

**LOCAL 138, 138A, 138B & 138C  
INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO  
ANNUITY FUND**

**SUMMARY PLAN DESCRIPTION**

**RESTATED AS OF January 1, 2020**

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Dear Participant:

The Board of Trustees is pleased to present you with this booklet which describes the Local 138, 138A, 138B & 138C Annuity Fund. This booklet will explain who can become a participant in the Fund, what the benefits are, and when benefits may be received. Please read this booklet carefully and keep it for future reference.

If you have any questions, the Fund Office will be pleased to help you.

Sincerely,

BOARD OF TRUSTEES

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## **LOCAL 138, 138A, 138B & 138C ANNUITY FUND**

### **SUMMARY PLAN DESCRIPTION**

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#### **INTRODUCTION**

The Local 138, 138A, 138B & 138C International Union of Operating Engineers, AFL-CIO has adopted this Fund for the exclusive benefit of employees covered by collective bargaining agreements negotiated by the Union with various employers and/or employer associations or based upon an agreement between your employer and the Trustees of the Fund. The Fund is a convenient way to provide you with tax-deferred supplemental retirement income. You do not pay income taxes on contributions made to your individual account or on interest and earnings credited to your individual account until you receive benefit payments from the Fund.

The benefit that the Fund pays you and your beneficiaries is equal to the balance of an individual account that is maintained by the Fund on your behalf. Your employer makes contributions to your individual account as required by collective bargaining agreements negotiated between the Union and various employers and/or employer associations or based upon an agreement between your employer and the Trustees of this Fund. Contributions that the Fund receives on your behalf and interest and earnings on your investments are credited to your individual account. Benefit payments, investment losses and administrative fees are charged against your individual account. You can apply for benefits from the Fund when you stop working. Benefits can be paid in a single lump-sum or in installment payments over a period of time.

The assets of the Fund are held in Trust and may only be used to pay benefits and to pay the administrative expenses of the Fund. The Fund is administered by a Board of Trustees that is made-up of an equal number of labor and employer representatives. The Trustees are assisted by an accountant, an attorney, an investment consultant and other professionals. The Fund Administrator is responsible for the daily administration of the Fund.

The Trustees want you, as a participant in the Fund, to enjoy its benefits. This booklet describes the administrative procedures of the Fund, its eligibility requirements, benefits provided by the Fund and tells you and your beneficiaries how to obtain more information.

If the information in this Summary Plan Description varies in any way from the Fund's Plan Document, the Plan Document will prevail.

Definitions.

Throughout this document you may see the following terms:

1. "ACCOUNT" shall mean the individual bookkeeping accounts maintained for a Participant under the Plan.
2. "ADMINISTRATOR" shall mean the Fund Administrator appointed from time to time in accordance with the Trustees right to designate its authority to administer the Plan.
3. "BENEFICIARY" shall mean any person, trust, organization, or estate entitled to receive payment under the terms of the Plan upon the death of the Participant.
4. "BOARD OF TRUSTEES" shall mean the Trustees of the Local 138, 138A, 138B & 138C Annuity Fund and any successors thereto.
5. "CODE" shall mean the Internal Revenue Code of 1986, as amended from time to time.
6. "COLLECTIVE BARGAINING AGREEMENT" shall mean an agreement between the Union and an Employer that requires contributions to the Fund, including any extension, amendment, modification, renewal or memorandum of understanding of such an agreement, or any substitution or successor agreement or agreements and any continuation of an obligation to contribute to the Fund.
7. "COVERED EMPLOYMENT" shall mean employment with an Employer that allows participation in this Plan pursuant to the terms of a Collective Bargaining Agreement.
8. "EMPLOYEE OR PARTICIPANT" shall mean any person who is, or at any time has been covered under a Collective Bargaining Agreement with the Union, or its predecessor or substitute or successor union or unions, and who is, or at any time has been, in the employ of any one of the Employers. "Employee" also may include owner-employees only to the extent permitted by applicable law.
9. "EMPLOYER" OR "CONTRIBUTING EMPLOYER" shall mean:
  - (a) An employing organization that is party to a Collective Bargaining Agreement with the Union which requires Contributions to the Fund, and
  - (b) The Union, the Plan, and any affiliated employee organizations which execute written Participation Agreements to be parties to and bound by the Trust Agreement, provided contributions as stipulated in such written agreements are paid to the Fund for and on behalf of their eligible Employees.
10. "PLAN" shall mean the Local 138, 138A, 138B & 138C, I.U.O.E. Annuity Plan, as set forth herein and as may be amended from time to time.
11. "PLAN YEAR" shall mean the twelve (12) consecutive month period beginning July 1 and ending June 30.

12. "TRUST" shall mean the Trust Agreement entered into between one or more employer associations and the Union, together with any amendments thereto.

### **How Do I Become Eligible To Participate In The Fund?**

You become eligible to participate in the Fund if you are working in covered employment for an Employer that is required to make contributions to the Fund on your behalf according to an agreement with the Union or if your employer is obligated to make contributions on your behalf through an agreement between your employer and the Trustees. Covered employment means employment for which contributions are required to be made on your behalf and allocated to the Fund.

### **When Are Contributions Credited?**

Contributions made by employers are credited to individual accounts that are established for each participant. The Fund operates on a cash basis and credits an individual account only with contributions actually received during the Plan Year. Late contribution payments will be shown as being received during the next Plan Year. Interest is posted on your individual account balance on an annual basis. You will receive an annual statement which shows your current Fund balance, and any contributions and income credited to your individual account during the Plan Year within 5 months of the close of each Plan Year. The Plan Year runs from July 1 to June 30. A statement of hours will be mailed to you every 12 months; this will reflect the hours which have been credited to your individual account on a monthly basis during that period. You are entitled within 90 days after its receipt to provide documentation to the Fund if you feel you are entitled to more credit hours.

At the time you become a participant under the Fund, you are 100% vested in your individual account. This means that whenever you leave covered employment, you are entitled to the full value of your account, less administrative expenses including but not limited to a onetime application charge of \$50.00. Other administrative charges will incur at times that you apply for in-service or hardship withdrawals.

### **How Is The Value Of Each Individual Account Determined?**

As soon as practical after each Plan Year, the Trustees shall determine, within their discretion, the amount in your individual account by adding together:

The amount in your individual account at the beginning of the Plan Year.

**PLUS**

Employer contributions made on your behalf during the most recent Plan Year.

**PLUS**

The earnings on your individual account, as determined by the Trustees.

**PLUS**

Any contributions received from prior Plan Years.

**MINUS**

Any losses on your individual account, as determined by the Trustees.

**MINUS**

Any benefit payments or other distributions made from your individual account.

**MINUS**

Administrative expenses charged to your individual account.

If your account is in excess of \$5,000 and upon any distribution of \$5,000 or more, retention of 10% from your account shall be held until the investment yield of the Fund is ascertained, and then the Fund will distribute the remaining distribution to you, depending on the investment yield of the Fund at the end of the Plan Year in which the distribution is taken.

**Are There Some Specific Rules Regarding The Valuing Of Accounts During The Plan Year?**

There are some specific rules that govern the value of accounts during the Plan Year:

- Interest is based on the month in which contributions are received by the Fund. For example, the July hours worked, if posted by August 10, result in the receipt of interest for the remaining 11 months of the Plan Year.
- Late redemption and/or adjustment accounts result in earned interest from the date of the posting of such late redemption and/or adjustment.
- Participants receive a monthly benefit and receive the appropriate interest based on the remaining balance.

**How Is the Fund Invested?**

The Trustees invest the assets of the Fund in a number of investments including stocks, bonds, investment funds and insurance company contracts. An investment consultant advises the Trustees on investment decisions. In addition, you may elect to direct the investment of your [individual] account yourself.

**How Does The Self-Directed Program Work?**

The Trustees have established an optional self-directed investment program. You can sign-up for the self-directed program by completing an investment designation form provided by the Fund Office. You may also change back from the self-directed program to have your individual account invested by the Trustees by completing an application form that you can

obtain from the Fund Office. You can transfer from the optional self-directed program to the Trustee-directed program at any time, but you can only transfer from the Trustee-directed program to the optional self-directed program on a quarterly basis.

The self-directed program offers a variety of investment options. You may obtain a listing of investment options from the Fund Office. You may select how new contributions will be allocated among the investment options and you may change how the balance in your individual account is allocated among the investment options.

The self-directed program is intended to constitute a plan described in Section 404(c) of ERISA. Section 404(c) is a provision providing special rules for participant [individual] directed plans, like this one, that permits participants to exercise control over the assets in their accounts. If a plan complies with Section 404(c), the plan's fiduciaries will not be liable for poor investment performance or losses resulting directly from participant [individual] directed investment decisions. This means you are responsible for your investment decisions under the Plan.

You have the right to receive the following information upon request:

1. A description of the annual operating expenses of each investment fund (e.g., investment management fees, administrative fees, transaction costs) which reduce the rate of investment return to you, and the aggregate amount of such expenses expressed as a percentage of average net assets of the designated investment alternative;
2. Copies of prospectuses, financial statements and reports, plus any other relevant materials provided to the Fund relating to each available investment option;
3. A semi-annual list of the assets comprising the portfolio of each standard investment option, the value of such assets (or the proportion of the investment option which it comprises) and, with respect to each such asset which is a fixed rate investment contract issued by a bank, savings and loan association or insurance company, the name of the issuer of the contract, the term of the contract and the rate of return on the contract; and
4. Information concerning the value of shares or units in each investment option, as well as the past and current investment performance of each investment option available under the Plan.

#### IMPORTANCE OF DIVERSIFICATION

To help achieve long-term retirement security, you should give careful consideration to the benefits of a well-balanced and diversified investment portfolio. Spreading your assets among different types of investment can help you achieve a favorable rate of return, while minimizing your overall risk of losing money. This is because market or other economic conditions that cause one category of assets, or one particular security, to perform very well often cause another asset category, or another particular security, to perform poorly. Although diversification is not a guarantee against loss, it is an effective strategy to help you manage investment risk.

In deciding how to invest your retirement savings, you should take into account all of your assets, including any retirement savings outside of the Fund. No single approach is right for everyone because, among other factors, individuals have different financial goals, different time horizons for meeting their goals, and different tolerances for risk.

It is also important to periodically review your investment portfolio, your investment objectives, and the investment options under the Plan to help ensure that your retirement savings will meet your retirement goals.

You may access the U.S. Department of Labor's website at [www.dol.gov/ebsa/investing.html](http://www.dol.gov/ebsa/investing.html) to obtain other sources of information on individual investing and diversification.

The value of your self-directed account is determined from the investments you select. Your investment in each of the Fund's investment options is measured in shares of each respective investment option. The value of a share in each investment option is determined each day and posted in newspapers and on websites maintained by various financial institutions. The value of your account is determined by multiplying the number of shares you own in each investment option by the value of a share for each respective option and then totaling these amounts.

The number of shares in each investment option increases when new employer contributions are allocated to your account and decreases when benefits are paid or administrative expenses are charged to your account. You will receive periodic statements showing how your account is invested.

Your ability to self-direct your account may be suspended if the Trustees believe you are engaged in market timing trading.

**What Happens if I Do Not Make an Election Regarding the Investment of My Account?**

If you elect the self-directed option but do not specify where you wish to direct your investments, you will be placed in a Target Date Retirement Fund. This Fund will have a mixture of stocks and bonds that varies depending on your age and how close you are toward your target retirement date. These target retirement funds are intended to qualify as a "qualified default investment arrangement" in accordance with applicable federal regulations.

### **When Am I Eligible For Benefits?**

You are eligible to receive benefits from the Fund at any time after:

- You apply for, or begin receiving a pension from the Local 138 Pension and Retirement Benefit Fund or, its successor, the Central Pension Fund of the International Union of Operating Engineers and Participating Employers.
- You become totally and permanently disabled, as determined by the Trustees. You will be required to periodically submit proof of continued disability.

- You terminate employment by not being employed in covered employment for 2 consecutive months. Covered employment means work for an employer that is required to make contributions to the Fund on your behalf.

### **When Is The Fund Required To Pay A Benefit?**

Upon receiving the necessary forms, the Fund must begin paying your benefit after your retirement, disability or when you terminate employment by not being employed in covered employment for 2 consecutive months. Benefit payments are not made until a Participant is in pension status by reason of applying and/or receiving a pension benefit.

### **How Much Is My Benefit?**

The amount of your benefit is equal to the balance of your individual account. **If a Participant's account is in excess of \$5,000 and upon any distribution of \$5,000 or more, retention of 10% shall be held until the investment yield of the Fund is ascertained, and then the Fund will distribute the remaining distribution to such Participant, depending on the investment yield of the Fund at the end of the Plan Year in which the distribution is taken.**

### **How Will My Benefits Be Paid?**

You can choose to have your benefits paid:

- In a single lump-sum.
- In equal monthly installments over 5 years, 10 years, and 15 years or until your individual account balance is zero.
- In a combination of an initial lump-sum amount and equal monthly installments as described above.

If you choose monthly installment payments, each year the amount of your monthly installment payment will be adjusted for earnings or losses credited or charged to your individual account.

### **What Happens If The Balance Of My Individual Account Is Less Than \$1,000?**

If your individual account balance is less than \$1,000 after you become eligible to receive benefits, and if you have not begun receiving benefits, your benefit will be immediately paid in a single lump-sum. This can occur without the permission of you or your spouse.

If you terminate employment and your vested interest in the Fund (excluding amounts attributable to any rollovers you made into the Fund) does not exceed \$1,000, then a lump-sum distribution will be made as soon as administratively practicable following your termination of employment. You may not postpone the distribution, but you may elect either to receive the distribution (less required income tax withholding) or to roll over the distribution to an individual retirement account (IRA) or another employer's eligible retirement plan. At the

time of your termination of employment, the Fund Administrator will provide you with information regarding your distribution rights.

### **How Do I Apply For Benefits?**

You must file a written application with the Trustees to receive benefits. Your application must be filed at least 30 days before the date your benefits will commence. If your application is granted, your benefit will commence on or about the first day of the month following the 30-day waiting period. You should not apply while you are still working in a job covered by a collective bargaining agreement with the Union.

Your benefit will be paid regardless of whether you file an application if your individual account balance is less than \$1,000, or if the Fund is required to begin paying your benefit because you are retired, receiving a pension, and no longer working.

### **Can My Application Be Rejected?**

Your application will be rejected if it is incomplete or if it has not been properly completed, or you are determined ineligible for your benefit at the time you submit your application. In addition, if you dispute the amount of your benefit, or any other issue arises with respect to the entitlement to benefits, you should make a request for the benefits that you believe you are entitled to receive. The request must be made in written form and should be made to the Fund Administrator who will submit your request to the Board of Trustees for their approval or denial. Your request will be considered a claim and will be subject to a full and fair review by the Board of Trustees.

### **INITIAL ADVERSE BENEFIT DETERMINATIONS**

If your claim for benefits is denied in whole or in part for any reason, then within 90 days after this Plan receives your claim, this Plan will send you written notice of its decision, unless special circumstances require an extension, in which case the Plan will send you written notice of the decision no later than 180 days after the Plan receives your claim. If an extension is necessary you will be given written notice of the extension before the expiration of the initial 90 day period, which shall indicate the special circumstances requiring the extension of time and the date by which the Plan expects to render the benefit determination. Disability determinations must be decided within 90 days, absent special circumstances.

The Plan's written notice of its decision will include the specific reason or reasons for the adverse benefit determination; reference to specific Plan provisions on which the determination is based; a description of any additional material or information is necessary (if applicable); and a description of the Plan's review procedures and the time limits applicable to such procedures, including a statement of your right to bring a civil action under Section 502(a) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") following an adverse benefit determination on review.

## **What Can I Do If My Claim is Rejected?**

If you are not satisfied with the reason or reasons why your claim was denied, then you may appeal to the Board of Trustees. To appeal, you must write to the Trustees within 60 days after you receive this Plan's initial adverse benefit determination. Your correspondence (or your representative's correspondence) should include the following statement: "I AM WRITING IN ORDER TO APPEAL YOUR DECISION TO DENY ME BENEFITS. YOUR ADVERSE BENEFIT DETERMINATION WAS DATED \_\_\_\_\_, 20 \_\_\_\_." If this statement is not included, then the Trustees may not understand that you are making an appeal, as opposed to a general inquiry. If you have chosen someone to represent you in making your appeal, then your letter (or your representative's letter) must state that you have authorized him or her to represent you with respect to your appeal, and you must sign such statement. Otherwise, the Trustees may not be sure that you have actually authorized someone to represent you, and the Trustees do not want to communicate about your situation to someone unless they are sure he or she is your chosen representative.

You shall have the opportunity to submit written comments, documents, records, and other information related to the claim for benefits. You shall also be provided, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to your claims for benefits. A document, record, or other information is relevant to a claim if it was relied upon in making the benefit determination; was submitted, considered, or generated in the course of making the benefit determination, without regard to whether such document, record, or other information was relied upon in making the benefit determination; demonstrates compliance with the administrative processes and safeguards required in making the benefit determination.

### **DETERMINATIONS ON APPEAL**

The Trustees at their next regularly scheduled meeting will make a determination of the appeal. However, if the appeal is received less than thirty (30) days before the meeting, the decision may be made at the second meeting following receipt of the request. If special circumstances require an extension of time for processing, then a decision may be made at the third meeting following the date the appeal is made. Before an extension of time commences, you will receive written notice of the extensions, describing the special circumstances requiring the extension. The Plan will notify you of the benefit determination no later than 5 days after the determination date.

If your appeal is denied, the Plan's written notice of the Board's decision will include the specific reason or reasons for the adviser benefit determination; reference to specific Plan provision on which the determination is based; a statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information relevant to your claim for benefits; and a statement of your right to bring a civil action under Section 502(a) of ERISA. Disability determinations will be examined independent of the persons who made a determination of your initial claim denial.

The Trustees' final decision with respect to their review of your appeal shall be final and binding upon you, since the Trustees have exclusive authority and discretion to determine all

questions of eligibility and entitlement under this Plan. Nonetheless, if you disagree with the final decision of the Trustees with respect to your appeal, then you may start a legal action against this Plan.

### **Does The Fund Pay A Death Benefit?**

If you die, the balance of your individual account will be paid to your beneficiary. If you are married at the time of your death, your benefit will be paid to your spouse unless you have designated someone else as your beneficiary. If your benefit is paid to your spouse, your spouse may elect to receive the benefit in monthly installments or a single lump-sum. If your benefit is paid to someone other than your spouse, the benefit will be paid either in a single lump-sum or based on the periodic payment schedules available under the Fund.

### **How Do I Designate A Beneficiary?**

When you become eligible to participate in the Fund, you may name someone to receive your death benefit. If you are married, your spouse is your beneficiary. However, with the written consent of your spouse, you can designate someone else as your beneficiary. Your spouse's consent must be in writing and notarized. The Fund Office will provide you with the required form. If you do not name a beneficiary, the Trustees will pay your benefit to your surviving spouse, or if you do not have a surviving spouse, to your estate. Benefits paid to your estate may be subject to the claims of your creditors.

You may revoke or change your beneficiary designation at any time. In addition, if you marry, your beneficiary designation will become void unless your spouse consents to your beneficiary designation. Contact the Fund Office for a new beneficiary designation form when you marry or if you divorce.

No change of beneficiary will be effective until such written notice has been approved by the Fund. If the beneficiary is the son or daughter (natural or adopted) of the participant, then such beneficiary will have the same benefit payment options as a retiring participant. The death benefit will be paid in the form of a fixed monthly benefit, in equal installments of 5, 10 or 15 years duration, until exhausted, or in a single lump-sum or in any combination of the foregoing, at the option of the Trustees. In the event that the beneficiary dies before the exhaustion of his death benefit, a lump-sum benefit payment will be made to his or her designated beneficiary.

If applicable, a direct transfer from the Plan to an IRA set up to receive the distribution can be treated as an eligible rollover distribution if the individual is the designated beneficiary of the Plan but not the employee's spouse. The IRA is treated as an inherited IRA.

### **Do I Have To Pay Taxes On My Benefits Under The Fund?**

You do not pay income taxes on contributions at the time they are paid into the Fund for you, and the investment income and earnings are also not taxed at the time it is earned. However,

when you receive benefit payments from the Fund, they are taxable. You will receive an IRS form 1099R for withdrawals and distributions you receive from the Fund. You will also receive an explanation of your distribution options when you request an application.

**Can I Postpone Income Taxes On Retirement Distributions By Rolling Over A Distribution From This Fund Into Another Retirement Fund?**

You may postpone income taxes on most distributions from this Fund by depositing your distribution in an IRA or another employer's eligible retirement plan. You may have your distribution deposited directly in an IRA or another employer's eligible retirement plan or you may have your distribution paid to you and then deposit the distribution yourself within 60 days into an IRA or another employer's eligible retirement plan. If your distribution is not paid directly to an IRA or another employer's eligible retirement plan, at least 20% of your distribution will be subject to Federal income taxes. Distributions that are not eligible to be rolled into an IRA or another employer's eligible retirement plan include joint and survivor annuities, hardship withdrawals and certain distributions that must be paid by April 1 of the calendar year following the later of the calendar year in which you:

- Turn age 70 ½; or
- Retire or otherwise terminate employment.

Effective January 1, 2020, if you have not reached age 70 ½ before December 31, 2019, you do not have to take a distribution until the April 1 of the calendar year following the later of the calendar year in which you:

- Turn age 72; or
- Retire or otherwise terminate employment.

**What Happens If I Return To Work While I Am Receiving Benefits From The Fund?**

The payment of your benefit may be suspended if you are again employed as an operating engineer within the jurisdiction of the Union. You must, therefore, notify the Fund Office of any work performed as an operating engineer, including in a supervisory capacity, directly or indirectly, supervising operating engineers. The Board of Trustees will periodically require that you certify that you are not working as an operating engineer in order to continue to receive the benefit. Reinstatement of your benefit after its suspension will be based on the determination by the Board of Trustees that you are not working as an operating engineer and that you are eligible for your benefit.

**Can I Receive an In-Service Withdrawal?**

You are entitled to obtain a distribution prior to retirement, up to a lifetime maximum of \$100,000. You are eligible for a distribution once you have obtained 5 years of participation and every five years thereafter, up to the lifetime maximum of \$100,000.

### **What Are The Eligibility Requirements For A Hardship Withdrawal?**

A participant who has had an individual account for 1 year or more may apply to the Trustees for a hardship withdrawal from the participant's individual account upon the occurrence of one or more of the following:

To purchase a principal residence (excluding mortgage payments)

To pay unreimbursed tuition and related educational expenses for the next 12 months of post-secondary education for yourself, your spouse, or any of your dependents

To pay unreimbursed expenses for medical care for yourself, your spouse, or any of your dependents

To make payments necessary to prevent eviction for your principal residence or foreclosure on the mortgage of your principal residence

To pay funeral and/or burial expenses of your deceased parent, spouse, child or dependent

To repair damage to your principal residence due to a casualty (e.g., fire, storm, disaster declared by the federal government) that would qualify for a casualty deduction under Section 164 of the Internal Revenue Code, determined without regard to whether the loss exceeds 10% of adjusted gross income.

To repair damage to your principal residence if the area of residence is declared to be located in a disaster zone as determined by the Federal Emergency Management Agency (FEMA)

Estimated taxes on the amount of your hardship withdrawal. Hardship withdrawals are generally subject to Federal and State income taxes. You will receive a Special Tax Notice from the Fund Administrator related to such withdrawal.

In addition, the above list of expenses that may be deemed to be made on account of immediate and heavy financial needs of the Participant will be extended to include any such additional expenses as permitted by the Internal Revenue Service.

A hardship withdrawal cannot be made if the Participant has other resources available to meet the financial need (even if the need is deemed to be an immediate and heavy financial need). A hardship withdrawal will be deemed necessary to satisfy the financial need of a Participant if all of the following requirements are satisfied:

- The hardship withdrawal is not in excess of the amount of the immediate and heavy financial need of the Participant; and
- The Participant has obtained all distributions other than hardship withdrawals

currently available from this Fund.

A Participant will be charged a **\$160.00** administrative fee from his/her account for processing a hardship withdrawal.

The Trustees are the sole and absolute judge of the following: whether or not the above contingencies have occurred; the standards of proof required; and such judgment in this connection will be final and binding on all parties.

How Are Hardship Withdrawals Taxed?

Hardship withdrawals will be taxed as ordinary income to you and are subject to mandatory 20% Federal income tax withholding that will be deducted from your withdrawal. Hardship withdrawals are not eligible for special tax treatment or rollover to an IRA. If you are less than 59½ years old, an additional 10% Federal income tax penalty may apply to your hardship withdrawal.

May I Borrow Against My Account?

No. Loans from the Fund are not permitted.

Will Contributions Be Made To My Individual Account While I Serve In The Military?

If you meet the eligibility requirements, your individual account will be credited with contributions for each day you perform uniformed military service. To be eligible, you must be working for an employer that makes contributions to the Fund at the time you enter uniformed military service and you must notify your employer that you are entering uniformed military service. In addition, the length of your uniformed military service may not exceed 5 years and you must leave uniformed military services under honorable conditions. You must also report for work with an employer that makes contributions to the Fund within 1 day after leaving uniformed military service if your service was less than 31 days, within 14 days if your service was more than 30, but less than 181 days, or within 90 days if your service was more than 180 days.

Uniformed military service includes service with the Army, Navy, Air Force, Marines, Coast Guard, National Guard and Public Health Service. Uniformed military service may also include uniformed military service training, fitness examinations to perform uniformed military service and authorized training to provide emergency assistance following a terrorist attack.

The daily credit to your individual account for the time you perform uniformed military service will be your average daily contribution hours during the 3-year period immediately preceding your uniformed military service, multiplied by the contribution rate that would have applied to your hours had you worked instead of performing uniformed military service. The credit to your account will be made within 30 days after your return to work with an employer that makes contributions to the Fund and will be made from the unallocated assets of the Fund.

## Can I Assign My Benefits?

No, you cannot assign any benefits due to you from the Fund. The Fund expects to pay benefits solely to the participant or beneficiary as the benefit amounts become payable. Accordingly, the Fund does not allow a participant or beneficiary to alienate the benefit by sale, assignment, or in any other way. In addition, the benefit is not subject to claims based on any debt or contract the participant or beneficiary may have incurred. However, your benefit may be subject to a levy by certain regulatory agencies or a Qualified Domestic Relations Order which is explained later in this booklet.

## What Is A Qualified Domestic Relations Order (QDRO)?

A Qualified Domestic Relations Order (QDRO) is a domestic relations order that is a judgment, decree, or order (including the approval of a property settlement) that is made pursuant to a state domestic relations law that relates to the provision of child support, alimony payments, or marital property rights for the benefit of a spouse, former spouse, child, or other dependent of a participant. A QDRO states that a person, known as the alternate payee, is entitled to a certain portion of your benefits from the Fund. The QDRO may provide that your alternate payee is entitled to a lump-sum payout to be paid on or about the first day of the second month after the Fund approves the Order. Both you and your spouse can obtain from the Trustees, without charge, a copy of the Fund's procedures governing Qualified Domestic Relations Orders.

A QDRO must clearly specify the name and the last known mailing address, if any, of the Participant and each Alternate Payee covered by the Order, the amount or percentage of the Participant's benefits to be paid by the Fund to such Alternate Payee, or the manner in which such amount or percentage is to be determined, the number of payments or period to which such Order applies, and each plan to which such Order applies. A QDRO must not require the Fund to provide any type or form of benefit, or any option, not otherwise provided under the Fund, provide increased benefits (determined on the basis of actuarial value), make payments of benefits to an Alternate Payee which are required to be paid to another Alternate Payee under another Order previously determined to be a Qualified Domestic Relations Order, or pay any benefits to an Alternate Payee prior to the earliest age that the affected Participant could have received an annuity under the Fund.

However, upon the election of the Alternate Payee, the Alternate Payee may receive a lump sum benefit prior to the participant obtaining the earliest age under the Fund. Applying for this option must occur within 60 days after the Fund accepts and approves a Qualified Domestic Relations Order and the Alternate Payee is advised, by certified mail at the address stated in the order, of his/her opportunity to exercise such a payment option. **If the Alternate Payees' share is in excess of \$5,000 and upon any distribution of \$5,000 or more, retention of 10% shall be held until the investment yield of the Fund is ascertained, and then the Fund will distribute the remaining distribution to such Alternate Payee, depending on the investment yield of the Fund at the end of the Plan Year in which the distribution is taken.**

A Participant will be charged a one-time, \$150.00 administrative fee from his/her account for processing the QDRO.

### **Can A Participant Or Employer Submit proof of old contributions?**

Unredeemed contributions that are over 7 years old will not be accepted for redemption unless documentation that is considered satisfactory to the Trustees is presented to allow such redemption (e.g., payroll stubs, employer contribution reports, wage reports).

### **IMPORTANT NOTICE**

This Summary Plan Description is designed to cover only the highlights of the Fund. The full text of your Fund's plan document details the complete and specific rules that govern your rights to your benefits. In the event there appears to be a conflict between the description of any provision in this booklet, and its statement in the formal plan document, the language contained in the plan document is the official and governing language.

Nothing in this booklet is meant to interpret or extend or change, in any way, the provisions contained in the Fund's plan document. The Trustees reserve the right to amend, modify or discontinue all or part of the Fund and its plan document whenever, in their judgment, conditions so warrant.

### **FUND INTERPRETATION**

#### **Who Is Responsible For Interpreting And Making Determinations On Behalf Of The Fund?**

The Board of Trustees is responsible for interpreting the Fund's plan document and for making determinations under the Fund. In order to carry out the responsibility, the Board of Trustees or designee have exclusive authority and the discretion to determine whether an individual is eligible for any benefits under the Fund; determine the amount of benefits, if any, an individual is entitled to from the Fund; interpret all provisions of the Fund; and interpret all the terms used in the Fund. All such determinations and interpretations made by the Trustees or the designee will be final and binding upon any individual claiming benefits under the Fund; be given deference in all courts of law to the greatest extent allowed by applicable law; and not be overturned or set aside by any court of law unless found to be arbitrary and capricious, or made in bad faith.

### **CAUTION**

#### **Who Are Authorized Sources Of Fund Information?**

This booklet and the Fund Administrator and/or Trustees are authorized sources of Fund information for you. The Trustees of the Fund have not empowered anyone else to speak for them with regard to the Fund. No employer, union representative, or shop steward is authorized to discuss your rights under the Fund.

## COMMUNICATIONS

### **How Do I Communicate With The Fund?**

If you have a question about any aspect of your participation in the Fund, you should, for your own permanent records, write to the Fund Administrator or Trustees. You will then receive a written reply, which will provide you with a permanent record.

## GENERAL HIGHLIGHTS OF THIS SUMMARY PLAN DESCRIPTION

### **What Is The Summary Plan Description?**

This Summary Plan Description has been sent to you to comply with the Reporting and Disclosure requirements of the Employee Retirement Income Security Act of 1974 (ERISA), and its amendments. It is a brief description of the Fund, and it is not meant to interpret, extend or change the Fund in any way. The Trustees retain the ultimate authority to define and interpret the provisions of the Fund, and their determinations will be final and binding.

"Union" means Local 138, 138A, 138B & 138C, International Union of Operating Engineers, AFL-CIO.

The Fund Office of the Local 138, 138A, 138B & 138C, International Union of Operating Engineers Annuity Fund ("Fund"), which administers the Fund is located at:

P.O. Box 206 - 137 Gazza Boulevard  
Farmingdale, New York 11735-0206

The Fund was established pursuant to an Agreement and Declaration of Trust by and between the Union and employer associations which include the Long Island Contractors Association and the Building Contractors Association, Inc., and other employers who contribute to the Fund.

### **Who Are The Fund's Trustees?**

The Board of Trustees of the Fund is composed of persons appointed by the Union and those appointed by the employers (who contribute to the Fund) in equal numbers, and they are responsible for the administration of the Fund.

The Fund has been designed by the Trustees, and it has been submitted to, and approved by the Internal Revenue Service as a qualified profit-sharing retirement plan.

The following individuals are the individual Trustees who make up the Board:

#### **Labor Trustees**

John Duffy  
Local 138, I.U.O.E.  
137 Gazza Blvd.  
P.O. Box 206

Farmingdale, NY 11735

John Duffy, Jr.  
Local 138, I.U.O.E.  
137 Gazza Blvd.  
P.O. Box 206  
Farmingdale, NY 11735

Philip Capobianco  
Local 138, I.U.O.E.  
137 Gazza Blvd.  
P.O. Box 206  
Farmingdale, NY 11735

Scott Adrian  
Local 138, I.U.O.E.  
137 Gazza Blvd.  
P.O. Box 206  
Farmingdale, NY 11735

Anthony Malizia  
Local 138, I.U.O.E.  
137 Gazza Blvd.  
P.O. Box 206  
Farmingdale, NY 11735

### **Management Trustees**

Marc Herbst  
150 Motor Parkway, Suite 307  
Hauppauge, NY 11788-5145

James Haney, III  
P.O. Box 530  
Old Bethpage, NY 11804

James Pratt III  
c/o Pratt & Pratt, Inc.  
608 Union Avenue  
Holtsville, NY 11742

John O'Hare, Alternate Trustee  
c/o Building Contractors Association  
451 Park Avenue, Suite 412  
New York, NY 10017

The Trustees whose names appear above are responsible for the investment and maintenance of the Fund's assets, limited to the extent that you direct your own investment in the self-directed program. The Trustees have the right to promulgate and establish rules of eligibility and other regulations for the administration and operation of the Fund, and to determine all questions relating to the eligibility of employees to participate in the Fund.

The Fund is funded and maintained by contributions made by your employer on your behalf to the Fund. All contributions are paid to the Fund subject to provisions in an agreement between the Union and the employer associations or those employers who are not members of or represented by such Associations but who individually execute an agreement with the Union. The agreement specifies the amount of payments to be made, the due date of such payments by the employer, the type of work for which payments are payable and the geographic area covered by the agreement. Also, in accordance with any reciprocity agreement that might exist between this Fund and another fund, any contributions will be transferred to the Fund when you work in the other plan's jurisdiction.

Employer contributions made on your behalf are received and held in trust by the Fund. They are invested on your behalf in qualified investments pursuant to the requirements detailed under ERISA. No employee has the option to receive, instead of benefits, any part of the employer payments made on his behalf.

### **Can I Get More Information About The Fund And The Fund's Plan Document?**

As a participant in the Fund you will automatically receive a Summary Plan Description (this booklet). If any substantial changes are made to the Fund, you will be notified within the time limits required by ERISA. Each year you will be provided a summary of the Fund's latest annual financial report. You may examine, without charge, most documents relating to this Fund. These documents include: the Trust Agreement, the plan document, and collective bargaining agreements and all documents filed by the Fund with the Department of Labor or the Internal Revenue Service, such as detailed annual reports. Such documents may be examined at the Fund Office (or at other required locations such as work sites or union halls) during normal business hours.

In order to assure that your request for documents to the Fund is handled promptly and that the information you want is delivered expeditiously, the Trustees have adopted specific procedures which you should follow:

- Your request should be in writing.
- It should specify what materials you wish to look at.
- It should be received at the Fund Office at least 7 days before the date you want to review the materials at the Fund Office.

You may obtain copies of documents relating to the Fund upon written request to the Trustees, addressed to the Fund Office. ERISA provides that the Trustees may make a reasonable charge

for the actual cost of reproducing any document you request. However, you are entitled to know what the charge will be in advance. Just ask the Fund Office.

A complete list of the Employers sponsoring this Fund may be obtained upon written request of the Fund Administrator, and is available for examination by employees and participants. Upon written request to the Fund Administrator, you will be provided with information as to whether a particular employer is a contributor to the Fund, and if an employer is a contributor, its address will also be provided.

The Internal Revenue Service Employer Identification Number of the Fund is:

Taxpayer I.D. Number: 11-2653717  
Number: 002

The Fund Administrator is:

William K. Duffy, Jr.  
Local 138 Annuity Fund  
Post Office Box 206 - Gazza Boulevard  
Farmingdale, New York 11735-0206  
631-694-2478

The agent for service of legal process for the Fund is:

Archer, Byington, Glennon & Levine, LLP  
One Huntington Quadrangle – Suite 4C10  
P.O. Box 9064  
Melville, New York 11747-9064  
631-249-6565

Service of legal process may also be made upon any Trustee or the Fund Administrator.

Plan Year of the Fund: The Fund's Plan Year begins July 1st and ends June 30th. Fund records are maintained on this basis.

**Can The Board Of Trustees Amend Or Terminate The Fund?**

The Board of Trustees retains the right at any time to amend the Fund; however, no part of the funds of your individual account may be diverted for any purpose other than the exclusive benefit of you or your beneficiaries, and no amendment may reduce your accrued benefit under the Fund, except as allowed by applicable law. The Trustees may decide to terminate the Fund, and in the event of such termination, the applicable law will be followed.

## STATEMENT OF ERISA RIGHTS

As a participant in this Fund, you are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974. ERISA provides that all Fund participants are entitled to:

- Examine, without charge, at the Fund Office and at other specified locations such as work sites and union halls, Fund documents, collective bargaining agreements and copies of all documents filed by the Fund with the U.S. Department of Labor, such as detailed annual reports and Summary Plan Descriptions.
- Obtain copies of Fund documents and other Fund information upon written request to the Fund Administrator. The Fund Administrator may make a reasonable charge for copies.
- Receive a summary of the Fund's annual financial report. The Fund Administrator is required by law to furnish each participant with a copy of this summary annual report.
- Obtain a statement telling you whether you have a right to receive a pension at normal retirement age ("normal retirement date" means the first day of the month following retirement as an Employee of an Employer; or from the Union, or any of the Funds, provided such participant attains age 55) and, if so, what your benefits would be at normal retirement age if you stop working under the Fund now. If you do not have a right to a pension, the statement will tell you how many more years you have to work to get a right to a pension. This statement must be requested in writing and is not required to be given more than once every 12 months. The Fund must provide the statement free of charge.

If your claim for a 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 Fund review and reconsider your claim.

In addition to creating rights for Fund participants, ERISA imposes duties upon the people who are responsible for the operation of the Fund. The people who operate your Fund, called "fiduciaries" of the Fund, have a duty to do so prudently and with the best interest of you and other Fund participants and beneficiaries. No one, including your employer, your union, and any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a benefit or exercising your rights under ERISA. If your claim for a 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 Fund review and reconsider your claim. Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request materials from the Fund and do not receive them within 30 days, you may file suit in a federal court. In such a case, the court may require the Fund Administrator to provide the materials and pay you up to \$110.00 a day until you receive the materials, unless the materials were not sent due to reasons beyond the control of the Fund Administrator. If you have a claim for benefits which is denied or ignored, in whole or in part, you may file suit in a state or federal court. If

it should happen that Fund fiduciaries misuse the Fund's money, or if you are discriminated against for asserting your rights, you may seek assistance from the United States Department of Labor, or you may file suit in a Federal court. The court will decide who should pay costs and legal fees. If you are successful, the court may order the person you have sued to pay these costs and fees. If it finds that your claim is frivolous, you may be liable to pay costs and legal fees.

If you have any questions about your Fund, you should contact the Fund Administrator. If you have any questions about this statement or about your rights under ERISA, you should contact the nearest area office of the Employee Benefits Security Administration, U.S. Department of Labor, listed in your telephone directory, or the Division of Technical Assistance and Inquiries, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington D.C. 20213. You may also obtain certain publications about your rights and responsibilities under ERISA by calling the publications hotline of the Employee Benefits Security Administration.