

**Cement Masons and Plasterers  
Joint Pension Trust**

**Summary Plan Description  
and  
Plan Rules and Regulations**

**January 2022**



## This Book has 2 parts:

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**Cement Masons and Plasterers  
Joint Pension Trust  
8311 West Sunset Road, Suite 250  
Las Vegas, NV 89113**

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Thomas Pfundstein  
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Freddy Medina  
Jose Marquez  
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**ADMINISTRATOR**

BeneSys, Inc.

**LEGAL COUNSEL**

Christensen James & Martin, Cthd.

**CONSULTANT**

Kaufmann & Goble

**AUDITOR**

Berry & Company, CPAs



**Message from  
the Board of Trustees of  
the Cement Masons and Plasterers  
Joint Pension Trust**

To All Covered Employees:

We are once again happy to provide you with a new booklet explaining the Cement Masons and Plasterers Joint Pension Plan (the “Plan”), which was revised and updated effective January 1, 2022. All changes since the last booklet was distributed have been incorporated.

We believe you will want to read these rules and their explanation very carefully in order to understand your rights to a Benefit. We have tried to explain all sections of the Plan as clearly as possible. However, the rules are complicated. It is likely, therefore, that you will have questions after reading this booklet. You can call or write the office of the Plan’s third-party administrator (the “Administrative Office”) for answers to any questions you may have about the Plan and how any rule affects you and your Beneficiaries. In all cases, the actual text of the Plan governs every aspect of participation, Eligibility, Benefit payments and administration of the Plan.

Please keep in mind that, for your protection, only the Plan’s full Board of Trustees (the “Board”) is authorized to interpret the Plan. Information you may receive from the Union, Employers or others is not binding on the Plan and should not be relied upon by you. Official information concerning your rights under the Plan must be communicated to you, in writing, signed on behalf of the full Board. Further, if there are any discrepancies between this Summary Plan Description and the Rules and Regulations of the Plan (the “Plan Rules”), the Plan Rules govern.

You should be sure to keep the Administrative Office informed of any change in your mailing address to ensure that you will receive all communications.

We suggest that you share this booklet with your family, because they too have an interest in the Plan. We also suggest that you keep this booklet for future reference and inform your family members where it can be found. From time to time, material changes may be made to the Plan provisions. These are communicated to you in the form of Plan notices. So that your information is complete and up-to-date, you should retain all Plan notices with this booklet.

We hope that you will find this booklet helpful and that you and your family will enjoy the protection of the Plan for many years to come.

Sincerely,

BOARD OF TRUSTEES



**Part One:  
Summary of Pension Plan**

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## **A. PARTICIPATION**

All Employees (“Employees”) working for Employers (“Employers”) whose collective bargaining agreements or other written participation agreements obligate the Employer to contribute to the Plan on behalf of such Employees are eligible to participate in the Plan. You become a “Participant” on the day you complete your first (1<sup>st</sup>) hour of work as an Employee.

Participation ends when you die or on the day you receive distribution of your individual account (“Individual Account”).

*Claims and Appeals Procedures for the Plan can be found on pages 13 to 18 of this booklet.*

## **B. CONTRIBUTIONS AND INDIVIDUAL ACCOUNTS**

Once you become a Participant, an Individual Account will be established for you.

### **Contributions**

An Employer will make contributions on your behalf based on your hours of service according to the terms of the applicable collective bargaining agreement or participation agreement. These contributions will be deposited into your Individual Account.

### **Valuation**

At the end of each valuation period, your Individual Account is valued according to the following formula:

- the balance of your Individual Account at the end of the last valuation period;
- plus the total amount of contributions received on your behalf since the last valuation period;
- less your proportionate share of the administrative expenses incurred by the Plan (including expenses for review or implementation of a qualified domestic relations order (“Qualified Domestic Relations Order”));
- plus your proportionate share of the net investment gain (or less your proportionate share of the net investment loss) realized by the Plan during the current valuation period.

Plan administrative expenses will be shared proportionately across all account balances. Certain Individual Account administrative expenses are entirely allocated to the Participant involved in each particular case, such as expenses incurred for review and implementation of QDROs, the verification and confirmation of your identity upon distribution, and changes in personal identification information required to permit the distribution of Plan Benefits. The proportionate share of investment gains and losses of an individual account is based on the size of the account.

You will receive periodic statements showing the amount in your Individual Account. Individual Accounts that are eligible for distribution will also be valued immediately prior to distribution. The valuation period will be the fiscal quarter unless the Board designates another period.

### **Vesting**

The amount in your Individual Account is always 100% vested.

## **Investment of Contributions**

Contributions in your Individual Account are combined and invested with the contributions in all other Individual Accounts. At the end of each valuation period, your Individual Account is credited with a pro rata share of the Plan's overall investment return, in addition to the contributions received on your behalf since the end of the last valuation period.

The Board will invest the assets of the Plan with the primary objective of preserving the contributions made on behalf of Participants. Consistent with preservation of principal, the Board will seek a prudent rate of return while minimizing exposure to losses or wide swings in market value. It is emphasized, however, that there is no guarantee of investment return or principal when investing in securities such as stocks and bonds. At any time, the value of your Individual Account will reflect any changes in the total value of the securities held by the Plan.

*Claims and Appeals Procedures for the Plan can be found on pages 13 to 18 of this booklet.*

## **C. PAYMENT OF BENEFITS**

### **Amount to Be Paid**

The amount to be paid to you or your beneficiary ("Beneficiary") is the total amount in your Individual Account at the end of the valuation period preceding a payment event, plus contributions made on your behalf since the end of such valuation period, less expenses, including expenses for review of a Qualified Domestic Relations Order, if any. A Participant may take a partial distribution of his or her Individual Account but may not take another distribution until the lapse of a 24-month period during which no contributions have been made.

### **Earliest Permissible Eligibility for Payment of Benefits**

Your Individual Account will be paid out only as a result of any of the following reasons:

#### ***Retirement***

A Participant may receive or begin to receive Benefits from the Plan ("Retire") at or after "Normal Retirement Age," which is the later of age 62 or the fifth (5<sup>th</sup>) anniversary of the Participant's participation in the Plan. A Participant may also Retire and receive Benefits from the Plan when he or she reaches age 55 with 30 years of continuous participation in the Plan.

#### ***Age 55 With 30 Years of Continuous Service and Active***

A Participant may receive Benefits from the Plan when he or she reaches age 55 with 30 years of continuous participation in the Plan and continues to work under the Plan.

#### ***Disability***

If a Participant at any age becomes Disabled, he or she may begin to receive payments. You will be considered "Disabled" if you are entitled to Social Security Disability Benefits or provide competent medical evidence of your disability. (See Sections 1.09 and 4.02(c) of the Plan Rules for more details).

#### ***Termination of Employment Before Normal Retirement Age***

A Participant who has a termination of employment may begin receiving payments under the Plan if (i) a period of 24 consecutive months has elapsed when no contributions have been made to the Participant's Individual Account, and (ii) at the beginning of such 24-month period, the Participant had completed at least ten (10) years of continuous participation in the Plan. (Please review Section 4.02(d) of the Plan Rules). However, for purposes of calculating the period of 24

consecutive months during which no contributions have been made to the Participant's individual account, 40 hours of actual covered work performed or paid shall be excluded from the computation.

#### ***Termination of Employment Due to Terminal Illness***

If a Participant stops working for an Employer because of a terminal illness, his or her Individual Account will be paid out after application and submission of sufficient medical evidence. (Please review Section 4.02(e) of the Plan Rules).

#### ***Death***

If a Participant dies before retirement, payments will be made to his or her Beneficiary. (Please review Section 4.05 of the Plan Rules).

#### **Latest Permissible Eligibility for Payment of Benefits**

Unless you elect otherwise, payment of Benefits will begin no later than the 60<sup>th</sup> day after the close of the calendar year in which you become eligible and complete an application.

However, in no event may you postpone the commencement of Benefits to a date later than April 1<sup>st</sup> immediately following the later of the calendar year in which you attain age 72 or (except for five percent (5%) owners) the calendar year in which you Retire.

If you are eligible but fail to apply for Benefits, and the Plan is unable to locate you, your Individual Account will be allocated and distributed in accordance with Section 4.10 of the Plan Rules and applicable Department of Labor and Internal Revenue Service requirements.

*Claims and Appeals Procedures for the Plan can be found on pages 13 to 18 of this booklet.*

#### **D. FORMS OF BENEFIT PAYMENT**

The form in which your Individual Account will be paid depends on how you become eligible for Benefits and, in certain circumstances, how you choose to receive it. See additional description regarding the forms of payment below.

#### **Payment on Retirement, Disability or Termination of Employment**

##### ***Married Participants***

If your Individual Account becomes payable to you as a result of your retirement at or after age 62, Disability, or termination of employment and you are married at the time Benefits become payable, the automatic form of payment will be a joint and 50% survivor annuity. This means that the value of your Individual Account will be converted into monthly payments to you for your life, and upon your death, 50% of such monthly amount will be paid to your surviving spouse ("Spouse") until your Spouse's death.

If you and your Spouse do not want this form of payment, you may reject it and elect an optional form of payment described below. You may rescind your rejection or again reject the contingent annuity any number of times before distributions of your Benefit begin. Your rejection must contain the notarized signatures of both you and your Spouse. You may not change the form of payment once payments actually begin.

##### ***Unmarried Participants***

If your Individual Account becomes payable to you as a result of your retirement at or after age

62, Disability, or termination of employment, and you are not married at the time Benefits become payable, the automatic form of payment will be a life annuity. This means that the value of your Individual Account will be converted into monthly payments to you for your life, and upon your death, no further Benefits would be payable.

If you do not want this form of payment, you may reject it and elect an optional form of payment described below.

#### ***All Participants***

Instead of receiving a distribution, a Participant may choose instead to transfer his or her Individual Account directly to another qualified retirement Plan or individual retirement account or annuity, or to rollover a qualifying distribution, as described under “*Rollover Distributions*” in the section on “*Tax Effects on Distribution*,” below.

### **Payment on Death Before Retirement**

#### ***Married Participants***

If your Individual Account becomes payable to you as a result of your death and you have been married throughout the year before your death, the automatic form of payment will be a life annuity for your Spouse. This means that the value of your Individual Account will be converted into monthly payments to your Spouse for the remainder of your Spouse’s life.

Prior to your death, you and your Spouse may reject this life annuity and elect an optional form of payment described below. This rejection must include the notarized signatures of both you and your Spouse. Also, in the event of your death, if your Spouse is eligible for this life annuity, your Spouse may then choose to reject this life annuity and elect an optional form of payment.

#### ***Unmarried Participants***

If your Individual Account becomes payable to you as a result of your death and you are not married or you have not been married throughout the entire year before your death, the automatic form of payment will be a lump sum payment of the value of your Individual Account to your Beneficiary.

#### ***All Beneficiaries***

A Beneficiary may have the ability to rollover Benefits to an individual retirement account or annuity as described under “*Rollover Distributions*” in the section on “*Tax Effects on Distribution*,” below.

### **Optional Forms of Payment**

The following optional forms of payment can be elected by certain individuals as described in the preceding sections.

#### ***Married Participants***

For married Participants, the Individual Account can be used to purchase a joint and 75% survivor annuity. This means that the value of your Individual Account will be converted into monthly payments to you for your life, and upon your death, 75% of such monthly amount will be paid to your Spouse until your Spouse’s death.

### ***All Participants and Beneficiaries***

The Individual Account can be paid in a lump sum to you or your Beneficiary. Alternatively, the Individual Account may be used to purchase an annuity contract from a life insurance company that provides a monthly income to the Participant for life, or a period certain annuity that provides monthly income to the Participant, or in the event of the Participant's death, to a designated beneficiary, for a certain period of time.

A lump sum may be transferred directly to another qualified retirement Plan that covers the Participant (and permits the transfer) or rolled over to an individual retirement account or annuity, as described under "*Rollover Distributions*" in the section on "*Tax Effects on Distribution*," below.

### **Involuntary Lump Sum Cash-Out**

If you are eligible to receive your Individual Account in connection with a termination of your employment, and your Individual Account is not more than \$1,000, the Plan may pay it as a lump sum without obtaining your consent. In addition, if your Individual Account is not more than \$5,000, the Plan, upon obtaining the written consent of you or your Beneficiary, may make payment in a lump sum.

### **Continued Participation**

In the event your Individual Account becomes payable due to retirement, Disability or termination of employment, you may choose to continue participation in the Plan or to receive payment if you are eligible. You must select your option in writing on a form issued by the Board.

#### ***Deferred Payment***

You may elect to leave your Individual Account in the Plan until the end of the next valuation period and continue to elect to defer payment of your Individual Account if you so desire. The latest you will be able to commence Benefits is the April 1<sup>st</sup> immediately following the *later* of the calendar year in which you attain age 72, or (except for five percent (5%) owners) the calendar year in which you Retire.

#### ***Immediate Payment***

You may elect to receive your withdrawal immediately. Under this option, your Individual Account is the amount in your Individual Account at the end of the last valuation period plus contributions made since the end of such valuation period, less expenses.

*Claims and Appeals Procedures for the Plan can be found on pages 13 to 18 of this booklet.*

## **E. TAX EFFECTS OF DISTRIBUTION**

How you choose to receive a distribution from the Plan will affect the taxes that must be paid.

### **Payment to You**

If you choose to have a lump sum distribution from the Plan paid to you, you will receive 80% of the payment, and 20% will be withheld and sent to the Internal Revenue Service to be credited against your income tax. Your distribution is taxed in the current year unless you roll it over (while you may be able to use special tax rules to reduce the tax you owe, if you receive a distribution prior to age 59½, you may have to pay an additional ten percent (10%) tax).

If you receive payment in the form of an annuity, your Benefit amount will be subject to federal income tax withholding unless you elect otherwise. The Administrative Office will provide you with a tax election form. You should contact your tax advisor to discuss your personal tax situation before making your election. You may change your withholding at any time by requesting a new tax election form from the Administrative Office.

### **Rollover Distributions**

Certain distributions from the Plan are called eligible rollover distributions, and these can be rolled over, at the time and in the manner specified by the Board, to another qualified Plan or to an individual retirement account or individual retirement annuity (“IRA”) to avoid having taxes withheld at the time of distribution. There are two (2) types of distributions made under the Plan that are eligible rollover distributions: (1) any payment of at least 50% of all remaining Benefits under a Plan because of death, Disability or other separation from service, and (2) payment of 100% of all remaining Benefits while an active Employee after reaching age 59½. The following distributions are not eligible rollover distributions: (a) payments in the form of a life annuity, a husband-and-wife annuity or any annuity over the joint lives of you and a contingent beneficiary; (b) regular payments scheduled for at least ten (10) years; or (c) mandatory minimum distributions after age 72.

You can have all or any portion of an eligible rollover distribution paid in direct rollover or paid to you. This choice will affect the amount of tax you owe.

#### ***Direct Rollover***

If you choose a direct rollover, your payment will not be taxed in the current year and no income tax will be withheld. In a direct rollover, your payment is made directly to your IRA or, if you choose, to another qualified retirement Plan that accepts the rollover, and your distribution is taxed when you take it out of the IRA or the qualified retirement Plan.

#### ***Rollover After Receiving Payment***

You can roll the distribution over by paying it, within 60 days of receiving it, into your IRA or other qualified retirement Plan that accepts the rollover, and the amount will not be taxed until you take it out of the IRA or other qualified retirement Plan. If you want to roll over 100% of the distribution, you must find other money to replace the 20% that was withheld. If you roll over only the 80% that you receive, you will be taxed on the 20% that was withheld and not rolled over.

### **Explanation of Tax Consequences**

Federal law requires that the Plan Administrator provide you with a timely “*Special Tax Notice Regarding Plan Payments*,” which describes your rights and obligations regarding rollovers and withholding requirements.

*Claims and Appeals Procedures for the Plan can be found on pages 13 to 18 of this booklet.*

## **F. NONASSIGNABILITY**

### **General**

Except in certain cases, your interest in the Plan cannot be assigned or encumbered. This means that the Plan cannot be forced to use assets in your account to pay any of your debts. Also, you cannot give anyone else the right to these assets while they are still in your account in the Plan.

## **Qualified Domestic Relations Orders**

In divorce or other domestic relations legal proceedings, some of your assets may be assigned to your Spouse, former Spouse or other dependent if the Plan is told to do so by a Qualified Domestic Relations Order issued in connection with those proceedings. A Qualified Domestic Relations Order is a state domestic relations order, such as a divorce decree, that creates or recognizes the right of a Spouse, former Spouse, child or other dependent (“alternate payee”) to receive all or a portion of the Benefits payable to a Participant. The order must contain certain information and otherwise comply with federal law to qualify as a Qualified Domestic Relations Order. The Plan must recognize any Qualified Domestic Relations Order and make payments as directed by the Qualified Domestic Relations Order to any alternate payee specified in the Qualified Domestic Relations Order.

To qualify and implement a Qualified Domestic Relations Order, the Plan Administrator may need to engage experts such as attorneys, consultants or accountants, or incur expenses for the additional administration required by the Qualified Domestic Relations Order. These expenses are deducted from the Participant’s and alternate payee’s Benefits pro rata in the same manner as the Qualified Domestic Relations Order divides the Individual Account.

*Claims and Appeals Procedures for the Plan can be found on pages 13 to 18 of this booklet.*

## **G. CHECKLIST: THINGS FOR YOU TO DO**

### **Let Us Know Where You Are**

You should keep the Administrative Office informed of any change in your mailing address to make sure you get all of our communications. Our address and phone:

Cement Masons and Plasterers Joint Pension Trust  
8311 West Sunset Road, Suite 250  
Las Vegas, NV 89113  
(702) 415-2190

### **If You Are Thinking About Retirement . . .**

Application for Benefits must be made in writing on a form that can be obtained from the Plan Administrative Office or from the Participant website at [www.opcmia797Benefits.org](http://www.opcmia797Benefits.org). You may have to provide such information or documentation as may be reasonably required. The Spouse or other Beneficiary of a Participant should contact the Plan Administrator as soon as possible after the Participant’s death about applying for any death Benefits that may be due. (See Section 4.05 of the Plan for a complete description).

You will need copies of your birth certificate, marriage certificate and other documents.

The Administrative Office will tell you what you need.

### **Keep Your Records**

The accuracy and completeness of the records of your work in Covered Employment are important factors in determining the value of your Individual Account. You can protect yourself by checking the work records you receive. Try to keep pay vouchers, payroll check stubs and other evidence of your employment until you are sure you have been credited with that work.

## **Designate a Beneficiary**

For the protection of the person or persons you want to receive the Plan's death Benefits, you should be sure that you have made your beneficiary designation known to the Administrative Office in writing. If your Beneficiary should die or for any other reason you want to change your choice, you should inform the Administrative Office by completing a Pension Beneficiary Designation Form.

## **Any Questions? Ask the Administrative Office**

You should contact the Administrative Office about any questions you have about the Plan and your rights and Benefits under it, or about any disagreement you may have concerning your records. Remember, only information in writing, signed on behalf of the full Board, can be considered official.

## **H. ADDITIONAL INFORMATION REQUIRED BY ERISA**

### **Official Plan Name and Type of Administration**

#### ***Name of Plan and Type of Plan***

The official name of the Plan is the Cement Masons and Plasterers Joint Pension Trust. The Plan is a defined contribution Plan, which is not, and is not required to be, insured by the Pension Benefit Guarantee Corporation.

#### ***Type of Administration of the Plan***

The Plan is administered and maintained by a joint labor-management board of trustees. The Board administers the Plan in accordance with the Plan document. This booklet describes the major provisions of the Plan. If the Plan document and this booklet are inconsistent, the Plan document will govern.

### **Internal Revenue Service Plan Identification Number and Plan Number**

The Employer Identification Number (EIN) issued to the Board is 88-0135696. The Plan Number is 001.

### **Name and Address of the Designated Agent for Service of Legal Process**

The agent for service of legal process on the Plan, and the address at which process may be served, is:

Kevin B. Christensen, Esq.  
Christensen James & Martin, Cthd.  
7440 West Sahara Avenue  
Las Vegas, Nevada 89117

In addition, service of legal process may be made to the Board or the Plan Administrator.

### **Name and Address of the Plan Administrator**

The Board serves as the Plan Administrator and has engaged the independent contractor named below to perform the routine administration of the Trust.

BeneSys, Inc.  
8311 West Sunset Road, Suite 250  
Las Vegas, NV 89113  
(702) 415-2190

## **Names and Addresses of the Trustees**

### **Employer Trustees**

Brady Stevens  
Nevada Contractors Assn  
6600 Amelia Earhart Ct., #B  
Las Vegas, Nevada 89119

Thomas Pfundstein  
Southern Nevada Chapter,  
PDCA  
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Las Vegas, Nevada 89119

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WWCCA  
1910 North Lime St.  
Orange, California 92865

Kim Christensen, Alternate  
Nevada Contractors Assn  
4265 S. Arville St.  
Las Vegas, Nevada 89103

### **Union Trustees**

Marc Leavitt  
Operative Plasterers & Cement Masons  
4231 West Oquendo Road  
Las Vegas, Nevada 89118

Paul Benigno  
Operative Plasterers & Cement Masons  
4231 West Oquendo Road  
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Pablo Leos  
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Freddy Medina  
Plasterers & Cement Masons Local 797  
4231 West Oquendo Road  
Las Vegas, Nevada 89118

Jose Marquez, Alternate  
Plasterers & Cement Masons Local 797  
4231 West Oquendo Road  
Las Vegas, Nevada 89118

## **Collective Bargaining Agreement**

Contributions to this Plan are made on behalf of each Employee in accordance with Collective Bargaining Agreements between the Employers and the Operative Plasterers and Cement Masons International Association, Local Union No. 797 (the “Union”). The Administrative Office will provide you, upon written request, a copy of the Collective Bargaining Agreement. The Collective Bargaining Agreement is also available for examination at the Administrative Office. A complete list of the Employers and Employer organizations sponsoring the Plan may be obtained upon written request to the Plan Administrator and/or is available for examination at the Plan Administrator’s office.

## **Plan Recordkeeping Period**

July 1<sup>st</sup> of a year through June 30<sup>th</sup> of the following year.

## **Source of Financing of the Plan**

All contributions to the Plan are made by Employers in accordance with Collective Bargaining Agreements or other agreements. Benefits are provided directly from the Plan's assets, which are accumulated under the provisions of the Trust Agreement.

## **Contributing Employer and Labor Organizations**

A complete list of Employers and labor organizations sponsoring the Plan may be obtained from the Administrative Office. The Administrative Office will also, upon written request by a Participant or Beneficiary, advise whether a particular Employer or labor organization is a Plan sponsor, and if so, will provide the address of the Employer or labor organization.

## **Plan Termination**

In the event of termination of this Plan or in the event of complete discontinuance of Contributions, each Participant shall have a nonforfeitable right, and the assets then remaining, after providing for expenses of the Plan and for the payment of any Individual Account expenses approved, shall be distributed among the Participants. No part of the assets shall be returned to any Employer or inure to the Benefit of any Employer, any association or Union. In the event that a Participant cannot be located and no Claim is made by the Participant for payment of his or her Individual Account within six (6) months following the sending of notice by registered mail to the Participant's last known address, the Individual Account shall be forfeited and disposed of in accordance with applicable Department of Labor and Internal Revenue Service requirements.

## **Statement of ERISA Rights**

As a Participant in the Cement Masons and Plasterers Joint Pension Trust you are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974 ("ERISA"). ERISA provides that all Participants shall be entitled to:

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

- Examine, without charge, at the Administrative Office and at other specified locations, such as worksites and Union halls, all documents governing the Plan, including insurance contracts and collective bargaining agreements, and a copy of the latest annual report (Form 5500 Series) filed by the Plan with the U.S. Department of Labor and available at the Employee Benefits Security Administration.
- Obtain, upon written request to the Administrative Office, copies of documents governing the operation of the Plan, including insurance contracts and collective bargaining agreements, and copies of the latest annual report (Form 5500 Series) and updated Summary Plan Description. The Administrative Office may make a reasonable charge for the copies.
- Obtain a statement telling you whether you have a right to receive a pension at Normal Retirement Age (age 62 with five (5) years of participation) and if so, what your Benefits would be at Normal Retirement Age if you stop working under the Plan now. If you do not have a right to a pension, the statement will tell you how many more years you have to work to get a right to a pension. This statement must be requested in writing and is not required to be given more than once every 12 months. The 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 Plan, called “fiduciaries” of the Plan, have a duty to do so prudently and in the interest of you and other Plan Participants and Beneficiaries. No one, including your Employer, your Union, or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a pension Benefit or exercising your rights under ERISA.

### **Enforce Your Rights**

If your Claim for a pension 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 Plan documents or the latest annual report from the Plan and do not receive them within 30 days, you may file suit in a federal court. In such a case, the court may require the Board, through the Administrative Office, 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 Board. If you have a Claim for Benefits that 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 Plan’s Decision or lack thereof concerning the qualified status of a domestic relations order, you may file suit in federal court. If it should happen that Plan fiduciaries misuse the Plan’s money, or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a federal court. The court will decide who should pay court costs and legal fees. If you are successful the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees, for example, if it finds your Claim is frivolous.

### **Assistance with Your Questions**

If you have any questions about your Plan, you should contact the Administrative 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 Administrative Office, you should contact the nearest office of the Employee Benefits Security Administration, U.S. Department of Labor, listed in your telephone directory or at 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.

## **I. CLAIMS AND APPEALS PROCEDURES**

### **Introduction**

These Claims and Appeals procedures replace and supersede all previous Claims and Appeals procedures adopted by the Board, whether such procedures are contained in a Summary Plan Description, Plan, or separate documents.

These procedures are intended to comply with ERISA and the Internal Revenue Code, and all applicable regulations. Any provision of these procedures that is determined to conflict with such laws and

regulations shall be deemed to be subject to such laws and regulations, which shall govern the Claims and Appeals process.

In addition to receiving these procedures as a critical part of this Summary Plan Description, any Participant or Beneficiary may request a copy of these procedures from the Administrative Office for no charge, except that a reasonable copy charge may apply.

## **Processing of Claims and Appeals**

These are the procedures for when a Claim is denied and you want to Appeal the denial to the Board.

### ***Important note regarding unofficial Claims:***

Claims, inquiries, questions and requests regarding Eligibility or available Benefits made before an application for Benefits is completed are not Claims for purposes of this section, and are not subject to the Plan's Claims and Appeals procedures. This is true even if these types of unofficial Claims are referred to as "Claims" by the Plan Administrator or the Board. Such unofficial Claims and questions will be responded to in a prompt manner, but are not subject to the time limits that apply to Claims and carry no right to Appeal under these procedures.

### **Making a Claim**

There are no fees or charges to file a Claim or to Appeal a Benefit Decision. A "Claim" is a written application seeking Plan Benefits. You may authorize another person to make a Claim (and any subsequent Appeal) for you only in writing, signed by you on a form provided by the Plan. An oral or email request is not a Claim, but a facsimile ("fax") is acceptable. Once a Claim is made by you or your authorized representative, the rights of any other person or entity to make a Claim for the same Benefits are terminated.

### **Deciding a Claim**

Whether a Claim is granted in your favor will be determined based on the Plan Rules. The Board has full discretion to interpret and apply the Plan Rules. However, the Plan Rules will be interpreted consistently in similar circumstances, and similar past Appeals, if any, will be reviewed when your Appeal is decided. The Plan will ensure the independence and impartiality of the persons involved in making the Decision(s) for an initial Claim and any Appeal.

### **When Will Your Claim Be Decided?**

The time periods for Claim Decisions depend on whether you are making a Claim for Benefits based on Disability.

#### **Disability Benefit Claims**

If you make a Claim for Disability Benefits, your Claim will be decided within a reasonable time no longer than 45 days after receipt of your Claim. However, an additional 30 days may be needed if there are special circumstances beyond the Plan's control. If so, you will be given notice of the special circumstances before the end of the first 45 days and told the requirements for receiving Benefits, any unresolved issues, whether additional information is needed, and when a Decision is expected. You will have at least 45 days to provide the additional information.

#### **Other Claims**

For all Claims that do not depend on a determination of Disability, a Decision will be made within a reasonable time no longer than 90 days after receipt of your Claim. However, an additional 90 days may be needed if there are special circumstances beyond the Plan's control. If so, you will be given notice of the special circumstances before the end of the first 90 days, including when a Decision is expected.

The time in which to make any Claim Decision is extended during any time in which the Plan is waiting to receive requested additional information.

### **Contents of Claims Denials**

These are the procedures for when a Claim is denied and you want to Appeal the denial to the Board.

If your Claim is denied, you will be provided in writing (via facsimile or email if you wish):

- i. the specific reasons for the denial;
- ii. the Plan provisions on which the denial is based and any internal rules or guidelines that are not in the Plan, with copies of them;
- iii. a list of any additional information needed to obtain approval of your Claim, and why such information is needed; and
- iv. a reminder that these Claims and Appeals procedures may be found in this Plan Book, and notice of your right to file a lawsuit if your Appeal of the denial is denied.
- v. The Claim Denial information in a culturally and linguistically appropriate manner, upon request, including the availability of a verbal customer assistance program in the applicable non-English language, for those whose address is in a county where ten percent (10%) or more of the population is literate only in the same non-English language.
- vi. Additional information will be provided for all Disability Benefit Claims:
  - a. An explanation of the Adverse Decision, including the views and determination of:  
(i) any health care professionals and vocational professionals who evaluated the Claimant, (ii) any medical or vocational experts whose advice was obtained and relied upon in the Decision, and (iii) any Social Security Administration's Disability Determination of the Claimant.
  - b. If the Adverse Benefit Decision is based on medical necessity, experimental treatment or other similar exclusions or limits, an explanation of the scientific or clinical judgement used in the Decision, or a statement of such explanation will be provided upon request for free of charge.
  - c. The Plan provisions on which the Adverse Benefit Decision is based and any internal rules or guidelines that are not in the Plan.
  - d. A statement that the Claimant is entitled to receive, upon request and free of charge, reasonable access to all documents, records and information relevant to the Claimant's Claim for Benefits; and
  - e. If the Adverse Benefit Decision related to a Claim involving urgent care, a description of the expedited review process applicable to such Claim.

### **Appealing a Claims Decision**

You have the right to Appeal any Adverse Claim Decision. With regard to Disability Benefits, an Adverse Claim Decision also means any rescission (a cancellation or discontinuance) of your Disability Coverage, whether or not, in connection with the rescission, there is an adverse effect on any particular Benefit at that time, that has retroactive effect, except to the extent it is attributable to a failure to timely pay required premiums or contributions toward the cost of Coverage. Please keep in mind that only where you have already completed an application for Benefits is there a "Claim" subject to these procedures.

- i. All Appeals must be in writing, describe every issue on which your Appeal is based, and be filed within 60 days of notice of the Claim Denial. Any specific issue that is not timelyAppealed is waived as a basis for later legal action against the Plan, the Board, the Union, any association or any Employer. You may submit any written records and all information relating to the Claim you wish to be reviewed, whether the information was part of the initial Claim or not, and you may obtain, upon request and free of charge, access to all relevant documents, records and information related to the Claim.
- ii. Your Appeal will be decided by the next regularly-scheduled meeting of the Board that is at least 30 days after your written Appeal is received. If special circumstances require additional time to process your Appeal, you will be notified of those circumstances and a Decision will be made no later than the third (3rd) meeting following receipt of your written Appeal. Notice of the Decision on Appeal will be given as soon as possible and, in any event, by mailing such notice no later than the fifth (5th) business day after the Decision is made.
- iii. If your Appeal is denied, you will receive written (or electronic as permitted by law) notice, including the specific reasons, reference to the specific Plan provisions, and you may have access to all records that were used in reaching the Decision.
- iv. Any Appeal denial will also provide the following disclosure required by ERISA: "You and your Plan may have other voluntary alternative dispute resolution options, such as mediation. One way to find out what may be available is to contact your local U.S. Department of Labor Office and your State insurance regulatory agency." If other voluntary alternative dispute resolution options are available, the Administrative Office can provide this information upon request.
- v. If your Claim involves a medical judgement, a health care professional trained in the relevant field will be consulted (one who did not take part in the Claim Denial and who is not the subordinate of such a person). You may also request the names of medical professionals who gave advice on your Claim Denial.
- vi. The Plan will provide you, free of charge, with any new or additional evidence considered and relied upon in making the Adverse Benefit Decision (in connection with the initial Claim) before issuing a determination on Appeal. The new or additional evidence will be provided to you, along with the rational for Adverse Benefit Decision, allowing a reasonable amount of time for your response before any Appeal review.

If you are not satisfied with the Decision made on your Appeal, you may file a lawsuit in federal court (and possibly also state court with respect to a Qualified Domestic Relations Order) against the Plan. However, you must complete the Appeal, including each and every issue on which any lawsuit is based, to the Board before you may file a lawsuit. You will have 90 days after

completing the Appeals process and being denied to file suit, after which your Claim will be waived.

### **Exhaustion of Remedies**

No legal or equitable action for Benefits under this Plan may be brought unless and until the Claimant, in accordance with the foregoing Claims and Appeal Procedures:

- i. has submitted a written Claim for Benefits;
- ii. has been notified that the Claim is denied (or the Claim is deemed denied);
- iii. has filed a written Appeal for review of every issue on which the denial is disputed; and
- iv. has been notified in writing that the denial of the Claim has been confirmed (or the Claim is deemed denied on review).
- v. with regard to Disability Claims only, the Claimant is not prohibited from seeking court review of a Claim Denial based on a failure to exhaust administrative remedies under this Plan, if the Plan failed to comply with the Claim procedure requirements, unless the violation was the result of a minor error and the violation occurred in the context of an ongoing, good faith exchange of information between the Plan and the Claimant. This exception is not available if the violation is part of a pattern or practice of violations by the Plan. The Claimant may request a written explanation of the violation from the Plan and the Plan must provide such explanation within ten (10) days, including specific description of its bases, if any, for asserting that the violation should not cause the administrative remedies available under the Plan to be deemed exhausted. If the Claimant is deemed to have exhausted the administrative remedies available under the Plan, the Claim or Appeal is deemed denied on review without the exercise of discretion by the Trustees, the Claimant may immediately pursue review of the Claim Denial in Court. If the Court rejects the Claimant's request for review, the Plan will treat the Claim as re-filed on Appeal upon the Plan's receipt of the Court's Decision rejecting the Claimant's request for review.

No legal or equitable action may be brought against the Plan, the Board, the Union, any association or any Employer or its delegate relating to any dispute over Benefits under this Plan more than 90 days after a final Decision under the Claims and Appeal Procedures.

### **Trustee Discretion**

The Board (and/or its duly authorized designee(s)) have the exclusive right, power and authority in their sole and absolute discretion, to administer, apply and interpret the Plan and all other documents that describe the Plan and Trust Fund. The Board may decide all matters arising in connection with the operation or administration of the Plan. All determinations made by the Board with respect to any matter arising with regard to Benefits under the Plan will be final and binding on all concerned. Any judicial review of any Trustee Decision must be done in deference to the Board's Decision and shall be limited to only those issues timelyAppealed to the Board.

Without limiting the generality of the foregoing, the Board, and/or its duly authorized designee(s), shall have the sole and absolute discretionary authority to—

- take all actions and make all Decisions with respect to the Eligibility for, and the amount of, Benefits payable under the Plan;
- formulate, interpret and apply rules, regulations and policies necessary to administer the Plan, in accordance with the terms of the Plan;
- decide questions, including legal or factual questions, relating to the calculation and payment of Benefits under the Plan;

- resolve and/or clarify any ambiguities, inconsistencies and omissions arising under the Plan, including this Summary Plan Description, the Trust Fund agreement or other documents of the Plan or Trust;
- process and approve or deny Benefit Claims;
- determine the standard of proof in any case.

All determinations and interpretation made by the Board, and/or its duly authorized designee(s) shall be final and binding upon all Participants, Beneficiaries and any other individuals Claiming Benefits under the Plan. The Board may delegate any other such duties or powers as it deems necessary to carry out the administration of the Plan.

#### **J. CIRCUMSTANCES THAT MAY NEGATIVELY AFFECT YOUR BENEFITS**

Under certain conditions, you may not receive Benefits, or you may receive smaller payments than you expected. The following are some examples of such cases:

- If you fail to meet the Eligibility requirements of the Plan, you will not earn Benefits.
- If you do not use the designated forms from the Administrative Office or complete them in a timely manner, Benefits could be postponed.
- If you do not meet payment Eligibility requirements, no Benefits will be payable until you do.
- If you experience a layoff or your employment terminates, Contributions made on your behalf will be affected.
- If you receive a single life annuity, Benefits will stop when you die.
- If you are subject to a Qualified Domestic Relations Order, a portion of your Benefit could be paid to an alternate payee.
- If you fail to keep the Administrative Office informed of your current address, your Benefits may be affected.
- If you are affected by the federal law that limits the amount of Benefits that may be received from a qualified pension Plan, your Benefits may be limited. You will be notified if you are affected by these limits.

*Claims and Appeals Procedures for the Plan can be found on pages 13 to 18 of this booklet.*



**CEMENT MASONS AND PLASTERERS  
JOINT PENSION PLAN**

**RULES AND REGULATIONS**

**Amended and Restated Effective January 1, 2022**

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## INTRODUCTION

The Cement Masons and Plasterers Joint Pension Plan (the “Plan”) is a defined contribution profit sharing Plan. The Plan most recently was amended and restated, effective January 1, 2022, and subsequently was amended from time to time to make necessary and desirable changes.

The Plan, as set forth in this document, now is amended and restated effective as of August 1, 2015 (and as of such other dates as specifically stated herein) to make further necessary and desirable revisions to reflect the applicable provisions of the Internal Revenue Code of 1986, as amended (the “*Code*”), the Employee Retirement Income Security Act of 1974, as amended (“*ERISA*”), and related regulatory guidance and other laws enacted and regulatory changes promulgated since the last restatement as well as to incorporate prior adopted amendments and desired changes.

Except as otherwise provided herein, the amount, available payment forms, Benefits Eligibility and vesting of retirement Benefits for retirements occurring before January 1, 2022, are determined in accordance with the provisions of the Plan in existence at the time of that retirement.

**CEMENT MASONS AND PLASTERERS  
JOINT PENSION PLAN**  
**Amended and Restated Effective January 1, 2022**

**ARTICLE 1.  
DEFINITIONS**

**1.01** *Annuitant* means a Participant for whom an annuity is purchased.

**1.02** *Annuity Starting Date* means the first day of the first calendar month starting after the Participant has fulfilled all of the conditions for entitlement to Benefits and after the later of:

- (a) submission by the Participant of a completed application for Benefits; or
- (b) 30 days after the Plan advises the Participant of the available Benefit payment options, unless:
  - (i) the Benefit is being paid out automatically as a lump sum under Section 4.04(e) or Section 4.08;
  - (ii) the Benefit is being paid out as a Joint and 50% Survivor Annuity (as defined in Section 4.04(a)) at or after the Participant's Normal Retirement Age; or
  - (iii) the Participant and his or her Spouse (if any) consent in writing to commencement of payments before the end of the 30-day period, in which case payments may commence no sooner than eight days after the Plan advises the Participant of the available Benefit payment options.

The Annuity Starting Date will not be later than the Participant's Required Beginning Date.

**1.03** *Association* means the Nevada Chapter, Associated General Contractors of America, Inc., the Nevada Contractors Association, the Southern Nevada Chapter of the Painting and Decorating Contractors of America, and the Western Wall and Ceiling Contractors Association.

**1.04** *Beneficiary* means any individual, trust, estate or other recipient properly designated by the Participant to receive Benefit payments, if any, after the death of the Employee or Annuitant. For purposes of Code Section 401(a)(9), "Beneficiary" also means the designated beneficiary under Code Section 401(a)(9) and Treasury Regulation Section 1.401(a)(9)-1, Q&A-4.

**1.05** *Code* means the Internal Revenue Code of 1986, as amended.

**1.06** *Collective Bargaining Agreement* means any collective bargaining agreement between the Union and an Employer or Association, together with any amendment, modification, or successor to such agreement.

**1.07** *Contributions* means payments to the Plan by an Employer, whether pursuant to a Collective Bargaining Agreement or otherwise, on account of an Employee's Covered Employment.

**1.08** *Covered Employment* means work as an Employee and as measured in Hours of Service.

**1.09** ***Disability*** or ***Disabled*** means a Participant's total Disability such that the Participant is unable to engage in any type of work covered by the Collective Bargaining Agreement. A Participant shall be deemed totally disabled, upon written application submitted by the Participant and approved by the Board of Trustees, if the Participant meets either of the following criteria:

- (a) the Social Security Administration determines that the Participant is entitled to a Social Security Disability Benefit in connection with Old Age Survivors and Disability Insurance Coverage; or
- (b) the Participant provides competent medical evidence of disability.

Any application for Disability Benefits must be accompanied by complete medical records as determined by the Board of Trustees. The Trustees may, at any time and from time to time, require evidence of continued entitlement to Social Security Disability Benefits, and they may enact such rules and regulations involving medical examinations, documentary proof, and other matters as they shall, in their sole discretion, determine. Evidence of Disability or continued Disability must show that the Employee is unable to engage in any type of work covered by the Collective Bargaining Agreement by reason of any medically determinable physical or mental impairment that can be expected to result in death, or to be of at least 12 months duration. The Trustees may, from time to time and at their discretion, require evidence that the Employee remains totally disabled. The Trustees can also designate a specific physician to determine whether the Employee is totally Disabled.

**1.10** ***Employee*** means any person employed by an Employer and for whom Contributions have been made or are required pursuant to a Collective Bargaining Agreement or other written agreement. "Employee" includes the Employees of the Union and the Cement Masons and Plasterers Joint Apprenticeship Training Trust and any other Board approved industry affiliated employers on whose behalf Contributions are required by a Collective Bargaining Agreement, participation agreement or other written agreement, to be made to the Plan. Any party executing a participation agreement providing for Contributions to the Plan on behalf of non-collectively bargained Employees may be required to acknowledge its independent obligation to comply with applicable federal law, including but not limited to those laws and regulations defining rules of participation, Coverage, limitations on contributions and nondiscrimination in Benefits. "Employee" does not include any self-employed person, whether a sole proprietor or partner of a business organization that is an Employer, or owner of 90 percent or more interest in the shares of an Employer. No person will be permitted to participate as an Employee unless Contributions on the person's behalf are required to be made to the Plan.

**1.11** ***Employer*** means any Employer that is required to make Contributions by a Collective Bargaining Agreement. To the extent consistent with applicable law and the requirements of the Code, "Employer" includes the Union and the Operative Plasterers and Cement Masons International Association Local 797 Apprenticeship and Journeyman Training Trust and any other Board approved industry affiliated employers, which may make Contributions on behalf of its Employees pursuant to a participation agreement, provided such Contributions do not jeopardize the tax-exempt status of the Plan or Trust Fund.

**1.12** ***ERISA*** means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder.

**1.13** ***Fiscal Quarter*** means any three month period beginning on July 1, October 1, January 1 or April 1 of any year and ending on the following September 30, December 31, March 31 or June 30, respectively.

**1.14** *Fiscal Year* or *Plan Year* means July 1 of any year to June 30 of the succeeding year. For purposes of ERISA and U.S. Department of Labor regulations, the Plan Year shall serve as the Benefit accrual computation period.

**1.15** *Hour of Service* means an hour in Covered Employment (and other employment for an Employer that is subject to federal tax withholding and immediately follows or precedes Covered Employment with the same Employer without any intervening termination that occurs while the Employer is obligated to contribute to the Plan for Employees in Covered Employment) that is equivalent to—

- (a) in accordance with Sections 2530.200b and 2530.200b-3 of the U.S. Department of Labor regulations, each hour for which an Employee is paid or entitled to payment, for
  - (i) the performance of duties for an Employer during the applicable computation period;
  - (ii) nonperformance (due to vacation, holiday, illness, incapacity, layoff, jury duty, military duty, or leave of absence) of duties for an Employer during the applicable computation period; or
  - (iii) back pay, irrespective of mitigation of damages, awarded or agreed to by an Employer, to the extent that such award or agreement is intended to compensate the Employee for periods during which the Employee would have been engaged in the performance of duties for an Employer, provided that hours for which back pay is awarded or agreed to shall be credited to the computation period or periods to which the award or agreement for back pay pertains, rather than to the computation period in which the award, agreement or payment is made;
- (b) each hour granted by the Board of Trustees for absences due to illness or injury in accordance with regulations adopted and uniformly applied by the Board of Trustees, provided that a Participant on such a Disability absence will be credited with four Hours of Service for each day of absence, up to a maximum of 750 hours during a Fiscal Year;
- (c) each hour granted by the Board of Trustees for absences due to—
  - (i) the pregnancy of the Participant;
  - (ii) the birth of a child of the Participant;
  - (iii) the placement of a child with a Participant in connection with the adoption of that child by the Participant; or
  - (iv) the care of a child immediately following the child's placement with the Participant.

The Participant shall be credited with the Hours of Service that are otherwise normally credited during the period of such absence. If the Board of Trustees cannot determine the Hours of Service that would normally have been credited then for each day of absence, the Participant will be credited with eight Hours of Service. The Hours of Service provided hereunder shall apply only in the calendar year in which the absence begins or

the immediately following year. No more than 501 Hours of Service shall be credited pursuant to this subsection (c) for any single continuous period.

No Hours of Service will be credited under subsection (c) unless the Participant furnishes, within 24 months of the commencement of the absence from work, such medical or other evidence as the Trustees may reasonably require establishing that the absence is for one of the reasons provided herein and the number of days of such absence.

- 1.16** *Individual Account* means the account established for each Participant pursuant to Section 3.01, which account shall reflect applicable Contributions and the net earnings and losses thereon.
- 1.17** *Normal Retirement Age* means age 62, or if later, the age of the Employee on the fifth anniversary of participation in the Plan if the Employee is a Participant on such anniversary.
- 1.18** *Participant* means any Employee who satisfies the requirements for participation set forth in Article 2.
- 1.19** *Plan* means the Plan duly adopted and approved by the Board of Trustees to provide pension Benefits to Employees and may include the Trust Fund or Board of Trustees, as the context may determine.
- 1.20** *Qualified Domestic Relations Order* means a domestic relations order (a court judgment, decree or order, including approval of a property settlement agreement) that relates to the provision of child support, alimony payments or marital property rights to an alternate payee (a Spouse, former Spouse, child or other dependent of an Employee) that is made pursuant to state domestic relations law (including divorce and community property laws), and that has been determined, pursuant to procedures established by the Board of Trustees, to be a Qualified Domestic Relations Order as defined in ERISA Section 206(d).
- 1.21** *Required Beginning Date* means the April 1 following the calendar year following the later of: (a) the calendar year in which the Participant attains age 72 or (b) (except for five percent owners) the calendar year in which the Participant Retires.
- 1.22** *Retire* means to cease working in work that is, or is of the type that is, covered by a Collective Bargaining Agreement as demonstrated by such written evidence as the Plan may require.
- 1.23** *Spouse* means, effective June 26, 2013, the individual to whom a Participant is lawfully married (on the earlier of the Participant's death or Annuity Starting Date) in accordance with the laws of the jurisdiction in which the marriage was celebrated, whether the marriage is by civil or religious ceremony or by common law. Spouse also shall include a former Spouse to the extent that a Qualified Domestic Relations Order requires such former Spouse to be treated as a Spouse or a surviving Spouse. In some cases, a Spouse must have been married to the Participant:
  - (a) throughout the one-year period ending on the earlier of (i) the Participant's Annuity Starting Date or (ii) the date of the Participant's death; or
  - (b) for at least one year ending on or before the Participant's death, if a Participant marries within one year before the Annuity Starting Date.

**1.24** *Trust Agreement* means the agreement establishing the Cement Masons and Plasterers Joint Pension Trust, and any modification, amendment, extension or renewal thereof.

**1.25** *Trust Fund* means the Trust Fund created by and administered pursuant to the Trust Agreement to provide pension Benefits to Employees.

**1.26** *Trustee* means a trustee appointed or elected to administer the Trust Fund pursuant to the provisions of the Trust Agreement, including a successor trustee. “Trustees,” “Board,” or “Board of Trustees” means all Trustees collectively.

**1.27** *Union* means the Operative Plasterers and Cement Masons International Association, Local Union No. 797.

**1.28** *Valuation Date* means the last day of any month and any additional dates the Trustees deem appropriate.

## **ARTICLE 2.** **PARTICIPATION, SERVICE AND VESTING**

**2.01** **Commencement of Participation.** An Employee shall become a Participant on the day the Employee first works an Hour of Service.

**2.02** **Termination of Participation.** Participation ends when the Participant dies or on the day the Participant receives the distribution of his or her Individual Account.

**2.03** **Return to Work of a Withdrawn Participant.** A Participant who has received a distribution of his or her Individual Account shall immediately reestablish participation upon return to Covered Employment. Contributions shall be made on such Participant’s behalf for those Hours of Service completed since his or her return to Covered Employment.

**2.04** **Vesting.** A Participant is fully vested in his or her Individual Account at all times.

**2.05** **Military Service.**

(a) **General Rule.** Notwithstanding any provision of the Plan to the contrary, Contributions, Benefits, and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u). In addition, effective as of January 1, 2009, the differential wage payment rules contained in Code Section 414(u)(12) shall apply with respect to individuals performing services in the uniformed services described in Code Section 3401(h)(2)(A) to the extent and according to the terms required by the Heroes Earnings Assistance and Relief Tax Act of 2008 (“HEART Act”).

(b) **Death or Disability Benefits.** For purposes of Contributions, the Plan treats an individual who dies or becomes Disabled on or after January 1, 2007 while performing qualified military service with respect to the Employer, as if the individual had resumed employment in accordance with the individual’s reemployment rights under the Uniformed Services Employment and Reemployment Rights Act of 1994 (“USERRA”) on the day preceding death or Disability (as the case may be) and terminated employment on the actual date of death or Disability.

(c) **Survivor Benefits.** In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service, the survivors of the Participant are entitled to any additional Benefits (other than Benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed and then terminated employment on account of death to the extent and according to the terms required by the HEART Act.

### **ARTICLE 3.** **CONTRIBUTIONS, ALLOCATION AND VALUATION**

**3.01** **Establishment of Accounts.** An Individual Account shall be established for each Employee as of the date the Employee becomes a Participant under Section 2.01. An Individual Account shall be credited with Contributions made on behalf of the Employee for all Hours of Service within Covered Employment. An Individual Account will be maintained for each Participant for recordkeeping and accounting purposes, but segregation of the assets of the Plan shall not be required.

**3.02** **Allocation of Contributions.** Contributions made on behalf of Participants will be credited to Individual Accounts when deposited into the Plan according to the terms set forth in the Collective Bargaining Agreement or applicable participation agreement. Contributions shall be allocated to each Participant's Individual Account subject to the limitations of Section 3.08.

**3.03** **Investment of Contributions.** Individual Accounts are pooled and invested by the Trustees as an aggregate amount. Each Individual Account is credited with a pro rata share of the Plan's overall investment return.

**3.04** **Valuation of Accounts; Plan Expenses.**

(a) **Periodic Valuation.** As soon as practicable after the Valuation Date, the Trustees shall determine and fix the amount in each Participant's Individual Account. The amount in each Individual Account shall be determined as follows:

- (i) the amount in the Individual Account as of the previous Valuation Date; plus
- (ii) Contributions made on the Participant's behalf and received by the Plan since the previous Valuation Date; less
- (iii) the Participant's share (as determined pursuant to subsection (b)) of the administrative expenses of the Plan; plus
- (iv) the Participant's share (as determined pursuant to subsection (c)) of the net investment income of the Plan.

(b) **Administrative Expenses.** The total administrative expenses are those expenses incurred by the Plan not related to the process of investing the Plan assets, such as fees for investment managers and investment monitors. Each Participant's share of the total administrative expenses shall equal the total administrative expenses of the Plan divided by the number of Individual Accounts in the Plan as of the previous Valuation Date; provided, however, that excluded from the denominator shall be those Individual Accounts that were distributed since the previous Valuation Date or that had a zero (\$0) balance as of the previous Valuation Date and no allocated Contributions since the

previous Valuation Date. In no case shall the administrative expenses deducted from a Participant's Individual Account exceed the balance of his or her Individual Account after application of subsections (a)(i) and (ii).

(c) **Net Investment Income.** The net investment income of the Plan is the total investment income (including but not limited to interest, dividends, and realized and unrealized gains) less all investment expenses, and less those administrative expenses not allocated under subsection (b) due to the requirement that the administrative expenses allocated to an Individual Account may not exceed the balance in the Individual Account. A Participant's share of the Plan's total net investment income shall be determined by multiplying the total net investment income by a fraction, the numerator of which is the amount in the Participant's Individual Account after applying Sections 3.04(a)(i) through 3.04(a)(iii), and the denominator of which is the sum of all Individual Account balances determined after applying Sections 3.04(a)(i) through 3.04(a)(iii).

### **3.05 Qualified Domestic Relations Order Expenses.**

(a) **Expenses Allocated.** All expenses, including attorneys' fees, consultants' fees, actuaries' fees, and accountants' fees, incurred by the Plan for services related to reviewing and implementing a domestic relations order or Qualified Domestic Relations Order or reviewing a draft or proposed domestic relations order or Qualified Domestic Relations Order, shall be taken into account as allocated costs against Benefits payable to the Participant and alternate payee, divided pro rata in the same manner as the Qualified Domestic Relations Order divides pension Benefits, and deducted by the Plan Administrator from the first Benefit payment to each of them. The applicable amount of attorneys' fees, consultants' fees, actuaries' fees and accountants' fees, shall be provided by the various professionals to the Plan Administrator, Participant and alternate payee upon completion of any services provided to the Plan in relation to an approved Qualified Domestic Relations Order.

(b) **Allocation Method.** If a Qualified Domestic Relations Order divides Benefits that accrued both before September 1, 2004, and after, the amount charged shall first be reduced pro rata to apply only to the Benefits accrued after such date.

(c) **Deduction from Disbursement.** All such costs shall be deducted from the applicable individual's (Participant or alternate payee) Benefit payments at the time they are disbursed, at a rate not to exceed 25 percent of each such payment in the case of monthly payments, until the entire costs due are recouped by the Plan.

Notwithstanding anything to the contrary herein, this provision for allocation of Qualified Domestic Relations Order costs shall be applied in a manner consistent with applicable federal law and pertinent U.S. Department of Labor and Internal Revenue Service guidance.

### **3.06 Restrictions on Distribution.** The valuation of Individual Accounts as of each Valuation Date shall not cause any Individual Account to be payable to the Participant or others, except at the time or times or upon the terms and conditions herein provided.

### **3.07 Maximum Annual Compensation.** If at any time a Participant's compensation is applied to determine Benefits or Contributions under the Plan, compensation shall not include any amount in excess of \$265,000 (for 2015, as adjusted pursuant to Code Section 401(a)(17)(B)) in any Fiscal Year, subject to any adjustments to reflect any increase in the cost of living as determined by the

Secretary of the Treasury. If a determination period consists of fewer than 12 months, the Code Section 401(a)(17) limitation will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

**3.08 Maximum Annual Additions.** Notwithstanding any other provision of the Plan, the annual additions to which an Employee shall be entitled hereunder shall not exceed the maximum amount permitted under Code Section 415 and the final Treasury Regulation promulgated thereunder, the provisions of which are incorporated herein by reference. In accordance with Treasury Regulation Section 1.415(a)-1(d)(3), if no language is set forth in the provisions of the Plan, and a default rule exists, then the default rule applies. The following subsections clarify the application of Code Section 415 and the final Treasury Regulation to the Plan:

- (a) **Limitation year** means the calendar year.
- (b) **Compensation** means, for purposes of Code Section 415, “compensation” as defined in Treasury Regulation Sections 1.415(c)-2(b) and 1.415(c)-2(c) actually paid and includable in gross income for the limitation year, including regular pay paid after severance from employment as permitted under Treasury Regulation Section 1.415(c)-2(e)(3)(i)-(ii).
- (c) **Cost-of-Living Adjustments**. The maximum dollar limitation under Code Section 415(c)(1)(A) is adjusted annually as provided for under Treasury Regulation Section 1.415(a)-1(d)(3)(v). The limitations will be adjusted in accordance with Treasury Regulation Section 1.415(d)-1(b).
- (d) **Distribution of Excess Amounts Caused by Plan**. Notwithstanding any provision of the Plan to the contrary, if the annual additions are exceeded for any Participant, then the Plan may only correct such excess in accordance with the Employee Plans Compliance Resolution System as set forth in Revenue Procedure 2013-12 or any superseding guidance, including, but not limited to, the preamble of the final Treasury Regulation promulgated under Code Section 415.
- (e) **Plan Aggregation**. No other multiemployer Plan shall be aggregated with the Plan for purposes of applying the limits of Code Section 415. For purposes of applying the limitations of Code Section 415, all defined contribution Plans (without regard to whether a Plan has been terminated) ever maintained by a contributing Employer (or a “predecessor Employer”) under which the Participant receives annual additions are treated as one defined contribution Plan. The “Employer” means an Employer that contributes to the Plan and all members of a controlled group or an affiliated service group that includes the Employer (within the meaning of Code Section 414(b), (c), (m) or (o)), except that for purposes of this Section, the determination shall be made by applying Code Section 415(h), and shall take into account tax exempt organizations under Treasury Regulation Section 1.414(c)-5, as modified by Treasury Regulation Section 1.415(a)-1(f)(1). The Trustees shall be entitled to rely on a representation by an Employer that the Benefits payable to an Employee participating under the Plan to the extent attributable to employment with the Employer, do not, together with any other pension Benefits payable to the Employee under any other Plan maintained by the Employer (and to the extent attributable to employment with that Employer), exceed the limits of Code Section 415.

**ARTICLE 4.**  
**DISTRIBUTION OF PLAN BENEFITS**

**4.01** **Amount to be Paid.** The amount to be paid as a Benefit under the Plan shall be the amount of the Participant's Individual Account as of the most recent Valuation Date plus Contributions since such Valuation Date, less appropriate expenses as determined pursuant to Sections 3.04 and 3.05.

**4.02** **Payment Events.** A Participant's Individual Account shall become payable in the manner set forth in Section 4.04 or Section 4.05, as applicable, upon the first to occur of the following events:

- (a) **Retirement.** A Participant who attains Normal Retirement Age or a Participant who reaches age 55 with 30 years of continuous participation shall, upon written application, receive the Benefits in his or her Individual Account in accordance with Section 4.04. However, the Participant may not withdraw his or her Individual Account more frequently than once in any 12-month period.
- (b) **Death.** If a Participant dies prior to distribution of any Benefits from his or her Individual Account, the Individual Account shall, upon written application, be payable in accordance with Section 4.05.
- (c) **Disability.** If a Participant becomes Disabled (pursuant to Section 1.09) prior to distribution of any Benefits from his or her Individual Account, the Participant shall, upon approval of a written application, be entitled to receive his or her Individual Account in accordance with Section 4.04.
- (d) **Termination of Employment Before Normal Retirement Age.** Before reaching Normal Retirement Age, a Participant whose employment with an Employer has terminated for a reason other than retirement, death or Disability, shall, upon written application, be entitled to receive the amount of his or her Individual Account in accordance with Section 4.04, if:
  - (i) 24 consecutive months have elapsed when no Contributions have been made or were required to have been made on the Participant's behalf, excluding 40 hours of actual covered work performed or paid, and
  - (ii) at the beginning of such 24-month period, the Participant had completed at least 10 years of continuous participation in the Plan.
  - (iii) A Participant entitled to receive his or her Individual Account under this subsection (d) may elect to receive a partial distribution of less than his or her entire Individual Account. A Participant so electing may not receive another distribution unless subsection (d)(i) above, requiring 24 consecutive months without contributions, is satisfied.
- (e) **Termination of Employment for Terminal Illness.** If a Participant's employment with an Employer is terminated as a result of contracting a terminal illness, as determined through a medical examination by a qualified physician acceptable to the Trustees, the Participant shall, upon written application, be entitled to receive his or her Individual Account in accordance with Section 4.04.

**4.03** **Benefit Notice.** No less than 30 days and no more than 180 days before the Participant's Annuity Starting Date, the Trustees shall provide a Benefit notice to a Participant who is eligible to make an election or required to consent under this Article. The Benefit notice shall explain the optional methods of distribution from the Plan, including the material features and relative values of those methods; the Participant's right to defer distribution until the Participant attains his or her Required Beginning Date; the Participant's right to consider whether to elect a distribution for a period of at least 30 days; and, with respect to married Participants, a written explanation of the terms and conditions of the Joint and 50% Survivor Annuity, the Participant's right to waive the annuity and to revoke a waiver, and the Participant's Spouse's rights. Such distribution may commence fewer than 30 days after the Benefit notice is given, provided that the Participant, after receiving the notice, affirmatively elects a distribution.

**4.04** **Form of Payment.**

(a) **Normal Form of Distribution: Married Participants.** Unless otherwise provided in Section 4.08, or otherwise elected under this Section, a married Participant who becomes eligible to receive his or her Individual Account will receive payments under the Plan in the form of a Joint and 50% Survivor Annuity, which provides monthly payments for the life of the Participant and continues monthly payments upon the Participant's death for the life of his or her Spouse in an amount equal to 50 percent of the rate at which such Benefit was payable to the Participant during his or her lifetime. The Benefit payments under the Joint and 50% Survivor Annuity shall be the amount payable under an annuity purchased from a legal reserve life insurance company with the Participant's Individual Account.

(b) **Election to Waive Joint and 50% Survivor Annuity.** Any married Participant who becomes entitled to receive his or her Individual Account may elect to waive, or revoke a waiver of, payment in the form of a Joint and 50% Survivor Annuity by making a written election, in the form and manner required by the Trustees, within the 180-day period ending on the Annuity Starting Date, that directs payment of his or her Individual Account in a lump sum. Such written election shall not take effect unless:

- (i) the Participant's Spouse consents in writing to such election, and the Spouse's consent acknowledges the effect of such election and is witnessed by a designated Plan representative or a notary public; or
- (ii) it is established to the satisfaction of a designated Plan representative that the consent required under this subsection may not be obtained because there is no Spouse, because the Spouse cannot be located, or because of such other circumstances as the Secretary of the Treasury may by regulation prescribe.

Any consent by a Spouse (or establishment that the consent of a Spouse cannot be obtained) shall be effective only with respect to such Spouse, and only with respect to the designated beneficiary or form of Benefits, which may not be changed without spousal consent (unless the consent of the Spouse expressly permits designations by the Participant without any requirement of further consent by the Spouse).

(c) **Normal Form of Distribution: Unmarried Participants.** A Participant who is not married shall receive payments under the Plan in the form of a single life annuity, unless the Participant elects payment in a lump sum within the 180-day period ending on the Annuity Starting Date.

(d) Optional Forms of Payment. A Participant, or as permitted by the specific optional form of payment, a Spouse, who becomes entitled to receive a Participant's Individual Account may elect to receive payment in an optional form described below. All the distribution options are subject to the minimum distribution requirements described in Section 4.06. Once payments begin, a Participant cannot revoke or alter the payment option choice.

(i) Lump Sum. A Participant or Spouse who becomes entitled to receive a Participant's Individual Account may elect to receive payment in a lump sum.

(ii) Joint and 75% Survivor Annuity. Effective July 1, 2009, a married Participant who becomes eligible to receive his or her Individual Account Benefits may elect to receive payments under the Plan in the form of a Joint and 75% Survivor Annuity, which provides monthly payments for the life of the Participant and continues monthly payments upon the Participant's death for the life of his or her Spouse in an amount equal to 75 percent of the rate at which such Benefit was payable to the Participant during his or her lifetime. The Joint and 75% Survivor Annuity shall be at least actuarially equivalent to the single life pension that would be payable for the life of the Participant if the Participant were not eligible for the Joint and 50% Survivor Annuity.

(iii) Period Certain Annuity. An unmarried Participant who becomes eligible to receive his or her Individual Account Benefits may elect to receive payments under the Plan in the form of a period certain annuity, which provides monthly income for a specified period of time to the Participant, or in the event of the Participant's death, to a beneficiary designated by the Participant.

(e) Small Benefit Cash-Out Lump Sum. Notwithstanding anything to the contrary herein, if as of any Valuation Date a Participant has met conditions of Sections 4.02(d)(i) and (ii) and his or her Individual Account balance does not exceed—

(i) \$1,000; or

(ii) \$5,000 and the Participant has consented (with his Beneficiary, if applicable) to the lump sum payment;

then the Plan may distribute such balance in a lump sum.

(f) Continued Participation. In the event a Participant's Individual Account becomes payable in accordance with the provisions of Section 4.02(a), 4.02(c), or 4.02(d), a Participant may elect to receive payment of his or her Individual Account in the Plan, as valued on the Valuation Date in accordance with Article 3. The Participant will be required to select his option in writing on a form prescribed by the Trustees within 180 days after the date the Participant becomes eligible to receive payment of his or her Individual Account. If this election is not filed within 180 days, it will be presumed that the Employee elects to leave his or her Individual Account in the Plan and continue maintenance of the Individual Account in accordance with this Article. If a Participant instead files an application for distribution and receives payment of his or her Individual Account in accordance with Section 4.03, the Participant's active participation in the Plan shall be terminated and all rights of the former Participant and liabilities from the Plan to the former Participant shall cease.

(g) Application for Benefits: Initial Date. Application for Benefits must be made in writing in a form and manner prescribed by the Trustees. Unless the Participant elects in writing

otherwise, the payment of Benefits will begin no later than the 60<sup>th</sup> day after the close of the Plan Year in which the Participant becomes eligible under Sections 4.02(a), (c) or (d). However, no election may postpone the commencement of Benefits to a date later than the Participant's Required Beginning Date.

(h) Establishment and Verification of Identity. The Trustees have the right to verify and confirm the identity of any Participant or Beneficiary applying for, or entitled to receive, Benefits. Such Participant or Beneficiary has the responsibility and obligation to establish his or her identity to the satisfaction of the Trustees. Such a Participant or Beneficiary must reimburse the Trust for the costs and expenses incurred by the Trust in verifying and confirming identity.

#### **4.05 Death Benefits.**

(a) Distribution to Spouse. Unless otherwise provided in Section 4.04(e) or subsection (d) or otherwise elected under subsection (c), the Spouse of a deceased Participant who was not an Annuitant shall, upon written application, receive his or her Individual Account upon death in the form of an immediate annuity payable monthly for the Spouse's lifetime. The Benefit payments under the life annuity shall be the amount payable under an annuity purchased from a legal reserve life insurance company with the Participant's Individual Account based on the Joint and 50% Survivor Annuity. Payments shall commence no later than December 31 of the Plan Year following the year in which the Participant died, except that the surviving Spouse may postpone commencement of Benefits to a later date but no later than the deceased Participant's Required Beginning Date, or may direct the commencement of Benefit under this subsection within a reasonable time after the Participant's death.

(b) Spouse Election. A Participant's surviving Spouse may elect to receive preretirement death Benefits in a lump sum.

(c) Notice of Benefit; Waiver. To the extent required, the Plan shall provide a written explanation of the preretirement survivor annuity to each married Participant after the Plan Years in which the Participant reaches ages 32 to 35, or if later, by one year after the latest of an Employee becoming a Participant, the joint and survivor rules becoming applicable to the Participant, or a fully subsidized preretirement survivor annuity no longer satisfying the requirements for a fully subsidized Benefit. If the Participant separates from service before attaining age 35, the Plan must provide the written explanation within the period beginning one year before and ending one year after the separation from service. Such explanation shall describe, in a manner consistent with Treasury Regulation, the terms and conditions of the preretirement survivor annuity and the Participant's right to make, and the effect of, any election to waive the preretirement survivor annuity Coverage with the consent of his or her Spouse and the right to make, and the effect of, a revocation of any election by the Participant or the Spouse. The Plan does not limit the number of times the Participant may revoke a waiver of the preretirement survivor annuity or make a new waiver during the election period. The Plan will accept a waiver from a Participant who has not yet attained age 35 until the first day of the Plan Year in which he attains age 35, or the Plan Year in which he separates from service if he separates from service prior to such date. An election designating a Beneficiary to receive a Participant's Individual Account, or a revocation thereof, shall be made in writing, in the form and manner required by the Board. Such written election shall not take effect unless:

(i) the Participant's Spouse consents in writing to such election within the time

period set forth above; such election designates a Beneficiary (or a form of Benefits) that may not be changed without spousal consent (or the consent of the Spouse expressly permits designations by the Participant without and

requirement of further consent by the Spouse); the Spouse's consent acknowledges the effect of such election and is witnessed by a designated Plan representative or notary public; or

- (ii) it is established to the satisfaction of a designated Plan representative that the consent required under subsection (c)(i) may not be obtained because there is no Spouse, because the Spouse cannot be located, or because of such other circumstances as the Secretary of the Treasury may by regulation prescribe.

Any consent by a Spouse (or establishment that the consent of a Spouse cannot be obtained) shall be effective only with respect to such Spouse. The Spouse's consent to the waiver of the preretirement survivor annuity is irrevocable, unless the Participant revokes the waiver election.

- (d) **Lump Sum Payment to Nonspouse.** Notwithstanding anything herein to the contrary, in the event of the death of a Participant who was not an Annuitant, the distribution of a Participant's Individual Account to a Beneficiary other than a Spouse shall be paid to the Beneficiary in a lump sum no later than December 31 of the calendar year containing the fifth anniversary of the Participant's death.

**4.06 Minimum Required Distributions.** All distributions made from the Plan shall be made in accordance with the minimum distributions rule prescribed by Code Section 401(a)(9) and the regulation thereunder, including Treasury Regulation Sections 1.401(a)(9)-2 through 1.401(a)(9)-9, notwithstanding any Plan provision to the contrary.

- (a) **Required Minimum Distributions Beginning During the Participant's Lifetime.** The entire interest of a Participant must be distributed or begin to be distributed no later than the Participant's Required Beginning Date. The minimum distribution for any calendar year shall be based on the Participant's age attained in the calendar year, or if the Participant's sole Beneficiary is the Participant's Spouse, on the Participant's and Spouse's ages attained in the calendar year.
- (b) **Death After Retirement.** Pursuant to the requirements of Code Section 401(a)(9), if a Participant dies after distribution of his or her Individual Account has begun, the remaining balance shall continue to be distributed at least as rapidly as under the method of distribution being used prior to the Participant's death. If the Participant is unmarried or the Participant is married and his or her Spouse has waived the joint and survivor annuity, the remaining balance in his Individual Account may be distributed to the surviving Spouse or designated Beneficiary in a lump sum.
- (c) **Distributions After Required Beginning Date.** The account balance must continue to be distributed at least as rapidly as under the method of distribution being used prior to the Participant's death in accordance with Treasury Regulation Section 1.401(a)(9)(5), Q&A-5.
- (d) **Incidental Death Benefit Distributions.** Any distribution required by the incidental death Benefit requirements of Code Section 401(a)(9)(G) shall be treated as a distribution required under the minimum distribution rules.
- (e) **Life Expectancy.** The life expectancy of a Participant and his Spouse (other than in the

case of a life annuity) may be redetermined but not more frequently than annually.

- (f) **Payments to Children.** Any amount paid to a child shall be treated as if it had been paid to the surviving Spouse if such amount will become payable to the surviving Spouse upon the child reaching majority (or other designated event permitted under the regulations). If the original account owner died on or after January 1, 2020, in most cases you will need to fully distribute your account within 10 years following the death of the original owner.
- (g) **TEFRA Elections.** Notwithstanding the other provisions of this Section, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act ("TEFRA") and the provisions of the Plan that relate to Section 242(b)(2) of TEFRA.

**4.07 Designation of Beneficiary.** A Participant may designate a Beneficiary on a form provided by or acceptable to the Trustees and delivered to the Plan before death; provided, however, that a married Participant may not designate a Beneficiary other than his Spouse without spousal consent being obtained. A Participant may change his Beneficiary in the same manner but no change shall be effective or binding on the Board unless it is received by the Board prior to the time any payments are made to the Beneficiary whose designation is on file with the Plan. If no Beneficiary has been designated or no designated Beneficiary has survived the Participant, distribution of the Participant's Individual Account shall be made to the first existing class of the Participant's next of kin in the following order of preference: (a) the surviving Spouse; (b) the surviving children in equal shares; (c) the surviving parents in equal shares; or (d) the surviving brothers and sisters in equal shares. If a Participant leaves no named Beneficiary, Spouse, child, parent or brother or sister, surviving, then the Benefit is to be distributed to his estate. Notwithstanding the foregoing, the designation of a Beneficiary for any share of a Participant's Individual Account that is required to be paid to the surviving Spouse shall be void.

**4.08 Rollover Distributions.** Notwithstanding any provision of the Plan to the contrary, a Distributee may elect, at the time and in the manner prescribed by the Board, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

- (a) "**Direct Rollover**" means a payment by the Plan to the Eligible Retirement Plan specified by the Distributee. In the case of a nonspouse Beneficiary, the Direct Rollover may be made only to an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), or a Roth individual retirement account described in Code Section 408A that is established on behalf of the designated beneficiary and that will be treated as an inherited IRA pursuant to the provisions of Code Section 402(c)(11).
- (b) "**Distributee**" means a Participant or former Participant or, with respect to the individual's interest, the Participant's or former Participant's surviving Spouse, the Participant's or former Participant's Spouse or former Spouse who is the alternate payee under a Qualified Domestic Relations Order, or, effective January 1, 2008, the nonspouse Beneficiary of a Participant or former Participant.

**"Eligible Retirement Plan"** means an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity Plan described in Code Section 403(a), a qualified trust described in Code Section 401(a), an annuity contract described in Code Section 403(b), an eligible Plan under Code Section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately

account for amounts transferred into such Plan from the Plan, or effective January 1, 2010, a Roth individual retirement account described in Code Section 408A; in each case that accepts the Distributee's Eligible RolloverDistribution.

(c) **“Eligible Rollover Distribution”** means any distribution of all or any portion of the Individual Account to the credit of the Distributee, except that an Eligible Rollover Distribution does not include:

- (i) any distribution that is of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and his Beneficiary, or for a specified period of 10 years or more;
- (ii) any distribution to the extent such distribution is required under Code Section 401(a)(9);
- (iii) any portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to Employer securities); or
- (iv) any distribution of all or any portion of the Individual Account made on account of hardship (except where the Participant also satisfies a nonhardship distribution event).

**4.09 Limitations Under Qualified Domestic Relations Orders.** Notwithstanding anything to the contrary herein, a person who, as an alternate payee, seeks payment of any portion of an Employee's Individual Account under a Qualified Domestic Relations Order, shall not be eligible to receive the payment until the later of the Participant's earliest Eligibility for payment under Section 4.02 or one year after the date of entry of the Qualified Domestic Relations Order. This one-year limitation shall not apply to:

- (a) a person eligible for normal retirement Benefits, Disability Benefits or death Benefits; or
- (b) a Qualified Domestic Relations Order for past due child support or for periodic payments of child support, which the Trustees, in their sole discretion, determine not to be a device to evade the purposes of the one-year limitation period.

For purposes of this Section, an alternate payee is a Spouse, former Spouse, child, or other dependent of a Participant who is recognized by a Qualified Domestic Relations Order as having the right to receive all or a portion of the Benefits under a Plan with regard to an Employee.

**4.10 Distribution of Benefits to Missing Participants or Beneficiaries.** On occasion, Participants (72 years of age or older), who are eligible for Mandatory Distributions of Benefits under IRC, fail to apply for Benefits or respond to the Benefit Notices sent to them by the Plan. Consistent with their obligations of prudence and loyalty, the Trustees will take reasonable steps to search for and locate such missing Participants or Beneficiaries, as described in Section (a), below. When the Trustees have followed the search and location Steps, but are unable to locate a Participant or Beneficiary, the Trustees may allocate, transfer and distribute the missing Participant's or Beneficiary's Benefits in the manner described below in Section (b).

(a) **Search Steps.** If the Participant or Beneficiary does not respond to the Plan's first class mail, certified mail and electronic notifications of a Mandatory Distribution, or there is reasonable belief that the Participant or Beneficiary has failed to inform the Plan of his or her new address, the following steps shall be taken to locate the Participant or Beneficiary, and the reasonable

expenses for such Steps may be charged to the Account of the missing Participant or Beneficiary, as follows:

- (i) The Benefit Notice must be sent both by First Class and Certified Mail;
- (ii) Reasonable use of Internet Search Tools (that do not charge a fee) must be used, including Internet search engines, public record databases (such as trade licenses, mortgages and real estate taxes), obituaries and social media;
- (iii) Related Benefit Plans and Employer Records must be checked. The Plan must search its own records and ask both the Employer and administrator(s) of related Benefit Plans to search their records for a more current address and/or contact information for the missing Participant and/or Beneficiary. If there are privacy concerns, the Plan may request that the Employer or related Plan Administrator contact or forward a letter to the missing Participant or Beneficiary, requiring the missing Participant or Beneficiary to contact the Plan;
- (iv) The Designated Beneficiary, if any, must be contacted to determine and obtain any updated contact information for the missing Participant or Beneficiary; and
- (v) Additional Search Steps may be appropriate, depending on the Participant's Account Balance and the cost of further Search efforts, including use of commercial locator services, credit reporting agencies, information brokers, investigation databases and analogous services that may incur Plan charges.

(b) Distribution Options. Nevada adopted the Uniform Unclaimed Property Act, which require that persons in possession of abandoned personal property belonging to another remit the property to the State Treasurer. IRS Treasury Regulation & 1.411(a)-4(b)(6) provides that a Benefit "lost by reason of escheat under applicable state law" will not be treated as an impermissible forfeiture under Internal Revenue Code 411(a). The Department of Labor ("DOL") issued an Advisory Opinion on December 7, 1994 ("Opinion") concluding that ERISA 514 may preempt the application of the Texas Unclaimed Property Statute (similar to Nevada's Statute) to Benefits of Participants who cannot be located. In its Field Assistance Bulletin No. 2014-01, the DOL concluded that Plan fiduciaries may escheat missing Participant Account Balances to a state unclaimed property fund but are not required to do so – leaving the Plan with options to either continue to administer missing Participant Account Balances or escheat to the state.

Therefore, based upon IRS and DOL guidance, or if deemed pre-empted by ERISA, when a Participant or Beneficiary cannot be found, the Plan shall administer and/or distribute the Benefits of the missing Participant or Beneficiary, as follows:

- (i.) Pursuant to ERISA 404(a), the Trustees may first consider distributing missing Participant Benefits directly into individual retirement accounts or annuities ("IRA") in the name of the missing Participant or Beneficiary. The Trustees shall have broad discretion with respect to choosing a qualified IRA trustee, or custodian or issuer able to receive a distribution, the costs thereof, the initial investment in any such IRA or electing a different distribution option;
- (ii.) If the Plan does not select a qualified and/or acceptable IRA Plan provider for direct rollover of a missing Participant or Beneficiary distribution or determines not to make a rollover distribution for other prudent reasons based upon ERISA (pre-emption, etc.) or the particular cost, facts and circumstances, the Trustees may classify such unclaimed Benefits as "Trust Assets" under a continuing administration duty through the Plan. Such Trust Assets shall be transferred to a "Terminated Participants Fund

Account" for the exclusive Benefit of each missing Participant or Beneficiary. The Terminated Participants Fund Account shall be segregated by accounting from other Plan Accounts, but continue to be invested and administered under the Plan Investment Policy. The Plan shall maintain records to accurately track each missing Participant or Beneficiary Account. If a lost Participant or Beneficiary is thereafter located, or submits a qualifying Plan Benefit Application, his or her Benefits shall be paid from the Terminated Participants Fund Account, according to the provisions of the Plan. The Terminated Participants Fund shall be subject to the same Investment Standards applied to the Plan's general Trust Assets; and

- (iii.) Under no circumstances shall the missing Participant or Beneficiary Account Benefits deposited to the Terminated Participants Fund escheat to the State of Nevada, which would be deemed a pre-empted seizure of Plan Assets.

## ARTICLE 5. NONBARGAINED EMPLOYEES PROVISIONS

**5.01 Definitions.** For purposes of identifying Highly Compensated Employees and applying the rules on participation, vesting and statutory limits on contributions and Benefits under the Plan for such Employees, but not for determining covered service, the following terms shall have the specified meanings.

“Employer” includes all corporations, trades or businesses, under common control with the Employer within the meaning of Code Sections 414(b) and (c) and all members of an affiliated service group with the Employer within the meaning of Code Section 414(m) and all other businesses aggregated with the Employer under Code Section 414(o).

- (a) “Highly Compensated Employee” means each highly compensated active Employee and highly compensated former Employee of an Employer. A highly compensated active Employee is an Employee who performs service for the Employer during the determination year and who—
  - (i) during the look-back year received compensation from the Employer in excess of \$120,000 (for 2015 as the look-back year, as adjusted under Code Section 414(q)) and was in the top-paid group of Employees, as determined under the Code and applicable regulations, or
  - (ii) is a five percent owner at any time during the look-back year or the determination year.

A highly compensated former Employee is an Employee who separated from service (or was deemed to have separated) before the determination year and was a highly compensated active Employee either for the separation year or for any determination year ending on or after the individual's 55<sup>th</sup> birthday.

The “determination year” is the Fiscal Year for which the test is being applied, and the “look-back year” is the 12-month period immediately preceding that Fiscal Year. Whether an individual is a Highly Compensated Employee is determined separately with respect to each Employer, based solely on that individual's compensation from or status with respect to that Employer. The determination of who is a Highly Compensated Employee shall be made in accordance with Code Section 414(q) and the Treasury Regulation promulgated thereunder.

(b) “Nonbargained Employee” means a person who is employed by an Employer and who is not covered by a Collective Bargaining Agreement, but is covered by another written agreement requiring Employer contributions on his behalf.

**5.02 Nondiscrimination, Coverage and Participation.**

(a) Compliance with Minimum Requirements. Participation in the Plan by Nonbargained Employees shall be in compliance with Code Sections 401(a)(4) (nondiscrimination rules) and 410(b) (Coverage rules).

(b) Corrective Measures. A Nonbargained Employee who is a Highly Compensated Employee shall not receive any Contributions (although vesting credit may be earned) for any Plan Year in which the Employer fails to meet the requirements of Code Section 410(b) with respect to Coverage and participation of Nonbargained Employees.

**5.03 Top Heavy Plan Requirements.** If the Plan becomes top heavy in any Fiscal Year, the provisions of Internal Revenue Code Section 416 and related Treasury Regulation will supersede any conflicting provisions in the Plan.

(a) Top Heavy Definitions. For purposes of determining the Plan’s top heavy status as of the last day of the Fiscal Year (the determination date), the following definitions apply:

(i) “Compensation,” as used in this Article, means the compensation that would be stated on an Employee’s Form W-2 for the Plan Year.

(ii) “Key Employee” means an Employee or former Employee (including any deceased Employee) who at any time during the Plan Year that includes the determination date was an officer of the Employer having annual compensation greater than \$170,000 (for 2015, as adjusted under Code Section 416(i)(1)), a five percent owner of the Employer, or a one percent owner of the Employer having annual compensation of more than \$150,000. For this purpose, annual compensation means compensation within the meaning of Code Section 415(c)(3). The determination of who is a Key Employee will be made in accordance with Code Section 416(i)(1) and the applicable regulations and other guidance of general applicability issued thereunder.

(iii) “Top Heavy Plan” means the Plan for any Plan Year if, as of the determination date, the present value of the aggregate Individual Accounts under the Plan for Key Employees exceeds 60 percent of the present value of the cumulative accrued Benefits under the Plan for all Nonbargained Employees as determined under Code Section 416(g) and related regulations.

(iv) Aggregation Rules. In determining if the Plan is a Top Heavy Plan, the Plan shall be aggregated with each other Plan in the required aggregation group as defined in Code Section 416(g)(2)(A)(i) and may, in the Trustees’ discretion, be aggregated with any other Plan in the permissive group as defined in Code Section 416(g)(2)(A)(ii).

(b) Minimum Benefit. For any Plan Year in which the Plan is a Top Heavy Plan, the Contribution payable to each Employee who is not a Key Employee and is not covered under a Collectively Bargained Agreement shall, at least, be the lesser of the following:

- (i) three percent of such Employee's compensation (within the meaning of Code Section 415); or
- (ii) the same percentage at which Contributions are made (or required to be made) for the Key Employee for whom such percentage is highest for the year.

## ARTICLE 6. AMENDMENT, MERGER AND TERMINATION

**6.01 Plan Amendment.** The Trustees may amend or modify the Plan at any time in accordance with the Trust Agreement, and at the time of restatement, except that no amendment or modification may reduce any Benefits that have been approved for payment prior to amendment so long as funds are available for payment of such Benefits.

**6.02 Plan Merger or Consolidation.** In the event of any merger or consolidation with, or transfer of assets or liabilities to, any other plan, the amount of Benefits that a Participant would receive upon a termination of the Plan immediately after such merger, consolidation, or transfer shall be no less than the Benefit the Participant would have been entitled to receive immediately before the merger, consolidation, or transfer if the Plan had been terminated.

**6.03 Plan Termination.** In the event of termination of the Plan or in the event of complete discontinuance of Contributions, each Participant shall have a nonforfeitable right, and the assets then remaining, after providing for expenses of the Plan and for the payment of any Individual Account expenses approved, shall be distributed among the Participants. No part of the assets shall be returned to any Employer or inure to the Benefit of any Employer, Association or Union. In the event that a Participant cannot be located and no Claim is made by the Participant for payment of his or her Individual Account within six months following the sending of notice by registered mail to the Participant's last known address, his or her Individual Account shall be forfeited and disposed of in accordance with applicable Department of Labor and Internal Revenue Service requirements.

## ARTICLE 7. GENERAL PROVISIONS

**7.01 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 the Plan, and Decisions of the Trustees shall be final and binding on all parties. The Trustees have full, discretionary powers and shall exercise such powers in a uniform and nondiscriminatory manner.

**7.02 Benefit Claims Procedures**

(a) **Determination of Disputes.** No Employee, Participant or Beneficiary or any other person shall have any right or Claim to Benefits under the Plan, other than as specified in the Plan. If any person shall have a dispute with the Plan as to Eligibility, type, amount or duration of any Plan Benefits, the dispute shall be resolved by the Board, in its complete and sole discretion, and its Decision of the dispute shall be final and binding on all parties. Claims and Appeals shall be subject to and determined under the terms, conditions, limitations and requirements of the Plan's Claims and Appeals procedures, as established by the Board and as set forth in the Plan's Summary Plan Description ("Claims and Appeals Procedures"). The Board intends that the Plan's Claims and Appeals Procedures comply with U.S. Department of Labor Regulation section 2560.503-1.

(b) Deadline for Filing Claims. Any Claim for a Plan Benefit or Appeal thereof shall be submitted to the Board or its delegate, in the circumstances and according to rules prescribed by the Board as set forth in the Plan's Claims and Appeals Procedures.

(c) Legal Remedy. After exhausting the Plan's Claims and Appeals Procedures, nothing shall prevent any person from pursuing any other legal remedy or equitable action; provided, however, that no person shall have the right to file a civil action, proceeding or lawsuit against the Plan or any person acting with respect to the Plan, including but not limited to, the Union, the Association, any Employer, the Board, any Trustee or any other Plan fiduciary, or any third party service provider, or their delegates after the last day of the 90 day period following the later of (i) the deadline for filing an Appeal under the Plan or (ii) the date on which an adverse Benefit determination on Appeal was issued with respect to such Plan Benefit Claim.

(d) Inconsistent Information Furnished to the Plan. Whenever conflicting information regarding the identity or Eligibility of an Employee, Participant, Annuitant, Spouse or Beneficiary is submitted to the Board of Trustees or the Plan Administrator, including, but not limited to, a Plan Administrator review of an Application for Benefits, the Plan Administrator shall require that the applicable party provide competent information or proof to resolve (or sufficiently clarify) the conflicting information to enable a prudent Decision by the Plan. If the applicable party fails to promptly and in good faith furnish such information or proof, then the Plan Administrator (or legal counsel, to whom such tasks may be referred) shall perform an investigation of relevant information from such lawful sources as may be deemed reasonable to secure clarifying proof. Upon receipt of a Plan request for information or documents relevant to any such investigation, a participating Employer shall promptly disclose such relevant information and documents in its possession. The Board shall be notified immediately of all such conflicting information matters and shall have complete and sole discretion to: (i) require more information or proof, (ii) approve any pending Application for Benefits despite conflicting information, or (iii) deny, suspend or discontinue Benefits under the Plan. Any Board Decision regarding conflicting information matters shall be final and binding upon all parties. The requirements and procedure required by the Section are separate from, and in addition to, those requirements and procedure found in Section 7.03 of these Rules.

**7.03 Proof to be Furnished; Penalties for Fraud.** Every Employee, Participant, Annuitant, Spouse or Beneficiary shall furnish, at the request of the Trustees, any information or proof reasonably required for the administration of the Plan or for the determination of any matter that the Trustees may legitimately have before them. Failure to furnish such information or proof promptly and in good faith shall be sufficient reason for the denial of Benefits to such person. The falsity of any statement material to an application or the furnishing of fraudulent proof shall be sufficient reason for denial, suspension or discontinuance of Benefits under the Plan, except to the extent of payments of Benefits are nonforfeitable and, in any such case, the Trustees are entitled to recovery of any Benefit payments made in reliance on such false statement, fraudulent information or proof, as well as any attorneys' fees or costs incurred by the Plan in securing such recovery. The Plan shall be entitled to an award of attorneys' fees and costs in any action to recover such erroneous payments, as well as prejudgment interest computed at the Plan's delinquent contribution interest rate, not the statutory rate.

**7.04 Mental Incompetence.** In the event it is determined that any Participant, Annuitant, Spouse or Beneficiary is unable to care for his or her affairs because of mental or physical incapacity, any Benefit due such person, unless Claim therefor has been made by a legal guardian or legal representative, may be applied in the discretion of the Trustees for such person's maintenance and

support or the maintenance and support of his or her Spouse and minor children.

**7.05 Prohibition Against Assignment.** To the end of making it impossible for Participants, Annuitants, or Beneficiaries covered by these regulations improvidently to imperil the provisions made for their support and welfare by directly anticipating, pledging or disposing of their payments hereunder, it is hereby expressly stipulated that no Participant, Annuitant, or Beneficiary hereunder shall have any right to assign, alienate, transfer, sell, hypothecate, mortgage, encumber, pledge, commute or anticipate any payments and that such payments shall not in any way be subject to any legal process to levy execution upon, or attachment or garnishment proceedings against the same for the payment of any Claim against any Participant, Annuitant, or Beneficiary; nor shall such payments be subject to the jurisdiction of any bankruptcy court or insolvency proceedings by operation of law or otherwise, and any such assignment shall be void and of no effect whatsoever, and in any such event the Trustees shall have the right to terminate any payments to such Participant, Annuitant, or Beneficiary. Notwithstanding the foregoing, Benefits shall be paid in accordance with the applicable provisions of any Qualified Domestic Relations Order.

**7.06 Nonreversion.** The Plan has been established by the Trustees for the exclusive Benefit of Participants and their Beneficiaries. Under no circumstances shall any funds contributed hereunder at any time revert to, or be used by, any Employer, nor shall any such funds or assets of any kind be used other than for the Benefit of Participants or their Beneficiaries, except as specifically permitted by ERISA regarding contributions made due to mistake of law or fact.

**7.07 Governing Law.** The Plan shall be construed, regulated and administered under applicable federal law including ERISA, except to the extent state law is not superseded or preempted by such federal law, in which case, Nevada law shall apply.

**7.08 Interpretation.**

- (a) **Pronoun Usage.** Any masculine personal pronoun shall be considered to mean also the corresponding feminine or neuter personal pronoun, and any words used in the singular form shall be considered to mean also the plural form, as the context requires.
- (b) **Severability.** If any provision of the Plan is held illegal or invalid for any reason, the other provisions of the Plan shall not be affected.
- (c) **Headings.** The headings in the Plan are for convenience of reference only and shall not be given substantive effect.



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