

**EXCAVATING AND BUILDING MATERIAL DRIVERS UNION LOCAL 436 PENSION FUND POLICY STATEMENT ON THE ACCEPTANCE OF PROPOSED BARGAINING AGREEMENTS FOR PLAN PARTICIPATION**

**Effective October 1, 2014**

**WHEREAS**, the undersigned are the duly designated Trustees of the Board of Trustees (the "Trustees") of the **EXCAVATING AND BUILDING MATERIALDRIVERS UNION LOCAL 436 PENSION FUND** (hereinafter the "Fund" or "Pension Fund") and are "fiduciaries" as defined in Section 3 (21) of the Employee Retirement Income Security Act of 1974 ("ERISA"); and

**WHEREAS**, the Fund is a multiemployer pension benefit plan as defined in Section 3(37)(A) of ERISA, 29 U.S.C. §1002(37)(A); and

**WHEREAS**, the amended and restated Pension Plan of the Fund has, since January 1, 2009, been certified by the Fund's actuary to be in "critical status", as defined by the Pension Protection Act of 2006 ("PPA"), ERISA Section 305(b)(2), 29 U.S.C. §1085(b)(2), and on or about November 16, 2009, the Trustees adopted (and since amended) a Rehabilitation Plan as required by ERISA Section 305(e)(1), 29 U.S.C. §1085(e)(1); and

**WHEREAS**, the Fund's actuary has advised that the Pension Plan cannot reasonably be expected to emerge from "critical status" in accord with the initial and amended Rehabilitation Plan at the end of the stated rehabilitation period, and, thus, the Trustees are required to take all reasonable measures to forestall possible insolvency of the Pension Plan, under ERISA Section 305(e)(3), 29 U.S.C. §1085(e)(3); and

**WHEREAS**, the Trustees, consistent with Section 3.5 of the Pension Plan, are required to accept or reject proposed collective bargaining agreements negotiated by and between employers and Teamsters Local Union No. 436 (the "Union") requiring contributions to the Fund on behalf of bargaining unit employees, as consistent with the terms of the amended Rehabilitation Plan, and which can reasonably be expected to forestall the possible insolvency of the Pension Plan;

**WHEREAS**, the Trustees heretofore have not adopted a formal written policy for the acceptance or rejection of proposed collective bargaining agreements for participation in the Fund, other than formulation of an ERISA-compliant Rehabilitation Plan; and

**WHEREAS**, the Trustees desire to confirm in writing those conditions under which the Fund will accept or reject proposed collective bargaining agreements negotiated by and between employers and the Union.

**NOW THEREFORE, BE IT RESOLVED BY THE TRUSTEES**, by written consent, that this Statement of Policies and Procedures is hereby adopted, as set forth herein.

## **General Policy on Acceptance of Proposed Collective Bargaining Agreements**

The Board of Trustees will act in accordance with the following language from Section 3.5 of the amended and restated Pension Plan, to reject collective bargaining agreements that could result in adverse selection:

*Effective as of January 1, 2001, the financing of benefits provided by the Plan is based on the continued contribution of Employers as required by the collective bargaining agreement with the Union. If a Union and an Employer should enter into a collective bargaining agreement requiring contributions to the Fund, and then fail to renew such agreement, or enter into an agreement which does not require the continuation of contributions to the Fund, or requires a lesser rate of contributions, the Trustees have the authority to take such action as is necessary with respect to all of the Employees of all of the Employers in that Union jurisdiction, including, but not limited to the following, in order to maintain the Fund on a sound actuarial basis:*

- (a) The Trustees shall have the right to terminate the Employer's status as Employers.*
- (b) The Trustees shall have the right to adjust or cancel the past Service Credit of any Employees or former Employees in order to maintain actuarially sound relationship between the contributions made on account of such Employees or former Employees and any benefits accrued by them.*

The Trustees will approve new and successor collective bargaining agreements only if they have been endorsed by the Fund's actuary as being able to sustain and/or contribute to the solvency of the Pension Plan. Further, the Trustees will only accept new or successor collective bargaining agreements if they contain actuarially sound contractual agreements for the payment of contributions to the Fund.<sup>1</sup> The Trustees will rely upon actuarial calculations to determine the benefit level(s) offered to Participants under each contribution level contained in a proposed collective bargaining agreement. Because of this, the Trustees will avoid, consistent with the Pension Plan's terms, accepting any proposed collective bargaining agreements that restrict pension coverage

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<sup>1</sup> For the purpose of this Policy, the phrase "actuarially sound" shall mean as follows in terms of a collective bargaining agreement: a collective bargaining agreement is actuarially sound if the present value of expected contributions made thereunder exceed the present value of future benefits reasonably expected to accrue under the Plan. The determination regarding whether a proposed collective bargaining agreement is actuarially sound shall be made by the Fund's actuary in writing using reasonable actuarial assumptions, and reported in writing to the Fund Trustees.

to only those employees who are likely to receive a benefit and that exclude those employees who are less likely to receive a benefit whereby the contribution rate is insufficient to support the benefit level(s) promised. Further, the Trustees will not accept proposed collective bargaining agreements that, in practice, employ any type of “adverse selection”.

Bargaining parties (i.e. the Union and the Employer) may reach tentative agreements on collectively bargained terms and conditions of employment impacting the Employer’s participation in the Fund. However, all such collective bargaining agreements must be presented to and approved by the Fund’s Trustees in accordance with this Policy before the Employer’s participation (or continued participation) in the Fund is accepted.

### **Transition Period**

The Trustees are aware that some collective bargaining agreements, as presently constituted, may contain terms and conditions that are not consistent with this Policy Statement. Upon expiration and renegotiation of such collective bargaining agreements, the following shall be required for the Trustees to accept such collective bargaining agreements for participation in the Fund:

1. If any bargaining unit employees are currently excluded from participation in the Pension Fund, by Agreement, under the terms of the prior collective bargaining agreement, such partial participation must cease and either all bargaining unit employees must participate in the Fund, or no bargaining unit employees may participate in the Fund. If continued participation of employees is included in a new Agreement, the employer must commence participation in the Pension Fund on behalf of such employees, no later than thirty (30) days after the effective date of such agreement; and
2. A lower contribution rate or schedule for newly hired or covered employees will be permissible provided that such rate or schedule is approved and authorized by the Trustees in the current Rehabilitation Plan and otherwise complies with the General Policy statement above, including the determination by the Fund’s actuary that such contribution rates and corresponding benefits are actuarially sound.

### **Employer Hardship Circumstances**

If an otherwise non-complying contributing employer can demonstrate through the submission of objective evidence satisfactory to the Trustees that: (i) it cannot financially sustain the contribution requirements of this Policy for all or a part of any term of a collective bargaining agreement; (ii) it has not otherwise acted in a manner that undermines, either directly or indirectly, the actuarial solvency of the Plan (e.g. through ‘double breast’ or other non-union operation(s)); and (iii) a complete or partial withdrawal from the Pension Fund would likely result in the employer’s withdrawal

liability being uncollectable. Notwithstanding the foregoing, the Trustees shall be empowered to vary the terms and conditions of this Policy for employers meeting this hardship exception in their sole discretion, so as to permit an employer's continued participation in the Fund, provided that the employer's contribution rates and corresponding benefits to the employer's employees are actuarially sound.

### **Non-Compliance**

If the bargaining parties are unable to negotiate terms and conditions for a proposed collective bargaining agreement that comply with the requirements set forth in this Policy Statement within one hundred eighty (180) days of the expiration of the currently effective bargaining agreement, the Trustees may: (i) implement the "Default Schedule" of the then current Rehabilitation Plan with regard to the employer and its covered employees; or (ii) terminate the employer's participation in the Fund, and assess withdrawal liability in accord with ERISA and the Fund's governing plan documents; or (iii) take any and all other reasonable measures necessary and appropriate that are consistent with their duties as ERISA "fiduciaries" and otherwise in accord with Federal Law.

### **Review & Modification of Policy Statement**

The Trustees will annually review this Policy Statement and any modifications to the provisions set forth above will be forwarded to all employers and to the Union within sixty (60) days after adoption. Further, this Policy Statement will be interpreted and applied in a manner consistent with the current, and any amended, Rehabilitation Plan, as well as ERISA and the PPA.

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**REVIEWED AND APPROVED AT REGULAR MEETINGS OF THE BOARD OF TRUSTEES OF THE EXCAVATING AND BUILDING MATERIALDRIVERS UNION LOCAL 436 PENSION FUND ON**

**NOVEMBER 20, 2015**

**NOVEMBER 18, 2016**

**DECEMBER 1, 2017**

**NOVEMBER 30, 2018**

**NOVEMBER 25, 2019**

**DECEMBER 4, 2020**