

**IRON WORKERS DISTRICT COUNCIL OF WESTERN NEW
YORK AND VICINITY PENSION AND WELFARE FUNDS**

AMENDED RESTATED COLLECTIONS POLICY

WHEREAS, the Board of Trustees of the Iron Workers District Council of Western New York and Vicinity Pension Fund and the Board of Trustees of the Iron Workers District Council of Western New York and Vicinity Welfare 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 all reasonable efforts to collect all Employer contributions, including interest and liquidated damages thereon, owed to the Iron Workers District Council of Western New York and Vicinity Pension Fund and the Iron Workers District Council of Western New York and Vicinity Welfare Fund (hereinafter referred to as "Funds"); and

WHEREAS, pursuant to various collective bargaining agreements between certain employers or their representatives (hereinafter referred to as "Employers"), and International Association of Bridge, Structural, Ornamental, and Reinforcing Iron Workers Local Union Nos. 33, 9, 440, 6, and 12, or any local union affiliated with the International Association of Bridge, Structural or Ornamental Iron Workers, AFL-CIO (hereinafter referred to as the "Union"), 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 empower 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 of the Funds' Trust Agreements authorizes 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. Remittance Reports; Payment of Contributions; Late Payments.

(a) All reports and 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.

(b) If no report or payment has been received by the Funds on or before the (15th) day of the month following the month during which hours are worked and for which contributions are required, 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. A copy of such

notification is to be forwarded to the applicable Local Union Business Representative. If notification is sent, it will state that unless the contributions are received by the 30th of the month, interest, calculated at the rate of fourteen percent (14%) per annum from the 15th day of the month, will be due in addition to the delinquent contributions.

(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 fourteen percent (14%) per annum, calculated from the date the contributions were due as described in paragraph (a) until the date the Funds receive payment.

(d) If no payment has been received by the Funds within sixty (60) days of the due date set forth in paragraph 1(a), the Employer will be assessed liquidated damages in the amount of twenty percent (20%) of the delinquent contributions, auditing fees, attorneys' and paralegals' fees, and all costs in addition to interest computed pursuant to paragraph (c) above.

(e) If no payment has been received by the Funds within ninety (90) days of the due date set forth in paragraph 1(a), the Employer's delinquent account may be referred to Funds' Counsel to seek recovery of the delinquent contributions plus the interest, liquidated damages, audit fees, attorneys' and paralegals' fees and costs. If Fund Counsel performs legal 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 will reimburse the Funds for all attorneys' fees and paralegals' fees, auditing fees, and all costs incurred by the Funds in attempting to collect and in collecting 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) An Employer that ceases to perform work in a Union's territory is obligated to submit a final report to the Funds stating that it has no further work in the Union's territory.

(h) Except as may be otherwise required by law, the Trustees, in accordance with their fiduciary obligations to act in the sole interest of the Funds and the participants and beneficiaries, shall have the power and authority, in their sole discretion, to allocate and disburse payments remitted by an Employer and shall have the power and authority, in their sole discretion, to allocate and disburse payments to current obligations or past due obligations of the Employer. 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. Payment of Contributions; Late Payment (Weekly Method)

(a) If an Employer fails to remit its fringe benefit contribution payments on or before the thirtieth (30th) day of the month following the month during which the hours are worked [i.e., within fifteen (15) days of the date set forth in Section 1(a)] and if such a delinquency occurs three times in any consecutive six (6) month period, that Employer will thereafter, at the discretion of the Trustees, be required to make the payments on a weekly basis; all payments will be required no later than

seven (7) days following the end of the weekly payroll period during which the hours, for which contributions are required, are worked.

(b) If no payment has been received by the Funds on or before the seventh (7th) day following the end of the weekly payroll period during which hours are worked, and for which contributions are required, the Employer will be assessed the applicable interest, liquidated damages, attorneys' and paralegals' fees and costs as set forth in Section 1 of this Policy.

Section 3. Audit of Payroll Records.

(a) Article IV, Section 4, of the Funds' Trust Agreements are incorporated herein. The Trustees may at any time examine and copy such books, records, papers, or reports of any Employer, as they deem necessary, to permit them to determine whether the Employer is making full and proper reports and payments to the Funds. Such records include, but are not limited to, all payroll records (including, but not limited to, payroll journals, time cards, printouts, ledgers and any other form of payroll records) of all employees (including, union, non-union, bargaining unit and non-bargaining unit employees) and subcontractors, hours reports, payroll tax records submitted to Federal and State agencies (including, but not limited to, Forms 941 and W-2's), complete business income tax returns, cash disbursements journals, general ledgers, 1099's, and names and social security numbers of all employees (including, union, non-union, bargaining unit and non-bargaining unit employees).

Further, the Trustees may examine whatever records they deem necessary to permit them to allocate an Employer's contribution obligation to specific projects and to determine whether the Employer is complying with its obligations to remit payment for work performed on such project(s). The examination will cover the period of time that the Employer has been signatory to a collective bargaining agreement or other written agreement requiring contributions to the Funds.

(b) Such examination will occur whenever such examination is deemed necessary or advisable by the Trustees and, except as indicated below, at no charge to the Employer. If it is found by the Trustees, however, that the Employer has violated its obligations under the rules, regulations and/or Trust Agreements of the Funds including, but not limited to, its obligation to timely remit fringe benefit contributions to the Funds, then the Employer will reimburse the Funds for all auditing charges for examining the Employer's books, except where the Trustees determine, in their sole and absolute discretion, that such violation has been uncovered by the Funds during the course of their routine cyclical audit of the Employer, the Employer has not previously incurred a delinquency with the Funds, and the delinquency consists of minor shortages of hours for months and employees that the Employer had previously reported to the Funds.

(c) The Trustees may, by their representatives, conduct such examination at the Employer's place of business or they may require, in the case of an Employer with offices outside the Union's geographic jurisdiction, that the Employer produce said records for examination at the Funds' offices. If the Employer fails to comply with this requirement and the Trustees or their representatives are required to travel to the Employer's offices outside the Union's geographic jurisdiction, the Employer is liable for all travel expenses of the Trustees or their representatives, including, but not limited to, airfare, transportation, lodging, and meals. If it is necessary for Funds' Counsel to perform legal services to implement this requirement, the Employer is liable for all attorneys' and paralegal fees, costs and disbursements.

(d) If it is necessary for the Funds' Counsel to perform legal services, including the commencement of a lawsuit or other proceedings, to obtain the audit and to compel the Employer's production of its payroll records, then in that event, 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.

(e) 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 has 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-one (51) weeks during the calendar year. The Employer further agrees that in these circumstances the Funds shall be entitled to recover contributions at the Journeyman's rate set forth in the applicable collective bargaining agreement for a total of the two thousand forty (2,040) hours for the calendar year. The two thousand forty hours (2,040) per year shall be paid at the rate of one hundred seventy hours (170) per month for each and every month. 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) A formula may be utilized to calculate the delinquency owed by the Employer, as follows:

i. If the Employer fails to:

1. submit the required remittance reports within thirty (30) days after written demand by the Funds or their representatives;
2. respond to a request for an audit and schedule the audit within the thirty (30) days after written demand by the Funds or their representatives (the audit need not be conducted within such thirty (30) days);
3. allow the auditor to conduct the audit within sixty (60) days after written demand by the Funds or their representatives; or
4. produce all requested books and records for the audit within thirty (30) days after the scheduled date and commencement of the audit,

the Trustees, or their agents, may compute the contributions due for the audit period by: (1) identifying the month, during the twelve (12) consecutive calendar months prior to the audit period, having the largest number of hours reported and submitted by the Employer to the Funds [hereinafter "Base Month"]; (2) multiplying the hours in the Base Month by ten percent (10%) and adding that ten percent (10%) figure to the Base Month hours to arrive at the monthly unpaid hours [hereinafter "Base Month Unpaid Hours"]; (3) determining whether there was an audit disclosing unreported hours for the Base Month and, if so, taking

the amount of said unreported hours plus ten percent (10%) thereof and adding that figure to the Base Month Unpaid Hours; (4) multiplying the Base Month Unpaid Hours (plus any additional hours pursuant to no. (3)) by the number of months under audit to arrive at the total unpaid hours for the audit period [hereinafter "Total Unpaid Hours"]; (5) multiplying the Total Unpaid Hours by the journeyman contribution rate (determined by the geographic area of the Employer's place of business) for the audit period to arrive at the total unpaid contributions [hereinafter "Total Unpaid Contributions"] for the audit period; and (6) subtracting the amount remitted by the Employer to the Funds for the audit period from the Total Unpaid Contributions to arrive at the balance due [hereinafter "Balance Due"]. The Balance Due so computed shall be binding on the Employer and shall be deemed the amount due from the Employer for the purpose of any legal or administrative proceeding and shall be in addition to any monies set forth by the Employer on any remittance reports or payroll records which it subsequently provides to the Funds for the audit period.

ii. If the Employer submits remittance reports, but thereafter fails to:

1. respond to a request for an audit and schedule the audit within the thirty (30) days after written demand by the Funds or their representatives (the audit need not be conducted within such thirty (30) days);
2. allow the auditor to conduct the audit within sixty (60) days after written demand by the Funds or their

representatives; or

3. produce all requested books and records for the audit within thirty (30) days after the scheduled date and commencement of the audit,

the Trustees, or their agents, may compute the contributions due for any month by: (1) multiplying the number of hours listed on the remittance reports by fifty percent (50%) and adding that fifty percent (50%) figure to the hours listed on the remittance reports to arrive at the monthly unpaid hours; and (2) multiplying such number of hours by the current journeymen contribution rate for the geographic area of the Employer's place of business. The debt so computed shall be binding on the Employer and shall be deemed the amount due from the Employer for the purpose of any legal or administrative proceeding, and shall be in addition to any monies set forth by the Employer on any remittance reports or payroll records which it subsequently provides to the Funds for the audit period.

If the Funds implement a formula audit, the contributions must be paid by the Employer pursuant to this section regardless of the amount of bargaining unit work actually performed by the individuals, regardless of the amount of compensation paid, if any, to the individuals during the audit period, and regardless of whether the individuals are listed as employees on the Employer's records.

(g) If the Employer does not maintain or does not have in its possession records explaining, to the satisfaction of the Funds' Auditor, the payment of monies to an Employee, or to 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 journeyman contribution rate for the applicable work area, with the hours of bargaining unit work calculated by dividing the Employer's payments to the individual by the journeyman wage rate in the applicable work area. 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.

Section 4. Project by Project Remittance Reports.

The following Employers shall be required to file monthly remittance reports on a project by project basis, which reports must allocate the number of hours worked by employees to identifiable construction projects:

- i. Employers who have not been signatory to a collective bargaining agreement or written agreement requiring payment of contributions to the Funds for more than one (1) year or Employers who have not had one (1) year of covered employment requiring payment of contributions to the Funds.
- ii. Employers who have been delinquent or who have untimely remitted fringe benefit contributions to the Funds at least twice during any consecutive twelve (12) month period.

If Employers meeting the criteria set forth in Section 6(a)(i) can establish that they have had a one (1) year history of timely remitting contributions to another employee benefit plan either within or outside of the Iron Workers District Council's jurisdiction, they may be relieved of the

requirement to file project reports.

(a) Each project remittance report must be received by the Funds on or before the fifteenth (15th) day of the month following the month during which the hours, for which contributions are required, are worked and must contain the following information:

- i. Name and address of the construction project;
- ii. Name and address of the property owner;
- iii. Name and address of the general contractor;
- iv. Names and social security numbers of all employees performing work on the construction project; and
- v. Number of hours worked by the employees on the construction project.

The foregoing project report must be provided to the Funds for each and every construction project where the Employer's employees performed work during the month.

(c) The Funds will notify the Employer of its obligation to file remittance reports on a project by project basis pursuant to this Section. Once notified, the Employer will be obligated to file its next remittance report on a project by project basis. If an Employer who is required to file project reports fails to do so, the Board of Trustees, or any duly authorized representative of the Board, may immediately refer the matter to Funds' Counsel for institution of legal proceedings. If it is necessary for the Funds' Counsel to perform services, including commencement of a lawsuit, to compel an Employer to file project by project reports, the Employer shall be liable for all attorneys' and paralegal fees, court costs, disbursements and any other expenses incurred by the Funds in enforcing their right to the project remittance reports.

Section 5. Fiduciary Relationship.

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

All monies received by an Employer from any source for work performed by employees represented by the Union shall be held in trust by the Employer. The Employer shall disburse the monies only for the purpose of paying wages owed to the employees represented by the Union and fringe benefit contributions owed to the Funds on behalf of the employees' labor. If the Employer owes any wages to the employees represented by the Union and/or owes any monies to the Funds on behalf of the employees' labor, it may not utilize the monies received by it in connection with its employees' labor for its own obligations or those of its officers, shareholders or directors.

Section 6. 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 or the Collective Bargaining Agreement, the terms and provisions of this Collections Policy will govern.

IN WITNESS WHEREOF, the Board of Trustees of the Iron Workers District Council of Western New York and Vicinity Pension Fund and the Iron Workers District Council of Western New York and Vicinity Welfare Fund have executed this Collections Policy, effective the 1st day of November 2013

IRON WORKERS DISTRICT COUNCIL OF WESTERN NEW YORK AND VICINITY PENSION FUND

DATED: Oct. 17, 2013

George Rocco
UNION TRUSTEE

DATED: _____

R.L. Stephenson Jr
EMPLOYER TRUSTEE

IRON WORKERS DISTRICT COUNCIL OF WESTERN NEW YORK AND VICINITY WELFARE FUND

DATED: 10/17/13

Michael Altomare
UNION TRUSTEE

DATED: 10/17/13

R.L. Stephenson Jr
EMPLOYER TRUSTEE

**IRON WORKERS DISTRICT COUNCIL OF WESTERN NEW YORK AND
VICINITY PENSION AND WELFARE FUNDS**

**AMENDMENT
TO
AMENDED RESTATED COLLECTIONS POLICY**

Pursuant to Article V, Section 8, of the Amended and Restated Agreement and Declaration of Trust of the Iron Workers District Council of Western New York and Vicinity Pension Fund and the Amended and Restated Agreement and Declaration of Trust of the Iron Workers District Council of Western New York and Vicinity Welfare Fund, the Collections Policy of the Iron Workers District Council of Western New York and Vicinity Welfare and Pension Funds is hereby amended by adding a new Section 1 (i) to read as follows:

Section 1 (i).

The rate of interest set forth in Section 1(b) 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 suspend liquidated damages and reduce the interest rate to eleven percent (11%) 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 shortage 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.

THIS IS TO CERTIFY that the foregoing Amendment was adopted by the Board of Trustees of the Iron Workers District Council of Western New York and Vicinity Welfare and Pension Funds on the 30th day of July, ~~2014~~²⁰¹⁵, to be effective as of the 30th day of July, 2015.

**IRON WORKERS DISTRICT COUNCIL OF WESTERN NEW YORK
AND VICINITY WELFARE FUND**

DATED: April 9, 2015

Angie Dorr
UNION TRUSTEE

DATED: April 9, 2015

R. H. Stevenson II
EMPLOYER TRUSTEE

**IRON WORKERS DISTRICT COUNCIL OF WESTERN NEW
YORK AND VICINITY PENSION FUND**

DATED: April 9, 2015

Angie Dorr
UNION TRUSTEE

DATED: April 9, 2015

R. H. Stevenson II
EMPLOYER TRUSTEE

**IRON WORKERS DISTRICT COUNCIL OF WESTERN NEW YORK AND
VICINITY PENSION AND WELFARE FUNDS**

**AMENDMENT
TO
AMENDED RESTATED COLLECTIONS POLICY**

Pursuant to Article V, Section 8, of the Amended and Restated Agreement and Declaration of Trust of the Iron Workers District Council of Western New York and Vicinity Pension Fund and the Amended and Restated Agreement and Declaration of Trust of the Iron Workers District Council of Western New York and Vicinity Welfare Fund, the Collections Policy of the Iron Workers District Council of Western New York and Vicinity Welfare and Pension Funds is hereby amended by adding a new Section 1 (i) to read as follows:

Section 1 (i).

The rate of interest set forth in Section 1(b) 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 suspend liquidated damages and reduce the interest rate to eight percent (8%) 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 shortage 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 incurred a delinquency with the Funds during the audit cycle.

THIS IS TO CERTIFY that the foregoing Amendment was adopted by the Board of Trustees of the Iron Workers District Council of Western New York and Vicinity Welfare and Pension Funds on the 24th day of April, 2017, to be effective as of the 24th day of April, 2017.

IRON WORKERS DISTRICT COUNCIL OF WESTERN NEW YORK AND VICINITY WELFARE FUND

DATED: 5/2/18

Gary E. Roor
UNION TRUSTEE

DATED: 5/2/18

R.L. Stephenson B
EMPLOYER TRUSTEE

IRON WORKERS DISTRICT COUNCIL OF WESTERN NEW YORK AND VICINITY PENSION FUND

DATED: 5/2/18

Gary E. Roor
UNION TRUSTEE

DATED: 5/2/18

R.L. Stephenson B
EMPLOYER TRUSTEE

**IRON WORKERS DISTRICT COUNCIL OF WESTERN NEW YORK AND
VICINITY PENSION AND WELFARE FUNDS**

**AMENDMENT
TO
AMENDED RESTATED COLLECTIONS POLICY**

Pursuant to Article V, Section 8, of the Amended and Restated Agreement and Declaration of Trust of the Iron Workers District Council of Western New York and Vicinity Pension Fund and the Amended and Restated Agreement and Declaration of Trust of the Iron Workers District Council of Western New York and Vicinity Welfare Fund, the Collections Policy of the Iron Workers District Council of Western New York and Vicinity Welfare and Pension Funds is hereby amended by adding a new Section 3 (h) to read as follows:

Section 3 (h).

Employers are subject to audit whenever the Trustees determine, in their sole and absolute discretion, that it is necessary. Notwithstanding the foregoing, the Trustees will audit on a three (3) year cycle all Employers that work or have worked 2,000 hours or more during the calendar year.

THIS IS TO CERTIFY that the foregoing Amendment was adopted by the Board of Trustees of the Iron Workers District Council of Western New York and Vicinity Welfare and Pension Funds on the 8th day of May, 2019, to be effective as of the 1st day of January, 2019.

**IRON WORKERS DISTRICT COUNCIL OF WESTERN NEW
YORK AND VICINITY WELFARE FUND**

DATED: 5/16/19



UNION TRUSTEE

DATED: 5/16/19



EMPLOYER TRUSTEE

**IRON WORKERS DISTRICT COUNCIL OF WESTERN NEW
YORK AND VICINITY PENSION FUND**

DATED: _____



UNION TRUSTEE

DATED: _____



EMPLOYER TRUSTEE