

# **HOD CARRIERS LOCAL 166 PENSION PLAN**



## **Summary Plan Description**

**September 2017**

**For the complete Hod Carriers Local 166 Pension Plan Rules and Regulations, visit [www.norcalaborers.org](http://www.norcalaborers.org)**

# HOD CARRIERS LOCAL 166 PENSION PLAN

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# HOD CARRIERS LOCAL 166 PENSION PLAN

Dear Participant:

We are pleased to provide this new booklet, known as a Summary Plan Description, for the Hod Carriers Local 166 Pension Plan ("Plan"), which is also known as the "East Bay" Plan. The Plan provides retirement benefits to members of the Northern California District Council of Laborers (who were formerly members of Hod Carriers Local 166) working under a collective bargaining agreement between Hod Carriers Local 166, different employer associations and some individual employers. The Plan was established as of July 1, 1967. **Effective January 1, 2015, the Hod Carriers Local No. 166 South Bay Pension Plan was merged into this Plan.** Effective as of July 1, 2017, the Hod Carriers Local 166 West Bay Pension Plan was merged into this Plan. The pension benefits earned under each of those Plans at the time of the merger cannot be taken away from a Participant, however some Plan benefits may have changed. But, for Covered Employment after the merger effective date, the rules of the Hod Carriers Local 166 Pension Plan apply.

This booklet summarizes the key provisions of the Plan including how you earn benefits, when you may commence receiving your benefits and the choices you have when your benefits are paid to you. The formal text of the Plan controls eligibility, benefit payments, and other aspects of the Plan. **In the event of any ambiguity or conflict between this booklet and the Plan, the Plan will govern.**

You should read this booklet carefully. Moreover, if you are married you should discuss the Plan's benefits, options and other rules with your spouse.

<b>KEEP THIS BOOKLET FOR FUTURE REFERENCE</b>
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Over the years you may accumulate substantial funds to which you or your named beneficiary may be entitled. Please submit a completed Enrollment Form, naming your beneficiary, to the Fund Office and notify the Plan of any address changes.

Only the Board of Trustees is authorized to interpret the Plan of benefits described in this booklet. The Board of Trustees has the full discretionary authority to determine eligibility for benefits, claims and appeals and to construe and interpret the Plan and related documents, and any rules.

If you have questions about your Pension Plan, or this SPD, contact the Trust Fund Office at 707-864-2800 or toll-free at 800-244-4530, Monday through Friday, between 8:00 AM and 5:00 PM. You can also email any questions to [customerservice@norcalaborers.org](mailto:customerservice@norcalaborers.org).

Sincerely,

Board of Trustees

### **PLAN AMENDMENTS**

Future amendments to the Plan may have to be made from time to time to comply with Congressional action, rulings by federal agencies, and/or courts and other changes deemed necessary or prudent by the Board of Trustees. You will be notified when important amendments to the Plan are made. Before you decide to retire, you should contact the Fund Office to determine if there have been Plan changes or other developments that may affect your retirement benefits.

### **LIMITATION UPON RELIANCE ON BOOKLET AND STATEMENTS**

This booklet provides a brief, general summary of the Plan rules. It is not intended to cover all the details of the Plan. Nothing in this Summary Plan Description is meant to interpret or change the Plan provisions. You should review the Plan to fully determine your rights. The Plan is available for your review at the Fund Office upon written request.

You are not entitled to rely upon oral statements of employees of the Fund Office, a Trustee, an Employer, any Union Officer, or any other person or entity. If you wish an interpretation of the Plan, you should address your request in writing to the Board of Trustees at the Fund Office. To make their decision, the Board of Trustees must be furnished with full and accurate information concerning your situation.

As a courtesy to you, the Fund Office may respond orally to questions; however, **oral information and answers are not binding upon the Plan and cannot be relied upon in any dispute concerning your benefits and/or the Plan.**

You should further understand that, from time to time, there may be an error in a statement, letter or other communication that you receive which may be corrected upon an audit or review. **The Board of Trustees reserves the right to make corrections whenever any error is discovered.**

### **CONSULT WITH A TAX ADVISOR**

The Fund Office does not provide tax advice or suggest how you should receive your benefits. **You should discuss with a tax advisor the tax consequences of any withdrawal of funds or selection of a benefit option.**

### **ONE YEAR TO FILE A LAWSUIT**

If a claim for benefits has been denied and you filed an appeal which is also denied or you have a different type of adverse determination, you have one year from the date of the denial of the appeal or the adverse determination to file a lawsuit seeking to overturn the appeal and/or adverse determination. **Failure to do so means that you will not be able to file your lawsuit.**

## **I. TYPE OF PLAN**

The official name of the Plan is the Hod Carriers Local 166 Pension Plan ("Plan"), also known as the "East Bay Hod Carriers Local 166 Pension Plan". The Plan retains that name even though Hod Carriers Local 166 is no longer in existence, having merged into the Northern California District Council of Laborers. The Plan is a multi-employer, collectively bargained defined benefit pension plan, which means that the Plan contains a formula for determining your pension benefit at retirement. If you are vested, you will be entitled to a "defined" benefit at retirement based on your years of service and the formula provided in the Plan and as summarized in this booklet. Benefits are payable at Normal Retirement (after age 62 or older), early retirement (age 55) and in the event of a permanent and total disability. The Plan Year is July 1-June 30 of the following year.

The Plan is governed by a federal law known as the Employee Retirement Income Security Act as amended ("ERISA") and is insured under the federal Pension Benefit Guaranty Corporation, known as the "PBGC". See Article XIV, Section D of this booklet for more information on the Plan's provisions relating to termination and the PBGC guarantee of certain benefits.

The PBGC guarantees certain Vested Normal Retirement Age Benefits, Early Retirement Benefits, and certain Disability and Survivor's pensions. PBGC does not, however, guarantee all types of benefits under covered plans, and, the amount of benefit protection is subject to certain limitations. (See Article XIV for more details on the Plan's provisions relating to termination.)

### **Who to Contact for Questions**

Please contact the Fund Office if you have questions or want to know more about the Plan.

## **II. ADMINISTRATION OF THE PLAN/INVESTMENTS**

### **A. Administration.**

The Plan is administered by a Board of Trustees comprised of up to twelve Trustees. One-half of the Trustees, called "Employer Trustees," are selected by the Employer Associations signatory to collective bargaining agreements with Hod Carriers Local 166, and one half of the Trustees, called "Union Trustees," are selected by the Northern California District Council of Laborers.

The Board of Trustees has many powers and functions including without limitation, investing the Plan's assets, interpreting Plan provisions, amending the Plan, deciding policy questions, and appointing advisors and consultants, such as an auditor, legal counsel and investment consultant. The Board of Trustees has delegated the day-to-day administration of the Plan, including processing of applications and issuance of benefit payments, to the Laborers Funds Administrative Office of Northern California, Inc., also known as the "Fund Office" or "Administrative Office".

Only the Board of Trustees and its authorized representatives are authorized to interpret the Plan of benefits described in this booklet. No one else can interpret this Plan or act as an agent for the Board of Trustees—this includes individual Trustees, Employers, Unions and their representatives. The Board of Trustees (and persons or entities appointed or so designated by the Board) has the full discretionary

authority to determine eligibility for benefits and to construe the terms of the Plan (and other documents pertaining to the Plan and Trust) and any rules adopted by the Trustees.

## **B. Investments**

The Plan's investments are diversified among fixed income securities, domestic and international common stocks, real estate, mutual funds and other investment vehicles consistent with the Plan's Investment Policy Statement. Other types of investments could be used in the future.

The Board of Trustees has contracted with Alan Biller & Associates, a registered investment manager, to prudently invest the Plan's assets in accordance with the Investment Policy adopted by the Board of Trustees.

## **C. Auditor**

The Board of Trustees has contracted with Hemming Morse, Inc., a certified public accounting firm, to audit the Plan's assets and to prepare the annual tax return (Form 5500).

## **D. Earning Benefits—Employer Contributions for your Covered Employment**

Your pension benefit is funded by Employer contributions made on your behalf pursuant to Collective Bargaining Agreements with the Northern California District Council of Laborers (formerly the Hod Carriers Local 166). The mandatory contribution amount may be different under certain collective bargaining agreements and for apprentices. Employer contributions to the Plan are not subject to withholding for FICA, FUTA or state or federal taxes. You may obtain a list of contributing Employers with their addresses and the applicable Collective Bargaining Agreement upon written request to the Fund Office. The amount of Employer contributions made to the Plan for non-bargaining unit employees will be governed by Subscription Agreements entered with the Plan.

### **IF YOU BELIEVE THAT YOUR EMPLOYER IS NOT CONTRIBUTING THE FULL AMOUNT**

The Fund Office sends a semi-annual statement of account—please review these statements as you receive them. You **should notify the Union and the Plan immediately** if you are aware or suspect that your Employer has not contributed to the Plan on your behalf the full amount required under your Collective Bargaining Agreement. **If you fail to do so, your Pension may not be credited with the correct or full amount or there may be delays in the crediting of such amounts.**



### III. PARTICIPATION, RECIPROCITY AND VESTING

#### A. Participation and Reciprocity

1. **Participation Requirements.** A Participant is an Employee who works in Covered Employment pursuant to a Collective Bargaining Agreement which requires contributions to this Plan on behalf of such Employee and who meets the eligibility requirements for participation in this Plan.

An Employee becomes a Participant on the first day of the month following the first twelve-consecutive-month period during which he earned at least 300 hours of service in Covered Employment. If the Employee does not work 300 hours of service in such initial twelve-month period, the Employee qualifies as a Participant on the first of the month after earning 300 hours in any Plan Year following the first date of employment. An Employee's initial twelve-month period for measuring eligibility to participate begins on the day on which the first Hour of Service is performed (Prior to July 1, 2017, 1,000 hours was required to become a Participant.)

Certain full-time employees of the Union are also allowed to participate in the Plan under rules and contribution rates approved by the Board of Trustees.

2. **Duration of Participation.** You continue as a Plan Participant until you incur a permanent Break in Service resulting in the cancellation of your previously accumulated Benefit and Vesting Credits, until your death or your benefits are otherwise fully distributed, whichever occurs first.

3. **Reinstatement of Participation.** A Participant who has not incurred a Permanent Break in Service who is reemployed after a temporary Break in Service will participate immediately on his reemployment commencement date or retroactively as of his date of reemployment upon completion of a year of service measured by his reemployment commencement date. Such person shall be entitled to Benefit Credits and Vesting Credits earned in the period prior to and after his temporary Break in Service immediately upon his reemployment. An Employee who has lost his status as a Participant because of a permanent Break in Service shall again become a Participant upon meeting the requirements of Section 1 above.

4. **Reciprocity.** Pension Credits you accumulate under one plan signatory to the Laborers International Union National Reciprocal Agreement are recognized by this Plan in determining whether you are vested in accordance with that Agreement and any restrictions imposed thereon. Thus, if you have 4 years of Vesting Credit under this Plan and 2 years vesting Credit under another Pension Plan signatory to the Reciprocal Agreement, the combined 6 years of Vesting Credits will result in your being vested under this Plan. You will be vested, however, only in the Benefit Credits earned under this Plan.

There is also "money follows the person" reciprocity whereby the Employer contributions contributed on your behalf when you work in an area of a different Laborers Pension Plan are transferred (reciprocated) to this Plan enabling you to earn both Pension and Vesting Credit for such service. You would have to sign a written authorization permitting the transfer of such funds. Please contact the Fund Office if you have questions.

## **B. Vesting, Credited Service and Benefit Credit**

1. Vested Employee. Once you are “vested” you are entitled to receive a pension from the Plan at specified ages. A Participant who has worked at least one hour of Covered Employment on or after July 1, 1998, is 100% Vested when he accumulates 5 Years of Vesting Service (without an intervening Permanent Break in Service). If you have not worked one or more hour of Covered Employment on or after July 1, 1998, you are subject to a ten-year vesting requirement under Plan rules in effect at that time.

You earn 0.1 year of Vesting Service for 300-399 hours plus 0.1 year for each additional 100 hours. One year of vesting credit is earned for each Plan Year in which 1,000 or more covered hours are worked. Vesting service as of December 31, 2014 in the South Bay Plan is counted as vesting credit in the Plan. See the table addressing this issue on the next page.

The twelve-consecutive month period used to determine whether an Employee has a year of service for vesting purposes is the Plan Year. An Employee’s right to his or her Normal Retirement Benefit is non-forfeitable upon the attainment of Normal Retirement Age.

2. Benefit Credit. Benefit Credit is credit which is given for pension benefit accrual purposes for periods of service which are accumulated for Covered Employees under the Plan. Benefit Credits for work performed during a Plan year after July 1, 1967, and before July 1, 1976, are determined as follows:

### **NUMBER OF COVERED HOURS WORKED IN A PLAN YEAR**

300 Hours or more  
Less than 300

### **BENEFIT CREDITS**

Total credited covered hours divided by 1,200  
-0-

(The rules for Participants of the West Bay and South Bay Pension Plans were different prior to their merger dates into this Plan. For example for the West Bay Plan, prior to July 1, 2017, there was a \$75 benefit for each 1,200-hour year with additional credits up to 1,680 hours with partial credit given for hours over 300 up to 1,680 resulting in Credited Service from 0.2 to 1.4.)

Benefit Credits for work performed during a Plan year from July 1, 1976 through June 30, 1983 are determined as follows:

### **NUMBER OF COVERED HOURS WORKED IN A PLAN YEAR**

Less than 300  
300 but less than 400  
400 but less than 500  
500 but less than 600  
600 but less than 700  
700 but less than 800  
800 but less than 900  
900 but less than 1000  
1,000 but less than 1,125  
1,125 but less than 1,250  
1,250 and up

### **BENEFIT CREDITS**

-0-  
.10  
.20  
.30  
.40  
.50  
.60  
.70  
.80  
.90  
1.00 maximum

From July 1, 1983 forward, Benefit Credits are earned in the same manner shown above except for the following additions:

**NUMBER OF COVERED HOURS**

**WORKED IN A PLAN YEAR**

**BENEFIT CREDITS**

1,250 but less than 1,375	1.00
1,375 but less than 1,500	1.10
1,500 but less than 1,625	1.20
1,625 but less than 1,750	1.30
1,750 but less than 1,875	1.40
1,875 but less than 2,000	1.50
2,000 and up	1.60 maximum

3. Vesting Credit. Covered Employees earn Vesting Credit according to the following rules:

(a) Pre-July 1, 1976. For Plan Years ending prior to July 1, 1976, a Covered Employee's Vesting Credits shall be the same as the total of his earned Past Service Benefit Credits and Future Service Benefit credits.

(b) July 1, 1976 Forward. Vesting Credit shall be computed for each Plan year, which is defined as the twelve-month period beginning July 1 of each year and ending June 30 of the following year. From July 1, 1976 forward, the credit earned each Plan Year will be determined as follows:

**NUMBER OF HOURS COVERED**

**EMPLOYMENT IN A PLAN YEAR**

**FUTURE SERVICE**

**VESTING CREDITS**

Less than 300	-0-
300 but less than 400	.10
400 but less than 500	.20
500 but less than 600	.30
600 but less than 700	.40
700 but less than 800	.50
800 but less than 900	.60
900 but less than 1,000	.70
1,000 and up	1.00

(c) Service for Related Employers. For Vesting purposes only, service with a contributing Employer includes service for certain related Employers for the period in which the Employers are related. Such related Employers include members of a controlled group of corporations (within the meaning of IRC Section 1563(a), determined without regard to subsections (a)(4) and (e)(3)(c) thereof) and trades or businesses (whether incorporated) which are under common control. Service must also be counted for organizations that are part of an affiliated service group under IRC Section 414(m).

(d) Continuous Non-Covered Employment. If you work for a Contributing Employer in non-Covered employment, your time in that job may count towards meeting the above hour requirements to earn a Year of Vesting Service. To qualify, your work in the non-Covered position must be immediately before or immediately after your time worked as a Covered Employee for the same Employer with no intervening quit, discharge or retirement. Time worked before your employer became a Contributing Employer or after the employer is no long a Contributing Employer does not count under

this rule. Although such time in a non-covered position may help you become Vested, it does not count when determining the amount of your pension benefit.

(e) Past Service Credit. Past Service Credit shall be determined as follows:

i. An Employee shall be eligible for Past Service Credit if he (a) was employed or available for employment within the jurisdiction of the Union during the period from July 1, 1967 through June 30, 1969; and (b) completed at least 600 covered hours of employment during the period from July 1, 1967 through June 30, 1969. Employees unable to meet these requirements because of military service shall be eligible as approved by the Trustees.

ii. Such eligible Employees shall be credited with past service for the years and fractions thereof of his continuous employment or availability for employment for work of the type and in the area covered by the Collective Bargaining Agreement establishing this Plan prior to July 1, 1967; provided that the maximum Past Service Credit shall be ten years. Continuity shall not be deemed broken by unemployment due to a permanent and total disability or military service.

4. Amount of Pension. Effective July 1976, the monthly payment of a Vested Participant's pension is computed by adding the Participant's past service benefit credit to his future service benefit credit as follows:

(a) Past Service Benefit Credit. Years of Past Service Benefit Credit are multiplied by \$11.50; plus

(b) Future Service Benefit Credit. A Participant's Future Service Benefit is computed as follows:

1) July 1, 1976-June 30, 1978 Period. For hours worked from July 1, 1967 through June 30, 1978, multiply total credited contributions times by two percent.

2) July 1, 1978-June 30, 2005 and July 1, 2005 Forward. For hours worked on or after July 1, 1978 through June 30, 2005, multiply Future Service Benefit Credits by \$95.00, with bonus credits for hours of service over 1,250 (up to 2,000 hours) in a Plan Year. Proportional credit is given for hours under 1,250. Effective as of July 1, 2005, multiply Future Service Benefit Credits by \$75.00, with bonus credits for Hours of Service over 1,250 (up to 2,000 hours) in a Plan Year earned after July 1, 1983. (Prior to the merger of the Hod Carriers 166 South Bay Pension Plan into this Plan as of January 1, 2015, pension benefits for South Bay Participants were calculated by multiplying employer contributions by 1.5%. After the merger, for future service on or after January 1, 2015, the \$75.00 rate referenced above applies to the former South Bay Plan Participants.)

3) Prior Rule for South Bay Mason Tenders. Effective as of July 1, 2009, the Benefit Accrual Rate for the South Bay Mason Tenders (previous Local 270 Mason Tenders) is equal to that of the East Bay Mason Tenders times the former Employer Contribution rate divided by the latter contribution rate. This is known as a pro-rata determination of the value of the Benefit Accrual Rates based on the Employer contribution rates in the collective bargaining agreements (resulting in a decreased Benefit Accrual Rate if the contribution to the Pension Plan is smaller than that of the East Bay Tenders). This adjustment to the Benefit Accrual Rate based on the Employer contribution requirement under the

collective bargaining agreement based on the applicable collective bargaining rate comparison shall also apply to any new Participants as a result of a merger and/or transfer of assets from another pension plan.

(c) Increase and/or Extra Payments. The Board of Trustees, from time to time, may approve cost of living supplements or grant an extra payment for Pensioners, Disabled Participants, and/or Beneficiaries. Any such payments, known as a “supplemental payment,” “13<sup>th</sup> check,” or cost of living increase, are at the absolute discretion of the Board of Trustees. Such payments are not guaranteed or vested. Moreover, the amount of any increase, including any extra check issued, may vary for different categories of individuals, such as Pensioners, Disabled Participants and Beneficiaries (and may vary within each of those separate categories).

(d) Prior Increases. Benefits have periodically been increased for Participants as follows:

1) Actives. Increases for active Participants have applied to Participants who earned 300 or more hours of Covered Employment in the Plan Year immediately preceding the increase. The increases, which applied to benefits accrued through the date of the increase (including any applicable previous increases), have been as follows:

<u>APPLICABLE JULY 1</u>	<u>INCREASE IN BENEFIT</u>
1987	15%
1988	10%
1989	10%
1990	5%
1991	18%
1992	12%
1993	6%
1997	4%
1999	10%

2) Retirees. Increases for retired Participants and Beneficiaries apply to those individuals whose effective date for benefits commenced on or after July 1, 1976 and prior to the effective date of the increase. The increases, which applied to benefits being paid on the effective date of the increase (including any applicable previous increases), have been as follows:

<u>EFFECTIVE</u>	<u>INCREASE IN BENEFIT PAYABLE</u>
January 1, 1988	15%
July 1, 1988	10%
July 1, 1989	10%
July 1, 1992	6%
July 1, 1997	1.5%

There is no requirement that periodic increases are granted. Any such increase, which is at the total discretion of the Trustees, may vary each year, be zero in a year or be terminated. **There is no vested right to periodic increase in benefits.**

(e) Veterans' Benefit Rules. Pursuant to the Veterans Readjustment Assistance Act, the Veteran's Reemployment Act of 1994, and other applicable federal law, an authorized leave of absence due to certain military service in the Armed Forces of the United States shall earn Future Service Benefit Credit and Vesting Credit under the Plan provided that the Participant complies with all of the requirements of applicable federal law, this Plan, and any rules established by the Board of Trustees or its delegate. Only service in the Armed Forces of the United States for which credit is required under the above-referenced federal laws will be considered under this subsection.

To be entitled to Credited Future Service and Vesting Service for the period in the Armed Services, a Participant whose active duty exceeded 90 days must have: (i) been working as a Covered Employee during the 90 days prior to commencement of his Armed Services; (ii) returned to work as a Covered Employee within 90 days following termination of his service in the Armed Services; (iii) been honorably discharged from the service, and (iv) served no more than five years in the Armed Services.

For Participants whose active duty did not exceed 90 days, an application for reemployment or signed-up on the Union's out-of-work list must be made within the time periods required by the Uniform Services Employment and Reemployment Rights Act of 1994.

In determining a Participant's Credited Future Service and Vesting Service for serving in the Armed Services for a Plan Year (prorated for shorter periods), the Trustees shall determine the Employer contributions that would have been made to the Plan on the Participant's behalf for the period of absence by taking an average of the contributions made to the Plan on the Participant's behalf during the Plan years immediately preceding the date the Participant commenced his service in the Armed Services, or if greater, using the Plan Year in which the Participant entered the Armed Services. The Trustees shall have sole and absolute discretion to determine the appropriate contributions to be allocated to a Participant in this situation subject to the minimum requirement of federal law.

## **IV. BREAKS IN SERVICE/LOSS OF VESTING SERVICE**

### **A. Break in Service/Loss of Credits.**

If a Participant has a Break in Service before he has become a Vested Participant, it has the effect of canceling his participation, his previous Years of Credited Service and his Benefit Units accrued to the date of his Break in Service; however, a Break in Service may be temporary, subject to repair by a sufficient amount of subsequent Credited Service. A longer Break in Service may be permanent. The Break in Service rule does not apply to a Pensioner or a Vested Participant.

(1) General. A Break in Service may be temporary subject to repair by again becoming a Participant before a permanent Break in Service occurs. If a person has a permanent Break in Service before becoming vested, his participation and years of Future and Past Service Benefit Credit and Vesting Credit (previous versions of this Plan govern breaks in service prior to July 1, 1976) would be cancelled.

An Employee who separates from Covered Employment and is reemployed in Covered Employment prior to incurring a permanent Break in Service will continue to vest, starting at the point in the vesting schedule where such Employee left employment, in the pre-separation or post-separation accruals. If an Employee who has no vested interest separates from service and is reemployed before the number of consecutive one-year breaks in service equals or is more than the greater of 5 or the number of years of service, whether consecutive ("Rule of Parity") upon re-employment the pre-break service will

be considered for purposes of determining the vested interest in benefit accruals that resulted from Employer contributions after a year of service is completed.

(2) Break in Service from July 1, 1976 through June 30, 1986.

(a) A one-year Break in Service, also described as a temporary Break in Service, occurs in any Plan Year in which a person fails to earn 300 Hours of Service in Covered Employment or in continuous non-Covered Employment.

(b) A one-year Break in Service is repairable (i.e., its effects are eliminated) if, before incurring a permanent Break in Service, the Employee within a subsequent Plan Year earns 300 hours of service.

(c) A permanent Break in Service occurs if a person has consecutive one-year breaks in service, including at least one (1) after July 1, 1976, and prior to July 1, 1986, that equals or exceeds the number of full years of vesting service he had previously accumulated.

(3) Breaks in Service on or From July 1, 1986 through June 30, 1998.

(a) A one-year Break in Service occurs in any Plan Year in which a person fails to complete 300 hours of service in Covered Employment or in continuous non-Covered Employment.

(b) A one-year Break in Service is repairable (i.e., its effects are eliminated) if, before incurring a permanent Break in Service, the Employee within a subsequent Plan Year earns 300 hours of service.

(c) A permanent Break in Service occurs on or after July 1, 1986 if a person has consecutive one-year breaks in service that equal or exceed the number of full years of accumulated Benefit Credits or five (5) consecutive Plan Years, whichever is greater.

(4) Breaks in Service from July 1, 1998 Forward.

(a) A one-year Break in Service occurs in any Plan Year when you fail to complete 300 hours in Covered Employment.

(b) A one-year Break in Service is repairable (i.e., its effects are eliminated) if, before incurring a permanent Break in Service, you earn 300 hours of Covered Employment in a Plan Year.

(c) A permanent Break in Service occurs after July 1, 1998, if you have consecutive one-year Breaks-in-Service that exceed five years.

**B. Grace Periods to Break in Service Rule.**

(1) Grace Period Due to Disability or Military Service. Notwithstanding the above, a Covered Employee who is unable to accumulate sufficient Benefit and Vesting Credits or hours of service to otherwise prevent a permanent Break in Service is entitled to a grace period if such failure to accumulate credits is attributable to permanent and total disability or service in the Armed Forces of the United States (excluding periods of voluntary re-enlistment) provided the Covered Employee submits to the Trust an

application for a leave of absence and exemption from cancellation of accumulated Benefit and Vesting Credits prior to the cancellation of such person's Benefit and Vesting Credits.

(2) Grace Period for Maternity or Paternity.

(a) Maximum of 501 Hours. A Participant who is absent from Covered Employment after March 31, 1985, because of Maternity or Paternity Leave, is credited with a maximum of 501 Hours of Service for the period of such leave for (i) Pregnancy of the individual; (ii) Birth of the child of the individual; (iii) Placement of a child with the individual due to adoption; or (iv) care of the child immediately following birth or adoption.

(b) Does Not Add to Vesting Service Totals. A grace period does not add to a Participant's Vesting Service; it is a period which is to be disregarded in determining whether the Participant has worked sufficient hours in Covered Employment to prevent a Permanent Break in Service. To secure the benefits of a grace period, a Participant must give written notice to the Board of Trustees. The Board, at its discretion, may determine whether the Participant is entitled to a grace period in accordance with the provisions of this Section.

(c) Plan may Require Evidence to Support Leave. The Board of Trustees may require as a condition of providing credit for the hours required that a Participant certify that the leave was taken for one of the permitted reasons. The Board of Trustees, at its discretion, may require such medical or other evidence as it deems appropriate.

## V. TYPES OF RETIREMENT

### A. Normal Retirement Date

A Vested Participant may retire upon reaching Normal Retirement Age and commence receiving a pension benefit from the Plan. The Plan's Normal Retirement age is age 62 for a Vested Participant or the later of the age of the Participant after attainment of age 62 or attainment of the fifth (5th) anniversary of participation in the Plan.

#### Retirement Defined

To be considered retired under this Pension Plan, a Pensioner must withdraw completely and refrain from any employment for wages or employment for profit in the Hod Carrier and/or Building and Construction Industry in the same geographic area covered by the Plan as set forth below in Article IX Section 1. A Covered Employee may continue working without restriction, beyond Normal Retirement Date if he has not retired, in which event the Employer shall continue to make contributions with respect to such employment, and such person shall continue to accrue Benefit and Vesting Credits until retirement. Furthermore, such Employee who elects Postponed Retirement shall have his accrued monthly benefit earned to his Normal Retirement Date actuarially increased by 0.5% per month each month between his Normal Retirement Date and Postponed Retirement Date.

If such Employee is entitled to additional benefits after Normal Retirement Age, whether through additional service or because of a benefit increase, the actuarial increase on those benefits will apply from the end of the Plan Year in which they were earned or awarded rather than from Normal Retirement Age. Actuarial increases are not provided for months in which an Employee works in prohibited employment.



(Prior to the merger of the West Bay Pension Plan into the East Bay Plan, the West Bay Pension Plan had a Normal Retirement Age of 65. That no longer applies to individuals retiring on or after July 1, 2017. Prior to the merger of the South Bay Pension Plan into the East Bay Plan, the South Bay Pension Plan also had a Normal Retirement age of 65 (previously age 63 before January 1, 2013). That age no longer applies to individuals retiring on or after January 1, 2015.)

## **B. Early Retirement**

A Vested Employee may retire prior to attaining Normal Retirement Date and be entitled to his pension benefits upon attaining age 55. For Vested Employees electing Early Retirement, the monthly pension as calculated in accordance with Plan rules is reduced by one-half ( $\frac{1}{2}$ ) of one percent (1%) for each month the Early Retirement Date precedes age sixty-two (62).

For Participants who were previously Participants of the South Bay Hod Carriers Local 166 Pension Plan prior to January 1, 2015, the requirement that there be at least ten years of Credited Service and at least  $\frac{1}{2}$  year of a Future Service Credit or five years of Credit Service after January 1, 1998 continues in existence on or after January 1, 2015.

1. Amount of Early Retirement— $\frac{1}{2}$  of 1% Reduction for Each Month Pre-Age 62. The Early Retirement Pension is a monthly amount determined as follows:

i. The first step is to determine the amount of the Regular Pension to which the Participant would be entitled if he were 62 years of age on his Annuity Starting Date.

ii. The second step is to take account of the fact that the Participant is younger than 62, is to reduce the first amount by one-half ( $\frac{1}{2}$ ) of one percent (1%) for each month that the Participant is younger than 62 on the effective date of his Early Retirement Pension.

### **EARLY RETIREMENT BENEFIT REDUCTION EXAMPLE**

Assume an Employee decides to retire at age 55. His regular Pension, if he were age 62, would be \$1,706.00 a month. Because he is 84 months (7 years) younger than 62, the reduction is  $\frac{1}{2}$  of 1% for each of the 84 months that he is younger than age 62 which equals a reduction of 42%. The reduction is therefore 42% of \$1,706.00 or \$716.42. Subtract \$716.42 from \$1,706.00 which equals \$989.58 or \$985.00 rounded. That is the reduced Early Retirement benefit in this example.

## **C. Postponed Retirement**

A Vested Employee, at his option, may postpone retirement past Normal Retirement Date, subject to Section 6.5 of the Plan.

## **D. Disability Retirement Benefit**

A Covered Employee under age sixty-two (62) with at least ten (10) Benefit Credits and ten (10) Vesting Credits (without a permanent Break in Service) who becomes totally and permanently disabled, as defined in Section 4.2 of the Plan for six consecutive months or more is entitled to a disability pension as set forth in Section 4. The age 45 minimum requirement for Participants of the South Bay Pension Plan

is eliminated for any new disability on or after January 1, 2015. The age 50 minimum requirement for Participants of the West Bay Pension Plan is eliminated for any new disability on or after July 1, 2017. But, a Social Security Disability Award is required as of July 1, 2017.

### **FILE EARLY APPLICATION WITH THE FUND OFFICE**

You are urged to file a claim for a Disability Retirement Benefit with the Fund Office at the same time that you apply for your Social Security Disability Benefit so that Plan benefits become payable as early as possible.

1. Permanent and Total Disability—Social Security Award Required. A Covered Employee shall be deemed Permanently and Totally Disabled if he or she suffers from any medically determinable physical or mental impairment which renders the Participant unable to work for any remuneration or profit in any occupation or trade for which such person is reasonably fitted, and such disability continues for six consecutive months and is determined to be permanent and continuous during the remainder of his lifetime. To be determined to have a Permanent and Total Disability, a Participant must have been determined as such by the Social Security Administration.

2. Disability Pension Payment—Seventh Month of Disability. A disability pension commences on the first day of the month following the submission of an application for a disability pension, if the application is approved by the Board of Trustees, or on the first day of the seventh month of disability, whichever is later, and shall continue thereafter for so long as such disability continues.

Upon the filing of a disability application, a married Participant is provided the Joint and Survivor Annuity, unless the Participant and Spouse waive such benefit in the manner provided in the Plan and as required by law. The disability benefit provided hereunder ceases upon termination of the Participant's total and permanent disability, attainment of age 62, or at death, whichever is earlier.

3. Plan May Require Proof of Continued Disability. The Trustees may require reasonable proof of continued disability. Such proof of continued disability may take the form but is not limited to periodic verification that a person receiving a disability benefit under this Plan continues to be considered permanently and totally disabled by the Social Security Administration. It is the duty of the person receiving disability payments to provide the Fund Office with such proof of continued disability upon request. Failure to provide such proof may in the discretion of the Trustees result in the withholding of benefit payments until proof of continued disability is furnished. The Trustees shall have the discretion to require refunds of improperly paid benefits.

4. Amount of Disability Benefit—2/3 of the Normal Retirement Pension. The monthly disability benefit is an amount equal to two-thirds (2/3) of the Normal Retirement Benefit that the Participant had earned as of the date of the disability. At age 62, the full benefit is paid. The amount of the benefit is adjusted unless such joint and survivor annuity form of benefit is waived by the Participant's spouse. (The amount of the disability benefit paid under the West Bay and South Bay Pension Plans were different prior to their effective merger dates.)

Upon attainment of age 62, a Participant who has been receiving a disability pension benefit hereunder shall have his monthly benefit converted to a Normal Retirement Benefit as of the first day of the month following his attainment of age 62. At that time, the Normal Retirement Benefit shall

be paid in the Joint and 50% Survivor Benefit as provided in Section 6.2 of the Plan, subject to any waiver of that option pursuant to the Plan's spousal consent requirements.

5. Recovery by an Employee on a Disability Benefit. A Covered Employee receiving a disability benefit who is no longer totally and permanently disabled may re-enter Covered Employment and may thereupon resume the accrual of Benefit Credits. If a Covered Employee receiving a disability benefit loses his entitlement to the disability benefit or returns to Covered Employment, such fact shall be reported, in writing, to the Board of Trustees within thirty (30) days of the date of recovery or return to Covered Employment. Such failure may result in the repayment of any improper payments and/or the reduction or offset of future benefits.

## VI. APPLICATION AND PAYMENT OF PENSIONS

### A. Form of Application

An application for a pension shall be made in writing on a form and in the manner required by the Board of Trustees and shall be filed with the Fund Office. To receive your benefits once you are eligible for such benefits, you should file an application with the Fund Office within 60 days of your anticipated retirement or benefit commencement date. To avoid delays, you should submit with your application:

- your anticipated last day of Covered Employment;
- your intended retirement date (date you wish benefits to start);
- proof of your age (birth certificate) and that of your Spouse if you are married;
- photocopy of your photo identification;
- your social security number and that of your spouse if you are married;
- proof of marriage, if applicable (your marriage certificate)
- copy of any qualified domestic relations order ("QDRO") showing approval by the Court, if applicable, including an Interlocutory Judgment and/or a Final Judgment, marital settlement agreement or any other court document which addresses your pension benefits with the Plan;
- military discharge papers, if applicable.

The Fund Office will not approve an application for a pension until the Participant has submitted required pertinent documents. Your pension is effective the first day of the month following the date you file your completed pension application and you are eligible to receive your benefits. Benefits are paid as soon as it is administratively feasible after all contributions are received and your application is processed. Thus, filing a timely application is important.

A Participant or other person who makes a false statement or provides false information to the Plan will be liable to the Plan for any benefits paid as a result of such false statements or information, and any attorney fees and costs incurred in effecting recovery or which were incurred as a result of the false statement or information. The Plan may deduct any such fees and costs from any benefits otherwise payable to the Participant or other person.

## B. Joint and 50% Survivor Benefit—Standard Benefit

1. The standard form of benefit for a Vested Employee with a spouse to whom such person has been married throughout the year preceding his retirement date is a benefit providing payments during the continued lifetime of the Vested Employee, but reduced to 50% and payable to the spouse during such spouse's lifetime, if any, after the death of the Vested Employee and which is the actuarial equivalent of the life annuity option. This benefit is known as the "Joint and 50% Survivor Benefit" or the "Joint Pension". A minimum of 60 months of benefits are provided under this option.

A Participant who elects to receive a distribution on or after attainment of early or normal retirement age or a permanent disability will receive the distribution in the form of the Qualified Joint and Survivor Annuity unless the Participant and spouse consent to payment in another form.

<b>EXAMPLE: 50% JOINT AND SURVIVOR ANNUITY</b>		
<b>Assume that your monthly benefit is \$1,706.00 and</b>		
<b><u>\$1,706.00 Benefit Reduced</u></b>	<b><u>MONTHLY BENEFIT TO PENSIONER AND SPOUSE</u></b>	<b><u>MONTHLY BENEFIT TO SPOUSE IF PENSIONER DIES FIRST</u></b>
Spouse is 10 years younger	\$1,416.00	\$708.00
Spouse is 5 years younger	\$1,459.00	\$729.50
Spouse is same age	\$1,501.00	\$750.50
Spouse is 5 years older	\$1,544.00	\$772.00
Spouse is 10 years older	\$1,587.00	\$793.50

The monthly benefit during the Participant's lifetime is reduced actuarially as follows: The monthly benefit is multiplied by .88, if the Participant and spouse are the same age. The 88% factor is reduced (or increased) by .5% for each year that the Participant is older (or younger) than his or her spouse. Upon the Participant's death, the spouse will receive fifty percent (50%) of the amount paid to the Participant for the remainder of his life (different factors are used for disability pensions).

2. The following spousal consent requirements shall apply for a Participant married for more than one year who requests a benefit other than the Joint Pension:

(a) Election Not to Receive Joint and Survivor Annuity. A married Participant and his lawful spouse may elect not to receive the Joint Pension during a one hundred-eighty (180) day period ending on the Participant's Annuity Starting Date as defined in subsection (4) below, by filing a written waiver of such annuity option with the Plan on such form and in the manner as the Fund Office requires. A Participant may revoke any previous waiver, election or revocation of a waiver at any time and any number of times during the 180-day period ending on the Annuity Starting Date. Prior to July 1, 2007 a married Participant and his lawful spouse could elect not to receive the Joint Pension during a ninety (90) day period ending on the Participant's Annuity Starting Date. A Participant could revoke any previous waiver, election or revocation of a waiver at any time and any number of times during the 90-day period ending on the Annuity Starting Date.

With respect to each of the optional forms of benefit available to a Participant (i.e., optional forms of benefit for which the Qualified Joint and Survivor Annuity ("QJSA") explanation

applies), the Plan will provide: (a) a description of the optional forms of benefit; (b) a description of the eligibility conditions for the optional form of benefit, if applicable; (c) a description of the financial effect of electing the optional form of benefit (i.e., the amounts and timing of payments to the Participant under the form of benefit during the Participant's lifetime, and the amounts and timing of payments after the death of the Participant); (d) a description of the relative value of the optional form of benefit compared to the value of the QJSA, in the manner required by the Internal Revenue Code and applicable regulations including but not limited to Reg. 1.417(a)(3)-1; (e) a description of any other material features of the optional form of benefit.

(b) Spousal Consent. An election by a married Participant not to receive a Joint Pension is effective only if the Participant's lawful spouse consents to such election in writing on a form provided by the Plan and such election is witnessed by a notary public or a designated Plan representative. Such election may designate a different beneficiary (or a form of benefit) which may not be changed without spousal consent.

(c) Limited Exception to Spousal Consent Requirement. Spousal consent is not required if the Participant establishes to the satisfaction of the Plan that the consent required by the spouse cannot be obtained because there is no spouse or the spouse cannot be located or because of other unusual circumstances. Spousal consent shall also not be required if allowed by federal law, court decisions or by regulations. If the Spouse is legally incompetent, consent may be given by his legal guardian, including the Participant, if authorized to act as the Spouse's legal guardian.

### 3. Additional Conditions/Rules Regarding the Joint and Survivor Benefit

a. One-Year Marriage Requirement. Spousal Pension is not effective for a surviving Spouse of a Participant who is not a Pensioner, unless the Spouse was married to the Participant throughout the year immediately preceding the Participant's death.

b. Plan's Reliance on Statement regarding Marital Status/Plan May Recover Funds. The Participant shall file, before his Annuity Starting Date, a written representation, on which the Board is entitled to rely, concerning the Participant's marital status which, if false, shall give the Board the discretionary right to adjust the dollar amount of the pension payments made to the alleged surviving Spouse to recoup any excess benefits which may have been erroneously paid.

c. Use of Fund Office Forms. An election or revocation of a Spousal Pension must be: (a) Made (or revoked) prior to the Annuity Starting Date; (b) Made on forms furnished by the Fund Office; and (c) Filed with the Fund Office.

d. No Revocation of Spousal Pension. A Spousal Pension, once payable, may not be revoked or the Pensioner's benefits increased, because of the subsequent divorce of the Spouse from the Pensioner or the Spouse predeceasing the Pensioner.

e. Prior Spouse's Rights under a Qualified Domestic Relations Order. The rights of a prior Spouse or other family member to any share of a Participant's pension, as set forth under a qualified domestic relations order, shall take precedence over any claims of the Participant's Spouse at the time of retirement or death.

4. Lump-Sum Payment In Lieu of Monthly Benefit. If, at the time a monthly benefit becomes payable to a Participant, surviving Spouse, or other Beneficiary, the Actuarial Present Value of such monthly benefit is \$5,000 or less, the Plan will pay such benefit the amount of the Actuarial Present Value in a lump sum payment in lieu of the monthly benefit otherwise payable.

### **C. Optional Benefit Forms**

Vested Employees without eligible spouses and Vested Employees with eligible spouses who have waived the Joint and 50% Survivor Annuity form of benefit in accordance with Plan rules may select one of the following forms of benefit:

1. Life Annuity Option/60 Month Guaranty. The Life Annuity, which is the normal form of benefit for a single Participant, provides a monthly pension during the lifetime of the Vested Employee, with a minimum of 60 monthly payments, and reduced for early retirement, if applicable. If the Retiree dies prior to full payment of the 60 payments, any remaining payments are payable to his designated beneficiary or if there is no designated beneficiary, as provided in the Plan.

2. 75% or 100% Joint and Survivor Benefits. The Vested Employee with a spouse to whom the Participant has been married throughout the year preceding the "Retirement Date" may choose:

(a) Joint and 75% Survivor Annuity. Receive a benefit providing monthly payments during the continued lifetime of and after the death of the Vested Employee, but reduced to 75% and payable to the spouse during the spouse's lifetime after the death of the Vested Participant. The benefit is reduced by the early retirement reduction factor, if applicable, and further reduced by multiplying by 83.0% (also written as .83) if the Participant and spouse are the same age. The 83% factor is reduced by 0.6% (or increased by 0.6% with a maximum increase of 17.0%) for each year that the Participant is older (or younger) than the spouse.

(b) 100% Joint and Survivor Annuity. Receive a benefit providing monthly payments during the continued lifetime of and after the death of the Vested Employee, payments in the same amount are continued to the spouse during the spouse's lifetime. The benefit is reduced by the early retirement reduction factor, if applicable, and further reduced by multiplying by 78.6% if the Participant and spouse are the same age. The 78.6% factor is reduced (or increased) by .7% for each year that the Participant is older (or younger) than the spouse. (This form of benefit is known as the Joint and 100% Survivor Benefit.) There is also a 100% Joint and Survivor Annuity Option, which provides for a ten-year certain benefit, which requires and additional actuarial adjustment.

#### **JOINT AND 100% SURVIVOR BENEFIT CALCULATION**

For example: Jim retired as of the first day of the month following the date he reached age 62 with 15 years of Vesting Service. Jim is entitled to the full benefit under the Plan in the amount of \$2,000.00, which is based on his Benefit Credit total. If at the time of Jim's retirement, Jim's spouse is age 57 his Normal Pension of \$2,000.00 per month would be reduced as follows since his spouse is 5 years younger.

Adjusted 100% Joint and Survivor Benefit Percentage = 78.6%

$\$2,000.00 \times 75.1\%$  ( $5 \times .7\% = 3.5\%$ ;  $78.6\% - 3.5\% = 75.1\%$ ) = \$1,502.00

As a result, Jim will receive a 100% Joint and Survivor Benefit in the amount of \$1,502.00 per month. After his death, his surviving spouse will receive the same amount (\$1,502.00) for as long as she lives.

(c) 50% Marital Annuity with Pop-Up. Under the 50% Marital Annuity with Pop-up, a Vested Employee eligible for a retirement benefit under the Plan is entitled to a benefit providing for monthly payments during such Employee's lifetime, but upon such Employee's death, is reduced to 50% and payable to the spouse during his or her lifetime. If, however, the spouse predeceases the Participant, the benefit pop-ups to the amount the Participant would have received had such Participant and his or her spouse not elected a Joint and Survivor Option. To finance the benefit, the Participant's earned benefit is multiplied by 86% if the Participant and his or her spouse are the same age. The 86% factor is reduced (or increased) by .5% for each year that the Participant is older (younger) than the spouse.

#### **D. Commencement of Benefits**

Unless the Participant otherwise elects a later distribution of benefits, benefits payable under the Plan will begin no later than the sixtieth day after the latest of the close of the Plan Year in which: (a) the Participant attains age sixty-five (65) or the normal retirement age specified herein; (b) attains the fifth anniversary of the year in which the Participant commenced participation in the Plan; or (c) the Participant terminates employment.

In addition, a Participant who satisfied the service requirements for an early retirement benefit, but separated from Covered Employment (with a nonforfeitable right to an accrued benefit) before satisfying the age requirement for such early retirement benefit, is entitled upon satisfaction of such age requirement to receive a benefit not less than the benefit to which he would be entitled at the Normal Retirement Age, actuarially reduced to account for the longer period in which benefits are being paid.

#### **E. Required Distributions**

The distribution of benefits must begin no later than April 1 of the calendar year following the later of the year in which the Participant attains age 70½ or retires from Covered Employment. A 5% owner must commence receiving benefits no later than April 1 of the calendar year following the year in which the Participant attains age 70½. A Participant who continues to work past age 70½ may elect, however, to commence receiving his or her pension benefits.

#### **F. Electronic Fund Transfer of Pension Payments**

To increase efficiency and to reduce the possibility of theft, the Fund Office strongly recommends that you have your monthly benefit electronically transferred into an account at a bank, savings and loan, credit union, or other financial institution. You must complete the Fund Office form and return it to the Fund Office to identify the financial institution which will receive your electronic transfer.

#### **G. Interest on Certain Delayed Payments**

Pursuant to IRS guidelines and only to the extent required by the IRS, the Plan will pay annual non-compounded interest on certain delayed pension payments. The rate may vary during different periods and the rate may be changed in the future without a formal Plan amendment.

#### **H. Payments to a Minor—Unique Situation**

Any death benefit payable to a minor under age 18 may be paid to the legally appointed guardian of the minor or, if there is no guardian, to such adult(s) that has, in the discretion of Plan representative, assumed principal support of said minor. The Plan may also decide to distribute benefits to a minor, depending upon the circumstances. The Board, and its delegates, have absolute discretion in making such determinations and may delay making a distribution until the beneficiary attains age 18.

#### **I. Incompetence or Incapacity of a Pensioner, Participant or Beneficiary**

If it is determined that a Pensioner or Beneficiary is unable to care for his affairs because of mental or physical incapacity, any payment due may be applied, in the discretion of the Trustees, to the maintenance and support of such Pensioner or Beneficiary or to such person as the Trustees in their sole discretion find to be in the best interests of the Pensioner, Participant or Beneficiary unless, prior to such payment, claim is made by a legally appointed guardian, conservator or other legal representative appropriate to receive such payments.

#### **J. Rollover Option/IRS Mandatory Tax Withholding If Paid to You**

**Because this Plan is a defined benefit plan offering regularly monthly payments as the Normal Form of benefit, except for very small pension amounts (when the actuarial value does not exceed \$5,000), the rollover option is hardly available to Plan Participants,** except for certain death benefits. A rollover is a payment of your Plan benefits to an individual retirement arrangement (IRA) (except for Roth IRAs) or to another qualified employer plan. An eligible Plan rollover will not be subject to income tax withholding. A Plan distribution may be rolled over to another eligible retirement plan unless the distribution (1) is part of a series of equal periodic payments made over your lifetime, made over your and your beneficiary's lifetimes, or over a period of at least 10 years or (2) is a minimum benefit payment that must be paid directly to you. Other distributions also may not eligible for direct rollover treatment. You may have all or any portion of your pension either 1) paid in a "DIRECT ROLLOVER" or 2) paid to you. This choice will affect the tax you owe, as noted below:

**Surviving Spouses and Alternate Payees may also roll over certain distributions from the Plan. Required Minimum Distributions (RMD) that occur when you attain age 70½ or retire (whichever is later) cannot be rolled over pursuant to Internal Revenue Code requirements.**



## **K. Annual Statement**

The Fund Office will furnish you with a statement showing your benefits as of the end of the Plan Year, which includes the Employer contributions made on your behalf and the accrued benefit earned to date. The annual statement records the hours for which contributions were made up to the end of May before the current June 30 Valuation Date.

### **IF YOU FIND ERRORS IN YOUR STATEMENT**

**If you find errors in your statement you should notify the Fund Office immediately. If you notice any errors in your hours, rates, contributions or otherwise or you have any questions regarding your statements, you should notify the Fund Office immediately.**

## **L. IRS Benefit and Contribution Limits**

Congress has established annual limits on Employer contributions and benefits that could apply to your Plan benefits. Although it is anticipated that these rules should not affect your benefits, they are contained in the Plan because of IRS requirements.

## **M. Rights of Participants in Predecessor Plan that Merged into this Plan**

For any Participant or beneficiary of a predecessor plan that merged into this Plan (the Hod Carriers Local 166 South Bay Defined Benefit Pension Plan or the Hod Carriers Local 166 West Bay Pension Plan), or will do so in the future, any early retirement benefit or optional form of benefit available prior to the Merger Date is not reduced or eliminated with respect to a benefit accrued before the merger date. The Plan shall be interpreted to effectuate that intent.

# **VII. PRE-RETIREMENT SURVIVOR BENEFITS/DEATH BENEFITS**

## **A. Pre-retirement Survivor Annuity**

(1) If a Vested Participant dies, his surviving spouse is entitled to a surviving spouse pension known as a Pre-retirement Survivor Annuity. If the Participant's death occurred after attainment of age 55, the surviving spouse shall be paid a surviving spouse pension as if the Participant had retired on a Joint and 50% Survivor Benefit on the day before death.

If the Participant's death occurs before attainment of age 55, the spouse shall be paid a Pre-retirement Survivor Annuity commencing with the first day of the month following the month in which the Participant would have reached age 55 had he lived, and the amount of such Pension shall be determined as if the Participant had left Covered Employment on the date of death (or the date he last worked in Covered Employment if earlier), retired on a Joint and Survivor Annuity Pension upon reaching age 55, and died on the last day of the month in which age 55 was reached.

(2) The following rules are applicable for the Pre-retirement Survivor Annuity:

(a) Subsidized Benefit. The Pre-retirement Survivor Annuity shall be fully subsidized by the Plan which means there is no charge to the Participant or spouse for such coverage.

(b) Right to Waive Monthly Survivor Benefit. The spouse's entitlement to the annuity upon the Participant's death shall be automatic; however, upon the Participant's death, the spouse may choose another benefit option form if otherwise allowed by the Plan;

(c) Spouse is the Only Beneficiary for the Pre-retirement Survivor Annuity. The Participant cannot designate any person other than the spouse to receive the Pre-retirement Survivor Annuity.

(d) Supersedes the Cash Death Benefit. If the Pre-retirement Survivor Annuity benefit is selected, the Cash Death Benefit shall not apply at the death of the Vested Employee.

(e) One-Year Marriage Requirement to be Applicable. The Pre-retirement Survivor Annuity coverage will be provided to the spouse only if the Participant had been married to the spouse for at least one year immediately preceding the Participant's death.

## **B. Cash Death Benefit**

Upon receipt of proof of death of a Covered Employee prior to the Participant's retirement, a Cash Death Benefit is payable to the Covered Employee's designated beneficiary; provided, however, that this Cash Death Benefit shall only be available to beneficiaries of Covered Employees without a spouse eligible for the Pre-retirement Survivor Annuity, and to the eligible spouse of a Covered Employee if such spouse elects to receive the Cash Death Benefit as provided in this section, rather than the Pre-retirement Survivor Annuity. The amount of the Cash Death Benefit is the greater of \$1,000 times the number of the Participant's Future Service Benefit Credits or 60 payments of the monthly accrued benefit.

# **VIII. IRS AND OTHER DISTRIBUTION RULES/DIVORCE ORDERS (QDROS)**

## **A. IRS Required Distributions—Age 70½ Rules**

A Participant who attains age 70½ may elect to receive his benefits regardless of whether he retires. Upon attainment of age 70½, the Plan must ensure that you commence receiving your pension benefits, unless you continue to work in Covered Employment. **Not taking the RMD, however, will result in a significant penalty.** (If you own five percent or more of a contributing employer, the Plan will be required by IRS rules to commence paying your benefit at age 70½ even if you are still working.)

A Participant who refuses to accept payment of benefits when he becomes entitled thereto shall be presumed to have elected to defer payments until attainment of age 70½. If a non-married Participant attains age 70½ but refuses to file a pension application, the Participant will be deemed to have elected a lump sum distribution. The Plan shall make or attempt to make such distribution in the manner and period deemed reasonable under the circumstances. If the Plan is uncertain of a Participant's marital status, the Plan shall presume the individual is married as provided below for purposes of making a required distribution under this section.

If a married Participant attains age 70½ but fails to file pension application, the Participant shall be deemed to have elected a Joint and 50% Survivor Annuity. In determining such benefit, the Participant's spouse shall be deemed to be five years younger than the Participant. If the Plan later learns

that the spouse's age is different than that presumed, the Plan may make the appropriate adjustments, including a reduction in benefits, to account for such difference.

Federal income tax withholding of 10% unless you elect a different rate or you elect no withholding. Certain states also require withholding.

#### **POTENTIAL IRS PENALTY ASSESSED AGAINST YOU**

The IRS assesses a severe penalty against you if you do not begin receiving your pension benefits by April 1 of the year following the date you attain age 70½ or the date you retire, whichever is later. If you are a 5 percent owner you must begin receiving your benefits at age 70½ even if you are still working.

### **B. Internal Revenue Code Distribution Rules**

Pursuant to the Internal Revenue Code, the Plan contains certain other benefit distribution rules.

First, if you die after payment of your pension has commenced and a portion of your pension remains to be paid, the payments to your beneficiary must be made at least as rapidly as provided in the form of payment being made at the time of your death.

Second, if your death occurs before distribution of your pension has begun, distribution of your pension benefits must be completed by December 31 of the calendar year containing the fifth anniversary of your death. If, however, your benefits are payable to a designated beneficiary, the distribution may be made over the life (or life expectancy) of the designated beneficiary, but payments must commence on or before December 31 of the year immediately following the year in which you died. If your spouse is the beneficiary, however, he or she does not have to commence receiving benefits until the April 1 following the year you would have attained age 70½.

### **C. Rights of Former Spouse - Domestic Relations Orders**

If you are divorced your former spouse may be entitled to a portion or all your pension. The Plan is required by federal law to comply with a court order that awards a portion or all your pension benefits to a former spouse, child or other alternate payee if the order qualifies as a Qualified Domestic Relations Order ("QDRO") as defined in ERISA. A QDRO is a court order that creates or recognizes the existence of a former spouse's or child's right to receive all or a portion of your accumulated pension benefits.

Benefit payments to a former spouse under a QDRO do not begin until the earliest date that the Participant would be eligible to receive a payment from the Plan (if permitted by the QDRO). When you file your Pension application, you are required to provide the Fund Office with information on any pending or prior divorce action (even old divorce orders). This includes a Final and/or Interlocutory Judgment, marital settlement agreement and any related documents.

You, your spouse or former spouse may request the Plan's procedures for handling domestic relations orders which includes a sample order containing sample language acceptable to the Plan. You or your attorney (or your spouse or her attorney) may submit a proposed QDRO to the Plan's legal counsel prior to submission to a court. Counsel will then provide notice of any required changes.

### **UNRESOLVED DIVORCE CAN DELAY PENSION**

Unresolved disputes regarding a divorce and your pension benefits may delay payment of your pension.

If the Plan is notified of a pending divorce action or receives a court pleading known as a "Joinder Request" or a similar document, the Plan has the discretion to delay paying your Plan benefits for a reasonable period to allow time for the parties to prepare a QDRO, even if your pension application is on file. If it appears that your former spouse or other alternate payee is seeking only a portion of your pension, the Plan may, at its discretion, distribute to you that portion of your pension that is not addressed by the pending QDRO. Moreover, if a spouse or other person fails to pursue a QDRO in a timely manner, the Plan may proceed with a distribution.

#### **D. Your Benefits Cannot Be Assigned in Most Situations**

You may not borrow against or otherwise pledge any part of your pension benefits as security or collateral for a loan or otherwise transfer your rights. Your pension is exempt from claims of creditors, such as garnishments or executions, except for certain divorce and child support orders as set forth in Section C above, certain Internal Revenue Service liens, and as is otherwise required by applicable law.

#### **E. Overpayments Recoverable by the Plan**

As a Participant or beneficiary, you are entitled only to the amount and form of benefits described in the Plan document, as amended from time to time. **If you receive an improper amount or benefit from the Plan and you become aware of that fact, the Plan requires that you notify the Fund Office of the overpayment and repay the excess amounts.** If you or any beneficiary receives an overpayment of benefits, the Plan will reduce or offset any future benefits to recover the overpayment, unless other arrangements can be made to the satisfaction of the Board of Trustees for the recovery of the overpayment.

The Plan will withhold at least 25% of your pension payments until the overpayment is recovered by the Plan and to the extent permitted by law, the Plan may withhold up to 100% of your monthly payments until an overpayment is recouped. The Plan is also authorized to offset lost earnings on the overpayments and the attorney fees and costs incurred by the Plan as a result of the overpayment. The Plan may also file a claim against your estate or any other person or entity if amounts are still owed at your death and there are insufficient funds, including any death benefits payable to your beneficiary, to recover the overpayment. Any funds owed by a Participant to the Plan will be deducted from any death benefits that may be payable as a result of the Participant's death.

#### **F. Retiree Obligations**

Once you retire and begin receiving your pension benefits, you should keep the Fund Office informed of changes in your status that may occur. These include a change in your mailing address, your return to work in the Building and Construction Industry and the death of your Spouse (if you are receiving Joint and Survivor Annuity payments). Your failure to do so could result in your pension payments being delayed or stopped. Your pension benefits could be delayed or stopped because of the following:

1. Change of Address. If you move and do not notify the Fund Office, any pension benefits that are undeliverable will be held without interest until you provide your correct address to the Fund Office. The Fund Office will also be unable to provide you with any updated information about the Plan, such as important Plan changes.

2. Verification of Continued Eligibility. After you retire, the Fund Office may periodically request that you complete a statement verifying that you are still alive and are not reemployed in the Building and Construction Industry. Your statement verifying this information must be certified and returned to the Fund Office. **If you do not return the statement, your pension benefits will be suspended until the statement is received by the Fund Office.**

## IX. RETURNING TO WORK—BENEFIT SUSPENSION

When you retire, you will be required to sign a form stating that you have read and understand the Plan's benefit suspension rules.

If you are receiving a pension benefit from the Plan, your benefits will be suspended in certain circumstances, as explained below:

### A. Prohibited Employment in Building and Construction Industry

1. No Work Prior to Age 62. If you return to work after your retirement, your benefits may be suspended during the time you are working. Your benefits will be suspended if you return to any work in the Building and Construction Industry in the United States before you reach age 62. **Moreover, you will not be eligible to retire again and commence receiving a monthly pension until you reach age 62.**

The terms "Building and Construction Industry" or "Industry Service" include work in the Motor Vehicle Industry, whether for a participating or a non-participating Employer, which makes use of one or more skills used in a job for which the Plan was at any time entitled to receive contributions on the retired Employee's behalf; provided that the skill was learned during a significant period of training or practice (whether acquired during participation in the Plan). It includes work in a managerial, supervisory, or executive capacity, and persons with ownership interests in a business.

Such work, known as "prohibited employment", includes, but is not limited to, (1) work in employment of the type performed by Employees covered by the Plan, also known as "Covered Employment;" (2) work which requires directly or indirectly the use of the same skills used by Employees covered by the Plan on the date the Pension became effective; (3) work in employment for compensation or wages of any kind or for profit in the Building and Construction Industry in the geographic area covered by the Plan; (4) work where you supervise Employees in the same trade or craft or directly or indirectly use the same skills as Employees covered by the Plan on the date you retire.

For purposes of determining whether you have been employed in Prohibited Employment, "hours" or "hours of service" include all hours for which you receive or are entitled to compensation whether for actual work, illness, incapacity (including disability) or layoff.

**"Prohibited Employment" is interpreted in the broadest manner.** It includes employment in which a salary is paid (which includes payment based on an hourly, daily, weekly, bi-weekly, bi-monthly, monthly, annually or any other rate), work in which you are considered an

"independent contractor," work in which you receive a deferred benefit, or work in which you receive anything of value (or will receive anything of value) in exchange for the services rendered.

2. Limited Work Allowed After Age 62. After your Normal Retirement Date (the first of the month after attainment of age 62), your benefits will be suspended if you return to work for 40 or more hours a month in the Building and Construction Industry in California. This includes but is not limited to:

(1) The type of work performed by Employees covered by the Plan on your Effective Retirement Date; or

(2) Which requires directly or indirectly the use of the same skills employed by Covered Employees on your Pension effective date; or

(3) Any supervision of Employees in the same trade or craft or directly or indirectly using the same skills as Employees covered by the Plan on the date you retired. This includes self-employment, salaried, hourly and independent contract employment.

## **B. Presumptions**

If you are retired and receiving pension benefits under the Plan, you must immediately report to the Board of the Trustees in writing any employment in the Building and Construction Industry. If you do not report your employment, and the Trustees discover you have been working in the Building and Construction Industry, they will act on the basis of a rebuttable presumption that you have been working at least 40 hours per month. In addition, if the Board of Trustees learns that you worked in the Building and Construction Industry employment at a job site, the Trustees will presume you have been employed at the job site with the same Employer for as long as the Employer has been working at that job site. You will, however, have the opportunity to prove these presumptions are not true.

## **C. Access to Information**

If requested, you must provide the Board of Trustees with documents or other information for the purpose of verifying employment, such as time sheets, logs or records, income tax returns (including attachments), W-2 forms, and any other employment or income-related records. You must also comply with any request of the Plan that you request information from an Employer, contractor, subcontractor, union, government agency or any other person or entity relating to post-retirement employment.

## **D. Request Determination**

You may request of the Board of Trustees a determination whether specific contemplated employment will be prohibited under the Plan. The Board of Trustees will provide you with its determination within a reasonable time, not to exceed ninety (90) days, unless the Trustees have not been provided with sufficient information to make such a determination or unless special circumstances exist.

## **E. Notices**

1. Suspension Rules. The Plan will notify you by first class mail if it suspends your pension. The notice will include a description of the specific reasons for the suspension, a general description of

the Plan provision relating to the suspension of benefits. A copy of Department of Labor regulation 2530.203-3, which governs suspensions, is available upon written request of the Fund Office.

You are entitled to a review of the Plan's decision to suspend your benefits by submitting a written request with the Plan within 60 days of the date of the suspension notice. The Plan's claims and appeal procedure, as summarized in Article XIII applies to a suspension of benefits.

2. Your Obligation to Notify Plan. You must notify the Fund Office in writing immediately after you start in work of a type that is or may be prohibited under the Plan (or before starting).

3. Employment Ends. If your monthly payments have been suspended, you should notify the Plan when your Prohibited Employment has ended. The Plan may continue to withhold your pension until you provide written notice to the Fund Office.

## **F. Payment Resumption**

If you are employed in Prohibited Employment, your pension payments will be suspended for a period equal to the number of months during which you were employed in Prohibited Employment.

If the Plan has paid you a monthly pension for any month in which you engaged in Prohibited Employment, the Plan may offset such amounts from future monthly payments. In making such deductions the Plan may reduce your future monthly pension payments by 100% for the first three months of any pension payment to which you would otherwise be entitled and up to 25% of future monthly payments until the full amount of overpayment are recovered. The Plan will have the right to demand reimbursement for overpayments made prior to the Plan learning of your Prohibited Employment. The Plan will also be entitled to reimbursement for attorneys' fees and costs incurred by the Plan in the enforcement of these rules.

## **X. DEATH BENEFITS/PRE-RETIREMENT SURVIVOR BENEFITS**

### **A. Designation of Beneficiary**

#### **IMPORTANT**

**You should provide the Plan with the name and address of your beneficiary or beneficiaries.**

The Fund Office will provide you with a beneficiary designation form. You may change your beneficiary at any time, except if you are married, your spouse must consent to any beneficiary designation (other than such spouse) and the form of benefit. Each designation of beneficiary or beneficiaries must be in writing, signed, in a form acceptable to the Fund Office and submitted to and received by the Plan during your lifetime.

If no beneficiary has been designated or no designated beneficiary has survived you, distribution of your pension benefits will be made to your spouse, if any, and if none, in equal shares to your children, natural or adopted; if none survive you, to your parents; then to your brothers and sisters; finally, to your estate if there are no survivors.

**B. Non-spouse Beneficiary**

A non-spouse beneficiary may choose to have any benefits payable paid in a Direct Rollover to an inherited IRA.

**XI. POTENTIAL LOSS OR DELAYED PAYMENT OF BENEFITS**

You or your beneficiary could suffer a reduction of your pension benefits and/or have payments delayed in at least the following circumstances:

**A. Divorce or Child Support Order ("QDRO")**

Pursuant to a Qualified Domestic Relations Order, a Court may award a spouse, former spouse, child or other dependent a portion or all your monthly pension benefits. Payment may also be required by a Court order to be paid to a county or state child support agency.

**B. Insufficient Vesting Service or Benefit Credit**

If you fail to accrue the minimum years of Credited Service (to become vested) for Normal, Early or Disability Retirement, you will not be entitled to a Pension.

**C. Break in service (failure to work in Covered Employment)**

A Permanent Break in Service which occurs before you become vested has the effect of canceling your years of Vesting Credits and Benefit Credits.

**D. Prohibited Employment in the Building and Construction Industry**

If after your retirement you engage in certain kinds of work in the Building and Construction Industry, known as Prohibited Employment, your benefits may be suspended as described in Article XI above.

**E. Fail to File Complete Application**

If you fail to file a completed application, there will be a delay in the payment of your benefits.

**F. Incomplete Information/False Statements**

If you fail to provide information or give false information to verify disability, age, beneficiary information, marital status or other vital information, payment of your pension will be delayed or stopped. Moreover, if you make a false statement to the Plan or other officials regarding the payment of benefits or other issues related to the Plan, you will be liable to the Plan for any benefits paid in reliance on such false statements or information, and any attorney fees and costs incurred in effecting recovery or which were incurred as a result of the false statement or information. This includes but is not limited to costs incurred by the Fund Office, reasonable attorney fees and interest charges. The Plan may deduct any such fees and costs from any benefits otherwise payable to you, a beneficiary, your estate or other persons.



**G. Disappear/Returned Mail**

If the Fund Office is unable to locate you (for example, your annual statement is returned in the mail and the Plan does not have your address), the Plan will cease issuing a pension payment.

**H. Benefit/IRS Contributions Limits**

The annual Employer contributions to the Plan on your behalf cannot exceed the maximum amount allowed by the Internal Revenue Code and applicable IRS regulations. Although the Board of Trustees does not foresee this occurring, the Plan contains provisions to address this situation.

**I. Employer Delinquencies**

If your Employer fails to make contributions to the Plan on your behalf for your Covered Employment, you may lose benefits to which you would otherwise be entitled.

**J. Pension Protection Act Rules**

If the condition of the Plan declined in such a manner that would cause it to be an "endangered" plan under the Pension Protection Act, the Board of Trustees may decrease your pension benefits.

**K. Death**

If you die before meeting the requirements for a death benefit under the Plan or you fail to designate a Beneficiary or no eligible Beneficiary can be located, no benefits will be paid upon your death.

**L. Refund Overpayments**

If the Plan makes an overpayment to you or your beneficiary, you or your beneficiary will be required to reimburse the Plan. Moreover, if the Plan is forced to incur legal fees and costs to recover an overpayment, you and/or your beneficiary will be responsible for such fees and costs.

**M. Beneficiary Dispute—Potential Interpleader Action**

If there is a dispute between or among beneficiaries, the Plan may be required to file an interpleader or other court action seeking guidance from the Court on whom to make a distribution. The legal fees and costs associated with any such dispute, may be reduced from the pension or death benefits.

## XII. DEFERRAL OF TAXES/WITHHOLDING/ROLLOVERS

### A. Deferral of Taxes

An advantage of this Plan is that non-taxed employer contributions to the Plan accumulate non-taxed earnings for your retirement. **You will pay taxes only when you receive your benefits.** The amount of taxes you will owe will depend on when and how your benefits are paid to you and based on the tax laws in effect at the time. The Plan is required by federal law to withhold for taxes 20% of certain lump sum and other distributions from the Plan (see section B below). For monthly or other periodic payments, federal income tax will be withheld unless you elect otherwise.

### B. Tax Withholding Rules on Pension Payments

Federal and state income taxes are withheld from your pension payments unless you elect otherwise. When you retire, you must notify the Fund Office on the appropriate Plan forms whether you wish tax withholding. **You may want to consult with a tax advisor to discuss your payment and withholding options and the tax consequences of a distribution.**

#### **INSUFFICIENT TAX WITHHOLDING** **(Potential of Being in Higher Tax Bracket)**

The federal and state tax withholding on your pension payment may be insufficient to meet your tax obligations. **The Plan distribution, which will increase your taxable income, may, in many instances, place you in a higher tax bracket requiring a tax payment of much more than the amount withheld by the Plan (plus there may be a greater state tax).**

Participants who choose to take a distribution are responsible for satisfying the IRS' distribution rules and any tax consequences of the distribution. Distributions to Participants are reported annually on IRS Form 1099R, which is sent to you (and the IRS) in January following the calendar year in which the distribution was issued.

## XIII. CLAIMS AND APPEAL PROCEDURE

### A. Claims and Appeal Procedure

The Plan, which is available for review by appointment at the Fund Office, or upon written request of the Fund Office, contains a claims and appeal procedure that must be followed. Be sure to read the claims procedure carefully before filing a claim or a lawsuit regarding your pension or the Plan. The Procedures are summarized in paragraphs B-D below.

An application for benefits must be made in writing on the Application Form available from the Fund Office. The application should be filed at least one hundred (100) days prior to the date payment of a Participant's benefit is to commence being made.

The purpose of the claims procedure is to make it possible for claims and disputes to be resolved fairly and efficiently without necessitating costly litigation and attorneys' fees. **No lawsuit affecting the**

**Plan may be brought unless the Plan's appeal procedure is followed first (and see Section D below for the time period for filing lawsuits).**

## **B. Denial of Claim and Appeal Rights**

Under the procedures set forth in the Plan and as is required by ERISA, if your claim for a pension benefit is denied in whole or in part, you will receive a written explanation including the specific reasons for the denial. You will be notified in writing of such denial within 90 days after receipt of such application or claim (in most situations, much earlier than 90 days). An extension of time not exceeding 90 days may be required in special circumstances. In many situations, there are delays because of information required by the Fund Office to process an application (such as a birth certificate and/or marriage certificate). You then have the right to have the Board of Trustees review and reconsider your claim. If you have a question regarding the Plan or your benefit, you have the right to submit a letter to the Fund Office seeking a response. The Plan will respond within a timely manner (within thirty days).

To have your denied claim reviewed or if an issue is not resolved or you or any beneficiary disagrees with any act, omission or decision by the Fund Office, you must file with the Fund Office a written appeal within 60 days of your receipt of the Board's initial denial of your claim or other adverse action. Your appeal must state the specific reasons the denial of the claim or other adverse action was in error. **If you fail to submit your written appeal within that period, there will be no review of your claim.**

You may submit supporting documents or records, and you may examine Plan records pertinent to your dispute. You have the right to representation throughout the review procedure.

A review of your appeal will be held and a decision rendered by the Board of Trustees by the next regularly scheduled Trust meeting, unless the appeal is received within thirty days of such meeting or special circumstances exist requiring additional time. You may request or you may be requested by the Board of Trustees to appear at a hearing on your appeal. The Trustees, however, have the sole discretion whether to hold a hearing and whether to allow you to appear at such a hearing.

The decision on review will be in writing and, if your appeal is denied, will include specific reason(s) for the denial. There is no mandatory arbitration of any denied claim or appeal. The parties may mutually agree on arbitration but that is voluntary only.

If you believe that you are entitled to a non-Disability related benefit that you are not receiving, you can make a written request to the Plan (or its representative) for the benefit. If your request is denied, you will be informed by written notice within 90 days after the Plan received your request. If the Board of Trustees needs more than 90 days to review your claim for benefits, you will be advised by written notice within 90 days after receipt of your claim. The notice will inform you why the Plan needs more time (which cannot exceed an additional 90 days), and the date by which you can expect a decision.

## **C. Disability Claims and Appeals**

Appeals involving disability claims and/or determinations are required to be reviewed within 45 days of the Plan's receipt of the appeal unless special circumstances exist. An extension of time not exceeding 30 days may be necessary due to matters beyond the control of the Plan. The notice of extension will include in addition to the reasons for the denial, the standards on which entitlement to the benefit is based; the unresolved issues that prevent a decision on the claim and the additional information

needed to resolve those issues. The Claimant would have at least forty-five (45) days to provide the specified information, if any. The deadline for the Board of Trustees to render its 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 reasons for the denial (1) the specific rule, guideline, protocol, or other similar criterion, if any, relied upon in making the determination (if applicable); 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 of a claim is denied, the Claimant or the Claimant's duly authorized representative may petition the Board of 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 Fund Office within one hundred and eighty (180) day of receipt of the notification of adverse benefit determination.

The Claimant shall have access to relevant documents, records and other pertinent information, 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 Board of Trustees will not afford any deference to the initial benefit determination. If the adverse benefit determination is based in whole or in part on a medical judgment, the Board of 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 or the subordinate of any such person.

The Claimant shall be notified of the decision of the Board of Trustees in writing. Any notice of adverse benefit determination shall include, in addition to the reasons for the denial, (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.

#### **D. One Year Limitation Period for Filing Lawsuits**

Upon exhausting the above claims and appeal procedures, if you are still not satisfied, your next step is to file a lawsuit if you so desire and such lawsuit is permitted under ERISA or other applicable law. **No legal action may be commenced or maintained against the Plan, a Trustee, the Board of Trustees, or other person or entities involved with the denial or decision on appeal more than one year after the determination of your appeal by the Board of Trustees, or if not a formal appeal, one year after the act or omission of which you are questioning.**

## **XIV. AMENDMENT/TERMINATION/MERGER OF PLAN**

### **A. Amendment of Plan**

The Board of Trustees may amend the Plan at any time.

Any amendment may apply to all groups and/or Participants covered by the Plan or only to certain groups of Participants. Retroactive amendments may be made to the extent permissible under ERISA and other applicable law. Except as permitted or required by applicable law, an amendment may not divest accrued benefits that have previously been vested.

### **B. Merger or Consolidation or Transfer of Assets**

In the event of a merger or consolidation of the Plan with or transfer in whole or in part of the assets or liabilities of the Plan to any other pension plan, each Participant is entitled to a benefit immediately after the merger, consolidation or transfer which is at least equal to the benefit such Participant would be entitled to receive before such merger, consolidation or transfer. The Plan will accept the transfer of assets from another Plan upon approval of the Board of Trustees.

### **C. Termination of Plan**

The parties to the collective bargaining agreements between Hod Carriers Local 166 and the various Employer associations may terminate the Plan in whole or in part. Although there is no intent to terminate the Plan, there is no guarantee that the Plan will last forever.

In the event of termination or partial termination of the Plan, the assets then remaining, after providing for the expenses of the Plan, would be distributed among Participants, and each Participant would be 100% vested in his accrued benefits. The assets are not returned to any Employer (unless the Employer is a Participant in the Plan).

Once the Plan is terminated and all assets have been distributed, the Board of Trustees will be discharged from all liability under the Plan and Participants will have no further rights or claims.

### **D. Benefit Protection/PBGC Insurance in the Event of Plan Termination**

Your pension benefits under this multiemployer plan are insured by the Pension Benefit Guaranty Corporation (PBGC), a federal insurance agency, if the Plan terminates. Currently, the Plan pays an annual insurance premium per participant to the PBGC. If the Plan terminates without enough money to pay all benefits, the PBGC will step in to pay certain pension benefits. A multiemployer plan is a collectively bargained pension arrangement involving two or more unrelated Employers, usually in a common industry. The PBGC guarantees certain vested normal retirement benefits, early retirement benefits and certain disability and qualified pre-retirement survivor benefits (which are pre-retirement death benefits payable to the surviving spouse of a participant who dies before starting to receive benefit payments). The PBGC does not, however, guarantee all types of benefits and the amount of benefit protection is subject to certain limitations.

Under the PBGC's multiemployer plan termination program, the PBGC provides financial assistance through loans to Plans that are insolvent. A multiemployer plan, such as this Plan, is considered insolvent if the Plan is unable to pay benefits (at least equal to the PBGC's guaranteed benefit limit) when due. Before a Plan receives financial assistance from the PBGC, it must suspend payments in excess of the guarantee level.

The maximum benefit that the PBGC guarantees is set by law. Only benefits that you have earned a right to receive and that cannot be forfeited (called vested benefits) are guaranteed. 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 of the accrual rate, times each year of credited service. The PBGC's maximum guarantee, therefore, is \$35.75 per month times a Participant's years of service.

**The PBGC guarantee generally does not cover:**

- Benefits greater than the maximum guaranteed amount set by law;
- Benefits based on Plan provisions that have been in place for fewer than five years at the earlier of:
  - The date the Plan terminates; or the time the Plan becomes insolvent;
- Benefits that are not Vested because you have not worked long enough;
- Disability benefits not in pay status;
- Benefits for which you have not met all the requirements at the time the Plan becomes insolvent; and
- Non-pension benefits, such as health insurance, life insurance, certain death benefits, vacation pay, and severance pay.

In calculating a person's monthly payment, the PBGC will disregard any benefit increases that were made under a plan within 60 months before the earlier of the plan's termination or insolvency (or benefits that were in effect for less than 60 months at the time of termination or solvency).

For more information about the PBGC and the benefits it guarantees, ask your Plan Administrator or contact:

The PBGC's Technical Assistance Division  
1200 K Street N.W., Suite 930  
Washington, D.C. 20005-4026

You may also call the PBGC at 800-400-7242 (not a toll-free number). TTY/TDD users may call the federal relay service toll-free at 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 by going to the Multiemployer Page at [www.pbgc.gov/multiemployer](http://www.pbgc.gov/multiemployer).

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

### **A. Name and Type of Plan**

The name of the Plan is the Hod Carriers Local 166 Pension Plan ("Plan"). The Plan is a multi-employer, collectively bargained defined benefit pension plan exempt from income tax under Section 401(a) of the Internal Revenue Code.

### **B. Plan Administrator**

The Board of Trustees is the Plan Administrator of the Plan. The Board of Trustees is responsible for ensuring that information regarding the Plan is reported to governmental agencies and disclosed to Plan Participants and beneficiaries in accordance with ERISA. The Plan Administrator's address is: 220 Campus Lane, Fairfield, CA 94534.

### **C. Agent for the Service of Legal Process**

The person designated as agent for service of legal process is:

Richard K. Grosboll  
Neyhart, Anderson, Flynn & Grosboll  
369 Pine Street, Suite 800  
San Francisco, CA 94104-3323  
415-677-9440, Ext. 130

Service of legal process may also be made upon the Fund Office, a Plan Trustee, or the Board of Trustees, at the addresses listed on inside cover of this booklet. (Addresses herein may change in the future. You may consult with the Fund Office for current addresses.)

### **D. Plan Year and Employer Identification Number**

The Plan Year commences on July 1 and ends on June 30.

The Internal Revenue Service Employer Identification Number (EIN) for this Plan is 94-6273930. The Plan Number is 001.

### **E. Funding Contributions and Collective Bargaining Agreement and Fund Medium**

The Plan is maintained in accordance with collective bargaining agreements between the Hod Carriers Local 166 and certain designated Employer associations (and some individual Employers), which require Employers to contribute to the Plan. The Fund Office will provide you upon written request with information on whether an Employer for whom the Participant is employed is contributing to the Plan and, if the Employer is a contributor, the Employer's address.

**F. Fund Medium**

Assets of the Plan are held in Trust. The Board of Trustees has delegated to Alan Biller & Associates the Plan's Investment Consultant, with the responsibility for investing the Plan's assets.



## STATEMENT OF ERISA RIGHTS

### A. Your Rights as a Participant

As a Participant in the Hod Carriers Local 166 Pension Plan ("Plan"), you are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974 (ERISA). ERISA provides that Participants are entitled to:

- Examine without charge at the Fund Office and at other specified locations such as worksites and the union office, documents governing the Plan, including collective bargaining agreements and the annual report (Form 5500 series) filed with the Department of Labor.
- Obtain copies of Plan documents and other information required by law to be furnished upon written request to the Plan. Pursuant to ERISA, the Fund Office may require that you pay a reasonable charge for the copies.
- Receive a statement showing the value of your pension benefits once a year, upon written request.

### B. Prudent Action by Fiduciaries

In addition to creating rights for Plan Participants, ERISA imposes duties upon the people responsible for operating the Plan. The people who operate your Plan, called "fiduciaries," 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 or entity, 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.

### C. Enforcing Your Rights

If your claim for a pension benefit is denied in whole or in part, you must receive a written explanation of the reason for the denial. You have the right to have the Plan review and reconsider your claim. Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request certain documents (specified in ERISA) from the Plan and do not receive them within 30 days, you may file suit in federal court. In such a case, the court may require the Plan Administrator to provide the materials and pay you up to \$110 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the Administrator.

If you have a claim for benefits that is denied or ignored in whole or in part, and which is upheld on appeal (or ignored), you may file a lawsuit. In addition, if you disagree with the Plan's decision or lack thereof concerning the qualified status of a domestic relations order, you may file a lawsuit. As summarized earlier in this booklet, **any lawsuit must be filed within one year of the Trustees' determination of your appeal or otherwise.**

If Plan fiduciaries misuse the Plan's money or other assets, 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.

If you file a lawsuit, the court may decide who should pay court costs and legal fees. If you are successful, the court may order the person(s) you have sued to pay your costs and fees. If you lose, the court may order you to pay the Trust's or other defendants' costs and fees (e.g., your claim was frivolous).

#### **D. Assistance If You Have Questions**

If you have any questions about this statement, the Plan or about your rights under ERISA or if you need assistance in obtaining Plan documents you should contact the nearest office of the Employee Benefits Security Administration (EBSA), U.S. Department of Labor, listed in your telephone directory (or which can also be found at the EBSA website at [http://www.dol.gov/ebsa/aboutebsa/org\\_chart.html](http://www.dol.gov/ebsa/aboutebsa/org_chart.html)) or:

You can call the Employee Benefits Security Administration at (966) 444-3272; TTY/TDD users: (877) 889-5627. You may also obtain certain publications about your rights and responsibilities under ERISA by calling the publications hotline of the Employee Benefits Security Administration.

**You may find answers to your question and a list of EBSA offices at  
<http://www.dol.gov/ebsa/welcome.html>.**