

**TRUST AGREEMENT
OPERATING ENGINEERS PUBLIC AND MISCELLANEOUS EMPLOYEES
HEALTH AND WELFARE TRUST FUND**

THIS TRUST AGREEMENT is made effective September 1, 1998, by and between Operating Engineers Local Union No. 3 of the International Union of Operating Engineers (hereinafter referred to as "Union") and IEDA, a California Nonprofit Corporation (hereinafter referred to as the "Employer").

RECITALS:

1. The Employer is a representative of parties to collective bargaining agreements with the Union, which provide that each individual employer shall pay contributions under the terms of various collective bargaining agreements to the Operating Engineers Public and Miscellaneous Employees Health and Welfare Trust Fund, or its predecessor in interest, the Operating Engineers Public Employees Health and Welfare Trust Fund (hereinafter "Trust Fund" or "Fund") at rates specified from time to time in said Agreements.
2. The parties have agreed that such contributions shall be payable to and be deposited in the Trust Fund created and established by this trust agreement.
3. The purpose of this Trust Agreement is to provide for the establishment of such Trust Fund and for the maintenance of Health and Welfare Plans in accordance with the terms of various collective bargaining agreements and subscriber agreements.

PROVISIONS:

In consideration of the foregoing, and of the mutual promises hereinafter provided, the parties agree as follows:

**ARTICLE I.
DEFINITIONS**

Section 1. "*Board of Trustees*" means the Board of Trustees established by this Trust Agreement in Article III.

Section 2. "*Collective Bargaining Agreements*" includes any collective bargaining agreement between the Union, or any of its affiliated local unions, and any employer organization or individual employer which provides for the making of employer contributions to the Fund, and any extension or renewal of any of said agreements which provides for the making of employer contributions to the Fund.

Section 3. "*Code*" means the Internal Revenue Code of 1986, as amended from time to time. Reference to any section or subsection of the Code includes reference to any comparable or succeeding provisions of any legislation which amends, supplements, or replaces such section of subsection.

Section 4. "*Employee*" means any employee of a contributing employer for whom the contributing employer makes contributions to the Fund.

Section 5. "*Individual Employer*" means any employer who is required by any of the collective bargaining agreements to make contributions to the Fund, or who does in fact make one or more contributions to the Fund.

Section 6. "*Subscriber Agreement*" means any written agreement between the Fund and an employer which provides for the making of employer contributions to the Fund.

Section 7. "*Health and Welfare Plan*" or "*Plan*" mean the Health and Welfare Plan established pursuant to this Trust Agreement, and any amendments to or modifications of the Plan pursuant to such Agreement.

Section 8. "*ERISA*" means the Employee Retirement Income Security Act of 1974, as amended, and any valid regulation issued consistent with the Act.

Section 9. "*Signatory Association*" means any employer organization, other than the Employer, which signs this agreement on behalf of its members or executes on behalf of such members a written acceptance of any agreement to be bound by the terms of this Agreement.

Section 10. "*Trust Fund*" means the trust estate of the Operating Engineers Public Employees Health and Welfare Trust Fund created by this Agreement.

Section 11. "*Trustee*" means the designated trustee acting at any time under this Trust Agreement.

ARTICLE II. **TRUST FUND**

Section 1. There is hereby created the Operating Engineers Public Employees Health and Welfare Trust Fund which shall consist of all contributions required by the collective bargaining agreements, memorandums of understanding, or subscriber agreements to be made for the establishment and maintenance of the Health and Welfare Plan, and all interest, income and other returns thereon of any kind whatsoever.

Section 2. The Trust Fund shall have its principal office in the City and County of Alameda, State of California, or at such other place as the Board of Trustees may from time to time designate.

Section 3. Contributions to the Trust Fund shall not constitute or be deemed to be wages due to the employees with respect to whose work such payments are made and no employee shall be entitled to receive any part of the contributions made or required to be made into the Trust Fund in lieu of the benefits or any of them provided by the Health and Welfare Plan.

Section 4. Neither the Employer, any signatory association, any individual employer, the Union, any beneficiary of the Health and Welfare Plan, nor any other person shall have any right, title, or interest in the Trust Fund other than as specifically provided in this agreement, and no part of the Trust Fund shall revert to the Union, the Employer, any signatory association, any individual employer, any beneficiary, or any Employee, except for such contributions, if any, as may be returned to an Individual Employer, as paid by a mistake of fact, within one year of the payment thereof or as may otherwise be permitted by ERISA. Neither the Trust Fund nor any contributions to the Trust Fund shall be in any manner liable for or subject to the debts, contracts, or liabilities of the Employer, any signatory association, any individual employer, the Union, any beneficiary, or any Employee. No part of the Trust Fund, nor any benefits payable in accordance with the Health and Welfare Plan, shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge by any person; provided, however, that the Board of Trustees shall establish a procedure whereby any Employee may direct that benefits due him be paid to an institution in which he is hospitalized, in consideration for medical or hospital services rendered or to be rendered, and may establish a procedure whereby an Employee may direct that any such benefits be paid to any other person, entity, or institution furnishing services or supplies for which such benefits are payable.

Section 5. The Employer's liability to the Trust Fund or with respect to the Health and Welfare Plan, shall be limited to the payments or contributions required by the collective bargaining agreements or memorandums of understanding, and in no event shall the Employer be liable or responsible for any portion of the contributions due from other Employers. The basis on which payments or contributions are made to the Trust Fund shall be specified in the collective bargaining agreements, memorandums of understanding, and in this Trust Agreement, and the Employers shall not be required to make any further payments or contributions to the cost of operation of the Trust Fund or of the Plan, except as may be provided in such Agreements or in ERISA.

Section 6. Neither the Employer, any signatory association, any individual employer, the Union, nor an Employee shall be liable or responsible for any debts, liabilities, or obligations of the Trust Fund or the Board of Trustees.

Section 7. Contributions to the Trust Fund shall be payable in the City of Alameda, State of California, in regular monthly installments starting on or before the effective date of a collective bargaining agreement, and continuing from month to month thereafter subject to the

provisions of the collective bargaining agreements. Each monthly contribution shall be accompanied by a report in a form prescribed by the Board of Trustees which shall provide the due dates for any contributions to the Trust Fund.

Section 8. Each contribution to the Trust Fund shall be made promptly, and in any event on before the 25th day of the calendar month in which it becomes payable, on which date of said contribution, if not then paid in full, shall be delinquent. The Board of Trustees, in its discretion, may establish an earlier contribution due date. Unless otherwise notified by the Board of Trustees, if any Employer fails to make his or its monthly contribution in full on or before the 25th day of the month on four occasions within any twelve-month period, the Board of Trustees may provide by resolution that thereafter during the twelve-month period immediately following such resolution the 15th day of the month shall be the delinquency date for such Employer. The parties recognize and acknowledge that the regular and prompt payment of Employer contributions to the Trust Fund is essential to the maintenance in effect of the Health and Welfare Plan, and that it would be extremely difficult, if not impracticable, to fix the actual expense and damage to the Trust Fund and to the Health and Welfare Plan which would result from the failure of an Employer to pay such monthly contributions in full within the time above provided. Therefore, the amount of damage to the Trust Fund and Health and Welfare Plan resulting from any such failure shall be presumed to be the sum of \$20 per delinquency or 10% of the amount of the contribution or contributions due, whichever is greater, which amount shall become due and payable to the Trust Fund as liquidated damages and not as a penalty, in the City of Alameda, State of California, upon the day immediately following the date on which the contribution or contributions become delinquent. Said delinquent contribution or contributions shall be increased by the amount of said liquidated damages and such contributions, as thus increased, shall be the payments specified in this Trust Agreement and the Health and Welfare Plan pursuant to ERISA as required to be made to the Fund.

ARTICLE III. **BOARD OF TRUSTEES**

Section 1. The Trust Fund shall be administered by a Board of Trustees which shall consist of six (6) Trustees. Three Trustees representing the individual employer shall be appointed in writing by the Employer, who are hereby irrevocably designated by each individual employer as his or its attorneys in fact for the purpose of appointing and removing trustees and successor trustees. Three Trustees representing the employees shall be appointed by the Union by an instrument in writing signed by the Executive Officer of the Union. The Employer and the Union expressly designate the Trustees jointly as named fiduciaries, who shall have exclusive authority and discretion acting as the Board of Trustees as herein provided, to control and manage the operation and administration of the Trust Fund and the Health and Welfare Plan. Each of the Trustees expressly accepts designation as a fiduciary and as Trustee by written acceptance and signature of this Trust Agreement and assumes the duties, responsibilities, and obligations of the Trustees as created and established by this Trust Agreement and under

applicable law. Any Trustee named hereafter shall do likewise by signing the Trust Agreement or a written acceptance thereof, in a form approved by and filed with the Board of Trustees.

Section 2. The Board of Trustees shall select one of their number to act as Chairman of the Board of Trustees and one to act as Secretary, to serve for such period as the Board of Trustees shall determine. When the Chairman is selected from among the Employer Trustees, the Secretary shall be selected from among the Employee Trustees, and vice versa.

Section 3. Each Trustee shall serve until his death, resignation, or removal from office.

Section 4. A Trustee may resign at any time by serving written notice of such resignation upon the Chairman of the Board of Trustees, at least 30 days prior to the date on which such resignation is to be effective. The Secretary shall promptly notify in writing the Chairman and Secretary of the Board, and the Employer and the Union of such resignation.

Section 5. Any Employer Trustee may be removed from office at any time, for any reason, by a writing signed by the Employer and served on the Secretary of the Board of Trustees. Any Employee Trustee may be removed from office at any time, for any reason, by an instrument in writing signed by the Executive Officer of the Union and served on the Secretary of the Board of Trustees. The Secretary shall promptly notify in writing the Chairman and Secretary of the Board, the Trustee being removed, and the Union.

Section 6. If any Trustee dies, resigns, or is removed from office, a successor Trustee shall be appointed forthwith by an instrument in writing signed by the appropriate Executive Officer of the Union, or the Employer, as the case may be.

ARTICLE IV. **FUNCTIONS AND POWERS OF BOARD OF TRUSTEES**

Section 1. The Board of Trustees acting jointly shall have the power to control and manage the assets, operations, and administration of the Fund and the Plan as a fiduciary and shall exercise such authority with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent Board acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims; provided, however, that the Board may:

- (a) appoint an investment manager or managers (as defined in ERISA) to manage (including the power to acquire and dispose of) any assets of the Fund,
- (b) enter into an agreement allocating among Trustees such specific responsibilities, obligations, or duties as the Board shall determine, after receiving and considering the written reports and recommendations of the consultant-actuary, legal counsel and the qualified public accountant engaged by the Fund, may be properly so allocated,

(c) designate, pursuant to the same procedure, persons other than named fiduciaries to carry out fiduciary responsibilities (other than trustee responsibilities) under this Trust Agreement or the Plan,

(d) employ one or more persons to render advice with regard to any responsibility the Board has under this Trust Agreement or Plan, or

(e) do any one or more of the foregoing.

Any person or entity so appointed, designated, or employed shall act solely in the interests of the participants and beneficiaries of the Trust Fund and Plan.

Section 2. All contributions to the Plan or the Trust Fund shall be due and payable at the City of Alameda, State of California, and shall be paid to, received, and held subject to the trust established by this Trust Agreement and all the terms and provisions hereof. The acceptance and cashing of any checks for such contributions, and the disposition of the moneys covered thereby in accordance with this Trust Agreement, shall not release or discharge the Employer from his or its obligations under the collective bargaining agreement or memorandum of understanding for hours worked under said Agreements for which no contribution has actually been received, notwithstanding any statement, restriction, or qualification appearing on the check or any attachment thereto.

Section 3. The Board of Trustees shall have the power, in the name of the Trust Fund, in the name of its joint delinquency committee or jointly with other funds, or otherwise as in its discretion may be deemed necessary or desirable, to demand and enforce, by suit in court or otherwise, the prompt payment of contributions to the Trust Fund, including payments due to delinquencies as provided in Section 8 of Article II without being limited or restricted by any grievance or arbitration procedures provided in a Collective Bargaining Agreement, Memorandum of Understanding, and to assert and enforce all priorities, lien rights, and other claims or rights with respect to any contributions or payments belonging to the Trust Fund, this Trust or any of its beneficiaries, including the right to file priority and other claims in bankruptcy. If any Employer defaults in the making of such contributions or payments and if the Board consults or causes to be consulted legal counsel with respect thereto, or files or causes to be filed any suit or claim with respect thereto, there shall be added to the obligation of the Employer who is in default, reasonable attorneys' fees, court costs, and all other reasonable expenses incurred in connection with such suit or claim, including any and all appellate proceedings therein.

Section 4. The Board of Trustees shall establish the Health and Welfare Plan, which shall consist of (a) the benefits provided by and the other terms and conditions of the contracts and insurance policies entered into pursuant to the provisions of this section and, in the alternative or in combination, (b) such written statement of benefits and rules and regulations as may be established by the Board pursuant to this section to govern the direct payment of benefits. The

Board shall promptly use the moneys available in the Trust Fund first to provide the benefits specified in the Plan. The Board shall have power to enter into contracts and procure insurance policies necessary to place into effect and maintain all or any part of the Plan, to terminate, modify, or renew any such contracts or policies subject to the provisions of the Plan, and to exercise and claim all rights and benefits granted to the Board or the Trust Fund by any such contracts or policies. Any such contract may be executed in the name of the Trust Fund, and any such policy may be procured in such name. If, after reviewing the matter, the Board deems it advisable to do so, the Board shall also have power (c) to provide for the direct payment out of the Trust Fund of all or any part of the benefits to be furnished under the Plan, and (d) to provide for contributions by Employees to the Trust Fund to defray all or any part of the cost of any such benefits, but only to the extent that such payment or contribution is permitted by any applicable laws and regulations and subject to the terms and conditions of any such law or regulation. In the event that the Board elects to provide for the direct payment of any benefit or benefits the detailed basis on which such payments are to be made shall be set forth in a written statement, which statement, and any amendment, or modification thereof, shall be signed on behalf of the Board by the Chairman and Secretary thereof, and when so signed shall be a part of this Agreement for all purposes of the Labor Management Relations Act, as amended, or of any other law or regulation. An accurate summary of such benefit or benefits, and the terms and conditions of the payment thereof, shall be printed and made available to each active or retired employee who is eligible for any such benefit or benefits.

Section 5. The Board of Trustees shall have power:

- (a) To pay out of the Trust Fund the reasonable expenses incurred in the establishment of the Trust Fund and the Health and Welfare Plan.
- (b) To establish and accumulate such reserve funds as may be adequate to provide for administration expenses and other obligations of the Trust Fund, including the maintenance in effect of the Health and Welfare Plan.
- (c) To provide a procedure for establishing and carrying out the funding policy and method consistent with the objectives of the Health and Welfare Plan and the requirements of ERISA in adopting a plan of benefits and in amending the plan.
- (d) To employ such executive, consultant, corporate custodian or co-trustee, accounting, administrative, clerical, secretarial and legal personnel and other employees and assistants, as may be necessary, in connection with the administration of the Trust Fund and the Health and Welfare Plan, and to pay or cause to be paid, out of the Trust Fund, the compensation and necessary expenses of such personnel and assistants and the cost of office space, furnishings and supplies and other essentials required in such administration. If the Board is unable to agree upon the employment of either a consultant or an attorney pursuant to this clause, the Trustees may each select either a consultant or an attorney, or both, as the case may require, who shall be directed to act jointly with each other in connection with the administration of the Trust Fund, and the reasonable cost of such advice or services shall be paid from the Trust Fund.

(e) To incur and pay out of the Trust Fund any other expenses reasonably incidental to the administration of the Trust Fund or the Health and Welfare Plan.

(f) To compromise, settle, or release claims or demands in favor of or against the Trust Fund on such terms and conditions as the Board may deem desirable, including the power to continue, maintain, and from time to time modify or revoke, in whole or in part, a policy and procedure for the waiver of all or any part of the liquidated damages portion of any contribution or contributions upon such terms and conditions as the Board determines would be in the interests of the Trust Fund and its participants and beneficiaries; provided, however, that this clause shall not excuse any violation of any of the collective bargaining agreements or memorandums of understanding.

(g) If no investment manager is designated and appointed by the Board, to invest and reinvest or cause to be invested and reinvested the assets of the Trust Fund, in accordance with all applicable laws. Investments may be made with a bank or other fiduciary to the fullest extent permitted by law. No indicia of ownership shall be maintained outside the jurisdiction of the district courts of the United States, except to the extent permitted by law.

(h) To purchase, exchange, lease, mortgage or otherwise hypothecate, or otherwise acquire, or cause to be purchased, exchanged, leased, mortgaged or otherwise hypothecated, or otherwise acquired, any property, real, personal or mixed, on such terms as it may deem proper, and to execute and deliver or cause to be executed and delivered, any and all instruments in connection therewith.

(i) To sell, exchange, lease, convey, or otherwise dispose of or to cause to be sold exchanged, leased, conveyed, or otherwise disposed of, any property of any kind forming a part of the Trust Fund upon such terms as it may deem proper, and to execute and deliver or cause to be executed and delivered, any and all instruments of conveyance or transfer in connection therewith.

(j) To borrow money, and to encumber or hypothecate real or personal property by mortgage, deed of trust (with power of sale), contract of sale, security Agreement, pledge or otherwise; to borrow money on the credit of the trust estate; and to purchase real or personal property subject to, and assume the obligation secured by, mortgage, deed of trust (with power of sale), contract of sale, security Agreement, pledge or otherwise.

(k) To construe the provisions of this Trust Agreement and the Plan and any such construction adopted by the Board of Trustees in good faith which shall be binding upon any and all parties or persons affected thereby.

(l) To pay or cause to be paid any and all real or personal property taxes, income taxes, or other taxes or assessments of any or all kinds levied or assessed upon or with respect to the Trust Fund or the Plan.

(m) To maintain or cause to be maintained, on a current basis, all actuarial data, records and information in connection with the administration of the Plan and to cause the books and records to be checked and evaluated annually, or more often if the Board so determines, by the Trust Fund consultant-actuary or consultant-actuaries as the case may be, whose reports shall be available for inspection by interested persons at reasonable times and upon proper notice, at such place or places as may be designated by the Board; and the Board shall have the right to rely upon all such reports and records.

(n) To prepare or cause to be prepared such reports, descriptions, summaries and other information as are or may be required by law or as the Board in its discretion deems necessary or advisable, and to file and furnish such reports, descriptions, summaries and information to participants and their beneficiaries, Unions, the Employers, the Trustees, or other persons or entities, including government agencies, as required by law.

(o) To maintain or cause to be maintained such bank account or bank accounts as may be necessary or advisable in the administration of the Trust Fund or the Plan, and to designate the person or persons authorized to sign checks and withdrawal orders on any such accounts.

(p) With or without any of the contracts or policies mentioned in Section 4 of this Article, to pay or cause to be paid all or any part of the benefits provided in the Plan to the persons entitled thereto under the Plan, and in accordance with the terms and provisions of the Plan, which shall be the basis on which payments are made from the Plan.

(q) To adopt and prescribe reasonable rules and procedures, which shall not be inconsistent with the provisions of this Trust Agreement or of the Plan, governing the reporting of contributions, the entitlement to benefits, the method of applying for benefits, and any and all other matters in connection with the Fund and the Plan.

(r) To exercise and perform any and all of the other powers and duties specified in this Trust Agreement or the Plan.

Section 6. The Board of Trustees shall engage an independent qualified public accountant on behalf of all Plan participants as required by ERISA.

Section 7. The Board of Trustees shall provide at the expense of the Trust Fund, when and to the extent permissible by applicable law, insurance and bonding protection for the Trust Fund and for each Trustee, former Trustee or estate of a deceased Trustee or former Trustee, and all other persons who handle funds or other property of the Fund for any purpose whatsoever. The protection shall be from such companies as the Board shall determine.

Section 8. All checks, drafts, vouchers, or other withdrawals of money from the Trust Fund shall be authorized in writing or countersigned by at least one Employer Trustee and one Employee Trustee.

Section 9. The Board of Trustees shall maintain suitable and adequate records of and for the administration of the Fund and the Health and Welfare Plan. The Board may require the Employers, any signatory association, any individual employer, the Union, any employee or any other beneficiary under the Health and Welfare Plan to submit to it any information, data, report, or documents reasonably relevant to and suitable for the purposes of such administration; provided, however, that the Union shall not be required to submit lists of membership. The parties agree that they will use their best efforts to secure compliance with any reasonable request of the Board for any such information, data, report, or documents. Upon request in writing from the Board, any Individual Employer will permit a Trust Fund Auditor to enter upon the premises of such Individual Employer during business hours, at a reasonable time or times, not less than two (2) working days after such request, and to examine and copy such books, records, papers, or reports of such Individual Employer as may be necessary to determine whether the Individual Employer is making full and prompt payment of all sums required to be paid by him or it to the Fund.

Section 10. The books of account and records of the Board of Trustees, including the books of account and records pertaining to the Trust Fund, shall be audited at least once each year by an independent qualified public accountant engaged by the Board of Trustees on behalf of all Plan participants who shall conduct such an examination of any financial statements of the Trust Fund and Plan, and of the books and records of the Trust Fund and Plan, as may be required by ERISA. The Board of Trustees shall also make all other reports required by law. A statement of the results of the annual audit shall be available for inspection by interested persons at the principal office of the Trust Fund and at such other suitable place as the Board may designate from time to time. Copies of such statement shall be delivered to the Employers, the Union, and each Trustee within five days after the statement is prepared.

Section 11. The Board of Trustees may coordinate its activities in the administration of the Trust Fund and the Health and Welfare Plan with the administrative activities of the boards of trustees of other trust funds and health and welfare plans to such extent as may be necessary or desirable to minimize administrative costs, eliminate unnecessary bookkeeping and other expenses for the Employers and avoid or eliminate duplicating Employer contributions or insurance coverage with relation to the same Employee. The Board may agree to exercise and exercise any of its functions and powers jointly with any one or more of the board of trustees of such other trust funds, and it may agree to join with and join with any one or more of said boards in establishing a joint office or joint administrative personnel.

ARTICLE V.

PROCEDURE OF BOARD OF TRUSTEES

Section 1. The Board of Trustees shall determine the time and place of its regular periodic meetings. The Chairman, or any two (2) members of the Board of Trustees, may call a special meeting of the Board of Trustees by giving written notice to all other Trustees of the time

and place of such meeting at least five days before the date set for the meeting. Any such notice of special meeting shall be sufficient if sent by ordinary mail or by electronic mail addressed to the Trustee at his address as shown in the records of the Board of Trustees. Any meeting at which all Trustees are present, or concerning which all Trustees have waived notice in writing, shall be a valid meeting without the giving of any notice.

Section 2. The Board shall appoint a secretary who shall keep minutes of records of all meetings, proceedings, and acts of the Board. Such minutes need not be verbatim.

Section 3. The Board shall not take any action or make any decision on any matter coming before it or presented to it for consideration or exercise any power or right given or reserved to it or conferred upon it by this Trust Agreement, except upon the vote of a majority of all of the Trustees at a meeting of the Board duly and regularly called or except by the signed concurrence of all Trustees without a meeting, as provided in Section 5 of this Article. In the event of the absence of any Employer Trustee from a meeting of the Board, the Employer Trustees present at such meeting may vote on behalf of such absent Trustee and if such Employer Trustees cannot all agree as to how the vote of such absent Employer Trustee shall be cast, then it shall be cast as the majority of them shall determine or, in the absence of such majority determination, it shall be cast as the Employer Trustee Chairman or Secretary of the Board shall determine. In the event of the absence of any Employee Trustee from a meeting of the Board, the Employee Trustees present at such meeting may vote on behalf of such absent Trustee pursuant to the same method and in the same manner as above provided for Employer Trustees to cast the vote of any absent Employer Trustee.

Section 4. All meetings of the Board of Trustees shall be held at the principal office of the Trust Fund, unless another place is designated from time to time by the Board of Trustees, and all business may be conducted upon the attendance of one Employer Trustee and One Union Trustee.

Section 5. Upon any matter which may properly come before the Board of Trustees, the Board of Trustees may act in writing without a meeting, provided such action has the affirmative concurrence in writing of all Trustees

ARTICLE VI.

GENERAL PROVISIONS APPLICABLE TO TRUSTEES

Section 1. The provisions of this Article are subject to and qualified by the provisions of ERISA to the extent that such provisions are constitutionally applicable. In order to induce experienced, competent, and qualified persons and entities to serve as fiduciaries, to deal with the Trust Fund and the Board of Trustees and to participate in other ways in the administration and operation of the Trust Fund and Plan and thus to further the interests of the participants and beneficiaries of the Plan, it is the intent and purpose of the parties to provide herein for the maximum permissible protection and indemnification of such persons or entities from and

against personal liability, loss, cost, or expense as a result of such service, dealing, or participation, and the provisions of this Article shall be liberally construed and applied to accomplish this objective.

Section 2. No party who has verified that he or it is dealing with the duly appointed Trustees, or any of them, shall be obligated to see to the application of any moneys or property of the Trust Fund, or to see that terms of this Trust Agreement have been complied with, or to inquire as to the necessity or expedience of any act of the trustees. Every instrument executed by the Board of Trustees or by its direction shall be conclusive in favor of every person who relies on it, that (a) at the time of the delivery of the instrument this Trust Agreement was in full force and effect, (b) the instrument was executed in accordance with the terms and conditions of this Trust Agreement, and (c) the Board was duly authorized to execute the instrument or direct its execution.

Section 3. The duties, responsibilities, liabilities, and disabilities of any Trustee under this Agreement shall be determined solely by the express provisions of the Agreement and no further duties, responsibilities, liabilities, or disabilities shall be implied or imposed.

Section 4. The Trustees shall incur no liability, either collectively or individually, in acting upon any papers, documents, data, or information believed by them to be genuine and accurate and to have been made, executed, delivered, or assembled by the proper parties. The Trustees may delegate any of their ministerial powers or duties to any of their agents or employees. No Trustee shall incur any liability for simple negligence, oversight, or carelessness in connection with the performance of his duties as such Trustee. No Trustee shall be liable for the act or omission of any other Trustee. The Trust Fund shall exonerate, reimburse, and hold harmless the trustees, individually and collectively, against any and all liabilities and reasonable expenses arising out of their trusteeship, except (as to the individual Trustee or Trustees directly involved) for expenses or liabilities arising out of willful misconduct or gross negligence. No expense shall be deemed reasonable under this section unless and until approved by the Board of Trustees.

Section 5. (a) Except as otherwise provided in Sub-Section (b) of this Section, upon request of a Trustee or former Trustee, or the legal representative of a deceased Trustee or former Trustee, the Board of Trustees shall provide for the defense of any civil action or proceeding brought against the Trustee, former Trustee, or estate of a deceased Trustee or former Trustee, in his or her capacity as such Trustee or former Trustee or in his or her individual capacity or in both, on account of any act or omission in the scope of his or her service or duties as a Trustee of the Fund. For the purposes of this Section, a cross-action, counterclaim, cross-complaint, or administrative or arbitration proceeding against a Trustee or former Trustee or estate shall be deemed to be a civil action or proceeding brought against him or her or it.

(b) The Board of Trustees may refuse to provide for the defense of a civil action or proceeding brought against a Trustee or former Trustee or estate if the Board determines that:

(1) The act or omission was not within the scope of his or her service as a Trustee of the Fund; or

(2) He or she acted or failed to act in breach of his or her fiduciary duty because of willful misconduct or gross negligence; or

(3) The defense of the action or proceeding by the Board would create a conflict of interest between the Board or Trust Fund and the Trustee, former Trustee, or estate.

(c) The Board of Trustees may provide for the defense of a criminal action brought against a Trustee or former Trustee if:

(1) The criminal action or proceeding is brought on account of an act or omission in the scope of his or her services or duties as a Trustee or Former Trustee; and

(2) The Board determines that such defense would be in the best interests of the Fund and its participants and beneficiaries and that the Trustee or former Trustee acted, or failed to act, in good faith, without actual malice and in the apparent interests of the Fund and its participants and beneficiaries.

(d) The Board may provide for a defense pursuant to this section by Trust Fund counsel or by employing other counsel for such purpose or by purchasing insurance which requires that the insurer provide the defense. All of the expenses of providing a defense pursuant to this Section are proper charges against the Trust Fund. The Trust Fund shall have no right to recover such expenses from the Trustee, former Trustee, or estate.

(e) If after request, the Board fails or refuses to provide a Trustee, former Trustee, or estate with a defense against a civil action or proceeding brought against him or her or it and the Trustee or former Trustee or legal representative retains his or her own counsel to defend the action or proceeding, he or she shall be entitled to recover from the Trust Fund such reasonable attorneys fees, costs, and expenses as are necessarily incurred by him or her in defending the action or proceeding if the action or proceeding arose out of an act or omission in the scope of his or her service or duties as a Trustee of the Trust Fund, unless the Board establishes that the Trustee or former Trustee acted or failed to act in breach of his or her fiduciary duty because of willful misconduct or gross negligence.

Section 6. Neither the Employers, the Union, nor any of the Trustees shall be responsible or liable for:

(a) The validity of this Trust Agreement or the Health and Welfare Plan.

(b) The form, validity, sufficiency, or effect of any contract or policy for Health and Welfare benefits which may be entered into.

(c) Any delay occasioned by any restriction or provision in this Trust Agreement, the Health and Welfare Plan, the rules and procedures of the Board of Trustees issued hereunder, any contract or policy procured in the course of the administration of the Trust Fund, or by any other proper procedure in such administration; provided, however, that this clause shall not excuse any violation of any of the collective bargaining agreements or memorandums of understanding.

(d) The making or retention of any deposit or investment of the Trust Fund or any portion thereof, or the disposition of any such investment, or the failure to make any investment of the Trust Fund, or any portion thereof, or any loss or diminution of the Trust Fund, except as to the particular person involved, such loss as may be due to the gross neglect or willful misconduct of such person.

Section 7. Neither the Employer, any signatory association, any individual employee or the Union shall be liable in any respect for any of the obligations or acts of the Trustees because such Trustees are in any way associated with such Employer or Union.

Section 8. Subject to and within the limitations provided in ERISA, The Board of Trustees may provide for the reimbursement to the Trustees for expenses incurred in the performance of their duties as Trustees, including attendance at educational or training conferences, institutes or other meetings relevant to such duties as authorized by the Board, and for a reasonable payment to the Trustees for attendance at meetings or other services rendered to the Trust Fund at the request or direction of the Board.

Section 9. Any trustee who resigns or is removed from office shall forthwith turn over to the Chairman or Secretary of the Board of Trustees at the principal office of the Trust Fund any and all records, books, documents, moneys, and other property in his or her possession or under his or her control which belong to the Trust Fund or which were received by him or her in his or her capacity as such Trustee.

Section 10. The name of the Trust Fund may be used to designate the Trustees collectively and all instruments may be effected by the Board of Trustees in such name.

ARTICLE VII **ARBITRATION**

Section 1. In the event that the trustees deadlock on any matter arising in connection with the administration of the Trust Fund or the Health and Welfare Plan, they shall agree upon a neutral person to serve as an impartial umpire to decide the dispute. The Trustees may, by mutual agreement, select two representatives from the trustee group to sit with the umpire to constitute a Board of Arbitration. If such is done, the decision of a majority of this Board shall be final and binding upon the Trustees and the parties and beneficiaries of this agreement and of the Health and Welfare Plan. Otherwise, the decision of the impartial umpire shall be final and binding upon the trustees, the parties, and the beneficiaries of the agreement and the Health and

Welfare Plan. Any matter in dispute and to be arbitrated shall be submitted to the Board of Arbitration or the impartial umpire, as the case may be, in writing, and in making its or his or her decision, the Board or umpire shall be bound by the provisions of this agreement, the Health and Welfare Plan, the collective bargaining agreements and memorandums of understanding and shall have no authority to alter or amend the terms of any thereof. If the Trustees cannot jointly agree upon a statement submitting said matter to arbitration, each Trustee shall prepare and state in writing its version of the dispute and the question or questions involved. The decision of the Board of Arbitration or the impartial umpire, as the case may be, shall be rendered in writing within ten (10) days after the submission of the dispute.

Section 2. If no agreement on an impartial umpire is reached within ten (10) days, or within such further time as the Trustees may allow for such purpose by mutual agreement, such umpire shall, on petition of the Trustees, be appointed by the United States District Court for the Northern District of California.

Section 3. The reasonable expenses of any such arbitration, including any necessary court proceedings to secure the appointment of an umpire or the enforcement of the arbitration award (excluding the fees and expenses of witnesses called by the parties and the cost of any attorneys other than the Trust Fund attorneys selected pursuant to Section 5 (d) of Article IV, shall be a proper charge against the Trust Fund. No expenses shall be deemed reasonable under this section unless and until approved by the Board of Trustees.

Section 4. No matter in connection with the interpretation or enforcement of any collective bargaining agreement or memorandum of understanding shall be subject to arbitration under this Article. No matter which is subject to arbitration under this Article shall be subject to the grievance procedure or any other arbitration procedure provided in any of the collective bargaining agreements or memorandums of understanding.

ARTICLE VIII. **GENERAL PROVISIONS**

Section 1. Subject to the provisions of the collective bargaining agreements, memorandums of understanding, the rights and duties of all parties, including the Employer, the Union, the Employees and the Trustees, shall be governed by the provisions of this Trust Agreement and the Health and Welfare Plan and any insurance policies or contracts procured or executed pursuant to this Trust Agreement.

Section 2. No employee or other beneficiary or person shall have any right or claim to benefits under the Plan other than as specified in the Plan. Any and every claim to benefits from the Trust Fund, and any claim or right asserted under the Plan or against the Trust Fund, regardless of the basis asserted for the claim and regardless of when the act or omission upon which the claim is based occurred, shall be resolved by the Board of Trustees under and pursuant

to the Plan and its decision with regard to the claim or right shall be final and binding upon all persons affected by the decision. The Board of Trustees shall establish a procedure for the presentation, consideration and determination of any such claim or right, which procedure shall comply with ERISA. No action may be brought for benefits under the Plan or to enforce any right or claim under the Plan or against the Trust Fund until after the claim for benefits or other claim has been submitted to and determined by the Board in accordance with the procedure thus established and thereafter the only action which may be brought is one to enforce the decision of the Board or to clarify the rights of the claimant under such decision. Neither the Employer, the Union, nor any of the Trustees shall be liable for the failure or omission for any reason to pay any benefits under the Plan.

Section 3. Any notice required to be given under the terms of this Trust Agreement, the Health and Welfare Plan, or the rules and regulations of the Board of Trustees shall be deemed to have been duly served if delivered personally to the person to be notified, or if mailed in a sealed envelop, postage prepaid, or such person at his or her last known address as shown in the records of the Trust Fund, or if sent by wire or other means of written communication to such person at said last known address.

Section 4. This Trust Agreement shall be binding upon and inure to the benefit of all Employer and the heirs, executors, administrators, successors, purchasers, and assigns of the Employer, and the employees and beneficiaries, the Union and the Trustees.

Section 5. All questions pertaining to this Trust Agreement, the Trust Fund or the Health and Welfare Plan, and their validity, administration and construction, shall be determined in accordance with the law of the State of California and with any pertinent laws of the United States.

Section 6. If any provision of this Trust Agreement, the Health and Welfare Plan, the rules and procedures made pursuant thereto, or any step in the administration of the Trust Fund or the Health and Welfare Plan is held to be illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining portions of the Trust Agreement or Plan or the rules and regulations, unless such illegality or invalidity prevents accomplishment of the objectives and purpose of the Trust Agreement and the Plan. In the event of any such holding, the parties will immediately commence negotiations to remedy any such defect.

Section 7. Except to the extent necessary for the proper administration of the Trust Fund or the Health and Welfare Plan, all books, records, reports, documents, or other information obtained with respect to the Trust Fund or the Plan shall be confidential and shall not be made public or used for any other purpose. Nothing in this section shall prohibit the preparation and publication of statistical data and summary reports with respect to the operations of the Trust Fund and the Plan.

Section 8. Any payment required by a decision of the Board shall be due and payable in the County of Alameda, State of California, and any action or proceeding to enforce or clarify

such decision shall be brought in a court of competent jurisdiction in that County. Any action or proceeding affecting the Trust Fund, the Plan or the Trust hereby established shall be brought solely against the Fund as an entity, and solely by or on behalf of the claimant in the claims procedure established pursuant to Section 2 of this Article, and neither the Employer nor the Union, any employee, any beneficiary or other person shall be entitled to notice of any such action or proceeding or to service of process therein. Any final judgment entered in any such action or proceeding shall be binding upon all of the above mentioned parties so long as such judgment does not attempt or purport to impose any personal liability upon or against any party not joined or not served in any such action or proceeding.

Section 9. The section headings and numbers are included only for convenience of reference and are not to be taken as limiting or extending the meaning of any of the terms and provisions of this Plan and Trust Agreement. A pronoun or adjective in the masculine gender includes the feminine gender, and the singular includes the plural, unless the context clearly indicates otherwise.

ARTICLE IX.

AMENDMENT AND TERMINATION

Section 1. The provisions of this Trust Agreement may be amended, altered, or modified at any time, and from time to time, by the Board of Trustees with the consent of the Union and the Employer shall be in writing subject to the terms and conditions of the collective bargaining agreements, memorandums of understanding, and any applicable law or regulation.

Section 2. The provisions of this Trust Agreement shall continue in effect during the term of the collective bargaining agreements, memorandums of understanding, and any renewals or extensions thereof with respect to such collective bargaining agreements and memorandums of understanding, as provided for the continuation of payments into the Trust Fund and of the Health and Welfare Plan.

Section 3. This Trust Agreement may be terminated by the Board of Trustees with the consent of the Union and the Employer by an instrument in writing executed by mutual consent at any time.

Section 4. In no event shall the trust established by this agreement continue for a longer period than is permitted by law.

Section 5. Upon the termination of the trust herein provided, any and all moneys remaining in the Trust Fund after the payment of all expenses shall be used for the continuance of one or more benefits of the type provided by the Health and Welfare Plan, until such moneys have been exhausted.

Employer:

By: _____

Keith Fleming
Keith Fleming
President
IEDA
a California Nonprofit Corporation

Union:

By: _____

Donald Doser
Donald Doser
Business Manager
OPERATING ENGINEERS
LOCAL UNION NO. 3
a labor organization