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July 16, 2018

Summary of Material Modification to the International Union of Operating Engineers Local 825 Pension Plan

TO: All Participants

**FROM: The Board of Trustees of the International Union of Operating Engineers
Local 825 Pension Plan**

RE: Plan Changes to Disability Claims and Appeals Procedures

This Summary of Material Modification (“SMM”) describes changes to the claims and appeals procedures for the International Union of Operating Engineers Local 825 Pension Plan (“Plan”) which apply to disability claims in order to address procedural safeguards and additional disclosures issued by the Department of Labor. Please keep this SMM with your copy of the Plan’s Summary Plan Description (“SPD”) for future reference.

EFFECTIVE April 1, 2018

Section X, 3 of the SPD is amended to add the **bold, underlined and italicized** text as follows:

Special Rules for **Total Disability and** Partial Disability Pension: Notwithstanding the foregoing, special rules apply to adverse benefit determinations for claims for a **Total Disability and** Partial Disability Pension.

- **Initial Benefit Determination:** The Plan Administrator shall notify the claimant of the Plan’s determination within forty-five (45) days after receipt of the application. In addition to the information required by paragraph 1 of this section, the notice of an adverse benefit determination as to eligibility for a **Total Disability or** Partial

Disability Pension shall include any internal rule, guideline, protocol, or other similar criterion that was relied upon in making the determination, or a statement that such a rule, guideline, protocol or other similar criterion was relied upon in making the adverse benefit determination and that a copy thereof will be provided free of charge to the claimant upon request. **Additionally, the notice of adverse benefit determination as to eligibility for a Total Disability or Partial Disability Pension shall include a discussion of the decision, including an explanation of the basis for disagreeing with or not following: (1) The views presented by the claimant or health care professionals treating the claimant and vocational professionals who evaluated the claimant; (2) the views of medical or vocational experts whose advice was obtained on behalf of the Plan in connection with a claimant's adverse benefit determination without regard to whether the advice was relied upon in making the benefit determination; and (3) a disability determination regarding the claimant made by the Social Security Administration. The notification shall be provided in a culturally and linguistically appropriate manner, as defined in 29 C.F.R. 2560.503-1(o).**

- *Extension of Review Period:* The initial forty-five (45) day review period may be extended by the Plan for up to 30 days, provided that the Plan Administrator both determines that such an extension is necessary due to matters beyond the control of the Plan and notifies the claimant, prior to the expiration of the initial 45-day period, of the circumstances requiring the extension of time and the date by which the Plan expects to render a decision. If, prior to the end of the first 30-day extension period, the administrator determines that, due to matters beyond the control of the Plan, a decision cannot be rendered within the extension period, the period for making the determination may be extended for up to an additional 30 days, provided that the Plan Administrator notifies the claimant, prior to the expiration of the first 30-day extension period, of the circumstances requiring the extension and the date as of which the plan expects to render a decision. In the case of any extension under this paragraph, the notice of extension shall specifically explain the standards on which entitlement to a benefit is based, the unresolved issues that prevent a decision on the claim, and the additional information needed to resolve those issues, and the claimant shall be afforded at least 45 days within which to provide the specified information.
- **Filing an Appeal.** In the case of a claim as to eligibility for a **Total Disability or Partial Disability Pension**, the claimant has 180 days following receipt of the notification of an adverse benefit determination within which to appeal the determination. Such a claimant shall be afforded all of the rights described in

paragraph 2 of this section to the extent such rights are consistent with this paragraph. In addition, however, the review of an adverse benefit determination on a claim as to eligibility for a **Total Disability or** Partial Disability Pension shall not afford any deference to the initial adverse benefit determination. Moreover, the claimant shall be advised of the identity of any medical or vocational experts whose advice was obtained on behalf of the Plan in connection with the claimant's adverse benefit determination, without regard to whether the advice was relied upon in making the benefit determination.

- Failure to timely file an appeal within the applicable period shall constitute a waiver of the claimant's right to reconsideration of the decision on the basis of the information and evidence previously submitted to the Plan Administrator.
- **Appeal Determination.** The Trustees shall make an appeal determination no later than the date of the regularly scheduled meeting of the Trustees that immediately follows the receipt of a request for review, unless the request for review is filed within 30 days preceding the date of such meeting. In such case, the benefit determination may be made by no later than the date of the second meeting following receipt of the request for review. **Before the Plan can issue an adverse benefit determination on review of a disability benefit claim, the Plan Administrator shall provide the claimant, free of charge, with any new or additional evidence or new or additional rationale considered, relied upon, or generated by the Plan in connection with the claim; such evidence or rationale will be provided as soon as possible and sufficiently in advance of the date on which the notice of adverse benefit determination is sent, to give the claimant a reasonable opportunity to respond prior to that date.** The Plan Administrator shall notify the claimant of the benefit determination as soon as possible, but not later than 5 days after the benefit determination is made. In the case of an adverse benefit determination on appeal, in addition to the information required in paragraph 2 of this section, the notice of such determination will include any internal rule, guideline, protocol, or other similar criterion that was relied upon in making the determination, or a statement that such a rule, guideline, protocol or other similar criterion was relied upon in making the adverse benefit determination and that a copy thereof will be provided free of charge to the claimant upon request. The notice will also contain the following statement: "You and your Plan may have other voluntary alternative dispute resolution options, such as mediation. One way to find out what may be available is to contact your local U.S. Department of Labor Office and your state insurance regulatory agency." **Additionally, the notice shall include a statement of the claimant's right to bring an action under Section 502(a) of the Act, including the 180-day contractual limitations period that applies to the claimant's right to bring such an action and the calendar date on which the 180-day period expires for the claim. The**

notification shall be provided in a culturally and linguistically appropriate manner, as defined in 29 C.F.R. 2560.503-1(o).

- Please note that you must file an appeal with the plan and exhaust its claim and appeal procedures prior to filing an action in court with respect to a claim for benefits.

If you have any questions regarding this change to the Plan's rules, please contact the Fund Office at 65 Springfield Avenue, Second Floor, Springfield, NJ 07081, (973) 671-6800.