

CONSTRUCTION WORKERS PENSION TRUST FUND -  
LAKE COUNTY & VICINITY

EMPLOYER CONTRIBUTION DELINQUENCY PROCEDURE

Pursuant to the authority granted to them in the Restated Trust Agreement creating the CONSTRUCTION WORKERS PENSION TRUST FUND - LAKE COUNTY & VICINITY ("Fund"), and based upon their understanding of the requirements of the Employee Retirement Income Security Act of 1974, the Trustees of the Fund desire to institute a reasonable, diligent and systematic procedure for the identification and collection of contribution delinquencies and, in furtherance thereof, do hereby adopt the following Delinquency Procedure:

A. CONTRIBUTIONS AND DELINQUENCIES

1. The Contract Administrator shall determine whether it has on file either a collective bargaining agreement or other signed, binding document evidencing each employer's obligation to contribute to the Fund. In the event the Contract Administrator determines that it does not have a copy of such a document on file, it will implement the provisions of the Employer Contribution Acceptance Policy.

2. Employer contributions and contribution reports shall be due by the 10th of the month immediately following the month in which the work for which the contribution is made was performed, or the date provided in the applicable collective bargaining agreement, if later. In the absence of information to the contrary, an Employer who fails to submit a contribution report shall be presumed to

employ the same number of employees for the same number of hours as it did in the last month for which it submitted a contribution report, but such presumption will not prevent the Fund from requiring additional Employer contributions if it is later determined that there were more hours and employees eligible for contributions to the Fund than presumed.

3. An employer who fails to pay contributions by the date due shall be notified by first class mail not later than the 15th day of the month following the month the contributions were due.

4. If the employer does not pay the required contribution in full within 14 days thereafter, a second letter shall be sent by priority or United Parcel Service mail to the employer. The names of such employers shall be provided to the Trustees and the unions.

5. If the employer does not pay the required contribution in full within 10 days from the date of the mailing of the second letter, counsel for the Fund shall be notified.

6. Upon being notified of the delinquency, counsel for the Fund shall immediately notify the employer that legal proceedings will be instituted unless payment is received within 20 days.

7. If the employer either fails to pay the required contribution in full within 20 days or fails to make satisfactory arrangements to pay the delinquency, suit for collection shall be promptly instituted. The Fund Office and the Union shall be notified when the complaint is filed and advised from time to time of the suit's progress.

## B. INTEREST AND LIQUIDATED DAMAGES

1. If the employer does not pay the required contribution in full by the date set forth in Section 2, compound interest and liquidated damages will be assessed on the unpaid amounts commencing on the date set forth in that Section. Interest at the rate of 1.5% per month will be assessed and, in addition, liquidated damages in the amount of 10% of the contribution owed will be added to the delinquency if payment is not made within 30 days. If payment is made later than 30 days, then the amounts will be increased to 2% interest per month and 20% liquidated damages of the contribution owed. Interest and liquidated damages shall be calculated from the original due date of the contribution. Interest at the rate of 2% per month shall continue to be assessed on any amounts due including the original contribution, unpaid interest, and liquidated damages.

## C. PAYROLL AUDITS

1. Payroll audits of employers' records shall be conducted routinely by the Contract Administrator. It is the policy of the Trustees that each signatory and contributing employer shall be audited at least once every four years.

2. A payroll audit of a particular employer may be ordered by the Trustees if information comes to their attention which reasonably may cause them to believe such an audit is advisable.

3. If any employer refuses to permit the audit of his records, counsel for the Fund shall be notified. Upon being so notified,

counsel shall immediately advise the employer that a suit for an accounting will be instituted within 30 days if the employer continues to refuse to make his records available for audit. If satisfactory arrangements for an audit are not made within that time, suit shall be commenced forthwith.

4. An employer who is found to be delinquent as a result of a payroll audit shall pay such delinquent contributions by the 30th day following the date the employer is notified of the delinquency. If the delinquency is not paid by that date, the procedures outlined in Paragraphs 5 and 6 of Part A above shall apply. An employer found to be delinquent as a result of a payroll audit shall also be responsible for the payment of the cost of the payroll audit if the delinquent contributions are greater than 5% of all contributions obligated during the period of the audit, unless the delinquent amount is less than \$500. The cost of the payroll audit must be paid by the date the contributions are due.

5. In the event an employer refuses to comply with a payroll audit request with the result being that a lawsuit has to be filed to enforce the Fund's right to conduct a payroll audit, then, the employer shall not only be assessed the cost of litigation and the Fund's attorneys' fees, but shall also be assessed the cost of the payroll audit without regard to the amount of any variance (or no variance) being found.

6. If the payroll auditor believes that an employer which is being audited is not cooperating in the performance of the payroll auditor's duties, thus causing the auditor to spend more time than the auditor believes is necessary to perform the audit, the auditor

shall notify the Board of Trustees who shall have the right to require the employer to pay the cost of the payroll audit and costs without regard to whether there is a variance found.

#### D. BONDING

1. An employer shall provide to the Contract Administrator a surety bond, cash bond or letter of credit every year within fourteen (14) days of January 1. The bond is to be secured from an approved list of bonding companies and bond is to be posted with the Contract Administrator. The amount of the bond will be determined by the Trustees from time to time. In the event the bond is not posted within the time required, the Contract Administrator shall notify the employer within seven (7) days. If the bonding requirement is not satisfied within the following fifteen (15) days, the matter will be referred to counsel for the Fund. Counsel shall file suit to seek enforcement of the bonding requirement if a bond is not posted within fifteen (15) days of notification by counsel. In the event a lawsuit is required in order to enforce the bonding requirement, the Fund shall be entitled to the recovery of attorney's fees and costs.

#### E. EXTENSIONS AND SETTLEMENTS

1. The Trustees may extend the time for the making of contributions by an employer if the requirements of Department of Labor Prohibited Transaction Exemption 76-1 are satisfied.

2. The Trustees may agree to accept less than the full amount of contributions owed by an employer in satisfaction of the

employer's obligation to pay the full amount if the requirements of Department of Labor Prohibited Transaction Exemption 76-1 are satisfied.

3. The Trustees may consider employer contributions due to the Plan to be uncollectible, in whole or in part, and may terminate efforts to collect such contributions if the requirements of Department of Labor Prohibited Transaction Exemption 76-1 are satisfied.

4. The Trustees shall retain the authority to take any and all steps they may deem to be necessary or desirable to effectuate the collection of contributions or other moneys which may be due and owing to the Fund.

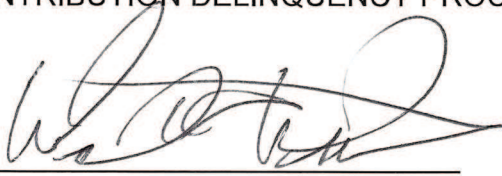
#### F. WAIVER OF LIQUIDATED DAMAGES

1. The Trustees may waive the assessment of liquidated damages if the waiver is consistent with their fiduciary duties and does not result in a prohibited transaction under ERISA Section 406.

#### G. TRUSTEE AUTHORITY

1. The Trustees are not bound to follow the procedures set forth in this Delinquency Procedure when the Trustees or their designee determine that normal procedures are inappropriate to any particular matter, and that the matter may be handled in such manner as is determined appropriate by the Trustees or their designee, other than the normal collection procedures.

IN WITNESS WHEREOF, the Trustees have adopted this EMPLOYER  
CONTRIBUTION DELINQUENCY PROCEDURE, effective January 22, 2015.



David Deprizio, Chairman



Michael Campbell, Secretary

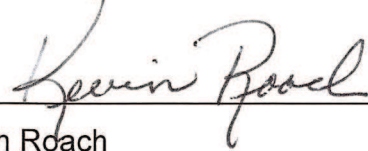


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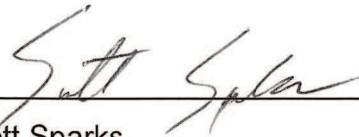
Frank Bova, Jr.



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