RESTATED

COLLECTION AND AUDIT PROCEDURES

IUOE LOCAL 487 TRUST FUNDS

Effective: ________________

Adopted: ________________

I. <u>Collection Schedule – "Routine" Delinquencies (by example)</u>

A. Administrative Manager:

Reports, contributions, withholdings and check offs shall be due by the 15th (the "due date") of the month following the month in which the hours are worked (pursuant to the collective bargaining agreement). Making allowances for mailing time, contributions will be considered filed timely if postmarked on of before the 20th day of the month. When contributions are delinquent, the Administrative Manager shall use the following procedure:

1. Within ten (10) days after the due date, the administrative manager shall send a letter warning that contributions are late and that the 10% service fee should be added. (See attached letter #1.)

2. Within twenty (20) days after the due date, the Administrative Manager shall send a second letter demanding payment of the delinquency, service fee, liquidated damages in accordance with Section IV below, and any additional interest due. (See attached letter #2.)

3. If no indication of payment is forthcoming, the Collection Sub-Committee will be notified. The Sub-Committee can take any of the following steps:

    a. Recommend to the Union that the workers be referred back to the Hall;
    b. Refer to counsel to institute legal action;
        i. The Sub-committee shall refer the matter to legal counsel by way of example, but not limited to, when:
            1) The employer is three months delinquent on submitting reports and contributions to the trust fund;
            2) The employer refuses to respond to an audit by making payment or disputing the matter within 30 days;
            3) Trust fund employees and employers have reached an impasse in a audit dispute and no further progress is reasonable expected.

c. File a lien on equipment; or
d. Tak other actions such as contacting the general contractor.

4. The Administrative Manager shall continue to take the following actions:
   a. Bill the 10% service fee when reports are postmarked after the 20th of the month;
   b. Keep separate lists of delinquent reports, shortages and service charges, liquidated damages and any interest rate due; and
   c. Make appropriate arrangements to pick up checks as needed.

5. The Administrative Manager shall The Administrative Manager shall appropriately allocate contributions equal to or in excess of one (1) month of required contribution. Contributions shall be allocated in accordance with the accompanying reporting forms. Costs and fees shall be credited as recovery of expenses.

B. Fund Counsel:

1. Once the matter has been referred to Fund Counsel, the Administrative Manager shall provide to Fund Counsel all reporting forms and the employer's signed collective bargaining agreement.
2. Unless circumstances warrant otherwise, within 10 days of receipt of referral Fund Counsels' demand letter shall be sent.
3. Ten (10) days after sending the demand letter, if the total amount exceeds $2,000.00 and no positive response has been received from the employer, Fund Counsel shall seek authority to file suit from collection sub-committee.

II. <u>Shop Audits</u>

A. Random Audits:

1. All participating employers will be subject to a random audit. The audit will be conducted in accordance with generally accepted audit procedures by the fund auditor.
2. The Fund will conduct no greater than five (5) random audits per year.
3. Each participating employer contributing over $200,000 annually, shall be audited at least once during a five-year period. The remaining employers shall be audited on the basis of two per year. The employers are to be selected on a random basis. The employer shall be notified of the scope of the audit in writing.
4. The initial audit shall be limited to the two years prior to the date the employer is notified of the audit. Employers who are found to have delinquencies will be subject to a more extensive audit following notification by the Trustees, as provided for in the IUOE Local 487 Collective Bargaining Agreement.

B. Small Employer Audit Procedures:

The Fund Auditor may use procedures for employers who employ 3 or fewer employees covered by the collective bargaining agreement. In those cases, the following procedures shall apply:

1. Notify the employer (see attached Letter #3), and obtain from employer the following:
    a. Copies of Forms UCT-6, Florida Unemployment Compensation Reports for the 8 quarters covered by the audit period.
    b. Payroll records, printouts, copies of time cards or other documentation which details the hours for each covered employee for the period during the audit period.
    c. Copies of the employer reports to the union for the period during the audit period.
    d. A signed affidavit from the employer stating that no other employees should have been covered during the audit period.
    e. A completed questionnaire regarding how payroll is prepared, how the union reports are prepared, etc.
    f. Provide a list of employees and their job descriptions or note the job descriptions on forms UCT-6.

2. Review the records received from the employer and reconcile the amounts per the union reports to the detail payroll records for one month per quarter for the audit period.
3. If no errors exist, pass on further testing and accept reports as accurate.
4. If errors exist, test all months in the audit period in the field. Employer will be advised of the increase in the scope of the audit.
5. Reconcile UCT-6 reports to the payroll detail reports.
6. Review the UCT-6 reports and scan to see if there are other possible covered employees.
7. Schedule any differences and send to the employer for comments, a deadline of two weeks will be given for responses.
8. Complete audit file and issue report.

C. Audits Based on Cause:

1. In addition to random audits, the trustees may direct an audit using generally accepted audit procedures at any time for reasons including, but not limited to, irregular payment or non-payment of contributions, suspected underreporting or failure to submit reports.
2. Any participating employer will be subject to a mandatory audit if that employer becomes sixty (60) days delinquent in the payment of contributions or submission of reporting forms.
3. Upon cancellation of a surety bond.
4. When a collective bargaining agreement is terminated.

D. Audits of Contractors with Project Agreements:

Contractors with Project Agreements shall be audited using generally accepted audit procedures within three months of the first date that covered employees perform work on that project. The three-month audit shall be in accordance with the self-audit procedures described in subsection B above **or as may be modified by the auditor based on circumstances of the project.** Upon conclusion of the project, a final audit shall be conducted in accordance with procedures as deemed appropriate by the Fund Auditor.

E. Collection After Audit:

1. If the audit shows delinquencies, then Fund Counsel shall send a letter demanding payment or written objections within seven (7) days of receipt of the letter. Payment may include the cost of collection.
2. The cost of mandatory audits performed due to a delinquency of at least sixty (60) days will be charged to the employer regardless of whether a delinquency is found.
3. If the audit shows delinquencies of less than $1,000 or 5% of the average monthly required contribution over the period of the audit (whichever is greater), and the delinquent amount is remitted within thirty (30) days of demand, the employer will not be required to pay costs of accountants' fees in connection with the audit that are provided for in the collective bargaining agreement and/or Agreements and Declaration of Trusts.
4. If the employer does not remit payment in full of the delinquent contributions within 30 days of demand, additional attorneys' fees and accountants' fees will be sought along with the delinquent contributions and other costs.
5. If there is no favorable response from the employer within seven (7) days of the demand, the matter shall be referred to the Board of Trustees.
6. If the matter is referred to Fund Counsel, she shall notify the employer that suit will be brought unless payment is received. Fund Counsel may grant a reasonable extension for valid reasons. Such extension shall be communicated to the trustees in writing immediately.
7. If payment is not received and if no written objections are made, then the Funds' attorney shall take appropriate legal action. If the employer shall make written objections which raise a dispute as to the amount owing, then the matter shall be submitted to the trustees for decision.
8. At all times, the Board of Trustees reserve the right to settle any delinquency.
9. Based upon the advice of Legal Counsel, the Board of Trustees is empowered to authorize resolving a delinquency by accepting less than the full amount of principal due from the employer if the Board concludes that it is likely that the Fund will recover a smaller net sum by pursuing collection efforts further.
10. Settlement consideration guideline factors include by way of example, but are not limited to:
    a. Ability to collect the judgment;
    b. Risk of the employer filing for bankruptcy, entering into an assignment for the benefit of creditors or ceasing operations;

c. Mitigating and aggravating facts and circumstances of each case;
d. Cost of continued litigation;
e. Time needed to continue litigation and effect of the delay on participants and the plan;

11. Any settlement must be me memorialized in writing.
12. In the event that any delinquency represents an immediate threat to the interest of plan participants, the Plan reserves the right to institute legal action at any time after the delinquency is discovered, except when prohibited by the Collective Bargaining Agreement or Trust Agreement.

III. <u>General</u>

1. The Board of Trustees reserves the right to deviate from these written procedures where unique facts or circumstances warrant.
2. In the event that specific language of the collective bargaining agreement (CBA) directly conflicts with a specific provision in these procedures, then the provision of the CBA shall apply.

IV. <u>Service Fee, Liquidated Damages, and Interest</u>

1. If contributions and report forms are not in the Fund Office on or before the due date the employer shall be delinquent, and the following shall apply:
   a. All contributions required to be made on behalf of employees shall become immediately due and payable for all hours worked as of the date of the delinquency, and shall remain continuously due and payable until the default is cured, and all costs of collection are paid by the delinquent employer, including interest, reasonable attorney fees, and liquidated damages, all as permitted by the Trust Agreement and as set forth below:
      i. Interest: Delinquent contributions shall bear interest at the judgment rate of interest per Title VI, Chapter 55.03, Florida Statutes, established as of the effective date of the delinquency; from the due date (15th of the month) until they are paid.
      ii. Attorney's fees: those fees actually incurred.
      iii. Liquidated damages: the greater of the interest due or 20% of the due and unpaid contributions.
      iv. Costs: all miscellaneous costs incurred by the Trustees in connection with and directly related to the obtaining of report forms and contributions, including, by way of example, and not limitation, postage, service fees for service of process, court costs, witness fees, subpoena fees, sheriff's fees, etc. audit fees as described herein, and expert witness fees and expenses that may incurred in any delinquency collection action.

V. Standard for Waiver of Service Fees, Liquidated Damages, and Interest

1. Waivers are not granted automatically. Employers must show they qualify and are eligible for the waiver.
2. The Employer must be current in its contribution payments and must have timely made all other contribution payments within the last twelve (12) months.
3. Waivers may only be granted once in a three (3) year rolling period upon request.
4. Waivers can only be granted for a two (2) month consecutive period within the three (3) year period.
5. All other fees remain due and owing and must be paid in full prior to the waiver of the fees.
6. Current economic conditions will be considered.

VI. Surety Bond

1. In the event of any delinquency for more than 90 days after the due date or an amount greater than $50,000.00, the employer shall secure a Surety Bond executed by a qualified Surety company in an amount to ensure ful1 compliance by the Employer with the collective bargaining agreement to guarantee future benefit payments.
2. Any signatory employer required to post a bond shall do so in favor of the Trustees of the fund and the bond shall guarantee all fringe benefits and costs of collection, including but not limited to incurred audit fees and charges, court costs, delinquency liquidated damages, interest, and attorney fees.

VII. NSF Payments

Any signatory employer's check returned for insufficient funds will be assessed a service fee, depending on the amount of the check, of the greater of $25.00 or up to 5% of the face amount on the check pursuant to Florida law, as well as any additional lawful remedies, where applicable.

VIII. Withdrawal Liability (Pension Fund)

1. The Board of Trustees will implement internal controls that will assess withdrawal liability for any fund employer seeking to withdraw to help fund the plan's unfunded vested benefits. The withdrawal liability process involves:
    a. Determining whether the employer has withdrawn or is seeking to withdraw,
    b. Calculating the employer's share of unfunded vested benefits,
    c. Informing the employer of its liability and demanding payment, and
    d. Collecting the liability.

Example: LETTER #1

____

[DATE]

[Company Name]
[Address 1]
[Address 2]
[City, State, Zip Code]

[Employer Code]
Re: Delinquent Contributions and 10% Service Fee

Dear [_____________]:

Our records indicate that your contribution is delinquent for the month (or period) of _________ . The Collective Bargaining Agreement provides for a 10% service fee payable for each month the contribution is delinquent. Reports and contributions are due by the 15th of the month following the month in which the hours were worked and are delinquent after the date.

Please remit the above requested report(s) and contribution(s) plus service fees based on 10% of the total amount due payable to OPERATING ENGINEERS LU 487 ESCROW ACCOUNT and mail to:

Local 487 Fringe Benefits Trust Funds
P.O. Box 1037
Sparks, MD 21152-1037
Attn: Lana Malis

If you should have any questions, please do not hesitate to contact our office.

Sincerely,

____

Example: LETTER #2

____

[DATE]

[Company Name]
[Address 1]
[Address 2]
[City, State, Zip Code]

[Employer Code]
Re: Delinquent Contributions and 10% Service Fee

Dear [_____________]:

Previously, we requested that you remit your reports and contributions for the months of _______ ____________, plus service fees based on 10% of the total amount due. Our records indicate that you have failed to remit those payments and your contributions remain delinquent from ________ ____________. Therefore, in addition to the service fee, you are now responsible for the payment of liquidated damages based on 20% of the delinquent contributions, or interest in accordance with Chapter 55.03, Florida Statutes (whichever is the greater amount due). If you fail to remit the delinquent contributions, service fees, and liquidated damages or interest within ten days of this request, this matter will be referred to the Collection Sub-Committee. If the Sub-Committee refers the matter to fund counsel, all costs of collection will also be due.

Please remit the above requested reports, contributions and service fees made payable to OPERATING ENGINEERS LU 487 ESCROW ACCOUNT and mail to:

Local 487 Fringe Benefit Trust Funds
P.O. Box 1037
Sparks, MD 21152-1037
ATTN: Lana Malis

If you should have any questions, please do not hesitate to contact our office.

Sincerely,

____

Example: LETTER #3

____

[DATE]

Payroll Department
[Company Name]
[Address 1]
[Address 2]
[City, State, Zip Code]

[Employer Code]
Re: International Union of Operating Engineers Local 487 Fringe Benefit Funds

Dear [______________]:

This letter is written on behalf of the International Union of Operating Engineers Local 487 Health and Welfare Fund and the South Florida Operating Engineers Apprentice and Training Fund ("Funds").

Bellows Associates, PA is an independent auditing firm engaged by the Funds for the purpose of auditing Employer contributions to the Funds. In accordance with the Agreement and Declaration of Trust, please permit this letter to serve as notification that accountants from Bellows Associates, PA will perform a payroll audit of ____________________________in the near future. A mutually acceptable date for conducting the audit will be arranged with you by Bellows Associates, PA.

Should you have any questions concerning this process, please contact Jeff Ianniello, Administrative Manager for the Fund, by email at ieffi@associated-admin.com or me at jeffh@associated-admin.com.

Thank you in advance for your cooperation with Bellows Associates, PA in the payroll examination.

Sincerely,

Jeff Herron
Account Manager
Associated Administrators, LLC

cc: Bellows Associates, P.A.
Fund Counsel
Mark Schaunaman, IUOE Local 487
J. Ianniello, Associated Administrators, LLC