

# OE3 Trust Funds

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## HAWAII ANNUITY TRUST FUND FOR OPERATING ENGINEERS

### SUMMARY PLAN DESCRIPTION

and  
Rules and Regulations of the  
Hawaii Annuity Trust Fund  
for Operating Engineers

2011

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FOR  
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for Operating Engineers

**2011 Edition**

# HAWAII ANNUITY TRUST FUND FOR OPERATING ENGINEERS

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FOR OPERATING ENGINEERS**

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April 2011

TO: ALL PARTICIPANTS AND BENEFICIARIES:

We are pleased to provide you with this summary describing the provisions of the Annuity Plan of the Hawaii Annuity Trust Fund for Operating Engineers.

The Annuity Plan provides an additional measure of financial security and flexibility for you upon retirement. We encourage you to read this booklet carefully and share it with your family since they may also have an interest in the Annuity Plan. We also suggest that you keep this booklet for future reference and let your family know where it is being kept. Please remember to keep the Fund Office informed of any changes in your address to ensure that you receive all communications and updates to the Plan. In addition to retirement benefits, this Annuity Trust Fund also provides benefits upon death, disability or termination of service.

The QUESTIONS AND ANSWERS which follow are only intended to highlight some of the features of the Annuity Trust Fund and its Annuity Plan in effect as of April 2011. In all cases, the actual Annuity Plan document (Rules and Regulations) governs every aspect of participation, eligibility, benefit payments and, in general, the administration of the Annuity Trust Fund. The complete text of the Annuity Plan appears in the second half of this booklet.

Only the Board of Trustees has full discretion and authority to interpret the Rules and Regulations, and to decide any factual questions regarding the nature and extent of, as well as eligibility for benefits provided by the Annuity Trust Fund.

If you have any questions about the Annuity Plan or desire any additional information, please contact the Fund Office or the Hawaii Fringe Benefits Office.

Sincerely,

BOARD OF TRUSTEES

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# **HAWAII ANNUITY TRUST FUND FOR OPERATING ENGINEERS**

This explanation of the Annuity Plan is no more than a brief and very general statement of the most important provisions of the Annuity Plan. No general statement such as this can adequately reflect all of the details of the Annuity Plan. Nothing in this statement is meant to interpret or extend or change in any way the provisions expressed in the Annuity Plan itself.

An Employee or Participant's rights can only be determined by consulting the actual text of the Annuity Plan which appears in the last part of this booklet.

Only the full Board of Trustees is authorized to interpret the Annuity Plan described in this booklet. Only answers given by the Board of Trustees are official, and then only if you have furnished full and accurate information concerning your situation. To be official, information or opinions concerning your rights under the Annuity Trust Fund must be communicated to you in writing, and signed on behalf of the full Board of Trustees. No Union or Employer, nor any representative of any Union or Employer, is authorized to interpret the Annuity Plan on behalf of the Board—nor can such person act as an agent of the Board of Trustees.

## **SUMMARY PLAN DESCRIPTION**

## I. TYPE OF PLAN

### **A. What type of plan is the Annuity Plan of the Hawaii Annuity Trust Fund for Operating Engineers?**

(Refer to Section 1.18, page 37)

The Annuity Plan is a money purchase defined contribution retirement plan designed to provide its Participants with benefits at retirement. It is qualified under Internal Revenue Code § 401(a). Benefits are based upon the dollar balance in Individual Accounts maintained by the Fund on behalf of Participants. Under rules governing this type of plan, the Annuity Plan is not permitted to provide in-service distributions, such as withdrawals based on financial hardship. However, as of the printing of this booklet, it does have a temporary loan program in place that is set to expire for new loans on September 30, 2011.

## II. PARTICIPATION

### A. **How do I know if I am a Participant in the Annuity Trust Fund?**

*(Refer to Sections 1.08, 1.17 and 2.09, pages 36, 37 and 41)*

In general, if you are an Employee working for an Employer under a Collective Bargaining Agreement with the Operating Engineers Union Local No. 3 of the International Union of Operating Engineers, (the “Union”) or any successor labor organization with the approval of the Union, and such agreement requires Contributions to be made to this Annuity Trust Fund with respect to your work, you are a Participant in the Annuity Trust Fund.

If you are a Participant, you will receive a statement from the Fund Office at least once every year showing the actual Employer Contributions required to be made on your behalf in the previous fiscal year and the value of your Individual Account.

### B. **What is an Individual Employer?**

*(Refer to Section 1.13, page 37)*

The term “Individual Employer” means any person or entity, who is required by a Collective Bargaining Agreement to make payments to the Fund or who does in fact make one or more payments to the Fund. Note that an employer may not be considered an Individual Employer under the Fund simply because it is part of a controlled group of corporations or of a trade or business under common control, or some other part of which is considered an Individual Employer.

### III. INDIVIDUAL ACCOUNTS

**A. What is an Individual Account?**

*(Refer to Sections 1.12 and 2.01, pages 37 and 38)*

The term “Individual Account” describes the account established in your name to receive Contributions made by your Employers on your behalf. Your Individual Account is set up as of the first Valuation Date on which you become a Participant in the Annuity Trust Fund.

**B. What is an Accumulated Share?**

*(Refer to Sections 1.02 and 3.01, pages 35 and 41)*

Your “Accumulated Share” is the dollar balance in your Individual Account.

**C. What determines the value of the Accumulated Share in my Individual Account at any time?**

*(Refer to Article 2 and Section 3.01, pages 38 and 41)*

First, of course, is the amount of Contributions (including any voluntary contributions – see page 12) that are required to be made on your behalf by your Employer. This money, along with Contributions in all other Individual Accounts, is invested under policies established by the Board of Trustees of the Annuity Trust Fund. Accordingly, any interest or dividends received is added to Contributions; changes in the value of investments also result in increases or decreases in the value of each Individual Account. From this accumulation is deducted a uniform share of the expenses for operating the Annuity Trust Fund. All of these things taken together determine the value of your Accumulated Share in your Individual Account at any Valuation Date.

**D. What is the Valuation Date?**

*(Refer to Section 1.24, page 38)*

The Annuity Trust Fund’s Fiscal Year runs from November 1 through October 31. The value of each Individual Account is fixed on January 31, April 30, July 31 and October 31. These are known as Valuation Dates. These dates are selected as Valuation Dates because they fall on the last business day of each quarter following the beginning of the Trust Fund’s fiscal year. The value is fixed as of these dates by combining the following factors to determine the value of your account: prior balance (if any) on the previous Valuation Date, Contributions received during the quarter, adjustment for any outstanding loans, your share of the investment income and expenses of operating the Annuity Trust Fund for that quarter.

Every year following the October 31 close of the fourth quarter, you will receive a statement concerning the status of your Individual Account by showing you Contributions, expenses and investment yields as of the close of the October 31 Valuation Date. *(Refer to Section 2.09, page 41)*

**E. What should I do if the statement does not show Contributions from an Employer for whom I have worked during the year?**

If you believe that one of your Employers has not made the required Contributions on your behalf, you should notify the Fund Office. You should also keep in mind that the statement sent to you each year contains only the Contributions received by the Fund Office on your behalf, by October 31 of that year. It may not include all Contributions if your Employer's report is late. These late Contributions are not lost but will be included in the statement you will receive the following year.

Late Employer reports are kept to a minimum by the Fund's Collection Department and every effort is made to have your Individual Account annual statement up to date. However, it is important that you give prompt written notice to the Fund Office of any discrepancy in amounts that should be contributed to your Individual Account. This will make it easier for your Individual Account to be properly credited and for the Annuity Trust Fund to collect any delinquent Contributions.

**F. Will Contributions be made on my behalf for periods of military service?**

*(Refer to Section 1.19, page 37)*

If you serve in the uniformed services of the United States and are subsequently re-employed by an Employer, you may qualify for Contributions to be made to the Annuity Plan for such period(s) under the Uniformed Services Employment and Reemployment Rights Act of 1994 or "USERRA." In order to qualify for the contributions you must satisfy the following requirements:

- Worked for an Employer when your military service began.
- Be discharged from the military service under honorable conditions.
- Satisfy USERRA's advance notice requirement (to your Employer) prior to your period of military service.
- Remain in military service for no more than five years, except as otherwise specified by USERRA.
- Apply for reemployment within the time frame specified by USERRA, as shown in the chart below:

<b>Length of Military Service</b>	<b>Reemployment Deadline</b>
Less than 31 days	Within 1 day after discharge (plus 8 hours for travel)
31 through 180 days	Within 14 days after discharge
181 days or more	Within 90 days after discharge

Contributions payable on your behalf will be based on your average hours of work during the 12-month period immediately preceding the military service or, if shorter, the period of

employment immediately preceding the military service. Contributions credited to Individual Accounts for periods of qualified military service are treated as an expense of the Annuity Plan.

**G. Am I allowed to direct the investment of monies in my Individual Account?**

No. The Board of Trustees hires an investment consultant and individual investment managers to invest the Annuity Trust Fund assets on behalf of all Participants.

**► IMPORTANT ◀**

The fact that Individual Accounts are established and valued as of each Valuation Date shall not give you or others any right, title or interest in the Fund or its assets, or in the Individual Account, except at the time or times and upon the terms and conditions provided in the Annuity Trust Fund. Subject to such terms, your right to the value of the assets in your Individual Account is non-forfeitable from the time that such Individual Account is established.

## IV. PAYMENT OF BENEFITS

### A. When can I receive the money in my Individual Account?

*(Refer to Section 3.02, page 42)*

You may receive the money in your Account (“Accumulated Share” or “Individual Account balance”) at any of the following times:

#### ➤ AT RETIREMENT

You are considered Retired and entitled to receive payment of your Accumulated Share if you have attained the age of 62 and no Contributions have been made or have been required to be made to your Individual Account for at least three consecutive months.. You are also considered Retired, if you are receiving a pension from the Pension Trust Fund for Operating Engineers,

#### ➤ WHEN YOU LEAVE THE INDUSTRY

You are considered to have “left the industry” and entitled to receive payment of your Accumulated Share under the circumstances described below.

You have attained age 55 and your most recent employment was with an Employer that contributed only to this Trust Fund and you have withdrawn completely from any employment in the building and construction industry..

or

#### ➤ REGARDLESS OF YOUR AGE:

- You have been employed less than 300 hours in work in the building and construction industry in a 24-consecutive-month period, or
- You cease to be employed in work or a work classification covered by a Collective Bargaining Agreement with a Contributing Employer or
- Your Employer is no longer obligated to pay contributions on your behalf to the Annuity Fund.

#### ➤ WHEN YOUR EMPLOYMENT CEASES AND YOU COMMENCE WORKING WITH ANOTHER EMPLOYER WITHIN THE JURISDICTION OF THE OPERATING ENGINEERS ANNUITY PLAN

If you cease your employment with an Employer in the jurisdiction of the Hawaii Annuity Trust Fund for Operating Engineers and within six months commence employment with an employer in the jurisdiction of the Operating Engineers Annuity Plan, you may receive payment of your Individual Account in the form of a rollover distribution to the Operating Engineers Annuity Plan or any other qualified retirement plan.

In order to qualify for a rollover distribution under these rules, you (1) must not have already requested and received payment of your Individual Account as a rollover, and (2) there must have been Contributions made or required to be made to the Hawaii Trust Fund for Operating Engineers on your behalf within the six-consecutive month period preceding the date of your application for the rollover distribution.

➤ **IF YOU ARE ON TEMPORARY ASSIGNMENT UNDER THE JURISDICTION OF THE HAWAII ANNUITY TRUST FUND FOR OPERATING ENGINEERS**

If normally you do **not** reside within the jurisdiction of the Hawaii Annuity Trust Fund for Operating Engineers, but have traveled to the area for the sole purpose of working for a Contributing Employer in the jurisdiction of the Annuity Trust Fund on a **temporary assignment** for a specified period of time, you may, upon request, receive the money in your Individual Account following completion of such employment, provided:

- You have not previously received payment of your Individual Account under this temporary assignment provision; and
- The Contributions required to be made with respect to your work have been received by the Trust Fund within the six-month period prior to your request; and
- You can provide proof, as required by the Board of Trustees, that the temporary assignment has been completed and you have no expectation of residing or obtaining additional work for Contributing Employers in the jurisdiction of the Hawaii Annuity Trust Fund for Operating Engineers.

➤ **IF YOU ARE UNEMPLOYED**

If you are unemployed and eligible to receive unemployment benefits from the State of Hawaii or another state in the United States of America, you may apply for the money in your Individual Account after you cease to be entitled to receive the Unemployment Benefits.

**Exception:** You may be eligible to apply for the money in your Individual Account once you cease to be entitled to receive the combination of unemployment and temporary disability benefits from the State of Hawaii. You must have been receiving unemployment benefits from the State of Hawaii and then became disabled and began receiving temporary disability benefits from the State of Hawaii in lieu of those unemployment benefits. You must also be able to show that your entitlement to the unemployment and temporary disability benefits from the State of Hawaii was continuous.

➤ **IF YOU ARE TOTALLY AND PERMANENTLY DISABLED AND ENTITLED TO A SOCIAL SECURITY DISABILITY BENEFIT**

Regardless of your age, if you are totally and permanently disabled and entitled to a Social Security Disability Benefit, you may apply for the money in your Individual Account.



➤ IF YOU DIE

If you die after you become eligible for benefits but prior to distribution of your Individual Account, the money in your Individual Account will be paid to your surviving spouse or designated Beneficiary (if applicable) in one of the payment forms described on page 9. (The procedures for designating a Beneficiary are summarized on page 13.)

**B. If I satisfy one of the requirements above, do I have to withdraw my Accumulated Share or can I leave my money in my Individual Account?**

*(Refer to Subsection 4.01.(C), page 50)*

You do not have to withdraw your Accumulated Share immediately. Until withdrawn, the monies in your Individual Account will continue to receive its share of changes in the Fund's investments and be assessed its share of Fund expenses. However, you **cannot** postpone commencement of your benefits to a date later than your Required Beginning Date.

If you are not a 5% owner, your Required Beginning Date is your choice of either (1) the April 1<sup>st</sup> following the calendar year in which you attain age 70½ or, if later, (2) the April 1<sup>st</sup> following the calendar year in which you retire.

Please note that the failure to withdraw your Accumulated Share by your Required Beginning Date not only violates the Plan rules, but may expose you to significant federal tax penalties. Therefore, it is important that you contact the Trust Fund Office in advance of your Required Beginning Date so that you will receive a distribution on a timely basis.

► **IMPORTANT** ◀

You should keep the Trust Fund Office informed of any changes in your mailing address to make sure you receive all communications. The Hawaii Fringe Benefits Office is located at 1075 Opakapaka Street, Kapolei, Hawaii 96707. The telephone number is (800) 660-9126 Outer Islands.

**C. What is the exact amount of money I will get when I am eligible for benefits?**

*(Refer to Article 2 and Section 3.01, pages 38 and 41)*

Due to the fluctuation in the amount of yield on investments, the exact amount you will receive in the future when you are eligible for benefits cannot be determined now. Here is how the amount you will receive will be calculated:

- The sum of all the Contributions required to be made on your behalf, **plus**
- All actual investment earnings credited to your Individual Account, **plus or minus**
- Changes in the value of the Annuity Trust Fund's investments, **minus**
- Your share of the expenses of operating the Annuity Trust Fund.

Terminations that take place between October 31 Valuation Dates will earn interest for the current Fiscal Year based on the Passbook Savings and Loan Rate in effect for the Fund's Corporate Co-trustee as of the preceding November 1.

A statement will be sent to you annually showing you what has happened in your Individual Account in terms of Contributions, expenses and investment yields.

**D. How will my Individual Account balance be paid out?**

*(Refer to Section 3.03, page 44)*

When you qualify for a payment, you may receive your Individual Account balance in one of the forms described below. If your Individual Account balance is \$5,000 or less, it will automatically be paid in a lump sum. *(Refer to Section 3.04, page 46)*

If you are a single Participant, and your Individual Account is greater than \$5,000, the normal form of payment (unless otherwise specified) is the Life Annuity. If you are a married Participant, and your Individual Account is greater than \$5,000, the normal form of payment is the Qualified Joint and Survivor Annuity subject to the terms described later in this section.

- **LIFE ANNUITY**—An annuity purchased from an insurance company with your Accumulated Share providing payments for the duration of your life. Following your death, no further benefits are payable.
- **LUMP SUM**—A single payment equal to the value of your Accumulated Share.

In lieu of a lump sum payment, you may elect to rollover your distribution into an individual retirement account or other tax exempt retirement plan (see "TAXES" on page 20.)

- **QUALIFIED JOINT AND SURVIVOR ANNUITY**—An annuity purchased from an insurance company with your Accumulated Share, providing a fixed monthly amount for your lifetime. After your death, your spouse will receive a lifetime monthly benefit of **50%** of the amount you were receiving. The amount you receive at retirement will be reduced to take into account your expected life span as well as that of your spouse. Once your payments start, the amount will not be increased if your spouse predeceases you, or if you and your spouse are later divorced.
- **QUALIFIED OPTIONAL SURVIVOR ANNUITY** — An annuity purchased from an insurance company with your Accumulated Share, providing a fixed monthly amount for your lifetime. After your death, your spouse will receive a lifetime monthly benefit of **75%** of the amount you were receiving. The amount you receive at retirement will be reduced to take into account your expected life span as well as that of your spouse. Once your payments start, the amount will not be increased if your spouse predeceases you, or if you and your spouse are later divorced.
- **COMBINATION OF PARTIAL LUMP SUM AND LIFE ANNUITY**

If you are applying for distribution of your Individual Account because you have ceased to be entitled to a **State Unemployment Benefit** as explained on page 7, your Individual Account will be distributed in the following manner:

- 50% of the Account balance as of the first day of the month following the month you cease to be entitled to a State Unemployment Benefit.
- 50% of the remaining Account balance as of the first day of the month following the **third** month after you cease to be entitled to a State Unemployment Benefit.
- 100% of the remaining Account balance as of the first day of the month following the **sixth** month after you cease to be entitled to a State Unemployment Benefit.

**E. Can I change my election once I receive payment under one of the payment forms described above?**

No. Once an annuity is purchased from an insurance company to provide you with a Life Annuity, Qualified Joint and Survivor Annuity or Qualified Optional Survivor Annuity, you cannot change your payment form. If you receive payment directly as a lump sum, you are responsible for making your own arrangements for the future handling of those monies. If your Accumulated Share is rolled over into an eligible retirement plan, it is subject to the rules and regulations of that plan.

**F. What are the rules for payment of the Qualified Joint and Survivor Annuity or Qualified Optional Survivor Annuity?**

Under the Qualified Joint and Survivor Annuity or Qualified Optional Survivor Annuity, you will receive a lifetime annuity and 50% (or 75% in the case of the Qualified Optional Survivor Annuity) of your annuity amount will be continued to your spouse following your death. Payments will be made to your spouse for his/her lifetime. The following are some of the rules governing both these payment forms:

- The Qualified Joint and Survivor Annuity and Qualified Optional Survivor Annuity only protect the spouse legally married to you on your Annuity Starting Date.
- After payments begin, neither payment form can be cancelled or the amount of your benefit increased because of the death of your spouse or because you and your spouse become divorced.
- If you divorce and remarry, the rights of a former spouse as outlined in a “Qualified Domestic Relations Order” may reduce or eliminate any benefits payable to your current spouse.

**G. What if I am married and do not want a Qualified Joint and Survivor Annuity or Qualified Optional Survivor Annuity when I retire?**

*(Refer to Subsection 3.03.(B), page 45)*

If you are legally married, your Accumulated Share will automatically be used to purchase a Qualified Joint and Survivor Annuity from an insurance company. However, you can waive the Qualified Joint and Survivor Annuity on a form available from the Fund Office with your spouse’s consent. Your spouse must agree to the waiver in writing in the presence of a Notary Public or authorized Fund Representative unless you establish to the satisfaction of the Board of Trustees that the consent cannot be obtained because you have no legal spouse, your spouse cannot be located, or extenuating reasons exist. If you and your spouse also do not wish to

receive payment under the Qualified Option Survivor Annuity payment form, you both must also waive that payment form in the same manner described above.

No less than 30 or more than 90 days before your Annuity Starting Date, you will receive a written explanation of the terms and conditions of the Qualified Joint and Survivor Annuity and Qualified Optional Survivor Annuity and the effect of the waiver of such annuities. (You may waive the requirement that the written explanation be provided at least 30 days before your Annuity Starting Date if your annuity begins more than 7 days after the written explanation has been provided.) You and your spouse may waive the Qualified Joint and Survivor Annuity or Qualified Optional Survivor Annuity or revoke a previous waiver at any time not more than 90 days before your Annuity Starting Date. The waiver period shall end on the 30<sup>th</sup> day after the date on which the written explanation is provided, if the written explanation is provided after your Annuity Starting Date.

If you decide not to take the Qualified Joint and Survivor Annuity and Qualified Optional Survivor Annuity and have obtained your spouse's written consent, you can elect to have your account balance paid in any of the other forms described on page 9. **YOU MAY WISH TO CONSULT YOUR PERSONAL FINANCIAL ADVISOR OR YOUR TAX CONSULTANT TO DECIDE WHICH FORM OF PAYMENT MAY BE MOST BENEFICIAL TO YOU AND YOUR SPOUSE. THE FUND OFFICE AND ITS STAFF CANNOT PROVIDE YOU WITH FINANCIAL PLANNING OR TAX ADVICE.**

**H. Can I change my mind if I have waived the Qualified Joint and Survivor Annuity or Qualified Optional Survivor Annuity?**

You and your spouse may elect to waive the Qualified Joint and Survivor Annuity and Qualified Optional Survivor Annuity or revoke a previous rejection at any time (not to exceed 90 days) prior to the Annuity Starting Date. You and your spouse will have the right to exercise this choice up to 90 days after being advised of the terms and conditions of the Qualified Joint and Survivor Annuity and Qualified Optional Survivor Annuity.

**I. What if I die before retirement and have not withdrawn my Accumulated Share?**

*(Refer to Subsection 3.02.(D), page 44)*

Your Accumulated Share will be paid to your surviving spouse or designated Beneficiary (if applicable) in one of the payment forms described on page 9.

If you and your spouse have been married throughout the one-year period ending on the date of your death, your Accumulated Share will be paid to your surviving spouse, unless you—with your spouse's consent—have designated someone other than your spouse as Beneficiary. If you and your spouse have not been married to each other throughout the one-year period ending on the date of your death, your Accumulated Share will be paid to your designated Beneficiary (who could be your spouse if so named).

**J. What happens if I withdraw the money in my Individual Account and then start working again?**

*(Refer to Section 2.01, page 38)*

A new Individual Account will be established for you when you once again satisfy the requirements for participation as discussed in the Participation section on page 2.

## **V. VOLUNTARY EMPLOYEE CONTRIBUTIONS**

*(Refer to Section 3.07, page 48)*

### **A. May I make personal contributions to the Annuity Trust Fund in addition to the amounts contributed by my Employer?**

Each November 1, you may elect to start or stop making voluntary contributions to the Annuity Trust Fund. These voluntary contributions will be made directly from your Hawaii Operating Engineers Vacation and Holiday Pay Plan Account in an amount equal to the actual contributions made to your Vacation and Holiday Pay Plan Account. The total amount of your voluntary contributions may not exceed 10% of your monthly or annual compensation. All voluntary contributions shall be non-forfeitable at all times.

In addition, you may make a rollover contribution to the Annuity Trust Fund of all or any portion of the entire amount of an eligible rollover distribution, provided your rollover contribution is a direct transfer from a qualified defined contribution plan in the jurisdiction of the Operating Engineers Local Union No. 3 of the International Union of Operating Engineers.

The Plan is not a 401(k) plan and is not permitted to accept any pre-tax wage deferrals from your paycheck.

### **B. When can I receive the voluntary contributions made to my Individual Account?**

You may receive all or part of your voluntary contributions made to your Individual Account at any time. However, any portion of the investment earnings from your voluntary contributions may not be withdrawn until final distribution of your Individual Account. In addition, if you are married, your spouse must consent to the withdrawal of any voluntary contributions.

### **C. How will the voluntary contributions in my Individual Account be paid out?**

You may receive payment of the voluntary contributions in your Individual Account in any one of the payment forms described on page 9.

## **VI. DESIGNATION OF BENEFICIARY AND ASSIGNMENT OF BENEFITS**

### **A. How do I designate a Beneficiary for my Accumulated Share?**

*(Refer to Section 4.04, page 51)*

You may designate a Beneficiary on a form provided by the Board of Trustees and filed with the Fund Office before your death. You may change your Beneficiary at any time in the same manner. However, if you are legally married and wish to designate someone other than your spouse as Beneficiary, you must obtain written spousal consent which is witnessed by a Notary Public or authorized Plan Representative. Spousal consent is required any time you wish to designate a Beneficiary other than your spouse.

In addition, if you have named your spouse as Beneficiary, the designation is automatically cancelled if you become divorced, unless a Qualified Domestic Relations Order provides otherwise.

**NOTE:** In the case of a previous marriage, the rights of a previous spouse under a Qualified Domestic Relations Order may eliminate or reduce the benefits to which you, your new spouse, or new Beneficiary, would otherwise be entitled. You should also realize that you can only designate a Beneficiary to receive your Individual Account to the extent it has not been previously assigned by a Qualified Domestic Relations Order. (For more information, see the section entitled “QUALIFIED DOMESTIC RELATIONS ORDERS (QDROs)” on page 15.)

If you do not fill out your Beneficiary form, or update it should you become divorced or should your designated Beneficiary die, your Accumulated Share will be distributed in the manner described in the section entitled “What happens if my Beneficiary dies before I do and I fail to designate another Beneficiary?” This may not be the manner in which you wish to have your Accumulated Share distributed

### **B. May I assign my Individual Account or any other right or benefit under the Annuity Trust Fund?**

*(Refer to Section 4.06, page 51)*

Neither you nor any Beneficiary can assign any account, right or benefit under the Annuity Trust Fund. However, your benefits will be subject to Qualified Domestic Relations Orders (QDROs) pursuant to a State Domestic Relations Law. (For more information, see the section entitled “QUALIFIED DOMESTIC RELATIONS ORDERS (QDRO)” on page 15.) In addition, at the time of payment, your benefits will also be subject to the Internal Revenue Service provisions for garnishment of Individual Accounts for income tax purposes under the Internal Revenue Code.

**C. What happens if my Beneficiary dies before I do and I fail to designate another Beneficiary?**

*(Refer to Section 4.04, page 51)*

If there is no designated Beneficiary or no Beneficiary has survived you, payment of your Accumulated Share shall be made in the following order:

- To your surviving spouse; or if none
- To your surviving children in equal shares; or if none
- To your surviving parents in equal share; or if none
- To your executor or administrator of your estate.

If there is no estate, no payment of any kind will be made.

## VII. QUALIFIED DOMESTIC RELATIONS ORDERS (QDROS)

### A. What is a “Qualified Domestic Relations Order”?

If you become divorced, your Accumulated Share may be divided as part of your marital settlement. Dividing your benefits with a former spouse requires a special court order called a Qualified Domestic Relations Order or “QDRO”. It is recommended that you contact the Fund Office to obtain written information regarding the Annuity Plan’s QDRO Procedures. This information is furnished without charge.

A QDRO is a judgment, decree or order pursuant to state domestic relations law relating to child support, alimony, or marital property rights directing that all or part of a Participant’s benefit be paid to an Alternate Payee. A QDRO must meet the requirements of the Retirement Equity Act as set forth in 26 USC §414(p) and 29 USC §1056(d).

- a. Any such order must be delivered to the Annuity Plan before payments can be made to an Alternate Payee, and the Annuity Plan must approve its form. The order must clearly specify:
  - The name and mailing addresses of the Participant and each Alternate Payee covered by the order;
  - The amount or formula for determining the amount payable to each Alternate Payee;
  - The number of payments or period to which the order applies; and
  - The name of the plan to which the order applies, in this case, the Hawaii Annuity Trust Fund for Operating Engineers.
- b. The order cannot require the Annuity Plan to:
  - Provide any type or form of benefit not otherwise provided under the Annuity Plan;
  - Provide an increased benefit determined on the basis of actuarial equivalence;
  - Pay benefits in conflict with a previously issued QDRO; and
  - Begin payment of benefits to the Participant before the Participant is eligible for benefits.



**B. When can an Alternate Payee receive his or her share of your Accumulated Share?**

*(Refer to Section 3.02(E), page 44)*

Upon receipt of a QDRO and subject to the Fund's application requirements, an Alternate Payee can receive payment of his or her share at any time, regardless of whether the Participant has applied for payment.

## VIII. LOANS

*(Refer to Section 3.08; page 48)*

### **A. If I am experiencing financial hardship can I withdraw all or a portion of my Accumulated Share?**

No. The provisions of the Internal Revenue Code and regulations that govern money purchase retirement plans, such as the Hawaii Annuity Trust Fund for Operating Engineers, do not permit it to make in-service hardship distributions. However, subject to certain rules, such plans are permitted to contain loan provisions.

### **B. Does the Hawaii Annuity Trust Fund for Operating Engineers currently have a loan program?**

The Board of Trustees adopted a temporary loan program that is accepting applications from November 1, 2009 through September 30, 2011. As of the printing of this booklet the temporary loan program will automatically expire and cease granting new loans after September 30, 2011, unless it is extended by action taken by the Board of Trustees. The Board of Trustees is under no obligation to extend the loan program or to maintain any of its individual provisions beyond September 30, 2011. You can obtain information on whether a loan program is available to you by contacting the Fund Office.

### **C. Who is eligible for a loan?**

In order to be eligible for a loan, you must have an immediate and heavy financial need and have already exhausted all other assets that might reasonably be available to you, including those of your spouse.

In addition, you must satisfy each of the following requirements:

- You must have had an Individual Account for at least five years;
- You must have no other outstanding loans from the Plan or otherwise be delinquent in any other obligation to the Plan;
- You must have worked less than 161 hours in any capacity for any employer – not just Individual Employers contributing to the Annuity Trust Fund – during the three-month period preceding the date of your loan application; and
- You must be on the Union's out of work list and must not have rejected a geographically practical work assignment from the Union dispatch office during the same three-month period preceding the date of your application.

### **D. How much money can I obtain under the loan program?**

A loan cannot exceed the lesser of (1) the amount needed to address your financial hardship, (2) one-half of your Individual Account balance, or (3) \$7,500.00. In addition, any portion of your Accumulated Share that is potentially assigned to a former spouse or "Alternate Payee" under the terms of a Qualified Domestic Relations Order or QDRO will reduce the maximum amount of

any available loan (For more information, see the section entitled “QUALIFIED DOMESTIC RELATIONS ORDERS (QDRO)” on page 15.).

**E. What are the loan repayment terms?**

You must make equal monthly payments that include both principal and interest and result in the loan being repaid in full within three years. As of the date that this booklet went to print, the interest rate for new loans was 4.25%. The same interest rate will apply throughout the term of the loan. The interest rate for new loans can be changed by the Board of Trustees at any time.

At its discretion, the Board of Trustees may delay the due date of the first payment for up to 90 days from the initial date of the loan. However, the amount of each monthly amount then payable during the course of the loan will be adjusted so that the loan is repaid in full within three years after the loan was originally made.

Repayments made on the outstanding principal balance of your loan are credited to your Individual Account. While a portion of the interest is also credited to your Individual Account, part of your interest repayment goes to the Operating Engineers Union Local 3 Federal Credit Union to pay for the ongoing costs of administering your loan.

**F. What happens if I am late in making a loan payment?**

If your payment is received 11 or more days after its due date, you will be assessed a late charge based on the greater of 20% of the outstanding loan interest or \$5.00. The late charge will continue to be assessed each month on the unpaid delinquent amounts until all of the delinquent amounts are repaid in full.

If you have not made a loan payment for more than 120 days after the due date, your loan will be in default status for the entire unpaid balance of the loan. This outstanding balance will be considered to be a distribution from the Fund and must be reported as income to the Internal Revenue Service and the State of Hawaii Department of Taxation. Such distributions are subject to income tax and any applicable penalties assessed.

In addition, the Board of Trustees may avail itself of any legal remedy that it deems necessary to collect any outstanding loan balance (including accrued interest).

**G. Why are there penalties for late payments or loan defaults? Aren't I basically borrowing from myself?**

No. Loans are not made from Individual Accounts, but from the Trust Fund assets as a whole. They are considered to be “investments.” As with any investment, the Board of Trustees is responsible to take any steps necessary to ensure that the type of investment is secure and obtains a reasonable rate of return. To do so, the Trustees use your Individual Account as collateral or security and determine a reasonable rate of return by using the interest rate charged by the Operating Engineers Union Local 3 Federal Credit Union.

**H. If I am married, must my spouse consent to the loan?**

Yes. Under the law, eligible spouses have certain rights with respect to a Participant's retirement benefits. In order to protect those rights, spouses must consent to certain payments and forms of

payment made to Participants. Until a loan is repaid, it reduces the potential amount payable to a spouse in the event of the Participant's death. Therefore, the spouse's consent is required before a loan can be granted.

**I. Are the loan provisions a permanent part of the Annuity Plan?**

No. The loan program is only available for the period November 1, 2009 through September 30, 2011. While the Board of Trustees may extend the loan program or may reintroduce the program in the future, it is not obligated to do so and any such decision will only be made if it is in the best interest of the overall Plan and its Participants.

**J. What must I do to obtain a loan?**

You should contact the Fund Office to first determine if the loan program is available and, if so, to obtain the necessary application forms and information.

**K. What if my application for a loan is denied?**

The Board of Trustees is required to administer the Plan – including its loan program – in accordance with the rules and regulations of the Plan and laws governing retirement plans. However, if you believe that your application was improperly denied, you may file an appeal under the Plan's claims and appeals procedures. Your denial letter will explain what actions you must take to file an appeal.

## IX. TAXES

### A. Do I have to pay tax on the money in my Individual Account?

Your ongoing Accumulated Share based on amounts credited to your Individual Account for Employer Contributions and your share of investment income/Plan expenses is not considered taxable income to you until you actually receive the money. This is the date used to determine any tax liability you may have.

### B. Can the Fund Office assist me in determining my tax liabilities in connection with my Individual Account?

No. While the Fund Office can provide general tax information, is required to report certain tax information to the Internal Revenue Service and the State of Hawaii Department of Taxation and withhold amounts required by law or at your individual direction, its staff cannot provide individual tax advice of any kind.

The information on taxes contained in this booklet should be considered as being general in nature. You should consult with your own tax or financial advisor prior to applying to withdraw your Accumulated Share and electing its form of payment.

### C. Does the form of payment affect my taxes?

The form of payment you elect also affects the taxation of your Individual Account. For example, you may elect to roll over certain types of distributions (“eligible rollovers”) into an Individual Retirement Account (IRA) or other “eligible retirement plan.” Such rollovers are intended to postpone tax liability until distributed from the successor plan.

When you apply for the withdrawal of your Accumulated Share, you will be provided with general information concerning taxes and tax withholding.

### D. Is money withheld from a distribution of my Accumulated Share?

Depending upon the payment form and other factors, the Plan may be required to withhold monies from your distribution. In other cases, you may voluntarily request that amounts be withheld. Please note that the withholding, itself, is not a tax but is applied towards any taxes that you may owe as a result of receiving a distribution. Again, in cases involving voluntary withholding, the Fund Office cannot advise you as to how much to withhold.

Since you may owe taxes on the money you withdraw, the federal government requires that if you (or your surviving spouse or beneficiary) are receiving payment of your Accumulated Share in the form of what is called an “eligible rollover distribution,” 20% **must** be withheld for income tax purposes. Generally speaking, eligible rollovers include lump sum payments, installment payments over a period of less than 10 years, and certain death benefit payouts. However, eligible rollovers may be “rolled over” into an IRA or other eligible retirement plan that is willing to accept the distribution, in which case the 20% mandatory withholding will not apply. You will be given information on the 20% mandatory withholding requirement and the

opportunity to elect or reject rollover treatment when you apply for benefits. (*Refer to Section 4.09, page 54*)

**E. Does my receipt of my Accumulated Share prior to attaining age 59 ½ have some affect on the taxes that I may owe?**

Yes. If you receive a payment of your Accumulated Share before you reach age 59½ and you do not elect to rollover the distribution, you may have to pay a penalty tax equal to 10% of the taxable portion of the payment. This tax is in addition to any regular federal income tax due.

In some instances, defaulting on a Participant loan prior to age 59½ may qualify as a premature distribution subject to the additional tax penalty. A direct rollover will be impossible if you default on a loan from the Annuity Plan and it offsets your account balance and treats you as having received a distribution of an amount equal to the unpaid loan balance. In that case, the Annuity Plan will withhold sufficient monies from any additional distribution to satisfy the mandatory withholding requirement for amounts already distributed.

Unless payment of your Accumulated Share is made under one of the circumstances shown below, payment of your Accumulated Share before you reach age 59½ may be subject to this additional early distribution penalty tax:

- Payment made in the form of life annuity (including a Qualified Joint and Survivor Annuity) following separation from service;
- Payment made when you are at least age 55 in accordance with the Annuity Plan's early retirement provisions;
- Payment made due to your death or permanent and total disability, or to an Alternate Payee as decreed by a Qualified Domestic Relations Order; or
- Payment used to pay your medical expenses otherwise deductible under Internal Revenue Code Section 213.

In order to determine if this penalty tax applies to you, you should seek the advice of a tax professional.

**► IMPORTANT ◀**

When you withdraw your Individual Account, significant tax consequences may result from the way that payment is made to you. It is very important that you discuss with a competent tax advisor the manner in which you should take the money out of your Individual Account. Advice of this nature cannot be provided by the Fund Office. The Fund Office is required to report to the appropriate government tax agencies any payments to you, your spouse or your Beneficiary.

## **X. APPLICATION AND APPEALS PROCEDURES**

### **A. What is the application procedure for payment of my Accumulated Share?**

*(Refer to Subsection 4.01.(A), page 50)*

Your application for benefits must be made in writing on a form established by the Board of Trustees and must be filed with the Fund Office prior to the payment of any benefits.

Your claim will be considered filed when your application is received by the Fund Office, without regard to whether all information necessary to make a benefit determination accompanies your application. If all necessary information does not accompany your application, the Fund Office will notify you in writing of:

- The standards on which entitlement to benefits is based;
- Any unresolved issues that prevent a decision on the claim; and
- Any additional information needed to resolve those issues.

### **B. When and how is my application acted upon?**

*(Refer to Subsection 5.02(A), page 56)*

The initial determination of benefits will be made within a reasonable period of time but not longer than 90 calendar days after the Fund Office receives your application for benefits.

If the Fund Office determines that special circumstances require an extension of time for processing the claim, the Fund Office will notify you in writing prior to the expiration of the 90 days of the circumstances requiring the extension of time and the date by which the Plan expects to make a determination. The extension cannot be more than 90 calendar days from the end of the initial 90-day period.

If an application for benefits is not acted on within these time periods, you may proceed to the appeal procedures as if the claim had been denied.

### **C. How will I be notified if my claim is denied?**

*(Refer to Subsection 5.02.(A), page 56)*

If the Plan denies your application for benefits, in whole or in part, you will be notified in writing of the determination and given the opportunity for a full and fair review of the benefit decision. The written notice of denial will include:

- The specific reason(s) for the denial;
- The specific reference to pertinent Plan provision(s) on which the denial is based;
- A description of any additional material or information necessary for you to perfect your claim and an explanation of why such material or information is necessary;



- A description of the Plan's review procedures and the time limits applicable to such procedures, including a statement of your rights to bring civil action under §502(a) of ERISA following an adverse benefit determination

**D. What is the procedure to follow if my Application is denied?**

*(Refer to Subsections 5.02.(B), (C) and (D), pages 56 and 57)*

If you apply for benefits and your claim is denied, or if you believe that you did not receive the full amount of benefits to which you are entitled, you have the right to petition the Board of Trustees for reconsideration of its decision. Your petition for reconsideration:

- Must be in writing;
- Must state in clear and concise terms the reason(s) for your disagreement with the decision of the Board of Trustees;
- May include documents, records, and other information related to the claim for benefits; and
- Must be filed by you or your authorized representative with the Fund Office within 60 days after you received notice of denial. Failure to file an appeal within this time limit will constitute a waiver of your rights to a review of the denial of your claim. A late application may be considered if the Board of Trustees finds that the delay in filing was for reasonable causes.

Upon request, you will be provided, free of charge, reasonable access to and copies of all documents, records, and other information relevant to your claim for benefits.

**E. How is my appeal reviewed?**

*(Refer to Subsections 5.02.(E) and (F), page 57)*

A properly filed appeal will be reviewed by the Board of Trustees at its next regularly scheduled quarterly meeting. However, if the appeal is received within 30 days prior to such meeting, the appeal may be reviewed at the second quarterly meeting following the receipt of your appeal. If special circumstances require an extension of time, the Board of Trustees will render a decision at the third scheduled quarterly meeting following the receipt of your appeal. The Fund Office will notify you in writing before the beginning of the extension of the special circumstances and the date that the Board of Trustees will make its decision.

The Board of Trustees will review all submitted comments, documents, records and other information related to your claim, regardless of whether the information was submitted or considered in the initial benefit determination. The Board of Trustees will not give deference to the initial adverse benefit determination.

The Fund Office will send you written notification of the benefit determination on an appeal no later than 5 calendar days after the benefit determination is made. It will include the reason(s) for the determination, including references to the specific Plan provisions on which the determination is based. The written notification will also include a statement that you are entitled

to receive, upon request and free of charge, reasonable access to and copies of all documents, records and other information relevant to your claim for benefits.

The denial of a claim to which the right to review has been waived, or a decision of the Board of Trustees or its designated committee with respect to a petition for review, is final and binding upon all parties, subject only to any civil action you may bring under ERISA. Following issuance of the written decision of the Board of Trustees on an appeal, there is no further right of appeal to the Board of Trustees or right to arbitration.

**F. What if I fail to apply for payment of my Accumulated Share?**

Generally, benefits will not be payable until an application is filed with the Fund Office. However, the Plan requires that your benefits commence no later than your Required Beginning Date. (*Refer to Subsection 4.01.(A), page 50*)

If an application is not received following the date an event occurs as described on page 6, your Individual Account will continue to be maintained by the Annuity Trust Fund until an application is submitted by you, or your Beneficiary (if you are deceased).

**G. What if I attain my Required Beginning Date but fail to apply for payment of my Accumulated Share?**

If you do not receive a distribution of your Accumulated Share by the April 1 following the later of (1) the calendar year in which you attain age 70 ½, or (2) the calendar year in which you cease working and are retired, you may incur significant federal tax penalties. Therefore, it is very important that you keep the Fund Office informed of any changes in address/telephone number and file an application for payment of your Accumulated Share prior to that date.

## **XI. RIGHT TO BENEFITS**

### **A. Could I lose some or all of the money in my Individual Account?**

Yes. The money in your Individual Account is not guaranteed. You or your Beneficiary could lose Contributions made on your behalf, related earnings, or some or all of your Individual Account balance under the Annuity Trust Fund, under any one of the following circumstances:

- The Annuity Trust Fund experiences investment losses.
- Your share of Annuity Trust Fund expenses exceeds your Contributions and earnings in a year.
- You fail to provide information or give false information to verify disability, age, Beneficiary information, or other vital information. (*Refer to Section 4.02, page 50*)
- All or a portion of your Individual Account is assigned by a QDRO to your spouse, your former spouse, or for support of your children or other dependents. (For more information, see the section entitled “QUALIFIED DOMESTIC RELATIONS ORDERS (QDRO)” on page 15.)

### **B. What will happen if the Annuity Trust Fund is terminated?**

(*Refer to Section 7.02, page 59*)

There is no intent to terminate the Annuity Trust Fund. Few multiemployer pension plans are ever terminated. However, future changes in the law or economic conditions may make it advisable to do so. If it is terminated, after payment of the Annuity Trust Fund termination expenses, the balance of the Fund’s assets shall be distributed to the then Participants with each Participant receiving a share of the remaining assets in proportion to the ratio his/her Individual Account balance bears to the total of all the Participants’ Individual Account balances. None of the assets shall be returned to any Employer.

In the event a Participant cannot be located, the Board of Trustees will send a notice by registered mail to the Participant’s last known mailing address. If the Participant does not file an application for payment of his Individual Account within 90 days following the Board’s sending of the notice, the Participant’s Individual Account will be forfeited and redistributed among the remaining Individual Accounts in the Annuity Plan.

In the event the liquidation value of the assets on the date of termination is less than the total of all Individual Account balances plus expenses, the Board of Trustees shall have the option of paying all Individual Account balances to Participants over a period not to exceed 10 years to the extent permitted by the assets.

## **XII. AVAILABILITY OF PLAN DOCUMENTS**

### **A. Are Plan Documents available to Participants and Beneficiaries?**

Yes. Copies of applicable Collective Bargaining Agreements, the Trust Agreement, Plan Document (and Plan Amendments), statements of assets and liabilities and income and expenses of the Annuity Trust Fund, and a full Annual Report (Form 5500) are available for inspection at the Fund Office during regular business hours and, upon written request, will be furnished by mail upon payment of reasonable charges. You should therefore find out what that charge will be before writing and asking for copies of these documents. A Summary of the full Annual Report will be sent to you annually without charge.

Further information and application forms can be obtained from the Trust Fund Office, the Hawaii Fringe Benefits Office or one of the following District Offices:

#### **TRUST FUND OFFICE**

Hawaii Annuity Trust Fund for Operating Engineers  
1640 South Loop Road  
Alameda, California 94502

#### **Pension/Annuity Department and Billing and Eligibility Department**

1-(800) 251-5014 or (510) 271-0222

#### **HAWAII DISTRICT OFFICES**

##### **Oahu and Kauai:**

Operating Engineers Local Union No. 3  
1075 Opakapaka Street  
Kapolei, Hawaii 96707  
(808) 845-7871

##### **Maui, Molokai and Lanai:**

Operating Engineers Local Union No. 3  
95 Lono Avenue, Suite 104  
Kahului, Hawaii 96732  
(808) 871-1193

##### **Hawaii:**

Operating Engineers Local Union No. 3  
50 Waianuenu Avenue  
Lycurgus Building—1<sup>st</sup> Floor  
Hilo, Hawaii 96720  
(808) 935-8709

**INFORMATION REQUIRED BY THE EMPLOYEE  
RETIREMENT INCOME SECURITY ACT OF 1974 (ERISA)**

1. The name of the Plan is the Hawaii Annuity Trust Fund for Operating Engineers. It is administered and maintained by the Joint Board of Trustees consisting of individual Employee and Employer Trustees with equal voting power
2. The Board of Trustees is the Plan sponsor and Plan Administrator. This means that the Board of Trustees has the discretion to interpret the Rules and Regulations of the Plan and to determine the eligibility for benefits. Such decisions shall receive judicial deference to the extent that they do not constitute an abuse of discretion. The Board is also responsible for seeing that information regarding the Annuity Trust Fund is reported to government agencies and disclosed to Annuity Trust Fund participants and beneficiaries in accordance with the ERISA.

The Board of Trustees employs Associated Third Party Administrators (ATPA) to provide day-to-day administrative services to the Annuity Trust Fund. The Fund Office is located as follows:

Board of Trustees  
Hawaii Annuity Trust Fund for Operating Engineers  
c/o Associated Third Party Administrators  
1640 South Loop Road  
Alameda, California 94502

Pension/Annuity Department and Billing and Eligibility Department

1-(800) 251-5014 or (510) 271-0222

3. The Fund Office will provide any Annuity Trust Fund Participant or Beneficiary, upon written request, information as to whether a particular employer is contributing to this Fund with respect to the work of Participants in the Annuity Trust Fund and if the employer is a contributor, the employer's address.
4. The Employer Identification Number (EIN) issued to the Board of Trustees by the Internal Revenue Service is 94-000421. The Plan Number (PN) is 004.
5. The Annuity Trust Fund is a defined contribution money purchase plan within the meaning of the Employee Retirement Income Security Act of 1974. As such, it is not a plan covered by the plan termination insurance provisions of that Act and the benefits of the Plan are not insured under Title IV of the Act.

This Plan provides retirement and termination benefits to eligible employees or, in the case of a deceased Participant, to his or her surviving spouse or Beneficiary in accordance with its rules and regulations. .

6. The designated agent for service of legal process is:

Hawaii Fringe Benefits Office  
1075 Opakapaka Street  
Kapolei, Hawaii 96707  
(800) 660-9126

Service of legal process may also be made on the Board of Trustees at the address shown above.

7. The names, titles, and addresses of the Trustees are shown on page i.
8. The procedure for applying for benefits is described on page 23; and the rules for appealing the denial of a benefit in whole or in part is set forth on page 23 of this booklet.
9. The Plan is maintained in accordance with Collective Bargaining Agreements negotiated between various Individual Employers and Operating Engineers Local Union No. 3 of the International Union of Operating Engineers. These Collective Bargaining Agreements call for Individual Employer Contributions to be made to the Annuity Trust Fund on a cents-per-hour basis. With the exception of voluntary employee contributions made from the Hawaii Operating Engineers Vacation and Holiday Pay Plan Accounts and eligible rollover distributions made from a qualified defined contribution plan within the jurisdiction of the Operating Engineers Local Union No. 3, no Employee contributions are permitted. Benefits are provided directly from the Fund's assets which are accumulated under the provisions of the Trust Agreement and held in custody by the Trust Fund's contracted corporate co-trustee.
10. The Fiscal Year of the Fund is the twelve-month period beginning November 1 and ending the following October 31.
11. The Annuity Trust Fund's requirements with respect to eligibility for participation are described on page 2 and in Plan Section 1.08 and the eligibility for benefits is set forth on page 6 and in Plan Section 3.02.
12. The Board may amend, modify or terminate the Annuity Trust Fund pursuant to its authority under Article 7 of the Rules and Regulations of the Annuity Trust Fund. No amendment or modification may reduce any benefits which have been approved for payment prior to such amendments, so long as sufficient funds are available to provide such benefits.

Upon termination, the assets remaining, after providing for Annuity Trust Fund expenses and for the payments of any Accumulated Share already approved, shall be distributed among the Annuity Trust Fund Participants. In no event will the termination of the Annuity Trust Fund result in a reversion of any assets to any Employer.

Every Employee, Annuitant or Beneficiary shall furnish, at the request of the Board, any information or proof reasonably required for the administration of the Annuity Trust Fund or for the determination of any matter that the Board may legitimately have before it. Failure to furnish such information or proof promptly and in good faith shall be sufficient reason for the denial of benefits to such Employee or Beneficiary, or the suspension or discontinuance of benefits to such Annuitant. The falsity of any statement material to an application or the furnishing of fraudulent information or proof shall be sufficient reason for the denial, suspension or discontinuance of benefits under the Annuity Trust Fund except to the extent that the benefits are non-forfeitable and, and in any such case, the Board shall have the right to recover any benefit payments made in reliance on such false statement or fraudulent information or proof.

## STATEMENT OF ERISA RIGHTS

As a Participant in the Hawaii Annuity Trust Fund for Operating Engineers, you are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974 (ERISA). ERISA provides that all Plan Participants shall be entitled to:

### **Receive Information About Your Plan and Benefits**

- Examine, without charge, at the Fund Office and at other specified locations, such as worksites and union halls, all documents governing the Annuity Plan, including insurance contracts, collective bargaining agreements and a copy of the latest annual report (Form 5500 series) filed by the Annuity Plan with the U.S. Department of Labor and available at the Public Disclosure Room of the Employee Benefit Security Administration.
- Obtain, upon written request to the Plan Administrator, copies of documents governing the operation of the Annuity Plan, including Collective Bargaining Agreements, and copies of the latest annual report (Form 5500 Series) and updated Summary Plan Description. The administrator may require a reasonable charge for the copies.
- Receive a summary of the Annuity Plan's annual financial report. The Plan Administrator is required by law to furnish each Participant with a copy of this Summary Annual Report.
- Obtain a statement telling you whether you have a right to receive an annuity at normal retirement age and if so, what your benefits would be at normal retirement age if you stop working under the Annuity Plan now. If you do not have a right to an Annuity Plan benefit, the statement will tell you how many more years you have to work to get a right to an Annuity Plan benefit. This statement must be requested in writing and is not required to be given more than once every twelve (12) months. The Annuity Plan must provide the statement free of charge.

### **Prudent Actions by Plan Fiduciaries**

In addition to creating rights for Plan Participants, ERISA imposes duties upon the people who are responsible for the operation of the employee benefit plan. The people who operate your Annuity Plan, called "fiduciaries" of the Plan, have a duty to do so prudently and in the interest of you and other Plan Participants and Beneficiaries. No one, including your Employer, your Union, or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining an annuity benefit or exercising your rights under ERISA.

### **Enforce Your Rights**

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

Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request a copy of Annuity Plan documents or the latest annual report from the Annuity Plan and do not receive them within 30 days, you may file suit in a Federal court. In such a case, the court may require the Plan Administrator to provide the materials and pay you up to \$110 a day until you receive the



materials, unless the materials were not sent because of reasons beyond the control of the Administrator. If you have a claim for benefits which is denied or ignored, in whole or in part, you may file suit in a state or Federal court. In addition, if you disagree with the Annuity Plan's decision or lack thereof concerning the qualified status of a domestic relations order, you may file suit in Federal court. If it should happen that Annuity Plan fiduciaries misuse the Annuity Plan's money, or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor or you may file suit in a Federal court. The court may decide who should pay court costs and legal fees. If you are successful, the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees for example, if it finds your claim is frivolous.

### **Assistance With Your Questions**

If you have any questions about your Annuity Plan, you should contact the Fund Office. If you have any questions about this statement or about your rights under ERISA, or if you need assistance in obtaining documents from the Fund Office, you should contact the nearest office of the Employee Benefits Security Administration (formerly the Pension and Welfare Benefits Administration), U.S. Department of Labor, listed in your telephone directory or:

The Division of Technical Assistance and Inquiries  
Employee Benefits Security Administration  
U.S. Department of Labor  
200 Constitution Avenue N.W.  
Washington, D.C. 20210

You may also obtain certain publications about your rights and responsibilities under ERISA by calling the publications hotline of the Employee Benefits Security Administration ("EBSA"). For single copies of publications, contact the Employee Benefits Security Administration Brochure Request Line at 800-998-7542 or contact the EBSA field office nearest you. You may also find answers to your Annuity Plan questions at the website of the EBSA at <http://www.dol.gov/ebsa/>.