**TRUSTEE APPOINTMENT OVERVIEW AND POLICY**

**FOR**

The [ ] (Association ), in its role as a settlor, has appointed you to the position of management trustee for one or more of the following SMART Local [ ] multiemployer benefit trust funds: the Local 525 Pension Fund; the Local 525 Health & Welfare Fund or the Local [ ] JATC. The ASSOCIATION has prepared this policy to prepare you for your new role by offering a brief educational overview and to outline both its requirements of you and your obligations under the law during your tenure as trustee.

***MULTIEMPLOYER BENEFIT TRUST FUNDS***

Multiemployer funds have been created solely for the benefit of collectively bargained employees working for many employers. They are typically sponsored by a group of participating employers, within the same or related industries, and a corresponding labor union. These funds are maintained pursuant to a trust agreement and one or more collective bargaining agreements. Employers negotiate the funds into the applicable collective bargaining agreement and agree to contribute to the funds at a certain specified rates.

The funds are then administered by jointly-managed boards of labor and management trustees, in equal numbers, to represent participants and their beneficiaries. These funds are often referred to as Taft-Hartley funds. This name refers to the Taft-Hartley Act of 1947, also known as the Labor-Management Relations Act. The Act was passed by Congress to regulate organized labor practices and to define standards for union pension and benefit funds.

***EMPLOYEE RETIREMENT INCOME SECURITY ACT***

The Employee Retirement Income Security Act of 1974 (ERISA) was enacted to protect the interests of employee benefit plan participants and their beneficiaries by (1) requiring the disclosure of financial and other information concerning the plan to beneficiaries; (2) establishing standards of conduct for plan fiduciaries and (3) providing for appropriate remedies and access to the federal courts. ERISA is sometimes used to refer to the full body of laws that regulate employee benefit plans, which are mainly in the Internal Revenue Code and ERISA itself. Responsibility for interpretation and enforcement of ERISA is divided among the Department of Labor (DOL), the Department of Treasury, in particular, the Internal Revenue Service (IRS) and the Pension Benefit Guaranty Corporation (PBCG).

***THE TRUSTEE AND THEIR FIVE FIDCUIARY DUTIES***

A trustee has a fiduciary duty **to act in the best interests of both current and future beneficiaries of the trust** and can be held personally liable for any breach of that duty. ERISA expects that a trustee shall discharge his duties as follows:

A trustee has a ***duty of loyalty***. Thou shall act for the exclusive purpose and interest of all participants and beneficiaries. Thou shall use plan assets only to pay benefits and reasonable administrative expenses.

A trustee has a ***duty of prudence.*** Thou shall act as a prudent expert with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

A trustee has a ***duty of diversification***. Thou shall diversify investments unless it would be imprudent to do so.

A trustee has a ***duty to follow the plan documents***. Thou shall act in accordance with the plan documents unless those documents are inconsistent with the provisions of ERISA.

A trustee has a ***co-fiduciary duty.*** Thou art thy fellow fiduciary’s keeper. A trustee cannot avoid liability simply by avoiding direct participation in a fiduciary breach. A trustee can be liable for direct participation in a breach, concealment of a breach, failure to make reasonable efforts to remedy a breach once he or she acquires knowledge of it. A trustee has a nondelegable obligation to monitor the work of other fiduciaries and service providers.

A fiduciary who fails to live up to ERISA’s requirements is personally liable for any losses to the plan resulting from a breach under Section 409 of ERISA. A fiduciary cannot avoid liability simply by avoiding direct participation in a fiduciary breach. Under ERISA Section 405, a fiduciary can be liable for direct participation in a breach, concealment of a breach, failure to make reasonable efforts to remedy a breach once he or she acquires knowledge of it, or even for allowing a breach to happen by failing to exercise his or her supervisory duties as a trustee. In other words, every fiduciary has a nondelegable obligation to monitor the work of other fiduciaries and service providers and to correct errors.

***ASSOCIATION IS A SETTLOR AND YOUR DUTIES TO THE SETTLOR***

In traditional trust law parlance, a “settlor” is the party who designs, establishes and funds a trust, while the “fiduciary” administers the trust in accordance with the terms adopted by the settlor. The DOL has adopted this terminology for ERISA plans. Thus, an employer association setting the terms of its employee benefit plan is a "settlor," but when the employer administers the plan, it is a "fiduciary." ASSOCIATION is thereby a settlor to the Local [ ] multiemployer benefit plans, along with Local [ ]. ASSOCIATION in its role as settlor brings about obligations and responsibilities under both the terms of the Trust Agreements and the law. For example, ASSOCIATION as a settlor to the Trust Agreement is given the sole authority and responsibility of appointing management side trustees to the multiemployer benefit trust funds, and, under the law it has an obligation to evaluate its appointed trustees.

Therefore, in your role as an appointed management trustee by ASSOCIATION you will be required to do the following to sustain your role and aid in ASSOCIATION’s evaluation of your performance:

1) Attend 75 percent of all multiemployer benefit trust fund meetings to which you have been appointed in a

calendar year. Depending on the trust fund to which you have been appointed, your trust funds may meet

quarterly or monthly.

2) Obtain trustee training through a bona fide, nationally recognized organization at least once, every three

years. The customary recommendation is to attend training provided by the International Foundation of

Employee Benefit Plans (IFEBP or IF). Typically, the IFEBP hosts its annual conference every fall in October

or November and will be discussed during a regularly scheduled fund meeting.

3) Complete and submit the ASSOCIATION-provided evaluation you are provided each year with relevant

but simple questions specific to the fund(s) to which you have been appointed.