# MEMORANDUM OF AGREEMENT

This Agreement, dated the 16th day of October, 2019, by and between Office and Professional Employees International Union, Local 32 ("OPEIU) and the Laborers' District Council Construction Industry Pension Fund, Laborers' District Council Heavy and Highway Construction Health and Welfare Fund, Laborers' District Council Building and Construction Health and Welfare Fund ("Benefit Funds") hereby agree to the following terms and conditions set forth below:

1. Term of Agreement shall be January 1, 2019 through December 31, 2020.

2. Wages
   a. Effective January 1, 2019, each employee shall receive an increase over their December 31, 2018 rate of pay of $1.00 per hour.
   b. Effective January 1, 2020, each employee shall receive a minimum of $16 per hour or an increase over their December 31, 2019 rate of pay of $1.00 per hour, whichever is greater.

3. Annuity Fund
   a. Effective January 1, 2019, the Employer shall contribute into the Laborers' District Council Construction Industry Pension Fund- Annuity Accumulating Account an increase of $0.50 per hour (to $3.70) for each employee.
   b. Effective January 1, 2020, the Employer shall contribute into the Laborers' District Council Construction Industry Pension Fund - Annuity Accumulating Account an increase of $0.50 per hour (to $4.20) for each employee.

4. Pension
   a. Effective January 1, 2019, the Employer agrees to make payments into the OPEIU Local 153 Pension Fund on behalf of each eligible employee of the Laborers District Council Construction Industry Pension Plan at the rate of $76.08 per week, and on behalf of each eligible employee of the Building and Construction Health and Welfare Plan at the rate of $84.27 per week. OPIEU Local 153 Pension Fund is participating in a Rehabilitation Plan and said terms and conditions of the Rehabilitation Plan are incorporated herein and made a part hereof and marked Exhibit "A".

   b. Effective January 1, 2020, the Employer agrees to make payments into the OPEIU Local 153 Pension Fund on behalf of each eligible employee of the Laborers District Council Construction Industry Pension Plan at the rate of $78.36 per week, and on behalf of each eligible employee of the Building and Construction Health and Welfare Plan at the rate of $86.80 per week.

   c. In addition, the Employer agrees to make payments of the arrears due to the Pension Fund as part of the Rehabilitation Plan which was instituted in January 2011.

5. Probation Period
    a. Effective January 1, 2020, Article II, Section 4, will be modified to increase the probationary period from 31 days to 90 days.

6. Paid Time Off
    a. Effective January 1, 2019, Article VIII section 1 shall be revised for all employees hired after January 1, 2001. Said employees will be entitled to a "Paid Time Off" benefit that may be used for either sick and/or personal leave in the amount of twelve (12) days per calendar year.

7. All other provisions of the existing Agreement shall remain unchanged.

This agreement is subject to ratification by the union membership and approval by the Trustees of the Funds *above* mentioned.

Agreed and Accepted on behalf of
Laborers' District Council Construction
Industry Pension Fund, Heavy and
Highway Construction Health and
Welfare Fund and Building and Construction
Health and Welfare Fund

BY: ______________________

Date: October 16, 2019

Agreed and Accepted on behalf of
Office and Professional Employees
International Union, Local 32

BY: ______________________

Date: November 22, 2019

REHABILITATION PLAN FOR THE
LOCAL 153 PENSION FUND

Adopted June 25, 2018

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# I. Introduction

The Pension Protection Act of 2006 ("PPA"), as amended by the Worker, Retiree and Employer Recovery Act of 2008 and the Multiemployer Pension Reform Act of 2014 (MPRA), requires the Trustees of a multiemployer pension plan that has been certified by the plan's actuary as being in Critical status (also known as "Red Zone" status) to develop a Rehabilitation Plan. On March 30, 2018, the Local 153 Pension Fund ("Pension Fund") was certified by its actuary to be in Critical or Red Zone status for the Plan Year beginning January 1, 2018, a continuation of the same status since January 1, 2011. In addition, the Pension Fund was certified as in "declining" status for the plan year beginning January 1, 2018 because the actuary determined that the Pension Fund is projected to become insolvent in the beginning of 2032.

PPA requires that once the Pension Fund's actuary certifies that the Pension Fund is in Critical or Red Zone status, a Notice of Critical Status must be sent to all participants, beneficiaries, retirees, contributing employers and OPEIU Local 153. The Pension Fund most recently sent a Notice of Critical and Declining Status on or about April 27, 2018.

Because the Pension Fund is in the Red Zone, the Board of Trustees ("Trustees"), as the Plan Sponsor, is required by law to develop a Rehabilitation Plan. On November 10, 2011, the Board of Trustees adopted a Rehabilitation Plan. This Rehabilitation Plan was revised on June 23, 2016 to reflect changes required by MPRA and to clarify the operation of the Default Schedule. After further review of the Plan's status and experience as of January 1, 2016 the Trustees updated the Rehabilitation Plan on December 9, 2016 to reduce the required employer contribution rate increases under the Preferred Schedule beginning in Year 7. The Annual Standards of the Rehabilitation Plan were also updated. On May 25, 2017, the Trustees revised the Rehabilitation Plan to clarify that a collective bargaining agreement could provide for employer contributions in excess of what is required under the Rehabilitation Plan in order to increase the monthly pension accrual rate for covered employees.

The Rehabilitation Plan generally must be designed, based upon reasonably anticipated experience and actuarial assumptions, to improve the funding levels of the Pension Fund so it is no longer in the Red Zone by the end of the "Rehabilitation Period", if possible. The Rehabilitation Period for this Pension Fund is the ten (10) year period beginning January 1, 2014.

The Rehabilitation Plan includes two Schedules of benefits, the "Preferred Schedule" and the "Default Schedule." These Schedules are provided to the contributing employers and OPEIU Local 153 (referred to as the "Bargaining Parties") for implementation.

## II. Rehabilitation Period

PPA generally specifies a ten-year Rehabilitation Period to emerge from Critical, or Red Zone, status. However, PPA also provides a "safety valve" that permits emergence from Critical status at a later date if the Trustees determine that the Pension Fund cannot reasonably be expected to emerge within the ten-year Rehabilitation Period.

The Trustees considered numerous alternatives that might enable the Pension Fund to emerge from Critical status by the end of the ten-year Rehabilitation Period. After consideration of these alternatives, the Trustees determined, based on reasonable actuarial assumptions and upon the exhaustion of all other reasonable measures, that it would not be reasonable to expect to exit Critical status within the ten-year Rehabilitation Period.

The Trustees determined, based on the advice of the Pension Fund actuary, that exiting Critical status within the ten-year Rehabilitation Period would require annual contribution rate increases of 25% each year. The Trustees determined that the contributing employers could not sustain contribution increases at this rate, given the economic difficulties facing many of these employers. Accordingly, the Trustees determined that the Pension Fund needed to utilize the "safety valve" under which it could exit Critical status over a longer period of time.

The Trustees also determined that the prior Preferred Schedule which called for contributing employers to increase their contribution rates by 15% per year for three years, followed by 10% increases in subsequent years, was a hindrance to bargaining and thereby undermined the Plan. Increases in excess of these amounts would make it extremely difficult, if not impossible, for the employers to make the required contributions. Therefore, the updated Preferred Schedule has reduced the 10% contribution rate increases to 9% beginning with the 7th year under the Preferred Schedule. Effective June 25, 2018, the updated Preferred Schedule reduces contribution rate increases to 3% beginning with the 8th year under the Preferred Schedule.

Given that participants' benefit accruals are a function of the employer's contribution rate, as employers increased their rates, accruals likewise increased. Effective January 1, 2017, this is no longer the case unless the collective bargaining agreement specifically calls for contribution rate increases in excess of what is required under this Rehabilitation Plan (called "Enhanced Contributions"). The Trustees decided to eliminate most of the adjustable benefits under the Preferred Schedule effective November 1, 2018, as outlined below; these changes do not reduce the level of any participant's accrued benefit payable at Normal Retirement Age.

## III. Rehabilitation Plan Schedules

One of the Rehabilitation Plan Schedules must be reflected in collective bargaining agreements that are entered into, modified or renewed on or after April 30, 2011. Until the Rehabilitation Plan was implemented, benefits and contributions for active employees will be governed by the existing collective bargaining agreements and there were not any changes in benefits or contributions (except for any required employer surcharges, described below).

The benefit adjustments and contribution rate increases for each of the Schedules are described below. The benefit provisions of the Preferred Schedule will apply to Deferred Vested Participants who have not retired and begun payment of their pension benefits on or before April 30, 2011.

## A. Preferred Schedule

**Plan Provisions**

The Trustees previously reduced the rate of future benefit accruals in 2006, 2007 and 2010. Other plan modifications included greater reductions for early retirement benefits and a freeze on the 13th check benefit. The following changes were adopted by the Trustees and will be effective November 1, 2018:

1. Elimination of the Disability Pension.

2. A change in early retirement reduction factors as specified in Section 3.5 of the Pension Plan Document from one-quarter of one percent or one-half of one percent (depending on the period the benefit was accrued) to six-tenths of one percent for each month by which the commencement of the pension precedes the participant's Normal Retirement Age.

3. Elimination of the pre-retirement 10 Year Certain Pension for Non-Spouse Beneficiaries.

4. For the employees previously covered by the OPEIU Local No. 12 Retirement Plan, which merged into this Pension Fund, elimination of the pre-retirement optional lump sum death benefit.

**Contribution Increases**

The Preferred Schedule provides for the following increases in contribution rates:

| Effective Date, Beginning of Contract Year in | Percentage Increase in Contribution Rate |
|---|---|
| Year 1 through Year 3 | 15% |
| Year 4 through Year 6 | 10% |

| | |
|---|---|
| Year 7 | 9% |
| Years 8 through emergence from Critical Status | 3% |

The first increase (referred to above as "Year 1") applies to contributions for hours worked during the 12-month period beginning on the effective date of the collective bargaining agreement or other agreement that incorporates this Preferred Schedule and that is entered into, renewed or extended on or after November 10, 2011. Each subsequent increase applies to contributions for hours worked during each subsequent 12-month period.

An employer may agree to make contributions in excess of those required in the Preferred Schedule in order to increase the monthly pension credit accrual rate for its covered employees. The excess contributions are known as Enhanced Contributions. Contribution rate increases required under the Preferred Schedule of this Rehabilitation Plan shall be calculated without regard to any Enhanced Contributions. Enhanced Contributions, if applicable, are then added to the required contribution rate under the Preferred Schedule to arrive at the total contribution rate for each period for which Enhanced Contributions apply.

The Preferred Schedule of benefit and contribution rates provided by the Trustees and relied upon by the Bargaining Parties in negotiating a collective bargaining agreement shall remain in effect for the duration of that collective bargaining agreement. This Schedule may be amended from time to time and any collective bargaining agreement entered into, renewed or extended after the date of any changes to this Schedule shall be subject to the Schedule then in effect at the time of such entry, renewal or extension.

## B. Default Schedule

**Affected Participants**

The benefit changes described in this Default Schedule apply to participants employed by an employer that: (i) either agreed to the Default Schedule in collective bargaining or had the Default Schedule automatically imposed, and (ii) who retired or terminated employment after April 30, 2011. Benefits for participants who retire after April 30, 2011 and prior to implementation of the Default Schedule will be re-determined under the provisions described below. There will not be any retroactive reductions to benefits already paid. In addition, no benefit changes will be effective until thirty (30) days after the Pension Fund provides specific notice of changes to the affected Pension Fund participants and to the Bargaining Parties.

**Benefit Changes**

PPA requires that the Default Schedule include certain reductions in benefits. Accordingly, the Default Schedule includes the following changes:

1. Elimination of the Disability Pension.

2. A change in early retirement reduction factors as specified in Section 3.5 of the Pension Plan Document from one-quarter of one percent or one-half of one percent (depending on the period the benefit was accrued) to six-tenths of one percent for each month by which the commencement of the pension precedes the participant's Normal Retirement Age.

3. Elimination of the pre-retirement 10 Year Certain Pension.

4. Elimination of the immediate payment of the pre-retirement surviving spouse death benefit to the spouse of a participant who dies after attaining age 45 with at least 20 Pension Credits. Payment will now be made on the earliest date the participant would have been eligible for a benefit.

5. For the employees previously covered by the OPEIU Local No. 12 Retirement Plan, which merged into this Pension Fund, elimination of the pre-retirement optional lump sum death benefit.

**Contribution Increases**

The Default Schedule provides for the following increases in contribution rates:

| Effective Date, Beginning of Contract Year in | Percentage Increase in Contribution Rate |
|---|---|
| Year 1 through Year 3 | 20% |
| Year 4 through Year 6 | 15% |
| Years 7 through emergence from Critical Status | 5.75% |

The first increase (referred to above as "Year 1") applies to contributions for hours worked during the 12-month period beginning on the effective date of the collective bargaining agreement or other agreement that incorporates this Default Schedule and that is entered into, renewed or extended on or after November 10, 2011, regardless of whether the Preferred Schedule was applicable under the terms of the prior collective bargaining agreement. In other words, the Year 1 through 6 increases required under the Default Schedule would apply for every employer subject to this schedule, regardless of whether they were subject to the Preferred Schedule under prior bargaining agreements. Each subsequent increase applies to contributions for hours worked during each subsequent 12-month period.

The first increase also applies to contributions for hours worked during the 12-month period beginning on the date this Default Schedule is automatically imposed, if applicable, in addition to the applicable Critical status surcharges. Each subsequent increase applies to contributions for hours worked during each subsequent 12-month period.

The Default Schedule of benefit and contribution rates provided by the Trustees and considered by the Bargaining Parties in negotiating a collective bargaining agreement shall remain in effect for the duration of that collective bargaining agreement. However, this Schedule may be amended from time to time and any collective bargaining agreement entered into, renewed or extended after the date of any changes to this Schedule shall be subject to the Schedule in effect at the time of such entry, renewal or extension.

## C. Provisions Applicable to Both Schedules

The benefits of participants who retired (as that term is defined in the Pension Plan Document) prior to April 30, 2011 are not affected by this Rehabilitation Plan. Benefit changes for other participants, if applicable, are determined as follows:

- A participant who earns at least one Hour of Service under a collective bargaining agreement that provides for terms consistent with one of the Schedules of this Rehabilitation Plan shall have his or her benefits determined based on that Schedule effective on the date the Schedule is effective for the participant's bargaining unit.

- If a pensioner returns to work on or after April 30, 2011, any new benefit accrual earned will be subject to the Schedule under which he or she works after the return to work. However, any benefit accrual earned before April 30, 2011 will be based on the Pension Fund rules in effect at the time of the initial retirement.

- Benefits of a beneficiary or alternate payee shall be determined on the same basis as benefits of the participant or retiree to whom they relate.

**THE TRUSTEES ARE PROHIBITED FROM ADOPTING ANY BENEFIT CHANGES AFTER THE DATE THIS REHABILITATION PLAN IS ADOPTED THAT ARE INCONSISTENT WITH THE TERMS OF THIS REHABILITATION PLAN.**

## IV. Adoption of the Rehabilitation Plan and Employer Surcharges

Once a multiemployer pension plan is certified in the Red Zone, PPA requires that all contributing employers pay a surcharge to the plan to help improve the funding situation. Surcharges are additional contributions paid to the Pension Fund at the same time and in the same manner as the regular contributions. The amount of this surcharge is in addition to the amount an employer is otherwise required to contribute to the plan under the applicable collective bargaining agreement or other agreement that incorporates one of the Rehabilitation Plan Schedules. With some exceptions, a 5% surcharge applies for the part of the initial plan year that the plan is in the Red Zone, and increases to 10% for succeeding plan years until it is no longer applicable.

In the case of the Bargaining Parties for this Pension Fund, the 5% surcharge will apply to contributions under the collective bargaining agreement for work performed on and after May 30, 2011. The surcharge increased to 10% as of January 1, 2012 unless the bargaining parties agreed upon either the Preferred Schedule or the Default Schedule as part of the collective bargaining agreement or other agreement that incorporates one of the Rehabilitation Plan Schedules prior to that date. Such agreement must also include the commencement of contributions consistent with the negotiated Schedule. Once the Bargaining Parties agree upon either the Default Schedule or the Preferred Schedule provided under the Rehabilitation Plan and commence contributions consistent with the negotiated Schedule, the obligation for the contributing employer to pay the surcharges is eliminated.

Any contributing employer that fails to pay the surcharge, in addition to and in accordance with the schedule of payments for monthly employer contributions as outlined in the collective bargaining agreement or other agreement that incorporates one of the Rehabilitation Plan Schedules, will be treated as delinquent in payment of those amounts.

This Rehabilitation Plan supersedes the Funding Improvement Plan, which applied during the Plan Year beginning January 1, 2010. However, the contribution increases under the Preferred Schedule of this Rehabilitation Plan are the same as the contribution increases in the initial years of the Preferred Schedule of the Funding Improvement Plan. Therefore, any employer that adopted the Preferred Schedule of the Funding Improvement Plan will be deemed to have also adopted the Preferred Schedule of this Rehabilitation Plan. As a result, no surcharges will be applied to those employers.

## V. Automatic Implementation of a Schedule

If a collective bargaining agreement providing for contributions to the Pension Fund that was in effect on January 1, 2011 expires, and after receiving the Preferred and Default Schedules, the Bargaining Parties fail to adopt either the Preferred or Default Schedule, the initial contribution schedule shall be the Default Schedule, which will be implemented automatically 180 days after the date on which the collective bargaining agreement expires.

If a collective bargaining agreement expired prior to January 1, 2011 and was not renewed by April 30, 2011, the initial contribution schedule shall be the Default Schedule, which will be automatically implemented 180 days after November 10, 2011.

If a collective bargaining agreement that provides for contributions under the Preferred or Default Schedule expires while the Pension Fund is still in Critical Status and the bargaining parties fail to adopt a contribution schedule in accordance with the updated Rehabilitation Plan, then the contribution schedule under the expired collective bargaining agreement, as updated and in effect on the date the collective bargaining agreement expires, shall be implemented 180 days after the date on which the collective bargaining agreement expires, retroactive to the expiration date of the prior agreement.

Even if the Default Schedule is automatically implemented as the initial contribution schedule, the obligation of the contributing employers to pay the surcharges continues until either the Preferred or Default Schedule is adopted by the bargaining parties and reflected in the applicable collective bargaining agreement, or other agreement that incorporates one of the Rehabilitation Plan Schedules.

## VI. Retroactive Adoption of the Preferred Schedule

An employer for whom the Default Schedule is automatically implemented may negotiate the Preferred Schedule with a retroactive effective date, provided all contributions retroactive to the effective date are paid, with interest as specified in the Plan and under applicable law. If the collective bargaining agreement for such employer was in effect on January 1, 2011, the retroactive effective date must be no later than the date of expiration of the collective bargaining agreement. If the collective bargaining agreement for such employer expired prior to January 1, 2011, the retroactive effective date must be no later than November 10, 2011. In the event the Preferred Schedule is retroactively adopted, the employer's active participants will be treated as though they have been covered by the Preferred Schedule since the retroactive effective date.

In the event an employer negotiates the Preferred Schedule with a retroactive effective date, as discussed above, any surcharges paid on or after the retroactive effective date will be credited as partial payment of contributions due under the Preferred Schedule.

## VII. Annual Standards for the Rehabilitation Plan

The Pension Fund's actuary certified that the Pension Fund was in Critical and Declining Status as of January 1, 2018 because the Pension Fund was projected to become insolvent in 2032. The year of projected insolvency will vary each year as actual experience differs from the assumptions. The Trustees recognize the possibility that actual experience could be less favorable than the reasonable assumptions used for the Rehabilitation Plan. Consequently, the annual standard for meeting the requirements of the Rehabilitation Plan is for updated actuarial projections each year to show, based on reasonable assumptions, that under the Rehabilitation Plan (as amended from time to time), the Fund will forestall insolvency until at least the plan year ending 2027.

## VIII. Monitoring and Updating of the Rehabilitation Plan

The Trustees recognize the possibility that actual experience could be less favorable than the reasonable assumptions utilized by the Pension Fund actuaries. Accordingly, in conjunction with the actuarial valuation, a projection will be done on an annual basis to determine when the Pension Fund is expected to be insolvent. In the event that the Pension Fund is projected to fall short of the annual benchmarks established to meet its funding objectives, the Trustees will update this Rehabilitation Plan as necessary. This update may include changes to the current Schedules, revisions to the benchmarks and/or the adoption of additional Schedules, as necessary to ultimately forestall insolvency.