



## Wolds Law Group

July 2, 2010

VIA E-MAIL

Jackie Nutting  
Government Affairs Director  
c/o Associated Builders and Contractors, Inc.,  
Southern California Chapter  
1400 N. Kellogg Drive, Suite A  
Anaheim, California 92807

Re: San Gabriel Unified School District: Project Labor Agreement Issues

Dear Ms. Nutting:

This letter is in response to your request for information relevant to the consideration of a project labor agreement by the San Gabriel Unified School District. We understand that you will be meeting with the facilities committee and that you will be asked to reply to certain statements made by representatives of the Building Trades Council regarding employer obligations.

WITHDRAWAL LIABILITY POTENTIAL

A Building Trades Council representative has apparently misrepresented the nature of potential contractor withdrawal liability. It is the position of the Building Trades representatives that the only contractor pension liability is for hourly contributions into the Southern California IBEW-NECA Pension Trust Fund. While it is accurate that Section 7.20 of the Collective Bargaining Agreement sets forth hourly contributions to be paid by employers on behalf of covered employees, this is only partially reflective of contractor liability.

The provisions of the Multiemployer Pension Plan Amendments Act contained within ERISA impose potential liability for contractors to pay a portion of the unfunded vested liability of pension trust funds like the Southern California IBEW-NECA Pension Trust Fund following the termination of their labor agreements. Employers that work under project labor agreements are exposed to unanticipated liabilities due to the poor funding of union-sponsored benefit programs. The U.S. Department of Labor and the Obama Administration have recently emphasized the drastic situation involving underfunded union pension plans. A contractor working on one or more project labor agreements assumes an unknown liability that can only be determined, under the federal laws and regulations that apply, after the project labor agreement work is completed. This may be hundreds of thousands of dollars of liability depending upon the funding situation of the trust fund which cannot be known for 2010 funding until 2011.

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By seeking to require contractors to contribute to the union pension funds under the proposed PLA, the unions request the contractors to roll the dice in the hope that their pension fund will be fully funded. Obviously, that will not occur. We challenge the Southern California IBEW-NECA Pension Trust Fund to demonstrate the current status of its funding to provide you with the most recent 5500 and actuarial reports that reflect the funding of this program. In our view, most of the Building Trades Pension Plan in Los Angeles face millions of dollars in unfunded vested liability which they should not be able to impose on contractors through project labor agreements. Open shop contractors should not be obligated to pay for the poor management decisions and fiduciary breaches of union multiemployer plan trustees. The Building Trades representatives have misled the San Gabriel Unified School District to the extent that they claim that the only contractor liability is for hourly contributions. That ignores the law and the desperate funding situation of these pension programs.

#### ADDITIONAL COSTS

We have also considered the argument of the Building Trades representative that the non-fringe benefit contributions required of participating employers in the IBEW Collective Bargaining Agreement are "pass through fees contained in prevailing wage". A copy of the current prevailing wage determination in effect in Los Angeles County, including electrical work, is attached. In addition to the required health and welfare, pension and training contributions, thirty cents per hour is allocated to "other payments". This thirty cent amount is hardly adequate to cover the additional costs that contractors must pay under the IBEW Local 11 Collective Bargaining Agreement. These other costs are far in excess of the prevailing wage determination amounts, for example:

- (1) Contributions to the National Electrical Industry Fund require up to 1% of productive electrical payroll (defined as total wages including overtime) per month as set forth in Section 7.01 of the labor contract;
- (2) .5% of the productive payroll must also be paid for the unions labor compliance efforts per month under Section 7.02 of the agreement;
- (3) The mandatory contributions to the IBEW Political Education (COPE) Fund require additional employee deductions as set forth in Section 7.03 of the agreement (the specific amount is not even specified in the contract);
- (4) Contributions to the Labor Management Cooperation Committee under Section 7.05 amount to five cents per hour as a payroll deduction from employee compensation. In addition, employers are obligated to pay an additional fifteen cents per hour into this program, for a total of twenty cents per hour;

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- (5) The Payroll and Fringe Benefit Guarantee Trust Fund requires an additional \$100 assessment and imposes additional costs for benefit bonds;
- (6) A credit union fund at Section 7.40 requires an employer to pay each employee 12% of gross payroll per month to be held in employee accounts in which the union maintains the interest payments.

It is obvious that these costs far exceed the amount set forth in the wage determination for "other payments". The representations of the Building Trades employees are false and misleading.

The only conclusion that can be reached after reviewing these Building Trades representations versus the actual provisions of the law and the prevailing wage determinations is that contractors are exposed to unanticipated withdrawal liability obligations related to their pension fund contributions and additional costs above and beyond the requirements of the DIR-Approved prevailing wage determinations in the Los Angeles County area on all projects.

Yours truly,



David P. Wolds

DPW:km  
Attachment



Southern California  
Chapter

Champions of Free Enterprise

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GENERAL PREVAILING WAGE DETERMINATION MADE BY THE DIRECTOR OF INDUSTRIAL RELATIONS  
 PURSUANT TO CALIFORNIA LABOR CODE PART 7, CHAPTER 1, ARTICLE 2, SECTIONS 1770, 1773 AND 1773.1  
 FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY CONSTRUCTION AND DREDGING PROJECTS

LOCALITY: LOS ANGELES COUNTY  
 DETERMINATION: LOS-2010-1

	ISSUE DATE	EXPIRATION DATE	EMPLOYER PAYMENTS										STRAIGHT-TIME				OVERTIME HOURLY RATE		
			BASIC HOURLY RATE	HEALTH AND WELFARE	PENSION	VACATION/HOLIDAY	TRAINING	OTHER PAYMENTS	HOURS	TOTAL HOURLY RATE	DAILY	SATURDAY	SUNDAY AND HOLIDAY	DAILY	SATURDAY	SUNDAY AND HOLIDAY			
#	BRICKLAYER, STONEMASON, MARBLE MASON, CEMENT BLOCKLAYER, POINTER, CAULKER, CLEANER	8/22/2009	04/30/2010*	A 36.000	5.000	6.750	B -	0.400		0.560	C 8.0	48.710	D 66.710	D 66.710	D 66.710	84.710			
#	BRICKLAYER:																		
#	MASON FINISHER	2/22/2010	04/30/2010*	A 25.200	5.000	6.750	B -	0.400		0.560	C 8.0	37.910	D 50.510	D 50.510	63.110				
#	BRICK TENDER	8/22/2009	06/30/2010*	27.170	4.760	5.750	E 3.600	0.640		0.280	C 8.0	42.200	55.790	55.790	69.370				
#	BRICK TENDER:																		
#	FORKLIFT OPERATOR	8/22/2009	06/30/2010*	27.620	4.760	5.750	E 3.600	0.640		0.280	C 8.0	42.650	56.460	56.460	70.270				
#	CARPET, LINOLEUM,																		
#	RESILIENT TILE LAYER	2/22/2010	04/30/2010*	A 30.850	5.330	2.700	2.050	0.460		0.200	8.0	41.590	F 57.010	F 57.010	72.440				
#	MATERIAL HANDLER - FIRST SIX MONTHS	8/22/2007	09/30/2007*	A 9.250	-	-	0.550	-		-	8.0	9.800	F 14.430	F 14.430	19.050				
#	MATERIAL HANDLER - AFTER SIX MONTHS	2/22/2010	04/30/2010*	A 9.250	5.330	0.950	0.550	0.100		0.150	8.0	16.330	F 20.950	F 20.950	25.580				
#	DRYWALL FINISHER																		
G	DRYWALL FINISHER	2/22/2010	09/30/2010*	H 29.190	5.300	3.400	3.070	0.420		0.470	8.0	41.850	I 56.440	I 56.440	71.040				
#	DRYWALL FINISHER	2/22/2010	09/30/2010*	A 33.220	5.300	3.400	3.070	0.420		0.470	8.0	45.880	I 62.490	I 62.490	79.100				
#	ELECTRICIAN:																		
#	COMM & SYSTEM INSTALLER	2/22/2010	11/28/2010**	26.990	5.450	J 2.540	-	0.650		K 0.210	8.0	36.650	L 50.550	L 50.550	64.450				
#	COMM & SYSTEM TECH.	2/22/2010	11/28/2010**	28.790	5.450	J 2.540	-	0.650		K 0.210	8.0	38.500	L 53.330	L 53.330	68.160				
#	SOUND ELECTRICIAN	2/22/2010	11/28/2010**	29.790	5.450	J 2.540	-	0.650		K 0.210	8.0	39.530	L 54.880	L 54.880	70.220				
#	INSIDE WIREMAN, RADIO MONITOR TECHNICIAN	2/22/2010	07/25/2010**	36.850	7.740	J 11.470	B -	0.560		0.300	8.0	58.030	L 77.000	L 77.000	95.980				
#	CABLE SPLICER-WELDER	2/22/2010	07/25/2010**	38.690	7.740	J 11.470	B -	0.560		0.300	8.0	59.920	L 79.850	L 79.850	99.770				
#	TUNNEL WIREMAN	2/22/2010	07/25/2010**	40.540	7.740	J 11.470	B -	0.560		0.300	8.0	61.830	L 82.700	L 82.700	103.580				
#	TUNNEL CABLE SPLICER	2/22/2010	07/25/2010**	42.570	7.740	J 11.470	B -	0.560		0.300	8.0	63.920	L 85.840	L 85.840	107.760				
#	TRANSPORTATION SYSTEMS ELECTRICIAN	2/22/2010	07/25/2010**	36.650	7.740	J 11.670	B -	0.560		0.300	8.0	58.020	L 76.890	L 76.890	95.770				
#	TRANSPORTATION SYSTEMS ELECTRICIAN (CABLE SPLICING, WELDING, AND NETA TESTING)	2/22/2010	07/25/2010**	38.480	7.740	J 11.670	B -	0.560		0.300	8.0	59.900	L 79.720	L 79.720	99.540				
#	TRANSPORTATION SYSTEMS TECHNICIAN	2/22/2010	07/25/2010**	27.490	7.740	J 11.670	B -	0.560		0.300	8.0	48.580	L 62.740	L 62.740	76.900				
#	FIELD SURVEYOR:																		
M	CHIEF OF PARTY (018.167-010)	2/22/2010	09/30/2010*	E 42.810	8.200	5.550	N -	0.750		0.100	8.0	57.410	O 78.230	P 99.050	Q 140.690				
M	INSTRUMENTMAN (018.167-034)	2/22/2010	09/30/2010*	E 40.310	8.200	5.550	N -	0.750		0.100	8.0	54.910	O 74.480	P 94.050	Q 133.190				
M	CHAINMAN/RODMAN (869.567-010)	2/22/2010	09/30/2010*	E 39.730	8.200	5.550	N -	0.750		0.100	8.0	54.330	O 73.610	P 92.890	Q 131.450				
#	GLAZIER	2/22/2010	05/31/2010**	R 38.900	6.100	9.990	T -	0.620		0.340	8.0	55.950	U 74.400	U 74.400	92.850				
#	MARBLE FINISHER	8/22/2009	05/31/2010*	V 27.040	7.010	2.510	-	0.250		0.360	W 8.0	37.170	X 50.690	Y 50.690	64.210				
#	PAINTER:																		
#	PAINTER, LEAD ABATEMENT	2/22/2010	06/30/2010*	H 29.320	5.300	2.520	1.050	0.540		0.670	8.0	39.400	Z 54.060	Z 54.060	54.060				
#	REPAINT PAINTER, LEAD ABATEMENT	2/22/2010	06/30/2010*	H 26.050	5.300	2.520	1.050	0.540		0.670	8.0	36.130	AA 49.150	AA 49.150	49.150				



Southern California  
Chapter

Additional Fees to be Paid by Taxpayers Under a PLA via Incorporated Collective Bargaining Agreements	Where Tax Dollars Really Go	Name of Big Labor Fund that will Receive Tax Dollars	Evidence
<p>.2 – 1 % of gross payroll</p> <p>25% of all payroll in excess of 75,000 man hours and 100% of payroll in excess of 150,000 man hours</p>	<p>Tax Dollars to Contractor to Big Labor</p>	<p>National Electrical Industry Fund</p>	<p>According to District Judge Herbert F. Murray, the purpose of the National Electrical Industry Fund requirement in the national bargaining agreement between NECA and IBEW was to “eliminate competition between NECA members and non-NECA members in bidding for projects” in the construction industry. .. the industry fund was created to be used primarily to cover NECA’s “costs of administration of labor agreements, industry advancement and services rendered to the electrical contracting industry.” NEIF became effective on July 1, 1977. (Construction Dimensions April 1981)</p>
<p>.5% of Payroll</p>	<p>Tax Dollars to Contractor to Employee to Big Labor</p>	<p>Contract Compliance Fund</p>	<p>Labor Compliance Program (PLA lobbyists insist that a PLA saves tax dollars because there is no need for a Labor Compliance Program but the cost is built into the PLA with this fee mandate.)</p>
<p>.05 per hour worked</p> <p>.15 per hour worked by each employee</p>	<p>Tax Dollars to Contractor Employee to Big Labor</p> <p>Tax Dollars to Contractors to Big Labor</p>	<p>Labor Management Cooperation “Trust”</p>	<p>This is not a Trust. It is a 501.C6 organization. In its IRS filing for 2007 its primary expenditure was \$250,000 contributed to a single ballot initiative.</p>
<p>Variable (Mandatory) Payroll Deduction</p>	<p>Tax Dollars to Contractor to Employee to Big Labor</p>	<p>IBEW Political Education Fund</p>	<p>The stated purpose of the IBEW Political Education Fund according to IBEW Local 701 is “To support, through voluntary contributions</p>

			from our membership, those seeking office who share our beliefs..."
\$250,000 (Long Beach Port estimate)	Tax Dollars to Port Staff	None	Long Beach Port staff sent a memo to the Engineering and Environmental Committee on 12/21/09 stating "Port staff and consultant assistance in the estimated amount of \$250,000 will be necessary to implement, manage and monitor the PLA."
3.30 Per Hour worked by each employee	Tax Dollars to Contractor to Big Labor	Southern California IBEW NECA Defined Contribution Plan	Southern California Board of Trustees Administration for IBEW/NECA Pension Trust Fund
\$100 per month (estimated dues and fees deducted from prevailing wage) paid by each employee	Tax Dollars to Contractor to Employee to Big Labor	IBEW AFL-CIO	These dues are deducted from the prevailing wage being paid to the employee under a PLA whether or not they choose to belong to the union. It does not increase the cost to the taxpayer however it reduces the amount of the employees take home pay. In 2007 a portion of these dues were used to buy \$450,000 in new automobiles.
3% of all payroll	Total Wages	National Employee Benefit Fund	Funded at 69% as of 2007. This is an added cost to the taxpayer as open shop contractors are forced to pay into union pension funds even though non union employees will never vest. This forces the taxpayer to pay retirement benefits twice.
<b><i>For further information and documentation contact Jackie Nutting at Associated Builders and Contractors Southern California Chapter.</i></b>			<b><i>Referenced deductions are agreed upon in the current IBEW Local 11 and LA NECA Collective Bargaining Agreement enacted 2/17/05</i></b>

One argument in favor of a project labor agreements made by PLA lobbyists is that Open and Free Enterprise shop employees and employers are not mandated to join the union but to only pay the fees and the dues required. For the employee this is like paying for an insurance policy which will never benefit them. They get to pay for the opportunity to be on the job but receive no representation while working.

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The Trustees authorized under this Trust Agreement are hereby empowered to determine the reasonable value of any facilities, materials, or services furnished by either party. All funds shall be handled and disbursed in accordance with the Trust Agreement.

Section 5.16. All Employers subject to the terms of this Agreement shall contribute the amount of funds specified by the parties signatory to the local apprenticeship and training trust agreement. For the current rate of contribution refer to Article III, Section 3.05 of this agreement. This sum shall be due the Trust Fund by the same date as is their payment to the NEBF under the terms of the Restated Employees Benefit Agreement and Trust.

#### **ARTICLE VI National Employees Benefit Fund**

Section 6.01. It is agreed that in accord with the National Employees Benefit Agreement entered into between the National Electrical Contractors Association and the International Brotherhood of Electrical Workers on September 3, 1946, as amended, that unless authorized otherwise by the National Employees Benefit Board, the individual Employer will forward monthly to the designated Local Secretary-Treasurer an amount equal to three percent (3%) of his gross monthly labor payroll, which he/she is obligated to pay to the employees in this bargaining unit, and a completed payroll report prescribed by the National Board. The payment shall be made by check or draft and shall constitute a debt due and owing to the National Board on the last day of each calendar month, which may be recovered by suit initiated by the National Board or its assignee. The payment and the payroll report shall be mailed to reach the office of the appropriate Local Secretary-Treasurer not later than fifteen (15) calendar days following the end of each calendar month.

Individual Employers who fail to remit as provided above shall be additionally subject to having this agreement terminated upon seventy-two (72) hours' notice, in writing, being served by the Union, provided the individual Employer fails to show satisfactory proof that the required payments have been paid to the Local Secretary-Treasurer. The failure of an individual Employer to comply with the applicable provisions of the National Employees Benefit Agreement shall also constitute a breach of this Labor Agreement.

#### **ARTICLE VII National Electrical Industry Fund**

Section 7.01. Each individual Employer shall contribute an amount not to exceed one percent (1%) nor less than .2 of 1% of the productive electrical payroll, as determined by each Local Chapter and approved by the Trustees, with the following exclusions:

1. Twenty-five percent (25%) of all productive electrical payroll in excess of 75,000 man-hours paid for electrical work in any one Chapter area during any one calendar year, but not exceeding 150,000 man-hours.

2. One Hundred percent (100%) of all productive electrical payroll in excess of 150,000 man-hours paid for electrical work in any one Chapter area during any one calendar year.

(Productive electrical payroll is defined as the total wages (including overtime) paid with respect to all hours worked by all classes of electrical labor for which a rate is established in the prevailing labor area where the business is transacted).

Payment shall be forwarded monthly to the National Electrical Industry Fund in a form and manner prescribed by the Trustees no later than fifteen (15) calendar days following the last day of the month in which the labor was performed. Failure to do so will be considered a breach of this Agreement on the part of the individual Employer.

#### CONTRACT COMPLIANCE FUND\*

**Section 7.02 Contract Compliance Fund** – Each employer shall contribute 0.5% of the productive payroll for work performed under this agreement.

The fund shall be administered solely by the Association and shall be utilized to pay for administration services performed on behalf of all signatory employers, such as marketing the benefits of IBEW contractors to construction users, promoting project labor agreements, and service on all funds as required by federal law. The amount of this contribution is included in, and is not in addition to, the amount paid by NECA members to the NEIF. *Labor Compliance*

The C.C.F. contribution shall be submitted with all other fringe benefits as delineated in the Labor Agreement by the fifteenth (15<sup>th</sup>) of the following month in which they are due to the Administrator receiving funds. In the event any employer is delinquent in submitting the required Contract Compliance Fund to the designated Administrator, the Administrator shall have the authority to recover any funds, along with attorney fees, court costs, interest and liquidated damages as required with all other fringe benefits as delineated in the Labor Agreement receiving such funds. The enforcement for delinquent payments to the fund shall be the sole responsibility of the fund or the employer and not the Local union. These monies shall not be used to the detriment of the IBEW.

#### IBEW Political Education Fund\*

**Section 7.03 An IBEW Political Education (COPE) fund** will be established upon adoption of mutually agreed to language by the parties, but administered solely by IBEW Local 11. Contributions to the fund will be employee deductions.

\*This provision will sunset at the end of the contract term unless renewed by the parties.



## Labor-Management Cooperation Committee

**Section 7.05.** Each employee covered by the terms of the agreement shall contribute, through a payroll deduction, five cents (\$0.05) per hour for each hour worked, into the Local 11, I.B.E.W.-Los Angeles County Chapter, N.E.C.A. Labor-Management Cooperation Committee. Each Employer shall make the five cents (\$0.05) per hour deduction for each hour worked and shall forward the total amount for all employees covered by this agreement and on a monthly basis transmitted on a form furnished and prescribed by the Trustees of the Fund.

**Section 7.06** All Employers subject to the terms of this agreement shall contribute fifteen cents (\$.15) per hour for each hour worked for the purpose of maintaining the Local 11, I.B.E.W.-Los Angeles County Chapter, N.E.C.A. Labor-Management Cooperation Committee. This sum shall be forwarded monthly to the Trust.

**Section 7.07.** A Board of Trustees for the Labor-Management Cooperation Committee is hereby established and shall consist of an equal number of members selected by the Union and the Chapter. The Board of Trustees is hereby authorized to establish and implement such Trust Fund, Trust Fund Agreement, and reporting forms as they consider necessary to administer the plan.

## Payroll and Fringe Benefits Guarantee Trust Fund

**Section 7.10.** Each electrical contractor employing workmen under the terms of this Agreement shall deposit One Hundred Dollars (\$100.00), free of interest, for a payroll and fringe benefits guarantee (including Credit Union Fund) up to Fifty Thousand Dollars (\$50,000.00) of payroll, but not over that amount, with the Trustees who shall function under a Trust Agreement to be agreed upon between the parties. If at any time, the interest accrued in the Payroll and Fringe Benefits Guarantee Trust Fund is depleted, each signatory contractor shall make an additional deposit into such fund of any amount up to One Hundred Dollars (\$100.00), making a total of Two Hundred Dollars (\$200.00) maximum. Notice of such additional deposit shall be given by the Labor-Management Committee.

Net payroll checks shall be paid by the Electrical Industry Payroll and Fringe Benefits Guarantee Trust Fund to be agreed upon between the parties. Net payroll checks shall be paid by the Electrical Industry Payroll and Fringe Benefits Guarantee Trust Fund in a total amount not to exceed Two Thousand Two Hundred and Fifty Dollars (\$2,250.00) maximum per employee.

A contractor who makes the payroll and fringe benefits deposit, and pays wages and fringe benefits to employees covered by this agreement, shall be absolved from all responsibilities with respect thereto. This payroll and fringe benefits deposit is in no respect a bond covering the contractor's payroll and fringe benefits obligation, but only an emergency fund to relieve employees' financial strain caused by issuing of bad checks or

failure of contractors to meet payroll, or failure of contractors to make fringe benefit contributions as provided in this agreement. If the contractor defaults in the foregoing, his/her liability shall be as set forth in the Trust Agreement but shall, in any event, include the following:

(1) The contractor shall be liable for cost of enforcing collection, including but not limited to court costs, attorney fees, loss of earnings of an employee not paid, fringe benefits lost to an employee and any other expenses as determined by the Trustees to be the fault of such delinquent contractor.

(2) The Trustees are authorized to institute whatever federal or state, civil or criminal actions as are necessary to enforce collection. Upon collection of defaulted payroll, or bad check, employees must reimburse the Payroll and Fringe Benefits Guarantee Trust Fund. Employees shall cooperate in every manner in regard to the collection of defaulted payroll, as requested by the Trustees.

(3) The contractor must, within five (5) calendar days after notice from the Business Manager of Local Union No. 11, IBEW, make good any defaulted wages to his/her employees.

(4) On the first default of payroll payments and/or fringe benefit payments the defaulting contractor shall, upon notice from the Trustees, furnish a surety or cash bond in an amount of Five Thousand Dollars (\$5,000) as guarantee that wage payments and fringe benefit payments will be regularly made. On the second default of payroll and/or fringe benefit payments, the defaulting contractor shall furnish a bond or equivalent of at least Ten Thousand Dollars (\$10,000). The amount of bond may also be set by the Trustees by using the following formula:

Four (4) times the weekly wages and fringe benefits for all of said signatory contractor's employees covered by this agreement.

However, the amount of bond required in this instance shall not be less than Ten Thousand Dollars (\$10,000). Failure to furnish the above-referred-to bond shall constitute cause for immediate cancellation of the Collective Bargaining Agreement at the option of the Local Union and the processing of all legal procedures necessary to enforce collection of defaulted amount, plus collection costs and interest involved. It shall not be a violation of this Agreement for the Union to refuse to permit persons covered by this Agreement to work on said job or project until all such wages and/or fringe benefits have been paid.

(5) Whenever a contractor has definite knowledge that he is taking over a contract for a job that has been partially completed by another contractor, he/she shall notify the Local Union, in writing, in the area before starting work.

(6) It is understood and agreed that this Payroll and Fringe Benefits Guarantee Trust Fund is considered a joint fund covering both the Inside and Outside Agreements

and groups of workmen. Consequently, contractors who are engaged in both Inside and Outside work shall make only one payroll and fringe benefits deposit to this Trust.

Rules, regulations and operations of the Payroll and Fringe Benefits Guarantee Trust Fund are as set forth in the Trust Agreement.

### **Fringe Benefits Pension Fund - Contributions**

**Section 7.20.** Each signatory contractor shall contribute to the Southern California IBEW-NECA Pension Trust Fund a total of Three Dollars and sixty Cents (\$3.60) per hour for each hour worked by each employee covered by this Agreement, except apprenticeship classifications. (See Wage Scales - Article III, Section 3.05)

**Section 7.21.** A Board of Trustees for the Pension Trust Fund is hereby established, and shall consist of an equal number of members selected by the Union and the Chapter. The Board of Trustees is hereby authorized to establish and implement such Trust Fund Pension Plan, Trust Agreement and reporting forms as they consider necessary to the finalization of the Pension Plan.

**Section 7.22.** All disbursements shall be in accordance with the Trust Agreement. The cost of implementing and the administration of the Pension Plan and Trust, including legal fees, bonding of Trustees, postage, printing, etc., shall be borne by and from the Pension Trust Fund.

**Section 7.23.** This Pension Fund, including employer contributions, shall be irrevocable except by mutual consent of the parties to this Collective Bargaining Agreement. Mutual consent, as used herein is defined as: A three-fourths (3/4) majority vote of the total employees covered by the plan, and a like vote of the Employers, with subsequent conformity to Section 1.03 of Article I. The provisions of the plan trust and documents shall have control as to plan benefits and rights not specifically addressed herein.

**Section 7.24.** Any signatory contractor that defaults in making contributions to the Pension Fund shall be liable for all collection and litigation expenses, including reasonable attorney's fees, court costs, liquidated damages and audit fees and expenses, as well as interest at the legal rate.

**Section 7.25.** This Pension Fund and Trust Document will comply with and conform to all applicable laws.

### **Health Fund Contributions**

**Section 7.30.** Each signatory contractor shall contribute to the Southern California IBEW-NECA Health Trust Fund a total of Three Dollars and sixty-nine Cents (\$3.69) per

hour for each hour worked by each employee covered by this Agreement. (See Wage Scales - Article III, Section 3.05)

**Section 7.31.** A Board of Trustees for the Health Trust Fund is hereby established and shall consist of an equal number of members selected by the Union and the Chapter. The Board of Trustees is hereby authorized to establish and implement such Trust Fund, Health Fund Trust Agreement and reporting forms as they consider necessary to the finalization of the Health Fund.

**Section 7.32.** All disbursements shall be in accordance with the Trust Agreement. The cost of implementing and the administration of the Health Fund and Trust, including legal fees, bonding of Trustees, postage, printing, etc., shall be borne by and from the Health Trust Fund.

**Section 7.33.** This Health Fund Plan, including employer contributions, shall be irrevocable except by mutual consent of the parties to this Collective Bargaining Agreement. Mutual consent, as used herein, is defined as: A three-fourths (3/4) majority vote of the total employees covered by the Plan, and a like vote of the Employers, with subsequent conformity to Section 1.03 of Article I. The provisions of the plan trust and documents shall have control as to plan benefits and rights not specifically addressed herein.

**Section 7.34.** Any signatory contractor that defaults in making contributions to the Health Trust Fund shall be liable for all collection and litigation expenses, including reasonable attorney's fees, court costs, liquidated damages and audit fees and expenses, as well as interest at the legal rate.

**Section 7.35.** This Health Plan and Trust Document will comply with and conform to all applicable laws.

#### **Credit Union Fund**

**Section 7.40.** The Employer shall pay to each employee, by paying to an account maintained in his/her name at the Los Angeles Electrical Workers Credit Union (LAEWCU), a state chartered credit union, an amount equal to 12% of the gross pay of each employee. This amount is not in excess of, but is a part of the wage scale, and shall be paid to the LAEWCU by remitting said amount along with other contributions to the existing "Lock Box" account.

Union  
Keeps  
Interest

**Section 7.41.** The accounts held in each employee's name by the LAEWCU shall be subject to such rules and regulations as the LAEWCU has adopted or may adopt pursuant to its charter.

**Section 7.42.** The employer's sole responsibility under this section shall be to pay the amounts described in Section 7.40 above.

**Southern California IBEW, Local No. 11-NECA  
Defined Contribution Plan**

**Section 7.45.** Each signatory contractor shall contribute to the Southern California IBEW Local Union 11-NECA Defined Contribution Plan a total of Three Dollars and thirty Cents (\$3.30) per hour for each hour worked by each employee covered by this Agreement. This fund shall become Part "B" of the Southern California Board of Trustees that administer the Southern California IBEW/NECA Pension Trust Fund. (See Wage Scale - Article III, Section 3.05). A 'Tiered' Defined Contribution process shall be implemented by the parties to this agreement upon full compliance with all state and federal laws. In addition, an automatic Local 11 Working Assessment will be implemented.

**Section 7.46.** All disbursements shall be in accordance with the Plan adopted by the Board of Trustees. The cost of implementing and the administration of the Southern California IBEW, Local Union 11-NECA Defined Contribution Plan shall be borne by the Southern California IBEW, Local Union 11-NECA Defined Contribution Plan.

**Section 7.47.** This Southern California IBEW, Local Union 11-NECA Defined Contribution Plan, including Employer contributions, shall be irrevocable except by mutual consent of the parties to this Collective Bargaining Agreement. Mutual consent, as used herein, is defined as: A three-fourths (3/4) majority vote of the total employees covered by the Plan, and a like vote of the employers with subsequent conformity to Section 1.03 of Article I. The provisions of the plan trust and documents shall have control as to plan benefits and rights not specifically addressed herein.

**Section 7.48.** This Southern California IBEW, Local Union 11-NECA Defined Contribution Plan shall comply with and conform to all applicable laws.

**Time of Contributions and Monthly Reports, Delinquency  
or Failure to Make Contributions or to File Reports of all Funds**

**Section 7.51.** Contributions to each of the foregoing Funds shall be due and payable on or before the tenth (10th) day of each month covering hours worked by each employee through the last payroll period in the prior calendar month. Each contractor shall file a monthly report with each Fund in the form established by the Fund, and such report shall be filed regardless of whether a contractor has employed any employees in the month covered by the report.

**Section 7.52.** Any contractor who fails to report or to make contributions due to any foregoing Fund before the fifteenth (15th) day of the month in which it is due, or who issues a non-sufficient check shall be considered delinquent and, therefore, obligated and liable and subject to the following:

Each delinquent contractor shall pay to the Fund involved liquidated damages in the amount of 1½% of the principal if late 1-30 days; 3% of the principal if late 31-60 days; 1½% will accrue for each additional thirty days late, up to a maximum of 18% per annum of the indebtedness or ten dollars (\$10.00) for each month of delinquency, whichever is the greater.

The Trustees of the Fund involved shall, within sixty (60) days after a contractor is delinquent, instruct legal counsel to institute legal action to enforce collection. A delinquent contractor shall pay all collection and litigation expenses, including reasonable attorney's fees, court costs, liquidated damages, audit fees and expenses, as well as interest and other expenses incurred in the enforcing of collection from such contractor, and each contractor shall make applicable books and records available for such purpose. Collection actions may be brought by the Trustees of the Fund in the name of the Fund, or in the name of the Trustees or in the name of any assignee, or agent as determined by the Trustees.

A delinquent contractor shall be liable to any employee affected by such delinquency for a sum equal to the value of the benefits lost to the employee by reason of delinquency of such contractor. A delinquent contractor shall be liable to reimburse any Fund for the cost or value of any benefits which may be made available by the Trustees to any employee affected by the failure of the delinquent contractor to contribute or to report to the Health Fund or to the Pension Fund or to any other Fund.

Individual Employers who fail to remit as provided above shall be additionally subject to having this Agreement terminated upon seventy-two (72) hours notice, in writing, being served by the Union, provided the individual Employer fails to show satisfactory proof that the required payments have been paid to the Local Secretary-Treasurer.

A contractor may be absolved of any or all of the foregoing liabilities if he/she satisfies the Trustees that he/she failed to pay any contributions or to report because of honest mistake, clerical error, or other reasons satisfactory to the Board of Trustees.

Whenever a contractor claims that his/her failure to make the required contributions was due to honest mistake or clerical error, and requests relief for that reason, it shall be considered provided the contractor agrees in writing to an audit of his/her records by an auditor appointed by the Board of Trustees. If the audit reveals to the Trustees that such failure to pay was not due to honest mistake or clerical error, then the contractor shall pay the cost of the audit; otherwise, the Trust Fund will pay for the cost of the audit. Any contractor shall be entitled to credit for or refund of money paid to any Trust Fund by reason of clerical error or mistake and the Trustees are authorized to refund such monies. The acceptance of any contributions from any contractor shall not release or discharge him/her from the obligations to contribute for all hours worked under this Agreement for which no contribution has actually been received notwithstanding any statement, restriction or qualification appearing on any check from any contractor.