

## **AMENDMENT OF DELINQUENCY POLICY**

WHEREAS, on September 1, 2009, the Boards of Trustees of the Plumbers and Pipefitters Local 502 Health & Welfare Fund and the Plumbers and Pipefitters Locals 502 & 633 Pension Fund for the purpose of establishing a written policy for the investigation, enforcement and collection of contributions to the Funds pursuant to Collective Bargaining Agreements and/or assent of participation agreements, thereby effectuating the requirements of the Employee Retirement Income Security Act of 1974 ("ERISA") do find it necessary and appropriate to amend its Delinquency Policy Amended and Restated on September 1, 2009,

NOW, THEREFORE, the Delinquency Policy shall be amended, effective January 1, 2014, as follows:

The following titled sections will be amended as indicated below:

### **Notification to Delinquent Employer by the Fringe Benefits Office**

#### **Late Payment Assessments**

#### **Audit Procedures**

### **Notification to Delinquent Employer by the Fringe Benefits Office**

"The Fringe Benefits Office will initiate written notification to delinquent employers(s) as follows:

Immediately upon completion of the monthly delinquency report, the Fringe Benefit Office will advise the employer (a) that plan interest has been assessed on the delinquency and (b) that the report and contributions must be remitted within 10 calendar days.

In the same notification the Fringe Benefit Office will further advise the employer that immediately following the expiration of the 10 day period provided above, contributions and continuing interest and liquidated damages as described hereinafter must be received by no later than the last calendar day of the month or the delinquency will be referred to the Fund Attorney for legal action. Late payment assessments, interest and liquidated damages, will be described in the notification. The employer will be further informed that a separate notice will be sent from the Fringe Benefits Office to the employees for whom contributions were reported in the prior month that contributions and hours for Health and Welfare Fund benefits will not be credited effective the first day of the month following the month in which the report is delinquent. The issue of crediting subsequent delinquent reports will be determined by the Trustees on a uniform basis.

The Fund Attorney, following notification from the Fringe Benefits Office, as described hereinabove, of those employers who remain delinquent for the reporting period, will send a letter to the delinquent employer advising the employer (a) that liquidated damages and plan

interest apply; (b) that legal fees have been assessed; and (c) that a lawsuit will be filed unless the delinquency is resolved within 7 business days of the date of the Fund Attorney letter. The Fund Attorney will also contact the Administrative Office and/or the Union to call any bond or letter of credit. Absent mitigating factors, including advice of counsel, it is the intent of the Trustees to file a lawsuit against employers who are delinquent."

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### **LATE PAYMENT ASSESSMENTS**

"It is understood and recognized that, under ERISA, one form of prohibited transaction is an extension of credit between the plan and a party-in-interest. Delinquent contributions create a loan due from the employer to the plan and, thus, constitute an impermissible extension of credit.

Additionally, the expenses incurred by the Funds in the collection of delinquent contributions are an administrative expense to the Funds.

Therefore, in consideration of the foregoing, the Trustees adopt the following late payment assessments:

1. Plan interest at the rate of 8% per annum, unless a different rate is established in a collective bargaining agreement, will be assessed on all delinquent employers who submit their reports and contributions to the Fringe Benefits Office on and after the 16th day of the month following the work month.

2. Liquidated damages in the amount of 3% of the unpaid contributions will be assessed on all delinquent employers who submit their reports and contributions to the Fringe Benefits Office between the 26th day of the month following the work month and the last calendar day of said month.

3. Liquidated damages in the amount of 6% of the unpaid contributions will be assessed on all delinquent employers who submit their reports and contributions to the Fringe Benefits Office after the last calendar day of the month following the work month.

4. Liquidate damages in the amount of 10% of the unpaid contributions will be assessed on all delinquent employers who submit their reports and contributions to the Fringe Benefits Office following the last day of the second month following the work month and/or against whom litigation is initiated to collect the delinquencies.

Legal fees at the current hourly rate will also be assessed against any delinquent employer who is sent the hereinabove described Fund Attorney letter, and such legal fees will continue to accrue due to subsequent correspondence, litigation or otherwise until the delinquency is paid or settled.

In the event of extenuating circumstances as described hereinabove, liquidated damages and plan interest will be assessed as set forth above; however, legal fees will begin to accrue immediately with the initial notice to the delinquent employer.

Should an employer fail to remit the liquidated damages and plan interest, the matter will be considered as a delinquency and the procedures above will apply, including the assessment of legal fees.

An employer who is assessed liquidated damages inters and/or attorney's fees may appeal the assessment, in writing, to the Trustees. In the event the delinquent contributions were paid within (30) days of the due date, the Trustees will automatically grant 1 waiver of liquidated damages and attorney's fees only within a rolling 2 year period; provided, however, that a new signatory employer, acting in good faith but unaware of the Funds' remittance policies and procedures, will be granted an additional automatic waiver by the Fringe Benefits Office if the employer's initial remittance report and payment is untimely. The Trustees have further determined that interest on delinquent contributions is never to be waived. For purposes of this policy, the 1 time waiver relates to the assessment of liquidated damages and attorney's fees on any contributions owed to the Funds and does not entitle the employer to multiple 1 time waivers based on work performed within the jurisdiction of each Local Union."

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### **III. AUDIT PROCEDURES**

"Notwithstanding any other provision of this policy, the Trustees have determined to audit any employer who is (a) habitually late in the remittance of fringe benefit contributions and/or (b) delinquent 2 times within a rolling 12 month period. In an effort to monitor delinquencies, the Fringe Benefits Office will review, on a quarterly basis, the files of all employers to whom delinquency notification, described hereinabove, has been sent, together with those employers who have been referred to the Fund Attorney, and provide a report to the Trustees of employers to be considered for audit. Interim reports will be furnished by the Fringe Benefits Office to the Delinquency Committee. Delinquent employers may be audited at any time deemed appropriate by the Trustees.

In addition, the Trustees have determined to audit new signatory employers within 12 months of the date contributions are first remitted to the Funds. All employers will be audited on a five year cycle.

Once an employer is identified for audit, the Fringe Benefit Office will initiate the audit program procedures previously adopted by the Trustees and incorporated herein by reference, including notification to the Funds' auditor. Upon receipt of the audit authorization letter, the auditor will advise the employer by letter of the pending audit. The auditor will then contact the employer to arrange the time and place of the audit. Reasonable efforts will be made by the auditors to schedule audits in such a way as to minimize travel and other out-of-pocket expenses.

If an employer refuses to produce complete payroll books and records, the auditor will promptly notify, in writing, the Fringe Benefits Office and the Fund Attorney. The Fund

Attorney will take the necessary steps, up to and including the filing of a lawsuit, to compel production of the payroll documents. Likewise, if the auditor has any difficulty in scheduling the audit, written notice of the problem shall be promptly given to the Fringe Benefits Office and appropriate action will then be taken, including the possible filing of a lawsuit.

If the employer provides the necessary payroll data, the auditor will conduct the audit in accordance with generally accepted accounting standards. Upon completion of the audit, the auditor will prepare an audit report and submit that report with a cover letter summarizing his findings to the Fringe Benefits Office and Fund Attorney, together with a statement itemizing the services rendered.

The Fringe Benefits Office will review the completed audit, calculate the applicable liquidated damages, interest, attorney fees, if any, and the costs of the audit, if applicable, and forward a demand letter and copy of the audit report findings to the employer. Should an employer dispute any of the auditor's findings, the matter will be handled by the auditor or the Fund Attorney, as circumstances so warrant.

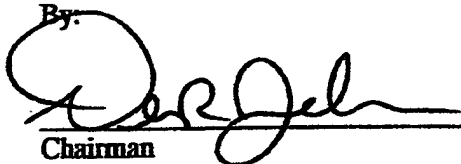
In the event an employer fails to satisfy the demand letter, the matter will be referred to the Fund Attorney for appropriate legal action. Liquidated damages, interest, and attorney's fees will continue to accrue until the matter is resolved through judgment, compromise or settlement."

In all other respects, the Delinquency Policy remains unchanged.

IN WITNESS WHEREOF, the Trustees of the Plumbers and Pipefitters Locals 502 & 633 Pension Fund and the Plumbers and Pipefitters Local 502 Health & Welfare Fund unanimously adopted the foregoing Amendments this 22<sup>nd</sup> day of November, 2013 and authorize the duly elected Chairman and Secretary of each Fund to affix their names thereto.

Plumbers and Pipefitters Locals 502 & 633 Pension Fund

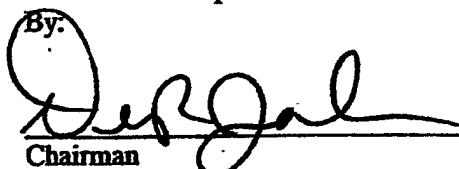
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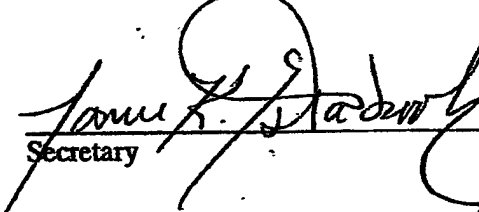
  
Chairman

  
Secretary

Plumbers and Pipefitters Local 502 Health & Welfare Fund

By:

  
Chairman

  
Secretary