

**MEMORANDUM OF UNDERSTANDING
BETWEEN
IBEW LOCAL UNION 280, 659, and 932
AND THE
OREGON PACIFIC-CASCADE CHAPTER, NECA**

**PERMANENT MOU MODIFYING SOUTHWEST OREGON ADDENDUM TO 9TH
DISTRICT SOUND & COMMUNICATIONS AGREEMENT**

WHEREAS, IBEW Local Unions 280, 659, and 932 and the Oregon Pacific Cascade Chapter, NECA have a Southwest Oregon Addendum to the 9th District Sound & Communications Agreement (the “agreement”); and

WHEREAS, the bargaining parties have determined to modify certain provisions of the agreement, effective July 1, 2019 (the “Effective Date”), in the manner identified in this MOU;

THEREFORE, IT IS RESOLVED AND AGREED that, effective as of the Effective Date, the agreement is changed in the following manner:

1. Section 5.03 of the agreement is deleted, and replaced with the following language:

“5.03 Cascade Pension Trust. Each Employer who is bound to this agreement agrees that the Agreement and Declaration of Trust of the Cascade Pension Trust, as it now exists or may hereafter be amended, (Cascade Trust Agreement), shall continue in full force and effect during the term of this agreement, and agrees to be bound by the terms of such Cascade Trust Agreement.

“Each Employer who is a party hereto or who agrees to be bound by the terms hereof, shall make payment to the Trustees of the Cascade Pension Trust for each hour which is a covered hour under the terms of this agreement at the rate, if any, specified for such employee’s classification under the applicable Schedule 3A or Schedule A to the agreement between such IBEW Local and NECA. Payment of contributions and reporting by the Employer shall be on the terms and conditions provided for in Section 5.04 of this agreement.

“Hours worked shall be deemed to include straight time hours, actual overtime hours, report time, and shift premium hours not worked, in addition to such other time as provided for in the Cascade Trust Agreement.

“In addition to the contributions above, the Cascade Pension Trust permits employees covered by this agreement to elect to reduce the salary payable to them by the Employer and to direct the amount of the reduction be contributed to the Cascade Pension Trust under Section 401(k) of the Internal Revenue Code of 1954. If an employee so elects, the amount of the voluntary contribution shall be determined by the employee as a percentage of such hourly wages, but in any event not exceeding the amount provided under the Cascade Trust Agreement and the Internal Revenue Code. The employee shall designate the percentage on forms provided by the Trust and delivered to the Employer at the time the employee is dispatched to the Employer. In addition, during the month of December of each year, the

employee may change the amount of the percentage effective the following January 1 for the next year. Once an employee designates a percentage, it may not be changed without the consent of the Employer except during the month of December of each year.

“Employers who fail to remit regularly shall be subject to having this agreement terminated upon seventy-two (72) hours’ notice in writing being served by the Union, provided the Employer fails to show satisfactory proof that delinquent payments have been paid to the administrator or other designated collecting agent for the Cascade Pension Trust. The failure of any Employer to comply with the applicable provisions of the Cascade Trust Agreement shall also constitute a breach of this agreement.”

2. Section V.5 of the Addendum is deleted, renumbered as Section 5.04, and replaced with the following language:

“5.04 Payment, Reporting and Collection. Employer contributions and wage withholdings to employee benefit trust funds and other fringe benefit funds required under this labor agreement are due and payable on or before the 15th calendar day of each month covering the hours worked by each employee through the last full payroll period in the prior calendar month. Each employer shall file a monthly report for each contribution or fringe benefit in the form established therefore. A report shall be filed, regardless of whether or not the employer employed any covered employees in the period covered by said report, and a report indicating no contributions shall constitute a certification by the employer that there were no contributions owing for the period covered by the report.

“Any employer who fails to file a report or pay contributions by the 15th calendar day of the month following the month in which the work was performed shall be considered delinquent and in violation of this Agreement. Legal action may be brought by the appropriate parties to enforce collection and/or reporting without resort to arbitration. Delinquent employers shall be liable for all reasonable attorney fees, court costs and other expenses incurred in the enforcement of any applicable trust agreement or collection from such employer plus liquidated damages and lost earnings charges provided below. Each employer shall make available applicable books and records for the purpose of auditing same to determine the amount of the employer’s liability, and shall pay the expenses of the audit if any delinquencies are found under the guidelines of any of the applicable trust agreements. An action to collect contributions may be brought in the name of the respective trust fund, Trustees, the Trustees who compose the trust funds’ joint Audit Committee, or any other assignee or agency designated by said Trustees. Each employer agrees to, and shall be bound by, the terms of the Trust Agreement for each trust fund to which contributions are allowed or required hereunder.

“There has been considerable time and effort since 1984 on behalf of the parties hereto assessing the need for and amount of liquidated damages that an employer should pay to cover administrative and collection efforts that is difficult to estimate and could be substantial.

“The parties recognize and acknowledge: that the regular and prompt payment of individual and employer contributions and/or amounts withheld from employees’ wages is essential to the maintenance of the various multiemployer employee benefit funds and designated

recipients of the withholdings; that delinquencies cause increased administration costs because of the additional labor, record keeping, oral and written notification, investigation, consultation and other effort to enter information in the computers, make calculations, send demand letters to and otherwise communicate with the delinquent employer, make reports to the delinquency committee members responsible for collecting all delinquent amounts, and fully inform counsel, the auditor or other third parties of the information needed to collect all delinquencies; that each failure to pay must be investigated and referred to one or more appropriate service providers for field investigation or audit or legal action; and that collection efforts must be undertaken even if the employer thereafter promptly pays the delinquent contributions or withholdings.

“The employer's failure to make timely payment each month of the contribution and withholding amounts required by employer's agreement can result in damage to the labor management harmony, the amount of which is difficult to estimate; employee loss of health and certain pension coverage, with damage that could be substantial and would be difficult or impossible to estimate; and reduced benefit amounts to all employees of all participating employers if late or delinquent payments become significant.

“The foregoing are not exhaustive, but demonstrate some of the costs, difficulties and damages created by late payment or nonpayment. As the length of the delinquency increases, the time and effort by the administrative staff and retained service providers increases, thereby increasing the damage to the recipients. Unlike the lost earnings charge, which increases at a specified rate per day, the exact cost for the additional damages caused by late payment or nonpayment is extremely difficult to determine.

“Accordingly, in light of the anticipated harm caused by late payment or nonpayment of contributions and withholdings, the difficulties of proof of loss, and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy, the parties agree, that a delinquent employer shall be liable for all liquidated damages delinquency charges specified herein with respect to all contributions and withholdings not paid by the delinquency date.

“These liquidated damages are in addition to contributions otherwise due. In addition, interest damages for loss of earnings on contributions which are delinquent past the due date, shall be charged at the rate of ten percent (10%) of the delinquent contributions from the due date, compounded monthly until paid in full. Such interest charges shall apply both pre- and post-judgment, and the bargaining parties specifically waive their right to have post-judgment interest calculated at the federal statutory (or any other) rate. **Liquidated damages shall be computed for each trust in an amount up to 20% of the unpaid contributions on the due date.**

“The parties agree to abide by the terms and conditions established from time to time by the trustees of the various trust funds providing the fringe benefits, with respect to any collection procedure for delinquent contributions; provided, however, this Agreement or the applicable trust agreement shall control to the extent of any direct conflict with such collection procedures.

“Each employer without prior participation and contribution history to the trust funds or which have been delinquent in reporting or paying contributions to the trust funds

shall post security, referred to as a "bond", to secure future payment of contributions due the trust funds in the manner and to the extent required by the collection policies and procedures established by the trust funds.

"Delinquent employers shall be liable to any employee affected by such delinquency for all benefits lost by such employee by virtue of such delinquency, plus interest at the statutory rate (pre- and post-judgment, and the bargaining parties specifically waive their right to have post-judgment interest calculated at the federal (or any other) rate, and such delinquent employer shall also be liable for reasonable attorney fees and collection and audit costs incurred for any action brought to recover the amount of said benefits.

"The union may remove employees covered by this Agreement from the employ of a delinquent employer provided advance notice to the delinquent employer of not less than seventy-two (72) hours is given of such proposed action. Such removal of employees and the cessation of work by the employees of any such delinquent employer shall continue until the administrator or collecting agent of the applicable trust funds involved confirm that no amounts remain owing to said funds by said employer."

The agreement, as modified by this MOU, is otherwise unchanged and shall remain in effect until changed or terminated in the manner provided by the agreement.

Signed to be effective as of the Effective Date.

IBEW LOCAL 280

By: Drew Lindsey
Drew Lindsey, Business Mgr.

OREGON PACIFIC-CASCADE CHAPTER,
NECA

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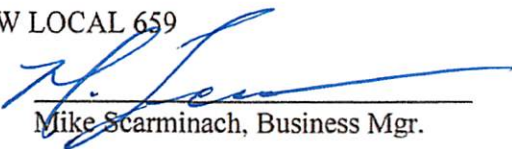
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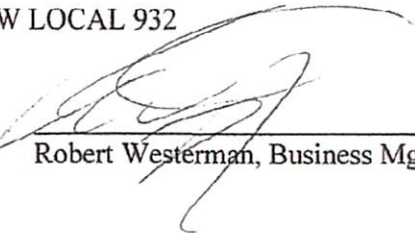
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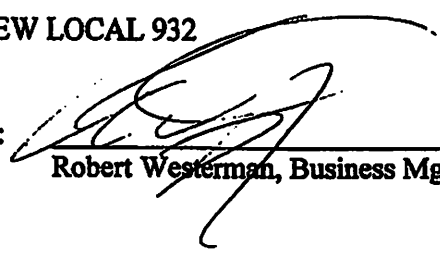
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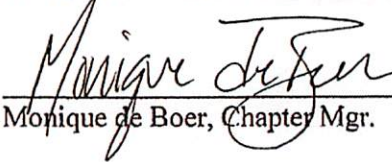
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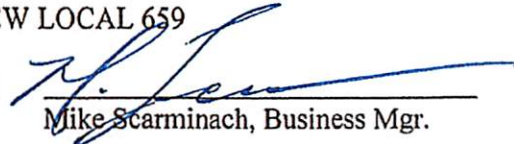
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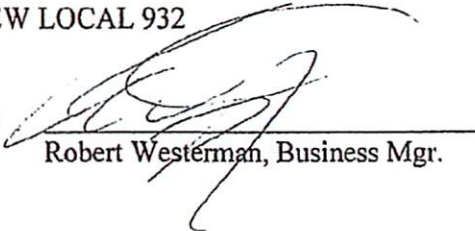
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