OPERATING ENGINEERS LOCAL #234
HEALTH AND WELFARE FUND
COLLECTION POLICY

Pursuant to Section 1 of Article VII of the Restated and Revised Agreement and Declaration of Trust establishing the Operating Engineers Local #234 Health and Welfare Fund (the "Fund"), the Board of Trustees of the Fund hereby adopts this policy with respect to collecting contributions due the Fund.

CONTRIBUTIONS

1. **Monthly contributions.** All contributions required to be made to the Fund by an Employer, as that term is defined in the Agreement and Declaration of Trust, shall be paid to the Fund Administrator, together with the remittance report form supplied for such purpose, on or before the 10th day of the month following the month in which the contributions were earned.

2. **Delinquent Contributions.** If an Employer fails to make the contributions as set forth in Paragraph 1 above, the following procedure shall be followed:

   a. **Demand Letter.** If the contributions are not made on or before the 20th day of the month following the month the contributions were earned, the Employer will be deemed **delinquent.** At that time, the Fund Administrator or Trustees' Auditor shall mail by first class mail, postage prepaid, a letter in the form attached as Exhibit A addressed to a specific representative of such Employer at the Employer's last address as shown on the most recent remittance report form filed with the Fund, advising the Employer that the Employer is deemed delinquent, that interest will be assessed, and that liquidated damages may be assessed and the delinquency will be referred to Fund Counsel for remedial action if the delinquent report and/or contributions are not submitted to the Fund office within five business days of the date of the letter. A copy of the letter shall be sent to the Trustees, to the Union Business Manager and Fund Counsel.

   b. **Interest Assessed.** An Employer deemed delinquent will be assessed interest at the rate of 9% per annum on the delinquent contributions from the first of the month following the month the contributions first became due until the end of the month prior to the month in which the contributions have been paid. Interest may be waived at the discretion of the Trustees, if the Trustees determine that the Employer has provided facts demonstrating a commercially reasonable, and non-recurring reason exists for the delinquent payment. Interest may also be waived for new Employers where the Employer provides facts demonstrating that the Employer's failure to remit contributions in a timely manner is the result of a good faith misunderstanding of how to properly pay contributions, and where the Employer has demonstrated, upon receipt of instructions regarding the procedures

to properly remit contributions, that it will follow such procedures. Nothing in this policy shall create any right to a waiver of assessments.

c. **Liquidated Damages.** If the contributions have not been paid within the 20th day following the month the contributions were earned, and if suit is filed to collect the contributions, the Employer will be assessed, in addition to interest, liquidated damages of 15% of the delinquent contributions. The liquidated damages compensate the Fund for lost interest, attorney fees and expenses, audit costs and administrative costs, all of which are incurred in delinquencies but are difficult to measure on a case by case basis. The 15% liquidated damages are based upon the Fund's estimate of actual harm which late payments cause the Fund.

d. **Referral to Fund Counsel. If the Employer fails to respond to the Demand letter from the Fund Administrator or Trustees' Auditor, as set for the in paragraph 2.a. above, the Fund Administrator or Trustees' Auditor** shall refer the delinquency to Fund Counsel for remedial action. (See section below on Legal Action.)

e. **Cash Bond.** If the Employer is "habitually delinquent," the Employer may be required to post bond from a surety company licensed to do business in the State of Iowa in the amount of $5,000 or three times the Employer's average monthly contributions, whichever is greater. This bond shall expire no earlier than 90 days after the Employer's final contribution to the Fund may be due. Solely for the purpose of this Collection Policy, "habitually delinquent" is defined as being delinquent for more than a two-month period or for a two-month period two or more times during a calendar year.

3. **Partial Payments.** If an Employer remits only partial payment of either monthly contributions or delinquent contributions, the payment received shall be applied to the Employer's obligation to the Fund in the following manner until such payment is exhausted: (i) current monthly contributions, (ii) assessed liquidated damages on delinquent contributions, (iii) assessed interest on delinquent contributions, and (iv) delinquent contributions, beginning with the most recently due.

4. **No Extensions of Time.** No extension of time in which to make the contributions will be granted to an Employer unless such extension is set forth in writing and expressly approved by the Board of Trustees.

5. **Employer is Liable.** If the Employer is deemed delinquent, the Employer shall be liable for any claim that may arise on account of such nonpayment.

AUDITS

1. **Audit of Payroll Records - Generally.** Each Employer shall promptly furnish the Trustees' authorized auditor, upon reasonable notice thereof, all payroll records, as more specifically described herein, relating to present and former employees, including any

relevant information that may be required in connection with the administration of the Fund, but for no other purpose. The Trustees' Auditor may examine such payroll records whenever such examination is deemed necessary by the Trustees in connection with the proper administration of the Fund.

2. **Audit Procedures.** With respect to examination of the Employer's books and records, the Trustees' Auditor will follow the audit procedure outlined below:

   a. **Random Audits.** Random audits will be performed, with approximately one third of all Employers being audited each year.

   b. **Mandatory Audits.** Mandatory audits will be performed of each Employer which:

      i) is going out of business or which is no longer required to make contributions to the Fund (no longer has any employees or no longer is signatory to the working agreement),

      ii) is "habitually delinquent" (as defined above), or

      iii) consistently reports for any one employee only the minimum number of hours necessary to maintain health and welfare benefits.

   c. **Records Examined.** The Trustees' Auditor will examine records for the prior two-year period and (i) compare the Employer's remittance report forms as filed with the Fund to the information shown in the participant's earnings records and (ii) compare hours worked and earnings records with the Employer's remittance report forms to evaluate whether the employees have been properly included or excluded from the reports and whether the number of hours of the included employees has been properly reported.

   d. **Notification of Audit Results.** The Trustees' Auditor shall notify the Employer of the results of the audit by mailing by first class mail, postage prepaid, a letter in the form attached as Exhibit B, to a specific representative of the Employer at the Employer's last address as shown on the most recent remittance report form filed with the Fund. When such results indicate the Employer owes contributions to the Fund, the Employer will be requested in such letter to either contest such results or pay the amount due within ten days from the date of the letter. All contributions due and owing as a result of an audit are delinquent contributions subject to interest and liquidated damages (see above).

   e. **Referral to Fund Counsel.** If full payment is not received within fourteen days from the date of the Auditor's letter, or arrangements for payment satisfactory to the Trustees have not been made, the Trustees will assume the Employer does not intend to honor its obligations and the matter will be referred to Fund Counsel for remedial action.

LEGAL ACTION

1. **Commencement of Legal Action.** Once a referral of a delinquency has been made to Fund Counsel pursuant to the procedures set forth above, Fund Counsel shall send a demand letter informing the Employer that if payment is not received within ten days of the date of the letter, an action may be filed in the Court of proper jurisdiction to collect any or all of the following:

   a. The unpaid contributions;

   b. The interest on the unpaid contributions;

   c. An amount equal to the greater of:

      i) Interest on the unpaid contributions, or

      ii) Liquidated damages provided for under the Plan in an amount not in excess of fifteen (15%) (or such higher percentage as may be permitted under federal or state law of the amount determined to be delinquent);

   d. Reasonable attorneys' fees and costs of the action;

   e. Such other legal or equitable relief as a Court of proper jurisdiction deems appropriate.

   If the Employer fails to respond to the demand letter by the deadline specified therein, Fund Counsel shall proceed to file an action in the Court of proper jurisdiction, to collect the damages and seek the relief set forth above.

2. **Settlements.** Any decision to accept less than the full amount of contributions, interest and/or liquidated damages due from the Employer, or any decision not to pursue litigation or to discontinue litigation, shall be made by the Trustees on the advice of Fund Counsel. The Trustees will enter into a less than whole settlement or will not institute or withdraw pending litigation if the Trustees determine that doing so is in the best interest of the Fund.

   Where the Trustees, upon Fund Counsel's advice, agree to accept less than the entire amount of delinquent contributions due from the Employer, the following conditions must be met:

   a. **Diligent and Systematic Efforts to Collect.** Before entering into an agreement, the Fund has made reasonable, diligent and systematic efforts to collect the entire amount of such contribution, or has made the determination that such efforts to collect the entire amount of such contribution would not be in the best interest of the Fund, due to the cost of such efforts, and / or the likelihood of success.

b. **In Writing.** The terms are set forth in writing and are reasonably based on the likelihood of collecting the delinquent contributions or the expenses that would be incurred in further attempting to collect the delinquent contributions.

Where there is a determination, upon Fund Counsel's advice, that a delinquency due from an Employer should be considered uncollectible, in whole or in part, and to terminate efforts to collect such contribution, the conditions set forth immediately above shall apply.

3. **Committee of Trustees.** For the purpose of negotiating settlements, since time may be of the essence, a committee appointed by the Board of Trustees, consisting of one Employer Trustee and one Union Trustee, shall act on behalf of the Board of Trustees. All actions of the committee shall have the same force and effect as actions of the Board of Trustees. The committee shall report its actions at the subsequent meeting of the Board of Trustees which actions shall then be reported in the minutes of such meeting.

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