

MCASF LOCAL 725 SERVICE CORPORATION

POLICY FOR COLLECTION OF DELINQUENT EMPLOYER CONTRIBUTIONS

Background:

The MCASF Local 725 Service Corporation (Service Corporation) is a Florida non-profit corporation established by the Boards of Trustees of the ACRA Local 725 Pension Trust, the ACRA Defined Contribution Retirement Trust, and the ACRA Local 725 Health & Welfare Trust to provide administrative services to the founding funds and other benefit funds and programs (all of which are collectively referred to as the Employee Benefit Trusts) and to collect and disperse contributions required to be made by employers subject to certain collective bargaining agreements (CBAs) and other agreements. The CBAs and other agreements require contributions to the Employee Benefit Trusts from numerous employers that are to be paid to the Service Corporation to facilitate the collection and distribution of contribution obligations. In addition, certain other amounts, both taxable and non-taxable, are required to be paid by employers to the Service Corporation, including a portion of covered employees' taxable compensation.

The Employee Benefit Trusts for which contributions are required from employers are generally subject to the Employee Retirement Income Security Act of 1974, as amended (ERISA). ERISA makes clear that the collection of contributions to benefit plans is a fiduciary obligation. In meeting that obligation on behalf of the Employee Benefit Trusts, the Service Corporation has maintained a policy for collection of delinquent contributions, and this version updates and restates that policy.

Purpose:

The purpose of this policy is to provide workable guidelines for the effective and efficient collection of contributions from employers who fail to pay required contributions to the Service Corporation in a timely manner. The Service Corporation recognizes that the security and welfare of the Employee Benefit Trusts and the employees on whose behalf required contributions are to be made depends upon a diligent and systematic procedure to collect as much of the payments due to the Service Corporation as possible. At the same time, pursuing and collecting delinquent contributions involves factors and processes that make the ultimate result less than certain, and often requiring expenditures of resources to pursue potential collections. The guidelines are further intended to protect the Service Corporation and Employee Benefit Trusts from issues related to perceived extensions of credit to delinquent employers and prohibited transactions while

allowing the Service Corporation and the Trustees of the Employee Benefit Trusts to meet their fiduciary duties.

Policy and Applicable Procedures:

The policy employed by the Service Corporation is designed to provide consistent parameters for collection of contributions due as well as to provide for reasonable flexibility in dealing with difficult and dynamic situations.

Section 1. Core Requirements.

- 1.1 All contributions and payments required from employers shall be in the amount and manner specified in the CBA or other agreement applicable to the employer and in accordance with the rules and interpretations of the Service Corporation on behalf of the Employee Benefit Trusts.
- 1.2 Contributions and payments are ordinarily due on the 10th working day following the payroll period(s) for which the hours were worked. Employers making monthly contributions (following application and approval) shall report and pay contributions for all payroll periods ending in a calendar month by the 10th working day of the following month.
- 1.3 Reports documenting hours worked and contributions due shall be submitted not later than the applicable due date for the contributions on forms approved by the Service Corporation.
- 1.4 Except as provided in Section 4.3, each payment from an employer shall be applied first to the oldest contributions, assessments, liquidated damages, interest, cost and fees outstanding. Payments on a workout plan are applied to the oldest amounts outstanding, or according to the terms of a written work out agreement, if different.

Section 2. Monitoring Contributions, Late Payments and Assessments.

- 2.1 The Administrative Manager or Fund Administrator, as applicable, shall monitor and report to the Service Corporation Board monthly the status of employer contributions and reports, and whether any contributions are unreported and/or unpaid.

- 2.2 Any report or payment that was expected but not received in the reporting cycle for the month shall trigger:
- a). A variance report in writing to the employer;
 - b). Prompt notice to the Service Corporation's Delinquency Committee, collections counsel, and legal counsel;
 - c). Attempt first telephone contact, and if unsuccessful, written contact, with the employer to determine status and time frame for payment, to facilitate voluntary payment of amounts due.
- 2.3 Payments submitted by an employer that are late for all or a part of the contributions due for a reporting period shall be subject to a late payment assessment as described in the CBA and the Employee Benefit Trusts trust agreements. This assessment is in addition to, and not in place of, any amount authorized pursuant to Section 502(g) of ERISA. The following provisions apply to the assessment and payment of the late payment assessment:
- a). The assessment for an employer that has been late no more than two times in a twelve month period, whether or not an earlier late payment was forgiven for any reason, shall be 10%.
 - b). The assessment for an employer that has been late three times in a twelve month period, whether or not an earlier late payment was forgiven for any reason, shall be 15%.
 - c). The assessment for an employer that has been late more than three times in a twelve month period, whether or not an earlier late payment was forgiven for any reason, shall be 20%.
 - d). Any adjustment to, or abatement of, late payment assessments shall be governed by the principals and policies established by the Service Corporation board as described in Section 3.6, or an addendum to that Section.

- 2.4 An employer may receive upon application to the Service Corporation Board a waiver of a first late payment assessment if the employer has not ever had a previous late payment assessment.
- 2.5 Any late payment assessment shall be due and paid by the employer within 10 calendar days of the employer's receipt of the assessment. Subsequent payments received by the Service Corporation may be applied to outstanding late payment assessments, in the Service Corporations sole discretion. The Service Corporation may assign collections counsel to recover unpaid assessments.

Section 3. Failure to Pay or Report.

- 3.1 The failure of an employer to pay the contributions required under Section 1.1 by the applicable due date shall be a violation of the collective bargaining agreement between the employer and the Union, as well as a violation of the employer's obligations under the trust agreements for the Employee Benefit Trusts. The Service Corporation shall be free to utilize any remedy otherwise available for the collection of delinquent contributions and any unpaid interest, liquidated damages assessment, including initiation of legal proceedings pursuant to Sections 302 and 515 of ERISA, pursuit of mechanic lien rights, and action against any bonds posted.
- 3.2 An employer who fails to pay any contributions for a reporting period on time shall not be relieved from its obligation to make all required payments for any subsequent contribution period, and no other employer shall be excused from paying their contributions due because of such employer's nonpayment.
- 3.3 An employer that fails to pay contributions when due is obligated to immediately pay all delinquent contributions together with interest on those amounts at the rate provided for in the trust agreements.
- 3.4 An employer that fails to pay contributions when due is obligated to pay liquidated damages of 20% of the amount due. Liquidated damages assessed pursuant to this Section shall be deemed to be additional employer contributions due and shall be paid not later than the 10th working day following assessment.

- 3.5 In addition to any other remedies to which the Employee Benefit Trusts may be entitled, the Service Corporation shall be entitled to all expenses of collection, including, but not limited to reasonable attorneys' fees and court costs.
- 3.6 The Service Corporation shall have the discretion to reduce or waive interest, liquidated damages, and costs (including attorneys' fees) according to procedures adopted by it in those situations where the employer is voluntarily working out its non-payment. The Service Corporation, in consultation with legal counsel as appropriate, shall be guided by the principals of business judgment, use of objective standards, and attempted equity in the treatment of all employers in determining whether and to what extent to compromise on assessments due from an employer. The Service Corporation board may also adopted procedures relating to late payment assessments, adjustments to interest, liquidated damages and costs, and the adjustment or abatement of late payment assessments in an addendum to this Section.

Section 4. Collection Action.

- 4.1 The Service Corporation shall monitor the status and timing of employer contributions on an on-going basis. The Service Corporation shall periodically report to the Employee Benefit Trusts the status of employers who are late making payments or have failed to pay contributions. The Service Corporation may designate an individual of its choosing who shall act as representative of the Employee Benefit Trusts unless the Trustees have appointed another as representative of the respective Trust. The designated representative shall also act as the representative of employees of a delinquent employer in any arbitration or legal proceeding, including the filing of mechanics liens on any property where employees of a delinquent employer have furnished labor or for recovery on a payment bond, and for the additional purpose of acting as such representative in any court foreclosure proceeding to enforce payment of a lien.
- 4.2 The Service Corporation shall have the discretion to determine to refrain from collections, or to terminate collections, if in its discretion, after consultation with legal counsel, it concludes that an obligation is uncollectable or any potential recovery would exceed the expenditure of resources required to pursue such claim.

- 4.3. The Service Corporation, or its designee, may arrange meetings with employers or consult with trustees on aspects of resolving a contribution claim. If an employer requires a payment plan to become current, the Service Corporation will ordinarily require that such a plan be in writing and ordinarily includes consequences for noncompliance with the plan. As a general rule, payment arrangements need to be for a sufficiently short duration so as to not be construed as extending credit to an employer. Payment periods for outstanding contributions should not ordinarily extend longer than six months, taking into consideration the likelihood of recovering the outstanding contributions.
- 4.4. In addition to matters where a work out plan is required, the Service Corporation (directly or through the Administrative Manager) will refer to collections counsel for formal action any delinquent contractor who has failed to pay for two consecutive reporting periods. While collections counsel may send a demand for payment to the employer, or notice of proceeding on any bonds posted, collections counsel should be mindful of the risk associated with delayed collection action and that the employer has already been notified of the non-payment.
- 4.5. The Service Corporation will also immediately refer to collections counsel those delinquent contractors who have issued payment to the Service Corporation that has been dishonored by the employer's bank, or who has filed for bankruptcy protection.
- 4.6. Collections counsel shall coordinate any resolution of a contribution or security issue with the Service Corporation's legal counsel, and shall act consistent with the objectives and parameters established by the Service Corporation. Any issues requiring direction or clarification shall be directed to legal counsel.
- 4.7. The Service Corporation shall retain, at all times, the discretion to reduce, waive or hold in abeyance any portion of a claim against a delinquent employer to the extent it determines is reasonably necessary to maximize the recovery of contributions due.

Section 5. Security Requirements.

- 5.1 The Service Corporation, in order to compel and enforce the payment of ongoing contributions, may require a delinquent

contractor to post an additional or increased bond in cash or through a surety in a form acceptable to the Service Corporation. The Service Corporation may also require such delinquent contractor to make all contribution payments and submit reports on a weekly basis, not later than three (3) working days (excluding Saturdays, Sundays, and holidays) after the close of the payroll period for which contributions are due. Any employer with monthly reporting shall be directed to convert to weekly reporting and payment.

- 5.2 The bond and enhanced weekly payment requirements under this Section shall continue for a period of not less than twenty-four (24) months of consistent compliance with the timely and complete payment obligation by the delinquent employer. If the Service Corporation is required to seek an injunction from the United States District Court to impose the bond and enhanced weekly payment obligations, then such bonding and weekly payment requirements shall be permanent, and the bond shall be in an amount sufficient to fund three months of future contributions.
- 5.3 The Service Corporation may allow, in its discretion, funding of a cash bond through a series of installments in those cases where the employer is voluntarily complying with the security obligation and financial conditions indicate to the Service Corporation that such structure is required.
- 5.4 If an employer is required to commence weekly payments and or post a bond to secure future contributions, compliance with those requirements shall be completed within seven (7) calendar days of notice from the Service Corporation.
- 5.5 The Service Corporation is authorized, in its sole and exclusive discretion, to require an employer who is late in making any required contribution payments to post an enhanced bond or the cash equivalent in an amount that is less than the amount required to secure three months future contributions, the amount of such alternative bond to be determined in the sole discretion of the Service Corporation, and may be imposed without requiring weekly contributions. The employer shall post the required bond or cash equivalent within seven (7) days of a demand by the Service Corporation or its designee (or such longer period as the Service Corporation may authorize in their sole discretion). If the employer fails to post such bond or to maintain it, including if the Trust is required to draw against it for the employer's contribution

obligations, then the Service Corporation is authorized to obtain an injunction requiring a bond for three months future contributions and weekly contribution payments.

- 5.6 The Service Corporation is authorized, in its sole and exclusive discretion, to require an employer who has not been delinquent in making contributions but who has incurred an event of financial insecurity to post an enhanced bond or the cash equivalent in an amount of up to two months future contributions, such amount to be determined in the sole discretion of the Service Corporation. The employer shall post the required bond or cash equivalent within seven (7) days of demand by the Service Corporation (or such longer period as the Service Corporation may authorize in its sole discretion) by delivering the bond to the Service Corporation. If the employer fails to post such bond, or maintain it, including if it must be replenished because the Service Corporation is required to draw against it for the employer's contribution obligations, then the Service Corporation is authorized to obtain an injunction requiring a bond for three months contributions and enhanced weekly contribution payments. Events of financial insecurity mean events which include, but are not limited to, missing employee payrolls, having checks issued by the employer dishonored at a financial institution, being subject to a tax lien, losing credit at a supplier, or making a fringe benefit contribution payment late.

Section 6. Periodic Compliance Examinations.

- 6.1 The Service Corporation or its authorized representative(s) shall have the right to examine (Shop Audit), in accordance with the rules of the Service Corporation, pertinent business records, including, but not limited to:
- Payroll books and records, including weekly payroll records;
 - IRS forms 941;
 - IRS forms 1099;
 - IRS forms 940;
 - Florida tax form UTC-6;

- Employer fringe benefit contribution reporting forms for these and any other funds;
- Daily time sheet records;
- General Ledger and cash disbursement records; and
- Any other records or documents that are deemed necessary for completion of the audit.

The employer shall make such books, records and reports available during business hours after at least one-day's notice in advance.

- 6.2 If an examination of the employers books and records reveals that an amount is due to the Service Corporation, then in addition to all other assessments due to such underpayment, the employer shall pay the cost to have performed the examination, and any attorneys fees incurred by the Service Corporation.
- 6.3 If it is determined that any employer has made an excess contribution in any Plan Year, such excess shall be held by the Service Corporation in a suspense account, to be applied to the employer's contribution in the following Plan Year or refunded as determined by the Service Corporation Board.
- 6.4 The Service Corporation shall conduct employer payroll audits on a random schedule designed to review every employer once every three years. The Service Corporation may schedule an employer for review more frequently than once every three years if the Service Corporation has a reasonable basis based upon facts indicating that the employer is not paying the required contributions properly, or the employer is delinquent in its contributions. An audit that determines that an employer has failed to pay contributions properly shall be a conclusive factual basis for more frequent examinations. The Service Corporation may defer an examination of an employer if prior examinations have not identified any contribution issues.
- 6.5 Collections counsel shall coordinate completing Shop Audits scheduled by the Service Corporation. An auditing firm selected and assigned by the Service Corporation shall perform Shop Audit reviews. Collections counsel shall receive the auditor's report and

notify the employer and collect assessed amounts due. Collection counsel shall report progress and results to the Service Corporation's legal counsel, and shall obtain any required direction for issues or questions that arise through legal counsel.

- 6.6 If an employer fails to cooperate in any examination authorized by this Section, such employer shall be responsible for all of the costs and attorneys fees incurred in compelling the employer's compliance.

This revised policy is adopted by action of the MCASF Local 725 Service Corporation board on _____, 2016, and is effective immediately.

Local 725 Board Members

MCASF Board Members
