

## IRON WORKERS' LOCAL 25 VACATION PAY FUND PLAN

### Preface

The Board of Trustees of the Iron Workers Local 25 Vacation Pay Fund (the "Fund") defines its Vacation Pay Plan by this Plan Document. It is the intent that this Fund be maintained for the exclusive benefit of employees on an indefinite basis. It is intended that this Plan Document will serve to describe the benefits of the Fund. It is also intended that this Plan Document conforms with the requirements of the Employee Retirement Income Security Act of 1974 (ERISA), as amended from time to time, as that Act applies to employee welfare benefit plans. If any portion of the Plan Document, now or in the future, conflicts with ERISA or applicable federal regulations, ERISA and/or such regulations will govern. **Although the Trustees expect and intend to continue the Fund indefinitely, they reserve the right to change or terminate the Fund at any time and for any reason, for any group or class of employees as well as for all employees.** The Fund is subject to all terms, provisions and limitations stated on the following pages.

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## ARTICLE I

### DEFINITION OF TERMS

- Section 1.**     Association     The term “Association” shall mean the Great Lakes Fabricators and Erectors Association.
- Section 2.**     Associations     The term “Associations” shall mean Associated General Contractors of America, Detroit Chapter, Inc., Michigan Conveyor Manufacturers Association, Inc., Great Lakes Fabricators and Erectors Association, the Resteel Contractors Association, Inc., Michigan Cartagemen’s Association Heavy Haulers Division and any successor to these entities.
- Section 3.**     Collective Bargaining Agreement     The term “Collective Bargaining Agreement” shall mean any contract entered into between the Union and the Associations or any Employer under which the Employer has agreed to contribute to the Fund and any renewal or extension of such agreement.
- Section 4.**     Employee     The term “Employee” shall include any person employed in the bargaining unit, established pursuant to the Collective Bargaining Agreements between the Union, the Associations, and the Employers, under which the Employer has agreed to contribute to this Fund. The term “Employee” shall also include any person employed by the Union, the Trustees, or the Building Trades Council, on whose behalf of the Union, the Trustees, or the Building Trades Council is required to make Contributions to this Fund.
- Section 5.**     Employer     The term “Employer” shall include:
- (a)     a member of one of the Associations who is bound by the terms of a collective bargaining agreement between the Union and the Association to make Contributions to the Fund;
  - (b)     any other employer engaged in work coming within the jurisdiction of the Union who is obliged, by a collective bargaining agreement or written agreement satisfying the requirements of the National Labor Relations Act, to make Contributions to the Fund;
  - (c)     the Union to the extent, and solely to the extent, that it acts in the capacity of an employer of its business representatives or other employees on whose behalf it makes Contributions to the Fund;
  - (d)     the Trustees of the Fund, to the extent, and solely to the extent, that they act in the capacity of an employer of administrative employees on whose behalf Contributions are made to the Fund; and

(e) the Building Trades Council to the extent, they contribute to this Fund on behalf of their Employees.

- Section 6.** **Employer Contributions** The term "Employer Contributions" or "Contributions" shall mean payments made or required to be made to the Vacation Pay Fund by the Employers. Contributions become vested Plan assets at the time they become due and owing to the Fund. An Employer shall have no right, title or interest in the Contributions owing to or made to the Fund. Title to all Contributions paid into and/or due and owing the Fund shall be vested in and remain exclusively in the Trustees of the Fund.
- Section 7.** **ERISA** The Employee Retirement Income Security Act of 1974, as amended.
- Section 8.** **Participant** The term "Participant" means an Employee who has met the requirements established by the Trustees to be eligible for benefits from the Vacation Pay Fund.
- Section 9.** **Plan** The term "Plan" means this document.
- Section 10.** **Plan Year** The term "Plan Year" shall mean May 1 through April 30.
- Section 11.** **Trust Agreement** The term "Trust Agreement" or "Trust" shall mean the Amendment and Restatement of Iron Workers' Local No. 25 Vacation Pay Fund Trust Agreement in its present form or as it may, from time to time, be amended.
- Section 12.** **Trustees** The term "Trustees" shall mean the Board of Trustees designated in the Trust and any Successor Trustee elected, in the case of Employee Trustees, or appointed, in the case of Employer Trustees, in the manner provided by the Trust. The Trustees are "Named Fiduciaries" for purpose of ERISA Section 402(a)(1).
- Section 13.** **Union** The term "Union" shall mean Local No. 25 of the International Association of Bridge, Structural, Ornamental, and Reinforcing Iron Workers, A. F. L.- C.I.O.
- Section 14.** **Vacation Pay Fund or Vacation Pay Trust** The term "Vacation Pay Fund" or "Vacation Pay Trust" shall mean all Contributions to the Fund which are received and accepted by the Trustees under applicable Collective Bargaining Agreements or written agreement satisfying the requirements of the National Labor Relations Act, together with all income, increments, earnings and profits, and all other funds received by the Trustees for the use and purpose of this Fund. The term "Vacation

Pay Fund” shall be interchangeable with the term “Vacation Pay Trust” and with the terms “Fund” and “Trust”.

## **ARTICLE II**

### **CONTRIBUTIONS, ELIGIBILITY AND PARTICIPATION**

- Section 1.**     **Employer Contributions** Each Employer shall contribute to the Fund on behalf of each Employee as required by the Collective Bargaining Agreement. All contributions must be made within the time limits prescribed by the Trustees.
- Section 2.**     **Eligibility and Participation** Any Employee on whose behalf contributions are required to be made to the Fund shall be eligible to participate.

## **ARTICLE III**

### **APPLICATION OF TRUST FUNDS AND PLAN OF PAYMENT**

- Section 1.**     **Allocation** All payments received from Employers shall be credited conditionally to the individual Employees for whose behalf they are made. In no event shall any Employee have the option to receive any payment required to be made to this Fund directly from his Employer, and in no event shall any Employer make any such payment directly to any Employee.
- Section 2.**     **Plan of Vacation Pay Payment** Payment of Vacation Pay shall be made on a semi-annual basis by check and distributed to the Employees as directed by the Trustees. The semi-annual distributions shall be made in June and December of each year. The June distribution shall include contributions for hours of work performed by the Employee from the preceding October through the end of March. The December distribution shall include all contributions made for hours worked by the Employee from the preceding April through the end of September.
- Section 3.**     **Expenses** At the time of each semi-annual distribution of Vacation Pay, the Trustees may deduct the cost of all necessary and reasonable expenses from the excess of the Fund’s assets over the aggregate amount of Vacation Pay distributable to the Employees. Should the excess of the Fund’s assets be insufficient to defray such expenses, the Trustees may allocate such expenses on a pro-rata basis among the Employees based upon the respective amounts conditionally standing to their credit or by assessment of a fixed amount against each Employee concerned.

**Section 4. Outstanding Liability Reserve** After the deduction of expenses, the Trustees shall set aside or reserve an amount, from the excess of the Fund's assets, sufficient to cover any outstanding or uncashed checks from the previous two semi-annual disbursements. This amount shall be held in reserve until such time as the outstanding checks are cashed or the disbursement may revert to the Fund as provided below.

**Section 5. Contribution Deficiencies** After expenses and the outstanding liability reserve are deducted, the Trustees shall determine if any Employee accounts are deficient of Employer contributions that should have been made by the Employer but, for any or no reason, were not paid as required. The Trustees are permitted to make up the deficiencies in such Employee accounts by authorizing payment to such Employees from the excess of the Fund's assets.

For the processing of contribution deficiency claims, the Trustees shall utilize the following procedure:

1. Prior to each semi-annual distribution, the Trustees shall determine which Employees have not received the amount of Vacation Pay contributions to which they were entitled;
2. The only contribution deficiency claims which may be considered by the Trustees are ones where the Employer who withheld the Vacation Pay (i) does not have a bond posted to guarantee payment of such contributions; or (ii) does not have a sufficient bond posted for such guarantee; or (iii) is not making weekly contributions and who is either bankrupt, out of business or no longer doing business within the jurisdiction of the Union.
3. The Employee must not be guilty of contributory negligence. In determining if an Employee has been negligent in protecting his interests, the Trustees may exercise their discretion and shall be guided by the following guidelines as well as other facts and extenuating circumstances:
  - a. The Employee must be covered by a collective bargaining agreement with the Union calling for contributions;

- b. The Employee must not have worked for the Employer after the first payroll date, if any, where he did not receive his full pay due or after his payroll check was not honored at his Employer's bank;
  - c. The Employee must have exercised his best judgment in reporting errors on his Monthly Status Report received from the Health Fund and/or in reporting his failure to receive same to the Union;
  - d. The Employee must have retained his pay stubs to indicate the amount of vacation pay contributions his Employer withheld from his wages but did not remit to the Fund.
4. The Trustees may, in the exercise of their discretionary powers, adopt rules and regulations from time to time to further assist them in the payment of deficient contributions out of the Fund's assets.

**Section 6.**     **Special Vacation Pay Trustee Subcommittee** Prior to each semi-annual distribution, the Trustees may appoint a Subcommittee with equal representation of Union and Employer Trustees. This Subcommittee will review all Employee claims in light of the above-stated conditions and shall thereafter make a recommendation to the Trustees regarding payment to the Employees whose contributions are deficient. The Trustees may adopt the recommendations of the Subcommittee and in their discretion, authorize payment to the extent that the excess of the Fund's assets shall suffice.

**Section 7.**     **Owner-Member** In the case of an Owner-Member or any individual on whom contributions are made to this Fund and who has any financial interest in the business of the contributing Employer, no deficiencies in an Owner-Member's or individual's account shall be paid to the Owner-Member or individual out of the excess of the Fund's assets. An Owner-Member or individual, as herein described, shall be entitled to receive only those contributions actually made on his behalf and conditionally credited to his account, plus any dividend that may be declared by the Trustees.

**Section 8.**     **Dividends** If, after the deductions described in Sections 3 through 5, above, are made, there remains any excess of Fund assets, the Trustees may, in the exercise of their discretionary powers, declare a dividend to be paid with the disbursement of accrued Vacation Pay. The Special

Vacation Pay Trustee Subcommittee, as described in Section 6, above, shall make recommendation to the Board of Trustees as to whether or not such a dividend should be declared and as to the recommended amount of the dividend.

Such dividend, if any, may be pro-rated among the Employees entitled to receive regular Vacation Pay at that time in proportion that the regular Vacation Pay credited to each such Employee for distribution at that time bears to the aggregate regular Vacation Pay credited to all such Employees for distribution at that time.

**Section 9. Distribution of Vacation Pay** After determining whether or not to declare a dividend, the Trustees shall distribute to the Employees, the amounts conditionally credited to each Employee's account (this shall include the amount credited by the Trustees to certain Employees to make up deficiencies as described above in Section 5).

In no event shall any vacation pay check for less than \$5.00 be issued. If at the time of semi-annual distribution, an Employee has less than \$5.00 conditionally standing to his credit, he shall forfeit his right to it and the Fund shall not be liable for payment of such amount.

If any amount still conditionally stands to the credit of any employee twelve (12) months after the date such amount was due to be distributed because of his failure to cash his distribution check, because his check is returned to the Administrator's Office undelivered, or because of insufficient information, no such check could be issued and he fails to claim same within such twelve-month period, then such amount conditionally standing to his credit may be canceled.

In the event an employee who has Vacation Pay conditionally credited to his account enters into an active-duty status in the Armed Forces of the United States, he may, upon request, receive such Vacation Pay at that time without having to wait until the next regular semi-annual distribution date.

In the event of the death of an employee, any amount conditionally credited to his account as of the date of his death shall be paid to his Beneficiary. The Beneficiary shall be the party or parties designated in the Trust Fund office records in accordance with such Participant's election. If any Designated Beneficiary predeceases the Participant, the interest of such Beneficiary shall automatically terminate. If no Beneficiary is named or the Designated Beneficiary predeceases the Participant, Beneficiary shall mean: (1) Spouse; (2) Children; (3) Parents; (4) Brothers and Sisters; and (5) Estate. Payments of the Vacation Pay credited to a deceased



Employee shall ordinarily be made at the time of the next following semi-annual distribution, provided, that upon request of the deceased Employee's Beneficiary, the Trustees may authorize an immediate distribution of the money ordinarily to be conditionally credited to the deceased Employee.

**Section 10. Spendthrift Protective Clause:**

(A) The employee may assign all or part of his monthly vested contributions to the Union for payment of working dues and targeting fund assessments. Upon receipt of a signed voluntarily executed authorization and assignment form from the employee, the Trustees are authorized to remit to the Union that portion of the employee's contributions so designated to be forwarded to the Union for payment of these assessments. The employee may also assign all or part of his monthly vested contributions to the Ironworkers Political Action League (IPAL). Upon receipt of a voluntarily executed authorization and assignment from the employee, the Trustees are authorized to remit to IPAL that portion of the employee's contributions so designated to be forwarded to IPAL. The employee may also assign all or part of his monthly vested contributions to the Local 25 Political Action Committee ("PAC"). Upon receipt of a voluntarily executed authorization and assignment from the employee, the Trustees are authorized to remit to PAC that portion of the employee's contributions so designated to be forwarded to PAC. Except as provided above, no right or claim to, or interest in, any part of the Fund, or any payment there from, should be assignable, transferable or subject to the debts, contractual liabilities of the Association, the Union, the Employers or the Employees, nor shall the Fund be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution, attachment or any legal process and any attempt thereto shall be utterly void.

(B) The Union shall indemnify, defend and save the Fund, its Trustees, agents, and the contributing Employers (the same as if the latter were parties to this Agreement) harmless against any and all claims, demands, suits, judgments or other forms of liability arising out of or by reason of action taken or not taken in the administration and operation of the assignment program.

(C) The Union shall pay to the Fund's Administrator, promptly after billing, for all expenses attributable to the administration of the assignment program.

**Section 11. Hardship Distribution.** The Plan Administrator, at the election of the Participant, shall direct the Trustees to distribute to any Participant 100% of his account prior to the semi-annual distribution date set forth in Section 2 of this Article, two times per calendar year for hardship as defined below:

(1) Medical Expenses described in Code Section 213(d) incurred by the Participant, his spouse, or any of his dependents (as defined in Code Section 152);

(2) The down payment for purchase of a principal residence for the Participant;

(3) Funeral expenses for a member of the Participant's family;

(4) Payment of tuition for the next semester or quarter of post-secondary education for the Participant, his spouse, children, or dependents;

(5) The need to prevent the eviction of the Participant from his principal residence or foreclosure on the mortgage of the Participant's principal residence; or

(6) The need to prevent significant deterioration of a Participant's consumer credit rating.

In the event a hardship distribution is made, the Participant shall forfeit all interest earned on said account and pay an administrative fee of \$25.00 to process the distribution. In addition, the Participant must provide the Trustees with proof of hardship, i.e. receipts, etc.

#### **ARTICLE IV**

#### **APPEAL RIGHTS**

**Section 1. Written Request for Review.** Any Participant may request a review of his/her vacation pay payment (or lack thereof) upon written request to the Administrator at Iron Workers' Local No. 25 Vacation Pay Fund, P. O. Box 8006, Novi, MI 48376-8006. This request must be received by the Administrator within 60 days of the contested vacation pay distribution.

**Section 2. Response to Written Request for Review.** The Administrator must review and respond to the request within 45 days. If the Administrator denies the claim, in whole or in part, his response must include (1) the

specific reasons for the denial; (2) the specific Plan provision or provisions on which the decision was based; (3) what additional material or information is necessary to complete the claim and the reason why such material or information is necessary; and (4) an explanation of the steps which must be taken by the Participant if the Participant desires to submit an appeal of the denial to the Trustees and the time limits applicable to such procedures, including a statement of the Employee's right to bring a civil action under section 502(a) of ERISA following an adverse determination on appeal.

**Section 3. Appeal of Administrator's Decision to Trustees.**

If upon receipt of the Administrator's response a Participant is not satisfied with the benefit determination, the Participant has the right to appeal to the Board of Trustees. An appeal is an opportunity for the Employee to submit written comments, documents, and other information related to the Benefit Denial to the Trustees. The Employee, free of charge and upon request, shall be provided reasonable access to, and copies of, all documents, records, and other information relevant to his/her claim for Benefits. The Trustees review on appeal shall take into account all comments, documents, records, and other information submitted by the Employee relating to the claim, without regard to whether or not such information was submitted or considered in the initial benefit determination.

The appeal must be in writing and set forth the issues related to the benefit determination which the Participant wants considered by the Trustees, along with any additional comments the Participant may have. In formulating the appeal, the Participant may review pertinent Plan documents at the Fund Office. Any appeal must be received by the Trustees no later than 60 days after the Administrator responded to the claim pursuant to Section 2.

**Section 4. Trustees Binding Determination.** The Trustees shall decide an Employee's appeal at its next regularly scheduled Board meeting, unless the appeal was received within 30 days of such meeting, in which case the appeal shall be decided at the second Board meeting following receipt of the appeal. If special circumstances so warrant, the appeal shall be decided no later than the third Board meeting following receipt of the appeal. The Employee shall be notified of the Trustees' decision on appeal no later than 5 days after the decision is made. Such notification shall include:

- The specific reason or reasons for the denial;

- Reference to the specific plan provisions on which the denial is based;
- A statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits;
- A statement describing the Employee's right to bring a civil action under section 502(a) of ERISA;

The Trustees have full discretionary authority to determine eligibility for benefits, interpret plan documents, and determine the amount of benefits due. Their decision, if not in conflict with any applicable law or government regulation, shall be final and conclusive.

**Section 5. Timely Submission of Appeals.** All appeals must be submitted in a timely manner. A Claimant who does not submit an appeal in a timely manner waives his/her right to have the benefit claim subsequently reviewed by the Plan or in a court of law.

**Section 6. Limitations of Actions.** No action may be brought to recover benefits allegedly due under the terms of the Plan more than 180 days following the Notice of Decision on Appeal.

## **ARTICLE V** **INTERPRETATION**

Interpretation and construction of the Iron Workers' Local No. 25 Vacation Pay Plan is subject to federal law and regulation and, when applicable, shall be subject to interpretation pursuant to the laws of the State of Michigan.

THIS IRON WORKERS' LOCAL 25 VACATION PAY FUND is hereby adopted this  
28<sup>th</sup> day of february, 2007.

UNION TRUSTEES

George H Young

Steve Zukuk

Jim Hamric

EMPLOYER TRUSTEES

John Rogers

JW Ham

W0509538

