and to execute and deliver or cause to be executed and delivered, any and all instruments of conveyance or transfer in connection therewith.

(j) To construe the provisions of this Trust Agreement and the Plan and any such construction adopted by the Board in good faith shall be binding upon any and all parties or persons affected thereby.

(k) To pay or cause to be paid any and all real or personal property taxes, income taxes, or other taxes or assessment of any or all kinds levied or assessed upon or with respect to the Fund or the Plan.

(l) To maintain or cause to be maintained, on a current basis, all actuarial data, records and information in connection with the administration of the Plan and to cause the books and records to be checked and evaluated annually, or more often if the Board so determines, by the Fund consultant-actuary or consultant-actuaries as the case may be, whose report shall be available for inspection by interested persons at reasonable time and upon proper notice, at such place or places as may be designated by the Board; and the Board shall have the right to rely upon all such reports and records.

(m) To prepare or cause to be prepared such periodic reports concerning the affairs of the Fund and the Plan, as the Board may deem advisable, and to furnish such reports to such persons as the Board may deem advisable.

(n) To maintain or cause to be maintained such bank account or bank accounts as may be necessary or advisable in the administration of the Fund or the Plan.

(o) To adopt and prescribe reasonable rules and procedures which shall not be inconsistent with the provisions of this Trust Agreement or of the Plan, governing the reporting of Contributions, the entitlement to pension benefits, the method of applying for pension benefits, and any and all other matters in connection with the Fund and the Plan.

(p) To exercise and perform any and all of the other powers and duties specified in this Trust Agreement or the Pension Plan.

Section 6. The Board of Trustees shall procure bonds for each Trustee or other person authorized to receive, handle, deal with or draw upon the moneys in the Fund for any purpose whatsoever, said bonds to be in such reasonable amount and to be obtained from such source as the Board

shall determine. The cost of such bonds shall be paid out of the Fund.

Section 7. The Board of Trustees shall maintain suitable and adequate records of and for the administration of the Fund. The Board may require the Employers, and Signatory Association, any Individual Employer, the Union, or any Employee to submit to it any information, data, report or documents reasonably relevant to and suitable for the purpose of such administration; provided, however, that the Union shall not be required to submit lists of membership. The parties agree that they will use their best efforts to secure compliance with any reasonable request of the Board for any such information, data, report or documents.

Upon request in writing from the Board of Trustees, any Individual Employer shall permit a person or persons, selected by the Board to enter upon the premises of such Individual Employer during business hours, at a reasonable time or times, and to examine and copy such books, records, paper or reports of such Individual Employer as may be necessary to determine whether the Individual Employer is making full and prompt payment of all sums required to be paid by him or it to the Fund.

Section 8. The books of account and records of the Board of Trustees, including the books of account and records pertaining to the Fund shall be audited at least once a year by a qualified certified public accountant to be selected by the Board. The Board shall also make all other reports required by law. A statement of the results of the annual audit shall be available for inspection by interested persons at the principal office of the Fund and at such other suitable place as the Board may designate from time to time. Copies of such statement shall be delivered promptly to the Employers, the Union and each Trustee.

Section 9. Compatible with equitable principles and to the extent that sound actuarial and accounting principles permit, the Board of Trustees may, subject to any applicable law or regulation, coordinate its activities in the administration of the Fund and the Pension Plan with the administrative activities of the Boards of Trustees of other Pension Plans or Health and Welfare Plans.

In addition, the Board of Trustees may, in their discretion, enter into reciprocal agreements with Boards of Trustees of other pension plans providing for the transfer or exchange of service credits, or contributions or both upon such terms and conditions as the Trustees may deem proper.

If any such coordination of activities is found to be or become inconsistent with the continuance of an exempt status of the Fund for tax purposes or with the favorable tax incidences of contributions to the Fund and of benefits paid under the Pension Plan, the provision or provisions of this agreement or arrangement causing such inconsistency shall be inoperative.

ARTICLE VI PROCEDURE OF BOARD OF TRUSTEES

Section 1. The Board of Trustees shall determine the time and place for regular periodic meetings of the Board. Either the Chairman or the Secretary-Treasurer, or any two (2) members of the Board, may call a special meeting of the Board by giving written notice to all other Trustees of the time and place of such meeting at least five (5) days before the date set for the meeting; provided, however, the notice shall contain an agenda of the items to be discussed and the special meeting shall be confined to the discussion of such

items. Any such notice of special meeting shall be sufficient if sent by ordinary mail or by wire addressed to the Trustee at his address as shown in the records of the Board. Any meeting at which all Trustees are present, or concerning which all Trustees have waived notice in writing, shall be a valid meeting without the giving of any notice.

Section 2. To constitute a quorum for the transaction of business not less than three (3) Employer Trustees and three (3) Union Trustees shall be present in person. The Board shall not take any action or make any decision on any matter coming before it or presented to it for consideration or exercise any power or right given or reserved to it or conferred upon it by this Trust Agreement except upon the majority vote of the Trustees at a meeting of the Board duly and regularly called or except by the signed written concurrence of all fourteen (14) Trustees without a meeting, as provided in Section 3 of this Article. However, Employer Trustees and Union Trustees shall have the right to cast an equal number of votes whether or not an equal number of Employer and Union Trustees are present. In the event the number of Employer Trustees and Union Trustees present at the meeting is not equal, each Trustee of the smaller group is vested with additional voting power in an amount sufficient to equalize the voting power of the two groups. For example, by way of illustration, if there are present at a meeting three Union Trustees and five Employer Trustees, there will be a total voting power of ten votes, five of which shall be vested in the Employer Trustees, one vote each; and five of which shall be vested in the Union Trustees, one and two-thirds vote each.

Section 3. Upon any matter which may properly come before the Board of Trustees, the Board may act in writing without a meeting, provided such action has the written concurrence of all the Trustees.

Section 4. Upon authorization by the Board of Trustees, a Trustee may be paid a fee from the Fund not exceeding one hundred dollars (\$100.00) per meeting of the Board of Trustees or of any Committee of the Board of Trustees of which he has been duly appointed a member as and for compensation for his services as Trustee and, in addition, may be reimbursed for expenses properly and actually incurred in the performance of his duties as Trustee, provided, however, that actual personal attendance at such meetings by such Trustee shall be required as a condition of payment of such compensation. Notwithstanding the foregoing, no Trustee who already receives full-time pay from an Employer or an Employer Association, or the Union, shall receive compensation as hereinabove described, except for reimbursement of expenses properly and actually incurred; provided, however, that this limitation shall not apply until June 30, 1977, as to any Trustee who served in such capacity and received compensation therefor on or before June 30, 1974, and continues in such capacity.

Section 5. In the event the Trustees cannot act with respect to any question or resolution presented to them for decision, including proposed amendments to this Trust, because of a tie vote, either side may submit said dispute within 48 hours to the American Arbitration Association for a list of seven arbitrators, from which list each side shall immediately within 48 hours alternately strike three names. The remaining arbitrator shall be the impartial chairman. In the event the Trustees fail or refuse to refer said dispute to the American Arbitration Association as stipulated above, said dispute shall within 48 hours be automatically referred to the grievance procedures set forth in the Southern California Master

Labor Agreement. Any decision of the Labor-Management Adjustment Board or Arbitrator shall be final and binding on the Trustees.

The cost and expenses incidental to arbitration before the American Arbitration Association shall be a proper charge against the Fund, and the Board of Trustees is authorized and directed to pay such charges; provided, however, that each party shall pay any expenses incurred by it in connection with the dispute.

Section 6. No matter in connection with the interpretation or enforcement of any of the Collective Bargaining Agreements shall be subject to arbitration under this Article. No matter which is subject to arbitration under this Article shall be subject to the grievance procedure or any other arbitration procedure provided in any of the Collective Bargaining Agreements.

Section 7. The Trustees may delegate fiduciary responsibilities and administrative duties to committees or sub-committees of the Board of Trustees, and may delegate such responsibilities and duties to other individuals as the Trustees may deem appropriate or necessary in their sole discretion and consistent with applicable law.

Section 8. (a) The standing committees of the Board of Trustees may consist of a Finance & Investment Committee, a Benefits Committee and a Contributions Committee, and such other standing committees as the Trustees may create by resolution.

(b) Each committee shall consist of an equal number of Employer Trustees and Union Trustees. A quorum of any committee meeting shall be at least one Employer Trustee and at least one Union Trustee. Voting at committee meetings shall be in accordance with Article VI, Section 2. Officers of the Board of Trustees who are Union Trustees shall designate the Union Trustee members of each committee, and officers of the Board of Trustees who are Employer Trustees shall designate Employer Trustee members of each committee. Any appointed member of a committee may be removed from membership in such committee by the officers of the Board of Trustees appointing him at any time without cause.

(c) The Finance & Investment Committee may review and formulate investment policies, receive and act upon investment advice and legal advice relating to investments, and make appropriate recommendations to the Board of Trustees on any matter relating to investments and investment policies. The Board of Trustees may delegate to the Finance & Investment Committee the authority to authorize and approve the sale and investment of Trust Fund assets as permitted by this Trust Agreement, subject to pertinent investment policies and guidelines adopted by the Board of Trustees.

(d) The Benefits Committee may formulate rules and procedures relating to benefits. The Benefits Committee may review all applications for benefits with regard to eligibility and amount, and may make appropriate determinations with respect to payment.

(e) The Contributions Committee may formulate policies and procedures in regard to collection of delinquent payments and contributions due the Fund. The Trustees may delegate to the Contributions Committee the authority to initiate legal actions and to exercise the powers of the Trustees to enforce, compromise or otherwise resolve disputes and claims regarding delinquent employer contributions or other obligations owed to the Trust Fund. The Contributions

Committee may act jointly with similar committees of related employee benefit trusts entitled to receive Contributions under the Collective Bargaining Agreements.

Section 9. All Trust and Committee meetings shall consist of the Trustees and/or Committee members only, in addition to the Recording Secretary.

All Trust staff members shall be present at all Trust and Committee meetings only during the portion of the agenda which requires their reporting. On the request of any individual Trustee, however, any staff member shall be admitted into all or any part of any meeting. Nothing stated in this provision shall be intended to exclude the Administrative Manager from attendance at any Trust and/or Committee Meeting.*

ARTICLE VII CORPORATE CO-TRUSTEE

Section 1. The Corporate Co-Trustee, if any, and any successor shall be appointed by the Trustees.

Section 2. Any Corporate Co-Trustee shall not be a representative of either the Employers or the Union.

Section 3. The Board of Trustees may select a California banking institution which is a member of a federal reserve bank or which is subject to the supervision of the Superintendent of Banks or the Comptroller of Currency to act as Co-Trustee and, in the event of such selection, shall negotiate an agreement with such Co-Trustee under the terms of which said Co-Trustee shall receive, on behalf of the Fund, all Contributions payable by Individual Employers to this Fund. The duties, responsibilities, rights and powers of the Corporate Co-Trustee shall be such as are delegated to it by the Board of Trustees in said agreement. It is the purpose of this section to provide for compliance of the Trust with Section 28103 of the California Corporations Code. The Board of Trustees may, in its discretion, omit to select or dispense with the services of the Co-Trustee if in so doing the Trust nevertheless remains in compliance with Title 4, Division 3, Chapter 1 of the California Corporations Code, known as the Retirement Systems Law, as amended or supplemented from time to time. If the Board of Trustees omits to select or dispenses with the services of a Co-Trustee, the duties and responsibilities otherwise performed or to be performed by the Co-Trustee under this Trust Agreement shall be performed by the Board of Trustees.

ARTICLE VIII GENERAL PROVISIONS APPLICABLE TO TRUSTEES

Section 1. No party who has verified that he or it is dealing with the duly appointed Trustees, or any of them, shall be obligated to see to the application of any moneys or property of the Fund, or to see that the terms of this Trust Agreement have been complied with, or to inquire as to the necessity or experience of any act of the Trustees. Every instrument executed by the Board of Trustees or by its direction shall be conclusive in favor of every person who relies on it, that (a) at the time of the delivery of the instrument this Trust Agreement was in full force and effect; (b) the instrument was executed in accordance with the terms and conditions of this Trust Agreement; and (c) the Board was duly authorized to execute the instrument or direct its execution.

Section 2. The duties, responsibilities, liabilities or disabilities of any Trustee under this Trust Agreement shall be determined solely by the express provisions of this Trust

Agreement and no further duties, responsibilities, liabilities or disabilities shall be implied or imposed.

Section 3. The Fund shall protect, indemnify, hold harmless and defend each Trustee from any and every liability, claim and cause of action arising from the affairs of the Fund or his service in the capacity of Trustee to the maximum extent permitted by law; provided, however, that in no event shall the foregoing apply to any Trustee whose willful misconduct or gross negligence gives rise to the liability, claim or cause of action.

Section 4. Neither the Employers, any Signatory Association, any Individual Employer nor the Union shall be liable in any respect for any of the obligations, acts or omissions of the Trustees or any of them because such Trustees are in any way associated with any such Employers, Signatory Association, Individual Employer or Union.

Section 5. The Trustees may, but are not required to secure the advice of legal counsel or other consultant on any matter under consideration. Acting upon such advice shall be full protection and justification to the Trustees for anything suffered, done or admitted to be done in good faith and in accordance with and in reliance on such opinion, and the Trustees shall not be liable therefor.

Section 6. No decision shall be made by the Board of Trustees in the administration of the Fund or Pension Plan which is unreasonably discriminatory under the provisions of the Internal Revenue Code, or under any other applicable law or regulation.

Section 7. The name of the Fund may be used to designate the Trustees collectively and all instruments may be affected by the Board of Trustees in such name.

Section 8. A Trustee of this Trust may also be a beneficiary hereof if he otherwise qualifies as an Employee; and nothing contained herein shall be construed or interpreted to prevent any Trustee, who is also an Employee, from participating in the benefits of the Plan.

ARTICLE IX GENERAL PROVISIONS

Section 1. Subject to the provisions of the Collective Bargaining Agreements, the rights and duties of all parties, including the Employers, the Signatory Associations, the Individual Employers, the Union, the Employees, Retired Employees and their beneficiaries, and the Trustees, shall be governed by the provisions of this Trust Agreement and the Pension Plan and any insurance policies or contracts procured or executed pursuant to this Trust Agreement.

Section 2. No Employee, Retired Employee or other beneficiary shall have any right or claim to benefits under the Pension Plan, other than as specified in such Plan. Any dispute as to eligibility type, amount or duration of benefit shall be resolved by the Board of Trustees under and pursuant to the Pension Plan, and its decision of the dispute shall be final and binding upon all parties thereto. No action may be brought for benefits under the Pension Plan or to enforce any right thereunder until after the claim therefor has been submitted to and determined by the Board, and thereafter the only action that may be brought is one to enforce the decision of the Board. Neither the Employers, any Signatory Association, any Individual Employer, the Union or any of the Trustees shall be liable for the failure or omission for any reason to pay any benefits under the Pension Plan.

Section 3. Any notice required to be given under the terms of this Trust Agreement or the Pension Plan shall be deemed

to have been duly served if delivered personally to the person to be notified in writing, or if mailed in a sealed envelope, postage prepaid, to such person at his last known address as shown in the records of the Fund, or if sent by wire to such person at said last known address.

Section 4. This Trust Agreement shall be binding upon and inure to the benefit of all Individual Employers who are now or hereafter may become members of Employers of any Signatory Association or who become in any other way a party to any of the Collective Bargaining Agreements and this Trust Agreement, and upon the heirs, executors, administrators, successors, purchasers and assigns of the Employers, any Signatory Association, any Individual Employer, the Union and the Trustees.

Section 5. This Trust Agreement may be executed in a number of counterparts, each of which shall have the force and effect of an original, and no more than one counterpart need be signed by any party hereto; provided, however, that each of said counterparts shall be filed in the principal office of the Fund.

Section 6. All questions pertaining to this Trust Agreement, the Fund or the Pension Plan, and their validity, administration and construction, shall be determined in accordance with the laws of the State of California and with any pertinent laws of the United States.

Section 7. If any provision of this Trust Agreement, the Pension Plan, the rules and procedures issued pursuant thereto, or any step in the administration of the Fund or the Pension Plan is held to be illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining portions of this Trust Agreement, the Plan and the rules and procedures, unless such illegality or invalidity prevents accomplishments of the objectives and purposes of this Trust Agreement and the Plan. In the event of any such holding, the parties will immediately commence negotiations to attempt to remedy any such defect.

Section 8. All books, records, papers, reports, documents or other information obtained with respect to the Fund or the Plan shall be confidential, and shall not be made public or used for any other purposes, except to the extent necessary for the proper operation of the Fund or the Plan and for the cooperation with other funds or plans authorized by other provisions of this Agreement. Nothing in this section shall prohibit the preparation or publication of statistical data and summary reports with respect to the operations of the Fund and the Plan.

Section 9. In the establishment and maintenance of the Pension Plan, and in the execution, amendment and implementation of this Trust Agreement, the Union acts for and on behalf of the Employees and as their collective bargaining representatives and agents, and every agreement or act of the Union in connection with the establishment, maintenance and operation of the Fund or the Plan shall be deemed to be and is the agreement or act of the Employee, or Employees, concerned with or affected by such agreement or action.

Section 10. In the establishment and maintenance of the Pension Plan, and in the execution, amendment and implementation of this Trust Agreement, the Employers act for and on behalf of the Individual Employers who, at the time of the execution of this Trust Agreement are, or during the term thereof become members of any of the Employers, or of any Signatory Association. Also, in that same regard, said Employers act for and on behalf of any other Individual

Employer who is required by any of the Collective Bargaining Agreements to make Contributions to the Fund or who in fact makes one or more Contributions to the Fund; provided such Contribution or obligation to make such was favorably approved by the Board of Trustees. Every agreement or act of the Employers in connection with the establishment, maintenance and operation of the Fund or the Plan shall be deemed to be and is the agreement or act of the Individual Employers, or Individual Employer, concerned with or affected by such agreement or action.

Section 11. It is the intent and purpose of the parties that Contributions to the Fund shall be at all times deductible by the Individual Employers for income tax purposes in the taxable year when paid; that benefits to Employees, Retired Employees or other beneficiaries shall be at all times taxable to them, if at all, only in the year such benefits are distributed or made available to such employees, Retired Employees or other beneficiaries and that the Trust created hereby shall be at all times tax exempt. Application for the qualification of the Trust and Plan created by this Trust Agreement under the Internal Revenue Code and the law of the State of California shall be made as soon as practicable, and the parties and the Board of Trustees shall do whatever may be necessary to secure such qualification as soon as possible. If any administrative or judicial ruling holds that any provision of this Trust Agreement or of the Pension Plan prevents or defeats the qualification of the Trust and Plan as herein provided, or any other objective stated in this section, either under presently existing laws or regulations or under any laws or regulations hereafter enacted or adopted, or if for any reason it shall be necessary or desirable to amend this Trust Agreement or the Pension Plan to accomplish any such objective, the parties will forthwith enter into negotiations with regard to the amendment of this Trust Agreement or the Pension Plan in such respects as may be necessary to accomplish such qualification or other objective consistent with the other objectives and purposes of this Agreement, and any such amendment shall be effective, insofar as practicable, as of the effective date of this Trust Agreement or of the Pension Plan or as of the effective date of any such law or regulation hereafter enacted or adopted, as the case may require.

Section 12. In any action or proceeding affecting the Fund, the Plan or the Trust hereby established, it shall be necessary to join as the parties only the Trustees, and no Employer, Individual Employer, the Union, Employee, Retired Employee, beneficiary or any other person shall be entitled to notice of any such proceeding or to service of process therein. Any final judgment entered in any such action or proceeding shall be binding upon all of the above mentioned parties so long as such judgment does not attempt or purport to impose any personal liability upon or against any party not joined or served in any such action or proceeding.

ARTICLE X NON-MEMBER EMPLOYERS

Section 1. Any Individual Employer who is not a member of or represented by Employers or a Signatory Association but who is performing work coming within the jurisdiction of the Union may become a party to this Trust Agreement, upon approval of the Board of Trustees, by executing in writing and depositing with the Board of Trustees his or its acceptance of any of the Collective Bargaining Agreements and of this Trust Agreement, in a form acceptable to the Board. The

Board may provide that this requirement may be satisfied by depositing such an acceptance with Board of Trustees of another fund or funds.

Section 2. Any Individual Employer who executes and deposits any such written acceptance, or who in fact makes one or more Contributions to the Fund with the approval of the Board of Trustees assumes and shall be bound by all of the obligations imposed by this Trust Agreement upon the Individual Employer, is entitled to all rights under this Trust Agreement and is otherwise subject to it in all respects.

ARTICLE XI AMENDMENT AND TERMINATION

Section 1. The provisions of this Trust Agreement may be amended or modified at any time, and from time to time, by mutual agreement of the Employers and the Union subject to the terms and conditions of the Collective Bargaining Agreements, any applicable law or regulation and the provision of Section 4 of this Article.

Section 2. Subject to provisions of this Article and Article IX, Section 7 hereof, this Trust is irrevocable and the provisions of this Trust Agreement shall continue in effect during the term of the Collective Bargaining Agreements, and any amendments, modifications, renewals or extensions thereof with respect to such Collective Bargaining Agreements as provide for the continuation of payments into the Fund and of the Pension Plan.

Section 3. This Trust Agreement and the Trust herein provided may be terminated by the Employers and the Union by an instrument in writing executed by mutual consent at any time, subject to the provisions of Section 4 of this Article. Upon the termination of such Trust, any moneys remaining in the Fund after the payment of all expenses and obligations of the Trust shall be paid or used for the continuance of one or more pension benefits in accordance with the provisions of the Pension Plan, until such Fund is exhausted.

Section 4. In no event shall any amendment or modification of this Trust Agreement, or the termination of this Trust Agreement, cause or result in any portion of the Fund reverting to, or being recoverable by, any of the Employers, any Signatory Association, any Individual Employer, or the Union, or cause or result in the diversion of any portion of the Fund to any purpose other than the exclusive benefit of Employees, Retired Employees or their beneficiaries under the Plan and the payment of the administrative expenses of the Fund and the Plan, or the refund of erroneous payments.

Section 5. In no event shall the Trust established by this Agreement continue for a longer period than is permitted by law.

EXECUTED as of the day and year first above written.

EMPLOYERS:

ASSOCIATED GENERAL CONTRACTORS OF
AMERICA, SOUTHERN CALIFORNIA CHAPTER
By Warren Driver

BUILDING CONTRACTORS ASSOCIATION OF
CALIFORNIA, INC.
By Leo J. Volk

ENGINEERING AND GRADING CONTRACTORS
ASSOCIATION, INC.

By D. W. Asher

HOME BUILDERS ASSOCIATION OF LOS ANGELES,
ORANGE AND VENTURA COUNTIES, successor to
Home Builders Institute, Inc.

By R. A. Alsweet

ASSOCIATED GENERAL CONTRACTORS OF
AMERICA, SAN DIEGO CHAPTER

By Howard C. Dennis

SAN DIEGO BUILDING CONTRACTORS
ASSOCIATION

By Howard C. Dennis

ASSOCIATED GENERAL CONTRACTORS OF
AMERICAN, NEVADA CHAPTER

By Richard D. Chase

ENGINEERING AND GRADING CONTRACTORS
ASSOCIATION, INC., SAN DIEGO CHAPTER

By Howard C. Dennis

LAS VEGAS BUILDERS EXCHANGE

By Richard D. Chase

SOUTHERN NEVADA HOME BUILDERS, INC.

By Richard D. Chase

FEDERATED EMPLOYERS OF NEVADA, INC.

By Richard D. Chase

UNION:

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL UNION NO. 12

By J. J. Twombly, President

By Anthony Sanders — by Wm. A. Cobb, Jr.
Recording and Corresponding Secretary

By R. B. Bronson, Business Manager

EACH OF THOSE SIGNING AS "EMPLOYERS" ABOVE EXPRESSLY WARRANTS THAT IT IS AUTHORIZED TO EXECUTE THIS AGREEMENT, WARRANTS THAT ALL OF THE MEMBERS OF SAID "EMPLOYER" WHO HAVE AUTHORIZED IT SO TO DO THEREBY BECOME AND ARE PARTIES TO AND BOUND BY THE TERMS AND PROVISIONS OF THIS AGREEMENT FOR ITS DURATION; AND FURTHER WARRANTS THAT ANY EMPLOYER WHO SHALL BECOME A MEMBER OF SAID "EMPLOYER" AND WHO SHALL HAVE SO AUTHORIZED IT TO BIND HIM TO THIS AGREEMENT FOR ITS DURATION.

ACCEPTANCE OF OFFICE BY TRUSTEES

The undersigned hereby accepts office as original Trustees appointed pursuant to the foregoing agreement and agree to act under and be subject to all of the terms and conditions of said Agreement. The undersigned hereby declare that they hold the Fund created by said Agreement in trust for the uses and purposes set forth in said Agreement.

DATED THIS 13TH DAY OF DECEMBER, 1960.

Duncan Campbell
Wm. A. Cobb, Jr.
Donald Fager
H. D. Gibford
P. A. Judd, Jr.
Cecil Montgomery
J. J. Twombly

Phil Bailey
Richard D. Chase
H. C. Dennis
Leo Majich
Richard Spicer
E. J. Strecker
Leo J. Volk

THE OPERATING ENGINEERS PENSION PLAN (Including Amendments Numbers 1 through 55)

ARTICLE I DEFINITIONS

Unless the context or the subject matter otherwise requires, the following definitions shall govern the Plan.

Section 1. The terms "Pension Fund" or "Fund" mean the Trust Fund created and established by the Trust Agreement.

Section 2. The terms "Pension Plan" or "Plan" mean the Pension Plan created pursuant to the Collective Bargaining Agreements and the Trust Agreement and any modification, amendment, extension or renewals of said Plan and shall be known as "The Operating Engineers Pension Plan."

Section 3. The term "Collective Bargaining Agreements" includes:

(a) Any Collective Bargaining Agreement between the Union and any individual Employer or Employer Association which provides for the making of Employer contributions to this Fund and concerning which agreement the Board of Trustees approves, or has approved the sufficiency of any provisions therein purporting to obligate Employer contributions to this Fund.

(b) Any extensions, amendments, modifications or renewals of any of the said agreements, or any substitute or successor agreements to them which provide for the making of Employer contributions to this Fund.

Section 4. The term "Individual Employer" means any individual Employer (including any individual, partnership, corporation, contractor, joint venture or other entity) who is required by any of the Collective Bargaining Agreements to make contributions to the Pension Fund or who, in fact, makes one or more contributions to the Fund. The term "Individual Employer" shall also include the Union if it elects to include its regular employees as participants in the Fund and Plan and notifies the Board of Trustees, in writing, of its election as provided in Article I, Section 2, of said Trust Agreement, provided the inclusion of said Union as an Individual Employer shall be on the same basis as other Individual Employers and shall not be a violation of any law or regulation.

Likewise the term "Individual Employer" shall also include an AFL-CIO Building Trades Council as to any employee who was, immediately preceding his employment with this Building Trades Council, a Member of or in the employ of International Union of Operating Engineers, Local No. 12, or in the employ of an Individual Employer and, in either case, covered by the Plan. The Building Trades Council shall be required to notify the Board of Trustees of this Trust in writing of its request to participate and the Board shall have the power to approve or deny the request. The approval and inclusion of the Building Trades Council as an Individual Employer shall be on the same basis as other Individual Employers, provided such participation shall not be a violation of any law or regulation.

Likewise the term "Individual Employer" shall also include the Southern California Operating Engineers Benefits Administration, Inc., a non-profit corporation, provided such participation shall not be a violation of any law or regulation.

Likewise the term "Individual Employer" shall also include each of the Employers and Signatory Associations.

An employer shall not be deemed an Individual Employer simply because he is part of a controlled group of corporations or of a trade or business under common control, some other part of which is an Individual Employer

Likewise the term "Individual Employer" shall also include the Operating Engineers Training Trust, formerly known as the Operating Engineers Journeymen and Apprentice Training Trust, formerly known as the Southern California Operating Engineers Apprentice Training Trust, shall also include the Southern Nevada Operating Engineers Journeyman and Apprentice Training Trust, formerly known as the Southern Nevada Operating Engineers Apprentice Training Trust, and shall also include the Apprentice and Journeyman Training Trust Fund of the Civil Engineering and Land Surveying Industry of California, provided that such inclusion shall not be a violation of any law or regulation.

Section 5. The terms "Employee" or "Participant" mean any employee of an Individual Employer who is entitled to receive pay under any of the Collective Bargaining Agreements. The term "Employee" or "Participant" shall also include employees of the Union on whose behalf contributions are made to the Pension Fund, provided the inclusion of said employees is not in violation of any law or regulation.

The term "Employee" shall also include any employee of an AFL-CIO Building Trades Council, who was a member of or in the employ of International Union of Operating Engineers, Local Union No. 12 or in the employ of an individual employer immediately preceding his employment with the Building Trades Council and, in either case, covered by the Plan, and on whose behalf contributions are made to the Pension Fund under the conditions set forth in Article I, Section 2 and 11 of the Trust Agreement.

The term "Employee" shall also include any employee of the Southern California Operating Engineers Benefits Administration, Inc., a non-profit corporation, provided the inclusion of said employees is not a violation of any law or regulation.

The term "Employee" shall also include all employees of any of the Employers and of any Signatory Association; provided, however, that such organization shall elect whether the above class of employees shall be covered by contributions in accordance with the rules and procedures adopted by the Board of Trustees; provided further that such employees shall constitute a class of employees which is nondiscriminatory within the meaning of Internal Revenue Code Section 401; and provided further that the detailed basis on which such payments are to be made is specified in a written agreement with the organization.

The term "Employee" shall also include all employees not covered by any collective bargaining agreement of any Individual Employer or, in the alternative, all such employees on whose behalf contributions have been made to the Pension Fund under a Collective Bargaining Agreement; provided, however, that the Individual Employer shall elect which, if either, of the above alternative classes of employees shall be covered by contribution in accordance with rules and procedures adopted by the Board of Trustees; provided further that such employees shall constitute a class of employees which is nondiscriminatory within the meaning of Internal Revenue Code Section 401; and, provided further that the detailed basis on which such payments are to be made is specified in a written agreement with the Individual Employer.

The term "Employee" shall also include any employee of the Operating Engineers Training Trust, formerly known as the Operating Engineers Journeyman and Apprentice Training Trust, formerly known as the Southern California Operating Engineers Apprentice Training Trust, shall also include any

employee of the Southern Nevada Operating Engineers Journeyman and Apprentice Training Trust, formerly known as the Southern Nevada Operating Engineers Apprentice Training Trust, and shall also include any employee of the Apprentice and Journeyman Training Trust Fund of the Civil Engineering and Land Surveying Industry of California, provided that contributions are made to the Trust for such employee and provided further that the inclusion of said employee is not a violation of any law or regulation.

Section 6. The term "Employers" means and includes:

Associated General Contractors of California, Inc., Successor to Associated General Contractors of America, Southern California Chapter;

Building Industry Association of California, Inc., Successor to Building Contractors Association of California, Inc., and Home Builders Association of Los Angeles, Orange and Ventura Counties, Successor to Home Builders Institute, Inc.;

Engineering Contractors Association, Inc., Successor to Engineering and Grading Contractors Association, Inc.;

Southern California Contractors Association, Inc.;

Associated General Contractors of America, San Diego Chapter;

San Diego Building Contractors Association;

Engineering and General Contractors Association, Successor to Engineering and Grading Contractors Association, Inc., San Diego Chapter;

Nevada Chapter, Associated General Contractors of America, Inc., Successor to Associated General Contractors of America, Nevada Chapter.

Section 7. The term "Union" means International Union of Operating Engineers, Local Union No. 12.

Section 8. The term "Signatory Association" means any Employer organization, other than one of the Employers, which signs any of the Collective Bargaining Agreements and the Trust Agreement, or a counterpart thereof, on behalf of its members or executes on behalf of such members any agreement to be bound by the terms of the Trust Agreement or a written acceptance or authorization of the Trust Agreement and any such Collective Bargaining Agreements; provided, however, with respect to any such writings, the Board of Trustees approves, or has approved, the sufficiency of any provisions therein purporting to obligate contributions by members of such Employer organizations to this Fund and approves or has approved any provisions therein purporting to bind members of such Employer organization to the Trust Agreement.

Section 9. The term "Trustee" means any natural person designated as Trustee pursuant to Article IV of the Trust Agreement, but shall not include Corporate Co-Trustee as defined therein.

Section 10. The terms "Board of Trustees" or "Board" mean the Board of Trustees established by the Trust Agreement.

Section 11. The term "Trust Agreement" means that the agreement to which the Plan is attached and any modification, amendment, or extension or renewal of said agreement.

Section 12. The term "Corporate Co-Trustee" means the Corporate Co-Trustee appointed for the purpose specified in Article VII of the Trust Agreement.

Section 13. The terms "Retired Employee" or "Retired Participant" mean a person who is receiving pension benefits under this Plan.

Section 14. The term "Plan Year" means the period of twelve consecutive months commencing on June 1 of each year and ending on May 31 of the following year; provided, however, that the Plan Year beginning on June 1, 1971, shall end on June 30, 1972, and each Plan Year thereafter shall begin on July 1 of each year and end on June 30 of the following year.

Section 15. The term "Prior Service" means the period or periods of employment prior to June 1, 1960 to the extent credited in accordance with Article II of this Plan.

Section 16. The term "Current Service" means employment on and after June 1, 1960 credited in accordance with Article II of this Plan.

Section 17. The term "Pension Credit" means a unit of Current Service credited in accordance with Article II of this Plan.

Section 18. The term "Service Credits" includes both credited Prior Service and Pension Credit.

Section 19. The term "Normal Retirement Age" means age 65 or, if later, the age of the Participant after his accumulation of ten years of Current Service.

Section 20. The term "ERISA" means the Employee Retirement Income Security Act of 1974.

Section 21. The term "Spouse" means the person to whom the Participant or Retired Participant is legally married.

ARTICLE II ACCUMULATION OF CREDITS

Section 1. Purpose

The purpose of this Article is to define the basis on which Participants accumulate Service Credits toward eligibility for a Pension. This Article also defines the basis on which Service Credits once accumulated may be forfeited.

Section 2. Credit for Periods Prior to June 1, 1960 (Prior Service)

(a) Subject to the provisions of subsection (c) of this Section, a Participant shall be entitled to one Prior Service Credit, or portion thereof, for:

- (1) each Plan Year he was employed prior to June 1, 1960 (A) in any of the classifications which was then included in the Collective Bargaining Agreements and was performed in the geographic area covered by any of the Collective Bargaining Agreements, or (B) said work was performed in an industry that was organized by the Union prior to June 1, 1960, except that employment resulting in credits under a pension program of a public agency shall not count toward Prior Service Credit. A Participant shall be entitled to a full year of such credit for each Plan Year he was so employed for 1200 hours or more and if so employed for less than 1200 hours he shall receive 1/1200th of a year for each such hour. In no event shall any employee be given any Prior Service Credit for work performed in an industry that was organized by the Union subsequent to June 1, 1960. The date that an industry was organized by the Union shall be the date that the first Collective Bargaining Agreement was executed by the Union in said industry.

- (2) each Plan Year he was regularly employed prior to June 30, 1960 by the Union, pursuant to the provisions of Article I, Section 2, of the Trust Agreement.
- (3) each Plan Year in which he served in the Armed Forces of the United States during the years 1940 through 1947 inclusive, and 1950 through 1956 inclusive, provided:
- (i) he was employed in any of the classifications included in the Collective Bargaining Agreements and in the geographical area covered by any of the Collective Bargaining Agreements immediately preceding his induction in the Armed Forces; and
 - (ii) his discharge from the Armed Forces was under a condition other than dishonorable; and
 - (iii) he returned to employment in any of the classifications included in the Collective Bargaining Agreements and in the geographical area covered by any of the Collective Bargaining Agreements within one year of his release from active duty or within one year of his recovery from a disability continuing after his release from active duty. A Participant shall be entitled to a full year of such credit for each Plan Year he served in the Armed Forces of the United States and for less than a full year he shall receive 1/12 of a year for each such month of service in the Armed Forces.

Section 2(a) and (3) shall apply only to those persons who are Retired Participants on June 1, 1967 and thereafter. Any increased benefits to be paid as a result of this Section shall not be paid retroactively and shall apply only to payments commencing on or after June 1, 1967 upon proper application.

(b) It is recognized that in many cases it will be difficult, because of changing employment, to produce evidence of past years of employment in the types of employment referred to in (a) above. A presumption is therefore established that a Participant was engaged in employment entitling him to credit at the rate of 1200 hours in each Plan Year throughout the period of his membership in good standing in the Union in the period May 1, 1939, to June 1, 1960 subject to the provisions of subsection (c) of this section.

(c) The number of Prior Service Credits for any Participant shall not exceed 20. Prior Service Credits will be credited if a Participant accumulated 1/2 Pension Credit, subject to the provisions of Section 4 of this Article.

Section 3. Credit for Periods On and After June 1, 1960 (Current Service)

(a) For employment commencing on and after June 1, 1960, but prior to June 1, 1968, a Participant will receive one Pension Credit for each 1000 hours, and 1/1000th of a Pension Credit for each hour less than a full Pension Credit in which he is employed by an Individual Employer with regard to which contributions are received by the Fund, or are obligated to be paid to the Fund, subject to the provisions of Article V, Section 4.

(b) For employment commencing on and after June 1, 1968, but prior to July 1, 1970, a Participant will receive one Pension Credit for each \$600 of contributions made on his behalf and 1/1000th of a Pension Credit for each 60¢ accumulation less than a full Pension Credit for which he is employed by an Individual Employer with regard to which contributions are received by the Fund or obligated to be paid to the Fund, subject to the provisions of Article V, Section 4.

(c) For employment commencing on and after July 1, 1970, but prior to July 1, 1971, a Participant will receive one Pension Credit for each \$800 of contributions made on his behalf and 1/1000th of a Pension Credit for each 80¢ accumulation less than a full Pension Credit for which he is employed by an Individual Employer with regard to which contributions are received by the Fund or obligated to be paid to the Fund, subject to the provisions of Article V, Section 4.

(d) For employment commencing on and after July 1, 1971, but prior to July 1, 1972, a Participant will receive one Pension Credit for each \$1,000 of contributions made on his behalf and 1/1000th of a Pension Credit for each \$1.00 accumulation less than a full Pension Credit for which he is employed by an Individual Employer with regard to which contributions are received by the Fund or obligated to be paid to the Fund, subject to the provisions of Article V, Section 4.

(e) For employment commencing on and after July 1, 1972, but prior to July 1, 1973, a Participant will receive one Pension Credit for each \$1,200 of contributions made on his behalf and 1/1000th of a Pension Credit for each \$1.20 accumulation less than a full Pension Credit for which he is employed by an Individual Employer with regard to which contributions are received by the Fund or obligated to be paid to the Fund, subject to the provisions of Article V, Section 4.

(f) For employment commencing on and after July 1, 1973, a Participant will receive one Pension Credit for each \$1,500 of contributions made on his behalf and 1/1000th of a Pension Credit for each \$1.50 accumulation less than a full Pension Credit for which he is employed by an Individual Employer with regard to which contributions are received by the Fund or obligated to be paid to the Fund, subject to the provisions of Article V, Section 4.

(g) For employment commencing on and after July 1, 1975, but prior to July 1, 1976, a Participant will receive one Pension Credit for each \$1,750 of contributions made on his behalf and 1/1000th of a Pension Credit for each \$1.75 accumulation less than a full Pension Credit for which he is employed by an Individual Employer with regard to which contributions are received by the Fund or obligated to be paid to the Fund, subject to the provisions of Article V, Section 4.

(h) For employment commencing on and after July 1, 1976, a Participant will receive one Pension Credit for each \$2,000 of contributions made on his behalf and 1/1000th of a Pension Credit for each \$2.00 accumulation less than a full Pension Credit for which he is employed by an Individual Employer with regard to which contributions are received by the Fund or obligated to be paid to the Fund, subject to the provisions of Article V, Section 4.

(i) For employment commencing on and after July 1, 1978, a Participant will receive one Pension Credit for each \$2,300 of contributions made on his behalf and 1/1000th of a Pension Credit for each \$2.30 accumulation less than a full Pension Credit for which he is employed by an Individual Employer with regard to which contributions are received by the Fund or obligated to be paid to the Fund, subject to the provisions of Article V, Section 4.

(j) For employment commencing on and after July 1, 1979, a Participant will receive one Pension Credit for each \$2,600 of contributions made on his behalf and 1/1000th of a Pension Credit for each \$2.60 accumulation less than a

full Pension Credit for which he is employed by an Individual Employer with regard to which contributions are received by the Fund or obligated to be paid to the Fund, subject to the provisions of Article V, Section 4.

(k) For employment commencing on and after July 1, 1980, a Participant will receive one Pension Credit for each \$2,650 of contributions made on his behalf and 1/1000th of a Pension Credit for each \$2.65 accumulation less than a full Pension Credit for which he is employed by an Individual Employer with regard to which contributions are received by the Fund or obligated to be paid to the Fund, subject to the provisions of Article V, Section 4.

(l) For employment commencing on and after January 1, 1981, a Participant will receive one Pension Credit for each \$2,800 of contributions made on his behalf and 1/1000th of a Pension Credit for each \$2.80 accumulation less than a full Pension Credit for which he is employed by an Individual Employer with regard to which contributions are received by the Fund or obligated to be paid to the Fund, subject to the provisions of Article V, Section 4.

Section 4. Break in Employment and Forfeiture of Service Credit.

(a) General Rules.

- (1) Between June 1, 1960 and July 1, 1976. A Participant who fails to receive credit for 500 hours during a period of three (3) consecutive Plan Years between June 1, 1960 and July 1, 1976, shall incur a break in employment on the last day of the third Plan Year. Notwithstanding the provisions of this Section 4(a)(1), with respect to a Participant for whom contributions to the Trust are first required by a Collective Bargaining Agreement after June 1, 1960, the Plan Year or portion thereof in which contributions are first required to be paid to the Fund shall be excluded from the application of the provisions of this Section 4(a)(1).
- (2) Between July 1, 1976 and July 1, 1979. A Participant who fails to receive credit for 500 hours during a period of three (3) consecutive Plan Years and who fails to receive credit for 500 hours in each of the consecutive Plan Years equal in number to the number of full Pension Credits (or multiples of 1,000 hours) previously accumulated will incur a break in employment on the last day of the last such consecutive Plan Year.
- (3) On and After July 1, 1979. A Participant will incur a break in employment on the last day of the Plan Year in which he fails to receive credit for 500 hours during each of the consecutive Plan Years equal in number to the amount of full Pension Credits (or multiples of 1,000 hours) previously accumulated.

(b) Exceptions to General Rule. A Break in Employment will not include a Plan Year in which:

- (1) the failure of a Participant to earn Pension Credit is due to temporary or total disability for more than six (6) months of the Plan Year. Temporary or total disability, for purposes of this Section is to be determined to the satisfaction of the Board of Trustees. In order to secure the benefits of this provision, a Participant must present such written evidence and submit to such examination or examinations as the Board may in its sole discretion determine.

(2) the Participant is in service in any of the Armed Forces of the United States or in service pursuant to a national conscription law, provided the Participant makes himself available for employment under the Collective Bargaining Agreements within 90 days after termination thereof or 90 days after recovery from a disability continuing after termination thereof.

- (c) Effect of a Break in Employment. A Participant whose Service Credits are not vested in accordance with Section 5 of this Article II and who incurs a break in employment as described in this Section 4 shall forfeit all Service Credits on or before the date of the break. His eligibility thereafter for benefits under this Plan shall be the same in all respects as if he were a new Participant who had never previously participated in the Plan.

Section 5. Vesting. A Participant will have his Service Credits vested and the forfeiture provided in Section 4 of this Article will not apply to a Participant who:

- (a) has acquired at least three (3) Pension Credits or has worked at least 3,000 hours under the Plan on or before June 30, 1978, and before a break in employment occurred; or
- (b) has acquired at least two and seven tenths (2.7) Pension Credits or has worked at least 2,700 hours under the Plan on or before June 30, 1978, and before a break in employment occurs, and thereafter works a sufficient number of hours under the Plan before a break in Employment occurs to bring his total Pension Credits to three (3) or his total hours worked under the Plan to 3,000; or
- (c) has acquired at least six (6) Pension Credits or has worked at least 6,000 hours under the Plan before a break in employment occurs.
- (d) has acquired at least five (5) Pension Credits or has worked at least 5,000 hours under the Plan on or before June 30, 1980, and before a break in employment occurs, and thereafter works a sufficient number of hours under the Plan before a break in Employment occurs to bring his total Pension Credits to six (6) or his total hours worked under the Plan to 6,000; or
- (e) has acquired at least ten (10) Pension Credits or has worked at least 10,000 hours under the Plan before a break in employment occurs.

Section 6. Separation from Employment.

A Participant who fails to receive credit for 500 hours during a period of three (3) consecutive Plan Years subsequent to July 1, 1960, will be deemed to have incurred a Separation from Employment on the last day of the third Plan Year.

The monthly benefit amount payable to a Participant who incurs a Separation from Employment and who subsequently applies for a pension under this Plan will be determined in the following manner:

- (a) The Service Credits which such Participant accumulated prior to his Separation from Employment shall be multiplied by the Pension Factor in effect under Article III, Section 1(b), on the date the Separation from Employment occurred, but said Pension Factor shall not be less than \$8.00 for each Prior Service Credit and \$12.00 for each Pension Credit:
- (b) If such Participant returns to Covered Employment and

incurs another Separation from Employment the provisions of Subsection (a) shall again be applied to the Service Credits accumulated between the Separations from Employment, and the monthly amount(s) determined in Subsection (a) above shall be added to the monthly benefit calculated in accordance with Article III, Section 1(b), based on Service Credit earned after the most recent Separation from Employment; and

- (c) If such Participant is awarded an Early Retirement Pension, the monthly amount determined under Subsections (a) and (b) shall be reduced in accordance with Section 2(b) of Article III.

A Separation from Employment will not include a Plan Year in which the failure of a Participant to earn the required credit is due to temporary or total disability or service in any of the Armed Forces of the United States as provided in Sections 4(b)(1) and (2) of this Article II.

ARTICLE III

ELIGIBILITY FOR AND AMOUNT OF PENSION

Section 1. Regular Retirement

(a) Eligibility for Pension: Each Participant who

- (1) has attained age 62; and
- (2) has acquired either:
 - (i) at least three (3) Pension Credits or has worked at least 3,000 hours for which contributions have been made to this Plan before a break in employment has occurred and on or before June 30, 1978; or
 - (ii) at least six (6) Pension Credits or has worked at least 6,000 hours for which contributions have been made to this Plan before a break in employment has occurred;

may, at his option, retire under the Plan as of the first day of any calendar month coincident with or following his fulfillment of requirements (1) and (2) above.

(b) Amount of Regular Pension

In applying the above rules to determine the amount of pension, with respect to any participant who has accumulated more Related Hours under Related Plans as defined in Articles III-A and III-C than the number of hours of Covered Employment under this Plan, the Pension Factor applicable to Pension Credits earned under this Plan shall be the Pension Factor in effect at the time the particular Pension Credits were earned in this Plan.

In such cases, when a specific Pension Factor is applicable to a percentage of the Pension Credits accrued by the Participant, then the Pension Factor applicable to Prior Service Credits during the time those Pension Credits were earned shall be applicable to the same percentage of any Prior Service Credits accrued and not forfeited by the Participant.

The monthly amount of the Regular Pension payable to a Participant who is eligible for a pension in accordance with Section 1(a) of this Article shall be determined by multiplying the numbers (including fractions) of his respective Prior Service Credits and Pension Credits accumulated before his retirement by the appropriate Pension Factor below, unless the Participant's Regular Pension is to be determined in accordance with Section 6 of Article II in which event the provisions of that Section shall control:

Pension Factor

- (1) Effective on July 1, 1966:

Prior Service Credit (per year).....	\$ 4.50
Pension Credit (per credit).....	3.65

The above Pension Factors will apply to both Participants and Retired Participants on the pension rolls on July 1, 1966.
- (2) Effective on July 1, 1967:

Prior Service Credit (per year).....	\$ 7.20
Pension Credit (per credit).....	5.65

The above Pension Factor will apply to both Participants and Retired Participants on the pension rolls on July 1, 1967.
- (3) Effective on July 1, 1968:

Prior Service Credit (per year).....	\$ 7.20
Pension Credit (per credit).....	7.95

The above Pension Factors will apply to both Participants and Retired Participants on the pension rolls on July 1, 1968:
- (4) Effective on July 1, 1970:

Prior Service Credit (per year).....	\$ 7.20
Pension Credit (per credit).....	9.00

The above Pension Factors will apply to both Participants and Retired Participants on the pension rolls on July 1, 1970.
- (5) Effective on July 1, 1971:

Prior Service Credit (per year).....	\$ 7.20
Pension Credit (per credit).....	11.00

The above Pension Factors will apply to both Participants and Retired Participants on the pension rolls on July 1, 1971.
- (6) Effective on September 1, 1972:

Prior Service Credit (per year).....	\$ 8.00
Pension Credit (per credit).....	12.00

The above Pension Factors will apply to both Participants and Retired Participants on the pension rolls on September 1, 1972.
- (7) Effective on July 1, 1973:

Prior Service Credit (per year).....	\$ 8.00
Pension Credit (per credit).....	15.50

The above Pension Factors will apply to both Participants and Retired Participants on the pension rolls on July 1, 1973.
- (8) Effective on July 1, 1975:

Prior Service Credit (per year).....	\$ 8.00
Pension Credit (per credit).....	20.00

The above Pension Factors will apply to both Participants and Retired Participants but not to surviving spouses or beneficiaries on the pension rolls on July 1, 1975.
- (9) Effective December 1, 1978:

Prior Service Credit (per year).....	\$ 8.00
Pension Credit (per credit).....	22.00

The above Pension Factors will apply to both Participants and Retired Participants but not to surviving spouses or beneficiaries on the pension rolls on December 1, 1978.
- (10) Effective July 1, 1979:

Prior Service Credit (per year).....	\$ 8.00
Pension Credit (per credit).....	23.00

The above Pension Factors will apply to both Participants and Retired Participants but not to surviving spouses or beneficiaries on the pension rolls on July 1, 1979.

(11) Effective January 1, 1981:

Prior Service Credit (per year)..... \$ 8.00
Pension Credit (per credit)..... 24.00
The above Pension Factors will apply to both Participants and Retired Participants but not to surviving spouses or beneficiaries on the pension rolls on January 1, 1981.

(c) Lump-sum Benefit at Retirement

A Participant who qualifies for a pension in accordance with Section 1(a) and 1(b) of this Article, shall receive, upon his retirement, a lump-sum benefit not exceeding a maximum of \$2,500.00. The lump-sum retirement benefit shall be equal to the product obtained by multiplying \$250.00 by the number of Pension Credits, not exceeding ten (10), earned prior to the date of retirement. Notwithstanding the foregoing, (1) the lump-sum retirement benefit shall be reduced by any amount paid as a Lump-sum Benefit at Retirement at any previous commencement of retirement, if any, under this Plan; and (2) prior to his date of retirement a Participant who is not subject to the Husband-and-Wife Pension as provided in Article IV, Section 4(c), may elect in writing to direct payment of all or any portion of the above benefit to his designated beneficiary upon his death; and (3) no lump sum benefit is payable under this subsection (c) to any Participant who is to receive the Husband-and-Wife Pension. Any such election by the Participant may not be revoked after the effective date of retirement. Any amount paid to the designated beneficiary pursuant to such election shall be deducted from the benefits otherwise due under Article VI, Section 2. If payments are due under the Husband-and-Wife Pension, the actuarial equivalent of the lump sum amount otherwise provided under this subsection (c) will be included in the monthly amount of the Husband-and-Wife Pension.

Section 2. Early Retirement

(a) Eligibility for Early Pension: Each Participant who

- (1) has attained age 52 but has not attained age 62; and
- (2) has acquired either:

- (i) at least three (3) Pension Credits or has worked at least 3,000 hours for which contributions have been made to this Plan before a break in employment has occurred and on or before June 30, 1978; or
- (ii) at least six (6) Pension Credits or has worked at least 6,000 hours for which contributions have been made to this Plan before a break in employment has occurred.

may, at his option, retire under the Plan as of the first day of any calendar month coincident with or following his fulfillment of requirements (1) and (2) above.

(b) Amount of Early Pension shall be a monthly amount determined as follows:

- (i) The first step is to determine the amount of the Regular Pension to which the Participant would be entitled if he were 62 years of age at the time his Early Pension is to be effective.

- (ii) The second step, to take into account the fact that the Participant is younger than 62, is to reduce the first amount by $\frac{1}{4}$ of 1% for each month that the Participant is younger than 62 on the effective date of his Early Pension.

(c) Lump-sum Benefit at Retirement

A Participant who qualifies for a pension in accordance with Section 2(a) and 2(b) of this Article, shall receive, upon his retirement, a lump sum benefit not exceeding a maximum of \$2,500.00. The lump sum retirement benefit shall be equal to the product obtained by multiplying \$250.00 by the number of Pension Credits, not exceeding ten (10), earned prior to the date of retirement. Notwithstanding the foregoing, (1) the lump sum retirement benefit shall be reduced by any amount paid as a Lump sum Benefit at Retirement at any previous commencement of retirement, if any, under this Plan; and (2) prior to his date of retirement a Participant who is not subject to the Husband-and-Wife Pension as provided in Article IV, Section 4(c), may elect in writing to direct payment of all or any portion of the above benefit to his designated beneficiary upon his death; (3) no lump sum benefit is payable under subsection (c) to any Participant who is to receive the Husband-and-Wife Pension. Any such election by the Participant may not be revoked after the effective date of retirement. Any amount paid to the designated beneficiary pursuant to such election shall be deducted from the benefits otherwise due under Article VI, Section 2. If payments are due under the Husband-and-Wife Pension, the actuarial equivalent of the lump-sum otherwise payable under this subsection (c) will be included in the monthly amount of the Husband-and-Wife Pension.

(d) Return to Covered Employment

A Retired Participant who has received an Early Pension may, subject to all of the provisions of this Plan including the provisions of Article V, and this subsection, return to employment as an Employee and, thereafter, earn additional Pension Credits. Each Participant who has received Early Pension benefits and who, after returning to employment as an Employee, again is eligible to retire under this Plan shall receive, upon such subsequent retirement, a monthly pension amount equal to the monthly amount for which he qualified at his previous retirement plus an additional amount equal to the number of Pension Credits earned since returning to Covered Employment multiplied by a Pension Factor equivalent to one-half of the Pension Factor then in effect in the Plan for Participants who have not previously received an Early Pension.

Section 3. Disability Retirement

(a) Eligibility for Disability Pension. Each disabled Participant who

- (1) is not entitled to a Regular Pension under the Plan and has not attained age 62;
- (2) has acquired either:
 - (i) at least $\frac{1}{2}$ of 1 Pension Credit or has worked at least 500 hours for which contributions have been made to this Plan before a break in employment has occurred and on or before June 30, 1978; or
 - (ii) at least six (6) Pension Credits or has worked at least 6,000 hours for which contributions have been made to this Plan before a break in employment has occurred; and
- (3) has elected not to receive, or who is no longer eligible to receive, disability benefit under the Operating Engineers Health and Welfare Fund,

will be eligible to retire under the Plan in accordance with Sections 4 and 5 of this Article.

(b) Amount of Disability Pension

The monthly amount of the Disability Pension payable to a Participant who is eligible for a pension in accordance with Section 3(a) of this Article III shall be determined in the same manner as if the Participant were eligible for a Regular Pension under Section 1 of this Article III.

(c) Lump-sum Benefit at Retirement

A Participant who qualifies for a pension in accordance with Sections 3(a) and 3(b) of this Article, shall receive, upon his retirement, a lump-sum benefit not exceeding a maximum of \$2,500.00. The lump-sum retirement benefit shall be equal to the product obtained by multiplying \$250.00 by the number of Pension Credits, not exceeding ten (10), earned prior to the date of retirement. Notwithstanding the foregoing, (1) the lump-sum retirement benefit shall be reduced by any amount paid as a Lump-Sum Benefit at Retirement at any previous commencement of retirement, if any, under this Plan; (2) prior to his date of retirement a Participant who is not subject to the Husband-and-Wife Pension as provided in Article IV, Section 4(c), may elect in writing to direct payment of all or any portion of the above benefit to his designated beneficiary upon his death; and (3) no lump sum benefit is payable under this subsection (c) to any Participant who is to receive the Husband-and-Wife Pension. Any such election by the Participant may not be revoked after the effective date of retirement. Any amount paid to the designated beneficiary pursuant to such election shall be deducted from the benefits otherwise due under Article VI, Section 2. If payment is due under the Husband-and-Wife Pension, the actuarial equivalent of the lump-sum amount otherwise payable by this subsection (c) will be included in the monthly amount of the Husband-and-Wife Pension.

Section 4. Disability Defined

A Participant shall be deemed disabled within the meaning of this Section only if the Board of Trustees shall in its sole and absolute judgment find that

(a) on the basis of such competent medical evidence as the Board of Trustees may require to be shown, the Participant is totally and permanently disabled, due to sickness or accidental bodily injury or both, so as to be unable to perform the duties of any position covered by a Collective Bargaining Agreement, or, in the case of any Participant whose normal position is not covered by a Collective Bargaining Agreement, his normal duties.

(b) such bodily injury or disease is not due to such Participant's commission of or attempt to commit a felony, or the engagement in any felonious activity or occupation, or the self-infliction of any injury, or the use of narcotics, unless the same were administered pursuant to the orders of a licensed physician. The application of the provisions of this Subsection may be waived by the Board of Trustees upon good cause satisfactory to the Board being established.

In exercising such judgment, the Board may obtain and act upon such competent medical evidence as it may require to be shown to it and it may accept as proof of disability a determination by the Federal Social Security Administration of a Disability Benefit Award in connection with his Old Age and Survivors Insurance coverage.

The Board of Trustees may at any time, or from time to time, require evidence of continued entitlement to such Social

Security Disability Benefit and may at any time, notwithstanding the prior granting of a Disability Pension under the Plan, require that the Participant satisfy the provisions of Subsections (a) and (b) of this Section as a prerequisite to the continuance of the Disability Pension granted under the Plan.

Section 5. Disability Pension Payments

Payment of the Disability Pension shall commence with the sixth month of disability or the first day of the month following the last Disability Benefit Payment made under the Operating Engineers Health and Welfare Trust, whichever is later, and shall continue thereafter for so long as such disability continues and the Retired Participant remains disabled as herein defined, except that upon attainment of age 62 a Retired Participant on a Disability Pension shall have his benefits continued regardless of whether or not he remains disabled.

Section 6. Recovery by a Retired Participant on a Disability Pension

If a Retired Participant on a Disability Pension loses entitlement to a Social Security Disability Pension, or recovers from a disability; such fact shall be reported in writing to the Board of Trustees within 30 days of the date he received notice from the Social Security Administration or the date of such recovery. If such written notice is not provided, he will, upon his subsequent retirement, not be eligible for benefits for a period of six months following the date of his retirement, in addition to the months which may have elapsed since he received notice of the termination of the Social Security Disability Pension, or recovered from the disability, in which he received disability pension payments from the Fund.

A Retired Participant on a Disability Pension who is no longer disabled may re-enter Covered Employment and will thereupon resume the accrual of Pension Credit.

Section 7. Service Retirement.

(a) Eligibility for Service Pension:

Each Participant who

- (1) has attained age 60; and
 - (2) has, without a break in employment at least 30 years of service. For purposes of this Section 7(a)(2) only, the following shall be considered to be a year of service:
 - (i) each year of Prior Service Credit to the extent credited in accordance with Article II, Section 2, and
 - (ii) each Plan Year following June 1, 1960, in which the Participant works at least one hour in employment for which Current Service Credit is granted in accordance with Article II, Section 3;
- and
- (3) has 30,000 or more hours of employment for which contributions have been made to this Plan without a break in employment; and
 - (4) was not awarded an Early Retirement Pension prior to January 1, 1980,

may, at his option, retire under the Plan as of the first day of any calendar month coincident with or following his fulfillment of requirements (1), (2), (3), and (4) above.

(b) Amount of Service Pension:

The monthly amount of the Service Pension payable to a Participant who is eligible for a pension in accordance with Section 7(a) of this Article III shall be determined in the same manner as if the Participant were eligible for a Regular Pension under Section 1 of this Article III.

(c) Lump-Sum Benefit at Retirement:

A Participant who qualifies for a pension in accordance with Sections 7(a) and 7(b) of this Article shall receive, upon his retirement, a lump-sum benefit not exceeding a maximum of \$2,500.00. The lump-sum retirement benefit shall be equal to the product obtained by multiplying \$250.00 by the number of Pension Credits, not exceeding ten (10), earned prior to the date of retirement. Notwithstanding the foregoing, (1) the lump-sum retirement benefit shall be reduced by any amount paid as a Lump-Sum Benefit at Retirement at any previous commencement of retirement, if any, under this Plan; (2) prior to his date of retirement a Participant who is not subject to the Husband-and-Wife Pension as provided in Article IV, Section 4(c)(ii), may elect in writing to direct payment of all or any portion of the above benefit to his designated beneficiary upon his death; and (3) no lump sum benefit is payable under this subsection (c) to any Participant who is to receive the Husband-and-Wife Pension. Any such election by the Participant may not be revoked after the effective date of retirement. Any amount paid to the designated beneficiary pursuant to such election shall be deducted from the benefits otherwise due under Article VI, Section 2. If payments are due under the Husband-and-Wife Pension, the actuarial equivalent of the lump sum amount otherwise payable under this subsection (c) will be included in the monthly amount of the Husband-and-Wife Pension.

(d) It is recognized that in many cases, it will be difficult, because of changing employment, to produce evidence of past years of employment in the types of employment referred to in subsection (a)(2) of this Section 7. A presumption is therefore established that a Participant was engaged in employment entitling him to credit at the rate of 1,200 hours in each Plan Year throughout the period of his membership in good standing in the Union during the period prior to June 1, 1960.

Section 8. Any pension payable to a Retired Participant granted under Articles III and IV shall be rounded to the nearest \$1 by ignoring fractions of \$1 less than 50¢ and increasing fractions of \$1 amounting to 50¢ or greater to \$1.

ARTICLE III-A

PRO-RATA PENSION

(Western States Reciprocity Agreement)

Section 1. Purpose.

Pro-Rata Pensions are provided under this Plan for Participants who would otherwise be ineligible for a pension because their years of employment have been divided between employment creditable under this Plan and employment creditable under another pension plan or whose pensions would otherwise be less than the full amount because of such division of employment.

Section 2. Related Plans.

By resolution duly adopted, the Board of Trustees may recognize another pension plan as a Related Plan.

Section 3. Related Hours.

The term "Related Hours" means hours of employment which are creditable under a Related Plan.

Section 4. Related Contributions.

The term "Related Contributions" means contributions made on behalf of a Participant under a "Related Plan."

Section 5. Related Credit.

The term "Related Credit" means employment which is creditable to a Participant under a Related Plan.

(a) For periods of employment before June 1, 1960, no more than one year of Service Credit or Related Credit shall be granted for all employment during any given year.

(b) For Related Hours worked after June 1, 1960, one Related Credit will be granted for each 1,000 Related Hours earned by a Participant and 1/1000th of a Related Credit will be granted for each Related Hour less than a full Related Credit.

Section 6. Combined Pension Credit.

The term "Combined Pension Credit" means the total of a Participant's Related Credit plus the Service Credit accumulated under the Operating Engineers Pension Trust (hereinafter referred to as "Local 12 Service Credit").

Section 7. Eligibility for Pro-Rata Pension.

(a) A Participant who is retired in accordance with Article V, Section 1, shall be eligible for a Pro-Rata Pension if he meets the following requirement:

1. He would be eligible for a Regular, Early Retirement or Disability Pension under the Plan were his Combined Pension Credits treated as Local 12 Service Credit.

(b) Related Hours shall be considered in determining whether a Participant has incurred a break in employment pursuant to the provisions of Article II, Sections 4 and 5 of this Plan.

Section 8. Amount of the Pro-Rata Pension.

The amount of the Pro-Rata Pension is determined by multiplying the number of Local 12 Prior Service and Pension Credits (including fractions) by the appropriate Pension Factors in Section 1 of Article III and rounding up the resultant amount in accordance with Section 7 of Article III.

The benefit amount so obtained is reduced in accordance with Section 2 of Article III if the Participant is qualified for a Pro-Rata Early Retirement Pension. However, in no event shall any Pro-Rata Pension amount be paid for any Prior Service Credit(s), unless at least ½ Pension Credit has been accumulated by the Participant under this Trust before February 16, 1968.

Section 9. Payment.

Payment of a Pro-Rata Pension shall be subject to all the conditions applicable to other types of pensions under this Plan.

ARTICLE III-B

PRO-RATA PENSION

(Rock Products Reciprocity Agreement)

Section 1. Purpose.

Pro-Rata Pensions are provided under this Plan for Par-

participants who would otherwise be ineligible for a pension because their years of employment have been divided between employment creditable under this Plan and employment creditable under another pension plan or whose pensions would otherwise be in less than the full amount because of such division of employment.

Section 2. Related Plans.

By resolution duly adopted, the Board of Trustees may recognize another pension plan as a Related Plan.

Section 3. Related Hours.

The term "Related Hours" means hours of employment which are creditable under a Related Plan.

Section 4. Related Contributions.

The term "Related Contributions" means contributions made on behalf of a Participant under a "Related Plan."

Section 5. Related Credit.

The term "Related Credit" means employment which is creditable to a Participant under a Related Plan.

(a) For periods of employment before June 1, 1960, no more than one year of Service Credit or Related Credit shall be granted for all employment during any given year.

(b) For Related Hours worked after June 1, 1960, one Related Credit will be granted for each 1,000 Related Hours earned by a Participant and 1/1000th of a Related Credit will be granted for each Related Hour less than a full Related Credit.

Section 6. Combined Pension Credit.

The term "Combined Pension Credit" means the total of a Participant's Related Credit plus the Service Credit accumulated under the Operating Engineers Trust (hereinafter referred to as "Local 12 Service Credit").

Section 7. Eligibility for a Pro-Rata Pension.

(a) A Participant who is retired in accordance with Article V, Section 1, shall be eligible for a Pro-Rata Pension if he meets the following requirement:

1. He would be eligible for a Regular, Early Retirement or Disability Pension under this Plan were his Combined Pension Credits treated as Local 12 Service Credits.

(b) Related hours shall be considered in determining whether a Participant has incurred a break in employment pursuant to the provisions of Article II, Sections 4 and 5 of this Plan.

Section 8. Amount of the Pro-Rata Pension.

The amount of the Pro-Rata Pension is determined by multiplying the number of Local 12 Prior Service and Pension Credits (including fractions) by the appropriate Pension Factors in Section 1 of Article III and rounding up the resultant amount in accordance with Section 7 of Article III. The benefit amount so obtained is reduced in accordance with Section 2 of Article III if the Participant is qualified for a Pro-Rata Early Retirement Pension. However, in no event shall any Pro-Rata Pension amount be paid for any Prior Service Credits, unless at least one-half of one Pension Credit has been accumulated by the Participant under this Trust before February 6, 1968. In no event shall a Participant receive Prior Service Credits under this Plan when Related Contributions were made on behalf of the Participant to a Related Plan prior to the date the first contributions were made to this Plan on the Participant's behalf. Further, in no event shall a Participant receive Prior Credits under this Plan where he is entitled to receive the Prior Service Credits under a Related Plan.

Section 9. General.

The provisions of this Article III-B shall not apply with respect to Pension Plans signatory to the "Pension Reciprocity Agreement of International Union of Operating Engineers," unless a specific reciprocal agreement has been effectuated with the Operating Engineers Pension Trust, based on the other provisions of this Article III-B. Instead, the provisions of Article III-C shall apply with respect to agreements for "Pro-Rata Pensions" with Pension Plans signatory to the "Pension Reciprocity Agreement for Operating Engineers Pension Funds of International Union of Operating Engineers." The provisions of Article III-C shall not make void, change or replace the provisions of this Article III-B with respect to Related Plans specifically recognized as such under Article III-B.

ARTICLE III-C

PRO-RATA PENSION

(International Union Reciprocity Agreement)

Section 1. **Purpose** — Pro Rata Pensions are provided under this Retirement Plan for employees who would otherwise lack sufficient service credit to be eligible for any pension because their years of employment were divided between different pension plans or, if eligible, whose pensions would be of a lesser amount because of such divisions of employment.

Section 2. **Related Pension Plan** — By resolution duly adopted, the Trustees recognize each others pension plans, which has executed the Pension Reciprocity Agreement for Operating Engineers Pension Funds and who has adopted Exhibit A of such Reciprocity Agreement as a Related Plan.

Section 3. **Related Hours** — The term "Related Hours" means hours of employment which are creditable under a Related Plan for both pension credit and benefit accrual purposes, and include hours of employment before the Effective Date of this Agreement.

Section 4. **Related Credit** — The term "Related Credit" means years of service creditable to an Employee under a Related Plan and certified by the Related Plan to this Plan, including service before the Effective Date of this Agreement to the extent creditable under this Plan.

Section 5. **Combined Pension Credit** — The term "Combined Pension Credit" means the total of an Employee's Related Credit plus the Credited Service accumulated under this Plan. For the purposes of determining eligibility for a Pro-Rata Pension the maximum "Combined Pension Credit" counted in any Plan Year shall be no more than the Credited Service available under the terms of this Plan.

Section 6. **Eligibility** — An Employee shall be eligible for a Pro-Rata Pension under this Plan if he satisfies all of the following requirements:

- (a) He has retired and is not performing work for which contributions are being made to a Related Plan; and
- (b) he would be eligible for any type of pension under this Plan, including a disability pension and a vested or deferred pension if his Combined Pension Credits were treated as Credited Service under this Plan; and
- (c) he has at least one year of Credited Service based upon actual employment after his Effective Date of Coverage for which contributions have been made to this Plan; and

(d) he is eligible for a Pro-Rata Pension from a Related Plan; and

(e) he waives his right to any other pension he may otherwise be entitled to from this Plan.

Section 7. Benefit Amount — The amount of the Pro-Rata Pension shall be determined in the same manner as applicable to the calculation of regular pension benefits based on the years of Credited Service under this Plan and the Employer contributions to this Plan on behalf of the Employee. No payment shall be received from this Plan for Related Credits.

Section 8. Payment — The payment of a Pro-Rata Pension shall be subject to all of the conditions applicable to other types of pensions under this Plan.

Section 9. Break in Service — Related Hours shall be counted when determining whether an Employee has satisfied the requirements of this Plan in order to prevent cancellation of his accumulated Credited Service.

Section 10. Pre-Retirement Death Benefits — Related Credits shall be limited to determining an Employee's eligibility for monthly Pension Benefits to a pensioner (including a Disability Pension and Vesting in a deferred pension) or to monthly payments (guarantees) to the survivor of a pensioner.

Section 11. Effective Date — This article and the payment of Pro-Rata Pensions hereunder as originally adopted was effective on April 4, 1972, and as amended shall be effective on July 1, 1979.

ARTICLE IV FORMS OF PENSION PAYMENTS

Section 1. General Form.

An eligible Participant who makes application in accordance with the rules of the Pension Plan shall be entitled upon retirement to receive a lump-sum benefit and the monthly pension provided for the remainder of his life, subject, however, to all of the provisions of this Plan. Pension payments shall be payable commencing with the first full month when the Participant has fulfilled all of the conditions for entitlement to benefits, including the requirements for advance application. Pension payments shall end with the payment for the calendar month in which the death of the Retired Participant occurs, except as otherwise provided under this Article.

Notwithstanding the foregoing, unless the Participant elects otherwise in writing, the payment of pension benefits shall begin not later than the sixtieth (60th) day after the close of the Plan Year in which occurs the latest of the following:

- (1) The Participant attains Normal Retirement Age;
- (2) The tenth (10th) anniversary of the Participant's commencement of participation in the Plan; or
- (3) The Participant terminates his Covered Employment under the Plan.

Section 2. The Trustees may in their discretion make arrangements for the payment to eligible beneficiaries hereunder of quarterly, semi-annual or annual payments in lieu of monthly pension payments as set forth in Section 1 of this Article.

Section 3. Ten Year Guarantee.

If a Participant or Retired Participant dies before he has received 120 monthly pension payments, then the monthly pension to which he was entitled, or would have been entitled at normal retirement based upon Service Credits accumulated prior to his death, shall become payable to his surviving

spouse, if any, while living, otherwise to his designated beneficiary or beneficiaries for the remainder of the 120 months payments and shall thereupon cease. Benefits provided by this Section shall not be payable on behalf of a Retired Participant who was receiving pension benefits in the form of a Husband-and-Wife Pension. Benefits provided by this Section shall not be payable on behalf of a Participant who dies prior to retirement if payments were due under the Husband-and-Wife Pension, unless the deceased Participant's surviving Spouse elects, within ninety (90) days after being given written notice from the Plan, to receive this benefit instead of the Husband-and-Wife Pension.

Section 4. Husband-and-Wife Pension.

(a) General. The Husband-and-Wife Pension provides a lifetime pension for the married Participant plus a lifetime pension for his (or her) surviving Spouse, starting after the death of the Participant. The monthly amount to be paid to the surviving Spouse is one-half of the monthly amount payable to the Participant. When a Husband-and-Wife Pension is in effect, the monthly amount of the Participant's pension is adjusted in accordance with the provisions of Subsection (f) hereof from the regular amount otherwise payable.

(b) Effective Date. The provisions of the Husband-and-Wife Pension apply only to pensions which are effective on or after July 1, 1976.

(c) Upon Retirement After Age 52.

(i) A pension shall be paid in the form of a Husband-and-Wife Pension to a married Participant unless the Participant has filed with the Trustees in writing, a timely rejection of that form of pension, subject to all of the conditions of this Section.

(ii) A Married Participant may reject the Husband-and-Wife Pension (or revoke a previous rejection) at any time before the first pension payment is made to him. Any election made by December 31, 1976 shall be deemed timely. While a written rejection is effective, the provisions of this Section shall not apply to the Retired Participant. A Participant shall in any event have the right to exercise this choice up to 90 days after he has been advised, by the Trustees, of the effect of such choice on his pension.

(d) Upon Retirement on a Disability Pension Before Age 52. If the effective date of a married Participant's Disability Pension occurs before he attains age 52, payment shall be made in the form of a Husband-and-Wife Pension, unless the Participant has rejected such form of payment, in writing, on a form prescribed by the Trustees, and has filed such rejection with the Trustees before the first pension payment has been made to him.

If no such rejection is filed, the Husband-and-Wife Pension shall provide payment to the surviving Spouse, if any, starting on the later of (a) the first of the month following the death of the Retired Participant, or (b) the first of the month following the date, on which the Retired Participant would have attained age 52, had he lived.

(e) Before Retirement.

(i) After Normal Retirement Age. If a married Participant who has attained Normal Retirement Age dies at a time when he was eligible for a pension but before retirement or after retirement and before

pension payments commence, a Husband-and-Wife Pension shall be paid to his surviving Spouse.

- (ii) If a married Participant younger than Normal Retirement Age dies after he has met the age and service requirements for an Early Retirement Pension but before retirement or after retirement and before pension payments commence, a Husband-and-Wife Pension shall be paid to his surviving spouse.
- (iii) The benefit amount for the surviving Spouse shall be determined as if the Participant's pension had been effective on the day before he died.

(f) **Adjustment of Pension Amount.**

When a Husband-and-Wife Pension becomes effective, the amount of the Participant's monthly pension shall be calculated in accordance with a formula adopted by the Trustees, which provides overall actuarial equivalence and equitable adjustment of the amount of pension otherwise payable under this Plan on the single life of the Participant and, in addition, shall include the actuarial equivalent of any Lump-Sum Benefit at Retirement otherwise payable in accordance with Sections 1(c), 2(c), 3(c) or 7(c) of Article III and the actuarial equivalent of any lump-sum death benefit otherwise payable under Article V.

A formula or formulas adopted by the Trustees may be made applicable by them from year to year; that is, the amount of the adjustment from the full single-life pensions account of the Husband-and-Wife Pension may be fixed in accordance with the adopted formula or formulas for:

- (i) any such pension, the effective date of which falls within the year; and
- (ii) any election (or failure to reject) such pension which is exercised by the Participant within the year as his final choice.

Such a formula is not in any respect to be deemed a vested right of any Participant nor part of his accrued benefit, and is subject to change by the Trustees for pension commencing later or for elections (or rejections or revocations of either) which the Participant has the option to make later.

(g) **Additional Conditions.** A Husband-and-Wife Pension shall not be effective under any of the following circumstances:

- (i) The Participant and Spouse were not married to each other when pension payment began.
- (ii) The Participant and Spouse were married to each other for less than a year before the Participant died.
- (iii) The same Spouse must satisfy (i) and (ii) above.
- (iv) The Spouse died before the Participant's pension began or before his death, if he died before a pension was payable to him.
- (v) The Participant and the Spouse obtained a final decree of dissolution or annulment of their marriage before the Participant's pension began or before his death, if he died before a pension was payable to him.

The Trustees shall be entitled to rely on the written representation last filed by the Participant before his pension payments commenced as to whether he or she is

married. If such representation later proves to be false, the Trustees may adjust for any excess benefits paid as the result of the misrepresentation.

Election, rejection or revocation may not be made or altered after payment of the pension has commenced.

- (h) **Continuation of Husband-and-Wife Pension Form.** After payment of the Husband-and-Wife Pension has commenced, the monthly amount shall not be increased even if the Spouse is subsequently divorced from the Retired Employee or if the Spouse predeceases the Retired Employee.

Section 5. Optional Form — Social Security (Level Income). In lieu of the form of pension otherwise payable in accordance with Sections 2 or 7 of Article III, a Participant retiring on an Early Retirement Pension or Service Pension may elect to have his pension increased until age 62 or 65, according to the age at which he expects to receive his Social Security benefit, and reduced thereafter, in order to approximate a pension before age 62 or 65, as nearly equal as possible to his combined retirement income after that age. The adjustment in amount shall be made on the basis of actuarial equivalence as established by the Trustees.

Election of the Social Security (Level Income) Option must be made in writing on a form prescribed by the Trustees and filed with the Trustees on or before the date of retirement under the Plan.

Once elected, the Social Security (Level Income) Option may not be revoked except when revocation is made in writing on a form prescribed by the Trustees and filed with the Trustees before the first calendar month for which a pension benefit has become payable to the Pensioner.

If 120 times the amount of the Early Retirement Pension or Service Pension before it was adjusted exceeds the total amount received by the Pensioner before his death, his pension will be continued to his surviving spouse, or beneficiaries in accordance with Article IV, Section 3, until the excess has been received. The monthly pension payment shall be rounded in accordance with Article III, Section 8.

Benefits provided by this Section shall not be payable if payments were due under the Husband-and-Wife Pension.

ARTICLE V RETIREMENT

Section 1. Retirement Defined.

(a) **Before Normal Retirement Age.** To be considered retired and entitled to a pension under this Plan before attaining Normal Retirement Age, a person must withdraw completely and refrain from any employment which includes the performance of duties of the nature covered by any Collective Bargaining Agreement, regardless of the location of such employment or whether such employment is covered by a Collective Bargaining Agreement.

(b) **After Normal Retirement Age.** To be considered retired and entitled to a pension under this Plan after attaining Normal Retirement Age, a person must withdraw completely and refrain from any employment in the same industry, in the same trade or craft, and the same geographical area covered by the Plan or any Related Plan, as when such benefits commenced.

To be entitled to receive a Pension payment under this Pension Plan, a person must withdraw completely and refrain from any employment which includes the performance of

duties of the nature covered by any Collective Bargaining Agreement, regardless of the location of such employment or whether such employment is covered by a Collective Bargaining Agreement; provided, however, that the foregoing requirement shall not apply to any person who has reached Normal Retirement Age, and such person must refrain from any employment covered by any Collective Bargaining Agreement to be entitled to receive a pension payable under this Pension Plan.

Section 2. Re-employment of Retired Participant.

If a Retired Participant enters employment of the nature described in Section 1 of this Article V, he shall not be entitled to a pension for any calendar month of such employment.

Section 3. Notification of Re-employment.

A Retired Participant shall notify the Board of Trustees in writing within such 30 days following his return to employment of the nature described in Section 1 of this Article V. If he fails to give such written notice within 30-day period, he may, at the discretion of the Board, be disqualified for pension payments for an additional period of up to 12 months over and above the disqualification period of the preceding Section 2.

Section 4. No Larger Pension.

A Retired Participant, other than a Retired Participant who has been receiving a Disability Pension or an Early Pension who returns to employment under any of the Collective Bargaining Agreements, shall not be entitled by reason of such employment to accumulate additional Pension Credit.

Section 5. Advance Written Application Required.

An application for a pension shall be made in writing on a form and in the manner prescribed by the Board of Trustees. Any such pension shall be effective at the earliest on the first day of the month following the date said application was filed.

Section 6. Information Required.

Each Participant and Retired Participant shall furnish to the Board of Trustees any information or proof requested by it as reasonably required to administer the Pension Plan. Failure on the part of any Participant or Retired Participant to comply with such request promptly, completely and in good faith shall be sufficient grounds for denying, suspending or discontinuing benefits to such person. If a Participant or Retired Participant or other claimant to benefits hereunder makes false statement material to his claim for benefits, the Board may recoup, offset or recover the amount of any payment made in reliance on such a false statement in excess of the amount to which such Participant or Retired Participant or other claimant was rightfully entitled under the provisions of this Plan; and in addition, the Board shall have the right, in its sole discretion, to deny benefits under this Plan to such Participant, Retired Participant or other claimant for such period as it may deem appropriate.

Section 7. Action of Trustees.

The Trustees shall, subject to the requirements of the Law, be the sole judges of the standard of proof required in any case and the application and interpretation of this Plan, and decisions of the Trustees shall be final and binding on all parties.

Section 8. Duplication of Pensions.

A Retired Participant shall not be entitled to the payment under this Plan of more than one type of pension at any one time.

Section 9. Lump-Sum Payment in Lieu of Monthly Pension.

If, at the time a monthly pension is payable to a Participant, the actuarial value of his lifetime pension is \$1,750 or less, the Trustees, in their discretion, may pay him the lump-sum amount of such actuarial value, instead of the monthly pension otherwise due him.

Section 10. Maximum Limitation.

In no event shall this Plan pay benefits in excess of the maximums specified for qualified plans by Section 415 of the Internal Revenue Code. The Trustees shall be entitled to rely on a representation by an Individual Employer that the pension payable to a Participant under this Plan, to the extent attributable to employment with the Individual Employer, does not, together with any other pension payable to him under any other plan maintained by that Individual Employer (and to the extent attributable to employment with the Individual Employer), exceed the limitations of Section 415.

Section 11. Nonforfeiture.

The rights of a Participant or Retired Participant under this Plan shall become nonforfeitable when, and only when, the Participant or Retired Participant attains Normal Retirement Age. Further, a Participant or Retired Participant shall have a nonforfeitable right to his accrued benefit under the Plan when, and only when, the Participant or Retired Participant has at least 10 years of service under the Plan. Notwithstanding the nonforfeiture of rights as described above, all benefits described in the Plan shall continue to be subject to amendment as described in Article VIII of the Plan.

ARTICLE VI BENEFIT OF DEATH

Section 1. Payment of Benefit.

In the event of the death of a Participant, a death benefit shall be payable provided that, at the time of his death, payments are not due under the Husband-and-Wife Pension and the Participant had not become ineligible for the benefit by reason of Forfeiture of Service Credit as defined in Article II, Section 4 of this Plan.

Section 2. Amount of Benefit.

The benefit payable due to the death on or after July 1, 1975, of an active Participant, under the conditions stated in Section 1 of this Article VI shall be Two Hundred Fifty Dollars (\$250.00) for each Pension Credit acquired by the active Participant prior to the date of his death, but not less than one Thousand Dollars (\$1,000.00) and not exceeding a maximum of Two Thousand Five Hundred Dollars (\$2,500.00); provided, however, that the amount of any Lump-Sum Benefit at Retirement previously paid shall be deducted from the benefits otherwise due under this Section. If payments are not due under the Husband-and-Wife Pension at the time of the Participant's death the amount of death benefit payable by this Article shall be paid in one lump-sum to the designated beneficiary or the person or persons outlined in Section 4 of this Article. If payments are due under the Husband-and-Wife Pension at the time of the Participant's death the actuarial equivalent of the lump-sum amount otherwise payable under this Section 2 shall be included in the monthly amount of the Husband-and-Wife Pension payable in accordance with the provisions of Article IV, Section 4 of this Plan.

Section 3. Designation of Beneficiary.

A Participant or a Retired Participant may designate a

bénéficiary or beneficiaries to receive any payments, due and payable but not actually paid before the death of any Retired Participant, or any benefits provided in accordance with Article VI by forwarding such designation to the Fund Administrative Office on a form acceptable to the Board of Trustees. A Participant or Retired Participant shall have the right to change his designation of beneficiary without the consent of the beneficiary, but no such change shall be effective or binding on the Board unless it is received by the Board prior to the time any payments are mailed to the beneficiary whose designation is on file with the Fund Administrative Office.

Section 4. Failure to Designate a Beneficiary.

For any of the following events:

- (a) no beneficiary is designated by a Participant or Retired Participant;
- (b) the designated beneficiary predeceases the Participant or Retired Participant; or
- (c) the designated beneficiary cannot be found within two (2) years from the date of death of the Participant or Retired Participant;
- (d) the beneficiary or beneficiaries designated by the deceased Participant or Retired Participant died before receiving payment of all benefits to be paid;

then any benefits due and payable but not actually paid before his death or any benefits provided under this Article VI shall be paid to the spouse then alive, such payments shall be made to his estate or his heirs as the Board of Trustees in its sole discretion may decide; provided, however, that if the estate has assets, including the benefits of this Plan, in excess of liabilities and no heirs to said estate are identified within two (2) years from the death of the Participant or Retired Participant, then any benefits otherwise payable under this Plan which, if paid, would provide net assets to said estate shall be forfeited and shall be retained in the Pension Trust Fund. The purpose of this clause, in part, is to prevent any escheat of benefits to the State pursuant to the provisions of California Code of Civil Procedure Section 1521. Any benefits forfeited as stated above shall be reinstated if a valid claim is made by an eligible beneficiary within seven years of the death of the Participant or Retired Participant, unless the right to such reinstatement would cause the funds to escheat to the State.

ARTICLE VII

GENERAL PROVISIONS

Section 1. Incompetence or Incapacity of a Retired Participant.

In the event that it is determined to the satisfaction of the Board of Trustees that a Retired Participant is unable to care for his affairs because of mental or physical incapacity, any payment due may be applied at the discretion of the Board to the maintenance and support of such Retired Participant in the manner decided by the Board unless prior to such payment claim shall have been made for such payment by a legally appointed guardian, committee or other legally appointed representative.

Section 2. Non-Assignment of Benefits.

Each Participant or Retired Participant under the Pension Plan is hereby restrained from selling, transferring, anticipating, assigning, mortgaging or otherwise disposing of his pension, prospective pension or any other right or interest under the Plan, and the Board of Trustees shall not recognize, or be required to recognize, any such sale, transfer, anticipation, assignment, mortgage or other disposition. Any such

pension, prospective pension, right or interest shall not be subject in any manner to voluntary transfer or transfer by operation of law or otherwise, and shall be exempt from the claims of creditors or other claimant and from all orders, decrees, garnishments, executions or other legal or equitable process or proceedings to the fullest extent permissible by law.

Section 3. Trust Assets.

Neither the Employers, any Signatory Association, any Individual Employer, the Union, any Participant or Retired Participant under the Pension Plan nor any other person shall have any right, title or interest in or to the Fund other than as specifically provided in the Trust Agreement or in the Pension Plan. Neither the Fund nor any contributions to the Fund shall be in any manner liable for or subject to the debts, contracts or liabilities of any of the Employers, any Signatory Association, any Individual Employer, the Union, or any Participant or Retired Participant.

Section 4. Limitation of Liability.

This Pension Plan has been adopted on the basis of an actuarial calculation which has established, to the extent possible, that the contributions will, if continued, be sufficient to maintain the Plan on a permanent basis. However, it is recognized that the benefits provided by this Pension Plan can be paid only to the extent that the Plan has available adequate resources for those payments. No Individual Employer has any liability, directly or indirectly, to provide the benefits established by this Plan beyond the obligation of the Individual Employer to make contributions as stipulated in any Collective Bargaining Agreement. In the event that any time the Pension Fund does not have sufficient assets to permit continued payments under this Pension Plan, nothing contained in this Pension Plan and the Trust Agreement shall be construed as obligating any Individual Employer to make benefit payments or contributions (other than the contributions for which the Individual Employer may be obligated by any Collective Bargaining Agreement) in order to provide for the benefits established by the Pension Plan. Likewise, there shall be no liability upon the Board of Trustees, individually or collectively, or upon the Employers, Signatory Association, Individual Employer, or Union to provide the benefits established by this Plan if the Pension Fund does not have assets to make such benefit payments.

Section 5. Determination of Disputes.

(a) No Participant, Retired Participant, beneficiary or other person shall have the right or claim to benefits under the Pension Plan, other than as specified in the Plan.

(b) Any person whose application for benefits under the Pension Plan has been denied in whole or in part by the Board of Trustees, or whose claim to benefits is otherwise denied by the Board of Trustees, shall be notified of such decision in writing by the Secretary of the Board of Trustees and may petition the Board of Trustees to reconsider its decision. A petition for reconsideration shall be in writing, shall state in clear and concise terms the reason or reasons for disagreement with the decision of the Board of Trustees, and shall be filed with or received by the Secretary within 60 days after the date shown on the notice to the petitioner of the decision of the Board of Trustees.

Upon good cause shown, the Board of Trustees may permit the petition to be amended or supplemented. The failure to file a petition for reconsideration within such 60-day period shall constitute a waiver of claimant's right to a reconsideration of

the decision on the basis of the information and evidence submitted prior to the decision. Such failure shall not, however, preclude the applicant or claimant from establishing his entitlement at a later date based on additional information and evidence which was not available to him at the time of the decision of the Board of Trustees.

(c) Upon receipt of a petition for reconsideration the Board of Trustees, or a Committee appointed by the Board and authorized to act on such petitions, shall proceed to review the administrative file, including the petition for reconsideration and its contents. A decision by the Board of Trustees or its Committee shall be made promptly and not later than 60 days after receipt of the petition by the Administrative Office unless special circumstances required an extension of time for processing, in which case a decision shall be rendered as soon as possible, but not later than 120 days after receipt of the request for review. The petitioner shall be advised of the decision in writing.

(d) The decision of the Board of Trustees with respect to a 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 Pension Trust, and any claim or right asserted under the Pension Plan or against the Pension Trust, regardless of the basis asserted for the claim and regardless of when the act or omission upon which the claim is based occurred.

Section 6. Non-Reversion.

It is expressly understood that in no event shall any of the corpus or assets of the Pension Trust revert to any Individual Employer or be subject to any claims of any kind or nature by any Individual Employer, except for the return of erroneous contributions within the limits prescribed by law.

Section 7. Gender.

Whenever words are used in this Pension Plan in the masculine gender, they should be construed as though they were also used in the feminine gender in all situations where they would so apply; wherever any words are used in this Pension Plan in the singular form they should be construed as though they were also in the plural form in all situations where they would so apply, and vice versa.

Section 8. New Individual Employers.

If an Individual Employer is sold, merged or otherwise undergoes a change of company identity, the successor company shall participate as to the Employees thereto covered in the Pension Plan just as if it were the original company, provided it remains an Individual Employer as defined in Section 4 of Article I.

ARTICLE VIII AMENDMENT

Section 1. Amendment.

The Board of Trustees may amend or modify this Pension Plan at any time or from time to time in accordance with the Trust Agreement provided, however, that in no event shall any amendment or modification of this Pension Plan cause or result in any portion of the Fund reverting to, or being recovered by, the Employers, Signatory Association, Individual Employer, or Union, or cause or result in the diversion of any portion of the Fund to any purpose other than the exclusive benefit of the Participants, Retired Participants or designated beneficiaries under the Plan and the payment of the administrative expenses of the Fund and the Plan.

Section 2. Actuarial Reviews.

This Plan has been adopted on the basis of an actuarial estimate which has established (to the fullest extent possible) that the income and accruals of the Fund will be fully sufficient to support this benefit plan on a permanent basis. However, it is recognized as possible that in the future the income or the liabilities of the Fund may be substantially different from those previously anticipated. It is understood that this Pension Plan can be fulfilled only to the extent that the Fund has assets available from which to make payments. Consequently, the Board of Trustees may have prepared annually an Annual Actuarial Evaluation of the Fund and shall take the actuarial status of the Fund into account in determining amendment or modification of this Pension Plan.

ARTICLE IX

TERMINATION OF PLAN

In the event of the termination of this Plan, the Trust Fund then held by the Trustees shall, to the extent that is sufficient, after deduction of expenses of administration and liquidation, become and remain fully vested and shall be used and applied for the benefit of the Participants and Retired Participants in the following order of priority.

(a) First, the benefit of Retired Participants and others receiving pensions under this Plan.

(b) Second, if any balance of the Fund shall remain after the allocation is made pursuant to (a) above, for the benefit of those Participants then eligible to retire and receive a pension under this Plan; and

(c) Third, if any balance of the Trust Fund shall remain after the allocation is made pursuant to (a) and (b) above, for the benefit of all other Participants.

In the event of such termination the amount of pension benefit for each person shall be computed on a basis determined by the Trustees and, to the extent possible, shall be consistent with that set forth in Articles III and IV, taking into account, however, the fact of termination of this Plan and the amount of funds then available. Such amount when determined, shall remain fixed regardless of the status of any Participant's work thereafter.

In the event of a partial termination of this Plan, that portion of the assets of the Trust allocable to the Participants in the terminated part of the Plan shall be treated as if the Plan had terminated with respect to those Participants and shall be used and applied in the order of priority and on the basis set forth above in this Article.

ARTICLE X AMENDMENT

NATIONAL PIPE LINE AGREEMENT CENTRAL PENSION PLAN

The Trustees of the Operating Engineers Pension Trust (I.U.O.E. Local Union No. 12), having adopted the Resolution providing for reciprocity among Pension Funds as required by the National Pipe Line Agreement, provide for the treatment of contributions received in accordance with the terms of the Resolution and the administrative procedures as follows:

1. Contributions.

Contributions received shall be treated in all respects as if they were regular contributions received in accordance with the terms of a Collective Bargaining Agreement.

2. Pension Credits.

Each Participant in respect of whom contributions are transferred from the Central Pension Fund shall be credited with hours worked in the period to which the transferred amount relates. The number of hours shall be calculated as the transferred amount divided by the current rate of contribution expressed in cents per hour and applicable to the period to which the transferred amount related. Fractions of an hour of .5 or greater shall be taken as 1 hour and lesser fractions shall be ignored. The hours so credited shall be taken in lieu of the hours actually worked, as the basis for determination of Pension Credits under Article II, Section 3. All provisions of the Plan shall apply to such Pension Credits as if they were credited as a result of regular contributions.

**ARTICLE XI
TRUST AGREEMENT**

This Pension Plan shall be attached to and by this reference made a part of the Trust Agreement to which it is an Appendix.

**ARTICLE XII
WITHDRAWAL LIABILITY ARBITRATION
AND PROCEDURES**

Section 1. Applicability.

In the event applicable federal law imposes a liability upon any participating Individual Employer arising from complete or partial withdrawal of the Individual Employer from participation in the Plan, the provisions of this Article shall apply.

Section 2. Nature of the Plan; Total Contributions Received.

- (a) The Plan primarily covers employees in the building and construction industry. Section 4203(b) of the Multiemployer Pension Plan Amendments Act of 1980 ["MPPAA"] (29 U.S.C. §4203(b)) shall apply to any Individual Employer if substantially all the employees with respect to whom the Individual Employer has an obligation to contribute to the Fund perform work in the building and construction industry.
- (b) An Individual Employer shall be treated as covered by Section 4203(b) of the MPPAA if the collective bargaining agreement requiring contributions of Section 8(f) of the National Labor Relations Act [29 U.S.C. §158(f)].
- (c) The sum of all contributions made by Individual Employers to the Fund in any Plan Year shall be determined without regard to any monies paid to the Fund more than three months after the last day of the Plan Year, even though such payments are made for obligations which accrued during the Plan Year. Contributions actually made for such obligations within three months after the last day of any Plan Year shall be included in determining the total contributions received by the Fund for that Plan Year.

Section 3. Actuarial Assumptions; Monthly Installments.

- (a) The actuarial assumptions and methods customarily used in determining the unfunded vested benefits of the Plan shall be used for purposes of determining an Individual Employer's withdrawal liability under Part 1 of the MPPAA [29 U.S.C. §§4201-4225], unless applicable law shall require that other actuarial assumptions and methods set forth in regulations adopted pursuant to Section 4213(a) of the MPPAA be used for such purposes.

- (b) The annual payment of withdrawal liability determined as set forth under Section 4219 of the MPPAA shall be payable to the Fund by the Individual Employer in twelve equal monthly installments. Each monthly installment shall be due on or before the first day of the month, beginning with the first month of the first Plan Year following the Plan Year in which the complete or partial withdrawal of the Individual Employer occurred.

Section 4. Resolution of Disputes.

- (a) In the event the withdrawing Individual Employer raises a dispute concerning withdrawal liability, or fails to pay according to the demand, the Individual Employer or the Board may, within the time limits permitted by Section 4221 of the MPPAA, make a written request, with a copy to the other party, to the American Arbitration Association for a list of names of seven persons available to hear and determine the claim of the Fund against the Individual Employer. The arbitrator to hear the claim shall be selected according to the procedures of the American Arbitration Association. The Board shall give not less than 30 days advance written notice to the Individual Employer of the date, time and place of the hearing.
- (b) Either the Board or the Individual Employer may, at its own expense, provide a certified stenographic reporter to make a record of the proceedings at the hearing. The arbitrator shall have discretion to award the prevailing party its costs incurred in recording the hearing.
- (c) In the event the arbitrator determines that the Individual Employer has any liability to the Plan arising from complete or partial withdrawal, the arbitrator shall, within fourteen days from the date of the hearing and in addition to any findings of fact and conclusions of law the arbitrator may issue, make an award in the form substantially as follows:

"Arbitration Award

The undersigned, having been duly appointed as arbitrator pursuant to the provisions of Section 4221 of the Multiemployer Pension Plan Amendments Act of 1980 [29 U.S.C. §4221] and having taken evidence and heard the arguments of the parties at a hearing duly held upon thirty days prior written notice by one party to the other at (insert city), California, on (insert date), hereby makes an award as follows:

(Insert Identification of Individual Employer) is liable to pay to the Operating Engineers Pension Trust ("Trust") for withdrawal liability the amount of

..... (\$.....)
for each Plan Year after the Plan Year in which withdrawal occurred, and each such increment shall be due and payable in twelve equal monthly installments on the first day of each month of each such Plan Year.

In the event of a default, the entire amount of withdrawal liability shall be due and payable from the Employer immediately upon demand by the Trust and, in addition, interest at prevailing market rates on similar obligations shall accrue and be payable on the total outstanding liability from the due date of the first payment which was not timely made. 'Default' means:

- (A) the failure of the Employer to make, when due, any payment required by this Award, if the failure is not cured within 60 days after notification from the Trust of such failure;

(B) the commencement of proceedings under Title 11, United States Code, or the occurrence of any event which would provide a basis for commencement of such proceedings; or

(C) any other event which would cause reasonable question to be raised concerning the creditworthiness of the Employer in relation to the amounts due under this Award.

In the event that the Trust is required to commence or defend a legal action to enforce this Award, the Trust shall be entitled to recover reasonable attorney's fees incurred in the action. Further, if any payment due under this Award is not paid within ten days of the date due, then the Trust shall be entitled to recover, in addition to such delinquent amount, liquidated damages in a sum equal to twenty percent (20%) of the delinquent amount.

Date this day of, 19
at, California.

.....
(Signature of Arbitrator)"

The Award issued by the arbitrator shall be final and binding on the parties.

SUMMARY OF REVISIONS TO THE PLAN

The following summary of revisions and additions made to the Pension Plan is prepared to maintain continuity of the historical concept of the Plan and is not intended to change in any way the provisions of the Plan itself. For a determination of the Plan provisions, refer to the Plan itself.

- (1) Article II, Section 2(b) revised to eliminate the requirement of "continuous membership in good standing."
Article III, Sections 1 and 2 revised to reduce Service Credit Requirements from 10 to 7½ total with ½ Pension Credit.
Approved by the Board of Trustees October 1, 1963.
- (2) Article X added to provide reciprocity with the Central Pension Plan covering employment under the National Pipe Line Agreement.
Approved by the Board of Trustees April 3, 1964.
- (3) a. Article II, Section 2(b) revised to extend period of accumulation of Prior Service Credits from January 1, 1940 to May 1, 1939.
b. Article II, Section 2(c) revised to permit maximum prior service from 15 to 20 if Participant accumulates ½ Pension Credit subject to provisions of Section 4.
c. Article II, Section 3 revised to permit Pension Credits to be given for hours worked even if contributions are not received for them.
d. Article II, Section 4(a) revised to reduce the minimum number of worked hours after June 1, 1960 from 1,000 hours in two consecutive Plan Years to 750 hours in three consecutive Plan Years.
e. Article II, Section 4(b)(1) revised to permit exception to Forfeiture of Service Credits where failure of a Participant to earn Pension Credit is due to temporary or total disability.
f. Article II, Section 4(b)(4) added to provide that the Board of Trustees in its sole discretion may grant an exception to Forfeiture of Service Credits where the failure of a Participant to earn Pension Credit is due to employment by an affiliated labor organization.

- g. Article II, Section 4(b)(5)(ii) added to permit exception of Forfeiture of Service Credits where Participant who at the time of application of the break rule had attained age 55 and had accumulated 30 Pension Credits.
- h. Article II, Section 4(b)(5)(iii) revised to permit exception of Forfeiture of Service Credits where Participant, who at the time of application of the break rule had accumulated 50 Pension Credits regardless of his age.
- i. Article III, Section 1(b) revised to increase Pension factors for Prior Service Credit per year from \$2 to \$3 and Pension Credit per Credit from \$1.50 to \$2.40.
- j. Article III, Section 2(a)(i) revised to reduce age requirement from 60 to 55 years of eligibility for early retirement.
- k. Article IV, Section 3 added, where a pensioner dies before he received 36 monthly payments, that the balance of the 36 payments shall be payable to his surviving wife or until the death of the surviving wife.
- l. Article VI added to provide death benefits to the designated beneficiary where death occurs prior to receipt of a monthly pension payment.

Approved by the Board of Trustees April 3, 1964, applicable as of May 1, 1964.

- (4) a. Article II, Section 4(b)(5) revised to liberalize the "break in service" rules.
b. Article II, Section 5 added to liberalize the vesting rules and establish vesting filing requirements.
c. Article III, Section 1(b) revised to increase Pension factors for both Prior Service Credits and Pension Credits per year to \$4.50 and \$3.65.
d. Article III, Sections 3, 4, 5 and 6 added to provide a Disability Pension.
e. Article IV, Section 3 revised to provide for remaining 36 monthly payments to continue to designated beneficiary or beneficiaries if there is no surviving wife.
f. Article IV, Section 5 added to provide Social Security (Level Income) Option for employees electing Early Retirement.
g. Article V, Section 4 revised to allow a Disability Pensioner who recovers from a disability to accrue additional Pension Credit for work in Covered Employment.
h. Article VI, Sections 1 and 2 revised to provide a greater pre-retirement lump sum Death Benefit and add to post-retirement lump sum Death Benefit.

Approved by the Board of Trustees April 19, 1966; (a) and (b) applicable as of June 1, 1966 and (c) through (h) applicable as of July 1, 1966.

- (5) Article II, Section 2(a) revised to liberalize credits for Prior Service. Effective June 1, 1967.
- (6) Article III-A, Sections 1 through 8 is added to the Pension Plan. This allows credits from Related Plans when recognized by the Board of Trustees, to provide Pro-Rata Pensions.

Approved by the Board of Trustees April 23, 1968, applicable as of February 16, 1968.

- (7) a. Article II, Section 3(b) revised to allow the Pension Credit for each \$600 of contributions and 1/1000th of a Pension Credit for each 60¢ accumulation less than a full Pension Credit earned by a Participant.
- b. Article III-A revised to define Related Contributions, Related Credit and Pro-Rata Pension to conform with the Local 12 Pension Plan.
- Approved by the Board of Trustees April 23, 1968 to be effective June 1, 1968.
- c. Article III, Section 1(b) revised to increase the amount of Normal Pension.
- Approved by the Board of Trustees April 23, 1968 to be effective July 1, 1968.
- (8) Article III-A revised to define all rules and regulations for a Pro-Rata Pension. Effective February 16, 1968.
- (9) Article III-B added to the Pension Plan to provide non-forfeiture of Related Hours. Effective October 8, 1968.
- (10) Article II, Section 4(b)(3) revised the non-forfeiture rule as to work performed in the classification included in the Collective Bargaining Agreements and the time of written notice to be submitted to the Board of Trustees.
- Approved by the Board of Trustees December 27, 1968 applicable as of June 1, 1960.
- (11) Article II, Section 2(a)(1) revised the Prior Service Credit regulation. Effective June 1, 1960.
- (12) Article III-B, Sections 7(a) and 8. Revised the eligibility and the basis of earning a Pro-Rata Pension.
- Approved by the Board of Trustees April 22, 1969, effective October 8, 1968.
- (13) Article III, Section 2(b), Step 2 revised to reduce the Early Retirement percentage factor from one-half of 1% to one-quarter of 1% for Participants who retire between the ages of 65 and 60.
- Approved by the Board of Trustees January 27, 1970, applicable as of March 1, 1970.
- (14) a. Article II, Section 3 revised to change the basis on which Current Service is earned.
- b. Article II, Section 4(a) revised to liberalize the Forfeiture of Service Credits.
- c. Article II, Sections 4(b)(5)(ii) and (iii) revised to permit exception of Forfeiture of Service Credits where Participant, who at time of application of the break rule had accumulated 20 Service Credits regardless of his age.
- d. Article II, Section 5 revised to liberalize the vesting rules.
- e. Article III, Section 1(a)(1) revised to reduce Normal Retirement to age 64.
- f. Article III, Section 1(b) revised to increase the amount of Normal Pension.
- g. Article III, Section 2(b) Step 2 revised to reduce the Early Retirement percentage factor from one-half of 1% to one-quarter of 1% for Participants who retire between the ages of 60 and 55 effective July 1, 1970.
- h. Article VI, Section 2 revised to increase the death benefit for a Participant who dies after July 1, 1970.
- Approved by the Board of Trustees April 4, 1970, applicable as of July 1, 1970.
- (15) a. Article II, Section 5 revised to delete the filing requirements for vesting.
- Approved by the Board of Trustees July 14, 1970, applicable as of June 1, 1960.
- b. Article V, Section 4 revised to allow Disability Pensioner to accumulate additional Pension Credit upon return to employment under any of the Collective Bargaining Agreements.
- Approved by the Board of Trustees July 14, 1970, applicable as of July 1, 1970.
- (16) Article III, Section 3(a)(1) liberalized requirements for a Disability Pension to ½ of one Pension Credit, or 500 hours under the Plan.
- Approved by the Board of Trustees January 12, 1971, applicable as of November 1, 1970.
- (17) a. Article II, Section 3 revised to change the basis on which Current Service is earned.
- b. Article II, Section 4(b)(5)(ii) revised to permit exception of Forfeiture of Service Credits for a Vested Participant.
- c. Article II, Section 5 revised to liberalize vesting rules.
- d. Article III, Section 1(a)(1) revised to reduce Normal Retirement age to 62.
- e. Article III, Section 1(b) revised to increase the amount of the Normal Pension.
- f. Article III, Section 2(a)(1) revised to reduce Early Retirement age to 52.
- g. Article III, Section 2(b) revised to reflect reduced retirement age.
- h. Article VI, Section 2 revised to increase Death Benefits for a Participant or a Retired Participant who dies after July 1, 1971.
- Approved by the Board of Trustees April 7, 1971, applicable as of January 1, 1971.
- (18) Article VII, Section 5 added to the Plan to establish procedures for determination of disputes.
- Approved by the Board of Trustees April 4, 1972, applicable as of April 4, 1972.
- (19) Article III-C added to the Plan in order to recognize reciprocity arrangements through the International Union of Operating Engineers.
- Approved by the Board of Trustees April 4, 1972, applicable as of April 4, 1972.
- (20) Article I, Section 14 revised the Plan Year period to July 1 of each year through June 30 of the following year.
- Approved by the Board of Trustees June 27, 1972, applicable as of June 1, 1971.
- (21) Article III, Section 1(b) revised to increase the value of each year of Prior Service Credit to \$8.00 and each year of Current Service Credit to \$12.00.
- Approved by the Board of Trustees October 10, 1972, applicable as of September 1, 1972.
- (22) a. Article I, Sections 4 and 5 revised to include Southern California Operating Engineers Benefits Administration, Inc. as an Individual Employer under the Plan, applicable as of September 1, 1971.
- b. Article II, Section 4(a) revised to liberalize Forfeiture of Service Credits, applicable as of July 1, 1972.

- c. Article II, Section 4(b)(5)(ii) revised to permit exception for Forfeiture of Service Credits when the Participant has, at time of application of the break rule, at least 10 Service Credits, applicable as of July 1, 1972.
- d. Article II, Section 5 revised to liberalize vesting rule to accumulation of at least 10 Service Credits, applicable as of July 1, 1972.
- e. Article VI, Section 2 revised to establish minimum Death After Retirement Benefit of \$1,000, applicable as of November 1, 1972.
- Approved by the Board of Trustees October 10, 1972.
- (23) Article III, Section 5 revised to reduce the waiting period for Disability Pension to five (5) months.
- Approved by the Board of Trustees April 10, 1973, applicable as of January 1, 1973.
- (24) Article IV, Section 4 revised to provide that the benefit payable to a beneficiary other than the spouse is incidental to the primary purpose of distribution from the Plan to the Participant.
- Approved by the Board of Trustees July 10, 1973, applicable as of July 1, 1973.
- (25) a. Article II, Section 4(c) revised to liberalize the Forfeiture of Service Credit.
- b. Article II, Section 4(b)(3) revised to permit exception to rule of Forfeiture of Service Credit for periods of recognized work for a governmental or public agency.
- c. Article II, Section 4(b)(5) revised to permit exception to rule of Forfeiture of Service Credit when the Participant has worked at least 3,000 hours for which contributions have been made to the Plan.
- d. Article II, Section 5 revised to liberalize vesting rule to accumulation of at least three (3) Pension Credits or 3,000 hours of work for which contributions have been made to this Plan before a break in employment.
- e. Article II, Sections 1(a) and 2(a) are revised to require at least three (3) Pension Credits or 3,000 hours of work for which contributions have been made to this Plan as an eligibility requirement for a Normal Retirement or an Early Retirement.
- f. Article II, Sections 1(c), 2(c) and 3(c) are added to provide a Lump-Sum Benefit at Retirement.
- g. Article II, Section 3(a) revised to provide a Disability Pension for eligible Participants who are not entitled to a Normal Pension under the Plan.
- h. Article III-A, Section 7(a)2 and Article III-B, Section 7(a)2 are deleted. Article III-A, Section 7(b) and Article II-B, Section 7(b) are revised to describe the application of the break in employment rule for work in a Related Plan.
- i. Article IV, Section 3 revised to increase the guarantee period of benefits to Retired Participants and provide a guarantee period of benefits to the spouse or beneficiary of the Participant who dies before a pension is payable to him.
- k. Article IV, Section 5 revised to provide an increase in the guarantee period.
- l. Article VI, Section 2 revised to provide a Standard Benefit and an Optional Lump-sum Benefit as a result of death of a Participant or Retired Participant.
- m. Article VI, Section 4 expanded to provide a successor in benefits if there is no Designated Beneficiary.
- Approved by the Board of Trustees July 10, 1973, applicable as of July 1, 1973.
- (26) a. Article II, Section 3 revised to change the basis on which Current Service is earned.
- b. Article III, Section 1(b) revised to increase the value of each year of Current Service Credit of \$15.50.
- Approved by the Board of Trustees July 10, 1973, applicable as of July 1, 1973.
- (27) a. Article II, Sections 1(c), 2(c) and 3(c) revised to provide a Lump-Sum Benefit at Retirement for Retired Participants who retired prior to July 1, 1972.
- b. Article VI, Section 2(a) revised to apply the Standard Benefit on Death of all Retired Participants.
- Approved by the Board of Trustees October 11, 1973, applicable as of July 1, 1973.
- (28) a. Article I, Sections 4, 5 and 6 revised to include the Employers and Signatory Associations.
- b. Article III, Section 4(a) revised to include a Participant whose normal position is not covered by a Collective Bargaining Agreement.
- c. Article V, Sections 1, 2 and 3 revised to prohibit employment of the nature covered by a Collective Bargaining Agreement regardless of the location and whether or not such employment is covered by a Collective Bargaining Agreement.
- Approved by the Board of Trustees April 16, 1974, applicable as of July 1, 1974.
- (29) a. Article VI, Section 2(a) Standard Benefit for Retired Participants who retired prior to July 1, 1972.
- b. Article VI, Section 4(d) added to provide payment to a successor if designated beneficiary dies before receiving all benefits to be paid.
- Approved by the Board of Trustees February 12, 1974, applicable as of July 1, 1973.
- (30) Article III, Section 3(a)(1) revised to provide a Disability Pension only to eligible Participants who are not yet 62.
- Approved by the Board of Trustees July 30, 1974, applicable as of July 1, 1974.
- (31) Article III, Sections 1(c), 2(c) and 3(c) revised to reduce the Lump-Sum Benefit by the amount of benefit received at any previous commencement of retirement.
- Approved by the Board of Trustees July 30, 1974, applicable as of July 1, 1973.
- (32) a. Article II, Section 4(b)(5) added to provide waiver of break-in-service rule where failure of a Participant to earn Pension Credit is due to employment for an employer who is signatory to a Collective Bargaining Agreement not requiring contributions to this Fund.
- b. Article II, Section 4(b)(6) added to provide waiver of break-in-service rule where failure of Participant to earn Pension Credit is due to employment by an Employer outside of the United States of America.
- Approved by the Board of Trustees June 24, 1975, applicable as of July 1, 1975.

(33) a. Old Article II, Section 4(b)(5) deleted. Article II, Section 4(a) revised to change the break in service rules.

b. Article II, Section 5 revised to change the vesting rule to at least ten (10) Pension Credits or 10,000 hours under this Plan or Participant meets age and service requirements for a Normal or Early Retirement.

Approved by the Board of Trustees April 29, 1975, applicable as of July 1, 1972.

c. Article VII, Section 5 revised to change Determination of Disputes procedure.

Approved by the Board of Trustees April 29, 1975, applicable as of January 1, 1975.

d. Article II, Section 1(b) revised to increase the amount of the Normal Pension.

e. Article III, Section 3(b) revised to change the basis on which the amount of the Disability Pension is determined.

f. Article III, Section 5 revised to reduce the waiting period for a Disability Pension to four (4) months.

g. Article VI, Section 1 revised to exclude Retired Participants from conditions of payment of benefit.

h. Article VI, Section 2(a) revised to apply the Standard Death Benefit only to active Participants and modify the benefit amount payable for a Participant who dies after July 1, 1975.

i. Article VI, Section 2(b) revised to exclude the 36 monthly pension payments in the case of a Retired Participant.

Approved by the Board of Trustees April 29, 1975, applicable as of July 1, 1975.

(34) Article VIII, Section 1 revised to change the authority of the Board of Trustees to amend the Plan.

Approved by the Board of Trustees April 29, 1975, applicable as of July 1, 1975.

(35) a. Article II, Section 4(a) revised to change the general rule for Forfeiture of Service Credits.

b. Article II, Section 5 revised to change vesting rules from ten (10) Pension Credits and 10,000 hours under the Plan to eight (8) Pension Credits and 8,000 hours under this Plan, or Participant meets age and service requirements for a Normal or Early Retirement.

Approved by the Board of Trustees September 9, 1975, applicable as of July 1, 1972.

(36) a. Article II, Section 4(a) revised to change the general rule for Forfeiture of Service Credits.

b. Article II, Section 5 revised to change vesting rules from eight (8) Pension Credits or 8,000 hours under the Plan to 3,000 hours under this Plan.

Approved by the Board of Trustees October 28, 1975, applicable as of July 1, 1972.

(37) Article III, Section 3(b) revised to change method of determining the amount of Disability Pension.

Approved by the Board of Trustees October 28, 1975, applicable as of November 1, 1975.

(38) Article II, Section 3 revised to change the basis on which Current Service is earned.

Approved by the Board of Trustees October 28, 1975, applicable as of July 1, 1975.

(39) Article III, Sections 1(c), 2(c) and 3(c) amended to include options for payments of Retirement Lump Sum.

Approved by the Board of Trustees February 24, 1976, applicable as of February 1, 1976.

(40) a. Article II, Section 4(b)(1) amended to delete employment in a supervisory capacity as an exception to forfeiture of Service Credit.

b. Article II, Section 4(b)(4) amended to delete employment by an affiliated labor organization as an exception to forfeiture of Service Credit.

Approved by the Board of Trustees April 27, 1976, applicable as of July 1, 1976.

(41) a. Article I, Section 19 added to provide a definition of "Normal Retirement Age."

b. References throughout the Plan to the term "Normal Retirement" and "Normal Pension" were changed to "Regular Retirement" and "Regular Pension."

c. Article II, Section 4(b) deleted to remove certain grounds upon which a forfeiture of service could be waived.

d. Article IV, Section 3 amended to provide that the Ten Year Guarantee did not apply if the Participant elected to receive benefits in the form of a Husband-and-Wife Pension.

e. Article IV, Section 4 amended deleting the Contingent Annuitant form of pension and substituting in its place, the Husband-and-Wife form of Pension.

f. Article V, Section 1 amended to liberalize the requirement for withdrawal from employment as a condition to receiving pension benefits with respect to any person who has reached Normal Retirement Age.

Approved by the Board of Trustees August 12, 1976, applicable as of July 1, 1976.

(42) a. Article III, Section 3(d) revised to change the method of determining the amount of Disability Pension.

b. Article III, Section 2 amended to allow Retired Participants (Early) to return to covered employment and earn additional Pension Credits at one-half the rate of Participants who have not retired.

c. Article V, Section 4 amended to conform its provisions to the provisions allowing Retired Participants to earn additional Pension Credits by returning to covered employment.

Approved by the Board of Trustees February 1, 1977, applicable July 1, 1976 (in part) and January 17, 1977 (in part).

(43) a. Article I, Section 4 amended to clarify the definition of "Individual Employer" with regard to a controlled group of corporations and a trade or business under common control.

b. Article I, Section 20 added to provide a definition of "ERISA."

c. Article I, Section 21 added to provide a definition of "Spouse."

d. Article IV, Section 1 amended to add provisions for commencement of pension benefits.

- e. Article IV, Section 3 amended to allow the surviving spouse of a Participant who dies prior to retirement, ninety days after written notice to elect this form of death benefit rather than the Husband-and-Wife Pension form of benefit.
- f. Article IV, Section 4 amended to revise the Husband-and-Wife Pension.
- g. Article IV, Section 5 amended to provide that the Social Security (Level Income) Option is not payable if payments were due under the Husband-and-Wife Pension.
- h. Article V, Section 7 added providing that the Trustees are the sole judges of the standard of proof required in any case and the interpretation of the Plan and that their decisions shall be final and binding.
- i. Article V, Section 8 added providing that no Retired Participant is entitled to more than one type of pension at any one time.
- j. Article V, Section 9 added providing the payment of a lump-sum amount at the Trustees' discretion if the actuarial value of a pension is less than \$1,750.
- k. Article V, Section 10 added providing maximum limitations on the amount of pension benefits.
- l. Article V, Section 11 added regarding non-forfeitability of benefits.
- m. Article VII, Section 6 added to proscribe any reversion of Plan Assets to an Individual Employer, except within the limits prescribed by law.
- n. Article VII, Section 7 added regarding gender and number.
- o. Article VII, Section 8 added providing that successor companies will be regarded as the same as the original company participating in the Plan.
- p. Article VI, Section 2 amended to remove the lump-sum total distribution form of death benefits previously available.

Approved by the Board of Trustees May 4, 1977, applicable as of July 1, 1976 (in part) and March 1, 1977, (in part).

- (44) a. Article I, Section 4 amended to include as "Individual Employers," the Operating Engineers Training Trust, the Southern Nevada Operating Engineers Journeyman and Apprentice Training Trust and the Apprentice and Journeyman Training Trust Fund of the Civil Engineering and Land Surveying Industry of California.
 - b. Article I, Section 5 amended to include as "Employees," all employees of the Individual Employers specified in (a) above.
- Approved by the Board of Trustees February 21, 1978, applicable as of January 11, 1966.
- c. Article VI, Section 4 amended to allow reinstatement of benefits forfeited under that Section if a valid claim is made by an eligible beneficiary within 7 years of the Participant's or Retired Participant's death, unless such reinstatement would cause funds to escheat to the State.
 - d. Article IX amended to provide the procedure for allocation of assets on partial termination of the Plan.

Approved by the Board of Trustees February 21, 1978, applicable as of July 1, 1966.

- e. Article III, Sections 1(c), 2(c) and 3(c) amended by changing reference therein from "Article VI, Section 2(a)" to "Article VI, Section 2."

Approved by the Board of Trustees February 21, 1978, applicable as of March 1, 1977.

- f. Article VII, Section 2 amended by changing the words, "hypothecating" and "hypothecation" to "mortgaging" and "mortgage," respectively.

Approved by the Board of Trustees on February 21, 1978, applicable as of March 1, 1978.

- (45) a. Article III, Section 5 amended changing the requirements for vesting to 6 Pension Credits or 6,000 hours for which contributions have been made to the Plan, for those Participants who did not have at least 3 Pension Credits or 3,000 hours for which contributions have been made to this Plan, on or before June 30, 1978.
- b. Article III, Sections 1(a)(2) and 2(a)(2) amended to require 6 Pension Credits or 6,000 hours for which contributions are made to the Plan for eligibility for a Regular or Early Pension, for Participants who did not have, on or before June 30, 1978, at least 3 Pension Credits or 3,000 hours for which contributions were made to the Plan.
- c. Article III, Section 3(a)(2) amended to require 6 Pension Credits or 6,000 hours for which contributions are made to the Plan, for eligibility for a Disability Pension, for those Participants who did not have, on or before June 30, 1978, at least ½ Pension Credit or 500 hours for which contributions were made to the Plan.
- d. Article II, Section 3 amended to change the basis on which Current Service is earned.

Approved by the Board of Trustees August 2, 1978, applicable as of July 1, 1978.

- e. Article III, Section 1(b) amended to increase the amount of Regular Pension.

Approved by the Board of Trustees August 2, 1978, applicable as of December 1, 1978.

- (46) Article III, Sections 1(c), 2(c) and 3(c) and Article IV, Section 4(f) and Article VI, Sections 1 and 2 amended to provide that if payments are due under the Husband-and-Wife Pension, the actuarial equivalent of any lump sum benefits otherwise payable by the Plan will be included in the monthly amount of the Husband-and-Wife Pension payable.

Approved by the Board of Trustees on, applicable as of

- (47) Article II, Section 4(b) is renumbered as Section 4(c) and a new Section 4(b) is added to allow grace periods for disability and military service.

Approved by the Board of Trustees on applicable as of July 1, 1976.

- (48) a. Article I, Section 6 amended to name as employer associations the Engineering Contractors Association, the Southern California Contractors Association and to delete the Las Vegas Builders Exchange and the Southern Nevada Homebuilders, Inc.

Approved by the Board of Trustees on April 18, 1979, applicable as of January 1, 1979.

- b. Article II, Section 4 restated in its entirety to provide a "one-for-one" break in employment rule for non-vested participants. (ERISA 1974).

Approved by the Board of Trustees on April 18, 1979, effective July 1, 1976.

- c. The title of Articles II-A and III-B were amended to include the description of the reciprocity agreement to which they apply.
- d. Article III-C restated in its entirety to conform this Pension Plan with the revised International Union Reciprocity Agreement.

Approved by the Board of Trustees on April 18, 1979, effective July 1, 1979.

- e. Article V, Section 1 amended to clarify the definition of retirement after normal retirement age.

Approved by the Board of Trustees on April 18, 1979, effective July 1, 1976.

- (49) Article III, Section 1(b) amended to restrict reciprocal pension benefits.

Approved by the Board of Trustees June 28, 1979. Applicable as of July 1, 1979.

- (50) Article III, Section 1(b) amended to increase the amount of a Regular Pension.

Approved by the Board of Trustees June 28, 1979. Effective July 1, 1979.

- (51) A. Article II, Section 5 restated vesting provisions.

- B. Article II, New Section 6 added to define separation from employment.

- C. Article III, Section 1(b) restated amount of Regular Pension determination.

Approved by the Board of Trustees February 26, 1980. Effective July 1, 1976.

- D. Article II, Section 5 amended vesting requirements.

Approved by the Board of Trustees February 26, 1980. Effective July 1, 1978.

- E. Article II, Section 3 amended to add new subsection (j) revising Master Contribution Rate.

Approved by the Board of Trustees February 26, 1980. Effective July 1, 1979.

- (52) A. Article III, Section 7 renumbered Section 8. New Section 7 added to add Service Pension.

- B. Article IV, Section 4(f) amended to include actuarial equivalent of Lump Sum at Retirement in the Husband-and-Wife Pension.

- C. Article IV, Section J restated to include Service Pension.

Approved by the Board of Trustees August 6, 1980. Effective January 1, 1980.

- D. Article II, Section 4 amended to restate break in employment and forfeiture of Service Credit Rules.

- E. Article II, Section 5(c) is restated and new subsections (d) and (e) added to increase vesting requirement to 10,000 hours.

Approved by the Board of Trustees August 6, 1980. Effective July 1, 1980.

- (53) Article II, Section 5 restated to amend vesting rules.

Approved by the Board of Trustees April 23, 1980. Effective July 1, 1978.

- (54) A. Article II, Section 3 amended to add new subsection (k) revising Master Contribution Rate.

Approved by the Board of Trustees. Effective July 1, 1980.

- B. Article II, Section 3 amended to add new subsection (l) revising Master Contribution Rate.

- C. Article III, Section 1(b) amended to increase the amount of a Regular Pension.

Approved by the Board of Trustees. Effective January 1, 1981.

- (55) Article XII added to the Plan to provide withdrawal liability arbitration and procedures.

Approved by the Board of Trustees, January 28, 1981, applicable as of April 28, 1980.

the decision on the basis of the information and evidence submitted prior to the decision. Such failure shall not, however, preclude the applicant or claimant from establishing his entitlement at a later date based on additional information and evidence which was not available to him at the time of the decision of the Board of Trustees.

(c) Upon receipt of a petition for reconsideration the Board of Trustees, or a Committee appointed by the Board and authorized to act on such petitions, shall proceed to review the administrative file, including the petition for reconsideration and its contents. A decision by the Board of Trustees or its Committee shall be made promptly and not later than 60 days after receipt of the petition by the Administrative Office unless special circumstances required an extension of time for processing, in which case a decision shall be rendered as soon as possible, but not later than 120 days after receipt of the request for review. The petitioner shall be advised of the decision in writing.

(d) The decision of the Board of Trustees with respect to a 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 Pension Trust, and any claim or right asserted under the Pension Plan or against the Pension Trust, regardless of the basis asserted for the claim and regardless of when the act or omission upon which the claim is based occurred.

Section 6. Non-Reversion.

It is expressly understood that in no event shall any of the corpus or assets of the Pension Trust revert to any Individual Employer or be subject to any claims of any kind or nature by any Individual Employer, except for the return of erroneous contributions within the limits prescribed by law.

Section 7. Gender.

Whenever words are used in this Pension Plan in the masculine gender, they should be construed as though they were also used in the feminine gender in all situations where they would so apply; wherever any words are used in this Pension Plan in the singular form they should be construed as though they were also in the plural form in all situations where they would so apply, and vice versa.

Section 8. New Individual Employers.

If an Individual Employer is sold, merged or otherwise undergoes a change of company identity, the successor company shall participate as to the Employees thereto covered in the Pension Plan just as if it were the original company, provided it remains an Individual Employer as defined in Section 4 of Article I.

ARTICLE VIII AMENDMENT

Section 1. Amendment.

The Board of Trustees may amend or modify this Pension Plan at any time or from time to time in accordance with the Trust Agreement provided, however, that in no event shall any amendment or modification of this Pension Plan cause or result in any portion of the Fund reverting to, or being recovered by, the Employers, Signatory Association, Individual Employer, or Union, or cause or result in the diversion of any portion of the Fund to any purpose other than the exclusive benefit of the Participants, Retired Participants or designated beneficiaries under the Plan and the payment of the administrative expenses of the Fund and the Plan.

Section 2. Actuarial Reviews.

This Plan has been adopted on the basis of an actuarial estimate which has established (to the fullest extent possible) that the income and accruals of the Fund will be fully sufficient to support this benefit plan on a permanent basis. However, it is recognized as possible that in the future the income or the liabilities of the Fund may be substantially different from those previously anticipated. It is understood that this Pension Plan can be fulfilled only to the extent that the Fund has assets available from which to make payments. Consequently, the Board of Trustees may have prepared annually an Annual Actuarial Evaluation of the Fund and shall take the actuarial status of the Fund into account in determining amendment or modification of this Pension Plan.

ARTICLE IX

TERMINATION OF PLAN

In the event of the termination of this Plan, the Trust Fund then held by the Trustees shall, to the extent that is sufficient, after deduction of expenses of administration and liquidation, become and remain fully vested and shall be used and applied for the benefit of the Participants and Retired Participants in the following order of priority.

(a) First, the benefit of Retired Participants and others receiving pensions under this Plan.

(b) Second, if any balance of the Fund shall remain after the allocation is made pursuant to (a) above, for the benefit of those Participants then eligible to retire and receive a pension under this Plan; and

(c) Third, if any balance of the Trust Fund shall remain after the allocation is made pursuant to (a) and (b) above, for the benefit of all other Participants.

In the event of such termination the amount of pension benefit for each person shall be computed on a basis determined by the Trustees and, to the extent possible, shall be consistent with that set forth in Articles III and IV, taking into account, however, the fact of termination of this Plan and the amount of funds then available. Such amount when determined, shall remain fixed regardless of the status of any Participant's work thereafter.

In the event of a partial termination of this Plan, that portion of the assets of the Trust allocable to the Participants in the terminated part of the Plan shall be treated as if the Plan had terminated with respect to those Participants and shall be used and applied in the order of priority and on the basis set forth above in this Article.

ARTICLE X AMENDMENT

NATIONAL PIPE LINE AGREEMENT CENTRAL PENSION PLAN

The Trustees of the Operating Engineers Pension Trust (I.U.O.E. Local Union No. 12), having adopted the Resolution providing for reciprocity among Pension Funds as required by the National Pipe Line Agreement, provide for the treatment of contributions received in accordance with the terms of the Resolution and the administrative procedures as follows:

1. Contributions.

Contributions received shall be treated in all respects as if they were regular contributions received in accordance with the terms of a Collective Bargaining Agreement.

2. Pension Credits.

Each Participant in respect of whom contributions are transferred from the Central Pension Fund shall be credited with hours worked in the period to which the transferred amount relates. The number of hours shall be calculated as the transferred amount divided by the current rate of contribution expressed in cents per hour and applicable to the period to which the transferred amount related. Fractions of an hour of .5 or greater shall be taken as 1 hour and lesser fractions shall be ignored. The hours so credited shall be taken in lieu of the hours actually worked, as the basis for determination of Pension Credits under Article II, Section 3. All provisions of the Plan shall apply to such Pension Credits as if they were credited as a result of regular contributions.

**ARTICLE XI
TRUST AGREEMENT**

This Pension Plan shall be attached to and by this reference made a part of the Trust Agreement to which it is an Appendix.

**ARTICLE XII
WITHDRAWAL LIABILITY ARBITRATION
AND PROCEDURES**

Section 1. Applicability.

In the event applicable federal law imposes a liability upon any participating Individual Employer arising from complete or partial withdrawal of the Individual Employer from participation in the Plan, the provisions of this Article shall apply.

Section 2. Nature of the Plan; Total Contributions Received.

- (a) The Plan primarily covers employees in the building and construction industry. Section 4203(b) of the Multiemployer Pension Plan Amendments Act of 1980 ["MPPAA"] (29 U.S.C. §4203(b)) shall apply to any Individual Employer if substantially all the employees with respect to whom the Individual Employer has an obligation to contribute to the Fund perform work in the building and construction industry.
- (b) An Individual Employer shall be treated as covered by Section 4203(b) of the MPPAA if the collective bargaining agreement requiring contributions of Section 8(f) of the National Labor Relations Act [29 U.S.C. §158(f)].
- (c) The sum of all contributions made by Individual Employers to the Fund in any Plan Year shall be determined without regard to any monies paid to the Fund more than three months after the last day of the Plan Year, even though such payments are made for obligations which accrued during the Plan Year. Contributions actually made for such obligations within three months after the last day of any Plan Year shall be included in determining the total contributions received by the Fund for that Plan Year.

Section 3. Actuarial Assumptions; Monthly Installments.

- (a) The actuarial assumptions and methods customarily used in determining the unfunded vested benefits of the Plan shall be used for purposes of determining an Individual Employer's withdrawal liability under Part 1 of the MPPAA [29 U.S.C. §§4201-4225], unless applicable law shall require that other actuarial assumptions and methods set forth in regulations adopted pursuant to Section 4213(a) of the MPPAA be used for such purposes.

- (b) The annual payment of withdrawal liability determined as set forth under Section 4219 of the MPPAA shall be payable to the Fund by the Individual Employer in twelve equal monthly installments. Each monthly installment shall be due on or before the first day of the month, beginning with the first month of the first Plan Year following the Plan Year in which the complete or partial withdrawal of the Individual Employer occurred.

Section 4. Resolution of Disputes.

- (a) In the event the withdrawing Individual Employer raises a dispute concerning withdrawal liability, or fails to pay according to the demand, the Individual Employer or the Board may, within the time limits permitted by Section 4221 of the MPPAA, make a written request, with a copy to the other party, to the American Arbitration Association for a list of names of seven persons available to hear and determine the claim of the Fund against the Individual Employer. The arbitrator to hear the claim shall be selected according to the procedures of the American Arbitration Association. The Board shall give not less than 30 days advance written notice to the Individual Employer of the date, time and place of the hearing.
- (b) Either the Board or the Individual Employer may, at its own expense, provide a certified stenographic reporter to make a record of the proceedings at the hearing. The arbitrator shall have discretion to award the prevailing party its costs incurred in recording the hearing.
- (c) In the event the arbitrator determines that the Individual Employer has any liability to the Plan arising from complete or partial withdrawal, the arbitrator shall, within fourteen days from the date of the hearing and in addition to any findings of fact and conclusions of law the arbitrator may issue, make an award in the form substantially as follows:

"Arbitration Award

The undersigned, having been duly appointed as arbitrator pursuant to the provisions of Section 4221 of the Multiemployer Pension Plan Amendments Act of 1980 [29 U.S.C. §4221] and having taken evidence and heard the arguments of the parties at a hearing duly held upon thirty days prior written notice by one party to the other at (insert city), California, on (insert date), hereby makes an award as follows:

(Insert Identification of Individual Employer) is liable to pay to the Operating Engineers Pension Trust ("Trust") for withdrawal liability the amount of

..... (\$.....)
for each Plan Year after the Plan Year in which withdrawal occurred, and each such increment shall be due and payable in twelve equal monthly installments on the first day of each month of each such Plan Year.

In the event of a default, the entire amount of withdrawal liability shall be due and payable from the Employer immediately upon demand by the Trust and, in addition, interest at prevailing market rates on similar obligations shall accrue and be payable on the total outstanding liability from the due date of the first payment which was not timely made. 'Default' means:

- (A) the failure of the Employer to make, when due, any payment required by this Award, if the failure is not cured within 60 days after notification from the Trust of such failure;

(B) the commencement of proceedings under Title 11, United States Code, or the occurrence of any event which would provide a basis for commencement of such proceedings; or

(C) any other event which would cause reasonable question to be raised concerning the creditworthiness of the Employer in relation to the amounts due under this Award.

In the event that the Trust is required to commence or defend a legal action to enforce this Award, the Trust shall be entitled to recover reasonable attorney's fees incurred in the action. Further, if any payment due under this Award is not paid within ten days of the date due, then the Trust shall be entitled to recover, in addition to such delinquent amount, liquidated damages in a sum equal to twenty percent (20%) of the delinquent amount.

Date this day of, 19
at, California.

.....
(Signature of Arbitrator)"

The Award issued by the arbitrator shall be final and binding on the parties.

SUMMARY OF REVISIONS TO THE PLAN

The following summary of revisions and additions made to the Pension Plan is prepared to maintain continuity of the historical concept of the Plan and is not intended to change in any way the provisions of the Plan itself. For a determination of the Plan provisions, refer to the Plan itself.

- (1) Article II, Section 2(b) revised to eliminate the requirement of "continuous membership in good standing."
Article III, Sections 1 and 2 revised to reduce Service Credit Requirements from 10 to 7½ total with ½ Pension Credit.
Approved by the Board of Trustees October 1, 1963.
- (2) Article X added to provide reciprocity with the Central Pension Plan covering employment under the National Pipe Line Agreement.
Approved by the Board of Trustees April 3, 1964.
- (3) a. Article II, Section 2(b) revised to extend period of accumulation of Prior Service Credits from January 1, 1940 to May 1, 1939.
b. Article II, Section 2(c) revised to permit maximum prior service from 15 to 20 if Participant accumulates ½ Pension Credit subject to provisions of Section 4.
c. Article II, Section 3 revised to permit Pension Credits to be given for hours worked even if contributions are not received for them.
d. Article II, Section 4(a) revised to reduce the minimum number of worked hours after June 1, 1960 from 1,000 hours in two consecutive Plan Years to 750 hours in three consecutive Plan Years.
e. Article II, Section 4(b)(1) revised to permit exception to Forfeiture of Service Credits where failure of a Participant to earn Pension Credit is due to temporary or total disability.
f. Article II, Section 4(b)(4) added to provide that the Board of Trustees in its sole discretion may grant an exception to Forfeiture of Service Credits where the failure of a Participant to earn Pension Credit is due to employment by an affiliated labor organization.

- g. Article II, Section 4(b)(5)(ii) added to permit exception of Forfeiture of Service Credits where Participant who at the time of application of the break rule had attained age 55 and had accumulated 30 Pension Credits.
- h. Article II, Section 4(b)(5)(iii) revised to permit exception of Forfeiture of Service Credits where Participant, who at the time of application of the break rule had accumulated 50 Pension Credits regardless of his age.
- i. Article III, Section 1(b) revised to increase Pension factors for Prior Service Credit per year from \$2 to \$3 and Pension Credit per Credit from \$1.50 to \$2.40.
- j. Article III, Section 2(a)(i) revised to reduce age requirement from 60 to 55 years of eligibility for early retirement.
- k. Article IV, Section 3 added, where a pensioner dies before he received 36 monthly payments, that the balance of the 36 payments shall be payable to his surviving wife or until the death of the surviving wife.
- l. Article VI added to provide death benefits to the designated beneficiary where death occurs prior to receipt of a monthly pension payment.

Approved by the Board of Trustees April 3, 1964, applicable as of May 1, 1964.

- (4) a. Article II, Section 4(b)(5) revised to liberalize the "break in service" rules.
b. Article II, Section 5 added to liberalize the vesting rules and establish vesting filing requirements.
c. Article III, Section 1(b) revised to increase Pension factors for both Prior Service Credits and Pension Credits per year to \$4.50 and \$3.65.
d. Article III, Sections 3, 4, 5 and 6 added to provide a Disability Pension.
e. Article IV, Section 3 revised to provide for remaining 36 monthly payments to continue to designated beneficiary or beneficiaries if there is no surviving wife.
f. Article IV, Section 5 added to provide Social Security (Level Income) Option for employees electing Early Retirement.
g. Article V, Section 4 revised to allow a Disability Pensioner who recovers from a disability to accrue additional Pension Credit for work in Covered Employment.
h. Article VI, Sections 1 and 2 revised to provide a greater pre-retirement lump sum Death Benefit and add to post-retirement lump sum Death Benefit.

Approved by the Board of Trustees April 19, 1966; (a) and (b) applicable as of June 1, 1966 and (c) through (h) applicable as of July 1, 1966.

- (5) Article II, Section 2(a) revised to liberalize credits for Prior Service. Effective June 1, 1967.
- (6) Article III-A, Sections 1 through 8 is added to the Pension Plan. This allows credits from Related Plans when recognized by the Board of Trustees, to provide Pro-Rata Pensions.

Approved by the Board of Trustees April 23, 1968, applicable as of February 16, 1968.

- (7) a. Article II, Section 3(b) revised to allow the Pension Credit for each \$600 of contributions and 1/1000th of a Pension Credit for each 60¢ accumulation less than a full Pension Credit earned by a Participant.
- b. Article III-A revised to define Related Contributions, Related Credit and Pro-Rata Pension to conform with the Local 12 Pension Plan.
- Approved by the Board of Trustees April 23, 1968 to be effective June 1, 1968.
- c. Article III, Section 1(b) revised to increase the amount of Normal Pension.
- Approved by the Board of Trustees April 23, 1968 to be effective July 1, 1968.
- (8) Article III-A revised to define all rules and regulations for a Pro-Rata Pension. Effective February 16, 1968.
- (9) Article III-B added to the Pension Plan to provide non-forfeiture of Related Hours. Effective October 8, 1968.
- (10) Article II, Section 4(b)(3) revised the non-forfeiture rule as to work performed in the classification included in the Collective Bargaining Agreements and the time of written notice to be submitted to the Board of Trustees.
- Approved by the Board of Trustees December 27, 1968 applicable as of June 1, 1960.
- (11) Article II, Section 2(a)(1) revised the Prior Service Credit regulation. Effective June 1, 1960.
- (12) Article III-B, Sections 7(a) and 8. Revised the eligibility and the basis of earning a Pro-Rata Pension.
- Approved by the Board of Trustees April 22, 1969, effective October 8, 1968.
- (13) Article III, Section 2(b), Step 2 revised to reduce the Early Retirement percentage factor from one-half of 1% to one-quarter of 1% for Participants who retire between the ages of 65 and 60.
- Approved by the Board of Trustees January 27, 1970, applicable as of March 1, 1970.
- (14) a. Article II, Section 3 revised to change the basis on which Current Service is earned.
- b. Article II, Section 4(a) revised to liberalize the Forfeiture of Service Credits.
- c. Article II, Sections 4(b)(5)(ii) and (iii) revised to permit exception of Forfeiture of Service Credits where Participant, who at time of application of the break rule had accumulated 20 Service Credits regardless of his age.
- d. Article II, Section 5 revised to liberalize the vesting rules.
- e. Article III, Section 1(a)(1) revised to reduce Normal Retirement to age 64.
- f. Article III, Section 1(b) revised to increase the amount of Normal Pension.
- g. Article III, Section 2(b) Step 2 revised to reduce the Early Retirement percentage factor from one-half of 1% to one-quarter of 1% for Participants who retire between the ages of 60 and 55 effective July 1, 1970.
- h. Article VI, Section 2 revised to increase the death benefit for a Participant who dies after July 1, 1970.
- Approved by the Board of Trustees April 4, 1970, applicable as of July 1, 1970.
- (15) a. Article II, Section 5 revised to delete the filing requirements for vesting.
- Approved by the Board of Trustees July 14, 1970, applicable as of June 1, 1960.
- b. Article V, Section 4 revised to allow Disability Pensioner to accumulate additional Pension Credit upon return to employment under any of the Collective Bargaining Agreements.
- Approved by the Board of Trustees July 14, 1970, applicable as of July 1, 1970.
- (16) Article III, Section 3(a)(1) liberalized requirements for a Disability Pension to ½ of one Pension Credit, or 500 hours under the Plan.
- Approved by the Board of Trustees January 12, 1971, applicable as of November 1, 1970.
- (17) a. Article II, Section 3 revised to change the basis on which Current Service is earned.
- b. Article II, Section 4(b)(5)(ii) revised to permit exception of Forfeiture of Service Credits for a Vested Participant.
- c. Article II, Section 5 revised to liberalize vesting rules.
- d. Article III, Section 1(a)(1) revised to reduce Normal Retirement age to 62.
- e. Article III, Section 1(b) revised to increase the amount of the Normal Pension.
- f. Article III, Section 2(a)(1) revised to reduce Early Retirement age to 52.
- g. Article III, Section 2(b) revised to reflect reduced retirement age.
- h. Article VI, Section 2 revised to increase Death Benefits for a Participant or a Retired Participant who dies after July 1, 1971.
- Approved by the Board of Trustees April 7, 1971, applicable as of January 1, 1971.
- (18) Article VII, Section 5 added to the Plan to establish procedures for determination of disputes.
- Approved by the Board of Trustees April 4, 1972, applicable as of April 4, 1972.
- (19) Article III-C added to the Plan in order to recognize reciprocity arrangements through the International Union of Operating Engineers.
- Approved by the Board of Trustees April 4, 1972, applicable as of April 4, 1972.
- (20) Article I, Section 14 revised the Plan Year period to July 1 of each year through June 30 of the following year.
- Approved by the Board of Trustees June 27, 1972, applicable as of June 1, 1971.
- (21) Article III, Section 1(b) revised to increase the value of each year of Prior Service Credit to \$8.00 and each year of Current Service Credit to \$12.00.
- Approved by the Board of Trustees October 10, 1972, applicable as of September 1, 1972.
- (22) a. Article I, Sections 4 and 5 revised to include Southern California Operating Engineers Benefits Administration, Inc. as an Individual Employer under the Plan, applicable as of September 1, 1971.
- b. Article II, Section 4(a) revised to liberalize Forfeiture of Service Credits, applicable as of July 1, 1972.

- c. Article II, Section 4(b)(5)(ii) revised to permit exception for Forfeiture of Service Credits when the Participant has, at time of application of the break rule, at least 10 Service Credits, applicable as of July 1, 1972.
- d. Article II, Section 5 revised to liberalize vesting rule to accumulation of at least 10 Service Credits, applicable as of July 1, 1972.
- e. Article VI, Section 2 revised to establish minimum Death After Retirement Benefit of \$1,000, applicable as of November 1, 1972.
- Approved by the Board of Trustees October 10, 1972.
- (23) Article III, Section 5 revised to reduce the waiting period for Disability Pension to five (5) months.
- Approved by the Board of Trustees April 10, 1973, applicable as of January 1, 1973.
- (24) Article IV, Section 4 revised to provide that the benefit payable to a beneficiary other than the spouse is incidental to the primary purpose of distribution from the Plan to the Participant.
- Approved by the Board of Trustees July 10, 1973, applicable as of July 1, 1973.
- (25) a. Article II, Section 4(c) revised to liberalize the Forfeiture of Service Credit.
- b. Article II, Section 4(b)(3) revised to permit exception to rule of Forfeiture of Service Credit for periods of recognized work for a governmental or public agency.
- c. Article II, Section 4(b)(5) revised to permit exception to rule of Forfeiture of Service Credit when the Participant has worked at least 3,000 hours for which contributions have been made to the Plan.
- d. Article II, Section 5 revised to liberalize vesting rule to accumulation of at least three (3) Pension Credits or 3,000 hours of work for which contributions have been made to this Plan before a break in employment.
- e. Article II, Sections 1(a) and 2(a) are revised to require at least three (3) Pension Credits or 3,000 hours of work for which contributions have been made to this Plan as an eligibility requirement for a Normal Retirement or an Early Retirement.
- f. Article II, Sections 1(c), 2(c) and 3(c) are added to provide a Lump-Sum Benefit at Retirement.
- g. Article II, Section 3(a) revised to provide a Disability Pension for eligible Participants who are not entitled to a Normal Pension under the Plan.
- h. Article III-A, Section 7(a)2 and Article III-B, Section 7(a)2 are deleted. Article III-A, Section 7(b) and Article II-B, Section 7(b) are revised to describe the application of the break in employment rule for work in a Related Plan.
- i. Article IV, Section 3 revised to increase the guarantee period of benefits to Retired Participants and provide a guarantee period of benefits to the spouse or beneficiary of the Participant who dies before a pension is payable to him.
- k. Article IV, Section 5 revised to provide an increase in the guarantee period.
- l. Article VI, Section 2 revised to provide a Standard Benefit and an Optional Lump-sum Benefit as a result of death of a Participant or Retired Participant.
- m. Article VI, Section 4 expanded to provide a successor in benefits if there is no Designated Beneficiary.
- Approved by the Board of Trustees July 10, 1973, applicable as of July 1, 1973.
- (26) a. Article II, Section 3 revised to change the basis on which Current Service is earned.
- b. Article III, Section 1(b) revised to increase the value of each year of Current Service Credit of \$15.50.
- Approved by the Board of Trustees July 10, 1973, applicable as of July 1, 1973.
- (27) a. Article II, Sections 1(c), 2(c) and 3(c) revised to provide a Lump-Sum Benefit at Retirement for Retired Participants who retired prior to July 1, 1972.
- b. Article VI, Section 2(a) revised to apply the Standard Benefit on Death of all Retired Participants.
- Approved by the Board of Trustees October 11, 1973, applicable as of July 1, 1973.
- (28) a. Article I, Sections 4, 5 and 6 revised to include the Employers and Signatory Associations.
- b. Article III, Section 4(a) revised to include a Participant whose normal position is not covered by a Collective Bargaining Agreement.
- c. Article V, Sections 1, 2 and 3 revised to prohibit employment of the nature covered by a Collective Bargaining Agreement regardless of the location and whether or not such employment is covered by a Collective Bargaining Agreement.
- Approved by the Board of Trustees April 16, 1974, applicable as of July 1, 1974.
- (29) a. Article VI, Section 2(a) Standard Benefit for Retired Participants who retired prior to July 1, 1972.
- b. Article VI, Section 4(d) added to provide payment to a successor if designated beneficiary dies before receiving all benefits to be paid.
- Approved by the Board of Trustees February 12, 1974, applicable as of July 1, 1973.
- (30) Article III, Section 3(a)(1) revised to provide a Disability Pension only to eligible Participants who are not yet 62.
- Approved by the Board of Trustees July 30, 1974, applicable as of July 1, 1974.
- (31) Article III, Sections 1(c), 2(c) and 3(c) revised to reduce the Lump-Sum Benefit by the amount of benefit received at any previous commencement of retirement.
- Approved by the Board of Trustees July 30, 1974, applicable as of July 1, 1973.
- (32) a. Article II, Section 4(b)(5) added to provide waiver of break-in-service rule where failure of a Participant to earn Pension Credit is due to employment for an employer who is signatory to a Collective Bargaining Agreement not requiring contributions to this Fund.
- b. Article II, Section 4(b)(6) added to provide waiver of break-in-service rule where failure of Participant to earn Pension Credit is due to employment by an Employer outside of the United States of America.
- Approved by the Board of Trustees June 24, 1975, applicable as of July 1, 1975.

(33) a. Old Article II, Section 4(b)(5) deleted. Article II, Section 4(a) revised to change the break in service rules.

b. Article II, Section 5 revised to change the vesting rule to at least ten (10) Pension Credits or 10,000 hours under this Plan or Participant meets age and service requirements for a Normal or Early Retirement.

Approved by the Board of Trustees April 29, 1975, applicable as of July 1, 1972.

c. Article VII, Section 5 revised to change Determination of Disputes procedure.

Approved by the Board of Trustees April 29, 1975, applicable as of January 1, 1975.

d. Article II, Section 1(b) revised to increase the amount of the Normal Pension.

e. Article III, Section 3(b) revised to change the basis on which the amount of the Disability Pension is determined.

f. Article III, Section 5 revised to reduce the waiting period for a Disability Pension to four (4) months.

g. Article VI, Section 1 revised to exclude Retired Participants from conditions of payment of benefit.

h. Article VI, Section 2(a) revised to apply the Standard Death Benefit only to active Participants and modify the benefit amount payable for a Participant who dies after July 1, 1975.

i. Article VI, Section 2(b) revised to exclude the 36 monthly pension payments in the case of a Retired Participant.

Approved by the Board of Trustees April 29, 1975, applicable as of July 1, 1975.

(34) Article VIII, Section 1 revised to change the authority of the Board of Trustees to amend the Plan.

Approved by the Board of Trustees April 29, 1975, applicable as of July 1, 1975.

(35) a. Article II, Section 4(a) revised to change the general rule for Forfeiture of Service Credits.

b. Article II, Section 5 revised to change vesting rules from ten (10) Pension Credits and 10,000 hours under the Plan to eight (8) Pension Credits and 8,000 hours under this Plan, or Participant meets age and service requirements for a Normal or Early Retirement.

Approved by the Board of Trustees September 9, 1975, applicable as of July 1, 1972.

(36) a. Article II, Section 4(a) revised to change the general rule for Forfeiture of Service Credits.

b. Article II, Section 5 revised to change vesting rules from eight (8) Pension Credits or 8,000 hours under the Plan to 3,000 hours under this Plan.

Approved by the Board of Trustees October 28, 1975, applicable as of July 1, 1972.

(37) Article III, Section 3(b) revised to change method of determining the amount of Disability Pension.

Approved by the Board of Trustees October 28, 1975, applicable as of November 1, 1975.

(38) Article II, Section 3 revised to change the basis on which Current Service is earned.

Approved by the Board of Trustees October 28, 1975, applicable as of July 1, 1975.

(39) Article III, Sections 1(c), 2(c) and 3(c) amended to include options for payments of Retirement Lump Sum. Approved by the Board of Trustees February 24, 1976, applicable as of February 1, 1976.

(40) a. Article II, Section 4(b)(1) amended to delete employment in a supervisory capacity as an exception to forfeiture of Service Credit.

b. Article II, Section 4(b)(4) amended to delete employment by an affiliated labor organization as an exception to forfeiture of Service Credit.

Approved by the Board of Trustees April 27, 1976, applicable as of July 1, 1976.

(41) a. Article I, Section 19 added to provide a definition of "Normal Retirement Age."

b. References throughout the Plan to the term "Normal Retirement" and "Normal Pension" were changed to "Regular Retirement" and "Regular Pension."

c. Article II, Section 4(b) deleted to remove certain grounds upon which a forfeiture of service could be waived.

d. Article IV, Section 3 amended to provide that the Ten Year Guarantee did not apply if the Participant elected to receive benefits in the form of a Husband-and-Wife Pension.

e. Article IV, Section 4 amended deleting the Contingent Annuitant form of pension and substituting in its place, the Husband-and-Wife form of Pension.

f. Article V, Section 1 amended to liberalize the requirement for withdrawal from employment as a condition to receiving pension benefits with respect to any person who has reached Normal Retirement Age.

Approved by the Board of Trustees August 12, 1976, applicable as of July 1, 1976.

(42) a. Article III, Section 3(d) revised to change the method of determining the amount of Disability Pension.

b. Article III, Section 2 amended to allow Retired Participants (Early) to return to covered employment and earn additional Pension Credits at one-half the rate of Participants who have not retired.

c. Article V, Section 4 amended to conform its provisions to the provisions allowing Retired Participants to earn additional Pension Credits by returning to covered employment.

Approved by the Board of Trustees February 1, 1977, applicable July 1, 1976 (in part) and January 17, 1977 (in part).

(43) a. Article I, Section 4 amended to clarify the definition of "Individual Employer" with regard to a controlled group of corporations and a trade or business under common control.

b. Article I, Section 20 added to provide a definition of "ERISA."

c. Article I, Section 21 added to provide a definition of "Spouse."

d. Article IV, Section 1 amended to add provisions for commencement of pension benefits.

- e. Article IV, Section 3 amended to allow the surviving spouse of a Participant who dies prior to retirement, ninety days after written notice to elect this form of death benefit rather than the Husband-and-Wife Pension form of benefit.
- f. Article IV, Section 4 amended to revise the Husband-and-Wife Pension.
- g. Article IV, Section 5 amended to provide that the Social Security (Level Income) Option is not payable if payments were due under the Husband-and-Wife Pension.
- h. Article V, Section 7 added providing that the Trustees are the sole judges of the standard of proof required in any case and the interpretation of the Plan and that their decisions shall be final and binding.
- i. Article V, Section 8 added providing that no Retired Participant is entitled to more than one type of pension at any one time.
- j. Article V, Section 9 added providing the payment of a lump-sum amount at the Trustees' discretion if the actuarial value of a pension is less than \$1,750.
- k. Article V, Section 10 added providing maximum limitations on the amount of pension benefits.
- l. Article V, Section 11 added regarding non-forfeitability of benefits.
- m. Article VII, Section 6 added to proscribe any reversion of Plan Assets to an Individual Employer, except within the limits prescribed by law.
- n. Article VII, Section 7 added regarding gender and number.
- o. Article VII, Section 8 added providing that successor companies will be regarded as the same as the original company participating in the Plan.
- p. Article VI, Section 2 amended to remove the lump-sum total distribution form of death benefits previously available.

Approved by the Board of Trustees May 4, 1977, applicable as of July 1, 1976 (in part) and March 1, 1977, (in part).

- (44) a. Article I, Section 4 amended to include as "Individual Employers," the Operating Engineers Training Trust, the Southern Nevada Operating Engineers Journeyman and Apprentice Training Trust and the Apprentice and Journeyman Training Trust Fund of the Civil Engineering and Land Surveying Industry of California.
 - b. Article I, Section 5 amended to include as "Employees," all employees of the Individual Employers specified in (a) above.
- Approved by the Board of Trustees February 21, 1978, applicable as of January 11, 1966.
- c. Article VI, Section 4 amended to allow reinstatement of benefits forfeited under that Section if a valid claim is made by an eligible beneficiary within 7 years of the Participant's or Retired Participant's death, unless such reinstatement would cause funds to escheat to the State.
 - d. Article IX amended to provide the procedure for allocation of assets on partial termination of the Plan.

Approved by the Board of Trustees February 21, 1978, applicable as of July 1, 1966.

- e. Article III, Sections 1(c), 2(c) and 3(c) amended by changing reference therein from "Article VI, Section 2(a)" to "Article VI, Section 2."

Approved by the Board of Trustees February 21, 1978, applicable as of March 1, 1977.

- f. Article VII, Section 2 amended by changing the words, "hypothecating" and "hypothecation" to "mortgaging" and "mortgage," respectively.

Approved by the Board of Trustees on February 21, 1978, applicable as of March 1, 1978.

- (45) a. Article III, Section 5 amended changing the requirements for vesting to 6 Pension Credits or 6,000 hours for which contributions have been made to the Plan, for those Participants who did not have at least 3 Pension Credits or 3,000 hours for which contributions have been made to this Plan, on or before June 30, 1978.
- b. Article III, Sections 1(a)(2) and 2(a)(2) amended to require 6 Pension Credits or 6,000 hours for which contributions are made to the Plan for eligibility for a Regular or Early Pension, for Participants who did not have, on or before June 30, 1978, at least 3 Pension Credits or 3,000 hours for which contributions were made to the Plan.
- c. Article III, Section 3(a)(2) amended to require 6 Pension Credits or 6,000 hours for which contributions are made to the Plan, for eligibility for a Disability Pension, for those Participants who did not have, on or before June 30, 1978, at least ½ Pension Credit or 500 hours for which contributions were made to the Plan.
- d. Article II, Section 3 amended to change the basis on which Current Service is earned.

Approved by the Board of Trustees August 2, 1978, applicable as of July 1, 1978.

- e. Article III, Section 1(b) amended to increase the amount of Regular Pension.

Approved by the Board of Trustees August 2, 1978, applicable as of December 1, 1978.

- (46) Article III, Sections 1(c), 2(c) and 3(c) and Article IV, Section 4(f) and Article VI, Sections 1 and 2 amended to provide that if payments are due under the Husband-and-Wife Pension, the actuarial equivalent of any lump sum benefits otherwise payable by the Plan will be included in the monthly amount of the Husband-and-Wife Pension payable.

Approved by the Board of Trustees on, applicable as of

- (47) Article II, Section 4(b) is renumbered as Section 4(c) and a new Section 4(b) is added to allow grace periods for disability and military service.

Approved by the Board of Trustees on applicable as of July 1, 1976.

- (48) a. Article I, Section 6 amended to name as employer associations the Engineering Contractors Association, the Southern California Contractors Association and to delete the Las Vegas Builders Exchange and the Southern Nevada Homebuilders, Inc.

Approved by the Board of Trustees on April 18, 1979, applicable as of January 1, 1979.

- b. Article II, Section 4 restated in its entirety to provide a "one-for-one" break in employment rule for non-vested participants. (ERISA 1974).

Approved by the Board of Trustees on April 18, 1979, effective July 1, 1976.

- c. The title of Articles II-A and III-B were amended to include the description of the reciprocity agreement to which they apply.
- d. Article III-C restated in its entirety to conform this Pension Plan with the revised International Union Reciprocity Agreement.

Approved by the Board of Trustees on April 18, 1979, effective July 1, 1979.

- e. Article V, Section 1 amended to clarify the definition of retirement after normal retirement age.

Approved by the Board of Trustees on April 18, 1979, effective July 1, 1976.

- (49) Article III, Section 1(b) amended to restrict reciprocal pension benefits.

Approved by the Board of Trustees June 28, 1979. Applicable as of July 1, 1979.

- (50) Article III, Section 1(b) amended to increase the amount of a Regular Pension.

Approved by the Board of Trustees June 28, 1979. Effective July 1, 1979.

- (51) A. Article II, Section 5 restated vesting provisions.

- B. Article II, New Section 6 added to define separation from employment.

- C. Article III, Section 1(b) restated amount of Regular Pension determination.

Approved by the Board of Trustees February 26, 1980. Effective July 1, 1976.

- D. Article II, Section 5 amended vesting requirements.

Approved by the Board of Trustees February 26, 1980. Effective July 1, 1978.

- E. Article II, Section 3 amended to add new subsection (j) revising Master Contribution Rate.

Approved by the Board of Trustees February 26, 1980. Effective July 1, 1979.

- (52) A. Article III, Section 7 renumbered Section 8. New Section 7 added to add Service Pension.

- B. Article IV, Section 4(f) amended to include actuarial equivalent of Lump Sum at Retirement in the Husband-and-Wife Pension.

- C. Article IV, Section J restated to include Service Pension.

Approved by the Board of Trustees August 6, 1980. Effective January 1, 1980.

- D. Article II, Section 4 amended to restate break in employment and forfeiture of Service Credit Rules.

- E. Article II, Section 5(c) is restated and new subsections (d) and (e) added to increase vesting requirement to 10,000 hours.

Approved by the Board of Trustees August 6, 1980. Effective July 1, 1980.

- (53) Article II, Section 5 restated to amend vesting rules.

Approved by the Board of Trustees April 23, 1980. Effective July 1, 1978.

- (54) A. Article II, Section 3 amended to add new subsection (k) revising Master Contribution Rate.

Approved by the Board of Trustees. Effective July 1, 1980.

- B. Article II, Section 3 amended to add new subsection (l) revising Master Contribution Rate.

- C. Article III, Section 1(b) amended to increase the amount of a Regular Pension.

Approved by the Board of Trustees. Effective January 1, 1981.

- (55) Article XII added to the Plan to provide withdrawal liability arbitration and procedures.

Approved by the Board of Trustees, January 28, 1981, applicable as of April 28, 1980.

AMENDMENT TO
AGREEMENT ESTABLISHING THE
OPERATING ENGINEERS PENSION TRUST

THIS AMENDMENT is made and entered into in the State of California this 8th day of October, 1997, by and between the Employers and the Union party to that certain Agreement Establishing the Operating Engineers Pension Trust made and entered into on December 13, 1960, as amended (hereinafter called "Trust Agreement").

The Trust Agreement is hereby amended further by the Employers and the Union as follows:

1. The names of the Employers who are party to the Trust Agreement are amended by adding the name "Nevada Contractors Association."

2. Article I, Section 14, of the Trust Agreement is amended by adding the name of "Nevada Contractors Association" as a Trustor to this Trust Agreement.

3. Article IV, Section 1(a), of the Trust Agreement is amended and restated in its entirety to read as follows:

"Section 1. (a) The Fund shall be administered by a Board of Trustees which shall consist of sixteen (16) Trustees. Eight (8) Trustees shall be appointed by the Union (known as Union Trustees) and eight (8) Trustees shall be appointed by the Employers (known as Employer Trustees)."

4. Article IV, Section 2(b)(4), is added to the Trust Agreement to read as follows:

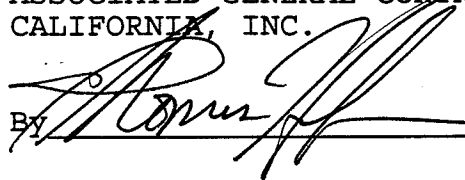
"(4) One Trustee shall be appointed by Nevada Contractors Association."

This Amendment shall become effective when duly executed by the Union and by a majority of the Employers.

EXECUTED on the day and year first above written.

EMPLOYERS:

ASSOCIATED GENERAL CONTRACTORS OF CALIFORNIA, INC.

By  10/8/97

BUILDING INDUSTRY ASSOCIATION OF CALIFORNIA, INC.

By _____

ENGINEERING CONTRACTORS' ASSOCIATION, INC.

By _____

SOUTHERN CALIFORNIA CONTRACTORS ASSOCIATION, INC.

By _____

ASSOCIATED GENERAL CONTRACTORS OF AMERICA, SAN DIEGO CHAPTER, INC.

By _____

4. Article IV, Section 2(b)(4), is added to the Trust Agreement to read as follows:

"(4) One Trustee shall be appointed by Nevada Contractors Association."

This Amendment shall become effective when duly executed by the Union and by a majority of the Employers.

EXECUTED on the day and year first above written.

EMPLOYERS:

ASSOCIATED GENERAL CONTRACTORS OF CALIFORNIA, INC.

By _____

BUILDING INDUSTRY ASSOCIATION OF *SOUTHERN* CALIFORNIA, INC.

By *Paula Dehn*

ENGINEERING CONTRACTORS' ASSOCIATION, INC.

By _____

SOUTHERN CALIFORNIA CONTRACTORS ASSOCIATION, INC.

By _____

ASSOCIATED GENERAL CONTRACTORS OF AMERICA, SAN DIEGO CHAPTER, INC.

By _____

4. Article IV, Section 2(b)(4), is added to the Trust Agreement to read as follows:

"(4) One Trustee shall be appointed by Nevada Contractors Association."

This Amendment shall become effective when duly executed by the Union and by a majority of the Employers.

EXECUTED on the day and year first above written.

EMPLOYERS:


ASSOCIATED GENERAL CONTRACTORS OF CALIFORNIA, INC.

By _____

BUILDING INDUSTRY ASSOCIATION OF CALIFORNIA, INC.

By _____

ENGINEERING CONTRACTORS' ASSOCIATION, INC.

By  (John J. Simpson Acting Exec. Dir.)

SOUTHERN CALIFORNIA CONTRACTORS ASSOCIATION, INC.

By _____

ASSOCIATED GENERAL CONTRACTORS OF AMERICA, SAN DIEGO CHAPTER, INC.

By _____

4. Article IV, Section 2(b)(4), is added to the Trust Agreement to read as follows:

"(4) One Trustee shall be appointed by Nevada Contractors Association."

This Amendment shall become effective when duly executed by the Union and by a majority of the Employers.

EXECUTED on the day and year first above written.

EMPLOYERS:

ASSOCIATED GENERAL CONTRACTORS OF CALIFORNIA, INC.

By _____

BUILDING INDUSTRY ASSOCIATION OF CALIFORNIA, INC.

By _____

ENGINEERING CONTRACTORS' ASSOCIATION, INC.

By _____

SOUTHERN CALIFORNIA CONTRACTORS ASSOCIATION, INC.

By *Jack R. [Signature]*

ASSOCIATED GENERAL CONTRACTORS OF AMERICA, SAN DIEGO CHAPTER, INC.

By _____

BUILDING INDUSTRY ASSOCIATION
OF SAN DIEGO COUNTY

By _____

ENGINEERING AND GENERAL CONTRACTORS
ASSOCIATION

By _____

NEVADA CHAPTER, ASSOCIATED GENERAL
CONTRACTORS OF AMERICA, INC.

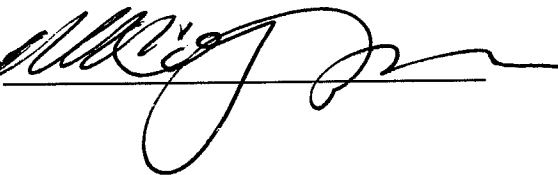
By _____

NEVADA CONTRACTORS ASSOCIATION

By _____

UNION:

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL UNION NO. 12

By  _____