

UPSTATE NEW YORK ENGINEERS PENSION, HEALTH,
S.U.B. AND TRAINING FUNDS

AMENDED COLLECTIONS POLICY

WHEREAS, the Board of Trustees of the Upstate New York Engineers Pension Fund, the Board of Trustees of the Upstate New York Engineers Health Fund, the Board of Trustees of the Upstate New York Engineers S.U.B. Fund and the Board of Trustees of the Upstate New York Engineers Training Fund (hereinafter referred to as the "Trustees") have a duty under the applicable provisions of the Employee Retirement Income Security Act of 1974, as amended (hereinafter referred to as "ERISA") to make reasonable efforts to collect Employer contributions, including interest and liquidated damages thereon, owed to the Upstate New York Engineers Pension Fund, the Upstate New York Engineers Health Fund, the Upstate New York Engineers S.U.B. Fund, and the Upstate New York Engineers Training Fund (hereinafter jointly referred to as "Funds"); and

WHEREAS, pursuant to participation agreements between certain Employers and the Funds and various collective bargaining agreements, project labor agreements, and project agreements between certain employers or their representatives (hereinafter referred to as "Employers"), and International Union of Operating Engineers Local Union Nos. 17 and 463, and Upstate New York Operating Engineers Local 158 (Districts 106, 545 and 832) (hereinafter referred to as the "Unions"), Employers are required to make prompt payments of the contributions owed to the Funds and are bound by the Restated Agreements and Declarations of Trust of the Funds (hereinafter referred to as the "Trust Agreements"); and

WHEREAS, Article IV of the Funds' Trust Agreements empowers the Trustees to demand, collect and receive Employer payments and all other money and property to which the Funds may be entitled,

and to take such steps including the institution and prosecution of, or the intervention in any proceeding at law, or in equity, or in bankruptcy, as may be necessary or desirable, in their sole discretion, to effectuate the collection of such Employer contributions; and

WHEREAS, Article V, Section 9, of the Funds' Trust Agreements authorize the Trustees of the Funds to promulgate any and all such rules and regulations as they deem necessary to facilitate the administration of the Funds, including such rules and regulations as are required to govern the process for the collection of Employer payments pursuant to Article IV; and

WHEREAS, Section 515 of ERISA requires every Employer who is obligated to make contributions to the Funds under the terms of any collective bargaining agreement to make such contributions as are required in that agreement; and

WHEREAS, in keeping with the relevant provisions of the Trust Agreements, it is deemed desirable by the Trustees to formulate a written policy to be applied uniformly to the collection of Employer contributions, containing certain terms and conditions governing the payment of Employer contributions to the Funds;

NOW, THEREFORE, it is resolved that the Trustees hereby adopt a Collections Policy as follows:

Section 1. Payment of Contributions; Late Payments.

(a) All remittance reports and all contribution payments to the Funds must be received on or before the fifteenth (15th) day of the month following the month during which the hours, for which contributions are required, are worked by the employees.

(b) If no report or payment has been received by the Funds on or before the deadline set forth in Section 1(a), the Funds will pursue whatever avenues they deem appropriate to collect the delinquencies, including, but not limited to, notifying such Employer that the contributions are late.

(c) If no payment has been received by the Funds on or before the thirtieth (30th) day of

the month following the month during which hours are worked and for which contributions are required, the Employer will be assessed interest on the amount of delinquent contributions at the rate of twelve percent (12%) per annum until the date payment is received by the Funds, calculated from the date the contributions were due as described in Section 1(a), plus liquidated damages equal to twenty percent (20%) of the delinquent fringe benefit contributions, plus any auditing fees, attorneys' and paralegal fees, and all costs.

(d) If no payment has been received by the Funds by the thirtieth (30th) day of the month as set forth above, the Employer's delinquent account may be referred to Funds' Counsel and collection proceedings may be commenced by Funds' Counsel seeking the delinquent contributions plus the interest, liquidated damages, audit fees, attorneys' and paralegal fees and costs.

(e) If Fund Counsel performs services, which may include, but are not limited to, the commencement of legal or agency proceedings against the Employer, to recover the amounts owed to the Funds pursuant to this section, the Employer is obligated to reimburse the Funds for all attorneys' fees and paralegals' fees, auditing fees, and all costs incurred by the Funds in attempting to collect the Funds' monies.

(f) In the event the Funds do not commence a lawsuit or other proceedings to collect delinquent fringe benefit contributions, in the event a lawsuit or other proceedings is settled prior to a judgment or resolution being obtained by the Funds, or in the event the delinquent contributions are paid either prior to commencement of the lawsuit or proceedings or prior to judgment or other resolution, the Funds are still entitled to collect, and the delinquent Employer is still obligated to pay, the interest, liquidated damages, costs, attorneys' and paralegal fees set forth in this Policy.

(g) Except as may be otherwise required by law, payments by an Employer will be allocated to its oldest debt unless the Trustees, in accordance with their fiduciary obligations to act in the sole

interest of the Funds and the participants and beneficiaries, determine, in their sole discretion, to allocate and disburse the payments in a different fashion. Such allocation and disbursement shall be binding upon the Employer; the Employer's request that the Funds allocate and disburse payments in a particular manner and/or a different manner than chosen by the Funds shall be of no force and effect.

Section 2. Audit of Payroll and Related Records.

(a) Article IV of the Funds' Trust Agreements concerning "Production of Records" is incorporated herein. The Trustees may at any time examine and copy such books, records, papers, or reports of the Employer, including, but not limited to, payroll records, time cards, general ledgers, cash disbursements journal, hours reports, names and social security numbers of all employees (union and non-union employees), as they deem necessary to permit them to determine whether the Employer is making full and proper reports and payments to the Funds. Such examination will occur whenever such examination is deemed necessary or advisable by the Trustees and, except as indicated hereinafter, at no charge to the Employer. If the Trustees determine, in their sole discretion, that the Employer has, among other things, failed to cooperate with the Funds and/or the Funds' Auditor, that the Employer failed to report to the Funds the identity of all employees performing bargaining unit work, that the Employer underreported to the Funds the number of hours worked by employees, and/or that the Employer's conduct required Funds' Counsel to perform services, then the Employer will reimburse the Funds for all auditing charges for examining the Employer's books.

(b) If it is necessary for the Funds' Counsel to perform services, including the commencement of a lawsuit or other proceedings, to obtain the audit and to compel the Employer's production of its records, the Employer will be liable for all auditing fees, attorneys' and paralegal fees, court costs, disbursements and expenses incurred by the Funds in enforcing the Funds' right to audit and/or examine the Employer's books, regardless of whether the Employer is delinquent in payment of

contributions or in violation of any of its other obligations under the rules, regulations and/or Trust Agreements of the Funds.

(c) In the event the Employer does not maintain or otherwise does not have in its possession records of the number of hours worked by each Employee, the Employer agrees that in order to determine the number of hours for which contributions are required to be made to the Fund, the Employee's gross wages shall be divided by the applicable hourly wage rate set forth in the collective bargaining agreement for the Employee's job classification, which classification shall be determined by the Union and/or the Trustees.

(d) Employers are obligated to maintain complete and accurate records of the number of hours of bargaining unit work performed on a monthly basis by each and every individual, including, but not limited to, corporate officers, directors, members and shareholders, and spouses, children, parents and/or siblings of corporate officers, members, directors, and/or shareholders. If the Employer does not maintain or otherwise have in its possession such complete and accurate records and the Funds otherwise have evidence that an individual has performed some bargaining unit work for the Employer, the Employer agrees that the Funds are entitled to presume that the individual performed a minimum of forty (40) hours per week of bargaining unit work for fifty-two (52) weeks during the calendar year. The Employer further agrees that in these circumstances the Funds shall be entitled to recover contributions at the Class A or Class 1 Mechanic rate set forth in the collective bargaining agreement governing the Employer's work for a total of two thousand eighty (2,080) hours for the calendar year. The two thousand eighty (2,080) hours per year shall be paid at the rate of one hundred seventy-three (173) hours per month for eleven (11) months and one hundred seventy-seven (177) hours for one (1) month. Unless the Trustees determine, in their sole discretion, that the Employer has rebutted the presumption in this section, contributions must be paid by the Employer

pursuant to this Section regardless of the amount of bargaining unit work actually performed by the individual, regardless of the amount of compensation paid, if any, to the individual during the month or calendar year, and regardless of whether the individual is listed as an employee on the Employer's records.

(e) In the event the Employer does not maintain or otherwise does not have in its possession records explaining, to the satisfaction of the Funds' Auditor, the payment of monies to an Employee, or the Employee's spouse, children, parents and/or siblings, the Funds are entitled to presume that the individual receiving the monies performed bargaining unit work and that the monies represent compensation for bargaining unit work performed by the individual. The Funds are entitled to recover contributions for such individual at the Class A or Class 1 Mechanic rate set forth in the collective bargaining agreement governing the Employer's work, with the hours of bargaining unit work calculated by dividing the Employer's payments to the individual by the Class A or Class 1 Mechanic rate set forth in the collective bargaining agreement governing the Employer's work. Unless the Trustees determine, in their sole discretion, that the Employer has rebutted the presumption in this section, contributions must be paid by the Employer pursuant to this Section regardless of the amount of bargaining unit work actually performed by the individual, regardless of the amount of compensation paid, if any, to the individual during the month or calendar year, and regardless of whether the individual is listed as an employee on the Employer's records.

(f) The rate of interest set forth in Section 1(c) is applicable to delinquencies uncovered by a payroll audit. In the case of a payroll audit conducted during the course of the Funds' routine auditing cycle and prior to referral of the matter to Funds' Counsel, the Trustees may reduce the interest rate to seven and one-half percent (7½ %) per annum if the Employer promptly pays the contribution delinquency upon being notified of the audit results and the Trustees determine in their sole and

absolute discretion that: (1) the Employer cooperated with the payroll auditor; (2) the delinquency consists of minor discrepancies or shortages of hours for employees previously reported by the Employer to the Funds; (3) the discrepancies or shortages are due to inadvertence or oversight; (4) the delinquency is small; (5) the Employer is signatory to the collective bargaining agreement; and (6) the Employer has not previously incurred a delinquency with the Funds.

Section 3. Effect of This Collections Policy.

This Collections Policy constitutes a rule of the Funds. To the extent this Collections Policy conflicts with the terms and provisions of the Funds' Trust Agreements, the collective bargaining agreement, the project agreement, the project labor agreement, or the participation agreement, the terms and provisions of this Collections Policy will govern.

Failure by the Trustees to adhere to any provision provided herein shall not abrogate, alter or amend any other provision, duty or requirement of this Policy and shall not constitute a waiver by the Trustees and shall not relieve the contributing Employer of any obligation under ERISA.

Section 4. Contributions are Trust Assets.

Title to all the monies paid into and/or due and owing to the Pension Fund shall be vested in and remain exclusively in the Trustees of that Fund; outstanding and withheld contributions constitute Plan assets.

All monies received by an Employer from any source for work performed by Employees represented by the IUOE Local Union Nos. 17, 158, and/or 463, ["Unions"] shall be held in trust by the Employer. The Employer shall utilize the money to first pay wages owed to the Employees represented by the Unions and fringe benefit contributions owed to the Funds on behalf of the Employees. If the Employer owes any wages to the Employees represented by the Unions and/or owes any monies to the Funds on behalf of the Employees' labor, it may not utilize the monies for its own obligations or those

of its officers, shareholders and directors.

Section 5. Effect of this Trust Agreement. To the extent this Collections Policy conflicts with the terms and provisions of the Funds' Trust Agreements or the Collective Bargaining Agreement, the terms and provisions of this Collections Policy shall govern.

IN WITNESS WHEREOF, the Board of Trustees of the Upstate New York Engineers Pension Fund, the Board of Trustees of the Upstate New York Engineers Health Fund, the Board of Trustees of the Upstate New York Engineers S.U.B. Fund and the Board of Trustees of the Upstate New York Engineers Training Fund, have executed this Collections Policy, effective the 15th day of January, 2016.

UPSTATE NEW YORK ENGINEERS PENSION FUND

DATED: 12/17/15

[Signature]

UNION TRUSTEE

DATED: 12/17/15

[Signature]

EMPLOYER TRUSTEE

UPSTATE NEW YORK ENGINEERS HEALTH FUND

DATED: 12/17/15

[Signature]

UNION TRUSTEE

DATED: 12/17/15

[Signature]

EMPLOYER TRUSTEE

UPSTATE NEW YORK ENGINEERS S.U.B. FUND

DATED: 12/17/15

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UNION TRUSTEE

DATED: 12/17/15

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EMPLOYER TRUSTEE

UPSTATE NEW YORK ENGINEERS TRAINING FUND

DATED: 12/17/15

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UNION TRUSTEE

DATED: 12/17/15

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EMPLOYER TRUSTEE