



DATE: JANUARY 28, 2020

TO: SIGNATORY CONTRACTORS

FROM: ROBERT A. BRIANT, Jr., CEO

SUBJECT: **HEAVY AND GENERAL LABORERS LOCALS 472/172 BENEFIT FUNDS**  
AUDIT AND COLLECTION POLICY

The Board of Trustees for the Heavy and General Laborers Locals 472/172 Benefit Funds have revised and updated their Audit and Collection Policy (the "Policy"), which you should soon receive from the Fund Office. The updated Policy will become effective for work performed under the Local 472/172 Agreement on and after January 1, 2020. A copy of the Policy is enclosed herewith for your reference. Some of the provisions are summarized below but please refer to the Policy for the detailed requirements.

- **Payment Due Date.** The "Due Date" for contributions is the twentieth (20th) day of the month following the month in which the covered work was performed. You are required to file a Remittance Report on the Due Date even if no money is due. Contributions may be made by check or via electronic transfer. ***Contributions made by check shall be mailed or hand-delivered to the Fund Office, except where otherwise approved by the Co-Chairmen of the Board of Trustees.***
- **Interest and Liquidated Damages.** Liquidated damages (5% per month to a maximum of 20%) and interest (8%) shall be assessed on the delinquent Contributions retroactive to the Due Date unless your contributions are paid and received by the Fund Office in full before the first scheduled Arbitration Date following the Due Date or, if earlier, the last day of the calendar month following the Due Date.
- **Arbitration Proceedings.** If your delinquency goes to arbitration, the hearing will be conducted before the Funds' permanent arbitrator, J.J. Pierson, Esq. or his successor.
- **Estimated Contributions.** If you do not submit remittance reports for work covered by the CBA, you may be found liable for contributions, interest and penalties based on an estimated amount of contributions due for the covered period. The formula for estimating contributions is described in the Policy.
- **Notice of the Arbitration Award to Your Employees.** If you do not satisfy an Award within 21 days after it is issued against you, the Fund Office will identify ***and notify all your employees who are working under your CBA ("Laborers") of:*** (i) the Award; (ii) that you have not satisfied the Award; and (iii) that, if they continue to work for you, their benefits are subject to termination to the extent permitted by ERISA. If your delinquency has not been arbitrated within 45 days after the Due Date for those contributions, then as soon

as practicable thereafter, the Fund Office shall send a similar notice of the delinquency/termination of benefit coverage to your Laborers.

- **Fringe Benefit Bond Requirement.** The Trustees may, in their sole discretion, require you to post a fringe benefit surety bond or an escrow deposit in an amount determined by the Audit Subcommittee of the Board of Trustees, in their sole and exclusive discretion.
- **Claims Against Fringe Benefit Bonds.** If you do not satisfy an Arbitration Award within fourteen (14) days after it is issued, Fund Counsel shall assert a claim against your Fringe Benefit Bond, escrow, or other security for payment of contributions due to the Funds, if any. If that occurs, you will be required to restore the Bond or escrow deposit to its required level within thirty (30) days of notice from the Fund Office to so restore the Bond and may be treated as delinquent
- **Payroll Audit Policy and Guidelines:**
  - **Audit Frequency.** You generally will be audited at least once during a three-year period and the audit will cover the period since the last audit.
  - **Records to be Provided to the Auditor.** You must maintain and provide to the Funds' auditor records that identify each project or worksite on which its employees performed work for which contributions to the Funds were required as well as the period of work, the number of hours worked by each employee during the period. You must also maintain and provide to the Funds' auditor upon request the following documents: (i) Federal Forms W-2, W-3, 940, 941, 1098 and 1099; (ii) state and federal unemployment tax returns; (iii) employee identification lists; (v) weekly payroll journals or employee earnings reports from payroll companies; (vi) job lists; (vii) cash disbursement journals, check registers, bank statements and cancelled checks; (viii) quarterly payroll tax returns; and (ix) state and federal tax returns (upon request). This list is not intended to be exhaustive.
  - **Notice of Audit.** Prior to conducting an audit, the Fund Office will notify you via telephone and/or in writing of the upcoming audit, describing the documents requested for review and referring to the Trustees' authority to conduct such audits. If, during an audit, you take a position not consistent with the auditor's understanding of the Collective Bargaining Agreement or this Policy or encounters an issue of interpretation of the Collective Bargaining Agreement, the auditor will complete the audit based on the auditor's understanding of the Collective Bargaining Agreement, which should be informed by consultation with the Fund office.
  - **Preliminary Audit Report.** Upon completion of the audit, the auditor will provide you with a preliminary report. You must notify the auditor or any issues arising out of the report within 15 days after receipt.
  - **Final Audit Report.** The Final Audit Report and the Funds' demand for payment will be sent to you electronically or by certified mail (or both). If a delinquency is reported, the Report will also determine the amount of accrued interest, liquidated damages, and reasonable attorneys' fees and audit fees owed on the delinquency.

- **Refusal to Permit Audit.** If you refuse to permit an audit or refuse the Fund auditor access to pertinent records, then the Fund auditor may refer the matter to Fund Counsel for appropriate action.
- **Cost of Audit.** Each employer is responsible for the cost of the audit if the payroll audit results in a discrepancy that the employer has underpaid by at least an amount equal to the lesser of: (a) 3% of its annual contributions during any twelve-month period covered by the audit; or (b) \$10,000.

Although the terms of the attached Policy govern, please feel free to call the Association Office if you have any questions regarding the Policy.

**HEAVY AND GENERAL LABORERS LOCAL 472/172  
OF NEW JERSEY BENEFIT FUNDS  
AMENDED AND RESTATED POLICY  
FOR COLLECTION OF DELINQUENT CONTRIBUTIONS  
Effective January 1, 2020**

It is the policy of the Board of Trustees ("Trustees") of the Heavy and General Laborers Local 472/172 of New Jersey Benefit Funds ("Funds") to collect all employer contributions as they come due and to make reasonable, systematic and diligent efforts to identify all amounts to which the Funds have a right and to collect such amounts. In furtherance of this policy, the Trustees have the right to exercise all rights and to obtain all remedies provided for under the Funds' governing documents, Collective Bargaining Agreements obligating employees to contribute to the Funds, Employee Retirement Income Security Act of 1974, as amended, ("ERISA") and applicable labor law, including, but not limited to the following rights:

1. to audit records of employers to determine whether the proper contributions have been made;
2. to enforce the terms of the collective bargaining agreement obligating employers to contribute to the Funds and to pursue, where appropriate, claims against individual business owners and/or alter egos of contributing employers for payment of delinquent contributions;
3. to compromise and settle claims in accordance with the Funds' governing documents, applicable collective bargaining agreements, this Policy for Collection of Delinquent Contributions ("Policy"), ERISA and the Internal Revenue Code of 1986 as amended;
4. to take any other steps and to perform all other acts they deem appropriate to collect contributions in a timely manner.

The procedures set forth herein will be followed unless the Trustees determine, in their discretion, that they should be waived in any particular case. All questions regarding the interpretation, intent or application of this Policy and these procedures will be resolved exclusively and finally by the Trustees.

**COLLECTION PROCEDURES**

**1. Requirement for Written Agreement to Contribute.** No employer shall be permitted to contribute to the Funds without having signed or otherwise agreed to be bound by a collective bargaining agreement, participation agreement, or other document requiring contributions to the Funds for hours worked by covered employees. For the purposes of this Policy, the Union and its affiliates shall be considered an employer and shall be permitted to contribute to the Funds in accordance with a signed Participation Agreement with each Fund. The Funds shall not accept contributions from any employer unless the Funds' General

Manager has received a signed collective bargaining agreement or other written agreement between the employer and the Union or, where appropriate, the Funds, obligating the employer to make contributions to the Funds, or other evidence of the employer's obligation to make contributions to the Funds (e.g., membership in a multiemployer bargaining group with authorization to bargain and execute agreements on behalf of the Employer; submission of Remittance Reports acknowledging status as a signatory, etc.) (hereinafter, "Signatory Employers"). Contributions submitted by an employer who is not in compliance with the requirements stated above will be returned to the employer immediately with notice from the General Manager to the Union of the same.

**2. Payment Due Date.** Contributions must be paid to the Funds no later than the twentieth (20th) day of the month following the month in which the hours of work gave rise to the obligation to contribute, unless the applicable Collective Bargaining Agreement provides otherwise (hereinafter, "the Due Date"). If the Due Date is a Saturday, Sunday or a legal holiday, the monies must be received by the next business day. On or before the Due Date, each Signatory Employer shall report the amount due the Funds on a form supplied by the Funds ("Remittance Report"), which shall be submitted with the contributions due for the reported month. The Signatory Employer shall file a Remittance Report on the Due Date even if no money is due. Contributions may be made by check or via electronic transfer from the Employer's financial institution to the Fund account designated in writing by the Fund Office. Contributions made by check shall be mailed or hand-delivered to the Fund Office, except where otherwise approved by the Co-Chairmen of the Board of Trustees. On the Remittance Report, the Signatory Employer shall specify the weeks reported, the employees covered by the report, each employee's Social Security number, the number of hours worked by each employee, the total amount due to each Fund on account of those hours, and the total amount remitted to each Fund with the report. The Funds may rely on the Signatory Employer's report of work, employees covered by the report, Social Security numbers, and other relevant factors in administering benefits and calculating amounts due the Funds.

**3. Interest and Liquidated Damages.** If a contribution is not received by the Funds' General Manager by the Due Date, interest at the rate of eight percent (8%) per annum on the delinquent amounts shall accrue from the payment Due Date until the date the contribution is received by the Funds but will not be assessed if the employer's contributions are received in full on or before the first scheduled arbitration date following the Due Date or, if earlier, the last day of the calendar month following the Due Date. Thereafter, interest calculated as set forth above and liquidated damages equal to 5% of the unpaid contributions multiplied by the number of months (or any part thereof) that the employer's contributions are delinquent (to a maximum total of 20%) shall be assessed on the delinquent Contributions retroactive to the Due Date and shall continue to accrue to the date when payment in full of the delinquent contributions is received.



**4. Delinquency Notice to Employers.** If an Employer that remits contributions on a monthly basis fails to submit a remittance report and/or contribution to the Funds by the Due Date, the Administrative Office of the Funds will call the Employer on or about 20 days following the Due Date to advise the Employer of the missing remittance report and contributions.

**5. Referral to Counsel.** Following notification by the Fund Office, should the contributions not be received by the tenth (10th) of the month immediately following the Due Date, the delinquency will be referred to Fund Counsel if the amount owed exceeds \$15,000; otherwise, the delinquency may, but need not, be referred to Fund Counsel, and such referral shall be in the discretion of the Funds General Manager and Co-Chairmen.

**5.1 Pre-Arbitration Period.** Upon receipt of the delinquency list, Fund Counsel will send a letter by certified and regular mail to each delinquent Employer scheduling an arbitration hearing for the end of that calendar month. Attached hereto as Exhibit A is a suggested form of a Demand for Arbitration. Prior to the arbitration hearings, which are conducted at the end of each calendar month, the Funds may enter into a Pre-Arbitration Settlement Agreement with a delinquent employer or agree to postpone the arbitration proceeding upon receipt of a substantial amount of the delinquent contributions, provided that interest and liquidated damages shall continue to accrue on any unpaid contributions that are delinquent, retroactive to the Due Date, pursuant to the above provisions. The Funds' General Manager may enter into consent Arbitration Awards with delinquent employers for the full amount of the delinquency, which shall include interest and liquidated damages retroactive to the Due Date, costs and attorneys' fees; provided that the General Manager may waive or reduce the assessment of liquidated damages and attorneys' fees upon the advice of counsel if the employer has not been delinquent in its contribution obligation within the last 24 months and the costs and fees actually incurred are nominal.

**5.2 Arbitration Proceedings.** Arbitration hearings are conducted monthly before the Funds' permanent arbitrator, J.J. Pierson, Esq. or his successor. At the arbitration hearing, evidence of delinquencies of each employer is presented to the Arbitrator. Such evidence may include pay stubs, contribution reports, shop steward reports or audit results. If an employer fails to submit complete and accurate remittance reports for all of its covered work, the amount claimed due and owing may be based upon a reasonable estimate (see section 5.3 below). If the Arbitrator enters an Award against the delinquent Employer, the Arbitration Award will also include the assessment of reasonable attorneys' fees of no less than 20% of the delinquency, interest and liquidated damages retroactive to the Due Date, and the Arbitrator's fee. Fund Counsel will forward the Award to the delinquent employer by letter or email advising that unless payment is received within the deadline specified in the letter, further legal measures will be taken in order to collect the monies owed the Funds.

**5.3 Estimated Contributions.** If an Employer fails to submit remittance reports,

weekly payroll reports, or other reports of work for which contributions to the Funds are required, such that the Funds cannot determine the amount owed by the employer for a given month, then the Fund Office and Fund Counsel will compute the estimated amount of contributions due by assuming that the hours for which the Employer is obligated to contribute for each week in the unreported month equal the greater of (i) the average weekly hours for which the Employer was obligated to contribute in the 3 consecutive months preceding the unreported month; or (ii) the average weekly hours for which the Employer was obligated to contribute for the same month in the preceding year. The Arbitrator shall retain jurisdiction over awards that are based upon estimated contributions to address necessary adjustments based upon a final audit of the Employer. to modify the Award based upon the results of a final audit.

**5.4 Notice of Arbitration Award to Delinquent Employer.** Upon issuance of an arbitration award, Fund Counsel shall send a copy of the Award to the Employer. If an arbitration award has not been satisfied within 14 days of the date it is sent to the employer, Fund Counsel may seek to confirm the Award in a court of appropriate jurisdiction.

**5.5 Notice of Arbitration Award to Employees.** If the Employer has not fully cured a delinquency within 21 days after the Arbitrator issues an Award against it, the Fund Office shall identify and notify all employees of the Employer who are performing covered work of: (i) the Award; (ii) that the Employer has not satisfied the Award; and (iii) that, if they continue to work for the delinquent Employer, their benefits are subject to termination to the extent permitted by ERISA. If an Employer's delinquency has not been arbitrated within 45 days after the Due Date for those contributions, then as soon as practicable thereafter, the Fund Office shall send a similar notice of the delinquency/termination of benefit coverage to all employees performing covered work for the delinquent Employer.

**5.6** The failure of the Fund to send any of the above-mentioned notices or otherwise follow the procedures set forth in this Policy shall not constitute a defense against a claim by the Funds for delinquent contributions, penalties, interest, or other fees and expenses.

**6. Settlement and Compromise.** The Board of Trustees shall have the exclusive authority to compromise, settle or abandon a claim or delinquency in accordance with DOL PTE 76-1, if the cost and expenses which would be involved in the filing of a complaint and in the proceeding with litigation would exceed the amount of the delinquency due, or if there are other good and sufficient reasons, such as the remote likelihood of collection, established on a case by case basis, for compromising a claim. Any agreement to accept repayment over a period of time, to compromise a claim, or to terminate collection efforts, will be reduced to writing and will contain terms and conditions that are reasonable and consistent with this

Policy and may be secured by personal guarantees of the principal(s) of the delinquent contractor and by the spouses of those principals. Between regularly scheduled meetings of the Trustees, the co-chairs of the Board of Trustees shall have, in consultation with the Administrative Office of the Funds and Counsel, the authority to compromise, settle or abandon, a claim in accordance with this Policy. Unless the Co-Chairmen of the Board of Trustees specifically agree to the contrary, no settlement may permanently waive the collection of interest, liquidated damages, or attorneys' fees, although any settlement may suspend the collection of interest, liquidated damages, or attorneys' fees until a subsequent delinquency if the current collection of those amounts would involve unwarranted expense. The General Manager shall have the authority to decide whether the Funds shall accept a settlement that requires payment in full of a delinquency over a period of no more than twelve (12) months or if the delinquent contributions are less than \$15,000. In either case, the settlement must include the payment of interest at 8% per annum retroactive to the Due Date and reasonable attorney's fees, and Fund Counsel must recommend the settlement to the General Manager in writing.

## **7. Ancillary Devices for Collections**

**7.1 Fringe Benefit Bond Requirement.** The Trustees may, in their sole discretion, require a Signatory Employer(s) to post security in the form of a fringe benefit surety bond from an insurance company or other reputable and acceptable issuer of such instruments licensed to do business within the State of New Jersey to guarantee timely payment of contributions, interest, liquidated damages, collection costs (including attorney fees) and audit costs. In lieu of a surety's bond, the Trustees may accept an escrow deposit pledged to the Funds or other security interest acceptable to the Trustees. The amount of the bond or escrow deposit shall be in such amount or amounts as the Audit Subcommittee may determine, in their sole and exclusive discretion, based on all the relevant factors. Evidence of current or continuing surety bond coverage shall be provided to the Funds' General Manager, who shall maintain such information on an appropriate list.

**7.2 Claims Against Fringe Benefit Bonds.** If a delinquent Employer does not satisfy an Arbitration Award within fourteen (14) days after it is issued, Fund Counsel shall assert a claim against the Employer's Fringe Benefit Bond, escrow, or other security for payment of contributions due to the Funds, if any. The delinquent Employer shall restore the Bond to its required level within thirty (30) days of notice from the Fund Office to so restore the Bond and may be treated as delinquent

**7.3 Claims Against Labor and Material Bonds.** Contemporaneous with the referral of a delinquency to Delinquency Counsel, the Fund Office may request information from the Union concerning the identity of all projects on which the Employer is working or worked during the delinquency period, the identity of the general contractor, the name and address of the insurer who underwrote any labor and



materialmen's payment bond for the general contractor and/or employer on the project, and the bond number. Upon receipt of this information, a claim may be made on the labor and materialmen's payment bond, if permitted by law.

**7.4 Municipal Public Works Liens – N.J.S.A. Section 2a:44-132 Et Seq.** When a delinquent employer is performing work on a project owned or sponsored by a county, city, town, public commission, public board or other county or municipal authority ("Municipal Public Work"), the Funds' General Manager should ascertain the location of the employer's Public Works from the Union and/or Funds' personnel and the amount of money due and owing for work performed on each Public Work and immediately contact Fund Counsel for the purpose of filing any required notices, lien claims, and proofs of claim with the Public Agency which owns the job and, if possible, a notice of intent to lien, which must be served upon the project owner within 20 days of the commencement of work.

**8. Write Offs.** Certain delinquencies may be written off as non-collectable. Such determinations are based upon a combination of several factors, including:

- whether the company has any assets;
- whether the company is defunct or remains in business;
- whether the company is solvent or has sought bankruptcy protection;
- whether the company or its officers can be located;
- what effort has already been expended to collect the delinquency; and
- the amount at issue and the length of time since the delinquency was incurred.

In each case, the decision to write off a delinquency is made after the Union and Funds have made reasonable, diligent and systematic efforts to collect the amount due the Funds. Determining that a delinquency is non-collectable is intended to avoid additional and burdensome expenses which may be incurred by the Funds in an unsuccessful effort. Write-offs constitute an internal accounting procedure and shall not be construed as a waiver or release of any claim the Funds may have against a delinquent contractor for the amount written off. In the event that the Trustees or the Fund Office becomes aware of the possibility of collecting a written-off delinquency, they will immediately consult with Fund Counsel regarding the viability of pursuing such a claim.

## **9. Payroll Audit Policy and Guidelines**

**9.1 Audit Frequency.** Employers generally will be audited at least once during a three-year period and the audit will cover the period since the last audit, unless circumstances dictate otherwise. Delinquent Employers will be subject to an immediate audit. After an employer ceases to have an obligation to contribute, that Employer will remain subject to a payroll audit covering the period during which the

Employer was obligated to contribute.

**9.2 Documents to be Provided.** Each Employer shall maintain and provide to the Funds' auditor records that identify each project or worksite on which its employees performed work for which contributions to the Funds were required as well as the period of work, the number of hours worked by each employee during the period. The Employer shall also maintain and provide to the Funds' auditor upon request the following documents: (i) Federal Forms W-2, W-3, 940, 941, 1098 and 1099; (ii) state and federal unemployment tax returns; (iii) employee identification lists; (v) weekly payroll journals or employee earnings reports from payroll companies; (vi) job lists; (vii) cash disbursement journals, check registers, bank statements and cancelled checks; (viii) quarterly payroll tax returns; and (ix) state and federal tax returns (upon request). This list is not intended to be exhaustive. If requested by the employer, the Plans' auditor may enter into a confidentiality agreement in the form attached as Exhibit B.

**9.3 Notice of Audit.** Prior to conducting an audit, the Fund Office will notify the Employer via telephone and/or in writing of the upcoming audit, describing the documents requested for review and referring to the Trustees' authority to conduct such audits. If, during an audit, the Employer takes a position not consistent with the auditor's understanding of the Collective Bargaining Agreement or this Policy or encounters an issue of interpretation of the Collective Bargaining Agreement, the auditor will complete the audit based on the auditor's understanding of the Collective Bargaining Agreement, which should be informed by consultation with the Fund office.

**9.4 Preliminary Audit Report.** Upon completion of the audit, the auditor shall provide a preliminary report of the same to the Employer and the Employer shall have fifteen (15) days from the date of its receipt of the report to resolve any issues with the auditor. If not resolved, the dispute may be submitted to the permanent arbitrator or other appropriate action determined by Fund counsel.

**9.5 Final Audit Report.** The Final Audit Report and the Funds' demand for payment shall be delivered electronically or by certified mail (or both) to the Employer. Where the Final Audit Report determines there are unpaid contributions owed, the Funds' demand for payment will include accrued interest, liquidated damages, and reasonable attorneys' fees and audit fees calculated in accordance with this Policy. In addition, the Employer will be notified that, if such delinquent contributions, interest, and fees are not paid in a timely manner, the matter may be referred to Fund Counsel for further collection action.

**9.6 Refusal to Permit Audit.** If an Employer refuses to permit an audit or if the Employer refuses the Fund auditor access to pertinent records, then the Fund auditor shall refer the matter to Legal Counsel for appropriate action.

**9.7 Overpayments.** A payroll audit shall disclose any potential overpayments discovered. An overpayment discovered in a compliance audit shall be credited against an underpayment within the same plan year only in determining any Delinquency in payment due to Funds. Other overpayments shall be refunded only under the general procedures of Section 11.

**9.8 Audit Subcommittee.** The Board of Trustees hereby establishes an Audit Subcommittee composed of two Labor Trustees and two Management Trustees who shall be appointed by their respective Co-Chairmen. The Subcommittee shall meet on at least a quarterly basis with the Funds' General Manager, the Fund Collectors, and Legal Counsel. The Fund's auditor be available to attend such meetings or participate by telephone upon invitation. The Subcommittee shall review the payroll auditing practices to ensure compliance with this Policy's auditing requirements. The Audit Subcommittee is authorized to implement procedures and requirements, do all acts, compile all reports and records, and recommend further policies and procedures as are necessary to implement and administer this Policy and more generally to accomplish the goal of timely collecting all contributions and wage deductions due to the Funds. All such actions shall be subject to review and ratification by the Board of Trustees.

**10. General Manager Reports.** The General Manager or his designee shall prepare a delinquency report to be presented at each meeting of the Trustees identifying: each delinquent employer, the amount owed, the time period for which the amount is owed, and a brief description of collection activities taken to date. Decisions and determinations of the Trustees with regard to any issue will be noted in the minutes of such meeting. The General Manager shall also maintain a file of Collective Bargaining Agreements, participation agreements, audit reports and workpapers, and written settlement agreements. Counsel shall provide an oral or written report on the status of delinquencies referred to Counsel at each meeting of the Trustees and at each meeting of the Audit Subcommittee.

**11. Return of Overpayments.** A Signatory Employer shall not unilaterally take a credit for a claimed overpayment unless the Signatory Employer received prior written notice from the Funds to apply the overpayment against current obligations. In all other cases, the Signatory Employer must submit a written request to the Fund for a refund under this Delinquency Policy. A Signatory Employer taking an unauthorized credit shall be treated as delinquent under this Delinquency Policy and shall be charged accordingly. It is the sole and exclusive responsibility of the Signatory Employer to discover and delineate the existence and amount of a contribution overpayment. Any refund of an overpayment must be requested in writing with supporting documentation within one (1) year from the date of the mistaken payment. This is necessary to allow timely reporting and disclosure by the Funds. Contribution overpayments received by the Funds more than one (1) year prior to the date that a Signatory Employer's request for a refund is received by the Funds shall not be returned. Refunds of overpayments resulting from the mistaken inclusion of ineligible employees on the Remittance Form, or resulting from an employee becoming ineligible for benefit

coverage under one or more of the Funds' plans of benefits, or resulting from an employee being entitled to a lower benefit, must be requested in writing with supporting documentation and shall be limited to a maximum of one (1) month of contributions. This limitation is necessary because of reporting, disclosure and notification obligations by the Funds with respect to the employee's continuation of his/her benefit coverage and to allow the Funds to attempt to recover any insurance premiums or benefits it may have paid as a result of the erroneous reporting. No refunds shall be made more than six (6) months after the Board of Trustees determines that the overpayments were the result of the Employer's good faith mistake of fact or law. The policy of Funds on overpayments shall be subject to law, including 29 U.S.C. §1103(c). A refund shall be without interest. The amount of excess contributions that may be credited or returned to the Signatory Employer under this Section shall be the net balance after deduction of (i) audit costs, (ii) direct and indirect administrative expenses incurred in processing a refund request, and (iii) the full value or potential value of any direct or indirect cost, expenses, investment loss, or liability incurred by the Funds (whether asserted or capable of subsequent assertion). These deductions shall include, without limitation, the amount of any benefits or insurance premiums paid by the Funds which would not have been paid but for the Signatory Employer's remittance of the excess contributions.

**12. Benefits Credit for Employees of Delinquent Employers.** To the extent permitted by law, benefits under the Funds shall be determined on the basis of paid contributions or, in the sole and exclusive discretion of the Trustees, for work covered by a settlement agreement or other alternative payment arrangement acceptable to the Trustees. The Trustees, in their sole and exclusive discretion and after consultation with the Union and Fund Counsel, may notify the Signatory Employer and/or its employees that benefits may be discontinued if any unpaid contributions are not submitted within the specified time period or in accordance with other arrangements acceptable to the Trustees. The Trustees may terminate a Signatory Employer from participation in the Funds upon a Delinquency covering six (6) or more months. The Trustees may terminate a Signatory Employer earlier if they determine, in their sole and exclusive discretion, that full collection is doubtful or that the Signatory Employer's contribution practices may affect the financial integrity or actuarial soundness of the Funds.

**13. Effective Date.** The Policy for Collection of Delinquent Contributions is effective as of January 1, 2020 and supersedes the previous Policy. This Policy shall be applicable to all delinquencies arising after that date; provided, however, the foregoing rules and regulations shall be applicable to all delinquencies arising out of audits that are completed on or after said date irrespective of the period for which contributions are due. The Trustees shall review this Policy every three years, or at such other interval as they shall deem appropriate.

**BY THE BOARD OF TRUSTEES:**

\_\_\_\_\_

\_\_\_\_\_


## EXHIBIT A

## DEMAND FOR ARBITRATION

Employer name [include name on contract, name on checks, proper name as recorded with Secretary of State], successors, and assigns (“generic name”)

Re: Notice of Intent to Arbitrate Fund Delinquency

Dear Employer:

As a participating employer in the Heavy & General Laborers’ Local Unions 472 and 172 of New Jersey Pension Fund, Heavy & General Laborers Local Unions 472 and 172 of New Jersey Annuity Fund, Heavy & General Laborers Local 472 and 172 of New Jersey Welfare Fund, and Heavy & General Laborers’ Local Unions 472 & 172 of New Jersey Safety, Education and Training Trust Fund (collectively, the “Funds”), you are obligated to contribute to the Funds pursuant to the terms of your collective bargaining agreement and the rules and regulations adopted by the Trustees of the Funds pursuant to the Trust Agreements and Plans governing their operation.

Please take notice that, in accordance with the obligations and powers delegated to the Trustees of the Funds, the Trustees hereby demand arbitration before the collection’s arbitrator designated by the Funds, J.J. Pierson, Esq. **An arbitration of this matter has been scheduled for [DATE] at [ADDRESS].** The arbitration will concern your delinquency to the Funds in the amounts set forth in the attached statement, as well as any unpaid obligations that have accrued thereafter. Please take further notice that, in accordance with the Funds’ Delinquency Procedures and applicable law, in addition to the principal amounts, the Funds shall seek and the arbitrator is authorized to award interest at the rate of 8% per annum retroactive to the Due Date (specify date) for the delinquent contributions; liquidated damages equal to 5% of the delinquent contributions multiplied by the number of months or partial months that elapse between the Due Date and the date the contributions are actually paid in full to the Funds (to a maximum of 20% of the delinquent contributions), and reimbursement of the costs of collection including reasonable attorneys’ fees, the costs of the arbitration, and expenses.

This document is to collect an obligation due in accordance with the Employee Retirement Income Security Act (“ERISA”) and the Trustees reserve all rights to pursue the collection of the obligation in Federal Court or other appropriate forum in the event that you object to arbitration in accordance with the Trustees’ procedures.

Sincerely,

Andrew Zazzali



## EXHIBIT B

CONFIDENTIALITY AGREEMENT BY AND BETWEEN  
HEAVY AND GENERAL FUNDS' AUDITOR AND EMPLOYER

\_\_\_\_\_ (the "Employer") is party to a collective bargaining agreement with the Heavy and General Laborers (the "Union") permitting the Trustees of the Heavy and General Laborers' Funds (the "Funds") to examine the payroll and other relevant financial records of any employer at any reasonable time to determine whether the Employer has made all required contributions to the Funds in accordance with the collective bargaining agreement. The Trustees have \_\_\_\_\_ (the "Auditor") to conduct an audit of the Employer's books and records for the period \_\_\_\_\_ through \_\_\_\_\_. The Employer and the Auditor hereby enter into this Agreement because the performance of the audit will require the auditor to review certain information of the Employer and its employees that the Employer wishes to remain confidential. With respect to such review, the parties hereto agree as follows:

1. The Auditor agrees not to disclose or use, either during or subsequent to the conduct of its audit, any confidential or proprietary information of the Employer or its employees ("Information") of which the Auditor and its employees or agents become aware except as required to provide the Trustees with such information as needed to determine whether the Employer has made all required contributions to the Funds in accordance with the collective bargaining agreement and/or applicable federal and state laws, and may summarize its findings in its report to the Trustees.
2. The Auditor will not appropriate any information for its own use, nor use information in any way inconsistent with the purpose of its audit.
3. The Auditor agrees that all Employer files and other records or data are the exclusive property of the Employer. The Auditor's work product shall remain the exclusive property of the Auditor.
4. Information disclosed to the Board of Trustees will be limited to information directly related to the procedures engaged to be performed and will not include any Employer proprietary information that may have been obtained during the course of the Auditor's performance of his/her procedures.
5. This Confidentiality Agreement is between the Auditor and the Employer and shall not limit the right of the Board of Trustees and the Union to utilize the report of the Auditor to enforce the Employer's obligations under the collective bargaining agreement or applicable federal, state, or local law.

The undersigned have read this Agreement, understand its contents, and agree to be bound by its terms.

Employer:

Auditor:

By: \_\_\_\_\_  
Name

By: \_\_\_\_\_  
Name

## EXHIBIT C

## NOTICE TO GENERAL CONTRACTORS

[To be sent by the Fund Office to the General Contractor(s) on Fund letterhead 10 days after the First Notice Letter if payment is not received]

[Date]

**Subject:** \_\_\_\_\_ Heavy and General Laborers Local 472/172 Funds – General Contractor Notice

**Sub-Contractor Name:** [INSERT EMPLOYER NAME]

**Contractor Code:** [INSERT EMPLOYER CODE]

**Project:** [INSERT PROJECT NAME]

**Period:** [INSERT DELINQUENCY PERIOD]

To Whom It May Concern:

As you may be aware, members of the Heavy and General Laborers' Locals 472 and 172 (the "Union") have performed work on the above referenced project for your subcontractor \_\_\_\_\_. Pursuant to the Collective Bargaining Agreement between the Union and this subcontractor, fringe benefit contributions are to be submitted monthly to the Heavy & General Laborers' Local Unions 472 and 172 of New Jersey Pension Fund, Heavy & General Laborers Local Unions 472 and 172 of New Jersey Annuity Fund, Heavy & General Laborers Local 472 and 172 of New Jersey Welfare Fund, and Heavy & General Laborers' Local Unions 472 & 172 of New Jersey Safety, Education and Training Trust Fund (collectively, the "Funds").

The purpose of this correspondence is twofold. First, this will serve as notice that your subcontractor has become delinquent in its contributions. The estimated amount due for the above referenced period is \$\_\_\_\_\_. Second, we are requesting your assistance and cooperation so we can amicably resolve this matter to the satisfaction of all parties concerned. Therefore, we are requesting a joint check be forwarded to the Funds for the outstanding benefits due from your subcontractor. Please be advised that if we do not hear from you within ten (10) days of the date of this letter, the Funds will have no alternative but to place a lien on this project and pursue alternative collection measures against the subcontractor.

If you have any questions concerning this matter, please call \_\_\_\_\_ at the Fund Office at (phone number).

On Behalf of the Board of Trustees: