

# B.A.C. Local No. 3 Pension Plan Summary Plan Description

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Effective January 1, 2020

# B.A.C. LOCAL NO. 3 PENSION PLAN

## SUMMARY PLAN DESCRIPTION

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**B.A.C. Local No. 3 Pension Plan**  
**January, 2020**

Dear Participant:

This booklet summarizes the retirement benefits provided by the B.A.C. Local No. 3 Pension Plan. It explains how you earn benefits, when you become eligible for payment, and the choices available to you concerning the way your benefit will be paid. Please destroy any printed material dated prior to January 2020 as it may be misleading or incorrect.

This booklet includes many important changes. You should read it carefully so that you will understand your rights and obligations. If you are married or have a registered domestic partner, you should discuss the Plan benefits and options with your spouse or partner because you may each have an interest in the Plan.

This Plan is amended from time to time. You will receive written notice of any changes to the Plan. Please read all Plan communications and keep them with this booklet. Please notify the Administration Office immediately if you change your address.

This booklet contains a brief, general summary of the Plan rules. It does not, however, take the place of the Plan. In the event of any conflict between the summary portion of this booklet and the Plan, the Plan will govern. For your convenience a copy of the current Plan document is printed at the back of this booklet.

<p><b>Only the full Board of Trustees is authorized to interpret the Plan. The Board has discretion to decide all questions about the Plan. No individual trustee, employer, union representative or other person has authority to interpret this Plan on behalf of the Board or to act as an agent of the Board.</b></p>
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The Board has authorized the Administration Office to respond in writing to your written questions. If you have a question about your benefits, you should write to the Administration Office for a definitive answer. To obtain an accurate answer, you will need to provide complete and accurate information about your situation.

As a courtesy to you, the Administration Office also may respond informally to oral questions. Oral information and answers are not binding upon the Board and cannot be relied on in any dispute concerning your benefits.

You will receive periodic statements showing your accumulated benefits. From time to time such statements may reflect a data error, which may be corrected based on a subsequent audit or review. The Board of Trustees reserves the right to make appropriate corrections whenever such error is discovered.

This Plan can help provide financial security to you and your family upon retirement or in the event of your death. To be sure benefits are paid in the manner best suited to your needs, please keep your beneficiary designation up to date and carefully analyze your benefit options before you retire. You may wish to consult your tax advisor concerning the tax consequences of your decisions.

If you have questions about the Plan or need further information, please contact the Administration Office at 888-208-0250 or (925) 208-9995.

Sincerely,  
Board of Trustees

# **B.A.C. Local No. 3 Pension Plan**

## **Summary Plan Description**

### **Background and Type of Plan**

This Plan is a multiemployer, collectively bargained defined benefit pension plan which provides retirement benefits to employees of employers that contribute to the Plan. The Plan, which was restated most recently in March 2019 including amendments 1-5, is reprinted at the back of this booklet.

Prior to the most recent restatement, the Plan was last restated on January 1, 2015. Previously, the Plan had been restated on October 1, 2012, July 1, 1999 and May 1, 1996. The B.A.C. Local No. 3 Pension Plan merged with the San Francisco Bricklayers Local No. 7 Pension Plan and the Bricklayers and Allied Craftsmen Local No. 16 Pension Plan effective December 31, 2019. On May 1, 1996, the Sacramento-San Joaquin Valley Brick and Tile Pension Plan (the Valley Plan) merged with the B.A.C. Local 3 Pension Plan. The Valley Plan was effective May 1, 1995, the date on which the Allied Masonry Industry Pension Plan merged with the Bricklayers and Tilers Local No. 12 Pension Plan. In addition, the Brick Plan was previously restated on December 1, 1994 in connection with the merger of the San Jose B.A.C. Local 10 Pension Plan into the Oakland B.M. and P.I.U. Local No. 8 Pension Plan.

The Plan is funded from employer contributions. Employees do not make contributions to the Plan and do not have individual accounts with this Plan. Instead, benefits are based on your years of Future and Past Service Credit and the amount of employer contributions made to the Plan on your behalf. The amount of your retirement benefits will depend on when you retire and the benefit option you select.

The current Collective Bargaining Agreement between B.A.C. Local No. 3 and the participating employer associations and individual employers require employers to contribute to the Trust Fund at fixed rates per hour for each hour worked by their covered employees. The B.A.C. Local No. 3 Union is known as the "sponsoring Local Union" of the Plan.

### **Administration of the Plan and Investments**

The Plan is administered by a Board of Trustees consisting of an equal number of Trustees appointed by the Union and Employers. Under the Trust Agreement under which the Plan is administered, four Trustees, called "Union Trustees," are selected by the B.A.C. Local No. 3 and four Trustees are appointed by the employer association named in the Trust Agreement or its successor. The current Trustees are listed under the heading Employee Retirement Income Security Act of 1974.

The Board of Trustees has designated the day to day administration of the Plan to BeneSys Administrators, a professional plan administrator, known as the "Administration Office". The Trustees have also contracted with various investment managers to invest the Plan assets. In addition, an investment consultant assists the Trustees in monitoring the Plan's investment managers and the Plan's investments.

### **1. Who pays for the Plan?**

The entire cost of the Plan is paid by your contributing Employers who are signatories to a Collective Bargaining Agreement with B.A.C. Local No. 3. No employee contributions are required or permitted.

### **2. Who is eligible to participate in the Plan?**

You become a Participant in the Plan the first day of the Plan Year (July 1 through June 30) in which you work at least 300 hours in Covered Employment. Covered Employment means employment covered by a Collective Bargaining Agreement for which contributions are required.

If you were a Participant in the B.A.C. Local No. 3 Plan on May 1, 1996, and you worked at least 300 hours in Covered Employment during the Plan Year ending June 30, 1996 you are also a Participant in this Plan.

If you were a Participant in the Valley Plan on May 1, 1996 and you worked at least 500 hours in Covered Employment in the twelve month period ending April 30, 1996, you are also a Participant in this Plan.

If you were or would have become a Participant in the San Francisco Bricklayers Local No. 7 Pension Plan or the Bricklayers and Allied Craftsmen Local No. 16 Pension Plan as of December 31, 2019, you will automatically become a Participant in this Plan on that date. To have become a Participant under the San Francisco Bricklayers Local No. 7 Pension Plan, you would have had to work 250 hours of Covered Employment during their Plan Year (January 1<sup>st</sup> to December 31<sup>st</sup>). To have become a Participant under the Bricklayers and Allied Craftsmen Local No. 16 Pension Plan, you would have had to work 300 hours of Covered Employment during their Plan Year (July 1<sup>st</sup> to June 30<sup>th</sup>). No Participant's accrued benefit under either the San Francisco Bricklayers Local No. 7 Pension Plan or Bricklayers and Allied Craftsmen Local No. 16 Pension Plan will be lower after the effective date of the merger, December 31, 2019, than the benefit immediately before that date.

**Although it is not necessary that you complete an enrollment form to become a Participant in the Plan, once you become a Participant you should file a completed Beneficiary Designation Card with the Administration Office.**

### **3. What happens to credits I earned under my prior Plan?**

You will not lose any vested benefits which you earned prior to the merger of the Sacramento-San Joaquin Valley Pension Plan with the B.A.C. Local 3 Pension Plan, or prior to the merger of the San Francisco Bricklayers Local No. 7 Pension Plan, and Bricklayers and Allied Craftsmen Local No. 16 Pension Plan with the B.A.C. Local No. 3 Pension Plan. You should refer to the rules of your prior Plan to determine how many Vesting Credits and Service Credits you had earned prior to the date of the merger. If you are a Participant in this Plan, any Vesting Credits which you had earned under those Plans will be combined with Credits earned under the merged Plan to determine your eligibility for retirement and your benefit amount earned under the prior Plan will be combined with your benefit amount earned under this Plan to determine the amount

of your benefits when you retire. If you do not have active participation in this Plan (refer to question 2 above) your eligibility and benefits will be determined solely under the rules of your prior Plan.

#### **4. What types of benefits are paid by the Plan?**

The Plan pays benefits for Normal, Early, Unreduced, or Delayed Retirement and Disability benefits to Participants who meet the eligibility requirements. Generally speaking, retirement benefits are paid in the form of monthly benefits for your life alone or reduced monthly benefits for the joint lives of both you and your spouse. Refer to questions 7, 10 and 11 below for the rules regarding election among the forms of benefits offered by the Plan. The Plan also pays benefits to your surviving spouse or other named beneficiary if you die prior to retirement (refer to question 15). You will receive a mandatory lump sum distribution in lieu of all other benefits under the Plan if the present value of your accrued benefits when you qualify for retirement is less than \$5,000.00.

If you were a Participant in the Local 7 Plan or the Local 16 Plan, and you are credited with at least one hour of service in this Plan after January 1, 2020, you will be eligible to treat all your prior accrued benefits to satisfy the following BAC Local 3 Pension Plan provisions:

1. Normal Retirement
2. Early Retirement
3. Disability

#### **5. How do I earn a right to benefits under the Plan?**

If you are a Participant in the Plan (refer to question 2 above) you accrue "Vesting Credits" in accord with the hours worked in Covered Employment. In certain circumstances you may be qualified to receive Vesting Credit for hours worked in employment for an Employer that is not Covered Employment. For example, work performed as an apprentice for an Employer even if no contributions are made for those work hours.

As noted in question 3 above, you will be credited with Vesting Credits earned under your prior Plan. Under this Plan, you will be credited with one full Vesting Credit for each Plan Year in which you work at least 1,000 hours in Covered Employment. If you work less than 1,000 hours in a Plan Year, you may receive partial credits in increments of one-tenth for each full 100 hours worked. However no credit is given for a Plan Year in which you work less than 300 hours. You will not earn more than one Vesting Credit in any one Plan Year even if you work more than 1,000 hours.

If you are a Participant in this Plan and you are credited with at least one hour of service after May 1, 1996, you will be fully vested in your accrued benefits when you have earned five Vesting Credits. Your accrued benefits must be paid to you in accordance with the rules of this Plan when you qualify for Normal Retirement, even if you leave Covered Employment. If you have eight Vesting Credits you may apply for Early Retirement when you qualify as described in question 7. Refer to question 8 for rules that apply in the case of your disability.

If you are a Participant in this Plan based on your membership in the B.A.C. Local No. 3 Pension Plan or the Valley Plan (as described in question 2) but you are not credited with at least one hour of service after May 1, 1996, refer to Article III, Section 3.1 through 3.4 of the Plan document for the rules which apply to your vesting rights.

If you earned vesting credits as of December 31, 2019 under either the San Francisco Bricklayers Local No. 7 Pension Plan or Bricklayers and Allied Craftsmen Local No. 16 Pension Plan, provided there has been no Permanent Break-in-Service, you shall have the same number of vesting credits as of December 31, 2019 under this Plan.

If you are a former Participant in the San Francisco Bricklayers Local No. 7 Pension Plan and worked at least 1,000 hours in Covered Employment during the twelve month period ending December 31, 2019 and 1,000 hours during the twelve month period ending June 30, 2020, you shall receive one year of Vesting Credit under that Plan and one year of Vesting Credit under this Plan. If you are a former Participant in the San Francisco Bricklayers Local No. 7 Pension Plan and worked more than 300 hours but less than 1,000 hours during the twelve month period ending June 30, 2020, you shall receive partial credit under this Plan, whether or not you worked more than 250 hours during the twelve month period ending December 31, 2019.

#### **6. Can I lose my right to benefits under the Plan if I do not work sufficient hours in Covered Employment?**

**YES!** If you are not vested, you will be considered to have a one year "Break-in-Service" in any Plan Year in which you work less than 300 hours. If you earn three hundred or more Hours of Service during a subsequent Plan year, your previously forfeited benefits shall be restored if the number of consecutive one-year Breaks-in-Service are less than five years. If you are not vested (have fewer than five Vesting Credits) and you then have five consecutive Breaks-in-Service, you will lose all of your previously earned benefits and will not be able to re-capture them even if you return to Covered Employment. In this case your Break-in-Service has become Permanent.

#### Exceptions:

There are some special circumstances under which you will not suffer a Break-in-Service even when you do not work 300 hours in the Plan Year. These include service in the armed forces of the United States, time lost from work due to maternity or paternity or adoption of a child, and, in some circumstances, time lost due to your disability. You should refer to Article III, Section 3.5(e) of the Plan document for the rules which apply in these circumstances.

Credits forfeited due to a Permanent Break-in-Service shall be reinstated if all the following requirements are met (Refer to Article III, Section 3.7 of the Plan document):

- (a) you earned at least five years of service immediately before the Permanent Break-in-Service;
- (b) the Permanent Break-in Service occurred due to your continuous employment for a signatory employer immediately before the break;
- (c) during the break period, you were employed under the terms of a collective bargaining agreement between the employer and the Roofers and Waterproofers Union Local 40 or 81;

- (d) after the break, you returned to Covered Employment and earned at least five years of Vesting Credit based solely on Contributory Service, without an intervening Break-in-Service or cash-out; and
- (e) you earned at least five years of Vesting Credit after June 30, 2001.

Participants who suffer a Permanent Break-in-Service because of one or more Breaks-in-Service during the 2009 – 2014 Plan Years may qualify to have forfeited Credits restored if the following requirements are satisfied at the time the Participant applies for benefits (Refer to Article III, Section 3.5(f) of the Plan document):

- (a) The Participant suffered a Permanent Break-in-Service because of one or more Breaks-in-Service during the 2009 – 2014 Plan Years;
- (b) Following the Permanent Break-in-Service the Participant returns to Covered Employment and earns five (5) or more years of Vesting Credit; and
- (c) The Participant does not work in the masonry industry for self-employment or for an employer who is not signatory to a collective bargaining agreement with B.A.C. Local Union No. 3 or other local union affiliated with the International Union of Bricklayers and Allied Craftworkers, after returning to Covered Employment following the Permanent Break-in-Service.

If you incurred one or more consecutive one-year Breaks-in-Service as of December 31, 2019 under the San Francisco Bricklayers Local No. 7 Pension Plan or Bricklayers and Allied Craftsmen Local No. 16 Pension Plan, you will automatically have incurred the same number of consecutive one-year Breaks-in-Service under this Plan. Any one-year Breaks-in-Service incurred after December 31, 2019 shall be determined under this Plan.

## **7. When am I eligible for retirement benefits?**

The Plan provides benefits for four types of retirement. You must meet the eligibility requirements outlined below and file an application with the Plan.

### **a) Normal Retirement:**

Normal Retirement Age for a Participant who has earned at least five years of Vesting Credit is age 62. Such a Participant may apply for a retirement benefit based on his/her accrued benefit. A Participant may also apply for Normal Retirement if he/she has attained the later of age 62 or the fifth year of participation without a Break-in-Service. If you have not been a Plan Participant for five years without a Break-in-Service, you will not be eligible for a Normal Retirement until the date after age 62 that you meet this requirement.

### **b) Unreduced Early Retirement:**

A Participant who has attained age 60 and earned at least five years of Vesting Credit may apply for an unreduced retirement benefit based on his/her accrued benefit without reduction. Prior to 1998, the Plan required eight years of Vesting Credit.

### **c) Reduced Early Retirement:**

A Participant who has attained age 55 and earned at least eight years of Vesting Credit may apply for a reduced retirement. His/her, accrued benefit will be reduced by ½ of 1% for each month that he/she is less than 60 years of age (six percent for each full year you are younger



than 60). The benefit will be reduced from the accrued benefit because the retiree will be collecting a pension for a longer period of time.

**d) Delayed Retirement:**

A Participant may defer retirement beyond Normal Retirement Age or Unreduced Retirement Date and continue to accrue benefits or receive an actuarially increased benefit. In lieu of an actuarially increased benefit, upon your retirement you may be eligible to receive a lump sum payment based on the amount you would have received if you had retired on the date you were entitled to the Unreduced Retirement Benefit or on your Normal Retirement Date, whichever is greater.

If you accrued benefits under either the San Francisco Bricklayers Local No. 7 Pension Plan or Bricklayers and Allied Craftsmen Local No. 16 Pension Plan as of December 31, 2019 and earn at least one hour of service in Covered Employment in this Plan in any Plan Year on or after January 1, 2020, your post-merger benefit accruals for Normal Retirement, Early Retirement or Disability Retirement shall be determined in accordance with this Plan.

**8. What benefits are provided by the Plan if I become disabled?**

A Participant will be entitled to a Disability Benefit if he/she becomes totally and permanently disabled prior to Normal Retirement Age and has earned at least five Vesting Credits but only if he/she has worked at least 300 hours in Covered Employment in the Plan Year in which the disability occurs or in the prior Plan Year.

If you are a Participant in the Plan based on your membership in the B.A.C. Local No. 3 Pension Plan or the Valley Plan (as described in question 2), you will satisfy the 300 hour rule if you become disabled prior to July 1, 1998.

The Disability Benefit will be the accrued benefit without reduction for age. To be eligible for a Disability Benefit you must have received a Social Security Disability Award. To ensure that you receive maximum benefits you should apply for Disability Benefits at the same time that you apply to the federal government for Social Security benefits.

You will also be considered disabled and entitled to benefits for up to 12 months if you have at least 15 vesting credits and provide the Board of Trustees with satisfactory evidence that you are currently receiving Medicare benefits due to disability and have applied for Social Security Disability Benefits.

If you are waiting for a determination on your application for a Social Security Disability Award and are eligible for Early Retirement benefits, you have the option to begin receiving Early Retirement benefits and then convert your Early Retirement benefits to Disability benefits when you receive your Social Security Disability Award. Please refer to Article V, section 5.4(c) of the Plan document for the rules to be eligible for converting Early Retirement benefits to Disability benefits.

If you apply for and are eligible for a Disability Benefit, and the present value of the benefit is \$5,000.00 or less, it will be paid to you in a lump sum payment.

If you were disabled and then recover from your disability before you reach age 60, or if your Social Security Disability Award is revoked, you must notify the Administration Office within 31 days, or else any Disability benefits you collect after your recovery will be offset from your pension benefits.

## **9. How is my Normal Retirement benefit calculated?**

When you work for signatory contractors, they contribute to the Pension Plan for each hour worked. The hourly contribution is established in the Collective Bargaining Agreement. When you retire, your accrued monthly benefit will be determined by multiplying the total dollar amount of contributions you earned as follows:

- (a) 1.75% of contributions earned on and after October 1, 2010.
- (b) 2.0% of contributions earned on and after March 1, 2009 through September 30, 2010.
- (c) 2.5% of contributions earned on and after May 1, 1996 through February 28, 2009.

This amount will be added to any benefit earned under either of the prior Plans, if any, to determine your accrued monthly benefit amount. Remember, if you take Early Retirement prior to age 60, your vested accrued benefit will be reduced by 0.5% for each month you are younger than 60.

Your Normal Retirement benefit may be increased if you meet any of the conditions below:

- (a) For the Plan Year ending June 30, 1997, a monthly benefit equal to three and one-quarter percent (3.25%) of employer contributions;
- (b) If you had at least 300 covered hours in the Plan Year ending June 30, 1998 and were not retired as of June 30, 1998, the monthly benefit for the Plan Years ending June 30, 1997 and June 30, 1998 shall equal five and one-quarter percent (5.25%) of employer contributions.
- (c) If you worked at least 300 hours during the Plan Year ending June 30, 1999 and retire after that date you shall be entitled to a five and one-half percent (5.5%) increase in all benefits accrued as of June 30, 1999.
- (d) If you worked at least three hundred (300) hours under the Local 3 Plan during the year ending June 30, 1996, without regard to hours worked under the Local 3 Plan as a result of the merger with the Valley Plan, and retire after June 30, 1996 you are entitled to a twelve percent (12%) increase in all benefits accrued under the Local 3 Plan prior to June 30, 1996. This provision does not apply to benefits accrued under the Valley Plan.
- (e) If you worked at least three hundred (300) hours under the Valley Plan during the year ending April 30, 1996 and retire after that date, you are entitled to a twelve percent (12%) increase in all benefits accrued under the Valley Plan prior to April 30, 1996. This provision does not apply to benefits accrued under the Local 3 Plan.

Effective January 1, 2000, if you are receiving a pension from this Plan you may transfer all or part of your distribution from the B.A.C. Local No. 3 Defined Contribution Plan into this Plan and thereby increase the amount of your monthly pension benefit. The minimum amount you may transfer is \$10,000. There is no maximum amount. The amount of the increase in your monthly pension will depend on your age, the amount you transfer and the pension payment

option you have chosen. If you die before you have received benefits equaling the amount transferred from the Defined Contribution Plan, the balance will be paid to your designated beneficiary. If you are married, election of this option requires the written and notarized consent of your spouse.

#### **10. How is my retirement benefit paid?**

The normal form of benefit for an unmarried Participant will be a lifetime monthly annuity, with 36 monthly payments guaranteed, based on the amount of your accrued benefit. This is called a Single Life Annuity. If you are unmarried but would like to provide protection for some other designated beneficiary in the event of your death, you may elect one of the Joint and Survivor options described below in question 11. The amount of your benefit will be reduced to compensate for the fact that the Plan may be paying benefits for longer than your life alone.

If you are married on the date of your retirement, then your benefit will be in the form of a **50% Joint and Survivor Annuity**, unless your spouse waives his/her right to this form of benefit in writing on a form witnessed by a Plan representative or a notary public. This form of benefit consists of monthly benefit payments for your life followed by monthly benefit payments for the life of your spouse at 50% of the benefit paid during your joint lives.

To compensate for the fact that the Plan may be paying benefits for longer than your life alone, your accrued benefit will be actuarially reduced according to the difference in ages between you and your spouse. The reduction factors are provided in Appendix A of the Plan document. If your spouse pre-deceases you, your payments are not reduced or increased.

#### **11. Are there other options for how my benefits could be paid?**

Yes. There are several other options which you should consider:

- a. If you would like to provide your spouse or other designated beneficiary with additional protection you may elect a **66-2/3%, 75% or a 100% Joint & Survivor Benefit**. Your benefit will be reduced more than it would under the 50% Joint and Survivor option, however your surviving spouse or other beneficiary would continue to receive either 2/3 (66-2/3% J&S), 3/4 (75% J&S), or the same monthly amount (100% J&S) for the remainder of his/her life as was paid during your lifetime.
- b. If your designated beneficiary is your spouse, you may provide additional protection for yourself in the event that your spouse pre-deceases you by electing a **Joint & Survivor with Pop-Up Option**. Under this option, there is a small additional actuarial reduction to the Joint and Survivor annuity. However, if your spouse dies, then the amount paid to you for the remainder of your life would "pop-up" to the amount that would have been paid as a single life annuity, i.e. the accrued benefit prior to the Joint and Survivor reduction.
- c. If you do not select a Joint and Survivor option but would like to provide some protection to your spouse or other designated beneficiary, you may elect a **Life Annuity with 10 Years Certain**. Under this option, if you die before 120 monthly payments have been issued to you, your spouse or other designated beneficiary will receive the remaining monthly payments until the full 120 total payments have been made.

**12. What is the 36-month guarantee for a Single Life Annuity?**

For both married and single retirees the Plan guarantees to pay no less than the value of 36 monthly payments even if both you and your spouse or other beneficiary do not survive that long. For example, if your spouse waives his/her right to a 50% Joint & Survivor annuity and you then die 12 months after your retirement, he/she would receive the additional 24 monthly payments, assuming he/she is your named beneficiary.

If you both die less than 36 months from the date of your retirement, your designated beneficiary would receive the balance of the payments, either in monthly installments or as a lump sum. Your beneficiary will receive the same monthly payments as you received, based on the form of election you made prior to retirement.

**13. Are benefits ever paid in a form other than monthly payments?**

Yes. The Plan pays a mandatory lump sum payment to a Retired Participant if the present value of the benefit he is entitled to is \$1,000.00 or less, before any payments have been made. Sometimes a lump sum payment may be eligible for rollover to a traditional IRA or to another qualified employer plan, or may qualify for other favorable tax treatment. The Administration Office will provide basic information required by law concerning these issues. You are encouraged to consult your tax advisor when making any decisions about your pension.

**14. Do I pay income tax on my pension?**

Yes. All benefits you receive from this Plan, including Disability benefits, are taxable income to you. Certain lump-sum payments that are not rolled over directly to another qualified plan or individual retirement account are subject to mandatory 20% withholding for federal income tax. For additional guidance, you should seek the advice of a tax professional.

**15. What happens to my benefits if I should die prior to retirement?**

If you are married and you die prior to your annuity start date with vested pension benefits, your surviving legal spouse will be entitled to the Qualified Pre-Retirement Survivor Annuity (QPSA), described below. As an alternative, your spouse may elect to receive a lump sum payment calculated as 36 times the unreduced monthly benefit amount you would have received had you retired at the time of your death.

If you are unmarried at the time of your death, and you have designated a beneficiary, your beneficiary is entitled to the lump sum benefit payment described above, i.e. 36 times your monthly benefit amount. It is important to file a beneficiary card with the Administration Office once you become vested even if you are not married.

If you die while performing qualified military service on or after January 1, 2007, your survivors are entitled to any additional benefits (other than benefit accruals relating to the period of your military service) provided under the Plan as if you had resumed employment before you died.

**Qualified Pre-Retirement Survivor Annuity (QPSA).** If you are married and die prior to your annuity start date with vested pension benefits, your surviving spouse will be entitled to a 100% Joint and Survivor Annuity calculated as if you had retired on the date of your death with no

early retirement reduction, if applicable, below age 55. The benefit will commence not later than sixty (60) days after the close of the Plan Year in which you die. Your surviving spouse may defer commencement until the time you would have attained the later of age 62 or Normal Retirement Age.

This QPSA benefit is also available to your spouse if you die while receiving Disability Benefits.

#### **16. Once I retire can my benefits be suspended?**

**YES!** If you return to employment of the type covered by the Collective Bargaining Agreement within the State of California your pension benefits will be suspended for any calendar month in which you are employed for 40 or more hours. However, your benefits will not be permanently withheld if you work for a contractor who contributes to the Plan and you have reached Normal Retirement Age or Unreduced Retirement Age. In this case your monthly benefits will be suspended, but will be paid to you in a lump sum when you again retire.

If you return to work you should notify the Administration Office within 15 days. If you fail to notify the Administration Office it will be presumed that you have worked more than 40 hours per month unless you provide evidence to the contrary. The Trustees may require all pensioners to certify as often as every three months that they have not performed work in the Masonry Industry. You will be notified of the suspension of your benefits by the Administration Office.

If you have separated from service with your employer and have been receiving your pension benefits for at least three (3) months, you may return to work at an employer covered by a collective bargaining agreement with B.A.C. Local No. 3 and continue to receive your benefits from the B.A.C. Local No. 3 Pension Plan provided you notify the Administration Office within two weeks of beginning employment. Any additional benefits earned as a result of reemployment will be added to your pension following the end of the Plan Year. This provision is only effective for hours worked between January 1, 2000 through February 6, 2007, October 1, 2007 through December 31, 2008, June 1, 2012 through June 30, 2013, and January 1, 2014 through December 31, 2015. This provision is also effective January 1, 2017 through June 30, 2021 but is limited to working up to 1,000 hours in a Plan Year before your benefits are suspended.

However, your benefits will not be suspended if you are employed in one of the following positions: (1) as an apprenticeship training instructor (so long as the program is funded, either directly or indirectly, by an apprenticeship training fund affiliated with the Union); (2) hired by an Employer as a project manager, marketing representative, field superintendent, estimator, purchasing agent, expeditor, detailer, safety director, or other non-bargaining unit position approved by the Board of Trustees, and are receiving benefits under the Plan; or (3) you are an owner of a company that contributes to the Plan and you are no longer actively involved in the management of the company, you do not perform work that would be considered Covered Employment, you regularly employ Employees in Covered Employment, and you are over age 62 and receive wages from the company for no more than 80 hours per month. You will be required to notify the Administration Office in writing of such employment.

Retired Participants under either the San Francisco Bricklayers Local No. 7 Pension Plan or Bricklayers and Allied Craftsmen Local No. 16 Pension Plan as of December 31, 2019, are subject to the suspension of benefit rules under those applicable plans. Retired Participants with effective dates of retirement on or after January 1, 2020 are subject to the suspension of benefit rules under this Plan.

**17. Are my benefits subject to a court order if I am divorced?**

Yes. If your marriage ends, you and your spouse may agree to divide your pension benefits as part of your marital property settlement. If your former spouse is to receive any part of your pension, you must obtain a court order called a Qualified Domestic Relations Order ("QDRO"). The Plan reviews all court orders concerning your pension to determine if they are qualified under the law. The Plan does not examine the fairness of your property settlement. You and your spouse are each responsible for protecting your own interests when you agree to any QDRO.

Benefit payments to your former spouse under a QDRO cannot begin until the earliest date you would be eligible to receive a payment from the Plan.

A copy of the procedures governing the QDRO determination is available, without charge, upon request from the Administration Office.

**18. How do I get further information about the Plan or an application for benefits?**

This summary of the Plan is intended only as an explanation of the principal features of the Plan. A complete copy of the Plan in effect as of March 1, 2019, is attached to this Summary. If there is any conflict between this summary and the terms of the Plan, the Plan prevails.

If you want to apply for your pension benefits you must contact the Administration Office at the address below. Your surviving spouse or other beneficiary who is entitled to a Qualified Pre-Retirement Survivor annuity ("QPSA") must also apply at the time he/she becomes eligible for it.

Address your request to the Administration Office:

B.A.C. Local No. 3 Pension Trust Fund  
c/o BeneSys Administrators  
P.O. Box 1607  
San Ramon, CA 94583

Your application for pension benefits cannot be approved and payments cannot begin until you have completed all of the forms provided by the Administration Office and your work history has been confirmed. You must provide proof of your date of birth. If you are married, you must also provide proof of marriage and proof of your spouse's date of birth (unless your spouse has properly waived, in writing, his/her right to participate in your pension benefits). If you are providing Joint and Survivor benefits to another designated beneficiary, you must provide proof of that person's date of birth.

Once your application (or that of your surviving spouse or other beneficiary) has been approved, benefits will be paid retroactive to the first of the month following the month the application was received.

### **19. What can I do if I disagree with a benefit determination?**

If your application for benefits is denied in whole or in part, or if you are in any way dissatisfied with a determination regarding your eligibility, amount, or duration of benefits, you or your legal representative are entitled to a complete review by the Board of Trustees. You should submit your request for review to the Board of Trustees at the address below.

Any person whose application for benefits under the Plan has been denied in whole or in part by the Board of Trustees will be notified of the decision in writing within a reasonable period of time, but not later than 90 days after receipt of such application. A decision affecting disability benefits must be delivered no later than 45 days after receipt of such application. You or your qualified beneficiary may then file, within 60 days (180 days for disability benefits), a petition to the Board of Trustees for a review of the decision. This request for reconsideration must be in writing and state in clear and concise terms the reasons for disagreement with the Trustees' decision, including the Plan provisions or other documents which support your position. Send your written request addressed to the following:

B.A.C. Local No. 3 Pension Trust Fund  
c/o BeneSys Administrators  
P.O. Box 1607  
San Ramon, CA 94583

If your appeal is denied, the decision shall state the specific reasons for the decision including a reference to the Plan's provisions. The decision shall be made at the next succeeding regular Trustees' meeting and issued within five (5) days after the meeting, unless special circumstances require additional time.

Failure to file a written request for claim review with the Board of Trustees within 60 days (180 days for disability benefits) shall constitute a waiver of your right to reconsideration of the Trustee's decision. However, such a failure shall not preclude you from establishing another claim based on additional information which was not available at the time of the Trustees' decision.

No employee, beneficiary, or third party provider or any other person shall have any right or claim to benefits under this Plan except as specified in the Plan document. The procedures specified in this section shall be the sole and exclusive procedures available to any individual who is dissatisfied with any eligibility determination or benefit award, or who is adversely affected by any action of the Trustees, the Contract Administrator or any other Plan Fiduciary.

The decision of the Trustees shall be final and binding upon you and all persons claiming through you. The Board of Trustees have full discretionary authority to interpret all Plan documents and to make all factual determinations concerning any claim or right asserted under or against the Plan or Trust. Determinations by the Board of Trustees shall be subject to judicial

review only for abuse of discretion. No lawsuit may be filed more than two (2) years after the claim was denied and may only be brought in the United States District Court in the Northern District of California.

By participating in the Plan, Participants, Retired Participants, Employees, and Beneficiaries waive, to the fullest extent permitted by law, whether or not in court, any right to commence, be a party in any way, or be an actual or putative class member of any class, collective, or representative action arising out of our relating to any dispute, claim or controversy relating to the Trust Fund or the Plan, and Participants, Retired Participants, Employees, and Beneficiaries agree that any dispute, claim or controversy may only be initiated or maintained and decided on an individual basis.

## **20. Can the Plan be amended?**

The Board of Trustees reserves the right to amend the Plan at any time, provided no such amendment shall reduce the interest of any Participant who is then vested, or divert any portion of the Plan assets to any purpose other than the payment of retirement benefits to Plan Participants and their beneficiaries.

## **21. Can the Plan be terminated?**

The Board of Trustees intends this Plan to continue indefinitely; however, the Trustees reserve the right, subject to the provisions of the Trust Agreement and the Collective Bargaining Agreements, to terminate the Plan. To do so, they must notify and obtain approval from a governmental agency called the Pension Benefit Guaranty Corporation. Refer to Article XIII, Section 13.3 of the Plan document for more information on the allocation of Plan assets in the event of termination. In no event shall any of the assets of the Pension Fund revert to or be recoverable by an Employer Association, Individual Employer, or Union. In the event of partial or total termination of this Plan, all Participants of the Plan at that time will be one hundred percent (100%) vested to the extent that the Plan is funded.

Your pension benefits under this multiemployer plan are insured by the Pension Benefit Guaranty Corporation, a federal insurance agency. A multiemployer plan is a collectively bargained pension arrangement involving two or more unrelated employers, usually in a common industry.

Under the multiemployer plan program, the PBGC provides financial assistance through loans to plans that are insolvent. A multiemployer plan is considered insolvent if the plan is unable to pay benefits (at least equal to the PBGC's guaranteed limit) when due.

The maximum benefit that the PBGC guarantees is set by law. Under the multiemployer program, the PBGC guarantee equals a participant's years of service multiplied by (1) 100% of the first \$11 of the monthly benefit accrual rate and (2) 75% of the next \$33. The PBGC's maximum guarantee limit is \$35.75 per month times a participant's years of service. For example, the maximum annual guarantee for a retiree with 30 years of service would be \$12,870.



The PBGC guarantee generally covers: (1) normal and early retirement benefits; (2) disability benefits if you become disabled before the plan becomes insolvent; and (3) certain benefits for your survivors.

The PBGC guarantee generally does not cover: (1) benefits greater than the maximum guaranteed amount set by law; (2) benefit increases and new benefits based on plan provisions that have been in place for fewer than 5 years at the earlier of (i) the date the plan terminates or (ii) the time the plan becomes insolvent; (3) benefits that are not vested because you have not worked long enough; (4) benefits for which you have not met all of the requirements at the time the plan becomes insolvent; and (5) nonpension benefits, such as health insurance, life insurance, certain death benefits, vacation pay and severance pay.

For more information about the PBGC and the benefits it guarantees, ask the Pension Office or contact PBGC's Technical Assistance Division, 1200 K Street, N.W., Suite 930, Washington, D.C. 20005-4026 or call 202-326-4000 (not a toll-free number). TTY/TDD users may call the federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4000. Additional information about the PBGC's pension insurance program is available through the PBGC's website on the Internet at <http://www.pbgc.gov>.

## **22. Statement of ERISA Rights**

As a participant in the B.A.C. Local No. 3 Pension Plan, you are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974 (ERISA). ERISA provides that all Plan participants will be entitled to:

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

Examine, without charge, at the Administration Office or at other specified locations, such as union halls, all documents governing the plan, including insurance contracts, trust documents 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 Public Disclosure Room of the Employee Benefits Security Administration.

Obtain, upon written request to the Administration Office, copies of documents governing the operation of the Plan, including insurance contracts, trust documents and collective bargaining agreements, and a copy of the latest annual report (Form 5500 Series) and updated summary plan description. The administrator may make a reasonable charge for the copies.

Receive a summary of the Plan's annual financial report. The Plan administrator is required by law to furnish each participant with a copy of this Summary Annual Report.

Obtain a statement telling you whether you have a right to receive a pension at normal retirement age 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 twelve (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 responsible for the operation of the 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 administrator to provide the materials and pay you up to \$110 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the administrator.

If you have a claim for benefits which is denied or ignored, in whole or in part, you may file suit in a state or federal court. In addition, if you disagree with the plan's decision or lack thereof concerning the qualified status of a domestic relations order or a medical child support 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 the court finds your claim is frivolous.

### **Assistance with Your Questions**

If you have any questions about your Plan, you should contact the Plan administrator. If you have any questions about this statement or about your rights under ERISA, or if you need assistance in obtaining documents from the plan administrator, you should contact the nearest area office of the Employee Benefits Security Administration, United States Department of Labor, listed in your telephone directory or the Division of Technical Assistance and Inquiries, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210. You may also obtain certain publications about your rights and responsibilities under ERISA by calling the publications hotline of the Employee Benefits Security Administration.

# EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Information required by the Act specified in Section 102(b)

## **1. The name and type of administration of the Plan:**

The name of the Plan is the B.A.C. Local No. 3 Pension Plan. The Plan is a defined benefit pension plan covered by the plan termination insurance provision of the Employee Retirement Income Security Act of 1974 (ERISA). The Plan is administered and maintained by the Joint Board of Trustees, with an equal number of Union Trustees and Management Trustees.

## **2. Internal Revenue Service Plan Identification Number and Plan Number:**

Employer Identification Number (EIN) issued to the Board of Trustees: 90-0888690  
Plan Number: 001

## **3. Name and address of the person designated as agent for the service of legal process:**

Lisa Schwantz  
Kraw Law Group, APC  
605 Ellis Street, Ste. 200  
Mountain View, CA 94043

Service of legal process may also be made upon the Board of Trustees at the Administration Office shown below, upon any individual Trustee or upon the Plan Administrator.

## **4. Name and address of the contract administrator:**

The Trustees have engaged the independent Third Party Administrator named below to perform the routine, day-to-day administrative tasks of the Trust Fund:

BeneSys Administrators  
925-208-9995  
Toll Free: 888-208-0250

### Mailing Address:

P.O. Box 1607  
San Ramon, CA 94583

### Physical Address:

7180 Koll Center Parkway, Suite 200  
Pleasanton, CA 94566

**5. Names and Addresses of Trustees:**

MANAGEMENT TRUSTEES

Jeff Barber  
c/o John Jackson Masonry  
5691 B. Power Inn Road  
Sacramento, CA 95824

Ronald Bennett  
E&S Masonry  
1970 Rancho Verde Circle  
Danville, CA 94526

Randy Statham  
P.T.S. Masonry, Inc.  
7117 Tokay Avenue  
Sacramento, CA 95828

Eddie Lourenco  
Associated Terrazzo Co. Inc.  
1991 Oakdale Avenue  
San Francisco, CA 94124

UNION TRUSTEES

Troy Garland  
BAC Local No. 3  
10806 Bigge Street  
San Leandro, CA 94577

Dave Jackson  
BAC Local No. 3  
10806 Bigge Street  
San Leandro, CA 94577

Gary Peifer  
BAC Local No. 3  
1550 Harbor Blvd., Ste. 205  
Sacramento, CA 95691

Steve Kantoniemi  
BAC Local No. 3  
10806 Bigge Street  
San Leandro, CA 94577

**6. Collective Bargaining Agreements:**

Contributions to this Plan are made on the behalf of each Employee in accordance with Collective Bargaining Agreements between the Employers and the Union. The Administration Office will provide, upon written request, a copy of the Collective Bargaining Agreements, which are also available for examination at the Plan Administration's Office and certain other locations, such as the union hall.

**7. Source of financing for the Plan and identity of any organization through which benefits are provided:**

All contributions to the Plan are made by Employers in accordance with Collective Bargaining Agreements with B.A.C. Local Union No. 3. Benefits are provided directly from the Fund's assets which are accumulated under the provisions of the Trust Agreement. The Administration Office will provide, upon written request, information as to whether a particular employer is a sponsor of the plan. If the employer is a sponsor, the sponsor's address will also be provided.

**8. Record Keeping Period:**

Pension Vesting Credits are computed for the period of July 1 through June 30 of any year.

**9. Plan Year Ending Date:**

The Plan fiscal year ends June 30.

**B.A.C. LOCAL NO. 3**

**PENSION PLAN**

**(Working Plan Document As Amended and Restated Effective March 1, 2019  
with Amendments 1-5)**

**B.A.C. LOCAL NO. 3  
PENSION PLAN  
(Working Plan Document As Amended and Restated Effective March 1, 2019  
with Amendments 1-5)**

This Plan amends and restates the B.A.C. Local No. 3 Pension Plan (Local 3 Plan). The effective date is July 1, 1964, the original effective date of the B.M. and P.I.U. Local No. 8 Pension Plan (Local 8 Plan). The Local 3 Plan was previously amended and restated effective May 1, 1996 in connection with the merger of the Sacramento-San Joaquin Valley Brick & Tile Pension Plan (Valley Plan) into the Local 3 Plan. The Plan was again amended and restated effective July 1, 1999, October 1, 2012, and January 1, 2015. This document represents the current amended and restated Plan effective March 1, 2019 with Amendments 1-5.

The Pension Fund Trust Agreement originally executed on July 1, 1964 and amended and restated as of February 28, 1984, is intended to form a part of the Plan.

The Plan and Trust are intended to meet the requirements of Sections 401(a) and 501(a) of the Internal Revenue Code of 1954, as amended by the Employee Retirement Income Security Act of 1974.

The provisions of this Plan shall apply to all benefits accrued under this Plan on or after July 1, 1999, and to benefits accrued prior to that date under this Plan or the Valley Plan by “active employees” who were covered by either of those plans at the time of the merger. To the extent that benefits accrued by a Participant prior to the Effective Date become payable under the terms of this Plan, the result shall be at least as favorable to the Participant as under the prior Plan. Nothing in this Plan shall be construed as eliminating any right or reducing any benefit available under the Local 3 Plan or the Valley Plan with respect to benefits accrued prior to the Effective Date, except as may be required by law.

In this context it is noted that the Local 3 Plan resulted from the merger of the B.A.C. Local 10 Plan (Local 10 Plan) into the Local 8 Plan effective December 1, 1994. The Local 8 Plan was developed and established on July 1, 1964. The Valley Plan resulted from the merger of the Bricklayers and Tilesetters Local Union No. 12 Retirement Income Plan (Local 12 Plan) into the Allied Masonry Industry Pension Fund (Local 9 Plan) effective May 1, 1995. Except as otherwise provided, benefits accrued by a Participant under the Local 3 Plan, the Local 8 Plan, the Local 10 Plan, the Local 12 Plan, the Local 9 Plan or the Valley Plan prior to the applicable merger date shall be calculated in accordance with the terms of that Plan. Nothing in this Plan shall be construed as eliminating any right or reducing any benefit available under the Local 8 Plan, Local 10 Plan, Local 12 Plan, or Local 9 Plan with respect to benefits accrued under by a participant in that Plan prior to the applicable merger date. Except as otherwise specified herein, rights and benefits with respect to service before the Effective Date shall be determined in accordance with the provisions of the applicable predecessor Plan.

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## **ARTICLE I DEFINITIONS**

The words and phrases as used herein shall have the same meaning as they do in the Trust Agreement or as defined below, unless a different meaning is plainly required by the context:

**“Active Employee”** means a Participant in the BAC Local 3 Plan who worked at least three hundred (300) hours for which contributions were required to be paid during the Plan Year ending June 30, 1996, or a former participant in the Valley Plan who worked at least five hundred (500) hours for which contributions were required to be paid to that Plan during the twelve (12) month period ending April 30, 1996.

**“Administration Office”** means the party or agent designated by the Trustees to perform administrative duties on behalf of the Trust Fund.

**“Annuity Start Date”** means the first day of the first period for which an amount is payable as an annuity, or, in the case of a benefit payable in the form of an annuity, the first day on which all events have occurred which entitle the Participant to such benefit.

**“Beneficiary”** means the person designated by a Participant to receive whatever benefits may be available in the event of the Participant’s death. Subject to the legal requirement of spousal consent, where applicable, each Participant shall have the right at any time to designate, rescind or change any designation of a primary or contingent beneficiary. A designation or change of beneficiary shall be made in writing on such form or forms as the Trustees may require. If no beneficiary was designated or no designated beneficiary survives the Participant, distribution shall be made to the first eligible survivor(s) on the following list:

- (a) the Participant's spouse;
- (b) the Participant's children, including legally adopted children;
- (c) the Participant's grandchildren;
- (d) the Participant's parents;
- (e) the Participant's brothers and sisters; or
- (f) executors or administrators of the Participant's estate appointed by the court within one (1) year of the Participant's death.

Designation of the Participant's spouse as beneficiary is automatically revoked if the marriage is dissolved before the Participant retires and begins receiving benefits.

**“Break-in-Service”** means a Plan Year in which a Participant completes less than three hundred (300) hours of Covered Employment.



**“Collective Bargaining Agreement”** means a written agreement between the Union and the Employer under which the Employer is obligated to pay contributions to the Trust Fund providing for this Plan, and may include a written participation agreement requiring the Union to pay contributions to the Trust for employees of the Union.

**“Compensation”** means the total amount of all payments made by the Employer to an Employee for services rendered to the Employer, including commissions, overtime pay, bonuses, but compensation shall not include director’s fees, contributions made by the Employer under the Plan, payments made by the Employer for group insurance, hospitalization and like benefits, nor contributions made by the Employer under any other employee benefit plan it maintains. Compensation includes any elective deferral (as defined under Internal Revenue Section 402(g)(3)), and any amount which is contributed or deferred by the Employer at the election of the Employee and which is not includible in the gross income of the Employee by reason sections 125, 132(f)(4), or 457. Furthermore, for purposes of a contribution or an allocation under the Plan based on compensation, compensation shall only include amounts actually paid an Employee during the period he or she is a Participant in the Plan.

Effective July 1, 2002, the annual compensation of each Participant taken into account under the Plan for any year shall not exceed Two Hundred Thousand Dollars (\$200,000), as adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code. Annual compensation means compensation during the Plan Year or such other consecutive 12-month period over which compensation is otherwise determined under the Plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. Until July 1, 2002, the annual compensation of each Participant taken into account under the Plan shall not exceed One Hundred Fifty Thousand Dollars (\$150,000).

Post-Severance from Employment Payments Not Includible in Compensation. In no event shall Compensation include severance pay. However, the following types of remuneration, if includible for purposes of Compensation as defined above, shall be taken into account only if paid by the later of 2-1/2 months after the date of severance from employment with the contributing employer or the end of the Section 415 limitation year that includes the date of severance from employment with the contributing employer, and the amounts would have been included in Compensation if they had been paid before the separation from service date:

(a) Regular Pay after Severance from Employment. The payment of regular compensation for services during the Participant’s regular working hours, or for services outside of the regular working hours such as overtime or shift differential, commissions, bonuses or other similar payments and the payment would have been paid before severance from employment if the Participant had continued service.

(b) Leave Cash Outs and Deferred Compensation. Payments of unused accrued bona fide sick, vacation or other leave provided the Participant would have been able to use the leave if employment had continued, or payments from a nonqualified unfunded deferred compensation plan, provided the payment would have been paid at the time if the Participant had continued service and such payment would be includible in gross income.

Post-Severance from Employment Salary Continuation Payments. Effective January 1, 2008, if a contributing employer continues salary to a Participant because of the disability of a Participant or who is not performing services because of qualified military service, as that term is used in Code Section 414(u)(1), at a rate that is not in excess of the salary that would have been payable to the Participant had he not entered qualified military service, such salary continuation will be included in Compensation.

**“Contributions”** means employer contributions made to the Trust Fund under a collective bargaining agreement for the benefit of Plan Participants.

**“Contributions for Benefits”** means contributions made to the Trust Fund on or after January 1, 2006, less the Deficit Reduction Amount as defined below.

The Deficit Reduction Amount shall be equal to \$.40 per hour for hours worked on or after January 1, 2006 for all journeymen working under a collective bargaining agreement that does not provide for a separate deficit reduction contribution to the Plan.

The Deficit Reduction Amount shall be used to reduce the Plan’s funding deficit, as determined by the Plan’s actuary, and shall not be used in determining a Participant’s retirement benefit under the Plan.

As of November 1, 2005, amounts set aside under the applicable collective bargaining agreement for deficit reduction shall be deposited into the Fund for the sole purpose of reducing the Plan’s funding deficit, as determined by the Plan’s actuary, and shall not be used in determining a Participant’s retirement benefit under the Plan.

**“Contributory Service”** means Covered Employment subsequent to May 1, 1996, for which the Employer was obligated to pay contributions to this Plan and any periods of military service for which the Participant is legally entitled to receive benefit credit under the Uniformed Services Employment and Reemployment Rights Act of 1994 or any similar law. Contributory Service shall also include periods of Covered Employment prior to May 1, 1996 for which the Employer was obligated to pay contributions to the Local 3 Plan, Local 8 Plan, Local 10 Plan, Local 12 Plan, Local 9 Plan or Valley Plan, as more specifically defined in those plans, provided that the Participant is an Active Employee.

**“Covered Employment”** means employment covered by a collective bargaining agreement for which contributions are required.

**“Effective Date”** generally means July 1, 1964, the original effective date of the Local 8 Plan. Certain provisions of the Plan have different effective dates as specified herein or as otherwise required by law.

**“Employer”** means any individual employer or group of employers bound by a collective bargaining agreement to participate in and contribute to the Trust Fund. The Union may contribute to the Plan on behalf of its employees, provided that the Union's contributions are made pursuant to a written participation agreement and are made on the same basis as

contributions by Employers under a collective bargaining agreement. The Union is not required to contribute on behalf of clerical employees who are covered by a collective bargaining agreement.

**“Employee”** means any person on whose account an Employer is required to make contributions to the Trust Fund, or for whom an Employer did make such contributions and who qualified for benefits to be provided by the Trust Fund. Employee may include employees of the Union.

**“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended from time to time.

**“Fund” or “Trust Fund”** means the Trust Fund into which all monies paid by the Employers on behalf of Employees shall be deposited.

**“Hour of Service”** means any of the following:

(a) Each hour for which an Employee is paid, or entitled to payment, for the performance of duties for the Employer during the applicable computation period.

(b) Each hour for which an Employee is paid, or entitled to payment, by the Employer on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence. Notwithstanding the preceding sentence:

(1) No more than five hundred one (501) Hours of Service are required to be credited under this Paragraph (b) to an Employee on account of any single continuous period during which the Employee performs no duties (whether or not such period occurs in a single computation period);

(2) An hour for which an Employee is directly or indirectly paid, or entitled to payment, on account of a period during which no duties are performed, is not required to be credited to the Employee if such payment is made or due under Plans maintained solely for the purpose of complying with applicable worker's compensation, or unemployment compensation or disability insurance laws; and

(3) Hours of Service are not required to be credited for a payment which solely reimburses an Employee for medical or medically related expenses incurred by the Employee.

(c) Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer. The same Hours of Service shall not be credited both under Paragraph (a) or Paragraph (b), as the case may be, and under this Paragraph (c). Crediting of Hours of Service for back pay awarded or agreed to with respect to periods described in Paragraph (b) shall be subject to the limitations set forth in that paragraph.

(d) Hours of Service will be credited in accordance with Part 2530.200 b-2 (b) and (c) of the Code of Federal Regulations, as amended from time to time.

**“Limitation Year”** shall be the twelve (12) month period ending on June 30 of each year.

**“Normal Retirement Age”** means the attainment of age sixty-two (62) with five (5) years of Vesting Credit or the later of the attainment of age sixty-two (62) or the fifth (5<sup>th</sup>) anniversary of participation in the Plan without a Break-in-Service.

**“Normal Retirement Date”** means the first day of the month following the date on which the Participant first becomes eligible for a normal retirement benefit as provided in Section 4.1.

**“Participant”** shall mean an Employee who becomes a participant of the Plan in accordance with Article II of the Plan.

**“Plan”** shall mean this Pension Plan developed and established by the Trustees pursuant to the terms of the Trust Agreement. This Plan is a defined benefit plan as that term is defined by ERISA.

**“Plan Year” and “Fiscal Year”** shall be the twelve (12) month period ending June 30 of each year.

**“Retired Participant”** shall mean a Participant whose participation terminated by reason of retirement and who is receiving or is entitled to receive retirement benefits under this Plan.

**“Retroactive Annuity Start Date”** means an Annuity Start Date that occurs on or before the date the Participant is provided with the written explanation of the fifty percent (50%) Joint and Survivor Annuity.

**“Spouse”** means the person to whom the Participant is legally married. Notwithstanding any other Plan provision to the contrary, effective as of June 26, 2013, a Spouse shall include the same-sex spouse of a Participant, provided the marriage was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex and regardless of whether the individuals are domiciled in a state that does not recognize the validity of same-sex marriages.

**“Suspendible Employment”** shall mean employment or self-employment within the State of California in the Masonry (B.A.C.) industry, in a trade or craft in which the employee was employed at any time under this Plan.

**“Trust Agreement”** means the agreement and declaration of trust providing for the establishment and continuance of the above Plan, and any modification, amendment, extension or renewal thereof.

**“Trustees”** shall mean the Trustees designated in accordance with the provisions of the Trust Agreement, who shall administer and interpret the Plan.

**“Union”** shall mean Bricklayers Local Union No. 3 and any other union of the Bricklayers and Local 9 Craftsmen, AFL-CIO whose participation in the Plan is approved by the Trustees.

**“Unreduced Retirement Date”** means the date on which a Participant first becomes eligible for Unreduced Retirement.

**“Vesting Credit”** means the credit toward non-forfeitable benefits which is earned by each Participant based on his or her Hours of Service.

## **ARTICLE II PARTICIPATION**

**2.1.** An Employee of an Employer shall become a Participant in the Plan effective as of the first day of the Plan Year in which the Employee works at least three hundred (300) hours in Covered Employment. A Participant who is an Active Employee shall become a Participant on May 1, 1996.

**2.2.** Participation under the Plan shall terminate if and when a Participant shall cease to be an Employee, except as provided under Article III - Vesting Credit, Article IV - Retirement Eligibility, Article VI - Disability and Article VIII - Benefit Payments.

**2.3.** (a) If any person who has been employed by an Employer in other than Covered Employment becomes employed in Covered Employment for the same Employer without a quit, discharge, or retirement occurring between the two types of employment, such person shall be considered a Participant in the Plan from the commencement of his or her employment by said Employer.

(b) If any Participant ceases to be employed in Covered Employment, but continues to be employed by the same Employer without a quit, discharge, or retirement occurring between the two types of employment, such Participant shall be considered a Participant in the Plan so long as he or she continues to be employed by said Employer.

(c) Any Participant who becomes an officer or shareholder of an Employer may continue to participate in the Plan, provided (i) the Board of Trustees approves his or her continued participation; (ii) he or she is working with the tools of the trade; (iii) such Employer is incorporated and employs at least one bargaining unit employee who has no ownership interest in the Employer and is participating in the Plan under the terms of a Collective Bargaining Agreement or in a plan that benefits workers in the masonry trade under the terms of a collective bargaining agreement; (iv) such Employer signs a participation agreement; and (v) such participation meets the requirements under applicable law.

## **ARTICLE III VESTING CREDIT**

### **3.1. Years of Vesting Credit**

For the purpose of determining eligibility for death, disability, retirement and vested benefits, but not for the purpose of determining the amount of such benefits, Vesting Credit will be granted for each Plan Year as follows:

Hours of Service During Plan Year	Years of Vesting Credit
1,000 or more	1.0
900 but less than 1,000	.9
800 but less than 900	.8
700 but less than 800	.7
600 but less than 700	.6
500 but less than 600	.5
400 but less than 500	.4
300 but less than 400	.3
Less than 300	0.0

A Participant may not receive more than one (1) year of Vesting Credit for Hours of Service during a single Plan Year. However, a former Participant in the Valley Plan who earned at least one thousand (1000) hours as defined in either plan during the twelve (12) month period ending April 30, 1996 and one thousand (1000) hours during the twelve (12) month period ending June 30, 1996, shall receive one (1) year of Vesting Credit under that Plan and one (1) year of Vesting Credit under this Plan. If the Participant worked more than three hundred (300) hours but less than one thousand (1000) hours during the twelve (12) month period ending June 30, 1996, he or she shall receive partial credit under this Plan in accordance with the above schedule, whether or not he or she worked more than five hundred (500) hours during the twelve (12) month period ending April 30, 1996 and therefore may have received partial credit in accordance with the terms of the Valley Plan.

**3.2.** Except as otherwise provided in Section 3.5, benefits accrued by Active Employees and Participants shall become vested and non-forfeitable when the Active Employee or Participant has accumulated five (5) years of Vesting Credit without an intervening Break-in-Service or zero cash-out as defined in Section 3.5.

**3.3** Benefits accrued before May 1, 1996 which were fully vested as of that date shall remain fully vested. A Participant who had accrued non-vested benefits under the Local 3 Plan, Local 8 Plan, Local 9 Plan, Local 10 Plan, Local 12 Plan or Valley Plan as of May 1, 1996 and who works at least one (1) hour in Covered Employment under this Plan on or after May 1, 1996 shall become vested in such benefits and in any benefit accruals under this Plan upon completion of five (5) years of Vesting Credit without an intervening Break-in-Service or zero cash-out as defined in Section 3.5.

**3.4.** All benefits earned by Participants in this Plan and all benefits earned before May 1, 1996 under this Plan or the Valley Plan by Participants who are Active Employees, shall become vested and nonforfeitable when the Participant attains Normal Retirement Age, provided there has been no Permanent Break-in-Service or a zero cash-out as defined in Section 3.5. Normal Retirement Age is the attainment of age 62 and the earlier of (a) five (5) years of Vesting Credit or (b) the fifth (5th) anniversary of participation without a Permanent Break-in-Service as described in Section 3.5. Nothing in this section shall be interpreted to prevent the vesting of benefits accrued under the Local 3 Plan, Local 8 Plan, Local 10 Plan, Local 9 Plan, Local 12 Plan or Valley Plan prior to the applicable merger date upon attainment of Normal Retirement Age as defined in that plan at the time the benefits were accrued.

### **3.5. Break-in-Service**

(a) Except as provided in subparagraphs (b), (e) and (f) below, if a non-vested Participant fails to earn at least three hundred (300) Hours of Service during a Plan Year, a Break-in-Service shall occur, and the Participant's accrued benefits shall be forfeited. The Participant shall be deemed to have received a distribution of the entire non-forfeitable benefit in the amount of \$0 (a zero cash-out). If the Participant thereafter returns to Covered Employment, he or she shall be treated as a new Employee.

(b) If a Participant who incurred a Break-in-Service while non-vested earns three hundred (300) or more Hours of Service during a subsequent Plan Year, the Participant's previously forfeited benefits shall be restored if the number of consecutive one-year Breaks-in-Service is less than the greater of (1) the years of Vesting Credit prior to the break and (2) five (5) years.

(c) If a partially-vested Participant incurs a Break-in-Service, all non-vested benefits earned prior to the break shall be forfeited. However, if the Participant returns and works at least three hundred (300) hours on or after May 1, 1996, the break shall be disregarded, the forfeited benefits shall be restored, and the Participant's vested percentage in both pre-break and post-break benefits shall be calculated based on his or her total Vesting Credit. The forfeited benefits likewise shall be restored if the Participant attains Normal Retirement Age before the number of consecutive one-year Breaks-in-Service exceeds the greater of (1) the years of Vesting Service prior to the break and (2) five (5) years.

(d) A Permanent Break-in-Service occurs when a Participant fails to qualify for restoration of previously forfeited, non-vested benefits under the rules prescribed in paragraph (b) or (c), as applicable.

(e) Service which is broken as a result of one of the following causes shall not be considered a Break-in-Service:

(1) Service in any of the armed forces of the United States for a period of up to five (5) years, provided that following discharge from such service the Participant returns to Covered Employment within the time period required to qualify for benefit protection under the Uniformed Services Employment and Reemployment Rights Act of 1994 or any successor law.



If this condition is met, the Participant shall be credited with Hours of Service for each full year of military service equal to the number of Hours of Service he or she earned during the twelve (12) month period immediately prior to entering such military service. Pro rata credit shall be given for partial years of military service.

(2) Disability for the period in which California UCD benefits were paid or which constituted a valid waiting period for such benefits.

(3) Disability for the period for which Worker's Compensation temporary disability benefits were paid or which constituted a valid waiting period for such benefits.

(4) Effective May 1, 1996 (May 1, 1995 for former Valley Plan participants who are Active Employees), disability for the period in which Social Security disability benefits were paid or which constituted a valid waiting period for such benefits.

(5) A maternity or paternity leave of absence which shall mean an absence from work for any period by reason of the Participant's pregnancy, birth of the Participant's child, placement of a child with the Participant in connection with the adoption of such child, or any absence for the purpose of caring for such child for a period immediately following such birth or placement. For this purpose, Hours of Service shall be credited for the computation period in which the absence from work begins, only if credit therefore is necessary to prevent the Employee from incurring a one-year Break-in-Service, or, in any other case, in the immediately following computation period. The Hours of Service credited for a "maternity or paternity leave of absence" shall be those which normally would have been credited but for such absence, or, in any case in which the Administrator is unable to determine such hours normally credited, eight (8) Hours of Service per day. The total Hours of Service required to be credited for a "maternity or paternity leave of absence" shall not exceed five hundred one (501) hours.

(6) Effective July 1, 1964, any period of full time employment for a contributing Employer in a capacity for which contributions to the Plan are not required.

(f) This paragraph applies to a Participant who has suffered a Permanent Break-in-Service under paragraph (d) of this Section because of one or more Breaks-in-Service during the 2009 – 2014 Plan Years. For a Participant qualified under this paragraph, no Plan Year, or series of Plan Years during the 2009 – 2014 period shall be treated as a Break-in-Service for the Participant if the Participant satisfies all of the following requirements at the time the Participant applies for benefits under the Plan:

(1) The Participant suffered a Permanent Break-in-Service under paragraph (d) of this Section because of one or more Breaks-in-Service in the 2009, 2010, 2011, 2012, 2013, or 2014 Plan Years;

(2) Following the Permanent Break-in-Service to which this paragraph applies, the Participant has subsequently returned to Covered Employment for one or more Employers and earned five (5) or more years of Vesting Credit; and

(3) The Participant has not worked in the masonry (B.A.C.) industry for self-employment or for an employer who is not a signatory to a collective bargaining agreement with the Union or other local union affiliated with the International Union of Bricklayers and Allied Craftworkers, after returning to Covered Employment following the Permanent Break-in-Service to which this paragraph may apply.

### **3.6 Election of Prior Vesting Schedule**

To the extent that any provision of this Plan constitutes an amendment of a prior vesting schedule applicable to any benefit payable hereunder, each Participant affected by such amendment who has at least three (3) years of service shall be entitled to elect, within a reasonable period after such amendment, to have his or her nonforfeitable percentage computed under the Plan without regard to such amendment.

### **3.7 Reinstatement of Lost Credits**

A participant who has lost credits due to a Permanent Break-in-Service shall be entitled to reinstatement of such credits if all of the following requirements are met:

- (a) The Participant had earned at least five (5) years of service immediately preceding the Permanent Break-in-Service;
- (b) The permanent break occurred due to the Participant's continuous employment for an employer that was signatory to a Collective Bargaining Agreement immediately before the break period;
- (c) During the break period the Participant was employer under the terms of a collective bargaining agreement between said employer and Roofers and Waterproofers Union Local 40 or 81;
- (d) After the break the Participant returned to Covered Employment and earned at least five (5) years of Vesting Credit based solely on Contributory Service, without an intervening Break-in-Service or zero cash-out as defined in this Article; and
- (e) The Participant earned at least five (5) years of Vesting Credit after June 30, 2001.

This rule applies only to reinstate credits forfeited due to the most recent Permanent Break-in-Service. Multiple Permanent Breaks-in-Service are not covered.

### **3.8 Vesting Credit for First Step Pointer, Cleaner, Caulker Apprentices**

Effective for hours worked on or after July 1, 2016, hours worked by apprentices under the 45% or 55% apprentice classification under the Pointer, Cleaner, Caulker Collective Bargaining Agreement for an Employer, who is otherwise required to contribute to the Plan on behalf its Employees, where the Collective Bargaining Agreement does not require contributions to the Plan for apprentices in these classifications, shall be considered Hours of Service for

purposes of awarding Vesting Credit under Section 3.1.

### **3.9 Vesting Credit for First Step Bricklayers Apprentices**

Effective for hours worked on or after July 1, 2016, hours worked by apprentices under the 43% apprentice classification under the Agreement by and between Bricklayers Local Union #3 of California, IUBAC, AFL-CIO and Northern California Mason Contractors Multi-Employer Bargaining Association for an Employer, who is otherwise required to contribute to the Plan on behalf of its Employees, where the Collective Bargaining Agreement does not require contributions to the Plan for apprentices in this classification, shall be considered Hours of Service for purposes of awarding Vesting Credit under Section 3.1.

## **ARTICLE IV RETIREMENT ELIGIBILITY**

### **4.1. Normal Retirement**

A Participant will be eligible for a normal retirement benefit if he or she has:

- (a) attained age sixty-two (62) and earned five (5) years of Vesting Credit; or
- (b) attained the later of age sixty-two (62) or the fifth (5th) anniversary of participation in this Plan without a Break-in-Service.

### **4.2. Early Retirement**

A Participant will be eligible for an early retirement benefit if he or she has:

- (a) attained age fifty-five (55); and
- (b) earned eight (8) years of Vesting Credit.

### **4.3. Delayed Retirement**

A Participant may defer his or her retirement beyond Normal Retirement Age and continue to accrue benefits.

### **4.4. Vested Retirement**

A Participant who incurs a Break-in-Service but does not forfeit all benefits pursuant to Article III will be eligible to receive a benefit when he or she qualifies for early or normal retirement.

### **4.5. Payment of Benefits**

Retirement benefits will be payable commencing on the first day of the month following written application to the Trustees by the Participant, if he or she is then eligible.

## **ARTICLE V RETIREMENT BENEFITS**

**5.1.** All benefits are calculated based on the vested percentage of the Participant's accrued benefit as of the retirement date. All benefit improvements shall be applied in accordance with the provisions of Appendix B attached to this Plan.

### **5.2. Normal Retirement**

Upon retirement on or after the Normal Retirement Date, a vested Participant shall be entitled to receive a Single Life Annuity as defined in Section 5.7(a), computed as follows:

Effective for benefits accrued on and after October 1, 2010, except as provided below, a monthly benefit equal to one and three-quarters percent (1.75%) of employer contributions for each Plan Year in which the Participant was credited with at least 300 covered hours. For all journeymen working under a collective bargaining agreement that does not provide for a separate deficit reduction contribution to the Plan, for benefits accrued on and after October 1, 2010, a monthly benefit equal to one and three-quarters percent (1.75%) of Contributions For Benefits for each Plan Year in which such Participant was credited with at least 300 covered hours. The 300 hour requirement shall be waived if a Participant was credited with less than 300 hours in a Plan Year due to retirement (as provided in Article V), disability (as provided in Article VI), or death, and a Participant will be entitled to the monthly benefit for that year.

Effective for benefits accrued on and after March 1, 2002, except as provided below, a monthly benefit equal to two percent (2%) of employer contributions for each Plan Year in which the Participant was credited with at least 300 covered hours. For all journeymen working under a collective bargaining agreement that does not provide for a separate deficit reduction contribution to the Plan, for benefits accrued on and after March 1, 2009, a monthly benefit equal to two percent (2%) of Contributions For Benefits for each Plan Year in which such Participant was credited with at least 300 covered hours. The 300 hour requirement shall be waived if a Participant was credited with less than 300 hours in a Plan Year due to retirement (as provided in Article V), disability (as provided in Article VI), or death, and a Participant will be entitled to the monthly benefit for that year.

Except as provided below, a monthly benefit equal to two and one-half percent (2.50%) of employer contributions for each Plan Year in which the Participant was credited with at least 300 covered hours. For all journeymen working under a collective bargaining agreement that does not provide for a separate deficit reduction contribution to the Plan, for work performed on or after January 1, 2006, a monthly benefit equal to two and one-half percent (2.50%) of Contributions For Benefits for each Plan Year in which such Participant was credited with at least 300 covered hours. The 300 hour requirement shall be waived if a Participant was credited with less than 300 hours in a Plan Year due to retirement (as provided in Article V), disability (as provided in Article VI), or death, and a Participant will be entitled to the monthly benefit for that year.

For the Plan Year ending June 30, 1997, a monthly benefit equal to three and one quarter percent (3.25%) of employer contributions for such Plan Year.

If the Participant has at least 300 covered hours in the Plan Year ended June 30, 1998 and was not retired as of June 30, 1998, the monthly benefit for the Plan Years ending June 30, 1997 and June 30, 1998, shall equal five and one quarter percent (5.25%) of employer contributions.

A Participant who worked at least 300 covered hours during the year ending June 30, 1999 and who retires after that date shall be entitled to a five and one half percent (5.5%) increase in all benefits accrued as of June 30, 1999.

A Participant who qualifies for pension benefit credit under the Uniformed Services Employment and Reemployment Rights Act of 1994 or any similar law shall receive benefit credit for the applicable period of military service. Credit for the period of military service shall be calculated based on the contributions earned by the Participant during the Plan Year immediately preceding the period of military service.

A Participant who worked at least three hundred (300) hours under the Local 3 Plan during the year ending June 30, 1996 without regard to hours worked after April 30, 1996, and who retires after June 30, 1996 shall be entitled to a twelve percent (12%) increase in all benefits accrued under the Local 3 Plan prior to June 30, 1996. This provision does not apply to benefits accrued under the Valley Plan.

A Participant who worked at least three hundred (300) hours under the Valley Plan during the year ending April 30, 1996 and who retires after the date shall be entitled to a twelve percent (12%) increase in all benefits accrued under the Valley Plan prior to April 30, 1996. This provision does not apply to benefits accrued under the Local 3 Plan.

### **5.3. Unreduced Retirement**

A Participant who has at least five (5) years of Vesting Credit and has attained age sixty (60) shall be entitled to the benefit described in Section 5.2 without reduction as described in Section 5.4.

### **5.4. Early Retirement**

(a) The Single Life Annuity for a Participant electing early retirement benefits shall be based upon the amount that would have been payable at Normal Retirement Age based on the accrued benefit at the date of early retirement, reduced by one-half percent (.5%) for each calendar month or fraction thereof by which such Participant's early retirement date precedes his or her Unreduced Retirement Date as described in Section 5.3.

(b) A Participant who has received early retirement benefits and who, after returning to work in the industry, again retires under this Plan, shall upon such subsequent retirement, be entitled to a Single Life Annuity in an amount equal to the original early retirement pension. Payment of any additional benefits attributable to Covered Employment after the original

retirement date shall commence when the Participant attains Normal Retirement Age.

(c) For applications received on or after July 1, 2013, a Participant may, if eligible, begin to receive Early Retirement benefits while waiting for a determination by the Social Security Administration that the Participant is entitled to a Social Security disability benefit in connection with his or her Old Age and Survivors Disability Insurance Coverage, making him or her eligible to receive Disability benefits under Article VI of this Plan. The Participant may elect to convert his or her Early Retirement benefits to Disability benefits once he or she has been awarded a Social Security disability benefit, provided the date of entitlement to Social Security disability benefits is coincident with or prior to the Participant's retirement date, and the following requirements are met:

(1) At the time early retirement was elected disability retirement was simultaneously elected;

(2) At the time early retirement was elected an application for a Social Security disability award was pending;

(3) The election to change from early retirement benefits to disability benefits upon receipt of an award of Social Security disability is irrevocable; and

(4) The Participant notifies the Plan of receiving a Social Security disability award. If the Participant notifies the Plan within ninety (90) days of the date on the Social Security disability award, conversion will be effective retroactive to the Social Security disability award effective date, but in no event earlier than January 1, 2015. If the Participant notifies the Plan after ninety (90) days the Disability benefit will be effective the first of the month following the month in which the Plan receives notice of the Social Security disability award.

(d) A Participant who accrued benefits under either the Local 7 Pension Plan or the Local 16 Pension Plan on or before December 31, 2019 and earns at least one (1) hour of service in covered employment in any Plan Year on or after January 1, 2020, shall be eligible for an Early Retirement benefit in accordance with Section 16.6 of this Plan.

### **5.5. Delayed Retirement**

If a Participant retires after his or her Normal Retirement Age or Unreduced Retirement Date, upon retirement the pension benefit shall be computed by determining the Participant's accrued benefit up to the date of actual retirement.

If a participant commences receiving pension benefits after Normal Retirement Age, the monthly benefit will be the accrued benefit at Normal Retirement Age, actuarially increased for each complete calendar month between Normal Retirement Age and the date pension benefits commence for which benefit payments were not suspended and during which the Participant was not employed in Suspendible Employment, and then converted as of the pension commencement

date to the benefit payment form selected or to the automatic form of the fifty percent (50%) Joint and Survivor Annuity if the Participant is married. If a Participant first becomes entitled to additional benefits after Normal Retirement Age, whether through additional service or because of a benefit increase, the actuarial increase in those benefits will start from the date the additional benefits would have first been paid rather than Normal Retirement Age. The actuarial increase will be based on an interest rate of six and one-half percent (6 ½ %) and the 1983 Group Annuity Mortality Table for males.

Notwithstanding the forgoing, if the Participant commences receiving pension benefits after his or her Unreduced Retirement Date, but on or before his or her Normal Retirement Age, or if the Participant commences receiving pension benefits after his or her Normal Retirement Age, in lieu of an actuarially increased benefit, the Participant may elect, subject to the requirements of Section 5.9, to receive at the Participant's pension commencement date a monthly benefit equal to the Participant's accrued benefit at the Participant's pension commencement date, plus, except as otherwise provided in Section 8.5, a one-time lump sum payment equal to the greater of (1) the total of the non-forfeitable accrued benefit payable commencing at Normal Retirement Age for the months between Normal Retirement Age and the pension commencement date, or (2) the total of the nonforfeitable accrued benefit payable commencing at the Unreduced Retirement Date for the months between the Unreduced Retirement Date and the pension commencement date.

#### **5.6. Pension Enhancement Option**

Any Participant who is receiving benefits or who commences receiving benefits under this Plan on or after January 1, 2000 may elect to have such benefits increased by the actuarial equivalent of a rollover contribution or elective transfer of funds from the Participant's account in the B.A.C. Local No. 3 Defined Contribution Pension Plan.

(a) The amount of such rollover or transfer shall not be less than ten thousand dollars (\$10,000).

(b) Any transfer or rollover under this Section must be described in Treas. Reg. §1.401(a)(4)-11(b) and shall require the written and notarized consent of the Participant's spouse.

(c) The increase in the amount of the Participant's benefit attributable to the rollover or transfer shall be paid in the same form of payment as the Participant's retirement benefit under this Plan, except as provided in paragraph (d) below, and shall be the actuarial equivalent of the amount of the rollover or transfer determined using the following:

(1) An interest rate determined as of the first day of each Plan Year (July 1), which shall be equal to the interest used in the most recent regular actuarial valuation of the Plan for purposes of the minimum funding standards of ERISA; and

(2) Mortality under the 1983 Group Annuity Mortality table (male).



In no event shall such benefit be less than the actuarial equivalent of the amount of the rollover or transfer determined using the Applicable Mortality Table and Applicable Interest Rate specified in Section 5.9(g).

(d) Upon the death of the Participant (and beneficiary, if any), a single sum death benefit will be paid to the beneficiary designated for this purpose equal to the excess, if any, of the total amount rolled over or transferred minus the total retirement benefits paid that are attributable to the rollover or transfer.

(e) The funds rolled over or transferred into this Plan must originate from the Participant's account in the B.A.C. Local No. 3 Defined Contribution Pension Plan. Enhanced benefits attributable to such rollover or transfer will be considered to have originated in that Plan and shall not be considered in connection with the benefit limitations set forth in Section 8.6.

## **5.7. Forms of Retirement Income**

(a) Single Life Annuity. The benefit amount described in Sections 5.2, 5.3, and 5.4, is payable for the life of the Participant. If a Participant has elected to receive a Single Life Annuity form of retirement benefit and dies after commencing to receive pension benefits but before receiving a total of thirty-six (36) such payments, the monthly pension shall be continued to the Participant's spouse or other named beneficiary, if living, until a total of thirty-six (36) payments have been made.

(b) Fifty Percent (50%) Joint and Survivor Annuity. Unless an optional form of benefit is selected, a Participant who is married on the annuity starting date will be paid in the form of a fifty percent (50%) Joint and Survivor Annuity. This form of benefit actuarially reduces the Single Life Annuity during the lifetime of the Retired Participant and then continues fifty percent (50%) of such reduced benefit to the spouse or other named beneficiary of the Participant, if living, after the Retired Participant's death.

(c) 66-2/3% Joint and Survivor Option. An actuarially reduced benefit payable to the Retired Participant during his or her lifetime and sixty-six and two-thirds percent (66-2/3%) of such reduced benefit to a contingent beneficiary, if living, after the Retired Participant's death.

(d) 75% Qualified Optional Survivor Annuity. An actuarially reduced benefit payable to the Retired Participant during his or her lifetime and seventy-five percent (75%) of such reduced benefit to the Participant's contingent beneficiary, if living, after the Retired Participant's death.

(e) 100% Joint and Survivor Option. An actuarially reduced benefit payable to the Retired Participant during his or her lifetime and the continuance of such reduced benefit to a contingent beneficiary, if living, after the Retired Participant's death.

(f) Joint and Survivor Annuity with Pop-Up. An actuarially reduced benefit providing for monthly payments during the Participant's lifetime, and, upon such Participant's death, monthly benefits to the Participant's spouse or other named beneficiary during his or her lifetime in an amount equal to fifty percent (50%), sixty-six and two-thirds percent (66-2/3%), seventy-

five percent (75%), or one hundred percent (100%) of the monthly benefit paid to the Participant, as described in paragraphs (b), (c)(1) and (2), and (d) above. If the spouse predeceases the Participant, the benefit will increase to the amount the Participant would have received under the Single Life Annuity option. To finance the pop-up benefit, the Participant's earned benefit is actuarially reduced.

(g) Life Annuity with Ten (10) Years Certain. An actuarially reduced benefit payable for the lifetime of the Participant or one hundred twenty (120) months, whichever is greater. If the Participant dies before receiving one hundred twenty (120) payments, the balance of the one hundred twenty (120) minimum payments is made to the beneficiary.

(h) Mandatory Lump Sum. If the present value of the benefit to which a Retired Participant is entitled is One Thousand Dollars (\$1,000) or less, it shall be paid in a lump sum, provided, however, no distribution may be made after the annuity starting date unless the Participant and his or her spouse (or surviving spouse) consent in writing to the distribution.

(i) For An Employee who commences participation in the Plan (or recommences participation in the Plan upon the Employee's return after one or more 1-year breaks in service) on a date other than the first day of an applicable accrual computation period, all hours of service required to be credited to the Employee during the entire accrual computation period, including hours of service credited to the Employee for the portion of the computation period before the date on which the Employee commences (or recommences) participation, shall be taken into account in determining whether the Employee has one thousand (1000) or more hours of service for purposes of section 411(b)(3)(C) of the Code. If such Employee's service is not less than one thousand (1000) hours in such accrual computation period, the Employee must be credited with a partial year of participation which is equivalent to no less than a ratable portion of a full year of participation for service credited to the Employee for the portion of the computation period after the date of commencement (or recommencement) of participation.

## **5.8. Minimum Benefits Under Survivor Annuity Options**

(a) If a Participant has elected to receive a fifty percent (50%), sixty-six and two-thirds percent (66-2/3%), seventy-five percent (75%), or one hundred percent (100%) Joint and Survivor Annuity form of retirement benefit, in the event of the Participant's death after commencing to receive pension benefits but before receiving a total of thirty-six (36) such payments, the monthly pension at the same rate as that payable immediately prior to the Participant's death shall be paid to his or her contingent beneficiary, if living, until a total of thirty-six (36) payments have been made, following which the contingent beneficiary, if then living, shall be entitled to the continuance benefit in accordance with the option selected.

(b) If the contingent beneficiary is other than the spouse of the Participant, the present value of the payments to be made to the Participant shall be more than fifty percent (50%) of the present value of the total payments to be made to the Participant and the contingent beneficiary.

## **5.9. Selection of Optional Forms of Benefits**

(a) Any election to waive the fifty percent (50%) Joint and Survivor Annuity and to select another form of distribution must be made by the Participant in writing during the one hundred eighty (180) day election period and be consented to in writing by the Participant's spouse. Such spouse's consent must acknowledge the effect of such election and be witnessed by a Plan representative or a Notary Public. Such consent shall not be required if it is established to the satisfaction of the Board of Trustees that the required consent cannot be obtained because there is no spouse or the spouse cannot be located. The election made by the Participant and consented to by the spouse may be revoked by the Participant in writing without the consent of the spouse at any time during the election period, but any new election must comply with the requirements of this Article. A former spouse's waiver shall not be binding on a new spouse.

(b) The election period to waive the fifty percent (50%) Joint and Survivor Annuity shall be the one hundred eighty (180) day period ending on the "annuity starting date". The Participant and spouse may waive the full election period as permitted under applicable law and regulations.

(c) For purposes of this Article, the "annuity starting date" means the first day of the first period for which an amount is received as an annuity by reason of retirement.

(d) With regard to the election, the Board of Trustees shall provide the Participant within a reasonable period of time before the "annuity starting date" a written explanation of:

(1) The terms and conditions of the fifty percent (50%) Joint and Survivor Annuity;

(2) The Participant's right to make an election to waive the Joint and Survivor Annuity;

(3) The right of the Participant's spouse to consent to any election to waive the Joint and Survivor Annuity;

(4) The right of the Participant to revoke such election and the effect of such revocation; and

(5) The general description of the material features, and an explanation of the relative values of, the optional forms of benefit available under the Plan in a manner that would satisfy the notice requirements of section 417(a)(3) of the Code and Treas. Reg. 1.417(a)(3)-1.

(e) Revocation of Election. A Participant may revoke any election previously made or deemed to be made under this Article or change from one option to another during the one hundred eighty (180) day election period. Any such revocation or change must be made at any time prior to the commencement of pension payments under the Plan. At a reasonable time before a Participant reaches the age of fifty-five (55) years and before the Trustees accept a Participant's election to forego the fifty percent (50%) Joint and Survivor Annuity as provided herein, the Trustees shall furnish such Participant a written explanation of the terms and

conditions of such option and the effect of electing not to take advantage of such option.

(f) The spouse consent requirements described in paragraphs (a) through (e) above do not apply to an election to receive benefits in the form of a sixty-six and two-thirds percent (66-2/3%), seventy-five percent (75%), or one hundred percent (100%) Joint and Survivor Annuity or to a Joint and Survivor Annuity with Pop Up if the spouse is the survivor annuitant.

(g) Any of the optional forms of benefits described herein shall be the actuarial equivalent of a Single Life Annuity. An actuarial equivalent is an alternative mode of payment which is equivalent to a given mode of payment to any entitlement under the Plan. The Single Life Annuity amounts set forth in this Article V will be converted to the other options in accordance with Appendix A attached to this Plan and incorporated herein by this reference. Lump sum distributions and all other distributions requiring the use of actuarial assumptions not otherwise specified will be determined using the Applicable Mortality Table and the Applicable Interest Rate as follows:

Applicable Mortality Table shall mean the applicable mortality table for purposes of determining the present value of plan benefits under Section 417(e)(3) of the Internal Revenue Code. Effective July 1, 2008, the Applicable Mortality Table is based on the mortality table specified for the plan year under subparagraph (A) of section 430(h)(3) of the Internal Revenue Code (without regard to subparagraph (C) or (D) of such section). Prior to July 1, 2008, the Applicable Mortality Table shall be based on the prevailing commissioners' standard table described in Section 807(d)(5)(A) of the Code and used to determine reserves for group annuity contracts issued on the date as of which the present value is being determined.

Effective July 1, 2008, the Applicable Interest Rate shall mean the adjusted first, second and third segment rates applied under rules similar to the rules of section 430(h)(2) of the Internal Revenue Code for the month preceding the stability period. For purposes of this section, segment rates shall be the segment rates set forth in Internal Revenue Code section 417(e)(3)(D). Prior to July 1, 2008, the Applicable Interest Rate shall mean the annual interest rate on 30-year Treasury securities for the month preceding the stability period. The initial stability period is the Plan Year beginning July 1, 2000.

For purposes of benefit accrual, the Plan takes into account every year required to be taken into account in accordance with DOL Regulation section 2530.204-1(b).

(h) If the Plan furnishes the explanation of the fifty percent (50%) Joint and Survivor Annuity after the Annuity Start Date, a Participant may affirmatively elect a Retroactive Annuity Start Date, provided all of the following requirements are met:

(1) The Participant's spouse (including an alternate payee who is treated as the spouse pursuant to a qualified domestic relations order (QDRO) as defined in Code Section 414(p) consents to the distribution in a manner that satisfies the Code section 417(a)(2), unless the amount of the spouse's survivor annuity payments under the Retroactive Annuity Start Date election is not less than the survivor payments under a qualified joint and survivor annuity (as defined in Section 417(b) of the Code) with an Annuity Start Date after the date the written

explanation was provided.

(2) The distribution (including appropriate interest adjustments) provided based on the Retroactive Annuity Start Date satisfies the requirements of Code Section 415 as of the date the distribution commences, with the applicable interest rate and mortality table determined as of that date, unless the date the distribution commences is no more than twelve (12) months after the Retroactive Annuity Start Date.

(3) The written explanation of the fifty percent (50%) Joint and Survivor Annuity must be provided no more than one hundred eighty (180) days before the date of the first actual payment of benefits based on the Retroactive Annuity Start Date, and must be provided at least thirty (30) days before the date of the such first actual payment, unless the Participant, with any applicable spousal consent, elects to waive the thirty (30) day minimum election period requirement and distribution commences more than seven (7) days after the date that the written explanation is provided.

(i) The Plan may treat a Participant as having elected a Retroactive Annuity Start Date only if the following requirements are met:

(1) Future periodic payments with respect to the Participant must be the same as the future periodic payments, if any, which would have been paid with respect to the Participant had payments actually commenced on the Retroactive Annuity Start Date.

(2) The Participant receives a make-up payment equal to the amount of the missed payment or payments for the period from the Retroactive Annuity Start Date to the date of the make-up payment, with an adjustment for interest at six and one-half percent (6 ½ %) from the date that the missed payment or payments would have been made to the date of the make-up payment.

(3) The benefit determined as of the Retroactive Annuity Start Date complies with the requirements of Code Section 415, with the applicable interest rate and applicable mortality table determined as of that date.

(4) The Retroactive Annuity Start date does not precede the date upon which the Participant could have otherwise commenced receiving benefits under the terms of the Plan in effect as of the Retroactive Annuity Start Date.

If the Participant's spouse as of the Retroactive Annuity Start Date is not the Participant's spouse as of the date distributions commence, consent of the former spouse is not required for the Participant to waive the fifty percent (50%) Joint and Survivor Annuity with respect to the Retroactive Annuity Start Date, unless otherwise provided under a QDRO.

#### **5.10. Distribution of Benefits**

Distributions of benefits as provided herein shall commence in all cases no later than April 1 of the calendar year following the calendar year in which the Employee attains age seventy and

one-half (70-1/2). Effective July 1, 1997 this rule is modified for all Employees except five percent (5%) owners to require commencement no later than April 1 of the calendar year following the year in which the Employee retires. However, if payment commences after the Employee attains age seventy and one-half (70-1/2), the amount shall be actuarially adjusted to equal the benefit that would have been payable commencing at age seventy and one-half (70-1/2).

In the event that a Participant dies before distribution of his or her benefit has commenced, the entire portion of the Participant's interest that is not payable to a beneficiary designated by the Participant shall be distributed within five (5) years of the date of the Participant's death. Any portion of the Participant's interest payable to a beneficiary designated by the Participant shall be distributed over the life of the beneficiary (or over a period not extending beyond the life expectancy of the beneficiary), and distribution of that portion shall commence no later than one (1) year after the date of the Participant's death. However, if the beneficiary is the Participant's surviving spouse, distribution of the benefit shall commence no later than the date on which the Participant would have attained age seventy and one-half (70 1/2).

If distribution has commenced before the Participant's death, the remaining interest will be distributed at least as rapidly as under the method of distribution being used as of the date of the Participant's death.

## **ARTICLE VI DISABILITY**

**6.1.** A Participant shall be deemed totally and permanently disabled within the meaning of this Article if the Board of Trustees determines, upon the basis of medical evidence, that the Participant is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or could be of long-continued and indefinite duration.

**6.2.** A Participant shall not be considered to be disabled unless he or she has furnished a determination by the Social Security Administration that the Participant is entitled to a Social Security disability benefit in connection with his or her Old Age and Survivors Disability Insurance coverage. The Board of Trustees may at any time, or from time to time, require evidence of continued entitlement to such Social Security disability.

A Participant shall be considered disabled and entitled to benefits under this Article for up to 12 months if he or she has at least 15 Vesting Credits and has furnished the Plan with evidence satisfactory to the Board of Trustees that he or she has applied for Social Security disability benefits and is currently receiving Medicare benefits due to disability.

**6.3.** A Participant who becomes disabled within the meaning of this Article before attaining Normal Retirement Age and after the completion of five (5) or more years of Vesting Credit, and who worked at least three hundred (300) hours in Covered Employment within the Plan Year in which the disability occurs or the prior Plan Year, is entitled to a monthly disability benefit equal to his or her earned benefit as described in Section 5.1, without reduction based on age. At Normal Retirement Age, he or she shall be entitled to receive a Normal Retirement Benefit. An Active Employee who becomes disabled prior to July 1, 1998, satisfies the three hundred (300) hour rule.

**6.4.** If the present value of the disability benefit is Five Thousand Dollars (\$5,000) or less, it shall be paid in a lump sum.

**6.5.** Retroactive payments under this section are limited to a maximum of twelve (12) months prior to the date of application.

Effective for applications received on or after April 1, 2014, the Plan will make retroactive payments back to a Participant's Social Security disability award effective date, provided the Participant notifies the Plan of the Social Security disability award within ninety (90) days of receipt. If a Participant fails to notify the Plan of the Social Security disability award within ninety (90) days, the Plan will pay retroactive payments for a maximum of twelve (12) months prior to the date of application.

### **6.6 Recovery from Disability.**

(a) If a Participant receiving benefits under this Article VI loses entitlement to Social Security disability benefits, or recovers from disability prior to attaining age 60, such fact shall

be reported by the Participant in writing to the Board of Trustees within 31 days of the date he or she receives notice from the Social Security Administration or the date of such recovery, whichever occurs first. A Participant is no longer eligible for Disability benefits under this Article VI effective the first of the month following notice from the Social Security Administration or the date of such recovery.

(b) Overpayments attributed to Disability benefits paid for any month or months for which the Participant was no longer entitled to such benefits shall be deducted from any subsequent pension payments to which the Participant becomes entitled. A deduction from a monthly benefit for a month after the Participant attains Normal Retirement Age shall not exceed 25 percent of the pension amount. If a Participant dies before recoupment of overpayments has been completed, deductions shall be made from the benefits payable to his or her beneficiary or surviving Spouse, as the case may be, subject to the 25 percent limitation on the rate of the deduction.



## **ARTICLE VII PRERETIREMENT DEATH BENEFITS**

**7.1.** If a vested Participant (including a vested Participant who is receiving disability benefits) dies before he or she begins receiving retirement benefits, a death benefit shall be paid to the Participant's beneficiary in accordance with this Article. If the Participant was married at the time of death, the Participant's surviving spouse shall be the beneficiary. An unmarried Participant may designate a beneficiary in accordance with Article I, but any such designation is automatically revoked if the Participant marries.

If a vested Participant (including a vested Participant who is receiving disability benefits) dies before he or she begins receiving retirement benefits, but after his or her Annuity Start Date, benefits shall be paid to the Participant's beneficiary in accordance with Article V.

The designation of a Participant's spouse as the beneficiary to receive pre-retirement death benefits under this Article is automatically revoked if the marriage is subsequently dissolved.

### **7.2. Qualified Pre-Retirement Survivor Annuity**

This benefit is provided only to the surviving spouse. The benefit amount shall be the amount which would have been paid to the survivor under a one hundred percent (100%) Joint and Survivor Annuity retirement benefit as determined in accordance with the provisions of Article V, with no early retirement reduction, if applicable, below age fifty-five (55). In lieu of this benefit, the surviving spouse may elect to receive the Lump Sum Death Benefit described below. The surviving spouse may defer commencement of benefits to the time the Participant would have attained the later of age 62 or normal retirement age, except where the present value of the survivor's benefit is Five Thousand Dollars (\$5,000) or less.

If the present value of the survivor's benefit is Five Thousand Dollars (\$5,000) or less, the benefit will be paid in a lump sum. In no event, however, shall a distribution, either partial or total, be made after the annuity starting date, regardless of the present value of the nonforfeitable accrued benefit, unless the surviving spouse consents in writing to the distribution. If the survivor's benefit is to be paid as an annuity, payment shall commence no later than sixty (60) days after the close of the Plan Year in which the Participant dies, but shall cover the period commencing with the date of death of the Participant.

### **7.3. Lump Sum Death Benefit**

This benefit is payable to the designated beneficiary of an unmarried Participant. The benefit amount payable under this paragraph is a lump sum equal to the monthly benefit (without regard to the vested percentage and without any other reduction) that would have been payable to the Participant if he or she had retired on the date of death, multiplied by thirty-six (36).

#### **7.4 HEART Act Provision**

If a Participant dies while performing qualified military service on or after January 1, 2007, 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 had the Participant resumed employment and then terminated employment on account of death.

## **ARTICLE VIII BENEFIT PAYMENTS**

**8.1.** A Participant eligible for retirement benefits who makes application in accordance with the rules of the Plan, shall be entitled upon retirement to receive the monthly benefits provided hereunder, subject to all of the provisions of the Plan. Benefit payments shall commence from the first of the month following the month in which the Participant has fulfilled all conditions for entitlement to benefits, including the requirement for advance application. The last benefit payment shall be for the calendar month in which the death of the Retired Participant occurs, unless a pension payment is continued under the provisions of Article VI.

**8.2.** A Retired Participant shall not be entitled to payment under this Plan of more than one type of pension provided under this Pension Plan at one time.

### **8.3. Application**

An application for a pension must be made in writing on a form and in a manner prescribed by the Trustees and must be filed at least sixty (60) days in advance of the first month for which benefits are payable. Except as otherwise required by law, no benefits shall be paid until an application has been submitted, and the failure by a Participant or beneficiary to submit an application as required under this paragraph shall be deemed an election by such Participant or beneficiary to defer receipt of benefits. Unless the Participant otherwise elects, benefit payments shall commence no later than sixty (60) days after the close of the Plan Year in which the latest of the following events occurs:

- (a) the date the Participant attains Normal Retirement Age;
- (b) the date the Participant terminates Covered Employment;
- (c) the tenth (10th) anniversary of commencement of Covered Employment by a Participant who is vested.

**8.4.** Each Participant and Retired Participant shall furnish to the Trustees any information or proof requested by them and reasonably required to administer the Plan. Failure on the part of any Participant or Retired Participant to comply with such a request, promptly, completely, and in good faith, shall be sufficient grounds for suspending or discontinuing benefits to such person until such information is furnished. If a Participant or Retired Participant or any claimant to benefits hereunder makes a false statement material to his or her claim for benefits, the Trustees shall recoup, offset or recover the amount of any payments made in reliance on such false statement in excess of the amount to which such Participant or Retired Participant or other claimant was rightfully entitled under the provisions of this Plan plus interest.

## **8.5 Suspension of Benefits**

If a retired Participant engages in Suspendible Employment, or if an active Participant engages in Suspendible Employment after attaining early retirement age, the following rules shall apply:

(a) A Participant otherwise eligible to receive pension benefits under this Plan shall not be entitled to receive such benefits for any month in which he or she completes forty (40) hours or more of Suspendible Employment, whether as an employee or in a managerial, supervisory, proprietary or any other capacity including as a self employed person.

(b) The Participant shall give notice in writing to the Plan within fifteen (15) days after accepting such employment giving the name and address of the employer, the address of the job site, and the probable length of employment. In the event of his or her failure to do so, it shall be presumed that in any month in which it is found that he or she accepted such employment, he or she worked forty (40) or more hours and that, if employed on a construction site, he or she was so employed for forty (40) or more hours in each month his or her employer was performing work at the construction site.

(c) If benefit payments have been suspended because of Suspendible Employment as described above, they must be resumed no later than the first day of the third calendar month after the calendar month in which the Participant ceases to be employed in Suspendible Employment. The initial payment upon resumption shall include the payments scheduled to occur in the calendar month when benefit payments resumed and any amounts withheld during the period between cessation of employment and the resumption of payments, less any amounts which are subject to offset.

The Plan may offset from benefit payments to be made by the Plan, payments previously made by the Plan during those calendar months in which the Participant was employed in Suspendible Employment. Except for the initial payment upon resumption described in the previous paragraph, which may be subject to offset without limitation, no such deduction or offset may exceed in any one (1) month twenty-five percent (25%) of that month's total benefit payment which would have been due but for the offset.

(d) No payment of benefits may be withheld from a Participant under this provision unless the Plan notifies the Participant by personal delivery or first-class mail during the first calendar month in which the Plan withholds payments that his or her benefits have been suspended. Said notice shall contain a description of the specific reasons why benefits are being suspended, a general description of the Plan provisions relating to the suspension of payments, a copy of such provisions, a statement that the applicable Department of Labor Regulations may be found in Section 2530.203-3 of the Code of Federal Regulations, and a reference to the Plan's procedure for review of decisions by the Trustees concerning benefits. If the Plan is seeking to recover any payments because of the discovery that a Retired Participant has been working in Suspendible Employment as described above, the notice shall also identify the specific periods of employment for which recovery is sought, and the amounts which are subject to recovery and the manner in which the Plan intends to recover such Suspendible amounts.

(e) No benefit shall be permanently withheld based on employment for an Employer during any month after the Participant attains Normal Retirement Age or, if earlier, the Participant's Unreduced Retirement Date. In the event of such employment, monthly benefits shall be suspended as provided in subsection (a) above, but shall be paid in a lump sum when the Participant again retires.

(f) The Plan may, at reasonable intervals, request from the Participant information to verify that he or she is not employed in work of the sort described in subsections (a) and (b) above, and may withhold payments until he or she has complied. Such information may include W-2 forms and any other reasonably pertinent information.

(g) The Participant may prior to acceptance of any employment, request a determination by the Plan as to whether any intended employment will result in suspension of his or her benefits as herein provided.

(h) The provisions of this Section 8.5 shall not apply to any Participant who engages in Covered Employment during the period from January 1, 2000 through February 6, 2007, October 1, 2007 through December 31, 2008, June 1, 2012 through June 30, 2013, and January 1, 2014 through December 1, 2015, provided that (1) as required by Section 401 of the Internal Revenue Code, at the time of retirement the Participant has separated from service with the Employer or former Employer in whose employment Participant most recently earned benefit credit, and (2) the Participant notifies the Plan in writing of such employment as required by subsection (b). A Participant shall be deemed to have separated from service as required by this subsection if he or she has refrained from Suspendible Employment and has been receiving benefits from this Plan for a period of at least three (3) months. Any additional benefits earned as a result of reemployment will be added to the Participant's pension following the end of each plan year.

(i) Between January 1, 2017 and June 30, 2021, a Participant may engage in Covered Employment, up to 1,000 in a Plan Year, and not have his or her benefit suspended under the provisions of this Section 8.5, provided that (1) as required by Section 401 of the Internal Revenue Code, at the time of retirement the Participant has separated from service with the Employer or former Employer in whose employment Participant most recently earned benefit credit, and (2) the Participant notifies the Plan in writing of such employment as required in subsection (b). A Participant shall be deemed to have separated from service as required by this subsection if he or she has refrained from Suspendible Employment and has been receiving benefits from this Plan for a period of at least three (3) months. Any additional benefits earned as a result of reemployment will be added to the Participant's pension following the end of each plan year.

(j) The provisions of this Section 8.5 shall not apply to any Participant employed as an instructor in an apprenticeship training program funded, either directly or indirectly, by an apprenticeship training fund affiliated with the Union, provided that the Participant notifies the Plan in writing of such employment as required in subsection (b).

(k) The provisions of this Section 8.5 shall not apply to a Participant who is receiving benefits from the Plan and is employed by an Employer as a project manager, marketing

representative, field superintendent, estimator, purchasing agent, expeditor, detailer, safety director, or other non-bargaining unit position approved by the Board of Trustees in their sole discretion, provided that no Employer has ever made contributions to the Plan on behalf of the Participant while working in such a position, and the Employer does not make contributions to the Plan on behalf of other employees in the same or similar position. A Participant must notify the Plan in writing of such employment as required in subsection (b).

(l) The provisions of this Section 8.5 shall not apply to a Participant who is an owner of a corporate Employer, if the following conditions are satisfied:

(i) The Participant is no longer actively involved in the management of the corporation on a full-time basis;

(ii) The Participant performs no work that would be considered Covered Employment;

(iii) The Employer regularly employs Employees in Covered Employment; and

(iv) The Participant is over age 62 and receives wages from the corporation for no more than 80 hours of employment per month. For purposes of this subsection, a Participant who is paid a salary shall be deemed to have worked 4 hours in any day in which he or she worked, or was paid for working, any amount of time up to 4 hours, and shall be deemed to have worked 8 hours in any day in which he or she worked, or was paid for working, any amount of time over 4 hours.

#### **8.6. Section 415 Limitations on Benefit Amount**

Notwithstanding the foregoing, the pension payable under this Plan (including benefits accrued under the Local 8 Plan, Local 10 Plan, Local 12 Plan, Allied Plan or Valley Plan and payable by this Plan on or after May 1, 1996), when expressed in the form of a Straight Life Annuity, may never exceed any applicable limitation imposed by Section 415 of the Internal Revenue Code.

As of January 1 of each calendar year, the dollar limitation as determined by the Commissioner of Internal Revenue for that calendar year will become effective as the maximum permissible dollar amount for that calendar year. The maximum permissible dollar amount for a calendar year applies to limitation years ending with or within that calendar year.

If the retirement benefit is any form other than a Straight Life Annuity, the benefit shall be adjusted to the actuarial equivalent of a Straight Life Annuity beginning at the same age for purposes of applying the limitations on benefits described above to the annual benefit of the Participant. Actuarial equivalence will be determined in accordance with Section 415(b)(2)(E) of the Internal Revenue Code.

## **8.7. Top Heavy Rules**

The following rules do not apply to an employee or Participant who is included in a unit of employees covered by a collective bargaining agreement which requires contributions to this Plan or another qualified plan.

(a) Notwithstanding any other provision in this Plan except (c) and (d) below, for any Plan Year in which this Plan is top-heavy, each Participant who is not a key Employee and has completed one thousand (1,000) hours of service will accrue a benefit (to be provided solely by employer contributions and expressed as a life annuity commencing at Normal Retirement Age) of not less than two percent (2%) of his or her highest average compensation for the five (5) consecutive years for which the Participant had the highest compensation. The aggregate compensation for the years during such five (5) year period in which the Participant was credited with a year of service will be divided by the number of such years in order to determine average annual compensation. The minimum accrual is determined without regard to any Social Security contribution. The minimum accrual applies even though under other Plan provisions the Participant would not otherwise be entitled to receive an accrual, or would have received a lesser accrual for the year because (i) the non-key Employee fails to make mandatory contributions to the Plan, (ii) the non-key Employee's compensation is less than a stated amount, (iii) the non-key Employee is not employed on the last day of the accrual computation period, or (iv) the Plan is integrated with Social Security.

(b) For purposes of computing the minimum accrued benefit, compensation shall mean compensation as defined in Article I, as limited by section 401(a)(17) of the Code.

(c) No additional benefit accruals shall be provided pursuant to (a) above to the extent that the total accruals on behalf of the Participant attributable to employer contributions will provide a benefit expressed as a life annuity commencing at Normal Retirement Age that equals or exceeds twenty percent (20%) of the Participant's highest average compensation for the five (5) consecutive years for which the Participant had the highest compensation.

(d) All accruals of employer-derived benefits, whether or not attributable to years for which the Plan is top-heavy, may be used in computing whether the minimum accrual requirements of paragraph (c) above are satisfied.

(e) For purposes of minimum top-heavy accruals, each non-key Employee will accrue a minimum benefit of two percent (2%) of compensation for each year the Plan is top-heavy.

(f) If the form of benefit is other than a Straight Life Annuity, the Employee must receive an amount that is the actuarial equivalent of the minimum Straight Life Annuity benefit. If the benefit commences at a date other than at Normal Retirement Age, the Employee must receive at least an amount that is the actuarial equivalent of the minimum Straight Life Annuity benefit commencing at Normal Retirement Age.

(g) The minimum accrued benefit required (to the extent required to be nonforfeitable under section 416(b) of the Internal Revenue Code) may not be forfeited under section

411(a)(3)(B) or 411(a)(3)(D) of the Internal Revenue Code.

(h) For any Plan Year in which this Plan is top-heavy, the minimum vesting schedule in paragraph (i) will automatically apply to all benefits within the meaning of section 411(a)(7) of the Internal Revenue Code, including benefits accrued before the effective date of section 416 and benefits accrued before the Plan became top-heavy. Further, no decrease in a Participant's nonforfeitable percentage may occur in the event the Plan's status as top-heavy changes for any Plan Year. However, this section does not apply to the accrued benefit of any Employee who does not have an hour of service after the Plan has initially become top-heavy and such Employee's account balance attributable to employer contributions and forfeitures will be determined without regard to this section.

(i) The nonforfeitable interest of each Participant in his or her accrued benefit attributable to employer contributions shall be 100% vested after three (3) years of service. If the vesting schedule under the Plan shifts in and out of the above schedule for any Plan Year because of the Plan's top heavy status, such shift is an amendment of the vesting schedule and each Participant who has at least three (3) years of service shall be entitled to elect, within a reasonable period after such shift, to have his or her nonforfeitable percentage computed under the Plan without regard to such amendment.

(j) For any Plan Year, this Plan is top-heavy if (1) the top-heavy ratio for this Plan exceeds sixty percent (60%) and this Plan is not part of any required aggregation group or permissive aggregation group of plans; or (2) this Plan is a part of a required aggregation group of plans but not part of a permissive aggregation group and the top-heavy ratio for the group of plans exceeds sixty percent (60%); or (3) this Plan is a part of a required aggregation group and part of a permissive aggregation group of plans and the top-heavy ratio for the permissive aggregation group exceeds sixty percent (60%).

(k) Definitions

**“Top-heavy ratio”:**

(1) If the Employer maintains one or more defined benefit plans and the Employer has not maintained any defined contribution plan (including any simplified employee pension, as defined in section 408(k) of the Internal Revenue Code) which during the five (5) year period ending on the determination date(s) has or has had account balances, the top-heavy ratio for this Plan alone or for the required or permissive aggregation group as appropriate is a fraction, the numerator of which is the sum of the present value of accrued benefits of all key Employees as of the determination date(s) (including any part of any accrued benefit distributed in the five (5) year period ending on the determination date(s)), and the denominator of which is the sum of the present value of accrued benefits (including any part of any accrued benefits distributed in the five (5) year period ending on the determination date(s)), determined in accordance with section 416 of the Internal Revenue Code and the regulations thereunder.

(2) If the Employer maintains one or more defined benefit plans and the Employer maintains or has maintained one or more defined contribution plans (including any



simplified employee pension) which during the five (5) year period ending on the determination date(s) has or has had any account balances, the top-heavy ratio for any required or permissive aggregation group as appropriate is a fraction, the numerator of which is the sum of the present value of accrued benefits under the aggregated defined benefit plan or plans for all key Employees, determined in accordance with (a) above, and the sum of account balances under the aggregated defined contribution plan or plans for all key Employees as of the determination date(s), and the denominator of which is the sum of the present value of accrued benefits under the defined benefit plan or plans for all Participants, determined in accordance with (a) above, and the account balances under the aggregated defined contribution plan or plans for all Participants as of the determination date(s), all determined in accordance with section 416 of the Internal Revenue Code and the regulations thereunder. The account balances under a defined contribution in both the numerator and denominator of the top-heavy ratio are increased for any distribution of an account balance made in the five (5) year period ending on the determination date.

(3) For purposes of (1) and (2) above, the value of account balances and the present value of accrued benefits will be determined as of the most recent valuation date that falls within or ends with the twelve (12) month period ending on the determination date, except as provided in section 416 of the Internal Revenue Code and the regulations thereunder for the first and second plan years of a defined benefit plan. The account balances and accrued benefits of a Participant (1) who is not a key Employee but who was a key Employee in a prior year, or (2) who has not been credited with at least one hour of service with any Employer maintaining the Plan at any time during the five (5) year period ending on the determination date will be disregarded. The calculation of the top-heavy ratio, and the extent to which distributions, rollovers, and transfers are taken into account will be made in accordance with section 416 of the Internal Revenue Code and the regulations thereunder. Deductible employee contributions will not be taken into account for purposes of computing the top-heavy ratio. When aggregating plans, the value of account balances and accrued benefits will be calculated with reference to the determination dates that fall within the same calendar year.

(4) The accrued benefit of a Participant other than a key Employee shall be determined under (i) the method, if any, that uniformly applies for accrual purposes under all defined benefit plans maintained by the Employer, or (ii) if there is no such method, as if such benefit accrued not more rapidly than the slowest accrual rate permitted under the fractional rule of section 411(b)(1)(C) of the Internal Revenue Code.

**“Permissive aggregation group”** means the required aggregation group of plans plus any other plan or plans of the Employer which, when considered as a group with the required aggregation group, would continue to satisfy the requirements of sections 401(a)(4) and 410 of the Internal Revenue Code.

**“Required aggregation group”** means each qualified plan of the Employer in which at least one key Employee participates or participated at any time during the determination period (regardless of whether the plan has terminated), and any other qualified plan of the Employer which enables a plan described in (1) to meet the requirements of sections 401(a)(4) or 410 of the Internal Revenue Code.

**“Determination date”:** For any Plan Year subsequent to the first Plan Year, the last day of the preceding Plan Year. For the first Plan Year of the Plan, the last day of that year.

**“Valuation date”** means the last day of the Plan Year.

**“Present value”** means for purposes of establishing present value to compute the top-heavy ratio; any benefit shall be discounted only for mortality and interest based on the interest and mortality rates specified in this Plan.

**“Key Employee”:** means any Employee or former Employee (and the beneficiaries of such Employee) who at any time during the determination period was an officer of the Employer if such individual's annual compensation exceeds fifty percent (50%) of the dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code, an owner (or considered an owner under section 318 of the Code) of one of the ten largest interests in the Employer if such individual's compensation exceeds one hundred percent (100%) of the dollar limitation under section 415(c)(1)(A) of the Internal Revenue Code, a five percent (5%) owner of the Employer, or a one percent (1%) owner of the Employer who has an annual compensation of more than One Hundred Fifty Thousand Dollars (\$150,000). Annual compensation means compensation as defined in Article I, but including amounts contributed by the Employer pursuant to a salary reduction agreement which are excludable from the Employee's gross income under section 125, section 402(e)(3), section 402(h)(i) (1)(B), or section 403(b) of the Internal Revenue Code. The determination period is the Plan Year containing the determination date and the four (4) preceding Plan Years. The determination of who is a key Employee will be made in accordance with section 416(i)(1) of the Internal Revenue Code and the regulations thereunder.

## **8.8 Top Heavy Rules for Plan Years Beginning After December 31, 2001**

The following rules do not apply to an employee or Participant who is included in a unit of employees covered by a collective bargaining agreement which requires contributions to this Plan or another qualified plan.

(a) This section shall apply for purposes of determining whether the plan is a top heavy plan under section 416(g) of the code for plan years beginning after December 31, 2001, and whether the plan satisfies the minimum benefits requirements of section 416(c) of the Code for such years. This section amends 8.7 of the plan.

(b) Determination of top-heavy status.

(1) Key Employee. Key Employee means any Employee or former Employee (including any deceased Employee) who at any time during the plan year that includes the determination date was an officer of the Employer having annual compensation greater than One Hundred Thirty Thousand Dollars (\$130,000) (as adjusted under Section 416(i)(1) of the Code for plan years beginning after December 31, 2002), a five (5) percent owner of the employer, or a one (1) percent owner of the employer having annual compensation of more than One Hundred Fifty Thousand Dollars (\$150,000). For this purpose, annual compensation means

Compensation as defined in Article I of the Plan. The determination of who is a Key Employee will be made in accordance with Section 416(i)(1) of the Code and the applicable regulations and other guidance of general applicability issued thereunder.

(2) Determination of present values and amounts. This section (b)(2) shall apply for purposes of determining the present values of accrued benefits and the amounts of account balances of employees as of the determination date.

(A) Distributions during year ending on the determination date. The present values of accrued benefits and the amounts of account balances of an Employee as of the determination date shall be increased by the distributions made with respect to the Employee under the Plan and any plan aggregated with the Plan under Section 416(g)(2) of the Code during the one (1) year period ending on the determination date. The preceding sentence shall also apply to distributions under a terminated plan which, had it not been terminated, would have been aggregated with the Plan under Section 416(g)(2)(A)(i) of the Code. In the case of a distribution made for a reason other than severance from employment, death, or disability, this provision shall be applied by substituting five (5) year period for one (1) year period.

(B) Employees not performing services during year ending on the determination date. The accrued benefits and accounts of any individual who has not performed services for the employer during the 1-year period ending on the determination date shall not be taken into account.

(c) Minimum benefits. For purposes of satisfying the minimum benefit requirements of section 416(c)(1) of the Code and the Plan, in determining years of service with the employer, any service with the employer shall be disregarded to the extent that such service occurs during a plan year when the plan benefits (within the meaning of section 410(b) of the Code) no key employee or former key employee.

## **8.9. Direct Rollover of Eligible Rollover Distributions**

This paragraph applies to distributions made on or after January 1, 1993. This paragraph does not create any right to payment except in accordance with the eligibility rules described above. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this paragraph, a distributee may elect, at the time and in the manner prescribed by the Plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; the 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); and any amount that is distributed on account of hardship.

**Eligible retirement plan:** An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, or a qualified trust described in Section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity. For distributions made after December 31, 2001, an eligible retirement plan shall also mean an annuity contract described in section 403(b) of the Code and an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code.

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

**Direct rollover** is a payment by the Plan to the eligible retirement plan specified by the distributee.

#### **8.10 Non-Spouse Rollovers.**

If a participant dies leaving a benefit to a designated beneficiary who is not his spouse, the designated beneficiary may roll over the assets to an inherited Individual Retirement Account in accordance with the following rules:

(a) The rollover must meet all the requirements of an eligible rollover distribution as defined in 8.9 except that the distributee may be a non-spouse beneficiary.

(b) The rollover must be accomplished by a direct trustee-to-trustee transfer.

(c) The Individual Retirement Account must be established as an inherited Individual Retirement Account.

(d) The rollover must comply with the minimum distribution rules found in section 401(a)(9) of the Code. If the Participant dies before his required beginning date, the rollover must be made in accordance with either the five year rule described in section 401(a)(8)(B)(ii) of the Code or the life expectancy rule described in section 401(a)(9)(B)(iii) of the Code. Rollovers made in accordance with the five-year rule must be completed by the end of the calendar year

which contains the fifth anniversary of the date of the Participant's death. Rollovers made in accordance with the life expectancy rule must be made by the end of the calendar year following the year of the Participant's death.

(e) The Plan may make a direct rollover to an inherited Individual Retirement Account on behalf of a trust in accordance with these rules where the trust is the named beneficiary of the Participant, provided the beneficiaries of the trust meet the requirements to be a designated beneficiary under the Plan.

(f) The rollover must otherwise be in accordance with applicable law.

(g) The rollover must be approved by the Board of Trustees (or a designated committee of Trustees) after the Plan's administrator has verified that the above requirements have been met.

### **8.11 Roth Individual Retirement Accounts**

A Participant or beneficiary (including spouse and non-spouse beneficiaries) with an adjusted gross income of less than \$100,000 who is not married or who has filed a joint tax return with his or her spouse, will be permitted to rollover any portion of an eligible rollover distribution to a Roth Individual Retirement Account (IRA) established under section 408(A) of the Code via a direct trustee-to-trustee transfer. Effective January 1, 2010, a Participant or beneficiary (including spouse and non spouse beneficiaries) will be permitted to rollover all or a portion of an eligible rollover distribution to a Roth Individual Retirement Account via a direct trustee-to-trustee transfer regardless of his or her adjusted gross income and regardless of his or her filing status.

**ARTICLE IX**  
**NON-ALIENATION OF BENEFITS**

Participants, Retired Participants and their beneficiaries under the Plan are hereby prohibited from selling, transferring, anticipating, assigning, hypothecating or otherwise disposing of their retirement benefit, prospective retirement benefit, rights, and interest of said Participants. Except as specifically provided in applicable law, benefits payable to Participants, Retired Participants and beneficiaries shall not at any time be subject to the claims of creditors nor to attachment, execution or other process of law. This restriction shall not prevent compliance with a qualified domestic relations order.

## **ARTICLE X CLAIM PROCEDURE**

### **10.1 Trustees to Resolve Benefit Disputes.**

No Employee, Participant, Beneficiary or other person ("Claimant") shall have any right or claim to benefits under the Plan, or any right or claim to payments from the Fund other than as specified herein. Any dispute as to eligibility, type, amount or duration of benefits or any right or claim to payments from the Fund shall be resolved by the Trustees under and pursuant to this Plan, and their decision on the dispute, right or claim, shall be final and binding upon all parties thereto. Pursuant to Section 4.05(k) of the B.A.C. Local No. 3 Pension Trust Fund Agreement, the Trustees have full discretionary authority to decide all claims and appeals and interpret all Plan documents, including prior versions of this Plan and of the Local 10 Plan, Local 8 Plan, Local 12 Plan, and to make all factual determinations concerning any claim or right asserted under or against the Plan or fund.

### **10.2 Application for Benefits**

Any person whose application for benefits under the Plan has been denied in whole or in part, or whose claim to benefits or against the Fund is otherwise denied, shall be notified in writing of such decision within a reasonable period of time, but no later than ninety (90) days after receipt of such application or claim by the Plan. An extension of time for processing not exceeding ninety (90) days may be required by special circumstances, in which case written notice of such extension shall be furnished to the Claimant prior to the expiration of the initial ninety (90) day period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the Plan expects to render a benefit determination. The initial benefit determination will be made by the Administration Office, or such other agent as may be appointed by the Trustees.

The notice of denial shall set forth (1) the specific reason or reasons for the denial; (2) specific reference to pertinent plan provisions on which the denial is based; (3) a description of any additional material or information necessary for the Claimant to perfect the claim and an explanation of why such material or information is necessary; (4) a description of the Plan's review procedures and the time limits applicable to such procedures; and (5) a statement of the Claimant's right to bring a civil action under ERISA Section 502(a) following an adverse benefit determination.

### **10.3 Right to Appeal**

If the application for benefits or a claim is denied, the Claimant may petition the Trustees for review of the decision. The petition for review shall be in writing, shall state in clear and concise terms the reason or reasons for disagreement with the decision, shall be accompanied by any relevant documentary material relating to the claim not already furnished to the Plan, and shall be filed by the claimant or the Claimant's duly authorized representative with the Administration Office within sixty (60) days after receiving the notification of the adverse benefit determination. As part of the review process the Claimant or the claimant's duly

authorized representative will be provided, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claim. Relevant information includes identification of any medical or vocational expert whose advice was obtained on behalf of the Plan in connection with the adverse benefit determination, without regard to whether the advice was relied upon in making the benefit decision.

Upon receipt of a petition for review, the Trustees or a committee appointed by the Trustees and authorized to act on such petitions shall proceed to review the administrative file, including the petition for review and its contents. All comments, documents, records and other information submitted by the Claimant relating to the claim will be taken into account without regard to whether such information was submitted or considered in the initial benefit determination. A decision by the Trustees or a committee appointed by the Trustees shall be made at the next succeeding regular Trustees' meeting following the request for review, except that a request for review received within thirty (30) days preceding the date of such meeting. IN such case, a benefit determination may be made no later than the date of the second meeting following the Plan's receipt of the request for review. If special circumstances require a further extension of time for processing, a benefit determination will be made no later than the third meeting following the receipt of the petition for review. Notification of the extension shall be sent to the claimant prior to the commencement of the extension describing the special circumstances and the date as of which the benefit determination will be made.

The Claimant shall be notified of the decision of the Trustees or a committee appointed by the Trustees in writing within five (5) days after the benefit determination is made. Any notice of adverse benefit determination will include (1) the specific reason or reasons for the adverse determination; (2) reference to the specific plan provisions on which the benefit determination is based; (3) a statement that the Claimant is entitled to receive, upon request and free of charge, reasonable access to and copies of, all documents, records, and other information relevant to Claimant's claim; (4) a statement describing any voluntary appeal procedures offered by the Plan and the Claimant's right to obtain information about such procedures; and (5) a statement of the Claimant's right to bring an action under ERISA Section 502(a).

In the event that the Claimant desires additional time to present evidence in support of his or her appeal, the Claimant may request such additional time in writing. The Trustees shall grant the Claimant's written request for additional time necessary to perfect an appeal, provided the written request is received before the Trustees issue their decision. Requests for additional time and requests to submit additional information received after the Trustees' decision has been rendered shall be denied, unless the Trustees, in their sole discretion, determine that the information is material to the appeal and could not have been provided earlier.

The failure to file a petition for review with such sixty (60) day period shall constitute a waiver of the Claimant's right to review, and the initial decision shall be final and binding.

#### **10.4 Disability Claims and Appeals**

If a claim pertains to disability benefits the rules and rights set forth in this Section shall apply in addition to those set forth above. Any person whose application for disability benefits is



denied shall be notified of such denial within a reasonable period of time, but not later than forty-five (45) days after receipt of such application or claim. An extension of time not exceeding thirty (30) days may be necessary due to matters beyond the control of the Plan prior to the expiration of the thirty (30) day extension, the period for making a determination may be extended for up to an additional thirty (30) days, in which case notice will be sent to the Claimant prior to the expiration of the first thirty (30) day extension. The notice of extension shall include, in addition to the information set forth in Section 10.2 above, the standards on which entitlement to a benefit is based, the unresolved issues that prevent a decision on the claim and the additional information needed to resolve those issues. The Claimant shall be afforded at least forty-five (45) days to provide the specified information, if any. The deadline to render a decision is tolled from the date on which the notification of the extension is sent to the Claimant until the date a response from the Claimant is received.

Any notice of an adverse benefit determination shall include, in addition to the information set forth in Section 10.2 above: (1) the specific rule, guideline, protocol, or other similar criterion, of any, relied upon in making the determination; and (2) an explanation of the scientific or clinical judgment for the determination if the adverse benefit determination was based on medical necessity or other similar exclusion or limitation.

If the application for benefits or a claim is denied, the Claimant or the Claimant's duly authorized representative may petition the Trustees for review of the decision. The petition for review shall be filed by the Claimant or the claimant's duly authorized representative with the Administration Office within one hundred and eighty (180) days of receipt of the notification of the adverse benefit determination. The Claimant shall have access to relevant documents, records and other information as set forth in Section 10. above, including any statement of policy or guidance with respect to the Plan concerning the denied treatment option or benefit for the Claimant's diagnosis, without regard to whether such advice or statement was relied upon in making the benefit determination. The Trustees will not afford any deference to the initial benefit determination. If the adverse benefit determination is based in whole or in part on the medical judgment, the trustees shall consult with a health care professional with appropriate training and experience in the field of medicine involved in the medical judgment. Such consultant shall be different from any individual consulted in connection with the initial determination nor the subordinate of any such person.

A decision by the Trustees shall be made within the time limits as set forth in Section 10.3 above.

The Claimant shall be notified of the decision of the Trustees in writing within five (5) days after the benefit determination is made. Any notice of adverse benefit determination shall include, in addition to the information set forth in Section 10.3 above: (1) the specific rule, guideline, protocol, or other similar criterion, if any, relied upon in making the determination; and (2) an explanation of the scientific or clinical judgment for the termination if the denial was based on medical necessity or other similar exclusion or limit.

### **10.5 Finality of Decision on Claims.**

The denial of an application or claim after the right to review has been waived or the decision of the Trustees on petition for review has been issued shall be final and binding upon all parties, including the Claimant. No lawsuit may be filed without first exhausting the above appeals procedure. In any such lawsuit, the determinations of the Board of Trustees are subject to judicial review only for abuse of discretion. No legal action may be commenced or maintained against the Fund of the Plan more than two (2) years after a claim has been denied.

### **10.6 Waiver of Class, Collective and Representative Action**

By participating in the Plan, Participants, Retired Participants, Employees, and Beneficiaries waive, to the fullest extent permitted by law, whether or not in court, any right to commence, be a party in any way, or be an actual or putative class member of any class, collective, or representative action arising out of or relating to any dispute, claim or controversy relating to the Fund or the Plan, and Participants, Retired Participants, Employees, and Beneficiaries agree that any dispute, claim or controversy may only be initiated or maintained and decided on an individual basis.

### **10.7 Applicable Venue**

A Participant or Beneficiary shall only bring an action in connection with the Plan in the United States District Court in the Northern District of California.

## **ARTICLE XI ADMINISTRATION**

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

**11.2.** The Trustees may adopt such rules and actuarial tables as they may deem necessary, desirable or appropriate. When making a determination or calculation, the Trustees shall be entitled to rely upon information furnished by Participants or beneficiaries, Employers, their administrator, their legal counsel, their certified public accountant or their actuary.

**11.3.** Whenever, in the opinion of the Trustees, a person entitled to receive any payment of a benefit or installment thereof hereunder is under a legal disability or is incapacitated in any way so as to be unable to manage his or her financial affairs, the Trustees may make such payments to such person or to the person's legal representative or to a relative or friend of such person for his or her benefit, or the Trustees may apply the payment for the benefit of such person in such manner as they deem advisable. Any payment of a benefit or installment thereof in accordance with the provisions of this Article shall be a complete discharge of any liability for the making of such payment under the provisions of the Plan.

**11.4.** No Employee or Participant shall have any right to or interest in any assets of the Trust Fund except as provided from time to time under this Plan and then only to the extent of the benefits payable under the Plan to such Employee or Participant out of the assets of the Trust Fund. Except as otherwise may be provided under Title IV of ERISA, all payments of benefits as provided for in this Plan shall be made solely out of the assets of the Trust Fund, and none of the Trustees shall be liable therefor in any manner.

## **ARTICLE XII**

### **QUALIFIED DOMESTIC RELATIONS ORDERS**

Notwithstanding any other provision of this Plan, the Trustees shall comply with the terms of any state court domestic relations order which they or their authorized representatives have determined to be a Qualified Domestic Relations Order (QDRO) as defined in Section 414(p) of the Internal Revenue Code. The following special rules shall apply:

**12.1.** Payments to an alternate payee pursuant to a valid QDRO may begin at any time after the earliest date on which the Participant could begin receiving benefits under the Plan if the Participant separated from service.

**12.2.** If the Participant is already receiving benefits when the Plan determines that a valid QDRO exists, the alternate payee's share of the benefit must be paid in compliance with the previously-elected form of distribution. In such circumstances, any benefits payable to the Participant after the alternate payee's death shall be increased to the amount that would have been paid in the absence of the QDRO. This rule shall apply whenever the alternate payee dies first without having received any benefit payment calculated on the basis of the alternate payee's lifetime in accordance with Section 12.3.

**12.3.** If the Plan determines that a valid QDRO exists before any benefit payments have been made to the Participant, the alternate payee may receive his or her share of the benefit in any form permitted by the Plan at the time of distribution, except a Joint and Survivor Annuity providing for survivor benefits to another spouse. If the alternate payee elects and begins receiving any form of benefits calculated on the basis of the alternate payee's lifetime in accordance with this paragraph, there shall be no adjustment in the Participant's share of the benefit in the event the alternate payee dies first. Any benefit payable over the life of an alternate payee shall be the actuarial equivalent of the amount deducted from the Participant's retirement pursuant to the QDRO. Actuarial equivalence for this purpose shall be determined by using the following actuarial assumptions:

Interest rate	6% per annum
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Participant mortality	1983 Group Annuity Mortality Table
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## **ARTICLE XIII AMENDMENT, MODIFICATION OR TERMINATION OF PLAN**

### **13.1. Amendment**

The Trustees may amend or modify this Pension Plan at any time or from time to time in accordance with the Trust Agreement and may make any amendment they deem necessary or desirable, with or without retroactive effect, to comply with ERISA, except that no amendment or modification may reduce any pension payments made prior to such amendment or verification so long as funds are available for such payments. In no event shall any amendment or modification of this Pension Plan cause or result in any portion of the Fund to revert to, or be recovered by, any Employer, Signatory Association, Individual Employer, Union, or subordinate Union, or cause or result in the diversion of any portion of the Fund to any purpose other than the exclusive benefit of Participants, Retired Participants, or their beneficiaries under the Plan and the payment of administrative expenses of the Fund and the Plan.

### **13.2. Actuarial Reviews**

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

### **13.3. Termination**

In the event of termination of this Plan, and subject to applicable requirements of ERISA, the Trustees, after providing for the expenses of the Plan, shall allocate the assets then remaining to the extent that they shall be sufficient for the purpose of paying pension benefits (based on Pension Credit to the date of termination of the Pension Plan) in the following order or precedence:

(a) to provide pensions to Retired Participants who shall have retired under the Plan prior to its termination and to provide pensions to the beneficiaries of deceased Retired Participants in accordance with the optional form of pension selected without reference to the order of retirement;

(b) to provide pensions to Participants who have reached Normal Retirement Age on the date of termination, without reference to the order in which they have reached Normal Retirement Age;

(c) to provide pensions to Participants who qualify for early retirement or who have qualified for disability benefits without reference to age or the date which a Participant qualified for a disability benefit;

(d) to provide pensions upon attainment of Normal Retirement Age to Participants and former Participants who qualify for a vested benefit without reference to the order in which they attain Normal Retirement Age; and

(e) to provide pensions upon attainment of Normal Retirement Age for all other Participants who have not lost Vesting Credit.

In no event shall any of the assets of the Pension Fund revert to or be recoverable by an Employer Association, Individual Employer, or Union. In the event of partial or total termination of this Plan, all Participants of the Plan at that time will be one hundred percent (100%) vested to the extent that the Plan is funded.

#### **13.4. Merger or Consolidation**

In the case of any merger or consolidation with, or transfer of assets or liabilities to, any other plan, each Participant or beneficiary in the Plan shall, if the Plan is then terminated, receive a benefit immediately after the merger, consolidation, or transfer, which is equal to or greater than the benefit he or she would have been entitled to receive immediately before the merger, consolidation, or transfer, if the Plan had then terminated.

#### **13.5. Allocation of Funds**

Notwithstanding any term or provision of the Plan to the contrary, the allocation of funds and future distribution of benefits may, in the discretion of the Trustees, be accomplished through either:

- (a) continuance of the existing pension fund; or
- (b) purchase of insurance annuity contracts.

## **ARTICLE XIV MINIMUM DISTRIBUTION REQUIREMENTS**

### **14.1. General Rules**

The provisions of this Article will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year. The requirements of this Article will take precedence over any inconsistent provisions of the Plan. All distributions required under this Article will be determined and made in accordance with the Treasury regulations under section 401(a)(9) of the Internal Revenue code.

Notwithstanding the other provisions of this Article, other than the above paragraph, 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.

### **14.2. Time and Manner of Distribution**

The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(a) If the Participant's surviving spouse is the Participant's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70  $\frac{1}{2}$ , if later.

(b) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, distributions to the designated beneficiary will begin by December 31 of the calendar year containing the fifth (5) anniversary of the Participant's death.

(c) If there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth (5) anniversary of the Participant's death.

(d) If the Participant's surviving spouse is the Participant's sole designated beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 14.2, other than 14.2(a) will apply as if the surviving spouse were the Participant.

For purposes of this Section 14.2 and 14.5, distributions are considered to begin on the Participant's required beginning date (or, if Section 14.2(d) applies, the date distributions are required to begin to the surviving spouse under 14.2(a)). If annuity payments irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving

spouse under Section 14.2(a)), the date distributions are considered to begin is the date distributions actually commence.

Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with Sections 14.3, 14.4 and 14.5 of this Article. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the code and the Treasury Regulations. Any part of the Participant's interest which is in the form of an individual account described in Section 414(k) of the Code will be distributed in a manner satisfying the requirements of Section 401(a)(9) of the code and the Treasury Regulations that apply to individual accounts.

### **14.3. Determination of Amount to be Distributed Each Year**

If the Participant's interest is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements:

(a) the annuity distributions will be paid in periodic payments made at intervals not longer than one year;

(b) the distribution period will be over a life (or lives) or over a period certain not longer than the period described in Section 14.4 or 14.5;

(c) once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;

(d) payments will either be nonincreasing or increase only as follows:

(1) by an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;

(2) to the extent of the reduction in the amount of the Participant's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period described in Section 14.4 dies or is no longer the Participant's beneficiary pursuant to a qualified domestic relations order within the meaning of Section 414(p) of the Code;

(3) to provide cash refunds of employee contributions upon the Participant's death; or

(4) to pay increased benefits that result from a Plan amendment.

The amount that must be distributed on or before the Participant's required beginning date (or, if the Participant dies before distributions begin, the date distributions are required to



begin under Section 14.2(a) or (b)) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the Participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Participant's required beginning date.

Any additional benefits accruing to the Participant in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

#### **14.4. Requirements For Annuity Distributions That Commence During Participant's Lifetime**

If the Participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Participant and a nonspouse beneficiary, annuity payments to be made on or after the Participant's required beginning date to the designated beneficiary after the Participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Participant using the table set for in Q&A-2 of Section 1.401(a)(9)-6T of the Treasury Regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the Participant, a nonspouse beneficiary, and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.

Unless the Participant's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Participant's lifetime may not exceed the applicable distribution period for the Participant under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the Participant reaches age 70, the applicable distribution period for the Participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations plus excess of 70 over the age of the Participant as of the Participant's birthday in the year that contains the annuity start date. If the Participant's spouse is the Participant's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the Participant's applicable distribution period, as determined under this Section 14.4, or the joint life and last survivor expectancy of the Participant and the Participant's spouse as determined under the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the calendar year that contains the annuity starting date.

#### **14.5. Requirement for Minimum Distributions Where Participant Dies Before Date Distributions Begin**

If the Participant dies before the Date distribution of his or her interest begins and there is

a designated beneficiary, the Participant's entire interest will be distributed, beginning no later than the time described in Section 14.2(a) or (b), over the life of the designated beneficiary or over a period certain not exceeding:

(a) unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the Participant's death; of

(b) if the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

If the Participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

If the Participant dies before the date distribution of his or her interest begins, the Participant's surviving spouse is the participant's sole designated beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this Section 14.5 will apply as if the surviving spouse were the Participant, except that the time by which distributions must begin will be determined without regard to Section 14.2(a).

#### **14.6. Definitions**

**"Designated beneficiary"** means the individual who is designated as the beneficiary under Article I of the Plan and is the designated beneficiary under Section 401(a)(9) of the Internal Revenue Code and Section 1.401(a)(9)-1, Q&A-4, of the Treasury Regulations.

**"Distribution calendar year"** means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to Section 14.2.

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

**"Required beginning date"** means the date specified in Section 5.9 of the Plan.

## **ARTICLE XV WITHDRAWAL LIABILITY**

The Employer Withdrawal Liability Rules and Procedures of the B.A.C. Local No. 3 Pension Plan (“Withdrawal Liability Rules and Procedures”) govern the circumstances in which an Employer will be considered to have completely or partially withdrawn from this Plan, the amount of the Employer’s withdrawal liability, and how that liability is to be satisfied, and related subjects. The provisions of the Employer Withdrawal Liability Rules and Procedures will control except to the extent that they are inconsistent with the requirements of the Multiemployer Pension Plan Amendments Act of 1980 (the “Act”) or applicable regulations or rulings. To the extent the Withdrawal Liability Rules and Procedures do not address any matter affecting an Employer’s withdrawal liability, the relevant provisions of the Act shall apply. The Trustees reserve the right to amend the provisions of Withdrawal Liability Rules and Procedures from time to time both with respect to withdrawals occurring after, and to the extent permitted by law, to withdrawals occurring on or before such date the amendment is adopted. The Procedures have been amended to adopt the “Fresh Start” provisions allowed by Section 204 of the Pension Protection Act of 2006.

Pursuant to ERISA Section 4210, an Employer who withdraws from the Plan in complete or partial withdrawal is not liable to the Plan if the following conditions are met:

1. The Employer first had an obligation to contribute to the Plan on or after January 1, 2014; and
2. The Employer had an obligation to contribute to the Plan for no more than five consecutive plan years preceding the date on which the Employer withdraws; and
3. The Employer was obligated to make contributions to the Plan for each such plan year in an amount that was equal to less than two percent (2%) of the sum of all employer contributions made to the Plan for each such year; and
4. The Employer has never avoided withdrawal liability from the Plan under this provisions; and
5. Reduction under Section 411(a)(3)(E) of the Internal Revenue Code applies with respect to the Employees of the Employer; and
6. The ratio of the assets of the Plan for the plan year preceding the first plan year for which the Employer was required to contribute to the Plan to the benefit payments made during that plan year was at least 8-to-1.

## **ARTICLE XVI MERGERS**

Effective December 31, 2019, the San Francisco Bricklayers Local No. 7 Pension Plan and Bricklayers and Allied Craftsmen Local No. 16 Pension Plan merged into the Plan.

### **16.1 Merger**

The provisions of this Plan shall apply to all benefits accrued under this Plan on or after January 1, 2020. To the extent that benefits accrued by a Participant or beneficiary prior to January 1, 2020 become payable under the terms of this Plan, the result shall be at least as favorable to the Participant or beneficiary as under the prior Plan. Nothing in this Plan shall be construed as eliminating any right or reducing any benefit available under this Plan or the San Francisco Bricklayers Local No 7 Pension Plan (hereinafter “Local 7 Pension Plan”) or the Bricklayers and Allied Craftsmen Local No. 16 Pension Plan (hereinafter “Local 16 Pension Plan”) with respect to benefits accrued prior to January 1, 2020, except as may be required by law.

### **16.2 Acceptance of Local 7 Pension Plan and Local 16 Pension Plan Liabilities.**

All liabilities of the Local 7 Pension Plan and the Local 16 Pension Plan, including, by way of example, liabilities for Vesting Credit, Pension Credit, and benefit accruals earned prior to January 1, 2020 under Local 7 Pension Plan or Local 16 Pension Plan and all obligations to persons retired under the Local 7 Pension Plan or Local 16 Pension Plan are hereby recognized as liabilities of this Plan. All benefits and eligibility therefore for service earned both prior to January 1, 2020 and prior to a separation from service which occurred on or before December 31, 2019 shall be determined in accordance with the terms of the respective Local No. 7 Pension Plan or Local 16 Pension Plan. No Participant’s or beneficiary’s accrued benefit under the Local 7 Pension Plan or Local 16 Pension Plan will be lower immediately after the effective date of this merger than the benefit immediately before that date. Commencing January 1, 2020, the rules of this Plan, as modified in this Article XVI, govern the accrual of credits, forfeitures and rights of Employees under the Local 7 Pension Plan or Local 16 Pension Plan respective Collective Bargaining Agreements.

### **16.3 Participation**

All persons who, absent this merger, would have been Participants under the Local 7 Pension Plan or Local 16 Pension Plan on January 1, 2020 shall be Participants under this Plan as of January 1, 2020. All former Participants of the Local 7 Pension Plan and the Local 16 Pension Plan who had not incurred a Permanent Break-in-Service as of December 31, 2019, shall become Participants under this Plan in accordance with Article II of this Plan.

### **16.4 Normal Form of Benefit**

All Active Employees under the Local 7 Pension Plan or the Local 16 Pension Plan as of December 31, 2019 are subject to the normal form of benefit rules under the applicable Local 7

Pension Plan or Local 16 Pension Plan for benefits earned on or before December 31, 2019. Effective for any hours worked on or after January 1, 2020, the normal form of benefit for an unmarried Participant shall be determined in accordance with Section 5.7(a) of this Plan.

### **16.5 Unreduced Retirement**

All Active Employees under the Local 7 Pension Plan or the Local 16 Pension Plan as of December 31, 2019 are subject to the unreduced retirement benefit rules under the applicable Local 7 Pension Plan or Local 16 Pension Plan for benefits earned on or before December 31, 2019. Effective for any hours worked on or after January 1, 2020, a Participant will be eligible for an unreduced retirement in accordance with Section 5.3 of this Plan.

### **16.6 Eligibility for Normal Retirement, Early Retirement or Disability Retirement**

Benefits accrued under either the Local 7 Pension Plan or the Local 16 Pension Plan on or before December 31, 2019 for a participant who earns at least one (1) hour of service in covered employment in any Plan Year on or after January 1, 2020, shall be determined in accordance with the Normal Retirement provision (Section 5.2), the Early Retirement provision (Section 5.4) or the Disability provision (Article VI) of this Plan, if applicable.

### **16.7 Vesting**

A former Participant in the Local 7 Pension Plan who earned at least one thousand (1,000) hours as defined in either this Plan or the Local 7 Pension Plan during the twelve (12) month period ending December 31, 2019 and one thousand (1,000) hours during the twelve (12) month period ending June 30, 2020, shall receive one (1) year of Vesting Credit under that Plan and one (1) year of Vesting Credit under this Plan. If the Participant worked more than three hundred (300) hours but less than one thousand (1,000) hours during the twelve (12) month period ending June 30, 2020, he or she shall receive partial credit under this Plan in accordance with the schedule in Section 3.1, whether or not he or she worked more than two hundred fifty (250) hours during the twelve (12) month period ending December 31, 2019 and therefore may have received partial credit in accordance with the terms of the Local 7 Pension Plan.

All Participants who earned vesting credits as of December 31, 2019, under the Local 7 Pension Plan or Local 16 Pension Plan, provided there has been no permanent break-in-service, shall have the same number of such vesting credits as of December 31, 2019, under this Plan.

### **16.8 Breaks-in-Service**

All Participants who incurred one or more consecutive one-year Breaks-in-Service as of December 31, 2019, under the Local 7 Pension Plan or Local 16 Pension Plan shall have the same number of such consecutive one-year Breaks-in-Service as of December 31, 2019, under this Plan. Thereafter, effective for any hours worked on or after July 1, 2020, additional one-year Breaks-in-Service, if any, shall be determined in accordance with Section 3.5 of this Plan.

### **16.10 Suspension of Benefits**

Retired Participants under the Local 7 Pension Plan or the Local 16 Pension Plan as of December 31, 2019 are subject to the suspension of benefit rules under the applicable Local 7 Pension Plan or Local 16 Pension Plan. Retired Participants with effective dates of retirement on or after January 1, 2020 are subject to the suspension of benefit rules under this Plan. Notwithstanding any other provision herein, this Article XVI shall be interpreted with the intent of complying with the requirements set forth in Revenue Procedure 2005-23.

The Board of Trustees of the B.A.C. Local No. 3 Pension Plan does hereby adopt the B.A.C. Local No. 3 Pension Plan (as Amended and Restated Effective March 1, 2019).

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Chairman

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Secretary

**APPENDIX A**  
**Joint Option Factors**

<u>Beneficiary's Age in Relation to Retiree's Age</u>	<u>50% Joint Option</u>	<u>50% Joint Option With Pop-up</u>	<u>66 % Joint Option</u>	<u>66 % Joint Option With Pop-up</u>	<u>100% Joint Option</u>	<u>100% Joint Option With Pop-up</u>
Each additional year older	+.004	+.004	+.005	+.005	+.007	+.007
+10 years	.944	.924	.926	.906	.893	.873
+9	.940	.920	.921	.901	.886	.866
+8	.936	.916	.916	.896	.879	.859
+7	.932	.912	.911	.891	.872	.852
+6	.928	.908	.906	.886	.865	.845
+5	.924	.904	.901	.881	.858	.838
+4	.920	.900	.896	.876	.851	.831
+3	.916	.896	.891	.871	.844	.824
+2	.912	.892	.886	.866	.838	.818
+1	.908	.888	.880	.860	.831	.811
Same age	.904	.884	.875	.855	.824	.811
-1	.900	.880	.870	.850	.817	.797
-2	.896	.876	.866	.846	.811	.791
-3	.892	.872	.861	.841	.805	.785
-4	.888	.868	.856	.836	.798	.778
-5	.884	.864	.851	.831	.792	.772
-6	.880	.860	.847	.827	.786	.766
-7	.877	.857	.842	.822	.781	.761
-8	.873	.853	.838	.818	.775	.755
-9	.870	.850	.834	.814	.770	.750
-10	.866	.846	.830	.810	.764	.744
Each additional year younger	-.004	-.004	-.004	-.004	-.004	-.004

**APPENDIX A (cont.)**  
**Certain Factors**

Nearest Age At Retirement	10 Year Certain Factors
75	0.826
74	0.842
73	0.857
72	0.871
71	0.884
70	0.896
69	0.906
68	0.916
67	0.925
66	0.933
65	0.941
64	0.948
63	0.954
62	0.959
61	0.964
60	0.968
59	0.972
58	0.975
57	0.978
56	0.980
55	0.982



**APPENDIX B**  
**Benefit Improvements**

1. Each retired Participant who was in pay status under the Valley Plan as of April 30, 1996 shall be entitled to receive a one-time supplemental payment equal to the amount of the Participant's regular monthly benefit payment for the month of April 1996.
2. Each retired Participant who was in pay status under the Local 3 Plan as of June 30, 1996, shall be entitled to receive a one-time supplemental payment equal to the amount of the Participant's regular monthly benefit payment for the month of June 1996. For this purpose, the regular monthly benefit shall not include benefits accrued under the Valley Plan.
3. Each retired Participant who was in pay status under the Local 3 Plan as of June 30, 1997, shall be entitled to receive a one-time supplemental payment on December 1, 1998 equal to the Participant's regular monthly benefit payment for the month of June 1997.
4. Each retired Participant who was in pay status under the Local 3 Plan as of June 30, 1998 shall be entitled to receive a one-time supplemental payment on December 1, 1999 (as long as he or she is still living on December 1, 1999) equal to the Participant's regular monthly benefit for the month of June 1998.
5. Each retired Participant who was in pay status under the Local 3 Plan as of June 30, 1999 shall be entitled to receive a one-time supplemental payment on March 1, 2000 (as long as he or she is still living on March 1, 2000) in the amount of \$485.00.