

**INTERNATIONAL UNION OF OPERATING ENGINEERS
LOCAL 98 PENSION, ANNUITY, HEALTH & WELFARE AND TRAINING FUNDS,
AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS
LOCAL 98 AND EMPLOYERS COOPERATIVE TRUST**

RESTATED COLLECTIONS POLICY

The Board of Trustees of the International Union of Operating Engineers Local 98 Pension Fund, the Board of Trustees of the International Union of Operating Engineers Local 98 Health and Welfare Fund, the Board of Trustees of the International Union of Operating Engineers Local 98 Annuity Fund, the Board of Trustees of the International Union of Operating Engineers Local 98 Training Fund, and the Board of Trustees of the International Union of Operating Engineers Local 98 and Employers Cooperative Trust (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 International Union of Operating Engineers Local 98 Pension, Annuity, Health and Welfare, Training, and Employers Cooperative Trust Funds (hereinafter referred to as "Funds") (noting the Employers Cooperative Trust is not subject to ERISA); and

Pursuant to various collective bargaining agreements, project labor agreements or project agreements with Local Union 98 of the International Union of Operating Engineers (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

The Funds' Trust Agreements empower the Trustees to demand, collect and receive Employer payments and all other money and property to which the Trustees 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

Section 515 of ERISA requires every Employer who is obligated to make contributions to the Funds to make such contributions in accordance with the terms and conditions of the collectively bargained agreement or the terms and conditions of the International Union of Operating Engineers Local 98 Pension Plan, the International Union of Operating Engineers Local 98 Health and Welfare Plan, the International Union of Operating Engineers Local 98 Annuity Plan, the International Union of Operating Engineers Local 98 Training Plan, and International Union of Operating Engineers Local 98 and Employers Cooperative Trust (hereinafter referred to as the "Plans"); and

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;

It is resolved that the Trustees hereby adopt a Restated 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 twentieth (20th) day of the month following the month during which the hours, for which contributions are required, are worked by the employees.

(b) 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 one and one-half percent (1-1/2%) per month from the date the monies were due (the twentieth (20th) day of the month), liquidated damages of twenty percent (20%) of the delinquent contributions, and any auditing fees and costs.

(c) If no reports or payment have been received by the Funds on or before the ninetieth (90th) day of the month following the month during which the hours are worked and for which contributions are required, the Employer's delinquent account may be referred to Funds' Counsel for collection seeking the monies set forth in (b) above, plus any attorney's and paralegal fees and other costs.

(d) If the Funds' Counsel performs legal services, which may include (but are not limited to) the preparation for and/or 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 paralegal fees, court costs, disbursements, auditing fees and expenses incurred by the Funds in attempting to collect and in collecting the Funds' monies.

(e) In the event the Funds do not commence a lawsuit or other proceedings to obtain the reports or 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, auditing fees, attorneys' fees, and costs and disbursements set forth in this Policy.

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, or their designated representatives, may at any time examine and copy any books, records, papers, or reports of the Employer concerning its work and all of its employees (regardless of whether they are members of the Union and regardless of their position with the Employer). If it is found by the Trustees, however, that the

Employer has violated its obligations under the rules, and regulations and/or Trust Agreement of the Funds including, but not limited to, its obligations 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 when the Trustees determine that such violation has been uncovered by the Funds during the course of a routine cyclical audit of the Employer and the contribution delinquency is less than \$5,000.

(b) Notwithstanding the foregoing, the Employer will be obligated to reimburse the Funds for all auditing charges for examining its books, even charges incurred in the case of a routine cyclical audit and a contribution delinquency of less than \$5,000, if the Trustees determine, in their sole discretion, that the Employer 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 regularly and systematically underreported to the Funds the number of hours worked by employees, that the Employer's conduct required Funds' Counsel to perform services, and/or that the Employer withheld information from the Funds and/or their auditor.

(c) If it is necessary for the Funds' Counsel to perform legal services for any reason, 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 shall 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.

(d) All books, records, papers, or reports of the Employer are subject to review and

copying by the Trustees, or their designated individuals, including, but not limited to, payroll records, certified payroll records filed on public projects, time cards, time sheets, individual earning records, payroll and corporate tax returns (including, but not limited to, W-2s, W-3s, WR-1, 1700-H1, 940s, 941s, WRS-2s, IA-5s, 1099s), general ledgers, cash disbursements journals, cancelled checks, hours reports, job cost records, documents showing the names and social security numbers of all employees (union and non-union employees), their job titles, job duties, job description, rates of pay, job locations, hours worked, wages paid, and nature of their work, documents showing the amount of money remitted by the Employer to the Funds, documents showing the names and addresses of the property owners or general contractors that hired the Employer, and such other records as the Trustees deem necessary to permit them to determine whether the Employer is making full and proper reports and payments to the Funds.

Prior to providing the documents listed in the preceding paragraph, the Employer may request a Confidentiality Agreement to be entered into between the Employer and the Funds' auditor. In the event there is a dispute as to the form and content of the proposed Confidentiality Agreement, the Trustees are entitled to pursue its claim for records and documents required by this Restated Collections Policy in the appropriate Court, pursuant to the terms of ERISA and the Funds applicable Trust Agreements and this Restated Collections Policy.

(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 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 up to forty (40) hours per week of bargaining unit work for up to fifty (50) weeks during the calendar year. The Employer further agrees that in these circumstances the Funds shall be entitled to recover contributions at the journeymen rate set forth in the collective bargaining agreement governing the Employer's work and the applicable work area for a total of the two thousand forty (2,040) hours for the calendar year. The two thousand forty hours (2,040) per year can be paid at the rate of one hundred seventy (170) hours per month for each and every month. Contributions can 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. The Employer may rebutt the above-referenced presumption if the Employer can prove through other evidence that the individual was either: 1) the employee of another Employer; or 2) the individual did not perform bargaining unit work.

Section 3. Effect of This Restated Collections Policy.

This Restated Collections Policy constitutes a rule of the Funds. To the extent this Restated Collections Policy conflicts with the terms and provisions of the Funds' Trust Agreements or the Collective Bargaining Agreement, the terms and provisions of this Restated Collections Policy shall 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 monies paid into and/or due and owing to the Funds will 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 will be held in trust by the Employer. The Employer will disburse the monies first 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.

IN WITNESS WHEREOF, the Board of Trustees of the International Union of Operating Engineers Local 98 Pension Fund, the Board of Trustees of the International Union of Operating Engineers Local 98 Health and Welfare Fund, the Board of Trustees of the International Union of Operating Engineers Local 98 Annuity Fund, the Board of Trustees of the International Union of Operating Engineers Local 98 Training Fund, and the Board of Trustees of the International Union of Operating Engineers Local 98 and Employers Cooperative Trust Fund have executed this Restated Collections Policy, effective the 23rd day of March, 2021.

DATED: 3/23/22

INTERNATIONAL UNION OF OPERATING
ENGINEERS LOCAL 98 PENSION FUND



UNION TRUSTEE

DATED: 3/23/22

MITHORE
EMPLOYER TRUSTEE

INTERNATIONAL UNION OF OPERATING
ENGINEERS LOCAL 98 ANNUITY FUND

DATED: 3/23/22

William Jay
UNION TRUSTEE

DATED: 3/23/22

MITHORE
EMPLOYER TRUSTEE

INTERNATIONAL UNION OF OPERATING
ENGINEERS LOCAL 98 HEALTH AND
WELFARE FUND

DATED: 3/23/22

William Jay
UNION TRUSTEE

DATED: 3/23/22

MITHORE
EMPLOYER TRUSTEE

LOCAL 98 ENGINEERS JOINT TRAINING,
RETRAINING, SKILL IMPROVEMENT, SAFETY
EDUCATION, APPRENTICESHIP AND TRAINING
FUND

DATED: 3/23/22

William Jay
UNION TRUSTEE

DATED: 3/23/22

MITHORE
EMPLOYER TRUSTEE

INTERNATIONAL UNION OF OPERATING ENGINEERS
LOCAL 98 AND EMPLOYERS COOPERATIVE TRUST

DATED: 3/23/22

William Jay
UNION TRUSTEE

DATED: 3/23/22

MITHORE
EMPLOYER TRUSTEE