

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

SUMMONS IN A CIVIL CASE

MIKE SHALES, JOHN P. BRYAN, AL OROSZ,
DAN BREJC, TOBY KOTH and VERN BAUMAN
as Trustees of THE FOX VALLEY LABORERS'
HEALTH AND WELFARE FUND, and
MIKE SHALES, JOHN P. BRYAN, AL OROSZ,
TOBY KOTH, VERN BAUMAN AND DAN
BREJC as Trustees of THE FOX VALLEY &
VICINITY LABORERS' PENSION FUND,

Plaintiffs,

v.

HUGH HENRY CONSTRUCTION INC., and
TRACEY BIESTERFELDT, individually,

Defendants.

Case No.: 14-cv-305

Assigned Judge: Rebecca R. Pallmeyer

Designated
Magistrate Judge: Mary M. Rowland

TO: (Name and address of defendant)
Hugh Henry Construction Inc.
c/o Katherine M. Galvin, Agent
5901 W. Lawrence Ave.
Chicago, IL 60630

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFFS' ATTORNEY (name and address)

Josiah A. Groff
Dowd, Bloch & Bennett
8 South Michigan Avenue, 19th Floor
Chicago, IL 60603

an answer to the complaint which is herewith served upon you, within twenty-one (21) days after service of this summons upon you exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

Thomas G. Bruton, Clerk

THOMAS G. BRUTON, CLERK

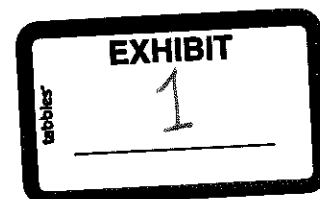
Jaclyn Beckwith

(By) DEPUTY CLERK



January 16, 2014

DATE



RETURN OF SERVICE

Service of the Summons and Complaint was made by me.

DATE: Jan 31 2013

NAME OF SERVER (PRINT) Philip M. Ducar

TITLE Special Process Server

Check one box below to indicate appropriate method of service

Served personally upon the defendant. Place where served: _____

Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.

Name of person with whom the summons and complaint were left: _____

Returned unexecuted: _____

Other (specify): Personally handed the Summons and the Complaint to Ms. Tina Almaguer, at the business location of Katherine M. Galvin, the Registered Agent for the defendant, Hugh Henry Construction Inc. Service was effected at 5901 W. Lawrence Ave., in Chicago, IL, on the 31st day of January, 2013 at the hour of 3:05 p.m.

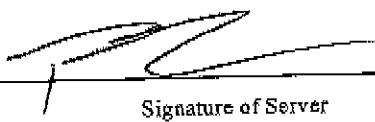
STATEMENT OF SERVICES FEES

TRAVEL	SERVICES	TOTAL

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on January 31 2013
Date


Signature of Server

Post Office Box# 558435
Chicago, Illinois 60655
Address of Server

AFFIDAVIT OF PATRICIA M. SHALES

COUNTY OF KANE)
) **SS**
STATE OF ILLINOIS)

I, Patricia M. Shales, of full age, being duly sworn on my oath, hereby depose and say as follows:

1. I am the Administrative Manager of the Fox Valley Laborers Fringe Benefit Funds, (the "Funds") and in such capacity, I have personal knowledge of the matters contained in this affidavit, and if necessary, I could testify to the facts contained herein.

2. I have responsibility for maintaining Hugh Henry Construction, Inc.'s account with respect to the Funds in this matter. Furthermore, I am in charge of keeping and maintaining records of contribution reports and contributions received by the Funds from each person, firm and corporation required to make contributions to the Funds. I have similar responsibilities on behalf of Plaintiffs for employers who are signatory to collective bargaining agreements with the Laborers' District Council and/or Fox Valley area local unions requiring employer contributions to the Funds.

3. Pursuant to the terms of the collective bargaining agreements, signatory employers are required to make contributions to the Funds on behalf of their covered employees.

4. Defendant Hugh Henry Construction, Inc. (hereinafter "Defendant Company") is signatory on the collective bargaining agreements.

5. The Funds are agents for the purpose of collecting employer contributions and deductions required to be paid on behalf of The Construction and General Laborers' District Council of Chicago and Vicinity's Work Dues Fund, the Laborers-Employers Cooperation and Education Trust ("LECET"), and the Laborers District Council Labor Management Cooperation Committee ("LDC/LMCC"), the IAF Fund, the CISCO Fund, the Apprenticeship Fund, and the Safety Fund (collectively, "the Affiliated Organizations").



6. Notwithstanding its obligations under the Funds' respective Trust Agreements, the Defendant Company was delinquent in remitting its contributions to the Funds for the period of March 2013 to October 2013, as detailed in the audit report attached hereto as Exhibit A.

7. Pursuant to the Funds' collection procedures, which is attached hereto as Exhibit B, Employers who fail to report and/or remit contributions are liable to pay interest on the delinquent contributions, an additional 10% in liquidated damages, which increases to 20% once a lawsuit is filed, and all costs of collection, including reasonable audit expenses, attorneys' fees, and court costs.

8. Notwithstanding its obligations under the collective bargaining agreements, the Defendant Company failed to remit dues owed to the Laborers District Council for the period of March 2013 to October 2013, as shown in the auditors report attached as Exhibit A. Defendant Company has also accumulated late fees owed the Laborers District Council and Affiliated Organizations for prior delinquent months. Employers who fail to remit dues and contributions to the Affiliated Organizations on a timely basis are liable to pay an additional 10% on dues owed for delinquent months (Exhibit B).

9. In addition to the delinquencies shown in the audit report attached as Exhibit A, the Defendant Company also submitted reports for March and April 2013 untimely. Reports for both months were received on or about August 21, 2013. Based on that receipt date:

- (a) late fees are owed for the March 2013 in the amount of \$1,704.63 and interest is owed in the amount of \$676.23; and
- (b) late fees are owed for the April 2013 in the amount of \$1,702.40 and interest is owed in the amount of \$501.11.

10. The Funds have received four checks issued by The George Sollitt Construction Company as joint checks to the Funds and the Defendant Company. The Funds have deposited these checks and acknowledge them as a credit toward the delinquencies shown in Exhibit A to the Complaint. The checks are in the amounts of \$7,865.80, \$20,554.45, \$9,579.84, and \$3,827.24.

11. Pursuant to the Funds' collection procedures and the Defendant Company's collective bargaining agreement, the Defendant Company must also provide the Funds and/or the Union with a bond to guarantee the payment of wages and fringe benefit contributions (Exhibit B).

12. In accordance with the Agreement and/or the Funds' collection procedures and based on its work force, the Defendant Company is required to post a bond in the amount of \$25,000.00.

13. The form of the bond that is required by the Funds and the District council is attached hereto as Exhibit C; however, the Defendant Company may alternatively also post a cash bond.

14. Under the terms of the Funds' collection procedures, if an employer fails to provide a bond as required, it is required to pay all of the costs, including attorneys' fees, incurred in seeking to compel the bond.

15. The Defendant Company has failed to post the \$25,000.00 bond as required.

16. Based on the audit findings in Exhibit A to the Complaint, the Defendant Company owes principal contributions as stated in the reports, plus Funds liquidated damages at 20%, dues liquidated damages at 10%, interest, audit fees, and a cash bond as follows:

Welfare Fund Delinquent Contributions	\$90,098.60
Pension Fund Delinquent Contributions	\$68,837.08
Safety Fund Delinquent Dues	\$69.61
Apprenticeship Fund Delinquent Dues	\$3,481.50
CISCO Delinquent Dues	\$69.61
IAF Delinquent Dues	\$557.04
Liquidated Damages on Funds Contributions @ 20%	\$32,622.69
Interest on Funds Contributions	\$4,068.41
Sub-Total Owed to Funds for Delinquent Contributions	\$199,804.54
LDCLMCC Delinquent Dues	\$926.82
LECET Delinquent Dues	\$540.66
Dues Fund Delinquent Dues	\$9,960.03
Liquidated Damages on Contributions @10%	\$1,142.75
Sub-Total Owed to Funds for Delinquent Dues and Affiliated Funds	\$12,570.26
Credit for Payments from George Sollitt (4 checks)	(\$38,000.09)
Auditor Fees	\$1,759.50
March 2013 Untimely Report Late Fees	\$1,704.63
March 2013 Untimely Report Interest	\$676.23
April 2013 Untimely Report Late Fees	\$1,702.40
April 2013 Untimely Report Interest	\$501.11
Sub-Total Owed for Untimely Reports	\$4,584.37
Surety Bond	\$25,000.00
TOTAL OWED:	\$205,718.58

I have read the foregoing affidavit and swear that it is true and correct to the best of my knowledge, information, and belief.



Patricia M. Shales

Subscribed and sworn to by
Patricia M. Shales, whose signature
is known to me, this 28 day of
March, 2014,

Notary Public *Cynthia C. Young*



Levinson Simon Hein & Bilkey

A Division of Calibre CPA Group, PLLC

Summary Report

Local: Fox Valley Laborers
Contractor: Hugh Henry Construction
Case: FVLAB-1013-01455

Manager: Benjamin Vargas
Auditor: Suzanne Uczen
Audit Period: 10/1/2012 - 10/31/2013

Contract: 8001 - Building Contractor

Fund	Year Begins	Amount
Welfare Fund	01/2013	\$90,098.60
	Total	\$90,098.60
Pension Fund	01/2013	\$68,837.08
	Total	\$68,837.08
Safety Fund	01/2013	\$69.61
	Total	\$69.61
Training/Apprentice Fund	01/2013	\$3,481.50
	Total	\$3,481.50
CISCO	01/2013	\$69.61
	Total	\$69.61
IAF	01/2013	\$557.04
	Total	\$557.04
LDCLMCC	01/2013	\$926.82
	Total	\$926.82
LECET	01/2013	\$540.66
	Total	\$540.66
Dues	01/2013	\$9,960.03
	Total	\$9,960.03
Total	01/2013	\$174,540.95
	Total	\$174,540.95



Levinson Simon Hein & Bilkey
 A Division of Calibre CPA Group, PLLC

Local: Fox Valley Laborers
 Contractor: Hugh Henry Construction
 Case: FVLAB-1013-01455

Details Report

Contract: 8001 - Building Contractor	Findings Source: Hours Worked (Dues)												
	01/2013	02/2013	03/2013	04/2013	05/2013	06/2013	07/2013	08/2013	09/2013	10/2013	11/2013	12/2013	Total
Employee Findings													
BLOCK, JEFF						156.50	126.00	189.50	148.00	27.00			647.00
CARMICKLE, GREG						34.00	34.00						34.00
GALLAGHER, ANDREW			113.50	72.00	82.00	148.00	144.00	194.50	143.00	102.00			999.00
GALVAN, JORGE						74.00	74.00	41.50					115.50
GARCIA, ANGEL			139.00	116.00	94.50	142.50	160.00	224.00	168.50	169.00			1213.50
JOHNSON, LENNART L			55.00	94.00	104.00	73.50	139.00	248.00	163.00	139.50			1016.00
LOPEZ, ROMAN			75.00	98.00	94.50	160.00	160.00	135.50	136.00	142.50			1001.50
MONTGOMERY, HOWA						107.00	43.00						150.00
RHODES, RICHARD						153.50	160.00	162.50	148.00	36.00			660.00
SANCHEZ, FAUSTINO						121.50	140.50	192.00	147.00	84.50			685.50
SCHOFIELD, RICHARD						135.50	178.50	81.00	104.00				499.00
STALLONE, MICHAEL					93.00	69.00	110.50	115.00	4.00				391.50
SUND, MICHAEL						150.00	62.00						212.00
WALSH, THOMAS							89.00						89.00
Total			382.50	380.00	468.00	1174.50	1552.50	1823.00	1138.50	804.50			7723.50

Fund Contributions Summary	
LDCLMCC	45.90
LECET	26.77
Total	72.67

Fund Contribution Rates	
LDCLMCC	0.1200
LECET	0.0700
Total	0.1900

Contract: 8001 - Building Contractor	Findings Source: Hours Worked (Dues)												
	01/2013	02/2013	03/2013	04/2013	05/2013	06/2013	07/2013	08/2013	09/2013	10/2013	11/2013	12/2013	Total
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**FOX VALLEY LABORERS WELFARE & PENSION FUNDS
PAYROLL COMPLIANCE AUDIT PROGRAM ADMINISTRATIVE PROCEDURES**

I. Selection Procedures

- A. Annually establish the parameters for the selection of employers for random audit. These parameters will be reviewed each year to ensure that substantially all employers will be audited over a five year period and to further refine the audit program to provide the most cost effective program possible. These parameters will be presented to the Board of Trustees for approval.
- B. The selection will be made annually by the Fund Office. The listing of employers to be audited will be kept confidential by all parties until the scheduling of the specific audit.
- C. The Fund Office will provide a list to the audit firm annually of those employers selected for audit.
- D. Employers who are no longer in business or are believed to be going out of business should be audited immediately on a priority basis.

II. Preparation of the Audit Package

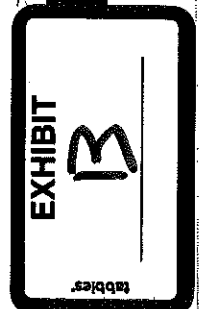
- A. Approximately 30 days prior to the tentative audit date, the Fund Office will prepare the audit package and forward it to the audit firm no later than 10 working days prior to the actual audit date. This will consist of the collective bargaining agreement, participation agreements, copies of contribution reports and a listing of the applicable contribution rates in effect during the audit period.

III. Cancellation of Audits

- A. The reasons for canceling or deselecting an audit are non-existence of a contract, inability to locate employer, or the employer is in contract negotiations, organization or arbitration. Employers in contract negotiations, organization or arbitration will be given preference for audit during the following year.
- B. Only the Board of Trustees has the authority to cancel audits.

IV. Scheduling the Audit

- A. After the Fund Office has provided the annual audit list, the auditor should establish a tentative schedule of audits that will then be approved by the Fund Office. To be cost effective, audits should be grouped so that multiple audits can be performed in a geographic area.
- B. Thirty days prior to the tentative audit date the Fund Office will send each selected employer a letter, on behalf of the Board of Trustees, stating the name of the audit firm, the audit period and the records required.
- C. Twenty days prior to the tentative audit date, the auditor should make the initial contact with the employer to schedule the actual audit date. The actual audit date should be confirmed with the Fund Office for preparation of the audit package.
- D. When an audit is scheduled, the auditor should send a form letter confirming the actual audit date, the audit period and the records required to be provided. A copy should be sent to the Fund Office.
- E. If the auditor, after three attempts to schedule the audit within a two week period, is unsuccessful, the employer should be referred back to the Fund Office. The Fund Office will send a certified letter to the employer stating the contractual obligation to comply with the audit request. A ten day period will be given for the employer to contact the auditor to schedule the audit.
- F. If there is no response to the certified letter, the Fund Office should notify Fund Counsel, who will send one final letter with a one week grace period. Suit will be filed immediately at this point if there is not a satisfactory response.



G. An immediate refusal by the employer to schedule the audit should be referred back to the Fund Office. The Fund Office will send a certified letter as a Section IV, Item F above and the same procedures will apply.

H. To accommodate the employer, an audit may be rescheduled. The new date should be within fourteen days of the original audit date. Frequent rescheduling of the audit by the employer in an attempt to stall for time will be treated as a refusal and the procedures in Section IV, Item F will apply.

V. Requested Documents for Audit

A. The following documents will be requested to perform the audit:

1. Quarterly and annual payroll tax return, including but not limited to, federal quarterly forms 941, federal annual forms W-2, W-3, 940, 1099 and state quarterly unemployment returns (UC-3).
2. Payroll journals and/or registers which include or identify employees' social security numbers, hourly rates of pay, hours worked and the time period in which the work was performed.
3. Individual earnings records for all employees of the employer not shown on payroll journals or registers, including social security number and work classification (or code or clock or ID number), hourly rates of pay, hours worked and the time period in which the work was performed.
4. Cash disbursement journals and general ledgers.
5. Copies of all contributing reports and proof of payment (canceled checks or records of canceled checks) of all contributions to the Laborers' Funds and to all other trade union fringe benefit funds to which the employer contributed.
6. Copies of all dues records and proof of payment (canceled checks or records of canceled checks) of all union dues submitted to the Laborers' District Council.
7. Records showing all amounts paid to all persons or entities that performed work for the employer as independent contractors or subcontractors, if any, including copies of any federal form 1099's issued by the employer.
8. Daily time records filed by employees or supervisors.
9. Source documents and lists of job codes and equipment codes.
10. Certified payrolls for public sector jobs where such payrolls are required.
11. Employee personnel files including, but not limited to, last known address and telephone numbers, any documents which demonstrate employees' job classifications and/or status as an apprentice, journeyman, foreman, superintendent, or supervisor. (Confidential medical records or other private records not relevant to the establishment of an employee's job classification shall not be disclosed).
12. Bank account statements and canceled checks from any account used in conjunction with the employer's business.
13. If records of all hours worked, rates of pay and classifications are not provided in the records listed in items 1 through 10, the employer shall maintain monthly lists of all employees not shown on payroll records, showing social security number and work classification (or code or clock or ID number), rates of pay and hours worked.
14. Collective Bargaining Agreement
15. Surety Bonds
16. Workers Compensation Insurance Policy.
17. Employer Federal Tax Return.

VI. Presumed Hours-Lack of Payroll Records

A. The Payroll Compliance Auditor may apply \$10.00 as the hourly rate or a rate determined by the Administrative Manager when calculating hours worked in absence of detailed payroll records.

VII. Audit Guidelines

A. Upon initial testing of the employer's records, if no discrepancies are found, the auditor should complete their testing and finalize the audit.

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- B. If errors or discrepancies are found, the auditor should concentrate on substantiating these differences. If warranted, the audit scope may be expanded from eighteen months up to five years and 100% of the employees.
 - 1. The auditor should request the required employer records for the expanded time period covered by the audit.
 - 2. If the employer refuses to provide the required records for the expanded audit, the procedures in Section IV, Item F will apply as if it is an audit refusal.
- C. The auditor should disclose on a separate schedule in the audit report, welfare and pension contributions paid erroneously into the Funds for the six month period, prior to the end of the audit period. The designated Trustees may refund the welfare and pension contributions overpaid, upon a written request from the employer.

VIII. Audit Report

- A. The auditor will provide four copies of the audit report and one invoice within 5 working days of field work completion.
- B. If no discrepancies are found, the Fund Office will send a letter stating this to the employer and thanking them for their cooperation.
- C. Upon receipt by the Fund Office of the auditor's report showing the discrepancy, the employer will be provided a copy of the audit report and an invoice requesting payment. The employer will be given 20 days to review the audit report, present their challenges and dispute the audit findings in writing. The invoice to be provided will be prepared by the Fund Office and will include the audit delinquency amount, audit fee, liquidated damages and legal fees, if any. If the audit findings are paid in full within 20 days, the liquidated damages will be waived.
 - 1. Payment arrangements will be made if the employer accepts the audit report in accordance with the approved Contribution Collection Policy.
 - 2. If the employer does not respond within 20 days, the entire matter will be placed with Fund Counsel for immediate legal action.

IX. Audit Settlement Guidelines

- A. Generally employer disputes over audit findings should be submitted in writing to the Fund Office.
- B. Disputes with the employer over audit findings may be investigated by Fund Office representatives. Independent confirmation may be obtained from employers, Business Agents and other funds to support the employer's position.
- C. When necessary, waive and hold harmless affidavits will be obtained.
- D. If a liability of \$50.00 or less is disclosed in the audit, the discrepancy will be billed as usual. However, no further collection efforts will generally follow if unpaid, since it may not be cost effective to do so.
- E. Contract interpretation issues should be settled based upon "a fair reading standard". This standard should be in accordance with the union's position and not place undue administrative burden.
- F. Once the proper support is obtained as outlined above, adjustment of the audit and liquidated damages may be considered.
 - 1. There will be no reduction or compromise on admittedly delinquent contributions.

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2. Audit Fees:

- a. The Trustees authorize the automatic waiver of audit costs for any Random and Priority audit which reveals less than \$500 or less than 2% in unpaid contributions contingent upon the employer voluntarily agreeing to pay all contributions due and owing without requiring legal assistance to recover the amounts due and where no fraud by the employer caused the shortage.
- b. The Trustees authorize the automatic suspension of 10% liquidated damages, at their discretion; for any audits contingent upon the employer voluntarily agreeing to pay all contributions due and owing within 10 days of the date of the invoice.

3. Attorney fees, if any, should not be compromised.

X. Application of Money Collected

- A. Money collected should be applied in the following order: 1) Union Dues; 2) Contributions due (prorated among funds); 3) Interest; 4) Attorney fees and costs; 5) Audit costs; 6) Liquidated Damages.

XI. Delinquent Contribution Settlement Guidelines

- A. The Trustees have the authority to suspend, reduce or waive the assessment of interest, liquidated damages, audit costs or attorney fees on a case by case basis for good cause shown and in the interest of the participant.
- B. The Trustees have the authority to compromise contributions where disputed issues of fact or law exist or where necessary to maximize the recovery.
- C. The Trustees have the authority to terminate collection efforts.
- D. Where a court has required that an authorized representative be present at a settlement conference, any one management or any one union trustee may settle a case on advice of counsel that disputed issues of facts or law or the costs of litigation warrant settlement.

**FOX VALLEY LABORERS WELFARE & PENSION FUNDS
PAYROLL COMPLIANCE AUDIT POLICY.**

It is the intention of the Board of Trustees of the Fox Valley Laborers Welfare and Pension Funds to establish a payroll compliance audit program, including both new, random and priority audits to assure fulfillment of their fiduciary duty to collect substantially all employer contributions. This program is designed to:

- Establish a systematic method to collect contributions.
- Put the employers on notice that the Funds are monitoring contributions.
- Help eliminate the unfair competitive advantage in labor costs enjoyed by the occasional dishonest employer.

GENERAL

- The Board of Trustees may designate two Trustees and two alternates to approve settlement of disputed audits and establish payment schedules and assure consistent application of the Audit Policy and Administrative Procedures. The circumstances of these settlements, however, must be within the audit settlement guidelines. The Administrative Manager, Fund Office representatives, Fund Counsel, the auditor, and other Trustees may also participate in any audit settlement discussions. Minutes will be recorded and presented quarterly to the Board of Trustees.
- An audit firm will be appointed by the Board of Trustees based upon recommendation from the Fund Office.
- Fund Counsel will provide legal counsel for the Payroll Compliance Audit Program. This will primarily include legal review of the Payroll Compliance Audit Policy and Administrative Procedures, legal counsel regarding consistent application of the Audit Policy and Administrative Procedures, participation during audit settlement discussions, meetings with the Fund Office representatives as needed and recommendations regarding pursuit of legal action on audits and collection of audit findings.
- Cost effectiveness will be evaluated based upon the money recovered and not on reported audit delinquencies. A substantial finding is neither to be sought after nor avoided. However, substantial findings that are questionable and subject to adjustment are less cost effective than less significant, yet strongly supported findings.

SELECTION

- The following types of audits will be selected:
 1. To be most cost effective, the designated Trustees will review a list of audits selected by other funds administered by the Fund Office and may choose to participate. These will be known as "Participation Audits".
 2. In addition to Participation Audits, the Board of Trustees will direct the Fund Administrator to select employers randomly from a list of employers not signatory to other agreements maintained by the Fund Office. These will be known as "Random Audits".
 3. Finally, priority audits may be requested by the Trustees, Business Agents and Fund Office representatives. A request for priority audit form will be completed and approved by the Administrative Manager. These will be known as "Priority Audits".
- The list of employers to be audited will be kept confidential and disclosed only to those with a business need to know until the specific audit is scheduled.

CANCELLATION

- The designated Trustees must review all requests for audit cancellations. The only acceptable reasons for canceling an audit are outlined in the Administrative Procedures. Individual Trustees, Business Agents or local unions do not have the authority to cancel audits.

SCHEDULING THE AUDIT

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- Generally, scheduling of audits should be flexible and accommodate the employer's needs and circumstances. However, if there is evidence of an employer attempting to delay the audit, this will be interpreted as an audit refusal. Appropriate legal action will be taken to ensure timely compliance with the audit program.

REQUIRED DOCUMENTS FOR AUDIT

- Quarterly and annual payroll tax return, including but not limited to, federal quarterly forms 941, federal annual forms W-2, W-3, 940, 1099 and state quarterly unemployment returns (UC-3).
- Payroll journals and/or registers which include or identify employees' social security numbers, hourly rates of pay, hours worked and the time period in which the work was performed.
- Individual earnings records for all employees of the employer not shown on payroll journals or registers, including social security number and work classification (or code or clock or ID number), hourly rates of pay, hours worked and the time period in which the work was performed.
- Cash disbursement journals and general ledgers.
- Copies of all contributing reports and proof of payment (canceled checks or records of canceled checks) of all contributions to the Laborers' Funds and to all other trade union fringe benefit funds to which the employer contributed.
- Copies of all dues records and proof of payment (canceled checks or records of canceled checks) of all union dues submitted to the Laborers' District Council.
- Records showing all amounts paid to all persons or entities that performed work for the employer as independent contractors or subcontractors, if any, including copies of any federal form 1099's issued by the employer.
- Daily time records filed by employees or supervisors.
- Source documents and lists of job codes and equipment codes.
- Certified payrolls for public sector jobs where such payrolls are required.
- Employee personnel files including, but not limited to, last known address and telephone numbers, any documents which demonstrate employees' job classifications and/or status as an apprentice, journeyman, foreman, superintendent, or supervisor. (Confidential medical records or other private records not relevant to the establishment of an employee's job classification shall not be disclosed.)
- Bank account statements and canceled checks from any account used in conjunction with the employer's business.
- If records of all hours worked, rates of pay and classifications are not provided in the records listed in items 1 through 10, the employer shall maintain monthly lists of all employees not shown on payroll records, showing Social Security number and work classification (or code or clock or ID number), rates of pay and hours worked.
- Collective Bargaining Agreement.
- Surety Bonds.
- Workers Compensation Insurance policy.
- Employer Federal Tax Return.

PRESUMED HOURS - LACK OF PAYROLL RECORDS

- The Payroll Compliance Auditor may apply \$10.00 as the hourly rate or a rate determined by the Administrative Manager when calculating hours worked in absence of detailed payroll records.

PRESUMPTIONS FOR SALARIED EMPLOYEES

- The minimum contribution rule for salaried employees and participating company shareholders is 40 hours per week.
- The Administrative Office is authorized to accept contributions from the District Council and Local Unions on behalf of persons employed by the Union for organizing purposes.
- Retirees paid a stipend for assisting the union in organizing and contract enforcement should not be considered to be in "disqualifying employment" as defined by the Pension Plan.

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APPLICATION OF MONEY COLLECTED

- Money collected should be applied in the following order: 1) Union Dues; 2) Contributions due (pro-rated among funds); 3) Interest; 4) Attorney fees and costs; 5) Audit costs; 6) Liquidated Damages.

DELINQUENT CONTRIBUTION SETTLEMENT GUIDELINES

- The Trustees have the authority to suspend, reduce or waive the assessment of interest, liquidated damages, audit costs or attorney fees on a case by case basis for good cause shown and in the interest of the participant.
- The Trustees have the authority to compromise contributions where disputed issues of fact or law exist or where necessary to maximize the recovery.
- The Trustees have the authority to terminate collection efforts.
- Where a court has required that an authorized representative be present at a settlement conference, any one management or any one union trustee may settle a case on advice of counsel that disputed issues of facts or law or the costs of litigation warrant settlement.

FOX VALLEY LABORERS WELFARE & PENSION FUNDS
COLLECTION ADMINISTRATIVE PROCEDURES

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I. DEFINITIONS

- A. First Delinquent Month – The 30 day period beginning the month following the date in which contributions were due. Contributions are 15-44 days delinquent during this period.
- B. Second Delinquent Month – The 30 day period beginning the second month following the date in which contributions were due. Contributions are 45-74 days delinquent during this period.
- C. Third Delinquent Month – The 30 day period beginning the third month following the date in which contributions were due. Contributions are 75-105 days delinquent during this period.

II. COLLECTION EFFORTS

- A. At the First Delinquent Month a letter will be sent to each employer for which contribution report sheets have not been received. The letter will specifically ask if the job in the area has been completed, if there were no covered employees this month, or other reasons for non-payment. If applicable, the letter will also provide notice that, due to the delinquency, all future contribution payments will be required on a weekly basis and will be due on the first business day following the close of the Employer's work week.

A report recapping these letters, by area, will be sent to the Business Agent to complete and return to the Fund Office.

- B. At the Second Delinquent Month a second letter will be sent to the employer with copies to the Business Agents.
- C. Between the First and Second Delinquent Month, a Fund Office representative will call each employer for which contributions report sheets have not been received.
- D. Full payment must be received or a payment schedule worked out before the end of the Second Delinquent Month or the account will be placed with an attorney for collection.
- E. The employers should be told that if payment is not received during the Second Delinquent Month the account will automatically be sent to an attorney for collection.

Special cases will be handled on an individual basis.

III. DOCUMENTING THE COLLECTION PROCESS

- A. A log sheet will be maintained for each delinquent employer documenting the collection process. A master book will be maintained in the Fund Office.

IV. LIQUIDATED DAMAGES

- A. Contributions that are received after the First Delinquent Month will be assessed 10% and compounded at 2% or other rate designated by the Trustees, for liquidated damages. Interest and liquidated damages will be billed on a separate invoice to the employer.
- B. In the event the Funds must file suit to collect unpaid contributions, liquidated damages will increase to 20%.
- C. The collection of unpaid liquidated damages invoices should be actively pursued by Fund Office representatives by the end of the First Delinquent Month.
- D. Those employers who do not pay the liquidated damages invoice by the beginning of the Third Delinquent Month will be referred to the attorney.

V. PROMISSORY NOTES

- A. A Promissory Note Authorization form with related support must be submitted for required approval. This support should include completed contribution report sheets for each credit date of the note.

- B. An initial payment of approximately 30% of the delinquency owed should be obtained from the employer before a time payment arrangement can be approved.

- Special cases will be considered individually.

- C. Acceptance of a promissory note in excess of \$50,000 shall generally require that the Employer and/or an officer or owner of the Company provide a first lien security interest in the amount of the Note, to be reviewed by Collection Counsel.
- D. An officer or owner of the Company must personally guarantee all promissory notes.
- E. An employer must agree to timely remit promissory note payments as well as current contributions. In addition, if the Employer is delinquent beyond the First Delinquent Month, current contributions will be required on a weekly basis.
- F. All promissory notes will be monitored by the Fund Office. The employer should be contacted when a payment is ten days past due.
- G. The note is due in full at 30 days past due; or, if current contributions are not timely, the account should be referred to the attorney.
1. If the attorney collects the past due payment and recommends that the promissory note continues, it is the Fund Office's responsibility to monitor future payments.
 2. If the employer defaults on the payment again, suit will be filed at 30 days delinquent.

VI. COLLECTION OF AUDITS

- A. The employer is given twenty days to review the audit report and related invoices, present their challenges, and dispute the audit findings or pay the invoice as outlined in the Payroll Compliance Administrative Procedures.
- B. If the employer does not respond within twenty days, the entire matter will be placed with the attorney for immediate legal action.

VII. OUTSTANDING CONTRIBUTION REPORTS

- A. If contributions are received for a particular credit month in which there is a prior outstanding report, the check will be deposited and held in a suspense account until it is determined the credit month to which the money should be applied.
1. If the Fund Office has the prior month's contributions report, the check will be applied to those hours first and to the equal benefit of the participants.
 - The employer will be notified as to how the money was applied and request the balance due for the current month.
 2. If the Fund Office does not have the prior month's contribution report, the employer will be contacted and asked to send the missing report so that the check may be properly applied. The employer will be notified as to how the check was applied and requested to remit the current month's contributions.
 3. Money will not be held in a suspense account for more than 60 days.
 - The current month will be processed and normal collection efforts will apply to prior month's outstanding reports.

VIII. DEFAULTED EMPLOYERS

- A. In cases where there the Trustees reasonably believe that an Employer is owned or operated by a Defaulted Employer, based on terms defined by the Trust Agreement or the Collection Policy, the Fund Office will send written notice to the Employer which provides the Employer with a date certain, no less

than 30 days after the date of transmittal of the Notice, that the Employer may provide evidence establishing that the Employer is not owned or operated by a Defaulted Employer. The Notice will further state that if satisfactory evidence is not provided to the Trustees, the Employer will be deemed a successor to the Defaulted Employer and liable for the liabilities the Defaulted Employer had to the Funds and will be required to post a bond for the benefit of the Funds in an amount equal to two times the amount of the Defaulted Employer's prior delinquencies to the Funds.

- B. If an Employer fails to respond to the Notice from the Fund Office by the date specified, the matter shall be referred to collection counsel for collection of the successor liability amounts due and/or enforcement of the special bonding provisions.

IX. ACCOUNTS REFERRED TO THE ATTORNEY

A. The Fund Office will send all pertinent information, including a copy of the employer log sheet, memorandum of agreement and master agreement information, to the attorney. A cover sheet recapping the nature of the delinquency and the Fund Office approval will be sent with the file.

B. An initial demand letter should be sent out within five business days upon receipt of the file.

- Copy to the Fund Office.

C. A suit should be filed if there is no response from the employer.

D. The attorney will prepare a quarterly status report of the accounts they are pursuing for collection.

X. DELINQUENT CONTRIBUTION SETTLEMENT GUIDELINES

A. The Trustees have the authority to compromise contributions where disputed issues of fact or law exist or where necessary to maximize the recovery.

B. The Trustees have the authority to suspend, reduce or waive the assessment of interest, liquidated damages, audit costs or attorney fees on a case by case basis for good cause shown and in the interest of the participant.

C. The Trustees have the authority to terminate collection efforts.

D. Where a court has required that an authorized representative be present at a settlement conference, any one management or any one union trustee may settle a case on advice of counsel that disputed issues of facts or law or the costs of litigation warrant settlement.

XI. PRESUMPTIONS FOR SALARIED EMPLOYEES

A. The minimum contribution rule for salaried employees and participating company shareholders is 40 hours per week.

B. The Administrative Office is authorized to accept contributions from the District Council and Local Unions on behalf of persons employed by the Union for organizing purposes.

C. Retirees paid a stipend for assisting the union in organizing and contract enforcement should not be considered to be in "disqualifying employment" as defined by the Pension Plan.

XII. PRESUMPTION OF EMPLOYEE STATUS

A. Effective for any audit completed on or after March 1, 2008 and applicable to any period covered in the audit, there shall be a rebuttable presumption that any individual, sole proprietor, or partnership who did bargaining unit work for the contributing employer shall be considered an employee of that employer for whom contributions are due to the Funds in accordance with the collective bargaining agreement or other governing Trust documents.

B. The employer may rebut this presumption and establish that an individual, sole proprietor or partnership doing bargaining unit work is a sub-contractor and not an employee of the employer, only if the employer provides sufficient evidence establishing that the individual, sole proprietor or partnership is not an

employee. The Trustees may adopt a policy that specifies what type of evidence is sufficient to overcome the presumption.

XIII. BANKRUPTCY

- A. For any employer who is currently in bankruptcy, or where bankruptcy seems probable, any money received from the employer should be applied to current month's delinquencies, rather than the oldest delinquency.

XIV. APPLICATION OF MONEY COLLECTED

- A. Money collected should be applied in the following order:
- 1) Union Dues;
 - 2) Contributions due (pro-rated among funds);
 - 3) Interest;
 - 4) Attorney fees and costs;
 - 5) Audit costs;
 - 6) Liquidated Damages.

XV. SURETY BONDS

- A. Pursuant to the Collective Bargaining Agreement, each employer is required to provide the Funds' Trustees and/or the Union with an original surety bond, reflecting the company name exactly as it appears on the Collective Bargaining Agreement, to guarantee the payment of wages and fringe benefit contributions.
1. The principal sum of all bonds shall not be less than \$5,000 and shall be in the form required by the Union and/or Trustees and shall guarantee payment of wages, Pension and Welfare Fund contributions and all industry fund contributions during the term of the Labor Agreement.
 2. If the Employer employs between seven (7) and ten (10) Laborers, the surety bond shall be increased to \$15,000; If the Employer employs between eleven (11) and twenty (20) Laborers, the surety bond shall be increased to \$25,000; If the Employer employs between twenty-one (21) and forty (40) Laborers, the surety bond shall be increased to \$35,000; If the Employer employs forty-one (41) or more Laborers, the surety bond shall be increased to \$45,000.
 3. The Trustees in their sole discretion may require an Employer to provide a bond of up to three times the monthly contribution of the average of the three highest months' contribution during the prior 12 month period for any Employer who is chronically delinquent. A chronically delinquent Employer is any Employer who has remitted any two work reports and/or payments more than 45 days from the date it was due or who has been more than 15 days delinquent in remitting reports and/or payments for any three or more work months during any prior 12 month period.
- B. The Fund Office will send a demand letter to any Employer who fails to provide an original surety bond in the amount and form required from an acceptable surety and will instruct the Employer to provide the bond within 30 days of the date of the letter.
- C. If the Employer fails to comply with the original bond requirement within 30 days of notice from the Fund Office, the matter shall be referred to collection counsel, who shall pursue the bond as required by the Collective Bargaining Agreement and this policy.
- D. If the Employer fails to provide the required original bond, Collection Counsel is authorized to pursue the bond through a lawsuit against the Employer.
- E. Any Employer who fails to provide the required original bond and whose account is referred to Collection Counsel shall be required to pay the Funds' attorneys' fees and costs associated with pursuit of the Bond.
- F. The Trustees in their sole discretion, may accept a cash bond and written cash bond agreement in lieu of a bond issued by a surety company, and the Administrator is authorized to accept the cash bond if there is written agreement and to put such sums in an account created for such cash bonds.

FOX VALLEY LABORERS WELFARE & PENSION FUNDS
COLLECTION POLICY

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It is the intention of the Board of Trustees of the Fox Valley Laborers Welfare and Pension Funds to establish a collection policy to assure fulfillment of their fiduciary duty to collect delinquent employer contributions. This policy is designated to:

- Establish a systematic and reasonable method to collect contributions cost effectively.
- Provide assurances that the Funds are not engaging in prohibited transactions by extending credit to parties in interest or allowing them the use of Plan assets.
- Implement control procedures to assure consistent application of the policy to all employers.

GENERAL CONTRIBUTION INFORMATION

- Contributions are due in the Fund Office by the 15th of the month for previous month's hours worked. Contributions received from the 16th until the end of the month will be accepted without liquidated damages being assessed.
- Employers who are 30 days or more delinquent will be required to remit contributions on a weekly basis. Such contributions will be due on the first business day following the end of the Employer's work week.
- Contributions received will be applied to the oldest hours first and to the equal benefit of all participants.
- If contributions are received for a particular credit month in which there is a prior month outstanding report, the check should be deposited and held in a suspense account until it is determined the credit month to which the money should be applied.

PROMISSORY NOTES

- Promissory notes should only be established when it provides legal support for the pursuit of contribution collection in Federal court under ERISA. However, only the Fund approved language and form will be accepted.
- Promissory notes could be sought when it is advantageous to the Funds as in the following situations:
 1. For a sole proprietor, to admit that a liability is owed for the collection of an audit, or;
 2. To have a principal of a corporation sign a personal guaranty for a delinquency or audit discrepancy.
- Promissory notes should be amortized for the shortest time possible, generally three months or less.
- Interest at 1.5% per month on the declining balance will be calculated on the note. Liquidated damages will be assessed at 10%, increased to 20% if a lawsuit has been initiated.
- A Promissory Note Authorization form with related support must be submitted for approval.
- When the promissory note is in excess of \$50,000, a first-lien security interest in the amount of the Note must be provided by either the Company and/or the personal guarantor;
- A review of the employer's financial information to determine the contractor's ability to pay, may be requested before approving the promissory note. The Funds' collection counsel will review any prior UCC filings by the company or owner when a security interest is to be provided to the Funds. The cost of this review, as well as the costs associated with recording the lien, may be charged to the employer.
- The promissory note should include the following costs: delinquency, audit fee, attorney fees, interest, liquidated damages, and the financial review costs.

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GENERAL

- The Board of Trustees may designate two Trustees and two alternates to consider and approve settlement of further legal action on delinquent employers and to insure consistent application of the Collection Policy and Administrative Procedures. Generally these settlements and schedules will be resolved within the collection guidelines. However, when warranted, special cases will be determined on an individual basis. The Administrative Manager, Representatives from the Fund Office, Fund Counsel and other Trustees may also participate in any settlement discussions. Minutes will be recorded and presented quarterly to the Board of Trustees.
- Fund Counsel will provide legal counsel for the collection program. This will include legal review of the Collection Policy and Administrative Procedures, legal counsel regarding consistent application of the Collection Policy and Administrative Procedures, participation in settlement discussions, meetings with the Fund Office representatives as needed, and recommendations regarding pursuit of legal action or settlement on delinquent contributions.

SETTLEMENT

- No reduction or compromise should be made on admittedly delinquent contributions. Such requests are considered inappropriate by the courts. However, the courts believe that the Funds should allow for considerable compromise on costs other than actual contributions.

PRESUMPTIONS FOR SALARIED EMPLOYEES

- The minimum contribution rule for salaried employees and participating company shareholders is 40 hours per week.
- The Administrative Office is authorized to accept contributions from the District Council and Local Unions on behalf of persons employed by the Union for organizing purposes.
- Retirees paid a stipend for assisting the union in organizing and contract enforcement should not be considered to be in "disqualifying employment" as defined by the Pension Plan.

PRESUMPTION OF EMPLOYEE STATUS

- Effective for any audit completed on or after March 1, 2008 and applicable to any period covered in the audit, there shall be a rebuttable presumption that any individual, sole proprietor, or partnership who did bargaining unit work for the contributing employer shall be considered an employee of that employer for whom contributions are due to the Funds in accordance with the collective bargaining agreement or other governing Trust documents.
- The employer may rebut this presumption and establish that an individual, sole proprietor, or partnership doing bargaining unit work is a sub-contractor and not an employee of the employer, only if the employer provides sufficient evidence establishing that the individual, sole proprietor or partnership is not an employee. The Trustees may adopt a policy that specifies what type of evidence is sufficient to overcome the presumption.

DEFAULTED EMPLOYERS

- The Trustees are authorized to establish rules and procedures to protect the Funds' assets, with such rules to be applied specifically to any entity or individual who has within the last 10 years incurred substantial liability to the Funds for delinquent contributions and then ceased operations or became insolvent without satisfying such liability and without any reasonable likelihood of paying those amounts to the Funds ("Defaulted Employers").

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An Employer who owns a Defaulted Employer may be deemed a successor employer and liable to the Funds for the unpaid liabilities of the Defaulted Employer and may also be required to post a bond for the benefit of the Fund in an amount equal to twice the amount of the Defaulted Employer's prior delinquencies to the Funds.

- An Employer who is operated by a Defaulted Employer or who employs an officer, partner or owner of a Defaulted Employer in a managerial or supervisory position or other responsible position that may exercise control over the assets or contribution obligations of the Employer may be deemed a successor employer and liable to the Funds for the unpaid liabilities of the Defaulted Employer and may be required to post a bond for the benefit of the Fund in an amount equal to twice the amount of the Defaulted Employer's prior delinquencies to the Funds.

BANKRUPTCY

- For any employer who is currently in bankruptcy, or where bankruptcy seems probable, any money received from the employer should be applied to current month's delinquencies, rather than the oldest delinquency.

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- The Trustees have the authority to compromise contributions where disputed issues of fact or law exist or where necessary to maximize the recovery.
- The Trustees have the authority to terminate collection efforts.
- Where a court has required that an authorized representative be present at a settlement conference, any one management or any one union trustee may settle a case on advice of counsel that disputed issues of facts or law or the costs of litigation warrant settlement.

EMPLOYER'S BOND

KNOW ALL PEOPLE BY THESE PRESENTS, that we _____

_____, a _____,
(name of employer) (indicate corporation, partnership, or sole proprietor)

of _____, Illinois, herein called the "Principal," and

_____, herein called the "Surety," are hereby held
(name of bonding company)

and firmly bound unto the various fringe benefit and industry funds identified in the collective bargaining agreement between the Construction and General Laborers District Council of Chicago and Vicinity, affiliated with the Laborers' International Union of North America (the "Union") and the Principal and any successor collective bargaining agreements, all of which funds are collectively referred to as the "Funds"; unto the Union; and unto all individuals employed by the Principal and represented for collective bargaining purposes by the Union, referred to as the "Union Employees" (the Funds, the Union, and the Union Employees are collectively referred to as the "Obligees") in the penal sum of _____ Dollars (\$ _____), for the
(amount - written out) (amount)

obligations and undertakings hereinafter set forth, for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, our successors, assigns, heirs, executors, and administrators.

Signed and sealed and dated on this _____ day of _____, _____.

WHEREAS, the above named Principal is employing or proposes to employ employees in a bargaining unit represented by the Union for the purpose of performing certain work as defined in a collective bargaining agreement between the Principal and the Union;

NOW, THEREFORE, the conditions of this bond are such that if the Principal shall well and faithfully pay the wages due to the Union Employees with respect to the

EXHIBIT

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work performed by the Union Employees, the contributions due to the Funds, the dues due to the Union, any interest, liquidated damages, attorneys' fees, and/or costs that may become due, and such other amounts as the Principal may be required to pay to the Obligees, or to any of them, pursuant to the collective bargaining agreement between the Principal and the Union or pursuant to the rules and regulations of any or all of the Funds, then this obligation shall be void; otherwise it shall remain in full force and effect. This obligation of the Principal and Surety shall be joint and several.

If Surety is required to make payment to the Obligees pursuant to the bond, Surety shall have no claim or right of any sort against Obligees.

In the event that the aggregate amount due the Obligees shall exceed the amount of this bond, then the claims of the various Obligees shall be satisfied on a pro rata basis, proportionate to the amount of each Obligee's claim. Any disputes as to the proper distribution in such circumstances, and any disputes regarding the Principal's obligations to the Obligees, shall be resolved in accord with the dispute resolution mechanisms of the collective bargaining agreement between the Principal and the Union.

The Surety shall pay any claim made by the Obligees under this bond within 30 days from receipt of the claim. Should the Surety fail to issue payment within 30 days from receipt of a claim, the Surety shall be liable for the claimed amount and any reasonable attorneys' fees and costs incurred by Obligees in enforcing this bond.

This Bond may be canceled by the Surety 120 days after receipt by the Obligees of the Surety's written notice of cancellation by registered or certified mail.

PRINCIPAL

SURETY

By: _____
Agent

By: _____
Attorney-In-Fact

A Power of Attorney and Notarial Acknowledgement must be submitted with this bond.